

Gujarat High Court

Arab Ahemadhia Abdulla And Etc. vs Arab Bail Mohmuna Saiyadbhai And ... on 18 February, 1988

Equivalent citations: AIR 1988 Guj 141, (1988) 1 GLR 452

Bench: M Shah

ORDER

1. In these petitions the questions which arise for determination are :

(1) Whether by the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, hereinafter referred to as the "Muslim Women Act", the orders passed by the Judicial Magistrate, First Class, under S. 125 of the Criminal P. C. ordering the husband to pay maintenance to the wife are nullified?

(2) Whether the Muslim Women Act takes away the rights which are conferred upon the divorced women under the Personal Law as interpreted by the Supreme Court in the case of Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945?

(3) Whether the Muslim Women Act provides that a divorced woman is entitled to have the maintenance only during the iddat period i.e. only for the iddat period?

As these questions are of importance, a number of learned advocates intervened in the matter and they ably rendered assistance.

2. For deciding the aforesaid questions it would be necessary to refer to the preamble of the Act which reads as under:

"An Act to protect the rights of Muslim Women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto."

From this preamble one thing is apparent that the Act is enacted to protect the rights of Muslim Women who have been divorced by, or have obtained divorce from, their husbands. This is as clear as anything could be. In simplest language the Parliament has stated that the Act is for protecting the rights of Muslim Women. It does not provide that it is enacted for taking away some rights which Muslim Woman was having either under the Personal Law or under the general law i.e. Ss. 125 to 128 of the Cr. P.C. The aforesaid preamble further provides that it is also enacted for making other provisions for matters connected therewith or incidental thereto.

3. Keeping this in mind, we have to consider the provisions of S. 3. As this section requires to be interpreted, it would be necessary to refer to it in its entirety. S. 3 is as under:

"3(1) Notwithstanding anything contained in any other law for the time being in force a divorced woman shall be entitled to -

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

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

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

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

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

(3) Where an application has been made under sub-s. (2) by a divorced woman, the Magistrate may, if he is satisfied that -

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair, provision and maintenance for her and the children; or

(b) the amount equal to the sum o f mahr or dower has not been paid or that the properties referred to in CL (d) of sub-s. (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the, means of r former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-s. (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-s. (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying them under the Code of Criminal Procedure, 1973, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code."

S. 3(1) begins, with non-obstante clause "notwithstanding anything contained in any other law for the time being in force" and provides that a divorced woman shall be entitled to have from her former husband -

(i) a reasonable and fair provision;

(ii) a reasonable and fair maintenance;

which is to be made and paid to her within the iddat period

4. Clause (b) of sub-s. (1) provides for a reasonable and fair provision and maintenance to be made and paid for a period of two years from the respective dates of the birth of such children. This Clause (b) specifies the period for which she is entitled to get maintenance for her children. The period is limited only to two years from the respective dates of birth of such children. So the specific period is provided for which she is entitled to get provision and maintenance for her children. In addition to the above, she is entitled to get "mahr or dower" amount under Clause (c) and all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends under Clause (d).

5. The crucial question which would require determination is whether under S. 3(1)(a) a divorced woman is entitled to get a reasonable and fair provision and maintenance only during the iddat period or beyond it? No specified period for which she is entitled to get reasonable and fair provision and maintenance is fixed under the Act, nor S. 3(1)(a) provides that for a particular period she is entitled to get the said amount. The learned advocates who are appearing on behalf of the former husband submitted that a divorced woman is entitled to get provision and maintenance from her former husband within the iddat period only and that word "within" should be read as "during" or "for". In my view, this submission cannot be accepted for the reasons which I would narrate hereafter after referring to other provisions of the Act.

6. Under sub-s. (2) of S. 3 a divorce woman is entitled to file an application before a Magistrate if the former husband has not made and paid to her a reasonable and fair provision and maintenance, mahr or dower, due or has not delivered the properties given to her as stated in sub-s. (1)(d). Sub-s. (3) provides how the Magistrate is required to proceed with the said application. The Magistrate has to be satisfied that (i) her husband was having sufficient means and (ii) has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children. After taking into consideration the aforesaid facts, he can pass an order directing the former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit: and proper having regard to (a) the needs of the divorced woman, (b) the standard of life, enjoyed by her during her marriage and (c) the means of her former husband. If the mahr or dower amount or the properties referred to in CL (d) of sub-s. (1) have not been delivered to her, then under sub-s (3)(b) he is required to direct the former husband to make payment of such "mahr or dower" or deliver all such properties as referred to in Section 3(1)(d). From this sub-section it is clear that objective criteria are laid down by the Legislature for determining reasonable and fair provision and maintenance to be paid to the divorced woman i.e.

the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband. After taking into consideration all these facts he is required to determine the amount and pass appropriate order. This sub-section nowhere provides that the determination of reasonable and fair provision and maintenance is only for the iddat period..

7. The other important section which requires consideration is S. 4 which is as under :

"4.(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not remarried and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim Law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman. the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order :

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents, is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-s. (1) or such relatives or any one of the them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-s. (1), the Magistrate may, by order direct the State Wakf Board established under S. 9 of the Wakf Act, 1954, or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-s. (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order."

This section also begins with non obstante clause i.e. "notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force." Therefore, it clearly means that whatever might have been provided under S. 3 or in any other law for the time being in force, the divorced woman is entitled to file an application for grant of maintenance if she has not remarried after the iddat period and is not able to maintain herself after the iddat period meaning thereby that even if she has received reasonable and fair provision and maintenance from her

former husband, if she has not remarried after the iddat period and is not able to maintain herself after the iddat period, she can file an application grant of maintenance and the Magistrate can pass an order directing such of her relatives who are entitled to inherit her property her, death according to Muslim law to pay maintenance at such periods as he may specify in his order. Again it should be noted that S. 4(1) provides for payment of reasonable and fair maintenance only and 'not for "reasonable and fair provision and maintenance. " Sub-s. (2) of S. 4 provides that where the divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-s (1) or such relatives or any of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid, by such other relatives, the Magistrate can direct the State Wakf Board established under S. 9 of the Wakf Act, 1954, or under any other law for the time being in force in a State, to pay such maintenance as determined by him under sub-s. (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

8. From Ss. 3 and 4 broadly speaking it can be said that the following rights are conferred upon a divorced woman :

(1) She is entitled to have a reasonable and fair provision and maintenance from her husband. That is to be made and paid to her within the iddat period. The determination of reasonable (sic) the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband. Apart from this she is entitled to have "mahr" or "dower" and return of her properties.

