

SHRI MANORANJAN BHAKTA: Sir, I want to seek one clarification. This is an important point.

MR. CHAIRMAN: Shri Basu Deb Acharia, please say whether you are willing to withdraw the Bill. *(Interruptions)*

SHRI MANORANJAN BHAKTA (ANDAMAN AND NICOBAR ISLANDS): I want to seek some clarifications. ...*(Interruptions)*

MR. CHAIRMAN: No; this is not the way.

SHRI V. DHANANJAYA KUMAR: I am on a point of order.

(Interruptions)

MR. CHAIRMAN: Shri Basu Deb Acharia, I have asked you.

SHRI BASU DEB ACHARIA: In view of the assurance given by the Minister of Parliamentary Affairs that in this very Session they will bring a Bill after discussions with all the political parties, I am withdrawing the Bill.

I beg to move for leave to withdraw the Bill to provide for the creation of a Legislative Assembly for the Union Territory of Andaman and Nicobar Islands and for matters connected therewith or incidental thereto.

MR. CHAIRMAN: The question is:

"That leave be granted to withdraw the Bill to provide for the creation of a Legislative Assembly for the Union Territory of Andaman and Nicobar Islands and for matters connected therewith or incidental thereto."

The motion was adopted.

SHRI BASU DEB ACHARIA: I withdraw the Bill.

16.52 hrs.

CONSTITUTION (AMENDMENT) BILL
(OMISSION OF ARTICLE 44 ETC.)

[English]

MR. CHAIRMAN: Shri Bhagwan Shankar Rawat has to move that the Bill further to amend the Constitution of India, be taken into consideration.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT (AGRA): Mr. Chairman, Sir, I beg to move that:

"the Bill further to amend the Constitution of India, be taken into consideration."

[English]

MR. CHAIRMAN: Order please.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT: Sir, Article 44 under the Directive Principles of State policy in the Constitution states that:

[English]

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

[Translation]

But even after 50 years of independence the Government have not been able to enact a uniform civil code. Though it has been stated in the Directive Principles yet the Government have so far overlooked it. ...*(Interruptions)* A division bench of the Supreme Court headed by justice Kuldeep Singh also gave some ruling but the Government did not take note of that ruling also. It did not respect the spirit of that directive. It is the need of the hour today that we should have a common civil code or a uniform civil code.

In this connection, I would like to submit that Pt. Jawaharlal Nehru committed a big mistake. In 1955, he brought about a Hindu code Bill to enact the same and asserted that they had made the common civil code for 80 per cent people of the country. Had they enacted that common civil code 100 per cent people of the country and not for 80 per cent, there would have been no communal division in the society. We could not bring the uniform civil code because we saw our vested interest in the minorities' vote bank. Not only this, whenever any change in the Hindu or Muslim or Christian personal laws was mooted, it was the Hindu law which was changed and a communal frenzy was created. It was said that no interference would be made either in Muslim or Christian law. Not only this, when the Supreme Court gave its verdict on humanitarian grounds in Shahbano case, that too was not accepted by the Parliament and a law was enacted to reverse the verdict of the apex court. Even today thousands and lakhs of Shahbano are crying for justice but they are not getting the same. Thousands of Shahbanos are being burnt to death today but nobody is there to do justice to them.

I can say it without any hesitation that though our sisters in a male dominated society do fight for Government jobs for seats in Legislative Assemblies and Lok Sabha yet they do not pay their attention towards the basic problems of women in the society. The different women's organisations have failed to take note of such problems. We are exploiting our women. We have made them just an object of enjoyment. May I know from the hon. Members as to which are those countries where different laws are enacted on religious basis? I have studied the laws in force in Pakistan, Tunisia, Syria, England, America and Russia but except for India, there is uniform law in each of these countries and there is no discrimination on the basis of either religion or creed. Only in India laws are made on the basis of religion. If somebody raises his voice against the system and says that there is no relation between the

[Shri Bhagwan Shankar Rawat]

system of worship on the one hand and the social justice, social order and social law on the other he is being branded as communal. If he tries to say so, he is finished. The minorities are befooled by people who claim to be their well wishes. They warn the minorities that a uniform civil code is most likely to do harm to them. This is the politics of vote-bank and it has brought the country on the brink of disaster.

