

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 Shah 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 mahar amount as also the jahez 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 Arthashastra. 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 भारद्वाज: 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 Semina, 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 तुफे के बाद पिछले शौहर से एक फूटी कोई 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, (Interruption!) Uons). 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 alimony; the Dahez articles of the law; 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

The Committee recommended that due to the declaration of National Holiday on Friday, the 9th May, 1986, on account of 125th birth anniversary of Gurudev Rabindranath Tagore, the sitting of the House fixed for that day be cancelled.

The Committee also recommended that in order to complete the Government and other Business, the present Session of the Rajya Sabha be further ex-extended by one day and accordingly, the House should sit on Wednesday/the 14th May, 1986, for transaction of the Government and other Business.

The Committee further recommended that to enable Member to be present in the House at the time of voting on the Muslim Women (Protection of Rights on Divorce) Bill, 1986 currently in progress, the First Division on the Bill be called at 10 p.m.

The Muslim Women (Protection of rights on divorce) Bill 1986—contd.

SHRI M. KADHARSHA (Tamil Nadu): Mr. Deputy Chairman, Sir, I rise to support the Muslim Women (Protection of Rights on Divorce) Bill, 1986 and thank the Prime Minister and the Law Minister for

{Interruptions})

SHRI R. RAMAKRISHNAN (Tamil Nadu): Sir, let there be order in the House.

MR. DEPUTY CHAIRMAN: Order, order.

(Interruptions)

SHRI M. KADHARSHA: Sir...

(I?;terrocpticms)

SHRI R. RAMAKRISHNAN: Mr. Deputy Chairman, Sir, there should be some order in the House. This is not the way to treat the House. Just because a powerful Minister has that does not mean that others would be listened to with iet. If they want to leave, let them leave.

MR. DEPUTY CHAIRMAN; Order, please. Either you resume your seats or move out of the House. Yes, Mr. Kadhansha.

SHRI M. KADHARSHA: Mr Deputy Chairman, Sir, I rise to support the Muslim Women (Protection of Rights on Divorce) Bill, 1986, and thank the Prime Minister and the Law Minister for having brought a legislation which will clear the mud and the debris created in the country in the context of the Supreme Court judgment. Ever since the judgment was delivered, the press and every celebrity was so much obsessed with

[Shri M. Kadhursha]. this issue that one would think that India's population consists mainly of Muslim Women...that too divorced women and that India has no greater problem to solve than this. Sir, as a matter of fact, the Muslim population is 12 per cent. Of them children and adolescents form 6 per cent. Then males are 3 per cent and females another 3 per cent. Among them married women will be 1 per cent and the divorced will be .001 per cent, a minuscule minority within the minority. Sir, I am not contesting that those women should not be given succour and sustenance but there is provision in the Islamic law itself. Sir, my argument is that there are far more serious social problems involving millions and millions of Indian women, both Muslim as well as non-Muslim, who are destitutes, who are downtrodden, who are unemployed, who are not even able to get their grown up daughters married for want of money. So, my argument is why the same sense of seriousness has not been shown by my hon. friends on those social problems. So, Sir, it becomes clear that they are motivated by considerations other than the concern for Muslim women. This is a social problem and should be dealt with accordingly.

Sir, if Shah Bano's case was focus-sed as a case of men's oppression towards women, the result would have been different. But unfortunately, the issue was converted into a communal tirade and it is here where my friends have failed.

Sir, Muslims throughout the country and, for that matter, wherever they are, have unflinched faith in Islamic tenets and they observe them with utmost sincerity in their daily life. They would not like someone to interfere or tamper with that as they do not interfere with other people's religious beliefs and practices. It is a matter of regret that on a purely personal matter of Muslims such a heated debate like this one, by those who are not acquainted and connec-

ted with Islamic ways of life, has been initiated, giving it an interpretation according to their own convenience.

Sir, Muslim married life is a matter where you are morally and spiritually as well as socially bound to give protection to women in distress. Sir, this is very well taken care of to ensure that women are not neglected and subjected to torture and agony and, therefore, it is specifically laid down for the husband to maintain his wife under the circumstances.

Sir, from what my hon. friends spoke here I understand that they have got a wrong impression on divorce. Before we speak about maintenance we should know fully well about divorce. Sir, divorce is not a one-sided affair. Sir, in Islam there are four types of divorce, Mubarat—divorce by mutual consent, Khula—it is at the instance of the wife, Faskh—if it is declared by the court and finally Talaq—unilaterally de-cleared by the husband.

[The Vice-Chairman (Shri Pawan Kumar Bansal) in the Chair].

So, Sir, before we speak about maintenance, the circumstances which lead to divorce should be taken into consideration. Sir, in Islam women are given a pride of place. She is given the right to property. She is given the right of marriage. She is given the right of divorce, which even advanced countries of the west did not think of before 1400 years. Sir, but Islam discourages divorce. The Koran terms divorce as the most obnoxious act that a man can do and any religious Muslim would think twice before he gives Talaq.

To quote Prophet, "That of all things that have been permitted by the law the most despicable thing in the eye of God is divorce."

So, if it is really strange that without going into the safeguard and protection available to Muslim women, some

people are opposing the Bill for political expediency and the benefits are being lost sight of. This Bill restores the status quo ante as far as Muslim women are concerned. Taking together Shariat and Islam, there was no occasion for anybody to offer commentary on the Muslim women's post-marital status. An attempt has been made to arouse communal passions in the name of discrimination. It is again a matter of deep anguish that I condemn such an attitude of mind to generate passions on a matter already settled by Islamic traditions and to project it with false glasses. Are the opponents of this legislation going to say that had this legislation not been brought before Parliament, it would have contributed to national integration and uniformity of the personal laws? This legislation, to my mind, has channelised the thought of national integration in a more effective manner than that of any other social legislations so far. It has removed the misgivings in the minds of Muslims in general about the policy of non-interference, about Government's commitment to bring emotional integration by developing individual faith and beliefs in own religion and way of life and by demonstrating Government's will for peaceful coexistence of all persons belonging to different castes, creeds and religions. This legislation is a fine example of removing distortions created by the Supreme Court judgment in the minds of Muslim population. I should not be mistaken if I say that the Supreme Court has disturbed the hornet's nest in interpreting the personal law. Even in 1898, the Privy Council advised the courts that they should not interfere with personal laws.

Sir, as Mr. Shiv Shanker pointed out Quran is the inviolable and unquestionable word of God, according to Muslim belief. Even the Prophet has been warned in the Quran that he shall not change even a single word. Sir, Shariat is part and parcel of Muslim life. Jewish orientalist Joseph Sahach says: "The Shariat is the epitome of Islamic thought,

the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself." But the Bench of Supreme Court which was constituted, has interpreted Muslim law and this has hurt the feelings of minorities. Sir, there was even an offensive remark on Prophet Mohammad which no Muslim can tolerate. This is not an isolated incident. Some of the courts are going beyond their limits and so I would like to bring to the notice of the hon. Law Minister this fact and I hope that he will take care of it.

Sir, the Muslims who are already under the lurking fear that their identity is under duress, that their safety security and solidarity is under question have witnessed a vicious circle, encircling them outside and it is encroaching now even the corridors of the highest court. Sir, the Government deserves to be congratulated for feeling the pulse of the masses and acting at the right time and respecting the sentiments of the Muslims in the country. I do not agree with my hon. friend Mr. Mostafa Bin Quasem when he said that the Bill has been brought with the intention of getting votes. It is an insulting remark on the Muslim community. I must remind my friends who are opposing the Bill for the sake of opposition that you have underestimated the collective wisdom of the Muslim voters. The Muslims are known for their patriotism and they have proved it by their contribution to the nation's well-being, to the country's prosperity and vitality. . . .

SHRI K. MOHANAN: We are not opposed to Muslim as such. We are only opposed to Muslim fundamentalists. ..
(Interruptions).

SHRI M. KADHARSHA: The view of my hon. friends is, if some people oppose their views, they are fundamentalists and if they accept their views, they are reformists. If they contradict their views, they become fundamentalists and if they accept their views, they become reformists. This is the stand of my hon. friends.

SHRI K. MOHANAN: Of course, a progressive mind must be there.

SHRI M. KADHARSHA: Sir, as I said, Muslims are known for their contribution to preserving the country's integrity and for their loyalty to the motherland. The need of the hour is to strengthen the country's unity, integrity and sovereignty. This Bill will cement the two major communities into one solid stone to stand against any situation. This piece of legislation is going to usher in an era of mutual trust and understanding. In the best democratic traditions, let Muslims have their own arrangement for regulating their social life according to their own beliefs and religious guidelines enshrined in the Islamic Holy Book.

When making a point of order hon. Member, Shri Advani pointed out that no newspaper has written in support of the Bill. Sir, in their view, they consider only articles in Hindi newspapers to be of importance. I would like to point out that in his, Thai' weekly, one of the leading Tamil weeklies, which is having a circulation of more than 1,80,000 copies, Shri Valampuri John, my friend who is sitting here, has written an editorial last week, which is relevant to our discussion. Therefore, I would like to refer to it here. It says: I quote:

"The sudden fall of Urdu from the cultural and political pedestal, change in the Muslim character of the Aligarh Muslim University and a campaign for a uniform civil code by some vested interests in the non-Muslim communities have thoroughly shaken the confidence of the Muslim population. It is true appeasement widens the limits of autonomy till it threatens national unity. But when you impose uniformity, does it not prove revolt and rebellion of diversities and pose a challenge to the national fabric. Allow the sub-

national urges so that Muslims may have an emotional attachment to the nation."

Therefore, Sir, it is wrong to say that no newspaper or periodical has written in support of the Bill.

Some other Members while speaking pointed out that a separate law is unconstitutional. But I would like to point out, I would like to remind them that the Constitution itself provides for some fundamental rights like freedom of speech and freedom of religion. Even in a small country like Britain, there is no single common law. There are two systems of criminal law. There are two Bars, namely, Scottish and English. Therefore, in a big country like India, which is multilingual, which is multi-religious and which is multi-racial to an extent, what is the harm in having more than one personal law? This is my humble submission.

Sir, the last point I would like to mention is about the role of the so-called progressive Muslims and reformists who are not in war with the enactment of the legislation. I would like to point out to them. Let them calmly ponder over why Muslim representation in Government service and in the police is very poor? Why their share in the country's trade and industry has become very meagre? Why their quota of credit from financial institutions is very low? What have they done for the improvement and upliftment of the Muslim society? I am also reminded of the contribution and role of great Muslim leaders like Sir Syed Ahmed who could foresee the educational needs of the Muslims a century ahead. Let us ask very frankly if we have been able to deliver the goods to them. Our commitments to them by way of our being their leaders have been achieved or not. Have we succeeded in providing them with some definite directions

[Shri M. Kadharsha]

with a view to directly bringing them in the mainstream of national life? If not, then what right do we have to misguide them by saying that this piece of legislation is a retrograde step? All these things are clearly an attempt to misguide and take advantage out of it. It is unislamic. Let us adhere to the stipulations contained in our sacred book which we cherish and follow with the sentiments. Let us resolve to uplift the Muslim masses and bring them to a place from where they can share and enjoy the fruits of a beautiful country with a fine example of coexistence and cherish the unity in diversity.

With these words I support the Bill.

SHRI NIRMAL CHATTERJEE:
Government should reply to his criticism also.

AN HON. MEMBER: You have to answer his questions.

SHRI N. K. P. SALVE: (Maharashtra) : Sir, I rise to support, the Bill. This controversial legislative measure traverses in a sensitive area. On the one hand it has nexus with the religious sentiments of the largest minority community in India, on the other hand it must be conceded that it is directly related to the issue of supposed withdrawal of protection to indigent and helpless divorced Muslim women, supposedly ensured by the Supreme Court in the judgement they have laid down in the case of Mohd. Ahmad Khan versus Shah Bano Begum, AIR 1985, Supreme Court 945. It is inevitable that in a controversial Bill of the nature as it is being debated in the House, there are going to be extremely sharp differences of opinion. Each one of us is entitled to his opinion on the matter and is also entitled to express himself in this House and outside, but it needs to be understood that in a matter like this which has a delicate issue at

stake, a dignified tolerance of each other's view is a sine qua non if the debate has to be meaningful. It is a sheer force of lung power is going to stultify the others from speaking or to ridicule the others, that is neither going to serve the purpose of debate nor is it going to enhance the dignity of the House. What is at stake has to be understood. The Bill for no rhyme and reason has raised so much communal passions and created communal tensions. So far as this House is concerned, it owes not a small duty to ensure that all these communal passions, communal tensions and this sort of a rift that must be coming in, communities over this Bill is brought an end to and for that we owe it to each other to listen to each other's view with some degree of tolerance, some degree of understanding. What we say cannot be to your liking. What we speak is something which you cannot agree and you are perfectly justified in it. We are not obliged to agree with what you say, but to run down each other is what we cannot understand and this is what has been going on in this House. I have been associated with Parliament for nearly two decades and in this House I have been a Member for eight years. I must submit with great anguish in my heart that I have rarely seen a spectacle as I saw today when the Law Minister was heckled for so many hours.

Sir, coming to the Bill, it is necessary for us to make it clear that before we come with this enactment in the House—we know that we would be liable to answer not only to this House but the whole country as to why we have come with this measure it was not an impetuous decision that we had taken, nor a decision taken with elections or a few votes in mind, but there were various serious far reaching aspects of the matter which we had to look into in great depth. The judgment of the Supreme Court had undoubtedly created a very serious problem. One who says that the problem had not been created is either an idiot

of his own choice or a congenital idiot. A problem had been created and a solution had to be found. And if the solution had to be found, the matter had to be looked into in very great depth. It was necessary firstly, and it became clear from the official note which the Law Minister was compelled to read because the same had been referred to earlier by Shri Advani in some other context, distorted out of context, and a case was sought to be made out that so far as Law Minister is concerned, from within he is with the opposition and outside he is with us. He is a distinguished lawyer. If the Law Minister did not want this Bill to come, this Bill would not have seen the light of the day. It was very unfair of Mr. Advani, who showed great concern for the welfare of the Muslims—I was amused to see that—to make an allegation which was totally and wholly unwarranted. Be that as it may, it is first necessary that whoever wants to offer his comments on this Bill, on the relative merits and demerits of the Bill, and the provisions of sections 125—127 Cr. P.C. as understood these two sections in the light of the decision of the Supreme Court in the case of Shah Bano, must understand in very great depth the three judgments of Supreme Court on this issue. The three judgements are; the first was Bai Jafra Vs. AH Hussain Fasaali Chothia AIR 1979 SC 362; the next was that of K. Kadar, AIR 1980 SC 1127; and the third is Mohd. Ahmed Khan Vs. Shah Bano Begum in AIR 1985, SC 945. While understanding the implications of these judgements one has to properly understand the subtle nuances of law of the judgments so far as the law of maintenance of the divorced Muslim woman was concerned. As against this, the injunctions of Hoi" Koran on maintenance had to be properly evaluated. Sir, it is essential to understand the validity and the T-iq's of the dissent amongst Muslims on the judgment of the Supreme Court and after the case of Shah Bano decided by the Supreme Court. In fairness it must be said

that those who resented and objected to the decision of the Supreme Court did not raise such a hue and cry, furore and resentment on the earlier two judgements. And there is a reason for it to which I will come later.

What was the basis, what was the reason that the Muslim community was so terribly agitated and felt so disturbed that its basic rights, its right to profess practice and propagate religion was sought to be imperilled, if the judgment so remained and if the judgment was not superseded? Such a fear entered their minds. The judgment, it was contended was a total anathema to the basic values of secularism which we have been so diligently practising, which are totally sacrosanct to us.

While determining the validity of the grounds on which a large majority felt so perturbed, we have also to understand the viewpoint of a very small minority amongst the Muslim who supported the judgement because, Sir, it has to be understood, and evaluated in a calm atmosphere. Shouting has not solved any one's problems. This small minority consisted of enlightened people. They were progressive people, they were people who were motivated by considerations of bringing in a social transformation in the Muslim law who said that not only was the judgment of the Supreme Court correct approving its interpretation of section 125-127 of the Cr. P.C. but further according to them Supreme Court Judgement conformed to the injunctions of Shariat. They contended that it conformed to the injunctions in Shariat as ordained by the Holy Prophet. Thus this section of the Muslim contended that the judgment was correct and the judgment should not be superseded. Finally, Sir, it was absolutely necessary, in view of the disturbed conditions, to assure the Muslims that their religious sentiments stand fully respected and that for the purpose of adhering to the highest secu-

L&nri N. K. P. salve] lar standards we would cretainly take measures which, while assuaging their hurt feelings, at the sam_e time, would not lead the Muslim divorced woman into a lurch, that it would not lead such woman into a quandary. Therefore, Sir, it fe necessary, having considered all these aspects, to explain the rationale as to why we have come with this enactment.

First and foremost I want to point out, when I am on the question of rationale and justification and the grounds for this Bill. No one seems to have touched an important point. An extremely erroneous impression seem_s to be going round everywhere, with whoever is opposing the Bill, that the provisions of section 125 and 127 of the Cr.P.C. as interpreted by the Supreme Court which gav_e extremely beneficent interpretation, a very compassionate interpretation, in favour of Muslim women has bestowed an extremely invaluable right on Muslim divorced women. Everyone who argued here argued upon an assumption that Muslim divorced women by the Bill being taken outside the purview of sections 125 and 127 of the Cr.P.C.—are being subjected to a very grave injustice. By bringing this Bill we are accused to succumbing to fundamentalists and succumbing to obscurantists. That is what has been argued here repeatedly. The lady, a new entrant into Parliament, said, that she was speaking for her entire community of her sisters and said that she did not want anyone to be thrown into vagrancy and destitution. We do not want that; w_e do not want a situation to be created where any divorced woman is thrown either to moral degradation or to material dereliction; we do not want a divorced women to be thrown to take sanctuary in the streets which leads to the world's oldest profession. We certainly do not want it. But the question that arises to, whether sections 125 and 127 as interpreted by the Supreme Court guarantees that a Muslim divorced woman would not

be led into a lurch in the unfortunate circumstance of a *talaq*. Is there a guarantee for a divorced Muslim woman that the judgement of the Supreme Court will ensure a fair maintenance and fr[^]dom from harassment after Talaq. Or does the present Bill improve the situation. A hard-headed assessment ha_s to b_e made of the beneficial effects of sections 125 and 127 of the Cr.P.C. vis-a-vis the provisions of the present Bill which is before th_e Houe. In a calm, objective manner. Let us understand what kind of deal the Muslim divori-ed women get under section 125 and 127' Is she going to get heav Has the Supreme Court bestowed a grandiose right in her favour for all times to come, so that she could live in luxury herself, with her children, live very well for the rest of her life after divorce? One could have understood the concern of the people and the opposition if such an invaluable right had been taken away by this Bill.

A doubt has been raised whether or not a lady coming under this Bill would be entitled to adequate maintenance or not. One has only to look at, Sir, the facts of these cases d ded by Supreme Court to realize how niggardly, how inadequate, how unsatisfactory are the provision of 1-and 127 of Cr.P.C. interpreted by the Supreme Court. No one has touched this aspect of the matter. What are the facts? Any one who has not read these three cases, one who has net understood and appreciated the facts of these three cases is hardly justified in making any comments on the merits of this Bill. What are these judgments, Sir? The first one came in the case of Bai Tehrabai in 1979 in the Supreme Court. What are the facts of this case? They are very pathetic. The lady, Bai Tehrabai, was married as a second wife "> 1962 and a suit relating to a plot m which he was living was filed and, as a result of consent decree, the hus* band gave her Rs. 5,000 as *mahr* and

[Shri B. Satyahanarayana Reddy] gave her Rs. 180 for *iddat*. They again started living together, and thereafter they were estranged and separated. In 1973, under section 125 the lady moved for maintenance and the Magistrate gave her a princely maintenance of Rs. 400 in Bombay. To this there is an absolutely agonising reference made in the Supreme Court by Justice Krishna Iyer. He said with reference to Rs. 400 granted as maintenance per month—that even on a footpath in Bombay nobody can live in Rs. 400. That was the maintenance which was given and for that we are fighting. The husband went in appeal to the Sessions Judge where the wife lost. The matter was taken to the High Court. The wife lost again. The matter then came to Supreme Court in 1979. After 1973, in 1979 for a sum of Rs. 400 per month in Bombay the lady kept on fighting. The Supreme Court reiterated and confirmed the maintenance of Rs. 400. What a princely maintenance—under Section 125. What a Section for us to fight for and to say if this is taken away everything is taken away from divorced Muslim Women.

The most appalling case is that of Shah Bano. If one is possessed of a human heart, one would shed tears. This lady was married to one Ahmed Khan, an Advocate in 1932, who was making way back Rs. 60,000 per year. The way he treated his wife was extremely inhuman and extremely cruel but that is a different aspect of the matter. At some other time we will consider how women are treated by men who want to get rid of them. She gave this man three daughters and two sons. In 1975 i.e. 33 years after the married life, Mr. Ahmed, the Advocate, drove her away from his house. In April 1978, Shah Bano filed an application under Section 125 before a First Class Magistrate, Inrode and asked for a maintenance of Rs. 500

in November 1978, Ahmed Khan thought it was best to divorce her and he divorced her while the petition was still pending and gave her Rs. 200 for two years and deposited Rs. 3,000 in the Court as dower. And what was the maintenance fixed? A princely amount of Rs. 25 per month. A princely amount of Rs. 25 per month was fixed for a divorced woman of an advocate who was making Rs. 60,000 per year. And it is that Section 125 we are pleading. What a joke we are making of this Section.

SHRI B. SATYTNARAYAN REDDY:
Then why don't you remove Section 125.
(Interruptions)

SHRI N. K. P. SALVE: The hon. Member should please understand as to what they are pleading. Are they pleading that Section 125 be removed or arguing that it should be amended or their only argument is that this Bill must be opposed and Section 125 and the Supreme Court Judgment must remain?

SHRI B. SATYTNARAYAN REDDY:
What are you telling is that Section 125 is not helpful. Then why you keep this rule?

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Please do not interrupt. Mr. Reddy please listen to him—

SHRI N. K. P. SALVE: Was it not contended here, were not an invective lavished on the Law Minister as the one who is not only a diehard, reactionary, making a retrograde legislation, making a legislation which is anti-women and so on and so forth? All this was said because Section 125 will be inapplicable to Muslim divorced women. For what purpose was it said? Was it to ensure that Rs. 25 maintenance per month is a Jagir? With these Rs. 25 Shah Banu went to the High Court and the High Court gave a more princely maintenance <" Rs. 179.20. Against that the husband appealed to the Supreme Court. And when it came to the Supreme Court

in the year 1985, that Rs. 179.20 was confirmed. Do you want to know the facts of the third case? You are pleading vehemently for something about which you do not know, about which unfortunately you have not made any study. Have you studied the three cases?

SHRI B. SATYTNARAYAN REDDY: We are ignorant of everything, but what I want to say is...

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Mr. Reddy, you are to speak after him.

SHRI B. SATYANARAYAN REDDY: I want to know whether you want to maintain that Section which is... (Interruptions)

SHRI DIPEN GHOSH: If that is a good piece of legislation, why don't you extend it to others also.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Mr. Satyanarayan Reddy, your party will get an opportunity to speak, please don't interrupt.

SHRI D. B. CHANDRA GOWDA (Karnataka): Sir, let him not argue on the sections.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Minister would reply to your points. Don't pose to him any questions.

SHRI N. K. P. SALVE: Sir, I must submit that I do not want to cast any aspersion on anybody. (Interruptions)

SHRI DIPEN GHOSH: Mr. Salve is always there to salvage.

SHRI N. K. P. SALVE: You are the Leader of the Opposition, there is a certain responsibility of the conduct of the Opposition. If you start behaving like this, I am very sorry.

Sir, I must submit, how many of us have read these three judgements? How many of us have analysed the facts involved in these cases? How many of us have understood in reality the true implications of what re-

lief comes to a divorced woman in terms of section 125 and section 127. However, beneficial and however compassionate might have been the interpretation of the Supreme Court of Section 125—what is it that they are likely to get? A maximum of Rs. 500. Sir, I have not seen a case where they have got Rs. 500. Here is a case of Fulzumbi who was married to an extremely rich man and propertied man. She was married to one Kader Ali in 1966. Her husband first discarded her in 1971. Then she was sent to live with her parents. Later on she became extremely indigent. She had no means to live and therefore, she moved an application under section 125 for maintenance and Rs. 250 per month. Her husband ultimately literally divorced her offering Rs. 500 as mahr and Rs. 750 towards maintenance for iddat period. Later on her husband moved the Additional First Class Magistrate for rescinding the maintenance order of Rs. 250 by the Session Judge. The High Court upheld the order of the Session Judge. The matter came to Supreme Court and Supreme Court granted in 1980 after a litigation of nine years. This indigent lady had to fought her case upto Supreme Court for 9 years and what an incalculable hardship she must have faced would be known only to those who have an idea—how litigation is fought these days.

SHRI B. SATYANARAYAN REDDY: Then you have to change the procedure code.

SHRI N. K. P. SALVE: That is where you are. This is precisely what we have done. Now you are walking into my parlour. The whole procedure has to be changed. The approach has to be expedited.

SHRI B. SATYANARAYAN REDDY: Sir....

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Mr. Reddy, please don't interrupt like this. I requested you earlier also.

SHRI N. K. P. SALVE: Anyway, Sir, one can have eloquence to any extent on section 125 and 127 and the Supreme Court judgement. We can keep on praising the same *ad infinitum* that it is extremely wholesome it is extremely adequate, but the facts in the cases which have gone to the Supreme Court on which the judgement of the Supreme Court rests make belie all the opposition's arguments in favour of retaining sections 125 and 127. If at all there is to be any argument by people who are concerned for the welfare of women — should demand that let us have any other law, for divorced Muslim women, but not section 125 and 127 which provides less than minimal.

(Interruptions).

SHRI P. N. SUKUL (Uttar Pradesh): Let him have his say. Unnecessarily you want to prolong the discussions.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Mr. Sukul please leave it to me, I will look after that.

SHRI P. N. SUKUL: Please do
(Interruptions).

SHRI D. B. CHANDRE GOWDA:*

SHRI K. G. MAHESWARAPPA
(Karnataka): *

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Please ord.

SHRI N. K. P. SALVE: Sir, I have narrated which are facts. They are not concoction. They have been drawn from the reported cases. Sir, what I want to submit before the House is if there is one law that came into force of Muslim divorced women it is law laid down by Supreme Court while interpreting to be there under sections 125 and 127. If there is one circumstance in which certainly the women who are divorced would be left in lurch, in a quandary, is the one that would be

one covered by the judgment of the Supreme Court. How easy it is for Mr. Reddy to say, change the procedure. In fact that is what we have done, Mr. Reddy. It was realized easily that sections 125 and 127 are not all that glamorous, not all that capable of ensuring to the benefit and advantage of divorced women and all the glitters that were found in the judgment were absolute illusions. As against this Sir, in the existing Bill, what we are doing. We do not say there is a total panacea. There cannot be a total remedy against divorce. Divorce is a great hardship on a lady and you can never undo what you inflict on a lady by way of a divorce. The best years of her life were taken away. Man is by nature promiscuous and one gets more licentious and one gets more permissive, and that is, perhaps, the curse of the society, and it is not the typical to Muslim. This was very unfortunate comment about Muslim. I have some figures. They reveal that the percentage of divorces in Hindus are much more than that of the Muslims. Certain figures have been given. A survey conducted in 1931 showed that while it was only 4.318 per cent among Muslims, it was 5.60 per cent among Hindus, 15.25 per cent among tribals and 7.97 per cent among Buddhists. Therefore, Sir, let us not be taken away by our sentiments, our own views, our own thinking on the entire matter. Look at the problem realistically but from a human angle. Can anyone bring back the best years of a divorced woman? Like Shah Bano, Sir after 32 years of her married life, she is just thrown out. What would she be worth to a selfish husband, Sir to relieve the tension of the House, I want to recite a couplet, which a journalist from Bombay gave me. How harsh divorce is. how harsh the talak is, and whatever may be the amount of mehar, whatever may be the maintenance a woman on Talak is condemned to misery and this is couplet Sir.

*Not recorded.

[Shri N. K. P. Salve]

द तो रहे हो तलाक ज़ेरो कहर के साथ
मेरा शवाब भ लौटा दो मेरे मेहर के साथ।

a hardship and injustice implied in a Talaq and if cannot be undone Sec-125 and 127 are simply 'unsatisfactory and those who are championing the cause of women resting their barrel on sections 125 and 127 do not seem to realise the grave sin they are committing against women? Now, just pose the provisions under sections 125 and 127 and collate the provisions of this Bill. What are the salient features of the present Bill. You will find how we have taken care of all the problems, the problem extremely tortuous litigation. What is it that the Law Minister has brought in? What are the salient features of the Bill? There has to be an order of maintenance within a period of one month. Once a petition is filed under Section 2, then order has got to be made within 1 months and if for any reason, it is delayed, he will have to record reasons in writing as to why there is delayed.

SRHI B. SATYANARAYAN REDDY:
No, it is one month.

SHRI N. K. P. SALVE: Sir, I stand corrected. It is one month. And Sir, if there is to be no delay in getting a maintenance order how salubrious, how wholesome are these provisions that the divorced ladies do not have to wait till they come to the Supreme Court bar maintenance order. Had the ladies who come to the Supreme Court been asked earlier, would you be content with half the amount, but spared years of litigation, they would have said "Thank you very much that I will take half, rather than keep on going to the Magistrates, the Sessions Judges, the High Court and the Supreme Court."

Secondly, Sir, so far as maintenance is concerned, a fair and reasonable maintenance has to be given within the period of *iddat*. And the main-

tenance is for two years, if she has children. The maintenance is for the wife and for the children. *Mahr* or dower has to be paid. And all her personal properties given to her by

her relations, her husband's relations, friends, etc., are ensured in the order to be given to the lady. Thereafter, if nothing comes from all this, then having regard to the need of the woman, the women's heirs, who are entitled to inherit her property, will be asked to pay for her maintenance. Someone raised this question that "heirs" is a very wide term. One doesn't know, how long we can go or how short we can go, on arguing in ignorance of law. But if one has studied the scheme of the enactment a little more carefully, one would have realised immediately that "heirs" are those heirs who are well defined in the Muslim law, who are entitled to inherit the property of the lady. They are the ones who are responsible for her maintenance. Speaking purely on the question of morality, what is wrong in these persons being called upon to maintain her, to help her out of conditions of indigency if she finds herself in difficult financial straits? If they are otherwise entitled to inherit her property, there is a moral obligation on them to support her when she needs it. That is what has been provided here. That is the rationale for this provision. In the case of Shah Bano, she had grown-up sons. I am unable to understand how a divorced woman also gets alienated from her children. I can never divorce my wife because all my children will go to her side and I will be left alone. How does it happen that a divorced woman also loses the sympathy of her children? Here the children are brought in and they are put under a statutory obligation to support her. I am sure Shah Bano would not have liked to humiliate herself in this manner on account of the provisions of section 125 and section 127 if this Bill had been brought by Mr. Sen earlier in good time. The chil-

dre are there to maintain her. If the children cannot maintain, her parents will maintain her. If everything else fails, then the Wakf will be called upon to help her. Now you are imputing motives that this sort of an enactment is only for the purposes of aggrandising our political interests. To say this to say the least in my respectful submission, is to do injustice to the cause of the Muslim divorced women whose cause you are wanting to espouse and champion here in the House.

The next aspect of the matter—and that is very important—is, why is it that the Shah Bano case disturbed the hornet's nest? The earlier two cases had not disturbed, but this case disturbed. As a result of that, a sense of insecurity was installed into the minds of the largest minority that their freedom to profess, practise and propagate their religion perhaps was likely to be imperilled. And that directly went against the grain of our values of secularism. Therefore, it is absolutely necessary to understand, though this very law was laid down in 1979 and thereafter it was reiterated in 1980 and virtually the same law was reiterated in 1985, excepting minor refinements or changes. What happened in the last judgment and why the Muslim community felt so completely perturbed so far as their religious rights are concerned. There are two reasons for it. One was referred to by the Law Minister. The other is 'the very unfortunate reference to the Holy Prophet and to the Muslim religion, which was utterly unwarranted. I really hope that the judges in future will realise that on all sensitive religious issues, they may deal with the law, in the manner they want to, but they must understand how much they are capable of being misunderstood. It is the irreverential reference to the Holy Prophet and the irreverential reference to the Muslims religion that created all this trouble. Perhaps if those comments had not been made and if this rather unwarranted discussion on article 44 had not come may be, these 125 and 127 would have continued and more

Shah Banos after 8 years, 10 years, would have got a princely maintenance of 200 or 179 or a 100 rupees. In a way it is good that such a thing has happened. It has at least stirred the conscience of men, it has stirred the conscience of the Government it has stirred the conscience of the Law Minister; that this plight of the women is something which needs to be remedied and remedied immediately. This reference in the judgement to prophet was most unfortunate. I will not even refer to it. What was more damaging was the discussion the court embarked upon with reference to Article 44. The court came with a scathing indictment of the Government for not making a uniform civil code. They bamboozled the Government. The Supreme Court also bamboozled the Parliament into making not only, a uniform civil code rites and the law emanating from religion. The two things are quite but making it enforceable by law on everybody even if it made inroads into his personal religious beliefs, into the religious beliefs of different communities. That was the most dangerous thing. Permit me to read this paragraph which is extremely important for those who are opposing Bill should appreciate that the Muslim sentiment today is so touched, so pricked so provoked, is not without justification. Let us not put the whole blame on the fundamentalists and say that we are surrendering to the obscurantists. The way the opponents of the Bill have behaved is something ridiculous, understandable. Whatever may be our views, in this way or that way, I personally must unequivocally condemn all those Muslim members who are for the Bill and against the judgement of the Supreme Court but showed total intolerance to other Muslims to support the judgement and oppose this Bill.

An eminent and revered poet like Ali Sardar Jaffri who opposed the Bill in Hyderabad was given a garland of shose—a most unfortunate thing to happen. A mushaira could

[Shri N. K. P. Salve]

not be held in Lucknow because some of the progressive poets who had opposed the Bill would not allow that to come about...

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Please conclude now. I have a long list of speakers before me.

SHRI N.K.P. SALVE: Just two minutes more...

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): We won't be able to conclude the debate at this rate. You have already taken long enough time.

SHRI N.K.P. SALVE: To make the debate more meaningful I would just quote. .

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Please conclude.

[Mr. Deputy Chairman in the Chair]

SHRI N.K.P. SALVE: "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that the State shall enact for the citizens a uniform civil code throughout the territory of India. There is no evidence of any official activity." They are getting indignant with us. *(time-bell rings)* *(Interruption)* ...It is for the Muslim Community to take a lead in the matter and reform in their Personal Law.

A common civil code.....extremely objectionable... which have conflicting ideologies----- But a beginning has to be made if the Constitution has to have any meaning. Inevitably the role of reformer has to be assumed by the Congress because of the inroads of a sensitive mind.. to allow injustice to be suffered when it is so palpable.. *(time-bell)* Only one last point I would like to make on the question of what is the injunction of the Koran the maintenance of a divorced Muslim woman. A good deal of debate has gone on what precisely is the injunction of the Koran so far as the maintenance is concerned. So far as I am concerned I am not a profound scho-

lar of Muslim Law...

SHRI DIPEN GHOSH: If the Supreme Court cannot interpret it, how can you?

SHRI N. K. P. SALVE: I assure you I am not going to rush where the angle cannot dare, I would not have asked the questions which you asked the Law Minister. I say I would not rush where the angles would fear to tread. But what happens is we do have to decide this one thing as to what really is the injunction. Why not I go by the views of the majority amongst the minority community? If 999 people in a 1000 were to think that this is the mandate, that this is the injunction of the Koran and there is no maintenance possible after the period of Iddat^ is there anything wrong to in accepting such a view? In 1973, precisely this was the view. This was the very view in 1973 to the amendment by the late Shri Jyotirmoy Bosu in Lok Sabha when he said that when section 127(3) (b) would come into play when there would be no liability for maintenance after the payment of *Mahr*. Mr. Jyotirmoy Bosu quoted the Koran which you say must not be quoted. To that, Mr. Mirdha said in the other House that his interpretation was not acceptable and said that section on the payment of obligations was disturbing the personal law. The person was no longer liable to pay the maintenance after the period of Iddat. That was the view then and Mr. Mirdha's statement is here to which Mr. Sen referred. Thus^ it is unfair and unjustified, emanating out of, I would not like to say, political motives^ then at least ignorance, the imputation of political motives in our bringing forward this Bill accusing that we have brought forward this Bill for purposes of a few votes here and there. This is not a fair way to look at things. Sir, we want to do justice. We want to do justice to the biggest minority community and we want to instill a sense of confidence into them and we want to retain our cherished

values of secularism. Thank you, Sir. MR. DEPUTY CHAIRMAN: Now, Dr. Sarojini Mahishi.

DR. (SHRIMATI) SAROJINI MAHISHI; Sir^ I was listening with rapt attention to the speeches of the Members from the o'-her side who spoke in favour of the Bill. I do not know whether they had greater confusion in their minds because of their clubbing religion with the religious rites and the law imanaling from religion. The two things are quite different. Religion is an abstract thing whereas the law emanating from religion is something concrete and is codified also. There is no law which does not "trace its origin to a divine source. Let me know whether there is any law that does not trace its origin to a divine source. Is there any law which does not trace its origin to a divine source? Every law traces its origin to a divine source, whether it is the Hindu Law or the Islamic Law or even the Roman Law. Whichever law it may be, every law traces its origin to a divine source because the people may get scared of the consequences if they do not comply with that law. But, later on, in courts of time, the various disciples and the vested interests tried to interpret the Law indifferent ways. The Original propounders of the faith had given the principles, the programmes and the policies supported by their own action whereas their disciples later on started interpreting them, twisting them and deforming them, those laws. What happened in course of time was that these people were not the exact pro-types of those original saints or prophets or seers or the divine source. What actually we see is only the deformities and the discrepancies which have crept into the body of that law. Therefore, it is very necessary, not for any particular law, but for every law, to undergo certain changes and it cannot remain static. Alongwith the changes in society, the socio-economic changes, the changes, in the way of life of the people, law also gets itself chan-

ged. Therefore, if a law remains static, should we not take it for granted that the thinking process of the people of the country has become static? The law of any living people cannot be static. It is always flowing and it is assuming new values also many a time according to the convenience of the society at large, not for the convenience of a single individual. In this case also, I would say that the honourable Minister, Shri Shiv Shan-ker, was wrong when he said that when the Hindu Law was also amended, the people were in favour of that and the people had given their consent to that. I do not agree with him there. Rather I agree to disagree with him in this matter because there was a lot of resistance at that time and there were black flag demonstrations arranged before the Parliament in the year 1956 and the Constituent Assembly Members had to face all these things also who became Members later. They had to face all these things trying to convince the people. When the daughters were allowed a share of their fathers' property, the fathers, brothers and others came in a demonstration, holding black flags, and they said that if the daughter got a share of her father's property, then there would be no love between the brother and the sister. But what guarantee could they give that there would be love between the brother and the sister if the daughter was not allowed to have a share of her father's property? They could not answer this question. But, in spite of the resistance of the conservative people then, there was codification and an attempt was made at the codification of the Hindu Law. I do not say that it has been fully made. There were certain things which needed to be done. But the Hindu Law is also all-embracing. It was not restricted to a particular time, but it has also spread itself over a period of time.

It was not only the *shrutis* and the scriptures and the other things, it was also the good conduct of the good people and the noble ideas

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[Dr. (Shrimati) Sarojini Mahashi]

of the pious people which formed the basis for religion. So is Islam. I have great respect for the Koran and for the Prophet. It has 114 Ayats in number and the Suras; they were communicated to the Prophet, and later on, of course, they were written by others, and they were supported by actions of the Prophet also and later the disciples tried to interpret them in a different way. That is why, of course, we are quarrelling here. We are not actually quarrelling over differences with the interpretations made by the later disciples of these people, whether the interpretations given by these people were properly brought into practice.

Sir, I do understand hon. Shiv Shanker telling us to look at these things from the Muslim angle and not from the Hindu angle. I do appreciate his point because he is looking at it from the Muslim angle and therefore he has been able to say this perhaps. We would like to look at it from the 21st century angle, latter part of the 21st century. We are now on the way to the 21st century. We want it from the Indian angle also, from the Indian point of view also. (Interruptions). We do not make a distinction whether it is the Hindu woman or Muslim woman or Christian woman or Parsi woman. She is woman after all. Her dignity has got to be maintained. She cannot be left on the streets of this country. She cannot be left to the wolves also. It is contract, no doubt. I may be permitted to say here that a Muslim man can marry four wives, not necessarily. The Koran never said that. The Koran said: If you cannot maintain four wives, do not marry; if you cannot maintain them in a proper way, do not marry; marry one. And if you can maintain them, give equal treatment to all. But who cares to study and have all the introspection whether he has the capacity to treat equally all of them? Does everyone have an introspection for himself? He cannot. Therefore, he

will sit upon himself on judgment that he is capable of maintaining them on this side. Also, at the time of 'Nikah, the witnesses are two females and one male or two females and one male or two male witnesses, which goes to show that two women are equivalent to one man. I do not know arithmetic, Sir. But this of course is there. That was the tradition that was practised. In the Arab countries the situation that was prevailing at that time was quite different, and the law emanated from all these conditions. Not only that, the thought was also influenced by these conditions. Now, today in India as the socio-economic circumstances continue, as the religious practices continue, if you leave out Satpati, the marriage is still valid. Any ritual can be done away with but the marriage is still valid. (Interruptions) If it is a ritual. They may not be practising Satpathi according to Mitak-shara; any ritual may be dispensed with. Even then the marriage is valid. Marriage is being registered also under the Special Marriages Act. It is a standing contract. But the people who are still attached to the sentiments, they do go through all these religious rites and other things also, because there is freedom of religion. Freedom of religious rites is given under the Fundamental Rights of the Constitution. Therefore, Sir, I would like to ask, what is this exactly which made the Government the ury benches, bring this Bill forward?

Then, the title itself is the Muslim Women (Protection of Rights on Divorce) Bill, 1986. An divorce, Muslim womens' rights have got to be protected. What are the rights of the Muslim women on divorce? According to Explanation (b) in section 125 of the Cr. P.C., 'wife' Means a wife belonging to any community-Hindu, Parsi or whosoever, or Muslim also. Therefore, the whole question arises whether she has to be guided by sections 124 to 127 of the Criminal Procedure Code. The Supreme Court would not have referred to this also

but for the fact that the appellant referred to this and tried to seek shelter under 127. Otherwise the Supreme Court would not have referred to these things also. Therefore, the whole thing is that the Chief Justice of the Supreme Court who happened to be the chief author of the judgment, went to the extent of saying; I am only interpreting the Muslim personal law. I am not interfering without. The Supreme Court interpreted the Muslim personal law. It never interfered with it. Therefore, this is what the Supreme Court has got to do. Can we say that the Supreme Court has not right to interpret the personal law of any community? We cannot say that. There were days during the British rule when the British Courts interpreted the Muslim law with the help of Maulavis and the Hindu law with the help of Pandits. We accepted that. I know, today we say that the Supreme Court has got no right to interpret Hindu law. Are we questioning their right? They have interpreted. Of course, what is it that they have interpreted? They have interpreted the relief and redressal under Section 125 in the Criminal Procedure Code for a woman seeking relief and redressal of her grievance and she is entitled to it as a citizen of this country. Of course, earlier also there were cases. The case of Mai Tara in 1979 and the case of Azim Bai in 1980 were there. But they were decided by the Division Bench. Therefore, this case is referred to a larger Bench and the larger Bench gave this judgment. Therefore, why should this door for relief for a citizen of India, for a woman who is a divorcee, whether under the Muslim law or any other law, be closed to her. This is the point.

I was listening to the hon. Minister for law in the other House sitting in the gallery. He was saying that we are not closing the doors of Section 125 of the Criminal Procedure Code. But what we are doing is that we are having a restricted use of that Section 125 of the Criminal Procedure Code for the period of Iddat. What is the

meaning of Iddat? Iddat has been defined as three menstrual periods or three lunar months or something like that. But has it been defined in the Quran? What is the meaning of Iddat? The word Iddat or the period of Iddat has not been used in the Quran. Ayat 241, Sura 2, of Quran has been mentioned. But the period of Iddat has not been mentioned, on the contrary, they have mentioned Muta-ul-bin-Marroofa. That means that a reasonably adequate amount has to be paid to her. What is the quantum of the amount and what is the period for which it has to be paid? It has not been mentioned. This Bill has come forward probably for the eventuality that must have arisen before the court. Firstly, the period of Iddat may last for three months or it may last for a greater period also. I am told by one of the scholars that it may last for a period of 14 years also. It may last only for three months also. Secondly, is the divorcee to be paid until she remarries? Thirdly, is she to be paid for lifetime if she does not remarry? A number of questions will arise there which have not been made clear. Of course, Shri Shiv Shanker Ji was saying that we have not been able to create confidence in the communal minorities and Members on our side were shouting "you are responsible for that". This is not the answer. It is the communal minority which has to create confidence in their own scriptures, in their own holy books by practising them, not by preaching them. How did they try to practise? Many of our Members of the Muslim community do not know what is Muta-ul-bin-Marroofa. It is the adequate compensation or adequate amount to be paid to her for a reasonable period. It is not known to many of the people. Just as Hindu law is not known to many of the people so also. Muslim law is not known to many of the people. Sir, the Hindu law, as I said, went on curtailing the rights of the women. She was entitled to her money under the Stridhana. What was given to her before the nuptial fire, what was presented to her by the brothers and the father and the mother, that alone was Stri-

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dhana and the husband had to decide whether there is any impending danger in the family. She could make use of it. (Interruptions) What I am saying is, Sir, just as the Hindu law went on curtailing the rights of the women, that is the weaker section of the society, I am telling that it is the weaker section of the society which has fallen a victim to the men-dominated society. And it is this society which has framed the laws for the women, whom they considered no more than a toy or a commodity, and she could be thrown away at any time. I do not say that it is one reason or the other reason. The vested interests in these religious inter-pretations of the dogmas came forward to see that her rights are curtailed, I am speaking for the women of this country. I am speaking here that in the whole world also, this situation is going on. It is the woman who falls a victim. It is not the man. There may be some cases of men also. But I don't think that there are many. By and large, the women section is being exploited. And, of course, there is every possibility that in the name of religion, in the name of religious preachings, the women, the weaker section being exploited. I know, Sir, that many of my friends on the other side are also capable of going with me; (hey are also capable of coming along with us. But they have got a whip on them. I would like to quote a sher in this con-

यह दखतूर जवा भंदो है, ऐसी तेस महफिल में
यहाँ तो बात करने की तरसत है जवा मेर ।'

nection. "Even though I am quite keen to say this thing, I cannot say because my tongue is tied." I know the tongue of these are tied. They are under restriction. Therefore, they cannot come out. Would-you like to throw our women, whether Hindu women or Parsi women or Muslim women to the streets? What is the alternative for her? Is she capable of having any vocation? Is she capable of earning for herself? I know, Sir, when the Supreme Court gave the judgment, no less a person than the

Union Minister, Mr. Ansari, went to the extent of saying that it is a mean attack on Islam. Is that the interpretation, is that the accusation to be made of the highest court of the irland? He went on to say that it has come out as a judicial intolerance and motivated interpretation of the Shariat. Can it come from a person of responsibility, a person who is supposed to be holding a post of responsibility? On the contrary, Sir, I had an opportunity of listening to Mr. Arif Mohd. Khan, who had to pay heavily for this thing. He said. I do not know of the practice. When the Mahr is given, Mahr is not given after the divorce. But Mahr is given immediately after the marriage. It is not consideration for the divorce. It is consideration for the marriage. But when the girl, when the bride enters into the home of a bridegroom, all the sisters of the bridegroom and the brothers-in law come and under force, she is made to say: V(gX

मैंने मुआफ कर दिया है
मेहर मैंने मुआफ कर दिया है ।

She is made to say this thing. (Interruptions) If my Muslim friends do not agree with me.... (Interruptions)

SHRI RAOOF VALLIULLAH: You cannot teach anything you like. (Interruptions)

MR. DEPUTY CHAIRMAN: Please take your seats.

