IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 28TH DAY OF OCTOBER 2022 / 6TH KARTHIKA, 1944

RP NO. 936 OF 2021

AGAINST THE JUDGMENT in Mat.Appeal 89/2020 OF HIGH COURT OF KERALA

REVIEW PETITIONER/S:

XXXXX
X

BY ADVS.
BABU KARUKAPADATH
P.U.VINOD KUMAR
ARYA RAGHUNATH
VAISAKHI V.
T.M.MUHAMMED MUSTHAQ
MOHAMED HISHAM P
KARUKAPADATH WAZIM BABU
P.LAKSHMI
AISWARYA ANN JACOB

RESPONDENT/S:

XXXXX
X

BY ADV. P.NARAYANAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 29.07.2022, THE COURT ON 28/10/2022 DELIVERED THE FOLLOWING:

A.MUHAMED MUSTAQUE & C.S.DIAS, JJ.

R.P.No.936 of 2021

IN

MAT.APPEAL No.89 OF 2020

O R D E R

Dated this the 28th day of October, 2022

A.Muhamed Mustaque, J.

This is a typical review portraying that Muslim women are subordinate to the will of their male counterparts. This review does not look innocuous at the instance of the appellant, but rather appears to have been fashioned and supported by clergies and the hegemonic masculinity of the Muslim community who are unable to digest the declaration of the right of Muslim women to resort to the extra-judicial divorce of khula, unilaterally. The appeal from which this review arises was filed challenging a divorce decree

granted to a Muslim wife under the Dissolution of Muslim Marriages Act, 1939. The appeal was filed by the husband. In the appeal, we noticed the existence of the right of Muslim women to resort to the extra-judicial divorce of khula, allowing her to terminate her marriage. Thereafter, the appeal was disposed of, recording khula and also delineating the different methods of extra-judicial divorce applicable to Muslim spouses. We declared that the right to terminate the marriage at the instance of a Muslim wife is an absolute right, conferred on her by the holy Quran and is not subject to the acceptance or the will of her husband. In the review petition filed by the husband, he does not dispute the authority given to the Muslim wife to invoke khula, but rather raises, as a ground of review, the procedure acknowledged by this Court to invoke the remedy of khula by the Muslim wife. We declared that khula would be valid if the following conditions are satisfied:

i. A declaration of repudiation or termination of marriage by the wife.

ii. An offer to return dower or any other material gain received by her during marital tie.

iii.An effective attempt for reconciliation was preceded before the declaration of khula.

2. The review petition, though, was filed by the husband, the courtroom was filled with persons who have shown an interest in the outcome and we allowed all those interested to make submissions. Accordingly, we had the advantage of hearing a muslim scholar turned lawyer, Adv.Hussain C.S.

3. According to the learned counsel for the review petitioner and Adv. Hussain C.S.,the Court erred in recognising the procedure in effecting khula. According to them, if a Muslim wife wishes to terminate her marriage with her husband, she has to demand talaq from her husband and on his refusal, she has to move the qazi or Court. According to them, though a Muslim woman has a right to demand divorce

of her own will, she has no absolute right to pronounce khula like the right of her counterpart to pronounce talaq. It was submitted that, as a consequence of the declaration of law by this Court, a large section of Muslim women are resorting to khula in derogation of the Sunnah. It was also argued that the Court is not competent to decide on religious beliefs and practices and the Court ought to have followed the opinion of Islamic Scholars. It was submitted that almost all across the globe, it is recognised that on demand of the wife to terminate the marriage, the husband has to pronounce talaq, obliging her demand. In countries where qazis are recognised, on refusal of the husband, the qazis would terminate the marriage. It was argued that nowhere in the world, a Muslim wife is allowed to unilaterally terminate the marriage. It was further submitted that in the absence of qazis, the competent civil court in India have to terminate the marriage.

4. In the holy Quran, Chapter II, verse 229, the right of Muslim wife has been explicitly referred to, which reads thus:

> The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your *Mahr* (bridal money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the *Mahr* or a part of it) for her *Al-Khul'* (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the *Zalimun* (wrong-doers, etc.).

5. The limit of moral authority postulated in the above verse alongside the legal right providing a remedy for a Muslim woman, may require delineation to decide on the question involved. The moral injunction that one has to be contended with is perhaps reiterated with a warning of the life hereafter, by

pointing out that they shall not transgress the limits set by the Almighty. The intersection of the moral injunction and the legal right shows the accountability to the Almighty in the life hereafter as per the faith, but it cannot be a determination of the validity of the legal right in a court of law in a secular country. The moral injunction so stipulated in the above verse has to be read in the context of the Prophet's warning to the believers that divorce is "the most hated of the permissible things to Allah" {See *Sunan Ibn Majah, Book on Hadith,* 2018, Vol.3 Ch.1, Book 10 (English Translation)}.

6. The legal conundrum in this case, is not an isolated one. It has evolved over the years as the scholars of Islamic studies, who have no training in legal sciences started to elucidate on the point of law in Islam, on a mixture of belief and practice. Islam has a code of law, apart from laying down rules relating to beliefs and practices. Legal norms are the cornerstones of creating a social and cultural

order within the Muslim community. The dilemma that persisted, in this case, is, perhaps, more related to the practice that has been followed for years, overlooking the mandate of the legal norm conferring on Muslim women the right to terminate the marriage without the conjunction of the husband. The Court in such circumstances is expected to look at the legal norm, if the same relies upon Quranic legislations and the sayings and practices of the Prophet (Sunnah). The underlying distinction between Fiqh and Shariah needs to be stressed here. Fiqh has been loosely translated to English as Islamic law and literally means 'the understanding of what is intended'. Shariah means 'a straight path'. Fiqh refers to the science of deducing Islamic laws from thr evidence found in the sources of Islamic law. (See the distinction of Fiqh and Shariah in the book, *'The evolution of Fiqh'* by Dr. Abu Ameenah Bilal Philips). Ordinary scholars and the Islamic clergy, who have no formal legal training find it difficult to deduce Islamic law from its sources. Fiqh denotes

