

madhavan and twenty other residents of Calicut and Malappuram districts in Kerala regarding pollution caused by the effluent's discharged by the pulp and fibre manufacturing units of M/s. Gwalior Rayons located in Mavoor township near Calicut City in Kerala and matters connected therewith.

LEAVE OF ABSENCE TO SHRI SALIM ALI

MR. CHAIRMAN: I have to inform hon. Members that I have received a letter, dated the 29th April, 1986, from Shri Salim Ali stating that owing to illness, he would not be able to attend the current session of the Rajya Sabha. He has accordingly requested for grant of leave of absence from all the sittings of the Rajya Sabha during its 138th Session.

Is it the pleasure of the House that permission be granted to Shri Salim Ali for remaining absent from all the meetings of the House during the current Session?

(No hon. Member dissented.)

MR. CHAIRMAN: Permission to remain absent is granted.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) BILL, 1986

MR. CHAIRMAN: Shri Asoke Sen.

SHRI DIPEN GHOSH (West Bengal): On a point of order.

SHRI SURESH KALMADI (Maharashtra): On a point of order.

SHRIMATI KANAK MUKHERJEE (West Bengal): On a point of order.

(Interruptions)

MR. CHAIRMAN: First I will explain. There is a procedure... (Interruptions) Please sit down. I am on my legs. The Minister will formally move that the Bill be taken into consideration. Then I will call

those people who have given notice of points of order to raise their point of order. Then the Minister will reply to the points of order. Then I will give my ruling and thereafter the Minister will proceed with his speech. Is that all right?

SHRI SURESH KALMADI: No, Sir. (Interruptions).

SHRI DIPEN GHOSH: No, Sir, we have objection to the introduction of the Bill. We have a point of order. (Interruptions).

MR. CHAIRMAN: I am giving the floor to Mr. Dipen Ghosh. All of you, please sit down. Now Mr. Dipen Ghosh will speak.

(Interruptions)

MR. CHAIRMAN: Nothing will go on record.

SHRI SURESH KALMADI:*

MR. CHAIRMAN: A point of order will arise only when the Minister gets up and says "I move the Bill". You cannot have a point of order without any thing.

(Interruptions)

SHRI CHITTA BASU (West Bengal):*

MR. CHAIRMAN: Please sit down. I said, I will give everyone of you an opportunity to raise your point of order after the motion is made. How can you raise a point of order without anything before the House?

(Interruptions)

MR. CHAIRMAN: I will give every body an opportunity to raise his point of order. First the motion must be moved. (Interruptions). There cannot be a point of order in a vacuum. How does any point of order arise when the Minister has not yet moved the motion? First let him bring it

* Not recorded.

[Mr. Chairman]

before the House. Let him say, 'I move... the'. I will not allow him to make the speech. I will allow your points of order. I have already explained to you. *(Interruptions)*. Please sit down, all of you, and let the Minister move it.

THE MINISTER OF LAW AND JUSTICE (SHRI ASOKE KUMAR SEN): Mr. Chairman, I move—

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, as passed by the Lok Sabha, be taken into consideration.

(Interruptions)

MR. CHAIRMAN: I shall call one by one. First I call Mr. Dipen Ghosh. Nobody else will be recorded.

SHRI DIPEN GHOSH: Mr. Chairman, first of all, I take objection to the very nomenclature of the Bill. I do not agree with the Union Law Minister that this Bill is intended for the protection of the rights of Muslim women. It only amounts to throwing the Muslim women to wolves. That is what is being done.

(Interruptions)

MR. CHAIRMAN: May I appeal to this side of the House, the Law Minister is quite capable of answering all the points. The Chair is capable of giving a ruling. We do not want your assistance. Please don't interrupt. Mr. Dipen Ghosh, please continue.

SHRI DIPEN GHOSH: I am glad, Mr. Chairman. Now I raise my point of order... *(Interruptions)*.

MR. CHAIRMAN: Nothing except what Mr. Dipen Ghosh will be recorded. *(Interruptions)*. Please sit down. You cannot speak without the permission of the Chair. I am not

allowing anybody except Mr. Dipen Ghosh.

SHRI DIPEN GHOSH: This Bill is *ultra vires* the Constitution from the very beginning of the preamble.

Sir, the Preamble says... *(Interruptions)*... Sir, again they are interrupting... *(Interruptions)*... Will they continue this thing?... *(Interruptions)*... If they continue then even the Law Minister will not be allowed to continue. I take up the challenge... *(Interruptions)*... I take up the challenge... *(Interruptions)*.

SHRI ASOKE KUMAR SEN: what is this, Sir? *(Interruptions)*

SHRI DIPEN GHOSH: Sir, will all this go on record?

(Interruptions)

MR. CHAIRMAN: Mr. Parliamentary Affairs Minister, will you kindly control your Members?

(Interruptions)

MR. CHAIRMAN: I have allowed only Mr. Dipen Ghosh. Nothing else will go on record.

SHRI DIPEN GHOSH: Mr. Chairman, Sir, this Bill *ultra vires* of the Constitution. *(Interruptions)*

MR. CHAIRMAN: Nothing will go on record. Only what Mr. Dipen Ghosh says will go on record. I do not want anybody to interrupt. Yes, Mr. Ghosh.

SHRI DIPEN GHOSH: Sir, this Bill is *ultra vires* of the Constitution from the very beginning of the Constitution, from the Preamble itself, and the Union Law Minister knows better than me that the Preamble has been described as the key of the Constitution by the Supreme Court and by all the legal luminaries including the Union Law Minister himself.

Sir, the Preamble says that there shall be equality of status and opportunity and this Bill is intended to take away that equality of status and opportunity.

Sir, article 13 (2) says:

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of contravention, be void."

Naturally, when we go to articles 14 and 15, we find that the right of equality has been guaranteed. So, if any Bill is passed and made into an Act, contravening any of the Fundamental Rights, then that law will be declared void under article 13(2). So, Sir, I would say that though this Parliament has got the right to make a law, surely, it has no right to make a bad law, a law which may be struck down by the Supreme Court. So, this should not be taken up for consideration and passing. Instead, under article 143 of the Constitution, the Supreme Court should be consulted and the advice of the Supreme Court should be taken a priori before this House is called upon to take up this Bill for consideration and passing. Thank you, Sir.

MR. CHAIRMAN: Yes, Mr. Gurupadaswamy.

SHRI M. S. GURUPADASWAMY (Karnataka): Sir, this is a black day. The Bill refers to the protection of Muslim women. It is a clandestine statement, if I may say so. The Bill contravenes, contradicts and violates both the spirit and the letter of the Constitution. If I may recall it, Shri Dipen Ghosh referred to the Preamble and Article 13. I do not go into these two things which he has referred to. He has also pleaded for the opinion of the Supreme Court in this matter. While agreeing with all what he said, may I say that my learned friend, Shri Asoke Sen, who is such an able advocate, I know, today has become the devil's advocate? (*Interruptions*) Perhaps most unwillingly, reluctantly, he has been performing this ugly task. (*Interruptions*)

424 RS—8.

MR. CHAIRMAN: No interruptions.

SHRI M. S. GURUPADASWAMY: I value his legal acumen. That is why I am saying this.

Sir, the Constitution provides under Article 15(1):

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Clause (3) states as follows:

"Nothing in this article shall prevent the State from making any special provision for women and children."

This is not a special provision for safeguarding, protecting uplifting, liberating the women, Muslim women. It is, on the contrary, suppressing their rights, their fundamental rights.

Then, please look into Article 44:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

This Bill negatives these Directive Principles. If this Bill is passed, we can never think of a common civil code. The civil code has got to be uniformly applicable to the whole of India, to all classes, irrespective of which religion, caste, creed or sex they belong to. And this Bill contravenes, negates, contradicts, thwarts this very important Directive Principle in the Constitution. Sir, ...

AN HON. MEMBER: A long speech!

MR. CHAIRMAN: If you interrupt, it will become longer.

SHRI M. S. GURUPADASWAMY:
Sir, Article 51A says:

"It shall be the duty of every citizen of India—

(a) to abide by the Constitution...the National Flag and National Anthem."

The Constitution incorporates the Preamble and the Fundamental Rights.

Sir, Article 39A says that the State shall secure justice on the basis of equal opportunity under the law. Sir, these are the important provisions which my hon. friend, Shri A. K. Sen, has forgotten while piloting the Bill in the other House and while moving the Bill for consideration in this House. I am not going into the merits of the Bill which will be debated later on. This Bill is *ab initio* wrong from the point of view of the Constitution and it cannot be taken into consideration at all. I say it is irrelevant, unconstitutional, *ultra vires* the Constitution, socially objectionable and ethically perverse. This is a very retrograde step which I never thought that the secular Government would adopt. You must admit that we have adopted secularism. This is the secularism... (*Interruptions*) Don't bring in Janata Party. Let us concentrate on this Bill. (*Interruptions*) I know very well that your conscience is with us. (*Interruptions*) Sir, I consider that secularism is an important plank in our constitutional system, in our parliamentary system. This Bill takes away this thing completely from the constitutional framework. I have no doubt that the Supreme Court will strike down this obnoxious measure. I have no doubt about that. Even now, if the Law Minister agrees to refer this matter to the Supreme Court for their opinion, which is provided in the Constitution under Article 143, we have no objection to go by the Supreme Court judgment. May I go one step further? May I ask my hon. friend the

Law Minister why has he not considered to call the Attorney General to the House? I remember and you remember that in the other House when I had the honour of being there with you a long time ago in the 50s, the Attorney General was called on the floor of the House. The Constitution provides for calling the Attorney General so that we may hear him. I think this is a very important Bill which is going to change the fundamental character of our society. When that is so, we should call the Attorney General on the floor of the House and take the benefit of his advice. (*Interruptions*)

MR. CHAIRMAN: Please don't disturb.

SHRI M. S. GURUPADASWAMY:
Please don't disturb. I respect your views. I know that your conscience is with us though you are there. I am expressing the collective conscience of this House, including that of our friends, when I say...

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra):
It is not my conscience.

SHRI M. S. GURUPADASWAMY:
I do not want to embarrass you, Sir. Your conscience is also with us. I do not want to drag you here. But the conscience of the House is here. (*Interruptions*) May I end by saying a famous adage? Female of the species is deadlier than the male species. They will wreck vengeance on you. It is also said: Frailty, thy name is woman. May I amend this and say: Frailty, thy name is Rajiv Gandhi.

MR. CHAIRMAN: Now, Mr. Upendra. I request you to be brief.

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): I will take half the time my predecessor has taken.

MR. CHAIRMAN: And the next Member will take half the time of yours.

SHRI DIPEN GHOSH: That way, Mr. Asoke Sen will get zero.

SHRI PARVATHANENI UPENDRA: Sir, this Bill is ill-timed, ill-conceived, obnoxious and reactionary. By bringing forward this Bill, this Government has shown cynical disregard to the overwhelming public opinion in this country. And while doing so, they have violated every provision of the Constitution and all the fundamental rights and duties which we hold so sacred and which the Constitution-makers so assiduously formulated. As my predecessors have pointed out, it violates not only the Preamble but also the Fundamental Rights as enshrined in articles 13, 14 and 15. And, Sir, it violates the Directive Principles of State Policy as enshrined in article 44. It also violates article 21 which gives the citizen a right to life which includes right to a decent livelihood. It also violates the fundamental duties under article 51A(e) which clearly stipulates that a citizen should renounce practices derogatory to the being thrown to wolves.

Sir, all these aspects are being violated and it is unfortunate that the Bill is being rushed through in such a manner and the interests of women are being sacrificed in the process.

SHRI DIPEN GHOSH: They are being thrown to wolves.

SHRI PARVATHANENI UPENDRA: It is not only *ultra vires* of the Constitution but it also shows discrimination on the basis of religion, it shows discrimination between a woman and a woman. Sir, though the Bill has been brought as a separate enactment, in effect it excludes certain people from the Criminal Procedure Code, which again, is a discrimination. As the divorce or illtreatment of a woman has been considered as a social evil, this has been included in the Criminal Procedure Code. What Mrs. Indira Gandhi gave in 1973 to the women of this country is unfortunately being

taken away by her son today. This has to be opposed tooth and nail. Sir, in our Rules of Procedure, we have a Rule—Rule 67—which says that whenever a Bill is considered outside the legislative competence of this House, the matter has to be discussed fully. Though it relates to a Motion originating in this House, still the spirit has to be taken. Rule 67 says: "Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the Council, the Chairman may permit a full discussion thereon." Therefore, it is very necessary to discuss whether it is within the competence of this Parliament and this House to pass such an enactment which is *ultra vires* of the Constitution and which is in the danger of being struck down by the Supreme Court. Therefore, Sir, I fully endorse the view expressed by Mr. Gurupadaswamy that the Attorney-General should be called to this House to express his views before we take up further consideration of this matter.

Lastly, Sir, I would say that this Bill is patently unconstitutional and it would only be a waste of time of this House because we know what fate awaits this Bill in the Supreme Court. And I am sorry to say that this House and this country are being taken on a ride to satisfy the whims and fancies of an individual, supported by an important Party.

SHRI LAL K. ADVANI (Madhya Pradesh): Mr. Chairman, Sir, I regard it as a sad day and I am particularly sad that an eminent luminary like the Law Minister, Mr. A. K. Sen, should be moving a Bill, which, I am sure, he himself is convinced, cannot stand judicial scrutiny.

SHRI DIPEN GHOSH: In fact he had taken up many cases earlier.

SHRI LAL K. ADVANI: Mr. Chairman, Sir, when I say this I am not speaking subjectively or just as a matter of speculation. After all, this Bill has arisen out of the Supreme

[Shri Lal K. Advani]

Court judgment on the Shah Bano case and the country became divided into two camps, some who supported that judgment and others who were opposed to that judgment. Of course, a preponderant rather overwhelming majority found that the judgment was sound. I am among those, and in that camp Mr. A. K. Sen also was there. After all, I have with me a signed note by Mr. A. K. Sen, arguing at length how that judgment is very sound.

SHRI PARVATHANENI UPENDRA: He is a lawyer and he can argue on both sides.

MR. CHAIRMAN: Do not disturb, he is making a point.

SHRI LAL K. ADVANI: I am not referring to Mr. A. K. Sen's opinion as a lawyer. I would not have quoted that at all. The other day when the Finance Minister sought to quote the opinion of a lawyer, I myself objected to it. But I am quoting his opinion as the Law Minister, which I am perfectly entitled to do.

Sir, in the other House a Private Member's Bill was being debated and that Private Member's Bill sought to undo the effect of the Shah Bano judgment. The Government naturally consults the Law Ministry and the Law Ministry examined that particular Bill seeking to undo that judgment and said: "The decision of the Court cannot be regarded as an encroachment on the Muslim personal law. The Muslim personal law is of a civil nature, whereas section 125 is a provision contained in the Criminal Procedure Code. In view of the foregoing the Bill to amend sections 125 and 127 of the Cr. P.C. should be opposed." The note was signed, signed by Mr. B. S. Sekhon, Law Ministry, dated May 31, endorsed by Mr. H. R. Bhardwaj, Minister of State for Law, June 1; and endorsed by Mr. Asoke Kumar Sen, Union Law Minister.

Sir, I have referred to this not to score any debating point. I am aware that so far as the points of order are concerned, what your ruling is going to be, or what your ruling can be. I am aware and fully aware of it.

AN HON. MEMBER: Do not cast aspersions.

ANOTHER HON. MEMBER: He has an open mind.

SHRI LAL K. ADVANI: Sir, the Chair always has an open mind. But when I present a case, as I said, I am not presenting a case only to make a point. No. Mr. Upendra was right, for instance, when he said that if this Bill had been introduced in this House, I would have been the first to press that there should be a full-day debate on whether this House is competent to pass the Bill and, in that context everything would have been valid. Now, it has been introduced in the other House. I cannot raise an objection on that ground because that House has passed this Bill and now it has come to us for consideration. But, on this point also I can certainly point out to the Government that after all here is a Bill which violates article 14 of the Constitution, equality; which violates article 15 of the Constitution, no discrimination on grounds of religion.

Mr. Chairman, Sir, this Bill says that any Muslim divorcee wishing to go to a court of law to get maintenance, beyond the limit of Rs. 500, that is laid down by section 125 of the Cr. P.C. will not be applicable to her, so that if a Christian woman or a Hindu woman or a Parsee woman seeks maintenance the maximum maintenance the court can grant to them is Rs. 500. In case of a Muslim divorcee this restriction is not there. That is what you will try to point out and say that you have favoured the Muslim woman. I will come to that later when the matter is discussed. But it is patent discrimination. No court can uphold this and the court

is bound to strike it down, and I am sure Mr. A. K. Sen has not the slightest doubt. If, even after that, he is moving this Bill, I would say that the politician Mr. A. K. Sen has triumphed over the Constitutionalist, a legal luminary, and it is unfortunate.

SHRI PARVATHANENI UPENDRA: What can the poor man do?

SHRI LAL K. ADVANI: It is very unfortunate. Here is a matter in which not a single newspaper in the country of any standing throughout the country—there are thousands of papers; and I have not come across a single newspaper of standing, except some Urdu papers, not Bengali, not Tamil, not English, not Hindi, not one single paper—supports the Government on this Bill.

And finally, I would say that even those who were opposed to the Shah Bano judgment, do not support it. And one of them is—I respect him greatly; he is a jurist; he is an eminent man—Mr. A. G. Noorani. He disagreed with Shah Bano judgment, but about this particular Bill, this is what he says:

"It is yet not too late to repair the damage to the values and interests so want only inflicted by The Muslim Women (Protection of Rights on Divorce) Bill."

I am in agreement that this is a wrong title altogether. It should be regarded as "Protection of Muslim Husbands Bill." After all, the husband divorces the wife, and the responsibility for maintenance is put upon the father, the brothers, the sisters and relatives, and not the husband.

SHRI DIPEN GHOSH: On the whole world, except the husband.

SHRI LAL K. ADVANI: He says:

"This title is a classic instance of Orwell's Newspeak. It does lasting damage to Muslim community itself. Yet it fosters the impression

of a special favour. Muslim grievances remain unredressed. Their isolation increases. Even those who are sympathetic to minority rights regard the Bill with dismay."