(Interruption)

SHRI V. GOPALSAMY: When Mr. Shiv Shanker was making his speech I also said not to disturb him. Now, Madam is making a very good speech, why do you disturb her? (Interruptions)

DR. (SHRIMATI) SAROJINI MAHISHI: Sir, if this is not the practice, let them say while they are speaking that this is not the practice. But this is what I have come to know from no less a person than Mr. Arif

Mohd. Khan. Of course, the bride is made to say;

Therefore, Sir, Mahr is not a thing which is a specified amount at the time of the marriage. Even though the specific amount is not mentioned at the time of the marriage, marriage does not become invalid on account of the fact that it is not specified. Therefore, Mahr is, in respect, as a token in respect for the woman for having... (Interruptions) Sir, this Bill which has been before us... (JwterrwptioTis) I am happy in one way that it has tried to open the eyes of Muslim women. (Interruptions). It has opened the eyes of Muslim women in the country. They are becoming conscious of these things and it has given them an opportunity to discuss all these things. Otherwise, it had become, so to say, a static thing. Now, section 3 mentions mahr or other properties of Muslim woman to be given to her at the time of divorce. Mahr is not in consideration of divorce. Mahr is in consideration of the marriage. It has to be paid earlier. At the time of the divorce it has got to be paid. But then, of course, all these things are mentioned. Sir, where is the period of iddat, according to me in Koran. In Ayyat 42 there is no mention of it. Now, what does section 4 say? After the period of iddat is over, where is she to go? She is to marry another person. Will anybody come to marry her and that too in the middle age or after a particular age, after she has three or four children, with all the liabilities, they are not assets, at that time? Whom is she to marry? Even among the Muslims, I do know they do not go for marrying a divorced lady. Under these circumstances, where is she to go? I do feel that the Shariat has made provision earlier but may if it is practised. Now, the times have changed. The practices have become obsolete for them. So much of water has flowed under the bridges. Now we have to bring a new approach and

new amendments and a whole new approach has to be brought about. Now, what I am speaking may be a small thing from a small person as compared to our great teachers, great Islamic teachers or great gurus. I am not a propounder of all these things but the disciples have to take the responsibility, and we have to see what they have been doing all these years. This has also got to be seen. Therefore, under the circumstances, if they have not been able to do this thing, we have to see that life is injected in the body of this thing.

Now, Sir, under section 4 of this Bill it has been said that she can go to a relative, inherit property from the father, brother etc. But how many parents are there who can give property to their daughters? How many of them have got the will to stay with their daughter? Secondly, when they carry four wives or three wives, they have got to protect children. I am not speaking of tall highly placed persons who go verbatim by the word of the Koran. (Time Bell rings). (Interruptions). I am speaking on behalf of the common Muslim women, amongst whom there are bidi workers, illiterate women, who do not understand anything, and a large number of whom are below the poverty line and who are treated as domestic servants. Of course, I have no hesitation in saying that they are treated as domestic servants.

Sir, under section 5 she has to go to a relative and the argument given by my friends on this side is this thing—speaking loudly, or shouting loudly and differing loudly. I only want that the cause of woman should be served in this country, whether she is a Muslim or a Hindu or a Parsee, does not matter. The people who number 51 per cent of the society, have been thrown to the winds. They have not been emancipated in spite of the talk of Hindus and Muslims together.

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Woman should be worshipped. But that is not done. Hindus worship stones but not women. Under these circumstances, I am not saying in praise of this thing or that thing, all corrupt religious rights and practices should be given up. The law that is there has got to be corrected, and corrected immediately.

Sir, under section 5 of this particular thing she is to approach a relative. What relative is there? What brother, cousin-brother, half brother, full brother is there, who is going to entertain a divorced sister in his house. Is his wife going to allow such a thing. Let me know what is the practice? Can she go back to her father's place? She may go if he is alive. She may get a piece of bread in the father's family if he is alive. But suppose he has married again and her own mother is not alive what will happen to her? To which relative will she go? Who will entertain her without any selfish interest? Any such person may take away her property. Have you understood the economic position of women in the country, the social position of women in the country? Therefore, it may be any community woman; we have to understand the social predicament, the economic predicament in which the woman is. Even though there is codification of Hindu law, we find a daughter can get property share in her father's house but she cannot become a co-partner in the property. She cannot claim the partition in the property. Even today the position of women is like that. You can see that in the House of 250 Members, there are hardly 3 or 4 or 5 women which can be counted on fingers. Proper representation is not there either in this House or the other House. You can make out whether you have the representation of women who can speak with authority, women who can act, who vent to their feelings and women who can fight for their rights,

Can a Muslim woman go to court? It was a coincidence and an accident that Shah Bano went to the court and that too was on account of her sons. I had the opportunity of talking to Shah Bano. She went with the help of her sons to the court and she continued for such a long period. Is it possible for a Muslim woman to attend the court and hear all the expenses by herself? Here, the woman will go to the Magistrate and the Magistrate will give his judgment in one month's period. The husband pays her for the period of Iddat and then the relatives. Who is to find out the relatives? Will the Magistrate find out or the lady will find out? Who is to find out the relatives? And if the relatives do not make payment, then Wakf Board makes the payment. Wakf Board has to make payment for her subsistence. But how many Wakf Boards are capable of paying in the country? My friends know about the administration of the Wakf Boards and under what difficulty they are. How are they capable of making payment? Let us have the sentiments and the regards. The Madhya Pradesh Wakf Board came forward to ask: "If the Central Government pays so many crores of rupees, we will be able to give something to the divorcee who comes to beg of us." That is how we have to maintain the dignity, the integrity and the individuality of the citizens of this country. We shall have to give the dignity to the women whom we have respected in our scriptures. We shall have to find out practical way for her subsistence, for her living. Therefore, under these circumstances, Wakf Board may not be a substitute. We do not say that section 125 is not capable of giving her all the redressal of grievances. We do not say that. Section 127 also is incapable of giving her redressal; Section 488 is incapable—I am talking of Criminal Procedure Code. Muslims have no Criminal Procedure Code of their own. They have got this law; they have the Shariat. This is their civil law.

Cr.P.C. and I.P.C. are administered by the State only. Therefore, can they do away with this particular section notwithstanding anything written in section 125 and section 127 of Cr. P.C.? These shall prevail.

There is a discrimination. But the discrimination must be for the good of the society. Discrimination, if at all it is used, as substitute, must be for the betterment of the society. If it is not for the betterment of the society, what is the use of bringing it only to satisfy the sentiments of a few people?

I am not speaking either on behalf of this party or that party. Whether they praise me or they do not praise me, it is immaterial. But then, what is the use of haranguing like this? I would like to quote a small couplet:

In this particular hangama, the big harangue that went on, who is the victim? It is the conscience and it is the heart and nobody else. Thank you for the kind consideration.

डा० (ओमति) राजरा हेषतुल्ला :
मानवर, आज जब कि मैं एक ऐसे बिल पर बोलने के लिये खड़ी हुई हूँ, उस से पहले मेरी साथी जनता पार्टी की मेम्बर ने बड़े जोर शोर से इस पर अपनी तहरीर की। बड़ी खुशी की बात है कि आज 40 वर्ष के बाद इस हाउस में एक मुस्लिम औरत चाहे मने हो वह एक परेगन डाइवर्स औरत हो या न हो, उस के बारे में इतनी जोर-दार तहरीर हुई; मुझे लगता है कि जो इंडोरेड इन बिजनेस में नहीं पैरा किया है वह शायद किसी अच्छी चीज की तरफ हमारे देश के लोगों को ले जायेगा और वह न सिर्फ कुछ परेगन

डाइवर्स औरतों की बात करेंगे बल्कि 99 परसेंट लोग जो माइनारिटीज के हैं, मुस्लिमानों के और दूसरी माइनारिटीज के हैं उन के हक की हिफाजत के लिये बोलेंगे और यही फायदा सेकुलरिजम का होगा।

मैं यहाँ थोड़ी बात हिस्ट्री के तौर पर बोलना चाहूँगी कि इस हिन्दुस्तान में मुसलमान 14वीं सदी में आये। उन्होंने इस देश को अपनाया। इस देश की विशालता है, इस देश के लोगों का हृदय इतना विशाल था कि उन्होंने भी उन लोगों को अपना लिया। हम अपने साथ कुछ कदरें बाहर से लाये, कुछ कदरें हम ने यहाँ से सीखी और बहुत कुछ पाया अब इस चीज को एक दो वर्ष नहीं गुजरे हैं सदियां गुजर गयी है और अभी मेरे साथी जो बंगाल से आये हैं, जो सुबह से बड़े जोर शोर से इस मसले पर बोल रहे थे और जो कल हम गुरुदेव रवीन्द्रनाथ टैगोर की 125 वीं जयन्ती मना रहे हैं और गुरुदेव के बारे में कि जिन्होंने हमारा राष्ट्रीय गान लिखा है उस के आगे के हिस्से के बारे में कुछ बोलना चाहते हैं।

वह सहजोब जो न समझ पाये हों उन के लिये मैंने जो बंगाली जवान - जानते हैं उन से पूछ कर एक तर्जमा किया है कि ऐ भारत माता तेरे कर्त्तव्य काल पर उसे सुन कर हम यहाँ आये जिस में हिन्दू, मुसलमान, सिख, ईसाई, बूढ़ और दूसरी सब जातियों के लोग ईस्ट, मध्यक से आये, मगख से आये और उन्होंने यहाँ पर आकर एक ऐसा हार गूथा जो तेरे शरीरों पर एक आन बनाता वह आन है हमारे हिन्दुस्तान की और इस

[डॉ० (श्रीमति) नाजमा हेपतुल्ला]

हिन्दुस्तान में यह मुत्तमान 11 वीं सदी से रह रहे हैं, एक दो वर्ष से नहीं रह रहे हैं। दस, बीस वर्ष से नहीं, सदियाँ गुजर गयी हैं और मुझे अफसोस है कि अगर इस के बाद भी हमारे साथी, हमारे इस देश के गैर मुत्तमान भाइयों को हमारे मजहबी और हमारे सैटोमेंट्स के, हमारे विलीफ के बारे में अभी अगर कुछ शकोनुदा है तो यह गलती उन को नहीं कहूँगी। यह गलती सारो को सारो हमारी है कि हम उन को सही मायनों में बता नहीं सके कि इस्लाम में 1400 साल पहले, जब दुनिया को कौमें अंधेरे में भटक रहीं थी, जब अरब मुल्को में लड़को पैदा होते वे बाद जिन्दा दफन कर दी जाते थे, 14, 15 सौ वर्ष पहले औरत को जो सोशल और क्या इकोनामिक सैवयोरिटी दी उस की मिसाल दुनिया में कहीं नहीं होगी। आज भी हम कानून बताते हैं। उन कानूनों में कुछ न कुछ कमी होती है। हमारी बहिन बड़ी अच्छी तरह से तकारीर कर रहीं थीं। मैं उन की तारीफ करती हूँ। उन्होंने इस पर बड़ी मेहनत की और बड़ी अच्छी तरह से बोलीं लेकिन उन्होंने जो कुछ बातें कहीं हो सकता है कि ये समझ न पायी हों कि कुरान में हर औरत को, हर मर्द को और हर रिश्ते को हिस्सा

दिया गया है और उस हिस्से को एक 7 P.M. तरीके से दिया गया है। औरत को जहाँ

मर्द ने यह हक दिया कि वह तलाक ले, वहाँ औरत को यह हक दिया कि वह मेहर ले। ताकि उसका इकोनामिक प्राटेक्शन हो। 14 सौ वर्ष पहले जो चीज इस्लाम में लाई गई, वह कांसेप्ट किसी दूसरे ला के अंदर नहीं था। हो सकता है आप इसको सेक्रड कांटेक्ट करें। दो शब्द अन-

जाने एक दूसरे के साथ जिन्दगी बिताने का एक वायदा करते हैं, और मजहब उन्हें इजाजत देता है कि चार शर्तें हों या चार मर्द हो, वह ऐहत करें कि हम एक दूसरे के साथ जिन्दगी निभाएंगे उस कांटेक्ट में पूरी शर्तें जो भी आप चाहे रख सकते हैं वह पूरी शर्तें इस्लाम के अंदर है। जो शर्तें आप उस कांटेक्ट में रखोगे, डाइवोर्स में उन्हीं पर क्रमल किया जाएगा। जो मेहर का प्रोटेक्शन औरत को दिया गया है, वह उसी के आधार पर दिया गया।

श्रीमान, मेहर जो होती है वह मेरिज कंसिडरेशन होता है। दो तरह के मेहर होते हैं। आज हमारे हिन्दुस्तान में चूँकि यहाँ की तहजीब से हमने बहुत कुछ सीखा है, वह डावरी, कपड़ा। गहने आदि के तौर पर शादी के वक्त दिए जाते हैं। दूसरा मेहर एक प्रोटेक्शन होता है मैं अरबी लफज नहीं बोलूँगी हालाँकि वह अच्छा लगेगा लेकिन समझ में नहीं आएगा, लेकिन जो चीज कुरान में है उसका एक आयोटा भी आपको समझा सकूँ तो मैं अपने काम में सफल हो गई हूँ। वह इकार शरब कहलाता है। उसे जब चाहे औरत मांग सकती है। अगर दो लोग अपनी जिन्दगी साथ नहीं गुजार सकते तो वह किसी भी वजह से हो सकता है, मर्द औरत को रखना चाहे या औरत उसके साथ नहीं रहना चाहे तो वह मेहर उससे मांग सकती है। उसके लिए डाइवोर्स सैटलमेंट होता है। अगर कास उसका शोहर गुजर जाए तो उसकी मेहर मिलता है, उसको अपनी शोहर की प्रोपर्टी से पैसा भी मिलता है। जो हक औरत को इस्लाम ने

दिया अपने बारे में हक दिया, कि वह जिसे चाहे शादी करें जो पेशा अख्तियार करना चाहे करे। कथा 14-15 को साल पहले इस तरह का कोई कांसेप्ट था इसके अलावा औरत का इंडिविजुएटी का कांसेप्ट भी इस्लाम ने दिया। उसको कोई जरूरत नहीं है कि वह अपने नाम के आगे अपने पति का या अपने बाप का नाम लगाए। उसकी अपनी इंडिविजुएटी है। वह चाहे कुंवारी हो या शादी बूढ़ा हो। आज के जमाने में अगर कोई किसी की बोवा कहलाती है तो उसकी इंडिविजुएटी खत्म हो जाती है। उसको तलाक के बाद अपना नाम बदलना पड़ता है। इस्लाम ने इसकी पाबंदी भी लागूई इस्लाम ने नहीं कहा कि वह शादी नाम रखे।

इसके अलावा उसको उसके बाप की प्रापर्टी में हक दिया। जिस कानून में ऐसा है। कुरान आपके सामने है। मैं कहिए तो आपको पढ़कर बता सकती हूँ कि उसमें इतना कुछ लिखा "जा चुका है कि औरत को अपने बाप की जवादाद में हक है। इससे पहले किसी को नहीं था। अतः औरत को अपनी ओलाद की प्रापर्टी में, अपने शौहर की प्रापर्टी में कितना हक है, उसकी भी डेफिनिशन दी है। हर चीज की एक हद मुकरर की जाती है। हमारे लां मिनिस्टर साहब कानून पेश करते हैं—चाहे कल के लिए हों, चाहे चोरी के लिए हो, हर कानून में हद मुकरर की जाती है। मगर फिर भी इस्लाम ने इस बात पर कहा कि मेहर, औरत की शौहर की हैसियत पर कायम की जाए। मेरी बहुत यह प्रोब्लम औरत और मर्द की हैसियत और पैसे की नहीं है। यहाँ प्रोब्लम है गरीबी की। जो इन्तान गरीब है जिसके पास नौकरी नहीं है, जिसके

पास बच्चों को पालने के लिए पैसा नहीं है वहाँ मैन्टेनेन्स और मेहर की बात आती है। पहला जो बुनियादी सवाल आता है वह यह कि जिसके पास कुछ होगा वही तो मैन्टेनेन्स दे पायेगा। आप बात करते हैं यहाँ पर मैन्टेनेन्स की 125 और 127 की। मैं यहाँ पर एक बात आपके नामने रखना चाहती हूँ कि नारे लोगों ने 125 की बात की है सिवाय आपके। मगर किसी ने 127 की बात नहीं की। 125 के आने के बाद 127 3 वीं को लाया गया। उसी से जो माइनोरिटी है उसको प्रोटेक्ट करने की कोशिश की। उस वकत किसी ने कुछ नहीं कहा। इन वर्षों के बाद आज जब कि इस बिल के जरिये उस औरत को सुप्रीम कोर्ट, हाई कोर्ट और दूसरे कोर्टों के चक्करों के चंगुल से निकाल कर एक ऐसे दायरे में डाल दिया कि वहाँ पर एक महीने के अन्दर जो कुछ भी उसके हकूक हैं वह हासिल कर सके तो आप इसकी ताईद नहीं करते इसका मुझे अफसोस है। आप इसकी ताईद क्यों नहीं करते? मुस्लिम औरतें जिस मेहर के लिए, जिस प्रोपर्टी के लिए, जिस हकूक के लिए सिविल कोर्ट में धक्के खाने पड़ते थे, जिस औरत के पास पैसा नहीं होगा वह कैसे कोर्ट में जायेगी, कहां से वकील करेगी। सारी कोई शाहू बातों जैसी खुशकिस्मत औरत नहीं होती जिसके पास पैसा भी हो और जिसका शौहर भी वकील हो। लसीफी की तरह सारे नहीं होते जो कोर्ट में चले जायें और जाकर उन के लिये फैसला कर दे। कितनी औरतें ऐसी हैं? चाहे हम यहां से बोल रहे हैं और चाहे वहां से बोल रहे हैं। कितनी दफा आपने यह बात कही है कि जस्टिस डिलेड इज जस्टिस डिनाइड। यहां तो जस्टिस डिलेड का सवाल ही पैदा नहीं

[डा० श्रीमति (नाजमा) हेपतुल्ला]

होता। वह जस्टिस के लिए कोर्ट में जायेगी ही नहीं। अगर वह डेस्टोय्यूट है और वह किन्हीं के जरिये से सुप्रीम कोर्ट या हाई कोर्ट के वकील को ले जाकर यह बहेगी कि मुझे मेरा हक दिलवा दो तो 125 में उन्को डेस्टोय्यूट के लिए है; अगर कोई औरत अपने को मंटेन कर सकती है तो वह कोर्ट में जा सकती है मगर उसको उसमें से कुछ नहीं मिलेगा। मैं दूसरी बात इस कुरान की तरफ दिलाना चाहती हूँ। इस कुरान में बार-बार इस बात का जिक्र किया गया कि तुम अपनी औरत को तलाक दो, तलाक को कोई अच्छी बात नहीं कहा गया, तलाक तो ऐसे ही रख दिया गया है क्योंकि इस्लाम 1,400 साल पहले आया दुनिया की तबारीख में। वर्ल्ड की हिस्ट्री में 1,400 साल कोई ज्यादा पुराने नहीं होते। आपको मालूम है कि मेरे से पहले आप बोल रही थी कि एक कानून बनता है किसी चीज को बेहतर करने के लिए और दुसरा बनता है उसको बेहतर करने के लिए, तीसरा बनता है उसको बेहतर करने के लिए। अगर कोई ऐसा वक्त भी आता है जब कानून मुसलमान हो जाता है। मैं समझती हूँ कि कुरान का कानून एक मुसलमान है। एक बच्चा पदा होता है उसके लिए हम एक छोटा कुर्ता बनाते हैं, जब दो साल का होता है तो थोड़ा बड़ा कुर्ता बनाते हैं और जब वह 16 वर्ष का होता है तो उससे बड़ा कुर्ता बनाते हैं। जब वह एक हफ पर पहुँचता है तो उसके कुर्ते की लम्बाई नहीं बढ़ती। यहाँ पर हालत यह है कि हर हफ का डिफाइनत हो गई है। यहाँ फंडामेंटलिस्ट की बात है वह मेरी समझ में बात नहीं आती। मैं यह कहना चाहती हूँ कि मेरी समझ

में नहीं आया कि यह फंडामेंटलिस्ट है क्या। अगर किसी मजहब को मानना है और उस मजहब के ऊपर चलता है तो अगर यहाँ फंडामेंटलिज्म है तो मुझे लगता है कि हिन्दुस्तान के साढ़े सात सौ मिलियन लोग फंडामेंटलिस्ट हो जायेंगे और फिर शायद हो सकता है कि सी पी एम के लोग उससे बच जायेंगे क्योंकि वे किसी मजहब को मानते नहीं। उनका अपना फंडामेंटल है (व्यवधान) दूसरे लोगों का अपना फंडामेंटल है। क्या आप यह समझते हैं कि हिन्दुस्तान के 95 परसेंट मुसलमानों ने भाइतोरिटी ने इस बिल की तरफदारी की है, इस बिल के बारे में कहा है कि यह सही है और उनके ख्यालात की, उनके सेंटिमेंट्स की राजीव गांधी जी ने कद्र की तो क्या साढ़े 95 परसेंट लोग फंडामेंटलिस्ट हो गये? क्या मैं आपको फंडामेंटलिस्ट लगती हूँ? मैंने इतनी तालीम पाई है। अगर मैं अपने मजहब के तौर तरीकों से चलती हूँ तो क्या मैं फंडामेंटलिस्ट हो गई? मेरी समझ में यह आरगूमेंट नहीं आता है। मैं आज यहाँ मुझ से बड़ी हुई हूँ। मैंने किसी एक को भी इट्रस्ट नहीं किया... (व्यवधान)। मैं चाहती हूँ कि आप मेरी बात सुनें। हो सकता है कि मेरे सभजा से आपका शक-शुबहा दूर हो जाय... (व्यवधान)। अगर आप नहीं समझना चाहते हैं तो दूसरी बात है। किसी ने एक बात कही है कि अगर कोई सो रहा हो तो उसको जगाया जा सकता है। लेकिन अगर कोई सोने का खाली ड्रामा कर रहा हो तो उसको कैसे जगाया जा सकता है। मैं तो उन लोगों को समझाना चाहती हूँ... (व्यवधान)।

श्री गुलाम रसूल मट्टो : मेडम, आपके सामने कुरान है। उसमें यह सब दिया हुआ है।

डा० (श्रीमती) नाजमा हेपतुल्ला : मैं समझती हूँ कि मैं कुरान का रेफरेंस अच्छी चीज के लिए दूँगी क्योंकि मैं उस खानदान से आती हूँ जिसके ऊपर मुझे फक है। मैं मौलाना आजाद के खानदान से आती हूँ जिनका कुरान का तर्जुमा दुनिया में सबसे ज्यादा मकबूल माना जाता है। मैं समझती हूँ कि इससे अच्छा कुरान का इन्टरप्रेटेशन और कामेन्ट्री किसी दूसरी की नहीं हो सकती है। इसका कारण यह है कि वे उर्दू भी जानते थे और अरबी भी जानते थे। वह सही मायनों में एक मुकम्मल बयान है। मुझे इसका बड़ा फक है।

श्री सैयद अहमद हाशमी : मैं आप को कांग्रेस के रामगढ़ के सेशन की भी याद दिला दूँ जिसमें उन्होंने कांग्रेस प्रेजिडेंट की हैसियत से इस्लाम के बारे में कहा था... (व्यवधान)।

डा० (श्रीमती) नाजमा हेपतुल्ला : आपने रामगढ़ सेशन के बारे में कहा। लेकिन कांग्रेस के लोगों के ऊपर आज इल्जाम लगाये जा रहे हैं कि कांग्रेस पार्टी के लोग वोट प्राप्त करने के लिए यह बिल लाये हैं। मैं एक छोटी सी भिसाल दूँगी। मौलाना आजाद ने इसी दिल्ली शहर के अन्दर सन् 1923 में सबसे कम उम्र के 35 साल के कांग्रेस प्रेजिडेंट की हैसियत से यह कहा था कि हिन्दू और मुसलमानों की दोस्ती और सेक्शुलेरिज्म के लिए अगर वासमान

से फरिस्ता भी उतर कर आए और जामा मस्जिद को मोनार से यह कहे कि तुम्हें हिन्दुस्तान की आजादी मिल सकती है अगर तुम हिन्दू-मुसलमानों की दोस्ती छोड़ दो तो मैं यह कहूँ कि मुझे हिन्दू और मुसलमानों की दोस्ती चाहिए, चाहे आजादी मिलने में कुछ देर ही क्यों न हो जाए अगर हिन्दुस्तान को आजादी नहीं मिलेगी तो यह हिन्दुस्तान का नुकसान होगा, लेकिन अगर हिन्दू और मुसलमानों की दोस्ती टूट गई तो यह इंसानियत का नुकसान होगा। मैं उस खानदान में आती हूँ उस खानदान से आती हूँ जिसने मुझे मोडर्न तार्किक दी है। मैं समझती हूँ कि कोई भी ऐसा चीज कुरान में नहीं है जो हकी को तोड़ती है। अफसोस इस बात का है कि हम औरतें अपने क़ो की माँगती नहीं हैं। गलती नदों को नहीं, गलती औरतों की है। अगर वह खड़ी होकर अपने हक माँगे तो उनको हक मिलेंगे। इस्लाम ने हमें अपने हक दिये हैं। हम मेहर माँग सकते हैं। मैरिज कंट्रैक्ट में जो कायदे-कानून चाहे रख सकते हैं। अगर हम नहीं रखते हैं तो यह गलती हमारी है। डेरॉरिज्म पर पार्लियामेंट ने कानून बनाया लेकिन फिर भी डेरॉरिज्म ब्रुम् नही हुआ है। इसलिए मैं समझता हूँ कि आज मैं श्री राजीव गांधी जो 10 मुसलमानों के तरफ से माइनोरिटीज की तरफ से, उनके प्रतिशुक्ति अदा करूँ (व्यवधान)

SHRIMATI KANAK MUKHERJEE: Do you represent all Muslims?

DR. (SHRIMATI) NAJMA HEPTULLA: I only represent myself; I do not represent anybody. So I am

[Dr. (Shrimati) Najma Heptulla] speaking on my own behalf. But I am not speaking on your behalf. I am speaking on behalf of my party and I think I am speaking on behalf of all those people who have supported this Bill—and I think they are in a majority. My mathematics is not very weak.

SHRI H. R. BHARDWAJ: That is what is troubling them.

डा० (श्रीमती) नाजमा हेपतुल्ला : मैं यह कहना चाहती हूँ कि हिन्दुस्तान की 12 करोड़ मस्जिद माइनारिटी और दूसरी माइनारिटी के हकूकों की हिफाजत का जो भार जनता ने इस नौजवान नेता के कंधों पर डाला है तो उस नौजवान नेता ने कांग्रेस की पुरानी परम्पराओं को सामने रखते हुए जो वायदे कांग्रेस ने किये थे, आजादी के बाद पंडित जवाहर लाल नेहरू और उसके बाद इंदिरा जी ने और अब खुद जो राजीव गांधी ने अपने मैनीफेस्टों में किये थे उन बातों को पूरा किया है। आज कुछ लोग इल्जाम लगाते हैं कि यह बिल लाने से सेकुलरिज्म की तरफ हम मूर्ती से नहीं जा रहे हैं मैं उनसे यह कहना चाहती हूँ कि क्या उन्होंने कांग्रेस का मैनीफेस्टो पढ़ना छोड़ दिया है ? जरा वे एक बार उसको पढ़ लें। अगर अपोजीशन वाले लोग यह कहते हैं तो मैं उनसे कहूँगी कि मैं कांग्रेस की जनरल सेक्रेटरी हूँ, पब्लिसिटी की इंचार्ज हूँ, आप जो कांग्रेस का मैनीफेस्टो भेज दूँगी, एक बार आप उसे पढ़ लीजिए। जो वायदे हमारे कांस्टिट्यूशन में किये गये हैं, मैं उन सारी धाराओं को पढ़ने वाली नहीं हूँ क्योंकि मुझे मालूम है कि वक्त कम है और केसरी जी मेरी तरफ गौर से देख रहे हैं। और आप भी मेरी तरफ गौर से देख रहे हैं। (समय की घंटी) ... गौर अब आपने घंटी भी बजा दी है। मैं सिर्फ यह कहना चाहती हूँ कि वे जरा हमारे मैनीफेस्टो को भी पढ़ लें। जो वायदे

हमारे कांस्टिट्यूशन ने किये हैं, जो वायदे कांग्रेस पार्टी ने अपने मैनीफेस्टों में किये हैं, कांग्रेस ने उन वायदों को निभाया है। राजीव गांधी जी ने कोई गलत कदम नहीं उठाया। वह औरत जो आज दर-दर की छोरें खाती हैं और जिसको 125 या 250 रुपये के लिये सुप्रीम कोर्ट में जाना पड़ता है, जिसको दूसरों के आगे हाथ फैलाना पड़ता है अब उसका हक लमसम तौर से एक महीने के अंदर उसको मिल जायेगा। सामान्यतः, मैं दो मिनट का समय और लूँगी मुझे दो मिनट का समय और दे दीजिए। एक वक्त था जब मैं वहाँ पर बैठकर लोगों को समय दिया करती थी। इसलिये आज जब हम इस अहम बिल पर विचार कर रहे हैं तो मैं दो मिनट का समय आपसे और मागूँगी।

जहाँ राजीव जी ने मुसलमानों का, अहसास सात निभाया है, माइनारिटी को हिम्मत बंधाई है, उनको कान्फिडेंस दिया है और जैसा कि श्री शिवशंकर जी ने तनाम मुद्दल्लज और तकरीर में कहा मैं सिर्फ एक बात अपने मुसलमान भाइयों और बहनों से कहना चाहती हूँ कि अब जिम्मेदारी हमारे ऊपर है। जो कुछ सरकार को करना था वह सरकार ने कर लिया है। अब जिम्मेदारी हमारे ऊपर है। हम औरतों के हकूकों की कैसे हिफाजत करते हैं यह हमें सोचना है। जो हमारे ऊपर आरोप लग रहे हैं उनका जवाब हम जुबानी नहीं देंगे हम उनका जवाब अपने अमल से देना चाहते हैं। आपको यकीन दिलाती हूँ कि हम लोग न सिर्फ अपने इस बिल के अंदर जो प्रोजेक्शंस दिये हैं, ला मिनिस्टर साहब ने, हम बकबोर्ड में यह कोशिश करेंगे और हमारे दूसरे भाई भी इस बात की कोशिश करेंगे कि जिस तरह से कुरान में औरतों का हक

है, जिस तरह से तलाक देने और उनकी मेहर को हिफाजत करने का सवाल है, जिस तरह से उनका कान्टैक्ट मेरेज है उसको क्रोटिफाई करें इसी तरह से एक ऐसा फंड बनाना चाहिए। जिसमें न सिर्फ एक परसेन्ट डाईवोसंड औरतें जिनके बारे में हम बोल रहे बल्कि 99 परसेन्ट उन औरतों को भी मदद हासिल हो जो हिन्दुस्तान में डिस्ट्रीड्यूट हैं। उनके लिये हम काम करें यहीं हमारे नेता का कहना है। औरतों की जब तक तरक्की नहीं होगी, औरतों को उनका हक जब तक बराबर नहीं मिलेगा तब तक इस मुल्क की तरक्की नहीं होगी। मैं इस वायदे के साथ आपका शुक्रिया अदा करती हूँ जो आपने मुझे वक्त दिया।

MR. DEPUTY CHARM AN: Hon. Members, since the House is sitting beyond ten O'clock, arrangements have been made for dinner in refreshment room No. 70 on the first floor from 8.15 p.m. onwards, Mr. P. Upendra.

SHRI PARVATHANENI UPENDRA: Mr. Deputy Chairman, Sir, I rise to oppose this obnoxious and reactionary Bill. While doing so, I reaffirm fine commitment of our party to the concept of freedom of religion and also non-interference in the personal laws of the minority communities, whether muslims or any other community.

I had an occasion to discuss this number of people, including authorities on Shariat, and officials of the Muslim Personal Law Board, but I am sorry to say that since I still remain unconvinced of the necessity for the Government to bring forward this in any manner and for all of us to take a stand on such a controversial and sensitive matter

fierce confront the country and among the people

on communal lines. There is also a division among the Muslims themselves. At present we are facing so many problems in various parts of the country. At this time was it really necessary for the Government to indulge in this kind of a legislation to increase the cleavages and dissensions? Should the Government have rushed like this to nullify the judgment of the Supreme Court? The proper thing would have been to arrive at a consensus on this vital issue touching 13 crores of people of this country. In fact, the Prime Minister had attempted to arrive at such a consensus. He had two meetings, with us and promised further meetings with the Opposition leaders and with others also, but for reasons best known to him, he abandoned that process and on one fine morning, in the early hours of the day at 3 O'clock we were summoned to come for a meeting at 10 a.m. There, a 124 page document along with the draft Bill, was thrown at us and we were asked to give our consent then and there. Understandably, we did express our reservation and could not agree to the introduction of the Bill in the present form.

There is a reason for rushing through this Bill. As far as I could understand, there is growing awakening among the Muslims themselves, particularly among the educated Muslims, about the need for changes in the Shariat law to suit the time. There is also a growing feeling within the Congress Party itself that there was no need for the Government to go in for a legislation like this to nullify the Supreme Court judgment. The Members on the other side may dispute this. Unfortunately, there are no machines to gauge the inner feelings and the conscience of the human mind. Otherwise we would have known the real feelings of Congress (I) Members. But I dare say if a freedom of vote had been at least 500 out of the 555 MPs would have voted against this Bill.

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Mr. Shiv Shankar has said that the Bill should be seen from angle of the Muslims. I would like to ask: "Do Muslims mean only those Muslims represented by the Muslim League and other fundamentalists? What about those Professors, journalists, university Vice-Chancellors, artistes and public men etc? lift of those eminent people who gave a memorandum to the Prime Minister opposing the Bill? What about those educated Muslim women, who demonstrated in the streets of various capitals? Are they not Muslims? Is it not also Muslim opinion? Why should you ignore the opinion of that segment of the Muslims?"

AN HON. MEMBER: That is one per cent.

SHRI PARVATHANENI UPENDRA; Whatever may be the percentage they are also Muslims. You are speaking about the rights of the minorities, but it is unfortunate that those who speak for the rights of the minority sections are themselves not respecting the wishes of the minorities in their own community.

Sir, I take it essentially as a human problem. I would have been happy if the Government had forced such a legislation on the country for a better cause or for a reform which would have benefited everybody in the Muslim community itself. But, here, what is the cause? The cause of an errant husband, who divorces his wife, who refuses to pay for her maintenance. And you take up his cause in preference to the cause of the hapless woman who is thrown on the streets! Is it proper for us in the Parliament to champion such a cause? Sir, that is the angle clause taking. This is essentially a human problem which has been coloured by religious and other considerations. Where is the question of religion in this if a hapless woman, a divorced woman, is paid a maximum of Rs. 500? Is it a crime against the religion? Every religion including Islam preaches compassion. If something extra is going to a

divorced woman why there is such a hue and cry and term it as a danger to Islam, and violation of Shariat? I am very sorry to say that even the Government was taken in by this kind of argument.

Sir, a note was circulated to us, as I said, by the Government. On page 49 of the note, the Government itself have given so many arguments in favour of the Supreme Court judgement and they say at the end, I quote:

"From the foregoing, it will be clear that the interpretation of *Shah Bano* by the Supreme Court in the *Shah Bano* case, does not militate against the intentions either of the Government or of the Parliament at the time when the provision was enacted or at any earlier stage. It may be noted in this connection that no new interpretation was adopted in *Shah Bano* case. The matter came up before courts in a number of cases after 1974 and the Supreme Court has in the two cases decided in 1979 and 1980 adopted only this interpretation of the provision. No serious objection was taken by anyone when these cases were decided."

Sir, this is in the note given by the Government. This is an admission by the Government that the Supreme Court judgement was correct. Sir, there is another thing in the note. When section 125 was adopted in 1973, along with section 127, in the Select Committee there were people who are now vociferously championing the cause of this Bill and these persons include the Leaders of the Muslim League. They were on the Select Committee. This is what the Government note itself says: "The Joint Committee included a number of Muslim Members (including Mr. Ibrahim Sulaiman Saite) and there was not a single vote of dissent in regard to this clause." This is given in the note. Why this noise now, after 13 years? Is it because other factors have come into consideration? What are those other factors? I say,

one is the religious factor, because today it is not an issue of rights of Muslim women. It has been taken to be a broader canvas. It has become the question of rights of the Muslims in this country. There are genuine apprehensions among them. Providing maintenance allowance to Muslim women has become only a side issue because so many communal Hindu organisations have unfortunately taken a very vociferous stand on this issue. These organisations never bothered about the atrocities committed on the Hindu women, or when the dowry deaths took place when {drls were burnt for dowry, they Eever raised their voice. But, when H came to injustice to a Muslim woman, all these communal Hindu organisations came to the forefront championing the cause of the Muslim women. This has complicated the issue giving rise to genuine fears among the Muslim community that some danger is in the offing for their existence and identity. In the process, the Mullahs, Maulvis and Ulemas have taken the upper hand. They have browbeaten the Government. They have unnerved the Government. They misrepresented to the Government that 99 per cent of the Muslim community is in favour of this Bill and against the Supreme Court judgement. They pleaded that something nrgent should be done; otherwise the whole country will be on fire. That is their opinion. Have they taken the opinion of the ordinary masses? They are only speaking about those few people who have all along been opposing social reforms in the Muslim community and they have succeeded in unnerving the Government and forcing it to bring forward this legislation.

Sir, all the opinions expressed in this regard are coloured either way I spoke to a number of ordinary Muslims and many of them are in favour of change, in the law and are against this Bill also. But they are afraid of coming out and expressing their opinion, because any opposition to the Bill will be treated as identifying with

the Hindu reactionary elements and therefore, anti-Islam. So, they are not ready to come forward and express their opinion. But I know their feelings and I have spoken to many eminent Muslims as well as ordinary Muslims.

Sir, many Members spoke about the Shariat and Quran I do not want to get into that controversy because I do not claim much knowledge of it and I do not venture into that field. Mrs. Sarojini Mahishi referred to the provision of Shariat Act also. But I just want to know from these friends, if you cannot change Shariat, if it is sacrosanct, how is it that so many Islamic countries have changed it? These people are also Muslims and these Muslim countries have changed Shariat, as the Law Minister said in the morning itself. In Turkey, after the case for divorce is filed, the court takes measures to protect the rights of the wife and children. Each side, having responsibility in the breakdown of marriage; *hose* interests have been disturbed because of the divorce, can ask for a suitable compensation from the other. Also, in case of divorce, both husband and wife get back their individual belongings, while the assets acquired during the marriage are divided equally.

In E wife divorced by her husband without her consent (and without any reason of her own) is entitled to her maintenance, to a compensation amounting to maintenance for two years at least, keeping in view the financial status of the divorcing husband. This payment can however be made in instalments. In Saudi Arabia, despite restrictions on women, the marriage contract provides not only for 'mehr' and maintenance for three months of 'Iddat' but also for 'Muakkar-al-Sadag'. Accordingly a divorced woman is entitled to payment of a specified sum for maintenance. The payment can be made in a lump-sum or in instalments. In Syria, a divorced woman is entitled to maintenance-nafakah till she remarries. This is in addition to the

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amount paid for the upkeep of children. Recently, Tunisia also introduced it.

Sir, we speak so much of Pakistan as an Islamic Republic. What Air. Jinnah had said about women is also relevant,

"As early as in 1944, Mr. Jinnah told Muslim community: "No nation can rise to the height of glory unless your women are side by side with you. We are victims of evil customs. It is a crime against humanity that Our women are shut Up the four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in which our women have to live. You should take your women along with you as comrades in every sphere of life."

Th I Mr. Jinnah said. You know that in the military regime of Mr. 31st, Family Laws Ordinance, 1961 was passed—and that was also in favour of women.

Sir, in 1973, when the Bill 6 corporation of Sections 125 and 127 was introduced, Shri Ram Niwas Mir-dha, the then Minister of State for Home Affairs, who piloted the Bill, said, I quote;

"Shri Sulaiman Sait said that the Explanation to Section 125 would interfere with the personal law of the Muslims. We have to see what is the purpose of the whole clause. It says "Order for maintenance of wives, children and parents". This comes into effect only in case of extreme hardship when a wife has been neglected and her husband is not maintaining her. The clause gives her a right to go to court and get an order for maintenance against the husband. The explanation says:

"Wife" includes a woman who has been divorced by or has obtained a divorce from her husband

band and has not remarried."

It has no effect on the civil status of the wife, husband or the divorcee. It has nothing to do with the personal law. If divorce has taken place and is valid under the existing law of divorce, either personal law or otherwise, that is not at all interfered with here.

"There have been cases and we have received a lot of representations which show that after divorce, the women are generally in a very bad plight. It is a very difficult social and humanitarian problem. To cover that category also, we have said that if other conditions are satisfied, a divorced person can also get the benefit of this section. There is no intention to interfere with the personal law of Muslims in any way. This is a humanitarian approach which, I think, would be found by hon. Members to be in consonance with the basic humanitarian traditions of the Muslim personal law also. In a situation like this, where there is a helpless lady, they would try to help her a little, along with other categories of persons. I think this should be welcomed. I do not think the Muslim personal law in any way comes into the picture."

This is what Shri Mirdha said.

SHRI ASOKE KUMAR SEN: There are other things also.

SHRI PARVATHANENI UPENDRA: You can refer to them when you reply.

Sir, this is what he said justifying section 125. And today they are in a hurry to remove that benefit which Mrs. Gandhi gave to the women of this country, by saying it is against Muslim Personal Law.

We have changed several laws relating to various religious groups. We changed the Hindu law and we had

brought forward the Hindu Code. Even Manu said something disparaging about women—"na stree swatantra-marhati". He said, a woman has to take the protection of the parents in childhood, of the husband in the middle age and of the children in her old age. But that concept has changed. Today we are not accepting that concept. Today women are independent and they are capable of managing their affairs themselves. Every society is changing and accordingly, every religion has to bring changes into its fold.

This is the religious aspect which I referred to. And there is a political aspect too. Unfortunately, our friends on the other side will be hurt if I say that. But, there were political considerations also in bringing forward this Bill in such a hurried manner, because of the impending elections in Kerala, West Bengal and Jammu and Kashmir. To gain the Muslim votes, to placate the Muslim sentiment, the ruling party has hurried to bring forward this Bill.

SHRI GHULAM RASOOL MATTO: We don't play politics in religion.

SHRI PARVATHANENI UPENDRA: Otherwise there was no need for the Government to change its views so soon because this note from which I quoted was circulated just a few days prior to the drafting of the Bill. They want to say that the Opposition is stalling this Bill, that the Opposition is not prepared to accept this Bill and only the Congress(I) is championing the cause of the Muslims. I would like to put a simple question to my friends on the other side. By bringing forward this legislation, which benefits a recalcitrant and cruel husband and robs a helpless woman of her sustenance, are you doing a great service to the Muslim community? What have you done for them in 38 years of your rule? What is the economic condition of the Muslims today? What improvement have you brought in their living conditions? How are their traditional arts languishing, whether it is at Moradabad or 424 RS—13.

Ghaziabad or Mirzapur or elsewhere? What is their situation in the field of employment and self-employment? What is their economic condition today? And why are communal riots taking place in various parts of the country, particularly in those States ruled by the Congress? Why are there no communal riots involving other minorities, but only Muslims are involved? Therefore, you cannot hoodwink the Muslims just by bringing forward this legislation as if you are championing the cause of the Muslims. It is pure surrender to the* fundamentalists and the orthodoxy. More time could have been given to the country to discuss this aspect thoroughly.

We are opposing this Bill on various grounds. One is that this Bill, if you look at it carefully, is an interference in the Shariat. For we have taken the stand that no change can be brought about in the Shariat and it cannot be modified. But today by agreeing to this Bill, the Muslims are landing themselves in trouble. If tomorrow some other Government brings some other changes in their marriage system or divorce system through legislation, nobody can take exception to that. This has now become a precedent. That way this Bill is an interference in the Muslim personal law.

Another aspect is that as long as one chooses to remain within the purview of the personal law, nobody can interfere. But if somebody chooses to go out and demand protection under the law of the land and the Constitution the law of the land or the courts or the Constitution cannot discriminate on grounds of religion or sex. Therefore, if the Muslim leader; want to avoid interference in their Personal Law, they have to prevent their co-religionists from going to court. Once the matter goes to the court, the law has to be applied equally to everybody and there cannot be any discrimination. I am very sure this legislation, which is very bad in law, will be struck down definitely by the Supreme Court. In

[Shri Parvathaneni Upendra] the morning we raised objections to its consideration and passing because it is patently wrong, it is bad in law and it is discriminatory, and surely the highest court in the land will not countenance this kind of legislation.

This Bill also goes against our attempt to bring forward a uniform civil code. All along we have been saying that we will bring forward a uniform civil code. When a uniform civil code is brought, it will not be a Hindu civil code. We are not forcing a certain civil code on others, we are not forcing anybody to accept a Hindu civil code. We are for a civil code which is acceptable to all, which is convenient to all. Such a civil code has to be evolved through consensus. That effort or ideal is getting a setback through this Bill.

