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2024 INSC 506

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2842 OF 2024
[ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO. 1614 OF 2024]

MOHD. ABDUL SAMAD ... APPELLANT

VERSUS

THE STATE OF TELANGANA & ANR. ... RESPONDENTS

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. Leave granted.

2. This appeal challenges the Order dated 13.12.2023 passed in Criminal Petition No. 12222 of 2023 moved

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under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC 1973"), whereby the High Court of Telangana modified the Order dated 09.06.2023 passed by the Family Court in M.C No. 171 of 2019. By virtue of disposing of the said petition, the High Court decreased the quantum of interim maintenance payable by the Appellant herein from INR 20,000/- (Rupees Twenty Thousand only) per month to INR 10,000/- (Rupees Ten Thousand only) per month.

3. As per the Appellant, the brief facts leading to the instant appeal are that the Appellant herein was the husband of the Respondent No. 02. Both the parties entered the matrimonial consortium on 15.11.2012. However, as their relationship deteriorated, Respondent No. 02 left the matrimonial home on 09.04.2016. Subsequently, Respondent No. 02 initiated criminal proceedings against the Appellant by lodging FIR No. 578 of 2017 for offences punishable under Sections 498A and 406 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC 1860"). In response, the Appellant herein pronounced a triple *talaq* on 25.09.2017 and moved

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for divorce before the office of *Quzath* seeking a declaration of divorce, which was eventually granted *ex parte,* and the divorce certificate was issued on 28.09.2017.

4. It is further claimed that he attempted to send INR 15,000/- (Rupees Fifteen Thousand only) apropos maintenance for the *iddat* period, which the Respondent No. 02 is said to have refused. Instead, she moved a petition for interim maintenance under Section 125(1) of CrPC 1973 before the Family Court vide M.C. No. 171 of 2019, which was consequently allowed vide Order dated 09.06.2023. Seeking quashing of the said Order, the Appellant herein moved the High Court of Telangana, eventually leading to passing of the instant Impugned Order dated 13.12.2023.

5. The prime contention of the Appellant while moving this Court is that the provisions of Section 125 of CrPC 1973 do not prevail in light of the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the "1986 Act"). Furthermore, it is contended that even if a "divorced Muslim woman" seeks to move the court under the

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secular provision of Section 125 of CrPC 1973, it would not be maintainable, rather the correct procedure would be to file an application under Section 5 of the 1986 Act, which is not the case herein.

6. To substantiate the said contentions, the learned Senior Advocate for the Appellant herein, vehemently argued that since the 1986 Act provides a more beneficial and efficacious remedy for divorced Muslim women in contradistinction to Section 125 of CrPC 1973, thereby the recourse lies exclusively under the 1986 Act. In addition, it is submitted that the 1986 Act being a special law, prevails over the provisions of CrPC 1973. To buttress his contentions, reliance is placed on a decision rendered by a 3-Judge Bench in ***M/s. Jain Ink Manufacturing Company v. Life Insurance Corporation of India and Another (1980) 4 SCC 435*** wherein this Court went on to hold that a special law would supersede a general law and if such conflicting statutes are passed by the same legislature, the rule of harmonious construction is to be applied while interpreting the said statutes. Several other judgments to this effect were also brought to our notice with the similar position being

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reiterated as in a recent judgment of this Court in ***Chennupati Kranthi Kumar v. State of Andhra Pradesh and Others (2023) 8 SCC 251.***

7. He further emphasised that Sections 3 and 4 of the 1986 Act, commencing with a *non-obstante* clause, shall have an overriding effect on any other statute operating in the same field. An acknowledgment to this effect is said to have been found in a 5-Judge Bench in ***Danial Latifi and Another v. Union of India (2001) 7 SCC 740*** and specifically in paragraph numbers 21 to 24. Further reliance is placed on paragraph numbers 03, 07, 08, and 09 of the judgment in ***Iqbal Bano v. State of Uttar Pradesh and Another (2007) 6 SCC 785.*** Another limb of his submission is based upon the transitional provision of Section 7 of the 1986 Act, in an attempt to establish supersedence and clarity as to the intent of the legislature on prevalence of the 1986 Act and the procedure and rights contemplated therein.

8. To assist this Court, Mr Gaurav Agrawal, Senior Advocate, was appointed as *amicus curiae* vide Order dated 09.02.2024, who eventually went on to submit that the remedy under a secular statutory

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provision of Section 125 of CrPC 1973 is not foreclosed for a divorced Muslim woman by virtue of enactment of a personal law remedy under Section 3 of the 1986 Act to the limited extent of maintenance, as the latter does not in any manner, expressly or by necessary implication, bar the exercise of former remedy. To buttress this submission, he went on to highlight the distinction between the very object and purpose of the aforesaid provisions. Mr Agrawal, while also extensively referring to the 5-Judge Bench decision in ***Danial Latifi (supra)***, goes on to submit that the explicit question as to whether the *non-obstante* clause in Section 3 of the 1986 Act takes away the rights under Section 125 of CrPC 1973, was not dealt by this Court therein. However, it is his contention that the observations in paragraph number 33 of this judgment suggest an interpretation that a divorced Muslim woman is also entitled to all the rights of maintenance as are available to other equally situated women in the country and an interpretation otherwise would only infringe upon the fundamental rights conferred through Articles 14, 15, and 21 of the Constitution of

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India 1950 (hereinafter referred to as "Constitution of India").

9. Mr Agrawal also brought to our attention numerous oppugnant decisions of the High Courts, thus bringing out the conflict between the provisions while interpreting the provisions of the 1986 Act *vis-à-vis* CrPC 1973, as aforementioned. A reference to these decisions would be made as part of the analysis hereinafter.

10. We have heard the learned Senior Advocate for the Appellant, as well as the learned *amicus curiae* at length and in the light of their submissions, it is requisite to consider the historical perspective, the grey areas leading to a clarified position of law by this Court regarding the secular provision of maintenance under Section 125 of CrPC 1973, as well as the rights guaranteed under personal law to a divorced Muslim woman through Section 3 of the 1986 Act.

11. The legislature through Section 488 of the Code of Criminal Procedure, 1898, and subsequently by introducing Section 125 CrPC 1973, sought to carry on the efficacious remedy through a summary

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procedure in favour of a wife, including a divorced woman, and others as applicable. To better comprehend the instant provision, the same is reproduced hereinbelow:

> "***125. Order for maintenance of wives, children and parents.—***
>
> *(1) If any person having sufficient means neglects or refuses to maintain—*
>
> *(a) his wife, unable to maintain herself, or*
> *(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
> *(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
> *(d) his father or mother, unable to maintain himself or herself,*
>
> *a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:*
>
> *Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means*

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Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter,—

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order,

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any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her

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> *husband, or if they are living separately by mutual consent.*
>
> *(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent."*

12. Numerous decisions of this Court went on to state that Section 125 of CrPC 1973 is a measure for social justice to protect the weaker sections, irrespective of applicable personal laws of the parties, as contemplated through Articles 15(3) and 38 of the Constitution of India. This Court similarly held in the decision of ***Shri Bhagwan Dutt v. Smt. Kamla Devi and Another (1975) 2 SCC 386*** that the nature of power and jurisdiction vested with a Magistrate by virtue of the instate provision is not punitive in nature and neither it is remedial, but it is a preventive measure. It was also observed that while any such right may or may not exist as a consequence of any of the personal laws applicable to the concerned parties, they shall continue to exist distinctively, and independently as against the secular provision.

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13. The purpose of Section 125 of CrPC 1973 has been spelt out to prevent vagrancy and destitution of the person claiming rights through invoking the procedure established under the said provision. However, in ***Inderjit Kaur v. Union of India and Others (1990) 1 SCC 344***, it was clarified qua the wife that such a right is not absolute in nature and is always subject to final determination of the rights of the parties by appropriate courts. Further emphasis has also been placed on the expression "unable to maintain herself" and that the burden of proof is on the wife to prove the existence of said circumstances leading to such inability. This is, in addition, to the requirement to establish that the husband has "sufficient means" to maintain her, and is, however, neglecting or refusing to do so.

14. In ***Fuzlunbi v. K. Khader Vali and Another (1980) 4 SCC 125 (SC)***, it was categorically observed by this Court that enactment of the said provision charges the court with a deliberate secular design to enforce maintenance or its equivalent against the humane obligation, which is derived from the State's responsibility for social welfare. The same is not

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confined to members of one religion or region, but the whole community of womanhood.

15. At this stage, it is pertinent to consider the concerned personal laws which allegedly stand in conflict with the secular provision of Section 125 of CrPC 1973. The 1986 Act was brought about by the legislature as an attempt to clarify the position laid down.

A 5-Judge Bench in ***Mohd. Ahmed Khan v. Shah Bano Begum and others (1985) 2 SCC 556*** extensively dealt with the issue of maintenance apropos the obligation of a Muslim husband to his divorced wife who is unable to maintain herself, either after having been given divorce or having had sought one. The Bench unanimously went on to hold that the obligation of such a husband would not be affected by the existence of any personal law in the said regard and the independent remedy for seeking maintenance under Section 125 of CrPC 1973 is always available. It also went on to observe that, even assuming, there is any conflict between the secular and personal law provisions in regard to maintenance being sought by a divorced wife, the Explanation to second *Proviso* to Section 125(3) of CrPC 1973

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unmistakably shows the overriding nature of the former. While elaborating on the said observation, it explained that the wife has been conferred with the right to refuse to live with her husband who has contracted another marriage, let alone three or four other marriages.

16. After the pronouncement of the aforesaid verdict, a controversy is said to have emerged anent the true obligations of a Muslim husband to pay maintenance to his divorced wife, particularly beyond the *iddat* period. The Parliament, as an attempt to clarify the position, brought about the 1986 Act. Herein, it was sought to specify the entitlements of such a woman at the time of divorce. Section 3 of the 1986 Act deals with this aspect and reads as follows:

> "***3. Mahr or other properties of Muslim woman to be given to her at the time of divorce***.—
>
> *(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*

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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-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (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

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(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (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 it 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 her 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-section (1) 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-section (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 fines under the Code of Criminal Procedure, 1973 (2 of 1974), 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

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> *being imposed according to the provisions of the said Code.*"

17. After the 1986 Act came into force, a series of writ petitions were moved before this Court challenging its constitutional validity on ground of being violative of Articles 14, 15 and 21 of the Constitution of India. Sections 3 and 4 of the 1986 Act were the principal sections under attack as part of the said writ petitions. Section 3, which opens up with a *non-obstante* clause seeking to override the application of all other existing laws, was carefully perused by this Court in the common verdict rendered on the constitutional validity in the decision in ***Danial Latifi (supra)***. Elaborating on the prevalence of Section 125 of CrPC 1973 as a secular protection available to women across communities, it was observed in paragraph number 33 as follows:

> "***33.*** *In Shah Bano case [(1985) 2 SCC 556: 1985 SCC (Cri) 245] this Court has clearly explained as to the rationale behind Section 125 CrPC to make provision for maintenance to be paid to a divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman. The contention put forth on behalf of the Muslim organisations who are interveners before*

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us is that under the Act, vagrancy or destitution is sought to be avoided but not by punishing the erring husband, if at all, but by providing for maintenance through others. If for any reason the interpretation placed by us on the language of Sections 3(1)(a) and 4 of the Act is not acceptable, we will have to examine the effect of the provisions as they stand, that is, a Muslim woman will not be entitled to maintenance from her husband after the period of iddat once the talaq is pronounced and, if at all, thereafter maintenance could only be recovered from the various persons mentioned in Section 4 or from the Wakf Board. This Court in Olga Tellis v. Bombay Municipal Corpn. [(1985) 3 SCC 545] and Maneka Gandhi v. Union of India [(1978) 1 SCC 248] held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution would include the "right to live with dignity". Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may remarry and such a right, if deprived, would not be reasonable, just and fair. Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of Section 125 CrPC. Such deprivation of the divorced

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Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion. It is well settled that on a rule of construction, a given statute will become "ultra vires" or "unconstitutional" and, therefore, void, whereas on another construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that the legislature does not intend to enact unconstitutional laws. We think, the latter interpretation should be accepted and, therefore, the interpretation placed by us results in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the

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> *validity of the Act can be upheld, such interpretation is accepted by courts and not the other way round.*"

While the Court *prima facie* observed the said provisions to be violative of Articles 14 and 15 of the Constitution of India, the latter interpretation, seeking to uphold the validity, was eventually adopted and the 1986 Act was read down to not foreclose the secular rights of a divorced Muslim woman.

