

FIFTH ANNUAL REPORT

OF

THE MINORITIES' COMMISSION

FOR THE PERIOD

1-4-1982 TO 31-3-1983

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CHAPTER I

GENERAL REMARKS

1.1 The Minorities' Commission hereby submits its Fifth Annual Report for the period April 1, 1982 to March 31, 1983 to the President of India.

1.2 The Commission was set up in pursuance of the Government of India Resolution No. II-16012/2/77-NID(D), dated 12-1-1978 (Appendix-I).

1.3 When Constituted, the Commission consisted of one Chairman and two Members whose initial terms of office were ordinarily to last three years. Shri M. R. Masani was appointed as the first Chairman and Shri Justice M. R. A. Ansari and Prof. V. V. John as Members of the Commission. But, it was soon reorganised and expanded by an order of the President of India dated July 28, 1978 with Justice M. R. A. Ansari as Chairman and Prof. V. V. John, Air Chief Marshal Arjun Singh (Retd.), Dr. (Miss) Aloo J. Dastur and Ven, Kushok G. Bakula as its Members. On completion of the term of office of the second Chairman of the Commission, Shri Justice Mirza Hameedullah Beg, former Chief Jusice of India, was appointed as the third Chairman of the Commission. He assumed charge of this office on March 4, 1981 and continued during the period under report. At the commencement of this period the Commission comprised of :

Chairman

Shri Justice Mirza Hameedullah Beg

Members

1. Ven. Kushok G. Bakula
2. Shri K. T. Satarawala
3. Shri S. A. Dorai Sebastian
4. Gyani Sujan Singh

The term of office of Shri Dorai Sebastian, M.P., expired on November 23, 1982. Shri K. T. Satarawala, on his appointment as Lt. Governor of Goa, relinquished charge of his office with effect from the forenoon of February 23, 1983. The vacancies caused by the retirement and resignation of these two members have been filled after the period under report.

1.4 Shri G. S. Sial, IAS, Secretary of the Commission, retired from service on superannuation with effect from July 31, 1982. Shri S. S. Gill, IAS, took over as Secretary of the Commission with effect from July 31, 1982. Shri A. P. Sarwan, IAS, Joint Secretary of the Commission, was transferred to the Ministry of Industry (Department of Industrial Development). He relinquished charge of his office in this Commission on September 14, 1982. The post of Deputy Secretary was filled up with the posting of Shri W. Hasan, IRS, with effect from May 13, 1982. The Under Secretary, Shri K. John Koshy, IAS, was transferred from the Commission to the Ministry of Industry (Department of Industrial Development). He relinquished his charge in the Commission on November 25, 1982. The posts of Joint Secretary and the Under Secretary remained vacant during the rest of the period under report.

1.5 Shri B. P. Singh, Deputy Commissioner for Linguistic Minorities, who had earlier been looking after the work of the Deputy Secretary of the Commission also, was reverted to the Posts and Telegraphs' Department with effect from December 31, 1982. Shri N. S. Bhatia, CSS(SG), joined as Deputy Commissioner for Linguistic Minorities in his place, with effect from January 4, 1983.

Terms of Reference

1.6 As explained in the Fourth Report, the Minorities' Commission was established, out of concern for secular traditions and to promote national integration. Effective enforcement and implementation of safeguards provided for religious and linguistic

minorities in the Constitution, in the Central and State laws, in Governmental policies and administrative schemes formulated from time to time, were intended, so that feelings of inequality and discrimination prevalent amongst minorities, whether based on religion or language, are removed.

1.7 To carry out these objects, expressed in the Government Resolution, the Commission was entrusted with the following functions :

(i) to evaluate the working of various safeguards provided in the Constitution for the protection of minorities and in laws passed by the Union and State Governments;

(ii) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards and the laws;

(iii) to undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the minorities;

(iv) to look into specific complaints regarding deprivation of rights and safeguards of the minorities;

(v) to conduct studies, research, and analysis on the question of avoidance of discrimination against minorities;

(vi) to suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the Central or the State Governments;

(vii) to serve as a national clearing house for information in respect of the conditions of the minorities; and

(viii) to make periodical reports at prescribed intervals to the Government.

Constitutional Provisions

1.8 Under our Constitution, rights of individual members of religious minorities are secured in common with those of other citizens. Absence of discrimination on grounds of religion or language is guaranteed by Articles 14 and 15 of the Constitution.

1.9 Our Constitutional concept of religious freedom was explained in the Fourth Annual Report where a Declaration of Religious Freedom approved by the Commission would also be found. That Declaration was sent to the Human Rights' Commission of the United Nations' Organisation, which has now adopted a Declaration after a search, lasting about twenty years for a satisfactory one. A copy of the Declaration adopted by the General Assembly is annexed herewith as *Appendix-II*. It is by and large in conformity with that approved by the Commission and set out in the Fourth Annual Report.

1.10 The function of such a Declaration is not only to clarify principles but to provide, like judgments of courts, precedents for views taken and tests for correctness of the conclusions of the Commission reached on particular issues involving religious freedom. It has helped the Commission in forming its opinions and making recommendations based on correct principles. It should not concern the Commission if its views, so long as they are honest and believed to be beneficial and correct, do not please some people. It is not only impossible to please all people with conflicting claims, differing points of view, and demands which overlook what could be said against them, but it is not among the functions of the Commission to adopt any views merely to please any minority or section of the nation. Those who do not understand the highly non-partisan functions of the Commission, unfortunately, keep criticising it for not doing precisely what it is not supposed to do.

1.11 The large number of letters of appreciation and some highly laudatory articles and references in the English Press

emphasising the importance of the principles of religious freedom enunciated by the Commission, indicate the importance of the principles found in Article 25 of the Constitution : that individuals constituting a minority, even if that minority consists of a single individual, as against the rest of a community, is entitled to full freedom on what are really matters of religion and conscience subject only to exceptions introduced by law to protect "public order, morality, and health" and other provisions of the Constitution, dealing with Fundamental Rights of citizens. Religious Freedom is guaranteed to them by Articles 25, 27 and 28, whereas Articles 26, 29 and 30 protect rights of minorities as groups and rights of individuals, as members of such groups are implied. Special cultural and educational rights of minorities, as groups, are specified in Articles 29 and 30. Nowhere do these rights include violation or suppression of individuals rights of dissent urged upon the State illegally by some members of communal bodies saturated with theocratic notions aimed at suppression of beneficial dissent with prevalent notions even within minority groups.

1.12 Special constitutional safeguards are also provided for linguistic minorities under Articles 347, 350, and 350A. Article 350B provides for the appointment of a Special Officer for Linguistic Minorities to ensure that the safeguards provided in the Constitution, for the linguistic minorities, are observed. Another article often overlooked, is Article 340 based on the assumption that removal of backwardness is an important duty of the State. An extract of the relevant provisions of the Constitution for religious and linguistic minorities is attached as *Appendix-III*.

Meaning of Minorities

1.13 Apparently, the appellation "Minorities' Commission" was chosen because our Constitutional and political history has produced what could be described as "minority" problems. These arise out of allegations of discrimination practised against

members of minority communities, and out of feelings, frustrations, and social, economic and educational needs and problems of these communities.

1.14 According to our Constitution, the solution devised could be described as "national integration" resulting from a joint and integrated effort to satisfy human needs of citizens belonging to minority communities as well as those belonging to majority communities without discrimination. Absence of discrimination in public as well as private actions, undertakings, and activities is the goal of such integration. Impartial secular approaches and criteria, which the Minorities' Commission is expected to recommend will, it is believed, produce it. Such is the faith in a Secular Socialist Democratic Republic set up by our Constitution, which the Minorities' Commission is expected to inculcate.

1.15 The term 'minority' has not been defined in the Constitution or in any other enactment or in the Government Resolution under which the Commission was established. However, the Commission has been treating Muslims, Christians, Sikhs, Buddhists and Zoroastrians as religious minorities at the national level because their numerical strengths, as compared with the rest of Indian citizens is smaller. The Commission is expected to safeguard all protections provided for religious and linguistic minorities in the Constitution and other laws throughout the territory of India by indicating how they are operating, by suggesting improvements or amendments in them, from the point of view of the welfare of minorities judged in the light of constitutional objectives and not by some partisan tests of policies propounded by sectional interests or vociferous individuals among the minorities. It has to recommend schemes for the welfare of minorities applying constitutional utilitarian criteria. It cannot, therefore, recommend solutions which may pass muster in a theocratic society and set up. It has to apply secular or utilitarian criteria in pronouncing its views even on purported religious claims. It cannot lay down religious doctrines. It can

take note of existence of different beliefs on religious matters, and, unless expression of any such belief runs counter to a constitutionally valid provision, it is bound to uphold the constitutional right to express a belief in words or by conduct. The protection it has to recommend must conform to constitutionally correct tests and not one which is dictated by adherence to any one particular form of religion only. It does not fail to recognise the demands of a group identity based on the profession of the faith or beliefs of a minority when it insists on the observance of certain values and tests common to religious and linguistic minorities as well as majorities by reason of a common bond of a constitution to which all of us owe allegiance.

1.16 The Commission has been entertaining representations from members of above mentioned five communities. Claims of other alleged minorities are also given due consideration.

1.17 So far as linguistic minorities are concerned, the Commission has been treating those groups as linguistic minorities which have separate languages and which constitute numerically smaller sections of the people in a State. In other words, linguistic minorities are determined on a statewise basis. It is not necessary that a language should also have a distinct script to be entitled to protection.

1.18 Available detailed statistical data on various religious and linguistic minorities are enclosed as *Appendix-IV*.

CHAPTER II

ACTIVITIES OF THE COMMISSION

2.1 The Activities of the Commission extended as they did earlier, to the examination of various complaints received from individuals as well as from associations of minority communities. Those which came to its notice through other sources, were also looked into.

2.2 The Chairman and Members of the Commission visited various parts of the country to investigate important general and specific problems relating to minorities. Further more, the Commission entrusted studies of special subjects to persons believed to be qualified to investigate and considered their reports on problems they were asked to study. It also gave detailed opinions on matters referred to it and, on some matters, *suo moto* also.

2.3 During the period under report, the Commission received 364 complaints relating to grievances of members of minority Communities. Out of these, two hundred and sixty eight cases were disposed of after preliminary examination. Seventy two cases were taken up by the Commission for detailed inquiries and investigation. Out of these, twenty four cases have been finalised and suitable recommendations made where found feasible. A statistical statement relating to the cases considered by the Commission is at *Appendix-V*.

2.4 During this period the Commission held 14 meetings in which it considered altogether 193 items relating to specific complaints and grievances regarding deprivation of rights and safeguards of minorities. The details of the Commission's

meetings held during this period and the number of items considered are given in the following table :—

Sl. No.	Number of meetings	Date of meeting	Number of items considered by the Commission
1	2	3	4
1.	53rd meeting	5-4-1982	39
2.	54th meeting	3-5-1982	22
3.	55th meeting	7-6-1982	10
4.	56th meeting	15-7-1982	19
5.	57th meeting	27-7-1982	4
6.	58th meeting	11-8-1982	11
7.	59th meeting	4-9-1982	11
8.	60th meeting	4-10-1982	8
9.	61st meeting	8-11-1982	16
10.	62nd meeting	20-12-1982	11
11.	63rd meeting	27-1-1983	16
12.	64th meeting	28-2-1983	19
13.	Special meeting	9-3-1983	2
14.	Special meeting	31-3-1983	5
	TOTAL		193

2.5 The Chairman, Shri Justice M. H. Beg, Member, Gyani Sujan Singh, together with the Secretary, Shri S. S. Gill, IAS, and Deputy Secretary, Shri W. Hasan, visited the State of Bihar from 6th to 12th December, 1982. They discussed in detail various problems of different minorities, both religious and linguistic, in order to ascertain minority problems with representatives of various minority organisations, officials of the State Government, Vice-Chairman and Members of the State Religious and Linguistic Minorities' Commission and the Chief Minister. The pros and cons of various proposed solutions, such as formation of Peace Committees to keep a watch and to resolve disputes immediately and peacefully, without allowing false rumours or exaggerated reports to spread and to aggravate situations, were discussed. A detailed report of mattes discussed during its visit to Bihar is given in a separate chapter.

CHAPTER III

SPECIAL REPORTS

3.1 During the period under report, the Commission prepared separate reports on the following subjects :

1. Report on provisions of law relating to communal activities.
2. Report of the Chairman on his visit to Gita Foundation's Conference at Bangkok.
3. Study of general character of personal law of Muslims.
4. Constitutional aspects of citizenship rights and violation of Human Rights in Assam.
5 Reports on the visit of the Member Gyani Sujan Singh, to Amritsar on 19th September, 1982.
6. Communal disturbance in certain villages of Kanyakumari district, Tamil Nadu.
7. Violance against Sikh Truck Drivers—an in-depth study entrusted to Shri P. N. Duda, Advocate.

Report on recommendations and provisions of law relating to communal activities

3.2 On 1st April, 1982 a communication was received in the following terms by the Secretary to the Commission from the Home Ministry :—

> "Definition of the term 'communal organisation' and evolving a set of guidelines for identification of such organisations has been under consideration of this Ministry. There is no clear-cut line of demarcation between a communal organisation and religious/political/social cultural organisation. Demarcation of an

> organisation as a communal organisation otherwise has, therefore, necessarily to be based on a subjective assessment. Again, the activities of an organisation in a particular context or at a particular time are capable of being termed as communal while in another context and another situation, its activities may be of religious/political/social or cultural nature. Activity of an organisation in a particular localised area or a widespread region may be capable of being labelled as communal, whereas the activities of the same organisation in another local situation or wider region may not be so.
>
> We would be grateful if the Minorities' Commission could examine the issue in its totality and let us have its views regarding an acceptable definition of the term 'communal organisation' and also in evolving a set of guidelines for identification of such organisations."

3.3 The Commission at once took up the question of defining communal activities and provisions of law dealing with them. It also made certain suggestions relating to the way in which these activities could be curbed. Suggestions were also made to amend, if necessary, the provisions of the Constitution to check communal activities in general and of organisations which carry them on.

3.4 Even the existing provisions, however, seemed sufficient to the Commission to control communal activities if the provision of law contained in section 153A, 153B and 153C of the Indian Penal Code were liberally used and strictly enforced. It was of the opinion that strict enforcement of these provisions of the law by local administrations was not only necessary to restore order in disturbed areas but also to prevent communal activities from creating a situation in which there are repeated outbursts of violence with considerable losses of lives and properties of innocent Indian citizens.

3.5 The Commission is of opinion that, although firm action must be taken to check outbursts of violence, resulting in much loss of innocent human lives and plunder or destruction of property caused by the activities of lawless elements, taking advantage of tense situations created deliberately for their benefit, yet, radical or lasting cures could only lie in completely overhauling our system of education so as to eliminate those ideas and attitudes which damage national integration. It felt that obstructions in the path of national integration have been deliberately created by either vested interests seeking to generate and exploit antagonisms based on creed, caste, or region, or by those who hope to acquire political power or gain some supposed advantage for themselves due to the creation of such cleavages and exacerbation of group animosities. The Minorities' Commission also gave its suggestions as to how difficulties in administering the law, referred to by the Home Ministry could be resolved.

3.6 When communal activities become objects of organisations, they assume a graver form. Behind all communal activities which take the form of deliberately planned outbreaks of violence against lives and properties of members of any particular religious or cultural community was invariably to be found an organised effort of some individuals. From the acts and utterances such as propagation of false or exaggerated reports, the character of organisations to which they belonged could be inferred. It was all a matter of objective evidence.

3.7 A copy of the special Report sent by the Minorities Commission to the Home Ministry is attached herewith as Appendix VI.

Note :

1. Instances of communal activities may be given from decided cases on Sections 153A, 153B and 153C I.P.C.

2. It is recommended :

(a) That, State Government be directed by the Central Government to order the setting up a cell of members drawn from all parties, containing members of minority as well as majority communities in each district to keep a watch over "communal activities" of individuals as well as groups and parties indulging in such activities. Care should be taken to ensure that its members themselves are not communal.

(b) That, the State Governments be directed to order district authorities to institute prosecutions freely of individuals whose actions or spoken or written words constitute sufficient grounds for prosecution under Section 153A or 153B or 153C either on information supplied by the cells constituted by the Government or on information received otherwise.

(c) That, special watch should be directed to be kept on the activities of members and office bearers of every organisation believed, on substantial grounds, to have been formed for promoting or indulging in communal objectives common only to members of a particular cultural or religious community, or caste, or group.

(d) That, lectures for the general public should be arranged by these cells for explaining the messages and meanings of different religions on matters connected with communal harmony. Such lectures should be directed towards elimination of all hatred, disharmony and discrimination on grounds of religion.

(e) That, the Central as well as State Governments should issue directives for schools, universities, political parties and service clubs asking them to form similar cells and to arrange similar lectures.

(f) That, directions be issued both by Central and State Governments for associating members of minority communities with those of majority communities in all important social, cultural and economic programmes and activities.

Report of the Chairman on his visit to Gita Foundation's Conference at Bangkok

3.8 A Conference of Gita Foundation was held at Bangkok during 25th to 27th December, 1982. The Chairman Minorities' Commission Shri Justice M. H. Beg, was invited to the Conference. In addition to the founder President of the Gita Ashram, Swami Hari Har Ji Maharaj, Dr. Karan Singh and Shri Akbar Ali Jasdanwala, the Chairman spoke on the occasion (see Chairman's speech at Appendix VII-A).

3.9 A report of the Chairman on his visit to the Conference was placed before the Commission.

3.10 The report of the Chairman recommends certain measures to impart education for removing religious bigotry. In brief, the report is as follows :—

3.11 Faith in the Supernatural is common to traditional religions irrespective of labels. There has been exploitation in the name of religion by the cunning with vested interests to serve. Hence, in the world of today, many have rebelled against traditional religion. They compare religion to intoxicating

liquors or disabling drugs which do more harm than good to human beings.

3.12 Swami Hari Har Ji Maharaj, in his discourses, advised development of human wisdom, which requires a scientific application of utilitarian principles and tests, to human thought and action. Faith is not to be blind but to be enlightened and productive of respect for only the highest values. Swami Ji advised acquisition of such wisdom by raising teaching of religions to levels higher than those of traditional religions. He emphasised the need for a healthy mind in a healthy body to be able to do so. According to Swamiji, the true religion of human beings is one that really unites and does not divide people. The word "religion" comes from "religio" or to bind together in an integrated society or nation or a world community. Among those needs, none is greater than that for commonly sought interests and values which could preserve and ensure the progress of the whole human race.

3.13 The preamble to our Constitution mentions these needs as follows :—

"JUSTICE, Social, economic and political ;

LIBERTY Of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation".

3.14 The Indian Constitution is secular because it sets up a State or a Republic in whose eyes all citizens are equal in rights and status irrespective of their caste, creed, race, or religion. This is exactly what Swami Hari Har Ji says about what good human beings should believe in and work for. Hence, his teachings are

not anti-secular. They are only intended to spiritualise our 'secularism' in the sense that, by following them, our secularism itself can attain its highest professed objectives. The real clash is between these broad objectives and narrow creeds whose followers may seek to govern society. It is not between humanistic tolerant creeds, such as that of Swamiji, and what is called "Secularism".

3.15 Swami Hari Har Ji Maharaj is really a teacher of good ethics. He believes that good ethics can save us from a blindness caused by intoxication with any kind of power whether it be political, social, economic, or even religious and spiritual.

3.16 Swamiji described four methods of devotion to the highest objectives for intellectual and spiritual development. The first is devotion to work for the good of the whole human race. The second is to strive to attain the good of a people of a particular country inhabited by a nation. The third is effort for one's own individual salvation by trying to achieve what each considers best for him or her own excellence. While doing so the individual should not harm others. The fourth form consists of obedience by those who are unable to fend for themselves or to work for even their own good. They must carry out the orders of those superior to them in development and intellectual and moral capacity.

3.17 In making the above classification of human beings with their different methods of serving the common good, Swami Ji does not intend to suggest conflict between any of the four categories mentioned above. On the other hand, it will be seen that he visualises a cooperative endeavour of all to serve the common good. These teachings are based on wordly wisdom and good ethics and embrace the objects of secularism itself.

3.18 Growing expansiveness of the human spirit or consciousness may be said to represent the needs of human society at various stages of its evolution or historical development. The present is the global stage. In other words, the human good has to be viewed

and sought globally. For such a global age, the advice given by Swami Ji in the above classification is meant to bring about a reconciliation between the secular and the spiritual of a kind which Alexander Pope also attempted in his "Essay on Man". The more there is of such exalted teaching in the world, the better and more beautiful would be the world of human beings in which we have to live.

3.19 To integrate religious groups does require an educational re-orientation or appropriate disciplining and eliminating sources of conflict between them. This has to be done on a global scale for unification of humanity on the basis of commonly acceptable basic ethical principles or norms which serve the common good of humanity as a whole. It is not difficult to find much common ground and affinity of ethical teachings between the Bible, the Quran, the ancient Hindu scriptures, Guru Granth Sahib and other religious literature.

3.20 Teachings such as those of Swami Hari Har Ji Maharaj, designed to bring out the true worth of human kind and to reinforce its humanity, could certainly promote National Integration as well as international understanding and cooperation. Such teachings should, therefore, receive the utmost encouragement from both governmental and non-governmental sources. They could even be included in the educational curricula of our schools and colleges. In India, we need more and more of the synthesising kind of education which teachings of Swami Hari Har Ji Maharaj represent.

3.21 A copy of the Chairman's report is enclosed as *Appendix VII B*.

3.22 It is recommended that the Education Ministry may be requested to direct inclusion of a scientific study of anthropological or functional aspects of religious teachings of different religions in educational curriculae in order to promote national integration, harmony, and goodwill between people of different religious faiths and creeds.

Study of general principles underlying personal laws of minorities : Basis of Muslim jurisprudence examined

3.23 Article 44 of the Constitution provides for a uniform Civil Code for the citizens of India. Does this Article conflict with the religious tenets of Islam, Sikhism, Buddhism, Christianity or Zoroastrianism ?

3.24 This question is raised whenever enactment of a general law, such as an Adoption of Children Act, without exempting either the Muslims or some other minority community, affecting rights now governed by the "personal law" of members of a minority community, is proposed. It is pointed out that, so far as Muslims, at any rate, are concerned, there is a promise in the election manifesto of ruling Congress(I) not to make any changes in Muslim Personal Laws by legislation.

3.25 The Commission, therefore, decided to study the personal laws governing members of minority communities, community-wise, so as to find answers to this question, and, after that, to make suitable recommendations on whether article 44 of the Constitution should or should not be amended.

3.26 Such studies could also reveal the scope of or indicate possible improvements or reforms in the personal laws of every community and suitable ways of achieving these. A note prepared by the Chairman relating to Muslim laws and jurisprudence which was considered and approved by the Commission is enclosed as Appendix VIII-A. It was felt that a similar exercise for formulation of general principles in respect of other communities also will be useful. Member, Gyani Sujan Singh, undertook to prepare one with regard to the Sikh community, Member, Kushok G. Bakula, undertook to prepare another relating to Buddhists. These formulations will indicate general principles and differences, similarities, or identities of principles governing all communities.

3.27 In his detailed note, the Chairman has dealt with the concept of secularism and attempted a broad survey of the growth of Muslim Law, showing that Muslim jurisprudence can contribute valuable ideas, even in formulating a uniform Civil Code of personal laws, which is one of the objectives of our Constitution, mentioned amongst the Directive Principles of the State Policy, if this objective was really ever attempted to be carried out.

3.28 The extreme sensitiveness and strength of the feelings of many leaders of Muslim thought and opinion make it both difficult and undesirable to suggest any alterations in India of Muslim personal laws, which have undergone amendments even in Muslim countries, in ways which may alarm them. In view of the really rational and progressive bases of Muslim jurisprudence it may be possible, in future, to attempt best formulations of Muslim personal laws, on matters where there is no uniformity between its different schools or where some changes may be found necessary on any specific matter, to bring it in conformity with rules of that natural law about which not only the Greek Philosophers spoke, but which are found in the teachings of the Holy Quran itself. The tolerant and rational and humanistic Sufi philosophy, to which Arab and Persian and Indian thinkers and savants and poets have contributed, is also based on Quaranic precepts.

3.29 Muslim leaders need fear no imposition of any uniform Code of personal laws upon Muslims in India. On such matters, change of thought and sentiment by persuasion can only result from better education on what really does or does not benefit Muslims or is or is not in conformity with the basics of Muslim jurisprudence found in the Holy Quran and elsewhere. The Commission thinks that the wisest course for reformers of any part of Muslim Law would be, to devote themselves to a better understanding of the meaning and spirit of the Quranic formulations of broad basic principles, as well as pronouncements on specific problems dealt with there and then to a better education of Muslim public opinion about them.

3.30 We would like to emphasise here that Muslim jurisprudence neither makes the whole body of Muslim law so rigid and clear as to be regarded as untouchable, nor are its principles irrational, unprogressive, and so incapable of responding to needs for change as those who neither understand their rationale nor know their sources and meanings, would have us believe. Much ignorance and prejudice, surrounding these questions, has to be dispelled before Muslim thinking is released from the clutches of unscientific theological categories of reasoning and thinking. The Muslim Shariat, properly understood, should operate as an instrument of rationality, justice, and progress instead of being converted into a frightening ghost from the past conjured up to stifle demands of reason, reality, and justice. It was never meant to be a tool of any reactionary or vested interest as it is represented to be by its uncomprehending opponents.

3.31 Muslim jurisprudence affected other systems of law and accepted their influences too, so as to become a part of that common stock of juristic ideas which have helped to produce that composite culture of our country which is necessary to sustain the secular state. It could also serve as a useful guide, negatively, for avoiding legislation for Muslims which may run counter to their Shariat.

3.32 Another function, which Muslim jurisprudence can still very effectively and most usefully perform, is that of acting through the judge, who is given a pivotal position in the Muslim Shariat itself, so as to prevent juristically incorrect decisions on matters of Muslim Law. Instances can be given of cases in which either the Privy Council or some of our own judges have expressed opinions or used analogies, in purporting to apply Muslim law, which do not seem to accord either with Muslim jurisprudence or with the requirements of justice, equity, and good conscience. Invariably, a doctrine of Muslim jurisprudence itself can be invoked to support the requirements of justice, equity and good conscience.

3.33 It is true that there are no separate Shariat courts in India which could administer the Shariat law as a separate system of law. In fact, the history of Muslim jurisprudence bears so much evidence of the effects on its growth of Jus *Gentium* or the laws common to all civilised nations of the world that its principles, either as found in the basic tenets in the Holy Quran and in the Sunna or those developed by classical Muslim jurists could be reconciled, without much difficulty with Justice, Equity and good conscience of Anglo Saxon jurisprudence. Mr. Justice Syed Mahmood, the renowned Muslim judge of the Allahabad High Court, did so when he found that the Muslim law of Pre-emption was not opposed to "justice, equity, and good conscience" in a masterly survey of its rationale in Gobind Dayal *Vs.* Innayatullah (7 All. 790).

3.34 Sir Shah Sulaiman, another famous Muslim Judge from the Allahabad High Court, also found no difficulty in engrafting the principles of the Anglo-Saxon law of estoppel, contract, and family settlement, in Latafat Hussain *vs.* Hidayat Hussain (AIR 1936 Allahabad p. 573), on to laws governing transactions of Muslims which could be looked upon as falling within the sphere of personal laws of Muslims. He argued that the existing body of Muslim personal laws did not affect the operation of the principles of law to which he resorted. According to this reasoning, new principles, even from outside the Shariat, could govern transactions, such as family settlements, made by Muslims. It clearly amounts to an assertion, albeit indirectly, of the power of the judge, in exercise of his judicial function to resort to what is nothing more nor less than what, in the language of Muslim jurisprudence is "Ijtehad". In other words, our present system of administration of justice enables the judge to overcome, in applying of Muslim Personal Law, to the very limited number of cases where it is applied, a wrongly supposed inter-diction imposed by the doctrine of "closure of gates of ijtehad" which arose in special circumstances at a late stage in the evolution of Muslim jurisprudence. This prohibi-

tion on a procedural matter does not, it is suggested here, operate against courts in India.

3.35 In Ghulam Abbas *vs.* Haji Kayyam Ali, AIR 1973 SC 554, when a transaction similar to one considered by Sir Shah Sulaiman came up before the Supreme Court of India, Mr. Justice M. H. Beg, speaking for the Supreme Court of India, upheld the validity of family settlements by Muslims and pointed out that, far from there being anything in the Muslim Shariat to prohibit transactions which were binding on considerations of "Justice, Equity, and good conscience", they were in full accord with its spirit, and, indeed, with its specific doctrines found explained in Sir Abdur Rahim's Muslim jurisprudence. Hence, such developments of Muslim Law are within the purview of the Shariat Act, 1937.

3.36 Authoritative modern commentators on Muslim Law have noticed these decisions of our highest courts on Muslim Law with apparent satisfaction with the results. Prof. Asaf A. A. Fyzee has highly commended these decisions resulting from what he prefers to describe as "Anglo-Muslim jurisprudence".

3.37 In a paper written by a Muslim lawyer, now Mr. Justice Haider Showkat Abidi of the Patna High Court a copy of which is attached as Appendix VIIIB, the way in which judges of highest courts in India have administered justice in cases involving consideration of provisions of the Muslim Shariat in India is indicated. This method of applying the Muslim Shariat Law to Muslim citizens of India, by showing how it is consistent with the best concepts of Anglo-Saxon "Equity, Justice and Good Conscience", as well as with our statutory law where the late Mr. Setalvad found the essence of British Common Law (*See* : "Hamlyn Lectures on "Common Law in India") is so satisfactory, in the opinion of this Commission, that no basic change whatsoever in this system of administering the Muslim Shariat Law, through the judicial organs and functionaries of a secular State, is called for.

3.38 The Commission expresses this opinion here, in view of certain demands, on behalf of theologians, purporting to be experts in Muslim Shariat, for special Shariat Law Courts, similar to those which administer justice in some Muslim countries, have been voiced and sent to this Commission.

3.39 This Commission does not think it necessary to go into the history of a unified judicial system, under which secular courts, in the sense that they are presided over by judges for whom no religious qualifications are prescribed, administer what are known as "personal" Laws, on certain specified and limited number of topics only. These laws vary with the religious tenets or the faith of particular persons figuring as parties before courts. It considers it enough to point out that this secular system has produced such an excellent and elaborate body of personal laws of Muslims in the form of judgments, expounding principles of the Muslims Shariat very well, that there is nothing like this body of Muslim personal laws in countries other than ones which, like Pakistan, share this rich heritage and have not entirely abandoned it.

3.40 There is now such an accumulation of case law on problems of Muslim personal law, which have well set patterns in India, that satisfactory solutions, in cases where Muslim law is applicable, can only be found with the help of this case law. And, we also have now extremely valuable collections of principles culled from this case law as well as from original authorities, cited by commentators in works of abiding value by Muslim Jurists of such eminence as the late Mr. Justice Ameer Ali and Mr. Justice Tyabji and Prof. A. A. Fyzee, in addition to British scholars, such as Wilson and MacDonald, and the distinguished judge and jurist Sir D. F. Mulla.

3.41 The result is that the Muslim Shariat, as expounded by our courts and jurists, is so much a part of our own integrated unified body of laws that no resort is now permitted, according to our Evidence Act, to extraneous sources of information

on it, such as opinions of supposed experts, which are admissible as evidence only on matters of "foreign law". The Muslim Shariat, just like Hindu law, is not "foreign law" for our courts. Hence, presiding judges of our courts are expected to know it, as experts in our own laws, and to apply it unerringly to cases of Muslim citizens.

3.42 It is only when our highest courts, as presumed experts in our own laws, go wrong that their mistakes may call for correction by appropriate legislation as was the case when the Mussalman Wakf Validating Act 1913, was enacted to counteract the effects of an erroneous view of the Judicial Committee of the Privy Council in Abul Fata Mohammed *vs.* Rossomoy (22 I.A.P. 76) where a private wakf or "wakf-al-al-aulad" was held to be void for contravening the British rule against creation of a perpetuity because the "private" wakf was held to be a device for the aggrandisement of the "family" and did not satisfy the test of "charity" in English law which the Privy Council had applied. That was a healthy legislative intervention.

3.43 It requires a great deal of courage of the wrong sort, which can be equated with utter foolhardiness and disregard of the real interests of Muslims, to advocate an abandonment of this treasure of what is really Muslim Shariat law for us. No one, in fact, has had the courage to advance such a proposition openly so far. Nevertheless, cries in the wilderness are heard for some "Shariat Courts" on the lines of such courts in some other countries as though we have to learn from them and not that they have much to learn from how we have viewed and nurtured and developed the Muslim Shariat.

3.44 The Commission takes cognizance of the fact that Shariat Law is now enforced, so far as its Constitutional position in our country is concerned, by virtue of a statute : The Shariat Act of 1937. It could be said to be entitled to preservation, in the form in which it exists, because our judges have

been applying its provisions in a very broad and progressive spirit. This is revealed in the annexed copy of the Article contributed by Mr. Justice Haider Showkat Abidi of Patna High Court (see appendix VIII-B).

3.45 There is no need, therefore, to think about any uniform codifications of Personal Laws of all Indian citizens which may apply to Muslims also compulsorily. This, however, does not dispose of all questions raised.

3.46 Article 44 aims at a general codification of personal laws applicable to all citizens and not only to Muslims. A case made out for excluding Muslims, which does exist today, from the purview of Article 44, does not amount to a case made out for the deletion of Article 44 altogether from the Constitution. If other communities want to move towards such an objective, Muslims could not object to it. A secular state's basic laws cannot be dictated by any single religious group or community. All that such a group or community can claim is that, on matters of its personal law, which affect only a segment of the lives of its members, the law should not be changed by general legislation unless and until a majority of members of the community or group affected itself wants a change. And, to that extent this Commission considers the point of view of governments of our secular state to be justifiable : that changes in personal laws by legislation should be made only when public opinion of the community governed by them demands such a change.

3.47 The question whether Kazis, who have no judicial powers under the Kazis' Act, should be invested with some statutory powers in matrimonial matters for bringing about reconciliations contemplated by the Holy Quran is a different question which the Commission could only answer after holding a full-fledged inquiry on the subject. Can Kazis function as good enough experts for Muslims in matrimonial matters ? Can they be given a limited jurisdiction to function as peacemakers ? At present, the Commission will certainly be handicapped, by

the absence of investigatory powers, in holding inquiries to answer such a question. It is, however, noteworthy that, if there are any special powers to be conferred on Kazis for matrimonial cases of Muslims, this can only be done by means of a statute.

3.48 This Commission has, in recommending setting up of special courts or tribunals for Muslim Wakf cases, in its fourth report, really favoured creation of a separate statutory procedural machinery for a special and important sphere of Muslim Personal Law—that which relates to Wakfs both "public" and "private". The recommendation for setting up appropriate procedural machinery for just or speedy adjudications is not one which recommends a change in the substantive law to be enforced. The demarcation, at times, may be difficult but the distinction is there. This special procedural machinery recommended will also, quite naturally, be subjected to judicial superintendence of our highest Courts on questions of basic principle which are uniform.

3.49 All that the Commission need say at present, is that neither a case for any statutory alterations in the application of the Shariat Act, 1937, to Muslims nor one for any deletion of Article 44 of the Constitution, by a Constitutional amendment, is made out from the point of view of Muslim Personal Law.

3.50 A copy is attached herewith, as evidence examined by the Commission (see Appendix-VIII C) of attempts at the reform of Muslim Personal Law in a chapter of a short but useful book of Dr. Tahir Mahmood on the subject.

3.51 As this Commission is not recommending any changes in Muslim Personal laws in response to any demands made by Muslims and has not considered the matter further, as it may do after Investigating the questions involved, it is not citing a large number of writings of scholars and theologians of eminence of

Shah Waliulah laying down the proposition that laws have to keep pace with changes in modes of life and thought. It has contented itself with citing the results of a voluminous amount of writings by such scholars, including some modern ones like Dr. Nizami of Aligarh University. The result is contained in Article 39 of the Majelle quoted in Appendix VIII A of this Report : "The terms of law change with the times".

3.52 The view of this Commission is based upon faith in the good work done by Indian judges in developing the law by applying the principles of "Ijtehad" which are really part of procedural law. Literally, "Ijtehad" means struggle or effort. This is involved in interpreting the law in accordance with the needs of the times and apply it to the facts of a case. If no principle is found, which applies precisely to the facts of a particular case, the judge can resort to analogical deduction (Qiyas) Equity and justice and good conscience (Usual Adal), and reasoning from basic postulates (Istidlal), as indicated in Abdur Rahim's Muslim jurisprudence. A basis for the application of the Judge's reasoning powers to the facts of each case, with the help of all available principles, is found in a tradition which indicates how the prophet gave approval to the answers of the Governor Muadh cited at page 307 of Appendix VIII A.

It is the view of the Commission that at the basis of Muslim jurisprudence will be found a great deal of what Justice Mehmood described as "universal jurisprudence". In other words, Muslim jurisprudence is nothing more than the adoption of these universal principles by jurists who happen to be Muslims. This is a matter of pride for Muslims rather than any cause for lamentation.

3.53 Even if "Ijtehad" as a means of discovery of the Shariat or even an extension or development of it, in conformity with the Shariat's basic ideas, can become a means of expanding the sphere of the Shariat or making it more comprehensive and, therefore, could be more than a merely procedural matter the

material examined by the Commission shows that it is permissible in the form it has been practised by Indian Courts. This, however, is a matter on which our Courts have not yet pronounced specifically. They have done so only impliedly.

3.54 Based upon an examination of materials contained in appendices VIII-A to VIII-C as well as its own deliberations and discussions, the Commission makes the following recommendations :

(i) That, Muslims may be assured that no change in their personal laws by legislation is contemplated without any demands from the Muslims themselves.

(ii) That, Muslims may be assured that their personal laws, as taken from the original texts and authorities interpreted by duly constituted courts functioning under the Constitution of a Secular State, are functioning satisfactorily, but, any defect which may be pointed out to the Commission, will be duly investigated.

(iii) That, it be clarified that, under our secular Constitution courts presided over by persons of different religious denominations are expected to know better the laws applicable to all parties before them than any other class of persons believed to be experts in either law or theology.

(iv) That, it may be declared by the Central Government, that, although no personal laws of minorities will be changed except in response to demands of the minority concerned itself, yet, Article 44 of the Constitution, incorporating a sound principle of a secular society, does not need to be deleted from the Constitution.

ASSAM ISSUE

3.55 There have been some newspaper comments to the effect that the Minorities Commission is doing nothing about the situation in Assam where atrocities have been and are still in the process of being committed against both religious and linguistic minorities, the interests of each of which sections are to be looked after by the Minorities' Commission.

3.56 Shri G. S. Sial, the former Secretary of the Minorities' Commission, had proposed, in 1980, that the Minorities' Commission should visit Assam to find out for itself the facts of the situation there. But, he was informed that the Home Ministry did not favour a visit by the Minorities' Commission to Assam as the situation there was not conducive to any objective ascertainment of facts. Furthermore, the Home Ministry informed the Secretary of the Minorities' Commission that the Central Government was itself looking into the situation and tackling difficult problems and a grave situation in its own way in Assam with a view to finding solutions. The suggestion clearly was that the Minorities' Commission need not trouble itself with conflicts in Assam when the Central Government was itself directly and immediately dealing with them in view of the urgency and gravity of the situation there.

3.57 The Minorities' Commission was also informed that the Government of Assam also did not approve of the visit of the Minorities' Commission for similar reasons.

3.58 As it is the policy of the Minorities' Commission to avoid doing anything which may make a delicate or explosive situation worse or give an excuse to any party to a dispute for not reaching a settlement, the Commission did not visit Assam. However, the Chairman, prepared a report on the subject which was considered by the Commission.

3.59 The broad legal problem as it emerges from newspaper reports is : Can the residents of any Indian State as Indian citizens object to the existence, as human beings, living in any part of India, of any religious or linguistic minority groups whose claims to Indian, citizenship, the objecting group asserts its own right to decide ? So stated, in very general terms, the question is not at all difficult to answer by a reference to Constitutional and other legal provisions.

3.60 If the question, arising from patent facts, as reported in the newspapers, stands out clearly, the answer to it is also given quite emphatically by our Constitutional provisions.

3.61 Our Constitution and the Laws made under it on the subject, such as the Indian Citizenship Act, do not recognise any multiplicity or duality of citizenships or nationalities based on residence in different regions of India or on political or social or religious or linguistic groupings of Indian citizens. Our system asserts a unity of nationality, of citizenship, and of claims to protection of life and liberty based on such citizenship. Indeed, protection to life and liberty is conferred by our Constitution on all "persons" who reside in India, including foreign residents in this country. That protection extends to a right to be dealt with, in accordance with the law of the land and the procedure established by it. This is what Article 21 of the Constitution provides. It says : "*No person* shall be deprived of his life or personal liberty except according to procedure established by law".

3.62 This mandate of our Constitution which protects all "persons", including foreigners residing in India, cannot be disobeyed by any State. No person's life or liberty or property can be taken away by murderous mobs which have decided before hand that the victimised group consists of "foreigners".

3.63 Questions of citizenship or nationality, properly raised, can be decided only by duly constituted authorities and not by lynching mobs. In addition, those who are Indian citizens have

further rights guaranteed to them. Article 19(1)(d) lays down a citizen's right "to move freely throughout the territory of India". Article 19(1) (e) guarantees the right "to reside and settle in any part of the terrtory of India".

3.64 It, therefore, follows that persons or groups of persons who do not recognise these Fundamental Rights are themselves foreigners to the ideology contained in the Constitution and want to subvert its principles.

3.65 Among the principles of the Constitution are the Fundamental Duties of Citizens laid down in Part IV-A, which seem to be totally forgotten by those who are bent on violent solutions dictated by force instead of the democratic methods of pursuasion, legislation, and decision by appropriate authorities.

3.66 The issue of "foreigner" or alien on Indian territory, which is one for appropriate Governmental authorities to decide, in accordance with applicable law, should recede into the background due to the enormity of wrongs done by those who, by their actions, disclose that they themselves subvert the very ideology and concepts embodied in our Constitution, and, indeed, the universally acknowledged norms of human conduct towards even enemies in war time e.g., by killing unarmed unoffending women and children so as to terrorise-laid down by international law. The problem in Assam is of restoration of basic norms of human conduct by strict measures against the wrong doers accompanied by benevolent protection of innocent sufferers.

3.67 If the newspaper reports are correct, what has happened in Assam does not require the visit of a Commission like the Minorities' Commission at all. It requires possibly strong administrative actions through the police, and, if necessary, by armed forces. A powerful wing of a National Moral Rearmament Movement may be required thereafter, so as to restore belief in and enforcement of the moral values, without which no

human society can cohere. If the moral fibre of the people has been sapped to such an extent that large sections are unable to see the difference between right and wrong and indulge in worse than bestial acts of criminal violence, what may be needed is the shock treatment of very firm measures which can appropriately punish those indulging in monstrously inhuman acts combined with rewards for those who are supporting the restoration of moral values and law and order.

3.68 A copy of the Chairman's report containing the above views adopted by the Commission and sent to the Home Ministry is attached herewith as Appendix IX.

The Commission, therefore, recommends—

(i) That, the Government of Assam may be directed to take stringent measures to protect lives, liberties, and properties, and all rights of persons living in Assam, and, in particular, of members of minority communities in Assam.

(ii) That, regular tribunals be set up to determine questions of disputed nationality or citizenship in accordance with law.

NOTE : These recommendation have already been acted upon by the Governments concerned.

Report on the visit of Member (Gyani Sujan Singh) to Amritsar

3.69 With a view to make an in depth study of the problems raised by the Akalis in Punjab, the Member of the Minorities' Commission, Gyani Sujan Singh, visited Amritsar on 19th and 20th September, 1982, and met a number of important leaders, Government officials, and leaders of public opinion, including Sant Harchand Singh Longowal, President Shiromani Akali Dal, Sardar Dalbir Singh, a leading industrialist, and leader of the

Chief Khalsa Dewan, S. Parkash Singh Majithia, General Secretary, Chief Khalsa Dewan, Amritsar, Sardar Kirpal Singh, Ex-MLA and a well known socialist leader, and Brij Bhushan Mehra, Speaker Punjab Assembly. The Member went to Sahib Dewan and also visited Amritsar Jail. He held wide-ranging discussions with these people and made a detailed report on the subject (Appendix X).

3.70 After discussing the matter with different persons and visiting different places, he reached the following conclusions :

(i) Tension is increasing in Punjab;

(ii) The economy of the State is worsening and peace is in danger. Every evening, at the time of arrest of satyagrahis at Amritsar, the shopkeepers down their shutters and there is panic and fear in their minds. The people fear that any time disturbances might break out;

(iii) Extremists would gain strength if the Morcha was prolonged;

(iv) If the Akalis come to know that Government is unwilling to accept their demands or initiate talks, they may give some other shape to the Morcha; and

(v) Though many Sikhs living outside Punjab are not concerned with the Morcha, yet they certainly live in fear as their lives and property are insecure.

3.71 The Member invited the attention of the Minorities' Commission to the following points :

(i) Akali leaders and Sant Bhindranwala have repeatedly said that they are against Khalistan;

(ii) Akali leaders have vehemently condemned the activities of the extremists;

(iii) Akalis have so far kept peace in Punjab and have all along been campaigning for Hindu-Sikh unity. They do not want their relations to get strained;

(iv) The Akalis wish that their religious demands should immediately be accepted, as this will pave the way for resuming the talks. With the passage of time the sympathy of Sikhs with the Morcha will increase because the Akalis are daily campaigning that their religious demands be conceded; and

(v) About some of their demands, Sant Harchand Singh Longowal is of the view that a Commission should be set up to examine them.

3.72 The Member divided Akali demands into two parts : Religious and Non-Religious or Secular.

I. *Religious*

(a) Declaration of Amritsar as holy city;

(b) Carrying of Kirpan on domestic flights;

(c) Relay of Gurbani Kirtan from the Golden Temple; and

(d) Enactment of all India Gurdwara Act.

He felt that these demands should be accepted and a Commission consisting of law experts, which should have confidence of the Sikh Community, may be appointed to go into the details for the enactment of an All India Gurdwara Act.

II. *Secular Demands*

(a) Before the division of Punjab, under the Regional Formula, Hindi and Punjabi were studied as first and second languages in the schools. He suggested that under 3-language formula, Punjabi should be declared as one of the three languages in Haryana and

Himachal Pradesh. In Delhi also, the Punjabi-speaking population is more than 33 per cent. Punjabi language should, therefore, be given the status of a second language.

(b) Punjabi farmers settled in Haryana and U.P. are facing some difficulties. Regarding this demand also he suggested that the Centre should ask both these States to solve their difficulties so that they are not subjected to any harassment.

(c) Regarding Chandigarh, he is of the opinion that it should be made the capital of Punjab in place of Haryana and it should be handed over to Punjab. Haryana must build its new capital, and, it should be given grant/loan from the Central Government.

(d) Regarding re-demarcation of boundaries of Punjab, Haryana, and Himachal Pradesh he suggested that a Linguistic Commission should be appointed to identify the Punjabi and Hindi-speaking areas of Punjab, Haryana, and Himachal Pradesh. That Commission should identify the Punjabi and Hindi-speaking areas of Abohar and Fazilka also. He added that this boundary problem should be solved once for all to avoid future disputes.

(e) Regarding Ravi-Beas waters' dispute, he suggested that the Chief Justice of the Supreme Court should be asked to adjudicate on it and his decision should be binding on all the parties involved.

(f) Regarding the Anandpur Saheb Political Resolution, the Member is of the firm view that the language of this Resolution is not clear. The thoughts contained in it have raised many doubts in the minds of the people about this demand of the Akalis. He suggested that the Akali Dal be advised to re-write

the Resolution in clear terms. The clarifications given by the Akali Dal till now show that the Akali Dal asks for more powers to the States. The present political conditions of the country demands that the Centre should be strong. Moreover, the history of India reveals that, whenever the Centre was weak, the whole country became weak. This question does not concern Punjab only, but all other States also. For this reason, views of all the States, political parties and Constitutional experts should be obtained. It also involves an amendment to the Constitution. If this resolution means secession from India, it should be rejected straightaway, and, there should be no compromise on it.

3.73 The Minorities' Commission, as a whole, did not think it necessary to take decisive stands on these views as the Central Government had itself, as pointed out in the Fourth Report, decided to look into Akali demands. However, certain broad basic propositions may be stated here and recommendations based on them can be made.

3.74 The Constitution contemplates the putting forward of political demands through political non-communal parties. The democratic process necessarily implies adoption of peaceful methods of persuation and decisions by counting votes instead of by terrorisation or breaking of heads. It would be tragic if the disputes escalate into a Hindu-Sikh antagonism of a kind in which both sides bid good bye to reason or objectivity so that nothing except power to destroy each other could decide issues. But adoption of this mode of deciding issues does irreparable damage to both sides, and, a minority is bound to suffer more as a result of such a conflict.

3.75 Even if secular demands are put forward by religious bodies or individuals, they could still be considered and examined on merits from the point of view of the welfare of all.

Attempts should, however, be made to give all affected parties due hearings on questions raised which should be speedily decided to prevent deterioration in conditions. Giving due hearing to all affected parties before taking a decision, is a part of rules of natural justice.

3.76 The Commission, appreciated the efforts made by its Sikh Member, Gyani Sujan Singh, to procure speedily a negotiated peaceful settlement of all issues raised by the Akalis. It does, however, appear that there are extremist elements in the country, opposed to any negotiated settlement or adoption of the non-violent democratic processes of settlement. Such elements could not favour the adoption of any policies which could benefit either the Sikhs, as a religious minority, or the interests of the country as a whole. This Commission, therefore, considers it to be its bounden duty to warn all Indian citizens, and, particularly, extremists section of the Sikh religious minority, against the harmful consequences of the rejection of the democratic and peaceful ways of settling disputes alleged to arise out of religious or cultural differences. Attempts to solve them by force or threats of use of force, and, particularly, by the use or by threats of use of violence to terrorise, are bound to boomerang against those who use such methods.

3.77 Although persons who believe in violence or threats of use of violence can never be in a majority even within a religious minority, because the majority of human beings of every community and country, desire peace ardently and see that it is needed for their own economic betterment, yet, a handful of fanatics can make many people feel so insecure and full of fear that spreading waves of irrationality and viciously spiralling retaliatory actions and reactions overwhelm people in certain parts of the country, paralyse governments, and make just settlements impossible. Such outcomes could only be desired by those who want to "destabilise" governments, spread anarchy and disorder and damage the interests of all who live in our great country and mar its bright prospects. Who would want this ? It is certainly surprising that those whose actions could have such

results have not yet been satisfactorily identified so that they may be punished in accordance with law.

3.78 We are emphatically and unanimously of opinion that our intelligence services and administrative machinery dealing with law and order problems, require tightening and improvement.

3.79 The Commission, therefore, recommends—

(i) That, the Central Government and State Government of Punjab may make it clear by declarations that mixing up of religious with secular demands is contrary to the basic tenets of a secular state.

(ii) That, nevertheless, having regard to the stage of imperfect development of secular outlook in general, the religious demands of the Akalis may be separated from the secular ones and referred to the Commission, if necessary, for its views.

(iii) That, the secular demands of the Akalis may be referred by the Central Government unilaterally, if no agreement between parties concerned is forthcoming, to appropriately constituted tribunals or to the Supreme Court of India for their decisions.

(iv) That the Government of Punjab may be directed to improve its Intelligence Services and to streamline and strengthen its administrative set up to meet the worsening law and order situation in Punjab.

Communal disturbances in certain villages of Kanya Kumari District, Tamil Nadu

3.80 Shri S. A. Dorai Sebastian, M.P. and the then Member, Minorities' Commission, visited all the affected villages and areas of Kanya Kumari District, Tamil Nadu, from 22-3-1982 to 23-3-1982, which were affected by the communal disturbances which took place in March, 1982 and submitted a report.

3.81 The Member's report was considered by the Commission and it was resolved to place it on record. The Commission noted that a judicial enquiry has already been instituted by the State Government on the communal disturbances in Kanya Kumari district. It was directed that copies of the report of the Member be sent to the Central and State Governments with the request that they should take adequate preventive measures against recurrence of such incidents in future. The Commission also recommended that adequate relief should be provided to the affected persons immediately.

3.82 Accordingly, copies of the report were sent to the Ministry of Home Affairs and the Government of Tamil Nadu with requests to intimate to us actions taken.

3.83 Ministry of Home Affairs informed the Commission that the State Government has appointed Mr. Justice P. Venugopal, a retired judge of the Madras High Court, to conduct an inquiry into the circumstances and events that led to the building up of tension between the two communities, *viz.*, Christians and Hindus, and also to enquire into the circumstances that led to police firings. The Commission was also informed that the Government of Tamil Nadu had taken several steps to provide relief and rehabilitation to the victims of incidents in Kanya Kumari district. In addition to the relief sanctioned by the Government of Tamil Nadu, the Prime Minister has also sanctioned an amount of Rs. 5,000 each for families of the deceased persons. Ministry of Home Affairs also stated that the State Government undertook that they would take necessary measures to prevent recurrence of such incidents in future in the light of the findings of the Commission appointed to enquire into the matter. No separate reply was received from the State Government.

3.84 The matter was considered by the Commission and it resolved to defer further consideration of the matter as a Commission of Inquiry had been set up by the State Government. It will await the results of that inquiry on facts.

3.85 The report of the Member is enclosed as Appendix XI.

Reported Atrocities on Sikh Truck Drivers—an in-depth study by Shri P. N. Duda

3.86 On a report by Shri Rajinder Singh, Convenor, Sikh Minority Rights safeguards Committee, New Delhi, regarding alleged atrocities against Sikh truck drivers in Kursella Naugachia and other nearby villages in Bihar on April 25th and 26th 1981, the Minorities' Commission decided to entrust an in-depth analytical study of the incident, with a view to unearth the social, psychological, and other factors which underlay such incidents. To investigate and identify factors which induce members of two communities to take sides in stray and ordinary incidents between individual members of different communities and then spread and grown into a conflagaration has been on the list of priority tasks of this Commission.

3.87 A study of this subject was entrusted to Shri P. N. Duda, a Supreme Court Advocate, who had a background of sociological studies. Shri Duda visited Bihar from 4th to 10th April, 1982. His report is at Appendix XII. It is summarised as follows :

I. *Incident*

3.88 G. B. Degree College, the only one within 20 kms. of its radius and connected inadequately by transport is situated at Naugachia, District Bhagalpur, Bihar. There is only one train which passes through Naugachia to reach there in good time to attend the morning shift of the College. The college being on the highway with a lot of public carrier movement on it, students used to seek and secure free lifts to reach the college. On April, 25, 1981, in the early hours of the morning, a group of students boarded a public carrier whose driver, Sukhdev Singh, was reluctant to oblige. Three of the students sat on front seats and the rest of them perched themselves on the body of the truck as was the usual practice. When the truck reached near the by-road that lead to the college, they asked the driver to stop. The boys perched on the truck jumped down as the

driver slowed down the vehicle. The driver is reported to have prevented the three boy sitting alongside him from alighting. The truck sped up without these three boys getting down. The boys who had dismounted started crying and chasing the vehicle. In the meantime, one Shri Ramesh Singh, fell down from the driver's seat with dagger injuries which proved fatal. Another student, similarly occupying the driver's seat, also fell down with non-fatal dagger wounds. When this hurtling of students from the truck was viewed by passersby and students, they gave a chase to the truck and some managed to mount it. The truck was over taken at Kursella and was set ablaze by a furious mob. The driver was arrested.

3.89 Students of G. B. College left classes and started milling around the scene of action. The Principal accompanied by 8 members of staff reached the bus stop. In the stampede that ensued traffic was jammed. All the passing trucks were lined up by the students. The injured students were rushed to the hospital. Some students put a truck on fire which spread and engulfed about six to seven other trucks. The situation was brought under some uneasy control by the police who arrived at the scene an hour and a half later. However, a few more trucks were in the mean time, attacked by the irate students. The entire occurrence at Naugachia, Kursella, and Madadpur lasted for around two hours and a half.

3.90 A FIR against the arrested driver Shri Sukhdev Singh and his assistant Hita Singh under section 302, 324 read with 34 of the Indian Penal Code was registered. Another FIR under Section 147, 322, 379, 436 and 307 was registered against 11 students who were also arrested. From the police records it appeared that all the arrested persons have been granted bail. The truck driver and his associate had been committed to the Bhagalpur Sessions' Court for trial. Due to non-apprehension of an absconding student, Shri Shaligram Rai, no charge sheet against the students had been filed in Court.

3.91 Based on perusal of court records and applications of bail, statements of witnesses, inquiries from Sikh transporters, local people, principal and members of G. B. College, Shri Duda came to the conclusion that the fury of May 25, 1981 was totally bereft of overtones based on religion or language. He termed the allegation of Sikh being chosen for assault or desecration of the photos of Sikh Gurus as mischievous and untrue. The fact that, except for one public carrier, all the carriers, which bore the brunt of the orgiastic outburst, were manned by Sikhs could not lend credence to the suggestion that the flare-up was a sequel of communal tensions, simply because transport business in Bihar is monopolised by Sikhs.

3.92 The study brought out the following findings :—

(1) The incident was a transitory impulsive and unpremeditated outbrust of mob fury of students directed against the members of the class at whose hands some of them had suffered.

(2) The incident was shorn of communal or religious or linguistic hues. Neither was there any such background to it. It was due to an identification of persons of similar appearance and dress with assumed wrong doers.

(3) No disrespect was shown to Sikh Gurus or their photographs or Sikh religious symbols.

(4) The occurrence was short-lived and there was no spin-off to this incident.

(5) The date of occurrence, the details, and suggestions made in the issue of 18 April, 1981, of the Spokesman Weekly were incorrect and false. Such false news magnifies and spreads mischief.

II. *Analysis*

3.93 Analysing the psycho-social factors behind incidents like to one under study, Shri Duda began with the problem of youth in India. He identified two factors that are responsible for the youth unrest, which occasionally snowball into blow ups which the immediate cause could not justify if it could be objectively viewed.

3.94 The first has roots in political history. The character of Indian National Movement underwent a change with the emergence of Gandhi on the scene. The moderate movement operating within constitutional four walls gave way to mass agitational politics. The youth participated on a large scale in the national struggle. The school and college students were encouraged to boycott classes and joined political movements. A sense of discontent against the educational system prevailing under the Raj was generated among the students. They became handy tools for the politicians to tinker with. With the withering away of Congress Culture after independence, the political weaponary in operation in India continued to be destructive and exploitative of the youth. Every political party maintained and nurtured a youth wing.

3.95 The limited avenues of employment in India has bred frustration among the youth who feel socially neglected. The politicisation of students and their exploitation by the politicians to achieve their ends are also contributory causes of the youth unrest, the country is suffering from. The feeling that their futures are bleak and uncertain and that they may be heading to a life of frustration and unemployment gives rise to anti-social group action on their part, which is really a part of an attempt to seek their identities and attract attention. Often, such acts assume overtones of violence and hooliganism, accentuated by the feeling of discontent fuelled by economic backwardness and reckless irresponsibility bred by want of discipline by proper education.

3.96 A disintegrated body politic has been identified as the Second factor responsible for youthful aberrations. Various aspects of the disintegration indicated are :

(i) The unity of India, a land of diverse cultures, does not have the psychological base of an integrated people. An amorphous collection of various notions of religion, caste, language, tribe is what exists beneath a veneer of a national unity. The sense of unity exhibited in India during times of crises like external wars is short-lived and melts away once the objective which held the people united vanishes.

(ii) Reorganisation of States on linguistic lines has accentuated local/regional loyalties at the expense of a sense of national feeling. Regionalism and group feelings, which were swept under the carpet by the broom of Independence Movement and which lay dormant for sometime were resurrected after independence. Creation of language based States gave fresh impetus to such forces.

(iii) The introduction of regional language as the official language in non-Hindi speaking states restricted social inter-course between people of different regions in India.

(iv) By pandering to the caste interests politicians sought to wrest political power in India. Castes now function as vote banks and they play definitive roles in the rise and fall of fortunes of many politicians and political parties. Fomenting small caste loyalties, sectional interests and group identities to climb the ladder of political power has made a mockery of democracy in India.

III. *Recommendations*

3.97 Dealing with the remedial measures the report adumbrates three basic approaches as under :—

Constabulary

3.98 In order to discourage inflamatory, irresponsible and scurrilous writings that inflame communal passions, the report suggests action under Section 153 and 153A of the I.P.C. against the Editor, Printer, and Publisher of the Spokesman Weekly. Further, it recommends a report to be sent to the Press Council for initiating suitable action against the delinquent for violation of canons of journalism. The report while criticising the delay in launching prosecutions against the errant students has called for greater speed on the part of law enforcing authorities in bringing to book the guilty students so that there would not be complaints of favoured treatment meted out to students.

Palliatives

3.99 The palliative measures suggested in curbing communal outbursts are :—

(1) Incentives for marriage outside caste.

(2) Meetings of National Integration Council.

(3) Holding Seminars and exhorting people at public meetings and cultural shows.

(4) Intelligent use of mass media.

(5) Encouraging celebration of each other's religious festivals.

3.100 The report states that though these measures are already in practice and do not touch the root cause of the besetting evil, such palliatives should be continued in order to keep the movement alive.

Structural or Organic

3.101 Under this heading the report calls for an overhauling of the present educational system in order to get rid of evils that have created the present impasse.

3.102 In order to keep the students occupied and bury the introduction of Semester system with marks for internal assessment, has been suggested.

3.103 The report calls for maintaining a balance between production of skills and the capacity of the system to absorb them. The reckless manner in which degrees/certificate holders are churned out without monitoring absorption capabilities available has been cited as main cause of frustration among the youth. The report recommends setting up of an Education Commission to overhaul the system of education and to strengthen economic planning.

3.104 As part of depoliticisation of student community, the report suggests framing of laws banning students on rolls of colleges or schools to join political parties or youth wings of political parties or making it an election offence to secure help of students.

Systemic Changes

3.105 To stem the disintegrating trends in our polity the report has suggested changes in our system of Government.

3.106 The investigator points out that under a parliamentary system of Government the leader of the Government can survive only on the continued confidence of the legislature. The executive head can be greatly hamstrung if the members on whose support he leans start bringing pressures on him for pleasing certain parochial interests and threatens to withdraw support if their wishes are not met. A pluralistic society, with different interests pulling in different directions, is not, according to the report, congenial for the operation of a secular system where the executive is politically at the mercy of such interests.

3.107 The report suggests change over to a Presidential form of Government where the leader of the Executive is not responsible to the legislature. Such a system would lend stability to the Government for a fixed period as well as give a free hand to the leader of the Government in administration. He would choose his team from outside legislature who would not be members of the legislature at all. In such a system, the leader of the government would be removed only by impeachment on grounds of proved misconduct. The report argues that in the Indian context such a system would score well over the present system.

Commission's view on the Report of Shri P. N. Duda

3.108 The report was considered by the Commission on 4-9-1982. It apprised Mr. P. N. Duda of its desire to obtain more information on what the investigator concluded on the basis of actual facts found instead of his very interesting speculative views on a number of important educational and political problems before the country on which the investigator's opinions were not specifically sought. Mr. P. N. Duda thought that he was being asked to change or modify his views which he was not prepared to do.

3.109 As there was no provision in the contract with Mr. P. N. Duda for asking the investigator to improve or add to his report and no condition in it that there would be no payment for it, unless any fresh information or a more satisfactory report could be produced, the matter was dropped.

3.110 The Commission, however, learnt, from this experience, that there is need for framing guidelines on contracts for work to be assigned to investigators in future. If there was a condition in the contract under consideration, providing for a constant supervisory control which the Commission could exercise, the Commission could ask for further work on the lines required by it. The Commission thought that, in future, there

should be always such a provision whenever investigations are entrusted to any person or agency. The experience was useful and disclosed the need for the Commission to prescribe a procedure for investigations, and to frame guidelines to obtain the kind of results it expects. The Commission proposes to evolve and frame these very soon.

3.111 The special Investigator certainly went beyond the scope of investigation entrusted to him. The Commission, however, took note of the special Investigator's views so far as National Integration is concerned. It thinks that mere change of method of election of the President from an indirect to a direct method of election or increase in the President's powers could not be enough to achieve better integration of the nation. It could help in achieving such an object only if a changed method of electing the country's President directly instead of indirectly or an increase in his powers would necessarily imply an improvement in patterns of thought, feeling, and behaviour of vast masses of our people. A study of these patterns is very relevant for the purposes for which this Commission was set up. The object of entrusting the study to the investigator was to obtain information which may help the Commission in making appropriate recommendations for improving these patterns in order to produce better National Integration.

3.112 The Commission, having undertaken no study so far of the extent to which any change in the form of democratic government in our country, known as Parliamentary Democracy, is called for in order to promote better national integration, does not propose to make further comments on this particular suggestion of the Special Investigator.

3.113 It, however, came to some conclusions from facts revealed by the investigation they are :

(1) That, as is well known, the communal group identity of an offender or criminal gets easily mixed up with same group identities of others wrongly assumed, due to an association of the crime itself with this

identity, not only to have a similar criminal tendency but to be also actually responsible for the crime.

(2) That, this pattern of thinking, though a familiar phenomenon of a lynching "mob mentality", which exhibits itself in race riots in the West too even today, is essentially due to a primitive tribal pattern of thinking and feeling which tends to identify each individual with a group even if he does not share any of the group's approaches or points of view where there are such approaches.

(3) That, the false identification, due to the operation of a law of association of ideas with certain appearances or symbols evoking certain responses is understood well by those familiar with Prof. Pavlov's experiments and observations of behaviour of anmials such as "conditioned reflexes" of dogs.

(4) That, to break away from such associations with mere symbols and appearances, we look forward to the development of a more enlightened human and humane outlook emerging from better general education. But, when a situation temporarily exists in any particular area where particular symbols, such as the turban and the beard are for the Sikhs become targets of violence even though the display of such symbols is a part of the constitutional right guaranteed by Article 25 of the Constitution, it may be advisable for the possible victims of the aroused feelings against such symbols to abstain from their use in particular areas. In other words, one may have to recommend changes of religious sentiments attached to particular symbols of religion and to insist on the spirit and substance of religion rather than on appearances. These are, however, matters for the community concerned, the Sikhs themselves,

to consider. Their constitutional right to use religious emblems and symbols is indisputable.

(5) That, it seems too much to expect the State to protect all individuals everywhere and at all times from outbursts of criminal or irrational mob or individual violence so that individuals liable to be victims of it, have also to take some precautions to protect themselves against unfortunate possibilities and events attributable to such unhealthy psychology. The duty of the State to protect is no doubt there. Hence, the Police must also take precautionary measures such as issue of warnings of inflamed feelings against certain symbols so as to enable possible victims to avoid affected areas.

(6) That, situations, such as those examined and studied by the Special Investigator are more likely to affect the minds and feelings and behaviour of the youth. Students are, as a rule more easily affected for the reasons given by the Investigator. And, in this case, they had a special reason for being agitated as the victim of the initial offence was a student.

(7) That, situations such as those studied by the Special Investigator are likely to be taken advantage of by the "goonda" elements in particular.

(8) That, fortunately, the irrational reactions of the students were not the result of any set "reflexes" producing any lasting animus against Sikhs, as such, but was only a part of a passing and temporary phenomenon due to a special cause in a particular locality. Hence, temporary precautions were enough.

(9) That, those concerned about National Integration have not only to study and isolate such special cases, but to make recommendations about the nature of

education which could produce patterns of behaviour we would like to see and expect in the kind of society we want to build and live in and about the means through which this could be done.

(10) That, the creation of the nature of such a society of the future and the task of recommending appropriate means for building it can only be performed by Social Engineers who understand the vision of such a society underlying our Constitution and the means prescribed by the Constitution for attaining it as well as other means which may become necessary in changing contexts.

3.114 The study of the Special Investigator did help the Commission to do some constructive thinking on points mentioned above.

CHAPTER IV

ACTION TAKEN BY THE COMMISSION ON REPRESENTATIONS RECEIVED

4.1 The Commission received representations from members of various minority communities and organisations during the year. Out of these representations, 72 cases were taken up by the Commission for detailed enquiries and investigations and remaining cases were disposed off after preliminary examination by the Commission on one or more of the following grounds :—

(i) The representations were not addressed to the Commission and no serious minority grievances were involved.

(ii) The matter was outside the purview of the work of the Minorities' Commission.

(iii) Other normal channels of redress were available or such channels had already been resorted to.

(iv) The representation was too general or vague.

(v) The matter was sub-judice in a regular court of law.

(vi) A similar representation from some other quarter had already been separately considered by the Commission.

4.2 While the majority of representations were essentially particular complaints affecting certain individuals only, a number

of them related to important matters affecting minority communities in general. A brief report on the action taken by the Commission on the latter categories of cases is summaried below :—

Representation regarding constructing of a Mosque in village Sangali, District Gurgaon, Haryana.

4.3 The Commission has received a representation from the Muslims of village Sangali, District Gurgaon, Haryana, alleging that the Rajputs of the village are preventing them from constructing a Mosque. It was stated that in Tehsil Nuh of Gurgaon district, there are 3 Rajput villages namely Sangali, Ujhina and Bajhera. There are Mosques in Ujhina and Bajhera villages. The Muslims of Sangali village wanted to build a Mosque at a distance of one furlong from Sangali in their own land. It has been alleged that the Rajputs of the village do not allow them to construct the Mosque and that they, in collusion with the police, are harassing the Muslims and preventing them from conducting Aazan or call to prayers.

4.4 The Government of Haryana, with whom the matter was taken up, have reported that the State Government do not consider it opportune to construct the Mosque now and that the matter may wait for some time.

4.5 The Commission considered the report from the Government of Haryana and resolved that the State Government be requested to create conditions favourable for construction of a Mosque by the Muslims of the village in their own land. The resolution was communicated to the State Government for suitable action on the recommendation of the Commission. The Government of Haryana have intimated that as there is communal tension at various places in the country, it does not seem proper to take any action in the matter at this stage.

4.6 The Commission again considered the report of the Haryana Government and decided to look into this matter during its proposed visit to Haryana.

Creation of the post of Urdu Officer in Delhi Administration for the development of Urdu.

4.7 The Commission received a representation from Shri Nizamuddin, Joint Secretary, Delhi Urdu Forum, Delhi in July 1979, for creation of a post of Urdu Officer in the Delhi Administration to look after the interest of Urdu. The matter was referred to Delhi Administration for its comments. The Delhi Administration informed the Commission that a proposal has been sent to the Ministry of Home Affairs for creation of the post of one Urdu Officer. The matter was, therefore, taken up with the Ministry of Home Affairs for expediting the sanction. The Ministry of Home Affairs has, however, informed the Commission that necessary sanction for the creation of the post of Urdu Officer in the pay scale of Rs. 650—950 has already been conveyed to the Delhi Administration in April 1981.

4.8 The Delhi Administration was requested to intimate action to fill up the post. It informed us that the post is being filled up through the Union Public Service Commission and has been advertised in the leading newspapers.

4.9 It was unofficially ascertained that the incumbent selected through UPSC has joined.

Complaint against the recruitment policy of the Regional Rural Bank, Bundelkhand for appointment to the post of Branch Managers.

4.10 An anonymous complaint was received against Shri S. M. Wadhwani, Chairman, Regional Rural Bank, Bundelkhand alleging non-selection of Muslims in the interviews for the post of Branch Managers due to the communal attitude of Shri Wadhwani. It is reported that, although, four to six Muslim candidates passed two written examinations for the above post, yet, none of them was selected so far.

4.11 The matter was taken up with the Bank authorities. The State Bank of Bhopal sent a report denying the charges of corruption and discrimination. On analysing the report it was

found that, during three years, 60 Muslim candidates applied for 105 posts of Branch Managers but only 43 Muslim candidates could appear in the written test out of which 12 qualified but one was selected in the interview.

4.12 The Chief General Manager, State Bank of India, Bhopal, and Chairman, Regional Rural Bank, Bundelkhand, were requested to furnish complete details about those who qualified in the written tests in order of merit and those among them who were finally appointed to enable the Commission to examine the issue in detail. Though the merit list for the year 1978, 1979 and 1980 were not made available but data regarding composition of the interview Board was received. The interview Board during these years consisted of the Chairman (Shri Wadhwani in all the three years) and two Directors of the Board representing the Central Government and the sponsor bank respectively. They however, regretted their inability to give any comments as to why none of the Muslim candidates were considered for final selection to the post of Branch Manager.

4.13 The Commission noted the report of the Regional Rural Bank, Bundelkhand, and resolved to consider separately the matter as a part of the general question whether adequate representation of minorities is given on the selection Committees or bodies, so as to inspire confidence that there is no undue discrimination made against minorities in the process of selection.

Representation from the President, West Bengal Muslim Citizens' Forum, Calcutta, regarding firing on Muslims in Ali Nagar in Malda District on 11-12-1978.

4.14 The Commission received a representation from the President, West Bengal Muslim Citizens' Forum, Calcutta, dated 21-12-1978, forwarding with it a copy of the report of the Fact Finding Team of the West Bengal Muslim Citizens' Forum regarding police firing on 11-12-1978 on Muslims of Ali Nagar Gram in Kaliachak P.S. of Malda District, West Bengal. The following account was given by the team :

4.15 A Kali Asthan, constructed under a Banyan tree on the Mohurram procession route was the subject matter of dispute. In a meeting of the local peace committee held before the Mohurram day, it was decided that the procession would make a detour near the Kali Asthan so that it may not become necessary to cut the Banyan tree of the Kali Asthan. However, the Mohurram procession was stopped by the police about 100 yards away from the Kali Asthan even though the procession was moving on the lincensed route. It was alleged that police officers made certain objectionable remarks which created a tense situation. Some violence took place. The assembly was than declared unlawful and a lathi charge and firing of tear gas shells were ordered. The police also resorted to firing in which two persons were killed and six injured according to the official version.

4.16 It was also alleged that the minorities in the area were subjected to indiscriminate arrests and harassment and that the district administration was under political pressure from the ruling party leaders of West Bengal.

4.17 The matter was referred to the State Government. After prolonged correspondence, the State Government sent its comments on the points mentioned in the representation. It was stated that, besides making adequate police arrangements, a peace Committee was organised prior to Mohurram festival to ensure peace in the area. The District Magistrate, the DIG of Police, and the S.P. of police, visited the area on Mohurram day. Strong barricades were set up by the police near the Kali Asthan on the Mohurram day to avoid trouble. It was alleged that, members of the Mohurram procession insisted on getting branches of the Banyan tree of the Kali Asthan forcibly cut and deviated from the licensed route, that the police stopped the procession at about 50 yards from the Kali Asthan in order to prevent untoward happenings, that the police tried in vain to persuade the processionists to go back to the licensed route, that agitated Muslims, armed with deadly weapons, surrounded the police party, that appeals made by the Executive Magistrate and the Dy S.P. of

police were not headed and they were man-handled by the mob. The mob was, therefore, declared unlawful and the police was ordered to fire tear gas shells followed by a lathi charge with due care and caution. When this also proved ineffective the mob was warned that firing would be resorted to, if the crowd intensified its attack on Hindus and damaged the Hindu altar. It is alleged that the Executive Magistrate ordered firing with due care and caution to save his party and local inhabitants. In all nine rounds were fired and the mob disappeared.

4.18 Whether the police firing was justified or not is the subject matter of an enquiry which is being held by the additional District Magistrate, Malda. The State Government has denied the charge that objectionable remarks were made by police officers to wound the feelings of Muslims. They have also denied the allegation that the District Administration was under political pressure from the ruling party leaders. The report also states that, except for the incident at Ali Nagar, the Muslims of Kaliachack P.S. observed the festival of Mohurram peacefully. The District Administration claims to have made all efforts to keep peace and harmony amongst different communities in the area. Just after the incident, responsible district officers undertook tours in the affected areas and restored normalcy.

4.19 The Commission resolved to close the case after informing the complainants that it was not possible for it to decide disputed questions of fact. Appropriate authorities will have to do that.

Request for extension of time limit of Public Wakf (Extension of Limitation Act) Rajasthan Amendment Act, 1978

4.20 The President, Rajasthan Board of Muslim Wakf, Tonk sent a representation to this Commission pointing out that although Rajasthan State has enacted a law for extension of limitation for filing suits against the tresspassers of wakf property upto December 1983 yet, as many properties of relevant wakf categories came to light after 1980, the dead line set for

this purpose should be extended. The matter was taken up with the State Government. It agreed to extend the time limit up to December 31, 1985.

Demand of Ahom Buddhist Community in Assam

4.21 In February 1980, the Ministries' Commisssion received a copy of the Memorandum submitted to the Chairman, Joint Parliamentary Select Committee on Scheduled Castes and Scheduled Tribes Order Bill, 1978, by the Representative Organisations of the Ahom Buddhist Minority Section, Assam. The Memorandum contained the following eight demands :—

(i) To list the Ahom Buddhist Minority Section (followers of Phralung Buddhist Cult) as a Scheduled Tribe extending all benefits of the Scheduled Tribes to its members ;

(ii) To reserve at least one Parliamentary seat for Ahom Buddhists in their thickly populated area in Sibsagar District of Assam from Tribal Reserved Quota ;

(iii) To introduce Ahom language as one of the languages taught in the schools and colleges in Assam;

(iv) To take up schemes for study, research and publication of Ahom manuscripts under the Central Government of India and to arrange for exchange of Scholars between India (Ahom Buddhists) and Burma, Thailand and Laos;

(v) To introduce Ahom Programmes on the A.I.R.;

(vi) To preserve and protect the Ahom religious shrines and sites;

(vii) To restore the landed properties to the original Ahom Buddhists owners (followers of Phralung Buddhist Cult) sold by them as a result of dire poverty for bare needs of subsistance; and

(viii) To pay off the debts of the Ahom Buddhists (followers of Phralung Buddhists Cult) taken from various individuals, organisations, Government etc. due to their penury.

4.22 A copy of the said memorandum was sent to concerned department of the State and Central Governments for their comments/reports. The Commission received comments from them on all these demands.

4.23 As regards non-inclusion of Ahom Tribal Buddhists in the list of Scheduled Tribes of Assam [Demand No. (i)] it was reported by the Government of Assam that there is no distinctive line, so far as socio-economic standards are concerned between Buddhists adopting the Phralung beliefs and other Buddhists. The State Governments, therefore, did not agree to recommend the proposal for inclusion of Phralung Ahom Buddhists in the list of Scheduled Tribes (Plains) of Assam. In a subsequent report, however, the State Government reported that the matter is under consideration of the Government and the Director of Tribal Research Institute, Gauhati, has been asked to make a survey of Tai Ahom community to examine their claim for inclusion in the list of Scheduled Tribes of Assam as per criteria laid down by the Government of India.

4.24 As regards the reservation of one Parliamentary seat for Ahom Buddhists [Demand No. (ii)] the Ministry of Home Affairs, Government of India informed the Commission that the Joint Committee on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1980, which was considering the proposals, has ceased to exist with the dissolution of the Sixth Lok Sabha and that the said proposal would be considered by the Government at an appropriate time along with other such pending issues.

4.25 As regards the introduction of Ahom Language as one of the languages taught in schools and colleges in Assam [Demand No. (iii)] the State Government informed us that the matter is under examination by the State Education Department.

4.26 As regards taking up schemes for study, research, and publication of Ahom manuscripts and the exchange of scholars [Demand No. (iv)], the Ministry of Education and Culture have informed us that it would be possible to consider research and publication under the scheme of Department of Culture. However, voluntary organisations among the Ahom Buddhists should also come forward and take a lead in undertaking such studies. Regarding another part of the demand (*viz.* exchange of scholars between India and Burma, Thailand and Laos) it was stated that this would be the concern of the I.C.C.R.

4.27 Regarding the introduction of Ahom programme on the AIR [Demand No. (v)] the Ministry of Information and Broadcasting, Govt. of India, have stated that, according to the Census Report, 1971, there is no mention of Ahom people, their number, language, religion, etc. separately because the Ahoms appear to have merged themselves with the Assamese. Similarly, Buddhists account for only 0.15 per cent of the total population of the State. They are spread over the districts of Assam, the highest percentage being 0.70 per cent in Dibrugarh district. It also stressed that the Gauhati and Dibrugarh stations of AIR are being used to their optimum capacity and there is no scope for additional programmes.

