

PROF. P. J. KURIEN : Sir, I introduce the Bill.

-----

TRANSPORT PARCEL SERVICE  
WORKERS WELFARE BILL

[English]

SHRI AJOY BISWAS. (Tripura West) : I beg to move for leave to introduce a Bill to provide for welfare measure for the transport parcel service workers.

MR. DEPUTY SPEAKER : The question is :

"That leave be granted to introduce a Bill to provide for welfare measures for the transport parcel service workers."

The Motion was adopted.

SHRI AJOY BISWAS : Sir, I introduce the Bill.

15.35 hrs.

CODE OF CRIMINAL PROCEDURE  
(AMENDMENT) BILL—Contd.

(Amendment of Sections 125 and 127)

[English]

MR. DEPUTY SPEAKER : Shri Mool Chand Daga to continue.

[Translation]

SHRI MOOL CHAND DAGA (Pali) : Mr. Deputy Speaker, Sir, 23rd April, 1985 will be a memorable day in the legal history. India a new interpretation of the law was pronounced that day which will be a memorable day in the legal history. In India a new gave a new awareness to the enlightened women. The enlightened muslim women are becoming conscious of their rights. Previously the women were oblivious of their rights and did not have the courage to speaking but now they have become bold to raise their voice. Some people, who have faith in God, have drawn attention to the law which has become outdated. But I would like to point out that Muslims are full of human virtues like love and compassion. All these virtues are there in the Muslim community. There was a time when *Sati* practice was prevalent among the

Hindus. When the *Sati* practice become a social evil, efforts were made to eradicate that. Gradually, the people become enlightened and in this way this practice came to and end. "*Muslim mazhab nahin sikhata muslim auraton ka quid rakhna*" (It is not the teaching of Islam that women should be kept in bondage. The judgement which was delivered on 23rd April, 1985 in Shahbano Case has gives a new turn to the law. It was a small incident. A married man divorced his wife when she was 43 years old and was the mother of 8 children and the grandmother of 9 children. A lawyer, Mohammad Ahmed Khan took the case to the court. A bench of 5 judges of the Supreme Court delivered the judgement which does not interfere with the Muslim Personal Law. The Court based its judgement on the principles of morality. When a petition was made under section 125 of the Criminal Procedure Code, an amount of Rs. 25 was awarded to her per month. The High Court raised it to Rs. 179 per month, but, being a lawyer he pursued the matter further. He was a veteran lawyer whose income was Rs. 60,000 per year. He took the case to the Supreme Court. The judgement delivered by the Supreme Court created a Stir. *Mehtar* is insignificant. It can be given at any time at the time of marriage. She had demanded maintenance allowance so that she could lead a decent life. Not only in India but enlightened women of other countries also welcomed the judgement. Today, in India, the people have become more enlightened and they are conscious of their rights and have started expressing their opinion regarding the present laws. New developments are taking place in the realm of the laws. In Kerala, a new development has taken place. It is well known and my colleague, Shri Banatwalla, might also be knowing about it that the incident concerning Jude Khan alienated C.P.M. from Muslim League in Kerala. It was ordered that Jude Khan be given lashes. The specification of the lash was that its weight should be 5 kgs. and the length of the wire should be 5 ft... (Interruptions). Of course, this resentment should be there but it does not last long. He was a mechanic who had come from Abu Dhabi. The matter was taken to the court and the punishment of lashing was stopped. Now there is new awakening. The Muslim Law questions as to why it has happened, It has happened because it is the demand of

morality. It is not interference with the religion. I shall read out what Asghar Ali Engineer has said :

[English]

"Asghar Ali Engineer maintains that the Muslim Personal Law is not wholly divine. He quoted from the Kuran itself to justify continued maintenance for divorcees in indigent circumstances."

[Translation]

In this way Asghar Ali Engineer expressed his opinion. In Pakistan also a commission was set up on the Muslim Personal Law to make a study in this respect. The time changes and with time everything changes. With the change of an era, the ideas also change... (Interruptions)... people have their are to grind in politics. Why do they not change? They are the influential people and they are on the lookout to find ways to serve their own interests. The problem is of those women who are still in veil and burqa and are not aware of their rights. The Supreme Court took not of it on moral grounds and gave this judgement and in that judgement they clearly said that a common civil code should be framed for all. It did not say that any exception should be made. It has even pointed out to the government... that "it has remained a dead letter." The Britishers had fromed certain laws in India. They have been continuing. But there is some sense of awarness now among our muslim brothers and their womanfalk have come out of *burqas* and have through a challange to conservation. What happened in Pakistan? Women were not allowed to take up jobs there. They were not given the opportunity to work. They opposed this. You want us to remain slaves of old ideas. I do not expect a young man like you holding the position of hon. Deputy Speaker to say such things.

Mr. Deputy Speaker, Sir, I would like to draw your attention to the law of the land and quote two or three paragraphs from the judgement of the Supreme Court :

[English]

"It is also a matter of deep regret that some of the interveners who supported the appellatant, took up an extreme

position by displaying an unwarranted zeal to defeat the right to maintenance of woman who are unable to maintain themselves. The written submissions of the All India Muslim Personal Law Board have gone to the length of asserting that it is irrelevant to inquire as to how a Muslim divorce should maintain herself. The facile answer of the Board is that the Personal Law has devised the system of Mehr to meet the requirements of women and if a woman is indigent, she must look to her relations, including nephews and cousins, to support her. This is a most unreasonable view of law as well as life."

[Translation]

What a judgement the Supreme Court has given ! It has brought us to our senses. If any doubt is left, that should be clear form this. The judgement further says :

[English]

"It is a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that 'The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.' There is no evidenece of any official activity for framing a common civil code for the country."

[Translation]

This is a hint for you, Mr. Minister. Government should try to bring a legislation for a common civil code under Article 44. This is the voice of the Muslim women who have come out of the *Pardah* and who have realished their identity. They are addressing the society and the Government.

[English]

"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 help the cause of national integration by removing disparate loyalties to laws which have conflicting by ideologies."

[Shri Mool chand Daga]

[Translation]

You should direct the Union Law Minister to bring a fresh legislation.

[English]

"Dr. Tahir Mahmood in his book 'Muslim Personal Law' (1977 Edition, pages 200-202), has made a powerful plea for framing a uniform Civil Code for all citizens of India. He says : 'In pursuance of the goal of secularism, the State must stop administering religion-based personal laws.' "

"Instead of wasting their energies in exerting theological and political pressure in order to secure an "immunity" for their traditional personal law from the State's legislative jurisdiction, the Muslims will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time-worn and anachronistic interpretations, can enrich the common civil code of India."

[Translation]

Now there is awareness in the Muslim brethren also and they have also realised it. The muslim community to has learned people in large number, people professing different views. If they say...

SHRI ZAINUL BASHER : You held them in very high esteem.

SHRI MOOL CHAND DAGA : Yes, only the jeweller knows the worth of a diamond.

These are the judgements which should be gone through thoroughly. What happened in Pakistan when a report was sought by her on them ? There too, when women are summoned...(Interruptions).

In Pakistan also, both are summoned in Shariat Courts and are permitted to explain their case. It is not that one can resort to divorce at will. Similarly, at the time of marriage both the parties must be present. (Interruptions)

Similarly, in Malaysia they have amended the personal law. There was a time

when wives and...\*\*. Now they have been prohibited. This provision in the Muslim Personal law has been amended. They realised that the law was outdated. They prohibited them where the wives...\*\*... and...\*\*...why... ? (Interruptions).

SHRI OWAISI (Hyderabad) : Where were...\*\* wives ? You are not exercising any restraint. You are provoking us. We are not prepared to tolerate it. These remarks are uncalled for...(Interruptions) He is provoking us...(Interruptions) Do you want to create disturbances in India through this Parliament ?

SHRI MOOL CHAND DAGA : I yield, but I would like to say...

[English]

SHRI P. M. SAYEED (Lakshadweep) : Mr. Daga is referring to wives\*\* according to Muslim Law. If it is so, then he should quote the source. He cannot go on like this.

SHRI G. M. BANATWALLA (Ponnani) : Sir, you expunge this remark that Muslim Law allows...\*\* of wives; otherwiss, let him quote the source or law.

MR. DEPUTY SPEAKER : I will go through the record.

SHRI MOOL CHAND DAGA : Whatever I read I have read from books.

[Translation]

Even at present, in many countries several laws...(Interruptions).

SHRI EBRAHIM SULAIMAN SAIT (Manjeri) : You till us the source...(Interruptions).

SHRI OWAISI : Why do you talk about my religion ? This is wrong. We shall not tolerate it at any cost...(Interruptions).

SHRI MOOL CHAND DAGA : I have already said that in the personal law...(Interruption).

[English]

SHRI SAIFUDDIN CHOWDHURY : On a Point of Order, Sir...(Interruptions)

SHRI G. M. BANATWALLA : Is it a Point of Order or a request ? If it is a request, it should not go on record. It should be a Point of Order and he should say what is the rule under which he is raising the Point of Order...(*Interruptions*).

MR. DEPUTY SPEAKER : Don't get agitated. What is your Point of Order ? What is the ruling that has been violated ?

SHRI SAIFUDDIN CHOWDHURY : Sir, in this discussion everybody should be requested not to bring in religious sentiments.

