

MR. DEPUTY SPEAKER : Now item 11. Mr. Mool Chand Daga is not here. Now next Bill—Mr. Priya Rajan Das Munsi.

15.39 hrs.

INCOME-TAX (AMENDMENT) BILL
(Amendment of Section 10)

[English]

SHRI PRIYA RANJAN DAS MUNSI (Howrah) : I beg to move for leave to introduce a Bill further to amend the Income-tax Act, 1961.

MR. DEPUTY SPEAKER : The question is :

“That leave be granted to introduce a Bill further to amend the Income-tax Act, 1961.”

The motion was adopted

SHRI PRIYA RANJAN DAS MUNSI
I introduce the Bill.

15.39½ hrs.

PROHIBITION OF USE OF RELIGIOUS, COMMUNAL, REGIONAL AND SECTORAL NOMENCLATURES FOR POLITICAL PARTIES BILL*

[English]

SHRI ANAND SINGH (Gonda) : I beg to move for leave to introduce a Bill to provide for the prohibition of use of religious, communal, regional and sectoral names for political parties.

MR. DEPUTY SPEAKER : The question is :

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+Introduced with the recommendation of the President.

“That leave be granted to introduce a Bill to provide for the prohibition of use of religious, communal, regional and sectoral names for political parties.”

The Motion was adopted

SHRI ANAND SINGH : I introduce the Bill.

15.40 hrs.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL—Contd.

(Amendment of Sections 125 and 127)

[English]

MR. DEPUTY SPEAKER : We now take up item No. 14, viz. further consideration of the following motion moved by Shri G.M. Banatwalla on the 10th may, 1985, namely :

“That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration.”

The time left is only 20 minutes. If the hon. Members want to extend the time, by how much time do we extend it ?

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI GHULAM NABI AZAD) : It may be extended at least by eight hours.

PROF. MADHU DANDAVATE (Rajapur) : There is a consensus that this Bill be discussed till the House is dissolved !

MR. DEPUTY SPEAKER : We will extend it by three hours for the time being. I think the House agrees.

SOME HON. MEMBER : Yes.

[Translation]

THE MINISTER OF STATE IN THE MINISTRY OF ENVIRONMENT AND FORESTS (SHRI Z.R. ANSARI) : Sir... (Interruption).....The Bonded Labour Abolition law has just now been passed. Now at least you should leave us free. Why Janga Reddyji is after us ?

SHRI C. JANGA REDDY (Hanamkonda) : We are after nobody.

SHRI Z. R. ANSARI : The moment I stood up, the hon. Member started raising objections. You will also have full opportunity and if you say, should I convey what you want to say ?

PROF. MADHU DANDAVATE : Ansari Sahab, you may continue speaking for five years.

[English]

MR. DEPUTY SPEAKER : What about the Minister's 'bhatija' ?

[Translation]

SHRI C. JANGA REDDY : The hon. Minister may go on speaking even for decades.

[English]

PROF. MADHU DANDAVATE : Speak till this House is dissolved.

[Translation]

SHRI Z. R. ANSARI : Sir, last time, while discussing Shri Banatwalla's Bill, I had thrown some light on various provisions of the Holy Quran regarding marriage, divorce and maintenance and had fully proved, from the 'Aayats' of the Quran, to those who want to see all the provisions of the Quran with an open mind, that the divorced wife has a right to maintenance only during the period of 'Iddat'. I was discussing the other aspect of this issue that even though there was no provision for maintenance in the Quran, yet what was the harm if some provision for maintenance was made for an utterly destitute woman. In this connection.

I had touched two or three points and, probably, I was on this point that to make such a provision was 'zulm' as per Islam and Islamic law. The word 'zulm' was commonly used in our country. 'Zulm' is a purely Arabic word and in that language it means to do something when it is not called for. The kith and kin of a person have a right over his property and his income. Nobody earns for himself only. Those people who are either related to him or do some service unto him have some rights over his property, or income. If out of that income, a share is granted to a divorced wife who, after having been divorced, has no relationship whatsoever with the divorced husband and who is more than a stranger for her, and if granting of such share is termed as proper and his bounden duty, then for this there is no other word than 'zulm' in the Arabic language.

I want to say another thing from purely religious point of view and that is that any change in the provisions of the 'Shariat' based on the holy Quran and the 'Hadis', which are in the form of edicts, will tantamount to imposing a command on the 'Shariat' as if the 'Shariat' has a flaw which we are removing. There is an 'Aayat' of the 'Quran' :

Alyoma akmlat lakum deenkam va atmamat neamti alaikam

When the Quran was complete and all the edicts had been enshrined in it in entirety, then this 'Aayat' of the Quran was revealed to Mohammad Sahib at the time of parting and he was told "*alyoma akmlat lakum deenkam*" I have today revealed the entire faith upto you.

"*Va atmamat neamti alaikam*"—And I have bestowed all my gifts unto you. If today, we make any addition to those duties which have been made obligatory in the holy Quran and the 'Hadis', then it is clear violation of this 'Aayat' or the holy Quran. They say that 'Deen' was not complete that day and all the gifts were not bestowed that day. It is this day when all the gifts are to be bestowed. There can be nothing more sinful for a Muslim than that he should put this blame on the Quran, his God and his Rasul that He had failed to comprehend property the fundamentals enunciated by Him, that He had left some shortcomings,

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some lacunae and that we have today reached that height of intelligence that we are removing those shortcomings and lacunae and are making the 'Deen' perfect. May God save us.

I want to say in all humility that this is what pinches and effects a Muslim most. In a way, it can be said that when we do so, we indulge in creating 'Shariat' afresh; we are creating a new 'Shariat'. This is what is called herdsy, which is 'haram', improper and playing with the 'Shariat',

After all these edicts, there remains a question which people are unable to comprehend and if that is not clarified, then one feels that there remains some lacuna somewhere and that question is that where should that helpless woman go who has been divorced, whose bonds with her husband have severed, who has nobody to sustain her, who has no house to live in and no means of livelihood, nothing to eat, drink and no clothes to wear. And this question I do not pose to others. This question becomes troublesome for every honest man. It is not a question of any particular religion. Those of our brethren who have no connection with *Shariat* have this doubt in their minds. I say must honestly that if this problem as to where should the divorced woman go, is posed before those who are ignorant about the provisions in Islam or in the Quran about this, he would definitely say that this is wrong and this is cruelty unto that woman and that there should be some provision for maintenance. Sir, I want to throw some light on this issue.

I had said in the very beginning in this House that we can know about the good and bad aspects of Islam or any other scheme only if we see it in its entirety. For instance, if we see a lady who is completely in *pardah* expert her hand which is beautiful to look at, and thereby if we guess that that must be very beautiful, that guess may by sometimes very wrong.....(Interruptions). Now, I am past that age; you, of course, can have ... (Interruptions)...

I was saying that we should view these provisions in their entirety. This is an issue which is the cause of a confusion in our mind and that confusion is justified. We should know what the status of a woman is in the scheme of social life in Islam. In Islam, after marriage, a woman's relation with her parents' family, with her natural family, is not severed, unlike other religions. 'Fatima' shall remain Bent-e-Mohammad, daughter of Mohammad, even if she is married to Ali and Aisha will remain Bent-e-Abu-Bakr daughter of Abu-Bakr even if she is married to Mohammad. After marriage, the relation of a daughter with her parents' family, natural family, is not severed. Her *Gotra* does not change. Even after marriage, she remains entitled to the inheritance of her parents' property and after divorce she again reverts back to her parents' family. To make it more intelligible, just as it is the duty of the parents to sustain and maintain her before marriage, similarly after divorce also it remains their duty to sustain and maintain her and this is obligatory for them. One cannot escape it. Not only this, I would like to tell you the further provisions also. If after marriage, the girl is suffering from some ailment and her husband refuses to provide her medical treatment. even then it is the duty of her parents to provide her medical treatment. Further, another provision is also there that in case her parents are not in a position to perform all these duties, then it becomes the duty of her brother, uncle, grandfather and others to shoulder this responsibility. And one general law is that those who are entitled to be the heirs to her property, they have to provide maintenance to her in the same proportion in which they are entitled to her property.

Sir, the real issue is not that there are no provisions; the real issue is that unfortunately we have not implemented these provisions fully; we have not enacted such laws by which the aforesaid relatives have to provide maintenance to her in such circumstances and whereby they may be bounded to do so. We have not done so. We have not evolved any machinery for its implementation. This is the lacuna and if this lacuna is removed, then there will be no problem of providing maintenance to her. If there is nothing else, the society is there.