Sir, this is the opinion of a person, a very learned legal brain who criticised the Shah Bano judgment, who was in disagreement, and he thinks that this Bill is not only bad legally, it will do damage to Muslim community in whose name the Bill is sought to be introduced.

Therefore, through you, I appeal to the Law Minister not to press this motion. After all, here is with me the Constitution again, article 143, which says—I need not quote an article to the Law Minister, but nevertheless:

"If at any time it appears to the President..." meaning the Government of India—

"...that a question of law or fact has arisen or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court on it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to President its opinion thereon."

I would conclude by recalling that when we in the Government wanted to introduce the Special Courts Bill, doubts were expressed whether it would be valid. Many Members of the Congress Party said that it would be *ultra vires* of the Constitution. Even though, by majority, we could have passed it but we felt that after all if doubts have been expressed and there is some content in it, all right, let us first refer the matter to the Supreme Court for opinion, and only when it says that this proposed Bill is sound, or if it says that this particular provision is bad, we will amend it accordingly and then introduce it. In Jammu and Kashmir State, a Bill was passed by the Assembly and then sent back by the Governor to the

Assembly and passed a second time. Even then the Government of India, because it rightly felt that the Bill's constitutionality was dubious, advised the Government of Jammu and Kashmir and referred back that particular Resettlement Act to the court for opinion. Here is a Bill on which not only the whole country is opposed. Here is a Bill on which enlightened people like the former Chief Justice of the country, Shri Chandrachud, Justice Krishna Iyer.....

(Interruptions)

SHRI RAOOF VALIULLAH (Gujarat): Only people like you are opposed to it.

SHRI LAL K. ADVANI: Of course. I am opposed to it. I will oppose it tooth and nail.

SHRI RAOOF VALIULLAH: We know what is your stand.

SHRI LAL K. ADVANI: People like Justice Baharul Islam sitting here. All these luminaries have expressed doubts about the constitutionality of the provisions of the Bill.

SHRI DIPEN GHOSH: Justice Baharul Islam has written an article. I am in possession of it.

SHRI LAL K. ADVANI: Why should the Government try to defraud the community? I regard this as a fraud committed on the Muslim community by telling them that you are bringing in a Bill in their favour. They know it that this Bill will be struck down.

(Interruptions)

SHRI RAOOF VALIULLAH: We know what sort of articles you write in the Organiser. We know where you stand. (Interruptions) I have never come across such a fanatic thing. (Interruptions).

MR. CHAIRMAN: Mr. Valiullah, you cannot object to anything which a Member says.

SHRI RAOOF VALIULLAH: He is objecting to all sorts of things. He is casting aspersions on the Muslim community. (Interruptions)

MR. CHAIRMAN: I must preserve the freedom of speech. Freedom of speech includes the right of a Member to say right as well as wrong things. Therefore, you cannot object to what he says. You do not interrupt him. Mr. Advani, you go on.

SHRI LAL K. ADVANI: Sir, I have nothing more to add. I would only appeal to the Government, even at this late stage, to invoke article 143 and seek the opinion of the Supreme Court and only when the Supreme Court says that Constitutionally also, it is valid—my objection is not merely to the Constitutionality of it; but at this point of time, I have raised that—the Bill can be taken up for consideration. Otherwise, I will oppose the Bill as anti-women, as retrograde and as a surrender to the forces of obscurantism in this country. Sir, one last point and that is, till now, there were divergent laws... (Interruptions).

SHRI RAOOF VALIULLAH: Progressives and reactionaries are sitting on the same platform. (Interruptions)

SHRI DIPEN GHOSH: You will not get relief from this Act. (Interruptions).

SHRI PARVATHANENI UPENDRA: He is recently married. (Interruptions).

SHRI NIRMAL CHATTERJEE (West Bengal): Are you going to utilise the Bill so soon, Mr. Valiullah? (Interruptions).

MR. CHAIRMAN: Mr. Valiullah, this will not apply to you. (Interruptions).

SHRI LAL K. ADVANI: Till now, criminal law in the country was uniform. It was only in the field of civil law that there was divergence. There too, there are a number of civil laws like, for example, the Contract Act,

the Transfer of Property Act etc., where there is uniformity. But in the case of law relating to marriage, divorce, maintenance and adoption, there is divergence. Different communities and different religions have different laws. The Constitution requires us to bring about an element of uniformity in the field of civil law. Instead of doing that, what we are doing is that we are introducing divergence in the field of criminal law. This is a criminal law provision. Section 125. This section will now not be available to Muslim women. Is it not an action blatantly against the Muslim women? If you had introduced this Bill and said that section 125 is also open, it would have been a different matter. But section 125 is closed. The provision which has been brought in by way of an amendment is a provision which is ridiculous. Of course, it is a matter of detail. Sir, in the end, I would once again request the Government to reconsider its stand.

श्री वीरेन्द्र वर्मा (उत्तर प्रदेश):
आदरणीय, चेयरमैन साहब, विभिन्न दलों के नेताओं ने संविधान की विभिन्न धाराओं पर प्रकाश डालते हुए सुप्रीम कोर्ट के जजमेंट और अखबार की कतरनों से इस इशू पर विस्तार के साथ अपने विचार आपके सामने रखे हैं।

मान्यवर, सारे संसार में और हमारे इस प्यारे भारत देश में भी महिलाओं की उपेक्षा होती रही है और दुर्भाग्य है कि महिलाओं की उपेक्षा संसार में और हिन्दुस्तान में आज भी है। इन उपेक्षाओं के विरुद्ध स्वर्गीय महात्मा गांधी जी और उनसे पेश्वार महर्षि दयानन्द जी और संसार के बहुत से सुधारक महिलाओं के हितों और उनके अधिकारों को संरक्षण देने के लिए लड़ाई लड़ते रहे हैं। मान्यवर, यह जो बिल माननीय श्री अशोक सेन साहब पेश कर रहे हैं

इसका नाम है, "मुस्लिम स्त्रियों के अधिकारों का संरक्षण"। मान्यवर, किसी को गलतफहमी नहीं रहनी चाहिए कि हिन्दुस्तान का संविधान सैकुलरिज्म में विश्वास रखता है। वह सैकुलरिज्म को आदर्श मानकर बनाया गया है और किसी को गलतफहमी नहीं होनी चाहिए, वीरेन्द्र वर्मा जैसा आदमी सौ फीसदी सैकुलरिज्म में विश्वास रखता है। लेकिन जिस प्रकार यह महिलाओं के अधिकारों के संरक्षण के लिए बिल लाया गया है मैं निःसंकोच यह कहने के लिए खड़ा हुआ हूँ कि इससे महिलाओं के अधिकारों का संरक्षण नहीं होगा बल्कि इसके जरिए से उनके हस्बैंड्स का, जो जवान बहनों के साथ, जवान बेटियों के साथ खिलवाड़ करते हैं, उनके साथ या उनके हितों के लिये यह संरक्षण नहीं होगा बल्कि संरक्षण उनका होगा जो कि इस प्रकार की ज्यादती करते हैं।

(अवधान)

श्री सत्यपाल मलिक (उत्तर प्रदेश):
उनके मंस्वर ने कहा था कि इस बिल का विरोध करने वाला जहन्नुम में जाएगा।... (अवधान)

MR. CHAIRMAN: Mr. Virendra Verma, please address the Chair and also remember the rule not to reply to the interruptions.

श्री वीरेन्द्र वर्मा: यह हमारे जो विचार हैं उन्हें हम कह रहे हैं और उनके जो विचार थे वह उन्होंने कहा। हमारे जो विचार हैं हम कहेंगे।

SHRI DIPEN GHOSH: Can the speech made in the Order House be referred to here?

विधि और न्याय मंत्रालय में राज्य मंत्री
(श्री हंस राज भारद्वाज) : यह उनकी
पाटी के मੈम्बर की बात कर रहे हैं।
(व्यवधान)

SHRI DIPEN GHOSH: He is talking of another Member in the Lok Sabha and Shri Virendra Verma is the Member of the Rajya Sabha.

MR. CHAIRMAN: Please take your seats. (Interruptions) Please hear the other side.

श्री बोरेन्द्र वर्मा : माननीय चेयरमैन साहब, भारत के संविधान-निर्माताओं ने सन् 1950 में जब इस संविधान का निर्माण किया उनके मुकाबले में सारे माननीय सदस्य जो इस समय यहां उपस्थित हैं, मैं दृढ़ता के साथ यह कहने की जुर्रत करता हूं कि जिस जमाने में संविधान का निर्माण हुआ था उसके मुकाबले में आज के नेता और सारे वर्कर पिगरी हैं। इन सभी धाराओं पर, जिनकी माननीय सदस्यों ने चर्चा की, 13-ए, 14, 15, 44, 143 संविधान में उन सभी धाराओं पर खुल करके बहस हुई थी और उसके बाद यह निर्णय लिया गया था जिस प्रकार का विधान हिन्दुस्तान में रखा गया है। यह नहीं समझना चाहिए कि हम मुस्लिम महिलाओं के अधिकारों के विरोध के लिए खड़े हुए हैं, हम तो फोवदी उनके अधिकारों के पक्ष में हैं और उनके अधिकारों का संरक्षण होना चाहिए। हम इस हक में हैं। लेकिन चाहे वह हिन्दू महिला है, चाहे वह मुस्लिम महिला है, चाहे वह सिख और ईसाई महिला है या कोई भी महिला है, सारी दुनिया में और सारे हिन्दुस्तान में भारत में महिलाओं के हितों का, महिलाओं के अधिकारों का कभी आरक्षण नहीं हुआ है बल्कि उनका शोषण हुआ है।

क्या माननीय मंत्री जी स का न से उनके अधिकारों का संरक्षण करेंगे? मैं यह कहने के लिए तैयार हूं और मान्यवर, आपकी आज्ञा से यह कहना चाहता हूं कि यह बिल महिलाओं के परिवार में उनके भाईयों, उनके चाचाओं और उनके ताऊयों में एक झगड़ा पैदा करेगा। मुकदमें बाजी पड़ा करेंगे और मान्यवर, इसके साथ ही साथ यह हाईकोर्ट के जजमेण्ट, मुश्किल बड़ दुख के साथ यह कहना पड़ता है कि भारत ने संविधान में स्वीकार किया है कि सुप्रिम को सर्वोच्च संस्था है हमारी और हाईकोर्ट उनके जजमेण्ट के विरुद्ध गलतियों में फैसला करेंगे क्या? हाऊस के अन्दर, माननीय सदन के अन्दर उनकी निन्दा की जाती है। माननीय न्यायमंत्री जी प्रशंसा करते हैं और दूसरे मंत्री जी कण्ठम करते हैं। उच्चतम न्यायालय के न्याय को न्यायमंत्री प्रशंसा करें और दूसरे कण्ठम करें हाऊस के पलोर पर और गलतियों में जाकर, हाईकोर्ट और सुप्रिम-कोर्ट के फैसलों पर निर्णय लिया जाएगा? मान्यवर, मुझे इस बात का दुख है।

फिर मान्यवर, सेकुलरिज्म में हमारे ला-मिनिस्टर साहब यकीन रखते हैं, हर आदमी सेकुलरिज्म में यकीन रखता है और आप सब सेकुलरिज्म में यकीन रखते हैं। जब सब सेकुलरिज्म में यकीन रखते हैं तो फिर क्या यह सेकुलरिज्म को बढ़ावा देने के लिए है या सांप्रदायिकता को बढ़ावा देने के लिए है? इससे तो सांप्रदायिकता बढ़ेगी। इससे मुस्लिम परिवार में फैसादात बढ़ेंगे
(व्यवधान)... मेरे अपने विचार हैं, मैं समझता हूं कि यह बढ़ेंगे। जो प्रोग्रेसिव

सूज के आदमी है, ये इस बात को रिलाइज करते हैं ।

मान्यवर, इस प्रकार मैं ईमानदारी से यह महसूस करता हूँ कि हमें सेकुलरिज्म को बढ़ावा देने के लिए कदम उठाना चाहिए और जो संविधान की विभिन्न धाराएँ हैं, उनके उपर विचार करके कानून को आधारित करना चाहिए । अच्छा होता, उचित होता कि हम इस पर सुप्रीम कोर्ट की राय लेते । अभी जस्टिस कृष्णा अग्रवर साहब ने, इसके लोकसभा में पास हो जाने के बाद, कहा है कि यह नया कानून सुप्रीम-कोर्ट में टिक नहीं सकेगा । इससे पश्चात् वो जश्नेष्ट ये वे चुके हैं, सुप्रीमकोर्ट दे चुका है । तो आप पोलिटिकल गेम बनाना चाहते हैं या महिलाओं की रक्षा करना चाहते हैं ? होना यह चाहिए था कि सुप्रीमकोर्ट में भेजकर पहले उनकी राय लेनी चाहिए थी, जैसा कि संविधान में प्रावधान किया हुआ है । इन शब्दों के साथ मैं कहता हूँ कि बहुत उचित यह आपने नहीं किया है ।

SHRI S. W. DHABE (Maharashtra): Mr. Chairman, Sir, it is a very sad day today that such Bills are to be brought, discussed and passed by this House. Our friends on the other side claim to be socialists. The Preamble of the Constitution which we have adopted says that we shall try and promote a socialist, secular, democratic Republic. This Bill is anti-secular, this Bill is anti-socialist, this Bill is against the interests of Muslim women divorcees. It limits their interests and their unlimited right of maintenance under section 125 Cr. P.C. Why should we limit it to a community? Simply because she happens to be a Muslim woman, her rights are being eroded by this Bill. Their rights are not being enlarged or advanced, as is claimed. As my friends have rightly said, it is a Bill meant for protection of husbands and not for women.

At this stage because we have to raise legal objections, I want to say that my first objection is that under Art. 141 of the Constitution of India, the judgment of the Supreme Court is the law of the land and is binding on all courts in India. Under clause 7 of this Bill, it has been given retrospective effect and to all pending matters also it will be applicable as if they are not governed under Section 125 Cr. P.C. but by the provisions of this Bill. Therefore, I say that it violates Art. 141 of the Constitution. It is not a prospective bill; and a retrospective till cannot be passed against the judgment of the Supreme Court. Sir, my second objection is more fundamental. This Bill is called "The Muslim Women (Protection of Rights on Divorce) Bill, 1986." The preamble of the Bill says it is meant "to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto." Therefore, the Bill is only limited to divorce provisions. Under articles 245 and 246 of the Constitution, the powers of Parliament are specifically given as to where they can make laws. Under article 246(1) Parliament has got exclusive powers for making laws relating to entries mentioned in List I—Union List in the Seventh Schedule. So far as the Concurrent List is concerned, the power is given to the State Legislatures as also the Central Legislature. Under List I—Union List in the Seventh Schedule, there is no power given to the Central Government to pass any legislation on marriage or divorce. Neither can the residuary power under entry No. 97 be utilized or exercised because the subject is specifically in the Concurrent List—List III. Entry No. 5 is the only entry under which such a law can be made. Entry No. 5 reads: "Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; ..." Therefore, under entry No. 5 it is a well-known rule of construction that the General Clauses Act does not

[Shri S. W. Dhabe]

apply to interpretation of the Constitution. It must be interpreted strictly. Therefore, if the law has to be brought before Parliament, it must relate to marriage and divorce, both. It cannot be either for marriage or for divorce. If you see laws like the Special Marriages Act and the Hindu Marriages Act, all the provisions are right from marriage to divorce. Without having a provision of marriage law, passed by the Legislature, for Muslim women, how can you have a law only for divorce? Therefore, my submission is that entry No. 5 does not cover this piece of legislation limited to divorce only. Apart from political expediency, I think this power is not there and viewing the strict construction it cannot be interpreted as "or" and unless the law relates to both marriage and divorce, there is no legislative competence under the Constitution in List III.

My friends here have already spoken about the ethical and political grounds. My submission is, this is not the time to divide the country or make divisions between community and community. When we are fighting the forces of disintegration at many places, it is now the responsibility of the Government to see that such controversial Bills are not brought, and these controversies should not go to the States. I, therefore, suggest that since a uniform law is already there, there is no need to bring this law.

I also want to say that the opposition parties are not taken into confidence in this matter. Some other persons were taken into confidence. Although we had several meetings with the Prime Minister, the subject was not discussed with us. Therefore, I suggest to the honourable Law Minister, through you, Sir, to withdraw the Bill, not to press it and refer it to the Supreme Court as suggested by our friends here.

1.00 P.M.

SHRI GURUDAS DAS GUPTA:
(West Bengal): Sir, I rise to op-

pose the introduction of the Bill because in my opinion the Bill is unconstitutional. The Bill is outrageous, the Bill is anti-secular, the Bill goes against the fundamental philosophy of the Indian national movement, the Bill is anti-Indian. I oppose the introduction of the Bill because I consider this to be an abject surrender to fundamentalism. I oppose this Bill, the introduction of the Bill because I consider this to be a fraud on the Indian Constitution.

Sir, I believe, the Prime Minister has been stating that the Bill was necessary taking into consideration the feelings of the Muslim masses. If our Government is so much interested to take into account the feelings of the Muslim masses, why has the Babri Masjid not yet been declared a national monument? That is also as sensitive as the Shah Bano Case.

Sir, the nomenclature of the Bill should be changed, in my opinion. It is, in my opinion, a protection to polygamy and bigotry because taking advantage of the provisions of the Bill men will enjoy women and discard them just after one month, two months or three months.

SOME HON. MEMBERS: Shame.

SHRI GURUDAS DAS GUPTA:
Therefore, Sir, it is an inducement. Sir, I believe this will be an inducement to commit rape, to constitutionalise rape on womanhood of this country.

SOME HON. MEMBERS: Shame.

SHRI GURUDAS DAS GUPTA:
I believe my friends on the other side will perhaps not think of the whip but will think of the consequences, will think what Indian nation has stood for. The tragedy, the greater tragedy is that this Bill is being introduced for consideration on the completion of 100 years of India's freedom movement. That is a greater tragedy. The paradox lies here, in my opinion. On this

auspices occasion a outrageous, anti-secular, anti-Indian Bill is sought to be introduced by the ruling party.

