

DAWOODI BOHRA COMMISSION REPORT

the first part of the book, the author discusses the historical context of the study.

In the second part, the author presents the methodology used in the study.

The third part of the book contains the results of the study.

In the fourth part, the author discusses the implications of the findings.

The final part of the book is a conclusion.

The book is written in a clear and concise style.

The author provides a thorough analysis of the data.

The book is a valuable resource for researchers in the field.

The author's conclusions are well-supported by the evidence.

The book is a well-written and informative work.

The author's analysis is thorough and insightful.

The book is a valuable contribution to the literature.

The author's findings are significant and important.

The book is a well-organized and easy-to-read work.

The author's writing is clear and professional.

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DAWOODI BOHRA COMMISSION

(NATHWANI COMMISSION)

REPORT

(of investigation conducted by the Commission appointed by the
Citizens for Democracy into the alleged infringement of
human rights of reformist members of the Dawoodi
Bohras in the name of the High Priest)

N. P. Nathwani, M.P.	Chairman
V. M. Tarkunde	Member
Dr. Alam Khundmiri	Member
Dr. Moin Shakir	Member
C.T. Daru	Member-Secretary

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First Published: May 1979

Price: Rupees Forty only

PRINTED IN INDIA

by Arun Naik, Akshar Pratiroop Pvt. Ltd. 42, Ambekar Marg, Wadala, Bombay 400 031 and published by C.T.Daru, Member-Secretary, The Nathwani Commission, 9, New Alkapuri Society, Gulbaino Tekro, Ahmedabad 380 015.

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To,
The President and members of the National Executive Committee of the CITIZENS FOR DEMOCRACY,
223, Deendayal Upadhyaya Marg,
New Delhi-110 002.

Sirs,

We the chairman and members of the Committee constituted in pursuance of the resolutions of the National Executive Committee passed on August 13, 1977 and October, 15, 1977 have the honour to submit herewith our report of the investigations conducted by the Committee into the allegations made by reformist sections of the Dawoodi Bohra Community about the infringement of their human rights by the priestly class in the name of the High Priest of the community Syedna Saheb.

Due to unavoidable reasons Mr. C.T. Daru (Member-Secretary) could not attend the final meeting at which the report was signed. He has however authorised us to append his name as a signatory saying that he fully agrees with the report. We take this opportunity of recording the valuable services rendered by him to us as Member-Secretary.

We also wish to acknowledge the valuable services rendered to us by Shri P.D. Patwari of Ahmedabad in compiling, analysing and tabulating the replies to the questionnaire and a number of other documents.

Yours sincerely

8th April, 1979.

1. Sd/-
(N.P. Nathwani M. P.)
Chairman
2. Sd/-
(V. M. Tarkunde)
Member
3. Sd/-
(Dr. S. Alam Khundmiri)
Member
4. Sd/-
(Dr. Moin Shakir)
Member
5. Sd/-
(C. T. Daru)
Member-Secretary

INTRODUCTORY

This report is the result of investigations made by us into the complaints of persecution of reformist members of Dawoodi Bohra community practised by the priestly class in the name of the religious Head-Priest Syedna Saheb.

Initially, some leaders of the reformist section of the community approached the Citizens for Democracy with a complaint that the members of the community did not enjoy any civil liberties and that the priestly class and its associates were harassing the reformist members in a variety of ways which amounted to infringement of human rights. They alleged that the reformist members were being oppressed by the priests in the name and under the authority of the High Priest of the community Syedna Saheb. They requested the C.F.D. to look into these allegations and make a proper investigation.

The Citizens for Democracy is an organisation formed for strengthening democratic values in all spheres of life, social, economic and cultural. It is not a political party nor is it committed to supporting any political party. It strives to guide public opinion by propogating rational and constructive views so as to counteract damagologic and sectarian appeals. Its aims and objects include the following:—

- (i) to secure recognition to the right of public dissent and generally to defend civil liberties;
- (ii) to secure recognition of the democratic principles and the dignity of the individual and on that basis to combat untouchability, casteism, communalism and secure an increasing measure of social as well as economic equality.

In the past, the Citizens for Democracy had taken on hand important matters and appointed committees for that purpose. One committee known as Tarkunde Committee was constituted to suggest electoral reforms in the country. It had made its report containing various suggestions which the Government of India have taken into consideration. Another committee, also known as

Tarkunde Committee, investigated into the killing in alleged "encounters" of several Naxalities in Andhra Pradesh. A committee was also constituted to prepare a practical plan for education for our people. The same has been prepared and published for public discussion. Thus, Citizens for Democracy has been doing work for educating public opinion and inquiring into matters of public importance.

The National Executive Committee of the institution accepted the request of the reformist Bohras and in its meeting held on 13th August, 1977 at New Delhi resolved to appoint a committee for this purpose. The committee was later given powers to co-opt and its terms of reference were settled. The said terms were:—

To investigate into, and report on, the alleged infringement of human rights of reformist members of the Dawoodi Bohra Community in the name of the High Priest by the Bohra Priesthood and their associates.

The final composition of the Committee after co-option of some members was as follows:—

1. Shri N. P. Nathwani
M.P. Chairman A former Judge of the High Court of Bombay and a sitting member of the present Lok Sabha.
2. Dr. (Miss) Aloo Dastur
Member Head of the Deptt. of Political Science, Bombay University; since retired and now a member of the Minorities Commission appointed by the Government of India.
3. Shri V. M. Tarkunde
Member A former Judge of the Bombay High Court, now Senior Advocate of the Supreme Court and General Secretary of the Citizens for Democracy.
4. Dr. Alam Khundmiri
Member Deptt. of Philosophy, Osmania University, Hyderabad.
5. Dr. Moin Shakir
Member Deptt. of Political Science, Marathawada University, Aurangabad.
6. C. T. Daru
Member-Secretary Advocate and General Secretary of the Radical Humanist Association.

The Committee after due deliberations settled a questionnaire and circulated it among all sections of the community both in English and Gujarati with a covering letter. The covering letter

and the questionnaire are set out in Appendix 'A'.

Soon after the Commission was appointed, a hue and cry was raised by the priestly class against the Commission. They launched a systematic campaign to oppose the attempt of the Commission to discharge its duties. A cry of 'religion in danger' and 'hands off religion' was raised to mislead the members of the community. State Governments were urged to ban the activities of the Commission. Processions of the members of the community were organised in various centres where there was some concentration of the Dawoodi Bohra Community to demonstrate against the Commission. Speeches were made at these meetings telling the people that the Citizens for Democracy was trying to interfere with the religious beliefs and tenets of the community and it deserved to be boycotted and opposed. It was also stated that the appointment of the Commission was contrary to the guarantee of religious freedom enshrined in the Constitution of India and that the Governments of the day should not permit such unconstitutional activities. The propaganda against the Commission was expertly managed because Shri H. J. D'penha, the notorious ex-Chief Censor to the Government of India during the Emergency period, was picked up by the Syedna Saheb as his Publicity Officer and was handling the campaign on behalf of the priestly class. As this kind of campaign was likely to mislead the people about the true scope of the investigation by the Commission, the Member-Secretary published a brochure giving the facts about the Commission and explaining the scope of its enquiry. It was made clear that the Commission was not expected to probe into the merits of the religious beliefs of the community. It was concerned to find out whether or not the allegations of infringement of human rights of the members of the community were true. The guarantee of religious freedom did not, it was emphasised, give a charter to any religious head or his agents to suppress the freedom of conscience and freedom of expression of members of a community and their right to criticise the behaviour of those in authority. The freedom of religion did not prevent anyone in this country to demand and work for social reforms or eradication of harmful and oppressive practices. Furthermore, in economic, financial, political or other secular activities associated with religious practices, the State had the power of regulation and restriction for the purpose set out in article 25 of the Constitution of India. The citizens had also the

right to campaign for such regulation or restriction. It was further pointed out that in not a single question in the questionnaire which was circulated was there any reference to the truth or falsehood of any religious belief.

Representatives of Syedna Saheb met Shri Narendra Nathwani, Chairman of the Commission and Shri V.M. Tarkunde, the General Secretary of the Citizens for Democracy, on more than one occasion in this connection. Both Shri Nathwani and Shri Tarkunde repeatedly requested them to co-operate with the Committee and assured them that their representatives will be heard by the Committee and they will have ample opportunity to lead evidence if they so desired, to contradict any allegations which they considered to be false. In spite of these assurances, they did not think it fit to cooperate and continued the campaign of vilification.

The priestly class tried to enlist the support of other muslims in their campaign against the Commission but did not have a significant success.

Undeterred by the campaign engineered by those who did not like that the allegations against them be inquired into, the Commission continued its legitimate activity. After the replies to the questionnaire were received, the Commission held its meetings in Bombay, Gandhinagar (Gujarat) and New Delhi. These meetings were held to examine witnesses in order to elicit information and to verify the answers given by those who had replied to the questionnaire. Obviously, all persons who had sent their replies could not be examined as witnesses nor was it necessary to do so. A few cases were taken up for such examination and the witnesses were closely questioned by members of the Commission.

The Commission had sought co-operation of Syedna Saheb by a letter dated April 18, 1978 addressed to him. He was requested to send his representative or representatives to assist the Commission at its meetings. The Syedna Saheb did not care to send a reply to this letter. It appears that he and members of the priestly class had decided to boycott the Commission and to dissuade the orthodox members of the community from co-operating with the Commission.

Not only this but in Bombay and Gandhinagar (Gujarat) when the Commission held its meetings an attempt was made to take out processions raising the false alarm of religion being in danger and calling upon the faithful to wage a *JEHAD against the Com-*

mission. The residence of the Chairman in Bombay was attacked and an attempt to break the door was made by some miscreants on the night previous to the meeting. On the day of the meeting a procession was taken out with the object of surrounding the place of the meeting and shouting threatening slogans. There were moments when some sections of the mob grew violent and the police had to resort to preventive action. In Gandhinagar (Gujarat) a deputation of the leading orthodox members of the community waited upon the Chief Minister of the State and urged him to ban the meeting of the Commission. The Chief Minister, Shri Babubhai Patel, however, told the deputationists that he had no power under the law to ban such a meeting and that he was advised that the activities of the Commission did not amount to interference with religion. He, however, assured them that the orthodox section was free to organise a demonstration provided it remained peaceful and did not break the law. On the day of the meeting a demonstration was organised near the place of the meeting of the Commission but it did not remain peaceful with the result that the police had to intervene and restore peace.

It must, however, be mentioned that a number of telegrams and letters welcoming the appointment of the Commission and assuring full co-operation to it in discharging its duty were also received by the Chairman, the Member-Secretary and other members of the Commission.

Some persons who replied to the questionnaire expressed the desire that their names be kept secret but others have come out with their answers unreservedly.

In all, eight meetings of the Commission were held, three of which were held after the work of examining witnesses was over.

The places at which its meetings were held and the dates thereof are shown in Appendix "B".

The number of persons who answered the questionnaire is 1075. It is to be regretted that the priestly class and its staunch supporters kept away and, therefore, the Commission had to fall back on its own devices to elicit the truth by carefully scrutinising the written answers as well as the oral and documentary evidence, unaided by those who may have had a different version to give. *The Commission, however, feels that the evidence placed before it was abundant and overwhelming and that the opponents could have little material with which to contradict it.*

It may be noted that Dr. (Miss) Aloo Dastur after her appointment as member of the Minorities Commission by the Government of India did not participate in the work of the Commission, even though she would have very much liked to continue the work in fulfilment of the task which she had voluntarily undertaken at the request of the C.F.D. She shared the labours of the Commission in settling the questionnaire and actively participated in the meetings held in Bombay and in Gandhinagar (Gujarat) regardless of great inconvenience and the risk involved. The Commission places on record its appreciation of the valuable services rendered by her until she was called upon to undertake another mission having a wider scope.

CHAPTER II

HISTORICAL BACKGROUND AND THE DAWOODI LEGEND

As is commonly known Musalmans are divided into two sects: Sunnis and Shias. The Dawoodi Bohras belong to the Shia Sect. They are mostly descended from Hindu converts to Islam. Their population is not confined to Gujarat. They are found in many other parts of India, notably in Rajasthan, Maharashtra and Madhya Pradesh. They also live in other parts of the World - Pakistan, Sri Lanka, Singapore, East African countries, United Kingdom, Canada etc. Their total population in the world is estimated at about a million.

The Shiah, like Sunnis, believe that there is one God and that Mohammed is His Prophet to whom He revealed the Holy book (Kuran). But there the agreement ends. In the eyes of the Shiah, Ali, the son-in-law of Prophet Mohammed, has almost a co-equal position with the Prophet himself. Sunnis also revere Ali as the son-in-law of the Prophet and regard him as a good man but they do not treat him as a 'Vicar of God'. But shiahs elevate him, as stated above, to almost an equal status with the Prophet. It is this elevation that can be popularly stated as the distinctive tenet of the Shiah faith.

The Shiah further hold the belief that Ali succeeded Mohammed by '*Nasse-e-Jali*' which may be loosely translated as 'declaration'. Ali, according to their belief, was succeeded by a line of Imams each of whom in turn was appointed by '*Nasse-e-Jali*' by his immediate predecessor.

At a later date the Shiah sect itself became divided into two sects known respectively as *Ismailia* and *Isna-Asharia*. This division arose out of a disputed succession on the death of the 5th Imam Jafar-as-Sadiq in about the year 765 A.D. The eldest son of Imam Jafar was Ismail. But he died before the death of Jafar. Dispute arose because one group contended that Ismail being the eldest son of Jafar who had predeceased Jafar, it was the son of Ismail who was entitled to succeed Imam Jafar. The other group on the other hand sided with Musa-al-Kazim who was the second

son of Imam Jafar and contended that he should be preferred as Imam Jafar's successor. Those who supported Musa-al-Kazim were in majority and they are called Isna-Asharias. Those who wanted Ismail's son to succeed were known as Ismailis. Dawoodi Bohras belong to the Ismaili branch.

It was at the death of the 18th Imam Mustansir towards the end of 11th Century that a dispute over succession occurred among Ismailis. Of the two sons of the deceased Imam, Nizar, the elder was at first named as successor, but was afterwards passed over in favour of his younger brother Almustalli. A group of Ismailis holding that an elder son could not thus be deprived of his right to succeed followed Nizar and were called Nizarians. A large number however accepted the younger son as the successor and they were therefore called Mustalis. The Bohras of to-day are Mustallians. Khojas are Nizarians.

According to the legend which the Bohras believe, the last of revealed Imams was Imam Tyeb who was the 21st Imam in the line of succession. He was a child when he succeeded to his predecessor in 1131 A.D. The further belief is that owing to persecution Tyeb, the 21st Imam, went into seclusion. Since that time there has been no revealed Imam but the belief is that some successor of the 21st Imam is always on earth and that one day the Imam of the time will reveal himself. Owing to the seclusion of Tyeb, his predecessor the 20th Imam, had directed his Hujjat (a dignitary next in rank) to appoint a Dai (Missionary) to carry on the Dawat (Mission) of the Imam so long as the Imam should remain in seclusion and to take and receive from the faithful an oath of allegiance.

Every Dai would appoint his successor by Nasse-e-Jali. The Dai acts as a representative of the Imam and is called Dai-ul-Mutlaq or absolute Dai. When Imam comes out of seclusion these powers of the Dai will immediately cease.

Each Dai went on appointing his successor. No difficulty arose until the death of 26th Dai. But on his death in about 1589 A.D. one Suleman claimed that he was appointed by the 26th Dai as his successor and established a sect known as Sulemanis. Those members of the sect who rejected the claim of Suleman held the belief that the 26th Dai had appointed as his successor Dawood-bin-Kutubshah. These persons came to be known as Shiah Ismailia Tyebia Dawoodi Bohras (or in short Dawoodi Bohras). The word

Bohras is a Gujarati word meaning traders.

Prior to that year the seat of the High-priest of the Bohras had been already shifted from Yemen in Arabia to Gujarat. In Gujarat it was shifted from place to place until it became established in Surat where it remained for more than 150 years. It is now located at Bombay.

The High-priest of Dawoodi Bohras is called Syedna Saheb or Mullaji Saheb. As seen earlier he is also called Dai-ul-Mutlaq. He succeeded to the Gadi in 1966. He claims to be 52nd Dai in the line of succession. His predecessor the 51st Dai was his father, the late Syedna Taher Saifudin Saheb.

There is some controversy as regards the question whether the present Syedna Saheb's claim to the Gadi is valid. Some members of the community assert that there is a break in the chain of succession after the death of the 46th Dai Badruddin. They say that the 46th Dai had died suddenly from poison without making any appointment. But the learned men of the community of that time in their anxiety to avoid disintegration of the community and to prevent its members from joining the rival sect of Sulemanis gave a Fatwa (ruling) in favour of one Najmuddin to the effect that he was a fit person to succeed Badruddin. Accordingly they elected him as Dai-ul-Mutlaq. They concealed from the general body of the community the fact that Badrudin had not appointed him. If this was so, they argue, then all subsequent appointments of successors would be invalid and the appointment of the present occupant to the Gadi would therefore also be invalid and he can have no valid claim to act as the High-Priest.

We must make it clear that we are not concerned with the merits of this controversy. Some witnesses whom we examined in Bombay tried to persuade us to take the view that for the reasons stated above the present occupant is an usurper. But we explained to them that this controversy was not within the scope of our terms of reference and that in any event this dispute was settled by a decision of the Judicial Committee of the Privy Council in 1947 in a case in which this question was expressly raised and answered in favour of the 51st Dai, the immediate predecessor of the present occupant. That was the case of *Hasan Ali and others Vs Mansoor Ali and others* reported in All India Reporter, 1948, Privy Council, page 66.

The historical factual information and the legend contained

in this chapter are culled out from four sources, three of which are judicial pronouncements. These sources are:

- (1) Judgement of Justice Arnauld in a suit commenced on the equity side of the then Supreme Court prior to the coming into existence of the Bombay High Court by the *Advocate General of Bombay ex-relation Dave Muhammad against Mohmad Huseln Huseni*. It was given in 1966 and reported in 12 Bombay H.C. Reports, page 325. It is also known as the *Aga Khan case*.
- (2) Judgement of Justice Marten of the Bombay High Court in *Advocate General of Bombay Vs. Yusuf Ali and Others* reported in 24 Bombay Law Reporter P-1060. It was given in 1921.
- (3) Judgement of the Judicial Committee of the Privy Council in *Hasan Ali and Others Vs. Mansoor Ali and others* reported in 1948 All India Reporters Privy Council page 66.
- (4) Part I of the volume on the people of Gujarat of *Bombay Gazetteer* edited by James M. Campbell published in July, 1899. Part I relates to the Musalmans of Gujarat.

CHAPTER III

SYEDNA'S CLAIM TO OMNIPOTENCE

The Syedna Saheb claims to be not only the religious head of the community but also its head in secular affairs. What is the power-structure that he heads?

He has a deputy practically in every town where a sufficient number of Dawoodi Bohras reside. This deputy is called an Amil. It is this Amil who has the authority to take Misaq (oath of allegiance to the Syedna—See Chapter IV) from the Bohra youths, to solemnise marriages, to perform funeral rites, to collect taxes from the members of the community and to keep a general control over the community affairs.

The Amil deputises for the High Priest and acts with his permission not only in India but in other countries as well. The Commission has received answers to the questionnaire from a number of countries in the world and from these answers it is clear that wherever there is some concentration of Dawoodi Bohras there is an Amil acting as a deputy of the High Priest.

Now let us see what powers the Syedna claims to possess and in fact does exercise. For this purpose we will have to travel a bit into the past and see how the reformist movement started and how the powers claimed by the Syedna were asserted not only over the reformers but on all members of the community.

In Bombay there is a mosque named after one Chandabhoy who is regarded as a saint by the Dawoodi Bohra community. There is also a tomb of Chandabhoy and a *gulla* (a box in which offerings are placed by visitors-worshippers of the shrine). There are also other properties which were alleged to have been purchased out of the surplus *gulla* funds and there is also a building called Badri Mahal which was alleged to be partly acquired by the aid of *gulla* funds.

The Badri Mahal is a palatial building situated in a posh locality of Bombay. The Mullaji Saheb with his large family used to reside there till recently. It also houses the offices of the community.

One Ebrahimji Adamji (son of Sir Adamji Peerbhoy, the illustrious Bohra philanthropist) and many others felt that it was highly improper that money (offerings) received at the *gulla* should be used for private purposes. They claimed that all properties like the mosque, *gulla* funds, the tomb of the saint and Badri Mahal which was allegedly partly acquired with the *Gulla* funds should be held in trust for the benefit of the community and there should be a scheme for the management of the properties. They, therefore, moved the then Advocate-General of Bombay (who was also a public trustee) to look into this matter. The then Syedna Saheb (Taher Saifudin) claimed before the Advocate General that he had absolute power and authority over the lives and properties of all members of his community including all charitable and public funds. He said that he was the sole and absolute owner of the properties and was accountable to none.

The Advocate General thereupon filed a Civil Suit in the High Court of Bombay on its original side at the relation of Ebrahimji and others against the High-Priest for a declaration among other things that the abovesaid mosque named after Chandabhai, the tomb of Chandabhai and the offerings placed there in the *gulla* and the four immovable properties purchased out of the surplus *gulla* funds, and Badri Mahal which was partly acquired by the aid of *gulla* funds, formed the subject of a trust created for public purposes of a charitable and religious nature. The plaintiff (Adv. General of Bombay) also claimed among other things an order for accounts on the footing of a wilful default. This was O.C.J. Suit No. 941 of 1917 tried by Justice Marten and decided by him by a judgement dated 19th March 1921. (The judgement is partly reported in 24 BLR 1060. As is the practice of reporters, discussion of evidence is omitted from the report. We have, therefore, used the full text of the judgement for the purpose of setting out the contentions, discussion of evidence and observations of the learned Judge).

It is highly interesting to read the contentions taken by the then High-Priest in the suit. He contended that Chandabhoy was not a saint at all and that the *mosque was not named after him*. He also contended that the *donations of the gulla were not charitable gifts but were offerings to the gulla over which he as a Dai or head of the community had absolute control and that he was entitled to dispose of all such offerings as he pleased*. His contention was also

that by virtue of his office as as a Dai he had the power to close it at any time and that Chandabhoy's tomb could not form the subject of a trust and further that Badri Mahal was presented as a *Wakf* to him and his successors in perpetuity and that all the suit properties vested in him by virtue of his office as spiritual and *temporal* head of the community. He claimed that the management of these properties had been carried on by his deputies (Amils) who were *accountable to him only and the plaintiff had no right to ask for any accounts.*

These contentions were pressed hard by him at the trial. To substantiate these claims he examined witnesses who said that Mullaji Saheb was not *accountable to any one except the Imam in seclusion* and that *he is the representative of God on the Earth and as such infallible and immaculate.* His witnesses further said that according to the tenets of their religion the Mullaji is the master of the mind, property, body and soul of each of his followers and that his followers are bound to obey him implicitly and cannot question any act of the Mullaji; that he is entitled to take any property from his followers *whether trust or private property, and if the former to alter and cancel the trusts* and that there can be no such thing in the Dawoodi Bohra community as a permanent irrevocable charitable trust. To say that he was accountable only to Imam who is in seclusion is merely to say that he is accountable to none. The Imam is nowhere visible on earth and naturally he would not be in a position to ask for accounts from the Dai.

One witness of the Mullaji Saheb who was also a defendant in the Suit deposed in the Court on oath as follows:—

“The Mullaji is the owner and master of the community. Everything is vested in the Mullaji. We are only working as his Mehtas and clerks. By ‘We’ I mean the whole community. The whole community are his Mehtas. The Mullaji is the owner of everything. By owner of everthing I mean of everything appertaining to the community.” (The term ‘Mehta’ is a Gujarati word meaning clerk-cum-accountant).

It was further claimed that *the Dai-ul-Mutlak as the representative of Imam is the representative of God and conveys God's message to his people.* For that purpose the Dai must have similar powers to those of the Imam. Thus as the Imam is *immaculate and infallible (Masum)*, so the Dai is also immaculate and infallible (Kal Masum).

In the earlier stages of the trial it was contended by the counsel of the defendants that the *Mullaji Saheb was in effect God or for all practical purposes God and that the suit was a sacrilege*. The former contention was eventually withdrawn but it was claimed for the Mullaji Saheb that though he did not have the rank, he had the powers of the Holy Prophet Mahomed, and that he is a Saint or Wali.

These were the fantastic claims made by the then Dai to support the wide and extraordinary powers which he was exercising and wanted to exercise. *He as the religious head of the community also wanted to claim the ownership of the minds, bodies, souls and properties of the members of the community. Indeed, if he was a representative of God what could he not do? All Dawoodi Bohras were his clerks and Mehtas. And he could indeed dictate to any member of the community what evidence to give in a court of law. After all Misaq which every Bohra gave at the age of puberty to the Dai was of much greater value than the oath taken in the witness box! Evidently all evidence given in favour of the Dai by Bohra witnesses was influenced by the sense of allegiance to the Mullaji. It was dinned into the ears of every Bohra youth that if the Dai is displeased due to disobedience of his orders by any Bohra even God would not pardon such a sinner. (See para 13 of the Misaq in chapter IV). How could he give evidence contrary to the contentions of the Mullaji? It would amount to disobedience of Mullaji's command. Justice Marten rejected the claims of the Mullaji in the following words:—*

"It is incorrect to say that Mullaji Saheb is in effect God, or for all practical purposes God and that it is a sacrilege to bring the present suit. This is, I think, opposed to the leading tenet of the Mahomedan faith which is known to educated people all the world over, viz. 'There is but one God and Mohamad is his Prophet.' "

Dealing with the principal religious books of the community namely (1) The Koran (2) the Hadees or sayings and doings of the Holy Prophet Mohamed (3) the Nehjul Balagh or sayings and doings of Ali, the learned judge observed: "In none of these is the claim which the Mullaji now makes specifically put forward. His counsel admitted that he had no religious authority to show in precise word that the Mullaji could take away trust property under a deed, will or scheme.....I have been through all the other religious writings which were cited but it is impracticable

to do this in a judgement. I have given them my best consideration but in the result I am not satisfied that they fairly substantiate the claims of the Mullaji to ownership of the minds and properties of the followers. I mean even as a matter of religious belief. Further the priests themselves would seem to draw a distinction between ownership in a worldly sense and ownership in a religious sense. Thus when Sheikh Kokab, a former sub-Amil of Bombay, was cross-examined on the Surat Priest's litigation.....and was asked whether it was true or false when the 49th Dai said that he had not the slightest interest in the property, the witness replied: 'In a worldly sense he had no interest and therefore, his statement was correct.'

As regards the ownership of the properties we have seen that the Mullaji claimed to be the absolute owner of the mosque etc. and contended that he was not accountable to any one. He even went to the length of contending that if he was held to be a mere trustee and therefore accountable, the *Mahomedan religion would come to an end!* His contention thus amounted to saying that he was above the civil and criminal law of the land. It also meant that Islam could not permit its religious head to be subjected to the law of the land because he was infallible and immaculate. Infallibility, he said, could not go well with accountability. His claim extended also to the private property of his followers. This will be clear from the following passage in Justice Marten's judgement:

"On the 10th January 1921 Mr. Binning stated that his client had the right in his religion to seize the property of the followers, but it did not arise whether he could enforce his right in a court of law and counsel did not contend either way about that. Substantially the same position was taken up in counsel's final addresses on behalf of the defendants." (Mr. Binning was one of the Counsel for Mullaji Saheb in the case.)

For these wild claims the Mullaji Saheb relied on the freedom of religion guaranteed by the proclamation of Queen Victoria dated 1st Nov. 1858. About the freedom of religion Justice Marten had this to say:

"Now coming down to first principles, British Government brings to its subjects, as a general rule, liberty of the person, liberty of conscience, liberty of speech, liberty to own property, and

last but perhaps not least, equality of man in the sight of the law. But the liberty granted to one subject must not be used to the detriment of another subject. The principle *sic utere tuo ut alienum non loedas* (enjoy your own property in such a manner as not to injure that of another person) is applicable to rights as well as property. In other words, liberty must not degenerate into licence. Hence the law has to impose restraints on those who misuse the privileges of a free citizen. The slanderer, for instance, is restrained by the law of libel, the thief by the Indian Penal Code. But the fact that such restraints exist and apply to all citizens alike is not a slur upon the honest citizen. It is unthinkable that His Grace the Archbishop of Canterbury, for instance, would commit a criminal offence, but he is subject to the criminal law all the same, and this fact involves no slur. So, too, in theory the Mullaji Saheb is amenable to the criminal and civil law of this country, though it is unthinkable that he would commit any offence.*

A striking instance of this is the attempt made by a Dawoodi Borah Priest to put the 49th Dai into prison for failure to pay judgement debt, and which I have already referred to (see Ex. B. E5)."

It is important to note that such claims made by the Mullaji Saheb were never made by any predecessor Dai in the past. The learned Judge observed in his judgement as follows:

"The defendants cannot produce a single instance of these extreme claims having been exercised by any Mullaji Saheb prior to the suit. They cannot even show that these claims have ever been put forward prior to this suit. The trial of this suit in 1920 would seem to be the first occasion whereas the first Dai came to the *Gadi* in 1137 A.D. Possibly these claims owe their origin to the legends of the days when the Dais as Sultans of Yemen had sovereign independent rights. But as I have already said these days ended about 1539 A.D., if not earlier, when the Dais left Yemen and came to India."

