

15.42 hrs.

PREVENTION OF SOCIAL DISABILITIES  
BILL\*

[English]

SHRI MOOL CHAND DAGA (Pali) : I beg to move for leave to introduce a Bill to prevent the imposition of social disabilities by a member of a community on a member or members of his or their own community; to provide for penalties for such an act or acts and for matters connected therewith.

MR. DEPUTY SPEAKER : The question is :

"That leave be granted to introduce a Bill to prevent the imposition of social disabilities by a member or members of a community on a member or members of his or their own community; to provide for penalties for such an act or acts and for matters connected therewith."

The motion was adopted.

SHRI MOOL CHAND DAGA : I introduce the Bill.

15.43 hrs.

INDIAN PENAL CODE (AMENDMENT)  
BILL\*

(Omission of section 309, etc.)

[English]

SHRI MOOL CHAND DAGA (Pali) : I beg to move for leave to introduce a Bill further to amend the Indian Penal Code, 1860.

MR. DEPUTY SPEAKER : The question is :

"That leave be granted to introduce a Bill further to amend the Indian Penal Code, 1860."

The motion was adopted.

SHRI MOOL CHAND DAGA : I introduce the Bill.

15.44 hrs.

CONSTITUTION (AMENDMENT) BILL  
(Omission of article 44)—Contd.

[English]

MR. DEPUTY SPEAKER : The House will now resume further consideration of his following motion moved by Shri G. M. Banatwalla on 29th March, 1985, namely :-

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

Shrimati Mamta Banerjee was on her legs and she has to continue her speech. But I find that she is not present in the House.

So, I shall now call the next speaker to speak. Shri Girdhari Lal Vyas.

Only 40 minutes we are having for this Bill.

SHRI GIRDHARI LAL VYAS (Bhilwara) : How many minutes for me ?

MR. DEPUTY SPEAKER : 5 minutes for you. I hope you will take 5 minutes only.

[Translation]

SHRI GIRDHARI LAL VYAS (Bhilwara) : Mr. Deputy Speaker, Sir, I oppose the Constitution Amendment Bill, 1985 moved by Shri Banatwalla. In his Bill, he wants Article 44 to be deleted. Article 44 says :

[English]

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

[Translation]

This is not a law which can be forced on anybody. It says that the State shall endeavour to secure a uniform civil code throughout the territory of India.

Now, many things have been included in this Bill on the plea that it will interfere in their personal law, and apprehensions of this kind have been expressed.

While referring to the Muslim Personal Law Shri Banatwalla said that the Muslim Personal Law was a part of the *Shariat* and based on the injunctions of *Quran* and so it could not be changed. My submission is that there is no need for making a provision for its amendment. If the members of a particular community do not want any change in their personal law, there is no need to effect such a change.

But in order to have a uniform law relating to marriage, divorce, etc., so that the whole system functions well, a provision has been made here. There is no provision for any interference of any kind in that also.

37 years have passed since the country attained independence. The hon. Member's assertion that they do not want any interference in their personal law need not be stressed because no such change has since been made therein. Therefore, it is not desirable to express such an apprehension as to demand deletion of this Article.

I think it is not at all proper. There are many Muslim countries which have brought about changes in their laws and have tried to bring about uniform laws. There are many communities also who have tried to codify their personal laws. If such an arrangement is made, that will not create any problem and that will not be an interference in their personal law.

We have enacted a law against polygamy, but in Islam, four marriages have been allowed. For example, if a person has married once but his wife is unable to bear children, he can marry again for procreation. This provision can definitely be made but if some one marries 4 to 5 times just to satiate his lust, he should not be allowed to do so. That is why we have enacted a law against polygamy which invalidates more than one marriage.

Similarly, there is the question of inheritance. There are different laws in different countries in this regard. In our earlier laws the women had no right of inheritance. Today, we have given them equal rights legally. The sons and daughters have equal rights, *i.e.*, all the members of a family have equal rights. But the provisions of those laws are quite different from therein the present law. When we want to enact a law which will be beneficial to all and which will give equal rights, then there should not be any difficulty in adopting such a law.

The law concerning divorce has been enacted for all communities. Similar law exists in Islam also. For example, if a person lives separately or does not cohabit with his wife, he is entitled to have divorce. But the provisions in the Muslim Law are quite different. If the provisions in the Muslim Law regarding divorce are codified, that law would have additional force.

