

16.02 hrs.

## INDIAN PENAL CODE (AMENDMENT) BILL\*

(Insertion of new sections 298A to 298C)â€”contd.

Title: Further discussion on the Indian Penal Code (Amendment) Bill, 2003 (Insertion of new sections 298A to 298C) moved by Shri G.M. Banatwala on 14 August 2003. ( Bill was, by leave, withdrawn).

MR. DEPUTY-SPEAKER: The House will now take up Item Number 44. Shri G.M. Banatwalla was on his legs. You may deliver now your unfinished speech.

SHRI G.M. BANATWALLA (PONNANI): Sir, I thank you very much for giving me this opportunity to speak. The Bill that I have moved is a very brief and simple Bill that deals with the serious question of encroachments on wakf properties. The encroachments are widespread and are on the increase. They are almost done with impunity which further encourages the encroachments on the wakf properties. As I have already submitted, the encroachments on wakf properties are an offence against religion. They are serious offences against the society itself because they adversely affect the capability and the extent to which the wakf can carry on their charitable objectives without any distinction of religion, class, caste or creed.

These wakfs have charitable objectives. They come for the benefit of the society even without any consideration of religion, class, caste or creed. They are there to help the needy sections of the society, to whichever class, caste or creed they may belong. If their properties are encroached upon with impunity, then the extent to which the wakfs can serve the needy sections of the society is adversely affected. Therefore, encroachments on wakf properties is a serious offence against the society.

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22.8.03

16.04 hrs. (Shri P.H. Pandian *in the Chair*)

There is no authentic data with respect to the extent of the encroachments. But we all know very well about it. It is a ground reality that the encroachments are widespread and they are on the increase.

We have had Reports of the Joint Parliamentary Committee on Wakf and some of these Reports have already been laid on the Table of the House. They present a very pathetic picture. There are encroachments not only by the private parties resulting into even commercial activities on the land and properties belonging to the Wakf but there are also encroachments by the Central Government, the State Governments, the local bodies and the public sector undertakings.

I will just give one illustration. Some time back, a survey took place in Delhi and we found that Delhi alone has around 1,950 Wakf properties. According to one Survey that was conducted, nearly 50 per cent of the properties surveyed are under encroachments. We should realise the extent to which the Wakf are incapacitated from addressing the needs of the poorer sections of our society. Therefore, I say that the encroachments are a serious offence against the society itself. Sir, it is shocking to look at the situation in Delhi. The Central and the State Governments have encroached on as many as 362 properties out of 1,117 Wakf properties surveyed in Delhi itself.

Now, Mr. Chairman, Sir, some time back, the then Prime Minister, Shrimate Indira Gandhi had proposed a formula with respect to encroachments on Wakf properties that have been made by the Governments, local bodies and the public sector undertakings. I do not want to go into the details of that formula. It is a matter of record. The JPC on Wakf have also mentioned them in their Reports. But, Sir, it is unfortunate that this formula has been jettisoned and there is hardly any action on this formula suggested by the then Prime Minister Shrimati Indira Gandhi to address the question of encroachments by the official authorities. As many as 23 Wakf properties in Delhi itself are under the control of the Central Government and they were sought to be transferred to the Delhi Wakf Board. The matter went to the court. There were restraint orders and, unfortunately, a long period has gone by and the matter is still pending. No serious effort has also been made to get the stay orders vacated. There is total apathy with respect to the follow-up of the pending matter before the courts. I appeal to the Government to be sincere in this matter.

We have to follow it up seriously and see that the courts are persuaded to give their findings and judgements as soon as

possible so that this important matter is addressed. It is very sad that years and years have gone by, fresh stay orders are being given, but no sincere efforts are being made either to get the stay orders vacated or to get the cases expedited and get these properties transferred to the Wakf Board as they belong to it.

Sir, in addressing the question of encroachment on Wakf properties, we can also make use of the Public Premises Act. There are recommendations to this effect from the Joint Parliamentary Committee on Wakf. A few Reports have been laid on the Table of the House. For evictions on Wakf properties, we can resort to the Public Premises Act if it is made applicable. I understand that the Government of Karnataka has, by its legislation, extended the Public Premises Act to the Wakf properties. It is necessary that the Government give its attention to this matter. It must receive active consideration from the Government and an expeditious decision should be taken on this matter.

Sir, we have this question of the encroachments on the Wakf properties and the Reports of the Joint Parliamentary Committee on Wakf say that the State Governments or the local authorities or the police and the administrative authorities do not even cooperate with the Wakf Board in getting these encroachments removed. These are not ordinary encroachments. These are encroachments, as I have been emphasizing, on the Wakf properties which are for the benefit of the society and, therefore, we must be very serious about them.

Sir, there are punishments for ordinary thefts, but here, theft takes place of the land and properties of the Wakfs which are for the service of the society and the matter is not taken seriously. The Bill that I have moved seeks to provide for criminal liability and deterrent punishments to those responsible for the encroachments.

**MR. CHAIRMAN :** Shri Banatwalla, theft is committed in respect of a movable property, not in respect of an immovable property.

**SHRI G.M. BANATWALLA :** Sir, I thank you for that. But that is all that I have been saying. That is exactly what I have been pleading before the House that the apathy on the part of the Government must go. They must become serious about this particular problem which the society faces.

Sir, we do not have enough social security schemes to serve the society and we do not do anything to help the organisations and the Wakfs that are there which can function and which do function as a type of social security organisation for the society. I can understand the financial constraint because the Government may not be in a position to come forward with comprehensive social security schemes. A few of them are there. But, at least, let us come forward sincerely to strengthen the Wakfs which are there for the service of the society and which are in the form of social security for the needy sections of our society. They are doing the work without any consideration of religion or caste or creed. Educational help is being given. Medical help is being given. How many am I to count here before the House? Let us try to help them out.

I do understand that the JPC's full reports will be coming. They will be giving their recommendations in respect of detailed measures. But in the meanwhile, we cannot turn a Nelson's eye to the encroachments that are going on on the land and properties of the Wakfs.

I have been saying that the Government must see to it. The problem is that the Wakfs Act has to be implemented by the State Governments. I understand that. The state of affairs with respect to the implementation of the Wakfs Act is extremely sad. It is good that we now have the JPC for Wakfs and they are seized of the problem and are doing considerably good work. But in the meanwhile, the Government has to come forward to see to it that the local administration, the Police, the State Governments and, in the case of Union Territories, the Central Government themselves should extend every help to the Wakf Boards and the Wakfs to get these encroachments removed. I do not think that there can be any two opinions on this vital question. There is considerable commercial activity that goes on with impunity on these Wakf properties. Many a time, the Wakf Boards do not have sufficient resources with them in order to go after those who commit this grave criminal offence of encroachment on Wakf land and properties.

My Bill is very simple. It proposes a clause in a chapter that is to be added to the Penal Code as '296-B'. Therefore, about encroachments, we have to take a serious view and give deterrent punishment, a punishment with imprisonment of either description for a term that may extend to one year or with fine or with both.

I feel sorry that I have provided in this clause that the punishment for encroachment on Wakf land is a criminal offence and apart from the civil matter, there can be either imprisonment or fine or both. I would have very much liked not to have the point with respect to punishment with a fine. Such a grave offence, as I said, is an offence against the entire society. That must be punished with a deterrent punishment. But then, I thought, let the matter rest with the courts. Let the courts also apply their minds to the facts before them and then decide upon the punishment that can be there so that there is justice for the Wakf and other problems and other considerations can also be there.

Mr. Chairman Sir, as I said, the Bill is very simple. It is very brief. It is on a matter of serious importance. We need to rise and take stock of the situation. As the day passes by, everyday there is encroachment upon land and properties of the Wakfs with impunity somewhere or the other. Let us address ourselves to this particular question. We cannot allow these Wakfs created to be so liquidated by those irresponsible. We find big hotels, large commercial activities also going on on these Wakf properties.

May I mention a number of them in this very capital city of India, that is, Delhi? But then my idea is not to address myself to individual cases. I have no grudge against individuals. It is a big social problem and a social question that is there

before us. In the name of justice, in the name of secularism, in the name of the welfare society that we propose to have, I commend my Bill for favourable consideration of this House. The Bill is so simple, so brief and on such a serious matter that I am sure, it should meet and will meet with approbation and approval from every section of this House.

With these words, I request the House, I implore upon the House, I besiege the House to adopt the Motion for consideration of the Bill and proceed further for the adoption of the Bill itself.

SHRI ANADI SAHU (BERHAMPUR, ORISSA): Thank you, Mr. Chairman Sir, I am fortunate that a legal expert is now the Presiding Officer when we are discussing the Wakf Act and certain provisions which Shri G.M. Banatwala very carefully, assiduously and in a knowledgeable manner has presented to this House.

Mr. Chairman Sir, I fully agree with the intention and concern of Shri G.M. Banatwala, but I do not agree with the procedure that he thinks would be appropriate to get these encroachments evicted and the persons who have done it to be severely dealt with.

You are quite aware, Mr. Chairman Sir, that in civil procedures, bringing in the criminal Act is a dangerous procedure and it has not be encouraged at all. The Wakf Act is a genuine Act and it is a very distinct Act in India where it does not encourage any encroachment by any other Act itself. That is a very good Act itself and does not encourage anything else.

Now, it is a fact that Wakf properties have been encroached upon. There are two reasons for this. One is that the descendants of the Wakifs are mainly responsible for encroachment of the properties relating to Wakf. Properties have been bestowed by persons in those days and now also for purposes of religious work as per the Muslim Law.

After many years, as he was referring to some 50-60 Wakf properties in Delhi, those have been bestowed for certain specific religious work. To invoke the Public Premises Eviction Act, at this stage, is not proper at all. It relates to the religious work only. That is what has been indicated in, as my knowledge goes, Section 3 (J) of the Wakf Act, 1995. It says a Wakf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law. I agree with him that commercial purpose use of Wakf property is not proper at all.

Sir, I being an atheist, I very seldom go to places of worship. After 40 years I went, under compelling circumstances, to see *Sheikh Salim Chishti's Dargah* at *Fatehpur Sikri*. I was shocked to find that there is encroachment inside of people who say that they have a right to stay there or take up work inside. The entire edifice is now a place of encroachment.

I went to Nagoor in Pondicherry and the Wakf's descendants are at loggerheads among themselves. It is a question of getting a share of the property and using it for one's own benefit. That is the bane of any society or, for that matter, any group of people and there is no exception in Muslim groups of people. But, what happens is that the purpose for which these have been bestowed or bequeathed is being lost sight of. How to get over these things, that is the most important aspect now we have to discuss, instead of amending the Indian Penal code to bring a deterrent punishment for encroachments.

