

[Shri Syed Ahmad.]
cept on one point namely that he is changing the Muslim law by formulating such a proposition. According to the Muslim law, the idea is to carry out the direction of the wakf unless it is repugnant to the policy of law. If it is repugnant to Muslim law, do not carry it out. But here you are changing Muslim law and this Bill does not deal with any change in Muslim law but only with the administration and supervision of wakfs. That is my first objection.

Secondly, it is mischievous because if you read 36B you find it stated that if the property has been transferred in contravention of 36-A then the Board can ask the Collector to put the Board in possession of the property. I have read criminal jurisprudence. I have read Hindu law and other laws, but I have never come across such a summary procedure in law. There is section 9 of the Special Relief Act in which you have some proceedings. There is section 145 of the Criminal Procedure Code and in the different States also there are revenue laws dealing with restitution. Even in the D.R. there is no such summary provision in which you can ask the Collector to do it. Because somebody has sold wakf property, therefore, the Collector, it is said, should go and use force—that is the word used by my hon. friend—to put the Board in possession of that property. What will be the consequence?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Shri Syed Ahmad, you will please continue a little later. Mr. Ramaswamy has to make a statement.

1 P.M.

STATEMENT RE PRODUCTION AND PRICE CONTROL OF VARIETIES OF CLOTH OF MASS PRODUCTION

THE DEPUTY MINISTER IN THE MINISTRY OF COMMERCE (SHRI S. V. RAMASWAMY): Sir, on behalf of Shri Manubhai Shah, I beg to lay on

the Table a statement regarding the production and price control of varieties of cloth of mass production. [See Appendix XLIX, Annexure No. 46A]

THE WAKF (AMENDMENT) BILL, 1964—continued

SHRI SYED AHMAD: Mr. Chairman, Sir, I was submitting to this House that when we bring in special legislation affecting the personal law of

AN HON. MEMBER: He is the Vice-Chairman, not Mr. Chairman.

SHRI SYED AHMAD: I see him only as the Chairman. If he is in the Chair, he is the Chairman.

SHRI FARIDUL HAQ ANSARI: On a point of order, Sir. Why not my hon. friend speak through you? Why does he speak straight with him?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): I wish every hon. Member does that.

SHRI SYED AHMAD: I shall speak through you to anybody provided he permits me.

SHRI NAFISUL HASAN (Uttar Pradesh): Not through anybody but only through the Chair.

SHRI SYED AHMAD: I am speaking through you, Sir, and so I want you to listen.

My submission was that we come to this House with a special law saying that the personal law of the Muslims ought to be protected. This House contains Members belonging to all the communities and religions and when we want that a religious institution ought to be protected, we ought to come with something concrete, something comprehensible and something reasonable. If a Hindu is dispossessed of his house, he has to go to a court of law but if the house of a Mohammadan is taken away, if he is dispossessed, he goes to the Collector

and gets restitution. This would be very undesirable and discriminatory. It is discriminatory in this sense that if a property belonging to a wakf is sold and if the Board is to be put in possession of the house then the people responsible for the administration of the wakf, the Wakf or the Board need not go to any court of law.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Mr. Syed Ahmad, I hope you have made your points clear.

SHRI SYED AHMAD: No, Sir. He has not understood and, therefore, I am saying.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): By your lengthy speech, you will not make him understand.

SHRI SYED AHMAD: One word more, Sir. The provision here speaks only of immovable property. What about other movable property such as jewels, shares, scrips, postal certificates and so on? These are freely sold in the markets and can be sold without any restrictions. He is also talking only about the wakfs that are registered. He has not said anything about the Wakf Al-ul-Aulad which cannot be registered under the present Act. My friend knows that this kind of a wakf can never be registered under the Act. I want his protection in this matter and I want him to see that this type of wakfs are also registered. At present they are not registered. If a mutwali sells the property then there is no remedy open. Moreover, this provision is not given retrospective effect. It would appear from 36A that in future if property is sold a certain procedure can be followed but if property had been sold in the past nothing can be done; and nothing is said about such eventualities. My submission is that before formulating these two very controversial propositions of law he ought to have seen to it that some good Draftsmen were with him. Even now, it is not too late. Rather than allow this, I should say with very great respect to him—he is a big mah, there is no doubt 730 RS—6.

about it, a 'great educationist—crude piece of legislation which is an insult

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): I think Mr. Syed Ahmad you have made your case. Let others put their case also.

SHRI SYED AHMAD: For the first time in two years I am speaking in this House today. Let me assure him that I am not saying that the wakfs should not be properly administered. They ought to be properly administered. They should not be done in an inconsistent manner.

شری فریدالحق انصاری : مسٹر

وائس چیمبرمین - یہ وقف املاہ ملت
ہل جو آپ کے سامنے پھنس ہے اس کے
مذہبی مجھے یہ کہنے میں بالکل
شک و شبہ نہیں ہے کہ پرانی جو
باتیں تمہیں پرانے جو حالات تھے ان
کے اوپر اس بل کے ذریعہ سے ضرور
ترقی ہوئی ہے اور اس وجہ سے میں
آنریبل ممبر کو مبارک باد دیتا
ہوں کہ وہ یہ املاہ ملت لائے - وقت
کی ضرورت یہ تھی کہ ہمارے پرانے
قانون مسلمانوں کے جو ہوں چاہے
وہ پرسنل ہوں چاہے وہ عوام کے ہوں
ان میں تبدیلی ہونی چاہئے - مگر
اس وقت آپ معزز دوست کی تقریر
سننے کے بعد مجھے تو ایسا اندازہ
ہوا کہ ہم ہندوستان کے مسلمان جو
ہیں کوئی ایسا اقدام پسند نہیں
کرتے جو ترقی پسند ہے - میں یہاں
یاد دلاؤں کہ پرسنل لاز کے متعلق
ایک مشاورتی کمیٹی ہوئی تھی جس

(شری فریدالحق انصاری)

کہتی ہیں یہ بحث تھی کہ آیا اس وقت ہندوستان میں ایسے حالات ہیں یا نہیں جن کی رو سے مسلمانوں کے پرسنل لا میں کچھ تبدیلی ہو کچھ اصلاحات یا ترمیم ہو اور معاف کہجئے گا کہ اس کا میرے دماغ پر تو اتنا برا اثر پڑا کہ کوئی ٹھکانہ نہیں - وہاں زیادہ تر لوگ جو تھے ان کی بحث ان کی دہلیوں سے یہ پتہ چلا کہ وہ کوئی ایسا اقدام پسند نہیں کرتے جو کہ آگے کا ہو جس سے کہ ہمارے قانون میں جو کچھ ہیں وہ دور ہوں - ایک بزرگ نے جب ان سے کہا کہ مسلمانوں کے پرسنل لا کے متعلق کم سے کم یہی کرنے دیجئے کہ پتہ چلایا جائے کہ آیا اس میں کسی ترمیم کی ضرورت ہے یا نہیں اور کورسٹکٹ وہ بہترین ذریعہ ہے اس کے پتہ چلانے کا - تو انہوں نے ایک دوسرا طریقہ نکالا اس بات کو روکنے کا وہ انہوں نے کہا کہ میں ایک لاکھ روپے اپنے پاس سے جمع کروں گا اس کی ریسرچ کے لئے کہ یا ہندوستان میں مسلمانوں کے پرسنل لا میں کوئی ترمیم کی ضرورت ہے یا نہیں اور میرا خیال ہے کہ جب سے وہ بڑے عہدہ پر پہنچے ہیں تب سے شاید ایک پچیس بھی جمع نہیں کیا ہے -

شری ابراہیم سلیمان سہت : جب

ایک شریعت کے قانون قرآن اور حدیث پر ہے تب تک تبدیلی کی کوئی گنجائش نہیں ہے -

شری فریدالحق انصاری : میں نے

یہ نہیں کہا - ایسا کچھ میں نے نہیں کہا -

उपसभाध्यक्ष (श्री महावीर प्रसाद भगिव) : असारी साहब, जरा मेरी तरफ देख कर बोलिये ।

SHRI SYED AHMAD: He is talking directly, Sir. He should talk through you.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): That is what I am telling him.