(2) If she has not remarried after the iddat period and is not able to maintain herself, then she is entitled to her maintenance (maintenance only) from her relatives who are entitled to inherit her property on her death, at such periods as directed by the Magistrate; and (3) If her relatives are not in a position to pay such maintenance, she is entitled to get it from the Wakf Board at such periods as specified by the Magistrate.

9. The next question which would require determination is, whether this "reasonable and fair provision and maintenance is limited only up to iddat period or whether it is to be made and paid to her after visualizing or contemplating her future needs? The learned advocates who are appearing on behalf of the former husbands vehemently submitted that the period is limited and it is only for the iddat period. As against this, the learned advocates appearing on behalf of the divorced woman submitted that the Parliament has provided for making reasonable and fair provision and payment of reasonable and fair maintenance to the divorced woman after visualizing and contemplating her future needs. That amount is to be paid by her former husband or provision is required to be made by her former husband within the iddat period. Heavy reliance was placed by the learned advocates for both the sides on the decision of the Supreme Court in the case of Mohd. Ahnied Khan v. Shah Bano Begum, AIR 1985 SC 945. Learned advocates appearing on behalf of the former husbands submitted that in view of the decision of the Supreme Court in the aforesaid case the Parliament has enacted the Muslim Women Act to take away the rights of a Muslim divorced woman as decided by the Supreme Court as well as her right to get maintenance under S. 125. As against this Mr. Pandya,

the learned Government Pleader and Public Prosecutor, and other learned advocates submitted that nowhere the Act provides that the personal rights conferred upon a Muslim divorced woman or the rights conferred upon her under Ss. 125 to 177 are taken away or are in any way adversely affected. On the contrary, they submitted that in conformity with the view expressed by the Supreme Court in the aforesaid case the Parliament has codified the rights of a Muslim divorced woman.

10. Taking into consideration the objects and reasons for enacting the Muslim Women Act as well as the preamble and the plain language of S. 3, it cannot be said that Muslim Women Act in any way adversely affects the personal rights of a Muslim divorced woman as laid down by the Supreme Court in Shah Bano's case. In Shah Bano's case the Supreme Court in para I I has stated as under:

"We embarked upon the decision of the question of priority between the Code and the Muslim Personal Law on the assumption that there was a conflict between the two because, in so far as it lies in our power, we waited to set at rest, once for all, the question whether S. 125 would prevail over the personal law of the parties, in cases where they are in conflict."

Thereafter in para 13 the Court referred to the contention of the husband that the liability of a husband to maintain a divorced wife is limited to the period of iddat. The Court further referred to the quotations from MulWs Mahomedan Law and other authors and in para 14 held that the statements in the aforesaid Text Books were identical to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance of his divorced wife who is unable to maintain herself. The Court held that the statements extracted from the above Text Book which lay down that the husband has no obligation to maintain his wife after iddat period are not only incorrect but unjust and they would not apply to cases in which a divorced woman is unable to maintain herself. The Court held:

"We are of the opinion that the application of those statements of law must be restricted to that class of cases, in which there is no possibility of vagrancy or destitution arising out of the indigence of divorced wife."

The Court rejected the contention that under the Muslim Personal Law the former husband is liable to provide maintenance to his divorced wife only for iddat period and held as under:

"The argument of the appellant that, according to the Muslim Personal law, liability to provide for the maintenance of his divorced wife is limited to the period of iddat despite the fact that she is unable to maintain herself, has therefore to be rejected. The true position is that, if the divorced wife is, able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat. If she is unable to maintain herself, she is entitled to take recourse to S. 125 of the Code. The outcome of this discussion is that there is no conflict between the provisions of S. 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself."

The Court thereafter referred to the Holy Quran and verses (Aiyats) 241 and 242 which are
"Arabic version English version

WA LIL MOTALLA- For divorced women

QATAY

MATAUN Maintenance

(should be provided)

BILMAAROOFA On a reasonable

(Scale)

HAQQAN This is a duty

ALAL MUTTA- On the righteous.

QEENA

Ayat No.242

KAZALEKA YUBA- Make clear His

IYYANULLAH Signs

TAQELOON To you : in order

That you may understand."

There was some controversy with regard to the English version of the word "Mata". Some state it to be, "maintenance" and some state it to be "provision". It should be noted that S. 3(1)(a) provides for reasonable and fair provision and maintenance. May be that the Parliament wanted to be doubly sure about the exact meaning of the word "Mata" and, therefore, it provided for reasonable and fair provision and maintenance. The Court further referred to an English version of the aforesaid two Aiyats by different authorities. One is that of Muhammed Zafrullah Khans 'The Quran' (page 38) which reads as under:

"For divorced women also there shall be provision according to what is fair. This is an obligation binding on the righteous. Thus does Allah make His commandments clear to you that you may understand."

For our purposes it is not necessary to refer to other quotations. The Court thereafter held that these Aiyats leave no doubt that the Quran imposes an obligation on the Muslim husband to make

provision for or to provide maintenance to the divorced wife. In view of this interpretation given by the Supreme Court it is apparent that the Parliament has made provision in S. 3(1)(a) which states that a divorced woman is entitled to have a reasonable and fair provision and maintenance from her former husband. The learned advocates appearing on behalf of the husbands submitted that this enunciation of law by the Supreme Court is not in accordance with the Personal Law as interpreted on different occasions by different authorities. They also wanted to rely upon some decisions of the various Courts. In my view, it is not open to me to take any contrary view in view of the law laid down by the Supreme Court. Further, it should be noted, that the decision in, the case of Shah Bano (AIR 1985 SC 945) is of the Bench consisting of 5 Hon'ble Judges.