I do not want to go into the details. But it only hurts me, not only me but millions. It only speaks of the new culture that some people now in power seem to stand for. It speaks of the new culture of the ruling clique.

Sir, this Bill is discriminatory because there is enough provision in the Indian law, under which a divorced women could take recourse to compensation or allowance when divorced. That is sought to be changed. Some group of women will not be able to get the benefit under the common Indian law. Why will they not get it? It is because they belong to one religion. Herein religion is being made the basis of law-making. When religion is being made the basis of law-making, we strike at the very root of our Constitution, at the foundation of the Indian Republic.

Shall I remind my friends that the national movement under the leadership of Gandhiji had always fought against communalism at every stage? India has never accepted the two-nation theory. Why should we accept separate law for separate religion. We had never accepted communalism in Indian politics. We are going back. We are going back from the position our national leaders had stood for. Therefore, Sir, this Bill is a betrayal of the national movement, it is a betrayal of the national tradition, it is a betrayal of what all our national leaders stood for.

Therefore, Sir, I oppose this Bill tooth and nail, and I only say, this Bill will encourage criminal offences on the part of males in the country, will result in greater amount of social repression on the womanhood. Therefore, on behalf of my party, on behalf of the secular forces, on

behalf of the bonded women I thoroughly oppose the introduction of this Bill for consideration being placed by the Law Minister.

SHRI CHITTA BASU: Mr. Chairman, I am of the view that this House in the other House. The other consideration. Of course, you have, in your wisdom, allowed the Law Minister to move the motion.

Sir, I want to remind you that this House had not the opportunity of scrutinising the constitutionality of this Bill because this Bill was introduced in the other House. The other House is an independent House, and this House is also an independent House of the other House. Therefore, this House was not given an opportunity of scrutinising, examining the constitutionality of the Bill. However, you have allowed us to speak about it.

At this stage I can only say that the Bill should not be taken into consideration. The hon. Minister should withdraw it. This Bill suffers from constitutional infirmity. It violates certain specific constitutional provisions in our country. It violates Article 14; it violates Article 15; it violates Article 16(2); it violates Article 13(2); it violates Article 38; it violates Article 39(a). I think, everybody knows that Article 14 relates to the equality before law and equal protection by the law. This Bill denies that opportunity. Muslim women will be debarred from enjoying the Fundamental Right of equality before law. Therefore, it violates Article 14. Article 15 relates to the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. This Bill discriminates against a section of the Indian womanhood on the ground of religion, they being debarred from enjoying that Constitutional right, which is a Fundamental Right, because they belong to a particular religious faith viz. Muslim. Therefore, this Bill violates Article 15 of the Constitution.

[Shri Chitta Basu]

Now, coming to Article 13(2), it is known that this Article relates to the laws inconsistent with or in derogation of the Fundamental Rights. Article 14 guarantees certain Fundamental Rights, Article 15 guarantees certain Fundamental Rights, Article 16 too guarantees certain Fundamental Rights and this Bill denies those Fundamental Rights which are to be enjoyed by the citizens of our country. Article 13(2) says that any Act, which is not consistent with the Fundamental Rights or in derogation of them, should be void. I am not a legal expert, but there are many legal luminaries and they will examine it, but it is quite clear that it violates the Fundamental Rights and, therefore, is likely to be declared as void.

Apart from this, I also want to mention one precedent. This precedent is that in the Central Assembly in 1929 hon. Vithal Bhai Patel observed that the Public Safety Bill could not be considered as the Meerut conspiracy case was pending before the Court of Law and that it will demolish the fundamental basis if it was passed. In this particular case also, this matter is *sub judice*; special leave applications have been admitted by the Supreme Court and they are considering the same issue of alimony by a husband to a Muslim divorcee. As hon. Vithal Bhai Patel could not allow the Central Assembly to discuss and pass the Public Safety Act at that time moved by the British Government on the question of it being *sub judice*, and since some other law of the same nature was on the anvil, it was not allowed to be discussed and considered. I would appeal to you as a guardian of the House that since a special leave has been granted and cases for alimony are under the consideration of the Supreme Court, if this Bill is passed it will demolish all the basis for that. Therefore, the House also should not take into consideration this Bill.

Socially and politically-speaking, I would say, it is a retrograde step. It is rather a war against the concept of equality of man and woman. A Legislature of this nature cannot concede to this position. It also violates the Directive Principles, although I am quite conscious that the Directive Principles are not to be taken in that light as the Fundamental Rights ought to be taken. In this connection I would say that no law can trample upon the Directive Principles of the State Policy. As a matter of fact, all the laws should reflect positively the Directive Principles of our country. Sir, this Bill does not only reflect positively the Directive Principles of the State Policy, but it trample upon certain basic principles enshrined in the Directive Principles of the State Policy. In this context I mention article 38 and 39. Article 39 speaks about the social and economic rights of the women. This Bill takes away the social and economic rights which have been enshrined by article 38 of the Constitution of our country although it is a Directive Principle. Sir, the Directive Principle here has not been reflected in the Bill. As a matter of fact, the Directive principle as contained in article 38 has been trampled down. Therefore, Sir, it is also injurious to the interests of the women of our country.

Lastly, Sir, I would say that this Bill is a product of Shah Banc case-judgement. This judgement was a progressive social legislation that could enhance the pace of social progress in our country. Unfortunately, this Bill negates, nullifies the progressive features of the social legislation.

Sir, I would also like to draw the attention of the hon. Member from the opposite side who spoke just now that the hon. Law Minister while introducing the Bill is recorded to have said that this Bill is a product of the consent of the Muslims. Sir, the law does not provide separate

electorate in our country. Any law passed in Parliament or in any State Legislature is on the basis of the joint electorate. Does he indicate that the law can be passed. . .

श्री (मौलाना) अतराफत हुक
 (राजस्थान) : 1948 में डा० अंबेडकर
 ने यह यकीन दिलाया था सब को कि
 जिस समाज के लोग हैं उनके पर्सनल
 लॉ में कोई परिवर्तन नहीं किया जायेगा।
 यह मुस्लिम पर्सनल ला है इस पर आपको
 बोलने का कोई अधिकार नहीं है।
 (व्यवधान)

SHRI DIPEN GHOSH: Mr. Chair-
 man, Sir, this must go on record. This
 is Parliament. Nobody is elected on
 the basis of religion. (Interruptions).
 You must give your ruling on this
 particular point. (Interruptions). Sir,
 you must give your ruling on this
 particular point. He has stated that it
 is Muslim personal law and only
 Muslims should have prerogative to
 discuss this. This is Rajya Sabha
 elected on the basis of the Consti-
 tution. Therefore, there is no question
 of having any representative in
 Parliament on the basis of religion.
 Naturally, you must give your ruling
 on this. (Interruptions).

MR. CHAIRMAN: No ruling is
 called for. I am allowing Mr. Chitta
 Basu to continue his speech which is
 implied in the ruling.

SHRI DIPEN GHOSH: Is it going
 on record or not? (Interruptions).

MR. CHAIRMAN: As I said in the
 beginning, every person has a right
 to express his views. You may agree
 with it or you may not agree with
 it. But he has a right to express
 his views. (Interruptions).

SHRI DIPEN GHOSH: After Chitta
 Basu concludes his speech you must
 give your ruling. (Interruptions).

MR. CHAIRMAN: Mr. Chitta Basu,
 please proceed.

SHRI CHITTA BASU: Sir, a Bill
 cannot be the product of the consent
 of a particular community, because
 Indian society today is represented by
 all communities. Here it is India and
 Indian nationhood. Muslims are
 also citizens of this country. They
 have got equal rights and responsi-
 bilities, therefore, equal duties to
 this great country of ours. Our Consti-
 tution has got the conception of
 comprehensive culture. Therefore, Sir,
 there was no scope of having separate
 electorate in our country and I would
 only ask the hon'ble Law Minister is
 it not improper? I won't say it is
 unconstitutional but is it not im-
 proper? Was it not an opinion which
 is an example of impropriety and
 also which is very dangerous and
 which is also inherent with very
 dangerous potential. (Interruption)

SHRI SUKOMAL SEN (West
 Bengal): That will lead to demand
 for separate electorate.

SHRI CHITTA BASU: I am very
 glad that you have understood the
 point. (Interruption).

SHRI DIPEN GHOSH: But I have
 also understood that the Law Min-
 ister cannot understand. (Interrup-
 tion).

SHRI CHITTA BASU: The Law
 Minister may know the law. Mr.
 Bhardwaj was very expert in law
 but you should be also equally con-
 scious about the grave potential. You
 are also willy-nilly speaking in favour
 of having separate electorate for
 our country which is proved by the
 remarks made by him.

Lastly, I would say so much
 damage has already been done and
 if you want to retrieve the position
 and the position can be retrieved if
 the hon. Law Minister agrees to
 withdraw his motion honourably.

Sir, refer to the Supreme Court,
 under Article 143 as to what is its
 opinion and the House can then

[Shri Chitta Basu]

discuss that and proceed on. In the meantime, I would also subscribe to the view that the constitutional points which are being raised should be answered by the Attorney General. There is a constitutional provision where the Attorney General may be invited to clarify the points raised by the Members in this House. I think, even at this late stage, you should consider my proposal to invite the Attorney General to convince the House about the constitutionality of this Bill. Thank you Sir.

MR. CHAIRMAN: Now, all the Leaders have spoken. There are a number of other Members who belong to the same party and who also want to speak. They will have an opportunity. (Interruption).

SHRI SURESH KALMADI: Sir, you have said, everybody who has raised a point of order can speak. Please do not go back on your ruling Sir. (Interruption).

MR. CHAIRMAN: When the Chair is satisfied that there has been enough discussion, sufficient discussion has taken place. (Interruption).

SHRI SURESH KALMADI: Please do not go back on your ruling.

MR. CHAIRMAN: Nothing will go on record. (Interruptions).

MR. CHAIRMAN: I would now call the Law Minister. (Interruption). Please sit down, all of you. This is not the final discussion. This is only a preliminary discussion. There is going to be. (Interruptions).

SHRI SURESH KALMADI: *

MR. CHAIRMAN: Nothing will be recorded. Please sit down.

SHRI SURESH KALMADI: *

*Not recorded.

MR. CHAIRMAN: This is only a preliminary discussion. (Interruptions). On the motion, there will be a discussion. When the Minister moves that the Bill be taken into consideration; after his speech, there will be a general discussion. At that time, all of you can raise your points. Therefore, it is not..... (Interruptions)

All right, what is your point of order, Mr. Dipen Ghosh?

SHRI DIPEN GHOSH: Sir, I have a submission to make as leader of my party and as a friend of other Opposition parties. We are glad that you have allowed all the leaders of the Opposition parties to make their points of order. And you had declared that on those points of order, after hearing the Minister of Law, you would give your ruling. But apart from that, there may be some Members who may have some new points of order. (Interruptions) They may have some new points of order or new points for submission. So after the Minister's reply, you give your ruling on the first spate of points of order and then you hear the other Members also to see whether they have got any further points of order or points of submission. You dispose of them and then take up the Bill for discussion. Otherwise it is the inalienable right of every Member to raise a point of order and naturally we cannot allow the surrender of that right of the individual Members. So there should be some arrangement.

MR. CHAIRMAN: I will clarify the position. There is only one point of order relating to the constitutionality of this Bill. On this several Members have spoken and the Chair is satisfied that there has been sufficient discussion on this matter. If others still want to speak, there is still an opportunity. It is not as if there is no opportunity for them.

When the motion for consideration is taken up, they can make the same points, new points, everything. I am not shutting out anything. (Interruptions).

Mr. Ghosh referred to different points of order. Here, there is only one point of order, namely, the constitutionality of this Bill which is before the House. I can understand, if they have different points of order on different subjects, then I should give them an opportunity. But on one single point of order, about the constitutionality, I have given sufficient time for discussion. I am satisfied..... (Interruptions) You may reply, Mr. Minister.

SHRI SURESH KALMADI: How can you presuppose what we want to say. You have agreed that you will listen to our points of order. . .

MR. CHAIRMAN: No. nothing will be recorded.

SHRI SURESH KALMADI: (Continued speaking).

MR. CHAIRMAN: If you disturb the proceedings further. I will have to take recourse to other things. Mr. Law Minister, you please proceed with your reply.

SHRI ASOKE KUMAR SEN: May I express my very deep distress....

SEVERAL HON. MEMBERS: Point of order!..... (Interruptions).

MR. CHAIRMAN: No point of order will be allowed. There is no point of order. I have explained it already. I do not want to repeat myself. Now, Mr. Law Minister,....

SHRI ASOKE KUMAR SEN: You are one of our experienced parliamentarians and we are bound to meet this extravagant claim that any point of order can be raised to obstruct the proceedings. Nobody has got the right to raise each and

everything.. ..((Interruption by Shri Suresh Kalmadi).

MR. CHAIRMAN: Nothing of what Mr. Kalmadi says will be recorded.

SHRI ASOKE KUMAR SEN: If the proceedings of the House have to be carried on, the Chair has to be obeyed, otherwise, if this is going to be carried on this way, then the honourable Member.... (Interruptions).

SOME HON. MEMBERS: No, no, who are you to say that? You have no right to say that.

SHRI PARVATHANENI UPENDRA: You have no right to threaten Members. The Chair is there to conduct the House, not the Minister.

SHRI DIPEN GHOSH: Mr. Chairman, he is usurping not only the power of the Constitution, he is usurping your power also. He is threatening the Member.

SHRI ASOKE KUMAR SEN: I am only saying that the Chair's decision should be obeyed. (Interruptions). I am again reiterating that the Chair's decision should be obeyed.

SOME HON. MEMBERS: Point of order. . .

MR. CHAIRMAN: I am disallowing any point of order.

SHRI ASOKE KUMAR SEN: Sir, as I said...

(Interruptions)

MR. CHAIRMAN: Nothing of what others say will go on record.

(Interruptions)

SHRI ASOKE KUMAR SEN: Sir, I am not going to yield.

(Interruptions)

2

minutes past one of the clock.

clock, Mr. Chairman in the Chair.

What a great day! (Interruptions).

terruptions).

been raised. (Interruptions).

made. Two minutes.

us time to speak.

der care and look after them.

is a point of order!

ruptions).

any legal opinion at all except Government legal opinion. I am sure

it is a total waste of...

will end in 12 hours?

particular piece of legislation.

will cut across this whip, etc.

they will be expelled.

Two minutes.

Judiciary. It has almost come to this

was already discussed in this House

made it very clear that it does not

apply to the Muslim personal law

And in the recent time there was another judgment of the honourable Supreme Court...wherein the Supreme Court gave its ruling against Krishna Singh versus Mathur, A.I.R. Supreme Court 707 at 712. It was reported in the Hindustan Times of 22-9-1985 saying that the caste Hindus will not be governed by the personal law and it could not be given effect to by the judiciary. This is the ruling of the Supreme Court. I do not know how the Supreme Court can give two different rulings when it comes to the Hindu law and Muslim law. It is very clearly defined in the Constitution in Article 25 and 29. It is very clearly mentioned that these laws can be practised and it is not a violation. I would like to know from the hon. Members of this august House who have been raising these things as to what happens to Article 17 about untouchability. If equality as defined in article 14 is to be implemented in letter and spirit, which has been argued, what happens to untouchability? Have they anything to mention about it? I would like to know it from the Members and the Government.

SHRI SATYA PRAKASH MALA-VIYA (Uttar Pradesh): Sir, my submission is that the Bill moved by the hon. Law Minister cannot be debated, discussed or passed today by this House. I take my plea under Rule 69. It says:

"Motion after introduction of Bills.

When a Bill is introduced, or on some subsequent occasion, the member in charge may make one of the following motions in regard to his Bill, namely:—

(i) that it be taken into consideration."

Now, I refer to the proviso. It says:

"Provided that no such motion shall be made until after copies of the Bill have been made available

for the use of members, and that any member may object to any such motion being made unless copies of the Bill have been so made available for two days before the day on which the motion is made, and such objection shall prevail, unless the Chairman allows the motion to be made."

Sir, my submission is that this Bill was passed by the Lok Sabha at 2.40 A.M. on the morning of 5th.

MR. CHAIRMAN: It was accepted in the Business Advisory Committee that it would be taken up within 24 hours. Now, you are raising it here again.

SHRI SATYA PRAKASH MALA-VIYA: Sir, it is my right to raise this point because the matter was raised in the other House and Mr. H. K. L. Bhagat said that they were also moving for waiving of the rules. This House does not know when the Parliamentary Affairs Minister moved for waiving of the rules. The second point is that the Bill was received by the Members of the House yesterday at 10.00 A.M. One day continues for 24 hours. Two days mean 48 hours. It will expire tomorrow at about 10.00 A.M. One day continues for that it can neither be debated nor passed today. (Interruptions).

श्री राम नरेश कुशवाहा (उत्तर प्रदेश) :
हमें हिन्दी की कापी नहीं दी है। हम लोग जो अंग्रेजी नहीं जानते, क्या करें ?

SHRI NIRMAL CHATTERJEE: On a point of order of a completely different nature. I want the ladies to get precedence and after that I will speak.

MR. CHAIRMAN: You take one minute for one point of order and then you jump to another. Let it be finished.

SHRI NIRMAL CHATTERJEE: My point is simply like this. I am not making a point. But I will approach the kind of objections that have been raised from a completely different angle.

MR. CHAIRMAN: Please sit down.
Dr. (Shrimati) Sarojini Mahishi.

DR. (SHRIMATI) SAROJINI MAHISHI (Karnataka): You are good enough to give me a chance. When I approached you again, you were kind enough to reconsider your decision that you should not give any further chance to anybody to raise a point of order. I hope the hon. Minister will also reconsider his view to get it passed today only. He will reconsider it and submit it to a Select Committee first. Sir, I have written a letter to you. The Muslim Women (Protection of Rights on Divorce) Bill, 1986, involves many intricate points of law in respect of which the expert advice and guidance of the Attorney General is absolutely necessary. I would request you to invite him to the House when the Bill is taken up for consideration.