After all, when a woman is widowed and there is none to provide maintenance to her, in such a situation the society does maintain her. All these provisions have been given in 'Shami' which is an authoritative book. In that book everything has been given in minutest detail. Now, after all these provisions if somebody wants to understand the issue, then it is quite clear, provided he is not biased. These are the provisions and this is the scheme. The 'Shariat' has a complete ethos. The answers will have to be searched and seen in that ethos. And if some particular part is separated from the whole pattern, then the entire structure will collapse, its foundations will be shaken. This entire structure is standing on a few columns and if a single column is removed then the entire structure will collapse; as the entire arch is supported by single brick and if that brick is removed, then the entire arch will collapse. This is my submission.

Sir, now I come to another point. One thing has been generally said that a number of changes have been made in the 'Shariat' in the Muslim countries. I admit that changes have been made. But the question is, firstly, what is the nature of those changes in the laws and, secondly, whether we are looking into the Islamic laws or the attitudes of the Muslim governments and the Muslim rulers. We are looking into the Islamic laws and not the Muslim governments and the attitude of the Muslim rulers. In the world, there may be a Muslim government in a country in the name only as is there in Pakistan but it cannot be said to what extent Islamic laws are being implemented there. Islamic laws are not being implemented in Libya, Turkey, Tunisia, etc. because of arbitrariness and this arbitrariness is the offshoot of their being overawed. And this awe had been there on all the occasions. The history of Islam bears testimony that when Islam came in close contact with Greek thought and then some of our educated people were impressed by that and were overawed by that and after being overawed, they started interpreting Quran in the style of Greek thought. In India itself, a group of non-conformist Muslim, under the leadership of Sir Syed Ahmed Khan, after the newly established British rule, was much impressed by the

British culture and started interpreting Quran in that style which is of the new light. And it is natural that the Islamic world rejected that, so much so that today no Muslim is prepared to listen to whatever he had said. The people, therefore, concluded that he was also the victim of the same awe. And what are the so-called progressive saying today? They say that those who do not interpret the holy Quran in terms of Marx, are fundamentalists and obscurantists. So, they are the victims of the same awe. Some people interpret Quran in view of the prevailing thought—current. If Quran is interpreted by being influenced even by the greatest philosophy then that interpretation cannot be acceptable. The Quran can be interpreted in the language ordained in the holy Quran itself,

Of course, this is a fact that, as I had said in the beginning also, the real interpretation of the holy Quran is the life of Mohammad Rasul Allah.

I had said earlier also, Saif Sahib, but you were not present. You were indisposed. Banatwalla Sahib was present. I had a misunderstanding also and I had apologised.

I was saying that the Quran should be interpreted through those who have complete understanding of it. It has been stated: "*Afla tandbaron afla tafakron*"—And ponder over the holy Quran. Whosoever has read a little bit and whosoever has read two 'Aayats' he claims to have become knowledgeable now. It is a fact that Quran is not the book meant for a particular section of the people; it is not a book which should be read by *Panditji Maharaj* and none else. Islam has not created any particular section for this purpose. It is an open book for the common people and they have been told to read it. But the capacity to understand differs from man to man. It is obvious that how can a man like me, who has only a little knowledge, comprehend the provisions of the Quran. There is a world of difference between the people like us and those who have devoted their entire lives for this cause, who have read the 'Hadis', who have gone into the issues in depth and drawn conclusions, just as one has to draw water from the well. Such a

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seeker should have seen the life of Rasul Allah (Peace be upon him). There is a world of difference between the understanding of such seekers and that of ours. Allama Maudoodi of the Jamaat-e-Islami has done a strange thing by making all and sundry the interpreters.

15.59 hrs.

[SHRI ZAINUL BASHER *in the chair*]

AN HON. MEMBER : Please explain its meaning in Bengali.

SHRI Z. R. ANSARI : It will be difficult to explain in Bengali. I shall learn Bengali from you some time. Even if I explain its meanings in Bengali, it will still be beyond your comprehension. By trying to make you understand I shall only wreck my brains. You will not be able to understand. You are obsessed with a different ideology.

SHRI C. JANGA REDDY : So you admit that obsession is there.

SHRI Z. R. ANSARI : I was addressing one but now here appears another one. The world is full of such people.....(*Interruptions*)Please do not feel angry. I have said this out of affection. He being younger to me, I said this.

I was saying that now the question is whether Quran has envisaged a society which should be static and immutable, which should have no scope for any change whatsoever and whether we are bound like the bonded labour. No. Perhaps the dynamism of the holy Quran is unparalleled. I am not criticising any other religion but so far as I have seen, Islam has that flexibility because of which there had been interpretations at different times. What is the intention of these interpretations? Interpretation, consensus of Muslim opinion—these are all the ways to adjust laws in accordance with the requirements of the times. And which laws? Not those laws which, in one way or the other, are clearly given in the holy Quran; no change is

possible in those laws. There is no scope for any change in those provisions which are settled permanently by the 'Hadis'. There is scope for change only in the laws relating to the new issues which may arise and about which the society demands that they should be reviewed to make some changes therein to adapt them to the needs of the society. Then there has been the consensus of the Muslim opinion at different times. Now, if the change in the laws in the Islamic countries is in conformity with these principles, then I also say that there is scope for doing so. But if the changes are such as have struck at the roots of Islam and the very pillar on which the entire structure of the society stands, has been demolished then it will be said forthwith that those laws are un-Islamic and in spite of their being Islamic countries, they have nothing to do with Islam whatsoever. I am myself saying there is scope for change, but, in spite of that scope, a principle has been laid down.

Now, this is the only area where the 'Ulemas' and 'Fuqhas' have greater responsibilities to shoulder. I want to say with great regret and also want to convey this unto them through this august House that they have also not realised their duty; they had taken care of all these things at the proper time and had adapted themselves to the fast changing times and had effected such changes in the laws as could be in consonance with the modern times! They remained under the wrong motion that because of their sluggishness, the times will also not change. But the march of time is inevitable. Therefore, Sir, through you, I want to submit most respectfully unto those who claim to be the defenders of the religion and the 'Shariat' that still there is time when they should look at their laws and bring about basic changes in them to suit the social demands and the changing times. And when the Muslim 'Fuqhas' and 'Ulemas' arrive at a consensus, then it becomes the duty of the Government to consult them if they present such a picture as may give a new and a dynamic shape to the Personal Law of the Muslims. Just for example, there are provisions regarding maintenance but they have not been implemented anywhere. It is a fact that the helpless woman has to run from pillar to post after divorce and there is no

doubt that everybody feels pity at her condition and it is natural to be so. It should also occur to anyone as to where should she go. So, a sound idea about such laws should be formed and put before the Government and the Government should in turn take steps and amend the law accordingly so that this issue is resolved.

Now, the last question. I had said in the beginning that there were two aspects of this issue : one aspect is what the edicts of the 'Shariat' are ; what the provisions regarding maintenance in the 'Shariat' are and what scope is there ; what is meant by 'Talaaq', what are its conditions and what is the importance of marriage. I have already discussed all these aspects. Now, another issue is there about which I had said that I would throw light on that afterwards and that in the issue of the judgement of the Supreme Court in Shah Bano case. Shri Chandrachud has given a statement that the desired effect which he wanted to create by giving that judgement has been created, His statement has appeared in *The Hindustan Times*, dated 28th November, 1985, after he had retired. I may say that even after he did not remain the Chief Justice, even after his retirement, he could not avoid giving directions sometimes. And it does happen that if a person remains in an office for a long time, then it takes time for his mentality to change.....(Interruptions)That will change with great difficulty.

*Thamte thamte thamenge yeh aansoo
Rona hai yeh Kuchh hansii nahin hai*

.....(Interruptions).....

Ham ko rula kar kaha hai

AN HON. MEMBER ; Why ?

SHRI Z. R. ANSARI : I shall tell you why. But there are so many things which can be told here and there are so many which can be told outside. His Lordship shays.....

SHRI RANA VIR SINGH (Kaiserganj):
When he gave this statement then he was not His Lordship.

SHRI Z. R. ANSARI : All right. The Lordship says in a press conference :

[English]

"The former Chief Justice explained that although the Supreme Court had powers to review its own decision but in this case, a review was 'particularly inappropriate' as the verdict was a significant land-mark in the march of law towards social reformation."

[Translation]

The Chief Justice, after retirement, became a reformer.

[English]

"He further said, 'This decision has provoked a social turmoil which does not furnish any logical reasons to review it. If a part of the society does not like the decision, what about the other half ?'"