شری فریدالحق انصاری : میں یہ

نہیں کہتا کہ مسلمانوں کا قانون جو ہے وہ کرسچن لا کے مطابق ترمیم ہو، میں یہ نہیں کہتا کہ مسلمانوں کا قانون ہندو لا کے مطابق ترمیم ہو بلکہ میں یہ چاہتا ہوں کہ مسلمانوں کے قانون میں اسلام اصول کی بنیاد پر ترمیم ہو -

شری ابراہیم سلیمان سہت :

ہمارے شریعت کے جو قانون ہیں انکی بنیاد قرآن اور حدیث پر ہے جسے بدلا نہیں جاسکتا تو پھر کسے ترمیم ہوگی ؟

شری فریدالحق انصاری : میں

ایسی دلیل کے آخری حصہ پر نہیں کہتا - میں یہ کہتا جا رہا تھا کہ

ہندوستان کے علاوہ اور بھی اسلامی ممالک ہیں جہاں کہ ان قانونوں میں ترمیم ہوئی ہے - لیکن بدقسمتی سے ہمارے ملک کے مسلمان یہ سمجھتے ہیں کہ کسی اور جگہ کے مسلمان ان ممالک کے مسلمان جہاں ترمیم ہوئی ہے وہ مسلمان نہیں ہیں ہم ہی مسلمان ہیں - گویا مسلمان ہونے کا تہہ کہ ہم ہندوستان کے مسلمانوں نے لے رکھا ہے جو اسلام میں اور قرآن میں بالکل منع ہے -

شرعی ابراہیم سلیمان سہت : لیکن دوسرے اسلامی ممالک ہمارے لئے نمونہ نہیں ہو سکتے - ہمارا نمونہ تو قرآن اور حدیث ہو سکتا ہے -

پंडित श्याम सुन्दर नारायण तन्खा (उत्तर प्रदेश) : क्या हिन्दुस्तान के मुसलमानों ने ठेका लिया है या पाकिस्तान के मुसलमानों ने ?

उपसभाध्यक्ष (श्री महावीर प्रसाद भार्गव) : आपन में बातचीत नहीं हो सकती है।

شرعی فرید الحق انصاری : بہر حال میں کہہ رہا تھا کہ میں اس بل کو ضرورت کر رہا ہوں اس وجہ سے نہیں کہ بعض اس میں اصلاحیہت آ گیا ہے بلکہ اس وجہ سے کہ میرے ناقص خیال کے مطابق جو بھی قدم اس اصلاحیہت میں اٹھایا گیا ہے وہ پروگریسو اسٹیپ ہے - اب تک یہ

تھا کہ وقف کے ماتحتی میں وقف سے فائدہ صرف مسلمان اٹھا سکتا تھا اب میرے خیال - میں کوئی اس میں شک نہیں کرے گا کہ اسلام نے بہانگ دھل یہ کہا کہ ہم ہر انسان کی خدمت چاہتے ہیں ہر انسان کو آرام پہنچانا چاہتے ہیں - ہر انسان کے دکھ درد کو ختم کرنا چاہتے ہیں - اس لئے اس وقت بل کے کلاز ۲ میں جو کچھ کہا گیا ہے اس کی ماتحتی میں ہر شخص فائدہ اٹھا سکتا ہے اور اس کی خدمت کی جا سکتی ہے - اور دوسرے . . .

श्री सैयद अहमद : भूल गए ?

شرعی فرید الحق انصاری : جی نہیں بھولا - ابھی تک تو نہیں بھولا ہوں - شاید اس گورنمنٹ میں آجوں تو بھول جاؤں - دوسرے اب تک یہ رہا ہے کہ وقف کے مقاصد اکر ختم ہو جائیں تو پھر وہ وقف ختم ہو جاتا ہے - اس ریل کے ذریعہ سے یہ بتایا گیا ہے - کلاز ۷ کو دیکھئے کہ اگر وقف ختم ہو جائے - جو مقصد اس میں لکھا ہوا ہے اس کے علاوہ اور بھی جو بہتر کام ہو سکتے ہیں اور بھی جو مذہبی کام اس قسم کے ہو - سکتے ہیں وہ بھی کئے جا سکتے ہیں دوسرے یہ ہے کہ جو کلاز ۲۱ کا مطلب ہے کہ اب تک کہ وقف کے اندر صرف وہ جائدادیں اور وہ چیزیں آتی ہیں

[شری فریدالحق انصاری]

جو کہ مسلمان نے وقف کی نہیں - اس بل کے ذریعہ سے وہ بھی وقف ہے جو نان مسلم نے کیا ہو - اور میں آپ کی توجہ وائس چیمبر میں صاحب - میڈول کرنا چاہوں گا کہ ہندوستان میں اب بھی بہت سے ایسے وقف ہیں جو کہ نان مسلم نے کئے ہیں - مقبروں کی حفاظت کے لئے مساجد کی تعمیر کے لئے ان کی دیکھ بھال کے لئے اور جو بھی درگاہ ہیں ان کے اخراجات کے لئے - اور ایسے وقف زیادہ تر راجستھان میں ہیں جو کہ راجستھان کے ہندو راجاؤں نے کئے اور ایسے کوئی 10 ہزار وقف ہیں - تو اس امپلمنٹ بل کے ذریعہ سے وہ 10 ہزار وقف بھی وقف کی قیید میں ہوں گئے ہیں - یہ میرے خیال میں بہت ہی پروگریسو اسٹیپ ہے -

تیسری چیز جو سب سے بڑا فائدہ مسلمانوں کو اس کے ذریعہ پہنچتا ہے کہ ہندوستان میں ہنگوں میں جو وقف کا رویہ ہے اس کا جو منافع ہے وہ اب تک ہوا رہتا تھا یا اس کو غیر اسلامی معاملوں میں برتن گورنمنٹ خرچ کیا کرتی تھی - اس وقف بل کے ذریعہ سے اس منافع کا فائدہ وقف کے لئے استعمال کیا جا سکتا ہے یہ سب سے بڑا قدم اور سب سے بڑی پروگریسو بات اس میں ہے -

اس کے ساتھ ساتھ جہاں میں اس بل کو لانے کے لئے سرکار کی تعریف کرتا ہوں وہاں میں یہ بات دریافت کرنا چاہتا ہوں کہ آخر کار آج کل ہندوستان میں ہم روزانہ جتنے ہیں - ہندوستان میں انٹیگریشن کا ایک زبردست سوال ہے اور بڑا زبردست پروپگنڈا اس کا ہوتا ہے کہ ہم انٹیگریشن چاہتے ہیں تو جب ہم انٹیگریشن چاہتے ہیں اور تمام کمیونٹیز کو ایک جگہ لانا چاہتے ہیں تو پھر ہم کہوں نہ اس بات کی کوشش کریں کہ مسلمانوں میں جو دو فرقہ ہو گئے ہیں شعی اور سنی ان کو بھی ایک جگہ کہوں نہ لائیں - اس کے علاوہ میں یہ لکھا ہے -

"Notwithstanding anything contained in sub-section (1), if the Shia wakfs in any State constitute in number more than fifteen per cent. of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent. of the total income.....the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni Wakfs and for Shia Wakfs. . . ."

یہ دونوں سبھی سبھی جدا-جدا کہوں ہیں - ایک کہوں نہ بورڈ بنایا جائے - اور میری اطلاع ہے - ایک دوست نے مجھے بتایا ہے کہ مہسور میں ایسا ہوا ہے - دوسرے اس کے شیڈولڈ کلاسز میں یہ لکھا ہے -

"Persons having knowledge of Muslim law and representing, in the case of a Sunni Board of Wakfs, associations such as State Jamiat-ul-Ulama-i-Hind (whether such persons are Hanafi, Ahle-Hadis or Shafai) and in the case of a Shia Board of Wakfs, associations such as State Shia Conference;"

میں یہ پتہ چلانا چاہتا ہوں کہ آخر کار یہاں جمعیتہ العلماء ہند کو ہی کہوں شرف بخشا گیا ہمارے سامنے اور یہی کئی "جماعتیں" ہیں - جماعت اسلامی ندوۃ میں ایک جماعت ہے انہوں بھی کیوں نہیں دکھا گیا ان کے بھی ممبر ہو سکتے ہیں یہ صرف جمعیتہ العلماء ہند کو ہی کہوں دکھا گیا ہے - جہاں تک مدنی اطلاع ہے یہ اس وجہ سے دکھا گیا کہ یہ سمجھا جاتا ہے کہ جمعیتہ العلماء سیاسی جماعت نہیں ہے میرے خیال میں یہ بالکل غلط ہے - ۱۹۵۲ء کا الیکشن ۱۹۵۷ء کا الیکشن اور ۱۹۶۲ء کا جنرل الیکشن ہوا - ان تینوں میں پتہ چلے گا کہ جمعیتہ جیسا کہتو ہے - محض ایک کلچرل سوشل آرگنائزیشن ہے - میں کہتا ہوں کہ پولیٹیکل آرگنائزیشن بھی ہے - اس لئے کہ انہوں نے کھلے پن ان تینوں الیکشنوں میں حصہ لیا - اس لئے میں چاہوں گا کہ انہیں منسٹر صاحب اس پر روشنی ڈالیں گے کہ آخر کار انہوں کو یہ شرف کہوں بخشا گیا دوسروں کو کہوں نہیں بخشا گیا ؟

