

The motion is not carried in accordance with Rule 157 of the Rules of Procedure and in accordance with the provisions of Article 368 of the Constitution of India. The motion is negatived.

*The motion was negatived.*

16 40 hrs.

CONSTITUTION (AMENDMENT)  
BILL

(Omission of Article 44)

by

Shri G. M. Banatwalla

[English]

MR. DEPUTY SPEAKER : The House will now take up the Bill further to amend the Constitution of India by Shri G.M. Banatwalla.

Now, before we take up the Bill for consideration, we have to fix the time for the Bill.

Shall we fix 2 hours ? Is it all right ?

SHRI G.M. BANATWALLA : There is no need to fix any time limit.

MR. DEPUTY SPEAKER : We have to fix a time-limit. Shall we fix 2 hours ?

HON. MEMBERS : Yes.

MR. DEPUTY SPEAKER : So, 2 hours have been fixed for the Bill. Now, Shri G.M. Banatwalla.

SHRI G.M. BANATWALLA (Ponnani):

Mr. Deputy Speaker, Sir, I beg to move :

“That the Bill further to amend the Constitution of India be taken into Consideration”.

The Bill seeks to delete Article 44 of the Constitution of India.

Article 44 is as under :

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

The aim of the Article is eventually to do away with all the personal laws of the various communities.

The final objective is that, instead of citizens being governed by their separate systems of personal law in regard to marriage, divorce, succession, inheritance and such other matters, they should be governed by one system of law.

Now, Sir, this uniform system of law, it is said, should apply even with respect to matters in which the citizens are subject to different systems of personal law. My amending Bill, as I have said, seeks to delete this Article.— Article 44—of the Constitution of India.

I need hardly point out that Christians and Parsis have their separate codified Marriage and Divorce laws. Further, the laws of the Christians are supplemented in South India by a lot of local legislation also. The Jewish Law of Marriage also remains uncodified. Then, the Muslims in India are today governed in these matters by their personal law, or, in other words, by the *Shariat*.

Before I proceed further, let me point out the exact nature of the Muslim personal law. I submit that the Muslim personal law is an inalienable part of the Islamic injunctions. A Muslim must adhere to it steadfastly lest he should cease to be a Muslim.

Therefore, Sir, you will find that there cannot be an abrogation of the Muslim personal law in their application to the Muslims and their replacement by any uniform civil code as may be envisaged by Article 44 of the Constitution of India.

Mr. Deputy Speaker, Sir, let me briefly point out now to this august House some of the basic features of the Muslim personal law. The *Koran* and the *Sunnat* contain specific laws relating to Marriage, *Meher*, Divorce, *Khula*, *Iddat*, Inheritance, will, Wakf and so on. It is not merely that it contains all these specific rules. These laws are related to basic values and the ideals of the religion. They are not merely optional. They have laid down boundaries which cannot be crossed. I may here be permitted to draw the attention of the House to these boundaries. After laying down the law relating to marriages, the Quran says—

“This is the law from Allah and you are bound to obey it (3:240)”—

I may give another quotation—

“It is a decree of Allah for you (IV:24).”

I may point out another provision—

“That is the judgement of Allah. He judgeth between you.” (LX : 10).

Similarly, after laying down the law relating to divorce and *Khule*, the Quran says—

“These are the limits ordained by Allah, Do not go and beyond them, and if anyone exceeds these limits, he is the transgressor.” (2:229).

Further, after laying down the law of succession, Quran says—

This is the law ordained by Allah.” (4:11).

Sir, you will therefore find that the Muslim Personal Law has Islamic injunctions which have religious obligations as far as Muslims are concerned. Their contravention amounts to transgression and sin. I may again quote from the Quran and when I say I quote, I give the English version for the convenience of the House.

“And who so disobeyeth Allah and His messenger and transgresseth His limits, He will make him enter fire, where such will dwell for ever, this will be a shameful doom.” (IV :14).

Mr. Deputy-Speaker, Sir, what I am pointing out is that the Muslim Personal Law is a part of immutable Shariat. Even the prophet—Peace be upon him—did not have the right to make any changes in the injunctions of Quran. For, these were not his creation. They were only revealed to him by God. He was a messenger of exalted status to convey and communicate these revelations to the people. The Muslim Personal Law is the religious obligation of every Muslim. The observance of the Shariat is a necessary condition of one being a Muslim. A Muslim will be prepared to lay down his life rather than surrender any part of Shariat. Even a part cannot be surrendered. Observance in toto is the condition. Moreover, I must emphasise that it is the faith of Muslims that the welfare of Muslims lies not in surrendering any part but in strictly adhering to the whole of the religion. I have, therefore, to invite the attention of this House to consider calmly the grave situation that emerges because of the continuation of Article 44 in the Constitution of India which presupposes annulment of the personal laws of various communities.

