



MAINTENANCE OF THE DIVORCED WIFE

The Viewpoint of the Islam Law

By

Shams Pirzada

Chairman, Idara Dawatul Quran Mumbai

Translated from Urdu by:

Abdul Karim Shaikh

IDARA DAWATUL QURAN

59, Mohammed Ali Road,
Mumbai 400003,
(Phone : 2346 5005).

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, Most Gracious, Most Merciful

FOREWORD

This paper was read at the All India Seminar on Muslim Personal Law. organized by the Students' Islamic Movement of India in Delhi, on 12th October 1985.

The Supreme Court of India has, in the case of Mohammed Ahmed V/s Shah Bano (23 - 4 - 1985). given this judgement concerning maintenance of the divorced woman under Section 125 of the Cr.P.Code, to provide her maintenance, if she unable to maintain herself, till she marries or dies. In this connection the Supreme Court has tried to prove, with the help of some verses of the holy Quran, that making obligatory the provision of maintenance after Iddat by the ex-husband is not contrary to the Muslim Personal Law.

The All India Muslim Personal Law Board has declared this judgement an open interference in the Muslim Personal Law. and an unending series of massive protests by Muslims started. In which Muslim women are in the forefront of the Muslim masses. Mr. Ghulam Mahmood Banatwala, M. P. has tabled a bill in the Parliament for amending Section 125 of the Criminal Procedure Code. but a Muslim Minister of State. Mr. Mohammed Arif Khan, has tried to show in his statement that the judgement of the Supreme Court is quite in the keeping with the teaching of the Quran. A few other 'intellectuals' have also argued in favour of maintenance providing by the ex-husband to the divorced woman for the lifetime with the help of Verse No. 241 of Surah Baqrah of the holy Quran.

Such a situation demanded that the Islamic Law concerning maintenance of the divorced woman should be presented in a clear light by means of lucid arguments, and the verse concerning 'Mataa' be discussed in detail so that the correct interpretation of the verse may be brought forth and the weakness of the argument of those who are misinterpreting it may be made manifest.

This paper or article has been prepared with true purpose in view,

and the intention was to make it comprehensive. it has become a little lengthy.

In the end we would like to make it clear that this article has not been written to represent any particular school of Fiqh, but it has been written in the light of Quran and Sunnah with a view to presenting the facts. The sayings of the commentators of Quran and Fuqaha (jurists) has been liberally quoted, and as such it has become more or less a research article, with all precautions duly taken. There is no guidance for me but from Allah, May this prove helpful in our endeavours for the safeguard of the Shariah.

Mumbai
29th October 1985.

SHAMS PIRZADA

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah. Most Gracious. Most Merciful.

The recent Judgement of the Supreme Court on the problem of the maintenance of the divorced wife has opened up new avenues of ideas and discussion - nay, it has rushed in the realm of offering new explanation and interpretation of the Quranic revelations and has astounded the intellectuals of the millat. In the words of Ghalib :

The pen is stunned how to describe it !

The speech is paralysed what to say about it !

The well wishers of the community have been forced to moan with poet :

The lustful have become the plaintiff and the Judge.

Whom may we make our advocate and from whom may we seek justice !

The fact is that in the present atmosphere it has become useless to talk about the rightness or otherwise of a thing in the light of arguments, for in these days reason has yielded to desires and argument has been replaced by passions, as the Arabic poet has so rightly remarked :-

ولا يصح فى الاذهان شىء
اذا احتاج النهار الى دليل

The minds are not ready to accept the rightful thing when argument is needed (in daytime) to prove that it is day.

However, there is no society that is totally bereft of justice-loving people, Therefore, our approach on the subject under discussion should be rational and logical, so that the rightness of our stand, our case, may be brought home to the right thinking and logical-minded people.

THE ISLAMIC FAMILY LAWS ARE THE INSEPARABLE PART OF THE ISLAMIC SYSTEM OF LIFE

Behind every law there is a concept or a theory, to satisfy whose demands the relevant law is enacted. So far as the modern family laws are concerned, they fully represent the modern civilization. These laws are specifically based on the following three basic concepts :

First secularism, that is to formulate family laws on a non-religious basis. The credit of first formulating these laws goes to Napoleon Bounapart, who secularized the family laws by severing its connection

from the church. Thus the civil codes which came into existence by his efforts is called the Code Napoleon, which was enforced in France in the years 1804. Thereafter all the civil codes that came into being were derived from this code :

"Further the Code Napoleon has become the foundation of several codes of the new world." - (Encyclopaedia Britannica, V.VI, P. 12)

Experience has been showing its defects and it was being subjected to changes off and on, which resulted in the enactment of the German Civil Code and the Swiss Civil Code. In other words the original author of the secular civil code is Napoleon, and whatever family laws that are being formulated these days on the western style are based on the dissociation of the family life from religion, whether it be Islam or any other religion.

Secondly equality of the sexes, that is on the basis that the rights and privileges of man and woman are equal, and in rank and importance there is no difference between the two. On this basis, the family laws for men and women should necessarily be equal or of similar nature, as if for the family life neither a manager is needed nor a head of the family.

Thirdly freedom from moral restrictions.

Modesty, sense of shame, and chastity are the high watermark of the glory of humanity and the essence of womanhood, and purity of the self and ideas is considered the desired objectives objectives for humans. But since all this requires a control over the desires and the requirements of pleasure - seeking are not fulfilled, keeping the family laws from moral restrictions is considered necessary, as if man is free like the butterfly to enter any garden he likes and to sit on any flower he pleases, or like a honey-bee to suck the juice of any flower that he chooses comingling of sexes, nudity, exhibition of lewd scenes, singing and dancing, immoral songs sexual misbehavior and straying are the gifts of this very freedom end permissive mentality, and all these activities enjoy the protection of the law.

But Islam declares these concepts false and the laws formulated on their basis as destructive to the human life. Against these concepts, the concepts which Islam presents as basis for the family laws, and in fact for the construction of the entire human life, are briefly as under.

First, life is a gift from God, therefore, the right method of living is the one that God has ordained, The commands and laws concerning the family laws have been given by God in His holy book, Qur'an, and the same were explained in detail by His Messenger, in what are called his Sunnah. The commands and the laws mentioned the Quran and the Sunnah collectively are called the Shariah, Following the Shariah Laws for a Muslim is not only necessary but it is also an open demand

of this faith. The subsidiary rules that may be considered necessary to be formulated for the enforcement of the Shariah laws can be formulated within the sphere of the Shariah without injuring the spirit of the Shariah laws. To Islam secularization of the family life after accepting faith is like committing an act of disbelief (Kufr)

For man, woman is the spouse and for woman man is the spouse and for women man is the spouse. Either of them in is complementary to the other, and is a means of his or her perfection. So far as the honour as humans is concerned there is no difference between the two sexes. Similarly the rights of both are basically equal, but since their physical conditions are not the same, the fields of activities of both are basically different and their responsibilities of man are greater, the rights enjoyed by him are also proportionate. The slight difference between their rights is not unjust but based on natural justice.

Thirdly the real test of man is in his ability to show himself better from moral point of view. The success in the Hereafter depends on the chastity of self, purity of ideas, and superiority of moral attitude, therefore, family laws must necessarily be made subservient to the moral limits and restrictions. Islam has taken extreme care to ensure the infusion of the development of qualities like modesty, sense of shame, chastity, purity and self control in its social system, and It exerts to sharpen the sense of morality to such an extent that its true follower cannot a lustful glance at any strange woman.