For the last 37 years, there has not been any interference in their cultural and personal law and in future also our Government have no intention to interfere in their personal law.

But whenever the need is felt to bring about some improvements in their personal law the same can be done through those very provisions and this Article will help in formulating a Common Law for the people of the entire country. Whenever the need felt to effect any change in their personal law the same can be done under this Article on the basis of consenses. Therefore, if this law is allowed to remain on the statute book, it will not cause any harm or will not create any problems so as to cause apprehension of interference in their Personal Law.

In other countries such as Pakistan, Iran and other Muslim countries, particularly in Turkey or even in the socialist countries, where there is a large population of Muslims, such as China, the USSR, etc. such provisions regarding personal laws have been introduced and these are continuously being brought forward to ensure that the members of every community get equal rights. On this basis, I think the Constitution Amendment Bill introduced here with the feeling that with there will be interference in their personal law is not correct and the provision to delete that Article is not desirable. It will be a good thing if progressive laws are enacted for every community on the lines of the existing Civil Code so as to provide equal rights to every one and also to ensure that the Directive Principles are observed. Therefore, as I said in the beginning, I oppose this Bill and this Article must remain in the Constitution.

SHRI HARISH RAWAT (Almora) : Mr. Deputy Speaker, Sir, in principle, I support the views of the moves of the Bill but the question is not that of principle only. The question is of practicability and the practical aspect is that the mover of the Bill cannot achieve his objective merely through law. If we enact a law which hurts the feelings of some one, particularly the feelings of the minorities, I think we shall have to be careful while taking any step in this direction. Keeping in view the social composition of our democratic country also, we shall have to be very cautious. We should not compare our laws with those in the countries where the State is theocratic. Ours is a secular country. Our constitution provides for a secular society and if we bring about any change in the personal law of any particular community or religion, that community or religion can feel aggrieved and that can affect our whole system. Shri Banatwala,

while moving the Bill, has said a very good thing. He has rightly taken the initiative because such an initiative should be taken only by the minorities. But this initiative should not be only for bringing about any change in the law, but this should be to educate the people also. If the followers of that religion develop an understanding, a consensus, then I think the Government too will not have any objection. But a consensus should be evolved among the followers of that religion. We can, while discussing this matter, express our different views but, at the same time, we have to take into consideration the difficulties of Government also. I think it will be difficult for Government to implement the provisions of the Bill. Keeping in view the above, I oppose the Bill, though I agree with its spirit and request the mover of the Bill withdraw it.

[English]

MR. DEPUTY SPEAKER : I will ask the hon. Minister to intervene.

THE MINISTER OF LAW AND JUSTICE (SHRI A. K. SEN) : Lot of feelings, both emotional and religious have been introduced in the debate. Article 44 was debated elaborately before the Constituent Assembly and it was originally Article 35 in the Draft Constitution. There were amendments proposed for deleting this. This is what Dr. Ambedkar had said and the House is well aware that he represented the minority view very strongly. This is what he said :

“We have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there is the Negotiable Instruments Act, and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as

part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore, too late now to ask the question whether we should do it.”

Now, whenever the question of a uniform code is raised, it is thought as if it is going to interfere with the law of marriages and succession of different communities, forgetting for the moment, that Civil Code and Criminal Code cover so many branches of our political and social life. For instance, we have a Criminal Code. We have the Transfer of Property Act governing the property relations. We have the Law of Contract, governing the law relating to contracts. We have the Law of Torts, which is not yet statutory. We are striving to make it statutory and we are attempting to do so. Therefore, a large part of our political life and our social life is covered by codified law and for a long time.

I am not very conversant with the law relating to crimes so far as the Koranic Law is concerned. But I have no doubt that there are certain injunctions there, penal and otherwise, which are quite different from the Penal Code and possibly the trial there, would be different from the Criminal Procedure Code. But why is it that it is not objected to by anyone? Because the Penal Code is one of the finest laws so far as crimes are concerned and nobody thinks of either chopping hands or stoning adulterers or various other punishments, which possibly prevailed in olden days and which, I think, even the Koranic Law does not make mandatory.