4.28 As regards the preservation and protection of the Ahom religious shrines and sites [Demand No. (vi)] it has been reported by the Ministry of Education and Culture (Govt. of India) that 21 monuments of Ahom period in Assam are under Central Government protection and are being looked after and maintained by the Archaeological Survey of India. Besides these monuments, Joysagar Tank at Sibsagar is also in the process of being declared as a protected monument. While the monuments of national importance are being looked after by the Archacological Survey of

India, the responsibility for the remaining rests with the State Government which has already on its list of protected monuments a number of monuments of Ahom period.

4.29 As regard the restoration of the landed properties to the original Ahom Buddhist owners [Demand No. (vii)] it has been reported by the State Government that there is no provision in the Revenue Laws to help restoration of the landed properties to the Ahom Buddhist owners. It has also been stated that Chapter X of the 'Assam Land and Revenue Regulations 1886' which regulates the disposal of lands in Tribal Belts and Blocks, also is not applicable in the areas inhabitated by the Ahom Buddhist community as they do not belong to the protected classes living in Tribal Belts and Blocks.

4.30 As regards paying off the debts of the Ahom Buddhists [Demand No. (viii)], the State Government stated that the question of remission of debts to the Government is not considered on the basis of community of the debtor. It may, however, be considered on the merits of each individual case if and when brought to the notice of the Government. It has been also stated that there is no law in the State for writing off or compounding of the debts of debtors belonging to protected categories payable to private individuals or money lenders. However, charging of exorbitant rates of interest is punishable under Assam Money Lenders Act. The State Government has advised that members of the community may avail of the protection given by this Act.

4.31 The Commission assumed correctness of the reports received from the concerned authorities on the various demands and informed the complainants accordingly. No further communication has been received on the matter.

Discontinuation of Punjabi Language in Government Schools of Delhi (Distt. North).

4.32 In October 1980 a copy of the representation, addressed to the Director of Education, Delhi Administration, was received from Shri Narinderjit Singh Darvesh, President, Punjabi

Vidiyak Sanstha, Tri Nagar, Delhi, regarding the discontinuation of teaching of Punjabi Language in Government Schools of Delhi. Sri Darvesh drew attention to the following grievances :

(i) that 16 students of Class IX of the Government Boys Senior Sec. School, Tulsi Nagar, who opted for Punjabi, were given another language. The students of Punjabi Class X were given school leaving certificates and directed to take admission in GBSS No. 2, Lawrence Road;

(ii) that there were more than 15 students in VIth class Government Boys Middle School, Inderlok, who wanted to learn Punjabi but no arrangement was made for this purpose;

(iii) that no student has been admitted in Class VI in GBSS No. 1, Lawrence Road and the post of P.G.T. (Punjabi) has been declared surplus and that of T.G.T. is lying vacant;

(iv) that 24 students of Class VI of Boys Middle School A-Block, Lawrence Road, learnt Punjabi during 1979-80 but were refused Punjabi in Class VII and were asked to leave the school as arrangement of teaching Punjabi at Class VII was stopped;

(v) that four students of Class VIII of the Government Boys Middle School, Trinagar Road, offered Punjabi for Class VI. Their parents were misguided so that they removed their wards from this School. The Punjabi teacher in that school was deputed to teach other subjects; and

(vi) that in some schools valuable subjects are not combined with Punjabi in spite of every subject being optional. The result is that the development of Punjabi is adversely affected.

4.33 The matter was referred to Delhi Administration. The Directorate of Education, Delhi Administration has furnished the following comments :

(i) *Govt. Boys' Sr. Secondary School, Tulsi Nagar* :

The Principal of the School had submitted a proforma regarding introduction of Punjabi in Class IX to A.D.E. (Plg.) on 29-1-1980. Only 8 students had opted for Punjabi in Class IX. The case was examined by the ADE (Plg.) and was rejected on 9-6-80 on two grounds : firstly that, the number of students was scanty; and secondly, that these students were ordered to be admitted at GBHSS No. 2, Lawrence Road. Tenth class students were admitted to GBHSS No. 2, Lawrence Road, Delhi.

(ii) *GBHS Inderlok* :

No formal request was received from the Headmaster for introduction of Punjabi in the school.

(iii) *GBSS No.* 1, *Lawrence Road* :

Punjabi is being taught in all the classes but there were only 2 students in Class XII and 6 students in Class XI whereas, the number cannot be less than 15, yet one PGT (Pb.) has been sanctioned so that students of Class XII may not suffer. There was no admission in class VI this year due to shortage of accommodation.

(iv) *GBMS, Lawrence Road 'A' Block* :

No request for introduction of Punjabi in the school has been received in the Zonal Office from the Headmaster. The school is being run in the campus of GBHSS No. 2, Lawrence Road, where Punjabi is being taught in GBHSS No. 1, Lawrence Road, which is hardly at a distance of 100 yards. Hence, these students could be accommodated in these schools.

(v) *GBMS, Trinagar* :

No request from the Headmaster has been received in the Zonal Office and the Headmaster is fully justified in transferring 4 students of Class VIII to nearby school *i.e.* GBHSS, Ram Pura where Punjabi is being taught which is just a distance of 100 yards.

(vi) *GBSS, Rani Bagh* :

Punjabi is already being taught in the school and three language Teacher (Pb.) are in the school so the question of abolition of Punjabi in the school does not arise and Shri L. P. Verma Vice-Principal of the school has been transferred.

4.34 There does not seem to be any manipulation and flouting of policy by any one of the Head of Schools under the Directorate of Education.

4.35 The reply of the Delhi Administration on all the points appears satisfactory. However, it was proposed to discuss the matter further. Accordingly, Shri Narinderjit Singh Darvesh, President Vidyak Sanstha, was requested to see the secretary, Minorities Commission on March 30, 1982. Since he failed to appear on that day, he was again requested to come for a discussion on 30-4-1982. Neither Shri Darvesh nor any representative of the Sanstha turned up for the discussion on that date also. The case was closed after informing the representationist on the basis of the reply received from the Delhi Administration.

Grievances of the Hindi speaking linguistic minorities in the State of Punjab

4.36 A large number of representations from the Hindi Raksha Samiti, Hoshiarpur, Punjab have been received in the Commission. The representatives of the Hindi Raksha Samiti also met the Commission on August 27, 1980 when they supplied

further note regarding their grievances. From the representation and the discussions following grievances emerged :

(i) Hindi is not being allowed as medium of education in Govt. schools in Punjab;

(ii) Hindi has not been given its due place in administration;

(iii) Applications written in Hindi are not accepted in Govt. offices in Punjab;

(iv) Hindi has not been allowed as the medium of instruction in post-graduate classes in Punjabi University, Patiala;

(v) Hindu minority is not being treated properly in Punjab;

(vi) Religious places of the Hindu minority are being forcibly occupied by the majority community;

(vii) Permission to construct a Mandir in the Punjabi University campus has not been given though a Gurdwara is under construction there.

(viii) Facility of education through Hindi at the primary stage of education in Govt. schools should be provided by Punjab Government.

(ix) The condition applicable to unrecognised middle school requiring prior approval of the Education Board for Hindi medium before submission of examination forms should be done away with and arrangement should be made for medium of examination according to entry on the examination forms as is applicable for other examination.

(x) Applications in Hindi should be accepted by all Government offices in Punjab.

4.37 The main grievances which appear reasonable and covered by the scheme of safeguards relate to facilities of instruction through Hindi at the primary stage of education, acceptance of applications in Hindi by all State Government offices and seeking prior approval for Hindi medium by the unrecognised middle schools.

4.38 The representatives of the Hindi Raksha Samiti were requested to supply more factual information supported with relevant details on the above points before the Commission considers them. Some details were furnished later on by this Samiti. Simultaneously the Government of Punjab was also requested to send their report/comments on the above points.

4.39 The Government of Punjab reported on the above grievances including the education policy being followed in Government schools in Punjab as under :

"(i) Punjabi to be the first compulsory language and medium of instruction at all levels and Hindi as second compulsory language from IV class, English as third compulsory language from VI class. However, privately recognised schools are free to choose Punjabi or Hindi as medium of instructions. According to the State education policy Hindi medium is not introduced from the very beginning in Government schools.

(ii) Regulations in respect of the Medium of Examination are made by the Punjab School Education Board according to the State Education Policy. According to this policy the arrangement cannot be made for medium of examination according to entry on the examination form for unrecognised middle schools.

(iii) According to the provisions contained in Section 7 of Punjab Official Language Act, 1967 any person can submit a representation for the redress of any grievances to any officer or authority of the State in any of the languages including Hindi, used in the State.

4.40 According to the 1971 Census the speakers of various languages in Punjab are as under :—

Sl. No.	Language	Speakers	Percentage
1.	Assamese	146	
2.	Bengali	2294	
3.	Gujarati	1384	
4.	Hindi	2711490	20.05%
5.	Kannada	236	
6.	Kashmiri	963	
7.	Malayalam	2019	
8.	Marathi	1710	
9.	Oriya	323	
10.	Punjabi	10771246	79.64%
11.	Sanskrit	77	
12.	Sindhi	774	
13.	Tamil	2322	
14.	Telugu	995	
15.	Urdu	29003	0.21%
	TOTAL	13,524,982	

According to the 1971 Census the religion-wise population of Punjab is as under :—

Hindus	5087235	37.54%
Muslims	114447	0.84%
Christians	162202	1.20%
Sikhs	8159972	60.22%
Buddhists	1374	0.01%
Jains	21383	0.16%
Others	4447	0.03%
TOTAL	13551060	

4.41 From the above it would be clear that the Hindi speakers are 20 per cent of the total population of Punjab. The followers of Hindu religion are 37.54 per cent of the total population of Punjab. Thus the Hindi speakers and Hindus both are minorities—the former a linguistic minority and the latter a religious minority and they should be entitled to all the safeguards and protection given to them under the Constitution or agreed to at all India level.

4.42 A number of specific constitutional safeguards have been provided to the linguistic and religious minorities under the provisions of Article 25 to 30, 347, 350, 350-A and 350-B of the Constitution. In addition to these an agreed scheme for practical implementation of the safeguards relating to linguistic minorities has also been evolved in various decisions taken at the all-India level and which has been agreed to by all the States. The last of such decisions taken in the Chief Ministers' Conference of 1961 provides for safeguards in the field of education, use of minority language for official purposes, recruitment to state services machinery for implementation of safeguards and issue of pamphlets.

4.43 So far as linguistic minorities are concerned it has all along been observed by the Commissioner for Linguistic Minorities in the Annual Reports, specially after the reorganisation of the erstwhile Punjab State in 1966, that the safeguards provided to linguistic minorities have not been extended to Hindi speakers of Punjab by the Punjab Government.

4.44 From the above, it would be clear that in spite of repeated reports and observations of the Commissioner for Linguistic Minorities, the Punjab Government have been treating Punjab as a unilingual State. The Punjab Government have been insisting that there are no linguistic minorities in the State. They have not, therefore, provided any of the safeguards available to linguistic minorities. The facility of instruction in the mother-tongue at the primary stage, however, continues to be available

in the private schools which were in existence before the re-organisation of the State in 1966. Article 350-A of the Constitution enjoins on the States to provide adequate facilities for instruction in the mother tongue at the primary stage of education. Denial of this facility appears to be violative of the constitutional provisions.

4.45 The stand of the Government of Punjab that there are no linguistic minorities in the State of Punjab is factually incorrect as may be seen from para 4.41. The stand that after reorganisation of the State in 1966, the Punjab State has become unilingual and that Punjabi has become the sole medium of instruction at all the stages of education including primary stage is, therefore, not in conformity with the national policy.

4.46 The report from the office of the C.L.M. brings out that similar has been the policy of the State Government of Haryana. In view of what has been stated above the Commission is of the opinion that the stand taken by the Haryana Govt. to use Hindi as the sole medium of instruction, is also not in consonance with the national policy and provisions of Article 350-A of the Constitution. The attention of the State Governments of Punjab and Haryana has been drawn to these provisions of Article 350-A of the Constitution and the national policy and they have been requested to provide facilities to the linguistic minorities as provided under Constitution. A press release in the matter has also been issued. Appendix XIV.

CHAPTER V

COMMUNAL RIOTS

During the period under report, the Commission dealt with the incidents about communal riots as reported from various parts of the country. The relevant details are given below :—

(1) KANYA KUMARI (TAMIL NADU)

These incidents were alleged to have been caused by the communal activities indulged in by the R.S.S. against the people of other religions and a failure on the part of the State authorities to make timely preventive measures. The Commission considered the on-the-spot study report of its Member, Shri S. A. Dorai Sebastian, relating to the Communal disturbances involving the Christians and Hindus that took place in certain villages of Kanya Kumari District of Tamil Nadu in March, 1982. The report of the Member may be seen at Appendix-XI.

As a judicial enquiry had already been initiated by the State Government, the Commission resolved that copies of the report of the Member may be sent to the Central and State Governments with the request to take adequate preventive measures against recurrence of such incidents in future. The Commission also recommended that adequate relief measures be provided to the affected persons immediately. Subsequently, the Ministry of Home Affairs informed the Commission that the State Government had appointed a retired Judge of the Madras High Court to conduct an enquiry and that the Government of Tamil Nadu had also taken several steps to provide relief and rehabilitation for the victims of the incidents. In addition, the Prime Minister had also sanctioned an amount of Rs. 5,000 each for the families of deceased persons. Further, the State Government assured that it will take necessary measures to prevent recurrence of such incidents in future in the light of the findings of the Commission appointed to enquire into the matter.

(2) GODHRA (GUJARAT)

On receipt of a representation from the All India Sindhi Panchayat Federation, Bombay regarding the communal riots at Godhra in Gujarat State during October, 1980, alleging cases of death of Sindhis, burning of houses and shops on a large scale and looting of property worth several lakhs of rupees, the Commission called for a report from the Government of Gujarat. The State Government reported that the riots were caused by a quarrel between two Lariwalas resulting in a damage to the extent of about Rs. 37 lakhs to Muslims and Rs. 39 lakhs to Hindus in addition to burning alive of 5 Sindhis including two children. Besides two Muslims were also killed, 60 others were injured including six due to Police firing and 36 others were injured due to stone throwing. Curfew was imposed and 319 persons were arrested for different offences. The State Government denied that Godhra riots were the result of a planned conspiracy by overstaying Pakistani nationals. The State Government reported that positive steps have been taken to prevent recurrence of communal incidents in consultation with the various political parties and local leaders. Moreover, the District police has been strengthened. Riot affected persons have also been granted necessary financial help. No incident of communal riots has been reported in Godhra subsequently.

(3) PHULWARI SHARIF (BIHAR)

With regard to the communal disturbances which took place in Phulwari Sharif in Bihar in May-June, 1982, the Government of Bihar were requested to furnish details of these disturbances. According to the report received from the State Government, the incidents involved initially certain individuals of Hindu and Muslim communities only. These were stray incidents isolated in nature and not of a part of any communal feelings.

The apparent cause was the allotment of one acre of land to Imarate-E-Saria in 1980 by the Government which had led to suspicion and bitterness between members of the two communities. During the incidents, 7 persons were killed and 23

injured, including 4 Government servants, 11 Hindus and 8 Muslims. During the Police searches, bombs, ammunition, guns, country-made revolvers and explosives, including defused bombs were recovered. The State Government further reported that the families of the deceased and the injured were given a relief of Rs. 10,000 and Rs. 1,000 each respectively. All expenses towards the burial of dead bodies were borne by the administration. Old age pension has been sanctioned to the mothers and widows of the three deceased including two Muslims and one Hindu. The disabled child of one of the deceased Muslims has been covered under the Social Security Scheme. Suitable employment has also been provided to one Member each from the family of the two deceased Muslims.

(4) MONGHYR (BIHAR)

With regard to the communal disturbances which took place in Monghyr in Bihar in July, 1982, the Govt. of Bihar was requested to furnish the details of these disturbances. According to the report received from the State Government, violence erupted suddenly as a sequel of long standing enmity between groups of criminals comprising Hindus and Muslims over the village elections. The miscreants indulged in arson, lootings and killings in retaliation against each other. The District Magistrate and Superintendent of Police, Monghyr visited the spot and took requisite measures which brought the situation under control. Thirtyfive persons including main suspects were arrested. Affected families were given immediate relief of Rs. 5,000 to families of each deceased and Rs. 1,000 to each injured. A sum of Rs. 2,000 for each burnt house was given and one month's free ration was also distributed to the affected families.

(5) TIRUNELVELI (TAMIL NADU)

On the basis of press reports and representations received in this Commission about incidents of communal violence at Puliangudi in Tirunelveli District of Tamil Nadu, during June, 1982, this Commission took up the matter with the Government of

Tamil Nadu and called for details about these incidents. According to the report furnished by the State Government, some Adi Dravidars from Puliangudi on their way to Kadayanallur to attend the birth anniversaries of Quide-E-Millet Ismail Sahib and Dr. Ambedkar, shouted abusive and provocative slogans against Thevars of Chockkampatti. In retaliation, the Thevars threw stones on Adi Dravidars. In the ensuing violence both sides suffered injuries. The buses were attacked and shops were damaged and looted. A mob of Adi Dravidars subsequently attacked Puliangudi Police Station and the police fired two buck-shots in the air to disperse the crowd. None is stated to have been injured in the firing and the crowd dispersed. The Collector and D.I.G. of Police visited the place, peace Committee meetings were held at Puliangudi, Chokkampatti, and Kadayanallur. The police pickets were also posted. It is further reported that a minor quarrel over objection by Muslims to the drawing of water by a Thevar woman from a well at Puliangudi developed into large scale violence. About 1000 Muslims & Adi Dravidars are stated to have indulged in acts of violence and in spite of police intervention they attacked Thevars and set fire to some houses of non-Adi Dravidars. About 252 huts were gutted. However, there was no loss of life. To control the mob, the police used tear-gas shells, resorted to lathi-charge and opened fire. Notwithstanding the Police intervention violent incidents continued to occur for a number of days.

During these incidents, 11 persons were killed and 93 injured, 291 houses, 45 shops, 7 agricultural pump-sets, 4 sugarcane fields and two Dargahas/Mosques have been damaged and destroyed. The loss is estimated as Rs. 5 lakhs.

The Police registered 41 cases and accused persons have been arrested on both sides. Relief has been provided to the victims in cash and kind. A Peace-Committee consisting of people representing different communities has been formed. It has further been reported that RSS had no hand in the affair.

After considering the State Government's report, the Commission has asked the State Government to furnish further details

of the steps taken for rehabilitation of the victims of the riots and this information is awaited.

(6) MEERUT (UTTAR PRADESH)

Communal riots broke-out in Meerut in September-October, 1982. During the riots several persons were reported to have been killed and injured. Houses of both the communities and three mosques were damaged. The total loss to property during the riots is estimated to be about Rs. 28 lakhs. The dispute between two communities is reported to have arisen initially over a certain place contended to be a place of worship in Mohalla Shah Ghasa in Meerut City. In spite of an interim agreement arrived at between the two communities; the situation was aggravated and finally took the shape of a major riot. Notwithstanding the visits of the Chief Minister and the Union Home Minister, the incidents of violence occurred again.

In view of the seriousness of the riots, the Commission decided to visit Meerut and deputed the Deputy Secretary and Deputy Commissioner for Linguistic Minorities in India to visit Meerut on 14th March, 1983 to fix a programme with the District authorities. The District Magistrate advised them that, in view of the Navchandi Mela, the visit may be deferred. The Commission deputed its Joint Secretary for an on-the-spot study. His report has subsequently been sent to the Government of Uttar Pradesh and the Ministry of Home Affairs. The State Government has already appointed a judicial commission on 21-1-1983 to submit its report on the following matters :—

(a) ascertaining the facts regarding the said incidents and the causes which led to those incidents;

(b) assessing the justification and adequacy of the force used by the local authorities to control the situation; and

(c) assessing and fixing the responsibility and the extent thereof in relation to the said incidents.

The enquiry report of the Commission is awaited.

(7) BARODA (GUJARAT)

According to the press reports, major riots broke-out in Baroda during October, 1982. The trouble is reported to have arisen when a group of people tried to hinder the progress of a procession being taken out by another group. Violence occurred again the December, 1982, and took alarming proportions. During these incidents, several persons were reported to have been killed and injured, houses, shops, and vehicles were burnt and damaged in arson and looting in the city. Whereas the riots during October, 1982, are attributed to the taking out of a procession, the incidents in December, 1982, are stated to have been sparked off by the transfer of the City's Police Commissioner. The Commission later on paid a visit to Baroda and discussed the situation with the representatives of the minority community and also with the District authorities. Measures taken by the State Government have prevented recurrence of the trouble again and no further incidents have been reported.

Conclusion

The facts, stated above would reveal that fire of communal violence is quite often ignited by trivial and local issues and disputes between individual members or small groups of persons belonging to different communities. Soon the local professional bad characters, generally enjoying some sort of political patronage jumped into the arena. The situation was taken advantage of by the scheming local "netas" for their own narrow, selfish, and vested interests to maintain and boost their own images in the eyes of their gullible followers. The virus of religious bigotry and fanaticism propagated by communal organizations, such as RSS and Jamait-E-Islami, was also instrumental in

spreading hatred and communal disharmony. The communal incidents were fanned by the disgruntled and anti-national elements who have no love for the welfare and progress of other fellow citizens. The progress made by the country in various fields and its growing strength is also an eye-sore to certain hostile forces abroad whose constant endeavour is to disrupt the unity and integrity of the country with a view to weakening its influence among the developing nations of the world.

The situation, therefore, requires very serious thinking and evolving of a consensus at the national level among all the political parties in the country not only to identify and take cognizance of the causes which generate communal tension and riots but also to take really effective and remedial measures to prevent such incidents which pose a threat to the very existence of the nation.

Prevention of communal riots constitutes one of the most important pre-requisites for promoting national and emotional integration in the country. There is, therefore, an imperative and urgent need for removing the irritants which cause communal tension between Hindus and Muslims. To achieve this object, the following measures deserve to be adopted :

(1) The properties of religious trusts, which are often encroached upon and result in tension, should be ordered to be clearly demarcated by local authorities after proper verification and some sort of enclosures should be provided around such properties at the expense of their beneficiaries to minimise instances of deliberate and flagrant encroachment. Legislation should make it compulsory for managers of Muslim waqfs to ensure that this is done.

(2) In the vulnerable and riot prone districts, which need to be identified, the heads of the Civil and Police Departments, namely District Magistrate and

Superintendent of Police, should not belong to the same community.

(3) The Police forces, particularly the armed constabulary, should be reorganised so as to include a substantial percentage of members drawn from the minority community.

(4) Severe punishment should be imposed on anti-national, anti-social, and all other elements, including individuals and organizations, indulging in inciting hatred and tensions among communities or taking re-course to violence against other communities.

(5) Special Courts should be set up for speedy trial of criminal cases relating to communal offences such as rioting.

(6) The officials who show positive results in containing or preventing the communal troubles and those who suffer physically in the course of dealing with the riots should be suitably rewarded and encouraged.

(7) Keeping in view the secular character of our nation, no religious ceremonies should be observed at any State function and the celebrations should be of purely a secular nature.

(8) That, as the spirit of communal harmony needs to be rejuvinated by intensive propaganda through all organs of mass-media and by seminars, workshops, or conferences and participation in the religious functions of other communities expressing respect and regard for other religions, steps be taken to intensify such efforts.

(9) Routes of religious processions taken out on religious occasions should be regulated in such a manner that the processions do not pass by the places of worship of other communities and also as far as possible, through the localities predominantly inhabited by members of the other communities.

(10) On administrative side, licences for operating of slaughter houses, meat-shops, and wine shops should also be regulated in such a manner that they do not cause resentment or hurt the susceptibilities of members of any community which constitutes the major population of that particular area.

(11) As voluntary organizations can play a vital role in generating an atmosphere of amity and good-will among the different communities, such organisations should be encouraged by the Central Government.

(12) Peace-Committees should also be constituted, where necessary, by enacting suitable legislation, so that right thinking and secular-minded representatives of different communities for each and every colony in a town and for each village in the rural areas in the country can look after promotion of better relations between all communities as already suggested in other recommendations on the subject.

CHAPTER VI

VISIT OF THE MINORITIES' COMMISSION FROM 6-12-1982 to 12-12-1982 TO THE STATE OF BIHAR

6.1 In pursuance of the resolution passed by the Commission in its 61st meeting held on 8-11-1982, the Commission consisting of the Chairman, Justice M. H. Beg, and Member, Gyani Sujan Singh, accompanied by the Secretary Shri S. S. Gill and Deputy Secretary Shri W. Hasan, visited Bihar from 6th December to 12th December, 1982. Whereas the Chairman, Secretary and the Deputy Secretary reached Patna on 6th December, 1982, Gyani Sujan Singh, Member, joined the Commission on 7th December, 1982.

6.2 The Commission visited different places and met the representatives of various minorities and also met the officers of the State Government as per programme available at Appendix XV. A brief account of these meetings is given below :—

1. *Discussion with the representatives of minority organisation at Patna*

6.3 The meeting was held at 3.00 p.m. in the Conference Room of the Secretariat and was attended by the representative of various minority organisation.

6.4 The meeting was conducted by Shri Harun Rasheed, Vice-Chairman of the State Religious and Linguistic Minorities' Commission Bihar. Shri Joginder Singh Jogi, the other Vice-Chairman of the Bihar Minorities' Commission was also present. Representatives of different minority organisations participated in the discussion and placed the various problems of Minorities

before the Commission for its consideration. A summary of the major problems is given below :—

A. *Problems relating to Muslims*

(i) *Problems relating to Employment*

6.5 It was pointed out to the Commission that in Bihar the population of the Muslims is about 20 per cent whereas the representation of the Muslims in the Government services is hardly 2 per cent excepting the education department where it is about 7%. It was emphasised that the Government should take necessary steps to provide employment to Muslims and other minorities in State services and other public sector undertakings in proportion to their population. It was also pointed out that the benefits reaching the Muslims from the various developmental schemes, like loans from banks and issue of industrial licences etc., is inadequate. It was suggested that to increase the representation of the Muslims in the Government services, a minorities' cell should be established in each department which should look after the interest of minorities.

(ii) *Problems relating to Wakfs*

6.6 It was also pointed out that, after the zamindari abolition in 1955, Wakf properties have been adversely affected. Particular attention was drawn to the problem of grant of annuities to the Wakfs. It was mentioned that, on the one hand, annuities to the various wakfs are not granted in time, and, on the other hand, several properties of wakfs have been occupied by the State Government. When this was brought to the notice of the Government, the authorities stated that, since some constructions have already taken place on these lands, the occupants cannot be evicted though other lands were offered in exchange. It was also emphasised that the ceiling laws apply to wakf properties in the same way as to cases of individuals. This creates hardship. To remove these difficulties, it was suggested that the annuity, which is presently granted to the Mutuwali, may be given to the

wakf concerned so that questions of mutation do not arise on the death of a Mutuwali. It was also suggested that wakf properties should be exempted from the operation of the ceiling laws to avoid hardships.

(iii) *Problems relating to Urdu*

6.7 The Commission was informed that Muslims were highly gratified that the State Government, by a notification dated the 18th January, 1981, had declared Urdu as the second official language in 15 districts of the State. As a follow-up action, the Government decided to start one unit of Urdu Translation at the State Headquarters and at headquarters of each of the districts concerned. Under this scheme, several officers and assistants, totalling about 800 persons are to be appointed. It was pointed out to the Commission that these appointments have not been completed. It was suggested that necessary action should be taken to fill up these vacancies expeditiously.

6.8 Coming to the teaching of Urdu, the participants expressed satisfaction on the recent instructions of the Chief Minister to appoint one Urdu teacher in each school. However, it was pointed out that these instructions of the Chief Minister have not been implemented effectively and the appointment of the teachers is being delayed.

(iv) *Problems relating to recognition of minority institutions*

6.9 It was emphatically urged that, although article 30 of the Constitution grants to the minorities the fundamental right to establish and administer educational institutions, recognition to these institutions is not granted by the state authorities, and they (the institutions) have to run from pillar to post for recognition. In this respect, it was emphasised that despite Govrenment's honest intentions, the authorities at the lower level are apathetic to the demands of the minorities. The problem was raised by the representatives of Christians also.

(v) *Problems relating to communal riots*

6.10 Grave concern was expressed at the communal riots erupting so frequently through the length and breadth of the country which has created a sense of insecurity among the minorities. It was pointed out that it is unfortunate that, despite 35 years of Independence, the problem of communal conflicts could not be contained. In this connection, the role of the B.M.P. and the P.A.C. came in for severe criticism. It was alleged that these organisations have actually become gangs of criminals rather than protectors. It was strongly urged that the Commission should recommend to State Governments reconstitution of police forces to make them more broadbased and representative so that they may inspire confidence in the minorities.

B. *Problems relating to Christians*

(i) *Rights of the Scheduled Caste converts to Christianity and Islam*

6.11 It was represented to the Commission that when members of Scheduled Castes and Scheduled Tribes embrace Christianity or Islam, privileges available to these castes and tribes are not extended to the converts. It was stated that this amounts to imposition of restrictions on conversion of Scheduled Caste to Christianity or Islam. It was submitted that Article 25 of our Constitution, gauranteeing freedom to propagate and practice any religion, was thus violated. It was pointed out that the position becomes anomalous when we see members of Scheduled Castes continuing to enjoy, even after conversion to Sikhism, the benefits they had obtained as members of Scheduled Castes, even though Sikhism does not allow caste distinctions just as they are against Christianity and Islam.

6.12 It was pointed out by the Commission that law is not always logical. Indeed, if reservation of posts is granted on grounds of possible prejudice operating in the process of selection, it should be legally possible whenever such grounds are

likely to operate. Article 16, however, provides that it must be shown that, only where representation of a "Socially or Educationally Backward Class" in a public service is actually inadequate that there can be reservation for them. Thus, no reservations are constitutionally provided for possibilities of prejudice operation or against a minority. The position can only be changed by a constitutional amendment which requires a government with atleast a two-thirds' majority. However, there could be a minority representative on selection Boards or Committees to obviate possibilities of injustice to members of minority communities. This could be a matter of executive policy in making appointments to the selecting authorities.

(ii) *Problems relating to representation of Christian Community of North Bihar in Bihar Legislative Council*

6.13 It was brought to the notice of the Commission that there is no representation of the members of the Christian community of North Bihar in the Bihar Legislative Council. It was stated that, when this was brought to the notice of the State Government, it said that there are several such representatives from South Bihar. However, it was alleged that the people of North Bihar are ethnically different from those of South Bihar, especially from Chhotanagpur and Santhal Parganas, and consequeantly, except for a common religion, they are socially, culturally, economically and even educationally different from one another. It was urged that the Commission should bring this to the notice of the State Government and recommend that a member of North Bihar Christian community be nominated as member of the Bihar Legislative Council. The Commission did not wish to encourage "ethnicity" to this extent.

C. (i) *Problems relating to Sikhs*

6.14 The Commission was informed that the members of Sikh community, belonging to the Scheduled Castes, are given certain benefits in the State of Punjab. But, when members of

these very castes shifted to Bihar State, these benefits were denied to them. It was suggested that the Commission should recommend to the State Government to grant these benefits to members of the Sikh community shifting to the Bihar State also.

6.15 The Commission could only formulate its views on such suggestions after accurate ascertainment of relevant facts. If caste prejudices and distinction continue even after conversion to Sikhism, some practical solution may be recommended on humanitarian grounds. But, a policy of reservation has, it was earlier pointed out, a tendency to create harmful vested interests and to dampen incentives for improvement of standards. It should not be viewed only from the point of view of short term advantages to some members of minority communities. Long range interests should not be overlooked.

(ii) *Meeting with the representatives of the minorities' organisations and district authorities at Sasaram*

6.16 This meeting was particularly fixed with a view to discuss the representaions in respect of alleged atrocities on Christians. Fr. Mathew's murder case was especially considered.

6.17 In respect of facts and circumstances leading to the murder of Fr. Mathews, a note has been given by the Administration which is available as Appendix-XVI. The Collector informed the Commission that Fr. Mathews was murdered not because of any communal conflict between the Christians and Hindus but out of personal enmity.

6.18 During the course of the meeting, representatives of the various organisations pointed out many problems which are the same as those posed in the earlier meeting held at Patna. However, particular emphasis was laid on the construction of certain temples adjoining mosques and around the tomb of Sher

Shah which have become spots of communal tension. It was suggested that the State Administration should be advised not to allow such construction as it will vitiate peaceful atmosphere.

(iii) *Discussion with the representatives of the minorities and district authorities at Bihar Sharif at* 11.00 *A.M. on* 9-12-1982.

6.19 The third meeting was held at Bihar Sharif. During the course of discussion, the Commission was informed by participants in the meeting that the atmosphere of tension which existed at the time of the Commission's last visit in the month of June, 1981, was no longer there, and, due to the joint efforts both of the administration and of the citizens, there is now peace, harmony, and cooperation in the area. It was particularly emphasised that the feeling of fear that existed among the Muslims, as a consequence of the riots, had been removed and the Muslims who had left their homes from the villages had either returned to their homes or had been rehabilitated elsewhere. It was particularly pointed out that the two steps taken by the State Government, namely, the imposition of punitive tax, and the setting up of special courts were particularly useful in creating a better atmosphere.

6.20 Special emphasis was laid on the problems of graveyards which are a constant irritant and cause of tension between Hindus and Muslims. It was suggested that the Government should take necessary steps to solve this problem by constructing boundary walls around such graveyards so that they are not encroached upon. This, it was urged, will go a long way in establishing peace and communal harmony. The Commission also visited village Sabbite where some of the riot affected persons who had fled from the villages for the safety of their lives took refuge and have been rehabilitated. The District Magistrate informed the Commission that about 57 houses have been newly constructed there with the help of Amarat-e-Sharia. It was gratifying to watch both communal

harmony and a spirit of charity and tolerance and mutual help operating again in full force in Bihar.

(iv) *Meeting with the State authorities at Patna at* 3.00 *P.M. on* 10-12-1982

6.21 This meeting was convened to discuss the matter relating to alleged attacks on Sikh truck drivers at villages Naugachhia and Kursola. The meeting was attended by various officers, including Shri R. N. Dash, the Home Commissioner.

6.22 Shri Ramanujam, the then Divisional Commissioner of Bhagalpur, who had inquired into the incident, narrated the sequence of events which was more or less the same as the one supplied in writing to the Commission during its visit. The writing is in Appendix-XVII. There was a detailed discussion on the incident. From the discussion, it appeared that the incident took place suddenly because of the death of one of those students who had forcibly boarded the truck. The incident did not occur against a background of communal feelings deliberately worked up or engineered by interested parties as was the case in the earlier riots in which Muslims who had suffered terribly were sought to be terrorised and driven away. It was stated by the State officers that the Government has taken all necessary steps to contain the conflict and actually succeeded in saving the lives of truck drivers and the Khalasis though some of their trucks were burnt and looted. The Commission was also informed that there was no anti-Sikh feeling amongst the residents of the area either before or after these incidents. The officers had, however, been instructed to be vigilant about such incidents. They could often defuse tension by disclosing correct facts.

(v) *Meeting with the Chief Minister at Patna on* 11-12-1982

6.23 A meeting was held at the residence of the Chief Minister which was attended by various officers including the Home and the Education Commissioners. During the course

of discussion, the Chairman, Minorities' Commission Shri Justice M.H. Beg apprised the Chief Minister about his experiences at different places visited during the tour and expressed his satisfaction particularly in respect of the situation in Bihar Sharif, where the communal harmony has now been restored.

6.24 Other matters discussed were communal tension in general, recognition of minority institutions, and representation of minorities, particularly of the Muslims, in Government services. Regarding communal tension, the Chief Minister informed us that, particularly after the Jamshedpur riots, a complete list has been prepared identifying the various spots of communal tension and reasons that lead to such tensions. He informed the Commission that the administration is fully alive to the situation and is taking all necessary precautionary steps to control such tensions. He particularly emphasised that, with a view to encourage communal harmony and promote national integration, the educational system is being reformed.

6.25 Regarding recognition of educational institutions, the Education Commissioner informed the Commission that the Government is taking all necessary steps to recognise the educational institutions and that the Bihar State is the first State where total expenditure is met by the Government right from the day an institution is recognised. On an enquiry by the Chairman about the criterion for recognising the minority institutions, the Chief Minister said that recognition is granted after examining the deed setting up an institution, the constitution of the Managing Body, the number of students of the minority concerned, and qualifications of teachers. The Chairman explained cases decided by the Supreme Court of India on the subject.

6.26 In respect of the representation of minorities in the services, the Chief Minister informed the Commission that there is no discrimination in the appointments to various services which are made purely on the basis of merit but there is no reservation for Muslims or any other community.

(vi) *Meeting with Members of the State Linguistic and Religious Minorities Commission at Patna at* 11.30 *A.M.* on 12-12-1982.

6.27 This meeting was convened to have a dialogue with members of the State Minorities' Commission. The Commission was informed about various activities carried on by the State Minorities' Commission in some detail. However, the opportunity was also utilised to discuss problems of various minorities by different members. Problems discussed at this meeting were similar to those discussed at the first meeting with the State Commission held at Patna in the light of the facts seen by the Central Commission.

6.28 The Member Gyani Sujan Singh, in his remarks at different meetings, underlined the need to maintain an atmosphere of communal harmony and peace. He particularly emphasised that one of the basic reasons of the communal conflict is the ignorance of various communities about the basic principles of religions of each other. He stressed the fact that, since religious instruction is not a part of any educational curriculum, members of different communities have wrong notions about each other which ultimately lead to communal conflicts. He therefore, suggested that the educational system should be reformed so as to include the imparting of instruction in respect of all religions. This, he stated, will create an atmosphere of better understanding.

6.29 The Chairman in his concluding remarks at different meetings emphasised the need to inculcate discipline amongst the citizens of the country and to delink religion from politics. He also indicated that problems of minorities have to be viewed in the larger perspective of national integration.

6.30 His views were : Religions, like other aspects of human culture, must change in their ways of expounding and explaining their basic tenets, principles, or messages so as to harmonize with the knowledge provided by findings of modern Science.

This had happened to Christianity and other religions. Religion was a personal matter in the west. Although, in the West too religion was still exploited by clever individuals, including some charlatans, in ways which made them enormously wealthy, in India, it was exploited shamelessly for political purposes and violent crime which could, if permitted, destroy the whole basis of civilized existence. Hence, the state had to step in to control even allegedly religious manifestations in mad quests of some for political power, using religions, both new and old, in their gangster-like activities. It was time for people of India to become fully alive to the dangers of new destablising forces, some of which had their real roots abroad or in super-power rivalries and politics. New demons of intolerance and fratricidal hate are stalking our land now. People are found indulging sometimes in acts of brutal cold-blooded destruction of innocent human lives and of national property. They are filled with notions which are totally foreign to the cultural traditions of the land of Buddha, of Akbar, of Guru Nanak, of Guru Gobind, of Kabir, of Mahatma Gandhi, and of Jawaharlal Nehru. It is the duty of all of us irrespective of our creeds, castes, colours, or religions, to get together to defeat a common menace which had insidiously crept in. We must do so before it is too late.

CHAPTER VII

PRESERVATION OF SECULAR TRADITIONS AND NATIONAL INTEGRATION

A. *General*

(i) *Object of this Chapter*

7.1 What this Commission considered necessary primarily from the point of view of institutional reform "in order to preserve secular traditions and promote National Integration" is found in a separate opinion of the Chairman stated after the unanimous conclusions and recommendations. These expressly stated paramount objects seem to be generally forgotten by the critics of the Commission and others. And, even the officials sent to help the Commission formulate proposals to carry out these objects seem often to have the haziest notions about either the meaning or the importance of these objects or about methods of attaining them. Unfortunately, its officials, who are not selected by the Commission but by the Personnel Department of the Government of India, are so used to considering "work" only in terms of weilding of executive power and execution of orders, that they are often unable to understand the full implications of the vitally important objects of the Commission's work in clarifying them and recommending better ways of carrying them out. To the "executive minded" its quests may appear to be academic, theoretical, and even futile. This chapter is meant to correct such misconceptions. It should show that a Commission like ours can, even with its present limitations, contribute something useful to clarify our basic constitutional concepts whose propagation and increasingly wider and better realisation should be the objects of State policies as well as of efforts of all patriotic rightminded Indian citizens and their voluntary organisations.

7.2 To clarify any basic national objectives and concepts and to suggest best possible ways and means of securing them are not unimportant or easy functions to fulfil with which this Commission is entrusted. It requires the aid of sufficiently competent personnel to meet the Commission's difficult requirements in addition to necessary cooperation from all governmental agencies whether Central or in the States so that the Commission is fully informed of policies and schemes it has to assess.

7.3 If our institutional machinery was sufficient to meet the needs of wide and rapid enough movement towards our national goals we would not be faced with recurring and increasing outbreaks of violence in our country which our bureaucracy, at any rate, has dismally failed to cope with because, we think, it has, so far, tried principally to suppress the symptoms of maladies which are much deeper than mere law and order problems of the routine type it has been trained to handle. We need to more rigorously and thoroughly and scientifically explore the causes to be in a position to recommend effective long term remedies which a Commission could find only after a comprehensive and intensive study of what gives rise to the symptoms.

7.4 This Commission has undertaken clarification and exposition of some basic concepts in an attempt to find both long term solutions and to indicate short term measures of immediate value and effect to cope with recurring serious problems, causing deep anxiety to all of us, due especially to misuses of religion and other cultural features for political purposes.

7.5 Sometimes, local officials, to explain their failures, complain of political interference and of the gangsterlike activities of local organisations and their leaders vying with each other in the use of intimidating and corrupting tactics. This results, it is complained, in demoralising and discouraging honest and efficient officials and patriotic citizens. Such a complaint itself

discloses a weakening of the moral fibre of those who succumb to unhealthy pressures.

7.6 The health of a democratic system requires, according to Jawaharlal Nehru, "self-discipline". Montesquieu thought that soundness of such a system requires the prevalence of the spirit of "virtue" inculcated by a culture which integrates. Unless such a culture is strongly entrenched and widespread neither majorities nor minorities will be safe against dangers of exploitation of religion, region, or caste which have reached alarming proportions. Religious and linguistic minorities, not unnaturally, feel disturbed. Their welfare involves consideration of problems which cannot be solved by trying to separate the good of minorities from that of the rest of the people in the country. We have, therefore, considered, in this chapter, certain matters affecting the general health of the outlook and culture of all our people. Religious and linguistic minorities must, as proud and honourable citizens of a great country, take their due share in widening, deepening, and strengthening of a culture which has deep roots in universalism and humanism and is not narrow or confined to certain segments of society only. No narrow or sectarian creed or outlook should be allowed to exclude the minorities or worse still, majorities from this onward march of human civilisation and culture. The task of every government of a secular State is to do everything to promote it and to remove everything which obstructs it.

7.7 This chapter will deal with three matters : firstly, in it, we will try to clarify the meanings and implications of our "secular" outlook and traditions and "national integration"; secondly we will give our opinions on broad policies which could be and should be adopted to preserve, promote, and strengthen these basic concepts; and, thirdly, we will revert to the institutional aspect and make further recommendations so that the pursuit of policies we recommend becomes a well directed, regular, and more systematic and effective affair which yields

continuously improved or better and better results with the passage of time.

7.8 The basic concepts, we think, are found in our Constitution. And, even changing forms or systems of government could be justified by a reference to the basic concepts and objectives if changing needs for their realisation in changing context and situations could be shown to require such changes. An understanding and conviction about the worth of the basic concepts and objectives are no less essential than a willingness to concede legitimate claims of change in the right directions and adoption of appropriate means for their realisation in changed circumstances. To add to the understanding of these objects and to assess the success or failure of means meant to serve them and to recommend improvements in them are our most important duties.

7.9 The aspiprations of all Indian people, contained in one Constitution, demand rapid changes to overcome dangers of stagnation, instability, and disintegration. Spread of secular ways of thinking and action, to be equated with Enlightenment and better National Integration, need the specialist's study and recommendations.

(ii) *General Requirements of Preservation of Secular Traditions*

7.10 It is obvious that what can be "preserved" must exist. You cannot "preserve" what does not exist. Hence, the Central Goverment's resolution, establishing this Commission, was meant to "preserve" what existed and required preservation. The questions to which we have to address ourselves are : What is it that exists and requires preservation ? What does this need to preserve demand or imply ?

7.11 Sociologists tell us that even primitive societies are not quite static. They must change either for the better or for the worse. They either ascend or descend a ladder on a scale of

values. Qualities of men and women, who compose societies, develop in particular directions. If directions, in which their development is contemplated, are changed, the process could become disoriented and one of decay and descent and weakening and not of preservation or ascent or strengthening. On the other hand, if development in right directions is maintained or the pace of movement in these directions is increased, the process of "preservation" passes through consolidation and is strengthened and fortified. "Preservation" includes a wider and wider spread or a more rapid movement in the desired directions or a strengthening of the process. It excludes the opposite downward movement or decay which weakens what was meant to be widely spread, achieved and strengthened. One ensures whilst the other jeopardises preservation.

7.12 The process of preservation thus postulates a constant struggle against what may weaken it and imperil its existence. It involves building up of fresh fortifications to meet new dangers. It has to be necessarily dynamic, progressive, powerful, pervasive, ever expanding, and not retrogade anaemic, shrinking, jejune, half-hearted, or insipid. No doubt, it requires constant vigilance. Careful pruning of weeds, regular preparation of the ground, watering and manuring, and, above all, sowing of good seeds, are needed if the plants expected to be grown are to be beautiful strong, and fruitful.

7.13 Now, this need to be vigilant about our secularism, with which "National Integration" is indissolubly linked up, both as a set of forces propelling each other onwards as well as logical consequences of each other, is sometimes, quite mistakenly, represented as though our "Secularism" itself was a beautiful but fragile elitist facade which could easily crumble or a delicate plant grown in a hot house which would soon wither away if removed from its salubrious surroundings.

7.14 The meaning we give to our "Secularism" is much wider. It is practically coextensive with imperative needs of living on this earth. It embraces all those arts and sciences

which man has produced to meet these needs of human living in the physical world of matter and of various forms of life on this earth, as contrasted with the needs of life hereafter in the "other world" which should be the real concern of various religions.

(iii) *Some Consequences*

7.15 To the secularist our beliefs about the nature or about commands of the Power or Powers that may or may not exist in an iivisible or in "another World" and the ways adopted to worship or please such Power or Powers are relevant for the State's actions or its activities only to limited extent for specific objects; firstly, to ensure that our laws providing for freedom from interference as well as from any discrimination practised on grounds of differences of faith and forms of worship are really enforced; and, secondly, to see that where these private and voluntary individual and social spheres of belief, thought, feeling, and action have to be interfered with by the State authorities in the interests of public order, health, or morality or basic common rights of citizens and others, the interference is necessary and minimal. Under our Constitution, the courts are there to draw the line between what is and what is not a legally permissible restriction on religion or culture.

7.16 This position, in the eyes of law, could be said to result from our "Secularism" in culture or communicable knowledge whose embrace has to be preserved and strengthened and widened amidst all citizens and not confined to any particular class or strata amongst them. We believe that it is not those who think in this "secularist" fashion who are weak or liable to be culturally or ideologically "defeated" (if we may put it in this way), but those who stand in the way of what secularism, understood as a powerful broad primordial factor, operative since the very advent of man on earth, stands for, are relatively weak and liable to be swept aside if they persist in courses opposed to the lessons of the whole of human history and human evolution from very rudimentary stages to highly efficient and

sophisticated ways of thought and life on earth. It is in this wide and not in any narrow pedantic sense that "secular traditions" were, we think, mentioned in the forefront of the Preamble to our terms of reference and their preservation is indicated as a Paramount purpose of setting up of this Commission. A narrow sense given to secularism would, we apprehend, stultify our constitutional goals and the approaches they require.

7.17 It is true that we do, as some foreigners have observed, tend to speak of our "secularism" more than Westerners do about theirs and perhaps even read more into it than Western thinkers often do. But, that is because we are more conscious of the need to cultivate widely what is now part of a subsconsciously pervasive Western attitude separating more clearly than most of us do what belongs to Caesar from what belongs to God, as Jesus Christ put it. It is, however, perhaps consoling, or, at least encouraging, to realise that there was a time when Westerners too were caught, like even many educated people of older generations are in our country to this day, in the grips of theocratic notions from which Western people have secured their release only slowly and painfully in the course of their history.

7.18 There is another sense in which "preservation", as a kind of balance which has resulted from centuries of common living with multiplicity of religious beliefs and practices and adaptation to the needs of cultural co-existence in our country, could be contemplated. It is clear that this balance is being seriously disturbed by new socio-economic and political and ideological conflicts both external and internal. Now, the preservation of this balance by developing the strength of our fortifications against new dangers needs special attention and study. It requires positive planning, vigilance, and effort which have to be given institutional form. New cores of unity have to be built to displace factors which tend to destroy the old bulwarks. Revivalisms of a kind which tries to put flesh and bones on to old skeletons of the dead could only complicate matters and make the realisation of our constitutionally prescribed objectives more difficult. Steps needed to put any new

health giving wines into old bottles involve expert knowldege of what is to be put there and how and its likely effects. Possibly, a mixture of the old and new and even change of some labels may be needed. One can only express a reliable opinion on such matters after a thorough study and considerable thinking.

B. *Meaning of Secularism*

(i) *The Broad Sense*

7.19 It is apparent that, in our terms of reference, the term "secular" was used in a broad sense so as to go far beyond the narrower interpretations of secularism which became current in Europe as a result of writings of leaders of a movement of revolt or protest against sacerdotalism. This revolt could be traced to Martin Luther's "Reformation". The narrower form of secularism is mentioned in the paper of the Chairman of the Minorities' Commission on the effects of secularism on Islamic Jurisprudence (*See* Appendix VIII-A). There, the Chairman of this Commission also observed as follows :—

> "I think that this term stands for a tendency so broad and basic, so primordial and significant, in the evolution of human thought and institutions, that the other ripples of human thought and endeavour, even when not actually embraced by it, should at least not collide with it. If there are, unfortunately, collisions between forces so powerful and sweeping as those represented by Secularism today and those which have restricted appeals for humanity in general, it is obvious that the lesser and the weaker will have to give way and may even be swept aside altogether. It seems to me that all particular systems of jurisprudence, including Islamic Jurisprudence, can escape relegation to the

limbo of discarded ideas, which is bound to overtake every narrow or rigid or out-of-date system, only by keeping abreast of the times and by flowing along the broad currents of human thought and activity represented by Secularism. The more each system can contribute to this broad flow, the more will be its worth and significance for humanity in general. Each system can thus become a part of a greater and more harmonious glorious diapason of life instead of serving only as a discordant and jarring not fit to be silenced. A particular system of jurisprudence can only assume such a valuable role if it is capable of being woven into the fabric of a modern multicultural, multi-religious, and even multinational society and satisfying its basic urges and needs."

7.20 In that very article, a wide meaning of the term Secularism is used in interpreting the Semetic legend of an expulsion of Adam and Eve from Paradise in the following passage :

"The story of Adam's expulsion from the garden of Eden seems meant to emphasise the fact that God has so ordained that man, whose conduct was thus removed from the direct control of God Almighty, was invested with the power of deciding for himself what is good and what is harmful for him, and that he has to be given only a limited amount of direct divine guidance which God, out of His mercy and grace, was pleased to bestow upon mankind, from time to time, through His messengers. This was how according to the Semetic lore and mythology utilised by the Prophet of Islam in order to impart lessons to his followers in basic verities of life, the seeds of Secularism were sown on this earth."

7.21 In other words, we reject the theocratic presumption of God guiding every sphere of human lives, including politics, law or economics, Theocratic thinking, resulting in a priest-ridden State or Society is opposed to our basic Constitutional postulates. But, the profession and practice of an unmixed (some may describe it as "uncontaminated") religion has our Constitution's fullest support.

7.22 The term "Secularism" is used here to indicate a broad basic movement characterised by more and more successful harnessing of forces of nature to needs of living happily on the terrestrial globe. This "Secularism" stands for that tendency of human life and thought which directs all spheres of activity towards solving problems of living in this world as opposed to those of the other world with which religion, in the traditional sense, concerns itself. It was in this sense that Will Durant, a famous American historian and writer, used this term when he wrote in the preface to his volume on "The Life of Greece" in his "History of Civilisation" as follows :

"Excepting machinery, there is hardly anything secular in our culture that does not come from Greece : Schools, gymnasium, arithmetic, geometry, history, rhetoric, physics, biology, anatomy, hygiene, therapy, cosmetics, poetry, music, tragedy, comedy, philosophy, theology agnosticism, skepticism, stoicism, epecureanism, ethics, politics, idealism, philanthropy, cynicism, tyranny, plutocracy, democracy : these are all Greek words of cultural forms seldom originated but in many cases first matured for good or evil by the abounding energy of the Greeks. All the problems that disturb us today—the cutting down of forests and the erosion of soil, the emancipation of women and the limitation of the family; the conservatism of the established, and the experimentalism of the unplaced, in morals, music,

and government, the corruptions of politics and the perversions of conduct, the conflict of religion and science, and the weakening of the supernatural supports of morality, the war of the classes, the nations, and the continents, the revolutions of the poor against the economically powerful rich, and of the rich against the politically powerful poor, the struggle between democracy and dictatorship, between individualism and communism, between the East and the West—all these agitated, as if for our instruction, the brilliant and turbulent life of ancient Hellas. There is nothing in Greek civilisation that does not illuminate our own."

7.23 Thus, Secularisation in the above mentioned passage stands for the process which emerges from the secularism reflected in Alexander Pope's poetical Essay on Man where he said :

"Know then thyself, presume
not God to scan;

The proper study of Mankind
is Man"

Now, Alexander Pope was not an atheist. He represented a broad rational liberal view which developed in Europe after the disastrous wars of religion. He said :

"For Forms of Faith
Let Zealots fight;

His Cannot be wrong
Whose life is in the right."

7.24 It could be said that, inasmuch as religion as well as secularism have concerned themselves with what is right conduct, both have a common or concurrent field in ethics. In the Encyclopaedia Britanica, "secularism" is defined as "a branch of utilitarian ethics" designed for the physical, social, and moral uplift of mankind which "neither affirms nor denies the theistic premises of religion". This is again pointed out by the Chairman of this Commission in his paper (Appendix VIII-A) where, after indicating a much narrower meaning of secularism, as constituting the movement of revolt against Sacerdotalism in Europe, a much broader sense is adopted. This broader sense corresponds to what we mean when we refer to our "Secular traditions".

7.25 In the Encyclopaedia of the Social Sciences, a more modern American publication, "secularism" is treated scientifically as a comprehensive movement tracing its philosophical antecedents to the political philosophy of the European Renaissance and even to that of classical antiquity. It reads as follows :—

"The ideal of human and social happiness, as proclaimed by the prophets and leaders of the French Revolution, has continued in the intervening period to mould the temper not only of the French bourgeoisie but also of larger and larger groups in all countries, Protestant as well as Catholic, who are resolved that *mankind shall strive by most enlightened methods at its disposal to establish the maximum of social justice and welfare in the world*. The power of this secularised type of idealism derives in large part from its close connection with science; and, in this union of social and scientific secularism, the movement which since the Middle Ages has been gathering increasing momentum finds its logical climax."

7.26 Indeed, a theory of history, with ever expanding and strengthening holds of human love and understanding, combining both secular and religious sentiments was reflected in the above

mentioned poetical "Essay on Man" by Alexander Pope when he wrote :

"God loves from whole to parts but human soul
Must rise from individual to the whole
Self-love but serves the virtuous mind to wake,
As the small pebble stirs the peaceful lake;
The center mov'd, a circle straight succeeds,
Another still, and still another spreads;
Friend, parent, neighbour, first it will embrace;
His country next; and next all
human race;
Wide and more wide, th'
O'erflowings of the mind
Take ev'ry creature in, of ev'ry kind;
Earth smiles around, with boundless beauty
blest,
And have'n beholds its image in his
breast."

(ii) *Legal significance of our Secularism*

7.27 We, in our country, have tended to use the term "Secularism" very loosely for tolerance of religious and cultural differences. Often it is intended to convey merely the principle of "live and let live". Sometimes it is asserted that secularism implies "equal respect for all religions". It will be remembered that when, under the Janata regime, a constitutional amendment sought to define Secularism as "equal respect for all religions", the proposed amendment was rejected due to the opposition of the Congress(I) which is now the ruling party.

7.28 Legally speaking, our secularism means equality before the law and equal opportunity and equal treatment of citizens given by law irrespective of creed, caste, colour, race or region. The principles of equal opportunity for all irrespective of religion or language is embodied, as already mentioned in the previous Chapter, in various provisions of our Constitution.

7.29 As already indicated earlier, all dignitaries of State, including the President, the Prime Minister, Governors, Ministers, both at the Centre and in the States, Judges of the Supreme Court and of High Courts, as well as all Members of Parliament and of the State Legislatures, swear allegiance to the Constitution of a "Secular, socialist, Democratic, Sovereign Republic". We are all expected to accept the principles of Secularism embodied in our Constitution as already indicated earlier and also explained in the 4th Report of this Commission.

7.30 Our Constitution guarantees freedom of individual conscience from all coercion, even by a group to which one may belong, in expressions of opinion, including those on religion. Our citizens are free to indulge in religious, political, and other forms of voluntary activities, subject to certain essential limitations. The secular State differs from the Theocratic State in-as-much as neither the Secular State nor any political organisation nor any individual citizen under it can compel any person to believe in anything considered religious as a condition precedent to enjoyment of political or civil or social or economic rights or amenities and advantages. The law of the land treats everyone equally. This is the meaning of "Secularism" in law.

7.31 It will be seen that equal respect for every religion, which may not be humanly possible, is not a part of the constitutional requirements although equal treatment by the law of persons of all religions is a part of it. One may have one's own scale of values for various religious beliefs and practices, but such scales of value are private matters. They cannot provide reasons for discrimination in public or social, economic, or political conduct on behalf of the State. Religion belongs to the sphere of private belief and conduct provided it does not interfere with the requirements of public order, morality or with similar fundamental rights of other citizens. The result is that the basis of secularism in law are : (i) Separation of religion from all official actions of the State, whether Executive/Legisla-

tive or Judicial; (ii) Absence of discrimination on the ground of religion; (iii) relegation of religion to the voluntary sphere of private or individual belief, activity and life.

7.32 Even if religion forms part of activities of groups, no group can coerce any individual to believe any thing or act in any way it considers as correct in matters religious. Such coercion would be unconstitutional. And, after Part IV A of our Constitution even individuals and groups could be found to be obliged to carry out the constitutional mandates. A group or section which tries to coerce or punish or defame an individual for mere alleged deviation from accepted or orthodox religious beliefs or practices really infringes the constitutional right of the individual to religious freedom guaranteed by Article 25 of the Constitution.

C. *Importance of Religious Freedom*

(i) *Religious Freedom Explained*

7.33 The degree of freedom of the mind and action from illegal constraints, whether imposed by the State or by actions of individuals operating in the voluntary social sphere, affects the development of the kind of freedom which produces cultural flowering of which Will Durant, in the passage quoted above from the volume on contributions of Greece, wrote, and he identified it with the growth of "secularism".

7.34 When we read of the horrors perpetrated by and absurdities and aberrations of thought and conduct indulged in by theocrats, such as those who burnt people at Spanish Autos-da-fe to "save" their souls or of the followers of Calvin, who solemnly "beheaded" a cock for crowing on a Sunday morning, we realize the importance of religious freedom, in particular, for the growth of that "scientific temper" or "Enlightenment" and "composite culture" the promotion of which is part of the constitutionally enjoined duties of all citizens of India. And, of course, the State, as representing the core of

power and as the legal instrument of society, has the consequential obligation to promote, through each Government in the country, such developments and to check any backsliding from the path towards constitutional goals which, apart from any merely consequential obligations, are found directly and expressly stated in the Preamble and also flow from the Directive Principles of State Policy laid down in our Constitution.

7.35 Now religious freedom is an especially important part of that general freedom of expression about which the Supreme Court of India spoke as follows in Bennet Coleman Co.'s case (see 1972) S.C.C. p. 788 at p. 828, per Beg J.).

> "Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. Voltaire expressed a domocrat's faith when he told an adversary in argument : 'I do not agree with a word you say, but I will defend unto death your right to say it'. Champions of human freedom of thought and expression, throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members."

7.36 When we come across instances of hostility by "men of religion" to new scientific knowledge, at certain stages in the world's history, such as that the earth is round and not flat and that it goes round the Sun, or the prohibition by State laws, until quite recently, in parts of U.S.A., of teaching of the theory of man's biological evolution from lower forms of life, we realise the importance of religious freedom for the growth of modern scientific knowldege and outlook and temper. And, of course,

religious freedom of belief, expression, and practice is a matter of vital importance for the protection of rights of religious minorities.

7.37 Religious freedom of minorities can be jeopardised or denied by two types of actions : firstly, actions of organs of State, whether Executive, Legislative, or Judicial, and secondly, in the voluntary social sphere, when powerful individuals, representing a section constituting a religious majority, act aggressively towards a religious minority, or, looking at intolerance in a different form, where a majority within a religious minority operates oppressively, through social ostracism or outcasting or denial or deprivation of religious or even civil rights, towards a minority within a minority. In the first type of discrimination against a religious minority, the State, through governmental action, uses its coercive power to establish or enforce religious tenets and becomes theocratic. Such would be a government either directly by a priestly class or by one which enforces the opinions given to it by a sacerdotal class. In the second kind of violation of religious freedom, the offending individuals or sections may be attempting to act in an illegal fashion within a secular Democratic Socialist Republic, like ours, whose Constitution does not permit either of the two types of violation of the basic right to religious freedom. This Commission's duties embrace pointing out of cases of both types of violations of the Right to Religious Freedom so that authorities concerned may take appropriate action, and, if necessary, appropriate laws may be enacted or ones offending against Religious Freedom may be replaced.

(ii) *The Secular State*

7.38 A secular State not only separates religion from politics and law and economics, so that it cannot embark on political, legal or economic policies or programmes on religious grounds, but its organs and officials are duty bound to maintain conditions of religious freedom for all its citizens. Hence, it will not permit discriminatory conduct, on religious grounds, even by individuals

or sections, either against those who profess different creeds or against those who are dissenters within a religious fold. This, in fact, is the basic difference between a Theocratic and a Secular State. Unfortunately, the importance of this distinction is not understood by even some educated people in our country.

7.39 Religious freedom is only possible, in a real sense, in a secular state which maintains the conditions of such freedom for all its citizens. It ensures that there is no discrimination on grounds of religion either in the official or in non-official voluntary spheres of activity.

7.40 In order to prevent the State developing theocratic or discriminatory tendencies, the secular state as well as its citizens have to take every possible measure to maintain a healthy outlook of citizens towards religious freedom although this freedom operates in a sphere where the State cannot impose any restrictions except for the reasons given in Article 25 of our Constitution (*i.e.* to safeguard public order, public health and morality, or fundamental rights of all citizens). To maintain these conditions of religious freedom, there has to be freedom not only to believe and worship as one pleases but also to criticise any form of belief or worship without offending religious sentiments by attacking persons or objects of religious veneration unfairly or maliciously. The maintenance of a just and proper beneficial balance, between these two sets of consideration, which may appear to be conflicting at times, is not always easy.

7.41 Only in a country with a secular state, where religious freedom is maintained, will it be possible for writers like George Bernard Shaw or H. G. Wells to criticise religious tenets. Even the Anglican Bishop Robinson, a pillar of the Church of England, could now write in his book "Honest to God" that the old concept of the Universe, with the heavens above, where God Almighty, like a human being, sits on a throne in the Seventh Heaven, the humans on the earth below and the fires of hell beneath, has collapsed, without his being hounded out of

his high religious office or declared a heretic or an atheist. He tells us that Christian beliefs have undergone a revolution as a result of the spread of secular science and better knowledge about the Universe. He conceives of God not as a divine being seated above but as a power operating within and around human beings themselves. He develops this Vedantic concept further in his book called "Truth is two eyed". Again Dr. Don Cupitt, the Dean of Emanuel College, Cambridge, can write today (*See* : "Sea of Faith" by Dean D. Cupitt) that not only the vertical concept of religions, making a distinction between one's own "superior" religion and the inferior religions of others lower down, but also the horizontal classification of religions, meant to give effect to equality of respect for religion of every kind, under the influence of a belief in a set of natural universal principles common to all religions, has given place to a new attitude looking upon religion as an aid in the practical art of living. He says :—

> "This is a new kind of voluntary and fully human faith after the end of the old Cosmos. There is no longer anything out there for faith to correspond to. The only test of faith now is the way it works out in life. The objects of faith, such as God, are seen as guiding spiritual ideals that we live by and not as beings. The very idea of an ontology is, in truth, one of the first things that critical thinking obliges us to give up. The world is not made up of beings but of meanings, and religious meanings are purely practical."

(iii) *"Religion" must also be dynamic*

7.42 References to views of the above writers show that even concepts at the basis of religious faiths, such as that of God in Christianity, are not static. They change. We do not know whether the dynamism of which the Dean of Emanuel College speaks carries us further than what Voltaire meant when

he said that even if there was no God, mankind will have to invent one. Presumably, Voltaire meant that the moral order, based on social utility, requires the concept of a Lord Preserver who both rewards and punishes, inspiring love as well as fear of what could happen in this world and in the hereafter also. If, however, the Dean means that religion has a purely utilitarian purpose, does he carry the concept further than Jeremy Bentham's utilitarianism as a substitute for traditional religion ?

7.43 Attempts to answer the last mentioned question could lead us to believe that religions too, like Secularism, are largely concerned with ethics. As we have already observed, Secularism is defined in the Encyclopaedia Brittanica as a "branch of utilitarian ethics". To some, however, secularism may have a more materialistic content and purpose and may be confined to what emerges as a set of rules deduced by observations of physical facts of Nature and socio-economic transformations and religion deals with spiritual matters. But, Hindu religious literature as well as Koranic verses indicate the important roles of ethics and also contain religious exhortations to draw inferences about nature of the Supreme power of powers and principles or ways of their operations from observations of laws of Nature. We also find references in religious literature to miraculous interferences, by those gifted with super human or 'divine' powers, with what are believed to be ordinary laws of Nature. Can the division between the two aspects of experience be watertight or clear ? This is a subject on which much discussion is possible.

7.44 We, however, know that, with the advance of modern science and technology, the "totalitarian" hold of religion on all aspects of human belief, thought and action retreats to a sphere where religion neither injures those who hold religious beliefs nor could such beliefs injure others. They have to operate in what may be conceived of as a harm-free zone. A demarcation of this zone for all practical purposes should be

possible. It cannot be left exclusively to courts which pronounce only on matters of dispute in legal forms. Positive planning and action after clarification of thoughts and feelings through potent educational processes, constantly operative and wise policies and actions both of the State and of citizens, are needed for satisfying objects of this Commission.

7.45 Inasmuch as different religions reach common conclusions in a general ethical area, they could reinforce each other as well as "secularism" in its ethical aspects and propositions. All really religious people should, in the opinion of this Commission, work for creating a harmony which flows from concentration on common areas of agreement between them. Principles of secular utilitarian ethics can help one to explore these areas of agreement. Differences of beliefs, lore, traditions, and practices could also be seen as differing forms of attempts to serve commonly felt needs and purposes just like differences in food taken or clothes worn are. The common as well as different purposes and fields of secularism and religion could emerge from specialised studies. Harmony and understanding could displace conflict and suspicion if we plan for it. And, such planning means utilisation of experts who are social philosophers and not mere bureaucrats.

7.46 Even using the term "religion" to indicate what determines only our concepts of the Supreme Power or Powers and forms of worship of such Power or Powers, instead of conveying its derivative sense of a "binding force", which all elements of "human culture", whether secular or religious, can be, our aim is a society where differences of religion do not affect the conduct of human beings adversely towards each other. Such a society, free from discrimination on grounds of religion, was visualised by our Constitution makers. It was a harmonious pattern because of their abounding faith in the virtues of Secularism, as explained above, and its logical consequence—Religious Freedom. They believed that through such freedom, which exists in a secular society, religion will find its

appropriate place and functions which do not conflict with secular ethical norms.

7.47 Social philosophers writing on religion, such as Durkheim, have pointed out that religious values in every society have social utility and important functions to perform. Indeed, Durkheim goes so far as to say that a society's objects of worship are determined by what is considered socially most useful or valuable in it. For example, in a rural society, the cattle may be worshipped. In a martial society, weapons may form objects of veneration and even worship and religious sentiments may be attached to them. In a peace-loving society, virtues which preserve peace and goodwill amongst men will be given the highest importance and pivotal positions by religion. The object of religious freedom is, however, to secure, even within a controlled political, social, and economic order, freedom of religious intellectual and sentimental orders. In this way, we are expected to find ways of reconciling our religions with secularism and not of discovering or introducing conflicts between them.

7.48 Freedom of religion involves the liberty to believe in the crudest forms of primitive animism or worship of Nature as well as the most refined and sophisticated kinds of belief or disbelief, thinking, and feeling about the Supreme Power governing the Universe. It also leaves individuals free to worship the Power or Powers they believe in as they please. Nevertheless, when any belief or practice, even if "religious", impinges on any of the fields which the Secular State can regulate, it becomes subject to restrictive or regulatory laws in the interests of the common good and freedom of all. Among these restrictions on freedom of expression and action fall those also which are designed to prevent injury to religious sentiments or attacks on venerable religious personalities or objects. Freedom of thought and sentiment and action from malicious and unwarranted attacks covers the sphere where the State may impose restrictions in the interests not only of public order,

public health, or public morality, but of religious freedom of individuals guaranteed by Article 25 of the Constitution.

(iv) *Functions of the Secular State*

7.49 The Secular State safeguards, through limits imposed by the law, religious sentiments against malicious wounding as well as the right to criticise all religious beliefs and practices soberly and objectively. A secular State, such as ours, has to perform, in this way, the dual and difficult tasks of maintaining due "respect" for all religions as well as freedom to criticise what may be, rightly or wrongly, believed to be religion. Committed as we are to adopt, unless we recommend changes there, the approaches contemplated by our Constitution and the laws, as they stand today, we are bound to point out that our secularism is not hostile to religion. It does not seek to eliminate religion from the lives of our citizens altogether. It is meant to secure conditions for the free exercise of the right to religious belief and worship as well as the right to freely but soberly and rationally and objectively criticise or to propagate any religion. It may, and should, however, so operate, primarily in the voluntary sphere of free criticism, as to rid religion of anything harmful done under its guise or cover.

7.50 The limits within which conversion from one faith to another can be propagated have also been the subject matter of decisions of our courts. It has been laid down by our Supreme Court that, whereas propagation of religion, including attempts to change the religious beliefs and practices of people, are covered by the right to freely practise, profess, or propagate religion, yet, the use of deception or fraud or holding out temptations of wordly benefits, or threats of injury (which should, we think, include threats of divine displeasure) are not permissible in a secular state.

7.51 Although, it is a part of the duties and responsibilities of all organs of the Republic, both Central and in the States, as well as of our citizens, to ensure due respect for and enforcement of basic human rights, including that of religious freedom

(relevant Articles 25 to 28 of our Constitution, under the heading of "Right to Freedom of Religion" are reproduced in Appendix III), yet, while doing so, they cannot avoid taking into account certain changes and developments of thought, feeling, and attitude, which have become prevalent in those parts of the world where freedom of thought on religious matters is permitted because the concept of the State and its functions are secular. Freedom of thought and expression on many matters, including those which used to be considered "taboo" at one time or to be the exclusive preserve of "men of religion", have to be permitted more widely now by the Secular State.

7.52 One of the results of developments of thought, feeling, and attitudes, due to advances in our knowledge of the Universe and free thought on religious matters and discussion was, as observed earlier, a horizontal or egalitarian classification of religious beliefs and practices of various brands of religion, as Dean Don Cupitt points out. Hence, those who worship Powers or Deities, in the form of idols installed in temples, in ways prescribed by their traditional ritual, were placed on an equal footing with those who, while dominated by a missionary zeal to convert "heathens", conceived of God in anthropomorphic terms, and believed that he was sitting on a throne, in the Seventh Heaven, feeling angry with certain human beings and pleased with others and awarding punishments or bestowing rewards just as human beings do. Neither the functional view of religion, by Anthropologists, like Malinowski and Durkheim, pointing out the same kind of function of every religion, nor the discovery of a common thread of universally acceptable and accepted ethical principles or precepts underlying various religions, has prevented the development of a new "vertical" classification in the realm of religious thought and feeling. The new type of gradation does not depend upon principles believed to be ordained by a Divine Power or Powers, but, as Dean Don Cupitt thinks, on the practical utility or value of Principles and precepts. In other words, Secular utilitarian ethical criteria and values are now imported even by people of religion into their

thinking to judge the social and practical utility of religious beliefs and practices prevalent within a society or a nation.

7.53 One of the functions of the modern "Secular" and "Socialist" State, visualised by our Constitution, is the application of a new secular socio-economic ethical set of values even to what may be otherwise permissible "religion" under the caption of "religious freedom". In this new scale of values, attempts to convert people from one traditional religion to another may be seen to involve a kind of conflict or such disturbance of public order, due to preaching of the superiority of one traditional "religion" over another, as to fail to pass the test of Secular Utilitarian Ethics. Hence, the means employed, the ideas advanced, and the motivation underlying attempted conversions become relevannt. Any politically motivated religious conversions would certainly fail to pass the criteria of secular ethics enjoining the social good in a Social Democracy.

7.54 The secular State has, however, to be impartial in applying the criteria of secular ethics when it prohibits any alleged "religious" practice. For example, if religious processions are to be banned in a particular locality, due to communnal tension, the prohibition must not appear to be or actually be operative against one side only. It should cover all those against whom the danger of provocation, even by carrying on a lawful activity, may exist. In Beatty Vs. Gillbanks, an English Court held that even an otherwise legally permissible activity may have to be prohibited where no other method of preserving public peace and order is reasonably available. If utilitarian secular criteria can be used by the executive authorities in England, the reputed and, and for some, a hallowed home of religious freedom and personal liberty, to prohibit otherwise legal activities, why can they not be used in our country, if an unfortunate situation calling for such restraints does arise ? What has, however, to be ensured and made clear beyonnd the region of any doubt, is the impartiality of all such action taken.

7.55 An obvious method in which a modern Secular State, meant to ensure impartiality, can so act as to inspire more confidence, particularly amongst religious and linguistic minorities, in the complete integrity and impartiality of its actions, which have to be necessarily firm and unpleasant in grave situations, is to select, honour, and encourage officials and dignitaries of State who are, in their speech and action, demonstrably above prejudices on grounds of religion, language, caste, or religion. A very salutary feature of the present Constitution of our Secular Republic, with a strong Centre, is that the Central Govt. has the power as well as duties, which are always coupled with power (See : Julius Vs. Bishop of Oxford) to ensure due compliance with the Constitutional and legal obligations of the State and its officials and functionaries, at every level, to act impartially and in such a manner that their integrity and impartiality are demonstrably above board and beyond suspicion.

7.56 The powers and duties of our Central Government towards the States, which it has, very rightly, not refrained from exercising whenever need has arisen, do not rest on mere convention but on the express provisions of Articles 256 and 257 of our Constitution. Nevertheless, as responsibility for the protection of lives, liberties, and properties of members of religious and linguistic minorities is not expressly mentioned in these articles, and, as doubts are sometimes raised by those unfamiliar with the special needs of our Secular, Socialist, Sovereign Republic, this Commission would recommend that any grounds for possible doubts be clarified by a constitutional amendment by adding, just like present sub-articles (2) and (3) of Article 257, an additional sub-article to the following effect : "The executive power of the Union shall also extend to giving directions to a State on all matters involving National Integration and Secular Traditions, such as due protection of lives, liberties, rights, properties, and interests of members of religious or linguistic minorities". It is suggested that, due to the vital importance of this subject, such an addition, which may be made, for clarification and out of abundant caution, may be numbered as sub-article

(2) and the remaining sub-articles may be suitably renumbered as (3) and (4) and (5).

(v) *Declaration of Religious Freedom*

7.57 The rules, subject to which complete religious freedom exists in our Secular, Socialistic, Democratic, Sovereign Republic, did require, in the opinion of this Commission, an elaborate setting out of constitutionally correct approaches for guidance of the Governmental authorities as well as of citizens. Hence, to meet the basic need to maintain freedom of religion within our secular State, as explained above, this Commission drew up and placed before the Central Government a Declaration of Religious Freedom, explaining its approach and indicating the conditions of religious freedom.

7.58 This Declaration, set out in its Fourth Report, meets, in the opinion of this Commission, a felt need for correct criteria and a statement of policy in dealing with questions of religious freedom requiring : firstly, a separation of what could be called "religion" from secular activities; secondly, laws to prevent and punish misuses or exploitation of religion to serve political or economic interests; and, thirdly, the laying down of rights as well as limits of the rights to criticise rationally and soberly all religious tenets while abstaining from defamatory statements or hurting of religious sentiments in criticising religious tenets and practices and personages. The correctness of all secular activities, such as politics, law, economics, and aesthetics, is to be tested by principles of secular ethics. This is the thinking underlying this Declaration.

7.59 It is unfortunate that this important and delicate part of the work of this Commission, in drawing up a Declaration of Religious Freedom, containing guidelines for judging the validity of legislation, which is sometimes alleged to violate principles of religious freedom in certain States of India (this has happened in cases sent to the Commission) or of any executive

and judicial actions, has not been noticed even by the English Press which is expected to give information on matters of importance to educated classes in our country. Probably, this is explicable when the Commission, though expected to serve as a "clearing house" for information relating to all matters affecting minorities, has not yet got an information officer of its own who could understand and pick out important bits of work done by this Commission and ensure that due publicity is given to it. To be able to do so, officials of the Commission have also to understand and be conversant with policies of this Commission and with ways chosen by the Commission to carry out its objectives. Only by doing so can they explain and justify them to the public as they should be able to do.

7.60 Constant study to acquire knowldege of all relevant facts, as they occur, as well as of ways of interpreting them, in the light of our objectives and advancing horizons of knowldege and thought, are very necessary for serving adequately the objects for which this Commission was set up. The Declaration of Religious Freedom, drawn up by this Commission, should help officials of this Commission also in appreciating this Commission's approach to religion and all questions involving religious freedom.

(vi) *Three types of Secularism and their impacts on Religion*

7.61 Having indicated the very broad meaning of secularism we adopt in our country, as a necessary concomitant of a democratic system which attempts to realise all urges for freedom, including those of religious freedom, we should perhaps indicate the two other types from which we differentiate our secularism.

7.62 Firstly, ours is not a technically narrow sort of secularism confined in its connotations to anti-sacerdotalism or anti-clericalism that arose in Europe due to exploitation and misuses of religion by a priestly class. That kind of secularism appeared in a special context and its importance was a passing phase. It

has retreated into the background because exponents of traditional religion occupy now backseats in the West. And, in any case, religion has been also purified by the processes of the kind of broader secularism we have spoken of. Religion is not allowed to harbour exploiting predatory elements in the West as a rule.

7.63 Secondly, our Secularism is certainly very different from any crusading anti-religious faith of those who, attributing nothing beyond evil consequences to traditional religions, describe it as an "opiate of the masses" and regard it only as a means of exploitation adopted by harmful vested interests and predatory elements and seek to suppress all forms of traditional religion.

7.64 Our broad type of secularism looks upon traditional religion, of every label, with benevolent neutrality. It would like to see the end of exploitation or of use of religion for political and economic purposes and to purge it of superstitions and harmful predatory practices. But, beyond that, it encourages religion as a part of beneficial human activity in so far as it can satisfy and serve the criteria of utilitarian Ethics which are secular. Hence, we tend to employ the term secularism for a healing, freedom supporting, harmonising factor in our thoughts and feelings which enables religions and cultures not only to survive and live but to do so with all the force and vigour they can do this without harming the general social welfare.

7.65 In a book called "Sea of Faith", Dean Don Cupitt of Emanuel College, Cambridge, has examined the impact of the broad secular thinking on the evolution of Western religious thought. As we have observed already, this led to the dissolution of what may be regarded as religious tribalism which placed one's own religion, however defective and full of superstitions, right at the top and the religions of others below it. This "horizontalism", as the Dean calls it, placed "idolators" and

"heathens" on the same footing as practitioners of so called higher religions where concepts of God were no less anthropomorphic. Secular rationalism, thus operating on religion, had the effect of dissolving religious prejudices.