18. The position that the rights under Section 125 of CrPC 1973 would also be accessible to a divorced Muslim woman was substantially reiterated in ***Shabana Bano v. Imran Khan (2010) 1 SCC 666***, whereby this Court, through a cumulative reading of the decision in ***Danial Latifi (supra)***, reached the said conclusion.

19. The same question of law again knocked on the doors of this Court in ***Khatoon Nisa v. State of Uttar Pradesh and Others (2014) 12 SCC 646*** wherein the 5-Judge Bench also took the assistance of the observations made in the decision in ***Danial Latifi (supra)***. While acknowledging the similar parameters

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and considerations for the purpose of adjudicating petitions under both the laws, secular and personal, it held that a divorced Muslim woman is entitled to invoke the jurisdiction under Section 125 of CrPC 1973 to seek her right of maintenance even if she does not exercise her choice of election as stipulated under Section 5 of the 1986 Act. The relevant paragraph number 10 is reproduced herein below:

> "***10.*** *Subsequent to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short "the Act") as it was considered that the jurisdiction of the Magistrate under Section 125 CrPC can be invoked only when the conditions precedent mentioned in Section 5 of the Act are complied with, in the case in hand, the Magistrate came to a finding that there has been no divorce in the eye of law and as such, the Magistrate has the jurisdiction to grant maintenance under Section 125 CrPC. This finding of the Magistrate has been upheld by the High Court. The validity of the provisions of the Act was for consideration before the Constitution Bench in the case of Danial Latifi v. Union of India [(2001) 7 SCC 740]. In the said case by reading down the provisions of the Act, the validity of the Act has been upheld and it has been observed that under the Act itself when parties agree, the provisions of Section 125 CrPC could be invoked as contained in Section 5 of the Act and even otherwise, the Magistrate under the Act has the power to grant maintenance in favour of a divorced*

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> *woman, and the parameters and considerations are the same as those in Section 125 CrPC. It is undoubtedly true that in the case in hand, Section 5 of the Act has not been invoked. Necessarily, therefore, the Magistrate has exercised his jurisdiction under Section 125 CrPC. But, since the Magistrate retains the power of granting maintenance in view of the Constitution Bench decision in Danial Latifi case [(2001) 7 SCC 740] under the Act and since the parameters for exercise of that power are the same as those contained in Section 125 CrPC, we see no ground to interfere with the orders of the Magistrate granting maintenance in favour of a divorced Muslim woman. In fact, Mr Qamaruddin, learned counsel appearing for the appellants, never objected to pay maintenance as ordered by the Magistrate. But, he seriously disputes the findings of the Magistrate on the status of the parties and contends that the Magistrate was wholly in error in coming to the conclusion that there has been no divorce between the parties in the eye of law.*"
>
> (Underlining is ours)

20. Subsequently, in ***Shamim Bano v. Asraf Khan (2014) 12 SCC 636***, this Court had to consider the maintainability of a petition under Section 125 of CrPC 1973 *vis-à-vis* a situation where a petition under Section 3 of the 1986 Act has been subsequently moved. Holding that an election under

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Section 5 of the 1986 Act was not imperative, since both the petitions were moved before a Magistrate, it clarified that even for the purpose of adjudicating a petition under the personal law, specifically in regard to maintenance for a divorced Muslim woman, the parameters of Section 125 of CrPC 1973 would be applicable.

21. It is imperative to acknowledge that the enactment of the Family Courts Act, 1984 (hereinafter referred to as "FCA 1984") had excluded the jurisdiction of a Magistrate under Chapter IX of CrPC 1973, of which Section 125 is a part, wherein a Family Court had been established for the concerned area or jurisdiction. After the enactment of FCA 1984, a situation arose where a divorced Muslim woman moved a Family Court under Section 125 of CrPC 1973, and a similar circumstance was dealt in ***Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705*** in light of the question of law at hand. Herein, while relying on the earlier mentioned judgments of this Court, it observed that the concerned Family Court had rightly, and without a shadow of a doubt, held that Section 125 of CrPC 1973 would be

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applicable. The relevant paragraph number 09 is reproduced below:

> "***9.*** *First of all, we intend to deal with the applicability of Section 125 CrPC to a Muslim woman who has been divorced. In Shamim Bano v. Asraf Khan [(2014) 12 SCC 636 : (2014) 5 SCC (Civ) 145 : (2014) 5 SCC (Cri) 162], this Court after referring to the Constitution Bench decisions in Danial Latifi v. Union of India [(2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266] and Khatoon Nisa v. State of U.P. [Khatoon Nisa v. State of U.P., (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170] had opined as follows : (Shamim Bano case [(2014) 12 SCC 636 : (2014) 5 SCC (Civ) 145 : (2014) 5 SCC (Cri) 162] , SCC p. 644, paras 13-14)*
>
> *'13. The aforesaid principle clearly lays down that even after an application has been filed under the provisions of the Act, the Magistrate under the Act has the power to grant maintenance in favour of a divorced Muslim woman and the parameters and the considerations are the same as stipulated in Section 125 of the Code. We may note that while taking note of the factual score to the effect that the plea of divorce was not accepted by the Magistrate which was upheld by the High Court, the Constitution Bench [(2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266] opined that as the Magistrate could exercise power under Section 125 of the Code for grant of maintenance in favour of a divorced Muslim woman under the*

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Act, the order did not warrant any interference. Thus, the emphasis was laid on the retention of the power by the Magistrate under Section 125 of the Code and the effect of ultimate consequence.

14. Slightly recently, in Shabana Bano v. Imran Khan [(2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873], a two-Judge Bench, placing reliance on Danial Latifi [(2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266], has ruled that : (Shabana Bano case [(2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873], SCC p. 672, para 21)

> *'21. The appellant's petition under Section 125 CrPC would be maintainable before the Family Court as long as the appellant does not remarry. The amount of maintenance to be awarded under Section 125 CrPC cannot be restricted for the iddat period only.'*

Though the aforesaid decision was rendered interpreting Section 7 of the Family Courts Act, 1984, yet the principle stated therein would be applicable, for the same is in consonance with the principle stated by the Constitution Bench in Khatoon Nisa [Khatoon Nisa v. State of U.P., (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170] .'

In view of the aforesaid dictum, there can be no shadow of doubt that Section 125

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CrPC has been rightly held to be applicable by the learned Family Judge."

22. Before perusing the submissions made by the Counsel, it is paramount to also consider the bare text of the concerned provisions *vis-à-vis* their comparative dissection. Under Section 3 of the 1986 Act, the entitlements or rights of a divorced Muslim woman, wider than the ambit of maintenance, arise as against the obligations of her former husband emanating from their divorce. *Per contra*, under Section 125 of CrPC 1973, a woman seeking maintenance has to establish that she is unable to maintain herself. The right to seek maintenance under Section 125 of CrPC 1973 is invokable even during the sustenance of marriage and, thereby is not contingent upon divorce.

23. Another distinction *vis-à-vis* the aforementioned provisions, relates to the time period within which proceedings initiated thereunder are to be decided. While a petition moved under Section 3(2) of the 1986 Act is to be decided in regard to a husband's liability under Section 3(1) of the 1986 Act within a period of one month, there is no such statutory time frame

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prescribed under Section 125 of CrPC 1973. However, there is an obligation to determine the interim maintenance within a period of 60 days while dealing with a petition under Section 125 of CrPC 1973. Moreover, failure to comply with such order passed under Section 3(2) of the 1986 Act may lead to issuance of a warrant for levying the amount of maintenance as directed under the said order and may also sentence him to imprisonment till the payment is made or for a term which may extend to one year. On the other hand, equivalent non-compliance of an order passed under Section 125 of CrPC 1973 may result in imprisonment for a term of one month or until the payment is made.

24. After the advent of the decision in ***Danial Latifi (supra)***, numerous High Courts also went on to contemplate and analyse the instant question of law. A quick examination of the said judgment by various High Courts allows us to categorise the decisions rendered therein into two sets of views. The first view in certain judgments so rendered held that the remedy is to be exclusively exercised under Section 3 of the 1986 Act, impliedly holding that the rights

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under the secular provisions stood extinguished. Another view in certain other judgments allowed a divorced Muslim woman to seek the remedy of maintenance under Section 125 of CrPC 1973 while explicit existence of Section 3 of the 1986 Act was recognised.

25. The set of judgments, that went on to hold that the rights of a divorced Muslim woman are to be exercised through the provisions of the 1986 Act and specifically under Section 3 therein, and, not through the secular provision of Section 125 of CrPC 1973. One decision by a Single Judge of the High Court of Allahabad in ***Shahid Jamal Ansari v. State of Uttar Pradesh 2008 SCC OnLine All 1077*** is brought to our attention by the learned *amicus curiae* whereby the Court opined that a divorced Muslim woman cannot claim maintenance from her former husband by virtue of secular provision of Section 125 of CrPC 1973 and the 1986 Act, being a complete code in itself on the subject matter of maintenance, prevails.