In 1947, the country was divided into two parts but before the partisan Shaheed Bhagat Singh was hanged to death alongwith other freedom fighters who laid their lives for the unity and integrity of India and its culture. Later Mahatma Gandhi also said that we will accept the partisan but will not compromise our principles and, therefore, the country will remain a secular state and we will not be a theocratic State. Pakistan was formed.

16.59 hrs.

(SHRI BASUDEB ACHARIA *in the Chair*)

Lakhs of people sacrificed their lives in the resultant communal riots. We suffered heavy losses of life and property. Our honour was also hurt but we did not compromise with our principles in order to save the cultural heritage of our country. Religious tolerance has been the mainstay of our nation. This country cannot be ruled on the basis of caste or creed. We have sacrificed many lives to carry on this tradition ahead. And it became evident after independence that different laws for different people cannot rule this country. Those who want separate laws on the basis religion or caste, may quit India. But even after doing so much, our policy makers changed that law in 1955 which was the biggest mistake. Dr. Bhimrao Ambedkar, while delivering his speech on Article 44 in the constitution assembly, had said that we do not want any kind of interference in matters of religion, pooja system or freedom of any faith but at the same time we also want that the power to maintain law and order in society should vest with the administration. But, today, even Ambedkar's soul is crying in pain in the heaven. His soul is crying because it was with great faith they had envisaged in article 44 of our constitution that the future Government would strictly, honestly and with full respect implement the Directive principle of State Policy of the Indian Constitution. But unfortunately our present Government have failed in building up an ideal Indian Republic where every one could have got justice, peace and love, where there would have been no disharmony between among one another the people. In place of such a Republic, they have built up a State where there is only hatred and disharmony between the different communities. Our Directive Principles of State policy have been ignored. We closed our eyes after enacting the Hindu Code Bill. We were glad that we made arrangements for 80 per cent people but we were not interested in the rest 20 per cent people because we were afraid that it will reduce our Vote Bank. The minorities should have been told the truth but they were not. The way, the women are being exploited there, has not been

taken vote of. No steps have been taken to stop it. My hon. friends must be thinking.

Justice Mathew had been an honorable judge of the Supreme Court. He has explained it while delivering his verdict in Keshwanand Bharti's Case which is considered the oldest and a leading case pertaining in to the Fundamental Rights which gave a new direction to the lives of Indian people. In Bharti case he made a reference of the Directive Principles and observed.

[English]

"The moral rights embodied in Part-IV of the Constitution are equally as essential features of it as Part-III which deals with the fundamental rights, the only difference being that the moral rights are not specifically enforceable against the State by a citizen in a court of law in case the State fails to implement its duty. But, nevertheless, they are fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce those directives."

[Translation]

He had hoped that the coming generation would keep all these things in mind and strive for building a pleasant and ideal India where every body would enjoy universal justice, equality of status and a life of honour. But even that judgement of Justice Mathew is being mocked at and ignored. Thereafter the Bench headed by Justice Kuldeep Singh also gave a judgement.

That too was ridiculed and levelled as an orbiter dictor remark and the Government of India is not ready to comply with that decision. In that sequence now the final decision has come.

[English]

The Supreme Court dismissed three writ petitions challenging the various provisions of Hindu Succession Act, Muslim Personal Law.

[Translation]

This was told that we can't do it as per the Directive Principals. They are infact holding the charge of legislature I quote.

[English]

"That is because there was no occasion to consider whether Part-III of the Constitution had any application to personal laws or not; suffice it to say that we are satisfied. The argument advanced before us involves issue in our opinion to be dealt with by the legislature the judgement said."

[Translation]

I am saying so because if my friends have an intention to commit Contempt of the Court, then we can not sit Complacent merely by talking about judicial activism. If you are not ready to follow my, or even judicious decision, or

even the Prime Minister's advice in the interest of the Country, then its all right, don't implement it. They say it was an *orbiter dicta* remark, and we accepted that. I say it is the responsibility of the legislature to ensure implementation of the Directive Principles and this is a challenge thrown to the legislature by the Supreme Court and now the legislature would have to pick up the gauntlets.