MR. DEPUTY SPEAKER : That is no Point of Order. Please sit down.

[*Translation*]

SHRI MOOL CHAND DAGA : I would like to read out to you from the report of the Commission of Marriages in Family Law. This Commission was set up in Pakistan :

[*English*]

"In the words of Alama Iqbal, the question which is likely to confront Muslim countries in the near future is whether the law of Islam is capable of evolution, a question which will require great intellectual effort and is sure to be answered in the affirmative."

[*Translation*]

These are your findings and the changes made in the law were based on moral consideration, This is not amendment in the personal law. It was done on moral grounds to protect the rights of the people. The legislation introduced by you should be circulated to elicit public opinion thereon. It should be discussed in this House after ascertaining the views of public from all part of the country. I have, therefore, moved the Motion.

[*English*]

"That the Bill be circulated for eliciting public opinion."

[*Translation*]

I do not want to close the chapter. It would be better to elicit public opinion. I

would reiterate that I have not said a single word about your Personal Law. Personal Law will remain, but when the question of morality comes, the rights will be protected. It is our duty to ensure that there is a common code. It is necessary.

SHRIMATI ABIDA AHMED (Bareilly) : Mr Deputy Speaker, Sir, we are proud that we have a secular Government in our country and everybody is free here to profess his religion. The secular character of section 125 of the Criminal Procedure Code, 1973 had been upheld in Bai Tahira and Fazl Bi case. I do not know why Muslim Personal law is being brought in for no reasons by the Supreme Court in its judgement on grant of maintenance in Shah Bano's case.

16.00 hrs.

The manner in which the recent judgement of the Supreme Court has depicted the Shariat had a very egonising impact. The judgment makes a reference to the women but that has not been explained. Then what was the need of referring to it ? I would like to quote it.

[*English*]

And it is alleged that the 'fatal point in Islam is the degradation of women.'

[*Translation*]

This accusation is totally untenable. The Shariat enumerates the rights of the women thus she has the right to share her parental property properly, she is the sole proprietor of the property required by her; she gets *Mehr* from her husband which is decided according to the financial states of the husband; she cannot be forced to marry against her will. In this context, I would like to narrate an incident to which I myself was a witness.

A girl's parents had decided to marry the girl to a boy who belonged to a family with which the parents had old family relations, but the girl was against that marriage. She tried her best to convince her parents but all in vain. The appointed marriage day came and the marriage party came in a procession with great pomp and show. As is the custom, the vavil and the witness went to the girl and asked her whether she was agreeable to that marriage or not. The girl said, "No." They repeated the question perhaps thinking that they

[Shrimati Abita Ahmed]

might not have heard her properly—but the girl again refused. They asked her for the third time and she refused the third time. The result was that they openly declared in the presence of the gathering that the marriage was not acceptable to the girl. The entire *Barat* went back. From this incident you can imagine about the status of women in Islam. A girl cannot be married against her will. If a woman herself want to seek divorce, she is free to do so. The divorced woman gets maintenance from her husband till the *Iddat* period is over. It has not been mentioned anywhere that if any one does not wish to give maintenance he is free to do so but she is entitled to maintenance till the *Iddat* period is over. She has a share in her husband's property also.

At one place the supreme Court judgement states—which is very much against *Shariat*.

[English]

“Undoubtedly, the Muslim husband enjoys the privilege of being able to discard his wife whenever he chooses to do so, for reasons good, bad or indifferent, indeed for no reason at all.”

[Translation]

In reply to this, I would like to read out the English translation of Alama Abdullah Yusuf Ali of Aayat 'Sura-e-Nis' of the Quran-e-Kareem.

[English]

“If, ye fear a breach  
Between them Twain  
Appoint (two) arbiters;  
One from his family  
and the other from hers;  
If they wish for peace,  
God will cause their reconciliation,  
For God hath full knowledge;  
And is acquainted with all things.”

16.02 hrs.

[SHRI VAKKOM PURUSHOTHAMAN  
in the chair.]

[Translation]

Thus it is clear that divorce is allowed only when all efforts, as laid down in the Quran, prove to be in vain. Divorce can happen only when all efforts keep them to united fail. A married woman cannot be divorced without any reason; it is forbidden in the holy Quran.

With regard to the *Mehr* the Supreme Court Judgement States in the Shah Bano case—

[English]

“*Mehr* is not a sum payable on divorce under Muslim Personal Law.”

[Translation]

And that is why it does not fall within the purview of section 127. In other words the Supreme Court overruled, in Shah Bano's case, the earlier judgement given in Bai Tahira's case. If the sum payable on divorce, as given in section 125, is not *Mehr*, then what else can it be?

I would like to quote what Shri Mirdha had said in this regard when he was the Minister of State in the Ministry of Home Affairs.

[English]

“Divorced women have been included and brought within the ambit of Clause 125, but a limitation is being imposed by this Amendment to Clause 127 viz. that the maintenance order would cease to operate after the amounts due to her under the personal law are paid to her. This is a healthy compromise between what has been termed a conservative interpretation of law or concession to conservative public opinion, and liberal approach to the problem. We have made an advance and not tried to transgress what are the personal lives of Muslim women.”

[Translation]

The way *Shariat* has been interpreted and the way the Quran has been referred to time and again in the Supreme Court judgement is Shah Bano's case is not proper, because without fully knowing the religion or without consulting 'Fiqha' 'Hadis' and

'Izma', the holy Quran cannot be quoted. As a result of this judgement the religious sentiments of the Muslims have been hurt. Therefore Government should frame a law which should prohibit interference with the Personal Law time and again and may end the disturbed atmosphere that has been created in various quarters as a result of Shah Bano's case, so that in future there is no complaint and the *Shariat* is not wrongly interpreted. *Shariat* is the soul of Islam and they cannot be separated from each other.

[English]

SHRI SURESH KURUP (Kottayam) : Mr. Chairman, Sir, a serious debate is going on in our country about the plight of Muslim women who are subjected to out-dated customs and practices which is a shame to any civilised society. I am thankful to my esteemed colleague Shri Banatwalla saheb for giving this opportunity for us to discuss this issue.

Sir, the aim of the Bill is to evade the embarrassment caused to certain vested interests by two historic judgments of the Supreme Court in BAI TAHIRA *vs.* ALI HUSSAIN and MUHAMMAD AHMAD KHAN *vs.* SHAH BANU BEGUM cases. In the first case the division bench of the Supreme Court gave the verdict that if the amount paid at the time of divorce is not at all adequate for the women to carry forward her life then Section 127 clause (3) sub-clause (b) will not apply; the husband is obliged to pay maintenance according to section 125. I shall read out the relevant portion. I quote :

"The proposition therefore is that no husband can claim under section 127 (3) (b) absolution from his obligation under section 125 towards a divorced wife except on proof of payment of a sum stipulated by customery or personal law, whose quantum is more or less sufficient to do duty for maintenance allowance."

It is so clear that if, at the time of divorce, the husband pays sufficient money, then, the wife is not entitled to go to court to seek protection under section 125. I was listening with rapt attention to the speech of Shri Banatwalla saheb. But I could not find any convincing argument how this judgment makes inroads into the personal laws of the

muslim community. Sir, I cannot find any such thing. It only states that if the amount given is sufficient, then, it is okay. But if the amount is not sufficient, then a woman has every right to approach the court and seek protection under Section 125, what is the aim of Section 125? Why it was included in the Criminal Procedure Code? This is the law of a secular nation, of a secular State, it is binding on all the people of this country irrespective of caste or community to which they belong. (Interruptions). This Section 125 is the law of the secular State. (Interruptions). It is incorporated in the Criminal Procedure Code because the State does not want vagrants in the State, the State does not want destitutes in this country. That is why this Section was incorporated in the Criminal Procedure Code and it is in conformation to the view expressed by the Division Bench of the Supreme Court. A full Bench of the Supreme Court gave its verdict in Mohammad Ahmad Khan *vs.* Shah Banu Begam case, it has become a much controversial verdict. And what did the learned Judges mention in this? The Judgment categorically states that in case there is a conflict between Section 125 and Section 127, Section 125 will prevail."

SHRI AZEEZ SAIT : Why don't you read out that Section?

(Interruptions)

SHRI SURESH KURUP : The Supreme Court in this Judgment also makes it clear that there is no conflict...

(Interruptions)

AN HON. MEMBER : He does not know that Mr. Banatwalla seeks to amend that particular Section.

(Interruptions)

MR. CHAIRMAN : Please sit down.

SHRI SURESH KURUP : I have every right to make my point.

(Interruptions)

MR. CHAIRMAN : MR. Sait, you will also be given time.

SHRI SURESH KURUP : Sir, in this Judgment also the Supreme Court makes it categorically clear that there is no question of conflict between Muslim Personal Law and Section 125. I shall quote here para 14 of the Judgment which says :

[Shri Suresh Kurup]

"Since the Muslim Personal Law which limits the husband's liability to provide for the maintenance of the divorced wife to the period of iddat, does not contemplate or countenance the situation envisaged by Section 125, it would be wrong to hold that the Muslim husband, according to his personal law, is not under the obligation to provide maintenance, beyond the period of iddat, is a divorced wife who is unable to maintain herself. The argument of the appellant that, according to the Muslim Personal Law, his liability to provide for the maintenance of his divorced wife is limited to the period of iddat, despite the fact that she is unable to maintain herself has, therefore, to be rejected."