One particular aspect in this Bill very objectionable and that is throwing the burden of maintenance of the divorced woman on her parents, family members and relatives. As Mrs. Mahishi has rightly pointed out, in the present economic conditions, whether it is parents or brothers or sisters or any other relatives, are they in a position to maintain a woman driven out by her husband? No, this will only remain on paper and ultimately the woman has to approach the Wakf Board for sustenance. Somewhere I have read that the Central Wakf Board demanded Rs. 50 crores per year to pay to the divorcees, and if Rs. 50 crores of public money have to be shelled out from the public exchequer, why should we make the payment through other agencies? (Interruption.) If the Government has to pay so much money from the public exchequer, why should it be routed through the Wakf Boards which are in many places, defunct and which are ineffective? It can be given directly by the Government. Then, what about the divorcees from other communities? If the Government has to take the responsibility of Muslim

divorcees what about the divorcees among the Hindus, among the Sikhs, among the Christians and other religious groups? Why should they be ignored?

As regards the present state of Wakf Boards, one Dr. S. Khalid Rashid of Aligarh Muslim University has made a survey sometime back of the conditions of the Wakf Boards in the country. He says the percentage of wakfs which have got their accounts audited was next to »dl. He also gives the numbers. In Andhra Pradesh, out of 34,000 wakfs only 7 got their accounts audited. In Delhi, only 80 out of 3624 wakfs got their accounts audited. In Punjab, only 36 out of 33,000 got their accounts audited. The income from the one lakh wakfs in the country is around Rs. 150 crores but there is no proper auditing of their accounts. Tomorrow, the Government pays money to these wakf boards to distribute to the divorced women. Are you sure that this money will reach the poor women? How much of it will be squandered or eaten away by the middlemen who are controlling these wakf boards? Therefore, that is also not a convenient arrangement. Ultimately nothing will happen. Neither the relatives nor the wakf boards will do anything for the hapless divorced women. The women will be ultimately on the streets. That is the net result of this Bill which this Government has brought forward.

Lastly, I would say that we are opposing this Bill because it is reactionary and retrograde. It sets a bad precedent. Tomorrow we cannot prevent other minority communities from seeking exception from so many other sections of the Criminal Procedure Code or various other Acts and piece* of legislation. This will be a precedent and it goes against the spirit of the Constitution. It is discriminatory and it harms the Muslim community in the long run. Therefore, we oppose this Bill and I hope this House will reject the Bill.

श्री गुलाम रसूल कार (नाम निर्देशित) ;
जन्मने वाला, जहाँ तक इस बिल का ताल्लुक
है मैं इस की पुरजोर हिमायत करता हूँ
और साथ-साथ हाउस में यह कहना चाहता
हूँ कि इस बिल को जम्मू-काश्मीर पर भी
लागू करना चाहिए। यह हमारी बदकिस्मती
है कि जहाँ तक सेक्शन 125, 127, या
इस बिल का ताल्लुक है इस का डाइरेक्टली
अमल जम्मू-काश्मीर में नहीं होगा। मैंने
यहाँ पर चन्द अपोजीशन मेम्बरों की तकरीरें
सुनी। उन का मोहसिल यह था कि इस
बिल का ताल्लुक एक खास कम्युनिटी के
साथ है जिसको मैं इस हद तक तस्लीम नहीं
करता हूँ कि यह छोटी सी अक्कलियत है।
बल्कि मैं समझता हूँ कि यह बहुत बड़ी अक्क-
लियत हैं और उन के साथ मौजूदा सरकार
ने, राजीव गांधी की रहनुमाई में एक
ऐसा बिल हाउस में पेश किया है जिससे कि
जो कम्युनिटी को एक फायदा मिलेगा, जो
आसानी पैदा होगी उस से उन के मसाल का
हल होगा। अपोजीशन ने इस बिल की मुख-
लिफत की। मैं देख रहा था कि अपोजीशन
के कुछ लोगों ने इस की मुखलिफत की
और सुन रहा था। काश कि वह अपने तक-
रीरों में इस कम्युनिटी की एकतादी तस्वीर
के बारे में या उस की पसमंदगी के बारे में
या उस के ताल्लुमी हालात को सुधारने
के बारे में एक लफज भी कहते तो मैं
समझता कि उन को मुसलमानों का दर्द है।
उन को इस कम्युनिटी का कुछ दर्द है।
महज एक बिल की बिलफत करने के लिए
यहाँ खड़े होना, मुझे लगता है कि एक खास
परपज के लिये है। सुप्रीम कोर्ट ने जो
फैसला दिया उस को यह लोग तमाम मुल्क
भर में एक्सप्लायट करना चाहते थे, कांग्रेस
के खिलाफ, हुक्मरानों के खिलाफ, क्योंकि
ऐसा लगता है कि वे चाहते हैं कि हर
मसले में, हर बारे में किसी न किस तरह उन

को फायदा मिलना चाहिए। मैं प्राइम मिनिस्टर
से और अपने साथियों से अर्ज करना चाहता
हूँ कि हमें बक्ती तौर पर इस बिल को नहीं
देखना चाहिए। पिछले एक साल में मुत्त-
वातिर जो कोशिश हो रही है ईतशार पैदा
करने को कमी कुरान के खिलाफ कलकत्ता
हाई कोर्ट में जा कर रिट दाखिल करना या
कमी मजहबों जज्बत को उभार कर फिर-
कापरस्ती को फैलाना, रीजनलिज्म को फैलाना
और उस का लिमिटेड परपज के लिये फायदा
उठाना उससे मुझे लगता है कि इस बिल की
मुखलिफत करना भी उन्हीं ताजा इरादों का
पसमंदर है। अम मुसलमानों का जहाँ तक
ताल्लुक हमारी सोस यटी में चन्द ऐसे लोग
होंगे जो कालेज में प्रोफेसर या लेक्चरर है
या युनिवर्सिटी में चांसलर हैं जिन को हमारी
मजहबों जिन्दगी के साथ इस सोस इटी के
साथ उठने-बैठने का कोई बतल नहीं। उन
के खयालत का, जजबत का हमारे साथ
कोई ताल्लुक है। कितब के तौर पर
पढ़ाई, कितब के तौर पर लिखना और
अनो कबिलत को मंजर पर लाना प्रेस
के जरिये रहो उन का काम है प्रम सोसा-
इटी के जजबत का उन के साथ कोई ताल्लुक
नहीं। जहाँ तक इस बिल का ताल्लुक है,
हमारे सोस ने निकह के बारे में फरमाया
उन को रता नहीं कि निकह कितने किसम
के होते हैं अतलत, कदलत, बिलायतन,
वगैरह वगैरह और तलकों में तलाक तो
उन के मजहब को बत नहीं उन का इस्तेमाल
से दूर का भी कोई बसा नहीं।
आप देखें कुरान में सबसे पहले ऐसी कितबें
आईं जिनमें पहली दफा दुनिया में एक
औरत का हक तहल्लिम किया। उसी का
इंटरप्रिटेशन अगर इस बिल में दिया गया
और उसको प्रोटेक्ट करने की कोशिश की गई
तो आप लोगों को यह बात क्यों चुभती है
बजाये इसके कि औरत को 10, 12 साल के
बाद फैसला मिलता है उसको उसका हक एक

[श्री गुलाम रसूल कार]

महीने के मिल जाए तो आपको क्यों दुख होता है ? दोनों प्राविजंस बराबर मौजूद है। 125 और 127 सेक्शन जिसका एक महीने के अंदर फैसला होना चाहिए। उसको आप क्यों बुरा समझते हैं। मुसलमानों को, उनकी औरतों को पहली दफा फायदेका कोई बात कही गई है। अगर हम तारीखी पसमंदर में जाएं तो जैसा कि मेरी बहुत ने 1400 साल पहले मुसलमानों के वजूद में आने और हिन्दुस्तान के कल्चर में फलने-फूलने को बात कही और कहा कि हमें इस तरह जीव में रहना है, यह मुल्क हमारा है और आपका है, इसके लिए हमने भी कुरबानियां दी है, आज तक आप यह साबित नहीं कर सकते कि पाकिस्तान के साथ लड़ाई में किसी मुसलमान ने मजहब की बिना पर हिन्दुस्तान में कभी हथियार नहीं डाले हैं। हम इकतस दी तौर पर आपके साथ हैं इसके हक में है।

मैं चाहता हूं कि यह जो बिल लाया गया है, वह प्रोसेसिव है। प्राइम मिनिस्टर से गुजारिश करना चाहता हूं कि उनको ऐसे कदम लाने चाहिए और जो नईसफो बाकी कम्प्यूनिटीज के साथ हो उसकी तरफ तबज्जह देना अच्छी बात होगी। अपोजीशन के लोग जो इसको मुखालफत कर रहे हैं उनके दिल में मुसलमानों लिए कोई दर्द नहीं है। वे इसकी मुखालफत इसलिए कर रहे हैं कि किसी को इसका फायदा न मिले। हर कानून के दो रिजकशन होते हैं, फायदे के भी और मुखालफत करने के भी। अगर हम अच्छे कानून लाएं तो उसकी हिमायत करेंगे। अगर नाफोज कानून है तो खाने कहने के मुताबिक हमको तो नुकसान होगा। अगर अच्छा होना तो मुल्क को फायदा मिलेगा। हक हक इस

मुल्क के हिस्सेदार हैं अगर बगल में फोडा हो तो सारा बदन कांपता है। इसलिए अगर सुप्रीम कोर्ट ने एक फैसला दिया है तो उसको दुस्त लाइन पर लाने के लिए हक है पार्लियामेंट को। पार्लियामेंट इसीलिए है कि लोगों के जज्वात को, उनके फंडामेंटल राइट्स को, जो कांस्टीट्यूशनल प्राविजन है, सेक्युलरिज्म के सेक्युलर करेक्टर को अगर आघात पहुंचता है तो पार्लियामेंट को दूर करना चाहिए। आपके जज्वात से यह जाहिर होता है कि सुप्रीम कोर्ट में इसे ले जाकर वहां गिरा दें। हमको लगता है कि आप मुसलमानों के दुश्मन हैं और आप कहते हैं कि इस मुल्क में इस कानून की मुखालफ इसलिए करनी चाहिए ताकि अफरा-तफरी हो, मुल्क में फिरकापरस्ती पनपे, रीजनलिज्म बढे। मुझे बहुत दुख होता है कम्प्यूनिस्ट पार्टी से। अगर औरत के पास पैसा देने को नहीं है, और अगर उसके रिश्तेदारों के पास पैसा देने को नहीं है और अगर उसको कम्प्यूनिटी के तौर पर वक्फ फंड से पैसा दे देते हैं, एक गरीब औरत को उसमें से पैसा देना पड़े तो क्या हर्ज है। क्या यह वक्फ के खिलाफ है ? अगर वक्फ फंड में पैसा जमा होता है और उस वक्फ खजाने में से एक गरीब औरत को, एक मौतलबा औरत को मेंटेनेंस के लिए कुछ मिलता है तो आपको क्यों दुख होता है, आप को क्यों दर्द पैदा होता है महज इसलिए कि मुसलमान उसका नाम है। मुसलमान होना क्या जुर्म है। मैं हिन्दुस्तानी मुसलमान हूं और हिन्दुस्तान में रह कर मरना चाहता हूं। इसलिए मुसलमानों को यहां रहने वाले मुसलमानों को हक है यहां अपने हिसाब से बिजली बसर करने का। यह मुल्क हमारा है, यह मुल्क आपका है। (समय की घंटी) इसी के साथ मैं इकीत पुरजोर तर्जुम कर रहा हूं।

†[شری قلام رسول کار (نامزد) :
جناب والا - جہاں تک اس بل کا
تعلق ہے - میں اس کی پر زور
تائید کرتا ہوں - اور ساتھ ساتھ
ہاؤس میں یہ کہنا چاہتا ہوں کہ
اس بل کو جموں کشمیر پر بھی
لاگو کرنا چاہئے۔ یہ ہماری بدقسمتی
ہے کہ جہاں تک سیکشن ۱۲۷-۱۲۵
یا اس بل کا تعلق ہے - اس کا
قانونی عمل جموں کشمیر میں
نہیں ہوگا - میں نے یہاں پر چند
ایوانوں میں اس کی تقریریں سنیں۔
ان کا مقصد یہ تھا کہ اس بل کا
تعلق ایک خاص کمیونٹی کے ساتھ
ہے - جس کو میں اس حد تک تسلیم
نہیں کرتا ہوں کہ یہ چھوٹی سی
اقلیت ہے - بلکہ میں سمجھتا ہوں
کہ یہ بہت بڑی اقلیت ہے - اور
ان کے ساتھ موجودہ سرکار نے -
راجہ گاندھی کی رہنمائی میں
ایک ایسا بل ہاؤس میں پیش
کیا - جس سے کہ اس کمیونٹی کو
ایک فائدہ ملے گا - جو آسانی پیدا
ہوگی اس سے ان کے مسائل کا حل
ہوگا - ایرویشن نے اس بل کی
مخالفت کی - میں دیکھ رہا تھا
کہ وہ اپنی تقریروں میں اس
کمیونٹی کی اقتصادی ترقی کے بارے
میں یا اسکی پس ماندگی کے بارے
میں یا اسکی تعلیمی حالت کو
سمجھانے کے بارے میں ایک لفظ بھی
کہتے تو میں سمجھتا کہ ان کو

مسلمانوں کا درد ہے - ان کو اس
کمیونٹی کا کچھ درد ہے - بعض
ایک بل کی مخالفت کرنے کے لئے
یہاں کھڑا ہونا - مجھے لگتا ہے کہ
کہ ایک خاص پریز کیلئے ہے -
سیپریم کورٹ نے جو فیصلہ دیا اسکو
یہ لوگ تمام ملک بھر میں
ایکسپلائٹ کرنا چاہتے تھے - کانگریس
کے خلاف - کیونکہ ایسا لگتا ہے -
کہ وہ چاہتے ہیں کہ ہر مسئلہ
میں ہر بارے میں - کسی نہ کسی
طرح انکو فائدہ ملنا چاہئے - وہ
پرالم منسٹر سے اور اپنے ساتھیوں سے
عرض کرنا چاہتا ہوں کہ ہمیں
واقعی طور پر اس بل کو نہیں
دیکھنا چاہئے۔ پچھلے ایک سال میں
متواتر جو کوشش ہو رہی ہے -
اعمال پیدا کرنے کی - کبھی ڈرگن
کے خلاف کلکتہ ہائی کورٹ میں
جاکو دت داخل کرنا - یا کدھی
مذہبی جذبات کو ابھار کر فرقہ
پرستی پھیلانا - ریجنلزم کو پھیلانا اور
اس کا لمیٹڈ پریز کیلئے فائدہ اٹھانا
اس سے مجھے لگتا ہے کہ اس بل
کی مخالفت کرنا بھی انہیں تازہ
ارادوں کا پس منظر ہے - عام
مسلمانوں کا جہاں تک تعلق ہے -
ہماری سوسائٹی میں چند ایسے
لوگ ہونگے جو کالج میں پروفیسر
یا لکچرر ہوں - یا یونیورسٹی میں
چانسلر ہوں - جن کو ہماری
مذہبی زندگی کے ساتھ - ہماری

[شرعی غلام رسول کار]

سوسائٹی کے ساتھ اٹھتے بیٹھتے کا کوئی سوال نہیں ہے۔ نہ انکے جہالت کا جذبات کا ہمارے ساتھ کوئی تعلق ہے۔ کتاب کے طور پر لکھنا کتاب کے طور پر پڑھنا۔ اور اپنی قابلیت کو منظر عام پر لانا پریس کے ذریعہ یہی ان کا کام ہے۔ عام سوسائٹی کے جذبات کا انکے ساتھ کوئی تعلق ہے۔ جہاں تک اس بل کا تعلق ہے ہمارے دوست نے نکاح کے بارے میں فرمایا۔ انہیں پتہ نہیں نکاح کتنے قسم کے ہوتے ہیں۔ امالین۔ کڈالین۔ ولانٹین۔ وغیرہ وغیرہ۔ اور طلاقوں میں طلاق تو ان کے مذہب کی بات نہیں۔ ان کا اسلام سے دور کا بھی واسطہ نہیں۔ آپ دیکھیں کہ قرآن میں سب سے پہلے ایسی کتابیں آئیں۔ جس میں پہلی دفعہ دنیا میں ایک عورت کا حق تسلیم کیا۔ اسی کا انگریزی ترجمہ اگر اس بل میں دیا گیا۔ اور اسکو پروٹیکشن کرنے کی کوشش کی گئی۔ تو اور لوگوں کو یہ بات کہوں چاہتی ہے۔ بھائیہ اسکے کہ عورت کو ۱۲-۱۰ سال کے بعد اس کا حق ملتا ہے اس کو اس کا حق ایک مہینے کے اندر مل جائے تو آپ کو کیوں دکھ ہوتا ہے۔ دونوں پروویژنس برابر موجود ہیں۔ ۱۲۷-۱۲۵ سیکشن میں۔ جسکا ایک مہینے کے اندر فیصلہ ہونا

چاہئے اسکو آپ کہوں برا سمجھتے ہیں۔

مسلمانوں کو انکی عورتوں کو پہلی دفعہ فائدہ کی کوئی بات کی گئی ہے۔ اگر ہم تاریخی پس منظر میں جائیں تو جہاں کہ میری بہن نے ۱۴۰۰ سال پہلے مسلمانوں کے وجود میں آئے اور ہندوستان کے کلچرل میں پھولنے پھلنے کی بات کہی۔ اور کہا کہ ہمیں اس تہذیب میں رہنا ہے۔ یہ ملک ہمارا ہے۔ اور آپ کا ہے۔ اسکے لئے ہم نے یہ قربانی دی ہے۔ آج تک آپ یہ ثابت نہیں کر سکتے کہ پاکستان کے ساتھ لڑائی میں کسی مسلمان نے مذہب کی بنا پر ہندوستان میں کبھی ہتھیار نہیں ڈالے ہیں ہم اقتصادی طور پر آپ کے ساتھ ہیں۔ اسکے حق میں ہیں۔

میں سوچتا ہوں کہ یہ جو بل لیا گیا ہے وہ پروگریسو ہے۔ میں پرائم مسٹرد سے گزارش کرنا چاہتا ہوں کہ انکو ایسے قدم اٹھائے چاہئے اور جو ناانصافی باقی کھینچنے کے ساتھ ہو اسکی طرف توجہ دینی اچھی بات ہوگی۔ اپوزیشن کے لوگ جو اسکی مخالفت کر رہے ہیں انکے دل میں مسلمان کھلے درد نہیں ہے۔ وہ اسکی مخالفت اس لئے کر رہے ہیں کہ کسی کو اسکا فائدہ نہ ملے۔ ہر قانون کے در دی ایکشن ہوتے ہیں۔ فائدے کے بھی اور

مخالفت کرنے کے بھی۔ اگر ہم اچھے قانون لائیں تو وہ انکی حمایت کریں گے۔ اگر ناقض قانون ہے تو آپکے کہنے کے مطابق ہم کو نقصان ہوگا۔ اگر اچھا ہوگا تو ملک کو فائدہ ہوگا۔ ہم اس ملک کے حصہ دار ہیں۔ اگر بغل میں پھوڑا ہوگا تو سارا بدن کانپتا ہے۔ اسلئے اگر سپریم کورٹ نے ایک فیصلہ دیا ہے تو اسکو درست لائن پر لانے کیلئے حق ہے پارلیمنٹ کو۔ پارلیمنٹ اسلئے ہے کہ لوگوں کے جذبات کو۔ انکے فلیڈامینٹل رائٹس کو۔ جو کانسٹیٹیوشنل پروویژن ہیں سیکولرزم کے۔ سیکولر کی ریگٹر کے اگر انکو آگہاں پہنچانا ہے تو پارلیمنٹ کو دور کرنا چاہئے۔ آپکے جذبات سے یہ ظاہر ہوتا ہے کہ سپریم کورٹ میں اسے لے جا کر وہاں کرا دیں۔ ہم کو لگتا ہے کہ آپ مسلمانوں کے دشمن ہیں۔ اور آپ کہتے ہیں کہ اس ملک میں اس قانون کی مخالفت اس لئے کرنی چاہئے تاکہ افراتفری ہو۔ ملک میں فرقہ پرستی پنہے۔ ریپبلزم بڑے سطح پر بہت دکھ ہوتا ہے کیمونسٹ پارٹی سے۔ ہم اجتماعات طور پر وقف فلڈس سے ادائیگی کے حق میں ہے۔

اگر ایک عورت کے پاس پیسہ دینے کو نہیں ہے۔ اگر اس کے رشتہ داروں کے پاس پیسہ دینے کو

نہیں ہے اگر اس کو کمیونٹی کے طور وقف فلڈ سے پیسہ دے دیئے ہوں اب تک شریعہ عورت کو اس میں سے پیسہ دینا پڑتا ہے تو کیا حرج ہے۔ کیا وقف اسلامیات کے خلاف ہے۔ اگر وقف فلڈ میں پیسہ جمع ہوتا ہے۔ اور وقف خزانہ میں سے ایک فرد عورت کو۔ ایک مطلقہ عورت کو۔ میٹرنیٹالس کے لئے کچھ ملتا ہے۔ تو آپ کو کیوں دکھ ہوتا ہے۔ آپ کو کیوں درد پیدا ہوتا ہے۔ محض اس لئے کہ مسلمان اس کا نام ہے۔ مسلمان ہونا کیا جرم ہے۔ میں ہندوستانی مسلمان ہوں اور ہندوستان میں رہ کر مرنا چاہتا ہوں۔ اس لئے مسلمانوں کو یہاں رہنے والے مسلمانوں کو حق ہے وہ یہاں اپنے مذہبی حساب سے زندگی بسر کرنے کا۔ یہ ملک ہمارا ہے۔ یہ ملک آپ کا ہے۔ (وقت کی کھلتی)۔۔۔۔۔ اس کے ساتھ میں اس کی پوزور تائید کرتا ہوں۔]

श्री अश्विनी कुमार : माननीय उपसभापति महोदय, इस प्रस्तुत बिल पर बहुत सी चर्चा हो चुकी है। अपने-अपने दृष्टिकोण से भिन्न-भिन्न माननीय सदस्यों ने बहुत सी बातें रखी हैं। जो कुछ कहा गया है कि कुरान में, आयाद में यह है, वह है, मैं नहीं जानता कि इसमें क्या है। मैं इसको समझने के नाकाबिल हूँ। इसलिये मैं अपने उद्घरण में केवल कुछ मुसलमान विद्वानों ने जो बात अही है उसी के उद्घरण आपके सामने रखना चाहूँगा। अपनी कोई बात नहीं रखूँगा। कंसलजन जब करना होगा तो मैं आपके सामने रखूँगा।

[श्री आश्वनी कुमार]

यह बिल लाया गया है लेकिन 103 क्रिमिनल कोड को जिसमें केवल मुस्लिम महिलाओं के लिये नहीं बल्कि मुस्लिम महिलाओं, डाइवोर्सिं काइफ, बच्चे, नैगलेक्टिड काइफ, अनाथ बालक, इल्लिजिटिमेट अदर चिल्ड्रन, फादर, मदर सब की सुरक्षा का व्यवस्था एक क्रिमिनल कोड में की गई है। उस सारे की चर्चा नहीं हो रही है उसमें से केवल एक विशेष को निकाल कर चर्चा कर रहे हैं। क्योंकि उस पर हम लोग ताराज है यह पर्सनलला है आया है। शहबानों का किस्स क्या है? शहबानो जब कोर्ट में गई 45 साल विवाहित जीवन बिताने के बाद, पांच बच्चे होने के बाद कोर्ट में गई। जब कोर्ट में चला गई तो उसको कितना खपया मिला—179 रुपये मिले। उसके खिलाफ केस को बकील स हव सुप्रीम कोर्ट में ले गये। अब उनको लगा कि यह देना पड़ा तो उन्होंने उसका कोई रास्ता निकाला। अपनी जिम्मेदारी से बरी होने के लिये एक पड़ोस के विद्वान बकील ने रास्ता निकाला। यह हमारे सामने तथ्य है। केवल इन्हीं को बात है क्या? मैं आपके सामने 1984 में ब्रिजस हाई कोर्ट के एक जस्टिस का जजमेंट कोट करना चाहता हूँ। जस्टिस एस ए काबिर ने कहा :

The /benefit of maintenance of, divorced wives until they re-, marry (extended by sec. 132 of. Cr. P.C. is led step in the right direction and a landmark in social legislation. It is one of the beneficent and progresive pieces of legislation in recent times.

The derelict Muslim husband cannot take shelter under his personal voider the Code of Criminal Procedure."

Wot an extract from the famous 3hah Bano judgement that has ruffled many a Muslim sentiment, but an equally significant pronouncement of the Madras High Cou** way back in WW that went un-wotJoed.

बह जस्टिस ने कहा। 1984 में यह बात हुई है मुस्लिम समाज के अन्दर बराबर दो विचार धाराएँ चलती रहीं। एक तो उनको 21 वीं सदी में ले जाने की विचार धारा, नेशनल इंटिग्रेशन की भावना और दूसरी अलगाववाद की विचार धारा। यह संघर्ष अभी से नहीं चल रहा है यह स्वाधीनता से पूर्व से चल रहा है। एक संघर्ष का नेतृत्व मौलाना अब्दुल कलाम आजाद ने किया जिनका विचार था कि मुस्लिमों को मिल कर रहना चाहिये जिनके परिवार की एक माननीया सदस्या हमारे बीच में बैठी है। दूसरी विचारधारा उस समय की जो मुस्लिम लीग पार्टी थी जिसका नेतृत्व जिन्ना साहब कर रहे थे, उनकी थी। उनका कहना था कि मुसलमान अलग रहें। इन दोनों विचारधाराओं का टकराव

3.00 P.M. बराबर होता रहा। उस समय दो विचारधाराओं का

संघर्ष चला। महात्मा गांधी, मौलाना आजाद और जवाहरलाल नेहरू ने कहा कि हम अलगाववादी नीतियों का विरोध करेंगे, अलगाववादी बंटवारे नहीं होने देंगे। महात्मा गांधी ने कहा कि देश का बंटवारा हमारी छात्र पर होगा। हम देश का बंटवारा नहीं होने देंगे। उस समय हमारे देश में अंग्रेज भी मौजूद थे। उन्होंने हिन्दू-मुसलमानों को लड़ाने के लिये देश का विभाजन करा दिया। क्या यह वृत्ति देश से समाप्त हो गई है? क्या विभाजन के बाद भी यह वृत्ति समाप्त हो गई है? क्या देश में एकात्मकता पैदा हो गई है? मैं आपके सामने कुछ तथ्य रखना चाहता हूँ। आज भी मुस्लिम समाज के अन्दर दो वर्ग हैं। एक वर्ग मुसलमानों को भारतीय समाज में विलीन कर 21 वीं सदी में आगे बढ़ना चाहता है और दूसरा वर्ग उसको पीछे रखना चाहता है। आज भी गांवों में इस प्रकार के स्कूल हैं। मैं बिहार का उदाहरण आपको देना चाहता हूँ। बिहार के अन्दर मुस्लिम जनसंख्या 10 प्रतिशत है। हाई स्कूल तक की शिक्षा निःशुल्क है, फ्री है। लेकिन दुर्भाग्य की बात यह है कि कामेजों में दो प्रतिशत मुसलमान विद्यार्थी ही पहुँच पाते हैं। आज कहा जाता है कि उनको नौकरियों में जगह क्यों

नहीं मिलती है ? बे पढ़ते-लिखते तो हैं नहीं; तो नौकरी कहाँ से मिले। मैं आप के सामने अपना एक व्यक्तिगत अनुभव रखना चाहता हूँ। धार्मिक शिक्षा प्राप्त करने का सब को हक है, लेकिन यह किस प्रकार से दी जाती है, उसको मैं आपके सामने रखना चाहता हूँ। मेरी कॉन्स्टिट्यूएन्सी-रॉन्ची में एक स्कूल चलता है जिसमें मुसलमान और आदिवासी सभी बच्चे पढ़ते हैं। स्कूल में पाँच घंटे पढ़ते हैं और फिर घर में उनको चार घंटे तक पुराने की शिक्षा दी जाती है। कोई भी व्यक्ति धार्मिक शिक्षा प्राप्त करने में स्वतन्त्र है। लेकिन आज के आधुनिक युग में उसका क्या उपयोग है, इस पर विचार करने की जरूरत है। कई बार बच्चों ने हम से कहा कि हम धार्मिक शिक्षा इतनी पढ़ते हैं कि हमें हाई स्कूल की शिक्षा प्राप्त करने के लिये समय ही नहीं मिलता है। इस प्रकार का एक संघर्ष चल रहा है। इस सदन में मुसलमान के धरिष्ठ नेता हैं। उनको इन बातों पर विचार करना पड़ेगा। अगर आप इस प्रकार की धार्मिक शिक्षा ही देते रहेंगे तो 21वीं सदी में कैसे पहुँचेंगे ? केवल धार्मिक शिक्षा से नौकरी नहीं मिल सकती है। इस प्रकार से कोई भी डाक्टर या इंजीनियर या साइंटिस्ट नहीं बन सकता है। आपको यह तय करना है कि माडर्न शिक्षा लेनी है या नहीं ? मैं आप के सामने कुछ घटनाएँ रखना चाहता हूँ जो देश के कोने-कोने में हो रही हैं। केरल के अन्दर कुछ इस प्रकार की घटनाएँ घटी हैं जिनसे पता चलता है कि मुस्लिम समाज में किस प्रकार का संघर्ष चल रहा है। 18 जून को बेलापल्ला में त्रिवेन्द्रम में मुरीला बीबी को 101 कोड़े लगाये गये और उसका सिर मुड़वाने की आज्ञा दी गई। उन्हीं की जमात के लोगों ने यह किया। इसी प्रकार से बेरु-पुरम में शाहबन्तू को जो एक परित्यक्ता थी, जिन पर एडलट्री का आरोप लगाया गया, उनको उनके पति ने पीटा जिससे वे बेहोश हो गईं। उनकी जमात के सब लोगों ने

इसका समर्थन किया। इस प्रकार का संघर्ष मुस्लिम समाज में चल रहा है। एक धर्म धार्मिकता के नाम पर बंधन लगाना चाहता है, दूसरा धर्म 21वीं सदी में जाना चाहता है। जब यह बिल आया तो सबसे पहले आपकी पार्टी के मन्त्रों श्री धरिष्ठ खान ने समा में क्या कहा, वह आज किसी से छिपा हुआ नहीं है। मैं उनको दोहराना नहीं चाहता ... (अवधान)। उन्होंने गलत कहा या सही कहा, इस पर आप क्यों चिल्लाते हैं। यह उनका जाति मामला है। इस प्रकार की दो घटनाएँ चल रही हैं। श्रीमती खोजिना मधुबा जो ने कहा कि हिन्दू कोड बिल का जब हर साल श्री ने समर्थन किया। लेकिन कांग्रेस के कई धरिष्ठ नेता ऐसे थे जो उसके पक्ष में नहीं थे। अगर समाज को परिवर्तन के पथ से जाना है तो उसके लिये नेतृत्व में शक्ति चाहिए। वह एक अच्छा काम था। उसका हम स्वागत करते हैं। इसी प्रकार का कदम अंग्रेजी राज में भी उठाया गया था। उस समय हिन्दुओं में यह प्रथा थी कि अगर पति मर जाता था तो पत्नी को उसके साथ सती होना पड़ता था। यह एक मध्यकालीन प्रथा थी। सती के प्रथा के विरुद्ध राजा राम मोहन राय ने जैष्ठ्य बोल दिया। राजा राम मोहन राय का विरोध करने वाले बहुत लोग थे, बहुत थोड़े लोग उनके साथ थे। समाज के कुछ प्रबुद्ध लोगों ने उनका साथ दिया और मठाधीशों ने विरोध किया। लेकिन अन्त में अंग्रेज सरकार ने सती प्रथा को बंद कर दिया। परन्तु क्या वह प्रथा बन्द हो गई है, यह मैं आप से पूछना चाहता हूँ ? आज भी राजस्थान के अंदर रानी सती, जो अपने पति के साथ सती हो गई थीं, उसकी पूजा होती है, उसका पाठ होता है, उसके मंदिर हैं। जगह-जगह पर कहाँ भी मारवाड़ी समाज रहता है, देखा

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के हर कोने में रानों सती के मंदिर बने हुये हैं जहाँ उसकी पूजा होती है। कानून बना हुआ है लेकिन इस तरह की घटनाएँ होती हैं। आज मुस्लिम समाज के सामने एक संघर्ष खड़ा है। जैसा मैंने निवेदन किया यह संघर्ष जो चल रहा है इस संघर्ष में मुस्लिम समाज को आप कौन सी दिशा देना चाहते हैं यह निर्णय आपको करना है कि आप उनको पाकिस्तान के जिन्ना की ओर ले जाना चाहते हैं या मोलाना अबुल कलाम आजाद की ओर ले जाना चाहते हैं, यह निर्णय आपको करना है।... (व्यवधान)

श्री (मोलाना) अख्तराख हक : भारत के मुसलमानों पर इस तरह का इल्जाम मत लगाइये। अगर भारत में रहने वाले मुसलमान जिन्ना की ओर जाना चाहते हैं तो अब्दुल हमीद पैटन टैंक न तोड़ते।... (व्यवधान)

श्री अश्विनी कुमार : उपसभापति महोदय, उनको कहने का जब मौका मिले तो वे मेरी हर बात का जवाब दें। जो बातें यहाँ पर कही गई, उनको मैंने शांतिपूर्वक सुना। मैं भी अग्रह करूँगा कि वे भी मेरी बात को शांतिपूर्वक सुने और अंत में शांतिपूर्वक उनका जवाब दें। व्यर्थ में भावनाओं में बहने का प्रयास न करें। मैंने जस्टिस कादर का उदाहरण रखा है। मिस्टर लतीफ का जो स्टेटमेंट है, आप सब जानते हैं कि उन्होंने इस बिल के बारे में बहुत स्पष्ट कहा है।... (व्यवधान)

श्री एम० हाशिम कदवाई (उत्तर प्रदेश) : आप किसी के मजहब पर हमला नहीं कर सकते... (व्यवधान)

Bill 1986—Passed

श्री अश्विनी कुमार : मैं आप के सामने टाइम्स आफ इंडिया 23-3-86 का उद्धरण देना चाहता हूँ। इसमें मिसेज रेश्मा मोहम्मद खां ने कहा है कि :

Sir, if the Bill was passed, it would be equivalent to signing the death warrant of women. A national referendum be held on the Bill in which all women must be consulted. She said, public meetings should be held in different neighbourhoods in order to build up this thing.

यह मुसलमानों के नेता कह रहे हैं ? किस तरफ आप मुस्लिम समाज को ले जाना चाहते हैं यह प्रश्न मैं आज के शासन से करना चाहता हूँ, न्याय मंत्री से करना चाहता हूँ, गृह मंत्री से करना चाहता हूँ और हमारे अनुपस्थित प्रधान मंत्री जी से करना चाहता हूँ कि वे मुस्लिम समाज को इसी सदी में ले जाना चाहते हैं या पाँचवीं सदी में ले जाना चाहते हैं, इसका उत्तर उन्हें तब करना पड़ेगा। मैंने अरिफ मोहम्मद साहब की बात कही। उन्होंने भी सीधे रूप से स्वयं नहीं कहा, वे बड़े-बड़े प्रोफेसर्स के पास गये उनमें से उन्होंने एक प्रोफेसर ने पूछा :

"But I ask you simple question" Arif said, "If a well-to-do husband throws out his wife and the wife has no way at all to keep her body and soul together other than to go about begging or selling her body, if her relatives cannot maintain her, if the Muslim community being poor cannot provide for her, and if we then ask the husband to give her at least a little bit so that she can keep her body and soul together, will we be contravening the Sharia? Will we be acting against the spirit of Kstebn <Sr acting in accordance with It?

The professor agreed that asking the husband to do so would be in accordance with the spirit of Islam, and that there would be no contravention of the Shariat?

यह उनका कहना है मेरा कहना नहीं है। आप उनसे बात कर सकते हैं। मैं केवल इतना ही नहीं इसके आगे भी कुछ बात कहना चाहता हूँ... (व्यवधान) ...इंडियन एक्सप्रेस 23-3-86 के अन्दर नूरानी ने डा० ताहर मोहम्मद को कोट करते हुये लिखा है कि :

"Dr. Tahir Mahmood is an ardent supporter of the Bill. But his observations in a recent press interview on March 6 reinforce the case for a comprehensive reform: "Everybody seems to be interested in post-divorce rights while they should be interested in the law of divorce itself. In 99 per cent cases of divorce by Muslim husbands in our country, the husbands flout the Islamic law itself. They exercise their right to divorce in violation of open provisions of Islamic law of divorce. If you can check that there is no need to regulate the post-divorce right of Muslim women. Actually the area which needs control and reform is the husbands' power to divorce."

यह मुसलमान नेताओं का कहा हुआ है। इसके बारे में आप को विचार करना है। इतना ही नहीं उप-भाषति महोदय, इसके साथ-साथ कहा जाता है कि शरीयत और कानून सारा एक है। बहुत से विद्वान मिल बैठें हैं। मैं अनभिज्ञ हूँ लेकिन जो 3-3-1986 का इंडियन एक्सप्रेस में छपा है वह मैं आपके सामने रखना चाहता हूँ :—

"According to Maulana Monam-med Farooq who is a member of tin Muslim Personal Law Board, where the laws contradict each other the customary laws are mandatory and prevail upon the Shariat laws."

यह लिखा हुआ है कि कस्टमरी ला शरीयत ला के ऊपर आता है। गोआ में भी इसी प्रकार की स्थिति है। अब आप कहेंगे यह नहीं हो सकता है। यह एक प्रश्नवाचक चिन्ह है। यह आपके सोचने का विषय है।

अब मैं आप के सामने यह कहना चाहता हूँ कि तलाक किस वर्ग में होता है। देश के अन्दर 1971 की जनगणना के हिसाब से 55 करोड़ जव आजादी थी तब 45 करोड़ हिन्दुओं की आबादी और 6 करोड़ मुसलमानों की आबादी थी। जनसत्ता 12-4-86 को शाहिद रहम साहब ने एक आर्टिकल लिखा है। मैं नहीं जानता कि यह कितना सही है या कितना गलत है, यह आप बतायें। परन्तु उन्होंने जो जनसत्ता में लिखा है मैं वह कोट कर रहा हूँ। उन्होंने लिखा है :

"तीन बड़ी और छोटी शरयी अदालतों में तीन करोड़ से ज्यादा तलाक के मुकदमें लंबित हैं।" आप बताइये। (व्यवधान) आपको पता होगा कि यह गलत कहा है या सही कहा है (व्यवधान) मैं तो कोट कर रहा हूँ, यह आप बताइये कि कितने मुकदमें हैं। (व्यवधान) आप बैठ जाइये (व्यवधान) सरकारी अदालतों में 70 लाख की सुनवाई बाकी है और शरयी अदालतों में एक हजार मुकदमें निबटाने के बाद 12 सौ मुकदमें और दर्ज हो जाते हैं। केवल कानपुर में 25 हजार मुकदमें बाकी हैं। (व्यवधान) अब मैं यह सब आप के ऊपर छोड़ता हूँ कानून के अन्दर कहा गया है कि अगर उसका पति नहीं दे सकता है तो नहीं देना चाहिये। मुस्लिम कानून के हिसाब से वह अपने रिश्तेदारों के पास जाएगी। मैं सारे देश में

[श्री अश्विनी कुमार]

मुसलमान जनता के बीच में घुमता हूँ। मैं जानता हूँ कि मुसलमानों के अन्दर बहुत खरीबी है और यह तलाक़ वगैरह इन गरीबों के अन्दर ही ज्यादा होते हैं, अमीरों में बहुत कम होते हैं। अमीर एक-दो-तीन-चार आदियाँ कर सकता है और उसमें रखने का साधन भी है और रख सकता है लेकिन जो गरीब होता है वह अपने पति के साथ दो-चार वर्ष रही, जीवन दिया सम्मान दिया तीन-चार बच्चे पैदा किये तो वह औरत निकल करके कैसे किसी रिसेटिव या सम्बन्धी के पास जाएगी? इसका सारा वर्णन आपके सामने आ गया है सम्बन्धियों को खोजने का। अभी मेरे मित्र ने कहा था कि हमने कानून में कहा है कि एक महीने के अन्दर दिया जाए परन्तु उसी के अन्दर यह भी लिखा है कि एक महीने के अन्दर नहीं होगा तो मेजिस्ट्रेट के सामने कारण बताना होगा। हमारे वहाँ मजिस्ट्रेट के पास जाने में ऐसे अच्छे जीनल व्युमिनेरीज हैं वह 10-10 साल तक मुकदमों खींच जाते हैं।

अब वक्फ बोर्ड की बात आती है वक्फ की क्या स्थिति है, कैसे बनते हैं मैं उन्हीं की भाषा में आपके सामने रखना चाहता हूँ।
From Syed Amer Ali, Mohammedan Law Volume I-1912:

"It has been held to be lawful for a believer to create a waqf but simultaneously lay down that the manager—the Mutawali—he appoints will pass the proceeds to me while I am alive and then after that to my child and my child's child and their race for ever where there are any* end only after that, the proceeds would go to the poor."

यह मैं कट कर रहा हूँ किताब से, मुझे पता नहीं कि यह कितना सही है। यह कार साहब बतायेंगे। यह वक्फ बोर्ड की स्थिति है और वक्फ बोर्ड के बारे में अखबारों में छपा है—(पंटी) बस मैं दो मिनट और जूंगा। अब यह 20-3-1986 के स्टेट्समैन में छपा है।

"In a remarkable gesture of generosity, the Delhi wakf Board recently raised the monthly stipend it gives to 20 odd divorced woman in the city from Rs. 29 to Rs. 30."

यह दिल्ली के वक्फ बोर्ड की कहानी है और मेरे बहुत सारे मित्र वक्फ बोर्ड के बारे में कह रहे थे। उन्हीं के अनुसार से इंडियन एक्सप्रेस में 13-3-86 को छपा है—

"Wakf boards are facing acute shortage of funds and whatever is left after payment of salary to the staff and other expenses, is not enough to indulge in charitable activities. However, this lack of funds can be attributed to mismanagement and corruption in a number of wakf boards."

अब मैं वक्फ बोर्ड के बारे में एक बात कहना चाहता हूँ। मेरे मित्र महोदय यहाँ बैठे हैं। इन्होंने इस सदन में जो कुछ वक्फ बोर्ड की चर्चा में कहा है, मैं वही बता देना चाहता हूँ। शांतिपूर्वक सुन लीजिये। यह मेरा नहीं है, मैंने ला रिपोर्ट नहीं की है। अखबार के पन्ने से कह रहा हूँ, इतनी ही मेरी गलती हो रही है।

MR. DEPUTY CHAIRMAN- please conclude aow. I am calling ^TM

SHRI ASHWANI KUMAR: Sir, I will just take two minutes. This is very Important.

अब कार साहब यहाँ बैठे हैं । इस बिल के ऊपर 23 जुलाई को राज्य सभा में और 27 अगस्त को लोक सभा में बहस हुई थी 1984 को—कार साहब फरमाते हैं, इस अवसर के हिसाब से—

*I feel that wakf properties have come into the hands of persons who, by exploiting religion, want to influence and overawe the Government.

They gave such clever persons, he said, that they are inflaming Muslim sentiments to further their personal interests, to fortify their hold on the chair. He spoke of a dargah in Kashmir whose income of Rs. 1 "to Rs. 1.5 crores was being used, he said, for political exploitation. The persons controlling wakf properties, he said, looked upon them and were using them as their personal property, as their jagirs."

यह बात मौलाना असगर अली खान ने कही है । . . . (व्यवधान)

श्री गुलाम रसूल कार : यह कौन-सी बड़ी बात है । चोरी कहाँ नहीं है इसमें सुधार लाने की जरूरत है, इसमें सुधार लाया जा सकता है । लाइये, क्यों—इसमें सुधार लाइये आप । लाइये वक्फ बोर्ड में सुधार करने के लिये आप बिल लाइये । . . . (व्यवधान)

श्री अश्विनी कुमार : मुझे अपनी बात कन्कलूड करने दें । यह सारी स्थिति जब हम लोगों ने कर दी है . . .

MR. DEPUTY CHAIRMAN: Now nothing will go on record, Mr. Sukul please.

SHRI ASHWANI KUMAR: * SHRI P. N. SUKUL; Mr. Deputy Chairman. Sir, I rise to support this bold and historic Bill which has been brought before us for our consideration by the young Prime Minister Shri Rajiv Gandhi and his Government. (Interruptions) They do not understand the import of the Bill. They either do not understand or they are deliberately making it controversial. Sir, there is no doubt that this is one of the most important pieces of legislation which has ever come up for discussion in Parliament in recent times. The last one was, perhaps, the National Security Act which was brought before the House in December, 1980. And thereafter this is the most controversial piece of legislation and the extent to which it happens to be controversial was proved in a big way this morning when for three hours points of order were raised one after the other by the opposition Members. Even in the case of National Security Act which concerned all the people of the country no point of order was raised and now here is a case only of divorced Muslim women and you are raising such a hue and cry.

What is really surprising for a man like me is that whereas you say that the Muslim divorced women, destitute women must be maintained by the husband or by the society, the Bill that has been brought is to translate that only. The Supreme Court of India in the Shah Bano case had agreed that the Personal Law of Muslims verses 241 and 242, did not make it obligatory upon the former Muslim husband to pay maintenance to his divorced wife beyond a period of iddat. Up to iddat period he has to pay and he should pay, and beyond the iddat period the relatives should pay who are in a position to inherit the property, if any. Now, suppose the husband does not maintain, other relatives also do not maintain by saying that they do not have money, then what will happen to them? What will happen to that woman if the Pec-

*Not recorded as order by the Chair-

[Shri p. N. Sukul]

sonal Law of the Muslims is not to be encroached upon.' And our Congress Party has from the very beginning given this guarantee to the minorities, to the Muslims, that their personal Law would never be touched. Our father of the nation, Mahatma Gandhi died for this in trying to preserve the rights of the minorities. If you go through the autobiography of Nathu Ram Godse who killed Mahatma Gandhi, he has said that he killed Mahatma Gandhi because Mahatma Gandhi, had told the Government to pay Rs. 55 crores to Pakistan. They did not want that the interest of the minorities should be protected. But our party has always guaranteed this, has always worked for this. Gandhi, Nehruji, Indiraji time and again have said that the right of the minorities will remain intact, we won't interfere. If you go into the debates of the Constituent Assembly, as our Minister was saying, there too it has been assured, our minorities have been assured of full guarantee to practice their own personal law.