7.66 Misuses of what was claimed as parts of religious freedom and prevalence of casteism and chauvinistic lingoism in our country still remind us of tribalisms which could be more deleterious than what the West had experienced. Hence, we certainly need to develop a new kind of vertical set of values in which all the good elements of all religions are placed at the top, whereas harmful inferior practices lower down, indulged in under various religious labels, could be put and categorised together and sought to be eliminated. The impact of our secularism operating as a new social, economic, ethical and moral force resulting from modern knowldege, science, and enlightenment can elevate traditional religion by purging it of noxious elements. This is a delicate and difficult task requiring specialist thinking and sound recommendations for an intellectual and spiritual reawakening and uplift of the mass of our people even on matters relating to religion. It can take place more through better education through means mentioned earlier than laws meant to punish offenders or to reward those who support its purposes.

7.67 We have, however, recommended below the adoption of a policy which may operate selectively so as to encourage those filled with a new urge to profess and practise secular enlightenment and to discourage those who look backwards and downwards and act in ways which could make the lives of fellow citizens, and, in particular, of members of religious minorities or other weaker sections miserable. Giving effect to such a scale of values requires recognition and appreciation of individual worths in place of a mechanical evaluation of persons according to their supposed group identities which characterise primitive thinking and approaches to relations between human beings.

D. *Certain Requirements of policy*

(i) *Need for understanding paramount objects of policy*

7.68 Our State's paramount policies need to be explained and expounded to all those, whether officials or others, such as journalists and educationists, who may be concerned with moulding, chalking out, and adoption of appropriate practical measures to carry out our basic objectives. The extent to which actions taken or abstained from succeed in realising the objectives determines the success or failure of the policy which motivates the actions taken. Sound policies are generally based on a mastery of the science and art of successful implementation. These are not natural gifts but emerge from deep and extensive serious study, knowledge and experience. This Commission tries to supply a need for wise guidance, but it is frank and modest enough to think that this need could be served still better by a National Integration-*cum*-Human Rights' Commission it strongly recommends.

7.69 We have pointed out repeatedly that promotion of "Secular traditions" and of "National Integration" are the positive and constructive aims of the Minorities' Commission of India. These purposes are overlooked by those who erroneously seem to think that the Commission's only function is to project and publicise the grievances of religious and linguistic minorities.

7.70 No doubt, the constructive function of proposing remedies, both curative and preventive, for what has been compared to a disease—communalism—does involve investigation of symptoms and their causes also before sound and effective remedial measures can be suggested. But, perceptive and correct diagnosis, with a view to finding remedies for an ailment, is to be distinguished from purely carping criticism and what has been rightly called "grievance politics", going to the extent of inventing causes for complaint with a view to making political capital out of them. And, this is precisely where the utility of a Commission, such as the Minorities' Commission of India,

becomes manifest. It could impartially hold inquiries in order to "separate the grain from chaff", as a court is expected to do, and then give sound and correct advice and make helpful recommendations. If it does this, it is not likely to please people who expect what would be unfairness on its part. It is not a judicial authority. But, its views, to be sound, judicious, and respectable, have to be impartial.

7.71 The Commission's critics must realise that irrational opposition or criticisms which are not constructive could neither help to build secular traditions nor to promote national integration. It has to be the policy of the Commission to make only recommendation which benefit minorities by promoting secular traditions and national integration. The paramount purposes have to be borne in mind always. Their meanings have had to be propounded in order to indicate to the critics that the very assumption underlying the creation of the Minorities' Commission cannot, as a matter of policy, be stultified or abandoned by the Commission.

7.72 The Commission's objects are not, as some critics would have us believe, meaningless. Their vital importance has been attempted to be shown in the course of the 4th report and the 5th (that is this one) report of the Commission. If the purposes of the Commission, as set out above, are paramount, our attempts to suggest institutional reforms to coordinate all efforts, including those for removal of grievances of minorities, through appropriate institutional instrumentalities, are necessarily covered by the terms of reference of this Commission.

(ii) *Rewards and punishments as a matter of policy*

7.73 If the above mentioned purposes are paramount, this Commission thinks that their realisation will be considerably helped and expedited by an appropriate system of rewarding those, particularly in government services, who manifestly serve the paramount purposes and punishing those whose actions or activities run counter to these basic purposes for which this Commission was constituted.

7.74 Indeed, this Commission thinks that this policy should not only be pursued by the States as regards promotions or demotions of government officials and distribution of benefits to citizens, but it should also extend further to appropriate actions taken by the Central Government against those State governments whose policies do not serve the paramount purposes as explained above. The Central Government could show its disapproval, even going to the extent of dismissing of a State Government, when a government pursues policies which run counter to the interests of national integration and secular traditions.

7.75 The safeguarding of interests and welfare of religious minorities was one of the special individual responsibilities of the Governor of a State under the Government of India Act. 1935, on which the pattern of State Governments is based under the present Constitution. It should now be so treated as a matter of a convention covered by express Constitutional provisions (*vide* Articles 256 and 257). The Central Government has evolved and followed, very rightly, a very appropriate and necessary convention to show special concern for needs of law and order involving the security and protection of religious and linguistic minorities as its very healthy intervention in Assam recently shows. It has the power to issue special directions to State Governments under Article 257, although the protection of interests of religious and linguistic minorities is not expressly mentioned there. Therefore, this Commission has suggested a constitutional amendment for purposes of clarification. It may be pointed out that in a system such as ours, as explained by the Supreme Court, in the State of Rajasthan V/s Union of India, the power of the Central Government extends to even dissolving State legislatures and dismissing state Governments after declaring the President's Rule when this may be necessary for the prevention of the basic democratic structure. National integrity and Secular traditions are inescapable parts of such a basic structure.

(iii) *Needs of a Crusade*

7.76 A crusade for the adoption of such a policy at all levels of thinking and action on the part of all functionaries of State, as well as of citizens, so that all may conduct themselves as human beings who respect and observe the set of values mentioned above, already embodied in the Universal Declaration of Human Rights and other documents, such as the two conventions, one on civil and political rights and another on economic and social rights, may require the creation of new and carefully trained and selected cadres of State officials, administrators, Police officers, as well as social workers and educationists who could work dedicatedly to free our country from the canker of what is called communalism which springs from a false sense of identity of members of ethnic, religious, or cultural groups. In other words, the primitive view that the group identity, and not the human identity with its longings for universally accepted values, determines one's position in society, one's rights and duties, one's whole outlook and conduct, will have to be displaced by the propagation and inculcation of a set of bonds which, if they are not stronger than those of blood, as Mahatma Gandhi, Father of our nation, wanted them to be, are atleast much stronger than those of community or religion, region, or language.

7.77 The poisoning of thoughts and feelings of the young and the old by highly noxious anti-social divisive, disruptive, dis-integrationist notions, which disturb their minds and enable them to imagine that they are acting as heroes and protagonists of their religious faiths, when they may be acting as nothing more than despicable tools of highly potent worldwide economic and political forces, will have to be removed by every conceivable means. Institutional machinery for sustained and systematic thinking and action for the removal of these notions will have to be set up. This Commission thinks that such machinery will have to be necessarily far more potent and effective than the Minorities' Commission of India, with its present personnel and limitations, has been.

E. *Meaning of National Integration*

7.78 National Integration implies, in the context in which the expression is used in the terms of reference of this Commission, fitting a part into the whole so that it functions harmoniously. In explaining what should be the relations between religious minorities and majorities, it is often assumed that there are such things as group identities or even group minds functioning against each other. Such concepts generate hostile feelings against each other and assumed clashes of interests. The intelligentsia or better educated people should know that this is not so. Bearing in mind the needs of national integration, this Commission adopts a definition of national integration given by its Chairman as below :—

> "National Integration is not just a banding together to protect our lives and limbs, our hearths and homes, the honour of our women folk, the safety and dignity of our persons against lawless elements instigated by internal or external foes. It is much more than that. It involves meeting of hearts and minds of citizens. It means a feeling of oneness, of belonging to one another, and to one's country. It implies all that patriotism and cooperative national effort generate. It connotes, as Edmund Burke once said of the State, not merely a temporary association, but a permanent 'partnership in all art, in all science, in every virtue, and in all perfection'. It is, like true love, a 'Northern star' which 'alters not when it alteration finds' or 'an understanding that grows bright' with the passage of time. It holds aloft all that is bright and glorious in our past and present. It holds forth the promise of a more magnificent tomorrow. It wipes off all that is painful and unpleasant in our memories of the past. In this, it is like that complete understanding which produces complete forgiveness. It can be defined

> as *that understanding of one's ownself and our relations with other citizens of our country, coupled with appropriate action, which fit us into an integrated whole proceeding, or, if one may import some 'martial' terminology, 'marching' in a disciplined harmonious fashion towards nationally set or accepted goals. No one who refuses allegiance to these goals or to adopt peaceful and non-violent methods of pursuing them could be a friend of the country. It is thus a test of our faith in outselves, in our countrymen and in our country's past, present, and future.* Can we afford to neglect so important a subject ? The answer given to this question by our Prime Minister, Shrimati Indira Gandhi, has always been an emphatic 'NO'."

7.79 Mr. Nirad Choudhury, writing in an article in Times of India in December 1982, seemed to think that Gandhian ways of thinking have failed to unite us as citizens. He thought that there were only three possible solutions to Hindu-Muslim conflicts. These were : either the majority somehow eliminates the minority, or, the majority reduces the minority to the position of second-rate citizens or "Zimmis", as is the case in certain theocratic states, or all citizens, taken together, work out a "feasible solution" by living in culturally separate segments, presumably equal in status, with mutual respect for each other. The first two suggestions are considered "unethical" by him as they involve genocide or apartheid. His views on the third suggested solution, however, remind one of a stage in American thinking when Blacks, though theoretically equal, had to live in separate compartments, as they still do in South Africa, so that, in practice, they got separation but not equality. Mr. Choudhury, completely overlooking the whole trend and broad thrusts of bases of life and thought today, which are undergoing, largely imperceptibly, revolutionary shifts due to modern science and technology caricatured in Elvin Toffler's "Future Shock" and his more hopeful "Third wave", derided the integrationist thinking

of Mahatma Gandhi. But, this Commission thinks that Gandhian charity is all the more necessary today due to the vast explosions of knowldege and developments of modern technology, which could destroy all life on earth unless we develop or build a new climate of integration, through universalism and humanism, in our ethics and politics and other spheres of life, translated into a world recognised law which is honestly and impartially enforced everywhere. This involves the triumph of a world wide Human Rights' movement.

7.80 This Commission recommends to the intelligentsia of this country a better understanding of and feeling for a vision of India which great leaders of the Indian Independence struggle, such as Mahatma Gandhi and Jawaharlal Nehru, had given us. Without such a vision, it is not only the minorities, but the majorities also will suffer grievously. If the spirit of the nation perishes, the nation itself could not survive. Sowing of dissension is exactly what the British did to exploit us to serve their own selfish ends and to perpetuate their rule in this country. The result was a disastrous partition of India the harmful consequences of which still jeopardise our future.

7.81 The Commission is firmly of the opinion that Dr. Annie Besant's dream of an India fulfilling her destiny deserves constantly to be borne in mind by those in search of better national integration :—

"Hark the tramp of marching numbers,
India waking from her slumbers;
Calls us to the fray.
Not with weapons slaughter dealing;
Nor with blood her victory sealing;
But, with peacebells loudly pealing;
Dawns her freedom's day;
Justice is her buckler stainless;
Argument is her rapier painless;
Truth her pointed lance;
Love her shining glance".

F. *Conclusions and recommendations*

7.82 The object of this Chapter has been to explain the importance of secular traditions and national integration and to indicate how these could be promoted and strengthened. All that we have said and also all that is happening around us indicate a crying need for better national integration and better ways of achieving it. The need is for dynamism and action in the directions indicated. These are, we believe, possible if the recommendations of this Commission are accepted.

7.83 We now revert to the question of giving institutional form and shape to policies outlined in the previous Chapter and this one for the purpose of realising the paramount objects of this Commission. We have in this Chapter and in the last Chapter, tried not only to identify problems but also to indicate our thinking in devising means for tackling these problems by research on facts and thinking out both short term and more lasting solutions of the kind of problems we have indicated. The terms of reference of this Commission and the next Chapter on Plans for the Future Work of this Commission also indicate the type of institutional set up through which such work can be better carried out. We have not suggested, anywhere, the supplanting of the existing constitutional and legal machinery for administering justice although our proposals, in keeping with thinking in many countries, do involve considering additional machinery for meeting demands of justice in an increasingly complex multicultural and multireligious society whose problems of national integration are undoubtedly and obviously intensifying and multiplying. These demands can only be satisfactorily met by setting up supplementary agencies for dealing with them.

7.84 We had recommended in the Fourth Annual Report the setting up of a Committee to consider the need for considering and, if necessary, to formulate a scheme to establish a National Integration-cum-Human Rights' Commission, for promotion of secular traditions and national integration as explained above. The proposals of such a Commission could make the work of the

National Integration Council more meaningful and securing observance of human rights of all, as visualised by the framers of our Constitution and the Universal Declaration of Human Rights, more effective.

7.85 We would also like to make it clear that we are not proposing the abolition of this Commission. The kind of work it could do is not unnecessary for the welfare of the nation as a whole and for religious and linguistic minorities in particular. We are recommending the merger of this Commission into a larger one with more comprehensive functions and adequate powers and personnel, so that the work entrusted to the Minorities' Commission could be done really well, and more effectively from the point of view of its objectives.

7.86 In order to help the proposed National Integration Commission, or, even before it could be set up, to facilitate the work of the Minorities' Commission of India, we put forward the following additional recommendations :—

A National Integration Institute may be set up functioning under the directions of a National Integration-cum-Human Rights' Commission, and, before such a Commission could be set up, it should function under the directions of the Chairman of the Minorities' Commission of India. It should have a special staff of at least three trained permanent research field workers, chosen and appointed by the Minorities' Commission of India, to carry out schemes of study of Human Rights' problems and other difficulties of minorities, which may be assigned to the Institute for study by the Commission, so as to enable the Commission to suggest better solutions of immediate problems, arising from time to time, as well as for improving implementation of general and continuing policies and programmes for a more rapid development of a secular outlook

and traditions and promotion of national integrations and respect for human rights amongst all Indian citizens.

7.87 This Commission also recommends that the Central Government as well as the State Governments may frame schemes of rewards and punishments of government officials as well as of citizens on grounds of reliable tests to be formulated by this Commission for judging services or disservices to the causes of development of secular traditions and promotion of national integration.

7.88 This Commission also recommends the adoption by the Union Government, acting as the best and most authoritative and powerful organ of the State in the the Indian polity, of a policy which takes into account the views of this Commission on performances of State Governments in developing or obstructing the development of secular traditions and promotion of National Integration. The opinions of this Commission on such performances, supported by reliable facts and cogent arguments, should be considered as the best impartial indicia available to the Central Government on such questions for deciding upon appropriate corrective measures against State Governments where these may be needed.

7.89 This Commission also recommends the insertion in Article 257 of our Constitution, through a constitutional amendment, of the following new sub-article (2), and that the remaining sub articles (3) and (4) and (5) of Article 257 may be suitably renumbered :

"(2) The executive power of the Union shall also extend to giving directions to a state on all matters involving National Integration and Secular Traditions, such as due protection of lives, liberties, rights, and properties of members of religious or linguistic minorities".

CHAPTER VIII

PLAN OF WORK FOR FUTURE

8.1 In its 4th Annual Report, the Commission has identified as many as 14 items for making in-depth studies (Appendix XIII). However, since the proposal of the Commission in respect of additional staff could not be accepted by the Home Ministry so far, it has not been possible for the Commission to carry out the in-depth studies on these subjects.

8.2 The study in respect of personal laws governing members of minority communities, community-wise, so as to find common principles which could prepare the ground for a future uniformity in such personal laws and also to suggest any possible improvements or reforms in the personal law of every community and the ways of achieving these has been started. The Chairman has prepared a note in respect of personal laws of Muslims (Appendix VIII-A). An opinion has been given against legislative interference with these laws in view of the good work being done by judges in India. Other members are preparing notes in respect of other communities.

8.3 The studies identified by the Commission cover wide ranging topics. Most of the studies are of fairly specialised nature and cannot be undertaken by the existing staff of the Commission. The Commission has, therefore, decided to take up the studies on the following subjects only on priority basis :

(i) Preparation of demographic profiles of minority communities.

(ii) Study of reports/recommendations on communal riots since 1947—guidelines for dealing with communal tensions and disturbances.

(iii) Minority educational institutions and rights and duties in particular.

(iv) Study of educational problems of Muslims.

(v) Plans for economic, educational, and social development of educationally backward sections of all minority communities.

(vi) Special difficulties and problems of each linguistic and religious minority throughout India.

(vii) Need for uniformity of Economic, Social, Educational and Cultural development of all minorities in accordance with constitutional objectives.

(viii) Removal of obstacles to the performance of duties of citizens as found in Chapter IV A of the Constitution and ways of promoting development of a composite culture and National Integration through :

(a) State action.

(b) Voluntary activities of Citizens.

Convention of State Minority Commissions, Members of National Integration Council, etc.

8.4 The Commission proposes to hold a convention of the representatives of minority communities, State Minorities Commissions, Members of the National Integration Council, representatives of the State Governments, annually. The object of holding of such conventions is to provide a National Forum for exchange of views on the problems of minority communities and also to discuss the following problems :

(i) Need for specific machinery in every state to look into the problems of religious and linguistic minorities regarding the deprivation of safeguards provided in the

Constitution, Central and State Laws, Government Policies and Administrative Schemes, etc.

(ii) Status of the Central and State Minorities Commissions.

(iii) Powers of the Central and State Minorities Commissions to examine persons, records, documents, etc.

(iv) Organic link and coordination between the Central and the State Minorities Commissions and distribution of areas of work amongst them.

(v) Need for more frequent consultation between Minorities Commissions and Governments.

8.5 We formulated, in Chapter IX of the Fourth Annual Report, a number of proposals in general terms for future work of this Commission in keeping with the paramount purposes of this Commission. We stated them so comprehensively that we could use the statement as a test for judging the extent of success of future performance every year by examining what we said then. We, therefore, reproduce the whole of this short Chapter from the Fourth Annual Report. We said there as follows :

8.6 In the past, a number of issues affecting the minority communities have been identified and dealt with. Representations from individual members of minority communities have also been considered. This is proposed to be continued by the Commission, but, in view of the limitations of the Minorities' Commission, both from the point of view of its legal powers as well as its personnel or staff available to it, the Commission could only "look into" alleged grievances and forward them to authorities against which complaints were made. Not infrequently authorities concerned themselves wake upto actual or possible injustices and remove grievances. In a number of cases, however, the grievances are found to be unsubstantial. The replies sent by the authorities concerned show that this is the case. Such cases are then colsed after informing the complainants. The future

plan of work of the Commission, while continuing whatever may be possible for it to do in this direction, involves breaking new ground and embarking on fresh fields of endeavour.

8.7 The most crying need of the nation, as seen by the Minorities' Commission, is for better National Integration. In the period under report, it has done some useful work in this direction by attempting to formulate principles (e.g. principles of Religious Freedom (Annexure VIII of 4th Annual Report) & suggestions on rules of conduct to be observed by members of political parties for achieving better National Integration. It is proposed to carry out the following work so as to explore in greater depth, the imperative needs of minorities and ways of meeting them in keeping with the welfare and strength of the whole nation as contemplated by the Constitution :

(i) To formulate principles of National Integration in the form of general guidelines to be followed by State organs as well as by citizens so as to be better able to achieve cultural and psychological harmony between all sections;

(ii) To propose rules of ethics and conduct for every class of citizens as well as Government servants so as to promote communal harmony and removal of all reasonable grievances of members of minority communities. This has already been undertaken and some suggestions have been made regarding the conduct of members of political parties which have, however, not evinced enough enthusiasm in this vital sphere of our national life, despite the fact that the Prime Minister, Shrimati Indira Gandhi, rarely deals with any subject without touching some important aspect of National Integration and development.

(iii) To examine the nature of education to be imparted to coming generations from the point of view of

national integration, particularly revision of curricula so as to introduce a better written national history, promotion of better ethical and moral standards, study of comparative religious and other aspects of culture with a view to building patterns of behaviour which will protect the interests of minorities;

(iv) To explore other methods of bringing about better understanding between communities and promotion of national integration and a secular outlook through possible changes in Constitutional and other laws;

(v) To study modes of national integration adopted in other countries such as U S.A., Japan, China, Yugoslavia and U.S.S.R. in their attempts to promote the interests of minorities without jeopardising national interests and the extent to which their experiences could be utilised by us;

(vi) To undertake study of working of laws relating to administration of charitable endowments of trusts amongst different religious minorities, and to recommend better modes of utilisation of funds of these endowments and trusts for betterment and development of each community on right lines;

(vii) To elucidate principles governing the rights of minority educational institutions contained in Article 30 read with Articles 25 to 29 of the Constitution and the extent to which enactments in various States affecting minority institutions need modifications in the light of principles found in the Constitution;

(viii) To study the personal laws governing members of minority communities, community-wise, so as to find common principles which could prepare the gorund

for a future uniformity in such personal laws and also to suggest any possible improvements or reforms in the personal laws of every community and the ways of achieving these;

(ix) To study the cultural and educational patterns, including those resulting from religious and moral instructions, prevalent in every community, to examine its shortcomings and possible benefits, and to suggest ways of improving these;

(x) To study the rights of women and children and other weaker sections especially in each minority community and ways of protecting their interests, for promoting their progress and better realisation of their human rights by them;

(xi) To examine legal and administrative shortcomings and deficiencies from the point of view of protection of the rights of members of all minority communities. These are proposed to be examined state-wise so as to provide a comprehensive picture for the whole of India when such work of the Commission, which has not yet begun, is completed;

(xii) To explore every avenue of progress and uplift of each minority community economically, politically, socially, educationally, morally, intellectually, culturally, psychologically, and spiritually;

(xiii) To examine and expose fearlessly the nature of all threats to the above mentioned avenues from whatsoever quarter the threat may exist or may come so that it may be removed or averted; and

(xiv) To make available, by means of appropriate publications, such information about minority communities in India as is contemplated by imposing upon it, in the terms of reference creating the

Commission, the obligation to serve as a "clearing house of information."

8.8 Using the above statement as a test of what we may have accomplished this year, we can say that we have worked in particular on Nos. 1, 3, 4, 8 and 11 of the proposals. We are aware of our shortcomings and limitations. We have proposed methods, including a complete re-shaping of the character of this Commission, by merging it with a National Integration-*cum*-Human Rights' Commission. We have advanced detailed reasoning in the last two Chapters why this should be done. Hence, it is hoped that it would not be possible now to say that we have not identified problems or indicated why we consider the remedy proposed to be the most appropriate in meeting the needs of minorities which have to be viewed in the context of the needs of the whole nation, and, indeed, the worldwide scope of a Human Rights' movement. We have set out our ideas on Secular Traditions and National Integration.

8.9 As we are going to continue working on the lines indicated in the Fourth Report, a repetition of what we said there with regard to the future plan of work should guide us in proceeding further on the lines we proposed there. We propose to continue working on the lines indicated there. We will go on indicating every year the extent to which we have succeeded or the manner in which we consider we have proceeded on the lines set out in the Fourth Annual Report of this Commission or considered that changes or additions in the proposals are needed.

8.10 We would, however, like to indicate that whereas, we have devoted our attention very largely in this Report and in the Fourth Report to clarify the meanings and significance of the development of our Secular traditions and strengthening of National Integration, in future we propose to turn our attention especially to the development plans and projects of governments, both at the Centre and in the States, and assess the extent to which they have been successful throughout India.

CHAPTER IX

CONCLUSIONS AND RECOMMENDATIONS

9.1 The task of stating conclusions in the form of recommendations is simplified in this Report as we have made relevant recommendations at the end of each Chapter. Hence, the conclusions and the recommendations we propose are merely extracts of what we had already proposed on the strength of reasoning given in each Chapter. In this Chapter we have only collected in a brief form the recommendations emerging from discussions in each Chapter. Our recommendations are as follows :

I. Emerging from the Special Report on provisions relating to communal activities are the following recommendations :

(i) That, the State Governments be directed by the Central Government to order the setting up of a cell of members drawn from minority as well as majority communities in each district to keep a watch over individuals as well as groups and parties indulging in such activities. Care should be taken to ensure that its members themselves are not communal.

(ii) That, the State Governments be directed to order district authorities to institute prosecutions freely of individuals whose actions or spoken or written words constitute sufficient grounds for prosecution under Section 153A or 153B or 153C I.P.C. either on information supplied by the cells constituted by the Government or on information received otherwise.

(iii) That, special watch should be directed to be kept on the activities of members and office bearers of every organisation believed, on substantial grounds, to have been formed for promoting or indulging in

communal objectives common only to members of a particular cultural or religious community, or caste, or group.

(iv) That, lectures for the general public should be arranged by these cells for explaining the messages and meanings of different religions on matters connected with communal harmony. Such lectures should be directed towards elimination of all hatred and disharmony.

(v) That, the Central as well as State Governments should issue directives for schools, universities, political parties and service clubs asking them to form similar cells and to arrange similar lectures.

(vi) That, directions be issued both by Central and State Governments for associating members of minority communities with those of majority communities in all important social, cultural, and economic programmes and activities.

In this important report (Appendix VI), the Commission recorded the following conclusions :

(i) Firstly, although a communal organisation could be defined in the way suggested in this report, yet, the mere membership of a communal organisation could be an offence for each individual member of the organisation only if the expressed objects of the organisation include commission of criminal offences to the knowledge of the members concerned or where the activities of the organisation in which the member concerned participates are such that the member could be reasonably presumed to know that criminal offences would result from these activities.

(ii) Secondly, it is difficult under the law, as it stands today, to ban a communal organisation merely on the ground that it indulges in political activity although communal or religious organisations should certainly not be formed for the purposes of political activities. Political activity should represent the interests of the nation as a whole and not merely of a section of it only. As the law stands at present, prohibition of political activities by religious or communal organisations is a matter of ethics which can be enforced only by building up public opinion against misuse of either religion or politics. It has to be remembered that what is believed to be ethically correct today may be the law of tomorrow.

The disestablishment clause of the American Constitution, separating the Church and its activities from those of the State, and, a similar provision in the Constitution of U.S.S.R., give effect to the secular foundations of the Constitutions of both these States. Although, our Constitution has not got a separate clause separating religion from politics, yet, its implications lead to that result. Secular foundations of our Constitution should perhaps be placed on a clearer footing by the kinds of amendments in law, even in the Constitution, and actions suggested in paragraphs 21 and 22 of the Special Report, and even without such amendments, existing law, which has enough teeth to deal with communal activities, should be freely used.

(iii) Thirdly, it ought not to be overlooked that, so far as electioneering on communal grounds is concerned, it is already banned and falls within the purview of corrupt and illegal practices prohibited by provisions of the Representation of People Act and

that communal activities of individuals are already punishable under sections 153-A and 153-B of I.P.C. A copy of extract from the judgment of Beg. J., In Bukhari's case is annexed as *Annexure-B* of Appendix-VI.

(iv) Fourthly, there could not be much difficulty in arriving at the anti-national character of an organisation or its design to promote commission of offences punishable under sections 153-A and 153-B I.P.C., when the official representatives of an organisation, proclaim and assume responsibility for commission of acts like hijacking of a plane or sacrilege with a view to offending the religious sentiments of another community. The difficulty arising in other cases, where the actual activities may be governed by secret directions but they are attempted to be concealed by misleading statements of ostensibly laudable express objects, the test could be circumstantial on the following lines :

(a) The number of incidents of communal character in which the members of the organisation are found to be involved; and

(b) the cumulative results of the various activities of the organisation.

Our intelligence agencies must become more efficient and honest so as to be able to unravel the true character, objects, and results of activities of organisations trying to conceal their real designs. A strict watch should be kept not only on the office bearers and members of suspect organisations but also on activities of and expressions of opinion by Government officials who may be inclined to be sympathetic towards such organisations.

A solution of the problem of "subjective" assessments of what are "communal organisations", mentioned in the communication from the Home Ministry, would present no serious difficulty if officials entrusted with appropriate decisions are impartial, conscientious, and experienced in appraising evidence for which courts have laid down a number of very helpful guidelines making even a man's state of mind "as much a matter of evidence as the state of his digestion". Evidence, so long as it is relevant and comes from reliable untainted sources, always provides an "objective" basis for a conclusion which need not be arbitrary at all. It is not so much the subjectivity of a judgment—best of judgements are often "subjective" in a sense—but its erroneous conclusions or obvious arbitrariness or whimsicality of it which could be objectionable. Procedural rules framed elaborately by courts, such as the need to record reasons for a decision after hearing both sides, are intended to guard against such errors.

(v) Fifthly, banning of organisations and punishment of individuals could remove symptoms temporarily but the deep roots of the disease which produces them could only be effectively tackled by thorough-going national drives with the aid and co-operation of appropriate institutions and of all political parties for achieving the commonly accepted goal of national integration which is a necessary condition of sustained progress and development of our nation towards the objectives proclaimed in the Preamble to the Constitution. Punitive action, to serve a constructive purpose, must operate only as a part of the nation's education in national integration. The Commission also said in this special report as follows :

"A criminal conspiracy is defined in Section 120-A of the I.P.C., as an agreement between two or more persons to do or cause to be done either an illegal act or any other act which, though not illegal, is to be accomplished by illegal means. The proviso to Section 120-A lays down that a mere agreement to do anything will not constitute a conspiracy unless the agreement itself is one for the commission of a criminal offence, or, alternatively, some act follows the agreement to commit illegality. It is also made clear by an explanation to Section 120-A of the I.P.C., that even an objectionable incidental object could make the agreement a conspiracy even though the ultimate object may be legal. Thus, the definition enables the criminal courts to go into incidental and implied objects. In as much as the agreement itself has to be for committing a criminal offence, a vague or misleading 'agreement' may be insufficient to impute the knowledge of all its possible consequences to every person who is a member of an association based on an agreement whose activities result in criminal offences. This is also a question of proof depending on evidence against individuals accused of an offence. In cases where the objectives of the association are unmistakably clear and come within the mischief of either Section 153-A or 153-B I.P.C., the mere membership of an association with such criminal objects could be deemed to be the result of a criminal intent and conspiracy. But, even in such cases, the accused could prove that he was ignorant or deceived or not really aware of the expressed objects. In making mere membership of a communal organisation illegal, the juristic elements of a crime could not be overlooked. In other words, each individual charged will have to

be proved to have "mens rea" and to have exhibited it by committing wrongful act or "actus reus".

"Other difficulties in the way of making mere membership of a communal organisation, as defined above, an offence, could arise by looking at the provisions of Article 19(1) (c) and Article 19(4) which subject the fundamental right of association, guaranteed by Article 19(1)(c), to reasonable restrictions in the interest of "sovereignty and integrity of India" or 'public order' or 'morality' only. It may be contended that at least the first part of the definition of a communal organisation, suggested above, consisting of a pursuit of "the object of exploiting a difference of caste, community, religion, race, culture or region for the purpose of obtaining unfair advantages at the expense of other communities", will not come within the purview of permissible reasonable restrictions. In view of the decision of the Supreme Court in the State of Madras Vs. V. G. Row (AIR 1952 S.C. 196), a restriction which is either too vague or does not impose sufficient procedural safeguards, such as the duty to give notice to an offender against it, could be held to be void. It is difficult to foretell what the ultimate result of litigation may be in such a case unless an offence connected with the membership of a communal organisation is clearly brought within the category of what can be reasonably done keeping in view the provisions of Article 19(1) (c) and (4) of the Constitution. It is, however, suggested that the path would be easier if the salutary provisions of Article 31-D of the Constitution, which were repealed by the Janata Government, were restored to

the statute book in some form under prevailing conditions in India. That Article reads as follows :

"31-D (1) Notwithstanding anything contained in Article 13, no law providing for—

(a) the prevention or prohibition of anti-national activities; or

(b) the prevention or formation of, or the prohibition of, anti-national associations, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31.

(2) Notwithstanding anything, in this Constitution, Parliament shall have, and the Legislature of a State shall not have, power to make laws with respect of any of the matters referred to in sub-clause (a) or sub-clause (b) of clause (1).

(3) Any law with respect of any matter referred to in sub-clause (a) or sub-clause (b) of clause (1) which is in force immediately before the commencement of section 5 of the Constitution (42nd Amendment) Act, 1976, shall continue in force until altered or repealed or amended by Parliament.

(4) In this Article,—

(a) "Association" means an association of persons;

(b) "Anti-national activity", in relation to an individual or association, means any action taken by such individual or association—

(i) which is intended, or which supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory

of India or the secession of a part of the territory of India or which incites any individual or association to bring about such cession or secession;

(ii) which disclaims, questions, threatens, disrupts the sovereignty and integrity of India or the security of the State or the unity of the nation;

(iii) which is intended, or which is part of a scheme which is intended, to overthrow by force the government as by law established;

(iv) which is intended, or which is part of a scheme which is intended, to create internal disturbance or the disruption of public services; and

(v) which is intended, or which is part of a scheme which is intended, to threaten or disrupt harmony between different religious, racial, language or regional groups or castes or communities.

(c) "anti-national association" means an association—

(i) which has for its object any anti-national activity;

(ii) which encourages or aids persons to undertake or engage in an anti-national activity; and

(iii) the members whereof undertake or engage in any anti-national activity."

In view of the anti-national activities of some ostensibly social and cultural but actually anti-national and dangerous organisations, judging from the results of their activities encouraged by certain external forces hostile to the national interests of our country, it seems to the Commission that the ambit of the definition of "unlawful activity" in Section 2(f) of the Unlawful Activities (Prevention) Act 37 of 1967 is too narrow as it is confined to support of claims for cession or secession of Indian territory or to activities intended to bring that about or to disrupt the sovereignty or territorial integrity of India. It seems to the Commission that the scope of the definition should be widened so as to include the grounds in the repealed Article 31-D (iv) of the Constitution which ran as follows :—

> "(iv) which is intended, or which is part of a scheme which is intended, to create internal disturbance or the disruption of public services;"

It seemed to the Commission that the above mentioned provisions of the repealed Article 31-D (iv) would be covered by Article 19(4) of the Constitution authorising imposition of reasonable restrictions on the right to form associations provided restrictions are in the interests, *inter-alia* of "public order". The Commission, therefore, strongly recommends :—

(a) that, the scope of "Unlawful Activity" in the Unlawful Activities (Prevention) Act 37 of 1967 be enlarged by adding to the definition under section 2(f) of the Act as Clause (iii) of it the above mentioned provisions of the repealed Article 31-D (iv); and

(b) that, in any case, the prosecuting agencies all over the country may be directed to make use of the provisions of Sections 153-A and 153-B of the I.P.C. liberally so as to enforce better discipline in matters relating to communal harmony and national integration.

"It seems to the Commission, that for the purposes of checking most of the objectionable activities of associations which may require to be banned in the interest of communal harmony, the two steps recommended above are enough. Existing legal provisions must also be utilised fully for the purposes for which they are intended.

"The ambit of 'unlawful activities' may, however, require to be enlarged further in order to check the proliferation of associations intended to damage harmonious relations between communities. This could be done by adding, as clause (iv) of Section 2(f), defining 'unlawful activity' in the Unlawful Activities (Prevention) Act 37 of 1967, another clause which was there in the repealed Article 31-D as clause (v) and which ran as follows :—

> "(v) which is intended, or which is part of a scheme which is intended, to threaten or disrupt harmony between different religious, racial, language or regional groups or castes or communities."

"The danger, however, in introducing this wider category is that the enlargement may be challenged as outside the purview of permissible restrictions contained at present in Article 19(4) of the Constitution on the right of association unless the words 'or national integration' were added after the words 'public order or morality' as a permissible ground of restrictions upon the right of association. In the alternative, Article 31-D of the Constitution may be re-introduced so as to provide a more comprehensive protection to any law made to curb associations intended to disrupt communal harmony. The need of such legislation to curb dangerous activities of communal associations and of steps under it is borne out by publications in newspapers and periodicals in general. An instance is an article in the magazine entitled 'Sunday' dated 14-3-1982, an extract from which is found in the attached *Annexure A* to Appendix VI.

"As regards electioneering based on communal grounds, it has to be remembered that it is already a corrupt and illegal practice as defined by section 123 of the Representation of People Act. The reason why such activity is not permissible and would invalidate a candidate's election has been explained at some length as inconsistent with the very basis of a secular State by Beg. J (Now Chairman of the Minorities' Commission) in Bukhari's case (Z. B. Bukhari *Vs.* Brij Mohan Ramdass Mehra and others (1976) (2 Supreme Court Cases 17)."

II. Emerging from the report of the Chairman after his visit to the Gita Foundation Conference at Bangkok is the following recommendation :

That, the Education Ministry may be requested to direct inclusion of a scientific study of anthropological or functional aspects of religious teachings of different religions in educational curriculae in order to promote national integration, harmony, and goodwill between people of different religious faiths and creeds.

III. Emerging out of the study of general principles underlying the personal laws of the Muslim minority are the following recommendations :

(i) That, Muslims may be assured that no change in their personal laws by legislation is contemplated without any demands from the Muslim themselves.

(ii) That, it may be clarified that, Muslim Personal Law enjoined by a Statute, known as the Shariat Act, 1937, recognised by our Constitution, is satisfactorily administered by the Ordinary Courts duly constituted under the law and that this system needs no change.

(iii) That, it may be declared by the Central Govt. that, although no personal laws of minorities will be changed except in response to demands of the minority concerned itself, yet, Article 44 of the Constitution, incorporating healthy principles of a secular society, cannot be deleted from the Constitution.

IV. Arising out of the report on the Assam disturbances, the Commission recommends :

(i) That, the Government of Assam may be directed to take stringent measures to protect lives, liberties, and properties, and all rights of persons living in Assam, and in particular, of members of minority communities in Assam.

(ii) That, regular tribunals be set up to determine questions of disputed nationality or citizenship in accordance with law.

NOTE : This recommendation has already been acted upon by the Government.

V. Emerging from the report of Member, Gyani Sujan Singh's visit to Amritsar and matters relating to the Punjab problems are the following recommendations :

(i) That, the Central Government and State Government of Punjab may make it clear by declarations that mixing up of religious with secular demands is contrary to the basic tenets of a secular State.

(ii) That, however, having regard to the stage of development of secular outlook in general, the religious demands of the Akalis may be separated from the secular ones and referred to the Commission, if necessary, for its views.

(iii) That, the secular demands of the Akalis may be referred by the Central Government unilaterally, if no agreement between parties concerned is forthcoming, to appropriately constituted tribunals or to the Supreme Court of India, for their decisions.

(iv) That, the Government of Punjab may be directed to improve its intelligence services and to streamline and gear its administrative set-up to meet the worsening law and order situation in Punjab.

VI. Emerging out of the report of Shri P. N. Duda, Advocate, on the alleged atrocities on Sikh truck drivers, the following recommendations is made :

That, the Government may send the Commission's conclusions on this report, insofar as these relate to national integration, to organisations working for national integration.

VII. Emerging out of the difficulties of the Commission in obtaining information on matters necessary for it to investigate before giving its opinions, the following recommendation is made once again :

That, the Central Government may be pleased to confer, by a notification under Section 3 of the Commissions of Inquiry Act, the powers of investigation under Sec. 5 of the Act upon the Minorities' Commission of India, subject to the proviso that the Central Government may direct either abstention from such enquiry or dropping of such enquiry by the Commission at any stage if it considers it inexpedient in public interest for the Commission to do so after recording reasons for its direction.

VIII. Arising out of the difficulties of the Commission in carrying on the work of research and other functions entrusted to it, the following recommendation is made :

That, the Minorities' Commission may be empowered to make its own appointments of permanent officials needed for conducting research on a regular basis subject to reasonable

limits to be imposed by the Central Government on the amount of remuneration to be paid for such work.

NOTE : It may be mentioned that the Commission has already got such power to entrust *ad-hoc* investigations to persons or institutions believed to have special facilities or expert knowledge on the subject matter of any investigation.

IX. Emerging out of the incidents about communal riots as reported from various parts of the country, the following recommendations are made :—

(i) The properties of religious trusts, which are often encroached upon and result in tension, should be ordered to be clearly demarcated by local authorities after proper verification and some sort of enclosures should be provided around such properties at the expense of their beneficiaries to minimise instances of deliberate and flagrant encroachment. Legislation should make it compulsory for managers of Muslim Waqfs to ensure that this is done.

(ii) In the vulnerable and riot prone districts, which need to be identified, the heads of the Civil and Police Departments, namely, District Magistrate and Superintendent of Police, should not belong to the same community.

(iii) The Police forces, particularly the armed constabulary, should be re-organised so as to include a substantial percentage of members drawn from the minority community.

(iv) Severe punishment should be imposed on anti-national, anti-social, and all other elements, including individuals and office bearers of organisations,

indulging in inciting hatred and tensions among communities or resorting to violence against other communities.

(v) Special Courts should be set up for speedy trial of criminal cases relating to communal offences such as rioting.

(vi) The officials who show positive results in containing or preventing the communal troubles and those who suffer physically in the course of dealing with the riots should be suitably rewarded and encouraged.

X. For the reasons contained in Chapter VII of this Report, the following recommendations may be adopted by the Central Government :

(1) A National Integration Institute may be set up functioning under the directions of a National Integration-*cum*-Human Rights' Commission, and, before such a Commission could be set up, it should function under the directions of the Chairman of the Minorities' Commission of India. It should have a special staff of at least three trained permanent research field workers, chosen and appointed by the Minorities' Commission of India, to carry out schemes of study of Human Rights' problems and other difficulties of minorities, which may be assigned to the Institute for study by the Commission, so as to enable the Commission to suggest better solutions of immediate problems, arising from time to time, as well as for improving implementation of general and continuing policies and programmes for a more rapid development of a secular outlook and traditions and promotion of national integration and respect for human rights amongst all Indian citizens.

(2) This Commission also recommends that the Central Government as well as the State Governments may frame schemes of rewards and punishments for government officials as well

as for citizens as a result of reliable tests, to be formulated by them, for judging services or disservices to the causes of development of secular traditions and promotion of national integration.

(3) This Commission also recommends the adoption by the Union Government, acting as the best and most authoritative and powerful organ of the State in the Indian polity, of a policy which takes into account the views of this Commission on performances of State Governments in developing or obstructing or neglecting the development of secular traditions and promotion of National Integration. The opinions of this Commission, on such performances, supported by reliable facts and cogent arguments, should be considered as the best impartial indicia available to the Central Govt. on such questions for deciding upon appropriate corrective measures against State Governments where these may be needed.

(4) This Commission also recommends, for purposes of clarification and removal of all doubt, the insertion in Article 257 of our Constitution, through a Constitutional amendment, of the following new sub-article (2) and that the remaining sub-articles (3) and (4) and (5) of Article 257 may be suitably renumbered :

"(2) The executive power of the Union shall also extend to giving directions to a State on all matters involving National Integration and Secular Traditions, such as due protection of lives, liberties, rights and properties of members of religious or linguistic minorities."

9.2 Having indicated our recommendations, we may observe that only three of us are still the Commission's Members out of the total membership of the Commission during the period covered by this report. This report is, therefore, signed by three of us only. Unfortunately, it is unduly delayed due to difficulties

we have already indicated above arising out of changes in the Commission's Secretariat and other factors. The Chairman had to write large parts of the report himself. But it has been carefully examined and discussed by all of us and its contents are unanimously adopted by us.

Sd/-
(M. H. Beg)
Chairman

Sd/-
(Ven. K. G. Bakula)
Member

Sd/-
(Sujan Singh)
Member

New Delhi,
December 21, 1984.

OPINION AND SUGGESTIONS OF THE CHAIRMAN ON FUTURE OF THE MINORITIES' COMMISSION OF INDIA

A. GENERAL

1. Despite the fact that every Annual Report of the Minorities' Commission, including this one, reproduces the Government of India's Resolution of 1978, setting up the Minorieties' Commission, there is considerable misunderstanding about the place of the Minorities' Commission in the scheme of the Government of the country, about its objects, about the ways in which they can be served, and about the nature of the powers and procedure needed for due performance of its functions. Anyone who is acquainted with the basic principles of interpretation of a legal document should be able to explain the purpose of this Resolution fairly satisfactorily.

2. In the Fourth Report of the Commission, an attempt is made to explain the theoretical basis of a Commission such as the Minorities' Commission of India. The following paragraphs from the Fourth Report are reproduced as they will serve to emphasise what such a Commission is meant for in the modern context :

3. "Modern Government has become extremely complex. In every sphere of it, it has to be carried on with the aid of experts. The advice of experts has, however, to be given in such a way as to make it comprehensible and acceptable to the representatives of the people under a democratic form of government. It has to give cogent and convincing reasons in the light of national objectives to support its recommendations. The setting up of such a Commission is, undoubtedly, a device intended to facilitate the operations of democratic Government and to enable it to meet the needs of a complex multi-religious and multi-cultural society in a modern world where the welfare of each individual

and group depends upon the strength and welfare of the whole nation; and the nation, too, has to fit into an "organically" interlinked world where differences in concepts and institutional mechanisms between different nations have to be harmonised."

4. "A Commission such as the Minorities' Commission ought to be able to suggest ways and means of such integration. This undoubtedly, seemed to be the idea behind entrusting the Minorities' Commission with the function of carrying out study and research, which the Government departments, headed by overworked Ministers, even with the help of a bureaucracy, which is no less short of time and burdened with work of executing governmental policies, could not be expected to satisfactorily discharge. Moreover, the recommendations of such a Commission, arising out of its independent critical analysis, could provide a means of avoiding mistakes and discovering fresh constructive approaches, ideas, and methods of dealing with all problems concerning religious or linguistic minorities and acquainting Government and representatives of the people assembled in Parliament with its views."

5. "Such a Commission is expected to provide new ideas and analytical studies of working of all laws keeping in view the interests of minorities. It is to make useful assessments of policies and to suggest guidelines for the execution of Central and State Governmental policies in confirmity with constitutional principles and objectives. Indeed, it could even suggest amendments to the Constitution or any of the laws where this may be necessary for safeguarding or promoting the interests of minorities and for integrating them better with the rest of the nation so as to contribute to national strength and progress and not to hinder these."

6. It is evident that the Commission is intended to supply something over and above what overworked Ministers or the bureaucracy, expected to help them, could do. It is to operate as

a "think bank" supplying useful and constructive ideas. This, however, should not give grounds to suspect or believe that a Commission, such as the Minorities' Commission of India, is meant in any way to obstruct any Government in the discharge of its duties to formulate laws or to administer or to execute requirements of laws through normal channels. On the contrary, the obvious purpose of the Commission is to facilitate the task of a "government of laws and not of men" by reference to certain healthy and basic principles. Nevertheless, inasmuch as laws are meant to serve human needs and the legal and administrative mechanisms are operated by human beings, the Commission cannot, in the discharge of its functions, ignore the human element in making its recommendations.

7. The laws and Governmental policies and administrative schemes, and the Constitution, the Preamble of which provides the key to the Constitution's meaning, are mentioned in the Government Resolution setting up the Commission. The relevant portion reads as follows (*vide* Appendix-I).

8. "Despite the safeguards provided in the Constitution and the Laws in force, there persists amongst the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the effective enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in Central and State laws, and in Government policies and administrative schemes enunciated from time to time."

9. The Central Government Resolution refers to the paramount object of "preservation of secular traditions and promotion of national integration" which are the very reasons for "attaching the highest importance to the enforcement of safeguards provided for the minorities". It, therefore, expresses its "firm view"

that effective institutional arrangements and implementation of all the safeguards provided for the minorities in the Constitution, in Central and State laws, and "in Government policies and administrative schemes enunciated from time to time" are needed for removing the grievances of members of minority communities so as to integrate the nation better.

10. It seems clear that everything done by the Commission must be related to the paramount purpose of building up and strengthening secular traditions and promoting national integration. It is an institutional arrangement for the purpose of assessing operations of laws, both constitutional and ordinary, as well as of governmental policies and administrative schemes in their impacts on the minorities as essential parts of the nation with a view to finding out how the paramount objects can be best served and recommending measures with this end in view. These are no mean tasks.

11. I reproduce below the functons of the Commission as found in the resolution setting it up :

"(i) to evaluate the working of the various safeguards provided in the Constitution for the protection of Minorities and in laws passed by the Union and State Governments;

(ii) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards and the laws;

(iii) to undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the minorities;

(iv) to look into the specific complaints regarding deprivation of rights and safeguards of the minorities;

(v) to conduct studies, research and analysis on the question of avoidance of discrimination against minorities;

(vi) to suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the Central or the State Governments;

(vii) to serve as a national clearing house for information in respect of the conditions of the minorities; and

(viii) to make periodical reports at prescribed intervals to the Government."

12. The terms of reference of the Commission are so very wide and comprehensive that they bring within their scope surveys of all laws, both constitutional and ordinary, which affect minorities as well as suggestions for their amendment. In view of the importance attached to removal of grievances of members of minority communities, as one of the matters covered by the terms of reference and to enable it to satisfy constitutional objectives, the context and requirements of its functions are explained as follows in the Fourth Report.

13. "Expressed in the Preamble of our Constitution is a whole set of broad and basic concepts of general welfare and a just and desirable political, legal, and socio-economic structure resolved upon by the representatives of the nation in the Constituent Assembly. These are elaborated further in the Directive Principles of State Policy in Part IV, together with the respect for Human Righs defined in Part III, and the duties of the Citizens, laid down in Part IV-A of the Constitution. Within the framework of these concepts, principles and suggestions relating to the rights of minorities and policies affecting national integration have to be formulated. These concepts clearly indicate both the ends as well as the means of such national integration. It is for the people who made the Constitution and not the Courts

to change such ends or means constituting a basic structure. Of course, the Commission can, where necessary, make its suggestions to Parliament to even change the basic structure. It is no doubt a very responsible, important, and difficult task."

14. "Among the terms of reference of the Commission is found the function of assessing the extent of success or failure of constitutional and other legal provisions which serve the interests of minorities. This certainly requires a very high degree of legal knowledge in those who discharge the duties entrusted to the Commission. It requires constant study and research into the working of constitutional and other legal provisions in addition to considerable knowledge and experience of men and affairs, and, in particular, of the problems of minority communities in all parts of the country."

15. "The terms of reference also indicate a desire to remove the grievances of members of minority communities in order to create a pervading sense of equality, justice and security amongst them. These are the best safeguards of national objectives. Therefore, there is a mention in the terms of reference of the Commission that the Commission must look into the grievances of minorities."

16. If, as is clear from the Resolution creating the Minorities' Commission, it is to assess and recommend, after necessarily determining what has gone wrong in the laws or policies and schemes, it has to have personnel competent enough to fully understand and discharge such highly important functions and also powers of investigation which will enable the Commission, with the help of its personnel, to perform its duties adequately. This is apart from the duty of enforcement. Investigations are needed in order to find out why certain constitutional and legal requirements are or not effective enough. The Commission has, therefore, repeatedly asked for these very necessary powers to be conferred upon it under Section 5 of the Commissions of Inquiry Act. But, that matter is still under consideration by the

Central Government presumably because there is some fear that these powers may be misused by the Commission or its officials acting on behalf of the Commission.

17. It may be admitted that there is a possibility of misuse of power whenever and wherever power is lodged. For that, reason, the lodging of a very necessary power in appropriate hands on the sanguine assumption that it will not be misused but properly used is not generally refused. If there is, whatever may be its reasons, too great an apprehension of misuse of power, the institution set up may itself become quite ineffective. In fact, the criticism often heard of the Government's policy with regard to the Commission is that the Central Government had not yet granted the Commission even powers of investigation under Section 5 of the Commissions of Inquiry Act.

18. The Commission has made due allowance for the contingency of possible misuses of power by the Commission. It has recommended that the notification conferring power on it under Section 5 of the Commissions of Inquiry Act may contain a proviso that the Central Government may, for reasons to be recorded, stop an inquiry by the Commission at any stage so that the power is not used for ulterior purposes as it undoubtedly can be. But, as already stated above, every kind of power can be abused. An illustrious historian and political observer, Lord Acton, enunciated the famous maxim : "power corrupts and absolute power corrupts absolutely", and Bertrand Russel, in his analysis of power, points out that democracy consists of institutional machanisms of checks and balances for preventing abuses of power. If the Commission is part of such mechanisms, possibilities of misuses of power by it also may justify checks against such abuse but not a mechanism so defective that its efficacy is lost. Nevertheless, neither the Janata Government, which set up the Commission, nor its successor has so far found it possible to arm it with powers needed to make its investigations more authoritative and fruitful.

19. It is true that the Minorities' Commission was set up to safeguard the welfare of religious and linguistic minorities. But, the Commission has not hesitated to ask the questions : Is it possible to do this without examining or suggesting policies which affect the views and actions of members of majority communities towards minorities ? Is it enough that grievances of minorities are dealt with in superficial ways and their removal suggested, such as reservations for jobs given by the State or other facilities and advantages afforded by the State ? If the Minorities' Commission is to make its due contributions for improving the lot of minorities, it should be able to suggest more. It necessarily has to deal with problems affecting not only minorities but also majorities. If its objects are preservation or building up of secular traditions and national integration, these cannot be served without changing conditions, including thinking on the part of both minorities and majorities. It is not enough to help change modes of thought and life of minorities. A corresponding process of change has to take place on the part of the majority community. This should be obvious to anyone concerned with prospects of welfare of minorities which cannot, in fact, be improved much without a change in ways in which members of majority communities think and act. The directions of the change envisaged by our Constitution must envelope thinking and action of both the minorities and majorities. Here, once again, I see the importance of what is called national integration to serve the interests of even minorities themselves better. Such integration, through "Justice : Social, Economic, and Political" and building a "composite culture" must be seen by all as the necessary conditions of progress and welfare of every section of the nation, and therefore, of the whole nation as well.

20. Unfortunately, as soon as efforts are made by the Minorities' Commission to explore or recommend policies which may improve the relations between minorities and majorities or to recommend ways of growth of what is called a "composite culture", the Commission or others putting forward such proposals are looked upon with suspicion and castigated. Those who

exploit communal feelings find their selfish interests, which they identify with interests of the community they exploit, threatened by sound recommendations. Communalists among members of minority communities, therefore, quite naturally but very mistakenly, characterise its integrating proposals and policies as damaging to the interests of minorities. Undoubtedly, this is the attitude of those who indulge in communal politics (some would equate all "Communalism" with this kind of politics). Such people, whether inside or outside the ruling party, have no use for the Minorities' Commission unless it is willing to be used as their tool. The Minorities' Commission has consistently refused to be reduced to such a position despite unfair and shortsighted criticims of its thinking or proposals.

21. Again, there are individuals labouring under a misconception, partly created by a concept of the Minorities' Commission prevalent in communal minority circles : that the Minorities' Commission is meant to extract some special privileges and benefits at the expense of the majority communities or of general welfare. This erroneous view seems to be shared by communalists in the majority community also. It overlooks that the real purpose is to remove the great disadvantages and discrimination likely to be suffered by members of a numerically inferior group in a society where all thinking and action seem regulated by a false division between the interests of minorities and majorities and where organised efforts for obtaining any power or position or benefits are also made along these lines of division. Hence, the Minorities' Commission has to suggest ways of removing handicaps and removing inequalities and bridging unjustifiable gaps. It cannot properly recommend ways of creating new cleavages or differences or for obtaining undue privileges or introducing new inequalities by obtaining any undue or special benefits for any minority group or for any person belonging to such a group. Its true function consists in recommending ways of removing inequalities and disadvantages.

22. A false division of interest results from identifying the totality of one's life and outlook with one's religious and linguis-

tic or even regional identities. Many people do not realise that such divisions and group identities are over emphasised when these make them forget the basic human identity and its needs which should unite both minorities and majorities. The Minorities' Commission of India has set before itself the task of emphasising and bringing out unity of interests between minorities and majorities so as to serve national good and welfare and thus to make clear the purposes underlying our Constitution and the laws.

23. The question thus arises whether setting up of a National Integration-cum-Human Rights' Commission, recommended in the Fourth Report of this Commission, will serve the ostensible objects of the Commission better. That was the main ground on which the study of such a proposal was recommended in its Fourth Report. It is true that the Commission, for want of qualified personnel and facilities for doing much needed spade work and investigation for identifying all the problems arising out of what is called "communalism" or for formulating a scheme for solving them in the manner involved in its proposals, could not be more helpful or elaborate. It is doubtful whether the Commission, with its present handicaps and personnel, can do anything more than to place some beneficial basic ideas for meeting certain obvious requirements of the situation with which the country is faced.

24. The Commission's Fouth Report contains a frank confession that it has not formulated a comprehensive scheme itself for the establishment of a National Integration-cum-Human Rights' Commission. It was content with the recommendation that such a proposal be viewed as acceptable by the Central Government and that an expert body be appointed to frame the comprehensive scheme involved in the proposal. It rejected a proposal for the enlargement of its administrative set up and for establishing its branches all over the country, recommended by its former Secretary, Shri G. S. Sial, as not justified by the present range of powers of the Commission and its restricted

activities and non-specialised officials it gets. It said that a more comprehensive set up would be justified only if the undoubtedly wide purposes of the Commission could be carried out in a more effective and satisfactory manner by a comprehensive and enlarged National Integration-*cum*-Human Rights' Commission with adequate powers and duly qualified personnel. It also raised the question whether the existence of the Commission, with its existing powers and personnel, completely justified the public expense incurred on the Commission and its activities.

B. *Safeguards and Removal of Shortcomings*

25. If we look at the Government Resolution (Appendix-I) again, we will find that the persistence amongst the minorities of a "feeling of inequality and discrimination" is treated as a state of affairs which should not exist in view of the safeguards provided in the Constitution and the laws meant to be enforced and implemented, together with the policies and administrative schmes for the welfare of minorities. Hence the following questions arise :

(a) What are these safeguards ?

(b) What are the institutional arrangements and powers provided for their enforcement and implementation ?

(c) What are the shortcomings in the laws or institutional arrangements ?

(d) How can these be removed ?

(a) *What are the safeguards* ?

(i) *Relation of Articles* 29 *and* 30 *with other Articles*

26. It is true that there are only two provisions, Articles 29 and 30, which contain any specific references to the interests and rights of "Minorities". It is noticeable that Art. 29 contains a "right" to conserve "distinct language, script or culture of its own" possessed by "any section of the citizens residing in the territory of India or any part thereof". Hence, any section as

well as any part thereof has a declared right to conserve its language, script or culture. But, significantly, religion is not mentioned here. Of course, if the term "culture" is given its scientific and anthropological connotation and used for all "cummunicable knowledge", it will include "religion".

27. Apparently, the reason for this significant omission is that "Freedom of Religion" is a heading given to a separate set of fundamental rights contained in Articles 25 to 28 of the Constitution defining the scope of both individual and group rights of citizens so far as freedom of conscience and belief and worship and free profession, practice, and propagation of any religion are concerned. This set of Articles contains Article 26 also which confers upon every "religious denomination" or any section thereof, the right to establish, maintain and administer institutions for "religious and charitable purposes". It specifies the rights of such a denomination : "(a) to manage its affairs in matters of religion; (b) to own and acquire movable and immovable property; and (c) to administer such property in accordance with law". Thus, group rights of individuals professing any particular religion are specifically mentioned here also whereas individual rights of citizens are dealt with in Art. 25 and 27 and 28 of the Constitution.

(ii) *Legal limitations*

28. It has been held, very rightly, by our Supreme Court that a right " to manage" does not include a right to "mismanage" or "maladminister". Furthermore, the right to administer an institution is circumscribed by law, as this is considered a secular aspect of religion subject to regulation by common principles of law which require that religious and charitable purposes will not be deviated from in the administration of charitable and religious institutions.

29. Religious and charitable purposes of an endowment should not be so mixed up with political or any other secular purpose as to be no longer confined to religious or charitable

purposes. Indeed if an instrument creating an endowment leaves it open to the manager or trustee to divert funds to non-charitable or non religious secular purposes, the attempt to make such an endowment will itself fail for this defect (See Md. Yusuf Vs. Azimunnisa 1941 AIR All p. 242). On this aspect of law, we have adopted principles of Anglo-Saxon jurisprudence.

30. Religious freedom is subject also to general regulatory laws for purposes of safeguarding "public order, morality, and health". Article 25 also clarifies that "religion" cannot be used as a cloak for violating fundamental rights of individual citizens whether belonging to any particular religious denomination or not. Hence, the Minorities' Commission, which is bound to uphold the Constitution and the laws, cannot be used as a means of shielding attacks upon or violations of fundamental or other legally valid rights of any citizen or group of citizens by any body or authority either within or outside any religious or linguistic group. We know that individuals within any group can constitute dangers to the health, moral or physical, and well being and happiness of individuals within a group by trespassing outside the sphere of religious freedom and acting even more tyrannically than they could have done towards outsiders.

(iii) *Significance of "Status to Contract" Theory*

31. It may be observed here that, in the last century, Sir Henry Maine advanced a very striking theory of the movement of thought and action, as reflected in the laws of progressive societies, as a "movement from status to contract". He pointed out that, in primitive and ancient societies, an individual counts for nothing apart from his group. All his rights and duties flow from his membership of a group, whether it be a family, a clan, and, in more advanced social and political conditions, a nation. But, the whole trend of modern juristic, legal, social and political thinking is to give the human individual his due place and rights of his own as a member of the human race even against his own group.

32. From this concept of freedom of an individual human being arise all the assertions of the rights and dignity of the individual which found expression not only in aspirations for Liberty, Equality, and Fraternity, the battle cries of the French Revolution, and in the preamble to the Declaration of American Independence, but also in the Universal Declaration of Human Rights, adopted in 1948 by nations of the world as a charter of rights of all human beings all over the world. The Charter provides a legal and moral basis for the yearning for a new international world order free from all injustice and exploitation of artificial divisions.

33. It is noticeable that, whereas after the First World War, the legacy of a past outlook was reflected in a number of treaties for the protection of minorities as groups, the second World War was followed by an apparent change of emphasis to individual Human Rights which has affected the development of modern international law as well. A wider human and not a mere group identity is the basis and necessary implication of this new assertion of rights of the individual as possessed of certain inherent and natural human rights to which he is considered entitled. The sphere of these rights expands with advances in civilisation. The categories of these rights are never closed nor rigid.

(iv) *Position under our Constitution*

34. It may be mentioned here that our own Constitution is really based on an attempt to weave this natural law philosophy of human rights into it, as was pointed out by Chief Justice Subba Rao of the Supreme Court of India in the famous Golakh Nath Case (1967). One can say this without going further and enclosing the wide powers of amendment, contained in Art. 368 of our Constitution, within a restricting judicial framework of a basic structure to which the powers of amendment of the Constitution are confined by the judicially declared wisdom of a slender majority of our highest court. One result of this position is that basic human rights of all minorities, such as the

right to life and liberty, or the right to be free from being discriminated against, could be said to be protected, in India, by such a basic structure too.

35. The most important human rights, such as the right to life and personal liberty and a right to equality before law and to equal protection of laws, declared by Art. 14, are guaranteed by our Constitution for all "persons" on the Indian Soil. The right to be free from discrimination on grounds of religion, caste, sex, or place of birth, is part of basic rights of each individual citizen. And, so are the freedoms guaranteed by Art. 19 of the Constitution. Article 19 contemplates freedom of citizens to communicate with each other, as they must do in exercising their freedoms in speech, expression, assembly, formation of associations, or for practise of any profession, trade, business, or occupation or to reside and settle in any part of the territory of India. On the other hand, Art. 29(2) placed in the category of group rights, makes it clear that "no citizen shall be denied admission into any educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them". Thus, even here the group rights are an extension or an amplification of the individual's rights.

36. The result is that there is no real dichotomy or watertight compartmentalisation between individual and group rights under our Constitution. But, the cultural and educational rights of groups as Minorities are specifically and clearly guaranteed so that a minority group, having a "distinct language script, or culture" of its own, may not be afraid of being obliterated by the steamroller operations of any sweeping legislation designed to destroy any such differences. Articles 29 and 30 are really inserted by way of abundant caution to remove possible doubts or apprehensions although what they guarantee could be said to flow naturally and logically out of previous enumerated individual fundamental rights of citizens. It cannot, therefore, be contended that the scope of consideration, covered by the wide terms of

reference of the Minorities' Commission of India, does not extend to anything beyond the "cultural" and "educational" rights of groups mentioned in Art. 29 and 30 of the Constitution.

(v) *Objective : Secular outlook and National Integration*

37. The result of my consideration, however, is that diversities are not to be converted into conflicts. They are to be preserved and encouraged only so far as they do not jeopardise a fundamental unity and integrity of the nation. The basic safeguard of the whole nation, which includes minorities, is that unity and integrity of the nation which is something much more than what merely laws can build or sustain. The right, however, to a diversity or difference, falling within the basic assumptions, is a constitutionally guaranteed right operating within a well defined orbit.

38. Undoubtedly, that part of the Constitution which contains the Directive Principles of State Policy is intended to lay down the guidelines which the State must follow in its attempts to build and preserve an integrated secular society where individual as well as group rights and identities are harmonised and protected, but the basic unities are not to be lost sight of or destroyed. "JUSTICE : social, economic and political, LIBERTY : of thought, expression, belief, faith, and worship, EQUALITY : of status and of opportunity" are both means and ends of our "Socialist Secular Democratic Sovereign Republic" which was designed to promote : "FRATERNITY, assuring the dignity of the individual and the unity and integrity of the nation".

39. Again, Part IV-A of the Constitution laying down the Fundamental Duties of Indian Citizens, indicates an essential safeguard also. Unless Art. 51-A, comprising Part IV-A of the Constitution, specifying duties of citizens, is observed both in letter and spirit, the other safeguards, the citizens fundamental Rights and the Directives of State Policy, together laying down duties of the State towards citizens, will become mere

paper guarantees without much meaning or substance. Art. 51-A is, therefore, perhaps the most important part of our Constitution from this point of view. It is an exhortation to citizens on matters which, even though falling largely outside the power of courts to enforce, constitute the pivot of any real protection to the lives and liberties and cultures of all Indian citizens, and, in particular, of the minorities. The courts come in where a citizen violates his obligations to the extent of trespassing on the rights of others.

40. I, therefore, need not hesitate to reproduce here what could be the most vital safeguard for minorities, lying largely beyond the power of courts to enforce, but they fall within the sphere of activities of the State and of the various governments, which represent the State, to promote, respect, and encourage in citizens by devising and adopting appropriate systems of selections of individuals who weild power and occupy official position and of rewards and punishments. In fact, the whole legal, educational and administrative machinery of each State should be so equipped and geared as to breed and nurse these qualities in our citizens.

41. The article reads as follows :—

"51-A—Fundamental Duties : It shall be the duty of every citizen of India :—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism, and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."

(vi) *Best Real Protection : Cultural and Ethical Values*

42. In treating what are really duties of all citizens also as safeguards of their rights, and, in particular, of those who, being members of numerically smaller groups, require, even more than others, the observance of certain standards of thought and action towards them, I am only emphasizing certain basic truths which all jurists and social observers recognise : that rights and duties are co-relative or opposite sides of the same coin and that the ultimate safety of values lies in thoughts and actions of citizens built by their education and culture which produce as well as sustain their laws. If the basis of a "culture", using this term in the widest sense of all "communicable knowledge" meant to protect and ensure the progress and prosperity of society, are assailed by undermining its essential values

and by spreading hatred, conflict, and violence, then mere laws, however perfect, and armies, however powerful, may not be able to protect the lives and liberties of citizens for long whether they belong to a minority or a majority community. Such rot, if allowed to creep in and spread, could not be confined to injury to certain groups or communities only. It could destroy the cohesive power of the whole nation unless checked in time.

43. Every religious or linguistic minority is necessarily at a special disadvantage in case any conflict or violence spreads because it is weaker. Hence, it should be the special duty of a majority to protect the lives and liberties of all citizens and to propagate and guard a system of values which ensures this. If minorities cease to be protected in a society simply because they happen to be numerically inferior, it would be because there is degradation in thoughts and feelings and because humanity and human values have been shaken within the social framework. Good and great ideas, producing a humanistic "composite" culture, reflected in a Constitution such as ours, can animate and propel people along the path of progress and prosperity if the ideas are carried out, but vicious ones can, in the same way, destroy all like a fatal contagion or disease which makes no distinctions between majorities and minorities and attacks both if it is permitted to progress. These are truths borne out by the whole gamut of human history, which this Commission need not elaborate further.

44. Our concept of national integration is one of "Unity amidst Diversity". It contemplates fruitful inter-communication and mobility between all religious, cultural, linguistic, social, and regional groups, without forgetting their separate identities in these respects. Nevertheless, unless a common identity, which underlies these separate group identities, is evolved and so strengthened as to overshadow other separate identities, it may be difficult for all Indian citizens to march in a tolerable conjoint cooperative effort towards common goals in a disciplined fashion

and the unity and integrity of the nation may be imperilled. If unity and integrity and even rights to human life, dignity, and personality, and to equal opportunity and to equal protection of laws for members of all groups cannot be preserved, the very purpose of a Constitution and the laws will be frustrated. No safeguard is, therefore, superior to or more effective than demonstrable service to public good or "Salus Populi". Such service should be the real test or criterion for recognition of individual or group worth and qualification to hold official positions and to weild any power in the State.

(vii) *"Salus Populi Suprema Lex"*

45. The maxim "Salus Populi Suprema Lex"—the good of the people is the supreme law—contains a salutary principle, embodied in constitutions of democratic countries, including ours, in various forms, to protect the weak including religious and linguistic minorities. The principle is, however, only available for use by the State and its governmental organs in enforcing the law which circumscribes the State's powers too. It cannot be utilised by individuals or groups operating outside or in competition with constitutionally recognised machinery of Government. Indeed, if individuals or groups, acting extra-constitutionally try to misuse it, the State becomes duty bound to suppress them through its governmental machinery. Our Constitution making postulated a surrender by the people of all right and authority to act on their behalf to this machinery set up by the Constitution. Even the natural law right of private defence of person and property, recognised by ordinary law, is exercisable by individuals only subject to strictly prescribed limitations and conditions. The State and its agencies have also the right to defend themselves and society when either is attacked but its powers are subject to limits meant to preserve humanity, decency, reason and justice even amidst outbreaks of utter irrationality or in times of severest trial and tribulation such as war.

46. The principle of "Public Good" operates in times of war and emergency to support exceptional governmental powers of executive organs of the State acting as defenders of the people. The provisions of Arts. 353 to 360 of our Constitution, contained in Part XVIII, fall under the heading "Emergency Provisions". They are meant to be invoked as a protective cover for the nation when certain contingencies arise putting the existence of the nation itself in jeopardy. And, every section of the nation is entitled to the protection for which this machinery is intended. Indeed, if forces begin to operate within a nation which imperil the very existence and basic human rights of any religious or linguistic minority, in any part of the country, a need may arise to give protection under these emergency provisions. Here, even though the courts may be temporarily deprived of their ordinary power to interfere with exceptional executive powers of the State exercised through its functionaries, yet, the duty of the executive authorities themselves to see that justice is done or rules of fairness observed does not vanish. This was indicated by Beg, J., in the course of a very elaborate judgment of the Supreme Court in Shukla Vs. ADM Jabalpur, popularly known as the "Habeas Corpus Case". It was also pointed out in the course of this judgment that the protection of ordinary criminal and civil laws, contemplated by the Constitution, does not cease to protect citizens whether it be peacetime or war time. During the Emergency, award of only certain remedies by ordinary courts such as a writ of Habeas Corpus is merely suspended for the time being.

47. It has also been pointed out by this Commission in the course of a reply to a query sent by the Home Ministry, dealing with the meaning of "communal activity", that provisions of various heads of Section 153 of the IPC as well as other provisions of our ordinary criminal laws and procedure can operate as sufficient protections against communal activities and disturbances or preparations for them if these provisions are used freely and enforced rigorously by local administrations all over the country.

48. There is, therefore, no want of safeguards in the Constitution as well as in the ordinary laws of the land for the protection of members of religious and linguistic minorities in all parts of the country. The question whether they are satisfactorily or adequately enforced is an administrative matter where, in the face of notorious facts, the Commission thinks there is scope for a great deal of improvement. It does not require much investigation to be able to express such an opinion.

(b) *What are the institutional arrangements and their powers to enforce safeguards?*

49. It is useful to list the institutional arrangements which exist under our Constitution and our laws for the protection and enforcement of rights of members of religious and linguistic minorities before dealing with shortcomings in these arrangements or of making suggestions for removing defects. One may, however, divide them into those which carry with them power to enforce safeguards and those which do not have this power.

(i) *Institutional Arrangements with Powers of Enforcement*

50. Firstly, there are the courts of law set up under the provisions of our Criminal and Civil Procedure Codes and our substantive laws with the details of which we will not trouble the readers. Those who require more information on this subject can get it from books on our Civil and Criminal Laws administered by Judges and Magistrates who are required to act impartially and "without fear or favour, affection or ill-will".

51. At the top of this system of administration of justice is a High Court in every State. Apart from the powers it weilds under the civil and criminal procedure codes and other laws, it has the power to issue general directions, as well as orders or writs, of the nature specified in Article 226 of our Constitution, to all authorities, including government, within a State. It has also a power of superintendence, under Article 227 of the Constitution, over all courts subordinate to it.

52. To preserve a uniformity of legal principles and to provide a supreme judicial authority for the whole of India to lay down interpretations of the law finally binding upon all the courts in Indian territories, as provided by Article 141 of the Constitution, there is the Supreme Court of India established by Article 130 of our Constitution.

53. Apart from the power of the Supreme Court to exercise certain original jurisdiction under Article 131, in disputes arising between the Union and the States or States *inter se*, its civil appellate jurisdiction under Articles 132 and 133, and its criminal jurisdiction under Article 134, the highest court in our land has also discretionary powers under Article 136 of the Constitution to grant "Special Leave" to appeal from any judgment, decree, determination or order in any cause or matter of any court or tribunal in the territory of India, excluding tribunals dealing with Armed Forces. The Supreme Court of India has also got the power under Article 32 of the Constitution to enforce Fundamental Rights.

54. It is true that grievances arising from discrimination against members of minority communities can be decided by courts, as indicated above, in the exercise of their ordinary jurisdictions as well as by our superior courts in the exercise of their extraordinary jurisdictions for setting aside *mala fide* actions violating Articles 14 and 15 or other Articles in Part III of the Constitution and damages sustained from them. But, impropriety of motivation or *mala fides*, under which such discrimination will fall, is so difficult to prove in courts, before which each side tries to twist or conceal true facts to gain strategic advantages and to win, by fair means or foul, and the formal proceedings are so dilatory that, barring extraordinarily resourceful and well to do persons, who can afford to wait and spend time and money, this mode of redress could be deemed

not to be there for all practical purposes even when the allegations are true.

55. Even for other types of cases, proceedings in courts have been found to be very insufficient for securing justice speedily particularly due to the accumulation of vast number of undecided cases in both the trial and appellate courts for a variety of reasons which need not be gone into here.

56. The Minorities' Commission has never suggested that the ordinary courts of law could be or should be abolished or displaced by any quasi-judicial jurisdiction of a Human Rights' Commission or Court either in each State or at the Centre. Nevertheless, what it did suggest and recommend in the Fourth Report was : firstly, a reorientation of the activities of all such Commissions so as to enable them to suggest constructive positive measures to build a secular outlook and achieve national integration instead of merely voicing the grievances of minorities; and, secondly, to consider, by appointing a Special Committee to work out details, if the proposal was accepted, or, in the alternative, to consider whether special quasi-judicial machinery should be set up at all to deal with all complaints of alleged discrimination speedily on the footing that, all human beings having equality before the law, members of minority communities, just like the rest of citizens, enjoy equal human rights.

57. Secondly, there is, of course, the whole governmental machinery with all the three organs of the State, consisting of the Executive, the Legislature, and the Judiciary. The Judicial mechanism has already been very briefly indicated above. A list of institutional arrangements would, however, not be complete if our Parliament and the State Legislatures, with exclusive as well as concurrent lists of legislative powers, and the Executive power covering all matters not assigned to the Legislatures or the Judiciary, are not mentioned here. The Parliament and State Legislatures, however, enact laws which have to conform to the constitutionally prescribed or deducible "basic structure"

as explained by our Supreme Court. But, enactment of laws, which are constitutionally valid, is not their enforcement. All one needs observe here is that the constitutionally prescribed pattern excludes unjustifiable discrimination.

58. All organs, functionaries, and officials of the State are duty bound to uphold the Constitution and all the values it incorporates. According to our Constitution, the Executive machinery is headed at the Centre by the President of India, who has to, under Article 74 of the Constitution, act in accordance with the advice of the Council of Ministers tendered through the Prime Minister. In each State, there is a Governor who acts on the advice of his Council of Ministers headed by the Chief Minister, but, in the case of the Governor, the advice of his Council of Ministers is binding only under a Constitutional convention and not under a Constitutional mandate as is the case with the President of India. This is a significant difference suggesting that the Governor has a wider sphere of discretionary power, where he may not necessarily adopt the advice tendered to him by a State's Council of Ministers but could act on his own views and assessments of the requirements of the constitutional basic structure and values or on Central assessment on these questions. Thus, the Governor may conclude that the Secularism and Socialism of a Democratic Republic, which embraces all the regions, demands conformity to wider norms and values than those which the Government of a State at any particular time recognises and enforces honestly. The President of India and Governors of States are sentinels of constitutionality and are expected to know what this means.

59. It has to be borne in mind that the President of India and the Governor of each State, as well as all dignitaries of State, including Ministers, both at the Centre and in the States, and Judges, both of the Supreme Court as well as of High Courts, take oaths of allegiance to a Constitution that contains the safeguards and obligations for the protection of all citizens,

including the minorities. All are expected to secure freedom from discrimination. This loyalty to the Constitution, which is supreme, makes demands higher than adherence to what may be communal, casteist, or regional, and prevalent in a particular State a particular time. Hence, the exceptional discretionary powers of the Governor may be used to protect secularism and democracy judged by tests which may be perfectly constitutional although they may not accord with those pleasing to the State's Ministers for the time being.

60. At the back of the extraordinary powers of the Governor lie our constitutional and political history and basic structure and realities and their imperative demands which cannot be overlooked. For example, under the Government of India Act of 1935, among the special responsibilities of the Governor was the protection of minorities. Large part of the framework of our Constitution has come from the Government of India Act of 1935. It is noticeable that, whether it was communal rioting or terroristic outbreaks in Bihar or Assam, the strength of the Centre, which the Governor represents, comes to the help of minorities, both religious and linguistic, when their very elementary right to live is jeopardised by disruptive forces of local lawless violence.

61. Protection of rights of minorities, whether religious or linguistic, against discriminatory treatment, should be one of the matters where the special individual responsibility of each Governor of a State as well as that of the Centre comes into play in addition to that of each State's Council of Ministers. This could be boldly emphasised by the Union Government as the representative of the higher values and objects of democratic government and power of the whole of our Sovereign Republic. The Supreme Court of India, in the Dissolution of Assemblies' case [State of Rajasthan *Vs.* Union of India (3 SCC 1977 p. 592)], explained this to justify even central intervention for preserving Democracy itself. It has held that the need for a strong centre emerges out of not only socio-economic pulls but also basic

geopolitical and cultural historically traceable drives towards the integrity and unity of the whole country.

(ii) *Institutional Arrangements without the power of Enforcement*

62. First among these institutional arrangements which carry with them no power of direct enforcement but can have a pursuasive effect in as much as they result in recommendations to the Government which have to be placed before Parliament is the Minorities' Commission of India so far as religious and linguistic minorities are concerned. There are several States also which have Commissions with similar functions. The power to recommend is to be exercised after careful study and analysis of facts and serious deliberation over problems concerning relations between minority and majority communities or otherwise which are important for the welfare of minority communities.

63. The Minorities' Commission is undoubtedly handicapped in the performance of its rcommendatory functions by an absence of power to summon witnesses or to call for evidence. No doubt the Central Government Departments are obliged to furnish such information as the Commission requires. The Commission has, however, felt considerable difficulties in the performance of its functions because of lack of interest or great delay in responding or supplying it with necessary information shown by Governmental agencies both at the Centre and in the States. It is true that there are other urgent problems before the Central and State Governments to attend to. Nevertheless, the Commission would appreciate greater attention to its requirements and speed in supplying it with information and in responding to its communications.

