

FAMILY RESTRICTION INCENTIVES BILL*

[English]

SHRIMATI JAYANTI PATNAIK (Cuttack) : I beg to move for leave to introduce a Bill to provide for incentives to those who would restrict their families by using family planning devices.

MR. DEPUTY-SPEAKER : The question is :

“That leave be granted to introduce a Bill to provide for incentives to those who would restrict their families by using family planning devices”.

The motion was adopted.

SHRIMATI JAYANTI PATNAIK : I introduce the Bill.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL—Contd.

(Amendment of Sections 125 and 127)

[English]

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

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

Shri Ebrahim Sulaiman Sait was speaking, he can continue.

SHRI G.M. BANATWALLA (Ponnani) : He is under the impression that he will be called at 3.30 P.M. He may be called later. If there is some

rule by which we can continue till he comes, let us continue.

MR. DEPUTY-SPEAKER : It is not possible.

SHRI G.M. BANATWALLA : There should be some laxity somewhere. At least let us go on till he comes.

MR. DEPUTY-SPEAKER : Shri Owaisi may start his speech.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI GHULAM NABI AZAD) : He has already spoken, I think.

SHRI OWAISI (Hyderabad) : No. I have not spoken.

[Translation]

SHRI OWAISI (Hyderabad) : Mr. Deputy-Speaker, Sir, the Supreme Court judgement, which has interfered with the Muslim Shariat law has caused anxiety among the entire muslim community of the country. I would like to say that a Muslim can tolerate everything but he cannot tolerate interference with his religion.

I feel that in all the speeches made here, no Muslim Member has said anything wrong because Islam has been bestowed by Allah “Mohammadur-rasool-ullah Sullahu Eillah Wasallam”. Nobody can interfere with it. We shall never tolerate any kind of interference with it. Member have given here many examples about the changes which have taken place in Pakistan, Malaysia and other places. Mr. Deputy Speaker, Sir, Mr. Sait has come here. If he..... should I continue or.....

[English]

MR. DEPUTY-SPEAKER : You continue.

[Translation]

SHRI OWAIISI : I was saying that it was wrong to say that in certain Muslim countries changes had taken place. No such thing had taken place anywhere. Suppose for a while that some change has taken place somewhere, but that does not mean that this religion belongs to Zia-ul-Haque or somebody else. Nobody has got the right to change it. If such a thing happens in any country, it is not worthy of being accepted by us. If they do so, they are wrong.

It has been said here that many persons including certain Muslims also have spoken against this Personal Law. I may tell you that a person who speaks of interfering with religion is not a Muslim at all. It has been stated here that Ajgar Ali Engineer and some other persons have spoken like this. If they have spoken like this, they are not Muslims and if they are not Muslims, they have no right to say anything in this matter.

On the other hand, it has been stated in this august House that atrocities are being perpetrated on women. It has been said that sympathy should be shown towards women. But it is a strange coincidence that what when discussion was going on the Personal Law in the country, riots broke out in Gujarat. The women there were disgraced, but nobody uttered a word about it. After all, atrocities are being perpetrated on women there also. Has it not come in some newspapers that spears were thrust and acid poured into their private parts? Where were these persons at that time? Nobody came forward to plead the case of women at that time.

Today, on the basis of a case relating to Muslim Personal Law, sympathy is being shown to women by conspiring to impose the orders of civil courts.

The condition of woman is very

miserable, but you have done nothing in this respect. Islam is a *Deen-e-Fitrat* and it has not gone against the *Fitrat*. Islam wants that no woman should remain unmarried. The divorcee should marry again because remaining unmarried in society will help create evils. Islam does not want creation of evils. It wants that a woman should marry and it is the sacred saying of Prophet Mohammad that it is His law and he who violates His law has nothing to do with Him. Such a great importance has been given to marriage. Why as such things talked about? After all, there are other matters to be worried about. I would like to say that it would be better to amend the Supreme Court's judgement through this Bill and do what the Muslims want. The foundation of secularism should be strengthened.

You have no right to say anything about the entire religion. I would like to say it again that you enact a law for prevention of cow slaughter to protect your religion. If you talk of Supreme Court today, then do not do it. Due to this judgement, there is restlessness not only in India but in the entire Muslim countries of the world. It is the first instance in the history of Islam that such a judgement has been given by which changes are sought to be made in the *Shariat*. This thing has happened for the first time after 1,400 years. It has caused restlessness among all the people. The only way to remove this restlessness is to pass immediately the Bill introduced by Shri Banatwalla and settle this issue for ever. If this decision is left as it is, then I do not feel that it would lead to any satisfactory condition. On the other hand, it will lead to disturbing consequences and create restlessness among Muslims.

You will see that such a serious concern has never been expressed on any matter in the country before as has been expressed in the present case. Keeping in view all these things, it would be better for Government to have a second thought on it. The

[Shri Owaisi]

Supreme Court Judges should also hold consultations before delivering such judgement. This issue pertains to a religion and only a Muslim Judge should decide such cases because in such cases only a Muslim has got the right to do *izti had*, i.e., right to give opinion where there is conflict between the order of the law and that of the Prophet. Nobody else has got the right to do so. Exactly this is the case before us today. As per as problem, only Muslim Judges have got this right. Certain conditions have been laid down for him also. Neither Parliament nor the Supreme Court has got this right. No power on earth has got the right to enact such a law which may cause mental agony. I would like to say that this august House should postpone consideration of the Bill. The widespread restlessness among Muslims in the country should be removed. The best way to remove this restlessness is to close the doors for such cases for ever so that such issues may never arise and never create restlessness.

I would like to say that hon. Member should not say anything which may cause mental agony to anybody. Many things have been said. Many women have said such things. You cannot enact a law on the basis of the views expressed by a few persons. What does the majority want? The majority in the country has taken this decision and a deputation of the religious scholars met the Prime Minister also. These are the matters where the Supreme Court judges have totally erred while giving the judgement. They have made references which I do not want to mention there. I would like to say that this problems should be recognised and the restlessness among Muslims removed for ever because people in India clearly have their own dignity and it is not advisable to cause restlessness among the people of such a large minority in the country. The interference which has started with their religion recently should be put to

an end for good. With these words, I conclude.

[English]

MR. DEPUTY SPEAKER : As a special case I am all wing Shri Sulaiman Sait because when I called his name he was not present, but anyhow one of his colleagues Shri Banatwalla told that since he had some important work, he wants to come late. So, as a special case I am allowing Shri Sulaiman Sait to continue his speech.

SHRI EBRAHIM SULAIMAN SAIT (Manjeri) : Mr. Deputy-Speaker, Sir, I was on my legs when the House adjourned on the 9th of August and discussions was continuing on the Code of Criminal Procedure (Amendment) Bill moved by my colleague Janab Gulam Mohammad Banatwalla. I had spoken just for one or two minutes on that day and now I am resuming my speech. I am grateful to you for permitting me to speak though I was a little late. At the outset, I request you to bear with me for justified length of time this. I say because Muslim Personal law is a very important issue, a burning issue, a sensitive issue which deeply concerns the religious security and religious identity of 120 million people of this country. When I stopped speaking last time on 9th of August, I had emphatically told the House that the recent Supreme Court judgement, that is, AIR 1985 SC 945 is a complete and flagrant violation of Muslim Personal Law. The Supreme Court, through its judgement, has interfered in the Muslim Personal Law. Not only this, the Supreme Court has flouted, without any consideration, the decision taken by this House in 1973 with regard to various sections of Criminal Procedure Code Bill thus flouting the intention of the Parliament. What is much more grievous is that Supreme Court has given a wrong interpretation of two isolated verses of Quran. The Supreme Court has quoted these verses out of Context ignoring other verses

on the subject; and ignoring also the traditions of the Prophet,

The verses of Holy Book Quran cannot be misinterpreted in such a manner ignoring established interpretations for last 1400 years—thus creating a wrong impression in the country. All Holy Books are important. All Holy Books are sacred, be it the Quran, or the Bible, or the Granth Sahib or the Vedas. All are sacred and nobody should be allowed to play so lightly with the injunction contained in these Holy scriptures. Therefore, I felt that Parliament should come forward to amend the Criminal Procedure Code in a suitable manner to give protection to Muslim Personal law and thus nullify the effect of the judgment of the Supreme Court. Otherwise the secular character of our country will be lost. The religious freedom guaranteed by the Constitution in the Fundamental Rights Chapter will become a force. Thus we will be laying a very very bad precedent for the future. Therefore, I request that it is the duty of this Parliament to amend the Criminal Procedure Code and nullify the effect of the judgment of the Supreme Court.

One basic factor has to be understood very very clearly. As far as Shariat is concerned—and the Muslim Personal Law is a part of Shariat—it is not a man-made law. It is a divine revelation. It is based on Quaranih injunctions and traditions of Prophet. Therefore, as far as Shariat is concerned and the personal law is concerned, it is a divine law, is a substantial law. It is an inalienable and an integral part of the religion of Islam. And together with this, our firm belief is that when this is a divine law, it cannot be changed, nor can't be interfered with Allah's directions cannot be changed. Therefore, we emphatically feel that as far as Shariat is concerned, the personal law is concerned, it is for all times and for all believers.

Here I do not make these pro-

nouncements myself. Here it is the Holy Quran which says this. I would not go its text, but will quote the translation of the verses. It is Chapter II, Verse 229. It says: These are the limits ordained by Allah. Allah has ordained certain limits. Allah has laid down certain law. Allah says "These are the limits ordained; so don't transgress them". It means don't cross those limits, do not interfere, do not give up certain portions, and follow certain portions according to your like and dislike. You have no right to do so. And then it says: If you do transgress the limits ordained by Allah, such persons do wrong to themselves.

Here I would like to point out one more thing. After saying this Quran goes further and says what happens if one transgresses these limits ordained by Allah? I am a believer. I believe in the Holy Book and I know 90 per cent of the people in India are believers. They believe in Hinduism or Christianity or Jainism or Buddhism or some religion or the other. Therefore, it is that everybody should respect the Holy Books. I respect the Holy Books of other religions and I want that all others should respect the Holy Book of Islam also.