[Translation]

He wanted to create social turmoil but there was an earthquake, to stem which a review is not required.

[English]

Which other half, this ex-Chief Justice is referring to ? Well, it is a matter of the Muslim Personal Law. It does not concern others and if he means by this other half, the women-folk, perhaps he does not know the attitude of the Muslim women with regard to this judgement. He is unaware. He does not know. He is absolutely ignorant, and I can.....

[Translation]

SHRI RANA VIR SINGH : He is pointing to the nephew.

SHRI Z. R. ANSARI : I am quoting what he say further :

[English]

"On allegations that the decision was an interference in Muslim Personal Law, Mr. Chandrachud said :

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'The law has to be interpreted by the court in accordance with the mandate of Holy Koran.' "

And that interpretation he will give. Now all these Ulemas, Mufti and Mujtahids should close down their offices. Mr. Chandrachud is here to interpret Koran as a grand Mufti, as a grand Mujtahid of the time. Who else can come forward to interpret Koran as a reformer ?

[*Translation*]

The wording, the tone and the style of this judgement, all these show that this, in fact, is no judgement at all. It seems that some learned man has prepared a paper for a seminar.

SHRI EBRAHIM SULAIMAN SAIT :
Anti-Islam paper.

SHRI Z.R. ANSARI : The thesis which he read.

[*English*]

It is not a judgement at all. Now, in this particular case, there are two parties. One a man, the other a woman.

[*Translation*]

There is a dispute between a man and a woman. The court which wants to do justice should at least be impartial, otherwise it can be said that the judgement is prejudiced and it has no importance. I shall read out to you.

[*English*]

The judgement beings with it :

"Some questions which arise under the ordinary civil and criminal law are of a far-reaching significance to large segments of society which have been traditionally subjected to unjust treatment. Women are one such segment."

Now he is again entering the field for which he is** He has referred to *Sastra*.

Na stri swatantrya arhti

said Manu, the Law-Giver.

[*Translation*]

I have not understood its meaning but further where he has made an indecent attack on Islam, I want to tell you quite plainly.

[*English*]

I am saying these things between the lines, and what I say, I mean it. That is, the woman does not deserve independence.

[*Translation*]

This has been said by manu :

[*English*]

"And it is alleged that the fatal point of Islam is the degradation of woman"—Selections from Koran.

[*Translation*]

And who has written this book 'Selections from Koran', to which he is referring ? This is not written by justice Amir Ali nor by any of the other eminent jurists. This is written by a defamed person who is notorious in the world for his hostility towards Islam. And he is referring to that. That is —

[*English*]

—Edward William Lane. Everybody knows that in the whole of Islam world, he is a known person for his anti-Islam feelings. He has referred him, not Justice Amir Ali, not Tyabji, not the other jurists of eminence, but only Edward William Lane.

**Expunged as ordered by the Chair.

[Translation]

Now he has referred to the *Hadis*. The references are not confined to the Quran and to other quotation, the *Hadis* has also been referred to. You can see how derogatory these remarks are :

[English]

To the Prophet is ascribed the statement :

“...hopefully wrongly, that woman was made from the crooked rib, and if you try to bend it straight, it will break. Therefore, treat your wives kindly.”

[Translation]

He has quoted this portion thinking that the *Hadis* is meant to degrade the status of women and treat them with disdain. Sir, the *Hadis* is the most authentic, and the most authentic books relating to *Hadis* are “Bukhari” and “Muslim”. I am quoting from both of them. I think, you are not in hurry.

AN HON. MEMBER : Please carry on.

SHRI Z. R. ANSARI : In the absence of the nephew it has become a little dry. Bhagwat Jha Azad Sahib is also sitting in a passive mood.

PROF. SAIFUDDIN SOZ (Baramulla) : You can send for the nephew. The debate has become unlively.

SHRI Z. R. ANSARI : You may play his role.

PROF. SAIFUDDIN SOZ : How can I? I sincerely regard you as my uncle. You can send for your nephew.
(Interruptions).

SHRI Z. R. ANSARI : I hope you are not considering me as nephew.

PROF. SAIFUDDIN SOZ : No, I consider you my uncle, respected uncle.

SHRI Z. R. ANSARI : Sir, there is a *Hadis* by Bukhari which bears the title “Bab-ul-vasiat-binnisa” — Will regarding women—the will of the Prophet regarding women. That *Hadis* is in this chapter. This chapter shows that Hazur Nabi Karim (Peace be upon him) wants to make a will about something in respect of woman and this is its wording. Hazrat Abu Hurera, who was an illustrious companion of the holy Prophet, attributes it to Nabi Karim Sali Allah (Peace be upon him) that whatsoever has faith in Alla Taali and the Doomsday should not cause trouble to his neighbour and accept his will for being kind to the women. And these are the words. I am not reading the Arabic text but only reading the Urdu translation—“you should accept my will in respect of women and the uppermost rib is the most crooked.” An example has been given and that too of the rib. I shall first read and then explain. “The uppermost rib is the most crooked and if you try to bend it straight, it will break and if you leave it like that, then it will remain crooked for ever. So, you should accept my will for being kind to the women.” The expression “hopefully wrongly” has been used. Sir, if crookedness had been attributed to the nature of the women and meant disrespect for them, then there are so many things in the world which always remain crooked even if one tries to straighten them for hundred years. The example of human rib has been given. The example of dog’s tail could as well have been given. There is a popular saying that even if the dog’s tail is kept under pressure for hundred years, that will still remain crooked. The context shows that this is a will in respect of the women. As I said earlier, you should treat your neighbours well. This is only an example and we have been made to understand things by such examples in the holy Quran and in the *Hadis* also. This reference to the women is only about their being delicate. It has been said that the women are very delicate and we should take care of their delicacy. Dandavate Sahib, I am saying particularly to you, you are listening with rapt attention. The women have very delicate temperament and you should not lose sight of this aspect and if you try to straighten her by exercising pressure, then she can break but never change. The expression “hopefully wrongly” has been used for this. This I have quoted from “Bukhari” and this very *Hadis* is there

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in the "Muslim" also in chapter entitled "Bab-ul-vasiat-baulnisa." This Chapter embodies the will in respect of woman and issues a command for being kind to the women. According to Abu Hurera Razi Allah Taali Ana, Nabi Akram (Peace be upon him) said, 'For those who have faith in Allah and the religion, it is necessary that when they face some problem they should either speak well or refrain from speech.' But such refrain should not mean : "*Kahiyon mahu thakur suhati nahin to chup dinraatin.*" Either speak well plainly or remain silent. Take care of the women because they are made of ribs and the uppermost rib is the most crooked and if you try to bend it straight, it would break but will remain still crooked. Therefore, take care of the women. These are then the two *Hadis*. There is a saying among us : when a *Tamboli* starts doing the work of a *Teli*, then there is disorder. If you make a carpenter an engineer for preparing the design of a bridge, how will he be able to do that work ? Although they are unaware of the scriptures and the ethos of Islamic culture yet they are referring to the Quran and the *Hadis* and are saying 'hopefully wrongly.' Therefore my submission is that all this goes to prove that this is a prejudiced decision. It was a preconceived notion that women had always been subjected to injustice and so now another injustice has been done. Nobody could expect such a judgement from an institution like the Supreme Court which is the highest seat of justice in our country. Lobbying is going on even today and statements are being given. What is this going on ? This judgement has lowered the prestige of the Supreme Court. The Supreme Court is a venerable institution which is expected to treat all alike and to judge every case with the scale of justice without any discrimination. I want to give you an example how there is discrimination in the judgements that are being delivered by the Supreme Court. I shall look for that and then tell you.