Now the Supreme Court agrees that according to the Muslim Law this cannot be done, it is not obligatory upon the husband to maintain the wife and then it says that under section 125 of the Cr. P. C. the husband must maintain the wife and so he has to pay to wife a monthly sum regularly towards her maintenance. After that judgement there has been a lot of controversy on this subject and the views that have been expressed have come from three directions. Number one is the voice of the Muslims whom you call the fundamentals, they have repeatedly said the same thing that the Personal Law should not be interfered with. The other is the voice of the progressive element among the Muslims, as that side was speaking in the morning. Certain progressive elements among Muslims and also certain Muslim delegations said, no, this judgement of the Supreme Court is right and this question of litigation amongst women must be guaranteed

and there should be no separate law for Muslims. But there is a separate law for Muslims, their own Personal Law is there, not that we are bringing in something new. We are only saying, if you respect, if you regard the Muslim Personal Law, we are only making an arrangement whereby that divorced woman will be getting maintenance regularly and she will be maintained. Definitely, we are improving upon it. That is why I call it a revolutionary step. In the very beginning I said that it is a revolutionary step and I congratulate our Government for bringing in this piece of legislation for our consideration because we are really interested in the well being of the divorced and destitute women and we do not want them to roam on the streets and beg.

The views expressed by the third category are the views of Judges—like Justice Chandrachud or our Baha-rul Islam Sahab—who are of the opinion that there should be no two laws on the subject and the equality before law should remain intact even in the case of Muslim women. When the Muslim do not want it, the majority of the Muslim do not want it, what can we do? It is for the Muslims alone to try to evolve a better law. If necessary, but we cannot force them to accept something. That is why this law has been brought forth for our consideration so that Muslim personal law is not encroached upon, is not abridged and simultaneously the Muslim divorced women are able to get maintenance either from their relatives or from the Wakf Board as the case may be.

In 1979 and 1980, there were some judgments by hon. Justice Iyer in similar cases and almost same judgements by hon. Justice Iyer in hue and cry was raised because at that time it was a Question merely of interpretation of Section 125 Cr. P. C. Today, the judgement that has come from the Supreme Court, talks of conflict in principles and when we talk of principles our main principle is to keep the personal law of minorities

entirely secure and intact. We must have proper regard for that.

So, as I said, it is only for keeping the sanctity of the Muslim personal law that a via media is being evolved through this legislation to arrange to have maintenance for the Muslim divorced women paid by the society. If the husband does not pay, naturally someone has to pay. Then who is to pay? According to this Bill, the relatives who are going to inherit her property. And among relatives also there is an order of precedence. If the children are there and they are earning, the children will be called upon to maintain their mother and if the children also cannot do it then the parents, if they are alive will be asked to maintain their daughter. And of the parents as well as the children refuse to maintain her, either because of their economic condition, or because of their attitude, then what will happen? Then the Wakf Board will be asked to maintain that woman. There are many who think that the Wakf Board may not be in a position to pay. The condition of Wakf Boards as present in our country is not very good. For example, the Delhi Wakf Board has to look after 456 burial grounds, 765 mosques, 160 darghas and 151 mausoleums. Naturally someone may think that if the Wakf Board which has to maintain so many buildings and so many schools has to pay for Muslim divorced women then how can it do it? Where will the funds come from? I think the Government will perhaps be giving adequate grants to Wakf Boards to meet this exigency. So there is nothing wrong about it. Mr. J.D.endra was saying that a consensus has not been taken. But he himself contradicted his own statement by saying that the Prime Minister wanted to have consensus from amongst Opposition parties. Our Prime Minister consulted various mullahs and leaders of the Muslim community whose say matters in such matters and it is only after due consideration at all levels that this Bill has been brought. Maybe this Bill may also create some problems. I fail to understand how it will create any

problem, but supposing some problem comes up, then it can be improved upon, we can certainly bring about an amendment.

So, Mr. Deputy Chairman, Sir, it is a very good piece of legislation—as I said, a revolutionary piece of legislation. Our Government, in fact, deserves bouquets for having brought this legislation for our consideration. I support this Bill wholeheartedly and also appeal to all members of this House to pass it unequivocally.

MR. DEPUTY CHAIRMAN: The Hon. Home Minister will intervene now.

THE MINISTER OF HUMAN RESOURCE DEVELOPMENT AND HOME AFFAIRS (SHRI P. V. NARASIMHA RAO): Mr. Deputy Chairman, Sir, I shall be very brief because there is no need after such an exhaustive debate to repeat what has been said. I think the lines are clear, where the opinions differ is also clear. But there is one aspect to which I would like to draw the attention of the House and, so far as I have been able to listen to the speeches, that aspect has not been fully brought out.

Sir, there was a section 488 in the Cr. P. C. which concerned the duty of the husband to maintain his wife or the father to maintain his children. As section 488 stood there was no mention of any divorced wife and therefore we all knew how it worked. We worked in the courts and we took it as a rough and ready method for giving some relief to the wife in whose case the husband has failed to do his duty. and similarly for the children. Came 1973 and we had a new legislation—the same Cr. P. C. brought up to date. altered in several respects and the whole of section 488 was incorporated as 125. While that was being incorporated, because circumstances had changed, because divorce laws had come into being, because along with wives, divorced wives also became a concern of the State, an amendment was made. The definition of "wife" was widened so as to include a divorced wife. That was

{Shri P. V. Narasimha Rao] in section 125. As is well known, the Bill was first introduced in the Rajya Sabha. It was passed by the Rajya Sabha. It went to the Lok Sabha and at some later stage during its passage in the Lok Sabha, a very strong representation from the Muslim opinion in the country was made to the Prime Minister, to the Government, and naturally to Parliament. The matter was gone into. There had been a standing commitment on the part of the framers of the Constitution, and starting from them right up to 1973, that rights of the minorities or the personal law of the minorities would in no way be interfered with by legislation or otherwise. So, basing *me* representation on that longstanding commitment which was never departed from nor diluted in any form, a demand was made that this provision of including the divorced wife in the definition of the "wife" should be done away with and they should revert back to the provision which was the original one as section 488. Now this is a matter of knowledge. It is a matter of general knowledge. Most of us know it, that the then Prime Minister, Smt. Gandhi was not prepared to revert back. But at the same time she also reiterated her stand that, as was committed *rwVif f>wT! t>i< Vio^riTv^CT f th?ro* was anything that was coming in the way of the personal law of Muslims, that should be looked into, and that should be obviated. So, after long deliberations, a compromise formula was found, and that was incorporated as section 127(3) (b) which very clearly controls the operation of section 125. It was said, "O.K. She could go to court under section 125 but subject to 127." While making this provision, it was not confined only to the Muslim personal law. It was generalised. There was no reason why we should not generalise. When you say, under her personal law, the wife's or ex-wife's personal law, if she has received what she had to receive under the personal law then, there is no need of her invoking section 125.

So, it was generalised. Furthermore, not only personal law but customary law also was included for very good reasons very valid reasons.

We know in this country that irrespective of religion, irrespective of community, divorce is not so uncommon, not under law, but under custom. In our areas we know that. Go to any village and make an analysis of the population. Apart from few castes the upper castes, all the others take a very relaxed view, of these relations. They have a caste panchayat. That panchayat goes into all cases of divorce. They also decided the conditions subject to which the divorce is to be granted. So, practically everything that a court decides, is decided by a caste panchayat. This is known to all of us. So," it was very advisedly said that when a divorced wife has received whatever due to her under her personal law or customary law, then, there is no question of section 125 continuing to be applicable. Whatever had been given, would be cancelled or whatever the consequences, they would follow.

Now, Sir, the crux of the matter is this. How did section 127(3) (b) come to be incorporated in the law? This is what we have to consider, if we have to go back to the intention of the Legislature, why it came, it came because there was a commitment right from the beginning that the personal law would not be interfered with. Not only personal law of Muslims but personal law as such would not be interfered with. In that particular case, the Muslims raised it, the Muslim opinion raised it. And while the amendment was incorporated it was widened so as to include everybody. This is what happened.

Sir, from 1973 to 1985, for 12 long years, this law has been on the statute book. How many have got relief? We are not concerned with that. What kind of relief they got we are not here concerned with that. As Parliament, the Government, we are concerned now only with one aspect.

what happened to our commitment. We said, we are not going to interfere with the personal law. Therefore, we brought section 127 (3) (b). If there had been no Shah Bano Case, we would have been merrily continuing with 125, 127. Nobody would have even thought about it. The matter would never have come to Parliament. There would have been no question of further legislation on it. Maybe, at some future date, after ten years or fifteen years, any uniform civil code etc., those matters contained in article 44, would have come in their own good time. There was no question of our undertaking a legislation. Now we have to undertake a legislation because there was a judgement of the Supreme Court.

The question is what do we do? The Supreme Court has given an interpretation which went against the intention of this very Parliament of 12 years ago. The speeches are there. Mr. Ram Niwa_s, Mirdh_a himself piloted the Bill. He himself made all these commitments. It is we, ll-known that all these negotiations were carried on when the matter was raised in the second House, in the House to which the Bill passed originally here went. And at that stage it was incorporated as an amendment and as an earnest of the fact that Government and the Parliament do not want to do anything by way of legislation which would interfere with the personal law of anybody—any personal law or any custom law. So, that was the spirit of it.

Now what are the options open to us? Shall we say as has been suggested: all right the Supreme Court has struck it down, why should you poke your nose? You keep quiet. You look the o'her way. You think that nothing hag happened. And if the Mulims come and ask you, you say we have not done anything. We passed the law. What else can we do? If it is the Supreme Court, we cannot help it. But in all conscience can we say we cannot help it? It is another matter if

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the Parliament come_s to the conclusion that the Supreme Court was right. It is another matter that Parliament comes to the conclusion that between 1973 and 1985 something has supervened which justifies a complete change on the part of the Government. That is another matter. If the intention of the Legislation is that this has changed completely and the intention of the Legislature today has to be something else diametrically opposite, then I can say, yes, you go into the case, go into the merits and do what you like. But the point is so long as we do not come to that conclusion, so long as we think that the conditions of 1973 exist today, so long as we think that the commitment which Parliament and the Government had given—because this Bill mind you, was passed unanimously by everybody, there was no question of any party saying no to this, which means that something was being observed by all parties—we have to say either we restore the intention of the Legislature of we say that the intention of the Legislature has changed. Now, in the eyes of the Government—and if I may submit in the eyes of the Parliament also—there is no justification to come to the Conclusion that there is any change in the circumstances which warrant a chan-^vge in the intention of the legislature as was unequivocally -expressed in 127(3) (b). Otherwise what will people say? What will the minorities or those who are affected say? They will say "Oh you passed in 1983 a law about which you were not sinceft-e. The moment the Supreme Court in one case set it aside, you have started looking the other way. You don't come to the rescue of those whom you did want to help in 1983." So what has changed between 1973 and 1985? This is what we have to look into. If hon. Members could direct their attention to this, this is crux of the whole matter, I feel and the Government feels that today Wo are in no position to say that there has been anv such sea-change that all the intentions of the Legislature, as expressed in 1973,

Now, here again there could be a difference of opinion. Some friends think that the time has come, when the Muslim population of India feel that there should be a change and that our commitment of 1973 should be reversed. We should go back on that commitment. This is the opinion from the other side. I may have spoken to some Muslims—he has spoken to some—Mr. Upendra has spoken to 3 Muslims, that kind of arithmetic is not going to help. If it is your opinion that an overwhelming majority of Muslims want it, you say so. It is the opinion of the Government that an overwhelming majority of Muslims are for this Bill. This is our considered opinion. This is our assessment. *(Interruptions)*

SHRI P. V. NARASIMHA RAO: It is not a question of my thinking. I am very clear in my mind. Those are the facts. After consulting them, we came to some conclusion. We think that conclusion is correct. Even if we err in our conclusions, heavens are not going to fall by passing this Bill.

SHRI P. V. NARASIMHA RAO: I will tell you about referendum also. Please recall the Hindu Code Bill of the time of the elections of 1957. Whatever had been done, it created a raging controversy in this country. Then came the elections of 1957. At that time I happened to be here in Delhi just a month or before the elections. There was a Hindi film produced by, I do not know who, but we saw that film in a theatre called 'Golcha' somewhere near Chandni Chowk. I do not know whether the name of the theatre has been changed as they do so often. It was a film which was supposed to bring all the evil of the Hindu Code Bill. It was a three hour film. It was fully utilised against the Congress party. We in the South were also in the election fray. We read in the newspapers even Pandit Jawaharlal Nehru's election was in jeopardy. We were worried.

SHRI M. S. GURUPADASWAMY: May I say, I was a Member of the Lok Sabha then. There was a raging controversy against the Bill, but all the political parties supported the Bill, because it was a progressive measure.

SHRI P. V. NARASIMHA RAO: It is not a question of political parties. It was a question of some people taking advantage of the Hindus sentiments...

SHRI DIPEN GHOSH: You cannot compare a progressive measure with a retrograde measure. *(Interruptions)*

SHRI P. V. NARASIMHA RAO: Let me have my say. Let me finish. Sir, this Sanatan lobby at that time was so active, which party was behind it, which party wanted to reap the harvest, I would not like to go into the details.

SHRI DIPEN GHOSH: They have simply changed the sides. The Sana-tan lobby who were opposing the Bill at that time, are supporting you. You know that the same Sanatan lobby belongs to Muslim obscurantists.

SHRI P. V. NARASIMHA RAO: Only the difference is we have our own assessment. We stick to our assessments. There is no question of your arithmetic changing ours. Only time will show. May be a time will come when it will be possible for us to verify in a more verifiable manner what the Muslim opinion in this country thinks about this Bill, but at the moment, we are convinced, this party is convinced, this Government is convinced that an overwhelming of Muslims are for this Bill. If we had not brought it, we would have gone back on our own commitment. This is one point. *(Interruption)* The other point is this. *(Interruption)* . Will you kindly listen to me? I did not disturb anybody. I was not in the slinging match at all. *(Interruption)* .

SHRI GULAM RASOOL MATTO: Sir, no Muslim Member in this House or that Houpp has opposed this Bill. (Interruption) .

SHRI BAHARUL ISLAM (Assam): Sir, some hon. Members have mentioned my name. Kindly allow me to make my point clear. I am supporting the Bill.

SHRI GURUDAS DAS GUPTA: H_e is supporting under duress. (*Interruption*).

SHRI P. V. NARASIMHA RAO: Sir, I have disposed of one aspect of the matter. There is another aspect which is connected with it. Now, I am talking from the point of view of *Reduction ad absurdum*. Suppose, we have any difference with the purport of this Bill. Do we have to take cover under the Supreme Court decision? That is not necessary. That is not done. If Parliament has an opinion and that opinion changes over time, it is for Parliament to bring the change. So, let us first set right what the Supreme Court has set wrong. After that, Parliament is supreme. After that Parliament is supreme. After that, on the substantive side if any change have to be brought and if you think the Muslims are ready for it, the country is ready for it, the party is ready for it, let us go in for it. But let us not take cover. This is a very wrong way of doing things. The Supreme Court cannot substitute Parliament. They can only interpret. They have given an interpretation which according to us and according to this Parliament is not correct. Therefore, let us put it right. This is the limited aspect. But at the same time, we have not just said, "We put it right; let the woman go where she wants". We have gone further. We said: all right, if section 125 is not available, what else is available? We went into the positive aspect. We delved deep into her personal law. We found, to our great delight, that that personal law is so liberal that every Muslim woman, under whatever circumstances, has a place in the sun under Islam. We have studied the Mohammedan Law. We have studied it inside out. And whatever

[Shri P. V. Narasimha Rao]

we have studied convinced me that perhaps the Muslim Law is more liberal even when it started, because, historically speaking, the Muslim Law or Islam was a reaction against certain obscurantist practices. Those practices did not allow any woman to come up in life. If a female child was born, it was strangled. Those were the practices in that society, and Islam was the correct reaction to that. So Islam became more liberal to Muslim women, to women in general.

SHRI K. MOHANAN: But beyond practice?

MISS SAROJ KHAPARDE (Maharashtra): They do not believe in God. Their god is the sickle and hammer. What is the message of their discussion this? (Interruptions)

MR. DEPUTY CHAIRMAN: Don't have a running commentary. (Interruptions).

SHRI P. V. NARASIMHA RAO: Therefore, this is the second aspect I would like to place before the House. This is not the end of the story. Parliament is supreme. Having set right something which we consider wrong, which we consider as going against our intention, we can in good time think of what substantive aspects to legislate upon. That is always open to us. Sir, this, I think, is a very important aspect. It is not just the Government, not just the Law Minister; I feel that it is as much a commitment of Parliament in this case as of the Government. Now, for the rest, you are the masters.

MR. DEPUTY CHAIRMAN: Shri N. E. Balaram. You have 12 minutes. Please confine yourself to the time given.

SHRI N. E. BALARAM: Sir, I rise to oppose this Bill because after reading the Bill, I find that this Bill is viola-

ting our Constitution, is violating human rights, thereby undermining the secular character of our State and finally is denying the divorced women the right to maintenance.

[The Vice-Chairman (Shri R. Rama-Krishnan) in the Chair].

So a person with some democratic sense cannot support this Bill. I do not think anybody can support this Bill. It is such a reactionary measure. That is why I said that I am opposing this Bill.

Now the arguments advanced by my friends on the other side are mainly two, as explained by the Home Minister and the Law Minister. Their main point is that they are compelled to bring such a law because the Muslim public opinion is such that a change is needed in the Criminal Procedure Code that was passed in 1973. It requires amendment. That is the solution to this problem. I would like to say that, first of all, even if you pass this Bill, I don't think that the problem raised after Shah Bano case can be solved. I must say frankly that the Muslim friends who are supporting this Bill, all of them are not fundamentalists. I would like to know the attitude of the Government. Only a section of the fundamentalist Muslims are there in India who have raised this question against Shah Bano case and they have conducted a big campaign among the Muslim people. Is it not a fact? Why do you deny that? I was listening to the speeches of all Congress Members at that time. None of them have uttered a word against the danger of fundamentalism and the danger to secularism, prevailing in the country. I think there was an agreement among all the secular parties that the integrity of the country should be maintained. The danger of fundamentalism should be fought out. I think much agreement was among all the secular parties. It is not the duty of only one party, of any one single party. You were talking about public opinion. The honourable Narasimha Raoji was repeatedly saying, the Law Minister has also saying the same thing

that 99 per cent of the Muslim public opinion is in favour of this Bill. Shall I tell you some other facts? The Law Minister himself said that in a large number of Muslim countries they have already changed the Muslim Personal Law. ...

SHRI ASOKE KUMAR SEN: I didn't say all; I said some.

SHRI N. E. BALRAM: But this is India. We cannot do it here because public opinion is such. That is the argument. I can tell you that you are only listening to the public opinion of certain quarters. Public opinion is building up in some other quarters also in some other direction. I can give you one example. Recently in Lahore—you know where Lahore is—there was a seminar organised by Muslim women participating from nine countries. There were about 1000 Muslim women participating in that seminar at Lahore, organised on the question of Muslim women's problems. What were the points discussed there? One of the items discussed was the question of maintenance. *(Interruption)* Dr. Najma Haptulla would please listen to my speech. She seems to be busy otherwise. Ten hundred Muslim Women from nine countries, most of them from Muslim countries, held a "Seminar in Lahore three weeks back. What was the decision? It appeared in the newspapers. What have they to say? The Muslim women from Algeria, Bangladesh, India, Malaysia, Pakistan, Philippines, Tunisia, Sri Lanka have all jointly condemned the Bill recently introduced in the Indian Parliament. It is not a conference held by Communists. You know there were people who were accusing the Communists. No this is a non-communist Muslim women's conference who have condemned the Bill introduced...

AN HON. MEMBER: Pakistan?

SHRI N. E. BALRAM: No, you are not listening to this side...You are only listening to the fundamentalists. This conference was held by Muslim

women from nine countries. This was published by Mr. Karanjia. It says:

"The Bill introduced in Parliament recently exempts the Muslim women from section 125 of the Criminal Procedure Code. If this Bill is passed it will deprive the Muslim women of their right to maintenance on divorce. We strongly oppose the proposed Bill as it is against the spirit of Islam which is based on the beings before God, not before hammer and sickle" and under verse 243 in the Koran, "I am not a student of the Koran, but this is what they have said"—for divorced women maintenance should be provided on a reasonable scale and it is the duty of the righteous. We, therefore, strongly urge the Indian parliament to reject the Bill."

This is also public opinion. *(Interruption,)* This is also public opinion.

DR. (SHRIMATI) NAJMA HEPTULLA: Just a minute. You took my name and you also mentioned the name of a country. So, I have to say something.

SHRI N. S. BALRAM: You please sit down, your case is coming up. I am coming to your case. Please sit down. I am coming to your case and I will give you a chance, I will ask you a question and you answer. *(Interruptions)*.

DR. (SHRIMATI) NAJMA HEPTULLA: Sir, I ask your protection. He mentioned my name.

SHRI N. E. BALRAM: You please sit down, Dr. Najma. Please sit down. I am coming to your point.

DR. (SHRIMATI) NAJMA HEPTULLA: Sir, I am on a point of clarification. He took my name. Otherwise I would not have got provoked. That is what I have learnt in the six years of my being a Member of the Rajya Sabha. You mentioned my name and

[Dr. (Shrimati) Najma Heptulla] you took the name of a country called Pakistan. You also talked of the progressive Muslim women. I would like to remind you that it was only these progressive the so-called progressive, Muslims who invoked the sentiments of the Muslim, for the partition of India and you are talking about them. (*Interruptions*). Please let me speak. It is only people like me who stood for the unity of the country. You should know this. You are calling me a fundamentalist.

SHRI N. E. BALRAM: I am not yielding.

OR. (SHRIMATI) NAJMA HEPTULLA: It is only there progressive people and not the fundamentalists who divided the country. (*Interruption*).

SHRI N. E. BALRAM: I am talking about your leaders and your Ministers. Anyhow, what I am saying is that this conference was a conference of Muslim women and it was an international conference and Muslim Women from various countries participated. So, what I am pointing out is that you are depending on one kind of public opinion. (*Interruption*) This is my opinion I ask you one question. The honourable Minister may kindly listen to me. Why did you introduce this Bill in such an ugly haste?

SHRI K. VASUDEVA PANICKER (Orissa): Mr. Balaram....

SHRI N. E. BALRAM: I am coming to you

also and then to Najma.

SHRI K. VASUDEVA PANICKER: Mr. Balaram, may I remind you that your leader, Shri Achutha Menon, argued out a case, to ally against what you are saying here at Trichur in a seminar where the former judge. M. Justice Krishna Iyer, and others were there. They had participated in that seminar. It was totally against your argument which you are placing here. If you have read that article. I will give you that article.

SHRI N. E. BALRAM: I am coming to your point. What I am saying is that if this is the kind of public opinion that you are depending upon and if this is the reason for introducing this Bill, we would suggest one idea to you. Why do you not circulate this Bill for debate inside the country. (*Interruptions*). Let us have a democratic debate. Let us have a democratic debate in this country. In that case, my party will give you hundred per cent support. Are you prepared for this?

SHRI J. K. JAIN: What is going on here now? Is it not a democratic debate? What is going on here is not democratic? Is it not democratic? (*Interruptions*).

SHRI NIRMAL CHATTERJEE; Mr. Jain, it is impossible for you to understand.

SHRI N. E. BALRAM: This is my suggestion.

No. 2, I am not only opposing the Bill; I am opposing the political approach of the Congress Party, towards the Bill. That is my point. Why should I say this? I can give you one example. Sir, recently one Central Minister, Ansari, had a tour in Kerala to propagate in favour of this Bill. The Congress Party had convened a meeting of all the Muslim MPs, and Muslim MLAs to give them the directive to propagate in favour of this Bill. (*Interruptions*) I am talking of the Press report.

श्री (मौलाना) अस्तरादत हक :
भाई आपको मालूम होना चाहिये कि लखनऊ
में... (व्यवधान)... कि यह पास होना
चाहिये ।

SHRI N. E. BALRAM: Mr. Aswani Central Minister, made a tour of Kerala, and, you know, what he spoke at a public meeting in Calicut? He spoke that those people..

(Interruptions) He spoke in that public meeting and Mr. Panicker.. (Interruptions)

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN); I can only appeal to the hon. Members that you allow the speakers to speak. When your turn comes, you meet the points. Otherwise there will be more heat than light and more sound than fury.

SHRI N. E. BALRAM: I am quoting he said: The opponents of this Bill are worse than animals. (Interruptions) This is what he said in the public meeting. Is this the culture of Congress? A Central Minister was going to propagate... (Interruptions)

श्री (मौलाना) अस्तरुल हक:
यह गलत है।... (व्यवधान) इसको रोकार्ड
मे से निकाल दिया जाए। न हमारे
लीडर न हमारे प्रधान मंत्री और न ही
हमारी कांग्रेस सरकार कभी ऐसा करती है।

AN HON. MEMBER; He should substantiate what he has said just now. (Interruptions)

SHRI N. E. BALRAM; I am very old. My voice is not that much strong. I cannot speak in this atmosphere. So I am leaving that point. I am talking of the public opinion. It is baseless; it is unfounded. I tell you: Please circulate this Bill for the public opinion, to elicit public opinion. Come back and we can discuss it in future. The cat came out of the bag. When hon. Minister Narasimha Rao spoke. Sir, he spoke... (Interruptions) In 1957 when the Hindu Code Bill was being discussed, he said, in 1957, when the elections were taking place they were very much worried even about the seat of Pt. Jawaharlal Nehru. The cat is out of the bag. This is a political approach. This is the political approach which I am opposing. Again you are thinking of elections, how to get votes. What are you doing? You are compromising on fundamentalism.

SHRI (MOLANA) ASRARUL HAQ:-
Sir... (Interruptions)

SHRI K. MOHANAN: Every time I he is disturbing. Take him out. (Interruptions)

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Order please. Have you concluded?

I
SHRI N. E. BALRAM: I have not concluded. I have got three points.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): I will give one minute more.

SHRI N. E. BALRAM: I would like to remind you that this is the first time in the life of this Parliament after the attainment of freedom that a Bill has been introduced solely based on religion in relation to the Criminal Procedure Code. This is the first time that there is such a Bill exclusively based on religion. What do you talk about secularism? I can understand if you say that you are compromising with the fundamental fundamentalists on this question. If you frankly say that, I can understand it. But you are not doing it.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Next speaker. You have already taken your time.

SHRI N. E. BALRAM; I would like to ask three questions. Only three questions.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Put your questions.

SHRI NIRMAL CHATTERJEE: The discussion on the Bill is not a matter of putting questions only, when the Minister was speaking, I very clearly remember that he said that the time of interruptions should be excluded from his time. It should be done in this case also.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Mr. Chatterjee,

[Shri R. Ramakrishnan]

the time allotted to the C P. I. is 12 minutes. He started at 8.58 and now it is 9.17. He has already taken 19 minutes. If we exclude the time of interruptions, he has already taken more than that.

SHRI N. E. BALRAM; I will put the questions. Muslim personal law is not confined only to the problem of maintenance. It covers, according to my understanding, a number of problems. The offences against socio, economic matters have been made cognizable and are not subject to any religion as in Article 25(2) of the Constitution. Why should not the offences against the rights of women be treated accordingly. This is my first question.

Secondly, all of you secured very much worried about Section 125 of the Criminal Procedure Code. That section is not at all compulsory. It does not ask any divorced woman to file a petition. It does not compel any woman. Why should they not explain to their people not to go to the court? If it is so much fundamental to them, why don't they go and ask your own people not to go to the court? Why do you amend the law? I do not understand this thing. Had it been a compulsory law, I would have understood. But it is not at all compulsory. (Interruptions).

My third question is more important. Is the hon. Minister of the opinion that the present Bill will be more helpful to the divorced women than Section 125 of the Criminal Procedure Code? He is not sure of that. They are wobbling on that problem. I want a straight forward answer. His own amendment adopted in Lok Sabha shows that he is aware of the inherent defect in the substance of the protection afforded by the new Bill.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN); You have already put your questions.

SHRI N. E. BALRAM: If the ex-husband agrees that the divorced woman can seek the help of Section 125, it is a strange logic. Is it going to happen? Sir, I conclude.

SHRI GHULAM RASOOL MATTO. Sir I am on a point of order. My point of order is this that it was announced that the voting will take place 10 o'clock. But...

SOME HON. MEMBERS; No, no.

SHRI GHULAM RASOOL MATTO: There are so many speakers who have yet to speak. If the Lok Sabha sat up to 3 a.m., we shall not surrender our right to sit till we get an opportunity to speak on this Bill. (Interruptions)

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): I only appeal to the hon. Members that you please co-operate and you please do not disturb. Otherwise, We will have to sit even till 5 in the morning.

SHRI NIRMAL CHATTERJEE-. Let us sit up to 5 a.m.

THE VICE-CHAIRMAN (SHRI K. RAMAKRISHNAN): The object is not to sit; the object is to have a meaningful and purposeful debate. (Interruptions)

SHRI NIRMAL CHATTERJEE: Sir, you please assure Maulana Asrarul Haq that he is not to be worried. His right to Zaq is not taken away.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Shri Darabara Singh-not here. Shri Valiullah. (Interruptions)

SHRI RAOOF VALIULLAH: Mr. Vice-Chairman. Sir, I rise to support the Muslim Women (Protection of Rights on Divorce) Bill, 1986 brought to this House by the hon. Law Minister. Sir, the object of this Bill is to protect the rights of Muslim

women who have been divorced "y or have obtained divorce from their husbands. Sir, this Bill is not only | in consonance with the spirit of the Constitution and the wishes of the , Muslims of this country but also an instrument that would ensure a better deal to the divorced Muslim women.

Sir it is a very simple hill for a simple matter concerning rights of divorced Muslim women. The Bill seeks to mollify th_e apprehensions of the minority community in the country. But a certain section of the people is determined to polarise the people of the country on communal lines, taking advantage of this Bill and creating misunderstanding amongst the majority. Sir, it is a question of the biggest minority in the country. And the Congress Party which has inherited a long-established traditions of a secular, socialist and democratic India only seeks to strengthen these ideals. Sir, i am surprised at the Oppositon propaganda that the Government has surrendered to fundamentalists and obscurantists and all that. But by so saying they do not know that they are themselves helping those who are fomenting communal trouble and encouraging the sinister forces who are at work to destabilise the nation. Sir, o_n this very issue, some Opposition parties have gone to the extent of fomenting communal trouble in some parts of the country. Sir, I, therefore, say that this Bill has been brought at an appropriate time. Sir, this Bill only seeks to clarify the existing law on alimony and it is nothing more. If it does any thing it gives more protec tion of rights on divorce to Muslim women. Sir, when the Cr. P.C. was passed 13 years ago, an objection was raised on behalf of the Muslims with regard to sections 125 and 127 including sub-section (3) of section 127. It was argued that the law about alimony is contained in the respective law for the Christians, the Indian Divorce Act, the Hindu Marriage Act and for

the Muslims their own personal law. According to the Muslim personal law, the obligation to maintain an ex-wife lasts only up to the iddat perio'l and that beyond this period the obligation reverts to the original family. Sir, at that time the stand of the Government was and it was very correct that no Muslim person should be offended because under section 137 sub-section (1) the moment a person discharges his oligation under the personal law, the order under section 125 will cease to be operative. Therefore, there is an in-built provision in this very Cr. P.C. whereby the personal law of the husband concerned was made the determining factor for the continuance of the order unde_i section 125. It was also argued that if the husband discharges his obligations under the Muslim personal law, he should not be burdened with any obligation to maintain beyond the Iddat period as it will go against the Shariat. Sir, when the matter came before the Supreme Court in Shah Bano's case, the lady, after her divorce, claimed maintenance under section 125. The judgment of the Supreme Court created a great apprehension in the minds of the Muslims because the judgment was quite at variance with the Shariat. The Muslim Ulemas and other leaders from the Muslim community met the Prime Minister and represented the feelings of the Muslims. Sir, I am thankful to the hon. Prime Minister and the hon. Law Minister for coming to this House and bringing this Bill so that the apprehension amongst the minds of the people particularly the Muslims is cleared.

Sir, the Muslim masses will" be grateful to the Law Minister and to the hon. Prime Minister. Sir, the Government as rightly pointed out by the hon. Law Minister could not possibly be blind to this apprehension on behalf of the largest minority ia the country Sir, it said that if section 125 was given the meaning as the Supreme Court.s judgment then

[Shri Roof Valiullah]

according to the Muslims it is completely repugnant to Muslim personal law in the Shariat. Sir, I also appreciate the liberal approach that many of our hon Members and colleagues not only from this side but also from the other side have in this matter. But as a party in power the Congress cannot ignore the voice of the vast majority of the Muslims in this country and I also want to refer to the allegations that the Bill seeks to keep the Muslim

women out of the ambit of section 125. I want to say that it is not so, Section 125 will apply and oblige the husband to maintain his divorced wife up to the Iddat and after the Iddat the parents and other relations according to the Koran and Hadith are to maintain the wife. The issue is not whether this is right or wrong. In the light of the Supreme Court Judgment, the only point is, how the Muslim community views it. Sir, the point I want to raise is, the Muslim personal law is linked with our religion and I, therefore, request the hon. Members to view it from that angle also. Sir, all minorities in the country must be assured that they can lead their own life and the reforms in the Muslim community must come from within the community itself.

Sir, I would like to caution the hon. Members that already the debate on this Bill has created an impact on the political life of this country and here, in this Parliament, we have to be balanced in our pronouncements in order to create a peaceful atmosphere. Therefore, I lend my wholehearted support to this Bill.

श्री सैयद अहमद हाशमी (उत्तर प्रदेश) : वाइस चेयरमैन साहब, पहले तो मैं इस बिल के मुताल्लिक यह कहना चाहूंगा कि यह सिचुएशन का रिएलाइजेशन है। सुरतेहाल का हकीकत पसनाना एतरफ है और मैं इस बिल को तार्ईद करता हूँ। लेकिन हमने जिस तरह की बातें इस हाउस में सुनी है अगर इस तरह के हालात मुल्क के अन्दर पैदा किये गये हैं। इससे मेरे नजदीक यह सवाल पैदा हो गया है कि सैकुलरीज्म की तहरीफ जो हिन्दुस्तान की माइनारिटीज के जहन में बी क्या आज वो तहरीफ तबदील हो गई है और आज सैकुलरीज्म वो है जो इस मुल्क के बाज लोग डिक्टेट करना चाहते हैं। जो इन्टरप्रीटेशन हिन्दुस्तान के कान्स्टीट्यूशन के वक्त था। इस वक्त यह समझा गया था कि सैकुलरीज्म इस मुल्क के अन्दर सभी माइनारिटीज को एतबार में लेने वाला और इन्हें बगैर किसी मदाखलत के प्रोवेटश देने वाला है। आज एक बहुत ही मामूली मसला था मुसलमान तालाकशुदा औरतों का। लेकिन मुखालफत इस बिल के मैं समझता हूँ कि हिन्दुस्तान में मुसलमानों के साथ कोई इंसाफ नहीं है। मेरा ख्याल है कि जो लोग इस बिल के मुखालफत कर रहे हैं। इनके दिमाग में या तो बदगुमानी है। इस्लाम ने औरत के मकाम को गिराया है। यह बराड नगरिये के मुताबिक इस मुल्क की माइनारिटीज को इनके नजदीक इस मुल्क में रहने का हक नहीं है और इन्हें बर्दाश्त नहीं करना चाहते। मैं समझता हूँ कि शायद यही नजरीये इन लोगों के दिमागों पर भी हावी हो गये है।

जो इस मुल्क के अन्दर सैकुलरीज्म का नारा लगाते हैं। या प्रोग्रेसिव नारे लगाते हैं। लेकिन यहां सूरतेहाल यह है कि आज इस मुल्क के अन्दर इसबिल के लाने से न सिर्फ मुसलमानों में बल्कि मुल्क को जो दूसरी माइनारिटी है अकलियते हैं एक भरोसा पैदा होने में मदद मिली है। क्योंकि मजमुई तौर पर इनके अन्दर एक फेयर काम्प्लेक्स खोफ पैदा हो गया है और उनको डर है जिस तरह कुछ लोग इस मुल्क को चलाना चाहते हैं इन हालात में इनको यहां रहने और जीने का हक भी दिया जायेगा या नहीं। मैं समझता हूं कि यह मुसलमानों का ही मसला नहीं है बल्कि मुल्क की तमाम मजहबी व लसानी अकलियतों का मसला है। एक तकरीब के अन्दर मेरे एक गहरे दोस्त जो जैनी हैं और जो एक मशहूर अखबार के एडिटर रह चुके हैं। उन्होंने मुझसे बिल के सिलसिले में पूछा। मैंने उन्हें तफसील से आगाह किया। फिर उन्होंने कहा कि हमारे यहां भी कुछ न कुछ ऐसी ही चीज पैदा हो रही है। और यह सवाल उठ रहा है कि हिन्दुस्तान की एक बड़ी अकलियत मुसलमान का छोना जा सकता है। उसकी बे आफ लाइफ छीनी जा सकती है। और अगर सैकुलरीज्म के कन्सेप्शन से इसे मालूम किया जाता है तो हमें भी अपने मुताल्लिक सोचना पड़ेगा। इसलिए मैं समझता हूं कि यह जो बिल लाया गया है इससे मुल्क को तमाम अकलियतों में एतमाद पैदा होगा। न सिर्फ इसलिए कि मजहज मुसलमानों के जहन से बदएतमादी को दूर करने के लिए बल्कि आज हिन्दुस्तान की अकलियतों के बारे में भी यह बात कही जा सकती है। मैं यह जानता हूं

कि आप हिन्दुस्तान के दस्तूर के बारे में दूसरी तरह की समझदारी पैदा करने के लिए दूसरी तरह का हुजाला देते हैं। आर्टिकल 44 का हुजाला देते हैं। आप फण्डामेंटल राइट्स की बात करते हैं। आप हाईकोर्ट के, सुप्रीम कोर्ट के जज को आलाक्वास बात समझते हैं। मैं पूछना चाहता हूं अपने प्रोग्रेसिव दोस्तों से जो यहां बैठे हुए हैं कि इस वक्त यह फण्डामेंटल राइट्स कहां चले गये थे। जजों ने यह फैसला दिया था कि प्रीवी पर्स काफी रहना चाहिए। और मैं यह कहता हूं कि सुप्रीम कोर्ट की बात अभी हाल के अन्दर यह फैसला हुआ कि एम्पलाईज के बारे में सरकार को अख्तियार है कि वो किसी भी एम्पलाई को बिना वजह के नौकरों से हटा सकती है। आज यूनियनों इस चीज को उठा रही है और चीख रही है कि यह गलत फैसला हुआ है। आज मुसलिम पर्सनल ला के अन्दर जिसके बारे में यह कमिटमेंट है कि इसे तबदील नहीं किया जायेगा। यह बिल कोई नई चीज लेकर नहीं आ रहा। मगर इसके खिलाफ एक मुहिम है। मैं सन 1937 का मुसलिम पर्सनल शरीयत एक्ट जिसके सेक्शन 2 में यह बात कही गई है मैं इसका उर्दू तरजुमा सुनाता हूं। दफा दो में है। यह इस्तन्ना जल अगर फरोकैन मुसलमान हैं तो उन पर मुतनाजा अमूर में मुसलिम पर्सनल ला शरीयत का नफाज मकसूद होगा। जुमला मुतनाजा अमूर है। विरासत तरका जायदाद बंशूल जायदाद हासिल करदा जाति या बजरिया खरीद या हुब्बा या मुसलिम पर्सनल ला के तहत हासिलशुदा जायदाद शादी शादी बंशूल तालीक-एलन-जहार लगान खिला मुबारत नानफुता-बहुरलौयितवक्फ—वक्फ जायदाद और हाफ-इस्तन्ना जराअत मुतालिक जायदाद

[श्री संयद अहमद हाशमी]

यानि अराज्यता काण्ड वगैरा पर मुसलिम पर्सनल ला का निफाज बेहतर है ।

सन 1937 के शरीयत एक्ट का सैक्शन जो आपके सामने है आप इस बिल के जरिये कोई दूसरी चीज नहीं कर रहे हैं । अभी 1937 का जो शरीयत एक्ट है वो मनसूरज नहीं हुआ है । इस मुल्क के अन्दर वो बाका है । मैं तो इसी को चाहता हूँ । अगर किसी वजह से इस एक्ट के ऊपर पर्दा पड़ रहा था बाका ब्राकात जो हुक्म के ऊपर शक व शुबहात पैदा हो रहे थे तो मैं यह समझता हूँ कि इस एक्ट को लाने के बाद यह शक शुबहात दूर हो जायेंगे । और शायद सुप्रीम कोर्ट को भी मजकूर शरीयत एक्ट की इस तथरी के बाद इन्टरप्रिटेशन में आसानी पैदा हो जायेगी । एक बात और...

