

## COUNCIL OF STATES

Friday, 23rd April 1954

The Council met at a quarter past eight of the clock, MR. CHAIRMAN in the Chair.

### MEMBER SWORN

SHRI T. V. Kamalaswamy (Madras):

### MESSAGE FROM THE HOUSE OF THE PEOPLE

SECRETARY: Sir, I have to report to the Council the following message received from the House of the People, signed by the Secretary to the House:

"In accordance with the provisions of rule 132 of the Rules of Procedure and Conduct of Business in the House of the People, I am directed to enclose herewith a copy of the Finance Bill, 1954, as passed by the House at its sitting held on the 22nd April, 1954.

The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India".

I lay the Bill on the Table.

### THE MUSLIM WAKFS BILL, 1952

SHRI AKHTAR HUSAIN (Uttar Pradesh): Mr. Chairman, I beg to move:

"That the Bill to provide for the better administration and supervision of wakfs, as passed by the House of the People, be taken into consideration."

Sir, this Bill aims at making provision for the proper management, control and supervision of dedicated properties designated as 'wakf.

12 C.S.D.

As the House is aware, religious-minded and pious people, with a view to spiritual advancement, set apart some portion of their property for the purpose of its being utilised for the benefit of mankind. The idea in creating wakfs has always been .....

SHRI H. P. SAKSENA (Uttar Pradesh): What is the real title of the Bill—the Muslim Wakfs Bill or the Wakfs Bill?

SHRI AKHTAR HUSAIN: If my hon. colleague had only taken the trouble of reading the Bill as amended by the Select Committee, he would<sup>1</sup> not have asked the question. He would have seen that originally the name of the Bill was the Muslim Wakfs Bill but later on when it went to the Select Committee presided over by our Law Minister, the whole matter was carefully gone into and the new name given to the Bill that I have the privilege of moving for consideration before this august House is the Wakfs Bill.

SHRI H. P. SAKSENA: But I have before me a copy of the Bill which clearly says: "The Muslim Wakfs Bill, 1952" and because it is so I raised the point. So I cannot be accused of not having read the title of the Bill.

SHRI AKHTAR HUSAIN: I can accept no responsibility for any incorrect copy that my hon. colleague may have provided himself with or a copy which might not be up to date or a copy which might have been printed before final shape was given by the Select Committee to the title and the provisions of this Bill.

I am sorry I have allowed myself to be side-tracked, but the submission I was making was that these charitable endowments were created by people for the benefit of mankind and with a view to carry out what they considered to be their religious obligation, these properties have been set apart, and the view that prevails is that when a Mussalman creates a

[Shri Akhtar Husain.] wakf, that property is dedicated to the ownership of God. When property is so dedicated the owner divests himself of the ownership of the wakf property and ownership of such property is vested in God Almighty. No man can have any right of ownership in such property. Such properties continue to remain eternally dedicated for the purposes considered by Islamic law as pious, religious or charitable. Sometimes the authors of these wakfs continue to remain associated with the management of such properties for their life-time. All wakfs in due course of time pass away from this world and the management of wakfs created by them is transferred to the hands of trustees called "mutawallis". Some of these mutawallis certainly carry on the work of the wakfs efficiently and give full effect to the objects for which the wakfs were created. But there are others who make free use of the profits of the wakf property. Some of them even alienate wakf property and others misappropriate the profits of the property and not only do they misappropriate the profits of the property but they misuse profits and the income of wakf properties for purposes which could not have been even dreamt of by those pious people who set apart their properties for the purposes of the benefit of mankind. They did not use all their properties for their own benefit. They did not spend it themselves. They did not pass on these properties to their near and dear ones, but they set apart these properties so that the income of these properties may eternally be used and utilised for the benefit of mankind. I would place before the House, Sir, the recognised definition of a wakf.

SHRI RAJAGOPAL NAIDU (Madras) : I would like to know from the hon. mover whether there are no private wakfs for the benefit of the heirs and representatives of the man who has created the wakf.

MR. CHAIRMAN: Later on you can ask these questions.

SHRI AKHTAR HUSAIN: I hope to be able to satisfy my friend. I hope my hon. friend being himself a lawyer knows it well.

SHRI V. K. DHAGE (Hyderabad): May I know, Sir, whether the profits of the wakf property are to be utilised for the benefit of mankind or only for the Muslims?

SHRI AKHTAR HUSAIN: Now, as I was saying, Sir, I will give to the Council and through you to the hon. Members the exact definition of 'wakf' as recognised in the textbook on Muhammadan Law by Sir Dinshah Fardunji Mulla, a very eminent jurist, who was at one time a Member of the Privy Council also, and this is what he says: "The term wakf literally means detention. The legal meaning of wakf, according to Abu Hanifa, is the detention of a specific thing in the ownership of the wakif or appropriate^ and the devoting or appropriating of its profits or usufruct, "in^ charity on the poor or other good objects." According to the two disciples, Abu Yusuf and Muhammad, wakf signifies the extinction of the appropriator's ownership in the thing dedicated and the detention of the thing is the implied ownership of God, in such a manner that its profits may revert to or be applied "for the benefit of mankind". A wakf extinguishes the right of the wakif or dedicator and transfers ownership to God'.

M&J.-GENERAL S. S. SOKHEY (Nominated): Are we called upon in this House to express our belief in God?

MR. CHAIRMAN: Let the thing be moved<sup>1</sup> first. Then it will be open for discussion.

SHRI AKHTAR HUSAIN: I hope to-be able to satisfy my learned friend in due course of time.

If my hon. colleagues will bear with me I will finish my preliminary remarks in order to acquaint those hon. colleagues of mine, who may not have had the opportunity of acquainting themselves, with what the spirit of a

wakf is. A wakf extinguishes the right of the dedicators and transfers the ownership to God. The mutawalli is the manager of the wakf but the property does not vest in him as it would vest in the trustees in the English law. I do not wish to make my submissions to this House a legalistic survey of the law of wakf, but I think I have stated enough to satisfy my hon. colleagues that transfer by wakf is a purely religious dedication and the object is to set apart property in wakf in order to obtain some spiritual benefit. With this object in view large properties have been set apart and, as you are aware, the mutawalli who is the manager has no right of ownership in the property and he is bound to expend the income of this wakf property in a suitable manner in accordance with the wishes of the person who has tied the property to the ownership of God. The essence of the matter is that it is the obligation of the mutawalli to carry out the wishes of the person who has created the trust and to give full effect to those wishes and to expend the income from the property in the manner prescribed by him. Sir, it is a recognised responsibility of the State to see, just as minors are the responsibility of the State to see that nobody takes away the property of the minor, that, in the same way where a property is left by religious-minded deceased persons, it is not misappropriated by those persons who carry on the management of that property. For this reason in some of the States long before the dawn of independence special enactments were passed for the purpose of controlling the activities of these mutawallis. They have established Wakf Boards, they have had a survey made of all the wakf properties, got them properly registered and full control is exercised over the persons who are in charge of the management. If the Wakf Board finds that the persons are mismanaging the property then those persons are removed. The necessity for such legislation was felt quite early in the States; in some cases about 20 years before, because we have a Bengal Act of the year 1934 and our Uttar Pradesh Act is of the

year 1936. Even the Madras State has passed an enactment and so has the Delhi State and also Bihar. All these States have passed such legislation for the proper protection of the wakf properties and for the purpose of enforcing the law against the mutawallis. They have also simplified the provisions relating to the removal of mutawallis, because before these enactments, which I have just now mentioned, were made in those various States, it used to be a very cumbersome legal process to institute a suit, to pay *ad valorem* court fee, to carry on the litigation for years, to produce evidence and do so many other things which were beyond the capacity of the average public-spirited persons who had to spend money out of their own pockets to get the property placed in the hands of suitable managers. So with a view to remove all those technical difficulties, the State stepped in. The enactments were passed at the instance of certain public-spirited persons and the working of the Wakf Acts in the various States has shown that the control now exercised by the Wakf Boards over managers is very much more effective.

When this improvement was noticed, it was realised that now that our country is one, there should be uniformity of legislation in all the States and after removing the defects which the working of these Acts had disclosed in the various States where local enactments had been passed, this Bill was framed. When this Bill was framed, it was introduced in the House of the People where it received the support of various sections. It was realised that it was a very laudable object to have uniformity of legislation all over the country and to make adequate provision for the proper management of dead men's property and to give full effect to the wishes of those people who had no selfish motives in setting apart those properties. They only just wanted that the income of these properties which they left should be utilised for the betterment of humanity. Having regard to these objects, the House of the People referred this Bill to a Select Committee presided over by the

[Shri Akhtar Husain.] Law Minister and I shall give to the House the names of the members of the Select Committee to demonstrate that it was a Committee which was representative of the various sections of opinion. It was a Committee of 19 members including the Chairman and apart from the nine Muslim members, I will give the names of the non-Muslim members among whom the first is of course the Chairman. The others are—Shri Gurmukh Singh Musafir, Pandit Krishna Chandra Sharma, Shri Hira Vallabh Tripathi, Shri Mohanlal Saksena, Dr. Jaisooraya, Shrimati Subhadra Joshi, Shri Nara-simham, Shri Atma Singh Namdhari and Shri Piare Lai Kureel. These were the public-spirited persons with experience of public affairs who helped in the deliberations of the Select Committee. The Select Committee met several times, more than a dozen times in a period of over one year. The whole matter was gone into, public opinion was elicited and the Law Minister very kindly placed at the disposal of this Committee the services of the expert draftsmen of his Department who went through the Bill and drafted it in accordance with the directions given by the Committee. The whole Bill was redrafted and what we have now before us is the combined wisdom of all shades of public opinion and it is this Bill which I beg of the Council to take into consideration.

Now, I would state very briefly what this Bill consists of. It consists of 69 clauses. The first chapter is only a preliminary one and it describes the extent of the operation of the Bill and the places where it would apply. The second chapter requires that a survey of the wakf should be made in those States where a survey has not already been made. Chapter III relates to the establishment of the Board of Management and its functions. One important matter to be placed before the House with respect to the functions of these Boards is that in some of the States there are two Boards—one relating to the Shia

v wakfs and the other relating to the Sunni wakfs. There has been some difference between the legal incidents of a Shia wakf and that of a Sunni wakf and in order to give the fullest confidence to the two communities of Shias and Sunnis it has been provided that in the State of Uttar Pradesh the Shias will have their own Wakf Board so that they may be able to determine in what manner the property set apart by the Shia wakfs should be managed and spent, and the Sunni Central Board of Wakf is entrusted with the duty and responsibility of making provision for the due utilisation of the funds of the Sunni wakfs. We felt that the two communities were very touchy and sensitive about this matter. They do not want that the income of the Shia wakf should be utilised for the benefit of the Sunnis or the income of the Sunni wakfs should be utilised for the benefit of the Shias.

In my State of Uttar Pradesh, there was some litigation with the Sunni Wakf Board on the one side and the Shia Wakf Board on the other where the Shias said that they cannot allow the income to be utilised to the exclusion of the Shias. That was a passing phase, and in this Bill that is before the House now, we have made provision that two separate boards need not be established. All that the Bill provides is that when the objects provided for in the original deed of the wakf have failed, it is no longer possible to utilise that income for those purposes and objects, then this income should be diverted

' to equally religious objects, or objects of spiritual import, and the determi-

I nation should be made by the coreligionists of the person who sets apart that property; that is to say, if the object of a certain Shia wakf had failed and the question arisen how the income should be diverted for other suitable religious purposes, this should be left exclusively to the determination of the Shia members of the Board, and similarly with the Sunni property. The Bill before us makes this distinction between the two sects. Otherwise, in other respects it has

been found that the establishment of two separate boards of management would be unnecessary, expensive, and the money can better be utilised for other more beneficial purposes and for more humanitarian work.

Then, Sir, I come to Chapter IV. It provides for the registration of wakfs and imposes penalties for not registering such properties. The Board may collect information regarding any property which it has reason to believe to be wakf property, and if any question arises whether a particular property is wakf property or not or whether a wakf is a Shia wakf or a Sunni wakf, it may, after making such inquiry as it may deem fit, decide the question. There is a statutory obligation on the mutawalli to disclose what wakf property is in his possession and have it properly registered and brought under the proper and suitable control of the boards of management.

Then we come to Chapter V. This deals with Mutawallis and Wakf Accounts. This is an important chapter which prescribes effective remedies of getting rid of erring mutawallis and removing them without any long legal process.

Then, there is Chapter VI, dealing with the Finances of the Board. It contains nine clauses. This chapter prescribes that a sum not exceeding five per cent, of the net annual income of such of its property as is situate in the State of the Board is to be utilised for purposes of the various boards.

The next chapter is Chapter VII, relating to judicial proceedings. This chapter provides for the judicial proceedings in respect of suits by courts and lays down that in case of any wakf property being taken over by proceedings under the Land Acquisition Act, the Wakf Board concerned will be made a party and intimation of it will be given so that wakf property, dedicated property, or endowed property may not be taken away in any wrongful way without adequate

compensation being paid to the interests concerned.

Then, Sir, I come to Chapter VIII, the last chapter. This relates to miscellaneous provisions, which provide for issue of directions by the Central Government, directions by the State Government, power to supersede the Board, power to make rules and issue regulations and other matters of that kind. But the most important provision introduced in this chapter is one which does not exist in the other existing Acts, and that is that the Central Government has the authority to issue directions to the various wakf boards through the respective State Governments. Under the provisions of this chapter, the Union Government has been given the authority to obtain the information and to ask the State Governments to submit a report about any matter about which they feel concerned and after considering such report or information, the Union Government will have the authority to issue directions. This, I submit, is a very salutary provision because it is designed to secure uniformity. The Union Government will thus have the authority to exercise its control and give proper guidance to the various State Boards.

Now, Sir, I have taken much of your valuable time to place before you the various provisions of the Bill.

I should only like to submit that it is a measure formal in character and I hope so far as the properties of the dead men are concerned, the dust of controversy shall not be raised. The other matter concerning wakfs that deserves consideration is that apart from the purely public and religious wakfs, there are a certain number of wakfs called the wakf-alal-aulad. In the case of the wakf-alal-aulad, the property is tied to the ownership of the family, but when the line of the family becomes extinct or when the descendants of that family cease to exist, then the entire property is devoted for pious, religious or charitable purposes, that is to say, in all the wakf-alal-aulad it is necessary that there should be an ultimate act of charity. The funds

DR. P. V. KANE (Nominated): Sir, I do not want to go into the details of the Bill. But I And that there are

going to be perpetuities created. In this Bill—I hope everybody has got the Bill in his hands—there is clause 10 which **says that certain** perso-are to be nominated on the Board, and that the Board shall consist of 11 members, 7 members and 5 members. In clause 13 it is clear that no member of this House can be a member of the Board unless he is a Muslim. So there is going to be a diarchy. The Shia wakf is different from the Sunni wakf. And in the Board there must be Shia members as also Sunni members, and they will be in two bodies. That is the question. I do not want to say myself as to how I feel, but let the House consider this matter, this very idea of wakfs, which is no doubt religious. But there are certain restrictions in it which partake of the nature of perpetuity. For example, you will consider the definition of 'wakf. In clause 3(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—mind you, that is the wording. The hon. mover said "for humanity". Probably the original author, the great prophet, thought that the whole world would be a Muslim world. But here we have got the Muslim law. Therefore, charity created for all mankind will not be 'wakf in that sense. It must be for the purposes recognised by the Muslim law as pious, religious or charitable. In sub-clause (iii) it is said "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." My objection is to that last thing. The very idea of wakf is really retention in the custody of God. The Muhammadan lawyers say, "Charity begins at home." Therefore create a charity for your children. And remember that in the Muhammadan law there are so many heirs and shares. It is a charity to the family of the person who created the wakf. Therefore there is the perpetuity. The general rule is that perpetuity

should not be recognised ordinarily except in the case of charitable and religious things. This is called a religious thing. But what is the substance of the whole thing? The substance is that it is meant for the benefit of the children, the children's children and so on. So this is creating a perpetuity. The result is that all these charities of this nature, namely, alal<sup>^</sup>aulad, become a private property. The learned mover himself said that the wakfs have not been very well managed. I do not want to go into that, but let the Shias and Sunnis come together. They swear by the same **sacred book; they** honour the same prophet. Why do not Shias and Sunnis come together? Why is it said that this is a Shia law and<sup>1</sup> that is a Sunni law?

Then, Sir, there is clause 55 about judicial proceedings. At present if anybody has to file a suit for a declaration that a certain property is religious and charitable etc., he has to do it under the Religious Endowments Act or under section 92 of the Civil Procedure Code. But Were in clause 55 what do we find? It says:

"A suit to obtain any of the reliefs mentioned in section 14 of the Religious Endowments Act, 1863 (XX of 1863) and in section 92 of the Code of Civil Procedure, 1908 (Act V of 1908) relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Board without obtaining the leave or consent referred to in those Acts."

Under section 92 you have to take leave either of the Advocate-General or of the Collector of a District. Now here there is a discrimination made. A Muhammadan wakf can be sued upon by a person without such consent as above. I therefore submit that this must be omitted here. You cannot have a power to bring a suit about which there is a provision different altogether from what applies to all. Not only Hindus, but even the Christians and Parsis cannot do it unless, they come under section 92 of the Civil Procedure Code. Therefore my

[Dr. P. V. Kane.] submission is that the learned mover will see his way to omit this clause. These are the few remarks that I wanted to make on this Bill.

SHRI K. S. HEGDE (Madras): Mr. Chairman, I agree with some of the observations made by my learned friend, Dr. Kane, on this Bill. I have a doubt in my mind whether this Bill is changing indirectly some of the methods that are found to exist in administering trust law both in regard to Hindu trusts and Muslim trusts. It is well-known to everybody, particularly to my lawyer friends, that many trusts are created in the name of wakfs or Hindu religious trusts just to avoid disintegration of the property. Oftentimes persons heavily involved create some type of trust or other to cheat the creditors, and in some cases, to see that the property is kept over for their children and grandchildren. That has been found to be the practice both among the Hindus as well as among the Muslims. By putting the seal on certain matters, it is very likely that we are strengthening these tendencies by passing this measure. That is why it is necessary to analyse and divide trusts into two categories—public trusts and private trusts. Many times, wakfs are private trusts and the benefit goes to the heirs. The property is only nominally put in the name of God, but the income is utilised by the children and grandchildren. I for one would like to see that the law distinguishes between the public wakfs and those of private character. It must only apply to trusts where the benefit entirely goes for religious or charitable purposes and not in cases where the benefit is likely to flow to private individual. But this object has been lost sight of in framing this measure. In fact, in framing the Hindu Religious Endowments Act in the Madras State, they had in view this difficulty and distinguished between private trusts and public trusts, and the Hindu Religious Endowments Act was made applicable only where it was a 100 per cent, public trust and any trust

which partook of the character of a private trust wholly or partly was excluded.

Now, another difficulty that I have found is that under the law as it exists today, if any dispute arises whether a trust is a public trust or a private trust, whether it is a trust at all, we have to take recourse to section 91 of the Civil Procedure Code. Now, any suit under section 91 is one that is appealable, but under this Bill what has been done is that in clause 6 the position is:

"If any question arises whether a particular property is wakf property or not or whether a wakf is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final."

You are indirectly amending section 91 of the Civil Procedure Code. Now, as the law now stands, there is a right of appeal, and we can agitate the matter whether a trust is really a trust or not, whether it is a private trust or a public trust. What is being done under this Bill is to make the decision of the original court final. I do not know how the Law Minister was a party to enacting a law like this, under which the right of appeal is taken away, whereas the right of appeal exists with regard to other trusts.

SHRI AKBAR ALI KHAN (Hyderabad): Finality does not mean that the right of appeal is taken away.

SHRI K. S. HEGDE: My hon. friend is trying to point out whether the word 'final' means finality or otherwise. Now the right of appeal is not an inherent right. It is a right statutorily conferred by law and this statutory confirmation is under the provision in the Civil Procedure Code. Now, you are amending section 91 of the Civil Procedure Code, by saying that the decision is final. Why is the word 'final'



used here? In fact, this word 'final' had opened up a large area for legal conflict in connection with many other Acts. And the courts, the highest of of them, have come to the conclusion that it is finality within the Act. Taking that interpretation of the word, we have to assume that the decision of the trial court is final. Otherwise, I see no reason for the inclusion of the word 'final' here. No appeal is provided for anywhere in the Bill. The right of appeal is a statutory right and not an inherent or a natural right.

9 A.M.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): The Law Minister took the view that the words 'civil court' used in any enactment include any appellate court. It means that the decision of the ultimate court of appeal exercising civil jurisdiction is final.

SHRI K. S. HEGDE: I am grateful to the Law Minister for his interpretation, but he will pardon me if I say that I differ from him. As I was saying, the right of appeal is a statutory right and not a right which is inherent.

SHRI C. C. BISWAS: The Civil Procedure Code is the statute that gives that right of appeal, and it is not taken away because the words 'civil court' are used in this enactment.

SHRI K. S. HEGDE: I would agree with the Law Minister if he says that he intended to give the right of appeal. I suppose we are agreed on that, but the question is whether the right of appeal is actually there. That is the question before the House. Let me, with the indulgence of the House, read the clause again:

"If any question arises whether a particular property is wakf property or not or whether a wakf is a Shia wakf or Sunni wakf, the Board or

the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question, and the decision of the civil court in respect of such matter shall be final."

I fail to see how the interpretation of the Law Minister can hold.

' SHRI V. K. DHAGE: May I draw attention to clause 27? Sub-clause (2) of this clause says: "The decision of the Board on any question under subsection (1) shall, unless revoked or modified by a civil court of competent jurisdiction, be final." Here also the word 'final' is used. What is the effect of this sub-clause on the clause in the Bill with which the hon. Member is dealing?

SHRI K. S. HEGDE: My hon. friend is a little off the track. Clause 27 refers to another matter. Clause 6 refers to the civil court. Clause 27 refers to the decision of the Board.

SHRI V. K. DHAGE: The sub-clause says 'shall, unless revoked or modified by a civil court of competent jurisdiction, be final.' I am trying to support him.

SHRI K. S. HEGDE: This is more or less on the lines of the other Endowment Acts, where administrative Boards are created and are given certain judicial powers. They go into certain judicial problems and decide the matter, and that decision, unless revoked or changed by a civil court, becomes final. That is given to the Board under clause 27. It is a quasi-judicial body, it goes into the matter and comes to certain decisions, but that is subject to the decision of a civil court, which might revoke it. I was entirely *on* a different point. I was dealing with clause 6. By using the word 'final', the only meaning that can be given to it is that the decision that was contemplated and was provided for was the decision of the court

[Shri K. S. Hegde.] which tried the case, and unless that is the meaning, I do not see why the word 'final' should have been used here.