64. So far as the general public is concerned, the Commission has not got any power to compel members of the public to give any evidence. A large number of matters before the Commission require investigations for which it has to depend entirely on information supplied second-hand or voluntarily out of desire

for public service on the part of persons requested to furnish information. The recommendations made repeatedly by the whole Commission asking for powers of investigation, together with a proviso to prevent possibilities of any misuse appear to me to be perfectly reasonable. The suggested safeguard is sufficient to ensure that the power can not be misused. Conferment of such power on the Commission should enable it to express opinion with greater authority and confidence. Its requirements will be more readily satisfied and its utility will be enhanced if it has such powers.

65. Secondly, one may mention here the highly important institutional machinery, both governmental and non-governmental, for the education of our citizens in order to produce a secular outlook and culture that could bind us as a nation. The power this education has can make a world of difference to the enforceability of legal safeguards which can be stultified by an education or lack of education or other factors which generate indiscipline, dishonesty or corruption.

66. Our educational machinery includes schools, either by local governmental authorities or by voluntary organisations, and our universities, run as autonomous organisations, aided by State Governments, in the case of State Universities, and by the Central Government, in the case of Central Universities. Schools and Universities are not directly responsible for enforcement of safeguards but are concerned with education which could promote or hinder prospects of effective enforcement. Their place in building up of appropriate cultural back-grounds and climate cannot be ignored by us.

67. Then there are our news media consisting of the exclusively Central Government controlled radio and television broadcasting systems and of a practically completely uncontrolled press, despite the few norms attempted to be broadly enforced, through the Press Council of India, in rare cases of complaints to it. A vast number of newspapers, journals, and magazines

are published in Hindi, the National language, as well as in English, the link language (in the sense that it links us with each other as well as with the world), and also in numerous regional languages, such as Punjabi, Gujarati, Marathi, Telugu, and Tamil. Urdu is given a special place. It is still spoken and understood by a vast number of people in our country. A number of regional newspapers in North India as well as in South India are published in Urdu. The Urdu press provides a rough idea of the thinking of the traditionally educated Muslims. It also serves as a link with our neighbour Pakistan which has adopted this language, developed in North India principally, as its national language. It has been described as "India's gift" to Pakistan.

68. The cinema may also be mentioned as a growingly important educative factor. Hindi and regional languages are here gradually displacing Urdu, looked upon by some as the Persianised form of Hindi, and the simpler "Hindustani". The cinema makes very valuable contribution to the growth of a "composite culture" in India. Communal harmony is often directly or indirectly inculcated by what it depicts.

69. We may also note characteristics of our literature among educative factors of our people. It has, undoubtedly, a bearing on matters which could make or mar prospects of better National Integration through inculcation of "secular" values. Such inculcation does require a discarding of much that is obfuscatory and superstitious in our lore and traditions. The books produced by our writers either in our Indian languages or in English also disclose much confusion of thought and feelings resulting from a conflict of values between the over disciplinarian, traditional and orthodox ones, charged with sentimentality, and some excessively libertarian Western and modern cynical ones with occasional fairly balanced presentations.

70. There seems a moral and spiritual vacuum in world which, of course, includes India. This explains why certain "spiritualised" forms of mental and emotional satisfaction and

explanations of even very tall claims made in attractive "scientific" language and literature attract many people both in the East and in the West. Here, we enter the sphere of world-wide trends and of controversies I do not propose to resolve here. I indicate it only as a rich field for exploration and for the formulation of a correct and balanced system of values which a National Integration Commission, with the help of qualified experts and institutions, could attempt. The work done by the NCERT and other governmental and non-governmental institutions, relevant for national integration, could also be better utilised and all efforts of every description having a bearing on national integration could be coordinated, analysed, and guidelines for adoption of required policies and programmes could be laid down by a National Integration-*cum*-Human Rights' Commission aided by a Naiotnal Integration Institute.

71. It is not surprising that even well educated and thoughtful Indians, exposed to powerful conflicting currents, feel confused today. And, the ill-educated ones suspend thinking altogether and become victims of some theocratic "fundamentalism" (this is really "obscurantism") of priest—like, if not priestly, classes with their own vested interests or masters to serve who tell people what right beliefs and actions are. The result is a strange confusion which can only be resolved by sound thinking and an education planned to impart universally acknowledged values and well balanced humanistic outlooks and approaches necessarily implying appreciation and understanding of cultures and religions other than one's own. It necessitates change in the right direction and development of the "composite culture" mentioned in our Constitution. It necessitates dissolution of irrational prejudices.

72. Of course, we have a great deal of extremely valuable and beautiful classical literature too, consisting of fiction, folklore, religious and philosophical writings, together with considerable amount of more modern writing, incorporating results of very sober and serious reflections and thoughts and feelings

of the highest order in every sphere. They also contain intelligible and Scientific explanations of anthropologists of the functional school of thinking of the value and function and significance of much that may, at first sight, appear to be absurd. But, to build a "composite culture" in our masses of the type Gandhi and Tagore and Jawaharlal Nehru visualised, we need much better means of coordination and orientation of activities of our intelligentsia, our writers, our poets, our artists, and of our scientists too. It requires fresh and powerful mass infusion of well directed thought and feeling towards production of the desired results through appropriate institutional channels with the State providing the much needed guidance and direction as well as affording adequate relief against every violation of the human right to be free from being discriminated against on ethically and legally unjustifiable grounds.

73. All this seems necessary to me to sustain and progressively realise and expand the objects of our Secular Socialist Democratic Sovereign Republic where enforcement of rights of members of minority groups and their freedom from discrimination could be ensured.

74. Thirdly, although, the last mentioned category of all educational institutional agencies, mechanisms, and processes, from the cradle to the grave, of our citizens, would include State run or controlled as well as voluntary organisations of various kinds, the study of whose operations and effects is a vast & fascinating task, yet, from amongst these, a separate mention must be made of educational and other roles of political parties. Their character, composition, and objects and activities, both ostensible and actual, have a very decisive effect, in the present state of our nation's political, social and economic development, on the question whether we can preserve our "secular traditions" and develop them further so as to promote national integration of which protection of minorities, both religious and linguistic, is an essential part.

75. Each political party in our country devotes special attention and issues special appeals to the minorities and claims to be their best protector and friend and tries to demonstrate this by making declarations of policy towards them. The party ruling at the Centre, the Congress (I), has minority cells spread all over the country in every State and District and city. Other parties also attempt to have such cells. Each tries to espouse its own brand of what it calls "Secularism". Are their combined or competitive activities conducive to the production of desired results from the point of view of Constitutional objectives ? This is a very important and interesting aspect of the study of problems of National Integration on which no serious and systematic study has so far taken place, although observations are frequently made to the effect that different political parties, in attempts to secure votes, exploit caste and communal and linguistic and regional differences and prejudices unscrupulously. The building up and strengthening of a correct system of scruples and inhibitions is a task in the execution of which the citizen and the State have to combine.

76. Some people have opined that there should be a consensus of opinions and attitudes on basic national issues, such as National Integration, between all political parties, and that this is possible. Others have felt that it is not possible to achieve such a result without a radical change in the system of Government or political affiliations in our country. Some would go to the extent of wanting to see only one single all India non-regional political party with free internal democratic debates and free expressions of opinion within the party and of disciplined unity of front after that. This would mean that members of regional parties, even if regional political parties are legally permissible, will not be allowed to contest elections. There is no such law just now. And, to prevent misuse of religion, those members of political parties who use a common religious bond or label for advancing political or economic aims and objectives, may also have to be debarred from contesting elections. These are controversial questions. But, even as the

law stands today, use of religious or communal grounds against a candidate at an election would vitiate a winning candidate's election on grounds of undue influence within the meaning of Section 123 of the Representation of People Act. If use of such methods materially affects the result of the election, it will be set aside. The contention that use of regional prejudices also similarly vitiates elections has not been tested in courts so far. No proposals to make laws to prevent those using communal or religious or caste or regional labels or grounds for purposes of elections have been made so far. This Commission has also not examined questions of legal or constitutional validity of such legislation. But, such questions may arise in future. Some people have suggested conversion of a system of political democracy into one of economic democracy or syndicalism. However, I am not going into these controversial matters here.

77. It has been urged by some that we should seriously consider the system prevailing today in USSR where only members of the Communist Party are permitted to contest elections. It is the only legally permitted political party. It is given a special and exclusive constitutional position and status. It takes charge of and directs a great many social and cultural activities with a view to producing national integration. Others would like us to emulate USA where there is a Civil Rights' Commission. In addition, American life and culture is believed to operate as a "melting pot" out of which a common "American character" is believed to emerge. It is moulded by factors producing unity and patriotism and a common devotion to certain commonly accepted sets of values and ways of thought and action despite all the freedom and diversities of opinion and life styles prevailing there. Thus, each country has its own special methods of integrating the nation and producing respect for and enforcement of human rights of all citizens including members of minority communities.

78. Study of ways of integration adopted in other countries and those which are ours and how far we could improve our methods and institutions and what we could learn from our own

history as well as from experiences of other countries could, in my opinion, be carried out far more efficiently and effectively with the help of officials, chosen by the Commission itself, who are duly qualified and properly trained to carry out the work required by a Commission equipped with legal powers of investigation as suggested and recommended below.

(c) What are the shortcomings in the institutional arrangements and in powers for enforcement and implementation of safeguards ?

79. As will be seen from the above discussion, there are ample safeguards, so far as constitutional and other legal provisions as well as institutional arrangements are concerned, to protect minorities. Attempts made through institutional machinery to enforce the safeguards have also been many sided. Nevertheless, it has to be confessed that, if the purpose of the Minorities' Commission of India was to remove a persisting "feeling of inequality and discrimination amongst the minorities", the Commission has failed to meet this particular objective. Strictly speaking, so long as the Commission is not better equipped with required powers and personnel, it can only make recommendations which could, if carried out, serve its objects including removal of grievances. Its duty just now is not to see that its objects are carried out; it ceases after making appropriate recommendations.

80. The resolution creating the Minorities' Commission itself indicated that the existing methods of removing the persistent feeling of inequality and discrimination were not enough. That position has to be changed. The obvious increase in the strength and pressure of an advancing tide of communal activities, antagonisms, and bitterness indicates that an added provisions of a Minorities' Commission has not been able to halt this tide. As already pointed out, the Commission was not, from the point of view of its personnel and powers, equipped well enough to do that. The Minorities' Commission can very well plead that it

was neither meant to be nor does it actually constitute a force which could stem an "advancing tide" of unreason. It is also obvious that what is needed is a whole host of more powerful institutional mechanisms which could not only halt but reverse that "tide" so as to prevent the disaster of either disintegration, disruption, or anarchy overtaking the country.

81. A wise individual could not, like the proverbial ostrich, bury his head under the sand and assert that such dangers do not exist. And, when events occur showing unmistakably that such a danger faces the country, a Commission, which can only observe, analyse, and recommend, cannot possibly give adequate relief itself. If what somebody said is true and the country's position could be compared to that of a house on fire, a Commission, like the Minorities' Commission or any other Commission, could certainly not provide a fire fighting force which could extinguish the conflagration by any quantities of water which may be required. The Commission, however, does not take so pessimistic a view of the situation. It can, at any rate, observe, analyse, and make appropriate recommendations to remove what has so obviously gone wrong. It has been doing that despite its limitations, its want of sufficient power and qualified competent personnel.

82. Events in Assam or Punjab may not be amenable to control by any methods a Commission could adopt. These methods involve : objective study and analysis, report and recommendation. By the time the Commission has, after due investigation and study, prepared a report, the situation may have so altered as to make it worthless. Its report would then not really relate to an existing situation which may have either deteriorated considerably or improved. A Commission's recommendations could, in other words, be no substitute for speedy and drastic action which certain situations, such as those of Assam and Punjab, may require. Of course, after certain events have occurred, it could analyse, fix responsibilities, and suggest ways, in the light of certain basic norms, of avoiding disasters which

result from departures from these norms. It could certainly explain reasons for these norms and perform an educational function. The Minorities' Commission of India has been trying to do all this.

83. Before offering its opinion on the reported events in Assam, giving rise to certain obvious legal questions, which the Commission thought fit to answer, it did not have to visit Assam where, on advice received by the Commission, the situation was not favourable for any satisfactory investigation by it. But, it thought that it could and did express opinions, even without a visit to Assam or any on the spot study, because the only kind of information it could get from newspapers was enough for the expression of its views on legal questions. The Commission also pointed out that such situations called for strong action through the police, and, if necessary, through the armed forces of the State. It also said that legal questions could not be decided by lynching mobs led by criminals bent upon murder, arson, pillage, and loot. Obviously, mobs were being instigated to commit genocide and to indulge in violence. These are happenings calling for findings from the point of view of elementary human rights. The proposed remedies have to provide for the short term as well as long term needs of the nation.

84. Turning next to the availability of ordinary remedies under not so disturbed conditions, the Commission did observe in its 4th Report as follows :—

> "It may be mentioned here that even for removal of individual grievances, a less formal machinery than the procedure prescribed for courts is visualised by the institution known as "Ombudsman". Indeed, the highest court in our country is itself so conscious of the shortcomings of the highly formalised and technically cumbersome legal procedure which, in the opinion of some experts on such matters, denies the demands of justice, that it has resorted to

> more informal modes of doing justice, even on receipt of letters from aggrieved persons. Some of these methods have been questioned by constitutional experts of the old school who feel alarmed at this excessive expansion of judicial activities and incursions into the administrative fields. The question, therefore, arises whether such informal modes should not be entrusted to bodies more suited, such as special commissions, to discharge these duties in respect of all citizens. Standing commissions, as distinguished from *ad hoc* commissions, can certainly serve such a purpose after a clearer demarcation of strictly judicial functions which the ordinary courts ought to perform. This would diminish the load of the work of the ordinary courts and place a great deal of work of supervision of administrative actions in expert bodies with informal and more effective methods of doing justice which may be more in keeping with the policies of a Welfare State. A great deal of clogging of work, which should be done by ordinary law courts, has, in the opinion of some experts, caused almost a break-down of our judicial system by the protracted denial of justice."

85. It is clear that the Commission did point out the failure of the existing ordinary formal judicial machinery also to answer the growing needs of the common people. Indeed, it thought that such a failure had brought about almost a "breakdown of our judicial system by the protracted denial of justice". The Commission did not consider it necessary, in its Fourth Report, to deal in extenso with either the cause of this failure or with the results of it. When floodgates of litigation are opened up due to multiplicity of causes, including the growth of lawlessness and violence resulting from a deliberate inculcation and propagation of poisonous ideas to disturb the even tenor of the lives of the common people, other remedies, in addition to the ordinary courts, have to be thought of. I am setting out grounds to

support the recommendations in this respect made in the Commission's Fourth Report more elaborately now.

86. Internationally operative worldwide factors, such as the economic depression, psychological insecurity resulting from the intensified nuclear arms' race, diversion of world's economic resources to meet the growing needs of defence due to insecurity, the spread of aggressiveness and religious fanaticisms, have also played their parts in the growth of instability. External and internal exploitative elements have found a good opportunity to build up their strengths. Does it require an elaborate discussion by the Minorities' Commission of India to indicate the need to meet challenges on the ideological as well as practical fronts and adoption of appropriate educational and correct information propagating systems, both formal and informal ? It seems to me obvious that even our ordinary formal grievance resolving mechanisms, if they have not come to a grinding halt, are badly creaking and require to be relieved of the overload of excessive demands made upon them.

87. It has also been indicated, in the quotation given above from the Commission's Fourth Report, that the response of the Supreme Court of India to this more sharply felt need for justice has been to develop informal methods of redressing wrongs and to adopt an expanded concept of "Public Interest Litigation". This has held up a great deal of ordinary work of courts. Some go to the extent of saying that our higher courts have developed what has been called a "guidelines' jurisdiction" which belongs more appropriately to Commissions.

88. The traditional concept of courts of law is that they are "case deciding" institutions which incidentally also interpret laws and remove legal uncertainties. Hence, it was suggested, in the quotation given above from this Commission's 4th Report, that there should be a clearer demarcation of strictly "judicial functions of ordinary courts" from the "guidelines' jurisdiction" which is more appropriate for Commissions, whether *ad hoc* or permanent, appointed especially to examine questions, such as

those contemplated by the terms of reference of the Minorities' Commission, and to point out ways of solving problems in ways more comprehensive than those open to courts of law.

89. The object of investigations by a Commission should be the emergence of correct guidelines and also to redress grievances. Removal of grievances could be the common ground between ordinary judicial authorities and what a Commission, such as ours, could embark upon. A Commission could range over a wider field of investigations carried out less formally than courts could so as to explore and suggest best possible solutions also and to provide a basis for appropriate legislation where this is wanting.

90. It is true that the Supreme Court of India has also a jurisdiction under Art. 143 of the Constitution to resolve the difficulties of the Executive arising from any particular questions of law or fact on matters of public importance. But, this jurisdiction is confined to answers from a legal point of view. It is not expected to cover matters of general or special policy. Moreover, it is optional for the Court to give or not to give answers to questions referred to it. So far, the Supreme Court has never refused to answer any question sent to it by the President of India.

91. If the machinery available in the ordinary courts was enough for removing grievances of religious and linguistic minorities, there could be no need for a Minorities' Commission of India just as there could be no need for the Scheduled Castes & Scheduled Tribes Commission if there were no problems which it could not deal with better. Hence, the existence of ordinary machinery of justice is not an answer to the question whether better, more informal additional methods of removing grievances speedily are not needed or possible. It was suggested in the 4th Report of the Minorities' Commission that this was both necessary and feasible. It is true that the report did not go further to set out the reasons so elaborately as it is now doing.

It assumed that the defects in the existing machinery of removing grievances, particularly of religious and lingustic minorities and other weaker sections, were sufficiently known and so obvious as not to require a more detailed treatment.

92. The Law Commission has also felt the need for an institution of the kind as the Public Grievances Resolving Officer, the Ombudsman, to provide remedies more speedily, inexpensively, less formally, and more effectively. The need for what an institution like a Human Rights Commission could be for the minorities will emerge powerfully if we examine the implications of a great deal of what is demanded by the advocates of minority rights. The need is really felt by them. They, very rightly, believe that minorities have a constitutional right to be treated equally or impartially and without discrimination in all spheres of life and this is really a human right. It flows from the rights to equality of all before the law and of equal protection of all by the laws as well as in the State schemes of development and policies. Indeed, the State has, in U.S.A., legislated to make it obligatory for citizens to apply certain norms to policies and prospects and course of employment in what are considered private spheres of individual enterprise, industry and business, so as to remove disparities and to ensure absence of discrimination. Why can we not have similar legislation here ?

93. Not merely spokesmen of minority grievances but all astute observers of formal legal processes know that the charge of discrimination, though sometimes capable of proof before judicial authorities, generally eludes attempts to prove it in a court of law even when it is true. Indeed, those often charged with it are powerful bureaucrats who have complete control over departmental files, and, whenever such a charge is levelled, they do not hesitate to adopt unfair methods of concealment and distortion. I prefer not to go into instances of this which have come to my knowledge as persons involved have to be given opportunities to be heard in at least quasi-judicial proceedings

before they are castigated. If the charge can be proved at all, it can be done only with difficulty in the course of something resembling a departmental inquiry, such as a procurator is said to carry out in U.S.S.R., where nothing can be concealed from the investigator. Indeed, the head of the department concerned or his representative should be an ad-hoc member of an authority or body investigating a charge of alleged unjustifiable or illegal discrimination levelled against an official in discharging official functions.

94. The defect in the present institutional machinery is that, whereas allegations of damaging prejudice and bias on the part of the petty, and sometimes, even against higher officials made by fairly independent and impartial and reliable sources, are plentiful, yet such weakness in the administration escape correction due to the difficulties involved in prolonged formal proceedings in ordinary courts where truth is often obscure. A more informal machinery of investigation by persons of unquestionable integrity, one of whom at least should come from the community to which the complainant belongs, will inspire a great deal of confidence and contribute considerably to remove the feeling of inequality and discrimination still prevailing amongst members of minority communities. Such discrimination and prejudice need not exhibit itself in hostile conduct towards subordinates only. It can be present in conduct towards other citizens. It can be most damaging when it takes the form of partisan conduct of administrative or police officers towards members of the public. When this happens, all the safeguards in the Constitution and the laws are often reduced to the level of mere paper guarantees which cannot be adequately or effectively enforced for want of means of doing so. At least, such is the feeling from which victims of injustice, real or supposed, suffer. The machinery suggested by me will, I think, prevent much miscarriage of justice.

95. So far as the weaker sections, such as women and children are concerned, those belonging to the minorities, especially the

largest minority groups in the country, the Muslim religious minorities, perhaps suffer more than others due to lack of means of setting right the wrongs suffered by them. It is true that they share this failure of justice with many others similarly placed coming from what is, technically speaking, a majority community. But, that could not be a reason for not providing substantial and effective means of redress which is even wider based than what a Minorities' Commission or a Scheduled Castes' and Scheduled Tribes' Commission, having no power to conduct quasi-judicial enquiries into alleged injustices and acts of discrimination, could give. The success of appeals to irrational communal and caste feelings could also not infrequently be traced to a sense of want of means of redress and a feeling of frustration. Such feelings, fanned by malicious instigation, can even take the form of utterly irrational, inhuman, brutal acts of terrorism which spoil the atmosphere and make the situation more exacerbating and difficult for everyone.

(d) *How can these defects be removed ?*

96. If, as suggested in the 4th Report of the Minorities' Commission, a National Integration-cum-Human Rights' Commission is set up, it could certainly not displace the formal machinery of adjudication which is always open to the citizens in the ordinary law courts. What was suggested was a machinery to help and supplement in realising the objects of "Justice : Social, Economic and Political" as provided in our Constitution and not to supplant the already existing ones.

97. It may be mentioned here that Canada has a machinery for redressing grievances through a Human Rights' Commission appointed in that country in each State as well as at the Central level. A description of the system is found in Appendix-XVIII given by Mr. W. Hasan, a Deputy Secretary of the Commission, who was entrusted with the task of studying the material received from Canada. Judges of highest State and Federal

Courts of Canada have expressed satisfaction with and highest admiration for the work done by the Human Rights' Commissions there through informal and more efficient ways of solving problems which have defied solutions through the more formal procedure available in law courts. In Australia also, a Human Rights' Commission has been set up to deal with questions arising out of complaints and grievances on grounds of discrimination. In niether of these two countries, has the effect of a Human Rights' Commission been to oust the jurisdiction of ordinary law courts. Indeed, it can be said that it has taken off an exceptional load of work, which can be done better elsewhere, from the lists of ordinary courts.

98. It was suggested in the 4th Report of the Commission that the jurisdictions of the ordinary law courts and that of a National Integration-cum-Human Rights' Commission should be clearly demarcated. If the suggestion is found to be acceptable, the result could be achieved through an Act of Parliament making it clear that what is known as "guidelines' Jurisdiction", on policy matters, is more appropriately excercisable by Commissions such as a National Integration-cum-Human Rights' Commission could exercise. Indeed, the Minorities' Commission of India, even under its present terms of reference, does exercise that jurisdiction on matters of policy and this does not detract from the jurisdiction of the ordinary law courts. In any case, the work of study, research, and investigation is severable from a redress of grievances, although each has a bearing on the other.

99. Again, a minority in one part of the country may be a majority in another part of it. Facts in a particular city or in a particular department of Government may even reverse positions. The problem of discrimination seems to be more general and wider than one confined to one against any particular or specific religious or linguistic groups.

100. The present policy of the Minorities' Commission is to confine its attention to five communities which it recognises

as religious minorities : viz. Muslims, Sikhs, Christians, Buddhists, and Zoroastrians. Claims have been made on behalf of Jains and Bahais, which are still under examination by the Minorities' Commission, to recognise them as separate minorities for purposes of appointing their representatives on the Commission. It has been made clear to them that the Commission is only concerned with the existence of possible discrimination on grounds of religious and not with appointments of its members. Linguistic minorities are dealt with on a state-wise basis. These classifications do not appear to be really satisfactory from the point of view of justice against discrimination of every description on the ground of religion or language. Moreover, similar is discrimination on the ground of caste or region. Hence, a single Commission dealing with all complaints of discrimination on any unconstitutional ground seems not only more logical and just, but would meet constitutional requirements better. If such a Commission was there, it could not be urged that there is any discrimination in favour of or against any person or groups in providing only partial machinery for dealing with certain kinds of discrimination against specified categories only.

101. Indeed, it has been urged by some that the term "Hindu" does not indicate a single monolithic religious community, which could be properly described as a religious "majority". In origin, the term stood for those who resided in the region of river "Indus". By an extension, for political purpose, the descriptive term Hindu has become associated with and is used today for a congeries of communities whose religions are belived to have an Indian origin but each of which constitutes and acts, on the whole, as a separate ethnic group or entity with its own customs and traditions; and their religious beliefs and forms of worship too vary considerably. Hence, some observers have gone to the extent of asserting that India is a land of minorities, from the point of view of group affiliations, and *that there is nothing like a Hindu "majority community."*

102. To think of Hindus as a single monolithic community may appear to some to be quite unhealthy. The feeling and belief that there is such a single "majority" community, whose machination the minorities should fear and try to protect themselves against, were fostered by our foreign British rulers during a colonial past. They sought to "divide and rule" us. Even after the British have quit India, the same divisive patterns of thought and feeling have been adopted in soliciting votes and competing for power or for benefits whether political or economic. This vicious circle has to be broken. How can this be done ? This is the crux of the problem before us.

103. Some people contend that the establishment of a Minorities' Commission itself proceeds on the wrong or unhealthy premise that there is some conflict of interests between "majority" and "minority" groups. But, the Minorities' Commission can recommend ways of reconciling these, or, in other words, can show the ways of "National Integration". One of these ways, perhaps the most important, is a removal of or redress of grievances arising from violations of human rights of members of Minority Comminities. Prevention of causes of grievances is to be looked after by recommendations whose adoption could foster a secular outlook through a "composite culture".

104. Assuming, however, that the activities of the Minorities' Commission do not (some complain that actually they are bound to) encourage "divisiveness", but help to promote National Integration, secular outlook, and removal of complaints arising from violations of human rights, the question arises : Why object to a change of nomenclature in such a way that possible misconceptions about it are removed and the institutional machinery of the Commission is seen to rest on its ideologically correct basis ? If separate electorates were politically disastrous and joint electorates are preferable, is the suggestion of a common means of meeting all complaints of discrimination, similarly, not better method of emphasising the common interests of all in the removal of discrimination through

appropriate common quasi-judicial machinery for dealing with all unjustifiable and illegal discrimination or denial of basic human rights ? This would certainly bring out a basic unity of interests and purposes of all citizens in duly respecting human rights of all.

(ii) *Our Obligations under the Universal Declaration*

105. Moreover, we have not only signed the universal Declaration of Human Rights but also ratified the two international covenants : one on Economic and Social and Cultural Rights and another on Civil and Political Rights. The Universal Declaration begins as follows :

106. "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace of the world.

107. Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

108. Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

109. Whereas it is essential to promote the development of friendly relations between nations.

110. Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal

rights of men and women, and have determined to promote social progress and better standards of life in larger freedom.

111. Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedom.

112. Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge.

Now, therefore,
The General Assembly,
Proclaims this Universal Declaration

of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the people of territories under their jurisdiction".

113. The question arises : Has not time come to give practical form and shape to these solemnly undertaken obligations by establishing a Human Rights' Commission or Court, as Europe and America and some others have done, in addition to the ordinary modes of redress by dilatory, expensive, and formal proceedings in Courts of law only ? Indeed, the European Human Rights' Court hears appeals against the decisions of the highest domestic Courts and tribunals. Alternatively, our machinery could be something like what Canada has successfully introduced and worked for years. If this suggestion is to be given effect to, our Minorities' Commission and the Scheduled Castes' and Scheduled Tribes' Commission could constitute parts of National

Integration Research Sections or sub-Commissions of a National Integration-cum-Human Rights' Commission.

(iii) *A Fallacious Argument*

114. An argument against linking up of Human Rights with National Integration is that Human Rights take us into the sphere of international law. Hence, it is suggested that incursions into such fields could bring the subject matter within the scope of subjects where the jurisdiction of an international authority may be exercisable. This argument is completely fallacious. It overlooks that the setting up of a supplementary machinery for dealing with questions of discrimination on the basis of human rights to equality before the law and equal protection of laws, which is already guaranteed by our Constitution, far from bringing in the need to subject ourselves to any international authority, would only indicate that we have our own domestic authorities, in addition to the Supreme Court and the High Courts, to decide such matters. Our High Courts and the Supreme Court of India are not subjected to interference by any international authorities simply because they deal with questions of human rights. No Commission created by a statute of our Parliament or by our Constitution could be subjected to such an external authority merely because it deals with human rights.

115. It is true that modern International Law takes congnizance of violations of Human Rights in every country now. That has been India's stand too. We have said that such questions can be raised before international authorities against any state. The existance of our own Commission to deal with Human Rights could only be an argument for excluding external interference and not one for inviting it.

116. The timorous argument—it must be so characterised—that we should shrink from taking the next step of establishing a National Integration-*cum*-Human Rights' Commission, into which the Minorities' Commission could merge as its sub-Commission or section, could appeal to those bureaucrats who boggle

at all suggestions which appear novel or seem to them, quite erroneously, to involve international complications. This Commission, I think, is not beset with any such phobias. I am clearly of opinion that such a development will be not only in keeping with our bright image in the international world as the leader of the non-aligned movement and brighten it still further, as the champion of justice to all those who need it, but it will lead to far better removal of grievances of all those who suffer from any species of discrimination in India. It will, in particular, help members of minority communities.

117. It is really futile to fear international complications out of a step which is in conformity with internationally acceptable and recommended norms of a politico-legal order moving towards international concern for all alleged violations of human rights anywhere in the world. Absence of adequate and effective domestic machinery for dealing with allegations of discrimination and bias could provide a ground for increased and not diminished international attention and concern over such absence in any country. In India, the validity of modern international legal and moral norms is unquestionably recognised. Although, under our Constitution, there is no provision incorporating completely the British principle that international law is part of the law of the land, yet Article 51, dealing with international peace and security, enjoins fostering of "respect for international law".

(iv) *Recommendations*

118. There is no legal, moral, or administrative norm or rule or need which could or should prevent the creation of a really effective machinery to look into allegations of unjustifiable bias or discrimination, particularly by officials and servants of the State. Capable Government servants who fear exposure of bias or unfairness of officials in dealing with communal problems, could dress up these fears as strong "administrative reasons" just as, when Prime Minister Jawaharlal Nehru wanted to set up a Planning Commission, there were misconceived

objections from unimaginative bureaucrats who view all innovations with suspicion. They fear undue interference with their own powers. Honest and upright officials, dedicated to the principles and humanistic values embodied in our Constitution, need have no such fears. At any rate, I would, far from entertaining any such fears, strongly recommend such a step as it would, I am convinced, benefit those in need of help against all alleged unconstitutional, illegal, immoral, or unjustifiable discrimination irrespective of the creed, caste, or region of the citizen complaining of it. A Commission, which could deal impartially with all such complaints, and also explore ways and means of removing and preventing the growth of their causes, will undoubtedly strengthen, promote, and develop secular traditions and national integration. These are the very purposes of the Minorities' Commission of India.

119. It is no real answer to the need pointed out to say that it should not be met simply because some political party, other than the ruling Congress (I), has supported such a measure. Indeed, such support, if it really exists, should provide an added reason favouring the recommendation made by this Commission which seeks to advance propositions which are acceptable to and accepted by all political parties because they promote constitutionally enjoined basic objectives to which all swear allegiance. The larger the measure of agreement in support of a proposal, the more acceptable it should be from the point of view of a nationally acceptable consensus on basic principles which all citizens of the country are duty bound, as already pointed out, to uphold. Therefore, support given to such a proposal, from any quarter whatsoever, should be welcomed. It should be an added argument, logically speaking, in favour of the proposal. It could not be used to defeat it.

120. The principle that there should be common National Integration-*cum*-Human Rights' Commission to cover all allegations of unjustifiable illegal discrimination or bias against members

of any group, community, or caste, or tribe, either individually or as a group, would naturally bring in consideration of questions which interest Scheduled Castes and Scheduled Tribes also. The work now assigned to the Minorities' Commission and the Scheduled Castes and Tribes' Commission could become parts of the work of a National Integration Commission which could formulate proposals or schemes to be put forward before the National Integration Council as now constituted. And, once these proposals are discussed and passed by the National Integration Council, as at present constituted, they would clearly acquire added force and legitimacy. Differences of approach or opinion could be thrashed out and creases ironed out before a proposal is sent to Parliament through the Central Government.

121. Even if the work of research and study required for investigating problems relating to national integration were to be separated from the task of redressing individual grievances on grounds of alleged discrimination, which brings in human rights, powers of investigation, subject to the authority of the Central Government to stop any inquiry on grounds of expediency to be stated, would be absolutely necessary for satisfactory investigations. It is, therefore, suggested that this minimum requirement should be fulfilled immediately in any case even if the Minorities' Commission retains its present form.

122. It is suggested and recommended that, if investigations relating to all matters with regard to national integration and also removal of minority grievances are to be combined, a scheme on the lines indicated above may be directed to be formulated by a Special Committee of jurists and others as suggested below.

123. Conscious of the fact that the above suggestion and recommendation may require further consideration, it is alternatively suggested and recommended as follows :—

124. That, a Committee may be appointed by the Central Government headed by the Chairman of the Minorities' Commission of India, who happens to be a former Chief Justice

of India, with two legal experts, competent to be appointed judges of the Supreme Court, together with two other members, one of whom may be the Chairperson of the Scheduled castes and Scheduled Tribes' Commission, to consider and to report on the following questions within three months of its appointment :

(a) Should a National Integration Commission be set up to coordinate or to combine the functions of various bodies and authorities concerned with this subject ?

(b) By what machinery can the work of building or promoting secular traditions and promoting National Integration be best carried out ?

(c) Should the work of promoting National Integration be combined with the duty and power to redress grievances arising out of alleged violations of Human Rights ?

(d) If a combined National Integration-*cum*-Human Rights' Commission is to be set up, what should be the scheme for discharging its functions and what should be its powers, its procedure, its relations with other bodies or authorities doing similar work, and by what means (*i.e.* whether through an ordinary statute or a constitutional amendment, should the Commission be set up ?

(v) *Concluding Observations*

125. The above discussion and recommendations were prepared by me originally as a part of an exposition of the thinking of the whole Commission during the period covering this report. But, as the recommendations resulting from this discussion are not acceptable now to the whole Commission, they

may be treated as my separate additional contribution to thinking and to the set of suggestions made through the Minorities' Commission of India. The Commission, as a whole, can also consider them further afterwards. At present, all the Members of the Commission are not prepared to go so far as I do.

126. Recommendations based on the above discussion and lines of reasoning seem to be unacceptable at present to the majority of Members of this Commission for reasons which may carry some weight at present. I, therefore, mention them here for this among other reasons together with my own observations about them.

127. Firstly, it seems that leaders or influential persons among minority communities fear that, if the present Minorities' Commission is reduced to the position of a section or a branch of a wider or more comprehensive National Integration-*cum*-Human Rights' Commission, the rights of members of minority communities, as members of minority groups, may be submerged and lost sight of.

128. It could be urged that this "argument of fear" is misconceived in as much as demonstration of the correct morally and legally higher footings of rights of members of minority communities, as human beings and Indian citizens, should procure better and surer and possibly speedier justice for them. I, however, see the weight of the argument that we should wait for public opinion to develop in favour of such proposals before asking the Govt. to accept them. But, even if it be our duty to build public opinion rather than to say what we consider right, unmindful of what members of any section of the public, particularly those who may be anxious to twist and misrepresent our views, may say about it, we must state and explain our proposals. It is in this spirit that I consider it my duty to indicate the lines of thinking contained in this separate note.

129. Secondly, there seems to be a fear that proposals, stated above, are frowned upon in governmental circles.

130. Here again, the answer should be that we are not government servants whose thinking should not extend beyond faithful and efficient execution of governmental policies and programmes as enunciated or laid down by any government. It is a part of our duties to fearlessly indicate what correct thinking and lines of governmental policies should be so that mistakes there may be corrected or a national "consensus" may emerge on basic national issues, such as requirements of national integration or development of a secular outlook and traditions. Indeed, we could, according to my way of looking at the functions and utility of a Commission like ours, even suggest changes in laws, including Constitutional Laws, and in governmental policies and programmes, insofar as they affect the interests of religious or linguistic minorities or national objectives and welfare of which sectional interests are an integral part. Such a function of a "think bank" can only be satisfactorily discharged if a Commission like ours properly understands and fearlessly expounds the needs of national policies, as found in the Constitution, in the laws, and, above all, in our sense of what is Right and Just as human beings.

131. Today, this sense of what is Right and Just, for satisfaction of a human life's urges and their needs, leaps not only across religious, linguistic, and regional barriers, but also beyond national frontiers. It should gradually, I believe, envelope the whole world within a tight unshakable embrace. A claim for protection and for satisfaction of a human need is, therefore, not weakened or diluted by being shown to be a part of broader humanistic worldwide currents and trends but gains in momentum, weight, strength, force, and effectiveness by such a demonstration. Even where a claim is put forward by a Member of a religious or linguistic minority, it must be clearly seen as a part of what concerns all. Therefore, I do not hesitate to use internationally recognised declarations and instruments in support of my proposals.

132. I do not see why any person or section or minority within a nation should be afraid to rely upon what governments of all civilised nations, including ours, repeatedly cite and bank on and profess to respect. If any person, be he a sectional or communal political leader or bureaucrat, tries to inject unjustifiable fears into our thinking or to use misconceived arguments to oppose any proposal made by this Commission, we should not be deflected from what we consider to be the right course for reasons we must be able to give. It becomes our duty all the more to try to dispel all such fears and suspicions if we are really convinced that we are right. At least I am convinced that it is high time that such proposals were made by this Commission even if some overriding reasons or constraints prevent their materialisation at present. We cannot fail to project what the shape of things to come should be.

133. Some of my proposals, I concede, appear to be too "idealistic" to some people. I, however, believe that it is better to have ideals and to express them fearlessly rather than to have none or to be afraid to express them. I regard it as a part of my duties to record my line of thinking although I have due respect for other lines of thinking too about the proposals contained in this separate note or opinion following logically as an explanation of the Commission's misunderstood point of view stated in the Fourth Annual Report. This further separate note or opinion will, I hope, help to dispel some misunderstanding of our proposals based on thinking indicated in this Commssion's Fourth Report.

134. Thinking is useful only if it promotes thinking and discussion and deliberation alround, and, after due discussion, produces beneficial practical results in the form of positive action. It is because even the thinking underlying the proposals made above, in this separate note or opinion, is still in its formative stages in our country that I would be satisfied if a Committee, suggested as an alternative to an outright acceptance of the principles and proposals set out above, could be appointed to

consider how far such thinking is correct and could be given a practical shape and form. Of course, if the principles and proposals are accepted outright, the suggested Committee could only prepare a comprehensive scheme for giving effect to accepted principles.

135. In fact, the Minorities' Commission appears, from its terms of reference, to be set up to achieve National integration by promoting respect for human rights of minorities. The suggestion to expand the scope of such operations to cover the whole nation, if accepted, will only demonstrate that the interests of minorities as well as of majorities pull in the same directions. If either those whose interests are sought to be protected or those who can protect them are not yet convinced of the utility of proposals made by me, the time for giving effect to such proposals could not be said to have arrived. Nevertheless, the time to make beneficial proposals is certainly that when such conviction is lacking.

136. I would like to make it clear that I think that there should be no communication gap between the Chairman of the Commission, who represents the Commission's views and who can speak for and defend its policies, and the Central or State Governments. So far as I am personally concerned, the Prime Minister of India, Shrimati Indira Gandhi, who has always been greatly concerned about the welfare of every minority community, permitted me to convey to her directly, as a personal privillege, any matter of public importance the details of which I wanted her to know. And, I have taken full advantage of this permission by keeping her informed of the thinking of this Commission. Therefore, I cannot personally complain of a communication gap which may, however, exist so far as State Governments are concerned. I would, therefore, like to draw the attention of the Central Government to the need, for atleast the Chairman of the Commission, to discuss directly at highest levels with those who formulate policies with regard to the minorities, both at the Centre and in the States, if the Commission is to

correctly understand and assess effects of these policies which is one of the primary objects of the Minorities' Commission of India. This Commission is different from other Commissions, which have not been assigned such delicate tasks falling within the scope of their objects and terms of reference.

137. Therefore, in its Fourth Report, the Commission observed as follows :—(p. 76).

> "It would help the Commission in the performance of its duties if problems coming within the scope of its operations are freely and frankly discussed with the Commission by members of Governments, both at the Centre and States, so that it is better able to understand and appreciate policies and to offer such assessments, criticisms, or suggestions as it may be able to do."

138. Originally, the terms of reference of the Minorities' Commission of India together with their Preamble, stating the objects of this Commission, were intended to be incorporated in our Constitution itself so that the Commission could appear to everyone who read our Constitution as a special sentinel of the rights and safeguards provided for members of minority communities either especially or in common with the rest of the citizens of the country. A constitutional amendment was also introduced in Parliament by the Janata Party Government with this object in view. But, it failed to get through for want of a quorum. Subsequently, it appears that neither the Janata Party Government nor its successor, at the Centre, felt quite convinced about the utility of this Commission. I, therefore, put forward a proposal for a more comprehensive National Integration Commission aided by a National Integration Institute (*See* : Annexure XII B at p. 273 of the Fourth Annual Report of the Minorities' Commission) which could demonstrate the usefulness of a Commission doing the kind of work entrusted to the Minorities' Commission of India. It could have a Minori-

ties' Section and could make the work of National Integration Council also more effective and meaningful.

139. This proposal, after its unanimous approval by a gathering of scholars, educationists, social workers, at the concluding session of the Seminar held by Gandhi Darshan Samiti, was brought by me to the Minorities' Commission of India and discussed and approved by it in its Fourth Report. Nevertheless, the Commission suggested also the appointment of a special committee to consider the utility of a National Integration-*cum*-Human Rights' Commission so that the proposed scheme could be more closely and comprehensively examined. It is difficult to understand how some people, outside governmental circles, could try to make out, as they did, that the proposal originated from governmental sources, whereas the criticism at the bureaucratic barrier, that the Commission had suggested the displacement of the ordinary machinery of justice, was equally unfounded.

140. The Commission faces an uphill task which is not made easier by misconceived criticisms. So far as I am personally concerned, such opposition does not make my work less attractive even if my conclusions are not above criticism. The object of all criticism should be to reach better conclusions.

(M. H. Beg)
Chairman

APPENDICES

APPENDIX I
(*Ref.* Chapter I, para 1.2)

NO. II-16012/2/77-NID(D)

GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA

New Delhi-1, *Dated the* 12*th Jan.* 1978

RESOLUTION

Despite the safeguards provided in the Constitution and the laws in force, there presists amongst the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the effective enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in Central and State laws, and in Government Policies and administrative schemes enunciated from time to time.

2. The Government of India has, therefore, resolved to set up a Minorities Commission to safeguard the interests of minorities whether based on religion or language.

3. The Minorities Commission shall consist of a Chairman and two other Members, whose term of office would not ordinarily exceed three years. The officer appointed as Special Officer in terms of Article 350(B) of the Constitution will function as the Secretary of the Commission.

4. The Commission shall be entrusted with the following functions :—

(i) to evaluate the working of the various safeguards provided in the Constitution for the protection of minorities and in laws passed by the Union and State Governments;

(ii) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards and the laws;

(iii) to undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the minorities;

(iv) to look into specific complaints regarding deprivation of rights and safeguards of the minorities;

(v) to conduct studies, research and analysis on the question of avoidance of discrimination against minorities;

(vi) to suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the Central or the State Governments;

(vii) to serve as a national clearing house for information in respect of the conditions of the minorities; and

(viii) to make periodical reports at prescribed intervals to the Government.

5. The headquarters of the Commission will be located at Delhi.

6. The Commission will devise its own precedures in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents and provide such assistance as may be required by the Commission from time to time. The Government of India trusts that the State Governments and Union Territory Administrations and others concerned will extend their fullest cooperation and assistance to the Commission.

7. The Commission will submit an Annual Report to the President detailing its activities and recommendations. This will, however, not preclude the Commission from submitting Reports to the Government at any time they consider necessary on matters within their scope of work. The Annual Report together with a memorandum outlining the action taken on the recommendations and explaining the reasons for non-acceptance of recommendations, if any, in so far as it relates to the Central Government, will be laid before each house of Parliament.

ORDER

ORDERED that a copy of this Resolution be communicated to all Ministries and Departments of the Government of India, State Governments and Union Territory Administrations, etc.

ORDERED also that the Resolution be published in the Gazette of India for general information.

Sd/-
Maheshwar Prasad
Additional Secretary to the Govt. of India

APPENDIX II

(*Ref.* Chapter I, para 1.9)

UNITED
NATIONS

General Assembly

Distr.
GENERAL
4/RES/36/55
18 *January* 1982

Thirty-sixth session
Agenda Item

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

for the report of the Third Committee (A/36/6849).

36/55. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*

The General Assembly

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Considering that the Universal Declaration on Human Rights[1] and the International Covenants on Human Rights[2] proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief.

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

1. General Assembly resolution 217 A(III).
2. General Assembly resolution 2200A (XXI), annex.

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter, other relevant instruments of the United Nations and the purposes and principles of the present Declaration, is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the grounds of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or other beliefs.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration on Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

Article 6

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

(a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes.

(b) To establish and maintain appropriate charitable or humanitarian institutions.

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief.

(d) To write, issue and disseminate relevant publications in these areas.

(e) To teach a religion or belief in places suitable for these purposes.

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions.

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief.

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or beliefs.

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislations in such a manner that every one shall be able to avail himself of such rights and freedoms in practice.

Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration on Human Rights and the International Covenants on Human Rights.

73rd plenary meeting
25 November 1981

APPENDIX-III

(*Ref.* Chapter I, para 1.12)

SAFEGUARDS

Safeguards to Religious Minorities

In addition to the Fundamental Rights provided under the Constitution, certain protection and safeguards are provided in the Constitution specifically for the minorities. These are as under :—

(i) Article 25. Freedom of conscience and free profession, practice and propagation of religion.

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

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law :—

(a) regulating or restricting any economic, financial or other secular activity which may be associated with religious practice; and

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

(ii) Article 26. Freedom to manage religious affairs.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right :—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

(iii) Article 27. Freedom as to payment of taxes for promotion of any particular religion.

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

(iv) Article 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to any educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

(v) Article 29. Protection of interests of minorities.

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

(vi) Article 30. Right of minorities to establish and administer educational institutions.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

II. Constitutional Safeguards for Linguistic Minorities

The following Articles of the Constitution specifically provide for safeguards to linguistic minorities in addition to the Articles relating to fundamental rights in Part III of the Constitution which operate as safeguards for linguistic minorities as well :—

(i) Article 29. Protection of interests of minorities.

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

(ii) Article 30. Right of minorities to establish and Administer educational institutions.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority, whether based on religion or language.

(iii) Article 340. Appointment of a Commission to investigate the conditions of backward classes :—

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

The Constitution contemplated the appointment of a Commission whose reports and recommendations, it was thought, would be of assistance to the authorities concerned to take adequate steps for the advancement of backward classes. But it would be erroneous to assume that the appointment of the Commission and the subsequent steps that were to follow it constituted a condition precedent to any action being taken under Article 15(4). Besides, it may be noticed that Article 340(1) provides that the recommendations have to be made by the Commission as to the steps that should be taken by the Union, or any State, *inter alia*, to improve the condition of the backward classes. This means that the recommendations are to be made to the Union or State Governments, as the case may be, who may implement them at their discretion. Once the Commission has been constituted by the President, the recommendations are to be made to the Union or State Governments and not to the President.*

(iv) Article 347. Special provision relating to language spoken by a section of the population of a State.

On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purposes as he may specify.

(v) Article 350. Language to be used in representations for redress of grievances.

Every person shall be entitled to submit a representation for the redress of any grievance to any office or authority of the Union or a State in any of the languages used in the Union or in the State as the case may be.

(vi) Article 350A. Facilities for instruction in mother-tongue at primary stage.

It shall be the endaevour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

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*M.R. Balaji v. State of Mysore, AIR 1963 SC 649, 657 : 1963 Supp 1 SCR 439.

(vii) Article 350B. Special Officer for Linguistic Minorities.

(1) There shall be a Special Officer for Linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

APPENDIX-IV

(*Ref.* Chapter I, para 1.18)

STATISTICAL DETAILS AS PER 1971 CENSUS

Religious Minorities

1. According to the 1971 Census, the Muslims constitute 11.21 per cent of the total population whereas Christians constitute 2.60 per cent, Sikhs 1.89 per cent, Buddhists 0.70 per cent, Jains 0.47 per cent and Zoroastrians 0.01 per cent. Hindus constitute 82.72 per cent of the total population. The religion-wise break-up of the population is given as under :—

Major religious communities	Population	Percentage to total population
Hindus	453,292,086	82.72
Muslims	61,417,934	11.21
Christians	14,223,382	2.60
Sikhs	10,378,797	1.89
Buddhists	3,812,325	0.70
Jains	2,604,646	0.47
Zoroastrians (Parsees)	91,266	0.01
Others	2,129,373	0.40
Total population of India	547,949,809	100.00

2. The picture of the population by religions at the national level is different from that at the State levels. At the national level Hindus are the dominant majority but at the State level they are not in a few States and Union Territories. The Muslims are in majority in Jammu and Kashmir State and Lakshadweep, whereas Christians are in majority in the States of Meghalaya, Nagaland and Mizoram. Sikhs in the State of Punjab and the followers of other than Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism and Zoroastrianism are in majority in the Union Territory of Arunachal Pradesh. The break-up of the population by religion and their percentage in the various states and Union Territories is enclosed as Appendix IV.A.

Population of Muslims

3. (*i*) Muslims are 11.21 per cent of the total population of the country and numerically they come next to the Hindus (82.72%). Uttar Pradesh accounts for the largest concentration (22.27%) followed by West Bengal (14.76%), Bihar (12.36%), Maharashtra (6.89%), Kerala (6.78%), Assam (5.85%), Andhra Pradesh (5.73%), Karnataka (5.07%) and Jammu and Kashmir (4.95%). The States and Union Territories in which the population is predominantly Muslim and where the proportion of Muslims exceeds the National average of 11.21 per cent and where they form 5 per cent or more of the States/Union Territories population are as under :—

Percent of population	Name of State/ Union Territory	%age to the State/UT population
(*a*) 50% or more	(1) Lakshadweep	94.37
	(2) Jammu and Kashmir	65.85
(*b*) Between 11.21% and 49.99%.	(1) Assam	24.03
	(2) Bihar	13.48
	(3) Kerala	19.50
	(4) Uttar Pradesh	15.48
	(5) West Bengal	20.46
(*c*) Between 5% and 11.20%	(1) Andhra Pradesh	8.09
	(2) Gujarat	8.42
	(3) Maharashtra	8.40
	(4) Manipur	6.61
	(5) Karnataka	10.63
	(6) Rajasthan	6.90
	(7) Tamil Nadu	5.11
	(8) Tripura	6.68
	(9) Andaman and Nicobar Islands.	10.12
	(10) Delhi	6.47
	(11) Pondicherry	6.18

(*ii*) The population composition of various districts indicates that out of 356 districts in the entire country there are nine districts in the country where Muslim population is 50 per cent or more of the district population and 30 districts where Muslim population is more than 20 per cent but

less than 50 per cent of their respective population. The name of such districts with their percentage of population is given below :—

Per cent of Population	Name of district	%age of district population	Name of the State/ Union Territories
(*a*) Having 50% or more.	1. Baramula	95.92	Jammu & Kashmir
	2. Anantnag	94.83	—do—
	3. Srinagar	91.37	—do—
	4. Punch	88.86	—do—
	5. Doda	63.59	—do—
	6. Rajouri	60.98	—do—
	7. Lakshadweep	94.37	Lakshadweep
	8. Mallapuram	63.93	Kerala
	9. Murshidabad	56.34	West Bengal
(*b*) Having more than 20% but less than 50%.	1. Hyderabad	26.45	Andhra Pradesh
	2. Goalpara	42.25	Assam
	3. Cachar	39.89	—do—
	4. Nowgong	39.39	—do—
	5. Kamrup	28.93	—do—
	6. Purnea	39.62	Bihar
	7. Ladakh	46.66	Jammu & Kashmir
	8. Udhampur	32.92	—do—
	9. Kozhikode	30.62	Kerala
	10. Cannanore	24.34	—do—
	11. Palghat	21.27	—do—
	12. Jaisalmer	24.41	Rajasthan
	13. Rampur	45.76	Uttar Pradesh
	14. Moradabad	38.15	—do—
	15. Bijnor	36.66	—do—
	16. Saharanpur	31.11	—do—
	17. Bareilly	29.20	—do—
	18. Muzaffarnagar	28.83	—do—
	19. Bahraich	26.99	—do—
	20. Gonda	22.57	—do—
	21. Meerut	22.14	—do—
	22. Pilibhit	21.62	—do—
	23. Basti	20.30	—do—
	24. Malda	43.13	West Bengal
	25. West Dinajpur	35.89	—do—
	26. Birbhum	29.19	—do—
	27. 24-Parganas	23.68	—do—
	28. Nadia	23.34	—do—
	29. Cooch Behar	21.25	—do—
	30. Mahe	24.44	Pondicherry

(*iii*) The distribution of the 356 districts according to the different ranges of proportion of Muslim population is as follows :—

Percentage of Muslim population to total population—1971	Number of Districts
(*a*) Upto 2.50	81
(*b*) 2.51—5.00	51
(*c*) 5.01—10.00	102
(*d*) 10.01—20.00	83
(*e*) 20.01—50.00	30
(*f*) 50.01 and above	9

Populaion of Christians

4. (*i*) Christians account for 2.60 per cent of the total population of the country and are the third major religious community in order of numerical strength. Christianity appears most widespread in the southern and north-eastern regions of the country. Kerala accounts for 31.60 per cent of the Christians in the country, whereas Tamil Nadu accounts for 16.65 per cent, Andhra Pradesh 12.82 per cent and Maharashtra 5.04 per cent. The States and Union Territories having more than the national average of Christian population (2.60%) are as under :—

Per cent of population	Name of State/UT	Percentage to the total population
(*a*) 50 per cent or more	Nagaland	66.76
(*b*) Between 2.60 per cent and 49.99 per cent.	1. Meghalaya	46.98
	2. Goa, Daman and Diu	31.77
	3. Andaman and Nicobar Islands	26.35
	4. Manipur	26.03
	5. Kerala	21.05
	6. Pondicherry	8.76
	7. Tamil Nadu	5.75
	8. Assam (including Mizo districts).	4.46
	9. Andhra Pradesh	4.19

(*ii*) At the district level, out of the total 356 districts, there are nine districts having 50 per cent or more of Christian population and twenty having 10 per cent to 50 per cent. The names of such districts with their percentage of total population is given as under :—

Per cent of population	Name of the district	%age to the total population	Name of State/UT
(*a*) Having 50% or more.	1. Manipur East	92.00	Manipur
	2. Manipur South	89.11	—do—
	3. Manipur West	77.61	—do—
	4. Manipur North	56.13	—do—
	5. Mokokchung	88.62	Nagaland
	6. Tuensang	56.60	—do—
	7. Kohima	55.81	—do—
	8. Mizo	86.09	Assam
	9. United Khasi and Jaintia Hills.	51.16	Meghalaya
(*b*) Between 10% and 49.99%.	1. Kottayam	46.93	Kerala
	2. Ernakulam	41.54	—do—
	3. Alleppey	27.64	—do—
	4. Trichur	25.18	—do—
	5. Quilon	23.51	—do—
	6. Trivandrum	17.26	—do—
	7. Garo Hills	40.75	Meghalaya
	8. Kanyakumari	38.90	Tamil Nadu
	9. Nilgiris	13.62	—do—
	10. Tirunelveli	12.51	—do—
	11. Goa	33.97	Goa, Daman and Diu
	12. Andaman and Nicobar Islands	26.35	A & N Islands
	13. North Cachar Hills	21.87	Assam
	14. Ranchi	17.70	Bihar
	15. Sundergarh	16.55	Orissa
	16. Guntur	14.61	Andhra Pradesh
	17. Ongole	10.87	—do—
	18. Krishna	10.85	—do—
	19. Raigarh	10.34	Madhya Pradesh
	20. Karaikal	10.28	Pondicherry

(*iii*) The distribution of the 356 districts according to the different ranges of proportion of Christians in the total population is as under :—

Percentage of Christian population to total population—1971	Number of districts
(*a*) Upto 0.50	207
(*b*) 0.51—2.00	68
(*c*) 2.01—10.00	52
(*d*) 10.01—50.00	20
(*e*) Above 50.00	9

Population of Sikhs

5. (*i*) Sikhs account for 1.89 per cent of the total population of the country. 78.62 per cent of the total Sikh population of the country are in Punjab, whereas Haryana accounts for 6.08 per cent, Uttar Pradesh 3.56 per cent, Rajasthan 3.29 per cent, Delhi 2.81 per cent and Jammu and Kashmir 1.02 per cent. The States and Union Territories where Sikhs constitute one per cent or more of population are as under :—

Name of the State/ Union Territory	Percentage to the total population
1. Punjab	60.22
2. Chandigarh	25.45
3. Delhi	7.16
4. Haryana	6.29
5. Jammu and Kashmir	2.29
6. Rajasthan	1.33
7. Himachal Pradesh	1.30

(*ii*) At the district level, Sikhs constitute 5 per cent or more of its population in 19 districts out of total 356 districts.

The name of the district with the percentage is given as under :—

Name of district	%age to the total population	Name of State/UT
1. Delhi	7.16	Delhi
2. Jammu and Kashmir	7.60	Jammu and Kashmir
3. Nainital	8.97	Uttar Pradesh
4. Hissar	10.26	Haryana
5. Karnal	11.72	—do—
6. Ambala	12.57	—do—
7. Ganganagar	19.18	Rajasthan
8. Chandigarh	25.45	Chandigarh
9. Hoshiarpur	39.38	Punjab
10. Gurdaspur	44.82	—do—
11. Jullundur	44.90	—do—
12. Patiala	54.24	—do—
13. Ropar	55.61	—do—
14. Kapurthala	61.26	—do—
15. Firozpur	65.07	—do—
16. Ludhiana	65.71	—do—
17. Sangrur	66.90	—do—
18. Amritsar	74.22	—do—
19. Bhatinda	76.93	—do—

(*iii*) The pattern of distribution of Sikh population in districts is as under :—

Percentage of Sikh population to total population	Number of districts
(*a*) 25.01 and above	12
(*b*) 5.01 to 25.00	7
(*c*) 1.01 to 5.00	21
(*d*) Upto 1.00	280
(*e*) Nil or negligible	36

Population of Buddhists

6. (*i*) Buddhists are 0.70 per cent of the total population of the country. Maharashtra accounts for 85.62 per cent of the total Buddhist population in the country, whereas West Bengal 3.19 per cent, Madhya Pradesh 2.15 per cent, Arunachal Pradesh 1.61 per cent, Jammu and Kashmir 1.52 per cent, Assam 1.19 per cent, Tripura 1.11 per cent, Uttar Pradesh 1.04 per cent and Himachal Pradesh 0.94 per cent.

The States and Union Territories which account for more than national percentage (0.70) of the Buddhist population in respective States/Union Territories are as under :—

Name of the State/ Union Territory	Percentage to the total population
1. Maharashtra	6.47
2. Arunachal Pradesh	13.13
3. Tripura	2.72
4. Jammu and Kashmir	1.26
5. Himachal Pradesh	1.04

(*ii*) At the district level there are 25 districts in the entire country which have 5 per cent or more of its population as Buddhists. They are as under :—

Per cent of population	Name of district	%age to the total population	Name of State/UT
(*a*) 20% or more	1. Lahul and Spiti	61.53	Himachal Pradesh
	2. Ladakh	51.82	Jammu & Kashmir
	3. Kameng	37.98	Arunachal Pradesh
(*b*) 5% to 19.99%	1. Tirap	16.54	Arunachal Pradesh
	2. Lohit	12.94	—do—
	3. Akola	16.15	Maharashtra
	4. Nagpur	14.55	—do—
	5. Wardha	14.35	—do—
	6. Amravati	13.41	—do—
	7. Bhandara	13.01	—do—
	8. Buldhana	12.28	—do—
	9. Prabhani	11.49	—do—
	10. Chandrapur	10.44	—do—
	11. Nanded	9.66	—do—
	12. Yeotmal	9.21	—do—
	13. Aurangabad	8.15	—do—
	14. Satara	5.79	—do—
	15. Ratnagiri	5.55	—do—
	16. Nasik	5.10	—do—
	17. Poona	5.06	—do—
	18. Kinnaur	14.22	Himachal Pradesh
	19. Darjeeling	11.68	West Bengal
	20. Mizo	6.81	Assam
	21. South Tripura	5.23	Tripura
	22. North Tripura	5.19	Tripura

Population of Zoroastrians (Parsees)

7. The Zoroastrians are 0.01 per cent of the total population of the country. Most of them are concentrated in the State of the Maharashtra followed by Gujarat. The distribution of the Zoroastrians in various States is as under :—

State/Union Territory	Total population
1. Andhra Pradesh	486
2. Assam	1
3. Bihar	495
4. Gujarat	15,131
5. Haryana	5
6. Himachal Pradesh	47
7. Jammu and Kashmir	4
8. Kerala	46
9. Madhya Pradesh	736
10. Maharashtra	72,266
11. Manipur	2
12. Meghalaya	6
13. Karnataka	344
14. Nagaland	..
15. Orissa	2
16. Punjab	1
17. Rajasthan	281
18. Tamil Nadu	75
19. Tripura	..
20. Uttar Pradesh	387
21. West Bengal	585

Union Territories	
1. Andaman & Nicobar Islands	2
2. Arunachal Pradesh	..
3. Chandigarh	5
4. Dadra and Nagar Haveli	18
5. Delhi	302
6. Goa, Daman and Diu	28
7. Lakshadweep	..
8. Pondicherry	11
India	91,266

Linguistic Minorities

8. The linguistic minorities are those who have separate spoken language without necessarily having a distinct script. The speakers of all such languages become linguistic minority in one or the other place and, therefore, are entitled to all the safeguards provided for them. On the basis of the 1971 Census, it would be clear that majority of the population speaks 15 major languages mentioned in the Eighth Schedule of the Constitution. The speakers of the identifiable languages having 10,000 or more speakers at the national level constitute the second group. The speakers of most of other languages/mother-tongues are in the third group whose speakers are less than 10,000 at the all-India level. The total speakers in each of the above groups and their percentage to the total population is as under :—

Group of languages	Total speakers	%age to the total population
(*i*) Languages mentioned in the Eighth Schedule	522,759,625	95.38
(*ii*) Identifiable languages whose speakers are 10,000 or more at all-India level . .	25,040,995	4.56
(*iii*) Unidentifiable languages whose speakers are less than 10,000 at all-India level . .	359,032	0.06
TOTAL	548,159,652	100.00

9. The total speakers of the 15 major languages mentioned in the Eighth Schedule according to the 1971 Census and their percentage to the total population is as under :—

Sl. No.	Name of Language	Total speakers	%age to the total population
	India	548,159,652	100.00
1.	Assamese	8,959,558	1.7
2.	Bengali	44,792,312	8.1
3.	Gujarati	25,865,012	4.7
4.	Hindi	208,513,005	38.4
5.	Kannada	21,710,649	3.9
6.	Kashmiri	2,495,487	0.4
7.	Malayalam	21,938,760	4.0
8.	Marathi	41,765,190	7.6
9.	Oriya	19,863,198	3.6
10.	Punjabi	14,108,443	2.5
11.	Sanskrit	2,212	0.00004
12.	Sindhi	1,676,875	0.3
13.	Tamil	37,690,106	6.9
14.	Telugu	44,756,923	8.1
15.	Urdu	28,620,895	5.2
	Other languages	25,400,027	4.6

APPENDIX IV A

Distribution of Population by Religion and their percentage to total population (As per 1971 Census)

Sl. No.	India/ State/ Union Territory	Total Population	Hindus	Muslims	Christians	Sikhs	Buddhists	Jains	Others
1	2	3	4	5	6	7	8	9	10
	India	547,949,809	453,292,086 82.72%	61,417,934 11.21%	14,223,382 2.60%	10,378,797 1.89%	3,812,325 0.70%	2,604,646 0.47%	2,220,639 0.41%
	States								
1.	Andhra Pradesh	43,502,708	38,119,279 87.63%	3,520,166 8.09%	1,823,436 4.19%	12,591 0.03%	10,035 0.02%	16,108 0.04%	1,093 N
2.	Assam	14,957,542	10,625,847 71.04%	3,594,006 24.03%	667,151 4.46%	12,347 0.08%	45,212 0.30%	12,917 0.09%	62 N
3.	Bihar	56,353,369	47,031,801 83.46%	7,594,173 13.48%	658,717 1.17%	61,520 0.11%	4,806 0.01%	25,185 0.04%	977,167 1.73%
4.	Gujarat	26,697,475	23,835,471 89.28%	2,249,055 8.42%	109,341 0.41%	18,233 0.07%	5,469 0.02%	451,578 1.69%	28,328 0.11%
5.	Haryana	10,036,808	8,956,310 89.23%	405,723 4.04%	9,802 0.10%	631,048 6.29%	845 0.01%	31,173 0.31%	1,907 0.02%

1	2	3	4	5	6	7	8	9	10
6.	Himachal Pradesh	3,460,434	3,324,627 96.08%	50,327 1.45%	3,556 0.10%	44,914 1.30%	35,937 1.04%	626 0.02%	447 0.01 %
7.	Jammu and Kashmir	4,616,632	1,404,292 30.42%	3,040,129 65.85%	7,182 0.16%	105,873 2.29%	57,956 1.26%	1,150 0.02%	50 N
8.	Kerala	21,347,375	12,683,277 59.41%	4,162,718 19.50%	4,494,089 21.05%	1,284 0.01%	605 N	3,336 0.02%	1,766 0.01%
9.	Madhya Pradesh	41,654,119	39,024,162 93.68%	1,815,685 4.36%	286,072 0.69%	98,973 0.24%	81,823 0.20%	345,211 0.83%	2,193 N
10.	Maharashtra	50,412,235	41,307,287 81.94%	4,233,023 8.40%	717,174 1.42%	101,762 0.20%	3,264,223 6.47%	703,664 1.40%	5,102 0.17%
11.	Manipur	1,072,753	632,597 58.97%	70,969 6.61%	279,243 26.03%	1,028 0.10%	495 0.05%	1,408 0.13%	87,013 8.11%
12.	Meghalaya	1,011,699	187,140 18.50%	26,347 2.60%	475,267 46.98%	1,262 0.12%	1,878 0.19%	268 0.03%	319,537 31.58%
13.	Mysore (Karnataka)	29,299,014	25,332,388 86.46%	3,113,298 10.63%	613,026 2.09%	6,830 0.02%	14,139 0.05%	218,862 0.75%	471 N
14.	Nagaland	516,449	59,031 11.43%	2,966 0.58%	344,798 66.76%	687 0.13%	179 0.04%	627 0.12%	108,161 20.94%
15.	Orissa	21,944,615	21,121,056 96.25%	326,507 1.49%	378,888 1.73%	10,204 0.04%	8,462 0.04%	6,521 0.03%	92,977 0.42%

16.	Punjab	13,551,060	5,087,235 37.54%	114,447 0.84%	162,202 1.20%	8,159,972 60.22%	1,374 0.01%	21,383 0.16%	4,447 0.03%
17.	Rajasthan	25,765,806	23,093,895 89.63%	1,778,275 6.90%	30,202 0.12%	341,182 1.33%	3,642 0.01%	513,548 1.97%	5,062 0.02%
18.	Tamil Nadu	41,199,168	36,674,150 89.02%	2,103,899 5.11%	2,367,749 5.75%	4,355 0.01%	1,148 N	41,097 0.10%	6,770 0.01%
19	Tripura	1,556,342	1,393,689 89.55%	103,962 6.68%	15,713 1.01%	318 0.02%	42,285 2.72%	375 0.02%	.. ..
20.	Uttar Pradesh	88,341,144	73,997,597 83.76%	13,676,533 15.48%	131,810 0.15%	369,672 0.42%	39,639 0.05%	124,728 0.14%	1,165 N
21.	West Bengal	44,312,011	34,611,864 78.11%	9,064,338 20.46%	251,752 0.57%	35,084 0.08%	121,504 0.27%	32,203 0.07%	195,266 0.44%
Union Territories									
1.	Andaman & Nicobar Islands	115,133	70,134 60.92%	11,655 10.12%	30,342 26.35%	865 0.75%	103 0.09%	14 0.01%	2,020 1.76%
2.	Arunachal Pradesh	467,511	102,832 21.99%	842 0.18%	3,684 0.79%	1,255 0.27%	61,400 13.13%	39 0.01%	297,459 63.63%

1	2	3	4	5	6	7	8	9	10
3.	Chandigarh	257,251	184,395 71.68%	3,720 1.45%	2,504 0.97%	65,472 25.45%	92 0.04%	1,016 0.39%	52 0.02%
4.	Dadra and Nagar Haveli	74,170	71,075 95.83%	740 1.00%	1,918 2.58%	3 N	73 0.10%	303 0.41%	58 0.08%
5.	Delhi	4.065,698	3,407,835 83.82%	263,019 6.47%	43,720 1.08%	291,123 7.16%	8,720 0.21%	50,513 1.24%	768 0.02%
6.	Goa, Daman and Diu	857,771	550,482 64.18%	32,250 3.76%	272,509 31.77%	885 0.10%	260 0.03%	556 0.06%	829 0.10%
7.	Laksha-dweep	31,810	1,545 4.86%	30,019 94.37%	239 0.75%	4 0.01%	.. ..	.. ..	3 0.01%
8.	Pondicherry	471,707	400,793 84.97%	29,143 6.18%	41,296 8.76%	51 0.01%	21 N	237 0.05%	166 0.03%

APPENDIX-V

(*Ref.* Chapter II, para 2.3)

Statement showing the Receipts and Disposal of Cases Received During the Period 1-4-82 *to* 31-3-83

Sl. No.	Name of the community	Total receipts	Cases filed after preliminary exam.	Cases finalised	Cases taken up
1	2	3	4	5	6
1.	Muslims	245	188	15	42
2.	Christians	35	19	5	11
3.	Sikhs	33	23	1	9
4.	Buddhists	11	5	2	4
5.	Parsis	1	..	..	1
6.	Others	39	33	1	5
	TOTAL	364	268	24	72

APPENDIX VI

(*Ref.* Chapter III, para 3.7)

"Communal Organisation' and suggestions for action against communal activities

1. The term 'communal' has, in the context of certain facts and developments in our country, acquired a bad odour. It is derived from 'commune' which was a small territorial division of self-government in France. It meant "a group of people living as a community". It implied living as a self-governing body for certain limited local purposes sharing certain common objects of living together as organisms within a larger national entity.

2. In our country, the word 'communal' has been used for those who are united by religious bonds to pursue certain objects intended to benefit their particular community. It has acquired, not without good reasons, the meaning of an 'objectionable activity' by trying to benefit from some communal bond, especially religion, to gain an unfair advantage over and even at the cost of others similarly organised on the strength of communal or religious bonds. The original meaning, as a group of persons living in a locality and sharing the requirements and pursuing the objects they are entitled to enjoy on the basis of their organisation into an organ of local self- government, has not only been over-shadowed but displaced by the objectionable implications of an organisation, working on the basis of a religious or racial or caste affinity, to attain political and economic ends and aggrandisement at the expense of others.

3. In the latter sense, every organisation which purports to exploit any common bond, such as that of creed or caste or locality or language or culture, for the purpose of gaining unfair advantage for the members of the organisation, could be called a "communal organisation".

4. That national outlook and integrity, which have to be kept in view for the purpose of attaining the objects stated in the Preamble to our Constituion and which have to be achieved through the pursuit of Directive Principles of State Policy and respect for equal fundamental rights of all citizens, tend to be wiped out by organisations working on communal lines particularly those of religion and caste with a view to serving political,

economic, or social ends. Exclusion of others from the benefits which such an organisation is supposed to bring to its members would make it anti-national, predatory, and anti-social.

5. It is true that certain organisations, on the basis of religion, caste, linguistic, or cultural affinity, may aim at raising the standards of life of those who organise themselves in this fashion without damaging other people. But, this is very difficult unless certain prescribed standards and limits are observed. The object, for example, may be to remove superstitious ideas or phobias which divide Indian citizens, but, as soon as an organisation, even if originally based on some communal bond, begins to entertain wider objects and acquires an integrationist outlook, it begins to lose its communal or exclusive character.

6. An organisation intended for true socio-economic and laudable political purposes must necessarily keep the integrationist ideology of our Constitution, reflected in the Preamble and the Directive Principles of State Policy in the forefront as its object. In other words, all healthy organisations must necessarily be based on the concept of at least an organic interlinking, an equal participation and an equal benefit to all citizens instead of serving the interests of only a section of the nation distinguishable as a community or caste.

7. In practice, the actions of members of an organisation, taken together with their objects, will determine the extent to which it is benefitting or damaging the basic concepts of national integration. Those organisatons which challenge the basic concepts or spread hatreds and hostilities which would divide Indian citizens from each other or promote discord between them could be penalised or discriminated against within the objectives of the Constitution. The absence of discrimination against any persons or citizens contemplated by the Constitution does not preclude discrimination against those who want to destroy or challenge the very basis of national integration contemplated as the foundation of all national development, progress and endeavour under the Constitution. If they are punished or penalised or even if their organisation is banned, it can be urged that the grounds of discrimination against them are absolutely legitimate and constitutionally valid.

8. Even Article 25 of the Constitution, conferring religious freedom both in belief and in action, subjects citizens to the requirements not only of law and order, morality, and public health, but also to the identical rights of other citizens. Activities that could strengthen the bonds which unite citizen and citizen and the citizen and the State are legal and laudable.

Organisations and activities that damage those bonds can be penalised as anti-national and anti-social.

9. The test in every case should not be the mere description of the bonds but their objects and the manner in which those objects are pursued. For example, a religious community will necessarily organise itself for the purposes of religious worship and expression and propagation of religious ideas on the strength of a common religous bond and label. It may take to education, social reform, and economic uplift. A line can, however, be drawn against allowing it to indulge in political activity. The secularism contemplated by our Constitution at least requires separation of religious organisation from organisations for political purposes.

10. It is true that secularism carried to its logical conclusion, excludes the religious from economic, legal, and social spheres as well. Nevertheless, organisations based on religious bonds could be permitted if their activities are intended to better educate the members of a religious community or to improve their economic or social lives. The object may be to deal with what is ultimately strengthening and integrating for the whole nation in a piecemeal fashion. The political bond, however, must stand for the common national objects which cannot be cut into pieces or served by religious classifications. Hence, banning of political parties organised on the basis of religious affinity should be permissible. But, the pursuit of other activities on grounds of religious affinity as the communal or uniting bond may be punished only where the activity is such that it goes beyond promoting the welfare of those organising themselves and is designed to injure others. As soon as it tends to generate hostile feelings against others and tolerates exploitation of others who do not share the same bond, the activities of the organisation would fall within a field which is objectionable. It should then be discouraged or p nalised.

11. This, it is submitted, is a rough statement of what policy should and could be in accordance with our Constitution. It indicates the policy underlying constitutionally valid law making with regard to communal organisations. An organisation limiting the right of membership by virtue of religious or any other similar qualification such as caste, language, or culture could be suspected as a communal organisation. Nevertheless, its activities should be prohibited or penalised only when they enter the obnoxious or offending zone. Its character will depend only partly on its stated objects, and, even more so, on the nature or result of its activities. The twin tests of object plus activity should determine whether the communal organisation is obnoxious or harmless from the point of view of national interest and integration.

12. The test indicated above requires a determination of the usefulness of an organisation for purposes of national integration. If its objects and activities lead towards that result, it is a laudable organisation whatever be its name. On the other hand, if its objects and activities promote national disintegration and disruption, it is a harmful organisation which can be discriminated against. The mere fact that a subjective element enters the process of judging the effects of the aims, objects and activities of an organisation should not deter the determination or decision which should be based on practical commonsense. Objectively varifiable criteria must form the basis of even subjective assessments or else the assessment becomes arbitrary, whimsical and unjustifiable.

13. It has been sometimes stated that commonsense is uncommon. Nevertheless, the process of judging the effects of purposes found to exist or of their pursuits cannot be so difficult as to be elusive. It may be that certain organisations, which may be really pursuing political or economic objectives, conceal themselves in the garb of merely religious, social, or cultural activities. The removal of the garb is also possible by carefully gathering and analysing objective data of what lies underneath. The effects of objects and activities are, at any rate, capable of objective determination. They are disclosed by outbursts of violence and lawlessness. Any attempt to preach violence or hatred of another community should *prima facie* be considered legally actionable. Appropriate laws, their impartial administration, their firm, unbending, and speedy enforcement are matters capable of easy determination by experienced administrators.

14. Bearing the above considerations in mind, a "communal organisation" may be defined as follows :

> "A communal organisation is one intended to facilitate the pursuit of or actually pursuing the object of exploiting a difference of caste, community, religion, race, language, culture, or region for the purpose of obtaining unfair advantages at the expense of other communities or propagating hatred or hostility against others not sharing the same organisational basis; and, any activity pursuant to such an object will constitute an 'objectionable activity'."

15. It should be noticed here that even intention exhibited by for ming the organisation is within the mischief aimed at by the definition. What is and what is not preaching "hatred" or "hostility" may require further elucidation and for that purpose, this explanation may be added to prevent misuses :

"*Explanation* : Bonafide and balanced criticism, however severe, which could not reasonably provoke violence or hostility between classes or communities, would not be deemed to constitute an 'objectionable activity'."

Of course, both 'mens rea' and 'actus reus' must concur to constitute any punishable offence which may be created, but, it is suggested, any action or conduct pursuant to or promoting an objectionable object should be deemed to be an "objectionable activity". The objectionable object is one which could reasonably provoke outbreaks of violence.

16. In fact, it could safely be recommended that a communal oganisation be viewed as one intended to promote or promoting objects prohibited already by Section 153-A of the I.P.C. An organisation resulting in or for the purpose of inciting commission of offences defined by sections 153-A and 153-B of the I.P.C. by its members could be said to be an aggravated form of this offence. In fact, the offence of forming a communal organisation would be a conspiracy between two or more persons to comm it offences prescribed by section 153-A and 153-B of the I.P.C. Banning of organisations of this character would serve to emphasise the salutary objects of section 153-A of the I.P.C., which reads as follows :

"Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc., and doing acts prejudicial to maintenance of harmony.

(1) Whoever

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language (linguistic) or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquility, shall be punished with imprisonment which may extend to three years or with fine or with both or,

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community.

(2) Offence committed in the place of worship etc. :—

Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

17. Furthermore, section 153-B of the I.P.C. introduced by Act 31 of 1972 reads as follows :

"Imputations, assertions prejudicial to national integration—(1) Whoever, by words either spoken or written or by signs or by visible representations or others;

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language, regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class or persons by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal

causes or is likely to cause disharmony of feeling or enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place or worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

18. The difficulty in bringing a communal organisation, as defined above, within the purview of a conspiracy between a number of in dividuals to commit offences already made punishable by Sections 153-A and 153-B of the I.P.C. relates to the nature of the evidence which could establish that not only some of its members individually but the organisation as such, which means all its members, can be held legally responsible. Even in such cases where it is possible to make the organisation responsible, the evidence will have to be of the overt acts of individuals who cannot escape liability.

19. A criminal conspiracy is defined in Section 120 A of the I.P.C., as an agreement between two or more persons to do or cause to be done either an illegal act or any other act which, though not illegal, is to be accomplished by illegal means. The proviso to Section 120-A lays down that a mere agreement to do anything will not constitute a conspiracy unless the agreement itself is one for the commission of a criminal offence or alternatively, some act follows the agreement to commit illegality. It is also made clear by an Explanation to Section 120A of the I.P.C., that, even an objectionable incidental object could make the agreement a conspiracy even though the ultimate object may be legal. Thus the definition enables the criminal courts to go into incidental and implied objects. In as much as the agreement itself has to be for committing a criminal offence, a vague or misleading 'agreement' may be insufficient to impute the knowledge of all its possible consequences to every person who is a member of an association based on an agreement whose activities result in criminal offences. This is also a question of proof depending on evidence against individuals accused of an offence. In cases where the objectives of the association are unmistakably clear and come within the mischief of either Section 153-A or 153-B I.P.C. the mere membership of an association with such criminal objects could be deemed to be the result of a criminal intent and conspiracy. But, even in such cases, the accused could prove that he was ignorant or deceived or not really aware of the expressed objects. In making mere membership of a communal organisation illegal, the juristic

elements of a crime could not be overlooked. In other words, each individual charged will have to be proved to have 'mens rea' and to have exhibited it by committing wrongful act or 'actus reus'.

