



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Thursday, the 29th October, 1953

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF PAKISTAN

Thursday, the 29th October 1953

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Ten of the Clock, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

REPORT OF THE BASIC PRINCIPLES COMMITTEE— *Consideration contd.*

PART I

CHAPTER II—DIRECTIVE PRINCIPLES OF STATE POLICY

Paragraph 2

Mr. President : We resume consideration of the Report of the Basic Principles Committee. The House had under discussion the following amendment of Prof. Raj Kumar Chakraverty :—

“That to paragraph 2, the following new sub-paragraph (19) be added at the end :—

‘(19) There should be no detention without trial’.”

Mr. Chattopadhyaya ! You were on legs yesterday.

Shri Sris Chandra Chattopadhyaya (East Bengal : General) : Mr. Nandy would speak.

Mr. President : Mr. Nandy ! Will you speak ?

Mr. Bhabesh Chandra Nandy (East Bengal : General) : Yes, Sir. I stand to support the amendment moved by Prof. Raj Kumar Chakraverty. Sir, the fundamental idea of making a good Constitution is to ensure the rights and privileges to the people. So, from that stand point of view, it is essential that we should incorporate this clause in the Constitution. Sir, every body knows how the party in power generally plays with the rights and privileges of the people to serve their own advantage. It is, therefore, all the more necessary that such a clause be incorporated. My friend Mr. D. K. Datta pointed out and also Mr. B. K. Dutta has explained from his personal experience how often the party in power behaves in a way whereby nobody feels himself safe and secure. So I am pressing that provisions should be made clearly in the Constitution to safeguard the interests, rights and privileges of the people so that there cannot be any encroachment on the freedom of individuals whatever be the difference of point of view with the party in power. This clause is therefore essential and it should be incorporated in the Constitution. Sir, I can also speak a little from my own experience how often the Britishers made ordinances and laws even in normal times to curb and to restrict the freedom of the people by putting them in jail without any justification whatsoever. Even today after we have achieved independence we have instances of people who are rotting behind the bar. God knows what is their fault. Mr. Datta pointed out yesterday the case of Mr. Abdul Ghaffar Khan of Frontier, who assured his allegiance and help to Pakistan when speaking in this House. I can say that nobody doubts that what Mr. Abdul Ghaffar Khan will say he will follow. He is not a man of the type to fall back from what he said. So there is no reason to suspect that he will do any mischief to

[Mr. Bhabesh Chandra Nandy]

the Pakistan Government. But still he is rotting in jail for the last five years. We do not know what charges the Government has got against him, but still he is rotting in jail. This is only one instance. There are so many other instances. You know in the language movement in Bengal, how the people were arrested, how they were put into the prison only to guard the interests of such men in power or in authority. We could not make head and tail of the attitude of the Government, when they suddenly caught hold of certain people, some professors, some students, some M. L. A.s and some leading citizens and put them in prison where they had to rot for years together. So if such a state of affairs is allowed to exist even after we have become free then there is no need of making the Constitution. If we cannot save the legitimate freedom and rights of the people, if we cannot guarantee that there will be no encroachment on the freedom of the people, then what is good of making a Constitution. It is better to have a lawless order; it is better have a system wherein no obligation is put on every body; let the people in power behave in a way that serves their interests, no matter how far it encroaches upon the rights and privileges of the people. I am sure no body wants such a state of affair. So this amendment is necessary. So, Sir, with these few words I support the amendment, and hope friends on the other side will realise the necessity of it.

Shri Sris Chandra Chattopadhyaya : Mr. President! Sir, I support the amendment moved before the House by Prof. Raj Kumar Chakraverty and I hope this amendment will be accepted by the House and incorporated in the Constitution. This principle of detention without trial has always been described by us as an obnoxious lawless law and I regret it is still in existence despite the dawn of independence. The law for detention without trial as the lawless law was first described, and Mr. President you know by that great jurist Dr. Rash Behari Ghosh in the Town Hall meeting in Calcutta some day between 1905 and 1910 contrary to all principles of jurisprudence. You will remember that in 1908 that rustic weapon the Regulation III of Bengal was first applied against the nine of our prominent men, like Aswimi Kumar Dutta of Barisal and others. Their only offence at that time was that they were the prominent members who fought against the partition of Bengal and made impossible for the administration to carry on so ruthlessly, for which of course, the then Lieut.-Governor Mr. Fuller had to go. He had resigned and his resignation was accepted. From that time I have the misfortune of representing these detenus before the Government. There were many difficulties to convince the Executive to release these people. They prepared cases against those people so beautifully that it was impossible to say for any one that they were innocent. Much has already been said about this lawless law. Only one thing I will say. This is a very convenient weapon when there is a party system of Government, because as soon as one party comes in power, this lawless law is applied against its opponents. I may say frankly that it is very difficult for us to convince the people who do not suffer under it. I can only say and explain in a few words :

* "Nobody will feel the pangs of poison if he has not been bitten by a snake."

Therefore it is very difficult to convince them. I only say that this law must not be put on the Statute Book. When after the Mutiny the Britishers created some sort of such laws, you will remember that the then Governor General Lord Canning did not like to apply those laws in all cases and therefore he was called "Clemency Canning." In answer

* Translation of a Bengali poem read out by the Honourable Member.

he stated "I have got papers in my desk which I do not wish to publish to blacken the face of my country." Really it blackens the face of a country where such a law exists. These laws of detention without trial must be removed from the statute books. Besides this, it is also against the principles of Islam, against the Islamic principles which enjoin that nobody could be detained without a trial in open court. It is repugnant to *Sunnah*. I shall refer you to some special opinion by some of the Khalifai Rashidin. You know that excepting Abu Bakr all his successors were killed. Second to him was Umar. He was informed that Feroz would kill him and he was asked to take some steps against him. You will find his answer in Ibne Sayed.

I shall read it in Bengali. They requested the Khalifa to apply some law to detain him.

Mr. President : You have got only one minute more.

Shri Sris Chandra Chattopadhyaya : Are ten minutes over so quickly ?

Very well, Sir, I do not want to read the whole of it. Umar stopped the advisers with reasons as this. Islam has no doubt prescribed punishment for criminals, but before crime is established, no power is given to encroach on any person's freedom on mere suspicion. So by mere suspicion, an opposition cannot be put behind the bars. Merely on suspicion Feroz cannot be detained. This Feroz killed him, yet he did not merely on suspicion detain him. Ali was also killed. His followers drew less attention to a conspiracy to kill him by Abdur Rahman and asked him to take steps against him but he said :

"He has not yet killed me, how can I take steps against him."

I would ask you to read those books. I have no time to place every thing before you. In the book "the Administration of Justice in Medieval India" by Mr. M. B. Ahmad, you will find on page 266 a *farman* issued by Aurangzeb.

It is a detailed *farman* and says that prisoners were not to be taken into custody until a *prima facie* legal evidence was available and proved and no prisoner was to remain in jail without a lawful charge.

I have not any more time, otherwise I will read to you *in extenso* and show what it means. But I will ask you to read this book and ask you to follow the Islamic principles.

Maulana Sahib had suggested similar amendment to another clause which was not considered then. This is the proper time to consider it.

Sir, if I had more time I would have placed everything. I would ask you to read all these things very carefully and then decide. In the name of Islamic constitution I request the members not to frame an un-Islamic constitution and thereby blacken the face of Pakistan.

Mr. A. K. Fazlul Haq (East Bengal : Muslim) : *Mr. President Sir, I deem it my duty to say a few words in support of this amendment.

Sir, the House is aware that my friend the Honourable Mr. Brohi has held the office of Advocate General of Sind for some time and in spite of my unsuitability for high office or public office, I was selected by the Government of East Bengal to be their Advocate General some time before for a period of 2½ years. I do not wish to divulge any of the secrets, but I may tell the House that what I came to know in the course of my duties left a deep impression in my mind that nothing would be more atrocious, nothing would be more disgraceful, nothing would be more objectionable for a civilised Government than to have on its Statute Book a lawless law like the one which we are condemning. I will not say anything further. I feel that it is so un-Islamic that it does not need a Member of the Hindu

[Mr. A. K. Fazlul Haq]

community to point out to the Islamic Government that to place such a law on the Statute Book is against the teachings of Islam. Praise be to God that light has come from the Hindu quarters. Let the light illumine the minds of those who are in power and let them not lose one single moment in accepting the amendment.

Mian Muhammad Iftikharuddin (Punjab : Muslim) : *Mr. President ! Sir, I think I can express my point of view in a forceful manner by no other method than after my friend, the Leader of the Opposition has quoted the traditions of Islam, if I now quote the sayings of Quaid-i-Azam Mohammad Ali Jinnah. Sir, here is a speech of the Quaid in the year 1924 when he said :

"Sir, I am not one of those men who encourage any crime or any offence, but I do maintain,—and I have drunk deep at the fountain of constitutional law,—that the liberty of a man is the dearest thing in the law of any constitution and it should not be taken away in this fashion."

I have read that so that the gentleman, who has piloted this Bill may, perhaps not having been in politics at any time and having had long and brilliant legal career, may not think that no matter what the subject or what the point, he has only to support everything for which he is paid and whatever the cause he takes a stand on legal ability. I just want to point out to him that Quaid-i-Azam Mohammad Ali Jinnah was a constitutional lawyer, if the Khulafa-e-Rashideen did not command that respect of him because they may not have been to a British or Indian British University. Sir, with due respect, I would say that the founder of the nation made it quite clear from the beginning that Pakistan and liberty are one thing. Here is another speech of his, which I would like to read with your permission, Sir :

"My liberty should not be taken away without a judicial trial in a proper court where I have all the right to defend myself."

"If I were an official and if I felt that my life was in danger and I was going to be shot down, even like a dog, I should never be a party to a measure which will endanger the life and liberty of the innocent population as this measure undoubtedly does. But rather I would stand and be shot down by that wicked gang, than give power to the Executive and the Police which can be abused and has been abused in the past."

Mr. M. H. Gazder (Sind : Muslim) : When was that speech delivered by the Quaid-i-Azam ?

Mian Muhammad Iftikharuddin : I am thankful to the Honourable Member for reminding me to mention the occasion. This speech was delivered by the Quaid-i-Azam in the Central Assembly on January 28, 1925. Sir, these are the views of Quaid-i-Azam and they are before you. Now, how Pakistan came into being ? Again I have to remind, because the gentleman does not know the traditions and the history of this movement. Only as late as 1949 when on the 8th of August the then Minister of the Interior issued an ordinance under the signature of His Excellency the Governor-General, promulgating the Central Safety Ordinance, such dignitaries as today occupy Ministerial and Provincial Ministerial seats, gave this statement. I have in my hand, Sir, a paper, which will be a very historic paper, because in their own hand the great legislators, who sit on that side have signed this paper ; and the original is here with me. Sir, this paper is signed by the respected lady Begum Shah Nawaz ; Khan Iftikhar Husain Khan of Mamdot, ex-Chief Minister, Punjab ; Mumtaz Mohammad Daultana, ex-Chief Minister, Punjab ; Sardar Shaukat Hyat Khan of the Muslim League Party ; Malik Firoz Khan Noon, the present Chief Minister of Punjab ; Dr. O. H. Malik, the present Ambassador of Pakistan and late Sheikh Karamat Ali, the then Minister in Punjab, and

* Speech not corrected by the Honourable Member.

my humble self. I hope that mention of my name will not prejudice any one, but truth demanded that I should give out that also. Sir, in this statement they say :

"The people of the West Punjab who launched their historic struggle against this very legislation had a special reason to resent the existence of the provincial Act and will now no doubt be shocked at its sanctification by the Pakistan Government, in the shape of new Central Ordinance. To the people of the West Punjab the struggle against the Safety Act and the fight for freedom had become synonymous and this relapse into the traditions of slavery is reminiscent of the dark days of the Unionists and a betrayal of the ideals embodied in the demand for Pakistan."