This concept of uniform civil code was never there at any time during our struggle for independence. The concept suddenly came up when the Constituent Assembly was busy preparing a Constitution for us. There was a suggestion by

Shri M.R. Masani at the meeting of the Fundamental Rights Sub-Committee on 28th March, 1947 to include among Fundamental Rights a provision for a common civil code applicable to all citizens. This was the first time that the concept of a common civil code was advanced. The suggestion was struck down by a majority of 5:4. The subject was, however, later pressed, though it was rejected, as I said, in the meeting of the Fundamental Rights Sub-Committee on 28th March, 1947. The suggestion was pressed on 30th March, 1947. The Fundamental Rights Sub-Committee then decided by a slender majority to include a clause for uniform civil code in the Directive Principles of Social Policy. Accordingly, we have this Article 44 among the Directive Principles.

Even when the Constituent Assembly was discussing this provision, four amendments were moved to this Article. They were moved by Mohd. Ismail Sahib, Nazir-ud-din Ahmed Mehbub Ali Beg Sahib and B Pocker Sahib. As I submitted, during the independence movement, neither the Indian National Congress, nor the All Party Conference or the Sapru Committee had suggested the need for having a uniform civil code.

17:53 hrs.

[SHRI SOMNATH RATH *in the chair*]

The concept was not there at all. Not only that but the 47th session of the Congress in 1933 adopted a resolution to protect culture, language and script of the minorities and it is the way of life envisaged by a religion, that forms the culture of that religious group.

The 47th session of the Indian National Congress held in Calcutta on the 1st April, 1933 adopted a resolution

under the heading 'Fundamental Rights, Duties and Economic Programme'. There were 17 articles in this resolution and I will not take much time of the House at least on this point. These articles were divided under four heads. The resolution said :

"The Congress is of the opinion that to enable the masses to appreciate what 'Swaraj' as conceived by the Congress, will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them.

This resolution further goes on to say :

"The Congress, therefore, declares that any Constitution which may be agreed to on its behalf should provide, or enable the Swaraj Government to provide for the following..."

And then, under the heading Fundamental Rights and Duties :

"1 (iii) : The culture, language and script of the minorities and of the linguistic areas shall be protected".

Therefore, I was submitting that Article 44 or the concept of a uniform civil code is a total reversal of the pre-independence thinking as also our cherished policy of unity in diversity. We never insisted on uniformity. Our policy has always been that of unity in diversity. This insistence on common civil code, I submit, signifies an inroads into religious freedom guaranteed by articles 25 and 26 of the Constitution and a total eradication of minority culture protected by article 29. Thus Sir, the continuation of article 44 in our Constitution, even as a directive principle, not enforceable by law, tends to discredit constitutionalism itself.

Mr. Chairman, Sir, the underlying idea behind this concept of uniform

civil code as was pointed out at the time of discussion during the Constituent Assembly was delinking of religion from the way of life. This was the terminology used in the Constituent Assembly also. With respect to this idea of religion from the way of life, I must respectfully draw the attention of this House to some important thinking on the subject.

Sir, Prof. W. Paton in his 'Textbook of Jurisprudence' on page 105 says that Gustav Radbruch "considers that legal philosophy should study legal values, but should not attempt to choose between them. The choice is not a matter of science, but of conscience..."

Similarly Sir, while L. L. Fuller contends that Law is in quest of itself, W. Friedman says that it is not possible to determine the absolute ideals of justice without the guidance of religion.

Therefore, this whole assumption behind article 44, the assumption of delinking religion from the way of life is hollow and does not stand any test. W. Friedmann in his treatise "Legal Theory" says at page 414 and I quote—

"A theological basis provides the simplest and perhaps the only genuine foundation for absolute ideals of justice."

How the can there be delinking of religion from the way of life ?

17.00 hrs.

The same W. Friedmann, in this Chapter 30 giving an interesting account of his search for absolute ideals of justice says—I quote from page 416 :

"What emerges from all these varying attempts is the utter failure to establish absolute standards of justice except on a religious basis. But religion is ultimately a matter of

revelation and faith. The principles established by God must be believed in as part of one's religious faith."