20. Other difficulties in the way of making mere membership of a communal organisation, as defined above, an offence, could arise by looking at the provisions of Article 19(1)(c) and Article 19(4) which subject the fundamental right of association, guaranteed by Article 19(c), to reasonable restrictions in the interest of 'sovereignty and integrity of India or 'public order' or 'morality' only. It may be contended that at least the first part of the definition of a communal organisation, suggested above, consisting of a pursuit of "the object of exploiting a difference of caste, community, religion, race, culture or region for the purpose of obtaining unfair advantages at the expense of other communities", will not come within the purview of permissible reasonable restrictions. In view of the doecision of the Supreme Court in the State of Madras Vs. V.G. Row (AIR 1952 S.C. 196), a restriction which is either too vague or does not impose sifficient procedural safeguards, such as the duty to give notice to an offender against it, could be held to be void. It is difficult to foretell what the ultimate result of litigation may be in such a case unless an offence connected with the membership of a communal organisation is clearly brought within the category of what can be reasonably done keeping in view the provisions of Article 19 (1) (c) and (4) of the Constitution. It is, however, suggested that the path would be easier if the salutary provisions of Article 31-D of the Constitution, which were repealed by the Janata Government, were restored to the statute book in some form under prevailing conditions in India. That Article reads as follows:

"31-D(1) Notwithstanding anything contained in Article 13, no law providing for,

(a) the prevention or prohibition of anti-national activities or

(b) the prevention or formation of, or the prohibition of anti-national associations shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, article 14, article 19 or article 31.

(2) Notwithstanding anything in this Constitution, Parliament shall have, and the Legislature of a State shall not have, power to make laws with respect to any of the matters referred to in sub-clause (a) or sub-clause (b) of Clause(1).

(3) Any law with respect to any matter referred to in sub-clause (a) or sub-clause (b) of clause (1) which is in force immediately before the commencement of section 5 of the Constitution (44th Amendment) Act; 1976 shall continue in force until altered or repealed or amended by Parliament.

(4) In this article,—

(a) "Association" means an association of persons;

(b) "anti-national activity", in relation to an individual or association, means any action taken by such individual or association—

(i) which is intended, or which supports any claim to bring about, on any ground what soever, the cession of a part of the territory of India or the secession of a part of the territory of India or which incites any individual or association to bring about such cession or secession;

(ii) which disclaims, questions, threatens, disrupts or is intended to threaten or disrupt the sovereignty and integrity of India or the security of the State or the unity of the nation;

(iii) which is intended, or which is part of a scheme which is intended, to overthrow by force the Government as by law established;

(iv) which is intended, or which is part of a scheme which is intended, to create internal disturbance or the disruption of public services;

(v) which is intended, or which is part of a scheme which is intended, to threaten or disrupt harmony between different religious, racial, language or regional groups or castes or communities;

(c) "anti-national association" means an association:

(i) which has for its object any anti-national activity;

(ii) which encouragess or aids persons to undertake or engage in an anti-national activity;

(iii) the members whereof undertake or engage in any anti-national activity."

21. In view of the anti-national activities of some ostensibly social and cultural but actually anti-national and dangerous organisations, judging from the results of their activities encouragee by certain external forces hostile to the national interests of our country, it seems to the Commission that the ambit of the definition of "unlawful activity" in Section 2 (f) of the Unlawful Activities (Prevention) Act 37 of the 1967 is too narrow as it is confined to support of claims for cession of or secession of Indian territory or to activities intended to bring that about or to disrupt the sovereignty or territorial integrity of India. It seems to the Commission that the scope of the definition should be widened so as to include the grounds in the repealed Article 31-D (IV) of the Constitution which ran as follows:

> "(iv) which is intended, or which is part of a scheme which is intended, to create internal disturbance or the disruption of public services;"

It seemed to the Commission that the above mentioned provisions of the repealed Article 31-D(iv) would be covered by Article 19(4) of the Constitution authorising imposition of reasonable restrictions on the right to form associations provided restrictions are in the interests, *inter alia*, of "public order". The Commission, therefore, strongly recommends:—

(a) that, the scope of "Unlawful Activity" in the Unlawful Activities (Prevention) Act 37 of 1967 be enlarged by adding to the definition under section 2(f) of the Act as Clause (iii) of it the above mentioned provisions of the repealed Article 31-D (iv);

(b) that, in any case, the prosecuting agencies all over the country may be directed to make use of the provisions of Sections 153-A and 153-B I.P.C. liberally so as to enforce better discipline in matters relating to communal harmony and national integration.

It seems to the Commission that, for the purposes of checking most of the objectionable activities of associations which require to be banned in the interest of communal harmony, the two steps recommended above are enough. Existing legal provisions must also be utilised fully for the purposes for which they are intended.

22. The ambit of "unlawful activities" may, however require to be enlarged further in order to check the proliferation of associations intended to damage harmonious relations between communities. This could be done by adding, as clause (iv) of Section 2(f), defining "unlawful activity" in the Unlawful Activities (Prevention) Act 37 of 1967, another

clause which was therein the repealed Article 31-D as clause (v) and which ran as follows :

"(v) which is intended, or which is part of a scheme which is intended, to threaten or disrupt harmony between different religious, racial, language or regional groups or castes or communities".

The danger, however, in introducing this wider category is that the enlargement may be challenged as outside the purview of permissible restrictions contained at present in Article 19(4) of the Constitution on the right of association unless the words of 'national integration' were added after the words " public order or morality', as a permissible ground of restrictions upon the right of association.

In the alternative, Article 31-D of the Constitution may be re-introduced so as to provide a more comprehensive protection to any law made to curb associations intended to disrupt communal harmony. The need of such legislation to curb dangerous activities of communal associations and of steps under it is borne out by publications in newspapers and periodicals in general. An instance is an article in the magazine entitled "Sunday" dated 14-3-1982, an extract from which is found in the attached ANNEXURE-A.

23. As regards electioneering based on communal grounds it has to be remembered that it is already a corrupt and illegal practice as defined by section 123 of the Representation of People Act. The reason why such activity is not permissible and would invalidate a candidate's election has been explained at some length as inconsistent with the very basis of a secular State by Beg. J. (now Chairman of the Minorities' Commission) in Bukhari's case [Z.A. Bukhari Vs. Brij Mohan Ramdass Mehra and others (1976) Supereme Court Cases 17].

24. In the opinion of the Commission, the result of the foregoing discussion is as follows :—

(i) Firstly, although a communal organisation could be defined in the way suggested above, yet, the mere membership of a communal organisation could be an offence for each individual member of the organisation only if the expressed objects of the organisation include commission of criminal offences to the knowledge of the member concerned or where activities of the organisation in which the member concerned participates are such that the member could be reasonably presumed to know that criminal offences would result from these activities.

(ii) Secondly, it is difficult under the law, as it stands today, to ban a communal organisation merely on the ground that it indulges in political activity although communal or religious organisations should certainly not be formed for the purposes of political activities. Political activity should represent the interests of the nation as a whole and not merely of a section of it only. As the law stands at present, prohibition of political activities by religious or communal organisations is a matter of ethics which can be enforced only by building up public opinion against misuse of either religion or politics. It has to be remembered that what is believed to be ethically correct today may be the law of tomorrow.

The disestablishment clause of the American Constitution, separating the Church and its activities from those of the State, and a similar provision in the Constitution of U.S.S.R. give effect to the secular foundations of the Constitutions of both these States. Although, our Constitution has not got a separate clause separating religion from politics, yet, its implications lead to that result. Secular foundations of our Constitution should perhaps be placed on a clearer footing by the kinds of amendments in law, even in the Constitution, and actions suggested above in paragraphs 21 and 22, and, even without such amendments, existing law, which has enough teeth to deal with communal activities, should be freely used.

(iii) Thirdly, it ought not to be over looked that, so far as electioneering on communal grounds is concerned, it is already banned and falls within the purview of corrupt and illegal practices prohibited by provisions of the Representation of People Act and that communal activities of individuals are already punishable under sections 153-A and 153-B of I.P.C. A copy of extract from the judgement of Beg. J., in Bukhari's case is annexed herewith as ANNEXURE-B.

(iv) Fourthly, there could not be much difficulty in arriving at the anti-national character of an organisation or its design to promote commission of offences punishable under sections 153-A and 153-B I.P.C., when the official representatives of an organisation proclaim and assume responsibility for commission of acts like hijacking of a plane or sacrilege with a view

to offending the religious sentiments of another community. The difficulty arising in other cases, where the actual activities may be governed by secret directions but they are attempted to be concealed by misleading statements of ostensibly laudable express objects, the test could be circumstantial on the following lines :

(a) the number of incidents of communal character in which the members of the organisation are found to be involved; and

(b) the cumulative results of the various activities of the organisation.

Our intelligence agencies must become more efficient and honest so as to be able to unravel the true character, objects, and results of activities or organisations trying to conceal their real designs. A strict watch should be kept not only on the office bearers and members of suspect organisations but also on activities of and expressions of opinion by Government officials who may be inclined to be sympathetic towards such organisations.

A solution of the problem of "subjective" assessments of what are "communal organisations", mentioned in the communication from the Home Ministry, would present no serious difficulty if officials entrusted with appropriate decisions are impartial, conscientious, and experienced in appraising evidence for which courts have laid down a number of very helpful guidelines making even a man's state of mind "as much a matter of evidence as the state of his digestion". Evidence, so long as it is relevant and comes from reliable untainted sources, always provides an "objective" basis for a conclusion which need not be arbitrary at all. It is not so much the subjectivity of a judgement—best of judgements are often "subjective" in a sense—but its erroneous conclusions or obvious arbitrariness or whimsicality of it which could be objectionable. Procedural rules framed elaborately by courts, such as the need to record reasons for a decision after hearing both sides, are intended to guard against such errors.

(v) Fifthly, banning of organisations and punishment of individuals could remove symptoms temporarily but the deep roots of the

disease which produces them could only be effectively tackled by thorough-going national drives with the aid and cooperation of appropriate institutions and of all political parties for achieving the commonly accepted goal of national integration which is a necessary condition of sustained progress and development of our nation towards the objectives proclaimed in the Preamble to the Constitution. Punitive action, to serve a constructive purpose, must operate only as a part of the nation's education in national integration.

ANNEXURE-A

Extract from Article on "THE PUNE RIOTS : REVENGE FOR MEENAKSHIPURAM" By M.J. AKBAR—In the Magazine SUNDAY, dated 14th March, 1982.

The violence of 14 February is not a very serious inciden in the larger perspective. What is serious is the growth of communal organisations, whether Hindu or Muslim, and their spreading influence on the youth of the two communities in these times of increasing unemployment and growing despair. The despondency of the Harijan youth is an even worse social reality. These are the problems, and we must find answers soon if—God forbid—we do not want a myriad civil wars, small and big, to break out in our country. As long as there are caste and creed divisions, there will be caste and creed tensions. But where there should be a multiplying numbers of organisations that heal wounds, we are finding a plethora of groups that spend their time pouring acid in the sores.

ANNEXURE 'B'

Z.A. BUKHARI *Vs.* B.R. MEHRA AND OTHERS

(SCC Vol. II 1976 Page 17)

The relevant passage dealing with the reason why electioneering on communal grounds is not permissible during an election reads as follows :

X X X X
X X X X

Per Beg, J. :

38. "The whole outlook revealed by the speeches of Bukhari is that of a medieval crusader who had embarked on a Jehad for extirpation of the heresy or 'kufr' which, in Bukhari's imagination, was represented by Chagla and his party. We do not consider such speeches to have any place in a democratic set up under our Constitution. Indeed, they have none in the world of modern science which has compelled every type of religion, for its own survival, to seek securer foundations than child-like faith in and unquestioning conformity or obedience to an invariable set of religious beliefs and practices.

39. We do not think that any useful purpose is served by citing authorities, as the learned counsel for the appellant tried to do, to interpret the facts of the case before us by comparing them to the very different facts of other cases. In all such cases, the line has no doubt to be drawn with care so as not to equate possible impersonal attacks on religious bigotry and intolerance with personal ones actuated by bigotry and intolerance.

40. As already indicated by us, our democracy can only survive if those who aspire to become people's representatives and leaders understand the spirit of secular democracy. That spirit was characterised by Montesquieu long ago as one of "virtue". It implies, as the late Pandit Jawaharlal Nehru once said, "self-discipline". For such a spirit to prevail, candidates at elections have to try to persuade electors by showing them the light of reason and not by inflaming their blind and disruptive passions. Heresy hunting propaganda on professedly religious grounds directed against a candidate at an election may be permitted in a theocratic state but not in a secular republic like ours. It is evident that, if such propaganda was permitted here, it would injure the interests of members of religious minority groups more than those of others. It is forbidden in this country

in order to preserve the spirit of equality, fraternity, and amity between rivals even during elections. Indeed, such prohibitions are necessary in the interests of elementary public peace and order.

41. Learned counsel for the appellant submitted that if we considered the substance of what was said by the appellant, it would only amount to a plea that the voters should support one who opposes any change in Muslim Personal Law as against another who wanted to change it. If change of personal law is, it issuggested, only a secular matter, opposition to its change could not become an appeal on grounds of religion. To accept this argument would be to review the appeal to the voters after turning it upside down, or, perhaps, inside out. We are not concerned so much with the real nature of what is opposed or supported as with the grounds on which a candidate claims support over a rival. We have to primarily examine the cloak which the appeal wears to parade in and not only what lies beneath it.

42. If all human activity in this world could be labelled "secular" on the ground that it appertains to "this world, as against the other world", all religious thought and activity could be described as "secular" as it takes place in this world. But, the term is not used so broadly. It is a convenient label to distinguish all that is done in this world without seeking the intervention or favour of or propitiating a Superhuman or Divine Power or Being from that which is done professedly to please or to carry out the will of the Divinity. Secularism, in the realm of Philosophy, is a system of Utilitarian ethics, seeking to maximise human happiness or welfare quite independently of what may be either religious or the occult.

43. Primitive man does practically nothing without making it wear a religious garb because his understanding of the physical world, of human nature, and of social needs and realities, is limited. He surrounds customary modes of action with an aura of superstitious reverence. He is fearful of departures from these lest he is visited by Divine wrath. Modern man, with his greater range of scientific knowledge and better understanding of his own needs as well as of the nature of the Universe, attempts to confine religion to its proper sphere.....that where he reaches a satisfying relationship between himself and the Divinity, he believes in so as to get an inner strength and solace which enables him to over-come psychological crises or fears when confronted with disturbing or disrupting events such as Death, or their prospects. He does not permit his religion, which should be essentially his individual affair, to invade what are properly the spheres of law, politics, ethics, aesthetics, economics, and technology, even where its administration is institutionalised and it operates as a social force.

44. The Secular State, rising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds. Maitland has pointed out that such a State has to ensure, through its laws, that the existence or exercise of a political or civil right or position under it or to perform any public duty connected with it does not depend upon the profession or practice of any particular religion. Therefore, candidates at an election to a Legislature, which is a part of "the State", cannot be allowed to tell electors that their rivals are unfit to act as their representatives on grounds of their religious professions or practices. To permit such propaganda would be not merely to permit undignified personal attacks on candidates concerned but also to allow assaults on what sustains the basic structure of our Democratic State.

45. Our Constitution and the laws framed thereunder leave citizens free to work out happy and harmonious relationships between their religions and the quite separable secular fields of law and politics. But, they do not permit an unjustifiable invasion of what belongs to one sphere by what appertains really to another. It is for courts to determine, in a case of dispute, whether any sphere was or was not properly interfered with, in accordance with the Constitution, even by a purported law. The validity of Section 123(2)(3) and (3A) has not been questioned before us. And, we have explained above what these provisions are meant for.

46. X X X X
X X X X

APPENDIX VIIA

(*Ref.* Chapter III, para 3.8)

ON BHAGAVAD GITA

By

Mr. Mirza Hameedullah Beg (Chief Justice of India) (Retd.),
Chairman, Minorities Commission of India.

Swamiji and Friends,

I have seen success, even less than what I had the good fortune to attain by reaching the highest judicial office in my country, turn the heads of some people who become filled with vanity and false pride or arrogance. Others, whose footsteps are dogged by the misfortune of failure and defeat, despite their most strenuous efforts, become embittered, their thoughts and feelings are poisoned by frustration and filled with hatred and jealousy, and their actions turn towards activities destructive of themselves or of others or of both. In fact, all these are examples of those whose souls have fallen on the battlefield of life in this world. They can be revived, strengthened, cured, purified and purged of all poisons if they could take a daily dip in that moving poetic Ocean of self-knowledge, celestial inspiration, and courage known as Bhagavad Gita. They then realise that success or failure in any direction and to any extent are mere ephemeral illusions which should not and do not matter. What matters and is significant is earnest endeavour in the right direction with the right means. The satisfaction right action brings should be its own reward. It imparts joy to living and brings glory to death for a good cause which it turns into eternal life by enveloping it with the magnificent glow of a golden fire of martyrdom. All this one learns only if one understands the meaning of one of the greatest outpourings of the human soul at its best which Bhagavad Gita, called the "Celestial Song" by Sir Edwin Arnold, really is.

Mr. Juan Mascaro in his Introduction to a beautiful translation of Bhagavad Gita in English wrote :

"The true progress of man on earth is the progress of an inner vision. We have a progress in science, but is it in harmony with a spiritual progress ? We want a scientific progress, but do we want a moral progres ? It is not enough to have more, or even to know more, but to live more, and if we want to live more, we must love more. Love is 'the treasure hid in a field, and this field, according' to the Gita, is our own soul. Here the

treasure is found for which the wise merchant 'went and sold all he had'. And, contrary to the law of matter where to give more means to have less, in the law of love the more one gives the more one has.

The spiritual visions of man confirm and illumine each other. We have the cosmic greatness of Hinduism, the moral issues of Zoroaster, the joy in the Truth of Buddha, the spiritual victory of Jainism, the simple love of Tao, the wisdom of Confucius, the poetry of Shinto, the One God of Israel, the redeeming radiance of Christianity, the glory of God of Islam, the harmony of the Sikhs. Great poems in different languages have different values but they all are poetry, and the spiritual visions of man come all from One Light. In them we have Lamps of Fire that burn to the glory of God.

The finite in man longs for the Infinite. The love that moves the stars moves also the heart of man and a law of spiritual gravitation leads his soul to the Soul of the Universe. Man sees the sun by the light of the sun, and he sees the Spirit by the light of his own inner spirit. The radiance of eternal beauty shines over this vast universe and in moments of contemplation, we can see the Eternal in things that pass away. This is the message of the great spiritual seers; and all poetry and art and beauty is only an infinite variation of this message.

If we read the scriptures and books of wisdom of the world, if we consider the many spiritual experiences recorded in the writings of the past, we find one spiritual faith, and this faith is based on a vision....the Truth of our Being.

In the Bhagavad Gita we have faith, a faith based on spiritual vision. In this vision we have light. Shall we see ? This Song calls us to Love and Life. Shall we hear ?

Every moment of our life can be the beginning of great things".
He also said :

"Socrates tells us that love is the messenger between the Gods and man, and St. John of the Cross says that 'It is love alone that unites the soul with God.... These ideas are in the spirit of the Bhagavad Gita. The vision of God is the grace of God; but the grace of God is the reward of the love of man.

Love is the power that moves the universe, the day of life, the night of death, and the new day after death. The radiance of this universe sends us a message of love and says that all creation came from love, that love impels evolution and that at the end of their time, love returns all things to

Eternity. Even as the rational mind can see that all matter is energy, the spirit can see that all energy is love and everything in creation can be a mathematical equation for the mind and a song of love for the soul. Love leads to Light : Bhakti leads to Jnana, and Jnana is the joy of Brahman, the joy of the Infinite.

Our soul, like a bird in a cage, longs for the liberty of the vast air. We read the words of Pindar :

Things of a day; What are we, and what are we not ? A dream about a shadow is man : yet, when some God given splendour falls, a glory of light comes over him and his life is sweet.

The finite longs for the Infinite and we feel the sorrow of things that pass away; but beyond the tears of mankind there is the rainbow of joy. We can love the Infinite in all, and thus we can find joy in all, as it was so beautifully expressed in the Brihad-Aranyaka Upanishad".

The message of Gita is that of hope for the fallen and depressed and of further exaltation and progress for the enlightened and advanced in excellence. To be properly understood we need good guidance lest we mis-interpret and misunderstand in our gropings towards perfection with imperfect-mental mechanisms. Hence, we should bear in mind the words of the father of our nation, Mahatma Gandhi, who was a great lover of the Gita. He wrote about the first rule he followed in his "Interpretation of the Gita":

"Any interpretation of a Shastra which is opposed to truth cannot be right. The Shastras are not meant for those who question the validity of the principle of truth itself, or, rather, the Shastras are no better than ordinary books for such a person. No one can meet him in argument. Any one, on the other hand, who does not find the principle of non-violence in the Shastras, is indeed in danger, but his case is not hopeless. Truth is a positive value, while non-violence is a negative value. Truth affirms. Non-violence forbids something which is real enough. Truth exists, untruth does not exist. Violence exists, non-violence does not. Even so, the highest Dharma for us is that nothing but non-violence can be. Truth is its own proof, and non-violence is its supreme fruit. The latter is necessarily contained in the former. Since, however, it is not evident as truth is, one may try to discover the meaning of the Shastras without believing in it. But, the spirit of non-violence alone will reveal to one the true meaning of the Shastras".

"The second rule to be followed in determining the meaning of a text in a Shastra is that one should not stick to its letter, but try to understand its spirit, its meaning in the total context".

There are many translations and commentaries, both Indian and foreign, of the Bhagavad Gita. Those who make an advanced study of its place in the Indian philosophical-cum-religious thought cannot do better than to read about it in the volumes of our late President, Dr. Radhakrishnan, writing on Indian Philosophy. I will quote only a few passages from there. Comparing it with Buddhism, he said :

"The Gita denounces the religious madness of the hermits and the spiritual suicide of saints who prefer darkness to day light and sorrow to joy. It is possible to attain salvation without resorting to the cult of narrowness and death. The word nirvana occurs in the Gita, but this does not show any borrowing from Buddhism, since it is not peculiar to it. In the descriptions of the ideal man, the Gita and Buddhism agree. As a Philosophy and religion, the Gita is more complete than Buddhism, which emphasises overmuch the negative side. The Gita adopts the ethical principles of Buddhism, while it by implication condemns the negative metaphysics of Buddhism as the root of all unbelief and error. It is more in continuity with the past and, therefore, had a better fortune than Buddhism in India."

And, explaining the character of the universality, the wholeness, and the imperishableness of the spirit reflected in man as depicted in the Gita, he writes :

"We have in the actual individuals of the world combinations of subject and object. The empirical individuals are the divine principles of subject limited by contexts of object. In the world the subject and the object are always found together. Only the object has not an ultimate transcendental existence. The subject superior to the object is the basis of the object. When a mansees all the variety of existence as rooted in one and all as emanating from that, he becomes one with the Supreme. When the confusion with the object terminates, the subject in all is found to be the same. When *Krsna* urges Arjuna not to grieve for the dead, he says that death is not extinction. The individual form may change, but the essence is not destroyed. Until perfection is obtained, individuality persists. However, repeatedly the mortal frame is destroyed, the inner individuality preserves its identity and takes on a new form. *Buoyed* up by this faith, man has to work for self-knowledge. Our imperishableness is guaranteed either by way of endlessness or perfection. It is the unfolding of our implicit infinitude. It is by this affirmation of the soul, by this vindication of the intuition of the Upanisads, that the Atman, or the pure subject, remains unaffected, even though our body be 'dust returning unto dust', that *Krsna* stills the unrest of Arjuna's mind.

'Never the spirit was born; the spirit shall cease to be never : Never was time it was not; end and beginning are dreams; Birthless and deathless and changeless remaineth the spirit for ever, Death hath not touched it all, dead though the house of it seems.'

"In the spirit of the Upanisads, the Gita identifies the two principles of the Atman and the Brahman. Behind the fleeting senses and the body there is the Atman; behind the flating objects of the world, there is Brahman. The two are one, being of identical nature. The reality of this is a matter of each man's experience to be realised for himself. Any endeavour to define the unchanging in terms of the changing fails. There is, however, no attempt in the Gita to prove that the absolute discerned by intuition is the logical foundation of the world, though this is implied. If the world is to be an experience and not a chaotic confusion, then we require the reality of an unconditioned absolute. We should, however, be very careful not to oppose the infinite and the finite as two mutually exclusive spheres. This will lead us to a false view of the infinite. What strikes us at first is the distinction between the passing finite and the real infinite. But if this were all, then the infinite becomes finitised, converted into something limited, since the opposed and the excluded finite becomes the limit of the infinite. It is wrong to conceive the infinite as something pushed out of the being of the finite. It is the finite itself in its truth. It is the infinitised finite, the real in the finite and not something lying side by side with it. If we overlook the infinite in the finite, we get an endless progress peculiar to the world of finitude or samsara. This very endlessness is the sign of the infinite within the sphere of the finite. The finite reveals itself as nothing more than the infinite made finite. The distinction between the infinite and the finite is only a characteristic of loose thinking. In truth, there is only the infinite, and the finite is nothing more than the finitisaton of the infinite. It follows that terms like transcendence and immanence are inapplicable, since these assume a distinct 'other' to the absolute. Any category of thought is inadequate for the purposes of the absolute. It is described as neither being nor non-being, neither formed nor unformed. The Gita reiterates the Upanisad principle that the real is the immutable self-existence behind the cosmic world, with its space, time and casualty."

The Gita, though employing allegories and poetic imagination in abundance, if correctly understood, leads only to the fundamentalism of what is truly and fundamentally good and excellent or of what we may call the "divine spark", in each one of us. Its positivistic philosophy is full of hope and courage for all. It should only be used to elevate the minds and feelings of human kind as a whole so as to better enable it to cope with realities and difficulties of life. There is no book or doctrine, however great and excellent, and, indeed, nothing which Man or God is believed to have said or done which has not been misintrpreted, twisted out of shape,

and represented as an instrument of evil or injustice. To prevent such perversion of the Gita, which is one of the greatest of all inspired utterances found in man's history on earth, we need guides, such as His Holiness Swami Shri Hari Har Ji Maharaj who can explain its true meaning and message. This, as I have tried to indicate above, is so elevating, so exhilarating, and so invigorating that no work could be nobler than that undertaken by Swamiji in starting the Geeta Foundation, with seats of learning for research into and for teaching the beauties and refinements of thought, feeling, and action, expounded in the Bhagavad Gita, and for spreading their knowledge far and wide all over the world to all peaple of all classes and all types among all the nations of the world. Indeed, I have ventured to suggest to Swamiji that, among the many projects of the Geeta Foundation, none could be more appropriate than that of an Ashram situated at Allahabad in India, the site of the confluence or the Sangam of two rivers venerated by us—the Ganga and the Jamuna—and of a mythological third river, the Saraswati. I believe that this scheme is in its formative stages. I hope it will materialize soon as I, who really come from Hyderabad Deccan, where my father had settled down, but went to Allahabad to settle there, know of its quiet but powerful and unshakable charm for those who love learning and excellence. The Gita too represents a confluence of all that is good, great, beautiful, and heroic in the spirit of man.

APPENDIX-VII-B

(*Ref.* Chapter III, para 3.21)

REPORT OF MR. JUSTICE M.H. BEG., CHAIRMAN, MINORITIES COMMISSION OF INDIA ON HIS VISIT TO GITA FOUNDATION'S CONFERENCE AT BANGKOK AND THE TEACHINGS OF SWAMI HARI HAR JI MAHARAJ.

(25th December to 27th December 1982)

Note :—This is an attempt to answer the question raised by Prime Minister Shrimati Indira Gandhi's recent advice that we should "weave the wisdom of the sages into knowledge and give consideration to the values that are timeless to bring out the true worth of human kind and reinforce its humanity".

Lovers of the Gita from every continent and from many countries of the globe assembled at Bangkok to exchange ideas and to hear the wonderfully clear and witty discourses of Swami Hari Har Ji Maharaj, the founder President of the Gita Ashrams. Expert exponents of the message of the Gita such as Dr. Karan Singh and Mr. Akbar Ali Jasdanwala, spoke with the fervour of a faith which no teaching deserves more than that in the Bhagvad Gita—a superb manifestation of the spiritual greatness and grandeur of the "divine discontent" of men. It also contains solutions which dispel doubt and discontent of a troubled mind and bring peace and tranquility to it and joy to life. This happens when, as Swami Hari Har Ji Maharaj explained, the wise, for whom the Gita is meant, see what it really stands for. It does not imply the narrowness of the faith of a dogmatist or of a blind bigot who knows nothing better than a literal sense which destroys the spirit or the real meaning. This meaning, while transcending particular religious faiths and dogmatism, rests on the Real Dharma of Man or on faith in the nature, or, as some put it, "the divinity" in Man. That, as Swamiji so beautifully explained, can only unite and not divide us as human-beings. It is, therefore, the One that unites, lying behind all that seems but only seems—to divide, which the wise seek. To the unwise what is insignificant and can divide matters more than what unites. To the wise, what unites is far more significant, grander, and greater than what differentiates. The wise, throughout the world, have a

faith that unites man everywhere irrespective of labels. The unwise or unenlightened, on the other hand, have another faith which divides them irrespective of their labels, for they must fight over trivialities even when they have the same labels because, to them only futile clashes over trifles in life matter.

Even religions which came to uplift and unite humanity were exploited by the cunning with vested interests to serve. They have been used to confound and confuse the foolish and the ignorant and to cheat them into parting with their belongings by holding out false hopes and offering quack remedies for relief of distress or for satisfaction of desires whether healthy or unhealthy. Such exploiters convert the best of religions into sources of confusion, error, division, hatred, anger and ruination. They even reduce them into engines of fraud, oppression, suppression and monstrous cruelties and outrages. Hence, in the world of today, many have rebelled against traditional religions. And, all religion has been described by some as an "opiate of the masses" meant to keep them down and satisfied with their sad and sorry lots. Others have compared religions to intoxicating liquors or disabling drugs which do more harm than good to human-beings.

Swami Hari Har Ji Maharaj, aware of the misuses of the name of religion for nefarious purposes, questioned the utility of a welter of creeds, each professing to spread a gospel of peace and of love and of goodwill amongst mankind, or of a multiplication of places of worship—temples, churches and mosques—when so many powerful nations and their leaders blindly prepare means of destruction of not only the whole human race but of all life on earth. He suggested that neither a proliferation of religious creeds nor any intensification of religious frenzies, which do harm, is called for. He advised development of human wisdom which no doubt, requires a scientific application of utilitarian principles and tests to human thought and action. Some may call this "Secularism" which has been described, in the Encyclopaedia Britannica, as a part of "Utilitarian ethics". Others, however, object to the term "Secularism" on the ground that it suggests a hostility to religion which stands for faith. If, however, faith is not to be blind and based on irrational superstitions and dogmatism but to be enlightened and productive of respect for only the highest values, can we abandon the scientific methods of observation and rational induction and deduction from satisfactorily ascertained facts or empirical knowledge ?

Swami Hari Har Ji Maharaj obviously favours gathering pearls of empirical wisdom found buried in the Bhagavad Gita, an ocean of such wisdom, by raising its teaching to a level higher than that of traditional religions. He does not want to add any new sect or creed to the already

existing plethora of these. His is the method of Jalaluddin Roomi, the Sufi who wrote, in the 13th Century :

'Mun uz Quran Magz
ra bardash—tam' :
(I have extracted the marrow
or essence from the Quran)

'Ustukhwan pesh sagan
mi undakhtam'
(I throw the bones in front of the dogs).

Human beings, who claim to possess the "divine spark", should not fight, as the canine species does, over bones.

Swamiji gives us his pearls of wisdom in the form of simple stories or parables. For example, he explained to us the need for a healthy mind in a healthy body, with adequate means to execute what such a mind wants, by telling us that to write a good letter, one requires not only a duly trained wise mind but also pen and ink and paper and a hand to write with. He also told us the story of two brothers, one healthy but blind and another with good eyesight but unable to walk as he was lame. Both were caught in a house on fire. He compared the present state of the world to such a house. It was only when the two brothers had shouted and contrived to meet each other by so shouting, and when the blind one had agreed to carry the lame one on his shoulder, that they were able to find the way out and to escape being burnt to death. Swamiji thought that the blind one represented those powerful ones who rule over the earth today and the lame one represented the disabled ones with enough capacity to guide the blind ones. The inference is that Swamiji represents the voice of that good sense and empirical wisdom which could help the world out of its difficulties.

Now, one of the rules deduced by empirical wisdom, gathered by our political philosophers from the history of all nations in the world, is that confusion of religion with politics, resulting in a theocracy, can erect the worst form of tyranny. It generally results in the misuse of religion to persecute political opponents, to slaughter or plunder innocents who hold broader and more liberal views on religion than the religious bigots who rule a State. We find this happening under our very eyes in some countries such as Iran. Swami Hari Har Ji's empirical widsom cannot, however, support such monstrous misuse of so called religion because, according to his teaching, the true religion of man is one that really unites and does not divide man. Only such a religion could carry out the true purposes of the term "religion" used in its derivative sense. The word "religion" comes from "religio" or "to bind together". It is

unity of human needs, material as well as moral or psychological, which bind human beings together in an integrated society or nation or a world community. Among those needs, none is greater than that for commonly sought interests and values which could preserve and ensure the progress of the human race through a just, orderly, integrated society.

The Preamble to our Constitution mentions these needs as follows :—

"JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief,
faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation."

The Indian Constitution is secular because it sets up a State or a Republic in whose eyes all citizens are equal in rights and status irrespective of their caste, creed, race, or region. This is exactly what Swami Hari Har Ji says about what good human beings should believe in and work for. Hence, his teachings are not anti-secular. They are only intended to spiritualise our 'secularism' in the sense that, by following them, our secularism itself can attain its highest professed objectives. The real clash is between these objectives and narrower creeds whose followers may seek to govern society and not between broad humanistic creeds, such as that of Swamiji, and what is called "Secularism".

When Swamiji speaks of the blindness of the powerful, he does not mean to convey that all those who have power are blind. Nevertheless, he does warn us against the blindness caused by an intoxication with any kind of power, whether it be political, social, economic, or, even religious or spiritual. It is good ethics which can save us from such blindness. And, as Swami Hari Har Ji Maharaj is really a teacher of good ethics, he is able to rise above the narrowness of labelled creeds and organised religions.

Swami Ji gave a lesson in good ethics when he described four methods of devotion to the highest objectives which can be pursued by men and women at various stages or levels of intellectual and spiritual development. The first or the highest form is devotion of those who consciously work for the good of the whole human race. They test all thoughts and actions, including their own, by asking whether these are for the good of the whole human race or not. The second variety or level is of those who are not able to serve the highest good of man, whatever may be the

reasons for it, and strive to attain the good of their particular country inhabited by a nation. Of course, they ought to reconcile their national objectives with the good of the whole human race. Nevertheless, where their efforts or capacities must fail in achieving the highest objective, they are to be content with achieving what appears to them to be the best for at least a section of humanity to which they belong. This line of thinking may result from an inability to achieve the purposes of the highest objective of those who work consciously keeping in view the good of the whole human race. Even the second class of workers, who work for the good of a particular section of humanity, must, however, avoid doing anything which injures the good of the whole because the good of the whole and its parts is not capable of compartmentalisation. The third type described by Swami Ji is of persons who, for some reasons over which they have no control, are disabled from working for either of the two higher objectives consciously or directly. They can, according to Swami Ji, work for their own individual salvation by trying to attain what each considers best for his or her own excellence. But, here again, the attempts of the individual to benefit himself or herself must stop short of injuring the good of others. In other words, he or she must not harm others. At least by setting such an example, he or she will also be serving the higher objectives for which the person concerned may, due to some disability for want of power or capacity, be unable to consciously work. The fourth and the last category of human beings, according to Swami Ji's teachings, consists of those who are unable to fend for themselves or work for even their own good. Such are the persons incapacitated by some physical or psychological weakness in development, such as children, or want of capacity for some other reason, such as ignorance or lack of education, for which they are not themselves responsible. According to Swami Ji's teachings, this fourth and last class of persons must, in order to serve the purposes of human life and endeavour, carry out the orders of those superior to themselves in development and intellectual and moral capacity. They must possess atleast the capacity to recognise such superiority in others whom they should obey and follow.

In making the above classification of human-beings, with their different methods of serving the common good, Swami Ji does not intend to suggest any conflict between any of the four categories. On the other hand, it will be seen that he visualises a cooperative endeavour of all to serve the common good. Now, this teaching of Swami Ji is, in my humble estimation, completely in consonance with utilitarian ethics or secularism. Those who want to surround such secularism with an aura of divinity can do so. That is a question of faith and choice. But, the fact is that, in ultimate analysis, such teachings, based on worldly wisdom and good ethics, embrace the objects of secularism itself.

I am reminded here of the approach of Alexander Pope who, in his poetical "Essay on Man", appears to me to give the essence of Secularism :

"Know then thyself, presume not God to scan,
The proper study of mankind is man."

Alexander Pope was, however, neither anti-religious nor an atheist as the following lines from his "Essay on Man" show :

"God loves from whole to Parts : but the human soul
Must rise from Individual to the Whole.
Self-love but serves the virtuous mind to wake,
As the small pebble stirs the peaceful lake;
The centre mov'd, a circle straight succeeds;
Another still, and still another spreads;
Friend, parent, neighbour, first it will embrace;
His country next, and next all human race;
Wide and more wide; th' o' erflowings of the mind
Take ev'ry creature in, of ev'ry kind;
Earth smiles around, with boundless bounty, blest,
And Heav'n beholds its image in his breast."

"Growing expansiveness of the human spirit or consciousness may be said to represnt the needs of human society at various stages of its evolution or historical development. The present is the global stage. In other words, the human good has to be viewed globally. For such a global age, the advice given by Swami Ji in the above classification is meant to bring about a reconciliation between the secular and the spiritual of a kind which Alexander Pope also attempted in his "Essay on Man". The more there is of such exalted teaching in the world, the better and more beautiful would be the world of human beings amongst whom we have to live."

Whether one sees a design in the course of human evolution which is super-natural or "divine", in origin, or conceives it to be the result of a natural law operative due to the nature of man or his needs, the results, in terms of ethical norms to be observed, will not be different. But, once the political or legal sovereign in a State take upon themselves the duty to enforce a set of rules given by an external or super-natural divine power, the result is a theocracy where neither the life nor the property of any one who entertains any belief about the supernatural which is different from that of the political or legal sovereign or ruler is safe. Indeed, even lives of birds and animals are not safe in an irrational order governed by those mentally disturbed by religion. In Calvin's Geneva, a cock was solemnly executed for crowing on a Sabbath day and thereby breaking the Lord's Commandment. Moral or ethical principles used by Governments of a

multi-cultural and multi-religious country must necessarily be divorced from attempts to impose religious doctrines of a particular brand or those given by any particular religious teacher or prophet.

Swami Hari Har Ji Maharaj, however, extracts rules of practical wisdom or ethical principles from the Bhagavad Gita, even though some may look upon it as a book of divine revelation. He gives these to us in a form which is acceptable to followers of every or even of no particular brand of religion. It seems to me that if religion is to withstand the onslaughts of the advancing spheres of scientific knowledge and technology, it will have to attempt some such transcendence of certain moral or ethical principles, based on scientifically deduced utilitarian ethical concepts. That is what is really meant by "secularism" properly understood.

If science and religion are to be reconciled, such secularism has to be woven into our social and moral structures. This is inevitable where there has to be a multi-religious orchestra which leaves the common ethical principles for the good of all intact. As I understand the teachings of Swami Hari Har Ji Maharaj, they stand for such an orchestra where there is no jarring note or cacophony. Here several instruments, each standing for the sound or note of a religion of a different brand, may contribute to the effects created by the orchestra governed by a harmony. No single instrument in the orchestra is without its contribution. That is a concept basic to the Indian variety of secularism as well as to Indian spirituality.

The problem of integration by fitting every conceivable religious group into such an orchestra does require an educational reorientation or appropriate disciplining. Broad thinking and perception of common needs has to take place on a global scale for a unification of humanity on the basis of commonly acceptable basic ethical principles or norms as the core of a global religious orchestra. These principles have to be justified on the anvil of secular utilitarian principles of what serves the common good of humanity as a whole.

It seems to me that the expansiveness of the human spirit which Swami Hari Har Ji Maharaj represents does involve scientific and rational interpretations of all religious scriptures, so as to discover not only commonly accepted ethical principles, but also to eliminate all sources of hostility between persons professing various brands of faith and observing different forms of worship. It is not difficult to find much common ground and affinity of ethical teachings between the Christian Bible and our own ancient Hindu scriptures, the Quran of the Muslims, the Guru Granth Sahib of the Sikhs, and other similar religious literature. The problem is, however, caused by misinterpretations of doctrines which have

been misused to produce harmful conflicts. If these doctrines could be so interpreted as to produce harmony, the problem could be solved on the conceptual plane.

We see this done in works such as those of Dr. Bhagwan Das in his masterly collection of similar thinking found in the scriptures of followers of different faiths in his book on "The Essential Unity of Religions". Similar is the result of the books written by Bishop Robinson of the Anglican Church in England, such as "Honest to God" and "Truth is Two-eyed", where the highest truths of Christian Religion are seen reflecting Vedantic philosophy. In fact, the Bishop uses our ancient Indian philosophy to enrich and modernise Christian religious thinking. He points out that the Semetic concept of God as a gigantic Diety sitting on His throne in the Seventh Heaven above, the fires of Hell beneath the surface of the earth and human beings living on the earth in between and "here below" has been completely shattered by modern scientific knowledge and investigation giving us precise knowledge of what is to be found in space or below the surface of the earth. He finds it possible to reconcile traditional religions with modern scientific knowledge only by accepting the Vedantic concept of divinity as a Power working within and around man living on the surface of the earth itself.

Another example of this kind of interpretation bringing approaches of people of different religious backgrounds together could be a comparison of the philosophy lying behind the exhortations of Krishna to Arjuna to fight for justice in order to redress wrongs done, even if it involves fighting one's kith and kin who had been near and dear to Arjuna or those revered by him, and the expositions of the meaning of the word "Jihad", mentioned in the Quran, as expounded by Allamah Abdullah Ysuf Ali, as a struggle for justice. It has to occur within one's self before it takes the form of human action.

In different stages of world's history, a struggle for justice has to take place by different methods. Today, with the vast possibilities of destruction by war and violence conducted with the help of modern science and technology, the moral and spiritual struggles of man can only be effectively conducted by the weapon of non-violence forged by our ancient religious teachers and used so effectively by Mahatma Gandhi. In other words, the change for the better in human beings can be brought about only by the method of non-violent persuasion. This is, of course, a moral weapon.

Governments, however, faced with lawlessness and outbreaks of violence and rioting cannot rest content with leaving restoration of law and order to the operation of the moral force of non-violence practised

by the citizens of a country. They are, of necessity, compelled to meet force by force and secular modes of action. In a world where practical needs and commonsense make it necessary to use physical force, the teachings of the Bhagavad Gita can be utilised to find a sanction for the use of such force in order to preserve the elements of civilized existence.

I may observe that Swami Hari Har Ji Maharaj, while deploring the blindness caused by fears and suspicion in those powerful nations now engaged in an almost insane nuclear arms race, applauds the vision and the wisdom which actuates approaches such as those of Prime Minister Indira Gandhi on Nuclear Disarmament. Recently, she said on a Lecture on the Future of Mankind at the Theosophical Society in Madras :

> "Let us weave the wisdom of the sages into knowledge and give consideration to values that are timeless, to bring out the true worth of human-kind and reinforce its humanity."

Teachings such as those of Swami Hari Har Ji Maharaj designed to bring out the true worth of human-kind and reinforce its humanity will certainly promote National Integration as well as international understanding and co-operation. Such teachings should, therefore, receive the utmost encouragement from both governmental and non-governmental sources. They certainly do not deserve to be excluded from educational curricula of our schools and universities. On the other hand, such humanistic education, as a part of national character building, without giving it any denominational or religious label, should be permissible even in educational institutions wholly run and maintained by a Secular State. Indeed, it seems necessary for dissolving the poisons or corrosion which divisive education of different religious systems or characters, represented as clashing or conflicting ones, deposits in the minds of citizens of a country. In India, at any rate, we need more and more of the synthesising kind of education which the teachings of Swami Hari Har Ji Maharaj, the founder President of Gita Ashrams, represent.

APPENDIX VIII-A

(*Ref.* Chapter III, para 3.26)

ISLAMIC JURISPRUDENCE AND SECULARISM

M. H. BEG

I. SECULARISM AND PARTICULAR SYSTEMS OF JURISPRUDENCE

In the course of this paper, I propose only to indicate what I understand by "secularism" and by "Islamic jurisprudence" and venture to make some general observations about the relationship between them in the past, present and future. I propose to deal with secularism first, because I think that this term stands for a tendency so broad and basic, so primordial and significant, in the evolution of human thought and institutions, that the other ripples of human thought and endeavour, even when not actually embraced by it, should at least not collide with it. If there are, unfortunately, collisions between forces so powerful and sweeping as those represented by secularism today and those which have a restricted appeal for humanity in general, it is obvious that the lesser and the weaker will have to give way and may even be swept aside altogether. It seems to me that all particular systems of jurisprudence, including Islamic jurisprudence, can escape relegation to the limbo of discarded ideas, which is bound to overtake every narrow or rigid or out-of-date system, only by keeping abreast of the times and by flowing along the broad currents of human thought and activity represented by secularism. The more each system can contribute to this broad flow, the more will be its worth and significance for humanity in general. Each system can thus become a part of a greater and more harmonious glorious diapason of life instead of serving only as a discordant and jarring note fit to be silenced. A particular system of jurisprudence can only assume such a valuable role if it is capable of being woven into the fabric of a modern multi-cultural, multi-religious and even multi-national society and of satisfying its basic urges and needs.

II. DEFINITION OF SECULARISM

Secularism has been itself often conceived of rather narrowly as though it was a mere movement of protest or the expression of a temporary discontent and reaction of a small body of men against the excesses of religious zeal or of social, political, and economic injustices which men of religion had tried to justify and explain away as parts of a divine dispensation.

The term "secularism" acquired a new significance and wide currency in British thought and literature as a result of the writings of G. L. Holyoake, an associate of Charles Bradlaugh, who brought out his *Principles of Secularism* in 1859. These principles won the whole-hearted approval of the celebrated political philosopher J. S. Mill. They appear to flow directly from the theories of the Utilitarians and from Jeremy Bentham's *Principles of Legislation* formulated in the eighteenth century, stating the moral bases of politics and law determined from the point of view of human welfare sought through democratic liberal channels and intended to attain the "greatest happiness of the greatest number" —a maxim dear to democratic utilitarian political philosophers. In the *Encyclopaedia Britannica*, "secularism" is defined as a branch of utilitarian ethics designed for the physical, social and moral improvement of mankind which neither affirm nor denies the theistic premises of religion.[1]

1. I think this view is represented by an elaborate article on "Secularism" contained in the *Encyclopaedia of Religion and Ethics* brought out by James Hastings at the beginning of this century. But, even here, it is indicated that Secularism claims to do much more than just to protest.

The Encyclopaedia of the Social Sciences —A more modern American publication deals with secularism more scientifically and as a more comprehensive movement tracing its philosophical antecedents to the political and social philosophy of the European Renaissance and even to that of classical antiquity. Here, the course taken by secularism in France is indicated in particular[2].

"Secularism" should be so defined as to comprehend all its brands and varieties. I would, therefore, in conformity with its broadest sense given in the dictionaries, define it simply as all human thought and action directed towards securing human welfare in this world without any reference to or seeking the intervention of the divine or unseen powers. It is more of an attitude of mind and approach, in this sense, than a set of fixed rules and doctrines. The poet, Alexander Pope, who certainly had faith in the existence of God, expressed this attitude, which has soaked into the beings of modern men, in his *Essay on Man* in the first half of the eighteenth century when he wrote :

"Know then thyself, presume
not God to scan;

The proper study of Mankind
is man."

2. B. Groethuysen, "Secularism" in E.R.A. Seligman and A. Johnson (eds), 13 *Encyclopaedia of the Social Sciences* 631, at 634.

The ideal of human and social happiness, as proclaimed by the prophets and leaders of the French Revolution, has continued in the intervening period to mould the temper not only of the French bourgeoisie but also of larger and larger groups in all countries, Protestant as well as Catholic who are resolved that mankind shall strive by the most enlightened methods at its disposal to establish the maximum of social justice and welfare in this world. The power of this secularized type of idealism derives in large part from its close connection with science; and this union of social and scientific secularism, the movement which, since the Middle Ages, has been gathering increasing momentum, finds its logical climax.

III. THE PRIMITIVE AND THE MODERN CONCEPTS

The primitive man began to grope towards secularism when he set out to control his physical environment and to regulate social life in order to achieve human welfare. Although, as pointed out in Professor Malinowski's writings[2], even the primitive man kept the distinction clear between sacred and the secular in putting his knowledge to practical uses, yet, in comprehending the nature of the world around him, beliefs about the operation of supernatural forces dominated his mind so much that he surrounded all his important activities with ritualistic performances meant to propitiate the supernatural powers. Therefore, in primitive societies, it is difficult to disentangle economics, technology, ethics, aesthetics, social organization and law from religion. Primitive law consists of customary rules evolved almost imperceptibly and subconsciously out of social reactions and courses of conduct adopted rather mechanically to meet similar repeated situations and needs and to regulate recurring activities[4].

On the other hand, the modern civilized man conceives of his religion essentially as a private and personal affair governing his relationship with the unseen power. Dr. Thouless, in his *Introduction to the Psychology of Religion*, after analysing the various elements and definitions, defines it as "a felt practical relationship with what is believed in as superhuman being or beings". This relationship should help and harmonize with but not hinder the efficient performance of duties of the individual in all other spheres of life. The process of secularization of life and thought has consisted in the increasing withdrawal and separation of "religion", properly so called, from other spheres of life and thought which are now governed by independently evolved rules and standards. The law of the modern man is a consciously adopted instrument of social order, social reform, and social change for attaining the social good which is determined by applying scientific utilitarian criteria.

IV. RELIGION AS AN INSTRUMENT OF SOCIAL REFORM

Sir Henry Maine, in his *Ancient Law*, expressed the view that the first concepts of law itself emerged through the religious notion of divinely inspired utterances which preceded even the development of custom.

2. B. Malinowski, "Magic, Science and Religion" in *Science, Religion and Reality*.

4. See Malinowski, *Crime and Custom* & Hogbin, *Law and Order in Polynesia*.

I confess that I find it difficult to conceive of kings whose judgements could be accepted as divinely inspired even without the growth of a social order sustained by custom which could clothe these individuals with sufficient authority to evoke such reverential responses.

The value attached to the pronouncements or adjudications of the exceptionally wise and gifted is a phenomenon which occurs above the primitive levels of life and thought. It is found both in Roman and Muslim jurisprudence.

As Maine himself indicated, the conception of the deity dictating a code to a people or to humanity in general through a mouthpiece or a messenger occurs at a fairly advanced stage of social evolution. It is the stage of 'revealed' religion at which man's social conscience is sufficiently aroused to perceive the conflict between what is morally right and just and the customs and practices which actually prevail around him. Revealed religions thus resemble secularism if secularism is regarded as originating from a spirit of protest and reforming zeal.

"Revealed" religion, as Islam is believed to be by its followers, with its set of injunctions constituting a basic law, differs from primitive religion, among other features, in that it is not just the product of blind gropings and mere emotional urges translated into ceremonial performances. Its motivation is essentially moral. All moral rules must necessarily be related rationally to what is socially good and just. In other words, its social purposes are distinctly utilitarian, and, therefore, must coincide basically and largely with those of secularism. Secularism is indifferent to the nature of beliefs or feelings of individuals about the supernatural being or beings, but, it is vitally concerned with what is socially good and just and which "revealed" religion also, as a social force, seeks to achieve. "Revealed" religion, therefore, tends to have well-developed, rational, intellectual, and philosophical elements which, insofar as they influence or produce a jurisprudence, are conducive to social justice and harmony. Revealed religion and the law it brings with it often clash with customary laws and practices. Thus, although the Arabs retained a number of pre-Islamic customs, yet, others which were denounced as pernicious, such as the burying alive of female infants, were suppressed by Islamic law.

V. IN ISLAM, OBJECTS CONFORM TO BOTH SECULARISM AND UTILITARIANISM

The Prophet of Islam repeatedly tells humanity not to expect the performance of miracles from him to prove the existence of God. He resorts frequently to what Dr. Thouless calls "cosmological" and

"teleological" arguments to support the existence of God. He calls upon mankind to infer a design underlying the scheme of nature of which the instincts and the activities of human beings are treated as parts.5

Nature itself is not divinized, but the operations of laws of nature are used as evidence of a Creator who has a design and who governs the universe through these laws. And, that design can be discovered by studying the functions fulfilled by the things created. The teaching appears to be in complete accord with the law of nature of the ancient Greek philosophers and with utilitarianism. It practically amounts to saying that secularism also proves that God exists.

Although, the Prophet of Islam, in order to tame and overcome the fierce spirit of barbarism he found around him, instilled the fear of God in the Arabs and often spoke of God as a personal force, wrathful to the wicked and merciful to the repentant, yet, we find a number of passages in the Quran where God is viewed as an impersonal moral force propelling mankind towards what is good, true, just, and beautiful. Among the hundred and fifty appellations of God are *haq* (truth) and *sami* (one who hears). The followers of the Prophet are called upon to regard themselves as vicegerents of God. The socially valuable qualities—pursuit of

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5. Some examples may be given of this from the Holy Quran itself :

(1) Behold : In the creation
Of the heavens and the earth;
In the alternation
Of the Night and the Day;
In the sailing of the ships
Through the ocean
For the profit of mankind;
In the rain which God
Sends down from the skies;
And the life which He gives therewith.

To an earth that is dead;
In the beasts of all kinds
That He scatters
Through the earth;
In the change of the winds,
And the clouds which they
Trail like their slaves
Between the sky and the earth;
(Here) indeed are signs
For a people that are wise.

truth, justice, love and charity—are repeatedly enjoined as the Will of God. Of course the methods were religious and not secular, but the objects sought to be achieved seem to be in complete conformity with those of secularism and utilitarianism.

(Surah "Baqara" No. II, Section 20, para 164).

(2) Among His signs is this,
That He created you
From dust; and then,—
Behold, ye are men
Scattered (far and wide) !

And among His signs
Is this, that He created
For you mates from among
Yourselves, that ye may
Dwell in tranquility with them,
And He has put love
And mercy between your (hearts):
Verily in that are signs
For those who reflect.

And among His signs
Is the sleep that ye take
By night and by day,
And the quest that ye
(Make for livelihood)
Out of His Bounty; Verily
In that are signs
For those who hearken.

(Surah "Rum" No. XXX, Section 3, Paras 20 to 28).

(3) Are there not signs enough around you
To bear witness to God, and His saving Grace ?
The earth dies and revivese there are mysteries
Of life and sex, of light and the stars
And planets in heaven, that follow
Their orbits by Law and in harmony !
There are the ships and the modes of transport
By which man can conquer the forces
Around him with God-given Gifts!
Learn the Law of Goodness from them.

(Surah "Yasin" No. XXXVI, paras 33 to 50 Summarised in Abdullah Yusuf Ali's translation at page 1177).

VI. CHARACTER OF QURANIC EXHORTATIONS

The overwhelmingly large part of the Quranic exhortations are of a very broad and general character. They are designed to teach humanity what conclusions to draw not only from close observation of the operations of the laws of nature around, but also from the past history of the semetics and of others with whom they came into contact.

In the Quran, specific injunctions on matters of law are very few. These are practically confined to the nature of charity and the kind and just treatment of women and children which are enjoined; the bars to valid marriage; the payment of dower and the contract of marriage; a few rules relating to divorce (which is disfavoured but permitted) and divorced women; the rules of inheritance of property and the prohibition of usurious exploitation.

It is very remarkable that there is nothing in the Quran corresponding to constitutional law or about the organisation of any Muslim state or the duties or rights of Muslim rulers evidently because the Prophet was giving God's message to whole humanity consisting of individuals in all lands living under various political systems. Even the 'Sura Nisaa', which contains the specific directions which form the basic law of Muslims relating to marriage and inheritance, begins with : "Oh Mankind" (Ya Ayyuhannass). Its first fourteen paragraphs are translated and summarised as follows by Abdullah Yusuf Ali :

> All mankind are one, and mutual rights
> Must be respected : the sexes
> Must honour, each the other;
> Sacred are family relationships
> They rise through marriage
> And women bearing children;
> Orphans need especial loving care.
>
> In trust is held all property;
> With duties well-defined;
> And after death, due distribution
> Should be made in equitable shares
> To all whose affection, duty,
> And trust shed light and joy
> on this our life below.[6]

It is true that the Quran approves of fighting in the cause of God. But, if God represents truth, justice, kindness, and charity, the cause of God (the word used for this is fisabil—illah which is also used for charity) could not

6. At p. 127.

be identified with brutality or violence used for the purpose of oppression. The commentary of Abdullah Yusuf Ali on a passage dealing with *jehad* shows that the term represents "striving" in the cause of God and that violence, except in self defence, is opposed to the spirit behind the conception.

It seems to me that passages dealing with the *jehad* are liable to be seriously misused unless they are interpreted in the light of the historical context and the times for which they were meant. It will take me too far a field if I deal with professor Arnold Toynbee's view of Islam as an Arab national politico-religious-cum-cultural movement and as a reaction against the dominance of the East by the Romans so that the Arabs retaliated through Islam after assimilating the most advanced western concepts including those of Roman jurisprudence. I may, however, observe that even if such a view could partly explain the involvement of Islam with politics, national and international, and the misuse of Islam for political objects, the Islam found in the Quran is free from any political or economic ideology or complexion. It is directed towards the spiritual, moral and social regeneration and uplift of mankind. If it has been misinterpreted and misused, the remedy lies in reinterpretation of it so as to separate politics, a secular activity, from religion.

The Quranic injunctions relating to charity which is enjoined upon Muslims make no distinction between the Muslim and non-Muslim relatives and needy and orphans and wayfarers who are declared as the first objects of charity. The Quran contains the statement at several places that God sent his prophets to all the people in the world and that they (i.e. the prophets and their followers) will be judged justly by God. Indeed, the Quran declares that only those are believers in "Islam" (signifying "peace" and submission to the will of God) who believe in God and His apostles and "make no distinction between any of the apostles".

Although Muslim jurisprudence, as a formal science, developed only after the death of the Prophet and the first four Caliphs, yet, the Quranic exhortations and the example and sayings of the Prophet bred such a devotion to justice and such solicitude for impartiality and equality before the law—the "king of kings"—that an incident relating to the second Caliph, Umar, may be cited from Abdur Rahim's *Muhammadan Jurisprudence* to illustrate it :

> "Umar appointed the first Qadi, and he enforced the principle that the majesty of law was supreme, and that the administration of justice must be above the suspicion of subservience to executive authority. He once had a law suit against a Jew, and both of them went to the Qadi, who, on seeing the Caliph, rose in his seat out of deference

Umar considered this to be such an unpardonable weakness on his part that he dismissed him from office."[7]

The story of Adam's expulsion from the garden of Eden was, it seems, meant to emphasize the fact that God has so ordained that man, whose conduct was thus removed from the direct control of God Almighty, was invested with the power of deciding for himself what is good and what is harmful for him and that he has to be given only a limited amount of direct divine guidance which God, out of His mercy and grace, was pleased to bestow upon mankind, from time to time, through His messengers. This was how, according to the Semitic lore and mythology, also utilised by the Prophet of Islam in order to impart lessons to his followers in basic verities of life, the seeds of secularism were sown on this earth.

I mention the implications of this story so as to bring out the two most striking features of Islamic jurisprudence: firstly, a theory of the regulation of certain basic but very limited matters of personal law by means of the Quranic injunctions which no Muslim can be permitted to transgress; and, secondly, the large sphere left for the exercise of human reason where, by using advanced and utilitarian juristic principles, the sometimes differing schools of Muslim juristic thought consciously built up that main body of personal laws which regulate the lives of Muslims.

Even if the story of Adam's expulsion from paradise was not meant to convey the lesson I have read into it, there is the direct authority of what the Prophet approved, and this has been used, in accordance with the logic which characterises Muslim jurisprudence, to justify subsequent developments of Muslim Law. It may be cited as set out in Fyzee's Outlines of Muhammadan Law. [8]

7 A. Rahim, Muhammadan Jurisprudence (1958) 21.

8 Asaf A.A. Fyzee, *Outlines of Muhammadan Law* (3 ed. 1954) 17-18 :
The Prophet sent Muadh, one of his Companions, as Governor of a Province and also appointed him as the distributor of justice. No trained lawyers existed then and the Prophet asked :
'According to what shalt thou judge.' He replied;
'According to the scriptures of God.'
'And if thou findest nought therein ? '
'According to the Tradition of the Messenger of God.'
'And if thou findest nought therein?
'Then I shall interpret with my reason.'
And thereupon, the Prophet said :
'Praise be to God who has favoured the messenger of His Messenger with what His Messenger is willing to approve.'

VII. THE GROWTH OF MUSLIM JURISPRUDENCE

The Prophet Muhammad's genius of inspired utterances in beautiful and stirring language was akin to that of poets who have been regarded as the true legislators of mankind. Apart from the exhortations, the specific instance of opinions expressed by him on particular problems put to him (*hadith* or tradition) and the practices adopted or approved by him (sunna or usage) formed the earliest sources of the Muslim *Shariat* (path). One of the Prophet's teachings which has been treated as an exposition of the spirit of the *shariat* was : "Make *hasna* the guide of your life" . The beautiful (hasna) could only be, according to the teaching, what was morally good, just and truthful.

If Islam, originating as a movement of religious, spiritual, moral and social uplift, became also a means of political and national cohesion for the Arabs, its involvement with politics produced the greatest schism in Islamic history which led to the division of Muslims into the Shia and the Sunni sects.

The Shias, believing in the continuity of Divine inspiration through their Imams, took a less secular but more dynamic view of the Law. The *Shariat* was, in the hands of their Imams, more easily adaptable to changing conditions. Shia law is, in some respects (such as divorce), more just and a better reflection of the Quranic spirit.

The four Sunni schools of law, the Hanafi, the Shafii, the Maliki, and the Hanbali, named after four great jurists, placed the *shariat* above the will or the wishes of the Caliph who was looked upon as the temporal head charged with the duty of enforcing the *shariat*. It was for the jurist (faqih), who had to be not only learned (alim) but also so versed in the science of law as to be able to form an independent judgement and to distinguish between the correct and incorrect rules of law, to show what the *Shariat* said on any legal problem which arose.

Among the Sunni schools, the most widely followed is the Hanafi school which developed a larger armoury of doctrines in order theoretically to find but actually to develop the law by resorting to juristic reasoning. In fact, Imam Shafii perceived this when he opposed *istehsan* (juristic equity) on the ground : "Whoever resorts to *istehsan* makes laws." A very helpful account of these doctrines and their applications is found in A. Rahim's Muhammadan Jurisprudence. The need for *Ijma*, the doctrine of "consensus of juristic opinion", arose from the paucity of actual rules of law in the Quran which made it impossible to answer the numerous new questions which were encountered as society developed and its problems became more complex. Extension of law by analogical deductions from what was laid

down in the Quran or found in the sunna was accepted as sound by all the Sunni schools. Elaborate rules were formulated about the manner in which correct deductions could be made. Imam Malik formulated a doctrine, of "public good", which was more general and vaguer than the Hanafi "juristic equity". The term *istidlal* was used for all juristic reasoning including that not covered by a specific doctrine.

The practical result of Hanafi school of thought for the administration of justice was set out as follows by Ameer Ali :

> The early Hanafi jurists declared in explicit terms the necessity for the exercise of private judgement in the exposition of the law and the administration of justice. And in this they approached closely the doctrines of the Usuli Shiahs.
>
> Razi-ud-Din Nishapuri has declared in his Muhit, "If the concurrent opinion of the companions be not found in any case which their contemporaries may have agreed upon, the Kazi must be guided by the latter. Should there be a difference of opinion between the contemporaries, let the Kazi compare their arguments and adopt the judgement he deems preferable. If, however, none of the authorities referred to be forthcoming and the Kazi be a person capable of analogical deduction (Ijtihad), he may consider in his own mind what is consonant with the principles of right and justice and applying the result with a pure intention to the facts and circumstances of the case, let him pass judgement accordingly." Abu Bakr ibn Masud al-Kashani has stated in the Badaia, "Where there is neither express statement of the law nor concurrence of opinions for the guidance of the Kazi, if he be capable of legal disquisition and has formed a decisive judgement in the case, he should carry such judgment into effect by his sentence although other scientific lawyers may differ in opinion from him, for that which upon deliberate investigation appears to be right and just is accepted as such in the sight of God." And again, a third passage may be quoted to the same effect from the last mentioned work : "If in any case, the Kazi be perplexed by opposite proofs, let him reflect upon the case and determine as he shall judge right, or for greater certainty, let him consult other able lawyers; and if they differ, after weighing the arguments, let him decide as appears just."[9]

9 Syed Ameer Ali, Mohammadan Law (4 ed. 1912 T.L.L.) 26-27 (emphasis removed).

After the third Hijri century, the concept that the era of independent judgement or of analogical deductions had come to an end had a blighting effect on the progress of Sunni jurisprudence. But, in spite of the rather futile and arid controversies about *ijtihad* and *taqleed* which this concept produced, the result of Muslim jurisprudence could be summed up in the axiom contained in the Mejele of the Turks (Article 39) : "It is an accepted fact that the terms of law vary with the change in the times". Ameer Ali recorded his conclusion as follows :

> "In spite of these obstacles and limitations, the legal conceptions have steadily advanced and old constructions have been abandoned in favour of views more in accord with the progress of social conditions. This statement is clearly supported by the frequent preferences of the doctrines of the 'moderns"...as also the liberty which is accorded to the Mussulman Judge to draw from the dicta of Imams and jurists with the requirement of justice, the changed circumstances of the times or the conditions of society, or follow the doctrine most in accord with the above considerations."[10]

VIII. CHARACTER OF MUSLIM JURISPRUDENCE

Muslim Jurisprudence is called *fiqha* or the science of Islamic law consisting of "the knowlecge of one's rights and obligations derived from the Quran or the Sunna of the Prophet, or the consensus of opinion among the learned (ijma), or analogical deduction (qiyas)".[11] The definition of it by Abu Hanifa as "soul's cognizance of its rights and obligations indicates the spiritual requirements of the jurist (faqih). The implication is that the jurist must not only know but also be responsive to and understand Muslim law and its spirit correctly so that he is able to distinguish between what the *Shariat* enjoins, what it permits or tolerates and what it prohibits.

Abu Hanifa's definition of Islamic jurisprudence may give a mystic flavour to it. But, actually, the principles underlying even the Quranic law are easily understood and clear. The methods adopted by Muslim jurists are so similar to those of Roman jurists and the whole of Islamic law is so like the secularised rationalised Roman law of Justinian's *Corpus Juris Civile* in which the rules of *jus gentium* predominate, that it has been even said that "Muhammedan law is but the Roman law of Justinian in Arab dress".

10. Ibid 28—29

11. Fyzee, op. cit. supra n. 8, at 17

Professor V. Fitzgerald has tried, in an article[12] to repel the theories about "The Alleged Debt of Islamic to Roman Law" put forward by Professor G.S. Amos, Savvas Pasha, and Ignaz Goldziher. The evidence of this was insufficient in Dr. Fitzgerld's opinion. The view that Roman law had some effect on Muslim law, even though it may have been indirect, has been accepted by Muslim jurists of the eminence of Ameer Ali and Tyabji and great scholars like Macdonald. But even if the Muslim jurists owed a debt to Roman law, they did not, like the British common lawyers, who were also indebted to Roman law, acknowledge it anywhere. Therefore, it is very difficult to determine the extent of that debt. It is, however, noteworthy that Muslim Law, like the Roman law of the most advanced stage of the *corpus juris*, is extraordinarily free from ceremonialism, ritualism, or rigid formalism, of the types found in the *jus civile* of the Twelve Tables. The equitable rules of *jus gentium* comprising the elements common to the laws of the then civilized peoples in the world, seem to underlie a great deal of Muslim juristic reasoning.

IX. LIMITATIONS OF THE SCOPE AND UTILITY OF MUSLIM JURISPRUDENCE

The scope and value of Muslim jurisprudence as the science which shows the path of Muslim *Shariat* is necessarily limited today for a number of reasons :

Firstly, the path of statutory law, adopted even by states the majority of whose citizens are Muslims, is determined by forces outside the range of Muslim jurisprudence. To quote Mr. Fyzee's *A Modern Approach to Islam*: "National loans, insurance, income tax, hire purchase agreements, the law of the air, industrial legislation, statutory crimes—to name but a few at random—had to be dealt with by society, and the *shariat* could not possibly deal with them all". In fact, subjects of the kind mentioned by Mr. Fyzee are dealt with by legislation which follows patterns set on an international level and result from economic forces which cross religious and even political barriers of states. An overwhelmingly large part of the daily lives of the individuals are governed today by laws made without any reference to or aid from any particular system of jurisprudence and these are interpreted by courts according to well developed canons which do not need to be supplemented.

Secondly, even in the sphere of personal laws, statutory law has made serious inroads so that basic sources of personal law can be consulted only as secondary aids to interpretation of statutory law where this is possible at

12. Fitzgerald, "The Alleged Debt of Islamic to Roman Law," (1951) 67 L.Q.R. 81.

all. In this country, there is the Dissolution of Muslim Marriages Act, 1939, which purports to give statutory form to pre-existing Muslim Law. There are also a number of statutes dealing with private and public *wakfs* in the application of which questions of Muslim law and jurisprudence some-times arise.

Thirdly, the field of constitutional law is also placed outside the range of the *shariat* even in Islamic states, as this field is governed by written constitutions generally. The Muslim *shariat* has only an indi ect bearing on constitutional principles insofar as it can be said that its egalitarian spirit does not harmonize with a constitution which discriminates between man and man on grounds of race, religion, colour, caste, or creed. But, if the constitution of any state makes such distinctions, the mere declarations of Muslim jurists (faqih) cannot make the constitutional provisions legally inoperative.

Fourthly, even as regards matters of personal law, governed by the Muslim *Shariat*, there is such an accumulation of case law at least in this country that exploration of basic principles of Muslim jurisprudence is generally not necessary.

Jurists expounding the principles of any particular system of jurisprudence cannot possibly, in any part of the world today, hope to play the grand role shown to have been performed by the Muslim jurists in the formative period of Muslim law when they were not only the principal respositories of law but also the only practical means of law making.[13]

X. THE FUNCTION OF MUSLIM JURISPRUDENCE IN A SECULAR STATE

Secularism is not only a set of philosophical or ethical doctrines or an attitude of mind for us today. It is a part of the poltical ideology and faith of all the progressive countries of the world, with notable exceptions such as Pakistan. It is embodied in the provisions of our Constitution which guarantees freedom of conscience and expression to all and seeks to secure the equality of every citizen before the law and the equal protection of laws for every body without any discrimination on grounds of race or religion. Our Constitution especially guarantees religious and cultural freedom so that a jurisprudence linked up with the lives and culture and religion of 75 million citizens cannot, in spite of the above mentioned reasons for which its cope and value may be limited today, possibly be either ignored or be a matter for indifference in this country. I have tried to show that Muslim jurisprudence can contribute valuable ideas in formulating a uniform civil code of personal laws which is one of the objectives of our Constitution mentioned amongst the Directive Principles of State Policy.

13 See Joseph Scht, *Orgins of Muhammadan Jurisprudence*, 1950 (*Reprinted*).

The extreme sensitiveness and strength of the feelings of the leaders of Muslim thought and opinion make it both difficult and undesirable to so alter Muslim law (it has been subjected to legislation even in Muslim countries) as to alarm Muslims. But, in view of the really rational and progressive bases of Muslim jurisprudence, as I see them, it may be possible, in future, to make some changes in Muslim personal laws, where there is no uniformity between its different schools or where such changes may be found necessary on any specific matter, to bring it in conformity with rules of that natural law about which not only the Greek philosophers spoke but which are found in the teachings of the Holy Quran itself. The high and tolerant Sufi Philosophy, to which both the Arab and Persian thinkers and poets have contributed, is based on Quranic precepts. It is also found in our ancient Vedantic philosophy, brought up-to-date and reduced to tabloid forms by Maharishi Mahesh Yogi. However, hopes of a new world dominated by that universal human jurisprudence, to which the great Muslim jurist and judge, the late Syed Mahmood, was deeply devoted, and to which all modern exponents of the philosophy underlying the International Universal Declaration of Human Rights profess allegiance, belong to the world of those happy dreams about which our national poet Tagore wrote :

> "Where the mind is without fear and the head is held high;
> where knowledge is free;
> Where the world has not been broken up into
> fragmanets by narrow domestic walls;
> Where words come out from the depth of truth;
> Where tireless striving stretches its arms
> towards perfection;
> Where the clear stream of reason has not lost
> its way into the dreary desert sand of dead
> habit;"

XI. THE FUTURE

Muslim leaders need fear no imposition of any uniform Code of Personal Laws upon them in India. My view is that on such matters, change of thought and sentiment by persuasion can only result from better education on what is really in conformity with the basics of Muslim jurisprudence found in the Holy Quran and elsewhere. Till such change in general Muslim thought and sentiments takes place, the wisest course of would be reformers of any part of Muslim law would be to devote themselves to better education of the Muslim public. All that I have tried to emphasize here is that Muslim jurisprudence neither makes the whole body of Muslim law so sacrosanct as to be regarded as untouchable nor are its principles irrational, unprogressive, and unresponsive to needs for change as those who neither understand their rationale nor know their sources and meanings would have us believe. Much ignorance and prejudice has to be

dispelled before Muslim thinking is released from the clutches of unscientific theological categories of reasoning. The Muslim Shariat can, I think, operate as an instrument of rationality, justice, and progress instead of being converted into a frightening ghost from the past conjured up to stifle demands of reason, reality, and justice.

Muslim jurisprudence has acted and could still act as a part of that common stock of juristic ideas which have acted and reacted upon each other to produce a composite culture in this country which sustains the secular state. It could also serve as a useful guide, negatively, for avoiding legislation for Muslims which may run counter to the Shariat.

There is one more function which Muslim jurisprudence can still very effectively and most usefully perform. This is that of acting through the judge, who is given a pivotal position under the Muslim legal system, so as to prevent juristically incorrect decisions on matters of Muslim law. Instances can be given to cases in which the Privy Council as well as some of our own great judges have expressed opinions or used analogies in purporting to apply Muslim law which do not seem to accord either with Muslim jurisprudence or with the requirements of justice, equity, and good conscience that can, without violating any canon of Muslim jurisprudence, still be used by the judge to develop Muslim law itself. However, some of the finest expositions of Muslim law, according to the basic Quranic principles, are found in the judgements of Indian judges functioning under a secular system of administering justice where the personal religion of the presiding judges of the court does not affect their authority to lay down the law of the land. Muslim personal law is part of the law of the land which our judges have to declare and administer on subjects mentioned in the Muslim Shariat Act, 1937, for Muslim parties. It has this position for courts because of a Statute which rests on the assumption that as law, it can be enforced by courts of a Secular State. If it was part of a religion only, the courts may find some constitutional difficulties which need not be gone into here.

APPENDIX-VIII-B

(*Ref.* Chapter III, para 3.37)

INDIAN JUDGES AND MUSLIM PERSONAL LAW

By

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When I requested Mr. Justice M·H. Beg, at present Chairman of the Minorities Commission, to enlighten me about the future of Muslim Law in India, he was pleased to say that it would be bright if only the greatness of the principles embodied in what came to Muslims through religion but contains a treasure of broad juristic ideas from which the whole world could benefit are not buried beneath the rubbish with which the ignorant and the unitelligent often cover them. What is wanted, he said, was the understanding of the relationship between this treasure and human needs.

When I further requested him to tell us how the desired result could be achieved, Mr. Justice M.H. Beg took out Prof. Asaf A.A. Fyzee's book on 'Mohammedan Law' and said that this enlightened Jurist understood how this could be done. On the cover as well as on a whole page following the Preface were some verses of the Poet Urfi. An English translation by Prof. Fyzee himself of these lines is as follows :

"The Hajis worship but a Gate,
The jurists bow to portly Tomes,
Tear down the curtain, O Man,
And let the world know
That our friends have worshipped
Gods of straw."

Mr. Justice M.H. Beg thought that the last line of Urfi's verses was not translated literally by Prof. Fyzee when he talked about 'gods of straw'. What Urfi meant was that the spirit behind rules found both in religion and law reflected a divinity rising above what Muslim traditionalists have been obsessed with in most fields including religion as well as law. The reality behind it could be discovered by only tearing down the thick curtains of illusion manufactured by theologians. Only by doing so, could the message

of the Quran or of Muslim Law, built by jurists around the basic tenets found in it and in the Prophet's utterances and example, be seen and understood.

A great historian, Prof. Toynbee, had observed that Islam was not just a religion but a cultural, political and national movement of Arab resurgence against Roman imperialism. Muslim jurists absorbed a great deal of the modes of reasoning as well as the doctrines and principles perfected by the Roman jurists. But, they did not directly acknowledge this debt anywhere. They had evolved their own broad and basic doctrines which were most rational and just and could be used by judges even today to develop the Muslim Law, where necessary. There was no need for legislation if judges do this work well. They could easily make the law conform to the most advanced notions of justice if they went on interpreting the Muslim Shariat as they had been doing in India.

Justice Mahmood on Muslim Marriage

The renowned Mr. Justice Mahmood, while analysing the conception of Muslim marriage as a purely civil contract, had used doctrines of Roman Law, in Abdul Kadir Vs Salima Bibi, as long ago as 1886. Mr. Justice M.H. Beg thought that this was not necessary. Better results could be obtained by using the Quranic texts read in the light of history of juristic ideas and their contexts.

An illustration of the method adopted by Mr. Justice M.H. Beg is to be found in his judgement in the case of Syed Mohammed Hasan Vs Hafiz Abdul Naeem (1965 ALJ-P85) where he considered the question of the validity of a polygamous Muslim marriage. He observed as follows : "....opinion is expressed by the great Muslim jurist Syed Amir Ali in his work on Mohammadan Law vol. II P 192 about the validity of Muslim polygamous marriages in these words :

"There is a great difference of opinion among the followers of Islam regarding the extent to which polygamy is tolerated or allowed in the Islamic system. An influential and growing section holds that the conditions under which it was permitted are so difficult of compliance that they amount to a virtual prohibition and that the circumstances which rendered it permissible in primitive times having either passed away or not existing in modern times, the practice of polygamy is in contravention of the law..... The most important passage in the Quran on this matter occurs in sura IV 'Nisaa' (*i.e.* the Woman) paragraph 3, translated thus by the late Abdullah Yusuf Ali :

Marry women of your Choice, Two or three or four;
But, if ye fear that ye shall not be able to deal justly (with them),

Then only one, or 'a captive' that your right hand possesses That will be more suitable, to prevent you, From doing injustice."

"In other words, there is distinction between the status and position of a wife and a mere 'captive'. The 'captive' or 'slave' was permitted, according to the notions of an age in which war and its concomitant 'slavery' were recognised as ordinary incidents of life of people of civilised nations such as the Romans. But, according to the law applicable to and recognised by all civilised people today, slavery or capture, as a basis of relations between a man and a woman, are not permissible."

Thus, Mr. Justice M.H. Beg goes straight to the Holy Quran for adopting the principle of equality between wives and relies on the opinion of the great Muslim jurist, Syed Amir Ali, who says that the practice of polygamy is permissible only under such conditions that ordinary human beings cannot be expected to observe them.

Furthermore, Mr. Justice Beg points out that slavery which was recognised by "*Jus gentium*", the common law of all the civilised nations in ancient and medieval times, was prohibited by modern municipal and constitutional laws. Hence, under the guise of religion what was not constitutionally and legally permitted, that is to say, slavery of the primitive times, could not be revived just as cutting off of a thief's hand was not permitted by the criminal law of India and could not be revived. Nevertheless, for the basic principles, judges could and should resort to what was laid down in the Holy Quran itself.