SHRI K. MADHAVA MENON (Madras) : The statement made by the Law Minister that the Bill does not go beyond section 92 of the Civil Procedure Code has practically no meaning in the light of clause 55 of the present Bill. This clause says:

"(1) A suit to obtain any of the reliefs mentioned in section 14 of the Religious Endowments Act, 1863 and in section 92 of the Code of Civil Procedure, 1908, relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Board without obtaining the leave or consent referred to in those Acts.

(2) No suit to obtain any of the reliefs referred to in sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board."

It is the Board's decision which is said to be final. Otherwise you cannot go to the court. If you want to take action under section 92 of the Civil Procedure Code, you have to take the consent of the Board. I wish to know whether that interpretation is possible.

MR. CHAIRMAN: I am asking the Law Minister to take note of all these objections and answer at the end.

SHRI K. S. HEGDE: For the present I was not on that aspect. Consciously or unconsciously this Bill might have the effect of amending section 92 of the Civil Procedure Code with regard to suits coming under clause 6 of this Bill and you might take away the right of appeal which is absolutely necessary in a case of this nature, because oftentimes the parties who might come before a court may not be the real parties who are prejudiced by the decision of the courts. My ex-

perience as a lawyer has shown me that in endowment suits the interested parties may not know about the existence of the litigation in question. The Board may not have all the information to assist the court to come to a correct conclusion. As such in all suits of this nature, at least provision for one appeal is absolutely necessary and I suppose the Law Member is also agreeing with me that that should be done. It may require reconsideration and he may again consider the matter and see whether by this provision which says that the decision of the civil court shall be final, he has not taken away the right of appeal.

Another matter to which Mr. Madhava Menon also referred is regarding clause 55. Clause 55 is more or less a model on the basis of section 73 of the Madras Religious Endowments Act. There what is provided is this. First you go to a quasi-judicial Board. The Board goes into the matter and gives its decision. The parties are given the right to move the District Court or High Court, whatever the court might be, and question the correctness of the decision of the said quasi-judicial Board without its consent but unfortunately here we find a curious procedure. You go to a Board which takes a decision and before you can question that decision you should take the consent of the Board whose decision you are questioning. It is well-known that these Boards are judges in their own causes. To explain myself, normally if A and B have a dispute, they go to C who is an impartial judge and ask for a decision. But for the sake of administrative exigency we are oftentimes constituting the very complainants or one of the parties to the dispute as a judge. They sit as judges in their own causes. These Boards give decision and they are interested in their decision, and if their consent is to be sought before we can question it in the court, I think it will be an embarrassing situation even if it could be held to be a constitutionally valid clause. My submission would be that it would be constitutionally invalid because you cannot make a party to a

litigation the judge and further say that his judgment cannot be questioned without his consent.

Another objection that my friend Mr. Kane took is this. He said that under section 92 you have got to take the sanction of the Advocate-General or Collector before you institute a suit, and that is a section which binds both Hindus and Muslims. We cannot take it away. I am unable to agree with him on this matter. The reason behind this rule is this that in these matters some responsible body or person must go into the matter before they come to a court of law, private grudge should not be the cause of litigation, evidence should have been sifted by a seemingly responsible body which again applies its mind and gives its sanction or withholds the sanction. In fact in matters like this it is well-known that when an application is made to the Collector, the application is forwarded to the local Government Pleader who gives his advice to the Collector and who normally, if not invariably, accepts his advice and then permission is either granted or refused. That function is to be performed under this Bill by a Statutory Board here, i.e., the Board'. It could be trusted with that responsibility. The provision is analogous to the provisions in the other Endowment Acts. When you constitute a Statutory body which has opportunity to go into the matter and come to a conclusion *prima facie* that here is a matter which must be placed before a court of law for its decision, then the sanction of the Collector or the Advocate-General on this matter may be unnecessary.

Adverting to another aspect of it, the criticism of Prof. Kane again may not be valid. He said that there will be discrimination between the Hindu Trusts and Muslim Trusts. There is no such discrimination. This idea of ■discrimination may not be correct because it must be one of discrimination in substance and not one of theory. That has been held by the Supreme Court. Coming to substance, what is being substituted here is to substitute for the Collectors' consent, the consent

of the Board—a Statutory tjoara. AS such I don't think there will be any discrimination and in that respect the clause may not be repugnant. Now take this Bill into consideration with the suggestions that I have made to the House and consider to what extent the Bill may require amendment. In fact I should have been happy if the hon. Member who had moved for reference of this Bill to the Select Committee had made the amendments because I for one have good reasons to think that the Bill may require further amendment though essentially the object of this Bill may be one that might be of a laudable character. With these remarks, I request the House to see whether the clauses to which I have invited reference, could not be suitably amended.

SHRI RAJAGOPAL NAIDU: Mr. Chairman, when I was going through the Bill as amended by the Select Committee, I had certain confused ideas of the intentions on the part of the mover with regard to making of a law for the wakfs. When I heard the hon. mover now, my confusion became worse confounded and I am at a loss to know as to what the intention of the mover is in moving this Bill. A wakf is both religious as well as charitable in its purpose. Now we have to see whether we are competent to enact a law affecting religion. I am afraid it is opposed to Fundamental Rights. If it is purely one for charitable or pious purposes, we can certainly pass a law of this kind. We find one of the objects of the wakfs, as defined in the very book which has been quoted by the hon. mover, is reading *Koran* in public places and also at private houses. Now, are we here to pass a law to propagate the object of the wakf to see that *Koran* is read in public places and also at private houses? There are two kinds of wakfs. We have the private wakfs and we have the public wakfs. I was not able to understand clearly from the mover whether this particular Bill applies both to the private and the public wakfs. I find that the definition of the word "wakf", as given in

[Shri Rajagopal Naidu.] clause 3 of the Bill, is very dubious, because I find it embraces even private wakfs:

•• '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—

(i) a wakf by user;'

And then there is something under (ii).

SHRI V. K. DHAGE: It is "mashrut-ul-khidmat".

SHRI RAJAGOPAL NAIDU: I could not pronounce it and so I conveniently left it. And then there is (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;"

Sir, I understand that the meaning of the word "wakf-alal-aulad" is this that it is a pure and simple private wakf. It is a wakf which has been dedicated for the benefit of the family of the person who was responsible for creating the wakf. The word has been defined in section 158 of Mulla's Mahomedan Law:

"A private wakf is one for the benefit of the settlor's family and his descendants and is called wakf-alal-aulad."

When we see clause 69 of this Bill we find<sup>1</sup> that the following enactments, namely:—The Bengal Charitable Endowments Regulation, The Religious Endowments Act, The Charitable Endowments Act, and other Acts shall not apply to any wakf to which this Act applies. That means the Wakfs Validating Act of 1913 will be made applicable so far as wakfs under the present Bill are concerned. When we come to the 1913 Act, we find that that Act applies to private wakfs also, but here in clause 3 we find that private

wakf will come in "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable." But I do not find any private wakf made for a purpose which is pious, religious or charitable, for it means it is entirely for the benefit of the family and the descendants of the person who creates the wakf. So I am unable to understand the legal effect of the definition of the word "wakf" particularly with regard to private wakfs. That is why I was a little bit confused and I wanted to ask the hon. mover even at the beginning whether this measure applies to private wakfs also.

SHRI K. S. HEGDE: As the Bill stands, it applies to private wakfs.

SHRI RAJAGOPAL NAIDU: As it is, it applies to private wakfs, but we find that it has been subjected to restrictions to a certain extent.

Sir, I am opposed to the provisions of this Bill for the simple reason that various States have been consulted in this matter, and as the various States have got analogous laws, they have not been in favour of such a measure, as the one that is proposed. I know for certain that there is a law in Madras; and we find in States like West Bengal, Bihar, Uttar Pradesh, Saurashtra, Mysore, Travancore-Co-chine, Madhya Pradesh and Hyderabad, they have got analogous laws. And all these States are of one opinion in saying that they do not want the Central Government to pass any such law for the wakfs in their States. When the various States are of this opinion, I do not understand why the Central Government should try to impose this law upon the States.

SHRI TAJAMUL HUSAIN (Bihar): Government are not imposing it.

SHRI RAJAGOPAL NAIDU: My hon. friend to my left says that it is not the Government that is trying to enforce the law. But I say it is the Government that is behind the whole thing. It is the Government that is behind the screen. Otherwise this Bill

would not have been passed by the other House.

SHRI C. C. BISWAS: It is not a fact that the Government is behind the screen. If Government wanted to sponsor this measure, they could have come forward openly. It was a private Member's Bill which was sent to the Select Committee. The Government's attitude was one of complete detachment. If the Members of the House desired that this Bill should be referred to a Select Committee and accepted by the House with such modifications as the Select Committee might make, well, it was up to them to take that step and that step was taken. Government did not want to stand in the way. The Government wanted the House to express its own opinion and then act according to that opinion. It is only accidental that I was made the Chairman of the Committee and I was there not in my capacity as Law Minister, sponsoring the Bill on behalf of the Government. My object there was to give proper shape and form to the measure. I made that perfectly clear. And when the Bill and the report of the Select Committee came before the House of the People there was hardly a word of dissent and the Bill went through in less than fifteen minutes.

SHRI K. S. HEGDE: Sir, the hon. Law Minister was pleased to say that he was in the Select Committee not as a Minister, but in his individual capacity. If that is so, then I submit that the whole Bill is invalid, because he had no right to be on the Select Committee of the House of the People of which he was not a Member. He could have been there on the Select Committee only as the Law Minister, not otherwise.

SHRI C. C. BISWAS: What I meant was, I was not there representing the Government's view in respect of this matter. I made this point perfectly clear both in the Select Committee and in the House of the People.

SHRI RAJAGOPAL NAIDU: Sir, the Law Minister is completely beaten. He

is a Member of this House and it is preposterous for him to state that he had been there on the Select Committee not in his capacity as Law Minister. I ask this question of the Law Minister: "What is your capacity or right to be a Member of any Select Committee of the other House unless you are there in your capacity as Law Minister?"

SHRI C. C. BISWAS: Sir, whatever I say is always found to be preposterous by some sections of the House.

MR. CHAIRMAN: Let us proceed.

SHRI RAJAGOPAL NAIDU: I once again ask this question. Is there any.....

MR. CHAIRMAN: It has been asked by Mr. Hegde.

SHRI RAJAGOPAL NAIDU: I am going to a different point. Is there any private Member's Bill, however laudable its objective be, that has been passed by this House? I have always found the Treasury Benches coming forward to say that a more comprehensive Bill is to be brought forward by them, and so "you had better withdraw your Bill, otherwise it will be voted down." That has been the fate of every private Member's Bill. That has uniformly been the fate of such Bills, introduced either in the House of the People or in the Council of States. I know of certain important and well-worded Bills moved in this House—there will also be hereafter— but they meet with the same fate.

AN HON. MEMBER: This is a welcome departure.

SHRI C. C. BISWAS: The statement was made by me in the House of the People that it was the Government's intention to bring forward a Bill which would apply to endowments of all kinds and denominations. Unfortunately the House did not accept that view and thereupon the Government thought they would not stand in the way of those

[Shri C. C. Biswas.] Members who desired that this kind of a private Member's Bill should go through. That was my attitude. As a matter of fact, the Law Ministry has circularised the different States trying to collect information regarding the endowments which are to be found in these States. The idea is to bring forward a measure dealing with endowments of all kinds. Unfortunately, well, Members of the other House suggested that they might go on with this Bill, and if the House took a different view, that did not mean that the Government should oppose it. I left it to the House.

SHRI RAJAGOPAL NAIDU: Sir, I had seen the Bill as it was introduced by the private Member. I had also seen the Bill as it came out from the Select Committee.

If the hon. Members would glance through the Bill they will find the black line on the margin right from the first page to the last page. There is not even a single clause that does not remain unaltered in the entire Bill. We find the whole structure is changed.

SHRI V. K. DHAGE: In the Select Committee's Report it is stated that it is entirely redrafted.

SHRI RAJAGOPAL NAIDU: It is entirely redrafted and redrafted by the hon. Law Minister as the Chairman of the Select Committee.

SHRI B. GUPTA (West Bengal): What do you say to that?

SHRI RAJAGOPAL NAIDU: Now, Sir, I shall come to the other aspect of the Bill.

Sir, in the Directive Principles of State Policy it is said that we should have a uniform civil code. It was said that this was not a Muslim Wakf Bill but it is only a Wakf Bill but I fail to understand whether there is this system of wakf in any other religion and even the definition in clause 3 says, "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....." I had not heard of any other religion having wakfs. Only Islam has wakfs and it should be very appropriate that it should be called the Muslim Wakfs Bill. If that is so, then under the Directive Principles of State Policy which says that there should be one uniform civil code, is it not better and proper that we have a uniform civil code throughout India for all religious and charitable endowments affecting not only the Muslims but also the Hindus, Parsis, Jains, Sikhs and every other community that is found in India? Why should there be a separate piece of legislation for religious and charitable endowments of the Muslims? It is now for us to consider whether we should have a uniform law with regard to the religious and charitable endowments for every religion in India or not and I leave it, Sir, to the House to judge whether it is right on our part to go against the Directive Principles of State Policy and enact a law affecting only the religious and charitable endowments of one particular religion.

Sir, I have nothing more to say except that there is already a particular Act and we find it is given in clause 69, the Charitable and Religious Trusts Act of 1920, which deals with the religious endowments not only of Hindus but also of Muslims and of every other religion in the country. When there is such a comprehensive Act, it is right on our part to see whether that Act should be amended or whether we should bring in a different kind of Act instead of passing an Act which affects only the religious and charitable endowments of a particular religion.

Sir, with these words, I resume my seat.

SHRI H. P. SAKSENA: Mr. Chairman, I am in entire agreement with each and every word and syllable that has fallen from the lips of my friend, Mr. Naidu. I am also thankful to the

Law Minister for having given a clear declaration that the position of the Government with regard to this Bill is one of complete detachment and consequently I find myself absolutely free to exercise my own discretion in the matter of this Bill.

Now, Sir, I have a sort of feeling that a huge fraud is being practised upon us in this House so far as this Bill is concerned. I look upon this Bill as of a purely communal character, applicable only to one community residing in this country of ours. There is a change in the name. Even just now I have before me the paper, 'List of Business, dated April 23, 1954' and I hammer that point again that the Bill is a Muslim Wakfs Bill and not a Wakfs Bill alone because the words "Muslim Wakfs Bill, 1952" are there. Whatever the other House might have done and whatever the Select Committee might have done in the matter of that Bill, it is not binding on us. We are considering this Bill afresh, anew.

Now, Sir, merely the change in the title of the Bill does not change the character of the Bill. We have experience of the Muslim Conference of Kashmir being changed into the National Conference but it did not change its character and unfortunately it remained of the same old pattern. Similarly, the Muslim Wakf Bill deals only with Shias, Sunnis, with wakf-alal-aulad and all those things which are purely and exclusively of Muslim character and cannot be applicable to any other community of the country. This Bill, Sir, is of such a character as to benefit those who believe intensively in God. For my part, I am no unbeliever in God but I would look to the interests of the creations of God rather than on God who is not in need of any assistance from us mortals. Sir, time has now come when my friend the mover of the Bill ought to pay attention to advising the people to set apart money for the establishment of hospitals, schools and colleges rather than all this alal-aulad business which is, after all, a purely personal endowment and of no use

to humanity at large. Sir, this Bill smacks of.....

DR. SHRIMJATJ SEETA PARMA-NAND (Madhya Pradesh): May I ask the speaker under what clause of the Constitution is he saying that it would be against the principles of the Constitution to pass a Bill for a particular community?

SHRI H. P. SAKSENA: It is against the Fundamental Rights.

SHRI K. S. HEGDE: Under which clause of the Fundamental Rights?

Parliament is a supreme body and we can pass legislation for the entire body or for a section thereof. If you can show us one single clause in the Constitution which prohibits enactment of such laws, either by letter or by spirit.....

SHRI B. GUPTA: You can pass a law even relating to Mr. Mohanlal Saksena.

SHRI H. P. SAKSENA: I am not Mohanlal Saksena.

MR. CHAIRMAN: What he perhaps has in mind is the general directive that we should endeavour to have a uniform civil code for all, but we have been passing separate legislation also.

SHRI K. S. HEGDE: It is a wrong conception. Although, as he says, we are a Secular State, it does not mean that we are not religious and there is no clause anywhere in the Constitution which says that we should not pass any legislation for any particular community.

MR. CHAIRMAN: All that he is saying is that although there is no clause in the Constitution, our objective is to .....

SHRI K. S. HEGDE: Even there it is not so; there is no question of elimination of religion.

MR. CHAIRMAN: We are not talking of elimination of religion.

SHRI H. P. SAKSENA: I am not satisfied with the objections of my friend Mr. Hegde. The principles describe the objective and the objective

[Shri H. P. Saksena.]  
is that no communal spirit is advanced and tolerated in the country. Now, with that object in view, the Bill is clearly against the spirit of the Constitution and, therefore, I submit that it should not be accepted. For once, I am prepared to throw it out even at this consideration stage and not to waste our time in going through the provisions of the Bill. The Bill clearly applies only to one community and I want this august House to pass such legislation as will be applicable to all the communities of the country whether they be Jains, Christians, Parsis or Hindus. Had it been a Hindu Endowment Bill I would have opposed it in the same way as I am opposing this. I am not against any community of India as such because I look upon each community as a component part of the country as a whole and for that reason I look upon myself as an Indian, never as a Hindu, and I want my other friends to cultivate the same feeling towards the country so that the whole country might be consolidated and, in the difficult times to come, we may be able to think as one man, as an Indian, and not as a Muslim, Shia or Sunni, etc. For this reason, I oppose the Bill, lock, stock and barrel,

SYED MAZHAR IMAM (Bihar): What is the view of the hon. Member on the Hindu Code Bill?

DR. SHRIMATI SEETA PARMA-NAND: I ask the same question.

MR. CHAIRMAN: Quite right. Mr. Gupta.

SHRI B. GUPTA: Mr. Chairman, it is not given to many people in India to have private property. The overwhelming majority of the people do not have the occasion to make such endowments, religious or otherwise, and the opportunity to make endowments or create charitable trusts or institutions is confined to a handful of people in our society who have the fortune to own properties beyond their requirements. As far as the bene-

ficiaries are concerned, probably the Bill will relate to a larger section of the people who may come within the range of a charitable trust or certain other endowments that are envisaged in such a measure.

Sir, piecemeal as it has come before us with the detachment of the Government but nevertheless with the vote of the Congress Party in the House of the People, it does not meet the requirements of the situation. We are not of the view that we cannot pass legislation here affecting one or the other community. We are interested in all legislations provided they go to help the people and to advance the cause of the people. That is to say, if a legislation is socially valid, helpful and beneficial, we welcome it regardless of whether it relates to a particular community or not. It will be my contention here that it does not even much help the Muslim community. After all there are very few Nawabs, Badshahs and landlords amongst the Muslims. The overwhelming majority of the Muslims in our country are sunk in poverty. They are workers, agricultural labourers and peasants who live in extreme poverty, who are placed in a situation which calls for charity rather than in a situation which enables them to create charities. Therefore, Sir, if the measure was one which would promise some benefit to them, we would be interested in it. Unfortunately, however, this Bill falls very far short of expectations even if we have a limited view before us.

Sir, as you know, we have got under the Hindu law *debattar* properties and we have got under the Muslim law wakf properties. Both these properties have been grossly abused. The laws have been abused by the vested interests more especially by the landholding class who try to evade even certain ordinary provisions of the law by creating *debattar* properties or by creating wakf properties, depending upon whether they are Hindus or Muslims.



Now, Sir, in the Muslim law you have got certain provisions of inheritance and succession. They bring in a wide range of successors and heirs in Muslim law and it has been found that certain people who are property owners try to evade those provisions of the law by creating wakf estates. They style themselves or some of their nominees as "mutawallis" just as we have in the Hindu law the institution called "shebais". You must have seen some *Mahants* in Puri and if you look at the limousines which they drive and the majestic way in which they ride on elephants you will never think that they were in communion with that institution which is called Almighty God. Now whatever else they may be, they are as far from religious things, as far from God, as, I suppose, the Himalayas from the Indian Ocean. They are poles apart. Yet we find huge properties created under these *debattar* laws managed by these people who spend the money not even for religious purposes according to the laws of the Hindus, but for meeting their own extravagant needs, for luxurious purposes and some such things. Likewise in Muslim law you have the mutawallis.

Now, Sir, if you go into the history of these mutawallis you will find that the mutawallis and the Nawabs are often identical figures.

SHRI TAJAMUL HUSAIN: Not at all.

SHRI B. GUPTA: Very often it is the case, and I know my friend will be annoyed and irritated. After all the leopard does not change its spots even in a big House like this. Now, Sir, I sympathise with the hon. land lord because his game is a losing game and naturally there will be.....

SHRI TAJAMUL HUSAIN: Not 'losing' but 'lost' game.

SHRI B. GUPTA: Now, Sir, in Bengal, for instance, to whose laws references have been made, certain enactments were made apart from the Muslim Wakfs Validating Act of 1913. Now -what do we find? You go round—and

12 C.S.D.

I ask my landlord friends here to go round.....

SHRI TAJAMUL HUSAIN: Ex-landlords.

SHRI B. GUPTA:.....and you will find what their blood-brothers are doing. They settle the properties, create endowments and then in the name of God—and that is the most scandalous thing of all—they lead a luxurious life with extravagant habits and waste the money when the people around them starve, and live in poverty and the blessings of God are something which are never known to them. That is what we find, and their selfishness has driven them to such a position that they not only deny the common people who are not their kith and kin that way, but also deny their close relatives who, but for this law, would have had a claim on such properties by way of inheritance and succession. That is how it is done. But, Sir, this Bill, we find, does not relate to any of these aspects.

We find a Board will be created. But who will sit on the Board? Certain people and the mutawalli himself. Why on earth should the mutawalli be on the Board? Keep him where he is and create a Board which will be uninfluenced by such mutawallis controlling the administration of such charitable properties so that they really benefit the people.