26. Deviating from the aforesaid approach, certain High Courts adopted a beneficial interpretation, that is to

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say, that the *non-obstante* clause in the 1986 Act, in no manner bars the remedy under Section 125 CrPC 1973. In this regard, a reference has been made to a decision of Single Judge of High Court of Gujarat in ***Mumtazben Jusabbhai Sipahi v. Mahebubkhan Usmankhan Pathan 1998 SCC OnLine Guj 279***, a decision of High Court of Kerala in ***Kunhimohammed v. Ayishakutty 2010 SCC OnLine Ker 567***, the decisions of High Court of Allahabad in ***Mrs. Humera Khatoon and Others v. Mohd. Yaqoob 2010 SCC OnLine All 202***, ***Sazid v. State of Uttar Pradesh and Others 2011 SC OnLine All 1059, Jubair Ahmad v. Ishrat Bano 2019 SCC OnLine All 4065,*** and ***Shakila Khatun v. State of Uttar Pradesh and Another 2023 SCC OnLine All 75,*** and the decision of a Single Judge of High Court of Bombay in ***Khalil Abbas Fakir v. Tabbasum Khalil Fakir and Another 2024 SCC OnLine Bom 23.***

27. Amongst these set of decisions, the one rendered by a Division Bench of the High Court of Kerala in ***Kunhimohammed (supra)*** has significantly occupied the field in regard to the limited question of

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law before us. A perusal of the instant judgment showcases the same to be in line with the *ratio decidendi* rendered by this Court in the decision in ***Danial Latifi (supra)*** by holding that there is no express extinguishment of the rights under Section 125 CrPC 1973 and neither the same was intended or conceived by the legislature while enacting the 1986 Act. It was observed that the domains occupied by the two provisions are entirely different as the secular provision stipulates an inability to maintain oneself for invoking the said rights while Section 3 of the 1986 Act stands independent of one's ability or inability to maintain. Thereby, adopting a harmonious and purposive approach amidst the two alleged conflicting legislative protections.

28. In consideration of the aforesaid well-established positions of law, as well as the submissions of the learned Senior Advocate and the learned *amicus curiae*, it is apposite to accordingly decide the fate of the instant petition moved before us.

To begin with the contention in regard to the existence of *non-obstante* clause in Sections 3 and 4 of the 1986 Act, it is undoubtedly clarified by the Constitution

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Benches of this Court that the same cannot promptly be deemed to override any other rights so provided by the enactments of the legislature. We are, accordingly, also bound by the Doctrine of *stare decisis* contemplated through Article 141 of the Constitution of India to accept the said observations. Furthermore, a bare perusal of Section 7 of the 1986 Act, reflects the same to be transitionary in nature and the interpretations in respect of Section 5 of the 1986 Act, as highlighted above through numerous decisions, reflect our inability to accept the passionate contentions of the learned Senior Advocate on behalf of the Appellant.

29. Thus, the High Court of Telangana, while modifying the Order(s) of the Family Court, was correct in upholding the maintainability of the petition filed under Section 125 of CrPC 1973 by Respondent No. 02 herein. Therefore, there is no infirmity in its Impugned Order dated 13.12.2023.

30. In addition, Mr Agrawal proceeded to put forth a question before us that whether fulfilment of a divorced Muslim woman's rights, particularly maintenance under Section 3 of the 1986 Act,

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accepted by her without *demur*, would bar her to file an application under Section 125 of CrPC 1973 in light of statutory protection ameliorating the issue of double payment by a husband under secular, and personal laws, as provided under Section 127(3)(b) of CrPC 1973.

31. Before proceeding with this additional question of law, it is apposite to refer the bare provision of Section 127(3)(b) of CrPC 1973. The same is accordingly reproduced hereinbelow:

> "***127. Alteration in allowance –***
>
> *(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that –*
>
> *(a)* xxx-xxx-xxx
>
> *(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order –*
>
> *(i) in the case where such sum was paid before such order, from the date on which such order was made;*
>
> *(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been*

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> *actually paid by the husband to the woman;*"

32. Unequivocally, the most appropriate construction of these secular provisions of CrPC 1973 in regard to the right of maintenance is that the legislature would never intend that an undue benefit is derived after the end of the marital relationship between the parties concerned. Hence, the provision of Section 127(3)(b) of CrPC 1973 would act in the nature of a *proviso* to the right provided under Section 125 of CrPC 1973 only in such a circumstance where sufficient means of livelihood after the divorce, and the provisions contemplating the future needs of divorced Muslim women, stands provided to the satisfaction of the court concerned. To affirm, reliance is placed on paragraph numbers 28 and 29 of the decision in ***Danial Latifi* (*supra*)**, which are reproduced below:

> "***28.*** *A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at*

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the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time

29. *The important section in the Act is Section 3 which provides that a divorced woman is entitled to obtain from her former husband "maintenance", "provision" and "mahr", and to recover from his possession her wedding presents and dowry and authorizes the Magistrate to order payment or restoration of these sums or properties. The crux of the matter is that the divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. The wordings of Section 3 of the Act appear to indicate that the husband*

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has two separate and distinct obligations : (1) to make a "reasonable and fair provision" for his divorced wife; and (2) to provide "maintenance" for her. The emphasis of this section is not on the nature or duration of any such "provision" or "maintenance", but on the time by which an arrangement for payment of provision and maintenance should be concluded, namely, "within the iddat period". If the provisions are so read, the Act would exclude from liability for post-iddat period maintenance to a man who has already discharged his obligations of both "reasonable and fair provision" and "maintenance" by paying these amounts in a lump sum to his wife, in addition to having paid his wife's mahr and restored her dowry as per Sections 3(1)(c) and 3(1)(d) of the Act. Precisely, the point that arose for consideration in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] was that the husband had not made a "reasonable and fair provision" for his divorced wife even if he had paid the amount agreed as mahr half a century earlier and provided iddat maintenance and he was, therefore, ordered to pay a specified sum monthly to her under Section 125 CrPC. This position was available to Parliament on the date it enacted the law but even so, the provisions enacted under the Act are "a reasonable and fair provision and maintenance to be made and paid" as provided under Section 3(1)(a) of the Act and these expressions cover different things, firstly, by the use of two different verbs — "to be made and paid to her within the iddat period" it is clear that a fair and reasonable provision is to be

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made while maintenance is to be paid; secondly, Section 4 of the Act, which empowers the Magistrate to issue an order for payment of maintenance to the divorced woman against various of her relatives, contains no reference to "provision". Obviously, the right to have "a fair and reasonable provision" in her favour is a right enforceable only against the woman's former husband, and in addition to what he is obliged to pay as "maintenance"; thirdly, the words of The Holy Quran, as translated by Yusuf Ali of "mata" as "maintenance" though may be incorrect and that other translations employed the word "provision", this Court in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] dismissed this aspect by holding that it is a distinction without a difference. Indeed, whether "mata" was rendered "maintenance" or "provision", there could be no pretence that the husband in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] had provided anything at all by way of "mata" to his divorced wife. The contention put forth on behalf of the other side is that a divorced Muslim woman who is entitled to "mata" is only a single or onetime transaction which does not mean payment of maintenance continuously at all. This contention, apart from supporting the view that the word "provision" in Section 3(1)(a) of the Act incorporates "mata" as a right of the divorced Muslim woman distinct from and in addition to mahr and maintenance for the iddat period, also enables "a reasonable and fair provision" and "a reasonable and fair provision" as provided under Section 3(3) of the Act would be with reference to the needs of the divorced

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> *woman, the means of the husband, and the standard of life the woman enjoyed during the marriage and there is no reason why such provision could not take the form of the regular payment of alimony to the divorced woman, though it may look ironical that the enactment intended to reverse the decision in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245], actually codifies the very rationale contained therein."*

From the aforementioned paragraphs, this Court has clarified the intent of the Parliament by giving beneficial construction to the expressions contemplated under Section 3 of the 1986 Act, particularly, "within *iddat* period" by observing that the Parliament never sought to restrict the rights of a divorced Muslim woman to *iddat* period. Rather, by virtue of the introduction of Section 3 of the 1986 Act in this socio-beneficial legislation, the idea was to confer the benefit of maintenance as well as a reasonable and fair provision for the lifetime of a divorced Muslim woman, subject to her remarriage. Adding to this well-expounded interpretation of the provisions of the 1986 Act, it is hereby pertinent to highlight that a divorced Muslim woman is not restricted from exercising her independent right of

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maintenance under the secular provision of Section 125 of CrPC 1973, provided she is able to prove the requisites encompassed by the said statute.

33. Having said that, it is also not to be a case where a specious amount rendered in favour of a divorced woman by virtue of requirements laid down in either the personal law or the customary law of the parties is utilised to evade the liability under Section 125 of CrPC 1973 or to seek an equivalent reduction in the amount of maintenance to be provided therein. There ought to be a reasonable substitute for the maintenance under personal or customary law equating to a rational nexus between the actual sum of maintenance paid and the potential of maintenance under the equivalent provision of secular law. Having made the said observations, a reference should again be made to the decision in ***Fuzlunbi (supra)*** in paragraph numbers 19(1) to 19(4) which declared that:

> "***19.*** *We may sum up and declare the law foolproof fashion:*
>
> *(1) Section 127(3)(b) has a setting, scheme and a purpose and no talaq of the purpose different from the sense is permissible in statutory construction.*

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> *(2) The payment of an amount, customary or other, contemplated by the measure must inset the intent of preventing destitution and providing a sum which is more or less the present worth of the monthly maintenance allowances the divorcee may need until death or remarriage overtake her. The policy of the law abhors neglected wives and destitute divorcees and Section 127(3)(b) takes care to avoid double payment one under custom at the time of divorce and another under Section 125.*
>
> *(3) Whatever the facts of a particular case, the Code, by enacting Sections 125 to 127, charges the court with the humane obligation of enforcing maintenance or its just equivalent to ill-used wives and castaway ex-wives, only if the woman has received voluntarily a sum, at the time of divorce, sufficient to keep her going according to the circumstances of the parties.*
>
> *(4) Neither personal law nor other salvationary plea will hold against the policy of public law pervading Section 127(3)(b) as much as it does in Section 125. So a farthing is no substitute for a fortune nor naive consent equivalent to intelligent acceptance…"*

34. It is observed that there shall arise a couple of peculiar circumstances while considering the right for seeking cancellation of an order by the husband concerned, through an application under Section 127(3)(b) of CrPC 1973. The first and settled

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circumstance is that, when a divorced Muslim woman initially moves a petition under Section 125 of CrPC 1973 and seeks an order for maintenance as against her former husband and only after receiving said entitlements, she chooses to exercise her substantial rights as provided under Section 3 of the 1986 Act, and therein, the husband is also able to fulfil his concerned obligations to the appropriate satisfaction of the court, ensuring her future maintenance. It is then and only then that the husband can invoke and press his claim under Section 127(3)(b) of CrPC 1973 to seek cancellation of an order, if so, passed under Section 125 of CrPC 1973, directing him to provide maintenance to his former wife.

35. In a case where a husband has fulfilled his obligations under Section 3 of the 1986 Act or as provided by customary or personal law so followed, and the divorced Muslim woman subsequently prefers to invoke Section 125 of CrPC 1973 on the ground of inability to maintain herself, in such a factual matrix, undeniably, the right to move under this provision is open in favour of a divorced Muslim

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woman. When a husband opposes resort to Section 125 CrPC 1973, he has to establish that, (a) initial obligations under the customary and/or personal statutory enactments as detailed earlier stands fulfilled by him, and (b) that the wife, in the light of this, is able to maintain herself. However, if the husband fails to sustain the said objection(s) raised during the proceedings initiated under Section 125 of CrPC 1973, and an order is accordingly passed, it would not be inherently barred or liable to be cancelled through an application under Section 127(3)(b) of CrPC 1973. Nevertheless, other appropriate remedies as provided under the CrPC 1973 or any other law to that effect, shall always be open to be exercised by such a husband to seek setting aside or appropriate modification of an order so passed under Section 125 of CrPC 1973.