Again Allah says—and I am not going to read the Arabic text because it will take much more time. I will just read the translation. This is from Chapter IV, verse 14. Here Allah says: I quote the translation of Abdulla Yusuf Ali. It says "Those who disobey Allah and his apostle and transgress the limits will be admitted to fire." "May be some people do not believe in any religion or do not believe in Allah and do not believe in hell. For them. I have nothing to say. But for believers I must say what Allah says. I quote: "Those who transgress limits will be admitted to fire to abide therein; and they shall have a humiliating punishment." This is what Quran

[Shri Ebrahim Sulaiman Sait]

says about those people who transgress the limits, those people who say they want to change the Personal Law, those people who say they will tolerate interference in personal Law. It is so important for a Muslim, the real Musalman, that he has to mould his life according to the injunctions of Quran and one who does not do so cannot be called Musalman at all. I don't say this. I say this on the authority of *Ulemas* of international fame. And therefore, it is very very important. Now the Supreme Court Judgment is here. I told you how important Shariat is and here, the Supreme Court judgment says. I quote :

“The statutory right available to her under this Section is unaffected by the provisions of the Personal Law applicable to her.”

That means, whenever there is conflict between the Personal Law and Section 125 of the Criminal Procedure Code. Section 125 will prevail. This is what Supreme Court again says. Please see page 12 of Supreme Court judgment. I quote :

“It shows unmistakably that Section 125 overrides the Personal Law, if there is any conflict between the two.” That means, the Supreme Court wants to abrogate the personal law through this judgment. Throughout the length and breadth of the Country, Mussalmans are unhappy about this judgment of the Supreme Court. There is complete and widespread resentment. Now when I say this, our friends who support the Supreme Court Judgment may say that progressives are on our side. Yes; handful of progressives are there. It has to be understood that all those persons who supported Banatwalla's Bill and opposed Supreme Court judgment are not obscurantists, and conservatives as is being said. In this Parliament, many Muslim Members have spoken. All of them belong to

Congress Party—Mr. Aziz Sait has spoken; Mr. Fakir Mohd. has spoken; Mr. Zainul Basher has spoken. All are elected representatives of the country. They are educated and cultured gentlemen. What did they say? They said that Supreme Court has erred; Supreme Court's judgment is wrong; and they support Banatwalla's Bill. Then it is said that all ladies are with you. Far from it. What a dream! Here on the 9th Begum Abida Ahmed was speaking. She is a progressive, educated, cultured lady and a Member of Parliament and wife of the former President of India. She said, that she was against the Supreme Court judgment. We had observed Shariat Protection day, last Friday of Ramzan, when lakhs and lakhs of telegrams were received by the Prime Minister, the Home Minister and the Law Minister. All these hard facts have to be understood very carefully.

Now, Sir, as I said in the beginning, they, the Supreme Court had completely ignored the intention of this Parliament. I do not want to go into details. My colleague Shri Banatwalla has already explained about the whole matter. When the Criminal Procedure Code was introduced in 1973, it was found to be against the Muslim personal law. We made representations. There was agitation in the country. Delegation of Muslim Personal Law Board met the then Prime Minister Shrimati Indira Gandhi. Prime Minister Indira Gandhi understood our position. She directed that amendment should be brought about to give protection to Muslim personal law and section 27(3)(b) was explicitly added at the direction of the then Prime Minister, Shrimati Indira Gandhi, and this was the decision of the Congress Government and Seal of approval was put on this amending section by this august House. There is no doubt that this House had passed this Article 27(3)(b) with clear intention of giving protection to Muslim personal law.

Our Home Minister Shri S.B. Chavan is sitting here. I am very happy.

This is what has appeared in the Indian Express on the 17th August, 1985. This is what Mr. Chavan said when he announced the Assam accord in the House. I quote from Indian Express dated 17th August, 1985 :

“Mr. Chavan asserted that the present Government’s policies were the continuation of the policies of Indira Gandhi’s Government. The entire approach of the present Government to all the issues was the same, he said.”

What was the policy of Indira Gandhi? What was the policy of her Government then? When the Home Minister says they are just continuing the same policy, nothing different from that, then I must say that they are bound to bring about this amendment as was done in 1973, and give protection to Muslim Personal Law. Then alone you can say that the present Government is following the policies of Mrs. Gandhi. Here I will just point out and make a reference, I do not want to take much time of the House.

It was on December 11, 1973, in this same august House, Mr. Mirdha, the then Home Minister who piloted Cr. Pr. Code Amendment Bill, said while moving amendment to add clause (b) to sub-section (3) of section 127 :

“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 ”

Again, in the Rajya Sabha, when clause 127(3)(b) of the Bill was introduced and his amendment was discussed; Mr. Mirdha said :

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

This was very very clear. The intention of the Parliament is clear and today the Supreme Court has gone against the intention of the Parliament.

Sir, now coming to the interpretation given to Quranic Verses I must say that they were wrong in their interpretation. Isolated versions have been chosen without any context and given wrong interpretation. The Verses taken from *Sura Baqra*, this is Second Chapter, Verse No. 241 are not at all the Verses pertaining to divorce, iddat and maintenance. No doubt that Abdullah Yusuf Ali has given this meaning of maintenance to word *Mata* in Verse 241 of *Albaqra*. But let me point out very humbly that the same Abdullah Yusuf Ali has given the meaning of *Mata* at 11 places, not one or two. In *Sura 2* he says, tax reasonable amount ; in *Sura 2*, Ayat 240 he says, ‘maintenance’ ; in *Sura 3*, Ayat 34, he says ‘possession’ ; in *Sura 3*, Ayat 196, he says ‘enjoyment’ ; in *Sura 9*, Ayat 38, he says ‘comfort’ ; in *Sura 10*, Ayat 76, he says ‘little enjoyment’ ; In *Sura 16*, Ayat 117, he says ‘profit’ ; In *Sura 79*, Ayat 37, he says ‘for use and convenience’.

This is how the meanings of Ayats vary. In a very authentic Arabic dictionary and that is *Li sonul Arab* and the translation of *Mata* is a single or one time transaction. It does not mean payment of maintenance continuously at all. This is the position with many other translations including Mr. Pickthaw and Maulana Mandoodi.

Now I want to tell you something more. They, the Supreme Court have selected Verse 241 of *Sura 2* to say that maintenance should be paid to a divorced wife until she remarries. Actually, it is *Sura 65* called *Sura Talaq* meaning Divorce that gives all guidance and directions regarding divorce, iddat, and maintenance. Without referring to *Sura Talaq* and without going through the *Sura* concerning divorce and maintenance, the Supreme Court Judges selected an isolated verse

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from Sura Baqra, the II Chapter of Qutan. There is not one single instance or practice of giving maintenance to a divorced wife until she remarries or dies in the entire Muslim World. There have been interpretations by the Prophet himself. There have been companions of Prophet Sahaba. They have given interpretations which are different. Then, there are learned Muslim Jurists: there are Ulemas, Muslim scholars and there have been Imams of four schools of thought—Hanfi, Maliki, Shafi and Hambli. None has said that maintenance has to be given until divorce remarries or dies. Everyone is unanimous that maintenance is only for a period of Iddat and not beyond. This has been the position for the last 1,400 years without any interruption.

Much is said about changes in Muslim countries. What changes have been made in Muslim countries? Nothing. They speak about Pakistan. Pakistan just appointed Sharia court to implement the direction of Quran. There has been no change, no interference.

Here I have Alakhbar. It is an Arabic daily published from Cairo, the capital of Egypt. It is a progressive country, a Muslim country. What is their decision? The Parliament of that country met and has taken decisions. There is the paper of 1st July, 1985. If anybody is here who knows Arabic—Janab Z.R. Ansari Sahib may be knowing—I can pass on this paper to him. He can read the newspaper so that he can see whether the translation I am giving here is correct or not. I quote the English Translation of the news from Alakhbar of Egypt dated 1st July, 1985:

“The Parliament of Egypt recently passed a comprehensive family law covering marriage, divorce “iddat” (waiting period), custody of children etc.

The newly passed Law includes a

provision that a husband would be responsible for maintenance of his divorced wife during the period of Iddat.”

This is the latest decision of July 1st, 1985 of a country whom you call very progressive. I cite the example here of a Muslim country and their decision that the maintenance is only for the period of Iddat, and not beyond.

PROF. N.G. RANGA (Guntur);
That means how long?

SHRI EBRAHIM SULAIMAN
SAIT: Three months.

THE MINISTER OF STATE OF
THE MINISTRY OF SHIPPING AND
TRANSPORT (SHRI Z.R. ANSARI):
Which country?

SHRI EBRAHIM SULAIMAN
SAIT: Egypt. This is Alakhbar dt.
3rd July, 1985.

PROF. N.G. RANGA: What
happens after three months?

SHRI EBRAHIM SULAIMAN
SAIT: I shall tell you what happens
after three months. Certain rules are
laid down by the Muslim Jurists, the
Fuqhas which say:

“The divorced wife should have maintenance after divorce for three months. Suppose she is pregnant, the maintenance is until delivery. After that, if she is feeding the child, whatever the feeding period she gets maintenance.”

“The maintenance will be for seven years for boy and for a girl until she attains maturity.”

“Custody of the child is till then will of the mother.”

It is very clear. Again after this the divorced wife goes back to her natural family and there is comprehensive law

of maintenance is Islam that governs such cases.

Nobody can dispute Quran and the traditions of Prophet. The law is laid down in Quran. The Jurists and scholars have given details in authoritative books like Hidayah etc. All this is indisputable. The Quran says: I quote the translation of Abdullah Yusuff Ali. It says:

INTRODUCTION TO SURAH LXV (Talaq).

"This is the ninth of the ten short Medina Suras dealing with the social life of the Community. The aspect dealt with here is Divorce and the necessity of precautions to guard against its abuse. The relations of the sexes are an important factor in the social life of the Community, and this and the following Surah deal with certain aspects of it. "Of all things permitted by law," said the prophet, "divorce is the most hateful in the sight of God." (Abu Daud, Sunan, xiii, 3). While the sanctity of marriage is the essential basis of family life, the incompatibility of individuals and the weaknesses of human nature require certain outlets and safeguards if that sanctity is not to be made into a fetish at the expense of human life. That is why the question of Divorce is in the Surah linked with the question of insolent impiety and its punishment."

The Prophet lived at Mecca and Madina. He migrated to Madina under the Command of Allah from Mecca. The revelations were there when he stayed in Mecca and also when he stayed in Madina.