The spirit behind Section 44 suggests that the laws pertaining to secularism does not have any relevance in a civilised society. That is why article 25 of the Constitution guarantees freedom of religion where as section 44 separates the Sects from social and personal laws. This forms a part of the judicial pronouncement. That is why I want to say that some of my friends should not misinterpret it. That is why before giving its final decision the Bench comprising Justice Jaswant Singh and Justice Adam Shah had desired that the matter should be referred by the Government to the Law Commission and the Law Commission may draft a bill conforming to the modern concept of human right's of women in consultation with the Minority Commission.

The second suggestion was the misuse of proselytation should be checked. The decision of Justice Kuldeep Singh was motivated by this concept. One Hindu husband wanted to marry another lady but he knew that he could not do so under Hindu Marriage act while his spouse was alive. So both of them got converted as muslims and then got married. When the matter was challenged in the court, the court ruled out that such marriages done after changing one's religion can not be deemed as valid. It was done with a view to check the trend of people getting converted into Muslim religion and the marrying somebody by misusing the religious provisions of other religions. This trend must be checked. But still thousands of people are getting initiated into another religions and making marriages with another ladies. This trend should be checked. If it goes on uninterrupted, then the card of minority vote bank can work but the society can not be run with a bonafide intention and with the spirit of social justice.

But unfortunately the Government has not accepted this suggestion. My friends Mr. Hannan Mollah and Shri Basu Deb Acharia are sitting here. The C.P.M. has welcomed this decision when this decision had come from the Division Bench of Justice Kuldeep Singh, it was termed as a revolutionary change that there should be uniform Civil Code. No Civil Code should be framed on the basis of any religion. When we come to uniform civil code, some of my fundamentalist friends say the Muslims would be regulated by Shariat, Christians by Christian law and Hindu by Hindu doctrines. But when it comes to criminal cases, they get frightened that if the Islamic laws are to be followed then in Islam the culprits are given very harsh punishment. It may be Pakistan or Saudi Arabia, the Islamic laws are followed their in a theocratic state. If the Government wants to do so then it should ensure that all civil and criminal codes should be framed on the basis of various religions, otherwise uniform laws should govern the people of our country. When Goa was under Portugese reign, a uniform

civil code applied there. Still common civil code is effective there and causing no problem at all. But other parts of the country are afraid of it.

In reaction I will not say that an individual Criminal should be dealt according to his personal religious laws. Therefore then who argue that civil laws should be formulated on the basis of the way of worship, they should realise the shallowness of their contention. If you accept the favourable and reject the unfavourable in personal laws, then that won't do. That is why a uniform civil code is essential for delivering equitable social justice. My friends get apprehensive whether Bhagwan Shankar Rawat intends to get Hindu laws applicable on one and all. But I am not going to say that. Those who have such apprehensions, they are infact living in dreamland and they take their own shadow for a ghost. There should be a uniform civil code. An ideal civil code should be framed after perusal of all the laws. I don't feel any hitch while saying that a blunder was committed in 1976 when the Hindus were deprived of their fundamental right by means of an amendment in Indian Succession Act. I must ask without any hesitation as to why a separate code was set for Hindus. When Indian Succession Act was enacted, at that time this should have been brought under its purview. As for the justice, I have read in Koran Sharif that if a husband does discrimination against his second wife, he has no right to keep two wives. On the other hand his second wife has a right to divorce him or to refuse from living with him. But in this millieue, in the present social set up where a woman can not see even the day light, can women do such daring things? I don't think they can ever do it. All the laws are pro male and in all the religions woman has been treated inferior to their men folk.

Now I come to the Criminal laws. Adultry is considered a crime. I had been a Criminal lawyer. When it comes to proving of guilt in an adultery case, the law expects the affected women to substantiate the charge and give complete and unchallengeable and clear cut evidences to establish that her husband has entered into second marriage. The unfortunate first wife comes down to roads as destitute and in the mean time the second wife and her relatives spoil all the evidences. It so happens, just because she is weak and does not have supposters. But who should have been sent to jail, goes on violating all the laws. She is not aware of the hardship and complexities in legal cases. She does not know as to where she can be given justice. She does not know about all these intricacies. Thus most of such cases are lost by the women deserted by their husbands because they fail to produce evidences and come down to streets.