Now, Mr. Banatwalla has spoken only from the point of view of one community, viz. the Muslims.

16.00 hrs.

There are other communities in this country which have their own personal laws, and which also would need the same consideration as the Muslim personal law. But as I see it, the Quranic Law was an all-pervading law. As the hon. member himself has said, it is one law which covers every facet of human life, including the law of crimes, and the question of punish-

ment of criminals, and other offences. But when we talk of the Penal Code and the Criminal Procedure Code, it is the uniform Code which applies to all. Nobody says that the Muslims will have a different criminal law, Parsi will have a different criminal law. The Parsi Marriage and Divorce Act is a different Act. Nobody says that Christians will have a different Criminal Law. These are matters where the necessity of human beings in a particular age makes it possibly very desirable that there may be a uniform Code. For instance, the Law of Contracts : it covers every community. Now take the Moneylenders' Act, for instance. The Muslim Law prohibits taking of interest. But the Moneylenders' Act or the Contracts' Act or the Negotiable Instruments Act allows the Muslim to take interest. Muslims go, particularly the typical Kabuliwallah, to a court; and he gets the decree, with interest. Muslims go to recover the loans, get decrees along with interest. Nobody says that it is conflicting with the Muslim personal law. As far as I know, there is a thing called *farz*, in the Muslim personal law : Something which must be done, like saying prayers five times a day, or performing the Haj, or the injunction for fasting *i.e.* during Ramzan. I think there are five *farzes* according to Muslim law.

But, for instance, circumcision is not a *farz*, It is a custom. Nobody says that if circumcision is not adopted by a Muslim, he will be committing something against what is mandatory according to the Muslim law. It is entirely his option, to do or not to do it. In fact, many non-Muslims adopt the practice of circumcision, as a very hygienic method of preserving the body from a particular ailment. Therefore, it should be a mistake—and we have debated this question so many times—to think that Article 44 hits at any person. It does not. It has been our policy for a very long time that so far as minority communities are concerned—and that includes the Sikhs and the Muslims—their personal law would not be touched so far as marriages or succession or divorce is concerned, unless the community itself agrees that it should be so done, as it has been done in Egypt, Tunisia and other Muslim countries. But uniform Code in other spheres is the most desirable thing; as I said, in the sphere of law of crimes, in the sphere of the law of Torts, in the sphere of the law of contract and various other things.

But whenever we think of a uniform Code, people think that it is hinting at the law of marriages or the law of succession. Nobody tries to do it, unless Muslims themselves think, or the Sikhs themselves think that their marriage laws should be changed.

So far as the Hindu Marriage Act is concerned, it applies to Sikhs, Hindus, Jains and others because, at that time, they all consented on the Marriage Act covering everyone, including the injunction of monogamy.

So much has been said about monogamy. I think it would be a great injustice to say, as if Muslim law enjoins upon more than one wife. It says nothing of the sort. I have read the Quran. I have made it a point to read the Quran.

It only says that you may marry upto four wives. It is otherwise an injunction against multiple marriage. In a society where people used to keep any number of wives, it becomes injunction only against multiple marriages. It is not a *faraz*. You must marry four wives. In fact, one hon. member has said about it. I don't see him here. Others have said about it and I have made a study myself about it. The Muslim Law is categorical that you may marry more than one wife upto four provided you can treat every one equally; and that is the commentary of the Muslim Law. Therefore if the Muslims agree that monogamy should be the rule of the community and that it may be departed from only in extreme cases like extreme illness of the wife, insanity of the wife and various other causes, then it will be for the Muslims to say. We have not said so. But what has got article 44 to do with it? We have seen this argument; and only, the other day, I had seen that even in Calcutta, the new wave has gone and I have been copies of certain resolution being passed by the Muslims. It is a curious thing; and it is only the Muslim community which tries to think that article 44 is at the same level. We have other communities here in this country. This country is rich in diversity. We have different categories of Christians : the Syrian Christians, the Catholic Christians, the Protestant Christians. We have different categories of Muslims—Sunnis and so on. The hon. member has not accepted *Ahamdiyas* as Muslims at all or the *Bahais* as Muslims.

