

-Secretary. In that letter the District Magistrate has said that immediately lent a wireless message to the Rajya Sabha Secretariat as also a telegram. And later he sent this letter to you through a special messenger. He meant no disrespect to the House or to the hon. Members and he thought that a wireless message was enough and he could forward the letter later. Hence no breach of privilege has been committed.

SHRI FARIDUL HAQ ANSARI (Uttar Pradesh): My hon. friend is misinformed. He does not know the practice. The practice of the House is that we do not rely on telegrams or wireless messages unless a letter is received by the Chairman of the House.

MR. CHAIRMAN: Yes, I have looked into the matter. Therefore, I am ready for a statement.

PROF. Mukut Behari Lai was arrested at Bulandshahr at 3-30 P.M. September 19, 1964. The same evening the Superintendent of Police, Bulandshahr sent a wireless message to me intimating that Prof. Mukut Behari Lai was arrested for an offence under sections 143 and 186 of the Indian Penal Code. In accordance with our practice intimation of this to Members was held over pending the receipt of a formal written communication. I have just now read out to the House the formal communication from the Magistrate which I received on the 26th morning. I have also informed the House that on the 27th morning a written communication was received from the Magistrate that Prof. Mukut Behari Lai was, after a trial lasting for two days, acquitted by the Judicial Magistrate, Bulandshahr on September 25. I may further inform the House that the District Magistrate has in a written communication furnished the facts relating to the arrest, trial and acquittal of Prof. Mukut Behari Lai and has explained the steps taken by the authorities at Bulandshahr to give intimation of the arrest of Prof.

Mukut Behari Lai to me. He has submitted that if any formality required by our Rules has not been properly fulfilled, the same has been due to inadvertence, which he greatly regrets.

I expressed my concern over the matter in the House on September 25, 1964. I hope and believe that the Ministry of Home Affairs will impress upon the authorities concerned that they should be very prompt in sending such communications. The Ministry would no doubt also impress upon all concerned that a written message or a telegraphic communication must invariably be followed by a formal communication in writing without any delay whatsoever.

In view of the fact that a wireless message was sent to me immediately after the arrest of Prof. Mukut Behari Lai and also in view of the explanation furnished and regrets expressed by the District Magistrate, I am of the view that we need not pursue the matter as a question of privilege.

#### REFERENCE TO U.P. GOVERNOR'S STATEMENT ON OPJSSA

SHRI BHUPESH GUPTA (West Bengal): About the U.P. Governor, the hon. Minister said that he would make a statement. He has the material now.

THE LEADER OF THE HOUSE (SHRI M. C. CHAGLA) : I have not got the materials. We have the communication from the U.P. Governor but the matter has been referred to the Law Ministry for examination and as soon as it comes, we will communicate it.

#### THE WAKF (AMENDMENT) BILL, 1964—continued.

MR. CHAIRMAN: The Minister had just concluded his speech moving the motion. Shri Jamal Moideen may speak. We will sit till 1.30.

SHRI M. J. J. MOIDEEN (Madras):  
Revered Chairman, Sir, I welcome this amendment to the Act proposed by the hon. Minister. Of course the Act has been there for so many years and <sup>on</sup> working it is found that certain amendments have to be brought in. So I support it.

The other day, when the Bill was proposed, he said that there was *some* provision to see that properties belonging to the Wakfs will not be alienable but I could not find it in the provisions of the Bill. Anyway I was under the impression that charitable properties including Wakf properties and temple properties were inalienable. I think some of the High Courts also have given decisions to this effect. If it is not so, I wish proper provisions are contained in the Bill to see that if any properties are alienated, they are retrieved immediately.

Then there was another matter regarding the working of the Wakf Act. It was said that in most of the States, the Wakf properties are exempted from the operations of the Rent Control Act. I am sorry to inform you that it is not so in Madras. They are not exempted from the Rent Control Act. I think he will have to see that all the States do exempt the Wakf and Charitable properties from the operations of the Rent Control Act.

Another thing that I found in the working of the Act is that when some of the Mutawallis have not paid their contributions for a certain time, they are removed arbitrarily. That, I think, is not good. It is possible that they may be abused. So I would prefer that such Mutawallis are prosecuted and then action taken after they have been found not quite all right and this arbitrary removal is not quite all right. They should be proceeded against in courts. I think such prosecutions should be in places where the Wakf properties are situated instead of at the State Headquarters. Sometimes just for the sake of getting them prosecuted, some of

them are prosecuted at State Headquarters. That itself is rather a difficult job for them to come and go. We should do something so that they do not feel harassed.