उपसभाध्यक्ष (श्री आर० रामकृष्णन): एक और बात नहीं आखिरी बात कहिये ।

श्री संयद अहमद हाशमी: यह बहुत जरूरी हो गया है : मुझे इस बात का हक है कि मैं इस बात को कहूँ क्योंकि मैं ही एक ऐसा मुद्दा हूँ जो ज्यादा एतमाद के साथ बात को यहां पर रख सकता हूँ । मैं एक बात यह कहना चाहता हूँ कि आप किस की मुखाफत कर रहे हैं । क्या मजहब की । तो जान लीजिए कि हिन्दुस्तान के अन्दर पहला इन्क्लाव अंग्रेजी अमलदारी के खिलाफ आया । क्यों आया । इसलिए आया कि चाहे हिन्दू हो या मुसलमान रहा हो उनको चर्बी का जो कारतूस दिया गया था । इसके बाद उन्होंने यह समझा कि यह हमारे मजहब के खिलाफ है और अंग्रेजों की तरफ से मजहबी

इशतयाल अंग्रेजी के नतीजे में मुतईआना तारीख से पहले ही 1857 के इन्क्लाव का नारा बुलन्द हो गया । और बगावत शुरू हो गई । अब मैं एलान करना चाहता हूँ और अब जब मुसलमानों की बात आई है तो मैं यहां कहना चाहता हूँ कि आज यह अपने मुल्क में जिस मुकाम पर खड़े कर दिये गये हैं । लेकिन मुसलिम पर्सनल ला हमारे मजहब का जरूरी और लाजमी जुज है । और इसे हम दीन का बुनियादी हिस्सा समझते हैं । हम किसी कीमत पर इससे दस्त-बरदार नहीं हो सकते । मैं आपको पुरानी आयात पढ़कर सुनाना चाहता था लेकिन वक्त नहीं है । सन 1857 की बात मैंने अभी आपको बतायी । अब मैं आपको गहनशाह अकबर द ग्रेट की बात बताना चाहता हूँ कि इसने मजहब के खिलाफ अपनी हद से तजाबुज किया । लेकिन यह जाहिर है इस बात के कि अकबर मुसलमान थे । मगर मुसलमान अकबर की मजहब दुश्मनी वर्दाशत नहीं कर सके और हजरत मुहम्मद अहमद सरहत की क़ियादत में मुसलमान इसके खिलाफ इसमें बगावत करने के लिए तैयार हो गये । चुनावे अकबर द ग्रेट की हुक्मत खत्म हो जाती अगर वो मजीद मजहब दुश्मनी की राह पर चलता ।

इसके मुकाबले मैं एक मिसाल और देता हूँ कि 19वीं सदी के शुरू में जब मराठों का कब्जा हुआ उस वक्त उन्होंने चौथे की रकम लेने का सिलसिला जारी किया । इस जुल्म के बावजूद मुसलमानों ने मराठों के खिलाफ बगावत करने के लिए उल्मा से फतवा खलब किया तो उल्मा जौनपुर ने मुसलमानों को मराठों के खिलाफ बगावत करने से

इसलिए मना कर दिया कि मराठा चौब की रकम जुल्मन लेने के अलावा मुसलमानों के किसी दूसरे मजहबी मामलात में मداخلत नहीं करते ।

उपसभाध्यक्ष (श्री अ.र. रामकृष्णन) : अब आप बैठ जाइये । (व्यवधान)

श्री संयद अहमद हाशमी : दूसरे लोगों को आपने बहुत सा टाइम दिया ।

उपसभाध्यक्ष (श्री अ.र. रामकृष्णन) : मैंने आपसे शुरु में कह दिया था कि आपका इतना टाइम है जो टाइम है वो मैंने आपको पहले ही बता दिया था ।

श्री संयद अहमद हाशमी : मैं अर्ज कर रहा हूँ कि सूरतेहाल है कि आज आप अपने हिसाब से डेमोक्रेसी की बात करते हैं आप यह कहते हैं कि आपके जर्म की सजा सबको मिलनी चाहिये ... (व्यवधान) ... आज डेमोक्रेसी का मतलब क्या है। ऐवरी सिटी-जन हर शहरी को अपने मजहब पर चलने का हक है। अपने वे आफ लाइफ को इसे हक हासिल है। मगर यहाँ बार-बार आर्टिकल 25 का हवाला दिया जाता है। और इसकी नई तशरी पेश की जाती है। और इसे मुसलिम मुतलका औरतों से जोड़ने की कोशिश की जाती है। मगर मैं पूछना चाहता हूँ कि छूतछात को खत्म करने के लिए क्या अभी तक कोई मूवमेंट शुरु की गई है। मैंने एक बड़ी सिबासतदा शरसीयत से पूछा क्या इन मुल्क के अन्दर गरीबी की रेखा मिटा दी गई है। क्या इस मुल्क के अन्दर जो यह कहा गया था कि हर बच्चे को बेसिक तालीम दी जायेगी, दे दी गई है। 10 साल के दर मुल्क के तमाम बच्चों को तालीम

देने की बात कही गई थी। क्या वो हमने दी है। क्या वो वादा पूरा हो गया है। क्या इसके लिए कोई मूवमेंट चलायी गई है। क्या किसानों को उनकी पैदावार की कीमत मिल गई है। क्या इस मुल्क के अन्दर हम बेरोजगारों को रोजगार दे पाये हैं। यह सारे मतले ऐसे हैं जिनको हम अभी तक हल नहीं कर पाये हैं।

आज हम देख रहे हैं और हमें हैरत है कि इस बिल के ऊपर कुछ प्रोप्रेसिव कम्युनल और फरकाफरस्त ताकतें एक हो गई हैं। और वो इसके खिलाफ बोल रही हैं। वो इस मुल्क के सैकुलर कान्सेप्ट को बदलना चाहती हैं। और माइनोरिटीज को जो हक हासिल हैं उनको नहीं देना चाहते हैं। इसलिए आज इस बिल की इतनी मुखालफत की जा रही है। सारा नेशनल मीडिया इसके खिलाफ हो गया है। इस मुल्क की जो कम्पोजिट कल्चर है उसको खत्म करने की कोशिश की जा रही है। लेकिन इस मजमूम कोशिश को हम कामयाब नहीं होने देंगे। इन इल्काज के साथ मैं इस बिल की पुरजोर तार्ईद करता हूँ।

[[شادی سہد احمد ماشہی

(اگر پردیہ): وائس چورمیں صاحب-

پہلے تو میں اس بل کے متعلق یہ کہنا چاہوں گا کہ یہ سچویشن کا رلائزیشن ہے - ضرورت حال کا حقیقت پسندانہ اعتراف ہے - اور میں اس بل کی تائید کرتا ہوں - لیکن ہم نے جس طرح کی باتیں اس مافس میں آج سنیں ہیں - اگر اس طرح کے حالات اس ملک کے

[شری سہد احمد ہاشمی]

اندر پیدا کئے گئے ہیں - اس سے
میرے نزدیک یہ سوال پیدا ہو گیا
ہے کہ سیکولرازم کا اس ملک میں
کیا انٹرپرائیٹیشن ہے - آج سوال یہ
ہے کہ سیکولرازم کی وہ تعریف جو
ہندوستان کی مائٹرائٹیز کے ذہن میں
تھی کیا آج وہ تعریف تبدیل
ہو گئی ہے - اور آج سیکولرازم وہ ہے
جو اس ملک کے بعض لوگ ذلت
کرنا چاہتے ہیں - جو انٹرپرائیٹیشن
ہندوستان کے کانستی ٹیوشن کے وقت
تھا - اس وقت یہ سمجھا گیا تھا
کہ سیکولرازم اس ملک کے اندر سبھی
مائٹرائٹیز کو اعتماد میں لہنے والا
اور انہیں بدھ کسی مداخلت کے
پروتھکشن دینے والا ہے - آج ایک
بہت ہی معمولی مسئلہ تھا -
مسلمان طلاق شدہ عورتوں کا - لیکن
مضالفتیں اس ریل کے بھگ دراؤنڈ
سوں اقلیت دشمن یہ پروجیکٹ کرنا
چاہتے ہیں کہ ہر مسلمان کے گھر
میں ایک طلاق شدہ عورت ہے -
اور وہ سکے ذریعہ مسلمانوں کی
امیج کو ملک میں خراب کرنے کی
کوشش میں لگے ہوئے ہیں - میں
سمجھتا ہوں کہ یہ ہندوستان
مسلمانوں کے ساتھ کوئی انعام
نہیں ہے - میرا خیال ہے کہ جو
لوگ اس بل کی مخالفت کر رہے
ہیں - انکے دماغ میں یہ تو
بدمانی ہے - کہ اسلام نے عورت کے

مقام کو گرایا ہے - یہ بڑے نظری کے
مطابق اس ملک کی مائٹرائٹی کو
انکے نزدیک اس ملک میں رہنے کا
حق نہیں ہے اور انہیں برداشت
نہیں کرنا چاہتے - میں سمجھتا
ہوں کہ شاید یہی نظریات ان لوگوں
کے دماغوں پر بھی حاوی ہو گئے
ہیں - جو اس ملک کے اندر
سیکولرازم کا نعرہ لگاتے ہیں - یہ
پروجیکٹسوز نعرے لگاتے ہیں - لیکن
یہاں صورتحال یہ ہے کہ آج اس
ملک کے اندر اس بل کے لانے سے نہ
صرف مسلمانوں میں بلکہ ملک کی
جو دوسری مائٹرائٹیز ہیں - اقلیتیں
میں ایک بھروسہ پیدا ہونے میں
مدد ملی ہے کیونکہ مجموعی طور
پر انکے اندر ایک فیر کامپلیکس -
ایک خوف پیدا ہو گیا ہے - اور
انکو قہر ہے کہ جس طرح کچھ لوگ
اس ملک کو چلانا چاہتے ہیں -
ان حالات میں ان کو یہاں رہنے
اور جیلے کا حق بھی دیا جائیگا یا
نہیں میں سمجھتا ہوں کہ یہ
مسلمانوں کا مسئلہ نہیں ہے - بلکہ
ملک کی تمام مذہبی و لسانی
اقلیتوں کا مسئلہ ہے - ایک تقریب
کے اندر میرے ایک گہرے دوست جو
چینی ہیں - اور جو ایک مشہور
اخبار کے ایڈیٹر رہ چکے ہیں -
انہوں نے مجھ سے بل کے سلسلہ میں
پوچھا میں نے انہیں تفصیل سے آگاہ
کیا پھر انہوں نے کہا کہ ہمارے

یہاں بھی کچھ - کچھ ایسی ہی چیز پیدا ہو رہی ہے - اور یہ سوال اٹھ رہا ہے کہ ہندوستان کی ایک بڑی اقلیت مسلمان کا حق چھینا جا سکتا ہے - اور اسکی وجہ - آف لائف چھینی جا سکتی ہے - اور اگر سیکولرازم کے کانسپشن سے اسے معلوم کیا جاتا ہے - تو ہمیں بھی اپنے متعلق سوچنا پڑے گا - اسلئے میں سمجھتا ہوں کہ یہ جو بل لایا گیا ہے - اس سے ملک کی تمام اقلیتوں میں اعتماد پیدا ہوگا - یہ صرف اسلئے کہ بعض مسلمانوں کے ذہن سے بد اعتمادی کو دور کرنے کیلئے بلکہ آج ہندوستان کے دوسری اقلیتوں کے بارے میں بھی یہی بات کہی جا سکتی ہے - میں یہ جانتا ہوں کہ آپ ہندوستان کے دستور کے بارے میں دوسری طرح کی سمجھداری پیدا کرنے کیلئے دوسری طرح کا حوالہ دیتے ہیں - آپ آرٹیکل ۲۲ کا حوالہ دیتے ہیں - آپ فنڈامینٹل رائٹس کی بات کرتے ہیں - آپ ہائی کورٹ کے - سپریم کورٹ کے جج میٹ کو آپ الہامی بات سمجھتے ہیں - میرے پوچھنا چاہتا ہوں اپنے پروکوریسیور دوستوں سے جو یہاں بیٹھے ہوئے ہیں - کہ اس وقت یہ فنڈامینٹل رائٹس کہاں چلے گئے تھے - جب ججوں نے یہ فیصلہ دیا تھا - کہ ہوی دی برس

باقی رہنا چاہئے - آج میں کہتا ہوں اس سپریم کورٹ کی بات کہ ابھی حال کے اندر یہ فیصلہ ہوا کہ امپلائز کے بارے میں سرکار کو اختیار ہے - کہ وہ کسی بھی امپلائز کو بلا وجہ دئے نوکری سے ہٹا سکتی ہے - آج یونینیں اس چیز کو اٹھا رہی ہیں - اور چیخ رہی ہیں کہ یہ غلط فیصلہ ہوا ہے - آج مسلم پرسنل لا کے اندر جسکے بارے میں یہ کمیٹیٹ ہے کہ اسے تبدیل نہیں کیا جائیگا - یہ بل کوئی نئی چیز لیکر نہیں آ رہا ہے - مگر اسکے خلاف ایک مہم ہے - میں سنہ ۱۹۳۷ء کا مسلم پرسنل شریعت ایکٹ جسکے سیکشن دو میں یہ بات کہی گئی ہے - میں اسکا اردو ترجمہ سناتا ہوں - دفعہ دو میں ہے - ”یہ استغنا“ ذیل اگر فریقین مسلمان ہیں تو ان پر متنازعہ امور میں مسلم پرسنل لا شریعت کا نفاذ ملصور ہوگا - جملہ متنازعہ امور ہیں - وراثت - ترک جائداد - بشمول جائداد حاصل کردہ ذاتی یا بذریعہ خرید یا ہبہ یا مسلم پرسنل لا کے تحت حاصل شدہ جائداد - شادی - ملتسمیح شادی بشمول طلا - ایلا - ظہار لکھان - خلع مبارک - نان نفقہ - مہر تولیت وقف - وقف جائداد اوقاف - دستا - زراعت سے متعلق جائداد یعنی اراضیات کاشت وغیرہ پر مسلم پرسنل لا کا نفاذ بہتر ہے -“

[جناب سید احمد ہاشمی]

سنہ ۱۹۳۷ء نے شریعت ایک کا
سیکشن دو آپ کے سامنے ہے۔ آپ اس
بل نے شریعت کوئی دوسری چیز نہیں
دے رہے ہیں۔ ابھی سنہ ۱۹۳۷ء
کا جو شریعت ایکٹ ہے وہ منسوخ
نہیں ہوا ہے۔ اس ملک کے اندر
وہ باقی ہے۔ مگر تو اس کو چاہتا
ہوں۔ اگر کسی وجہ سے اس ایکٹ
کے اوپر پردہ پڑ رہا تھا۔ ان
دفعات و حقوق کے اوپر شک و شبہات
پیدا ہو رہے تھے۔ تو میں یہ سمجھتا
ہوں اس ایکٹ کو لانے کے بعد بھی یہ
شک و شبہات دور ہو جائیں گے۔ اور
شاید سپریم کورٹ کو بھی مذکورہ
شریعت ایکٹ کی اس تعویض کے
بعد انکو یہی تھوڑی سی آسانی
پیدا ہو جائے گی۔ ایک بات اور۔۔۔
اپ سبھا ادھیکش غرو آر۔
دام کرشنن : ایک اور بات نہیں
آخری بات کہئے۔

جناب سید احمد ہاشمی : یہ
بہت ضروری ہو گیا ہے۔ مجھے اس
بات کا حق ہے۔ کہ میں اس بات
کو کہوں کیونکہ میں ہوں ایسا مدعی
ہوں جو زیادہ اعتماد کھیلتا ہوں
کو یہاں پر رکھ سکتا ہے۔ میں ایک
بات یہ کہتا چاہتا ہوں کہ آپ
کسی کی مخالفت کر رہے ہیں۔
کہا مذہب کی۔ تو جان لیو گئے
کہ ہندوستان کے اندر پہلا انقلاب
انگریزیveldary کے خلاف آیا۔

کہوں آیا۔ اسلئے آیا کہ چاہے ہندو
ہو۔ یا مسلمان رہا ہو۔ انکو
چربی کا جو کارتوس دیا گیا تھا۔
اسکے بعد انہوں نے یہ سمجھا کہ یہ
ہمارے مذہب کے خلاف ہے۔ اور
انگریزوں کی طرف سے مذہبی اشتعال
انگریزی کے نتیجے میں متعینہ تاریخ
سے پہلے ہی سنہ ۱۹۵۷ء کے انقلاب
کا نعرہ بلند ہو گیا۔ اور بغاوت شروع
ہو گئی۔ اب میں اعلان کرنا چاہتا
ہوں اور اب جب مسلمانوں کی بات
آئی ہے۔ تو میں یہ کہنا چاہتا
ہوں کہ آج یہ اپنے مانگ میں جس
مقام پر کھڑے کر دئے گئے ہیں۔
لیکن مسلم پرسنل لا ہمارے مذہب
کا ضروری اور لازمی جز ہے۔ اور اسے
ہم دین کا بنیادی حصہ سمجھتے
ہیں۔ ہم کسی قیمت پر اس سے
دستبردار نہیں ہو سکتے۔ میں
آپ کو قرآنی آیات پڑھ کر سنانا
چاہتا تھا لیکن وقت نہیں ہے۔
سنہ ۱۸۵۷ء کی بات میں نے ابھی
آپ کو بتائی اب میں آپ کو شہنشاہ
اکبر دی گریٹ کی بات بتانا چاہتا
ہوں۔ کہ اسلئے مذہب کے خلاف
اپنی حد سے تجاوز کیا۔ لیکن یہ
ظاہر اس بات کے کہ اکبر مسلمان
تھا مگر مسلمان اکبر کی مذہب
دشمنی برداشت نہیں کر سکے اور
حضرت محمد احمد سرہانسی کی
قیادت میں مسلمان اسکے خلاف
باوت کرنے کیلئے تیار ہو گئے۔

چنانچہ اکثر ہی گریس کی حکومت
ختم ہو جاتی اگر وہ مزید مذہب
دفتری کی راہ پر چلتا -

اسکے مقابلہ میں ایک مثال اور
دیعا ہوں - کہ ۱۹ویں صدی کے
شروع میں جب مراٹھوں کا قبضہ
ہوا - اسوقت انہوں نے چوتہ کی
رقم لینے کا سلسلہ جاری کیا - اس
ہام کے باوجود مسلمانوں نے مراٹھوں
کے خلاف بغاوت کرنے کھائے علما
سے فتویٰ طلب کیا تو علما چونہور
نے مسلمانوں کو مراٹھوں کے خلاف
بغاوت کرنے سے اسلئے منع کر دیا کہ
مراٹھا چوتہ کی رقم ظلماً لینے
کے علاوہ مسلمانوں کے کسی دوسرے
مذہبی معاملات میں مداخلت
نہیں کرتے -

اب سبھا ادھیکھی (شہی آر - رام
کوشلن) : اب آپ بہتہ جڑتے -
..... (مداخلت)

شہی سید احمد ہاشمی : دوسرے
لوگوں کو آپ نے بہت سا ٹائم دیا -
اب سبھا ادھیکھی : میں نے
آپ سے شروع میں کہہ دیا تھا کہ
آپ کا اتنا ٹائم ہے - جو نیم ہے وہ
میں نے آپ کو پہلے بتا دیا تھا -

شہی سید احمد ہاشمی : میں
مرضی کر رہا ہوں کہ یہ صورتحال ہے
کہ آج آپ اپنے حساب سے ڈیموکریسی
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کی بات کرتے ہیں - آپ یہ کہتے
ہیں کہ آپ کے جرم کی سزا سب کو
ملنی چاہئے ...-... (مداخلت) ...
آج ڈیموکریسی کا مطلب کیا ہے -
ابوری سنگھن کو ہر شہری کو اپنے
مذہب پر چلنے کا حق ہے - اپنی
وے آف لائف کا اسے حق حاصل ہے -
مگر یہاں بار بار آرٹیکل ۲۵ کا
حوالہ دیا جاتا ہے - اور اسکی نئی
تشریح یہیں کی جاتی ہے - اور
اسے مسلم مطلقہ عورتوں سے چورنے
کی کوشش کی جاتی ہے - مگر
میں پوچھنا چاہتا ہوں - کہ چھوٹ
چھوٹ کو ختم کرنے کھائے کیا ابھی
تک کوئی موومنٹ شروع کی گئی
ہے - میں نے ایک بڑی سیاست دان
شخصیت سے پوچھا کیا اس ملک
کے اندر فریڈمی کی دیکھا مثلاً دی
گئی ہے - کیا اس ملک کے اندر جو
یہ کہا گیا تھا کہ ہر بچے کو بیسک
تعلیم دی جائیگی - دی دی گئی
ہے - دس سال کے اندر ملک کے
تمام بچوں کو تعلیم دینے کی بات
کہی گئی تھی - کیا وہ ہم نے
دی دی ہے کیا وہ وعدہ پورا ہو گیا
ہے کیا اسکے لئے کوئی موومنٹ
چلائی گئی ہے - کیا کسانوں کو
انکی پیداوار کی قیمت مل رہی
ہے - کیا اس ملک کے اندر ہم
بے روزگاروں کو روزگار دے پائے ہیں
یہ سارے مسئلے ایسے ہیں جنکو ہم
ابھی تک حل نہیں کر پائے ہیں -

[جناب سید احمد ہاشمی]
آج ہم دیکھ رہے ہیں اور ہمیں
حیثیت ہے کہ اس بل کے اوپر کچھ
پروٹیکشن کمیونٹی اور فرقہ پرست
طاقتیں ایک ہو گئی ہیں۔ اور وہ
اس کے خلاف بول رہی ہیں وہ اس
ملک کے سیکولر کانسیٹیوٹ کو بدلنا
چاہتے ہیں اور مائینارٹیز کو جو
حق حاصل ہیں انکو نہیں دینا
چاہتے ہیں۔ اس لئے آج اس بل
کی انٹی مضالمت کی جا رہی ہے۔
سارا نیشنل موڈ اس کے خلاف ہو گیا
ہے اس ملک کی جو کمیونٹ کالج
ہے اسکو ختم کرنے کی کوشش کی
جا رہی ہے۔ لیکن اس من و م
کوشش کو ہم کامیاب نہیں ہونے
دیں گے۔ ان المناظ کے ساتھ میں
اس بل کی پرزور تائید کرتا ہوں۔]

श्रीमती जैमिनी सुल्तान (मध्य प्रदेश) :
श्रीमान, मुझे मालूम है, वक्त की कमी की
वजह से मुझे इस बिल पर बोलने का
मौका नहीं मिलता, लेकिन आपने
परसनल एक्सप्लेनेशन करने का मुझे
मौका दिया है। उसी के ऊपर मैं
सफाई करना चाहती हूँ। यह कहा जा
रहा है कि मैं इस बिल की तारीफ
में हूँ। लेकिन यह एक बेबुनियाद
बात है। मैं पूरी तरह से
इस बिल के हक में हूँ। मैंने शुरू से ही
इस पार्लियामेंट में ही नहीं, बल्कि
जब भी मुझे मौका मिला है, मैंने इस
बिल की तारीफ की है और तारीफ
करूंगी। मैं इसकी वजूहात से इस वक्त

नहीं जाना चाहती हूँ क्योंकि न तो
आपके पास इसके लिए वक्त है और
न ही मेरे पास है। जिस बिना पर
इस बिल की मुखालफत की जा रही
उन्हीं वजूहात से मैं जिस बिल की तारीफ
करती हूँ। यह बिल हमारी मजहबी
खायात की दीवारों को गिराएगा नहीं
बल्कि और भी मजबूत करेगा।
हिन्दुस्तान में हर मजहब के लोग हैं।
यहाँ पर परसनल ला सदियों से चल
रहे हैं। इन्हीं परसनल ला पर हमने
अपनी कौमी आजादी की लड़ाई लड़ी है।
हर मजहब के लोगों ने इस मुल्क की
आजादी की लड़ाई में हिस्सा लिया है।
जब मोहम्मद अली इंग्लैंड गये और
उनकी मौत वहाँ हो गई तो उनकी
लाश हिन्दुस्तान में लाई गई। महात्मा
गांधी की शहादत हुई। आप जानते हैं
कि महात्मा गांधी जी ने कहा था कि
मैं हिन्दू हूँ। उन्होंने कभी यह नहीं कहा
कि मैं हिन्दू नहीं हूँ। जब उनकी
शहादत हुई तो यह कहा गया—

न हिन्दू चला गया, न मुसलमान चला गया,
इंसान की —पर एक इंसान चला गया
इसी तरह से कुंवर बेदी ने कहा—

इशक हो जाता है तो हो जाये, कोई चारा
नहीं, सिर्फ मुसलमान का मोहम्मद पर...

इसलिए मैं अपने अपोजीशन के मेम्बरों
से कहूंगी कि जो बिल सदन के सामने
पेश किया गया है उसकी वे तारीफ
करें।

SHRI SHANKAR PRASAD MITRA: Mr.
Vice-Chairman, Sir, the hon. Shri Narasimha
Rao has said that the purpose of this Bill is to
give effect to the intention of the legisla-

ture expressed in 1973. It is to restore that intention that this Bill has been brought. Shri Narasimha Rao seems to have an open mind as to whether there is an alternative to the giving effect of that intention. I am in agreement with him that Parliament is Supreme law-making body and it has the right to supersede a judgment that may have been passed by the Supreme Court. The Bill is said to have been caused by the controversy raised by the Muslim community on account of the judgment of Chief Justice Chandrachud in the Shah Bano case. Chief Justice Chandrachud has regretted in paragraph 32 of the judgment that a uniform civil code has not been enacted in accordance with Art. 44 of the Constitution. The hon. Law Minister had completely misunderstood me when I said that there were Islamic countries which had deviated from the law of the Shariat. What I stated was a matter of fact. I know that India is a secular State and hence need not remind me that we have to be governed by different considerations. Apart from the wishes of the Founding Fathers of the Constitution, the Prime Minister has unequivocally stated that there shall be no uniform civil code against the wishes of the Muslim community.

Secondly, what was the law before the Shah Bano judgment to which objection was raised by the Muslim community? There was no controversy on judgments delivered either by the Privy Council or by the Supreme Court before this judgment. The Privy Council in Hamira Bibi's case AIR 1918 page 40 Privy Council at page 48—the judgment was delivered by Lord Pocke and Syed Amir Ali, one of the most renowned "Muslim Jurists of our country, was a party to this judgment—had held that deferred dower was payable on the dissolution of the contract of marriage by death of either party or by divorce. The Privy Council expressed the same view in Syed SftMr

Hussam's case (1938) P.C. at page 83. That judgment was delivered by Sir George Kenkin, who was the Chief Justice of the Calcutta High Court from 1926 to 1934 and Sir Shadi Lai was a party to this judgment. The Supreme Court itself in two judgments—in Bai Tahira's case (AIR 1979 SC 362) and Fazlunbi's case (AIR 1980 SC 1730)—had held that if dower and divorce be essentially part of the same transaction so as to make the one the consideration for the other that is payable only in the event of divorce and if the amount of dower is a substantial and not an illusory sum, section 127(3) (b) would not be attracted. Chief Justice Chandrachud has not accepted that position. According to Chief Justice Chandrachud dower, prompt or deferred, is not payable on 'divorce'. What was the difficulty, Sir, in introducing a simple retrospective amendment into the Criminal Procedure Code itself, restating the law as it stood before the Shah Bano judgment, without any controversy, without any objection, on the part of the Muslim community? What was the necessity of codifying these elaborate provisions some of which were placed before the Supreme Court by the Muslim Personal Law Board and have been rightly struck down by the Sup-

the Court as a most unreasonable view of law and life?

The second point I want to make—which I want the honourable the Law Minister to clarify—is, that this law is not retrospective in operation except to a limited extent in clause 7. This is, for all practical purposes, a prospective law. It does not say that it shall always be deemed to have been the law of Muslim women's maintenance irrespective of judgments delivered by the Supreme Court or any other court. Now Chief Justice Chandrachud has held—that is the thrust of his judgment—that section 125 and 127 CrPc would be attracted to all women irrespective of the religion professed by them.

[Shri Sankar Prasad Mitra] That appears to be the thrust of the judgment of Chief Justice Chandrachud. Religion is irrelevant to the Criminal Procedure Code from the point of view adumbrated by Chief Justice Chandrachud. This law which the Supreme Court has laid down would remain. It has not been repealed. The rights conferred or the liabilities fixed by these " sections would continue to operate. In these circumstances, would the taking away of these rights from Muslim women on the ground of religion and religion alone, having regard to the thrust of Chief Justice Chandrachud's judgment, be a reasonable classification within the meaning of articles, 13, 14 and 15 of the Constitution?

The Bill speaks of dower. Supposing a deferred dower of Rs. 5,000 was settled thirty years ago, would the deferred dower payable under this Bill be Rs. 5,000 or would it be the equivalent of Rs. 5,000 on the date of divorce, having regard to the fall in the value of the rupee under inflationary pressure?

AN HON. MEMBER: Rules will take care of that.

SHRI SANKAR PRASAD MITRA: All right. Thirdly, Sir, a divorced Woman may have children in her custody and these children will get maintenance for two years only. The Law Minister would be pleased to tell us where is this holy text of the Koran to be found to support this proposition.

Lastly, as regard the option given by way of an amendment introduced in the Lok Sabha. The Law Minister will kindly tell us whether husband will exercise notion in favour of the Criminal Procedure Code, knowing fully well that deferred dower will never be taken into consideration. Thank you.

SHRI J. V. GOVAL: Sir, I am of the view that this Bill has been introduced

in Parliament under some misapprehension about the Shah Bano Case. If the Shah Bano Case is properly read, the Supreme Court has come to the conclusion that there was no conflict between the provisions of section 125 and those of the Muslim personal law. Under the Holy Quran it has been mentioned that during the *iddat* period every husband is liable to maintain the wife for 90 days. But that does not mean, whether he has got means or no means, for that period he must maintain the wife. That is, in my submission his fundamental duty or liability of the husband. Thereafter, it is silent whether he should maintain her or not. But Article Or *Ayat* No. 241 which has been translated by the Supreme Court clearly says that for a divorced woman, maintenance should be provided on a reasonable scale. This is a duty on the righteous. Then Article 242 says:

"Thus the God may clear his signs to you in order that you may understand."

This means that Article 241 which the Supreme Court has interpreted says that divorced women must get a reasonable maintenance, and this is the duty on the righteous. My submission is: Where is the conflict between section 125 or 127 of the Criminal Procedure Code and the so-called personal law of the Muslims because if the husband is asked to maintain after the *iddat* period, then, the Quran does not say that if he maintains after the *iddat* period, then, it will be a sin, and that he will go to hell. On the contrary, Article 241 clearly says that divorced women must be properly maintained, and this is the duty on the righteous.

The question before us is whether Parliament can legislate by enacting sections 125, 127 over Muslim husbands who have divorced their wives. Can they be asked to pay for the maintenance of the wife, divorced

wife, till she remarries? This is the point before UB. In my submission, section 125 is operative. The opening portion of section 125 reads:

"If any person, having sufficient means neglects or refuses to maintain his wife unable to maintain herself..."

So, only those husbands who 'have got sufficient means and those wives who are unable to maintain themselves are contemplated under section 125. Suppose a husband who has divorced his wife, does not have sufficient means, then, h_c does not come under section 125. Or if a divorced wife is able to maintain herself, then, the case would not be covered under section 125. Therefore, only a affluent husbands who have divorced their wives are covered by section 125 and not others

It is said that 95 per cent or 100 per cent Muslims have come forward. Not a single Muslim from the rural areas where poor Muslims live has come to the Boat Club here, or elsewhere to represent that they are affected by the Shah Bano case. Only the affluent class of Muslim fundamentalists have started the bogey that Islam was in danger, that the Shariat was being infringed or interfered with by the Supreme Court or by Parliament. It is a blam»3 not 10.00 P.M. only on the Supreme Court, but also on Parliament which enacted Section 125 and Section 127. My submission is that can our Parliament not legislate regarding the Mus-lims. This is a very fundamental question. The Muslims today say impliedly and they also said expressly that the Parliament has no jurisdiction to legislate regarding them. The Supreme Court has no jurisdic-ion to have any adjudication regarding their rights. Then what the Supreme Court and the Parliament of India are? Tomorrow they will say there should be a Muslim Parliament, there should be a Muslim

Court and only Muslim judges who can interpret their laws. I would like to read from the booklet MAIN TENANCE FOR DIVORCED WOMEN which has been issued by the Lok Sabha Secretariat. In the other House when Mr. Banatwalla had introduced his bill, 'n the discussion the Chief Justice, Mr. Chandrachud was abused like any thing and it was said that a Hindu cannot interpret the Muslim law. I am reading on page 12 of this booklet which has been issued by the Lok Sabha Secretariat.

"A vast majority of public opinion is opposed to the Bill which include progressives among the Muslims. They feel 'obscurantist Mullahs and the communalist Muslim leaders and organisations have used the Supreme Court judgment in the Shah Bano case to whip-up emotions and put pressure on the Government to exclude Muslims from the purview of section 125 of the Criminal Procedure Code"

So the position today, is when the Constitution makers said that there should be a uniform civil code in Article 44, now instead of having that, when in Section 125 and Section 127 we had something for all communities and for all citizens, now we are going, behind and are indulging in communalism and having laws on communal basis. This is a big danger. The country was already divided on the basis of religion, on the basis of so-called 'two-nation theory', and the question is if -we are sowing the seeds for that, what will happen after ten or fifteen years? The question is whether tomorrow they will challenge that this Parliament has no business. These are our laws. These are the Christian laws. Now Jains are also saying and Arya Samaj is also saying that they are minorities. The question is¹ who is 'minority'. In the Constitution, with respect I must say I don't know under what pressure the word 'minority' was used in Article 29 and Article 30 and in some other articles. The major-

[Shri J. p. Goyal]

city has not been defined in the Constitution, whereas all the Fundamental Rights under Articles 19; 14 and 15 are to citizens and not to minorities or majorities. <

So, my submission is that the Bill which has been introduced by the hon. Law Minister has been under misapprehension of Shah Bano case, which the learned Chief Justice has clearly observed that as an outcome of this discussion there is no conflict between the provisions of Section 125 and those of the Muslim Personal law on the question of Muslim husband's obligation to provide maintenance for a divorced wife, who is unable to maintain herself.

So, the submission saying that *ih* Muslims have any doubts and their personal law is being interfered with is not correct. Therefore, the Parliament was right in enacting Section 125 and Section 127 in 1973 and that law must prevail and this law should not be passed.

The other question is what is the *n* of this law? This has already been submitted by our colleagues on this side that the law is unconstitutional, because it violates Article 14 and Article 15 of the Constitution. Article 15 clearly says that on the ground of sex or religion you cannot frame a law. This Bill, which has been introduced, is clearly violative of Article 15. Article 14 is general Article 15 (i) says:

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

So here on the ground of religion it is liable to be struck down particularly under article 15(1) and the Law Minister's argument of clause 3 that nothing in this article shall prevent the State from making any special provision for women and children, but women as against men, children as against men, but not bet-

ween woman and woman. Therefore clause 3 of article 15 does not apply.

In my submission, Sir, this Bill even if it is *(Time bell rings)* enacted is liable to be struck down.

The Supreme Court also observed towards the end of judgment and this very point was also raised by the All India Muslim Personal Law Board. I am quoting a few lines:

'(The written submissions of the All India Muslim Personal Law Board have gone to the length of asserting that it is irrelevant to inquire as to how a Muslim divorcee should maintain herself. The facile answer of the Board is that the Personal Law has devised the system of Mahr to meet the requirements of women and if a woman is indigent, she must look to her relations, including nephews and cousins, to support. This is a most unreasonable view of law as well as life."

These observations by a Bench of Judges are enough. One need to go into the either. If the matter goes before the Supreme Court it is liable to be struck down on these very observations saying that the Muslim woman will go to their relations, her father and then the Wakf Board. If the Wakf Board are financed by the Government, it will amount to discrimination between woman and woman. *(Interruptions)*.

Regarding article 44 of the Constitution, the Law Minister in the Lok Sabha as well as in this House has relied upon certain observations of Mr. B. h. Ambedkar. But the Minister has not placed before the both Houses of Parliament the observations of Mr. K. M. Munshi and Mr M. Ananthasayanam Ayyangar. I quote what Mr K. M. Munshi has said:

There is one important consideration which we have to bear in mind and I want my Muslim

friends to realise this that the sooner we forget this isolationist outlook o_n life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve as early as possible^ a strong and consolidated nation, Ou, first problem and the most important problem is to produce national unity in this country.'

I quote further what he has said: "This attitude of mind perpetuated under the British rule, that personil law is part of religion, has been fostered by the British arid by British courts. We must therefore outgrow ft,'

So the Congress Party from the very beginning never accepted it. Mahatma Gandhi said: dissolve it.

Sir, th_e Congress party was responsible for creating Pakistan. The Congress party which i_s the ruling party today is doing the same thing. (Interruptions) Again, Sir, it is disintegrating the country. Therefore, I am totally against the Bill. Thank you.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Mr. V. Gopal-samy. You have only three minutes.

SHRI V. GOPALASAMY: Mr. Vice Chairman, Sir the debate on this Bill has generated more heat as well as light than on any other debate in recent years on the floor of this House. Sir, the Muslim women are not entitled for maintenance from their husbands after divorce beyond the iddat period according to Shariat law. This is the view of the Muslim community.

Sir, this Bill has provided certain measures to give maintenance for those helpless Muslim women who where earlier not in a position to enjoy such rights. Therefore, through

this legislaion the rights of Muslim women could b_e protected to a certain extent. Therefore, I would like to support this Bill.

(Interruption). Yes, w_e hav_e certain convictions. Mr. Dipen Ghosh, now you please listen. Sir, for the past forty years, for the past four decades, we have been defending the rights of the minority community i_n Tamil Nadu. Mr. Asoke Kumar Sen, the hon. Law Minister correctly said that India consists of many linguistic groups, many religious groups. It is a plural society having composite culture. Therefore our Law Minister stated, it is the bounden duty to honour and protect the sentiments of the minority community, a major minority community. Sir, the basic principle of democracy is the protection of a minority. That is why, I support this Bill.

SHRI PARVATHANENI UPENDRA: On this, ADMK and DMK are joining together.

SHRI R. MOHANARANGAM: They were supporting CPM, CPI and all those parties. Nobody has said anything when Anna DMK principles are supported by DMK on the basis of sincerity, facts tru.h and honesty Now, they say they have joined hands with Anna DMK and Anna DMK is a party which is based on sincerity.

SHRI V. GOPALSAMY: Sir, I just stated it is our duty to honour and protect the sentiments of Muslim community. There should not be any interference to the Shariat Law Therefore, Sir, it is a compromise formula. This Bill brought a compromise formula without hurting the sentiments of Muslim community. At the same, it has provided certain measures to protect the rights of the Muslim women. Sir, I cannot brand

(Shri V. Gopalasamy) this Bill as a Bill embedded in sweet but at the same time, this Bill cannot be brushed aside as a Bill of bitterness. Therefore, I support it.

SHRI B. V. ABDULLA KOYA (Kerala): Mr. Vice-Chairman, Sir, even though, I feel that all the aspirations and desires of the Muslims are not met in the proposed. "The Muslim Women (Protection of Rights on Divorce) Bill 1986," I concede that the Bill is a bold step forward for removing the difficulties of the poor divorced Muslim women.

I therefore congratulate Shri Rajiv Gandhi and his Government for bringing in such a Bill, in spite of the fact that many of my colleagues here do not approve of it. The present Bill gave greater protection to a divorced woman than provided by the Supreme Court judgment. For example, if the former husband is himself destitute or dies, the divorced woman would have nobody to support her. But the Bill makes all the blood relatives or Wakf Board responsible for her maintenance suitably. There is also another danger. If alimony to the divorcees was made compulsory till remarriage or death, unscrupulous persons among the community would start doing away with their unwanted wives.

Ninety per cent of the Muslim population, both men and women, support this bill which, according to them, finds a remedy for removing difficulties of the unfortunate divorced women without infringing the tenets of the shariat.

The Supreme Court judgment in Mohd. Ahmed Khan V. Shah Bano Begum case (AIR 1985 S. C. 945) has far-reaching serious effects. In fact the judgment paves the way for a full fledged assault on the applicability of

the Islamic Shara in our country. The Supreme Court has; (i) sought to examine and interpret the divine scripture, placing its own construction upon the verses; (ii) observed that the courts would have to assume the role of the reformer; and (iii) recommended that the Government should proceed to frame a uniform civil code for the country, without waiting for any lead or initiative from the minority or any other quarters. To do so is in contravention of articles 25, 26 and 29 of the Constitution which guarantee practice and propagation of religion.

It is very unfortunate that many of our publicmen do not understand the real feelings of muslimans in a secular country like India where we will have to co-exist with different religions on the principle of religious tolerance. We should have the policy of "give and take" or live and let live. We should not try to impose the beliefs of one community on the other. While many Hindu brothers vehemently point out the so-called malpractices of the Muslims, they conveniently keep silent on their own shortcomings, I do not like to elaborate on such matters here, but I would take this opportunity to request my Hindu brothers to allow us, the Muslims, to eradicate ourselves such evils, if any. Then only we have real national unity integrity and freedom.

Now, as for the Bill, I am of the opinion that some more clarifications are necessary. For example, in clause 3, under sub-clause (1), there are two words used, "provision" and "maintenance". The word provision should be deleted so as to remove the doubts of the trying magistrate whether it allows two different kinds of amounts.

In sub-clause (b), maintenance should be only for two years for the divorced woman who is breast-feeding her child.

In sub-clause (c), it should be either mahr or a sum equivalent to mahr and not both.

Clauses 3 (1) and 4(1) should specifically refer to section 125 Cr. P.C. so as to make it clear that there should be no interference in the personal law of the Muslims.

Lastly, the definition of "divorced woman" in clause 2(a), the *khula*, that is, where the woman has obtained divorce herself, should not be allowed to nullify the terms of agreement*nt by any provision of the Bill.

With these words, I strongly support the Bill.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Shri Darbara Singh.

SHRI JASWANT SINGH (RAJASTHAN): Mr. Vice Chairman, I am not seeking merely an intervention. I am seeking a conscience intervention.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Don't make any controversial point and set the House afire.

SHRI JASWANT SINGH: That really is not my intention.

As I said, I am indeed very grateful to you for permitting me as indeed to Sardar Darbara Singh for so very graciously and kindly yielding..

THE VICE-CHAIRMEN (SHRI R. RAMAKRISHNAN): Cut down all these formalities. Make your point straightway.

SHRI JASWANT SINGH: The formalities are necessary because I speak not on behalf of my party but really as a fundamental humanist. I do admit that this is perhaps one of the most disturbing and distressing debates that I have participated in or have witnessed in this House. This is also perhaps one of the most difficult pieces of legislation that I have witnessed being legislated and I have never seen the House in the last so many years—I have seen the House earlier divided on ideological lines

but I have really never seen the House—divided as clearly and categorically on lines of faith as today and this has distressed me very much, and that is why I have sought your permission to make this intervention because I feel that perhaps in what we are doing today we might well be legislating communalism. I missed a very worthy intervention by the honourable the Minister of Commerce which I am sorry for I have heard all praise about it. I would have liked to listen to him as I could perhaps educate myself in the process. I really don't think this discussion today is essentially about the esoteric aspect of the Shariat Law or Koranic Suras or about the Mita-kshara Law or the law of the Hindus or the law of the Muslims. I don't think that in essence is what this House has set upon to discuss today. I think in essence what we are discussing is about the womankind of India and I think my essential difficulty with this legislation is the classification of womankind subscribing to

only single faith_____ (Interruption)
The honourable the Law Minister was candid enough in his presentation when he was asking for consideration of this Bill, to admit that the essential persuasion that motivated the Government for moving this piece of legislation was political. That is what the honourable the Minister said, that the essential motivation is political. And therefore, it raises some questions which perhaps Sardar Darbara Singh and the honourable the Law Minister might attempt to answer..

SHRI ASOKE KUMAR SEN: I never said the motivation was political. I said the Opposition was motivated politically. That is what I said.

SHRI JASWANT SINGH: If the honourable the Law Minister says that our interventions are all motivated politically, starting from that thesis, that we are indeed equally motivated politically, I have two clarifications to ask for, only two clarifications—

Lbhn Jaswant Singh] tions. I would, like THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN); I will give you enough time.

to clarify them. A question has been raised outside and in this House that in essential terms this debate had been settled by the creation of Pakistan. We have re-raised and we have reopened this debate.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): All these points have come up in the debate and they will be answered.

SHRI JASWANT SINGH: My second point is about the minority laws initiated . . . (Interruptions) . . . with a view to giving expression to the minority desire. Would the Government clarify this because this is an extremely difficult position, extremely difficult propositions? I say this because even in the Anandpur Sahib Resolution there is a demand for a separate Sikh law.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): You were not there throughout the debate and some of these points have already been made.

SHRI JASWANT SINGH: Once you start the thesis of minority laws, it will lead you somewhere . . . (Interruptions); . . .

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Everything has come up in the debate.

SHRI JASWANT SINGH: Therefore would the Law Minister answer this question? If this is the thesis put forward by them, then, Sir in the Anandpur Sahib Resolution also they talk of a separate Sikh law. If the Government tomorrow comes forward with the thesis of minority law for them, what will happen. (Interruptions) .

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): I am calling Mr. Darbara Singh now. Yes, Mr. Darbara Singh.

श्री दरबारा सिंह (पंजाब) : यह
आखिर में जो थोड़ा बहुत वक्त
मिला है

श्री दरबारा सिंह : अर्ज यह है कि बहुत कुछ कहा जा चुका दोनों तरफ से। पहले हमारे स्पिकर्स हमारे कॉमंस मिनिस्टर ने और उसके बाद कुछ हमारे दोस्तों ने वाजिया तौर पर कुछ बातें कही हैं : पोजीशन वाले शायद रिलिजन में यकीन नहीं करते, मैं रिलिजन में यकीन करता हूँ और सेकुलर बातों में यकीन करता हूँ, इसलिये उनकी मुखाफत बजिव है। मैं इसकी हिमायत इसलिए करने के लिये खड़ा हुआ हूँ क्योंकि इसमें औरतों के लिये बहुत कुछ किया गया है। पहले उनकी कोई मदद करने वाला नहीं था। इसमें सारे देश की औरतों के लिये, पार्टिकुलरली शरीयत के मुताबिक जो मुसलमान हैं, उस औरत का अगर डाइवोर्स हो जाये तो पहले उसमें उसको कुछ नहीं मिलता था। अब इसकी वजह से पहले जो देरी होती थी वह नहीं होगी, जल्दी फैसला होगा और उस फैसले में अगर उसको कुछ नहीं मिलता है तो वक्फ बोर्ड जो है, आखिर में जो आता है, वह उसकी मदद करेगा। जो वक्फ बोर्ड एक्ट है उसके मुताबिक जो भी उसका जकार है वह उसको भरेगा और उन औरतों को दिया जायेगा जिनकी कोई मदद करने वाला नहीं है। इसमें क्या हेरत की बात है। श्री जसवंत सिंह जी का यह कहना कि इससे पाकिस्तान में जो हालात पैदा हुए थे वह होंगे, यह उनकी गलतफहमी है। मुझे तो मिला यह है कि यहाँ कहते कुछ हैं और बाहर जाकर कम्युनलिज्म की हवा देने की खुद कोशिश करते हैं। (व्यवधान) वहीं

भी रिलीजन की यहाँ कोई बात नहीं है। यहाँ औरत और मुसलमान औरत और उसको मदद कर ने की बात कही गई है। यहाँ रिलीजन की बात नहीं है। रिलीजन की बात होती तो और भी रिलीजस है। लेकिन यहाँ शरीयत के मुताबिक, जो आपने माना हुआ है और इतनी देरी से माना हुआ है उसके बारे में है। यह जो बिल पार्लियामेंट में है, मैं पहले लोक सभा में रहा हूँ और अब यहाँ का मੈम्बर हूँ। कभी भी किसी ने इकाट्टा होकर उस औरत की मदद करने के लिये कुछ नहीं किया जिसका तलाक हो गया है, वह सड़कों पर घुमती फिरती थी और उसका कोई पूछने वाला नहीं था। उसको पूछने के लिये सरकार ने यह बिल पेश किया है। मैं यह इसलिये कहना चाहता हूँ कि पंडित जवाहर लाल नेहरू ने 1957 में यह कहा था कि मैं माइनारिटी की मर्जी के खिलाफ कुछ नहीं करना चाहता। (व्यवधान) एक दफा नहीं बार बार उन्होंने माइनारिटी की मदद की है। माइनारिटी खुद कोई ऐसी बात कर बैठे जिससे वह कम्युनलिज्म की तरफ चले तो वह अलग बात है। लेकिन पंडित जवाहरलाल नेहरू से ले कर आज तक आज श्री राजीव गांधी प्राइम मिनिस्टर जो यह बिल लाए हैं मैं समझता हूँ यह एक स्टेप फारवर्ड है। मैं यह चाहता हूँ कि इसको इस नजर से देखा जाए। आप कैसे कहते हैं, आप को अगर रास आता है कि कैसे खड़ा सकते हैं, लोगों को कैसे प्रोवोक कर सकते हैं, कैसे उठा सकते हैं और

हिन्दुस्तान में फसाद कैसे बढ़ाए जा सकते हैं। यहाँ किसी ने कहा कि बाहर के मुल्क नहीं मानते जो और तरह लेते हैं जरूर लेते होंगे कहीं पर तो फौजी शासन है, कोई मजहबी मुल्क है, कोई किसी तरह से अपनी सरकार को चलाता है लेकिन यहाँ तो डेमोक्रेसी है और डेमोक्रेटिक सेट अप में माइनारिटी का खयाल रखना जरूरी समझा गया है। इसलिए हमारे मुल्क में आज जो हालत चल रहे हैं वह हम किसी दूसरे मुल्क से मुकाबला करके हम अपनी डेमोक्रेसी पर जरब नहीं लगने देंगे। हमारी डेमोक्रेसी उन लोगों से मुक्तलिफ है। हमारे दोस्तों ने बहुत से मुल्कों का नाम लिया है उनका हम से डिफरेंट किस्म का तन्जाम है। हमारा तन्जाम डेमोक्रेटिक है और हमारे यहाँ डेमोक्रेसी है तथा सेकुलरिज्म है और सेकुलरिज्म में सरकार का त कोई किसी मजहब में दखल होता है न बढ़ावा दिया जाता है न इसको आगे बढ़ाने के लिए सरकार कुछ करती है। मजहब मजहब है लेकिन औरत के लिए आप क्यों इतनी तलख आवाज में कहते रहे। जहाँ तक डिस्टेम्प्लाइजेशन का सवाल है, मैं जसवंत सिंह जी से कहना चाहता हूँ, शायद मिनिस्टर साहब जवाब देना चाहें या न देना चाहें, मैं उनसे अर्ज करना चाहता हूँ कि आप बात पढ़ें लिखें अच्छा बोलने वाले हैं सब कुछ है लेकिन आपके दिमाग में यह कैसे आ गया कि पाकिस्तान जो है वहाँ से आवाज दे रहा है, आदमी भेज रहा है हिन्दुस्तान को डिस्टेम्प्लाइज करने की, कोशिश कर रहा है। हम उसके साथ कैसे मिल सकते हैं उनकी आवाज में हम अपनी आवाज कैसे मिला सकते हैं।

[श्री दरबारा सिंह]

आप काहे के लिए ऐसी बातें करते हैं। इस तरह से डिस्टेम्प्लाइजेशन नहीं होती है। हम उन औरतों की मदद करते हैं जिनकी आज तक मदद नहीं हो सकी। इसलिए मैं बहुत ज्यादा न कहना हुआ क्योंकि मुझे बहुत बाद में वक्त मिला है जितना भी वक्त मिला है उस में मैं यह अर्ज करना चाहता हूँ कि इस बिल को दिल से सपोर्ट करता हूँ।

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Shrimati Kanak Mukherjee. Two minutes you have got.

SHRIMATI KANAK MUKHERJEE: Sir, stand here to oppose this Bill will all the might I have. (*Interrup. tions*). Sir, I raise the voice here of millions of oppressed women in India, the voice of oppressed women—Hindus, Muslims, Sikhs and everybody.

SHRI (MOLANA) ASRARUL, HAQ: But ____ (*Interruptions*).

SHRI K. MOHANAN: This is a public nuisance. (*Interruptions*).

SHRIMATI KANAK MUKHER-JEE: Sir, I raise the voice of millions of women who are oppressed. Under the existing social system of the society as we have in India, discrimination social and economic, political and even.. (*Interruptions*). All of them are there among all the communities in India. They are denied opportunity of education and job. They are made to depend on the menfolk. Now you have directed your efforts on the weakest of the weaker sections of the population. This is not an act of chivalry; this is an act of cowardice. It is 'a shame to any civilized society. (*Interruptions*) Sir, I raise the voice of these deprived and oppressed woman. (*Intemip-tiows*).