36. Having said that, undoubtedly, if a "reasonable substitute" has been provided for by the husband as per their personal or customary laws at the time of their divorce, the maintenance provided for by a Magistrate or a Family Court, as the case may be, under Section 125 of CrPC 1973, can be reduced to

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the extent of deemed double benefit being given to a divorced wife.

37. From the aforementioned, we are inclined to conclude that equivalent rights of maintenance ascertained under both, the secular provision of Section 125 of CrPC 1973, and the personal law provision of Section 3 of the 1986 Act, parallelly exist in their distinct domains and jurisprudence. Thereby, leading to their harmonious construction and continued existence of the right to seek maintenance for a divorced Muslim woman under the provisions of CrPC 1973 despite the enactment of the 1986 Act.

38. Accordingly, the decisions, as rendered by various High Courts, one of which has been referred as aforesaid, or even otherwise, and stand in contradistinction to the observations made hereinabove, do not lay down the correct position of law, are, therefore, bad in law.

39. We note and acknowledge the able assistance rendered by the learned *amicus curiae* which has immensely benefitted this Court in settling the questions of law at hand.

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40. The Impugned Order dated 13.12.2023 passed by the High Court of Telangana is affirmed. Accordingly, the Appeal is dismissed in the above terms.

41. Pending application(s), if any, also stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
JULY 10, 2024.

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2842 OF 2024
(Arising out of Special Leave Petition (Crl.) No.1614 of 2024)

MOHD. ABDUL SAMAD ... APPELLANT

VERSUS

STATE OF TELANGANA & ANOTHER ... RESPONDENTS

J U D G M E N T

NAGARATHNA J.

I have perused the judgment proposed by my learned brother Augustine George Masih, J. and I agree with the same. Having concurred with his opinion, I would like to record additional reasons regarding the interpretation of Section 125 of the Code of Criminal Procedure, 1973 (for short, "CrPC") and Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, "1986 Act").

Section 125 of the CrPC reads as under:

> **"Section 125. Order for maintenance of wives, children and parents. -** (1) If any person having sufficient means neglects or refuses to maintain;

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a) his wife, unable to maintain herself, or

b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct;

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means;

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this Sub-Section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct;

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation. - For the purposes of this Chapter,-
a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

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b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.— If a husband has contracted marriage with another women or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband,

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> or that they are living separately by mutual consent, the Magistrate shall cancel the order."

2. A reading of the aforesaid provision would indicate that in respect of four categories of persons of a family unable to maintain themselves, namely, wife, minor child, father and mother, if a person neglects or refuses to maintain them despite having sufficient means then a Magistrate of the first class (now, the family court in certain States) upon proof of such neglect or refusal may order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and the person has to pay the same as directed.

3. Since the present case revolves around the expression "a wife who is unable to maintain herself", it is relevant to dwell further on the definition of a wife under Section 125 of the CrPC. Explanation (b) thereto defines a wife to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. The definition being inclusive is therefore expansive in nature. A divorced woman who has not remarried as well as a wife are placed on par for the purpose of seeking maintenance.

4. The States of Madhya Pradesh, Maharashtra, Rajasthan, Tripura, Uttar Pradesh and West Bengal have made State Amendments to Section 125 of the CrPC.

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Right to maintenance in a constitutional context:

5. Section 125 of the CrPC is a measure of social justice with a view to protect women and children and is aligned to the salutary object enshrined in Article 15(1) and (3) of the Constitution read with Article 39(e) of the Constitution. For immediate reference, Article 15(1) and (3) and Article 39(e) are reproduced as under:

> "**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—**(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
>
> xxx xxx xxx
>
> (3) Nothing in this article shall prevent the State from making any special provision for women and children.
>
> xxx xxx xxx
>
> **39. Certain principles of policy to be followed by the State.—**The State shall, in particular, direct its policy towards securing—
>
> xxx xxx xxx
>
> (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;"

6. Article 15(3) is a fundamental right while Article 39 is a Directive Principle of State Policy that is fundamental in the governance of the country and it is the duty of the State to apply these principles while making the law. Thus, the statutory right to seek maintenance under Section 125 of the CrPC is also embedded in the text, structure and philosophy of the Constitution. Article 15(3), read with Article 39(e)

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manifests a constitutional commitment towards special measures to ensure a life of dignity for women at all stages of their lives. This ought to be irrespective of the faith a woman belongs to. The remedy of maintenance is a critical source of succour for the destitute, the deserted and the deprived sections of women. There can be no manner of doubt that it is an instantiation of the constitutional philosophy of social justice that seeks to liberate the Indian wife including a divorced woman from the shackles of gender-based discrimination, disadvantage and deprivation.

7. Further, Section 125 of the CrPC is independent of and in addition to maintenance that could be awarded under the Protection of Women from Domestic Violence Act, 2005 (for short, "2005 Act") which is applicable to an 'aggrieved woman' in a 'shared household' as defined under the provisions of the aforesaid Act.

8. A reading of Section 125 of the CrPC would indicate that the intention of the said provision is to provide for a speedy remedy and prevent vagrancy by compelling the husband to support the wife. The provision is meant to achieve a social purpose. The reason being, that after marriage, it is the duty of the husband to provide shelter and maintenance to the wife in the Indian context. Particularly, if she is unable to maintain herself. If he neglects or refuses to do so, the wife is legally entitled to enforce the said right by filing a petition under

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Section 125 of the CrPC irrespective of any other right created in favour of the wife under any other law. Therefore, the passing of the 1986 Act, in my view, cannot militate against or dilute the salutary nature of Section 125 of the CrPC. The object of this provision is to save a wife including a divorced woman from deprivation and destitution.

9. The salutary parliamentary intent behind Section 488 of the erstwhile CrPC was exposited by Subba Rao, J., (as the learned Chief Justice of India then was) in ***Jagir Kaur vs. Jaswant Singh, (1964) 2 SCR 73***. It was held that *"Chapter 36 of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose."* After the enactment of the CrPC, 1973, this Court in ***Bhagwan Dutt vs. Kamla Devi, (1975) 2 SCC 386***, held that in order to subserve the object of Section 125(1) of the CrPC the Magistrate must determine the wife's requirements in such a manner that prevents vagrancy and destitution. While assuring the aggrieved woman a standard of living that is 'neither luxurious nor penurious,' this Court held that her separate income must also be accounted for while computing the amount of maintenance. Therefore, the object of maintenance proceedings is rehabilitative and not punitive as it seeks to efficaciously provide a deserted wife with food, clothing and shelter - the very basic essentials or needs of a human life.

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10. The direction to provide maintenance seeks to alleviate the financial stress and vulnerability of the impecunious woman who is dependent on her husband economically. It is indeed a constitutional imperative to redress the vulnerability of a married woman which includes a divorced woman who does not have an independent source of income under Section 125 of the CrPC. It is commonplace that married women sacrifice employment opportunities to nurture the family, pursue child rearing, and undertake care work for the elderly, *vide* ***Jasbir Kaur Sehgal vs. District Judge, Dehradun, (1997) 7 SCC 7.*** A neglected dependent wife, which also includes a divorced woman who has no other source of income, has to perforce take recourse to borrowings from her parents/relatives/others during the interregnum to sustain herself and the minor children, till she receives interim maintenance. This makes her obligated in so many ways which may be taken advantage of by her parental (or natal) family or others from whom she may have borrowed.

11. It is in this delicate context that the law of maintenance strikes a careful, just and fair balance between the husband's sacrosanct duty towards his wife and children and the social imperative of not imposing oppressive or punitive financial hardship on the husband, *vide* ***Bhuwan Mohan Singh vs. Meena, (2015) 6 SCC 353; Reema Salkan vs. Sumer Singh Salkan, (2019) 12 SCC 303.***

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Adequacy and sufficiency of maintenance:

12. One of the critical aspects of adjudicating claims for maintenance is ensuring adequate and sufficiency of maintenance so that the wife can maintain herself with dignity. The consistent emphasis of this Court's jurisprudence upon sufficiency of maintenance amount and social protection of deserted women transcends the intricacies of our pluralist legal culture and personal laws.

13. I may also note the Kerala High Court's Division Bench judgment in ***Kunhi Moyin vs. Pathumma, 1976 KLT 87 ("Kunhi Moyin")*** authored by Khalid, J. (as his Lordship then was). While dismissing a Muslim husband's constitutional challenge to Section 125 of the CrPC, the High Court held that the salutary provision was enacted to achieve the ends of social welfare and reform. Therefore, no claim of violation of the fundamental right to practice religion under Article 25 could be sustained. Of particular relevance was the interpretation of Section 127(3)(b) of the CrPC. The High Court found that an attempt may be made to rely upon Section 127(3)(b) to 'destroy the effectiveness of Section 125' and deny its benefit to rightful claimants. For the sake of clarity, the said provision is extracted as under:

> "**127. Alteration in allowance.-** (1) On proof of a change in the circumstances of any person, receiving under section 125 a monthly allowance, for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks

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fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

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

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

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

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order –

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under Section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order."

The learned judge clarified that Section 127(3)(b) does not refer to *mahr* or dower or the maintenance paid during the *iddat* period as these are not the sums 'payable on divorce'

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under the personal law. What was encompassed by the terms was the amount of alimony or compensation paid upon dissolution of marriage under customary or personal law. Expositing the intent and scheme of Section 125 read with Section 127, it was held that the Parliament did not intend to take away by one hand what is given under Section 125 by the other hand.

14. Krishna Iyer, J.'s judgment in ***Bai Tahira vs. Ali Hussain Fidaalli Chothia, (1979) 2 SCC 316*** is also instructive in this respect. This Court was confronted with the application of Section 125 of the CrPC by a Muslim woman who had been divorced through a consent decree. The husband had challenged the award of maintenance before the Sessions Judge on the ground that the Magistrate lacked jurisdiction to ascertain whether the petitioner-wife was a 'wife' within the meaning of Section 125. Since the High Court had not interfered with the view of the Sessions Judge, the Supreme Court granted leave and held that a destitute divorcee would be covered within the protection of Section 125 since she was suffering neglect. Krishna Iyer, J. emphasised the constitutional import of Section 125 in the following words:

> "7. **The meaning of meanings is derived from values in a given society and its legal system. Article 15(3) has compelling, compassionate relevance in the context of Section 125 and the benefit of doubt, if any, in statutory interpretation belongs to the ill-used wife and the derelict divorcee.** This social perspective granted, the resolution of all the disputes projected is easy. Surely, Parliament, in keeping with Article 15(3) and deliberate by design, made a special provision to help women in distress cast away by divorce.