So, it is quite clear that there is no conflict between Muslim Personal Law and this Section 125. Only if the wife is unable to maintain herself, the law will apply and the husband is bound to pay her maintenance.

On the question of Mahar, the Supreme Court made it clear that the amount paid at the time of marriage cannot be the amount paid at the time of divorce. The amount paid in consideration of the marriage cannot be an amount paid in compensation for divorce. That is the opinion expressed by the full Bench of the Supreme Court in this case. It is this judgement that has become the cause of concern of all the reactionary elements in this country.

Sir, I would like to mention one thing. What could have been the fate of our country, if the majority Hindu community in this country began following the Manu Smriti? Whenever there was a move for reforming the Hindu community, reactionary elements were there to resist it. When *Sati* was stopped, they made much noise. When the Bill to stop child marriage was presented before the Legislative Assembly...

MR. CHAIRMAN : One minute please. I have stopped you. I want to take the consensus of the House.

On 10-5-1985, two hours have been allotted for discussion. It has been extended further for one hour. Now the allotted time is over. How much time do you want?

SHRI PRIYA RANJAN DAS MUNSI (Howrah) : It is a serious matter. It needs more discussion.

MR. CHAIRMAN : Shall we extend it by one hour?

SHRIMATI KRISHNA SAHI (Begusarai) : We want to speak on this Bill.

MR. CHAIRMAN : So, today we will finish discussion on this Bill.

SHRI SURESH KURUP : Sir, when the Bill to stop child marriage was brought before the Legislative Assembly in the late '20s—that Bill was known as Sharda Bill—that was vigorously opposed by the reactionary elements in the Hindu community. In 1950, Hindu Code was formed and there was a reaction. Each and every movement, whether minor or major reform in the Hindu community, was very vigorously opposed by the reactionary elements.

My esteemed colleagues Banatwalla Saheb and Ibrahim Sulaiman Sait Saheb are the unquestioned leaders of the Muslim community in our State. (*Interruptions*).

MR. CHAIRMAN : Let him finish.

SHRI SURESH KURUP : They should have taken a lead for reforming their community. But unfortunately, Shri Banatwalla is presenting all sorts of primitive arguments in defence of this outmoded custom. I am sorry to say that.

Sir, I would like to mention that there are so many judgements by learned judges from the Muslim community itself for allowing maintenance. I would like to quote the judgement of Justice Khalid while he was a judge in the High Court of Kerala. It is in 1976, 9 years ago, in *Muhammed Vs. Sainabi*. He allowed the maintenance petition and observed on the payment of *Mehar* :

"Payment of Mehar will not effect a discharge of a claim for maintenance, because the claim for Mehar is a valuable right available to the wife and this claim is a charge over the properties of the husband."

That is what he says about Mehar. He further observed :

"So far as the Muslims of Kerala are concerned there is no custom by which a claim for maintenance by the wife could be discharged by payment of customary dues."

That is the verdict that a very learned Muslim judge gave in 1976 allowing the maintenance petition. The Muslim law permits a man to marry four times. As far as my understanding goes, he can marry for the fifth time also, and that marriage is not void. (Interruptions) Anyway, he can marry four times. I would like to know what Banatwalla Saheb has to say about women marrying for the second or third time.

SHRI G. M. BANATWALLA : One husband is a sufficient headache for her.

(Interruptions)

SHRI SURESH KURUP : Under the Muslim personal law, a man is entitled to have two shares in his father's property whereas a woman is entitled to only one share, the Muslim personal law insists that, in place of every one male witness there should be two female witnesses. I want to know what my hon. and esteemed colleague has to say about this. To Banatwalla Saheb I would like to put a very simple question. All these things arose because the Muslim women went to court and applied for maintenance. It is because they applied for maintenance right from the lower court to the Supreme Court, the court allowed the maintenance petition and interpreted the Muslim personal law. He could have asked the women in his community not to go to court and thus oblige the Muslim personal law...

AN HON. MEMBER : There are black sheep everywhere.

SHRI SURESH KURUP : He could have told them, "Even if you are divorced and even if only Rs. 4 had been paid as Mehr money, you should leave with that you should not go to court". I may point out that in Banatwalla Saheb's own constituency, Pannani, the highest number of maintenance petitions in Manjeri court are from divorced

Muslim women. He would not have put forward these arguments and come with this Bill if for a moment he had thought of that unfortunate woman who committed suicide with her children because her husband divorced her and she had no means to survive. It happened in his own constituency. (Interruptions) Whatever be their arguments, these unfortunate divorced Muslim women are going to courts more and more and are seeking protection under section 125 of the Criminal Procedure Code.

MR. CHAIRMAN : There are a number of Members who want to speak on this. Please try to conclude.

SHRI SURESH KURUP : Sir, this is a very important Bill. please allow me some more time. I am mentioning only the points. The other day while presenting this Bill, Banatwalla Sahib showed the courage to mention in this august House that separate Shariat courts presided over by a muslim should be instituted in this country. Ebrahim Sulaiman Sait Sahib for whom I have very high respect, mentioned in Cochin and that is reported in June, 25th, Hindu. I quote :

"Indian Union Muslim League (IUML) president, Mr. Ebrahim Sulaiman Sait has strongly defended the observance of the "Shariat protection day" on June 14 and said that he would welcome it if the Government permitted the Muslim Community to follow the "criminal side" of the Shariat as well.

"Practising Shariat law of crimes would help reduce crimes, he told a Press Conference here on Monday."

I would like to know what is the opinion of the ruling Congress-I about this and none other than the Deputy Chief Minister of Kerala, Shri Abu Kader Kutty Naha, Daheb mentioning about the Shariat protection day, said that whatever be the judgement of the Supreme Court, we are not going to obey it. He told that publicly. Sir, what I want to know is the opinion of the...

(Interruptions)

SHRI NARAYAN CHOUBEY : Let all the people show this courage.

SHRI SURESH KURUP : I have no objection about this courage, but what I want to know is what is the opinion of the ruling



[Shri Suresh Kurup]  
party here. The Union Muslim League  
is...

(Interruptions)

SHRI SAIFUDDIN CHOWDHARY :  
Dagaji said something, you are telling some-  
thing else !

AN HON. MEMBER : The party will  
not interfere in the Personal Law.

(Interruptions)

SHRI SURESH KURUP : What the  
Congress-I members have to say about this ?  
The Union Muslim League is demanding a  
separate Shariat court that the criminal side of  
the Shariat should be practised in India and  
whatever be the judgement of the Supreme  
Court, we are not going to obey it. They  
are saying it and they are in alliance with  
you in Kerala. Both Ebrahim Sulaiman Sait  
sahib and Banatwalla sahib are one within  
the alliance. What you have to say about  
it, I just want to know. Sir, you know it is  
in pursuance of.

(Interruptions)

Ebrahim Sulaiman Sait sahib statement  
that Jamait, a communal organisation in  
Trivandrum gave a verdict that 101 lashes  
should be given to a poor muslim lady and  
her hair should be cropped. Again, I want  
to know what is the opinion of the Govern-  
ment.

MR. CHAIRMAN : The Government  
there have taken action.

SHRI SURESH KURUP : No action  
has been taken. What is the opinion of the  
Government ?

SHRI EBRAHIM SULAIMAN SAIT :  
Sir, I have a point. In the press conference, a  
question was put to me asking for my opinion  
regarding the Trivandrum, Bimapalli...  
incidents. I have very clearly stated that  
Islam criminal law is not in practice in India.  
Therefore, it is wrong on their part to take  
the law in their own hands. It is very clear.  
They questioned me whether I would like  
the Government to have the criminal law of  
Islam for the muslims of the country. I said  
yes. I welcome it if the Government decides  
so. I welcome it because it will reduce the  
crimes.

MR. CHAIRMAN : You will get a turn,  
then you explain please.

SHRI SURESH KURUP : It is your  
policy and Jamait is implementing that policy  
in Trivandrum. I want to know whether any  
individual or a communal organisation can  
run a parallel judiciary, parallel criminal  
procedure code and penal code and whether  
they can award punishment. What action  
the ruling Congress Party and the Government  
in Kerala took in this case ? All Congress-I  
Ministers were snugly ensconced in the  
ministerial cell while all these were going on.  
What is the opinion of the ruling Party about  
this ? I am proud that our Party took a firm  
stand in this controversy.....(Interruptions)  
I am not yielding, Mr. Kurien. I am proud  
that our Party took a firm stand in position  
and in this controversy. That was why our  
ally in the Democratic Front, the All India  
Muslim League left our front and joined the  
Indian Union Muslim League and the Kerala's  
Chief Minister, Mr Karunakaran was  
welcoming them with both hands.

PROF. N. G. RANGA : Therefore, you  
had a divorce.

(Interruptions)

MR. CHAIRMAN : Please conclude.

SHRI SURESH KURUP : These people  
are constantly interrupting me.

In all these positions the position of the  
Indian Union Muslim League—about which  
I have no doubt. But what I want to know  
is : what is the position of the ruling Party  
in this country which preaches national  
integration, national unity, secularism and  
all that ? What is their position ?

