

THE ADOPTION OF CHILDREN BILL, 1972

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Sir, I beg to move:

"That the Bill to provide for the adoption of children and for matters connected therewith as reported by the Joint Committee of the Houses, be taken into consideration."

Sir, this Bill has a long history. As the House is aware, the Bill was introduced as far back as June 1972 in pursuance of demands made for over a decade prior to that by social welfare organisations. In our country, there is no general law of adoption. It is permitted by statute amongst Hindus only and it is permitted amongst a few other numerically insignificant categories of persons by custom or usage. There are a large number of children in our country who are orphans or destitutes. Some of these are taken care of in orphanages and other institutions. As the hon. Members are aware no orphanage or institution however well-organised and however efficiently run can provide for a child the family affection and the emotional involvement which, I think only a family atmosphere can provide to child. The family atmosphere and the emotional involvement arising therefrom is vital for the development of a child. If such an atmosphere and involvement is denied to them, they will grow as deprived individuals. It is on account of the realisation of this fact that more and more countries have been providing for the institution of adoption which alone holds the hope for securing for these unwanted and destitute children proper homes. Children by reason of their tender age cannot articulate their feelings or protest against what the society is denying to them. Their needs should transcend all considerations and should be regarded as paramount. At the same time, I do not like to give the impression that the time which has been

taken in bringing up this measure for consideration has not been properly utilised. The Joint Committee which considered the Bill was aware of the need for enacting the legislation as quickly as possible. Nevertheless, they had to bestow the full attention which a legislation of this type needs. From the two volumes of evidence recorded by the Joint Committee and from the Report of the Joint Committee it will be clear that the Joint Committee took great pains to elicit the views of all concerned and to finalise the legislation in the best manner possible. I have no hesitation in saying that the Bill as it has emerged from the Joint Committee is well-considered and comprehensive measure. I shall now deal briefly with the salient features of the Bill.

The Bill provides for adoption by order of a court. In the Bill as introduced, jurisdiction to make adoption orders was sought to be confined only to district courts. Taking into account the consideration that district courts are not easily accessible to people in the rural areas, the Joint Committee made amendments to enable jurisdiction to make adoption orders being conferred on lower courts also.

The Bill provides for necessary safeguards to prevent unsuitable adoptions and adoptions with mercenary or immoral objects and to ensure that adoption of a child is allowed only when it is in the best interests of the child. Before making an adoption order in respect of a child, the court will have to satisfy itself, amongst other things that the adoption order, if made, will be for the welfare of the child. For this purpose, the court may pass an interim order giving temporary custody of the child to the intending adopter by way of probation.

The Joint Committee made a number of amendments for strengthening the safeguards as provided in the Bill as introduced. Mention may be made in particular of the amendment made to clause 9(3) of the Bill. According

to this amendment, in cases where an application for the adoption of a child is made by his guardian, the court has to appoint some other person or authority to act as guardian of the child for the purposes of hearing of the application for adoption of the child and for safeguarding the interests of the child before the court. This amendment will help in securing that a guardian of a child does not adopt a child for mercenary purposes, such as for example, getting control over the property belonging to the child, etc. The Committee also made elaborate amendments in clause 15 of the Bill relating to licensing of institutions for making arrangements for adoption of children with a view to entrusting the work of licensing to a representative body instead of to an officer of Government. This amendment would help in ensuring that the institutions are properly supervised and in preventing abuses.

The Joint Committee did not make any changes in the categories of persons who may be taken in adoption under the legislation. Any child who is not already adopted or married may be taken in adoption under the provisions of the legislation. Any child, whether male or female, may be taken in adoption. The legitimacy of the child is not relevant. The Joint Committee made certain very significant amendments with a view to securing that a child not born in lawful wedlock who is adopted under the legislation is saved from the stigma of illegitimacy. Apart from eliminating the use of the expression 'illegitimate child', the Committee have made a special provision in clause 13(3) of the Bill to enable such children to obtain new birth certificates setting out the names of the adoptive parents. Under the legislation, any person who has completed the age of 25 years and is of sound mind can adopt a child. In the Bill as introduced, the age limit was mentioned only as 21 years and the Joint Committee rightly changed this to 25 years. Taking into account the normal age differences between husband and wife, the Joint Committee

provided by an Explanation to clause 5(1) that in the case of adoption of a child by spouses the requirement as to age shall be deemed to have been satisfied if either of the spouses has completed the age of 25 years. For the purpose of ensuring the normality of adoptive relationship, the Bill does not permit the same child to be adopted by more than one person unless, it is by husband and wife adopting jointly and for the same reason the Bill provides for a minimum difference of 21 years between the adopter and the child to be adopted. Special exceptions have been provided in the Bill to facilitate the adoption of a child not born in lawful wedlock by its natural parent. The Joint Committee made an amendment in clause 5(3) of the Bill to enable the court to dispense with the requirements as to difference of 21 years between a child and the person intending to adopt the child.

Adoption of a child involves complete severance of the child from its natural family. The Bill, therefore, provides that an adoption order in respect of a child shall not be made except with the consent of the person who is a parent or guardian of the child. Where the child is in the care and custody of an institution, the consent of the institution is necessary. The Joint Committee amended the provision as to consent by an institution to provide that all the persons entrusted with or in charge of its management should give their consent. The Bill also contains suitable provisions to enable the court to dispense with the consent of a parent or guardian or other person in cases where the parent, guardian or other person has abandoned, neglected or persistently ill-treated the child or cannot be found or is incapable of giving his consent or is withholding his consent unreasonably. An important change which the Joint Committee made with regard to consents is the relegating of matters, such as the time at which and the manner in which consents may be given to rules. This would help in evolving different rules for different classes of

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cases. For example, an unmarried mother may not be able to form a proper opinion for some time after the delivery of a child. The rules can make suitable provisions to ensure that consent is not obtained from her until she had sufficient time after the birth of the child to think coolly about the matter and arrive at a proper decision as to whether she should agree to her child being given in adoption. There would be several other types of cases which would require special provisions.

Coming to the effects of an adoption order under the legislation, it may be mentioned that the Bill seeks to assimilate the position of an adopted child with that of a natural born legitimate child to the maximum extent possible. Clause 13 of the Bill provides that an adopted child shall be deemed to be the child of his or her adoptive parent and the adoptive parent shall be deemed to be the parent of the child as if the child had been born to that parent in lawful wedlock for all purposes with effect from the date on which the adoption order takes effect. The clause also provides for the severance of the ties of the child with the family of his or her birth except for purposes of prohibitions relating to marriage. Exceptions are also provided in the clause to ensure that as a result of the adoption, vested rights of any person are not affected.

To meet the needs of foreigners desiring to adopt Indian children in their own countries, the Bill provides for the making of provisional adoption orders. In making a provisional adoption order, the court will have to take into account the same considerations as apply in respect of a regular adoption order and all the provisions of the legislation relating to regular adoption orders apply in relation to such provisional adoption orders. Since it may be difficult for courts to judge the antecedents and suitability of foreigners wishing to take an Indian

child abroad, clause 23 provides that an application for a provisional adoption order shall not be entertained unless it is accompanied by a certificate of the Central Government to the effect that the applicant is, in its opinion, a fit person to adopt the child; that the welfare and interests of the child would be safeguarded under the law of the country of domicile of the applicant and that the applicant has made proper provision by way of deposit or bond or otherwise to enable the child to be repatriated to India should it become necessary for any reason. The intention behind this provision is to ensure that a careful scrutiny is made abroad before a foreigner is allowed to make an application for a provisional adoption order in respect of an Indian child. I may also mention that since all the provisions relating to the making of an adoption order apply to the making of a provisional adoption order, the court will be competent, while making a provisional adoption order, to impose such terms and conditions as it may think fit and may require the intending foreign adopter, by bond or otherwise, to make for the child such provision, if any, as in the opinion of the court is just and proper by virtue of the provisions of sub-clause(3) of clause 11.

Another important feature of the Bill is that it makes a special provision for protection of adopted children who are neglected or subjected to cruel ill-treatment or not brought up properly. Cruel ill-treatment of an adopted child has been defined to include any undue harassment or discrimination between him and his brothers or sisters in his adopted family, in the matter of care, maintenance, training, education, provision of money or property or any other matter connected with the physical, material or moral well-being of the child.

The last feature of the Bill which requires special mention is that unlike other enactments relating

family matters it provides for rules being made by the Central Government after consultation with the Supreme Court. This would help in uniformity and would also secure to the rule-making authority the advantage, experience and wisdom of the Supreme Court Judges.

The Bill, as introduced and as reported by the Joint Committee, seeks to make the legislation a uniform code of adoption. This feature of the Bill has given rise to considerable controversy. I propose to move amendments to make the legislation enabling in the same manner as the Special Marriage Act of 1954. At this stage, I do not want to go into more details.

The Bill has been before the House for quite some time. Hon. Members are conversant with the provisions of the Bill. If the hon. Members feel that any matter requires further elucidation, I shall deal with the same in my reply to the debate.

Before I sit down, I would like to appeal to the Members to subordinate everything to the paramount interests of children in considering the provisions of the Bill and ensure that the benefits of this legislation are made available, as early as possible, to the children who are deprived of a normal family life, well before the commencement of the International Year for Children. I say well before because after the Bill is passed by both the Houses and assented to by the President, rules will have to be made and necessary arrangements for the proper administration of the Act will have to be made before bringing the Act into force. Sir, with these words, I move.

The question was proposed.

SHRI TRILOKI SINGH (Uttar Pradesh): May I ask one question? How can adoption be made in the presence of a living son? If I mistake not, the hon. Minister read out that an adoption can be made in the case of a living son also. This is not permissible under the Hindu Law.

SHRI SHANTI BHUSHAN: I will deal with this when I reply to the debate.

SHRI TRILOKI SINGH: Is it so? Have I understood him rightly?

SHRI SHANTI BHUSHAN: Yes. This is what I said.

SHRI SHYAM LAL YADAV: (Uttar Pradesh): Mr. Deputy Chairman Sir, the Law Minister has dealt with several important provisions of the Bill. But I am sorry to note that he did not refer to the most important aspect of the Bill which has caused great resentment. I am surprised why this Janata Government has considered it necessary to bring forward this adoption of Children Bill, 1972, for being passed by Parliament, after a lapse of six years. We all know that the Bill was introduced in the House in 1972 and it was referred to a Joint Select Committee of Parliament. The report of the Joint Select Committee was presented to the House on 20th August, 1976. This Bill and the Report raised unprecedented and unparalleled resentment, deep anxieties and revolt among the masses, particularly, the minorities like Muslims. I dare say, without any fear of contradiction, that this is a measure which has been opposed throughout the length and breadth of the country. And I can hardly find a sane man who has supported the provisions of the Bill. The genesis of this Bill was said to be the demand by some social organisations devoted to the maintenance of abandoned children either in India or even adoption by foreigners. There is said to be no law to cover such cases. But this demand did not come forward from Muslim community. The evidence which has been tendered before the Joint Committee proves this contention. The Government could be well advised to remedy this lacuna so far as persons other than Muslims are concerned. But to enact and pass such a Bill for a section of population which is totally opposed to this system

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of adoption is just horrible. I would like to warn this Government that they are trading on a dangerous path which may lead to something which you cannot dream of. We know that we Hindus have in our ancient law, which was later codified also, the detailed provisions for adoption of a son. It originates from the faith that a man cannot have salvation unless he has got a son who can give Pinda to him. It was good that the law on this topic was codified and I think the Act which is now going to be amended, Hindu Adoption and Maintenance Act, 1956, was sufficient to serve the purpose, and if there was any difficulty that could have been removed and there was no need to bring in Muslims under the purview of this Act for the first time. That is why several amendments have been proposed which we shall take up when clause by clause consideration of the Bill is taken up.

Several members of the Joint Select Committee have appended their Note of Dissent. I think there is no answer to their well thought out arguments against the inclusion of Muslims. It is said that the Bill is in the larger interest of children and their welfare. Secondly, it is said to be an enabling Bill and it does not compel Muslims to adopt. Thirdly, it is not against the Quranic injunctions. Fourthly, it is the first step to uniform Civil Code in India. I would like to remind the House and the Government that since independence this Bill has aroused the greatest resentment in the Muslim masses. Thousands and thousands of representations have been made by way of letters, telegrams, resolutions and memoranda against this inclusion. In the Joint Committee, the Committee heard the evidence of 147 witnesses. Out of them more than 100 Muslim representatives appeared before the Committee in their individual and collective capacity. Ulemas (Muslim Scholars) of undisputed re-

pute belonging to such scholastic orders as Darul Uloom of Deoband, Nadwathul Ulema of Lucknow, Imarath Shariah of Bihar and Orissa, Jamiathul Ulema of India, Muslim advocates, Muslim ladies and Muslim Personal Law Board appeared also and tendered their evidence against the inclusion of Muslims. Let it be remembered that the Muslim evidence is altogether non-political in its character and deals with the point of religious view. The summary of the evidence circulated by the Law Department clearly asserts that, I quote:

"Ninety-nine per cent of the Muslims who have given evidence (whether in their individual capacity or as representatives of Muslim organisations) have opposed the application of the Bill to Muslims. The main arguments which have been advanced by them are:

(1) Adoption is prohibited by the Holy Quran and is contrary to Islamic Law and Practice;

(2) Adoption will involve an alternation of various branches of personal law of Muslims particularly the Law of Inheritance;

(3) It would be unconstitutional as violative of article 25, 26 and 29 of the Constitution;

(4) The Bill is an attempt to foist Hindu Law on Muslims;

(5) There is no demand for a general law of adoption."

Those who are conversant with the Muslim jurisprudence know it fully well that the Muslim law is based upon the Holy Quran, the Sunnah, Ijma and Qiyas. It is the unshakeable belief of Muslims that Quran is the very word of God. Quranic injunctions are the first and foremost basis of the Muslim law. The Muslim scholars and lawyers who appeared before the Joint Select Committee were all one

on this point that adoption has been forbidden by the Holy Quran. They have based their argument on the verse of the Holy Quran, "...nor hath He made your adopted sons your real sons. This is only your saying by your mouths, whereas Allah sayeth the truth and guideth the way". (Chapter 33:4). All the commentaries on Holy Quran, without any exception, have been unanimous that this Verse was directed against Prophet Muhammad who had adopted Hazrath Zaid as his son. It is by this Verse that Islam had repudiated the old custom of Arabia of adopting children as their own. Till then the old custom of adoption was prevalent among the Arabs. In effect, the institution of adoption among the Arabs was very much analogous to the present system of adoption among the Hindus in India. In Arabs, the adopted son was called after the name of the adoptive father. He inherited property in the family of the adoptive father and observed the prohibited degress of marriage that arose out of this supposed relationship. In view of these facts, it is not so easy to say that Quran is silent on adoption or that it does not prohibit adoption. Had there been no Quramic Injunction, the highest Judicial Tribunals in undivided India and in independent India would not have given their unequivocal verdict that the institution of adoption is unknown to the Mohammadan Law. And no other person knows it better than the Law Minister himself.

Sir, some of the eminent Professors like Dr. S. D. Sharma, Professor, Goa Medical College, have opposed this very concept of adoption because it ultimately results in the retarded growth of the personality of the child and we have seen a large number of families who have to face perennial disputes with other co-sharers of the adoptive father and it is not rare that the lives of such adopted sons become hell and this results from the question of succession. The shares of other kith and kin entitled to succession get

affected and a new framework of prohibited degrees of marriage emerges round the personality of the adopted child. It will be admitted that adoption is a Hindu religious concept and this Bill is maliciously attempting to foist it upon the Muslims. It is against the spirit of secularism and that is why I am opposed to it. To say that the Bill is merely enabling one does not make any difference and it enables the citizens to seek a remedy as other laws do.

The divine character of the Muslim Jurisprudence can only be understood by those who either have faith in Islam or have made a deep study of the subject, or hold a sympathetic view about the credulity of the Godly revelations to the Holy Prophet. I think the Law Minister himself comes under any of these categories and if he does not, then I am very sorry. The desire to have a change in the Muslim Personal Law is the result of a thinking that the said Law is man-made and hence gets out of tune with the moving times. This view is in direct conflict with that of the Muslims who believe in the religious sanctity of the Muslim Personal Law for all times to come.

It is most unfortunate that no deeper study of the subject of the Muslim Personal Law as it is practised in India has been made. If it is considered necessary to have some changes, it is binding that the initiative for such changes should come from the Muslims only. Only then it can universally be accepted. It is in view of these considerations that the Congress Party gave out an assurance that the Muslim Personal Law would not be touched unless the Muslims wanted it and that is why, I think, this Bill was kept in cold storage for so many years. I do not know what has prompted this Government now to bring it forward for consideration from that cold storage where it was buried dead.

We are conscious of the fact that in many Islamic countries changes have

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been made but they do not afford any good examples. The main reason is that most of such countries are ruled by dictators, despots and monarches, Chief Martial Law Administrators and so on and so forth.