the true intentions and objects of Islamic law. It requires a legal mind to deduce Islamic law from the sources. The dilemma faced by the Islamic clergy in understanding triple talaq was based on the practice followed in society for centuries, on the footing that a single pronouncement of triple talaq would constitute a valid talaq. This was related to the decree of the Caliph Umar, who was one of the successors to the caliphate, after the demise of the Prophet Mohammed. Noting the misuse of the authority given to the husband, who invariably invoked talaq and revoked talaq thereafter, causing miseries and hardships to the women; on a complaint made by the women and acting on their behalf, the Caliph decreed that such pronouncement of talaq would be a valid divorce. This decree, though, does not look in tune with the Quranic legislation that refers to cyclic pronouncement of talaq at different intervals,was devised to meet a particular situation in the society at that point in time. Caliph Umar resolved to exercise his executive power to meet a particular

exigency, to redress the grievances of women. This power of the ruler is akin to the power exercised by the executive in the modern State. That executive power was so exercised, to tide over a particular situation. This practice, allowed at a particular time, was relied upon by the Islamic clergy to justify instantaneous triple talaq, overlooking Quranic injunctions. The Islamic clergy failed to distinguish between the legislative authority of the Quran and the executive power of the Islamic ruler to meet particular contingencies. We have narrated the above aspect only to bring home the point that the Islamic clergy who have no legal training or knowledge in legal sciences, cannot be relied upon by the Court to decide on a point of law involved, relating to the personal law applicable to the Muslim community. The Courts are manned by trained legal minds. The Court shall not surrender to the opinions of the Islamic clergy, who have no legal training on the point of law. No doubt, in matters related to beliefs and practices, their opinion matters to the

Court and the Court should have deference for their views.

7. The Quranic verse relating to khula found in Chapter 2, verse 229, in unequivocal terms, declares that a Muslim wife has the right to terminate her marriage. The problem, presented before us today, is based on a reported Hadith, illustrating an instance of termination of marriage at the instance of a wife during the lifetime of the Prophet Mohammed. In almost all the authorities related to Islamic law, this instance of divorce by a Muslim wife has been reported. We have also referred to the above reported Hadith in our judgment under review. We again, in this review, refer to the Hadith.-- One Thabit had two wives. One of them was Jamilah. Jamilah did not like the looks of Thabit. She approached the Holy Prophet. She said, "Messenger of Allah! Nothing can keep the two of us together. I do not dislike him for any blemish in his faith or his morals. It is his appearance that I dislike. I want to separate from him." The Prophet replied, "Will

you give him back the garden he gave you"? She replied, "I am prepared to give him the garden he gave and even prepared to give more". The Prophet said, "You only need to give him the garden". Then the Prophet summoned Thabit and told him to accept the garden and divorce Jamilah. (See for more reading on this, *'The Rights and Duties of Spouses'*, 7th edition, by Maulana Sayyid Abul A'la Maududi, page 49). Relying on this, the counsel for the petitioner and Adv. Hussain C.S. argued that the Prophet has prescribed a procedure for divorce in the above manner at the instance of a Muslim woman and therefore, it is not open for the Court to prescribe the procedure in a different manner. According to them, on the demand of the wife, the husband has to pronounce talaq. We are called upon to decide as to the true procedure to be followed for divorce at the instance of the wife (khula).

ELABORATION OF THE SUBMISSIONS OF THE COUNSEL:

8. Relying upon Article 25 of the Indian Constitution read with the Shariat Act 1937, Adv.

Hussain C.S. argued that the Muslim Personal Law is the rule of decision in questions relating to marriage, dissolution of marriage, maintenance, etc. of the Muslim community.

9. Citing numerous judgments, the counsel vehemently submitted that the verses of the Quran cannot be the subject matter of interpretation of secular courts.

10. He submitted that the Shariah is based on four sources, namely, the Quran, Sunnah, Qiyas (analogy) and Ijma (consensus). When the Quran is silent on any aspect, attention must be turned to the Sunnah of the Prophet, thereby using it to supplement the verses of the Quran. He quoted the verses of the Quran and the Hadeeth to buttress this point.

> Sura Al Hahr, verse 7 reads:
> "Whatever the Messenger gives you, accept it; and whatever he forbids you, abstain from it."
>
> The Prophet once said to his followers: "So long as you hold fast to two things which I have left among you, you will not go astray; God's Book, and His Messenger's Sunnah."

11. According to him, although the Quran grants women the right to obtain khula (verse 2:229), it does not prescribe a procedure for the same. In such an instance, the learned counsel submitted that the correct procedure for khula can be evidenced from the Hadith of Thabit. Relying upon the verses of the Quran and the Hadith, he contended that the following mandate flows in respect of khula:

i. Although undesirable but where there is a fear of violation of the limits set by Allah, khula can be obtained;

ii. A woman must part with money if she wishes to obtain khula;

iii. khula is legally effective only when the husband accepts the wife's offer of payment and divorces her.

12. The counsel submitted that all Muslim scholars, irrespective of their schools of thought, are unanimous in their opinion that khula is a divorce by mutual consent or agreement, with the

acceptance of the husband being an essential element for a valid khula.

13. Submitting that although khula is an extra-judicial form of divorce, when the husband refuses to give consent, it takes the form of faskh (a judicial divorce), thereby forcing the woman to seek the intervention of a qazi (judge). The learned counsel then, however, went on to submit that the judge has no discretion in the matter and has to give effect to the khula, if the wife insists.

14. The learned counsel cited numerous judgments to fortify his submissions on the nature of khula. We are not referring to any of the judgments for the reason that none of the judgments have decided upon the question involved in this review. All the decisions of foreign courts and domestic courts refer to the practice and form of khula exercised. In the judgment cited of the Apex Court in **Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another [(2014) 10 SCC 736]**, the court had adverted to the form of khula followed, to decide upon a question

arising under the Protection of Women from Domestic Violence Act, 2005.