In conclusion I would like to remind  
Banatwalla Saheb as to what is going on in  
other Muslim countries. I think Banatwalla  
Saheb has the knowledge of reforms im-  
plemented in Egypt and the reaction of the  
fundamentalists. I would like to know in  
which type he is. What is going on in  
Pakistan ? What is the position of the Indian  
Union Muslim League regarding the fight of  
the democratic elements in Pakistan against  
this cruel implementation of Shariat. I know  
their opinion because both of them went all  
the way to Pakistan and met Zia-ul-Haque  
and told him that with the aid of the  
Government of India persecution of Muslims

is going on in India. That is what they have done....

SHRI G. M. BANATWALLA : That is a totally wrong statement that he has made. There was no such talk about persecution of Muslims with the President of Pakistan and our talk with the President of Pakistan was in the presence of the Ambassador of India to Pakistan. He was with us from the very beginning till the end. That must be known.

(Interruptions)

MR. CHAIRMAN : Order, order.

SHRI SURESH KURUP : There is no uniform Shariat practised in the Muslim countries. The Shariat they are defending here is the Shariat implemented by the British in 1937. And with these words, I conclude.

SHRI PRIYA RANJAN DAS MUNSI (Howrah) : Mr. Chairman, you are very generous so far as such discussions are concerned.

At the outset I will submit before the House that this Bill invites the attention of the entire House on three fundamental principles—if you want really to make justice to this Bill. They are (1) religion and society, (2) Religion and the law and (3) religion and morality.

Mr. Chairman, Sir, you may recall that in the 16th and Seventeenth century the fanatic Hindus and Hindu community as a whole very much believed in the concept that the Hindu wives will be burnt along with the husbands and that was the custom. They quoted from Vedas, right from the days of Mannu Upanishad and all these things. As you know it was Raja Ram Mohan Roy who came forward in Bengal to fight against these evils and brought a new social reform which was accepted by the Hindus and even the fanatic Hindus could not question it any more. I am not saying this matter in the context of this Bill. What I am trying to refer is that our country possible has the unique example in the whole world where all religion are protected in their subtleties and practices and are fundamentally guarded by the Constitution. Possibly this is the only country in the whole world—even in the democratic nations—where such unique example is prevailing. Thanks to the contri-

bution of Indian National Congress to consolidate this process in this country.

Mr. Chairman, there are Hindu fanatics. There are Sikh fanatics. There are Muslim fanatics. Recently the Punjab incident has shown what amount of sacrifice we had to make right upto the life of Shrimati Indira Gandhi. As you know the extremists tried to put certain pressure on Longowal but finally he overcome those pressures.

Sir, I genuinely believe that Shri Banatwallaji brought this Bill into this House in order to ease the tension outside and to take a sanction in a democratic manner which will possibly create an atmosphere to solve this problem in a democratic framework without allowing the fire outside. If that is his spirit, I welcome that spirit. But I will explain a few points.

First, religion and society. Religion also follows society and society also follows the religion. I am not competent enough to say anything on the religious doctrines of Islam because I do not claim myself to be an expert on Quran but what I feel is that finally the message of every God or Prophet is kindness to human beings. Who follows this dictum to the last is the best followers of God. In between that there may be various interpretations which can be twisted this side and that side but the ultimate message of God is the message which should be interpreted into law. It is not that merely my personal emotion or sentiment that matters. I do strongly feel that in our society the Muslim community have a strong feeling that in some cases their personal matters are very much encroached upon by the law of the land or by some motive of political forces. After the Supreme Court judgement I know in abusive manner Hindu fanatics and a few critics tried to denigrate the image of the Muslim women to this extent that even the ordinary Muslim men who are not otherwise concerned about this matter felt very badly in their heart that we are being insulted and their religion is at stake. I know it not because I mix with Muslims or Hindus but this feeling is prevailing and if you allow it more then things will not be in the control of the House.

Therefore, I personally feel none of us in this House or outside should make any contribution in this manner which even

[Shri Priya Ranjan Das Munsij]

remotely creates further confusion and touches the sentiments of the women in general and particularly the image of the Muslim women.

Sir, I was listening with rapt attention the contributions made by a few Members. I do not want to go into what they have said—Muslim husband marries four times etc.

I am a Hindu for instance. What about the Hindu husband behaviour with his wife? How do Hindu husbands behave with their wives? How many customs they follow? Even after the divorce, what do they do? Even after the divorce, following the rule under 125 to file the position and get the maintenance can you show one instance from the Ministry of law how many times they have protected the Hindd women within the ambit of the law to get their maintenance? 90% of the poor divorcee women in the rural areas could not step into the court of law and they die in the street or go in for prostitution. You know what the document of status of women in the International media is. It is not a question of Hindu women and Muslim women. The question is fundamentally economic situation in our society prevailing in this country. Whether it is a Hindu woman or a muslim woman, after her divorce, her condition is such that only God can take care of them, not anybody else. I cannot save nor Mr. Banatwalla can save. You can interpret the protection of law. You can interpret many arguments with common phrase of the Quran and fundamental principles of the Constitution. But the reality in this society is whomsoever is rich or affluent is treated in a different manner and interpreted the protection of law in a different manner and whomsoever is power to them the law is very costly, Mr. Chairman. Even the protection of law in terms of legal aid has become a mockery in this country. I know it Mr. Chairman. If you take the example of dowry death of the women, Hindu women, if you take the example of the divorced wives' pitiable condition, you will find most of the cases end in suicide because they do not get justice at all. How many lawyers in this country will take their petition to the law court without charging fees? Up to the High Court some arrangement can be done. But in the lower courts and district courts, how can

they approach them? This is the problem of the society.

Therefore, when I talk of religion and society, even if Mr. Banatwalla preaches religion of Muslim and fundamentats and I preach Gita and other thinks, that can satisfy me and his ego of religion. But that does not satisfy the society. So, the fundamental issue is economic situation and poverty in our country. The muslim woman who does not get sufficient money at the time of the settlement during the three months' period, naturally suffers and suffers all the time. Even if Mr. Banatwalla comes out with his argument and I have gone through his 'right' that her parents will look after her, it is very difficult to do so in our country these days. Mr. Banatwalla, you talk to the young muslim boys who are educated, you will know that they have become modern in the sense that they believe in the total concept of secularism. So, for instance, the poor parents get their daughters to somebody else after the 'Iddat' is over, about the maintenance, if you talk to their parents you will find that the parents are poor 'bunkars' who cannot look after their own mothers, wives and fathers in their houses. What will the poor lady do? She will feel 'I have become a burden to my parents' and she will become desparate and feel a little isolated. Where do the solution lie in this matter? I am not questioning your principle, I am not questioning your law. I am questioning the reality. There you talk of religion and society. But answer the question of reality first. The reality is that she is to be protected by the State and the reality is that she is to be protected by the very society, the reality is that she is to be protected by the Constitution and if that is the reality, what else she can do excepting to go to the court of law. That is very necessary. One has to understand this point. I have been in my constituency after I have heard the speech of Mr. Banatwalla and went and talked to the muslim youngsters who strongly resented and they said that the Supreme Court is encroaching upon our Personal Law and it is a fact, Sir, there is an encroachment into the Personal Law. There is no denying the fact—whether the Supreme Court is right or wrong—that there is an encroachment. I don't dispute that. The 'Suras' which have been quoted in the Supreme Court judgement are not relevant 'Suras' that contained in the

provisions of 'Talaq' and 'divorce'. I have through that. That is not the correct interpretation. The reality is something different. I have met a few families in a slum of Chowrabasti in Howrah. I met a few destitutes. I heard their pitiable condition. They said :

[Translation]

Just see, what our father can do, he is not in a position to make his own both ends meet, where from could he provide for us.

[English]

There was no mullah to guide them, what is the direction of Quran; there was no Hindu to guide them what is the direction of Geeta and there was no jurist to guide them what is the direction of Constitution. That is the reality and that is how the women suffer.

This Parliament's business is not to see how much his sentiments are hurt, and how much my sentiments are hurt, the duty of the Parliament is to decide how the women can be protected by the State and the Constitution in such a pitiable condition. That is precisely the point. There comes the question of religion, law and morality. There is the moral responsibility and the Parliament should rise to the occasion. I always hold the view—many hon. Members may differ—it is not the Supreme Court, which is supreme in the country, it is not the administration, which is supreme, it is the Parliament, that is Supreme. Even if the Supreme Court in its wisdom says something, again we can have a rethinking on the whole issue and come to a conclusion.

I strongly feel that there is an encroachment on the Muslim personal law. When the petition was filed, *suo moto*, the Supreme Court could have easily ignored that, they could have said that this was not a matter for Supreme Court, they should go to Shariat. They did not do it, and having not done it, I would not have minded, if they had totally ignored Quran, but having Quoted Quran and that too irrelevantly is not justice. It is unfair. The judgement has created tension and much provocation on the part of Muslims.

The Criminal Procedure Code was amended in 1973. I was a Member of the Select Committee, to whom the Bill was referred at that time. Shri Shamlal was also there. This point was debated many times, Shri Saifuddin Chowdhury was telling me about the Government's weakness under Section 127(b). It is not so. The Select Committee in their collective wisdom considered it and placed it in the Statute Book. And, it is because of the Late Prime Minister, Shrimati Indira Gandhi's sympathy for the women of the world that this additional clause was there for the maintenance, if they finally did not get protection.