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> Protection against moral and material abandonment manifest in Article 39 is part of social and economic justice, specificated in Article 38, fulfilment of which is fundamental to the governance of the country (Article 37). From this coign of vantage we must view the printed text of the particular Code."
>
> (emphasis supplied)

15. The critical facet of the case was its interpretation of Section 127 of the CrPC. It was held that Section 127 did not totally exempt a husband from providing maintenance to a destitute ex-wife if the amount he paid to her under the personal law was not sufficient to support her. It was held that:

> "12. The payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate but cannot annihilate that rate unless it is a reasonable substitute. The legal sanctity of the payment is certified by the fulfilment of the social obligation, not by a ritual exercise rooted in custom. No construction which leads to frustration of the statutory project can secure validation if the court is to pay true homage to the Constitution. The only just construction of the section is that Parliament intended divorcees should not derive a double benefit. If the first payment by way of *mehar* or ordained by custom has a reasonable relation to the object and is a capitalised substitute for the order under Section 125 — not mathematically but fairly — then Section 127(3)(b) subserves the goal and relieves the obliger, not *pro tanto* but wholly. The purpose of the payment "under any customary or personal law" must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole scheme of Section 127(3)(b) is manifestly to recognise the substitute maintenance arrangement by lump sum payment organised by the custom of the community or the personal law of the parties. There must be a rational relation between the sum so paid and its potential as provision for maintenance to interpret otherwise is to stultify the project. Law is dynamic and its meaning cannot be pedantic but purposeful. The proposition, therefore, is that no husband can claim under Section 127(3)(b) absolution from his obligation under Section 125 towards a divorced wife except on proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance."

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16. This carefully balanced and gender-just interpretation further guided our jurisprudence in ***Fuzlunbi vs. K. Khader Vali, (1980) 4 SCC 125*** and ***Mohd. Ahmed Khan vs. Shah Bano Begum, (1985) 2 SCC 556 ("Shah Bano")*** insofar as the application of Section 125 to persons governed by Muslim Personal Law was concerned. In ***Shah Bano***, this Court held that Section 125 overrides personal law of Muslims and hence a divorced Muslim woman is a "wife" within the meaning of this provision. The crux of these judgments is that an order under Section 127 ought to be a reasoned order and shall only allow an order for maintenance to be cancelled if a judge was satisfied that the divorced woman had received a sufficient amount of maintenance under any customary or personal law.

In ***Danial Latifi vs. Union of India, (2001) 7 SCC 740 ("Danial Latifi")***, this Court has recorded that there was a big uproar after the judgment in ***Shah Bano*** was pronounced and Parliament enacted the 1986 Act "perhaps, with an intention of making the decision in ***Shah Bano*** ineffective."

Interpretation of 1986 Act:

17. The Parliament rejected legislative proposals to totally exempt Muslims from Section 125 of the CrPC and after extensive discussion, the Parliament enacted the 1986 Act. The preamble of the 1986 Act 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."

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18. The Statement of Objects and Reasons of the 1986 Act manifests the Parliament's intent to clarify the controversy emerging from the judgment in ***Shah Bano*** regarding the obligation of the Muslim husband to pay maintenance to a divorced wife. It underlines that the Parliament was taking the opportunity to 'specify the rights' of a Muslim divorced woman so as to protect her interests. The Bill of the said Act specified rights *vis à vis* a Muslim divorced woman who shall be entitled to the following:

i. Reasonable and fair provision and maintenance for the woman within the period of *iddat*;
ii. Reasonable provisions and maintenance for the children born to her before or after her divorce extended to a period of two years from the dates of birth of the children;
iii. Mahr or dower and all the properties given to her by her relatives, friends, husband or the husband's relatives, if the above benefits are not given to her at the time of divorce.

In the eventuality that a Muslim divorced woman was unable to maintain herself after the *iddat* period, it was specified that she shall be entitled to:

i. Maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim law in the proportions in which they would inherit her property.

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ii. If any one of such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the other relatives who have sufficient means shall pay the shares of these relatives also.

iii. If a divorced woman has no relatives or if such relatives are unable to provide maintenance then the State Wakf Board shall pay maintenance ordered by the Magistrate.

19. Sections 3 and 4 of the 1986 Act which deal with the aforesaid aspects are extracted hereunder:

> **"3. *Mahr* or other properties of Muslim woman to be given to her at the time of divorce**.—(*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-section (*1*) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her

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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-section (*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 of *mahr* or dower has not been paid or that the properties referred to in clause (*d*) of sub-section (*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 her 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-section (*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-section (*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 fines under the Code of Criminal Procedure, 1973 (2 of 1974), 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.

4. Order for payment of maintenance.—(*1*) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where the Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make

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> 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-section (*1*) or such relatives or any one 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 under the second proviso to sub-section (*1*), the Magistrate may, by order direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 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-section (*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."

In ***Danial Latifi***, this Court observed on the effect and implication of the 1986 Act on the judgment of this Court in ***Shah Bano*** as under:

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> "**8.** As held in *Shah Bano case* [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] the true position is that if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of *iddat* but if she is unable to maintain herself after the period of *iddat*, she is entitled to have recourse to Section 125 CrPC. Thus it is was held that there is no conflict between the provisions of Section 125 CrPC and those of the Muslim personal law on the question of the Muslim husband's obligation to provide maintenance to his divorced wife, who is unable to maintain herself. This view is a reiteration of what is stated in two other decisions earlier rendered by this Court in *Bai Tahira* v. *Ali Hussain Fidaalli Chothia* [(1979) 2 SCC 316 : 1979 SCC (Cri) 473] and *Fuzlunbi* v. *K. Khader Vali* [(1980) 4 SCC 125 : 1980 SCC (Cri) 916] .
>
> xxx xxx xxx
>
> **17.** This Court in *Shah Bano case* [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] held that although Muslim personal law limits the husband's liability to provide maintenance for his divorced wife to the period of *iddat*, it does not contemplate a situation envisaged by Section 125 CrPC of 1973. The Court held that it would not be incorrect or unjustified to extend the above principle of Muslim law to cases in which a divorced wife is unable to maintain herself and, therefore, the Court came to the conclusion that if the divorced wife is able to maintain herself the husband's liability ceases with the expiration of the period of *iddat*, but if she is unable to maintain herself after the period of *iddat*, she is entitled to recourse to Section 125 CrPC. This decision having imposed obligations as to the liability of the Muslim husband to pay maintenance to his divorced wife, Parliament endorsed by the Act the right of a Muslim woman to be paid maintenance at the time of divorce and to protect her rights."

20. This Court aptly summarised the position of a dependent married woman and her desperation on divorce in para 20 the judgment in ***Danial Latifi*** in the following words:

> "**20.** In interpreting the provisions where matrimonial relationship is involved, we have to consider the social conditions prevalent in our society. In our society, whether they belong to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and a woman. Our society is

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

21. The provisions of the 1986 Act came to be upheld by the Constitution Bench of this Court in ***Danial Latifi***. I may notice the clear conclusion that the Constitution Bench arrived at as under:

> "36. While upholding the validity of the Act, we may sum up our conclusions:
>
> > (*1*) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the *iddat* period must be made by the husband within the *iddat* period in terms of Section 3(1)(*a*) of the Act.

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

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

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

22. This Court, while interpreting the 1986 Act, specifically repelled the contention that the 1986 Act was enacted to undo the effect of ***Shah Bano*** in the following words:

"**26**. A reading of the Act will indicate that it codifies and regulates the obligations due to a Muslim woman divorcee by putting them outside the scope of Section 125 CrPC as the "divorced woman" has been defined as "Muslim woman who was married according to Muslim law and has been divorced by or has obtained divorce from her husband in accordance with the Muslim law". But the Act does not apply to a Muslim woman whose marriage is solemnised either under the Indian Special Marriage Act, 1954 or a Muslim woman whose marriage was dissolved either under the Indian Divorce Act, 1869 or the Indian Special Marriage Act, 1954. The Act does not apply to the deserted and separated Muslim wives. The maintenance under the Act is to be paid by the husband for the duration of the *iddat* period and this obligation does not extend beyond the period of *iddat*. Once the relationship with the husband has come to an end with the expiry of the *iddat* period, the responsibility devolves upon the relatives of the divorcee. The Act follows Muslim personal law in determining which relatives are responsible under which circumstances. If there are no relatives, or no relatives are able to support the divorcee, then the court can order the State Wakf Boards to pay the maintenance.

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28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the *iddat* period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the *iddat* period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

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30. A comparison of these provisions with Section 125 CrPC will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal and legitimate claim to support are satisfied. If that is so, the argument of the petitioners that a different scheme being provided under the Act which is equally or more beneficial on the interpretation placed by us from the one provided under the Code of Criminal Procedure deprive them of their right, loses its significance. The object and scope of Section 125 CrPC is to prevent vagrancy by compelling those who are under an obligation to support those who are unable to support themselves and that object being fulfilled, we find it difficult to accept the contention urged on behalf of the petitioners."

(underlining by me)

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Although the provisions of the 1986 Act have been upheld by this Court, the controversy raised still remains inasmuch as the respondent herein sought recourse to Section 125 of the CrPC despite the 1986 Act being applicable and the same being objected to by the appellant herein on the premise that on the enforcement of the 1986 Act, Section 125 of the CrPC ceases to apply to a divorced Muslim woman. I shall now analyse the relevant provisions of the 1986 Act.

23. Section 3(1) begins with a non-obstante clause as, "*notwithstanding anything contained in any other law for the time being in force*," a divorced woman shall be entitled to reasonable and fair provision and maintenance and other benefits in the manner stated therein. The object and purpose of a *non-obstante clause* in a statute can be discussed at this stage. A *non-obstante clause* is usually appended to a Section in the beginning with a view to give the enacting part of the Section, in case of a conflict, an overriding effect over the provision or Act mentioned in the *non-obstante clause*. In other words, in spite of the provision or the Act mentioned in the *non-obstante clause*, the enactment following it will have its full operation or that the provisions embraced in the *non-obstante clause* will not be an impediment for the operation of the enactment. Thus, a *non-obstante clause* is a legislative device used by a Parliament or legislature sometimes to give an overriding effect to what has been specified in the enacting part of a section in case of a conflict with what is contained in the

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non-obstante clause as stated above. Further, a *non-obstante clause* has to be distinguished from the expression "*subject to*" where the latter would convey the idea of a provision yielding place to another provision or other provisions to which it is made subject to. Also, the expression "*notwithstanding anything in any other law*" in a Section of an Act has to be contrasted with the use of the expression "*notwithstanding anything contained in this Act*", which has to be construed to take away the effect of any provision of that particular Act in which the section occurs but it cannot take away the effect of any other law. [Source: Principles of Statutory Interpretation by Justice G.P. Singh, 15th Edition, Chapter 5.4, p.284]

24. Recently, a seven-judge Bench of this Court in ***Curative Petition (C) No.44 of 2023 in Review Petition (C) No.704 of 2021*** arising out of ***Civil Appeal No.1599 of 2020 (In Re : Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996*** and ***the Indian Stamp Act, 1899), (2023) SCC OnLine SC 1666***, in paragraph 84 of the said judgment considered the implication of a *non-obstante* clause in a provision with reference to ***Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram, (1986) 4 SCC 447***, wherein it was observed as under:

> **"84.** xxx
>
> "67. A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to

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> a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment."

It was further observed in reference to ***ICICI Bank Ltd. vs. SIDCO Leathers Ltd., (2006) 10 SCC 452***, that even if a *non-obstante* clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy.

25. Further, the utility of *non-obstante* clause is where there is a conflict between what is stated in a provision and any other law for the time being in force, or anything else contained in the said enactment. As already noted, only in the case of a conflict, the object is to give the enacting or operative portion of the section an overriding effect, not otherwise. In other words, only in a case of a conflict, a provision in an enactment containing a *non-obstante* clause, would be given its full operation and what is stated in the *non-obstante* clause will not be an impediment for the operation of the particular provision in the enactment. This would mean that what is stated in the *non-obstante* clause would not take away the effect of any provision of the Act which follows the same.