UNDERSTANDING THE TRUE MEANING OF KHULA:

15. In order to understand the true meaning of khula and the procedure to be followed, we need to trace back the evolution of the right of women to obtain a divorce, from the pre-Islamic period onwards. This period was referred to, in the Holy Quran, as the period of ignorance. Many of the laws that were in existence in the pre-Islamic period were modified, adapted or abrogated during the Islamic period. Marriage in pre-Islamic Arabia was a recognised institution for creating a family which was the primary unit of society. Without marriage, there would be no family and no ties to unite different members of a community. Marriage in pre-Islamic society was one way to increase the strength of the tribe, by begetting more children who would be the next generation of the tribe. (Quoted from '*Changing the position of women in Arabia under Islam during the early 70th Century*', Research Thesis

submitted by Farya Abbas Abdullah Sulaimani, University of Salford 1986). The author refers to the existence of payment of dower by the bridegroom to the bride in pre-Islamic Arabia. The author also refers to the existence of the right to divorce in pre-Islamic Arabia, for both men and women. The man had the right to divorce whenever he liked without restrictions and conditions. The right of the wife to dismiss the marriage also has been referred to by the author. The author says that women used to dismiss their marriage at their will. He narrates the procedure as follows: "If they lived in a tent, they would turn round, so that if the door had faced east, it now faces west, and when the man saw this, he knew that he was dismissed and he did not enter." A similar kind of divorce has also been referred to in the book titled *'Women and Gender in Islam'* written by Leila Ahmed [pg. 44].

> Divorce and remarriage appear to have been common for both men and women, either of whom could initiate the dissolution. Kitab al-aghani reports: "The women in the Jahilia, or some of them, divorced men, and

> their [manner of] divorce was that if they lived in a tent they turned it round, so that if the door had faced east it now faced west ... and when the man saw this he knew that she had divorced him and did not go to her." Divorce was not generally followed by the 'idda, or "waiting period' for women before remarriage- an observance Islam was to insist on- and although a wife used to go into retirement for a period following her husband's death,the custom, if such it was, seems to have been laxly observed.

Abdur Rahim in his book, *'The Principles of Islamic Jurisprudence'* [pg. no.10], refers to another form of termination of the marriage at the instance of wife.

> The wife among the Arabs had no corresponding right to release herself from the bond of marriage. But her parents by a friendly arrangement with the husband could obtain a separation by returning the dower if it had been paid or by agreeing to forgo it if not paid. Such an arrangement was called khula lit. stripping, and by it the marriage tie would be absolutely dissolved.

Thus, it is clear that the woman exercised the authority to divorce unilaterally even during the pre-Islamic period.

16. In the post-Islamic period, Islam emphasised on conciliation as the preferred mode of

resolution of all disputes between the believers. The believers, at the first instance, will have to resort to conciliation, before resorting to the authority given to them to terminate any sort of legal relationship. In Surah Al Hujurat Chapter 49, verses 9 and 10 read thus:

> **9.** And if two parties or groups among the believers fall to fighting, then make peace between them both, but if one of them rebels against the other, then fight you (all) against the one that which rebels till it complies with the Command of Allah; then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are equitable.
>
> **10.** The believers are nothing else than brothers (in Islamic religion). So make reconciliation between your brothers, and fear Allah, that you may receive mercy.

17. In Chapter 4, verses 35 and 128, the Quran particularly refers to marital disputes and commands the believers to follow proper conciliation to resolve disputes.

> **35.** If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her's; if they both wish for peace, Allah will cause their reconciliation.

> Indeed Allah is Ever All-Knower, Well-Acquainted with all things.
>
> **128.** And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better. And human inner-selves are swayed by greed. But if you do good and keep away from evil, verily, Allah is Ever Well-Acquainted with what you do.

The authority given to the women in Chapter 2, verse 229, must be read in the above background.

18. Now, we will come back to the procedure illustrated in the reported Hadith of Jamila demanding divorce from Thabit. The Prophet had different roles during his lifetime. He was the messenger of God, he was a mediator and conciliator. He was also an arbitrator/adjudicator. In '*From Prophetic Actions To Constitutional Theory:A Novel Chapter In Medieval Muslim Jurisprudence*' [Int. J. Middle East Stud. 25 (1993), 71-90.] the author, Sherman A. Jackson has discussed the various roles of the Prophet.

> According to al-Qarafi, the Prophet functioned in four distinct capacities: (1) messenger, (2) mufti, (3)

> judge,and (4)imam or head of state. His actions thus constituted either(1)verbatim communications from God, (2) fatwas, (3) judicial rulings (ahkam; sing. hukm), or (4) discretionary injunctions (tasarrufat; sing.tasarruf) enjoined by the head of state.

M.H. Kamali, in his book, '*The Principles of Islamic Jurisprudence*' [pg. 54], discusses the different capacities in which the Prophet acted.

> The legal *Sunnah (Sunnah tashri'iyya*) consists of the exemplary conduct of the Prophet, be it an act,saying, or a tacit approval, which incorporates the rules and principles of *Shari'ah.* This variety of *Sunnah* may be divided into three types, namely the *Sunnah* which the Prophet laid down in his capacities as Messenger of God, as the Head of State or imam, or in his capacity as a judge.

These roles cannot be overlooked while adverting to the true meaning of the procedure followed by the Prophet for terminating the marriage between Jamila and Thabit, at the instance of Jamila. The direction given by the Prophet to Jamila to return the garden, is on an equitable consideration. In a unilateral divorce invoked by her, she has to return what she had received from her husband. This part constitutes

the substantial law as far as khula is concerned. Talaq is considered as a unilateral termination by the husband. The Quran therefore casts an obligation upon the husband to provide fair provisions for the wife's future, subject to his means. (See the verses 236 & 241 of Chapter 2, Quran)

> **236.** There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their *Mahr* (bridal money given by the husband to his wife at the time of marriage). But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good.
>
> **241.** And divorced women shall be provided for, equitably—a duty upon the righteous

The verses 236 and 241 would establish that the husband is legally bound to ensure fair provisions for the protection of the wife who would be separated, on pronouncement of talaq by the husband. It is particularly required to advert to, here, that the right to invoke talaq or its validity is not dependent on the acceptance or acknowledgment of the provisions for her future.