Hon. Member, Shri Kurup was telling what is the thinking of Communists, Kurup should know, what CPIM can think in a moment, Congress takes a little time because of its national responsibility and not regional. This is because CPIM has get the political responsibility for toppling or getting into Government in a part, but Congress is responsible to the entire nation, entire community, and to the House. It is not merely Namboodripad's heroism in Kerala sweeping the entire elections, the Congress is responsible for the whole country. He should realise it. What Congress speaks today, CPIM speaks tomorrow if not the day after tomorrow.

Congress is not for interference in any religious practices, or any personal law, specially the Muslim personal law. That is precisely our point.

I will conclude with two points. I do not know the meaning of Shri Sulaiman Sait's chivalry in offering that if the Government agrees, they were prepared to practice the provisions of Indian Shariat etc. I do not approve of this. After all in a country like India, we must have a compromise on any matter at a particular point, and if we cannot achieve that compromise, we lose India. That is precisely the point. Never forget, that it is India; it is not Nepal of Raja Birendra, or Iran of Khomeni. It is India and we have to maintain the true spirit of secularism.

In conclusion, I would suggest that the Government should as quickly as possible find a solution so far as the women are concerned. Whether they be Hindus or

[Shri Priya Ranjan Das Munsii]

Muslims, the total responsibility for protection of the women after divorce should be that of the nation as a whole; with one restriction that should be in consonance with Muslim personal laws, as far as Muslim women are concerned. It should be left to them, no doubt, according to their law, and within the Constitutional provisions.

I wish Shri Banatwalla should lead that torch in the country like Raja Ram Mohan Rai for further reforms, that even after divorce their maintenance is assured. If not assured and if they go for protection to the State, or to the court of law, they should not be detached from the religion and they should not be branded as anti-religious.

With these words, I conclude.

[Translation]

SHRI ZAINUL BASHER (Ghazipur) : Mr. Chairman, Sir, the recent Supreme Court judgement has caused restlessness among the Muslims throughout the country. The judgement has been treated as an interference with the Muslim Personal Law which has caused outrage and restiveness among the people in various parts of the country. Government and the late Shrimati Indira Gandhi in particular, when she held the reins of the Government, had assured that Personal Law of any community would not be changed or interfered with till such time as that community itself was ready for a reform or change. The Congress has consistently been adhering to this policy. Whenever such a law concerning marriage, divorce, adoption or Hindu law came before the House, it was assured time and again that Muslim Personal Law or the Personal Law of any other community would not be interfered with. There is a class in the country which is divided into two groups. Shri Kurup has left the House. That class is reactionary, leftist and progressive. Both the groups demand a uniform civil code in the country. It is not clear how the highest judicial body has been affected by this thinking. The Courts have given judgements of which there was no need whatsoever. There was no need to interfere with the Muslim Personal Law. You may recall that about two years back the Supreme Court had ordered the shifting of the grave of a Muslim in Banaras, which was unnecessary. The *Shariat* lays down the period within which the grave of a Muslim

can be exhumed. That grave was over 100 years old. If a living person occupies a piece of land for 12 to 14 years he becomes its owner but if a grave is more than 100 years old and it is shifted from one place to another without any reason it is not proper. In this way an unnecessary stir was created by interfering with the *Shariat*. Shri Ibrahim Sulaiman Sait is not present, he was one of the arbiters, who had gone to Banaras and in such a case where the shifting of a grave had been ordered, it is obvious for the State Government to be in a difficult situation. I am not sure in which State it is located.

SHRI IBRAHIM SULAIMAN SAIT (Manjeri) : The case has since been decided and the grave will not be exhumed.

SHRI ZAINUL BASHER : At least the occupation was concened.

Besides this, Calcutta High Court admitted a writ petition for hearing, which sought a ban on the Quran. The hon. Law Minister and the West Bengal Government deserve to be commended for quick action, who did not think like Shri Kurup. Shri Bharadwaj, our Law Minister is also present and he too tried his level best. Anyway, the matter was closed. Now, the Supreme Court judgement has raised another storm.

AN HON. MEMBER : This regime also fights for the protection of the Quran...  
(Interruptions)

SHRI ZAINUL BASHER : The Supreme Court has delivered the judgement under the Criminal Procedure Code... But the judgement had referred to the Muslim Personal Law and quoted from the *Ayats* of the Quran and had given examples of some countries which had made changes in the Muslim Personal Law, which was uncalled for. There was no need for this because in 1973 when certain changes were made in the Law, the then Minister of State in the Ministry of Home Affairs Shri Ram Niwas Mirdha had categorically stated that there would not be any interference with the Personal Law of any community.

Mr. Chairman, Sir, whenever the marriage of a girl is fixed, the amount of the *Mehr* is also fixed, that is the custom among the Muslims. The marriage is fixed with the consent of both the boy and the girl and the

amount of the *Mehr* is also fixed at that time. The quantum of the *Mehr* is a different issue and it is generally decided keeping in view the financial status of the husband. It is a good thing if the *Mehr* is given prior to the marriage or immediately after it but in case of divorce, the woman is entitled to the *Mehr*. Otherwise also she is entitled to it. When people are unable to pay it they get it exempted, as in the case of the death of earlier of the spouse. In fact it is a debt on the husband and he has to pay it whether there is divorce or not. The woman has a right to the *Mehr* amount and only she and no one else—not even the husband—has any right to it. The husband has to pay that amount and after divorce it becomes all the more necessary. The woman gets the entire amount of the *Mehr*. If she has not been able to get it due to any reason, she can seek redressal through the court and the law. Even property can be auctioned to ensure payment of the *Mehr*. But once the *Mehr* has been paid and if thereafter the divorce takes place, it is not the responsibility of the husband to give maintenance to his wife. This is the Islamic Law.

Many other religions also adopted this law. The Hindu Act has adopted it and now the woman has a right to her father's property. As Mr. Das Munsii rightly pointed out, if anyone does not have property, what will the hapless women get in that case? But those who have property, in that case the woman is entitled to it and she can move the court for the enforcement of her right. The woman has a right to the movable and immovable property of the husband and she can claim her right. The woman can get her rights enforced through the various organisations set up at various places. The Muslim Law bestows on woman a high status and we do not treat them as minions.

We treat women as superior beings. The Quran says :

17.00 hrs.

[English]

Heaven lies under the feet of mother.

[Translation]

We show great importance to woman but everything is classified and the extent of importance is all laid down.

[English]

It should be viewed in the totality of things, not in a single, isolated way.

[Translation]

It will have to be viewed in totality. Women has not been treated as a lesser being and she has a high status. But such an interference on the part of Supreme Court has created panic among the Muslims and they are apprehensive that these judgements by various courts would tamper with their Personal Law. The courts view it in an isolated way and not in totality, and base their judgements on a one-sided view. I would, therefore, request that the courts should not interpret the Muslim Personal Law. If there is any such case, it should be brought to the notice of this Sovereign House. This House, the Congress Party or the Government never had any intention to interfere with the Personal Law of any community. On the contrary, the Government have been assuring time and again that the Personal Law of different Communities would not be interfered with by the Government till a demand to this effect was made by the people of that community and till they were ready to accept it.

17.02 hrs.

[SHRI SOMNATH RATH *in the Chair*]

Mr. Chairman Sir, I would, therefore, say that the Bill introduced by Shri Banatwalla to remove the confusion caused by the Supreme Court judgement is justified. It would be all right if the Government accepts it, but if it likes to introduce a Bill on its own, we would welcome it and we can then request Shri Banatwalla to withdraw his Bill. It would be better if the Government introduces a Bill on its own which may help remove the confusion, or this Bill should be accepted. If the Government takes action and removes the confusion, the courts in future, will hesitate to interfere with the personal law of any community as they would come to know that Parliament does not favour it.

Mr. Chairman, Sir, our country has varied religions, customs, languages, cultures and dresses. This diversity constitutes the country and our dignity lies in maintaining

[Shri Zainul Basher]

this diversity. Mahatma Gandhi used to say that we are proud that our country is like a garden where flowers of various colours and hues bloom. And therein lies the dignity of this country. This is the very aspect which has earned us respect in the world and the country's unity also remains intact. If there are only roses in a garden it will not look as elegant as that garden where different flowers like rose, marigold and 'chameli' bloom. I would, therefore, request you not to turn this country into a garden having only one kind of flowers but to maintain the country's diversity. Therein lies the beauty of this country. I conclude with this appeal.

[English]

SHRIMATI GEETA MUKHERJEE (Panskura) : Since I came in this House, most of the old members know that whenever the question of women came up in this House, whether she be a Hindu or be a Muslim or be a Christian, I am one of those who always took up their cause. Today, I don't think that there is any necessity to deviate from that. From that point of view, I oppose Shri Banatwalla's Bill.

The husband of Shah Bano, she alleged, was earning Rs. 60,000 a year, and this lady was granted Rs. 25 a month as maintenance allowance by the lowest court. The society does not have any duty towards them. What Mr. Banatwalla and the like of his were doing in this situation, I would like to know on behalf of all the Muslim, the Hindu and the Christian women? You remember the personal law and the interference only now.