Roomi's view

According to the view held by the great Sufi of the 13th century, Jalaluddin Roomi, the basics of Muslim law, as found in the Quran, contain some principles which are valid for all times to come for Muslims. There are, however, others which are inessential and meant only for certain special conditions which were prevalent at the time of the Prophet, such as practice of slavery, although, under Islam slavery itself became very much more humane than it was in the past. The Prophet himself freed a slave, adopted him as a son and married him to his cousin, Zainab who, after a divorce by the adopted son, was married by the Prophet himself.

There is a famous couplet by Jalaluddin Roomi which says :

Mun az Quran Magz Ra Bardashtam
Istakhwan Pesh Sagan Undakhtam

("From the Quran I have extracted the marrow but I have cast the bones before dogs".)

Maulana Abul Kalam Azad too had expounded the view that "Deen" may be invariable, yet, the path of 'Shariat' could change with the needs and circumstances of each age.

According to Mr. Justice M.H. Beg, the Quran contains glorious principles of human conduct and elevation of the human spirit both intellectually and emotionally. But, its message has to be correctly understood by those who can express the spirit as Jalaluddin Roomi did. People tied down to literal interpretations miss the spirit of the Quran altogether. But, progressive Muslim thinking should enable Muslims to absorb not merely modern scientific knowledge and fruits of western civilisation, but also to create a better understanding by Muslims of other great eastern cultures and religions. This approach should, in the opinion of Mr. Justice M.H. Beg, be reflected in the progressive development of Muslim Law also. It is most necessary and beneficial for Muslims that in this way their backwardness is removed.

Justice Sulaiman's Approach

Indian judges have developed the law applicable to Muslims in India by using western concepts also. Thus, Chief Justice Sulaiman in Latafat Hussain and others Vs Hidayat Hussain and other (1936 ALJ P 342) laid down :

"Under the Mohammadan Law, a renunciation by an heir of a future right of inheritance is not in itself valid, and such a release or renunciation cannot be operative so as to divest the heir of all rights in the inheritance when the succession opens and to vest the whole property in the person in whose favour the relinquishment was made. (Mst. Khanum Jan Vs Mst. Jan Beebee, 45 D.A. 210 followed). But, there is nothing to prevent an heir from so acting as to stop himself by his own conduct from subsequently claiming a property to which he may succeed."

Sulaiman C.J. also applied English Law relating to family settlements when he held that ".....on the finding that the arrangement between the husband and the wife was in the nature of a family settlement, she cannot be allowed to go back upon her renunciation as it is not possible to grant her relief for possession by making her pay compensation to the defendants and she must be held bound by it".

An Alternative Reasoning

When this reasoning came up for consideration before the Supreme Court of India, in the case of Gulam Abbas Vs Haji Kayyum (1973), Mr. Justice M.H. Beg not only followed Sulaiman C.J.'s ruling in preference to the view of the Madras High Court that such a transaction was prohibited by Muslim Law, but he held as follows :—

"It may be mentioned here that Muslim Jurisprudence, where theology and moral concepts are found sometimes mingled with secular utilitarian legal principles, contains a very elaborate theory of acts which are good

(because they proceed from 'Hasna'), those which are bad (because they exhibit 'Qubuh'), and those which are neutral *per se*. It classifies them according to varying degrees of approval or disapproval attached to them (see Abdul Rahim's "Mohammadan Jurisprudence" P. 106). The renunciation of a supposed right, based upon an expectancy, could not, by any test found there, be considered prohibited. The binding force in future of such renunciation would, even according to strict Muslim Jurisprudence, depend upon the attendant circumstances and the whole course of conduct of which it forms a part. In other words, the principle of an equitable estoppel, far from being opposed to any principle of Muslim Law, will be found on investigation to be completely in consonance with it."

A comparison of the methods followed by Sulaiman C.J. and Beg J. shows that, although, they both reach the same conclusions on similar transactions, yet Beg J. utilises the principles of Muslim Jurisprudence and corelates the transaction, known as family settlement in English Law, to the concepts formulated by Muslim Jurists and discussed in Abdul Rahim's Muslim Jurisprudence. In other words, he indicates the correct line of development of Muslim Law ifself by using the broad and basic ideas lying even behind Muslim moral and juristic concepts such as, for example, 'Hasna' (beauty) as against 'Qubuh' (ugliness) as reflected in human conduct.

Other Decisions

It may be mentioned that other judges such as Justice Baharul Islam, have followed Mr. Justice M.H. Beg's method of using the Quranic concepts to expand the Muslim Law its elf and to make it conform to canons of justice today. This learned judge, as Chief Justice of Assam, declared that a Talaq pronounced erratically and without any reason for it is void because the Quran prescribes that there should first be an attempt at reconciliation through two arbiters, one from each side. He held that such an attempt constitutes a condition precedent to a valid divorce which could be given only for a good cause. This view is certainly contrary to the Privy Council decision in Rashid Ahmed Vs. Anisa Khatoon (1932) where a divorce pronounced, under compulsion, to comply with a dying father's wish, by a son, who never communicated it to his wife and lived with her and produced several children after it, was held to be valid. The result of the Privy Council's decision was unjust. Children born after the alleged divorce were bastardised for no fault of theirs.

It may be mentioned here that Sir Dinshaw Mulla, who happened to be absent due to indisposition on the date on which the case was taken up by the Privy Council, had expressed the opinion, in his book on Mohammadan Law that, in such circumstances, the marriage does not become "Batil" (void) but "Fasid" (vitiated) so that the children are not

bastardised. Perhaps, our Supreme Court will consider the correctness of the Privy Council decision on some occasion when the conflict between it and that of Baharul Islam J. comes up before it.

Muslim Shariat

Mr. Justice M.H. Beg's views found in a paper on the Muslim Shariat, published in 1965 by the Law Institute of India, following those of Justice Amir Ali, were stated as follows :

"Among the Sunni schools, the most widely followed is the Hanafi school which developed a larger armoury of doctrines in order theoretically to find but actually to develop the law by resorting to juristic reasoning. In fact, Imam Shaffi perceived this when he opposed 'istehsan' (juristic equity) on the ground : "Whoever resorts to istehsan makes laws". A very helpful account of these doctrines and their applications is found in A. Rahim's Mohammedan Jurisprudence. The need for 'ijma', the doctrine of "consensus of juristic opinion", arose from the paucity of actual rules of law in the Quran which made it impossible to answer the numerous new questions which were encountered as society developed and its problems became more complex. Extension of law by analogical deductions from what was laid down in the Quran or found in the sunna is accepted as sound by all the Sunni schools. Elaborate rules were formulated about the manner in which correct deductions could be made. Imam Malik formulated a doctrine of 'public good' which was more general and vaguer than the Hanafi juristic equity. The term 'istidlal' was used for all juristic reasoning including that not covered by a specific doctrine.

The practical result of Hanafi school of thought for the administration of justice was set out as follows by Ameer Ali : 'The early Hanafi jurists declared in explicit terms the necessity for the exercise of private judgement in the exposition of the law and the administration of justice. And in this they approached closely the doctrines of the Usuli Shiahs'.

Razi-u-Din Nishapuri has declared, in his 'Muhit' : 'if the concurrent opinions of the companions be not found in any case which their contemporaries may have agreed upon, the Kazi must be guided by the latter. Should there be a difference of opinion between the contemporaries, let the Kazi compare their arguments and adopt the judgement he deems preferable. If, however, none of the authorities referred to be forthcoming and the Kazi be a person capable of analogical deduction (Ijtihad), he may consider in his own mind what is consonant with the principles of right and justice and applying the result with a pure intention to the facts and circumstances of the case, let him pass judgment accordingly.

Abu Bakr ibn Masud al-Kashani has stated in the Badaia : Where there is neither express statement of law nor concurrence of opinions for the guidance of the Kazi, if he be capable of legal disquisition and have formed a decisive judgement in the case, he should carry such judgement into effect by his sentence, although other scientific lawyers may differ in opinion on what appears to be right and just is accepted as such in the sight of God. And again, a third passage may be quoted to the same effect from the last mentioned work : 'If in any case, the Kazi be perplexed by opposite proofs, let him reflect upon the case, determine as he shall judge right, or for greater certainty, let him consult other able lawyers; and, if they differ, after weighing the arguments, *let him decide as appears just'*.

After the third Hijri century, the concept that the era of independent judgment or of analogica' deductions had come to an end had a blighting effect on the progress of Sunni jurisprudence. But, in spite of the rather futile and arid controversies about 'Ijtihad' and 'Taqleed' which this concept produced, the result of Muslim jurisprudence could be summed up in the axiom contained in the Mejele of the Turks (article 39) : 'It is an accepted fact that the terms of law vary with the change in the times'. Ameer Ali recorded his conclusions as follows :

"In spite of these obstacles and limitations, the legal conceptions have steadily advanced, and old constructions have been abandoned in favour of views more in accord with the progress of social conditions. This statement is clearly supported by the frequent preferences of the doctrines of the 'moderns' as also the liberty which is accorded to the Musulman Judge to draw from the dicts of Imams and Jurists with the requirement of justice, the changed circumstances of the times or the conditions of society, or follow the doctrine most in accord with the above considerations."

Some Conclusions

Thus, Mr. Justice M.H. Beg's view is that Indian Judges are capable of declaring Muslim Law in such a way as to answer the highest concepts of justice without the need for legislation. In fact, as Mr. Justice M.H. Beg had pointed out in his paper quoted above, Muslim Law regulates only a small segment of the lives of the Indian Muslim citizens. They are mostly governed by uniform statutory law meant for all citizens. In the sphere of Muslim personal law, relating to marriage, divorce, inheritance, gifts, charitable endowments (except in so far as they are regulated by statutes), wills and guardianship, Muslims have their separate laws. Here, according to Mr. Justice M.H. Beg, no legislation is called for because of the good work done by judges themselves. Those who

assail such judicial wisdom without knowing or understanding what it stands for are like those who rush in where "angels fear to tread." There have been occasions when Muslims have themselves desired legislative interference to overrule the effects of a decision contrary to Muslim Law. Such was the position when the Privy Council declared in Abul Fatah Vs. Russomoy (1894) (22-IA page 76) that a Muslim Waqf Al-al-Auled was struck by the British rule against perpetuity as it was a settlement for the 'aggrandisement of the family". The result of Muslim agitation was that the Musalman Wakf Validating Act of 1913 was passed.

Saudi King's call

In many Muslim countries, including Pakistan, legislation to codify parts of Muslim Personal Law has taken place. Recently, King Fahd of Saudi Arabia himself gave a call to Muslim Jurists all over the world to think of modernising and codifying the laws governing Muslims. His Majesty attributed the intellectual backwardness and decline of Muslims to narrow-mindedness, and their unprogressiveness to their basically wrong notions about a static 'Shariat'. He boldly expressed the view that "Gates of Ijtehad" are not closed in the Muslim Shariat. His enlightened views were fully endorsed by the Secretary-General of the International Muslim Conference.

As indicated earlier, Mr. Justice M.H. Beg had pointed out in his paper read in 1965, that Indian judges had not been hampered by this doctrine. It would be unfortunate for Muslims if enlightened thinking which will certainly benefit Muslims, is now to be submerged by ignorant and unintelligent opposition based on the bigotry and the petty interests of an obscurantist class posing falsely as the protector of Muslim culture, religion, and law. The vested interests of this obstructionist class of theologians should not be allowed by Muslim masses to jeopardise their interests and welfare. The Muslim masses have to be rescued from the stranglehold of this class. Indian judges, presiding over secular courts, had been given by our Constitution and the laws, the power to secure such release and they have been using this power admirably.

Position of Judges

The power of all judges in India is derived from the Constitution as well as from the laws recognised by courts as binding on all citizens of India. There are no separate Shariat courts. Hence, non-Muslim judges too decide cases involving the Muslim Shariat just as Muslim judges pronounce on questions of Hindu law. There is no religious qualification for any judicial or other office of the state. Hence, Justice Dhavan of the Allahabad High Court had refused to decree a suit by a Muslim for restitution of conjugal rights against a first wife on the ground that the presence

of the second wife in the house was cruelty to the first. The learned judge acted on equitable principles because restitution is specifically provided as a civil remedy available where equities are in favour of the plaintiff. Nevertheless, inasmuch as the parties in the case were Muslims, the method followed by him was akin to that of Sulaiman C.J. who, on equitable grounds, had upheld a family settlement of Muslims. Similarly, Krishna Iyer, J. of the Supreme Court has taken a broad view of the rights of the Muslim wife which she had obtained under the provisions of the Criminal Procedure Code to maintenance provided by statute irrespective of the provisions of Muslim Law.

A number of Indian judges, both Muslim and non-Muslim, have decided questions of Muslim Law by purporting to follow the rules of Muslim Shariat or annexing to it the rules of reason, equity and justice developed in other systems. Mr. Justice M.H. Beg has, however, shown that such new developments of Muslim Law could be justified by using doctrines enunciated by classical Muslim jurists themselves. In other words, he has demonstrated the utility of formulations of principles of justice by classical jurists even for modern times. If one wants to use the technical phraseology of Muslim jurists, one could call this method of developing Muslim Law 'Ijtehad' to meet the advancing multifarious needs of Muslims in India. Its results have been wholly beneficial. It follows from this position that there is no need for legislative interference with Muslim Personal Laws in India.

I may also mention here that Mr. Justice Hidayatullah, a former Muslim Chief Justice of India, who is at present our Vice-President, has revised the latest edition of Mulla's Mohammedan Law without making any adverse comments on decided cases which have developed Muslim Law in India in the manner indicated above. Hence, it can perhaps be presumed that the developments mentioned above have his tacit approval. But in an address delivered at the inauguration of a society intended for the intellectual uplift of Muslims, Mr. Justice Hidayatullah mentioned, *inter-alia*, the doctrine of "closure of the gates of Ijtehad" as a bar to the further growth of Muslim Shariat itself.

Welcome trend

The recent statements of His Majesty King Fahd of Saudi Arabia and of the Secretary-General of the International Muslim Conference wholeheartedly support the progressive trend which will prevent what may be peculiarly Muslim in our jurisprudence from clashing with the advancing needs of Muslims, in personal laws, which are not unlike those of the rest of humanity.

APPENDIX-VIII-C

(*Ref.* Chapter III, para 3.50)

(*Extracted from the book of Dr. Tahir Mahmood on 'Muslim Personal Law'*)

FUTURE OF MUSLIM LAW IN INDIA

A. ATTITUDES TO COMMON CIVIL CODE

Securing "a uniform civil code for the citizens throughout the territory of India" in accordance with Article 44 of the Constitution would obviously mean the end of the separate existence of all the personal laws now prevailing in the country, including that of Muslims. Right from the beginning of the Constitution, there has been, and still is, among the Muslims of India a sharp cleavage in respect of the enforcement of the mandate of Article 44. There are enthusiastic supporters, hesitant tolerants, indifferent laymen, soft-spoken opponents and violent antagonists. Outside the Muslim community, reaction to Muslim feelings has been divergent. The government, fully alive to these conflicting currents of thought, has pursued a "cautious approach."

Mandate Supported

Among the first few enthusiastic supporters of Article 44, who had come out with their views even before the Constitution was formally promulgated, was a prominent Muslim lawyer of Lucknow, Chowdhry Hyder Hussain. Addressing law students of the Lucknow University, he had said :

> Living under the British rule for about two centuries we have come to consider it only natural for Hindus to be governed by Hindu law and Muslims to be governed by Muslim law; but it is wholly a medieval idea and has no place in the modern world. I would, therefore, strongly urge the necessity of having one single code to be named as the Indian Civil Code applicable to everybody living within the territory of the Indian Union irrespective of caste, creed or religious persuasions. This is the juristic solution to the communal problem. It appears to be absolutely essential in the interest of unification of the country for building up one single nation with one single set of laws in the country.[1]

1 Chowdhry Hyder Hussain, "A Unified Code for India," A.I.R. (J) 68, 71-72 (1949).

Another great Muslim lawyer who, throughout his distinguished career as a judge, politician and legal parctitioner, has been an active supporter of the mandate of Article 44 is M.C. Chagla. In many of his speeches and writings, he has expressed the view that religion-based personal laws have no place in a secular society like ours; and that all personal laws of India including Islamic law should as early as possible be replaced by a secular and common law. Inaugurating a symposium on Muslim personal law organised at New Delhi under the auspices of the 26th International Congress of Orientalists in 1964, he said :

> What is good for a section of the people must be good for the whole population. Every social legislation is an encroachment upon the individual's right, upon the individual's personality, but we have passed the stage when we accepted the position that the state should not interfere with the individual.....If we have accepted that position in the field of politics, why is that we should not accept that position in the field of social welfare, social justice and social reform? Therefore, I am a strong believer in a course which applies to every individual whatever his religion or his community, whatever his faith. Social progress cannot be in compartments. I do not think Parliament should legislate in a fragmentary way for a part of society and not for the whole country. After all fifty million Muslims have a voice in the election of that Parliament through adult sufferage. Parliament is the ultimate arbiter in regard to what is social good, what is social justice and what is the interest of the people as a whole.[2]

Nearly ten years later, referring to Article 44, he reiterated:

> That is a mandatory provision binding on the government and it is incumbent upon it to give effect to this provision....The Constitution was enacted for the whole country, it is binding on the whole country, and every section and community must accept its provisions and its directives.[3]

Chagla's meassage has, thus, over a decade, been the same: that Muslims must, along with other citizens, accept the principle of a uniform civil code.

Outside the lawyer community, a Marathi novelist, well known for his ultra-secular views, Hamid Dalwai, has in recent years been demanding an immediate implementation of the directive of Article 44. Both individually

2 Proceedings of the 26th Congress of Orientalists, 79-80 (1964).

3 M.C. Chagla, "Plea for a Uniform Civil Code," Weekly Round Table, 25 March 1969, p. 7.

as well as from the platforms of the Indian Secular Society and the Muslim Satyashodhak Mandal (both of Bombay), he has been persistently pressing his demand. His arguments in favour of the demand may be summed up in his own words:

> A uniform civil code as distinct from a modernised personal law is necessary for the integration into a single modern nation of the various religious groups which make up the Indian people; for the basis of a modern state is the individual citizen, not any sub-national collectivity defined by religion, language or any other incidental attribute its members may share. There has, therefore, to be a minimum degree of homogeneity among the citizens as regards their rights, obligations and outlook, no matter what religion they follow or what language they speak; such homogeneity cannot be ensured without a uniform civil code.[4]

Dalwai has a large following among Muslims, both men and women, in Maharashtra. His Muslim Satyashodhak Mandal has in recent years held a large number of conferences to press the demand that the government must take steps before long to formulate and enact a uniform civil code.

Rashid Ali Baig, President of New Delhi's Muslim Progressive Group, is another prominent figure who neither personally believes in religious personal laws nor wants the Muslims of India to have a separate personal law. A career diplomat and a trusted lieutenant of Jawaharlal Nehru since independence, M.R.A. Baig has in recent years taken keen interest in Muslim problems.[5] Presiding over the session on personal law reform during the course of a seminar on "Minorities and the Law" organized in 1971 by the Indian Law Institute, he had declared his personal conviction that any talk about the reform of the Muslim law was meaningless and that nothing short of a common civil code should be the country's ideal. In his recent highly controversial book, *The Muslim Dilemma*, he gives a warning: "No people can stand still. They must either go forward or backward. If the Muslims are not to sink to the lower levels of Indian society, they must keep pace with those who are forging ahead. Barriers which prevent this must be removed."[6] And one of these "barriers", he is convinced, is the tradition-bound and religion-based Muslim personal law.

The great scholar of Islamic law, Asaf A.A. Fyzee, Professor Mujeeb of Jamia Millia Ismlaia, Dr. Abdul Alim and Badruddin Tyabji (both former vice-chancellors of Aligarh Muslim University) and many other Muslims belonging to the academic community would, left to themselves, have no objection in accepting a secular and common civil code applicable

4 Vide his letter in the Hindustan Times, New Delhi, 1 November 1970.

5 See, generally, M.R.A. Baig, The Muslim Dilemma in India (1974).

6 Id., Preface, at xi.

to all Indians. The same is true about several Muslim Judges including Hamidullah Beg of the Supreme Court and V. Khalid of Kerala High Court. All these are socially progressive people who personally think that jurisdiction of religion need not extend to marriage, divorce and succession.[7] However, all of them are conscious of the tremendous difficulties to be faced in the enactment and enforcement of such a code. They are alive to the feelings of other sections of the people; and they are democratic in their approach and farsighted in their views. They would, therefore, like enforcement of a uniform civil code to be postponed for a fairly long period during which Muslims should be trained to accept change in the traditional family law. In this regard they have made diverse suggestions which we shall discuss in the second part of this chapter.

Mandate Opposed

Hyder Hussain, Chagla, Dalwai, Beg, Fyzee and others referred to above, along with their admirers and supporters, represent only one side of the picture. On the other side, there is vehement opposition to the idea of a uniform civil code. Theological, social, historical and even philosophical arguments are advanced against the mandate of Article 44. The ulama of India regard the mandate of Article 44 as the sword of Damocles hanging over the noble Shari 'a in this country. In this thinking there is unanimity among the ulama of various schools of law and religious thought otherwise in conflict with one another. Jami'at al-Ulama Hind, Jama' at-e-Islami, Tablighi Jama'at, Deobandis, Barelvis, Ahl-e-Hadith, Shi'a, Sunni, Shafi'i, Isma' ili, all are equally critical of the mandate on a uniform civil code.

Leaders of the Jama'at-e-Islami admit that what is now known and applied in India as Muslim Personal law has some unsatisfactory aspects; and they agree that the ulama should find out ways and means to remedy these flaws. But they refuse to accept that these flaws call for the replacement of the Muslim law by a common civil code. In the opinion of Maulana Mohammad Yusuf (the Amir-e-Jama 'at at present), the flaws that have crept in Muslim personal law "do not injure the society in any measurable degree" and they are "molehills" out of which "champions of the so-called reforms" unnecessarily make a "mountain."[8] He and the former Amir-e-Jama'at, Maulana Abul Lais, both made it clear through their speeches and writings that their organisation will never tolerate the idea of a uniform civil code. Shams Peerzada, former chief of the Bombay unit of the Jama'at-e-Islami,

7 Based on personal interviews and a perusal of their writings.

8 Maulana Mohammad Yusuf, "A Virtuous Society," Weekly Round Table, New Delhi, 25 March 1973.

in a recent Urdu booklet, *Muslim Personal Law aur Yaksan Civi Code*,[9] has said :

> So far as the Directive Principles are concerned, there is also a Directive on prohibition of liquor, and no religion obstructs its implementation. Nevertheless, in a number of states, it could not so far be implemented and in those states where it was implemented, it is being gradually abandoned. For instance, in Kerala, the ban on liquor has already been lifted....What sort of justice is this under which all possible devices are adopted to avoid one Directive Principle and, at the same time, implementation of another Directive, which is highly controversial and amounts to open interference in religion, is insisted upon?[10]

Referring to the debate in the Constituent Assembly on the subject of Article 44 and recalling its opposition by some Muslim members of the assembly,[11] Peerzada wrote, "we are now facing the danger which had been anticipated when the Constitution was being framed."[12] He demanded, in express terms, an immediate repeal of Article 44 by an amendment in the Constitution.

Maulana Minnatullah Rahmani, Amir-e-Shari 'at, Bihar and Orissa and a veteran 'alim of the Deoband School, has repeatedly expressed a view that Article 44, so far as the Muslims are concerned, conflicts with Article 29 of the Constitution which guarantees religious freedom.[13] His opinion is shared by Qari Mohammad Tyab Saheb and other luminaries of the Deoband seminary.[14] Leaders of the Congress-backed Jami' at al-Ulama, including it spresent chief, Molvi Asad Madani and General Secretary Syed Ahmed Hashmi, MP, are equally opposed to the constitutional provision relating to a uniform civil code.[15] Isma'ili and Shi'a ulama including Syedna Burhanuddin of the Bohra community and the Ithna 'Ashari mujtahid Maulana Syed Ali Naqi, have also made it abundantly clear that there is no room for a common civil code in their ideologies.[16] In December 1972, a representative conference of ulama was held in Dar-ul Uloom, Deoband which resolved, *inter alia*, to make an outright condemnation of Article

9 Markazi Maktaba Islami, Delhi, 1972.

10 Id. at 13 (tr. by this author).

11 Supra Chapter 5.

12 Supra note 9 at 16.

13 Minnatullah Rahmani, Muslim Personal Law, 15, Deoband, 1972 (tr. from Urdu by this author).

14 Based on personal interviews, speeches, casual writings and personal correspondence.

15 Ibid.

16 Ibid.

44. Deliberations of the conference later resulted into the organisation of a large-scale Shari' a convention at Bombay, which we shall discuss in part B of this chapter.

Leaving the ulama, when we travel to the other sections of people, we find vehement critics of Article 44 also among Muslim lawyers, doctors, teachers, and other people leading a modern life. Most of these opponents, however, only blindly follow the ulama in this regard; they themselves know nothing about the issue except that it should be equated with a flagrant interference in religious affairs of Muslims. There are very few non-ulama Muslims who understand the issue by themselves.

Salahuddin Tyabji, an octogenerian social worker, wrote in 1966 a book, *Uniform Civil Code—A Challengeable Proposition,* published by the Islamic Publications Society of Hyderabad. Analyzing the reasons for the demand of a uniform civil code, he wrote that the only reason he could think of was "the imperative need to break asunder the unifying force of the Islamic brotherhood which is bound together by the Shari'a."[17] "I deny that the concept of the secular state presupposes a uniform civil law," he emphatically declared.[18] In Uttar Pradesh, some senior members of the bar, including the late Syed Mahmood Hasan, Qazi Adil Abbasi and Zafar Ahmad Siddiqui, have made forceful pleas against a uniform civil code. The late Dr. Abdul Jalil Faridi, who had remarkably liberal views regarding reform of Muslim law, had opposed the idea of a uniform civil code from the platform of the Muslim Majlis and at the All India Muslim Political Convention organised by him at New Delhi in December 1971.

Among the political parties, apart from Dr. Faridi's Muslim Majlis, the Indian Union Muslim League has right from 1947 been opposing the directive of Article 44. In its election manifestos on several occasions, the party has declared that it regards the mandate of Article 44 as a danger to the identity of Muslims in this country. Some of its leaders like the late Mohammad Ismail of Kerala had opposed the principle in the Constituent Assembly. They continued to repeat their arguments after the promulgation of the Constitution. Among the present Muslim League leaders, Ibrahim Sulaiman Seth and C.H. Mohammad Koya, have pursued the same policy. In a recent article, Mohammad Koya wrote, "It is a crime to waste our energies on raking up issues like repeal of laws which have been accepted, practised and acknowledged for centuries and are based on spiritual and religious thinking."[19]

17 Salahuddin Tyabji, Uniform Civil Code—A Challengeable Proposition, 17 (1966).

18 Id. at 70.

19 Mohammad Koya, "Shari'a is Sacred," Weekly Round Table, New Delhi, 18-19 (25 March 1973).

The Muglim Majlis-e-Mushawarat, headed by Mufti Atiqur Rahman of Delhi and constituted by political and religious leaders of various parties and organizations, has also more than once voted against the implementation of a uniform civil code.[20] On 10 October 1972, Ghulam Mohammad Memon, a joint secretary of the Mushawarat, presented to the law minister a memorandum demanding deletion of Article 44 from the Constitution.[21]

As regards the Congress leaders of the past, it is claimed by some Muslims that Maulana Abul Kalam Azad and Rafi Ahmad Kidwai did not favour the idea of a uniform civil code. No authentic account of their opinion on the subject is, however, available. Of course, before independence, Maulana Azad had warned the British government that it should not try to interfere in the religious affairs and laws of Muslims.[22] Some light is thrown on how Maulana Azad and his disciples thought about a common civil code by the following observation of Karandikar :

> The pseudo-modernist section comprising Maulana Azad's followers, also known as nationalist Muslims due to their association with the Congress, seldom talk either about reform in Mohammedan law or a common civil code. If at all they speak or write on this issue, they make statements leaning heavily in favour of orthodoxy.[23]

The late Maulana Husain Ahmad Madani and Maulana Hifzur Rahman, Congress-backed members of parliament, were, however, certainly against the mandate of Article 44. Also the late President Zakir Husain had once, when he was Rajya Sabha Chairman, intervened to prevent the government from appointing a committee to examine how Muslim law had been reformed in Islamic countries.[24] Among other prominent political leaders who do not want the government to carry out the mandate of Article 44 is Shaikh Abdullah. In recent months he has led delegations to the central leaders to secure an assurance against the reform of Muslim personal law.

Two retired High Court judges, Bashir Ahmad Sayeed (of the Madras High Court) and Khalil Ahmad (of the Patna and Orissa High Courts), have expressly condemned Article 44. "I have always held the view," writes Bashir Ahmad Sayeed, "that Article 44 of our Constitution was not called for and that so far as its relevance to the Islamic personal law is concerned,

20 See Kul Hind Majlis-e-Mushawarat Ka Manshur, 3 (1966).

21 Radiance Weekly, Delhi, 7 November 1972.

22 A.K. Azad, Mas'ala-e-Khilafat, 204-205 as cited in Mohd. Yusuf, Muslim Personal Law, 5 (1973).

23 M.A. Karandikar, Islam in India's Transition to Modernity, 37 (1968).

24 Id. at 92.

there is room to think that it was not well-meant."[25] Judge Khalil Ahmad too has expressed similar views. Speaking in New Delhi on 6 October 1972, he said that he found a conflict between parliament's power to enact a common civil code and the fundamental right to religious freedom. Among the opponents of a uniform civil code, there is also a Muslim iudge, A.K. Moidu of the Kerala High Court. In 1973 (while he was a sitting judge), reading a paper at a seminar held during the Tellicherry district court centenary celebrations, he had clearly stated that Article 44 of the Constitution was in conflict with Article 25 guaranteeing religious freedom.[26]

The Logic of Opposition

The conflicting attitudes prevailing among the Muslims of India towards the mandate of Article 44, noted above, are illustrative of the trends in the community in regard to this constitutional provision. If we balance Muslim modernists' support to the mandate against its vehement opposition by the ulama, their followers and others, there is no denying the fact that the supporters form a thin minority: an overwhelming majority of Muslims are opposed to the mandate, what ever its merits. There are four major reasons underlying the opposition of the mandate by the Muslims.

First, Islamic laws of marriage, divorce and succession are regarded by the majority of Muslims as part and parcel of their religion. They sincerely and innocently believe that what is known as Muslim personal law is nothing different from the Qur'an and Sunna. As regards the ulama, it is naive to expect them to agree to the abandonment of the traditional laws. Their attitude is typical of the clergy in all religions. Pundits and Brahmans of India still regard the enactment of the Hindu Code of 1955-56 as a flagrant violation or dharma and adherence to its provisions as a sin. Catholic priests all over the world generally disapprove the modern reforms in family law. The modernization of family law in Israel did not have the blessings of Jewish priests. Abandonment of Islamic laws in Turkey, Albania and Soviet Central Asia was vehemently resented and opposed by the local ulama. In Pakistan and Bangladesh, the ulama would not tolerate even the slightest reform of the traditional law, leave alone its secularization. How can, then, the ulama of India be expected to agree to secularization of family law? Persons who are trained in a particular system, tradition and social order, and have spent their lives in studying and adhering to the same, are invariably not tolerant of any alternative system, irrespective of its merits. Ask any vaid or hakim about the allopathic system of medicine. The

25 B.A. Sayeed, "Why this Anxiety to Alter Islamic Personal Law," Radiance Weekly, Delhi 30 May 1972.

26 Quoted from his unpublished paper read at the seminar.

usual answer is that it is a useless system treating one ailment but by-producing many others. Theologians of any religion cannot, similarly, tolerate the talk about the replacement of religious law by manmade law; and the ulama of India are no exception.

Second, the common Muslim has been given to believe that it will be a great sin (gunah-e-kabira) to adhere to principles of marriage, divorce and succession other than those laid down in the Qur'an and Sunna or by their interpreters. The common Muslim is so obsessed by the thought of gunah and thawab, hell and heaven, that he cannot wilfully accept any proposition which, he is somehow or the other convinced, will be a gunah leading to punishment in the life hereafter. It is a fact that generally Muslims do not even know what Muslim personal law is or what a uniform civil code will mean. They just believe, simply and firmly, that enforcement of such a code would mean abandonment of a very essential part of the faith making them liable to spiritual torture on and after the Day of Judgment.

Third, Muslim personal law is regarded by a majority of Muslims as a symbol of their cultural identity in Hindu-dominated India. The fact that they are in a minority, to whose religion Hindu masses are generally hostile, makes the attitude of Muslims extremely rigid. They refuse to give up any of their distinctive possessions in a bid to preserve their identity. Many highly educated, enlightened Muslims have said to this author, "Our boys have been driven away from Islam. In schools and colleges, they are taught Hindu mythology. They neither pray nor fast nor recite the Qur'an. They have changed over to Western dress. What part of Islam will remain with them if we allow them to give up even our personal law?" The war against a common civil code is, thus, in the eyes of such Muslims, a jihad, a holy agitation for the protection of Islam in India.

Fourth, the fact that the idea of a uniform civil code is still abstract creates tremendous difficulties, specially for the Muslims. They believe that the code will be a replica of Hindu jurisprudence and will have nothing in it derived from the Islamic legal system. This impression has been created by those pseudosecularist Hindus who counsel the Muslims to adopt secularism in every walk of life, but do not themselves adopt it in practice in any walk of life. Misunderstanding has also been created by the observations of some foreigners. J.D.M. Derrett, the famous British scholar of Hindu law, for instance, once wrote that the "civil code promised in Article 44 of the Constitution will be like the Hindu Code (of 1955-56) which is a misnomer but a convenient one."[27] Sharply reacting to this observatior of Derret, in an Urdu booklet, Shams Peerzada of Jama'at-e-Islami spoke of the

27 J.D.M. Derrett, Religion, Law and the State in India, 546 (1970).

"motives" behind the demand for the implementation of article 44.[28] Comparing the principles of Muslim personal law with the Hindu Code of 1955-56, he concluded that the two conflict in fundamentals and that, therefore, the latter can never be acceptable to Muslims. The Amir of the Jama 'at-e-Islami, Maulana Yusuf, also thought that the uniform civil code would be another name for Hindu law.[29]

As regards the last reason mentioned above, this author has, in several works, explained that the Hindu Code of 1955-56 itself is much nearer the legal principles of Islam rather than those enunciated in the Dharmashastras and that, similarly, the future civil code of India will incorporate all the superb features of true Islamic law. It is in the light of this fact that Derrett's aforesaid observation should be appreciated. Also, Peerzada's discovery of conflicts between Islamic law and the "Hindu Code" is not indeed true. In a highly controversial article published in the *Hindustan Times* in June 1972, we had submitted:

> It is fallacious belief that the Indian civil code will be a replica of ancient Hindu juristic doctrines, since a large number of those doctrines have been abandoned under modern Hindu law itself. The Hindu Code of 1955-56 has very little of Shastric doctrines left into it. Many of its provisions in fact find support in the Qur'an and Sunna, and not in Dharmshastras. Therefore, if some principles of the Indian civil code resemble the corresponding principles of the Hindu code, it will in no sense amount to enforcement of ancient Hindu law....It seems to me that the civil code of India will be more in conformity with Islamic jurisprudence than with any other legal system. A contractual-cum-sacramental concept of marriage, complete freedom of both men and women in regard to marital choice, solemnization of marriage without any religious ceremonies, independent status of wife in her husband's home, facility of dissolution of marriage in special circumstances available to both spouses, and unqualified validity of the marriage of a widow or divorcee, all will be essential ingredients of the future civil code of India; and these are the ideals for which Islamic law stands.[30]

28. S. Peerzada, Muslim Personal Law aur Yaksan Civil Code, 27 (1972) (tr. from Urdu by this author).

29. M. Yusuf, Muslim Personal Law, 10 (1973) (tr. from Urdu by this author).

30. T. Mahmood, "Islam and a Common Civil Code," Hindustan Times, New Delhi, 22 June 1972.

These arguments were greatly resented by the ulama and were described by some critics as a camouflage meant to win over Muslim support for un-Islamic laws.[31] Justice V.R. Krishna Iyer of the Supreme Court has also tried to dispel the doubts of the Muslims about the contents of the common civil code. In a recent paper, he explained:

> A family code embracing the whole nation need not be an adaptation of the Hindu system....but a synthesis of the good in our diverse personal laws, an eclectic not exotic product, a picking and choosing from many systems so as to save our ethos and to express the genius of our culture....[32]

Nobody, however, is ready to listen to even this great jurist-judge of the age.

Opponents, Supporters, Advisers

There are very few non-Muslims in India who can or want to appreciate the attitudes and apprehensions of their Muslim co-citizens in regard to the mandate of Article 44. Hindu masses, as ignorant of the issue as the common Muslim, are given to believe that by refusing to accept a uniform civil code, Muslims are indulging in an anti-national act opposed to the interest of the country. Such ideas have been propagated by Hindu communalists to the detriment of the noble ideal underlying the directive of Article 44. Among the educated, enlightened non-Muslims who have entered into the controversy on the implementation of Article 44, there are two groups. Some of them, failing to appreciate the attitudes of Muslims and the need to remove their apprehensions in this regard, go on advising them to abandon their personal law and accept a common civil code without any more delay. On the other hand, some of them are fully alive to the nature and depth of Muslim feelings and have, therefore, adopted an extremely cautious approach. Some individual views illustrative of the approach of either group will be cited below.

A former Chief Justice of India and the present Chairman of the Law Commission, P.B. Gajendragadkar, is the most well known among those whom Muslim opponents of the mandate of Article 44 regard as their "enemies". On several occasions, he has expressed an opinion that Muslim personal law is "archaic" and "outdated" and that the Muslims must

31. It is notable that after the publication of this article, an invitation, extended by Dar-ul-Uloom Deoband, to this author to attend the all-India Shari'at convention to be held at Bombay in December 1972, was withdrawn.

32. V.R. Krishna Iyer, "Reform of the Muslim Personal Law in India", in T. Mahmood, Islamic law in Modern India, 17 (1972).

agree to its replacement by a common civil code [33]. Delivering the convocation address at Aligarh Muslim University in January 1969, he urged the Muslim youth to convince other Muslims that decisions on social matters like marriage and divorce should now be taken in conformity with reason and science, the teachings of the Qur'an on these subjects being inapplicable today [34]. The advice attracted bitter criticism and resentment by various sections of Muslims. Commenting on the statement in his book on Muslim law, Shams Tabrez Khan of Nadwat-ul Ulama, Lucknow, said that it was indicative of the "intellectual insolvency of modern thinkers."[35] Similar comments had appeared soon after the publication of the address in many Muslim newspapers and a demand was made in some quarters for Justice Gajendragadkar's removal from the Law Commission.

Some other judges of the Supreme Court have adopted an attitude very similar to that of P.B. Gajendragadkar. Welcoming the delegates attending the Indian Law Institute's seminar on "Islamic Personal Law in Modern India", Justice Hegde, then a sitting judge of the Supreme Court, instead of discussing possibility, need or feasibility of reform in Muslim personal law, said :

> ....what surprises as well as pains me is that instead of holding a seminar to find out ways and means of implementing the Directive Principles contained in Article 44, we have met here to consider as to what changes we could usefully effect in the Islamic personal law..... I have not been able to find any justifiable reason for not implementing Article 44. [36]

He urged the Law Minister Gokhale (chairing the seminar) to "exert his pressure to carry out the mandate of Article 44," advised Professor Mujeeb (who inaugurated it) to "lend his weight" for unifying the nation under common laws and asked J.N.D. Anderson (special invitee) to point out to the seminar the "unsuitability of Islamic law for a society like ours."[37]

33. See, generally, P.B. Gajendragadkar, Secularism and the Constitution of India, 124—127 (1971).

34. Daily Qaumi Awaz, Lucknow, 29 January 1969.

35. Shams Tabrez Khan, Islam Ka Aili Nizam, 261-262 (tr. from Urdu by this author).

36. K.S. Hegde, "Welcome Address" in T. Mahmood (ed.), Islamic Law in Modern India 3 (1972).

37. Id. at 4.

On the other hand, in the same seminar, Justice V.R. Krishna Iyer, then a member of the Law Commission, warned the advocates and supporters of a common civil code in the following words :

> Equally important are the means as the end. We must seek to convince the conscience and convert the sense of the Indian commonwealth of communities, by sure educative and legislative steps, to accept for the secular life of the people a single family code. This is the modus operandi for delicate lawmaking in a democratic polity affecting the sensitive social underside of minority groups.... Since first things must be first, let us tackle the job of modernizing the Islamic Law first, preserving its genius and great principles but approximating the law to the general system and eventually enriching the latter in many respects.[38]

In another article on the advisability of carrying out the mandate of Article 44, Justice Krishna Iyer said :

> Hurried remedies, enthusiasts and chauvinists, will aggravate the malady; for in the socio-political field one wrong step forward is two regrettable steps backward and a policy of principled compromise, not of doctrinaire or sectarian rigidity, moving up in zigzags, may be, is the right approach.[39]

On the political front, some prominent leaders of the opposition parties have, of late, encouraged the Muslims in their endeavours to retain a distinct personal law. One of them was the late Guru Golwalker of the RSS who, in the autumn of his life, expressed views about a uniform civil code incompatible with the known ideology of his party and of the Jana Sangh. At the inauguration ceremony of Deen Dayal Research Institute at New Delhi on 20th August, 1972, talking to the correspondent of the Motherland, he said : [40].

> Q Don't you consider a uniform civil code necessary for the furtherance of national integration ?
>
> A. No ! I don't think so. You and many others will be surprised to hear it, but this is my opinion and I should express the truth the way I see it.... It is not that I object to a uniform civil code as such. But, at the same time, it must be borne in mind that something cannot become desirable only because it is mentioned in the Constitution....

38. Supra note 32 at 18-19.

39. See his article in Weekly Round Table, New Delhi, 11 (25 March, 1973).

40. Motherland, New Delhi, 21 August 1972.

Q. Don't you think that Muslims are opposing the uniform civil code just to maintain their identity or individuality ?

A. I have no grievance against any section, community or fraternity desiring to maintain its identity or individuality, provided that ths 'identity' is not a hurdle in the way of sentiments for patriotism.... So long as the Muslims love this country and its culture, we welcome their way of life.

Q. Will it be right to permit Muslim women to remain in purda and put up with polygamy ?

A. Muslims should be given opportunity to give up themselves their archaic laws. If they themselves arrive at the conclusion that polygamy is not good for them, I will be very happy. But I will not like to impose my viewpoint on them.

Among Hindu religious dignitaries, Swami Karpatriji of the Sanatan Dharma, addressing a public meeting at Varanasi in September 1972, said that Muslims and Hindus should not give up their respective personal laws since "Muslims who are not faithful to their Qur'an, as also Hindus who are not faithful to Dharamashastras, cannot be faithful to the Constituion either."[41] These views of Guru Golwalker and Swami Karpatriji were greatly hailed and publicized by a number of Muslim dailies and periodicals. Commenting on this reaction by the Muslim press, Jana Sangh's organ, Motherland,in an editorial wrote, "We are happy in their happiness....we hope they will now appreciate that nobody is hostile to their legitimate aspirations.[42]

The editorial struck an explanatory note that the uniform civil code, as and when introduced, will incorporate the "best elements of all current legal systems". "Already the Hindu Code has not only accepted the Muslim principle of property right for daughters, it has improved upon it by giving them equal share as against the half share in Muslim law; Muslims should welcome this synthesization of laws ", the paper added. It is interesting to note the reaction of A.A.K. Soze, a lecturer at New Delhi's Jamia Millia Islamia, to Guru Golwalker's ideas. Commenting on them in the Radiance Weekly, he wrote, "The change (in the Guru's views) should be attributed to the horror created by Hindu intellectuals like Justice Krishna Iyer and Muslim scholars like Tahir Mahmood

41. As reported in Urdu daily, Al-Jami'at, Delhi, 28 September 1972.

42. Motherland, New Delhi, 28 August 1972.

that some of the liberal laws of Islam will have to be given a place in the proposed uniform civil code."[43]

The reason why Golwalker and "other rashtravadis" wanted Muslims to retain their personal law was, in the opinion of Soze, that they did not want the Shari'a to be "preached to them in the name of a uniform civil code". This apprehension of Soze is, however, clearly negatived by Motherland's frank acknowledgement of Islam's contribution to the reform of Hindu law.

Some impartial foreign observers have adopted an attitude very similar to that of Justice Krishna Iyer in regard to the need for carrying out the mandate of Article 44 with consideration to Muslim feelings. At the Indian Law Institute's seminar, J.N.D. Anderson said :

> These principles (Directives) are not mandatory as such; and the impatience in this matter shown by Justice K.S. Hegde and many others seems to me misplaced.... But even if the Indian Government eventually decides to force through a uniform civil code, it will surely be in the interest of the Muslim community to have defined what they believe to be the essential elements in their law, in contradistinction to the vagaries and abuses which at present discredit it, for it must be presumed that a uniform civil code would represent one drawn up by consultation between the different communities in India on a principle of give and take....[44]

Expressing similar sentiments, the Hindustan Times, in an editorial commenting on the seminar, said that "Impatience for a uniform civil code is often expressed by these among the majority community who are not themselves noted for their progressive outlook; they thereby undermine confidence in the Muslim mind."[45] The editorial welcomed the consensus arrived at the seminar that "reform of Islamic law should precede enactment of a common civil code".

The opinion of Krishna Iyer, Anderson, the editor of Hindustan Times and many others, seems to be that the implementation of the directive of Article 44 should not be impatiently pushed through and that Muslim Personal Law should for the time being be reformed and purged of its drawbacks. A reformed Muslim personal law, they feel, would pave the way

43. Radiance Weekly, Delhi, 10 September 1972.

44. J.N.D. Anderson, "Muslim Personal Law in India" in T. Mahmood (ed.), Islamic Law in Modern India, 35-36 (1972).

45. Hindustan Times, New Delhi, 18 January 1972.

for an easier implementation of the directive in the foreseeable future. How do Muslims view this opinion ? Are they willing to the reform of their personal law, in Justice Krishna Iyer's words, with its "genius and great principles" preserved but its general tone "approximated to the general system" ?

B. CONTROVERSY ON REFORM OF MUSLIM LAW

No research is required to prove that an overwhelming majority of Muslim Indians are opposed to any legislative activity affecting their traditional personal law in regard to which they want the status quo to be maintained literally and rigidly. There certainly are, in large numbers, enlightened and socially progressive Muslims who are dissatisfied with many principles of the traditional personal law and want it to be reformed through legislation or judicial interpretation. The latter, numerically balanced against the former, however, constitute a minority within the Muslim minority as a whole. The views of the opponents as well as those of the supporters of reform among Muslims, both have, in recent years, come into the limelight. Over a duration of about twenty-five years, since the early fifties, many important events closely connected in one way or the other with the controversy regarding the reform of Muslim Personal law have happened in this country. These events indicate the vicissitudes of the twenty-five year long polemic in the Republic of India on the future of Muslim personal law. Given below is a chronology of the main events which had special significance.

A Chronology

(1) During the debates in Parliament on the Hindu Code Bill, it was demanded by some non-Muslim members that measures like polygamy should be applied to all Indians including Muslims. The demand generated great anxiety among certain sections of Muslims. Jawaharlal Nehru intervened, pacified them and got the Hindu Code eventually placed on the statute book. All the four parts of the Hindu Code, 1955-56, laid down that their provisions would be applicable only to Indians other than Muslims, Christians, Parsis and Jews.[46]

(2) In 1963, the Central Government planned to set up a committee for examining and reporting on how and to what extent Muslim personal law had, in recent years, been reformed in some of the Islamic countries. The move was vehemently opposed from religious and political platforms. The resentment attained such a high altitude that, on its being conveyed to Parliament by then Vice-President Zakir Husain, the move was dropped.

46. See section 3 and 4 of the four Acts of 1955-56 (Hindu Code).

(3) Under the auspices of the 26th International Congress of Orientalists held in New Delhi, a symposium on "Changes in Muslim Personal Law" was arranged in March 1964. It was presided over by M.C. Chagla, then education minister of India, and attended by ambassadors of Turkey, Egypt, and Iran, a few foreign scholars of Islamic law and many Indians. The general consensus, though there were some dissenting views, was that Muslim personal law could be reformed but the machinery for its reform should have a religious basis.[47]

(4) In 1968, the Institute of Constitutional and Parliamentary Studies, New Delhi, organized a seminar on "A Uniform Civil Code for India". It was attended by judges, lawyers and scholars, including some eminent Muslims. The question of Muslim personal law came up for discussion during the course of the seminar.[48]

(5) Soon after the ICPS seminar on a uniform civil code, the Islamic Research Circle, Aligarh, organized an All India Seminar on Muslim Personal Law. Among its participants were the ulama of various schools of thought, journalists, law teachers and practising lawyers. All of them were Muslims. No non-Muslim participated in the seminar. The tone of the seminar tilted towards orthodoxy and rigid conservatism.[49]

(6) In March 1970, a Muslim Satyashodhak Mandal was set up in Poona by some Muslim modernists under the leadership of Babubhai Bandwale of Ahmedabad. In December 1971, the Mandal organized a Maharashtra Muslim Women's Conference. Inaugurated by Asaf A.A. Fyzee, the conference passed resolutions demanding reform of Muslim personal law leading to a uniform civil code. In the months that followed, there was a reactionary outburst of counter-conferences of devout Muslim women, mostly organized by Jam'at-e-Islami and held in all important cities of India during 1972-73. These latter conferences strongly opposed the views of Muslim modernists, condemned their attitude and demanded that the traditional Muslim personal law be left just as it is.

(7) In January 1972, the Indian Law Institute organized at New Delhi a seminar on "Islamic Personal Law in Modern India". It was presided over by Union Law Minister H.R. Gokhale and inaugurated by Professor

47. Proceedings of the symposium were published in the proceedings of the Congress (Vol. I, 1964) and reprinted in the form of a booklet; Symposium on Changes in Muslim Personal Law (1964).

48. The proceedings of this seminar are available in the Library of the Institute.

49. Proceedings of this seminar are found in M.N. Siddiqui and F.R. Faridi (eds.), Muslim Personal Law (Delhi, 1973).

M. Mujeeb. Among the participants were J.N.D. Anderson, Maulana Sayeed Ahmad Akbarabadi, one representative each of the Jamai' at al-Ulama and Jamat'at-e-Islami, and a large number of lawyers, law teachers, judges and other scholars.[50] The seminar, which received wide publicity in all sections of the press, arrived at a consensus that there was an urgent need for certain reforms in Muslim personal law as applied by the courts in India and that most of the problems could be solved quite easily in accordance with intrinsic aid from Islamic texts.[51] In certain Muslim sections, this seminar was described as a "semi-governmental", "organized" "conspiracy" against Muslim personal law.

(8) In March 1972 a convention of the ulama was held at the Dar-ul-Uloom of Deoband to discuss the controversy on the reform of Muslim Personal Law, especially the deliberations of the Law Institute's seminar organized in January 1972. The ulama participating in the convention were all Hanafi Sunni, those of the other groups of Muslims were not invited. The only non-ulama invited to the convention were former Deputy Law Minister Yunus Saleem and the present author.[52] At the end of the convention, a committee of the ulama was set up to make preparations for holding a grand Muslim personal law conference at Bombay towards the end of the year.

(9) In December 1972, Bombay was the venue of a really grand, large-scale Shari'at convention attended by the ulama, lawyers, judges, politicians, physicians, businessmen and many others. At the end of the convention resolutions were unanimously adopted declaring Muslim personal law to be absolutely immutable and the government was urged not to interfere with it either directly or indirectly.[53] Also an All India Muslim Personal Law Board was constituted for the purpose of ensuring protection of the Shari'a laws through a multifarious programme. Since then the board, having Maulana Minnatullah Rahamani, Amir-e-Shari'at, Bihar and Orissa, as its general Secretary, has met in Hyderabad and some other places. Its main purposes are to condemn any attempt to reform Muslim personal law by legislation or otherwise and to seek removal of all "un-Islamic" provisions from the existing laws applying to or affecting the Muslims.

50. Proceedings of this seminar are found in T. Mahmood (ed.) Islamic Law in Modern India (Bombay, 1972).

51. See Hindustan Times, New Delhi, 17 January 1972.

52. The long address of this author, in Urdu, was later published by the Zakir Husain Institute of Islamic Studies, Jamia Millia Islamia in the form of T. Mahmood, Muslim Personal Law ke Tahaffuz ka Mas'ala (Delhi, 1972).

53. Proceedings of the convention have been partly published in Urdu.

(10) In December 1973 the issue of Muslim personal law reform in India was discussed in an international conference on Law, Religion and Morality organized jointly by the Islam and Modern Age Society of the veteran scholar Dr. Abid Hussain and Hamdard Trust's Indian Institute of Islamic Studies. It was inaugurated by then President V.V. Giri, presided over by former Chief Justice M. Hidayatullah and attended by a number of foreign and Indian scholars. The opinion was sharply divided on the issue tilting in favour of reform.[54]

Support for Reform

With the seminars, etc. in the background, individual opinions and attitudes to the need for and feasibility of reform in Muslim law may be conveniently examined.

Asaf A.A. Fyzee, eminent scholar of Arabic and author of several authoritative books on Muslim law, has been in the forefront of the controversy. He has consistently held the view that the Indian brand of Islamic law (called by him " Muhammadan law") is quite different from the original Shari'a. He describes it as "Shari'at modified by the principles of the English common law and equity in the varying social and cultural conditions of India" and "a discrete system, somewhat at variance with its original sources."[55] He has substantiated this view by his study, Cases in the Muhammadan Law of India and Pakistan.[56] In 1954 Fyzee published his article "Islamic Law and Theology, Proposals for a Fresh Approach."[57] In 1963 his proposals found a fuller development and elaboration in his book A Modern Approach to Islam.[58] The theme of his views was that Islam should be reinterpreted as a living and creative force in India's pluralistic and secular society; one of the six principles proposed by him to carry out such a reinterpretation being separation of law and religion. This revolutionary approach of Fyzee was wholly unacceptable to a dominant majority; and he himself so n realized its present impracticability. In 1970 he brought out his extremely contro-

54. Proceedings of the conference were published partly in the Islam and Modern Age and partly in Studies in Islam, successive quarterly issues of 1974.

55. A.A.A. Fyzee, Outlines of Muhammadan Law, 50 (1968).

56. Clarendon Press, Oxford, 1965. The book contains a classified study of 43 leading cases on Muslim Law decided in the Indian subcontinent.

57. Middle—East Journal, 163-183 (1954).

58. Asia Publishing House, Bombay, 1963.

versial article "The Reform of Muslim Personal Law in India".[59] The basic theory underlying the article is that India is neither dar al-harb (a country inimical to Islam) nor dar al-Islam (Islamic country); it is rather dar al-hiyad (a country where the laws have to be laid down according to the state policy).[60] "Where the human conscience is moved by rank injustice", he argues, "it is for us, Muslims of India, to find a solution and bring out law into line with every other system of jurisprudence, giving justice to those to whom it is denied."[61] Writing in two leading English dailies in January 1972 Fyzee again stressed that Muslim personal law in India is "by no means to be equated with the Shari'a" and that the true position is that "in the case of Muslim litigants a few rules of law drawn from the Shari'a with an admixture of English law are applied, provided they are not against justice and equity."[62] In his paper presented (in his absence) at the International Conference on Religion, Law and Morality, held at New Delhi in December 1973, he reiterated that "to name the present system of Muslim personal law as Shari'a is political euphemism, not scientific nomenclature" since rules "tempered" by non-Islamic jurisprudence and administered under non-Islamic laws cannot be termed Shari'a "by any stretch of imagination or by any elasticity of interpretation.[63] It, thus, seems that the main reason why Fyzee finds nothing wrong in the reform of Muslim personal law in India is that this law is far from being the original Shari'a.

M. Hidayatullah, former chief justice of India, is another eminent supporter of reform. It is said that in 1972, when sounded for the chairmanship of a committee planned by the government o be set up for recommending reform of Muslim personal law, he turned down the offer. To this wholly unconfirmed report, the reaction of the orthodox Muslim press (e.g. Radiance Weekly of Delhi) was "hats off to Hidayatullah". The fact, however, remains that he has always held very progressive views on the subject. In his introduction to Mulla's classic on Muslim law (which he has twice edited), referring in brief to some of the major reforms effected in family law in certain Islamic countries, he remarked :

59. Humanist Review, 370-403 (1970), reprinted ina booklet (having the same title) in 1971.

60. Id. at 373.

61. Id. at 378.

62. Times of India, Bombay, 31 January 1972; Indian Express, New Delhi, 12 February 1972.

63. A.A.A. Fyzee, "The Concept of Justice and Personal Law in India" (unpublished).

"If the injunctions of the Qur'an and Hadith are not lost sight of, it is possible to make changes by legislation in a widening area.... The lead is coming from Muslim Countries and it is to be hoped that in course of time, the same measures will be introduced in India also".[64]

The presidential address Hidayatullah delivered at the international seminar on Religion, Morality and Law organized at New Delhi in December, 1973 speaks of his extremely progressive views regarding the issue of reforms in the Muslim personal law in India.[65] Analyzing the "divine element" in the Muslim personal law "in the spirit of a utilitarian,"[66] he concluded that out of the total of 6,000 Quranic verses, not more than 200 deal with law and these cover crimes, evidence, slavery, trade and commerce.[67] After a brief but close examination of the true nature and rationale of those verses (out of the 200) which deal with family law and succession, he strongly suggested legislation in the areas of divorce, polygamy, succession and adoption.[68] At the end of his address he defended the state's power to legislate on these matters by reference to Islamic jurisprudential principle of siyasa shar'iya.[69]

Among the dignitaries of New Delhi's Jamia Millia Islamia, Dr. Syed Abid Hussain and Professor Mujeeb are well known for their balanced, progressive views. Both are supporters of necessary reforms in the Muslim personal law but, being fully alive to the susceptibilities of orthodox elements, have adopted an extremely cautious approach. Dr. Abid Hussain, author of the famous work, The Destiny of Indian Muslims, founder of Islam and Modern Age Society and editor of the Society's English and Urdu quarterlies, in a recent article made a brilliant analysis of the pros and cons

64. Mulla, Principles of Mohammedan Law, xxxi (1968) Introduction by the editor, M. Hidayatullah.

65. The address was delivered on 11 December 1973 and is available in a printed booklet published by the organizers of the seminar.

66. Id. at 6.

67. Id. at 9-10.

68. Id. at 12-18.

69. Id. at 18.

in the controversy over the reform of Muslim personal law.[70] He criticized the opponents of reforms of confining "their sight to only one side of the picture" and neglecting the really unsatisfactory aspects of Muslim law as traditionally applied in this country.[71] He warned them that if such aspects of the law were not remedied, the belief of the new generation of Muslim Indians in Islam as a true and just religion will be "injured" and they might drift apart from their faith itself.[72] His advice to the socially progressive pro-reform Muslims was: "Don't be despaired and frustrated; never adopt vituperative tactics; go on trying to get at a solution."[73]

Professor Mujeeb, author of The Indian Muslims and one of the architects of Jamia Millia, has adopted an attitude very similar to that of Syed Abid Hussain. Inaugurating the Indian Law Institute's seminar on Islamic Personal Law in January 1972, he stressed:

> If Muslim lawyers studied the Shari'a for itself and not only with reference to particular cases, they would find that it provides remedies against its own injunctions if they prove irksome, and has authorized even utilization of subterfuges[74].

Muslims should, in his opinion, take guidance from the Qur'an for the application of the true and pure Shari'a. "In matters of personal law, much could be done to help them by Muslim Lawyers and by a state as secular and benevolent as ours," he said.[75] He suggested piecemeal and indirect legislation preceded by an educative process "including specific instruction in the means and methods whereby the individual citizens, in particular the women, can ensure that justice is done to them", as the methodology of reform.[76]

The list of other prominent Muslim men and women who have publicly supported the need for reform of Muslim personal law includes the names of Justice Hamidullah Beg of the Supreme Court, Justice V. Khalid of the Kerala High Court, Judge Aziz-al-Shafi of Delhi, Kamila Tyabji, Danial Latifi, A.G. Noorani, Asghar Ali Engineer, Dr. Yusuf Hussain Khan,

70 S. Abid Hussain, "Umr-e-Khizar Daraz", V, Islam aur Asr-e-Jadid, 6-16 (1973).

71. Id. at 13.

72. Id. at 14, 16.

73. Id. at 14.

74. M. Mujeeb, "Inaugural Address", T. Mahmood(ed.), Islamic Law in Modern India, 10 (1972).

75. Id. at 11.

76. Id. at 11-12.

Badruddin Tyabji, Alam Khundmiri, Begam Aijaz Rasul, Hajra Begam, S.T. Lokhandvala, M.S. Agwani, Deena Ahmadullah, M.K. Nawaz, Laeeq Fatehally and Zarina Bhatty. All of them are academic people trained in modern law or some other social sicence and hold responsible positions in society. They belong to different schools of Islamic law, both Sunni and Shi'a. Their views differ in details; but they all agree that Muslim personal law is not sacrosanct and that its existing drawbacks can and should be removed.[77] "If safeguards are evolved to protect women from undesirable situations, it will add to the credit of Islamic Shari'at and be in consonance with the Islamic Code and Quaranic principles," writes Begam Aijaz Rasul.[78] "To talk of socialism and an egilitarian society," asks Hajra Begam, "and exclude from the process of social reform both Muslims and Christians—can this be justified?"[79] Kamila Tyabji strongly advocates the possibility of reform by applying Islamic legislative principles and is convinced that such a process of change does not violate the sanctity of Islamic Shari'a. Similar views have been expressed by men modernists among Muslims mentioned above. Illustrative of their views is the conviction of A.G. Noorani; "That the Muslim law as in force in India cries for reforms, only a few would seriously contest."[80]

Among the ulama of India, Maulana Sayeed Ahmed Akbarabadi has expressed himself in writing in favour of reform. An enlightened scholar of Arabic and Islamic sciences, he has been principal of the Madrasa 'Alia, Calcutta, and later professor of theology at Aligarh Muslim University. Speaking at the 1964 symposium on Changes in Muslim Personal Law he had said, "It is clear that the Shari'a or Islamic Law, by its very nature and character, is liable to make adaptations to meet the genuine requirements of Muslim society in a particular age and place.[81] Many of the legal principles, according to him. are ahkam ghayr mansusa (not revealed) and can, therefore, be changed. At the Indian Law Institute's seminar on Islamic Law in 1972 he declared that ijtihad was a living source of legal development in Islam and could form the basis of necessary changes in the Muslim personal law as applicable in India,[82] "Like the mujthahids of the past, those of our times can also adapt the legal principles of Islam to the

77. For the views of Kamila Tyabji, Danial Latifi and M.K. Nawaz, see their articles in T. Mahmood (Ed.), Islamic Law in Modern India, 139-146, 99-113, 59-68 (1972).

78. Her note in Weekly Round Table, New Delhi, 25 March, 1973.

79. Her article in the weekly cited in the preceding footnote.

80. A.G. Noorani, "Secularism and Muslim Personal Law" (unpublished).

81. Supra note 51 at 80.

82. S.A. Akbarabadi, "How to Effect Changes in Islamic Law", T. Mahmood (ed.), Islamic Law in Modern India, 121 (1972).

contemporary social needs," he asserted.[83] However, as regards methodology of reform, he pleaded for the supremacy of ulama and insisted that only they should suggest the necessary reforms.

It is also true that some enlightened ulama of the Jami' at Ahl-e-Hadith (an organization whose members are not muqallid) do realize the flaws in the existing personal law of Indian Muslims and the need for their removal. In a personal letter to this author received in February 1972,[84] Maulana Abdul Hamid Rahmani, the young general secretary of the Jama'at, wrote, "This view of yours that in the Indian brand of Muslim personal law, reforms in the light of the Qur'an and Sunna and with due regard to the present social conditions are necessary, is hundred per cent true." He, too, however, like Maulana Sayeed Ahmed Akbarabadi, wants the ulama to take care of the necessary reforms and the non-ulama to keep away from the scene.

All those whose reformist ideas we have noted above are well known persons with whom, to a varying extent, people are acquainted. But it will be wrong to say that these are the only Muslims in India who are anxious to secure necessary reform in Muslim personal law. They are, in fact, the spokesmen of a much larger section of Muslims. Hundreds of Muslims do feel the same way as these few named reformers do, but they either fail to make their views known or cannot express themselves. This author has received, from time to time, personal letters from people, belonging to the ordinary strata of life, pledging support for the move regarding reform of Muslim personal law. As an instance may be mentioned the name of one Abdul Karim, an octogenerian of Lucknow, who, on reading an article by this author (in an Urdu daily of the city) published on the eve of the Deoband convention of ulama held in March 1972, sent his blessings in a letter as follows:

> Necessary reforms in Muslim personal law are unavoidable.... Thousands of poor Muslims having given their daughters in marriage are suffering at the hands of recalcitrants. Neither the boys give divorce nor can the girls' parents approach the court because of poverty. Daily the muftis receive queries (istifta) about such cases and go on beating about the bush. You do discharge your obligation by placing this picture of poor Muslims before the ulama at th. Deoband convention. Tell them with folded hands that they must wake up from their slumber and make efforts for securing the essential reforms in Muslim law. Allah will reward you.[85]

"If Muslim husbands place themselves voluntarily under the restraints of a law in regard to divorce, I don't think Allah Mian will mind it," said Habiba Khatoon, an illiterate housewife of Moradabad. There are, this author is convinced, hundreds of Abdul Karims and Habiba Khatoons in different parts of India who have similar views in respect of the reform of personal law.

Opposition to Reform

The most vocal and vehement opposition to legislative action affecting Muslim personal law has, during recent years, come from the ulama of India. It is unfortunate that even some very enlightened ulama, for example, philosopher-journalist Maulana Abdul Majid Daryabadi, Qari Mohammad Tyab Saheb (who is, incidentally, known as Hakim-ul-Ummat "saviour of the community"). Mufti Atiqur Rahman and Mujtahid-ul-'Asr Maulana Syed Ali Nagi, have unconditionally joined the opponents of reform raising the slogan of absolute immutability of Muslim personal law. In private, some of these ulama express their cognizance of the drawbacks in the traditional law; but in public, they keep mum. The Shari'at convention held at Bombay in December 1972 was sponsored and attended by the ulama of all four schools of Islamic law-Hanafi, Shafi'i, Ithna 'Ashari and Isma'ili. It was presided over by Qari Mohammad Tyab Sahab, octogenerian rector of the Dar-ul-Uloom, Deoband (Hanafi by creed) and inauguarated by Syedena Yusuf Najmuddin, president of Jami'a Sayfiya, Surat (an Isma'ili seminary).

Some ulama of the Jama'at-e-Islami and Jemi' at Ahl-e-Headith desired that the convention should resolve, inter alia, that in regard to those aspects of Muslim personal law in India which might really need a reconsideration, the ulama of various schools would make efforts to do the needful by means of ijtihad, but the majority of participants insisted that such a resolution, if openly adopted, would be treated by the modernists as an admission by the convention of the permissibility of changes. The majority prevailed and the convention passed resolutions that Muslim personal law in India is divine and, therefore, absolutely immutable and that any attempt by the Government to reform it by direct or indirect legislation would be considered by the Muslims as interference in religion which they would not tolerate under any circumstances.

It is notable that Qari Tyab Saheb confined his presidential address at the convention to the exaltation of the merits in the four Sunni schools of Islamic law, without a single reference to either the Ithna 'Ashari or the

83. Id. at 122.

84. Letter in Urdu dated 22 February 1972.

85. Letter dated 1 March 1973, written in Urdu (tr. by this author).

Isma'ili school, though eminent representatives of both were among the organizers of the convention. Moreover, neither he nor any of the other Hanafi speakers at the convention said that the followers of Hanafi law (which the majority of Indian Muslims are) could benefit from the Shafi's or any other school of Muslim law, though Shafi'i ulama were present. The tradition of rigid taqlid which is the basis of Muslim orthodoxy and conservatism was thus fully maintained and preserved at the convention. The convention was evidently a "show" of ulama, though some non-ulama did participate in it. The non-ulama participants, however, only strengthened the orthodox tone of the convention.

Another phase of the anti-reform programme planned by ulama has found expression in a series of women's conferences organized in different parts of the country during 1972—74. The Muslim Satyashodhak Mandal of Hamid Dalwai organized in December 1971 a Maharashtra Muslim Women's Conference which protested, in its own words, against the "archaic laws" of Islam. This had a reactionary outburst of anti-reform women's conferences held one after another in Poona, Bombay, Amravati, Ahmedabad, Parbhani, Hyderabad, Lucknow, Kanpur, Allahabad, Patna, Jaipur and many other cities. Description of Muslim personal law as a God-sent law no less divine than the Qur'an, failure to differentiate between Muslim personal law and the Shari'at Act, open condemnation of the "Chaglas, Fyzees, Dalwais" and declaration that not an iota of that law could be reformed even if the entire Muslim community agreed, have been some basic features common to all these conferences.[86] It is notable that nearly all these conferences were organized by local units of the Jama'at-e-Islami. At the Maharashtra Muslim Women's Conference held at Bombay, in May 1973, the main speech by Rashida Mad'u paid lip service to the ideas of her husband, Shams Peerzada of the Jama'at.[87] However, participants in most of these meets have shown shameful ignorance about the true nature of the issues discussed. For instance, at the Lucknow Muslim Women's Conference held on 19 March 1972, conflicting views were expressed by a prominent speaker. She first said that any reform of the prevailing law would amount to intolerable interference in religion; and, in the same breath, she demanded that something must be done forthwith to protect women against husbands' cruel behaviour.[88] This showed lack of clarity as to what was being opposed, demanded or talked about.

86. A critique of some of the conferences will be found in T. Mahmood, "Women's Conferences on Personal Law," Radiance Weekly, Delhi, 14 May 1972.

87. Proceedings of this conference were published in Urdu.

88. See Urdu daily, Da'wat, Delhi, 21 March 1972.

Booklets and monographs in Urdu, strongly opposing any change in the traditional law, have been written in recent years by Jama'at-e-Islami leader, Maulana Mohammad Yusuf, Shams Peerzada, Syed Hamid Ali, Abu Saleem Abdul Hai and Saduddin.[89] Maulana Minnatullah Rahmani, Amir-e-Shari'at, Bihar and Orissa and Maulana Shams Tabrez of Nadwat-ul-Ulama, Lucknow, have also published books on the same theme.[90] Maulana Amir Usmani, editor, Tajalli (Deoband), and Molvi Urooj Qadri, editor, Zindagi (Rampur), have written long series of articles on the subject in consecutive issues of their magazines during 1972-74. Reading all this literature one concludes that the authors are rigid muqallid; that they are aware of the drawbacks in the existing Muslim personal law in India but they attribute them to the people who have a tendency to misuse the law; and that in spite of the frequency of such abuses they do not want the state to take any action; the only remedy, they think, is to make the Muslims more God-fearing and religion-abiding. It is this kind of literature which the Urdu-speaking Muslim laymen have relied upon and which has formed the basis of their attitude to the issue of Muslim personal law. All those non-ulama who have spoken or written against the reform of Muslim personal law have almost invariably dittoed what their ulama have said, asserting that the issue lies in the exclusive jurisdiction of the ulama. They have no ideas of their own; they approve something if their ulama approve it; they agree that anything is a sin if their ulama consider it sinful. Notably, innumerable Muslim youth, though they have received modern education and are living modern lives, are in regard to the issue of Muslim personal law, blind followers of the ulama. Among them there are many students and alumni of Aligarh Muslim University.[91]

The vehemence of opposition by orthodox Muslims and their insistence on absolute flawlessness of the traditional law, are, to a large extent, attributable to the irresponsible utterances of some of the zealous supporters

89. All published during 1972-73 by Maktaba Jama'at-e-Islami, Delhi

90. Monographs by the former were published in 1972 by Maktaba Amarat Shar'iya, Phulwari Sharif, Bihar, and the latter's book: Islam ka 'Aili Nizam brought out by the Nadwat-ul-Ulama, Lucknow, in 1969.

91. In August 1970, on the eve of this author's departure from Delhi on a study-tour of Arab countries (the purpose of which was to examine how personal law had been reformed there), the then president of Aligarh students' union recited, at a send-off, a couplet which in English would read as follows; "As a result of the stupidity of certain Fascist groups, there is apprehension of tampering with Shari'a; how we wish that you never support this misconceived modernism; and that you declare: 'Qur'an is enough for our guidance'."

of reform and of the attitude of a section of the press. The Muslim Satyashodhak Mandal's Women's Conference had, for instance, made irreverent fulminations against the traditional law. (Some of the speakers tried to link the issue of personal law reform with the failure of Jinnah's two nation theory). The press described all this as the "rising of Muslim women of India against the archaic laws of Islam." Consequently, instead of building up a favourable climate for reform, the conference led to counter-efforts in the opposite direction by orthodox forces. Unhealthy and disrespectful criticism of ancient ideals and notions cannot, the recent events have proved, succeed in leading the community to social progress. The issue of Muslim personal law reform has, unfortunately, become a shuttlecock between the traditionalists and the progressives. On either side, very few understand the true nature and implications of the issue; the majority on both sides would only tread the already trodden path. Many of those who are alive to the crying need for reform in the existing Muslim personal law and may not object to limited legislation for that purpose, prefer to suppress their feelings on account of a fear that limited legislation may lead to complete abolition of the system and to its replacement by an un-Islamic common civil code. This is why even some enlightened and sensible people join the anti-reform mainstream in the community. Unfortunately, they refuse to believe that the future civil code of India will not be much different from an enlightened and liberal view of the Islamic legal principles and that the "conflicts" between that code and the law of Islam would be only superfluous.

Another reason of the mass opposition to reform, though this statement may be resented by many, is that some of the ulama have been misguiding their people. It is they who have made the people firmly believe that Qur'an and personal law are the same thing. Further, some irresponsible ulama have given to their people funny ideas as to why "non-Muslims" want Muslim law to be reformed. For instance, at the Deoband convention of March 1972 Maulana Asad Madani (then a member of parliament) said that since "thousands" of Hindus were adopting Islam in order to avail the "advantages" of its superb personal law, the Hindu community was "greatly disturbed" and wanted to check that tendency by getting the Islamic law abolished. Similarly, in the pro-reform camp, funny reasons have been given as to why Muslim law should be reformed. At the twelfth All India Law Teachers' Conference at Delhi in December 1972, during the debate on family law, a woman speaker said that polygamy permissible to Muslims must be abolished since if that is not done, their population would increase and "there will be another Pakistan which we don't want." Such fantastic utterances obviously provoke Muslims to defend their traditional law with all their might.

Some Impartial Views

In the context of the polemical debate on the reform of Muslim personal law going on between the modernist and the orthodox, advisory writ-

ings of some impartial scholars have special value. Speaking at the Indian Law Institute's seminar on Islamic personal law, J.N.D. Anderson said:

> The greatest need of the moment, as it seems to me, is to convince them (Muslims) that their personal law, as this is at present administered in India, stands in urgent need of reform.. and that the enactment of reforms in those aspects of the Muslim personal law.... which give rise to the most serious criticisms would not necessarily represent a step towards any suppression of their law, but might, indeed, prove the exact opposite. A house which is in good condition is, clearly, much more likely to stand the stresses and strains of the elements than one which is in sad state of disorder and disrepair.[92]

At the international conference on Religion, Law and Morality held at New Delhi in December, 1973, Anderson reiterated his stand and repeated the same advice. Theodore P. Wright Jr. of Albany (USA) has in a recent article said:

> Instead of merely condemning the Shari'a and its expositures as 'obscurantists', some empirically-oriented Indian scholars ought to investigate the actual impact of specific Muslim laws and customs on economic development, national integration and social choesion. In doing so, one needs to distinguish carefully between the ideal and the practice of Islam since much of the debate finds the proponents defending the former and opponents attacking the latter.... it seems to this outsider that the Muslim personal law issue is misdirected in present circumstances. Whether reformed, abolished or preserved, it keeps the minority too much in the limelight and exacerbates communal relations by raising fears of separatism and privilege in the minds of the majority.[93]

Among Indian scholars of repute impartially viewing the issue of Muslim personal law, justice V.R. Krishna Iyer has, on and outside the bench, extended extremely useful and sound pieces of advice to the agitated Muslim community. Speaking at the Indian Law Institute's seminar on Islamic law in January 1972 he said:

> Our Muslim brethren must remember that matters of civil concern do not affect the core of the Prophet's religious teaching but fall under the great guideline given by Jesus: 'Render unto Ceasar what is due to him'.[94]

92. J.N.D. Anderson, "Muslim Personal Law in India," T. Mahmood, Islamic Law in Modern India, 35 (1972).
93. T.P. Wright Jr., "The Muslim Personal Law Issue in India: An Outsider's View," Indian Journal of Politics, 69, 75 (1970)
94. V·R. Krishna Iyer, "Reform of the Muslim Personal Law," T. Mahmood, Islamic Law in Modern India ,19 (1972).

He asserted that necessary reforms in Muslim personal law would conform to the original texts of the Qur'an and the sayings and doings of the Prophet which are "refreshingly modern and rational." In a recent article he gave the following warning:

> The Middle East statutes which modernized the system while formally owing allegiance to the Shari'a..these twentieth century winds of change are an argument against India dragging her reformist feet. The politics of obscurantism pays poor dividends in the long run, but the politics of foolhardy hurry boomerangs.[95]

In many of his remarkable judgements, Krishna Iyer has pointed out that the practice of Muslim law in India does not in many respects conform to true Islamic teachings. In Shahulameedu V. Subaida Beevi,[96] for instance, he asserted that the belief that Muslim law "actively permits polygamy is open to serious doubts". He expressed surprise on the modern Indian courts' tendency to enforce "dubious religious interpretations with values valid in a by-gone age." Monogamy, in his opinion, would "fulfil rather than fail the Prophet." In another case, Yousuf Rowthan V. Swaramma,[97] he expressed an opinion that "the view that Muslim husbands enjoy arbitrary unilateral power to inflict instant divorce does not accord with Islamic injunctions."[98]

Ulama as Reformers—A Mirage

As regards the methodology of reform, Upendra Baxi of Delhi University and some other non-Muslim scholars feel that the Muslim modernist should direct his reformist thought to the ulama rather than to the state.[99] This is quite in keeping with the views of those ulama themselves who know that reform is needed but do not want the state to take action. To the present author, however, the expectation that the ulama of present-day India can ever agree to the reform seems a mirage. There are indeed tremendous difficulties in the way.

There are in India ulama of at least four different schools of Muslim law the Hanafis, the Shafi'is, the Ithna' Asharis and the Isma'ili. Of these, the Hanafis and Shafi'is are convinced muqallids: each of the groups considers the law of its own school as sacrosanct and immutable. To the

95. V. R. Krishna Iyer, "Methodology of Reform," Weekly Round Table, Delhi, 15-16 (25 March 1973).
96. 1970 K.L.T. 4.
97. 1970 K.L.T. 477.
98. Id. at 481.
99. U. Baxi, "Muslim Law Reform," T. Mahmood (ed). Family Law and Social Change (1975).

Hanafis the teachings of Imam Shafi'i are not acceptable: those of Imam Abu Hanifa do not find favour with Shafi'is. The followers of both these (Sunni) schools do not regard either the Ithna 'Ashari or the Isma'ili law as "Islamic" law. The Ithna 'Asharis, according to their original theology, are not to be muqallids, since they do not believe in the closure of the gates of ijtihad. But in India Ithna 'Asharis are, in practice, no better than the Hanafis and Shafi'is. In a recent article, Mujtahid Syed Ali Naqi explained: "Undoubtedly the doors of ijtihad are, in our view, open. But ijtihad means an effort to 'get at' the religious principle and not trying to 'formulate' that principle."[100]

Thus, the Indian Ithna 'Asharis, like other Muslims, would like to adhere strictly to their own personal law. The Isma'ili Shi'as are themselves not united; they are divided into the Khoja and Bohra groups and the latter is further divided into two wings—Sulaymani and Da'udi. Each of these three sections of the Isma'ilis has an imam of its own.[101] Apart from these schools and subschools of Islamic law prevalent in India, the Hanafi ulama of India are broadly divided into two ideological sections—Deoband and Bareli. The two sections have enormous differences and cannot agree with each other's viewpoint. Besides, there is a sizable group of Muslims who describe themselves as Ahl-e-Hadith and who agree neither fully with Deobandis nor entirely with Barelvis. Further, existence of different religious-cum-political organizations having conflicting policies is no secret, and the loyalty of the common Muslim is divided between these organizations. Jami'at al-Ulama, Jama'at-e-Islami and Jami'at Ahl-e-Hadith do not agree with one another's policies and programmes and, therefore, followers of any one of these give no importance to the views of others.