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26. In ***Aswini Kumar Ghosh vs. Arabinda Bose, AIR 1952 SC 369***, this Court speaking through Chief Justice Patanjali Shastri observed that only when there is any inconsistency between what is contained in a provision of an enactment and a *non-obstante* clause would make the latter in what is to yield to what is stated in the provision following the same. In other words, it is only when the enacting part of the statute cannot be read harmoniously with what is stated in the *non-obstante* clause, would the *non-obstante* clause result in yielding to what is stated in the enacting part. Similarly, in ***Municipal Corporation, Indore vs. Ratnaprabha, AIR 1977 SC 308***, it was observed that there should be a clear inconsistency between a special enactment or rules and a general enactment.

27. Reference may also be made to an earlier judgment of the Full Bench of the Bombay High Court in ***Karim Abdul Rehman Shaikh vs. Shehnaz Karim Shaikh, 2000 SCC OnLine Bom 446***. Ranjana Desai, J, (as Her Ladyship then was) held that the purpose of the 1986 Act was not to take away a pre-existing right to seek maintenance under the extant statutory regime. Its intent could not be to 'absolve Muslim husbands from their obligation to look after them after *iddat* period.' The upshot of the reasoning was that the 1986 Act deliberately used two distinct expressions: maintenance and provision. These expressions allow sufficient interpretive amplitude to reconcile the Muslim personal law with the secular law of maintenance bearing in mind the constitutional

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objective of preserving and promoting the dignity of Muslim women. The expression 'provision' denotes a forward-looking approach. It could not be circumscribed to the period of *iddat* but any limit on the same had to have a nexus to the vagrancy of the wife and the sufficiency of maintenance. Therefore, Section 3(1)(a) entitles the divorced wife to an amount that would be necessary in view of her essential expenses on residence, food, clothing, medicine etc.

28. I find that the 1986 Act was upheld by this Court in ***Danial Latifi*** on the basis of a purposive interpretation that mitigated the possibility of the absurd consequence of denying access to justice to a divorced Muslim woman. The premise of such an interpretation is that the expression "divorced woman" is defined in Section 2(a) of the said Act to mean a Muslim woman who has married according to Muslim law and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim Law. A plain reading of the aforesaid expression would also indicate that the right created in favour of a Muslim divorced woman is in addition to and not in derogation of any other law for the time being in force. This would mean that Section 125 of the CrPC applies to such a Muslim woman also and the definition of wife in Section 125 of the CrPC including a divorced wife (irrespective of the faith she follows) would not detract from such a divorced Muslim wife also claiming maintenance under that provision. This is despite Section 3 creating new rights insofar as such a

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divorced Muslim woman is concerned. The scope and ambit of the *non-obstante clause* must be given its full effect and force. In other words, the intent of the Parliament which can be gathered from the use of such a *non-obstante clause* is to enhance the right of a divorced Muslim woman in addition to what she would have been entitled to under Section 125 of the CrPC. If the intent of the Parliament was otherwise, i.e., to curtail the rights of a divorced Muslim woman then the *non-obstante clause* would not have found a place in sub-section (1) of Section 3 of the 1986 Act. This is evident from the fact that while enacting the 1986 Act, Parliament did not simultaneously or at anytime thereafter create any bar for a divorced Muslim woman from claiming maintenance under Section 125 of the CrPC and thereby constrain her to proceed to make a claim only under the provisions of the 1986 Act. Neither is there any bar, express or implied under the 1986 Act, to the effect that a divorced Muslim woman cannot unilaterally seek maintenance under Section 125 of the CrPC. One cannot read Section 3 of the 1986 Act containing the *non-obstante clause* so as to restrict or diminish the right to maintenance of a divorced Muslim woman under Section 125 of the CrPC and neither is it a substitute for the latter. Such an interpretation would be regressive, anti-divorced Muslim woman and contrary to Articles 14 and 15(1) and (3) as well as Article 39(e) of the Constitution of India. Therefore, inspite of an option of seeking maintenance under the provisions of the

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1986 Act, Section 125 of the CrPC is applicable to a divorced Muslim woman.

29. Similarly, the expression "*notwithstanding anything contained in the foregoing provisions of this Act or any other law for the time being in force*" in sub-section (1) of Section 4, is indicative of the fact that the Magistrate can order for maintenance of a divorced Muslim woman being entitled to maintenance as per the provisions of the said Act. Further, sub-section (1) of Section 4 takes into consideration the period *after* the *iddat* period while sub-section (1) of Section 3 deals with a period which is *within* the *iddat* period. This Section is akin to Section 125 of the CrPC for a reasonable and fair provision of maintenance to be made.

30. In my view, the rights created under the provisions of the 1986 Act are in addition to and not in derogation of the right created under Section 125 of the CrPC, and the same is the basis for this Court's conclusion in ***Danial Latifi*** to save the 1986 Act from the vice of unconstitutionality. This is because nowhere in the judgment of this Court in the aforesaid case is there a reference to any bar under the provisions of the 1986 Act and neither has this Court created any such bar in the aforesaid judgment for a divorced Muslim woman to approach the Court under Section 125 of the CrPC for maintenance. Thus, the *non-obstante clause* in Sub-section (1) of Section 3 cannot result in Sections 3 and 4 of the 1986 Act whittling down the application of Section 125 of the CrPC and other

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allied provisions of the CrPC to a divorced Muslim woman. Therefore, if a divorced Muslim woman approaches the Magistrate for enforcement of her rights under Section 125 of the CrPC, she cannot be turned away to seek relief only under Sections 3 and 4 of the 1986 Act as is sought to be contended by the appellant herein. In other words, such a divorced Muslim woman is entitled to seek recourse to either or both the provisions. The option lies with such a woman. The Court would have to ultimately balance between the amount awarded under the 1986 Act and the one to be awarded under Section 125 of the CrPC.

31. In this context, I note that the learned senior counsel for the appellant, Sri Qadri relied upon the language of Sections 5 and 7 of the 1986 Act to argue that the Parliament intended to give the 1986 Act an overriding effect over the secular law on maintenance, i.e. Sections 125 to 128 of the CrPC. Sections 5 and 7 are reproduced for immediate reference:

> **"5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974.-** If, on the date of the first hearing of the application under sub-section (2) of section 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 sections 125 to 128 of the Code of Criminal Procedure, 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 the attendance of the respondent to the application.
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> xxx xxx xxx

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> **7. Transitional provisions.-** Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act."

32. I find that Section 5 provides for a situation where a Muslim woman and her former husband decide to voluntarily elect to pursue the remedies under Sections 125 to 128 of the CrPC by way of a written application on the first date of hearing of an application under Section 3 of the 1986 Act. The provision seeks to provide an option that can be mutually exercised by the Muslim woman and her former husband. The deliberate use of the words 'option' and 'former husband' demonstrates that Section 5 does not statutorily confine the circumstances under which the claim of maintenance of a divorced Muslim woman can be governed under the secular law of maintenance. Similarly, Section 7, being a transitional provision, only determines that every pending application under Section 125 of the CrPC for maintenance at the time of commencement of the 1986 Act would be disposed of in accordance with the provisions of 1986 Act. The purpose of a transitional provision is to mitigate uncertainty from the minds of the litigants who were faced with the peculiar situation with respect to pending maintenance applications and the possibility of fresh applications being filed under the 1986 Act as per the option of the parties. The use of the expression in Section 7 of the 1986 Act '*notwithstanding anything contained*

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in that Code,' with respect to the CrPC does not indicate the intent to abrogate the independent right of a Muslim woman, as a victim of neglect or destitution, to claim maintenance from her husband. Moreover, Section 7 is subject to Section 5 of the said Act. Also, a transitional provision is of a temporary nature. On the strength of a transitional provision the main Act i.e. 1986 Act cannot be interpreted in a manner so as to restrict the rights of a divorced Muslim woman to other available remedies such as under Section 125 of the CrPC.

33. This Court in ***Danial Latifi*** was alive to the hardship that would befall Muslim women if the provisions of the 1986 Act were construed in a manner that deprived them of the protection that was equal to the protection afforded to non-Muslim women under Section 125 of the CrPC. It was reasoned that to make a Muslim woman run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board could not be reasonable and a fair substitute for the provisions of Section 125 of the CrPC. In this respect, the observations of this Court deserve to be quoted in full:

> "33. In *Shah Bano case* [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] this Court has clearly explained as to the rationale behind Section 125 CrPC to make provision for maintenance to be paid to a divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman. The contention put forth on behalf of the Muslim organisations who are interveners before us is that under the Act, vagrancy or destitution is sought to be avoided but not by punishing the erring husband, if at all, but by providing for maintenance through others. If for any reason the interpretation placed by

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us on the language of Sections 3(1)(*a*) and 4 of the Act is not acceptable, we will have to examine the effect of the provisions as they stand, that is, a Muslim woman will not be entitled to maintenance from her husband after the period of iddat once the talaq is pronounced and, if at all, thereafter maintenance could only be recovered from the various persons mentioned in Section 4 or from the Wakf Board. This Court in *Olga Tellis* v. *Bombay Municipal Corpn.* [(1985) 3 SCC 545] and *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248] held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution would include the "right to live with dignity". Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may remarry and such a right, if deprived, would not be reasonable, just and fair. Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of Section 125 CrPC. Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion. It is well settled that on a rule of construction, a given statute will become "ultra vires" or "unconstitutional" and, therefore, void, whereas on another construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that

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> the legislature does not intend to enact unconstitutional laws. We think, the latter interpretation should be accepted and, therefore, the interpretation placed by us results in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way round."

34. Therefore, it was held that the Muslim husband has two separate and distinct obligations, *viz.*, (i) to make a "reasonable and fair provision" for his divorced wife and (ii) to provide "maintenance" for her. Contrary to limiting the duration of any such "provision" and "maintenance" to only the *iddat* period, the emphasis of Section 3(1)(a) specifically and the 1986 Act generally is to mandate the time for concluding the payment of provision and maintenance within the *iddat* period but not only restricted for the said period. This Court applied its judgment in ***Danial Latifi*** in ***Sabra Shamim vs. Maqsood Ansari, (2004) 9 SCC 616*** wherein the High Court's judgment limiting the entitlement of the divorced wife to *iddat* period only was set aside on the ground that the liability "to pay maintenance is not confined to *iddat* period".

35. In other words, the constitutionality of the 1986 Act was upheld only on the basis of the expansive, purposive and progressive interpretation that harmonised the rights under secular and personal law. This is consistent with the settled norms of judicial review of legislative enactments whereby this Court reads a provision that is found to offend a constitutional guarantee to save its constitutionality, *vide* ***Binoy Viswam vs.***

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Union of India, (2017) 7 SCC 59, Pr. 83. Therefore, while extending the scope of 'reasonable and fair provision' in the 1986 Act to the entire lifetime of Muslim women, it was noted in paragraph 28 of ***Danial Latifi*** that 'nowhere has Parliament provided that reasonable and fair provision and maintenance is limited *only* for the *iddat* period.' Thus, it was held that an interpretative approach *de hors* the social facts and questions touching upon basic human rights should invariably be decided on constitutional considerations. Therefore, the Parliament's enactment cannot be construed to intend unjust consequences according to this Court.