To give you an example, Dr. Maimoon Khanam, a Muslim lady, who is a lecturer in Persian in K. M. College, Amravati, Maharashtra, was given talak nearly two years back on the plea that she was an atheist. Subsequently, she has been excommunicated on the basis of a Fatwa, a religious order, given by the Mufti of Deoband. The effect of the Fatwa is that she ceases to belong to Islam. As a result of that, she cannot get remedy under the Islamic law. The question, therefore, arises which is the law which covers such cases. It does not provide an answer to this. There are many cases where a Christian lady has married a Muslim. When she is given talak, she ceases to be a Muslim. Under which law she is to seek protection? These intricate questions are involved in this. And, therefore, Sir, it is necessary that the presence of the Attorney-General should be here. I listened to you that the legal acumen and the efficiency of the Minister is much more. And he is a legal luminary. We know, Sir. But, today, he has been an instrument in bringing this law. Therefore, we are

requesting you to have the presence of the Attorney-General in this case.

MR. CHAIRMAN: I am going to give preference to all ladies now. Shrimati Kanak Mukherjee.

SHRI NIRMAL CHATTERJEE: Sir, you have been chivalrous. The Government should learn from you how to approach the problems of women.

SHRIMATI KANAK MUKHERJEE: Sir, my submission is that this Bill cannot be taken into consideration for passing. This is an atrocious, obnoxious, retrograde and discriminatory Bill which violates the Fundamental Rights which the Constitution has given us. This Bill is a shame to any civilized society. This is beneath human dignity and it insults the womanhood and degrades the status of women. It takes away the Fundamental Rights which are guaranteed by the Constitution. Sir, this Bill is cruel, inhuman and arbitrary. Sir, as it is, the women of the minority community are much suppressed under the system of the rampant polygamy and even oral talaq. You are not bringing any comprehensive Marriage Bill and Divorce Bill. You are not going forward with that, and you are just giving open licence to the men for this immoral and unethical attitude to life. As it is, the women are not educated. They are deprived of any chance of jobs. You did not give any chance to stand on their own legs independently to live with self-respect. And what is the minimum right guaranteed under the Constitution, you are taking away. (Interruptions). The Constitution has given the promise of socialism, secularism and democracy. What you are doing is communalism, authoritarianism and autocracy. The Constitution has promised us justice, liberty and equality. You are doing injustice, slavery and discrimination both on the ground of religion and sex. This Bill cannot be and must not be taken into consideration for passing. I appeal to you, Sir, and I warn the hon. Law Minister Asoke Babu that you are coming from the land of Rammohun Roy, Vidya

Sagar and Rabindranath Tagore. We are celebrating the 125th birth anniversary of Tagore. And you are insulting womanhood and degrading the status of women. (Interruptions) And the Law Minister will be thrown into the dustbin of history for bringing out such a law. This cannot be taken into consideration. Thank you, Sir.

MR. CHAIRMAN: Smt. Renuka Chowdhury.

SHRI NIRMAL CHATTERJEE: Sir, this is her maiden point of order.

MR. CHAIRMAN: It is not a point of order. It is a maiden speech.

SHRIMATI RENUKA CHOWDHURY (Andhra Pradesh): Sir, I thank you for giving me this opportunity, as you call it my maiden speech again. And I hope this is going to reflect the thinking of men in the nation tomorrow on the Bill also that they will allow women to rise and speak and voice the sentiment as a woman. I reflect my Muslim sisters and every other sister in every caste and religion in this country today. I speak here as an Indian and not merely as a Party or an Opposition. That is the first point I want to make. Secondly, Sir, there is a slight technical hitch which I want to bring to your notice, and I am sure you are aware of it, but I just want to refresh your memory that this Bill was circulated yesterday morning at 10 a.m. 48 hours have not lapsed for us technically to take up this motion as yet. And on the other hand, by preaching secularism to the country, are we in spirit today in this House as a secular body of people? If I am to bring up my daughter for 21 years as a secular Indian and tomorrow she wants to marry a Muslim, will I as a mother, as a woman not hesitate to stop her from getting into this marriage because there is going to be no protection for her, God forbid in the event that I am also not around to protect her? This is undermining women and

their Fundamental Rights in our society today. And this is not only in respect of Muslim women. Tomorrow I will embrace Islam if I choose to. And if my husband desires to give me talaq, I use it as an instrument to go to the Wakf Board who can finance me and I can continue to live in what is considered...

(Interruptions). Sir, I am being interrupted from that side. Are we then giving rise to bring down the moral code of ethics in personal behaviour in the society? What are we trying to bring about? Sir, it is this. We are inadvertently, by introducing this Bill, promoting ostracism of a particular community for which nation's leaders have already laid down their lives and have fought trying to bring about secularism in our country today, and we will fail in the sense that as Indians today if we do not overcome politicising as Rajya Sabha Members in this House. if we do not overcome our own conscience. and if we are going to merely vote because we have been whipped to vote, then we are unfit to be in this House of Elders. (Interruptions). Sir, I also wish to draw your attention to the psychological connotation of the Rajya Sabha today when papers have been screaming headlines that the Bill has been passed and if half of us sitting here feel that since the Bill has already been passed in the Lok Sabha this is merely a formality and what the Opposition Members say here, which I and my friends represent here. that it will not be considered, then it is again a matter of shame. Then, we are again, I beg to stress here, unfit to sit in this august House.

Making these few points I thank you very much for giving a patient hearing.

MR. CHAIRMAN: Very good maiden speech. Now, Mr. Yadav.

श्री हुसमदेव नारायण यादव (बिहार) :

श्रीमन्, सभी इस विधेयक के संबंध में जितनी आपत्तियां उठायी गयी वह सब अंग्रेजी भाषा में उठाई गयी और मैं उन सभी आपत्तियों को पूरी तरह से समझ नहीं पाया। मैं हिंदी में आपत्तियां उठा रहा हूं और मेरा अलग दृष्टिकोण है। मैं गांव का रहने वाला हूं एक सामान्य नागरिक हूं और संविधान और कानून को परखने का मेरा अलग दृष्टिकोण है। गांव वालों को दृष्टि है। मैं इसलिए अपनी दृष्टि से इस को व्याख्या करना चाहता हूं।

जैसा कि संविधान के अनुच्छेद 15 (3) की व्याख्या करते हुए कहा जा सकता है कि इस अनुच्छेद की कोई बात राज्य का स्त्रियों और बालकों के लिये कोई विशेष उपाय करने से निवारित नहीं करेगी। इस की व्याख्या की जा सकती है कि यह स्त्रियों के लिये है, लेकिन जो मूल अनुच्छेद 15 है वह कहता है कि जाति, धर्म और सेका, यहां स्त्रियां हैं और स्त्रियों का मतलब स्त्रियां, समाज की सभी स्त्रियां, वह किसी जाति की नहीं, किसी धर्म की नहीं, समाज की जितनी स्त्रियां हैं वह सभी स्त्रियां हैं और यहां यह विधेयक समाज की सभी स्त्रियों से संबंधित नहीं केवल मुस्लिम महिलाओं के संबंध में है, इसलिये यह इस अनुच्छेद के विपरीत है। वह उन को इस से अलग करता है और समाज की सब स्त्रियों के लिये नहीं है।

फिर मैं आप का ध्यान ले जाना चाहूंगा कि संविधान के अनुच्छेद 23(2) में दिया गया है शोषण के विरुद्ध अधिकार इस ओर किसी माननीय सदस्य ने ध्यान

आकर्षित नहीं कराया। शोषण के विरुद्ध अधिकार 21(2) में दिया गया है और इस में साफ लिखा है कि "इस अनुच्छेद की कोई बात राज्य को सार्वजनिक प्रयोजनों के लिये अनिवार्य सेवा अधिरोपित करने से निवारित नहीं करेगी। ऐसी सेवा अधिरोपित करने में राज्य केवल धर्म, मूल, वंश, जाति या वर्ग या इन में से किसी के आधार पर कोई विभेद नहीं करेगा।" शोषण के विरुद्ध अधिकार जब संविधान में दिया गया है तो फिर यह जो कानून आ रहा है वह कहां तक उचित है। (समय की घंटी) मैं दो ही मिनट में अपनी बात खत्म कर रहा हूं केवल दो अनुच्छेद और पढ़ कर। यह संविधान में जो राज्य के नीति निर्देशक तत्व हैं इन के अनुच्छेद 44 में लिखा गया है कि "राज्य भारत के समस्त राज्य क्षेत्र में नागरिकों के लिये एक समान सिविल संहिता प्राप्त कराने का प्रयास करेगा।" जब राज्य को आदेश दिया गया है कि वह सभी नागरिकों के लिये एक समान संहिता बनावेगा तो फिर इस का, इस विधेयक का मतलब क्या है?

अंतिम रूप से मैं कहना चाहता हूं कि आपत्तिशाल के दौरान जब हम जेल में बंद थे तो आपकी नेता स्वर्गीय प्रधान मंत्री श्रीमती इंदिरा गांधी ने संविधान में एक विशेष अनुच्छेद जोड़ा था। हम लोग जब अधिकार के लिए लड़ते थे लेकिन भारत की प्रधान मंत्री श्रीमती इंदिरा गांधी ने इस विशेष शब्द को जोड़ा। उनका कहना था कि भारत के नागरिकों के लिए कुछ कर्तव्य भी निर्धारित हो। धारा 51(क) के तहत हम भारत के सभी लोगों में समरसता,

सम्मान और भातृत्व की भावना का : निर्माण करें जो जाति, धर्म और भाषा या प्रदेश या वर्ण पर आधारित न हो। यहां के नागरिकों के लिए संविधान में विशेष परिवर्तन करके धर्मती इंदिरा गांधी जी ने जो अनुच्छेद जुड़वाया था उन्होंने की पार्टी के लोगों का कर्तव्य है कि वे उनके प्रति सम्मान करें और इस विशेष उपाय का सम्मान करें और इस विशेषक को प्रस्तुत करने से रोकें।

SHRI NIRMAL CHATTERJEE: I thought I would raise this point of order a little later but because the kind of approach that was involved in the other points of order is a little different, I raise this point now. Sir, I believe the whole Bill is technically flawed. It uses certain terms which are not adequately defined and that will have dangerous and disastrous consequences. For instance, a term which is very frequently used in this Bill is the term 'Relative' or 'Relatives' without defining these terms, as a consequence of which, two kinds of adverse results might be there. Firstly, the husband whom this Bill is trying to protect, will also get involved because as you all know, there are marriages among the relatives which are permitted. So, when the Law Minister is trying to save the husband, as a relative he may once again get involved and forced to make payment or at least may be committed to make payment. There is the second difficulty also. Since the term 'Relative' is not defined in terms of degree of relationship, it may extend to any kind of relative. We may go on including -cousins, father-in-law, sons-in-law, sisters-in-law, and how far you can go on, I don't know, and if we go on proceeding along these lines, the whole universe may be covered including many people who are not Muslim

and those who belong to other religions and even people who do not believe in any religion, like me. So, this is the second difficulty, a technical difficulty for which the law is going to be bad.

MR. CHAIRMAN: You all agreed that you would take two minutes, and now you go on speaking.

SHRI NIRMAL CHATTERJEE: I was absent at that time.

The second problem to which I want to draw the attention of the tallest legal luminary who has gone astray and sitting in this House is... (Interruptions). I am not referring to Mr. Salve; this is not a tax matter, although some people will be taxed. Sir, the problem is, according to the provision in the Bill, during the period of Iddat or otherwise, care should be taken of the level of living of the divorcee as well as the means of the persons who will be asked to pay. I think Mr. Salve may correct me. Level of living is an upper limit and means also provide a limit and in no case can an award be made which is beyond the means of the husband during Iddat period or of the relatives after that. In the subsequent section it has been provided that if the means do not permit, then such and such a thing will have to be done. I believe, Sir, there is a contradiction within the Bill itself. That is, at the first stage, in one section, it is said that the award has to be in terms of the means of the lordly husband who has divorced the woman or the relatives on whom the burden has been thrust or the Wakf Board. If this is taken into account, the second stage or the third stage cannot be taken. In that case, it will mean contradicting the first one. Because of this, what I say is that, even when it becomes law, it will be bad, a technical fraud and on this ground also the court may strike it down. Sir, I do not accept the argument of the Law Minister that—he gives quite often—that it

[Shri Nirmal Chatterjee]

is for the court to judge. Well, that is true and not true because it is our prerogative. We are not as foolish as the Law Minister may think about us. We have to exercise our common judgement and as a responsible body we have to find out whether we have flouted any of the provisions.

MR. CHAIRMAN: Time up.

SHRI NIRMAL CHATTERJEE: Only when there is a difference of opinion, we should go to the court. Therefore, on this ground, I say, this Bill, with the extraordinary legal intelligence of the Law Minister, may kindly be withdrawn.

PROF. C. LAKSHMANNA (Andhra Pradesh): Mr. Chairman, Sir, this particular Bill which is before us not only vitiates the Constitution in terms of equality of status and of opportunity between Muslims on the one hand and Hindus, Christians, Sikhs and Parsis, on the other in the case of women. Secondly, Sir, it vitiates the principle of equality even within the same community. In a case where X is a Muslim and he marries Y, a non-Muslim under Muslim law, after conversion and if that person (Y) is divorced, she has no other recourse, she cannot go to relatives, she cannot go to her brothers and sisters or her father. Under the circumstances, she has only one recourse, namely she has to go the Wakf Board, because she continues to be a Muslim. This is a case of making the woman, Muslim woman, destitute by compulsion and by necessity. However, in the case of a Muslim woman marrying a Muslim gentleman and getting divorced by him, she has the father, brothers, relatives, community and the Wakf Board to turn for maintenance. Therefore, Sir, this vitiates the principle of equality of status and of opportunity even among Muslim women, between those Muslim women who are married to Muslim men and those non-Muslim women

who are married to Muslim men, after conversion, who revert back or do not revert back for the facility of maintenance. Therefore, Sir, it is from that point of view, I say, this Bill vitiates the Constitutional provision of equality of status and of opportunity because it is against status and it is against opportunity in the case of women. I would request the hon. Minister to kindly withdraw this Bill.

श्री बी० सत्यनारायण रेड्डी (आन्ध्र प्रदेश): यह विधेयक हिन्दुस्तान का जो संविधान है, संविधान की जो धाराएं हैं यह उसके खिलाफ है। खासकर धारा 14 और 15 के खिलाफ पड़ता है। इसके साथ-साथ जो डायरेक्टिव प्रिंसिपल्स हैं उसके विरुद्ध है और सारे समाज को एक नज़र से देखने के बजाय यह उसको डिफरेंट नजरिये से देख रहा है। अगर कोई मुस्लिम खालून किसी शख्स से शादी करने के बाद तलाक देना चाहती है और तलाक दे देती है तो तलाक देने के बाद वह रिश्तेदारों के पास मैन्टेनेन्स के लिए जायेगी। अगर कोई रिश्तेदार इसके लिए तैयार नहीं है, रिश्तेदार के पास मैन्टेनेन्स देने की शक्ति नहीं है तो वह वक्फ बोर्ड के पास जायेगी और वक्फ बोर्ड का जो काम है वह अलग है। इसके बावजूद इस विधेयक के द्वारा अगर वक्फ बोर्ड को सारा मैन्टेनेन्स देने की जिम्मेदारों दी गई है। और इससे जो नुकसान होगा वह न सिर्फ समाज पर बल्कि सरकार पर भी पड़ेगा। सरकार को भी इसका नुकसान उठाना पड़ेगा। हाल ही में कहा गया है कि 50 करोड़ रुपये वक्फ बोर्ड को इसके लिए दिये जायेंगे। उसका सारा भार भी समाज के ऊपर पड़ेगा।

3.00 P.M.

यहीं नहीं बल्कि जो डाइवोर्स नहीं देने वाले हैं, तलाक नहीं देने वाले हैं, वे भी अब तलाक देने लगेंगे। इसको वजह यह है कि आपने यह कहा है कि बक्क बोर्ड मैन्टेनेन्स एलाउन्स देगा। इसलिए लोग तलाक देने लगेंगे। इस तरह यह विषयका तलाक को बढ़ावा देगा। मैं यह भी कहना चाहता हूँ कि यह विषयका सिर्फ तलाक को ही बढ़ावा नहीं देगा बल्कि समाज के अन्दर झगड़े पैदा करेगा। इसलिए ला मिनिस्टर को स बिल को वापस ले लेना चाहिए।

श्री राम नरेश कुशावाहा : माननीय सभापति जी, हिन्दी हमारी राष्ट्रभाषा है, लेकिन अभी भी काम हिन्दी में नहीं होता है। यही कारण है कि इस बिल का हिन्दी रूपान्तर अभी तक नहीं मिला है। कम से कम मुझे तो नहीं मिला है। जब मुझे मिला नहीं है तो मैं उस पर कैसे विचार कर सकता हूँ? मेरे जैसा आदमी जो किसी न किसी तरह से अंग्रेजी पढ़ सकता है और किसी न किसी तरह से लिख सकता है उसको जब तक इसका हिन्दी रूपान्तर नहीं मिलेगा वह तब तक इस बिल पर कैसे विचार करे? इसलिए मैं चाहता हूँ कि आप ही हमारी रक्षा करें। मैं यह कहना चाहता हूँ कि जब तक मुझे इसका हिन्दी रूप नहीं मिलता है तब तक मैं इस पर अपने विचार कैसे प्रकट कर सकता हूँ... (व्यवधान)।

SHRI V. GOPALSAMY (Tamil Nadu): Are you providing the copies in Tamil? You should provide the copies in all the national languages.

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): You are creating a record by allowing three hours on points of order.

SHRI PUTTAPAGA RADHA-KRISHNA (Andhra Pradesh): Sir, mine is the real point of order. Leaders of the respective groups have spoken almost on the same point that the introduction of the Bill is unconstitutional, but my point is different. Some friends are harping on the interference of Shariat. They are saying that our opposition to the Bill is interference into the Shariat. But as a matter of fact, the introduction of the Bill itself is an interference into the Shariat, that is my point of order.

My second point is, as Mr. Kushawaha has said, the rule relating to the service of copies 48 hours prior to the introduction of the Bill might have been waived but it is not sufficient because the Hindi version of the Bill has not been served. That is why the Bill cannot be taken up for consideration.