SHRI SYED NIZAM-UD-DIN (Jammu and Kashmir): Except in one country—Turkey—there is no law, nor a recognition.

SHRI SHYAM LAL YADAV: That is true. Except for Turkey, in no other country this law is prevalent.

They are not bothered about the public opinion, whereas in India we have got a democratic system of Government. We have given a Constitution which guarantees secularism and equal respect for all religions. We all know that the Muslims provide institutions of fosterage and orphanages which make such arrangements. The abandoned children are being looked after by such institutions. I am sure by the passage of this Bill we are not going even to touch upon the fringe of the problem of abandoned children. It is not an economic measure; it is purely a religious measure and will continue to have the same old force. The evidence that was tendered before the Committee clearly establishes the adverse reaction of Muslims and their feelings that in spite of their strong opposition, their Personal Law is being interfered with. This will create disorder in the society and I am afraid, this will generate confrontation in the society which this Government, with its dwindling image, cannot contain. Muslims in our country enjoy two freedoms under our Constitution, that is, religious worship and governance by the Muslim Personal Law. These are the two hallmarks of our secularism, and if we pass this Bill as proposed, I am sure that it will demolish the basic character of our Constitution out of which the Law Minister

has made great capital and riding on that base has come to this House.

We have got our own Constitution and it is needless to refer to changes being made in other countries. I would like to know what is the evil or inherent defect in the Muslim society at large that this Bill wants to remove? I think the answer is in the negative. This Bill is going not only to affect the whole structure of the Muslim society in so far as their fundamental rights guaranteed by the Constitution are concerned and hitting their law of inheritance, the law of marriages, the question of religion of the adopted child and the adoptive father but the whole society into a new wave of uncertainty. This Bill will be an outrage and fraud on the Constitution and bring untold misery and suffering at large. I think the Law Minister should agree to the amendments proposed by me to clause (1) of the Bill and exempt the Muslims from the operation of the said Act.

There are some more provisions which I would like to draw the attention of the House to. This is regarding the raising of the age of the adoptive father from 21 to 25 years which is not understandable. It should remain 21 years because a person of 21 years of age in our Indian conditions is fully aware of his responsibilities and is mature enough to decide his future. When the Bill exempts the Scheduled Tribes from the operation of the Bill, I think it is fully justified that Muslims are also exempted on the same grounds as Scheduled Tribes. While one section of the population is being exempted from the operation of this Bill there is no reason why another section should not be given the same advantage. In my view, clause 20 of the Bill is unnecessary and this rule will be observed more in the breach. Therefore, there is no need to make such a provision, which nobody is going to agree to. This clause provides that there should not be any type of consideration for adopting a child. This is just a

pious hope which creates unnecessary trouble to the people. The innocent and the poor will be harassed by the guardians of law.

So far as the adoption by foreigners is concerned, clauses 22 and 23 should make more stringent provision, otherwise this concept of provisional adoption is being introduced for the first time in our society. I think there is hardly any justification for making this provision because once a child is adopted and it goes to the adopting family how can he come back again here and how the whole process can be upset is not clear to us. Particularly in case of a foreigner, once he adopts a child he will go out of the country with the child. What control this law will have over such adoption? Therefore, this should be further clarified.

Sir, I do not want to take much of your time and the time of the House. I would like to go to the last point. When this Government came to power through its manifesto it assured the minorities that they will create a Minorities Commission. They had also promised that they will refer all matters concerning the minorities to this Commission. They had promised that the Government will be guided by the advice tendered by the Minorities Commission. We know that this was only a slogan to catch the Muslim vote. It was just a deceitful declaration by the Government which till this day has not been fulfilled. The Chairman of the Minorities Commission resigned because he was not consulted on the Aligarh Muslim University Bill. Sir, my objection is when the Minorities Commission has been established and this Janata Government promised to abide by the advice tendered by the Minorities Commission in respect of matters relating to Muslims, why this Bill has not been referred to the Minorities Commission? I would like to know from the Law Minister. Kindly hear me, Mr. Law Minister. Why was the Bill not referred to the Minorities Commission

before bringing it to this House for consideration in accordance with the promises made by the Janata Government? What is the justification? The Government has made a promise and now the Government is bringing forward this Bill which is not a creation of the Janata Government. The previous Government, thinking it not proper because of various reasons, did not bring the Bill for consideration here. Therefore, I would like to know, people would like to know, why the views of the Minorities Commission have not been obtained. What I apprehend is that the Government knew it very well that not a single member of the Minorities Commission, whoever he may be, would accept this that it should apply to the Muslims and, therefore, the Government did not refer this Bill to the Minorities Commission before bringing it to the House for consideration. I think even now it is not too late, even at this stage. The Law Minister has said that he will consider objections and suggestions from Members. I think he should consider this even at this stage and keep it pending before the House and refer it back to the Minorities Commission and see how the country is reacting to this provision.

Sir, if the Janata Government has got any care for public opinion, I challenge it to hold a referendum on this matter from the Muslims. Now a new concept is going to be introduced in our Constitution. Let us start from this Bill and let us know the consensus of the Muslims, whether they want this Bill to apply to them or not because when the Government is going to make a law for a particular section of the society which has not so far been governed by such a law and when a new law is being made to govern the future lives of the people, it is very necessary that on this Bill, even at this stage, in accordance with the assurances and promises made by the Janata Party—if they are not just false promises, if they are not just promises to create confusion amongst the minorities—they should

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be frank in their view. If they are frank enough, if they are courageous enough, let them come forward and seek the opinion.

As I said earlier, Sir, according to the evidence tendered before the Joint Committee, out of 147 persons, 100 persons were Muslims and 99 per cent of them opposed the provisions of this Bill and they said that it should not be applied to the Muslims and that they should not affect their Personal Law. Therefore, my submission is that in view of the overwhelming opposition to this Bill, they should not create hatred among this community against the society.

SHRI SHANTI BHUSHAN: How many members of the Joint Committee supported the Bill?

SHRI SHYAM LAL YADAV: The Members who had opposed had given their Minutes of Dissent. If the Members did not support, it is none of the fault of the people.

SHRI SHANTI BHUSHAN: It was a Bill prepared by your own party.

SHRI SHYAM LAL YADAV: Our party did not get it passed. Although the Bill came through the Joint Committee, they thought the people will not accept it and therefore it was never placed before the House for consideration.

(Interruptions)

SHRI MOHAMMAD YUNUS SALEEM (Andhra Pradesh): Withdraw it.

SHRI SHYAM LAL YADAV: Why are you so anxious to carry it through? Throw it in the dustbin. There are so many other good measures that are pending which you should have taken care of. Why are you after this? Therefore, I would like to ask the Law Minister that he should state clearly whether he is going to accept

his own promises and implement his own promises. *(Interruptions)* I may tell the Government that this will not be accepted by the people of India. Every person will oppose it because India is a land composed of different castes, several creeds and many religious sects. All these matters concern religion. The Hindu society had its own ancient law of adoption and my hon. friend, who has been a member of the Bar, knows it very well. Before the codification of the Hindu laws, there was an ancient law of adoption for the Hindus. That was being observed and there was a religious sanctity behind it. It was because of religion that this adoption law was there. Therefore, when you are going to deal with a religious matter, you have got to be careful to see that it does not contravene the provisions of the Constitution, the guarantees that have been given in the Constitution. On the one side, this Government is very zealous about protecting the fundamental rights of the people. They always cry in the name of democracy. I wonder if they can justify the introduction of the Bill on the one hand and, on the other, their love for the fundamental rights, the fundamental rights of the Muslims, the fundamental rights of the minorities—all religious sections of the people of India—so that they have their own life, their own religious functions and duties to perform. There is no ground for this Government to stand on. I think the Janata Party is very well known for its fraud. It has maintained a very good facial expression, but in content this Government is anti-people, it is working against the interests of the people, against the interests of the minorities, against the interests of the Muslims and against their private individual lives. I condemn this Bill and I hope the Law Minister will have the courage of a lawyer to kindly withdraw this Bill. If he is not going to do that, we will oppose it.

PROF. RAMLAL PARIKH (Gujarat): Sir, the hon. Member did not

let the House know that this Bill came up during the term of the last Government as a result of a universal demand of child welfare societies and organisations for the last ten years, which included the Muslim child welfare organisations. So everybody was associated with this and this Bill was the result of a response to the public opinion.

SHRI SHYAM LAL YADAV: Sir, I would like to clarify this point because this was raised by the Law Minister then and even today he has mentioned it. I think there is no record to show that the people had demanded such type of a Bill. The Muslims have opposed it. The Muslims did not want it. They have never wanted it. The evidence before the Joint Select Committee is there. From there, it will be seen that out of 147 persons, 100 were against it. So, where was the demand for it?

PROF. RAMLAL PARIKH: In that case, there would not have been a Committee. For the past two years, this Committee has been working. I was a member of the Committee.

SHRI SHANTI BHUSHAN: Most of the members of the Joint Select Committee were from your party.

SHRI SHYAM LAL YADAV: I do not know why you are carrying this dead baby. Let it be buried. We are not for it.

PROF. RAMLAL PARIKH: It is because you are in the Opposition.

SHRI SHYAM LAL YADAV: If the Government wanted to have it passed, it would have been passed long ago. But they never wanted it.

श्री नागेश्वर प्रसाद शाही (उत्तर प्रदेश):

उपसभापति महोदय, हमारे मित्र निजामुद्दीन साहब और दूसरे मित्रों ने भी इस विधेयक पर संशोधन दिया है। उन की भावनाओं का हम आदर करते हैं और कोई भी

विधेयक या इस तरह का कोई कानून नहीं बनना चाहिए जिस के द्वारा किसी भी धर्म या धार्मिक व्यवस्था में किसी भी तरह की मداخلत होती हो, कोई धर्म हो, चाहे वह मुसलिम धर्म हो, ईसाई धर्म हो या हिन्दू धर्म हो, अगर उस धर्म के धार्मिक नियमों में किसी तरह की मداخلत या दखल होता हो तो इस तरह का कोई कानून नहीं बनना चाहिए। इस में कोई दो राय नहीं हो सकती। लेकिन श्रीमन्, हमारे मित्र श्री श्यामलाल जी ने जो ऐसी कलैया मारी है ...

श्री श्यामलाल यादव : नहीं, गलत बात है।

श्री नागेश्वर प्रसाद शाही : ... ऐसी कलैया मारी है कि जो शब्द उन्होंने इस्तेमाल किए हैं कि ...

This bill is a fraud—This fraud was instituted by Shrimati Gandhi and her Government.

SHRI SHYAM LAL YADAV: Sir, how is it relevant?

SHRI NAGESHWAR PRASAD SHAHI: Because you have named this Bill as a fraud.

SHRI SHYAM LAL YADAV: We did not get it passed. We put it in cold storage. You cannot make this false allegation. It is totally wrong.

PROF. RAMLAL PARIKH: My friend should have patience.

SHRI SHANTI BHUSHAN: Search your heart.

SHRI NAGESHWAR PRASAD SHAHI: If this Bill is a fraud, this fraud was initiated and perpetrated by Shrimati Indira Nehru Gandhi and her Government, not by the Janata Government.

[SHRI NAGESHWAR PRASAD SHAHI]

आप आज यह कहते हैं कि इस बिल को माइनारिटी कमीशन को क्यों नहीं रेफर किया जाता। मैं इस बिल का इतिहास बताना चाहता हूँ और चूँकि सौभाग्य से मैं भी इस कमेटी में था और एक्टिव पार्टी-सिपेंट था इसलिए मैं उसकी डिबेट्स प्रोसीडिंग्स को फालों करता था। जिस समय इस बिल की प्रगति को धीमा किया गया उस समय हम लोगों ने ला मिनिस्टर से पूछा कि यह स्लो गोइंग का आर्डर क्यों हो रहा है तो बताया गया कि चूँकि चुनाव सामने है इस लिये ऐसा चेकिंग करो कि यह बिल चुनाव के बाद संसद् में पेश हो। हम लोग स्वयं गये प्रधान मंत्री जी से पूछने कि आखिर इस बिल को क्यों लटकाया जा रहा है। या तो इस को ड्राप कर दिया जाय। अगर आइडिया यह हो कि इस से मुसलिम ला में कोई डिफ्रेंस होता है तो इस को ड्राप कर दिया जाय और अगर यह आइडिया हो कि इस को पास करना है तो प्रोसीड किया जाय, तो उन्होंने कहा कि चुनाव के बाद यह होगा। यह है बाबू श्याम लाल जी आप की ईमानदारी और आप के नेता की ईमानदारी।

श्री श्यामलाल यादव : उन की ऐसी कोई मंशा नहीं थी।

श्री नागेश्वर प्रसाद शाही : यह बिल 1972 का है और 1976 के मार्च में चुनाव ड्यू था इस लिए इस की रिपोर्ट तक को रोका गया और जब यह फैसला हो गया कि अब तो चुनाव को टाल देना है उस समय अगस्त, 1976 में रिपोर्ट तैयार कराई गई और वह रिपोर्ट सामने आयी। मैं फिर कहता हूँ कि जिस समय रिपोर्ट आयी उस कमेटी में तीन चौथाई से ज्यादा सदस्य कांग्रेस पार्टी के थे और यह रिपोर्ट सर्व-सम्मति से पास हुई। मैं जानना चाहता हूँ कि अगर श्रीमती इन्दिरा गांधी और

आप की पार्टी नहीं चाहती थी और अगर उनको मुसलमानों और मुसलिम ला से कोई सहृदयता थी तो क्यों पास किया गया इस रिपोर्ट को।

श्री श्यामलाल यादव : सेलेक्ट कमेटी में वह खुद जानते हैं कि क्या होता है।

श्री नागेश्वर प्रसाद शाही : मेरे मित्र ने रेफरेंडम की बात कही। आप को किस ने रोका था रेफरेंडम कराने से। 1972 से लेकर 1976 तक और मार्च, 1977 तक आप की सरकार थी। आप को किस ने रोका था कि मुसलमानों से रेफरेंडम न करा लो। (Interruptions) आप दिल से ईमानदार नहीं थे और मुसलमानों के साथ धोखा करना चाहते थे। मुल्क के मुसलमानों के आप दुश्मन थे। आप उन को धोखा देना चाहते थे। इसी लिए आप बिल को पहले नहीं लाये। आप चाहते थे कि उन के वोट लेलें और उसके बाद इस बिल को पास करायें। यही आप का इरादा था और खुले तौर से आप के नेता ने यह इरादा जाहिर किया था। आज आप घड़ियाल के आंसू बहा रहे हैं। आप ने रिपोर्ट तैयार कराई और अगर यह मुसलिम ला के खिलाफ है तो ऐसा कर के आप ने मुसलमानों के गले पर छुरी चलाई।

कई माननीय सदस्य : अब आप क्यों चला रहे हैं।

श्री नागेश्वर प्रसाद शाही : और आज आप घड़ियाली आंसू बहा रहे हैं और मुसलमानों के साथ दोस्ती और संप्रेषी का इजहार कर रहे हैं। बाबू श्यामलाल जी अब मैं कहना चाहता हूँ कि ईमानदारी की बात यह है कि यह कानून बिल्कुल निर्दोष है। इस कानून में

श्री शान्ति भूषण : श्याम लाल जी, माननीय सदस्य आप के लिए यह बात कह रहे हैं। सुनिये।

श्री नागेश्वर प्रसाद शाही : इस में कहीं नहीं है कि यह हिन्दुओं पर अप्लाई करेगा या यह मुसलमानों पर अप्लाई करेगा या यह ईसाइयों पर अप्लाई करेगा। यह तो मोस्ट इन्फोसेट बिल है।

श्री श्यामलाल यादव : इस में लिखा है।

श्री नागेश्वर प्रसाद शाही : आप बड़ी कलझा लिये हैं। अब सुनिये। इस बिल में कहीं नहीं है कि यह हिन्दुओं या मुसलमानों या ईसाइयों को अप्लाई करेगा। यह बिल उसको अप्लाई करेगा जो अडाप्ट करेगा। अगर हिन्दू धर्म के खिलाफ अडाप्टेशन है उसको लागू नहीं होता। मुस्लिम धर्म के खिलाफ अडाप्टेशन है तो वह लागू नहीं होता। क्रिश्चियंस के ऊपर लागू नहीं होता। यह केवल उसको लागू होता है जो अडाप्ट करता है। यह बड़ा इन्फोसेट बिल है। कहीं कोई सवाल नहीं है, मुस्लिम रिलीजन या किसी रिलीजन का...

(Interruptions)

श्री सैयद निजामुद्दीन : उस सूरत में मीसा भी बहुत इन्फोसेट बिल था। जो जुर्म करता था उसी को गिरफ्तार करते थे।

श्री श्यामलाल यादव : श्रीमन्, मेरा पाइंट आफ आर्डर है। पहले इन्होंने कहा कि यह सर्वसम्मत रिपोर्ट थी जो बात सही नहीं है। चार मੈम्बरों ने उस पर नोट आफ डिस्सेंट दिया है। ...