19. The Prophet was approached by Jamila as she had no knowledge of the procedure of divorce, at her instance. The Prophet responded to her request, asking her to return what she had obtained from Thabit. She agreed and thereafter, Thabit was asked to pronounce talaq. In another instance of khula, referred to in the book '*the Rights and Duties of Spouses*', 7th edition, by Maulana Sayyid Abul A'la Maududi, relating to the second wife of Thabit, Habeeba; she was also granted divorce in a similar manner. In another case, during the period of the Caliph Umar, a woman pleaded for khula. Umar counseled her to patch up the differences. She was adamant. Then Umar ordered that she be kept alone in a cell for three days, after which, she was produced before him. She did not budge from her demand. On production, she said that those were the three nights of peace she had in years. Umar summoned her husband and delivered the judgment and granted her separation. The same author, Maududi, refers to another instance of separation of Rubay'ah, daughter

of Muawwiz. She sought for separation from her husband, in return for all her property. The husband did not accept the deal. The case was brought before Caliph Osman who accepted the woman's plea and ordered the separation. In all these cases, there was a third party intervention, of the Prophet or Caliph (ruler of Arabia). In these cases, on the intervention of the Caliph, the husband pronounced talaq, accepting the return of the property given to the wife. This procedure is being cited as the procedure to be followed for extra judicial divorce by khula at the instance of the wife.

20. We have to differ on the point of procedure cited by the counsel for the review petitioners and the others. We cannot ignore the situations in these illustrated cases. The obligation of the wife to return the property she obtained from the husband forms part of the substantial law. The mandate of conciliation and the involvement of third-party, as referred to in the various instances noted above by us, cannot be

overlooked. It was more of a conciliatory situation where the prophet or ruler, as the case may be, decided the termination of marriage at the instance of the wife, as it also involved the return of property to the husband. In those circumstances, the intervenor could demand that the husband pronounce talaq and terminate the marriage. The pronouncement of talaq by the husband partakes the acknowledgment of the materials he is entitled to receive in return, bringing an end to the marital tie. No doubt, this procedure is most desirable for believers to follow for termination of marriages at the instance of the wife. However, the point is whether this procedure is itself the law for effecting khula. To understand this, one needs to distinguish between Hadith and Sunnah. Hadith refers to the narration of the conduct of the prophet in a situation. Whereas, Sunnah refers to the law deduced from it. See *'The Principles of Islamic Jurisprudence'* by M.H. Kamali [pg. No 49].

> Hadith differs from Sunnah in the sense that Hadith is a narration of the conduct of the Prophet

> whereas Sunnah is the example or the law that is deduced from it. Hadith in this sense is the vehicle or the carrier of Sunnah, although Sunnah is a wider concept and used to be so especially before its literal meaning gave way to its juristic usage. Sunnah thus preferred not only to the Hadith of the Prophet but also to the established practice of the community. But once the literal meanings of Hadith and Sunnah gave way to their technical usages and were both exclusively used in reference to the conduct of the Prophet, the two became synonymous. This was largely a result of al-Shafi'i's efforts, who insisted that the Sunnah must always be derived from a genuine Hadith and that there was no Sunnah outside the Hadith. In the pre-Shafi'i period, 'Hadith' was also applied to the statements of the Companions and their Successors, the tabi'un. It thus appears that 'Hadith' began to be used exclusively for the acts and sayings of the Prophet only after the distinction between the Sunnah and Hadith was set aside.

Further, the distinction between legal and non-legal Sunnah is equally relevant. Shah Abdul Hannan in the book '*Usul Al Fiqh*' writes:

> A very important classification is legal and non-legal Sunnah. Legal Sunnah (Sunnah tashriyyah)consists of the Prophetic activities and instructions of the Prophet (sm) as the Head of the State and as Judge. Non-legal Sunnah (Sunnah Ghayr tashriyyah) mainly consist of the natural activities of the Prophet (Al-

afal-al-jibilliyyah), such as the manner in which he ate, slept, dressed and such other activities which do not form a part of Shariah. This is called adat (habit) of the Prophet in the Nurul Anwar,a text-book of Usul. Certain activities may fall in between the two. Only competent scholars can distinguish the two in such areas. Sunnah which partake of technical knowledge such as medicine, agriculture is not part of Shariah according to most scholars. As for the acts and sayings of the Prophet that related to particular circumstances such as the strategy of war, including such devices that misled the enemy forces, timing of attack, siege or withdrawal, these too are considered to be situational and not a part of the Shariah.. (Khallaf:.'ILM - Usul al Fiqh', Mahmud Shalutat: Al Islam, Aqidah wa Shariah)

21. The procedure delineated and relied upon only refers to the settlement of a demand and the husband obliging thereon, by accepting return of the materials by pronouncing talaq, at the intervention of a third-party. That procedure adopted in a particular situation cannot itself be made a general law relating to khula while analyzing the right of the wife to obtain divorce. The general law has to be understood from the purport of the authority given and not with reference to the situation or

circumstances under which it was exercised. In Islamic law, it is desirable that all kinds of disputes are resolved amicably between believers, either themselves or with the assistance of the Ruler. If the matter is resolved by the Ruler or with the intervention of a third party, that procedure itself cannot be cited as the procedure for the determination and validity of the right conferred under the Quranic legislation. The right itself has to be understood from the scheme of the law. We are not invalidating the procedure of arriving at a settlement between spouses on demand of the wife, as above. We reiterate that that procedure is most desirable for parties. We also clarify our judgment to that extent. However, we cannot hold that that procedure followed situationally, be treated as a law when parties are not able to arrive at such a settlement. If the procedure itself is understood as the law, that would derogate from the right conferred on a Muslim wife, under Quranic legislation, to terminate the marriage at her will.

The Quranic verses are in unqualified terms recognizing that right. Deduction of law from a particular conduct of the Prophet is not easy as the Prophet acted in different and varied capacities either in isolation, or in combination of those different capacities. This has resulted in different understandings of the Sunnah among Islamic scholars. This difference has extended to beliefs and practices as well. The existence of different schools of thought among the Muslim community would vouch for this. We, in our judgment under review, also adverted to the different ways of effecting khula across the globe.