It is the contention of the reformists before us that prior to the regime of the 51st Dai members of the community and even of the priestly class were comparatively much more free than to-

* It appears that justice Marten was unduly optimistic in this regard because it has come to light that the present Syedna was involved in violation of foreign exchange regulations of Tanzania and was for that reason expelled from that country by the Government of Tanzania. (see appendix 'C').

day. They could openly oppose the Dai and the weapon of excommunication was hardly used. The earlier Dais were not living in such opulence and luxury as to-day and they were not rich either. This appears to be true. Justice Marten in his judgement has observed:

"Now it is clear that when Burhan-ud-din, the 49th Dai, succeeded in 1891 the Gadi was heavily in debt.....It is evident that these debts must have caused the Dawat considerable embarrassment and I regret to notice that some of the expedients adopted to meet the claims of two Bania creditors would seem hardly worthy of the high office which the Dai occupied...The Dawoodi Bohra priest Abdul Tyeb was another creditor. His suit..... in effect was, for Rs. 53,680 for money lent.....the result was that the suit was settled.....By it (the consent decree) the defendant was ordered to pay Rs. 54,000 by instalments spread over some 12 years with interest.....The next step in the suit was an astounding one, for *this Dawoodi Bohra Priest actually tried to put the Dai into prison for non-payment of the decretal debt or some portion of it.....*Not a word was then said by the Dai that he was the master of the Priest's body and soul and owner of the property. And if ever there was an occasion to raise such a plea, surely it would be when this follower of his proposed to put the then Mullaj Saheb into prison. *It is, I think, to the credit of the then Dai that he did not even excommunicate this audacious priest*" (emphasis supplied).

Justice Marten after rejecting the extraordinary claims of the 51st Dai (Taher Saifudin) held that the mosque was the subject of a trust for public purposes of a religious and charitable nature and the Mullaji was a trustee thereof and accountable as such and that the tomb of Chandabhoy and the Gulla offerings were charitable gifts held on charitable trusts for public purposes by the Mullaji. The court also held that Badri Mahal was purchased partly with the aid of gulla moneys and that the Gulla Charity was entitled to be recouped, the amount utilised towards the acquisition and that pending such recoupment the Gulla Charity was entitled to a charge on the Badri Mahal.

An appeal to the division bench of the Bombay High Court was preferred from the judgement of Justice Marten in the suit by the Mullah Saheb. It was appeal No. 42 of 1921. On 22nd Dec. 1921, however, the appeal was settled by consent terms.

According to the settlement the only variation made in the decree was that the Mullaji Saheb was given liberty to place at any time another box *outside* the enclosure of Chandabhoy's tomb and indicate on or near the box that any offerings placed therein are at the absolute disposal of the Dai-ul-Mutlaq for any purpose charitable or not charitable as the said Dai may direct.

Thus substantially the judgement and decree of Justice Marten became final with a minor change. No further appeal was preferred by any party to the suit.

This case goes to show that highly authoritarian claims came to be put forward by the 51st Dai for the first time in 1917 when the suit was filed against him. They do not have any backing of religious tenets. We shall examine in a subsequent chapter what freedom or lack of it is enjoyed to-day under the present regime. *But from what is stated above it is abundantly clear that in the time of the 49th Dai, not only an ordinary member of the community but even a member of the priestly class enjoyed the freedom of challenging the High-Priest, of filing a suit against him in the court, take legal steps to enforce the decree passed by the Court without facing the threat of ex-communication.*

This case denuded the Syedna of his pretended divinity and subjected him to the law of the land. His claim to absolute ownership of the communal property was expressly negated and he was held to be a trustee of those properties. He remained a religious head but was deprived of the regal crown which he attempted to wear. His status from then on was that of a mortal human being in control of the religious affairs of the community but no more. He was not reconciled to this position and from then on began his onslaught on the reformists and dissenters. But before we examine the evidence, let us see in the next two chapters the allegations put forth in general by the reformists.

CHAPTER IV

MISAQ OR THE OATH OF ALLEGIANCE

One of the most serious complaints made by the reformers is that Misaq or sacred oath which is being administered to young Bohras by the High priest himself in a few cases and by the Amils or sub-Amils (who are the representatives or deputies of Syedna Saheb) in others, is the main instrument of their persecution. This oath, according to the reformers, is oppressive and binds the Bohras to submit to a total surrender not to God but personally to the Syedna Saheb. It is this oath which is said to be the effective sanction for all kinds of inhuman behaviour associated with the weapon of social boycott wielded by the priestly class against the reformers.

Before we examine the effects of it let us first determine the facts about the form and content of this oath and how it is administered. One witness has produced English translation of a document which purports to be the misaq. Every boy or girl on attaining the age of puberty, that is to say, the age of 13 to 15 years, is expected to take this oath which is administered to the boy or the girl by an Amil. The Amil reads it and at the end of every paragraph he asks the oath maker to say 'yes' and the latter dutifully says so. The parents of the young are required to pay some amount to the High priest through the Amil on the occasion of oath taking ceremony. This oath is called misaq. The person who takes the oath is said to *give* Misaq to the Syedna Saheb.

In the case Advocate General of Bombay V/s Yusuf Ali & others reported in 24 B L R. 1060 (Supra) also known as Chanda-bhoj Gulla case, the predecessor of the present Syedna Saheb was himself a defendant. His name was Taher Saifuddin. He had given oral evidence. He had himself produced a document purporting to be Misaq. Its English translation was also kept on record. It was Ex. 17 on the record of the case. Justice Marten has in his judgement of the case characterised it as a 'remarkable' document. Remarkable, indeed, it is!

It was claimed as a secret document by Saifuddin. It has, therefore, not been fully set out in the judgement of the Bombay High Court. But Justice Marten has referred to it and has noted that according to Saifuddin himself it was ninety years old. This evidence was given in 1920 A.D. Therefore, according to the then High-Priest himself its origin is not very antiquated. It must have been written around the year 1833 A.D. The date of writing has been mentioned at the foot of the document by the author which is 1248 Higra which comes to 1833 A.D.

Another witness has produced before us a true copy of the English translation which was kept on the record of the *Gulla* case referred to above. The witness has said that the decision of Justice Marten was carried in appeal to a division bench of the High Court and he has taken out the copy from the appeal paper book then prepared. He has shown us that paper book.

Another witness has produced a printed book entitled "Mussalman Wakf Act and the Dawoodi Bohra Community" which he says he had got printed in 1933. It contains about 29 documents including the memorial and representations made to various authorities by the reformist section of Dawoodi Bohras requesting them not to accept the demand made by some Bohras to exempt the Dawoodi Bohras from the Mussalman Wakf Act 1923. The book contains at serial No. 7 the document 'Misaq' in English translation. This translation also tallies with the copy referred to earlier. We are, therefore, satisfied that what we have is an authentic copy of the Misaq as it was produced by Saifuddin (51st Dai) in the Court. We are also satisfied that the same document is today being used by the priestly class while administering Misaq.

Taher Saifuddin had claimed that the document produced by him was a secret document. We are unable to see how it can be so claimed when it is administered to every Bohra youth by Amils and the High Priest himself. There may have been some need for secrecy when Ismailis were fearing persecution by the sovereign rulers or by other sects but after the establishment and consolidation of the British rule and then after the advent of independence no one can seriously contend that the High Priest or priestly class or the community as a whole stand in the danger of facing religious persecution from others. This document affects a large number of Dawoodi Bohras. The claim to secrecy is, therefore,

out of question and we would not be justified in refraining from putting it on our record and incorporatng it in our report. Besides, it has been published several times. The latest is its publication in New Quest (issue No. 7 Jan Feb 1978) published from Pune.

We set out below the full text of the Misaq in English translation as used by the Syedna at least since the time of Taher Saifudin:

M I S A Q

- (1) "And if the Imam of the time or his Dai calls upon you to war against the enemy then you should make war. You should help with your life and property. And you should obey the Imam of the time or his Dai sincerely.
.....Say yes.
- (2) And whatever the Imam of the time or his Dai orders you to obey you should obey the Dai and you shall not become a sinner (by disobedience); and you shall not become hostile to the Dai. You shall not lay claim to the Daiship. You shall back up the Dai as true and you shall not falsify the Dai.
- (3) You shall keep up the command of the Imam and that Imam is Imam Tyeb Abul Qasim Amirul-Mominin. He is your Imam.
.....Say yes.
- (4) And you shall accept the order of the Dai of Imam in all things. And you shall not use that thing which the Dai shall forbid you, and you shall not take steps (towards it). You shall love him whom the Dai loves. You shall be enemy to him with whom the Dai is hostile. You shall war against him against whom the Dai makes war. Any person transgressing those engagements to the Dai he is outside the pale of religion. Whether he be great or small, whether he is a close relation or a distant one you shall not have any intercourse with him. You shall not correspond with him openly or secretly. You shall not do any act calculated to be friendly to him. And by no manner or means or pretence shall see the enemy of the Dai. The enemy of the Dai is your enemy.
.....Say yes.

- (5) And you shall attend on the summons (of) the Imam or the Dai to make religious war. At that time you shall not shirk or play the coward. You shall with all heart spend your property and your life in the cause of the Dai. You shall report fully to the Dai or to the Deputy of the Dai any person who transgresses the covenant of the Imamuzzamam.

.....Say yes.

- (6) And you shall not permit yourself to be induced to withhold assistance from the Dai, service and obedience to him, and prevent you from carrying out the order of the Dai. Further, you shall not suffer any disbeliever to turn you away from taking the oath of the covenant to the Dai. You shall render perfect service with your property and with the offer of your life (to the Dai). *The master of your life is the Dai of the Imam of the time.*

.....Say yes.

*7...8 (This has been omitted from Ex. 17)

- (9) And you shall be pleased by the order of the Dai of the Imam. The Dai shall raise among you or degrade among you persons as he likes. He shall gift to and shall deprive persons as he pleases. The Dai shall reward persons and shall *punish them in his discretion*. The Dai shall smile upon or shall break his wrath on whomsoever he thinks fit. *You shall be pleased in that in which Dai is pleased.*

.....Say yes.

- (10) The person to whom the oath is due enjoins to this effect that if a person on whom it is made obligatory by me to keep faith to the oath openly or secretly breaks it the defaulter is forsaken by God the Creator of the Earth and heavens, the framer of limbs of creatures, the Conferer of blessings on him, and the Bestower of health. The breaker of the oath is shut out from the books Taurat (laws of Moses), Injeel (the Bible), Zaboor (Psalms of David), and the Holy Quran. He is also deprived of the perfect Words (Blessings of Imam).

.....Say yes.

- (11) If a person taking the oath breaks it all his possessions, i.e. moveables, cash, housing, utensils jewels, ornaments, carriages, horses, cattle, milching cows, she buffalows, slaves, males and females *and all wordly materials become unlawful*

for him. All his property is liable to be looted and to be distributed among the poor and the needy. When he takes the oath again and accepts all the terms of the covenant then his things become lawful to him and then only he is entitled to get his things back.

.....Say yes.

- (12) All the benefits which he had already enjoyed (from his possessions) becomes unlawful i.e. with a prospective effect unless he takes the oath afresh (the past enjoyments) do not become lawful. *Say yes.* All the slaves males and females of the breaker of the oath become free and the defaulter loses all ownership over them until a fresh oath and he keeps faith with the covenant.

.....Say yes.

- (13) *And if the breaker of the covenant has a wife that wife becomes forbidden to him.* The breach (of covenant) has the effect of three Talaqs (divorce) against the wife i.e. Kataee Haraj and Sunnat (three forms of divorce). The woman can never marry him again, neither he can take her as a wife. *Say yes.* If the breaker of the oath performs Hajj thirty times with naked feet even then God shall not forgive him his sin (in breaking the covenant) or God shall accept his Hajj. But if he takes the oath again by the true Dai's covenant his master then and then alone God shall accept his Hajj, his prayers, fasts and other good deeds.

.....Say yes.

- (14) And the breaker of the covenant accursed of God by that curse which was inflicted on Iblis, the Satan the effect of which was that paradise was lost to Satan and hell became his inheritance.

.....Say yes.

- (15) *And the breaker of the covenant shall face his God as Kafir and apostate after his death. He is beyond redemption by the power of God.* He will be thrown on his own soul and shall curse him and shall extend hell to him which hell is the worst of all places. There is no God but he, Merciful and Benevolent. The defaulter turns away his face from the worship of God and turns it to the worship of idols. All kafirs worship idols and thus shall become attached to the idols and the grace of God shall destroy the breaker of the

oath with rapidty and shall confine him to hell in which there is *nothing but torture*.

.....Say yes.

- (16) There is no freedom for your soul but loyalty to the covenant and there is no salvation for you but in fulfilling the terms of the covenant. You have made God your witness and the testimony of God is enough.

.....Say yes.

- (17) You heard my words and you are pleased with my conditions. The person to whom the covenant is due say that you took upon your neck the obligation to hear the covenant of God and you took the mighty oath and you gave oath of allegiance which is very strong and which for our Lord the Imam Tyeb Abul-Qasim Amiril Mominin may the peace of God be on him and his holy ancestors and the generous descendants who are expected till the day of resurrection. When Imam Tyeb went in seclusion owing to the highhandedness of the oppressors, he left in Dawat three ranks behind him, namely, the rank of Dacee, the rank of Mazoon and the rank of Mukasir. Owing to the existence of these three ranks the existence of the Imam of the time is known to be in existence. The present Dai of the Imam of the time is the grand Maulana the singular Sayedna Zainuddin, May God prolong his life and his Mazoon is Bhai Saheb Shaikh Adam and his Mukasir is Bhai Saheb Hibtulla Bhai. Whoever recognises Zainuddin and these three ranks he recognises the Imam of the time.

.....Say yes.

- (18) Then be pleased that you have given the oath of allegiance to the Imam and his Dai, God says in Kuran to prophet: "O Mohammed the people do not give the oath of allegiance to you, rather they give it to God. The hand of God is above the hands of all people. Whoever breaks the covenant his soul will be tormented and whoever fulfils the covenant God will bless him and will highly recompense him. The persons from whom the Misaq is taken says that God may keep the covenants firm to the covenant and it may not be that he may *treat* the covenant as a mere deposit. May God grant you and me, the true believers, to be faithful to the covenant and may God keep you and me steadfast to His obe-

dience and the obedience of God's prophet and the obedience of Wali of God, the present Imam and his Dai and may God make it complete for you and us to remain firm for the mercy of God through the good end. And (all) praise is due to God, the one, the great Avenger; and peace of God be on Mohammad the Selected and on his Wasi, Preserver, and on his Progeny, the good, the pure, the righteous.

AND SALAAM !

- (19) It is written on the 10th of the month of Rabial Awal by the slave of Grand Dai Mowalana Zainuddin, may God prolong his life, Ahmedji the son of Mulla Nurkhanji in the year 1248 (higra) in the town of Ajmer, may God the Exalted protect him."

This document is virtually a charter of slavery. in particular, paragraphs, 4, 5, 6. 11. 12, and 13 are remarkable for their unabashed inhumanity.

Paragraph 2 commits every Dawoodi Bohra to absolute obedience of the orders of Dai of Imam i.e. of Sydena Saheb of the time. Disobedience is a sin. It is an advance commitment to obey all the commands of Dai of the time in future by a junior child without even knowing what those commands will be.

Paragraph 4 makes it clear that obedience to the order is demanded not only in religious matters but "in all things", that is to say, in all the secular affairs also. This para leaves the oath-maker in no doubt about the consequence of breaking the oath. As soon as he breaks the oath, he automatically places himself outside the pale of religion. The Misaq enjoins all Bohras not to have any kind of relations with the oath-breaker, be he a distant or close relation. No one can communicate to him openly or secretly. Nobody can remain his friend. Every Dawoodi should treat him as an enemy because he is the enemy of the Dai.

Paragraph 5 casts an obligation upon everyone to declare Jihad or religious war against such a person: Everyone should be prepared to lay down his life in making war with such a person. It is also the duty of everyone to report the names of such oath-breakers.

Paragraph 6 declares that the Dai of Imam is the master of

the life of every Dawoodi.

What follows in para 11 is atrocious and monstrous. It says that all the properties of one who breaks the oath are liable to be looted. All his possessions become unlawful unless he takes the oath afresh.

Paragraph 13 goes further and says that the wife of such a person becomes forbidden to him. The breach of the oath has the automatic effect of divorce with his wife. That woman can never marry him again. God would never forgive his sin of breaking the covenant. But if he takes the oath again God would accept his prayers and forgive him.

It is claimed by the priestly class that this oath is voluntarily taken. They argue that if one does not desire to accept the High-Priest as the master of his life, one should not take the oath! This is an untenable argument because it is maintained in the same breath that "no one is a Dawoodi Bohra by birth but he becomes one only when he makes the oath". One of the witnesses has produced a document which is a notice dated 29 th July 1968 given on behalf of the present Sydena by his secretary to one Shri Ebrahim Shaikh Mohamadaly of Kampala (Uganda) threatening him with action of ex-communication and expulsion for certain defaults. We shall have an occasion to refer to this notice later in another context. Here it is referred to only for the purpose of showing that this claim is being made by the Syedna himself. The notice contains the following passage:

"Every Dawoodi Bohra is under a solemn obligation as a religious duty imposed by the faith to give Misaq to the Dai-el-Mutlaq of the time, and thereafter to faithfully observe the covenants of that Misaq. By virtue of the Misaq given and in obedience to the beliefs and tenants of the faith of the Dawoodi Bohra sect, every follower is under a solemn obligation as a religious duty to obey and implement the firman of His Holiness the Dai-ul-Mutlaq. Disobedience to a firman is a breach of the misaq which empowers His Holiness, the Dai-ul-Mutlaq, in his absolute discretion, to deny to a transgressor of the Misaq all or any of the rights and privileges of a Dawoodi Bohra."

A book entitled "Tarkunde-Nathwani Commission? Committee? Confusion?", which is obviously a publication inspired

by the priestly class, contains a Chapter called "The faith and way of life of Dawoodi Bohra Community". In that chapter the following passage occurs:

"Misaq: No one is born a Dawoodi Bohra. On reaching puberty every person who so desires can voluntarily give the Misaq which one is enjoined to do by the tenets of the faith and *so become a member of the Dawood Bohra sect,*" (Emphasis supplied by us).

We are satisfied from these documents that it is the claim of the High Priest that a person who does not give Misaq would not be treated by the Dai as a Dawoodi Bohra.

Thus the claim of the Syedna is that no one is a Dawoodi Bohra unless he gives Misaq to him in the form set out in this Chapter. And once he gives his Misaq he is told that he is bound by it, and, therefore, has got to obey all the orders of Dai "in all things"! How can this oath then be described as a voluntary oath? Apart from the fact that one has to give it at the age of about 15 years which is not legally the age of full understanding in India (the age of majority is 18 years) giving of Misaq is treated as condition precedent to the acquisition of the status of the Dawoodi Bohra!

The implication of this oath is clear. It is that a promise of absolute obedience to all the future commands of the Dai, whatever they are, and whatever be their subject matter, is a condition of being a Dawoodi Bohra. One has to accept the Dai not merely as a religious head but as a master in secular affairs as well! This puts the Dai in the position of an absolute dictator controlling all aspects of the life of all members of the community. Even God is not above the Dai. *Because the oath says that if Dai's orders are broken even God will not pardon the person who has disobeyed the Dai's orders.* If he however again takes the oath of allegiance to the Dai, God will be pleased to pardon him. A benevolent God may pardon the sinner even though he has sinned against His own commands but He cannot pardon the man or woman who disobeys the Dai's orders!

And what is the sanction for breach of the covenant? Not merely the fear of hell and torture in the next life but complete ostracism and pauperisation in this life as well! His property should be looted and his nearest relations should break away

from him. His wife stands automatically divorced!

Thus complete surrender to the Dai even in secular matters is the price one has to pay for becoming a Dawoodi Bohra. The Misaq in the form in which it is being administered since the time of 51st Dai implies that *only a slave, not of God but of the Dai, can be a true Dawoodi Bohra!* It is difficult to see how a human being with any sense of self-respect can take such oath or having taken it when he was a minor can ever think of respecting it. If he stands fully by this kind of oath, he would be placed in a position of an offender not only against the laws of the State but also against the law of God! He cannot tell the truth in a Court of law if he has to appear as a witness against the Dai. He cannot criticise the Dai in public or in private. He cannot read the books or magazines which are indexed (banned) by the Syedna. He cannot maintain any intercourse with those on whom the Syedna's wrath has descended. He must participate in the looting of the property of a disobedient person if asked to do so. He must join in the war against the enemies of the Dai if commanded by him to do so. In short he should do whatever is commanded and should not do what is forbidden by the Dai. He has to mortgage the rest of his life to the Dai in choosing whom he had no voice. Whether right or wrong the orders of the Dai must be obeyed. And disobedience invites the most barbaric penalties. In our considered view this oath is totally destructive of all human rights.

It may perhaps be thought that this oath is a mere ritual to be practised according to the tradition and that the engagements contained in it are not to be taken seriously in practice. But the evidence discussed later under appropriate headings will show that it is not a mere matter of ritual. The engagements in the oath are strictly enforced by all the sanctions mentioned in the Misaq except perhaps looting the property of the errant individual.

It should also be noted that a reformist is not entitled to dissuade a Bohra youth from giving the misaq (see para 6 of the Misaq). This means that the guardian of a minor cannot tell his ward not to give Misaq if he does not agree. The minor of 15 years of age should set his face against his guardian if the latter tries to dissuade him.

A transgressor of the oath must agree to give Misaq again

and express his repentance and give a deed of apology if he wants to return to the fold. Several witnesses have produced the terms of apology which they were asked to accept and sign. We reproduce below one such document which was given to one Ali Husen Jafar Husen who was socially boycotted and was then allowed to return to the fold on his signing the draft which was given to him for signing on the dotted line.

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Dated 2nd February, 1975
 Anjumane Burhani Jammāt Committee,
 Bhavnagar

With respectful compliments:

I, Alihussainbhai Jaferhussein Rangwala against whom Baraat (social boycott) has been proclaimed, hereby agree before the Anjumane Jamat Burhani Committee that it is not my habit to say anything against the Dawat but even if I have said anything (unconsciously) against the Dawat or raised some controversy, I now say in the name of God and the Dai of God that I am a slave of the Maulana and I have been so believing and shall continue to so believe. I assure you that hence forth if I make any such controversy, you may take any steps you like. But I am an humble slave of the Syedana and may Maula be my master and he may pardon me.

Abde Syedna—Ta. U. Sha.
 Alihussain Jafarhussein.

(This document bears the seal of Anjumane Burhani Jammāt Committee Bhavnagar, and is countersigned by 19 members of the committee, probably in token of the acceptance of the apology. (The words preceding the signature of Alihussein, 'Abde Syedna' mean 'Slave of Syedna').

The terms of this deed are eloquent and need no comment. They are humiliating in the extreme and compel a person to approach the High Priest or his agent in sackcloth and ashes. It is an insult to human dignity.

We shall examine later how in fact and in actual practice the Syedna Saheb asserts the rights which flow from the Misaq.

Before parting with this subject we like to advert to one important matter. The reformist section has alleged that the current form of Misaq was manipulated by the 51st Dai and many matters were interpolated which were not to be found in the Misaq of the old days. They base their allegation on the fact that the 51st Dai himself admitted in the Galla case (Supra) in the Bombay High Court in 1920 A.D. that the form of Misaq produced by him was ninety years old. The date of the document mentioned at the foot of the document is the year 1249 Higra (1833 A.D.) Then they compare this document with another document which was produced by the Advocate General of Bombay in the Galla case as an exhibit. It is claimed that the said document is contained in a sacred book and is written in Arabic language in about the year 560 Higra (approximately 1165 A.D.) We reproduce the exhibit in Appendix "D".

A comparison of the two documents does reveal that there is a world of difference between the two. The Misaq used by the Syedna is fantastic and amounts to a charter of slavery while the document produced by the Advocate General of Bombay is innocuous. If the latter document was the Misaq used in older times then the allegation of manipulation would stand established.

The question, however, is about the source of the old document. No witness has been able to produce the sacred book from which it is said to have been taken. This form is not referred to in any authentic book. The researches made by one of us show that the original Misaq which was taken by the Dai-ul-Mutlaq or his Amils in the 6th Century Higra, (Islamic year) i.e. in about the 11th Century A.D. contained all the objectionable features of the currently used Misaq particularly mentioned in paras 11, 12, 13, 14 and 15 in the form set out earlier in this Chapter. (Though that portion of Para 11 which relates to the looting of the property is not to be found in the old form). The old Misaq was reported in the History of Egypt by Maqrizi, the great Arab Historian (Arabic) and which has been certified by Prof. Zahid Ali, Professor of Arabic, Nizam College, Hyderabad and also by Ivanov the orientalist who wrote on Ismaili religion (The Rise of the Fatimids, London, 1923 and "A guide to Ismaili Literature" London).

The old form has no doubt been altered but the present form does not substantially differ from the old document of about

11th Century A.D. in its essential features except that the right to lot the property of a disobedient Bohra seems to be an addition. The other alterations seem to be on minor points.

The Misaq, it should be noted, is not prescribed by the Koran or by the tradition of Mohammad. It is a typical Ismaili-Dawoodi institution. It is not at all obligatory on Muslims except Dawoodi Bohras. Some sort of 'Ahd' or oath is found among another Ismaili sect called Sulaimani Bohras. But it is not so rigid or harsh. No other Muslim sect practices Misaq or its equivalent.

The charge of manipulation levelled by some of the reformists, however, appears not to be without some basis, since it is certain that before the 51st Dai the Misaq had become a mere ritual and had only a ceremonial value for a considerable time. It was not generally enforced before the 51st Dai's regime. Moreover, it was given to the Imam in Seclusion and the Dai-al-Mutlaq and his Amils used to take it merely as the agents of the Imam. It appears that the word Dai alongwith Imam in several passages of the Misaqnama was introduced comparatively recently.* It is in this sense that some significant deparature can be said to have been made in the Misaqnama and, it seems, that the 51st Dai used to elevate the status of the Dai-al-Mutlaq to that of the Imam in Seclusion.

As we have seen in the earlier chapter, a suit was filed against the 49th Dai by an Amil and the latter actually tried to put the Dai into prison for non-payment of the decretal debt or some portion of it. The 49th Dai did not even excommunicate the Amil who did this. This clearly shows that the Misaq was not enforced and the earlier Dai did not invoke the Misaq even against a person who challenged him in secular matter. It appears that the Misaq in its harsh form arose as somewhat of a necessity when the Ismailis were spreading an underground network with a view to challenging the Abassid power. The persons who showed willingness to enter into Ismaili fold were administered this oath of allegiance. The covenant was drawn up in order to warn the fresh entrants of the consequences of breaking the oath or establishing contacts with the enemy of the Ismaili mission.

* In this connection it may be also worthwhile to compare the Misaq currently in use as set out in this chapter with the form of the Misaqnama set out in "Gulzare Daudi" for the Bohras of India by Mian Bhai Mulla Abdul Hussain (1920) at page 91.

However, after the disappearance of the Fatimid power the Misaq lost its *raison d'être* and seems to have been retained for its symbolic or ritual value. The Dais who officiated as the heads of the Ismaili mission after the last Ismaili Imam went into seclusion continued to take Misaq more or less as a ritual. It is also important to remember that right from the beginning the Misaq was taken for the Imam and not for the Dai. Thus one of the earlier Dai-ul-Mutlaq says in his book Tuhfat-ul-Qulub that "it does not behove a Dai to ascribe a single word of the Misaq towards himself".

He also makes it clear in the said book that Misaq is essentially for the purpose of strengthening the Ismaili faith and not achieving any worldly end. Most of the Dais after the last Ismaili Imam went into seclusion, faithfully, observed these instructions and never exploited Misaq for worldly ends.

The 51st Dai, however, used Misaq to build a personality-cult. What had eventually become a ritual was revived and strictly enforced thus using it as a weapon for centralising power and building his own empire. He used it as a standing threat to coerce Dawoodi Bohras into submission and to make them obey his commands not only in the religious but also in the secular field. This along with Ruku Chithi, as we shall see later, came into his hands as a powerful instrument for concentrating power and collecting wealth on a fantastically large scale. Thus the personality cult came to be systematically built by him.

A word for every letter of the Urdu Alphabet is coined which glorifies him in every manner. Whatever be the correct position and whatever the historical justification or otherwise for introducing the Misaq, the fact remains that the Misaq in its present form is absolutely oppressive, harsh and inconsistent with human rights. To judge its true character, it is immaterial in our view, whether it was prevalent in the 11th Century in the same form or altered in the 19th Century and continued in the 20th. Hoary antiquity cannot sanctify what is essentially destructive of human dignity and freedom. Untouchability among Hindus is much older than 11th Century but that does not make it sacred or respectable. Slavery was also an age-old institution but it was cast away by civilised mankind. Nothing that is inhuman can be justified merely because it assumes the cloak of religious practice nor can it gain sanctity by virtue of its antiquity.