(Interruptions)

श्री शान्ति भूषण : बाकी मेम्बरों का यूनैनिमस है। ... (Interruptions)

श्री नागेश्वर प्रसाद शाही : इस कमेटी में तीन मुसलमान सदस्य थे। मकसूद अली खान, जमीलुर्रहमान और शफ़ाकत जंग साहब। तीनों मुस्लिम सज्जन कांग्रेस पार्टी के थे। All the three hon. Members belonged to the Congress Party.

श्री श्याम लाल यादव : नोट आफ डिस्सेंट दिया है।

श्री नागेश्वर प्रसाद शाही : रिपोर्ट तैयार हो गई, सबमिट हो गई। आखीर में उन्होंने नोट आफ डिस्सेंट भेजा। यह रिपोर्ट सर्व-सम्मत रिपोर्ट थी। ...

(Interruptions)

श्रीमन्, इस बिल का ड्राफ्ट ला मिनिस्टर गोखले साहब ने तैयार किया। ज़रा खोलकर देखिए, वे इस कमेटी के मैम्बर थे। उन्होंने इस बिल को ड्राफ्ट किया।

श्री श्यामलाल यादव : आप भी ती मैम्बर थे उस कमेटी के।

श्रीमती हामिदा हबीबुल्लह (उत्तर प्रदेश) : आज की बात करो। ...

(Interruptions)

श्री नागेश्वर प्रसाद शाही : बेगम साहिबा, पुरानी बातें भूलती जायेगी तो हमारा उनका रिश्ता कैसे रहेगा ?

श्रीमन्, दूसरे जो आनरेबल मेम्बर थे वह चौधरी नीतिराज सिंह, स्टेट ला मिनिस्टर आफ इंदिरा गांधी गवर्नमेंट। वह भी इस कमेटी में थे। दोनों मंत्री हर बैठक में शामिल रहते थे और मुस्तकिल तौर पर यह ख्याल इंदिरा गांधी का था कि यह ला मुस्लिम ला को इंफ्रिज नहीं करता है। उनको डाइरेक्टिव था। ला मिनिस्टर ने कहा कि यह इंदिरा गांधी का आर्डर है। ...

(Interruptions)

SHRI TRILOKI SINGH (Uttar Pradesh): The hon. Member should know that consistency is the virtue of an ass. Why is he labouring on this point?

श्री नागेश्वर प्रसाद शाही : जब हम लोगों ने गोखले साहब से कहा कि कुछ लोग ऐतराज कर रहे हैं तो आप क्यों नहीं अमेंड कर देते तब गोखले साहब ने कहा कि यह प्राइम मिनिस्टर का आर्डर है। The Bill has to go through. उन्होंने साफ़ तौर से कहा कि श्रीमती इंदिरा गांधी का हुक्म है।

श्री श्यामलाल यादव : इन्होंने कहा है कि मुसलमानों को पाकिस्तान चले जाना चाहिए। आज यह इस तरह का बयान दे रहे हैं।

PROF. RAMLAL PARIKH: Two Members of that Committee are present here. So, at least on questions of fact you should allow us to know what the correct position is.

श्री नागेश्वर प्रसाद शाही : अगर हम सदन में बैठकर भी सत्य न बोल सके तो श्यामलाल जी, भगवान ही ख्याल करेगा। अगर आप ऐसा करेंगे तो सदन का क्या होगा। मैं आपसे कहता हूँ कि जरा शांति रखिये।

मैं आपसे यह कहना चाहता हूँ कि जनता सरकार ने और हमारे ला मिनिस्टर साहब ने उसी विधेयक को जिसे श्रीमती इन्दिरा गांधी ने तैयार कराया था और यह हुक्म दिया था कि एट एनी कोस्ट इसे पास होना चाहिए उसे संसद् के सामने पेश किया गया। आपको यह मालूम होना चाहिए कि मुस्लिम ओपिनियन को ध्यान में रख कर और देश के अपने मुसलमान भाइयों की भावना को देख कर सरकार इस विधेयक में संशोधन लाई है। इसलिए किसी को किसी प्रकार की गलतफहमी की गुंजाइश नहीं है। एक बात और कह

दू कि अगर किसी धर्म को यह इनाफ़िज करता है तो केवल हिन्दू धर्म को इनाफ़िज करता है।

श्री मुहम्मद यूनुस सलीम : तो इसे खत्म कर दो।

श्री नागेश्वर प्रसाद शाही : हम लोग इस तरह के नहीं हैं जैसे आप हैं।

श्री शान्ति भूषण : संशोधन से इसे भी रिमूव कर दिया है।

श्री नागेश्वर प्रसाद शाही : हां, सरकार की ओर से जो हमें अमेंडमेंट आया है उसके द्वारा इसे भी रिमूव कर दिया है। जो बिल श्रीमती गांधी की सरकार ने तैयार किया था वह बिल सीधा-साधा अगर किसी धर्म और धार्मिक व्यवस्था पर असर डालता है तो वह केवल हिन्दू धर्म पर डालता है।

[The Vice-Chairman (Shri Arvind Ganesh Kulkarni) in the Chair.]

इसी चीज को देख कर जो नया संशोधन लाया गया है उससे पुरानी सारी व्यवस्था को रद्द करके नई व्यवस्था की गई है। पुराने बिल में अगर कहीं इनाफ़िज था तो केवल हिन्दू धर्म के साथ था। आप देखेंगे कि अब जो संशोधन किये गये हैं उससे सूरत दूसरी हो गई है। मेरे दोस्त निजामुद्दीन साहब ने कहा कि केवल तुर्की में है। मैं अपने दोस्त से कहना चाहता हूँ ...

श्री सैयद निजामुद्दीन : मैं दावे के साथ कहता हूँ कि तुर्की में भी अडाप्शन ला नहीं है। उन्होंने अडाप्शन वा जिक्र करके इसको रिकोगनिशन के तौर पर मान लिया है। In no Muslim country is there a law on adoption.

श्री नागेश्वर प्रसाद शाही : मैं बड़े अदब के साथ डिफर करता हूँ। मुझे इस बात की इत्तला है कि अडाप्शन का प्रोविजन तुर्की में है, इजिप्ट में है, इण्डोनेशिया में है...

SHRI ABDUL REHMAN SHEIKH (Uttar Pradesh): The honourable Member is misleading the House. There is no such law in any country.

श्री नागेश्वर प्रसाद शाही : तुर्की में है, इण्डोनेशिया में है। मैं ने पहले ही अदब के साथ निवेदन किया है। मुझे इस बात की जानकारी है और उसी आधार पर मैं कह रहा हूँ।

श्री संयद अहमद हाशमी (उत्तर प्रदेश) : आपकी जानकारी गलत है।

श्री नागेश्वर प्रसाद शाही : हाशमी साहब को मैं मुस्लिम ला के सम्बन्ध में अथोरिटी नहीं मानता हूँ।

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): You have already taken 20 minutes. Now, please try to conclude.

श्री नागेश्वर प्रसाद शाही : इसलिए मैं कहता हूँ कि तुर्की में, इजिप्ट में, इण्डोनेशिया में और दूसरी मुस्लिम कन्ट्रीज में एडोप्शन का प्रोविजन है। मैं अपने लायक दोस्तों से कहूँगा कि वे सेलेक्ट कमेटी की रिपोर्ट को देखने की कृपा करें। उस कमेटी के सामने जितने भी गवाह पेश हुए उनमें बहुत से मुस्लिम महिलाएँ भी थीं। उन मुस्लिम महिलाओं ने इस विधेयक का समर्थन किया है। उन्होंने इस बिल की कमेटी को बताया है कि बच्चों की बहबूदी के लिए, उनके वेलफेयर के लिए यह बिल बहुत जरूरी है और सभी सिटीजन पर लागू किया जाना चाहिए।

Irrespective of any caste or community or religion, this Bill should apply to all.

कई बहुत पढ़ी-लिखी, आलिम फाजिल मुसलमान महिलाओं ने इस कमेटी के सामने अपनी शहादत दी है और उनकी बातें इस रिपोर्ट में दर्ज हैं। मैं हाशमी साहब से कहूँगा कि वे उसको पढ़ लें।

इसके साथ साथ दिल्ली में इस्लामिक कल्चर के ऊपर जो अथोरिटी हैं उनका बयान भी इस कमेटी के सामने हुआ है।

कुछ माननीय सदस्य : आप उनका नाम बताइये।

श्री नागेश्वर प्रसाद शाही : आप उनके घर उनसे झगड़ा करने पहुंच जाएंगे, इसलिए मैं उनका नाम नहीं लूँगा। उनकी चिट्ठी इस बिल से सम्बन्धित कमेटी की फाइल पर लगी हुई है। उस को अगर आप देखें तो आपको पता चलेगा कि उन्होंने इस बिल को सपोर्ट किया है। वे हमारे भुल्क के अन्दर मुस्लिम कल्चर के ऊपर अथोरिटी हैं और पिछले 20 सालों तक कैरो युनिवर्सिटी में, अंकारा यूनिवर्सिटी में तथा अन्य कई मुस्लिम मुल्कों की कैपिटल में रह कर उन्होंने मुस्लिम धर्म का गहरा अध्ययन किया है। उन्होंने कहा है कि यह विधेयक शरीयत के खिलाफ नहीं है, कुरान के खिलाफ नहीं है और मुस्लिम ला के नी खिलाफ नहीं है। उन्होंने इस बिल को अपनी प्रोटेक्शन दी है। इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ और चाहता हूँ कि हमारे दूसरे मित्र भी इसका समर्थन करेंगे।

आखिर में भाई श्यामलाल यादव जी से कहना चाहता हूँ कि इतना गला ऊंचा मत करो। आप लोग अपने बनाये हुए, अपना पैदा किये हुए बच्चे को आज डिसअन कर रहे हो। आज आप लोग अपने बच्चे को डिसअन कर रहे हो। यह बच्चा श्रीमती इन्दिरा गांधी के पेट से निकला है। आप इस को डिसअन कर रहे हैं। भगवान के नाम पर ऐसा मत कीजिए। कम से कम जो

[श्री नागेश्वर प्रसाद शाही]

पवित्र चीज है उसको पवित्र रहने दीजिए (Interruptions) इन शब्दों के साथ मैं फिर इस विधेयक का समर्थन करता हूँ।

श्री محمد یونس سلیم : جناب

والس چیپرمن صاحب — جو بل اس وقت ہاؤس کے سامنے تسکس ہو رہا ہے یہ اس نقطہ نظر سے بہت اہم ہے کہ یہ بل پچھلی حکومت کے زمانہ میں اس ہاؤس میں پیش ہوا تھا اور اس کے بعد سلیکٹ کمیٹی کے حوالے کیا گیا تھا اور سلیکٹ کمیٹی کی رپورٹ آجائے کے بعد پہلی دفعہ یہ اس ہاؤس میں تسکس کے لئے آیا ہے۔ چلتا گورنمنٹ کے لا منسٹر صاحب اس بل کو پائلٹ کر رہے ہیں اس ہاؤس کو معلوم ہے کہ تھوڑے دنوں میں یہی کچھ تعلق لا منسٹری کے ساتھ رہ چکا ہے جب میں لا منسٹری میں تھا اس وقت شری گوہلد میملی لا منسٹر تھے۔ کئی مرتبہ اس ہاؤس میں اور لوک سبھا میں یہ سوال اٹھایا گیا کہ مسلمانوں کے پرسنل لا میں مداخلت اور انٹرفیرنس ہونے کے کچھ خیالات ظاہر کئے جا رہے ہیں۔ پارلیمنٹری پروسیڈنگس گواہ ہیں کہ واقعی نوٹاً ہرائم منسٹر نے اس بات کا اشیورنس دیا تھا کہ اس ملک میں رہنے والے مالدیپتی خاص طور پر مسلمانوں پرسنل لا میں کسی قسم کا کوئی

انٹرفیرنس نہیں کیا جائیگا۔ جب یہ آڈیشن بل پیش ہوا اور سلیکٹ کمیٹی کے حوالے کیا گیا اور اس کی جو دھاراٹوں تھیں ان کو مسلمان جوڑسٹس، مسلم علما اور دوسرے قانون دانوں نے پڑھا تو ان کو اس بل کے ذریعہ سے مسلمانوں کے پرسنل لا میں صاف اور واضح طور پر مداخلت نظر آئی۔ چنانچہ مسلم پرسنل لا بورڈ نے اپنے کئی جلسوں میں اس کے متعلق ریزولوشنس پاس کئے اور گورنمنٹ آف انڈیا کے پاس بھیجے گئے۔ مجھے یقین ہے کہ میرے دوست لا منسٹر صاحب کے پاس وہ ریزولوشن پہنچے ہونگے۔ اگر نہیں پہنچے ہیں تو لا منسٹری میں تلاش کر کے ان ریزولوشنس کو دیکھیں ابھی میرے دوست شاہی صاحب نے مسز اندرا گاندھی کے متعلق سے بہت سی باتیں کہیں میں ان کی واقفیت کے لئے اس ہاؤس میں پوری ذمہ داری کے ساتھ یہ بات عرض کرنا چاہتا ہوں اور یہ بات ریکارڈ میں جائیگی کہ اس بل کے تعلق سے مسلمانوں کے نمائندوں اور مسلم عالموں کا ایک قیلمکیشی مسز اندرا گاندھی سے جا کر ملا تھا اور ان سے خاص طور پر آڈیشن بل کے متعلق بات چیت کی تھی انہوں نے تعجب کا اظہار کیا تھا اور کہا تھا کہ ہم سے یہ کہا گیا تھا کہ کچھ فارنرس آتے ہیں اور وہ ہندوستان کے بچوں کو اس طرح سے اداہت کرکے

لے جاتے ہیں کہ ان کے حقوق پر اس کا اثر پڑتا ہے۔ یہاں کچھ سوشل آرگنائزیشنس ایسے ہوں جنہوں نے ہم سے یہ خواہش کی ہے کہ ایک ایسا بل آنا چاہئے اس لئے ہم یہ بل لائے ہیں۔ اگر یہ بل مسلمانوں کے پرسنل لا میں مداخلت کرتا ہے اور آپ جو سے علماً جو سپیکولرازم میں یقین رکھتے ہیں جن کے متعلق سارا ہندوستان یہ جانتا ہے کہ آپ کا نقطہ نظر پروگریسو ہے۔ آپ اگر یہ سمجھتے ہیں کہ اگر یہ مسلم پرسنل لا میں مداخلت ہے تو میں آپ سے وعدہ کرتی ہوں کہ جب یہ بل ہاؤس میں آئیگا تو اس وقت اس میں امینڈمنٹ کے متعلق میں لا منسٹر سے کہونگی۔ آپ مطمئن رہیں۔ آپ لوگوں کو فکر کرنے کی ضرورت نہیں ہے۔ شاید یہ بات میرے لائق دوست کو معلوم نہیں ہے۔ بدقسمتی سے یہ بات اس لئے بھدا ہوئی کہ گوکھلے صاحب نے جو اس وقت لا منسٹر تھے انہوں نے اس بل کو انٹرویووس کرتے وقت ایک فیورڈمہ دارانہ بات یہ کہی تھی کہ یہ بل کامن ویول کوڈ کی طرف ایک قدم ہے۔

جلاب وائس چیرمین صاحب

انہوں نے یہ بھی کہا تھا کہ اس سے کسی مذہب کے مالکے والوں کے پرسنل

لا میں کوئی مداخلت نہیں ہوتی ہے اور قرآن کے خلاف بھی کوئی مداخلت نہیں ہوتی ہے۔ اس لئے اس قانون کے بنائے جانے میں کوئی نقصان کی بات نہیں ہے۔ میں گوکھلے صاحب کو مسلم لا پر انتہارتی نہیں مانتا۔ میں کسی شخص کو ان علماً کے مقابلہ میں جنہوں نے آکر اس سلیکٹ کمیٹی کے سامنے گواہیاں دی ہیں حلفیہ بیان دیئے ہیں وہ انتہارتی مانے جاتے ہیں اس ملک میں مسلم لا پر ان کے مقابلہ میں کسی کی بات ماننے کے لئے تیار نہیں ہوں۔ میں یہاں تک جانے کے لئے تیار ہوں کہ اگر ساری دنیا میں اڈاپشن لا کو قبول کر لیا جائے۔ چاہے وہ مسلم ملک ہو چاہے وہ کوئی ملک ہو تو بھی میں اس کو ماننے کے لئے تیار نہیں ہوں کہ اڈاپشن لا قرآن کے خلاف نہیں ہے۔ آپ کو معلوم ہے کہ شراب قرآن کی رو سے حرام ہے زنا قرآن کی رو سے حرام ہے۔ اگر مسلم ممالک چاہے وہ ترکی ہو چاہے مصر ہو چاہے کوئی دوسرا ملک ہو شراب پینے پلانے کے متعلق عام طور پر شراب بیچنے کے لئے لائسنس ایشو کرنا شروع کر دے۔ اس کے معنی یہ نہیں ہونگے کہ مسلمانوں کے لئے شراب جائز کر دی گئی۔ آپ کو یہ یقین پڑے گا کہ مسلمان عالموں کا جو یہ دعویٰ ہے کہ یہ قرآن کے خلاف

[شری محمد یونس سلیم]

ہے۔ قرآن کے خلاف نہیں ہے حدیث کے خلاف نہیں ہے مسلم پرسنل لا کے خلاف نہیں ہے تو ہم لوگوں کو کتے نے نہیں کاٹا ہے جو خواستگوارہ اپنا ولایت ضائع کرینگے اور ہر وگھسو لجنسلیشن کی مخالفت کرینگے۔ جذاب— یہ قانون اگر پاس ہو گیا تو ہمارے ملک میں جو کنسٹیٹیوشن نافذ ہے اس کے خلاف ہوگا اس کنسٹیٹیوشن میں ہمیں یہ سیف گارڈ دیا ہے کہ ہم اپنی مرضی کے مطابق اپنی ریلیجنس کو پریکٹس کر سکتے ہیں۔ پروڈیگیٹ کر سکتے ہیں۔ آرٹیکل ۲۵ کی طرف جذاب وائس چیئرمین صاحب — میں آپ کی توجہ دلاؤں گا۔

Article 25 says:

“(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.”