The problem may be either of the number of wives, or of divorce, or of maintenance, Islam's family laws need to be viewed in the light of only these concepts, and if it is not done, and the Islamic family laws are examined, keeping the present day concepts as a standard, then no Islamic law can be safe and its entire social system would be thrown helter skelter. And if efforts to revise it with patchwork is made, then it would be like sewing a patch of jute cloth to a dress of silk.

We will now try to explain the Islamic Law concerning the Maintenance of the Divorced Woman, and along with it we will also try to answer the objections raised regarding its justification.

THE COMMAND CONCERNING THE MAINTENANCE OF THE DIVORCED WIFE IN THE QUR'AN

In the Surah At-Talaq men have been forbidden to drive out the divorced wife from the house during the waiting period (iddat)

وَ أَخْضُوا الْعِدَّةَ وَ اتَّقُوا اللَّهَ رَبَّكُمْ لَا تَخْرُجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ - (سوره - الطلاق آیت - ۱)

"And reckon the period of iddat, and fear Allah, your Lord. Do not expel them from their homes or let them go away, unless they commit open immorality." (At-Talaq -1)

This verse Explains that the divorced wife has the right to stay, during the period of iddat, in the same house, in which she was staying with her husband before the divorce. Neither the husband has the right to turn her out, nor is it proper for the divorced wife to leave the house. Further in Verse No. 6 of the same Surah it has been explained and emphasised :

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجَدَكُمْ وَلَا تَضَارَّوهُنَّ
لِنَصِيحَتِكُمْ أَعْلَيْنَهُنَّ - (سورة الطلاق آيت - ٦)

"Lodge them where you dwell, according to your means. Do not harass them so as to make life intolerable for them." -(At-Talaq-6)

In this verse while commanding the husband to lodge or keep the divorced wife in the same house in which he is residing, he has been also directed to arrange for her residence according to his means, his position, which clearly means that arrangements for her food, clothing etc. should also be made, because when the woman has to spend her Period of waiting (iddat) in the house of her former husband, the responsibility of feeding her and meeting her other needs would essentially fall on the former husband. Accordingly in his commentary on this verse, Allama Jussas writes :

وقد تضمنت هذه الآية الدلالة على وجوب نفقة المبتوتة من
ثلاثة أوجه - (أحكام القرآن للجصاص ج ٣ ص ٥٦٥)

"One aspect of this verse is that it provides the proof for the justification of provision of maintenance for the (irrevocably) divorced wife." -(Ahkamul Qur'an by Jussas -V. III, P. 565)

In other words, the maintenance of the (revocable) divorced wife by the husband is essential, but at the same time it also proves that providing maintenance for the (irrevocably) divorced wife is also called for. Thereafter he has listed three reasons for this. One is that maintenance is the demand that emanates from the fact of the woman being a resident in the house, as provision of residence is part of the maintenance. Secondly, giving trouble to her is forbidden. This is as much connected with residence as with maintenance, that is in the event of not providing maintenance the woman would experience difficulties. Thirdly, it is forbidden to harass her, this harassment can be in connection with the provision of maintenance, that is if no maintenance is provided the woman would feel harassed and would be in trouble.

In this very verse the command for providing maintenance to the divorced wives who are pregnant is given further :

وَأَنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى
يَضَعْنَ حَمْلَهُنَّ - (سوره الطلاق آیت - ۶)

“ And if they are with child, maintain them until they deliver their burden.” (At-Talaq -6)

According to this verse, if the husband has divorced his wife who is pregnant, then maintaining her till the period of her confinement is over and that is the period of waiting (iddat) for the pregnant women is incumbent upon the husband. The period of iddat of a pregnant woman can be long, therefore. It has been specifically emphasised that the husband should spend on her despite the fact that the maintenance of the pregnant woman or non-pregnant woman is the essential corollary of their residence in the house of the husband, for which the command is given in the verse No. 6 as explained above. And it is agreed upon by all that the divorce may be revocable or irrevocable, in the case of a women with child, the husband would be responsible for her residence and maintenance till the end of her confinement :

ولا خلاف في وجوب سكنى المطلقات اولات الحمل ونفقتهن
بت الطلاق اولم يبت - (تفسير روح المعاني ج ۱۰ ص ۱۳۹)

“ There is no difference of opinion on the provision of residence and maintenance of the pregnant divorced woman being incumbent upon the husband, irrespective of whether the divorce is revocable or irrevocable.” (Tafseer Roohul ma’ni – V. I. P. 139)

The wording of the verse : “until they deliver their burden” has put a definite limit to the period of maintenance. And when the maintenance of the pregnant divorced woman is not incumbent upon the husband beyond the period of iddat, then how can he be responsible for the maintenance of the non-pregnant divorced woman beyond the period of iddat ?

When the supporters of the maintenance for life time fail to show it being obligatory by Qur’an, they ask : Where is it forbidden in Qur’an? And when it is not forbidden in the Qur’an, what is wrong in making it obligatory ? We would like to ask such people. Whether a thing can be taken to be forbidden only when it is specifically so started in the Qur’an or whether a thing can also be taken to be forbidden when the meaning of a Quranic verse carries such a sense ? if it is so as stated in the first proposition, then one may ask. Where in her Qur’an marrying more than four wives is forbidden, for the wording of the Qur’an says marry

two, three and four; here marrying the fifth or sixth wife is not forbidden in actual words. Then, will you agree that there is no limit to marrying more than four wives at a time, and that a Muslim is allowed to marry and many wives as he like at one and the same time? And if it is not so, then as the meaning of this verse limits the number of wives to four, similarly the meaning of this verse of Surah At-Talaq : “ And if they are with child, then spend for them until the end of their confinement, limits the period of maintenance to the period of iddat. What is your logic then in not accepting this limitation of maintenance?

If the person want to continue providing maintenance to his divorced wife even after the period of iddat, nobody has any objection to that. The objection is for establishing a right which Qur'an had not established, and you are thrusting this right forcibly on the heads of others against all norms of justice and logic. The right of the humans (slaves) have been fixed and established by the Almighty Allah, and no human being has a right to add to or subtract from it.

MAINTENANCE OF THE DIVORCED WIFE AND THE SUNNAH OF THE PROPHET

In the matter of maintenance for the irrevocably divorced wife the case of Fatimah Binte Qais has been narrated in the hadith, She was given the third remaining divorce by her husband when he had gone on a campaign to Yamen he sent a word about his third divorce and also sent some grains with a person for his divorced wife, Fatimah She resented this and referred the case of her residence and maintenance to the Prophet Shu'bi states :

قال دخلت على فاطمة بنت قيس فسألتها عن قضاء رسول الله صلى الله عليه وسلم عليها فقالت طلقها زوجها البتة فقالت فخاصمته الى رسول الله صلى الله عليه وسلم في السكنى والنفقة قالت فلم يجعل لي سكنى ولا نفقة وامرني ان اعتد في بيت ام مكتوم - (مسلم كتاب الطلاق)

“ I went to Fatimah Binte Qais and asked her what was decided in her the case by the Messenger (Sallal Lahu Alaihi Wa Sallam). She said that her husband had given her irrevocable divorce and she placed her dispute about residence and maintenance before the Messenger of Allah, Sallal Lahu Alaihi Wa Sallam. He neither arranged for the provision of my residence nor maintenance, however he directed me to spend my period of iddat in the house of Ibne - Umm-i-Maktoom.” (Muslim- kitabut Talaq)

Since the husband of Fatimah Binte Qais was not at home, but

was on a journey, and as stated in other narratives, she also did not want to stay in her husband's house for some reasons, the Prophet directed her to shift to a safe place. As for the maintenance, the husband had sent some grains with his representative. But Fatimah considered it insufficient and had asked for more, and the Prophet (Sallalahu Alaihi Wa Sallam) did not arrange for more maintenance being given to her, the reason for which might have been the absence of the husband on a journey, or the grains which he had sent might have been considered sufficient. However he found a practical solution of her problem, and that was to shift her to the house of Ibne- Umm-i-Maktoom, who was blind, and immediately on the expiry of the period of her iddat, he arranged her to be married to Usamah bin Zaid (R.). But Fatimah Binte Qais narrates this incident in such a way that it projects wife.