Then I would rather suggest to the Minister that he may provide for the exemption of contribution by mosques and orphanages which have to depend totally or partially on public charities and contributions. Wherever mosques or orphanages are able to conduct themselves entirely with their property incomes, it may not matter so much but in cases where they have got to depend upon public charities and contributions, the contribution to be paid to the Wakf Board also becomes a liability on them. So I would request the Minister to see that mosques and orphanages are exempted from paying the contribution to the Board but at the same time they can come under the purview of the Wakf Board because there have been so many mosques which have not been conducted all right. Now after establishment of the Wakf Board they have been pulled up rather and are doing good work these days. So they should be under the purview of the Wakf Board but as far as contribution is concerned, it will be a good thing if they are exempted—only the mosques and orphanages. Of course they are the best Charities mentioned in Islam. So I think they should be exempted and they should not be asked to make any contributions.

Regarding the constitution of the State Wakf Boards, at present all the members are nominated by the State Government. I think that a portion of the members at least should be elected from organised public bodies representing Muslim views. Otherwise at least make a provision that about one-third of the members should be co-opted by members who are nominated by the Government. I understand there is a proposal to have some board at the district level also, but I do not know whether the board at the district level would be of any great use except that they may act as

[Shri M. J. J. Moideen.]

the agencies of the State Wakf Boards. In that case, if at all the district boards are set up, I should think that it is the State Board which should nominate the members on the district boards. The hon. Minister can see that some of these things are either included in this Amendment, or later amendments, or at least if he will give some instructions to the Wakf Boards to exempt mosques and orphanages from the contribution, I think it will be a good thing, and I would request the hon. Minister to do so.

I do not think I can add anything else. Of course, as the working of the Act goes on. We may have to amend it further and then we will see about it

Thank you, Sir.

[THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair]

SHRI EBRAHIM SULAIMAN SAIT (Kerala): Mr. Vice-Chairman, Sir, I rise to accord my welcome to the Wakf (Amendment) Bill, 1964, which provides amendments to the Wakf Act, 1954.

Sir, I am glad that our secular State has come forward to safeguard the interest of the endowments established for the benefit of the Muslim community, and to implement their administration as sanctioned by the Muslim law.

Indeed this amending Bill has made this object very specific in the amendment which it proposes to section 3 of the present Act.

Sir, as a member of the Central Wakf Advisory Council and also the Kerala Wakf Board, I must place on record the gratitude of the Muslims of India that the Government have thought it wise to establish and constitute the Central Wakf Council as a statutory body for advising the Government, and also to issue directives to the State Wakf Boards concerning

their working in different States in India, consisting of persons from public life.

Sir, I am glad that this Bill also provides the finances required by the Central Wakf Council for discharging its responsibilities for the administration of the Wakfs in India, and for carrying out the programmes for the educational and social development of the community together with establishing charitable and educational institutions, like hospitals and colleges, for the benefit of the entire nation. It is but proper that each State Wakf Board shall pay from its fund to the Central Council one per cent of the net annual income of the Wakf properties.

Although I feel, Sir, that this may not be quite adequate to meet the potential responsibilities of this Council to provide several amenities for the advancement of the community through theological and technological institutions, and facilities of scholarship for higher education, nevertheless I think this is a first step in the right direction, and watching the progress that is made, it will be possible to devise ways and means to provide further finances for the Central Council.

Sir, I feel that the powers that be have carefully thought out the amendment, of section 15 of the present Act which reads as follows. It says on page 4 of the Bill, in clause 7—

"(a) in clause (e), for the portion beginning with the words 'in any case' and ending with the words 'of being heard', the following shall be substituted, namely:—

'to direct—

(i) the utilization of the surplus income of a wakf consistently with the objects of the wakf;

(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of a wakf has ceased to exist Or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object which shall be similar or as nearly as practicable similar to the original object: "

This I consider is a sincere attempt to utilise the surplus income of the Wakfs as far as possible in conformity with the original intentions of the Wakfs, as per the Muslim law. Here I have to emphasise that extreme care has to be taken to see that while implementing this assurance there is no room for any mischief that may arouse the misgivings of the community in the utilisation of the wakf funds for purposes other than what the donors must have intended.