Sir, the question is this: What is religion? What is not religion? Who will decide this? Will Mr. Shanti Bhushan decide it or the Muslim jurists who belong to the seats of learning of Muslim culture, civilisation and education will decide it? Or, Mr. Gokhale was going to decide what is Muslim religion and what is not Muslim religion?

اصل میں اس وقت سوال یہ ہے

کہ یہ جو جوائنٹ سلیکٹ کمیٹی کی رپورٹ ہے اس میں جتنے مسلم ممبرس تھے سب نے ڈیسینٹنگ نوٹ دیا ہے اور اس ڈیسینٹنگ نوٹ میں

یہ بات بھی کہی گئی ہے کہ جتنے مسلم جیورسٹس، مسلم قانون دان، لائوس، مسلم اسکولرس، مسلم علماء مسلم ریسپونڈنٹل سینیٹوزس، مسلم پائلگھیمس جن کے اوپنیشنز لئے گئے ہوں اس میں ۹۹ پورسٹ لوگوں نے اس بل کو اپوز کیا ہے۔ ان سب کو کسی کتے نے نہیں کاٹا۔ یہ سب ری ایکشنری ہیں۔ خالی شاہی صاحب اور ان کے ہم خیال لوگ پروگریسو ہیں جو اس لجنسلیشن کو لانا چاہتے ہیں کسی ایک سر پھرے شخص نے اگر یہ کہہ دیا کہ صاحب اس سے مسلم پرسنل لا میں کوئی مداخلت نہیں ہوتی۔

Is one opinion going to have weight against this 99 per cent opinion? This is for this House to consider.

میں اب آپ سے یہ بتاؤں گا کہاں کہاں یہ قانون اسلامک لا یعنی شریعت کے خلاف جاتا ہے۔ یہ بل جو آنے والا ہے اس کی دھارا ۱۳ کی طرف دیکھا جائے کہ اگر کوئی شخص کسی کو گود لے متعلق کرے تو اس کا ایڈکٹ کیا ہوگا۔

“13. (1) An adoption order shall take effect on such date as may be specified therein by the district court or where an appeal has been preferred under section 12 against such order on such date as may be specified in the appellate order.

(2) A child in respect of whom an adoption order is made shall be deemed to be the child of the adopter or adopters and the adopter or

adopters shall be deemed to be the parent or parents of the child as if the child had been born to that adopter or those adopters in lawful wedlock, for all purposes (including intestacy) with effect from the date on which the adoption order takes effect and on and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption order in the adoptive family."

جب ہم پرسنل لا کی بات کرتے ہیں تو ذرا ہم کو اپنی عقل سے کام لینا چاہئے۔ جب ایک مسلمان پرسنل لا کی بات کرتا ہے تو پرسنل لا کے کیا معنی ہوں۔ پرسنل لا کے معنی ہیں لا آف ان ہیریٹس۔ پرسنل لا کے معنی ہیں لا آف مہریج ایلڈ ڈائیورس۔ پرسنل لا کے اور کوئی معنی نہیں ہوں۔ میں ہاؤس کے سامنے یہ بتانا چاہتا ہوں کہ کس طرح سے آڈیشن کا قانون اگر نافذ ہو گیا اور مسلمانوں پر یہ لاگو ہوا تو مسلمانوں میں جن لوگوں کے ساتھ جن رشتہ داروں کے ساتھ شادیاں کرنا جائز ہے ان کے ساتھ شادی کرنا ناجائز ہو جائیگا۔ ساری دنیا جانتی ہے کہ ایک مسلمان لوکا اپنی چچازاد بہن کے ساتھ اپنی پھوپھی زاد بہن کے ساتھ شادی کر سکتا ہے۔ کوئی رکاوٹ شرح میں نہیں ہے۔ قرآن نے اس کو پرمٹ کیا ہے لیکن اس قانون کے آنے کے بعد وہ پروہیٹری فکری میں

شامل ہو جائیگا اور وہ اپنی چچازاد بہن، خالہ زاد بہن اور پھوپھی زاد بہن کے ساتھ شادی نہیں کر سکے گا۔ سارے لوگ یہ جانتے ہیں کہ اگر کوئی شخص مر جائے اور اگر لاولد مرے تو اس کی بیوی کو چوتھائی حصہ ملے گا۔ اولاد ہو تو آٹھواں حصہ ملے گا۔ سارے لوگ جانتے ہیں کہ اگر باپ زندہ ہو تو اولاد ہونے کی صورت میں چھٹا حصہ ملے گا اور اگر اولاد نہ ہو تو تہائی ملے گا۔ ساری دنیا جانتی ہے کہ صرف لڑکیاں ہوں اور لڑکا نہ ہو تو مرنے والے کا بھائی اگر زندہ ہے تو وہ دوپہہ پانے کا مستحق ہوگا۔ یہ آڈیشن کے ذریعہ سے یہ سارا لا آف ان ہیریٹس دستبر ہو جائے گا۔ اکورڈنگ ٹو قرآنیک سیکشن جو لوگ ان ہیریٹس کرنے کے مجاز ہیں جن کا حصہ قرآن کے اندر مقرر کیا گیا ہے وہ اپنے حصہ سے محروم ہو جائیں گے اور ان کو محض آڈیشن کی وجہ سے حصہ نہیں ملے گا۔ میں جانتا ہوں کہ لرنیڈ لا مسٹر صاحب اسکے جواب میں کیا کہیں گے۔ وہ جواب دینے والے ہیں وہ کہ دیلیکے کہ یہ تو ان ایبلٹی ایکٹ ہے کوئی آڈاپٹ کرے اور وہ اگر اس قانون کے تحت اس کو رجسٹرڈ نہ کرائے تو اس پر کوئی پابندی عائد نہیں ہوتی ہے۔ میں یہ کہتا ہوں کہ مسلم پرسنل لا میں مداخلت کے

[شری محمد یونس سلیم]

دروازے مت کھولئے اور لوگوں کو اندر بوس مت کھجئے کہ وہ اسلام کا نام لے کر اپنے کو مسلمان کہلانے کے باوجود اعلانہ قرآن کی مخالفت کرے اور قرآن کے احکام کے خلاف عمل کرے اس کی ترغیب ہم ملک میں آپ کو نہیں دینے دینگے۔ جب تک ہر مسلمان اس ملک کے اندر موجود ہیں میں علی اعلان اس ایوان میں کہہ دینا چاہتا ہوں کہ کوئی بھی مسلمان قرآنیک لا میں چاہے اس کو اپنی جان قربان کرنی پڑے چاہے آخری قطرہ خون بہانا پڑے وہ قرآنک لا میں مداخلت برداشت نہیں کریگا۔ میں یہ پوری ذمہ داری کے ساتھ اور ایوان کے سامنے کہہ دینا چاہتا ہوں اور واضح کر دینا چاہتا ہوں کہ بیٹھی ہوئی بھڑوں کے چہرے کو مت چھوڑیئے یہ بہت خطرناک کھیل کھلا جانے والا ہے۔ لا منسٹر صاحب آپ یہ کہہ کر بھلا نہیں سکتے۔

"It is an enabling act. It is not binding on the Muslims. If they want, they should get it registered. If they do not want, nobody is going to force them." This is not sufficient. I am not going to be convinced by his argument. Why do you feel uncomfortable if you introduce an amendment that is not applicable to Muslims? Why should you not do it?

آخر مسلم تہلک اویلیں کو ریسپونسیبیت کرنے کے کیا معنی ہوں۔ جب آپ کے سامنے ایڈننس دینے والے ۹۹ فی صدی آدمی کہہ گئے کہ۔

It is against the Muslim Law. You should accept that it is against the Muslim Law. I will not stop here.

میں بتاؤں گا ابھی میرے ایک دوست نے یہ صاف طور سے کہا ہے کہ اگر کسی کے دھرم پر یا کسی کے مذہب میں مداخلت ہوتی ہے تو وہ بل پاس نہیں ہونا چاہئے۔ میں بتاؤں گا کہ کسی طرح سے یہ قرآن کے خلاف ہے۔ یہ دیکھئے یہ قرآن ہے تو ترجمہ اس کا کیا ہے۔ عبداللہ یوسف علی نے جو ہندوستان کے بہت بڑے ماٹے ہوئے نامی گرامی عالم تھے۔ میں ان کا ٹرانسلیشن لایا ہوں یہ پارٹ ۲۲ ہے اور اس کے پیرواگراف ۴ اور پانچ میں خاص طور پر اڈاپشن کے متعلق قرآن نے کیا کہا ہے اور پھر میں کمیٹی سے بتاؤں گا کہ اس کے کہا امپلیمینٹس میں یہ قرآن کی آیت یہ ہے۔

وَلَا جَعَلَ اَدْعِيَاءَ كَمِ اٰلِهٰذَا كَمْ
"Nor has He made your adopted sons
your sons." He means God.

اس کے بعد حکم ہے۔
اُدْ اَمُوْهُمۡ بِاَسْمَآءِ رِجْمِ

Call them by the names of their fathers.

اس قانون کے تحت وہ اپنے باپ کے نام سے اڈاپشن کے بعد پکارے نہیں جا سکیں گے۔ جذاب۔ اس آیت کے نازل ہونے کا سبب یہ تھا۔ میں

عرض کروں کہ ہمارے پیغمبر محمد صلی اللہ علیہ وسلم نے ایک لڑکے کو جو حضرتؐ مریحہؑ جو ان کی بیوی تھی ان کا غلام تھا زید اس کو اپنے متبنی کے طور پر اختیار کر لیا اور ان سے وہ لڑکوں کی طرح مکہ مکرمہ کرتے تھے۔ جب رسول صلی اللہ علیہ وسلم پراخت ہوئے تو لوگوں نے ان کو زید بن محمد کہنا شروع کر دیا اور ان کے باپ کے نام کو بالکل نظر انداز کر دیا۔ یہ بات اللہ تعالیٰ کو مناسب نہیں معلوم ہوئی اور محسوس یہ ہوا کہ شاید اس سے آئندہ فتنہ پیدا ہوں چنانچہ یہ آیت نازل ہوئی اور ملاح کہا گیا جب یہ آیت نازل ہوئی تو یہ بات حدیثوں میں آئی ہے کہ لوگوں نے زید بن محمد کہنا متروک کر دیا اور زید کو ان کے والد کے نام سے کہنا شروع کر دیا اور اس کے بعد ایک واقعہ یہ ہوا کہ حضرت زید سے جن خاتون کی شادی ہوئی تھی جو حضرت رسول صلی اللہ علیہ وسلم کے خاندان کی خاتون تھیں جب زید نے ان کو طلاق دے دی تو یہ ثابت کرنے کے لئے کہ تبدلت کا اسلام میں کوئی مقام نہیں ہے اور متبنی اصلی بھٹے اور متبنی بھٹے کی طرح نہیں ہوتا ہے تو یہ ثابت کرنے کے لئے کہ متبنی کی اسلام میں کوئی اہمیت نہیں ہے اسی واسطے کہا گیا ہے تبدلت فی اسلام؟ اسلام میں کوئی متبنیت نہیں ہے

اس کا اسلام میں کوئی ذکر نہیں ہے۔ میں نے جو آیت آپ کے سامنے پڑھی اس کی کھینٹری کے طور پر میں جلد جملے آپ کو سنانا چاہتا ہوں کہ اس حکم کی تعمیل میں سب سے پہلے جو اصلاح نافذ کی گئی وہ یہ تھی کہ نبی صلی اللہ علیہ وسلم کے منہ بولے بیٹے حضرت زید کو زید ہی محمد بجائے کہلے کے ان کے حقیقی باپ کی نسبت سے زید بن حارث کہنا شروع کر دیا گیا۔ جذاب لا مدسٹر صاحب اتنا ضرور جانتے ہیں کہ پرسنل لا یعنی مسلم لا کے سورسز ہیں قرآن اور حدیث اور اس کے بعد لجماع اور اس کے بعد قہاس یہ سورسز ہیں مسلم پرسنل لا کے۔

قرآن کے برابر اطیعاللہ واطیعر الرسول کے حکم کے بموجب اللہ جر بات کہے رسول جو بات کہے وہ ہمارے واسطے قانون کا درجہ رکھتا ہے۔ حدیثوں میں آیا ہے کہ مسلم نے حضرت عبداللہ بن عمر کی روایت نقل کی ہے۔ زید بن حارث کو پہلے لوگ زید بن محمد کہتے تھے۔ یہ آیت نازل ہونے کے بعد انہیں زید ہی حارث کہلے لگے۔ مزید اس آیت کے نزول کے بعد یہ بات حرام قرار دے دی گئی۔ حرام قرار دی گئی کہ کوئی شخص اپنے حقیقی باپ کے سوائے کسی اور کی طرف اپنی نسب کو منسوب کرے۔ بخاری

[شری محمد یونس سلیم]

مسلم اور ابو دلاؤن نے حضرت محمد بن ابن وقاد کی روایت نقل کی ہے اور حضرت نے فرمایا - دھسن ادھی الی غیر ایسا وہو لعیم الہ غیہرا بہا فاجلس علیہ حرام، جس نے اپنے آپ کو اپنے باپ کے سوائے اور کسی کا بیٹا کہا حالانکہ وہ جانتا ہے کہ وہ شخص اس کا باپ نہیں ہے تو اس پر جنت حرام ہے - اس مضمون کی دوسری روایت بھی آج اس سے ملتی ہے جس میں اس فعل کو سخت گناہ قرار دیا گیا ہے -

جذاب والا - میں کس طرح لا منسٹر صاحب کو بتاؤں کہ حرام کے کیا معنی ہیں جس شخص کا باپ حقیقی باپ نہ ہو - آپ دوسرے کے باپ سے اپنے کو منسوب کرائیں یہ حرام ہے اور اس کے لئے کہا گیا ہے کہ ایسے شخص کے اوپر جنت حرام کر دی گئی ہے اور آپ یہ کہتے ہوں کہ پرسنل لا میں مداخلت نہیں ہے - میں ایک اور دوسرے کمیٹیئر کی بات آپ کے سامنے رکھ کر آئے ہوں گا - یہ جو میں نے کمیٹیئر سنائی ہے یہ ابو اعلیٰ مودو دی بہت بڑے مانے ہوئے اسلام کا عالم ہیں ان کی ہے - یہ مولانا مفتی محمد شذیع کی ہے جو دیوبند کے بہت بڑے عالم تھے اور اس میں انہوں نے اس

آیت کے سلسلہ میں جو کچھ فرمایا وہ یہ ہے - وہ دوسرے یہ کہ مکہ دھلے والوں میں ایک رسم یہ تھی کہ ایک آدمی کسی دوسرے کے بیٹے کو اپنا متبنی یعنی منہہ بولا بیٹا بنا لیتا تھا اور جب اس طرح بیٹا بناتا تھا تو یہ لوگ اسی کا بیٹا مشہور ہو جاتا اور اسی کا بیٹا کہہ کر پکارا جاتا اور ان کے نزدیک یہ منہہ بولا بیٹا تمام احکام میں اصلی بیٹے کی طرح مانا جاتا تھا مثلاً میراث میں بھی اس کی اولاد کے ساتھ شریک ہوتا تھا اور نسبی رشتہ سے جن عورتوں کے ساتھ حرام ہوتا ہے یہ منہہ بولے بیٹے کے رشتہ کو بھی ویسا ہی قرار دیتے ہوں جیسے اپنے حقیقی بیٹے کی بھوی سے اس کا طلاق دینے کے بعد بھی نکاح حرام رہتا ہے جو منہہ بولے بیٹے کی بھوی بھی با طلاق اس شخص کے لئے حرام سمجھتی تھی زمانہ جاہلیت کی یہ تین باتیں خیالات اور رسم سے ان سے پہلے کی بات اگرچہ مذہب اور عقائد کے عمل کے مطابق نہیں تھے قرآن کے ذریعہ سے ان کو ختم کر دیا گیا ہے اس بات کو میں ظاہر کرنا چاہتا ہوں اس ہاؤس کے سامنے کہ جو یہ بات لا منسٹر صاحب کو کہلے نے فرمائی تھی کہ تہذیب کا قرآن کے احکام سے کسی طرح کا کٹرتہ کھن یا تصادم نہیں

ہے وہ بات بہت مس لیڈنگ تھی اور اگر مہرے دوست جو اس وقت کے لا مسلٹر ہیں جو اس وقت تھریف فرما ہیں اگر ان کے ذہن میں یہ بات آئی ہو کہ اس بل کے جو اثرات ہیں ان کا قرآن سے اور حدیث سے تصادم نہیں ہو رہا ہے تو مجھے اُمید ہے کہ اتنی باتیں سلنے کے بعد وہ اس کو اپنے خیال سے نکل دیں گے۔

اس کے بعد آخری بات جو کہنا چاہتا ہوں کہ اس بل کے پیچھے جو انلٹ سلوٹ کمیٹی کی رپورٹ کے مرتب کئے جاتے وقت جتنے مسلم اکابر تھے انہوں نے جو قیسیتلیگ رپورٹ دی ہے ان کے چلدا اقتہاسات آپ کے سامنے عرض کروں گا۔

"Thousands and thousands of representations have been made by way of letters, telegrams, resolutions and memoranda to the effect that the Muslims in India should be exempted from the purview of this Bill. More than 1000 Muslim witnesses appeared before the Committee to give their evidence in their individual and collective capacities. Ulemas (Muslim Scholars) of undisputed repute belonging to such Scholastic Orders as Darul Uloom of Deobandh, Nadwathul Ulema of Lucknow, Imarath Shariah of Bihar and Orissa, Jamaithul Ulema of India appeared before the Joint Select Committee. Muslim advocates turned up in a great number. Muslim Ladies came forth to express their views. The Muslim Personal Law Board, though of late origin, also tendered its evidence.