This is the Chapter in Quran Surah Talaq which was revealed to prophet Mohammad at Madina. It is said that this is the ninth of the ten short

Madina Suras dealing with Talaq. The Supreme Court in the judgment must have quoted this Surah and not Surah Bakra. It is in Surah Talaq that the matters relating to divorce and maintenance are dealt with and there is warning also about the necessity of precaution to guard against its abuse. There are abuses—Misuse of the facilities provided and permission given I can see it. But because of certain abuse or certain misuse which are exceptional you cannot argue that the law is bad. There is a knife and if a lunatic kills himself with that knife, you cannot blame the knife itself, for the action of the mad.

I have read out the introduction to this chapter on divorce. Now I quote verse four and six from this Surah. Surah 65 which is called 'Talaq', meaning 'divorce'. Every minute detail is given here. You need not go to any other book. If anybody is quoting any other unauthentic book that has no importance. When Quran is here, injunctions given in clear terms, no other book has any value at all. This is the basic factor which has to be borne in mind only in cases when you cannot get guidance in Quran, one has to go to Hadith, and then Ijma and last Qiyas. Here in Surah 65: Verse 4, Quran says: "Such of the women"—every detail is given—"as have passed the age of monthly courses, the prescribed period is, no doubt, three months". This clearly says that Iddat period is three months, there is no doubt whatsoever. If you have any doubt about three months you can go through it. Those who carry life in their womb, the period will be till they deliver the burden.

Again I quote verse 6 from Surah 65 that is Talaq. It says: 'Let the women live (In iddat) in the same style as ye live, according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver'. It is very clear. Quran says that if

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they have got life in their womb, that is if they are pregnant, the period of iddat is till they deliver and they must be paid maintenance till such time and not beyond. It is unfortunate that the clear injunctions were not considered by the Supreme Court. I have one more very valid point and that is the Supreme Court has thrown to winds all judicial traditions and established conventions. Here it is a case of Krishna Singh-vs-Mathura Ahir. This is AIR 1980 SC 707. This Supreme Court judgement of 1980 says : "The fundamental rights do not touch upon the personal law of parties". "A judge cannot introduce his own concept of modern times but should enforce the law as it is derived from recognised and authoritative source". In this connection I would like to read out to you one para from an Article written by an eminent legal expert Mohammad Isa, advocate, Calcutta High Court :

"The Supreme Court in the case of Krishna Singh-vs-Mathura Ahir (AIR 1980 SC 707) upheld the traditional Hindu Law that a Sodra cannot become a Sanyasi and that this does not violate the fundamental rights because "the fundamental rights guaranteed by Part III of the Constitution do not touch upon the personal law of parties." But in the case of Md. Ahmed Khan-vs-Shah Bano Begum (AIR 1985 SC 945) the Supreme Court totally disregarded this principle and performed a somersault to deny the Muslim community the right to be governed by their own Personal Law."

Thus it is evident that the recent Judgement has broken all traditions. Sir, the Supreme Court has also gone beyond its terms of reference. What were the terms of reference? Now, while referring this case the Full Bench observed :

"As this case involved substantial

question of law of far reaching consequences, we feel that the decision of this Court in *Bal Tahira V. Ali Hussain Fida Ali Chothia and Anr* (1979 (2) sec. 316) and *Fazlum Bi V. K. Khailar Vall* (1980 (4) sec. 125) require reconsideration because, in our opinion, they are not only in direct contravention of the plain and unambiguous language of S. 121(3)(b) of the Code of Criminal Procedure, 1973 which far from over-riding the Muslim Personal 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 decisions also appear 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 5.2 of the Muslim Personal Law (Shariat) Application Act, 1937—an Act which was not noticed by the aforesaid decisions. we therefore direct that the matter may be placed before the Hon'ble Chief Justice for being heard by a larger Bench consisting of more than three judges."

The Supreme Court seem to have completely ignored this reference.

MR DEPUTY SPEAKER : Please conclude.

SHRI EBRAHIM SULAIMAN SAIT : Sir, one more point and I have done. Without any rhyme or reason the Supreme Court says in the judgment and I am quoting : It is from page 28. It says :

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that the State shall endeavour to secure for the citizens a

uniform civil code throughout the territory of India. There is no evidence of any official activity for framing a common civil code for the country."

This is what the Supreme Court says. Again the Supreme Court judgment says on page 29 of the Judgment.

"Inevitably the role of the reformer has to be assumed by the Court because it is beyond the endurance of the sensitive minds to allowed injustice to be suffered when it is palpable."

I would like to point out thing in this connection which is worth-remembering. When the debate was going on a common civil code, and it was opposed by many of the Muslim members, the Law Minister Dr. Ambedkar replied to the Debate. I am quoting from the debates. He said, "No Government can exercise 'its' power in such a manner as to provoke the Muslim Community to rise in rebellion. I think in would be mad Government if it did so."

"It will again cite from an Affidavit filed by the Government of our country in the Supreme Court, which speaks in unambiguous terms. This is the case of Ms. Shehnaz Shekh V/s Government of India and Others, Writ Petition No. 13451 of 1983 filed in the Supreme Court. Government of India has taken an authentic stand. Our Law Minister Mr. Sen must be aware of this and must be knowing Shri V.R. Atre, who had filed this Affidavit on behalf of the Government of India. It is said in the Affidavit —

"In any event, Directive Principles are not mandatory, and they cannot be enforced."

It is very clear. This has to be taken as the declared policy of the Government. Their policy has been very clearly laid down in the Affidavit filed

in the Supreme Court, which says : I quote again :

"It is the decided policy of the Government that in the matter personal law, applicale to the minority communities, unless the initiative therefor comes from the minority community itself, the Government will not take up any legislation in that field."

Now, the Supreme Court wants to take up the role of a social reformer as it has been said in the Judgment. Under our Constitution, under Articles 13 of Fundamental Rights and 37 of Directive Principles, they have no right and no jurisdiction to do so. It is very clear and this connection, let me quote the famous case of Keshavanada Bharati Vs state of Kerala AIR 193 Sc 1461. It was clearly held that "The Directive Principles are not enforceable by court and that no court can compel the Government to lay down a Uniform civil code as Contemplated by Article 44 of the Constitution of India." But Supreme Court has said something to the contrary.

I am sure all respect the personality of Maulana Abul Kalam Azad. I want to invite your attention and the attention of the hon. Ministers to what he has said. In the Congress Session of Ramgarh in 1940, this was what he said. This was the commitment of the Congress Party even before independence. Mulana Abul Kalam Azad said in the Ramgarh Congress Session in 1940 : I am quoting from his Book :

[Translation]

I am a Muslim I feel proud that I am a Muslim. I have got as legacy the 1300-year old glorious Islamic traditions. I am not prepared to waste even the smallest part thereof.

The teachings, history, knowledge and arts of Islam, and the Islamic

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civilization are my assets and it is
my duty to preserve them.

[English]

"I am not prepared at any cost to
give up even the smallest part
of the *Shariat*, the Muslim Personal
Law."

This was what Maulana Abul Kalam
Azad said in 1940. And he went
on to say...

SHRI K.P. UNNIKRISHNAN :
We should be happy that Sait Saheb
has become a follower of the Maulana.
But he should also quote what all
Maulana said on various other
things.

SHRI EBRAHIM SULAIMAN
SAIT : This is very important. Please
listen to what he said.

[Translation]

The people, who are well aware
of the changing times, know that the
followers of all religions in the world
are inclined to bring about reforms
and modifications in their respective
religions. This process of bringing about
reforms has been going on for the
past 300 years. The Christians felt the
necessity of introducing reforms because
the Orders issued by the Christian
religious leaders could not keep pace
with the changing times.

[English]

They could not keep pace with the
changing times.

And Finally Maulana Abul Kalam
Azad said :

[Translation]

But I solemnly affirm that Muslim
do not at all need to introduce
reforms and modifications in their
religion because *Surats*, are com-
plete in themselves. There is no
scope for any modification or
reform in them.

[English]

It is very clear that *Shariat*, the
Muslim Personal Law needs no change
whatsoever. It has to remain for ever
as it is.

Many members, while supporting
the Supreme Court's judgment and
opposing Shri Banarwalla's Bill have
stated that women have no place under
Islam. What an ignorance! They
know nothing about it. *Islam* is the
only ideology which has given a
position, respect, status and even pro-
perty rights to women. There is no other
system, like *Islam*, that does all this
which gives such prominence, status
and position to women. I have got a
quotation here from Justice Krishna
Iyer about the *Islamic Law*. He says
in his "*Islamic Law in Modern India*"
(page 23) :

"A secular and pragmatic approach
to the Muslim Law of divorce
happily harmonizes with contem-
porary concept in advanced coun-
tries."

Again he says :

"The only system of marital law
in India which accepts the ultra
modern but responsibly realistic
ground of breakdown as against
fault is in *Islam*."

This is what Krishna Iyer says. Finally let me be short and just quote Syed Amir Ali from his famous book "Spirit of Islam". He says; But the teacher who in an age when no country, no system, no community gave any right to women maiden or married, mother or wife, who in a country where the birth of 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".

Now, they say that a common civil code is needed for national integration. But national integration will go to pieces with a common civil code. India is a plural society. It has got so many religions. It is a multi-religious, multi-cultural, and multi-lingual country. Therefore, it is not possible to have absorption or assimilation. It can never work. The other day we presented a memorandum to our Prime Minister Rajiv Gandhi on behalf of Muslim Personal Law Board. I am just quoting from this memorandum. It said,:

"National integration lies in the acceptance of diversity and not in imposing uniformity; it lies in mutual trust and confidence and not in distrust and suspicion. National integration will be strengthened when every religious denomination feels religiously secure and satisfied and convinced that their religion in all its essential aspects is safe and untampered with and that they are free to practise it and their religious identity will be protected against the pressure of assimilation and absorption."

This gives out the correct picture. Not the Supreme Court Judgment. These are the facts. I have quoted the Quran, I have quoted our Constitution and as mentioned by the policies of the Indira Gandhi Government, and about the intentions of parliament to protect Muslims Personal Law. I have also told you what Maulana Azad had said about shariat and personal law of Islam. Considering all these things, the Supreme Court judgment is against the Muslim Personal Law and it is a flagrant violation and misinterpretation of holy Quran the only way to challenge it is to accept Shri Banatwalla's amendment so that Muslim Personal Law may be protected and the Muslim minority can enjoy secularism and the people of this country can have their religious freedom guaranteed under the fundamental rights of our Constitution. If this is not done all the declarations of government will become a farce and the fundamental right guaranteed in the Constitution will have no value whatsoever. Hope under the circumstances Parliament will realise its duty and act.