SHRI V. GOPALSAMY: Will you be entitled to get the copies in Tamil?

SHRI J. P. GOYAL (Uttar Pradesh): My point of order is that there is no hurry that this Bill be discussed in this session itself. Let it be postponed to the next session. The reason is, apart from the technicalities, procedural difficulties and irregularities, that under rule 69 it was served on us only yesterday and that also in English only and not in Hindi, we have not had enough time to even study the debates which were held in the other House. So, there is no hurry. We should not give an impression to the public outside that the Government wants to hurry it up for certain ulterior motives. After all, elections are not going to take place after this session is over, unless of course the Government wants to dissolve the House

[Shri J. P. Goyal]

and wants to hold fresh elections. So, I would suggest and submit, let it be postponed to the next session.

SHRIMATI BIJOYA CHAKRAVARTY (Assam): It is a very good suggestion, I support it.

SHRI SUKOMAL SEN: Sir, 46 years ago our respected national leaders who led the national movement for independence and the framers of the Constitution at that time were very much aware of the complexity of the Indian society. They knew very well that Indian society was composed of all religions, Hindus, Muslims, Sikhs, Christians, Buddhists and other religions. Keeping this factor in mind, they made a provision in the Constitution that there should not be any discrimination between citizens on the basis of religion itself. Now this Government is doing it through this Bill.

My point is, this is a fundamental change in the spirit of the Indian Constitution. Is the Government empowered to change the fundamental spirit of the Constitution without arranging a referendum, without taking the opinion of the people at large? I would like to know whether the Government can do it forcibly in the Parliament, thereby changing the entire concept of the Constitution, dividing the society into Hindus, Muslims, Christians, like that. The results will be serious, I am sure. You may got the Bill passed through raising of hands because of the whip, but I do not know whether the Government has thought of the likely repercussions of the Bill being passed, the severe communal backlash that it may entail if the Bill is passed. Sir, I would like to have your ruling on this point.

SHRI VIJAYA MOHANA REDDY (Andhra Pradesh): Sir, my point of order is about Art. 25 of the Constitution—Right to Freedom of Religion. It says:

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion".

Muslim women, Hindu Women, every woman, womanhood as such have got the right and discretion to practice their religion and religious observations and there should not be any interference in that. There is no necessity for the law to go to the help of fundamentalists to try to coerce and change women's religious discretion. Whatever she thinks is right, she will do. If she thinks it is right according to her religious practice to go and get the help of the court, she has got every right to do it. When she has got the right, when the entire Muslim community itself can bring about the change if at all they think it is fundamental, then why go to the aid of these fundamentalists with the help of this Bill, which will deprive the divorced Muslim women of their rights of sustenance, rights of livelihood, maintenance and dignity and seeing that their children prosper and grow to adulthood as free citizens. That is why this is interference with the religious practices of all womankind and is therefore fundamentally against the principles of Art. 25 of the Constitution. So this Bill should not become an aid to the fundamentalists to suppress Muslim women. Thank you, Sir.

SHRI ASOKE KUMAR SEN: Mr. Chairman, Sir.

MR. CHAIRMAN: You will reply to the points of order only now and you will reply to the other points later.

SHRI ASOKE KUMAR SEN: That is what I was also going to suggest that points of order would be answered now and after I move the

motion, in the course of my speech, I propose to deal with all these superlative qualifications showered on us—namely, lawless law, black Bill travesty of justice, betrayal of women and all these. Those things you will permit me to deal with in the course of my speech after the motion is moved.

Points of law which need to be answered as these: Firstly, constitutionality on the ground of its alleged infringement of Articles 13, 14, 15, 16 and 44. Somebody has also pressed in Article 51. Almost every Article has been pressed. I do not propose to reply from A to Z; I propose to reply to substantial objections. So far as Art. 14 is concerned, Art. 15 is concerned and Art. 16 is concerned, they can only be pressed into service if it is proved that equals are being discriminated against by the law. Articles 14 and 15 do not prevent classification. The Supreme Court has, in a series of decisions, laid down two principles, namely, that dead uniformity is not the prescription of the Constitution. What is prescribed is that if equals are treated unequally or unequals are treated equally, then it will lead to an infringement of the equality clause, but no legislation can proceed excepting with classification. For instance, if the Hindu Succession Act and the Hindu Marriage Act have dealt only with the Hindus, it can't be said why you have imposed monogamy on the Hindus. A law of divorce of the Hindus on certain grounds is not allowed for some other communities. The answer is simple, because the Hindus form a separate class by themselves.

SHRI DIPEN GHOSH: Class?

SHRI ASOKE KUMAR SEN: Yes, it is. For the purpose of legislation it is called a class.

MR. CHAIRMAN: He is using the legal language: classification.

SHRI ASOKE KUMAR SEN: Not the language of...

AN HON. MEMBER:... Marxists.

SHRI DIPEN GHOSH: Political philosophy.

MR. CHAIRMAN: Don't comment. Go on.

SHRI ASOKE KUMAR SEN: The expression "class" bears a different connotation for the Marxists.

SHRI DIPEN GHOSH: There is the dictionary also.

SHRI ASOKE KUMAR SEN: The expression "class", in Constitutional Law, means that body of persons which answers a particular description for the purpose of a particular law. Therefore, if Muslim divorced women are treated on a different basis from other divorced women, it cannot be called a case of discrimination.

SHRIMATI KANAK MUKHERJEE: The Hindu law is towards progress but this is retrograde.

MR. CHAIRMAN: You have all had your say. Please do not disturb the Minister.

SHRI ASOKE KUMAR SEN: Mrs. Mukherjee, your point will be answered.

MR. CHAIRMAN: You need not answer. You please speak to the Chair.

SHRI ASOKE KUMAR SEN: Therefore, Sir, the answer is very clear, and very clear specially on the ground that Article 25, which has also been mentioned, prescribes very clearly that the religious practices and beliefs of all communities are guaranteed. And the Supreme Court, as far back as in 1958, in deciding the Kerala Education Bill, case, laid down very clearly that the bedrock on which our Constitution rests is the guarantee to the minorities about their religion, their

[Shri Asoke Kumar Sen]

beliefs and their practices. Our National Anthem embodies that very concept when it says it is harmony and not symphony which is the mosaic of the Constitution. Therefore, if it is going to be harmony, then different religious groups and communities have to be recognized as facts and their personal laws and beliefs have to be guaranteed. Therefore, when I was hearing honourable Members saying very eloquently that equality is thrown to the winds, secularism is thrown to the winds, I was quite amused because I thought that they are thinking for a moment as if like totalitarian countries there are not different opinions, beliefs and religions to take account of... (Interruptions).

M.R. CHAIRMAN: Ignore interruptions

SHRI ASOKE KUMAR SEN: This country and this Constitution recognise the existence of different communities, different linguistic groups, religious groups, recognize the perpetuation and the guarantee of the beliefs and practices, particularly of minority communities. I will only read one sentence from that case.

SHRIMATI KANAK MUKHERJEE: One section of minority community.

SHRI ASOKE KUMAR SEN: If Mrs. Mukherjee has the patience to hear, she will hear.

M.R. CHAIRMAN: Mr. Minister, please ignore interruptions.

SHRI ASOKE KUMAR SEN: Yes.. No, Sir. I was accused that I am unmindful to women and their grievances. So, whenever Mrs. Mukherjee gets up I am very mindful lest I be accused.

Now, Sir, this is what the Supreme Court says. It is great. If I may read:

"It is not for this Court to question the wisdom of the supreme law of the land. We, the people of India, have given unto ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as the majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. These concessions must be made to them for good and for valid reasons. So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the Fundamental Rights and thereby honour our sacred obligation to the minority communities for their personal law and religion."

(Interruptions)

I am ignoring the interruptions, Sir. It seems that a good law does not sound very well.

Sir, because we were faced with legal objections, the next objection was about Article 44—secularism. Article 44 first of all cannot override Article 25 which has guaranteed the rights of the minorities about their religious beliefs, practices, and if Muslims say that this is their personal law, it must be accepted as valid and must override article 44, as it is interpreted. But article 44 does not bear the meaning which is sought to be given. Dr. Ambedkar when he moved article 35 which was the predecessor of Article 44, in the Constituent Assembly, met the objections. In answering the objections raised by Muslim Members, particularly Mr. Hasan Imam, that this would conflict with Muslim personal law because you could not have a uniform code which would override the Muslim personal law and personal laws of other communities, he said very

clearly that the objection was founded on a misconception. Article 44, that is article 35 then, does not enjoin enforcement of a uniform code. It only means that we shall frame a code which will be for the people to accept at their own option, like the Special Marriage Act under which Hindus, Muslims, Christians can marry and be governed by their own law. When he said so, all the amendments were withdrawn. He said further, "We are bound to guarantee the personal laws of Muslims and other minority communities." I think Maulana Saheb from there had hinted at it. I think, he was more or less not allowed a patient hearing. But, anyway, Maulana Saheb was not raising a point of order. He was agitated because of the fear that the Muslim personal law was going to be battered again. Therefore, Sir, Article 44 does not enjoin a dead uniformity of the grave. It recognises the fundamental, basic mosaic of the Constitution of this nation where, as the Supreme Court in the Kerala Education Act says, hordes of people have come over the ages, have mixed and mingled, but they exist separately, the Dravidians, the Aryans, non-Aryans, Muslims, Pathans, Moghuls.

And, therefore, this is India.

SHRI M. S. GURUPADASWAMY:
Mr. Minister, just...

SHRI ASOKE KUMAR SEN:
Please, Mr. Gurupadaswamy. Let us hear each other. This is India. This is the Indian Constitution. There are different communities speaking different languages—the Tamils in the South, the Telugus in the South, the Malayalees in the South and the Hindi-speaking people in the North, the Assamese in the East, the Bengalees in the middle, the Gujaratis on the Western coast. And many of them profess different beliefs. Even among the Hindus there are different denominations, Vaishyas and Kshatriyas and so on. But all of them are

guaranteed their own personal laws, their beliefs. Secularism does not mean that everybody must follow the same faith. This is a great misconception on which all this fallacy has arisen.

SHRI DIPEN GHOSH: That relates to only civil code.

MR. CHAIRMAN: The Minister is not yielding.

SHRI ASOKE KUMAR SEN: It relates to the whole field of the Constitution. (Interruptions)

MR. CHAIRMAN: The Minister is not yielding. Don't record.

SHRI DIPEN GHOSH:*

SHRI ASOKE KUMAR SEN:
Ignore this even if it comes from the Leader of the Opposition.

MR. CHAIRMAN: All of you had your say.

SHRI ASOKE KUMAR SEN: Sir, if Mr. Ghosh is treated with shouts from this side, he has to thank himself for it, not me.

SHRI DIPEN GHOSH: There is no question of thanking. I am helping you. Article 24 relates to uniform Civil Code. But this Bill has been brought in the Supreme Court Judgment even under the Criminal Procedure Code. There is already a uniform code.

SHRI ASOKE KUMAR SEN: So long as the Constitution lasts, the Tamils will speak their language uninterruptedly, the Telugu Desam people will speak their language uninterruptedly, the Assamese will speak their language uninterruptedly, the Muslims, the Shias and the Sunnis will practise their own faith uninterruptedly under their own personal laws. This is the Constitution and its greatness. Everybody has to live together. It is national integration,

*Not recorded.

[Shri Asoke Kumar Sen]

not national obliteration. It is an integration of different communities bound by a common thread.

SHRI M. S. GURUPADASWAMY: But Muslim women are protesting on this.

MR. CHAIRMAN: There was an argument that you can legislate only for marriage and divorce, not separately.

SHRI ASOKE KUMAR SEN: Certainly. There is a marriage only when your hands are tied. After that your laws don't bind you because marriage laws must relate to the binding of the hands and changing of the garlands.

Now, Sir, it has been held that each of these items must be given their plenary scope; they must be given their fullest expression. Marriage includes making of marriage, dissolution of marriage and the incidence of marriage, namely even when children are born, you must maintain the children, namely when wife is in the home, you must not maltreat her. You must maintain her properly and give her dignity. All this follows from the expression 'marriage' and divorce, infants, minors, adoption everything comes in. And if it is not covered here, item 97 of list I will cover it, because whatever is left belongs to the central theme. This is very clear. Therefore, I do not think there is anything in this point. The real point is that somebody does not like to look at this Bill and somebody likes to politicise this Bill. (Interruptions).

SHRIMATI KANAK MUKHERJEE: You politicise it... (Interruptions).

SHRI ASOKE KUMAR SEN: If we have got this Bill to assure the minority communities that their legitimate rights and personal laws are guaranteed for ever, the Opposition

may feel that the minority will be with us at the time of elections, but we cannot help it. (Interruptions).

MR. CHAIRMAN: I now proceed to give my ruling. The technical objection that 48 hours' notice was not given is not valid because Rule 123 provides that the Chair can waive that rule.

It says...

SOME HONOURABLE MEMBERS: You are biased.

MR. CHAIRMAN: On the day on which the motion for consideration is set down in the list of business which shall, unless the Chair otherwise directs, be not less than two days. The Chair has otherwise directed in pursuance of the decision of the Business Advisory Committee." Therefore, the objection has no validity.

The second objection that the Hindi version of the Bill... (Interruptions)... I have been a Minister and I know how to ignore interruptions.

The second objection that the Hindi version of the Bill has not been circulated is also incorrect because in the papers circulated today by the Rajya Sabha Secretariat, I find that both English and Hindi versions of the Bill have been circulated.

श्री रामनरेश कश्यप : मुझको नहीं मिला है। मुझे तो आज तक नहीं मिला है। . . . (व्यवधान) . . .

MR. CHAIRMAN: I have been a private Member of Parliament and it was my habit not to open my dak. I find that I am in good company.

The main objection is that the House has no competence to legislate upon this Bill. It is a well-established precedence in both Hou-

ses of Parliament that the Chair does not give a ruling on the vires of a legislation. It does not go into the question whether the legislation is *ultra vires* or *intra vires*. It is for the court to decide. This is borne by all the decisions given after the Constitution has been introduced. In accordance with the same principle, I am not deciding whether the Bill is *intra vires* or *ultra vires*. The House has heard the objections and it is open to the Members to come to the conclusions on the basis of the arguments advanced on both sides. So far as the Chair is concerned, the Chair rules that it is not for the Chair to give a decision on this, that the Bill is within the competence of the Legislature to consider.

The third objection which was raised was that it is *sub judice*, therefore, it cannot be brought before the House. This is not valid, because this is a sovereign body and it has the power to legislate on any matter—whether it is pending in a court or not. Therefore, this objection is also over-ruled. I therefore, give the ruling that the Minister will proceed with the Bill and make his speech in support of the motion.

SHRI DIPEN GHOSH: Sir, I am not going to raise about the constitutional validity of the Bill. For, I have accepted your ruling that the Legislature has the right to make law—whether its constitutionality is pending before a court of law or before any other body. But, Sir, in the Statement of Objects and Reasons of this Bill when it was first introduced, it was stated in the first paragraph of that Statement that this Bill was necessitated from the Supreme Court judgement in Mohd. Ahmed Khan vs. Shah Bano Begum and others. Now, I quote the first paragraph of the Statement of Objects and Reasons:

"The Supreme Court, in Mohd. Ahmed Khan vs. Shah Bano

Begum and others (A.I.R. 1985 S.C. 945) has held that although the Muslim Law limits the husband's liability to provide for maintenance of the divorced wife to the period of iddat, it does not contemplate or countenance the situation envisaged by section 125 of the Code of Criminal Procedure, 1973. The Court held that it would be incorrect and unjust to extend the above principle of Muslim law to cases in which the divorced wife is unable to maintain herself. The Court therefore, came to the conclusion that, if the divorced wife is able to maintain herself, the husband's liability ceases with the expiration of the period of iddat, but if she is unable to maintain herself after the period of iddat, she is entitled to have recourse to section 125 of the Code of Criminal Procedure."

Sir, this decision has led to some controversy as to the obligation of the Muslim husband to pay maintenance to a divorced wife. Sir, my submission is that the legal luminaries are here in the House on both the sides, like S/Shri P. Shiv Shankar, Asoke Kumar Sen, Baharul Islam, Sankar Prasad Mitra and H. R. Bhardwaj and many others. Sir, in the presence of these legal luminaries, I want to point out that the necessity of this Bill is flowing from the judgment of the Supreme Court which has been mentioned in this statement of objects and reasons and this Legislature is called upon to make a law to circumvent the said judgment of the Supreme Court or in your term also, to give protection to the Muslim women under this judgment, or to give protection to the Muslim women in the context of this judgment or to give protection to the Muslim women in the background of this judgment. But my point is that when you are asking the Legislature to make law in the context of Supreme Court judgment, you must give the Legislature the total and full

[Shri Dipen Ghosh]

fact of the said judgment. Without giving the Legislature the full fact of the judgment of the Supreme Court, how can you call upon the Legislature to make the law which would ultimately circumvent the said judgment of the Supreme Court. So, I would pray to you to give an opportunity to all the Members of this House to go through the full fact of the judgment because from this, nobody knows what is the judgment of the Supreme Court. Let the judgment of the Supreme Court be circulated to all the Members. Let the House be kept adjourned. Let the copy of the judgment of the Supreme Court be circulated among the Members so that they can go through it. They can learn the fact of the judgment and having learnt the fact of the judgment, they can exercise their power of making law in the House.

SHRI SURESH KALMADI: Sir, on a point of order.

MR. CHAIRMAN: There is no point of order. On the merits, the hon. Member, Shri Dipen Ghosh has made some observations. The Minister will reply to them when there will be a full-fledged debate on that and here, we are concerned only with the question whether the House can go ahead with the Bill and I have ruled, it can go ahead with the Bill and the discussion will take place now.

SHRI NIRMAL CHATTERJEE: Sir, I have another... (Interruption).

MR. CHAIRMAN: Any further objections can be raised during the general debate. That Members will have fullest opportunity to raise them.

SHRI NIRMAL CHATTERJEE: Sir, tomorrow is a holiday. (Interruption).