The Muslim evidence is altogether non-political in its character and deals with the issues from the religious point of view only. The summary of evidence circulated to us by the Law Department says that 99 per cent of the Muslim evidence is against the Bill."

4 P.M.

Mr. Vice-Chairman, this is very significant. At page 10, in the last para, it has been stated:

"No one denies the fact that the Bill is voluntary and enabling in its character. But the question remains whether its mischief extends to those who are not a party to the adoption. Once an adoption is made, the law takes its own course."

اصل میں جو اہم چیز ہے وہ یہ ہے کہ یہ بحث کہ دادا ز ان ایپلیک ایکٹ؟ یہ کیا ہے - اگر کوئی شخص متبلی کرنا چاہتا ہے اور متبلی کرنے کے بعد وہ اس قانون کی رو سے رجسٹر نہ کرائے تو اس پر کوئی پابندی نہیں ہے - اس کا جواب سیدھے طور پر یہ دیا گیا ہے کہ کسی شخص کو یہ اختیار نہیں دیا جاتا کہ وہ کسی کے رائٹ آف ہیڈنگس کو جو آڈیشن میں شریک نہیں ہے دھوڑا نوٹ اے پارٹی تو آڈیشن؟ اس کے حق کو منسوخ کیا جائے - اگر کوئی لا ولد ہے تو اس کے بھائی کی اولاد یا خود بھائی اس کی جائیداد کا حصہ پانے کا مستحق ہے لیکن یہ متبلی کا ہواؤن کر کے ان کو اس حصہ سے محروم کر دیا جائیگا - اگر فرض کیجئے کہ کسی ایک بھائی سے اس

[شری محمد یونس سلیم]

کی لڑائی ہو اور آج کل اکثر بھائیوں میں لڑائی رھتی ہے اس میں کوئی تعصب کی بات نہیں ہے تو محض اس کو مستحرم کرنے کے لئے کہ جائیداد اس بھائی کو نہ ملے پالے جیسا کہ قرآن نے مقرر کیا ہے وہ کسی کو گود لے لیا - قرآن کے لا کا مقصد کیا ہے - یہ میں ایوان کے سامنے اور لوگوں کی واقفیت کے واسطے کہنا چاہتا ہوں - جس چیز کو قرآن میں بیان کیا گیا ہے کہ اس کو کرو یا اس کو نہ کرو اس کو رسول اور پرافت بھی تبدیل نہیں کر سکتے - اس کو علماً تبدیل نہیں کر سکتے - اس کو کوئی لیجسلیچر تبدیل نہیں کر سکتا - اس کو - دنیا کی کوئی اتھارٹی تبدیل نہیں کر سکتی - قرآن کی انہی اہمیت ہے مسلمانوں کی نظر میں

"The shares of other kith and kin entitled to succession get affected and a new framework of prohibited degrees of marriage emerges round the personality of the adopted child. It is in this context that all the witnesses claim that adoption is a Hindu religious conception in spirit and is being foisted upon the Muslims."

میں نے جملاب یہ بل پڑھا ہے اس کے پہلے ہندو آڈیشن کے بارے میں جو تھا اس کو بھی پڑھا ہے میں نے کچھ دنوں وکالت بھی کی ہے قریب ۲۵ یا ۳۰ سال اور دھرم شاستر کے اوپر بیسیوں مقدموں میں آرگو

کرنے کا موقع بھی مجھے ملا ہے - میں پوری ذمہ داری کے ساتھ کہہ سکتا ہوں کہ میرے لائق دوست شانتی بھوشن جو خود بھی ایک امپلیمنٹ جوسٹ اور قانون دان ہیں وہ اس سے انکار نہیں کریں گے کہ -

Practically, all the fundamental principles of Hindu law have been adopted in this Bill.

سوائے اس کے کہ جو آڈیشن سریمونی ہوتی ہے اس کو چھوڑ کر باقی کے جو کلسیکو نسٹو ہیں وہ سب اس میں ہیں - کوئی شخص جو گود لے لیتا ہے کسی کو دھرم شاستر کے مطابق اس کے جملے کلسیکو نسٹو ہیں وہ سب اس میں ہیں - وہ نیچرول بارز، مانا جاتا ہے - وہ دھرم کی رسم ختم ہوتے ہی وہ اصل بھٹے کی مانند ہو جاتا ہے اور پچھلے تمام خاندان سے اس کا تعلق ختم ہو جاتا ہے اور اس کو رائٹ آف ان ہو ریڈلس پیدا ہو جاتا ہے - تو یہ ہندو لا کا کلسیپیٹ ہے جس کو اس میں پاس کیا جا رہا ہے - ہندو لا کا کلسیپیٹ بہت اچھا ہے جو ہمارے ہندو بھائی ہیں وہ اس پر عمل پیرا ہیں کسٹمس کے طور پر بھی اور قانون کے طور پر بھی اور ہندو لا میں کسٹمس کو رکٹلائز کیا گیا ہے لیکن مسلم لا میں کسٹم کی کوئی حقوت نہیں ہے -

Muslim law does not recognise customs. Customs are nothing in Muslim law.

ہے - اس لئے جو شریعت کے حکام ہیں ان کی خلاف ورزی کے لئے آپ ہندو لا کے پرنسپلس کو مسلمانوں کے اوپر توہین کی کوشش نہ کریں آپ ایک دعویٰ سے آئے ہیں آپ نے یہ دعویٰ کر کے روت لئے ہیں کہ مائندریٹیز کو اور مسلمانوں کو آپ اس ملک میں مذہبی آزادی دیں گے - آپ ان کو قیموکرسیسی دیں گے قیموکرسیسی کے معنی کیا ہیں - قیموکرسیسی کے معنی یہ ہیں کہ

Majority opinion should be respected.

مسلمانوں کی ۹۹ فی صدی رائے آپ کے سامنے آگئی کہ وہ اس قانون کو نہیں چاہتے ہیں -

آپ کہیں ہمارے ساتھ زیادتی اور زبردستی کرتے ہیں - اگر یہ قانون مسلمانوں پر نافذ نہیں ہوگا تو کس کو نقصان پہنچے گا - اس ملک کی آبادی کے کس حصہ کو نقصان پہنچے گا - - جناب - میں یہ معلوم کرنا چاہتا ہوں لا مینسٹر صاحب - اس قانون کے امپلیمینٹ کرنے میں کہاں تک مشکلات ہیں - اس لئے میں گزارش کروں گا لا مینسٹر صاحب سے کہ ہم نے جو ترمیم پیش کی ہے اس کو وہ نہایت دیانت داری فراہم دلی اور خوش دلی کے ساتھ قبول کر لیں تو ہم پورے بل کی ٹائیڈ کریں گے ورنہ پورے ملک پر اس کا اثر پڑے گا پورے ملک میں اس کے خلاف

ایجنڈیشن ہوگا اور آپ کے لئے کوئی یہ مذاصبات نہیں ہوگی - میں یہ نہیں چاہتا ہوں کہ ہمارے ملک کے دستور سکولر کھریکٹر کے اوپر کسی قسم کا دھبہ آئے - ہم اس بات پر فخر کرتے ہیں کہ ہمارا کلسٹی ٹیوشن سکولر ہے - ہمارے ملک میں سکولر ازم کی جڑیں مضبوط ہیں - ہم اس بات پر فخر کرتے ہیں کہ ہمارے قانون کے پیش نظر مذہب کے ماننے والوں کے انٹرسٹ کو شیلف نہیں کیا جاتا ان کے فلڈامینٹل رائٹ کو ختم نہیں کیا جاتا -

میری یہ درخواست ہے کہ اس بل سے مسلمانوں کو متسلئی کر دیا جائے تو میں اس بل کی ٹائیڈ کرتا ہوں ورنہ میں اس بل کی پوری طاقت سے مخالفت کرتا ہوں -

†[श्री मुहम्मद युनुस सलीम (आंध्र प्रदेश) :
 जनाब वाइस चेंबरमैन साहब, जो बिल इस वक्त हाउस के सामने डिस्कस हो रहा है यह एक नुक्त नजर से बहुत अहम है कि यह बिल पहली हकूमत के जमाने में इस हाउस में पेश हुआ था और इसके बाद सलेक्ट कमेटी के हवाले किया गया था और सलेक्ट कमेटी की रिपोर्ट आ जाने के बाद पहली दफे यह इस हाउस में डिस्कशन के लिए आया है। जनाब जनता गवर्नमेंट के ला मिनिस्टर साहब इस बिल को पायलट कर रहे हैं। इस हाउस को मालूम है कि थोड़े दिनों मेरा भी कुछ ताल्लुक ला मिनिस्ट्री के साथ रह चुका है जब मैं ला मिनिस्ट्री में था उस वक्त श्री गोविन्द मेनन ला मिनिस्टर थे। उस

[श्री मुहम्मद यूनुस सलीम]

मर्तबा इस हाउस में और लोक सभा में यह सवाल उठाया गया कि मुसलमानों के पर्सनल लॉ में मुदाखलत और इण्टरफियरेंस होने के कुछ ख्यालात जाहिर किए जा रहे हैं। पार्लियामेंटरी प्रोसिडिंग्स गवाह है कि वल्लन फल्लन प्राइम मिनिस्टर ने इस बात का एश्योरेंस दिया था कि इस मुल्क में रहने वाले माइनोरिटीज़ खास तौर पर मुसलमानों के पर्सनल लॉ में किसी किस्म का कोई इण्टरफियरेंस नहीं किया जाएगा। जब यह एडोप्शन बिल पेश हुआ और सलेक्ट कमेटी के हवाले किया गया और इसकी जो बाराएँ थीं, इनको मुसलमान जूरिस्ट मुस्लिम उलमा और दूसरे कानूनदानों ने पढ़ा तो इनको इस बिल के जरिये से मुसलमानों के पर्सनल लॉ में साफ और बाजे तौर पर मुदाखलत नजर आई। चुनावे मुस्लिम पर्सनल लॉ बोर्ड ने अपने कई जलसों में इसके मुताल्लिक रेजोल्यूशन पास किए और गवर्नमेंट ऑफ इण्डिया के पास भेजे गए। मुझे यकीन है कि मेरे दोस्त लॉ मिनिस्ट्री साहब के पास वो रेजोल्यूशन पहुंचे होंगे। अगर नहीं पहुंचे हैं तो लॉ मिनिस्ट्री में तलाश करके इन रेजोल्यूशन्स को देखें। अभी मेरे दोस्त शाही साहब ने मिसिज़ इन्दिरा गांधी के मुताल्लिक बहुत सी बातें कहीं। मैं इनकी वाकफियत के लिए इस हाउस में पूरी जिम्मेदारी के साथ यह बात अर्ज करना चाहता हूं। और यह बात रिकार्ड में जाएगी कि इस बिल के ताल्लुक से मुसलमानों के नुमाइन्दों और मुस्लिम आलिमों का एक डेलीगेशन मिसिज़ इन्दिरा गांधी से जाकर मिला था और इनसे खास तौर पर एडोप्शन बिल के मुताल्लिक बातचीत की थी। इन्होंने ताज्जुब का इजहार किया था और यह कहा था कि हमसे यह कहा गया था कि कुछ कारेन्स आत हैं और वो हिन्दुस्तान के बच्चों को इस तरह से एडोप्ट करके ले जाते हैं। इनके हकूक पर इसका असर पड़ता है। वहां कुछ सोशल आर्गनाइजेशन्स ऐसे

हैं जिन्होंने हम से यह ख्वाहिश की है कि एक ऐसा बिल आना चाहिए, इसलिए हम यह बिल लाए हैं। अगर यह बिल मुसलमानों के पर्सनल लॉ में मुदाखलत करता है आप जैसे उलमा जो सकूलरिज्म में यकीन रखते हैं जिनके मुताल्लिक सारा हिन्दुस्तान यह जानता है कि आपका नुकताएं नजर प्रोग्रेसिव है, आप अगर यह समझते हैं कि अगर यह मुस्लिम पर्सनल लॉ में मुदाखलत है तो मैं आपसे वायदा करती हूं कि जब यह बिल हाउस में आएगा तो उस वक्त इसमें अमेंडमेंट के मुताल्लिक मैं लॉ मिनिस्टर से कहूँगी। आप मुतामइन रहें। आप लोगो को फिकर करने की जरूरत नहीं। शायद यह बात मेरे लायक दोस्त को मालूम नहीं है। बदकिस्मती से यह बात इसलिए पैदा हुई कि गोखले साहब ने जो उस वक्त लॉ मिनिस्टर थे उन्होंने इस बिल को इंट्रोड्यूस करते वक्त एक गैर जिम्मेदाराना बात यह कही थी कि यह बिल कोमन सिविल कोड की तरफ एक कदम है।

जनाब वाइस-चेयरमैन साहब उन्होंने यह भी कहा था कि इससे किसी मजहब के मानने वालों को पर्सनल लॉ में मुदाखलत नहीं होती है और कुरान के खिलाफ भी कोई मुदाखलत नहीं होती है। इसलिए इस कानून के बनाए जाने में कोई नुकसान की बात नहीं। मैं गोखले साहब को मुस्लिम लॉ पर अथोरिटी नहीं मानता। मैं किसी शख्स को इन उलमाओं के मुकाबले में जिन्होंने आकर इस सलेक्ट कमेटी के सामने गवाहियां दी हैं, हल्फिया बयान दिए हैं वो अथोरिटी माने जाते हैं। इस मुल्क में मुस्लिम लॉ पर इनके मुकाबले में किसी की बात मानने के लिए तैयार नहीं हूं। मैं यहां तक जाने के लिए तैयार हूं कि अगर सारी दुनिया में एडोप्शन लॉ को कबूल कर लिया जाए चाहे वो मुस्लिम मुल्क हो चाहे वो कोई मुल्क तो भी मैं इसको मानने के लिए तैयार नहीं हूं कि एडोप्शन लॉ कुरान के खिलाफ नहीं। आपको मालूम है कि शराब कुरान

की रूह से हराम है। जिन्हा कुरान की रूह से हराम है अगर मुस्लिम मुमालिक चाहें वो तुर्की हो चाहे मिस्र हो, चाहे कोई दूसरा मुल्क हो शराब पीने पिलाने के मुताल्लिक आम तौर पर शराब बेचने के लिए लाइसेंस इशू करना शुरू कर दें। इसके मायने यह नहीं होंगे कि मुसलमानों के लिए शराब जायज कर दी गई। आपको यह बताना पड़ेगा कि मुसलमान आलमों का जो यह दावा है कि यह कुरान के खिलाफ है, कुरान के खिलाफ नहीं है। हृदयत के खिलाफ नहीं है। मुस्लिम पर्सनल के खिलाफ नहीं है तो हम लोगों को कुत्ते ने नहीं काटा है जो ख्वाहम-ख्वाह अपना वक्त जाया करेंगे और प्रोग्रेसिव लेजिस्लेशन की मुद्दालफत करेंगे। जताब यह कानून अगर पास हो गया तो हमारे मुल्क में जो कॉन्स्टिट्यूशन नाफिज है इसके खिलाफ होगा इस कॉन्स्टिट्यूशन में हमें यह सेफगार्ड दिया है कि हम अपनी मर्जी के मुताबिक अपने रिलिजन को प्रैक्टिस कर सकते हैं। प्रोपेगेट कर सकते हैं। आर्टिकल 25 की तरफ जताब वाइस चेयरमैन साहब, मैं आपको तबज्जह दिलाऊंगा।

Article 25 says:

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

Sir, the question is this: What is religion? What is not religion? Who will decide this? Will Mr. Shanti Bhushan decide it or the Muslim jurists who belong to the seats of learning of Muslim culture, civilisation and education will decide it? Or, Mr. Gokhale is going to decide what is Muslim religion and what is not Muslim religion?