ان باتوں کے ساتھ میں اس بل کو سپور کرتا ہوں -

†[बी करीबुल हक धन्यवारी : मिस्टर वाइस चैंयरमैन, यह वक्फ एमेंडमेंट बिल जो कि आपके सामने पेश है उसके मुत्तल्लिक मुझे यह कहने में बिल्कुल शको-शुबहा नहीं है कि पुरानी जो बातें थीं पुराने जो हालात थे उन के ऊपर इस बिल के जरिए मे जरूर तरक्की हुई है और इस वजह से मैं आनरेबिल मिनिस्टर का मुबारकबाद देता हूँ कि वह यह अमेंडमेंट लाए । वक्त की जरूरत यह थी कि हमारे पुराने कानून मुसलमानों के जो हैं चाहे वह पर्सनल हों, चाहे वह अब्बाम के हों उनमें तब्दीली होनी चाहिए । मगर इस वक्त अपने मुवजिज दोस्त की तकरीर सुनने के बाद मुझे तो ऐसा अन्दाजा हुआ कि हम हिन्दुस्तान के मुसलमान जो हैं कोई ऐसा इकदाम पसन्द नहीं करते जो कि तरक्कीपसन्द है । मैं यहाँ याद दिलाऊँ कि पर्सनल लाँज के मुत्तल्लिक एक मुशावरती कमेटी हुई थी जिस कमेटी में यह बहस थी कि आया इस वक्त हिन्दुस्तान में ऐसे हालात हैं या नहीं जिनकी रू से मुसलमानों के पर्सनल लाँ में कुछ तब्दीली हो, कुछ एमेंडमेंट या तरमीम हो और माफ कीजिएगा कि इसका मेरे दिमाग पर तो इतना बुरा असर पड़ा कि कोई ठिकाना नहीं । वहाँ ज्यादातर लोग जो थे उनकी बहस, उनकी दलीलों से यह पता चला कि वह कोई ऐसा इकदाम पसन्द नहीं करते जो कि आगे का हो, जिससे कि हमारे कानून में जो कमियाँ हैं वह दूर हों । एक बुजुर्ग ने जब उनसे कहा गया कि मुसलमानों के पर्सनल ला के मुत्तल्लिक कम से कम यही करने दीजिए कि पता चलाया जाए कि आया इसमें किसी तरमीम की जरूरत है या नहीं और गवर्नमेंट वो बहतरीन जरिया है इसके पता चलाने का, तो उन्होंने एक दूसरा

तरीका निकाला इस बात को रोकने का और उन्होंने कहा कि मैं एक लाख रुपया अपने पास से जमा करूंगा इसकी रिसर्च के लिए कि आया हिन्दुस्तान में मुसलमानों के पर्सनल ला में कोई तरमीम की जरूरत है या नहीं। और मेरा ख्याल है कि जब से वह बड़े ओहदे पर पहुंचे हैं तब से शायद एक पैसा भी जमा नहीं किया है।

श्री इब्राहीम सुलेमान सेट : जब एक शरियत के कानून कुरान और हदीस पर हैं तब तक तब्दीली की कोई गुजाइश नहीं है।

श्री फरीदुल हक अन्सारी : मैंने यह नहीं कहा। ऐसा कुछ मैंने नहीं कहा।

उपसभाध्यक्ष (श्री महावीर प्रसाद भार्गव) : अन्सारी साहब, जरा मेरी तरफ देख कर बोलिए।

SHRI SYED AHMAD: He is talking directly, Sir. He should talk through you.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): That is what I am telling him.

श्री फरीदुल हक अन्सारी : मैं यह नहीं कहता कि मुसलमानों का कानून जो है वह क्रिश्चियन लॉ के मुताबिक तरमीम हो, मैं यह नहीं कहता कि मुसलमानों का कानून हिन्दु ला के मुताबिक तरमीम हो बल्कि मैं यह चाहता हूं कि मुसलमानों के कानून में इस्लामिया उसूल की बुनियाद पर तरमीम हो।

श्री इब्राहीम सुलेमान सेट : हमारे शरियत के जो कानून हैं उनकी बुनियाद कुरान और हदीस पर है जिसको बदला नहीं जा सकता तो फिर कैसे तरमीम होगी ?

श्री फरीदुल हक अन्सारी : मैं अपनी दलील के आखिरी हिस्से पर नहीं पहुंचा। मैं यह कहने जा रहा था कि हिन्दुस्तान के अलावा और भी इस्लामी मुमालक हैं जहां कि इन कानूनों में तरमीम हुई है। लेकिन बदकिस्मती से हमारे मुल्क के मुसलमान यह समझते हैं कि किसी और जगह के मुसलमान, इन मुमालक के मुसलमान जहां तरमीम हुई है वह मुसलमान नहीं हैं हम ही मुसलमान हैं। गोया मुसलमान होने का ठका हम हिन्दुस्तान के मुसलमानों ने ले रखा है जो इस्लाम में और कुरान में बिल्कुल मना है।

श्री इब्राहीम सुलेमान सेट : लेकिन दूसरे इस्लामी मुमालिक हमारे लिये नमूना नहीं हो सकते। हमारा नमूना तो कुरान और हदीस हो सकता है।

पंडित श्याम सुन्दर नारायण तन्खा (उत्तर प्रदेश) : क्या हिन्दुस्तान के मुसलमानों ने ठेका लिया है या पाकिस्तान के मुसलमानों ने ?

उपसभाध्यक्ष (श्री महावीर प्रसाद भार्गव) : आपमें बातचीत नहीं हो सकती है।

श्री फरीदुल हक अन्सारी : बहरहाल मैं कह रहा था कि मैं इस बिल को सपोर्ट कर रहा हूं, इस वजह से नहीं कि महज इस में एमेंडमेंट आ गया है बल्कि इस वजह से कि मेरे नाकिस ख्याल के मुताबिक जो भी कदम इस एमेंडमेंट में उठाया गया है वह प्रोग्रेसिव स्टेप है। अब तक यह था कि वक्फ की मातहत में वक्फ से फायदा सिर्फ मुसलमान उठा सकता था; अब मेरे ख्याल में कोई इसमें शक नहीं करेगा कि इस्लाम ने बहाग धल यह कहा कि हम हर इन्सान की खिदमत चाहते हैं, हर इन्सान को आराम पहुंचाना चाहते हैं, हर इन्सान के दुख-दर्द को खत्म करना चाहते हैं। इस-

लिए इस वक्त बिल के क्लॉज (२) में जो कुछ कहा गया है उसकी मातहतों में हर शख्स फायदा उठा सकता है और उसकी खिदमत की जा सकती है और दूसरे

श्री संयद ग्रहमब भूल गए ?