This narrative was in indirect speech and was not in accord with the command of the Qur'an. For this reason Umar (R.) did not accept this narrative. Ha said :-

لا نترك كتاب الله وسنة نبيتنا صلى الله عليه وسلم لقول امرأة لا
ندري لعلها حفظت او نسيت - لها السكنى والنفقة قال الله عز وجل
لا تخرجن جوهرن من بيوتهن ولا يخرجن الا ان يأتين بفاحشة مبينة -
(الطلاق - آيتا - مسلم كتاب الطلاق)

"We will not give up Allah's Book and the Sunnah of our Prophet, Sallalahu Alaihi Wa Sallam, on statement of a woman. We do not know whether she preserved (the hadith) or forgot it. For the irrevocably divorced wife, there is residence and maintenance. The Almighty Allah has said : Do not expel them from their homes or let them go away unless they commit open immorality. (At-Talaq-I-Muslim Kitabut-Talaq)

Ayesha (R) has also taken exception to the narrative of Fatimah Binte Qais. In Bukhari it is stated that Ayesha (R.) said :-

اما انه ليس لها خير في ذكر هذا الحديث -

"There is no good for her in narrating this hadith."

She also said :-

ان فاطمه كانت في مكان وحش فخيف على ناحيتها فلذلك
ارخص لها النبي صلى الله عليه وسلم - (بخارى كتاب الطلاق)

"Fatimah was at a dreadful place, so it was considered dangerous, and for this reason the Prophet. Sallalahu Alaihi Wa Sallam, permitted

her to be shifted.”-(Bukhari, Kitabut- Talaq),

Commenting on this hadith. Hafiz Ibn Hajar writes that the right to residence was not set aside per se, put it was not enforced because of reason given above. But Fatimah Binte Qais said that the right to residence and maintenance was not permissible in the case of wives who are divorced irrevocably. Therefore, Ayesha (R.) repudiated her statement (Please see Fathul Bari, Vol. IX. Page 396).

However, from this hadith this point is proved beyond any doubt that for the divorced wife there is no maintenance beyond the period of iddat. The difference of opinion is about the right to residence and maintenance for the irrevocably divorced wife till the termination of the period of iddat, and not about the right to residence and maintenance beyond the period of iddat. Furthermore, from the statement of Umar (R.) that they would not give up the Sunnah of the Prophet Sallal Lahu Alaihi Wa Sallam, it becomes clear that provision for residence and maintenance was being made for the divorced wife, even if she were irrevocably divorced, from the lime of the Prophet (P.b.u.h.). In other words this is ‘Sunnah Taqriri’ and that is the meaning of the Quranic verse No. 1 of Surah At-Talaq. This Sunnah taqriri limits the period of maintenance for the divorced woman, therefore, there is no proof in the hadith for placing the responsibility on man to provide maintenance to his divorce wife after the period of iddat. On the contrary the Prophet’s Sunnah negatives it.

MAINTENANCE OF THE DIVORCED WIFE AND ISLAMIC FIQH.

The Islamic jurists (fuqaha) have laid down the Islamic commands concerning the maintenance of the divorced wife in detail. Here we would present some excerpts from a few famous and readily available books of fiqh. In the most reliable book of the Hanafi fiqh, Al-Mabsut, Allama Sarkhasi writes:

ولكل مطلقة بثلاث او واحدة السكنى والنفقة
مادامت في العدة. (المبسوط ج ٥ ص ٢٠١)

“ For every divorced woman, whether she has been given three divorce or one divorces, as long as she is in iddat, there is residence and maintenance for her.” -(Al-Mabsoot . Vol. V. P. 201)

In the Hidayah it is stated:

و اذا طلق رجل امراته فلها النفقة والسكنى في
عدتها رجعتا كان او باننا. (الهداية ج ٢ ص ٣٧)

“When a man divorces a woman, she has a right to get residence and maintenance, whether the divorce is revocable.” (Hidaya Vol. II P. 37)

Ibn Rushd writes in his Bidayotul Mujtahid :-

فانهم اتفقوا على ان للمعتدة الرجعية النفقة والسكنى وكذلك الحامل
 ----- واختلفوا فى سكنى المبتوتة ونفقتها اذا لم تكن حاملا على ثلاثة
 اقوال احدها ان لها السكنى والنفقة وهو قول الكوفيين والقول الثانى انه
 لا سكنى لها ولا نفقة وهو قول احمد و داؤد و ابى ثور و اسحاق
 و جماعة والثالث ان لها السكنى ولا نفقة لها وهو قول مالك والشافعى
 و جماعة وسبب اختلافهم اختلاف الرواية فى حديث فاطمة بنت قيس
 و معارضة ظاهر الكتاب له - (بداية المجتهد ج ٢ ص ١٣)

The jurist are agreed on the point that for the woman in iddat, during which the divorce can be revoked, there is maintenance as well as residence, and likewise for the woman with child However for the irrevocably divorced wife, if she is not with child, there is a difference of opinion, and in this case there are three opinions : one is that there is residence as well as maintenance for her; this is the opinion of the people Kufah. The second opinion is that there is neither residence nor maintenance for her; this is the opinion of Ahmed, Dawood, Abu Thawr, Ishaq and a group of people. And the third opinion is that for her there is residence but no maintenance; this is the statement of Malik, Shafii, and the a group of jurists. This difference of opinion is on account of the disagreement about the narrative of a hadith in the case of Fatimah Binte Qais, and of its being at variance with the apparent sense of the Quranic command.” (Bidayatul – Mujtahid Vol. II P. 94)

This difference of opinion among the jurists about the maintenance during iddat is within a specific area only, and this difference is not worth considering, because as explained above we have proved that according to the Quranic commands and the Sunnah the divorced wife has a right to get residence and maintenance during iddat. But for the divorced wife there being a right to residence and maintenance after iddat there is not a single statement of any jurist or mujtahid. And the principle behind the grant of maintenance which had been before the jurists is this :

كل من احتبس لحق غيره و منفعتة فنفقته على من

احتبس لاجله - (فتاوى السيد سابق ج ٢ ص ١٤٠)

"Whosoever is detained for the right or the benefit of another person, the responsibility of his or her maintenance is on the person for whom he or she is detained."

– (Fiqhus Sunnah-Assayed Sabiq Vol. II P. 170)

Ans since the divorced woman becomes free from the responsibility of wifhood and restrictions of nikah, the placing of the responsibility of her maintenance after iddat on her former husband is to deviate from a point of principle upon which all the jurists are agreed. Besides it is contrary to all norms of justice and fairplay. In the Muslim Personal Law very law has been accepted: "On the expiration of the iddat after talaq, the wife right to maintenance ceases."

–(Tayabji on Muslim Law P. 268)

MATAA FOR THE DIVORCED WIFE

In the holy Qur'an the command is given to make some provision for the divorced woman according to the known fair standard:

وَالْمُطَلَّاتُ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ۔ (سورة بقره آیت۔ ۲۴۱)

"For the divorced women some provision (Mataa) be made according to known fair standard (Maroof). This is an obligation (Haq) on the God-fearing. (Muttaqeen) –(Baqarah-241)

Since this verse has become a subject of discussion in the present dispute about the problem of maintenance to the divorced woman, it needs to be discussed in detail. First of all the exact sense of the verse should be understood, and after this the argument proffered by the supporters of maintenance for lifetime should be examined.