CHAPTER V

REFORMISTS' GRIEVANCES

The Central Board of Dawoodi Bohra Community which claims to represent the reformist or enlightened section of the Dawoodi Boharas in India submitted to the Commission a memorandum dated 7th April 1978 which sums up the grievances of the reformists. It is a lengthy memorandum but we have made a summary which we set out below.

The Board contends that the reformist movement among the Dawoodi Bohra dates back from the early years of the 20th Century. The community consists of small traders and petty businessmen who are known for their religious devotion. Prior to the accession of 51st Dai on the Gadi, the Dais were liberal in exercise of their power and allowed other Ulemas (priests) a great degree of latitude in exercising religious functions like leading congregational prayers, solemnising marriages, performing funeral rites etc. without prior permission from the Dai. The local Jamats also enjoyed full autonomy in carrying out their day-to-day functions, selecting their local representatives to run the affairs of the Jamat, collecting and spending money etc. This according to the Board amounted to respecting the democratic norms and paved the way for smooth working. The poor, needy, widows and orphans were also taken care of by the local Jamats.

After referring to the case which we have dealt with at length in Chapter III it goes on to contend that the result of this case infuriated the Syedna. He thought that if this tendency was not checked it would lead to a dangerous situation. He therefore, started using coercion in order to make recalcitrants fall in line with him. He arbitrarily excommunicated all those who had sided with Ebrahimbhai Adamji and ruthlessly enforced his decisions. Terror was created. Most dissidents were scared and they had to apologise and retract in order to escape the consequences. The Syedna then centralised all powers in his hand. These powers as pointed out above were earlier enjoyed by Ulemas and local jamats. The local Ulemas now could no longer solemnise

marriages, perform funeral rites without the Dai's express permission. Local Jamates were forced to remit all public moneys to him and not a pie could be spent by the Jamat without his permission. All the powers which were earlier enjoyed by the local jamat were now vested in Amils who were appointed by the Dai. These Amils were mere puppets in the hands of Syedna, his two brothers and other members of the family. The family at present has 188 members and each member of the family behaves as a Chhota Potentate.

This centralisation made him an autocrat and coupled with the power of money he became extremely powerful. From now on he controlled every aspect of a Dawood's life from conception to death. No activity whether religious or secular will now be carried out without his permission. He issued Firmans, banning/dissolving organisations which were promoting the cause of social welfare, modern education, culture and which brought greater awareness of human dignity and human and democratic rights. Cooperative Banks and such other independent organisations which could not be banned or dissolved were taken over by his management and were finally strangled to death. Reading of certain national newspapers was banned and if any Bohra was reported by his intelligence men to be secretly reading them, that person with his entire family, relatives and friends were persecuted.

The memorandum then proceeds to give illustration of these allegations.

The Syedna went on ruthlessly taking over possession from the manager/trustees of the community public charitable wakf properties valued at crores of rupees. Those who did not cooperate were severely persecuted. In the trusts which could not be taken over due to legal difficulty, the Syedna got himself appointed as one of the trustees having wide and arbitrary power.

Despite heavy repression and ruthless suppression of the reformists' movement a few individuals kept the torch of liberty burning.

The Syedna resorted to similar coercive methods in other countries as well where Dawoodi Bohras from India had migrated and settled down. There was great unrest among the Bohras in East Africa and they too demanded similar rights from the Syedna. As the Syedna was not supported by the British authorities in East

Africa, he was forced to restore democratically drawn up constitutions for the Jamats there. These constitutions gave complete autonomy to the local Jamats in running their secular affairs without touching Syedna's religious position as a Dai.

In 1932 the 1st Bohra Educational conference was convened at Bombay under the presidentship of late Sir Mohamedali Kanga, father of Mr. Ismail Kanga who is at present prominent solicitor and Ex-Consul General of Ethiopia. The organisers and even the participants were ex-communicated and their family members and relatives were persecuted. During that period, a Bohra Youth Association was also formed in Karachi by the late Sir Hatim Alvi and other prominent persons. They sought to promote the cause of education among the girls. Till then female education was totally banned. This group of brave persons was violently attacked and persecuted.

In 1944, the reformist Bohras tried to organise themselves and convened a conference in Bombay under the Presidentship of Sir Yusufali Currimji Jivanji of East Africa. One hour before the conference time, the Sunderbai Hall, the venue of the conference, was forcibly taken over by a violent mob of not less than 5000 Bohras led by Syedna's agents. The reformists were forcibly prevented from entering the Hall. Finally the venue was changed and the conference was held under great tension.

From 1954 to 1957, the community was so much terror stricken that no one dared to defy Syedna openly.

In 1957 another conference of the Reformists was held in Bugasara, a town in Gujara*. Among other things, the delegates demanded Jamat constitutions on the lines of those in East Africa, greater facilities for education for Bohra students, setting up of charitable institutions like hostels, orphanages, etc. the paucity of which greatly inconvenienced the members of the community although huge amounts of money were collected every year. The Syedna was also requested to account for these funds. The priestly class let loose repression on those who attended the conference. Different Jamats were forced to pass resolutions against the Bugasara conference and to denounce the relatives of all those who participated in it. The participants were demanding nothing more than what was already agreed to by the Syedna in the case of East Africa. The Syedna had concealed the fact of having granted democratic constitution to the Bohras of East Africa from his

Indian followers for fear of spreading democratic aspirations in the community.

In the mid-sixties the reformist movement gathered a new momentum in Godhra (Gujarat) where a large number of people rejected those priestly injunctions which were not based on a true belief of the Dawoodi Bohra community. A number of marriages were performed without the prior permission of Syedna Saheb. Their dead were also buried without his prior permission. The sons and daughters of Godhra also had to face a great deal of repression and the priesthood with the help of the weapon of Baraat i.e. social boycott succeeded in suppressing the members after a few years fight.

The Baraat has been adopted as an alternative device to ex-communication. Baraat literally means to disown or keep away from certain ideas or acts, but the priesthood employed this term for social boycott of any person who not only lost all his rights in the community but was also prevented from maintaining contacts with his own relatives including the parents, the spouse and friends.

There was a good deal of agitation in Bombay against Baraat. A number of copies of the order of Baraat were burnt by the reformists near Flora Fountain, Bombay. A brother of the Syedna Janab I. Zainuddin issued a public statement saying that Baraat only meant a directive to the faithful to disown certain ideology and no ex-communication or social boycott was intended. But this was only meant to mollify public opinion and the weapon of social boycott continued to be used.

Later on a grave situation developed in Udaipur in 1973. The young educated people of Udaipur formed a Bohra Youth Association which was registered, its objects being to carry out certain welfare activities for the Bohras in Udaipur. They started running a cooperative Bank, a scholarship society and a library. Four active workers of the Association wanted to contest municipal election but they were refused permission to do so. The youth members contested the election in spite of refusal and inflicted disastrous defeat on the candidates sponsored by the Syedna. This open defiance was enough to enrage the priestly class. The present Syedna sent one of his sons, Prince Qaid Johar, to Udaipur with a directive to dissolve the association and the cooperative Bank forthwith and to suspend all other activities of the youth

Association. The prince came to Udaipur and ordered dissolution. This was resented by a majority of Bohras of Udaipur. The Syedna's son openly said that whatever the Constitution of India may say, our religion was above the law of the land and the Syedna's written Firman to dissolve the association which was set up without his prior permission must prevail. He further said that it would be Syedna's discretion to reestablish the association after its dissolution and that it will be his prerogative to nominate its members and office bearers. The Bohras were not satisfied with this explanation and insisted on their fundamental rights. The prince had to agree to an intervention from the local Collector. The prince reported the matter to Syedna who declared Baraat (social boycott) against 10,000 Bohras of Udaipur. This declaration of Baraat made them panicky. A group of Bohras of Udaipur including women rushed to Galiakot durgah in Rajasthan where the Syedna was then camping. However, the Syedna did not hear them and they were set upon by a bunch of roughnecks and were severely beaten. Women were molested under the nose of Syedna Saheb and they had to flee to save their honour. The priestly class then withdrew the religious services and refused solemnisation of marriages etc. For two years thereafter the affected Bohras kept on pleading with Syedna to solve the problem and solemnise pending marriages.

However, Syedna refused to entertain this plea. Marriages remained unsolemnised. The then Prime Minister's attention was drawn by the reformist to the plight of these would be couples which by then numbered more than 200. But that did not help much.

After the Udaipur revolt the priesthood let loose a rain of terror on the community.

The memorandum then gives several instances of atrocities, social boycott, etc.

Earlier the reformists held the first All World Dawoodi Bohra conference on 17, 18, 19 February, 1977. According to the memorandum, Syedna instructed his followers to break this conference at any cost. It was planned to infiltrate some 15000 persons in Udaipur for the purpose. Syedna himself directed the operations from the Galia Kot Durgah 75 miles from Udaipur. The conference therefore became a great security risk and heavy police bandobast had to be kept. In spite of this, the conference had to be curtailed by one day as the law and order situation was getting worse.

CHAPTER VI

INTERFERENCE WITH CIVIL LIBERTIES AND HUMAN RIGHTS

Section A of the questionnaire issued by the Commission contains questions regarding the position of civil liberties and human rights enjoyed by members of the Dawoodi Bohra community vis-a-vis the High Priest or Syedna Saheb or Mullaji Saheb as he is called. Practically all the respondents to the questionnaire have replied that Syedna does not permit them to be enjoyed by others in this country. Almost all of them have stated that they are not allowed to express their free opinion about the community affairs and they are being suppressed by terror, harassment, social boycott and ex-communication. They have said that there is no freedom to publish any journal or news-bulletin without the permission of the High Priest or his agents. There is no freedom to read any daily newspaper or magazine banned by the High Priest. They do not have the freedom to form an association or union or a co-operative society without the sanction of the High Priest. They also do not have liberty to establish or administer orphanages, Mussafarkhanas (rest houses), schools, co-operative banking societies, consumer co-operative stores, homes for the widows or the old without his permission. Practically all of them have said that they do not believe that in secular matters such as these any permission of the high priest should be necessary. They have also said that to seek such permission is inconsistent with their self-respect and contrary to the constitution of our country. They have further stated that if permission is sought, it is granted subject to such conditions as would be violative of their rights and liberties. These conditions vary from case to case, a list of which will be found in Appendix E. Almost without exception they have stated that if these things are done without permission the consequences are very serious. The person concerned is socially boycotted or excommunicated, discriminated against victimised and pressurised to close down the institution started by him. In general, they have all said that it is not fair that the High Priest or the priestly class should do any of these things.

As regards the elections to the Lok Sabha or the State Assembly or local bodies, everyone has answered that there is no freedom to contest the election without the permission of the High Priest. As regards the right of vote, members of the community are pressurised only to vote for a candidate who has obtained the permission of the High Priest if he belongs to the Dawoodi Bohra community and his blessings if he belongs to any other community.

In the letters of invitations or correspondence with the High Priest or his subordinates, the members of the community are required to use the expression "Abde Syedna", if a male, or, "Amate Syedna", if a woman. Some respondents have said that prior to the regime of the 41st Dai it was not obligatory to use the expression but since he ascended to the Gadi it has become mandatory to write such words. The expression "Abde Syedna" or "Amate Syedna" means the slave of the Syedna. If these words are not used in the invitation cards for marriage or dinner party, such dinner would be boycotted and permission would not be given for marriage.

Teacher Mobbed and Dismissed

Now let us examine some of the cases in detail so far as freedom of expression and the freedom of opinion is concerned. These are only a few illustrative cases and do not exhaust the list. One Mulla Taherali A. Lokhandwala was a teacher who is residing at Arthur Road, Tardev, Bombay. He was working as a teacher in the Taheri High School, Khokha Bazaar, Bombay. He was teaching in the said high school for more than nine years. He says that he is a sympathiser of the Bohra Reformist Movement but has never displayed his sympathy publicly all these years. In 1975 one day he was reading Urdu Blitz in the School premises. Blitz as is well known, is a weekly magazine which is published both in Urdu and English and has a large circulation. We are not concerned here with the views or policy of this journal. It sometimes gives news about the Bohra reform movement. According to Shri Taherali, Urdu Blitz has been placed on the banned list by the priestly class. One day in June 1975, he was found reading Urdu Blitz in the High-school and for this he was beaten by teachers and students of the high school in the school premises and then thrown out. He narrated his story to the Editor of the Urdu Blitz which published it prominently. According to him, this enraged

the priesthood and he was dismissed from the school on some flimsy pretext. This high-school is run by His Holiness Syedna Mohamad Burhanuddin's Education Department. This is seen from a letter dated 22.3.1389 (Higri) corresponding to 11.6.1969 (A.D.) informing him on behalf of Syedna Burhanudin Saheb that he is appointed in Taheri High School as a teacher and that he should take up the said position and report for duty on 25.3.1389 (Higri) corresponding to 14.6.1969 (A.D.) Shri Lokhandwala has produced a photocopy of the original letter in urdu with monogram and its English translation. Thus there is no doubt that the school is under the management of the Syedna. He complained to the Director of Education, who ordered his reinstatement because his dismissal from the school was quite irregular. The management of the school Challenged by a writ petition filed in the High court of Bombay the validity of the order of the Director reinstating him. When the petition came up for hearing, it was stated by the counsel on behalf of the school management that they desired to withdraw the petition unconditionally and that Taherali would be reinstated in the school and arrears of salary would be paid. Accordingly he was reinstated. But the management then instigated the students, and teachers not to permit him to work peacefully and to insult, abuse and attack him violently. Everyday he had to go to the school under police protection.

On 27th September 1978, he went to school as usual in a police van. The Inspector of Pydhooni Police Station was also with him. As soon as the proctor of the school saw him coming to the school, he immediately asked the students to leave the classes and mob him. The Police Inspector saw this incident and scolded the proctor for his irresponsible behaviour in releasing the students with the intention of attacking the teacher. Meanwhile some outside goondas came and locked the door from outside, thus confining both the Inspector and the teacher. Later on the principal appeared on the scene who was also scolded by the Inspector. When the door was opened and the teacher came out, he was attacked with stones from all directions injuring his skull, his ankle, his thigh, foot and back. He was taken to the J.J. Hospital by the police for treatment. His services were then terminated by the School management by their order dated 28th September 1978 i.e. on the next day of the incident. We have seen a photo-copy of the order of termination of services. It does

not contain any reasons for termination. It merely says that the Taher Education Society has passed a resolution on 28-9-1978 terminating his services with immediate effect and giving him a cheque for the amount equivalent to six months' salary. We have also seen a true copy of the order of the High court and we asked Mr. Lokhandwala to state facts on an affidavit. Accordingly he has submitted an affidavit.

This is a clear illustration of the priestly class denying Dawoodi Bohras freedom of information and persecuting a reader of a "banned" magazine in all possible ways. The universal declaration of human rights adopted by the General Assembly of the United Nations on 10th December, 1948 (to which India is a signatory) by art 19 says:

"Every one has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference *and to seek receive and impart information and ideas through any media* and regardless of frontiers".

What the poor teacher had done was only to read an Urdu weekly newspaper!

Reading of Bohra Bulletin prohibited

Another witness Taheali Abdulali Kapadia who is residing in Dhoraji in Rajkot District has stated that Baraat (social boycott) has been declared against him, his wife and his father for reading a bulletin called "Dawoodi Bohra Bulletin" which was edited by one Mr. Sanchawala who is a staunch reformist. One Amil (Deputy of the Syedna) Mulla Yunus Mulla Ibrahim had orally instructed the members of the community on 16th Janaury, 1975 not to read the bulletin. The witness was asked by the Amil to apologise for having read it. On his declining to do so, a Jamat meeting was held in Bohra Mosque in Dhoraji and it was declared in the meeting tht he and his family should be boycotted. No explanation was asked from him.*

The witness has further stated that his six month-old daughter expired. He went to Vali Mulla Abdul Husein Tyebji who is a priest. He sought permission of the said priest for burial. Per-

* It must be noted here that at the meeting of Jamat only a declaration of Baraat is made under the command of the Syedna. Approval by the meeting is not sought. It is only a proclamation and not a proposal to be discussed and carried.

mission was refused. He then sought co-operation of others and had to go to the burial ground under police protection. It was only then that the child could be buried in the Dawoodi Bohra graveyard. A report of this event was published in the daily newspaper "Lok Manya" of Rajkot in its issue of 19-10-1976.

He further stated that all his near relatives did not come to him after his boycott. His elder brother is not able to come to him and visit him. The witness has produced a letter of his brother in which he has expressed regret that he was not able to visit him on the occasion of the death of his daughter.

Marriage Without Permission A Nullity

Smt. Zaitunben Ahmedali Easoofali Kapasi Talajawala has given evidence and has stated that her father was a reformist and was a follower of Mahatma Gandhi. He had suffered six months' imprisonment for Satyagraha. Her father had represented to Sardar Patel that the Dawoodi Bohras should not be exempted from the Mussalman Wakf Act 1923, which was the law made for regulating the administration and management of Muslim-charitable trusts. She stated that her father was a social reformer and a champion of female education. Her father, therefore, educated her. While she was studying her books were snatched from her hands and she was abused. In spite of all these difficulties her father persisted in educating her. He also used to write articles in Bombay Samachar, Gulzare Hakimi, Bage Momin, Bohra Bulletin and Sanjvaratman. Her mother, brother, sister and she also co-operated with him in the reformist activities. She started taking part in the reformist movement at the age of 16. She also said that her marriage was arranged with one Abdulhussein Bharatputra who was also a reformist. This marriage was arranged to be performed on 4-5-1946 when the local Amil was requested to officiate at the marriage ceremony. He told the witness and her father that since they were reformist family the High Priest Taher Saifuddin Saheb had prohibited him from officiating at the ceremony. A telegram was then sent to the High Priest requesting for sanction but he flatly refused. After repeated requests he relented and agreed to give sanction subject to the condition that the marriage should be performed not at her father's place but at some other place by arranging for someone else to act as her guardian. When this was communicated

to her, she did not accept such inhuman condition for performing her marriage under some guardian other than her father. She then got the marriage ceremony performed by a Kazi of the town (who is different from the Bohra Priest and who officiates at the marriages of all Muslims) and large number of persons attended her marriage but not a single Dawoodi Bohra attended it because she had not accepted the condition imposed by the High Priest.

She has produced a copy of the notice dated 29-1-1948 issued by the secretary to His Holiness Taher Saifuddin Saheb, Dai-ul-Mutlaq (51st Dai) in which it has been stated among other things, as under:—

- (a) You have openly proclaimed that his Holiness Sardar Syedna Taher Saifuddin the present Mullaji Saheb is not duly appointed in regular succession as Dai-ul-Mutlaq and you do not recognise him as the duly appointed Dai-ul-Mutlaq in regular succession, that is to say, that you maintain that the chain of succession of Dai-ul-Mutlaq was broken after the 46th Dai Syedna Badruddin Saheb and the 47th Dai Syedna Najmuddin Saheb was not the properly nominated, and duly appointed Dai-ul-Mutlaq.
- (b) That you went through a form of Nikah (marriage) ceremony on or about the 4th May, 1946 with Mr. Abdulhussain Noorbhai Bharatputra. You neither obtained the sanction of His Holiness the Dai-ul-Mutlaq for your marriage nor His Holiness or His Deputy specially authorised in that behalf officiated for the performance of the said marriage ceremony. *According to his Holiness the Dai-ul Mutlaq and the injunction contained in the books of the Holy Dawat such a marriage is null and void.* Hence this leads His Holiness to infer that you do not believe in all the essential articles of Faith in which Dawoodi Bohras are enjoined to believe and you do not recognise His Holiness the Dai-ul-Mutlaq as sole and final expositor of the precepts, tenets, usage and customs of the Dawoodi Bohra Faith and Community and you have challenged and/or defied the power, position and authority of His Holiness the Dai-ul-Mutlaq.

- (c) You as a writer did contribute articles in the magazine named and styled "Age-Kadam" run and published under the auspices of "The Young Men's Bohra Association" Karachi which contained matter intended to insult, defecad challenge the power, position and authority of His Holiness the Dai-ul-Mutaq and thereby you attacked the essential principles and articles of Faith, precepts, tenents, usage and custom of the Dawoodi Bohra community. Your article containing the aforesaid matter had been published in the issue of Age-Kadam for the month of December 1941. The aforesaid article was written in the Gujarati language under the caption "Stri Kelvani Sha mate" (A case for famale education) Your articles as aforesaid have appeared in Bombay Samachar also."

This notice shows that the High Priest treats any marriage without his permission as null and void. He also treats performance of such marriage as being contrary to the religious tenents of the Dawoodi Bohra which would make a person who marries in this way liable to ex-communication. This notice also shows that any article in which the authority of the High priest is challenged is treated as contrary to the essential principles of articles of Faith and tenents of the Dawoodi Bohra community.

We have looked into the article "Stri Kelavani Sha Mate" and we do not find anything there which would amount to insulting the High Priest. Similarly we have also seen the reply dated 11-2-1948 which the witness sent to the High Priest in response to the abovesaid notice. We do not find any insulting or abusive language in the reply also.

Of course in the said article she has asserted her right to challenge the authority of the priest and also the right to express views on female education. But ultimately by the letter dated 5-5-1948 His Holiness informed her through his Diwan (Secretary) that H.H. pronounced her ex-communication by holding a Jamat meeting after stating the grounds. The letter also stated that she failed to appear in the meeting of the jamat held on 27-4-1948 and that her reply dated 11-2-1948 was not satisfactory. It was further stated that she had failed to make any amends.

We may assume that she had committed all the acts stated in the show cause notice and yet we are unable to understand

how this could be against the religious tenets of the Dawoodis. This notice is a clear evidence of the fact that the 51st Dai did not permit any marriage performed without his permission as a valid marriage and any criticism of his conduct as a breach of the religious tenets. Not only this but he treated the performance of such marriage or writing of any article criticising him as sufficient ground for ex-communication.

Now let us see what happened to her after the excommunication. She has said that in 1947 she started a tailoring class for the benefit of the women of her community and also a class for primary and secondary education. But such classes had to be closed down because the women who attended the classes were also threatened with the social boycott by the local priest. A class for adult education started by her had also to be closed down merely because women attending the class were threatened with Baraat.

Prestigious Daily Newspaper Indexed

Another glaring instance is that of a very long-established daily Gujarati newspaper 'The Bombay Samachar'. It is a highly prestigious newspaper. It was established in the year 1822. The paper runs columns for different communities like Muslims, Jains, Dawoodi Bohras. In its Friday issues a column entitled 'Bohra Vartman' (Bohra news) appears wherein both orthodox and reformist Bohra are invited to express their views, mainly on socio-economic matters. Reformists in their letters also ventilate their grievances against the high-priest and the priestly class about arbitrary imposition of taxes and fines and even physical attacks upon the dissenters.

The 'Bombay Samachar' has stated through its editor Jehan D. Daruwala that the orthodox do not relish this. They want the paper not to publish any letters which are critical of any action or directives of the High Priest. On several occasions deputations of the orthodox called upon the editors and urged them not to publish views critical of working of the High-Priest. They explained to the deputationists that the columns were open to both the sections of the Bohras and the orthodox could avail of them to contradict any facts which they felt were not true and also put their case before the Community.

The editor has further stated that when our Commission held a sessions in Bombay to hear witnesses there were demonstrations

at Chowpaty. The Bombay Samachar gave a factual report of the same on the next day. On the day after the report appeared copies of the paper were snatched away from the vendors in the Muslim areas and some of them were burnt. Some of the miscreants wanted to come to the office and burn the copies in front of it. But the police forestalled the action and they dispersed after shouting slogans.

Thereafter a large number of handbills appeared which enjoin Dawoodi Bohras not to read the Bombay Samachar. They are also forbidden from giving any advertisements or publish obituary notices in the paper. The handbill threatens that no 'mumin' (follower of Syedna) will ever attend the 'Sipara' (ritual reading of the Holy Book) of a person whose relatives publish obituary notices in the boycotted paper. All such notices should be published in Jam-e-Jamshed (which is another Gujrati daily newspaper published in Bombay). It may be stated here that by a long tradition the Bombay Samachar publishes all obituary notices free of charge. The editor has produced photostat copies of three such handbills.

The significance of this injunction given to Dawoodi Bohras is that whoever violates the boycott of the paper will himself be boycotted by the establishment so that even a priest would not come and recite funeral prayers if the obituary notice is published in Bombay Samachar.

The editor has further said that in the issue dated 8th Jan, 1960 an editorial had appeared under the caption 'Yugdharnabe Pichhano, Bada Mullaji' (which means 'Recognise the changing times'). Some of the orthodox followers of the Syedna rushed into the office of the paper and assaulted the then editor Mr Sorabji Kapadia. There was a widespread protest by the leading newspapers denouncing the dastardly attack upon the veteran journalist. Those arrested for the offence were prosecuted and sentenced.

It is true that the handbills do not bear any signature, nor do they indicate on their face the source of publication nor the name of the printer. But from all the facts and circumstances set out by the editor we conclude that the editor is justified in holding the belief that they are issued under the directions of the priestly class. After all the priestly class had made organised efforts to boycott the commission and prevent it from functioning. They

naturally could not have relished the report of the violent incidents at the Chowpati in Bombay at the time when our commission was examining witnesses.

Moreover, the fact about the publication of the handbills was published by the paper. Yet no contradiction by anyone was issued stating that these handbills did not represent the orders or the directions of the High Priest or any member of the priestly class. No other person would be interested in spending large sums of money to announce the boycott of a particular newspaper through such handbills. The object was obviously not to cause financial loss to the paper because, as we have said before, obituary notices are published by the paper free of charge. The action is directed not so much against the paper as against the Bohra readers. Any paper which runs a regular column criticising the actions of the priestly class would not be relished by the priests who are deputies of the High-Priest, and given the claim which the High Priest makes of demanding implicit and absolute obedience from all members of the community, any criticism would ultimately shake the authority of High-Priest. The members of the community should, therefore, be forbidden from reading the papers on pain of social boycott of the reader himself!

In view of all the circumstances we are satisfied that the priestly class has by these handbills forbidden Dawoodi Bohras from reading the 'Bombay Samachar' on pain of social boycott so that they may not hear any criticism of the conduct of the priestly class.

We must make it clear that the editor who has given the facts is not a Dawoodi Bohra of one or the other group. He is not a mohomedan of any sect. He is a parsi. His co-editor is Mr. Bhatt is a Hindu. The paper is owned by a Private Limited Company controlled by persons who are not Bohras—orthodox or reformists.

The commission has received a number of other replies from the respondents in which examples of persecution for writing articles relating to the conduct of Syedna have been given. Here are some of these instances set out in brief:

One Saleh Abdul Hussain residing at Bombay has said that Baraat was declared against him four years back for subscribing to the Bohra Bulletin (organ of reformist Bohra). It was being published by the reformist bohras. He has also stated that mem-

bers of the community were forbidden from reading the following three journals when they were being published. Now they have ceased publication:

1. 'Bauge Momin' edited by Khanbhai Amarjibhai.
2. 'Gulzare Hakimi' edited by Hasanali Abdulali,
3. 'Age Kadam', edited by Hussein Al-Alvi.

He has further stated that a book entitled "Fatimi Dawat" by Vajidalali is also forbidden.

Baraat Against Orphanage:

Now we may take up a few illustrative cases of persecution of those who organise and administer social institutions without the sanction of the high priest.

One Abbasbhai Gulamhussein residing at Dhrol near Rajkot, Gujarat, has stated that he was working in an institution known as Sir Adamji Pirbhoy Rafiuddin Yatimkhana, Dhrol, which maintained orphans and very poor children. That institution was established in 1955 and was run with the help of a donation given by a Bohra Philanthropist Sir Adamji Pirbhoy who was a staunch reformist. It was started without the permission of the high priest. Therefore, the whole institution including the orphans living therein has been boycotted. The witness was working as a superintendent of the said orphanage—Yatimkhana. The Amil of Jamnagar asked him to resign from the service of the institution on 28-2-1975. The orphans were also asked to leave the institution. Their relations were asked to withdraw the children from the orphanage. The children were also called by the Amil who was then on a visit to Dhrol and told them that they should leave the institution. The witness was also called and told that he should resign; otherwise Baraat will be declared against him and that his relations will become helpless. When the orphans asked him as to what they would do if they went out of the Yatimkhana they were told by the Amil that when the dogs and other animals somehow procure their food, why should they feel so nervous about their life.

A list of the orphans was then prepared with their names and addresses. On the same day in the Masjid the members of the Jamat of Dawoodi Bohra congregation were directed by oral direction not to keep any relations with the orphans as well as members of the staff running the institution. They should never be invited to community dinner nor should anyone attend any

function of these persons nor even attend the burial. Since then even the children are not invited to the dinner or feast and the poor children and the members of the staff including the witness are socially boycotted. The witness made a complaint to one Mrs. Ayesha Begum, who was then Minister in the Gujarat state cabinet and she in turn passed on the complaint to the high priest. The High priest gave her a reply dated 1-9-1976 and Ayesha Begum communicated the gist of the reply to the witness. In substance the high priest had replied that his representative at Jamnagar was asked to report and action would be taken thereafter. But nothing has been done thereafter. The witness then wrote to the Minister more letters but he did not receive any reply from her.