Mr. Chairman Sir, you are quite aware that Sections 297 and 298 of Chapter 15 of the Indian Penal Code relates to offences against religion. Shri Banatwalla is referring to Section 298. This relates to offences against religion. Encroachment *per se* is not any offence against religion. It is a greed of a human being but it does not offend any religious practices. To insert Section 298 (A) to (C) etc. in my opinion is not proper at all. The Statement of Objects and Reasons, which Shri Banatwalla has very carefully drafted and presented to this House, indicates an encroachment of Wakf Property is an offence in the nature of offence relating to religion and an offence against the society. I beg to differ with him. Any encroachment cannot be an offence against religion, as indicated in the Indian Penal Code. Yes, it is a fact that there are certain civil laws where criminal action has been indicated. In case of Wakf property also, where there is encroachment, civil law can be amended to put in punitive action. I will give suggestion on the Wakf Act itself. This has been also discussed in the JPC which he was referring to. Shri Sikandar Bakht was the Chairman of the JPC, Shri Lal Bihari Tiwari was there. Shri Banatwalla was also a Member of that team which had gone into the details of these things.

What I would suggest is this. Now the procedure in the Wakf Act is if there is any encroachment the Chief Executive Officer will cause an enquiry and in case it is to be removed then he will take it up for removal of the encroachment, as has been indicated in Section 54 of the Wakf Act. He goes to the SDM. Now, the question is if, at all, we have to change the procedures, we must give some punitive powers and civil procedure powers to the Chief Executive Officer so that he takes action to remove the encroachments. We have had very good people. We had *Sufi* saints. The *Sufi* saints brought about tolerance and a secular nature of preaching in India and the musical way of teaching has influenced many writers, many poets in India and many people had bequeathed properties for the Sufi saints. We have a number of *dargahs* and all that in many places also. The *Shias* and *Sunnis*, different groups of people have got these properties.

And it is unfortunate that the *Ahmadiyas* have not been included in that group of *Shias* and *Sunnis*, where a mention has been made in the Wakf Act itself about *Shia* property and *Sunni* property. Now, *Ahmadiya* groups have come up. And *Ahmadiyas* are very liberal people. I have had the knowledge of *Quran* from the Oriya alphaphet of the *Quran* written by the *Ahmadiyas* with Oriya translation. It is a very good book and very good preaching but they have not been included in this Wakf Act itself. It is also now time that the *Ahmadiyas* also should be included as properties are being given to them and they should also come within this Act.

As I was telling, Sir, section 54 needs to be amended so as to ensure that any property of the Walf – wakf is the bequeathal, a trust – any property that has been encroached can be taken over without referring it to the SGM to give it back. Now, the CEO will have an inquiry and then, if the encouracher does not vacate, he goes to the Sub Divisional Magistrate for orders to vacate the property like a Civil Procedure Code. That takes lots of time. So, instead of going into the Indian Penal Code, where there are sections for trespass, section 448 or even section 144 of the Criminal Procedure Code can be adopted for certain action. But to insert 298 A to C is not proper. And as he has indicated in his Bill itself, he has asked for deterrent punishment of three years and like that. Now, as per the Criminal Procedure Code, if there is any punishment for three years, it becomes cognizable and non-bailable. Now, for any encroachment, if you say that deterrent punishment should be given, that means, everybody who has been in that place for years together, may be for whatever reason, may be the wakf or his descendents have allowed these people to stay there. To take action and to arrest him, and to take deterrent action, I think, is not proper at all, in my view.

So, I would suggest that the concern must be appreciated, the concern of Shri Banatwalla in presenting this Bill must be appreciated but in appreciating this Bill, let us not create any punishment part of it in a deterrent manner.

Sir, there is a Latin proverb, which says:

**"Summum jus**

*Summa injuria"*

**If you have too much of law, it will create too much of injury to the person concerned. Let us not create any injury to the people. Let us not create any atmosphere where for any type of civil procedure act, criminal action is taken. So, I would suggest, Sir, that a re-thinking should be given to this Bill itself and section 54 of the Wakf Act should be amended in a proper manner giving more power to the CEO or in case of necessity to the Tribunal itself to ensure that all properties which have been encroached are handed over and the appeal stages should be limited to two only.**

**Supposing the Tribunal gives some Order and if they go on putting appeals and all that, I think, it may take hundred years. The appeal stages should be limited to two. And then only, the encroached properties can be handed over to the wakf people. Many Muslim people have also given their property. I have seen in the Nagoor area in Pondicherry that the then Chieftain of the Marathas, who was a Hindu, bestowed lots of properties to the durgah. There are many other places where properties have been bestowed. There is a provision in the Wakf Act also that the properties or the proceeds of the properties can be used for secular purposes.**

**In Cuttack, where I was SP and I was an MP also from that place, I have seen a beautiful hostel and a beautiful college – Abul Kalam Azad college – has come up based on the property derived from the wakf properties, and that is running very well. So, lots of things have to be done. Now it is time that the Wakf Act itself is amended to give a chance for those people who have been running this property. The Mutawalis are also creating problem. They have to be properly harnessed and this harnessing can be done if the Muslim community itself comes up in a big way to ensure that the Wakf Act is completely overhauled.**

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Thank you, Mr. Chairman, for giving me this opportunity to speak on the Private Member's Bill to amend Section 298 the Indian Penal Code and to add Sections 298 (a) and 298 (b), which is a thought of our senior Member Shri Banatwalla on the feeling that the Wakf property should be protected because the gift of a religious person, a Musalman, to the community and also to the public is to be protected as a property of the community.

Now, encroachment and trespass are activities done everyday whether it is a religious property, public property or personal property. Therefore, trespass or encroachment is a way of life today. A rich man trespasses into his neighbour's property; a muscle man trespasses into another man's property. They are protected by their muscle and money power. The poor man is not protected with shelter during the night and from nature. He is removed by law on the basis that encroachment is a nuisance for the public.

We are protecting community property by way of social conscience that the property is for the community and for

the larger mass. If that feeling is there, whether it is a Musalman's property, a Hindu's property or a Christian's property, it would be protected. The morality of the total community when it comes to saving the property for the purpose of the public is nowadays going down but at the same time simply having an amendment will not help in bringing conscience to the people.

Now, plenty of properties of villagers and in urban areas are encroached. Our waterways are encroached; our drinking water tanks and irrigation tanks are also encroached. There is encroachment everywhere. We have got some knowledge from the British on the system of preparing land records. Every piece of land used to be properly surveyed and was classified under the British system. We followed that system but the person who is responsible for surveying and maintaining records becomes the first person to encroach upon the property. This is why the law is not in a position to protect the public and also the person whose property is encroached.

This is a Bill which wants to give some more weightage for the religious feeling. For this purpose, I feel, this type of an amendment need not come because only when there is an insult to the religion that Sections 295 to 298 of the Indian Penal Code would apply. The religious aspect need not be looked into here. Whether it is a Wakf property or a property of Hindu religious endowment or any religious property, it should be seen as a property of the community and an asset of the community. If that is done, as hon. Member Shri Banatwalla has said, the laws relating to protection of public properties of the State Governments like the Public Premises Act could be amended so that religious properties are also protected in the same way. Normally the law says that an idol in a temple is 'dumb'. It is the temple's property. The temple's property could be protected only by a trustee, who is a human being. If the trustee is not at all interested in protecting the temple or the deity, the law cannot help it. Therefore, the person who is protecting the interests of the wakf property should be very cautious, should see that the encroachments are not there and the criminal trespassers are not there. If any criminal trespassers are there, then the Indian Penal Code is ready to protect them by Section 441 and other Sections. Therefore, the intention is important.

When you go into the Indian Penal Code, two things are important. One is, whether the mind is set to have a criminal intention. Second is, how they are starting to act it. Now, the thing is, the whole society and the individual persons, who have got the money, muscle power and other powers, they have got the intention to go into the property and enjoy the property. They do not want to hurt others but they want to enjoy the property. Therefore, creating an atmosphere where there is an encroachment, whether it is a public property, religious property or the private property, should change the set of the mind to encroach upon the property. They should be exposed to the public and say that their rights are curtailed and they will be punished in different ways.

Hence, enactments are made now like the Registration Act, Survey Act, Settlement Act and Boundaries Act. These are all Acts. They can be very easily enforced if the wakf property is classified as a wakf property and survey number is given and it is registered under the Registration Act. Then, the law will take its own course. They should protect the property according to the law which is already available on both Civil and Criminal sides.

This enactment may be a thinking of Shri G.M. Banatwalla. But, at the same time, we should not create the religious differences on the basis of property. We are already having a burning House where the religious feelings are created then and there. This type of wakf property, which is not looked after properly by the Wakf Board, cannot be taken as a criminal offence and it should be protected only as a civil encroachment. It has to be properly looked after by the person who is in-charge of it because the Wakf Act itself protects the interests of the property.

Sir, with these few words, I request the hon. Member that instead of putting it in the light of the religious insult, it should be taken as an encroachment of the public property, the property which is used for the community as a community asset.

SHRI HANNAN MOLLAH (ULUBERIA): Mr. Chairman Sir, I thank you very much for giving me an opportunity to speak on this proposed legislation.

I congratulate our esteemed colleague, Shri G.M. Banatwalla for bringing this amendment Bill. But I will tend more to agree with my friend, Shri Anadi Sahu. I will also request Shri G.M. Banatwalla to bring a comprehensive amendment as a Private Members' Bill for further fullest discussion on the Wakf Act. It is because, as has already been mentioned earlier, in our country about one lakh wakf properties are there. A large number of properties are being used for the purpose other than the wakf. Muslim as well as a non-Muslim can register his property as wakf and once a property is with the Wakf Board, it will remain with the Wakf Board till the existence of the Wakf Board. Nobody has the right to dilute, sell or occupy it.

So, that is the purpose. But the reality is otherwise. In every State, in every city we see that the wakf properties are being misused. The Parliamentary Committee is engaged in a detailed study and we hope that we will get a total picture of the position in the country. But this encroachment of the wakf property is a major problem. As has already been mentioned, the encroachment is mainly by the *Mutwalis* and then by those people who hire or rent out the wakf property and then by the musclemen of a particular locality. These are the people who are occupying these

properties. Sometimes even Government buildings are there as has already mentioned in one study report from Delhi. About 362 properties in Delhi are occupied by the Central or State Governments. If a study is made all over the country, certain things may be found out. If this sort of a thing is happening, then the purpose of wakf is diluted. This encroachment is a big problem.

Let us see how the wakf property is being misused. Normally, the wakf estate is registered in the name of wakf estate only; but what happens some times is that the *Mutwalis*, those who are appointed to look after those properties, in collusion with the revenue officers in the block or district change the record and instead of registering the property in the name of wakf estate, they register such property in their own name and keep the document for years together. After 10 or 15 or 20 years, when that document comes out, then it is known that that property has already become a secular one, transferred from wakf to the name of the *Mutwali* family. To recover such property is a long process. You know that the civil courts do take 10 to 20 years to settle such things. It is still more difficult to recover the property from encroachers. This is a very serious matter. The removal of encroachment is one of the major problems of the Wakf Board.

