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BUSTER**

It is claimed, inter alia, that the Muslim women would get much more under the Act than Section 125, Criminal Procedure Code, and that the Act should be welcomed as the first step towards codification. The Bill was drafted with the assistance of the All India Muslim Personal Law Board, with which were associated some so-called Muslim experts in Personal Law.

(It was conveniently ignored that a Pakistani Alim has written that the Indian fundamentalists' charge that the Shah Bano decision was against the Shariat "is derogatory to Islam". The oft-repeated argument is also advanced that no Muslim country has such a law. (Again, it is conveniently ignored that at least nine Muslim countries have the laws under which a divorced wife can claim maintenance against her husband, in some form or the other). It is also forgotten that the fundamental Muslim countries do not grant even a bit of liberty that India grants to all its citizens. Was it possible in any such country to agitate the way the fundamentalists have agitated in India? It has also been argued that the Koran enjoins only a pious Muslim to make provision for his divorced wife, and, it seems, no Muslim wants to be pious when it comes to the question of making provision for a divorced wife.

It is also argued that since Muslim concept of marriage is different from the Hindu concept inasmuch as, it is asserted, there is no transfer of dominion over the girl from the father to the husband, and that under Muslim law marriage merely means a temporarily shift of the responsibility from father to husband, and on dissolution of marriage, the responsibility towards woman comes back to her father's family. It is also argued that why only one person (i. e., husband) should be responsible to maintain his divorced wife? Is it a penalty on him for divorcing his wife? These are devious arguments.

The obligation to maintain one's wife all over the world, in all patriarchal societies, arises out of the status of marriage, out of the jural relationship of husband and wife and out of intimateness of the spousal relationship, and not because marriage is regarded as sacrament or contract. Since in all patriarchal societies, the woman was not a bread-winner, this obligation was extended towards the divorced wife. In our contemporary society it is a projection of equality that in some countries the spousal obligation to maintain has been made reciprocal. Thus, under Hindu law, not merely a wife but a husband can also claim maintenance from the other spouse, the only condition being that he or she has no sufficient means to maintain himself or herself. Thus, in our submission the spousal obligation to maintain arises on account of intimateness of the relationship and for that reason, it continues even after the termination of marriage, and thus, the difference between the concepts of marriage is hardly relevant. The argument, that the Act imposes obligation on more than one person is illusory. (It is asserted by the protagonists of this view that to impose the responsibility to maintain an indigent Muslim woman on one person (i.

e., husband) is an insult to woman's dignity. But, it seems, it is not insult to her dignity to leave her destitute, and let her beg for maintenance from one relation after another.) Will it be effectively available against father (who may be dead or very old or dependent on others) and other relatives? Can a divorced woman's claim of maintenance have priority over other near relations of the person against whom it is claimed? The Act also imposes an obligation on Wakfs to provide maintenance to divorced women. In our submission, if by this provision, if we are envisaging substitution of public

responsibility for individual responsibility, the provision is welcome one. But then let us have a law under which a public fund (Islam recognizes creation of such a fund) is created by imposing a cuss on all religious institutions, out of which all destitute wives, children and parents are maintained. But will fundamentalists agree to such a law? Will such a law be constitutional? One should keep the warning given by V. R.

Krishna Iyer, J. in his letter to the Prime Minister. He said: " Secularists will be sore minority at the elections, and should the sleeping Hindu giant be provoked into communal frenzy? Every measure to the Ayatollah's pleasure alienates the ' Vishwa Hindu' incendiaries".