But they claim to be Muslims; and we are not saying that you cannot claim to be Muslims. Everybody has the right to claim whatever he wants to do, so far as religion is concerned. Article 25 gives a complete liberty to everyone to practice his faith; and we are proud of them; we are not like Pakistan where only one religion is the State religion or some other countries where State and the religion are common. This country does not recognise a State religion. We are not theocratic; we do not believe in fundamentalism. I make it quite clear to Mr. Banatwalla—he believes in fundamentalism—that he cannot force fundamentalism on any one, not even on Muslims; and we have plenty of Muslims who think that fundamentalism is not Islam and there is no compulsion in religion. I have read Koran. The very first tenet of Islam is that there is no compulsion in religion. Therefore, everybody has his own interpretation of religion.

Now, the orthodox Hindus says that unless one goes and takes bath in the Ganges five times or worship in the Vishwanath Temple, he is not Hindu and the Arya Samajis is no Hindu or the Jain is no Hindu. But we are those who believe that Arya Samajis are as much Hindus as anybody else. There are many Sikhs who think that they are different from the Hindus or there are Sikhs who think that they are part of Hindu community. Well, who is more powerful and who is less powerless is not our business to decide. Article 25 gives the guarantee in categorical terms that everybody is free to practise his own faith, his own religion, expresses his own conviction, expresses his own belief. Therefore, this country has no religion as a public policy. The State is different from religion and the Preamble says very clearly about it. We are proud of it. This is the multi-religious; State; this is multi-racial State; this is multi-lingual State. It says, "Socialist Secular Democratic Republic." That is the Preamble. Therefore, this is the secular democracy; this is not a religious or a theocratic democracy; and those who believe in theocracy have no place, so far as our constitutional mandate is concerned. This is very clear and we are absolutely dedicated to that idea that secularism is the very essence of our constitution, is the very essence of our life; and will not allow any religious strife or trail of any religion to dominate over us to prevail.

Therefore, all this talk about Article 44 and other things and quoting Quran or the Bible or the Gita—various people have quoted the Gita—Gita is quoted not merely by the Hindus but all over the world now by so many others. Krishna is quoted. There is a Hare Krishna Society, Krishna Consciousness Society, and we allow them to do so. They are as much entitled to claim Krishna as their Avatar as we claim, the orthodox Hindu. This is the very lesson of the Gita, of the religious faiths all over the world.

Swami Vivekananda said in his speech Chicago :

"As all roads lead to Rome all religions lead to God. It is only the smaller and the bigoted who says that his road alone will lead to God and other roads are completely alien from God."

This is what the whole concept of Indian society has taught us over the centuries and we have grown with various beliefs. Among the Hindus there are so many sects and communities, the Ramanuja, the Valabhas, the Shaivites and they all enjoyed larger life of Hindus similarly, with the larger life of India. When I go to a Vishnava temple in the South, or a Shiva temple in the South, I feel the same oneness with the rest of the community; and when I dip in the ocean in Kanyakumari I always feel elated at the very sort of majesty of this country which was described as *Aasetu Himachal* from the Himachal to this Ocean. So, when so many people full of petty jealousies go and take a dip in the Ocean at Kanyakumari, you will appreciate what great India is. What do the vast Oceans teach us? All Oceans meet, all the rivers meet in the vast Ocean, carrying the message of India through the centuries, namely we have evolved a common culture, a common society, common values in diversity. The Muslims, the Mughals, the Pathans, the Hoons, the Sakas and the Aryans and the Non-Aryans, Tamilians and the others, the Adivasis have all mingled in a mighty Ocean.

As Dr. Tagore says the great pilgrimage of India the farthest tip where all the mighty rivers have flowed into one Ocean, they remain separate, yet they are merged. That is the voice of India.

What has got Article 4 to do with this religion? Let us not pollute the concept of

our secular democracy, that rich heritage from the past thousands of years with these ideas of theocracy, bigotry and pettiness. This country is far above bigotry, pettiness and strifes amongst religions.