PROF. SAIFUDDIN SOZ : Please look for that patiently. We are not in hurry...
...*(Interruptions)*

SHRI Z. R. ANSARI : I value your kindness immensely. There was a judgement in the case of Krishna Singh, *versus* some

Ahir in the year 1980. The issue in that case was that a man, Ahir by caste, become the disciple of a *Baba*. He used to live in *Baba's* cottage or the house. When that *Baba* passed away, his heirs appeared from nowhere *(Interruptions)* When the *Baba* passed away, his sons questioned how that disciple had taken possession of that house whereas it were they who were the *Baba's* natural heir. The Ahir said that he was *Baba's* disciple and, therefore, that property was in this possession. The case was first heard in Munsif's court ; then in the court of the Additional District Judge and, thereafter, in the High Court at Allahabad, where justice Kirti gave his judgement in which he said that it was wrong that the Ahir being a *shudra* could not become a *sanyasi*. This was the case of Garhwa-Ghat of Banaras ...*(Interruptions)* It would be wrong to discriminate between *shudras* and others in the modern times. The High Court had delivered the judgement in favour of that Ahir, the disciple, but what strictures were passed by the Supreme Court against that judgement, that I would like to quote :

[English]

"It would be convenient at the outset to deal with the view expressed by the High Court that the strict rule enjoined by the Smriti rights as a result of which Shudras were considered to be incapable of entering order of 'Jathi' or 'Sanyasi' has ceased to be valid because of the Fundamental Rights guaranteed under part-3 of the Constitution." "In our opinion, a learned judge failed to appreciate that Part-3 of the Constitution does not touch upon the Personal Laws of the Parties and in applying the Personal Laws of the parties, he could not introduce his own concepts of modern times, but should have enforced the law as recognised and authenticative source of Hindu Law."

That is the 'Smriti' and commentaries referred to and interpreted in the judgement of the various High Courts.

[Translation]

On the one hand this is the attitude and on the other this is the judgement.....
...*(Interruptions)*..... I want to draw your

attention to those strictures. Are they not against the judge of the High Court? The decision of the High Court was in your favour which, on the one hand, cautioned that 'Smritis' could not be quoted—

[English]

—You have no right to re-interpret it.

[Translation]

But on the other hand, you may misinterpret the holy Quran and the *Hadis*, if you like. Then you must be remembering that case of Banaras, during the time of Indiraji, when the Hon. Chief Justice had ordered the shifting of graves from one place to the other. That case was also of Banaras city. The second case relates to the place to which Munsiji belongs, where a writ was admitted to prescribe the holy Quran itself. What funny things are going on in this country.

[English]

Are they just enhancing the prestige of the Supreme Court or degrading it? We wish that this matter has to be looked into. We cannot allow the degradation of the Supreme Court like this, the court which has got the highest place in our body politic. This is the objection.

[Translation]

You just think what all this is happening. Therefore, my submission is that this judgement is prejudiced and discriminatory.....
(Interruptions)

SHRI G. M. BANATWALLA (Ponnani):
This is a sacrilegious judgement.

SHRI Z. R. ANSARI: Yes, it is like that. Now I shall tell you more aspects of this judgement (Interruptions)..... Now I shall tell you the contradictions which are there in this judgement. At one place, the judgement says :

[English]

"Whenever there will be conflict between the Personal Law and the provisions of the Law or any Act, the provisions of that Act will prevail."

[Translation]

And at another place while quoting the holy Quran they have said that judgement shall be given exactly in accordance with the Quran. Page 949, A.I.R. Supreme Court, 1985 :

[English]

"It shows unmistakably that section 125 over-rides the personal law if there is a conflict between the two."

[Translation]

Had the judgement been confined to this only, even then it would have been all right. There is a substantive law which overrides the personal laws. Further it has been said :

[English]

"The whole of this discussion as to whether the right conferred by Section 125 prevails over the personal law of the parties has proceeded on the assumption that there is a conflict between the provisions of that section and those of personal laws."

[Translation]

Now they say that the whole of this discussion has proceeded on the assumption that there is a conflict between the two. Now his lordship has adopted a totally different attitude, that of an interpreter to somehow bring about conformity between the two.

Now I would like to quote some 'Aayats' of the holy Quran.

All those 'Aayats' which have been extensively commented upon by the people are known as 'Sura-ul-bakr' and form part of 'Sura' II of the Quran.

16.38 hrs.

[SHRI SOMNATH RATH *in the chair*]

Nobody is able to read more than three or four 'Aayats' of this 'Sura'. There are thirty paras in Quran. Whosoever attempts to read the Quran gets stuck up at para II. One may try one's best but one is utterly unable to proceed further. Those who wanted to quote the provisions of 'Sura-e-Talaaq' honestly, should have acquired full knowledge of Quran. As a matter of fact, Sir, at this stage, I consider them to be incapable; they have touched a subject with which they are not conversant.

*Tu to chakwa se khel bakhurdaar
Haath kat jaaega na chhu talwar*

They have touched a subject with which they are not conversant. They are incapable to interpret. They should have made a clean breast that they were not conversant with that. There is one lawyer, Danisel Latifi Saheb, who has tutored them and they have learned only that much and termed that as Quran and 'Hadis'. In a way, they deserved this as if it was not Daniel Latifi Saheb but God Himself who has descended from heaven. When they are listening to the recitation of the Quran by him, they deserve this. Daniel Latifi taught them this provision, i. e., *Vallamutalaquat mata baulmaruf*. I have argued that this does not at all mean maintenance. If some interpreters have happened to say somewhere and we take it as 'mata baulmaruf', even then no period has been mentioned. If it has been said that you provide maintenance, then it does not mean that you go on paying it throughout life. It has been specified in 'Sura-e-Talaaq'. It has been made abundantly clear in its 'Aayat' 6 that the divorcee is entitled to maintenance during the period of 'Iddat' only. But they happened to lay their hands on 'Mata baulmaruf' and that was the end of their argument.

I have said that these two points are contradictory. If you are convinced that the provisions of section 125 of Cr.P.C. override the Personal Law then the matter should end there. When you have this

conviction, you should have clearly done according to that irrespective of the Personal Law. If you have the conviction that section 125 will prevail and it overrides the Personal Law, then you should have said :

[*English*]

We are not concerned with the provisions of the Personal Law. We are only concerned with the provisions of the CRPC and Section 125 is enough and it overrides every other provision of Personal Law.

[*Translation*]

This has aggravated the matter further. Had it not been so, we could have the other alternative before us and taken recourse to that. But now the problem has assumed an altogether different shape as they have lost the track.

Now the point is that first we have to save the holy Quran from their encroachment. Let maintenance go to hell. Maintenance may or may not be given. First we have to save the holy Quran.

What should I say about his Lordship? In any case, the question of maintenance has been relegated to the background. The real issue now is that if his Lordship, sitting there, starts interpreting the Quran, then tomorrow he might say that there is no mention of 'Khutna' (circumcision) anywhere in the Quran. The day after he might ask where it is mentioned in the Quran that the dead should only be buried and why should they not be burnt. For 'Namaaz', he might say why should you recite Allah-o-Akbar time and again. Those who do not have thorough knowledge of the Quran, cannot be authorised to interpret it.

I am not talking only of the Quran. Tomorrow, they might interpret the 'Shastras' and say that you should not refer to the 'Shastras'. You are polluting Ganga by immersing ashes into it. Leave it, stop it. Now if this role is taken over by his Lordship, then it will create havoc. They might start interpreting the 'Shastras', the Bible, Guru Granth Sahib, and the Bhagavat Gita. That is why I had [said that the scriptures are supreme and—

[English]

His Lordship in spite of being the Chief Justice of Supreme Court is ** to interpret the Koran or any religious book or scriptures.

[Translation]

I was submitting that this is the whole problem. Now the newspapers are also writing about it. Letters are also pouring in. Charges of being obscurantists or fundamentalists are being levelled.

*Koi Majnu kahe ya mujhe Zanjeer kare,
Mujh se yeh mumkin nahin hai
Ke Laila ko main Laila na kahun.*

You may say whatever you like and you may think whatever you like, but it is impossible for me that on the subject of which I have gained knowledge and which I have been studying for the last forty years, I should accept the opinion of these who might have heard only from Daniel Latifi in connection with this judgement and might have heard nothing more. And in fact they quoted the very arguments of Deniel Latifi in their judgement.

Then there is another problem. As I have said earlier, the point is that they have not just written the judgement; in their capacity as reformers, they want to arrogate to themselves all the rights of Parliament, all the rights of the Constituent Assembly as well as those of the Executive. Please just think over it.... (Interruptions)

Now we come to the common civil code. What strange views have been expressed in this regard! When I read this judgement, I was very much pained.... (Interruptions)..... yes, one is able to sleep; there are sleep pills also but it is very difficult to check the tears. At page 954 of A.I.R. Supreme Court they say :

**Expunged as ordered by the Chair.

[English]

Common Civil Code

A.I.R. Supreme Court, Page 954

“It is also a matter of regret that Article 44 of our Constitution has remained a dead letter, etc., etc. A belief seems to have gained ground that it is for the muslim community to take a lead in the matter of reforms of their personal law, a common civil code will haste the cause of the national integration by removing these disparate loyalties to laws which have conflicting ideologies.”