श्री फरीदूल हक अंसारी जा नहीं भूला, अभी तक तो नहीं भूला हूँ। शायद इस गवर्नमेंट में आ जाऊँ तो भूल जाऊँ। दूसरे, अब तक यह रहा है कि वक्फ के मकासिद अगर खत्म हो जाए तो फिर वह वक्फ खत्म हो जाता है। इस बिल के जरिए से यह बताया गया है—क्लॉज ७ को देखिए कि अगर वक्फ खत्म हो जाए जो मकसद इसमें लिखा हुआ है उसके अलावा और भी जो बहतर काम हो सकते हैं, और भी जो मजहूबी काम इस किस्म के हो सकते हैं व। भी किये जा सकते हैं। दूसरे यह है कि जो क्लॉज २१ का मतलब है कि अब तक के वक्फ के अन्दर सिर्फ वो जायदादें और वह चीजें आती थी जो कि मुसलमान ने वक्फ की थी। इस बिल के जरिए से वह भी वक्फ है जो नान-मुस्लिम ने किया हो। और मैं आपकी तवज्जो, वाइस चैंबरमन साहब, मबजूल करना चाहूंगा कि हिन्दुस्तान में अब भी बहुत से ऐसे वक्फ हैं जो कि नान मुस्लिम ने किए हैं। मकबरो की हिफाजत के लिए, मसाजिद की तामीर के लिए, उनकी देखभाल के लिए और जो भी दरगाह हैं उनके अखराजात के लिए और ऐसे वक्फ ज्यादातर राजस्थान में हैं जो कि राजस्थान के हिन्दू राजाओं ने किए और ऐसे कोई १०,००० वक्फ हैं। तो इस एमेन्डमेंट बिल के जरिए से वह १०,००० वक्फ भी वक्फ की डेफिनीशन में आ गए हैं। यह मेरे ध्यान में बहुत ही प्रोप्रेसिव स्टैप है।

तीसरी चीज जो सबसे बड़ा फायदा मुसलमानों को इसके जरिए पहुंचाता है कि हिन्दुस्तान में बाँको में जो वक्फ का रुपया है, उसका जो

मुनाफा है वह अब तक पड़ा रहता था या उसको गैर-इस्लामी मामलों में ब्रिटिश गवर्नमेंट खर्च किया करती थी थी। वक्फ बिल के जरिए से इस मुनाफे का फायदा वक्फ के लिए इस्तेमाल किया जा सकता है। यह सब से बड़ा कदम और सबसे बड़ी प्रोग्रेसिव बात इसमें है।

इसके साथ साथ जहाँ मैं इस बिल को बाने के लिए सरकार की तारीफ करना हूँ वहाँ मैं एक बात दर्याफ्त करना चाहता हूँ कि आखिरकार आजकल हिन्दुस्तान में हम रोजाना सुनते हैं। हिन्दुस्तान में इन्टीग्रेशन का एक जबरदस्त सवाल है और बड़ा जबरदस्त प्रोपेगन्डा इसका हाता है कि हम इन्टीग्रेशन चाहते हैं। तो जब हम इन्टीग्रेशन चाहते हैं और तमाम कम्युनिटीज को एक जगह खाना चाहते हैं तो फिर हम क्यों न इस बात की कोशिश करें कि मुसलमानों में जो दो फिरके हो गए हैं शिया और सुन्नी उनको भी एक जगह क्यों न लाएँ ? इसके क्लॉज ५ में यह लिखा है :

"Notwithstanding anything contained in sub-section (1), if the Shia wakfs in any State constitute in number more than fifteen per cent of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent of the total income the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni Wakfs and for Shia Wakfs "

यह दोनों सेप्रेट सेप्रेट—जुदा क्यों हैं ? एक क्यों न बोर्ड बनाया जाए। और मेरी इन्तलाह है, एक दोस्त ने मुझे बताया है कि मैसूर में ऐसा हुआ है। दूसरे इसके शिड्यूल क्लॉज बी में यह लिखा है —

"Persons having knowledge of Muslim law and representing, in

[श्री फरीदुल हक अनसारी]

the case of a Sunni Board of Wakfs, associations such as State Jamiat-ul-Ulama-i-Hind (whether such persons are Hanafi, Ahle-Hadis or Shafai) and in the case of a Shia Board of Wakfs, associations such as State Shia Conference;".

मैं यह पता चलाना चाहता हूँ कि आखिरकार यहाँ जमायत-उलमाए हिन्द को ही क्यों शरफ बख्शा गया। हमारे सामने और भी कई जमायतें हैं। जमायते-इस्लामी नदवा में एक जमायत है उन्हें भी क्यों नहीं रखा गया? उनके भी मेम्बर हो सकते हैं। यह सिर्फ जमायते-उलमाए हिन्द को ही क्यों रखा गया है? जहाँ तक मेरी इत्तलाह है यह इस वजह से रखा गया कि यह समझा जाता है कि यह जमायते-उलमा सियासी जमायत नहीं है। मेरे ख्याल में यह बिल्कुल गलत है? १९५२ ई० का इलक्शन, १९५७ का इलक्शन और १९६२ ई० का जनरल इलक्शन जो हुआ उन तीनों से यह पता चलेगा कि जमायत जैसा कहती है महज एक कल्चरल सोशल आरगनाइजेशन है। मैं कहता हूँ कि पोलिटिकल आरगनाइजेशन भी है, इसलिए कि उन्होंने खुलेपन इन तीनों इलक्शनों में हिस्सा लिया। इसलिए मैं चाहूँगा कि आनरेबिल मिनिस्टर साहब इस पर रोशनी डालेंगे कि आखिरकार उन्हीं को यह शरफ क्यों बख्शा गया। दूसरो को क्यों नहीं बख्शा गया?

इन बातों के साथ मैं इस बिल को सपोर्ट कर रहा हूँ।]

श्री शेरखाना (मंसूर) : जनाब वाइस चेयरमैन साहब, मैं इस बिल की तारीफ करता हूँ। साथ ही साथ मैं यह अर्ज करूँगा, बिल का मकसद और मन्शा चाहे कितना

अच्छा हो जब तक, जैसा आज ग्राम तौर पर देखा जा रहा है स्टेटों में, स्टेट की हुकूमतें स्टेट के ओहदेदार स्टेट वक्फ बोर्ड के काम करने वालों से तआवुन-ए अमल न करे तब तक उसकी सही मन्शा और मकसद जो कि इस बिल के जरिये से पेश किया जा रहा है, वह कभी पूरा होने वाला नहीं है। दूसरी स्टेटो मे जो भी होता है उसकी पूरी जानकारी नहीं रखते। मैं मंसूर का रिप्रेजेन्टेटिव हूँ, मंसूर के एक जिले गुलबर्ग के स्टेट वक्फ का मेम्बर हूँ, वहाँ जो कुछ हो रहा है उसकी बिना पर मैं कह सकता हूँ कि वहाँ वक्फ बोर्ड का जो काम या मन्शा होनी चाहिये वह बिल्कुल ही मुश्किल है, फेल है। मिसाल के तौर पर, बीजापुर जिसको ग्राम तौर पर सब जानते है, एक मशहूर मुकाम है, वहाँ चांद बावली के नाम से एक मशहूर बावली है जो तकरीबन हिन्दुस्तान की एक बहुत ही मुकद्दस और बहुत ही मानी हुई बिल्डिंग है, जो वहाँ पर आर० टी० डी० के कब्जे में है। उमका किराया करीब १०००० रु० माहवार वसूल होता है। वक्फ बोर्ड हो जाने से हुकूमत से कोशिश की गई, आर० टी० डी० की तवज्जह दिलाई गई कि या तो उसका किराया दिया जाय या उसको खाली किया जाय, उससे मुस्लिम होस्पिटल या कोई ऐसा शिफाही काम चलाया जा सके। आज तक मैं समझता हूँ तकरीबन मिनिस्टर साहब भी इससे वाकिफ होंगे, न वह बिल्डिंग खाली हुई और न ही इस बारे में कभी अह्द दारने दिलचस्पी ली। इसी तरह से कल्याणी ताल्लुका का हेड क्वार्टर है बीजा, वहाँ बारगे हुसेन नाम से एक बहतरीन बिल्डिंग है जहाँ, आसारे बदीमा वाले कब्जा किए हुए हैं। वक्फ मदद यह चाहता है कि उस बिल्डिंग में कुछ अपना रफाई काम चले या कोई इन्स्टीट्यूट हो या हास्पिटल हो, या और कुछ हो लेकिन कभी भी गवर्नमेंट वाले उनके साथ तआवुन-ए अमल नहीं करते।

यहाँ पर हम कानून बनायेंगे लेकिन स्टेटों में उस पर अमल नहीं होगा तो फिर हम इस कानून से किस तरह कौम की खिदमत कर सकेंगे और क्या मुल्क को फायदा पहुँचा सकेंगे। मैं इन चन्द बातों के साथ अपनी तकरीर खत्म करता हूँ और यह कहना चाहता हूँ कि जो कानून हम पास करने जा रहे हैं अगर उससे हम कौम की खिदमत न कर सकेंगे तो इसका कोई फायदा नहीं होगा। मैं यह बात इसलिए कहना चाहता हूँ क्योंकि मैंने इसी सेशन में एक क्वेश्चन किया था जिसके जवाब में यह बतलाया गया कि इस तरह की १८ हजार जायदादे मैसूर स्टेट में हैं और इसी तरह से दूसरे स्टेटों में भी सैकड़ों जायदादे होंगी। अगर उनको जैसा आप चाहते हैं कि एकजा किया जाय, उनका मसरक ठीक ढंग से हो तो यह लाजिमी बात है कि एक इन्कलाव आयेगा और हकीकी माने में जो मन्शा वक्फ करने वालों की है, वह पूरी होगी।