Now here a provision is made for the mutawalli. I have just pointed out one drawback and you will find that the whole thing is one of a procedural nature. The sponsors of this Bill include the vicarious spokesman, the Law Minister, who has pleaded for it but he says he is fully detached from the Bill although he was the Chairman of the Select Committee and he has supported the measure. But now he is detached from it. Anyway he should have seen to it that the abuses are removed. If you at all pass such a measure you should take note of all the abuses that have taken place and all the abuses that are before him, and as a former Judge of the Calcutta High Court he should have known

[Shri B. Gupta.] them better than I do and better than many people do as to how these institutions had been abused. Therefore, Sir, instead of trying to maintain here, again, a kind of neutrality that suits him, he should have seen to it that provisions are made even in this bad Bill so that such abuses which we have been experiencing over a number of years are eliminated. He has done nothing of the sort. Therefore he says, "I am detached." Now I do not believe in such split personality, a personality that can be divided in between the House of the People and the Council of States whenever it suits him and can be united whenever it again suits him. We want people who will have one conscience as far as the people are concerned, as far as meeting their social needs is concerned. We will have but one conscience and we will consider every measure in the light of that good conscience and see that something good is done. Our Law Minister has not been a law-giver of that sort. Since the days of Manu we have heard for the first time of a law-giver who pleads such detachment from this measure in this House according as it suits him although he had been the Chairman of the Select Committee and although the Bill had been passed in the House of the People by some 366 people who sit on the Government side. Sir, that kind of thing may be very interesting for them but does not interest us much.

Our main contention is this. The whole thing has to be gone into, I mean this *debattar* property and the *wakf* property. Now these have become—whatever the ancient law-givers might or might not have intended — institutions of fraud on law; they have become institutions of exploitation; they have become institutions for defalcation of charitable funds and the Government of our country have done nothing whatsoever to put a stop to such malpractices and abuses that go under the name of services to God. That is why I say that this measure does not much satisfy anyone. Even if I take the position of a religious Muslim who is interested in the well-being

of his people, even from that angle this measure does not satisfy anyone. It may satisfy certain landlords; it may satisfy certain big people who want to retain their property.

Now, when these land measures are being passed in various States and I am saying a thing which has not been told by any other when these Land Acquisition Bills are being passed, you will find a tendency on the part of some landholding elements in the country, especially the big ones, to create endowments whether Hindu or Muslim, whether *debattar* or *wakf*, in order to evade even those restricted land measures and in order to get more compensation from the Government. This is another fact which one must bear in mind because we are passing such measures in the context of a situation where we feel in our wisdom that certain old laws and institutions, which are not compatible with the temper of our time and which are not in keeping with the new social and dynamic developments, have to be changed. Here is an attempt on the part of certain elements in the country to utilise in the name of religion—because that appeal becomes much more forceful to them than any other appeal—certain measures handed down to them by our forbears, in order to evade various measures that are passed and to take away whatever progressive element there may be in those measures. There is an attempt to perpetrate a kind of fraud on public, on social legislation, and this is a factor which one must bear in mind. Therefore the hon. sponsor of the Bill in this House who spoke from far behind the official benches should take note of this. I hope he means well of his people, but as I have said time and again we respect all sentiments including the religious sentiment of the common people and therefore if from his religious angle he is interested in having such a measure sponsored here, he should see to it that it is sponsored in order to ensure the interests of the people of his community. Religion is a private matter and we leave it to the private indivi-

duals. We respect that right but when we deal with such a measure there is social implication in it; there is a certain social element in it; there is a certain social jurisprudence inherent in it. Therefore we would ask him to rise to the occasion and see that that aspect is also taken into consideration.

Sir, I would not go into the legal wrangle that is going on between very eminent lawyers and, I suppose, our redoubtable Law Minister will also join the fray, but I am not interested in that aspect of the matter. I only say that if a piecemeal legislation of this sort is to be passed even from the narrow religious angle, the guiding force of such legislation should be on the one hand to eliminate the abuses that the existing laws permit and, on the other hand, to ensure the interests of the people at large, the public, who suffer all the same whether you pass this legislation or not. Therefore, it is only with that sense of change for the better, and with that dynamic outlook, one should come forward with such legislation. Otherwise he will be doing no good either to his own community or to the broader sections of the public.

SHRI K. B. LALL (Bihar): Sir, such a piece of legislation really makes me sad. I thought I would remain silent and generally I do remain silent, but because some points were raised .....

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRI C. C. BISWAS: Except when the Deputy Chairman is here!

SHRI K. B. LALL: Sir, some points were raised on which our friends have expressed that it is not a communal piece of legislation and it is that which has provoked me to say a few words on this. There is no doubt that this is a communal legislation and as such there should not have been any wrangle over that. I do not blame one community or the other. When my' hon. friend Mr. H. P. Saksena raised the point that it is a communal piece of legislation, there were lawyers here who began to question him saying that i/> the Constitution itself it is provided that we can legislate for any community or even for oneself. This is

going too far. All that I want to show is that we cannot quote scripture for that purpose. The Constitution is quite clear. Article 44 says that we must evolve a uniform civil code for the whole nation. After this, if we make any provision for doing good to this community or that community it is not conducive for unity; we are only allowing to disintegrate the nation and to keep up a separate existence. Otherwise article 44 would have no meaning. Instead of helping the process of integration there is a tendency everywhere towards separatism, for disintegration. This reminds me of a story. There was a conference of crows in order to pass a resolution that they should not take the leavings from anybody's dishes. After that an amendment was brought forward saying that they should take the leavings from the dishes of the Brahmins; then there was another amendment that they should take the leavings from the dishes of the Kshatriyas and there was another amendment permitting them to take from the dishes of Vaishyas also. In the end they decided, 'let us take the leavings of all' and they dispersed. It is in that way that our Constitution is interpreted by our friends. The very essence of it that we should evolve a common civil code is now left behind and we are trying to legislate for each community separately today. Today we have got the Muslim Wakfs Bill; tomorrow we will have a Hindu Code Bill; then we will have a Sikh Code Bill. In this way we will go on passing a series of communal legislations, but at the same time quoting our Constitution for passing them. Can we put our hand on our heart and say that we are not really going against the spirit of the Constitution which requires that we should evolve a common civil code for the whole nation? As it is, we are going on recognising each community. I do not mean to say that we can do away with all the communities all at once in one day. It is true we cannot do that but if we move in the direction in which we are moving now, there will be no end to communalism howsoever much you may declare from the

[Shrf K. B. Lall.] housetop that we have declared war against communalism. You may say that, but it will go on flourishing and you can never come to the end of communalism. Instead of evolving a common code you will be helping the evolution of separate codes for separate communities. I would not have spoken at all but I thought it better to point out that when you are doing something you must have the spirit of the Constitution in your mind. Do not quote the scripture always for your purpose. Some of my friends are interested in the Hindu Code today; I do not know what is going to fall from heaven out of that code. For a similar purpose you may be allowing a Muslim Code also; perhaps a Sikh Code, and Aryasamaj Code, a Brahmo-Code, a Jain Code, a Buddhist Code. We will have all kinds of codes and at the same time we will be declaring that we have declared war against communalism.

SHEI K. S. HEGDE: You are misinterpreting article 44 of the Constitution. You have not read article 26 of the Constitution which definitely provides for the enactment of law relating to property of a.....

SHRI K. B. LALL: You are quoting everything to your purpose. You are missing the very spirit of the Constitution. The framers of the Constitution wanted to evolve a common code. That is my purpose. Everything is there in the Constitution; for lawyers everything is in the law books, otherwise there would not have been such big libraries and so many books. Even the worst case can be fought and won in the law court provided one takes the help of ingenious lawyers like my friends here. You can fight and win a case even if there is nothing in it. I do not dispute that. Although I am myself a lawyer, I have at the same time gone into the spirit of the framers of the Constitution and I pay them compliments that they have not left any loophole there. But you want to disintegrate the nation by encouraging communal tendencies. Our Constitu-

tion has been framed with a view to discourage this communal tendency, and that aspect has been totally ignored, totally neglected and hairs have been split just as my friends here have been doing to by-pass everything in the Constitution and to have their own way. Sir, it is in this spirit that I have thought it fit to speak on this measure. I remember how my old friend Mohammad Ahmad Kazmi in the old Legislative Assembly brought a Bill for making uniform application of the Shariat law irrespective of any customary law. At that time, I remember, even Mr. Jinnah was governed by the Hindu law of Mitakshara school. For three years the whole Act remained stultified. By that time, Mr. Jinnah had changed to a very great extent. Today, some sections of the people who were governed by the Hindu law are made to be governed by the Arabic law of inheritance. By that you are helping disintegration. I brought this matter up in the Party meeting; there I was told, "What have we Hindus got to do with the Muslim laws? Let them go on in their own way." Although it is our duty to see that no disintegration sets in, we are daily asking people to go towards that. It has become a fashion to say Hindus and Sikhs although the Sikhs were part and parcel of the Hindu fold. We are, each time, emphasising on 'Muslims' and 'Hindus'. The Britishers were keeping on emphasising these differences and thus brought about a division and created a separate nation of the 'Muslims'. It is a psychological factor, and in this way disintegration "goes on. I see that there has been no change in our mental outlook, in our mental attitude towards all such small things that may go to disintegrate our nation. It is from that point of view that I have raised this point. My hon. friends keep on saying: 'it is there and it is there'. Yes, whoever denies that it is not there? It is there for their purpose and so you go on disintegrating. My own purpose in speaking today is that it is a communal piece of legislation, and if you are doing anything do it with a good conscience for the betterment of the nation.

Of course, my lady friend Shrimati Seeta Parmanand was threatening to speak on that point. I greatly apprehend that. She is very much interested in the Hindu Code and so she could not afford to waste this opportunity of speaking on this measure and so she welcomes this Muslim Bill. I am protesting against this measure not because it is intrinsically bad, not because its objects are bad, its principles and policies are bad, but because it smacks of communal spirit, and I do not like that. I have already stated that there should be a uniform civil code in which all these things should be merged. I do not comprehend why there should be a distinction between the Hindu—I would not call it Hindu but Sanatan—national and the Moham-madan national and the Sikh national. To my way of thinking, Hindu is not a community or a religion. So we should not bring in the word Hindu. Mrs. Seeta Parmanand may give her blessing to anything that is communal; but there is a limit up to which we can go, lest in our hurry or enthusiasm we should do something to gain our object against the interests of our country. When the question of the building up of our nation is concerned, we should not be narrow, communal-minded and throw overboard some of the high principles which we cherish.

10 A.M.

SAVED MAZHAR IMAM:

سید مظہر امام : جناب  
دینی چیرمین صاحب! میرا پہلے  
اس بل (Bill) پر بولنے کا ارادہ نہیں  
تھا۔ مگر جب ہمارے ہاؤس (House)  
کے بعض دوستوں نے اس بل کے  
متعلق اپنے خیالات کا اظہار کیا تو  
مجھے بھی چلد باتیں ہاؤس کے  
سامنے کہنے کے لئے مجبور ہونا پڑا۔  
اس بل پر چلد دوستوں کی  
تقریریں سننے سے یہ پتہ چلتا ہے  
کہ یہ ایک ایسا بل ہے جس کے ساتھ

ہمارے لا منسٹر (Law Minister)  
صاحب بھی ہیں جس سے ملک  
کو بڑا نقصان ہونیوالا ہے اور اس  
سے کمیونلزم (communalism) پھیلنے  
والا ہے۔ سوپریمٹ، ڈیٹنسٹی  
(Separate tendency) یائی جاتی  
ہے۔ تو حیرت کی انتہا نہ رہی۔ میں  
اپنے دوستوں سے یہ عرض کر دینا  
چاہتا ہوں کہ اگر وہ اس بل پر  
غور کریں گے تو وہ اس میں صرف  
یہ پائیں گے کہ ہاؤس آف دی پیپل  
(House of the People) نے جو  
بل پاس کر کے یہاں بھیجا ہے وہ  
بہت ہی بہتر ہے۔ اس سے مطلب  
صرف یہ ہے کہ وہ اختیارات جو اس  
وقت ڈسٹرکٹ جج (District Judge)  
کو تمام چیریٹیبل پراپرٹی  
(charitable property) کے متعلق  
ڈیٹے گئے ہیں وہ ایک بورڈ (board)  
کے سپرد کر ڈیٹے جائیں۔ اس سے  
زیادہ کوئی قانون اور اختیار اس  
بل کے ذریعہ نہیں دیا جا رہا ہے۔  
اگر آپ کوئی نیا قانون اس کے ذریعے  
چیریٹیبل پراپرٹی کے لئے دیتے  
تب بھی میں یہ نہیں سمجھتا  
کہ یہ تمام آرگومنٹس (arguments)  
جو ہاؤس میں ہو رہے ہیں وہ کچھ  
حد تک مناسب ہیں۔ مگر وہ  
اختیار جو ہر ایک ضلع میں ایک  
جج کے پاس موجود ہیں کہ وقف  
پراپرٹی کو ٹیکہ لے کے لئے وہ انتظام  
کریں لیکن اس سے کام نہیں چلتا

[Syed Mazhar Imam.]  
 ہے۔ اس لئے تمام سٹیٹوں (States)  
 میں منسٹروں (Ministers) کو یہ  
 اختیار دیا جا رہا ہے کہ وہ خود  
 اس بل کے ذریعے ایک بورڈ نامی نہت  
 (nominate) کریں۔ جس سے  
 بہتر انتظام ہو سکے۔

دوسری چیز جو ہمارے دوست  
 مسٹر بھوپیش کپتان نے کہی کہ متولی  
 اسکا روپیہ صحیح خرچ نہیں کرتا  
 ہے۔ تو اس لئے اس مینجمنٹ  
 (management) کو دیکھنے کے لئے یہ  
 بورڈ قائم کیا جا رہا ہے۔ اس لئے  
 حکومت کی یہ ذمہ داری (duty) ہے  
 کہ پبلک انٹریسٹ (public  
 interest) اور سارے ملک کے انٹریسٹ  
 کے لئے وہ اس طرح کا قانون پاس  
 کرے جس سے جو خرابیاں آ گئی  
 تھیں وہ دور کی جا سکیں اور اس  
 قانون کے ذریعہ وہی چیز کی جا  
 رہی ہے۔

میں مانتا ہوں کہ مسلمانوں  
 کی مسجدیں ہیں مسلمانوں کے  
 لئے مدرسے ہیں تو ایسی چیزیں  
 جس میں یہ جائیدادیں وقف کی  
 گئیں روپیوں کا استعمال تھیک طرح  
 سے ہو رہا ہے یا نہیں۔ مدرسے کے  
 لئے جو روپیہ دیا جاتا ہے اس کا  
 تھیک طرح سے غریب اور یتیم بچوں  
 کے لئے استعمال ہو رہا ہے یا نہیں۔  
 اس چیز کو دیکھنے کے لئے یہ بل

لایا جا رہا ہے۔ کیا ان چیزوں کو  
 دیکھتے ہوئے سٹیٹ کی ذمہ داری  
 نہیں ہو جاتی ہے کہ وہ دیکھے کہ  
 جو متولی اس طرح کے روپیوں کا  
 اختیار رکھتے ہیں وہ لوگ صحیح  
 طور پر غریبوں کے اوپر خرچ کر  
 رہے ہیں یا نہیں۔ میں تو یہی  
 کہوں گا کہ یہ حکومت کی ایک  
 مورل ذمہ داری (moral duty) ہے اور  
 ساتھ ہی ساتھ اس ہاؤس کے ممبروں  
 کی بھی ذمہ داری ہو جاتی ہے کہ وہ  
 اس طرح کا قانون بنائیں جس سے  
 غریب اور یتیم لوگوں کے لئے جو  
 روپیہ خرچ کیا جاتا ہے وہ تھیک  
 طرح سے استعمال کیا جائے۔ پارٹیشن  
 (partition) کے بعد مسئلہ انوں کی جو  
 حالت رہی ہے انکی جائداد اور  
 وقف پراپرٹی کا جس طرح سے مس-  
 مینجمنٹ (mismanagement)  
 ہو گیا ہے اس کو صحیح حالت  
 میں لانے کے لئے کیا حکومت اور  
 ہاؤس دونوں کا یہ فرض نہیں ہو  
 جاتا ہے کہ وہ اس طرح کا قانون  
 بنائے اور انکی مدد کرے۔

میں حکومت کا اور خاص طور  
 سے انریبل مینسٹر کا نہایت شکریہ  
 ہوں کہ انہوں نے یہ بل جس مصلحت  
 سے سلیکٹ کمیٹی (Select  
 Committee) میں بنایا ہے وہ قابل  
 مبارکباد ہے اور حقیقت یہ ہے کہ  
 انہوں نے ایک صحیح خدمت انجام

دی ہے۔ نہ صرف مسلمانوں کے لئے بلکہ سارے ملک کے لئے۔  
میں آخر میں ان درستوں سے یہ کہنا چاہتا ہوں جلسوں نے اس قانون کو کمیونل (communal) کہا ہے یہ بات قطعی غلط ہے۔ میں نہیں سمجھتا کہ کمیونلزم سے اس کا کیا تعلق ہو سکتا ہے۔ میں یہ کہنا چاہتا ہوں کہ سیکولر اسٹ (Secular State) ہونے کے بعد سرکار کا یہ فرض ہو جاتا ہے کہ ملک کی ہر کمیونیتی (community) کے لئے خاص طور سے مائنارٹیٹی کمیونیتی (minority community) فیسولٹیٹی (facility) دے۔ سیکولر اسٹیٹ کا مطلب یہی ہے کہ ہر قوم کو ہر کمیونیتی کو ہر ریلیجیون (religion) کو اس کے اختیارات حاصل ہوں۔ اس سیکولر اسٹیٹ کے لئے جتنے بھی ہم لوگ مائنارٹیٹی میں ہیں سرکار کے شکرگزار ہیں۔ اس کے بعد یہ کہنا کہ اس طرح کا قانون کمیونل ہے میں اس کو مناسب نہیں سمجھتا۔ اس طرح کے فائدے جو اس قانون سے ہمیں مل رہے ہیں بیشک اسی طرح کے فائدے دوسری کمیونیتی کے لوگوں کو بھی ملنے چاہئیں اور اس کے لئے قانون پاس کئے جائیں۔ اس پر ہمیں بیعتد خوشی ہوگی۔

چار صوبوں۔ اتر پردیش۔ دہلی۔ بمبئی اور بہار۔ کی حکومتوں نے اپنے اپنے قانون بنائے تھے اور ان کے بنائے ہوئے ہورت کام کر رہے ہیں۔ میں یہ کہہ سکتا ہوں کہ بہار کی سرکار نے بتوارے کے بعد ایک وقف ایکٹ بنایا جس سے بیعتد فائدہ ہو رہا ہے اور وقف جائداد کو بچانے کے لئے مقدمات لڑے جا رہے ہیں۔ میں نے شروع میں کہا ہے کہ یہ قانون کوئی نیا نہیں ہے اس میں کوئی نئی چیز ہم نہیں کرنا چاہتے۔ جس طرح سے ایک ڈسٹرکٹ جج ہر کیس میں انٹرفیر (interfere) کر سکتا ہے اسی طرح سرکار یہاں اس قانون میں ہورت کو اختیار دے رہی ہے۔ ہم یہ کر رہے ہیں کہ ایک جج کے اختیارات وقف کے ہورت کے نومی نیٹڈ (nominated) کے ہاتھ مہر دے رہے ہیں اس لئے کہ ڈسٹرکٹ جج کو تمام چھوٹی چھوٹی چیزوں کو اور رپورٹ (report) وغیرہ دیکھنے کا موقع نہیں رہتا۔ کیونکہ چھوٹی چھوٹی حثیت کے ہزار پانچسو اور بیس پچھس و دس روپہ تک کے بھی وقف ہیں۔ اس میں سے مسجد، امام بارے، گوبو۔ یارڈ (graveyard) وغیرہ بھی شامل ہیں۔ ہورت کو ان کی پروپرٹی (pro-perty) کا بہتر انتظام کرنے کا حق دیا گیا۔ اب اس کے چلانے والے کون ہوں وہ چیز یہاں طے کر دی گئی ہے۔ یہ تو سارے سٹیٹ کی تہوٹی بلکہ

[Sayed Mazhar Imam.]

ہاؤس کے تمام ممبروں کی دیوتی ہو جاتی ہے (کہونکہ حکومت کے ہاتھ میں ان چیزوں کا بندوبست ہے) کہ ہر اسٹیٹ میں وہاں کی حکومت بورڈ قائم کرے اور اس کی انکم اور مالی حالت کی رپورٹ لے - اور یہ دیکھے کہ اس کا جو روپیہ ہے یا انکم (income) ہے وہ صحیح مقصد کے لئے استعمال ہو رہا ہے یا نہیں - اس لئے میں اپنے تمام دوستوں سے اپیل کروں گا کہ یہ ایک ایسا بل ہے جس پر آپکو غور کرنا چاہیئے کہ یہ جو قدم اٹھایا جا رہا ہے اور جس پر ہمارے لائسنسٹر صاحب نے بھی سائنہ دیا ہے وہ چیریٹیبل انسٹیٹیوشن (charitable institutions) کو بچانے کے لئے ایک نہایت اچھا قدم ہے اور اس قانون کو ہمیں پاس کر دینا چاہیئے -

تو میں آپ سے عرض کر رہا تھا کہ سیکولر اسٹیٹ میں اس طرح کی پراپرٹی کو بچانا بہت ضروری چیز ہو جاتی ہے - اس حالت میں جبکہ اسٹیٹ کسی بھی ریلیجس پوز (religious purpose) کے لئے کوئی خرچ کرنے کو تیار نہیں ہوگی - تو یہ مسجد، امام باڑے، مدرسوں، گرجا، گوردوارہ یا اسی طرح کی اور مذہبی مدرسوں وغیرہ کی دیکھ بھال کرنے والا انکو مینج (manage) کرنے والا یا چلانے والا کون ہوگا - میرے

دوست اگر یہ چاہتے ہیں کہ اس قسم کی چیزوں کی جو یہاں تجویز کی گئی ہے وہ نہیں ہونی چاہئے تو میں کہتا ہوں کہ اسٹیٹ اس کی ذمہ داری اپنے اوپر لے لے مجھے اس پر کوئی گریز نہیں ہے - اگر اسٹیٹ یہ ذمہ داری لیتی ہے کہ جتنی بھی کمیونٹیز ہیں ہندو ہیں، مسلمان ہیں، سکھ ہیں، عیسائی ہیں، انکی ریلیجس چیزوں و پراپرٹی کو میں - تین (maintain) کرے تو بہت بہتر ہے - یہ آپکے انٹریسٹ میں زیادہ ضروری ہے - ورنہ اگر ان کو میں تین نہ کیا گیا تو پھر یہی ہوگا ان سب کو دیکھنے والا کوئی نہیں ہوگا اور تمام چیزیں تباہ ہو جائیں گی - آخر ہم یتیم بچوں اور غریب بیواؤں پر انکی پرورش لے لئے روپیہ دے رہے ہیں - اگر یہ سب کام ان وقتوں کے ذریعہ چیریٹی کے ذریعے ہو جائیں تو ہم اسٹیٹ کا روپیہ بھی بچائیں گے - اگر ان کو دم ختم کر دیں تو یہ بوجھ آخر میں گورنمنٹ ہی پر پڑے گا - اس لئے یہ اسٹیٹ کی دیوتی ہے اور ہم سب پارلیمنٹ (Parliament) کے ممبروں کی بھی دیوتی ہے کہ ایسے قانون کے بنانے میں ہم مدد دیں - آخر میں میں ممبروں سے اپیل کرتا ہوں کہ اس بل کو پاس کریں -

[For English translation, see Appendix VII, Annexure No. 206.]