[Translation]

As if there is going to be a complete national integration by merely changing the Muslim Personal Law. So, this is their theory and this is their philosophy. Although they do not know that uniformity is not in consonance with human nature. Too much uniformity goes against the demands of human nature. But they say that complete integration would come about with the change in the Muslim Personal Law. Further, there is an attack on the State itself :

[English]

“In the State which is charged with the duty of securing a uniform civil code for the citizens of the country and unquestionably, it has the legislative competence to do so.”

A counsel in the case whispers somewhat audibly that legislative competence is one thing and the political courage to use that competence is quite another thing. Whose political courage is this judge challenging? The political courage of this august House, the political courage of the Congress, the political courage of our Prime Minister, the political courage of our executive, whose political courage is he challenging? It was most absurd to pass such remarks against this august House, against the executive against the Prime Minister, against the Congress Organisation which has got a long history.

PROF. N. G. RANGA : It is only a whisper.

SHRI Z. R. ANSARI : But how could he catch this whisper? There are many things which are whispered. Their Lordships do not catch every whisper.

SHRI G. M. BANATWALLA : For the first time, a whisper has been given judicial recognition. How ridiculous!

SHRI Z. R. ANSARI : Thank you very much.

[*Translation*]

They had some pity on us. They have further said :

[*English*]

"We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform."

PROF. N. G. RANGA : That much Wisdom.

SHRI Z. R. ANSARI : It goes on :

"But a beginning has to be made, if the Constitution has to have any meaning."

[*Translation*]

Unless uniform civil code is provided for in accordance with Article 44, the Constitution has no meaning. But Article 44 says only this much :

[*English*]

It is said that the State shall endeavour ; it is not obligatory on the part of State ; it is just an endeavour, an indication that if possible, people come together and agree to some uniform Civil Code, certainly the State shall proceed in that direction. It does not bind the State. It has not created any obligation on the part of the legislature, State or the Executive to frame any Civil Code.

SHRI EBRAHIM SULAIMAN SAIT : It is not obligatory.

SHRI Z. R. ANSARI : It proceeds to say :

"Inevitably, the role of the reformer has to be assumed by the courts....."

(*Translation*)

As was assumed by Mahatma Gandhi, more than that by Raja Ram Mohan Roy or Lord Budha.

[*English*]

Let us see further :

"Inevitably, the role of the reformer has to be assumed by the courts, because it is beyond the endurance of sensitive minds to allow injustice to be suffered, when it is so palpable."

Is it a judgement or is it a sermon? What is it?

PROF. SAIFUDDIN SOZ : An exhibition of ignorance.

SHRI Z. R. ANSARI : He has not only incorrectly quoted, but misinterpreted Quran and Hadith. He has also misquoted a renowned jurist of Delhi, Dr. Tahir Mehmood. He referred to his books. He referred to his article. I will just read. Very, very mild word which can be used for his misquoting, it is judicial indolence. Nothing short of that. **

He has quoted Dr. Tahir Mehmood. Dr. Tabir Mehmood, in his book 'Muslim Personal Law', 1976 edition, pages 201-202, has made a powerful plea for framing a uniform Civil Code for all citizens of India ; and he says this and that. This he has quoted.

Now, Sir, the book which the Lordship is quoting was published in 1977 ; and a second edition was published in 1983. And

** Expunged as ordered by the Chair,

this second edition was published by no less a publisher than A.I.R., Nagpur. For quite some time there were advertisements that the second edition of this book of Dr. Tahir Mehmood was coming out. He chooses not to refer to his latest book—the second edition—but the first edition of 1977 **

Although, in the later edition Dr. Tahir Mehmood had deleted that portion from his book, and he has changed his view. There is an article which he has written and I just want to quote from his article.

SHRI SAIFUDDIN CHOWDHARY : What is happening ? How much time will he take ? I do not understand it. I take it seriously.

SHRI Z. R. ANSARI : What are you taking seriously ? You do not want to understand things. What do you want ?

PROF. SAIFUDDIN SOZ : He is replying to the debate.

SHRI SAIFUDDIN CHOWDHARY : Who is replying to the debate ? Is he replying to the Debate ?

SHRI Z. R. ANSARI : I am not quoting Marx's philosophy. It is not Marx's philosophy that I am quoting. I am not giving a lecture on the philosophy of Marx and Lenin. I am telling you about the ethos of this country, the culture of this country.

(Translation)

Sir, I am submitting that I am not addressing here the non-believers—

*Na khud been, na khuda been. na jahaan been
Yeh shahkaar hai ree hunar kaa*

I am not addressing them ; I am addressing these who are believers, these who appreciate the ethos of this country, those who follow the tradition of this country, the people who understand the subtleties

**Expunged as ordered by the Chair,

and nuances of the culture of this country. We are representing those people and not Marxism. Damn Marxism, damn Marxism...

[English]

Go and tell that philosophy in West Bengal. Do not tell it here. You have to hear me in this House.

Sir, I was just.....(Interruptions)

AN HON. MEMBER : He is provoked.

SHRI Z. R. ANSARI : No, no. I am quite controlled.

[Translation]

PROF. SAIFUDDIN SOZ : You have two nephews at your back.

SHRI Z. R. ANSARI : The hon. Member has gone ahead of the nephew... .. (Interruptions)

English

I was just dealing with the subject.

(Interruptions)

PROF. MADHU DANDAVATE : Ansariji, Marx is outside the House. Do not refer to him.

SHRI Z. R. ANSARI : But his representatives are here.

[Translation]

PROF. MADHU DANDAVATE : God can be referred to as—

[English]

—He is all pervading.

[Translation]

SHRI Z. R. ANSARI : You don't know. The representatives of Satan are present everywhere(Interruptions)..... When I say Satan, it is not unparliamentary because Satan himself was an eminent parliamentarian. He argued even with God, the Almighty. Can we think of a

[Shri Z.R. Ansari]

parliamentarian bigger than him? They will not be able to understand it. They should make use of the hearing aid. Let us see what Josh Malihabadi has said about Satan. I am quoting on stanza from his poem "Baghawat":

Jab azal mein

SHRI SAIFUDDIN CHOWDHARY (Katwa): You are speaking on Satan:

SHRI Z. R. ANSARI: I was saying:

*Jab azal mein sajda-e-aadam ka uthaya sawaal
Thaa usi halchal se mauque par yeh thaa
waqt jalaal*

*Khud khuda-e-bar tar-o-kihaar se abla par
Kee thi main ne gnftgu aankhon mein aankhon
dal kar*

*Roab-e-sultani se yeh chehrra utar sakta nahin
Jo khudai se dare woh shaahi se dar sakta
nahin*

.(Interruptions)

They are the progenies of the Satan; they are chicken-hearted..(Interruption) . . .

SHRI SYED MASUDAL HOSSAIN (Murshidabad): He is insulting in the House.

SHRI Z. R. ANSARI: Please excuse me if you have felt it. Sir, Dr. Tahir Mehmood has contradicted the learned judge of the Supreme Court and has sent his article on this issue which I am quoting (Interruptions)

*Yaarab woh na aomjhe hain na samjhenge
meri baat*

De dil hi unhen aur jo na de mujhko zubaan aur

.(Interruptions)

If I start speaking in Bengali, you will run away.

SHRI SAIFUDDIN CHOWDHARY: That will be far better.

PROF. MADHU DANDAVATE: If you start speaking in Bengali, then we shall run away (Interruption)

SHRI Z. R. ANSARI: Now there is another hon. Member to help you (Interruptions) There are two types of *talaaq*: *as-salam* and *bar-raqaab*. It is, therefore, necessary to have two nephews (Interruptions) What Dr. Tahir Mehmood has said in his article about the book referred to by him, I am quoting:

[English]

"The judgement runs into 31 pages. Page 20 of my book on Muslim Law has been quoted there. The second of this is my seminar address on divorcee's maintenance published in the Islamic and Comparative Law, quarterly, Vol. I 1981. I had commented on the Bi Tahira of the Supreme Court explaining how important it was for the Muslims in view of such cases to demonstrate by their conduct the true understanding and practice of the Islamic Matrimonial Law The other work quoted by the Supreme Court. First is the concluding chapter of my book 'Muslim Personal Law—Role of the State in the Indian sub-continent; 1st edition; Delhi; 1977 and the second edition, Nagpur, 1983.' In that chapter I had taken the stand that religion-based personal laws of all communities should be administered by the religious courts only and not by the State. And if a common civil code was at all necessary for India, it was only the true Islamic Law, read in its correct perspective, that could be adopted by such a court. It is absurd for anybody to conclude from the stand that I have demanded promulgation of uniform civil code after doing away with the Muslim Personal Law."