This is because under the provision of 1986 Act if during iddat period, no provision is made for the entire life of the divorced wife or if the same is inadequate particularly with the passage of time then Section 125 of the CrPC can be resorted to.

From the above, it can also be noted that if Section 3 read with Section 4 excludes the liability of the husband of a Muslim woman then there is no reason as to why his liability under Section 125 of the CrPC must also be excluded.

36. The 1986 Act thus continues to operate within the same juridical compass as the judgment in ***Shah Bano*** and the reasons for upholding the constitutionality of ***Danial Latifi*** cannot be lost sight of. The crux of the reasoning in ***Danial Latifi*** is that the 1986 Act is a social welfare legislation that seeks to provide an additional right and thereby, an additional

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remedy. ***Danial Latifi*** implicitly recognises the cardinal principle of non-retrogression that prohibits the State from taking measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise *vide* ***Navtej Singh Johar vs. Union of India, (2018) 10 SCC 1, Pr. 202.*** I therefore reiterate that the 1986 Act does not take away rights that divorced Muslim women have either under personal law or under Section 125 of the CrPC. I do not find any inconsistency between the provisions of the 1986 Act and Section 125 of the CrPC. Thus, a Muslim divorced wife is entitled to maintenance under Section 125 CrPC irrespective of her personal law, as reiterated in ***Shabana Bano vs. Imran Khan, 2009 (14) SCALE 331.*** Such a construction would not defeat the legislative intent and diminish the scope of additional protection afforded to Muslim women under the 1986 Act.

37. I note that the fixation of the three-month time limit for disposal of applications under the 1986 Act affords speedy justice and subserves the salutary aim of women's welfare and social security. Thus, the 1986 Act expands the protection of women and ought to be applied as such. I find that remarriage of a divorced Muslim woman does not nullify her claim to a just settlement under the 1986 Act, *vide* ***Abdul Hameed vs. Fousiya, (2004) 3 KLT 1049*** wherein it was held that a husband cannot recover the settlement amount awarded under the 1986 Act merely because his ex-wife gets remarried.

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This finding is consistent with our legislative regime of protecting the rights of married women against matrimonial harassment, *vide* ***Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori, (2014) 10 SCC 736.***

Access to Justice:

38. The question of interpreting Section 3 of the 1986 Act should also be construed from the perspective of access to justice. Therefore, a technical or pedantic interpretation of the 1986 Act would stultify not merely gender justice but also the constitutional right of access to justice for the aggrieved Muslim divorced women who are in dire need of maintenance. This Court would not countenance unjust or Faustian bargains being imposed on women. The emphasis is on sufficient maintenance, not minimal amount. After all, maintenance is a facet of gender parity and enabler of equality, not charity. It follows that a destitute Muslim woman has the right to seek maintenance under Section 125 of the CrPC despite the enactment of the 1986 Act. Thus, an application for maintenance under Section 125 of the CrPC would not prejudice another application under Section 3 of the 1986 Act insofar as the latter is additional in nature and does not pertain to the same requirements sought to be provided for by Section 125 of the CrPC. One cannot be a substitute for or supplant another; rather it is in addition to and not in derogation of the other.

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39. In this context, it would be apposite to take note of this Court's pertinent observations in ***Rana Nahid @ Reshma @ Sana vs. Sahidul Haq Chisti, (2020) 7 SCC 657.*** The appeal before this Court arose out of a judgment passed by the High Court of Rajasthan, by which the order passed by the Family Court, converting the application for maintenance under Section 125 of the CrPC into Section 3 of the 1986 Act and granting maintenance, was set aside. Banumathi, J. in her judgment considered the question which fell for consideration, namely, whether the Family Court had jurisdiction to try an application filed by a Muslim divorced woman for maintenance under Section 3 of the Act. After considering the provisions of the 1986 Act as well as the relevant provisions of the Family Courts Act, 1984, it was observed in paragraph 25 of the judgment that an application under Section 3(2) of the 1986 Act by the divorced wife has to be filed before the competent Magistrate having jurisdiction if she claims maintenance beyond the *iddat* period. Even if the Family Court has been established in that area, the Family Court, not having been conferred the jurisdiction under Section 7 of the Family Courts Act, 1984 to entertain an application filed under Section 3 of the 1986 Act, the Family Court shall have no jurisdiction to entertain an application under Section 3(2) of the 1986 Act. The Family Court, therefore, cannot convert the petition for maintenance under Section 125 of the CrPC to one under Section 3 or Section 4 of the 1986 Act. Accordingly, the High Court's view was affirmed and the appeal was dismissed.

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However, Indira Banerjee, J. disagreeing with the aforesaid view observed that the Family Court has the jurisdiction to convert the application for maintenance filed under Section 125 of the CrPC into an application under Section 3 of the 1986 Act and to decide the same.

In view of the difference of opinion between the two learned Judges, the matter was placed before Hon'ble the Chief Justice of India for referring the matter to a larger Bench. However, the larger Bench of three-Judges by its order dated 22.09.2022 disposed of the appeal without going into the questions referred to the said Bench.

Be that as it may, what is of relevance from the aforesaid case, is Banumathi, J.'s reasoning that the 1986 Act is not contrary to the object of Chapter IX of the CrPC as it provides remedies to a divorced Muslim woman. Therefore, the *non-obstante clause*, occurring in Sections 3(1), 4(1) and 7 cannot be lightly assumed to bring in the effect of supersession of Section 125 of the CrPC and cannot be allowed 'to demolish or extinguish the existing right unless the legislative intention is clear, manifest and unambiguous'. I also find force in Indira Banerjee J's reasoning that the 1986 Act manifests the Parliament's intent to protect and further the rights of Muslim women. Placing reliance upon the right to be treated equally irrespective of religion, as it is enshrined in Article 2 of the Universal Declaration of Human Rights and Articles 14 and 26 of the International Covenant on Civil and Political Rights, the

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learned judge held that Muslim women cannot be afforded a lesser degree of protection than other classes of women. It was also held that:

> **"57.** The Convention on the Elimination of All Forms of Discrimination against Women, 1979, commonly referred to as CEDAW, recognises amongst others, the right of women to equality irrespective of religion, as a basic human right. Article 2 of CEDAW exhorts State parties to ensure adoption of a woman-friendly legal system and woman-friendly policies and practices.
>
> **58.** As a signatory to CEDAW, India is committed to adopt a woman-friendly legal system and woman-friendly policies and practices. The 1986 Act for Muslim Women, being a post CEDAW law, this Court is duty-bound to interpret the provisions of the said Act substantively, liberally, and purposefully, in such a manner as would benefit women of the Muslim community."

40. Therefore, the position of law with regard to harmonious interpretation of Sections 125-128 of the CrPC and the 1986 Act can be summarised as under:

i. There cannot be a disparity amongst divorced Muslim women on the basis of the law under which they were married or divorced in the matter of their maintenance post-divorce. The definition of "divorced woman" under the 1986 Act would include only a Muslim woman who has married according to Muslim law but also divorced under that law. But if a Muslim woman has been married under the Special Marriage Act, such a Muslim woman who is divorced, cannot get the benefit of the 1986 Act. Such a Muslim woman, who is divorced, would have to proceed either under the

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provisions of the Special Marriage Act, 1954 and/or under Section 125 of the CrPC. Therefore, the protective provision of Section 125 ought to remain available to every divorced Muslim woman to avoid the absurd outcome of a section of Muslim women being left remediless under the 1986 Act. As a corollary, it is held that such women who are covered under the 1986 Act are also entitled to the benefit of Section 125 of the CrPC. Further, there can be no bar under the Explanation (b) to Section 125 of the CrPC so as to exclude any Muslim woman who has been divorced or has obtained a divorce from her husband and has not remarried. This is irrespective of the 1986 Act being applicable to only such divorced Muslim woman who qualifies within the definition of divorced woman under Section 2(a) of the 1986 Act.

ii. Section 3 of the 1986 Act provides for a reasonable and fair provision of maintenance to a divorced Muslim woman only on certain terms and conditions within the *iddat* period by her husband. Once the i*ddat* period expires, the personal law obligation to maintain the divorced Muslim woman by the husband ceases. *Per contra*, under Section 125 of the CrPC, any divorced wife who has not remarried is entitled to maintenance by her ex-

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husband who has sufficient means but has neglected or refused to maintain her.

iii. Further, under Section 3(1)(b) of the 1986 Act, where a divorced woman maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance has to be made and paid by her former husband only for a period of two years from the respective dates of birth of such children and not beyond the said period. However, under Section 125 of the CrPC, there is no such restriction of maintenance to be provided only for a period of two years from the respective dates of birth of such children in the case of a divorced wife. The obligation is until the children attain the age of majority and in terms of the said Section.

iv. What is of further significance is the fact that by Act 50 of 2001 [by Section 2(i)(a)] w.e.f. 24.09.2001, sub-section (1) of Section 125 of the CrPC has been amended to delete the words "not exceeding 500 rupees in the whole". By way of this omission, there is no upper limit fixed for payment of maintenance under the said provision. Therefore, Section 125 of the CrPC is a more beneficial provision as compared to the provisions of the 1986 Act *vis-à-vis* a Muslim divorced woman in the

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context of the obligations of a former husband and the rights of a divorced Muslim woman. This amendment to Section 125 of the CrPC being subsequent to the enforcement of the 1986 Act, is so significant that it virtually makes Section 3 of the 1986 Act very narrow and insignificant although the expression "provision" under Section 3(1) of the 1986 Act has been broadly interpreted by this Court in ***Danial Latifi***.

v. I, therefore, hold that Section 125 of the CrPC cannot be excluded from its application to a divorced Muslim woman irrespective of the law under which she is divorced. There cannot be disparity in receiving maintenance on the basis of the law under which a woman is married or divorced. The same cannot be a basis for discriminating a divorced woman entitled to maintenance as per the conditions stipulated under Section 125 of the CrPC or any personal or other law such as the 1986 Act. I also note that although the provisions of the 1986 Act have been upheld by a Constitution Bench of this Court in the case of ***Danial Latifi***, the same would not in any way restrict the application of Section 125 of the CrPC to a divorced Muslim woman.