In the verse command is given to make provision (Matta') for the divorced woman without any reservation or specification. Therefore, this command is general for all divorced women, irrespective of the fact whether the marriage was consummated or not or whether the amount of mehr (dower) was fixed or not, although according to a group of jurists and commentators this command applies specifically to those women with whom the marriage has not been consummated, and whose mehr has not been fixed. But this opinion cannot be accepted. First the prefix 'al' in the word 'al-mutalliqat' signifies its generality as in Verse No.228 of Surah Baqarah (Divorced women shall wait, keeping themselves apart, for three menstrual periods.). Secondly in Surah Baqarah, after laying down commands in respect of different kinds of divorced women, the command of making provision for them is given through this verse. Therefore, it assumes the position of the final command, which applies to all divorced women. Thirdly the

Prophet, Sallal Lahu Alaihi Wa Sallam, was ordained that if he gives divorce to his wives, he should make provision for them, although he had already their mehr at the time of the nikah. In Surah Ahzab, this command is given through the speech of the Prophet; addressed to his wives:

فَتَعَالَيْنِ أُمَتِّعْكُنَّ وَأَسَرِّحْكُنَّ سَرَاحًا جَمِيلًا۔ (سورة احزاب آیت-۲۸)

“If you seek the life of this world and its adornment, then come I will make provision for you and release you with a handsome release.” (Al-Ahzab-28)

For these reasons it would not be correct to restrict the application of the command for maintenance to those divorced women with whom the actual consummation has not taken place or whose mehr has not been fixed. The eminent commentator, Ibne Jarir Tibri, while quoting the statement of Saeed Bin Jubair has stated that this is the correct opinion.

والصواب من القول في ذلك ما قلناه سعيد ابن جبیر من ان الله تعالى ذكره انزلها دليلا لعباده على ان لكل مطلقة متعة لان الله تعالى ذكره ذكر في سائر آي القرآن التي فيها ذكر متعة النساء خصوصا من النساء فعم الله تعالى ذكره بقوله وَلِلْمُطَلَّقاتِ مَتَاعٌ بِأَلْمَعْرُوفِ ذكر جميعهن۔ (جامع البيان في تفسير القرآن ج ۲ ص ۶۴)

“ In this case the correct opinion is that of Saeed Bin Jubair that by revealing this verse Allah has directed His slaves to know that for every divorced woman there is maintenance, because Allah has commanded the grant of maintenance to specific kinds of women in other verses and here command is given to make provision for all the divorced women in general.” (Jamiul Bayan Fi-Tafseeril-Quran Vol. II P. 364)

He has also this opinion of Hasan and Abul Aliya :

لكل مطلقة متاع دخل بها او لم يدخل بها وان كان قد
فروض لها۔ (جامع البيان ج ۲ ص ۳۹)

“For every divorced woman there is maintenance, whether marriage is consummated or not, and if mehr is also fixed in her case.”-(Jamiul Bayan Vol. II P. 329)

Moreover, he has also quoted the opinion of those who disagreed

with this, and then has expressed his own opinion :

والذى هو اولى بالصواب من القول فى ذلك عندى قول من قال لكل
مطلقة متعة لان الله تعالى ذكره قال : وَلِلْمُطَلَّقاتِ مَتاعٌ بِالمَعْرُوفِ حَقًّا
على المتقين فجعل الله تعالى ذكره ذلك لكل مطلقة ولم يخص
منهم بعضاً دون بعض - (جامع البيان ج ٢ ص ٣٣١)

“ According to me most acceptable opinion is of that person who agrees to the grant of maintenance to every kind of divorced woman, for Allah has stated that there is maintenance according to the known fair standard for divorced women. This is an obligation on the righteous. Allah has placed this obligation on the righteous persons in respect of every divorced wife, and has not made any specification.” (Jamiul Bayan Vol. II Page 331)

Another word used In the verse is ‘Mataa’ which is qualified with the word ‘Ma’roof’. The literal meaning of the word ‘Mataa’ is a thing of beneficial thing. The Lisanul Arab states :-

المتاع فى اللغة كل ما انتفع به فهو متاع - (لسان العرب ج ٨ ص ٣٢٩)

“In the language, a thing from which benefit can be derived is called “Mataa.”

- (Lisanul Arab Vol. VIII P. 329)

In the Qur’an the things of comfort of this life have been termed as “Mataa”:

فما أوتيتهم من شئٍ فَمَتاعُ الحَيوةِ الدُّنْيا - (سورة اشورى آيت - ٣٦)

That which you have been given is but a passing comfort of this life (Mataa).” - (Ash-Shura.36)

In the surah ‘Abas’ after mentioning different gifts of food, has been stated :

متاعاً لكم ولا نعامكم - (عبس - ٣٢)

“For your benefit (Mataa) and that of your animals.”

(Surah Abasa -32)

As for its use in connection with the family matters, it has been used in the Qur’an to Connote maintenance also, and also for the gift which

is called Provision for the divorce.

In Surah Baqrah, verse No. 240 the word Mataa is used to connote maintenance only :

وَالَّذِينَ يَتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا
إِلَى الْحَوْلِ غَيْرِ إِخْرَاجٍ - (سورة بقره - آيت ١٣٠)

“ Those of you who die and leave wives behind should bequeath to them maintenance for a year without turning them out.” (Baqrah -240)

And in Surah Baqrah verse No. 236 this word has been used to mean Provision for the divorcee :

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَ
مَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرَهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا
عَلَى الْمُحْسِنِينَ - (سورة بقره - آيت ٢٣٦)

“ There is no sin on you if you divorce women before you have touched them or the fixation of their dower; bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means reasonably, this is an obligation on those who do good.”

The question now arises as to what is the meaning of the word Mataa' used in Verse No. 241 of Surah Baqrah

وَالْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ - (سورة بقره - آيت ٢٤١)

some provision be made, according to the known fair standard, this is an obligation on the God-fearing)? Allama Jassas (d. 370 A.H) has discussed the problem of maintenance for the divorcee in his well known and reliable tafseer Ahkamul Qur'an. He writes :

فالمتعة والمتاع اسم يقع على جميع ما ينتفع به ونحن فمتى
او جبنا للمطلقات شيئاً ينتف به من مهر او نفقة فقد قضينا
عهدة الآية - (احكام القرآن ج ١ ص ٥١٢)

Mut'ah and Mataa' is a noun, which connotes everything from which benefit can be derived. Therefore, when we have declared something which is beneficial for the divorced women as incumbent, whether it is dower or maintenance we have really fulfilled the intention of the verse.”-(Ahkamul Quran Vol. I P. 512)

Further on, he writes :

لَاِنَّ النِّفْقَةَ تَسْمٰى مَتَاعًا عَلٰى مَا بَيْنَا كَمَا قَالَ تَعَالٰى : وَالَّذِيْنَ يَتَّوَفُّوْنَ مِنْكُمْ وَيَذَرُوْنَ اَزْوَاجًا وَصِيَّةً لِّاَزْوَاجِهِمْ مَّتَاعًا اِلَى الْحَوْلِ غَيْرِ اَخْرَاجٍ مَّسْمٰى
النِّفْقَةِ وَالسَّكْنٰى الْوَاجِبَتَيْنِ لِهَامَتَاغًا۔ (احكام القرآن ج ١ ص ٥١٢)

Since maintenance is termed as Mataa', as we have stated above, Allah has stated; "Those of you who die and leave wives behind should bequeath to maintenance for a year without turning them out. 'In this verse maintenance and residence, provision of which is incumbent, have been termed as Mataa' (maintenance)." (Ahkamul Qur'an Vol. I Page 512)