It is Dr. W. Windelband who, in his treatise "A History of Philosophy" tries to expound the thoughts of Voltaire—Voltaire, on believer in God or any concept like that; but even he comes to this conclusion. With respect to the thoughts of Voltaire, Dr. Windelband says—and I quote him from the same treatise, at pages 495-496 :

"The deity and immortality are now for him only valid as postulates of the moral feeling; faith in them is regarded as only the condition for moral action...."

SHRI MOOL CHAND DAGA rose.

SHRI G. M. BANATWALLA : I do not yield at this juncture. Later on, during the discussion on this Bill, we can listen to what he has to say. The above author continues :

"If this belief should perish, the motives for honest conduct, and thus the foundations of social order, would, he thinks, perish with it."

Similarly, I seek the indulgence of this House to quote Prof. Paton from his "Textbook of Jurisprudence" at page 104 :

"What interests should the ideal legal system protect ? This is a question of value, in which legal philosophy plays its part. It is essentially the problem of natural law, though other terminology may be used. But, however much desire the help of philosophy, it is difficult to obtain. No agreed scale of values has ever been reached; indeed, it is only in religion that we can find a basis, and the truths of religion must be accepted by faith or intuition and

not purely as the result of logical argument."

I will give one more quotation from the same W. Paton and then not seek further indulgence of the House with respect to these quotations. At page 109 of the same book he says—I quote :

"The orthodox natural law theory based its absolutes on the revealed truths of religion. If we attempt to secularise jurisprudence, where can we find an agreed basis of values ?"

I need hardly point out that these and such are the thinking of the greater philosophers, of those widely respected in the area of jurisprudence. However, I quite realise that the protagonists of the uniform Civil Code argue, the protagonists demanding delinking of religion from the way of life have an assumption, that affairs such as marriage, divorce, inheritance etc. are purely mundane affairs unrelated to worship and religious life. They say: "What have these matters to do with your worship of God?" That is a different matter, they say, and all these matters, viz. marriage, divorce, inheritance and so on and so forth, they argue, have nothing to do with man's relation with God. Therefore, they seek to delink these matters from religion and want a common civil code. They say that all these matters belong to the social, cultural and economic spheres and do not form part of religion. I submit that several religions reject worldly life and consider this as driving away man from God. For the quest of God, according to these religions, man is driven to the solitude of caves and jungles—only one direct relationship between man and God. However, such is not the thinking in Islam; in Islam, the way to Allah is right through the affairs of this life on world. It is by a proper conduct through the multifarious activities of worldly life which include all these, marriage, divorce and so on, that one can earn the pleasure of God

and happiness in the life thereafter. Therefore, though protagonists of a uniform civil code may have an argument with respect to some religions, their argument does not stand.

SHRI MOOL CHAND DAGA : Can he cite other beliefs and other religions ? There are certain people who have certain faiths.

(Interruptions)

MR. CHAIRMAN : He is not criticising other religions.

SHRI MOOL CHAND DAGA : He has said about it.

SHRI G.M. BANATWALLA : I hold everybody with utmost respect. But I am only pointing out the features of the Muslim Personal Law.

SHRI MOOL CHAND DAGA : How have they injured the Muslim feelings, please let us know ? The Constitution came into effect in the year 1950. How you been affected ?

SHRI G. M. BANATWALLA : He has no patience; he only shows his obstinacy and nothing further.

SHRI Y.S. MAHAJAN : Is there no time limit ?

SHRI MOOL CHAND DAGA : 40 minutes he has taken and he has quoted all English authors and philosophers.

(Interruptions)

SHRI C.M. BANATWALLA : I Pointing out therefore that the Muslim Personal Law is a religious obligation on each and every Muslim. Now, the protagonists of a uniform civil code say that uniformity in way of life leads to national solidarity and unity. I very much respect the concern for this national solidarity and unity. But I must submit that it is unity in diversity, the principle which we cherish rather than uniformity in a plural society like India

that leads to national solidarity and unity. We have so many uniform laws, civil procedure code and so on and so forth. Why then do we still face challenges to national unity and solidarity despite all these uniform Laws? So, what I was pointing out is that India is a plural society and the basis of this plural society lies in our adherence to the principle of unity in diversity. The principles of Muslim Personal Law do not injure anybody else. They need not; they need not take any offence if a Muslim wants to continue with his adherence with the Shariat; the Shariat is immutable, as I said, and the fundamental principles of Shariat are not open for reconsideration.

Sir, it is some times argued that changes have taken place in the personal laws of Muslims in certain other countries, certain Muslim countries. It is sometimes argued. I must here point out that there are at least seven schools of Islamic Law which are currently prevalent in various parts of the world. These are the Hanafi, Shafci, Malki, Hambali, Ithna Ashari, Ismaili and Zaidi. Now, an individual is generally expected to adhere to any one of the schools *in toto* and is not supposed to make his own choice of legal rules from these several principles of jurisprudence.