11. The Court further negated the contention of the husband that once the "mahr" or "dower" amount is paid, that would take care of the requirements of divorced woman. The Court after considering the Privy Council decisions and the Bill which led to the amendment of the Cr. P.C. held that the decisions of the Supreme Court in the cases of Bai Tahira v. Ali Hussain Fidaalli Chothia, AIR 1979 SC 362, and Fuzlunbi v. K. Khader Vali, AIR 1980 SC 1730, are correct and held that there is no escape from the conclusion that a divorced Muslim wife is entitled to fair and reasonable maintenance under S. 125 and that "mahr" is not a sum which, under the Muslim Personal Law, is payable on divorce.

12. In para 32 the Court held that it was a matter of regret that Art. 44 of the Constitution has remained a dead letter as there was no evidence of any official activity for framing a common Civil Code for the country. It further observed as under : "It is the State which is charged with the duty of securing a uniform civil Code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning."

13. Therefore it seems that because of the aforesaid observation of the Supreme Court the Parliament has made the beginning and has codified the rights of Muslim divorced wife. This is borne out by the objects and reasons of enacting the Muslim Women Act which are as under:

"The Supreme Court, in Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945. has held that although the Muslim Law limits the husband's liability to provide for maintenance of the divorced wife to the period of iddat, it does not contemplate or countenance the situation envisaged by S. 125 of the Cr. P.C., 1971 The Court held that it would be incorrect and unjust to extend the above principle of Muslim law to cases in which the divorced wife is unable to maintain herself. The Court, therefore, came to the conclusion that if the divorced wife is able to maintain herself, the husband's liability ceases with the expiration of the period of iddat, but if she is unable to maintain herself after the period of iddat, she is entitled to have recourse to S. 125 of the Criminal P. C.

2. This decision has led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife. Opportunity has, therefore, been taken to specify the rights which a Muslim divorced, woman is entitled to at the time of divorce and to protect her interests."

14. Even the preamble of the Muslim Women Act recites to the same effect.

15. The Parliament also codified that in addition to reasonable and fair provision and maintenance, the wife is entitled to get "mahr" or "dower" amount. That means that the Parliament also approved the observation of the Supreme Court that "mahr" amount is not the amount which is to be paid to a divorced woman at the time of divorce or for taking divorce. As the Supreme Court has held that the said amount is payable as a mark of respect for the wife and is to be paid to her at the time of marriage or it can be paid in two parts, one of which is called "prompt" which is payable on demand and the other is called "deferred" which is payable on dissolution of the marriage by death or, by divorce. The Parliament, therefore, provided under S. 3(1)(c) that a divorced woman is entitled to have an amount equal to the sum of "mahe" or "dower" agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law. This means without any doubt that the Parliament also considered that "mahr" or "dower" is not the amount which is payable for taking divorce or for maintenance of the divorced woman. Hence it can be said that whatever is laid down by the Supreme Court in Shah Bano's case (AIR 1985 SC 945) is codified by the Parliament by enacting the Muslim Women Act. The Parliament has also taken care to see that a divorced woman gets back all properties given to her before or at the time of marriage or after the marriage by her relatives or friends and that is provided in S. 3(1)(d).

16. Further, if we consider the phrase used by the Parliament in S. 3(1)(a) i.e. reasonable and fair provision and maintenance to be made and to be paid to her", it seems that the Parliament intended to see that the divorced woman gets sufficient means of livelihood after the divorce and that she does not become destitute or is not thrown on the streets without a roof over her head and without any means of sustaining herself and her children. The word 'provision' itself indicates that something is provided in advance for meeting some needs. In the Webster's New Twentieth Century Dictionary, Second Edition, the following meanings are given to the word "provision"

1. a. providing, preparing, or supply of something.
2. something provided, prepared, or supplied for the future.
3. (pl.) a stock of food and other supplies assembled for future needs.
4. preparatory arrangements or measures taken in advance for meeting some future needs.

This means that at the time of giving divorce the Muslim husband is required to visualize or contemplate the extent of the future needs and make preparatory arrangement in advance for meeting the same and, therefore, the Parliament has provided that reasonable and fair provision is to be made and paid to her. May be that the provision can be made that every month a particular amount be paid to the wife; may be that residential accommodation for her can be provided; may be that some property be reserved for her so that she can purchase articles for livelihood. Reasonable and fair provision may include provision for her residence, provision for her food, provision for her clothes and other articles. The husband may visualize and provide for residential accommodation till her remarriage. That means, a provision for residential accommodation is made. Apart from the

residential accommodation, for her clothes, food and also for other articles some fixed amount may be paid or he may agree to pay it by instalments. That would also be a provision. Therefore, the 'provision' itself contemplates future needs of divorced woman. If the husband is rich enough, he may provide separate residential accommodation. In other cases, he may provide rented accommodation and that can be said to be a provision for residential accommodation. Therefore there is no substance in the contention of the learned advocates appearing for the husbands that under S. 3(1)(a) divorced woman is entitled to provision and maintenance only for iddat period. The Parliament has further emphasized that apart from reasonable and fair provision, reasonable and fair maintenance is also required to be made and paid to her. It has further prescribed the objective criteria for determining what would be reasonable and fair provision and maintenance for her in sub-s (3) which provides that the Magistrate shall determine reasonable and fair provision and maintenance having regard to the needs of the divorced woman, the standard of-life enjoyed by her during her marriage and means of her former husband, meaning thereby that if the former husband is a millionaire, he is bound to make provision in accordance with his means. Hence it can be said that the limitation of S. 125 of the Criminal P. C. that maintenance up to Rs. 500/- is to be paid, is not there in this provision. Therefore, something more is given to the Muslim divorced woman and her rights are fully protected as stated in the objects and reasons and preamble of the Muslim Women Act.