श्री (मोलाना) असरारुल हक :

जनाब वाईस चैयरमैन साहब, यह...

श्री नेपालदेव भट्टाचार्य (पश्चिमी बंगाल) : यह आपकी कांग्रेस का सेंटेंनी सेशन नहीं है जो आप हो-हो कर रहे हैं।

SHRIMATI KANAK MUKHER-JEE: At the same time, I raise the protecting voice of more than 1000 Muslim women who gathered here at the Boat Club on the 17th of April and led a deputation to the President requesting him not to give consent to this black and infamous Bill. The deputation, also went to the Prime Minister and the Speaker. The Speaker pleaded his helplessness before the women's delegation. I raise the protecting voice of the 2 million signatri's who were Muslim women and who sent their signatura to the President and to the Prime Minister. Besides this, million of postcards and telegrams protesting against this Bill were sent.

Sir, they talk about public opinion. I know the views of a number of people both men and women. They are all opposing it. But our Government is not paying any heed to public opinion. Sir, I must say that they are bringing this Bill not only in violation of the Constitution and the fundamental rights given by the Constitution, but also in violation of the public opinion. They have degraded the woman of this country. This Bill is directly fanning communal passions. I am very much pained to see that the ruling party wants to divide even the M.Ps. along the lines of communalism and religion. Now, I have to hear most painfully the hon. Members saying "We are Muslim M.Ps. of this House and that House". We do not come here as Hindus M.Ps., Muslim M.Ps. or men, or women M.Ps. We represent the people of India irrespective of caste, creed and religion. Sir, this Bill is directly opposed to communal harmony and national integration. My friend has cited

the lines from Tagore. I also cite the lines from our National Anthem: Punjab, Sindh, Gujarat, Maratha, Dravida, Utkal, Banga, Vindhya, Himachal, Jamuna, Ganga. Uchal Jaladhi Taranga, For generations, Hindus and Muslims are living like brothers. Generation after generation Hindus and Muslims have lived in harmony. The British imperialists divided us. They followed the policy of divide and rule. The Congress rulers are practising discrimination too not only against women. There is discrimination not only between man and woman. There is discrimination between woman and woman. The rights which one community in India enjoys, why should another community not enjoy those rights? We are the mothers and sisters. We are all women here. We are being oppressed under the same oppressive laws and systems in the society.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): I am calling the next speaker.

SHRIMATI KANAK MUKHERJEE: kindly give me one minute more.

THE VICE-CHAIRMAN: (SHRI R. RAMAKRISHNAN): Unless you conclude, Mr. Kesri will have to serve you breakfast.

SHRIMATI KANAK MUKHERJEE: We came other day before the Parliament with our hands chained as a symbol of the bondage of womanhood. Lok Sabha was discussing the Bill that day. He has insulted not only the womanhood. He has insulted men also. Which culture would like this Bill? You have degraded the relationship between man and woman. You have degraded the relationship between husband and wife and you made it a master-slave relationship. (Interruptions). You have degraded the Indian tradition of our country. You have degraded even the tradition of the Indian National Congress. The Indian National Congress, with all its limitation, from the

very beginning honoured the rights of woman. As early as the 20s of this century Sarojini Naidu and Acme Besant led a deputation to the British imperialists for equal rights for women. I know, there are many senior women Members of Parliament whose hearts are bleeding. But their tongues are tied due to the hardship of the Congress Party. Sir, my last point _____

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): You have already made your last point.

SHRIMATI KANAK MUKHERJEE: Sir, we will keep on fighting for equality, democracy and emancipation of women. Let the conscience of the nation be roused. And we shall fight and we shall win in spite of the heinous, atrocious attempt on the part of the Government.

SHRI GHULAM RASOOL MATTO: Mr. Vice-chairman. Sir, I have been in a dilemma as to how to start my speech. (Interruptions). I do not know what is the background of Mr. Dipen Ghosh but I can tell you my background. It was in the year 1838 that Jammu and Kashmir Muslim Conference was converted into National Conference. From 1938 to 1954 my house was raided eight times by the Muslim Conference people and three times arson was attempted at my house. So, my point is that with this background, if I am a fundamentalist, I accept the charge. (Interruptions). Sir, I was only 15 years old when Mr. Jinnah came to Kashmir. I, as a leader of the Muslim Students' Federation met him for four and a half hours. Mind you, I was only 15 years old. And I tried to convince him and he tried to convince me. And when he left, he said, "I must have boys like you in my organisation." But I did not join. So, if I am an obscurantist or a fundamentalist or whatever they call—so many people called it—I accept the charge. (Interruptions) Sir, the definition of secularism as given in the Chambers

[Shri G'hulam Rasool Matto]

20th Century Dictionary is: "Belief that the state, morals, education etc. should be independent of religion: This is G. J. Holyoake's (1817-1906) system of social ethics." Sir, secularism is a thing that is not only to be professed but it has also to be practised. And I must say that today I remember the hand-shake our great leader Sheikh Mohammad Abdullah had with Pandit Jawaharlal Nehru—I was there in the audience in 1948—that the Muslim majority province of Kashmir with its 90 per cent Muslims was joining hands with secular India which is being proved today when a Bill to protect the personal laws of the minorities is introduced in this House. Mr. Vice-Chairman, Sir, I do not want to impute (motives. But I may tell you one thing. We have a wonderful relation with the party, personal relations with the party, who have sent thirty M.Ps. in both the Houses. But may I ask them is there a single Muslim in those 30 M.Ps. who were sent by them to any of these Houses. (Interruptions).

Sir, the controversy raised on this Bill is to my mind, a storm in the tea cup. I do not understand if my friends in the opposition are aware of the Muslim Personal Law (Shariat) Application Act, 1937. It is on the Statute-book and what do^o section 2 say. Please note this and understand what I say. Section 2 says: "Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and muba-raat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the

parties are Muslims shall be the Muslim Personal Law (Shariat)".

This stands on the Statute-book. Where were my friends during the last 50 years? Why did they not raise their voice against this Bill which gives the Muslims of this country a

perfect protection? Mr. Narasimha Rao has stated the background about section 127(3) Co). Incidentally, I was also here in Delhi in 1973. There was a meeting of Majalis Mushawarat in Baroda and our great leader Sher-e-Kashmir, Sheikh Mohammad Abdullah was there. It was the consensus of the Muslims there that section 125 was sought and was intended to encroach upon the Muslim Personal Law. So they unitedly asked him that he must call upon the Prime Minister of India, Shrimati Indira Gandhi and he led a delegation to Shrimati Indira Gandhi and on his persuasion and on the consensus obtained section 127(3) (b) was enacted and what is that.—"The woman has been divorced, but before or after the date of the order for maintenance, the divorced woman has received the whole of any sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order."

I would like to ask my hon. Members from the opposition where were they when since 1973 this thing is there on the statutebook. Why did they not raise their voice against section 127(3) (b)? Why is it that they did not raise their voice against the Shariat Bill and why this *halla-gulla* on this Muslim Women Protection Bill... (Interruptions). It is because of the media that they have now risen from the slumber. I do not want to quote the Constitution. Constitution guarantees under section 29 the religious minorities and the Congress (I) Manifesto also does it. (Time bell rings). (Interruptions). Sir, I have only raised the main points. The present Bill is far better than section 125. I do not want to repeat that. But I have only one observation to

make here in this House. Several suspicions were raised by two or three Members that this Bill may be struck down by the Supreme Court. In this connection, I was watching the debate 'he Lok Sabha the o'her day. Shri Ram Niwas Mirdha, who is incidentally not here at the moment, gave an assurance that we are committed to safe-ling the personal law of the Muslims and if and when any High Court of the Supreme Court strikes it down or comes in the way of this decision, they will preserve this Muslim personal law and will again come before Parliament for any enactment. I want an assurance from the hon. Law Minister who is here. In the first instance, I want to assuage the feelings of those who say that jt be down. Our Law Minister is a legal luminary and I want him also to tell us and let it be on record so that in future also we may refer to it, that as and when any court, whether a High Court or the Supreme Court strikes down any law which in the opinion of the Government is interfering in the personal law of Muslims, Government will come forward with laws rectifying that position. I want this assurance on behalf of the Muslims of India.

PROF. (SHRIMATI) ASIMA CHATTERJEE (Nominated): Mr. Vice-Chairman, Sir, frankly speaking, I had much hesitation in supporting this Bill wholeheartedly considering the present status of Muslim women and also considering whether the Muslims divorced women will really get social justice through this Bill. After the hon. Law Minister and the Minister for Human Resource Development explained that this legislation will protect the rights of the Muslim divorced women, and that the women will not be deprived of social justice, I have changed my views and I support the enactment.

The law has its own interpretation, but social justice is guided by the human feelings and sentiments and these cannot be sacrificed. Social changes with the time may require revision of law and its amendment, if there is any urgent need for such an amendment. However, there is the question of personal law and the

personal law is to be accepted and interpreted by those whom the personal Jaw applies.

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The Bill which has been brought today before the House is in harmony with the Muslims personal law. The Shariat provides ih at any matter of maintenance of Muslim, divorcees will be governed by their personal law. In this context section 125 of Cr.P.C. to which this Bill really applies provides for necessary help to divorced women and it needs a careful analysis. Even in 1973 when section 125 was inserted through the efforts of late Shrimati Indira Gandhi, some sections of Muslim community had expressed a doubt that it would, in several respects, differ with the provisions in the personal law. So ' far as section 125 of Cr.P.C. is concerned, it speaks about maintenance of women and if the present Bill is an extension of that section removing the lacuna, if there be any, I have nothing to say and T support it strongly. However, from the analvsis of this piece of legislation, it is clear that the Government have no intention to interfere with the personal law of Muslims. This is in perfect harmony and conformity with secularism.

There has been a derailed discussion on this Bill and let us see whet would be the consequences of the impact of the Bill on the minds of the people, particularly on the minds of our Muslim sisters and their reactions. If the Muslim community—a vast majority of 14 crores of them feels that Muslim divorcees have enough protection by way of Mojor or iddat, their sentiment should be honoured and this Bill needs support. So far i guess the Government has widened the secu-dity that would be available to a divorced Musljm woman provided there within the community as the means to help her. In case the parents and the relations of divorced woman have not the means enough to maintain the Muslim divorcee, the Wakf Boards are supposed to provide the necessary financial assistance. However, the Government of

[Prof. Shrimati Asima Chatterjee]

India while implementing the provisions of the Bill should ensure that the Wakf Boards come forward to take care of the poor and destitute Muslim women, it is imperative that the Wakf Boards established under section 9 of the Wakfs Act, 1954, maintain and rehabilitate the poor and destitute Muslim women, who have no other means of sustenance. In this context, the Government should ensure that the State Wakf Boards are so managed that they do have the means available to provide protection to divorced women who are unable to maintain themselves. (*Time bell rings*) I am just concluding. Sir, I have a few suggestions to make. The Bill should be modified in certain respects. As per the provisions of the Bill, if a pregnant woman is divorced, the children would be entitled to get maintenance up to the age of two years. This period should be extended and the children should get maintenance as long as they are minors. Secondly, the maintenance should be such that they can reasonably maintain themselves with full dignity. With these words, I strongly support the Bill.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Mr. Chitta Basu. He is not here. Shri Saikia. This is the maiden speech of the hon. Member. Please listen to him.

SHRI NAGEN SAIKIA (Assam): Mr. Vice-Chairman, Sir, this Bill is a retrograde step, it is against the spirit of secularism and it is against the accepted policy of the country to emancipate women from the age-long atrocities, as some of my friends have already said. The Bill is also against the accepted principle of equality before law. As per the provisions of the Bill, the Muslim women will be entitled to get maintenance from their husbands for the period of Iddat only. Sir, I am neither a student of law nor an expert on Constitution. But as a humanitarian

I have two points to raise, in regard to this Bill. Firstly, the husband, even though he may be the guilty party—as in most cases, he is likely to be the guilty party—will have no responsibility for the divorced women after the Iddat period. The only course left for the women is to submit an application for the grant of maintenance from her children. Only when it is established that the children are not in a position to pay, the parents will be required to pay. This is the most inhuman provision you can ever imagine. Just imagine the plight of the women. First, she loses the sympathy and the support of her husband. Then the divorced woman will have to file a case against her children. She loses her husband legally. The moment she files a case against her children, she loses them emotionally. This Bill takes away the children from the mother and this has effect on the emotional relationship between the children and the mother. Losing everybody, where will she stay? How she will file a case? She will be pushed into the streets. In many cases the women will have to lead an undesirable life. In the Shariat Law, even when a husband divorces his wife, he has to maintain his children up to the age of puberty or marriage. In the present Bill, the responsibility of the husband is limited for a period of two years only. The Bill, therefore, is against Muslim Personal Law. It is anti-children as the benefit given to the children in the Muslim Personal Law is denied by the provisions of this Bill. With these words I oppose the Bill. Thank you, Sir.

11 P.M.

SHRI F. M. KHAN: Mr. Vice-Chairman, most of the points have been covered by the earlier Members Particularly, hon. Mr. Shiv Shan-kerji has denned secularism as hai been accepted in India. Mr Matte

has very clearly specified what the Muslim personal Law says. I would only like to draw the attention of the Government that when the judgement was delivered on 23.4.1985 the spokesmen of the Government interpreted the law in a different manner as far as secularism was concerned. This has generated enough heat in the country because the spokesman of the Government took a stand that secularism was something different than what the hon. Minister, Mr. Shiv Shanker, has mentioned today. The Constitution has given clear cut protection to the minorities under articles 25 and 29. Earlier my friends on this side also mentioned about articles 14, 15 and 16. I would like to have a little clarification from the Law Minister as to what happens to article 17 if it is interpreted in this particular manner. Earlier also in the morning this matter was raised about untouchability. Is it to be treated on a different footing? The Constitution has very clearly pointed out every bit of it in a different fashion. Directive principles are also to be introduced by the State. The Supreme Court has gone one step ahead of the legislators who should have got a uniform code...

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Yes, I am calling upon the Minister to reply.

SHRI PARVATHANENI UPENDRA:
No limit for time. We are
prepared to sit. (*Interruptions*).

SHRI F. M. KHAN: I have not completed my sentence.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): All right complete your sentence and then Shri Dhabe.

SHRI F. M. KHAN: Directive principles
are to be governed and

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implemented by the Government. The Supreme Court has been directed to see that the Fundamental Rights are protected. So, there is a rift between the legislature and the judiciary. This is what I wanted to point out. I have already pointed it out to the Prime Minister and the respective Chief Ministers of all the States. What I want to say is that a review petition should have been filed instead of taking recourse to bringing forward this Bill. In the review petition the matter would have been clear*. If there was anything other than what we had the apprehensions then we could have thought of a fresh legislation. It is no use having apprehensions about the Supreme Court Judges. It is not good for the country and I did not want the Parliament to be hasty in making remarks against the Supreme Court Judges.

SHRI S. W. DHABE: Mr Vice-Chairman, Sir, it is wrong to suggest or to create an impression that the opposition is opposing the right of maintenance of Muslim women. If this law is not passed, section 125 of the Criminal Procedure Code stands. I am very thankful to the hon. Home Minister to have enlightened us about section 127. In 1973 on the request of a Muslim delegation section 127(3) (b) was added. Therefore, to say that all the opposition is opposing the right of maintenance to Muslim women is not a correct proposition. It is entirely wrong. Every body wants that the rights should be preserved they should be enhanced but here the Supreme Court has given a judgement in favour of a woman who is indigent, who has five children, who was deserted by her husband! In April 1973, she applied for the right of maintenance and during the pendency of the proceedings she was given divorce. The Supreme Court felt that this was a

ection

[Shri S. B. Dhabe]

very difficult case having exceptional circumstances. There was no question of iddat period or a question of giving protection to the Muslim women during that period, who is thrown out on the street by the husband. In para 31, it has been specifically stated by the Supreme Court:

"It is a matter of regret that some of the intervenors who supported the appellant took up an extreme position by displaying an unwarranted zeal to defeat the right to maintenance of women who were unable to maintain themselves. The written submissions of the All India Muslim Personal Law Board has gone to the length of asserting that it is irrelevant to enquire as to how a Muslim divorcee should maintain herself. The facile answer of the Board is, that the Personal Law has devised a system of Mahr to meet the requirements of women and if a woman is indigent, she must look to her relations (husband has no responsibility) including nephews and cousins to support her. This is a most unreasonable view of Law as well as life."

I would like the Law Minister to tell us what he has to say on this. The judgement further goes on to say:

"We appreciate that Begum Temur Jehan, a social worker working in the Association with the Delhi City Women's Association for the uplift of Muslim women, intervened to support Mr. Daniel Latiffi who appears on behalf of the wife."

So, taking advantage of the Supreme Court judgment the Bill has been brought here. Government wants to try something more and pass the Bill.

Bill 1986—Passed

Secondly, the law Minister has said that the observation of the Supreme Court that it is regrettable that a common civil code has not been formed has created apprehensions in the minds of Muslim community. It has appeared in the press that the Government wants to bring a uniform civil code. I would like to know from the Minister whether he is prepared to contradict this report.

It has been further stated that choice will be given to the citizens of India whether they want to be governed by such civil code and take advantage of it. If that is so, how can the observation of the Supreme Court about Art. 44 create apprehensions in the Muslim community? So that is totally incorrect. This is only a camouflage for some political gain. I want to suggest if women's rights are to be maintained, how does this Bill advance rights of Muslim women? There must be an option. In this Bill option is not given to her. Option should be either to go under section 125 of the Cr.P.C. or to take recourse to these provisions. The option has been given to the husband. Will the Muslim woman have the right to get protection under section 125 Cr.P.C? I would like to ask the hon. Law Minister how he justifies revision of law that the husband must have a right jointly with the Muslim woman to come under section 125 Cr.P.C.

Lastly, I would like to know from the Minister if the Wakf Board is not in a position to pay the maintenance to the woman, what will happen? That position is not clear. So I want to reiterate that there should not be any wrong impression that opposing the rights of women for maintenance. What we say is there is no reason to deviate from the Criminal Procedure Code and the general principle of the law and make a special provision which is really not necessary under the law.

[Mr. Deputy Chairman in the Chair]

MR. DEPUTY CHAIRMAN: Law Minister.

SHRI SUSHIL CHAND MOHUNTA
(Haryana): On a point of order.

MR. DEPUTY CHAIRMAN: No point of order.

SHRI SUSHIL CHAND MOHUNTA: I am raising a point of order. My point of order has to be heard.

SHRI ASOKE KUMAR SEN: Mr. Deputy
Chairman, Sir. . . {Interruptions)

SHRI SUSHIL CHAND MOHUNTA-I am asking for a ruling. I am asking whether a point of order has to be heard or not.

SHRI ASOKE KUMAR SEN: Mr. Deputy
Chairman, Sir. . . (*Interruptions*)

MR. DEPUTY CHAIRMAN: Please sit down.

SHRI ASOKE KUMAR SEN: Mr. Deputy Chairman, Sir, every lime we stand' to reply to the debate, points of order are raised.

SHRI DIPEN GHOSH: How many times have you stood up?

SHRI ASOKE KUMAR SEN: Since morning WJ have had a plethora of points of '0' we have forgotten what point of order are. All the frontiers of points o* order arc bithing is made into a point of order.....

SHRI PARVATHANENI UPENDRA: It is a derogatory statement.

SHRI ASOKE KUMAR SEN: . . .so that we have forgo'ten the difference between points of order

SHRI PARVATHANENI UPENDRA: Sir, one minute. All the points of order were raised with the permission of Chair. He can't comment like that..)...

SHRI NIRMAL CHATTERJEE: Nobody
can take away our rights... (*Inter-*
I...

SHRI PARVATHANENI UPENDRA-
"Yon cannot say a plethora of points of -order.

SHRI ASOKE KUMAR SEN: I did tell the Chairman...

SHRI PARVATHANENI UPENDRA: He cannot behave like that. He should not comment that so many points of order were made. All the points of order were made with the permission of the Chair.

MR. DEPUTY CHAIRMAN": In the morning we spent three hours on points of order only.

SHRI DIPEN GHOSH: Mr. Deputy
Chairman. I am on a point of order...
(Interruptions)... .

SHRI ASOKE KUMAR SEN: No point of order. We are not yielding. We have had enough of it.

SHRI J. K. JAIN: No point of order. . . .
(Interruptions) . . .

SHRI DIPEN GHOSH: Mr. Deputy Chairman, Sir, you can listen to me.

SHRI ASOKE KUMAR SEN; We shall not allow. No.

SHRI J. K. JAIN: Nothing doing.

SHRI ASOKE KUMAR SEN- We are not yielding... (*Interruptions*).. . We are not going to yield. Sir, in the morning.. .

SHRI DIPEN GHOSH: Mr. Deputy Chairman, I am on a point of order. ...i I... If you don't allow me to raise this point of order, the Law Min- J to speak... (*In- 'ions*)...

SHRI PARVATHANENI UPENDRA: He will not be allowed to speak.

SHRI J. K. JAIN: You have had enough in the morning. No more.

SHRI ASOKE KUMAR SEN: Sir, in the morning. *ptions*).. We shall not yield. We are not going to yield,

SHRI J. K. JAIN: No, we will not.

SHRI ASOKE KUMAR SEN: We are going to meet this barracking.. . (*Interruptions*) . . .

SHRI K. MOHANAN; It is our right.
We will not surrender it.

SHRI J. K. JAIN: We will not allow this.

MR. DEPUTY CHAIRMAN: In the morning we have spent enormous time raising points of order. *(Interruptions)* Please sit down.

SHRI ASOKE KUMAR SEN: This is not Bengal Assembly. *(Interruptions)*

MR. DEPUTY CHAIRMAN: Raising as the pretext of point of order.. . (*Inter/pi ions*)

SHRI SURESH KALMADI: No, you cannot disallow. *(Interruptions)*

SHRI J. K. JAIN: This will not be permitted. *{Interruptions}*

MR. DEPUTY CHAIRMAN: Mr. Minister, please continue. (*Interruption'*)

SHRI SURESH KALMADI: Sir, there is a point of order. If you do not allow the point of order, we will not allow the Minister to speak. (*Interruptions*).

SHRI ASOKE KUMAR SEN: We are not going to yield. (*Interruptions*) This barracking will be met. I will move that the motion be passed. (*Interruptions*) This is the proper answer. They do not want to hear. (*Interruption?*)

SHRI H. R. BHARDWAJ: This is *gunda gardi*. (Interruptions)

MR. DEPUTY CHAIRMAN: Please sit down. Our House has a rich tradition. Our House has got a very great and very rich tradition. *(Interruptions)*

Mr. Kalmadi, I am on my legs. When all are shouting together, it is impossible

for the Chair to list ha point
been made exactly by whom. Mr Mohanta had
stood up and wanted to L I said Mrs Sen
had already been called upon. So, Mr. sen will
make a statement. In such a situation was
there a poin; for Mr. Mohanta...

SHRI SUSHIL CHAND MOHUNTA
No, I wanted to raise a point of order.

MR. DEPUTY CHAIRMAN: You wen
on a point of order.

SHRI SUSHIL CHAND MOHUNTA: Yes, I asked you to listen to my point of order. Whether you allow it or not is a different matter, but I wanted you to allow me to raise my point of order. When you said you were not going to allow a point of order, I said you must allow me. Now, I must make my position clear. The reason why I advanced is that in the morning there were a number of points of order that were raised and a number of points of orders having been raised were not allowed. My point of order is that this debate has continued since morning. The speaker has been given more time than allotted. My party has not been given the time it is allotted. Therefore, I have the right to speak on behalf of my party. You cannot exclude me. You can proportionately give my party some time which the other parties have been allowed. You cannot take away my right.

MR. DEPUTY CHAIRMAN: Mr. Bhagat, you wanted to say something.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND TOURISM (SHRI H. K. L. BHAGAT): Mr. Deputy Chairman, Sir, If Mr. Mohunta wants to speak, let him speak.

MR. DEPUTY CHAIRMAN: Mr. Mohunta speak for a few minutes.

SHRI SUSHIL CHAND MOHUNTA: Mr. Deputy Chairman, Sir, I wanted to speak on this matter specifically, because party is the only party which has given freedom to all its Members to express their own views as they liked. This is a matter concerning the personal law

of a particular community and it is not of national importance in the sense that it is not applicable to any other situation. Therefore, we have not done like the ruling party which has more or less whipped its speakers to fall in one line and not to project any other point of view. Therefore, I want to specifically point out under the Muslim law, the Muslims have a right to govern in the manner they choose and we cannot force upon our opinion whatsoever it may be on the Mus-

¹ Muslim Personal Law Board. I, therefore, wanted to support the Bill on this point: and make the position of my party clear. But the way the ruling party has behaved (*Interruptions*) I should have opposed it. I must also add that the remarks passed by the Honourable Minister, Mr P. V. Narasimha Rao on the Supreme Court judgement were uncharitable. I feel these

remarks should not have been used. The Supreme Court whatever judgement it gives, is supposedly a right judgement. We do not sit over the judgement. But if the judgement is not meritable or we say that we should modify the judgement, we the Parliament has to consider and modify it. But we cannot challenge the character, soundness and the authority of the Supreme Court. In the light of this, I feel those remarks should not have been used.

I personally feel that Muslims do not want any particular interference in their law. They want their own law to be governed in a particular manner. Well, I for one would be with them on this point. Thank you.

SHRI ASOKE KUMAR SEN: Sir, I think, I should add a few words: otherwise it will be discourtesy to the House. I thought I should not put the motion to vote, but having regard and courtesy to the House, I must say a few words to explain the few doubts which have been raised.

Sir, as I started explaining in the morning the reason why this Bill became necessary, because the Supreme Court in one sweep nullified the effect of section 127 (3) (M). In these words, the Supreme Court has given the statement of Mr. Mirdha while he was piloting the Bill in the Rajya Sabha. This is the relevance of Mr. Mir-

dha's statement. He said that if there is a demand for change in the Muslim Personal Law it should actually come from the Muslim community itself and should wait for the Muslim public opinion on these matters to crystallise before we try to change this customary right or make changes in their personal law. This is hardly the place where we should do so. But I tried to explain the provision of the Bill as an advance over the previous position—divorced women have been included in clause 125. But this important limitation has been imposed by this amendment to clause 127, namely, that the maintenance orders would cease to operate after the amounts due to her under the personal law are paid to her and in that an explanation was given, and then, the Bill was passed unanimously. But when it came to the Supreme Court, this is what the Chief Justice Chandrachud said :--

"It does appear from the speech of Ram Niwas Mirdha that the Government did not desire to interfere with the personal law of the Muslims through the Criminal Procedure Code. It wanted the Muslim community to twist the law and the Muslim public opinion to crystallise on the reforms in the personal law. However, we are not concerned with the question whether the Government did or did not desire to bring about a change in the Muslim law by enacting 125 or 127 of the Code."

As you have said earlier and as admitted by the Minister, the Government did introduce such a change by defining the expression 'why' include the divorced wife. This House will deal with it. Forgetting the divorced wife is included along with section 127 with the explanation that if the divorced wife is paid all that is due to her under the personal law, she will not get anything more. Now, this is what has created the trouble and this is not uncharitable. This is a very genuine criticism and all judgements are liable to be criticised genuinely and properly as Lord Atkin said in the famous case *Entores* that justice is not in a cross-jettison. It must stand the sunshine of public opinion and the path of justice is the public

[Shri Asoke Kumari]

path, if the path of justice is the public path, then the criticism that we are trying to overrule the Supreme Court is not a valid one. Every time, the Government has felt that the judgement either of a High Court or of a Supreme Court needs change like the Bank nationalisation case, like the various land reforms laws which are validated by putting them all in schedule and various other validating acts including the Central Sales Tax Act which validated various Sales Tax legislations 1937. It is a Parliament prerogative and duty in some cases to correct the law according to the needs of the public and according to public opinion and as has been said by my esteemed colleague Mr. Narasimha Rao that the Supreme Court forget the purpose of Section 127(3)(b) and how it satisfied the Muslim community in accepting the inclusion of ex-wife in the category of wife in section 125. What are we doing now? We are trying to rectify the position by passing a law, a separate law keeping 125 and 127 intact, to be applied to those whose personal laws are not affected as interpreted by the Supreme Court. If that interpretation did not come, there was no collision between the personal law and section 125 and section 127 but since the collision has now been created, it must be resolved and the Parliament would be failing in its duty and the Government much more, if it allowed this thing to continue as they are now and public passions to be aroused as that was done over the past eight months. We have studied the matter and we have been taking immense pains in finding out what would be the proper law for the Muslim community and we have tried to give expression to it. Now, it has been said every time. I heard Smt. Mukherjee. I was very much impressed with her eloquence but not very much with her reluctance. She was so overcome by her emotions in sympathy for the fairer sex. We are sympathetic to the fairer sex. We love either as mothers or as sisters or as wives or as lovers. So, the fairer sex is very much a part of us and if we take the biblical myth of the Rib of Adam being taken to create women and they are all part of us

and we are part of them. Therefore, it is wrong to say that we are throwing the women into the winds or throwing them into the dens of wolves and lions but she was so much in emotions, that so much " was lost in emotions. But I do appreciate Shrimati Mukherjee's concern for the women folk and the concern of many of us for the womenfolk. We are all shares in that concern. We are all either sons or husbands or fathers or brothers of women. Therefore, they are very much part of us. It is our duty to see... .

SHRIMATI KANAK MUKHERJEE Did you take the opinion of the mothers sisters and daughters?

SHRI ASOKE KUMAR SEN: I think so. I think during the last eight months. I have met thousands of mothers, thousands of sisters and thousands of daughters. Of course, I have got only one wife. • I have no desire to drive her into section 125 of the Criminal Procedure Code against me. I think, if I may quote a Muslim expression, *liisha-Allah*; we shall do well to avoid the net of section 125, with good understanding, with good relations with our fairer sex.

What is it that we are giving? Sections 125 and 127 give only what the personal law gives. It is forgotten that section 125 was not a provision for maintenance. It was a provision for preventing vagrancy. The law regarding maintenance is codified so far as the Hindu law is concerned. The law regarding maintenance for the Christians is codified under the Indian Christian Marriage Act and the Divorce Act, where alimony is given at the time of divorce. So far as the Muslim law is concerned, it is not yet codified, excepting that now we are codifying the maintenance of divorced women part of it for the first time. The Criminal Procedure Code was more or less a summary procedure given to get some interim alimony, not exceeding Rs. 500 to prevent vagrancy, and that was curbed, limited, as Mr. Mirdha said, by the personal law obligation. Now my friend, Mr. Salve, gave a very graphic description of those wonderful women, possessed with all those wonderful rights under section 125, waiting for years and years and then ultimately getting Rs. 125, Rs. 179 or

Rs. 200, and then still looking into the skies for the purpose of executing those wonderful orders. Now, what are we giving? No limit of Rs. 500 is there. "Reasonable provision and maintenance" is being given, having regard to the needs of the woman and having regard to the means of the husband. This has to be done within one month unless circumstances compel the magistrate to extend it for reasons to be recorded in writing. Then what do we give further? She gets this maintenance which was originally not codified for the Muslim wife. She gets her *mahr* for which she had to sing for years and years. She gets all the properties got by the husband. And what is more, today if the husband is unable to maintain her on divorce, she gets nothing. There is no obligation on the father, on the mother, excepting the Muslim law obligation, but there is no procedure to enforce her maintenance, from her father or children. Shah Bano had two very grown up sons. I do not know why she had to run to the court against her husband. Under the Muslim law, the sons were responsible primarily to maintain her on divorce after the *iddat* period.

SHRI DIPEN GHOSH: When she went to the court in Indore, she was not divorced.

SHRI ASOKE KUMAR SEN: When she came to the Supreme Court, she was divorced already. The other women who came to the Supreme Court were all divorced. Now, what are we giving? It is shown as if these women are without any

is of subsistence. If the husband is indigent, under section 125, nothing can come from him. If the wife is affluent* she cannot get anything from the husband. But under the present law, the duty is absolute, as in Islam. Now she gets something. If the husband is indigent, there is a charge on the family. The concept of Muslim Law has to be understood. This is where we go wrong. Under Muslim Law a woman is either a daughter or a wife or a mother. When the daughter becomes a wife, she goes out of the family. Until she goes out of the family, she is a charge on the family. It does not depend upon her puberty as in the case of the son. The daughter has to be maintained

by the father until she is married. When she is married, by the husband. When she is divorced, she is back to the family. Under the Muslim concept all the bonds between the husband and the wife are completely snapped and I was told by a very respected lady Member of Parliament—I don't name her—she was so excited that she said under the Shariat Law the moment I am divorced I cannot be touched by the dirty cards of my husband. That is the concept of Muslim Law of the relationship between the husband and the wife when the wife is divorced. Let us not get into the twin controversial topics of the arbitrariness of divorce in Muslim Law because that is a different subject altogether. ..

SHRIMATI KANAK MUKHERJEE. It is related.

SHRI ASOKE KUMAR SEN: It may be related but we are not dealing with it now nor does 125 deal with it. When the wife is divorced today, she comes back to the father's family. If the father is not there, the brothers are there, the children are there. If the father is not there, if the brothers are not there, if the children are not there, or they are not able to maintain her, then the community takes charge of her under the law. The Wakf Board has to take charge. Now, there is a lot of confusion as if the Wakf Board and the wakfs are the same. The wakfs are controlled and regulated by the Wakf Board which is a statutory Board. They get 6 per cent as their expenditure from the income of wakfs under them. From this 6 per cent they have to disburse this statutory charge we have now laid on them. It is one of the charitable objects in Islam, a very highly charitable object which they have to discharge from their 6 per cent income in favour of the divorced wives where there is no family to take care of them. Now, this concept of Islam—I do not want to go deeper and deeper into it—really delighted me, fascinated me, because, look at me, I am a Hindu. I remember how Hindu widows or Hindu wives when they were given up by their husbands—because there was no divorce in the olden days—when they were left, how they were not cared for even by their own families, and in law the divorced,

[Shri Asoke Kumar Sen]

not the divorced, the separated wife or the widow could not enforce any obligation on the father or on the brother or anybody else unless they inherited a property which originally belonged to the husband...

SHRIMATI KANAK MUKHERJEE:
When you are so much concerned about the divorced women, why cannot you guarantee them jobs?

SHRI ASOKE KUMAR SEN- We will talk about wider problems later. We are all for women, I can assure you. We are all for their welfare.

Therefore, Islam really was born at an age when women had hardly any rights in Europe; they were all almost chattels in their own empire. In England women had no property until the 19th century. Islam gave them all the rights of inheritance from the father, from the brother, from the husband, from the son, and then the right is given back to the family on divorce, and if there was no family to come back, the community has to take charge. It was a tribal society and if the community did not look after their daughters, then it would have been a very disruptive position. That is why in deserts in Arabia the entire community took charge of the women on the death of the father or the brother or the husband and on the divorce by the husband, and further, no stigma was attached to the women on divorce in Islam, even today. Today a man marries a divorced woman with two or three or four children and brings up those children as his own children until they live a happy life. But look at our society. Look at even the English, society. Because the Duchess of Windsor was a divorced woman, the Duke of Windsor could not marry her. He had to give up his throne. There was the stigma of divorce which is still there. But in the Islamic countries there is no stigma. There are many kings who have married divorced women. Therefore, in the Islamic society, a divorced woman is as honourable as a non-divorced woman. This is something which has to be

understood. (Interruptions). This has to be understood. (Interruptions). This has to be understood. (Interruptions). I would like to know in how many societies excepting the Muslim society a divorced woman would get the same honour as she gets in the Muslim society. Therefore, this is the structure of the Bill and we are giving ever so much more, with a much more speedy remedy, and yet we are being accused of throwing the women to the wolves.

Therefore, Sir, with these words, I recommend that the Bill be taken into consideration. Thank you, Sir.

MR. DEPUTY CHAIRMAN: I shall now put first the amendment moved by Shri Ashwani Kumar for reference of the Bill to a Select Committee of the Rajya Sabha to vote. The question is:

"That the Bill to protect the right 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
3. Shri Pranab Mukherjee
4. Shri Sankar Prasad Mitra
5. Dr. (Shrimati) Najma Heptulla
6. Prof. (Mrs.) Asima Chatterjee
7. Miss Saroj Khaparde
8. Shri Khushwant 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."

(**)

The House divided.

MR. DEPUTY CHAIRMAN:

| | |
|------------|-----|
| Ayes | 50 |
| Noes | 156 |
| Abstention | 1 |

AYES ... 50

Advani, Shri Lal K.
Ashwani Kumar, Shri
Baby, Shri M. A.
Barman, Shri Debendra Nath
Basu, Shri Chitta
Bhattacharjee, Shri Nepaldev
Chakravarty, Shrimati Bijoya
Chatterjee, Shri Nirmal
Chowdhury, Shrimati Renuka
Das Gupta, Shri Gurudas
Dhabe, Shri S. W.
Ghosh, Shri Dipen
Ghosh, Shri Shantimoy
Gopalan, Shri K.
Gowda, Shri D. B. Chandra
Goyal, Shri J. P.
Gurupadaswamy, Shri M. S.
Jaswant Singh, Shri
Kalmadi, Shri Suresh
Kalyala, Shri Prabhakar Rao
Kar, Shri Narayan
Khandelwal, Shri Pyarelal
Kushawaha, Shri Ram Naresh
Lakshmana, Prof. C.
Maheswarappa, Shri K. G.
Mahishi, Dr. (Shrimati) Sarojini
Malaviya, Shri Satya Prakash
Mazumder, Shri Ramkrishna

(**) The other amendments for reference of the Bill to a Select Committee of the Rajya Sabha were not put to vote.

Mishra, Shri Kailash Pati
Mohanan, Shri K.
Mukherjee, Shrimati Kanak
Mukherjee, Shri Pranab
Naik, Shri R. S.
Patel, Dr. Shanti G.
Poddar, Dr. R. K.
Quasem, Shri Mostafa Bin
Radhaakrishna, Shri Puttapaga
Rao, Shri Gopala Rao
Rao, Shri Yalla Sesj Bhushana
Reddy, Shri B. Satyanarayan
Reddy, Dr. G. Vijaya Mohan
Saikia, Shri Nagen
Scindia, Shrimati Vijaya Raje
Sen, Sri Sukomal
Suraj Prasad, Shri
Talarj Manohar, Shri
Upendra, Shri Parvathaneni
Vaghela, Shri Shanker Singh
Yadav, Shri Hukmdeo Narayan
Yadav, Shri Jagdambi Prasad

NOES....156

Abdi, Shri Hashim Raza Allahabadi
Akarte, Shri Jagannath Sitaram
Aladj Aruna, Shri alias V. Arunchalam
Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram
Anand Sharma, Shri
Ansari, Shri Hayat Ulla
Antony, Shri A. K.
Arun Singh, Shri
Balmik, Shri Achchhey Lal
Bansal, Shri Pawan Kumar
Basumatari, Shri Dharanidhar
Bhandare, Shri Murlidhar Chandrakant
Bharadwaj, Shri Ramchandra
Bhardwaj, Shri Hansraj
Bhatia, Shri Madan
Bhatt, Shri Nand Kishore
Bhattacharjee, Shri Kamalendu
Bhim Raj, Shri
Birla, Shri Krishna Kumar

Chatterjee, Prof. (Mrs.) Asima
Chaturvedi, Shri Bhuvnesh
Chowdhary Ram Sewak
Darbara Singh, Shri
Deori, Shrimati Omem Moyong
Desai, Shri Jagesh
Deshmukh, Shri Shankarrao Narayanrao
Dhusiya, Shri Sohan Lal
D'Souza, Dr. Joseph Leon
Faguni Ram, Shri
Fotedar, Shri Makhan Lal
Ganeshwar Kusum, Shri
Gautam, Shri Anand Prakash
Ghan Shyam Singh, Shri
Gopalsamy, Shri V.
Gupta, Shri Vishwa Bandhu
Hanspal, Shri Harvendra Singh
Hanumanthappa, Shri H.
Haq. Shri (Molana) Asrarul
Hashmi, Shri Syed Ahmad
Heerachand, Shri D.
Heptulla, Dr. (Shrimati) Najma
Islam, Shri Baharul
Jadhav, Shri Vithalrao Madhavrao
Jain, Shri J. K.
Jamuda, Shri Durga Prasad
Jani, Shri Jagadish
John, Shri Valampuri
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kadharsha, Shri M.
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhubaneswar
Kamble, Prof. N. M.
Kar, Shri Ghulam Rasool
Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Kestri, Shri Sitaram
Khan, Shri F. M.
Khaparde, Miss Saroj
Kidwai, Dr. Mohd. Hashim
Kollur, Shri M. L.
Koya, Shri B. V. Abdulla

Kushnoor, Shri Veershetty Moglappa
Madni, Shri Asad
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Makwana, Shri Yogendra
Malaviya, Shri Radhakishan
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Mane (Patil), Shri Maruti Dnyanoo
Manbar, Shri Bhagatram
Matto, Shri Ghulam Rasool
Meena, Shri Dhuleshwar
Mehta, Shri Chimanbhai
Mirza Irshadbaig, Shri
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohanaragam, Shri R.
Mohanty, Shri Subas
Moopanar, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanasamy, Shri V.
Natha Singh, Shri
Pachouri, Shri Suresh
Pahadia, Shrimati Shanti
Panda, Shri Akshay
Pandey, Shrimati Manorama
Pandey, Shri Sudhakar
Panicker, Shri K. Vasudeva
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Pratibha Devisingh
Pattnaik, Shri Sunil Kumar
Prajapati, Shri Pravin Kumar
Prasad, Shri K. L. N.
Rafique Alam, Shri
Rai, Shri Kalpnath
Rajagopal, Shri M.
Rajangam, Shri N.
Ramachandran, Shri M. S.
Ramakrishnan, Shri R.
Ramamurthy, Shri Thindivanam. K.

Ramanathan, Shri V.
Ramesh Babu, Shri S. B.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Ramsinghbhai Pataliya-
bhai
Ray, Shri Deba Prasad
Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richhariya, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Salve, Shri N. K. P.
Sambasivam, Shri Era
Saring, Shri Leonard Solomon
Sema, Shri Hokishe
Sharma, Shri A. P.
Sharma, Shri Chandan
Sharma, Dr. H. P.
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmed
Silvera, Dr. C.
Singh, Shri Bir Bhadra Pratap
Singh, Shrimati Pratibha
Singh, Dr. Rudra Pratap
Singh, Thakur Kamakhya Prasad
Singh, Shri Vishvajit Prithvijit
Singh, Shri Vishwanath Pratap
Sukhdev Prasad, Shri
Sukul, Shri P. N.
Sultan, Shrimati Maimoona
Sultan Singh, Shri
Tariang, Shri Jerlie E.
Thakur Jagatpal Singh
Thakur, Shri Rameshwar
Thangabalu, Shri
Tiware, Shri Narayan Datt
Tripathi, Shri Chandrika Prasad
Tripathi, Shri Kamalapati
Tyagi, Shri Shanti

Vaduthala, Shri T. K. C.
Valiullah, Shri Raoof
Verma, Shri Kapil
Vikal, Shri Ram Chandra
Yadav, Shri Ramanand

Abstention ... One

Mohunta, Shri Sushil Chand

The motion was negatived.

MR. DEPUTY CHAIRMAN: Now, I shall put the motion moved by Shri Asoke Kumar Sen to vote. The question is:

"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."

The House divided.

MR. DEPUTY CHAIRMAN: Ayes...

Ayes ... 159

Noes...49

AYES ... 159

Abdi, Shri Hashim Raza Allahabadi
Akarte, Shri Jagannath Sitaram
Aladi Aruna, Shri *alias* V. Arunachalam
Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram
Anand Sharma, Shri
Ansari, Shri Hayat Ulla
Antony, Shri A. K.
Arun Singh, Shri
Balmik, Shri Achchhey Lal
Bansal, Shri Pawan Kumar
Basumatari, Shri Dharanidhar
Bhandare, Shri Murlidhar Chandrakant
Bharadwaj, Shri Ramchandra
Bhardwaj, Shri Hansraj
Bhatia, Shri Madan
Bhatt, Shri Nand Kishore
Bhattacharjee, Shri Kamalendu
Bhim Raj, Shri
Birla, Shri Krishna Kumar

Chatterjee, Prof. (Mrs.) Asima
 Chaturvedi, Shri Bhuvnesh
 Chowdhary Ram Sewak
 Darbara Singh, Shri
 Deori, Shrimati Omem Moyong
 Desai, Shri Jagesh
 Dhabe, Shri S. W.
 Dhusiya, Shri Sohan Lal
 D'Souza, Dr. Joseph Leon
 Faguni Ram, Shri
 Fotedar, Shri Makhan Lal
 Ganeshwar Kusum, Shri
 Gautam, Shri Anand Prakash
 Ghan Shyam Singh, Shri
 Gopalsamy, Shri V.
 Gupta, Shri Vishwa Bandhu
 Hanspal, Shri Harvendra Singh
 Hanumanthappa, Shri H.
 Haq, Shri (Molana) Asrarul
 Hashmi, Shri Syed Ahmad
 Heerachand, Shri D.
 Heptulla, Dr. (Shrimati) Najma
 Islam, Shri Baharul
 Jadhav, Shri Vitthalrao Madhavrao
 Jain, Shri J. K.
 Jamuda, Shri Durga Prasad
 Jani, Shri Jagadish
 John, Shri Valampuri
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Sudha Vijay
 Kadharsha, Shri M.
 Kailashpati, Shrimati
 Kakodkar, Shri Purushottam
 Kalita, Shri Bhubaneswar
 Kamble, Prof. N. M.
 Kar, Shri Ghulam Rasool
 Kaul, Shrimati Krishna
 Kaushik, Shri M. P.
 Kesri, Shri Sitaram
 Khan, Shri F. M.
 Khaparde, Miss Saroj
 Kidwai, Dr. Mohd. Hashim
 Kollur, Shri M. L.