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, I



would like to make a few observations on some of the points raised during the course of the debate, because I feel, Sir, if they are allowed to go unchallenged, they might set up a bad precedent. Sir, it has been said that the nature of the Bill has been changed so much that it is not perhaps the same Bill which was originally drafted. I feel, Sir, that that is what is perhaps done during the deliberations of every Select Committee. And if, Sir, that argument were to be accepted, it would be a very dangerous handicap for the progress of any Bill. During the Select Committee sittings, Sir, members are allowed to have their majority view by Government spokesman without any hindrance. As you will see, Sir, in the case of the Special Marriage Bill, the Bill is perhaps changed bodily—you may call it—by omitting certain clauses altogether, which might be considered as changing the nature of the Bill, or perhaps by adding some new clauses altogether.

So, if on that ground, the Bill is not to be allowed to proceed, then it would be almost impossible to take up any Bill in which a Select Committee has been given a free hand, and on this ground, I would like the House to consider whether it should give any importance to the point raised that the Bill is a different Bill as it has emerged from the Select Committee.

Now, with regard to the point raised by Mr. Saksena that, if the Bill is passed, it would amount to passing communal legislation, I do not think there is anything in the Constitution which specifically lays down anything against bringing in legislation for the bettering of the conditions of any community. Till we have become a well-knit nation, we should not allow separatist tendencies, but if on this ground we should have disallowed anything, we should have disallowed the linguistic formation of States and also the

appointment of a Commission to sit on that question, because if anything is going to divide the nation, this is going to do it. Sir, I was reminded of a story which I had read in my school days in the Hitopadesa.

It is called "Dog in the manger policy". The English translation is 'Dog in the manger policy'. A dog which was sitting on a heap of hay barked at the cow coming to eat it. The cow said,

"You are not eating it and you are not giving it to me." If you are not going to make proper use of this facility, there is no reason why you should prevent other communities from doing it. True, we want perfect unity, but for that we should allow every section of the community to organise and improve itself first. That would not lead to any separatist tendencies, if we take care and behave in a friendly way. If anything is going to lead to separatist tendencies, it is this opposition in the House to the Muslims wanting to better the administration of their wakfs. That would surely create separatist tendencies. I would like to make a special reference to the correctness of bringing piecemeal legislation for particular communities. We have already introduced the Hindu Code Bill. Nobody raised any objection then. Incidentally, it is not my Bill though an hon. Member called it my Bill. He has forgotten that it was the Government which introduced it. It was a Government Bill. I would also like to say this that, if it had been my Bill, it would not have progressed like this, and it would not have been necessary repeatedly to beg the Government to allot some time to it. So, what I would like to point out is that we should not accept these grounds that the Bill has changed its character and so it should not be considered. We have given a new name for the Special Marriage Bill, and the Hindu Marriage and Divorce Bill might also change its name. I would suggest that, instead of being Hindu Marriage

[Dr. Shrimati Seeta Parmanand.] and Divorce Bill, it should be merely 'Hindu Marriage Bill'. Why bring in divorce in the Bill? All these things should not come in the way of our accepting this Bill. In connection with the ground of bringing in communal legislation, Mr. K. B. Lall referred to observing the spirit of the Constitution. I would ask him a question: In how many things are we following the spirit of anything? Our Prime Minister at the time of the elections gave a directive of which the spirit is not being observed. He said, "Honesty, integrity and ability were to be the guiding principle of an action." How many of us are abiding by that? Even in minor matters here in Parliament, all of us are not observing the spirit of honesty and integrity.

SHRI K. S. HEGDE: Is the hon. Member going to make a rule of dishonesty?

DR. SHRIMATI SEETA PARMANAND: I am not making any rule of dishonesty. I was only saying that we should not bring in such grounds as reasons for opposing this Bill. It is not the spirit of the Constitution also that a community should be debarred from bringing in legislation for its improvement. For that matter the law of Muslim Succession remains separate, and so what is wrong in having a law for the management of Muslim endowment and charitable trusts and wakfs? If you are going to stop them from having a separate law of succession, stop this too. I think that, until the day when we can have a uniform and comprehensive civil code for the country as a whole, we can allow a Bill such as this. I would also remind my Muslim brothers that at that time, they must fall in line with the others and should not oppose it.

SHRI H. P. SAKSENA: It may be bargaining, but it is no argument.

DR. SHRIMATI SEETA PARMANAND: It may be bargaining, I do

not know, but I should like to know why it is not an argument. Government itself evidently thinks that it is not possible now to bring in a uniform civil code for the whole country; otherwise they would have brought such a measure. Sir, in the end, I would make an appeal. As it is, there is very little time left today for my Bill on the Suppression of Immoral Traffic and Brothels. I hope the House would allow at least half an hour, if not 45 minutes, for hon. Members to take part in that debate. That is the only thing that I have to say.

PROF. A. R. WADIA (Nominated): Mr. Deputy Chairman, I had not the least intention to take part in this debate, for I am not qualified for it, but I am surprised to find that the debate has taken a very unfortunate turn and we are practically on the fundamentals. It is very necessary that we should clear our minds on the fundamentals. It has been argued against the Bill that this country is a secular State. Perfectly true, but it only means that the State does not identify itself with this or that particular religion. It certainly does not mean that it does not recognise the existence of religions. The Constitution recognises the existence of religions and it gives everyone of us the right to profess and practise our own religions. This implies the recognition of particular communities—Hindus, Muslims, Parsis, Jains, Sikhs, etc.

SHRI K. S. HEGDE: Ours is not an atheistic State. It is only a secular State.

PROF. A. R. WADIA: Because the Constitution recognises the right of everyone of us to profess his own religion, it implicitly recognises the existence of religions. It is my point that it implies that all these religious communities are there. It seems to me that this piece of legislation, if anything, is certainly not religious. It is absolutely secular in character.

for this reason that it only provides for the proper management of certain charitable trusts. It seems to me that the most important parts of the Bill are Chapters IV and V which deal with the registration of wakfs and the maintenance of mutawallis and wakf accounts.

Now unfortunately it is a well known thing even in my community, as in other communities, that the charity trusts are often mismanaged, that the main purpose why these trusts were brought into existence is forgotten, and as a result of it, a good deal of corruption has crept into their management and it is the duty of the State to see that every charitable trust is well managed. If a charitable trust belongs to a particular community, there is no reason why we should say, "This is communal, let them be as dishonest as they can be and we have nothing to do with it." It seems to me that that is a perfectly unreasonable attitude to adopt for any State and especially for our State. It is for that reason that I wholeheartedly support the principles of the Bill. It is our duty to come to the assistance of the Muslim community to set their house in order. We ought to help them to see that their trusts are better managed. Coming to details, I am not competent to speak about them but if we have honest doubts about this or that particular provision, *e.g.*, that a mutawalli should be there on the Board or whether there is anything in contravention of section 92 of the C.P.C., etc., if there are any such honest doubts, I think it might be worth while postponing this Bill and to refer it again to the Select Committee for further consideration rather than throw it out altogether. It seems to me that this House would be stultifying itself if it negates the right of the Muslims to manage their own affairs in an honest and legal fashion.

KAZI KARIMUDDIN (Madhya Pradesh): Mr. Deputy Chairman,

most of the objections to this Bill, in my opinion, are based on sentiments and prejudices and more particularly because of the zeal to be secular-minded. I must tell those people who are objecting to the Bill that they have not cared *to* read the object of the Bill itself. The object of the Bill is to provide for the better administration and supervision of the wakfs. It is not that today wakfs or dedications are being made. There have been dedications in the country since a long time. This Bill only enacts that wakfs which have been created already should be administered by this law. How my learned friends can bring into discussion that this is going to be a communal legislation, I really fail to understand. This Bill has been brought for the administration of dedications which have been already made by Mussal-mans. One objection which has been raised in this House is that this is more communal than secular. The dedications have been made for a particular purpose. Can my friends change the object of the dedication? If a dedication is given for educational purposes, can that grant be applied to the Railways? I really find that there is a great misconception and misunderstanding in appreciating the provisions of this Bill. Those dedications are for particular purposes and that they are for mosques, durgahs and other charitable institutions. Can we be called secular if we change the objects of the dedication? Can we legally change the objects of the dedications which have been made in the past? If we appreciate this position that the objects of the dedications cannot be changed, much of the discussion will be curtailed. The only point is to provide for the better administration of those wakf properties. Therefore it is no use arguing and it is no use objecting and saying that this is communal. What is the definition of communal? If some people of a community have dedicated properties for a particular religious or charitable purpose, the

[Kazi Karimuddin.] incomes of that property cannot be utilized for any other purpose legally except for the purposes dedicated either verbally or by a written document. Therefore we should stop such a discussion because it is futile and it is not fruitful. My friend Mr. Gupta said that the mutawalli and the landlord who dedicates generally is the same. He could have raised an objection that this dedication is for God and for charity purposes and if he does not believe in God, the whole Bill should be discarded. I tell him that this measure takes away the individual ownership of the man. It is one step in furtherance of his ideals of communistic progress that the properties should not centre in one hand. This is dedication of the property and dis-ownment of his personal belongings in the interest of the society and the interest of the people. It may be a sectional thing. What is done in the wakfs is that the man who gives the wakf disowns himself. He gives away that property and he has no individual ownership for the property. But it is in the interest of the society. It may be in the interest of a section of a society that the property is dedicated and it is certainly for the betterment of the society and the religious institutions. It should be understood that as long as religions are recognized in India, as long as religious institutions are recognized, it is futile to argue that any dedications made to the sectional institutions should be taken away or that they should be spent away on other objects. Now if Islam and Hinduism exist and they are recognized by the people, then they are bound to make provision for the maintenance and administration of those institutions and what is communal in this, I really fail to understand. In that way Mr. Saksena's name is communal. My name is communal. Is he going to discard his name and am I going to discard mine? Is he going to discard his religion and am I to discard my religion? This objection |

is based on no other ground but on sentimental grounds. If you recognize religions, if you allow religious institutions to exist, there are bound to be dedications in a sectional way and if it is not inconsistent with the spirit of the Constitution, all our objections are invalid and we are arguing in ways which are not tenable. One of the objectors on this side said that there may be good principles underlying this; but his objection is that they are communal. My submission is that as long as religions exist, as long as religious institutions exist, and in a secular State they are bound to exist, it is essential to pass this Bill which is for the proper administration of the religious institutions for which dedications have been made.

SHRI B. K. P. SINHA (Bihar):

श्री बी० के० पी० सिन्हा (बिहार) :  
उपाध्यक्ष महोदय, संसद् के चन्द माननीय सदस्यों ने बड़े जोरदार शब्दों में इस विधेयक का विरोध किया है। उन्होंने संविधान की दुहाई दी, धर्म-निरपेक्षता की दुहाई दी और सामाजिक प्रगति की दुहाई दी। हमारे साम्यवादी मित्र श्री भूपेश गुप्ता ने उन खराबियों की ओर ध्यान दिलाया जो इन संस्थाओं में आ गई हैं। उन्होंने कहा कि मुतवल्ली शानदार मोटरों में दौड़ते हैं और हाथियों पर बैठते हैं।

SHRI B. GUPTA: Mutawalli is a big Prophet.

SHRI B. K. P. SINHA

श्री बी० के० पी० सिन्हा : इन छोटी और बड़ी बातों की ओर, और जो कुछ भी खराबियां इसमें आ गई हैं उन सब पर, सरकार का ध्यान गया है और इस विधेयक के बनाने वालों का भी ख्याल गया है और इन्हीं खराबियों की वजह से यह विधेयक लाया गया है। लोगों ने यह महसूस किया कि जब तक कोई नियंत्रण

इन सम्पत्तियों पर, इन जायदादों पर नहीं रहेगा, तब तक ये खराबियां चलती ही चली जायेंगी और इन खराबियों को दूर करने के लिये कई जगह, कई राज्यों में, ऐसे बोर्ड (board) बनाये गये हैं जो नियंत्रण रख सकें।

सिक्खों के गुरुद्वारों के लिये आज से नहीं, बीसों सालों से, पंजाब में गुरुद्वारा ऐक्ट (Gurudwara Act) है जो गुरुद्वारों के कार्यों पर नियंत्रण रखता है, उन में जो महन्त और मुतवल्ली होते हैं, उनको बहकने से रोकता है। इसी तरह से हमारे राज्य बिहार में सिर्फ मुस्लिम वक्फ ऐक्ट (Muslim Wakf Act) ही नहीं है बल्कि हिन्दू रीलिजस एंडाऊमेन्ट ऐक्ट (Hindu Religious Endowment Act) भी है। यह कहना कि यह बिल (Bill) सिर्फ मुसलमानों के लिये ही बन रहा है, मेरे खयाल से बिल्कुल गलत है।

SHRI H. P. SAKSENA:

**श्री एच० पी० सक्सेना :** बोर्ड में किस-किस कौम के मेम्बर होंगे।

SHRI B. K. P. SINHA:

**श्री बी० के० पी० सिन्हा :** वस्तु स्थिति यह है कि हिन्दू रीलिजस एंडाऊमेन्ट ऐक्ट के मुताबिक जो भी बोर्ड के मेम्बर होते हैं, वे हिन्दू ही होते हैं। इसी तरह से मुसलमान वक्फ के लिये जो बोर्ड बनाया जा रहा है उसमें भी मुसलमान ही मेम्बर होंगे। राज्यों के कानून के अनुसार इन बोर्डों के मेम्बर मुसलमान ही रहेंगे। अभी हाल ही में सुप्रीम कोर्ट में उड़ीसा, बम्बई और मद्रास के हिन्दू रीलिजस एंडाऊमेन्ट बोर्ड से सम्बन्धित फैसलों के बारे में पढ़ा था जिन में सुप्रीम कोर्ट (Supreme Court) ने यह फैसला दिया था कि सम्बन्धित विधियों की चन्द धारारों अवैधानिक थीं।

मुझे मालूम है कि बिहार में मुस्लिम वक्फों के लिये भी बोर्ड बने हुये हैं। तो फिर ऐसी हालत में यह कहना कि चूंकि यह बिल मुस्लिम वक्फों के लिये लाया जा रहा है इसलिये यह नाजायज है, या जातीयता को, साम्प्रदायिकता को प्रोत्साहन देता है, मेरे खयाल से बिल्कुल गलत है। मेरे चन्द दोस्तों ने संविधान की बातें की और कहा कि संविधान यह कहता है कि हम एक समाज की रचना करेंगे, एक समाज के लिये नियम बनायेंगे। यह सही है, लेकिन वह तो हमारा आदर्श है, हमारा आइडियल (ideal) है जिस तक हमें जाना है, लेकिन उस आदर्श पर हम एक उड़ान में, एक उछाल में तो नहीं पहुंच सकते हैं। कानून जो बनते हैं वे समाज को खास दिशा में ले जाते हैं, खास तौर पर समाज को प्रेरणा देते हैं, लेकिन उससे भी ज्यादा बड़ी बात यह है कि कानून समाज का प्रतिबिम्ब होता है, जैसा समाज होता है उसी तरह के नियम होते हैं, उसी तरह की विधि होती है। ऐसी विधि जिसका समाज से कोई सरोकार नहीं है, वह किसी हालत में चालू नहीं हो सकता है।

इसी सिलसिले में मुझे अपने राज्य बिहार की एक विधि की चर्चा करनी है। वहां लोगों ने आइन बनाया और शादी में दहेज बगैरा का लेना-देना गैर कानूनी कर दिया, लेकिन समाज इस कानून के लिये तैयार नहीं था और आज भी तैयार नहीं है। नतीजा यह है कि कानून तो है लेकिन लोग खुले आम इस कानून की अवहेलना करते हैं। शादियों में दहेज लिया जाता है, फिजूल-खर्चियां की जाती हैं और रोज-रोज कानून तोड़ा जा रहा है।

तो मतलब यह है कि इस चीज की आवश्यकता समझी जाती है कि एक समाज होना चाहिये, लेकिन हमारे समाज में आज जितने वर्ग हैं, या जितने सेक्शंस (sections)

[Shri B. K. P. Sinha.]

बने हुये हैं, उनको हम इस वक्त बिल्कुल इग्नोर (ignore) नहीं कर सकते, उनकी तरफ से नज़र बचा नहीं सकते। वस्तुस्थिति को ध्यान में रख कर कानून बनाये जाते हैं और उनका बनाया जाना जरूरी है। हमारे दोस्तों ने कहा कि कानून सब के लिये एक होना चाहिये, मेरे पूर्व वक्ता मेरे बगल में बैठे हैं, उन्होंने ठीक ही कहा है कि यह इस देश का नहीं सारे सम्य संसार का नियम है कि जब कोई सम्पत्ति—धार्मिक, सामाजिक या विद्या के लिये—कोई व्यक्ति देता है तो फाउंडर (founder) की इच्छा पर ही वह सारी सम्पत्ति सुरक्षित रखी जाती है और उसका उपभोग होता है और उसमें कोई उलट फेर नहीं किया जा सकता। इस नियम को सारे देशों ने, सारे स्वतंत्र राष्ट्रों ने माना है। विलायत की पार्लियामेंट (Parliament) के बारे में कहा जाता है कि उसको सब कानूनी अधिकार प्राप्त हैं सिवाय इसके कि वह मर्द को औरत और औरत को मर्द नहीं बना सकती, और सब कुछ कर सकती है। उसे यह अधिकार भी है कि वह लोग जो इंडाउमेंट कर गये हैं उनकी इच्छाओं का ख्याल न करते हुये, उस इंडाउमेंट के कैरेक्टर (character) को, उसके स्वभाव को बदल सकते हैं। लेकिन उस सम्य देश ने या अन्य सम्य देशों ने अपने ऊपर एक बंधन लगा रखा है कि जिसने सम्पत्ति दी है उसकी इच्छा की अवहेलना नहीं की जायेगी और ऐसे नियम के लिये आज हमारे संविधान में भी गुंजाइश है। फिर आज अगर हम यह प्रयत्न करें कि इंडाउमेंट के कैरेक्टर को एकदम बदल दें जिससे सारे समाज को उसका फायदा मिले, तो मेरा यह खयाल है कि संविधान की चन्द धारायें हमारे रास्ते में आयेंगी। अभी हाल सुप्रीम कोर्ट के सामने एक मामला पेश हुआ था जिसमें उसने यह फैसला दिया था कि रिलीजस इंडाउमेंट पर जो टैक्स लगाया गया

वह नाम से लाइसेंस फीस हो कर भी टैक्स था और इससे प्रोपर्टी राइट्स (property rights) को इंटरफेरेंस (interference) होता है अतएव असंवैधानिक है। इसलिये अगर आज हम सारे देश के फायदे के लिये इन चीज़ों को सम्य बतला कर, अमल में लाने लें तो वैधानिक न होगा कोई प्रोपर्टी—स्वाह वह एक व्यक्ति की हो, या एक संस्था की हो—आप बिना मुआवजा दिये नहीं ले सकते। यदि हम उन के स्वभाव को बदलने लें तो इसका मतलब यह होगा कि उनकी सम्पत्ति को बिना मुआवजा दिये हम ले रहे हैं और यह संविधान के अनुसार गैरकानूनी होगा, असंवैधानिक होगा। संविधान तो मेरे खयाल से हमको मजबूर करता है कि हम इसी तरह के कानून बनायें और वह हमें विस्तृत क्षेत्र से अलग रखता है। ऐसी हालत में संविधान की दुहाई मुझे बिल्कुल फिजूल और गलत मालूम होती है।

फिर धर्म निरपेक्षता की बात आती है। इसका मतलब मैं यह समझता हूँ कि प्रत्येक धर्म के मानने वालों को ये अधिकार होंगे कि वे अपने धर्म को जैसा चाहें पालन करें या बरतें। अगर धर्म उन को कहता है कि एक ढंग से अपनी संस्थाओं को चलाओ तो उन संस्थाओं को उसी ढंग से चलाने का अधिकार उस धर्म के मानने वालों को होना चाहिये। आज जो अधिकार संविधान में आता है उसको हम संविधान के नाम पर ही उन से लेना चाहते हैं। इसलिये धर्म निरपेक्षता के खयाल से संविधान के ख्याल से इस कानून का बनना बहुत जरूरी है। मैंने अपने राज्य में देखा है, और भी तमाम जगहों में देखा है कि संस्थाओं में खराबियां और कमजोरियां आ गई हैं। इसलिये उन पर नियंत्रण रखना जरूरी हो गया है।

मेरे मित्र साम्यवादी मेम्बर, श्री भूपेश गुप्ता, ने कहा कि समाज की प्रगति जिस

ओर हो रही है, उसके विरोध में यह विधेयक जाता है। यह बात मेरी समझ में मुतलक नहीं आई कि यह विरोध में कैसे जाता है? आखिर ये नियम किस लिये हैं? इस बिल के क्लॉज (clause) ३ के (I) (iii) में दिया हुआ है :—

“wakf” means....., and includes.....

(iii) a wakf-alal-aulad to the extent to which the property for any purpose recognised by Muslim law as pious, religious or charitable.”

जहां तक उनका इस्तेमाल होता होगा वहीं तक उस सम्पत्ति पर नियंत्रण होगा। तो यह विरोध में कैसे पड़ता है यह मैं जानना चाहता हूं।

SHRI B. GUPTA: Sir, the hon. Member has misunderstood me. I never said that this Bill goes against the public progress. All that I said was that progressive provisions that we require are not there.