Sir, the lawyer should know better before advancing his case. Sir, the statement further says :

"It is a sad commentary on the popular character and self-confidence of a national government that they should find even the notorious and repressive laws of an alien government as insufficient to govern their own people."

"Many who fought for the success of the Muslim League Party have a further reason to pause and think. Are the civil liberties and people's interests safe in the hands of the men whom the Muslim League has put in power."

Sir, this is a statement from seven Muslim Leaguers plus myself from the Punjab. Sir, to us in Punjab Pakistan and civil liberty were synonymous. You remember that during the struggle in the 40 years history of Muslim League, the only direct action that took place was in the Punjab. Throughout the struggle there never was any occasion so important and provocative as when the Safety Act was put into action against us in the Punjab. It shows the ideals that we fought for. We attached great importance to it and thousands went to jail and as a matter of fact it was the success of that movement which really sealed and put the last nail in the coffin of those who opposed our freedom. Sir, if this is not the betrayal of those great proclamations and those traditions what else could. Today we are seeing that we fought for Pakistan, we fought for a State in which a gang could be enabled to rule. That is what we are proving to the people. And, Sir, how unjustly this law can and has been implemented can best be proved by the classic example of the gangsterism of those who are responsible for putting Khan Ghaffar Khan in jail. Sir, here is the speech of my friend, Ghaffar Khan, which he made. I would quote only a few lines. He said in this Assembly :

"I admit that it was my honest opinion that India should not be divided ; India should not be partitioned. But now that it is done, the dispute is over."

He then said "I and my people are at your service". He then said we should make it clear what type of State we want to make. He then says.

"We have to find out as to how to run the State of Pakistan. We have before us the traditions of our early predecessors....."

Thereby meaning the founders of Islam. He said that nowhere can any body in Islam, because of his personal grudge, take action against another person.

As high a dignitary in the history of Islam as Hazrat Ali, when somebody spat on him he said I will not take action because it may mean that I am taking action against him because he spat at me. He is one of the five most illustrious Khalifas in the history of Islam. But here if any Chief Minister finds that anybody makes himself inconvenient to him—no matter how bad it may appear even to the people sitting on the same Benches—he is prepared to take action and go scot-free and for six years this gentleman, who fought for 30 years, who has been over 20 years in jail, who had the courage to say something if he wanted to honestly think like that and who says "I will be faithful to you ; I am at your service ; let us build up this State now on the traditions of

[Mian Muhammad Iftikharuddin]

Islam", is now rotting in jail. Is there a greater scandal, a greater proof of the unscrupulousness in which this law can be used. Therefore, in the name of the founders of Islam, in the name of the traditions of Islam, in the name of the founder of this State, in the name of one who launched the only fight of direct action, in the name and history of the Muslim League, in the name of justice and humanity, I demand that this law should be incorporated in our Constitution. This should have been the first principle after

Bismillah-hir-Rahman-ir-Rahim

In the name of Allah, the Beneficent, the Merciful

in our Constiution because it is synonymous with Pakistan and if this amendment is not accepted today, well the people of Pakistan will know that Pakistan has been betrayed, though a State for a gang to rule over 8 crores of people may yet exist.

Seth Sukhdev (Sind : General) : Mr. President! Sir, in supporting the amendment of my friend, Professor Chakraverty, I want to say a few words.

Sir, I also belong to those few who have had an experience of this kind of law—to be arrested and detained without trial. Sir, in pre-partition times, I had been sentenced on political grounds several times and I had been in jails of Karachi, Sukkur and Nasik Road where I had come in contact also with those people who had been detained without any trial. I was also once detained without any trial and I can tell you what passes in the mind of an man or woman who is detained without any trial. Those opposite us, who have never tasted the rigour of jail life, or who have not been in jail without any trial can never realise the difficulties of those detained without trial, whatever the books they may have read on jail life.

Sir, a person who is sentenced, say, for five years, knows that he is sentenced for five years and everyday that passes goes out of those five years and one day those five years will be over and he will be out of the jail; but the person who is detained without any trial—and if he thinks that he has been detained without any reason, how much does he feel? It is beyond the comprehension of those who are sitting opposite me. Sir, I have known those people who have been in jail for years. I have met in jail the people whom I knew and came to know that they were detained in jail without any trial. How do they feel? They feel for their wives; they feel for their children, for their friends, re'atives; they feel how their children, how their wives might be spending their lives; have they money or no money? To think and brood like this in jail will make any sane person go mad. I have seen those detenus in a half-sound state of mind, daily thinking when one year will pass, when some good Judge might look through his papers—papers of his case prepared not by him but by the C. I. D. people! And this Judge comes, looks into pages after pages and says "Keep him another year".

Sir, I have got experience after partition also when our Pakistan came into existence and the Muslim League Government came into power. There was Minister Shahabuddin in the Rehabilitation Ministry, now he is His Excellency the Governor of the N.-W.F.P. at Peshawar. He sent a train of refugees to Larkana to be rehabilitated. I do not blame refugees—in those days times were not normal—they entered Larkana, looted the bazaars, stabbed a few Hindus. There was a hue and cry, and Hindus went to the District Magistrate and said what is

this state of affair, we are citizens of Pakistan. The poor District Magistrate waited for some time for instructions as to what he should do. All of a sudden some of the prominent Hindus, Tolani Brothers, who were big *Zamindars* and some other Hindus, who were never politicians in their lives, were arrested and detained. I have told you what is detention and these who were detained without any reason, without any trial, were told privately that they could be released if they left the country. They agreed and after some time they were released. They went away to India, leaving property worth lakhs of rupees. I do not want to say that because they were Hindus, why they were treated like that. Today Hindus are treated like that; tomorrow Muslims will be treated like that. Only recently there was a case. Some Hindus were detained without trial for smuggling and I knew them personally; some *Zamindars* and some refugees had grudged against them: they wanted their business. So the authorities were told that they were smugglers and without any inquiry they were arrested and detained without trials. I even submitted their case to His Excellency the Governor of Sind. After a time the reply came that nothing could be done in the matter. Then after some time they were released. They ran away from Pakistan, fearing to be arrested again, Sir. If such law, detention without trial, is put in our Constitution then God saves our citizens from this lawless law; then I say it is barbarous and primitive law. Even primitive people would not detain any without trial. At least they would hold a meeting of their *Jamayat*, hear the case and decide it on the spot. But to put man in jail without any trial, like Khan Brothers and many such others for years continuously is not Islamic. Sir, I do not want to go into details of Islamic law. Our new Moulavis—Moulvi Chattopadhaya Sahib and Maulvi Chakraverty—have stated what is Islamic law.

Mr. President : You have got one minute more.

Seth Sukhdev : I would request another Moulavi—Dr. Mahmud Husain—to throw light on how this law is not repugnant to Holy Quran and Sunnah. With these few words I support the amendment of my friend Professor Chakraverty.

Mr. Jnanendra Chandra Majumdar (East Bengal : General) : Sir, I rise to support the motion moved by my friend Prof. Chakraverty. Sir, I have been twenty years in jail. I do not want to relate to you the sufferings that the detenus have to undergo because my leader, Mr. Chattopadhyaya, has already described them in a Bengali poem. English translation is that those who are happy and have never suffered cannot understand the sufferings of those who have suffered. So I say that from Mr. Pathan on one side down to Mr. Nishtar on the other, because they have not been detained in jails, and so did not undergo any suffering they cannot understand the sufferings of those who had been to jail. But from my personal experience I want to say one instance in support of my friend, Mr. B. K. Datta, that this law is being utilized for Party cause. When Mr. Fazlul Haq was the Chief Minister of the Muslim League Government in the united Bengal and Kh. Nazimuddin was Home Minister in 1940, I was arrested and detained in Alipore Central Jail. After some time when that Ministry failed, another Ministry was formed with Mr. Fazlul Haq as Chief Minister and Dr. Shyama Prasad Mukherjee and others as Cabinet Ministers.

Sardar Abdur Rab Khan Nishtar (Punjab : Muslim) : Mr. Majumdar ! I was arrested in 1924.

Mr. Jnanendra Chandra Majumdar : Now, Sir, in 1942 when the Japanese were on the gates of India, Mr. Fazlul Haq and Dr. Mukerjee brought myself from Dacca Central Jail. Mr. Pratul Chandra Ganguli from

[Mr. Jnanendra Chandra Majumdar]

Midnapore Central Jail to the Secretariat in Calcutta. I think Mr. Fazlul Haq will bear me out. We had a meeting with him and his Cabinet. We discussed the ways and means to find out a formula whereby all the detenus could be released, so that in that national emergency they could defend their country. Some formula was then approved by Government. Dr. Mukerjee and Mr. Fazlul Haq then went to the then Governor, late Mr. Herbert but they were told by the Governor that all the detenus could be released on the condition that Kh. Nazimuddin was associated with them in the Cabinet. So I say that is how this law was being utilized in the past and also being utilized now in Bengal.

Sir, it is an irony of fate that though the mass movement for independence was originated from the agitation against such lawless laws but after achieving independence we are utilizing this law for detaining persons without trial. You know the history of the Rowlette Act, which was introduced by the Government to crush the freedom movement in Bengal and Punjab. Against that Act Mr. Gandhi took the field and led a mass movement resulting in the massacre of Jallianwala bagh in Amritsar and outrages under Martial Law throughout the Punjab. From that movement grew up the movement for Indian independence and we are here an independent nation as a result of that movement, and the irony of fate is that the measure against which the people fought before independence is still being utilized after independence with the same motive and persons are being detained under that measure.

Sir, next I want to make one more point. My friend Mr. Dharendra Nath Datta mentioned the name of Khan Abdul Ghaffar Khan, which is a name to be conjured up. He is the gentleman who is called Frontier Gandhi because of his truth and non-violence; he is the gentleman who has suffered most, I should say, for the cause of independence in this part of the country. But, Sir, he is now rotting in a Pakistani jail as a detenu. What was his fault? No tangible statement has been made by the Government regarding his detention without trial. He is also a Member of this Assembly and he is not brought here to take part in the deliberations of this House.

Sir, with these few words, I support the amendment moved by my friend Mr. Chakraverty.

Dr. Mahmud Husain (East Bengal : Muslim) : Sir, it seems to me that the discussion on this motion has been confined to the merits and demerits of the principle that there should be no detention without trial.

Now, that is a principle in favour of which, I have no doubt, much can be said. In fact, every freedom-loving person would sympathize with a principle like this. Why should anybody after all be deprived of his liberty, except in a regular and legal manner? I personally sympathize with this principle unless, of course, it is made absolutely clear to me that depriving an individual of his liberty is essential in order to maintain the greater liberty of the country itself; unless that is demonstrated clearly, I would never favour a principle which obviously is wrong. But, Sir, the question before us is not whether this principle is right or wrong. Unfortunately, speakers have confined themselves to the principle in that manner. The question is whether this should form part of the directive principles. We are concerned with that just now. Is it really a matter of directive principle? I would submit it is not. It is a matter for legislation. The law has come before the House in the past while sitting as legislature. There will

be occasions when it will come before you and you will have an opportunity of examining it. Government will have to prove that it is necessary in the interest of the security of Pakistan that it should continue. That will be the occasion when you can advocate its removal from the Statute Book or its amendment in such a way as would take away the obnoxious aspects of the law.