MR. CHAIRMAN: Mr. Nirmal Chatterjee you know you are a member of the Business Advisory

Committee. We are going to meet at 4 p.m. A decision about that will be taken today when the Business Advisory Committee meets. You are merely raising objections for the sake of objections. (Interruption).

[Mr. Deputy Chairman in the Chair]

SHRI ASOKE KUMAR SEN: Mr. Deputy Chairman, Sir, I told you that I shall reserve the points which are raised in the very beginning as points of order for being dealt with later and I propose to do so after I have unfolded to the House the object of the Bill and its main provisions. The object of the Bill is fairly set out in the object state. The hon. Members know very well that when the Criminal Procedure Code of 1973 was enacted, the 1898 Code was in operation. And the 1898 Code had a section called section 488, which was enacted in 1898, and the Law Member then, Sir James stated that the object of that section was to prevent vagrancy and, therefore, wives and children were included for the purpose of maintenance being given under section 488 by a magistrate. "Wife" did not include a divorced wife. Of course, at that time when the Code of 1898 was enacted, the Hindu society knew of no divorce. Only Christians knew of divorce, and Muslims had their own system of "talaq" and divorce. So the obligation of the husband was also laid down for maintenance. Therefore, divorced wives were not the object of being benefited by section 488. Mr. Ghosh, possibly, Sir, is not very concerned with this...

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Is he discussing point of order?

SHRI ASOKE KUMAR SEN: Perhaps we are not proving of sufficient interest for Mr. Ghosh. I would appeal to him to give his ear to what we say so that all his misapprehensions may possibly be clarified. As

I said, in 1898, ex-wives were not the object for benefit under that section—only wives and children. When the 1973 Act was passed, there was an Explanation put in section 125, which was the successor of section 488, to the effect that “wife” will include wives who have been divorced. Now when that was debated in the Lok Sabha, the Minister of State for Home Affairs explained, when objections were raised on behalf of the Muslims that if maintenance was to be provided by ex-husbands beyond the period of iddat, that would conflict with their personal law, which was guaranteed under the Constitution, and the answer given was that for that specific purpose, to preserve the personal law of the minorities, a provision was made, while introducing that Explanation of ex-wives being included within “wife”, in section 127 (3), and section 127(3) (b) provided clearly that even if an order under section 125 was made in favour of an ex-wife, if the ex-husband discharged his obligation of maintaining the ex-wife according to his own personal law or customary law, then that order would stand vacated. And Mr. Ram Niwas Mirdha, who was then the Minister of State for Home Affairs, explained very clearly that it is guaranteed that if a Muslim discharges his obligations to his ex-wife according to his own personal law, he would not be liable to pay maintenance under section 125 any more and any order made would stand vacated.

There was no controversy really after that until as a result of certain decisions in the High Courts, Shah Bano's case came up before the Supreme Court. The history of that case was that Shah Bano applied for maintenance under section 125 when she was still the wife of her husband, but the husband in the course of the trial divorced her and contended that his obligation to maintain her would confined only to three months, three menstrual periods, after the divorce.

And the matter went up to the Supreme Court at this stage, and the Supreme Court held as follows: (a) that it is true that normally the liability of the husband to maintain a divorced wife lasted only during the iddat period. But Section 125 contemplates a wife who is indigent, who is unable to maintain herself, and, therefore, that Section does not conflict with the Muslim Personal Law which, according to the Supreme Court, as Their Lordships read the various Ayats of the Koran, allowed an indigent wife to be maintained even beyond the period of the Iddat. That is how the Supreme Court explained the matter. And (b) Their Lordships made an observation which was rather unfortunate for the purpose of apprehensions that were created in the minds of the Muslims to the effect that the Government has failed in its duty in providing a uniform code for all the people, and, therefore, they said it is time that they did so. When that observation came along with the observation that the Muslim Personal Law also provided for maintenance beyond the Iddat for the former husband of a divorced wife, widespread feelings of apprehensions were expressed from all over the country from the Muslim Community. It is a fact which cannot be denied. And Mr. Banatwala brought a Bill in Lok Sabha seeking to amend Section 125 in a certain manner and while it was being debated, that was when the note of the Law Ministry came to the Home Ministry. I want to read it very clearly, because Mr. L. K. Advani has accused us of going back on our view. The attack of Mr. Banatwala was that the Supreme Court judgment really went against the Personal Law of the Muslims and attacked the Personal Law of the Muslims and interfered in the Personal Law of the Muslims, and he accused the Supreme Court of having done so. And the note of the Law Ministry which came first to the Minister of State was as follows. It was not read

[Shri Asoke Kumar Sen]

by Mr. Advani and I want to read it because it was raised by Mr. Advani and it gives a complete answer. This is how paragraph 4 of the note of the Joint Secretary reads. After Mr. Banatwala's Bill came, that Bill came before a committee which considered the question as to what attitude the Government should take on that Bill. This is how he note recorded the consensus of the committee. It said—

"Considering the political overtones of the matter a meeting was convened today in the room of the Hon'ble Defence Minister in Parliament House at 12.30 p.m. which was, amongst others, attended by the Minister of State for Law.

Para 4. All the pros and cons of the matter were considered in the meeting. The consensus emerged that it will require further time to consider all the possible implications of the Supreme Court judgment in question. However, the Government's general stand should be that there is no question of any interference with the Personal Law of any community in the country."

This is very, very clear and we stick to this attitude, that there is no interference with the Personal Law of any community. The Minister of State for Law to whom the papers had been shown, conveyed his views at the meeting and then the State Minister's note was as follows:—

"I agree. We should clearly indicate that there is no question of any interference with the Personal Law of any community by the Government. So far as the judgment is concerned—the Supreme Court judgment—we are examining the judgment. Since the Government was not a party to the litigation, we shall have to analyse the issues carefully before any decision is arrived at for the Government or for commenting on the judgment."

And on that when it came to me, I

had endorsed my signature. I do not think it conflicts with the view of the Government as reflected by the Bill. We said that we shall have to analyse the judgment and try to frame our issues and formulate our views on it. In any event, we don't agree that the Supreme Court judgment was an interference in the personal law of any community. We said, and I think the subsequent notes also said, that the Supreme Court only interpreted the personal law of the Muslims and they thought that it was the personal law of the Muslims and they did not want to interfere in the sense that they did not want to override the personal law. They interpreted the personal law in a particular way which did not commend itself to the Muslim community, a vast majority. Therefore, we said that we had to analyse the judgment, formulate our views, but we must express our views very clearly in the light of the Government's opinion that the Supreme Court did not intend, did not want, to interfere with the personal laws of any community. Therefore, this note which Mr. Advani read out was not read out fully and if it is read from the very beginning, it will appear that this was made only in the context of Mr. Banatwala's Bill to repel the suggestion that either the Supreme Court or the Government was interfering with the personal law of the Muslims.

SHRI M. S. GURUPADASWAMY: What is the practice in the other Muslim countries?

SHRI ASOKE KUMAR SEN: I may tell you—we have circulated the papers to the leaders of the Opposition—it is, by and large, the same excepting that in certain countries like Egypt, Tunisia, Indonesia, Malaysia, etc., they have changed the law of the iddat compensation. Take the Egyptian law. They have said that they will have the iddat compensation—they call it iddat compensation—and they have said that a woman who is divorced without any fault on her

[Shri Asoke Kumar Sen]

other House, so long as our Constitution is concerned, it has guaranteed to the minority community all their beliefs, practices and personal laws to continue. (*Interruptions*) The hon. Member has not read Article 25.

SHRI DIPEN GHOSH: There is reference to conscience also. If one acts outside the conscience...

SHRI ASOKE KUMAR SEN: I do not think, Sir, the Leader of the Opposition is doing justice to himself. (*Interruptions*) Please sit down. We wanted to respect your interruptions. Don't provoke us beyond a particular limit of patience. Now, Sir, Article 25 says: "Subject to public order, morality and..."

SHRI DIPEN GHOSH: 'Morality' is there, I have read this. Shall I read out?

SHRI ASOKE KUMAR SEN: That is what I said: "Subject to public order, morality...."

SHRI DIPEN GHOSH: If any religious feeling violates morality, are you constitutionally bound to protect that? (*Interruptions*) Is it the interpretation of article 25?

MR. DEPUTY CHAIRMAN: You continue the speech.

SHRIMATI KANAK MUKHERJEE: I want to ask a simple question: If one section of the Hindu community wants revival of 'sati', will the hon. Minister consider that also? (*Interruptions*).

SHRI ASOKE KUMAR SEN: Sir, it reminds me of that fable in Sanskrit: One king said: I shall give away my daughter to anyone who can defeat me in debate. The wife of the king was very much grieved and she asked: "What have you done? Are you going to barter away your daughter? If tomorrow anybody defeats you in debate, will he take away our daughter?" He said: "My dear wife, why are you getting worried? It is for me

to judge whether I have been defeated or not." (*Interruptions*) Therefore, Sir,....

SHRI DIPEN GHOSH: You please explain in legal terms. You are saying that Article 25. (*Interruptions*)

SHRI J. K. JAIN: On a point of order. Please allow me. This is continuing for the last so many hours in this House. (*Interruptions*)

श्री मान अ । दुःख के साथ 'हना' पड़ता है कि राज्य सभ के अन्दर *

MR. DEPUTY CHAIRMAN: This will not go on record. (*Interruption*)

SHRI DIPEN GHOSH: On a point of clarification.

SHRI ASOKE KUMAR SEN: I am not yielding.

SHRI DIPEN GHOSH: I am on a point of order, Sir.

SHRI SURESH KALMADI: On a point of order. He has cast aspersions on the Leader of the Opposition. All that he has said must be expunged. It is your duty to protect the Members. He has made certain allegations. (*Interruptions*)

SHRI ASOKE KUMAR SEN: We shall not yield.

MR. DEPUTY CHAIRMAN: The Minister may continue his speech. Please don't interrupt him. (*Interruptions*).

SHRI J. K. JAIN: No. He should not be allowed. Please control them. (*Interruption*).

SHRI K. MOHANAN (Kerala): If that is your attitude, we will not allow you to speak.

MR. DEPUTY CHAIRMAN: Please listen to Mr. Upendra. Only one per-

*Not recorded.

With these words, my submission is that the House will accept this motion. It is really based on a study of the Muslim personal law, the liability of the husband, the liability of the family and of the community. The Muslim concept is a different concept. It either accepts a woman as a wife or as a sister or as a mother or as a daughter. There are two categories of women in Muslim law—one the married one, the other is the unmarried one. The moment a woman becomes divorced after marriage, she reverts to her unmarried status. And the unmarried daughter is always a charge on the father. So long as she remains married, she is a charge on the husband. For three months after that divorce, she has to be maintained by the husband who divorces her. Then she comes back to the family. If the family is either not there or unable to maintain the wife due to various causes, then the community has to look after her. It is on that basis, Sir, that we have framed our law and it accords with the understanding of the subject by the community for which this law is meant to be applied. And, therefore, Section 125 has nothing to do with this understanding. Compare the benefits that the Muslim might get under this law as distinguished from the benefits derived under Section 125. Section 125 says if the husband is able to maintain and fails to maintain. But if it is a husband who is not able to maintain, where does the wife go? Where does the wife go? He does not say go back to the father, go back to the community. There are hundreds of persons who have either become blind or who are infirm or who have no job. They cannot maintain their wives. And this imaginary figure of Rs. 500 against a husband who is able to maintain has to be stuck to. And the wife who is divorced by her husband who is not able to maintain her, who has no means to maintain her is not to be a charge on the father or the mother or the children according to the Muslim law. He has to be. There-

[Shri Asoke Kumar Sen]

fore, this is the very crux of the law. And I recommend very strongly that..... (Interruptions) Again Mr. Ghosh is provoking, not me. He cannot provoke me. I am used to it. He is provoking others as if he has no right to reply. He has spoken in the morning. He will speak again, I am sure. Therefore, Sir, with these words I submit that the House will pass this motion. (Interruptions)

SHRI DIPEN GHOSH: Sir, I have a clarification. I want to seek a clarification. You have promised me. (Interruptions)

MR. DEPUTY CHAIRMAN: All right. What is the clarifications?

SHRI DIPEN GHOSH: Sir, you had promised me that after he finishes, you would allow me.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Sir, there are some Rules of the House. You should quote the rule under which you are allowing. How many times you are allowing it. (Interruptions).

SHRI DIPEN GHOSH: Sir, in reply to Mr. S. P. Mitra, the hon. Law Minister had stated that under article 25, the Muslim personal law has to be protected, that is, as I could understand, article 25 contains a clause or a sentence which reads: "Subject to public order, morality and health and to the other provisions of this Part. This is a clause of the sentence "subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." This needs a clarification from the Law Minister.

MR. DEPUTY CHAIRMAN: He will give an answer.

SHRI DIPEN GHOSH: Sir, if a religious law allows a person to have four wives and to make oral divorce and then after three months throw

them to wolves, does it not attract that morality question? (Interruptions).

MR. DEPUTY CHAIRMAN: Order, order please.

श्री संयद अहमद हाशमी (उत्तर प्रदेश)
यह प्रोवोकेशन है.. (व्यवधान) अगर यह आपका विचार है। अगर आप मजहब को नहीं मानते, तो दूसरे को मजबूर क्यों करते हैं। ... (व्यवधान)

MR. DEPUTY CHAIRMAN: Mr. Ashwani Kumar—not there. All right Mr. Quasem:

SHRI MOSTAFA BIN QUASEM (West Bengal): Sir, I move the motion:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following Members, namely:—

1. Shri Dipen Ghosh
2. Shri R. Mohanaragam
3. Shri M. S. Gurupadaswamy
4. Shri Lal K. Advani
5. Shri Indradeep Singh
6. Shri Virendra Verma
7. Shri Parvathaneni Upendra
8. Shri Chitta Basu
9. Shri Makhan Paul
10. Shri Vishwanath Pratap Singh
11. Shrimati Kanak Mukherjee
12. Shri V. Gopalsamy.
13. Shri M. Kalyanasundaram
14. Shri K. Mohanan
15. Shri Nirmal Chatterjee
16. Shri Mostafa Bin Quasem

with instructions to report by the 29th August, 1986.

Sir, the main purpose....

MR. DEPUTY CHAIRMAN: Only move the motion now, you will speak later.

SHRI PARVATHANENI UPENDRA: Sir he has a right to speak.

SHRI DIPEN GHOSH: He wants to explain why he wants a reference to the Select Committee... (Interruptions).

SHRI SATYA PRAKASH MALAVIYA: Sir, I move:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri Virendra Verma
2. Shri J. P. Goyal
3. Shri Kailash Pati Mishra
4. Shri Chaturanan Mishra
5. Shri Gurudas Das Gupta
6. Shri Pyarelal Khandelwal
7. Shri Suresh Kalmadi
8. Shri B. Satyanarayan Reddy
9. Shri Hukmdeo Narayan Yadav
10. Shri Ghulam Rasool Matto
11. Shri Satya Prakash Malaviya

with instructions to report by the first day of the next Session.

SHRI PARVATHANENI UPENDRA: Sir, I move:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shrimati Malmoona Sultan
2. Shri Baharul Islam
3. Shri H. Hanumanthappa
4. Shri R. Ramakrishnan

5. Shri M. S. Gurupadaswamy
6. Shri Parvathaneni Upendra
7. Shri Gurudas Das Gupta
8. Shri Dipen Ghosh
9. Shri Ghulam Rasool Matto
10. Shri Virendra Verma

With instructions to report by the first day of the next Session.

SHRI B. SATYANARAYAN REDDY: Sir, I move:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shrimati Malmoona Sultan
2. Shri Baharul Islam
3. Shri H. Hanumanthappa
4. Shri R. Ramakrishnan
5. Shri M. S. Gurupadaswamy
6. Shri Ghulam Rasool Matto
7. Shri Gurudas Das Gupta
8. Shri Dipen Ghosh
9. Shri Virendra Verma
10. Shri B. Satyanarayan Reddy

With instructions to report by the first day of the next Session.

SHRI ASHWANI KUMAR (Bihar): Sir, I move:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri Mostafa Bin Quasem
2. Shri Kamalapati Tripathi

[Shri Ashwani Kumar]

3. Shri Pranab Mukherjee
4. Shri Sankar Prasad Mitra
5. **DE. (Shrimati) Najma Heptulla**
6. Prof. (Mrs). Asima Chatterjee
7. Miss Saroj Khaparde
8. Shri Kushwant Singh
9. Shri Parvathaneni Upendra
10. Shri J. P. Goyal
11. Shri Valampuri John
12. Shrimati Vijaya Raje Scindia
13. Shrimati Bijoya Chakravarty
14. Dr. (Shrimati) Sarojini Mahishi
15. Shri S. W. Dhabe

with instructions to report by the last day of the Hundred and Fortieth Session."

SHRI CHITTA BASU: Sir, I move:—

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri Dipen Ghosh
2. Shri M. S. Gurupadaswamy
3. Shri Nirmal Chatterjee
4. Shri Mostafa Bin Quasem
5. Shri Chaturanan Mishra
6. Dr. (Shrimati) Sarojini Mahishi
7. Shri N. E. Balaram
8. Shri Chitta Basu

With instructions to report by the first day of the next Session.

SHRI N. E. BALARAM (Kerala): Sir, I beg to move:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be

referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. SHRI N. E. Balaram
2. Shri R. Mohanaragam
3. Shri M. S. Gurupadaswamy
4. Shri Lal K. Advani
5. Shri Indradeep Sinha
6. Shri Virendra Verma
7. Shri Parvathaneni Upendra
8. Shri Chitta Basu
9. Shri Makhan Paul
10. Dr. (Shrimati) Sarojini Mahishi
11. Shrimati Kanak Mukherjee
12. Shri V. Gopalsamy
13. Shri K. Mohanan
14. Shri Nirmal Chatterjee
15. Shri Mostafa Bin Quasem
16. Shri Gurudas Das Gupta

With instructions to report by the 29th August, 1986.