And Imam Razi writes :

واعلم ان المراد من المتاع ههنا فيه قولان احدهما انه هو المتعة فظاهر هذه
الاية يقتضى وجوب هذه المتعة لكل المطلقات ----- والقول
الثانى ان المراد بهذه المتعة النفقة والنفقة قد تسمى متاعا و اذا حملنا هذا
المتاع على النفقة اندفع التكرار فكان ذلك اولى۔ (التفسير الكبير ج ٦ ص ١٦١)

"It should be noted what is meant by Mataa' here. In this connection there are two opinions: One is that it means provision for the divorcee, and its manifest aspect also demands that this provision of maintenance is the right of every divorced woman..... And the second opinion is that by this provision is meant maintenance and sometimes maintenance is called mataa' and when we term this mataa as maintenance, then there is no dispute. Therefore this meaning seems to be more appropriate."-(At- Tafseerul Kabeer, Vol. VI. Page. 161)

Here it should be clearly noted that in this verse the meaning of Mataa' to be taken as maintenance is only as maintenance for iddat, because Surah At-Talaq was revealed after the Surah Baqarah, and it clarifies and explains the commands concerning divorce given in Surah Baqarah, therefore, the details of the command concerning maintenance given in outline in this verse have been given in these verses of Surah At-Talaq, in which the direction is given for provision of residence and maintenance during iddat only.

As it is there should also be agreement between the two statements of the Qur'an. How is it possible that at one place Qur'an may give the command of providing maintenance for the period of iddat, and at another place it may ordain to continue it beyond the period of iddat? Such contradictory statements can be made only by those

who do not want to understand Qur'an, but want to put their own words in place of those of the Qur'an. So far as the commentaries on Qur'an are concerned, as shown in the excerpts given in the above lines, mataa' has also been taken to mean maintenance, but no commentator has taken it to mean maintenance till the performance of the second marriage or maintenance for the whole life, but limited to the period of iddat as the known fair standard or the understood thing, because in the Shariah the known fair standard of maintenance is that one which is limited to the period of iddat. And it is such a universally accepted fact that no commentator ever thought of extending it beyond iddat, nor any one considered it necessary to repudiate it. If Abdullah Yusuf Ali has translated Mataa' as maintenance he had taken it as understood for the period of iddat only. Therefore, there is no ground for argument in this for the supporters of the maintenance for lifetime.

The other sense of the verse under discussion is provision for the divorcee, and the generality commentators have taken it to be so, that is that provision or gift which the husband may give to the woman at the time of separation so that she may be appeased and the husband may show his generosity and good morals. But as we have stated earlier there is a difference of opinion among the commentators whether this right to maintenance is available to every divorced wife or only to that divorced wife with whom the marriage is not actually consummated and whose mehr is not yet fixed. Here we only want to point out what do the commentators, who take the meaning of Mataa' as provision for the divorcee, understand by that word. Ibn Jarir Tabri writes.

ولمن طلق من النساء على مطلقهما من الازواج متاع يعني بذلك ما تستمتع
به من ثياب وكسوه ونفقة او خادم وغير ذلك مما يستمتع به -
(جامع البيان ج ٢ ص ٢٦٣)

"On the husband of the woman who has been divorced is the responsibility of providing provision, that is those things from which she can derive benefit, e.g. clothes, expenses for clothing or servant (slave), etc. from which benefit can be derived." — (Jamiul Bayan Vol. II. P. 363)

Ibn katheer has quoted the opinion of Ibn Abbas :

متعة الطلاق اعلاه الخادم و دون ذلك الورق و دون
ذلك الكسوة (تفسير ابن كثير ج ١ ص ٢٨٤)

"Among the higher things in the provision for the divorcee is provision of servant (slave), lesser than this is silver coins, and still lesser is clothes." -(Tafseer Ibn Katheer Vol. I. P. 287)

He has quoted a narrative about Hasan Bin Ali (R) that he had given ten thousand dirham to his divorced wife.

The jurists, belonging to the Hanafi Fiqh, consider that it is incumbent to provide maintenance to even that divorced wife with whom the marriage is not actually consummated, and according to them this provision is three pieces of clothing.

والمتمتع ثلاثه اثواب ----- ثم هي لا تزداد على نصف مهر مثلها ولا
تنقص من خمسة دراهم - (هداية ج ١ ص ١٦١)

" The provision for the divorcee is three pieces of clothing Then more than half Mehr-Mithl is not obligatory, and it should not be more than five dirham." - (Al- Hidayah, Vol. I Page 161).

The eminent Egyptian scholar, Mahmood Shaltut writes in his famous book: "Al- Islam Aqeedatan wa Shariatan':

واوجب لها اذا طلقت نفقة العدة على نحو ما وجبت لها في حياتها
الزوجية و اوجب لها المتمتع وهي ما يبذله الرجل بعد طلاقها غير نفقة
العدة مما تحفظ به وكيانها وللمطلقات متاع بالمعروف حقا على
المتقين - (الاسلام عقيدة وشريعة ص ٢٣٨)

"Islam has made the maintenance for iddat for women in the event of divorce as obligatory as it has made it obligatory in the case of married life. Moreover it has made obligatory for her to get the provision for the divorcee, and provision for the divorcee is that which a man spends after the divorce in addition to maintenance so that his self and his existence may be preserved. (As Quran states:) For divorced women some provision be made according to the known fair standard. This is an obligation on the righteous." -(P.238)

Allama Rashid Riza writes:

وان يكون لها حق السكنى والنفقة مدة العدة للطلاق الرجعي وان يمتعها
عند الفراق بما يليق بشروطه من نقد وغيره - (حقوق النساء في الاسلام ص ١٤١)

"There is a right to residence and maintenance for the divorced wife for the period of iddat in the case of revocable divorce, and also this that the man may benefit her by giving her money at the time of separation." (Huqooqan Nisa Fil-Islam P.171)

From the opinions of the commentators, jurists and scholars quoted by us in the above lines by way of example, it is quite clear that in the verse under discussion the word *Mataa'* (maintenance) is interpreted by them as maintenance for *iddat* or as provision for the divorcee that is a farewell gift. But in the present day a new interpretation is also being offered, and that is the divorced woman should be provided maintenance until she marries again or for her lifetime. This interpretation is being offered by the 'modern commentators' and the judges of the Supreme Court who are the least concerned with understanding Qur'an have adopted this new interpretation in coming to their judgment that has stunned the Islamic world. Qur'an has qualified *Mataa'* (maintenance) with the words '*bil ma'roof* (according to the known fair standard), and that is sufficient to pinpoint the glaring error of this interpretation.

Maroof means in a fair way, and in the terminology of Qur'an it means that way or method which the Shariah itself has fixed or the one which is based on justice and which may be accepted as proper by healthy intelligence. From *Maroof* are excluded those customs and rites and methods which clash with the Shariah or which are based on aggression or injustice, and are rejected as wrong by the healthy intelligence. In taking *Mataa'* to mean maintenance, it is essential that one should take that law of maintenance as its meaning which Qur'an itself has laid down in Surah At-Talaq, for after the revelation of Surah At-Talaq this very law had assumed the position of *Maroof* (known fair standard). To make maintenance for the divorced wife obligatory, whatever is said in contravention of this law would be totally rejectable (*munkar*) and not acceptable (*maroof*). But those who are ignorant of the Quranic terminology, they only try to take the literal meaning of the Quranic words and lend it a sense which is entirely alien and in this way the rejectable is made acceptable.