Saudi Arabia, Libya, Yemen, Bahara-in, Northern Nigeria, Gambia, Somalia, Mauritania, Chad and Afghanistan have not at all introduced any legislation to bring about changes in the locally prevalent schools of traditional laws of Islam.

Of course, in U.A.R., Sudan, Lebanon, Jordan, Syria, Morocco, Algeria, Iraq, Iran and Pakistan the legislatures have replaced—have replaced—some provisions of one school of law generally followed by their citizens, by the corresponding principles of other schools. You will, therefore, find that the object is to have those principles which are best for local conditions; but which are permissible by Islamic juris-

prudence. They are within the permissible limits. It is totally erroneous, therefore, to believe that Muslim countries have abandoned Islamic law in favour of any Western legal principles except perhaps in one or two countries where there is already a move to go back to the personal law.

The protagonists of the uniform Civil Code also point out or have an argument saying that certain provisions of the Muslim personal law are outdated or are at fault, or the faulty, and so on and so forth. I must here point out that their attack on these provisions of the Shariat laws stems from their being taken away or carried away by the glittering of the hallow principles of Western values.

If you want to talk about women themselves, I must submit that Muslim women themselves have held large conferences in various parts of our country like Bombay, Nagpur, Nanded, Pabhani, Hyderabad, Pune, Ahmedabad, Lucknow, Allahabad, Bangalore, Calcutta and Kanpur. These conferences have been attended by thousands and they have voiced their support for the Muslim personal law.

An International Islamic Conference was held in London from April 3 to 12, 1976. A session was devoted to Women and Islam. It was addressed by two Muslim women, both coming from Western background—one English and the other German.

In her paper on "Women in Islam" Fatima Heeren concluded by saying :

"The more perfect a society has become in the eyes of a superficial spectator, the more heart-rending may all its utterly impersonal social achievements appear in the sight of those who know the cherishingly care and warmth of a truly Islamic family life."

There was another woman delegate at this Conference and she has also spoken at length praising the entire laws.

To conclude I may say that India is a plural society. It is a cradle of several cultures. The unity and solidarity of our country lies in achieving unity in diversity. The talk of a uniform civil code with its implications, agitates the minds of the minorities especially the Muslims. The talk of the uniform civil code is an attack on the traditional spirit of tolerance and secular ideals of our society. It is not through uniformity that we can maintain our society. Uniformity leads only to the destruction of the very basis of our plural society. It opens floodgates to needless and avoidable conflict and confrontation. I have, therefore, pointed out the nature of the Muslim Personal Law, the implications of Article 44 and the continuation of Article 44 encouraging certain sections to continue with their campaign giving rise to conflicts, resentment and agitated minds. I have, therefore, come before this House with an amending Bill to delete Article 44 of the constitution of India and I commend the Bill for the approbation of the House.

MR. CHAIRMAN : Motion moved :

“That the Bill further to amend the Constitution of India be taken into consideration.”

SHRI MOOL CHAND DAGA : I beg to move :

“That the Bill be circulated for the purpose of eliciting opinion by 31st July, 1985.”

[*Translation*]

SHRI VIRDHI CHANDER JAIN (Barmer) : Mr. Chairman, Sir, I

rise to oppose the Constitution Amendment Bill moved by Shri Banatwalla.

[*English*]

Article 44 says :

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

[*Translation*]

It is clear from the provision made in the Constitution that we shall endeavour to secure a uniform civil code throughout the country. During the British rule also, such legislations were enacted as were against the *Shariat*. The Transfer of Property Act and the contract Act were enacted. As regards criminal law the Criminal Procedure Code and the I.P.C. were passed. They extend to the whole of India. Similarly, the Negotiable Instruments Act is in force. The Koran contains certain specific tenets, rules and laws which are violated by the aforesaid laws. All have supported it and none has opposed it. It is our endeavour to have a uniform civil code in the country which could preserve the unity of the country so that we could be successful in our secular policy. A special emphasis has been laid on the secular policy in our Constitution. Therefore, we thought it fit to endeavour to secure a uniform civil code.