22. Many Islamic scholars, while distinguishing the features of legal and non-legal Sunnah, have adverted to the following aspects ['*The Principles of Islamic Jurisprudence*' by M.H. Kamali, pg. no 57]:

> To distinguish the legal from non-legal *Sunnah,* it is necessary for the *mujtahid* to ascertain the original purpose and context in which a particular ruling of the *Sunnah* has been issued and whether it was designed to establish a general rule of law. The Hadith

> literature does not always provide clear information as to the different capacities in which the Prophet might have acted in particular situations, although the *mujtahid* may find indications that assist him to some extent. The absence of adequate information and criteria on which to determine the circumstantial and non-legal *Sunnah* from that which constitutes general law dates back to the time of the Companions. The difficulty has persisted ever since, and it is due mainly to the shortage of adequate information that disagreement has arisen among the ulema over the understanding and interpretation of the *Sunnah"*.[45. Ghazali, *Mustasfa*, II, 51; Badran, *Bayan*, pp. 41-42; Mutawalli, *Mabadi'*, p. 38.]

THE FALLACY OF THE ARGUMENT THAT WOMEN HAVE NO RIGHT TO TERMINATE MARRIAGE ON HER OWN:

23. According to the learned Adv. Hussain C.S., if the husband refuses to pronounce talaq on the request of the wife, a qadi has the power to pronounce talaq, and in the absence of a qadi, the modern Courts can exercise the power of qadi. A qadi can act as a conciliator, mediator and also as guardian. A qadi, in Islamic law, has the following powers and functions [See Engy Abdelkader, *'To Judge or Not to Judge: A Comparative Analysis of Islamic*

Jurisprudential Approaches to Female Judges in the Muslim World (Indonesia, Egypt and Iran)', Fordham International Law Journal, Volume 37, Issue 2(2014)].

> "Notably, the pre-modern Muslim judge functioned in a manner wholly distinct from his modern Western counterpart.
>
> As an initial matter, mediation figured prominently in resolving disputes arising in pre-industrial Islamic societies. These disputes encompassed quasi-legal matters as well as those arising between siblings or spouses.
>
> In addition to resolving disputes, the judge's typical activities included supervising charitable trusts; acting as a guardian over orphans; attending to public works; and leading Friday prayers and funeral prayers (an exclusively male province), among other responsibilities. Notably, the courts also functioned as judicial registries.
>
> Notably, the Quran and Hadith literature do not provide explicit provisions setting forth necessary qualifications or credentials concerning service in the judiciary—although Islamic scholars will later draw upon both of these textual sources to support opinions on the subject."

A qadi cannot be equated with a Court in the modern State. Apparently, the reference to the qadi in this context is to exercise his authority as a guardian

rather than an adjudicator. It is acknowledged by Islamic law that the Muslim wife has the right to demand termination of marriage. The argument that if the husband refuses, she has to move the Court stares at us. For what purpose she has to move the Court, begs the question. The Court is neither called upon to adjudicate nor called upon to declare the status, but simply has to pronounce termination of marriage on behalf of the wife. The Court in our country is not a guardian of an adult and able woman. If there is nothing for a Court to adjudicate, the Court cannot assume the role of a guardian and pronounce termination of marriage at the instance of a woman. Conferring authority upon the court is an exercise in futility, inasmuch as the court cannot entertain the request as there is no dispute to be resolved between the parties. The relief of declaration of status based on divorce can be given only when divorce is effected through an extra judicial method. If the court treats such a request for termination in the like manner of faskh, there would be no obligation on

the part of the wife to return the materials she obtained from her husband. It is to be remembered that in judicial divorce in the nature of faskh, the courts are deciding the cause on the premise of fault. If the arguments of the review petitioner is accepted that the court will have to pronounce termination of marriage, then the claim for khula would turn on fault. The very nature of khula has always been recognised as a mode of divorce on a no-fault basis. This is exactly the reason, in the judgment under review, we interpreted that the residuary ground as referred under Section 2(ix) of the Dissolution of Muslim Marriages Act, 1939 cannot be equated with khula. Dissolution of Muslim Marriages Act only contemplates dissolution of marriage at the instance of Muslim women on fault grounds. If the Qur'an, in unequivocal terms, permits spouses to terminate their marriage on their own will, it cannot be said that the Sunnah further qualifies it, subjecting it to the will of the husband, in the case of khula.

24. Sunnah cannot override or abrogate the primary legislation.[See *'The Principles of Islamic Jurisprudence'* by M.H. Kamali, pg. no. 60]

> As Sunnah is the second source of the Shari'ah next to the Qur'an, the mujtahid is bound to observe an order of priority between the Qur'an and Sunnah. Hence in his search for a solution to a particular problem, the jurist must resort to the Sunnah only when he fails to find any guidance in the Qur'an. Should there be a clear text in the Qur'an, it must be followed and be given priority over any ruling of the Sunnah which may happen to be in conflict with the Qur'an. The priority of the Qur'an over the Sunnah is partly a result of the fact that the Qur'an consists wholly of manifest revelation (wahy zahir) whereas the Sunnah mainly consists of internal revelation (wahy batin) and is largely transmitted in the words of the narrators themselves. The other reason for this order of priority relates to the question of authenticity. The authenticity of the Qur'an is not open to doubt, it is, in other words, qati, or decisive, in respect of authenticity and must therefore take priority over the Sunnah, or at least that part of Sunnah which is speculative (zanni) in respect of authenticity. The third point in favor of establishing an order of priority between the Qur'an and the Sunnah is that the latter is explanatory to the former. Explanation or commentary should naturally occupy a secondary place in relationship to the source, 55. CE. Shatibi, Mawagfagar, IV, 3, Badran, Usad, p. 101.1 Furthermore,

the order of priority between the Qur'an and Sunnah is clearly established in the Hadith of Mu'adh b. Jabal which has already been quoted. The purport of this Hadith was also adopted and communicated in writing by 'Umar b. al-Kattab to two judges, Shurayh b. Harith and Abu Musa al-Ash'ari, who were ordered to resort to the Qur'an first and to the Sunnah only when they could find no guidance in the Qur'an. 156. Shatibi, IV, 4; Siba'i, Sunnah, p. 377; Badran, Usal, p. 82. Shatibi adds that two other prominent Companions, 'Abd Allah b. Mas'ud, and 'Abd Allah b. 'Abbas are on record as having confirmed the priority of the Qur'an over the Sunnah]

There should in principle be no conflict between the Qur'an and the authentic Sunnah. If, however, at conflict is seen to exist between them, they must be reconciled as far as possible and both should be retained. If this is not possible, the Sunnah in question is likely to be of doubtful authenticity and must therefore give way to the Qur'an. No genuine conflict is known to exist between the Mutawatir Hadith and the Qur'an. All instances of conflict between the Sunnah and the Qur'an, in fact, originate in the solitary, or Ahad, Hadith, which is in any case of doubtful authenticity and subordinate to the overriding authority of the Qur'an. 158. Cr. Badran, Usaf, p. 102.]