In the case of taking the meaning of *Mataa'* as a farewell gift, the words "*Bil Maroof*" (known fair standard) would mean that the man should give this gift according to his means, and at the same time it should also express his generous conduct, as stated in Surah Baqrah Verse No. 236. If while giving the gift, the man acts in a miserly fashion, then it would not serve the purpose of appeasing the hurt feeling of the women. The quantity or amount of maintenance has not been fixed by Qur'an but it has directed that the quantity should be proper and reasonable, therefore, when the jurists suggest that it should be three pieces of clothing or a servant or slave for service, it was appropriate to their times. Whatever things or amount that may be proper and reasonable according to the prevailing conditions of the present day, and which should be according to the means of

the husband, offering that amount would meet or fulfill the intention or purpose of the verse.

The last part of this verse is: This is an obligation on the God-fearing people. This command is very emphatic, and it clearly shows that the command is obligatory, therefore, the opinion of those jurists who have taken it to mean good or desirable cannot be accepted.

Ibn Jarir Tabri (d. 310) whose commentary on Qur'an is the oldest and is considered the most reliable, is of the opinion that every kind of divorced wife has a right to get provision (Mataa'). He has expressed his opinion with full force in his commentary in these words:

وارى ان المتعة للمرأة حق واجب اذا طلقت على زوجها المطلقة على ما بينا
أنفا يوخذ بها الزوج كما يوخذ بصدقتها لا يرئ منها الا اداءه اليها او الى من
يقوم مقامها في قبضها منه او براءة تكون منها له وارى ان سبيلها سبيل صدقتها
و سائر ديونها قبله يحس لها ان طلقها فيها اذا لم يكن له شيء ظاهر يباع عليه اذا
متنع من اعطائها ذلك - (جامع البيان في تفسير القرآن ج ٢ ص ٣٣١)

"In my opinion when a woman is divorced, it is obligatory for the husband to give provision for the divorcee, as we have stated above. The husband can be arrested in case of default in this case as he can be arrested in case of default of paying mehr, and he can be freed only after making its payment, that is by handing it over to the woman or to her representative or if the woman herself abandons her right. And I think for this also the same method should be adopted as is adopted in the case of recovering her mehr or other arrears of her dues. If he had divorced her on account of these dues, and apparently he does not possess anything which can be sold, then on account of his inability to pay these dues he may be put behind the bars."-(Jami'ul Bayan fi Tafseeril Quran, Vol. II P. 331)

After this, he goes on presenting arguments for proving the right to provision (Mataa') as obligatory, and repudiates the idea that fulfilling this right is not obligatory on every Muslim, but on those Muslims who want to be righteous. He says that Allah has ordained that every Muslim should be righteous, and whatever is obligatory for the righteous and God-fearing people is also obligatory for others too. And Allama Rashid Riza writes :

واختلف العلماء في متعة النساء فقال بعضهم واجبة وقال بعضهم مندوبة
والتحقيق انها واجبة غير محدودة و انها من تمام ما وصف الله به الطلاق
المشروع انه تسريح باحسان ولذلك جعلها على قدر الثروة فالغنى لا يكون
محسنا ما لم يوسع في هذه المتعة بالالتق بشروطه - (حقوق النساء في الإسلام ص ١٤١)

" There is a difference of opinion among the ulema in the matter of making provision for the divorced wife. Some say it is obligatory and some say it is desirable. And the correct opinion is that it is obligatory without any reservation and this is the completion of the correct divorce as prescribed by the Shariah, which Allah has termed as leaving in a good way (Tasreeh bi Ihsan); and for this reason he has directed to give to the divorced woman according to one's means. A man of position cannot be righteous until he shows his generosity in making this provision according to his means."

-(Huqooqun Nisa fil Islam P. 171)

We agree fully with this opinion of Tabari and Rashid Riza, because the words of Qur'an clearly lay down the fact of providing provision for every divorced wife as obligatory. Therefore, it should be declared as the right of divorce as mehr is declared as the right of marriage. As for its actual quantity or amount, it cannot be fixed as the amount of mehr cannot be fixed. The husband is bound to provide provision (Mataa') according to the known fair standard (maroofo) and in the case of dispute, the judge of the Shairah court (Qazi) can also get for her this right in the same way as he can get her the right for mehr. If no judgment reports of the Islamic courts about provision from the past are available it should not be argued that the rights fixed by the Qur'an cannot be placed before a Qazi and that he cannot give his judgment in the matter, when the corruption in the society has taken such a turn that men are using their right of giving divorce improperly but are totally negligent about fulfilling their obligation in the matter of providing provision (mataa')

COMPENSATION FOR THE DIVORCED WOMAN.

A problem that has arisen particularly in some Muslim countries is that of compensation, whether a divorced woman can be given compensation ?

This problem has been discussed by Dr. Ahmed Al-ghandoor, in detail in his book, *At-Talaq fi Shariatil Islamiyah wal Qanoon*. He writes:

"It is the same Muta'h (Provision for the divorcee) which is being termed as compensation, and these are the opinions of the companions of the Prophet, tabi'een and mujtahi. In view of these it is better if for the husband giving the divorce this method of essential action is revived so that the increasing number of divorces may be limited, the woman is mollified, and the family is protected against the machinations of the irresponsible people and in addition the solid traditions of Islam may be put into actual practice."

-(At-Talaq Page 76).

Further on he writes:

"I think that in the matter of divorce the main thing is that it is forbidden. except when it is given because of necessity. And in the event of misusing the right of divorce. Mut'a (provision) is the basis for legislating the law of compensation. And the Qazi can penalize the person who misuses this right by making him pay compensation to the woman." -(Ibid Page 30)

We cannot agree with the opinion of Dr. Ahmed Alghandoor, because it makes the giving of divorce a crime, and giving divorce in every case is not a crime that would call for imposing a penalty on him. If this penalty is imposed on the misuse of the right to divorce, the question arises : who would decide whether the divorce is given of necessity or otherwise. If this question is to be decided by the court of law, then the good purpose for which the Shariah has given man this right to divorce is defeated. Secondly the Quranic verse concerning Mataa (provision) not be made a basis for imposing penalty-cum-compensation for the verse concerning provision directs that provision be made for every divorced woman, irrespective of the fact whether the husband has rightly or wrongly used his right to divorce, and Dr. Ahmed's proposition is for getting compensation for the woman for the misuse of the right to divorce by the husband. There is a lot of difference between the two from the viewpoint of the spirit. Qur'an wants the woman to get provision or gift for minimizing her hurt feeling while the proposed suggestion wants the husband to be penalised.

Another form of compensation is that which the Syrian government has enacted as law. Accordingly, Section 117 of the relevant Syrian law is as under.

إذا طلق الرجل زوجته وتبين للقاضي أن الزوج متعسف في طلاقها دون ما سبب معقول وأن الزوجة سيصيبها بذلك بؤس و فاقة جاز للقاضي أن يحكم على مطلقها بحسب حاجة ودرجة تعسفه بتعويض لا يتجاوز مبلغ نفقة سنة لا مثالها فوق نفقة العدة وللقاضي أن يحمل دفع هذا التعويض جملة أو شهرياً بحسب مقتضى الحال - (تنظيم الأسرة - البوزهره ص ٣٤)

" When a man divorces a woman and the Qazi is convinced that the husband has wronged the wife by giving her divorce without a reasonable ground, and the divorced wife would have to face starvation, then it would be right for the Qazi to order the husband to pay compensation to her in accordance with his position and the seriousness of his injustice, the amount of which should not be more than the amount of one year's maintenance of women like her. This compensation will

be in addition to the maintenance for the period of iddat, and the Qazi would have the authority to order the payment of this compensation all at one time or in monthly installment, as the situation may demand." (Tanzeemul Usrah-Abu Zohra P. 47)

The reputed author of the Islamic world. Imam Abu Zohra, examines this law and has to offer these remarks :

"In our opinion restricting the grant of provision for the divorcee to injustice or aggression being committed is not beneficial, because on account of this it would be necessary to investigate the causes for the divorce, and it would prove more disadvantageous to the woman than advantageous. The good of the woman demands that it should be kept general (that is the condition of aggression should not be there) and this point is quite in keeping with the principle of the Shariah." -(Ibid-P. 48)

We agree with the opinion of Abu Zohra that the law of provision (Mataa') be general and applicable to all divorced women, as the verse concerning Mataa' is for all the divorced women. It has neither the condition regarding man's aggression against woman in divorcing her, nor has it the restriction of the woman being subjected to starvation, but it categorically directs that every divorced women should be provided with provision. If the condition regarding aggression or injustice is attached to the grant of provision, then every woman would have to go to the court to prove that her divorce was unjust, and consequently the husband would cast such aspersions at the divorced as would damage her reputation. Therefore this Syrian law is not in the Islamic spirit.