If we look at the Hindu Law, it has also separate schools of succession, for example Mayukha school of succession and Mitakshara school of succession in Bengal also, there is a separate Dayabhaga school. Similarly, separate schools of succession exist for the followers of Shia and Sunni sects, and there also, there is no uniformity among them. There are certain communities among the followers of Shia and Sunni sects also which do

not accept them. Therefore, we should also keep this Viewpoint before us and not overlook it. Besides, it is the Succession Act of the Hindu Law which is being followed in the North West Frontier Province. What I mean to say is that there is at present a controversy over this subject in our country and on the laws which I referred to namely the inheritance law and the Marriage Law which are the major laws, the Marriage law includes the divorce law as well. Under the inheritance law, we want to enact such legislation as could give equal rights to men and women. Even in *Shariat* and *Koran*, women do not have rights and status equal to those men and even in Hindu Law, women have not been kept at par with men. But, in the modern age, we want to give them equal rights and place them on an equal pedestal. This is why we have made amendments in the law, we have amended the inheritance law and even in the case of property, we want to give women rights equal to those of men. we have made extensive changes in the age-old laws and it is our constant endeavour to change them in accordance with the times. Therefore, this is my request to you that the way we are changing the laws and the Hindus are accepting them, the Muslims also should not adopt a rigid attitude, but should instead view it from the angle of how justice can be done to women with the changing times and circumstances and how we can march forward unitedly on the path towards development, how we can surge ahead in the race for development.

A Provision in this regard exist under Article 35 of the Constitution and amendments thereto have also been moved from time to time. For instance, Shri Nazeeruddin Ahmad, Shri Mohammad Ismail Shri Mehboob Ali Baig, Shri D. Pokar and Shri Hussain Imam had moved amendments. In all these amendments, emphasis was laid on the fact that no such provision should be kept in the Constitution. But in the Constitution Amendment Bill proposed

by you, you do not want any change to be made in our old laws, but instead, want to continue the old law in its original form, which came into being thousands of years ago. We find that changes continue to take place in society and our laws also change in accordance with such changes. Today, in our country we do not want to live society which is not responsive to changes, because we know that we cannot progress without making changes. If the same old laws continue, how can we march ahead? Without change how can our country cannot progress? Therefore, I vehemently oppose this Bill. Our Government should endeavour to create such a situation with the cooperation of the leaders of the Muslims, the Christians and the Hindus, in which such changes are made in the laws as aim at achieving progress and marching towards development.

With these words, I oppose the Constitution Amendment Bill moved by Shri Banatwalla.

SHRI MOOL CHAND DAGA (Pali)  
Mr. Chairman, Sir, our Constitution came into force on 26th January 1950. It has been in seen in reports that the progressive people want to raise their standard of living by taking advantage of the developments made in the fields of science and technology. The policy of the Government is very clear in this regard.

I do not know what the need was for Shri Banatwalla to have brought forward such a legislation. He has not mentioned in his speech the reasons for which he has brought forward such a law.

Since 1950 the Government of India have been emphasizing time and again that they believe in unity in diversity. The temple, the mosque and the church, all of them would continue to exist. We welcome all of them. But if any Muslim in India wants to make any plea,

Government have already made their policy clear in this regard. The first question was put before the Law Minister here and the reply given by him on behalf of the Government in 1983 was as follows :

[English]

In answer to a question in 1983 it was stated :

“The enactment of a uniform civil code will require changes in personal laws of the minority community. The policy of the Government has not been to effect any changes in personal laws of the minority community, unless the initiative thereof comes from the community itself.”

[Translation]

Thereafter the then Law Minister Shir Jagannath Kaushal answered a question here.

[English]

On the 15th March 1982, Shri Jagannath Kaushal, the then Law Minister, answered a question put by Shri Shivchandra Jha. I am reading both the question and the answer :

“...Whether the Government propose to bring legislation for a common civil law for the whole of this country and, if so what are the details in this behalf ?”

The Minister says :

“No, Sir, does not arise. Legislation for a common civil law for the whole of the country would involve changes in the personal law relating to the minority community. The policy of the Government is not

to effect any changes in the personal laws of the minority communities, unless the initiative thereof comes from those communities.”

[Translation]

This version was received after asking questions four times in this House. Some people have gone to the Supreme Court recently. The Supreme Court has observed that there are certain basic features in the case of marriage in which it does not want to interfere.

The hon. Member has said that it is a law from Allah and anybody disobeying it would be a sinner. I have not been able to understand the language of vice and virtue. He wants to tell me the difference between vice and virtue that God had given decrees to the Prophet and whatever decrees were given by him continue to be the law today. We believe today that the intelligence and the wisdom of a person always continue to develop. Should we accept the idea of human sacrifice before god deses ? Should this belief continue to be recognised even today ? You have said that a man may have four wives. This issue was raised in the Supreme Court recently. A question has been asked what the law is in this regard. I do not have the newspaper cutting with me at the moment, otherwise I would have shown it to you.