A brother of the witness was to marry and, therefore, his father sought permission of the Amil of Bagasara (town near Rajkot). He was told that since his other son (i.e. the witness) was in the service of the said Yatimkhana, he (father) will not be given Safai Chithi (letter of clearance). The father feeling helpless sent a written apology addressed to the high priest which was signed by his father and several other gentlemen certifying that the facts stated in the apology were correct. In that apology he said that he would not keep any relations with the son. He produced a photo copy of the apology. It is dated 2-6-1977. The father i.e. Gulamhussein Adamji Vankar has signed it as "slave of the Syedna". There are signatures at the foot of the apology of seven other gentlemen who have vouched for the accuracy of the statement contained therein. The Safai Chithi was then given in a sealed envelope. The witness could not attend his own brother's marriage openly. He however went there clandestinely. When the Amil of Bagasara came to know about it he pressed his father to expel the witness from the place and so the witness was driven out from the marriage party. The father of the witness has confirmed the fact about withholding the Safai Chithi at the time of the marriage of his son (brother of the witness). He has added that when the Safai Chithi was asked for by his intervention and payment of Rs. 5000/- to the Dawat a fresh Misaq was taken from him.

Dissolution of Co-operative Bank Ordered:

Another astounding example is that of Shri Gulamhussain Ismail residing at Udaipur who is the Secretary of the Bohra Jamat

at Udaipur. Apart from submitting a memorandum he has given oral evidence in which among other things he has said that when the reformist movement gathered momentum in Udaipur, Firmans (orders) were issued by Syedna to ban and dissolve the organisations of the reformist Bohras which were started for the welfare of the members, of the community without the permission of the High Priest. He has produced a photo-copy of a letter which bears the date 23rd Rajab 1332 Hijri (about 1971 A.D.) The letter is addressed to the witness asking him to dissolve the Bohra Youth Association and to close down the Co-operative Bank started by the Youth Association. These institutions had been started without the permission of the high priest. The writer of the letter had also sent a copy of the order given to Amil of Udaipur Sheikh Gulamali. He has shown the original of the letter which he received and we have kept a photo-copy on record. This order clearly shows that the Syedna and the priestly class hold that no institution can be started without the permission of the high priest and that if one does it he can be directed to close it down. We shall have to say more about this witness later on. A transliteration of the firman ordering dissolution of the Youth Association and the Co-operative Bank in Devnagari script is reproduced at Appendix 'F'.

Youth Association Ordered to be Dissolved:

Abidali Hasanali is residing at Udaipur and was in the Rajasthan Sahitya Academi. He is the secretary of Bohra Youth Association, Udaipur. He submitted a written statement and personally appeared as a witness before the Commission. He stated how Syedna tried to break the Bohra Youth Association by unfair means. In the beginning one Gulam Hussain was elected as secretary of the Association. In order to take him under his influence Syedna conferred upon him the title of N.K.D. The witness has produced a photocopy of the Sanad of the title. Gulam Hussain was then called to Bombay by Syedna. The witness was also present there. Syedna's secretary (Divan) Sheikh Ibrahim Yemanni had asked the witness to meet him first and the witness was told that he (witness) had ridiculed the practice of Raza (permission) by setting up candidates to contest the municipal election against the candidates who were contesting the same with the Raza of Syedna and by not voting for the latter. He had thus committed a great sin

and he would have to tender apology for having done so. When the witness and the other person declined to do so, and finding that they were determined persons, the Divan changed his attitude and in an open assembly he conferred the title of 'Mulla' upon Gulam Hussain. Even after this the Youth Association did not break and therefore Gulam Hussain was called to Galia Kot, a place about 75 miles from Udaipur—and pressure was brought upon him for the purpose of breaking the Bohra Youth Association. When Gulam Hussain pleaded his inability to break the association, he was called at Barhanpur and warned. It was then that Syedna sent him a letter directing him to dissolve the Association. Gulam Hussain has also appeared as a witness and has corroborated this evidence.

The witness has further stated that thereafter the Amil Nomanbhai Saheb was called at Barhanpur and when the witness returned from there to Udaipur he received a letter from Sydena ordering dissolution of Youth Association.

Is Election Contrary to Religion?

In February 1973 Syedna sent his son Qaid Jauhar to Udaipur. He met a number of members of the community. He said that he was dissolving Anjumane Najmi in order to form a new committee. The members thereupon told him that if a new committee is to be formed, it must be democratically elected. He declined to do so and on 23rd February he formed a new committee consisting of his supporters. The community did not like the nominated members and offered Satyagraha for expressing their protest against such nomination. Satyagrahis were then physically attacked and beaten. On 25th February the Government intervened and the then District Magistrate and the Superintendent of Police told Qaid Jauhar that the Udaipur Bohras appeared to be opposed to the nominated members. They also advised him to cancel their nomination and constitute a committee by election. The Syedna's son reluctantly cancelled the appointments but did not agree to hold fresh election for the committee.

In order to oppose the dictatorial tendency of the Syedna and to oppose the committee which was imposed upon the community, the reformists announced that a committee should be elected by the Community and made a statement to that effect. But the Syedna and the priestly class boycotted the election and

issued commands to their followers not to participate in the election. The election was actually opposed by them and they said that they have no faith in the elections and that the election would be prejudicial to the tenets of their religion. Elections were held in 7-12-1975. Two days before the election the Amil Sheikh Sharafali sent a telegram to one M.A. Nazia residing at Basti Ramjiki Wadi, Udaipur. It makes very interesting reading. The witness has produced a photocopy of the said telegram. The whole of it is set out below:

As per our religious tenets all managing committees are nominated, appointed, constituted by Dai-Ul-Mutlaq His Holiness Syedna and functions under his authority Stop No elections are so held or were ever held in Bohra community Stop Pray so avoid hurting our religious feelings and beliefs by having a (illegible) of elections contrary to our religious feelings, practice and precepts Stop. Acts done as mentioned in the Jay Rajasthan daily dated 3rd December Page 1 col 6 middle portion under the caption ad hoc committees for Bohras Managing Committee are illegal unauthorised and contrary to our religion and its tenets etc and are being done/published with the sole object of promoting disharmony or feelings of enmity, hatred and ill-will amongst the members of Bohra community with the intention of outraging our religious beliefs and to arouse feelings of disrespect and hatred for our spiritual head-Shaikh Sharafali.

(The reference in this telegram to Jay Rajasthan of 3rd December is a reference to the announcement of elections which was published in that newspaper).

In support of the fact that elections were held on 7th December) the witness has also produced the newspaper cutting of Jay Rajasthan of 8-12-1975.

Charity Prohibited:

The witness has further stated that the Syedna ordered dissolution of one Anjumani Lukmani which provided for the necessary help at the time of burial. In order to harass the community directives were however given to dissolve this organisation.

The witness has given an instance of one Saifi Dispensary and Maternity Home. It was established many years back by late Shri Tayebali, who was a high judicial dignitary in one of the

erstwhile large princely state in the Rajasthan area. The witness said that the Syedna insisted upon the said dispensary and maternity home being dedicated to himself by a Wakf trust. The founder refused to do so and thereupon Syedna refused to give permission for its establishment. The consequence is that the same is still languishing and it has not been of any use to any one.

There is also an instance of one Buharnia Library which contains books on literature, history and on different other subjects. It was established many years back. It was being used by members of this community. It is a public library but only because it is managed by a person who had been a sponsor of the Bohra Youth, directives were given that it should be closed down. When the management refused to do so, directive was issued prohibiting members of the Bohra community from availing of it. Now no orthodox member visits it while all the general public make full use of it.

The witness has also quoted instance of Saif Imdadi, which for the last several years gives free books etc. to the students of the primary and higher secondary schools and gives scholarships to those who want to pursue further studies, it also awards gold and silver medals, shields and other awards for the encouragement of the students. As a result several young men and women have been educated among whom are doctors and engineers. The institution is run with the help of donations and membership fees. Syedna, according to the witness, is opposing all such institutions because he thinks that his authority will not work in a society of educated persons. For this reason when the Syedna came to Udaipur in 1966, he directed that the donations which were promised by one Advocate Shri Mahomed Hussein Paliwala (who was at that time living in Africa) should not be accepted and that if any donation had already been received from him, it should be paid back. The reason for doing so was shown to be that Mahomed Hussain's activities were prejudicial to Dawat and that he was an enemy of the Dai. A cable to this effect was got sent to him. Mahomed Hussain was giving large donations to the committee every year. At that time the witness was the acting secretary of the committee. There was a shadow of social boycott on all persons at that time. Through orthodox followers of the Syedna, the institution has been boycotted and every effort has been made to make it ineffective. Even the supporters of the institution who

are residing in Bombay have been directed to be excommunicated and the institution was facing financial disaster. But the committee has been again able to organise activities with the help of Bohra Youth and Bohra Jamat.

Another instance given by the witness is very eloquent. The reformist Bohras started the practice of arranging one function every year with the object of creating harmony and goodwill between different communities. They selected a date between Id and Diwali for the functions and called it Id-Diwali Gathering. This step was heartily welcomed by members of the public and Hindus and Muslims participated in it in thousands. This was concretisation of the principle of secularism adopted by our country. Syedna expressed his displeasure at such functions and has directed his orthodox followers not to take part in them.

One witness Pavaghadhwala of Godhra has given instance of one institution called "Club of Friends Circle" which was helping in the education of students. Permission of Syedna was not obtained for starting this circle and therefore it was directed to be disbanded in the name of religion.

Smt. Mehfuza Sadikali Sunwarwala of Bombay has in her reply to the questionnaire referred to four institutions which had to be closed down only on the ground that they were established without the permission of Syedna. They are:

1. Hasanali Dhut Wala Trust—(Maternity Home)
2. Maskati Charitable Trust.
3. Moriswala Musafirkahana.
4. Kandivali Colony.

The institutions at S. Nos 1, 2 and 4 above had to be closed down and that at S. No. 3 was taken over by the High Priest acquiring control over it by using his coercive power as a religious head.

One respondent to the questionnaire who would not like to have his name mentioned had given several instances of Mullaji's interference. He has said that leaders of the Jamat in Amreli were forced to agree to transfer all properties in Amreli which were meant for the welfare of the community to Mullaji Saheb in his capacity as religious head.

In Visavadar in Junagadh district a donor offered big amount for construction of a mosque. When he asked the Raza (permission) of the Syedna, he was asked to donate equal amount for

the "Roza Tahera" in the memory of late Mullaji Taher Saifuddin, predecessor and father of the present Syedna. The result was that the amount which was intended to be donated for the mosque had to be reduced.

In Rajkot they organised a Maiyyat Committee (Burial committee) for facilitating burial with permission. When the Amil found that out of 12 members two members belonged to the reformist group, he directed the institution to remove them. The members of the committee were shocked at this kind of attitude and they, therefore, preferred to dissolve the committee. On account of the demand from the people, it was again started with the same object.

One respondent from Godhra who would not like to have his name mentioned has stated that the "Anjumane Mohammadi", an institution carrying on public welfare activities for the members of the community, and Yahya Tailoring Class were established by one Ali Husain Cyclewala without permission of Syedna. They were forced to be closed down.

One Inayat Husain Mulla Yahyabhai, formerly residing at Kapadvanj, of Malegaon, in his reply to the questionnaire has stated that he had taken the initiative to start a free hospital and a free library for the community by establishing Dawoodi Bohra Helping Society. It was inaugurated by the Collector of the District. But since he had not secured permission of the high priest for doing so, all Bohras were forced to boycott him and so his family including his mother and sister were socially boycotted and were harassed so much that they had to leave Kapadvanj. His mother was asked by the Amil to declare that she had cut off all her relations with her husband.

Another respondent to the questionnaire who had requested his name to be kept secret has stated that a free dispensary for Bhindi Bazaar, Dr. Annie Besant Road, Bombay, was established by one Tayehali Ibrahimji who was the donor. It was ordered to be completely boycotted.

One Yunus KM Baluwala appeared as a witness before us. He said among other things that in Godhra in 1948 there was a largescale communal riot and houses of the members of the Bohra community were ablaze. The Government constructed a number of huts for the refugees. One Ibrahim Maliwala came from Karachi in 1977 and he wanted to donate a large amount for building many

more cottages. His donation was to be of Rs. 30 lakhs. But Syedna's permission was necessary for the same. When the permission of Syedna was sought, the latter insisted the donation to be given to him so that he could construct those cottages and the construction would be in his name. The donor was disgusted with this kind of attitude even for a humane activity of housing the houseless and he, therefore, withdrew the offer and a number of persons who could have been benefitted by this activity were deprived of the benefit only because the Mullaji Saheb wanted credit for himself, and wanted to have domination over the property. The victims of the riot are still residing in the temporary huts built by the Government. Mrs. Zubeda Zainuddin Vali of Godhra has stated in her reply to the questionnaire that she and other ladies had started an institution called Fatima Mahila Mandal but since it was started without the permission and since she and her husband were socially boycotted the institution had to be closed down.

One Mohamed Hussain of Indore who appeared before us has stated that he is an Assistant Professor of Economics at Christian College, Indore. He says that he had, in co-operation with others, but without the permission of the high priest, started various public activities for the welfare of the community, such as scholarship society, book bank, free classes for college students, funeral service society, medicine funds society etc. He said that he and his colleagues were silent workers. They had not met the local priest or the Shahzade, the son of Syedna, when he visited Indore. Therefore, he was semi-boycotted in 1968. This went on until 1972. He has to go to the high priest and tell him that he did not challenge the authority of Syedna. The semi-boycott then came to an end. But this was temporary. In 1974 a procession was organised by the priestly class as a protest against the remarks made by a congress leader of Delhi, Shashi Bhushan (Ex. M.P.) against Mullaji Saheb regarding the prevention of marriages at Udaipur. Since the witness did not join the procession, he has been boycotted again, and his father also expelled him from his house due to the threat that his four sisters would be divorced. The witness went out of his father's house and lived with a Hindu friend for about 6 months. Thereafter his father invited him to return, with the result that 14 members of his family were boycotted. His family was only one in Indore to be so boycotted and the whole

family was completely isolated. This placed the family in a very miserable situation. Ultimately the family preferred to adopt Bahai faith, and all the family members became members of the Bahai community of Indore.

It is obvious that Raza for establishing institutions is insisted upon to gain control over them. Even the illustrative cases which we have discussed above go to show that the weapon of social boycott is wielded in a ruthless manner by the priestly class. The object of such social boycott is to make the life of a dissenter miserable and intolerable so that neither he nor anyone else would ever think of dissenting or disobeying the orders of the Syedna or his Amils. The facts as narrated above in this chapter and which we have discussed in later chapter are tales of horror and remind us of the practices of the medieval Roman Catholic Church. We have no doubt that these acts are being committed not only in this country but in other countries as well. The fact that Baraat is being practised and persons are persecuted by merely calling them dissenters, has now been accepted by the Permanent Commission of Enquiry, Government of Tanzania. We have before us a photocopy of a letter dated 6th January, 1979 addressed by the Chairman of the Permanent Enquiry Commission to one Sheikh Fidaali H. Moayyadi, Moiz S. Khambhali (Chairman) and, Murtaza A. Raja (Secretary) of the Dawoodi Bohra Jamat Corporation, Dar-Es-Salaam. The letter is reproduced below:—

“It has been observed that Tanzanian Citizens who are members of the Bohra Community are being socially boycotted, are called dissidents and are thrown out of the mosques. Such reports have been received by several offices in the country and investigations into this state of affairs have been completed and found that the act of calling some members of the society as dissidents is quite against the peace and policy of the country, and hence intolerable. Citizens of the country should not be embarrassed by any person who does not abide with the country’s policy. From now onwards these things should not be entertained. Severe measures will be taken against any person who entertains act of calling citizens as dissidents, or practices “BARAAT” and freedom of choice must be allowed.

Take note that in order to eliminate tension arising from lack

of election, a fair election will take place in which all adults will participate.

Sd/- Illegible.
Chairman

PERMANENT COMMISSION OF ENQUIRY

c.c. Admin Jariwalla,
P.O. Box 20125
Dar es Salaam.

This letter is very eloquent. A permanent Commission of enquiry, a Government agency, having powers to investigate into such complaints, have found that in Tanzania also the same pattern is followed by the leaders of the Bohra Jamat to throw out Dawoodi Bohras out of the mosques. Attempts are made to persecute them. This is quite in keeping with the pattern of behaviour followed in India by the High Priest and his Amils. The letter shows that the Government of Tanzania is alive to this problem and its agency has given a warning to the priestly class not to indulge in such practices.

CHAPTER VII

BARAAT AND SOCIAL PERSECUTION

It is the common complaint of all the respondents to the questionnaire that those who are asking for reforms or call themselves reformers are socially boycotted. The expression 'social boycott' or 'Baraat' does not give a correct idea of its actual consequences. It is not merely boycott in the sense of ex-communication. It involves positive persecution, harassment, torture, assault, exclusion from the mosque, burial ground, etc. etc. The socially boycotted person does not suffer alone but those who are his near relatives and who try to keep some contact with him out of natural love and affection are also boycotted and persecuted in the same manner as the person originally boycotted.

Permission (Raza) from the priestly class is necessary not only for religious but even for secular, educational, cultural, social, economic, business and political and welfare activities. As one respondent has stated that for every act except birth, death and calls of nature permission is necessary. Those who exercise their rights even though recognised in the Constitution without Raza suffer consequences of social boycott, discrimination and victimisation. Even children of those who do not conform to the dictates of the High-Priest are made to suffer in their schools and playgrounds.

Several of the respondents assert that the practice of Baraat started with the 51st Dai and it has been imposed on more frequently since 1965. It is imposed by the Head-Priest through his Amils. It is strange that the declaration of Baraat is generally not in writing but is announced in the Masjid, Majlis and other gatherings of the followers of the faith and is orally conveyed to them. Generally no opportunity is given to the person boycotted to show cause against it.

There was a substantial number of persons and families suffering the rigours of Baraat. The number exceeds thousands in Udaipur and runs into hundreds in the city of Bombay and in East Africa. Even in smaller towns a few families are under social boycott.

The reasons for declaring Baraat are mainly exercise of the right to civil liberties, dissent, non observance of dictates of the priestly class, carrying on activities like social work, opening schools, starting business etc. without the permission of the Head Priest. Baraat is lifted if a very humiliating apology is tendered and on the acceptance of this Misaq is administered again. Photo-stat copies of some of these apologies and re-instatement by certificate of Misaq of individuals and families are with the Commission.

A number of persons who suffered and still suffer social persecution under or threatened Baraat is very large. A few illustrative cases with names of the persons are given below:

Sister's Plight—Brother's Burial:

One Memunabai, daughter of Rajabali Bagpurwala, residing at Udaipur appeared as a witness before us and the substance of what she said is reproduced below:

'The reformers in Udaipur have raised their voice and have started working for reforms since 1970. Ever since then I have been on their side because they work for the welfare of community only and for reforms. We are five sisters and two brothers out of whom one brother and one sister are not with reformers. By the orders of the Syedna, Baraat has been declared against us so that those of our relations who are with the orthodox section have got to break all relations with us and they should not even be on speaking terms with us. If they try even to speak to us or to keep relations, Baraat would be declared against them also. They not only break relations with us on account of instigation of the priestly class, but a kind of resentment is spread against us the effect of which is that the orthodox followers indulge even in assaulting and beating us without any reason. My uncle's son Sajjadhussain once assaulted me and my mother without any reason except that we are with the group of Bohra Youth Association. My father's shop is in Vaspura Village. He is old and his eyes have lost much of their vision. On 13th April, 1975, my brothers Shabbir Hussain died by an accidental fall in a well. My father was at the shop in the village. In our house there was no one except women. My brother Nisar Hussain, who is with the orthodox section and therefore, was always keeping away from us, was called by me. He went to the Amil

Shaikh Ismail Khanjar in order to ask him whether he should go to our place. Amil strictly prohibited him from going to his father's place and from attending burial ceremony. He could not even give his shoulder to the bier.

My sister Shirin who has been married to one who is a supporter of the orthodox section wanted to see her brother's face for the last time and so rushed down to our place. The result was that her husband prohibited her from returning to the matrimonial home. He told her that by going to the residence of our father who was a reformer she had polluted herself. In this way she was prevented from returning to her home for six months and after compelling her to express repentance and to give misaq again she was allowed to return. Since then I have not been able to see her face. She is not allowed even to pass by our house.

In 1976 when my sister Sakina was married the above said Shirin was not allowed to attend the marriage."

Women Attacked in A Mosque:

Memonabai further told us:—

"I was an eye witness to the well-known incident which occurred in Moiyadpura mosque on 18-1-1975. The heart-rending scene which I saw on that day can never be forgotten. On that day in the morning when people were listening to Majlis of Imam Hussain, people belonging to orthodox section entered the mosque with arms and started attacking persons sitting in the mosque listening to Majlis. Even women were not spared from this attack. Many men and women were wounded. I have never seen such murderous attack in my life. Women started screaming and weeping. They were being beaten and abused and being dubbed as enemies of the Dawat. They were being pushed down. One young child was thrown from above to the ground. I was also pushed by one person and made to fall down. All this was the result of the instigation by the priestly class. The attackers were saying so."

Galiakot Outrage:

Mrs. Mehfooza Abid Hussain Adib, aged about 30, of Udai-pur, has stated before us that her husband is a social reformer from the very beginning and that he is working for the spread of

education in the community and the uplift of the poor. He has organised an Institution called "Saifi Imdadia" for helping male and female students by giving scholarships, books etc. and also a dispensary for giving free medical treatment to sick persons.

After the defeat of those candidates whose names had been sanctioned by the Syedna at the Municipal elections in Udaipur in 1970, Syedna was displeased with her husband and she became the first victim of his wrath in the incident at Galiakot in 1973. (Galiakot is a place about 75 miles from the town of Udaipur in Rajasthan). There is a Durga (Shrine) at Galiakot where Bohra pilgrims congregate in large numbers at the time of Saiyedi Fakhru-din Shahid Urs. What happened there may be described in her own words:

"29th February 1973 is the day which still creates a shiver in my heart. I had gone to Galiakot on the occasion of the Urs with my friends in the evening of that day. I went to the waiting room which is in the neighbourhood of the Durgah. I had some sweets with me. As soon as I reached there, three daughters of Sheikh Zakirhussain *Kurbidwala* ran into me on the way and told me that Sheikh wanted to see me. Many people were standing there. When I refused to go with them to Sheikh, they started beating me. People standing there came to me and they also started beating me. Some elderly persons who were present asked them as to why they were beating me. Those elderly persons were silenced by a frown. Then they started saying that I was an enemy of the Dai. They further said that they will outrage my modesty. I was asked to condemn my husband because he is a Kafir. When I declined to do so, one individual rushed towards me and dealt a lathi blow on my head. I felt giddy. After some time when I regained consciousness I saw that some persons were casting lustful eyes on me. They were repeating the words that I was an enemy of the Dai and a Kafir. They also abused me. These persons included persons from outside Udaipur also. I knew some persons from Udaipur. One or two young persons who knew me asked me to leave the place silently. My outward garment was simply torn. In this state I had to come upto market from that place. Some persons were still pursuing me. I quietly went into the house of one woman

whom I knew. I learnt at night that some other persons were also beaten. On the next day I went to Udaipur by the morning bus. My two young children were with me. From that time my girlfriends and other relations who were with orthodox group started Baraat against me and all relations were broken.”

One Mrs Safiabai, widow of late Mohamed Hussain Delhiwala of Udaipur, has given a statement such to the same effect. She has added that “Shahzada Yusuf* Najmuddin (Shahzada means prince—sons of the late Syedna are generally referred to as ‘prince’) was amongst the persons present and was inciting the crowd at Galiakot. Women who had gone there for Urs were caught by their hair and dragged on the road. Their clothes were torn. They were spat upon and harassed in the worst possible manner. At that time Syedna and members of his family were enjoying the scene from the balcony of Fakri Mahal where they were camping at the time. Women were shouting with raised hands pointing to Syedna Saheb. They were imploring him to give protection but the family members of the Syedna were just chuckling at this oppressive thing. A crowd of persons surrounded me and asked me to curse (Lanat) my dear son Ahsan Hussain. I had to do so with a heavy heart because I was trapped. People from Udaipur were gathered in the mosque of Galiakot and there brother was asked to curse sister, wife the husband and parents their children and they were asked to take oath to the effect that they will not spread tale of Galiakot elsewhere. If any one does so he would be excommunicated. My husband had served Syedna for his whole life devotedly. When I narrated the story of oppression at Galiakot to my husband, who was then alive, he immediately left for Galikot to find some kind of solution or settlement. But there even he was illtreated. His advice was not heard. On the contrary, he was asked to tender apology. My husband was shocked beyond limit at all this and brooding over this matter he ultimately died. My husband had been given the title of M.K.D. by the Syedna. He (my husband) had paid Rs 2,000/- to Syedna as Nazarana at the time of receiving the title.” The witness also said that “even women were compelled to offer “Sajada” (bowing in prostration) to Syedna and his brothers and kiss their hands and feet. This practice is totally contrary to our religion.”

Son Compelled to Disown Father:

Sheikh Yakubali Kurbanhussein Rajnagarwala of Udaipur appeared before us and gave a moving account of how he, his son, and his daughter were persecuted. He said that he is 66 years old. He was working as a Mulla and serving the community from the age of 18 till the year 1973. In the municipal elections of 1970, which we have referred to in the later chapter, he had not taken any part nor had he supported or opposed any group. But his loyalty to the Syedna was suspected because he did not positively and actively support the persons whose candidature was approved by the Syedna.

Soon after the elections he had gone to Rojula in Gujarat to read prayers during Ramzan. He was however suspended when he was there by the Mullaji Saheb's establishment and was asked to go back. When he returned to Udaipur he was placed under Baraat by the Amil of Udaipur. He then went to the Syedna at Bombay and apologised and then was granted pardon. Thereafter he worked as acting Mulla for about three years.

In the beginning of 1973, the eldest son of Syedna had gone to Udaipur. At that time the (the witness) was in Khichpur in Madhya Pradesh for giving sermons during the mourning month of Muharram. By the time he returned to Udaipur, Syedna's son had already left for Galiakot. He immediately went to Galiakot. Two Arabs humiliated him in the presence of about 10,000 persons and threatened him that he would be done to death the next morning. The Amil of Udaipur who was also there at that time advised him to leave Galiakot without delay. When he returned to Udaipur, he was placed under Baraat for having run away from Galiakot.

At that time his son was studying in Jama Safia a religious college, at Surat. This institution has been established for religious teaching and training of Mullas i.e. religious priests of Dawoodi Bohras. It is an old institution. The son after his father's Baraat went to Udaipur to see him. For this offence of seeing the father who was under Baraat, the son was rusticated for 4 months from the Jamia Safia. He had to go to Bombay to apologise to Syedna and was then pardoned. But he was asked to change his name in such a manner that he may not be identified as the son of Sheikh Yukubali i.e. his father. His name was Mulla Ishak Ali son of Sheikh Yakubali. He was ordered to change his name into Mulla

Shabbir Hussain Udaipurwala. He was also asked not to suffix his father's name after his own name. He wrote a letter to witness's son-in-law Fakhrudding explaining why he had to change his name. In that he had to say that he no longer remained Ishak Ali son of Sheikh Yakubali but he was now Mulla Shabbirhussain Udaipurwala, son of the spiritual father Syedna Saheb. The witness produced the original letter with a photocopy. We have returned the letter retaining the photocopy.

In 1974 the witness delivered a sermon in a meeting of progressive Bohras at Udaipur. When Syedna came to know about this, he declared that he was "Taghut" meaning satan, enemy of God. The witness further stated that the supporters of orthodox Bohras now call him Taghut. He said that his son was married after that but he (the witness) did not know when he was married or to whom. He was not informed about the marriage by his son.

After he was put under Baraat, he started associating openly with the Bohra Youth Association. On 18th January, 1975, he was addressing a sermon during Moharram time to the gathering of Bohra reformists at the mosque. At that time about 200-250 orthodox Bohras equipped with knives, clubs, daggers and other weapons rushed to the mosque and wanted to attack him. Some young persons intervened and consequently he received only minor injuries.

His daughter Zubedabanu in her reply to the questionnaire stated facts substantially confirming her father's story and further added that on 29th November, 1973 her brother Ishak had written a letter to her expressing his agony at the way he was treated. In the letter he wrote that for the mere offence of visiting his father who was under Baraat, he had to pass through very painful experience. When he went to the college at Surat, his books and bag were snatched from him. No student or teacher spoke to him. Eventually feeling helpless he went to Syedna on 23rd May, 1973 and prostrating before him admitted: "My father deserves condemnation. He is a Satan. I am declaring Baraat against my father Yakub and also against the Bohra Youth. My father no longer remains my father and my name may be changed."

Zubedabanu then stated that Syedna was very much pleased at this request of her brother and gave him the new name Shabbir. Thereafter when her brother came to Surat, students and teachers of Jamia Safia honoured him very much and congratulated

him. Zubedabanu has sent a photo-copy of the aforesaid letter to us. She has further stated that Baraat has been declared by her relations and by her mother-in-law against herself.