Sir, I welcome the provision under clause 13 of this Bill, which is an intentment of section 43 of the present Act, with regard to the dismissal of the mutawalli guilty of various crimes as breach of trust and misappropriation of properties. This is really very important and in no circumstances should a person, who has been responsible for alienation of the wakf properties should be allowed to continue as a mutawalli.

Sir, as far as the finances of the Wakf Boards are concerned, the main income of the State Wakf Boards, according to the existing Act, is 6 per cent contribution payable by the various trusts out of the income of the wakf properties.

Here, Sir, I would like to point out the existing Act defines net income as total income less land revenue, cess and taxes, and as a practice that is being followed no deductions are allowed for the repairs and collection charges as far as landed properties are concerned, and no is being made for the manuring and plucking charges as far

as plantations are concerned. Here I would like to point out that the High Court of Kerala, on a reference from Abdul Sattar Hajee Moosa Trust on this point, has decreed that the total income also excludes such expenses as repairs, manuring charges, etc. This decision of the High Court of Kerala will substantially affect the finances of the Kerala Wakf Board. I am therefore of opinion that there should be an amendment clearly defining net income, or substituting the words 'gross income' for 'total Income'.

Sir, before I conclude I must give a note of warning to the Government that they should take the greatest care in the choice of the personnel for the Central Wakf Council and the State Wakf Boards. I have to mention at this juncture that, unfortunately in the past, little care has been exercised in nominations, and because of this, some of the nominations, particularly to the State Wakf Boards, have not inspired confidence and general approval. Therefore I make an earnest appeal to the Government through the hon. Minister of Wakfs that they should devise some alternatives to the present arrangement, which will secure the confidence and approval of the community whose interest they wish to safeguard, through proper administration of the wakf properties. The Government, I am of opinion, will do well to take into confidence the representative organisation of the community before making their nominations to the State Wakf Boards and the Central Wakf Council.

Sir, with these few words and with the hope that Government will consider the suggestions I have made, I retire.

SHRI SYED AHMAD (Madhya Pradesh):  
Mr. Vice-Chairman, I have tried to study this amending Bill along with the parent Bill of 1954. The fact is that some of the provisions of this Bill are not consistent with either Muslim Law or with the

rShri Syed Ahmad.]

Preamble to the parent Bill and or with the Objects and. Reasons of the parent Bill. Not only are some of provisions inconsistent, but there are certain provisions to which exception can be taken. I do not say that the Bill is as a whole, not useful for the administration of Wakfs in this country.

As a matter of fact, in 1954, when the parent Bill was brought before this House and the other House I said that the Wakfs would be better administered and supervised if they were brought under the scope of the Bill. While making my observations on the present Bill I shall take up only two points and I hope that the hon. Minister in charge of this Bill will look again into these two points. Probably he is adamant and he may not look into this matter and probably in the future, on a future date, he will bring forward an amending Bill again. But I submit that frequent amending of personal law should be avoided and I do not think the House can tolerate it or stand it. Therefore, it would have been much better if my hon. friend, the Minister in charge of this measure, had looked into the two points that I had suggested to him and amended the provisions contained in the present Bill just now accordingly.

In the first place I shall refer to the definition of the term "wakf. This term "wakf was never defined before 1913. But by a Statute in 1913, after the rulings of the Privy Council in 17 Indian Appeals and in 22 Indian Appeals, a Bill was brought in the Imperial Legislature, known as the Muslim Wakf Validity Bill, and for the first time the word "wakf" was defined, and that definition of wakf included "wakf-alal-aulad". If my hon. friend will care to go through this definition of wakf in Act 6 of 1913 he will find that that Act was passed primarily to include wakf-alal-aulad in the definition of wakf. That was as much part of a wakf as any other wakf. We find that in the

parent *am* and in *trus* amenaing *au*i the definition of wakf is separate from wakf-alal-aulad. Now as worded, waki has been divided and there has been a dichotomy of wakf-alal-aulad, itself for the benefit of the descendants of the wakf, that is the donor, and that part of the wakf-alal-aulad which is for a purpose that is pious, religious or charitable. These two definitions do exist in this country and Act 6 of 1913 has not been repealed. The Act that has come into force, that is to say, Act 29 of 1954 also defines wakf-alal-aulad but this definition is absolutely different the definition in the former Act.