I will also come to Muslim law which was enacted after Shahbano case ...(*Interruptions*)

SHRI KALPNATH RAI (GHOSI): What is there in Pakistan?

SHRI BHAGWAN SHANKAR RAWAT: There is a law in Pakistan which provides that one man is allowed to marry

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one woman. He cannot marry more than one woman. Such a law has been enacted in Pakistan. It is not only in Pakistan, I may tell my friends in this regard that such a law has also been enacted in Tunisia, Morocco, Syria, Iran and Russia. There are all Muslim republics. In these countries no man can marry more than one woman.

SHRI KALPNATH RAI: Civil Code exists there.

SHRI BHAGWAN SHANKAR RAWAT: Yes, civil code exists there. But there is only one civil code and it is a uniform civil code. Under this code all persons, whether Hindu, Muslim, Sikh, Christian or Parsi, will have to abide by the same law. There are no separate laws. I am pointing it out because has emerged out of India, it has been a part of India. Now coming to Muslim Woman Protection of Right of Divorce Act, 1986, I would like to submit that a law was enacted in this House itself that if husband abandons his wife, subsistence allowance is granted to her. But when court granted substance allowance to Shahbano, this law was changed. The spirit of law was slaughtered humanity was slaughtered. In this august House a slur was cast on humanity. It was more or less like the stripping of Draupadi in the court of Duryodhan.

Sir, a provision in the law was made by this august House which made the helpless women destitutes and no legal expert, who was in the favour of the ruling party, could go against it. They kept silent when I discussed this matter with one or two member of parliament, they said that they do not depend on wrongful member of Parliament, they said that they do not depend on wrongful deeds if they had raised their voice against the system, they would have been thrown out of the party under the anti-defection law. Therefore, they could not go against the whip. They could not annoy their leaders. Even today lakhs of women cases are lying pending. The law provided that share of women would be given to those who will look after her. But till date no woman has got her share. There are few examples where the family members of the husband of a woman have given patronage on the basis of right given to them. It is not enough. The law also provided that Wakf Board would also protect them. But unfortunately, the women have to go from pillar to post to approach the Wakf Board. They approach many people who could plead their case with the Wakf Board but they still do not get justice as their case is not pleaded properly. They are on the verge of starvation. Therefore, it is provided in the Act that Muslim women would be given protection under Protection of Right of Divorce Act. But it is not being enforced. No protection is being given to them under the Act. The preamble, the aims and objects, on the basis of which this Act was enacted after Shahbano case, have been defeated. The women are facing so many difficulties. I will refer one paragraph of Dissolution of Muslim Marriages Act, 1939. In Section 2, clause 8, sub-clause (f) it is mentioned—

[English]

"Cruelty: to declare the mere fact that the Muslim husband takes more than one wife is an act of cruelty within the meaning of Section II, Clause 8 Sub-clause (f)."

[Translation]

People have fought against the provision in Section 2, Clause 8, sub-clause (f) but they were defeated in India. The law has already been enacted in other countries which I referred.

Under the Shia and Sunni laws the women are deprived of their share whenever such issue arisen. Discrimination exists on the basis of gender. That is why I want to request that either the article 14-15 of the constitution should be repealed Muslim personal law which allows polygamy should be scrapped. I am not talking about conversion, I am not talking about evils existing in a religion. Why Muslim countries, have banned polygamy by enacting a law in this regard, why can not it be done in our country? How long will the women continue to be the victim of man's lust and man's whims? I want to submit that:-

[English]

"The Muslim Personal Law, which enables a Muslim male to give unilateral talaq to his wife without her consent and without resorting to judicial process of courts, should be declared as void because it is against the provisions of Article 13, 14 of the Constitution of India."