17. The learned advocates appearing on behalf of the husbands submitted that, the word

"3. Not beyond, not too far for, not transgressing, so as not to pass or exceed,

4. Not too far for, near enough to affect or be affected by, not farther off th

5. In a time no longer than, before expiration or since beginning of."

In the Webster's New Twentieth Century Dictionary, Second Edition, also the word "withi

"2. in the limits of compass of; not beyond in distance, time, degree,.etc.; a

3. inside the limits of; not exceeding; not overstepping, etc.; as, within th

The word "within" came up for construction before the Division Bench of the Bombay High Court in the case of *Cornmr. of Incometax v. Ekbal & Co.*, AIR 1945 Bom 316. In that case the Court held that whetens "within" the stated period must mean what it says, something less than the moment of expiration. The Court further held that "within 30 days" is within two points of time, one at which the period begins and the other at which it expires. Therefore, the word "within" which is used by the Parliament under to Muslim Women Act would mean that on or before the expiration of iddat period, the husband is bound to make and pay a reasonable and fair provnion and maintenance to the wife. If he fails to do so, then the wife is entitled to recover it by filing an application before the Magistrate as provided in sub-s. (2) of S. 3 but nowhere the Parliament has provided that reasonable and fair provision and maintenance is limited only for the iddat period or that it is to be paid only during the iddat period and not beyond it.

18. The aforesaid conclusion is further fortified by the provisions of S. 5 of the Muslim Women Act which reads as under:

"5. If, on the date of the first hearing of the applicatoin under sub-s. (2) of S. 3, a divorced woman and her former husband declare by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of Ss. 125 to 128 of the Cr. P.C., 1973 (2 of 1974), and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation :- For the purposes of this section, "date of the first hearing of the application" means the date fixed in the summons for attendance of the respondent to the application." It gives option to the parties either to be governed by the procedure under Ss. 125 to 128 of the Criminal P.C. or under the provisions of the Act. This would prima facie mean that there is no inconsistency or repugnancy between the general provisions of Ss. 125 to 128 and the Muslim Women Act. If there was inconsistency, the Parliament would not have given any option to the parties. Further, if S. 3(1)(a) is interpreted to mean that the former husband is bound to provide maintenance only for iddat period, then in no set of circumstances it can be expected that a former husband would pay future maintenance because it is difficult to imagine that the person who has given divorce to his wife would be so chivalrous as to agree to pay future maintenance. The result would be that in almost all cases divorced woman would like to be governed by the provisions of S. 125 and the former husband would refuse to be governed by the provisions of S. 125. Can it be imagined that the Parliament would pass an Act which gives absolute discretion to the former husband and leave, a divorced woman at his mercy and sweet will? Normally divorces are given because there are disputes between the parties. In that set of circumstances it is difficult to imagine, that the husband would agree to pay future maintenance if there is no specific provision in the Muslim Women Act. If that interpretation is accepted, then S. 5 would be redundant or otiose. Normally the provisions of the Act should be interpreted in such a manner as not to render any of its provisions otiose unless there are compelling reasons for the Court to resort to that extreme contingency, Therefore also it would be just and proper to hold that S. 3(1)(a) provides that the former husband is bound to make reasonable and fair provision and maintenance after taking into consideration the future needs of the divorced woman.

19. Mr. Pandya, the learned Government pleader and Public Prosecutor, rightly pointed out that the whole purpose and object of the Act is to specify or codify the law and not to take away the rights which are crystallized by the Supreme Court in the case of Shah Bano, (AIR 1985 SC 945). If the Parliament really intended to nullify the decision of the Supreme Court, it would have specifically stated so in the objects and reasons or would have provided it specifically in the Muslim Women Act itself.

20. Further, even applying the well known principles of construction of statutes also, the result would be the same. The intention of the Legislature has to be gathered by reading the statute as a whole. That is a rule which is now firmly established for the construction of the statute. Therefore, if we read different phrases used in S. 3(1)(a), 3(1)(b), 3(3) and S. 4 as well as S. 5 of the Act together, it would be clear that the Parliament wanted that the divorced woman is fully protected if she does not remarry and she gets adequate provision and maintenance from her former husband and/or maintenance from her relatives or Wakf Board in case of necessity. Section 3(1)(a) provides for reasonable and fair provision and maintenance to be made and paid by her former husband within the iddat, period. Section 3(1)(b) provides reasonable and fair maintenance for the children only for a period of 2 years. Section 3(3) lays down the objective criteria for deciding the future needs of the divorced woman and directs the Magistrate to determine reasonable and fair provision and maintenance depending upon the means of her former husband. Further, in case of the inability of the wife to maintain herself even from the said provision and maintenance made and paid to her by her former husband, she can get it from her relatives or from the Wakf Board. Section 5 of the Act gives option to the parties to be governed by the provisions of Ss. 125 to 128. From this it is abundantly clear that the phrase used in S. 3(1)(a) deals with future needs of the divorced woman and on that basis reasonable and fair provision and maintenance is required to be made and paid to her by her former husband. Further, the words and phrases used by the Parliament are to be construed in the ordinary and natural sense. It would be worthwhile to refer to the interpretation of Statutes by Maxwell, Twelfth Edition, Chapt. 2, which reads as under :

"The first and most elementary rule of construction is that it is to be assumed that words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the rules of grammar. "The length and detail of modern legislation," wrote Lord Evershed M.R., "has undoubtedly reinforced the claim of literal construction as the only safe rule." If there is nothing to modify, alter or qualify the language which the statute contains it must be construed in the ordinary and natural meaning of the words and sentences. "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases."