14.00 hrs.

MR. DEPUTY SPEAKER : The time allotted for the Bill is already over. It is going to be 4.15. We have already extended once by one hour and for the second time by three hours. We have had a total of six hours. By how many more hours can we extend it now?

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI GULAM NABI AZAD) : By two hours.

MR. DEPUTY SPEAKER : All right.

(Amndt.) Bill
translation

(Amndt.) Bill

THE MINISTER OF STATE IN THE MINISTRY OF INDUSTRY AND COMPANY AFFAIRS AND IN THE MINISTRY OF HOME AFFAIRS (SHRI ARIF MOHAMMAD KHAN) : Hon. Deputy Speaker, Sir, I am thankful to you for giving me an opportunity to speak on this Bill. Before, I begin, I would like to say that this is an area of law, of *Shariat*, of *Fiqha* (Islamic Scriptures), where no opinion can be given easily or casually. When I rise to speak, I do not at all claim that there is an element of finality in whatever I am going to say. But one thing I must say that since Shri Sait repeatedly said that he was quoting from the Holy Quran and that other Scriptures could also be quoted, I assure you that I shall quote from nothing but the Holy Quran and the *Hadis* and should I happen to refer to any other source, I request the hon. Members not to take such references into consideration at all. But I would certainly like to quote from the Holy Quran and the *Hadis*. I understand that Shri Banatwalla's Bill is based on the judgement of the Supreme Court about which Banatwalla Sahib and a number of other hon. Members feel that it is an assault on the Muslim Personal Law or an interference with it.

So far as a uniform civil code is concerned, the Government have made their stand clear not once but repeatedly and I do not think any further clarification is needed in that respect. After the Supreme Court judgement, the Prime Minister had made a statement. A woman had approached the Supreme Court seeking remedy under the Criminal Procedure Code. If under that provision the court considered that she had a right, the court might grant justice to her, and if the court considered that she had no right, the court might not grant that, and if the Court considered that she was not covered by that provision, the court could give its opinion accordingly. However, the Supreme Court went a step further and gave its opinion about a uniform civil code also. But, since the Supreme Court has no power to frame a uniform civil code, it simply gave its opinion. After the judgement of the Supreme court, when the Prime Minister made a statement

clarifying the position on behalf of Government, I think that meant that we had rejected that opinion. There is, thus, no further scope for discussion on a uniform civil code. I am saying this because sometimes certain statements in the matter of religion are made in such a manner as to arouse sentiments. If we go on telling and arousing the sentiments of the common man, who does not fully understand the law, that the *Shariat* Law and its interpretation is being interfered with and, as Sait Sahib was saying, that this law was a law revealed, then it is bound to arouse his sentiments. Only two weeks ago, while speaking on this subject, Shri Daga said certain things—I would not say that he has not studied it properly, he is a senior Member of this House— but even if he has studied, he has not been able to depict a true picture of Islam. What he spoke led Shri Sait, Shri Banatwalla and Shri Owaisi to be on their legs together and say emphatically that the House was being used as a forum for arousing sentiments. Believe me, I also did not like whatever he said, but did not evince those very feelings; my feeling is that we have been living in this country together for centuries, we follow different religions, and about the religion which we follow, what its true picture is, what its true teachings are, what its real message is, we have not been able to apprise our brethren of this country till today. We have been lacking somewhere; we have lagged far behind in doing our duty in that we have not been able to tell them so far what Islam in the true sense is. But at present so far as this Bill is concerned, the only thing worth consideration is that a uniform civil code or the question of fundamental Rights is not a subject of this debate. Government's stand on them is very clear. The point which needs consideration is whether the Supreme Court judgement affects the Law of *Shariat*? I would go a step further and say that the Supreme Court Judgement could be in just one individual case, and just about two months back, the Chief Justice of India issued a statement that the Judges of the Supreme Court were after all human beings and they could also err in their understanding, they could also misinterpret a certain

law ; therefore, we leave aside this judgement of the Supreme Court also. The basic question is whether Islamic teachings, Islamic Law and the intention of Islamic Law are in any way affected by Sections 125 and 127 of the Criminal Procedure Code and if so, the apprehension is well-founded in that regard. But, as I have already submitted nothing should be locked at emotionally. I think time and again it has been decreed that we should try to understand the Quran. (*Interruptions*) I would not be able to refer to the *Aayat* text in Arabic, but would, perhaps, be able to refer to its translation, and say that we have been ordained not to understand religion from any other source but to understand it by reading the text, and to practise it in life. (*Interruptions*).

First, let us see what the provision of the criminal Procedure Code is. The Criminal Procedure Code provides that a woman, who has been divorced but who is without any means of subsistence, who is not capable of making a living, has a right to maintenance allowance from her former husband. From which husband ? From one who is competent and has means and resources. This provision of the Criminal Procedure Code does not apply indiscriminately to every husband and wife who are separated from each other, but rather this provision is for those women only who have no means of subsistence, who are also not capable of making a living.

16.09 hrs.

[SHRI SOMNATH RATH *in the Chair*]

It is for them only. To my mind, what we have to see is that this provision is meant only for those women who are totally destitute, who have no means of subsistence, who cannot keep their body and soul together—only such women would be called destitutes only for them. And I repeat it is only for such women who have no means of subsistence.

PROF. SAIFUDDIN SOZ (Bara-mulla) : This is your own interpretation...

(*Interruptions*)..... I have no dispute, just listen to me.....(*Interruptions*)

SHRI ARIF MOHAMMAD KHAN : Please keep calm; I am explaining it. What was the objective behind the provision of the Criminal Procedure Code ? I would read it out, if you so desire, but it is not necessary. We have already discussed it a number of times. The question now is whether the *Shariat* Law enjoins any responsibility on the ex-husband in regard to a woman in question, i.e., a woman who has been divorced. This, I think, is a fundamental question which needs to be looked at from a juristic angle. I have already said that when a woman has no means of subsistence, nor the capability of making a living, if she, under the secular laws of some other country, gets maintenance from her ex-husband, who has been compelled to do so, then the point is whether the Islamic Law is affected by it. I think we shall have to look at both these aspects.

SHRI OWAI SI (Hyderabad) : What is your opinion ?

SHRI ARIF MOHAMMAD KHAN : I am coming to that. Whatever be my understanding of it, in this matter I shall depend on the *Ayats* of the Holy Quran. Thereafter, we would decide. I have listened to the speeches of two of the hon. Members of our party. They too said that the *Sura-e-Bakr* is not related to the cases of divorce. I was astonished to listen to hon. Shri Sait, but I cannot challenge him, he being a more learned person; he is also senior to me in age. But then, there is the translation rendered by Maulana Abdul Majid Dariyabadi, which has the approval of Rabta-e-Alak Islami, and then there is another translation by Yusuf Ali Maulana Azad also, but I would begin with Maulana Abdul Majid Dariyabadi. I now come to the *Ayats* of the Quran that would enlighten us, if we want to be so enlightened by the instructions of the *Ayats* in the matter of divorce. I would not refer to one *Ayats* alone, but still we should check up from the Index from where the light should be

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derived. Shri Sait has called the first Surat as irrelevant to the issue. This is the Surat which has been mentioned first of all. Now, you count the *Aayats* in *Surat-II-228, 229, 230, 231, 236, 237, 241* and 227 is also there—there are about nine *Aayats* in all in *Sura-e-Bakr* about divorce on which Shri Sait opines that these are not very much related to divorce.

SHRI G. M. BANATWALLA :
Divorce or Matta is not in question, my Bill is on maintenance.

SHRI ARIF MOHAMMAD KHAN :
Then there is another *Surat*, *Surat-65* containing *Aayats* from one to seven. Then there is *Aavats-4* in *Surat-e-Nis* which has been more emphasized it is related to divorce. There is a mention of *Sura-e-Ahjab* in *Surat-33*, there is *Aayats-28*, included in the index. I have also gone through Maulana Abdul Majid Dariyabadi—the position there is almost the same as is obtaining elsewhere.

Now I come to the question of divorce, *Mehr* and the issue of maintenance connected with it. These cannot be seen in isolation. These should be viewed from the point of view what duties are enjoined upon the husband in respect of a divorced woman. It will be viewed from this angle. This may appear to be irrelevant to begin with, but I am mentioning it because the arguments which I am going to advance are relevant. Mention has been here of *Mehr* repeatedly. There is a line in the Supreme Court judgement which seems to imply that in Islam, the position of a woman has been shown as a degraded one. I have laid my hands on several authorities. I wanted to quote all those authorities which show the real status of woman in Islam, the status of equality, which put end to cruelty and excesses. Since Shri Sait has put a restriction, I would not go into those details, but am confining myself to the Quran and the *Hadis*, although I have with me the view of *Spirit of Islam* by Ameer Ali and *Woman and Islam* by M. Zabiruddin and others. I need not go into what practices were prevalent here,

how after birth a female child was buried alive, how women had no rights, how Islam started a crusade against these practices and secured for women a status in society. The Prophet went to the extent of saying that the *Hadis Sharif* ordained that in the case of one who had a daughter, and who nurtured and brought her up well—this was up to three daughters—educated them, made them cultured and taught them knowledge of crafts, between him and hell shall he stand, i.e. for him the fires of Hell shall be forbidden. Why do I say all this? If we accept it basically that Islam does not recognize the rights of women, then we shall have to accept that all these things in the *Shariat* concerning women's rights, should be done away with. Our Government stand committed to it. Our Government talk neither of a uniform code, nor of interference with the Muslim Personal Law. That is why I say let us know the basics of it, from what angle Islam looks at women, how it has raised the status of women, how Islam fostered a sense of pride in having a daughter born in a society where they used to be buried and regarded as a shame upon the house. Where a woman, a girl, has been elevated to this position of prestige, we shall have to see whether this prestigious position is to obtain only for upbringing or it will continue for the entire life after marriage, we have to see it. In this connection, I was saying that with marriage is linked *Mehr* and *Mehr* is obligatory under the Muslim Law. The proposed Bill provides that where a sum has been paid under the customary or personal law, that woman will have no right to ask for maintenance, but the amount of money so given will not be questioned in a court of law. Sait Sahib has agreed to 'one time transaction', what Abdullah Yusuf Ali calls 'maintenance'. I have quoted Abdul Majid Dariyabadi. He has gone beyond that. Sait Sahib had said 'One-time transaction'. I say that if the 'one-time transaction' is such that the woman can keep her body and soul together, have a roof over her head, can make both ends meet, then that women would automatically be deprived of going to the Court, for, under the Criminal procedure Code, only that woman can go to the Court to

seek maintenance who has no means to support herself. If a woman has been given a large sum as *Mehr*, and if the husband says that a *Mehr*, of Rs. 5 lakhs has been given which brings so much of income annually, then how can such a woman be called a destitute? Therefore, the provision of the Criminal Procedure Code itself is clear about it that such a woman will have no right. The provision of the Criminal Procedure Code is only for those woman who are without any means which, as I take it, may also include a case where she has no parents, perhaps no brother too, and even if there be one, he is not prepared to support her. My aim in saying so repeatedly is that we shall have to proceed with this distinction, this difference as to what the provision really is. Coming to *Mehr*, *Mehr* has no relation with divorce. It is wrong that it so obtained in practice that it came to be of two kinds—one, prompt Dower, the other, deferred Dower.