It is naive to expect that the ulama of India having such tremendous differences would unanimously agree even on a single item for reform, if at all they agree to discuss it. It will be remembered that when Mustafa Kamal Pasha of Turkey set up in 1920 a committee of the ulama to consider reform of family law in that country, after being in session for so many years, the committee failed to agree on a single principle, and Mustafa Kamal had, in despair, to adopt the readymade Swiss Civil Code.[102] In India,

100. Maulana Syed Ali Naqi, "Shari'at Men Tarmim. Shi'a Nazaria," Karwan-e-Hayat, Bombay, 2 Nov. 1972 (tr. by author).
101. The extent and strength of the authority of these imams (called in the case of Bohras, Da'i-e-Mutlaq) was well illustrated by the recent scandal regarding the Bohra brides of Udaipur permission for whose marriage was allegedly denied by the Da'i.
102. See T. Mahmood, Family Law Reform in the Muslim World, 16—18 (1972).

each group of ulama (commanding innumerable followers) has its own Interpretation of the Qur'an and Sunna. They will take ages to express a unanimous opinion on any reform to be applied to all Muslims alike. And even if they have agreed on any reform, they will not like the state to take action. This has been made unequivocally clear by those few ulama who concede the possibility of a reconsideration of the traditional principles.

The ulama of India would, it seems, agree neither to the role of the legislature to make laws for Muslims nor to the function of the executive to introduce reforms by administrative measures. Even if they agree that a certain reform is necessary, they would like to effect the reform under their authority and vigilance, and not by legislative or administrative action. They are hostile to legislation since they apprehend that a reform measure which they agree upon and send for enactment to the legislature may be "distorted" there. Some of them recall how the draft of the Divorce Bill prepared by the Jami'at-al-Ulama was enacted by the legislature in 1939 in a "mutilated" form.[103] They do not want that history to be repeated. To the reform by administrative measures they will not agree, since that would amount to allowing the "non-Islamic" government of India to do indirectly what they do not permit it to do directly by legislation. The existing administrative service rules under which Muslim government servants are not allowed to contract bigamous marriages have already been openly attacked by many. The proposal to make registration of all Muslim marriages compulsory (which has been suggested by some scholars as a solution for many evils) is also not acceptable to the ulama. These administrative measures would, in their opinion, be no different from direct legislative interference.

On an overall assessment of the attitudes of the ulama and their followers in regard to the controversy regarding Muslim law reform, it may be concluded that even if some reform is necessary, it lies (in their opinion) in their exclusive jurisdiction which they do not like the state to "usurp". On the other hand, they themselves can never be unanimous in regard to any of the required reforms. Obviously, if the issue of reform is exclusively left to them, generation after generation of Indian Muslims will remain where they are.

Political Attitudes

During the first fourteen years of the republic, which may be termed as "Nehru era", the union government consistently followed the policy of non-interference in regard to Muslim personal law. No effort was made during that period either to secure a uniform civil code or to effect any

103. Supra, Chapter 3.

change in the traditional family law of the Muslims. During the 1950s, when the Hindu Code Bill was being debated in parliament, Jawaharlal Nehru had categorically rejected the demand made by certain sections of the people that Muslim personal law too should be reformed. The policy which Prime Minister Nehru and the governments, both at the centre as well as in the states, followed was to wait for the time when Muslims themselves would demand legislative action in regard to their personal law.

In the Maharashtra legislature, an anti-bigamy Bill moved by a non-Congress member in 1961 was opposed by the government on the ground that it would affect only the Muslims (bigamy being prohibited by the laws severally applicable to other communities) and they were not ready to receive such a reform.

In post-Nehru India, neither the short lived Shastri regime nor the Indira government abandoned Nehru's policy of patience in regard to Muslim personal law. During the last about five years, while the controversy on the reform of Muslim law attained unprecedented levels, the Congress party and its government were off and on asked to explain their stand in the matter. Their consistent reply had been that the government itself would never take initiative to introduce reforms in the Muslim personal law. After the midterm dissolution of the Lok Sabha in 1970, statements to this effect were repeatedly made by Congress leaders and ministers. In March 1972, addressing a press conference at Bombay, then Prime Minister Indira Gandhi said that though some progressive Muslims wanted reform in their personal law, the government would not take the initiative unless a substantial majority of Muslims agreed.[104] Later, on 9 October 1972 during a meeting of the "minority cell" of the Congress she and Fakhruddin Saheb (then agriculture minister) advised Muslims "to start a process considering change in their personal law with an open mind."[105] Referring to the reform of personal law in several Arab countries and in Pakistan, Indira Gandhi asked Muslims of India to start a "similar process of thinking." She however coupled her advice by a firm assurance that her government would not agree to impose any reform unless the Muslims themselves wanted it. Similar assurances were given at various election meetings by former Congress President Shankar Dayal Sharma. On 22 August 1973 a seven-man delegation of Muslims led by Shaikh Abdullah waited on the ex-Prime Minister and was assured by her that there was no proposal before the government to reform Muslim personal law and that there was no reason for the Muslims to get 'agitated' over the issue.[106]

104. Weekly Nida-e-Millat, Lucknow, 3 March 1972.
105. Hindustan Times, New Delhi, 10 October 1972.
106. Hindustan Times, New Delhi, 23 August 1973.

The Policy of the Congress government had found full expression, from time to time, also on the floor of parliament. In July 1972 a non-official Bill seeking to abolish polygamy throughout India, moved by a Congress-O member, Rama Reddy, was discussed inconclusively by an almost empty Rajya Sabha.[107] During the discussions, another Congress-O member Nawal Kishore urged the government to set up a commission, with, M. Hidayatullah as its Chairman, to consider reform of the Muslim personal law; but the ruling party refused to accept the suggestion. On the whole, the policy of Mrs. Gandhi's government in regard to the reform of Muslim personal law had all along been characterized, to borrow the language of Julius Stone, by a well defined tendency : "Legislators, especially those who must some time face the polls, move slowly and by indirection into areas where the community's conduct tells them that they must venture but the community's mores warns them that they must not."[108]

C. AILMENTS AND REMEDIES

On the eve of the Deoband convention of March 1972, Maulana Manzoor Nomani of Lucknow had, in a personal letter,[109] asked this author to prepare a list of the "conditions prevailing in Muslim society which keeps modernists like you sleepless." Given below is a revised, classified and illustrated version of the list prepared in response to Maulana Nomani's letter and later personally presented at the Deoband convention.[110]

Form of Muslim Personal Law

(1) Diversities of legal principles within the fabric of Muslim personal law—both codified as well as uncodified—denying equal protection of law to followers of the same religion.

Instances of such diversities are (i) in the codified law: court's power in Kashmir and Oudh to reduce amount of mahr with regard to husband's financial means, unknown in other parts of the country[111]; (ii) in uncodified law: unqualified power of Ithna 'Ashari Muslims to make bequests in favour of heirs—not enjoyed by Hanafis and Isma'ilis.[112]

107. Patriot, New Delhi, 27 July 1972.

108. J. Stone, Social Dimensions of Law and Justice, 97 (1968).

109. Dated 11 February 1972 (Urdu).

110. The list, as originally prepared, appears in T. Mahmood, Muslim Personal Law ke Tahaffuz ka Mas'ala (Urdu), 100—104 (1972).

111. Supra, Chapter IV.

112. See Fyzee, Outlines of Muhammadan Law, 359-360 (1964.

(2) Absence of a systematically codified Muslim personal law creating difficulties of ascertainment and often leading to misapplication and abuse.

Confirming that even judges face such difficulties, in the case of Yusuf Rowthan v. Sworamma[113] Justice Krishna Iyer observed that "Marginal distortions are inevitable when the Judicial Committee in Downing Street has to interpret Manu and Mohammad of India and Arabia".

(3) Self-imposed yoke of taqlid enforcing strict adherence to one particular school of Islamic law to the total exclusion of the law of other schools.[114]

Marriage and Divorce

(1) The practice of arranging marriages of boys and girls without allowing them to see and know each other; and specially in the case of girls the imposition of guardians' choice on them regarding the bridegroom and the mahr.

(2) Among certain sets of Muslims, specially the Isma'ilis, too much dependence on religious heads who traditionally enjoy absolute powers of interference.

The recent story of Bohra brides from Udaipur, who could not marry for want of permission by the Da'i-e-Mutlaq, is well known.

(3) The practice of giving excessive jahez to the bride which in theory means trousseau or other essential things of day to day use but in practice takes the form of an automobile or other expensive luxuries.

In August 1972 Urdu newspapers reported the case of suicide by a respected Muslim of Patna (a teacher of theology) who could not arrange jahez for his four marriageable daughters.[115] This was just one instance of the miseries which the evid of jahez results into.

(4) The tremendous diversity between the rights of men and women in the matter of divorce; men enjoying arbitrary power to inflict instant, unilateral divorce, and women having no right to seek divorce de hors the provisions of the Dissolution of Muslim Marriages Act, 1939.

113. 1970 K.L.T. 477.

114. An elaborate discussion of this point will be found in T. Mahmood, "Shi'a and Sunni schools of Islamic Law". Radiance Weekly, 21 November 1971.

115. See Nida-e-Millat, weekly, Lucknow, 19 August 1972.

In K.C. Moyin v. Nafisa and others,[116] where a woman claimed that her marriage had been dissolved by a kazi, Justice V. Khalid of the Kerala High Court said that "no person however great or learned can be allowed to usurp the functions of a court". On the other hand, as regards men's right to divorce, a division bench of the same high court had earlier held in Pathai v. Moyideen,[117] that a major and sane Muslim man had a "right" to effect a divorce "whenever he desires".

(5) Unconditional effectiveness of unintentional divorces in Hanafi law, for example, one under undue influence or momentary provocation.

In the case of Pathai *v.* Moyideen, the Kerala High Court's division bench also confirmed that a divorce given "under compulsion or in jest or in anger" would be "perfectly valid"[118]. Commenting on this decision of the division bench, Justice V. Khalid in a later case Mohammad Hanifa *v.* Pathummal Beevi[119] observed, "My judicial conscience is disturbed at this monstrosity. The question is whether the conscience of the leaders of public opinion is also disturbed."[120]

(6) Horror of the so-called "triple divorce", resulting into an immediate, irrevocable termination of marriage, making remarriage conditional on an intervening marriage, actually consummated.

In March 1973, in Kucha Pandit (a part of the walled city in Delhi) this author met a couple who had fallen victim to this abhorrent principle. A middle-aged man of about forty-five years had, in a fit of uncontrollable provocation, said to his forty-year-old wife, "I divorce thee thrice". A local mufti was approached and had issued a fatwa that an irrevocable divorce had been effected, that it was haram for the man to see the woman's face, and that if remarriage was desired, halala (after observance of 'idda an intervening marriage with another man, actually consummated and then terminated by divorce followed by another 'idda) was unavoidable. This author's advice that, in the circumstances of the case, the divorce could be regarded a single revocable divorce was strongly refuted by the mufti and was, therefore, not acceptable to the couple.

(7) Hanging of women's right to khul' on the sweet will of the husband.

116. 1972 K.L.T. 785.

117. 1968 K.L.T. 763.

118. *Ibid.*

119. 1972 K.L.T. 512.

120. *Id.at* 514.

In Pakistan, the Supreme Court's ruling in the case of Khurshid Bibi *v.* Muhammad Amin, [121] has set the law that where a marriage has broken down, the wife can demand khul' as of right. In India in a Kerala High Court case Justice Krishna Iyer referred to this ijtihad in Pakistan, [122] but the newly evolved principle is yet to be adopted in India.

(8) Liability of paying exorbitant amount of mahr which in some cases keeps the parties—though both fed up with and tired of the broken marriage—away from divorce.

In a personal letter to this author Abdul Karim of Mahmood Nagar, Lucknow, wrote[123] : "I personally know many cases in which married girls have returned to their parents' homes. On account of poverty they can't knock at the doors of the courts. Their husbands cannot divorce them because of their inability to pay the dower fixed by the guardians or payable under the principle of mahr mithl."

(9) Man's unbridled right to contract a bigamous marriage irrespective of if he needs an additional wife and if he can comply with the Quranic requirement of equitable justice between co-wives.

"The largest number of bigamous marriages", writes Kamila Tyabji, "found among Indian Muslims today are not cases where the husband lives with and supports two wives, which few can afford to do. In most cases of bigamy the husband abandons his first wife (and frequently children as well) and goes off to marry another woman."[124]

(10) Restriction of divorced wives' right to maintenance to the period of 'idda, which in those cases where the amount of unpaid mahr is too low, creates great hardship.

We have noted earlier how this rigid rule of the traditional Muslim law been protected, at the insistence of orthodox Muslims, under the new Criminal Procedure Code, 1973.[125]

121. P.L.D. (1964) S.C. 456.

122. Yusuf Rowthan's case, K.L.T. 4 (1970).

123. Letter in Urdu, dated 1-3-1972 (tr. by this author).

124. K. Tyabji, "Polygamy, Unilateral Divorce and Mahr", T. Mahmood (ed.), Islamic Law in Modern India, 142 (1972).

125. Supra Chapter 6.

Property and Succession

(1) Very low share of widow in the husband's estate, which in those cases where her mahr too is nominal, creates great hardship.

This author personally knows a case (of district Jaunpur in U.P.) where the mahr of a young widow was stipulated to be payable at Sharh Fatimi (calculated to be nearly Rs. 32 in that case); and in her husband's heritable property her share was about Rs. 1,000 with which she had to spend the rest of her life.

(2) Total exclusion (from the heritage of the propositus) of the children of his/her predeceased children and of predeceased son's widow.

The obligation to maintain such children imposed by the Shari'a on their uncles and aunts is not generally cared for.

(3) Invalidity of bequest in favour of an heir (without other heirs' consent which can seldom be obtained) in Hanafi and Isma' ili laws preventing a husband from augmenting his wife's low share in his property after his death, and a father from giving to his daughter a share larger than one half of the son's share.

(4) Pitiable condition of family wakfs (awkaf ala'l aulad) which, though extremely uneconomic, cannot be disposed of.

Abdul Karim of Lucknow, in his aforementioned letter to this author,[126] added : "In Lucknow thousands of houses were, a hundred years ago, given as wakf ala'l-aulad to a brother, nephew or widow. Now, the number of brothers, nephews and widows-beneficiaries in those houses—has risen to hundreds. These houses are in a ruined condition since, in spite of living in them, none regards them as his or her own and none worries about their condition".

Remedies Suggested

The above list of "ailments" incorporates nearly all the drawbacks in the existing Muslim personal law which experience and observation have brought to light. It must be stated here that most of the drawbacks in Muslim law noted above are not Islam's creation. They rather result from abuse and misapplication of the permissible laws of Islam. The ulama believe that polygamy is not a fundamental right of the husband, it is only permitted as a remedy for greater social evils; they also say that man does not enjoy an arbitrary power to inflict instant divorce on the

126. Supra note 123.

wife, he ought to exercise it in a reasonable manner. Troubles arise when distinction is made between strictly "legal" and apparently "moral" precepts in Islamic texts. To illustrate, "man can divorce his wife" is treated as "law" but an exhortation very relevant to this law, namely, "the most detestable thing in the eyes of God is divorce" is devoid of any legal sanction. Similarly, permission for polygamy is considered to be the "law", but the conditions attached to this permission are treated as rules of morality or courtesy. In principle, therefore, there need not be any objection to a check being put on the abuse of permissible principles like polygamy and divorce. Various "remedies" have been suggested for these and other "ailments". What follows is an illustrative survey of the remedies.

As regards the diversities within Islamic law and want of codification, some ulama of the Jama'at-e-Islami agree that Muslim personal law should be given the form of a code. Syed Hamid Ali of the Jama'at writes :

> "At present Muhammadan law is wholly uncodified. Some legal scholars have privately written books in the light of translations of the Hidaya and 'Alamgiri and according to judicial precedents Judges and lawyers consult these books.....The Shari'at Act only specifies the subjects which shall be regulated by Muslim personal law without defining that law. If, therefore, our ulama agree to a systematic code of Islamic principles, that can be regarded as the Muslim personal law referred to in the Shari'at Act."[127]

At the Indian Law Institute's seminar on Islamic personal law, this author had observed that it would have been ideal if a uniform code of Muslim law could be prepared and applied to all Muslims throughout India irrespective of their affiliation with a particular school of Muslim law (madhab) or loyalty to a particular religious organisation (jama'at).[128] This would, however, be no easy task and, if attempted, might turn out to be a utopian scheme. Obviously, codification of Muslim personal law would involve the tremendous task of making an eclectic choice of legal principles from all the schools of Islamic law, especially the four prevailing in India. Doctrines of ijtihad, takhayyur and talfiq will have to be invoked. In view of the differences between the ulama of various groups, preparation of a uniform code will be extremely difficult and cannot be expected to see the light of the day in any foreseeable future.

127. S. Hamid Ali, Mohammadan Law our us men Tabdili (Muslim law and change therein), 34-35 (1973) (Tr. by this author).

128. See this author's article, "Progressive Codification of Muslim Personal Law", T. Mahmood, Islamic Law in Modern India; 80—98 (1972).

Conscious of these difficulties, Fyzee has suggested interim enactment of a short Act incorporating some necessary principles modifying all schools of Muslim law and enacting a "rule of interpretation" as follows :

> Where a Muslim is governed by a particular school of Islamic law and the court is of the opinion that a decision according to that school would be against justice, equity and good conscience, the court shall have the discretion to apply a rule of law drawn from any of the other schools of Islamic law, Sunnite as well as Shi'ite.[129]

Fyzee, thus, wants to entrust to the courts the task of evolving, in course of time, a code of Muslim law based on the principle of "eclectic choice".

In connection with men's power to inflict instant divorce, Fyzee has suggested enactment of a law making it compulsory to refer every talaq, whether single or triple, to a "court of conciliation"; the court having power to make efforts at a reconciliation, failing which it can allow the husband to pronounce a single revocable divorce under the conditions specified by it in regard to wife's right to unpaid mahr, mut'a al-talaq (compensation) and maintenance while she remains unmarried.[130] Implicitly, the suggestion means abolition of the mode called "Triple divorce" and prohibition of extra-judicial repudiation of marriage; and it conforms to the corresponding reform introduced by the Pak-Bangla Muslim Family Laws Ordinance, 1961.[131]

Anderson, on the other hand, has recommended direct legislation, patterned after the recent Middle Eastern reforms, restricting the husband's power of pronouncing a divorce outside a court, de-recognizing unintentional divorces and abolishing triple divorce.[132] This author, in a recent article, ventured a suggestion that the Dissolution of Muslim Marriages Act, 1939, which is applicable at present to Muslim women only, be, after necessary elaboration and modification of its provisions, applied to men as well.[133]

129. A. A. A. Fyzee, "The Reform of Muslim Personal Law in India, Humanist Review, 398 (1970).

130. Id. at 400-401.

131. See infra Chapter 8.

132. J. N. D. Anderson, "Muslim Personal Law in India", T. Mahmood (ed.), Islamic Law in Modern India, 38—41 (1972).

133. T. Mahmood, "Divorce in Muslim Law", Hindustan Times, 18 February, 1973.

As regards a wife's right to khul', Justice Krishna Iyer has hinted, in a Kerala case, at the feasibility of adopting the Pakistan Supreme Court ruling that where breakdown of marriage is established, khul' may be claimed as of right.[134]

The legal principle under which courts in Oudh and Kashmir can reduce the amount of mahr musamma (or mahr mithl) in suitable cases may, it has been suggested by us, be extended to the whole of India; a parallel power to increase the amount of mahr wherever necessary in the circumstances of a case may also be usefully given to the courts.[135] Kamila Tyabji has a suggestion that since today "the main asset of young men is not the capital they possess, but their earning power", the mahr payable at the time of divorce should be a part of the husband's income for a stipulated period, and not a lump sum.[136]

A complete abolition of polygamy without abolishing men's right to unilateral divorce will, in Anderson's opinion, be a "retrograde rather than progressive step."[137] Obviously, however, the state in India cannot make a law allowing restricted polygamy to one community and prohibiting it altogether for all other communities. Alive to this difficulty, Anderson recommends legislation requiring registration of all marriages by means of a statutory contract incorporating anti-bigamy stipulations.[138] The same solution to the problem of unrestricted bigamy has been suggested by some Indian scholars including Kamila Tyabji,[139]. In a recent article Kamila tells her co-religionists : "When a purely permissive right is given to you, as in the case of polygamy, you cannot possibly be un-Islamic if you give it up; at the most it may be said you have been over-generous."[140]

Among the ulama and their disciples, a spokesman of the Jama'at-e-Islami favours judicial control on man's freedom to contract a bigamous marriage,[141] a reform introduced under section 18 of the Syrian Code

134. Supra note 113.

135. Supra note 128.

136. Supra note 124.

137. Supra note 132.

138. Ibid.

139. Supra note 124.

140. Ibid.

141. M. N. Siddique, "Restraint on Polygamy", T. Mahmood, op. cit, supra note 128 at 151.

of Personal Status, 1953. In the opinion of Maulana Sayeed Ahmad Akbarabadi, polygamy is a mubah having its uses and abuses, and if it is misused "for nefarious ends" it can be lawfully restricted.[142]

Compulsory registration of all marriages can, in the opinion of some writers, remove many loopholes in the traditional law. The laws providing for voluntary registration of marriages among Muslims—now available in Bengal, Bihar, Orissa and Assam[143]—can be adopted usefully and applied in the whole of India. These laws, together with the Kazis Act of 1880,[144] may be pressed into service to ensure prevention of misuse and abuse of the permissible laws of Islam.

In the area of succession to property, unconditional permissibility of bequests in favour of presumptive heirs is considered as a solution to many drawbacks. It will enable a husband to augment the share of his widow in his property. Similarly, a daughter's share, which is now one-half of the son's share, can be increased by means of a will. Further, in Anderson's words :

> "A father with four sons—the first an eminent physician, the second a suecessful lawyer, the third a partner in his father's commercial or industrial company and the fourth a helpless invalid—could make special provision for the one who stood most in need of assistance....."[145]

It may be noted that a baquest in favour of an heir is valid in Ithna 'Ashari law and the principle of that law has now been adopted and made applicable to all Muslims in Egypt, Sudan and Iraq.[146]

As regards orphaned grandchildren's problem, two different solutions have been adopted in the Muslim world—the "doctrine of representation" in Pakistan and Bangladesh[147] and the principle of "obligatory bequests" in Egypt, Syria, Tunisia, Morocco and Kuwait.[148] Fyzee has suggested enactment of the Pak-Bangla principle in India, under which orphaned

142. S. A. Akbarabadi, "How to Effect Changes in Islamic Law", in the same work, at 120.
143. Supra Chapter 4.
144. Ibid.
145. Supra note 132.
146. See. T. Mahmood, Family Law Reform in the Muslim World, 290-291 (1972).
147. Infra Chapter 8.
148. Supra note 146.

grandchildren would stand in the shoes of their link parent.[140] Anderson has, on the other hand, recommended adoption of the West Asian device of "obligatory bequest", under which rule a bequest (within the Islamic limit of bequeathable third) will be presumed to have been left by a person survived by a predeceased child's issues in favour of such issues.[150]

We know that by contracting or registering a marriage under the Special Marriage Act, 1954, a Muslim can oust the application of Islamic Law of succession to his or her property.[151] The opportunity should, it has been suggested, be available to unmarried persons as well. Fyzee has incorporated in his draft of the Muslim Personal Law (Miscellaneous Provisions) Act a section to the effect that an un-married person should have the power to make a declaration that he or she wants to be governed, in all matters relating to testamentary and intestate succession, by the Indian Succession Act, 1925.[152] In a recent study of the Special Marriage Act, this author has suggested insertion of a similar provision in the Indian Succession Act itself.[153]

The various "remedies" recommended by modernists in order to remedy the situations arising out of the application of the traditional Muslim law fall in three broad categories : (*i*) Legislation directly modifying the principles of the traditional law; (*ii*) administrative and regulatory measures controlling the application of the traditional law; and (*iii*) reinterpretation of traditional legal principles, conducive to modern social conditions.

Rejecting all the three, the ulama assert that the only remedy lies in a "correct understanding" of the Islamic laws in their true spirit and in their proper use by the Muslims. They, therefore, suggest, education of the masses regarding the rationale and spirit of Islamic legal principles and the "sinfulness" of misusing these principles. On the other hand, conscious of the declining influence of religion on the society, the modern reformers insist on action by one or the other organ of the state—legislature, executive or the judiciary.

149. Supra note 130.
150. Supra note 132.
151. Supra Chapter 6.
152. Supra note 130.
153. T. Mahmood, Civil Marriage Law; Perspective and Responses, 92 (1977).

However, the state has hitherto been constantly restrained by the custodians of its powers from playing this role. As regards the future, if a recent unofficial statement by Law Minister Shanti Bhushan,[154] is any indication, the new Janata Government too is not likely to adopt in the matter, at least for the time being, a policy different from that of its predecessor in office.

Note on the above-mentioned extracts from Dr. Tahir Mehmood's Book on Muslim Personal Law

Appendix VIII–C contains a long extract from a book by Dr. Tahir Mehmood who has done some very useful work on Muslim Personal Law as administered in this country as well as in other countries where Muslim Shariat prevails. In our country, the Muslim Shariat Act, 1937 enacts that Muslim Personal Law must be applied on certain subjects, enumerated in the Act, to Muslims. In other words, it is enforced here, by virtue of a statute, by courts established under the Code of Civil Procedure. These are secular courts in the sense that the religion of the presiding officers does not affect their power to enforce the law where parties are Muslims.

Dr. Tahir Mehmood has given a number of particulars about the attitude of the Ulema towards Muslim Personal Law. It is very useful to read this survey in order to find out the thinking of those who are brought up on traditional learning and look upon law as part of religion. But, if Muslim Law was purely religion, it would appear anomalous for secular courts to enforce it at all under a statute. Dr. Tahir Mehmood's assessment is that the Ulema cannot change their approach. The obvious reason is that, in their minds, there being no distinction between religion and law, any talk of change would appear like asking them to change their religion. That approach towards any reform, therefore, does seem very prickly because the very idea of reform of religion is foreign to the thinking of Muslim theologians. In the West, however, religion itself is looked upon as capable of change and adaptation to new scientific knowledge and growing needs of society. This Commission has dealt with this aspect in its chapter on Secularism. It thinks that it would be better to leave the religious to their beliefs so long as they do not interfere with basically secular activities. After a rough basic demarcation of the spheres of the secular and the sacred, lawyers should proceed to apply secular criteria to develop the law. They have to attempt to satisfy these rather than bother too much about what traditionalists think or believe about them.

154. See the minister's presidential address, read out in his absence by this author, at the seminar on "Matrimonial Laws : Need for Reforms" organized at New Delhi on 30 April 1977 by the Association for the Promotion of Legal Knowledge.

In the opinion of the Commission, which has been indicated in the main Report, Muslim Personal laws should be left to Judges and courts to interpret. Such a view is in accordance with Muslim Shariat itself whether we equate it with religion, or, as many would prefer, consider the Shariat to be a rational manifestation of a secular need for just solutions.

It seems that Dr. Tahir Mehmood has over-emphasized the place of Ulema in the development of Muslim Personal Law. The Commission's view, indicated elsewhere, is that judges have made more significant contributions to the development of Muslim Personal Law, through their judgments, than even legislation. Indeed, so great is the power of judicial interpretations of Muslim law that, in the opinion of the Commission, there is no need to introduce any change by legislation at present.

It is, however, left to the development of public opinion, particularly of Muslim women, to indicate areas where reform by legislation may also be needed. The areas indicated by Dr. Tahir Mehmood are useful guides for future thinking. The Commission has not, however, undertaken any investigation of these areas and does not commit itself to any views expressed by Dr. Tahir Mehmood. The views of the Commission are found in the main Report itself.

It should also be noted that, in the course of development of our Personal Laws (*i.e.*, Hindu and Muslim Laws), there was a time when foreign judges found it necessary to call Pandits and Maulvis to give evidence in order to obtain opinions on what our Personal Laws were. But, that era is long past. The Personal Laws of Hindus and Muslims and other minorities are enforced in India as laws of the land which the courts have to know and apply for themselves. The opinions of Pandits or Maulvis on our Personal Laws are not admissible in evidence according to the Indian Evidence Act. Opinion/evidence of experts is only admissible on questions of foreign law.

It would have been very useful if Dr. Tahir Mehmood had also dealt with the implications of the development of our law by courts which cannot admit opinion evidence on matters of Personal Law. In fact, the development of law by Indian judges could be equated with a kind of "Ijtehad". Atleast, it is the equivalent of what "Ijtehad" used to accomplish in formative stages of Muslim jurisprudence. The view adopted by the Commission is that the basic principles of Muslim Personal Law are so just and general and adaptable that "Ijtehad", if it stands for introduction of new doctrines or principles, is scarcely needed. But, if "Ijtehad" (from "striving") covers the power of courts to apply principles to facts, as they exist in different cases, it has been practised by Indian Judges for more than 200 years. Hence, the controversy between "Ijtehad" and "Taqlid"

appears unreal and irrelevant today. The most urgent and pressing problems of Muslims, so far as administration of law and justice to them are concerned, are, in common with those of the rest of citizens, of ability to procure justice expeditiously, inexpensively, and impartially. The contents of justice or what is justice in accordance with their personal laws, in areas where these are applicable, have not seriously troubled courts which have administered them admirably.

APPENDIX-IX

(*Ref.* Chapter III, para 3.68)

MINORITIES COMMISSION

SUBJECT : Consideration of Problems in Assam—Chairman's Note

There have been some newspaper comments to the effect that the Minorities' Commission is doing nothing about the situation in Assam where atrocities have been and are still in the process of being committed, against both religious and linguistic minorities, the interests of which are to be looked after by the Minorities' Commission.

Shri G.S. Sial, the former Secretary of the Minorities' Commission, had proposed in 1981 that the Minorities' Commission should visit Assam to find out for itself the facts of the situation there. But, he was informed that the Home Ministry did not favour a visit by the Minorities' Commission to Assam as the situation there was not conducive to any objective assessment of facts. Furtheremore, the Home Ministry informed the Secretary of the Minorities Commission that the Central Government was itself looking into the situation and tackling the difficult problems and a grave situation in its own way in Assam with a view to finding solutions. The suggestion clearly was that the Minorities' Commission need not trouble itself with conflicts in Assam when the Central Government was itself directly and immediately dealing with them in view of the urgency and gravity of the situation there. The Minorities' Commission was also informed that the Government of Assam did not approve of the visit of the Minorities' Commission for similar reasons.

It is the policy of the Minorities' Commission to avoid doing anything which may make a delicate or explosive situation worse or may give an excuse to any party to a dispute for not reaching a settlement.

Under the Resolution setting up the Commission, it could be said to be only a delegate of the Central Government in discharging most of its functions. A delegate ought not to go against the directions or suggestions of the Principal, even if the object of the Resolution setting it up may have been to constitute the Commission into an independent investigating and advisory body.

The soundness of the advice or recommendation of such a Commission depends upon the effectiveness and worth of the investigations it carries out. Such investigations, under the present set of powers and personnel

available to the Commission, have to be confined largely to obtaining information from governmental sources in response to its inquiries. It cannot compel any non-governmental agencies which are the principal parties involved in the Assam agitation to appear before it. It has not got its own investigating agencies. It has to rely on the cooperation extended to it both by the Central and State Governmental authorities and officials. Hence, unless the Central and State Governmental authorities and officials are favourable and cooperative, the Commission could not, as a matter of correct or practicable policy, possibly take upon itself a visit to Assam. Opposition to it from either Governmental authorities or the agitators in Assam could make any independent investigatory efforts of the Minorities' Commission absolutely futile.

Nevertheless, an obligation to consider and make recommendations on the interests of religious and linguistic minorities, wherever they may be in India, does rest on the Commission. It falls within the functions assigned to the Minorities' Commission by the terms of its reference. It can, therefore, consider such matters, on the strength of such information as is supplied to it by governmental sources or can be gathered by it from newspaper reports or other sources of information voluntarily given to it.

The Commission could deduce the basic legal question from such information as is indicated above. It is : Can the residents of any Indian State, as Indian citizens, object to the existence, as human beings living in Assam, of any other religious or linguistic minority groups whose claims to Indian citizenship the objecting group asserts its own right to decide ? So stated, in very bald general terms, the question is not at all difficult to answer by a reference to constitutional and other legal provisions. The Commission should, therefore, answer this question and forward its views to the Central Government.

Our constitution and the laws made under it on the subject, such as the Indian Citizenship Act, do not recognise any multiplicity or duality of citizenship or nationalities based on residence in different regions of India or on political or social or religious or linguistic groupings of Indian citizens. Our system asserts a unity of nationality, of citizenship, and of allegiance to the legal supremacy of the Constitution based on the political sovereignty of the whole of the people of India. Claims of citizens to protection of life or liberty may rest on such allegiance. But, protection of life and liberty is conferred by our Constitution on all "persons" who reside in India. It includes foreign residents in this country who too can claim protection. That protection extends to being dealt with in accordance with the law of the land and the procedure established by it. That is what Article 21 of the Constitution provides. It says : "No person shall be

deprived of his life or personal liberty except according to procedure established by law". This mandate of our Constitution, which protects all "persons" including foreigners residing in India, can not be disobeyed by the State. No person's life or liberty or property can be taken away by howling murderous mobs which have decided before hand that the group to be victimised consists of foreigners. It becomes the Government's bounden duty to protect life and property of all those residing on Indian soil irrespective of their creed, caste, language, or origin.

Questions of citizenship or nationality, when properly raised, can only be decided by duly constituted authorities and not by lynching mobs. In addition, those who are Indian citizens have further rights guaranteed to them. Article 19(1)(d) lays down a citizen's right "to move freely throughout the territory of India". Article 19(1) (e) guarantees the citizens a right" to reside and settle in any part of the territory of India". Assam is a part of the "territory of India".

It, therefore, follows that persons or groups of persons who do not recognise these Fundamental Rights are themselves foreigners to the ideology contained in the Constitution and want to subvert its principles.

Among the principles of the Constitution are the Fundamental Duties of Citizens laid down in Part IV which seem to be totally forgotten by those who are bent on violent solutions dictated by force instead of the democratic methods of legislation and decision by appropriate authorities. Article 51A in Part IV A is so basic for upholding what is found in the Preamble and elsehwere in the Constitution that it is worthwhile reproducing it in toto here :

"It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;

(h) to develop scientific temper, humanism, and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."

It is, therefore, crystal clear that those who want to use violence, whether it be in Assam or in Punjab or elsehwere in India, even to bring about changes in the law or the Constitution of the country, are really traitors to the country and its ideology.

If the Government declares, as our Prime Minister has done, that such a situation should be dealt with on a war-footing, the citizens of a patriotic nation can only applaud and heartily support such a declaration instead of finding fault with it. Although the Commission is not fully aware of the political, social, psychological, and economic forces and factors, both internal and external, operating in Assam, which set into motion such inhuman and violent waves of crimes against both minority and majority sections of the Assamese population as to jeopardise the very basis on which any political, social, economic, and legal structure could rest in a multi-cultural, multi-religious society, yet, it can have no doubts whatsoever on what the situation obliges, not only the Governments, both Central and State, but also Indian citizens to do in such circumstances. The Central Government is obviously doing what is its bounden duty to do to protect life and liberty in Assam and elsewhere in India. If it has to be dealt with on a war-footing, the Commission cannot possibly say, on patent facts, that this assessment is incorrect. Opposition parties and newspapers may deny the most patent facts. But, those who have eyes to see and ears to hear and minds and hearts directed by the Constitution, can have no doubts on the question raised. The duty of all Indian citizens, in such circumstances, is to support those who discharge constitutional obligations and not to be misled by their detractors or denigrators.

It is difficult not to suspect, at a time so critical in the history of the world as the present is, international conspiracies against the growing strength and importance of India. These could be designed to split the country or spread anarchy or to destabilise it by misleading gullible masses

of Indian citizens. It is not possible for the Commission to say, for want of information, what the exact nature of these forces, both internal and external, which are obviously trying to disrupt the social, political, and economic life of the whole country, beginning with Assam and Punjab, really is. It can, however, recommend that the Government dealing with the situation on a war-footing should employ the best available methods for gaining intelligence about the nature, sources, and location of hostile anti-national forces so that they may be identified and appropriately dealt with.

There is no doubt that large number of people in Assam have been infected with a madness akin to that which destroyed lives and properties of millions in Vietnam, and, after that, under the Pol Pot regime in Kampuchea. The Government, both at the Central and State levels, can only fight such destabilising forces with measures which have to be taken in war time. The Minorities' Commission and its activities do not fall within the purview of war time activities. They pre-suppose peace and normalcy.

The Universal Declaration of Human Rights lays down the duty of every one who resides on the surface of the earth as well as of all Governments and other organisations to secure respect for and observance of human rights even in war time. It is people and Governments and organisations attempting to secure observance and enforcement of Human Rights which deserve inter-national support and assistance and not those which attempt to subvert them. The Government of India is acting in Assam in support of elementary Human Rights unlike Governments in some other countries. Hence, anti-national elements try to create disorder and then to blame the Government. The people have to be made aware of the anti-people plans and strategy if they are to be saved from becoming their victims.

So far as the Minorities' Commission is concerned, it could have little doubt on questions of law and principle. The wrong doers have to be dealt with in accordance with law. The immediate problem which arises in Assam, as elsewhere, involving rights of linguistic as well as religious minorities, is to correctly identify who the wrong doers are and to determine what they have done so as to punish them appropriately. This should be accompanied by widespread constructive schemes and measures to help and rehabilitate those who are bereaved or have suffered loss of property or employment or means of existence.

The issue of "foreigner" or alien on Indian territory, which is one for appropriate Governmental authorities to decide in accordance with applicable law, should recede into the background due to the enormity

or wrongs done by those who, by their actions, disclose that they are themselves foreigners to the very ideology and concepts embodied in our Constitution, and, indeed, to humanity. They violate the universally acknowledged norms of human conduct towards enemies even in war time (e.g. by killing unarmed un-offending women and infants so as to terrorise) laid down by international law. The immediate problem in Assam is of restoration of basic norms of human conduct by strict measures against the wrong doers accompanied by benevolent protection of innocent sufferers.

A system of strong government which can adequately punish the wrong doers and reward appropriately those who conduct themselves rightly is called for in such conditions. Discipline is a pre-requisite of Democracy. It must have precedence over every other consideration.

If the newspaper reports are correct, what has happened in Assam does not require the visit of a Commission like the Minorities Commission at all. It requires the operations of a powerful wing of a Moral Re-armament Movement so as to restore belief in and enforcement of the moral values without which no human society can cohere or endure. If the moral fibre of the people has been sapped to such an extent that large sections are unable to see the difference between right and wrong and indulge in worse than bestial acts of criminal violence, what may be needed is the shock treatment of very firm measures which could appropriately punish those indulging in monstrously inhuman acts combined with rewards for those who are supporting the restoration of moral values and law and order.

There is a provision in every democratic constitution for the declaration of what is called a "state of siege" in French Constitutional Law when normal life is so disrupted as it has been in Assam. Such provisions have been dealt with by the Supreme Court of India in A.D.M. Jabalpur Vs. Shivakant Shukla (1976) 2 SCC. It said at page 609 (per Beg J) "202. Emergency provisions in our Constitution are after all a recognition and extension of the individual's natural law right of self-defence, which has its expression in positive law, to the State, the legal organisation through which society or the people in its collective aspect, functions for the protection of the common interests of all. Such provisions or their equivalents exist in the Constitutions of even the most advanced democratic countries of the world. No lawyer can seriously question the correctness, in Public International Law, of the proposition that the operation and effects of

such provisions are matters which are entirely the domestic concern of legally sovereign states and can brook no outside interference."

At pages 641-42, it was held in that case :

"320. There is no provision in our Constitution for a declaration of Martial Law. Nevertheless, Article 34 of the Constitution recognises the possibility of martial law in this country. It provides :

34. Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

321. As there is no separate indication in the Constitution of specific conditions in which martial law could be "proclaimed", it could be urged that a Presidential Order under Article 359(1) has a similar effect and was intended to provide for situations in which martial law may have to be declared in any part of the country. But, a Presidential order under Article 359(1) of the Constitution would, ordinarily, have a wider range and effect throughout the country than the existence of martial law in any particular part of the country. The Presidential proclamations are meant generally to cover the country as a whole. Martial Law is generally of a locally restricted application. Another difference is that conditions in which what is called "martial law" may prevail result in taking over by military courts of powers even to try offences; and, the ordinary or civil courts will not interfere with this special jurisdiction under extraordinary conditions. Such a taking over by military courts is certainly outside the provisions of Article 359(1) of the Constitution taken by itself. It could perhaps fall under Presidential Powers in Articles 53 and 73 read with Article 355. Article 53(2) lays down :

'53(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.'

And Article 355 provides :

'355. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Govt.

of every State is carried on in accordance with the provisions of this Constitution.'

A similarity in result, however, between martial law and condition resulting from a Presidential Order under Article 359(1) is that, if no provision is made by an Act of Indemnity, the civil liabilities of military or civil officers, acting mala fide and outside the law, are not removed ipso facto by either martial law or the proclamation of emergency."

In other words, the special (implied) powers of the Union of India (Article 355 of the Constitution) to protect the States from internal disturbance are in addition to the emergency provisions of the Constitution. In exercise of these powers, the Union Government may send troops to protect a State against internal disturbances and may set up special courts to try offences so long as an area remains disturbed. In fact, this is what the Central Government, acting in aid of the State Government, in exercise of its constitutional obligations, seems to be doing. Areas where disturbance exceeds the proportions of usual law and order problems, certainly endanger internal security and enable the executive authorities to declare them as disturbed areas and take appropriate action necessary to quell what may amount to a State of insurrection or civil war.

So far as relief measures are concerned, it is evident that they must be also temporary. They are designed to overcome the sufferings for the time being of those whose lives have been disrupted by the horrors being perpetrated in Assam. It is certainly not the state of affairs in which the Minorities' Commission could go and do any useful work in Assam. The decision of the Central Government in the circumstances indicated above is correct. Its announcement of what are the constitutional obligations of the State are based on what the Constitution obliges the Government to do. So far as the long term healing measures are concerned, the line has also been indicated by the Prime Minister, Mrs. Indira Gandhi at Varanasi, when she said that what is required is the removal of barriers between human beings which disable them from seeing that, as members of a human society, they must cohere and cooperate with each other despite their differences of religion and culture. I do not know what the Minorities' Commission could do except after a survey of the situation in Assam, make declarations of a kind which the Prime Minister and the Home Minister of India are already making.

It would, however, be quite proper for the Commission to request the Government to inform it of the facts of the situation in Assam and the measures adopted or proposed by the Government to deal with the situation. The information from the newspapers shows that the Central

Government is doing all that it could possibly do to protect the interests of Minorities, religious and linguistic, in Assam.

Other suggestions, such as the building up of a Moral Re-armament Movement throughout the country, to meet the threat from the rising tide of irrational disruptive forces, is a task to which all patriotic political and voluntary organisations as well as governmental organisations must address themselves jointly as parts of a long term healing process, involving all methods of education which can weave a fresh and firmer fabric of a culturally, intellectually, and emotionally integrated society and nation.

APPENDIX-X

(*Ref.* Chapter III, para 3.69)

SUBJECT :—Report on the Visit of Member (Gyani Sujan Singh) to Amritsar.

I left Delhi on official tour on 18th September 1982 by the Frontier Mail and reached Amritsar on the 19th morning. Sardar Dilbir Singh, a leading industrialist of Amritsar and a leader of the Chief Khalsa Diwan, had fixed my meeting with Sant Harchand Singh Longowal, President, Shiromani Akali Dal at 11 A.M. on the 19th September. Before going to Santji, I had a preliminary discussion about the Akali Morcha with Additional Deputy Commissioner of Amritsar and Senior Superintendent of Police.

2. Accompanied by S. Dilbir Singh, I met the Sant in his room at the Teja Singh Samundri Hall, Amritsar. The aides of the Sant present at the meeting were : S. Parkash Singh Majitha, General Secretary, Shiromani Akali Dal, S. Bhan Singh, Secretary, Shiromani Gurdwara Parbandhak Committee; S. Balwant Singh Ramoowala, ex-M.P.

3. I told the Sant that I had come to him to know the Akali demands because those reported in the Press could not be considered authentic. Sardar Parkash Singh Majitha then asked me whether I had been sent by the Central Government or by the Prime Minister ? I said : 'No, being the Sikh representative (Member) of the Minorities Commission, I was sent to Amritsar by the Chairman of the Minorities Commission only, to assess the political situation and to submit my report to the Chairman.'

4. I asked the Sant when the Akali Dal was having negotiation with the Prime Minister, how they had decided on launching the Morcha? Sant Longowal told me that during his earlier meetings with the Prime Minister, discussions were going on very smoothly. Only during the last meeting, the demands, which were likely to be accepted earlier, were turned down by the Prime Minister. She had also decided on unfair distribution of Ravi-Beas waters before their last meeting. The Sant added that all the time they had been appealing to the Central Government to concede their demands and had also given sufficient time for their consideration but the Government did not pay heed to it. The Punjab Government, instead of conveying the deamands of the Sikhs to the Central

Government, started arresting and torturing Amritdhari Sikhs. Many innocent Sikh youths were falsely implicated in cases and killed, but reported to have been killed in encounters. He metioned that one Sardar Gurmit Singh was put to death miserably and was stated by the police to have been killed in an encounter. His relations were also maltreated. Moreover, suddenly Bhai Amrik Singh and his colleagues were arrested by the Punjab Police and indescribable excesses were committed by the police on the innocent Sikhs. He further stated that when all their appeals to the Central Government had borne no fruit, only then was the Morcha launched. The Morcha, which aims at overflowing the jails with more than one lakh volunteers, is an attempt to get a peaceful redressal of their grievances. All aspects of the Morcha had been given due consideration and efforts were being made to maintain the Hindu-Sikh relations. The Sant added that the jails lacked adequate arrangements for medical aid, food, sanitation, accommodation and drinking water and it was feared that some kind of epidemic might spread soon. He added that till then about 34 satyagrahis (volunteers) had died in the rail-bus accident near Taran-Taran, 7 to 8 had died in jails due to illness and about 14,000 volunteers had courted arrest.

5. I asked the Sant about the demands which, according to him, were accepted by the Prime Minister earlier. He mentioned the following demands :—

(*i*) Declaration of Amritsar as a holy city, like Hardwar, Kashi and Kurukshetra;

(*ii*) Relay of Gurbani Kirtan from the Golden Temple;

(*iii*) Enactment of an All India Gurdwara Act;

(*iv*) Permission to carry Kirpan on domestic flights;

(*v*) Under the Nehru Language Formula, Punjabi to be given its proper place in Dehli, Haryana and Himachal Pradesh;

(*vi*) Handing over Chandigarh to Punjab; and

(*vii*) Punjabi farmers in U.P. and Haryana not to be uprooted.

He laid emphasis on the acceptance of the above demands before the Akali Dal could think of negotiations.

6. The other demands mentioned by him were :—

(*i*) Government should assure them that it would not interfere in the affairs of Gurdwaras;

(*ii*) Indian Constitution should be given federal structure and the States should be given more powers;

(*iii*) The left-out Punjabi speaking areas should be merged with Punjab; and

(*iv*) Control of Headworks should be given to Punjab. Water and electricity should be made available to Punjab according to its needs and the surplus could be given to other States.

He also mentioned that a Charter of Demands had already been given to the Central Government.

7. I suggested to the Sant that if negotiations were started again, in my view, some of the demands could be accepted. I also told him that there was no problem in the world which could not be solved through peaceful negotiations and these should be started without delay. The earlier they are started, the better it would be for the Sikhs, the Punjab and the country. The people of Punjab now felt insecure and afraid that the Hindu-Sikh relations might get strained any moment. Conditions must be created for resuming the talks with the Centre. Morcha could undoubtedly continue for many months, but the ultimate solution lies only through peaceful negotiations. Any incident might occur any time and create a situation which could go out of his control. The Sant and his colleagues said that if the Prime Minister accepts their religious demands and announces for their implementation, the proper atmosphere migth be created for negotiations. I told them that Sikh interests were quite safe in the hands of the Prime Minister, Shrimati Indira Gandhi whose thinking is secular and is a true friend of Sikhs. During her regime only, the Sikh problems could be solved. The Sant replied that the Sikhs had made supreme sacrifices for the independence of the country, *e.g.* out of 121 persons hanged, 73 were Sikhs; out of 2647 persons sentenced to life imprisonment, 2147 were Sikhs; in the Jalianwala tragedy, out of 1203 persons, who received bullets, 779 were Sikhs. Baba Ram Singh was the first Indian who started the struggle for the independence of India. But he regretted that in spite of all this, some leaders of the country misunderstood the Sikhs and misinterpreted their demands and were publicising that the Sikhs want to secede from India. This was quite wrong. I then told the Sant that the Anandpur Sahib Resolution was not properly worded and there was some misunderstanding in the minds of the people. He said that the Akali Dal had stated clearly that the Sikhs were part and parcel of India and would remain so. He also added angrily that the Sikhs were true Indians and India is their home. The people creating such misunderstanding are enemies not only of Sikhs but also of India. I assured the Sant that his feelings would be conveyed properly to the Minorities Commission. This meeting lasted 1½ hours.

8. Shortly afterwards on the 19th, I called at Sant Jarnail Singh Bhindranwale, but I did not talk about the Morcha. He narrated to me many incidents and condemned the police for their atrocities on the innocent Sikhs.

9. On the 19th evening, I went to the Manji Saheb Diwan which was attended by at least 10,000 persons. From this place, the satyagrahis march daily in the evening, shouting slogans, to the city Kotwali for courting arrest. S. Sukhjinder Singh, a staunch supporter of Khalistan, who had earlier formed his own Akali Dal and had recently joined the Akali Dal (L), had to court arrest on that day. He vehemently condemned the Government for discrimination against Sikhs and exhorted the congregation to fight for their demands. Sant Longowal also spoke at the Diwan. During their speeches, "Khalistan Zindabad" and "Raj Karega Khalsa" slogans were shouted frequently and loudly by some Sikh youths. The Sant criticised those youths and asked them not to raise such anti-national slogans, as the Akalis always condemned such slogans. But still all the way from Diwan Saheb to the Kotwali, one hears such slogans being shouted loudly by some mischievous youths. Satyagrahis shouted only those slogans which were approved by the Akali Dal. The Golden Temple is the most holy and scacred place for the Sikhs. I saw there that in place of hordes of pilgrims, however, hundreds of volunteers these days come there daily to court arrest.

10. On the 19th night, S. Parkash Singh Majitha, General Secretary, Shiromani Akali Dal met me at S. Dalbir Singh's residence for further discussion. Sardar Majitha told me that if the religious demands were not going to be accepted at the earliest, it was possible then that the extremists might take control of the Morcha, in which case conditions might worsen.

11. I visited Amritsar jail on the 20th Morning. It had about 3,300 prisoners (1,600 criminals and 1,700 satyagrahis) against its capacity of about 1,000. All those satyagrahis, who had courted arrest last evening, were camping outside the jail as there was no space in the jail. They were very angry since they had passed their night outside the jail. The satyagrahis complained bitterly against the conditions in the jail—lack of water, bad food, poor cleanliness, dirty latrines and inadequate medical aid, etc. The jail authorities told me that in spite of their best efforts, difficulties were bound to arise due to over-crowding.

12. I was told that during the past few days, some of the leading religious personalities (saints) had decided to offer themselves for arrest in the Morcha and to spread out to the villages to persuade the Sikh masses to join the Morcha.

13. I also met S. Sant Singh, Hony. Secretary, Chief Khalsa Diwan, Amritsar; S. Kirpal Singh, Ex-MLA and a well known socialist leader; Shri Brij Bhushan Mehra, Speaker, Punjab Assembly and many other personalities—both Hindus and Sikhs. All of them were of the opinion that efforts should be made to sort out the problems at the earliest and any delay would only harm the economy of Punjab and spoil its political and social atmosphere.

14. After this visit, I have come to the conclusion that :—

(*i*) Tension is increasing in Punjab;

(*ii*) The economy of the State is worsening and peace is in danger. Every evening at the time of arrest of satyagrahis at Amsritsar, the shopkeepers down their shutters and there is panic and fear in their minds. The people fear that any time disturbances might break;

(*iii*) Extremists would gain strength if the Morcha was allowed to prolong;

(*iv*) If the Akalis come to know that Government is unwilling to accept their demands or initiate talks, they may give some other shape to the Morcha; and

(*v*) Though the Sikhs living out of Punjab are not concerned with the Morcha, yet they certainly live in fear as their lives and property are insecure.

Efforts should, therefore, be made for initiating the Akali-Centre talks at the earliest, because the statements of the Akalis are also encouraging.

15. I wish to invite the attention of the Chairman, Minorities Commission, to the following points :

(i) Akali leaders and Sant Bhindranwale have repeatedly said that they are against Khalistan.

(ii) Akali leaders have vehemently condemned the activities of the extremists.

(iii) Akalis have so far kept peace in Punjab and have all along been campaigning for Hindu-Sikh unity. They do not want their relations to get strained.

(iv) The Akalis wish that their religious demands should immediately be accepted, as this will pave the way for resuming the talks. With the passage of time, the sympathy of Sikhs with the Morcha will increase because the Akalis are daily campaigning for their religious demands being conceded.

(v) About some of their demands, Sant Harchand Singh Longowal is of the view that Commissions should be set up.

16. The Akali demands can be divided into 2 parts ;

I. (a) Declaration of Amritsar as holiy city.

(b) Carrying of Kirpan on domestic flights.

(c) Relay of Gurbani Kirtan from the Golden Temple.

(d) Enactment of an All India Gurdwara Act.

I feel that these demands should be accepted and a Commission consisting of law experts, which should have confidence of the Sikh community, may be appointed to go into the details for enactment of an All India Gurdwara Act.

II. (a) Before the division of Punjab, under the Regional Formula, Hindi and Punjabi were studied as 1st or 2nd language in the schools. I suggest that under the 3 language formula, Punjabi should be declared as one of the three languages in Haryana and Himachal Pradesh. In Delhi also, the Punjabi speaking population is more than 33 per cent. Punjabi language should, therefore, be given the status of second language.

(b) Punjabi farmers settled in Haryana and U.P. are facing some difficulties. Regarding this demand also, I suggest that the Centre should ask both these States to solve their difficulties so that they are not subjected to any harassment.

(c) Regarding Chandigarh, I am of the opinion that it was made capital of Punjab in place of Lahore and it should be handed over to Punjab. Haryana must build its new capital and it should be given grant/loan from the Central Government.

(d) Regarding re-demarcation of boundaries of Punjab, Haryana and Himachal Pradesh, I suggest that a Linguistic Commission should be appointed to identify the Punjabi and Hindi speaking areas of Punjab, Haryana and Himachal Pradesh. That Commission should identify the Punjabi and Hindi speaking areas of Abohar and Fazilka also. I may add that this boundary problem should be solved once for all to avoid future disputes.

(e) Regarding Ravi-Beas waters dispute, I suggest that the Chief Justice of the Supreme Court should be asked to adjudicate on it and his decision should be binding on all the parties involved.

(f) Regarding the Anandpur Saheb Political Resolution, I am of the firm view that the language of this Resolution is not clear. The thoughts contained in it have raised many doubts in the minds of the people about this demand of the Akalis. I suggest that the Akali Dal be advised to re-write its language in clear terms. The clarifications given by the Akali Dal till now show that the Akali Dal asks for more powers to the States. The present political conditions of the country demand that the Centre should be strong. The history of India reveals that whenever the Cedtre was weak, the whole country became weak. This question does not concern Punjab only but all other States also. For this reason, views of all the States, political parties and constitutional experts should be obtained. It also involves an amendment to the Constitution. If this Resolution means secession from India, it should be rejected straightaway and there should be no compromise on it.

17. I am submitting this report impartially and as a true Indian. It is my honest view that Punjab is facing a very serious situation and the Government should give prompt attention to its affairs. The religious demands of the Akalis do not pose any hurdle and their acceptance should be announced. Because the Akalis have mixed up their religious and political demands intentionally and have created a thinking among the Sikhs that the Government does not wish to solve their religious problems, it is necessary that their religious demands should be accepted immediately. This will win the goodwill of the Sikhs throughout the world. Ways must be found to prevent the situation in Punjab from worsening. Efforts must be made to bring the Akalis to the negotiating table at the earliest as any delay would only spoil the atmosphere in Punjab.

Sd/-
(Sujan Singh) Member
24-9-1982

APPENDIX-XI

(*Ref.* Chapter III, para 3.85)

ON THE SPOT STUDY REPORT OF THE INCIDENTS OCCURRED IN AND AROUND THE MANDAIKADU, PUDUR, KURUSADI AND OTHER AFFECTED VILLAGES IN KANYAKUMARI DISTRICT OF TAMILNADU DUE TO THE RECENT COMMUNAL AND RELIGIOUS DISTURBANCES

SUBMITTED BY

SHRI S.A. DORAI SEBASTIAN, M.P. & MEMBER,
MINORITIES COMMISSION

(The Member, Minorities Commission, has visited all the affected villages and areas during his two-days tour on 22nd and 23rd of March, 1982, to the Kanyakumari District as part of his tour programme from 20-3-1982 to 31-3-1982. Miss G. Kannagi, R.D.O., Nagercoil and Shree Shreedaran, I.A.S., Sub-Collector, Thakkalai of the affected area took the Member to the spots. Shri Krishnaswamy, President, District Congress Minorities Cell, Shri Rathinaswamy, Secretary, DCC(I) and Shri M. Ganesan, his P.A., also accompanied the Member).

On 22nd March, 1982, I have visisted the following troubled villages :

(1) Kovalam (2) Pallam and (3) Mel Manakudi.

(1) KOVALAM VILLAGE

First of all, I visited Kovalam village which is populated by Parawans who are a Scheduled Caste Hindu Community.

On the 15th March, at about 10.00 hrs., people belonging to the Pujappura village, belonging to Hindu religion, had left their village and congregated on the road leading to the Christian Village called Kovalam. Some of them were dressed in Khaki uniforms. The villagers, who had heard of the destruction of Pallam village and the attack in Mel Manakudi Convent, were panicky, fearing an attack on their village Kovalam. The Priest, Fr. Jerome, requested for the Police protection as early as 10.00 hrs. However, the Police did not arrive until 17.00 hrs. after the incident. The Christian villagers went to the boundry of their village near the salt farms when stone pelting started. The Pujappura villagers, who had left their

village, crossed the salt farms and started firing with fire-arms. The man, who used the fire arms, is one Mr. Samy who has neither been arrested so far nor his weapon confiscated. One Mr. Ansal (Angel) died in the firing and Mrs. Jeralo was seriously injured. Prior to the attack, the Hindu village Panchayat sirens were sounded repeatedly.

(2) PALLAM VILLAGE

This village has around 1000 houses, a convent, a hospital and a school.

On 14th, Sunday night, people of the neighbouring villages of :

(1) Mugelam Vilai Post, Near Koil Vilai,

(2) Mela Krishnan Puthur,

(3) Chundanpatty Vilai, and

(4) Elanthai Vilai,

along with R.S.S. volunteers, dressed in Khaki Uniforms, attacked the village with country-made bombs. The villagers had got panicky and ran to the beach. Since the electricity was cut, there was panic in the village. The buses were not allowed to enter the village.

On Monday, the 15th, again the mobs attacked and burnt the houses, destroying personal property. They burnt all the wooden things, destroyed the Hospital, convent, church and the damages were over Rs. 40 Lakhs. Over 650 houses were completely burnt. The fishermen's nets have been destroyed. At about 10.30 hrs., on 15th, repeated representations were made to the Chief Minister, who happened to be camping there, the D.S.P. and the R.D.O. to send police protection to this village. However, no police protection was given until 17.30 hrs. when the village was totally gutted. After the R.D.O.'s visit to the spot, no action was taken. It is alleged that the Village Panchayat sirens were used repeatedly to mobilise the mobs before the attack. The rice was not supplied for a few days after attack and the water wells had been polluted by throwing the dead dogs and ducks and by pouring the diesel.

Mr. Sundaralingam, who is the agent of Godrej Cattle-feed, is alleged to have instigated and financed the mobs for hiring lorries to attack the Christian Villages.

Mr. Rajappan of Rajappa Tutorial and his brother, Nathan, were supposed to be storing bombs. Further, the following were the main instigators :

Mr. Arunachala Nadar
Mr. Sivalinga Nadar
Mr. Doraisami Nadar
Mr. Parma Sadhu

All of Kila Krishna Puthur Pallam Post.

The following were arrested by the Circle Inspector of Suchindram and are still under detention :

(1) Nirsal,

(2) Rohinson, son of Charles, and

(3) Thomas, son of Royappan.

(3) MEL MANAKUDI VILLAGE

On Friday, the 12th March, children going to school were prevented from leaving the village by the Hindus. On Saturday, 13th and Sunday, 14th, lorry loads of people with RSS volunteers kept coming to the entrance of the village and returned. This created panic in the village.

The Convent was damaged and the elementary school burnt and broken and over 60—75 coconut trees destroyed by cutting down adjacent to this village. The instigators are of Parakkai and Kalluvilai villages. Women, who went to the market to sell fish, were chased back. When a particular mob, who came to attack the village, was chased back, they ran away leaving behind diesel and gun-powder. In panic, the villagers organised their men to protect the village by keeping watch at the entrance. At 20.00 hrs. on 15th in the morning, two lorries had come and torches were flashed at Manakudi where there was darkness as the electricity lines were cut off by the mob already. The village people asked if the intruders were RSS or Police. There was no answer. Fearing an RSS attack, the villagers took precautionary measures by spreading fishing nets on the road. Then they were fired at by the Police. One died on the spot and the other, seriously injured, died later in the hospital. 8 S.S.L.C. students and 30 VIII standard students from this village have not been able to sit for the examinations due the disturbances. The Headmaster gave notice to the students to appear for the Examinations at their own risk as there was no police protection available from the Government side. This letter is available with the villagers. The villagers requested that the students should be permitted to write the examination in Nagercoil Centre but it was not granted.

Following are the instigators :

(1) Mr. Mahendran, son of Rangam Kalluvilai

(2) Mr. Kumar, son of Thanga Nadar

(3) Mr. Sridharan, son of Subbiah Nadar (keeps bombs in his house)

In KULASEKARAM, there was a Christian Convention. After that, the RSS asked permission for a convention which was refused by the R.D.O.

The following places were visited by me on 23-3-1982 :

(1) Samadhanapuram
(2) Eathamozhi
(3) Periyakadu
(4) Rajakkamangalam
(5) Manavalakurichi
(6) Anand Victoria Marthandam Canal
(7) Chinnavilai
(8) Koothamangalam
(9) Ammandivilai
(10) Colachal
(11) Kovilvilai
(12) Collector's Office, Nagercoil
(13) Holy Cross Hospital, Nagercoil
(14) Travellers' Bungalow, Nagercoil

(4) SAMADHANAPURAM

In Samadhanapuram, the residents of some affected houses were met by me. According to one, Smt. Ghammal, aged 65 years, on 15th March night at about 20.00 hrs., there were 200 to 300 people who rushed from Kovalam village and intruded Samadhanapuram and set fire on houses after looting the 23 houses out of which one belonged to a Hindu and 22 belonged to the Christians.

(5) PERIYAKADU

Then I proceeded to Periyakadu village, via Eathamozhi. There I met the residents of Periyakadu village, which is still under police custody. There are about 125 houses and about 1000 people are living in that village. This is one of the coastal villages. All are Christian people. They are all living in fear and afraid of Khaki uniforms as the attackers were in Khaki dress. After my going there, the people came nearer and nearer feeling that somebody came forward to their rescue. As such, people gathered in large number and one Mr. Joseph and one Mr. George spoke on behalf of the inhabitants of the Periyakadu village.

According to the people, the trouble started on 12th March and about 4000 people of a mad crowd came from Palvilai, Eathamozhi, Periyavilai and Sundapadivilai and intruded Periyakadu village. They poured kerosene and petrol on the houses of Christians and set them on fire. But, the fishermen belonging to the Christian community overpowered them and on that day, the position was very acute. On the way to Periyakadu, I have witnessed that the plantain and coconut trees belonging to the Periyakadu Church were destroyed by cutting off and the fencing made of coconut leaves were completely destroyed by fire. In addition, three big ditches were found on the road. These were dug and falsely closed with coconut leaves atop to prevent the people and the vehicles coming to the Periyakadu village as a measure of protection.

The people were full of fear and tension. According to the people there, they were even attacked by a section of the people with Khaki uniforms like police people. The same mob was also reported to have attacked the Pallam Village on the previous day.

Now, as the people are in a terrific fear and in a panic condition, although the Police party is posted, they have not been in a position to find any difference between the Policemen and the Khaki dressed RSS persons who attacked them on Friday, the 12th March. As such, the fishermen community have no courage to go to Eathamozhi village to get their rations and other things. The distance between the Eathamozhi and Periyakadu is about 1.5 Kms. The Periyakadu people are starving as they could not get rice and other articles. The Sub-Collector, Shri Shreedaran, was requested by me to arrange rations to be provided to the fishermen community of Periyakadu through trucks. He said that the people here can go to the Eathamozhi in groups for purchase of their rations and some people can help their fellowmen by bringing their rations also. I did not agree to his proposal and insisted the Sub-Collector to provide the rations and other essential commodities at the Periyakadu village itself through trucks. Later, when I spoke to the District Collector at Nagercoil, he has kindly agreed to my request to provide the rations and other essential articles and water to the Periyakadu villagers through trucks.

(6) EATHAMOZHI

I came back to the Eathamozhi village which is in a Road-Junction and where a small bazar is situated for the benefit of the nearby villagers and fishermen. The bazar was occupied mainly by the Muslims and Christians for their business. There are cloth, provisions, cycle hiring shops and one typewriting institute etc. The majority of the total population of Eathamozhi is the Hindus. These shops were looted and destroyed by fire by the RSS militant force—the buildings owned by the Hindus and

the business run by the Muslims and Christians on lease based agreements. The following shops were completely looted and destroyed in Eathamozhi Bazar :—

JAI Cycle Mart was owned by Muthaia Vathiyar and the cycle shop was run by a Christian. Another shop building was owned by Thanga Nadar of Rajakkamangalam but the shop was run by a Christian on lease basis. One Lakshmi Electric and Sons, Ganesan betal shop and Vanraj Tailoring shop were completely destroyed by fire. One Sherina Textiles Cloth Shop owned by a Muslim and Donitin Textiles, owned by one Puruthalkumar, a Christian, were also completely looted and destroyed by fire. One Timber Mart and one Hotel owned by Selvakumarsamy were also looted and completely destroyed by fire. Three huts of the following Hindus were destroyed by fire : (1) Subbiah Nadar (2) Sembilinga Nadar and (3) Sangiliyappa Nadar. Another house, owned by Chidambara Nataraja, the Trustee of Sri Alagiya Nayagi Amman, Tharamapuram, was looted. Three sewing machines of the Tailoring Institute run by the Maharishi Vidyalaya were missing. A house was set on fire when there were residents inside the house and cattles tied up in another hut in front of the house. A cow was burnt alive while the residents escaped unhurt. There was no loss of human life. The owner of the house was Thangaiya Nadar.

During my visit to all these shops at Eathamozhi, I met one Mr. Krishnappa, owner of the Ganapathy Press who said that on 11-3-1982, Kumarasamy Madam was attacked by some sea-shore mob. In the evening, there was an enquiry and they have prevented the sale of fish by the fishermen in retaliation. They also maintained a force to prevent the theft of the coconuts in the name of 'Bhoomi Padhukappu Sangam' and the total personnel recruited, about 40, were in that village alone. They have been given Khaki uniforms and militant training as in the case of Forest Rangers and as in the case of Policemen.

Mr. Arunachalam and Mr. Ganesa Nadar were holding the important offices of the 'Bhoomi Padhukappu Sangam'. The press owner said that they have constituted a Peace Committee which passed a resolution on 11-3-1982 and resolved to hand over the culprits immediately to the Police. Mr. Krishnappa handed over to me some printed materials telling that they passed the resolutions of the Peace Committee.

On 12th March, there was confusion. The Peace Committee resolutions and decisions were rejected by the 'Sangam' personnel and they started shouting slogans. The mob entered the 'Pons & Products', an iron and steel Industry and picked up and loaded the iron rods available there on cycles, etc., and started riots. According to him, the coastal

people of Rajakkamangalam and Periyakadu joined together and started disturbances. Five shops of Muslims have been destroyed completely. One gold covering shop and one cycle shop of a Muslim and another of a Hindu were struck down. The total loss estimated is Rs. 5 lakhs.

The opinion of the people of Eathamozhi and surrounding places is that the 'Bhoomi Padukappu Sangam' is a Unit of RSS. The distance between Pallam village and Eathamozhi village is about 7 Kms. The Sangam force people came in a large number with the Khaki uniforms for creating riot, looting and firing. It was known that this Pallam village was completely destroyed by the RSS volunteers who came in thousands by hiring lorries. While the Chief Minister was taking leave of Nagercoil, the Pallam village was attacked on the same day by the RSS people during the day time.

Mr. Krishnappa also narrated a story that one Mrs. Ramakrishna Nadar, aged 55 years, was stabbed to death by one Muslim.

There is a necessity of installation of a Police Station at Eathamozhi. This is an important demand of all the people of that area.

(7) AMMANDIVILAI

On the way to Manavalakurichi, I stopped at Ammandivilai and met the people there. All are Hindus in that village. They said that if the Christians were helped by the Government by sanctioning financial assistance, the Hindus also should be treated at par with the Christian community. One Mr. Rasamani was talking in a violent mood.

(8) KADIAPATTANAM

I have witnessed that the coconut trees in a large number in Kadiapattanam were destroyed by fire. Here I would like to mention that the Sub-Collector, Mr. Shreedaran, has always tried to stop me at places where there was no important incidents took place but to get the feeling of RSS.

(9) CHINNAVILAI

The Chinnavilai village is a fishermen colony, near Manavalakurichi. There is also Indian Rare Earth sites and a police station with 12 Policemen and wireless arrangements. There is a church in front of the Police Station at a distance of 10 yards. In the Chinnavilai Village, the fishermen community was attacked by RSS People, on 15th March, in front of the Policemen. Though they had the prior knowledge of attack by RSS, they did not care to provide any protection to the fishermen community,

Church and their properties. The RSS looted the ration shop and carried away 19 bags of foodgrains. The Hindus (RSS) attacked the Church and caused major damages to it. The roof and the windows of the Church were burnt and the stones pelted. But surprisingly, the small Hindu temple, school and the houses of Hindus were left untouched by RSS and they are completely safe. There was no retaliation by the Christians in that area. The people of Manavalakurichi, Valakkavilai, Thirumay-amaikurichi and Ammandivilai came in thousands and attacked the Chinnavilai fishermen community, at about 18.00 hrs. on 15-3-1982. The houses were burnt and damaged. The leading people for this attack are Mr. A.K. Sundaram Pillai, Manikanta Pannai (Farm), Mr. Ravi, the RSS leader and Duraimani.

The Police were informed early of their coming for attack but they were ineffective and did not show any mercy on the affected people. By keeping quite, the police rather helped the looters to damage the Church. The foodgrain bags and milk products in tins and other articles were carried away. The people from Manavalakurichi, Ammandivilai, Pillaiar Kovil, Kattumangalam and Kannamangalam surrounded the Chinnavilai from all the sides and operated as per their preplans on the fishermen Christian community. It is seen that all the 9 huts of the Hindu families living there are not at all attacked. There is a Hindu temple and a school of Hindus which were left untouched. A small petty-shop of a Christian was damaged. The fencing with coconut leaves has been completely burnt and a primary school run by the fishermen was also burnt. The Police were informed of the incidents occurring on 15-3-1982 and requested for immediate help. They turned deaf ears and there was repeated looting and attacks. The RSS people were responsible for all these troubles.

(10) MANAVALAKURICHI

On return from Chinnavillai, the people of Manavalakurichi, mostly Hindus and Muslims, collected in large numbers and showed me certain minor damages which, in my opinion, were created artificially to prove that they also incurred some loss by fishermen. The Hotel Buhari's owner, Mr. Moideen Khan, said that he incurred a loss of Rs. 12,000 due to the incidents occurred on 14-3-1982. Mr. Sahul Hamid complained that his two new cycles were completely damaged by the Hindu mob. One old gentleman of Manavalakurichi requested me to visit their Hindu Temple also which was located just after 2 to 3 houses from the main Road. I went to the temple and I was really surprised to see that there was not even a small sign of any disturbance and damage. What I saw there was that the coconuts and Punnai seeds were spread over for about

100 sq. yards for drying to extract oil exactly in front of the Hindu Temple. It was very very calm and the houses of Hindus were intact and their regular work was going on without any disturbance. This atmosphere was very uncommon to the situation prevailing in that region.

(11) KURUSADI IN PUDUR :

At about 11.35 hrs, I reached the Kurusadi Church at Pudur village and met the people and the priests. This church and the Kurusadi are situated at about 10 metres length from the Sea-water. All are fishermen of the Christian community. There is a way from the main road to the sea water by the side of the Kurusadi and the main road and the Anand Victoria Marthandam Canal which separates Pudur from Mandaikadu village where the Bhagawati Amman Koil (temple) is situated and which was the root cause for these communal troubles and unwanted shooting that took place.

The people gathered in a large number and the Priest narrated the incidents. On 1st March after 19.00 hrs., Police fired on the Fishermen community at the time of their prayer. I questionsed them that when there were indications for attacks by the police, why they did not get away from the trouble spot. The people said that they were praying in their own place of worship, the Church. There was no reason to run away from their own place of worship. The Father explained that the people were not aware of the shootings by the Policemen or RSS in Khaki uniforms. Suddenly they opened fire and nineteen men received bullets, out of which six lost their lives, leaving their young and infant children. It was a heart-rending scene to see the people, the widows and their infant children and the condition of the Kurusadi Church. The widows were dressed in white-dhotis/saries as per their traditions when they become widows. They were of the opinion that the people of Mandaikadu and Koothamangalam, with the help of RSS and the police personnel, attacked Kurusadi. There are bullet marks exactly on the walls of the Kurusadi Church and the walls of near by place and coconut trees. In one case, the bullet passed through the coconut tree.

The Father explained that after they lost six lives, they could not tolerate the festa and rejoycing by the Caste Hindus while coming to take sea-water bath with all their drum beatings and musical instruments and that too just by the side of the Church. He said that atleast for that day, atleast for the sake of God, the Caste-Hindus should stop their coming in a procession for bathing in the sea. The screen and fencing fixed at the AVM Canal for ladies – bath was burnt by the Hindus themselves to justify their inhuman activities and to blame the fishermen of Pudur.

The following are the names of six widows:

1. Mrs. Anthony Salit Mary
2. Mrs. Amurdeen Kringstain
3. Mrs. Selvaster Clostica
4. Mrs. Elliar Maria Maithili
5. Mrs. Ambrose Rani
6. Mrs. Patrose Mariaya Rosa

The above ladies were praying their Jabamalai at the time of the shooting. They were requested to stop their prayer which was their normal pratice. But they did not obey and the Police ordered the firing, without any lathi charge or teargas and bug-shots, to disperse the fishermen when they were praying. I feel that it was too much for the Police and the people of Mandaikadu to make efforts to stop the prayers of the Christian community fishermen. They have done their duties to their God. The Tamilnadu Government and the Chief Minister of Tamilnadu did not protect the people of the coastal fishermen Christian community but rather they helped the culprits on all occasions of their attacks against the fishermen and action has not yet been taken on them.

The blood stained clothes, the broken tubelights and the shrine and the young widows with their babies is a painful sight at Kurusadi in Pudur. One Mohamed Gani, District Muslim League President, came forward to help the people of Pudur-Kurusadi. When the Chief Minister of Tamilnadu offered some money to the widows in compensation, one of them very correctly refused to accept saying that she wants justice and not money. Still there are disturbances and the ladies and children are afraid of the Caste-Hindus and on two occasions, they had to jump into the sea to protect themselves from the inhuman activities of the Caste-Hindus and reached another coastal village through the sea. Even on 23rd March, this was the situation.

After witnessing these heart pinching incidents at the Kurusadi in Pudur, I proceeded to the Mandaikadu, AVM Canal and Bhagwathi Ammal Koil which were about 150 metres away from Kurusadi and the trouble had started from there. There was no sign of any trouble that took place. The temple was intact and the situation was very peaceful. The shops on the road-side were intact. The shop-keepers were requested by me to throw some light on the incidents that happened there and the losses, looting and associated incidents. They said that they know nothing about the situation. The police protection was there where there were no disturbances. I also called for the Temple Administrator (Executive Officer

of the Bhagawathi Ammal Temple, Mandaikadu), Mr. Selvamani. He expressed that there were no disturbances and looting incidents in and around the Bhagawathi Ammal Alayam but complained that fishermen prevented his people from taking bath in the sea.

In my investigation, I find that the root cause of all these disturbances and troubles in that area was due to the abusive words used by the RSS fanatics through microphones facing the Kurusadi Church. If the Government of Tamilnadu had taken the timely action, this would have been avoided and it would not have spread to other areas.

(12) COLACHAL VILLAGE:

I have visited the Colachal village at about 12.15 hrs and seen the signs of the hand bombs exploded there and bullet marks were also noticed on the walls of a Maternity Home belonging to the Christian Community. One Madhavan Pillai (a converted Christian) suffered losses as his provision store and house were destroyed by fire on 15th of March.

I was told that one Padmanabha Nadar was responsible for all these troubles in Colachal.

I met the Kundrakudi Adigalar and Rt. Rev. Dr. Arockiasamy, Bishop of Kottar, at Nagercoil who were engaged in peace restoration work at Kalimar, Kovilvilai and Colachal roads junction and had discussions with them.

(13) KOVILVILAI :

On 16-3-1982, there was an explosion of a country made hand-bomb in Kovilvilai village. One Ayyappan from this village had been kidnapped by the fishermen of Kodimunai. The houses of Ayyappan, Thangappan, Thangamani, Kumarapillai Velayuthan, Isakky Madam and Arumugam were burnt and destroyed. The people had run away from the village. There I found one Murugan Temple and Issakky Amman temple which were damaged and destroyyed by fire. The loss of property would be around Rs. 1 lakh. The people from Kodimunai village came to Kovilvilai via: Uppalam and attacked the people available there. The family and 4 children of Ayyappan were in misery. It was known that the people affected in Kovilvilai village belonged to the Hindu Paravar of Sunna Paravar Community.

(14) NAGERCOIL :

From Kovilvilai village, I proceeded for Nagercoil and met the District Collector, Shri B.M. Pranesh I.A.S., in his chamber. The Collector received me and we discussed the matter in detail and I requested him to

open a Police Station immediately at Eathamozhi village. The rations and water should be provided through lorries and trucks to the fishermen living in Periyakadu till the tension eased. The District Collector just read out the official reports of the various incidents available with him which were quite contrary to the actual happenings and incidents as per the spot study made by me. The Collector and the Government have been misled by the officers in-charge of the area administration and the officers in-charge of law and order in the area. The Collector promised me that he would help the affected people of the area and take proper steps to restore peace in the coastal area. I also insisted for the construction of a Coastal Link Road to enable the coastal people to have contacts with each other's coastal village and also for the security reasons.

(15) TRAVELLERS' BUNGALOW, NAGERCOIL :

After meeting the District Collector, I came to the Travellers' Bungalow to meet the R.D.O. as per the Schedule. There I could not find the RDO but I could meet some Muslims who suffered losses at Eathamozhi due to the destruction of their shops, etc., and who ran away to Kottar and living as repatriates, near Nagercoil, to save at least their lives from the RSS gundas. They also said that they lost all their shops and materials due to the RSS attacks.