Further, he says:

"It is indeed unfortunate that the Supreme Court chose to cite the 1977 edition of my book wholly

ignoring its later edition which was published two years ago by the most well-known law publisher of India, M/s All India Reporter, Nagpur. It cannot easily be believed that the second edition was not in the knowledge of the learned judges of the Supreme Court. To remove all doubts, I clarify that I do not at all support the move for a common civil code and must not be regarded by anybody as its supporter."

[Translation]

That is all about Dr. Tahir Mehmood.

Now, Sir, I would like to say something about the Personal Law and the common law. What is the purpose of Article 44? There is no mention of common civil code anywhere in Article 44. There is mention of uniform civil code. The framers of our Constitution deliberately mentioned uniform civil code and not common civil code. Common means one for all while uniform means that under similar conditions, there should be uniformity and this has been the view always.

Sir, here I would like to touch one point more and that is about Assam. When Assam was bifurcated and Nagaland came into existence, the Thirteenth Amendment was brought in case of Nagaland and Pandit Jawahar Lal Nehru....(Interruptions). What I am submitting is that keeping in view the ethos and culture of Nagaland, the Thirteenth Amendment was brought to protect that culture, the customary laws of the people of Nagaland and their customs and it was said that that was special type of Group. Sir, the extent of our large-heartedness for just a tiny minority of our country can be well-imagined that on the one hand we have provided protection to their culture, their customs and their customary laws by amending the Constitution itself whereas on the other hand it is being argued about Muslims that they will come in the main-stream. Sir, I am venturing to draw your attention towards this judgement of the Supreme Court. In this connection, I would like to say that the stand of the Congress in relation to any personal law should be seen in the historical perspective.....(Interruptions) ... I rarely get a chance to speak.

PROF. MADHU DANAVATE : We are also having a chance to hear you. . . .(Interruptions). . . .

SHRI Z. R. ANSARI : I must feel encouraged in the presence of the persons who value me so high. At present, I have a book with me . . .(Interruptions).

SHRI BASUDEB ACHARIA : What is the name of this book. . .(Interruptions)

SHRI Z. R. ANSARI : This is a book which you may not understand.

Na samjhaa umr guzii but-e khudsar ko samjhate,

Pighal kar mom ho jaate agar patthar ka samjhaate

[English]

"THE CONGRESS AND MINORITIES", this is a book published by All India Congress Committee where all the Resolutions have been given which have been passed from time to time by the Congress right from 1920 till the present time.

This is the Working Committee Resolution No. 23 of October 3, 4, 5, and 6 of 1921 at Bombay. It says :

"The Committee wishes also to assure the Musalman States that when India has attained self-Government, her foreign policy naturally will always be guided so as to respect the religious obligations imposed upon the Musalmans by the Islam."

At page 94 of this Book, Resolution No. 15 of the 1931 Karachi session says :

"Meaning of Swaraj and Fundamental Rights" is the heading of that Resolution. It says :

"Freedom of conscience and free profession and the practice of religion subject to public order and morality, protection of culture, language, and script of the minorities....."

[Shri Z.R. Ansari]

Then again in another Resolution of December 1931, the Working Committee Resolution at page 96 says :

“The Article and Constitution relating to Fundamental Rights shall include a guarantee to the communities concerned of the protection of their cultures, language, scripts, education, profession and practice of religion and religious endowments.”

“(b). Personal Laws shall be protected by specific provisions to be embodied in the Constitution.”

Then again at page 103, another Resolution under the heading “Minority Rights”, “these clauses of Fundamental Rights Resolutions make it clear that there should be no interference in matters of conscience, religion or culture and the minority is entitled to keep its personal law without any change in this respect being imposed by the majority.”

PROF. MADHU DANDAVATE : Right from 1968 onwards it is Congress (I).

SHRI Z. R. ANSARI : Then again, there is the Working Committee Resolution when it met from October 26 to November 1, 1937 at Calcutta.

(Interruptions)

SHRI JAFFAR SHARIEF : For the earlier one, which is the date you quoted ?

SHRI Z. R. ANSARI : I have told you already.

(Interruptions)

SHRI JAFFAR SHARIEF : Prof. Madhu Dandavate was saying it was Congress (I). You are going on record in this House, I do not want any statement to be incorrect, nor is it to be wrongly interpreted by anybody.

(Interruptions)

[*Translation*]

SHRI Z. R. ANSARI : I am prepared to even hand over this book to you.

[*English*]

PROF. MADHU DANDAVATE : I have not misunderstood, only your Member has misunderstood.

SHRI JAFFAR SHARIEF : Because there was no Congress (I) at that time.

SHRI Z. R. ANSARI : In approving the Working Committee's Resolution the AICC had passed a Resolution at the Congress Session at Haripura. Subhas Babu presided over it in 1937. It says :

“The Congress approves and confirms the Resolution of the Working Committee on minority rights passed in Calcutta in October, 1937 and declares afresh that it regards it as its primary duty and fundamental policy to protect the religious, linguistic, cultural and other rights of the minorities in India so as to ensure for being included in the scheme of Government to which the Congress Party” etc.

The Working Committee which met from December 7 to 11, in 1945 in Calcutta said :

“The State should observe neutrality in regard to all religions.”

[*Translation*]

SHRI RANA VIR SINGH : (Kaiserganj) : Hon. Minister, you please see the effect of your speech that he has come from that side to this side(Interruptions).....

SHRI Z. R. ANSARI : It is high time that you come to this side.(Interruptions).Otherwise your condition will be like this :

Naa khuda hi mila naa visaal-e-anam

Naa idhar ke hue naa udhar ke hue.

I cannot take you for a genuine Marxist. . . .

SHRI AJAY MUSHRAN (Jabalpur) : I am purifying him.

SHRI Z. R. ANSARI : Otherwise, you will lose both the sides . . . (*Interruptions*) . . .

[*English*]

PROF. MADHU DANDAVATE : He change his ethos.

SHRI Z. R. ANSARI : Now, Sir, this is the press statement issued by Pandit Jawaharlal Nehru, the first Prime Minister, the foremost leader of the Congress on January 2, 1938.

PROF. MADHU DANDAVATE : You tell us what this Nehru has to say.

SHRI Z. R. ANSARI : The Statement says :

“The Congress can conceive of no freedom for India which is not an equal freedom which inhabit India and in which all do not share equally and have full opportunities of growth and development. So far as the religious and cultural matters are concerned, it has given the fullest possible assurances and declared that this should be incorporated in the Fundamental Rights. A further assurance has been given in regard to Personal Law in regard to certain political rights. The communal award stands for the present and we have stated repeatedly that we seek no change except with the concurrence of all concerned.”

Sir, letter of Pandit Jawaharlal Nehru to Mohammed Ali Jinnah dated April 6, 1938. I am just quoting it as follows :—

“As regards protection.....”

SHRI S. JAIPAL REDDY : He is going from 1934 to 1938.

(*Interruptions*)

SHRI Z. R. ANSARI : Since my senior colleague ordered me to carry on, I shall carry on.

PROF. MADHU DANDAVATE : Please take 40 minutes. You have to quote for 40 minutes, till the end.

[*Translation*]

SHRI Z. R. ANSARI : If you say so, it will be like that because you are an economist.

[*English*]

This is a letter from Pandit Jawahar Lal Nehru to Mohammed Ali Jinnah. It is at page 161 of this book :

“As regards protection of culture, the Congress has declared its willingness to embody this in the fundamental laws of the Constitution. It has also declared that it does not wish to interfere in any way with the personal laws of any community.”

What I just want to establish by these quotations is that this has been our consistent policy right from the very beginning, the policy of the Congress, the sole freedom fighters organisation for the freedom movement of this country.

As regards election Manifesto of Congress.....(*Interruptions*) I just want to put the record straight. It is not they who are the protectors of personal laws, It has been our history to protect personal laws. I am just quoting the Manifesto of 1980 elections. It is at page 269 of this book.

“We will not interfere with the personal law of the minorities. (It is unequivocal terms.) Immediate corrective steps will be taken to ensure proper management of Wakf properties, amending existing legislation wherever necessary.”

SHRI EBRAHIM SULAIMAN SAIT : Declarations are there but

SHRI Z. R. ANSARI : These have been implemented. Please for God's sake, don't. Who has done this—restoration of Wakf properties in Delhi. You or Indira Gandhiji ? Now, you go to any place ; See

Shri Z.R. Ansari]

the list of Wakf properties which had been usurped by different persons. They had been restored and given to the minorities.