Before I come to the merit of this very question, I recall with great pride that, when through Hindu Code Bill Hindu Laws were being revised in this House—but I was not a member of the House; it goes without saying—I know, as a woman activist of that time, there was a tremendous opposition against that, and the woman who led the battle against that opposition, one of them, I revere and will revere throughout my life, was Shrimati Hajrah Begum, who was a Muslim women, who led the fight for the Hindu code Bill reform, and if today, the same Hajrah Begum leads the battle also for a uniform civil code, that will be in the spirit of the nation. I am proud of that fact, neither as a Hindi nor as a Muslim but as a woman she

led the battle. That is why, if today Geeta Mukherjee says one or two things about this question, I hope they will be taken in the same spirit without raising religious passion on this question.

Now, a question has arisen whether Muslim personal law should be interfered with or not. I do understand that there is a great sensitivity among the Muslim community on this question. How should we approach that? Should we not approach that in a scientific manner? My dear colleague, Shri Priya Ranjan Das Munsi has gone away. I thank him for several points raised by him. But I would like to know what is his conclusion? Whp even a progressive boy like him could not quote Article 44 and say "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India?"

May I know whether a Members of the ruling party do stand by this Constitution? Do they? If they do, is there no obligation under it to bring the Muslim Community also around constructively? That is the question. I believe that they do. I believe that all of us stand by the Constitution. It may not be a compulsion, definitely directive.

AN HON. MEMBER : No, no.

SHRIMATI GEETA MUKHERJEE : If it was given in the Directive Principles has anybody said that the Directive Principles are no more valid in the country?

SHRI EBRAHIM SULAIMAN SAIT : They are not mandatory.

SHRIMATI GEETA MUKHERJEE : Whether they are mandatory or not, whether those who stand by the Constitution, will try to take the State in that direction since that is the Directive Principle? I would like to know this. That is the moot question.

SHRI EBRAHIM SULAIMAN SAIT : What about Article 25?

SHRI NARAIN CHOUBEY : That is ornamental.

SHRIMATI GEETA MUKHERJEE : Now, coming back to this immediate concrete thing that has come up, I think, it is being posed as if by interpreting it, the Supreme Court Judgement has interfered with the Muslim personal law and it hits

their religious belief. I underline the word 'religious'.

The question arises, what is our experience in the country? If all Shariat laws are the last word in religion, then how is it that in some Muslim countries, the same Shariat laws are interpreted differently and different laws are being enacted?

AN HON. MEMBER: No; there is no uniform law.

SHRIMATI GEETA MUKHERJEE: In Syria, on the same question of Iddat—it is in vogue, in practice in Syria—that beyond the period of Iddat maintenance is being granted to Muslim women. May I know?

Now, our hon. friend and colleague, Shri Embrahim Sulaiman Sait has said that in India Muslim Criminal Law is not in vogue. He would have been happy had it been there! The very fact that a part of the Shariat laws are not being implemented in India and there was no purani that itself shows that these are not divine. It has come from usage. If all the Shariat laws are divine then how is it that only a part of it is applied and another part is not being applied? (*Interruptions*). Am I to take that when question of women came, when family came, then only it becomes the last word on religion. Male domination must be maintained, be it Hindu or be it Muslim, and that is how these personal laws were made over a period. But they were also changed over the period. (*Interruptions*). Yes, they were changed over the period. Please remember that Manusmriti is no more valid as my friend Mr. Kurup said, it changed over a period. So, this Muslim personal law also changed over the period. Most natural!

So, this furore is being made as if religion is at stake is baseless. No, Sir. I may be a believer in religion, I may not be a believer in religion, but to those people who believe in religion, to them with folded hands I say, "please try to think whether these were the immutable religious concepts or not." If so, why were they modified over the ages according to the then prevailing situation of the society itself? Therefore, I think, the whole House should approach this question not in a spirit of believer or non-believer and not with a political angle or for getting or losing votes of a particular community—after all, women constitute half

of the voters—but for a uniform family code which will give equal protection to all women belonging to all communities. Why should we not think that way? What is preventing us from thinking that way instead of whipping up religious passions on this question? Therefore, I would like to point out with humility to Banatwallaji and other Members of the House, whether belonging to ruling party or opposition, not to think that a great disaster has taken place or heaven has fallen on our head. Is it not a fact that in India itself even on this family question there are already some laws which are applied to all communities, whether Hindu, Muslim or Christian? What do you say about the Special Marriage Act, 1972, Medico-legal Termination of Pregnancy Act, 1971 and Child Marriage (Restraint) Act, 1929? Are all these Acts not valid for Muslims, Hindus and Christians? Are they not already touching the family question? There my complaint is different. Good laws are made, but when it comes to implementation, they fail, that is a the grave danger. That is why I say that these laws must be implemented and no retrograde step should be taken for taking political advantage. Banatwallaji asks as to what is happening among Hindus; are they not burning the girls? My heart bleeds when I plead for those Hindu women who were burnt. When I saw today in the newspapers that Rita Nargis, a Muslim woman was burnt for dowry, in the same way my heart bled. Why should your hearts not bleed in the same way? Why should you not think really in terms of a uniform family code? Try to evolve it. Do not be at loggerheads on this question. Do not whip up political sentiments. This is my appeal to all of you. We have already taken certain steps. These very laws referred by me earlier show that. Nobody at that time complained that these were in contravention of the Muslim Personal Law. They apply to all of them equally. Therefore, instead of taking retrograde step and whipping up retrograde communal feelings in whichever way it may be, I appeal to all community leaders, whoever they may be, to try to think over the whole question from a humanitarian angle. If you all believe in religion that should help you in evolving a uniform civil code which will really be the religion of religion *i.e.* humanism.

With these words, I do oppose the Bill. I appeal to all including Banatwallaji to think



[Shrimati Geeta Mukherjee]

in terms of the Directive Principles without whipping up communal passions.

**SHRI SATYENDRA NARAYAN SINHA (Aurangabad) :** Mr. Chairman, Sir, the heat that has been generated by this Bill or by the decision given by the Supreme Court has frightened me from participating in the debate. But there are quite a number of respectable Muslim community members also who have supported the judgement of the Supreme Court. I would refer to the opinion expressed by Mr. Baharul Islam, a Member of Rajya Sabha, who was the Chief Justice of Assam High Court and then a Judge of the Supreme Court...*(Interruptions)*.

**SHRI EBRAHIM SULAIMAN SAIT :** Mr. Bahrul Islam went to the Prime Minister as a delegation of Muslim Members of Parliament requesting that this judgement should not be accepted. *(Interruptions)*

**SHRI SATYENDRA NARAYAN SINHA :** If Mr. Bahrul Islam met him privately, I am not concerned with it. I am here concerned with this publication which is given in this newspaper. I do not know what he has done secretly or whether he has differed with the opinion expressed here in the newspaper...*(Interruptions)*.

[Translation]

**SHRI OWAISI (Hyderabad) :** He went along with Muslim Members of your congress Party. He went with Mrs. Najma Heptulla, Deputy Chairman, Rajya Sabha. Even then you stick to your version then after all what is correct—this or that ?

[English]

**SHRI SATYENDRA NARAYAN SINHA :** Mr. Chairman, Sir, if I am interrupted like this even on the mention of the fact that somebody has expressed his opinion, the opinion in favour of the decision of the Supreme Court, how can we have the cool, calm and dispassionate consideration of the proposition which has been placed before this House ? I must explain to you, at the very outset, that nothing could be farther from my mind then to hurt the sentiments of any Member of this House or to hurt the religious sentiments, belief or conviction of any Member of this House or any community outside. Therefore, I plead with them to bear with me even if my opinion is not in

accord with their opinion. I was only saying that I took up courage to speak because I found that there was a considerable volume of opinion in favour of the decision of the Supreme Court, and before me is an article by Mr. Bahrul Islam. He might have gone to the Prime Minister privately. I am surprised that a person of that eminence should act in this manner but I would not make any comment on him. But the opinion that he has given is that the judgement of the Supreme Court is right. He feels that there was no inroad into the Muslim Personal Law. There is another opinion also with me here of an eminent person who was also a judge. He also said that it is not an encroachment or an inroad into the Muslim Personal Law. If my friends feel hurt that it is an inroad into the Muslim Personal Law, I will plead with them to consider the whole situation in the prevailing context. The Muslim Personal Law is based upon the revelations by God to the Prophet, so nobody can challenge it. But let us try to find out if it was also the injunction of the Prophet that a divorced woman will get maintenance only for three months during the period of *Iddat*, or if she happens to be pregnant, till she delivers the child. Is that the injunction and if it was so, are we going to accept it in the present situation since we have progressed very far ? I feel that the whole world is concerned with the status and the conditions of women. You know this year, the United Nations Decade for women has concluded. A conference was held in Nairobi where women representatives from all over the countries had gone to find out what progress has been made with regard to the status and conditions of women. I thought that during this Decade for Women, when the Supreme Court gave this decision, it would be held as a charter of relief to the Muslim women.

Shri Banatwalla while placing this Bill before us forcefully and with emotion said that it is an inroad on the Personal Law. He also quoted from the principles of Muslim Law by Mullah and Tyabji and many others. And then it was also their objection, he said, that the Supreme Court is not competent to interpret the law. I have seen it in the newspapers. In a Press Conference, which was attended by Shri Banatwalla and Syed Shahabuddin, it was said that this is an inroad into the Muslim Personal Law and

that the Supreme Court was not competent to interpret it. Both these points have been answered by Shri Islam. Firstly, he said that the Supreme Court derived this jurisdiction from the Constitution; and secondly if the Privy Council was competent to interpret the law, why should not the Supreme Court? Why should they be allergic to the Supreme Court now? The jurisdiction of the Supreme Court is there and it is competent to interpret the law.