Koya, Shri B. V. Abdulla
 Kushnoor, Shri Veershetty Moglappa
 Madni, Shri Asad
 Mahendra Prasad, Shri
 Mahto, Shri Bandhu
 Majhi, Shri Prithibi
 Makwana, Shri Yogendra
 Malaviya, Shri Radhakishan
 Malik, Shri Mukhtiar Singh
 Malik, Shri Satya Pal
 Mane (Patil), Shri Maruti Dayanoo
 Manhar, Shri Bhagatram
 Matto, Shri Ghulam Rasool
 Meena, Shri Dhuleshwar
 Mehta, Shri Chimanbhai
 Mirza Irshadbaig, Shri
 Mishra, Shri Mahendra Mohan
 Mishra, Shri Sheo Kumar
 Mittal, Shri Sat Paul
 Mohanarangam, Shri R.
 Mohunta, Shri Sushil Chand
 Mohanty, Shri Subas
 Moopnar, Shri G. K.
 Naik, Shri G. Swamy
 Nalwa, Shri Hari Singh
 Narayanasamy, Shri V.
 Natha Singh, Shri
 Pachouri, Shri Suresh
 Pahadia, Shrimati Shanti
 Panda, Shri Akshay
 Pandey, Shrimati Manorama
 Pandey, Shri Sudhakar
 Panicker, Shri K. Vasudeva
 Patel, Shri Vithalbhai Motiram
 Patil, Shri Dinkarrao Govindrao
 Patil, Shrimati Pratibha Devisingh
 Pattnaik, Shri Sunil Kumar
 Prajapati, Shri Pravin Kumar
 Prasad, Shri K. L. N.
 Rafique Alam, Shri
 Rai, Shri Kalpnath
 Rajagopal, Shri M.
 Rajangam, Shri N.

Ramachandran, Shri M. S.
Ramakrishnan, Shri R.
Ramamurthy, Shri Thindivanam K.
Ramanathan, Shri V.
Ramesh Babu, Shri S. B.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Ramsinghbhai Pataliya
bhai
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Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richhariya, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Saikia, Shri Nagen
Salve, Shri N. K. P.
Sambasivam, Shri Era
Saring, Shri Leonard Solomon
Sema, Shri Hokishe
Sharma, Shri A. P.
Sharma, Shri Chandan
Sharma, Dr. H. P.
Shiv Shanker, Shri P.
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmed
Silvera, Dr. C.
Singh, Shri Bir Bhadra Pratap
Singh, Shrimati Pratibha
Singh, Dr. Rudra Pratap
Singh, Thakur Kamakhya Prasad
Singh, Shri Vishvajit Prithvijit
Singh, Shri Vishwanath Pratap
Sukhdev Prasad, Shri
Sukul, Shri P. N.
Sultan, Shrimati Maimoona
Sultan Singh, Shri
Tariang, Shri Jerlie E.
Thakur Jagatpal Singh
Thakur, Shri Rameshwar

Thangabalu, Shri
Tiwari, Shri Narayan Datt
Tripathi, Shri Chandrika Prasad
Tripathi, Shri Kamlapati
Tyagi, Shri Shanti
Vaduthala, Shri T. K. C.
Valiullah, Shri Raoof
Verma, Shri Kapil
Vikal, Shri Ram Chandra
Yadav, Shri Ramanand

NOES ... 49

Advani, Shri Lal K.
Ashwani Kumar, Shri
Baby, Shri M. A.
Balram, Shri N. E.
Barman, Shri Debendra Nath
Basu, Shri Chitta
Bhattacharjee, Shri Nepaldev
Chakravarty, Shrimati Bijoya
Chatterjee, Shri Nirmal
Chowdhury, Shrimati Renuka
Das Gupta, Shri Gurudas
Ghosh, Shri Dipen
Ghosh, Shri Shantimoy
Gopalan, Shri K.
Gowda, Shri D. B. Chandra
Goyal, Shri J. P.
Gurupadaswamy, Shri M. S.
Jaswant Singh, Shri
Kalmadi, Shri Suresh
Kalvala, Shri Prabhakar Rao
Kar, Shri Narayan
Khandelwal, Shri Pyarelal
Kushawaha, Shri Ram Naresh
Lakshmana, Prof. C.
Maheshwarappa, Shri K. G.
Mahishi, Dr. (Shrimati) Sarojini
Malaviya, Shri Satya Prakash
Mazumder, Shri Ramkrishna
Mishra, Shri Kailash Pati
Mohanani, Shri K.
Mukherjee, Shrimati Kanak
Mukherjee, Shri Pranab

Naik, Shri R. S. Patel, Dr. Shanti G. Poddar, Dr. R. K. Quasem, Shri Mostafa Bin Radhakrishna, Shri Puttapaga Rao, Shri Gopala Rao Rao, Shri Yalla Sesi Bhushana Reddy, Shri B. Satyanarayan Reddy, Dr. G. Vijaya Mohan Scindia, Shrimati Vijaya Raje Sen, Shri Sukomal Suraj Prasad, Shri Talari Manohar, Shri Upendra, Shri Parvathaneni Vaghela, Shri Shanker Sinh Yadav, Shri Hukmdeo Narayan Yadav, Shri Jagdambi Prasad

The motion was adopted.

12.00 Midnight

SHRI DIPEN GHOSH: With the adoption of the motion 'burah bajgaya'.

SHRI S. W. DHABE; Sir, I am on a point of order. Today, we are on a holiday. We cannot continue. We should continue on Monday. The next working day is Monday.

SHRI B. SATYANARAYAN REDDY: No proceedings should be there on a holiday.

श्री प्यारेलाल खंडेलवाल (मध्य प्रदेश): महोदय, हम लोगों को 8 तारीख का बिजनेस पेपर मिला था। अब 8 तारीख सन ५३ होकर 9 तारीख आ गई है। अब इस सदन की कार्यवाही उस कार्यवाही के अनुसार नहीं चलाई जा सकती। इसलिए आगे कार्यवाही नहीं की जानी चाहिए।

MR. DEPUTY CHAIRMAN: Please j
 :ake your seats. Rule 13 of the Rules of

Procedure clearly lays down that a sitting of the Council shall conclude at such hour as the Chairman may-direct. That is the Rule. In other words, it means that the sitting continues until the Chairman adjourns the House no matter whether the clock has passed beyond 12 midnight. Therefore, the House is in order and the discussion on the Bill will continue till it comes to an end I may point out that this is not the first time that this House is sitting beyond 12 midnight. At least, there are two instances which many of us may be remembering when the House sat beyond midnight. (*Interruptions*) I, therefore, rule that notwithstanding that the clock has passed 12 midnight today's sitting continues till we finish this Bill.

We shall now take up clause by clause consideration of the Bill. We shall take up Clause 2. There are 11 amendments.

SHRI PARVATHANENI UPENDRA: We want to speak in support of our amendments.

Clause 2—Definitions

MR. DEPUTY CHAIRMAN: We shall first take up clause 2 for consideration. There are 11 amendments on clause 5. The first one is by Dr. Mahisbi. Are you moving?

DR. (SHRIMATI) SAROJINI MAHISHI: Sir, I move:

4. "That at page 1, line 8, the word 'Muslims' be deleted."

MR. DEPUTY CHAIRMAN: The question is:

"That at page 1, line 8, the word 'Muslim' be deleted."

The House divided.

MR. DEPUTY CHAIRMAN:

Ayes ... 50 Noes

... 156

AYES ... 50

Advani, Shri Lai K.

Ashwani Kumar, Shri

Baby, Shri M. A.
Balram, Shri N. E.
Barman, Shri Debendra Nath
Basu, Shri Chitta
Bhattacharjee, Shri Nepaldev
Chakravarty, Shrimati Bijoya
Chatterjee, Shri Nirmal
Chowdhury, Shrimati Renuka
Das Gupta, Shri Gurudas
Dhabe, Shri S. W.
Ghosh, Shri Dipen
Ghosh, Shri Shantimoy
Gopalan, Shri K.
Gowda, Shri D. B. Chandra
Goyal, Shri J. P.
Gurupadaswamy, Shri M. S.
Jaswant Singh, Shri
Kalvala, Shri Prabhakar Rao
Kar, Shri Narayan
Khandelwal, Shri Pyarelal
Kushawaha, Shri Ram Naresh
Lakshmana, Prof. C.
Maheswarappa, Shri K. G.
Mahishi, Dr. (Shrimati) Sarojini
Malaviya, Shri Satya Prakash
Mazumder, Shri Ramkrishna
Mishra, Shri Kailash Pati
Mohanan, Shri K.
Mukherjee, Shrimati Kanak
Mukherjee, Shri Pranab
Naik, Shri R. S.
Patel, Dr. Shantu G.
Poddar, Dr. R. K.
Quasem, Shri Mostafa Bin
Radhakrishna, Shri Puttapaga
Rao, Shri Gopala Rao
Rao, Shri Yalla Sesi Bhushana
Reddy, Shri B. Satyanarayan
Reddy, Dr. G. Vijaya Mohan
Saikia, Shri Nagen
Scindia, Shrimati Vijaya Raje
Sen, Shri Sukomal
Suraj Prasad, Shri

Talari Manohar, Shri
Upendra, Shri Parvathaneni
Vaghela, Shri Shanker Singh
Yadav, Shri Hukmdeo Narayan
Yadav, Shri Jagdambi Prasad

NOES ... 156

Abdi, Shri Hashim Raza Allahabadi
Akarte, Shri Jagannath Sitaram
Aladi Aruna, Shri alias V. Arunachalam
Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram
Anand Sharma, Shri
Ansari, Shri Hayat Ulla
Antony, Shri A. K.
Arun Singh, Shri
Balmik, Shri Achchhey Lal
Bansal, Shri Pawan Kumar
Basumatari, Shri Dharanidhar
Bhandare, Shri Murlidhar Chandrakant
Bharadwaj, Shri Ramchandra
Bhardwaj, Shri Hansraj
Bhatia, Shri Madan
Bhatt, Shri Nand Kishore
Bhattacharjee, Shri Kamalendu
Bhim Raj, Shri
Birla, Shri Krishna Kumar
Chatterjee, Prof. (Mrs.) Asima
Chaturvedi, Shri Bhuvnesh
Chowdhary Ram Sewak
Darbara Singh, Shri
Deori, Shrimati Omam Moyong
Desai, Shri Jagesh
Dhusiya, Shri Sohan Lal
D'Souza, Dr. Joseph Leon
Faguni Ram, Shri
Fotedar, Shri Makhan Lal
Ganeshwar Kusum, Shri
Gautam, Shri Anand Prakash
Ghan Shyam Singh, Shri
Gopalsamy, Shri V.
Gupta, Shri Vishwa Bhandhu
Hanspal, Shri Harvendra Singh

Hanumanthappa, Shri H.
Haq, Shri (Molana) Asrarul
Hashmi, Shri Syed Ahmad
Heerachand, Shri D.
Heptulla, Dr. (Shrimati) Najma
Islam, Shri Baharul
Jadhav, Shri Vithalrao Madhavrao
Jain, Shri J. K.
Jamuda, Shri Durga Prasad
Jani, Shri Jagadish
John, Shri Valampuri
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kadharsha, Shri M.
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhubaneswar
Kamble, Prof. N. M.
Kar, Shri Ghulam Rasool
Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Kesri, Shri Sitaram
Khan, Shri F. M.
Khaparde, Miss Saroj
Kidwai, Dr. Mohd. Hashim
Kollur, Shri M. L.
Koya, Shri B. V. Abdulla
Kushnoor, Shri Veershetty Moglappa
Madni, Shri Asad
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Makwana, Shri Yogendra
Malaviya, Shri Radhakrishnan
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Mane (Patil), Shri Maruti Dnyanoo
Manhar, Shri Bhagatram
Matto, Shri Ghulam Rasool
Meena, Shri Dhuleshwar
Mehta, Shri Chimanbhai
Mirza Irshadbaig, Shri
Mishra, Shri Mahendra Mohan

Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohanarangam, Shri R.
Mohanty, Shri Subas
Moopanar, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanasamy, Shri V.
Natha Singh, Shri
Pachouri, Shri Suresh
Pahadia, Shrimati Shanti
Panda, Shri Akshay
Pandey, Shrimati Manorama
Pandey, Shri Sudhakar
Panicker, Shri K. Vasudeva
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Pratibha Devisingh
Pattnaik, Shri Sunil Kumar
Prajapati, Shri Pravin Kumar
Prasad, Shri K. L. N.
Rafique Alam, Shri
Rai, Shri Kalpnath
Rajagopal, Shri M.
Rajangam, Shri N.
Ramachandran, Shri M. S.
Ramakrishnan, Shri R.
Ramamurthy, Shri Thindivanam K.
Ramanathan, Shri V.
Ramesh Babu, Shri S. B.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Ramsinghbhai
Pataliyabhai
Ray, Shri Deba Prasad
Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richhariya, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan

Sahu, Shri Santosh Kumar

Salve, Shri N. K. P.

Sambasivam, Shri Era

Saring, Shri Leonard Solomon

Sema, Shri Hokishe

Sharma, Shri A. P.

Sharma, Shri Chandan

Sharma, Dr. H. P.

Shiv Shanker, Shri P.

Shukla, Shri Keshavprasad

Siddiqi, Shri Shamim Ahmed

Silvera, Dr. C.

Singh, Shri Bir Bhadra Pratap

Singh, Shrimati Pratibha

Singh, Dr. Rudra Pratap

Singh, Thakur Kamakhya Prasad

Singh, Shri Vishvajit Prithvijit

Singh, Shri Vishwanath Pratap

Sukhdev Prasad, Shri

Sukul, Shri P. N.

Sultan, Shrimati Maimoona

Sultan Singh, Shri

Tariang, Shri Jertlie E.

Thakur Jagatpal Singh

Thakur, Shri Rameshwar

Thangabaaalu, Shri

Tiwari, Shri Narayan Datt

Tripathi, Shri Chandrika Prasad

Tripathi, Shri Kamalapati

Tyagi, Shri Shanti

Vaduthala, Shri T. K. C.

Va'iullah, Shri Raoof

Verma, Shri Kapil

Vikal, Shri Ram Chandra

Yadav, Shri Ramanand

The motion was negatived.

SHRI MOSTAFA BIN QUASEM: Sir, I move:

5. "That at page 1, line 10, after the words 'Muslim Law' the words 'but shall not include a Muslim Woman who has been divorced by Talaq-ul-bi-dalat or Talaq-i-badai' be inserted."

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6.

"That at page 1, after' line 10, the following be inserted namely:—

'(aa) 'Hizanat' means period during which the wife and maternal relatives have preferential right of custody of the children;' "

7.

"That at page 2, after line 6, the following be inserted, namely:—

'(cc) 'Nikah nama' means a memorandum, drawn up either before, at the time or after the Nikah, embodying the essential terms and conditions of the contract of marriage, the rules framed by the appropriate Government, prescribing the standard proforma of the Nikah nama providing the essential terms including whether or not the wife retains the delegated powers of divorce (Haq-e-talaq-tafaiooz), right of the woman to the dwelling house or any other property acquired during marriage, custody of children and of matrimonial domicile in case of divorcee;' "

8.

"That at page 2, after line 8, the following be inserted, namely :—

'(d) 'Talaq-ul-bidat' means lalaq pronounced otherwise than in accordance with the Surat-ul-Talaq Ch. 65 of the Holy Quran.' "

The questions were put and the motions I were negatived.

MR. DEPUTY CHAIRMAN: Now, amendments by Shri Ram Naresh Kusha-waha.

SHRI RAMNARESH KUSHAWAHA: Sir, I move:

47,"That at page 1, line 9, for the words 'according to Muslim Law' the words 'according to their Religious Law' be substituted."

48."That at page 1, line 10. for the words 'in accordance with Muslim Law' the words 'in accordance with their Religious Law' be substituted."

The questions were proposed.

श्री राम नरेश कुशवाहा]

मान्यवर, मैं अपना संशोधन रखते हुए आपसे निवेदन करना चाहता हूँ कि मुद्दा एक तरफा नहीं होता, दोतरफा होती है। तो हम यह चाहते हैं कि अगर मुसलमान भाई हमारे साथ आने के लिये तैयार नहीं हैं तो हम ही उनके साथ चलें और इसमें मुस्लिम शब्द हटाकर केवल वॉमन कर दिया जाये। मान्यवर, इसमें जो वक्फबोर्ड पर ज़िम्मेदारी डली गई है यह केवल घुमाफिरा कर नाक पकड़ रहे हैं। अगर वक्फबोर्ड और अनुदान से इसको चलाना है तो सरकार इसकी सीधी ज़िम्मेदारी ले। सरकार की ज़िम्मेदारी है कि जो समाज में असमर्थ हैं, उनका पालन-पोषण का ज़रिया नहीं है उनको सुरक्षा दे और उनके जीवन-यापन का इंतजाम करे, उनके पालन-पोषण का इंतजाम करे। केवल मुस्लिम औरतों के लिये ही नहीं बल्कि सारे देश की स्त्रियाँ औरतों के लिये यह प्रबंध होना चाहिए। अगर ऐसा है तो हम खुद उनके साथ चलने के लिये तैयार हैं। मान्यवर, मैं आपसे निवेदन करना चाहता हूँ कि...

श्री उपसभापति : ज्यादा टाइम न लें।

श्री राम नरेश कुशवाहा : मेरा सिर्फ इतना ही कहना है कि वहीं से तो शुरुआत करनी ही पड़ेगी और कम से कम यहीं से राष्ट्रीय एकता और अखंडता की शुरुआत हो जाय और बजाय हमारे कोड के हम उन्हीं के कोड में शामिल हो जायें तो कोई हर्ज की बात नहीं है। इसलिये मैं चाहता हूँ कि आप मेरे इस संशोधन पर जो कि छोटा सा है, निष्ठाप है, उसको कबूल करें

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MR. DEPUTY CHAIRMAN: I shall now put amendments No. 47 and 48 to vote.

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: Next amendment. Shri Maheswarappa.

SHRI K. G. MAHESWARAPPA: Sir, I beg to move:

49. "That at page 1, line 10, after the words 'with Muslim Law,' the words 'or has been deserted by her husband,' be inserted."

MR. DEPUTY CHAIRMAN: I shall now put amendment No. 49 to vote.

The question was put and the motions were negatived.

SHRI JAGDAMBI PRASAD YADAV (Bihar): Sir, I beg to move:

50. "That at page I, line 12, for the word 'three' the word 'six' be substituted."

51. "That at page 1, line 14, for the word three the word six be substituted."

52. "That at page 2, for lines 1 to 3, the following be substituted, namely:—

'(iii) if she is *enceinte* at the time, of her divorce, after the divorce and the delivery of her child or the termination of her pregnancy;'

MR. DEPUTY CHAIRMAN: I shall now put clause 2 to vote. The question is: vote.

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: I shall now put clause 2 to vote. The question is:

That clause 2 stand part of the Bill."

The motion was adopted. Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: We shall now take up clause 3.

Clause 3 — Mahr or other properties of Muslim woman to be given to her at the time of divorce.

SHRI MOSTAFA BIN QUASEM: Sir, I beg to move:

9. "That at page 2, lines 9-10, for the words 'Notwithstanding anything contained in any other law for the time being in force' the words 'subject to the provisions of section 125 of the Code of Criminal Procedure, 1973' be substituted."

10. "That at page 2, for lines 9 and 10 the following be substituted namely: —

'Subject to the provisions of the existing laws in force, a divorced woman at her choice shall be entitled to—."

11. "That at page 2, line 10, after the words 'divorced woman' the words 'according to her choice' be inserted."

The questions were proposed.

SHRI M. A. BABY (Kerala): Sir, this Bill is for protection of divorced Muslim women. Actually this is destruction of divorced Muslim women. I do not want to elaborate this. The whole Bill is inhuman and only an uncivilised government and party can bring such a bill. In this background I move the amendment No. 9 to clause 3.

SHRI NIRMAL CHATTERJEE: Sir, I want to speak on amendment No. 11. We have been educated for the last few hours as to how much concern is there for the protection of women, of whichever community they may be. Our amendment is that let this be according to her choice. The hon. Law Minister with his background of British schooling, I believe would be chivalrous enough to hand over this responsibility to the womenfolk in whose name he was delivering his beautiful oration to us. While moving this amendment, I know it is a difficult proposition for the Members belonging to the fairer sex or otherwise of the ruling party despite their clear intention to come out in defence of

our womenfolk because they are inhibited with the introduction of a whip. I will request both the Leader of the House and the Law Minister who has moved this Bill to withdraw their whip at least on this amendment so that the freedom and their concern for the womenhood of India can be adequately expressed. Thank you.

SHRI S. W. DHABE: Sir, I beg to move:

54. "That at page 2, line 10, after the words 'a divorced woman' the words 'at her option' be inserted."

Sir, as Shri Nirmal Chatterjee has said, this is very important. Why not give an option to women to get the right under this section?

The question was proposed.

SHRI K. MOHANAN: Sir, is the Minister accepting this or not? At least let him say that.

SHRI NIRMAL CHATTERJEE: He is silent. I think silence implies acceptance.

SHRI ASOKE KUMAR SEN: Sir, with great respect to Mr. Chatterjee, I feel it is absolutely impossible to accept.

MR. DEPUTY CHAIRMAN: I will now put amendment nos. 9, 10, 11 and 54 to vote:

The House divided.

MR. DEPUTY CHAIRMAN:

| | | |
|------|---|-----|
| Ayes | — | 50 |
| Noes | — | 155 |

AYES—50

Advani, Shri Lai K. Ashwani
Kumar, Shri Baby, Shri M. A.
Balram, Shri N. E. Barman, Shri
Debendra Nath Basil, Shri Chitta
Bhattacharjee, Shri Nepaldev
Chakravarty, Shrimati Bijoya

Chatterjee, Shri Nirmal

Chowdhury, Shrimati Renuka

Das Gupta, Shri Gurudas

Dhabe, Shri S. W.

Ghosh, Shri Dipen

Ghosh, Shri Shantimoy

Gopalan, Shri K.

Gowda, Shri D. B. Chandra

Goyal, Shri J. P.

Gurupadaswamy, Shri M. S.

Jaswant Singh, Shri

Kalvala, Shri Prabhakar Rao

Kar, Shri Narayan

Khandelwal, Shri Pyarelal

Kushawaha, Shri Ram Naresh

Lakshmana, Prof. C.

Maheswarappa, Shri K. G.

Mahishi, Dr. (Shrimati) Sarojini

Malaviya, Shri Satya Prakash

Mazumder, Shri Ramakrishna

Mishra, Shri Kailash Pati

Mohanan, Shri K.

Mukherjee, Shrimati Kanak

Mukherjee, Shri Pranab

Naik, Shri R. S.

Patel, Dr. Shanti G.

Poddar, Dr. R. K.

Quasem, Shri Mostafa Bin

Radhakrishna, Shri Puttapaga

Rao, Shri Gopala Rao

Rao, Shri Yalla Sesi Bhushana

Reddy, Shri B. Satyanarayan

Reddy, Dr. G. Vijaya Mohan

Saikia, Shri Nagen

Scindia, Shrimati Vijaya Raje

Sen, Shri Sukomal

Suraj Prasad, Shri

Talari Manohar, Shri

Uppendra, Shri Paravathaneni

Vaghela, Shri Shanker Singh

Yadav, Shri Hukmdeo Narayan

Yadav, Shri Jagdambi Prasad

NOES—155

Abdi, Shri Hashim Raza Allahabadi

Akarte, Shri Jagannath Sitaram

Aladi Aruna, Shri *alias* V. Arunachalam

Amarjit Kaur, Shrimati

Amla, Shri Tirath Ram

Anand Sharma, Shri

Ansari, Shri Hayat Ulla

Antony, Shri A. K.

Arun Singh, Shri

Balmik, Shri Achchhey Lal

Bansal, Shri Pawan Kumar

Basumatari, Shri Dharanidhar

Bhandare, Shri Murlidhar Chandrakant

Bharadwaj, Shri Ramchandra

Bhardwaj, Shri Hansraj

Bhatia, Shri Madan

Bhatt, Shri Nand Kishore

Bhattaacharjee, Shri Kamalendu

Bhim Raj, Shri

Birla, Shri Krishna Kumar

Chatterjee, Prof. (Mrs.) Asima

Chaturvedi, Shri Bhuvnesh

Chowdhary Ram Sewak

Darbara Singh, Shri

Deori, Shrimati Omem Moyong

Desai, Shri Jagesh

Dhusiya, Shri Sohan Lal

D'Souza, Dr. Joseph Leon

Faguni Ram, Shri

Fotedar, Shri Makhan Lal

Ganeshwar Kusum, Shri

Gautam, Shri Anand Prakash

Ghan Shyam Singh, Shri

Gopalsamy, Shri V.

Gupta, Shri Vishwa Bandhu

Hanspal, Shri Harvendra Singh

Hanumanthaappa, Shri H

Haq, Shri (Molana) Asrarul

Hashmi, Shri Syed Ahmad

Heerachand, Shri D.

Heptulla, Dr. (Shrimati) Najma

Islam, Shri Baharul
Jadhav, Shri Vithalrao Madhavrao
Jain, Shri J. K.
Jamuda, Shri Durga Prasad
Jani, Shri Jagadish
John, Shri Valampuri
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kadharsha, Shri M.
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhubaneswar
Kamble, Prof. N. M.
Kar, Shri Ghulam Rasool
Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Kesri, Shri Sitaram
Khaparde, Miss Saroj
Kidwai, Dr. Mohd. Hashim
Kollur, Shri M. L.
Koya, Shri B. V. Abdulla
Kushnoor, Shri Veershetty Moglappa
Madni, Shri Asad
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Makwana, Shri Yogendra
Malaviya, Shri Radhakishan
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Mane (Patil), Shri Maruti Dnyanoo
Manhar, Shri Bhagatram
Matto, Shri Ghulam Rasool
Meena, Shri Dhuleshwar
Mehta, Shri Chimanbhai
Mirza Irshadbaig, Shri
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohanarangam, Shri R.
Mohanty, Shri Subas
Moopanar, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh

Narayanasamy, Shri V.
Natha Singh, Shri
Pachouri, Shri Suresh
Pahadia, Shrimati Shanti
Panda, Shri Akshay
Pandey, Shrimati Manorama
Pandey, Shri Sudhakar
Panicker, Shri K. Vasudeva
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Pratibha Devisingh
Pattnaik, Shri Sunil Kumar
Prajapati, Shri Pravin Kumar
Prasad, Shri K. L. N.
Raflque Alam, Shri
Rai, Shri Kalpnath
Rajagopal, Shri M.
Rajangam, Shri N.
Ramachandran, Shri M. S.
Ramakrishnan, Shri R.
Ramamurthy, Shri Thindivanam K.
Ramanathan, Shri V.
Ramesh Babu, Shri S. B.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Ramsingbhai Pataliyabhai
Ray, Shri Deba Prasad
Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richhariya, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Salve, Shri N. K. P.
Sambasivam, Shri Era
Saring, Shri Leonard Solomon
Sema, Shri Hokishe
Sharma, Shri A. P.
Sharma, Shri Chandan
Sharma, Dr. H. P.

Shiv Shanker, Shri P.
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmed
Silvera, Dr. C.
Singh, Shri Bir Bhadra Pratap
Singh, Shrimati Pratibha
Singh, Dr. Rudra Pratap
Singh, Thakur Kamakhya Prasad
Singh, Shri Vishvajit Prithvijit
Singh, Shri Vishwanath Pratap
Sukhdev Prasad, Shri
Sukul, Shri P. N.
Sultan, Shrimati Maimoona
Sultan Singh, Shri
Tariang, Shri Jerlie E.
Thakur Jagatpal Singh
Thakur, Shri Rameshwar
Thangababalu, Shri
Tiwari, Shri Narayan Datt
Tripathi, Shri Chandrika Prasad
Tripathi, Shri Kamalapati
Tyagi, Shri Shanti
Vaduthala, Shri T. K. C.
Valiullah, Shri Raoof
Verma, Shri Kapil
Vikal, Shri Ram Chandra
Yadav, Shri Ramanand

The Motion was negatived,

(Amendment Nos. 12, 13, 15 to 17, 22 to 29, 53, 55 to 79 were moved).

DR. (SHRIMATI) SAROJINI MAHISHI: Sir, I move:

12. "That at page 2, line 12, after the words 'iddat period' the words 'and if she chooses to do so, as long as she is not remarried' be inserted."

SHRI ASHWANI KUMAR: Sir, I move: I

13. "That at page 2, line 12, after the words 'iddat period' the words 'and until her death' be inserted."

(The amendment also stood in the name of Shri Pyarelal Khandelwal).

SHRI MOSTAFA BIN QUASEM: Sir, I move:

15. "That at page 2, lines 15-16 for the words 'for a period of two year from the respective dates of birth of such children' be the words 'till the children attain majority and become self-dependent' be substituted."

(The amendment uho stood in th\$ names of Shrimati Kanak Mukherjee, Shri Sukomal Sen and Shri N. E. Balram).

SHRI MOSTAFA BIN QUASEM: Sir, I move:

16. "That at page 2, lines 15-16 for the words 'for a period of two years from the respective dates of birth of such children' the words 'till the children attain majority' be substituted."

(The amendment also stood in the names of Shrimati Kanak Mukherjee, Shri Sukomal Sen, Shri N. E. Balram, Shri Prava-theneni Upendra, Shri B. Satyanarajan eddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhury).

SHRI ASHWANI KUMAR: Sir, I move:

17. "That at page 2, lines 15-16 for the words 'two years' the words 'till death' be substituted."

(The amendment also stood in the name of Shri Pyarelal Khandelwal).

SHRI MOSTAFA BIN QUASEM: Sir, I move:

22. "That at page 2, after line 22 the following proviso be inserted namely:—

"Provided that the divorced woman establishes before the Magistrate th it she had been divoiced for no fault of her then the Magistrate shall order for payment of due and proper compensation from her former husband'."

(The amendment also stood in the names of Shrimati Kanak Mukherjee, Shti Sukomal Sen, Shri Parvathaneni Upendra, Shri B. Satyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhury.)

(Protection of

SHRI MOSTAFA BIN QUASEM: Sir, I move:

23. "That at page 2, after line 22 the following be inserted namely:—

"(1A) Where a divorced woman establishes before the Magistrate that she has been divorced by her former husband, the Magistrate shall order payment of due and proper compensation and maintenance from the former husband."

(The amendment also stood in the name of Shrimati Kanak Mukherjee, Shri Sukomal Sen and Shri N. E. Balaram).

SHRI ASHWANI KUMAR: Sir I move:

24. "That at page 3, line 3, after the words 'said period' the words 'but not later than six months' be inserted."

25. "That at page 3, line 10, for the words 'one year' the words 'Three years' be substituted."

The amendments also stood in the name of Shri Pyarelal Khandelwal,

SHRI MOSTAFA BIN QUASEM: Sir, I move:

26. "That at page 3, line 10, for the words «one year' the word 'fifteen years' be substituted."

(The amendment also stood in the names of Shrimati Kanak Mukherjee and Shri Sukomal Sen).

SHRI MOSTAFA BIN QUASEM: Sir, I move:

27. "That at page 3, line 11 to 13, the words 'subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said code' be deleted."

(The amendment also stood in the name of Shrimati Kanak Mukherjee, Shri Sukomal Sen and Shri N. E. Balaram.)

SHRI MOSTAFA BIN QUASEM: Sir, I move:

28. "That at page 3, after line 13, the following be inserted, namely:—

'(5) Any person purporting to pronounce Talaq-ul-bidat shall be sen-

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tenced to six months rigorous imprisonment or a fine of such amount as the Court may decide or both and the amount of line so recovered shall be paid to the aggrieved woman in addition to what was due to her—" j *(The amendment also stood in the names of Shri Nirmal Chatterjee, Shri M. A. Baby and Shri N. E. Balaram).*

SHRI MOSTAFA BIN QUASEM: Sir, I move:

29. "That at page 3, after line 13 the following be inserted, namely: —

'(5) Notwithstanding anything contained in the foregoing provisions of this Act, the divorced women shall be entitled to a decree from an appropriate Court declaring null and void any talaq pronounced contrary to the procedure and injunction of the Quran.

(6) A divorced woman shall be entitled to all allowances agreed upon and written in the Nikah nama."

(The amendment also stood in the names of Shri Nirmal Chatterjee and Shri M. A. Baby).

SHRI PARVATHANENI UPENDRA: Sir, I move;

53. "That at page 2, lines 9-10, for the words 'Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—' the words 'subject to the provisions of the existing laws in force, a divorced woman, at her choice, shall be entitled to—' be substituted."

(The amendment also stood in the names of Shri B. Satyanarayan Reddy, Shri Go-pala Rao Rao and Shrimati Renuka Chowdhury).

SHRI K. G. MAHESWARAPPA: Sir, I move:

55. That at page 2, line 12, for the words 'within the Iddat period' the words 'till such time as she can reasonably support herself and her children' be substituted."

(The amendment also stood in the name of Shri D. B. Chandra Gowh).

SHRI GURUDAS DAS GUPTA: Sir, I move:

56. "That at page 2, after line 12, the following be inserted, namely:—

'(aa) a reasonable and fair provisions and maintenance to be made and paid to I her by her former husband even after Iddat period and till she is not remarried, if she proves before the Magistrate that she has been divorced by her husband due to *hik* abnormal or in-human sexuality'."

(The amendment also stood in the names of Shri Puttapaga Radhakrishna and Shri Suraj Prasad).

SHRI JAGDAMBI PRASAD YADAV:
Sir I move;

57. "That at page 2, line 15, for the words 'two years' the words 'till minority' be substituted."

(The amendment also stood in the name of Shri Kailash Pati Mishra).

SHRI GURUDAS DAS GUPTA: Sir, I move:

58. "That at page 2, lines 15-16, for the words for a period of two years from the respective dates of birth, of such children;' the words 'for a period till the children attain majority and got employed;' be substituted."

(The amendment also stood in the names of Shri Puttapaga Radhakrishna and Shri Suraj Prasad.)

SHRI PARVATHANENI UPENDRA:
Sir, I move:

59. * That at page 2, lines 15-16 for the words 'for a period of two years

from the respective dates of birth of such children; the words 'in case of a male child or children till he or they attain majority and in case of female child or children, till she or they attain majority or she or they got married whichever is earlier;' be substituted."

(The amendment also stood in the names of Shri B. Salyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhury).

SHRI S. W. DHABE; Sir, I move:

60. "That at page 2, lines 15-16 for the words for a period of two years the words till they attain majority".

SHRI GURUDAS DAS GUPTA : Sir, I move:

61. "That at page 2, after line 19, the following be inserted, namely:—

'(cc) Monthly payment of an amount reasonable for her and the children's subsistence; and "'

{The amendment also stood in the names of Shri Puttapaga Radhakrishna and Shri Suraj Prasad.)

SHRI PARVATHANENI UPENDRA:
Sir, I move:

62. "That at page 2, for lines 20 to 22, the following be substituted, namely--

'(d) all the properties and gifts received by her before or at the time of her marriage or after her marriage from anyone or in any manner.' "

(The amendment also stood in the names of Shri B. Salyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhury.)

SHRI GURUDAS DAS GUPTA : Sir, I move:

63. "That at page 2, line 22, the following words be inserted, namely:—

'or promised to be given to her by the husband or any relatives of the husband and his friends'."

(The amendment also stood in the names of Shri Puttapaga Radhakrishna, Shri Suraj Prasad, Shri Parvathaneni Upendra, Shri B. Satyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhury.)

SHRI S. W. DHABE: Sir, I move:

64. "That at page 2, after line 22, the following be inserted, namely:—

'(1A) where women establishes before the Magistrate that the husband was responsible for divorce, the Magistrate shall have power to order proper compensation and maintenance from the husband who divorced her.'"

SHRI GURUDAS DAS GUPTA: Sir, I move:

65. "That at page 2, line 23 for the words 'or the' the words 'and the' be substituted."

(The amendment also stood in the names of Shri Puttapaga Radhakrishna, Shri Suraj Prasad, Shri Parvathaneni Upendra, Shri B. Satyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhury.)

SHRI GURUDAS DAS GUPTA: Sir, I move-

66. "That at page 2, line 24 for the words 'or the' the words 'and the' be substituted."

(The amendment also stood in the names of Shri Puttapaga Radhakrishna and Shri Suraj Prasad.)

SHRI GURUDAS DAS GUPTA: Sir, I move;

67. "That at page 2, line 28, after the word 'maintenance' the words 'as well as' be inserted."

68. "That at page 2, line 28, for the words 'or the' the words 'and the' be substituted."

(The amendments also stood in the names of Shri Puttapaga Radhakrishna, Shri Suraj Prasad, Shri Parvathaneni Upendra, Shri B. Satyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhury.)

SHRI GURUDAS DAS GUPTA: Sir, I move:

69. "That at page 2, line 31, for the words 'may, if he is satisfied' the words 'shall take it as proved' be substituted."

(The amendment also stood in the names of Shri Puttapaga Radhakrishna and Shri Suraj Prasad.)

SHRI PARVATHANENI UPENDRA: Sir, I move:

70. "That at page 2, line 43 after the word 'husband' the words 'and the current price index' be inserted."

(The amendment also stood in the names of Shri B. Satyanarayan Reddy, Shri Gopala Rao Rao, and Shrimati Renuka Chowdhury.)

SHRI GURUDAS DAS GUPTA : Sir, I move:

71. "That at page 2, line 43 for the words 'mahr or the words 'mahr and' be substituted."

(The amendment also stood in the names of Shri Puttapaga, Radhakrishna and Shri Suraj Prasad.)

SHRI PARVATHANENI UPENDRA : Sir, I move:

72. "That at page 2, line 44 for the words 'dower or' the words 'dowar and' be substituted."

(The amendment also stood in the names of Shri B. Satyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhary.)

SHRI PARVATHANENI UPENDRA :
Sir, I move:

SHRI GURUDAS DAS GUPTA: Sir, I move—

78. "That at page 3, line 10, for the words 'one year' the words 'five years' be substituted."

73. "That at page 2, after line 45 the following be inserted, namely:—

(The amendment also stood in the names of Shri B. Satyanarayan Peday, Shri Gopala Rao Rao and Shrimati Renuka Chowdhary.)

'provided that the respondent proves otherwise:"

(The amendment also stood in the names of Shri Puttapaga Radhakrishna and Shri Suraj Prasad.)

SHRI GURUDAS DAS GUPTA: Sir, I move:

SHRI NAGEN SAIKIA: Sir, I move:

79. "That at page 3, line 10, for the words 'one year' the words 'three years' be substituted."

74. "That at page 3, after line 3, the following proviso be inserted, namely:—

(The amendment also stood in the names of Shri Puttapaga Radhakrishna and Shri Suraj Prasad.)

'Provided that notwithstanding anything contained in the foregoing provisions of the Act or any other Law for the time being in force, a divorced woman if she so chooses may make an application under the provisions of the Code of Criminal Procedure and on an application being so made the Code of Criminal Procedure shall only apply for such applications."

MR. DEPUTY CHAIRMAN: I will now put amendment nos. 12, 13, 15 to 17, 22 to 29, 53, 55 to 79 to vote;

(The amendment also stood in the name of Shri Bijoya Chakravariy.)

SHRI GURUDAS DAS GUPTA >, Sir, I move:

75. "That at page 3, line 5, the words •without sufficient cause' be deleted"

(The amendment also stood in the names of Shri Puttapaga Radhakrishna, Shri Suraj Prasad, Shri Parvathaneni Upendra, Shri B. Satyanarayan Reddy, Shri Gopala Rao Rao and Shrimati Renuka Chowdhary.)

SHRI GURUDAS DAS GUPTA: Sir, I move:

76. "That at page 3, line 6, for the word 'may' the word 'shall' be substituted."

77. "That at page 3, line 7, for the words 'or mahr' the words 'and mahr' be substituted"

The House divided

Ayes ... 50

Noes ... 155

AYES: 50

Advani, Shri Lal K.
Ashwani Kumar, Shri
Baby, Shri M. A.
Balram, Shri N. E.
Barman, Shri Debendra Nath
Basu, Shri Chitta
Bhattacharjee, Shri Nepaldev
Chakravarty, Shrimati Bijoya
Chatterjee, Shri Nirmal
Chowdhury, Shrimati Renuka
Das Gupta, Shri Gurudas
Dhabe, Shri S. W.
Ghosh, Shri Dipen
Ghosh, Shri Shantimoy
Gopalan, Shri K.
Gowda, Shri D. B. Chandra
Goyal, Shri J. P.
Gurupadaswamy, Shri M. S.
Jaswant Singh, Shri

Kalvala, Shri Prabhakar Rao
Kar, Shri Narayan
Khandelwal, Shri Pyarelal
Kushawaha, Shri Ram Naresli
Lakshman, Prof. C.
Maheswarappa, Shri K. G.
Mahishi, Dr. (Shrimati) Sarojini
Malaviya, Shri Satya Prakash
Mazumder, Shri Ramakrishna
Mishra, Shri Kailash Pati
Mohanan, Shri K.
Mukherjee, Shrimati Kanak
Mukherjee, Shri Pranab
Naik, Shri R. S.
Patel, Dr. Shanti G.
Poddar, Dr. R. K.
Quasem, Shri Mostafa Bin
Radhakrishna, Shri Puttapaga
Rao, Shri Gopala Rao
Rao, Shri Yalla Sesi Bhushana
Reddy, Shri B. Satyanarayan
Reddy, Dr. G. Vijaya Mohan
Saikia, Shri Nagen
Scindia, Shrimati Vijaya Raje
Sen, Shri Sukomal
Suraj Prasad, Shri
Talari Manohar, Shri
Uppendra, Shri Parvathaneni
Vaghela, Shri Shanker Singh
Yadav, Shri Hukmdeo Narayan
Yadav, Shri Jagdambi Prasad

NOES: 155

Abdi, Shri Hashim Raza Allahabadi
Akarte, Shri Jagannath Sitaram
Aladi Aruna, Shri *alias* V. Arunachalam
Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram
Anand Sharma, Shri
Ansari, Shri Hayat Ulla
Antony, Shri A. K.
Arun Singh, Shri
Balmik, Shri Achchhey Lal

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Bansal, Shri Pawan Kumar
Basumatari, Shri Dharanidhar
Bhandare, Shri Murlidhar Chandrakant
Bharadwaj, Shri Ramchandra
Bhardwaj, Shri Hansraj
Bhatia, Shri Madan
Bhatt, Shri Nand Kishore
Bhattacharjee, Shri Kamalendu
Bhim Raj, Shri
Birla, Shri Krishna Kumar
Chatterjee, Prof. (Mrs.) Asima
Chaturvedi, Shri Bhuvnesh
Chowdhary Ram Sewak
Darbara Singh, Shri
Deori, Shrimati Omem Moyong
Desai, Shri Jagesh
Dhusiya, Shri Sohan Lal
D'Souza, Dr. Joseph Leon
Faguni Ram, Shri
Fotedar, Shri Makhan Lal
Ganeshwar Kusum, Shri
Gautam, Shri Anand Prakash
Ghan Shyam Singh, Shri
Gopalsamy, Shri V.
Gupta, Shri Vishwa Bandhu
Hanspal, Shri Harvendra Singh
Hanumanthappa, Shri H.
Haq, Shri (Molana) Asrarul
Hashmi, Shri Syed Ahmad
Heerachand, Shri D.
Heptulla, Dr. (Shrimati) Najma
Islam, Shri Baharul
Jadhav, Shri Vithalrao Madhavrao
Jain, Shri J. K.
Jamuda, Shri Durga Prasad
Jani, Shri Jagadish
John, Shri Valampuri
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kadharsha, Shri M.
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhuvaneshwar
Kamble, Prof. N. M.

Kar, Shri Ghulam Rasool
Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Kesri, Shri Sitaram
Khaparde, Miss Saroj
Kidwai, Dr. Mohd. Hashim
Kollur, Shri M. L.
Koya, Shri B. V. Abdulla
Kushnoor, Shri Veershetty Moglappa
Madni, Shri Asad
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibj
Makwana, Shri Yogendra
Malaviya, Shri Radhakrishnan
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Mane (Patil), Shri Maruti Dnyanoo
Manhar, Shri Bhagatram
Matto, Shri Ghulam Rasool
Meena, Shri Dhuleshwar
Mehta, Shri Chimanbhai
Mirza Irshadbaig, Shri
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohanan, Shri K.
Mohanarangam, Shri R.
Mohanty, Shri Subas
Moopnar, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanaswamy, Shri V.
Natha Singh, Shri
Pachouri, Shri Suresh
Pahadia, Shrimati Shanti
Panda, Shri Akshay
Pandey, Shrimati Manorama
Pandey, Shri Sudhakar
Panicker, Shri K. Vasudeva
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Pratibha Devisingh
Pattnaik, Shri Sunil Kumar

Prajapati, Shri Pravin Kumar
Prasad, Shri K. L. N.
Rafique Alam, Shri
Rai, Shri Kalpnath
Rajagopal, Shri M.
Rajangam, Shri N.
Ramachandran, Shri M. S.
Ramakrishnan, Shri R.
Ramamurthy, Shri Thindivanam K.
Ramanathan, Shri V.
Ramesh Babu, Shri S. B.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Ramsinghbhai Pataliya-
bhai
Ray, Shri Deba Prasad
Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richhariya, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Salve, Shri N. K. P.
Sambasivam, Shri Era
Saring, Shri Leonard Solomon
Sema, Shri Hokishe
Sharma, Shri A. P.
Sharma, Shri Chandan
Sharma, Dr. H. P.
Shiv Shanker, Shri P.
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmad
Silvera, Dr. C.
Singh, Shri Bir Bhadra Pratap
Singh, Shrimati Pratibha
Singh, Dr. Rudra Pratap
Singh, Thakur Kamakhya Prasad
Singh, Shri Vishvajit Prithvijit
Singh, Shri Vishwanath Pratap
Sukhdev Prasad, Shri

'(3) If the Wakf Board mentioned in sub-section 2 is financially not in a position to pay such maintenance

84. "That at page 3, line 45, after the words 'by order direct the' the words 'Central Government to pay such main tenance as determined by him under sub section (1)' be inserted."

SHRI NIRMAL CHATTERJEE: If the Minister does not accept reply, we shall deem them to have been accepted by the Government.

SHRI ASOKE KUMAR SEN. That is a very new proposition. In law, mere silence is not concurrence. That is the rule of law.

SHRI DIPEN GHOSH: -*Maunam tarn-mat a lakshanam*

SHRI ASOKE KUMAR SEN: Sir, the question posed by Mr. Dhabs possibly needs answer. We do not accept it but I will give him an explanation. The scheme is unlike in the Criminal Procedure Code where if the husband has no means to pay the wife cannot recover. Therefore, there is no other person to whom she can take recourse. But here we have got three tiers—husband first and then, the husband's relatives and, after the relatives, the Wakf Board. Now the execution will be levied on the Wakf Board if the payment is not made.

MR. DEPUTY CHAIRMAN: Now I will put the amendments to vote.

Amendment Nos. 30 to 39 and 80 to 90 wete put to vote.

The House divided.