16) HOLY CROSS HOSPITAL AT NAGERCOIL :

After waiting for some time more at the Travellers' Bungalow for meeting the R.D.O., I visited the Holy Cross Hospital at Nagercoil and met the Bishop Rt. Rev. Dr. Arockiasamy who was admitted there due to his ill-health. I discussed and exchanged views with him. I feel that the Police protection was given to the Hindu Nadar Community only and not to the affected Christian fishermen community. The Bishop of Kottar was of the opinion that this should be investigated by the C.B.I. and a Court of enquiry should be constituted by the Union Government, which I too feel that it is a must, on the part of the Government of India, to look into the failure of the State Government's law and order machinery and the State Administration. And I left for Karur at about 15.45 hrs. on 23-3-1982.

CONCLUSIONS AND RECOMMENDATIONS :

The reason for these communal and religious disturbances was that it was a failure on the part of the State Government which failed to take necessary steps in time to prevent these troubles spreading to other areas. The State Government has also their Investigation Bureau and must have known the plans of the R.S.S. and other anti-soial activities which caused such awful situation in the State. I feel that the root cause of these

troubles is the R.S.S. who are numbering about 5000 in Kanyakumari District alone, giving a para-military training and maintaining a regular force of young Hindus to fight against the people of other religions.

I am also of the opinion that the police has failed to take necessary steps to protect the people and the shootings, which have taken place, could have been avoided but rather the police helped the trouble makers. There was no law and order in the area as the Police and the District Administrators like R.D.O., Sub-Collector and the then District Collectnr failed to take the necessary steps in time.

All the leading newspapers in this area were giving wrong information to the people but the reality was something else. Therefore, I felt that the C.B.I. should be asked to find out in detail of all that has taken place in this area. I appeal very strongly to safeguard the secularism and the democracy of our country and as a remedial action, the R.S.S. should be banned completely forthwith.

The Panchayat sirens were used often to collect the R.S.S. volunteers for mob attack. I could also find the R.S.S. infiltration among the Government officials and Policemen. The unprovoked shootings by the Policemen are a sign of their leniency towards R.S.S. Anybody could find that it was all directed against the minority, killing only Christians, numbering 11, wounding about 2 dozen people and destroying their property worth about Rs. 70 lakhs whereas the loss incurred by the Caste-Hindu communities could only be of Rs. 2 lakhs while the loss of the Muslims of about Rs. 5 lakhs. The shootings at Kovalam were made by a man, named Samy, who is still not arrested and not even known whether he possesses a licence. This proves that the police is not taking proper steps and siding with the R.S.S. people.

Certain government high officials, mainly the Sub-Collector of Thakkalai, R.D.O. and the Police Officials may be transferred immediately to improve the situation prevailing there. It is also regrettable to note the utterance of the Minister for Hindu Religious and Charitable Endowments (Govt. of Tamilnadu) in the State which has prompted the R.S.S. to take the upper hand and also the wilful negligence on the part of the Police. The police protection was given mainly to the R.S.S. concerns, though certain police bandobust was given to the fisherman's villages after the devastation had taken place.

The Hindu conventions and their 20 Point Programmes for Hindu Revival can be seen in the "VIDUTHALAI", a Tamil daily newspaper on 19th March, 1982. The various Hindu Revival Organisations are all the work of the R.S.S. to poison the minds of the people, especially the God fearing Hindu community.

Here, I must insist that the Organisation called the "BHUMI PADU-KAPPU SANGAM", which is another main organ of the R.S.S., imparting regular para-military training with Police Uniforms, was responsible for the destruction in the areas.

Therefore, this type of militant organisation and R.S.S. must be banned immediately by the Government.

It may be also noted that the Posts and Telegraphs Department have refused to book telegrams. The people, who are cut-off, are starving for about 2 to 3 weeks without proper supply of food and drinking water. The means of communications and transport facilities, which were cut-off by the R.S.S., are still being not restored.

All the activities of the R.S.S. and its militant youngmen, who are organising their Cycle-journey to the State Headquarters, must be stopped forthwith.

I appeal that immediate relief should be given to these unfortunate people by the State Government and by the Central Government. Thousands of these people have lost their houses and all their properties and, hence, this should be considered as an emergency need to the affected people. This help must be channelised through a Commission of all the three major religious groups and drastic action must be taken against those erring officials and Policemen as a precautionary measure for future.

APPENDIX XII

(*Ref.* Chapter III, para 3.87)

STUDY OF BIHARI-SIKH COMMUNAL DISTURBANCES AT NAUGACHIA IN BIHAR ON 25 APRIL, 1981

A Factual and Socio-Psychological Study

for

The Minorities Commission of India
Government of India
New Delhi

Study Conducted and Submitted by
P. N. Duda

Summary of Findings & Recommendations

Findings

1. The report of the Spokesman Weekly (Annexures 2 and 3) is incorrect in all particulars except that the trucks were burnt. The suggestion that disrespect was shown to the photos of Sikh Gurus, or that their other religious symbols were disrespected, is false and incorrect.

(2.11.1 to 5)

2. The students in general, and students of Bihar in particular, under twin pressures of personal frustrations of unemployment and bleak future, on the one hand and the attempts by field politicians to utilise them politically for agitational or electioneering work, on the other, has made them socially delinquent to some extent.

(3.4.1 to 6)

3. The Indian body-politic is, at root level, divided in small in-groups founded on language or one of its dialects, caste, sub-caste, tribe, which forms the real and effective social unit of thought and frame of reference.

(3.5.1 to 6)

4. After India's Independence, disintegrative forces have become more felt, and most of the political decisions are taken within this reference frame.

(*ibid*)

5. This emphasis on small group identities has given rise to a minorities complex which results in members seeking their good at the cost of nation and in disregard to national interests.

(*ibid*)

Recommendations

1. For deterrent reasons, the Editor, Printer, and Publisher should be prosecuted under Sections 153 and 153-A of the IPC.

(4.7)

2. They should also be referred to the Press Council of India for breaches in professional standards of journalism by publishing unverified news and reports which was fraught with danger to peace and class harmony.

(4.7)

3. Government of Bihar be called upon to expedite the case of arson against the students to restore public confidence in administration.

(4.7)

4. Attempts should be made to disassociate students from field politics by 1. reorganising the educational system by introducing four semesters a year which will keep them occupied with studies and 2. by coordinating the outlet-inlet ratio of educated youth and job openings. Post-Higher Secondary Education should be governmentally planned keeping in view of projected job openings.

(4.10.1 and 2)

5. The present system of parliamentary executive form of government should be replaced by a nationally elected head of the government who will not be a member of the legislature and not responsible to them except on a charge of impeachment for malfeasance and disregard of law.

(4.11)

6. The parliamentary executive system may not work successfully and usefully and may be counter-productive of progress in a traditional and caste-dominated society. The system will handicap the chief executive to bring about changes which may be necessary but unacceptable to obscurantists. The Chief Executive will find himself pushed to protect corrupt segment under political necessity germane to the present system.

(4.11.1 to 6)

1. *Introduction*

1.1 A letter was addressed by the Convenor, Sikh Minorities Rights Safeguards Committee, Amritsar, from their administrative office at New Delhi, on 23 May, 1981, to the Secretary, Minority Commission. The letter enclosed two cuttings from the Spokesman Weekly, a Delhi based journal. The Chairman of the aforesaid Committee (hereinafter referred to as SMRSC) is Sardar Hukam Singh, formerly the Speaker, Lok Sabha. The founder of the Spokesman Weekly also, as was revealed, is the same person. Copies of the letter and the cuttings are annexed to this report as Annexures 1, 2 and 3.

1.2 Pursuant to administrative decision to get the facts alleged in the report investigated, I was commissioned to make a study of the alleged facts, and what is more, make an in-depth study of the causative factors which lead to such and similar incidents. A copy of the letter of Commission is reproduced as Annexure 4.

1.3 A request made to the Commission to supply me with relevant material proved unhelpful because the Commission was not in possession of any material in addition to the two cuttings annexed to this report (Annexure 2 and 3). And that was the total initial groundwork which was available to me.

1.4 Soon after receiving the Commission, I was involved in a road accident which caused a compound fracture of my humerus bone in my right arm. This resulted in a few weeks of hospitalisation and subsequent bed rest for fear of dislocation of bone alignment. As soon as I got better and resumed my moblility, I got touch with Bihar Government who advised me against a visit to the State in view of the then civil staff strike They feared they may not be able to give me the necessary cooperation and provide me the information which I may require. Ultimately, I visited the State from 4th to 10 April, 1982.

1.5 I visited Patna, Naugachia, Kursella, Bhagalpur and Madadpur, between 4 April 1982 to 10 April, 1982. At Patna, I called on the Chief Secretary, the Home Secretary, the Inspector General of Police, the Deputy Inspector General of Police and the Protocol Officer. Apart from the officials, I also interviewed a large section of people including University teachers, students, lawyers, judges, persons involved in transport trade, the editors of the Searchlight and the Indian Nation—the two English language papers from Patna, a large section of drivers, in particular Sikhs; additionally I inspected the High Court records relating to the matter under study when bail was sought by the driver and the students.

1.6 From Patna, I proceeded to Naugachia where the occurrence sparked off. I interviewed the College Principal of G. B. College, and eight members of his staff who were witnesses to the incident at one or the other stage. I also interviewed a large number of students in the College; persons in transport trade or allied trade; I interviewed the proprietor of the Petrol Pump on whose land the occurrence took place and who was able to speak with first rate knowledge on the subject. I also visited the Police Office at Naugachia who are investigating the matters and inspected the records as available.

1.7 From Naugachia, I went to Kursella and Madadpur, the two neighbouring places to which the troubles travelled and where too some buses were burnt. I interviewed some local people who had witnessed the scenes. But at neither of these two places reside any officials who could be contacted.

1.8 At Naugachia Police Station, I was informed that the cases are pending in court at Bhagalpur and the dealing S.I. too was away at that place. I moved to Bhagalpur and inspected the police record for such information as was not available from Naugachia, also inspected the court record, met the prosecution and the defence lawyers. Most of the accused were not available and those who could be contacted were not very helpful for the very understandable reason of the matter being subjudice and their consequent reluctance of giving out a version which may conflict with anything they might ultimately have to say in lawyer-managed defence.

1.9 On return to Patna, I again contacted the Home Secretary to seek some clarifications.

1.10 Except for officials, most of the persons I contacted desired their identities not to be revealed, for very understandable reasons. In Delhi, I contacted Sardar Hukam Singh and Dr. R. S. Narula both of whom are very respectable individuals in Indian body politic. I had long and interesting discussions with them and their team. I have unfortunately not found myself in agreement with views expressed by them, or sympathise with the fears they seem to exhibit so far as the future of their community is concerned. But their zeal and earnestness for the good of their community was deeply and transparently sincere. I must put on record my deep sense of gratitude for their cooperation and shirt-sleeve dialogue which provided me an opportunity of stealing a peep into what I have ater in the body of this report termed as "minority complex".

1.11 I must mention a handicap I had to encounter. The Minorities Commission set-up under a Government Notification (No. II-16012/2/77 dated 12 January, 1978) with a long bill of obligations, most of which are in the nature of fact finding or making investigations or acting as watchdogs for minorities, have no legal rights of calling for information. They have to depend on goodwill and cooperation of the officials who may withhold information for just or unjust reasons. Apart from that, they have no right of asking for information from the public in general. A fortiori I, being only a mandatee of the Commission, could not gather any information as of right. I was accordingly checkreined in making my inquiry as any voluntary goodwill non-official body would be, but in spite of the handicap, I did receive reasonable cooperation and help I sought.

1.12 I would as an aside suggest that the government may consider conferment of powers on the Commission as are provided under the Commission of Inquiries Act. If, however, for any administrative reasons, it is considered inexpedient to bring into existence an independent body who may abuse their power of an open mandate to create their own briefs, I would suggest that in investigations, which may be undertaken with the approval of the government either by a member of the Commission or a person who receives approval of the government, powers similar to the powers under the Commission of Inquiries Act may be conferred on him. My experience has revealed that for this handicap, the work of investigation may not only become diffiucult but superficial in cases which call for an indepth fact finding.

1.13 I must put on record my deep sense of appreciation and obligation to the various officials of the Bihar Government for finding time to meet me and providing accommodation to me in government circuit houses and dak bungalows at rates payable by officials.

2. *The Incident*

2.1 As a result of my meeting various officials and non-officials at Patna; inspection of court records at High Court in bail matters arising out of this incident; meeting large number of people at Naugachia including the owner of the petrol pump who witnessed the scene; perusal of the police record; meeting the police officials the persons who had witnessed the scene; interviewing the Principal and teachers of G. B. College, Naugachia, whose students were involved in the incident; meeting people at Kursella and Madadpur; the following facts have come to my knowledge.

2.2 At Naugachia, district Bhagalpur, Bihar, there is an Arts & Science College known as G. B. Degree College. It has a few thousand students on roll and works in shifts to make the maximum use of its limited roofed accommodation. It is the only college within 20 Kms. of its radius. The

college is situated quarter of a mile inside the Grand Trunk Road, three quarters of a mile from Naugachia, a Bus stop on nearer side in Patna. The area to which it caters is poor; even by poor standard of Bihar. There is only one train which passes through Naugachia to reach there in good time to attend the morning shift of the College. But as everywhere, more particularly in Eastern U.P. and Bihar trains, local trains rarely run in time. And apart from that, the nearest station on either side can cater to just a few students, assuming the trains running in time. The college being on highway with a lot of public carrier movement on it, it appears that students seek and secure free lifts to reach the college. Lift sought is almost never refused. While I was on way to Naugachia, I saw, as it were, a human ant-hill in motion. On closer scrutiny, I discovered that it was a petrol tanker on which lift seekers had perched themselves on each conceivable portion of its body. I marvelled at the caution and adroitness of the man at its steering wheel who could keep the vehicle moving with so much of human load attached to it by the least possible body contact with it. While returning from Patna, the compartment, in which I was travelling, was literally mobbed by crowd and filled to standing capacity. I had to share my upper berth (to which I escaped to avoid the stampede) with four others. On reporting the matter to railway staff, I was told that they are helpless. For reasons to which I will refer later in this report, I think that hitch-hiking—if that can be the word for enforced lifts—and tiketless rail travel has gained some legitimacy in some parts of the country, Bihar and Eastern U.P. taking the sheild. I am not endorsing the system, I am only stating an accepted fact.

2.3 In the background of this social norm—desirability of this norm notwithstanding—the students look upon themselves as pampered beneficiaries of this privilege. On 25 April 1981, in early hours of morning, a group of students boarded a public carrier whose driver, Sukhdev Singh, was reluctant to oblige. Three of the students sat in front seats and rest of them perched themselves on the body of the truck. When they reached the destination near the by-road that leads to the college by a short-cut, they asked the driver to stop. The driver slowed down the truck and the boys who were sitting on the body jumped down. He is reported to have prevented the three boys sharing his berth on the truck. The truck sped up without the boys on the driver-seat getting down. The boys who had come off the truck felt intrigued by the non-dismounting of their mates and started crying and running after the vehicle. In the meantime, one Ramesh Singh, a student on the driver's seat, fell down from the driver's seat with dagger injuries which proved fatal. Another student, similarly occupying the driver's seat, also fell down with dagger injuries which did not prove fatal. When this dropping of students from the truck was viewed by passers by and students, they rushed after the truck and some did succeed

to mount it. The truck sped up but was overpowered at Kursella and burnt in mob fury. The driver was arrested.

2.4 This incident resulted in a milling confusion around the site of occurrence. The students in G.B. College left classes and rushed to the spot. People gathered. The Principal accompanied by eight members of his staff rushed to the bus stop. In the stampede that resulted, the traffic was jammed. The students asked all the passing trucks to line up. Except four drivers, all the drivers and their attendents escaped from the scene. The injured students were rushed to the hospital but their condition and the blood which was conspicuously flowing from their wounds triggered a rudderless fury. Some students put a truck on fire. Since they were lined up close to each other, the fire spread. The number of trucks that got involved in this numbered around seven to eight. The police, which was rushed to the place of occurrence from Katyar, appeared on the scene within an hour and a half and the situation came under some uneasy control. The buses were asked to move. When they moved, further groups of irate students again waylaid them and burnt a few trucks. The entire occurrence at Naugachia, Kursella, and Madadpur lasted for around two hours and a half.

2.5 The fall out of the occurrence was arrest of the errant truck driver, *viz*. Sukhdev Singh and his assistant, Hita Singh. An FIR number 97 of date was registered against them under Section 302, 324 read with 34 of the Indian Penal Code. Statements of three students who suffered injuries were recorded in hospital. The names of these students were 1. Methlesh Kumar Misra, 2. Saligram Mandal, and 3. Jogindra Jain. Ramesh Singh died. The other injured was badly mauled by wounds.

2.6 On the day following, *viz*., 26 April 1981, another FIR was registered under number 98 under sections 147, 323, 379, 436 and 307 against unidentified persons. Later, on identification of the Principal and teachers of G. B. College, the following 11 students were arrested and named in police record :—

1. Raj Kumar Jha
2. Laxman Jadav
3. Naresh Rai
4. Birhu Dev Thakur
5. Vinod Kumar Chaurasia
6. Sanjay Kumar
7. N. L. Shah
8. Mahindra Mandal
9. Bijli Chaudhry
10. Gaira Lal Thakur.
11. Gangli Singh.

2.7 The Principal named three other students, *viz.*, Pramod Yadav, Ashok Kumar Singh and Shaligram Rai, who according to him had participated in the criminal melee. These three students were absconding respectively till 1 February 1982, 21 February 1982 and the third is still absconding.

2.8 The present position according to police record is that all the persons on either front, the truck driver who reportedly killed one student and injured another and his assistant, and the errant students who were arrested, are on bail. The truck driver and his associate are facing trial and have been committed to the Court of Sessions at Bhagalpur. The case against students is still under investigation and no charge sheet has been filed in court. The officer-in-charge of investigation says that the investigation is complete but the charge sheet is not being filed because of the non-apprehension of the absconding student, *viz.*, Shaligram Rai.

2.9 The court record and applications for bail by the driver and his associate does not reveal even the faintest suggestion that the fury on 25 April 1981 at the places of occurrence was directed against them on grounds of their religion or language. In fact, the whole episode was so unpremeditated and impulsive that all changes of its being directed against a particular group have to be ruled out. The evidence and statements made by witnesses to the occurrence have asserted that the whole thing, like a cloud-burst, was extremely furious but left no hang over. In the evening, the traffic on the highway was resumed and nothing happened on any subsequent day or days as a fall out of the occurrence.

2.10 I made very close inquiries from Sikh transporters, from local people, from the Principal and members of the G. B. College, who significantly and very unlike average teachers, have been responsible not only for identifying the errant students but bringing them to book. All of them suggested that the allegation of Sikhs being chosen for assautl or desecration of the photos of Sikh Gurus is unfounded and mischievous. At Patna, and at all the places of occurrence, no one supported the story of Sikh victimization or disrespect to Sikh Gurus. It is, however, true that except for one public carrier involved in arson, all were manned by Sikhs, though all did not belong to them. Some of them were owned by non-Sikhs and were driven by Sikh employee drivers. While at Naugachia, I took my seat near the petrol pump where the occurrence took place and for around 45 minutes counted all the passing by public carriers. Out of seventy-nine that passed both ways during that interval, all but five were driven by Sikhs. In Bihar particularly, transport business is owned and manned by Sikhs almost as a monopoly. It is inevitable, therefore, that any trouble, justified or otherwise, which may arise involving this segment

of business will seemingly affect this community. But it will be hard on social thinking to conclude that it was directed against them *qua* their religion or language.

2.11 On incident-facts, my findings are :

2.11.1 That the occurrence was short-lived, impulsive, organic, an unpremeditated outburst of crowd fury of students directed against the members of the class at whose hands some of them had suffered.

2.11.2 That there was not a trace of communal or religious or linguistic background of the occurrence.

2.11.3 No disrespect was shown to the Sikh Gurus or their photographs or the Sikh religious symbols.

2.11.4 That the occurrence was a few hours long on 25 April 1981 and nothing happened at the highway again as a sequel to this incident.

2.11.5 That dates of occurrence, the details and suggestions made in the issue of 18 May 1981 of the Spokesman Weekly are, to say the least, unfortunate and irresponsible, apart from being incorrect.

3. *Analysis*

3.1 The field inquiry at Patna and other places I visited revealed that the incident, though extremely unfortunate, did not attract much notice. Against a UNI date-line of 25 April, a one column news appeared on second page of Searchlight and the Indian Nation, two English medium Patna papers which is reproduced below :

> 15 TRUCKS SET ABLAZE
>
> Katihar : April 25 (UNI) At least 15 trucks were set ablaze by an irate mob of college students between Naugachia and Kursella, about 50 kms. from here.
>
> The incident was stated to be a sequel to the death of a student and injuries to 15 who were allegedly pushed down from a truck when they forcibly boarded the vehicle. The injured students are admitted to hospital here.

On contacting the Home Secretary, he was at pains to explain that incidents like this only command topical attention for a few days and lost to routine and filed later. Other persons—mostly Sikhs who are in transport business—said that there was nothing communal in the incident. One of them who wants that his identity may not be revealed said, to quote

him in his own words : *"Yea Amarsarwalla hum ko roti nehai khan denge. Woh ek hava thi jo usi wakht khatam ho gai. Bihar ke ladke makhiyon ka chata hain. Isko chadna nehi chayya tha".* (These people from Amritsar will not permit us to make a living. The episode was like a short lived storm which abated soon thereafter. The student community of Bihar is like a honey comb which should not have been touched). At Patna High Court Bar Association, I was told that the three arrests were kept pending under political pressures for giving protection to students, and the so-called absconding students were seen openly moving about, one of them living with a ruling party MLA. It was also suggested that a Minister of State was interested in giving protection to students and a word was passed to keep the case in abeyance. When I confronted the police officials as to why the cases against students were not sent for trial, the only reply I got was that they were awaiting the arrest of the third absconder. When asked as to what prevented them from sending up the matter for trial after declaring the fugitive as an absconder, I got no verbal reply but a telling smile which conveyed more than what words could.

3.2 On the other side of the medal, I met the leaders of the SMRSC headed by a person of the stature of Sardar Hukam Singh and Dr. R. S. Narula whose reputation and rectitude stand in no need to mention. I was at pains to explain to them the false colour given to the incident by the Spokesman Weekly which is a journal devoted to the protection of rights of the Sikh community. I explained to them at length the undesirability of spreading canards which are fraught with dangers of spreading communal violence. Sardar Hukam Singh took pains to explain the genesis of the Sikh discontent in terms of governmental policy of destroying the Punjabi language which was the mainspring of Sikh solidarity. He tried to suggest that majority of the people of Delhi were Punjabi speaking and this language, therefore, should have been given the status of an alternate official language in Delhi. I suggested to him that I would be exceeding my brief if I get involved into such questions which are political. I told him that my mandate was to ascertain if the story revealed by the Spokesman Weekly in its issue of 18 May 1981 was factually correct, and if correct, what are the likely psychosocial causes of this and such confrontations. I represented to him that if the community of which he happens to be a leader wanted to assert their rights, whatever they be, they should resort to methods which are legitimate and overtly directed at their achievement. Nothing would justify to invent a false story to be used as a spark plug to induce the community into unrest or scare for attainment of objects ulterior to the improvised *casus belli*.

3.3 In the background of my findings that the incidents of 25 April 1981 at Naugachia, Kursella, and Madadpur, though unfortunate, were not even remotely communal or directed against a linguistic or religious

group, I have been drawn to the helpless conclusion that apart from the other social dry-rot that might have set in our body politic—which might call for a study deeper and more comprehensive than the present one—there are two glaring conclusion which flow from the present study; *viz.*

1. There exists an almost pathological lack of discipline amongst the Indian youth, and in particular, the segment receiving formal education, in which Bihar stands out a little glaringly; and

2. There is an excessive in-group identification by various "communities" resulting in lack of a national outlook; and still worse, giving rise to a society broken up in segments on the basis of either language, caste, religion, or localism, and lacking in a sense of integrative national personality.

As I have been commissioned to report on the psychosocial causes of irritations like the one under study, I will deal with the phenomena detailed above.

3.4 The problem of youth in India in general and Bihar in particular is at once pathetic and explosive. In my assessment, there are twin factors responsible for the youth unrest and discontent which occasionally finds expression in blow offs which objectively the immediate cause would not justify.

3.4.1 The first is traceable to political history. The Indian National Movement before 1920 mostly revolved round the upper class, urban intensive, and moderate policies-based Congress. Till as late as 1917, the Indian National Movement to a large extent was involved and seeking Indian representation in government at various levels. The civil service agitation spearheaded by S. N. Banerji arose out of discontent arising from maltreatment of Indian ICS personnel in distinction to the European segment. From the turn of the present century, there was a sort of "gold rush" for seeking English education and the youth had one point ambition of securing a government job. There was, however, an about-turn in political life of India with the emergence of Gandhi on the scene. Till his advent, the Indian politics operated on two independent platforms : one the reformist-constitutional; another, underground anarchist. Both of them were more or less exclusive and esoteric with not much of mass involvement. And then with Gandhi's appearing on the scene, the entire *leit motiv* of political operation changed. The youth was exhorted to boycott colleges and schools. They were involved in national struggle. We had some of the best and most eminent freedom fighters who dropped out from schools and colleges and joined the national movement. A different grund norm evolved: students' involvement in agitational politics.

With Gandhi's charisma over the people, his words and views commanded for almost a religious reaction. A look at Hind Swaraj and a compilation. To Students, which contains writings and speeches for or about students, will bring out that students' participation was sought and generation of a sense of discontent against the educational system prevailing under the Raj was attempted. The school and college going youth was the best stock-in-trade for any agitational purpose : they were young, ambitious, thirsty for a social placement and recognition, assertive, and by and large not bogged by economic problems—which in the context of Indian patriarchal system is taken care of by the family. If we turn the pages of history from the days of the Non-Cooperation Movement to 1946, the story of students' involvement in all convulsive political movements is phenomenal. The politicians in operation always encouraged and protected such of the student segments who could assert a sort of leadership potential amongst the class. As the politics from 1920 to 1946 was largely agitational and not in the nature of a constitutional opposition, it suited the politicians to generate a psyche of discontent and contempt against the establishment. I need to explain what I mean by politics of "constitutional opposition" against "agitational" politics. By the first, I mean drawing up programmes and policies on the assumption that by a change at the hustings, the same people may have to take over the reins of running the government in which case promises they make, or the paths which they show, may embarass them if based on political bluffs or extended as baits and nets. Three generations of students were socialised into belief that education was bogus, that there was no future for them, that their main purpose was to fight the government and be aides to political agitators.

3.4.2 With the closing of the Second World War, empires started dissolving and melting. India was possibly one of the first to become independent. Though there was a long and persistent background of political struggle for it, the transfer of power from the British to India was politically non-revolutionary though, to considerable sense of shame for the people of the Indian sub-continent, it was accompanied by killing and maiming and rapes and all other acts of necrophilia which far exceed a big revolution or a long drawn continental war. But that is another chapter. The minds of the people were fed on Gandhian ideals of village economy, eschewing western education, decentralised government in which the small peoples' panchayats would play an effective role. After Independence, Gandhi held for sometime but was given a decorous political niche and rendered politically ineffective. When the government came in the hands of Indian leadership, they moved in the prestigious North and South Blocks and ran the government as the erstwhile Imperial rulers had done and the pattern which they introduced, continued. The Indian National Congress, though continuing to be the most dominant single party

with a tradition and background which made it secure against any effective onslaughts on it, ceased to be a canopy party covering under its shade various ideologies which could in pre-Independent period be relegated in the background against the foreground—aim of gaining independence. The opposition parties took birth. They, however, suffered from the same handicap from which the Congress had suffered during independence struggle period, they had no hope of walking into the seat of power and could, therefore, make promises they knew they could not keep. The polity and mass psyche worked in continuum. The political weaponary in operation in India continued to be destructive, irresponsible, and exploitative of the youth. While every political party maintained a youth wing, variously named after its party banner, most of the establishment leaders exhorted the youth and students to eschew politics and devote themselves to studies and building career.

3.4.3 In the background of Indian economy being largely agricultural, there were till long after Independence very few avenues for educated youth except to get into service under the State. Under the system of education in India, there is no coordination between the outpouring of educated youth from various colleges and institutes and the job inlets. The registration record in various employment exchanges reveal that from 1961 to the end of 1980, the people on the live registers awaiting employment moved from 1.8 million to 14.7 million. In the corresponding period, the number of matriculates, undergraduates, and graduates and above varied respectively from 0.46, 0.07 and 0.05 to 3.9, 1.8 and 1.7 million. I was told that the persons on live registers of employment exchanges of Bihar State are the second highest in the country. Of late, some lucrative openings have come about for educated segment but that requires a specialised set of qualification which apart from being expensive also calls for an upper class urban cultural background. The net result of this background is that the youth from rural and township background find themselves discriminated and see themselves social backwaters. This possibly gives rise to a group action on their part to assertain a way that will make them realise their identity. Most of the blow offs are in a way compensatory and an attempt to seek their identities.

3.4.4 At Patna, I was told that it is a common practice for field politicians to keep a contingent of assertive students under their patronage, and in some cases, in pay. In India, unfortunately, we have not evolved the system of nursing constituencies. We have, on the other hand, developed what for a better term may be called the "carnival" system of electioneering. For around a month, the constituencies are flooded with posters and festoons and public address systems in operations, workers and notables in social and political spectrum visiting the scene till the day of dusting and leave the place as deserted as it ever was. For the intensity

of the show, the students are an enviable staple and it has become a part of political ethos of the country—on each side of the battle front—to keep this segment humoured.

3.4.5 At party level, the nominations for candidature on party ticket depends largely on local influence which a seeker of nomination may be able to command. Since the operational methods have unfortunately come to be dependent on youth workers to a large extent, the politicians find themselves pushed to the helpless corner of protecting them even in their aberrant behaviour. For reasons which call for a separate study, the State of Bihar inspite of its extremely rich gifts from nature, and an industrial background which many other states may not be able to boast of continues to be one of the poorest states in the country. I was told that in the Legislative Assembly, there are a sizeable number of members who are either convicts or cases are pending against them. Their only legitimacy to the political office being the potential of securing votes either on caste or religion or youth-power base. The targedy of Indian politics in practice is that while on the one hand, ceremonially but not sincerely, the leadership in the country is exhorting the students to keep off from politics, they not only encourage but work for their association and induction in politics. This in conjunction with the frustrations in life, and uncertainty about their future, and possibly a feeling that political prize awaits political operators (character rectitude or ideological drive being not only insignificant but a negative quality), the ambitious segment, particularly from the rural and township student community, look upon politics as possible careers. Since they have to operate through the frustrated lot of futureless mass of students, they find it easy to command a sort of normless anomie group behaviour, which is an excellent staple for politics in action.

3.4.6 The youth power, particularly of student variety, has developed a sort of normless aggressive behaviour pattern, partly because they have inherited a three generations-old ethos of political involvement, partly because of a conscious or still worse unconscious realisation that their future is uncertain and bleak and they may be heading to a life of frustration and unemployment and partly because the politicians in field find this segment as convenient cat's paw to do the dirty or not so dirty work for them. Their economic backwardness directs this feeling of discontent towards acts of rudderless hooliganism like ticketless travelling, seeking free lifts, eating from wayside eating joints and refusing to pay, making cat calls at girls, and such and similar acts. The segment of frustrated youth coming from urban middle and upper middle class show a different pattern of aberrant behaviour : hold ups, kidnapping for ransom, bank robberies, confidence tricks. The rural drop out who continues his malevolence in post adolescent period of his life may turn to be a village hooligan or join a gang of dacoits. The corresponding urban ones may take to drug

trafficking, forgeries, organised white-collar crimes and the like. But the causative factors are identical : frustrations in life and their exploitation by politicians for their small and big purposes.

3.5 Regarding the second phenomenon, viz. the disintegrated body politic, it is unfortunate but true that India seems to be an amorphous collectanea of various congruities of religion, caste, language, tribe, and subject to a deep emotional and social coerciveness from it. During our years of involvement in freedom struggle, we lived with a sense of negative unity founded on securing liberation from colonial yoke. It is a well known phenomenon in human anthropology that a people who may be split by cultural or social divergence always experience a sense of unity if they have to fight a common crisis. We experience it when we are caught in train mishaps or plane crashes or while in a boat facing a storm in sea. In these cases, the unity of purpose is short-lived because of the short life of the crisis. Various wars which have been fought in the world after 1913 can show how people so divergent and different from each other fought as one man, even with a short-lived emotional bondage, when they felt they were fighting a common enemy. This sense of unity was exhibited in India during the freedom struggle (the phenomenon of Muslim claim for division excepted), the war with China, wars with Pakistan. But as soon as the crises were over, the differences surfaced. India, as must be accepted, is a multilingual, multi-racial, multi-religious, and multi-caste society. From the most primordial times till the dawn of freedom, India was ruled, as all countries in history, successively by tribal chiefs, then feudal lords, then ruling chiefs, till it came under some imperial unity, be it under Ashoka or Moghals, or the British. It was the usual phenomenon which operated throughout the world. Unfortunately during the period of history when imperial or religious state broke giving way to nation states, India was yoked to foreign imperial rule subjected to schematic destruction of their political nerves. I have a hunch, which is not as poetic it may sound, that if the British had not administratively separated Burma from India, and run its Government from the same viceregal palace, the Burmese and Indians would have forged a united front to fight against the British. That is what is called meeting on a crisis platform. To be a nation calls for a more positive non-crises perennial attitude of a psychic cause of unity. It is an emotive of a space-time, outcome perimeter in which sharing of a common geography and a common shared-history interplay. The West discovered the 'unity in diversity' with us, and we were engaged in a negative political task of overthrowing colonial regime, we accepted it with advantage. The dominant mores in India till the start of national movement sometime in the later portion of the last century were regal loyalty, caste affiliations, religion, common worship of tribal gods. The periods of imperial unity

were periods of an imposed political unity by an external agent—the emperor, but that did not count for a psychological base of an integrated people.

3.5.1 The British rulers for their own convenience divided the country into polyglot administrative units. Conformable to the strategy of agitational politics to which I have referred to in para 3.4.1 supra, the Congress criticised the policy of such division and asserted that aministrative units should be based on linguistic principles. Ironically, a political opinion was generated that this "arbitrary division" was directed at the infamous British policy of "divide and rule". With this backlog of their own professions of linguistic states and the theory that multilingual states being roadblocks to realisation of national identity, things become ranged and Nehru hardly a year after India's Independence found himself steering the Linguistic Provinces Committee. Disillusioned and shaken by the separatist trends shown by the people who canvassed their views before the Committee of which the other members were Patel and Sitaramaya, in remorse and reflection characteristic of him, he lamented :

> "The inquiry has been in some ways an eye opener to us. The work of 60 years of Indian National Congress was standing before us, face to face with centuries-old narrow loyalties, petty jealousies, and ignorant prejudices engaged in mortal conflict and we are simply horrified to see how thin was the ice on which we were skating. Some of the ablest men came before us and stated that language in this country represented culture, race, history, and finally a sub-nation".

Quoted in "The Chellange to Indian Nationalism" : Harrison : Foreign Affairs. 3 April 1956.

Nehru realised the danger of reorganising states on linguistic basis, but when a Telegu speaking political zealot launched on an indefinite fast for creation of a Telegu speaking state by claiming division of the erstwhile State of Madras, and died of the fast, Nehru had to give in. The result was a spate of linguistic states : division of Bombay, division of the Punjab, and other linguistic claims. The worse fall out of the linguistic states was the anti-Hindi feeling in non-Hindi speaking states, in particular in regions who speak languages of the Dravadian family and Bengali. "India", feared Suniti Kumar Chatterji, one of the members of the Official Language Committee, "stands the risk of being split up into a number of totalitarian small nationalities". The old objective of national freedom having been achieved on the adhoc platform of unity, the divergence which

lay dormant appeared on surface. The people got more and more conscious of the common denominator of language in disregard to other imperative of forging a platform for an integrative national identity.

3.5.2 The non-Hindi speaking states in zeal decided to use the regional language as the official language which proved very divisive. As a reaction to Hindi being introduced as an alternate language in courts of records in states, there was a counter move from South to use their regional languages for identical purposes. This regional language introduction made communication between professionals and elites more difficult. The inter-regional people in various states became greater strangers than they were, before or after Independence.

3.5.3 Since India adopted the principle of universal suffrage under which the people would send their chosen representatives to elect the personnel of the government at highest level, the politicians in operation found it easy to capture votes by fostering narrow and small group identities. All the parties—be it establishment or opposition—selected their candidates on this base. They drew elaborate charts and collected data regarding caste and sub-caste composition of the constituencies, and fielded candidates who would be accepted to the electorate on this base. We have to span through the newspapers during election times and read the speeches of candidates or their canvassers to see how by politics in practice, instead of trying to remove differences, inflate them.

3.5.4 The stock we inherited at the time of Independence was a body politic which by a flat of an imperial legislation was told that it has become sovereign and can determine its own fate of polity. The basic unit of this body politic was not an integrated nation but a vast group of primordial units. Commenting on the situation, Clifford Geertz in his contribution to an anthology on old Societies and New States has offered the following comments :

> "A more exact phrasing of the nature of the problem involved here is that, considered as societies, the new states are abnormally susceptible to serious dis-affection based on primordial attachment. By primordial attachment is meant one that stems from the "givens" —or more precisely, as culture is inevitably involved in such matters, the assumed "givens"—of social existence immediate contiguity and kin connexion mainly, but beyond them, the givenness that stems from being born into a particular religious community, speaking a particular language, or even a dialect of a particular language, and following a particular social practice. These congruities of blood, speech, custom, and so on are seen to have

ineffable, and at times overpowering, coerciveness in and of themselves. One is bound to one's kinsmen, one's neighbour, one's fellow believer, ipso facto; as the result of not merely of personal affection, practical necessity, or incurred obligations, but in great part by virtue of some unaccountable absolute import attributed to the very tie itself".

3.5.5 This "ineffable tie" which binds a traditional society in pockets of caste or sub-caste and tribe is not an appropriate background for a universal-suffrage-based representative government. Unfortunately all through the period from 1952 to the last general elections and subsequent assembly elections, caste and other narrow in-group loyalties played a very definitive role. In view of the voters living predominantly in rural areas, the village and township based caste and tribe factors was freely exploited. These successive formations of small caste loyalties and prejudices have resulted in more intense division of people in small in-groups. I think in post-Independence period, the speeches and seminars on the need of national integration notwithstanding, the meaningful and powerful politicians have mostly moved in, and encouraged, their own narrow "tribal" or "caste" identities. Barring very few exceptions, most of the persons in coextensive staff of those who are entitled for it are found to belong to their small in-groups. It is unfortunate that in Independent India, which adopted a Westminster model of representative democracy, has been betrayed by leadership for the narrow purpose of securing their votes by exploiting their traditional small group loyalties.

3.5.6 These divisive factors: language, caste, tribe, sub-caste, which formed the leitmotiv of the Indian body politic has unfortunately been banked upon and exploited by the mass of Indian leadership. It is unfortunate that in India, the politicians have not developed the psychology of coordination on matters of national urgency. I fear that unless a national consensus evolves not to generate feelings of caste or religion, no single party for sheer survival can take the risk of not relying on it.

4. *Conclusions & Recommendations*

4.1 In the background of my findings on the incident under study (2.11) that though some crimes were committed at Naugachia and Kursella and Madadpur on 25 April 1981, which consisted of injuring some students, one of them fatally, and burning of some trucks, in themselves reprehensible acts, were not even remotely "communal", I am drawn to the painful conclusion that the action of the Spokesman Weekly in issuing the write-up on the subject in its issue of 18 May 1981 (Annexure 2 and 3) was

violative of journalistic canons. It is painful that the journal which was founded by a nationally respected person, Sardar Hukum Singh, should stoop to irresponsible yellow journalism of the gutter variety.

4.2 Apart from that, the publication under report is clearly such which could in all likelihood provoke a communal rioting and generation of hatred and tension between the Sikhs and non-Sikhs. This is clearly penal under Sections 153 and 153A of the Indian Penal Code.

4.3 On broadside, I conclude that the youth power in India is sandwiched between their individual crises of haunting fears of unemployment, insecurity, uncertainty of future, and a rudderless life, on the one side; and on the other, their induction into the rough street-corner public life in which they are hooked by socially myopic field politicians. This twin pressure exerted on them by their individual problems and the venal and protectionist encouragement they receive, or can, from a class of politicians, has given rise to a mass student group psyche and behaviour which verges on being delinquent.

4.4 For various historical reasons, and reasons of social structure and stratification characteristic of India—in which the identifiable human groups have no inter-penetrable movement but remain static and defined by bonds of immutable kinship or caste—the cohesive commonness amongst the people as a whole is thin and fragile. Regrettably on account of finding their path to power, the policy makers could not attempt anything drastic to underscore these small group loyalties. As we adopted a system of representative government, the power seeker through hustings, instead of raising the people up to the higher levels of thinking in terms of national identity, stoop to their level of thinking and cater to what Nehru called "narrow loyalties, petty jealousies, and ignorant prejudices". The historical background of a mosaic society bound together by the imperatives of a political unity and a thin cover of what may be called crises unity, without an appropriate mass psychology of a "peacetime national identity", provide a fertile pasture to short-route politicians to enter seats of power and prestige in elected bodies. This "realpolitik" results in each such group becoming more and more conscious of their own narrow interests. With the solitary exception of Parsees, I have yet to see a community who have evolved a process of thought that their group identities have only a club or matrimonial implication but for the rest, stand on a common platform with their compatriots. At governmental level, this divisive tendency was encouraged by reorganising states on linguistic base, worse by basing the whole election and candidature policy on caste or religion base.

4.5 In view of aforesaid, there are three facets of the matter under report : *viz.* 1. the incident as a fact; 2. the causes of youth delinquency; and 3. the causes of the intense small group affiliations. And on top : suggest remedial measures against these.

4.6 I think there are three approaches to the problems listed above. First, constabulary; second, palliative; and third, structural or organic. I may, before I detail my recommendations, explain the scope of each. By constabulary, I mean the measures that can be taken with the help of the coercive arm of the state like penal or prohibitory action. By palliative, I mean such measures which will temporarily and superficially, but not cardinally, relieve the suffering but will be no cure. By structural or organic remedies, I will mean remedies which will reach the root of the cause and will sidetrack the obstructing political roadblocks in the path of bringing about an integrative revolution.

4.7 *Constabulary :* I would suggest that with a view to discourage the irresponsible, mischievous, and inflammatory journalism which produces stuff which can bring sections of the people of India into conflict with each other, action be taken against the Editor, Printer, and Publisher of the Spokesman Weekly under Sections 153 and 153A of the Indian Penal Code. I would further suggest that a report be made to the Press Council of India for proceedings against the aforesaid persons for acting against the canons of journalism. The Bihar Government has already initiated criminal action against the delinquent driver and his assistant who are already committed to the Court of Sessions. Though an FIR has been registered against the aberrant students, who are presently on bail, no challan has been filed against them even though more than a year has lapsed. The pretext that they are awaiting the arrest of the still absconding student smacks implausible because after getting him declared as such, the rest could be proceeded against. I have reliable information from sources who claim anonymity that the absconding has been improvised to bring about an excuse for not bringing the errant boys to book. The orgiastic incident at Naugachia did not generate a feeling of fear in the minority in Bihar, but the subsequent partiality shown to the students has provided staple for suspicion that they are unfavourably discriminated against. I will suggest that the Government of Bihar be called upon to submit the "challan" against errant students and prosecute the matter with earnestness. The other measures which have become platitudes in context like the present one, are tightening the law and order machinery, greater vigil, and the like. But being repeated so often and with a sort of meaningless ritual, no elaborate mention to them is called for.

4.8 *Palliatives :* The constabulary measures being in essence negative and positive, may marginally act as deterrent, of which the chances are less in view of the current political ethos of politicians' endemic tendency

of interfering in administrative matters. There can be a few palliatives about whose lasting efficacy I have my doubts. The Government is already at some, like providing incentives to persons who marry outside caste and the like; the meetings of the National Integration Council; holding seminars and meetings; exhorting people at public meetings and cultural shows; pressing into use the mass media under centrol of the government; encouraging celebration of each other's religious festivals. I have, however, fears that these are only superficial and cosmetic and will not reach the root cause of the malaise. Apart from that, this will have an urban undertone while the people of India live mostly in village or small townships. But in the context of present structure, to keep the movement alive, the government has to resort to such palliatives. I have not ventured to give an exhaustive list of the palliative measures which are in practice or may be pressed into use in future.

4.9 *Structural & Organic :* The two problems listed in this report; the almost ubiquitous near-delinquent behaviour of adolescent and youth section of our body politic and the negative trends against an integrative change. As I have tried to argue in chapter 2 of this report, there are two causative factors for the student delinquency, namely, their personal frustrations and a dark vision of their future. At narrow small-group loyalties level—be it religion, caste, kulk, tribe, sub-caste, as I have tried to argue, the leadership, inspite of their vocal denunciation of it at various levels, by their non-vocal behaviour not only encourage it but lean and plan on its existence. Not unoften they operate to widen the wedge between these groups either to seek their popular credibility, or secure the votes for themselves or their parties. I think that in the event of a structural change in our educational system/constitutional structure, we might forge our way to a system, if not freed from these evils, but yet considerably reduced in intensity.

4.10 *Educational Reforms :* I would suggest creation of an educational system under which students may remain busy throughout. The once-in-one year examination system provides considerable leisure to students. It is of common knowledge that with the help of mercenary sketch-book writers, the annual examination system calls for two to three weeks of moderate preparation for a pass. The rest of the time the students are free for them and in the background which I have tried to state in the body of this report, they provide a fertile hatchery to political operators. To keep them busy throughout, I would suggest introduction of four semesters in a year with reserve marks for class behaviour. This perpetual preparation for the examination will leave little leisure to the students to engage in extra-curricular activities.

4.10.1 Apart from that, I would suggest a change in the present system of turning out degree and certificate holders without having job opportunities for them. As a result of the fight and facilities which the people have to start educational institutions of their choice, there has been a spate of outpouring of educated youth with certificates, and possibly with not much of education. While it would be desirable to allow right to establish minimum education schools to reduce illiteracy, restrictions may be imposed on establishment of certificate and degree securing institutes. Through a central agency that may exist or may be created, there should be brought into existence a coordination between the outflow of job seeking collegiates and the absorption inlets. The subject is too vast to be exhaustively dealt with in this report as a side issue. I would suggest establishment of an education commission to suggest means to bring about harmony between the outflow from colleges and universities and the avenues of their inlets. I would, by way of outline, suggest that a degree like the matriculation or Higher Secondary should be considered only as a qualifying course for pursuing a professional or academic course. The number of such professional or academic institutes should be determined in conformity to the job-demand projection that may be determined by planners and other sectors.

4.10.2 I would feel additionally tempted to make laws banning students on rolls of colleges or schools to join political parties or youth wings of political parties, or make it an election offence to secure help of student community. But, I fear, that might be a bit too Utopian even by standards of Thomas Moore. No government dare to initiate such a step both for self-interest, and the political capital that the opposition will make out of it. Aside, unless the outlook on public life sees a change, step like this may bring about, to use a metaphor from public finance, a black economy in student power when economic causes for inflation are not attempted to be cured but ad-hoc restrictions and controls are imposed.

4.11 *Disintegrative Trends and Constitution Structure Change :* I have observed with considerable concern that in the politics as practiced in India as a whole, which is predominantly rural, the entry to legislatures is seldom on the foundation of ideology but on caste or other small in-group affiliation. In distribution of party tickets, the party bosses are more like the shephard of the legend who, on being asked whether he controlled the cow's movement in pasture, remarked : "I take my stick, follow the cow wherever she goes, occasionally give her a mild stroke to cater to my vanity, and boast that I am driving the cow". I understand there are regular cells in political parties or think banks who assess the "influence potential" of a candidate which considerably influences the party nomination for seats in legislatures. It is this local influence-potential that is

responsible for induction of convicts or undertrials into legislatures. For a non-political study like the present one, it must be made clear that, public consumption protests notwithstanding, the politics in practice is a pursuit to capture political power by methods permitted by law. Except for prohibitions under law, it has no compunctions. Politics is goal-oriented in which conscience has no role to play. In the game of politics, no rival desires to be beaten by the other, and will not refuse using weapons which will hit below the belt if the other commissions that in use.

4.11.1 Conceding them the aim of capturing political power as a legitimate one, the system of polity we have has very unfortunately given rise to induction of an element in legislative bodies which for very unfortunate reasons, have handicaps of non-exposure to broader views on national identity. The majority of them between themselves have the right of electing the leader who becomes the Chief or the Prime Minister. For sheer survival in office, the head of the government in states or at the Centre has to keep his electors in good humour. The recent happenings in Haryana have shown that personal constituency-affiliation is very important and can overshadow party sponsoring. As the leader of the legislative party can be removed by a non-explained vote of no confidence, the leader has to suffer their views and not unoften their character defects. I have a conviction that the character of the government will reflect not the character of the leader who heads the government, but the character of the group of legislators on whose continued confidence he depends for continuing to hold his office.

4.11.2 In the background of the aforesaid system, a leader who heads the government, however well intentioned to bring about changes for the good of people, or for destroying the tribal and parochial mores of thinking, will be greatly handicapped if the members on whose continued loyalty he leans for his minute to minute existence in office, will not like his moves. The Westminster model of parliamentary executive, which we adopted under pressures of colonial heritage of emulating our erstwhile master, has worked to an anomalous end-product. Fired by zeal and working in the background of western education, the effective founding fathers of our Constitution did not take into account the pluralist nature of Indian society, except giving their protection under Part III of the Constitution. They also did not take into notice the possible effect of caste and tribe in making choice of legislative representatives. In a monolithic society like the British with one language and a deep sense of being British above everything else—the other differences having melted under pressure of history—the system of parliamentary executive can work. But in a society which is vastly rural and operating on small loyalties and parochial prejudices, both of which are immobile social phenomena—the

leader becomes a slave in their hands. Under the system prevailing at present, the leader can be asked to quit his office for no assignable reason.

4.11.3 This in fact does not happen but always works as a checkrein on his programmes and designs. Just because he wants to continue in office, he will never try to walk on their corns. Result : however earnest and well-intentioned the head of the government may wish to be, he is strait-jacketed by the whims and prejudices of the electors. This background makes it necessary for the leader to give protection to the delinquent or errant party men, in legislatures in particular, and others in general.

4.11.4 If we want to have change from a medieval traditional society to a modern affluent society, it is imperative that the head of the government must be given a free hand on executive side. He should not depend for his existence on confidence he will command from day to day from the legislature, but once elected should hold office for a predetermined term removable only by impeachment for proved misconduct or a judicial verdict of malfeasance. The head of the government should run it with the aid of a Council whom he will nominate, and none of whom should be a legislator.

4.11.5 This system will not be less democratic than the one we have for the following reasons :

1. It will mean greater separation of powers, which is said to be the sine qua non of an ideal democracy.
2. It will put the elected leader to the acid test for his promises and performances and will be responsible not only to his party but the entire opposition.
3. That he will always stand the risk of impeachment which can be initiated even by opposition and he will not have to compromise for accommodating his electors because his continuing in office will not depend on their mercy as in the present system.
4. The legislators not sharing executive power with him will always be chary in allowing structural changes in Constitution which may be directed at either making the office perpetual or extending it unreasonably.
5. Having a comparative free hand in running the government, it will not be necessary for him to give protection to malevolent elements in elected bodies which will result in cleaner administration.

6. He will have freedom to introduce nationally important measures calculated to integrate the society and give it a new sense of direction without being influenced by obscurantist elements who in the existing system can be powerful.

4.11.6 I have only hazarded a view which may not be deemed to be a blueprint or a treatise. I have thought aloud of a thesis that within the sociocultural framework of Indian society, no government, however well meaning, can rise above the whims and prejudices of the mass of them. If the change is called for, the details and modalities of changes can be considered but for present study, are outside the scope.

Annexure I

Sikh Minority Rights Safeguards Committee

(Kendri Sri Guru Singh Sabha)

Adm. Office : Gurdwara Rakabganj,
New Delhi.

No. KSGSS/71(30)/81/262 Dated : 23-5-1981

The Secretary,
Minorities Commission,
Lok Nayak Bhavan,
New Delhi 3.

Dear Sir,

The Sikh Minority Rights Safeguards Committee have read with great disappointment and anguish reports appearing in the press about gruesome tragedies of which members of the Sikh Minority Community have been subjected in Bihar. In this connection, I am sending herewith for the information and perusal of the Minority Commission copies of the editorial note of the 'Spokesman Weekly' dated 18th May 1981 and resolution passed by the Chief Khalsa Dewan, Amritsar.

Since this matter has greatly perturbed the Sikh Community and is bound to mitigate against attempts at national integration, I would request you to kindly have it fully investigated through proper agencies and to bring the culprits to book.

This Committee would be grateful if result of your investigation is communicated to us, indicating the actions taken to stop such atrocities on a Minority Community in future.

Sd/-
(Convenor)

COPY

Annexure 2

Atrocities Against Sikhs in Bihar Deplored

Sardar Sant Singh, Honorary Secretary, Chief Khalsa Diwan, Amritsar, has written a letter to the Chief Minister, Bihar, about the atrocities committed by natives of Karsala, Nagshya and nearby villages in Bihar on Sikh truck drivers on 25th and 26th April this year and asked the Chief Minister to punish the culprits. The following is the text of his letter :

"Sikhs are deeply grieved to learn of an utmost ugly, cruel, devildaring, unwarranted but pre-planned action of set of miscreants, belonging to village Karsala, Nagshya and nearby villages, who in an organised way, deliberately burnt alive half a dozen Sikh truck drivers, kidnapped some fifteen of them and also burnt seventeen trucks on the 25th and 26th of April, 1981. They also openly looted the goods of the trucks worth lakhs of rupees and shouted highly objectionable and prejudicial slogans that Sikhs must leave Bihar and go back to the Punjab.

"The pitiable and dangerously disappointing part of this gruesome tragedy is that the Police remained a silent spectator of this dastardly massacre.

I request your goodself with all the force at my command and in the name of justice, unity and future well-being of the country, to rise to the occasion and punish the culprits, by inflicting on them exemplary punishments. I fear repurcussions of this unfortunate happening elsewhere, unless immediate action is taken in the matter."

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Annexure 3

Gruesome Tragedies

Details are now available of the horrible manner in which trucks, belonging to Punjabis in general and Sikhs in particular, were recently detained in several parts of Bihar, their goods looted, their crew manhandled, abuses hurled at Sikhs and photos of Sikh Gurus torn and trampled under feet. The biggest wrench is that the State Police has done nothing to bring the culprits to book. The inescapable conclusion is that the authorities are either in league with these miscreants or they are too scared to give the victims the much-needed protection. The students, it is learnt, are having a field day; they stand on the roadside, force a passing truck to stop, and then board it; after some time, they begin looting the goods; when the driver or the cleaner protests, they are mercilessly beaten, at times the truck is also set on fire. There is chaos everywhere.

This is exactly what happened on April 28. A truck owned by Sardar Satbir Singh was transporting goods from one Bihar city to another; on the way, a group of 10 students stopped it and forcibly boarded it; soon they began tampering with the goods. When the cleaner protested, he was beaten; on hearing his shrieks, the driver brought the vehicle to a stop with a sudden brake and one student fell down. Within minutes, a huge mob gathered there; both the driver and the cleaner ran for their safety and have not been heard of since. Then followed mass rampage of all trucks belonging to Punjabis, trucks driven by or owned by Biharis were not touched.

For days together after the above incident, trucks of Sikhs were being destroyed; these could be easily identified because of either the mark of Khanda on the body or a photo of Guru Nanak Dev or Guru Gobind Singh. Whenever there was some doubt about the identity of a Hindu driver or cleaner, he was asked to speak in local Bihari dialect, if he did not measure upto the test, he was taken as a Punjabi and given the same rough treatment as Sikhs. Every Punjabi was abused, every truck had glass windsheets and bodies broken.

At a place called Naugachia, the police arrived on the scene but did not move an inch to arrest the unruly elements, though they were guilty of so many cognizable offences. The police merely escorted the Punjabi trucks safely to the other side of the town. But there a bigger tragedy was awaiting them. Another mob intercepted the convoy. All the drivers and cleaners were herded into a tiny enclosure and openly insulted; many were asked to

open their mouths and spit was thrown into it; almost all of them were physically assaulted and belaboured; even urine was passed on the photos of Sikh Gurus; there were constant demands to "Shave off the beards of all Sikhs". Unfortunately, an oil tanker happened to come by; it was detained and the mob took out the liquid and sprinkled it on all The Punjabi crew of the vehicles managed to run into safety in nearby villages. All this happened at a place which is barely 150 miles from Patna, the state capital, and yet the loot and arson continued for several days. Even now all Punjabi trucks, passing on the road, are stoned.

Bihar police has never been known for efficiency or perfect maintenance of law and order. Gangs of dacoits, some of them supported by politicians, roam the state. But this is the first time that Sikhs have been made victims of such large scale violence and insults. Unless the Centre intervenes and makes Patna realise its duty of providing protection to all, especially a vital minority like Sikhs, repercussions in other states cannot be prevented.

COPY

Annexure 4

K. JOHN KOSHY
Under Secretary

MINORITIES COMMISSION
Lok Nayak Bhavan,
New Delhi.

D.O. No. 3/Br/6/81-MC(G)

the 15th September, 1981

Dear Shri Duda,

A study of the communal incidents over the years reveals that by and large, these follow a certain pattern with regard to their origin, causation and proliferation. Seemingly trivial disputes involving individual members of two different communities sometimes lead to violent incidents and hostilities engulfing even innocent members of these communities. The Minorities Commission has decided to study some of such recent incidents on a selective basis in order to identify and isolate psychological and other factors which impel two different communities to take sides in stray and ordinary incidents between individual members of these communities.

2. One such incident was brought to the notice of the Minorities Commission by Shri Rajinder Singh, Convenor, Sikh Minority Rights Safeguards Committee. This incident was also editorially commented on by the "Spokesman Weekly" dated 18-5-81. The relevant letter from Shri Rajinder Singh and the editorial in the "Spokesman Weekly" have been enclosed (Annexure I). These refer to the atrocities committed on Sikh Truck Drivers in Kursella, Nougachia and other nearby villages in Bihar on April 25 and 26, 1981. The Commission has decided that this incident should be studied in depth with a view to identify the social, pychological and other factors and causations which exercised and found vent in violent incidents by one community against another. Justice M. H. Beg, Chairman, Minorities Commission, has desired that this study should be entrusted to you.

3. Accordingly, I am to request you to confirm your willingness to undertake the study and, in case you would be prepared to undertake the study, to submit a project proposal thereof quantifying the work content and also indicating the detailed cost, time-schedule, etc. of the project in the enclosed proforma. In formulating your proposal, the following aspects of the work may also be kept in view :

(*i*) Visit to places where the incidents took place.

(*ii*) Personal interviews of the heads, members of staff and students of the school and colleges involved in the incident.

(*iii*) Personal interviews of important non-official members of the public of the places where the incidents took place.

(*iv*) Personal interviews of the truck drivers involved in the incidents, transport operators of the area and responsible members of the minority community, if available, at the places of incidents.

(*v*) Interviews of the local officials, district officials, divisional commissioner, Home Commissioner, IG of Police and Chief Secretary etc. of the State.

(*vi*) Study of the social, economic, cultural and psychological factors responsible for such incidents.

(*vii*) Drafting, typing and cyclostyling of the report (in fifteen copies).

4. The study should be completed within four months from the date of receipt of the first instalment of the approved fee.

5. I would like to request you to submit a research project proposal in view of the above on the proforma enclosed herewith as Annexure II at your earliest so that further action in the matter is taken without any delay. The broad terms and conditions for the sanction of the lump-sum grant for the Research Project are also enclosed as Annexure III for your information.

Yours sincerely,

Sd/-
(K. John Koshy)

Shri P. N. Duda,
F-1-35, Lajpat Nagar,
New Delhi-110024.

APPENDIX XIII

(Ref. Chapter VIII, para 9.1)

LIST OF ITEMS FOR MAKING INDEPTH STUDIES

(*i*) To formulate principles of National Integration in the form of general guidelines to be followed by State organs as well as by citizens so as to be better able to achieve cultural and psychological harmony between all sections;

(*ii*) To propose rules of ethics and conduct for every class of citizens as well as Government servants so as to promote communal harmony & removal of all reasonable grievances of members of minority communities. This has already been undertaken and some suggestions have been made regarding the conduct of members of political parties which have, however, not evinced enough enthusiasm in this vital sphere of our national life, despite the fact that the Prime Minister Shrimati Indira Gandhi rarely deals with any subject without touching some important aspect of National Integration and development;

(*iii*) To examine the nature of education to be imparted to coming generations from the point of view of national integration, particularly revision of curricula so as to introduce a better written national history, promotion of better ethical and moral standards, study of comparative religions and other aspects of culture with a view to building patterns of behaviour which will protect the interests of minorities;

(*iv*) To explore other methods of bringing about better understanding between communities and promotion of national integration and a secular outlook through possible changes in Constitutional and other laws;

(*v*) To study modes of national integration adopted in other countries such as U.S.A., Japan, China, Yugoslavia & U.S.S.R. in their attempts to promote the interests of minorities without jeopardising national interests and the extent to which their experiences could be utilised by us;

(*vi*) To undertake study of working of laws relating to administration of charitable endowments or trusts amongst different religious minorities, and to recommend better modes of utilisation of funds of these endow ments and trusts for betterment and development of each community on right lines;

(*vii*) To elucidate principles governing the rights of minority educationa institutions contained in Article 30 read with Articles 25 to 29 of the Constitution and the extent to which enactments in various States affecting minority institutions need modifications in the light of principles found in the Constitution;

(*viii*) To study the personal laws governing members of minority communities community-wise so as to find common principles which could prepare the ground for a future uniformity in such personal laws and also to suggest any possible improvements or reforms in the personal laws of every community and the ways of achieving these;

(*ix*) To study the cultural and educational patterns, including those resulting from religious and moral instructions, prevalent in every community, to examine its short-comings and possible benefits, and to suggest ways of improving these;

(*x*) To study the rights of women and children and other weaker sections especially in each minority community and ways of protecting their interests for promoting their progress and better realisation of their human rights by them;

(*xi*) To examine legal & administrative shortcomings and deficiencies from the point of view of protection of the rights of members of all minority communities. These are proposed to be examined State-wise so as to provide a comprehensive picture for the whole of India when such work of the Commission, which has not yet begun, is completed;

(*xii*) To explore every avenue of progress and uplift of each minority community economically, politically, socially, educationally, morally, intellectually, culturally, psychologically and spiritually;

(*xiii*) To examine and expose fearlessly the nature of all threats to the above mentioned avenues from whatsoever quarter the threat may exist or may come so that it may be removed or averted; and

(*xiv*) To make available, by means of appropriate publications, such information about minority communities in India as is contemplated by imposing upon it, in the terms of reference creating the Commission, the obligation to serve as a "clearing house of information".

APPENDIX XIV

(Ref. Chapter IV, *para* 4.46)

PRESS STATEMENT

The Minorities Commission has been receiving representations from the linguistic minorities in the States of Punjab and Haryana about non-implementation of the safeguards and protections given to them under the provisions of the Constitution and the national policy on education adopted at the Chief Ministers' Conference in 1961.

2. Specific safeguards have been provided to the linguistic minorities under the provisions of Article 29, 30, 347, 350-A and 350-B of the Constitution. In addition to these, there is an agreed scheme for practical implementation of the safeguards. The scheme provides for safeguards to linguistic minorities in the field of education, use of minority languages for official purposes, recruitment to State services, machinery for implementation of safeguards, etc.

3. The States of Punjab and Haryana have not implemented this scheme of safeguards under the mistaken impression that these States are unilingual, being results of the reorganisation of the erstwhile State of Punjab and, therefore, do not have any linguistic minorities. There is, in fact, no unilingual State in India as may be seen from the Census Reports. Facilities and privileges granted under the Constitution and the national policy to the linguistic minorities cannot, therefore, be denied to the linguistic minorities. The Commission has, therefore, recommended that the Governments of both Punjab and Haryana should carefully review their present policies vis-a-vis linguistic minorities of their respective States in the light of the Constitutional provisions and the national policy with regard to the special safeguards to be provided to the linguistic minorities.

APPENDIX XV

(Ref. Chapter VI, *para* 6.2)

TOUR PROGRAMME OF BIHAR VISIT OF THE MINORITIES COMMISSION, GOVT. OF INDIA

Date	
5-12-82	Arrival of the Chairman, Central Minorities Commission, by 6-DN (Amritsar Mail) at 9.54 P.M. Proceed to Raj Bhavan and Halt.
6-12-82	Arrival from Delhi by Flight No. 489 at 10.15 A.M. Member Sri Giani Sujan Singh, Sri S. S. Gill, Secretary and Sri W. Hasan, Deputy Secretary. Discussion with the Minority Organisations Representatives in the Secretariat Conference Room at 3.00 P.M.
7-12-82	Leave Patna at 2.00 P.M. and reach Indrapuri 6.30 P.M. Night Halt.
8-12-82	Leave Indrapuri at 9.30 A.M. Reach Sasaram 10.30 A.M. Meeting with the representatives of the Minorities Organisations and District Authorities at 11.00 A.M. Lunch and Rest. Leave Sasaram at 3.00 P.M. Reach Rajgir at 7.00 P.M. Night Halt.
9-12-82	Leave Rajgir at 10.00 A.M. Reach Bihar Sherif at 10.45 A.M. Discussion with District authorities and representatives of minorities at Bihar Sherif at 11.00 A.M. Leave for Rajgir afternoon—Night Halt.
10-12-82	Departure for Patna at 10.00 A.M. Discussion with Officers of the State Government regarding atrocities committed on Sikh Truck Drivers at Naughachia and Kursella.
11-12-82	Meeting with Chief Minister, other officials of the State Government at Chief Minister's residence at 3.00 P.M.
12-12-82	Discussion with Vice-Chairman and Members of the State Religious and Linguistic Minorities Commission at 11.30 A.M. in the Secretariat Conference Room.
	Afternoon—Departure for Delhi by Flight.

APPENDIX XVI

(Ref. Chapter VI, *para* 6.17)

SASARAM (M) P.S. CASE No. 15 dated 7-3-1980 Under Section 394/302. IPC

Briefly, the case according to the complt. Fr. Sylvester D'souza S.J. is as follows :—"At about 9 A.M. on 7-3-80, prayer was going on in Burtan Mission. Besides Fr. Mathew (Deceased) and Fr. Scaris, there were teachers and villagers present in all 55 in number. All of a sudden, four persons entered the Church. Two men had guns while two were armed with knives. One man, with a gun, stood at the western gate of the church while three of them went to Fr. Mathew and took him out of the hall. They brought him back to the church to fetch the bunch of keys. Then they took Fr. Mathew to his bed room. The man with a gun posted at the gate asked the complt- to sit down. On refusal, he fired twice, but fortunately, the complainant escaped unhurt. Soon after, the complt. heard two gun shots from the side of the bed room of Fr. Mathew. After about 15 minutes, two of the criminals ret urned to the Church with the rifle of the mission and bundles of currency notes. They showed these to the man with a gun at the gate. Then all of them fled toward south. While fleeing they fired three rounds. After the departure of the criminals, the complt. went to the bed of Fr. Mathew and found him lying dead in his cot with bleeding injuries. The bunch of keys was in his left hand. Things in the room were found lying scattered. An Almirah, boxes, and cash drawer were found open. The glass panes of the adjacent room were found broken. On search, the Complt. found that cash of Rs. 20,000, one rifle and one Seiko wrist watch were missing. This cash had been brought by the deceased for payment to teachers, servants and for hostel expenses. Among the persons present in the Church, there was a stranger who looked like the person who had come last year with one Khublal Chamar. The deceased had stopped the donation given for education to the brother of Khublal Chamar and the latter was on enimical terms with the deceased."

This was the prosecution case.

Place of Occurrence :—Burtan Church Mission, about 3 kms. south of Sasaram town. The actual place of occurrence, a big hall with several doors, about 15/30 ft. high from the ground level. Pellet marks were found fixed in the hall. Several electric bulbs were found fixed in the hall. There is a small stair leading to the ground floor. An axe left over by the criminals

was found near there. A pucca road runs east to west by the side of Church gate. On the East, it goes to village Burhan, and on the West, it connects with Sasaram Derigaon road. On this road, at some distance, a bag belonging to the deceased was found lying.

On the north of the Main Church, there are four rooms in a row, besides a kitchen and store rooms. The deceased's room is on the extreme south. Facing East was found thoroughly ransacked. The body of the deceased was found in this room lying on an iron cot with lot of blood on the cot and on the ground. An open box with books was found scattered. Blood shoe print was found on a calender south of the cot. The drawers of a steel almirah were found open. A yellow paper envelope was found lying on the floor.

About two miles away, near village Bhadhokhra, a number of papers belonging to the Mission were found scattered.

Evidence :—Investigations have disclosed that during the famine of 1967, Khublal Chamar of Koner P.S. Sheonsqar was employed by the Mission on temporary basis for distributing relief. Intermittently, he was employed as teacher also. His younger brother, a student, was also given some financial help for sometime. But, it was stopped two years before the incident owing to paucity of funds. About two years back, Khublal Chamar was finally removed from the church. Besides Khublal, there were other teachers also who had been removed. But, some of them were re-employed. In May 1979, some of the menial staff from village Bhadokhara and Darkra were also removed. Khublal Chamar had reportedly organised a meeting about a year back inside the precincts of the church and levelled all sorts of complaints specifically against Fr. Mathew (deceased). After that, he allegedly had threatened to kill Fr. Mathew. Consequently, a report under Section 107 Cr. P.C. was submitted on 8-4-1979 *vide* : Sasaram P.S. FIR No. 14/79.

On the fateful day, cash from Patna meant for payment to the employees was brought by the deceased. Payment was to be made on the following day.

Prior to the occurrence [*vide* : Sasaram P.S. case No. 60(3) 70 under section 395 IPC], a dacoity had occurred in the Dharhom Mission in which Shobhukhon Koiry along with four others was charge sheeted. Only Shobhukhon Koiry was out on bail at the time of occurrence.

It has also been established during investigation that deceased Fr. Mathew used to indulge in local affairs as a result of which had enmity with some local people in general and Khublal Chamar in particular.

Movements of Shobhukhon Koiry were also found highly suspicious as he was found absent from his house on search. He was ultimately arrested on 15-3-1980.

The culprits came to kill Fr. Mathew in particular as it becomes clear from the fact that about 55 persons present in the prayer hall were not even touched, though many were wearing wrist watches. Again, the criminals took only Fr. Mathew to his bed room and shot him dead but they did not enter the room of old Fr. Man and assistant Fr. Scarin which adjoined deceased's room.

NOTE :—The case was obviously not communal in character and motivation but of murder out of malice, afore-throught and robbery.

APPENDIX XVII

(Ref. Chapter VI, *Para* 6.22)

BRIEF NOTE ON NAUGACHIA INCIDENT ON 25TH APRIL 1981

On 25th April, 1981, about ten students forcibly boarded a truck at Jhandapur Chowk P.S. Bihpur (Bhagalpur) resulting in altercation and clash between students and driver. When the truck reached near Naugachia at about 6.30 A.M., the driver stabbed one student and pushed down three other students. The student who was stabbed died in Naugachia Hospital at about 8.30 A.M. Three other students who were thrown out from the truck received minor injuries. The driver, however, fled away with the truck towards Purnea. There was a rumour among the students that a student has been kidnapped by the truck driver and taken away towards Purnea. Deputy Superintendent of Police, Naugachia, looked for the truck with police force and ultimately intercepted the truck and arrested the accused person at Kursella and handed over the accused to Kursella police station. At Kursella, the truck was set on fire by the agitated students who followed the truck from Naugachia.

Immediately after the incident, a mob of about 400 students collected near the Naugachia Bus stand, and assulted the driver. As the mob was furious, a Lathi charge had to be made. At this, the mob dispersed but while dispersing, they set fire to three other trucks. Nine other trucks loaded with articles, which were proceeding towards west in a convoy, were also burnt near Madadpur village, five kilometers west of Naugachia, by students of Narainpur and Khagaria colleges. The Drivers who were all Sikhs managed to flee away.

The mob of students near the Bus Stand swelled upto one thousand and tried to set fire to four trucks standing in front of Petrol Pump. Police had to resort to lathi-charge to disperse the mob.

In the incident, altogether, 13 trucks loaded with merchandise articles were burnt, 12 of them completely and one partially by the agitated mob of students and anti-social elements. Two cases, one under Section 302/324/341 I.P.C. against unknown Drivers and the other under 144/323/379/436 I.P.C., against Students and anti-social elements were instituted. Intensive patrolling by Armed Force with Magistrates in Naugachia Town and N.H.31 from Narainpur upto border of Naugachia Sub-division towards Kaursella was introduced.

The State Government got this incident inquired into by the Commissioner of Bhagalpur Division who held that the entire incident occurred on spur of the moment and it had no communal overtones. He also held that it was not a case of conspiracy against members of Sikh Community.

The General Secretary of the Management Committee of Shri Takhat Harmandir Jee, Patna, has been informed of the outcome of the enquiry by the State Government.

APPENDIX-XVIII

(Ref. para 95 of the "Opinion and Suggestion of the Chairman on Future of the Minorities' Commission of India")

SHRI W. HASAN'S NOTE ON ORGANISATIONAL MATTERS

This Commission has been looking after the problems and grievances of religious minorities with a view to remove the persistent feeling of inequality and discrimination amongst the minorities. It seeks to promote national integration which is only attainable if minorities feel that they are a part and parcel of a well integrated Indian Society. To some, the Minorities' Commission, as an agency to serve the interests of minority groups, seems unjustifiable. It has given them the impression that minorities are privileged groups whose interests conflict with those of the majority.

The Commission, therefore, is of the view that, while there may be enough justification for the existence of the Minorities' Commission for the present, this in itself cannot be the basis for a lasting and permanent arrangement for the resolution of the minority problems and those of the weaker sections of the society. Their main problem is to secure acceptance and observance of rules of conduct for themselves in their relations with the rest of citizens so that all fit into a happy harmonious whole. The solution has to be found within the overall social policy framework of the nation wherein religious and linguistic minorities form an integral part of the Indian Society. Any special privilege or protection for the minorities such as those extended to the Scheduled castes may prove to be divisive and harmful in some respects. In the long run, such institutional arrangements weaken the forces of integration and undermine the social fabric.

In view of the above considerations the Commission is of the view that our prime objective should be the evolution of an integrated Indian Nation. This would require planned social development on lines similar to those of economic develooment planned by the Planning Commission. Such a Commission should have the same kind of prestige and power as the Planning Commission. Economic and social planning must go hand in hand. The main task of such a Commission would be to attain integration through creation of conditions of equal opportunity for everybody living in this country irrespective of caste, creed, religion, or sex, etc.

Time has now come for political expediency to give way to social justice. Earnest efforts must be made to make possible what has only been dreamt of in the past as the answer to the problem of social development is the setting

up of a National Integration-cum-Human Rights Commission by means of atleast an Act of Parliament. Such a Commission should have adequate legal powers.

The setting up of such Commission is crucial for the creation of harmonious human relationship among the various sections of Indian society.

Human Rights Acts have been enacted in Canada and Australia. In U.S.A., there is a Civil Rights Commission. And, in England, there are special tribunals dealing with complaints on grounds of racial or ethnic differences, under the Race Relations Act. Recently, Dr. Ubab visited India and the Commission had an opportunity of discussing the functioning of the Canadian Human Rights' Acts of 1981. The Act seeks to create equality of opportunity through a prohibition of discrimination in employment, services, housing, public accommodation, and other spheres and matters of public policy. It also establishes a Human Rights' Commission as a statutory body comprising of prominent citizens appointed as Commissioners by orders of the State Council of Ministers. The functions of the Commission fall in two categories :

(*i*) Advisory functions;

(*ii*) Enforcement functions.

Advisory Functions

The advisory functions deal with promotion of equal opportunity and in this area, its functions are more or less the same as those entrusted to our Minorities' Commission. However, the Act provides for establishment of advisory or consultative committees on sector to sector basis such as education, police, industry, media and so on. Similar committees are established on municipal levels under the chairmanship of the Mayors of all the Municipalities. These committees include community and civic leaders as well as official heads of local agencies for general administration, police, education, industry, labour union leaders, and religious leaders. A small cell is set up in each ministry to promote human rights under its jurisdiction. In other words, the promotion of human rights and development of Human Rights programme is carried out by establishing a network at all levels. The Commission itself makes press statements in respect of all issues which tend to create disharmony. It holds conferences, seminars, and produces educational material. It concretises well thought out solutions to various problems, which may be agitating the groups at any point of time, after due study through expert investigators.

Enforcement of Human Rights

The Human Rights Code prohibits discrimination in employment, housing and public services for reasons based on race, colour, creed, age, sex, marital status, nationality. The Code prohibits discrimination in all fields of human activity and provides for punishment if grounds of any complaint under the Act are established.

Any person who has a reasonable ground to feel that any provision of the Code has been contravened, can file a complaint alleging discrimination with the Commission. The Commission is obliged to investigate the matter and endeavour to seek a settlement according to the procedure set out below.

A member of the staff of the Commission discusses the content of the complaint and determines if the matter falls within the Commission's jurisdiction. The complaint is then registered. Investigation is taken up by an 'Investigation Officer' appointed by the Commission. The Investigating Officer serves the complaint upon the respondent and asks both the complainant and the respondent to complete a questionnaire as thoroughly and accurately as possible. The Code provides the right to give evidence or assist in the complaint procedure or defence without any fear of reprisals from any body.

Fact Finding Conference

A fact finding conference is held thereafter by the Commission's staff, at which both sides, the complainant and the respondent are heard with a view to determine correctness of stands of the complainant and the respondent with regard to the complaint; to obtain detailed evidence from both parties, and to provide an opportunity for full statements of cases of both sides. Most of the disputes get settled in this manner.

In cases where any such complaints cannot be resolved by the fac finding conference, more extended investigations are undertaken. The Investigating Officer of the Commission is authorised to enter the premises, ask for production of documents, and speak to witnesses. Obstruction in the performance of these duties is illegal. After the completion of the investigations, efforts are again made to arrive at an amicable resolution of the complaint satisfactory to both the parties. All the settled cases are subjct to ratification by the Commission before they are approached. Cases which are not settled are referred to the Commission. The Commission reviews and evaluates the evidence of both sides and decides to make recommendations.

to the concerned minister for the appointment of a Board of Inquiry or otherwise.

Board of Inquiry

The Board of Inquiry is a quasi-judicial hearing conducted in accordance with the Statutory Powers and Procedure under the Act. If the Board finds no contravention, the case is dismissed. Otherwise, the Board may order full remedy to the complainant and compliance with the Code. An appeal lies to the Supreme Court against the orders of the Board of Inquiry.

The Commission has the power to initiate its own investigation without having to wait for a formal complaint. The Commission can also give directions to institutions and private companies to take "affirmative programme of action" to reduce discrimination.

Finally, the new Act establishes the supremacy of human rights' legislation over all other legislations. In other words, all other legislation is required to be brought in line with the spirit and letter of human rights' legislation. To sum up, the Commission endeavours to bring about social justice by securing absence of discrimination in all walks of life of members of society and an equality of opportunity for every one. People are forced to adopt egalitarian standards.

There are three policy instruments available to the Commission :—

(*a*) rigorous enforcement of the human rights;

(*b*) massive public education; and

(*c*) affirmative action programme to correct social imbalances.

These three instruments are administered in cooperation with the Government and the society at large.

The Minorities' Commission is of the view that the time has now come when in India also, a Human Rights Commission should be set up on the model of Civil Rights Commission of U.S.A., or the Human Rights Commission of Canada. Such a Commission will, in course of time, demolish the caste barriers and also tend to eliminate feelings which lead to riots, violence, and destruction of properties. If Government accepts in principle the passing of a Human Rights Act and setting up of the Commission on the lines suggested above, then further thinking can be done to ensure that the positive strength of the Indian society is mobilised and a widely acceptable solution is found to resolve the prevailing social ills coming in the way of national integration.

The task of improving inter-religious relationships and of backward sections of the society, found both in the majority and the minority religious groups, is not simple. However, given the will to resolve the social problems and mounting tensions and determination to remove discriminatory practices, it should be possible, in course of time, to evolve a well integrated Indian society where all communities and groups live in a society permeated with good-will and spirit of tolerance which is the *sine-qua-non* for harmonious relationships and economic development for all.

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