Therefore, the position at present is that the definition contained in the 1954 Act is good for the whole of India except for Bengal, Bihar and Uttar Pradesh, and the definition in the Act which has not been repealed, that is to say, Act 6 of 1913, is good for the three States only and not for the rest of India. I had suggested to my hon. friend that he should look into the Bengal Act, the U.P. Act and the Bihar Act and try and find out this dichotomy into private wakfs and public wakfs. for this should be eliminated. My view is—and I shall maintain it and put it forward with all the emphasis at my command that there is no such thing as private and public as far as wakfs are concerned. I have consulted many books on Muslim jurisprudence and I have come to the conclusion that Muslim jurisprudence never contemplated a public wakf and a private wakf. There was only one kind of wakf. The wakf-alal-aulad also meant for pious, religious or charitable purposes. Here I can quote on the authority of Tyabji, on the authority of A. A. Pairi.

SHRI AKBAR ALI KHAN (Andhra Pradesh): For our information will you please read from those Acts, the 1913 Act and the 1954 Act. the definitions of wakf?

SHRI SYED AHMAD: Yes, yes. I can do that. I shall read for your benefit and not for your information.

I was going to do it, but I thought that the time at my disposal was very short and I would not be allowed to read long extracts from books. But I have brought them and I shall read them.

THE VICE-CHAIRMAN: SHRI M. P. BHARGAVA: He knows it and you also know it.

SHRI SYED AHMAD: Well, he does not know and so he asked me to read it. I shall read it.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): We have to finish this; Bill by 130 P.M.

SHRI SYED AHMAD: Sir, I cannot help it. You can stop me and if "you don't allow me, I shall not read" it. He can read them and he can put the two definitions side by side and see the difference.

SHRI FARIDUL HAQ ANSARI (Uttar Pradesh): You may read them out instead of replying and explaining to the hon. Member.

SHRI SYED AHMAD: Now, I shall read the definition from Act 6 of 1913. It says:

"Wakf means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Muslim law as religious, pious or charitable."

That is the entire definition in this Act and it includes the wakf-alal-aulad because it was passed for that purpose, and particularly the function and the object of this Act was to see that the wakf-alal-aulad should be treated as wakf, and that is why it is known as The Muslim Wakf Validity Act. Now I shall give the definition in the Act of 1954. There the definition is like this:

"Wakf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by

by the Muslim law as pious, religious or charitable and includes—"

This much is the same as that in Act 6 of 1913. But further it says that it includes:

"(i) a wakf by user;

(ii) mushrut-ul-khidrnat; 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."

Thus it will be seen that wakf-alal-aulad has been divided into two portions and to some extent it is wakf and to some extent it is not wakf, and so here it is, neither fish, fowl nor good red herring. My hon. friend if he goes to court with this measure, it will create headache for the courts and it will be impossible for the court to interpret the law.

Firstly, although the wakf-alal-aulad is a charitable institution it will be excluded from the definition of wakf. It is going to create headache to the wakifs, to the Boards and also to the courts, and I am sure my hon. friend will have to bring in another amending Bill very soon. Secondly I object to this Bill because of clause 11 of the Bill which is a very mischievous clause I had written to my hon. friend about this, for it is a very mischievous formulation of law. I know law and he being an educationist it has not occurred to him. But I know something of law and I say that this is a very mischievous formulation of law. Clause 11 says that notwithstanding anything contained in the Act, the property of the wakf shall not be transferred by will, lease or sale, unless sanction has been given by the mutawalli.

SHRI AKBAR ALI KHAN: Not the mutawalli but the Board.

SHRI SYED AHMAD: Yes, the Board I am thankful to my hon. friend for the correction. So far as this is concerned, I have no quarrel ex-

[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 wakif unless it is repugnant to the policy of law. If it is repugnant to Muslim law, do not carry it out. But here >ou are changing Muslim law and this Bill does not deal with any change in n law but only with the admi-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 vnu have some proceedings. There is section 145 of the Criminal Procedure Code and in the different States also there are laws dealing with restitution. Even in the D.I.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 tftie 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 PRO- DUCTTON**

DEPUTY MINISTER IN THE MINISTRY OP COMMERCE (SHRI S. V. RAMASWAMY) : Sir, on behalf of Shri Mnnubhai 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.

Sara 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 dispossess-ed of his house, he has to go to a court of law but if the house of a Mohamman is taken away, if he is dispossessed, "he goes to the Collector