SHRI B. K. P. SINHA:

श्री बी० के० पी० सिन्हा : आखिर वह क्या प्रोविजन (provision) था यह तो उन्होंने उस समय बताया नहीं, इसलिये मैं हाइपोथेटिकल (hypothetical) वहस में नहीं पड़ना चाहता क्योंकि वे सिर्फ बराबर यह कहते रहे कि जो होना चाहिये वह बिल में नहीं है, क्या होना चाहिये यह तो उन्होंने बतलाया ही नहीं। मेरे दोस्त स्वसेना साहब ने कहा जरूरत यह थी कि अस्पतालों, पुस्तकालयों, दवाखानों और मकतबों के लिये रुपया लगाया जाय। मुझे पता नहीं उनका क्या अनुभव है। लेकिन मेरा अपना अनुभव है। हमारे राज्य में सुगरा स्टेट एक बहुत बड़ी स्टेट थी। मैं जानता हूं एक नहीं कितने ही दवाखाने वह स्टेट चला रही

थी, कितने ही मकतब वह चला रही थी। तो इनका तो उपयोग इसी तरह के कामों के लिये बहुत अंश तक होना चाहिये और होता भी है। अगर वे चूकते हैं तो उनकी चूक को दूर करने के लिये एक बोर्ड बनाया गया है जिससे दूसरे गलत कामों में, खराब कामों में रुपया न जाये और अच्छे कामों में, धर्म के कामों में, विद्या के कामों में, गरीबों की भलाई के कामों में जाये। इसलिये यह उज्र सिर्फ समझ का फर्क है। उस ओर यह बिल हमें प्रेरणा दे कर ले जाता है।

दूसरा उज्र हमारे साम्यवादी दोस्त श्री भूपेश गुप्ता का था, पता नहीं क्यों था, कि इस विधेयक से जितने जमींदार जो जमींदार की हैसियत से खत्म हो रहे हैं, उन्हें मुतवल्ली की हैसियत से बचाये रखा जा रहा है। अब जमींदारियां रह कहां गईं, हिन्दू रिलीजस इंडाऊमेंट या मुस्लिम वक्फ जैसे कोई इन्स्टीट्यूशन को बचाव नहीं रह गये हैं, उनकी भी जो जमींदारियां थीं वह लैंड लेजिस्लेशन (land legislation) और लैंड रिफार्म ऐक्ट (Land Reform Act) के अनुसार ले ली गईं। ऐसी हालत में उनके उज्र की कोई बुनियाद नहीं मालूम होती है।

SHRI B. GUPTA: May I ask him, Sir, if it is not a fact that whereas certain ceilings on holdings apply in regard to private individuals, with regard to wakfs and other Hindu endowments the ceiling on holdings does not apply?

SHRI B. K. P. SINHA:

श्री बी० के० पी० सिन्हा : सीलिंग आन होल्डिंग्स (ceiling on holdings) हमारे राज्य में तो आई नहीं है, और मेरा खयाल है कि इस देश के किसी राज्य में नहीं आई है।

SHRI B. GUPTA:

श्री भूपेश गुप्ता : आई है ।

SHRI B. K. P. SINHA:

श्री बी० के० पी० सिन्हा : वे कहते हैं कि आई है, लेकिन इस सम्बन्ध में कोई एक्ट तो पास नहीं हुआ है। कम से कम हमारे बिहार राज्य में, बंगाल में या उड़ीसा में हमने कहीं सीलिंग आन होल्डिंग्स की बात नहीं सुनी है। अब तक लैंड रिफार्म्स के जो कानून बने हैं वे जिस तरह व्यक्तिगत जमींदारों पर लागू होते हैं उसी तरह इन संस्थाओं पर भी लागू होते हैं।

इसलिये मुझे यह बिल भला ही भला मालूम होता है और मुझे यह अच्छा मालूम होता है। मैं समझता हूँ कि इसका विरोध करना गलतफहमियों को पैदा करना है। मैं नहीं समझता कि इसका विरोध करना जायज है। चन्द लोगों ने यह कहा कि चूँकि इसमें कुछ सुधार की आवश्यकता है इसलिये इसको वापस भेज दिया जाय लेकिन मैं नहीं समझता कि इसमें कोई सुधार की आवश्यकता है उनका उच्च मृतबल्ली के बारे में था। दफा में यह है कि बोर्ड के मेम्बरों की संख्या कहीं ११, कहीं ७ और कहीं ५ रहेगी और उसमें वक्फ का मृतबल्ली भी होगा लेकिन यह जरूरी नहीं है कि जो लोग लिये जायेंगे उनमें मृतबल्ली हों और वह संख्या भी सीमित है, उसमें भी पाबन्दी लगा दी है कि किसी बोर्ड में एक मृतबल्ली से ज्यादा नहीं रहेगा। तो अगर ११ में एक मृतबल्ली भी हो तो मैं नहीं समझता कि क्या खराबी और क्या कम-जोरी उस बोर्ड में वह लायेगा।

SHRI B. GUPTA: Don't you realise - what Birla means if he is on the Congress Working Committee?

SHRI B. K. P. SINHA: I know Mr. Gupta is a greater host than Birla.

श्री बी० के० पी० सिन्हा : फिर यह कहा गया कि यह बिल हमारे सी० पी० सी० (C. P. C.) की दफा १२ के खिलाफ है। यद्यपि मैंने उस दृष्टिकोण से नहीं देखा लेकिन जो कुछ मुझे याद है उसके आधार पर मैं समझता हूँ कि यह उसके विरोध में नहीं जाता। जो कुछ उसमें डिस्ट्रिक्ट जज (District Judge) वगैरह को अधिकार था वही अधिकार इसमें बोर्ड को दिया गया है। तो कचहरियों को यह माने लगाने होंगे कि डिस्ट्रिक्ट जज के वे अधिकार रहे या नहीं या डिस्ट्रिक्ट जज को भी अधिकार रहता है और बोर्ड को भी अधिकार रहता है यानी दोनों का कंट्रोल वक्फ पर हो जाता है। कोई भी कानून बनाया जाय उसमें कचहरियों के लिये थोड़ी गुंजाइश रह ही जाती है। तो थोड़ी सी बात के लिये इस बिल को फिर से वापस भेजना और ४ या ६ महीने पास होने से रोक देना मेरे खयाल में गलत है। मैं इस बिल का हृदय से समर्थन करता हूँ और आशा करता हूँ कि जो गलतफहमी चन्द लोगों के दिलों में है वह दूर हो जायगी और सभी लोग इसका अनुमोदन करेंगे।

[For English translation, see Appendix VII, Annexure No. 207.]

SHRI GOVINDA REDDY (Mysore): Sir, I wish to say a few words on the principles of the Bill. Nobody, in my opinion, Sir, can object to the proper regulation of the religious trusts of either the Muslim community or of the Hindu community or of any other community. As there are wakfs, there are other trusts created for beneficial purposes in other communities. For instance, there is a *dharmasala* meant for the public use and a man leaves his property for it. There is a trust for a temple meant for the welfare and the upkeep of the temple and in this way there are trusts almost in all communities that we have in India.



I agree, Sir, with those hon. Members who have said that there is no prohibition in the Constitution for any citizen to profess and practise any religion he wants and for any community to develop itself by means of any institution that it may create provided these things do not contravene any law in existence. We have that freedom and I do not think it is proper to argue or to dub any community which wants to develop in this way as communal and any legislation which is brought to promote it as communal but, Sir, it is one thing to allow any religion or any community to run institutions and it is quite a different thing for the State to identify itself with and this august Parliament to set its seal upon these things. Let us, Sir, visualise the consequences of Parliament or the Government approving a measure of this kind. Sir, it is a matter of common knowledge that our Constitution aims at a social welfare State. Unfortunately, in this land of ours, we have many religions, numerous sects, castes and creeds which even go contrary to each other. It is the object of every one to see that these difference fade away as much as possible and as early as possible and at least the State should not be a party to perpetuate these differences. Therefore, when the State sets its seal of approval on gifts or trusts which are separatist in character then the State must hesitate before it gives its approval. I will take an instance, Sir; I create a trust for my community and I say that no other community shall be the beneficiary and in the management of the trust I place people of my own community alone and the State sanctions this. This means that the State will be a party to perpetuation of this tendency. In my opinion the State should discourage these.

MR. DEPUTY CHAIRMAN: What do you say to article 26 (d)?

SHRI GOVINDA REDDY: May I know the language of the article, Sir?

12 C.S.D.

MR. DEPUTY CHAIRMAN: Article 26 says, "Subject to public order, morality and health, every religious denomination or any section thereof

shall have the right \_\_\_\_\_" and (d) says, "to administer such property in accordance with law". So, law has to be made.

SHRI GOVINDA REDDY: I am in full agreement with that clause, Sir, and that is why we have the Religious Endowment Acts and the Trusts Act.

MR. DEPUTY CHAIRMAN: And also this Act.

SHRI GOVINDA REDDY: I am going to point out the difference it makes and that is exactly why I stand up, not that I am opposing the passing of this Bill. If any wakf or religious trust wants to regulate its act according to law, we have got the Trusts Act and we have got the Religious and Charitable Endowments Act and it is open to any beneficiary of the trust to question the management of the trust and to see that the trust is properly managed and utilised for the objects with which that trust was created. There is a law which applies to all trusts in the land and it is open for me, if I want to create a trust, to register my institution under that Act and therefore, there is nothing preventing any community to come within the operation of the law by having itself registered as a trust or as a religious endowment.

I will have no objection to create a separate law for instance for a trust of the kind we have got, the Raj ghat Trust; that is a Trust which is open to all; there are no religious scruples, no restrictions and a man of any community may come and a man of any community may be on the board of management, but to say that my community alone should be there or that the members of my community alone should receive the benefit is a different thing from that

[Shri Govinda Reddy.] and the State should not be a party. That is my argument and the State should not be a party to allow me to perpetuate this by creating a trust with a separatist tendency and then seek the protection of the law. There is protection of the law for them and that is under the ordinary law of the land.

Why do we want a special measure when it is open for any wakf to be registered as a trust? Why do we need a separate law for this? Also you will find that wakf-alal-aulad is included in wakf. That is a private trust, a private trust not open for the community in general but a trust which is open only for even a family and the heirs of the family. Well, that is certainly a trust which the State should not encourage. In my opinion the State should fight to see that such trusts are not established. At least the State does not give sanction to these trusts.

SHRI C. C. BISWAS: I would read the definition of wakf. It "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." A wakf of that character is not recognised to the fullest extent.

SHRI GOVINDA REDDY: That is exactly my point. If I create a trust and then say that it is open only to a section of the Hindus according to the law of that section, it is this purpose that the State should not encourage.....

MR. DEPUTY CHAIRMAN: You have got the provisions also in article 26 of the Constitution wherein it says, "(a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law." As long as there are

such trusts a law has to be passed.

SHRI C. C. BISWAS: Yes, it is mentioned in that article "every religious denomination or any section thereof shall have the right" etc. That is one of the Fundamental Rights.

SHRI GOVINDA REDDY: Quite right; I have no quarrel with that position. My point is missed. My point is this. I don't contend at all to say that a community or a section of the community has no right to see that the trust which it creates is regulated by law or to use its funds for the purposes of the trust. That is not my point, and I myself said that if a community wants to create such a trust there is a law under which it can be registered. It can get into the operation of law. I don't question the object that any trust can be regulated by law. That is not my point. My point is with regard to a trust of this nature, for instance, a private trust, a trust which is communal in character, say, for instance, I establish a trust for my own community and I prevent others from coming in. I establish a trust for a temple and I prevent the Harijans from coming in. I prevent the Muslims from coming in. I prevent the Christians from coming in—they are quite within their rights to do-so. I don't contest that position, but my point is to say that in a secular State and a social welfare State the Government should not encourage such an attitude. That is all I want to say and the Government should not pass this legislation to encourage that. Even then they have been given the protection of their rights under the Religious Endowments and Trusts Act. They have the protection of law. Therefore I don't question that. Still the State should not pass separate legislation and encourage such trusts. On the other hand the State should discourage such things. Imagine, Sir, our passing a legislation, for instance, in favour of the Banaras temple, and

the Banaras temple has a rule that any Harijans are not to be admitted. „ „ „ It is absolutely wrong. I

11 A.M.

... would certainly oppose it. Everybody, in my opinion, should oppose it. The State should not be a party to it. Maybe the Banaras temple is a private trust. They have got a right to admit whomsoever they like. I may admit anybody into my house and I may refuse admission to anybody into my house. Similarly if I create a trust in favour of my community for a temple, then it is open to me, because it is private property, to accord admission or to refuse admission to anybody and I will be within my bounds. But when I seek the aid of the State, then the State must insist that the trust should conform to certain general principles, and those principles must be not to exclude the benefits of the trust to any one. Those principles must be not communal in character. They have some rules, for instance, that the Muslims may come into a Hindu temple, the Christians may come, but they should remove their shoes. If you go to a mosque and if you go to the prayer place, you are asked to remove your shoes. Such regulations for the sanctity and proper running and upkeep are not banned but if the benefits of the trust itself are banned to a section of the community, although the trust may be a valid trust, although it may have the protection of law, my only point is that the State should not be a party to it and the State should discourage these things and when any religious trust wants to get the help of the State, the State should insist that all the separatist characters of the trust should go. Therefore, Sir, I believe the State would be committing itself to a principle in approving this Bill; the Parliament would be committed to a principle of this kind. Tomorrow I may create a trust and tomorrow the Jains may float a trust. Already a quarrel is raging among the Jains about the admission of the Harijans to the Jain

temples. Tomorrow they may as well seek a measure from the Parliament for protection of their temples from the entry of Harijans. Therefore, Sir, this is a thing in which the State should be faultless and this is a thing the State should not encourage. If there was no other ordinary law open for these trusts to be regulated according to law, then of course there would have been the need to pass a legislation of this kind. Even then I would not be a party to pass such a legislation as this. But when there is a law according to which these things can be administered without the State setting its own approval, without the State giving its own special aid for that, why should this Bill be passed? And apart from this so many defects have been pointed out.

I really appreciate the interest of the Government in this matter that they would themselves bring a measure of this kind. When the Government have undertaken to bring a measure of this kind, I do not see why we should go on and press this Bill. Therefore, Sir, I would like to appeal to the mover to withdraw this Bill on the assurance given by the Law Minister that he was prepared to bring a measure of this kind. I must not be misunderstood when I say this that I am against regulating these trusts. I have nothing to say against these religious wakfs. My only point is that the State should not be a party to this Bill.

SHRI ONKAR NATH (Delhi):

श्री ओंकार नाथ (दिल्ली) : उपाध्यक्ष महोदय, मैं इस बिल (Bill) का हृदय से स्वागत करता हूँ और जोरदार शब्दों में इसकी तारीफ करता हूँ। हमारे मुसलमान भाइयों की तरफ से यह एक ऐसा बिल पेश किया गया है जिसकी सबको तारीफ करनी चाहिये, जो तमाम जाति, धर्म और विरादरियों के लिये मिसाल है और सभी को धर्मार्थ सम्पत्ति के लिये ऐसे कानून बनवाने चाहियें। हमारे

[Shri Onkar Nath.]

देश में सब धर्मों और मजहबों के लोग रहते हैं और हर एक को इस चीज की आजादी है कि वह मजहब के मामले में आजाद हो और उसको इस विषय में संरक्षण मिलना चाहिये। बहुत से लोगों का यह ख्याल था कि हमारे मुसलमान भाई दकियानूसी और कट्टर होते हैं मगर इस बिल को लाने से उन लोगों का यह ख्याल भी बहुत हद तक दूर हो जायेगा।

हमारे मुसलमान भाई चाहते क्या हैं ? वे इस बिल द्वारा यह चाहते हैं कि जो जायदाद और रकम धर्मार्थ के लिये दी जाती है, उसका अच्छा से अच्छा इन्तजाम किया जाय ताकि गरीब लोगों की भलाई, अर्थात् जिस खास मकसद के लिये वह दी जाती है, की जा सके। इस बिल द्वारा वे यह चाहते हैं कि सरकार इस तरह की जायदादों के इन्तजाम को जो आजकल वक्फ के मातहत हैं, अपने हाथ में ले ले ताकि उनका मुनासिब तरीके से कंट्रोल (Control) हो सके। सरकार ही इस वक्फ के इन्तजाम के लिये बोर्ड (Board) बनाये जो इस तरह की धर्मार्थ जायदादों का इन्तजाम करे। सरकार के पास यह अख्तियार भी होना चाहिये कि वह बोर्ड को ऐसी स्थिति में सस्पेंड (suspend) भी कर सकती है जब वह देखे कि बोर्ड का काम अच्छी तरह से नहीं चल रहा है। सरकार जब बोर्ड को सस्पेंड करेगी तो वह चीफ कमिश्नर (Chief Commissioner) या डिप्टी कमिश्नर (Deputy Commissioner) के जरिये ही करेगी जो ईसाई भी हो सकता है, हिन्दू भी, सिक्ख भी और किसी भी मजहब का हो सकता है। फिर यह सवाल मुनासिब नहीं मालूम होता कि बोर्ड में कौन कौन के मेम्बर होंगे।

वहस के दौरान में कुछ दोस्तों ने यह कहा था कि सरकार को किसी एक कौम के लिये

अलग से बिल नहीं बनाना चाहिये क्योंकि यह एक सेक्यूलर (secular) मुल्क है, उसमें सब धर्म और मजहब के मानने वालों को बराबर के अधिकार हैं। मगर आप जानते हैं कि इस देश में कई तरह की कौमें रहती हैं, बुद्ध भी रहते हैं, ईसाई भी रहते हैं, मुसलमान भी रहते हैं, जैन धर्म के मानने वाले भी रहते हैं, आर्य समाज को मानने वाले भी रहते हैं और इन सब के इबादत, दान, खैरात और पूजा करने के अलग अलग तरीके हैं। मुसलमान धर्म के लोग जकात को लाजिमी मानते हैं मगर और धर्म और मजहब वाले इसको नहीं मानते हैं। मुसलमान धर्म के मानने वाले रोज़े रखते हैं, मस्जिदों में नमाज पढ़ते हैं। मगर सनातन धर्म के मानने वाले मन्दिरों में आरती और पूजा करते हैं। इसी तरह से ईसाई धर्म के मानने वाले अपने गिरजे में अलग तरीके से इबादत करते हैं। इन धर्मों के मानने वालों की जो धर्मार्थ जायदाद होती है उसका खर्च वे अपने धर्म के और मजहब के मुताबिक करते हैं। सनातन धर्म वाले यह चाहेंगे कि उनकी जायदाद से जो आमदनी होती है, उसके जरिये वे सब से पहले शिवजी में जल चढ़ाने के लिये एक पुजारी रखें। आर्य समाज वालों के यहां आरती नहीं होती है वे अपने धर्म और मजहब के मुताबिक कोई दूसरी चीज करना चाहेंगे। कहने का मकसद यह है कि अगर एक तरह का बिल सब मजहब वालों के लिये बनाया गया तो इससे बहुत मुसीबत पैदा हो जायेगी क्योंकि हर मजहब वाले अपनी रस्मों के मुताबिक खर्च करते हैं।

अगर हमारे ला मिनिस्टर साहब (Law Minister) गवर्नमेंट की ओर से इस तरह का कानून लाते तो शायद बहुत से मजहब वाले ऐतराज करते कि सरकार की ओर से मजहब में दखल दिया जा रहा है। जब मुसलमानों की ओर से यह बिल लाया

जा रहा है तो यह कहा जा रहा है कि किसी एक धर्म वालों के लिये अलग से कानून नहीं बनाया जा सकता है क्योंकि हमारा मुल्क सेक्यूलर मुल्क है। हमारे जो क्रांतिकारी भाई और बहुत से साथी हैं, जो सेक्यूलरिज्म (secularism) के मायने समझते हैं कि जिनका कोई मजहब नहीं है, मेरा तख्तियुल दूसरा है। हमारा देश सदा से धर्म प्रधान देश रहा है। मैं भी कोई धर्म का बहुत कट्टर मानने वाला नहीं हूँ, न ही धर्म का विरोधी हूँ। लेकिन धर्म के बारे में मेरा अपना यह विश्वास है कि इन्सान के अन्दर जो सुपरह्यूमन (super-human) जाहिर से परे और आत्मा परमात्मा के सम्बन्ध में जो भावनाएँ होती हैं जो उसे ऊँचा उठाती हैं वही धर्म की शिक्षा देती हैं। मैं सेक्यूलर स्टेट और धर्म रहित देश के एक मानी नहीं समझता। मैं केवल स्लोगन (slogan) के रूप में या कन्स्टीट्यूशन (Constitution) में महज "सेक्यूलर स्टेट" शब्द लिख देने से उसको महत्व नहीं देता हूँ, मैं उसे "ए वे आफ लिविंग फ़ौर दी नेशन" (A way of living for the nation) समझता हूँ। कौम के चलन को सामाजिक जीवन का एक मार्ग मानता हूँ। धर्म के बारे में मेरा यह मत है कि धर्म, चाहे उस के कितने ही प्रकार हों, पर सबकी बुनियादी धर्म भावना एक समान है और मेरे हृदय में भी सब धर्मों के लिये समान इज्जत है। मैं कहता हूँ कि अगर किसी हिन्दू के मन्दिर पर आंच आती है तो सारे मुसलमान व अन्य धर्म के मानने वालों का यह कर्त्तव्य हो जाता है कि वह जाकर उसको उससे बचावें। इसी तरह आज किसी मस्जिद में कोई मुसलमान नहीं रह जाता है और उस खाली मस्जिद को कोई नापाक करने आये तो हर धर्म के लोगों का — चाहे वह हिन्दू हों, सिक्ख हों या ईसाई हों — यह फर्ज

है कि मस्जिद की रक्षा में अपने को समर्पित कर दें। हमारा कर्त्तव्य है कि हम एक दूसरे के धर्म स्थानों पर किसी प्रकार की आंच न आने दें। हमने कांस्टीट्यूशन का पालन करने की कसम खाई है ईश्वर के नाम पर कि हम उसके खिलाफ कोई कार्य नहीं करेंगे। लेकिन हमें उसकी सँवट्टी (sanctity) का पूरा प्रमाण देना है और उसके प्रमाण देने के मानी यह है कि हर हिन्दुस्तानी ने जिसने इस कांस्टीट्यूशन को समझा और माना है उसको चाहिये कि वह चाहे हिन्दू हो या और दूसरे किसी मजहब या विरादरी का हो तो उसका फर्ज हो जाता है कि वह देखे कि छोटे से छोटे धर्म वाले कम से कम संख्या वाले धार्मिक लोगों को उनका धर्म कर्म पूरा करने में उनको कोई बाधा न हो। हिन्दू मस्जिद की रक्षा व सफाई को अपनी जिम्मेदारी समझे, मुसलमान मन्दिर को अपनी।

आज हम एक मामूली सवाल पर, वक्फ के इन्तिजाम का विरोध कर रहे हैं और इसे फिरके वारी बता रहे हैं। आखिर जो कदम उठाया जा रहा है उसमें बुराई की क्या बात है। कांस्टीट्यूशन में सेक्यूलर स्टेट की कल्पना के नाम पर इस साधारण से विल का विरोध करते हैं। यह सिर्फ बहानेबाजी लगती है। आप यू० पी० में देखिये। वहां पर बद्रीनाथ मन्दिर के लिये एक ऐक्ट (Act) पास हो जाता है, धार्मिक मौकों पर लाखों रुपया सरकार की तरफ से खर्च किया जाता है। कुम्भ मेले के अवसर पर इतना भारी इन्तिजाम किया गया, लाखों रुपया खर्च किया गया, क्या यह धर्म की चीजों को प्रोटेक्शन (protection) देना नहीं है। जो यह समझते हैं कि यह जो वक्फ का इन्तिजाम करना है या किसी धार्मिक मेले का इन्तिजाम करना है इन पर दखल देना कौम्यूनल (communal) है या सेक्यूलर स्टेट के विरुद्ध है, वह भूल करते हैं। मैं कहता

[Shri Onkar Nath.]