Just now, however, we are concerned with the directive principles. If you include such a thing in the Directive Principles, it does not mean that the safety legislation goes—it remains. In spite of the evils of such law that have been mentioned by my friends that will remain on the Statute Book. Therefore, I would suggest that this amendment should not be pressed on this occasion but when suitable opportunity arises then the matter may be raised.

The Honourable Mr. A. K. Brohi (Sind : Muslim) : Mr. President ! Sir, the arguments that have been addressed in this House in support of this amendment require very close examination. I will, therefore, take a little bit of the time of the House in order to state as clearly as I can the position as I see it.

In the first place under the existing law whenever preventive detention is directed under what have come to be regarded as Safety Acts, it is perfectly open to the detenu to approach the High Court of the place where he has been detained with the prayer that the question of legality or otherwise of his detention should be examined. Under section 491 of the Code of Criminal Procedure that power has been reserved to the High Court. Generally the procedure is somewhat difficult. Under the law as soon as a detention has been directed by the Executive there is a presumption under section 114 of the Evidence Act that that detention has been properly directed but although there is this rebuttable presumption of law, it is perfectly open to a detenu to prove by all extraneous evidence that in fact his detention is contrary to the law for which he has been detained. In other words he must be able to show that the order that has been passed directing his detention is a fraud on the statute. In numerous cases where it has been proved to the satisfaction of High Courts that the detention of persons has been contrary to the law, release orders have been issued. Detenus were directed to be liberated. That is the existing position.

Then the other important point is with regard to the existence of 'legal sense' in this country. That unfortunately has not developed and we do hope and pray that legal sense will be fostered and developed because you cannot work a federal government successfully unless and until there does exist what is known as pre-detention for legalism. If this sense was developed then there would have followed another consequence in relation to detenus that have been directed without any rhyme and reason by the executive. I am of the opinion that the person who is responsible for directing a detention which may not be properly made under the safe law in other words detentions that are directed for ulterior political purposes, detentions that are in the nature of a fraud on the statute in relation to those cases, the person responsible for directing those detentions can be prosecuted under section 220 of the Penal Code because they have directed that confinement knowing that that confinement was contrary to law. I may tell the House that no previous sanction is required for commencing such prosecutions against even the tallest poppy in the State. That is the legal position as I see. Now the second point which the members of the Opposition ought to be able to appreciate is this that so far as the principle of detention without trial is concerned undoubtedly it is true that to the rational

[The Hon'ble Mr. A. K. Brohi]

system of jurisprudence such thing is revolting that any person can be detained validly without his being called upon to give an explanation in relation to any charges for which he may have been detained....

Shri Dharendra Nath Datta (East Bengal : General) : I am afraid the Honourable Mr. Brohi is out of order. He is irrelevant as the point just now under discussion is whether we should have a law of detention without trial or not.

The Honourable Mr. A. K. Brohi : I am not at all irrelevant. I am really stating points about things raised by the members on my opposite. If what Mr. Datta says is true then precisely these people were out of order completely. Mr. Datta in his speech referred to Khan Abdul Ghaffar Khan and somebody told the House about himself that he had been in jail for 23 years and so on and so forth. I am only replying to that. My friend ought not therefore to get nervous. What I am saying is absolutely germane to the amendment.

Now the other point to be appreciated is that supposing we incorporate this particular provision in the Directive Principles of State Policy what is the effect : the effect is that a direction is given to the Federal Legislature not to enact law which may provide for detention without trial. That in substance would be the effect. It will not be a justiciable issue but a direction would be given to the Legislature to keep that in view at the time when they are framing any law. Much more than that is being guaranteed in para. 3 of the report that no Legislature shall enact a law which is contrary to the Quran and Sunnah. If the argument is valid that detention without trial is contrary to the Quran and Sunnah then such detention can be challenged as a thing repugnant to what is contained in the Holy Quran and Sunnah. If any such law is enacted then it can be challenged before the Federal Court and arguments and counter-arguments raised, heard and adjudicated, with a view to determining whether or not there is any repugnancy between the law of the Quran and Sunnah on the one hand and any law providing detention without trial on the other. This, according to me, is a much more fundamental guarantee than a mere directive principle. I do not therefore wish to enter at this stage into the merits of the legal debate whether or not detention without trial is contrary to the law of the Quran and Sunnah. I do not want to advert to that issue nor do I want to advance arguments for or against it as all this will be neither here nor there at this stage. Ultimately this provision has prospective application. It will apply to the cases in future. I think, Sir, much more fundamental is the guarantee in para 3 and that shows that in the case of repugnancy you can certainly get this matter adjudged before the Supreme Court and get a declaration from them that a certain law which demands that detention without trial should take place, is contrary to Quran and Sunnah. Therefore, that aspect of the matter should not be forgotten. In fact that is a more substantial guarantee than the one that will be available if this amendment is accepted.

Another aspect of the matter is this. The reasons of security of State are of paramount importance in order that the individual may develop, may enjoy the fruits of his liberty and may enjoy the fruits of hard-won freedom. It is undoubtedly essential that these principles should be maintained but it is for more essential that the stability of the State should also be maintained and it is in relation to the arguments based on grounds of security of the

State that the law relating to preventive detention has to be appreciated—an aspect of the matter to which nobody has so far made any reference. Pakistan has been created in circumstances that are very well known to us and if I may say so, the state of emergency in Pakistan continually persists. If my friends can justify the existence of these abnormal laws during the stress and strain of war conditions or during the continuance of internal disturbances then it will be necessary to have such laws for the purpose of maintaining the security of the State. Now our State is continually facing an emergency and if the existence of these laws relating to detention is demanded whenever the security of the State is in danger. I see no objection in principle in having these laws about preventive detention—I do not wish to enter a detailed reply to the allegations that have been made with regard to the detention of Khan Abdul Ghaffar Khan—but can you not conceive of circumstances in which the State should have the power to detain a person without trial? Now with regard to detention of Khan Abdul Ghaffar Khan, although I would not enter into details, I will nevertheless attempt a very short reply. As we all know this detention came to be directed during the days when Quaid-i-Azam was alive; the charges against him were conspiracy against the State of Pakistan at the instance of a foreign power. Now supposing this charge would have come before an ordinary court.

Mian Muhammad Iftikharuddin: It was on the wrong information given by a local Chief Minister.

The Honourable Mr. A. K. Brohi: Now suppose this charge would have come before an ordinary court. I am not saying whether the allegations were correct or false—but supposing these were the allegations against a particular person and for the sake of argument let us assume he is not Khan Abdul Ghaffar Khan but Mr. 'A': Mr. A could demand a trial in a regular court of law where proceedings are open to public and press and they are available to all and sundry. Now an allegation of that kind which implicates a friendly power beyond the borders is likely to create devastating consequences so far as the maintenance of good relationship between Pakistan and that power is concerned. That is really the reason why public character of the trial cannot possibly be permitted when certain varieties of allegations come to be urged against a certain person. The question is not whether the allegations are false or true but whether it would be proper for a country to hold an open trial even in such cases and whether there should be power to detain without trial even in such cases or not. The point I am stating is that the character of the allegations some time demands the exclusion of trial of this type from the search-light of public press and public criticism. Unless this is done it will not prevent hostility and criticism from some friendly quarters. This is the argument which has not been properly appreciated. Consequently regardless of anything else it is absolutely imperative that for reasons of security of the State this power should be there.

The last point that I would urge is that in fact this amendment is meaningless because as you know the amendment urges that there should be no detention without trial. Now take the case of an ordinary murder which is put before a magistrate. Even in such cases, as you know, as soon as the complicity of an offender is brought to the notice of the police the accused is locked up and the proceedings in trial take place afterwards. The proceedings take a considerable time. In fact it takes many months before the case is decided and my experience is that it may take anything between 10 to 12 months. Now even in that case you think there should be no detention.

Mian Muhammad Iftikharuddin : Surely.

The Honourable Mr. A. K. Brohi : There is therefore detention without trial under the present law even. That is at times absolutely essential. Now as a lawyer if you interpret the amendment, it would mean that all persons under trial cannot be detained at all. So that until a decision is given in a given case no person can be detained.

(Interruption by Congress Benches.)

Mr. President : You should take no notice of these interruptions.

The Honourable Mr. A. K. Brohi : The point that I was going to urge was that if you carry it to the logical end the amendment defeats the very purpose of criminal investigation. If you take the substance of it then it is provided in a better form elsewhere in the constitution.

Now under the Indian constitution you will find a prohibition of this character having been maintained but what about Shaikh Abdullah. Under what law has he been detained ? Now states are confronted with a situation where it is necessary to use such powers. They are also faced with emergent situations where they are called upon to deal with very difficult situations. No doubt the constitution is to safeguard the liberty of the citizens but there is a much more important thing to be safeguarded and that is the stability of the State and for such purposes it may be necessary to have these powers. In my humble opinion this amendment would frustrate the purpose of the constitution itself. For this reason it is our bounden duty to oppose this amendment.

Mr. A. K. Fazlul Haq : *I rise, Sir, on a point of information. As you know, Sir, there have been cases where persons have been detained without trial for years together and no steps whatsoever have been taken either to try them or to release them. Now I would like to know where there is the guarantee that at the time of elections Honourable Members or other persons will not be clapped into the jail by the Government in power where the rival happens to be a person who has got great influence in the constituency or in the area. Such things are not unknown. They have actually happened in the past.

The Honourable Mr. A. K. Brohi : I will give the reply in one minute, Sir. My friend is absolutely right when he says that for certain ulterior reason this power of detentions is likely to be abused by the executive. In fact it has been continually abused, I need not touch that aspect of the matter. I admit that every power is liable to abuse. Any power that you give to the executive can be abused and cases are known that it has been abused. That aspect of the matter is a thing distinct in itself : the justification for avoidance of this amendment in the Constitution is for the reasons I have already stated. Now what about those cases in which that power has been correctly and rationally exercised ? Certainly there are genuine cases, in which these powers had to be resorted to and which in the wisdom and prudence and *bona fides* of the executive warranted action to be taken against the persons concerned. Had this power not been there then I ask what would have been the position. If my honourable friend's arguments were to prevail, then what about those cases in which genuine reasons action was demanded, *viz.*, that if a particular person is not locked up, then the safety of the State would be in jeopardy. How will you be able if you had no such power to cover those cases ? So Sir, I need not argue this point any further. My friend is a criminal lawyer and he must be aware of the fact that most innocent people have often been involved and implicated in most heinous offences. But there has never been the argument that since this power is likely to be abused or has been abused

* Speech not corrected by the Honourable Member.

in the past, therefore that power should be taken away, I think my friend forgets that when we are conceding this power, we are postulating that this will be exercised honestly and if an authority degrades to such an extent as to abuse this power, then it is very disgraceful, but that cannot be an argument for taking away that power altogether.

Mr. President : The question is :

"That to paragraph 2, the following new sub-paragraph (19) be added at the end :—

' (19) There should be no detention without trial'."

The House then divided.

AYES—11

Mr. Prem Hari Barma.
Prof. Raj Kumar Chakraverty.
Shri Sris Chandra Chattopadhyaya.
Shri Dharendra Nath Datta.
Mr. Bhupendra Kumar Datta.
Shri Kamini Kumar Datta.

Mr. A. K. Fazlul Haq.
Mr. Jnanendra Chandra Majumdar.
Mr. Bhabesh Chandra Nandy.
Mian Md. Iftikharuddin.
Seth Sukhdev.