Under your law, if a person says ‘Talaq, Talaq, Talaq, three times, divorce is considered to have been given. Do you consider it to be good ? We do not say that you want this law now or that there should not be any change. There is a different law in Russia in this regard. In China also, where there is some Muslim population, there is a separate law. All are bound by their laws. He says that *shariat* or the Koran permits them to do so. But we have kept our minds open.

Today we see that they grow a beard. It is your belief that the beard should always be grown as it is a blessing of God. Such are their beliefs. In this connection, I would like to say how such practices have come into vogue. We made the law regarding divorce more stringent and the law relating to dowry was amended. We say that we should have laws for making progress. We respect the provisions of the laws.

No body knows the circumstances under which certain decrees were made. We, the Hindus take bath before worshipping God, but in his community, we have seen that they do not wash their hands and feet. It seems, at that time there must have been shortage of water, that was why this became a law or a practice. What is law? It is man's wisdom which takes the shape of law. Tulsidas has said :

*"Dhol. Ganwar, Shudra, Pashu, Nari,  
Yeh Sab Tadan Ke Adhikari."*

One does not know the circumstances under which he had said this. I fail to understand how a scholar like Banatwalla has made such comments.

I do not have the "Opinion" with me, otherwise I would have shown that Muslims have themselves demanded that their law should be amended.

There was a time when their countries were inhabited by different tribes and the leader of the tribe used to have hundreds of wives in his *harem*. Nobody knew their exact number. Mohammed Saheb did not like this situation that the leader of the tribe should have so many wives. So, he ordained that nobody should have more than four wives. He considered the situation prevalent at that time when every girl was forcibly taken to the *harem*. That was why he limited the number of wives to four. It is said about Lord Krishna that he used to dance with one thousand

women. Should we follow him in this regard? Should we also follow these conventions? When I was young, I used to believe that the earth was stationary and it was the Sun and the Moon which revolved. When I grew up, I came to know that it is a scientific fact that the earth is revolving. So, our conceptions go on changing with the passage of time.

How had this question arisen then? Whose feelings are we injuring? The beauty of India is found in these words of a poet that *Saare Jahan Se Achchha Hindustan Hamara* our country is the best among all the countries, where there is maximum tolerance. We want that the maulvi may offer his prayers in the mosque, we consider it good, we respect him. But the hon. Member has said a new thing that this Article should be deleted. I would urge him to rather associate himself with it. There are many conventions in the Muslim community due to which women suffer. The laws about divorce or the *Mehar* are the cause of torment for Muslim women. I had expected him to give certain suggestions for amending those laws. But, instead, he has suggested that this Article itself should be deleted. I am an atheist. I do not believe in the existence of God. I believe in Karma, *i. e.* good deeds. I have neither seen God, nor believe in his existence, I attach the greatest importance to hard work. We have the capacity to think as also a sense of discrimination. That is the greatest thing.

You have said a strange thing in this era of science. You know this is not the law, it is not binding, as it is a part of the Directive Principles. It is written here "shall endeavour", it is not at all binding. And for that you have brought this Bill. I think you want publicity by bringing this Bill. I think we take more care of the interests of the Muslims than you. According to me, a Muslim is one who protects the rights of the Hindus as well as his own

religion. Similarly, a Hindu is one who protects the rights of the Muslims. We are equally entitled to protect the rights of the Muslims and we are Hindus because we do that. The followers of one religion should respect the other religions and all should endeavour for a common code for marriages and other things. When the Hindu Code was framed and enforced as a law, our daughters got certain rights which they did not enjoy previously and we gave the right of franchise to women, which was not available even in England. Today, they have the right to vote. But these scholars sometimes express conservative views. I would say that this tactic of soliciting votes should be stopped.

Earlier they had demanded that the Nepali language should be included in the Eighth Schedule. They thought that at least the people in Darjeeling would be pleased by this. They have devised this vote catching method....  
(Interruptions)

Shri Banatwalla is a very wise Parliamentarian. I was listening to him intently. If I had time I would have quoted from the voice raised by the Muslim brethren and progressive people, so much so that even the High Courts and the Supreme Court have also held that there are certain provisions which are violative of the Constitution. Therefore, I would request them to leave this controversy aside and divert their minds towards other things. If there is uniformity in all religions, there will be novelty in all of them because religion is an attitude which relates to thinking from within. It should not be related to marriage, divorce and succession. Religion is connected with one's heart and soul. You consider civilisation and culture as one, culture and religion are one. It is one thing that one's action should not hurt anybody but religion is another thing. I am not interfering in any religion. I am mentioning those things which are a source of solace and provide happiness for the mankind. We

do not want to interfere in your religious matters, but we do want that such things should be done as are conducive to the establishment of a good society. The old order should change. You must also be wishing that men and women should have equal rights. Both should have equal rights to property. The provision of divorce should also not be misused in this manner. Therefore, I would request you to help us in removing such shortcomings in the laws and respectfully withdraw your Bill.