I have some experience of being the Chairman of the Wakf Board for the last one year. From my personal experience I can say that specific measures should be taken to recover the wakf property encroached in this way all over the country. Very specific measures are necessary. If those who are entrusted the task of looking after these properties encroach them, if the Government officials who are to help in recovering the property fail to render adequate assistance and the assistance is not available from the Government, then how will it be recovered? This is a major question before us.

According to the new Act, the survey work is going on in various estates. After a full survey is conducted, we will be able to understand how many of these one lakh properties are in tact and how many of them are encroached, diluted, sold or rented out. These things can be identified. We should go in for correct and immediate survey work which should be completed at the earliest. That will help us to look at the encroachment problem in a big way.

The main problem, as has been mentioned by hon. Member Shri Anadi Sahu, is that there are some lacunae in the Wakf Act. If some property is encroached upon, if we go through the legal proceedings to recover it, it takes long time. If Section 54 of the Wakf Act is properly amended and those encroachers are brought under severe punishment, then only we will be able to stop this encroachment of wakf property.

So, that is necessary. I think that this Section should also be amended properly.

Thirdly, there is another problem. In a Wakf, the CEO issues a notice, and if it is in the city, then you have to go to the SDM. But, in Kolkata; in Mumbai; in Delhi, there is no post of SDM. There, they are known as the City Magistrates, and they are not called the SDMs. But, in the Act, SDMs are specifically mentioned. Who will function as the SDM in the big city, if there are no SDMs there? The Police Commissioner is entitled to work like that. But, the Police Commissioner says that they are too busy, and that they have no time to deal with these kind of works. So, that also is creating a problem. Instead of SDM in this Act, there should be some suitable amendment that, some Executive Magistrate or some City Magistrate should be added so that in the cities, these problems are solved.

From our experience, we have issued about 400 notices in our State to remove encroachment, and that work is going on. I do not know how long it will take, but these things are stated from our personal experience. So, the point of encroachment we need to take in a proper manner. Amendment of some Sections of the Wakf Act is very much necessary, and very strict punishment should also be given to those encroachers.

Fourthly, I would like to say that police help is very much necessary. Without police help, it would be very difficult because the Wakf Board is a very small board; a very small organisation. They have no machinery to work with in all the States or all over the country. They have to totally depend on the State machinery. Normally, the police and the armed forces also do not take much interest because the mindset is such. They think that : "Who will go for this, as it is mostly run by the Muslims or such other people." So, that sort of mindset is also there. The lack of adequate, proper, timely police help is another area of concern. So, we should find out as to how it can be taken up and solved.

Fifthly, a recent judgement in the Kolkata High Court has created a problem. It may dilute the Wakf, and it will help the '*mutawalli*' to encroach or grab the Wakf property in a personal way. Sir, how can this be so? There are two Wakf. One is the Public Wakf, and the other is the Wakf al-al-Aulad.

Wakf al-al-Aulad means to register as a Wakf, but a part of the proceeds will go for the family, and a part of the proceeds goes for the pious and charitable work. But, the judgement has clearly stated that in case of Wakf al-al-Aulad, they have divided the property. It means that 75 per cent of the property is for the '*Aulad*' and 25 per cent of it is for the pious and charitable work. But, this created a problem. If this judgement continues, then any Wakf al-al-

Aulad, any '*mutawalli*' of the Wakf al-al-Aulad will take the advantage of this judgement, and this 75 per cent of the property will be used for their own benefit.

The High Court said that the Wakf Board has no jurisdiction on that account. I think, that it is a mistake in the Wakf Act itself. There, it is mentioned with regard to the pious and religious work, but nothing is mentioned with regard to the property. The Wakf State cannot be divided. The proceeds from the States can be divided and used by the descendents of the Wakf, and a part may be used for the pious and charitable work. So, in that area also, an amendment is necessary.

The High Court has felt that the State property is being divided. So, I think Wakf Act has a lot of limitation. If Wakf Act is amended, and these lacunae are properly amended, only then Wakf property can be managed properly, and the purpose of this Wakf can be fulfilled.

Sir, with these words I would request that the Government should bring a comprehensive amendment to the Wakf, including in it all those points that we are making here so that Wakf Act can be foolproof, and that it can serve the purpose of the Wakf State in the country.

SHRI SUDIP BANDYOPADHYAY (CALCUTTA NORTH WEST): Sir, I would like to congratulate Shri Banatwalla for the whole nation has come to know as to how the Wakf properties are being looted in this country. I must thank Shri Anadi Sahu for his very articulate speech where he has requested the House for the introduction of a comprehensive legislation in this regard.

So far as the issue of corruption concerning Wakf properties is concerned, the State which I represent, West Bengal, is possibly one of the topmost States or is the only State in the country where the former Chief Minister had to announce a judicial probe on the floor of the House in the Assembly which would investigate the corruption that took place in regard to Wakf properties. Being a Member of the JPC on Wakf, I had visited a few places in the country. The corruption concerning Delhi Wakf properties has already been mentioned. We have toured a few places and we have examined the Wakf matters in West Bengal. Shri Hannan Mollah, in spite of being a Member of Parliament, has recently been appointed as the Chairman of the West Bengal State Wakf Board.

What is happening or the main issue is that there is a serious unholy nexus between the encroachers, local anti-social elements, a section of the police officials and some dishonest, unscrupulous promoters of the area. This unholy nexus is indulging in encroachment of very valuable Wakf properties in the city of Kolkata, which are under the jurisdiction of the Wakf Board. As he has described, Wakf properties have been illegally encroached in different places. Whenever the Chairman admits that the police officials are not functioning properly or police assistance is not being received at the appropriate time, it can be easily detected as to what level the corruption had gone up to.

Sir, before the judicial inquiry was announced in the State of West Bengal, the Judicial Secretary, Shri Sengupta -- I am not referring to our Dr. Sengupta, but to another Sengupta -- after a departmental inquiry had mentioned that the volume of corruption, so far as Wakf properties are concerned, had skyrocketed and he had given the details of a few properties in this regard. Sir, the JPC is trying to find out the reasons for this and it is also trying to find out ways to solve this problem. It is a very big affair. For many, many years, attention was not drawn to this. This JPC is, at least, trying its best to find out where the real problem lies.

I think, a comprehensive Bill and a full-fledged discussion on this issue would certainly help rescuing the properties belonging to the Wakf Boards. Wakf properties are mainly known as the properties of Allah. These properties are mainly distributed among the poor people of the Muslim community.

### **17.00 hrs.**

However, whenever you go into the details, you find that these have been looted by the people whom we consider anti-social elements. I hope this matter would be taken with all seriousness. Wakf Act is already there to tackle the unscrupulous, dishonest promoters, those officials who are entrusted with the responsibility, and the whole issue with proper attitude.

There is a provision of conducting surveys occasionally. In this regard, we in the Committee had categorically said that advertisements have to be put out in the newspapers before surveys are conducted. However, the State Committees or the Wakf Boards never put out full advertisements in the newspapers to ensure that common people can come and make their submissions. I, therefore, think that if a comprehensive Bill is introduced in time it can give some fruitful results.

So far as punishment is concerned, I do agree that if the guilty persons are found to be offensive in their acts even after a specific time limit, they have to be given exemplary punishment whether in the form of conviction or any other manner. The provision of exemplary punishment always reflects the attitude of the society and the Government that if any such heinous act is resorted to, the perpetrators of that act would not be spared.

Though this is a Private Member's Bill, this can be introduced from the Government side following which this issue can be taken up with all seriousness.

**SHRI RAMESH CHENNITHALA :** You say all these things to Shri Hannan Mollah. He will set all of them right in West Bengal.

**SHRI SUDIP BANDYOPADHYAY :** Shri Hannan Mollah has just expressed some of his feelings based on which one can easily guess the level of corruption that is seen in the Wakf Boards of the State of West Bengal. He is the main person there.

**SHRI HANNAN MOLLAH :** It applies not only to West Bengal but also for the country as a whole.

**SHRI SUDIP BANDYOPADHYAY :** I have made specific reference to West Bengal because that is the only State in the country where a judicial inquiry had to be ordered on the floor of the Legislative Assembly because of the pressure brought by the Opposition. It should go on record that there is no other State in the country where a judicial inquiry has been ordered. It is a fact and it cannot be denied. A few people, some of whom belong to the Ruling party, have been arrested there. Shri Hannan Mollah knows who those people are who have been arrested following the report of the judicial inquiry. There is no difference in opinion, in feelings and in the attitude. We are all united on this and we should endeavour to see that these properties are rescued and the guilty persons are dealt with sternly.

**प्रो. रासा सिंह रावत (अजमेर) :** सभापति महोदय, मैं श्री जी.एम. बनातवाला द्वारा प्रस्तुत भारतीय दंड संहिता संशोधन विधेयक, 2001 का समर्थन करता हूँ। वास्तव में बहुत अच्छे उद्देश्य को लेकर यह विधेयक लाया गया है। यह कितना दुःखद प्रसंग है कि कोई व्यक्ति इस्लाम धर्म को मानने वाला किसी पवित्र उद्देश्य के लिये, किसी धार्मिक भावना से प्रेरित होकर, चैरिटेबल परंपरा के लिये, दातव्य उद्देश्य के लिये अपनी सम्पत्ति प्रदान करता है। उसी का जो रक्षक है, वह भक्षक बन जाता है और धीरे-धीरे जिस उद्देश्य के लिये दानदाता ने वक्फ वालों के लिये सम्पत्ति घोषित की, उसका उपयोग सही उद्देश्य के लिये न करके उस पर कब्जा कर लेता है, उस पर अतिक्रमण कर लेता है, अनाधिकार स्वामित्व जमा लेता है। वह मुकदमेबाजी में फंसकर, उस पवित्र सम्पत्ति का दातव्य का उद्देश्य नट हो जाता है।

सभापति महोदय, जैसा श्री बनातवाला ने कहा कि इंडियन पेनल कोर्ट में ऐसा प्रावधान किया जाना चाहिये कि वक्फ की सम्पत्ति पर अतिक्रमण करने वाले लूट सके तो लूट, वक्फ की सम्पत्ति का दुरुपयोग करने वाले, आधिपत्य जमाने वाले, बिना सम्पत्ति के ऐसे लोगों के विरुद्ध कठोर और कड़ी से कड़ी कार्यवाही की जानी चाहिये, उन्हें सजा दी जानी चाहिये। ज्यादा से ज्यादा कारावास दिया जाना चाहिये, जुर्माना किया जाना चाहिये। श्री बनातवाला ने इसके लिये भारतीय दंड व्यवस्था के अंदर संशोधन प्रस्तुत किया है कि वा 1860 के एक्ट में नई धारायें 298क और 298ग जोड़ी जाएं