[Translation]

Today, if a man gets whimsical and speaks out the words, Talaq, Talaq, Talaq, to his wife. The life of women is ruined and all matrimonial relations are snapped. I am not talking about Muslim law, I am also talking about Hindu law. Many of my sisters have become victims of dowry. Therefore, that law also needs amendment. My friends should not have any misunderstanding because nobody knows in which family he will take birth, who will be his mother. Any baby who is about to take birth is not aware of the fact whether he will take birth in a Muslim family, Hindu family, Parsi family, Christian family or in Jews family. How long this evil and this crime which this social set up has created would last? And how long it will continue to penalise the human beings? There is no mention in Quran Sharif that one should misbehave with his wife, adopt a discriminatory attitude towards her and even than she continues to remain a slave and a means of recreation.

Under clause 10 of Indian Divorce Act, it has been provided under what circumstances husband can file the suit for separation. If husband says that his wife has been indulging in adultery after their marriage, her future is ruined for ever. But if wife wants separation on this ground that her husband has been indulging in adultery after marriage, it is not sufficient. I am not criticising any religion. I am drawing your attention towards the evils which have come in the social set up on the basis of religion. I am drawing

your attention towards that clause of the Indian Divorce Act on the basis of which it is said that it is a part of the Bible. But it is not so. Bible also contains elements of justice. But here the law has been enacted in such a way under which a woman cannot take divorce until it is proved that her husband has converted his religious or he has married other woman. If any woman indulges in adultery she is divorced. On the other hand it is a privilege of man. If there is insensuous adultery, if this sex relationship with a person with whom it is not permissible continues, there will be divorce. But if there is only adultery there would not any divorce. If a person is guilty of having second marriage with insensuous relation, divorce can be materialised. If he is a rapist, if has indulged in sodomy in liestiality, he can be given divorce, I am emphasising this point here because no religion allows to create hurdles in laws. After all constitution gives the right of equality to men and women. Humanity and equality is called for in the whole world but who will give justice to women. I would like submit it before the highest institution of the country that you kindly give justice to women. I would suggest to women organisations also that before asking for participation in politics, they should seek justice for women as a whole because a few women will participate in politics. The women should be released from the clutches of exploitation.

Now I come to talk joint Hindu family. In the joint Hindu family no share is given to the wife and daughter why? Every household continues with a strife because of the property to be shared by the daughter. There used to be a holy relation between brother and sister. It is sanctity of the relationship of brother and sister that on the day of Bhaiyadoo, sister says that she will gladly accept death but her brother should remain prosperous. Once sister used to accept death for the property of her brother but today that sister plays the role of Holika who tried to kill Prahlad because the sister wants her share. After all how long it will continue. Why is the social set up not taken to the proper direction? Please bring changes in this social set up. Give the women their right and give them social justice, adopt reasonable and rational attitude towards them. Therefore, I mentioned all three religions. I don't intend to establish a religion regime through a uniform civil code. I want an ideal code of conduct to be found, and for that an expert committee should be continued as was recommended by the bench of Hon. Justice Kuldip Singh also. Taking into account all these facts a common civil code be formed. It should be revolved to form a common civil code for the all people of this country. As for as provision of civil code is concerned, marriage system, succession procedure and adoption procedure in all castes, religions should be clarified in the code, under the Muslim and Christian law adoption is not permissible. If by misfortunate, no boy is born in a family the person can give divorce to his wife, but he cannot adopt any child to support him in his old age. A Comprehensive view of the merits in all religions should be taken and a uniform civil code should be formulated which should be an ideal code of conduct. Everybody should under the jurisdiction of this code.

Everybody should be benefited and society should move smoothly. In this way we will be able to tell the world what really exist here and this country is not a country of bribes. It is not so that we quarrel in the name of religion or for the manner of worship. All rule, regulations and laws have been enacted and enforced in our country as have been enacted and enforced in the other countries of the world. Today criminal laws has been changed on the basis of religion. If perturbs me. Today on the basis of religion partial penalisation has been asserted in the criminal law. By making amendment to CRPC it is being taken as usual as other laws. If these amendments continue endless it will be reduced to a mockery in the country.

Mr. Chairman, Sir, I would request all the Hon. Members sitting in this House who can hear me that instead of raking up religious or communal issues this will be passed so that the society is led in the right direction. I have already said that it should be done by inserting it in the schedule 51B and 51C of the Constitution.