हैं कि जो लोग धर्म के नाम पर दूसरे धर्म वालों से झगड़ते हैं ये लोग धर्म को कलंक लगाते हैं। सोमनाथ के मन्दिर के लिये विधान बनाया जाता है। स्वयं राष्ट्रपति उसमें एक्टिव (active) भाग लेते हैं। विश्वनाथ के मन्दिर पर जो प्रबन्ध किया जाता है, उस पर किसी को ऐतराज नहीं होता। हर की पैंड़ी के लिये कमेटी बनाई जाती है तब आप कुछ नहीं कहते। राष्ट्र पिता महात्मा गांधी ने हमको सेक्यूलर स्टेट का सबक दिया है। इस मामले में वही हमारे आदर्श हैं। उन्होंने बिड़ला मन्दिर का शिलान्यास किया था और अपना आशीर्वाद दिया, पर उस बिड़ला मन्दिर में मुसलमानों के सिवा सब धर्मों के लोग जा सकते हैं, आज भी इस चीज़ को वहां लिखा हुआ कोई भी देख सकता है।

DR. SHRIMATI SEETA PARMA-NAND: Is there a new deity called Birla? I thought it was called Lakshmi Narayan Temple.

SHRI ONKAR NATH: I agree.

SHRI H. P. SAKSENA: The Government have not spent a single penny on the Somnath Temple restoration. You should know it. Most of the points that you are raising are incorrect and untrue.

SHRI ONKAR NATH: I welcome the interruption.

MR. DEPUTY CHAIRMAN: Order, order. Members should not speak unless they catch the eye of the Chair.

SHRI ONKAR NATH:

श्री ओंकार नाथ : मेरे कहने का मतलब यह है कि धार्मिक कार्यों के प्रबन्ध पर हम एक ओर पैसा भी खर्च करते रहे हैं और कंट्रोल भी। दूसरी ओर इस कानून में तो पैसा खर्च

करने का सवाल ही पैदा नहीं होता है सिर्फ कंट्रोल में हाथ बटाने का सवाल है।

SHRI H. P. SAKSENA:

श्री एच० पी० सक्सेना : आप यहाँ नहीं समझे कि वक्फ पर ऐतराज किसने किया।

SHRI ONKAR NATH:

श्री ओंकार नाथ : मैं यह कह रहा था कि गांधी जी ने बिड़ला मन्दिर—जिसे आम तौर से इसी नाम से पुकारा जाता है, मैं जानता हूँ कि उसका नाम लक्ष्मीनारायण मन्दिर है लेकिन लोग उसे बिड़ला मन्दिर पुकारते हैं—उसमें कोई खपया नहीं दिया है लेकिन आशीर्वाद जरूर दिया है। अगर गांधी जी आशीर्वाद दे सकते हैं तो फिर समझ में नहीं आता कि उनके दिये हुये सबक को हम क्यों नहीं अमल में ला सकते।

SHRI T. PANDE (Uttar Pradesh):

श्री टी० पंडे (उत्तर प्रदेश) : इस बारे में आपकी बड़ी गलतफहमी है। मैं उत्तर प्रदेश के बारे में भ्रम का निवारण करना चाहता हूँ। उत्तर प्रदेश के किसी भी सदस्य ने, जहाँ तक मुझे मालूम है, इस बिल पर कहीं भी विरोध नहीं किया। मैं यह उत्तर प्रदेश की ओर से आप को बता देना चाहता हूँ।

SHRI ONKAR NATH:

श्री ओंकार नाथ : मेरा मतलब श्री सक्सेना के कथन से था क्योंकि वे लखनऊ से आते हैं।

SHRI T. PANDE:

श्री टी० पंडे : आप वापिस ले लीजिये।

SHRI ONKAR NATH:

श्री ओंकार नाथ : अच्छा। मुझे बहुत खुशी है कि उत्तर प्रदेश से ऐसे कोई साहब नहीं हैं जिन्हें इस पर विरोध हो।

SHRI T. PANDE:

श्री टी० पांडे : उत्तर प्रदेश के सदस्य ने ही तो बिल पेश किया है, जनाब ।

MR. DEPUTY CHAIRMAN: You cannot carry on conversation.

SHRI ONKAR NATH:

श्री अँकार नाथ : मैं यह अर्ज करना चाहता था कि इसको सही नजरिये से देखना चाहिये । यह कोई क्रान्तिकारी कदम नहीं है । यह ठीक है, दान लेना और दान देना पूजीवादी समाज की चीज है साम्यवादी समाज की दृष्टि से पाप है । आप देखिये एक तरफ आज जमींदारों के लिये कानून बना रहे हैं, दूसरी तरफ विनोबा जी जगह जगह धूम करके भूदान का आन्दोलन चला रहे हैं, जिसको सरकार भी रिकगनाइज (recognise) कर रही है । तो दोनों चीजें साथ साथ चल रही हैं । एक ओर आप यह भी देखें कि हमारे समाज में एक रिएक्शनरी (reactionary) वर्ग पंडों का है, जो कि बनारस में, गया में, और सभी तीर्थ स्थानों में भोली जनता को धर्म के नाम पर ठगते हैं ।

मैं इन चीजों को वर्दाशित नहीं कर सकता और मेरा विश्वास है कि यह चीजें भी जल्द से जल्द यहां से हट जायेंगी और मेरा ख्याल है कि लोगों का ध्यान इस ओर जा रहा है । लेकिन जब तक ऐसा क्रान्तिकारी परिवर्तन नहीं होता तब तक कम से कम ऐसा कानून ला कर कंट्रोल करना होगा । यह जो जेनरेशन (generation) है वह तो उस जमाने की है जब जिन्ना साहब थे । लेकिन आगे की जो जेनरेशन होगी वह काफी समझदार होगी । उपाध्यक्ष महोदय, इस बिल का अध्ययन करने से कई चीजें ऐसी निकल सकती हैं जो बदली जा सकती हैं पर इस बिल की देश में जरूरत

पूरी तरह है । तबदीलियां तो तजुर्बे के बाद होती ही रहेंगी ।

मैं मानता हूँ कि हमारे मुल्क में अभी बड़ा अन्धेरा छाया हुआ है । ईश्वर के नाम पर अनीति हो रही है । ऐसे भी धर्म स्थान हैं जहां भगवान के नाम पर हजारों रुपये की शराब प्रसाद के रूप में चढ़ाई जाती है । लेकिन आहिस्ता आहिस्ता हम लोग इन बुराइयों पर काबू पायेंगे और इस अन्धेरे को दूर करेंगे ।

मैं आपका ध्यान एक दूसरे पहलू की ओर दिलाऊंगा कि सेक्यूलर स्टेट होते हुये आज भी सारे देश में हिन्दू कालेज हैं, खालसा कालेज हैं, मुस्लिम कालेज हैं, उन्हें गवर्नमेंट रिकगनाइज भी करती है और एड (aid) भी देती है । मैं तो चाहता हूँ कि हिन्दुस्तान में कोई स्कूल या कालेज धर्म के नाम पर न हो और किसी ऐसे कालेज को गवर्नमेंट रिकगनाइज न करे । लेकिन आज जो हमारी परिस्थिति है उसमें यह मुमकिन नहीं है कि तमाम हिन्दू कालेज, खालसा कालेज, पारसी कालेज वगैरह बन्द कर दिये जायें । तो

'if you cannot have the best then make the best of what you have'.

हम चाहते हैं कि प्राविशियलिज्म (Provincialism) खत्म हो जाय लेकिन गुजराती समाज है, महाराष्ट्री समाज है, ब्राम्हो समाज है, सब तरह के समाज हैं । क्या कोई नेशनल समाज भी है ? इसी तरह अग्रवाल हैं, बनिया हैं, वर्मा हैं, सक्सेना हैं, ये सब चीजें हैं और हमारे कांग्रेस के लोग भी, कांग्रेस के नेता भी उन्हें अपनाते हैं । तो फिर जब यह जरा सा बिल यहां आता है तो उसमें कम्युनलिज्म या धर्म का सवाल कैसे उठाया जा सकता है ? यहां तो सिर्फ यह है कि कुछ लोग अपनी जायदादों को देना चाहते हैं और चाहते हैं कि उनका ठीक इन्तजाम हो और उस इन्तजाम को

[Shri Onkar Nath.]

गवर्नमेंट रिकग्नाइज करे। मैं नहीं समझता कि इसमें एतराज की क्या बात हो सकती है। या फिरकापरस्ती कहां से आ गई।

मैंने ज्यादा वक्त लिया, इसके लिये माफी चाहता हूं। मैं ज्यादा न कह कर इतना ही कहूंगा कि इस चीज को सही नज़रिये से सोचिये। सेक्यूलरिज्म नाम पर अन्याय न कीजिये।

मेरी समझ में जो सेक्यूलरिज्म के माने हैं वह यही हैं कि अगर कोई छोटे से छोटा शख्स सिर्फ १०० रुपये की अपनी एक छोटी सी मढ़ैया धर्म के लिये बनाता है तो उसको भी उसी तरह से प्रोटेक्शन दिया जाय जिस तरह से कि ५० लाख के मन्दिर या मस्जिद को प्रोटेक्शन देते हैं। सबको एक समान प्रोटेक्शन दे। इसी तरह पर मुसलमानों के वक्फ को भी प्रोटेक्शन दें। यह भी बात नहीं है कि हम किसी से ताल्लुक नहीं रखेंगे। सब कुछ धर्म के लिये किया जाता है। जब अजमेर में ख्वाजा साहब का उर्स होता है तो हम पुलिस का भी इन्तजाम करते हैं, सब तरह का इन्तजाम करते हैं और हजारों रुपया खर्च करते हैं। यहां तो इसमें कोई खर्च की बात नहीं है। इसलिये मैं कहता हूं कि इस किस्म के बिल की हमको तारीफ़ करनी चाहिये और जल्दी से जल्दी कोशिश करनी चाहिये कि हर किस्म के मजहब वालों की जो ऐसी जायदादें हैं, चाहे वे किसी भी मजहब से ताल्लुक रखती हों, गवर्नमेंट के कंट्रोल में आ जायें। जब ऐसा हो जाय तब एक कम्युनिटी चेस्ट (community chest) इन सब को मिला कर बनाया जा सकता है। लेकिन मैं समझता हूं कि वह वक्त ही नहीं आयेगा, क्योंकि उस वक्त के आने तक कोई जायदाद का सवाल मुल्क में रह ही नहीं जायेगा, सिर्फ अपने अपने रहने के लिये एक एक मकान ही ज्यादा से ज्यादा होगा। न

कोई पूंजीपति दानी होगा न भिखारी पात्र। इन शब्दों के साथ इस बिल की तारीफ़ करते दूये खत्म करता हूं।

[For English translation, see Appendix VII, Annexure No. 208.]

SHRI K. B. LALL: Sir, on a point of explanation.....

MR. DEPUTY CHAIRMAN: Order, order, ; you cannot make another speech.

SHRI K. B. LALL: I am not making.....

MR. DEPUTY CHAIRMAN: Order, order; will the hon. Member resume his seat? Mr. Lall, this can't be tolerated. Mr. Dhage.

SHRI V. K. DHAGE: Mr. Deputy Chairman, I do not wish to take up the time of the House too long, as I am aware that Shrimati Seeta Parmanand has already made an appeal that she is very keen on moving her Bill—the Indian Suppression of Immoral Traffic and Brothels Bill.

At the outset, I welcome the provisions of this Bill because they are for the better management and for the efficient administration of the trusts created by the Muslims. I would have welcomed it more if this Bill had been referred to a Select Committee. I am very much disappointed that my friend Shri Muhammad Ismail withdrew his amendment. If he had moved it, then, we would have been able to remove the difficulties pointed out by very many people here.

First of all, I wish that a more comprehensive Bill had been brought up in order to cover all such cases of mismanagement not only of the Muslim trusts but also of the Hindu trusts regarding the various temples and dharmashalas etc. There are not only trusts among the Mohammadans and the Hindus but also amongst the Parsis and the Christians. **I am glad to tell**



you that in that regard, the Bombay Government have made a great headway by controlling the management of the Muslim, Parsi and Christian trusts and thereby ensuring the better administration of these trusts. Ever since the passing of these measures—I must correct my friend\* Mr. Wadia here—they are being better managed than before.

PROF. A. R. WADIA: I don't deny that.

SHRI V. K. DHAGE: I thought he said that they are not managed well.

PROF. A. R. WADIA: No, I mean that these trusts were mismanaged before and not that they are mismanaged now.

SHRI V. K. DHAGE: I do feel that the provisions of the Bill could have been better. I feel that the Seled Committee when they applied their mind to this Bill, they had been a little narrow-minded or shall I say, a bit sectarian. Even in the matter of the Muslim wakfs, there are communities recognised as Shias and Sunnis. And when the objective of the Bill is to see that they are better administered according to what is stipulated in the trust deed or in the wakf deed, and when the management is vested in the 'mutawalli' or a committee of 'mutawallis', the Board is just for the purpose of supervising and controlling the trusts. I do not think it is necessary that in the matter of supervising the management of the Shia trust, the Shias should be there, and in the matter of the Sunni trust, the Sunnis should be there. I may state that several other sects have been left out, particularly Wahabis. If you go on like that, that is, that for the administration of a particular trust the members of that particular community or sect should be on the Board, it would be very unfortunate.

There is one point that has not been touched by any speaker here. In the case of the Muslim wakfs which are created by people, so far as some of the Dargahs and Ashurkhanas are concerned,—I am sure my friend Shri Abkai

Ali Khan will confirm the fact—the donors of such wakfs are not only Muslims but there are non-Muslims also who have donated property and cash. I feel that when it is said that the object of this Bill is to provide for the better management of the trusts, it would be just and fair to see that representation for all these people is found on the Board so that they may see that the property that has been donated by them is better administered. I think that will go a long way in securing the objects of the Bill.

DIWAN CHAM AN LALL (Punjab): Sir, I am sorry that this debate has

been taken a turn which it should not have

been taken. But I am very glad that it has provided this House with a lively debate

on the Bill which would ordinarily have

passed unnoticed. I think we might have avoided, possibly, acrimony with regard to this matter if a very healthy principle had been followed, namely, that a matter of this kind should have been referred to a Joint Select Committee.

I do hope that the hon. the Law Minister and the Leader of the House will take note of this particular matter

for future reference, because where it is a controversial measure, it has to be

discussed in both the Houses and so it is always advisable to get a Joint Select Committee operating so as to avoid any misunderstanding such as has arisen now on this measure.

Speaking on this Bill, the legal aspect of it is one, the Constitutional aspect of it is another and the moral aspect of it is the third which ought not to be ignored by hon. Members here. I think I am right when I say that, originally, this matter of the wakf Bill or the wakf Act was mooted by the late Quaide-Azam Mohammad Ali Jinnah in the year 1913 in the old Imperial Council. The basis of this measure is what was contained in that particular Act which was sponsored by Mr. Jinnah. Some seventeen years later, came a validating Bill in regard to that measure, that is to say, in the year 1930. It was found that although the old measure was expected to give retrospective effect to

[Diwan Chaman Lai.] the law, in actual fact, the rulings of the various High Courts led the judges to the conclusion that the Act could not be made retrospective, and hence, seventeen years later, in 1930, I forget now who it was, yes it was Mr. Ghaz-navi, who brought in that measure to make it possible to give retrospective effect to that particular Act.

Now we come back to the latest measure which not only is retrospective, but which has got certain provisions in it which also have been in dispute in the law courts. You will recall, Sir, that original measure was in reference to all kinds of wakfs, but it was thought under the law that a wakf-alal-aulad was not covered by the legislation which was before the Legislature in the olden days. In fact there were judgements of the High Courts, 10 Bombay and I believe 6 Calcutta, according to which it was definitely laid down that these private wakfs were not permissible. Then came the Privy Council's ruling which, I believe, is followed by 9 Calcutta and 17 Calcutta. And after the Privy Council's ruling we come to the amending measure, the validating measure, which made it possible to give effect to the law, namely, that the law covered not only public charitable trusts but also these private trusts. This comprehensive measure, therefore, consolidates the law on this subject and makes it quite clear that it is more or less comprehensive. Now, in doing so the sole object is what is contained I believe, in clause 15 of this measure. Now if hon. Members will look to clause 15, they will find that it deals with the functions of the Board. It reads as follows:

'Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established for the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the

objects and for the purposes for which such wakfs were created or intended;"

I am quite certain that if we divest our minds from the constitutional issue, about which I shall have to say a word or two presently, we will find that the objects laid down in clause 15 of this measure are generally such actions that should be supported publicly, and that everyone of us is in favour of the regulation and control of these trusts, Whether they are private or whether they are public. Now allegations have been made and my learned friend sitting on my left, Dr. Wadia, said that in the olden days these trusts were mis-managed. It is undoubtedly true that necessity arose because of this mismanagement to control these trusts. Now the object being laudable Mr. Deputy Chairman, is it not necessary that legislation should be introduced for the purpose of regulating these trusts and controlling them in the interests not only of those who are beneficiaries under these trusts, but in the interests of the public at large?

A red herring has been trailed across this debate in regard to the communal aspect of it. My friend Shri Govinda Reddy, was given a reply in regard to this matter by Mr. Onkar Nath who, I am very glad to say, Sir, is taking part in the debates now, and I hope that he will continue to take part in the debates, so that we may have the benefit of his nationalistic views in these matter. But my friend, Mr. Govinda Reddy, seems to have gone completely off the rails for once at least. He is a very keen student of Parliament, one of the ablest that we have got. He has apparently been misled into believing that there is some communal aspect attached to this particular measure which is not sanctioned by the Constitution.

SHRI GOVINDA REDDY: On a point of personal explanation I might say, Sir, that that was not my point at all. I did not say, "It goes against the Constitution." Not at all.

DIWAN CHAM AN LALL: Then if it does not go against the Constitution, there is a very valid ground for bringing forward this measure. The only ground he has advanced is that it should be in the shape of a comprehensive measure governing not only trusts which are Muslim, but governing also trusts which are Sikh, which are Jain, which are Hindu and so on and so forth. I take it that that is the proposition. Now my learned friend will realise the practical impossibility of bringing in a comprehensive measure dealing with these matters. What is necessary is to look at the Constitution for a moment and see whether these things are really permissible under the Constitution. Mr. Deputy Chairman, let us look at articles 23 and 26 of the Constitution. Article 25 says: "Nothing in this article shall affect the operation of any existing law or prevent the State from making any law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus." Now it recognises the distinction between religion and religion and between the special circumstances that are connected with the existence of various religions in India. Now article 26 says "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purpose..." It does not say that it must be ad hoc legislation covering every religion. It gives special permission in this respect for legislation to be brought in to cover any particular religious or charitable object for the purpose of establishing and maintaining an Institution governing any particular religion. Now if that is the position, then I do submit that there should be no difficulty for my learned friend to realise that an overall umbrella cannot be brought in from legislative point of view to cover each one of the institutions which are governed today by different religions. It is necessary to specify, necessary to differentiate, a permission which is sought for and granted by the Constitution itself, and within the four cor-

ners of the Constitution to try and *ao* the level best that we can in order to protect particular institutions or a particular religion

Now, Sir, 'wakf, as you know, is a word which means detention, i.e., detaining certain property for a certain particular purpose. The purpose may be a private purpose. But you must realise this that according to the Muslim law it is quite permissible to have a private charitable trust for the benefit of the members of a family and for those who inherit generation after generation, subject to one very important thing, and that is this. When the family line is extinguished, the entire trust may be distributed for charitable purposes. That is the fundamental basis of the private trust which applies to a particular family and for the benefit of a particular family. So then there too we have the essence and the seal of charity for a public purpose which applies even to a private trust. As a matter of fact, under our law, many High Courts of our country considered in the past that such a trust was not in accordance with Islamic law, and therefore, they ruled out such trusts. The private trusts now under this legislation, are permissible to the extent to which they have been referred to in the present measure. I have therefore no hesitation in asking hon-Members to divest their minds completely of even the slightest odour of communalism attached to this measure. This is a measure which is essential and necessary to protect the trusts that have been created in the past and are continuing to be created in order that the governance of these trusts may be in proper hands and may not be misused or badly administered, thus robbing the beneficiaries of the very objective of those trusts. Hence, the Constitution permits us to do this and public morality compels us to look into this matter, and from these points of view, there should certainly be no objection on the part of any Member who has the welfare of the community at heart in securing the proper management of these trusts whether they are private or public.

[Diwan Chaman Lall.]