मैं आपको मुबारकबाद देता हूँ कि आप इस चीज को चाहते हैं और वह काम करना चाहते हैं जो वक्फ करनेवाले चाहते हैं। साथ ही साथ मैं आपसे यह गुजारिश करूँगा कि जहाँ आप इस बिल को पास करेंगे वहाँ इस चीज का इन्तजाम करेंगे कि स्टेटों में जो नापरवाही बरती जा रही है, इस मामले में जो ताबुन अमल नहीं पाया जाता है, वह न होने पावे। आज वहाँ पर वक्फ बोर्डों की अजबे मुअत्तल के तौर पर रखा गया है और उनके साथ ताबुन करने में हिचकिचाहट का एहसास किया जाता है और यह तसव्वुर किया जाता है कि वक्फ बोर्डों को जिस ढंग से इस वक्त चलना चाहिये उनको न चलने दिया जाय। अगर इसका भी इन्तजाम करेंगे तो हकीकी माने में मैं यह कड़गा कि आप काबिले तहसीन हैं और काबिले तारीफ हैं और इस तरह से हकीकी माने में आप कौम की दुआ के मुस्तहक रहेंगे।

मैं इन चन्द अलफाज के साथ इस बिल की तारीफ करता हूँ।

SHRI BAHARUL ISLAM (Assam):
Sir, I rise to give general support to the Bill. I congratulate the Hon. Minister on bringing forward this Bill. But I beg to point out certain defects in the Bill because of which I am afraid the objects of the Bill will not be fully achieved. The major provisions of the Bill are:—

(1) Insertion of Chapter IIA which, *inter alia*, provides for the establishment of a Central Wakf Council and its finances; and

(2) Insertion of new section 36B, which provides for the recovery of wakf properties illegally transferred.

Now, I beg to point out the defects. Please come to the proposed section 8B, in clause 4 of the Bill. It says:—

“(1) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent. of the aggregate of the net annual income of the properties of the wakfs in respect of which contribution is payable under sub-section (1) of section 46:”

It provides for the finances of the Central Wakf Council. Each Wakf Board is to contribute one per cent of its net annual income to the Council.

Then, please come to section 46(1). Section 46(1) of the principal Act provides for the fund of the Wakf Boards. It provides that each mutawalli has to pay not more than five per cent of the net annual income of the wakf property situate within the State concerned to the Board. But “wakf” has been defined in section 3(1) of the principal Act as follows:—

“(1) ‘wakf’ means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

[Shri Baharul Islam]

- (i) a wakf by user,
- (ii) mashrut-ul-khidmat, and
- (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable.”.

So far as a wakf-alal-aulad is concerned, only that part of the wakf estate comes within the definition, which is permanently dedicated to charitable purposes, but not that part which is given to the beneficiaries. The funds of the Wakf Boards that cover only or mostly a wakf-alal-aulad are, therefore, very poor. Such Boards can hardly maintain themselves, far less they can contribute anything to the Central Wakf Council or do any beneficial work for the poor, which is the object of the Act. The Boards in such cases, cannot get, as of right, any contribution from the mutawallis. The Assam Board of Wakf is a case in point.

Now, I would draw your attention to the Review of Wakf Administration. At page 11, item 2, against Assam Muslim Wakf Board, the contribution is shown as Rs 2,882 75 p. Arrears of contributions, etc are shown as Rs 12,809 87 p. Expenditure is Rs 4,198 72. Other miscellaneous expenditure is shown as Rs 330/- The surplus shown is Rs 1,288 67 p. This is very misleading, because in Assam almost all the wakf are “wakfs-alal-aulad”. Therefore, as of right, the Board cannot expect anything more from these wakfs. Therefore, a request or an appeal was made by the then Chairman of the Board, Mr Fakhruddin Ali Ahmed, who is now the Finance Minister, to the mutawallis to contribute voluntarily something to these Boards. In this way the Board got some money. As of right it cannot get anything, because the actual wakf which is dedicated permanently for a pious, religious or charitable purpose is only Rs 30/-,

Rs 50, or Rs 100 or so. In that case, it will not come to anything. The sum of Rs 12,809/- is a voluntary contribution which was promised by some mutawallis. No force can be applied to recover this amount. Therefore, the result is there is actually no surplus. There is a great deficit. I have calculated it. The actual deficit in 1962-63 is Rs 985 97p.

Then please come to the new section 36B, because I am going to point out the defects in the Bill. It says—

“(1) If the Board is satisfied, after making an inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakfs maintained under section 26, has been transferred without the previous sanction of the Board in contravention of the provisions of section 36A, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.”

Section 36A restricts transfer of wakf property. This is a welcome provision. Section 36B provides for the recovery of wakf property illegally transferred. This is, no doubt, the most welcome provision in the Bill. But it ought to have been made retrospective in express terms—retrospective with effect from the coming into force of the principal Act. “Has been transferred” in section 36B will mean in the context “has been transferred before the allegation is made of such illegal transfer” and will have only prospective application. But there have been cases in which unscrupulous secretaries of Wakf Boards illegally and fraudulently transferred wakf properties to the detriment of the interests of the wakf estate, after the Wakf Act, 1954. Such properties cannot be recovered under the proposed section 36B of this Bill.

Then, please come to section 36B (5) which says:—

“Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.”

The literal interpretation of this sub-section is that the Collector has been empowered only to take symbolical possession of the property from the illegal occupant, and to give it to the Board. It has given no power to the Collector to evict such a person. But the intention, I believe, is to give power to the Collector to obtain vacant possession of the property by evicting the person in illegal possession and give that vacant possession to the Board, so that the property can be fruitfully utilised for those for whom the wakf was created.

I therefore suggest that in this sub-section (5) after the word ‘shall’ the word ‘obtain’ should be deleted and the words “evict the person in possession” should be inserted. Unless and until the power is given to the Collector to take vacant possession, vacant symbolic possession will be useless for the purpose of the Board.

Then I come to clause 13 at page 6 of the Bill. The portion to which I refer is sub-section (4A):

“A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (e) of sub-section (1) or under sub-section (2), may, within one month from the date of the receipt by him of the order, appeal against the order to the State Government and the decision

of the State Government on such appeal shall be final and shall not be questioned in any court of law.”

My objection is to the last portion: “and shall not be questioned in any court of law”. I respectfully submit that this last portion is *ultra vires* the Constitution because, whether there is this particular provision or not, every citizen, every mutawalli or anybody will have the fundamental right to approach the High Court under article 226 or approach the Supreme Court under article 32 of the Constitution.

SHRI AKBAR ALI KHAN: This provision does not affect the fundamental right. It is for legal procedure.

SHRI BAHARUL ISLAM: This provision is *ultra vires* the Constitution. Whether this provision is there or not, every mutawalli will have the right to approach the High Court under article 226 or the Supreme Court under article 32 of the Constitution. This provision is *ultra vires* the Constitution and will be useless.

In conclusion, I support this Bill in general, but unless and until these defects are removed, I am afraid the full object of this Bill will not be fulfilled. Thank you very much.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): There is yet one more speaker in my list. I hope the House will agree to sit a little longer to hear him and finish the Bill. Mr. Akbar Ali Khan.

SHRI AKBAR ALI KHAN: Mr. Vice-Chairman, I am much obliged to you for giving me this opportunity. Before I say anything I would very briefly pay my homage to the late Maulana Azad and Pandit Jawaharlal Nehru but for whose interest the Wakf Act of 1954 would not have come into existence and this putting right the management of Wakf which is a very large item in this country would not have been brought into proper shape. I am thankful to Hafiz

[Shri Akbar Ali Khan.]

Mohammed Ibrahim and Mr. Humayun Kabir equally for their efforts in this matter.

Now, I would just say that the main amendment relates to the fact that in the previous Act the matter was limited to cases where the beneficiaries were Muslims, which was not according to Muslim Law. According to Muslim Law, the beneficiaries could be anybody, not only Muslims but people of other religions also. It was felt necessary that some provision of this Act should be amended, and I will take this opportunity in order to enforce my argument as well as the amendment that has been brought in by quoting the saying of the Prophet which says: "All God's creatures are his family, and he is most beloved who does most good to His creatures".