NOES—34

Mr. Abdulla-al Mahmood.
The Hon'ble Mr. Abdul Hamid.
Mr. Abdul Monem Khan.
Mr. Abul Kasem Khan.
Maulana Md. Akram Khan.
Mr. Asadullah.
Mr. Azizuddin Ahmad.
Mr. Murtaza Raza Choudhury.
Mr. Zaheeruddin Chowhury Moazzem Hussein (Lalmia).
Moulavi Ebrahim Khan.
Mr. Fazlur Rahman.
Mr. Ghyasuddin Pathan.
The Hon'ble Khan Abdul Qaiyum Khan.
The Hon'ble Mr. Mafizuddin Ahmad.
Dr. Mahmud Husain.
Mr. Mohd. Abul Quasem.
Khwaja Nazimuddin.
Mr. Nur Ahmed.

Mr. Shahoodul Huque.
Syed A. B. M. Husain.
Mr. Wahiduzzaman.
Sardar Amir Azam Khan.
Mian Mumtaz Mohammad Khan Daultana.
Syed Khalil-ur-Rehman.
Sardar Abdur Rab Khan Nishtar.
The Hon'ble Malik Md. Firoz Khan Noon.
H. E. Dr. Omar Hayat Malik.
Shaikh Sadiq Hasan.
The Hon'ble Mr. Shuaib Qureshi.
Sardar Asadullah Jan Khan.
Mr. M. H. Gazder.
The Hon'ble Mr. A. K. Brohi.
Mr. M. H. Kizilbash.
Jam Sahib Mir Ghulam Qadir Khan of Las Bela.

Mr. President : Order, order. The House has divided :

Ayes.....11 votes.

Noes.....34 votes.

So, the Noes have it.

The motion was negatived.

Paragraph 2—Sub-paragraph 13

Mr. President : Now, we go over to the postponed matters of yesterday. The House would remember that yesterday we postponed clause 13 when we were considering the following amendment by Mr. Dharendra Nath Datta :

"That sub-paragraph (13) of paragraph (2) be omitted."

The Honourable Mr. A. K. Brohi : Mr. President! Sir, on re-consideration, we find that even a direction to the legislature, can validly form part of Directive Principles of the State Policy and I will remind my honourable friends on the opposite side that a definition of the word

[The Hon'ble Mr. A. K. Brohi]

'State' which for instance, has been given even in the Indian Constitution, which is the first section of Part III, includes even a legislature. I would like to read it out to the House. In fact, when you are dealing with that Chapter relating to the Directive Principles of State Policy, the first section says, the definition of the word 'State' here is the same as it appears in Part III and that is why we go over to Part III, Sir. This is how the definition in Article 12 of the Constitution of India runs:

"Unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

So by suitable definition, we can incorporate it in the Chapter relating to the State Policy. We can give a definition of the word "State" and thus make a direction contained in this paragraph consistent with the recommendation that I have made. It was only a question of definition so far as I was concerned. On examining the whole position, I have come to the conclusion that if direction to the legislature is incorporated in the Chapter relating to the Directive Principles, no difficulty would arise in view of the definition of the word "State". That was the thing which I wanted to say in defence of the position which I am now taking.

Mr. Jnanendra Chandra Majumdar: Will not the State interfere with the election of the President?

The Honourable Mr. A. K. Brohi: It will not. This is a question of substance. I move that this paragraph may remain as it is.

Mr. President: The question is:

"That sub-paragraph (13) of paragraph 2 be omitted."

The motion was negatived.

Mr. President: Let me take of the following amendment of the Honourable Mr. Brohi:—

"That to sub-paragraph (13) of paragraph 2, for the words 'conduct the affairs of the State' occurring in the fourth line, the words 'perform his duties and obligations' be substituted."

The Honourable Mr. A. K. Brohi: I had already moved it.

Mr. Ghyasuddin Pathan (East Bengal : Muslim): It has been disposed of.

Mr. President: No, because in that case, paragraph 13 also would have been disposed of, partly at least, had this been disposed of.

The Honourable Mr. A. K. Brohi: But I had moved it.

Mr. President: However, let me put it to vote.

(After a pause.)

Mr. President: The question is:

"That in sub-paragraph (13) of paragraph 2, for the words 'conduct the affairs of the State' occurring in the fourth line, the words 'perform his duties and obligations' be substituted."

The motion was adopted.

Paragraph 2—New sub-paragraph 19

Shri Kamini Kumar Datta (East Bengal : General): I beg to move:

"That to paragraph 2, the following new sub-paragraph (19) be added at the end:—

'(19) The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between Nations; and
- (c) encourage settlement of international disputes by arbitration.'

Sir, I will not be long.

The Honourable Mr. A. K. Brohi: Sir, it is not interference. May I tell my friend that we propose to accept this amendment.

Mr. President: There is no need of any speech.

The Honourable Mr. A. K. Brohi: There should not be any need of speech. Let us cut short the matter. I want to save your energy. I say that I accept your amendment.

Shri Kamini Kumar Dutta: Then there is no need of speech. I sit down.

Mr. President: The question is:

"That to paragraph 2, the following new sub-paragraph (19) be added at the end:—

'(19) The State shall endeavour to—

(a) promote international peace and security;

(b) maintain just and honourable relations between Nations; and

(c) encourage settlement of international disputes by arbitration.'."

The motion was adopted.

Paragraph 2—New sub-paragraphs (20) and (21)

Shri Dharendra Nath Datta: Sir, I want to substitute paragraph (20) in place of paragraph (19) and paragraph (21) in place of paragraph (20). Now I read my amendment:

"That to paragraph 2, the following new sub-paragraphs (20) and (21) be added at the end:—

'(20) The State shall direct its policy towards securing its citizens—

(a) the right to work, the right to an adequate means of livelihood; and

(b) the right to rest or leisure.

(21) The State shall make provision for securing just and human conditions of work and for maternity relief.'."

Are you accepting it?

The Honourable Mr. A. K. Brohi: I want to say that we accept it.

Mr. President: Mr. Datta, it is better to keep the numbers as they are for the time being because the clauses would be re-numbered properly afterwards.

Shri Dharendra Nath Datta: All right, Sir.

Mr. President: The question is:

"That to paragraph 2, the following new sub-paragraphs (19) and (20) be added at the end:—

'(19) The State shall direct its policy towards securing its citizens—

(a) the right to work, the right to an adequate means of livelihood; and

(b) the right to rest or leisure.

(20) The State shall make provision for securing just and human conditions of work and for maternity relief.'."

The motion was adopted.

Mr. Zaheeruddin Chowdhury Moazzem Hussein (Lalmia) (East Bengal : Muslim): Sir, I beg to move:

"That to paragraph 2, the following new sub-paragraph (19) be added at the end:—

'(19) It should be the endeavour of the State to so revise the pay structure of various categories of Government servants as to reduce the disparity to the reasonable minimum.'."

[Mr. Zaheeruddin Chowdhury Moazzem Hussein (Lalmia)]

While moving this amendment I feel that the necessity of adding a clause to this effect to the Directive Principles of our State policy is too obvious to call for any pleading whatsoever.

As a matter of fact I felt strongly tempted to propose the fixation of a definite proportion between the lowest and the highest emoluments and that too in the operative part of the constitution but I have contented myself with proposing the insertion of this very modest clause in general terms and just in the Directive Principles. This I have done simply in order to avoid making things very rigid for a Government from practical point of view.

The very glaring disparity between the highest paid and the lowest paid, is, like many other economic and social inequalities the reminiscence of British regime and is extremely repulsive to all standards of justice and fairplay, and particularly to the Islamic concept of social justice. It would be an irony indeed if the State created in the name of Islam and pledged to build itself up in accord with the requirements of that ideology should be unmindful of this state of affairs.

It suited the imperialistic designs of our erstwhile masters to fix very high salaries for the higher posts which in the beginning, at least, were invariably manned by their own nationals, and to have very low salaries for the posts of peons and clerks, etc., which went to the "NATIVES". They could thus not only take a lot of Indian wealth to their country but could also in this manner bring into prominence the difference between the rulers and the ruled and keep the latter ever conscious of their own inferiority and of the superiority of the British nationals. We inherited this legacy from the British masters and the result is that in this largest Muslim State of ours, quite contrary to the spirit of social justice as enunciated by Islam and even by common standards of justice and fairplay we have got disparity in the vicinity of something like 1 : 300. There is no other civilized nation in the world where such wide disparity between the highest and lowest salary exists as in our country. It would be seen that even in many Un-Islamic countries, e.g., Japan, U. K., etc., the difference between the two extremes is negligible. After all, the main purpose of a State like ours should be to do our best for the good and decent living of the common people, who form the bulk of the population. There is no sense in being freed from the foreign yoke if the same process of exploitation of the poor continues.

In order to give some economic relief to the low paid officials, who find it very difficult to keep their body and soul together with the scanty pay, which is much below their bare living wages, we should devise some effective ways and means. It is un-Islamic, rather inhuman to maintain the wide disparity that is at present existing between the highest and the lowest paid officials. Although it may be a bit difficult to bring about some radical change overnight by reducing the emoluments of the highest paid old officials, we should approach the problem in a sincere and realistic manner.

By the time we revise and enforce new scales in keeping with the above principles, we can do many things, as transitional measures, for example :

Having due regard for the meritorious services rendered to the nation during the most critical days by the old and veteran Government officials, we are now in superior administrative position, Government should appeal to their sentiments in the name of social and economic justice, at least on humanitarian grounds, and urge them to part with a portion of their salary and income for the benefit of their less fortunate

brethren who also in their humble capacities are doing their best for the State. It should be brought home to the former that Allah has entrusted them with positions of responsibility of rendering service to the latter. In order to set an example to the officials it would be desirable that our Ministers, Ambassadors, Governor-General and Governors should come forward with proposals of voluntary cut in their salaries which might be utilised for ameliorating the condition of poor officials.

Again, Sir, many gross evils and economic inequalities can be greatly remedied by the introduction of various security measures and insurance schemes. These are methods of redistribution of income within the salaried class in which all should be included and to which all should be required to make some additional contributions from higher incomes by placing a part of the cost of benefits on general taxation. Much can be done in this connection by making free health services, free educational facilities and other essential services available to all alike out of taxation on the middle and higher incomes.

I am sure that the House would share with me the feeling that there is no sense in being freed from the foreign yoke if the poor continue to grind in poverty and their blood continues to be squeezed as before.

The society that Islam wants to build is essentially a society free from internal feuds and class antagonisms which are the natural outcome of glaring economic inequalities. Moreover, Islam seeks to uphold the dignity of man. These ideals cannot be achieved unless we not only try to change sense of values and create a new outlook, but also remove these intolerably wretched economic inequalities as well which are bound to fan the flames of class hatred and jealousy.

As I have said earlier it is those on the highest ladders of the society who will have to come forward to offer sacrifice. According to Islam Government is not a bed of roses. Hazrat Omar said :

"The Head of an Islamic State is like the custodian of an orphan's property. If he has resources he should not take any thing from it. If otherwise, he can take only that which is essential and not more."

If we are really sincere about establishing an Islamic State we will have to prove the truth of our professions by earnestly trying to follow in the footsteps of Hazrat Abu Bakr Siddiq and other *Khulfa-e-Rashideen* whose simple and austere living is too well known to be mentioned here. This is extremely necessary, if the disparities are to be removed.

But apart from this important measure, the powerful machinery of a modern State can devise hundred and one ways to remove this evil. A new Pay Commission can be appointed with a view to make recommendations to fix a new scale of salaries in the light of Islamic teachings and it must be ensured that even the lowest paid employees are provided with food, clothing, shelter and medical aid and their children with education. This will require a change in the entire economic set up of the country to make it based on justice and fairplay to all.