चूंकि वक्फ की जितनी सम्पत्ति है वह वक्फ एक्ट के द्वारा शासित होती है। दूसरी तरफ वक्फ बोर्ड इन सम्पत्तियों की देख-रेख करता है और उनका ध्यान रखता है। इसलिए सारे देश के अंदर जहां-जहां भी वक्फ की सम्पत्ति है, वहां उसका बड़ा दुरुपयोग हो रहा है। लोगों ने उसकी सम्पत्ति के ऊपर अतिक्रमण कर लिया, कब्जा कर लिया। कई लोगों ने उसमें किरायेदार रख लिये, मुतेवल्ली जिनकी जिम्मेदारी थी, जिस उद्देश्य के लिए वक्फ को सम्पत्ति प्रदान की गई है, उसी उद्देश्य के लिए उसका उपयोग हो, लेकिन उसी ने भक्षक बनकर राजस्व अधिकारियों, पुलिस अधिकारियों और सम्पत्ति के माफिया गिरोह से मिलकर लाखों-करोड़ों रुपये की सम्पत्ति खुर्द-बुर्द कर दी। इस तरह एक प्रकार से उसका दुरुपयोग हो रहा है। हमारे अजमेर में भी ऐसा हो रहा है। उसके बारे में भी हमें मालूम है। इसी तरह से राजस्थान के बड़े-बड़े नगरों में जहां वक्फ की बहुत सम्पत्ति है, जैसे कब्रिस्तान, मस्जिद, किसी विद्यालय के लिए सम्पत्ति दी गई है या किसी अच्छे उद्देश्य के लिए दी गई है, धार्मिक कार्यों के लिए या किसी मदरसे के लिए दी गई है, उन पर लोगों ने अवैध कब्जा कर लिया है। परिणामस्वरूप कोर्ट में केस चलते हैं। लाखों रुपये केस पर खर्च किये जाते हैं। सिविल केसिज बड़े लम्बे चलते हैं। वक्फ एक्ट के अंतर्गत भी इस प्रकार का प्रावधान है कि कोई सम्पत्ति का दुरुपयोग नहीं करेगा। इसलिए जिस उद्देश्य के लिए सम्पत्ति दी गई है, उसका उपयोग उसी के लिए होना चाहिए। सरकार के द्वारा वक्फ बोर्ड को स्टाफ प्रदान किया जाता है, लेकिन उसकी संख्या कम होती है, जो भली प्रकार से देखभाल नहीं कर पाता है और परिणामस्वरूप लोगों को मौका मिल जाता है। मैं आपके माध्यम से सरकार से कहना चाहता हूँ कि चाहे वक्फ बोर्ड की सम्पत्ति हो, चाहे वक्फ की सम्पत्ति हो, चाहे देवस्थान की सम्पत्ति हो, इस प्रकार की सम्पत्तियां जो दानदाताओं के द्वारा जिस पवित्र उद्देश्य के लिए दी गई हैं, उसी उद्देश्य के लिए उनका उपयोग हो। मेरा निवेदन है कि सरकार इस बात की निगरानी रखे।

सभापति महोदय, मैं दूसरी बात कहना चाहता हूँ कि वक्फ की सम्पत्ति की रक्षा करने के संदर्भ में, वक्फ की देखभाल करने के संदर्भ में, वक्फ का उपयोग करने के संदर्भ में, उसकी मरम्मत करने के संदर्भ में एक काम्प्रीहेन्सिव वक्फ एक्ट आना चाहिए, ताकि भविय में कोई इस प्रकार की सम्पत्ति का दुरुपयोग न कर सके। सांगोपांग जो मंदिरों के साथ सम्पत्ति लगी हुई है, देवस्थान के साथ में जो मकान हैं, लोगों ने उनके ऊपर कब्जा कर लिया है। ऐसी सम्पत्ति इस्लाम के अंतर्गत जो वशो उद्देश्य के लिए व्यक्ति के द्वारा दी हुई होती है, इस्लाम मतावलंबी के द्वारा उस सम्पत्ति का दुरुपयोग होता है। जैसे इस्लाम में गया है कि वक्फ पवित्र, धार्मिक अथवा पूर्व प्रयोजनों के लिए किसी सम्पत्ति को समर्पित करता है, वास्तव में वक्फ की सम्पत्ति के ऊपर अगर कोई अतिक्रमण करता है तो धार्मिक रूप से और समाज के प्रति एक प्रकार से वह अपराध है, क्योंकि उसकी सम्पत्ति का उपयोग समाज के द्वारा किया जाना चाहिए। लेकिन वह समाज के काम न आकर कुछ व्यक्तियों की स्वार्थ पूर्ति के काम आती है और वह स्वयं उसका दुरुपयोग करता है। परिणामस्वरूप सम्पत्ति देने वाले की आत्मा को कितना कट पहुंचता होगा। जिस उद्देश्य के लिए सम्पत्ति दी गई है उस उद्देश्य का कितना अहित होता होगा और समाज में जो अच्छा काम होना चाहिए, जैसे कोई चैरिटेबल अस्पताल चल रहा है, चैरिटेबल संस्था चल रही है, कोई मदरसा चल रहा है या किसी धार्मिक उद्देश्य के लिए उसका उपयोग हो रहा है, कोई प्याऊ चल रहा है, पीने के पानी के लिए कोई व्यवस्था की जा रही है या सराय की व्यवस्था की जा रही है, लोग वहां जाकर विश्राम आदि करते हैं, लेकिन ऐसा न करके उसका दुरुपयोग होता है। परिणामस्वरूप भविय में लोगों में यह भावना पैदा होती है कि हम अपनी सम्पत्ति किसके लिए दें।

सभापति महोदय, मुझे एक कहानी याद आ रही है कि मानव नाम का एक ऐसा प्राणी है जिसकी गति दोनों तरफ है। आप भली प्रकार से अवगत होंगे कि नहु नाम का एक खंडकाव्य राट्टकवि श्री मैथिली शरण गुप्त के द्वारा लिखा गया था। उस खंडकाव्य में एक कहानी आती है कि धरती पर रहने वाला एक राजा स्वर्ग का अधिपति बन गया। उसके अधिपति बनते ही स्वर्ग में रहने वाली देवियां बड़ी चिंतित होने लगीं, इंद्राणी रोने लगी। दूसरी स्त्रियों ने उसे रोते देखकर पूछा कि तुम क्यों रोती हो, तुम्हारा पति तो बड़ा सक्षम है, बड़ा बलवान है, उसका कोई बाल भी बांका नहीं कर सकता, तुम किसलिए विलाप कर रही हो।

उस समय दूसरी देवियों ने कहा कि हम इसलिए नहीं रो रही हैं कि मनुय नाम का प्राणी धरती से स्वर्गलोक में आकर इंद्र के सिंहासन पर बैठ गया है, हम इसलिए रो रही हैं कि देवता देवता रहते हैं, राक्षस राक्षस रहते हैं, लेकिन मानव कब राम बन जाए कब रावण बन जाए, कब कृष्ण बन जाए कब कंस बन जाए, कब देवता बन जाए कब शैतान बन जाए, इस बारे में नहीं कहा जा सकता। इसकी गति बड़ी विचित्र है। समाज में किसी व्यक्ति ने अच्छे उद्देश्य के लिए संपत्ति दान में दी, पवित्र उद्देश्य के लिए समाज को अर्पित की कि इसका उपयोग इन उद्देश्यों के लिए किया जाए लेकिन लोग उसी संपत्ति को हड़प लेते हैं, कब्जा कर लेते हैं, अतिक्रमण कर लेते हैं, दीवारें तोड़कर अपने मकान बना लेते हैं और अमानत में खयानत पैदा करते हैं। इसलिए मैं कहना चाहता हूँ कि बनातवाला जी जिस उद्देश्य के लिए यह बिल लाए हैं, वह बहुत अच्छा है। केवल इसकी धारा क, ख, ग बदलने से काम नहीं चलेगा। इसके तीन साल की सज़ा या चार साल की सज़ा का प्रावधान होना चाहिए और एक समग्र बिल सरकार द्वारा प्रस्तुत किया जाना चाहिए। जेपीसी इस पर बैठी, उसने भी कुछ अभिशंसाएं की हैं। वक्फ बोर्ड के सामने भी स्टाफ वगैरह की जो समस्याएं हैं, इन सबको दूर करने के लिए कुछ ऐसा प्रयास किया जाना चाहिए ताकि भविष्य में कोई भी व्यक्ति अतिक्रमण करने का दुस्साहस न कर सके और वक्फ जिस उद्देश्य के लिए बनाया गया है, उस उद्देश्य के लिए वह काम में आए। आपने मुझे बोलने के लिए समय दिया, उसके लिए धन्यवाद।

SHRI RAMESH CHENNITHALA (MAVELIKARA): Mr. Chairman, Sir, at the outset I would like to congratulate our senior colleague, Shri Banatwalla for bringing forward this piece of legislation.

The entire object of this legislation is to preserve the Wakf properties; that means, to avoid any kind of encroachment upon the properties of the Wakf Boards. The Wakf Act of 1995 clearly says:

"Wakf means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose, recognised by Muslim Law as pious, religious or charitable and includes:-

wakf by user but such walk shall not cease to be a walk by reason only of the user having ceased irrespective of the period of such cesser."

These properties are maintained by the Wakf Boards. These Boards are there to strengthen welfare programmes of the minority community. They will also impart social security schemes. They are meant for charitable purposes. There is a need for strengthening Wakfs. Of course, *Shias* and *Sunnis* are Wakfs.

Wakf Act has been enacted by this Parliament in the year 1995, which needs more introspection now. The time has now come for a comprehensive legislation, according to the changing times.

As was rightly pointed out by our senior colleague Shri Banatwalla, there is a need for strengthening Wakf Boards. Shri Hannan Mollah is the Chairman of the Wakf Board of West Bengal and he was citing certain examples. He was expressing his feelings and also was mentioning about the impediments that are coming in the way of performing his duties. Considering all these aspects, a re-look at this legislation is needed urgently. Shri Bandyopadhyay was rightly pointing out one aspect, which is corruption. This is a disease which we witness in every sphere of our life.

This Board is appointed by the Government and is supposed to do pious and charitable activities. Unfortunately, they are also indulging in a kind of corruption.

There are a number of such examples. I do not want to go into the details but these corrupt practices will have to be stopped. The Waqf Boards are governing huge properties in almost all the States of our country. But they have not given proper attention to social security schemes, which they are supposed to do. Minorities, especially the Muslims who are the real beneficiaries of this scheme, are deprived of its benefits. So, the Waqf Board should ensure more and more implementation of social security schemes. They should also provide educational and other facilities to the deprived section of the society.

A lot of complaints of irregularities are coming up. For example, in Delhi itself – I do not want to name the person – the Waqf properties are leased to the people. This property is changing so many hands now. Ultimately this property is being used by such persons who are not supposed to use it. This is what is happening. There is a need for the Government to have a re-look at the entire governance of the Waqf Board.