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vi. Further, under Section 5 of the 1986 Act, if, on the date of the first hearing of the application under sub-section (2) of Section 3, a divorced woman and her husband declare by an affidavit or any other declaration in writing in the form prescribed, either jointly or separately that they would prefer to be governed by the provisions of Section 125 to Section 128 of the CrPC and file such an affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly. Therefore, the 1986 Act itself provides for the applicability of Sections 125 to 128 of the CrPC, even when an application under sub-section (2) of Section 3 is made seeking relief as per sub-section (1) of Section 3. However, the said option given to the divorced woman and her former husband mandates that there must be a declaration which is *ad idem* for the purpose of applying the provisions of Sections 125 to 128 of the CrPC, when an application is made under sub-section (2) of Section 3 of the 1986 Act. This would imply that if there is no such declaration given then Sections 125 to 128 of the CrPC would not apply when an application is made under sub-section (2) of Section 3 of the 1986 Act by a divorced Muslim woman. This again puts a fetter on the applicability of Sections 125 to 128 of the CrPC to such a

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divorced woman inasmuch it is necessary for her former husband to concur to be governed by the provisions of Sections 125 to 128 of the CrPC. This means that an option is given to the former husband of a divorced Muslim woman to concur or not to do so. In other words, if there is no such concurrence by the former husband then the aforesaid provisions of the CrPC would not be made applicable to a proceeding initiated under sub-section (2) of Section 3. Such a fetter, in my view, is of no consequence if a Muslim divorced woman can unilaterally maintain an application under Section 125 of the CrPC before the Magistrate or the Family Court, in which event when she unilaterally files such an application, there is no necessity of seeking a declaration from the former husband as required under Section 5 of the 1986 Act.

vii. On the other hand, if a divorced Muslim woman files an application for maintenance under Section 125 of the CrPC, there is no provision for considering the same under Section 3 of the 1986 Act. The reasons for the same are not far to see: firstly, because Section 125 of the CrPC and Section 3(1) of the 1986 Act operate in two separate fields. The former is a statutory right created, *inter*

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alia, for all divorced women, irrespective of the faith they may belong to or follow. On the other hand, the 1986 Act is in the nature of a personal law which applies to only divorced Muslim women who were married under Muslim law and divorced under the said law.

viii. While under the CrPC prior to CrPC of 1973, the alteration of maintenance was considered on the basis of change in circumstances but Section 127(3)(b) of the CrPC, 1973 specifically takes into account cases where a divorced woman has had the benefit of maintenance under the customary or personal law. In a case of a Hindu divorced woman, it could also include the Hindu Marriage Act, 1955 or Hindu Adoption and Maintenance Act, 1954. In the same manner in the case of a Muslim divorced woman, the 1986 Act is in the nature of a quasi-personal law. Section 127(3)(b), therefore, balances the obligation to pay maintenance by a former husband of a Muslim woman if he has done so under the provisions of any customary or personal law which would also include the 1986 Act applicable to the parties. In such an event, there could always be an alteration in the allowance when there is a change in the circumstances of any person receiving, under Section 125 of the CrPC, a

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monthly allowance towards the interim maintenance or maintenance under the said Section payable to a divorced wife. In which event, the alteration could be made in accordance with Section 127 of the CrPC.

ix. Section 127 would apply only when there has already been an order for maintenance or interim maintenance passed under Section 125 of the CrPC and if there is a subsequent order passed under the provisions of the 1986 Act. Then, an order for alteration in the maintenance under Section 125 of the CrPC could be made by the Magistrate. Section 127(3)(b) would however not detract a divorced Muslim woman from filing an application under Section 125 of the CrPC, by exercising her option to do so even in the absence of invoking the provisions of the 1986 Act. In other words, such a vulnerable woman cannot be constrained to seek remedy only under the provisions of the 1986 Act. The choice remains with her to be exercised in accordance with law and discretion. However, if a divorced Muslim woman already has an order passed under Section 125 of the CrPC, and thereafter also files an application under Section 3 or Section 4 of the 1986 Act and an order is made under the said Act also, in such an event, there

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could be an alteration in the order of payment for maintenance or interim maintenance, as the case may be, under Section 127 of the CrPC. This is in order to ensure that there is no double benefit which would be availed by a divorced Muslim woman under Section 125 of the CrPC as well as under the 1986 Act.

x. Hence, what emerges is that the 1986 Act is not a substitute for Section 125 of the CrPC and nor has it supplanted it and both can operate simultaneously at the option of a divorced Muslim woman as they operate in different fields. As I find no conflict between the provisions of the 1986 Act, which is a piece of legislation in the nature of quasi-personal law insofar as the divorced Muslim wife is concerned and Section 125 of the CrPC which is a statutory provision applicable to women belonging to all faiths therefore the latter cannot be restricted in its operation to divorced Muslim women. I find that if Section 125 of the CrPC is excluded from its application to a divorced Muslim woman, it would be in violation of Article 15(1) of the Constitution of India which states that the State shall not discriminate against any citizen only on the ground of religion, race, caste, sex, place of birth or any of

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them. Further, our interpretation is consistent with the spirit of Article 15(3) of the Constitution.

2019 Act:

41. At this juncture, Section 5 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 ("2019 Act") merits consideration.

> **"5. Subsistence allowance.-** Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom *talaq* is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate."

Section 5 extends to Muslim women upon whom *talaq* is pronounced. *Talaq* is defined in Section 2(c) as '*talaq-e-biddat*' or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband which is void and illegal as per Section 3 of the said Act.' In other words, married Muslim woman can seek subsistence allowance if *talaq*, as defined in the 2019 Act, is pronounced on her.

In case a woman has been divorced in a valid manner, she can approach the Magistrate under the 1986 Act but if she has been the victim of the mischief defined under the 2019 Act, then her right to subsistence allowance is secured through Section 5 of the 2019 Act. The intent of the Parliament is clear: it seeks to provide adequate remedies to women from economic deprivation that may result from marital discord, irrespective

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of their status as a married or divorced woman. Therefore, prior to a divorce in accordance with law, a married woman has access to maintenance under the general law, i.e., Section 125 of the CrPC and under a special law, i.e., 2019 Act. When divorce is void and illegal, such a Muslim woman can also seek remedy under Section 125 of the CrPC.

Maintenance and the Institution of Marriage: A Broader Perspective.

42. Before parting with this case, I pose a question to myself. What is the position of a wife after her marriage in Indian Society? This Court, speaking through Murtaza Fazal Ali, J. in ***Sirajmohmedkhan Janmohamadkhan vs. Hafizunnisa Yasinkh, AIR 1981 SC 1972***, had acknowledged the paradigm shift from viewing maintenance as a mere charity to a matter of parity and rights, essential for women. It is necessary to extract the pertinent observations as under:

> "14. ... the outmoded and antiquated view that the object of s. 488 was to provide an effective and summary remedy to provide for appropriate food, clothing and lodging for a wife. This concept has now become completely out dated and absolutely archaic. After the International Year of Women when all the important countries of the world are trying to give the fair sex their rightful place in society and are working for the complete emancipation of women by breaking the old shackles and bondage in which they were involved, it is difficult to accept a contention that the salutary provisions of the Code are merely meant to provide a wife merely with food, clothing and lodging as if she is only a chattel and has to depend on the sweet will and mercy of the husband. ..."

43. In this context, I would like to advert to the vulnerability of married women in India who do not have an independent

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source of income or who do not have access to monetary resources in their households particularly for their personal expenses. In Indian society, it is an established practice that once a daughter is married, she resides with her husband and/or his family unless due to exigency of career or such other reason she has to reside elsewhere. In the case of a woman who has an independent source of income, she may be financially endowed and may not be totally dependent on her husband and his family. But what is the position of a married woman who is often referred to as a "homemaker" and who does not have an independent source of income, whatsoever, and is totally dependent for her financial resources on her husband and on his family? It is well-known that such an Indian homemaker tries to save as much money as possible from the monthly household budget, not only to augment the financial resources of the family but possibly to also save a small portion for her personal expenses. Such a practice is followed in order to avoid making a request to the husband or his family for her personal expenses. Most married men in India do not realise this aspect of the predicament such Indian homemakers face as any request made for expenses may be bluntly turned down by the husband and/or his family. Some husbands are not conscious of the fact that the wife who has no independent source of finance is dependent on them not only emotionally but also financially. On the other hand, a wife who is referred to as a homemaker is working throughout the day for the welfare of the family without expecting anything in return

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except possibly love and affection, a sense of comfort and respect from her husband and his family which are towards her emotional security. This may also be lacking in certain households.

44. While the contributions of such a homemaker get judicial recognition upon her unfortunate death while computing compensation in cases under the Motor Vehicles Act, 1988 *vide* ***Kirti vs. Oriental Insurance Co. Ltd., (2021) 2 SCC 166,*** the services and sacrifices of homemakers for the economic well-being of the family, and the economy of the nation, remain uncompensated in large sections of our society.

45. Therefore, I observe that an Indian married man must become conscious of the fact that he would have to financially empower and provide for his wife, who does not have an independent source of income, by making available financial resources particularly towards her personal needs; in other words, giving access to his financial resources. Such financial empowerment would place such a vulnerable wife in a more secure position in the family. Those Indian married men who are conscious of this aspect and who make available their financial resources for their spouse towards their personal expenses, apart from household expenditure, possibly by having a joint bank account or via an ATM card, must be acknowledged.

46. Another aspect of vulnerability of a married Indian woman is regarding her security of residence in her

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matrimonial home. In this context in the case of ***Prabha Tyagi vs. Kamlesh Devi, (2022) 8 SCC 90,*** this Court while considering Section 17 along with other provisions of the Domestic Violence Act, 2005 opined as under:

> "60. In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in praesenti but also a past domestic relationship. Therefore, Parliament has intentionally used the expression "domestic relationship" to mean a relationship between two persons who not only live together in the shared household but also between two persons who "*have at any point of time lived together*" in a shared household."

47. Thus, both 'financial security' as well as 'security of residence' of Indian women have to be protected and enhanced. That would truly empower such Indian women who are referred to as 'homemakers' and who are the strength and backbone of an Indian family which is the fundamental unit of the Indian society which has to be maintained and strengthened. It goes without saying that a stable family which is emotionally connected and secure gives stability to the society for, it is within the family that precious values of life are learnt and built. It is these moral and ethical values which are inherited by a succeeding generation which would go a long way in building a strong Indian society which is the need of the hour. It is needless to observe that a strong Indian family and society would ultimately lead to a stronger nation. But, for that to happen, women in the family have to be respected and empowered!

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In view of the aforesaid discussion, the Criminal Appeal stands dismissed.

.....J.
[B.V. NAGARATHNA]

New Delhi;
July 10, 2024

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2842 OF 2024
(Arising out of Special Leave Petition (Crl.) No.1614 of 2024)

MOHD. ABDUL SAMAD ... APPELLANT

VERSUS

STATE OF TELANGANA & ANOTHER ... RESPONDENTS

O R D E R

What emerges from our separate but concurring judgments are the following conclusions:

a) Section 125 of the CrPC applies to all married women including Muslim married women.

b) Section 125 of the CrPC applies to all non-Muslim divorced women.

c) Insofar as divorced Muslim women are concerned, -

i) Section 125 of the CrPC applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.

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ii) If Muslim women are married and divorced under Muslim law then Section 125 of the CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the CrPC but in addition to the said provision.

iii) If Section 125 of the CrPC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986 Act shall be taken into consideration under Section 127(3)(b) of the CrPC.

d) The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.

e) In case of an illegal divorce as per the provisions of the 2019 Act then,

i) relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the CrPC could also be availed.

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ii) If during the pendency of a petition filed under Section 125 of the CrPC, a Muslim woman is 'divorced' then she can take recourse under Section 125 of the CrPC or file a petition under the 2019 Act.

iii) The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the CrPC.

f) The criminal appeal is dismissed.

.....J.
[B.V. NAGARATHNA]

.....J.
[AUGUSTINE GEORGE MASIH]

New Delhi;
July 10, 2024