Let me once more emphasize before the House that we shall be doing a great harm to the future of this State as well as to the cause of Islam and of humanity, if despite framing an Islamic Constitution, we are not able to eradicate these injustices which are sapping the very life blood of our society.

With these few words, I move this motion for the acceptance of the House.

Mr. President: Lalmia Sahib, the amendment in the list reads :

"The disparity to the reasonable minimum."

I think it should be "disparity to a reasonable minimum."

Mr. Zaheeruddin Chowdhury Moazzem Hussein (Lalmia): Yes, Sir, it should be "to a reasonable minimum."

Mr. President: The question is :

"That to paragraph 2, the following new sub-paragraph (19) be added at the end :—

'(19) It should be the endeavour of the State to so revise the pay structure of various categories of Government servants as to reduce the disparity to a reasonable minimum.'"

The motion was adopted.

The Honourable Mr. A. K. Brohi: Sir, the amendment which I have tabled and which I wanted to move is :

"That to paragraph 2, the following proviso be added :—

'Provided that nothing contained in this paragraph should be enforceable in a court of law'."

But I find that Mr. Dharendra Nath Datta's amendment is much more wisely worded amendment than mine is and I propose not to press my amendment and if my Honourable could move his amendment we should like to support his amendment on that point.

Shri Dharendra Nath Datta: Sir, I move my amendment. I beg to move :

"That after paragraph 2, the following new paragraph 2A be inserted :—

'2A. The provisions contained in this chapter are intended for the general guidance of the State. The application of this principle in legislation and administration shall be the duty of the State but shall not be enforceable in any court of law.'"

Sir, in view of the position stated by my Honourable friend Mr. Brohi, I do not want to make any observation. I am thankful to my Honourable friend that he has found his way to accept my amendment.

Shri Kamini Kumar Datta: Sir, I would suggest to Mr. Brohi the same phraseology as is found in the Indian Constitution.

The Honourable Mr. A. K. Brohi: You mean the definition of "State" ? It is just a direction to the Drafting Committee and there will be no difficulty.

Shri Kamini Kumar Datta: You will find this in Article 37 of the Indian Constitution.

The Honourable Mr. A. K. Brohi: It may be we may find a still better phraseology. This is the substance.

Mr. President: The question is :

"That after paragraph 2, the following new paragraph 2A be inserted :—

'2A. The provisions contained in this chapter are intended for the general guidance of the State. The application of this principle in legislation and administration shall be the duty of the State but shall not be enforceable in any court of law.'"

The motion was adopted.

Mr. President: The question is :

"That paragraph 2 of Chapter II, as amended, be adopted."

The motion was adopted.

CHAPTER III—PROCEDURE FOR PREVENTING LEGISLATION REPUGNANT TO THE QURAN AND THE SUNNAH

Paragraphs 3 to 8

Prof. Raj Kumar Chakraverty (East Bengal : General) : Sir, I move :

"That Chapter III of Part 1 (paragraphs 3 to 8) be omitted."

Mr. President : So far as this amendment is concerned, it is not in order. You can speak against the clauses.

Prof. Raj Kumar Chakraverty : Sir, this paragraph is not only the crux of this Chapter but the crux of the Constitution, as my friends opposite have said. While speaking on this, Sir, I speak with some limitations, because I do not know Arabic and have no expert knowledge of the Holy Book, Quran. For this purpose, Sir, I had to fall upon the translations of the Holy Book. It has been said that the Holy Book, Quran, provides a complete code of life for the Mussalmans. I do not quarrel with that. I wish, hope and pray that Mussalmans should be guided in their private life and character by the injunctions of the Holy Quran. The question here is to what extent our public life, public relations and public administration should be guided. In other words, how far the principles of the Quran may be enforceable or practicable or suitable in our public life and public relations in the modern context of things. Sir, in the general debate we also touched on these points and I do not like to repeat many of those arguments. But, Sir, in spite of the learned discourse on the subjects from the other side, I still remain unconvinced about the applicability, suitability or practicability of some of the principles. Sir, here I have used the word 'some' deliberately. I never say that none of the principles of Quran is applicable in the life of Muslims today. These principles of the Quran were promulgated for a particular country, for a particular period of time and for a particular people in particular circumstances.

Mr. M. H. Gazder : No, they are meant for all times.

Prof. Raj Kumar Chakraverty : That may be your point of view, but I do not agree with that. Sir, during the course of the general debates, I cited about twenty cases where these principles are not suitable or applicable. Moulana Mohammad Akram Khan was pleased to explain three of the items mentioned by me. As regards the other items, there has been no attempt from the opposite side to give a reply. In support of my argument of practicability, I can do no better than to quote a few lines from Mr. M. B. Ahmad's book 'Select constitutions of the world'. He says :

"It goes without saying that a State is an ever-changing, ever-growing organisation and just as a dress made for an infant child, however, well-made, cannot be expected to fit him as he advances in years, so a statecraft and social order conceived by our forefathers a thousand years ago cannot be expected to answer our 20th century needs, without stretching it to a tearing point."

Sir, no better words could be written by a student of political philosophy and these words fully apply on our conditions today.

It has been said that we are going to have new experiment about the Islamic principles in the laboratory of Pakistan. I put one question to my friends. Has there been no experiment on these lines previously? Has not history been our guide in any way? Did not Turkey experiment upon these principles? And what has been the result? In 1924, Turkey gave up the *Shariat* administration and adopted the Swiss Civil Code; they modelled her Penal Code on that

[Prof. Raj Kumar Chakraverty]

of the Italian Government and her commercial code on that of the German code. Wise men should take lessons from history, and I hope and trust that my friends opposite do not lack that sort of wisdom. It has been said, Sir, that we should have the experiment and should not care whether we fail or succeed. But I ask my friends, why should we court the chance of failure? We have already lost precious six years. The world and the nations are all moving very fast and if we spend further time in experimenting on new principles, I do not know what is in store for us. I would only remind my friends that there was a time in undivided India when they boycotted the English education, and the result was a disaster. I would ask my friends not to repeat now any experiment like that.

The exemption of the money bill from the operation of paragraph 3 is an admission by itself that some of the injunctions of the Quran are not practicable today. It is admitted thereby that we cannot give up our banking interest, we cannot give up our income derived from the court fees, that we cannot do away with our income-tax which is a substitute for Zakat. The disparity between the salary of an Honourable Minister and that of a fourth class Government servant cannot be given up. It has been said that this exemption of the money bill from the operation of this clause is a merely temporary measure. But nowhere in the Constitution, it has been mentioned that this exemption of the money bill is a temporary measure. However, Sir, it supports my contention that some of the principles are impracticable in the conditions today.

Then, Sir, I come to the question of interpretation of some of the contents of the Holy Book. There have been many interpretations of the Holy Book and some of these interpretations have been in conflict with each other. I would just refer you, Sir, to the resolution of a Convention held by the Shia community in Karachi on the 11th November, 1953. In that resolution they pointed out that every sect sincerely and honestly believed in the correctness of its own interpretation and would not tolerate any attempt from any quarter to impose any other interpretation by another sect. The resolution said that only such interpretation of the Holy Quran and Sunnah shall be accepted as is recognised by them. Sir, this is the position with regard to the interpretations. The other day, my leader, Mr. Chattopadhyaya referred to the evidence of some Maulvis and Maulanas before the Lahore Enquiry Committee. He pointed out that a Maulvi was pleased to say that out of the 73 sects among the Muslims, 72 sects will go to hell. That was the opinion.

The Honourable Malik Muhammad Firoz Khan Noon (Punjab: Muslim) : May be right.

Prof. Raj Kumar Chakraverty: To this argument, Sir, Sardar Abdul Rab Khan Nishtar was pleased to reply by saying that "a Maulvi here and a Maulvi there do not bother". Sir, I differ from him. These Maulanas and Maulvis are going to rule over Pakistan in the near future and they will be a very important factor in our public life tomorrow. Will the House be surprised to learn that it has been contended that according to the Quran our women cannot be legislators? The verse in question is this (4/34)—

"Men are in charge of women, because Allah has made one of them to excel the other."

So, Sir, they cannot be legislators. Will the House be surprised to learn that it has been argued and interpreted on the basis of another

verse that there can be no friendship between the Muslims and non-Muslims? That is Sura 8, verse 28: and its translation is:—

“Let not the believers take disbelievers for their friends in preference to believers.”

Will the House be surprised to learn that it has been argued and interpreted on the basis of another verse (Sura 5, verse 51) that no key-post should go to a non-Muslim? The translation of the verse is:—

“O ye who believe take not the Jews and the Christians for friends; they are friends to one another.”

Now, Sir, the opinions I have quoted are the opinions of a very respectable and learned organization, called the Board of Talimaat-i-Islamia appointed by the Basic Principles Committee, and that organization is headed by an eminent scholar of the type of Syed Sulaiman Nadvi and we are still spending Rs. 5,000 a month over that organization. Such is the opinion of that organization: that there can be no friendship between the Muslims and non-Muslims and that no woman can be a legislator....

Dr. Mahmud Husain: In preference.

Prof. Raj Kumar Chakraverty: It does not say that. You can see their Report and find out everything for yourself.

Now, Sir, on the one hand we have the enlightened opinions of my esteemed friends like Sardar Abdur Rab Khan Nishtar and Hon'ble Mr. Brohi and, on the other hand, we have the opinions like these. Well, that organization is also equally responsible and learned. We, the minorities, Sir, are in a very difficult position. We are in a fix in this maze and labyrinth of interpretations; we are perplexed. The House will be surprised to learn that even the Festival Cricket Match which was played the other day between the President's Eleven and the Prime Minister's Eleven, had been characterised by some Maulvis as “un-Islamic”. Where are we going to? What are you leading the country to?

Sir, I would go to the next point and finish. Why do you insist on the inclusion of this clause in the Constitution? In the future legislature of the country, 85 per cent. of the members in the provinces and the centre will be the Muslims. Certainly they will not be a band of fools; they know their own interests; they will know the Quran better than anybody else; they will be loyal to the Quran and the Sunnah; so it is useless to put this clause in the Constitution in view of the fact that the future legislature will be manned mostly, to the extent of 85 per cent. by our Muslim friends.

Sir, in conclusion, I would only refer to one argument. It has been said “Judge not Islam by the examples of a few men you come across here and there”. I wish, Sir, that I could be told where I could find the ideal state of things. When I look around me, I find the reality like this: there is detention without trial, which is absolutely un-Islamic; I find many of my friends are not giving Zakat; I find that there is a want of social justice all around me; I find our Honourable Ministers are not following the life of the Khalifas—the simple life of the Khalifas of old. So in these circumstances, please do not blame me if, as a member of the minority community, I am full of fears and apprehensions about the proposed paragraph. Sir, when I look around me, I find, to my sorrow and dismay, that there is an absence of brotherhood, an absence of equality, an absence of social justice, and all these are said to be the cardinal virtues of Islam. I find that there is clash between a Mussalman and a Mussalman as it was witnessed in Lahore some time ago. I find there is clash between an Islamic country and another

[Prof. Raj Kumar Chakraverty]

Islamic country. So, in these circumstances, my mind is full of fears and apprehensions about this clause and I would be less than human if I did not express these fears and apprehensions. In these circumstances, Sir, I oppose this clause.

Mr. President: I think the amendments may be moved first and then there will be a general discussion.

Prof. Chakraverty you have got two amendments, do you move them?

Prof. Raj Kumar Chakraverty: If this Chapter is deleted, then it will not be necessary to move any of these amendments.