MR. DEPUTY CHAIRMAN: Shri M. S. Gurupadaswamy. Not here. Dr. Bapu Kaldate. Not here. Dr. Shanti Patel. Not here. Shri Gurudas Das Gupta. Not here. Shri P. Radhakrishna. Not here. Shri Suraj Prasad. Not here. Shri Jagadambi Prasad Yadav. Not here. Shri Kailash Pati Mishra.

श्री कल्लाश पति मिश्र (बिहार)
महोदय, उन मुस्लिम स्त्रियों के अधिकारों का संरक्षण करने के लिये, जिनका उनके पति द्वारा विवाह विच्छेद हो गया है या जिन्होंने अपने पति से विवाह विच्छेद प्राप्त कर लिया है, और उससे संबद्ध और उसके अनुषंगी विषयों का उपबन्ध करने वाले विधेयक को छह माह के भीतर प्रतिवेदन देने के निदेशों के साथ राज्यसभा की

एक प्रवर समिति को सौंपा जाय,
जिसमें 11 सदस्य होंगे :—

1. श्री मुस्तफा बिन कासिम,
2. श्रीमती रेणुका चौधरी,
3. श्री तलारी मनोहर,
4. श्री शान्ति गो० पटेल,
5. श्री प्रभाकर राव,
6. श्री सुरेश कलमाडी,
7. श्री एस० डब्ल्यू० धावे,
8. श्री डो० पी० राय,
9. श्रीमती मनोरमा पाण्डेय,
10. श्री रामानन्द यादव,
11. श्रीमती प्रतिभा सिंह,

MR. DEPUTY CHAIRMAN: Now, Shri Mostafa Bin Quasem to initiate the discussion.

SHRI DIPEN GHOSH: Sir, what about voting on these Motions which have been moved for reference of the Bill to Select Committee

What is the procedure?

SHRI ASOKE KUMAR SEN: Both will be discussed together.

MR. DEPUTY CHAIRMAN: The main Motion and the amendments will be discussed together. Now, Shri Quasem.

SHRI GURUDAS DAS GUPTA: Sir, I was not there when you called me. I would like to move my amendment.

MR. DEPUTY CHAIRMAN: Yes.

SHRI GURUDAS DAS GUPTA: Sir, I beg to move:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the

following members, namely:—

1. Shri Gurudas Das Gupta
2. Shri N. E. Balaram
3. Shri Dipen Ghosh
4. Shri M. S. Gurupadaswamy
5. Shri V. Gopal Samy
6. Shri Sukomal Sen
7. Shri Chitta Basu
8. Shri Makhan Paul
9. Shri Suraj Prasad
10. Shrimati Kanak Mukherjee
11. Shri Lal K. Advani

with instructions to report by the 28th July, 1986.

DR. (SHRIMATI) SAROJINI MAHISHI: Sir, I have an amendment.

MR. DEPUTY CHAIRMAN: Yes.

DR. (SHRIMATI) SAROJINI MAHISHI: I beg to move:

That the Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Dr. (Shrimati) Sarojini Mahishi
2. Shri Parvathaneni Upendra
3. Shri Dipen Ghosh
4. Shri Virendra Verma
5. Shri D. B. Chandra Gowda
6. Shri Lal K. Advani
7. Shrimati Kanak Mukherjee
8. Shri M. S. Gurupadaswamy
9. Shrimati Renuka Chowdhury
10. Shri V. Gopalsamy

With instructions to report on or before 3rd November, 1986.

SHRI M. S. GURUPADASWAMY: Sir, I move:

That the Bill to protect the rights of Muslim women who have been

[Shri M. S. Gurupadaswamy]

divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri Dipen Ghosh
2. Shri R. Mohanarangam
3. Shri M. S. Gurupadaswamy
4. Shri Lal K. Advani
5. Shri Indradeep Sinha
6. Shri Virendra Verma
7. Shri Parvathaneni Upendra
8. Shri Chitta Basu
9. Shri Makhan Paul
10. Dr. (Shrimati) Sarojini Mahishi
11. Shrimati Kanak Mukherjee
12. Shri V. Gopalsamy
13. Shri M. Kalyanasundaram
14. Shri K. Mohanan
15. Shri Nirmal Chatterjee
16. Shri Mostafa Bin Quasem
17. Dr. Bapu Kaldate
18. Dr. Shanti G. Patel

With instructions to report by the 29th August, 1986.

The questions were proposed.

SHRI MOSTAFA BIN QUASEM:

Mr. Deputy Chairman, Sir, I rise to oppose this Bill and I think every Indian, whether he is a Hindu or a Parsi or a Christian or a Muslim or belongs to any other religion, who is committed to the ideal of secularism, to the ideal of humanism, who is committed to the principle of equality, principle of justice and has genuine aspirations for national unity and integrity, has a duty and responsibility to oppose this Bill. Sir, the title of this Bill is deceptive. In the name of protecting the rights of the Muslim women this Bill in essence and in effect wants to take away certain rights which have hitherto been enjoyed by the Muslim women of our country. I would like to remind you

what was the necessity on the part of the present Government in introducing his piece of legislation. It emanates from the present Government's motivated and partisen assessment of the reactions of the people of our country following the Judgement of the Supreme Court in, what by this time, is famous Shah Bano case. Sir, we the Members of Parliament, have not been supplied with the copy of the judgement regarding the Shah Bano case. We have to consult other documents. I think the hon. Members know the judgement of the Supreme Court. Therefore, I do not want to go into the details of the Shah Bano case or the judgement of the Supreme Court in this regard, but Sir, with your permission what I would like to emphasise is that the judgement of the Supreme Court in the Shah Bano case does not in any way violate the Muslim Personal Law nor is it contrary to the tenets of the Shariat of the Islam. I would like to emphasize that section 125 of the Criminal Procedure Code of our country rests on a principle which is neither opposed nor contrary to the tenets of the Shariat of Islam. As it is, it provides for maintenance to the divorced Muslim woman unless she is able to maintain herself. I would like to submit that the judgment of the Supreme Court in Shah Bano case and section 125 of the Criminal Procedure Code do not in any way violate the tenets of the Shariat. In fact, verse 241 of the Holy Quran makes it obligatory on the part of every Muslim husband to provide maintenance to the divorced wife and the question of payment of maintenance to the divorced wife is not confined only to the period of iddat, as it sought to be given to the people by many. I would like to submit here that the Supreme Court judgment which was to prevent vagrancy of the divorced indigent Muslim women had another added advantage. You know, Sir, in majority of the cases, divorce amongst the Muslims in our country is not in accordance with the principles of Shariat. Majority of the

divorces or *talaqs* by the Muslim husbands in our country...

SHRI F. M. KHAN: Sir, on a point of order. I would like to have a little clarification. The hon. Member has not read the Supreme Court judgment. If he is going to argue his point without reading the judgment, then it is baseless.

MR. DEPUTY CHAIRMAN: There is no point of order.

SHRI F. M. KHAN: There is a point of order, Sir. He is talking of Shariat. What is its interpretation? Who has the authority to give a ruling on the Shariat? Whether it is the Ulemmas or whether it is the Supreme Court or whether it is the Member? If I were to give an example, you pass a law, it is the court which gives the decree. Likewise Shariat can be interpreted only by Ulemmas; it cannot be interpreted by anybody else.

MR. DEPUTY CHAIRMAN: Let him continue. There is no point of order.

SHRI F. M. KHAN: He has not read the Supreme Court judgment and he is championing the cause.

SHRI MOSTAFA BIN QUASEM: There are so many commentators and I have the option to accept the commentary of a person whose commentary is in favour of emancipation of the womenfolk of the Muslim community.

The Supreme Court judgment had an added advantage, as I was just going to tell you and other hon. Members. It could have put atleast a brake on the undesirable system prevalent in our country amongst the Muslim community—the system of indiscriminate and irresponsible *talaqs*. Oral *talaq* has come to be condemned as a sin under Islamic law and is even a social evil by any standards. By nullifying the Supreme Court judgment in the Shah Bano case the Government, I charge, is going to provide an official support to these indiscriminate and irresponsible *talaqs*

by a majority of the Muslim husbands who divorce their wives, flouting all Islamic principles. One may charge the present Government of abetting these indiscriminate and irresponsible *talaqs* among the Muslim community. of trying to legalise, of trying to give official support to the discarded system of oral *talaq* which is considered to be a sin under Islamic law and a necessary social evil by any standards. (Interruptions). I am not referring to you. This is a fact of history.

SHRI NIRMAL CHATTERJEE. How many oral *talaqs* have you given?

SHRI MOSTAFA BIN QUASEM: Sir, I fail to understand when the countries which are known as Islamic countries or Muslim countries, have found it necessary to make legislative enactments in order to modify their personal law to give more rights to the women of their countries, to give more dignity to the women of their countries. I fail to understand why the Government of a secular country, a democratic country—not to speak of extending the rights to the Muslim women—hesitates to play in tune with the judgment of the Supreme Court in Shah Bano's case—which does not extend the right but wants to protect the existing right. In those countries the cry is not raised & that Shariat is in danger. But the fundamentalists and obscurantists of the Muslim community here raised the slogan and you surrendered to their slogan. This is a misfortune for the Muslims of India.

Sir, it has already been pointed out in this august House that section 125 of the Criminal Procedure Code is applicable to all the women of our country whether she is Hindu or a Muslim or a Christian...

SHRI PARVATHANENI UPENDRA: They can't go on interrupting like this.

SHRI MOSTAFA BIN QUASEM: The present piece of legislation is trying to exclude the women of the Muslim community of our country and put them outside the purview of section 125 of the Criminal Procedure Code. Sir, to my understanding, this piece of legislation militates not only against the secular provisions of section 125 of the Criminal Procedure Code but it also militates against the ideal of secularism enshrined in the preamble of the Constitution of our country.

Sir, it has already been pointed out in this House that simultaneously because of the same reasons, this law is highly discriminatory and is in flagrant violation of a number of articles of our Constitution. It is worth repeating and therefore I repeat; It violates article 14 of the Constitution and article 15 of the Constitution which, among other things, guarantee the Fundamental Right of equality before law to all citizens and prohibit discrimination on grounds of sex and religion.

Sir, I would like to place before this august House that the attitude of the Government needs total exposure to the people. What makes you oppose the judgment of the Supreme Court in Shah Bano's case? Let me tell you, Sir, and the honourable Members of this House that because of sheer political opportunism, for making some minor, temporary, electoral gains they have surrendered nakedly to the whim and caprices of the fundamentalists of the Muslim community of our country. This Bill is a panicky reaction to the reversals which the ruling party suffered in certain recent bye-elections. Sir, the Government should take a lesson from history. Surrender to fundamentalism does not pay any dividends to the country in terms of furthering of national interests.

(Interruptions).

With your permission, Sir, I would like to reiterate that opportunist appeasement of fundamentalism has never and shall never be in the interest of the healthy growth of Indian nationalism. During the course of our national liberation movement at a certain point of time some such opportunist alliance with the fundamentalists was made and it did not do any good to our national interest. Instead, it ultimately strengthened the hands of the fundamentalists and that ultimately resulted in the partition of India. Sir, I again charge that the present Congress (I) party is making an opportunity alliance with the fundamentalist bigots who are instigating a section of the people of our country with the slogan "Shariat in danger" just for the sake of prospective electoral gains against left and democratic forces of the country. I utter a note of warning. We are already hearing whispers that new Jinnahs are in the making. Sir, with all sincerity, we urge upon the Congress (I) to forsake such ruinous course. If they have to fight us fight the left and democratic force in the country, let them do it in the area of economic and on political issues. Sir I would appeal to the Government, Please don't fall into the trap of the fundamentalists. Instead, you take vigorous measures to meet the genuine economic and social grievances of the Muslim masses and other minorities, for which all the progressive forces of India will extend their unstinted support. (Time bellrings)

Sir, so much of my time has been taken.

Sir, it is claimed by the Government and even the hon. Prime Minis-

ter claims that 90 per cent of the Muslims support this Bill.

AN HON. MEMBER: Ninety-five per cent.

SHRI MOSTAFA BIN QUASEM: You say 95 per cent. Another person will say 99 per cent. Yet another may even say cent per cent. The difficulty with the Government is this that the obscurantist views of some fundamentalists of some self-appointed champions of the *Shariat* are considered by them as representative views of the Muslim community. They lose sight of the fact that thousands of progressive and secular Muslims of the country who include teachers, who include doctors, who include workers who include persons from all sections of the Muslim society have raised their voice of protest against this Bill.

Sir, now I come to certain provisions of the Bill. Sir under this Bill maintenance to the child or children of the divorced wife is provided only for two years. What will happen to the child or children after two years, Sir? The mother, the divorced wife will be still suffering the trauma of the divorce. She will have to go from door to door. She will have to beg from door to door for her own sustenance and for the sustenance of the child. There is no provision, Sir.

श्री (मौलाना) असराहल हक : वह
महर का पैसा लेगी, बाप से अपने हक
लेगी, वक्फ बोर्ड से रुपया लेगी (व्यवधान)

† [شہری (مولانا) اسرارالحق : وہ
مہر کا پیسہ لے گی - باپ سے اپنے
حق لے گی - وقف بورڈ سے روپیہ
لے گی - (مداخلت)]

SHRI K. MOHANAN: Sir, let him speak first, then Mr. Quasem will speak.

SHRI MOSTAFA BIN QUASEM: This is the position sir. That *bacha* or *bachi*, that innocent child, at that tender age will have to beg from door to door for its sustenance and the sustenance of its mother. This is due to your callous act in nullifying the judgment of the Supreme Court in the Shah Bano Case and bringing this Bill. Can you conceive of any situation more barbaric and more inhuman than this, Sir?

Apart from certain vices the Bill is shrouded in it suffers from certain contradictions which need clarifications from the Government. One aspect is this. It has already been pointed out by some hon. Members in the other House. It is in the press. But I would like to point out here, Sir, it is somewhat preposterous to imagine that when the relationship between the husband and the wife has become as hostile as possible after divorce they will happily unite together agree to go to the court and seek recourse to section 125 of the Criminal Procedure Code. I do not know what proposition can be more silly than this. This finds a place in the body of the Bill, Sir.

Second, I seek a clarification from the Minister. You also succumb to the view that section 125 of the Cr. P.Cs contrary to the Muslim personal law. And some even go to the extent of saying that it is against the *Shariat*, the tenets of the *Shariat*,

Sir, if the husband and the divorced wife who continue to be Muslim even after the divorce agree to go to the court and seek recourse under section 125 of the Cr. P. C. jointly then how do the anti-Muslim personal law character and the anti-*Shariat* character of section 125 evaporate? Will the hon. Minister give an explanation to this?

Sir, this Bill, it has been already pointed out by the hon Members is

† [] Transliteration in Arabic script.

[Shri P. Shiv Shanker]

fraught with dangerous possibilities. One such possibility is this, that it will result in unnecessary litigation among close relatives, which may rupture the cordial relationship between father and daughter, mother and daughter, brother and sister etc. etc. This possibility is there, Sir.

Finally regarding the provision of the Bill, I would like to say this. I know very well that interpretation of verse 241 of the Holy Qoran will not suit the purpose of the fundamentalists and you, the Government, the new ally of the fundamentalists. But what is the harm in accepting that interpretation of verse 241 of the Holy Qoran which provides for giving *mata*, reasonable *mata*, which one may like to call a parting gift to the divorced wife? No such provision has been made in this Bill.

Sir, before I conclude, I would like to quote the voices raised by millions of Muslims outside parliament, the majority of the people of our country, the entire secular and progressive forces of the country against this Bill. In tune with that protest I, inside the parliament, strongly oppose this black and retrograde Bill. I would like to submit that history will not forgive this present Government. You have worked against a positive movement in our history. It is a movement towards emancipation of the Muslim women of our country. Instead of making a positive contribution there to you have deliberately brought this Bill thereby subjecting them to 7th century primitivism. I would like to warn the Government that people of our country will say the final word. I know that our warnings will not enter the deaf ears of the Government, yet I would like to place before this august House that the Government has neither the power nor the capacity to halt the march of the people of our country

towards progress. I am sure a befitting reply to this attitude of the Government, which has brought in this anti-people, inhuman and barbaric Bill, will be given by the united movement of the people of our country.

With these words I once again register my protest against this Bill.

MR. DEPUTY CHAIRMAN: Shri P. Shiv Shanker.

SHRI PARVATHANENI UPENDRA: Sir, those who have moved their Amendments, they must be allowed to speak first.

MR. DEPUTY CHAIRMAN: No, the order is written here.

SHRI PARVATHANENI UPENDRA: It is not a general discussion, Sir.

MR. DEPUTY CHAIRMAN: It is. Let it be discussed along with that.

THE MINISTER OF COMMERCE AND FOOD AND CIVIL SUPPLIES (SHRI P. SHIV SHANKER): Sir, many an invectives have been used to decry and denounce the Bill. In sum and substance the Bill is criticised on the ground that the Judgment of the Supreme Court which provides a fair approach—even some of the critics have gone to the extent of saying that it is a very progressive approach—is sought to be nullified by the Bill.

A question that has got to be posed in our minds for the answer is how to decide and who has to decide that the Supreme Court has taken a fair approach? What is the rationale for deciding that the Supreme Court had a fair approach? What are the means? What are the guidelines by which we can go when we are considering the criticism of the Bill?

This aspect has got to be gone into. Is it that we should borrow our own notions or is it that we should rely on the scriptures or the Holy books or is it that we go by our own interpretations of the koran?

The basic postulate in my view is one has to understand certain basic points of the Muslim Law, particularly the aspect of marriage. While a Hindu marriage could be called a marriage by religion, a Christian marriage could be called a marriage by status, a Muslim marriage is a marriage by contract. This aspect has got to be borne in mind which is the basic tenet. What is called in Urdu there should be a 'Izabo kabul'. There should be an offer and acceptance. It is a pure and simple contract, where the 'Nikanama' is prepared. There are vakils, there are witnesses for the marriage and once the marriage is broken by divorce or otherwise, then the question of the liability to pay the mahr as the consideration thus arises. Now, the position is that hon. Members might also know that if the consummation of the marriage does not take place mahr amount is not payable. Thus is the basic tenet. Therefore, if we approach the problem from this angle—when once it is conceded that it is a contract and if this contract is dissolved—what follows out of it is to be taken into consideration. I am sure, the hon. Members would then appreciate the sentiments of the Muslim community. In Muslim law the whole difficulty to me appears to be that many a people are trying to look at this Bill from the law that they have. They wanted the correct approach. The correct approach to view the Bill would be how all Muslim community would look at the Bill that is number one number two, is it fair? Number three, does it offend the Central tenets of this country? Now, I would like to make my submission from all these aspects

so that the confusion that seem to have been created over the arguments in this case could be seen through. Sir, in the Muslim law there is also a concept in one section what is called as 'Muttah' marriage. To many, it may appear to be abhoric. It is a marriage for four months, once the marriage breaks whatever is the amount of mahr that is fixed, it is paid to the lady and the lady goes and the man also goes.