According to Islam—

[English]

—*Mehr* is a sum of money or that property which the wife is entitled to receive from the husband in consideration of marriage. Nothing to do whatsoever with divorce.

[Translation]

It is only related to marriage. I want to draw your attention to the Shariat Act. When is this *Mehr* confirmed? The *Mehr* is no doubt agreed to, but when is confirmed?

[English]

- (1) *Mehr* confirmed by consummation of the marriage,
- (2) by a valid retirement.

[Translation]

Which is called '*Khalvate Sahih*'.

[English]

Without going into the details, whether consummation of marriage has taken

place or not, if there was a valid retirement even then the woman becomes entitled to—

- (3) *Mehr* by the death of the husband or the wife.

[Translation]

These are the three conditions under which *Mehr* is duly confirmed to be paid. The *Encyclopaedia of Islam* says that,

[English]

It belongs absolutely to the wife.

[Translation]

It is her personal property. The idea behind it is that she leaves her home to join another. She must have so much means—

[English]

“—which she can operate independently of her husband and in-laws”.

[Translation]

She should have money at her disposal to meet her needs. This is what Islam contemplates. In this connection, it has been said :

[English]

“*Mehr* was used by the prophets to ameliorate the position of wife in Islam and it became a settlement for wife. Mr. Justice Mohamood defined *Mehr* as—

“Under the Mohammadan Law *Mehr* is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage and even where no *Dawar* is expressly fixed or mentioned at the time of the marriage something in law confers the right of *Dawar* on the wife”.

[Translation]

Even if *Mehr* is not mentioned in the *Nikahnama*, the woman shall be entitled to *Mehr* according to her social and financial position. In Abdul Quadir's case of 1866, it has been decided :

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[English]

"It is not consideration in [the modern sense of the term, but an obligation imposed by the law upon the husband as a mark of respect to the wife. This is made abundantly clear by the author of *Hidaya* in their 'Sources of the Law' that the payment of the Dower is enjoined by Law merely as a token of respect for the woman. We, therefore, conclude that mentioning it is not absolutely essential to the validity of the marriage.

[Translation]

SHRI G.M. BANATWALLA : Do you consider *Hidaya* authoritative or not? But you said you would only refer to the Quran and the Hadis . . . (Interruptions)

SHRI ARIF MOHAMMAD KHAN : But I had added that you should not consider anything which I might quote from sources other than the Quran the *Hadis*. I regard them all authoritative, but Shri Sait has put a restriction on me. That was why I had said that I would quote the Quran and the *Hadis* only . . . (Interruptions)

SHRI G.M. BANATWALLA : The *Hidaya* is very ancient; do you agree to it?

SHRI ARIF MOHAMMAD KHAN : The Quran is the basis of everything . . . (Interruptions) Sir, this is the only difference in the entire approach. Shri Banatwalla says we should read, but as I said at the very outset, I was fully conscious of my limitations. You continue to be the spokesman, I do not wish to be one, for, I am fully conscious of my limitations. I had said in the very beginning that this was a highly sensitive subject; I must speak on it; but I would not claim that there is an element of finality in what I say. I congratulate you on your con- right, it is tinuing to be a spokesman.....

SHRI G.M. BANATWALLA : All not even for him to be so.

SHRI ARIF MOHAMMAD KHAN : Sir, Abdullah Yusuf Ali in his translation in *Ayat 4, Surat 4* says :

[English]

"And give the women on their marriage their Dower as a free gift, but if they of their own good pleasure, remit any part of it, take it and enjoy it—with right good cheer."

[Translation]

PROF. SAIFUDDIN SOZ : Where is the difference of opinion in it.....

SHRI ARIF MOHAMMAD KHAN: By saying all this, I mean to emphasize that *Mehr* is out of respect, *Mehr* is a birdal gift, and has no relation with divorce at all; *Mehr* is related to marriage only, it has no relation with divorce. If you associate it with divorce, then we would not be doing justice with this law, this is all I mean to say.

Maulana Azad's translation is as under :

[English]

"offer the women their Dower ungrudgingly since they have a right to it, but if of their own free will they give back a part thereof to you, then make use of it as you will."

[Translation]

I say this repeatedly so that you may understand it. Now, Sir, after I have clarified so far from translations of the Quran and made clear the meaning of *Mehr* and its interpretation in the Islamic Law, I would like to come to the provision about divorce. As I said earlier, as regards the *Surats* and *Aayats* dealing with divorce—Shri Abdullah Yusuf Ali's translation, which was also used by the Supreme Court, that is the translation of 241—I would like to read out the translation of 228.

[English]

"Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what God hath created in their

wombs if they have the faith in the God and the last day their husbands have the better right to take them back in that period if they wish reconciliation."

[Translation]

Now, I would like to read out what Maulana Abdul Majid Daryabadi says in this regard :

[English]

"And the divorced women shall keep themselves in waiting for three courses—nor is it allowed to them that they should conceal what Allah has created in their wombs if they believe in Allah and the last day their husbands are more entitled to their restoration during the same if they seek rectification."

Then it is further said :

"And if they resolve on a divorce, then they should not forget the fact of their having decided upon—suppression will not go unnoticed by God if he heareth and knoweth."

[Translation]

Sir, I have read out these *Ayats* as they are all related to divorce.

Besides, I would like to read the first *Ayat Sura-e-Talaq* in which it has been stated that :—

[English]

"When ye who divorce women, divorce them at their prescribed period and count accurately their prescribed period, and fear God or Lord and turn them not out of their houses, nor shall they themselves leave."

[Translation]

This relates to the post-divorce period. What is being said here is that when you

have to divorce, the period of divorce should start from the period of purity. During this period, the husband and the wife should not live in isolation from each other. rather, they should have a satisfaction to come closer. At such a time, when you have come to a conclusion that you cannot live together, that you cannot maintain the limits set by the Almighty and that you have to separate from each other, then what should be the course of divorce in such a situation? The course is that it would be effective only after three months when the divorce is pronounced in the third month. The method of divorce prevailing today as also the method adopted by the gentlemen whose spouse had knocked at the door of the Supreme Court has not been envisaged in the Quran.

Sir, when the first Law Commission was constituted in Pakistan, it was also confronted with the question whether this method of divorce is justified or not. It has been said in this connection that "when a husband pronounces Talaq to his wife thrice in the same breath, it is counted to be Talaq only once and not thrice according to Rasullullah Salallahu Alahe Vasallam, Abu Bakr Siddiq and Omar Ibne Kkattab." Divorce becomes effective only after it is pronounced thrice. But if a husband pronounces Talaq thrice in the same breath, it was not counted as pronounced thrice but was counted to be pronounced only once, during the days of the said Abu Bakr and during the days of Abaile Khilafat i.e. the earlier period of the caliphate of Hazrat Omar. "At that time this method was prevalent but it underwent some changes in the course of time. Despite this, Omar Ibne Khatfah ordained this Talaq as Talaq-e-Baen as if it had the meaning of Three Talaqs as per the words of the husband." in that context. As at present, the whole of *Shariat* is seen with great respect. Ours is a country where the people have regard not only for their own religion but for the religions of others too. But, I think it is not proper to misinterpret a thing. It has to be seen what *Shariat* is. Shri Hidayatullah, in his introduction to Mulla's *Mohammedan Law*, which is considered the

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most authoritative text in the Courts, says :

[English]

“According to the classical belief of the Muslims the word of God is law and law is the command of God. This law is known as *Shariat*, *Fiqha*, which is jurisprudential in character is the ascertainment of the right principle. In the word of God is included, of course, the Koran, but the Divinely inspired *Sunna* of the prophet ranks equal. These two are immutable and the only room for the exercise of human reason is in their understanding.”

[Translation]

But, apart from this, there are a number of laws different from the Quran and the *Sunna* which are not directly based on the Quran and the *Sunna*. For example, the prevalent method of giving divorce by pronouncing ‘Talaq’ thrice is not approved by the Quran. The method was not in the days of the Prophet. It was also not prevalent during the days of Abu Siddiq. Now, I say it is an irony of fate that Omar Ibne Khattab had permitted it only because the people knew that pronouncing Talaq thrice would be treated as one count. Therefore, the husband divorced thrice. Thereafter the woman got frightened and her rights were got transferred to his own name. Then, as per the order he knew that that would be counted only as one, therefore, he re-established contacts with the woman. He followed the style pronounced in the Quran—do not force out the woman, live with her in the same style, behave with her properly, for Allah may create such circumstances as may help you meet again. When the third month approaches, the husband pronounces divorce for the third time, and the divorce then would become effective.

Hazrat Omar Ibne Khattab made this provision to protect the rights of the women and to instil a feeling of fear in those using it as a threat, that if they pronounced *Talaq* thrice, the divorce

would become effective. But, with the passage of time, the provision made for the women was used by the menfolk for their own benefit. I do not call it ‘non-Islamic’ method, but surely no such provision exists in the Quran for adoption of such method. But I have never heard it from any guardian of law that this method finds no mention in the Quran and, therefore, should be discarded.