Now coming directly to some of the points that my hon. friend, Mr. Ahmed, has taken up, I join with him in the tribute that he has paid to the Government of India regarding the administration of the Wakfs. I think it is very right and I quite agree with him in that matter. But as regards the points that Mr. Syed Ahmad has made, with your permission I would explain that in the 1913 Act and now in the 1954 Act certain things have come to our notice during this long period. What was the occasion for the 1913 Act was a certain decision of the Privy Council at that time which was considered contrary to Muslim Law. So the 1913 Act was passed. In the course of this period, especially after the abolition of the jagirs, inams, and so on, the question arose about the Wakf-alal-aulad. I know that in Hyderabad there were hundreds of jagirs that were given to mosques, temples and other things. The question arose as to what would be the position of this thing, and the Wakf Board which was administering the Wakf property had to take cognisance of such property. That is why I interrupted my learned friend.

SHRI SYED AHMAD: He is misquoting me in this matter. I never said anything about mashrat-ul-khidmat. I simply said that the definition was included in the Act of 1913 and you are excluding it.

SHRI AKBAR ALI KHAN: Please have a little patience. He said that these two definitions were contradictory. I am answering that point. They are not contradictory. We have included a few things in view of the experience, and it is absolutely in conformity with the principles of Muslim Law. That is one thing. The other thing is about exclusion of Wakf-alal-aulad. I think the central idea of this Wakf Act of 1954 was to take property for the benefit of the public and not the property which is for the benefit of the family. If we take into consideration the Wakf-alal-aulad for this purpose, then each family will have to submit its budget for the supervision of the Wakf Board which is not intended. I am sure we here are not concerned with the private family budget. We are concerned with the Wakf to the extent that it relates to the public, to the charitable purposes, to the prayer purposes, to the educational purposes.

SHRI SYED AHMAD: I cannot allow this to go unchallenged. Suppose there is a Wakf-alal-aulad in which Rs. 300 are meant for the mosque and the other income is Rs. 12,000. After paying Rs. 300 to the mosque, is it open to the beneficiaries and the mutawallis to sell the property? I want to know whether that property is Wakf property or not.

SHRI AKBAR ALI KHAN: I am trying to explain to my friend. I hope I will succeed in convincing him. So far as that question is concerned, Wakf-alal-aulad comprises two parts, one relating to private family and the other relating to public charity. We will certainly take into consideration that portion of it that relates to public charity. We are not excluding Wakf-alal-aulad from the definition of Wakf. Probably I am

not able to make him understand that we are not excluding Wakf-alal-aulad from the definition of Wakf. It is there. The Act is there of 1913, but what we are doing is, so far as the administration of the Wakf is concerned, so far as the administration of the Board is concerned, so far as the jurisdiction of the courts is concerned, we are limiting it only to the public part of it, and it will not extend to the private part of it. Then, Sir, he said something about the transfer of property. There also, the position is that a certain property is acknowledged and admitted to be wakf property. Cases have come to our notice where the manager or the mutawalli surreptitiously disposes it of. For that purpose this provision has been brought forward. In view of this experience it is laid down that after enquiry by the Board some immediate action should be taken subject to the right of the man aggrieved to go to the civil court. My friend has not properly looked into the matter. The right to go to a civil court and get this matter enquired into is not closed.

SHRI SYED AHMAD: The Minister has approved of your speech.

SHRI AKBAR ALI KHAN: Then he referred to the point: "notwithstanding the instructions of wakf . . ." There also the amendment is to this extent only. The managers can sell it. But in view of the experience that the managers have been selling it for their own profit, we have said "subject to the sanction of the Board". There is nothing contrary to the Muslim Law. The Muslim Law does not say anything. We are saying, if the donor has authorised the sale, certainly it will be done, but it will be done with the sanction of the Board. So, all these things are to see that the property that has been given for a certain purpose fulfils that purpose according to the modern notions and the circumstances of the country. So, I do not

see anything which is contrary to the Muslim Law; I do not see anything which is repugnant to the original Act, I do not see anything which in any way interferes with the Muslim Law.

So, I feel that the amendment that has been brought forward, in view of the experience, is perfectly correct and a legitimate one, and I request the House, through you, Sir, that the amending Bill is fully supported.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Shri Nafisul Hasan.

SHRI SYED AHMAD: Are we not adjourning for lunch?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Will adjourn after the Bill is over.

SHRI SYED AHMAD: According to the direction given by the Chair, we should adjourn at 1.30.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): And I have taken the permission of the House to sit.

SHRI SYED AHMAD: You have taken permission for five minutes.

SHRI NAFISUL HASAN: Sir, I support the Bill and I congratulate the hon. Minister for having brought forward this amending Bill. It is definitely an improvement over the existing Act.

Sir, you have been pleased to allow me to speak but as you have asked me to limit my speech to as short a time as possible, I am not dealing with the many points that I thought I would deal with but I will only deal with certain points which have been raised by my learned friend, Shri Syed Ahmad, who is an elder brother to me but, unfortunately, it is not possible for me to agree with him. First of all, his assertion has been that in a number of matters we are departing from the Muslim Law.

SHRI SYED AHMAD: Question. Sir, 'notwithstanding anything....'

SHRI NAFISUL HASAN: 'WAKF' is not the subject-matter of the definition in this Bill as it is defined in the original Act. My learned friend is of the opinion that because we are excluding *wakf-alal-aulad* we are taking only some portions of it and therefore we are departing from what a wakf is under the Muslim Law. Let us first of all see what is the object of this Act to which an amendment has been brought forward. The object of the Act has been given in the original Act and that is to provide for the better administration and supervision of wakfs. That is all. And if we have defined wakf under this Act, it is only for the purpose of this Act and not for any other purpose. Wakf as defined by the Muslim Law may be different but for the purpose of administration, we may omit certain wakfs and may even include those properties which are not strictly wakf. Under the Muslim Law only Muslims can create wakfs but here we are bringing, under the purview of the Wakf Board, even donations or grants made by persons who are not Muslims for graveyards and other purposes. That is a provision which we are adding under this Bill. Therefore, the object of this Bill is only to make provision for the proper supervision and administration of the wakf property. It is quite possible that a certain property which is not administered here may be a wakf and there may be a certain property which may be strictly a wakf and we do not propose to administer it.

Therefore to say that we are doing anything against the Muslim Law as far as the definition of wakf is concerned and as far as even the provision about the power of transfer of property is concerned, is wrong. That assertion is under a wrong notion. What is defined here as wakf will not affect the provisions of the Muslim Law. We are making an amendment in the definition of beneficiaries so that even where the beneficiaries are non-Muslims we can take those wakfs under our administration, it is not that these wakfs are invalid un-

der the Muslim Law. Muslim Law does not provide that the benefits of charity should be confined to Muslims only. It is always open to a Muslim to make a wakf for the benefit of Muslims and non-Muslims combined or even for the benefit of non-Muslims. That is a valid wakf under the Muslim Law. We could not take it under our superintendence because the beneficiary under the existing Act was excluded from the operation of the Act.

SHRI AKBAR ALI KHAN: The wording was "beneficiaries or...."

SHRI NAFISUL HASAN: For the benefit of the non-Muslim community now we are amending it by providing that wakf as

SHRI SYED AHMAD: Or objects permitted by Muslim Law.

SHRI NAFISUL HASAN: So, my learned friend, Shri Syed Ahmad, just objected to that definition of wakf and his objection is that *wakf-alal-aulad* is not included in this definition. Naturally, as my friend, Shri Akbar Ali Khan, said, we cannot enter into private affairs. The wakf is permitted by the Muslim Law for the beneficiaries, mainly the descendants of the wakif and for certain other charitable purposes also. So, we are going to take only that portion of the wakf under administration which relates to religious or charitable purposes. I remember, I have gone through the U.P. Wakf Act and they have excluded all those wakfs in which 75 per cent or more than 75 per cent of the property of the wakf is devoted to individual persons and not to charitable purposes. In this Act, we have gone further.

We are taking that portion of the *Wakf-alal-aulad* which is for charitable purpose.

SHRI SYED AHMAD: It is a fact that a property whose 74 per cent. is devoted to private charitable purpose is regarded as public trust.