असल में इस वक्त सवाल यह है कि यह जो ज्वाइंट सलेक्ट कमेटी की रिपोर्ट है इसमें जितने

मुस्लिम मैम्बर्स थे खाने डिसेंटिंग नाट दिया है और डिसेंटिंग नाट में यह बात भी बही गई है जितने मुस्लिम जुरिस्ट, मुस्लिम कानूनदा लाइअर्स, मुस्लिम स्कालर्स, मुस्लिम उलमा, मुस्लिम रेस्पेक्टेबल सिटिजंस, मुस्लिम पोलिटिशंस जिनके एवीडेंसेज, लिए गए हैं इनमें 99 प्रतिशत लोगों ने इस बिल को अपोज किया है। इन सबको किसी कुत्ते ने नहीं काटा है। क्या यह सब रिएक्शनरी है। खाली शाही साहब और इनके हम खयाल लोग प्रोग्रेसिव हैं जो लेजिस्लेशन को लाना चाहते हैं। किसी एक सिर फिरे शख्स ने अगर यह कह दिया कि साहब इससे मुस्लिम पर्सनल लॉ में कोई मुद्दखलत नहीं होती।

Is one opinion going to have weight against this 99 per cent opinion? This is for this House to consider.

मैं अब आपको बताऊंगा कहां-कहां यह कानून इस्लामिक लॉ यानि शरीयत के खिलाफ जाता है। यह बिल जा आने वाला है इसकी धारा 13 की तरफ देखा जाए कि अगर कोई शख्स किसी को गोद ले मुतबनी करे तो इसका इफेक्ट क्या होगा।

"13. (1) An adoption order shall take effect on such date as may be specified therein by the district court or where an appeal has been preferred under section 12 against such order on such date as may be specified in the appellate order.

(2) A child in respect of whom an adoption order is made shall be deemed to be the child of the adopter or adopters and the adopter or adopters shall be deemed to be the parent or parents of the child as if the child had been born to that adopter or those adopters in lawful wedlock, for all purposes (including intestacy) with effect from the date on which the adoption order takes effect and on and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed

[श्री मुहम्मद यूनुस सलीम]

and replaced by those created by the adoption order in the adoptive family."

जब हम पर्सनल लॉ की बात करते हैं तो जरा हमको अपनी अक्ल से काम लेना चाहिए। जब एक मुसलमान पर्सनल लॉ की बात करता है कि पर्सनल लॉ के क्या मायने हैं। पर्सनल लॉ के मायने हैं ला आफ इन्हेरिटेन्स—पर्सनल लॉ के मायने हैं लॉ आफ मैरिज एण्ड डाइवोर्स पर्सनल लॉ के और कोई मायने नहीं हैं। मैं इस हाऊस के सामने यह बतलाना चाहता हूँ कि किस तरह से एडोप्शन का कानून अगर नाफिज हो गया और मुसलमानों पर यह लागू हुआ तो मुसलमानों में जिन लोगों के साथ, जिन रिश्तेदारों के साथ शादियाँ करना जायज है, इनके साथ शादी करना नाजायज हो जाएगा। सारी दुनिया जानती है कि एक मुसलमान लड़का अपनी चचाजाद बहन के साथ, अपनी खालाजाद बहन के साथ, अपनी फूफीजाद बहन के साथ शादी कर सकता है। कोई रुकावट शुरू में नहीं है। कुरान में इसको परमिट किया है लेकिन इस कानून के आने के बाद वो प्रोहिबिटरी डिग्री में शामिल हो जाएगा और वो अपनी चचाजाद बहन, खालाजाद बहन और फूफीजाद बहन के साथ शादी नहीं कर सकेगा। सारे लोग यह जानते हैं कि अगर कोई शख्स मर जाए और अगर कोई लाओलाद मरे तो इसकी बीबी को चौथाई हिस्सा मिलेगा। औलाद हो तो आठवां हिस्सा मिलेगा। सारे लोग जानते हैं कि अगर बाप जिन्दा हो तो औलाद होने की सूरत में छठा हिस्सा मिलेगा और अगर औलाद न हो तो तिहाई मिलेगा। सारी दुनिया जानती है कि सिर्फ लड़कियाँ हों और लड़का न हो तो मरने वाले का भाई अगर जिन्दा है तो वो रुपए पाने का मुस्तहक होगा। यह एडोप्शन के जरिए से यह सारा ला आफ एन्हेविशन डिस्टर्ब हो जाएगा। एक्जैडिंग टू कुरान्स सेक्शंस जो लोग इन्हेरिट करने के मौजाज हैं जिनका हिस्सा

कुरान के अन्दर मुकर्रर किया गया है वो अपने हिस्से से महरूम हो जाएगा और इसको महज एडोप्शन की वजह से हिस्सा नहीं मिलेगा। मैं जानता हूँ कि लर्नड लॉ मिनिस्टर साहब इसके जवाब में क्या कहेंगे। वो जवाब देने वाले हैं वो कहेंगे कि यह तो अनेबलिंग एक्ट है कोई एडोप्ट करे और वो अगर इस कानून के तहत इसको रजिस्टर्ड न कराये तो इस पर कोई पाबन्दी आयद नहीं होती है। मैं यह कहता हूँ कि मुस्लिम पर्सनल लॉ में मुदाखलत के दरवाजे मत खोलिए और लोगों को इण्डयूस मत कीजिए कि वो इस्लाम का नाम ले कर अपने को मुसलमान कहलाने के बावजूद कुरान की मुखालफलत करें और कुरान के एहकाम के खिलाफ अमल करे इसकी तरगीब हम मुत्क में आपको नहीं देने देंगे। जब तक हर मुसलमान इस मुत्क के अन्दर मौजूद है मैं अली एलान इस एवाम में कह देना चाहता हूँ कि कोई भी मुसलमान कुरान के लॉ में चाहे इसको अपनी जान कुर्बान करनी पड़े, चाहे आखिरी वतराए खून बहाना पड़े वो कुरान के लॉ में मुदाखलत बर्दाश्त नहीं करेगा। मैं यह पूरी जिम्मेदारी के साथ और एवाम के सामने कह देना चाहता हूँ और वाजे कर देना चाहता हूँ कि बैठी हुई मिडों के छत्ते को मत छेड़िये। यह बहुत खतरनाक खेल खेला जाने वाला है। लॉ मिनिस्टर साहब यह कहकर बहला नहीं सकते —

"It is an enabling act. It is not binding on the Muslims. If they want, they should get it registered. If they do not want, 'nobody is going to force them.' This is not sufficient. I am not going to be convinced by his argument. Why do you feel uncomfortable if you introduce an amendment that is not applicable to Muslims? Why should you not do it?"

आखिर मुस्लिम पब्लिक ओपिनियन को रेस्पेक्ट करने के क्या मायने हैं ?

जब आपके सामने एवीडेंस देने वाले 99 फीसदी आदमी कह दें कि —

It is against the Muslim Law. You should accept that it is against the Muslim Law. I will not stop here.

मैं बताऊंगा अभी मेरे एक दोस्त ने साफ तौर से कहा है कि अगर किसी के धर्म पर या किसी के मजहब में मुदाखलत होती है तो वो बिल पास नहीं होना चाहिए। मैं बताऊंगा कि किस तरह से यह कुरान के खिलाफ है। यह देखिए यह कुरान है, तुर्जमा इसका क्या है—अब्दुल्ला यूमुफ अली ने जो हिन्दुस्तान के बहुत बड़े माने हुए नामी ग्रामी आलिम थे मैं इनका ट्रांसलेशन लाया हूँ। यह पार्ट 33 है और इसके पैराग्राफ 4 और 5 में खासतौर पर एडोप्शन के मुतालिक कुरान ने क्या कहा है और फिर मैं कामेंटरी से बताऊंगा कि इसके क्या इम्प्लीकेशंस हैं। कुरान की आयत यह है —

वमा जअला अद् अद्देया अकुम उन्ताओकुम

"Non has be made your adopted sons your sons". He means God.

उसके बाद हुक्म है — आ बा ओ हुम

Call them by the names of their fathers.

इस कानून के तहत वो अपने बाप के नाम से एडोप्शन के बाद पुकारे नहीं जा सकेंगे—जनाब, इस आयत के नाजिल होने का सबब यह था। मैं अर्ज करूँ कि हमारे पैगम्बर मोहम्मद सिला-उल्ला एलेम्मा वसलम ने एक लड़के को जो हज़रत खुरेखा जो इनकी बीबी थी इनका गुलाम था जैयद इसको अपने मुतबनी के तौर पर अख्तियार कर लिया और इससे वह लड़कों की तरह मुहब्बत करते थे। जब रसूल सली अल्लाह

अलेमा वसलम प्रोफिट हुए तो लोगों ने इनको जैयद बिन मुहम्मद कहना शुरू कर दिया और उनके बाप के नाम को बिलकुल नज़रन्दाज़ कर दिया। यह बात अल्लाह ताला को मुनासिब नहीं मालूम हुई और महसूस यह हुआ कि शायद उसे आइन्दा फितने पैदा हों चुनाचें यह आयत नाजिल हुई। और मना किया गया जब यह आयत नाजिल हुई तो यह बात हदीशों में आई है कि लोगों ने जैयद बिन मोहम्मद कहना मतरूब कर दिया और जैयद को इनके वालिद के नाम से कहना शुरू कर दिया और इसके बाद एक वाक़ा यह हुआ कि हज़रत जैयद से जिन खातून की शादी हुई थी जो हज़रत रसूल सला अल्लाह उल्लेमा वसलम के खानदान की खातून थी जैयद न इनको तलाक़ दे दी तो यह साबित करने के लिए कि तब नियत का इस्लाम में कोई मुकाम नहीं है और मुतबनी असली बेटे और सुबली बेटे की तरह नहीं होता है तो यह साबित करने के लिए कि मुतबनियत की इस्लाम में कोई अहमियत नहीं है इस वास्ते कहा गया है—

लॉ तबनियत सी० फित्व इस्लाम

इस्लाम में कोई मुतबनी नहीं है। इसका इस्लाम में कोई जिक्र नहीं है। मैंने जो आयत आपके सामने पढ़ी इसकी कामेंटरी के तौर पर मैं चंद जुमले आपको सुनाना चाहता हूँ कि इस हुक्म की तामील में सब से पहले इस्लाहनाफिस की गई वो यह थी कि नबी सला अल्लाह उल्लेमा वसलम के मुंह बोले बेटे हज़रत जैयद को जैयद बिन मुहम्मद कहने के बजाय इनके हकीकी बाप की निसबत से जारबिन जावद कहना शुरू कर दिया गया। जनाब लॉ मिनिस्टर साहब आप जरूर जानते हैं कि पर्सनल लॉ यानी मुस्लिम लॉ के सोर्सेंज हैं कुरान और हदीयश और उसके बाद अजमाए और उसके बाद कयास यह सोर्सेंज है मुस्लिम

[श्री मुहम्मद यूनुस सलीम]

पर्सनल ला के। कुरान के बराबर ऐतीसर अल्लाह वो एतीसर अल रसूल के हुक्म के बाद जब अल्लाह जो बात कहे, रसूल जो बात कहे वो हमारे वास्ते कानून का दर्जा रखती है हदीशों में आयत है कि मुस्लिम ने हजरत अब्दुल्ला बिन असर की रवायत नकल की है अयस बिन हावश को पहले लोग अयस बिन मुहम्मद कहते थे। यह आयत नाजल होने के बाद इन्हें अयस बिन हावश कहने लगे। मजीद इस आयत के नजूल के बाद यह बात एवाम करार दे दी गई। हराम करार दी गई कि कोई शरूस अपने हकीकी बाप के सिवाय किसी और की तरफ अपने निस्ब को मनसूब करने—बुखारी मुस्लिम और अबुदाअद ने हजरत साद बिन अबीवकास की रिवायत नकल की है और हजरत ने फर्माया—

“मिन अद आ इला गैर अे अबी ही व
हुवा या लमा है
इन्ना हू गैरा अबी ही फिल जन्नत अलही
हराम

जिसने अपने को अपने बाप के सिवाय और किसी का बेटा कहा हालांकि वो जानता है कि वो शरूस इसका बाप नहीं है इस पर जन्नत हराम है। इस मजबून को दूसरी रिवायत भी आज इससे मिलती है जिसमें इस फसल को सख्त गुनाह करार दिया गया है।

जनाबे वाला मैं किस तरह ला मिनिस्टर साहब को बताऊं कि हराम के क्या मायने हैं जिस शरूस का बाप हकीकी बाप न हो—आप दूसरे के बाप से अपने को मनसूब कराए यह हराम है और इसके लिए कहा गया है कि ऐसे शरूस के ऊपर जिनत हराम कर दी गई है और आप यह कहते हैं कि पर्सनल ला में मदाखलत नहीं है। मैं एक और दूसरे कामेंटेटर

की बात आपके सामने रखकर आगे बढ़ूंगा यह जो मैंने कामेंटरी सुनाई है यह अबू आला मौलवी जो बहुत बड़े माने हुए इस्लाम के आलिम है इनकी है। यह मौलाना मुफ्ती मुहम्मद शेख की है जो देवबंद के बहुत बड़े आलिम थे और इसमें इन्होंने आयत के सिलसिले में जो कुछ फरमाया वो यह है—

“दूसरे यह कि भक्का के रहने वालों में एक रस्म यह थी कि एक आदमी किसी दूसरे के बेटे को अपना मुकबनी यानि मुंहबोला बेटा बना लेता था और जब इस तरह बेटा बनाता था तो यह लड़का इसका बेटा मशहूर हो जाता और इसका बेटा कहकर पुकारा जाता और इसके नजदीक यह मुंहबोला बेटा तमाम एहतकाम में असली बेटे की तरह माना जाता था मसलन मीरात में भी इसकी औलाद के साथ शरीक होता था और नसबी रिश्ते से जिन औरतों के साथ ख्याम होता है यह मुंह बोले बेटे के रिश्ते को भी वैसा ही करार देता है जैसा अपने हकीकी बेटे की बीवी से उसका ताल्लुक तलाक देने के बाद निकाह हराम रहता है जो मुंहबोले बेटे की बीवी भी बातलाक इस शरूस के लिए हर म सम्झती थी जमाना जाहलियत की यह तीन बातें ख्याजात और रस्म से इनसे पहले की बात अन्नथ मजहब और अक़ाद के अमल के मुताबिक नहीं थे। कुरान के जरिए से इनको खत्म कर दिया गया।”

इस बात को मैं जाहिर करना चाहता हूं इस हाऊस के सामने कि यह जो बात लॉमिनिस्टर साहब ने फरमाई थी कि तवनीयत का कुरान के अहकाम से किसी तरह का कंटरा-डिक्शन या तसादुम नहीं है वो बात बहुत मिमलिडिंग थी और अगर मेरे दोस्त जो इस वक्त के ला मिनिस्टर हैं जो इस वक्त तशरीफ फर्मा हैं और इनके जहन में यह बात आई हो कि इस बिल के जो असरात है उनका कुरान से और हदीयत से तसादुम नहीं हो रहा है तो मुझे उम्मीद है कि उन बातों को सुनने

के बाद वो इसको अपने ख्याल से निकाल देंगे।

इसके बाद आखिरी बात जो कहना चाहता हूँ कि इस बिल के पेश जवाइंट सलेक्ट कमेटी की रिपोर्ट के तर्तीब किए जाते वक्त जितने मुस्लिम स्कालर थे उन्होंने जो डिसेंटिंग रिपोर्ट दी है इनके चन्द इकताबासात आपके सामने अर्ज कलंगा।

"Thousands and thousands of representations have been made by way of letters, telegrams, resolutions and memoranda to effect that the Muslims in India should be exempted from the purview of this Bill. More than 1000 Muslim witnesses appeared before the Committee to give their evidence in their individual and collective capacities. Ulemas (Muslim Scholars) of undisputed repute belonging to such Scholastic Orders as Darul Uloom of Deobandh, Nadwathul Ulema of Lucknow, Imarath Shariah of Bihar and Orissa, Jamiathul Ulema of India appeared before the Joint Select Committee. Muslim advocates turned up in a great number. Muslim Ladies came forth to express their views. The Muslim Personal Law Board, though of late origin, also tendered its evidence.