Boycott of Advocate:

One Shri Yahyaali, who is an Advocate practising at Udaipur, gave a statement and also appeared before us. He stated that he is interested in the Youth Reform Movement since many years. He had supported the youth reform candidates in 1970 elections of the Municipality in Udaipur. Baraat was declared against him in 1973 and as a result he lost most of the Bohra clientele belonging to the orthodox section and his first cousin has broken off all relations with him. His mother-in-law who resides with him is also boycotted by her other relations. His sister with her children have been boycotted by her husband because she refused to break her relations with the witness. She does not get any financial help from her husband for maintenance for her and her daughter. He also stated that before starting social and welfare activities permission of the Mullaji Saheb is required and if no permission is obtained, the person concerned is boycotted and persecuted till he gives up the activities and apologises. He said that in 1940 he had organised one Idara National Club in co-operation with other educated Bohras with the object of promoting educational and cultural activities for persons below the age of 18. Not knowing that permission of the Mullaji Saheb was needed, he had not sought such permission of the local Amil. When for the first time the club arranged a function and Mushaira, the witness was called by the local Amil and was told that as he had not sought permission to arrange the programme, he had committed a serious offence. Amil then threatened the father of the witness and his father asked him to leave the club or else he would not continue to pay for his education.

He further stated that if any school or a Society is floated with a constitution of its own, before securing sanction to such an institution, a condition is imposed that provision should be made in the constitution to the effect that whatever decisions are taken by the institution will have to be placed before Mullaji Saheb for sanction and if they are not so sanctioned they would be treated as null and void. In effect there is a veto power given to Mullaji in respect of every decision of the body. In this way, in every so-

ciety, the Amil of the Mullaji has been made its President. Thus Syedna keeps control over every institution started by a Dawoodi Bohra. As an illustration he said that in 1956-57 a secretary was to be elected for the *Syedna's* School. One Ismail Ali who was an Advocate and Chairman of the Municipal Council and also a member of the Panchayat Service Commission was returned uncontested under the new constitution of the society. When Syedna was informed of the uncontested election of the secretary, he at once ordered Ismail Ali to resign as secretary and without any further election one Shri Gulamali who was secretary prior to this uncontested election was appointed by his order and the election of Ismail Ali held in accordance with the rules became void by a stroke of pen and the old secretary who was not at all conversant with educational matters was put back in the saddle.

Persecution of Sheikh:

One Sarangpurwala Mahomed Sheikh, son of Sajjad Hussain, of Surat appeared before us and narrated the story of persecution of himself and his father. His late father has taken religious education in a religious college in Surat controlled by the then Mullaji. He studied religious literature in Arabic and he was a scholar of Urdu and Arabic and Farsi. He had also written religious songs. Thereafter he was appointed as a teacher in the religious college by the then Mullaji i.e. 51st Dai Taher Saifuddin. The present Syedna took religious instruction from him (Sajjad Hussain). He served the institution for about 50 years faithfully on a pittance of Rs. 275 per month. He was dismissed from the college by the brother of the present Syedna. The cause of his dismissal makes a very interesting reading and throws a flood of light on the totalitarian character of the Dai's regime.

Sajjad Hussain and three of his colleagues believed that the 45th Dai died suddenly from poisoning without making an appointment of his successor. He had not expressed his belief in public and kept it to himself. But in 1969 when one of his colleagues Sheikh Hasanali had gone to Mecca for Haj, he expressed his said view before an Arab friend and had requested him to keep it secret. Somehow this matter leaked out and the brother of the present Syedna Yusuf Najmuddin came to know that Sajjad Hussain and his three colleagues were holding this belief. Soon after that serious steps commenced to be taken.

The Mullaji Saheb first declared Baraat against Sajjad Hussain and his three colleagues. The Syedna started the practice of presenting them as "Maloon" (hated being or Satan) and informed the followers accordingly in all places by a circular. He thereafter called the family members of the four teachers to his Devdi (Surat headquarter) and told them either to expele the four persons from their family or to leave them collectively and to curse (utter Lanat against) them. When they refused to do so, they were manhandled by the followers of Mullaji and Baraat was declared against the family members also. This resulted in the severance of relations of the community with them and made their lives intolerable..

Before the dismissal from the college of these four teachers, they were called by the Syedna on 1-1-1971. They kept them standing, surrounded by teachers and pupils of the college. The pupils as well as the teachers were then asked to utter 'Lanat' against them and to spit on them and also abuse them. After this they were pushed out and dismissed. On same day at night, a mob of 300 persons went to their houses and looted household property and books of religion. At that time Sheikh Hasanali was called and severely beaten by the pupils. During religious occasions and especially during Mohram and Ramzan, the priestly class used to provoke the orthodox followers by falsely alleging that these four teachers were drinking alcohol and eating tobacco and that they did not believe in the authority of Prophet or Hazure Ala (Syedna) and besides their isolation they were threatened by some bully that acid will be thrown on them and that they will be murdered or their house will be looted and burnt if they did not apologise.

The witness further said that his father Sajjad Hussain was very old and weak and suffered the most. Even in the mosque and durgah very rough treatment was given to him by throwing pebbles at him and taking away his cap. The family members complained to the Mullaji about such behaviour. But the harassment went on increasing. Even if any one of the female members was seen from a window or verandah of their house, the orthodox followers used to abuse her indecently and it became practically impossible to move out of the house with any self respect. Not only Bohras but even others like milkmen, washerman and domestic servants also boycotted the families of Sheikhs (the four teachers referred to earlier).

The witness's wife was forced to divorce him. His 4 month

old daughter Nasrin was considered "Haram" i.e. bastard. Similarly the son-in-law of Sheikh Hasanali was forced to divorce his wife as he was serving in Mullaji's establishment and had, therefore, to carry out their order even though he was deeply attached to his wife. The second son-in-law of Sheikh Ahmedali (one of the four teachers) was not forced to divorce his wife because he and his wife in the presence of Syedna abused and uttered "Lanat" against all the four teachers including Sheikh Ahmedali.

In 1972 the wife of Sheikh Ali Ahmed expired after much humiliating treatment. Permission was granted for her burial. But all Bohras were asked not to participate in the burial. A condition was imposed that if any of the four boycotted teachers participated in the burial ceremony, the dead body would be thrown out from the graveyard. Consequently six young members of the family had to carry the dead body about 1. 1/2 miles in Ramzan when they were observing fast and they were hungry as well as thirsty. The grave digger was sent away and the witness had to arrange for another grave digger. Even though death took place at 10.00 a.m. the burial took place at 5.00 p.m. The same thing happened when the witness's aunt late Fatima Sheikh Hasanali expired.

The prestly class kept on telling the orthodox followers that this rubbish (meaning 4 teachers) must be removed from Surat. Sheikh Ahmed Ali one of the four teachers had already left Surat for good and he was invited by reformist Bohras of Udaipur as they needed a learned man.

On 22-11-1974 at night the teachers and pupils and other miscreants held a meeting at the school and after planning the assault they divided themselves into three groups and attacked the witness' family (i.e. the family of his father Sajjad Hussain) at about 10.00 p.m. The house of the witness's uncle was raided but he and others were able to save their lives by closing the front door and escaping through back door. They were saved by Hindus. All household furniture, utensils were looted and stones were thrown and food was destroyed and costly articles and glass-ware were broken. Sheikh Ali Ahmed and his family members also were protected by neighbouring Hindu families.

The witness and his father were surrounded by Bohras and the neighbouring families could not help them. Some of the raiders broke into the house and started beating the witness and his father,

The witness tried to protect his father and so they concentrated on the witness. He was dragged out. The witness was beaten and asked to leave his father and utter Lanat against him. His clothes were torn and various parts of his body were bleeding. He lost consciousness. With great difficulty when he went to his house he saw that his father was in a semiconscious condition. Serious injuries were inflicted on him by the mob and his ribs were injured. His furniture, radio and sewing machine etc. were destroyed including food and water. Costly things were taken away. His 4-month-old daughter was not spared. The wounded father of the witness expired on 25-11-1974 at the residence of a staunch reformist Sheth Taherbhai Abdul Gafoor Kinkhabwala. When the father died the priestly class celebrated the death and their victory by a show of fireworks from 2.00 to 10.00 p.m. and sweets were distributed.

Prosecution was filed against a number of persons for conspiracy to cause death. The accused persons were acquitted by the Surat Court because it could not be established that those who were put up for trial were guilty. We are however not concerned with the question as to which particular persons were the assailants. We are only concerned with the fact that the boycotted persons became victims of mob violence, whoever may have engineered it.

Persecution of Bohras abroad:

Performance of religious marriages in East African countries was denied to a number of reformers. About a dozen persons were involved and inspite of repeated representations and requests, the priestly class did not budge an inch from their position. Performance of 'Akika' ceremony of newly born babies was also denied in many instances. Affidavit of one Kurbanhussein Kirufu with the supporting affidavits of Rasulbhai Mulla Sulemanji and Tayebali Hasanali Isaji have been before us which illustrate difficulties faced by the parents.

Burial rites were denied to the dead. One example is of Mulla Amarbhai Mahomadali who was held in high esteem by the late Dai, on whom honorary title of Mulla and M.K.D. were conferred and who was a leading figure of the community. He had held the position of the president of the Jamat for many years. At the time of his death, Mulla Amarali was one of the trustees of the community and because he had declined to surrender com-

munal properties to the representatives of the Dai, without the prior consent of the community, the burial rites were denied to him. This is only an illustration because this happened in a large number of cases. These are instances of persecution in Kampala, Uganda.

Accommodation in the community guest houses (Musafirkhana) was also denied practically in all parts of the world. We have before us photo-copy of a letter dated 16-6-1967 from Anvarali T. Darbar, who was the Hon. Secretary of the Dawoodi Bohra Jamat Corporation of Mombasa. This letter is addressed to Abdulali Husein Hamdani of Kampala. The letter says: "Your signature in the letter dated 16-5-1967 which was circulated to the members of the Dawoodi Bohra community in East Africa connotes that you have directly challenged the authority and derogated the august and exalted personality of His Holiness Dr. Syedna Mahomed Burhanuddin Saheb (T.U.S.), 52nd Dai-ul-Mutlaq. Unless under your signature you send within one week from the date of this letter a written unconditional apology to Shahzada Dr. Yusufbhai Najmuddin Saheb with a copy to us, you will be deprived of all facilities including the right at Musafirkhanas rendered by our jamat Corporation in Mombasa. (Shahzada Yusufbhai Najmuddin is a brother of the present Syedna). A copy of the above letter was sent to Dr. Yusufbhai Najmuddin and to all Honorary Presidents and Secretaries of all Jamats in East Africa.

We have before us a letter of H.F.S Musaji who says that the late Syedna had conferred on him the title of N.K.D. which means "He is a warrior who defends Syedna and his Dawat." The present Syedna also conferred upon him the highest order a Bohra can attain, "Sheikh" for which he was grateful. He has been a loyal and leading member of the community and always defended Syedna as his forefathers, both from his father's and mother's sides, were devoted to religion and the community and had rendered valuable services to the Syedna, which as he says are too numerous to mention. He is the President of the Dawoodi Bohra Trust in Sri Lanka which possessed properties worth over Rs. 2 1/2 million. During the Syedna's visit in 1971 his brother Yusuf Najmuddin asked him whether he would transfer the trust properties to Syedna's name including the mosques. He said that he personally would not object if other trustees agreed. When it was put to the other trustees they inquired whether they had a right to do so and it

was therefore agreed that the matter should be referred to lawyers for their opinion. Two prominent Queen's counsels of Sri Lanka gave their opinion that the trustees had no right to transfer the public properties and mosques in the name of any individual. The opinion was forwarded to Syedna and his brother but no reply was received. In 1972, Yusuf Najmuddin pretended that he was going to Japan and breaking journey at Colombo and stayed there. He called a meeting and publicly insulted Musaji for obtaining legal opinion stating that the transfer could have been effected quietly. He explained that Counsels have stated that such a transfer would not be worth the paper on which it was written. Musaji complained to Police about this and Yusuf Najmuddin was asked to leave Sri Lanka within 24 hours. Thereafter he condemned wrongful actions of Yusuf Najmuddin and quarrel started. Later when Musaji visited Bombay, he wanted to pay his respects to Syedna but Yusuf Najmuddin persuaded Syedna to declare Baraat against him. Yusuf Najmuddin asked Musaji's nephew Faizul Adamali to leave Musaji's services and not to have any intercourse with Musaji. The ocal priest is still trying to separate Musaji's son and son's wife from him. Musaji is Honorary Life Member of Youngmen's Muslim Association, Youngmen's Christian Association, and Mahabodhi Society of U.K. He is a member of the British Legion Overseas Legion and Agricultural Society, U.K. and has been in the past a member of the Colombo Port Commission and Indian Mercantile Chamber.

CHAPTER VIII

SOCIAL PERSECUTION (CONTD) FURTHER INSTANCES

Methods of Harrassment and Persecution:

Various methods are used to harrass and persecute the socially boycotted persons. One of the most commonly used is attack on residence, shops or other work establishments, physical attacks on persons concerned as also the close members of their families if they have not broken away from them. Beating and spitting are two such methods. Amongst others are forcible expulsion from attendance and prayers at Masjids, Graveyards, religious ceremonies associated with birth, marriages, deaths, harrasing sick members of the family of the person under Baraat, removal from employment if the employer is a Bohra are commonly resorted to. Another very obnoxious method is separation of wife from husband, brother from brother, sister and all close relatives. We have received several instances of forced break-up of marriages. Mental torture and cruelty inflicted can only be imagined when sons and daughters have been prevented from meeting their parents on their death bed or from performing ceremonies associated with burial. Such examples are common and found in Bombay, Ahmedabad, Udaipur, Godhra to mention only a few in India from various towns also of East African countries and Pakistan. Some of the respondents have stated that private armies of men (Shabab) and of women (Bunayyat) are maintained by the Priestly class for harrassment, assault and persecution of the reformers and also for the purposes of spying on their activities. Medical practitioners are boycotted if in the course of their duties they render service or treat any reformers. Dr. Cutlerywala has suffered much for helping the sick. Children also have not been spared and poison is injected by the orthodox in the minds of their own children who are advised not only not to talk or play with the children of reformers in the schools but also to beat them up, spit on them and do everything to make the life miserable for little children in school.

Mohmedali Hasanali aged 77 years states from Nairobi that

in 1968 he was thrown out of Masjid during the presence of Syedna. He was not allowed to participate in the burial of his wife who died on 6-4-1973 in Mombasa. He was prevented from attending the marriage of his daughter and his son in Mombasa. When his sons visited Africa, they were forcibly prevented from meeting the father. As if all this is not enough, he is actually assaulted by the orthodox. When he visited India in 1976 after 23 years, the social boycott followed him because Syedna's agent of Nairobi sent a telegram. During his absence, shop in Mombasa was taken away from his son and he is not allowed the use of his property which is being sought to be taken away as Syedna is said to be the owner. (There were mass assaults in Galickot and Moidpura Masjid in Udaipur, Women and Children were also assaulted. This created strong resentment and Udaipur has become a very good stronghold of reformists. Their relatives in Bombay and other places are made to suffer for their relationships). The best illustration of persecution inflicted and suffered is of Mohmedhussain Gulamabbas (Jukkerwala) Udaipurwala, an active worker of Bombay Youth Association. His son aged 8 years was expelled from Saifi High School and when re-admitted because of Government order was so badly treated by other children of the school under instructions from their elders that with great difficulty he had to be admitted to another school. His wife was removed from the Masjid during Mohrum Vaez. As if this was not enough, he is asked to vacate the residential flat where he lives. On his continuing there, deliberate damage is caused to the residence. Life has really become dangerous for him. Besides abusing and spitting on him and his family members, on 23-8-1978 his neighbours seriously injured by beating him with an iron rod on his head.

A. A. Udaipuri, an Advocate who had taken the oath of allegiance again in Bombay in 1973 purchased a flat in Bombay constructed by the orthodox supporters of Syedna but the religious hierarchy were Lessors of the plot. He and some others were not given their title deeds. So they lodged a criminal complaint in the Additional Chief Metropolitan Magistrate II Court in Bombay. Only then they learnt that the original documents of the title deeds were false and fabricated. Thereafter persecution followed and he and his family were under baraat and the social boycott is very intense against him.

In Gujarat there is a substantial number of Bohras. There

too persecution and harassment continued. Zainuddin Valibhai Vall has given oral evidence and statement in writing. He is a reformist of long-standing and took an active part in the Godhra Convention of reformists. Thereafter, the Bombay Mercantile Co-operative Bank dominated by the Bohras stopped giving him loan for his business. The local Amil called upon the Bohras not to buy the soap of his factory. His advertisement boards in public area were destroyed. All other social and personal consequences of baraat followed.

Nomanbhai Contractor, a Bombay reformist leader, visited Godhra, his native place with his family on 12-6-1977. He visited a fellow reformist Pawagadhwala and a large crowd of Bohras surrounded the latter's house. Zainuddin was in a cinema house, he received a phone call from his house and he informed the police to protect the reformist leader and his host. Mullaji's men knew it and his house was surrounded and stoned. Contractor's motor car was totally burnt. Pawagadhwala of Godhra has also been subjected to personal humiliation and assault. His sister-in-law was attacked and she suffered injury because she was in his house.

In Udaipur mass reformist marriages had to be performed without permission because of non-availability of permission of religious authorities.

We can multiply instances but those given above would do. Among those who had suffered most are Abidali Jafarbhahi Gulguliwala of Dahod, Alihussain Tayyebbhahi Cyclewala, Husein Kurbanhusain Sanchawala. Sanchawala had an additional tale of persecution to tell which in its enormity excels anything said here. His father had started in 1935 "Anjuman Mohmedi" in co-operation with seven other reformists of Dahod in Gujarat. He was conducting night classes for old and young and tailoring class for giving employment to the poor. All these were forced to be closed down because of social boycott and persecution. Even the school which they started in Surat could not run. One serious allegation is by Sanchawala that from 47th Dai upto 50th Dai they were in debt because they used to spend for the welfare of the community and the community used to pay their debt. After 51st Dai, Dai's family has become one of the richest families in the world by exploiting the community ruthlessly.

Mohmedbhai Shamshuddin Kutpicewala of Surat had given

oral evidence in the criminal Court at Surat 50 years ago against forcible signatures for exemption for the operation of the Wakf Act 1923. He was beaten up and he has been socially boycotted since then. Tayyebbhai M. Bolbol, Zakiruddin Kadarbhai Roker and Taherbhai Abdul Gafur Kinkhabwala aged 82 years, have been under baraat since the Chandabhai Galla case. Besides ruining their business, they had the other horrible experience of having dirt and human excreta thrown on their person. Teherali-Abdulali Kapadia of Dhoraji Gujrat has been suffering the boycott for a number of years. The entire family with the aged father and women members is put to great harassment. When his infant daughter died, he was refused burial in the Bohra graveyard. But the police and other Muslim and non-muslim friends helped him.

Moiz Salebhai Mediwalla of Jamnagar, Taiyabi Zamindar of Ahmedabad and several others have recounted horrible tales of persecution of men, women and innocent children.

Breaking up of marriage is a very familiar method. Ibrahim Ali of Udaipur has given pathetic examples of his family, his sisters and other members who suffered because of the break of their marriages under compulsion. His only fault was that with the co-operation of all friends from other communities he had started a co-operative bank in Udaipur without the permission of Syedna's agent. His sister Dr. Khadija who was Professor in Baroda Medical College was tragically divorced with two children.

Sheikh Ahmedali Kurban Hussain Rajnagarwala suffered most because of the forced divorces of his two daughters Shahar Banu and Nafisa. One of his daughters was divorced when she was pregnant and the shock of divorce made her lose her child. Mehfuza Taj of Udaipur had her marriage broken up in 1975 and her brother's wife deserted him because they both are reformists. The Udaipur Youth Association also presented a memorandum listing 39 couples who were forced to divorce. Udaipur Jamat has also given such list. From other places in India and abroad we have received many complaints of forced divorces.

Mrs. Fatimabai Saddiqali Tinwala aged 50 years from Udaipur states that because her family was with reformist Youth group her son's wife from Orthodox family deserted him and sent to them their six year old crippled girl. She was continuously crying for her mother. When they informed them their reply was "let her die"

(Bala Jay) and ultimately after medical treatment she died. Before her death they informed her to visit their daughter. When she came with her brother she had already expired. They assaulted them and false complaint was made that they had poisoned the girl. After postmortem they were declared innocent.

Mulla Saleh Mohmad Abdul Husain Salam from Baroda states that he was under social boycott. His younger son's wife went to her father at Indore. Her father was threatened with social boycott and was asked not to send her daughter back to Baroda. His elder son's wife has expired. No one is ready to marry him due to threat of social boycott.

Prevention of Marriage:

There are many instances in which betrothal was broken due to pressure from the priestly class because one of the family members belonged to reformist group.

There is a tragic case of two daughters of Taiyyabbhai Koicha of Bombay who had taken active part for enforcement of Wakf Act to Dawoodi Bohra Community properties for welfare of the community because, late 51st Syedna was converting them to his exclusive ownership. One of the daughters Shirin! writes that both remained unmarried and live isolated life in Bandra since 35 years because they had to leave their house in Bohra Mohalla. Their mother had to be buried in a Muslim grave yard.

Other instances for remaining unmarried due to reformist activity in the family are as follows:—

I. Imrani of Godhra had four daughters, two had to be married outside community and two are yet unmarried.

Daughters of Sharafali Mamuji's family.

Nomanbhai Merchant's daughter.

A.M. Gheewala's brother Abid who is a doctor in U.S.A. had to marry a muslim girl at Delhi.

Those whose marriages were not performed by the priestly class on ground of reformists activity are so numerous that their names cannot be given Memorandum from England gives list of 13 persons.

The list of those who have suffered indignities like beating in public places, in streets etc., and who have had their houses, shops and business premises broken into, are many and they cover places as distant as Bombay, Ahmedabad, Godhra, Udaipur,

Pune. To mention a few names A.M. Ghecwala of Bombay, Taiabali Jivaji Charbiwala, both of Bombay Taiyabi A. Zamindar of Ahmedabad, Ismail E. Lokhanwala of Godhra, Yunus Baluwala of Godhra, Saifi Pawagadhwala have gruesome stories to tell. So did Dr. Yaqubhai K. Baluwala of Godhra. Ismail Ali from Udaipur, Nisar Husain Akabarali Daudji of Udaipur, Zainuddin Vali of Godhra Youth Association, Mohmad Husain Kothawala of Karachi, Huseinbhai K. Anjarwala of Mombasa. Women also are not spared and in Bombay reformist women have lodged complaints with the Police that at bus stops they are harassed and slapped by the orthodox women.

Loss of employment, termination of employment are other methods to pressurise reformists.

Forced Resignations:

Many instances are given by the respondents of resignation by Bohra employees from the services of reformist and boycotted employers due to pressure from the priestly class and their supporters. Some of them are as follows:

Huseinbhai Anjarwala of Mombasa who had sympathy for reformist publicly compalined to all the members of Bohra Community of Mombasa on 10-3-1977 by publishing appeal that 4 Bohra employees of his factory (African Cotton Industries Ltd.) had reluctantly left the service as ordered by their Priest.

We give here the text of a letter written by the Provincial Labour Officer, Coast, Mombasa Ministry of Labour, Kenya to the Secretary of the Dawoodi Bohra community of Mombasa and the local headpriest. The letter is dated 31st March, 1977, and its photocopy is supplied to us by one of the respondents.

“Loss of Employment” Due to Threats:

It has been brought to my attention that some eight employees of M/s. Namujee Brothers Ltd. have been forced to abandon their jobs on account of being subjected to sacrosanct pressure, intimidation, threats of ex-communication and of even being sent to coventry.

Some of the employees have worked for the Company for a long time. In fact the length of their services range from three years to 24 years.

The Management, I have been assured, badly need their ser-

vices and expertise, and have felt that the whole thing is most unfortunate as it has interferred with the smooth running and productivity of the company.

On the other hand, the employees have been badly hit by the action of your Society. They are the bread earners, and most certainly their families are going to suffer untold misery for no fault of theirs.

I would like to draw your attention to the fact that the freedom of workers to earn a living is guaranteed by the constitution of the country, and as such, any action that leads or may lead to depriving them of the liberty to earn a living for themselves, their families and dependants would be viewed gravely and would not be tolerated in an independent Kenya.

Whatever has happened, I am by copy of this letter asking the employer to let the men resume their work with immediate effect, and to let this office know if their freedom is interferred with in any manner.

I trust that you will ensure by all means that no more, cases of interference with people's employment will occur in future and that none of the 8 men will be threatened or intimidated any more".

Prohibition of Entry into Mosques:

One of the major handicaps suffered by the reformers is prohibition of entry into mosques. Although the Masjids belong to Dawoodi Bohras for their religious purposes those under Baraat are prohibited and forcibly prevented from offering their prayers inside the masjids. Fida Hussain Adamali from Nairobi has protested against this treatment because he and 300 other progressive Bohras have been kept out of the place of prayers.

A memorandum of Dawoodi Bohra Welfare Society of Great Britain states that refugees from Uganda later settled in England were prevented from attending religious discourse on the Martyrdom of Maulana Husein (1st Ashura) when Bohras from U.K. had gathered in London and left to suffer the rigours of British winter and rain. Amongst several such victims in India who have suffered are Miss Shakera Madarwala, Ismail Attarwala, Sharifa Attarwala, Taibbhai Ismailji Attarwala, Rakhubai Attarwala. Mr & Mrs. Fidahussain Rangwala, Miss Subera Mashraqui, Shabbir Palana-wala, Zakir Sanwarwala. They were not allowed to enter the Bombay Masjid and the last four had also been pushed out and

assaulted within the Masjid premises. Taibi Zamindar received a similar treatment in Ahmedabad Masjid. Yunus Baluwala, the family of Imranis, Zainuddin Vali, Abdul Husain Hatimbhai Vimanwala, Sultanali Mohamadali Dalal, all suffered the same fate in Godhra.

As is expected Nomanbhai Contractor and his family suffered similar disabilities. Shabbir Hussain was also assaulted in Bombay. The intensity of opposition to the reformers is so great that staunch followers of the Syedna are told that they should start a Jihad against the reformers especially during the months of Ramzan and Moharram. In the course of the last one year the Commission was also mentioned during the Moharram Vaez gathering when the Head Priest and his Amils called for a Jihad against the Commission. Literature printed by the followers reveals that not only must the faithful pray for the Head Priest but while doing so they must also pray that their critics and enemies must burn in the fire of Jahannam (hell). Instances of physical assaults are too numerous to be listed in the short report. Journalists, school children, families of reformers and others have invariably been the target of most vicious attacks whether it be in Bombay, Poona, Ahmedabad, Surat, Godhra, Udaipur or anywhere where the Bohra community is split amongst the orthodox and reformers. Most of them live in fear of physical assaults. More recently knife attacks have increased and one of the more recent one (13-8-1978) has been on Rasulbhai Kamruddin Engineer of Lathi at Bhavnagar.

Harrassment during Burial:

The memorandum submitted to the Commission regarding harrassment during burial of dead reformists or members of their families state that reformist or his relatives residing with him is denied burial in the Bohra Cemeteries in the event of death. The Central Board of Dawoodi Bohra community, Bombay, has submitted numerous instances of how revenge is taken on reformers by delaying the disposal of the dead. More often than not, the burial can take place only under Police protection. It is a similar story wherever Dawoodi Bohras are found in reasonable numbers. Whether it is Bombay, Udaipur, Gujarat, the story is pretty much the same. Some of more prominent members of the Bohra community whose burial was delayed were Khatija Attarwala, mother-

in-law of Nomanbhai Contrator, Ali Mohammad Kesaria, *Baneribai*, Akbarali Machisawala and others from Udaipur. In Udaipur section 144 Cr. P.C. was promulgated and curfew had to be clamped. Occasionally mental and emotional torture touches a new low as was done when Saifuddin Patrawala was severely burnt. As if this agony was not great, his son who was amongst the orthodox section was made to marry while the father was fighting for life. The same night Saifuddin died and the son as a 'loyal' Bohra could not and did not attend the burial.

The Memorandum of the Dawoodi Bohra Welfare Society of Great Britain cites several instances when last burial rights were denied. One instance is revealing. Mulla Amarbhai Mohamadali of Kampala was so highly respected by the late Dai that he was given the titles of Mulla and N.K.D. and was President of Jamaat for several years. Towards the end of his life as a Trustee of the Community he declined to surrender the communal properties to the representative of the present Dai without prior consent of the community. His burial rights were both delayed and denied to him. On several occasions even Janaza prayers were refused and non-Bohra Muslim priests were called by the relatives of the deceased to give them some solace. Sir Adamji Pirbhai's daughter-in-law's body was thrown out of the graveyard. These inhuman practices are stated to have started with the 51st Dai. Bohra doctors were instructed not to treat them. Several instances—Mohsin Mohmadhusain Udaipurwala (23 years), the daughter of Alihusain Mohmadali Ranapurwala, Sugarbai Akbarali Sulemanji Makati, Akbarali Yusufali (70 years) of Gondal were all buried under police protection.