SHRI NAFISUL HASAN: Whether it is public or private trust, that does

not matter. What we are talking here is about the definition of wakf under this Act. That is the main point.

My learned friend has also taken objection to the provision of section 36A.

SHRI SYED AHMAD: 36B. I said I support it.

SHRI NAFISUL HASAN: It says:

"Notwithstanding anything contained in the wakf deed, no transfer of any immovable property of a wakf by way of—

(i) sale, gift, mortgage or exchange; or

(ii) lease for a period exceeding three years in the case of agricultural land, or for a period exceeding one year in the case of non-agricultural land or building,

shall be valid without the previous sanction of the Board."

Now, Sir, his objection is to the word "notwithstanding". He thinks that if there is a provision for the transfer of property in the wakf deed, this is going against that.

SHRI SYED AHMAD: It is known as direction.

SHRI NAFISUL HASAN: There may be a provision or direction. Though there is nothing in this to go against that direction, this power is not to be exercised by the mutawallis, because as my friend has said and our experience also tells us that mutawallis, some of them at least, have exercised this power for their own personal benefit.

SHRI FARIDUL HAQ ANSARI: Most of them.

SHRI NAFISUL HASAN: May be, but at least some of them are like that. Even if some of them have exercised this power for their own personal benefit, we are justified in making this provision.

SHRI SYED AHMAD: You think that this Board will be above board.

SHRI NAFISUL HASAN: Anyway. At least they will be more responsible, and under the provision of this new Bill we are also having a higher supervisory body in the Central Council proposed under this Bill.

Objection has also been taken, Sir, to the provision under section 36B. I think that is one of the most useful provisions under this Bill because here, wakf property is being treated as public property. It is not the property of any individual. What it means is that if a mutawalli without obtaining permission of the Board clandestinely makes transfer and puts another person in possession of the property . . .

SHRI SYED AHMAD: There is no word like "clandestinely".

SHRI NAFISUL HASAN: It may or may not be there. But it is done generally in that way. When he has no right to transfer that property, if he does it, his intention is clear. If he puts any other person in possession of that property, then the Board need not go to a court of law for restoration of possession like every other individual. But since it is being treated as public property and if the wakf is registered, or it is apparent that the property has been illegally transferred, the collector has been authorised to restore its possession to the wakf, and it is open to the other side to go to the civil court in appeal against the order of the collector. So it is only putting the burden of proof on the other side. That is what is provided here. There is no injustice to any side.

Sir, I know you have been trying to see as to when I should stop. I thank you for the indulgence you have shown to me. With these words I support the Bill before the House.

THE MINISTER OF PETROLEUM AND CHEMICALS (SHRI HUMAYUN KABIR): Mr. Vice-Chairman, Sir, I am very grateful to the hon. Members who have taken part in the discussion and brought out the different aspects of the Bill. I am grateful to all those who have supported the Bill and to the friends who spoke last because they have made my task very much simpler, easier. I am grateful also to Mr. Syed Ahmad for having brought out certain points which makes it possible for me to clarify doubts. If you will permit me, Sir, I would say that most of the remarks of my hon. friend, Mr. Syed Ahmad, were confused and self-contradictory. In fact, one part of his speech had really no relevance or relation to the other part. If he will read carefully his speech when he gets it in cold print, he will find that he has contradicted himself.

SHRI SYED AHMAD: I will send it to you.

SHRI HUMAYUN KABIR: I now propose to point out how he is self-contradictory in his statements.

With regard to the remarks made by my other friends, most of them were suggestions and I shall keep them in mind. I will see how far these suggestions can be carried out by the rules or by advice or by direction to the different State Boards and also by consultation with the different State Governments.

SHRI AKBAR ALI KHAN: They relate mostly to the State Boards.

SHRI HUMAYUN KABIR: As my hon. friend has just now said, they relate mostly to the State Wakf Boards.

Sir, the only two critical comments were thus of Mr. Syed Ahmad and my friend, Mr. Baharul Islam. They also concentrated on the same points. Mr. Baharul Islam was mostly concerned with section 36B and partly with the constitution and income of the Central Wakf Council. But

Mr. Syed Ahmad went much further, and I must confess I was a little astonished when I heard that in his opinion this Bill or some clauses of it were mischievous. I am quite sure that it was far from any one here to think with regard to a Bill of this type that it was mischievous. And I may point out to him that when he regards any of the clauses of this Bill to be mischievous, he is in a way casting reflection on the wisdom of the entire Muslim membership of Parliament in both the Houses. He is also casting reflection on all the State Governments. He is casting reflection on all the State Boards because for the last ten years . . . (Interruption). I am not yielding. I never interrupted him—the Act has been in operation, rather immediately after it was passed it was felt that there were certain lacunae. There were discussions at State level and at the Central level. I may also inform you, Sir, that I discussed the clauses of the Bill with every single hon. Member—I cannot say if Mr. Syed Ahmad was present in that meeting or not—and not one single Member raised any objection. The clauses were framed with their unanimous consent and support. But I do not stand for the validity of the Bill on that ground alone.

Sir, my hon'ble friend imagined that there was contradiction between the different definitions of the wakf. But he himself pointed out that this was not so. He read out some parts of the definition in the Wakf Act of 1913. As Mr. Akbar Ali Khan and Mr. Nafisul Hasan pointed out, certain wakfs had been declared as not wakfs under the Privy Council judgment and the 1913 Act was passed to rectify the situation. That is why it was called a Wakf validating Act. Even then the substantive section in the Wakf Act of 1954 is substantially the same. A Wakf means:

“the permanent dedication by a person professing Islam of a movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable.....”

And Mr Syed Ahmad himself admitted that this part was common that this is not in any way different from the definition given in the Act of 1913. The 1954 Act goes a little further and mentions certain things by name. And these additions, as Mr Akbar Ali Khan pointed out, clear some doubts raised about certain types of property. Now Mr Syed Ahmad is a very distinguished lawyer, a veteran lawyer. But I do maintain here that when a definition is taken *in toto*, and in addition to that, a few more things are added by using the word "and", the earlier definition is not in any way modified or changed. I do not know where he got this interruption of law or whether any court of law anywhere in the world will support this peculiar interpretation of law. The whole clause as it was, stands and only certain illustrations are given by using the word "and". How then is the original definition changed?

2 P.M.

Therefore the first criticism that he made that there are two definitions in the country falls entirely to the ground. There is no justification whatsoever for his statement that the Act of 1954 in any way changed the law of 1913. I will now go further and say that this definition is not under dispute. He is also, I may submit, irrelevant because the present Bill is not dealing with the definition of Wakf to which he had referred. He made a great deal of play about the definition of 'Wakf-alal-aulad' which is defined in Section 3 (1) of the principal Act. In the Amending Bill, we have not even mentioned that clause. It is not mentioned at all. Therefore a good deal of his criticism and attack we like, if I may be permitted to say so. Don Quixote fighting the windmill. I think that disposes of his criticism so far as the definition of Wakf is concerned.

It is true that there is some distinction between the Acts of Bihar, U.P. and West Bengal but one of the purposes of this Bill is to bring these States also within the purview of the

Central Wakf Act and I have hopes—some discussions have already been held, I cannot say that they are conclusive or definitive but I have hopes that these three States will also come within the purview of this Bill and we shall have one uniform Wakf law operating throughout the country. I think my friend Mr Syed Ahmad should therefore welcome this Bill which is removing the distinction which to some extent exists today and not imagine differences where they do not exist.

Then I come to Section 36(a) and (b) that is clause 11 of the new Bill. In regard to section 36(a) his great objection was to the word 'notwithstanding'. Again, if I may say so, I am astonished that a lawyer of his astuteness should make an observation of that type. It is true that in a particular Wakf Deed, permission may have been given to the Mutawalli to operate in a certain way but all Wakfs are governed by the basic principle of Islamic Law that it must be in the interest of the Wakf. Who is to interpret what is in the interests of the Wakf? As my friends Mr Akbar Ali Khan and Mr Nafisul Hasan pointed out, in some cases the Mutawallis have behaved in a way which was not in the interests of the Wakf.

Therefore the purpose of this 'notwithstanding' is only to determine that if the purposes of the Wakf are to be carried out, they are to be carried out in accordance with the principles and the spirit of Islamic Law. This 'notwithstanding', therefore, only provides that even though the power may have been given, the power must be exercised in conformity with the law and the law is that the property can be alienated only in the interests of the Wakfs, not in the interest of the Wakf, not in the interests of Mutawallis, not in the interests of anyone else.