The Muslim evidence is altogether non-political in its character and deals with the issues from the religious point of view only.

The summary of evidence circulated to us by the Law Department says that 99 per cent of the Muslim evidence is against the Bill."

Mr. Vice Chairman, this is very significant. At page 10, in the last para, it has been stated:

"No one denies the fact that the Bill is voluntary and enabling in its character. But the question remains whether its mischief extends

to those who are not a party to the adoption. Once an adoption is made, the law takes its own course."

असल में जो अहम चीज है वो यह है कि यह बहस की 'इट इज एन एनेबलिंग एक्ट' यह कहा है। अगर कोई शक्स मुतबनी करना चाहता है और मुतबनी करने के बाद वो इस कानून की ओर से रजिस्ट्ररन कराए तो इस पर कोई पाबन्दी नहीं है। इसका जवाब सीधे तौर पर यह दिया गया है कि किसी शक्स को यह अख्तियार नहीं दिया जाता कि वो किसी के राइट आफ इन्हेरिटेंस को जो एडोपशन में शरीक नहीं है 'ही इज नाट ए पार्टी टू एडोपशन' इसके हक को मनसूब किया जाए। अगर कोई लावलद है तो उसके भाई की औलाद या खुद भाई इसकी जायदाद का हिस्सा पाने का मुसतहक है। लेकिन यह मुतबनी का प्रोविजन करके इनको इस हिस्से से महरूम कर दिया जाएगा। अगर फर्ज कीजिए कि किसी एक भाई से इसकी लड़ाई हो और आजकल अक्सर भाईयों में लड़ाई रहती है इसमें कोई ताज्जुब की बात नहीं है तो इसको महरूम करने के लिए कि जायदाद इस भाई को न मिलने पाए जैसा कि कुरान ने नुकरर किया है वो किसी को गोद ले लेगा। कुरान के ला का मकसद यही है। यह मैं एवाम के सामने और लोगों की वाकफियत के वास्ते कहना चाहता हूँ। जिस चीज को कुरान में बयान किया गया है कि इसको करो या उसको न करो इसको रसूल और प्रोफिट भी तबदील नहीं कर सकते। इसको उलमा तबदील नहीं कर सकते। इसको कोई लेजिस्लेचर तबदील नहीं कर सकता। इसको दुनिया की कोई अथॉरिटी तबदील नहीं कर सकती। कुरान की इतनी अहमियत है मुसलमानों की नजर में।

"The shares of other kith and kin entitled to succession get affected and a new framework of prohibited degrees of marriage emerges round the personality of the adopted child. It is in

[श्री मूहम्मद यूनुस सलीम]

this context that all the witnesses claim that adoption is a Hindu religious conception in spirit and is being foisted upon the Muslims."

मैंने जनाब यह बिल पढ़ा है इसके पहले हिन्दु एडोपशन के बारे में जो था उसको भी पढ़ा है मैंने कुछ दिनों वकालत भी की करीब 25 या 30 साल और धर्मशास्त्र के ऊपर बीसीयों मुकद्दमों में आर्गु करने का मौका भी मुझे मिला मैं पूरी जिम्मेदारी के साथ कह सकता हूँ कि मेरे लायक शांति शान्ति भूषण जो खुद भी एक एमीनेंट जूरिस्ट और कानूनदा हैं वो इससे इन्कार नहीं करेंगे कि—

Practically, all the fundamental principles of Hindu Law have been adopted in this Bill.

सिवाय इसके कि जो एडोपशन सेरेमनी होती है इसको छोड़कर बाकी के जो कांसीक्यूसेज हैं वो सब इसमें है। कोई शक्स जो गोद ले लेता है किसी को धर्मशास्त्र के मुताबिक इसके जितने कांसीक्यूसेज है वो सब इसमें हैं। वो नेचुरल बोनं माना जाता है। वो हवन की रस्म खत्म होते ही वह असली बेटे के मानिंद हो जाता है और पिछले तमाम खानदान से उसका ताल्लुक खत्म हो जाता है और उसका राइट आफ इहेरिटेंस पैदा हो जाता है तो यह हिन्दू लॉ का कंसेंट है जिसको इसमें पास किया जा रहा है। हिन्दू लॉ का कंसेंट बहुत अच्छा है जो हमारे हिन्दू भाई हैं वो इस पर अमल पेश हैं। कस्टम्स के तौर पर भी और कानून के तौर पर भी और हिन्दू लॉ में कस्टम्स को रिकोगनाइज किया गया है लेकिन मुस्लिम लॉ में कस्टम्स को कोई हकीकत नहीं है। Muslim law does not recognise Customs. Customs are nothing in Muslim law. इसलिए जो शरीयत के अहकाम हैं इनकी खिलाफ वर्जों के लिए आप हिन्दू ला के प्रिन्सीपल को मुसलमानों के ऊपर थोपने की कोशिश न करें। आप एक वायदे से आए हैं आपने यह

वायदा कर के वोट लिए हैं कि माइनोरिटीज को और मुसलमानों को आप इस मुल्क में मजहबी आजादी देंगे। आप इनको डेमोक्रेसी देंगे। डेमोक्रेसी के मायने क्या है। डेमोक्रेसी के मायने यह है कि—

Majority opinion should be respected.

मुसलमानों की 99 फीसदी राय आपके सामने आ गई है कि वो इस कानून को नहीं चाहते हैं। आप क्यों हमारे साथ ज्यादाती और जबरदस्ती करते हैं। अगर यह कानून मुसलमानों पर नासिब नहीं होगा तो किसको नुकसान पहुंचेगा इस मुल्क की आजादी के किस हिस्से को नुकसान पहुंचेगा। जनाब, मैं यह मालूम करना चाहता हूँ कि लॉ मिनिस्टर साहब इस कानून के इम्प्लीमेंट करने में कहां तक मुश्किलत है। इसलिए मैं गुजरािश कर्हंगा लॉ मिनिस्टर साहब से कि हमने जो तरमीम पेश की है उसको वह न्याय, दयानतदारी, फराख दिली और खुशदिली के साथ कबूल कर लें तो हम पूरे बिल की ताहित करेंगे वरना पूरे मुल्क पर इसका असर पड़ेगा पूरे मुल्क में इसके खिलाफ एजीटेशन होगा और आपके लिए कोई यह मुनासिब बात नहीं होगी। मैं यह नहीं चाहता हूँ कि हमारे मुल्क के दस्तूर, सेकूलर करेक्टर के ऊपर किसी किस्म का धब्बा आए। हम इस बात पर फख्र करते हैं कि हमारा कांस्टीट्यूशन सेकूलर है हमारे मुल्क में सेकूलरिजम की जड़ें मजबूत हैं, हम इस बात पर फख्र करते हैं कि हमारे कानून के पेशे नजर मजहब के मानने वालों के इन्ट्रस्ट को शेल्फ नहीं किया जाता। इनके फंडामेंटल राइट को खत्म नहीं किया जाता।

इसलिए मेरा दरखवास्त है कि इस बिल से मुसलमानों को मुस्तना कर दिया जाए तो मैं इस बिल की ताईद करता हूँ वरना मैं इस बिल की पूरी ताकत से मुखालफत करता हूँ।]

SHRI LAKSHMANA MAHAPATRO (Orissa): Mr. Vice-Chairman, Sir, while moving the Bill for consi-

deration, the Law Minister asked us to rise above many narrow interests and take the care of children to be a matter of primary importance and to easily agree to the passing of the Bill. He also told us that this Bill was introduced in 1972. Mr. Gokhale, the then Law Minister, while introducing the Bill had appended a Statement of Objects and Reasons. I shall just be taking, through you, the Objects and Reasons wherefrom you will be able to get the reasons for the anxiety of the Government to bring in such a Bill. Even today when the Law Minister was speaking while moving the Bill for consideration, he said, as has also been mentioned in the Statement of Objects and Reasons, that there have been over a period of a decade demands from social organisations which necessitated the framing of such a Bill. That apart, he has also said that the country needed a general law of adoption. That is the other reason why such a Bill was framed. He has also told us that the Bill went before the Joint Select Committee and the Joint Select Committee, which according to him deserved all the thanks for the pains taken by them in formulating such a good report, took four years to give us the report. Thereafter two years passed and now we are asked to consider the Bill. I do not know what the real state of affairs is at the moment, whether those particular social organisations which had been so much pressing for the framing of such a Bill do have that anxiety for the passing of the Bill even now or not. As some hon. Members pointed out earlier, we do not know which are the particular social organisations which are so much interested in it. But one thing I gather from the note of dissent of one of the Members of the Joint Select Committee is that only two communities—a few Christian organisations and one Parsi organisation—were very much interested in such a law being brought. While considering this law we have not only to see the notes of dissent appended to the Report of the Joint

Select Committee but also the violent resentment expressed in this House against the passing of this Bill. We shall have to be very cool in considering this Bill and in the background of what has been happening in the country. I think a very sane approach to the Bill has to be made.

Adoption, as you know, Sir, is not only prevalent in many other countries other than India but in India also, as far as the Hindu community is concerned, it was a particular function and it was a particular institution to which much of religious sentiment was attached. It was said that a person, to save himself from the 'put' had to take a *putra*, to save himself from the hell he had to take a son. But this idea of the institution of adoption was blasted immediately after we framed the Hindu (Adoption and Maintenance) Act of 1956 because there we said that it was no longer a *putra* alone, or a son alone, or a male alone who would be adopted but a female child could also be adopted. Therefore, there was no anxiety for saving oneself from 'put' or getting salvation any further by 1956 at least when we agreed to make such a law and having it very much effective till this day, we also agreed to the position that no longer a Hindu need have only a son, he could as well take a daughter. So what reigned supreme at the time the 1956 Hindu (Adoption and Maintenance) Act was passed was the care of the children, if anybody was interested in giving his affection to a child—whether male or female—he could very well do it and, therefore, could take a child in adoption. That possibly was the idea behind such a change in the attitude towards the institution of adoption.

Having blasted that particular idea, or the religious sentiment that was attached to the institution of adoption in 1956, I do not think there is much worry now when an adoption is made of any person of any community by any person of any community. But

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all the same we have to respect sentiments, because sentiments are not only connected with the religious ties but with something else also—that is, with material bias also. It is not only moral but it is material also. That is exactly how the different friends had either appended minutes of dissent or have spoken on the lines of the points made out in those minutes of dissent. So, Sir, I submit before you that how far it is proper now to continue with this Bill should be a question for consideration. As I said in the beginning, some institution wanted it. Whether they still want it or not is not known. They wanted it for the reason—I quote from the Statement of Objects and Reasons:

“In recent years there has been a growing demand for a general law of adoption in India, particularly from several social welfare organisations and social workers who see in the institution of adoption an opportunity to provide proper homes and families for abandoned, destitute and neglected children.”

So this was the lofty objective for which this particular Bill was framed and given to a Joint Select Committee. They pondered over it for four years and now it is placed before us for consideration and passing. So the most important factor for which this Bill was introduced was “to provide proper homes and families for abandoned, destitute and neglected children”. The Law Minister while introducing this Bill for consideration today also said that a child in an orphanage does not get the climate or the affection that he would get in a family. Therefore, for him to become a member of a family is very much better than his being an orphan. Therefore, he also sticks to this idea of providing affection, home and family to the three classes of children. These three classes are “abandoned, destitute and neglected”. So it should apply to children who are either being abandoned or are destitute or are

being neglected. I think the Law Minister and the Government would have seen these reasons in the country.

Sir, the law-framers when they framed the Constitution of India did see that the children need care. But I am sorry to say that till today child care is yet an unknown subject for the Government of India though in the directive principles of the Constitution so many things have been said. I take you to the different provisions in the Constitution about child care. Article 39 says:—

“(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that childhood and youth are protected against exploitation and against moral and material abandonment.”

Then article 41 says:—

“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Then article 42 says:—

“The State shall make provision for securing just and humane conditions of work and for maternity relief.”

Then article 45 says:—

“The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

These are the different provisions in our Constitution and I may say, without any fear of contradiction, that it is because of our not being able to touch even the fringe of these Directive Principles of State Policy that we have made the children of this country either destitutes or neglected ones. It is only the parents who are either legitimate or illegitimate. For a long time the notion has been running that it is only the children who are either legitimate or illegitimate but, according to me, no child is illegitimate. It could be that the parents are illegitimate, and every child, according to me, is born legitimately. Therefore, I say, it is the illegitimate parents who abandon their children.

Only the other day when I was travelling in a train, I found a couple strolling along the railway platform and when the train was about to leave the station it was found that they had left their child in a latrine there it was about four days old. The child was picked up later and handed over to the police. I do not know whether the child has gone destitute or sent to an orphanage or whether there would be any good person to take it in adoption.

Sir, somehow I do not see any rationale behind this Bill. In accordance with the Statement of Objects and Reasons, destitute or abandoned children who have been neglected could be adopted. But, Sir, who is going to adopt such children? Can they give a good appearance for a person to rush and adopt it? Unless an abandoned child is that tender and unless a couple feels that either of it has crossed the fertility period, it will not go in for adoption and nowhere has there been anxiety expressed by any person to go in for adoption of abandoned or destitute children. It may be rather the anxiety of the orphanage to pass on or brush off its responsibility of maintenance of a child. Therefore, I am very skeptical about such children being taken in adoption however much you may de-

sire them to be adopted and taken care of by other people and, therefore, there may not be many cases of adoption of such nature. So, the only thing that is very much possible if some institutions are registered or licensed under the proposed law which will be capable of arranging for adoptions is that they would be doing it either for mercenary or immoral purposes. In fact, we have seen many cases of such institutions engaging in such activities. The other thing that may happen is—I have a lurking fear in my mind and I am giving expression to it—that once you permit such institutions to be registered or licensed in the coming set-up, living in the situation where we are when one does not hesitate to adulterate food to the extent of killing his consuming brother there will definitely be innumerable cases of child-lifting, starting from the day of birth in the hospital. That is very much possible. I do not know what measures the Government will be able to take. Of course, the law as it is framed does not prevent any such thing. It is only after a child is taken in adoption, if there is cruel ill-treatment—it is, of course, defined in a particular way but the definition does not fit in with the words "cruel ill-treatment". I do not know how it will be interpreted by the courts when it goes before them, but one thing is certain. If there really is such a care of a child taken in adoption being cruelly ill-treated, then it can be taken up by the District Court and interim orders could be made. But then again, the law as it is framed does not say that the adoption will be declared invalid, nor does it say that the relationship between the child and the adoptive parents will cease to have its effect. Sir, as you know, according to our Hindu law, the child has to be maintained. And that is exactly why we had a law, to which I referred earlier, i.e. regarding the adoption and maintenance of children, of the year 1956. Now, by this particular Bill, we will be repealing those portions of that particular

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law which relate to the maintenance. Suppose, we have a general law of adoption for all persons living in this country—may be enabling, may be voluntary, may be anything—could you also not have such a general law for the maintenance of children? It is easy for the Hindus who will be bound to maintain those children after having taken them for adoption. Therefore, the point I want to make is that, if you have provided for the adoption of children, you should also provide for their proper maintenance and also provide against their ill-treatment. The most important matter which deserve consideration at the moment is not adoption because our social life is not related to adoption; it is related to many more things. We have in our Constitution, under article 44, provided to give to the citizens of India a uniform civil code. We have been failing in that. We have now and then been tinkering with this or that. We have now and then been having a law on marriage. We have now and then been having a law on adoption. But what is happening to the question of giving to the people of the country a uniform civil code? Why was it not done within two or three months or six years after 1972, though Mr. Gokhale had said that this was the first phase towards it. Why could he not frame it? Why could not the succeeding Government do it? What is the difficulty that comes in their way of framing such a law, about which we had mentioned as early as 1950 when we framed our Constitution.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): You have to finish now.

SHRI LAKSHMANA MAHAPATRO: Therefore, the main causes of abandonment, the main causes of neglect, the main causes of destitution being not solved, adoption by itself will not give the required climate that our learned Law Minister is very much anxious about. I want that

these things should first be attended to and they should have a primacy over adoption.

