

LOK SABHA DEBATES

LOK SABHA

Tuesday, November 19, 1985/Kartika 28,
1907 (Saka)

The Lok Sabha met at Eleven of
the Clock.

[MR. SPEAKER in the Chair]

MEMBER, SWORN

S. Tarlochan Singh Tur (Tarn Taran)

[English]

MR. SPEAKER : Now Question 21.
Shri Ananta Prasad Sethi. He is not available.

[Translation]

SHRI RAM NAGINA MISHRA : Mr. Speaker, Sir, I want to raise a point of order. I want to know from you whether anybody carrying a weapon can enter the House. I have seen that the hon. Member who has taken oath just now is, perhaps, carrying some weapon by his side. You give a ruling in this regard whether anybody can enter the House carrying any weapon.

MR. SPEAKER : That is not a weapon; weapons are not allowed in the House nor anybody has come with any weapon.

[English]

SHRI INDRAJIT GUPTA : You have to decide it in the case of *Kirpan*.

[Translation]

SHRI RAM NAGINA MISHRA : I have seen that the hon. Member who was taking oath just now is carrying a weapon by his side whether it is *katar* or some other weapon. Therefore, you give your ruling so that we could follow it in future.

MR. SPEAKER : In this case, it is constitutional and religious. He is not carrying with him any other weapon.

SHRI RAM NAGINA MISHRA : Provision in this respect exists in other religions also. Will you allow them also ?

MR. SPEAKER : Only that which has been provided for in the Constitution would be allowed.

[English]

PROF. MADHU DANDAVATE : According to the Constitution, *Kirpan* is permissible; and therefore, it cannot be objected to.

[Translation]

MR. SPEAKER : *Kirpan* is permissible according to the Constitution, we are not talking about sword, etc. Only that religious symbol which is allowed in our Constitution can be permitted.

Question No. 22.

ORAL ANSWERS TO QUESTIONS

[Translation]

Amendment of Muslim Personal Law

*22. SHRI AMAR ROYPRADHAN :
SHRI KALI PRASAD PANDEY :

Will the Minister of LAW AND JUSTICE be pleased to state :

(a) whether Government propose to amend the Muslim Personal Law;

(b) if so, the reasons therefor; and

(c) when necessary legislation is proposed to be introduced.

[English]

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ) : (a) to (c). No proposal for amending Muslim personal law is under the consideration of the Government. The consistent and declared policy of the Government has been that no changes in the personal law of a minority community should be made unless the initiative therefore comes from the community itself and there is an ascertainable consensus of the community concerned for such a change.

SHRI AMAR ROYPRADHAN : Sir, the Supreme Court's decision in the case of Shah Bano now has turned into a very touchy and sentimental issue. I do not know why Government is dragging on this matter for a long time. I say this because of the fact that in the last Shariat meeting, they have demanded not only an amendment to Section 125 of Cr.P.C. but also exemption of Muslims from the scope of Article 44 of the Constitution of India, with the argument that Muslims are totally different, and have their own individuality and identity and that they live only under the holy direction of the Shariat.

From religion, it has turned now to language also. You will find that in the Shariat conference proceedings of the particular meeting, they have said : "The end of the rule of the Nawab of Hyderabad means encouragement of Hindi in place of Urdu." Mr. Speaker, you will agree with me that when Muslim fanaticism is working, at the same time...

MR. SPEAKER : Who says that Urdu is not given encouragement ?

SHRI AMAR ROYPRADHAN : I have got the papers. It has been said in the Shariat Conference, whatever it may be.

MR. SPEAKER : Some fool might have done it.

SHRI AMAR ROYPRADHAN : I am quoting from the *Indian Express* dated 8 October 1985.

[Translation]

MR. SPEAKER : Some body might have written that.

[English]

SHRI AMAR ROYPRADHAN : Whatever it may, my point is that such a sentimental matter should not be dragged on in this manner. On the one hand the Muslim fanaticism is at work and on the other, the Hindu fanaticism is also spreading its wings, which is dangerous from the national integrity point of view. I would like to know from the hon. Minister as to how long you can drag on this matter. I would like to know whether the Government would stick to the judgment of the Supreme Court or whether they would amend Article 44 of the Constitution of India and Section 125 of the CRPC. I would like to have a clear 'yes' or 'no'.