[English]

"The State shall secure for the citizens a uniform civil code through out the territory of India."

[Translation]

It should be made a constitutional provision so that women could not exploited in future. Women could not be completed to sacrifice themselves at the altar. I have read in the newspapers that people indulge in foeticide once, they know that a female baby is to be born. The women are subject to grave atrocities. By adopting such measures it will come to amend and a prosperous India, a prosperous society will emerge. With these words I would request the House to pass the Bill and bring revolutionary changes in the society.

SHRI CHAMAN LAL GUPTA (UDAHAMPUR): Mr. Chairman, Sir, I rise to support the Common Civil Code Bill.

India is a country of many religious Hindus, Muslims, Christians and Sikhs inhabit this country and all these people have contributed in the making of it. It is just like a bouquet and the beauty of a bouquet lies in the variety of colours of its flowers and their fragrance, and I believe our country is also a semblance of it. At the time of framing of the Constitution the framer of the Constitution Dr. Ambedkar had pointed towards the need of a common civil code in the country. But the situations which developed and the people who came into power practised the politics of votes in the country. They could not devote as much attention towards the traditions of this country as was required. Today, a person visiting foreign countries realises that the women folk there are working hand in hand with men in almost all the fields. There is no such fields where women are not marching ahead of men. What then is the reason, that in our country where the number of women

[Shri Chaman Lai Gupta]

is more than 50% of the population but most of them are mere housewives? They are finding themselves unable to make use of their qualities for the betterment of the whole country. More especially, in the Muslim society, there are so many women who do not get any opportunity to contribute to the welfare of this country.

Mr. Chairman, Sir, the truth is that this fact is at times presented in such a way that when somebody talks about common civil code it is interpreted in a way so as to mean as if that Hindu law is sought to be enforced in the whole country. A brother of mine has also made it clear that there are many a law among Hindus also which have demerits and which we need to amend. Likewise, it is said that everything should be regulated by Muslim Personal Law. So my submission is that, we should adopt secularism in the real sense of the term so that the country may move ahead unitedly as a whole and make progress as a whole. Look at Turkey, Algeria, Indonesia and Malaysia, all these countries have imposed sort of ban on polygamy. Pakistan also has a clear mandate which says that if a person wants to remarry, he cannot do so unless his first wife permits him to. I do not understand that if when the Muslim countries are so much progressive, I fail to understand why we in our country India, are clinging to obscurantist/conservative views. On many of the issues we come to hear that we should abide by the court's decision. So under the prevailing circumstances, my submission is that the decision given by Shri Kuldip Singh and his fellow justice R.M. Shahi emphasising the need to have a common civil code all over the country, should be followed. We expected that it would be done after the court's decision, but what was done instead was something strange was in store for us strange, the judgement given by the court case of Shah Bano was tried to be amended. When Kuldip Singh gave his judgement, we chose to ignore it totally and nobody is paying any heed to it. All the renowned judges are of the opinion that the atmosphere prevailing in the whole country calls for provision of equal opportunities to women so that they are also successful in this country and can co-operate with us in the making of India, the way we cherish to make it.

A few days hence we will be celebrating 50 years of our independence (50th year of our Independence) and after 50 years we would like to visualise an India where every citizen is happy, nobody commits suicide by sprinkling kerosene on himself or herself, and nobody would have to bother how to make both ends meet.

Any man who marries another woman for the satisfaction of his lust and neglects his first wife, such an atmosphere will not be conducive for the progress of this country. So, I rise to support this Bill and support emphatically that there should be a common civil code in this country. Through you, and this House, I would submit that this Bill should be unanimously passed in the first instance itself, in the form it has come to us.

[English]

SHRI G.M. BANATWALLA (PONNANI): Mr. Chairman Sir, it is unfortunate that this Constitution Amendment Bill has been brought before the House. On the subject of a uniform civil code I have spoken in this House several times and I have spoken at length covering almost all the aspects and many more which the mover of the Bill today has tried to cover. If my previous submissions are considered, I think almost every point raised by the hon. Member Shri Bhagawan Shankar Rawat has already been met. I only wish that they had been read before he had thought of moving the present Bill.