I was speaking about these procedures. “Despite this, Omar Ibne Khattab ordained this *Talaq* as *Talaq-e-Baeen* as if it had the meaning of three *Talaqs* as per the words of husband.” The reason was that when Hazrat Omar Ibne Khattab noticed that the people made a mockery of this divorce and such divorces were being made in large number, he introduced this change with a view to punishing them and forbidding them from following this bad habit.

Hazrat Omar Ibne Khattab, as per the needs of his times, made changes in the course propounded by the Quran, Rasul and Hazrat Abu Bakr Siddiq. At that time he noticed the evil spreading and did so to check the evil.

Some Islamic scholars did not consider it better in view of the conditions prevailing in their times and thought it proper to incline towards *Sunnat-e-Nabwi* as per the principles of *Tagayur-e-Islam*. The following is an extract from the proceedings of the Law Commission of Pakistan :—

“An eminent scholar commented on this provision and said that this provision made by Omar is like an emergency commandment.”

This is an emergency provision which we have adopted in our life today. There is no objection to it because it provides freedom to the man and so it does not affect the law. But if a provision is made for a woman the dignity of whom has been emphasised by Islam, who is a destitute, to enable her to keep her body and soul together then the Islamic law is affected. But it has never been said

that this *Talaq-e-Baen'* which has never been envisaged in the Quran, affects the Islamic law.

This is what the Commission says :

[English]

“It is essential that this divorce should be followed by two further pronouncements in two subsequent *Tohars*.

[Translation]

If after keeping the wife for three months during the period of purity and during the period when both of them may have attraction also for each other they arrive at the conclusion that they cannot live together, there is recourse to divorce. But to say *talaq* thrice in the same breath—I am not saying that it is un-Islamic—is not in any way related to the Quran, it has not been envisaged in the Quran.

The most interesting quotation is :—

[English]

“And it is authentically reported by Ibn-e-Qayyum that Khalif Omar was extremely sorry to have allowed it even as an emergency measure” — IGHASATULLAH-FAN P. 151).

[Translation]

During the last moments, he felt extremely sorry to have allowed such a type of divorce Abdul Rahim has called it an innovation. What I mean to say is that Shri Sait was saying that the *Shariat* was ‘revealed’. But this particular portion of the *Shariat* is not ‘revealed’. Let us get it surveyed on how many of those who have divorced their wives have followed the provision of the Quran. You may get it surveyed how many people have knowledge about the method of divorce enshrined in the Quran.

...(Interruptions)

I feel that if there was some guardian of this law, he should have felt concerned

about the fact that Islamic law was being affected by the wrong use of the emergency commandment that had been issued and that this adversely affected their image. The guardians of law protest only when they are told to shoulder certain responsibility. There may be any number of rights. Everybody is eager to have each and every right. A husband can turn out his wife just in one minute and in the next minute he can change his decision, but when he is asked to shoulder responsibility, he would ask, “What responsibility?”

As I have said earlier, I think there is no doubt about the sanctity of the position of woman, her status, and her rights, under the Islamic Law, and all this has to be particularly kept in mind. As I said earlier, the women were leading a life of humiliation and inferiority. That was what I meant. Now if we have to discharge our responsibility towards her, what would be our attitude ?

The translation of *Surat* 229 by Abdullah Yusuf is as follows :

[English]

“A return to each other is permissible even after divorce has been pronounced twice (in two successive months). Thereafter two ways are open before the husbands—an honourable retention or a graceful parting (after the pronouncement of divorce for the third time in the third month). And it shall not be proper for you while divorcing your wives to take away anything out of what you have given them.”

[Translation]

What is the option after two months ? There are two alternatives—one is an honourable retention and the other is a graceful parting. It is not that she should be kicked out of the house. Either retain her honourably or let her part gracefully.

I would quote *Surat* 230 later on. Now I came to *Surat* 231. The translation which I have quoted just now has

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been done by Maulana Azad and *Surat* 231, which I am going to quote now is also the rendering of Maulana Azad.

[English]

“When you have divorced your wife and the period of waiting is nearing its end, you have only two ways open to you, either retain them with due propriety or walk from them with propriety.”

[Translation]

This is the translation by Maulana Azad. The question arises as to what is the meaning of ‘propriety’ and ‘kindness’, which have been emphasised? This is the crux of the matter. The Holy Quran repeatedly says that it should not be that a husband should part with his wife when arrives at this conclusion. It could be very easily said that the wife should be separated but the Holy Quran did not say that. It says that she should be separated with kindness. Maulana Majid Dariyabadi speaks about that as follows, (which is the translation of *Surat* 229)—

[English]

“Divorce is twice. Thereafter either retain her honourably or release her kindly, and it is not allowed to take away all of what you have given to them.”

Translation of *Surat* 231 is like this :

[English]

“When you have divorced them, either retain them honourably or release them kindly.”

[Translation]

Now, it is worth consideration that the subject matter of both the *Surats*, i.e., 229 and 231 is the same. After all, what was the need for this repetition? It could easily be said that when you have reached a conclusion that you cannot live together, then part with her. But it has been stressed in *Surat* 229 that either retain her honourably or let

her part gracefully. In *Surat* 231 also, stress has been laid on same thing. Now, there are two ways before you—either retain her honourably or let her part gracefully. In this connection, Maulana Majid Dariyabadi says :

[English]

“This is for as econd time that husbands are enjoined to behave towards their wives honourably.”

[Translation]

Who is this wife? This is the same woman whom one has divorced whom one is releasing. A stress has been laid on it.

[English]

“This is for the second time that husbands are enjoined to behave towards their wives honourably and generously, whether they retain them or divorce them. The duty to be kind, fair and chivalrous towards the wife is not contingent on something else it is unconditional.”

[Translation]

Even if the woman is at fault, even if you have reached the conclusion that divorce is being sought for this reason, yet she should be treated with kind heartedness and this kind heartedness towards her is not conditional, it is obligatory. And why is it so? This is so because divorce in Islam has not been envisaged as a punishment to a woman. The concept of divorce as envisaged in Islam is that if you are unable to maintain those bounds, if you are unable to maintain those limits ordained by the Almighty, and you have incompatibility—

[English]

—Then, in order to bring peace to yourself and to her.....

[Translation]

The concept of punishment is not there in the Holy Quran. It has therefore been repeatedly emphasised..

(Interruptions)

THE MINISTER OF STATE OF THE MINISTRY OF SHIPPING AND TRANSPORT (SHRI Z.R. ANSARI): Are you praising his speech or the provisions of the Quran ?

SHRI BHAGWAT JHA AZAD (Bhagalpur) : That responsibility is yours. I am praising him.

SHRI ARIF MOHAMMAD KHAN : Now I am coming to that *Aayat* whose translation has been done by Abdullah Yusuf Ali or someone else and which has been quoted by the Supreme Court. It is the translation by Abdullah Yusuf Ali : Sait Sahib says that the Supreme Court has wrongly interpreted it. My personal and purely personal view is that the Supreme Court need not have gone into it. A woman had gone to seek justice under the Cr.P.C. Earlier, many judgements had been delivered about this. Had the Supreme Court shown some judicial discretion, such a big controversy would not have arisen. There was no need for it at all. Many judgements had been delivered earlier. Justice Khalid has delivered a judgement. Justice Murtaza Fazl Ali, who referred this case, has given a judgement. It is being said repeatedly that Muslim Judges should have the right to decide such cases. The Muslim Judges of the Supreme Court have also delivered judgements but I do not want to go into that. But since it is being said that this *Aayat* has been wrongly interpreted, I would like to quote the translation of Abdullah Yusuf Ali in this connection.

[English]

Abdullah Yusuf Ali Said : "For divorced women maintenance should be provided on a reasonable scale. This is a duty on the righteous."

SHRI Z.R. ANSARI : From which portion are you reading ?

[Translation]

SHRI ARIF MOHAMMAD KHAN : The word is *Matta*. As Mr. Sait has said, the word *Matta* has been variously interpreted at different places. I do not feel

anyone would have any objection to the meaning given by Shri Sait. Even this House will have no objection if a lump sum of money is deposited as a one-time transaction in her name with which she may be able to maintain herself for the rest of her life. Who can object to it ? What does reasonable scale mean ? I feel there should be no objection to it. The basic point is that there should be no vagrancy. It is the duty of the State, the duty of the Government to see what arrangement has to be made for the destitute women who cannot maintain themselves. Even in an Islamic State, a murderer is sent to jail only for this reason that he has committed a murder. But he is not starved in the jail. When arrangements are made for even a murderer, why not for a woman who might have been at fault. I do not accept the other translation. I accept only your translation :

[English]

"Let it be one-time transaction but let it be in a handsome manner and let it be adequate to sustain her for life or till she remarries."

[Translation]

I have no objection. The basic point is not that a postman should bring money order on the first of every month. The basic point is that the woman who has no source of livelihood should not be thrown on the street. (Interruptions)

This is not my opinion. In this connection, I would quote again the Pakistan Law Commission. I am just mentioning here the opinion of the Commission. The Government may or may not accept it, that is a different thing. (Interruptions) I do not have any direct information from Pakistan

I can get some information from whatever papers are available with me. I do not have any direct information. I mean the documents of the Commission which included Dr. Khalifa Shujauddin, Dr. Khalifa Abdul Hakim, Maulana Ahtshamul Haq, Mr. Inayatullah Begum

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Shahnawaz, Begum Anwar Ahmed, Begum Shamshulnihar Mahmood. The question before the Commission was :

[English]

“Should it be open to a matrimonial and family law court when approached to lay down that a husband shall pay the maintenance to the divorced wife for life or till her remarriage ?”

This was the specific question which was posed to the Commission. What is the opinion of the Commission ? The Commission opines that such a discretion should be vested in the matrimonial court.

[Translation]

This was such a Commission which consisted of jurists as well as religious scholars. I did not say whether it was accepted or not. That is a different matter. But what the Commission has opined is that : (Interruptions)

I now come to 241. I have said so because the Commission is of the opinion that the Courts should have the right to see that the women are not thrown on the street.

[English]

“And 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.”

PROF. N.G. RANGA : Does it apply to Pakistan ?