You know, Sir, that as soon as a Wakf Deed has been registered or a Wakf has been made even orally, that

[Shri Humayun Kabir.]

property ceases to be the property of either the wakif or anyone else. It is regarded as the property of God held in trust. Wakf is a trust in the name of God and the Mutawalli or whoever it may be, holds it only in trust. Therefore this clause 11 only provides that even if the power to alienate be given, it should be exercised according to those principles. It is obvious that a comparatively detached body, a body or group of representative people can judge this question in a dispassionate way whereas a Mutawalli who is himself personally affected, may very often stress the law in his favour or sometimes he may go even against the law. Therefore, I submit that Section 36(a) is not only not against the spirit of Islamic Law but on the contrary it has given a constitutional form to something which was intended in the Muslim Law but which has not existed till now.

As I said earlier, some of my friend's remarks were confused and if I may say so, contradictory. That is clear when we come to Section 36(b). On the one hand he wanted that section 36(b) should not be enforced at all. I was astonished when he went to the extent of saying—I could hardly believe my ears when I heard him—that here is a discriminatory law and if the house of a Hindu friend is taken, then he has no remedy, he has to go to the court but if a trust property is taken, then immediately the magistrate can enforce delivery of the possession. He forgot one very very simple thing. It is clearly laid down in section 36(b) that where a Wakf property has been entered in the register—and the register is a public document which is accepted by the State—therefore, there is no doubt about the character of that property and when that character has been established, if someone illegally alienates that property, then on an application being made to the magistrate, once he is satisfied that that is public property he can give delivery or possession in that way. Why should my friend bring

Hindu or Muslim citizens or talk about discrimination between one community and another in this context? That passes my understanding. I really do not know how that was relevant.

Again, as I said in my opening remarks, while on the one hand we are trying to ensure that the sanctity of public property is maintained, that property which is devoted to public charitable purposes, is fully recovered, at the same time we have given protection against any illegal action because anyone who feels aggrieved can go to a court of law and the court of law will decide. Again, I was astonished when my friend said that force has been brought in. He was surprised that the magistrate should use any force in getting recovery of this property. When the court has given a judgment or where there has been no appeal against the order of the Collector, if even then the illegal occupant or trespasser is sitting on that property, is the Magistrate merely to look at the property and express pious resolutions and say 'Please get out.'? Why should he not use force then. It is the object of law to see that force is used according to law by the State and not by private parties. I may also tell my friend that this is almost identical with the law which already exists. In the Orissa Religious Endowments Act, this clause has been introduced and nobody has challenged it till now. Therefore, as I said, I was astonished when he made his remark but I was even more surprised when the next moment he said 'Why is it not given retrospective effect'. On the one hand he objects that we should give any power to the magistrates for recovering the property which is entered on the register and the next moment

SHRI SYED AHMAD: Regarding 36A . . .

SHRI HUMAYUN KABIR: If my friend corrects himself. I welcome it to the extent that he has moved from

his earlier position he makes my task easier. If he says that he has no objection to Section 36 (b), I shall be more pleased than anybody else. This also disposes of the point raised by Mr. Baharul Islam. You cannot give retrospective effect to a clause like this because then no one will know where he stands. Where we have a property entered in the register, there is some kind of evidence that it is Wakf property; otherwise, tomorrow someone will come and lay claim to the property of Mr. Syed Ahmad and say, 'This is Wakf property of 100 years ago'. There may be no document, there may be no register but he may say that he has oral evidence or some evidence.

SHRI BAHARUL ISLAM: Sir, I said, retrospective with effect from the coming into force of the Act of 1954.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): You have had your say. Let him reply now.

SHRI HUMAYUN KABIR: Retrospective effect cannot be given to this clause because an element of uncertainty will be brought in. So far as the point of Mr. Islam is concerned that this should be with regard to property in the register, I have read again the clause. There is nothing to prevent the interpretation which he sought to give to cover anything which is registered or already entered as a Wakf property; I think it is a matter for the court to decide but as I read the law—I am not a practising lawyer—I think the point mentioned by him is already covered by Mr. Syed. Ahmad went further. He wanted that even movable property should be recovered in this way. How am I to define 'movable' property? Somebody has a few rupees, someone has given as a gift to the mosque a few chatais, a carpet, a pitcher etc. Now, somebody takes that pitcher away. Who is going to identify that pitcher? Who is going to identify that particular carpet from any other carpet? There is a general distinction recognised throughout the world between movable and immovable property and in the case of immovable

property, there are certain measures which are possible, but which are not possible in the case of movable property. I am really astonished that a distinguished lawyer, an experienced lawyer like Mr. Syed Ahmad, should raise points which if you apply the slightest scrutiny, appear to be almost if I may say so, frivolous.

Sir, I think that disposes of his two main objections. The main purpose of the Bill, as I said, is to improve the administration of wakfs to see that the wakfs cover all kinds of properties devoted to similar purposes, and that is why we have extended the definition of 'wakf' and brought within it all benefactions and donations made by non-Muslims as well. We have also tried to see that the Central Wakf Council will be there to act as a unifying force for wakfs throughout the country.

One last word and I am done. The question was raised about the composition and character of the State Boards and the Wakf Council. They will include representative persons like my hon. friends here, and in every community, I am sure, there are men of goodwill, men of character, men of integrity, and the character of any body will depend upon the quality of its members. It shall be our endeavour to see that we get the most eminent and most respectable persons to be members of these Boards and this Council. We hope that with their help and co-operation these wakfs will not only serve the Muslim community, but they will also be able to serve the larger interests of the nation and act as a great integrating force among the different communities of India.

SHRI SYED AHMAD I just wanted to ask one question to make it clear; excuse me, I wanted to know from my hon. friend the Minister in-charge of this Bill whether the corpus of a wakf-alal-aulad is covered by the definition of 'Wakf'.

SHRI HUMAYUN KABIR: It is because, if you will read it again . . .

SHRI SYED AHMAD: Corpus.

SHRI HUMAYUN KABIR If you will read it again, you will find it in the Act I have answered the point but I will repeat it again Even in the 1954 Act wakf includes a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious, or charitable, and if in certain cases looking after the interests of a family is recognised as a religious or charitable purpose, well they are covered by this clause.

SHRI SYED AHMAD It is not clear, that is why I wanted that it should be made clear Who is going to interpret it

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) That will do The question is

"That the Bill further to amend the Wakf Act, 1954, as passed by the Lok Sabha be taken into consideration"

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) We shall now take up the clause by clause consideration of the Bill

Clauses 2 to 24 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI HUMAYUN KABIR I move

"That the Bill be passed"

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) I am very grateful to the hon Members for staying a little longer The House stands adjourned for lunch and we shall reassemble at 2.45 in the afternoon

The House adjourned for lunch at thirteen minutes past two of the clock till forty-five minutes past two of the clock

The House reassembled after lunch at forty-five minutes past two of the clock, the VICE-CHAIRMAN (SHRI M P BHARGAVA) in the Chair

ALLOTMENT OF TIME FOR BUSINESS FOR THE REMAINING PART OF THE CURRENT SESSION

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) I have to inform Members that the Business Advisory Committee at its meeting held today has recommended allocation of time for Government and other business during the remaining part of the current session of the Rajya Sabha as follows

GOVERNMENT BUSINESS

	Time allotted hrs mts
1 The Companies (Amendment) Bill, 1964, as passed by Lok Sabha	1 00
2 The Legal Tender (Inscribed Notes) Bill, 1964, as passed by the Lok Sabha	1 00
3 The Appropriation (No. 5) Bill, 1964, as passed by the Lok Sabha	1 30
4 The High Court Judges (Conditions of Service) Amendment Bill, 1964, as passed by the Lok Sabha	1 00
5 The Representation of the People (Amendment) Bill, 1964, as passed by the Lok Sabha	1 00
6. Discussion on the Resolution approving the Proclamation issued by the President under article 356 of the Constitution in relation to the State of Kerala on Wednesday, the 30th September, 1964, and .	One day
7. The Kerala State Legislature (Delegation of Powers) Bill, 1964, as passed by the Lok Sabha.	
8. The Direct Taxes (Amendment) Bill, 1964, as passed by the Lok Sabha	2 00
9 The State Bank of India (Amendment) Bill, 1964, as passed by the Lok Sabha	1 30