Sunnah is the second source of legislation. The first and primary source is the Quran itself. The Sunnah cannot be interpreted in such a way as to either

abrogate or reduce the scope of the command of the Lawgiver in the primary legislation. To understand the scope of discussion in this, it is necessary to understand the nature and varieties of law given in the primary legislation.

25. The nature of law given in the Quran is classified as defining law and declaratory law. There are varieties of sub-classes of law under these headings. M.H. Kamali in his book, *'The Principles of Islamic Jurisprudence'* [pg. no 279-280] , refers to defining law as follows:

> *Hukm shar'i* is divided into the two main varieties of *al-hukm al-taklifi* (defining law) and *al-hukm al-wad'i* (declaratory law). The former consists of a demand or an option, whereas the latter consists of an enactment only. `Defining Law' is a fitting description of *al-hukm al-taklifi*, as it mainly defines the extent of man's liberty of action. *Al-hukm al-wad'i* is rendered 'declaratory law', as this type of *hukm* mainly declares the legal relationship between the cause (*sabab*) and its effect (*musabbab*) or between the condition (*shart*) and its object (*mashrut*)[5. Cf. Abdur Rahim, *Jurisprudence*, p. 193, for the use of English terminology.].

> Defining law may thus be described as a locution or communication from the Lawgiver which demands the *mukallaf* to do something or forbids him from doing something, or gives him an option between the two. This type of *hukm* occurs in the well-known five categories of *wajib* (obligatory), *mandub* (recommended), *haram* (forbidden), *makruh* (abominable) and *mubah* (permissible). Declaratory law is also subdivided into the five categories of *sabab* (cause), *shart* (condition), *mani'* (hindrance), *`azimah (strict law) as opposed to rukhsah (concessionary law), and sahih (valid) as opposed to batil (null and void).[6. Khallaf, `Ilm, p. 101; Qasim, Usul, p. 213.]*

As stated above, defining law, is a locution or communication from the law-giver addressed to Mukallaf (accountable/responsible person) which consists of a demand or an option; it occurs in the five varieties of wajib (obligatory), mandub (recommended), haram (forbidden), makruh (abominable) and mubah (permissible). The learned author defines declaratory law as a communication from the Lawgiver which enacts something into a cause, a condition, or a hindrance to something else. The nature of classification as above, indicates that the right to exercise talaq or khula would form part of defining

law and the sub-category of mubah (permissible). M.H. Kamali, in another book, *'Shariah Law Questions and Answers'* [pg.nos.66-67] has further discussed these categories:

> Human actions are categorised according to a scale of Five Values, namely those that are obligatory (wajib), recommended (mandub, also mustahab), permissible (mubah, also ja'iz), reprehensible (makruh) and forbidden (haram). The first and last of these, namely the wajib and the haram, are legal categories in that that they are binding and may also be justiciable. These two categories mainly originate in the decisive rulings of Qur'an and hadith and are fairly limited in scope, whereas the remaining three categories occupy a much wider space, as they are also largely developed through juristic interpretation and ijtihad. The ijtihadi conclusions and rules concerning the evaluative labeling of human conduct into these categories are, on the whole, instructive and often rationally undisputable yet not binding - unless they are also upheld and endorsed by general consensus (ijma'), in which case they become a part of the actionable ruling (hukm) of the Shariah and acquire a binding force. These five values, known as al-ahkam al-khamsah, constitute the main bulk of the practical or positive law, the ahkam amaliiyyah, and the main subject matter of fiqh. The Scale of Five Values consists mainly of identifiers of the value attached to practical conduct of competent persons. The wajib and haram pertaining especially to human relations and

> muamalat are also enforceable in the courts of Shariah, but those which pertain to the purely religious and devotional aspects of Islam, such as performing the prayer or haj, normally do not give rise to legal action. The other three categories are not enforceable and basically fall outside the ambit of law enforcement. They are matters mainly of personal choice and may consist of advice, encouragement or discouragement, etc., that should be followed, in the case of recommendable/mandub, and should be avoided, in the case of reprehensible/makruh, whereas the permissible/mubah is totally neutral and may or may not be acted upon. The advice contained in these three categories may have cultural import and consequences and may also affect aspects of personal piety, customary and social relations, but it is not actionable in the way the wajib and the haram are.

In '*Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*', the author, Ahamd Al-Raysun [pg nos. 148-149] has extensively discussed the sub-category of mubah (permissible):

> The first thing which al-Shatibi concludes in his discussions of the category of mubah is that "that which is permissible, insofar as it is permissible, is something which one is neither required to do nor required to refrain from."181 He then proceeds to express the same thought in the language of objectives, saying, "...As far as the Lawgiver's

intention is concerned, it makes no difference whether one performs such an action or refrains from it." 182

What we are speaking of here is the essential meaning of the category of mubah, or permissible.' Scholars have described actions which fall into this category as neutral in the sense that there is an equal preference, if you will, for performing them or refraining from them, and that one is free to choose between these two options. This, then, is the meaning of the term 'permissible' when considered is isolation from all attendant circumstances and influences. Viewed from this perspective, the Lawgiver intends neither that we perform such an action nor that we refrain from it, and as such, neither choice is required of us, for if we are required either to perform it or to refrain from it, then it will fall into one of the other four categories of actions and can no longer be classified as 'permissible.'

26. The nature of khula is in the form of a ‘permissible’ action, to the Muslim wife who seeks to exercise the option of terminating her marriage. This reflects the autonomy of choice exercised by the wife. The will of the wife so expressed cannot be related to the will of the husband who has not expressed his choice to terminate the marriage. The very idea of categorization under the law, of an

action as permissible, is to retain that action within the domain of the person who exercises the option, by relating it with his or her autonomy. Extending such actions to the will of another would certainly keep the action out of the category of 'permissible'. The law being categorized so, it cannot be whittled down or constricted by the will of her husband upon whom no authority is conferred to enforce such permission. It is relevant to note that, there is no qualifying obligation on the husband in the form of the five categories of defining law, either in the Quran or the Sunnah, to accept or repudiate the will expressed by the wife to make the permissible activity contingent or dependant upon any qualifying factors.