I was only telling the Russian Law Minister today while I was lunching with him that "Years ago, Your Excellency." I said :

"There have been Jews in this country in the Sixteenth Century. In my own city of Calcutta there is a large population of Jews and there is a large population of Jews in Bombay and other places. They did very well. They are a very rich community. The first wave of Jews came," I told his Excellency, "in the Sixteenth Century when the religious bigotry of the Catholics in Spain led to the hated Inquisition system where anybody who was not a Catholic was put on the rack and shot until he succumbed to the torture and said, 'I shall become a Catholic'; and the Jews have come to us by the Inquisition and a large section came and settled in Cochin. They are still found there. The Synagogue there is built on a land which was gifted by the Maharaja. Opposite is his own ancestral Shiva temple."

In olden days when I was the Minister of law, Religious Endowment was one of the subjects under my charge. Whenever and wherever I went, I went all the religious places of worship—mosques, churches, temples and synagogues. I went to a Synagogue in Cochin. Cochin has the oldest population of Jews. They were white Jews and they married local girls and produced not such white children. They have very peculiar names. The rabbi was a very young man. He got the name of Hellen, whose cousin was a teacher of my children in Calcutta. What is the most wonderful thing about this—I will tell Mr. Banatwalla—and others that the whole tradition of India is tolerance of all religions. When I went inside the synagogue, the rabbi produced a very great copper plate before me. It was the grant of the land recorded in Sanskrit which said : "Our friends from across the seas have now come driven by fury and passion and religious intolerance. I owe it to my God and to my ancestors to give them help and succour. In the name of God and my ancestors I give this piece of land near

my own temple so that these friends driven from across the seas, will have the opportunity of worshipping their God in their own way." They have been worshipping since then, for centuries now. The synagogue is still there. A Hindu king, a Nayanar king by birth, allowed a synagogue to be built next to his temple where for centuries the Jews have been worshipping. When they were slaughtered in Germany and suffered in many other countries and when these tribes were the most unfortunate once in the Middle-East, they never suffered here. When you go to Ajanta, the Jain caves, the Hindu caves and the Buddhist caves have stood side by side for centuries. But nobody wanted to convert the other.

Mr. Banatwalla was very agitated when the question of forcible conversion was raised by some hon. Member. Forcible conversion is no conversion. This country does not believe in this. These caves have remained the sentinels of Indian nationhood, integrity and unity over the Centuries proclaiming to the rest of the world though languages and racial differences distinguish us, yet we have inherited the common heritage over the centuries. The great Bhagirathi and the Godavari have been fertilising our nation and our country for centuries. From the north to the south, millions of pilgrims have travelled over the years to the Rameswaram and the Kanyakumari to offer their prayers to God in their way. And thousands have come from the south to Varanasi and Amarnath high in the snows, showing thereby how our pilgrimages have been located so that notwithstanding the difference in political divisions, geographical divisions, they have forgotten all the differences. Rajputs have gone to the south. Tamilians have come to Varanasi. This country has been knit with golden bond of unity over the centuries. Go to Ajmer Sheriff. How many Hindus go and worship every year when the urs comes, travelling all over the country ? I know how many people bring to me the blessings of Ajmer Sheriff every year all the time.

I said on the Floor of this very House that whenever I have gone to Amritsar, I have never come away without saying my prayer in the Golden Temple and I never felt that I am not in a Hindu temple. Now the Sikhs say that Sikh temples are only their temples and not ours, and the Sikh Gurus are only their Gurus and not our

Gurus. We have never heard of this. In Dr. Tagore's *Jeevan Smriti*, his autobiography, he says how, as a child, his father used to take him in the morning for months to say the prayer early in the morning in the Golden Temple and how, he thinks, his own spirit was enlightened by the beautiful sounds of the prayers that he witnessed in the Golden Temple. And some of his finest poems are about the deeds of valour of Sikhs and their Gurus. This is what India is. Let us not talk and get bogged in bigotry. The whole House stands committed to secularism the whole nation stands committed to secularism. We do not believe in bigotry. Every community every religion, every faith has a right to exist. And Article 44 does not do away with this. Any lawyer should say Article 25 and Article 44 exist together. Article 25 is the guarantee for freedom of religion, expression faith and practice, and Article 44 says, try to bring about uniformity. Similar laws come by similarity. What has is got to do with the Quran, with the Geeta or with other things. I think in this country the worst thing that has happened, as in other countries, is that the worst of crimes have been committed in the name of religion only. I told the Russian Ambassador and the Russian Law Minister that when I went to Auswitz, I saw millions of little children's shoes, hair, dresses and everything, all stored in one room. Children were bashed into death in the gas chamber only because they were Jews, they belonged to a different faith, and that showed the barbarity of human mind. In the name of religion, people had to sacrifice for no fault of theirs. I read the Sikh history. Guru Teg Bahadur was murdered in Sis Ganj, right in Chandni Chowk, because he did not want to give up his faith and adopt Islam. The emperor who killed him, was he following the great tenets of Islam? He was following the tenets of barbarism. And we have banished barbarity and religious bigotry for all times to come. This country stands as the greatest champion for free thinking, free religion, free religious practice, and it will remain so for all times to come. Bigotry has no place in this country. With these words, I would request the hon. Member to withdraw this Bill. Otherwise it will be our duty to throw it out so that the country knows that this is the great bastion of secularism in the whole world.