Now, you may say that they have a law and that it had been misinterpreted by them and so you can correct it. Secondly, it has been said that the Government had agreed. One may agree or may not agree. The hon. Member, Shrimati Geeta Mukherjee while arguing very forcefully urged Government for acting under the Directive Principles laid down under Article 44, said it was an assurance given to the minorities that unless they approached the Government for taking a step in this direction, the Government will not on their own come forward to form a common Civil Code. And even when the Hindu laws were codified into one Hindu Code, this point was made. Then also the Government had said the same thing—unless the minorities come up with their demand, the Government would not interfere in their personal law. Therefore, Article 44 is not being acted upon and no action is being taken under that Article, because we do not want to disturb the whole Muslim community. We do not want to hurt their feelings. This is far from us. But certainly in this particular case, I feel that the Judgment of the Supreme Court to my mind is an extension of the right which has been given to a divorced women to claim maintenance from her ex-husband. It was limited to the period given there. The Supreme Court said that the whole objective or purpose of the Chapter IX of the Code of Criminal Procedure was to prevent vagrancy and destitution. The Criminal Procedure Code of 1898 had a section 488. It was enacted by the Britishers which had provided for this kind of maintenance to a divorced woman to prevent her from going to the street. No objection was then raised. No hue and cry was then raised. Then, in 1973, of course, this new Chapter was put in. Section 125 was also incorporated.

So far as I am concerned, I have read

the judgment of the Supreme Court and also the opinion of Mr. Bahrul Islam. I am afraid of saying this or quoting him that the period of Iddat does not occur in the original verse because it might create some annoyance to them. But I must say that this period of Iddat for 3 months, at the most, means the obligation of a husband to maintain the wife for only 3 months. This is something which is to my mind very unreasonable. (*Interruptions*) The period is necessary to determine whether the woman is pregnant or not. I know that. But if she is not pregnant then you can stop giving her maintenance. She will have to go back to her parents. Whether they are in a position to maintain her or not, she will have to go back. In the scheme of things, you have been telling us that there is a scheme of maintenance provided by Muslim personal law and women cannot be vagrants or destitutes or cannot go to the street.

But, Sir, our social and economic conditions being what they are, we have any numbers of cases not only of Muslims but also of Hindus, Christians etc., who are destitutes. There are poor women fending for themselves; they are destitutes; they are vagrants. I would plead with the Government that they should come forward with some scheme to look after such women who have no support, who are destitutes, who are vagrants. But, when we are enacting a law, we will not do something which will actually increase vagrancy or destitution. We will certainly take into account the fact that we should provide for them till they are in a position to remarry, or in a position to have a good living, or they die. So, this is the scheme. The judgment of the Supreme Court says this. In Shri Mirdha's speech, he has quoted. This is what Shri Mirdha has said :

"As I said, under customary or personal law of certain communities, certain sums are due to a divorced woman. Once they are said, the Magistrate's Order giving maintenance could be cancelled."

Sir, whether it is reasonable or unreasonable sufficient or insufficient, will not be the question. This is the purport of what Mr. Mirdha has said,

[Shri Satyendra Narayan Sinha]

I put it to Mr. Banatwalla,—the Mover of this Bill,—whether it is complete, are you satisfied that this should not be questioned? Sir, interpretations have been put on 'Mehr' also. The amount of money which is paid to woman as 'Mehr' is also perhaps being confused with certain sums which are customary to be paid under this law. No. That is something else. And the Supreme Court has said this. Even Muslim law has said that Mehr is an amount agreed to be paid at the time of marriage. It may be paid in part or it may be deferred payment. That is another matter. But whenever it will be demanded, it will be paid. It is not in consideration of divorce. It is not for the sake of maintenance of the divorced women. There may be some other sums which are agreed upon to be paid. I would like Mr. Banatwalla to enlighten the House as to what are those sums which are ordinarily and customarily paid to a woman. And it would be deemed to have been fully discharged, (*Interruptions*). There are two types of payment. One of them is deferred payment. Deferred payment is Mahar. Mahar is an amount paid in consideration of marriage. As a mark of respect for woman that amount is paid. You cannot confuse it with that amount which a woman will be entitled to receive under the customary law. Therefore, I would submit and request Mr. Banatwalla to enlighten the House on this particular aspect. Now that point is taken care of, I do not think that a person of the standing of Mr. Banatwalla raises the question of—competence of the Supreme Court to interpret the law.

The other question is that I have always felt that even if the period of maintenance is limited to Iddat, the Supreme Court has only amplified the right of the woman which is available to her under the law. It has only extended the period. If the amount given to her is not sufficient to maintain her at the time of divorce, then she is entitled to claim a reasonable amount till she remarries or dies, and in the mean time if she does some business and earn some income, the liability of the husband will cease. In this behalf my submission would be that we should approach this question purely from humanitarian point of view. Mr. Banatwalla said that the Muslim Law is founded in

"humanity and justice" and if it is founded in "humanity and justice", then humanitarian considerations do compel us to ensure that a divorced woman is maintained for her life. We cannot merely take comfort in the scheme of maintenance provided in the Muslim Law, we cannot take comfort in the fact that she takes shelter with her parents. Her parents might have several children and they might not be able to maintain her. This is not a satisfactory proposition and this Parliament must be convinced that there should be such a provision by which a divorce will be maintained and will not be thrown on the street as a destitute or vagrant.

With these words, Sir, I once again submit that this matter should be discussed thoroughly and I hope Mr. Banatwalla will withdraw his Bill and let the Government take a decision.

MR. CHAIRMAN : I think we can extend the time for discussion of this Bill up to 6 o' Clock.

AN HON. MEMBER : No, Sir.

SHRI SHYAM LAL YADAV : We will not be able to finish it today. We will continue it next time.

MR. CHAIRMAN : If it is to continue next time, for how many hours?

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI GHULAM NABI AZAD): The time for this Bill can be extended by two hours and can be carried to next time.

(*Interruptions*)

[*Translation*]

SHRI RAJ KUMAR RAI (Ghosi) : Mr. Chairman Sir, I would request you to conclude the discussion on this Bill today itself. The time can be extended and the discussion can be concluded. Government can also express their view. Therefore, it should be concluded today itself.

(*Interruptions*)

[*English*]

MR. CHAIRMAN : All right, we will extend it for two hours. We will continue it next time.

(*Interruptions*)

MR. CHAIRMAN : I think the House agrees that we will extend the time for this and continue it next time.

SOME HON. MEMBERS : Yes.

[Translation]

\*KUMARI MAMATA BANERJEE (Jadhavpur) : Mr. Chairman, Sir, at the very outset I want to thank you for permitting me to speak on such an important Bill. It won't be wrong to say that this Bill is very sentimental too. I had intended to speak on this Bill rising above politics and keeping politics away from my speech. But, Sir, I was very much pained to see that the leaders of some parties, while speaking on this Bill, tried more to establish their own parties rather than trying to establish this Bill of to establish the status of woman. I had expected that all the members participating in the discussion on this Bill will rise above politics and rise above their party interests. If we really have any love for the women, any sympathy for the women, then we should rise above petty party politics. I felt very sad when I saw that such a senior lady member like Smt. Geeta Mukherjee tried to establish her party instead of protecting the women, in her speech. She tried to say repeatedly (*Interruptions*). Please don't disturb. She had her say now I must be allowed to have my say...Please allow me to speak, she has already taken part in the discussion...(*Interruptions*). Sir, I felt very had when during her speech on this Bill, Mrs. Geeta Mukherjee repeatedly said pointing at the Congress benches, "why are you not supporting a common civil code. Why are you not be coming progressive? Let me say that it is not your party which is the progressive minded in India. It is the Congress party which is progressive minded. (*Interruptions*). Sir, what hurt me most was when she indicated the Congress benches and told us to be more progressive and more bold. You all know that this is the same Congress party which fought against the 'divide and rule' policy of the Britishers before independence. This is that Congress party whose leader Smt. Gandhi sacrificed her life even fighting for the cause of national integration and unity of India. She tried to protect not only the

Hindus or Sikhs or Muslims or Christians but she tried to protect all the religions. Just a day before her death she said at a public meeting in Orissa that "I do not care whether I live or die. I shall continue to serve the people till my last breath. If I die every drop of my blood shall strengthen our country and keep united India alive." This is what she said to save the country. All the reforms that has taken place in the country, all the progressive work that has been done in the country, all has been done under the leadership of the Congress party. We do not know what the Congress party will in this case. But we, who are speaking in the Parliament on this Bill of Shri Banatwalla, are expressing our individual opinion only. Our Constitution clearly says that India is a secular country. Every religion has its own tradition, its own ideology and wealth of philosophy. When the Hindus salute and bow before the sun God, they say in Sanskrit,

*Om Namō jawakusum Sankashyam,  
Kasyapayem mahadutim*

When the Muslim brothers read the 'Koran' they say :

*La Ilaha Illilah,  
Mohammad Rasullulah*

The Christian brothers say :

'There is none but one'.