AN HONOURABLE MEMBER: It is a rare case.

SHRI P. SHIV SHANKER: Among the Shias, it is an accepted concept. It is an accepted concept of Muslim law.

SHRI PARVATHANENI UPENDRA: There were such contract marriages in Gujarat also.

SHRI P. SHIV SHANKER: I am not concerned with it. You may be very enamoured about it. You take care of it, if you are enamoured by it.

I am only trying to submit that these are all matters of religion susceptibilities. If these are the matters of religious susceptibilities—if these are the matters of fair where one would like to argue, one would like to be logical, it is only in this background that one has got to appreciate the sentiments that the Muslim community have.

Sir, my submission is while it comes to the question of Hindus right upto 1954 when the Hindu Marriage Act was engrafted, the position was that a principle of once a marriage is always a marriage.

[Shri P. Shiv Shanker]

persisted, unless amongst the Shudras if there is a custom for the divorce that was followed. Otherwise so far as Gujar, are concerned, there was concept of divorce at all. That is why it is not proper in my view to view this issue from the law of one own, but it has got to be viewed from the background of the Muslim law itself, the Sharait law itself we should not forget about the Constitution wherein we have given certain rights to the minorities. We have categorically said that every one living in this country has a right to the faith to which he chooses. We have gone to the extent of saying that their institutions would also be protected. What I am saying is that this is a matter where one has to look at the whole Bill from this broader vision.

Sir, the question that I pose for myself is: where is it that the Government has gone wrong and how is it, I will put another question so that it becomes clear. Sir, today, the Hindus are in a majority in this country. Assuming for a moment, we pass a law without the consent of the community. Why I am saying without the consent of the community is that in 1954, 1955 and 1956, when various laws with reference to the Hindus personal laws were passed, at that time, the Hindus accepted them. Now, today, supposing what we do is this. We say, look that according to Hindu law, marriage is by religion. We would pass a law to say that there won't be any saptpaid. Only the simple marriage would be for all and we would say this that look, the boy and girl will have to go to the magistrate and the boy will have to say that I accept the as my wife and the lady will say to the boy, I accept you as my husband. Now the matter ends there. Now you can very well imagine what will be the sentiments of the Hindus in this country. Therefore, these are the matters where you cannot judge these issues on the anvil of total logics and reasons. These are matters

of faith and that is why, one has to keep the background of the Shariat la, the Muslim Law for the purposes of a proper understanding of the whole issue. Sir, the position is lot has been said about the fact that it is a case of erosion of secularism. It is also a case where the judgment about which I will come at later stage which has tried to take a little progressive.... a little retrograde approach is being taken. As I understand, secularism in the very simple logic is that so far as the State is concerned, State shall neither practise a religion nor encourage any particular religion nor interfere with the religion of any individual. If this be so, if this is the broad definition, I would not like to go into the details of it. If this is the broad definition and if the Muslim say well, this is our law and if they come forth by saying, well, look we are the minorities; we are entitled to the protection of our rights and it is in this background that we would like to profess these tenets.

Now, Sir, whether interference would be proper unless we have been able to prepare a public opinion otherwise. I must frankly admit that in the last 38 years and it is a very sorry state of affairs which I must make a clean breast of itself. We have not been able to enforce the confidence in this minority and I personally feel that the blame must be squarely to the majority community and to the system itself. If we have not been able to enthruse confidence in them. (Interruptions). Well, you can say, I am not arguing with that. If cannot claim to convince you by my arguments but certainly, I claim, by way of a right that I am entitled to be heard—Now, the position is that this is a situation which has come to pass in a situation which has come to pass when the community put in a position to accept it, that is why, I said that between 1954 and 1956, I gave the example of various personal laws with reference to Hindu Code Bill, Hindus laws, that

at that time, the Hindu community was prepared to accept that law. If we come to that stage whatever we might say here, outside the situation is that people are not prepared to accept this.

5 P.M.

SHRI PUTTAPAGA RADHAKRISHNA: On a point of order. (Interruptions).

MR. DEPUTY CHAIRMAN: Please sit down.

SHRI PUTTAPAGA RADHAKRISHNA: The hon. Minister says that there was a consensus of the Hindu community on the Hindu Code Bill. Has there been a consensus of the Muslim community on this Bill? (Interruptions).

SHRI V GOPALSAMY: I want to hear the Minister. (Interruptions)

SHRI R. MOHANARANGAM (Tami Nadu): Sir, when the Minister speaks, we want to listen to him because he is one of the best speakers and he is a lawyer. If anybody interrupts him, then I will also interrupt when that Member speaks. (Interruptions) I am not talking about Mr. Radhakrishna.

SHRI PUTTAPAGA RADHAKRISHNA: I am entitled to raise a point of order.

SHRI R. MOHANARANGAM: I am not interfering with you. I have never interfered with Telugu Desam. (Interruptions).

SHRI P. SHIV SHANKER: Sir, the submission that I was making to the House was that we have a Constitution and certain constitutional guarantees are given to the minorities. This is not a country—because references were made to some foreign countries. I will come to it shortly—which belongs to a particular section of the people. This is a country

which belongs to everyone who is a citizen of this country—let us not forget this—whatever language one speaks, whatever religion one professes, whatever is the region to which one belongs. Therefore, if this be the whole crux of the Constitution, if this be the very basic tenet which we have got to follow, then has the Government committed a sin in bringing this Bill? I am going to submit to the House, without criticising the judgment, certain of the basic and very apparent loopholes that become so clear in the judgment itself, in the reasoning itself. Now the question that comes to one's mind is, are we in a position to interpret Koran? The position is that they have said, and very rightly so, that one of the professed beliefs of the Muslim community as a whole, be it here or anywhere else, is that Koran is uninterpretable.

SHRI B. SATYANARAYAN REDDY: Who is to interpret then?

SHRI P. SHIV SHANKER: If this is the position, many Ulemas, many authorites and others have tried to give their translations, on which the Supreme Court has also relied, and I am going to show to the House as to how the Supreme Court has committed a mistake. I would not like to go beyond that. After all, the judgment of the Supreme Court is binding on the entire country. But where they err, I am entitled to point out to the House, which I will presently do.

One of the points very much adverted to is, "Look there are countries like Pakistan". For some people, Pakistan has now become a very progressive State in that respect. For those who day in and day out have a broadside against this country, it has become a very progressive country now. One thing which we forget . . .

SHRI SURESH KALMADI: Who says Pakistan is progressive?

AN HON. MEMBER: In the Shain Bano judgment there is a passage. What do you say about that quotation?

SHRI P. SHIV SHANKER: I am coming to that passage.

Questions were also asked with reference to diverse Muslim countries. I am not denying that. But then the point is these are countries which are either theocratic or these are countries where the people, when there had been a change in the law, had accepted it. In this country the population of the Muslims is only next to that of Indonesia, the second largest country. Have the Muslims accepted this? If they are accepting it, as I said, since we have failed to infuse confidence in them, we have not been able to prepare public opinion, therefore, till the time public opinion is prepared, one has got to go according to the tenets which they want us to follow...

SHRI DIPEN GHOSH: Then circulate it for eliciting public opinion.

SHRI P. SHIV SHANKER: This issue was raised, some Members have raised this issue, with reference to Article 44 of the Constitution, and I would not like to substitute myself except quoting the great personality, Dr. Ambedkar. This was in the Constituent Assembly when Article 35 was being discussed and the various Muslim members had expressed their apprehensions. They said that this Article 44 would trample the rights of theirs under their own Personal Law. Here is what Dr. Ambedkar has said:

"My second observation is to give them an assurance. I could realise their feelings in the matter. But I think they have read rather too much into Article 35 which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible

that the future Parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to be bound by it so that in the initial stage the application of the code may be purely voluntary."

Then he said:

"It would be perfectly possible for Parliament to introduce a provision of that sort so that the fear which my friends have expressed here will be altogether nullified. I, therefore, submit that there is no substance in these amendments and I oppose them."

He was opposing those amendments. So what I submit is even at the time when Article 44 was being framed, an assurance was given. That is why if we go to the Special Marriage Act, even though I might have married under the Hindu Law, unless I register myself under that law, the implications of that law will not apply. Under the Special Marriages Act every person living in this country, whatever faith he might profess that person can either get himself married or after the marriage under his own Personal Law, can get himself registered and then have the consequences of that law. That was why the Law Minister, at the instance of the Prime Minister, in the other House categorically said that so far as the voluntary uniform code was concerned that would be brought forward at a later stage and that would be the correct step for the purposes of seeing article 44 into its fruition. Sir, I would like to submit that when it comes to the question of this Bill, there are apparent advantages. The apparent advantages are like these: Firstly, there is an assured source of maintenance. Lawyers on this side and lawyers on the other side are very well aware of how many times a woman has got to go to the court notwithstanding the fact that the maintenance order has been passed and they are also aware of the many hurdles that come at the execution stage. It is very rightly said that the

difficulties of the litigant in India start after the decree is passed and when it is put into execution! But here is a case where an assured source of maintenance has been provided. Those who are willing, according to the Muslim law itself, that is, those who could have otherwise inherited the property of this lady and if such people are not available, then, ultimately, the community represented by the Wakf are sought to be made responsible for the purpose of helping a Muslim woman.

The second point that I would like to submit is that this Bill ordains that the Magistrate shall decide the entire issue within one month.

SHRIMATI: KANAK MUKHERJEE: Sir, on a point of clarification. (Interruptions).

SOME HON. MEMBERS: No, no. (Interruptions).

SHRIMATI KANAK MUKHERJEE: Sir, I want a clarification. If this Bill is deemed to be much better than section 125 of the Cr.PC, will the Government consider applying the something to the women of other communities also?

Secondly, if a section of the Hindu community wants the suttee system, will the Government consider that also?

Thirdly, if a section of the Hindu community wants or if the Hindu fundamentalists want that the system of child marriage should be revived, will the Government consider that also?

SHRI P. SHIV SHANKER: For your information, I may say that the Hindus could also claim maintenance under the Hindu Marriage Act. But I would not like to go into that now because that would be widening the scope of the discussion here. The point that I was submitting was that under this Bill within one month the Magistrate is enjoined upon to complete the entire proceedings and if he does not do so, he will have to give

some reasons. Now, the position is that even for Shagh Bano, for the purpose of seeing through her litigation, it has taken more than six years. Is it not an improvement on the provisions of the Criminal Procedure Code?

Then there is yet another aspect which I thought I should bring to the notice of the House and it is that the reliefs under this Bill are far wider as compared to the reliefs that are provided under the Cr. PC. Under the Criminal Procedure Code, it is only the maintenance that will be provided. But, under this Bill, it is not only the maintenance, but also the mahr amount as also the *jahaz* articles: everything has got to be received by the woman which she is entitled to. Yet another aspect which I would like to stress is that under the Criminal Procedure Code, the court can award relief to the tune of Rs. 500/-. But there is no such bar here. It can be Rs. 1,000/- or it can be Rs. 1,500/- or whatever it is, and in the shortest time, and, above all,...

AN HON. MEMBER: Why not one rupee?

SHRI P. SHIV SHANKER: Yes, one rupee also under the Criminal Procedure Code if you think that that is sufficient. If you think that that is sufficient for your wife's maintenance, then I cannot help it.

The other point which I thought I should say is that, above all, this Bill is according to the tenets of those who profess that religion. So, therefore, they come to the judgment. Sir, only two points I would like to make. I would not like to take much time. If you kindly look at this judgment,—I would not like to dispute with the hon. Judges—they have quoted various authorities. They have quoted *Arthar*... They have quoted more than one author. They have also quoted *Zaffarullah Khan*. They have also quoted the book "*Meaning of Koran*". This is published by the Board of Islamic Publications. Then they have also quoted—this is with reference to the interpretation of

[Shri P. Shiv Shanker]

Ayat 241 and 241—"Running Commentary on Koran". This is a book written by Maulana Khadim Rahman Amoori, and then the other book "Meaning of the Glorious Koran"; this is by... (Interruption) I am not going into it. But what they say is that for a divorced woman the righteous person should provide the maintenance. After quoting this, where I find myself at a loss was this. Now they proceed to say, these Ayats leave no doubt that the Koran imposes an obligation on the Muslim husband to make provision to the divorced woman. The submission that I make is, wherefrom had they extracted....

SHRI DIPEN GHOSH: Are you sitting over judgment over that judgment?

SHRI P. SHIV SHANKER: I have got a right... (Interruptions).

SHRI DIPEN GHOSH: In that case, my plea is to furnish a copy of the judgment to the Members so that we can go through it.

SHRI P. SHIV SHANKER: The Objects and Reasons say that this Bill has been introduced to get over the judgment of the Supreme Court.

SHRI DIPEN GHOSH: But you have not circulated the judgment. Circulate a copy of the judgment.

MR. DEPUTY CHAIRMAN: That is a different issue.

श्री हंस राज सारस्वात: उन को सब दिया हुआ है, लेकिन पढ़ते नहीं हैं।

SHRI P. SHIV SHANKER: I would like to ignore this interruption. I am not denying what is there in the text, that they have extracted. But then the point is, on whom is the obligation? How do you come to the conclusion that this obligation is on the husband? There is nothing. And it has been now categorically decided, categorically opined by the authorities, that it is only for the 'Aiyam-e-Iddat' that the woman is entitled to maintenance.

Recently, Sir, it may not be out of place to submit, I had to go to Hyderabad for attending the Iqbal Seminar where I had to preside, and there I was talking to certain Muslim women—three or four women, very highly educated—and when I talked to them, the answer that they gave me was

अयासे इद्दत के तुर्फ के बाद पिछले शौहर से एक फूटी कोड़ी लेना भी हमारे लिये हराम है।

(Interruptions)

SHRI DIPEN GHOSH: Are you prepared to take that responsibility upon the Central Government?

SHRI P. SHIV SHANKER: Mr. Ghosh, you are incorrigible; I am very sorry. You are a very responsible man, Leader of the Opposition. There is some responsibility upon you about the conduct of the proceedings here.

SHRI H. R. BHARDWAJ: Sir, the Human Resource Minister must give more weightage to adult education. (Interruptions).

SHRI P. SHIV SHANKER: I find quite eminent lawyers on that side also. They would certainly go into the judgment and I am sure they will agree with me that the Supreme Court should have given some reason after quoting the interpretation of the Ayat as to why they are bringing in the husband in the concept of the interpretation of the Ayat. They could not have jumped straightaway by saying that this means this. Here nobody is saying that a Muslim woman should not be provided maintenance beyond the period of Iddat. It is nobody's case. Who should pay the maintenance is the point. Now, it is a question of approach. The Muslim community feels that according to the Shariat, the position is that it is those who would have otherwise inherited the property of this lady or in the alternative the community. (Interruptions). Will you kindly wait? I am not yielding. Now, the point is this.

[Shri P. Shiv Shanker]

If you would like to look at this concept from the point of view of your likes, I am sorry that would not be a correct approach. The whole difficulty is this. Many of us are trying to look at this whole concept from the point of view of their likes. What did they say when I was talking to them? (Interruptions). Look, when we think of a woman, we think of a goddess. But then you forget that your background as to the concept of marriage, as to the concept of divorce, etc. which you have got developed over the years, is totally different from how the Muslims would like to look at the whole problem. That is why I was trying to say that the Supreme Court has erred in my submission in jumping to this conclusion that it is the Muslim husband who should provide the maintenance without any basis whatsoever. I am only sorry that when we framed the law, we framed the law taking into consideration certain aspects. In 1973, the amendment was effected in Section 127 (3) (b). Is there a custom in a particular community to pay the entire amount which one is liable to pay? If it comes to the question of Muslims, if they pay the maintenance for the Iddat period, the Mehar amount and also the Dahez articles or the value thereof, if they pay all this, then the position under Section 127 (3) (b), which exists even today in the Criminal Procedure Code, is that the order of maintenance has to be rescinded. This is the law. I would like to read one paragraph of the Supreme Court judgment. I would only read it. I would not like to comment on it. I am only sorry that the interpretation is so unacceptable even to a person who must have gone through the drill of law for a couple of years. I will like to read it:

"The main plank of the appellant's argument is that the respondent's application under Section 125 is liable to be dismissed because of the provision contained

in Section 127 (3) (b). That section provides, to the extent material, that the Magistrate shall cancel the order of maintenance if the wife is divorced by the husband and she has received the whole of the sum which under any customary or personal law applicable to the parties was payable on such divorce. That raises the question as to whether under the Muslim personal law any sum is payable to the wife on divorce. We do not have to grope in the dark and speculate as to which kind of a sum this can be..."

"...because the only argument advanced before us on behalf of the Appellant and by the Intervener supporting him is that *mehr* is the amount payable by the husband to the wife on divorce. We find it impossible to accept this argument."

Sir, I leave it. I do not want to comment the manner in which Section 127 (3) (b) has been interpreted. Therefore, without going further because a lot of my friends would also participate in the debate on either side, I would like to submit in the last that let us look at it in a society which we have given to ourselves, a Constitution which we have adopted. While we have tried to protect the rights of the minorities, we should look at it from a broader vision. The whole concept has got to be viewed from the point of view of as to how a devout Muslim would like to look at it. And unless we have been able to bring a change in the public opinion, I am sorry the approach that is suggested is totally wrong.

With these words, Sir, I am sure, the House would support this Bill. Thank you, Sir.

**Allocation of time for disposal of
Government Legislative Business**

MR. DEPUTY CHAIRMAN: I have to inform Members that the Business