**SHRI G. M. BANATWALLA (Ponnani):**

Mr. Deputy Speaker, Sir, I am very much thankful to the hon. Minister for his kind intervention. I am also grateful to all the Members who have participated in the debate and have made very valuable comments. The Hon. Minister has been carried away by his own eloquence and the central point has been totally neglected.

I may say that I am in agreement with the Hon. Minister with a large area of his speech. Indeed India is a secular State and that has to be protected. Those noble sentiments, which the Hon. Member has expressed are unfortunately at variance with and have been negated by the provision of Article 44 of the Constitution of India. Indeed India is a nation with so many languages, religions and cultures and I am one with the Hon. Minister when he says that the strength and the grandeur of our country lies in allowing free practice of religion. That is the spirit that has to be observed.

Unfortunately, while India is a nation with various religions, languages and cultures and while we ourselves believe in unity in diversity, at the same time we have this Article 44 in the Constitution of India, which wants a uniform civil code. The uniform civil code implies very clearly and unmistakably the steam-rolling of all the differences into a uniform pattern. That again is at variance with the secular spirit and our policy of unity in diversity. These differences are steam-rolled into one uniform pattern, which would not serve the interest of the country. The country to be truly free has to allow full blossoming of the religion and culture of every section of society. Instead the Article 44, as I have already pointed out in my opening remarks, tries to be steam-roller and have a regimentation which is contrary to the spirit of Article 25 and is contrary to the spirit of our secular democracy.

**THE MINISTER OF WORKS AND HOUSING (SHRI ABDUL GHAFFOR) :** Supposing a uniform law is made according to the SHERIAT, then what is the difficulty?

**SHRI G. M. BANATWALLA :** You know very well that whenever the question of interpretation comes, we have to go to the *koranic* text—SUNNAT—and not to the words which you may have incorporated

here. That is the particular thing. You cut away the source. That source cannot be cut away.

Some Members have referred to what they call pernicious practice in the name of religion. I am obliged to them for these remarks. However, these form the controversial subject of Article 25 of the Constitution and not Article 44. Article 44 deals with the concept of uniform civil code and I am before the House asking the House to delete this Article. I have already emphasised in my opening remarks that the Muslim Personal Law is the religious obligation of every Muslim. There is no question of its surrender. Therefore, the continuation of Article 44 in its present form gives only impetus to controversy. It generates tension. I have, therefore, come before this House requesting the House for the deletion of this particular Article or at least for making a provision that the Muslims will be exempt from the provisions of the Uniform civil code.

An argument has been advanced that when the Islamic Law of crimes is not available here, then why an objection is taken with respect to the items which form part of the personal law? I submit that this is perverted logic. If a part is not made available, it does not mean that the other should also be surrendered. It cannot be called a healthy logic. Let me declare that we, the Muslims of India, are prepared to submit ourselves to the law of crimes as envisaged by Islam if the State is prepared to enforce it upon us. We are prepared for it, but that is the law of crimes that has to be enforced by the State. If they are not prepared to enforce it despite our willingness, how can that be termed as a healthy logic for the surrender of the other part?

Sir, I have already said that there is an argument saying that when there are so many uniform laws, then these uniform laws encourage national integration, but despite all these other uniform laws we have the present pitiable position with respect to national integration and harmonious relations. If you talk of uniformity and uniformity, throughout why have the concept of federation at all? Why have the concept of 22 Legislatures legislating in different places? What I am submitting is that this concept of uniformity

which leads to regimentation is at total variance with our policy of unity with diversity.