17.43 hours.

[English]

SHRI Y. S. MAHAJAN (Jalgaon):  
Mr. Chairman, Sir, I am sorry that Mr. Banatwalla has not been able to carry conviction with us. His proposal can be dealt with in two ways. Firstly, as my friend Mr. Diga has said the Government have declared more than once that they do not wish to alter the Muslim Personal laws. We do not undertake any steps to have uniform Personal laws for this country unless the Muslim minority takes the initiative in this matter. That has been our policy for the last 40 years and we have reiterated it in this House a number of times. But still Mr. Banatwalla comes with the proposal to drop article 44, the proposal has absolutely no justification. There is no threat to have uniform personal law. This is a formal way of dealing with his Proposal.

But on its merits, I should say, Mr. Banatwalla has not put forward arguments which can be accepted by the Members of this House. The Muslim personal laws and the Hindu personal laws deal with marriage, succession, inheritance and custody of children. On these matters, conservative tradition has decreed certain rules and regulations. Mr. Banatwalla's contention is that these present practices Muslims regarding derive directly from what has been said by God, to Mohammed Prophet.

I think to say what has been said by the Prophet is immutable, is a fundamentalistic attitude which even the religious people all over the world are not prepared to accept unless they believe in creating friction in the society. wherever this sort of an attitude has prevailed, it has not succeeded in evolving a peaceful, developing and progressive society.

Now, even if we accept his contention how is it then that he himself agrees that there are seven schools of thought? If it is something which is immutable' how can it be multiplied into seven schools of thought? He even says, "If you accept this; you are a Muslim. Otherwise, you are not a Muslim." Even Pakistan our neighbour, Ceylon and Indonesia conferred the Power to regulate bigamous marriages upon institutions, such as, the Arbitration Councils. One must take the permission of the Arbitration Council before one can have a second wife. They have made an alteration they have made a change. Are they not Muslims? They will not agree with him if he says that they are not Muslims.

Then, there are countries like Iran, Iraq Singapore and Syria where the permission of the court is necessary for a bigamous marriage of the husband. This is another variation.

Again, there are countries like Turkey where polygamy is abolished by law. Tunisia also forbids plurality of wives. The Muslims in U. S. S. R. and China are governed by the rule of monogamy.

Now, to say that they are not Muslims and you alone are Muslims, they will not believe in that. They will not agree to that. This sort of religious belief in immutable laws of religion which do not change under any circumstances is not compatible with progressive views of people in modern times.

We are Hindus. But we have changed the Hindu Law beyond recognition. We are prepared to change it any number of times to suit the social and economic conditions of our country so that progress may become easy. The founding fathers of our Constitution, the architects of our Constitution, foresaw unity in diversity of Indian society. We believe in unity in diversity, but not unity in fissiparousness. Diversity is different from fissiparousness. If there is a common civil law, then it will be a homogeneous State, an integrated State, a powerful and a modern State. It will be able to absorb the benefits of science and technology and have an important place in the comity of nations. That is what our ambition is. We want to abolish poverty and we want to use modern methods of science and technology in order to see that our people live a happy life.

What do the people who believe in Muslim law preach? According to the Muslim personal law, they subjugate half of their population, their womenfolk, to a subordinate status. The Muslim women have not got the same status as that of the Muslim men. The Muslim women do not have the same rights so far as divorce is concerned. If a Muslim woman wants divorce, she has to go to a court. We have changed their personal law. The women have a right to go to a court. There is a lot of litigation, with protracted procedure. But if a Muslim man wants a divorce, he has to simply say "Talak" three times. There is no equality. Our people who framed the constitution believed in equality, equality of opportunity, and justice. We believe in equality for both men and women. Women must have the same rights. They are our mothers, sisters and daughters. They should have even more rights than what men have. Therefore, to subjugate women, to keep Muslim women in a subordinate position is to violate the principle of equality, the principle of democracy, enshrined in the Constitution. It is violative of the principle of justice.