There is no dearth of law in this regard. In the Waqf Board Act itself the Board has been given enormous power. Section 32 gives a lot of power to the Board. I wonder whether this Board in our country is really enjoying or implementing its power for the security and welfare of the Muslim community, especially the backward Muslims.

Even now, in a State like Kerala, we have socially, economically and educationally backward sections of the Muslims. Literacy rate is very low there. Even though there are educational institutions, they are deprived of proper education. In Government services, the number of Muslims is not adequate. Kerala is one State which is giving reservation to the Muslims on rotation basis. Even though we have reservation in our State, their number is considerably low. Waqf property is being misused like anything.

Shri Hannan Mollah was citing certain examples. Under section 52 of the Waqf Board Act, the transferred Waqf property can be recovered and can be properly maintained. Sections 54, 55 and 56 of the Waqf Act of 1995 clearly say how one can recover the property encroached upon by other people. But the whole thing is, these sections are not properly enforced. The Sub-Divisional Magistrate has the power to evict the people who have encroached upon the Waqf property. Section 55 clearly says:

"Where the person, ordered under sub-section (3) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-Divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property, is situated for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary. "

There is no dearth of law. Sections 55 and 56 also talk of restriction on the power to grant lease of Wakf property. That is another problem which is a perennial one. These Wakf properties are sub-leased by some people. It could be very evidently seen in the capital city of Delhi and other places. So, there is no dearth of laws. The only thing is how we are implementing the laws. Most of the CEOs are not properly implementing the laws. I am sorry to say that they are hand-in-glove with certain people who are the real encroachers. As a result of that, properties are encroached upon. Unfortunately, the community is suffering. The Muslims are not getting proper assistance from the Wakf Board.

I would request the hon. Minister to have a re-look on the constitution of the Board also. A lot of representations were given regarding the constitution of the Board. There are certain lacunae. The persons who are really interested in the social welfare activities are not being represented on the Board. This aspect should also be taken care of.

With these words, I once again congratulate Shri Banatwalla who is a learned Member of this House. He is also a very senior politician and is also having a great knowledge about the Muslim Personal Law and the Wakf Act. He has come forward with this piece of legislation with a very simple object of protecting the Wakf properties.

I do not think there is any need for changing the IPC. My whole point is that there are provisions in the Wakf Act. They should be properly enforced so that the properties of the Board are saved.

**SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL):** Sir, I rise to clarify the position for not supporting Shri Banatwalla. We all know the problem of encroachment is the order of the day. There is encroachment everywhere, not only of Wakf properties but also of Government properties. If I may put it, it is a national issue. The encroachment on forest land is widespread in the country in spite of the fact that we have the Forest Act. There is clear violation of the Forest Act and the Land Revenue laws. In this encroachment, the Revenue Officers as well as Forest Officers are conniving with the encroachers or the trespassers. With the result, the Governments are forced and compelled to declare a particular date and all encroachments prior to that date are given legal status and subsequent encroachments will be treated as offence. Then that year will again be changed giving legal status to the encroachment after that particular year. This is a thing that we find in almost all the States. With the result, very serious environmental issues have come up. Cloud-burst has become the order of the day. Even climatic conditions have changed. So encroachment is a very serious problem. Not only that, encroachers show inhuman cruelty towards wild animals as well. We are not bothered about the cruelty shown to these wild animals. We are worried about the cruelty to cows only and nothing else.

There is a law in our land that stipulates that we should not show cruelty to animals. But showing cruelty has been the order of the day. The species of wild animals are getting extinct. It is happening because of encroachment on their land. This is the situation in our country.

Sir, Shri Banatwalla has achieved his purpose. Encroachment on Wakf Board property should be barred. Strict action should be taken. I do agree with him and I have no objection to that. But there is one aspect to it. Would that purpose be achieved by amending the Indian Penal Law? This Indian Penal Law is secular in its character and is

applicable to all sections of the society. It cannot be allowed to be adulterated. Why should it be adulterated? The Penal Law is applicable irrespective of religion and belief. It is applicable to every citizen of this country. Why should there be a new separate chapter dealing with Wakf Board property? In such an event, I am afraid there will come a day when a new chapter would have to be ordered for saving the properties of the Hindus. The properties of the Hindus would then also have to be protected by having a separate chapter in the law. The Hindus would ask for a separate chapter for saving their property from being encroached.

Sir, it is highly dangerous to have any kind of an adulteration in the Indian Penal Law. It should not be allowed. The purpose of Shri Banatwalla has been served. There are other methods by which the properties of the Wakf Board can be protected. The Wakf Board Law should be made strict. More teeth should be given to it for ensuring protection of the properties of the Wakf Board. We should not change the Indian Penal Law for this purpose. The IPC is a secular law. We cannot give any religious colour to that statute. That will be against the basic principles of secularism. I would like to appeal to Shri Banatwalla not to press for insertion of a particular chapter dealing with the Wakf Board properties. If it happens, then the very next day there will be a demand from the Hindus, Parsis and others to have a separate chapter in the law for protection of their properties and also there may be demands for a law for personal purposes as well. This is quite unjustified. There are many easy methods for protecting the properties of the Wakf Board.

Sir, there is rampant corruption. Shri Hannan Mollah mentioned about the bitter experience he has had in West Bengal in regard to the functioning of the Wakf Board. All these things would have to be protected. We need not go in for a change in the Penal law. The word 'trespass' has been defined under sections 447 and 448 of the IPC. Section 447 of the IPC deals with general trespasses and section 448 deals with serious offences for another form of trespass. When there is a clear definition for trespass and punishment also has been provided for that in the IPC, there is no necessity to lend a communal colour to that provision by having a separate chapter. That is not good. That is why, I not only am opposing this, but I appeal to Shri Banatwalla to withdraw this. There are other effective methods for achieving this. However, I thank him for moving this amendment.

Sir, before I conclude, I would like to mention one thing here. Our judicial system is facing a crisis and we have appointed the Malimath Committee for that. The report and the recommendations of the Committee have been submitted to the Government. Why is the Government keeping it a secret? Only a summary of the recommendations was published in the Press. I would like to request the Government to give a copy of that to me.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI I.D. SWAMI): The Report is in the library.

SHRI VARKALA RADHAKRISHNAN : You please publish the report. Let people discuss it. Merely keeping the copy in the library is not enough.

SHRI I.D. SWAMI: It is under print.

SHRI VARKALA RADHAKRISHNAN : Let the citizens of India know as to what the recommendations are.

The Supreme Court has made certain observations. So, we want publication of the Malimat Committee Report in order to make it known to everybody. Let the legal community discuss it and the Bar Association discuss it. Keeping it in the library is not enough. It must be published. Our Indian criminal justice as well as the civil justice is facing a crisis. It is expensive and also plagued with delay, cumbersome process and deplorable state of affairs in the matter of conviction rate. When we compare it with other civilised nations, our criminal administration is far below standard and the conviction rate is very low. So, we have to tide over the situation.

For that purpose, what are the recommendations of Malimat Committee? Let us have a national debate on these recommendations. We will change the law enunciated by Lord Macaulay during the colonial rule. The Indian Penal Code will have to undergo thorough changes. The Criminal Procedure Code will have to undergo thorough changes and the Evidence Act also will have to undergo changes. I fight for changes. I fight for a system which is truth finding. Truth must prevail. But the Encroachment Act system is entirely different. Assuming innocence for the accused is not enough.

So, I again request the Minister to publish the Malimat Committee Report for the benefit of the public at large, so that there shall be a national debate on that subject; new recommendations will come and we will give effect to them.

With these words, I conclude.

**श्री थावरचन्द गेहलोत (शाजापुर) :** माननीय सभापति महोदय, मैं भारतीय दंड संहिता संशोधन विधेयक, 2001, जिसे इस सदन के सदस्य श्री जी.एम. बनात वाला जी ने रखा है, का विरोध करता हूँ। भावनात्मक रूप से मैं सहमत हो सकता हूँ कि अपराधी को अपराध की ज्यादा से ज्यादा सजा मिले किन्तु उन्होंने भारतीय दंड संहिता में जिस प्रकार का संशोधन चाहा है, अगर वह हो गया तो देश में दोहरा कानून हो जायेगा। दोहरे कानून के अनुसार एक धर्म के लिए अलग कानून हो जायेगा और दूसरे कानून के लिए अलग कानून हो जायेगा। जो कदापि उचित नहीं है। सुप्रीम कोर्ट ने अभी एक फैसला दिया है कि इस देश में समान नागरिक कानून बनना चाहिए, यह उस भावना के विपरीत होगा। इसलिए मैं बिल का विरोध कर रहा हूँ।

माननीय बनातवाला जी ने चिंता व्यक्त की है कि वक्फ सम्पत्ति पर अतिक्रमण हो रहा है, लोग उसका दुरुपयोग कर रहे हैं। वे उस पर कब्जा जमाकर उसको निजी सम्पत्ति के रूप में उपयोग कर रहे हैं, ऐसा नहीं होना चाहिए, इस बात से मैं भी सहमत हूँ। परन्तु मैं उनसे निवेदन करना चाहता हूँ कि इस देश में जितने धार्मिक संस्थान हैं, उन सब में इस प्रकार के अतिक्रमण की बाढ़ आई हुई है। एक समय था जब लोग स्वयं की भूमि देकर, स्वयं का पैसा देकर धार्मिक सम्पत्ति का निर्माण करते थे, उसका रख-रखाव करते थे। अगर कोई व्यक्ति उस पर बुरी नजर रखता था, उस पर अतिक्रमण करने की कोशिश करता था तो समाज के ही लोग उससे निपटकर उसे इस प्रकार की गतिविधि से वंचित कर देते थे और अतिक्रमण होने या इस प्रकार की और गड़बड़ी होने से रोक देते थे। परन्तु आज सब तरफ इस तरह की भावना बढ़ती जा रही है।