SHRI EBRAHIM SULAIMAN SAIT :
The Supreme Court has interfered.

[*Translation*]

SHRI OWAISI (Hyderabad) : There is no permission to offer 'Namaaz' in the Mosques, Sir.

[*English*]

MR. DEPUTY-SPEAKER : No interruptions please.

SHRI Z. R. ANSARI : No, I would give a last quotation from the introductory note of Shrimati Indira Gandhi at the Congress Election Manifesto in 1977. She declares :

"Secularism does not mean lack of faith but the protection of all faiths and the encouragement of spiritual and moral values."

It is not the values established by Marx and Lenin but the values established by the leaders and religious leaders of this country.

[*Translation*]

I have drawn your attention towards the Resolutions passed by the Congress. The thought—content of these resolutions is perpetual. By all this I ventured to establish that our perpetual thinking has been that we do not want to interfere in any way..... (*Interruptions*).....What I was submitting is that this was the stand taken by the Congress perpetually.....(*Interruptions*)..... If you behave this way, I shall not let you speak when it is your turn to speak ; you are a new entrant, you should understand it clearly.....(*Interruptions*).....I shall not allow you to speak at all.

One point more. The aim of Indian independence struggle was not just confined to the liberation of the country from the

foreign yoke. The Britishers were opposed not only because they had captured the country and were ruling it but they were opposed also on other count which formed part of our freedom struggle. The Britishers also wanted to efface our culture, they wanted to interfere with our religion and wanted to destroy it. These issues were also 'sine qua non' of the freedom struggle.

I would like to quote Maulana Abdul Kalam Azad, who had been the Congress President for the longest period, regarding the attitude of British Government. When the British Government was interfering with the religious matters of the Muslims (*Interruptions*)We would like to hold you in high esteem.

SHRIMATI KRISHNA SAHI : On the one hand you are saying this and on the other you treat women as maid servants.

SHRI Z. R. ANSARI : Alas ! You could understand this much. Really it has become very difficult.

Na samjhau umr guzri but-e-khudsar ko samjhaate,

Pighal kar mom ho jaate agar pattar ko samjhaate.

Sir, another problem has now cropped up. I spoke for one and a half hours that day and for two hours today but even after that the hon. Member has not been able to understand. The narration of the whole Ramayana has now been completed and still one has not been able to know as to who was Sita and who was Rama.

The demands of the Muslims date back to the time of the British Government ; they date back to 1918-19 :

"The edicts of Islam are not a secret inaccessible to the Government. They are embodied in the printed books and are taught day and night in the schools."

The are not of the Supreme Court but of the schools.

"What the Government should be is only to look into the fact whether the Islamic edicts are actually such or not. In case it is proved that they are such, then there should be only two options with the Government."

This has been said in relation to the British Government.

"Either to leave Muslims to practise their religion freely and not to do something which may interfere with their religion, and force them to go against the British Government because of their religious commands, or to declare that they do not at all care about the religious commands of Muslims, nor do they follow the policy of non-interference with their religion. Thereafter, it will be very easy for the Muslims not to waste their time unnecessarily in raising hue and cry and out of the two, choose either British Government or Islam."

Sir, in the above extract if a small amendment is made and the words "the British Government" wherever they occur are sub-stituted by the words "the Supreme Court" then the above extract will be applicable today.

Sir, doubtlessly, I praise your patience and am high'y grateful to this august House, to the hon. Members as also to the Hon. Lady Members without whom we shall not get our meals. After all, it is they who provide us with meals. I would like to Banatwalla Sahib in this august House that now it is enough. As I have said earlier that the statements made by Shri Rajiv Gandhi after Shrimati Indira Gandhi, are really very clear and open. I would say that this is an addition to all the statements made so far. He has not only said that they would not interfere with the Muslim Personal Law but has also gone a step further and said that they would try to ensure that no one's personal law is affected by this. He has further said that the dignity of this country lies in protecting and having regard for the entire culture. If this culture of ours is gone, what will remain with us? Then he went further ahead and said that if they found that some law interfered with the Muslim Personal Law, they

would seriously consider that. After this assurance, there does not remain much scope for further discussion on Banatwalla Sahib's Bill. I think that the Government is paying attention to the fact as to what the real features of the Muslim Personal Law are. I think, after consulting the 'Ulemas' and 'Fuqhas' who have full knowledge about all this, it is clear that....

AN HON. MEMBER : It is sufficient if you are consulted.

SHRI Z. R. ANSARI : Very kind of you, indeed :

*Man tura Haaji bagoyam
To mera Haaji bago*

Some time, I shall also pay back your courtesy.

I was, therefore, saying that now there is not much scope to carry it further and hope that this problem, which has become a cause of anxiety for the last so many days, will now be solved. I can't say whether it would be solved today itself or not but let me make an appeal to Banatwalla Sahib that he should withdraw this Bill and let the Government consider this matter and after due consideration find a way out which may be proper for all the minorities.

SHRI SAIFUDDIN CHOWDHARY :
Sir, I cannot speak like the hon. Minister and also I do not know Hindi well.

(English)

So, I will speak in English.

I want to start with a personal explanation that I am not an authority on the Holy Quran or any other religious scripture. But following the judgement and the kind of debate that has arisen, I went through the Holy Quran again and I tried to understand what is the spirit behind it. Thereafter I tried to judge the Supreme Court's judgement. I have to say that I cannot join with the sentiments expressed by Janab Ansari, hopefully, not wrongly,

[Shri Saifuddin Chowdhary]

The day before yesterday night on the TV we saw these two persons. Shah Bano and M.A. Khan talked on the TV. Listening to that and realising the misery of Shah Bano, I was thinking that if I had the power, I would have ordered flogging that person, that male, in public, and I think that is not prohibited by Shariat.

I don't want to take much time as Ansari Sahib took. I want to say certain things. There are so many editions of the Holy Quran.

SHRI G. M. BANATWALLA : What do you mean by editions ?

SHRI SAIFUDDIN CHOWDHARY : I mean translations in various languages. I stand corrected. Various translations are there.

SHRI AJAY MUSHRAN : Why don't you get your speech corrected ?

SHRI SAIFUDDIN CHOWDHARY : I try to. Banatwalla Sahib can tell me that. That is why I said in the beginning that I am not an authority.

Now, see what the Holy Koran Says in Ayat 241. After giving divorce to the woman, maintenance should be provided at a reasonable scale. This is the duty of the righteous. That is quite clear.

SHRI EBRAHIM SULAIMAN SAIT : For how long ?

SHRI SAIFUDDIN CHOWDHARY : I will come to that.

PROF. N. G. RANGA : Mr. Ansari was telling that.

PROF. MADHU DANDAVATE : He is not quoting Ansari. He is quoting the authority.

Ayat 242 says :

"Thus doth God make clear his signs in order that ye may understand."

But it seems even God has failed to make certain people understand his signs.

SHRI EBRAHIM SULAIMAN SAIT : How long ?

SHRI SAIFUDDIN CHOWDHARY : I am coming to that. Now, it is said that maintenance is upto "Iddat". What is "Iddat". Surat Altalaq says :

"When ye have to divorce women, pronounce divorce only when they are in a free state (free from menses or pregnancy). Do not turn them out of their houses God may perhaps bring about a reconciliation between you".

You have to ascertain that the particular woman is in a free state. Now, the question comes and I quote further :

"And when they reached their prescribed term, either retain them with kindness or part from them in a just and gentle manner.

The prescribed term of waiting is three months except for pregnant women for whom time is extended till they have laid down their burden.

This is for what. Is it for maintenance ? No. It is for re-conciliation.

SHRI EBRAHIM SULAIMAN SAIT : It is completely wrong.

(Interruptions)

MR. DEPUTY SPEAKER : Please do not interrupt him. Let him have his say.

SHRI SAIFUDDIN CHOWDHARY : Allah says :

"Lodge them (women in Iddat) where ye your-selves lodge and let them live in a style that ye yourselves live".

So, Iddat is the period of reconciliation and maintenance comes after that.

(Interruptions)

MR. DEPUTY SPEAKER : Please do not interrupt. Let him have his say.

SHRI SAIFUDDIN CHOWDHARY : So, I am of the firm opinion that this period of Iddat-three months-is not for maintenance. It is for reconciliation.

(Interruptions)

SHRI G. M. BANATWALLA : Reconciliation does not go on for life. Reconciliation is only during the period of Iddat.