But it is really surprising that the well known personality of the Islamic world, Dr. Mustafa As-Siba'ee not only supports this law but also is taking leading part in suggesting the grant of maintenance until the second marriage:

وهذا تشريع جميل بلا ريب من شأنه ان يخفف عن المطلقة الم الطلاق ولكننا نأخذ على القانون انه اشترط ان لا يزيد التعويض عن نفقه سنة لا مثالها فوق نفقة العدة فنحن نرى ان لا يقيد ذلك بنفقة سنة فمأرام الزوج ظالمات متعسفا وما دامت الزوجة مظلومة فلم لا يلزم بالاتفاق عليها حتى تتزوج ان كانت في سن قابل للزوج او حتى تلقى وجه ربها ان كانت عجوزاً اشارفت على ودا ع الحياة؟ والشريعة الاسلاميه في عدالتها تبي ان تترك مثل هذه المرأة العجوز تعاني آلام البؤس والفاقة حتى تلقى وجه ربها بعد ان امضت زهرة شبابها مع زوج لم يكن عنده من الوفاء ما يحفظ لها كرامتها في احياء ايامها۔ (المرأة بين النفقة والقانون ص ١٣٦)

"Undoubtedly this is good law which aims at reducing the suffering of the divorced woman on account of the divorce. But our objection to this law is that it has a condition that in addition to the maintenance for the period of iddat the compensation that would be given would not be more than the amount of maintenance that is given to women like her for a period of one year. In our opinion there should be no limitation of one year for this grant of compensation. In the case of the husband being an oppressor and the wife being the oppressed, why he should not be made to spend for her until she is married again; and if she is not able to marry again, or if she is so old that she is counting her last days, why should it not be until she passes away to meet her Lord? The justness of the Islamic Shariah denies that such old woman should be abandoned to her fate so that she may pass her last days in utter penury after spending her youth with her husband who has not even this much sense of loyalty that he may provide for her passing her last days honorably."

(Al-Maratu bainal Fiqh wal Qanoon. P. 146)

This picture of the divorced wife is very pathetic and she deserves our sympathy. But what is the requirement of this sympathy? Does it only demand that she should be provided with maintenance? The more important question than that question of maintenance or food, is the residence. What arrangement would she make for her residence. In the prevailing conditions, the problem of housing is more important and difficult to solve than the problem of food. Then why a law should not be enacted that the husband should make arrangement for providing residential accommodation to his divorced wife. Then the question arises: How can it be proper for a husband to force his wife to live separately after the divorce, therefore, there should be such a law that the divorce given to an old woman should not be considered a valid divorce.

If in order to meet the requirements of sympathy, we start to invent out own laws which are not in conformity with the laws of the Shariah, than not a single brick of the edifice of the Shariah would remain intact. Therefore, it is necessary that we must hold the original commands of Qur'an and Sunnah firmly, and must indulge in ijtihad (inventing) in those areas only where there is no clash with the original Quranic and Sunnah commands. And when the commands connection with the maintenance for the divorced woman in the Quran and Sunnah are absolutely clear that it is for iddat only, then what right have you to add anything to these commands? As for the difficulties of the divorced women, their solution should be sought within the limits of the Shariah and not outside.

In short there is absolutely no basis in the Shariah for imposing the maintenance of the divorced woman after the period of iddat on her

former husband. However, for getting for the divorced woman compensation the Verse concerning 'Mataa' can be taken as a basis, provided 'Marooof.' (fair known standard) is taken care of.

SOLUTION OF THE PROBLEM OF THE DIVORCED WOMAN IN ISLAM

Now we will answer, in a positive way, the question: What is the solution of the problem of the divorced woman in Islam?

First, if the woman is eligible for re-marriage, her re-marriage after iddat is the best solution of this problem. But it is also a fact that in the present society people agree to marry a divorced woman with difficulty. Even men whose wives have died seek to marry only virgins. At the time when the Qur'an was being revealed, re-marriages of the divorced women used to take place without any difficulty, and even today re-marriages take place in the Arab countries more easily than in our land. There is therefore a need to develop proper feelings of sympathy with the divorced women and such organizations be formed which may undertake this commendable work of arranging re-marriages of divorced women.

Secondly, if she has some means of income, she would be able to maintain herself after iddat. Islam has provided for women such financial resources as would become the means of income for her, e.g. mehr is the lawful right of the woman and she can invest this amount by obtaining it from her husband in some business, which can provide constant income for her. If our society has made mehr merely a customary thing, then it is not a fault of Islam but our own. Therefore the society needs to be reformed and not the law.

Mehr is a generous gift which the husband gives to his wife, but people have made it so ineffective that thousands of rupees are spent on celebration of marriage but the mehr is fixed as fifty or hundred rupees only, In spite of the capability to pay a higher amount of mehr, fixing such lower amount does not serve the purpose envisaged by Islam; it is a consequence of such a state of affairs that men are using their right to divorce unthinkingly, as they do not have to lose much. In our society there is also a section which, fixes a very huge amount as mehr, merely as a custom, because it is not at all paid. This method has also ended the utility of mehr. On the other hand the situation with regard to Arab is that they make cash payments of the mehr fixed at even one lakh Saudi Riyals, about Rs. Three half lakhs in Indian currency. The result is that men are not keen on giving a divorce, as they have to lose large amounts of money. However all women are not alike. Some women like to have divorce from their husbands in order to large

amounts as mehr and again be able to earn more mehr by contracting another marriage. The purpose of stating all this is not to recommend fixing of large amounts as mehr, payment of which may not be possible, but the purpose is to clarify that the mehr should be fixed in a reasonable way in accordance with the prevailing conditions at a particular place and time, so that the husband is made to think twice before he pronounces divorce, and that would control the problem of divorce to a great extent.

Here we would like to make it clear that if it is fixed at a reasonable amount and it is paid in cash the woman can invest it in some business to make it a means of her own income.

Thirdly, the gift to be given at the time of divorce, (provision for the divorcee/compensation) which is the intent of the verse concerning maintenance as has been stated above, is a means of control over divorce as well a source of benefit (provision) for the divorcee. It is necessary that the husband should give to the divorced woman an appropriate farewell gift.

Fourthly, woman gets inheritance from her parents and near relatives. This inheritance can provide a roof over her head as well as a means of permanent income. If men do not give their women folk their rightful share or if women squander their share of inheritance in unproductive expenditure, then these things need to be reformed.

Any way it is not correct to think that in the Islamic society woman is empty handed and she has no means of income.

Fifthly, if the divorced woman has a suckling child, then during the period of suckling the responsibility of providing maintenance to her is he child's father that is the husband of the divorced wife :

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَسِّمَ الرِّضَاعَةَ
وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ - (سورة بقره آیت ۲۳۳)

"Mothers shall suckle their children for two whole years: (that is) for those who wish to complete the suckling. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child." — (Surah Al-Baqarah 233).