Some of the hon. Members have pointed out that the Muslim personal law contravenes Article 15 (1) of our Constitution. I will not go into details here in this respect because there are several cases—in the State of *Bombay Vs. Narasu Appa Mali* (AIR 1952, Bombay 65), again in *Srinivas Iyer Vs. Saraswati Ammal* (AIR 1952 Madras 193), again in *Gurdayal Kaur Vs. Mangal Singh* (AIR 1968, Punjab 396) and several other cases also, the courts have held the opinion that the Muslim Personal Law is not at all violating any of the articles of our Constitution.

Sir, some of the Members, as I have said, referred to a few practices like polygamy the concept of divorce, the scheme under inheritance—mainly these there points have been referred to in this House as a little faulty as far as Islamic injunctions are concerned. As I said, these are really the controversial subject-matter of Article 25 of the Constitution. However, since the point has been raised, I may only briefly point out that *Encyclopaedia Britannica* asserts that the institution of polygamy exists in almost all parts of the world. The question, therefore, is its proper regulation. Sir, the western civilization permits adultery on the basis of mutual consent and thus closes the door to responsible relationship.

Mr. Anne Beasant says: "The pretended monogamy of the West is, in fact, polygamy without responsibility." I submit, Sir, that by prohibiting adultery, permitting polygamy in times of need under strict conditions and making parity among the wives on essential conditions. Islam has put a top to licentiousness and has opened the way to responsible relationship. The hon. Minister is totally right when he says that polygamy is not obligatory. It is discretionary. I must submit that the word "discretion" here means the descretion of an individual. You cannot by law taken away the discretion of an individual given to the individual by his own religion. That will be compulsion. And it is this compulsion that is opposed to the "free practice of religion". I emphasis the word "free" which has been used deliberately and purposely used in article 25 of the Constitution of India. What does the concept of

“free practice of the religion” mean? “Free practice” means, when your own religion gives you certain discretions, you will be free to make your own choice to make your own discretion. Closing the doors of discretion for an individual is not free practice of religion as contemplated by article 25 of the Constitution.

I totally agree with the hon. Minister when he says that there can be no compulsion. Indeed, that is the particular point that I have been raising. A uniform civil code introduces an element of compulsion at some stage or the other. The hon. Minister himself has expressed noble sentiments of doing away with this compulsion in a secular democracy. The Quran also says:

“*La Ikrahafuddin*”

That means, there is no compulsion in matters of religion. The Quran further says :

“*Lakun Di Nakum Vale Yadeem.*”

To you is your religion and to me my religion. Where then is the controversy? Then comes article 44 which says that we will steam-roller all the differences. Therein comes the impetus to controversy which generates tension.

However, Mr. Deputy Speaker, Sir, I submit that this question about polygomy and abuse of divorce and all these things are rare instances. *Leonard : (Pages 130-131) Islam, Her Moral and Spiritual Value*, points out—

“In a greater measure, polygomy in Islam is much more a theoretical than a practical institution.”

In India, not even 1% — surveys are already there—practise polygomy. Therefore what certain hon. Members have been putting forward—the ban on polygomy as their contention to bring about a uniform civil code—is rather misguided and misinformed position. I appreciate the sympathy that they have but I submit that it is a misguided sympathy and not based upon facts.

This is also true about divorce. In Islam, it has been emphasized and re-emphasized that divorce is the worst of all permitted things. Therefore, instances of divorce are also rather rare. It is an exception rather than a rule. Moreover, the procedure of divorce in Islam is also such as to encourage

reconciliation at every step wherever possible.

I will not take much time of the House by going into the entire law with respect to it. I draw the attention of the House to the judgment given by Justice V. R. Krishna Iyer when he was the Judge of the Kerala High Court in the case of *Yusuf Rawthan Vs. Sowramma AIR 1971, Kerala 271*. I quote :

“Indeed a deeper study of the subject discloses a surprisingly rational, realistic and modern law of divorce.”

This is not what I say. This is what Justice Krishna Iyer says with whose various other judgments we very vehemently differ. He himself has put it on record.