He further states that in 1925-26 Mullaji's Amil Fida Husain had prevented digging of grave for the burial of deceased Tasadukhusain Fidahusain. The dead body was buried with police help and the Amil was prosecuted and sentenced to six months rigorous imprisonment which sentence was confirmed in appeal also. Zainuddin Vali of Godhra states that Masjid was locked to prevent dead body of the mother of reformist Abbasbhai Safari for Burial Namaz and was opened with police help.

Rashidabanoo daughter of Sadiqali from Udaipur had to bury her grand mother Fatmabai in a deserted place in a graveyard for want of money. In Karachi the story has been the same. The mother of Hatim Alvi had to be buried in a non-Bohra graveyard.

The instances can be multiplied.

Financial Oppression:

Almost all have stated that various taxes, levies, nazaranas and salams are collected. Some have given long list of their varieties by mentioning 32 occasions on which they have to pay. Few have expressed that they have no objection in paying various tax but their grievance is that the amounts so collected are not used for the poor, needy, orphans, widows and for the welfare of the community. Almost all have said that lion's share of the huge collections is used for the luxurious living of the Syedna and his family members and not for the needy or welfare or advancement of the community. Overwhelming majority have also expressed that the collection is not only excessive but the method used by the priestly class to collect is oppressive and cruel.

One respondent has produced notice of Badri Mahal in which the follower's name and address is given and he is informed to pay Zakat on the day, time and place which is specified in the notice and also warning is given that if he does not pay within the time he will have to pay the amount which will be decided upon by Janabali (Mukasir Saheb) who is to come to the specified place and therefore it is religious duty to remain present in time and to pay. At the end it is requested to come with the firman (order).

Another one is a photocopy of the form to be filled in by the follower for the payment of Silah and Fitarah tax with table to calculate the amount. Below the form is a form of receipt in which the last line is that the receipt should be carefully preserved. It will have to be shown in the office of Jamaat on occasion of marriage, death.

Overwhelming majority have stated that if various tax and levies are not paid within time all the dues remaining unpaid are recovered by preventing marriage and burial ceremonies by the priestly class.

Almost all have said that the local Amils collect the tax on behalf of the Syedna. Nomanbhai L. Contractor in his affidavit states that there has been a practice to issue firmans from the establishment of the Syedna by written communications to the Amils of various towns and cities in India and abroad directing them to carry out certain jobs and the Amils are under obligations to obey these firmans without any reservation. He has produced

such telegrams from the establishment of Syedna. In one such telegram the Amil is informed that the Syedna has decided to bestow title to three of the Bohra residents and he is directed that Rs. 552/-, Rs. 501/- and Rs 421/- must be submitted respectively to the establishment of the Syedna.

In another telegram the Amil is directed to make proper efforts for Asian Dehydrates Ltd. shares. Minimum no. of share applications expected from his centre is 500. Nomanbhai states that the said Asian Delydrates Ltd. has been floated by the family members of the Syedna and he has produced a copy of the said company's 8th Director's Report in which in the list of Board of Directors is given with other names, names of the members of the Syedna's family.

In this connection Yusufali Alibhai Mithaiwala of Bagsara states in his complaint that he is a poor cook and earns his living by cooking dinner and prepares sweetmeats for the community dinner of Bohras. He is faithful to the Dai and regularly pays the tax due (Fitrah). Yet the local Amil presses him to buy one Surat Unit. He is poor and cannot afford to spend Rs. 251/-. He tried to secure a loan but had failed to get it. The Amil threatens Bohras not to give them permission for social or religious ceremonies if they engage the witness's service and therefore the Bohras have stopped giving him work of cooking. The witness has expressed his fear of the tragic consequences for himself and his family if he is boycotted.

In one telegram the Amil is informed that the Syedna is visiting a particular town and he should bring all Bohras with him to that town to appear before the Syedna for Kadambosi (kissing feet).

There is one circular about the rate of donations for the construction of the Tomb of late Head Priest Syedna Jalal Shamshuddin at Ahmedabad. The rate of collection according to the financial condition of person is Rs. 5152/-, Rs. 2552/- and Rs. 252/- per family and in addition Rs. 11/- for every male, Rs. 9/- for every female and Rs. 5/- for each child.

Also, produced are two photocopies of two receipts of Rs. 14,000/- and Rs. 1,300/- of donation for construction of the Tomb of the late Head Priest Taher Saifuddin Saheb.

Kurbanhussain from Udaipur has stated that Taiyyabia school is totally controlled by the Syedna and the School Committee sends

Rs. 121/- p.m. to him and he in turn sends Rs. 127/- showing that he helps the school while donating Rs. 6/- per month only. Another teacher has said that by such method payment of his salary is delayed. One respondent has also said that yearly collection for Madressa are made from Bohras.

With the memorandum of reformist Udaipur Jamaat a photocopy of a letter of Syedna is produced in which amil is ordered that all income accruing to Jamaat is absolute property of the Syedna.

It is stated in the above memorandum that the amount of Salams, donations, contributions, etc. is fixed by negotiations, higgling-haggling depending on the capacity of the person to pay.

Several respondents have said that they have to pay contributions for welfare institutions like hospital, Musafirkhana, Madressa, according to the financial capacity but they have no means to know how much amount is used for the purpose for which it was collected. Besides such welfare institutions which were constructed or are constructed by the donations of the community and controlled by the priestly class, reformists and boycotted persons are not allowed to make use of them. Besides, it is stated in the memorandum from the Great Britain Welfare Society, that the individual respondents were denied accommodation at community guest houses in practically all the parts of the world instances of which are given in the memorandum.

In the memorandum submitted by the Bohra Youth Association, Udaipur, it is stated that reformists are not allowed to enter into Dargah at Galiakot and if one goes he is beaten and the place is 'purified' as it is thought to be defiled by his presence. Local management welcomes non-Bohras there and shows them everything. But the reformist Bohras are forbidden. Orthodox Bohras get permit from the Amil to visit the place.

Reservation in Graveyard:

Regarding reservation of place in the graveyard for an individual or family almost all have stated that the land for the graveyard is given by the government or local authorities. In small towns there is no practice of reservation because land is easily available. Zainuddin Vali of Godhra has produced two photographs of plots in the graveyard of Godhra and states that the priestly class sells these plots to persons concerned by charging

high prices but no receipt for such payment is given.

Several respondents have stated that in the Nariawadi Graveyard in Bombay reservation of such plots is made and that amount is to be paid according to the place and capacity, ranging from few hundred rupees to Rs. 51,000/-. However they have also said that no receipts for these amounts are given. One respondent has produced in Gujarati language a photo-copy of registration note of Nariawadi Graveyard, Bombay, issued by the Hizbul Huda Society. It is numbered, dated and in it plot no., line no. of grave and grave number is recorded along with the date of permission, date and time of burial, and the name of the person buried. Signature of the successors or guardian of the deceased can also be seen.

Reservation in Mosque:

Nomanbhai Contractor in his affidavit has stated that a practice has been started to collect money for reserving places of prayer in the Bohra Mosque for ladies for a specified period against a payment of specified amount for each of such allotted seat. He has produced from one of the mosques in Bombay, allotment card in original for such place of prayer alongwith receipt for Rs. 401/- which was paid for the reservation of such seat and also a circular letter in original for allotment of such seat. In the circular letter which is in Gujarati language the amount is treated as "Hub and it is stated that it is to be used for repair of the Masjid so that if the lady named in it pays the amount of Rs. 401/- within time specified in it she will get Sawab (reward in the world hereafter) besides the facility.

The receipt is of Dawoodi Bohra Masjid Trust in Bombay and, on the allotment cards, number of place is given. In the card conditions are stated that the place is for the lady named in it or whomsoever she permits and the place cannot be sold by taking money and in any circumstances the Head Priest has right to cancel the pass.

Violation of Human Dignity:

One can continue with the Bohra community only at the expense of loss of one's personality and human dignity. A report from London by Yusuf N. Patwa shows how Nuruddin A. Kirefu was forced to kiss the feet of Prof. Hatim Hamiduddin Sahib at

Misag ceremony of his children. He had to pay seventeen pounds for the Misag. Thereafter the Head of Leicester Jamaat ordered him to sever all connections with his people from Kampala. In England too the writ of orthodoxy runs. This is also seen in another instance when the father of the bride Asgarali Akabarali of Cambridge was compelled to cancel invitations for the wedding sent to the reformers amongst the Dawoodi Bohras. The followers are also compelled to do Sajdah before the Dai. No Muslim sect can approve of such an act which is prohibited by the Holy Kuran; "Sajdah" can be offered only to God and not for any human being. Several such instances have been brought to the notice of the Commission.

Women forced to give up their jobs:

Abid Tayabali Rajabali states from Mombasa that Yusuf Najmuddin, brother of the Syedna, had visited East Africa in 1977 and a firman (order) was issued by him that all the Bohra women in East Africa should leave their jobs, and to wear 'riddas' (veil-cloth uniform covering the body including face with opening for eyes to see), and for males to grow beards and to wear Bohra uniform (sherwani i.e. long coat, trousers and turban or cap).

Adamali A. Patwa from Dar Es Salaam has produced a photo copy of the letter of the Ministry of Home Affairs of Tanzanian Government which is reproduced below.

**MINISTRY OF HOME AFFAIRS
THE UNITED REPUBLIC OF TANZANIA**

P.O. Box 9223
Dar Es Salaam
18 December, 1978

Ref: No. Has 24/19/89

Ndugu Murtazali A. Raja,
Hon. Secretary,
Dawoodi Bohras Jamat Corporation,
Kaluta Street,
P.O. Box 3037,
DAR ES SALLAM

BOHARA COMMUNITY

Dear Mr. Raja,

Thank you for your letter of 31st October, 1978 on the above subject, in which you draw our attention to the meeting held on

25th October, 1978 under the Chairmanship of Mr. J. H. M. Matiko, the Principal Secretary, Ministry of Home Affairs, who is also the Registrar of Societies under the Societies Ordinance, Cap 337.

2. It appears that you have misunderstood the theme and have also misinterpreted the spirit of that meeting. The purpose of the meeting was to convey to both parties i.e. leaders of the Bohora Community and those of the "dissident's" group as you call it, the Government's decision on the problem of the Bohora community. We take this opportunity to bring you the minutes of the said meeting.

3. At the opening of the meeting the Chairman explained briefly the misunderstanding and bitterness within the Bohra Community which culminated in ban for Bohra girls from working in offices and the closing of shops run by Bohora for one day sometime in March 1977. Both actions are contrary to the declared policy of the Government which requires every able-bodied man and woman to work. You were accordingly warned and pardoned by the Prime-Minister.

4. The Ministry of Home Affairs is charged with enforcement of the laws and regulations governing all registered societies in the country. And it intends to do its duty in seeing to it that no religious society breaks laws of this country on religious pretext.

5. Mr. Matiko stressed, however, that it is not the intention of Government to interfere unnecessarily in the internal affairs of any society provided it carries out its activities in accordance with its constitution.

6. He continued to explain that the 1967 constitution which was received on 23-12-1967 by the Registrar of Societies was accepted to which there were some objections from some members of the Community. Under the circumstances the Registrar of Societies, could have refused to accept it under section 7 (4) of the Societies Ordinance as stated below:—

"Rule 7 (4): The Registrar may refuse any application by a registered society to change any provision of its constitution or any of its rules where it appears to him that as a result of such change the society is likely to be used for any purpose prejudicial to or incompatible with the maintenance of peace order and good Government."

7. According to representations made by some Bohras the amendment to 1955 constitution was not only the source of discord in the Bohora Community but also the source of the breach of peace, order and good Government. It was, therefore, necessary to amend the 1967 constitution. But the Chairman made it quite clear that this change of constitution should be done by the Bohora Community in accordance with the Law. The Government would not make any changes for the community.

8. The Chairman stressed, however, that it is wise for the Bohora Community leadership to invite the so called 'dissidents' to make their representations about the change of constitution.

9. In conclusion, it was agreed at the meeting as follows:—

- (1) To examine the 1967 constitution and amend it if there is need. It was agreed that all parties concerned, including the 'dissident' group will participate in this and the Ministry of Home Affairs would be prepared to help if it was invited to do so.
- (2) To abide by the Government's guarantees of freedom of worship for everybody and to refrain from using such freedom to cause any form of harrassment which may lead to the breach of peace, order and good government.
- (3) That differences and disputes within the Bohora Community should be settled by the Bohora themselves and not by the Government, provided that such differences or disputes do not threaten the breach of peace, law and order or good government.
- (4) It should be clearly understood that any violation of the laws of this country under any pretext shall be dealt with by Government in accordance with the laws of the country.

10. I hope the above points clarify the government's position in so far as conflict in Bohra Community is concerned.

Yours faithfully,

Sd/-

M. Mohamed
for PRINCIPAL SECRETARY

Adamali Zariwala from Dar es Salaam has sent a photocopy of his public letter to the secretary of the Dawoodi Bohra Jamaat

of Dar Es Salaam in which he has stated that by acting according to the advice of priestly class prestige of the Bohra community is lost in the Government which is closely watching its activity and is ridiculed by other friendly communities and unity of the Community has become the matter of the past and bitterness amongst the members of the Community has been created. Various clippings from the regional paper are also produced in which priestly class has been strongly criticised for oppression of the reformists.

Fida Hussain Adamali from Nairobi states that Dr. Y.A. Yamani was turned out of the graveyard in Nairobi when he attended without sherwani the burial of the patient who was under his treatment. The respondent has also produced a copy of public appeal by Dr. Y.A. Yamani to all the members of the Dawoodi Jamaat complaining against his insult and suspension from the Community. The respondent has further stated that in Kenya, males are not allowed to enter Masjid or graveyard without turban and sherwani and all Chithiwala Bohras are compelled to wear beard. Women on reaching 18 years old and above are not allowed in Masjid and are boycotted if they do not wear Burqa (veil).

Regarding Bohra uniforms for males it states that on all social and religious occasions it is insisted upon and sometimes person may be insulted if he does not do so. Before going to meet Syedna Saheb it is necessary to wear turban or topi and sherwani.

After all the evidence was scrutinised and this report was in the final stage of its preparation, the Member-Secretary of the Commission received a statement supported by an affidavit from Shri Tyabi Zamindar, a reformist Bohra from Gujarat. He has testified that the Syedna Saheb has recently issued a Fatwa (ruling) that all male members of the community should wear caps on their heads and should also wear beards. Female members should not go out without wearing Burqa (veils). The complainant has, however, not supplied a copy of the Fatwa.

In these circumstances it is not possible for us to make any definite pronouncement except to mention in passing that if the report about compulsory wearing of Burqa by women is true and if it is enforced, it would be very serious violation of the highly cherished and valuable human right of equality of the sexes.

CHAPTER IX

INTERFERENCE WITH ELECTORAL RIGHTS

In this chapter we propose to examine the evidence relating to the interference with electoral rights.

Along with the memorandum of the Central Board of Dawoodi Bohra community, Bombay, they have produced photo-copies of two directives sent by Syedna, one dated 29 Shaban 1381 Hijri (about 1962 A.D.) and the other dated 28th Shawwal 1386 Hijri (about 1967 A.D.) by which Amils have been directed that they should ask the Bohra community to vote for the Congress party in the General elections. These letters are printed in Urdu script but the language in both the letters is the dialect of Gujarati which the Bohras use.

Shri Noman Lookmanji Contractor has filed an affidavit stating that there has been a practice to issue Firman by written communication to the Amils of various towns and cities in India directing them to carry out certain jobs of the Mullas and they are under obligation to obey the firmans without any reservation. He has produced a telegram in original received on 25-4-1952 by the Amil of Ujjain: It reads as under:—

“convey effectively all Momineens advisable vote for the Congress candidates and inform the Congress President (local.)”

In the memorandum submitted by Abid Ali, secretary of the Bohra Youth Association of Udaipur, he has referred to a letter dated 2-10-1951 addressed by Shri Mohanlal Sukhadia, the then minister of Rajasthan (later Chief Minister) to one Saiyed Abdeali-bhai, the then Amil of Udaipur, in which Shri Sukhadia has stated among other things as follows:—

“I am happy with the fact that Muslims all over India are presently supporting the Congress and specially the Bohra Jamat is firmly determined to make efforts to strengthen the Congress on every occasion. I had recently been to Bombay where I had the good fortune to meet Mullaji Saheb at Saifi Mahal. During the conversation with him he assured me that every member of

his community will help the Congress candidates in the elections.

The need for writing to you to-day has arisen because these are the days of Moharram and during these days you are tendering advice to your Community. May I suggest to you that during your religious discourses (*vaez*) you may impress upon the people the need to vote for the Congress candidates without being hood-winked by any other party.

You must be aware of the fact that Bhai Ismailji is contesting from the constituency of Uthala in the Rajasthan Assembly on the Congress ticket. Please keep on telling me if I can be of any services to you."

This is no doubt hearsay evidence about the assurance given by Mullaji to Shri Sukhadia. But normally Shri Sukhadia would not report the talk if it had not really taken place. The letter, however is very old and of the time of the present Syedna's predecessor. Therefore, much cannot be made out of it and we prefer not to treat it as an important piece of evidence. It throws some light on the goings on between the High Priest, politicians and the Amils during an election.

In an earlier chapter we referred to the deposition of Abid Hussain Hasanali, Secretary of the Bohra Youth Association Udaipur. He has referred to Municipal elections held in Udaipur in 1970. He has appeared before us and stated that four candidates who wanted to contest the said election had sought permission of the Syedna Saheb to do so. This fact is proved by a photocopy of the telegram which Syedna sent to the then Amil Abdeali Bhaisaheb and which was forwarded by him to the four seekers of permission. There is also a copy of the announcement made by the Amil. The text of the telegram is as follows:

"Bhai Saheb, Bohra Devri Udaipur.

You have solicited Huzur Ali's permission for

1. Taherali Gulamali Sheikh Larji.
2. Abbas Sadikali Kuravarwala,
3. Rajabali Alabakshji Sabunwala.
4. Ahmadali Kaluji Bandukwala.

to contest the Municipal elections which Huzur Ali is pleased to with benedictions."

The announcement made by the Amil after the receipt of this telegram which as translated in English, reads as follows:—

"NECESSARY INFORMATION"

All the Momineens, Brothers and Sisters, are hereby informed that these days rumours are being spread to the effect that sanction has not been received from Huzure Ali. This is false. Herewith attached is a copy of the telegram. If anybody wants to see the original he can come to the Darul Imarat (Residence of local priest.) and see it.

Abde Syedna—Ta. U. Sha
Abdeali son of Mohmed."

The witness has stated that the local people treated this as an imposition of candidates on the local Jamat. The Jamat committee, therefore, decided to set up other candidates against the 4 candidates abovenamed. The local Amil canvassed for the candidates who had received benediction of the Mullaji Saheb. Mullaji's candidates were all defeated and the candidates put up by the Jamat Committee won by thumping majorities.

The witness has also produced a letter dated 11th Ramzan 1390 Hijri addressed by Syedna's Office at Bombay to Sheikh Mahomed Mulla Kurbauhussian strongly criticising the help which Yakubali gave to the candidates who contested against Mullaji's candidates. Shaikh Yakubali also appeared before us and stated how he was suspected to have canvassed for the rival candidates and how he was persecuted for the same. But about him more later.

Shri Roshanali Mandviwala from Bombay has in his reply to the questionnaire stated that at the elections to Maharashtra Legislative Assembly held recently the priestly class canvassed through girl students in a door to door campaign that the symbol of 'Panjo' (hand) adopted by Congress (I) represents "Panjatan's Panjo" and, therefore, votes should be given for that symbol. The allusion is to five sacred persons namely prophet Mahomed, Ali, Fatima, Hassan and Hussein. This is obviously an appeal in the name of spiritual leaders..

Shri Alimohamed Kanchwala of Bombay has said in his reply that Mullaji Saheb's men used to remain present near the polling booth in the Assembly elections.

One respondent Shabbir T. Buxa Musa has stated that voting in general or municipal elections takes place by secret ballot. It may not do much harm to the individual's right to vote for the candidate of his choice. But what effects more seriously is the

directive not to work for the candidate who has not secured permission of the Syedna to contest the election. The candidate and his supporters are socially boycotted.

It thus appears that the statement made by Nomanbhai Contractor that there is a practice by the Syedna's establishment to give directives to the religious priests (Amils) to canvass for candidates of a particular party in the political elections is justified. There is also a practice which has been deposed to by all the respondents in their replies that Syedna blesses certain candidates if they are not of his community and expects persons of his community not to contest elections unless he gives permission to them.

This evidence clearly shows that the Syedna through his Amils uses his position as a religious and spiritual head to influence the members of his community to stand or not to stand as candidates at elections. He also uses it to direct them to vote or not to vote for any particular candidate. When it is remembered that he takes misaq from every member of his community which binds all to obey the commands of the Syedna whether in the field of religion or not, and when the misq further says that even God will not pardon one who disobeys Mullaji Saheb's command and thereby breaks his oath, and when the Syedna exercises the power to excommunicate any person for breach of Misaq, it becomes clear that his directive or even advice tends to interfere with the free exercise of a Bohra's electoral right.

The people of India by their constitution have accepted secularism as one of the fundamental objectives to govern their life. That principle would require not only that all religions will be treated equally by the State but also that religion should not be mixed with politics and that in the act of choosing their representatives people should not be influenced by considerations of religion. The parliament has translated this principle in the electoral field by making suitable provisions in the Representation of the People's Act. The 1951 Act by Sec. 123 defines "a corrupt practice" in the field of elections. That section, in so far as it is material in this context, reads as under:—

"123. *Corrupt practices*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1)

(2) Undue influence that is to say any direct or indirect inter-

ference or attempt to interfere on the part of the candidate or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right.

Provided that:

- (a) Without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
 - (i) Threatens any candidate or any elector or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or
 - (ii) induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

- (b) a declaration of public policy of a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

The Misaq on which the High Priest insists and which he rigidly enforces is a standing threat to every Bohra candidate whose candidature has not been sanctioned or blessed by him and to every Bohra who canvasses for such a candidate or votes for him. He would not only be ex-communicated but will be rendered an object of divine displeasure and spiritual censure (see paras 4, 13 and 15 of the Misaq reproduced in chapter IV). In this view, the practice followed by the High Priest of sanctioning or blessing the candidature of candidates at the general or local elections is covered by section 123 (2) quoted above and can, therefore, be said to amount to a corrupt practice for the purposes of the election law if it is done with the consent, express or implied, of the candidate or his agent.

The exercise of undue influence in an election is also an offence under section 171 C of the Indian Penal Code and is punishable with fine or imprisonment of upto one year under section 171 F. The definition of undue influence is the same in the Representation of People Act and the Indian Penal Code. Consent of the

candidate or his agent is not an element in the offence under the Indian Penal Code.

This is, indeed, a serious matter. No religious or spiritual head in this country has a right to use his office as such to help or hinder the prospects of election of any candidate or interfere with the freedom to vote for a candidate of one's choice. This observation applies with greater force to the High Priest of Dawoodi Bohras in view of what is stated earlier in this chapter. The fear of divine displeasure and spiritual censure is far more effective and, therefore, more dangerous than fear of physical injury. Secrecy of ballot can help overcome the former but not the latter. So far as candidates and canvassers are concerned, the shield of secrecy is not available to them. They must either obey the High Priest or be prepared to get out of the fold. A more flagrant violation of the principle of secularism is difficult to imagine.

CHAPTER X

IMPOSITION OF AUTHORITARIAN CONSTITUTIONS

A number of Dawoodi Bohras reside in countries other than India. Practically all of them have migrated from Gujrat. In these countries the local Jamats had their own constitutions. They were democratic in character. The late Syedna had tried to centralise all powers in India. But the Jamats in foreign countries had remained more or less autonomous. The present Syedna tried to complete the task of destroying the democratic character of Jamats in countries of East Africa. The story of how he managed it has been told by Dawoodi Bohra Jamat Corporation, Birmingham and Dawoodi Bohra Welfare Society, Leicester, U.K. supported by relevant documents. In their memorandum dated 19th July, 1978 which was also submitted to the High Commissioner for India, they have stated in substance that they represent the progressive section of the Dawoodi Bohra community in U.K. Their membership is chiefly comprised of immigrants who came from East Africa and India, the majority being from Uganda. They have said that the difference of opinion with their priestly class and oppression of the group by the said class date back to the year 1967. Until that year various jamats in East Africa worked under the constitution which was negotiated with the late 51 st Dai. That constitution had helped the Jamat accumulate great wealth which was used for the benefit of the needy members of the community. These benefits were in the shape of educational programme, free and subsidised housing, maintenance of widows and orphans, interest-free loans to start commercial enterprises, medical care, provision of guest houses, religious education etc.

An attempt was made by the present Syedna Mohomed Burahnuddin to introduce a new constitution in 1967. His motive for imposing the new constitution was to take over complete control of the management of the various boards of trustees and the finances and the property which various East African Jamats had acquired, and which amounted to millions of pounds. This attempt did receive partial success in Tanzania, but was vigorously

opposed in Kenya and Uganda. He issued a directive whereby the new constitution was imposed. A photocopy of the directive of Firman is also produced with the memoranauum. The firman is dated 17th Mohurram 1397 Hijri corresponding to 26-4-1967 A.D. The text is as under:—

DIRECTIVE

The Directive to the Momineen of East Africa is bestowed by us as a corollary to our previous two Directives both dated 16th Moharram 1387.

We now direct:—

1. That the existing Constitution of all the Jamats in East Africa shall stand revoked and repealed and is *hereby revoked and repealed* with effect from the 30th day of April, 1967.
2. That the Managing Council and the Board of Trustees constituted under the old Constitution shall *stand dissolved* with effect from the 21st day of Mohrram 1387 corresponding to the 30th day of April, 1967.
3. That the new Constitution promulgated and bestowed by us for all the Jamats in East Africa shall come into operation and be deemed to be in operation and effective as from 21st day of Moharram 1387 corresponding to the 30th day of April, 1967.
4. That in *exercise of the authority of the office of Dai-ul-Mutlag* and in terms of this Directive and the two previous Directives of 16th Moharram 1387 read with the new Constituion formulated and bestowed on the Momineen of East Africa to regulate the various Jamaats of the followers, we appoint with effect from the 17th day of Moharram 1387, Bhai Yusufbhai Najmuddin and Bhai Qaidjoherbhai Ezzuddin to represent me during the term of their stay in East Africa and to excrcise jointly and/or severally all or any of the powers and functions assigned to them under our authority and all or any of the powers and functions of the Honorary President and the Office-bearers and members of the Managing Council as provided for in the New Constitution bestowed.
5. That Bhai Yusufbhai Najumuddin as our special Representative is authorised *and directed to appoint* all or any of

the first Office-bearers and members of the Managing Council or all or any of the first members of the Board of Trustees of the Dawoodi Bohra Jamaat Corporations of East Africa and to hand over on our behalf to the various Jamaat official copies of our Directives and the constitution.

6. That the first Office-bearers and members of the Managing Council and Board of Trustees if appointed in terms of this special Directive *shall follow the guidance* and instructions of our special Representative in regard to the procedural steps to be taken.

We send our benedictions to all Momineen.

It is our prayer that Allah may guide the new constituted Managing Council in its deliberations. (Yusuf Najmudin is a brother of the present Syedna).

Photocopies of two other Firmans of 25th April, 1967 referred to in this Firman have also been produced. In one of these two firmans the following passages occur:—

“The fundamental and essential tenet of that faith is belief in the Imam of the time and during his seclusion in his vicegerent the Dai-ul-Mutlaq whose pivotal position preserves the brotherhood of Momineen and provides the fountain head of authority for all matters affecting the faith and *property, the institutions and the affairs of the followers.*”

“Thereafter we had by our directive of September 1, 1966 directed that the various Dawoodi Bohra Jamat Corporations shall exercise such powers and functions and only to such extent so far as it become necessary so to do for attending to the routine day-to-day administration of the affairs of the Jamaat.”

“We had also examined the entire organisational structure of the community of East Africa and by our *Directive of 16th Moharram 1387 revoked and repealed the constitution of the East African Dawoodi Bohra Jamaat Central Council and bestowed upon it a new constitution which comes into effect from the 20th Moharram 1387.*

“In the premises we further direct: That the East African Dawoodi Bohra Jamaat Central Council meeting on 20th Moharram 1387 shall receive this Directive and a new Constitution which was bestowed by us on the Momineens of

East Africa to regulate the various Jamats of the followers. That as set out in our separate Directive which our special Representative now in East Africa Bhai Yusufbhai Najmuddin has been authorised to hand over to the various Jamats. *The existing Constitution of all the Jamats in East Africa shall stand revoked and repealed and the consequential procedure to be followed by the Jamats shall be as prescribed in such separate Directive.*" (Emphasis supplied).

The new constitution which governed the East African Jamat thereafter is totally undemocratic and give very wide powers to the Dai.

Sub-clause (j) of clause 3 which relates to the aims and objects of the Jamat shows, among other things, that no devices, bequests and trusts from a person other than a Dawoodi Bohra or from any other corporation or institution managed, directed and controlled by any person or persons other than a Dawoodi Bohra shall be accepted without the written consent of His Holiness the Dai-ul-Mutlaq being previously obtained.