यह बात सही है कि सामान्यतः धार्मिक संस्थाएँ बहुत कम निजी जमीन पर बनती हैं। सामान्यतः ज्यादातर अतिक्रमण करके ही बना लेते हैं या सरकार से एलाट करा लेते हैं। ऐसी स्थिति में जो कागजी पक्ष सरकार की उस संस्था के पास होना चाहिए, उसमें कहीं न कहीं, किसी न किसी प्रकार की कई गड़बड़ियाँ रहती हैं। इस कारण वर्तमान में जो व्यवस्था है, उसमें राजस्व न्यायालय में अतिक्रमण के खिलाफ केस चलता है और एक नहीं अनेक वाँ तक इस प्रकार के केस चलते रहते हैं। मैंने एक-दो मामलों में ऐसा अनुभव किया है कि किसी की जमीन पर किसी ने कब्जा कर लिया, किसी की खेती पर किसी ने कब्जा कर लिया और उनकी दो-दो पीढ़ियाँ मर गईं, 35-35 साल से न्यायालय में केस चल रहे हैं। तहसीलदार के यहां निर्णय होगा तो एसडीएम के यहां अपील होगी, एसडीएम के यहां से निर्णय होगा तो कलेक्टर के यहां अपील होगी, कलेक्टर के यहां से निर्णय होगा तो कमिश्नर के यहां अपील होगी, फिर केस रिवैन्यू बोर्ड में जाएगा और रिवैन्यू बोर्ड से कुछ हुआ तो सिविल न्यायालयों में चला जाएगा और सिविल न्यायालय में एक से एक ऊपर, हाई कोर्ट और सुप्रीम कोर्ट तक केस जाते हैं। इस प्रकार के अनेक उदाहरण इसमें हैं। निश्चित रूप से अतिक्रमणकर्ताओं को ज्यादा से ज्यादा दंड मिलना चाहिए, अतिक्रमण को सख्ती से रोकने की कोशिश की जानी चाहिए। परन्तु यहां जो आईपीसी की धारा 291 के साथ क,ख,ग 3 सब-सैक्शन और जोड़ देंगे तो यह केवल वक्फ सम्पत्ति के लिए हो जाएगा अर्थात् मुस्लिम धर्म के लिए हो जाएगा परन्तु अगर कहीं मंदिर, गुरुद्वारे और अन्य धार्मिक संस्थान में अतिक्रमण हुआ तो उसके लिए वर्तमान कानून ही लागू होगा। केवल वक्फ सम्पत्ति के लिए यह कानून लागू हो, यह कदापि उचित नहीं है।

मैं इस संबंध में माननीय मंत्री जी का ध्यान एक बात की ओर दिलाना चाहता हूँ। जो बहु-विवाह होते हैं, मध्य प्रदेश का एक उदाहरण सामने आया था - शाहबानो, इंदौर की निवासी थी। उसके पति ने उसे छोड़कर दूसरी शादी कर ली। शाहबानो ने न्यायालय में केस दर्ज कर दिया। एक कोर्ट ने कम्पेंसेशन के लिए उनके पक्ष में फैसला दिया। सामने वाला, जिसने उसे छोड़ दिया था अर्थात् उनका पहले वाला पति, उसने फिर अपील की। उसमें भी शाहबानो जीत गईं। मामला सुप्रीम कोर्ट में आया। सुप्रीम कोर्ट ने भी, शाहबानो को जिसने त्याग दिया था, उससे कहा कि आप इनको हर्जा-खर्चा दें। परन्तु उस समय उनको हर्जा-खर्चा देने के बजाए इस संसद ने संविधान में बैंक डेट से संशोधन किया और यह प्रावधान कर दिया कि जिस व्यक्ति ने उस पत्नी को छोड़ा है, उसकी जांच की जाएगी कि वह पैसा देने में सक्षम है या नहीं जो बहुत ही त्रुटिपूर्ण था। जब उसने दूसरी शादी की और उसका लालन-पालन कर रहा है, जब वह सक्षम होगा तभी तो की होगी। परन्तु उसका एक रास्ता यह निकाला गया कि अगर यह पाया जाए कि वह कम्पेंसेशन देने में आर्थिक दृष्टि से अक्षम है तो वक्फ की सम्पत्ति से उसे पैसा दिया जाएगा अर्थात् परित्यक्ता महिला शाहबानो वक्फ सम्पत्ति से पैसा लेने के लिए पात्र हो गईं।

मैं माननीय मंत्री जी से कहना चाहता हूँ कि वक्फ सम्पत्ति जनता की सम्पत्ति में से बनती है। सरकारी टैक्स के पैसे में से सामाजिक न्याय और आधिकारिता मंत्रालय वक्फ बोर्ड को पैसा देते हैं। पैसा हम लोगों का, पत्नी को छोड़कर गड़बड़ी उसने की, सजा उसे मिलनी चाहिए, उसके बजाए जनता को सजा मिल रही है, जनता का पैसा उस परित्यक्ता को दिलवाने की बात की गई है। इस प्रकार का दोहरा कानून अगर इस देश में बना तो उससे कभी भी संतुष्टि नहीं होगी और धार्मिक समरसता और अपनत्व, भाईचारा निर्मित नहीं होगा। इसलिए मैं दोहरा कानून बनाने की बात का विरोध करता हूँ। इसमें इसी प्रकार की बात आई है। अगर यह संशोधन विधेयक पास हो गया तो इस देश में दोहरा कानून लागू हो जाएगा।

मैं इस संबंध में कहना चाहता हूँ कि क्यों नहीं अतिक्रमण को रोकने की दृष्टि से मंदिरों आदि के ट्रस्ट बनाकर, कलेक्टर को उसका अध्यक्ष बना दिया जाए। कलेक्टर के नियंत्रण में वह होता है। सामान्यतः अन्य धार्मिक संस्थानों में अतिक्रमण की प्रवृत्ति कम है। अगर कोई अतिक्रमण करता भी है तो, क्योंकि कलेक्टर उसका अध्यक्ष है और उसके पास डीएम की पावर भी रहती है, इसलिए वह उन अधिकारों का उपयोग कर उस अतिक्रमण को होने से रोक सकता है। अगर अतिक्रमण हो गया तो उसे हटाकर अतिक्रमणकर्ता को वह दंडित भी कर देते हैं। इस प्रकार की व्यवस्था कर दी जाए तो ज्यादा अच्छा होगा। जैसे मंदिरों, गुरुद्वारों पर जो कानून लागू हैं, वैसे ही कानून अगर इनके ऊपर कर दिया जाए तो वक्फ बोर्ड की सम्पत्ति का अतिक्रमण रुक जाएगा। इसी भावना के साथ मैं कहना चाहता हूँ कि सरकार इस मामले में एक विस्तृत विधेयक लाए। धार्मिक संस्थानों का दुरुपयोग करने के खिलाफ, इस प्रकार की सम्पत्ति का दुरुपयोग करने तथा अतिक्रमण हटाने संबंधी एक विस्तृत विधेयक लाए जिससे बनातवाला साहब की भावना का आदर हो और समस्या का निदान भी हो जाएगा। मैं सरकार से अपेक्षा करता हूँ कि वह ऐसा विधेयक लाए, अधिनियम लाए जो इस समस्या को रोकने का काम करे। धन्यवाद।

**श्री रामदास आठवले (पंढरपुर) :** सभापति महोदय, बनातवाला साहब जो बिल लाए हैं, जो वक्फ सम्पत्ति होती है, मुस्लिम समाज के लोग हैं, इनको इकॉनोमिकली और सोशलली मदद देनी चाहिए और इसीलिए यह बहुत महत्वपूर्ण बिल है। इसका विरोध करने की आवश्यकता नहीं है। बिल को सपोर्ट करना बहुत जरूरी है। आज वक्फ सम्पत्तियों का कुछ लोग व्यक्तिगत लैवल पर दुरुपयोग करते हैं क्योंकि वक्फ सम्पत्ति मुस्लिम समाज के लिए है तो समाज के इकॉनोमिक, सोशल और कल्चरल एक्टिविटीज के लिए इसका उपयोग होना चाहिए। कुछ लोग इसका दुरुपयोग कर रहे हैं और भ्रष्टाचार भी कर रहे हैं। बनातवाला साहब जो बिल लाए हैं, हर राज्य में वक्फ सम्पत्ति पर कंट्रोल रखने की आवश्यकता है। अगर कोई संस्था अच्छा काम कर रही है तो उसको सपोर्ट भी करना चाहिए लेकिन अगर जो गलत काम कर रही है तो उसके अधिकार निकालने के बारे में भी राज्य को सोचना चाहिए। भारत सरकार को पार्लियामेंट में कानून बनाने की आवश्यकता है और इसीलिए बनातवाला जी जो बिल लाए हैं, मैं उसका समर्थन करता हूँ। जो मुस्लिम समाज हमारे देश में है, उसके इकॉनोमिक और सोशल विकास के लिए यह कानून बनाना जरूरी है। मैं भारत सरकार से निवेदन करता हूँ कि बनातवाला जी ने जो अमेंडमेंट पेश किया है, उसके बारे में विचार करके इस कानून को लागू करना चाहिए। मैं बनातवाला जी के इस बिल का समर्थन करता हूँ।

**श्री सईदुज्जमा (मुजफ्फरनगर) :** सभापति महोदय, मैं आपका आभार प्रकट करता हूँ कि आपने इस महत्वपूर्ण विधेयक पर मुझे बोलने का अवसर दिया। पूरे देश के सामने आज समस्या है। आज वक्फ बोर्ड किसी भी प्रदेश का हो, बहुत ही अजीब परिस्थितियों से गुजर रहा है। तमाम प्रोपर्टीज पर ऐसे लोगों ने कब्जा कर रखा है जो उसके लिए मुस्तहिक नहीं है। कानून अपनी जगह पर है लेकिन सरकार की तरफ से कोई नियंत्रण नहीं है जिससे उसको इम्प्लीमेंट किया जा सके। आज वक्फ बोर्ड की प्रोपर्टीज पर जो मुतवल्ली बैठे हैं, वे ही उसका दुरुपयोग कर रहे हैं और व्यक्तिगत मकसद के लिए उसका उपयोग कर रहे हैं। चाहे केन्द्र का वक्फ बोर्ड हो या प्रदेश का वक्फ बोर्ड हो, मुत्वल्लियों को कोई भी डर नहीं है जिससे उनके खिलाफ कार्यवाही करके इस गलत कार्य को रोका जा सके। कितनी प्रोपर्टीज पड़ी है जिन पर नाजायज कब्जा है और सरकार की तरफ से कोई ध्यान नहीं दिया जा रहा है। बनातवाला साहब का बिल को लाने का मकसद यह है कि सरकार की तरफ से और प्रदेश की तरफ से इतना खौफ तो होना चाहिए कि इन गलत कामों को रोका जा सके। कोई नियम इसमें जोड़ा जाए जिससे यह डर पैदा हो कि गलत काम

करने से यह सजा मिल सकती है। सरकार चाहे किसी रूप में इसे लाए ताकि वक्फ प्रोपर्टी का सही मकसद पूरा हो सके और जो वक्फ बोर्ड पर मुत्वल्ली के नाम पर काबिज़ किये बैठे हैं या किसी और कानूनी स्टे के जरिए बने बैठे हैं, उनको किस तरह से रोका जाए जिससे उस प्रोपर्टी का सही इस्तेमाल हो सके और जिस तरह से वाकिफ़ में इस प्रोपर्टी को वक्फ़ किया है, समाज के लिए किया है, खास उद्देश्यों के लिए किया है, उन उद्देश्यों की पूर्ति हो सके और सही इस्तेमाल हो सके। अगर आज कोई सख्ती होती, कोई डर होता कि यदि हमने इस तरह से वक्फ़ प्रोपर्टी का गलत इस्तेमाल किया तो हमें सजा मिल सकती है, आज इस किस्म का कोई प्रावधान नहीं है।