JURISTIC SOLUTION TO THE DILEMMA OF THIS NATURE IN ISLAM

27. The review petitioner would admit that neither the Quran nor Sunnah has provided any guidance in the event the husband refuses to

pronounce talaq. As already noted, the invocation of khula in the cases referred by the different authorities all refers to the intervention of a third party, like the ruler. Islam itself has provided the guidance to overcome situations like this where a legal vacuum is created.

28. Muslim women in India are confronted with the situation where no solution would be available to them to effectuate this right, conferred on her as per Quranic legislation, if the arguments of review petitioner are accepted. We note that these arguments have been raised on the footing that the traditions and practices that have been followed have become part of faith. In the light of the above argument, we are also looking at a different dimension of the question from the perspective of those who conform to the faith.

29. Istihsan is an Arabic term for juristic discretion. In '*Principles of Islamic Jurisprudence*', M.S Khamali [pg. nos. 218-220] refers to Istihsan a follows:

"The jurist who resorts to *istihsan* may find the law to be either too general, or too specific and inflexible. In both cases, *istihsan* may offer a means of avoiding hardship and generating a solution which is harmonious with the higher objectives of the *Shari'ah*." It has been suggested that the ruling of the second caliph, `Umar b. al-Khattab, not to enforce the *hadd* penalty of the amputation of the hand for theft during a widespread famine, and the ban which he imposed on the sale of slave-mothers (*ummahat al-awlad*), and marriage with *kitabiyahs* in certain cases were all instances of *istihsan*.[5. *Umm al-walad* is a female slave who has borne a child to her master, and who is consequently free at his death. A *kitabiyah* is a woman who is a follower of a revealed religion, namely Christianity and Judaism.] For `Umar set aside the established law in these cases on grounds of public interest, equity and justice.[6. Cf. Ahmad Hasan, *Early Development*, p.145.]

"The Hanbali definition of *istihsan* also seeks to relate *istihsan* closely to the Qur'an and the *Sunnah*. Thus according to Ibn Taymiyyah, *istihsan* is the abandonment of one legal norm (*hukm*) for another which is considered better on the basis of the Qur'an, *Sunnah*, or consensus."

"But the Maliks view *istihsan* as a broad doctrine, somewhat similar to *istislah*, which is less stringently confined to the Qur'an and *Sunnah* than the Hanafis and Hanbalis have. Thus according to Ibn al-'Arabi, '*istihsan* is to abandon exceptionally what is required by the law because applying the existing

> law would lead to a departure from some of its own objectives.'"

30. In *'Istihsan The Doctrine of Juristic Preference in Islamic Law'* by Saim Kayadibi, the author says that during the early Islamic period, the term Istihsan was neither known nor directly defined and therefore, when it was applied in judgment it was applied without giving any specific definition or application. Support of Istihsan considered the fundamental principle of ease and avoidance of hardship as the sole basis of Istihsan. The rights and obligations conferred upon believers, in Islam, cannot be denied for want of a system as envisaged in Shariah.

31. In *'Shari'ah Law An Introduction',* by M.H. Kamali [pg. nos. 274- 275], the author discusses the various instances when the principle of Istihsan was put into practice by the Caliphs to remedy the injustice caused by the strict application of Shariah.

> Some instances of obvious imbalance in the distribution of inheritance can also be addressed, I

believe, by recourse to the principle of istiḥsān (juristic preference), especially in cases where strict enforcement of the existing law leads to unfair results in the distribution of family wealth. In such situations, istiḥsān authorizes the judge and the jurist to find an alternative and a preferable solution to the case before them which would realize considerations of equity and fairness. Notwithstanding the existence of valid precedent on this as reviewed below, Muslim jurists and judges have not made an effective use of the resources of istiḥsan. Without wishing to enter into details, I may refer here briefly to the renowned case of al-mushtarakah (the apportioned) which was decided by the caliph 'Umar b. al-Khaṭṭāb. In this case, a woman was survived by her husband, mother, two germane and two uterine brothers. The Qur'anic rules of inheritance were strictly applied but the result was such that the two maternal brothers received one-third of the estate and the two full brothers were totally excluded. This is because the former are Qur'anic sharers (dhawu'l-furüd) whereas the latter belong to the category of residuaries ('asabah). The former must take their shares first and what is left is then distributed among the residuaries. The full brothers complained to the caliph and forcefully pleaded with him about the justice of their case. According to reports, the full brothers addressed the caliph in the following terms: suppose our father was a donkey (which is why the case is also known as alhimariyyah), we still shared the same mother with our maternal brothers. The caliph was hesitant to act in the face of the clear Qur'anic

mandate, yet he decided on equitable grounds, after a month of consultation with the leading Companions, that all the brothers should share equally in the one-third.

Unfair results of a similar type can occasionally arise, sometimes due to technical reasons, which could be addressed by recourse to istihsan, and the judges should not hesitate to do so when istihsan can be invoked to serve the ideals of equitable distribution. To give an example, suppose that a deceased person is survived by a son and a daughter. During the lifetime of his father the son had bad relations with him and did not bother to seek his forgiveness even during the months of his last illness, while the daughter took the responsibility and spent much of her hard-earned income on her father's medical bills before he died. When this happened, however, the son was quick to claim double the share of his sister in inheritance. This would be the kind of case, in my view, where istiḥsan can be invoked to remedy the unfair outcome that is anticipated from a strict conformity to the normal rules of inheritance. This is the basic rationale of the doctrine of istiḥsān, to remedy unfair results which may arise from a strict application of the existing rules of Shari'ah. Yet to the best of my knowledge, Muslim countries have not introduced enabling legislation that would authorize the judges to apply istiḥsän to remedy such situations. Istiḥsan admittedly does not seek to introduce new law. It is rather designed so as to address case by case situations where strict

> implementation of the existing law may lead to unfair results. Istiḥsān in this way offers some potential to vindicate the cause of equity and fairness when this might present a compelling case for reconsideration and review. For this to become reality, we need lawmakers, judges and jurists of great professional fortitude to make laws and adjudicate cases that break away with the prevailing mindset of taqlid.