The Sikh brothers say :

*Vahe guruji ka khalsa,  
Vahe guruji ki fateh.*

Our Constitution is true to this spirit. Sir, Islam has its own ideology. The Islam ideology stands for social justice to the humanity. But in spite of that I will have to speak up a few things while discussing this Bill.

Sir, the 'Koran' says that proper respect and regard should be shown to the women. There was a time when in the Arab countries infant Muslim female children used to be killed at birth itself. But Islam is incarnation of peace. Therefore the 'Koran' speaks of respect and regard for the woman. The 'Koran' also says :

\*The speech was originally delivered in Bengali.

[Kumari Mamata Banerjee]

*Insaan ke agar bas mein hai  
to sitare bhi aurat ke liye la sakta hai*

This shows how much regard 'Islam' has for the women.

*Muddai lakh bura chahe to kya hota hai,  
Vahi hota hai jo manzoor khuda hota hai*

Islam prescribes so much respect for the women. Sir, we do not want to interfere in any religion. I do not want to hurt the feelings of our Muslim brothers. Every religion has its own ideology and tradition... (Interruptions) Sir, these GM people always disturb and always try to establish their own voice. We have to say something they can't allow. This is not politics... I want to request Shri Banatwalla Sahib to withdraw this Bill of his in the interest of us all and in the interest of the community and let some such Bill brought forth by the Government itself. There the Muslim brothers may come forward in a more effective manner for providing protection to the Muslim women. We, the Hindu sisters and Hindu brothers are at your aid, but the Muslim brothers will have to come forward with a more progressive outlook with a brother mind because we are living in a modern age where a medieval thinking will not be effective. We are marching towards the 21st century why such things should exist today? Why a section should be hurt through discrimination? You should yourselves take the lead to ensure that nobody suffers. You come forward, we are welcoming you. If such a Bill comes from the Government side, we will all welcome and support that Bill so that the women may not be insulted in any manner and proper protection is provided to them.

I will not take much time as many members want to speak on this important Bill, I will only mention a few other things. I want to draw the attention of the Shri Banatwalla and other Muslim brothers to the case of Shah Banu Begum. Sir, Shah Banu was married in 1932. In 1975 she was divorced. She approached the court in 1978 for justice, when she get a divorce from the court. If I assume that she was 20 years old at the time of her marriage, today after 46 years when she has been divorced, she will be about 66 years old. Now at this advanced age, if you do not provide for her maintenance, if your Muslim society does not

arrange for her living on a permanent basis, then how can a helpless woman live and keep her body and soul together? You have the thin about it sympathetically. We do not want to interfere with or hurt the Muslim personal law. We do not want to by pass the 'Shariat'. But at the same time in the 21st century no muslim woman should feel that she is not getting equal justice, or equal opportunity. This sort of thing should not be there. We have seen that in Turkey, in Egypt, in Pakistan etc. only one law is in existence. Here I am not apposing the speech of Geeta. I liked her forceful speech and I welcome the same. But we should make certain while speaking, that no politics pollutes religion, we should speak with responsibility. Religion speaks differently and politics speaks differently. I want to draw your attention to one other thing. In today's 'Ananda Bazar Patrika', an important newspaper of Bengal, one news item has been published under the heading "Death of 'Rita Nargis'. This is a very sad event for us all. The reason for her death (murder) has been given as due to dowry." But I know that according to the 'Shariat' of Islam, girls not have to pay dowry. It is the boys who pay dowry for marrying girls. But when we see that even then such incidents are taking place or there is a likelihood of their recurring, then we must take protective measures before hand. Rita Nargis died on 19th July. But when her father appealed for a post mortem, he was not given any opportunity for post portem. Such things should not happen. A few days back in the market of Calcutta, a muslim woman was burnt to death. Therefore, we must see that the muslim women get protection and equal justice and equal opportunity. The Constitution assures protection to all religions. We who are here, belonging to different religions, we should all unite together, and rising above politics we should all strive together to achieve this goal. I will specially request Shri Banatwalla to withdraw this Bill and to ask the Govt. to come with a similar Bill.

That Bill should provide for freedom of speech for the women, and fresh opportunity to a right to live with dignity and equal justice and opportunity. We, the Hindu sisters are with you and will support you. There is no conflict between Hindu and Muslim. Working with full unity we should try to broaden our outlook in the 21st

century, that is the need of the hour. We should develop a modern attitude towards such matters. In the middle ages we have seen that the muslim women played important and influential roles. Think of Meherunnisa, Nurjehan, Hamida Bano Begum, Jehanara, Roshnera etc. who played important roles even in State matters in the middle ages. In India also we have so many eminent women. But today many muslim women do not get proper education even since they are living in 'Purdah'. Why can they not move forward with the modern times? It is your responsibility to look to that. With that I thank the hon. Chairman for giving me time to speak and I conclude my speech.

[English]

SHRI EBRAHIM SULAIMAN SAIT (Manjeri) : Mr. Chairman Sir, I rise to support the Code of Criminal Procedure Amendment Bill moved by my dear colleague Mr. Banatwalla on the 26th of last month.

Sir, I have a feeling that I am duty bound to support this Bill because it vitally concerns my religion, my belief and, together with this, also Shariat of Islam and the vital problem of integration of the country and communal harmony. Sir, it is very unfortunate that the highest judicial body of our country has gone wrong in many aspects in this case, in Mohmmad Ahmad Khan *v/s*. Shah Banu in appeal No. 103 (8) delivered on 24-4-85. This judgement is not only a flagrant violent of Muslim Personal Law, but it is also a violation of the secular character of our country. It is a violation of the fundamental rights of the people of this country and not only this, Sir, the seriousness of the judgement does not stop here. The judgement has erred also in wrong interpretation of the verses of holy Quran.

Together with all this the Supreme Court has completely ignored the intention of this august House. The same Criminal Procdedure Code Bill was under discussion in 1973 in this august House and together with Art 25 (1) Sec. 127(3) (b) was added. Sec. 127(3) (b) was added to the Criminal Procedure Code Bill that was under discussion then. Why was it done so?

SHRI SATYENDRA NARAYAN SINHA : Did you object to it at that time?

SHRI EBRAHIM SULAIMAN SAIT : I did object. My speech is there, in 1973 You can see it. I have moved Amendments also.

SHRI G. M. BANATWALLA : We even walked out. We moved amendments. It is there in the proceedings.

AN HON. MEMBER : But there was the consenses of the House and they passed it.

SHRI EBRAHIM SULAIMAN SAIT : Yes. But how? How the Bill was passed—I must go into details. The members seen to be so much ignorant about the past history of Sec. 127(3)(b). I was the person who opposed the provisions during discussion in the House. I rushed to the Prime Minister and told her that it is against the Muslim personal law and was also flagrant interference in the Muslim personal law. Representations were made to her. Delegations met her and the late Prime Minister, Shrimati Indira Gandhi understanding our feelings directed Mr. Mirdha, the then Home Minister who was piloting the Bill to introduce this particular section—that is Sec. 127(3)(b), which provided that if the Magistrate is satisfied. I quote :

“the woman has been divorced by her husband and that she received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order...”

The section was particularly introduced to protect the Muslim personal law. Mr. Mirdha was very very categorical when he said that ‘through Criminal Procedure Code we do not intend introducing any change in the Muslim personal law.’ This was clearly the intention of Mr. Mirdha the Home Minister. I will go into details later when I come to that point.

One thing I would like to point out very clearly. Our country is a secular country and the founding fathers of the Constitution had very wisely incorporated in our Constitution the fundamental rights chapter and in this we have Art 25 (1). What does it say? It quotes :

[Shri Ebrahim Sulaiman Sait]

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

This is the fundamental right given to the Muslims and other religious minorities of this country. Now, one thing I would like to say here is that they have got these fundamental rights enshrined in our Constitution.

MR. CHAIRMAN. The hon. Member can continue next time.

[English]

PAPERS LAID ON THE TABLE

Notification under Central Excise Rules, 1944

THE MINISTER OF FINANCE AND COMMERCE (SHRI VISHWANATH PRATAP SINGH) : Sir, on behalf of Shri Janardhana Poojary I beg to lay on the Table a copy each of the following Notifications (Hindi and English versions) issued under the Central Excise Rules, 1944 :

- (i) Notification No. 183/85-CE published in Gazette of India dated the 9th August, 1985 together with an explanatory memorandum making

certain amendment to Notification No. 85/85-CE dated the 17th March, 1985 so as to restrict the benefit of exemption available to goods falling under Item 16A of the Central Excise Tariff to rubber products (other than tread rubber and camel back).

- (ii) Notification No.184/85-CE published in Gazette of India dated the 9th August, 1985 together with an explanatory memorandum seeking to exempt the products *viz.*, tread rubber and camel back falling under tariff item 16A of Central Excise Tariff, upto a value not exceeding Rs. 7.5 lakhs cleared, for home consumption, by or on behalf of a manufacturer from one or more factories, or from one factory by or on behalf of one or more manufacturers, in any financial year, from so much of the duty of excise leviable thereon as is in excess of 12% *ad valorem*.

[Placed in Library. See No. LT-1299/85].

18.01 hrs.

*The Lok Sabha then adjourned till Eleven of the Clock on Monday, August 12, 1985/ Sravana 21, 1907 (Saka).*