Sub-clause (m) of the said Clause 3 states one of the objects of the Jamat to be:—

"To manage, superintend and look after each institution and property dedicated or acquired for the benefit and use of the Dawoodi Bohra Community as may be specified and entrusted by His Holiness the Dai-ul-Mutlaq."

Clause 7 provides:

"His Holiness the Dai-ul-Mutlaq may in his discretion and pleasure nominate any persons to be members of the Corporation for such term and upon such conditions as His Holiness the Dai-ul-Mutlaq may stipulate."

Clause 8 sub-clause (v) provides: A member shall cease to be a member of the Corporation:

"Upon his removal as a member of the corporation by His Holiness the Dai-ul-Mutlaq at his discretion and pleasure."

Clause 20 sub-clause (v) provides: A member of the Managing Council shall cease to be such a member

"Upon his removal as a member of the Managing Council by His Holiness the Dai-ul-Mutlaq at his discretion and pleasure."

Clause 27 provides:—

"His Holiness's special representatives: His Holiness the

Dai-ul-Mutlaq in his sole discretion may appoint any person or persons for such term and upon such conditions as His Holiness the Dai-ul-Mutlaq may stipulate to represent His Holiness the Dai-ul-Mutlaq on the Corporation. His Holiness's special representative or representatives when present shall have precedence at all meetings, functions, gatherings or otherwise of the Corporation, Managing Council and sub-committees and shall exercise such powers and functions over those present as may be assigned to him or them by His Holiness the Dai-ul-Mutlaq."

Clause 45 sub-clause (v) provides: A member of the Board of Trustees shall cease to be such a member—

"Upon his removal as a member of the Board of Trustees by His Holiness the Dai-ul-Mutlaq at his discretion and pleasure."

Clause 50 which relates to amendment of Constitution provides:—

"His Holiness the Dai-ul-Mutlaq by virtue of his position may at his discretion and pleasure add to, delete, alter or otherwise amend, suspend, cancel, revoke, repeal or substitute these presents.

Clause 51 says:—

"51. The Corporation, Managing Council, Board of Trustees, Committees and Sub-Committees shall in all matters connected with performance and exercise of their respective functions and powers carry out and follow the directions and guidance of his Holiness the Dai-ul-Mutlaq."

Clause 52 is as follows:—

"His Holiness's Prerogative : His Holiness the Dai-ul-Mutlaq in his capacity as Dai-ul-Mutlaq and by virtue of the authority of his office has and shall have the power to over-rule and cancel any decision resolution or action of the Corporation or Managing Council or Board of Trustees or any Committee or Sub-Committee if in his opinion such decision or resolution or action is contrary to the law laid down by the Islamic Shariat or derogatory to the objects of the Corporation or in conflict with or not in the interest of the Dawoodi Bohra Community. The decision of His Holiness the Dai-ul-Matlaq in this behalf shall be final."

Clause 55 relates to:

"Winding up and Dissolution".

"His Holiness the Dai-ul-Mutlaq may at his discretion and

pleasure wind up or dissolve the Corporation and if upon the winding up or dissolution of the Corporation there remains, after the satisfaction of all its debts and liabilities, any property whatsoever the same shall not be paid to or distributed among its members but shall be given or transferred to some other institutions having charitable objects similar to the objects of the Corporation and which shall prohibit the distribution of its or their income and property among its or their members such institution or institutions to be determined by his Holiness the Dai-ul-Mutlaq at or before the time of dissolution and if and so far as effect cannot be given to such provision, then to some other Charitable object."

In the interpretation of clause 62 by Clause (g) the words "Dawoodi Bohra, Dawoodi Bohra community and Community" are defined as meaning and including persons:

"Who are Muslims of the Shia Ismaili Tayebi Dawoodi Bohra sect who believe in and owe *allegiance by giving the Misqa* to the Dai-ul-Mutlaq of the time and accept and recognise His Holiness Dr. Syedna Mohomed Burhanuddin Saheb as the 52nd Dai-ul-Mutlaq as the representative and vicegerent of the Imam on earth in seclusion in regular succession from Syedna Zueb and who have not otherwise cased to be Dawoodi Bohras and are recognised by His Holiness the Dai-ul-Mutlaq as his followers: Provided that those persons who are Muslims of the Shia Ismaili Tyebi Dawoodi Bohra sect and who have not attained the age of puberty shall be deemed to be Dawoodi Bohras until they shall give the Misqa in accordance with the precepts of the Shariat and otherwise shall conform to the definition of Dawoodi Bohra herein contained."

When the application to register this constitution was filed, the Minister of Minerals and Water Resources of Uganda by his letter dated 15-7-1967 addressed to the Secretary of the Dawoodi Bohra Jamat Corporation, had to state as follows:—

"I am in receipt of your application dated 29th June 1967 and 14th July, 1967 accompanying the affidavit sworn by the majority of the members of your community."

In para 3 of the letter the Minister has stated as follows:—

"3. I am of the opinion that every community must have its own say in their affairs which of course should be according

to the wishes of the majority of its members. In my investigations, it is revealed that the Constitution registered on the 30th June, 1967 was not carried by the wish, approval or acceptance of the majority of your community.

I am clear on this issue now and accordingly I have today issued an order revoking my decision, of 30th June, 1967. The Constitution registered in 1928 by your community remains valid. The door is still open for you for registration of a new constitution provided such a constitution is approved and agreed upon by 2/3rd Majority of your members."

When the Bohras refused to accept the new Constitution the Syedna started using his authority as High Priest to force them into submission. Notices were issued by the Dai-ul-Mutlaq to the President Mr. Gulamabbas Rajabbhai and the local priest Mr. Ebrahim Sheikh Mahomedali. Photocopy of these notices have been produced before us. Both these notices are dated 29th July, 1968.

One such notice is reproduced here in full:

"29th July, 1968.

"Mr. Ebrahim Shaikh Mohamedali,
P.O. Box 1432,
Kampala."

"Sir,

I am commanded by His Holiness Dr Syedna Mohammed Burhanuddin Saheb (T.U.S.) 52nd Dai-ul-Mutlaq, to address you as follows:—

1. The Dawoodi Bohras constitute a religious sect of Islam. Every follower of the Dawoodi Bohra sect, to be entitled to be so called, has a solemn religious obligation to profess certain beliefs and declare and continue to hold such beliefs. This is a fundamental and essential requirement which cannot under any circumstances be dispensed with.

"The Dawoodi Bohras believe that there is one God: that Mohammed Rasulullah is His Prophet; that Maulana Ali was the vasi of the Holy Prophet and succeeded him and that Maulana Ali was succeeded by a line of Imams each appointed by his immediate predecessor. That Imam Tyeb went into seclusion and that today there is an Imam on earth, the direct descendant of the Holy

Prophet. That during the seclusion of the Imam the Dawat (Mission of the Imam) is carried on by the Dai-ul-Mutlaq.

"The Dawoodi Bohras further believe that the Imams as supreme religious leaders lay down the code of worship, interpret the Holy Quran and the articles of the faith. They are alone empowered to conduct and direct or authorise the conduct of the religious and community activities of the Dawoodi Bohra sect. To the Imams belong the sole power to conduct and direct or authorise and permit the conduct of the religious observances and rites of the Dawoodi Bohra Sect. Further the Imams alone enjoy the power to carry out the management and administration of all properties dedicated to God and all properties for the use and benefit of the followers.

"The Dawoodi Bohras further believe that the Dai-ul-Mutlaq as the representative and vicegerent of the Imam on earth in seclusion, enjoys and exercises all the powers and authority of the Imam. The position of the Dai-ul-Mutlaq is an essential part of the creed of the Dawoodi Bohra Sect. Faith in his spiritual mission and *in the efficacy of his administration is one of the bonds that hold the community together as a unit. He enforces discipline and keeps the denomination together as one entity. He ensures the purity of the fellowship and the preservation of the brotherhood. He alone can conduct or authorise the conduct of all and singular the religious and community activities and religious observances and rites. The Management and administration of the affairs of the community and its institutions and all property for the use and benefit of the followers is carried out by him and under his authority and only with his permission and approval.*

Every Dawoodi Bohra is under a solemn obligation as a religious duty imposed by the faith to give Misaq to the Dai-ul-Mutlaq of the time, and thereafter to faithfully observe the covenants of this Misaq. By virtue of the Misaq given and in obedience to the beliefs and tenets of the faith of the Dawoodi Bohra sect, *every follower is under a solemn obligation as a religious duty to obey and implement the firman of His Holiness the Dai-ul-Mutlaq. Disobedience of a firman is a breach of the Misaq which empowers His Holiness the Dai-ul-Mutlaq, in his absolute discretion, to deny to a transgressor of the Misaq all or any of the rights and privileges of a Dawoodi Bohra.*

2. In the exercise of the authority, rights, privileges and func-

tions inherent and belonging to the office of the Dai-ul-Mutlaq, His holiness Dr. Syedna Mohammed Burhanuddin Saheb, as 52nd Dai-ul-Matlaq, issued the firmans (directives) dated 25th April and 26th April, 1967. These two Firmans became operative and effective from the 30th April, 1967. *They bind all the followers of His Holiness the Dai-ul-Mutlaq designated as Dawoodi Bohras and settled in East Africa.*

3. You have expressly refused to obey, to accept or implement the Directives of His Holiness the 52nd Dai-ul-Mutlaq. That constitutes a breach of your misaq and defiance of the authority of his Holiness the Dai-ul-Mutlaq. Further you have circulated or caused to be circulated the fact of your refusal with the intention and/or consequence of bringing into disrepute the office of Dai-ul-Mutlaq and of inciting subversions to his authority. Your activity and publicity are derogatory to the powers and authority of his Holiness the Dai-ul-Mutlaq and detrimental to the interests of the Dawoodi Bohra Community.

4. Between the 29th of April, 1967 and the date hereof, without any authority or any manner of right so to do and without the knowledge, authority or permission of His Holiness the Dai-ul-Mutlaq, *you did preside at religious and community functions and observances, take the Misaq, conduct namaaz, perform namaze-Janaza and burial rites and obsequies and also engage in the performance of other religious and community functions which are exclusively within the prerogative, power and authority of His Holiness the Dai-ul-Mutlaq or of his duly appointed representative.* Your actions are tantamount to a direct challenge, defiance and flouting of the power, position and authority of His Holiness Dai-ul-Mutlaq and the initiation and encouragement of a subversive movement designed to attack, sabotage and humiliate the religious institution of the Imam on earth in seclusion.

5. *You associated and consorted with persons and institutions against whom, to your knowledge, His Holiness the Dai-ul-Mutlaq had declared baraat and from whom His Holiness the Dai-ul-Mutlaq had disassociated himself and his loyal followers.* You had further associated and consorted with persons and institutions whose aims, objects, policies and activities were in conflict with and derogatory to the Dawate Hadiyah and the Dawoodi Bohra Community.

6. You have by your conduct, activities and utterance abjured the faith and transgressed the fundamental and essential

tenets and precepts of the Fatemi faith and the principles, articles and practices of religion and creed of the Dawoodi Bohra sect. You have committed multiple breaches of the Misaq by reasons of the facts set out in paragraphs 3 to 5 above.

7. By reason of the facts set out in paragraphs 3 to 5 above you are guilty of a multiplicity of grave offences any of which in accordance with the religious sense and in the opinion of His Holiness the Dai-ul-Mutlaq, warrants your ex-communication from the Dawoodi Bohra Community.

8. Notwithstanding previous warning and rebuke given to you by and on behalf of His Holiness the Dai-ul-Mutlaq you have not made amends or expressed repentance in respect of your reprehensible conduct, activities and utterances. On the contrary you have with malafides persisted in such reprehensible conduct and utterances. I am, therefore, directed by His Holiness the 52nd Dai-ul-Mutlaq to hereby again convey to you His Holiness's rebuke for your said conduct, activities and utterances. You are once again given warning and called upon to make amends and express repentance for your said conduct, activities and utterances.

9. I am further directed by his Holiness the 52nd Dai-ul-Mutlaq to give you notice, which I hereby do, that in default of your making amends and expressing repentance within two weeks from the date of this communication, His Holiness the 52nd Dai-ul-Mutlaq will administer a public reprimand, sever his connection with you and expel and excommunicate you as a member of the Dawoodi Bohra Community, at a meeting of the Jamaat and followers duly convened.

Yours faithfully,

Sd/-

Secretary." (Emphasis supplied).

The notice to Gulam Abbas Rajabbhai is in similar terms and both of them have been signed by the Secretary of the Syedna.

This clearly shows that the Dawoodi Bohras residing in different parts of East Africa like Uganda, Kenya, Tanzania were managing their own affairs under a democractic constitution by electing their managing council. The predecessor of the present Syedna as we have seen before had already assumed highly centralised power and destroyed local autonomy of the local Jamats in India. The present Syedna accomplished that task in the coun-

tries of East Africa by using his religious position. The relevant clauses of the new constitution which we have set out makes very interesting reading. That constitution gives absolute power to him to expel a member from the Jamat and to veto any decision which the council may take. He can even expel members of the managing committee and modify or cancel any decision taken by the Jamat. Not only this but he can even amend or cancel the constitution according to his pleasure. He can also dissolve the Jamat at his own sweet will. The constitution exhibited the features of a totalitarian community vesting absolute powers to control the lives of the members in one person who happens to be at the moment the Dai-ul-Mutlaq. No wonder that even the Government of Uganda, which was a democratic Government at the material time, refused to put its seal on this kind of Constitution. No wonder also that the members of the Community having been accustomed to managing their own affairs for quite a long time resented this imposition from above and boldly expressed their views. But the weapon of declaring Baraat and Lanat (Curse) claimed by the Dai was wielded against those who chose democracy within the community. The grounds given for their expulsion are not religious grounds. But the Syedna appears to make no distinction between the religious and the secular. The breach of the Firman of any kind whatever, according to him, amounts to a breach of the Misaq and makes the breaker liable to expulsion and excommunication. This corroborates the interpretation that we have given to Misaq in an earlier chapter.

CHAPTER XI

LEGISLATIVE EFFORTS

In this chapter we shall see the steps taken by the reformists under the law and what legislative efforts were made by the Bombay Government to prevent ex-communication from any community whatever and how those became ineffective.

In a case that ultimately reached the Privy Council, the question had arisen whether the Dai-ul-Mutlaq had the power of ex-communication. The Privy Council held that he had, but it also held that normally the members could be expelled only at a meeting of the Jamat after being given due warning of the fault complained of and an opportunity of amendment and after a public statement of the grounds of expulsion. The Privy Council further said that ex-communication, if justified, necessarily involved exclusion from the exercise of religious rites in places under the trusteeship of the head of the community in which religious exercises are performed.

As regards the determination of what is an offence warranting expulsion, the Court said that it must be best left to the religious sense of the community. (See *Hasanali and others Vs. Mansoorali and others*, A.I.R. 1948 P.C. 66).

Thus, this decision recognised the right of the High Priest to ex-communicate the members subject to the procedural safeguards mentioned above.

When it came to the notice of the Bombay Government that the practice prevailing in certain communities of ex-communicating its members is often followed in a manner which results in deprivation of legitimate rights and privileges of members, the Government felt that in keeping with the spirit of changing times it was necessary to stop that practice by law. It, therefore, introduced a Bill in 1948 in the Bombay Legislative Assembly called a "Bill to prohibit ex-communication in the Province of Bombay", being L.A. Bill No. 49 of 1948. There were lively debates on the bill in the Assembly.

Shri Morarji Desai, the present Prime Minister of India, who

was then the Home Minister of the Province of Bombay, was mainly responsible for piloting the Bill. Speaking in course of the debates he pointedly drew the attention of the House to the injustices and hardships that were being caused to the Dawoodi Bohras by the arbitrary exercise of the power of ex-communication by the Mullaji Saheb. A few passages from his speeches may well be reproduced here:—

After quoting that portion of the Misaq which says that the wife of the breaker of the covenant shall stand automatically divorced and that he will not be pardoned by God, Shri Morarji Desai continued:—

“These are some of the things which, to my mind, conflict with the law of the land. I do not mind as long as there is no coercion in these matters, but when coercion is applied in the performance of these things, is it not a defiance of the State? Does it not mean that there is a *State within a State*? The Mullaji Saheb has himself said personally that he is the temporal and spiritual head of all Bohras! Then, Sir, what is Government?”

“The Mullaji Saheb has said that he is the temporal head. He may be the spiritual head. Government does not want to be the spiritual head of any people. Government is trying to see that nobody becomes the temporal head of any body”.

Mr. A. A. Khan: Except Government?

“Yes; otherwise there cannot be any Government. There cannot be several Governments within a Government. There should be only one Government if it is to govern properly.”

“When this is the case what is to be done? Are we going to allow penalties which exceed the penalties prescribed by law? If the Mullaji Saheb, or if the Maharaja of Vaishnava, or any other head of a sect says that it does not want to associate with a man, if he breaks the law of the caste, Government does not want to quarrel with him. But if it is said that the persons who break the so called law of the caste will not be entitled to the use of a well which belongs to the community, or they will not be entitled to the benefits of the charities which have been collected for ages in the community, or they will not be entitled to pray in the mosque even though they believe in God, in Islam or the holy Koran, or they will not be buried in Kabrastan when they die, these things cannot

be allowed."

"I find that even in the Holy Koran there is a verse regarding this. I shall try to interpret it. It is possible that I may not be interpreting it as the Mullaji Saheb does or as other followers of Islam do, but as a layman, who looks on all religions with equal respect, I am interpreting this. Here it is said:— 'And who is more unjust than he who prevents a man from the mosques of Allah that his name should be remembered in them and strives to ruin them'".

"Somehow or other on account of years of superstition man has been invested with powers of God so that he may inflict punishments on the people. *To my mind, this is a monstrous thing for any Government to tolerate.* Therefore, this Government had to come forward with a bill of this nature. In other communities also similar evils exist but not to this extent. I have not found any other caste where as soon as a man is outcaste, he is deprived of even his wife."

Mr. B. G. Kher: "Sir, I do not want to interrupt the Hon. the Home Minister. To claim the wife of a person or his daughter is worse than everything else. There was a case in which the wife, daughter and daughter-in-law of a person were actually claimed in the name of religion".

Mr. Morarji R. Desai: "I do not say that there have been no worse cases than this. There was a famous case in which the most monstrous claim was made. These monstrous things cannot be allowed by a Government in which all of us consider that the rights and liberties of even humblest and the weakest may be protected. Therefore, the bill has been brought forward in such a careful manner that even public opinion was invited for six months. I do not see how anybody can object to it."

Shri Babubhai Patel, the present Chief Minister of the State of Gujarat, who was then a member of the Assembly, also took an active part in the debates. Here is what he had to say in this matter:

"...They argue that the religious rights of certain class of people are encroached upon and they feel that Government are putting their hand on religion. The old cry of religion in danger is put forth. They say 'Do not touch what we describe as our religion'. It is they alone who are to decide what religion is. But,

in all humility, it may be asked what this religion is. Is it that you have a right to say that a man shall not grow this size of beard or that size of beard? Is it that one shall not hold any progressive views in matters of social reform? Is it that to open an educational institution or aiding the spread of education is an encroachment on religion? If these are the rights that are being encroached upon, and if any person takes a risk in doing any of these things and thereby suffer excommunication, then I humbly submit that it is not an encroachment on any religious rights but it is only an attempt to secure civil liberty of the citizens of this province". (See Bombay Legislative Assembly Debates, Vol. 14 Part II, March-1949.)

The Bill then became the Act called the Bombay prevention of Ex-Communication Act, 1949. (Bombay Act 42 of 1949).

This act in substance provided that no ex-communication of a member of any community shall be valid and shall be of any effect. And it was also provided that doing of any act which amounted to or was in furtherance of ex-communication of any member of a community would be a criminal offence punishable, on conviction, with fine which may extend to one thousand rupees.

It will be seen that this Act applied to all communities in the Province of Bombay. It prohibited ex-communication altogether. It had a special significance for the Dawoodi Bohra Community in view of the power of the High Priest to expel any person on ground which he considered proper and sufficient for expulsion. This right was recognised by the Privy Council as seen earlier. It is true that this could be done only by the Jamaat and not by the High Priest alone. But this safeguard was practically ineffective if it is remembered that the Misaq required the whole Jamaat to obey the commands of the High Priest. If, therefore, the proposal of expulsion emanated from him or with his consent, the Jamaat had got to vote in favour of the proposal. Therefore, consent of the Jamaat was no consent at all. Under no circumstances could the Jamaat take a voluntary and free decision in view of the claim asserted by the Syedna that whoever broke the Misaq was a *Satan* whose property could be looted and whose wife stood automatically divorced. Thus the safeguard provided for by the Privy Council was illusory in case of the Dawoodi Bohra community. The notices of expulsion of Members issued on behalf of the Syedna reproduced elsewhere clearly go to show that disobedience of any

command by him in any matter, secular or religious, is treated by him as a breach of the Misaq which is a sufficient ground for expulsion. In this circumstance to hold, as the Privy Council did, that the decision be best left to the religious sense of the community amounted to holding that the High Priest was the sole judge of what would or would not warrant expulsion. The safeguard that it should be done only at the Jamaat meeting was meaningless. It therefore had the effect of vesting absolute and uncontrolled power into his hands. He was not bound by any fair norms in judging the conduct of any member. The Jamaat which considered his proposal was not a free agent; in reality, the fate of any proposal which had the support of the High Priest would be a foregone conclusion. Any one who opposed the proposal was himself liable to expulsion for the only reason that he opposed it. In our considered opinion the view taken by the Privy Council in the said decision is incorrect because it omitted to consider this vital aspect of the matter, namely the effect of Misaq. It requires to be reconsidered by the Supreme Court or made ineffective by proper legislation.

The Bombay Act referred to above was a step in the right direction. It did give some relief to the members of the community. But the then Syedna finding his authority shaken challenged the constitutional validity of the Act on the ground that it violated the religious freedom guaranteed by Articles 25 and 26 of the Constitution of India. The challenge arose in this way. The then Head Priest Sardar Taher Saifudding had made orders of ex-communication against one Tyebji Moosaji Koicha who was a Dawoodi Bohra. The latter filed a suit against the Syedna for, among other things, a declaration that the said orders passed on February 28, 1934 and April 28, 1948 were illegal and void. He said that these orders had become ineffective after the coming into operation of the Bombay Prevention of Ex-communication Act, 1949. The defendant Syedna in his defence urged that the Act was unconstitutional and void. The suit came up for hearing before Mr. Justice J.C. Shah (he was then a Judge of the Bombay High Court) who held that the Act was a valid piece of legislation and rejected the contention of Syedna.

This decision was taken in appeal by Syedna to a division bench of the Bombay High Court. Chagla C.J. and Bhagwati J., who heard the appeal dismissed the same holding that the Act

does not contravene Articles 25 and 26 of the Constitution of India and is not ultra vires the Constitution. Chagla C.J. who spoke for the Division Bench said:—

“The right to ex-communicate a member of a community is not part of religious faith and belief. At best it can only be a religious practice and if in the opinion of the Legislature such a religious practice runs counter to public order, morality, health or a policy of social welfare upon which the state has embarked then the religious practice must give way and the Legislation must prevail against the religious practice.

“In Article 26 (b) of the Constitution of India the expression ‘to manage its own affairs in matters of religion’ can only mean that in domestic matters of a religious denomination where those matters are concerned with question of religion, the Legislature cannot interfere unless the denomination is managing its affairs in such a way as to interfere with public order, morality and health. But when a religious denomination seeks to deprive a member of his legal rights and privileges it is doing much more than managing its own affairs. It is interfering with the rights of its members and the Constitution had not protected a religious denomination which deprives its members of their legal rights and privileges.

A religious denomination therefor cannot claim the right conferred upon it under article 26 to manage its own affairs in matters of religion in order to put forward the claim of ex-communication or expelling its members and thus depriving them of the rights and privileges which attach to the membership of that denomination.”

(The decisions of Shah J. and of Chagla C. J. and Bhagwati J. are reported in 55 Bom. L.R. 1 under the title, *Sardar Syedna Taher Saifuddin Vs. Tayebbhaji Moosaji Koicha*.)

Having lost in the Bombay High Court, the Syedna carried the matter to the Supreme Court. There his appeal was allowed and the Court held by a majority of four to one, that the Bombay Act in so far as it destroys the right of the Dai-ul-Mutlaq of Ex-communicating any member of the Dawoodi Bohra community on religious grounds is void being in violation of Article 26 (b) of the Constitution of India and is not saved by Article 25 (2) of the Constitution (A.I.R. 1962 S.C. 853) Chief Justice B. P. Sinha dissented from the majority view and held the Act valid. He was

of the view that:

“The right of ex-communication is not a purely religious matter. The effect of ex-communication or expulsion from the community is that the expelled person is excluded from the exercise of his rights not only in connection with places of worship but also from burying the dead in the community which are all disputes of a civil nature and are not purely religious matters.”

The Act is intended to do away with all that mischief of treating a human being as a pariah and depriving him of his human dignity and of his right to follow the dictates of his own conscience. The Act is thus aimed at fulfilment of the individual liberty of conscience guaranteed by Art. 25 (1) of the Constitution and not in derogation thereof.

“The position of an ex-communicated person becomes that of an untouchable in his community, and if that is so, the Act in declaring such practices to be void has only carried out the strict injunction of Art. 17 of the Constitution by which untouchability has been abolished and its practice in any form is forbidden. The article further provides that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. The Act, in this sense, is its logical corollary and must therefore be upheld”.

Three out of four judges who struck down the Act, however made it clear that the Act was bad because it invalidated ex-communications on any ground whatsoever including *religious grounds*. This view necessarily implies that if the Act had forbidden ex-communication on any ground other than religious grounds it would not have been vulnerable to attack on the ground of violation of Art 26 (b).

The position taken by the Supreme Court is open to criticism. It appears that the Court's attention was not drawn to the actual contents of the Misaq and the manner in which it is enforced by the High Priest. The Court was also not aware that in the matter of ex-communication the High Priest makes no distinction between the religious and the secular. The Syedna's commands in whatever field are expected to be implicitly obeyed without question on pain of expulsion. Moreover, the Court's attention does not appear to have been drawn to the fact that Baraat is much more than a mere exclusion from the places of

religious worship. It involved breaking up of marriages, separation of family members one from another, closing down of institutions formed for the welfare of the community and above all expulsion of all those who maintain intercourse with an expelled member.

Article 25 saves legislation for social reform and welfare and we are of the view that a measure of social reform is perhaps nowhere more needed than in a situation of this type. The Supreme Court said that a measure of social reform could not go to the length of reforming a religion out of its existence. It is submitted that the Dawoodi Bohra religious sect would not be reformed out of existence if its High Priest were to be prohibited from persecuting the members of the community for the only reason that they married without his Raza or established social institutions like schools, orphanages etc. without his permission or read books or magazines in which his unjust actions were criticised rightly or wrongly. Religion must exist on surer foundations than these.

CHAPTER XII

TAXES

In this chapter, we propose to deal with the taxes, levies, Nazarana and Salams which the reformers allege are collected by the Amils in the name of the Head Priest. In section-C of the questionnaire, we have included questions on this aspect.

All the respondents have in their replies stated that the following kinds of taxes are collected:—

- (1) Zakat.
- (2) Sila Fitra.
- (3) Nazar Mukam.
- (4) Hakkun Nafs.
- (5) Khums.

Let us first see how these terms are understood. *Zakat and Khums:*

Zakat is an obligatory tax on all Muslims sanctioned by the scriptures. It is a tax on accumulated wealth during the year, that is to say the amount saved during the year. It is not, however, a tax on income. Its prescribed rate common to all Islamic sects is $2\frac{1}{4}\%$. *Moreover among the Shias and Ismailis the rate $1/5$ th of the wealth is also current and is called Khums (meaning $1/5$ th).* Among the majority of Muslims it is believed that only the Islamic state has a right to collect such taxes. Otherwise a Muslim is free to distribute the Zakat among the poor, needy, orphans etc. It is only among Ismailis that its collection is obligatory.

Sila Fitra:

Fitra is an obligatory *Charity* (not to be collected compulsorily), to be distributed among the poor and the needy Muslims at the completion of Ramzan fast on the Id-ul-Fitr day (that is why the Id in the Ramzan is called Id-ul-Fitr). Fitr meant breaking the fast and Fitra is some sort of thanks giving. Sila means *reward* for the Imam or Dai for guiding the believers. It is a typical Ismaili institution not found among any other Muslims.

Nazar Mukam:

This is supposed to be really the amount deposited by a person with himself while starting some new work or going on tour or some such occasion. This amount is to be used for lending it to a needy person in the time of his need. Knowing that the amount which is thus borrowed from a fellow community member has been paid from Nazar Mukam, the borrower intends to return it after his need is over, being under the belief that if it is not returned or repaid some calamity would fall on him.

Haqqun Nafs:

There is no such tax prevalent in any sect of the Muslims. There is no mention of it in Islamic law. According to many respondents it is a creation of the High Priest. It is collected by the High Priest through his agents at the time of the death of any person from the survivors (near relations). This surviving persons are told that unless they pay this amount there will be no salvation for the dead person.

On the basis of evidence and some research made by us we are satisfied that the above fairly represents the true position in Islamic law and that in particular Haqqun Nafs is not prevalent in any other sect of Muslims.