(Interruptions)

MR. DEPUTY SPEAKER : Please sit down. You have got the right to reply.

SHRI SAIFUDDIN CHOWDHARY : Mr. Deputy Speaker, I accept what Shri Banatwalla has said that Iddat is the period for waiting for re-conciliation. Iddat is the period of re-conciliation. Maintenance comes after that when the parting is formalised. For divorced women maintenance should be provided at a reasonable scale. This is what the Holy Koran says.

It is my firm opinion that gross mis-interpretation is being given to the question by certain people. They are trying create passions in the minds of the Muslims. A very good judgement was given by the Supreme Court. It could be that while giving a judgement they could have misquoted or misinterpreted the 'Koran'. But the spirit of judgement is right according to 'Koran'. They could have given the judgement as natural justice without going into all that. But I support the spirit of the judgement. I support it for the millions of women who are our sisters and mothers in our country. Nobody has taken monopoly of any community, any religion or any system in our country. The general run of Muslims do not practice anything bad. But there are certain perverted people who are misinterpreting and exploiting them and the system.

SHRI JAFFAR SHARIEF : Sir, I have a point of order. Sir, he has questioned the very fundamental right, that is, right to practise and profess a religion.

He has the courage to say and impose his views that nobody has get the monopoly of the religion. I have get the monopoly of my religion. I have get faith and belief in it. Nobody on earth can challenge me. But he has no right to say that nobody has got the monopoly.

SHRI SAIFUDDIN CHOWDHARY : Yes, I have said that I don't have the monopoly. But you claim that you have the monopoly. Let it go to the Muslims and let them know that he has the monopoly of the whole Muslim community in the country.

Sir, our country is secular and there is a very good Section in Cr.P.C. in this regard. There is a certain provision also. Section 125 of Cr.P.C. says like this.

"If any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a magistrate may order such person to make monthly allowance for the maintenance of his wife."

Here the explanation is also given. Now, if this Section is complete here, no problem would arise. What is the problem here ? Here the Government has added one thing ; in between they have added one thing and that is dangerous and derogatory and harmful for keeping our country 'secular'. The discrepancy is in 127-3 (B). It says—

"If all dues are paid to the divorcee according to Personal Laws, than magistrates order will stand cancelled."

Here we see that the State is not interfering with the Personal Law, but Personal Law is interfering with the 'secular' law. Are you to accept that ? We are going to enter the Twenty first Century and they are taking pack to the 5th Century.

Now, one lady comes to the Court being dissatisfied with the so-called justice given by the Personal Law and you tell you her to go back to the same Personal Law. What kind of justice is this ?

SHRI EBRAHIM SULAIMAN SAIT : She has withdrawn.

SHRI SAIFUDDIN CHOWDHARY : Crying in Indore, why has she to withdraw it? She said about the withdrawal that there is so much turmoil and so much hangama. I salute that lady who continues to struggle with courage. She has been put under pressure. Now we have to try to save her. But there is no doubt she had to succumb and she had to make that a statement for cancellation of the judgement of the Supreme Court.

What is this monopoly? This is most unfor and pattetic. This has happened as we do not have a Common Civil Code. I emphasise the need for a common Civil Code; you may give it the name of uniform Civil Code. We are a secular country; we cannot have separate laws for Hindus, Muslims or Christians and others. I am not suggesting any interference in the personal law. But in the Cr.P.C. what has happened? State did not interfere in the personal law, but the personal law has interfered in the State law.

SHRI MOHD. MAHFOOJ ALI KHAN (Etah) : You do not know a single word of Quran and you are talking all about Quran. Can you read even two stanzas of Quran?(Interruptions)

MR. DEPUTY - SPEAKER : No interruptions please.

SHRI SAIFUDDIN CHOWDHARY : The Supreme Court judgement is totally supported by the spirit of Quran. There is no antagonism with Muslim personal law. Article 44 of the Constitution enshrines upon the State to endeavour to secure for the citizens a uniform civil code throughout the country. What endeavour has been made so far in that direction? What have the Government done? Every time the Government says that they are not going to interfere with the Muslim personal law. Recently in the All India Momin Conference, the Prime Minister said that the Government was not going to interfere with the personal law. In the name of secularism, a kind of hypocrisy is going on(Interruptions)

SHRI G. M. BANATWALLA : What is secularism?

SHRI SAIFUDDIN CHOWDHARY : Secularism is not mixing of all religious passions; State has to be separate from various religions. The Stats should not mix with religion; education should not mix with religion. Everyone should have freedom to pray God. There should be no interference in that(Interruptions). One misconception is there that what is now going on in the name of Muslim personal law is immutable and it is sacrosanct. But what did we see in 1937? The British enacted the Muslim personal law. . . .(Interruptions) . . .

SHRI EBRAHIM SULAIMAN SAIT : Wonderful!

AN HON. MEMBER : He is misleading to House. I have a point of order.

MR. DEPUTY-SPEAKER : No interruptions please. Let him complete.

SHRI EBRAHIM SULAIMAN SAIT : He is completely misleading the House.(Interruptions).

MR. DEPUTY-SPEAKER : You can reply when you speak. I will also give you a chance.

SHRI OWAISI : Mr. Deputy Speaker, Sir, it is insult to us when he says that the Britishers had framed our laws. Who is he provoking us?(Interruptions)

17.55 hrs.

[MR. SPEAKER *in the chair*]

[*English*]

SHRI EBRAHIM SULAIMAN SAIT : The British did not enact 'shariat.'

SHRI SAIFUDDIN CHOWDHARY : I did not say that. I meant its application. . . .(Interruption)

MR. SPEAKER : You please continue.

SHRI SAIFUDDIN CHOWDHARY : It is quite clear. I only said that the codification of the contents of the Personal Law

was done by the British. If you have certain laws, they have to be applied. In 1937, the British formed the legal provision so that the law can be applied.

Now Sir, Shri Ansari has referred to the book 'An Indian Civil Code and Islamic Law' by Taheed Mohammad. I can find justification from this book for what I am saying now that nothing is immutable. I would like to quote from his book :

"Statutory recognition of anti-bigamy stipulations in marriage contracts are found in so many Muslim countries like Lebanon, Jordan and Morocco."

This book also says that pre-marriage control by Courts exists in Syria, Iran, Iraq and Malaysian state of Sarwak or by administrative bodies in Indonesia, Pakistan and Bangladesh. And there is absolute prohibition of bigamy in Tunisia and Turkey. These are all Muslim countries. I wonder why we have to be so different ! If bigamy is prohibited, is Islam in danger ?

SHRI G. M. BANATWALLA : We are more concerned about that spirit of Koran.

SHRI SAIFUDDIN CHOWDHARY : Even the spirit of Koran, so far as I could understand and I may be wrong, is that it tried to restrict so many marriages and that is why they decided on a ceiling. So, the direction is towards monogamy. So, we have to take the spirit and in what conditions that had to be done. (*Interruptions*)

Let me now come to the aspect of divorce. The practice of Triple Divorce of the so called 'Talaq' is abolished in Muslim countries like Egypt, Sudan, Jordan, Syria, Morocco and Iraq. They are prohibiting this triple divorce system. All this, I am quoting from this book of Taheed Mohammed. I do not know anything about him.

SHRI Z. R. ANSARI : Then, why are you poking your nose ?

(*Interruptions*)

SHRI SAIFUDDIN CHOWDHARY : It is written there that it is prohibited. I am only quoting. What can I do ?

MR. SPEAKER : You may continue next time.

SHRI SAIFUDDIN CHOWDHARY : Yes Sir. Thank you.

SHRI C. JANGA REDDY (Hanamkonda) : How long will this debate continue Sir ?

MR. SPEAKER : As long as you wish !

PROF. MADHU DANAVATE : Do you want to make any observations on this ?

MR. SPEAKER : Who ? Me ! No, no.

(*Interruptions*)

MR. SPEAKER : Mr. Daga, you may move your Bill please.

INCOME TAX (AMENDMENT) BILL*

(Amendment of Section 2, etc.)

[*English*]

SHRI MOOL CHAND DAGA (Pali) : I beg to move for leave to introduce a Bill further to amend the Income Tax Act, 1961.

MR. SPEAKER : The question is :

"That leave be granted to introduce a Bill further to amend the Income Tax Act, 1961."

The motion was adopted

†

SHRI MOOL CHAND DAGA : I introduce the Bill.

*Published in Gazette of India Extraordinary Part II, Section 2, dated 20.12.1961.

†Introduced with the recommendation of the President.