SHRI H. R. BHARDWAJ : I would like to tell the hon. Member that he must understand the correct perspective of Section 125 CRPC. It is not touching any personal law. This Section 125 is a whole chapter relating to maintenance of children, maintenance of parents and maintenance of wives who cannot maintain themselves. If you correctly appreciate this Section and I wish others also appreciate it, it is a social security section. If there is a wife or a lady who is a former wife of somebody who cannot maintain herself, if she is in such a helpless condition and if she is dependend on our society, do you think that we will give no relief to such ladies ? This is what Section 125 provides for. Take the case of children, for example. They may be children of nobody but they remain the children of the country and therefore it is the social obligation of the country to maintain them. Take the case of old and infirm parents. Parents deserve protection

because they bring up the children and educate them, but finally if they are deserted, then the law provides that they can go to the court and have the relief from the court. Now these three categories of people are protected under Section 125 and it is something which a dignified and civilised society must have. All religions accept it. So far as the case of Shah Bano is concerned, it is a verdict of Supreme Court. If you kindly go into the history of the Shah Bano Case, you would find that this was not the only case that the Supreme Court had taken. Earlier two decisions were also there and nine judges have participated in these judgments. It is not as simple as you say that merely a controversy, a political controversy will change the decision of the Supreme Court. A debate is going on in this very House. We are listening to every member who speaks on this issue and our mind is categorically open. If a consensus either way emerges, then we can look into it. At the moment, there is no question of changing the Supreme Court judgment. Government cannot do it. The Supreme Court judgment cannot be reversed by the Government.

SHRI AMAR ROYPRADHAN : Mr. Speaker, Sir, this sort of a sensitive matter should not be dragged on for a long time in the interest of the country. I would like to know from the hon. Minister whether the Government would like to sit with the Opposition parties to come to a consensus on this issue.

SHRI H. R. BHARDWAJ : It is well known that the Opposition parties are also speaking on the Bill by Shri Banatwalla.

PROF. MADHU DANDAVATE : Shri Banatwalla himself is an Opposition leader.

SHRI P. KOLANDAIVELU : Today being the 68th birthday of late Shrimati Indira Gandhi, the Government has to take a vow...

PROF. MADHU DANDAVATE : Seek information whether it is the birthday.

SHRI P. KOLANDAIVELU : Surely it is her birthday. The Government has to take a vow that the injustice that is being done to the womenfolk should be stopped once for all. We see so many laws with

regard to maintenance and also with regard to succession to property for different religions at different levels. Why cannot we bring a uniform civil code for all these matters? I would like to know whether Government will come forward to do it.

SHRI H. R. BHARDWAJ : I am happy that the hon. member has reminded us today of the birthday of Mrs. Indira Gandhi. I would like to tell him that it was she who brought all the legislations 1983-84. We amended IPC and CRPC, specially IPC. They were inserted where the presumptions were raised that if there was a dowry death the presumption would be against the person who had caused that death. About Family Courts and several other measures, it was she who was very very keen to ameliorate the conditions of women. Now, with regard to improving the lot of women, uniform civil code is the cherished goal of the Constitution. Everybody knows Article 44 of the Constitution. But, so far as uniform civil code is concerned, hon. members will also appreciate that this country has diversity and unity both and wherever the question of touching any personal law is concerned, we have always accepted and the House has also accepted it by consensus—whatever governments were in power, they had always gone in by consensus of the communities who were residing in this country. If you try to touch some sensitive issue of a particular community, then you are not doing good to the country. Let us be very very dispassionate about this issue; and we should not go in a hurry. We know, when some cherished goals are to be achieved, then there are initial difficulties. I have already submitted that the initiative with regard to that must come from the community which wants a change. I am a Hindu. I can talk about my religion, but I cannot better advise on other religions because I may not be acquainted with that brand of religion.

SHRI JAFFAR SHARIEF : I am glad that the government is very categorical in its statement that it has no intention to touch the personal law. My friends on the other side have reminded us of the birthday of Mrs. Indira Gandhi and they are wanting certain measures to protect women folk. Perhaps there is no personality or the government which has done so much for women, children and weaker sections as Mrs.

Gandhi had done. But, today, in the Shah Bano's case, I am finding that many people are more sympathetic towards Muslim women than their own women. (Interruptions) This is very very strange. (Interruptions) All women are alike. That is what Mrs. Gandhi had done. But in the context of today's controversy, I have been finding people who did not cry whenever there was an attack on Muslims. But, today, they are suddenly concerned about Muslims. It is all right that he has said that the Supreme Court verdict has come and so many other judgments may be there. But there is a feeling that, somehow or other there is a pressure building up on the government to see that a debate is created and this verdict of the judiciary is being taken into the debate and to see that the government is pressurised to come some sort of a decision. (Interruptions) to create an atmosphere of insecurity, injuring the feelings of the minorities. Therefore, will the Minister categorically say that, whatever the Congress Party has committed in their election manifesto, they would stick to it and they will not interfere with the personal law?