Mr. President: Yes, in that event it will not be necessary to move them.

Prof. Raj Kumar Chakraverty: Therefore, we should put para. 3 to the vote first whether it is to be included in the Constitution or not.

Mr. President: If the clause is carried as it is then the amendments will be out of order. Therefore, the amendments have to be moved now. Do you want to move your two amendments now?

Prof. Raj Kumar Chakraverty: Yes, Sir. I do not propose to move the first of these two but the other I will move on the assumption that the House is not going to accept our position, i.e., is not going to delete this clause. Sir, I move:

"That to paragraph 3, the following be added at the end:—

'This provision should not apply to the personal laws of the non-Muslim citizens'."

We have been assured—and that assurance was put down in black and white in the Directive Principles—that the personal laws of the non-Muslims will be duly safeguarded, but that is in the Directive Principles only. Here we are going to make the law. These are the mandatory provisions we are going to consider now; so I suggest to the House that the majority party will be similarly generous on this occasion also, when we are going to make the laws and kindly put down something similar to that adopted in the Directive Principles yesterday. That will serve my purpose. I shall not quarrel with the drafting; or with the phraseology, but my purpose is there.

With these words, Sir, I move my amendment.

Mr. President: Motion moved:

"That to paragraph 3, the following be added at the end:—

'This provision should not apply to the personal laws of the non-Muslim citizens'."

Mian Muhammad Iftikharuddin: *Sir, I move:

"That to paragraph 3, the following be added at the end:—

'as agreed upon by all sects of Muslims or is contradictory to the commitments that may have been made to the Minorities'."

I know that the chapter is altogether changed, or is going to be changed and it may be that this amendment of mine is redundant. However as you have been good enough to allow Mr. Chakraverty to speak, I am also going to speak because I want to convey certain things which, anyhow whatever the new Chapter may read like, will be applicable.

Sir, it is well-known, apart from the fact that anyhow Islam....

The Honourable Malik Muhammad Firoz Khan Noon: Point of order, Sir. When the Honourable Member has himself admitted that his amendment is redundant—therefore the amendment does not exist—how can he talk on something that does not exist?

Mian Muhammad Iftikharuddin: *No, it exists very much, because the new formula, or the new Chapter, has not yet been introduced. It is quite possible that the House does not accept that; therefore it is necessary for me to speak.

Sir, I was saying that, apart from the fact that Islam advocates democracy, we should not forget that this Pakistan came into being by an agreement. The freedom of Bharat on the one hand and the freedom of Pakistan on the other was won by the struggle of the people, but we also must remember that it came into being ultimately by an agreement, not only with British imperialism, but by an agreement with Hindus as represented in the Indian National Congress and Pakistan as represented in the Muslim League and we know that it was agreed on both sides of the border that in both countries full freedom, full independence, full democracy, full justice, full equality, will be given to all citizens of the State. It is a well-known fact, I beg to submit, Sir, that even a single section in any future Constitution of Pakistan, which goes against that agreement, betrays the foundations or the fundamental principles of Pakistan. Similarly, every law that the Bharat Government may pass, which takes away from the freedom, from the equality before law of any single citizen, any single Muslim, or Muslim community in general, is a betrayal of the agreement that the leaders of the Indian National Congress made with the leaders of the Muslim League. Likewise anything that we do today, which may discriminate between Hindus and Muslims, which may give Hindus a lower status in the policy and in the political and social life of Pakistan is a betrayal of that agreement. Islamic principles demand, Islamic traditions demand—traditions established even in the days of the Holy Prophet demand that we should stand by this agreement. It will be un-Islamic, Sir, it will be absolutely going against the thing which is the most Islamic thing imaginable if today a law or a constitution is imposed on this country by these people sitting here which goes against that agreement in which we have said that on both sides of the border, in India and in Pakistan, full freedom will be given and equal rights will be given to all. In fact, it is a part of the Lahore Resolution, which stipulates two things: on the one hand, the Lahore Resolution says that independent autonomous States will be created—one in the North-West and one in the North-East of India, i.e., Eastern and Western Pakistan. And the second point of the Lahore Resolution is that it will be seen that full justice is done to all the minorities. In other words, they will be given equal rights both in India and in Pakistan. It was clear when the Lahore Resolution was passed that it was not only the aim, but it was the responsibility of the Muslim League leadership who passed the Resolution in 1940 that they will see to it that justice was given to Hindus here and that justice was given to Muslims in India. This was the solemn commitment made in the Resolution—which is the foundation of Pakistan—that justice will be done to Hindus in Pakistan. The Lahore Resolution is incomplete; the demand of Pakistan is falsified if this is not done, and I beg to submit that the type of constitution that is being imposed today is un-Islamic in the sense that it betrays the most solemn document which brought Pakistan into being. I do hope that nothing would be done even if we have to start again from the first line of these basic principles which may have to pass....

*Speech not corrected by the Honourable Member.

Mr. President: Mian Sahib, you are again lapsing into general discussion.

Mian Muhammad Iftikharuddin: I will say, Sir, even then because it is a part of the demand, which cannot be separated from this principle....

Mr. President: You cannot insist on this. You have been irrelevant almost throughout, but I allowed you to speak hoping that you will talk relevantly later on. My ruling is that you are not relevant and therefore you cannot continue in this strain.

Mian Muhammad Iftikharuddin: I submit to your ruling, Sir. But I may add that I am quite relevant to the subject under discussion and my speech pertains to all the speeches made from the opposite benches.

Mr. President: You always make allegations like that against the Chair and against everybody. I know that but I would not allow you to go irrelevantly in that way. If you have anything relevant to say, then say.

Mian Muhammad Iftikharuddin: I have been, in my opinion, absolutely relevant.

Mr. President: Please go on only if you have anything relevant to say.

Mian Muhammad Iftikharuddin: You mean to say I should go on with what you would consider is relevant. But I am not talking of that. I say it is a part of the demand for Pakistan. Therefore, any betrayal of the minorities, any injustice to the minorities....

Mr. President: There is no question of injustice to minorities that has arisen here.

Mian Muhammad Iftikharuddin: I am talking of the constitution.

Mr. President: But you cannot talk about the whole constitution.

Now you have to talk about this particular clause.

Mian Muhammad Iftikharuddin: I am talking on the previous subject, to make provisions for I am sorry you have really unnerved me—your authority has made me nervous, I must admit (after a pause). My amendment is:

“That to paragraph 3, the following be added at the end:—

‘as agreed upon by all sects of Muslims or is contradictory to the commitments that may have been made to the minorities.’”

That is what I am talking that we have made certain commitments. It is one of the two parts of the Lahore Resolution.

Mr. President: You have not said a single word hitherto about that. Please go on.

Mian Muhammad Iftikharuddin: If I brought any of the obnoxious undemocratic, unfair and unjust clauses in this Report I would be going beyond my limits. Therefore, I submit that we should not do anything which will betray the commitments that we have made, and the commitments were that we would treat everybody absolutely equally not only here, but in India also, so that we will be all one in the eye of the law.

Shri Kamini Kumar Datta: Sir, I think it will be best after moving the amendment if I speak against the main resolution because it is no use speaking twice. My amendment is this: Sir, I move:

“That to paragraph 3, the following proviso be added:—

‘Provided that the provisions of this paragraph will not affect any personal law applicable to any non-Muslim community and any vested right or interest.’”

There is already an amendment by Prof. Chakraverty, but as my amendment is of a wider scope, I move it because I have included in it not only the matter personally applicable to the non-Muslim community but the problem of any vested right or interest already created.

Now, Sir, in this particular chapter we are really concerned with clause 3 and I will confine my whole speech to that. No legislature should enact any law which is repugnant to the Holy Quran and the Sunnah. It must be admitted, Sir, that this clause does not occur in the Chapter on the Directive Principles, but in the substantive part of the Constitution and by accepting this provision, a clog will be put to the competency of the legislature to enact laws. So I must say not as one belonging to the minority, but really as one who is a citizen of Pakistan State, because it affects everybody. It will really be curtailing the powers of the legislature to enact laws which may be repugnant to the Holy Quran and the Sunnah. No doubt, I know that already that in another place an assurance has been given that the personal laws of a non-Muslim community will not be affected, and I remember that the Honourable the Law Member did read from a certain treatise, as to the jurisprudence of Islamic law, that the personal rights of non-Muslims will not be affected and I know that. As to that I will not entertain any apprehensions that this principle will be accepted. So far as non-Muslims are concerned the scope of personal law is particularly confined to succession and marriage and enactments are very few. Most of the laws are based on the old scriptures of the Hindus, and of the Buddhists. I do not know very much about the Christians. So really that is not a matter which would trouble us. But as to the domain of the result of the legislation there is a curtailment in the power of the legislature in that it would be incompetent to legislate on matter which may be found to be repugnant to the Holy Quran and the Sunnah. Law is not something static—a State is also not static. State is the product of history. It gradually develops. Sir, in law, with the growth of society, various problems would arise: problems regarding the relationship of the people, and the relationship of the society. Law is never the creation of individuals. It is really a product out of the needs of the hour; evils of the hour; out of the distress of the hour. Some problems would not arise all over the world and at all times. Law is never an article which was manufactured by a few people at a time. It is the progress of history. Therefore, I would seriously ask the members of the majority community to realise that the world is progressing; various problems would arise which were never contemplated thousand years ago when the Holy Quran and the Sunnah were promulgated. Would it be correct for us to put in a clause as regards the competency of the legislature to make laws on the various problems which would arise? It may be said that we are not putting a clause for all legislation but which may be found repugnant to the Holy Quran and the Sunnah, but then I think it will be borne out by my Honourable friend, the Law Minister, that repugnancy is a term which is very difficult to enunciate and which is very difficult in the matter of application. Even the courts have differed as to what is really repugnant and what is not repugnant. Repugnancy has never been clearly defined anywhere. Various attempts have been made to lay down some principle for guiding the people in regard to the problem of repugnancy. If a court of the modern age would be asked, as for instance in this case the Supreme Court of Pakistan, to adjudicate on a problem of repugnancy in relation to what was laid down a thousand years back, would it be possible and so very easy to do that? I remember, Sir, one passage which was uttered by Sir

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Wazir Hasan. He was arguing in the Honourable High Court of Calcutta. The Judge was interrupting him and he remarked: "My Lord! Please try to understand the principle which I am inculcating not in the light of the working of the modern state of society. Remember, my Lord at that time when this principle was inculcated and which I am placing before your Lordship, at that time the only property of the people was a camel and a date tree. Please do not confuse these with the modern requirements". I remember that statement of that distinguished jurist and lawyer.

I must say various complexities might arise which it may be impossible to solve. It may be that judges might become punctilious and a very good law which the society required might be gagged. So, this question, whether the power of the legislature of the country, which represents the will of the people, should be gagged ought to be seriously considered. There is no apprehension that there would be any breach of the cardinal principles of the Holy Quran and the Sunnah as the overwhelming majority of the legislators who would enact the law would be those conducting their lives, both individually and collectively, in accordance with the Holy Quran and Sunnah. They would be all alert to see that no law is being passed which would conflict with the basic principles of the Holy Quran and Sunnah. Law is the product of the will of the majority. Where is the apprehension that there would be any deviation from the fundamental injunctions? As far as I can understand repugnancy would not be slight variation from the non-essential matters. Repugnancy would only occur where there is a deviation from the fundamental principles of the Quran and Sunnah. Basic principles are certainly known to all the Muslims. So where is the apprehension? At the same time we must not lose sight of the fact that already under Chapter II, sub-clause (iv) we have adopted the principle: "suitable steps should be taken for bringing the existing laws into conformity with the Islamic principles". And for the codification of such injunctions of the Holy Quran and Sunnah as can be given legislative effect, we have already taken a decision. For future also a principle has been adopted that codification of such injunctions of the Holy Quran and Sunnah, as can be given legislative effect, should be done. Where is the apprehension? If I may not be guilty of repetition, after all what would be the law? It would be the will of the people. I ask you: would it be wise to adopt this principle of checking the power of the legislature? We must remember that the world is going very rapidly. The structure of society which exists today may not last for more than ten years more.