[Translation]

SHRI ARIF MOHAMMAD KHAN : What is the translation of the *Aayat* ? According to Abdullah Yusuf Ali,

[English]

“For divorced women maintenance should be provided on a reasonable scale. This is a duty on the righteous.”

[Translation]

Should I tell you the meaning of *Matta* ? As I have said, I have no objection to ‘one time transaction’. One thing more has been said that the word *Muttakeen* has been used in this case. This is the duty cast on *Muttakeen* and not on *Musalmeen*. (Interruptions) *Muttakeen* means more religious, God-Fearing. Maulana Azad has translated it like this : A man who could discriminate between what is good and what is bad, a man who can discriminate between what is useful and what is harmful”, but on this some guardians of the Muslim Personal Law said that it relates to *Muttakeen* and not *Musalmeen*. The Holy Quran begins with : “*Alif lam meen jalikal kitab, la-ia bafih hudalleel Muttakeenal lazina*”—if the Quran is for the *Muttakeen*, then which Quran do they follow ? The Quran says that it shows light to the *Muttakeen*, but in the Supreme Court, it was as held in defence “Who would decide about it ?” It is easy for Banatwalla Sahib to say, as he said, if you have read it, then quote it. Then, of course he can be one of the *Muttakeens*. (Interruptions) Who will decide it ? It is for him to do. The translation of Maulana Abdul Majid Dariyabadi is :

[English]

“And for the divorced women an honourable present.....”

[Translation]

.....(Interruptions)..... He has not used the word ‘mainenance’ I have already said that personally ‘one time transaction’ is acceptable. The only thing is that if a woman can lead her life well, nobody can have any objection. The question is not whether she may be paid maintenance or she should be given a lumpsum amount. The basic thing is that she should not be thrown on the street. There should be some arrangement so that she could sustain

herself. The only thing is that she should be able to keep her body and soul together. The Maulana has translated thus :

[English]

And for the divorced women an honourable present,

Incumbent on God fearing,

[Translation]

Mr. Speaker, Sir I want to draw the attention of Sait Sahib through you, that a gentleman has said about the Muslim Personal Law that the husband has not been enjoined to make provision for this wife. It is for her father, brother(Interruptions) Maulana Abdul Majid Dariyabadi says—

[English]

And for the divorced women an honourable present : 617

Incumbent on God fearing. (617: made by their husbands) And for the divorced women there shall be a provision of necessities with moderation, or right and just aim and beneficence. And for the divorced women, let there be a fair provision. This is an obligation on those who are mindful of God.

[Translation]

What more could the Quran say than that there shall be a provision for a woman? Similarly, Maulana Azad says :—

[English]

Although the provisions touching marriage and divorce have been already stated, Quran takes occasion to re-emphasize that proper consideration should be shown to the divorced woman in every circumstance.

[Translation]

In this connection, it has been said that there should be some consideration

for the woman, whatever the circumstances. The Holy Quran wants to emphasize it, that is why this has been said again, Maulana Azad says :—

[English]

This call was based on the reason that she was comparatively weaker than man and her interests needed to be properly safeguarded.

[Translation]

This has been repeated again and emphasized so that her interest could be safeguarded. This is the interpretation by Maulana Azad.

Now, I want to go back to what I was saying earlier. It has been said that it is 'one time transaction'. I am very happy about 'one time transaction', otherwise Sait Sahib, people are not agreeable even to 'one time transaction'. They are saying it is for *Iddat*. I have discussed this not with one or two but with tens of persons. Only yesterday, I had a talk with a member of my party who says that this provision is only for the period of *Iddat*. I am very happy that Sait Sahib has said that this is 'one time provision'. I agree with him. I will also say that one time provision is all right if such a provision could be made. I would like to come to the other point. It is being said that it is only for the period of *Iddat*. It is the responsibility of the husband to maintain his wife only for the period of *Iddat*. This is in order, that they may feel attracted towards each other and come together. It is ordained that she should not be turned out, she should be retained, she should be kept in the same style as lived by the husband .. (Interruptions) Yes, I am also referring to *Iddat*. I say that *Iddat* has been dealt with separately.

Many people say that the provision or maintenance or gift or present under 241 is only for the period of *Iddat*. What is *Iddat*?

17.00 hrs.

The period of *Iddat* is three months and in the case of a pregnant women, the period of *Iddat* will be till delivery. I

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want to draw specifically the attention of Shri Banatwalla, through you, Sir, to marriages where *Iddat* is not applicable.

SHRI G. M. BANATWALLA : I am quite attentive. Should I go on pointing out the misgivings to you?

SHRI ARIF MOHAMMAD KHAN : You will get a chance for that. Sir, what does the Holy Quran say about those marriages where the period of *Iddat* does not apply in case of divorce. We shall then be able to differentiate whether this provision is for *Iddat* or other than *Iddat*. In such marriages where the provision of *Iddat* does not apply, there should be no concept of gift there. Now, I come to such marriages, *Sura-a-Bakr*, *Aayat* 236, *Surat* 2 —

[English]

There is no blame on you if you divorce woman while yet you have not touched them nor settled with them a settlement. Benefit them on the affluent is due according to his means and on the straitened is due according to his means; an honourable present incumbent on the well-doers.

[Translation]

What is this case? This is the case where the sum of *Mehr* may not have been settled for the woman, where the marriage may not have been consummated but the woman has been divorced. In such a case there is no *Iddat*, that woman will not have to wait, she may marry that very evening or the next day, there is no period of *Iddat*. The period of *Iddat* means three months' wait. Maintenance has to be provided for that period. Even if she is not to wait, it has been ordained—'benefit them'. The rich should give benefit according to his status and the poor should provide benefit according to his means. Now, in the other cases, where *Iddat* is not due, but *Mehr* has been settled what happens? In that case. *Surat* 2. *Aayat* 237:—

[English]

"And if you divorce them before you have touched them but have already settled with them a settlement then due from you is half of what you have settled unless the wives forgo or he in whose hand is the wedding not forgoes and that you should forgo is higher to piety. And do not forget grace among yourselves surely Allah is the beholder of what you do."

[Translation]

It was translated as :

[English]

"Present them with a gift in place of dower".

[Translation]

It is where *Mehr* has not been settled. Words used where :—

[English]

"He gave her a gift after divorce".

[Translation]

No period of *Iddat* is involved, but a provision of gift has been made for her
.....(Interruptions)

[English]

The law declares that in such a case half the dower fixed shall be paid by the man to the women.

[Translation]

It is in the case of a woman where the *Mehr* was settled but the marriage was not consummated and she was divorced, it has been made obligatory under the law that whatever *Mehr* has been settled, half of that would have to be given. I want to tell you now what has been stated further.

[English]

"But it is open to the woman to remit the half due to her or to the man to remit the half which he is entitled to deduct and thus pay the whole."

[Translation]

The word 'Piety' has been used. The man has been instructed that half of whatever amount has been settled should be given. It is a different matter if a woman wants to forgo that. But it will be better for you if you make full payment. This is the provision :

[English]

".....Him in whose hands is the marriage tie ! According to Hanafi doctrine, this is the husband himself, who can dissolve the marriage. It, therefore, behoves him to be all the more liberal to the woman and pay her the full dower even if the marriage was not consummated."

[Translation]

When even in the case of a marriage which has not been consummated, the husband has been ordained to be all the more liberal to the woman and to pay her the full *Mehr* then what will become of that woman who has been living with him for thirty years? What is the reason for being displeased with her ? Such liberal provisions are there in this religion. It is not proper to distort this. The women were weak and exploited and used to leading a life of inferiority. It was the crusade of Islam to secure equal rights for all. Now, it is being directed against the teachings and spirit of Islam. Now I would like to quote from *Bukhari Sharif*. (Interruptions) I also visited Madina University along with two or three persons. The Vice Chancellor of Madina University had presented these copies of *Bukhari Sharif* to me. It is not an edition of the kind to be so dubbed as from where it has been brought. (Interruptions)

[English]

"About the gift given by a husband to a divorced lady for whom *Mehr* has been fixed by virtue of the statement of Allah .."

[Translation]

That is to say, that the statement of Allah is what is there in the Quran; and

after all, what is the statement of Allah ? For this *Surat* 236 and 237 of *Sura-e-Bakr* says :

[English]

"There is no blame....."

[Translation]

I have read that for you already. In *Sûrats* 241 and 242 also there are further references to it.

I want to repeat these things here because it is said that those *Aayats* of *Sura-e-Bakr* have been utilised for the judgement out of context. Here *Bukhari Sharif*, while dealing with the same chapter, refers to those very two *Aayats*, i.e., *Aayat* 241 and 242. But again and again it is said that there is no connection of these *Aayats* with this judgement. But *Bukhari Sharif* does not consider them as unconnected. In fact, the translation of *Aayats* 241 and 242 is given in *Bukhari Sharif*. I do not know who translated them. Besides the Vice-Chancellor of Madina University, some other persons are there and the Islamic Committee is there. In the preface to that, it has been said :

[English]

"And for divorced women, maintenance should be provided on a reasonable scale. This is the duty of the pious. Thus, Allah makes clear his signs to you in order that you may understand."

[Translation]

After this, there is a reference to the *Hadis*. It says :

[English]

"Prophet Sallam did not mention

17.12 hrs.

[SHRI ZAINUL BASHER in the Chair]

[Translation]

Sir, it so happens that somewhere a direct commandment is given : "do it"

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And at many places, one is forbidden to do a particular thing. It is mentioned in this *Hadis* :—

[English]

“Prophet Sallam did not mention that the gift should be given to the lady whom her husband divorced after they had been involved in a case of *Lian*.”

[Translation]

Now, what is *Lian* ? *Lian* is that where woman and man both accuse each other of infidelity, then both of them are brought at one place. First, oath is administered to them thrice to tell the truth and after that they are asked to explain the charges. After that, the fourth oath is administered wherein some such words are used as mean that if the charge levelled is proved to be false, then a calamity may befall him. Now, in such a case where such oaths are administered, if despite that, both of them do not repent and are not ready to reconcile, then after such a serious charge of infidelity and even after such oaths, it is understood that both of them cannot live together and the only course left is separation. There is no provision of gift in such cases. But if in such cases, gift is treated as *Mehr*, then I want to tell you what the decree regarding it is. *Hadis Sharif* says :

[English]

Prophet Sallam did not mention that the gift should be given to the lady whom her husband divorces after they had been involved in a case of *Lian*.