32. In this light, it is also important to give due consideration to the maqasid (goals and purposes) of Shariah. M.H. Kamali, in his book, "Shariah Law Questions and Answers" [pg. no. 204-205] refers to maqasid and its importance in understanding the Shariah:

> A) The maqasid (plural of maqsad - goals and purposes) of Shariah, or the higher purposes of Islamic law (henceforth maqasid) refer to the meaning, purpose and wisdom that the Lawgiver has contemplated in the enactment of Shariah laws. Maqasid thus refer to the higher purposes of the law, which are meant to be secured through the implementation of that law, and they give the law a sense of direction and purpose. It also means that the rules of Shariah, especially in the spheres of human relations and muamalat, are not meant for their own sake but to secure and realise certain objectives. When the dry letter of the law is applied in such a way that it does not secure its intended purpose and fails, for instance, to secure

> the justice and benefit it is meant to secure, or when it leads, on the contrary, to harm and prejudice, the law is most likely reduced to a purposeless exercise, which must be avoided. The laws of Shariah are generally meant to secure justice and the interests and prosperity of the people both in this world and the hereafter. But the detailed rules, commands and prohibitions of Shariah also have their specific purposes, which are often identified in the text of the law, or by recourse to interpretation and ijtihad.

33. The maqasid of Shariah can be arrived at by the process of ta'lil (ratiocination). The significance of the process of ta'lil in matters not pertaining to worship has been elaborated by the author, M.H.Kamali in the book, "Shariah Law An Introduction"[pg. no. 55]:

> 3. Ta'lil is not valid with regard to 'ibādāt, but outside this area the Shari'ah encourages investigation and enquiry into its rules. Ratiocination in the Qur'an means that the laws of Shari'ah are not imposed for their own sake, nor for want of mere conformity, but they aim at realization of certain benefits/objectives. This also tells us that when there is a change of a kind whereby a particular law no longer secures its underlying purpose and rationale, it must be substituted with a suitable alternative. To do otherwise would mean neglecting the objective of the Lawgiver. According to

al-Shāṭibi, the rules of Shari'ah concerning civil transactions and customary matters (mu'amalat wa 'ādāt) follow the benefits (maṣāliḥ) which they contemplate. We note, for instance, that the Shari'ah may forbid something because it is devoid of benefit, but it permits the same when it secures a benefit. A deferred sale, for example, of dirham for dinar: forbidden because of the fear of usury (riba) therein, but a period loan is permitted because it secures a benefit (deferment is harmful in one and beneficial in the other). Similarly fresh dates may not, in principle, be sold for dry dates for fear of uncertainty (gharar) and usury (ribā) but the Prophet permitted this transaction, known as 'arāyā, because of the people's need for it.

Moreover, instances of abrogation in the rulings of Qur'an and Sunnah which took place during the lifetime of the Prophet can properly be understood in these terms. Instances are also found in the precedent of Companions where some of the laws of Shari'ah were suspended because they no longer secured the benefit which they had initially contemplated. Since the 'illah and rationale on which they were premised were no longer present they were suspended or replaced with suitable alternatives. We note, for example, that the caliph 'Umar b. al-Khaṭṭäb suspended the hadd punishment of theft during the year of the famine. The caliph also stopped distribution of agricultural land to Muslim warriors in Iraq despite a Qur'anic ruling that entitled them to war booty; he also suspended the share of the pagan friends of Islam (the 'allafat al-

> qulub) in the revenues of zakah. These were persons of influence whose co-operation was important for the victory of Islam. The Qur'an had assigned a share for them (9:60), which the caliph later discontinued on the ground, as he stated, that 'Allah has exalted Islam and it is no longer in need of their support'. The caliph thus departed, on purely rational grounds, from the letter of the Qur'an in favour of its general purpose and 'his ruling is considered to be in harmony with the spirit of the Qur'an'.

34. In the absence of any other method in the manner suggested by the counsel for the review petitioner and others,to effectuate the right conferred on Muslim women being prevalent in this country, the Court’s authority in conferring upon Muslim women the right to invoke khula at her own will, will have to be respected. The Quran lays emphasis on the power of the authority and directs the faithful to follow the authority in Chapter 4:59 of the Quran by commanding believers as follows:

> **59.** O you who believe! Obey Allah and obey the Messenger (Muhammad), and those of you (Muslims) who are in **authority**. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger, if you believe in Allah and in the Last

> Day. That is better and more suitable for final determination.

Al Haj A.D. Ajijola in the book *'What is Shariah?'* [pg. no. 161] has discussed the power vested in the authority to enact laws:

> Strictly in theory in Islam, the authority to enact laws primarily belongs to God, and He alone has the supreme legislative power in the Islamic system. The Caliph, or the Executive Head of the Muslim Commonwealth has no sovereign power nor any royal prerogative, he is theoretically simply the principal magistrate to carry out the injunction of the Qur'an and the ordinances of the Prophet. He has no legislative functions as God alone is the Legislator in Islam. Thus according to Muslim concept of law and the popular belief, there is technically no legislative power in the state. But in reality these refer only to the basic law expressed or implied in the Qur'an or accepted Hadith. In any case, this actually means that any law made by Muslim community must not be repugnant or be in conflict with the provision of the Qur'an and the accepted Prophet's tradition. Otherwise, a Muslim state like a non-Muslim states has unlimited power to make law for the protection and the good of the community.

35. Istihsan is a doctrine for the Courts to adopt and apply, if there are no other methods to

streamline the rights conferred on believers to act upon. So, assuming that the argument of the review petitioner holds good, in the absence of any mechanism in the country to recognize the termination of marriage at the instance of the wife when the husband refuses to give consent, the court can simply hold that khula can be invoked without the conjunction of the husband.

36. We, therefore, find no reason to review the judgment. We record our deepest appreciation to Advocate Hussain C.S who is not a practitioner before this court, having argued the case with meticulous preparation, despite the fact that we cannot accept his views and opinions.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

C.S. DIAS, JUDGE

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