Undoubtedly one may be very confident on the other side that the Muslims will never change. But I will ask them a question. Are your young men, who are receiving modern education, not changing fast? We the older people would be retiring, leaving the affairs to the younger generation who are coming of age. Really it is they who will soon take charge of the affairs of the State. Do you think they will stick to the principles to which we are adhering? I think not. World is proceeding very rapidly and world, today, is not an isolated factor. Now we are linked with each other. Every matter is internationally linked. Activities and ideas all over the world influence us. These ideas and activities are knocking at our door and we cannot shut our door against them.

Mr. President: You have exhausted your time.

Shri Kamini Kumar Datta : One minute more and I have finished. Sir, I do think that this clause 3 ought not to have been put in there. In fact it should find no place. As to my amendment half of it relates to personal law and I have added at the end that the rights or interests guaranteed under the existing law—as you know various permanent rights have been created, various permanent interests have been created—should also be guaranteed and safeguarded in the new laws that would be framed. Now, Sir, it would be wrong that at the time the laws by which these rights have been created and which are the existing laws, existing for a century and half, they are to be disturbed because they are repugnant to the principles of Quran and Sunnah, it will cause really a serious problem and may result in the disruption of the society itself. Therefore I have added that not only the personal law would be protected but any valid right or vested interest that are created under the existing laws shall also be protected.

Mr. President : Mr. D. N. Dutta has an amendment.

Shri Dharendra Nath Dutta : Mr. President! Sir, I move my amendment to paragraph 3. Sir, I move :

“That to paragraph 3 the following proviso be added :—

‘Provided that the provisions of this paragraph shall not apply to any personal law of the non-Muslims or to any law exclusively relating to non-Muslims.’”

Mr. President! Sir, please allow me to speak generally on the provision that no law shall be passed which is repugnant to Quran and Sunnah and that no Legislature should enact any law repugnant to Quran and Sunnah. As you know we are now on the operative part of the report. We were dealing with the Directive Principles of the State for the last two days. My friend Mr. Chakraverty and Mr. K. K. Datta have dealt with the matter sufficiently from one point of view and I shall refer to the matter from another point of view. I know the difficulties of Hindus especially in this matter. First difficulty is that they are not fully aware, as many of the Muslims are not fully aware, of the teachings of Quran and Sunnah. Secondly, Sir, I am one of those who feel, rightly or wrongly, that politics should be free from religion. Law making is a part of politics and here we should not bring in religion. Whether I am correct or wrong I do not know but this is my view which I firmly hold. It is within me and ingrained in me. But, Sir, I express this view with a certain amount of diffidence lest my utterances or my expressions may offend the religious susceptibilities of my friends. I consider that in the present generation and in the generation to come the principle that politics should be freed from religion should be followed, otherwise we shall land ourselves into difficulties. That seems to me the view of the father of the nation. That is the view of Quaid-i-Millat, Honourable Mr. Liaquat Ali Khan. In one sentence while dealing with the Objectives Resolution he went to the length of calling my Muslim esteemed friends as maniac's leader referred that in a country dominated by the Muslims and by the *Ulemas* in fact he was apprehensive that the head of the State shall only be a Muslim. He said that was the view of the *Ulemas*. In reply Quaid-i-Millat went to the length of calling these persons who advocate such view as mad persons. In that sense, each one of you is a maniac. He said who says in the democratic Islamic State the head of the State should be a Muslim. I now see, Sir, that such a proposition is going to be embodied and is going to be inserted. I shall refer to the fundamental rights now, fundamental rights that have been adopted by this House. Now, Sir, this portion that no Legislature should enact any law which is repugnant to the Holy

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Quran and Sunnah is really a fundamental right because in the Fundamental Right there is a clause of repugnancy and you will find that in the report which has been adopted on the 6th October, 1950 it occurs in clause 9. It says :

"Every citizen of Pakistan is guaranteed : freedom of speech, expression, etc. Nothing in this article shall affect the operation of any existing law or prevent the State....."

I draw your attention and the attention of Honourable Mr. Brohi to this.....

".....or prevent the State from making any law relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines that authority or foundation of the State; or from restricting or regulating in the public interest or in the interest of public order, morality or health, any freedom or right guaranteed by this Article."

So, Sir, we are restricted from making any law which goes against morality and which offends it. I am a believer in moral laws in matter of politics and in matters of administration of the country. In Article 9 of the fundamental rights that has already been adopted, it has been stated that nothing which offends against morality should be passed. Now if you look to Article 10 which says :

"Freedom of conscience and the right to profess, practice and propagate religion are guaranteed subject to public order and morality."

Here also importance is given to public order and morality. It is as it should be. I also go further that in the case of fundamental rights that have been adopted by us there is provided everywhere subject to public order and morality.

Now Article 11 says :

"Subject to public order and morality, every religious denomination or any section thereof shall enjoy freedom."

Here also it is said subject to public order and morality. So it is of very great importance that everywhere there is reference to public morality but I do not want to raise a point of order. Now Para 15 says :

"Save with regard to matters governed by the personal law of the community or otherwise expressly provided in the Constitution any law in force in any part of Pakistan, at the time of the commencement of this Constitution, shall be void in so far as it is repugnant to any provisions of this part and any law made hereafter which contravenes any of the provisions of this part shall, to the extent of such contravention, be void."

Sir, this was the original order which was submitted on the 5th October, 1950, that really those laws which will be passed hereafter by this House and after the Constitution, they will be void if they contravene some of the provisions of fundamental rights. That was the law which was accepted and it was never thought that it will be changed in this respect that any law which is repugnant to the teachings of the Holy Quran and Sunnah shall be declared void. That was never thought of. We are guaranteed certain fundamental rights for the people and this is one of the fundamental rights. Repugnancy was never thought of on the ground that the law will be repugnant to the teachings of Quran. Sir, that was the position on the 5th October, 1950. Sir, a confidential Report of the Basic Principles Committee, I mean the Interim Report was circulated to all the members of this House in September, 1950, and if you look at the Report, there was no such provision inserted therein. So, Sir, it seems to me clear that the Quaid-i-Millat never thought of having such a provision in the Constitution. Afterwards, Sir, this Interim Report was objected to on different grounds and this

portion was never objected to even then. We know the views of the public. The Report was objected to with regard to the composition of the legislatures or the composition of the House of the People—Mr. Brohi may be knowing it.

Sardar Abdur Rab Khan Nishtar: You are wrong there.

Shri Dharendra Nath Datta: I know this particular provision was never objected to.

Sardar Abdur Rab Khan Nishtar: Ask your leader.

Shri Dharendra Nath Datta: I do know that; I have been following the politics of Pakistan and politics of this country for the last 40 years very carefully. So, I submit that this provision was never objected to. There was at that time no provision as to the repugnancy to the teachings of the Quran and Sunnah. But, Sir, it is unfortunate—it is unfortunate not only for the minorities but for Pakistan as a whole—that subsequently this provision has been changed. Sir, we are hearing about the constitution of a Mulla Board.....

Mr. President: Mr. Dutta, you have got about one minute more.

Shri Dharendra Nath Datta: I will just finish, Sir. Sir, even the Mulla Board, in one respect, seems to be little better than what it is proposed to do today. Mulla Board was an Advisory Board but the final authority was the legislature. Here the final authority has been taken away from the legislature. My esteemed friend, Khawaja Nazimuddin knows that the Mulla Board was only of an advisory nature and the final authority vested in the legislature. Here you have taken away the final authority.

Therefore, Sir, I sit down with the warning: do not mix politics with religion and if you do it, you will be landing yourself into difficulties. It is not a Constitution for today's generation, but for generations to come and I am afraid, Sir,—I am not quite sure whether I shall live long; but I hope my friend Mr. Brohi will—future generations will protest against you, will raise hue and cry against this particular provision that is sought to be inserted. With these few words, Sir, I resume my seat.

Mr. President: Then, I think.....

Shri Dharendra Nath Datta: Mr. President, Sir, one minute more and I have done. All this I said with regard to the amendment moved by Prof. Raj Kumar Chakraverty and now I beg to submit a few words about my amendment.

I have said that the provisions of this paragraph shall not apply to any personal law of the non-Muslims or to any law exclusively relating to non-Muslims. Sir, if the Hindus intend to pass a law relating to monogamy that a Hindu can not have more than one wife at a time. I want this should not be affected by this clause. Sir, it is very necessary in view of the density of the population—in view of the increase in the number of population. We should make such a proviso because I feel that in future such laws as will interfere with the personal laws of a community can be passed. Therefore, our proposal is, that if you pass any such law, then it will not apply to the personal law of non-Muslims or to any law exclusively relating to non-Muslims.

Mr. President: Amendment moved:

“That to paragraph 3, the following proviso be added:—

‘Provided that the provisions of this paragraph shall not apply to any personal law of the non-Muslims or to any law exclusively relating to non-Muslims.’”

Mr. M. H. Kizilbash : Sir, I have given notice of the following amendment :

"That to paragraph 3, the following new sub-paragraph (2) be added and paragraph 3 be renumbered as 3 (1) :—

'(2) The Holy Quran and the Sunnah, wherever these expressions occur shall mean, when applied to any sect, such interpretation thereof, as is recognised and accepted by that particular sect.'"

But with your permission, Sir, I would like to make a verbal change in this amendment and that is that :

"After para. 3, the following new para. 3B be inserted."

This is to be substituted for the words :

"That to paragraph 3, the following new sub-paragraph (2) be added and paragraph 3 be renumbered as 3 (1)."

The reason for this is that the amendment which I propose is of a general nature and is not linked to para. 3 only.

Mr. President : Will you kindly give me the amendment that you now propose to move, in writing as I will have to put it before the House exactly in the same terms in which you want to move it. That you can give after you have finished your speech.

Mr. Fazlur Rahman (East Bengal : Muslim) : Actually, Sir, this amendment is to be taken after clause 3 has been disposed of. The new amendment proposes to add a new sub-clause 3(b).

Mr. President : So, he does not want to move the amendment now.

Mr. Fazlur Rahman : He does not want to move it as an amendment but that he wants to add a new sub-clause 3 (b) to para 3.

Mr. President : So what I understand from him is that it will come when paragraph 3 has been disposed of. If that is the case, then he need not move it now.

Mr. Fazlur Rahman : It was only brought to your notice so that you may not treat it as a short-notice amendment.

Mr. President : That is all right.

Mr. Bupendra Kumar Datta (East Bengal : General) : Sir, I oppose this paragraph. Sir, we have warned, we warn and we will continue to warn against the mixing of such religious considerations with politics, and constitution-making. It is fraught with numerous untoward consequences particularly in a country inhabited by so many religious minorities, non-Muslims as well as Muslims. Sir, the Quran and the Sunnah, as we all know, are capable of varieties of interpretations, by varieties of persons for varieties of purpose and every student of Islamic History knows that it has been throughout a history of political intrigues, which have obstructed all progress. During the general debate, I quoted several early Muslim political thinkers. I expected a fairer, a more honest discussion on them. It will not do simply to assert that Islam adapts itself to circumstances. Sir, I made the point particularly by a quotation from Ghazali that the attempt to mix up religion with politics had been abandoned a thousand years ago and politics came to be regarded as a purely mundane matter. The quotation I gave from Mr. M. B. Ahmad's book contained a reference to Aurangzeb and describes him as an adept both in politics and Shariat. He too had declared that religion had nothing to do with politics.