The rule of construction is "to intend the Legislature to have meant what, they have actually expressed." The object of all interpretation is to discover the intention of parliament,"but the intention, of Parliament must be deduced from the language used," for "it is well accepted that, the beliefs and assumptions of those who frame Acts of Parliament cannot make the law."

21. Mr. Pandya further referred to "Statutory Interpretation by Francis Bennion and

"Prima facie, the meaning of an enactment which was intended by the legislator (in other words)

and para 140 which reads as under:

"It is presumed to be the legislator's intention that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, should assess the likely consequences of adopting each construction, both to the parties in the case and (where similar facts arise in future cases) for the law generally. If on balance the consequences of a particular construction are more likely to be adverse than beneficent this is a factor telling against that construction."

22. As against this, the learned advocates appearing on behalf of the husbands submitted that before interpreting the section the Court has to consider the history of the enactment and the reason why the Act was brought in. According to their submission, to nullify the interpretation given by the Supreme Court in Shah Bano's case, (AIR 1985 SC 945) the Parliament has enacted the Muslim Women Act. In my view, even if we take into consideration the legislative history for enacting the Muslim Women Act, it is clear that the Act is to codify and protect the rights of Muslim divorced wife. It was rightly submitted by the learned advocates Mr. Pandya and Mr. D.K. Shah that the Act nowhere provides or states that it is enacted to nullify the decision of the Supreme Court in Shah Bano's case. It nowhere states that the rights which are given to a Muslim divorced wife under the Personal Law are in any way adversely affected by the present enactment. As discussed above, the objects and reasons for enactment specifically state that the Muslim Women Act is enacted to specify the rights which the Muslim divorced woman is entitled to have at the time of divorce and to protect her interest. This is also further clear from the preamble of the Act. Further, the plain grammatical meaning of S. 3(1)(a) would be that the divorced woman is entitled to have a reasonable and fair provision and maintenance from her former husband. That provision is to be made and maintenance is to be paid to, her within iddat period. So the time limit is prescribed during which the husband is bound to carry out his obligation towards his divorced wife. As stated above, the word "Provision" in the context of the Act would mean the action of providing something before hand or arranging in advance to meet the needs of the divorced wife. May be, that provision can be made for, her residence or her maintenance or for her, other needs such as clothes, food and such other things depending upon the means of the husband. If the husband is millionaire, the amount is to be determined accordingly. The Parliament seems to have intentionally used the word "provision" because at the time of giving divorce the husband may visualize that the wife is likely to remarry. If she is likely to remarry then provision can be made only for a limited period. It may depend in some cases on the age of the woman children, her appearance and health. If she is a middle-aged woman having children, she may not have any chances of remarriage. If the intention of the Parliament was to take away some rights which were crystallized by the decision of the Supreme Court in Shah Bano's Case, then the Parliament would not have used the phrase which it has used in S. 3(1)(a) i.e. reasonable and fair provision and maintenance to be made and paid. The draftsman would have conveniently stated that a divorced woman is entitled to have maintenance during the iddat period. In S. 4 it has been provided that a divorced woman is entitled to get

maintenance (only) at such periods as the Magistrate may specify. In S. 3(1)(a) no periods are specified.

23. Mr. Oza, learned advocates appearing on behalf of the wife rightly relied upon the decision of the Supreme Court in the case of *Municipal Council, Palai v. T.J. Joseph* AIR 1963 SC 1561, wherein the Court has held that it is equally well settled that there is a presumption against an implied repeal because there is assumption that the Legislature enacts laws with complete knowledge of existing laws obtaining on the same subject and the failure to add a repealing clause indicates that the intention was not to repeal existing law. It would be worthwhile to reproduce the relevant discussion in para. (9) of the said decision which reads as under :

"It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together. As has been observed by Crawford on Statutory Construction. P. 63 1, Para. 311 :

"There must be what is often called such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together. 'In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal for the intention of the legislature to repeal the old enactment is utterly lacking."

If we consider Ss. 1 to 7 nowhere it is provided that the rights which are conferred upon a Muslim divorced wife under Personal Law are abrogated restricted or repealed. It is presumed that the Muslim Women Act is enacted with deliberation and full knowledge of existing law on the subject. Therefore, it would be reasonable to conclude that the Parliament in passing the Muslim Women Act did not intend to interfere with or abrogate any rights of the divorced wife. Further the implied repeal will take place in, the event of clear inconsistency or repugnancy. As such there is no inconsistency or repugnancy in the Muslim Women Act and the law laid down by the Supreme Court.

24. It is also a well recognised rule of interpretation of statutes that as far as possible statute should be interpreted so as to respect the vested rights of parties. While dealing with Ss. 21 and 22 of the Hindu Adoptions and Maintenance Act, the Supreme Court in the case of *Raja Gopala Rao v. Sitharam Amma*, AIR 1965 SC 1970, held that prior to the enactment of Hindu Adoptions and Maintenance Act a concubine was entitled to claim maintenance from the estate of the paramour and if the rights of maintenance were acquired by her or illegitimate sons of the deceased, those rights are not affected by the provisions of Ss. 21 and 22 of the Act. While dealing with this aspect the Court has held as under :

"Now, before the Act came into force, rights of maintenance out of the estate of a Hindu dying before the commencement of the Act were acquired, and the corresponding liability to pay the maintenance was incurred under the Hindu law in force at the time of his death. It is a well recognised rule that a

statute should be interpreted, if possible so as to respect vested rights, and such a construction should never be adopted if the words are open to another construction. See Caries on Statute Law, 6th Edn. (1963), p. 397, We think that Ss. 21 and 22 read with S. 4 do not destroy or affect any right of maintenance out of the estate of a deceased Hindu vested on his death before the commencement of the Act under the Hindu Law in force at the. time of his death."

25. In the present case the Muslim Women Act is for codification of the Law dealing with Muslim divorced women's right of maintenance and, therefore, unless the existing law is altered by express words the court should respect the vested rights. It further should not hold that the Act is going beyond codification.