यह जो प्रावधान है, एक्ट 95 में जो वक्फ बोर्ड का एक्ट आया है, इसमें यह प्रावधान तो है कि नाजायज कब्जे से प्रापर्टी वापिस ली जा सकती है, लेकिन कोर्ट में 50-50 सालों से बगैर मकसद के ऐसे मुकदमों पेंडिंग हैं। इसलिए ऐसी वक्फ़ कमेटी या कोर्ट बनाया जाए, जो वक्फ़ के मुकदमात को अलग से सुनकर निदान कर सके। जिन्होंने नाजायज रूप से कब्जा कर रखा है और प्रापर्टी का मिसयूज कर रहे हैं मुतवल्लियों पर इस वक्फ़ बोर्ड का कोई नियंत्रण नहीं है। सेंट्रल वक्फ़ बोर्ड एक्ट है, 5 देशों में भी वक्फ़ बोर्ड हैं, लेकिन मुतवल्ली उनके प्रति जवाबदेह नहीं हैं। उनके खिलाफ कार्रवाई के लिए कोई प्रोविजन होना चाहिए। इसलिए ऐसा कोई प्रावधान होना चाहिए कि जो मुतवल्ली वक्फ़ के खिलाफ काम कर रहे हैं, उनके खिलाफ कार्रवाई की जा सके। इसलिए मैं सरकार से अपेक्षा करता हूँ कि वक्फ़ की प्रापर्टी को बचाने के लिए वह इस पर ध्यान देगी। यह नेशनल इंटरैस्ट में भी है, यह प्रापर्टी अवाम की है, उसको फायदा पहुंच सके, तालीम के लिए, हॉस्टल्स के लिए और कई ऐसी चीजें हैं, जो समाज के काम में आ सकती हैं। लेकिन अभी ये प्रापर्टीज समाज के उद्देश्यों की पूर्ति न करते हुए जाती इस्तेमाल में आ रही हैं। इसको रोकने के लिए सरकार को ऐसा कोई प्रोविजन करना चाहिए। इसके अलावा जो 20-20 साल से, 40-40 साल से केसेज कोर्ट में पेंडिंग हैं, उनके लिए अलग कोर्ट बनाकर उनका निदान किया जाए।

17.48 hrs.

### (Mr. Speaker in the Chair)

खासतौर से जो मुतवल्ली लोग बैठे हैं, उनके खिलाफ भी इस सम्बन्ध में कार्रवाई की जाए। अगर उनके खिलाफ कार्रवाई नहीं होती और उनको दंड नहीं दिया जाता और यह एहसास नहीं होता कि हमारे खिलाफ कार्रवाई होगी, तो वे कभी भी वक्फ़ की प्रापर्टी पर कब्जा कर सकते हैं और दूसरों को लीज पर दे देते हैं। उसके बाद कोई वक्फ़ उसको रोक नहीं सकता और न ही कोर्ट से कुछ निर्णय हो पाता है। इस कारण वे सारे केस पेंडिंग पड़े रहते हैं। इन सारी बातों को देखते हुए बनातवाला जी ने जो विधेयक पेश किया है, उसका सरकार को समाधान निकालना चाहिए केन्द्र सरकार को और प्रदेश की सरकारों को इस सम्बन्ध में पूरा ध्यान देकर इस वक्फ़ प्रोपर्टी को बचाया जाना चाहिए।

SHRI E. AHAMED (MANJERI): Hon. Speaker, Sir, while supporting the Bill moved by Shri G.M. Banatwalla, I would just like to remind the House of one important matter. If I remember correct, in 1995, when the Bill was brought forward by the then Minister of Welfare, the late Shri Sitaram Kesri, there was a consensus among the parties in the House that the Bill was not perfect and it was not comprehensive enough. But the then Minister assured us one thing. The point is that whatever amendments we had sought to be moved, we were asked to keep them in abeyance because the hon. Minister said that he would discuss the matter with the concerned people. This is one such matter which we raised even at that time.

In the name of Wakf, all the people with vested interest - who have no regard to religion, no regard to humanity and no regard to charitable purposes - have been looting the property under the very eye of the laws and nothing could be done. Whenever there is any move in the Wakf Board to recover the property belonging to the Wakf - which is ultimately to go to God because it is not to be belonging to any individual or any institution except that of the Wakf Board - nothing can be done. Therefore, it is a matter of urgent public importance for the country and for the Government to restore the properties from some people who have been looting the property of the Wakf. They have sold many of the properties just by giving a paltry sum to the Wakf Board by way of rent etc. They are subletting the property to other people. By subletting the property, they have been making a lot of money. Even in a place like the capital city of Delhi, many pieces of land have been encroached upon by everybody. There are some provisions in the 1995 Act - sections 54, 55 and 56. As per these sections, the Wakf Board is the authority competent to deal with the matters. It can very well take action against the erring persons. But there is nothing which has been done. It cannot be done because of certain things. Even if the matter is taken to the court, if at all it is taken up by the court, they will bring some objections, *res judicata* and other provisions of the Civil Procedure Code.

It will be stayed. Then again that Criminal Court would also say that this being a matter of the civil nature, they would not be able to entertain it. Therefore, ultimately these looters, in the name of *Mutavalli*, have been misusing this. This is the time for the Government to step in and stop it.

Sir, this country being secular in nature, having all religious denominations, everybody has been given their privilege to have their own laws and the State has been supporting it. This is the most important thing for India, that is, *Bharat*. It is because any citizen, whether he is a Hindu, or a Muslim or a Christian has his own right to assert his religious rights and manage the property for the purpose for which it has been dedicated. Here, as Shri Banatwala *Sahib* has very clearly mentioned in the Statement of Objects and Reasons of the Bill that the Government should seriously view any encroachment on Wakf property than seeing it as a mere Order of removal of the encroachment. This is particularly so because the Wakf property is permanently dedicated for pious, religious and charitable purposes. That very charitable purpose, that very pious purpose has been defeated if it is not taken seriously. Therefore, I urge the Government also to consider accepting this amendment moved by Shri Banatwala. It is in the national interest; it is not in the interest of any particular community. It is the property belonging to the public. This is a property belonging to the people who are rightly and legitimately owning it for a pious purpose. Therefore, I strongly urge the Government to give consideration to this amendment.

MR.SPEAKER: Please conclude. I am trying to conclude this item today itself.

SHRI E. AHAMED : I would like to say one more thing. The position of our country in the Comity of Islamic countries is that this is one country which is giving safeguard to the religious minorities. So far as the Muslim minorities in this country are concerned, this is one of the most important things. If this Parliament, this secular Parliament passes such a protection Act of the Wakf property and also save this property from the looters, from those vested interests, it will be a landmark step in the history of this Parliament. Thank you very much.

**श्री ईश्वर दयाल स्वामी** : यह बिल जो माननीय बनातवाला जी आईपीसी को अमेंड करने के लिए लाए हैं कि वक्फ की प्रापर्टी पर जो जबरन कब्जे हो रहे हैं, उसका मिसयूज हो रहा है, जो प्रापर्टी अच्छे काम के लिए डेडिकेटेड की गयी थी लेकिन उसका मिसयूज हो रहा है, उसे रोकने के लिए यह बिल लाए हैं। उनकी मंशा और भावना बहुत अच्छी है। माननीय बनातवाला जी के अलावा जो 11 मैम्बर्स बोले हैं, चाहे वे किसी भी दल के रहे हों, सभी ने एक मत से इस बात को सपोर्ट किया है कि ऐसी प्रापर्टीज की हिफाजत होनी चाहिए। सरकार को उनको महफूज रखना चाहिए और उनकी हिफाजत के लिए सख्त कदम उठाने चाहिए। ऐसे कानून बनाने चाहिए और ऐसी अमेंडमेंट्स करनी चाहिए जिसके हिसाब से, जो गलत किस्म को लोग हैं, जो समाज के खिलाफ हैं, उनके खिलाफ एक्शन हो सके। यह बात सही है और खुद बनातवाला जी ने भी महसूस किया होगा कि इस आईपीसी अमेंडमेंट की जरूरत नहीं है। जैसे माननीय बंधोपाध्याय जी ने कहा कि बंगाल में तो ऐसी एक ज्यूडिशियल इंकवायरी हुई। वहां के मुतावल्लीज हों या वक्फ का मैनेज करने वाले लोग हों, उनका नैक्सेस कुछ ऑफिसर्स और असामाजिक तत्वों के साथ बन जाता है। उसके लिए उनको ज्यूडिशियल इंकवायरी करानी पड़ी। इसी तरह से माननीय चेन्नितला जी और माननीय अनादि साहू जी ने कहा कि जो वक्फ बोर्ड के प्रोविजन्स हैं, सैक्शन 32 के अनुसार, जिनका जिक्र यहां किया गया है कि सैक्शन 52, 54, 55, 56 अपने आपमें सक्षम हैं और काफी अच्छे हैं, उसमें चीफ एग्जीक्यूटिव ऑफिसर स्वयं एक्शन ले सकता है, इक्विशन के आर्डर पास करने के बाद अगर उनको कामयाबी न मिले तो एसडीएम को अप्रोच कर सकता है। हमारे सीआरपीसी में पहले से कानून है कि वक्फ के मुलाजिम, वक्फ की प्रापर्टी मैनेज करने वाले अफसरान अगर फुर्ती से काम करें और अगर कोई वक्फ की प्रापर्टी पर इंक्रोचमेंट करे तो उसी वक्त किसी भी एग्जीक्यूटिव मजिस्ट्रेट को अप्रोच कर सकते हैं।