MR. DEPUTY CHAIRMAN:

Ayes ... 48

Noes ... 155

AYES: 48

Advani, Shri Lal K.
 Ashwani Kumar, Shri
 Baby, Shri M. A.
 Balaram, Shri N. E.
 Barman, Shri Debendra Nath
 Basu, Shri Chitta
 Bhattacharjee, Shri Nepaldev
 Chakravarty, Shrimati Bijoya
 Chatterjee, Shri Nirmal
 Chowdhury, Shrimati Renuka
 Das Gupta, Shri Gurudas
 Dhabe, Shri S. W.
 Ghosh, Shri Dipen
 Ghosh, Shri Shantimoy
 Gopalan, Shri K.
 Gowda, Shri D. B. Chandra

Goyal, Shri J. P.
 Gurupadaswamy, Shri M. S.
 Kalvala, Shri Prabhakar Rao
 Kar, Shri Narayan
 Khandelwal, Shri Pyarelal
 Kushawaha, Shri Ram Naresh
 Lakshman, Prof. C.
 Maheshwarappa, Shri K. G.
 Mahishi, Dr. (Shrimati) Sarojini
 Malaviya, Shri Satya Prakash
 Mazumdar, Shri Ramkrishna
 Mishra, Shri Kailash Pati
 Mohanan, Shri K.
 Mukherjee, Shrimati Kanak
 Mukherjee, Shri Pranab
 Patel Dr. Shanti G.

Poddar, Dr. R. K.
 Quasem, Shri Mostafa Bin
 Radhakrishna, Shri Puttapaga
 Rao, Shri Gopala Rao
 Rao, Shri Yalla Sesi Bhushana
 Reddy, Shri B. Satyanarayan
 Reddy, Dr. G. Vijaya Mohan
 Saikia, Shri Nagen
 Scindia, Shrimati Vijaya Raje
 Sen, Shri Sukomal
 Suraj Prasad, Shri
 Talari, Manohar, Shri
 Upendra, Shri Parvathaneni
 Vaghela, Shri Shanker Singh
 Yadav, Shri Hukmdeo Naryan
 Yadav, Shri Jagdambi Prasad

NOES: 155

Abdi, Shri Hashim Raza Allahabadi
 Akarte, Shri Jagannath Sitaram
 Aladi Aruna, Shri alia V. Arunachalam
 Amarjit Kaur, Shrimati
 Amla, Shri Tirath Ram
 Anand Sharma, Shri
 Ansari, Shri Hayat Ulla
 Antony, Shri A. K.
 Arun Singh, Shri
 Balmik, Shri Achchhey Lal
 Bansal, Shri Pawan Kumar

Basumatari, Shri Dharanirhar
Bhandare, Shri Murlidhar Chandrakar
Bharadwaj, Shri Ramchandra
Bhardwaj, Shri Hansraj
Bhatia, Shri Madan
Bhatt, Shri Nand Kishore
Bhattacharjee, Shri Kamalendu
Bhim Raj, Shri
Birla, Shri Krishna Kumar
Chatterjee, Prof. (Mrs.) Asima
Chaturvedi, Shri Bhuvnesh
Chowdhary Ram Sewak
Darbara Singh, Shri
Deori, Shrimati Omem Moyong
Desai, Shri Jagesh
Dhusiya, Shri Sohan Lal
D'Souza, Dr. Joseph Leon
Faguni Ram, Shri
Fotedar, Shri Makhan Lal
Ganeshwar Kusum, Shri
Gautam, Shri Anand Prakash
Ghan Shyam Singh, Shri
Gopalsamy, Shri V.
Gupta, Shri Vishwa Bandhu
Hanspal, Shri Harvendra Singh
Hanumanthappa, Shri H.
Haq, Shri (Molana) Asrarul
Hashmi, Shri Syed Ahmad
Heerachand, Shri D.
Heptulla, Dr. (Shrimati) Najma
Islam, Shri Baharul
Jadhav, Shri Vithalrao Madhavrao
Jain, Shri J. K.
Jamuda, Shri Durga Prasad
Jani, Shri Jagadish
John, Shri Valampuri
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kadharsha, Shri M.
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhubaneswar
Kamble, Prof. N. M.
Kar, Shri Ghulam Rasool

Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Kesri, Shri Sitaram
Khaparde, Miss Saroj
Kidwai, Dr. Mohd. Hashim
Kollur, Shri M. L.
Koya, Shri B. V. Abdulla
Kushnoor, Shri Veershetty Moglappa
Madni, Shri Asad
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Makwana, Shri Yogendra
Malaviya, Shri Radhakishan
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Mane (Patil), Shri Maruti Dnyanoo
Manhar, Shri Bhagatram
Matto, Shri Ghulam Rasool
Meena, Shri Dhuleshwar
Mehta, Shri Chimanbhai
Mirza Irshadbaig, Shri
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohanarangam, Shri R.
Mohanty, Shri Subas
Moopnar, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanasamy, Shri V.
Natha Singh, Shri
Pachouri, Shri Suresh
Pahadia, Shrimati Shanti
Panda, Shri Akshay
Pandey, Shrimati Manorama
Pandey, Shri Sudhakar
Panicker, Shri K. Vasudeva
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Pratibha Devisingh
Pattnaik, Shri Sunil Kumar
Prajapati, Shri Pravin Kumar
Prasad, Shri K. L. N.

Rafique Alam, Shri
 Rai, Shri Kalpnath
 Rajagopal, Shri M.
 Rajangam, Shri N.
 Ramachandran, Shri M. S.
 Ramakrishnan, Shri R.
 Ramamurthy, Shri Thindivanam K.
 Ramanathan, Shri V.
 Ramesh Babu, Shri S. B.
 Rao, Prof. B. Ramachandra
 Rao, Shri R. Sambasiva
 Ratan Kumari, Shrimati
 Rathvakoli, Shri Ramsinghbhai Pataliya-
 bhai
 Ray, Shri Deba Prasad
 Rayka, Shri Sagar
 Reddy, Shri Adinarayana
 Reddy, Shri T. Chandrasekhar
 Richhariya, Dr. Govind Das
 Rohatgi, Shrimati Sushila
 Roshan Lal, Shri
 Sahu, Shri Rajni Ranjan
 Sahu, Shri Santosh Kumar
 Salve, Shri N. K. P.
 Sambasivam, Shri Era
 Saring, Shri Leonard Solomon
 Sema, Shri Hokishe
 Sharma, Shri A. P.
 Sharma, Shri Chandan
 Sharma, Dr. H. P.
 Shiv Shanker, Shri P.
 Shukla, Shri Keshavprasad
 Siddiqi, Shri Shamim Ahmed
 Silvera, Dr. C.
 Singh, Shri Bir Bhadra Pratap
 Singh, Shrimati Pratibha
 Singh, Dr. Rudra Pratap
 Singh, Thakur Kamakhya Prasad
 Singh, Shri Vishvajit Prithvijit
 Singh, Shri Vishwanath Pratap
 Sukhdev Prasad, Shri
 Sukul, Shri P. N.
 Sultan, Shrimati Maimoona
 Sultan Singh, Shri

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Tariang, Shri Jerlie E. Thakur,
 Jagatpal Singh Thakur, Shri
 Rameshwar Thangabalu, Shri

Tiwari, Shri Narayan Datt Tripathi, Shri
 Chandrika Prasad Tripathi, Shri
 Kamalapati Tyagi, Shri Shanti Vaduthala,
 Shri T. K. C. Valiullah, Shri Raoof Verma,
 Shri Kapil Vikal, Shri Ram Chandra
 Yadav, Shri Ramanand

*The questions were negatived. Clause 4—Order for
 payment of main-
 teumce.*

MR. DEPUTY CHAIRMAN: I shall now put
 clause 4 10 vote. The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 5—Option to be governed by the provisions
 of sections 125 to 128 of Act 2 of 1974

MR. DEPUTY CHAIRMAN: There are eight
 amendments.

SHRI SURAJ PRASAD (Bihar): Sir, I move:

40."That at page 4, line 2, after the
 words 'former husband' the words 'or a
 divorced woman b~ inserted.'"

Sir, I also move:

41."That at page 4, line 4, after the
 word 'they' the words ' or she' be
 inserted."

SHRI PARVATHANENI UPENDRA: Sir, I
 move:

91. "That at page 4, lines 1 to 11. for clause 5, the
 following clause be substituted, namely:—

5. If, on the date of the first hearing of the
 application under sub-section (2) of Section 3, a
 divorced woman declares by affidavit or any other
 declaration in writing in such form as may be pres-
 cribed, that she would prefer to be governed by the
 provisions of sections 125 to 128 of the Code of
 Criminal Procedure, 1973 and file, such affidavit

of declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.—For the purpose of this Section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application."

SHFI DIPEN GHOSH: Sir, I move:

9/. "That at page 4, line 2, the words 'and her former husband' be deleted."

SHFI PYARELAL KHANDELWAL:
Sir, I move:

93. "That at page 4, line 2 to 5, for the words 'a divorced woman and her former husband declare, by affidavit or any other declarations in writing in such form as may be prescribed, either jointly or separately, that they would prefer' the words 'a divorced woman by affidavit n.- any other declaration in writing in such form as may be prescribed that she would prefer' be substituted."

SHRI DIPEN GHOSH: Sir, I move:

94. "That at page 4, line 4, the words 'either jointly or separately,' be deleted."

Sir, I also move:

95. "That at page 4, line 6, for the word 'they' the word 'see' be substituted."

SHRI JAGDAMBI PRASAD YADAV:
Sir, I move:

96. "That at page 4, line 6, for the word 'and' the word 'or' be substituted."

SHRI DIPEN GHOSH: Sir, I have heard the very learned speeches given by my learned colleagues, Mr. Shiv Shanker, Mr. Narasimha Rao and the reply given by the hon. Law Minister. I have also heard how they are very much anxious to give protection to divorced Muslim women and also to give relief to them. All these three learned speakers had taken pain to carry home the idea that this Bill would give or would seek to give more relief move protection to divorced Muslim women than what they would have got under section 125 of the Criminal Procedure

Code. They have also emphasised on the limitations of the relief sought to be given under section 125 of the Criminal Procedure Code. So, according to Mr. Shiv Shanker, Mr. Narasimha Rao and Mr. Ashok Sen, this Bill, if and when enacted would give *more* protection more relief to divorced Muslim women than what they would have got under section 125 of the Criminal Procedure Code. We came to know that this particular section, section 5, when the original Bill was introduced in the other House, was not there. This Section 5 was brought by the Union Law Minister himself and he got it incorporated and passed by the Lok Sabha, the other House. But this is contradictory and also confusing, because when all these three luminaries had insisted and emphasised that this Bill would be given more benefit, more relief and more protection than they would have not under the Criminal Procedure Code, than what was the necessity to bring in this Amendment to the original Bill, which says:

"If on the days of the first hearing of the application under sub-section (2) of Section 3, a divorced woman and her former husband declare by an affidavit or any other declaration in writing in such form as may be prescribed either jointly or separately that they would prefer to be governed by the provisions of Sections 125 to 128 of the Code of Criminal Procedure, 1973 and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such applications accordingly."

The very attempt to bring in this amendment and to get it passed by the Lok Sabha is confusing. It is confusing first of all because of the fact that when this original Bill was intended to give more relief and protection to the divorced women, what was the necessity of giving this choice? And also when choice is being given, if the question of giving the choice is there, whom should the choice be given to be dealt with by the Criminal Procedure Code. Here the text of this Section suggests that both husband and wife must go together: they must agree with each other to seek preference to be

(Shri Dipen Ghosh >

governed by the Criminal Procedure Code. What does it suggest? Will the hon. Law Minister please explain that it suggests that it will help or pave the way of reunion: and therefore the question of paying alimony to the divorced women will not arise, because, if after divorce, when husband drives the wife out of his House and if the divorced wife seeks or declares to be governed by the Criminal Procedure Code, the divorced wife will have to come to the former husband and seek his agreement to prefer to be governed by the Criminal Procedure Code. It is ridiculous, if at all a choice has to be given it should be given to the divorced wife. The choice should be of the divorced wife. If I take for argument sake what Mr. Shiv Shanker had pleaded—what Mr. Narasimha Rao had pleaded and what Mr. Asoke Sen had emphasised that this Bill when enacted will give more relief or more protection to the divorced woman, then, if there is a divorced woman in this country, if she does not want so-called 'more relief' or 'more protection' she should be governed by the Criminal Procedure Code. So naturally the choice should be given to the divorced wife alone, but not the divorced wife and her former husband together. This is ridiculous, ludicrous, absurd and simply a dead letter. I say it is a dead letter. Therefore my suggestion is that either this entire clause be deleted or at page 4 line 2 the words "and her former husband" be deleted then at page 4, line 4, the words "either jointly or separately" be deleted, and again at page 4, line 4, for the word "they", the word "she" be substituted. Thank you.

MR. DEPUTY CHAIRMAN: Please take only two minutes.

SHRI M. S. GURUPADASWAMY: All right. The Bill deals with the protection of women who are divorced by their husbands. But clause 5 deals with a situation where both husband and wife may come to an understanding or an arrangement by which through an affidavit either jointly or separately they may say that are prepared to be governed by the Code of Criminal Procedure. Then Sir I do not think, my friend, Shri Asoke Sen is

thinking of cases where divorce occur by mutual consent. But here we are dealing with cases where divorce come about by the behaviour of the husband, not by the recalcitrant attitude or the behaviour of the wife. The victim is the wife and the guilty is the husband. Can the Law Minister expect these two incompatible couple after divorce will reach an understanding and file affidavit either separately or jointly by consent seeking the provisions of this Criminal Procedure Code? I think it is very irrational and illogical, as my colleague has already said. This section will remain by and large inoperative. I want to know whom does my friend wants to satisfy? Does he wants to satisfy the Opposition here? Does he wants to satisfy the wife or the husband who are separated and divorced? Does he wants to satisfy himself? I do not know what is the purpose that is being served by this section? Sir, it is hoodwinking the Muslims the women who are divorced and it is hoodwinking the critics of this Bill. Therefore, I suggest, Sir, the Minister should agree to our amendments where we have said that only the lady who has been divorced should be given option to go to the court of law and take advantage of the Criminal Procedure Code.

PROF. C. LAKSHMANNA (Andhra Pradesh): Mr. Deputy Chairman, Sir, the addition of this clause in the Bill is like throwing chilly powder on the sour wound. It is an appendix. It does not serve any purpose. It can only create pain leading to appendicitis. Sir, in this clause, the inequality about which I had earlier spoken is accentuated between man and women. While a man has the entire choice of the provisions of the Bill and the entire will, an addition, he has been heaped with one more choice. If so chooses to combine with his ex-wife, he can ask for application of Section 125 under Cr.P.C. On the other hand, a woman, who is aggrieved, who is the one who has been thrown to the roads has to have this choice only when her ex-husband is so magnanimous as to agree with her and go to the court. Therefore, Sir, as I had pointed out earlier, it is once again an instance of vitiating the principle of equality and therefore, I would request the

hon. Minister to withdraw this appendix, this sixth finger which serves no purpose. I can (inly create problem and pain for the entire society, therefore, in order to obviate from this possibility of pain, I request him to delete this clause. If he cannot delete, he should at least make the amendment which has been suggested by my friends here. I think, that is in the fairness Alternatively, he should insert another clause by which this facility is given only to women and nobody else because women is the aggrieved party in the entire process.

MR. DEPUTY CHAIRMAN: Mr.

Dhabe, you have already spoken.

SHRI S. W. DHABE : Not on this, Sir. MR.

DEPUTY CHAIRMAN: All right.

SHRI S.W. DHABE: Sir, I want to say that this clause 3 is in close counter to clause 3 of the Bill. Clause 3 says:

"that the divorced woman shall have a right and entitled to the following benefit".

Now, here, the right which has been given to her is subject to the will of the husband and he has been given a veto. It is contrary to all principles of natural justice and against all principles laid down by the Supreme Court for giving relief to the oppressed women and therefore, the amendments which we have moved that a divorced women should have a right to have option under the Cr.P.C. I think, the principle should be accepted by the Minister.

SHRI PARVATHANENI UPENDRA:

Sir, there is a parable in the South which describes the situation very well. In the South, there is a tradition that when a husband dies, the woman's head has to be shaved. One widow was crying and somebody went to her and asked, "why are you crying." She said "had her husband been here today, he would have gone and called the barber. I am so helpless today." She was not having anybody to go and call the barber. Sir, this is like that. This amendment is so ridiculous. If the husband and the divorced

wife are in such an amicable situation there was no necessity for such a provision. You are forcing the divorced wife to go and request the former husband to jointly go and give a petition and all that. If such a situation is there, this amendment Bill is not at all required. Therefore, i would request the Minister to be at least sensible, withdraw this clause or amend it so that if you want to give the benefit, give the benefit to the woman. (interruption).

SHRI ASOKE KUMAR SEN: Sir, I oppose the amendments because they would frustrate the very object and I tell

you, the ground is very clear. 1 P.M. One spouse cannot throw the other spouse to \ different law. It must be by the consent of both. That is the very purpose of a common civil code. Therefore, the provision is that where the husband and the wife agree to go to the common law, and to the special law, they will be allowed to do so.

MR. DEPUTY CHAIRMAN: Now 1 put all the amendments together—Nos.

40, 41 and 91 to 96.

The House divided.

AYES—48

Advani, Shri Lai K. Ashwani Kumar, Shri Baby, Shri M. A. Balaram, Shri N. E. Barman, Shri Debendra Nath Basu, Shri Chitta Bhattacharjee, Shri Nepaldev Chakravarty, Shrimati Bijoya Chatterjee, Shri Nirmal Chowdhury, Shrimati Renuka Das Gupta, Shri Gurudas Dhabe, Shri S. W.

Ghosh, Shri Dipen Ghosh, Shri Shantimoy

Gopalan, Shri K.

Goyal, Shri J. P.

Gurupadaswamy, Shri M. S.

Jaswant Singh, Shri
 Kalvala, Shri Prabhakar Rao
 Kar, Shri Narayan
 Khandelwal, Shri Pyarelal
 Kushawaha, Shri Ram Naresh
 Lakshmana, Prof. C.
 Maheswarappa, Shri K. G.
 Mahishi, Dr. (Shrimati) Sarojini
 Malaviya, Shri Satya Prakash
 Mazumder, Shri Ramkrishna
 Mishra, Shri Kailash Pati
 Mohanan, Shri K.
 Mukherjee, Shrimati Kanak
 Naik, Shri R. S.
 Patel, Dr. Shanti G.
 Poddar, Dr. R. K.
 Quasem, Shri Mostafa Bin
 Radhakrishna, Shri Puttapaga
 Rao, Shri Gopala Rao
 Rao, Shri Yalla Sesi Bhushana
 Reddy, Shri B. Satyanarayan
 Reddy, Dr. G. Vijaya Mohan
 Saikia, Shri Nagen
 Scindia, Shrimati Vijaya Raje
 Sen, Shri Sukomal
 Suraj Prasad, Shri
 Talari Manohar, Shri
 Upendra, Shri Parvathaneni
 Vaghela, Shri Shanker Singh
 Yadav, Shri Hukmdeo Narayan
 Yadav, Shri Jagdambi Prasad
 Noes 154
 Abdi, Shri Hashim Raja Allahabadi
 Akarte, Shri Jagannath Sitaram
 Aladi Aruna, Shri alias V. Arunachalam
 Amarjit Kaur, Shrimati
 Amla, Shri Tirath Ram
 Anand Sharma, Shri
 Ansari, Shri Hayat Ulla
 Antony, Shri A. K.
 Arun Singh, Shri
 Balmik, Shri Achchhey Lal
 Bansal, Shri Pawan Kumar
 Basumatari, Shri Dharanidhar

Bhandare, Shri Muridhar Chandrakant
 Bharadwaj, Shri Ramchandra
 Bhardwaj, Shri Hansraj
 Bhatia, Shri Madan
 Bhatt, Shri Nand Kishore
 Bhattacharjee, Shri Kamalendu
 Bhim Raj, Shri
 Birla, Shri Krishna Kumar
 Chatterjee, Prof. (Mrs.) Asima
 Chaturvedi, Shri Bhuvnesh
 Chowdhary Ram Sewak
 Darbara Singh, Shri
 Deori, Shrimati Omem Moyong
 Desai, Shri Jagesh
 Dhusiya, Shri Sohan Lal
 D'Souza, Dr. Joseph Leon
 Faguni Ram, Shri
 Fotedar, Shri Makhan Lal
 Ganeshwar Kusum, Shri
 Gautam, Shri Anand Prakash
 Ghan Shyam Singh, Shri
 Gopalsamy, Shri V.
 Gupta, Shri Vishwa Bandhu
 Hanspal, Shri Harvendra Singh
 Hanumanthappa, Shri H.
 Haq, Shri (Molana) Asrarul
 Hashmi, Shri Syed Ahmad
 Heerachand, Shri D.
 Heptulla, Dr. (Shrimati) Najma
 Islam, Shri Baharul
 Jadhav, Shri Vithalrao Madhavrao
 Jain, Shri J. K.
 Jamudua, Shri Durga Prasad
 Jani, Shri Jagadish
 John, Shri Valampuri
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Sudha Vijay
 Kadharsha, Shri M.
 Kailashpati, Shrimati
 Kakodkar, Shri Purushottam
 Kalita, Shri Bhubaneswar
 Kamble, Prof. N. M.
 Kar, Shri Ghulam Rasool

Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Kesri, Shri Sitaram
Khaparde, Miss Saroj
Kidwai, Dr. Mohd. Hashim
Kollur, Shri M. L.
Koya, Shri B. V. Abdulla
Kushnoor, Shri Veershetty Moglappa
Madni, Shri Asad
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Makwana, Shri Yogendra
Malaviya, Shri Radhakishan
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Mane (Patil), Shri Maruti Dnyanoo
Manhar, Shri Bhagatram
Matto, Shri Ghulam Rasool
Meena, Shri Dhuleshwar
Mehta, Shri Chimanbhai
Mirza Irshadbaig, Shri
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohanarangam, Shri R.
Mohanty, Shri Subas
Moopana, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanasamy, Shri V.
Natha Singh, Shri
Pachouri, Shri Suresh
Pahadia, Shrimati Shanti
Panda, Shri Akshay
Pandey, Shrimati Manorama
Pandey, Shri Sudhakhar
Paniker, Shri K. Vasudev
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Pratibha Devisingh
Pattnaik, Shri Sunil Kumar
Prajapati, Shri Pravin Kumar
Prasad, Shri K. L. N.

Ranque Alam, Shri
Rai, Shri Kalpnath
Rajagopal, Shri M.
Rajangam, Shri N.
Ramachandran, Shri M. S.
Ramakrishnan, Shri R.
Ramamurthy, Shri Thindivanam K.
Ramanathan, Shri V.
Ramesh Babu, Shri S. B.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Rumsinghbai Pataliabhai
Ray, Shri Deba Prasad
Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richhariya, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Salve, Shri N. K. P.
Sambasivam, Shri Era
Saring, Shri Leonard Solomon
Sema, Shri Hokishe
Sharma, Shri A. P.
Sharma, Shri Chandan
Sharma, Dr. H. P.
Shiv Shanker, Shri P.
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmed
Silvera, Dr. C.
Singh, Shri Bir Bhadra Pratap
Singh, Shrimati Pratibha
Singh, Dr. Rudra Pratap
Singh, Thakur Kamakhya Prasad
Singh, Shri Vishvajit Prithvijit
Singh, Shri Vishwanath Pratap
Sukhdev Prasad, Shri
Sukul, Shri P. N.
Sultan, Shrimati Maimoona
Sultan Singh, Shri

Tariang, Shri Jerlie E. Thakur
 Jagatpal Singh Thakur, Shri
 Rameshwar Thangabalu, Shri
 Tiwari, Shri Narayan Datt Tripathi,
 Shri Chandrika Prasad Tyagi, Shri
 Shanti

Vaduthala, Shri T. K. C.

Valiullah, Shri Raoof

Verma, Shri Kapil

Vikal, Shri Ram Chandra

Yadav, Shri Ramanand

MR. DEPUTY CHAIRMAN: The
 question is:

"That Clause 5 stand part of the Bill."
The motion was adopted. .

Clause 5 was added to the Bill.

Clause 6: Power to make rules.

SHRI NAGEN SAIKIA: Sir I move:

97. "That at page 4, line 17, for the
 words 'under section 5' the words 'under
 second proviso to sub-clause (3) of
 clause 3' be substituted."

*The question was put and the motion was
 negated.*

MR. DEPUTY CHAIRMAN: The
 question is;

"That Clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7: Transitional provisions.

SHRI PARVATHANENI UPENDRA:
 Sir, I move:

98. "That at page 4, lines 33 to 38
 for clause 7, the following clause be
 substituted, namely:—

7. Every application by a divorced
 woman under section 125 or under section
 127 of the Code of Criminal Procedure,
 1973 pending before a Magistrate on the
 commencement of this Act, shall be
 disposed of by such Magistrate in
 accordance with the provisions of Section
 125 or Section 127 of the Code of Criminal
 Procedure, 1973, as the case may be."

SHRI S. W. DHABE: Sir, I move:

99. "That at page 4, the clause 7 be
 deleted."

SHRI DIPEN GHOSH: Sir, I move:

100. "That at page 4, line 36, for the
 words 'that code' the words 'this Act'
 be substituted."

101. "That at page 4, lines 36-37, the
 words and subject to the provisions
 of section 5 of this Act be deleted."

102. "That at page 4, line 38, for the
 words 'this Act' the words that code
 be substituted."

The question were proposed.

SHRI PARVATHANENI
 UPENDRA:

This is the last clause of the Bill. It gives
 retrospective effect to this Bill. It is not
 correct. That is why I have given the am-
 endment that all those cases which are now
 pending in various courts under Sections 125
 and 127 must be heard under the same
 sections and it is not correct to bring them
 under the purview of the new Act because
 they might be in different stages of hearing in
 different courts and it is not proper to disturb
 the due process of law. For this reason I pray
 that my amendment be accepted by the
 honourable Law Minister.

SHRI SUKOMAL SEN: This clause is very
 preposterous. It gives retrospective effect. It
 says after enactment of this Bill all
 applications pending under Sections 125 and
 127 are to be disposed of under this Act and
 not under the Criminal Procedure Code. Why
 should the applications pending under the
 Criminal Procedure Code be dealt with by this
 Act? They should properly be dealt with
 under Sections 125 and 127 only. In clause 5
 it says that option should be given to the
 divorced husband and wife to seek protection
 from Section 125. Again in clause 7 it takes
 away that right. This is unjust and unfair to
 the divorced woman. I would like to ask the
 honourable Minister why he has introduced
 this clause.

SHRI ASOKE KUMAR SEN: I cannot
 accept this. This is the usual procedure when
 a law is changed particularly when

we are conferring more benets on the divorced women. ... (Interruptions) I thought an answer was not known nor does the answer evoke any laughter if it is understood properly. Under the old 'aw a divorce was getting Rs. 500 and she could not get any Mehr, she could not get any property. Now she will be getting much more than Rs. 500 and property. Therefore, it is absolutely necessary that this clause should be there.

MR. DEPUTY CHAIRMAN: Now, I shall put the amendments (Nos. 98, 99, 100, 101 and 102) to vote.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the BUI.

Clause 1 (Short title and extent)

(Amendments Nos. 1, 2, 3, 43, 44, 45 and 46 moved)

SHRI ASHWANI KUMAR: Sir, I move:

1. "That at page 1, line 3, the word 'Muslim' be deleted."

(The amendment also stood in the name of Shri Pyarelal Khandelwal.)

SHRI MOSTAFA BIN QUASEM: Sir, I move:

2. "That at page 1, line 5 for the words 'the whole of India' the words 'the States where the state Legislature accepts such extension by a two-third majority' be substituted."

(The amendment also stood in the names of Shri Nirmal Chatterjee, Shri M. A. Bady and Shri N. E. Balram.)

SHRI ASHWANI KUMAR: Sir, I move:

3. "That at page 1, lines 5-6, the words 'except the State of Jammu and Kashmir' be deleted."

(The amendment also stood in the name of Shri Pyarelal Khandelwal.)

SHRI RAM NARESH KUSHAWAHA: Sir, I move:

43. "That at page 1, line 3, the word 'Muslim' be deleted."

SHRI IAGDAMBI PRASAD YADAV: Sir, I move:

44. "That at page 1, line 3, for the word 'Protection' the word 'Denial' be substituted."

(The amendment also stood in the name of Shri Kailash Pati Mishra)

SHRI GURUDAS DAS GUPTA :Sir, I move:

45. "That at page 1, after line 6, the following sub-clause be inserted, namely:-

'(3) It shall come into force on 1st of April, 1987.'"

(The amendment also stood in the names of Shri Puttapage Radhakrishna and Shri Suraj Prasad.)

SHRI S.W. DHABE: Sir, I move:

46. "That at page 1, after line 6, the following sub-clause be inserted, namely:— il

'(3) It shall come into force on the date notified by the Central Government in the Gazette.'"

The questions were put and the motions were negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

SHRI ASOKE KUMAR SEN: Sir, I move:

"That the Bill be passed." *The*

question was proposed.

SHRI K. MOHANAN: Sir, at this stage of third reading of this Bill, I would like to say a few words to oppose this unwanted and constitutional and motivated legislation which will be detrimental to our social and political life. I am opposing this not merely because by passing this legislation millions of our Muslim women sisters will be thrown into the ocean of tears but also it will have far-reaching repercussions. Sir, this legislation will be an encouragement for all fundamentalists in all religions, Hindus, Christians, Muslim or Sikh. This will be a boost to the divisive and separatist forces of this country. They are organising a revolt against the Government of India on the basis of caste and religion. Now we are facing a lot of trouble from Punjab, Jammu and Kashmir and many other parts of the country from the fundamentalists. This legislation, Sir, injects another dose of encouragement to the divisive and fundamentalists versus those who want to divide this country on the basis of religion, caste and language. Sir, the Government itself brings forward a legislation to divide the people on the basis of religion. Religious fundamentalists will get a boost and encouragement from this and this will be detrimental to our country.

Sir, on this basis I am not going into the details of this Bill because it is the third reading stage. But the overall effect of this Bill will be that not only it will affect the Muslim women, divorcee women, but also the entire country and it will be dangerous to the unity and integrity of this country. Tomorrow a demand will come from Khalistanis and Hindu Rashtravadis. They will make all these demands. Tomorrow another demand will come. They will want Hindu militia or they will want Muslim militia as in Lebanon and some other countries. You are giving strength and encouragement to all these people and all these elements by dividing the people on the basis of religion, caste and creed. Mixing religion with politics is dangerous. We have our own experience in Jammu and Kashmir, in Punjab and in many other countries. So, Sir, if you are secular, if you are interested in the unity and integrity of this country, if you are interested in the very

existence of this country, give all the citizens of India the rights and privileges. You are dividing them through this legislation. I warn you that it will be dangerous for the Country. On this basis, I oppose this Bill with all the might at my command.

SHRIMATI RENUKA CHOWDHURY: Sir, when I was sitting as one of the new Members, I was thinking that before I was born it was somewhere in an hour like this that my nation got its Independence. Today, I am ashamed to say I that I am sitting here as a part of the death of the Indian women's free thinking and of their free excess to the courts of India today. While I make this point, Sir, what the opposition has failed to realise is that we are supporting the cause of the Muslims. It is for Muslim women that we have come forward to fight. Is Shah Bano not a Muslim? This is one point I have been repeatedly trying to ask. What is it that they are trying to achieve in what they think they have made a victory, and a hollow victory at that? It is one voice that starts in the wilderness and will become the call of the nation as it has been proved in the history of India. I was born in India as a woman. My children will be brought up as free Indians irrespective of what caste and creed they have. If they choose to marry a Muslim man tomorrow, then they must have an assurance that they will not be the dependents of Wakf Boards which have proved time and again that they are not capable of paying even the mere pittance for the subsistence of a human life. Where in Quaran has it been said that the Wakf Board will pay for a woman's subsistence? Where is this religious point being mooted from?

As for allegations made that parties, certain unnamed parties at that, do not have Muslim Members in both the Houses. I would say that one House has fielded Muslim Members who have failed to acquire their own votes in their own constituencies, whereas in the other House we have been ostracised because perhaps the minorities are waving flags in the name of minorities, waving flags in the name of being underprivileged siding with others.

parties who have an upper hand to gain their own end. They are merely using other parties as instruments and means to gain their unholy ends. Thank you.

श्री हुसमदेव नारायण यादव :

उपसभापति महोदय, इस अंतिम क्षण में जब इस विधेयक पर अंत में विचार होने जा रहा है और जब इस विधेयक को पास करने का सवाल आया है तो उस क्षण में मैं इसलिये कुछ कहने के लिए खड़ा हुआ हूँ कि जब जब इस देश में उदारता की धारा बहती है तब तब यह देश मजबूत हुआ है। भारत का प्राचीन इतिहास इस बात का साक्ष्य है कि जब जब इस देश में कट्टरता पैदा हुई है तब तब देश कमजोर हुआ है। महात्मा गांधी हिन्दू कट्टरता के खिलाफ खड़े हुए। उन्होंने देश को आजाद करने के लिये और राष्ट्र को एक करने के लिये अपनी जिन्दगी कुर्बान कर दी। कुछ दिन पहले देश की जनप्रिय नेता श्रीमती इंदिरा गांधी ने अपने जीवन की कुर्बानी दी थी। इस देश को एक रखने के लिये ऐसे नेता पैदा हुए जिन्होंने साम्प्रदायिकता के आगे घुटने नहीं टेके। उनके सामने राष्ट्र था, देश था, उनके सामने पार्टी नहीं थी। लेकिन आज भारत का यह दुर्भाग्य है कि न हमें पंडित जवाहरलाल नेहरू जैसा ऊँचे कैलिबर का हिन्दू नेता मिल रहा है और न मौलाना अबुल कलाम आजाद जैसे ऊँचे कैलिबर का कोई मुसलमान नेता मिल रहा है। हम छोटे हो गये हैं हमारा कद छोटा हो गया है, हमारा दिल छोटा हो गया है, हम में धर्म नहीं है, हम में साहस नहीं है, हमारे मन में त्याग की भावना नहीं है, हमारे मन में नीतिकता नहीं है। इसीलिये हम हिन्दू

की दृष्टि से मुसलमान की दृष्टि से खड़े होकर सोच रहे हैं।

मैं दूसरी बात यह कहना चाहता हूँ कि संविधान का अर्थ होता है मम माने बराबर और विधान माने कानून बराबर का विधान। देश में रहने वाले सभी लोगों के लिये बराबर का जो विधान हो उसका नाम संविधान है। उस संविधान में जब सब बराबर है, किसी के लिये उसमें ऊँच नीच नहीं है तो मैं आपसे यह प्रार्थना करना चाहूँगा कि उस संविधान की परिधि में आने वाले सभी लोगों के लिये एक जैसे नियम होने चाहिये। लेकिन भारत के संविधान को हम अपनी जीवन पद्धति नहीं बना सकते, वह हमारे जीवन का अंग नहीं बन सका। अगर हमारे विचार, हमारी जीवन पद्धति संविधान के अनुच्छेदों में निहित व्यवस्थाओं के आधार पर होती और भारत के सम्पूर्ण नागरिक उसके अनुसार चलने लगे होते तो राष्ट्र की एकता बन सकती थी, राष्ट्र मजबूत हो सकता था। लेकिन अफसोस कि वह संविधान अंगीकार तो जरूर हुआ लेकिन उस संविधान को हमने अपने जीवन का अंग नहीं माना, उसको हमने अपनी जिन्दगी का रास्ता नहीं बनाया बल्कि उस संविधान को एक नाटक बनाकर रखा। इसका मुझे अफसोस है। श्रीमान्, मैं एक मिनट में अपनी बात समाप्त करूँगा। उपसभापति महोदय, आज हम कहाँ हैं। मैं यह भी कहना चाहता हूँ कि इस देश में मुझे कहना पड़ेगा कि एक नौजवान प्रधानमंत्री है। वे कुछ करना चाहते थे लेकिन उनके असाधस के लोग सही समय का खयाल नहीं करते और जो काम सही समय पर नहीं किया जाता तो उसके

परिणाम बुरे निकलते हैं। यह समझ इसके लिये नहीं था। जब देश में एक तरफ पंजाब में हल्ला हो रहा हो, दूसरी जगहों पर हो रहा हो, देश में जब धार्मिक उन्माद, साम्प्रदायिक उन्माद खड़ा हो उस समय अगर अच्छा काम भी करते तो जरा सोचकर करते। मुझे एक मिनट का समय और दिया जाय। मैं कहना चाहता हूँ कि आज सत्ताधारी दल के जरिये जानबूझकर भारत के लोगों का मन दूसरी ओर मोड़ने के लिये यह दिया जा रहा है। जो देश में गरीबी, बेकारी, भुखमरी, अन्याय, चोरी, जुल्म है, हरिजन और कमजोर वर्गों पर अत्याचार हो रहे हैं तो उस अत्याचार पर भारत की जनता की दृष्टि न जाय, इसलिये इस तरह का अकारण अनावश्यक और निरर्थक विधेयक सदन में लाकर सम्पूर्ण देश में प्रतिवाद खड़ा करने की कोशिश करते हो जिससे इस देश की जनता सरकार की बुराइयों पर न जाय और उनके मानस को एक निरर्थक विवाद में फंसाकर देश की जनता को असंख्यत पहचानने से आप रोक नहीं सकते हो। गरीबी के खिलाफ भारत की जनता उठेगी और इस तरह से इस विवाद का एक न एक दिन अन्त होगा ही।

SHRI M. S. GURUPADASWAMY : Sir, at this late hour, we are passing a Bill which is atrocious. I see before me, Sir, the Members of the Treasury Benches reserbling the Bourbons of France. It is said, Sir, that the Bourbons of France learnt nothing and forgot nothing. The Opposition today tried its best to convince our friends here in the opposite about the menacing implications of this measure. But, unfortunately, they came to the House determined to pass this Bill however much it was irrational, unconvincing and obnoxious. Perhaps they were

ignorant of what they are doing. There is a saying in English, Sir, that the ignorance of the ignorant is a malady of the ignorant. Perhaps they are blissfully ignorant of the evil consequences arising out of this measure. Sir, we have condemned woman to a second status in this country. We have paid a huge price, a big price, in the past for practising religious fanaticism and communal obscurantism. The country was vivisected, divided. Unfortunately this lesson was not learnt by our friends. We are really sorry that an impression is being created by our friends here that they are doing something wonderful for the women of the Muslim community. This is not true. Sir, the future will bear out that this Bill has got all the potential of mischief. It will endanger the unity of India, the integrity of India. It will destroy some of the values, the secular values, which we have cherished. It is taking the country backwards. I do not know whether even at this late hour our friends in the opposition will realise the mistake that they are committing.

श्री जगदम्बी प्रसाद यादव : उपसभा-पति महोदय, मैं जब अपने सरकारी बेंच के मित्रों का भाषण सुन रहा था तो कहा गया कि यह विधेयक क्रान्तिकारी है, यह विधेयक पहली बार मुस्लिम महिलाओं के संरक्षण के लिये लाया गया है। अगर सचमुच में यह बात सत्य होती तो शायद इतना डट कर धिरोघ करने की बात नहीं होती। क्या हम भूल गये कि यह बातों के त में न्यायालय के इन्साफ की बात पर इतना बड़ा तूफान खड़ा किया गया। हिन्दुस्तान में जगह जगह पर क्या उस तूफान को देख कर कांग्रेस को अपने बैलेंस आफ वोट बिगड़ता हुआ दिखाई नहीं दिया? क्या उस के लिये कांग्रेस ने जो अपनी सेकुलरिज्म की बात करती है उसको सरेरर नहीं कर दिया? एक बात जो हमारे कई मित्रों ने कही है

राष्ट्र की एकता और राष्ट्र की अखण्डता पर आंच आने वाला यह एक छोटा सा जहर का गोला है जिसके पक्ष में जोर से तो बोला जा सकता है उसका दुष्परिणाम भोगना पड़ेगा देश को देश अगर आज सावधान नहीं हुआ तो देश फिर से इतिहास की पुनरावृत्ति भोगेगा । दूसरी बात मैं बहुत चाहता हूँ यह संरक्षण का सर्वाल कहीं से उत्पन्न होता है ? जब हिन्दुस्तान की 50 प्रतिशत जनता गरीबी की रेखा के नीचे है मुसलमानों में और अधिक हैं लोग अनपढ़ हैं जिनकी संख्या 68 प्रतिशत है और महिलाएँ उससे भी अधिक संख्या में अनपढ़ हैं । मुसलमानों में तो 90 प्रतिशत से भी अधिक महिलाएँ गरीब अनपढ़ हैं । अब इन पर कौन सा उपकार हो जायेगा । मैं एक उदाहरण पढ़ रहा था । एक मुसलमान भाई की चार बहनें हैं एक बचन का डाइवॉर्स हुआ वह तो खुद खाने के लिये हैंड टू माउथ था अगर उसकी चार-चार बहनें डाइवॉर्स हो जायें तो उनका क्या से पालन कर सकेगा ।

श्री सूरज प्रसाद : ब्रूट मैजारटी से या व्हिप से, यह बिल तो जरूर पास हो जायेगा, लेकिन भारत के इतिहास में यह काले अक्षरों में लिखा जायेगा । अब यह बात साफ जाहिर हो गई है कि कांग्रेस के पास जो पहले बुद्धिमत्ता थी, जो साहस था, जो दूरदर्शिता थी, वह अब वैसी चीज नहीं रह गई है । (समय की घंटी) कांग्रेस बिल्कुल ही कूपमंडूक बन गई है, अब दिक्कासों में दिक्कास करने लगी है और इस तरह से देश को ऐसे रास्ते पर ले जा रही है जिस रास्ते

पर जाने से हिन्दुस्तान के अंदर कट्टरपंथी शक्तियों की ताकत देश में बढ़ेगी ।

सरकार ने कट्टरपंथियों के सामने जो मुसलमान कट्टरपंथी है, उनके सामने समर्पण करने इस तरह के कानून को ... (व्यवधान)

श्री सैयद अहमद हाशमी : मुसलमानों को मशकूक समझना, मैं समझता हूँ कि ... (व्यवधान) मुसलमानों को मशकूक समझने के लिये ... (व्यवधान) और यह बात बहुत ही गलत है । मैं इसके खिलाफ प्रोटैक्स्ट करता हूँ ... (व्यवधान)

[شری سید احمد ہاشمی :
مسلمانوں کو مشکوک سمجھنا - میں
سمجھتا ہوں کہ .. (مداخلت)
مسلمانوں کو مشکوک سمجھنے کو مانگتے -
.... (مداخلت) اور یہ بات بہت
ہی غلط ہے - میں اس کے خلاف
پروٹیسٹ کرنا ہوں - .. (مداخلت)]

श्री सूरज प्रसाद : मैं बहुत चाहता हूँ कि ... (व्यवधान)

श्री सैयद अहमद हाशमी : इस बिल को पास करने का मतलब यह है कि मुसलमानों को ... (व्यवधान) मुसलमानों की खद्दिश के मुताबिक ... (व्यवधान) अगर वह हो रहा है ... (व्यवधान) आप मुसलमानों को मशकूक समझ रहे हैं । कभी आपने रेकोग्नाइज किया है हिन्दुस्तान के मुसलमानों को इस मुला के अंदर एक शहरी की तरह से ?

†[شہری سود احمد ہاشمی :
اس بل کو پاس کرنے کا مطلب یہ
ہے کہ مسلمانوں کو... (مداخلت)...
مسلمانوں کی خواہش کے مطابق
.... (مداخلت)... اگر وہ ہو رہا
ہے.... (مداخلت)... آپ مسلمانوں
کو مشکوک سمجھ رہے ہیں - کبھی
آپ نے ریکورڈز کیا ہے ہندوستان کے
مسلمانوں کو اس ملک کے اندر ایک
شہری کی طرح -]

श्री जगदम्बी प्रसाद यादव: इसीलिये मैं
यह कहना चाहता हूँ कि डिवोर्स का यह सब
जो आपने बिठिया है, यह पुरुष के पक्ष में
है, महिलाओं के पक्ष में नहीं है।

मैं एक उदाहरण आपके इसी एक्ट
से देना चाहता हूँ कि दो वर्ष तक के
बच्चों के संरक्षण की बात की गई है।
दो वर्ष में क्या डिवोर्स महिलायें, तलाक
शुदा महिलायें अपने जीवन में प्रस्थगित
कर जायेंगी, क्या जो दो वर्ष के बाद,
तीन वर्ष के बच्चे को लेकर जी सकेंगी?
अगर उस बच्चे की बात भी होती, तो
कम से कम जब तक वह व्यस्क नहीं हो
जाता, तब तक उसकी बात होती।
जब व्यस्क होने की बात नहीं, तब फिर
यह कैसे इस बात को हम समझते हैं।

इस लिये मैं एक बात कहते हुए अपनी
बात को समाप्त करना चाहता हूँ कि हमारे
अनेक मित्रों ने कहा है कि यह एक्सट्रेंज
बात है जिसका कोई जवाब हमारे कानून
मंत्री देते, तो शायद संतोष होना, लेकिन
उनके पास कोई कानून नहीं है। कामन
लॉ में जाने के लिये, क्रिमिनल लॉ में
जाने के लिये डिवोर्स तलाकशुदा औरत
से कहा जाता है कि आप अपने पति के

साथ (समय की घंटी) मिल कर इसका
प्रयत्न करें—अगर उनके साथ हा रहती तो
फिर तलाक की बात क्यों होती, अगर
वह दोनों मिल जाने हैं।

श्री उपसभापति: कृपया आप अब
बैठ जाइये।

श्री जगदम्बी प्रसाद यादव: मैं एक
बात कह कर समाप्त कर रहा हूँ। अंत में
मैं चाहूंगा कि अगर सचमुच कानून है, तो
कानून मंत्री जी तीन-चार उपरोक्त बातों
का जवाब अवश्य दें।

श्री सूरज प्रसाद: माननीय महोदय,
अभी जो डोटिंग हुआ, उससे यह प्रतीत
जरूर होता है कि कांग्रेस के पास जो बूट
मजारटी है, उस मजारटी से यह कानून
तो जरूर पास हो जाएगा, लेकिन...
(ध्वजधान)

एक भातनीय सदस्य: विहप से...
(ध्वजधान)

श्री सूरज प्रसाद: इसलिये मैं यह
कहना चाहता हूँ कि इस कानून के पास
होने के बाद देश में साम्प्रदायिकता बढ़ेगी।
देश की एकता और अखंडता पर खतरा
बढ़ेगा और देश के अंदर जो सेकुलरिजम
है उस पर खतरा बढ़ेगा।

इसलिये इन्हीं शब्दों के साथ मैं इस
बिल का विरोध करता हूँ और सरकार से
यह चाहता हूँ कि अभी भी टाईम है कि
सरकार इस बिल को पास न करे।

SHRI DIPEN GHOSH- Mr. Deputy Chairman,
Sir, according to the English calendar, we have
today reached the 9th day of May. On this day 12%
years ago, Rabindranath Tagore was born and today