SHRI KHURSHED ALAM KHAN (Delhi): Mr. Vice-Chairman, Sir, I regret that on principle I cannot support the Bill in its present form. Really speaking, I would submit that our view-point should not be misunderstood; and it needs more consideration than it received during the deliberations of the Joint Select Committee. The plea that I am making to the hon. Minister and the friends opposite is that it is in the interest of the country, secularism and democracy, and that it has nothing to do with communalism. I must say that it is the usual thing on the other side to bring in Mrs. Indira Gandhi's name whatever may be the Bill, whatever may be the subject, whatever may be the topic for discussion. Well, if they get any satisfaction out of it, they should continue to do it. But, in my opinion, they must hold their breath. The Bill originated as a result of a specific problem in respect of the abandoned children; and, therefore, the Bill should have been confined to this specific problem only. But, what has been done is that they have enlarged the scope of the Bill in order to bring all the communities under this Bill, which, if enacted into a legislation, is causing us a lot of worry. I can also assure the hon. Minister in this House—and when I say it, I say it with some authority—that Mrs. Indira Gandhi had given us an assurance that surely this Bill will not affect the fundamental rights or the Muslim personal law in any way. We had taken this assurance on its face value. But, unfortunately, now somebody else is piloting the Bill and he is not going to honour this assurance. Instead of providing for specific contingencies, the scope of the Bill has been enlarged, as I said, to cover all the communities. Well, this is going to open the floodgate for the future and this is the first step, as they say, towards a common civil code. Well, I would not like to say anything about the

late Law Minister as there is a phrase in French which means speak nothing but good of the day. You cannot say what he had in mind, and so, these people who are interpreting this saying, I do not think, are doing full justice to the late Law Minister. Therefore, what the present Hon. Minister is expected to do is that he should respect the sentiments, he should respect the emotions and he should respect the pleading of those people who feel that this Bill is going to offend their personal law and is going to offend the usage and custom of their religious practice. Therefore, its scope should not be enlarged to bring in all the communities under this Bill.

It appears that in the Joint Select Committee, the view points of those who disagreed, were not given due consideration. While the Scheduled Tribes were actually exempted, no exemption was given to the Muslim minority community. Here I would like to point to the Hon. Minister that the official amendment that he proposes to introduce is also a sort of camouflaging the whole thing because they are cleverly going to delete clause 1(4), lines 8 to 12, regarding the Scheduled Tribes. They are saying that nothing contained in this Act shall affect the operation of the Hindu Adoptions and Maintenance Act or the operation, custom or usage relating to adoption. Now, if the custom and usage regarding adoption is found only among the Scheduled Tribes and not among the Muslims because among the Muslims adoption is not allowed by the Quranic law or the Muslim Personal Law, even this amendment is not going to meet the requirement is not going to meet our view point and is not going to satisfy the Muslim community, and, therefore, unless their view point is not met, I assure the Hon. Minister that this Bill is not going to go through.

Now, I would like to point out here that almost 99 per cent of the minority community witnesses who appeared before the Joint Select Committee, concluded that the scope of the

Bill should not be enlarged to bring in the Muslim community under the purview of this Bill, but it appears that they were not given sympathetic consideration, and nothing was done to exempt the Muslim community as desired by them.

The Muslim Personal Law, I must say, Mr. Hon. Minister, codifies a perfect way of life; it is based upon the Holy Quran, Sunnah and Ijma, and this being so, I do not think that we need any such act for our purposes. In fact, this kind of act is going to offend our personal law, and we cannot allow that our personal law should be interfered with in any way. This being so, the provisions of the Bill will offend the Quranic injunction. The institution of adoption is unknown to the Quranic Laws, and, therefore, this must be kept in view. Unless this is kept in view and necessary exemption is made, I am afraid, it is not going to satisfy this community in any circumstances. Sir, here, in support of my argument, I should like to quote Shri Mohammed Shafetullah, an authority on Muslim law. I quote:

"The Muslim law or the Shariat defined in its origin is unanimously accepted by the Muslim community throughout the globe to be the most sacred, the most universal, the most rational, the most equitable, the most natural, the most scientific, the most comprehensive, the most perfect and the simplest in its nature."

Sir, further I should like to quote from the same author.

"It is all-comprehensive in its nature and leaves out no single aspect of human life."

This being so, I do not think we need any Act of this type for the benefit of the minority communities, for the Muslims particularly. Their own laws, their own Koranic injunctions are there to guide them and to provide a perfect way of life which is

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most simple, most scientific, most rational.

Sir, as other hon. Members have also stated, it may not be out of place to mention here that repeated assurances have been given that no changes in the Muslim Personal Law would be made unless the Muslims want it themselves. In this case, it has been proved that they do not want any change or that they do not want the scope of this Bill to be enlarged in such a way as to include the minority community. Sir, it is stated that something happened in other countries. Well, are you going to be guided by what is happening in other countries? Are you going to look to those countries as to what is happening there? Then I am afraid it is not a correct policy and it is not going to be accepted by us as we look to our own country. We are born in this country, we live in this country and we want to be of this country and we have to be of this country. Let it be clearly understood that adoption is prohibited by the Holy Koran and is contrary to Islamic Law and practice. This being so, I do not understand why the Government is insisting on including the minority community within the scope of this Bill. I think it is high time that the hon. Minister realised the mistake that they are doing and realised the serious damage that they are going to do to the Muslim community if they are going to enlarge the scope of this Bill to include all the communities.

Adoption will involve basic changes in the Personal Law of the Muslims, especially in the well-defined law of inheritance. We do not want any change in the law of inheritance. It is a well-defined law which provides a very generous and equitable share for the various relations and dependents of a person and, therefore, any interference in this regard will result in confusion and will result in a sort of direct interference in the religious affairs and the Personal Law of the Muslim community.

Sir, this will be contrary to the constitutional safeguards provided for the purpose. Therefore, I would appeal to the hon. Minister: if you have no consideration for anything else at least you must have consideration for the provisions enshrined in our Constitution and you should see that we got the protection of those provisions which were meant for providing protection to the minority communities, their special interests, to their special requirements.

Sir, as I said earlier, Islam is a complete code of life. It embraces within its fold the entire problems of life and provides suitable solutions in all matters, widely ranging from social to domestic affairs. And if anybody has got any doubt about it, surely I can provide the necessary literature to him. Let them go through that literature and they will be convinced that what is said here is really most appropriate and is a gospel truth which cannot be denied by anybody, which cannot be objected to by anybody.

Now, India, as I said, is a vast country of different religions and communities, and unless we learn to respect each other's faiths and beliefs and sentiments, we shall fail to achieve the objective of a united nation.

We are very keen that we should be part of this country in all respects, but our separate identity must remain intact. We do not want any infringement of that identity; we do not want to lose our identity. We all want to be part of the national life, part of the national stream, but at the same time please rest assured that if we have any suspicion, that is well founded; if we have any doubt, that is well founded, for the simple reason that somebody comes and tells us that there will be no separate culture, there will be no separate language, there should be no separate name, that all Indians must have one culture, all Indians must have one name and all Indians must have one of everything. How can we think of that? Composite culture is not of one country only; it is the composite cul-

various communities and we all respect it and we all honour it and therefore, we would like to retain such things, because these things are essential for us, these things are important for us, these things are basic for us.

Here I would like to mention that whatever may be said or whatever may be done, one thing must be kept in view—I am particularly addressing this to the honourable Minister on the other side—that we are in a minority, we are a minority community; we are a minority community; we admit that we are a minority community. But please note we are minority community but we are not such an insignificant minority community that you can ignore us completely. And take it from me that unless you take our consent, unless you take our agreement, in all such matters, in all such decisions, in all such policy matters which are of national importance, these Acts and decisions will not be everlasting. And we do not want anything, done any decision, any policy decision, taken, which is not everlasting in our country because we want to be very much part of the country, we want to make our full contribution to the country and we want to be involved in the country. Unless you involve us, unless you can create a full sense of involvement in us, there will be no everlasting decisions and everlasting policy matters. Therefore, let us not do anything or act in any manner which will create suspicion or doubt in the minds of the people, particularly of the minority communities, particularly in respect of their personal law or religious matters. This is a matter which needs special consideration and I hope the honourable Minister will give special consideration to these matters because these matters are of very grave and serious consequences if not considered in the right perspective, in the right manner, at the right time, in the right way. Please do not get away with the idea that the Muslim society is unhelpful in respect of abandoned or destitute children. This

is far from true. If you look at the Muslim society, the structure of the Muslim society, the Muslim personal law, the Muslim religious laws, you will find that we have ways and means of helping such destitute children, such abandoned children, by way of *zokat*, by way of *khairat* for which there is no provision in other religions, as far as I know. Muslims are required to make provision for this provision is especially for helping destitute people, destitute children and for all such matters in which we have to provide assistance and succour to the people who are needy. The Constitution of India, as far as I know—the honourable Minister knows better than I do—adequately protects the interests of the minority communities, it provides constitutional safeguards and fundamental rights for the minority communities. Thus, any move to enlarge the scope to cover the minorities will surely and definitely offend Articles 25, 26 and 29 of the Constitution.

Besides, a number of safeguards have been given to us at the national level. I am sure you are not going to discard or give up those safeguards which have already been given to us. With these words, I would once again appeal to the good sense of the hon. Minister and his party to consider our request and plea to incorporate such amendments in the Bill which will give us satisfaction and which will exempt the minority community from being brought under the scope of this Bill. Unless this is done, I assure you that this will not be correct on your part as this is going to create suspicion in the minds of the Muslim community that this is the beginning of the end of their personal law. Several hon. Members from this side and that side have said that they are not going to tolerate this under any circumstances because for us the personal law is a very important matter. Assurances have been given time and again that no interference will be allowed in the personal law of the Muslim community. With these few words, I would once again inform the hon. Minister

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that the amendment that he proposes to put forward is not going to meet the requirement. When there is still time left, please consider our pleas sympathetically and then come forward with adequate and proper amendments which will meet our requirements and which will exempt the Muslim community from the operation of this Bill. Otherwise it will not be possible for us to support this Bill and without our support it will be difficult for you to push through this Bill.

SHRI SYED NIZAM-UD-DIN: Mr. Vice-Chairman, all the hon. Members who have spoken on this Bill are opposed to it both in letter and spirit, except Shri Shahi who also did not speak on the merits of the Bill. He was going into the politics of this measure when he referred to the origin of the Bill, the supporters of the Bill and the members of the Committee. That was not relevant for the purposes of consideration of this measure.

As for the Law Minister, he emphasized one point, namely, the welfare of the children of this country. I really wonder whether the Law Minister is very serious about the welfare of the children in this country. The Law Minister knows, we all now and you also know that in this country there are millions and millions of children who are not only ill-fed, but also under fed; not only under-fed but also under nourished; they are not only under-nourished, but are naked. They have no shelter and they have no food. I do not know how passing of this Bill is going to help millions and millions of these children in our country. In this country, more than 70 per cent of our people live below the poverty line. The Law Minister is not worried about this bulk of people who do not have two square meals to eat, who do not have sufficient clothes to hide their body and who do not have any shelter or roof over their heads. The Law Minister is not worried about them. The Law Minister is not worried about those children who have no shelter to

live in or the millions of the children who have no educational facilities in this country. But he is going to pass this law thinking that this is a panacea for all the ills of this country and he thinks that there after every child will get what he wants. This is not the right consideration. You know better that so far as adoption is concerned, there can be three or four considerations.

First, in this country, it is a religious consideration. Otherwise, the consideration can be economic, it can be inheritance, it can be financial or it can be social. But, as far as the origin of adoption as such in this country is concerned, it is mostly religious because, in this country, an issueless person must have some male child just to perform the religious practices when he is not in this world so that he gets *nirvana*, so that he goes to *swarga*, because of the religious rites which are to be performed by his male child. If he has no male child, he has then to adopt somebody who will perform these religious practices. Therefore, to say that this is a progressive step is only to confuse the issue. There could have been hundreds and hundreds of pieces of progressive legislation if we were really serious about the welfare of the children in this country. It is not that way. It is basic in the religion of this country. Therefore, to say that it is a progressive step is only to confuse the public mind. So, I am not in agreement with the Law Minister and I humbly disagree with the Law Minister here and I would say, that this is not for that purpose.

The second consideration can be this: If a person has no male issue—mostly in agricultural classes this happens—he can adopt a child who can perform certain functions and who can help him. Here again that is not the consideration. Then, the third consideration can be this: I have no son and I do not want my property to be inherited by those people who are the legal heirs and I want to deprive them

of their inheritance and so, I adopt somebody from another family so that those who are the legal and proper heirs are not able to get the property and I want that the property should get concentrated in certain hand and should not get distributed. That can be one consideration. Therefore, to say that this is a welfare measure is not correct and I do not agree, Sir, that this has that as the object.

Then, Sir, as far as the question of adoption as such is concerned. You know it better: How many people in this country are there who adopt really? What is the percentage of those people who adopt really? Again, how does it help in the maintenance of the children? I know it for certain that if a poor man adopts a child, it does not help the child in his education. How does it help him in his health? How does it help him in his welfare? How does it help him in his economic condition? It does not help the child if the person who adopts is a poor man. So, that is also not a correct interpretation of the law. Then, Sir, for the first time, I have come across such a useless piece of legislation, where in such an exercise has been done which is an exercise in futility. We already had an Act because the Act was for the majority of the people in the country, the Hindu majority in the country. It is the religious consideration for a person and this to adopt somebody and so, we had one Act. It was passed in 1956 and it is the Hindu Adoption and Maintenance Act. Even now, if you compare this with that Act, you will see that most of the sections of this Bill are equivalent to the provisions in the Hindu Adoption and Maintenance Act. Therefore, there was no need for passing this Act at all because the majority in the country was covered by that law, by that Act, and that majority definitely needed some law for adoption and that law was there. Therefore, I say that it is a useless piece of legislation in that way also. Sir, the honourable Minister has referred to some organisations. But he did not name them and

he did not mention which were the organisations which have brought so much pressure for passing such a law in this country. How many people came to the Government saying that such a law should be passed? Sir, the Adoption of Children Bill, 1972, was referred to a Select Committee also and that Committee moved throughout the country for about three or four years and they took evidence and they ascertained the public opinion on this matter. If we go through the evidence recorded by the Committee, we will find that even then this Bill was not appreciated by any section of people in this country. Even those who are in favour of adoption said that the Hindu Adoption and Maintenance Act was sufficient for this purpose; therefore, there was no need of the new Act. And as was mentioned by some hon. Members, the Muslims in general were opposed to this Bill, because this institution of adoption is alien to the Muslim law. That was their main argument. Therefore, they said, no law should be passed which covers the Muslim community in this country. Sir, if a community has no institution as such, why should a law be passed which would cover them also? Why should not that community be exempted? I do not understand. There can be many arguments. Can there be any argument for this purpose at least? I would like to know from the hon. Minister. I say that 99 per cent of those people who appeared before the Committee—even 100 per cent, I am sure—in this country, are not in favour of passing this Bill. They do not want this Bill. They want exemption. I can say without fear of contradiction that hundered per cent Muslims in this country are opposed to it. To whatever section of Muslims they may belong—whether Shi'as or Sunis—and to whatever school of thought in Islam they are, they are hundered per cent against this Bill. Therefore, in a democratic set-up no Act should be passed while the majority of the people are against that Act... (*Time bell rings*).

[Shri Syed Nizam-ud-Din]

Sir, I have also to talk about the merits of the Bill. This was about the amendment I have given.

There was a reference made to some man by Mr. Sahi? I want to know, who is he? He appeared before the Committee. I have gone through the record of evidence. This single man has nothing to do with Islamic law. Maybe, like me, he can claim to be very learned on Islamic thought. But he is not that. He is Dr. Imtiaz Ahmed of Jawaharlal Nehru University you know yourself what this institution is composed of, and what type of people are there. With all respect for this gentleman, I would say that he is not an authority on Islamic law, because the people who are authority on Islam, who appeared before the Committee were unanimous in one thing that it is against the basic principles of Islamic law. None of them would differ on that. There were only three Muslims who were of the opinion that this law should be passed. Sir, I have gone through the records of the Committee. To the question put to Dr. Imtiaz Ahmed whether this is against the Islamic law or not, the answer from him was: Strictly speaking, it is against the pronouncements of Islam, but for other reasons he wants it. Even Dr. Imtiaz was categorical in one thing that it is against the pronouncements of Islam of the other two persons who appeared about one person I know. When he was asked "How do you say that it is not against Islam?" he said, "It is my interpretation." To the second question put to him, he replied that traditional

interpretation is not this and that the present-day 'Ulemas' and Muslim jurists do I not agree with me, but this is my interpretation. But even he admitted that Islam is indifferent to adoption. I do not agree with people about whom a mention has been made that there are great scholars of Islam and their opinion is Islamic. I am making a reference to those people also, what they finally said. 5 P.M.

One of them was clear in saying that it is against the basic principles of the Quran. The other said that it was his interpretation that Islam is indifferent to the institution of adoption.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Will the hon. Member finish in another five minutes?

SHRI SYED NIZAM-UD-DIN: We can take it up tomorrow.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): If you can finish in five minutes, then finish today.

SHRI SYED NIZAM-UD-DIN: I have to talk about the provisions of the Bill.

THE VICE-CHAIRMAN (SHRI ARVIND GENESH KULKARNI): The House stands adjourned till 11 A. M. tomorrow.

The House then adjourned at one minute past five of the clock till eleven of the clock on Wednesday, the 19th July, 1978.