Now, I would like to turn to the other sections of this measure which unfortunately have not so far been dealt with, because of this particular controversy which has been started whether this is a communal measure or not. I would draw the attention of hon. Members to articles 16, 25, 26, 33 and 44 which are the important articles governing this measure and if they look at these carefully, they will come to the conclusion that each one of these articles is designed for the purpose of providing the best management possible for these trusts and not allowing private individuals to play ducks and drakes with the funds that fall into their hands. If hon. Members, as I have said, will look at article 15 of the Constitution, apart from articles 25 and 26, they will find this: Article 16, clause (5), says:

"Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

It is an extraordinary thing, Mr. Deputy Chairman, that the framers of the Constitution, should have been so wise as to have anticipated every objection of the type taken now on the floor of the House. There could be no objection from the secular point of view, according to the Constitution, to action being taken of a type that is sought to be taken under this measure and to the appointment to the Board of members belonging to a particular religion. Objection was raised by some Members as to why only members of a particular religion should be appointed to the Board. Here is a provision in the Constitution which had anticipated this particular argument—this particular criticism—and met it as it should have been met. Except for a few lawyers like my friend, Mr. Hegde, who have to deal with these matters day in

and day out in their lives, I cannot expect my Muslim friends to understand the intricacies of Hindu religious institutions or the Hindu law, and *vice-versa*; nor can I expect the Hindus to understand the intricacies of Muslim institutions. Therefore it was right and wise to appoint to these Boards only those people who really understood the significance of the laws that we are passing. There is nothing wrong or communal about that. What is right about it is that it is a practical thing to do, and it is being done in the interests of the particular community and the institutions which have been evolved by that community. Therefore, may I say this briefly that from the point of view of the law, from the point of view of the Constitution, there is nothing wrong in framing a measure such as the one before the House. Indeed, from the point of view of public morality, it would be highly improper not to bring in a measure of this kind. I do not desire to say anything more about it but to suggest to my hon. friends that they should really not forget, in dealing with this measure, that this measure has got nothing else but the good of the community at heart. As long as we recognise that ours is a democratic Constitution and our State is a secular State which has guaranteed the right of every person to practise the religion that he wishes to practise and also the right of each person to have institutions for the purpose of practising the religion that he chooses, it is the duty of everyone of us to see that these rights are protected, protected even at the sacrifice of those who do not practise that religion, even the opponents of that religion, because that right is a fundamental right guaranteed by the Constitution.

SHRI GOVINDA REDDY: Nobody questions that right.

SHRI K. B. LALL: Then, why not bring in a uniform civil code?

DrwAi\* CHAMAN LALL: My hon. friend was unfortunately probably thinking in his own mind about the arguments that he had advanced and was not listening to what I had said. If he

had only followed and understood the reasons which I had advanced, he could have understood why I want to make this a separate thing. In fact, I would hate it to be an overall umbrella for the reasons and arguments that I had advanced. If these arguments are not accepted because there are people like my hon. friend over there who do not understand the working of democratic institutions—there may be others like him who are completely ignorant of the position—the result would be disastrous. What we want is a practical solution of the problem, to hand it over to people who really understand it and who are interested in it. Similarly I would hate other people getting mixed up in Hindu institutions of this nature. So long as the secular nature of our Constitution is preserved, all such institutions must have the best that we can offer them, and the best machinery that we can provide for their continuance, so long as they do not impinge upon the basic principles of the secular nature of our Constitution. Finally, my hon. friends should remember that this measure is meant only for the better regulation of something which needs to be regulated, that the method that is adopted in this measure is in the circumstances the best method, and therefore there should be no idea at the back of anybody's mind that the secular nature of our State is being injured by this particular piece of legislation. I do hope, Sir, that the House will give its unanimous support to the passing of this measure.

SHRI KANHAIYA LAL D. VAIDYA  
(Madhya Bharat):

**श्री कन्हैयालाल डी० वैद्य (मध्य भारत):**  
उपाध्यक्ष महोदय, मैं दीवान चमनलाल जी ने जो बातें कही हैं उन से पूरी तरह सहमत होते हुये इस बात को सदन के सामने रखना चाहता हूँ कि इसके पहिले जितने व्यक्तियों ने भाषण दिये, जिनमें प्रोफेसर वाडिया, श्री रेड्डी और यहां तक किमाननीय ओंकार

नाथ जी ने बड़ी राष्ट्रीयता के ढंग से इस बिल का समर्थन किया, उन सब ने इस बात को मंजूर किया कि इस बिल में जितनी खामियां हैं उनकी दुरुस्ती होनी चाहिये। हमारे सदन के लीडर, माननीय लॉ मिनिस्टर (Law Minister) महोदय ने भी इस बात को बहस के दौरान में बताया था कि निचले सदन में यह बिल पन्द्रह मिनट में, कौमा, फुलस्टोप, (comma, fullstop) चेंज किये बिना वैसे का वैसे ही, जैसा कि वहां की प्रवर समिति ने इसे रखा, पास हो कर हमारे यहां आ गया। हमारे यहां अब इस पर किस प्रकार से सील (seal) लगाया जाना चाहिये इस प्रश्न को देखना आवश्यक है। क्योंकि अगर निचला सदन जल्दबाजी में कोई काम ऐसा कर जाता है जिस उतावलेपन के कारण आगे जा करके किसी प्रकार से बाधा पहुंचे, और जैसा कि अभी एक माननीय सदस्य ने बताया कि मद्रास में इस प्रकार का जो कानून बना था उसको सुप्रीम कोर्ट (Supreme Court) ने रद्द घोषित कर दिया...

SHRI AKBAR ALI KHAN:

شری اکبر علی خان: ایسا نہیں ہے  
اسکی چند دفعات رد کر دی گئیں لیکن  
قانون کو قائم رکھا -

SHRI KANHAIYALAL D. VAIDYA:

**श्री कन्हैयालाल डी० वैद्य :** ठीक है, मैं इसको स्वीकार करता हूँ, मेरे कहने का आशय बिल्कुल यही नहीं था। आपके सामने सिलेक्ट कमेटी (Select Committee) की रिपोर्ट है उसमें जो नोट्स आफ डिसेंट (notes of dissent) दिये हैं, जिन सदस्यों ने उन्हें पढ़ा होगा, उनको मालूम होगा कि यह जो सब्जेक्ट (sub-ject) है ट्रस्ट्स (trusts) का यह एक और कानकरेंट लिस्ट (concurrent list) का सब्जेक्ट है, और विधान में इस प्रकार की लिस्ट में जो सब्जेक्ट्स आते हैं उन के लिये कानून नहीं बनाया जाये ऐसी बात तो नहीं है, लेकिन कानून बना कर उसे

[Shri Kanhaiyalal D. Vaidya.]

सब प्रान्तों में लागू कर दिया जाय यह उचित नहीं मालूम देता है। और बहुत से प्रान्तों ने, जैसे बिहार, मद्रास, यू० पी०, बम्बई, सौराष्ट्र, वेस्ट बंगाल, मसूर, ट्रावनकोर कोचीन, मध्य प्रदेश और हैदराबाद, ने यह विरोध किया है कि इस प्रकारका कानून बना करके आल इंडिया बेसिस (All India basis) पर कोई कानून प्रान्तों में भी लागू किया जाय, इसलिये इन प्रान्तों को यह स्वतंत्रता होनी चाहिये कि वे अपने वक्फ की स्थिति को देखते हुये, जैसा वाजिब समझें, वैसा कानून पास करावें। फिर मैं नहीं समझता कि क्या कारण है कि यह हाउस (House)—जिसका कि नाम काउंसिल आफ स्टेट्स (Council of States) है, हाउस आफ दी पीपुल (House of the People) के लोग जनता का प्रतिनिधित्व करते हैं, और हम इस सदन के अन्दर स्टेट्स (States) का प्रतिनिधित्व करते हैं—जिसका फज है कि उन स्टेट्स की रायों पर इस तरह से इस सदन में विचार करें और अपना मत दें कि जिससे कोई ऐसी चीज पैदा न हो जो आगे किसी तरह से बाधक हो।

यहां मैं इस बात पर संतोष करके बैठा हुआ था कि एक माननीय सदस्य सैयद नौशेर अली साहब ने एक अमेंडमेंट (amendment) इसमें मूव (move) किया है कि यह बिल सिलेक्ट कमेटी को सौंप दिया जाय।

MR. DEPUTY CHAIRMAN: It has not been moved.

SHRI KANHAIYALAL D. VAIDYA:

श्री कन्हैयालाल डी० वैद्य : मेरा मतलब यह है कि उन्होंने यहां यह संशोधन रखा था और इसलिये मैंने संतोष किया कि यह बिल सिलेक्ट कमेटी को शायद भेजा जाय।

नहीं तो इस सदन में और भी सदस्य थे जो कि यही चाहते थे। श्री दीवान चमनलाल जी ने भी इस बात को जाहिर किया है और माननीय लॉ मिनिस्टर महोदय के ध्यान में इस बात को लाये हैं कि इस प्रकार की सिलेक्ट कमेटियां उस सदन में बना दी जाती हैं और इस सदन के लोगों को उसमें नहीं लिया जाता है, जिससे कि इस सदन के लोगों को विचार करने का मौका नहीं मिलता।

\* \* \* \* \*

मैं यह कहना चाहता हूं कि इन तमाम बातों को ध्यान में रख कर और जो सुझाव यहां रखे गये हैं उन पर विचार करके इस बिल को अगर सिलेक्ट कमेटी में रखा जाय तो अच्छा होगा।

मेरा निवेदन है कि इस सदन में जो बातें भिन्न भिन्न रूपमें यहां बताई गई हैं उनको माननीय लॉ मिनिस्टर साहब ध्यान में रखें और जो इस बिल का कानूनी स्वरूप है उसको ठीक करें। हर आदमी यह चाहता है कि हिन्दुस्तान में जो वक्फ हैं उनके लिये ठीक से कानून बने और उनकी व्यवस्थाएँ ठीक हों और उन व्यवस्थाओं को ठीक होने के बाद उनके जो काम हैं, जैसे कि एजुकेशन (education) का काम है और और दूसरे काम हैं जिनके लिये कि वक्फ या ट्रस्ट (trust) हैं उनकी व्यवस्था राष्ट्रीय दृष्टिकोण से हो। इस हाउस का कोई मेम्बर यह नहीं चाहता कि अगर किसी सज्जन ने कोई ट्रस्ट या वक्फ इस बात के लिये किया है कि एजुकेशन के लिये वह रकम या पैसा काम में लाया जाय तो वह एजुकेशन के काम में नहीं लाया जाय। एजुकेशन के काम में उस पैसे को जरूर लगाया जाय लेकिन आप उसका नक्शा बदल सकते हैं। जो दकियानूसी और मजहबी जेहनियत हर

\*Expunged by order of the Chair.

मजहब के लोगों में है उसके बजाय एक राष्ट्रीय और सेकुलर (secular) तरीके से ट्रस्ट या वक्फ के पैसे को एजुकेशन के काम में लाया जाय। तो कानून में ऐसी व्यवस्था होनी चाहिये कि वह व्यवस्था उपयोगी हो और आपकी सेकुलर पालिसी (policy) को आगे ले जाने वाली हो। मैं नहीं कहता कि आप एजुकेशन परपजेंज (purposes) के लिये उर्दू जवान को काम में न लायें। मैं कहता हूँ कि उसमें मुसलमान बच्चों को शिक्षा दी जाय। मैं नहीं चाहता कि कोई ऐसा सेक्शन (section) इसमें लाया जाय कि मुसलमान बच्चों को उर्दू की शिक्षा से वंचित रहना पड़ेगा। मैं तो कहूँगा कि इस्लाम एक बड़ा अच्छा मजहब है और उसमें अच्छे सिद्धान्त हैं और यदि कोई हिन्दू भी चाहे तो वह उसका अध्ययन कर सके, उन संस्थाओं में जाकर शरीक हो सके और इस्लाम की बातों को सीख सके। एजुकेशन का परपज यह कभी नहीं होना चाहिये कि वह बिल्कुल दकियानूसी ढंग से या एक ऐसी कट्टरपन्थी मेनटैलिटी (mentality) से चलाया जाय जिस से कि उसका बहुत ही संकुचित दायरा हो। इसलिये मेरा कहना है कि जो वक्फ करने का उद्देश्य है, जिस अच्छी नीयत से वक्फ किये जाते हैं उनको पूरा किया जाय। इसके लिये जब तक कानून में उचित व्यवस्था नहीं करेंगे तब तक उनका दुरुपयोग होगा और उसका लक्ष्य पूरा नहीं होगा।

इस हाउस में स्वयं मूवर (mover) साहब ने और जितने भी लोग बोले हैं सबने बताया है और मंजूर किया है कि उन वक्फों का, उन जायदादों का, जो इन्तजाम करने वाले मुंतजिम हैं वे अच्छा इन्तजाम नहीं करते और इसलिये यह जरूरी है कि उसका अच्छा इंतजाम हो और उस वक्फ या ट्रस्ट की रकम मूलक की भलाई या कौम की भलाई के लिये

खर्च हो। इस हाउस में कोई भी ऐसा नहीं है जो कि इस तरह के कानून को नहीं चाहता हो, सब चाहते हैं कि कानून हो लेकिन ऐसा न हो कि जल्दबाजी में कानून बने और उससे जो लाभ अपेक्षित है वह न हो। इसलिये मेरी प्रार्थना है कि अगर आज भी इस बिल को सिलेक्ट कमेटी के सुपुर्द कर सकते हों तो तुरन्त उसको सिलेक्ट कमेटी के सुपुर्द किया जाय और उसकी खामियों को दूर किया जाय और सिलेक्ट कमेटी से आने के बाद पूरे विचार के साथ उसको पास किया जाय। स्वयं लॉ मिनिस्टर साहब ने कहा कि गवर्नमेंट भी चाहती है कि एक ऐसा ही विस्तृत कानून इस विषय पर बने। तो कोई वजह नहीं है कि जो सुझाव इस सदन में दिये गये हैं उनको ध्यानमें रख कर क्यों न गवर्नमेंट की तरफ से एक पूरा नक्शा तैयार किया जाय और एक पूरा कानून यहां ला कर पेश किया जाय। मैं कम से कम इतनी उम्मीद अवश्य करता हूँ। मैं चाहता हूँ कि इस बिल को हम पास तो जरूर करें लेकिन इसमें जो खामियां हैं और आगे इसमें जो दिक्कतें आ सकती हैं उनको ध्यान में रख कर इस कानून को बनाना चाहिये खास कर उस वक्त जब कि यह कांकरेंट लिस्ट का एक सब्जेक्ट है तब जिन प्रान्तों ने यह मांग की है, जिन राज्यों ने यह कहा है कि हम इस तरह का कानून अपने यहां लागू करना नहीं चाहते उनकी मांग का भी ध्यान रख कर इस कानून को बनाना चाहिये। इसलिये मेरी प्रार्थना है कि इस कानून को पास करने के पहले सिलेक्ट कमेटी में इसकी पूरी चर्चा होनी चाहिये और उस चर्चा के बाद जब वह वापस आये तो फिर उसके ऊपर पूरी तरह से विचार करके पास करना चाहिये। केवल मुझे इतना ही कहना है।

[For English translation, see Appendix VII, Annexure No. 209.]

[THE VICE-CHAIRMAN (SHRI B. C. GHOSE) in the Chair.]

SHRI AKBAR ALI KHAN (Hyderabad): Mr. Vice-Chairman, I am much obliged to my friend Diwan Chaman Lall and Shri Onkar Nath, because they have cleared the atmosphere, so to say. Really the matter and the argument especially in this House should be confined to the measure and discussion on merits. I know, Sir, there are people who do not believe in God, there are people who over-believe in God, there are people who keep their beliefs to themselves and discuss and consider matters dispassionately—irrespective of their beliefs. I am sure, Sir, this House will consider matters in a cordial spirit. Now what is this measure? I would appeal particularly to Prof. Kane and Mr. Hegde, who have agreed with me in private discussion as to the advisability of the Bill, to consider what this measure is. Please consider this fact and this fact alone. This measure is directed against mismanagement of wakfs and we want proper management. That is the essence of this measure and nothing else. I would invite the attention of the learned Members of this august House to clauses 62, 63 and 64 of this Bill. Clause 62 deals with directions by the Central Government, directions that they will give to the Board. Clause 63 deals with the directions that the State Government will give to the Board, should the Board go astray and clause 64 deals with the power of the Government to suspend the Board if the Board goes astray. That is the simple question that we are asked to consider and pass judgment on. All the other things, with due respect to other hon. Members, I would say, are beside the point. They are absolutely beside the point. Now, is there anybody in this House or for the matter of that, any reasonable person anywhere who if there is mismanagement in a Parsi endowment and if there is an enactment brought in to improve conditions in that Parsi endowment, will say, "No, don't do it, it is against our secularism"? With due respect, I

would say, it is misunderstanding. Secularism means that you should feel respect for all the religions. Secularism means that you should feel that men of all religions are creatures of one God, and that we have all respect for them irrespective of caste and religion. That is secularism. Secularism does not mean we should ignore or show disrespect to any religion, whether we believe in that religion or not. That I submit, should stop all the objections against this Bill on the score of communalism. Of course, there is one legal point—the question of appeal—that was raised by Mr. Hegde. Shri Hegde has got the view that the appeal should be expressly provided for. I think that even if it is not provided the authority of the High Court and that of the Supreme Court is there and the appeal will lie before these Courts— notwithstanding the word 'Anal'. There are other minor matters and these are matters which after the law is passed, could be later dealt with by amendments. So if we go into these things, unnecessary delay will occur. But taking the measure as a whole and after having had the deliberations of a very strong and representative Select Committee and the consent of the House of the people, I would request you to adopt it. I would further urge that there may be measures which may be agreed to and there may be measures which you may throw out—I would appeal to you all as Diwan Chaman Lall has said,—let us keep it clear in our minds what the object is and let us understand the true spirit which the Father of the Nation—Mahatma Gandhi—wanted to infuse in us—love and respect for all. Let that spirit be always our sole guide. Having that before us, I think the provisions in this Bill are not such that the Bill should be sent to a Select Committee or that any one should dissent from it. I feel that most of the points that I wanted to meet have been either met by others or after the discussion that we have had, the hon. Members have been convinced. I hope they are convinced. So I would not take much time of the House. I would only respectfully and humbly but with all the



emphasis that I command, commend this Bill for the approval of the House.

THE VICE CHAIRMAN (SHRI B. C. GHOSE): Yes, the Law Minister.

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SHRI AKBAR ALI: I am sorry Sir, I forgot to mention one point. My hon. friend Shri Dhage did refer to one point, mentioning my name. It is true that in Hyderabad there are endowments of thousands of rupees which have been made by the Muslim Kings, to the temples. But as regards these temples, generally speaking, the committee consists of the people who believe in that particular temple. There are cases where there are Hindu friends of mine who are mutawallis of certain dargahs. There are cases where the Muslims perform the duties of *Mahants*. But they are all governed by the committee members who believe in that particular denomination. That is the spirit of broad mindedness which India has always shown, and with all the feudalism and all the defects that may have been there in Hyderabad, I must say that so far as that part of the land is concerned—leaving out the last ten years, I do not count the last five to ten years before the police action, for that is a period for which most of us have to hang our heads down in shame, but that is a different proposition—leaving out that period so far as these religious and social conditions, the social relations, and cultural affinity are concerned, they are such that Hyderabad can be ever proud of them.

DR. R. B. GOUR (Hyderabad): And the repression also?

SHRI C. C. BISWAS: Sir, when the debate began this morning, I thought that it was the Law Minister and not the Wakfs Bill that was under discussion and so long as the debate maintained that character, I had no complaint, for I thought I could take care of myself when the turn came to me to speak. But I sincerely regret the turn that the discussion took later on. It developed into one of a communal character and that was very deplorable. Sir, we are very much apt to talk about the secular

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character of our Constitution or of the State being a secular State. But I am not at all certain that we, all of us, realise the implications of what we mouth so lustily. What exactly is meant by the Constitution being secular or the State being a secular State? By describing the Constitution or the country in these terms, you do not do away with the fundamental facts of life. India is not a small country. We have vast areas with vast populations and if any of us felt that the whole of that population in the whole of the country could be dragooned into uniformity in respect of any matter, well, he would be living in his own paradise. That is all that I can say. There must be diversity; but what is essential is that there must be unity in diversity. That should be our aim. So long as that fundamental unity is not sacrificed we ought not to shy at the very idea that there are so many people of different views or different persuasions, or of different modes of life. Diversity is not inconsistent with secularism. As some hon. friends have already explained here, what is meant by secularism is that we must have respect for every religion. There must be people belonging to different systems of religion. You cannot get away from that fact and it is as well that we always bore that in mind. When bringing in any measure the cry is raised that this is only for the purpose of this particular community or that particular sect or particular religion, and therefore, because I do not profess that religion myself, I must be in honour bound to oppose it. That is not a correct attitude. If our State is a secular State that means that every one should have respect for the views and the opinions of others, not merely in the matter of religion, but in other matters as well. We speak of a democratic State. What is democracy? Every person must be given full right to express his own views.

The Constitution itself grants that freedom, freedom of expression, freedom of opinion and so on. What does that mean? That does not mean that<sup>1</sup> we should all be regimented, that

[Shri C. C. Biswas.] every one of us should be cast in the same mould of uniformity. That was never intended and I hope the day will never come when that will be insisted on as a matter of law or of Constitution. If that is done, that will be a negation of democracy and that will be the negation of every principle of Constitution.

Sir, bearing these things in mind, I venture to suggest that the present Bill does not offend against secularism or against the Constitution which fully recognises differences of religion, differences of opinion, differences of practice and so on. Now, what is the object of this Bill? Let us be clear about it. The object of the Bill is to see to it that the various endowments, charitable, religious, etc., are duly administered. Now, it is a function of the State also to see to it that these endowments are properly administered; the State cannot divest itself of that responsibility. Well, it so happens that from the early sixties you have Acts enacted for the governance of religious endowments and charitable endowments. They began in a certain way and it was found by experience that that was not enough and then new Acts were introduced and so on. Even then you find that some of the Acts passed since 1863, or whatever the date is, were of a general character, as my hon. friend Mr. Reddy pointed out. Well, they applied to all kinds of endowments; but sometimes experience showed that this was not quite satisfactory. Then you had legislative measures in different States or different parts of the country, not for the whole country, but dealing with particular denominational endowment. But the object was the same. If administration could be more effectively and more satisfactorily carried on if the law was confined to a particular kind of endowment, what was the harm? The principles are the same. Now, if you look at this Bill, this Bill may as well be a model for the administration of any endowment, whatever be the religious denomination to which it belongs. The provisions would be essentially the

same; *mutatis mutandis* they might be applied for the governance of a mosque or of a temple, say like the Tar-keswar endowment in West Bengal or any endowment in South India. The whole object is to see that the purposes for which the endowment was created are fulfilled. Sometimes, unfortunately that is our experience, the persons who are in charge,—call them Shebaites, call them mahants, give them any name,—they misuse the funds which are placed at their disposal, they abuse their powers and they convert these public institutions into institutions for their own individual benefit. That has got to be stopped and, therefore, there must be strict supervision not by one person but by a body of persons, competent men who are really interested in the welfare of these institutions. They must be there and they must maintain a vigilant watch over the conduct of those who are in charge of day to day administration so as to see that all possible abuses are avoided and the management furthers the object for which the endowment was created. That is the object of this legislation, and nothing more than that.