एग्जिक्यूटिव मैजिस्ट्रेट को एप्रोच करने के बाद सीआरपीसी की धारा 144 के नीचे धारा 147 में नोटिस जारी हो सकता है और धारा 145 में वह प्रापर्टी अटैच हो सकती है। उसके बाद जब वह फेसला दे, तो वक्फ की प्रापर्टी, जिस किसी ने जबरदस्ती करने की कोशिश की है या कब्जा कर लिया है, उसको वापिस दिला सकते हैं। यह भी है कि सीआरपीसी की धारा 143 से लेकर धारा 148 तक प्रिवेंटिव मैजर्स हैं और प्रिवेंट किया जा सकता है। इसके बावजूद भी अगर बात नहीं बनें, तो वह सिविल कोर्ट में जा सकता है। सिविल कोर्ट में यह लम्बा सिलसिला लगता है। मैं समझता हूं कि यह बात सभी मैम्बरान ने कही है कि आईपीसी में एमेंडमेंट से बात नहीं बनेगी। जहां तक बनातवाला जी ने कहा कि यह रिलीजियन के खिलाफ होगा, क्योंकि यह आर्फसेस रिलेटिंग टू रिलीजियन है। मैं इस बात से इतिफाक नहीं रखता हूं। किसी भी मैम्बरान ने शायद इससे सहमति प्रकट नहीं की है। चैप्टर-15 भी आर्फसेस रिलेटिंग टू रिलीजियन है। उनमें सैक्शन के हेडिंग हैं - "injuring or defiling places of worship, deliberate, malicious or intended outrage of religious feelings, disturbing religious assembly, trespassing on burial grounds, uttering words etc. with deliberate intention to insult a religion." उसी सैक्शन में अगर ये अमेंडमेंट शामिल कर लिए जायें, तो ठीक नहीं होगा। यह बात सामने आई है और सभी आनरेबिल मैम्बर्स ने इस बात को कहा है कि यह सैक्युलर कन्ट्री है। श्री बनातवाला जी ने आर्गुमेंट्स में कहा है कि सैक्युलर कन्ट्री में वक्फ की प्रापर्टी को प्रोटेक्ट करना जरूरी है, वहीं उनको यह बात भी ध्यान में रखनी होगी, यह बात सभी मैम्बर्स ने भी कही है, कि सिर्फ वक्फ बोर्ड की प्रापर्टी के लिए कानून में अमेंडमेंट नहीं किया जा सकता है, क्योंकि गुरुद्वारों की भी प्रापर्टी है, मंदिरों की भी प्रापर्टी है, चैरिटेबल परपज के लिए जो ट्रस्ट बने हुए हैं, उनकी प्रापर्टी है तथा प्राइवेट चैरिटेबल ट्रस्ट भी हैं। इन सबके लिए कोई कानून बनें, तो सैक्युलर कन्ट्री में इस बात को देखा जा सकता है। यह कहना कि सैक्युलर कन्ट्री है, केवल वक्फ के लिए कोई अमेंडमेंट किया जाए, तो शायद यह सही नहीं होगा। श्री बनातवाला जी बहुत लर्नैड वकील भी है और बहुत पुराने पार्लियामेंटेरियन हैं, मैं उनकी बातों को आमतौर पर सुनता रहा हूं, मैं उनकी कद्र करता हूं। वे अच्छी तरह से अपनी बात रखते हैं, लेकिन इस बात को ध्यान में रखते हुए कि वक्फ प्रापर्टी को प्रोटेक्ट करने के लिए, वक्फ की प्रापर्टी को बचाने के लिए आईपीसी में कोई अमेंडमेंट की जाए, तो ठीक नहीं होगा। हां, वक्फ एक्ट में जो प्रोवीजन दिए गए हैं, उनको और सख्त बनाया जाए, वक्फ एक्ट में कोई अमेंडमेंट किया जाए, तो उसके बारे में सोचा जा सकता है। इस बारे में अन्य मैम्बरान में भी सुझाव दिए हैं। समय की कमी को देखते हुए, मैं केवल उनसे इतनी अर्ज करना चाहता हूं कि (व्यवधान)

SHRI SAIDUZZAMA : Mr. Speaker, Sir, the main point is that timely punishment should be there. पनिशमेंट होनी चाहिए, जिन्होंने गलत काम किए हैं या प्रापर्टी गलत तरीके से कब्जा की है। उनके खिलाफ कार्यवाही नहीं होती है।

**श्री सी.के.जाफ़र शरीफ़ (बंगलौर उत्तर)** : अध्यक्ष महोदय, सदन में प्रधान मंत्री जी उपस्थित हैं। जो प्राइवेट इन्स्टीचूशन्स हैं या प्राइवेट एन्क्रोचमेंट्स हैं या सरकारी आर्गेनिजेशन ने कब्जा कर रखा है, उसके बारे में क्या प्रधान मंत्री जी कुछ कहेंगे।

MR. SPEAKER: I extend the time of the sitting of the House till this item is concluded.

**श्री ईश्वर दयाल स्वामी** : मैं यह समझता हूं कि अगर सैक्शन 144 से 148 तक देखें, तो थानेदार ने मामला अंडर 44 तैयार करना होता है। सरकार की जमीन पर कब्जा कर लिया जाए, तब भी क्लैक्टर को एक एप्लीकेशन एसडीएम को धारा 145 में अपनी किसी आफिसर को डैजिगनेट करके देनी पड़ती है। अगर सरकार ने भी कहीं कब्जा कर लिया है या वक्फ की प्रापर्टी पर कब्जा कर लिया है, और वह अच्छे काम के लिए इस्तेमाल नहीं हो रही है या उनका मकसद पूरा नहीं हो रहा है, तो वक्फ बोर्ड की अथारिटीज, उसके चेयरमैन और चीफ एग्जीक्यूटिव आफिसर डिपार्टमेंट को एप्रोच कर सकते हैं। मैं समझता हूं कि एप्रोच करने के बाद इसका हल निकल सकता है। अगर हल नहीं निकलता है, तो सी.ओ. के पास पावर्स हैं कि वह सरकार के खिलाफ इजैक्टमेंट आर्डर पास कर सकती है और सरकार के खिलाफ एक्शन न ले सके, तो एसडीएम को एक एप्लीकेशन दे सकता है। एसडीएम फेसला करेगा और अगर इजैक्टमेंट आर्डर होगा, तो एसडीएम उस आर्डर के लिए पुलिस की हैल्प ले सकता है। ऐसी बात नहीं है, यहां कानून सबके लिए बराबर है। हां, सरकार का कब्जा हो या गैर सरकारी इंदारे का कब्जा हो या चाहे किसी प्राइवेट पर्सन का कब्जा हो या किसी इन्स्टीचूशन का कब्जा हो, तो उसमें किसी के लिए भी मना नहीं है कि वह कानून उस पर लागू न हो।

**18.00 hrs.**

जरूरत इस बात की है कि इस लॉ को सख्त किया जाए, वक्फ एक्ट को कुछ और सख्त किया जाए। इस बारे में सोचा जा सकता है। जेपीसी बैठी है। उसकी रिकमंडेशन भी आ जाएगी। जैसा कि प्रापर्टी का सर्वे करने की बात आई। वह सर्वे भी हो जाएगा। इन सब चीजों को देखते हुए मैं बनातवाला जी से बार-बार प्रार्थना करूंगा कि वह इम अमेंडमेंट बिल को वापस ले लें। इसके बाद हम देख लेंगे कि वक्फ एक्ट में क्या संशोधन करने की जरूरत है। इस बारे में सोचा जा सकता है।

SHRI G.M. BANATWALLA (PONNANI): Mr. Speaker, Sir, I am very thankful to the hon. Minister for his sympathetic and very kind intervention. I also thank all the Members who have participated in the discussion on the Bill. I moved

the Bill and then 11 Members participated. Thereafter, the hon. Minister has very kindly intervened. His intervention is very useful. I am so happy that we had a very light-bearing discussion. With the sympathetic attitude that the Government has taken and which the hon. Minister has just expressed, I am sure, the discussion will not remain merely light-bearing but will also be fruit-bearing in its purpose.

I am so heartened and happy that every section of the House has agreed with the intentions and concerns that we have expressed about the loot of the Wakf property that is going on. Everybody has shared that concern. The only question remained is as to how to address this particular problem. Therefore, we had discussion centred on whether there is any need for amendment, and if there is a need for amendment, whether the amendment must come in the IPC or whether the amendment should go to the Wakf Act or any other Act. These are matters of detail. There were so many suggestions. Similarly, if the amendment is to be in the IPC, what should be the nature of the amendment and what should be the reach of the amendment? That was another matter of detail that was considered and several suggestions were there.

I say that my amendment is concerned with only the Wakf properties. A similar position may be there with respect to *Devasthanam*. I have been pointing out the *Devasthanam*'s position and also with respect to temples. But, I am sorry, my knowledge about those state of affairs is rather limited. I thought I might not make a mistake and create any provocation anywhere. Therefore, I did not touch that particular aspect. But then such a provision can be made applicable to all places of religious worship and places of religious significance, whether it is Wakf or whether it is *Devasthanam* or *Gurdwaras* or anything whatsoever. I am totally agreeable that any encroachment on the land and the properties of religious significance must be removed. For public service, any encroachment is an encroachment against the society. There must be a criminal liability. A deterrent punishment should be given. However, we are told that there are provisions under the Wakf Act. Yes, there are provisions. But there are so many difficulties there. In the first place, the implementation of the Wakf Act, 1995 is a State concern. As I had pointed out while piloting the Bill, the position in various States with respect to the implementation of the Wakf Act is very pathetic. In 1995, the Act came into force. We are in the year 2003.

Eight years have passed by and there are States, which have not brought in Wakf Board into existence and because there is no Wakf Board into existence, there is no Chief Executive Officer in existence. Since, there is no Chief Executive Officer in existence, the provisions 52, 53, 54, 55, 56, etc. of the Wakf Act with respect to all those encroachment matters, etc. cannot be implemented. The people know that there is no Wakf Board or the Wakf Board is not fully constituted, that there are no Chief Executive Officers and therefore, that machinery and the mechanism contemplated by the Wakf Act is also not there. Therefore, encroachment goes on with impunity. That is the position.

MR. SPEAKER: Please conclude now.

SHRI G.M. BANATWALLA : Sir, I know the sanctity of time and I realise this.

Another problem is that whenever there are mechanisms, there is no full cooperation coming, as I have already pointed out, from the district administration, from the police to the Wakf authorities. These are matters that have to be considered. I will only say this much and conclude and that is, that by merely having a civil procedure, the question of encroachment on Wakf properties or as a matter of fact on the properties of public nature will not be solved. A person encroaches. Supposing you go to court and supposing the court also give an expeditious decision, which is so difficult, but then what happens? The man goes out of the encroachment he has enjoyed it for so many years. That is all that is to it? No, the person who has encroached and misutilised the entire place meant for charitable purposes, must also have criminal liability and deterrent punishment so that there is a deterrence in the society for this particular offence.

I am very thankful that the purpose of the Bill is served and, that is, to have an enlightened discussion on a serious question that is there before us. I am sure, the Government will consider various points, various suggestions which have been here. I am not adamant on any particular method to be adopted, but the problem has to be solved. I am sure, the Government will ponder over this question and suitable measures would be taken to avoid this loot of the Wakf properties or the properties of any religious significance, as a matter of fact, that is going on in our society.

With these words, I thank you very much. The hon. Prime Minister is also here. I had referred in my speech while speaking that a lot of Wakf property is under encroachment by the Government - Central, States and the local bodies. When Shrimati Indira Gandhi was the Prime Minister, she suggested a formula. But even that formula is not being implemented. So, I would request the Government to consider all these things. There are about 23 Wakf properties here in Delhi, which were to be transferred from the Government to the Wakf Board. The matter is lying in the court. I would request the Government to take interest and get the matter expedited.

With these words, I seek the leave of the House to withdraw my Bill and hope that the serious question will receive due attention from the Government and necessary action will be taken without delay.

I beg to move for leave to withdraw the Bill further to amend the Indian Penal Code, 1860.

MR. SPEAKER: The question is:

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

*The motion was adopted.*

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

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