Clause 2 of the Bill says that Article 44 of the Constitution shall be omitted. I wish the Bill had stopped there, ended there. I would have been very glad to welcome the Bill with outstretched hands. Indeed there is a need for Article 44 of the Constitution, which contemplates a uniform civil code, to be deleted from the Constitution totally, wholly. But, unfortunately, the Bill in its Clause 3 wants to make it mandatory through other provisions of the Constitution for the State to secure for the citizens a uniform civil code throughout the territory of India.

Sir, at the outset I must clarify a certain confusion. The question of uniform civil code is different from the question of the so called defects of personal laws and the injustices that may be found in the personal laws of certain communities. As far as the Muslim Personal Law is concerned and the Shariat is concerned, it is free from defects and free from any injustices to women as I shall *Inshah Allah* point out later in my talk. But these two concepts are different. A uniform civil code concept and the concept of the so called defects in personal laws, the two are different. Because you may have a uniform civil code and still it may be replete with all the defects and all the injustices.

Now, the Bill talks about a uniform civil code. My pointed question is this. Let us first, in a rational manner, in an objective manner, try to understand what is the necessity of a uniform civil code, what objects would it fulfil and why do we unnecessarily go on, in a stubborn manner, insisting upon a uniform civil code. Let me make it very clear that the concept of uniform civil code is destructive of the religious freedom and the secular polity of our country. It is also divisive in nature and will adversely affect the unity and integrity of our country.

We have different religious communities and all these communities have different religious or personal laws. It is not the question, alone, of Muslims. There are several religious communities. There are a large number of tribes here in India. Even among the Hindus, there are different systems as far as their personal laws are concerned, admitted and given the necessary currency through the Hindu Code that we have. To tamper with all the laws of all these religious communities, to force an unnecessary uniformity upon them is an attempt to destabilise the country. It is an attempt to divide the nation. Therefore, the concept, I would submit, ...*(Interruptions)*

SHRI CHAMAN LAL GUPTA: Sir, I am on a point of order. We have been clearly told in Article 44 that a uniform civil code should be there. ...*(Interruptions)*

SHRI G.M. BANATWALLA: There is no point of order here. Let them hear me. I patiently heard them. Now, why are they so stubborn and not prepared to even hear me?

SHRI CHAMAN LAL GUPTA: I simply wanted to know what your views on the Directive Principles are.

SHRI G.M. BANATWALLA: I have just begun. I have just opened my mouth but they are uncomfortable sitting there because the truth hurts them. They are not prepared to hear the truth. They know that even their Hindu brethren will not support them because they want their own Hindu laws to prevail.

We have, for example, the Special Marriages Act, common to all, supposed to be the forerunner of any uniform civil code. This Special Marriage Act is supposed to be not having anything to do with any religion. But how many marriages today—even among the Hindus—are being performed under the Special Marriages Act.

SHRI BHAGWAN SHANKAR RAWAT: Sir, I am on a point of information. I have already mentioned about the Special Marriages Act. ...*(Interruptions)*

[Translation]

Honourable Member as a lawyer of repute and that is why I ask him to clarify that in the wake of this amendment by the Government of India whether a Hindu marrying under the Indian Marriage Act will come to be governed by the Hindu Marriage Act.

[English]

SHRI G.M. BANATWALLA: I am not yielding.

There are statistics that are available that not more than two per cent of the marriages are performed under the Special Marriage Act. Otherwise, the people of India, that is ninety-eight per cent of the people of India are for their own personal laws, whether it is the Muslim Personal Law or the Christian Law or the Hindu Law. They opt for their own laws in order to perform their marriages and in their personal matters.

Only two per cent of the people of the country go in for marriages under the so-called central law applicable to one and all, that is, The Special Marriage Act. That is the situation. But here we have this Bill asking for a uniform civil code against the face of practice and against the faith of the 98 per cent of the people who go in for marriages under their own personal law and not under The Special Marriages Act.

That apart, I was trying, in a rational manner, to point out that this concept of a uniform civil code is a divisive concept which if forcefully imposed upon the different communities and different tribes spread throughout the country, would lead to serious discontent and serious

repercussions on the unity of our nation.