SHRI H. R. BHARDWAJ: I may repeat—I have been repeating—there is no question of interfering in any personal law, much less with the Muslim Personal law, because it concerns a minority. The question is, if you look at Section 125, as a lawyer I personally feel that there is nothing wrong with this Section, because this section protects all women and this is a social security measure.

SHRI INDRAJIT GUPTA: He has not objected to that.

SHRI H. R. BHARDWAJ: That is what is conveyed in this Section. I will further enlighten hon. Members. What is the point of issue in Shah Bano's case? A certain amount was granted to her by the Supreme Court. I would say, all this controversy is political—wherever it is.

SHRI BHAGWAT JHA AZAD: We are in sympathy with all women.

SHRI G.M. BANATWALLA: Mr. Speaker, this Section 125 was adopted when the Criminal Procedure Code was revised in the year 1972. At that time, this Section 125 as it stands today came into picture. I am

not going into the history. The Hon. Minister knows it very well. At that time it was pointed out that this Section 125 is a serious intervention in the Muslim Personal Law as far as the maintenance of a divorcee's rights are concerned. A delegation also met the then Prime Minister our late lamented Prime Minister Shrimati Indira Gandhi, and she accepted the point of view presented by that delegation of Muslims, and is a result of the instructions of the late Prime Minister Shrimati Indira Gandhi, the matter was reopened by her in Parliament and a clause was added—Clause (b)—to Sub-Section 3 of Section 127 and the then Minister of State for Home Affairs Shri Ram Niwas Mirdha, specifically and categorically said in this House that it was not the intention of the Government or this Parliament to try to interfere with the Muslim personal law through the back door of the Criminal Procedure Code. So, that is how the situation stands. Now, however, a judgment has come in the Shah Bano's case and it is a widespread and almost unanimous feeling among the Muslims both men and women—apart from some scattered here and there—and it is a most unanimous opinion among the Muslims, among Muslim jurists also that in this verdict in Shah Bano's case the Court has grievously erred on the interpretation of the Shariat and the Muslim personal law and therefore, an encroachment has taken place, an interference has taken place, change has taken place in the Muslim personal law, as a result not of the Government, but as a result of the decision of the Supreme Court.

Now keeping this in view, my question is, that when the Supreme Court has grievously erred and according to us an interference has taken place in the Muslim personal law, will the Government, therefore, come forward either to support my Bill, or bring one on its own part, or initiate some legislation in order to protect the Muslim personal law as it is properly understood, specially in view of the fact that there are adequate provisions in the Muslim personal law for taking care of the Muslim women and divorcees and, therefore, in this particular perspective of the whole matter, will the Government come forward to act on its own, to act up on its own words for setting aside... (Interruptions)

MR. SPEAKER : Mr. Banatwalla, this is too long, please conclude.

SHRI G. M. BANATWALLA : .. this impression and to see that according to the Muslim personal law the rights of women are protected ?

MR. SPEAKER : This is irrelevant. I must stop you. I cannot allow you like this.

SHRI G. M. BANATWALLA : It is the most pertinent question. I must agitate and emphasise that it is not the Government that interfered, but it is the Court that has interfered. Therefore, will the Government come forward to do something. Until and unless the question is...

MR. SPEAKER : You have already explained.

SHRI G. M. BANATWALLA : You are acting in a most unjust manner. This is not fair.

(*Interruptions*)

MR. SPEAKER : You are becoming unjust. You are taking undue advantage. You explained everything. Sit down now. Take back your words. Apologise.

SHRI G. M. BANATWALLA : There must be a reply. Sir, you must protect my rights.

MR. SPEAKER : I am protecting. You are misusing the powers I have given you.

SHRI G. M. BANATWALLA : There is no misusing. I never misuse. Look into my records...(*Interruptions*)

MR. SPEAKER : You are doing it now. You should withdraw your word 'unjust'. (*Interruptions*)

SHRI G. M. BANATWALLA : That was my feeling and I am true to my feeling. (*Interruptions*)

MR. SPEAKER : You were unnecessarily prolonging it. Have you withdrawn those words ?

SHRI G. M. BANATWALLA : Certainly not. That is my feeling. Take action against

me. I felt that you were being unjust to me... (*Interruptions*)

MR. SPEAKER : I gave you the chance, but you would not just listen to me. I repeatedly warned you and still you did not care. That is why, I said that...(*Interruptions*)

SHRI G. M. BANATWALLA : I was putting the matter in the true perspective.