Sixthly, if the divorced woman is poor (unlearning) and has a son, who is able to earn, then the responsibility of maintaining her is on the earning son of the woman, for the emphatic direction of fair treatment to be given to the mother contained in the Qur'an and Hadith demands that the male child should provide maintenance to this unlearning mother. In the Fiqhus Sunnah it is stated :

نفقة الوالدين المعسرین واجبة علی الولد متى كان
واجدا لها - (فتاویٰ السید سابق ج ۲ ص ۵۶۰)

"The maintenance of the poor parents is obligatory on the children, when they are capable of it." (Fiquhus -As -Sayed Sabiq. Vol. III P. 560)
In the Hidayah it is written :

وَعَلَى الرَّجُلِ أَنْ يَنْفِقَ عَلَى أَبِيهِ وَاجِدَادِهِ وَجَدَاتِهِ
إِذَا كَانُوا فَقَرَاءً. (هداية ج ٢ ص ٣٩)

On men is the responsibility to spend for their parents and grandparents, if they are poor." (Al-Hidayah. Vol. II Page. 39).

In the present Mohammedan Law this rule has been stated as under :

"As son though in straitened circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm."- (Mulla's Mohmmedan Law. P. 385).

Seventhly, if the divorced woman is poor (needy) and she has no children, or if she has children but they are not able to earn, then the responsibility of maintaining her is on her father :

أما إذا كان الولد أنثى فإن نفقتها على والدها سواء كانت صغيرة أو كبيرة
بشرطين أن تكون فقيرة-----الشرط الثاني أن تكون حرة-
(الفقه على المذاهب الأربعين ج ٢ ص ٥٨٥)

"But if the child is it female, then her maintenance is on the father, whether she is small or grown up, provided she is needy, and second condition is that she should be free." -(Al- Fiqh Alal Mazahibil Arba Vol. IV. P. 585)

وإذا أطلقت وانقضت عدتها عارت نفقتها على الأب. (فتح القدير ج ٣ ص ٣٢٢)

"And if she is divorced, and her iddat is completed, then her maintenance is, for the second time, on her father." —(Fathul Qadeer Vol. III. P. 344).

The point of principle stated by the author of Hidayah is as under:

والنفقة لكل ذي رحم محرم إذا كان صغيرا فقيرا أو كانت امرأة بالغة فقيرة
-----لان الصلة في القرية واجبة دون البعيدة والفاصل أن يكون ذا رحم
محرم وقد قال الله تعالى وعلى الوارث مثل ذلك. (الهداية ج ٢ ص ٣٩٠-٣٩١)

" Maintenance is for every near relative with whom marriage is forbidden if she is not of age needy or has come of age and is needy because kind treatment is obligatory for the near relatives

compared to the distant relatives, and the distinguishing thing between the two is the uterine relationship and that relationship in which marriage is forbidden. And Allah's command is: Similar is the responsibility on the inheritor." -(Al - Hidayah, Vol. II Page 30 - 40)

That is if the woman is adult and is not self-sufficient, then the responsibility for her maintenance is on her nearest relatives, in the order of nearness, e.g. brother, etc.

In connection with maintenance Ibn Hazm has made a very principled statement, when he says :

انه يجبر القادر على النفقة على المحتاج من ابويه واجدادهم وان علوا وعلى
البنين والبنات وبينهم وان سفلوا وعلى الاخوة والاحوات والزوجات -
(فتاوى السراج ص ٥٦٣)

" The person who is able to pay maintenance would be compelled to spend on his parents, grandparents, and those who may be above them, and also on sons, daughters and on their children, and similarly brothers, sisters and wives." -(Al-Fiqhus Sunnah, Vol. III. Page 563)

The main point is that Allah has not placed the responsibility of earning the livelihood on women, but has provided for them financial resources from different directions. If on the basis of these financial resources, a divorced woman is self-sufficient, then in her case the question of maintenance does not arise, but if she is not self-sufficient, then the responsibility of her maintenance falls on her nearest relatives, according to the order of their nearness to her, and on her inheritors. As Islam has fixed the rights of inheritance, it has also fixed certain responsibilities on these inheritors. "An heir shall be responsible in the same way." -(Surah Baqarah-233)

And it is because of these teachings of Islam that even in the Muslim society inspite of every kind of corruption found in it there is some awareness of fulfilling this responsibility of providing maintenance to women, and though the divorced woman sometimes to face difficulties but it does not force her to be on the streets. Baring a few exceptions, generally the situation is this that after being divorced, the woman is accepted by her original family, and the picture of her helplessness that the being drawn is to a large extent an exaggeration. On this occasion strength of faith should be derived from these Divine words:

وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلَّاهُمِنْ سَعْيِهِ - (النساء - آيت - ١٣٠)

" And if they separate from one another. Allah will, from His

abundance, make both of them independent one another." (Surah An-Nisa - 130)

It means that Allah will cause the situation to so change that they would not be dependent on one another, and incidentally it is also learnt that the livelihood of the divorced wife does not depend on the mercy of the former husband.

IS THE LAW OF MAINTENANCE FOR LIFETIME BENEFICIAL FOR THE DIVORCED WIFE

After clarifying the Islamic law in connection with the maintenance divorced wife, we would like to deal briefly with the problems arising out of the law which places on the former husband the responsibility providing maintenance to his divorced wife until she re-marries or for her lifetime, and which the Supreme Court has imposed in the case of Muslim women also. This law appears to be beneficial to woman, as it has on the one hand made the giving of divorce rather difficult, and on the other hand it has found the solution of the problem of the livelihood of the divorced women. But the fact is that it has more disadvantage than advantages.

First, when the lives of the husband and the wife become intolerable on account of the mutual distrust, etc., the operation of divorce opens a new road for a healthy life for the woman, but the law of maintenance for lifetime will prove to be an obstruction in reaching this road. The husband would argue why should he divorce his wife, when even after the divorce he would have to maintain her. He would consider it profitable to leave her suspended instead of divorcing her, and it is obvious that such a situation cannot be advantageous or desirable for the woman. Had she been given divorce, she would have been freed of the mental torture, and some possibility of a second marriage could have been explored, but the law of maintenance for lifetime has blocked these avenues.

Secondly, the husband who is fed up with his wife is likely to indulge in some unlawful or anti-social act when he would find that he is unable to divorce her for the law of maintenance for lifetime. In the non-Muslim society cases of murdering and burning alive the unwanted wives have become a daily occurrence. Do the authorities want the Muslim society to follow the same line?

Thirdly, the wife may herself get fed up with her husband, and may want she should be divorced. For this purpose Islam has provided the procedure of Khula, by which the woman can obtain freedom by giving some compensation (fidyah) to her husband, But because of the recently imposed law of maintenance for lifetime, why should the

husband agree to let the wife go when he knows that even after the divorce he would have to maintain her for the whole life. The result would be that the woman would not be able to gain her freedom from her husband, except by going to a court of law and spend lot of money and time to get the desired divorce.

Fourthly, after the expiry of iddat, the former husband of the women becomes a stranger to her, and to obtain maintenance on account of wifehood from a person who is a stranger and who is compelled to provide maintenance would be degrading, and this arrangement cannot but adversely affect the position of the woman.

Fifthly, the maintenance after the period of iddat, which the man is providing being compelled to do so by the law, will not be a right guaranteed by the Shariah, but would be a charity granted by a non- Islamic law, and this charity she would get by losing her honour of faith and religious trust.

May Allah protect the daughters of the Millat from this ignominy.