26. The learned advocate Mr. J.G. Shah submitted that the Muslim Women Act is for protecting the weaker section of one community and is a beneficial legislation, hence even if two interpretations are possible the Courts should liberally interpret the section in favour of the weaker section without doing any violence to the language used by the Parliament. For this purpose he relied upon the decision of the Supreme Court in the case of Workmen of F.T. & R. Co. v. Management, AIR 1973 SC 1227. In that case the Supreme Court dealt with the provisions of S. 11A of the Industrial Disputes Act, 1947. In that case the Supreme Court held that it is well settled that in construing the provision of a welfare legislation, Courts should adopt, what is described as a beneficent rule of construction, If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be Preferred. The Court further considered the aspect whether a long chain of the decisions of the Supreme Court laying down various principles in relation to adjudication of disputes by Industrial Courts arising out of orders of discharge or dismissal were altered or not by a clear expression in the section. The relevant discussion is in para 31 of the said judgment and it is as under :

"We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provision of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If the constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear expression of that intention in the language of section."

27. Therefore, in my view, taking into consideration the, plain language used by the Parliament in S. 10(a) that a divorced woman is entitled to have a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband it would clearly mean that her husband is bound to make reasonable and fair provision for her and also is bound to provide for maintenance and that this provision and maintenance should be made and paid to her within iddat period; but it cannot be said that the Parliament wanted to provide maintenance only for iddat period. In any set of circumstances even if other interpretation is possible as discussed above, this law is to protect the rights of, the Muslim divorced woman and not to take away her personal rights under the Muslim Law as interpreted by the Supreme Court in Shah Bano's case, (AIR 1981 5 SC 945). While construing welfare legislation a liberal construction should be placed on the provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified. Benignant provisions enacted by the Legislature having regard to the modern age have to be interpreted in meaningful manner which serves rather than defeats the purpose of the legislation. Therefore also the interpretation which is beneficial to the divorced woman should be accepted.

28. Further, wherever the Parliament intended to provide maintenance and provision for a limited period, it has done so specifically. This is apparent if we refer to S. 3(1)(b). Clause (b) provides provision and maintenance only for a period of two years from the respective dates of birth of children. It cannot be assumed that the Parliament has used different phraseology in two clauses of the same section unintentionally. On the contrary it can be said that where different phraseology is used in different clauses of the section, it can be presumed that the Parliament used it in order to confer different benefits. Reference may be made to Maxwell on "The Interpretation of Statutes", Twelfth Edition, page 282 :

"From the general presumption that the same expression is presumed to be used in the same sense throughout an Act or a series of cognate Acts, there follows the further presumption that a change of wording denotes, a change in meaning. "Where the Legislature," said Lord Tenterden, C.J., "in the same sentence uses different words, we must presume that they were used in order to express different ideas."

29. Apart from different phraseology used in S. 3(1)(a) and 3(1)(b), if we refer to sub section (3) of S. 3, it would be abundantly clear that Magistrate is required to pass an order on the application of the divorced woman. There is no limitation on him that he should determine reasonable and fair provision and maintenance only for the iddat period otherwise there was no necessity to provide in sub-section (3) that the Magistrate should take into consideration whether the husband was having sufficient means and also to take into consideration the needs of the divorced woman. This objective criteria laid down by the Parliament i.e. the Magistrate should take into consideration the needs of the divorced woman would undoubtedly indicate that the future needs of the divorced woman are required to be taken into consideration. The future needs would by no stretch of imagination mean her past needs during the iddat period. As the application under S. 3(2) is required to be filed by the divorced wife after the iddat period if the husband fails to provide a reasonable and fair provision and maintenance within the iddat period, there was no necessity to provide that the Magistrate should consider the needs of the divorced because that application would come up for determination before the Magistrate after the iddat period is over. On the contrary the Parliament

has emphasised that apart from the needs of the divorced woman, the Magistrate should take into consideration the standard of life enjoyed by the divorced woman during her marriage and the means of her former husband. This requirement also indicates that the Magistrate is required to determine the requirement of the wife after taking into consideration the means of her husband. If the husband is sufficiently rich, then the provision and maintenance would be such that it would be possible for the divorced woman to live with the same standard of living which she enjoyed during her marriage. Therefore, from this subsection (3) also it can be said that "reasonable and fair provision and maintenance" is to be determined by taking into consideration the future needs of the divorced wife and not by taking into consideration what she required during the iddat period and, therefore, it can be said that under S. 3(1)(a) divorced woman is entitled to, have reasonable and fair provision and maintenance for her future needs depending upon number of imponderable circumstances such as likelihood of remarriage, her age and her expectancy of life and means of her former husband.

30. The learned advocates appearing, on behalf of husbands relied upon S. 4 of the Act and submitted that after the iddat period is over, the divorced woman is entitled to get maintenance not from her husband but only from her relatives or from the Wakf property. In my view, this submission is without any substance because S. 4 again begins with non obstante clause and it provides that notwithstanding anything contained in the foregoing provisions of this Act i.e. S. 3, a divorced woman, is entitled to file an application for maintenance from her relatives or from the Wakf Board, as the case may be, if she is not in a position to maintain herself. The essential preconditions for filing an application under S. 4 would be -

(i) she must not have remarried after the iddat period; and

(ii) she is not able to maintain herself after the iddat period which may be even after a lapse of 10 years of divorce.