There have been so many speeches, **but** I should have welcomed amendments for the purpose of tightening the administration if there has been any loophole. I do not claim perfection for the drafting of this Bill; there might be loopholes but we gave it our best considerations, and you have got here what we were able to produce. When the original Bill was introduced, it was not quite good, not in good shape and form, and that is why I undertook to prepare a practically fresh draft. The whole thing was recast, the object being to make it as clear as possible and make it really workable. One of my friends telephoned to me yesterday evening and he said that he had read some provision of this Bill and found that the Bill was unworkable. I would have welcomed him here today to point out as to why or how this Bill is **not** workable. If that was so, I would certainly have expected him to move some amendments and would have

advised the mover of the Bill to accept them in order to make the Bill a better one, but nothing of that kind has happened. All sorts of opinions have been expressed and all kinds of speeches have been made, but none directed towards the improvement of the Bill. That has not been done. The time of the House has been taken up in considering whether this was against the Constitution or not. As I said, Sir, I will not repeat—Diwan Chaman Lall has made it perfectly clear and I am thankful to him—that the Bill does not offend against the Constitution merely because the Bill is concerned with Muslim wakfs.

SHRI GOVINDA REDDY: Who said that it offends against the Constitution?

SHRI C. C. BISWAS: Or, even if it is said that the State should not encourage this, or any other Bill which my friend may bring forward, say, for the purpose of securing better administration of any endowment in South India .....

SHRI GOVINDA REDDY: Supposing, Sir, I bring a Bill tomorrow seeking a measure of this kind for the better regulation of some temples restricting admission, will he consider that? Will he support it?

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): It is hypothetical.

SHRI C. C. BISWAS: So far as restricting admission is concerned, well, that is expressly dealt with in the Constitution itself. The Constitution enables the Central Government or any State Government to enact a law which shall prohibit any such practice. If we look article 25(2) it will be clear. Article 25(1) guarantees freedom of conscience and the right freely to profess, practise and propagate religion to everyone in the State subject to public order, morality and health. Then follows the next clause <2> which says, "Nothing in this article shall affect the operation of any existing law or prevent the State from making any law (a) regulating or restricting any economic, financial, political or other secular activity

which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus".

Now, if you make a law that a Hindu temple shall not be open to Muslims that will not be objected to but if you say that one class of Hindus may not be allowed to enter into a temple, that is objectionable and the Constitution has definitely taken the power to prohibit by law any such provision. That has been done. Therefore, the Constitution as it has been framed, takes due account of existing facts and if there are any practices which offend against our generally accepted notions of what is right and what is wrong, then you will see that provision has been made to deal with them.

We talk of the Directive Principles of State Policy. No doubt the attempt should be in that direction; as a matter of fact it would be very desirable if we had one common All-India law applicable to all kinds of endowments, but unfortunately that is not possible within a short space of time. Does that mean, therefore, that if any section of the community brings forward a Bill—this is not a Government Bill but a private Member's Bill—Government must stand in the way, choke it off at the very outset and prevent it because, three years later, say, it may be possible for Government, after collecting the facts from all over the country, to enact a comprehensive measure? When that comprehensive measure is enacted, that may repeal the existing State Acts or the Central Acts; nothing prevents it.

Now, it so happens that it was brought to our notice that the Muslim wakfs had been maladministered, that funds were being misappropriated by people who had no right to do so. Then, previously, questions arose that the endowments were being converted into private endowments, that is to say, institutions for private benefit. Among the Hindus you often have

[Shri C. C. Biswas.] the Shebait appointed from amongst the members of the family and he enjoys the property as if it were his private property but he clothes himself with the name Shebait and, therefore, no courts can touch him. That is all a misuse of the powers given to him. In the case of the Muslim wakfs, it was similarly found that many people were really using them for the benefit of their family, and then the leaders of that community thought that it was not right, and that if anyone wanted to make provision for the members of his family, he should do so openly and in a straight-forward manner. They should expressly provide that the object was partly to benefit members of the family. Then it was a matter of policy whether in such a case you would recognise such a wakf as a wakf at all. This led to the enactment of the Act of 1913, and it was there declared that it shall be lawful for a person professing the Muslim faith to create a wakf which in all other respects is in accordance with the provisions of the Muslim law, for the following, among other purposes: "for the maintenance and support wholly or partially of his family, children or descendants." It was a straightforward way of dealing with the matter instead of a law that allowed irregularities to go on in the name of religion. And then they say in the proviso, "provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent character." So in this Bill we are making provision for the administration of a wakf only in so far as it is confined to the religious and charitable purposes of it. So far as that portion of the wakf is concerned, which is for the benefit of the children and other members of the family, that does not come within the scope of this measure. Whether the members of the family play ducks and drakes with what has been given to them is another matter, but so far as the ultimate object of the charity is

concerned, that must be secured and to that extent the powers of supervision must be strictly enforced. This is the provision which we have made in this Bill. I should have welcomed them, if there were any alternative suggestions for the purpose of securing this object, but I have not found any, either in the speeches or in the amendments of which notice has been received. I have not had any alternative suggestions in order to protect the religious part of it, the charitable part of it from the other part, namely, "for the maintenance and support wholly or partially of his family, children or descendants" so that we could make certain changes in the provisions which will secure that object in a more effective manner. Nothing of the kind.

I shall not take up more time of this House, as the matter has been fully discussed here. Now, Sir, I come to the question of appeal. We have mentioned that a question as to whether a particular wakf is of one category or another will be decided by the Board, but the decision will be subject to the institution of a civil suit by any person interested in the wakf.

[MR. DEPUTY CHAIRMAN in the Chair]

It was suggested that the mention of a "civil court" would exclude the right of appeal. That is not the case. ■ I am sorry that that hon.

Member who raised the point is not here.

Where power is given to an ordinary court to deal with a matter, that carries with it a right of appeal. But if a court of special jurisdiction is created, there a right of appeal has to be expressly provided by statute. The general statute is the Code of Civil Procedure which applies to all ordinary courts, and section 96 of the code says that an appeal will lie from every original decree. I thought that it was so simple that it did not require to be emphasized at all.

DR. P. V. KANE: Here in the Bill you have used the word 'final'. Will it take away the provision in section 96 of the Civil Procedure Code?

SHRI C. C. BISWAS: No, that is what I am pointing out. Section 96 says: "Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force", etc. If there was an express provision that the decree shall be final without the right of appeal, then that would have been the case, but not otherwise. I will read out from the same section. "An appeal shall lie from every decree passed by any court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court." And I will give you Mulla's comments supported by decisions of courts. I will not quote the decisions of the courts. It will take a long time. I shall read Mulla's comment only.

DR. P. V. KANE: The word used in "the Presidency Small Cause Courts Act is also 'final' and there you have got no appeal. It will mean that the same thing will apply here and the decree will be final.

SHRI C. C. BISWAS: In the Presidency Small Cause Courts Act it is expressly provided that no appeal shall lie against the decision of a Small Cause Court, but there is no such corresponding provision to be found in this Bill. In the absence of any such specific provision the ordinary law will apply and if the court referred to is a court of ordinary jurisdiction, the right of appeal is implied and not merely implied, it is in accordance with the express provisions of the Civil Procedure Code.

SHRI K. S. HEGDE: What is the legal import of the word 'final'? What is final? Is the decision to be final or is the approach to the civil court to be final?

SHRI C. C. BISWAS: The decision of the court subject to all the incidents of appeal is final.

SHRI K. S. HEGDE: Which court's decision is to be final?

SHRI C. C. BISWAS: The decision of the appellate court; the highest court of appeal.

SHRI K. S. HEGDE: "The decision of the court shall be final". Is it a legal limitation that you have imposed upon the right of appeal or not?

SHRI C. C. BISWAS: No, I will just tell you.....

SHRI K. S. HEGDE: Then remove the word 'final'. It is quite all right still.

SHRI C. C. BISWAS: "Where by a special statute matters are referred to the ordinary courts of the country the implication is that the court will determine those matters as court. Its jurisdiction is only enlarged and all the incidents of that jurisdiction including the right to appeal from its decision remain."

SHRI K. S. HEGDE: But by putting the word 'final' you are putting a limitation on it.

SHRI C. C. BISWAS: No, because when you mention "civil court" it includes the appellate court also.

SHRI K. S. HEGDE: Then why use the word 'final'?

SHRI C. C. BISWAS: Because 'court' includes the appellate court also; it means that the decision of the appellate court shall be final. The limitation applies to the ultimate decision of the appellate court.

SHRI K. S. HEGDE: Is it necessary?

SHRI C. C. BISWAS: It may not be necessary but it follows from the provision of the Code of Civil Procedure as it has been interpreted by courts.

SHRI B. C. GHOSE (West Bengal): But lawyers never agree.

SHRI C. C. BISWAS: It may be somebody's misfortune but other people's fortune. However, that is the position. At any rate, as I said, that is the view which the Law Ministry took. It may be a wrong view. It very often happens that some decisions are taken and then the superior courts snap them asunder. But

[Shri C. C. Biswas.] we have got to act on a particular view which we think to be right. I expected my friends here to put in an amendment to make the position perfectly clear, if they had any doubt, but I looked in vain for any concrete or practical suggestions.

SHRI S. N. DWIVEDY (Orissa): Send it to the Select Committee then.

SHRI C. C. BISWAS: Even the Member who gave notice of a motion to refer the Bill to a Select Committee was not willing to move it and the other Member who was here asked for leave to withdraw his motion and the whole House concurrently gave him that permission.

SHRI K. S. HEGDE: It is within your power to amend it even now.

SHRI C. C. BISWAS: Why should I? I am not the sponsor of this Bill and personally I do not think an amendment is called for. What I suggested was that if my friend was very doubtful or diffident about it, it was open to him to give notice of an amendment to make that position perfectly clear beyond any possibility of doubt. That is what I am saying.

MR. DEPUTY CHAIRMAN: Is the hon. Minister prepared to accept such an amendment?

SHRI C. C. BISWAS: This is not my Bill. Also I have said that, in my opinion, such an amendment is unnecessary; so why should I make that amendment?

I do not think there was any other point of law which was raised and which calls for my reply.

SHRI B. GUPTA: Sir, I move that the question be now **put**.

MR. DEPUTY CHAIRMAN: He has to reply anyway.

SHRI C. C. BISWAS: Even if the question is put, he has to reply.

SHRI AKHTAR HUSAIN: After the wise guidance that has been given by the Leader of the House, I feel that my responsibility in the matter of replying to the debate has been greatly diminished. I do not think it is necessary to reply in detail to the criticisms advanced but I will certainly meet some of the points that have been raised. First of all, I must express my gratitude to those hon. colleagues who have expressed their sympathy with this measure and who have shown by their speeches that their view is that the Bill is really of such a nature that it seeks to serve the cause of humanity and as such it should receive the help and support of all right-thinking Indians. I am extremely grateful to those hon. colleagues who have expressed their fellow-feeling in such a manner as to create confidence in the minds of persons who will be mostly affected by this Bill, that their interests are absolutely safe in the hands of this secular Parliament of ours, and the kind of support that has been extended from various quarters is certainly a very great encouragement to me in the discharge of my duties with respect to this Bill.

After all, what happened was, the sponsor of this Bill in the House of the People came forward with it and the Leader of this House came in only incidentally. If his presiding at the deliberations of the Select Committee has given rise to any misunderstanding, I wish it to be clearly understood that he was there not in his capacity as the Law Minister but as a distinguished jurist and as one who was in a position to give guidance and advice in the framing of a Bill which concerns a very large number of citizens of this country. The sponsor came forward in the House of the People and made a request that 'here is some humanitarian duty to be performed; here are these properties that are being mismanaged; please lend your helping hand for the purpose of bettering the agency for the management of these properties and to ensure a better and more efficient control over them'. Actuated by feelings of sympathy and fellow-feeling,

hon. Members of the House of the People acceded to the request of the sponsor of the Bill. They gave him every help and assistance. People of different religious denomination agreed to serve on the Select Committee and by their advice helped in the deliberations of the Select Committee. As a result of their deliberations, a measure was evolved. Thanks to the kindness of the hon. Shri Charu Chandra Biswas, the Law Ministry's expert draftsmen also lent their help in drafting this humanitarian measure. This having been done, the measure was passed by that House and now it has come to this House. And it appears that my hon. colleagues in this House are in no way wanting in that feeling of fellowship and sympathy that was demonstrated in the House of the People and for that I express my gratitude to them and I thank them for the very valuable and constructive suggestions made by them and I trust that with their blessings we will be able to make a success, if this Bill is passed, of the management of the various Muslim wakfs and we can ensure that their administration is carried on efficiently and expeditiously under the provisions of this Bill. After that, a similar measure may be framed for other communities also, but that is a matter for others. What I want to put forward at this stage is that similar provisions have been found to work successfully in four States of our Union. This measure before us is an improvement, having been framed in the light of experience of the working of the other measures now in force in the various States, and therefore it should be given full effect and enforced so that we may have uniformity of legislation in all the States.

Of course, I have to remove certain doubts and apprehensions that have been expressed and I shall do so without taking very much of your precious time. Now, my hon. colleague Dr. Kane who was pleased to criticise this Bill said that wakf-alal-aulad should be excluded because he had some apprehensions about per-

petuities being created by wakf-alal-aulad. Wakfs-alal-aulad were declared to offend against the law of perpetuity by the Privy Council. It was in order to validate wakfs-alal-aulad which were so common that special legislation was enacted, and the Act of 1913 was passed which was referred to by my hon. colleague Diwan Chamal Lall who with his great legal knowledge and ability has removed most of the doubts that have been created as a result of undigested reading of the law on the subject.

Now, the wakf-alal-aulad has been excluded from the operation of this Bill to the extent to which the funds of such wakfs are not for charities. We find on page 2 that '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 a wakf-alal-aulad only to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable. That is to say, so long as the wakf continues for the benefit of the aulad, i.e., descendants of the creator of the wakf this Act will not apply to income set apart for the benefits of descendants. This Act has not been framed for perpetuating them, but the moment the aulad becomes extinct, then the entire assets are available for utilisation for the benefit of humanity. When that stage is reached this Act will step in. Apart from that, this Act does not in any way encourage either the creation of wakf-alal-aulad or giving them any protection. (*Interruption*). My learned colleague says that it accepts perpetuity. Does he want us to frame a Bill which would render the provisions of the Act of 1913 nugatory? We are not here dealing with private wakfs. I have come to this House for the purpose of requesting my hon. colleagues, through you, Sir, to lend their support to this Bill which seeks to ensure better management of wakf property. We are not concerned with perpetuities at all so far as this measure is concerned. This is a purely

[Shri Akhtar Husain.] humanitarian measure for the purpose of preventing the income from wakf properties from being wasted by persons who somehow or other have got into possession of these properties and who are misusing them and utilising them for purposes other than those prescribed by the creator of the wakf. That is all this Bill seeks to achieve. I hope I have said enough to satisfy my hon. colleague from Poona that there is nothing more for him to worry about in this matter.

Then my hon. colleague from Poona also referred to.....

AN HON. MEMBER: He is from Bombay.

SHRI AKHTAR HUSAIN: I am sorry; I will correct myself. My hon. colleague from Bombay also had some apprehensions about clause 55 of the Bill. I would assure him that these are all meant only for the purpose of simplifying the procedure and not for making the provisions of section 92 of the Civil Procedure Code nugatory or inoperative. If somebody invokes without any force any provision of law, neither I nor my hon. colleague with all his experience and legal knowledge can stop irresponsible persons from raising irresponsible pleas in any court of justice.

There was my hon. colleague, Mr. Hegde; he expressed some apprehensions that there are people who would execute deeds of wakfs for the purpose of preventing their properties from being taken away by their creditors. I wish to assure him, through you, Sir, that I have no intention of supporting any cheating or any violation of any law. The sponsors of this Bill never had any intention of taking away any property from the reach of the creditors. After a wakf had been calculated to defeat or delay creditors a suit can be instituted either under the Transfer of Property Act or any other Act that the transaction is invalid as it would defeat the creditors. There is legal remedy to set aside wakfs invalid for any reason. A wakf will be recognised

under this Bill only when it is made according to law and is valid. There is no intention to help those people who want to put away their properties from the reach of their creditors. My hon. friend has been pleased to express.....

SHRI K. S. HEGDE: I even now think it will be possible .....

SHRI AKHTAR HUSAIN: My hon. and learned friend still persists. I am extremely sorry that being a lawyer himself he should persist in saying that any provision of this Bill would make it possible to create wakf to defeat creditors. A wakf is a trust which has been duly made, which is not illegal on other grounds. Supposing somebody makes a wakf of another man's property, it would not be a wakf under the Mohammadan law. Supposing somebody makes a wakf to defeat his creditors, it is not then a valid wakf. I think, Sir, I have said enough on this point.

Again, Sir, there was something said about clause 6; and Shri C. C. Biswas has been pleased—an eminent jurist as he is—to explain away the doubts entertained by the Members.

SHRI K. S. HEGDE: You have put it correctly; he has been pleased to 'explain away' the clause! (*Laughter*).

SHRI AKHTAR HUSAIN: I will request my hon. friends not to read words (in the clauses) which do not exist; for example, he should not read in clause 4 "that the decision of the Civil Court of the first instance shall become final". These words do not exist. I am surprised that Members go on insisting even after the clarification made by Shri C. C. Biswas.

MR. DEPUTY CHAIRMAN: All of us, I think, have missed clauses 6(2); you may please read it.

SHRI AKHTAR HUSAIN: Clause 6(2) says:

"Notwithstanding anything contained in sub-section (1), no proceeds? under this Act in respect



of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceedings arising out of such suit"

I am thankful to you, Sir, for your suggestion. I am particularly thankful to the Deputy Leader of the Communist Party for his sympathetic approach to this measure .....

MR. DEPUTY CHAIRMAN: I suggest to you to answer only such points as are remaining unanswered.

SHRI AKHTAR HUSAIN: There is really nothing more for me to answer, and I thank those hon. Members who have lent their weight in support of this measure.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to provide for the better administration and supervision of wakfs, as passed by the House of the People, be taken into consideration,"

The motion was adopted.

Clauses 2 to 69 were added to the Bill.

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

SHRI AKHTAR HUSAIN: Sir, I beg to move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill be passed." SHRI K. B.

LALL: Yes. (*Laughter*).

MR. DEPUTY CHAIRMAN: What, are you opposing the passing of this Bill?

SHRI K. B. LALL: Sir, I want to correct some misunderstanding. I welcome this measure. I shall be brief. But what I meant to say during the course of the first reading of the Bill was that the objects contained in the Bill were not objectionable; what

I meant to suggest was that there should not be a separate piece of legislation for the disintegration of the community; all these laudable objects of this Bill could be incorporated in one common civil code. That will command the respect of the whole country. My hon. friend wanted to convince me with regard to the fact that there can be one common code with regard to property but how can there be, he asked, a common law with regard to religious things? Supposing a man bequeaths some property for a separate class for the study of Koran; and some other body bequeaths some property for the study of the Vedas; these can be done in a common way, and each person, according to his choice, might bequeath property or perform any act. My purpose is not to oppose whatever is contained in ! this measure or bring a communal atmosphere in this House. It has been unhappily badly misinterpreted, I am sorry to say, by my friends from Delhi and the Punjab who so vehemently opposed what I said. Everybody supports all the good things contained in this Bill, all these things should be done by everybody, but there is no point in simply misinterpreting an other and raising feelings unnecessarily. Now, I will again request those who may have an opportunity to operate this Act to behave in the spirit in which the Constitution of our nation expects them to behave. I find a silver lining in the speech of the hon. the Law Minister who has very candidly confessed that there is necessity for one comprehensive common code. With that silver lining before our eyes I hope that the people would look forward for the realisation of the ideas that the Law Minister has given to us just now. And he has very rightly pointed out that it can not be within his power to debar people from bringing any such legislation. The Law Minister has admitted that there are such provision in the Constitution itself and he .....

DR. SHRIMATI SEETA PARMA -NAND: In view of the fact that the hon. Member is going to take some

[Dr. Shrimati Seeta Parmanand.] time, may I appeal to the House to sit a little longer? *(Interruption.)*

MR. DEPUTY CHAIRMAN: Mr. Kailash Bihari Lall, all your remarks are irrelevant. Please finish up your speech.

SHRI K. B. LALL: I was saying that what the Law Minister had said was quite all right. He has said that a comprehensive civil code is necessary and that so long as he does not bring such a comprehensive Bill, people are at liberty to usher in such things as they like because the Constitution provides for them.

MR. DEPUTY CHAIRMAN: Mr. Kailash Bihari Lall, all these points you have already referred to earlier. You are repeating them.

SHRI K. B. LALL: I find that the Chair is also impatient.

MR. DEPUTY CHAIRMAN: Please don't repeat what you have already said.

SHRI K. B. LALL: I am going to sit down as a matter of fact, because the more I am interrupted, the more I am likely to lose the thread. I wanted to finish in one or two minutes, but now it will take some time to remember what I was saying.

MR. DEPUTY CHAIRMAN: I can't allow you, Mr. Kailash Bihari Lall, to repeat your arguments.

SHRI K. B. LALL: I have followed you quite clearly, and I think you are repeating the very thing .....

SHRI TAJAMUL HUSAIN: Sir, he should withdraw that remark against the Chair. The Chair does not repeat anything.

SHRI K. B. LALL: What is the remark I have made?

MR. DEPUTY CHAIRMAN: Please finish your speech.

SHRI K. B. LALL: Sir, I am being interrupted every now and then. I think I am under your protection.

MR. DEPUTY CHAIRMAN: Please finish your speech. Don't repeat.

SHRI K. B. LALL: So, till such a comprehensive Bill or law is brought before this House by the Law Minister, my only appeal .....

MR. DEPUTY CHAIRMAN: Order, order. Mr. Kailash Bihari Lall, please resume your seat.

SHRI K. B. LALL: I never meant anything .....

MR. DEPUTY CHAIRMAN: Order, order. Please resume your seat. I do not allow you to repeat .....

SHRI K. B. LALL: I am not repeating, Sir, .....

MR. DEPUTY CHAIRMAN: Mr. Kailash Bihari Lall, will you resume your seat?

SHRI K. B. LALL: Yes, I am resuming my seat. With due deference to you, Sir, I might say that perhaps you are losing your temper.

SHRI TAJAMUL HUSAIN: Withdraw it.

MR. DEPUTY CHAIRMAN: Yes, now the mover of the Bill.

SHRI AKHTAR HUSAIN: Sir, I have nothing more to add except to express the hope that with the blessings of all sections of the House, when the Bill is passed, it would succeed in achieving the objects it seeks to attain.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.