It is well recognised all over the world

and a number of Muslim intellectuals are of the view that permission for polygamy under the Quran was an exception. As an exception, it was meant as a remedy for many evils. In this male-dominated society, rules have been interpreted to the disadvantage of women. Otherwise, why not our mothers, sisters and daughters be given equal rights?

I am afraid I cannot agree with Shri G. M. Banatwalla. He has been conservative, obscurantist and fundamentalist in his views. It is not in keeping with modern notions of justice and equality. There is no necessity to bring this resolution in a formal way because nobody in the Government has said that he is going to bring such a proposal for uniform civil law.

[Translation]

SHRI MOHD. AYUB KHAN (Jhunjhune): Mr. Chairman, Sir, I am drawing your attention towards the Muslim Law. In Saudi Arab in there is a mountain range from Mucca to Arafat. There is a cave in these mountains named 'Garcheera'. In this cave, our holy 'Mohammad-ur-Rasul Lillah Salillahu-valeh Vasallam' had worshipped God. When he was about 40 years old, God sent to him a special angel 'Jibrael-Al-Islam'. When 'Jibrael-Al-Islam' first came to him he gave his first Commandment:

"*Ikrabe Isme Rabbikal Lazin Khalkka*", *Salillahu-valeh Vasallam*. This means: "Make a start in the name of your Creator". This is the first *Aayat* which was given by the Almighty to the respected. This relationship continued till the end and thus this "*Vahi*" was ordained. The collection of these "*Vahis*" is called '*Quran Sharif*'.

In this holy 'Quran' it is clearly ordained for all of us that we must consider the country where we live as

our homeland and if we are not loyal to it then we have no right to live in that country. These are the words of the holy 'Quran'. I say it clearly that if any Muslim does not believe in it, he is not a Muslim. I am not saying this by way of a lecture, this is written in *Shariyat*. If I have said anything wrong, tomorrow a *Fatwa* (a religious decree) will be passed against me. Therefore, this is a universal truth and this thing has been said in Toret, Bible, the New Testament as well as in the Ramayana and the Gita.

In this Holy Book, another Commandment has been given and it is not for Muslims only because it is written there "*Alhumdu lillahi Rabbil Almin*". Had it been exclusively for Muslims, the words would have been *Rabbil Musalmin*." Therefore, this commandment is for the entire humanity. The Almighty further says in the '*Quron*' that I will test you in every way, through women children etc. and I will impose upon you such a cruel ruler as will torment you in every way. This is merely to put you to test. The Almighty does not help the community which does not want to change its condition.

Now I refer to our *Shariyat*. In our religion, there is, of course, permission to have more than one wife but the law for that is very strict. A Muslim can marry a second time only when he does not discriminate at all between his first wife and the second wife and, in this world of today, no one will be found having such a quality. Similarly, one can have a third wife or a fourth wife only when one does not discriminate at all. You can very well imagine from it that how difficult it is to have more than one wife. If somebody marries twice to fulfil his lust, he is committing a sin.

Now, I will tell you about divorce. Some of the Members, like Shri Diga, spoke only for the sake of speaking.

They do not know what *Shariyat* is all about. They spoke just to get their names included in the list of speakers, but I am telling you on the basis of my study of *Shariyat* that Shri Banatwalla knows very well and is fully acquainted with the divorce system in Islam. For a Muslim, there cannot be a greater sin than divorce. He can divorce his wife only under very compelling circumstances. I do not want to utter any offending words. If the wife is sinful, she can be divorced. The law is so harsh in the matter of divorce and remarriage. If any Muslim remarries to fulfil his lust, he is not a Muslim. There is permission in Islam to have four wives but it is not his duty and the same applies to divorce also. One can divorce only under compelling circumstances. It does not form part of his duty. It is not a fun to divorce and remarry. It involves religious sentiments.

The first teaching of our religion is to remain loyal to the country and this

feeling of loyalty is the biggest asset. With these words, I conclude.

KUMARI MAMATA BANERJEE (Jadavpur) : Mr. Chairman, Sir, I share the sphere of this subject, but I oppose the text or substance of the Bill. Please allow me to use English, Bengali, Sanskrit, Hindi and Urdu because unity in diversity is an Indian feature and we like to establish it.

[Translation]

We sas in Bengali :

*Dive aar nibe milabe mllabe gabena phire Rai bharter mahmanver sagar teere.*

[English]

MR. CHAIRMAN : The hon. Member may continue in the next occasion.

18.1 hrs

*The Lok Sabha then adjourned till Eleven of the Clock on Monday, April 1, 1985/Chaitra 11, 1907 (Saka).*