Look here now. Wherever consideration of money comes in whether it is Money Bills or the Pay and Allowances for the State dignitaries, the Head of the State or the Ministers, exceptions are made. It gives a look as if money is sweeter than religion ; it gives a look as if it

is all cant and hypocrisy. Sir, it is bound to be so. The previous Finance Minister declared it on the floor of the House that the ancient taxation systems could not be made to fit in modern State structures. The teachings of Quran and Sunnah cannot be made to fit in other spheres also. Sir, we hear of and on on the floor of this House about the Muslim 'millat' and the Islamic internationale. The trend seems to be rather in the opposite direction. Many progressive countries like Turkey where massacre of non-Muslims continued as late as 1909 as at Adana, people feel insulted when questioned about the faith one follows. The report comes! "that is my private affair and none of yours." Sir, it is wisdom that we should go abreast of these progressive countries. For all these reasons, I appeal to you in the interest of the Nation 'give up these ideas, give up these attempts to mix up religion with politics'. We have achieved our freedom and with it Pakistan and we should use our victory with moderation and humility. With these few words, I oppose this amendment.

The Honourable Mr. Abdul Hamid (East Bengal : Muslim) : *Sir, I am a little surprised by the observations made by the speaker who has just sat down that religion in the East should be absolutely isolated from politics. So far as my information of history goes, the battle of renaissance in the East has never been fought and won as in the case of religion. So religion has interfered with every walk of life, whether it is the Hindus, Muslims or any other community. Therefore, theocratic nature has continued to run the system in the East, even in the 20th Century. East is trying to set up a new order of things, suitably assimilating religion with politics and life, so that they may not go to the extreme of following materialism which ultimately would bring atheism in the social order of our life. Sir, the objection that is proceeding from the Opposition, I think, is rather late in the day. In the Chapter of Directive Principles of the State Policy, in the first para they have accepted that the State should be guided in all its policies and activities by the principles enunciated in the Objectives Resolution. Sir, the Objectives Resolution says that the Constituent Assembly representing the people of Pakistan, resolves to frame a Constitution for the Sovereign independent State of Pakistan wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, shall be fully observed. They have given their approval to this measure. After giving their approval if they say that we should not implement it—that religion should not be mixed up into politics—, it should be kept absolutely isolated—I say, Sir, it is rather late in the day. The objection has been raised as regards incorporation of this paragraph in the Second report of the Basic Principles Committee, because they say that in the first report there was no such clause. Do they not remember that there were non-Muslim Members in the Basic Principles Committee? Has any of them put in a note of dissent to the inclusion of this clause in the Report. After you have taken decision and approved the Basic Principles Committee Report, instead of putting a negative proposition—that no legislation should be passed which is repugnant to the Quran and the Sunnah—, you might have very appropriately put in a positive proposition that every legislation must conform to the Quran and the Sunnah. Therefore, I think that, while admitting this provision in the Basic Principles Committee, the members of the minority community admitted this fact that religion of Islam will be mixed up with politics which would create safeguard for them and therefore the necessary corollary was that they did not put in a note of dissent.

So, Sir, I say that their objections come too late in the day. Reference was made to fundamental right. Well, fundamental rights are

*Speech not corrected by the Honourable Member.

[The Hon'ble Mr. Abdul Hamid]

there. Our opinion is that no Islamic principle can be inducted into the Constitution and its day to day administration which offends against the fundamental rights. Therefore the fundamental rights are justiciable and you will find that no Quranic principles will ever offend against them. If they err in any way, it will be for their good to give them more rights and privileges.

I do not want to take more time of the House in going into details. The Law Member will deal with them. The Honourable Members should have taken exception and while considering the Objectives Resolution the members of that Committee would have put in a note of dissent that they do not agree to the report of the Basic Principles Committee. They have done nothing of the sort and so it does not lie in their mouth at the present moment to say that this is denying them any right so far as the personal rights of the minorities are concerned. Times out of number we have said that their rights will be safeguarded. With these few words, I oppose the amendment.

Jam Sahib Mir Ghulam Qadir Khan of Lasbela (Baluchistan States) :

*Mr. President! My kind friend, Seth Sukhdev, has raised the question whether it would be justified under an Islamic Constitution to detain a person without trial. Sir, for his information I would submit with all humility that such detention is permitted according to the accepted principles of Islam which warns us against waiting for the evil-doer to do his mischief and directs us to put him out of harm's way in good time. This being the convention with us. I find myself at a loss to understand my friend's logic which runs contrary to the injunctions of Islam. He seems to counsel us, by implication, to let a blazing house burn itself out and to ask the firebrigade to stand aloof, lest the valuable furniture, though threatening to help in feeding the fire and spreading the flames, might be damaged in its attempt to put out the blaze.

Sir, the law is meant for the benefit of every citizen irrespective of his caste or religion, and it aims at providing full protection to his life and property. I, therefore, think that the minorities should not be alarmed at such laws. It is a matter of common experience that certain anti-social elements raise their head now and then in every country and if they are given a free hand to carry on their disruptive activities, they eventually become a menace to the tranquillity of the country and start movements calculated to disturb law and order. With a view, therefore, to forestalling such activities, it is necessary for every Government to have recourse to such preventive laws. Moreover, if the mischief begins to threaten the very integrity of the State, it becomes the duty of every individual to assist the Government in the enforcement of these laws which are meant for the security of the community. I am, therefore, of the opinion that the enactment of such laws is essential for the safety of Pakistan.

Sir, a few honourable friends of mine have said a lot against Islam. I am sorry that I have little time at the moment to answer their allegations and to refute their criticism point by point. I would content myself with saying that Islam teaches the lesson of justice and equality to mankind. The presumption is absolutely groundless that we are trying to thrust the Islamic Constitution on our friends and seeking through it to interfere with their religion or impose any restrictions on their 'personal activities'. My friends would be well-advised to cast off these misgivings which are purely imaginary. Had they got through the pages of history, they would have formed an idea of the just and generous spirit of the Muslims who could not have managed, without these sterling

qualities, to hold sway over such vast territories for centuries at a stretch. Even up to recent times, that is, till just before partition, the position in the Muslim majority provinces like the Punjab and Sind was that while the Ministries were formed by the Muslims, the Hindus dominated the administration and ran the Provincial Governments. I would, therefore, appeal to my friends to repose confidence in us because no Muslim citizen of Pakistan harbours any design of making life difficult for the minorities in this country or harming their interests in any way whether they are Christians, Parsis or Hindus. I hope they would find us unflinching in our determination to make the minorities secure in Pakistan. I agree with my friends' argument that we would not be justified in victimizing the minorities in Pakistan in retaliation of the maltreatment meted out to her minorities by India. I admit that if the Government of India chooses a wrong course of action for itself, it need not form a precedent for us.

Sir, if we take the trouble of going through history a little carefully, we would see that Muslims never conducted themselves in an objectionable manner as has been alleged with reference to certain traditions attributed to Hazrat Abu Bakr, Hazrat Umar, Hazrat Usman and Hazrat Ali. I can only express my sorrow at the fact my friends have not studied the lives of these great men with the carefulness they deserved. Had they perused the lives and achievements of Hazrat Ali and Hazrat Abu Bakr, among others, they would have acknowledged their selfless devotion which, more than anything else, served to win over the idolaters to the cause of Islam. We openly admit that we lack these qualities at present and have fallen a victim to many weaknesses. This is so because we abandoned the golden principles which had contributed to our progress in the past and forsook the teachings of our religion, our Prophet and the Holy Quran, thus bringing about our own downfall from the high position we once occupied. But now we have made up our mind to re-tread the same path which would again lead us to success.

Sir, Islam is not meant exclusively for us. It has given the message of equality, justice and fairplay to the whole world and several nations which are today considered as advanced, owe their position to these golden principles which they have chosen to act upon.

Before resuming my seat, I would again like to appeal to my kind friends to repose confidence in us. If our mutual differences continue as at present, we would be certainly heading for an unpredictable future. I, therefore, request them not to be swayed by such misunderstandings. With these words, I oppose the amendment.

Mr. Bhabesh Chandra Nandy: Sir, I rise to support the amendment proposed by Prof. Chakraverty. But the difficulty is that along with this amendment so many other amendments have been taken up and so many different aspects of the main amendment have been discussed that it will be very difficult for me to finish discussion and to do justice to this matter in ten minutes. Therefore I would request you, Sir, to be a little more indulgent on this point.

My point is this. Paragraph 3 says: "No Legislature should enact any law which is repugnant to the Holy Quran and the Sunnah." Sir, I can appreciate the feelings of Muslims who may feel that there should not be any law which they will be asked to follow in their day to day life, which runs counter to their convictions. That, of course, I can quite understand. As a Hindu I cannot agree to follow laws, which are against my religious convictions and I will always feel revolting against any law which is against the fundamental convictions of my life. But still I oppose the paragraph 3 on more than one grounds. First

of all I cannot understand the necessity of putting it here. Now who will be in the Legislature in the Province or in the centre? The percentage of Muslims population is nearly 85 per cent and they will come to represent the general masses of the people. We can reasonably expect that they will be all educated people because we are providing in the Constitution that any man returned must know how to read and write and so only educated people will come to the legislatures. We can expect that they will do nothing and pass no legislation which is against the principles of the Holy Quran or Sunnah. The Head of the State will be another safeguard for the principles of the Quran and the Sunnah. He will have to take the oath to the effect that he will faithfully discharge the duties of the State and that in his personal and public life he will endeavour to fulfil the obligations and duties enjoined by the Holy Quran and the Sunnah. So also every Muslim member of the Legislature will swear in the name of Allah that he will not do anything that will go against the principles of Quran and Sunnah. In spite of all these provisions why should we feel so much apprehensive as to propose further such a clause in the constitution. I appreciate that Muslims will not like any legislation which revolts against their conviction but for that is it necessary to bring such a binding clause like this. In a country where the preponderating majority is Muslim and the representatives are mostly educated Muslims people, people know their best interests. So I think looking at it from that stand-point this clause is absolutely redundant. Now it is not only redundant but it is dangerous. Why? You can look to the language of this para. It says no legislature should enact any law which is repugnant to the Holy Quran and the Sunnah. Sir, it is an impossible thing. For example, we make certain legislation in conformity with international agreements, such as certain labour legislation, certain legislation on factory law, certain health legislation which we have to make in conformity with our international agreements and commitments. Here we have to do it because we are committed to pass the legislation according to international agreements.

So if we are committed like that, we can not do otherwise, even if it is not provided in the principles of the Quran and in Sunnah. Sir, the period when Quran and Sunnah were communicated, the human life was not so advanced as it is today, the human life was not so complicated as it is today. Sir, the difficulty will be about the fanatics, who will insist that this is wrong and that is wrong... I can point out some recent instances.

Mr. President: Mr. Nandy, are you about to finish?

Mr. Bhabesh Chandra Nandy: I will take about ten minutes more at least.

Mr. President: You will have ten minutes in all. Will you now finish within a minute or two or you will take more time?

Mr. Bhabesh Chandra Nandy: No, Sir. I will take more time.

Mr. President: Then I adjourn the House. The House stands adjourned till 10 a.m. tomorrow.

The Assembly then adjourned till Ten of the Clock, in the Morning, on Friday, the 30th October, 1953.