[Translation]

Because both of them have refused to reconcile and they are accusing each other, and nobody is reconciling :

[English]

Narrated Ibne-Omar. Prophet said to those who were involved in a case of *Lian*. ‘Your accounts with Allah. Either of you must be a liar. You, husband, have a right on her’.

[Translation]

It is all right that they were separated, but the husband said that when they had been separated :

[English]

The husband said, “My money, Oh Allah Apostle.”

[Translation]

Then he said that when she was not faithful to him and he had been separated from her, the amount of *Mehr* paid to her should be returned to him. What was the reply of the Prophet there upon :

[English]

“Prophet Sallam said, ‘You are not entitled to take back any money. If you have told the truth, the *Mehr* that you paid was for having consummated your marriage lawfully with her’.”

Even if she were unfait hful, even then—

[Translation]

— as has been said earlier—

[English]

—she is not liable to return her *Mehr*. In such cases, it was not made obligatory. Prophet Sallam did not mention that the gift should be given to the lady whose husband divorced after they had been involved in a case of *Lian*.

[Translation]

And it is stated further as under :—

[English]

“If you have told the truth, there is the *Mehr* that you pay for having consummated your marriage lawfully with her and if you are a liar, then you are less entitled to get it back.”

[Translation]

Sir, in addition to that, I have commentaries of a contemporary Islamic scholar,

Ibne Kāsir, who is an authority on the Shafae Islamic School of thought. The entire commentary is in Arabic and the English translation has been done by Dr. Mushirul Haq, Prof. and Head of the Department of Arabic and Iranian Studies, Jamia Milia Islamia, Jamia Milia Nagar, New Delhi. It is written there :

[English]

Translation from a passage "With wise commentary on the *Holy Quran-Surah II, Iayat* (241).

[Translation]

After that it has been explained as follows :

[English]

And for the divorced women, let there be a fair provision. This is an obligation on those who are mindful of God. In these words God has decreed some provision for all divorced women after having earlier declared obligatory only for a particular class of women.

[Translation]

This is the translation of Ibne Kāsir who is a modern commentator. He is a classic commentator. In addition to it in 1937-38, I shall not be able to tell the exact year, the Law Minister is present here but when the Mohammedan Marriage Act was passed, Maulana Ashraf Ali Sahib Thanavi had represented to the Central Government that a provision should be made in this law to the effect that where difficulty was experienced in the Hanafi Law, in that case Shafae Law could be applied. Even if some doubt remains after that and still if we feel that a right is being denied, then I feel it is lack of our understanding. I want to repeat that I am prepared to totally agree with Sait Sahib that there would be no harm if arrangements are made for adequate lump-sum payment. I would now like to quote further. Sir, it is there in the history of Islam that once it so happened that Huzur Salallahe Able Vasallum was a little annoyed with his wives. It is said

in *Surat 33* and *Ayat 28* of *Suratul Ahjab* :

[English]

"Oh Prophet say to thy consorts, if it be that ye desire the life of this world—and its glitter, then come, I will provide for your enjoyment and set you free in a handsome manner."

[Translation]

It is said here that if they desired the life of this world and its glitter like ordinary women, then He was prepared to set them free, like ordinary women after making sufficient provision so that they could live a life of enjoyment. Further, it has been said, which is the translation of Maulana Majid Ali :

[English]

" Oh Prophet say to they wives if it be that ye seek the life of world and its adornment, then come ,I shall make provison for you and shall release you with a handsome release,"

[Translation]

It is said here that being the wives of the Prophet, special duties devolved on them but if they wanted to escape from their innumerable duties and lead a life of ordinary women, He was prepared to release them and He would release them with a handsome release and would make so such provision for them that they could lead comfortable life. In it, He is speaking of separation. It was a particular occasion when He had got annoyed.

The commentary is like this :

[English]

"The passage was revealed on the occasion of the Prophet's wives asking for more sumptuous clothes and an additional allowance for their expenses,"

[Translation]

At that time, He felt that being the wives of the Nabi, they should not demand

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sumptuous clothes and other luxuries like the ordinary women. Their duties were far greater and, therefore, He said that if they were to lead the life of ordinary women, then they had to separate from Him. He would release them in a handsome manner by making a provision for their leading a comfortable life.

[English]

“All the wives in their high position had to work as *Imhat Almoma-neen*. There were not idle lives either for their own pleasure or the pleasure of their husband. They are told that they have no place in the sacred household if they merely wished for ease and worldly glitter. If such were the cause, they could be divorced and amply provided for.”

[Translation]

This is *Surat-Ul-Ahzad*.

“To keep them with honour before divorce.” About this I have already said. I have said this also that time and again it has been decreed that the expenditure should be according to one’s capacity.

The question is to what extent we should follow *Shariat*. I do not think that *Shariat* allows us to continue to follow the *Shariat* in so far as the rights are concerned and not follow it where it enjoins upon us to perform certain duties. How can we afford to shirk our duties? In the *Holy Quran*, it has been clearly mentioned in *Surat 2, Aayat 81* :

[English]

“And remember we took your covenant (to this effect) Shed no blood amongst you. Nor turn out your own people from your homes; and this ye solemnly ratified, and to this ye can bear witness.”

[Translation]

Some agreement is violated and what happened thereafter? It has been mentioned therein :

[English]

“After this it is ye the same people, who stay among yourselves. And banish a party of you from their homes; assist the enemies against them, in guilt and rancour. And if they come to you . . .”

[Translation]

This is the translation of the *Holy Quran*, not its commentary, which is very important.

[English]

“As captives, ye ransom them, though it was not lawful for you to banish them. Then is it only a part of the book that ye believe in, and to ye reject the rest?”

[Translation]

What was the object of it? You follow *Shariat* to the extent it suits you and do not follow where it enjoins upon you duties. The Almighty is saying this through Rasul, who had broken some promise that he had made.

SHRI MOHD. MAHFOOJ ALI KHAN (Etah) : Cite only one instance where we did not act according to the *Shariat*.

SHRI ARIF MOHAMMED KHAN : Just now I have said that the method of divorce which is being followed is not in accordance with the *Shariat*.

Maulana Azad has said in his translation that when your exiled people fell into the hands of your enemy and were brought before you as prisoners, then you got them released by *Fidiya*. And you said that it was necessary to do so according to the *Shariat*, although if you were so particular about following the decree of *Shariat*, then according to the *Shariat* it was forbidden to exile them from their homes and localities. Then why mislead? It sounds extreme that the *Shariat* is followed for accumulating wealth, for releasing the prisoner by *Fidiya*, but it is not remembered when they fall into the hands of the enemies and become prisoners.

Is it so that certain provisions of the *Kitab-e-Ilahi* may be followed and some others may not be followed ?

In accordance with the decrees of the Prophet, we should have better practices these days and only if the down-trodden are uplifted, the Islamic tenets can be said to have been followed and justice done. It is the nature of man that the *Holy Quran* deals with. I want to tell you that giving and taking of interest is clearly forbidden in the *Holy Quran*. I want to ask Banatwalla Sahib to bring a Bill to the effect that a restriction may be imposed on the banks in the country whereby they shall not give any interest to Mohammadans who deposit money nor any interest will be charged on the money given as loan.

(Interruptions)

SHRI G.M. BANATWALLA : We demand that you should remove the provision regarding the payment of interest from the banking system in the country. We are prepared for its abolition, you may accept it.

(Interruptions)

SHRI ARIF MOHAMMED KHAN : What I mean to say is whether it is possible for you not to deposit money and not to have any transactions with the banks. This will meet your point

SHRI G.M. BANATWALLA : Our demand is that the provision regarding interest in the banking system should be abolished.

(Interruptions)

SHRI ARIF MOHAMMED KHAN : I want to say that Banatwalla Sahib may make this demand but the people whom he represents will not agree to what he says. We also know this fact.

I do not want to go into more details. Sait Sahib and Banatwalla Sahib know the law of the *Shariat* better. I know only this much that many communities

of Mohammadans are in there India which follow different laws in respect of succession, inheritance etc. But I do not think that it is in any way affecting their religion.

(Interruptions)

I look upon the *Shariat* with great respect. I think the Cr.P.C. can be changed and by changing it those Mohammadan women can be deprived of their right who do not have any means of livelihood and who cannot go to the courts but nobody can change the *Holy Quran*. The *Quran* bestows this right on the women that they may lead a life of honour. Even Banatwalla Sahib cannot change the *Quran*.

We have seen very difficult days in this country; we have faced grave consequences by using religion for political benefits.....

(Interruptions)

In the words of Maulana Azad, as a consequence of such politics, anxiety appeared on the faces of the people and their hearts became desolate. In spite of all the sentimental slogans, those who raised those slogans went elsewhere by leaving the Mohammadans of India to their fate considering them as orphans. There is a change in the atmosphere again today; the conditions are improving. But once again, those slogan-mongers have reappeared to indulge in their political jugglery and benefit thereby. I appeal that the atmosphere of this country should not be spoilt once again. We are heading towards communal harmony in this country; we should not repeat that past which created bitterness, which caused harm, which broke the hearts and which created hatred. We have come a long way now and we should forget the past. I request.....

PROF. SAIFUDDIN SOZ : Where is the difference ?

SHRI ARIF MOHAMMED KHAN : The difference is that the slogans that have been raised, the type of speeches that have been made, the type of state-

[Shri Arif Mohammad Khan]

ments that are being given in the newspapers—all these are aimed at instigating religious sentiments, I would like to request that if there are differences on any matter, then we should remember that there is scope for discussion. Somewhere you may agree to our views and somewhere we may agree to your views, but nobody should spoil the atmosphere by raising sentimental slogans and by instigating religious sentiments. That will benefit neither the country nor any community.

PROF. SAIFUDDIN SOZ : I want to ask one thing. The question is Arif Mohammed Khan has really.....

[English]

MR. CHAIRMAN : We will now take up the next item.

The House will now take up Half-an-Hour discussion, Shri B.V. Desai. The hon. Member is not present. So, the House stands adjourned to meet at 11 A.M. on Monday, the 26th August, 1985.

17.32 hrs.

*The Lok Sabha then adjourned till
Eleven of the Clock on Monday,
August 25, 1985/Bhadra
4, 1907 (Saka)*