In my view, the Parliament contemplated that even if reasonable and fair provision and maintenance is made and paid to the divorced woman within the iddat period, yet she can file an application for maintenance if she is unable to maintain herself from the amount or provision made by her former husband as required under S. 3(1)(a). Section 4 provides for only "reasonable and fair maintenance" while S. 3(1)(a) and (b) provides for reasonable and fair provision and maintenance. Apart from the fact that two different phraseologies are used in Ss. 3 and 4 S. 4 contemplates a situation where the divorced woman is not in a position to maintain herself after receiving maintenance in lumpsum from her husband or provision which was found to be reasonable and fair at the time of taking divorce. In that case she is entitled to file, an application for maintenance and set it from her relatives such as her parents. If they are not in a position to pay it, then she can claim it from the Wakf Board. Take for an example, in some cases where it is thought that divorced woman is likely to remarry and provision and maintenance is made and paid to her on that basis, but subsequently it turns out that she is not in a position to remarry for some reasons. Further, if the provision which was made for her and the maintenance paid to her is not sufficient to maintain her and she is not in a position to maintain herself, then she can file an application under S. 4 of the Muslim Women Act. But it would not be open to her to approach the Magistrate for getting

maintenance from her former husband, Take another instance wherein both the parties visualize that there are no chances for, remarriage of divorced woman and reasonable and fair provision is made for her future maintenance and yet, for some accidental reasons, she is required to spend all the amount, then in that case she cannot ask her former husband to pay further maintenance. This may happen because of some unforeseen illness such as cancer or such other disease or due to accidental injuries wherein the divorced woman is required to spend huge amount for curing herself or her minor children.

31. Therefore, reading Ss. 3 and 4 together it is abundantly clear that the Parliament wanted to fully protect the divorced woman so that she does not become destitute or is not thrown on the streets without roof over her head and without any means for sustaining herself and her children.

32. Mr. Momin, learned advocate appearing on behalf of the husband, submitted that if this was the intention of the Parliament, then there was no necessity of enactment of Muslim Women Act because S. 125 of the Criminal P.C. as interpreted by the Supreme Court in Shah Bano's case (AIR 1985 SC 945) gives her right to claim maintenance from her former husband. He also submitted that the law laid down in Shah Bano's case provides that Muslim divorced woman is entitled to have maintenance from her former husband if she is unable to maintain herself under the Personal Law. Taking into consideration the objects and reasons it is clear that the Parliament wanted to specify or codify the Personal Law and protect the Muslim divorced women so that there may not be any controversy over it in future. Further, under S. 125 of the Criminal P.C. the maximum amount which a divorced woman would get is only Rs. 500/- even though her former husband is a rich person. Therefore, to give her full protection or benefit, this Act is enacted and her rights are specified. The Parliament has set at rest the controversy which has arisen because of Shah Bano's case. It has not only provided for reasonable and fair provision and maintenance to the divorce woman and her minor children, but it also specifically provided that she is entitled to get "mahr" or "dower" amount from her former husband. Therefore, thus Act has set at rest the controversy that "mahr" or "dower" amount is paid to the divorced woman by the former husband for her future maintenance after divorce. The Parliament has not stopped there. It has further provided that she is entitled to get back all her properties which she had received before or at the time of her marriage or after her marriage from her relatives, her friends or her husband or relatives of her husband or his friends. So if the property is given by her husband or any of the relatives of her husband or his friends such properties are also required to be given to her.

33. Mr. Momin and Mr. Pathan further submitted that if the Parliament wanted to provide for future maintenance to the divorced woman, then the Parliament would not have provided that the said amount should be paid within the iddat period but instead of that the Parliament would have specified the time. It seems that the Parliament has provided that the provision and maintenance should be made within iddat period and should be paid within iddat period because during that period divorced woman is not entitled to remarry and iddat period varies as provided in S. 2(b). Therefore the Parliament has provided that it should be paid within iddat period and not during specified period. But this S. 3(1)(a) is abundantly clear that Within the iddat period the former husband is bound to make provision and pay maintenance to his divorced wife. She is entitled to get reasonable and fair, provision and maintenance depending upon her future needs and means of her

husband as well as standard of life enjoyed by her during her marriage.

34. Next it was contended that in view of the provisions of Muslim Women Act, the orders passed by the Magistrate under S. 125 of the Cri. P.C. are non-est. This submission also without any substance. There is no section in the Act which nullifies the orders passed by the Magistrate under S. 125 of the Cri.P.C. Further, once the order under S. 125 of the Criminal P.C. granting maintenance to the divorced woman is passed, then her rights are crystalized and she gets vested right to reecover maintenance from her former husband. That vested right is not taken away the Parliament by providing any provision n the Muslim, Women Act. Under S. 5 an opti6n is given to the parties to be governed by the provisions of Ss. 125 to 128 of the Cri.P.C. This section also indicates that the parliament never intended to take away the vested right of Muslim divorced woman which was crystalized before the passing of the Act. Section 7 only provides that every application by divorced woman under S. 125 or 127 of the Cri. P.C. which is pending before the Magistrate on the commencement of the Act shall be disposed of (subject to the provisions of S. 5 of the Act) by the Magistrate in accordance with the provisions of this Act. Relying upon this section, on the contrary the learned advocates appearing on behalf of wife rightly submitted that S. 7 of the Act clearly indicates that there is no inconsistency between the provisions of Muslim Women Act and the provisions of Ss. 125 to 128 of the Cri. P.C. The provisions of Muslim Women Act grant more relief to the divorced woman depending upon the financial position of her former husband. Further, it is a well-known rule of interpretation of law that remedial amendments have to be liberally construed so as not to deny their efficacy and it is the duty of the Courts to avoid a conflict between two sections. The Court will interpret as statute as far as possible, agreeable to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted for there is always a presumption against the law maker intending injustice and unreason The provision in a statute will not be construed to defeat its manifest purpose and general values which animate its structure. (B.P. Kbemka Pvt. Ltd. v. Birendra Kunuw Bhowmick, (1987) 2 SCC 407: (AIR 1987 SC 1010), referred to Madhav Rao Scindia v. Union of India AIR 1971 SC 530, also referred to). In my view, as discussed above, the Special Act confers more benefits upon the divorced woman and the provisions are not in any way inconsistent or repugnant with the provisions of Ss. 125 to 128 of the CrLP.C. Further, underS. 3(2) theParliament has given a mandate to the Magistrate to dispose of the application filed by the divorced woman within one month of the date of filing of the application. If the Magistrate finds it impracticable to dispose of the application , within such period, he is required to,record reasons for it and dispose of the said application after the said period. Even R. 5 of the Muslim Women (Protection of Rights on Divorce) Rules, 1986 provides that the application is required to be disposed of as expeditiously as possible and once the examination of witnesses has begun the same shall be continued from day-to-day until all the witnesses in attendance have been examined unless the Court finds that adjournment is necessary for which reasons are to berecorded That means the Parliament has provided- that top-most priority should be given to the application filed by the divorced woman and it should be disposed of as far as possible within one month from the date of filing of such application. This further shows that the Parliament was mindful of the fact that proceedings under S. 125 of the Cr.P.C. are prolonged for number of years.