It is a totally wrong concept to think that a uniform law will promote the unity of the country. It is a wrong concept. Ours is a federal structure. Different Legislatures make different laws and still unity of the nation is protected.

The mover of the Bill was referring to the United States. Let us study the laws of the United States. The laws differ. Take the question of law of marriage and divorce. It differs from State to State within the United States and still the unity of the United States is not at stake. It is well-known that laws about divorce are very flexible and easy in certain States as compared to certain other States within the United States itself. So, with regard to conditions of residence, manipulation is done umpteen times so that the couples who want divorce, file their petitions in the State in which the divorce laws are easier as compared to the other States of the United States itself.

Our unity is not so delicate. Is the unity of our nation so delicate that the system of marriage or divorce threatens the unity of our nation? They think so. But these are all misconceptions. It is totally wrong to think that a uniform civil code alone can promote unity. Look at the World Wars—the First World War and the Second World War. These wars were fought among the nations almost all of which had the same civil code or, I must say, the same religious laws. Still we had the World Wars before us. Why did it happen? Take the incidents that happened in our own country after Independence. I am sad to point out these things. It is painful to point out this thing. But for the sake of clarity I have to say that Article 25 of the Constitution stipulates and has an explanation saying that the term 'Hindu' shall include Sikhs, Jains and Buddhists. It says so.

In other words, there is a Uniform Civil Code for all of them since Independence, but we know how relations got strained. I will not go into the painful history of people—our Hindu and Sikh brethren—coming out here in Delhi itself to burn Article 25 and its explanation on the roads here in Delhi. Let us forget these painful parts. These are aberrations, I would say, which come up in our developments. But what I was pointing out was that it is a wrong concept to think that only uniform laws will bring about uniformity of the nation. Several of our laws are uniform. The Evidence Act, the Criminal Laws are all uniform. But still we are thinking of and talking about uniformity. So, let us give up this idea once and for all that a Uniform Civil Code is a need in order to bring about the uniformity of the nation.

No religious laws and no personal laws of any community—whether in times of peace or in times of war—have ever hindered the unity of the nation. India has gone through periods of war. We have stood up like one man on the 'national' questions. There are, I would say, unfortunate misconceptions under which certain people manage to go on for their own sake.

[Shri G.M. Banatwalla]

MR. CHAIRMAN: Please conclude.

SHRI G.M. BANATWALLA: I have still a lot to talk and you should allow me. I would welcome the opportunity given by the Mover of this Bill because it helps us to remove several misconceptions that are there. For example, there is a misconception about the laws that exist in other Muslim countries. I will take up those laws of the Muslim countries one by one and explain the situation here in this House. Let us have a dialogue. But then, before I do that, Sir, I must say that we—the Muslims—are sometimes, accused that we look to Pakistan and that we look to other Muslim countries for our guidance. Today I was surprised to hear when we were being asked by the Opposition Benches to look to Pakistan and to look to other Muslim countries for guidance. Let them have one standard. This shows, the arguments of convenience that comes from that side.

As far as the other countries are concerned, take the case of Saudi Arabia for example; and except two or three countries, take all other countries and you will find that the laws conform to the tenets of our religion. In a state

of mockery it is argued that we say 'talaq', 'talaq', 'talaq' and everything is over. But the law is not like that. It is not so easy and our brethren also know it. Had it been so easy like that and had the laws really been like that, the Muslim society especially would have been replete with 'talaq' and divorce.

18.00 hrs.

But that is not the case. Look at the statistics. The least number of divorce cases are there among the Muslim community. Statistics are there available in the reports of the Commission on Women also. The percentage of divorce is so low that really speaking, it is not an issue of a magnitude that they try to make. It become a non-issue specially when you try to study the various laws that are there under the law of Quran, the Hadees and the Firqa.

MR. CHAIRMAN: Mr. Banatwalla, you may continue next time. Now the House stands adjourned to meet again at 11 O'Clock on Monday, the 10th March, 97.

18.01 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, March 10, 1997/Phalguna 19, 1918 (Saka).