MR. SPEAKER : No question of that. Everything was explained. I understood clearly what you were saying. You were just going on repeating. That was the whole difficulty...(*Interruptions*)

SHRI G. M. BANATWALLA : The House was under grievous misunderstanding... (*Interruption*)

MR. SPEAKER : The House clearly understood what you said. And I know what you said.

SHRI G. M. BANATWALLA : You must protect my right...

MR. SPEAKER : I tried to protect but you took the liberty and misused the time of the House. You must withdraw your words.

SHRI G. M. BANATWALLA : If you ask the Minister to reply to my question, then I will feel that justice is being done to me.

MR. SPEAKER : I have already asked him to reply.

SHRI G. M. BANATWALLA : Then I feel that justice is being done to me.

SHRI H. R. BHARDWAJ : Shri Banatwalla is a very senior Member of Parliament. We have had very useful contribution in Parliament from him. Today was really surprised seeing him charged with emotion. He should leave it to the large-heartedness of the Chair.

You were kind enough to tell me that this section was amended at the instance of the Muslim minority. That would itself reveal how careful we are in dealing with the minority matters. At that time whatever sentiments were expressed, they were incorporated in the Code of Criminal Procedure

in 1973. Now you yourself say that the highest court of the land namely, the Supreme Court has created some sort of a hysteria in your mind, on a matter in which a constitutional bench of the Supreme Court said something in which they have incorporated certain quotations from the Holy Quran and the law of Shariat and some people in the minority community are agitated about that. Everybody knows it. But the question is that this is a system in which the Supreme Court lays down the law of the land. If the decision of the Supreme Court has created some misapprehension, you are yourself raising that in this House. In a democracy you always debate the things. In the House we never discuss the judgement. Once the judgment from the Supreme Court comes, we obey it normally, speaking for myself and the Government. But since it is a question relating to the minorities, we are discussing it and you are in the midst of the debate. If you want that it should be short-cut, that would not be better. In a democracy matters must be discussed time and again. A decision in haste will neither be in your interest nor in my interest.

SHRI E. AYYAPU REDDY : For expressing his views very clearly, candidly and logically the hon. Minister was ghered at Hyderabad. What is the reaction of the Government on the gherooing of the hon. Minister for expressing his views on the floor of the House? What are the steps taken by the Government to see that fanaticism does not browbeat and stifle the voice of sanity amongst the minority.

SHRI H. R. BHARDWAJ : In political life, the people do face demonstrations. I think we do not take note of those things.

SHRI SHANTARAM NAIK : Sir, in the light of the issues related to the Muslim Law and the Personal Law as envisaged in the Constitution of India, have the Government of India made any study with respect to the law existing in Goa, Daman and Diu? There is a uniform civil code existing in the Union Territory of Goa, Daman and Diu, so, I would like to know whether the Government of India have made any study with respect to that.

SHRI H. R. BHARDWAJ : As I submitted, and since the hon. Member comes

from Goa, he knows it also, that the type of society we have in Goa is a very large-hearted society.

Setting up of Mangalore and Karnal Refinery Projects

***23. SHRI V. S. KRISHNA IYER † :**
SHRI HANNAN MOLLAH :

Will the Minister of PETROLEUM AND NATURAL GAS be pleased to state :

(a) whether there is any proposal before Government to take up Mangalore and Karnal Oil Refinery Projects in joint sector during the Seventh Five Year Plan;

(b) if so, whether negotiations have been completed in this regard; and

(c) the time by which these oil refinery projects will be taken up?

THE MINISTER OF STATE OF THE MINISTRY OF PETROLEUM AND NATURAL GAS (SHRI NAWAL KISHORE SHARMA) : (a) to (c). The possibility of setting up these refineries in the joint sector is being explored. A final decision in this regard is yet to be taken.

SHRI V. S. KRISHNA IYER : Sir, the answer given by the Minister is very very vague. I want a very definite answer whether the Government of India has taken a decision with regard to Mangalore Refinery. At the request of the Government of India, the State Government has already proceeded in the matter. Nearly one thousand and four hundred acres of land has been acquired and water and electricity have been assured. Recently, the Chairman of IOC has said that IOC will hold only 26% equity in Karnal Refinery, but no word has been said about the Mangalore Refinery. I would like to know whether the Government of India have taken a decision to set up a refinery in Mangalore and if so, whether any provision has been made in the Seventh Plan for this purpose. I want a categorical answer from the Minister. It should not go in the way in which the Vijayanagar Steel Plant has gone in Karnataka. I want a categorical answer that the Mangalore Refinery will be set up, just as they have taken a decision with regard to the Karnal Refinery.