35. Apart from this expeditious disposal of the matter, it would be worthwhile to note that no appeal or revision is provided against the order passed by the Magistrate under S. 3 or 4 of the Muslim

Women Act. This would mean that the Parliament wanted to see that divorced woman gets relief at the earliest without there being any delay and without there being any stay from the appellate or revisional authority. Hence, it cannot be said that the orders passed under S. 125 of the Cr.P.C. become void or are non est because, of the Muslim Women Act.

36. From the aforesaid discussion the following conclusions emerge

(a) Under the Muslim Women Act a divorced woman is entitled to have a reasonable and fair provision from her former husband Reasonable and fair provision would include provision for her future residence, clothes, food and other articles for her livelihood. She is also entitled. to have reasonable and fair future maintenance. This is to be contemplated and visualized within the iddat period. After contemplating or visualizing it, the reasonable and fair provision and maintenance is to be made and paid to her on or before the expiration of the iddat period. This contemplation may depend upon the prospect of re-marriage of the divorced woman. If the former husband fails or neglects to make or pay a reasonable and fair provision and maintenance, then the divorced woman is entitled to recover it by filing an Application under S. 3(2) of the Act. The determination of reasonable and fair provision and maintenance depends upon the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband. This conclusion is inescapable in view of the different phraseology used by the Parliament in S. 3(1) and its clauses and S. 3(3). S. 3(1)(a) contemplates reasonable and fair provision and maintenance. Section 3(3) lays down objective criteria for its determination. Under S. 3(1)(b) reasonable and fair provision and maintenance is to be made and paid only for a period of two years from the respective date of birth of children. While the Parliament has not prescribed any such period, under S. 3(1)(a). Section 4 only provides for reasonable and fair maintenance. Apart from this, even S. 5 gives option to the parties to be governed by the provisions of Ss. 125 to 128 of the Criminal P.C.

(b) Under S. 4 of the Muslim Women Act a divorced woman is entitled to get maintenance from her relatives such as her children or her parents or from the Wakf Board if she is not able to maintain herself after the iddat period from the provision and maintenance made and paid by her former husband.

(c) As per the provisions of S. 5 the application filed under S. 3(2) of the Muslim Women Act by a divorced woman can be disposed of by following the provisions of Ss. 125 to 128 of the Criminal P.C. the divorced woman and her former husband file affidavits to that effect.

(d) Under S. 7 of the Muslim Women Act all applications filed by a divorced woman

(e) There is no provision in the Muslim Women Act which nullifies the orders pas

In view of the aforesaid discussion, there is no substance in the contentions raised by the

37. In Special Criminal Application No. 81 of 1988 the divorced woman filed Miscellaneous Criminal Application No. 89 of 1985 in the Court of the Chief Metropolitan Magistrate, Ahmedabad, claiming maintenance and by the order dated 30-4-1986 the Metropolitan Magistrate fixed the maintenance at the rate of Rs. 250/- per month. The petitioner-husband had not filed any revision application against that order. Subsequently the husband preferred Criminal Miscellaneous Application No:96/86 for cancellation of the order passed by the Metropolitan Magistrate under S. 125 of the Criminal P.C. on the ground that the order passed under S. 125 of the Cr.P.C. would be non-est in view of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The learned Chief Metropolitan Magistrate, Ahmedabad, rejected the said application by the order dated 17-6-87 on the ground that vested rights are, not taken away by the Act and that the Muslim -Women Act has no retrospective effect. Against that order, the husband preferred Criminal Revision Application No. 101 of 1987 before the Sessions Court, Ahmedabad. It was rejected by the learned Additional City Sessions Judge, Ahmedabad, by his judgment and order dated 26-1-88. Against that order, the petitioner husband has filed this Special Criminal Application.

38 Notice was issued to the wife respondent No. 1. At the request of the learned advocates for both the parties, the matter was fixed for hearing.

39. Similarly, in Special Criminal Application No. 586 of 1987 the present respondent No. 1 who is the divorced wife of the petitioner filed Miscellaneous Criminal Application No. 338 of 1984 in the Court of the Judicial Magistrate, First Class, Porbandar. By the order dated 30-10-1985 the learned Magistrate ordered the petitioner to pay maintenance to the respondent No. I at the rate of Rs. 300/- per month. Against that order the petitioner filed Criminal Revision Application No. 25 of 1985 in the Court of Additional Sessions Judge, Porbandar who by his judgment and order dt/- 28-9-1986 rejected the said revision application. Against that judgment and order passed by the learned Additional Sessions Judge, Porbandar this Special Criminal Application is filed.

40. In this Special Criminal Application (i.e. Special Criminal Application No. 586/87) the learned advocate for the petitioner husband submitted that in view of the Muslim Women Act the order passed by the learned Judicial Magistrate, First Class, Porbandar granting maintenance to respondent I requires to be quashed and set aside on the ground that it is nullified by the provisions of the Act.

41. As discussed above, the orders passed by the learned Magistrate under S. 125 of the Cr. P.C. are not nullified or the Muslim Women Act does not take away vested rights. These petitions, therefore, require to be rejected.

42. Hence Special Criminal Application No. 81 of 1988 is rejected Notice discharged.

43. Special Criminal Application No, 586 of 1987 is rejected.

44. Order accordingly.