There was a reference to the scheme of sharing under the law of Inheritance. The Muslim law is a very balanced and inter-related law. You cannot take up one item and talk about it without any reference to the context. I must say that under the concept of a Muslim society, men are charged with maintenance of women, children and the entire family. The greater are their responsibilities imposed upon them by law. Therefore, the higher is their share. To each according to his need and from each according to his ability. That is also translated in practice under the scheme which the law of inheritance lays down.

As I have said, the Muslim personal law is the religious obligation of a Muslim. As a Muslim, there is no question of his surrendering it. Therefore, wherever the uniform civil code comes in at variance with the Muslim Personal law, it cannot be acceptable to Muslim. Hence the continuation of article 44 is simply an impetus to some people to create controversies and to generate tensions and so on and so forth.

A lot is said about the status of women in Islam and about improving the lot of women. All that is based upon a lot of misunderstandings. I will rest content by quoting a Paragraph from the Paper of B. Asiha Lemu which she had submitted in a conference which took place in London and to which I had referred in my opening speech. She concludes her Paper by saying :

“Fortunately, no one has changed or can change the words of Quran and

the regulations for the protection of women which were revealed in the Seventh century can be easily verified by anyone in the Twentieth century as we have just been doing. I believe that these laws and social regulations regarding women contain certain fundamental truths which will benefit whoever applies them. The present time of widespread rethinking of the role and rights of women is perhaps the appropriate time to look with fresh eyes at the Islamic point of view which has contributed to the formation of stable societies in both sophisticated and under—developed peoples in vast areas of the world over the past 14 centuries which has retained the continuity of its principles and from which the Western world may have something to learn.”

Before I conclude, I must appreciate the position taken by the Government. It has been made amply clear that there is no intention on the part of the Government to bring about any changes in the personal law of the Muslim unless and until the Muslims themselves desire it. As I have already elaborated, the question of a Muslim as a Muslim desiring the changes in the Kuran and the Sunna do not arise. However, I must welcome the announcement made by the Government. But the proviso that the Government goes on adding and the content of this Article 44 of the Constitution of India is an impetus to many to create tensions and controversies which are quite avoidable. It is, therefore, that I had come before this House to request the House to delete this Article 44 from the Constitution of India. At least if that cannot be done, let there be some other Bill in which a proviso can be added to Article 44 exempting the Muslims from such a uniform civil code.

I am totally in agreement with the hon. Minister when he talks of the concept of secular democracy, of blossoming of every culture and of the rich heritage of tolerance of our Indian society. In fact, these were the very sentiments I had echoed in my own opening remarks while moving for the consideration of the Bill. My submission is that it is the ideology of any civil code to steamroll all the differences. However, I have come forward with the hope that there would be rethinking of the subject on the part of the Government also and on the part of this

House and there will be better realisation and appreciation that the concept of Article 44 is at variance, with the concept of our own secular democracy is at variance with the concept of national integration as we understand it and is at variance with the policy of unity in diversity.

I hope that these points in due course of time will, in future, at least if not today, be appreciated by the Government.

With this hope, I beg to move for leave to withdraw the Bill further to amend the Constitution of India.

MR. DEPUTY SPEAKER : Mr. Mool Chand Daga's amendment is there. He is not present in the House. I shall now put the amendment moved by Shri Mool Chand Daga to the vote of the House.

**Amendment was put and negatived.**

MR. DEPUTY SPEAKER : The question is :

“That leave be granted to withdraw the Bill further to amend the Constitution of India.”

**The motion was adopted.**

SHRI G. M. BANATWALLA : Sir, I withdraw the Bill.

16.51 hrs.

INDIAN TOBACCO COMPANY LIMITED  
(TAKING OVER OF MANAGEMENT)  
BILL

[*English*]

MR. DEPUTY SPEAKER : The House will now take up the Indian Tobacco Company Limited (Taking over of Management) Bill to be moved by Shri Ram Bhagat Paswan. Before we take up the Bill, we have fix the time for this Bill. Shall we fix two hours ? . . . Yes. Two hours are fixed for this Bill.

Mr. Ram Bhagat Paswan.

[*Translation*]

SHRI RAM BHAGAT PASWAN (Rosera) : Mr. Deputy Speaker, Sir, I have introduced this Indian Tobacco Company Bill because the company has become a web of irregularities. Therefore, it is necessary 111