Various respondents have said that in addition to these taxes the collection of various amounts takes place among the Bohra community by way of Nazarana and Salam on behalf of the High Priest and his family members on many occasions such as the following:

- (1) Marriage.
- (2) Majlis.
- (3) Death.
- (4) Taking the oath of allegiance.
- (5) Naming the child.
- (6) Haj.
- (7) Opening of yearly books of account by writing 'Bismilla' (ALAMAT) by the hand of the High Priest.

Let us now see what are the rates of these taxes, in what manner they are collected among Dawoodi Bohras, and what are the sanctions applied. We shall also see how Nazarana or Salam is collected. Evidence shows:

- (1) **Zakat:** It is being collected by the priestly class at the

rate of 2.5% on the accumulated wealth of the family during that year. No person is spared. No one is permitted to take a stand that he will distribute the like amount among the poor and needy himself. It is compulsorily exacted from every family without exception.

2. Sila Fitra: This is collected according to the evidence given before us, at the following rates:

- (a) Rs. 5.74 per adult male or female.
- (b) Rs. 2.87 per minor child male or female, and
- (c) Rs. 2.87 per conceived child while in the womb of the mother (hamal).
- (d) Rs. 2.87 per head.

(The above rates are applicable from year 1394 Hira or 1973-74 A.D. and are revised upwards as per the market rate of silver.)

Though Fitra is an obligatory *charity* according to Islamic law, the priestly class collects it as a compulsory exaction and does not recognise the right of a Bhora to make the charity himself on the occasion of Id-ul-Fitr. However, Sila or Silo, as stated above, is typical of Ismailis. It is supposed to be a reward for the Imam or the Dai for guiding a believer.

3. Nazar Mukam: Though it is supposed to be kept in possession of a person with himself as a deposit to help a needy person in the hour of his need, as stated above, it is forcibly collected from every family.

4. Haqqun Nafs: As stated above, appears to be an invention of the Bohra Priests. It is being collected according to the evidence before us at the rate of Rs. 119 or any multiple thereof or 119 Gold Mohurs or any multiple thereof. It is to be paid on the third day of the death of a person in the family.

Salam and Nazarana: As stated above, these are collected on every possible occasion.

Hosting a feast: If a person sends invitations for a community feast, it is incumbent on him to take permission of the High Priest. While seeking permission the seeker is required to pay homage to the High Priest by kissing his hand with Nazarana of Rs. 5/-, 11/- 21/- 51/- 101/- etc., Thereafter when he bestows Raza the seeker has to pay Salam amount for the High Priest and another Salaam amount for the Imam who is in seclusion.

Naming of the Child: On the 5th night of the birth of a child in a family, it is customary to name the child. Many persons of

the community go to the High Priest and express their desire that he should give a name for the child. The High Priest sits on a Gadi and the seeker of the name stands before him with folded hands. The High Priest then majestically raises his head, gets his hand and knee kissed with a handsome Salam amount and then bestows the name. The child must be named accordingly. That name cannot be changed.

Inviting High Priest at one's residence:

On the occasion of marriage or ordinary opening ceremony of a shop or a house, if the High Priest is invited for feast Zyafat—the invitor after kissing the hand and knee has to pay the Salamm amount, which he is asked to pay as Nazarana. This is settled at a sum like Rs. 11000 or 21000 or 51000 and even more. After the settlement the High Priest agrees to participate in the feast. Here also, the person who invites him is not free to prepare dishes of his own choice. Menu is also previously supplied and settled. After agreeing to attend the feast, if the High Priest knows that the invitor is capable of paying more than the settled amount, he stays a few yards away from the place where he is invited and sends his agent to the invitor and conveys to him that since he misrepresented his true financial position, the Mullaji will not attend the feast till the amount is suitably increased. The mullaji does not move further until the large amount is finally settled.

Death: On the occasion of death, apart from paying Haqqun Nafs, one has to go to the High Priest or the Amil for permission for burial ceremony. At that time the amount suggested by the High Priest or his agent has to be paid.

Going on Haj:

The members of the community are impressed by the legend that the Haj prayer would not be accepted by God unless before starting for Haj, a visit is paid to Mullaji and his Raza is obtained. Therefore, the person who starts on a Haj goes to the High Priest for Raza and on that occasion he has to pay suitable Nazarana amount. Raza has also to be obtained for going to Kerbala for 'Ziarat' of Imam Hussain. While returning from either place, it is necessary to visit the High Priest and pay Nazarana amount a second time.

The practices of giving things like *Taviz*, black thread, Sanctify-

ing water by breathing into it, are also prevalent and suitable amounts are charged for the same. These things are supposed to stave off any calamity or to cure any disease. Advice is also sought from the High Priest as to which doctor should be approached for consultation or treatment and Nazarana is also paid on that occasion.

Sabil:

In Bombay city and some other towns, the practice of collecting additional amount which is called, 'Sabil' has been prevalent at least since 1962. A large number of families give sabil out of their small earnings. Sabil is collected regularly every month from some persons in Bombay and on the occasion of marriage etc. in some other places. When it is paid only on such occasions, arrears of the past years have also to be paid. "Clearance" is not given to a person who has not paid the arrears of Sabil and other taxes. One Yunus K. Baluwala of Bombay has produced a photo-copy of a *Safai Chithi* (letter of clearance) given by the Amil of Izzi Masjid, Santa Cruz, Bombay in favour of one Hatimbhai Akbarali Mantri, residing at Parmeshwar Darshan, Santa Cruz and his wife Hajra Hatimbhai. The material portion of the text is as follows:—

"The amount by way of Sabil etc. due from the below-mentioned persons having been fully paid. This clearance certificate is hereby given by the Jamat Santacruz. In his family wedding is to take place Anjuman has no objection to it." A copy of this clearance and no objection certificate (rolled into one) is reproduced at Appendix 'G'.

ARE PAYMENTS COMPULSORY OR OPTIONAL:

Bills in printed forms have been produced before us which are used in various towns by the local Amil and they are sent to every family. In one such bill, which is produced by a respondent from the town of Bharuch, we find various columns for Sila Fitra—for adults, male and female; for minors and for a child in the womb and for the dead. The actual amounts payable are shown against these items. Similarly there are columns for Zakat, Khums, Kaffara Minnat Niyaz, Minnat Molana Mukkaar. It bears the date 1396 Higra. At the foot of the printed form-bill, a request is made that the receipt for this year's payment must be brought next year while paying the dues or else arrears would have to be paid next

year. A photostate receipt dated 28-2-1977 has been produced before us. It shows that payment of Sabil of Rs. 62/- has been made on demand for the year 2029 to 2033 of Vikram era. There is also another photostate receipt dated 5-9-1977 showing the payment of Sila Fitra for one year. Similarly one bill from Bombay has been produced which is for Sila Fitra for the year 1394 higrā.

We have also before us a demand made by an Amil in which it is stated that if the tax is not paid it shall be recovered with penalty.

On the basis of evidence before us we are satisfied that at least three imposts namely Zakat, Sila Fitra and Haqqun Nafs are being collected as compulsory exactions, and that even the other collections are not entirely voluntary.

When we say that some of the payments are compulsory, the question arises what the sanctions behind them are. Is it only a gentle pressure backed by some religious sentiment that induced a Dawoodi Bohra to pay these amounts? Or is it more than that?

On this question the witnesses have given details which show that there is a very effective sanction behind the demand of taxes which are obligatory and also some of the demands which are called optional. The sanction is that whenever the Misaq is to be given or Raza for the marriage is sought or permission for burial is asked for, the Amils insist on payment of arrears of taxes due, in some cases for several years, and unless the payment is made, Raza is refused. And we have seen in preceding Chapters—the serious consequences of doing any act when Raza for the same is refused—social persecution, torture, refusal of entry into the burial place etc. A large number of respondents have supported these allegations and we are satisfied that these sanctions are effectively applied for the recovery of the taxes.

The sanctions are also applied for payments which are said to be optional. For example, a form of bill for Sabil is to be found in an official document published from Badri Mahal (residence of Syedna) in the name of Anjumane Shiāteali which shows that the collection of Sabil has been started in the city of Bombay from 1962. It further says that many Momineens pay Sabil regularly as their obligation to the Jamat that it is preferable to pay it regularly because by postponing the payment upto some occasion like marriage, death etc. all the arrears for the past years have to be paid at a time; that this becomes a burden on the occasion as the payment

is in addition to other expenses; and that therefore, the amount of Sabil should be paid as an obligation regularly so that the arrears due to the Jamat may not become a heavy burden on one occasion. The document says that Sabil is to be paid per *chula* (per stove, meaning for every unit of family which has a separate mess) and that for the convenience of payment of Sabil, an office of Shietaali is being maintained in Bhindi Bazaar, near Husaini Masjid, Bombay. It further says that the enemies of the Dawat have wrongly described Sabil as a tax, but it is collected by Raza of Dai Jaman for welfare activities. The pamphlet further says that the arrears of Sabil must be paid up before the 29th day of Shaval. If not so paid, and if it is postponed till some occasion, Shiat-e-ali reserves the right to recover the Sabil by enhancing the amount due. This pamphlet bears 1384 Hijri as the date of its publication. This official publication is a clear proof that though Sabil is declared to be optional, it is really treated as an obligatory payment and it further shows that the concerned official reserves the right to collect all arrears of Sabil with penalty from those who do not pay it regularly but postpone payment till some occasion arises in the family. The demand of penalty is inconsistent with the claim that it is an optional payment.

In this connection, one respondent to the questionnaire has given an example. Mrs. Qushira Pheroz Bhagat has said that on the occasion of her marriage a demand of Sabil tax was made from her father. He refused to pay the same on the ground that it was optional. He was threupon thereatened that unless he paid the Sabil, Nikah (marriage) ceremoney will not be performed. Eventually he agreed to deposit an amount of Rs. 100/- for which a receipt was made out. After the Nikah was over the amount of deposit was treated as a compulsory payment of Sabil. The father had a long correspondence for refund of the deposit but there was no response.

Even the Nazaranas or Salaams are not entirely voluntary. One witness Sheikh Ahmed Hussain Kurbanhusain has stated that the amount of Salams are recovered on various occasions. They are as follows:—

- (1) Marriage.
- (2) Naming the Child.
- (3) Aqiqa of the Child (Cutting hair of the child for the first time).

- (4) Misaq.
- (5) Prayers of the Janaza.
- (6) Haj Badal.
- (7) Dawat.
- (8) Mufaddress.
- (9) Vaez.
- (10) Zyafat.
- (11) Kadam.
- (12) Visit for the first time.
- (13) Majlis and Safara.
- (14) Conferment of title—M.K.D., N.K.D. Mulla, Sheikh etc.

Some of the words are self-explanatory but some require explanation. 'Haj Badal' means that if a well-to-do person had died without making a Haj (pilgrimage to Macca) then some other person is sent on Haj in his place. On the occasion of Haj Badal, large sums are recovered by way of Nazarana which can range from Rs. 5000 to Rs. 1,00,000, 'Vaez'—means religious discourse. On this occasion some amounts are charged. 'Kadam'—means house to house visit by Syedna on foot. Nazarana has to be paid by every householder whose house is thus visited by Syedna.

We have a true copy of a telegram by one Amil N. Yusufali addressed to Gulamali Dadabhai of Jalgaon in which it is stated:—

"FARMANEALI—Come all members, first train, Firman 500 for Nazarana—Amil N. Yusufali."

There is another telegram in original which is addressed by Ismailbhai, the Amil of Burhanpur, to Mulla Mahomed Shaikh Saleh, Bolia Masjid, Burhanpur. The telegram was from Bombay and was received on 30-1-1967. The text is as follows:—

"Huzureali visiting Burhanpur on our mubarak occasion on 26th Shavval—come request all Momineens and Zyarat Momineens—Come Burhanpur and Kadambosi and Ziarat. Ismail. bhai Amil—Burhanpur."

The word 'Shavval' in the text is the name of 10th month of Hira calendar. The expression 'Mommineens', refers to all Dawoodi Bohra followers of the Dai and the expression 'Zyarat Momineens' refers to the followers who have come to attend the Durgah (Shrine) of Burhanpur 'Kadambosi'—means falling at the feet of the Syedna. This is usually accompanied by payment of some amount by way of Nazarana.

A large number of respondents have testified to the effect

that various amounts are collected by way of Salaam and Nazarana and the fact that this practice is prevalent is hardly in doubt. We find that the so called optional payments are also not so optional as they are made out to be.

A State within the State:

The respondents in their replies to the questions contained in section "C" of the questionnaire are practically unanimous in supporting the allegation of the reformist leaders that in a way Mullaji's establishment is run as a State within the State. Voluntary payment or donation made by the followers of any religious sect is understandable but here as we have seen above there is something more. Certain payments are made obligatory and they are enforced on pain of refusal to give a clearance certificate and the denial of Raza for marriage and burial etc. When it is remembered that (1) Raza is essential for the validity of marriage, and (2) burial grounds are generally provided for by the Government or local authorities over which every member has a right, the demands can only be treated as compulsory exactions. In other words they are coercive taxes imposed by the religious sovereign who makes no distinction between the religious and the secular, between the church and the State.

Passport To Paradise:

The said Shri Musaji has narrated that after the death of a person they sell a paper called Ruqa Chithi a letter of recognition with some geometrical lines and words in Arabic to be buried on the chest of the deceased for which the lowest fee of Rs. 140/- is charged. If he is a well-to-do person, he must pay five times this amount and a wealthy person should pay Rs. 1400/- for this letter. The object of the letter is that when angels Munkir and Nakeer visit the dead person in the grave with spear and sword to take recognition of his deeds in this world and to cut him to pieces, they would see this letter and would salute the dead, and realising that he is the follower of the High Priest they pass him by, giving him special treatment and asking no questions.

After Haqqun Nafs Ruqa is supplied, the High Priest through this assistant or Amil approaches the son or other relations of the deceased and demands a large sum of money for sending the soul of the deceased to Paradise to live in the garden of Eden full of

fruits and the cool sweet water provided by the fountains named Hauze-Kauser. A special living room with all comforts and the services of Houries (beautiful fairy damsel) would be provided through the strength of the High Priest's prayer if the relatives give a sufficiently large sum of money.

These illustrative cases show the magnitude and character of Baraat. It is not mere ex-communication or simple boycott. It is a powerful weapon to coerce a dissenter or a person who disobeys the commands of the Syedna or his Amils, legal or illegal, religious or secular, into submission by torture, harassment and other inhuman acts, which cannot possibly be regarded as legitimate religious practices.

CHAPTER XIII

INCOME, PROPERTY AND THEIR MANAGEMENT

The reformists complain that by virtue of his office as a religious head of the Dawoodi Bohras, the High Priest has become the sole trustee of numerous and very valuable immoveable properties.

A trust is registered in the name and style of Dawat-E-Hadiya's Properties Trust, Badri Mahal, Hornby Road, Fort, Bombay. It is one of the biggest trusts and the Syedna is the sole trustee with a power to appoint a manager. These vast properties are managed and controlled by the High priest and its income is applied for any purpose at the sole and absolute discretion of the Syedna Saheb.

We have been supplied with a certified copy of the relevant entries in the Register of public Trusts maintained under the Bombay Public Trusts Act, 1960. The entries relate to Dawat-E-Hadiya Properties Trust which is numbered S. No. B-729(B). The trust is shown to have been registered on 6-3-1954. In the original entry the sole trustee was "His Holines Sardar Sydna Taher Saifuddin Saheb (Sole trustee), Saifi Mahal, Malbar Hill Bombay". Ibrahimbhai Zainuddin (his brother) was shown as the manager. His address was Badri Mahal, Hornby Road, Fort, Bombay. The original entry has been deleted and in its place a new entry has been made in 1966, replacing the name of Taher Saifuddin by the name of "Syedna Mahomed Burhanuddin Saheb, 52nd Dai-ul-Mutlaq" (present Syedna). The mode of succession of the sole trustee and the manager has been stated to be by virtue of his capacity and status as Dai-ul-Mutlaq of the Dawoodi Bohra Community for properties conveyed, transferred, gifted or otherwise acquired and/or vested in him as religious and spiritual head". The manager is appointed by the sole trustee. This trust covers only the properties in Greater Bombay. The declared value of the immovable properties of the trust at the time of registration was Rupees 182 lakhs and odd. The market value of the properties since 1954 must have increased manifold.

There were 142 Bohra Trusts which are registered with the Charity Commissioner of Bombay, according to the figure pub-

lished by the Director of Public Trusts in 1954. Since that publication 92 more Bohra trusts have been brought on record in Maharashtra, bringing the number of registered trusts in Maharashtra alone to the figure of 234. Many of these Bohra trusts are decades old. The total assets, annual income, expenditure and surplus of all these Bohra Trusts in Maharashtra as per details given by the trustee at the time of registration are as under:

1. Total assets.	Rs. 3.6 Crores.
2. Annual Income.	Rs. 56 Lakhs.
3. Annual Expenditure.	Rs. 45 Lakhs.
4. Surplus.	Rs. 11 Lakhs.

The value of the assets as declared by the trustees is depreciated book value during the year of registration i.e. 1950-1952. Most of the trust properties are situated in south and Central Bombay. It is reasonable to suppose that the market value of the properties has gone upto by not less than 15 times. The present market value of these assets would, therefore, come in the neighbourhood of Rs. 50 crores.

It is the allegation of the reformists that some of the Bohra trusts were brought on the register by their trustees reluctantly and that too only after some Bohras who at the risk of persecution and social boycott filed applications before the Charity Commissioner for inquiry and registration and in doing so incurred heavy expenditure. They have further complained that all the Bohra trusts in Maharashtra have yet not been registered, because normally Bohras do not dare to displease their trustees by drawing the attention of the Charity Commissioner to the fact of non-registration of the trusts.

The Head Priest as stated above is the sole trustees of properties of the trusts. We have seen earlier in Chapter III that the 51st Dai had claimed that he was the absolute owner and not the trustee of the properties. The High Court of Bombay in the case discussed in that Chapter rejected this claim and the Dai had, therefore, reluctantly come to treat himself as a sole trustee. Many years thereafter the Bombay Public Trusts Act was enacted in 1950 and he had accordingly to get the properties registered with the Charity Commissioner. He did not however, file any trust deed nor declared the objects of the trusts. It is only recently

when one reformist Bohra drew the attention of the Charity Commissioner, Bombay to this omission that the Dai has been compelled to declare the objects of the trusts.

It is interesting to note that the amount of various taxes collected all over India and abroad by the Dai are not included in the income of these trusts. The Charity commissioner of Bombay has agreed to exclude the income from places other than those located in Maharashtra from the accounts of the trusts.

Another huge trust has been registered with the Charity Commissioner, Bombay, in the name and style of His Holiness Taher Saifuddin Memorial Foundation Trust under category E. All Muslim Trusts are registered in category B and cosmopolitan trusts under category E. The grand Mausoleum of Roza Tahera of the late 51st Dai is alleged to have been constructed at the cost of 4 crores by the Foundation. Trust charity boxes are kept at this Roza. The records of the Charity Commissioner do not show that offering at the Charity boxes are included in the income of the trust properties. The trustees of this foundation are the family members of the Dai-ul-Mutlaq and one outsider.

There is another large trust known as Saifi Foundation which is registered with the Charity Commissioner, Bombay in category E. There also the trustees are the Dai and his family members and the Dai has reserved unfettered and discretionary power to himself in the management of the trust.

These large trusts which number 234 in Maharashtra over which, it is alleged, the Syedna has acquired control by virtue of his position as Dai. Many respondents in their replies have mentioned that such control has been acquired by pressure.

Another trust called Hamzabhai Yusufali Charitable Trust in which the mode of succession to trusteeship and the managership has been shown to be as follows:—

“Trustees are appointed by surviving trustee after consultation with His Holiness the Mullaji Saheb and approved by the District Judge.”

There is a trust called Kutubuddin Shahid alias Panje Shahid-ni-Durgah Kabrastan Trust. It is registered in the books maintained by the Charity Commissioner in category B and is in Ahmedabad District. The mode of succession of trusteeship and managers has been shown in the register as Dai-ul-Mutlaq for the time being as ex-officio sole trustee and he appoints the manager or

managers. Its object is to give dinner to the persons of the Dawoodi Bohra community once a year in the month of Rabi-ul-Akhar and any other Charitable work with the consent of His Holiness Sardar Syedna Taher Saifuddin Saheb. This is an instance to show that the Dai-ul-Mutlaq is the sole trustee even of the trusts other than those in Bombay referred to above. There is no evidence regarding the number of trusts in which he acts as the sole trustee.

The secretary of the Jamat of the Dawoodi Bohra Community of Udaipur has in his memorandum stated that for a long time the community was made to believe that every paise that came in the coffers of the Jamat was the personal property of the Dai-ul-Mutlaq. All the endowments (Wakf) are the absolute properties of the Dai. According to Islam, a Wakf is "Le-Wajhillah" (dedicated to God). The Bohra Wakfs is now styled as "Le-Wajhe Syedna" (dedicated to Syedna). He maintains that this is evidenced by the brass plate put up on the Gallas of all Bohra endowments. On the Gallas at various places brass plates has been affixed. Khanji Peer Durgah at Udaipur the words engraved are: "DAWATE-HADIA" "Any offering placed in this Galla is at the absolute disposal of His Holiness Sardar Syedna Tahir Saifuddin Sahib and his successors in office, the Dai-ul-Mutlaq of the Dawood Bohra community for any purpose which may be charitable or not according to the law of the land." He has produced a photograph of one such plate. He has said that similar plates are affixed at other places mentioned above.

A question which would naturally arise is what induces the trustees of other trusts to agree to treat the Dai as the sole trustee for all practical purposes, although the trusts are autonomous and they alone are responsible for their administration. One reason is obvious and it is that the Dai is the religious head of the community and members are bound by the Misaq to obey implicitly his commands "in all matters". But the second important reason is that he and his administration has induced a belief in his followers that according to the tenets of their religion no spiritual benefits can accrue either to the donor or to those who pray in the mosque if the same is not vested in Dai-ul-Mutlaq. This also applies to other charitable properties. Appointment of any other trustee without his "Raza" would not be a waqf and would therefore be spiritually ineffective.

That this is the stand taken will be evident from a letter dated

29th November, 1976 which one Tayabali A. A. has addressed to one Nuruddinbhai. The former is a legal adviser to the Syedna or to his brother who plays an important role in the Syedna's administration. It is in connection with a trust deed made in the year 1940 in Mombasa by the grandfather of Nuruddin for the dedication of some property to be used as a mosque and for its upkeep. The settler had appointed trustees other than the Syedna. The main portion of the letter reads:

"I have gone through the photocopy of the trust deed and make the following observations:

Your grandfather made a wakf of the property in 1940 with the intention that the property should be used as a mosque. According to the tenets and beliefs of the Dawoodi Bohra faith, no *property can* be used as a mosque unless the title to the property vests in the Imam and during his seclusion in the representative and vicegerent of the Imam, namely, Dai-ul-Mutlaq, and, therefore, the deed made on 24-9-1940, is totally invalid and of no spiritual benefits to your grandfather. Because in the deed your uncle Hasanali became the trustee of the wakf property and after him the trustee was to be from amongst the members of Abdeali Waliji family. As a result of this view of the appointment of the trustee the property is not a wakf property according to our faith and no spiritual benefit accrues either to the donor or to the people who pray in the mosque. This is a very serious lapse and must be corrected immediately and without fail. In the document mentioned is also made of wakf of other buildings which are to be used for the purposes of the upkeep of the said mosque. No details are given of such other buildings. A photocopy of the said will should be forwarded for our information. You should discuss the matter with Janab Amil Saheb and take measures immediately to correct the position. It will be necessary for you and all the survivors to make a fresh document by which the property concerned is vested as wakf in His Holiness Syedna Mohmed Burhanuddin Saheb (T.U.S.) 52nd Dai-ul-Mutlaq. Thereafter the family should make a separate application to Huzure Ala to be graciously pleased to entrust the management of the property and the other building to you or any other members of the Abbasali Vali family. In this way you will be putting the matter right."

Donors make donations for religious and charitable purposes under the belief that they will reap some spiritual benefits therefrom.

If by appointing other trustees they would lose these benefits it would be natural for them to agree to put the trust property at the disposal of the Syedna and then to request him to permit others to manage it under his directions.

Thus all trust properties of Dawoodi Bohra community are at the Syedna's disposal, whether he is legally the sole trustee or not. Where he is the sole trustee, no difficulty arises for him. Where he is not so, by using the above device and with the aid of the belief spread by the priestly class, he can virtually be the sole trustee. Thus he can take decisions as to the application of the income of any trust for such purposes as he considers charitable. Even where the objects or purposes are defined in the deed it would be for him, and him alone, to decide whether a particular expenditure or activity falls within the object defined. Any person challenging his decision would have to face the consequences narrated in illustrative cases in earlier chapters.

In summary, the Syedna has absolute control over:

- (1) Income derived from taxes discussed in Chapter XII and collected from all over India and abroad.
- (2) Income from properties of all Dawoodi Bohra trusts.
- (3) Salam and Nazarana amounts.
- (4) Income from gallas or offering boxes where sign plates have been affixed that those offerings are at his disposal.

Since all the income derived by him does not go to the coffers of the trust, the accounts of the trusts registered in the State of Maharashtra cannot reflect the true and complete position of the total income at his disposal. We have received evidence which claims to be an estimate of all the income over which he has dominion. It is more in the nature of a 'guestimate'. We have come to the conclusion, after considering several factors such as the methods applied in the collection of taxes, the numerous occasions on which Salaams and Nazaranas are collected, the population of this community and its composition, the fact that the Syedna lives quite 'in state' with his large family of about 180 members etc., that though it is not possible to arrive at an exact estimate, the total income under his dominion would be in the neighbourhood of Rs. 7 crores a year.

We have not gone further into this question because what is important is not the exact figure of the income but the complete lack of communal control over its disposal. While the income is

fantastically large (whatever be the exact amount), the community has no voice in the management of the income and the trust properties.

The audit of accounts in these circumstances becomes largely illusory. The auditors can after all scrutinise only those items which are required to be brought into trust accounts. They cannot insist on inclusion of amounts which are given to the Syedna personally to be applied by him to any purpose, public or private, in his absolute discretion. The prevailing law does not fully cover such a situation and in any event the auditors cannot finally decide such questions of law.

Moreover, the reformists say that although the accounts filed with the Charity Commissioner are audited, the firm auditing the accounts is composed of Dawoodi Bohras, whose professional work is mainly confined to audits of Bohra trusts and of business firms controlled directly or indirectly by the Syedna and/or his family of 188 members.

While this by itself may not be objectionable, we are of the view that in these circumstances the firm of auditors is bound to feel highly embarrassed in pointing out any flaws in the accounts inspected by them. Being all Dawoodi Bohras they would be bound by the Misaq and also by the belief that the Dai is 'immaculate' and can do no wrong. They cannot afford to appear less devout than they ought to be. In any case, the people at large are bound to entertain a reasonable apprehension that the auditors would not be able to act independently, impartially and without bias.

This then is the broad picture of the economic power of the High Priest and the Priesthood.

The facts found by us in this and the foregoing chapters will show that the position of the Dai-ul-Mutlaq as a religious head, the huge income under his dominion, the obligations of the Bohras under the Misaq, the right of the Dai to expel any member on any ground which he considers sufficient, the practice of Baraat leading to grave consequences to the dissidents, the absence of any communal control over the income and properties of the community, the absence of adequate legal regulation of the trusts which are spread all over the world—all these have resulted in a huge centralisation of power in the hands of one person who can control the entire lives of Dawoodi Bohras right from the stage of con-

ception to that of death and even thereafter. The root cause of the reformists' grievances can be attributed to the fact that the religious power which the Syedna had and which was not intended to be used "for worldly ends" has been exercised since the beginning of the regime of the 51st Dai for gaining and centralising economic power and using the economic power so gained to further coerce any dissenting member of the community into submission and surrender. It is this deadly combination of religious and economic power which creates a huge problem not merely for the reformists but for all members of the Bohra community and for the State as well. Problems of such magnitude may require drastic remedies consistent with the principles of democracy and the fundamental rights guaranteed by articles 25 and 26 of the Constitution of India.

In the following chapter we shall discuss remedies which we deem necessary and appropriate.

CHAPTER XIV

RECOMMENDATIONS

Our enquiry has shown that there is large-scale infringement of civil liberties and human rights of reformist Bohras at the hands of the priestly class and that those who fail to obey the orders of the Syedna and his Amils, even in purely secular matters, are subjected to Baraat resulting in complete social boycott, mental torture and frequent physical assaults. The Misaq (the oath of unquestioning obedience to the Head Priest) which every Bohra is required to give before he or she attains the age of majority, is used as the main instrument for keeping the entire community under the subjugation of the Syedna and his nominees. On the threat of Baraat (social boycott) and the resulting grave disabilities, Bohras are prevented from reading periodicals which are censored by the Syedna (such as the Bombay Samachar, the Blitz and the Bohra Bulletin); from establishing charitable institutions like orphanages, dispensaries, libraries, etc. without the prior permission of the Syedna except by submitting to such conditions as he may impose; from contesting elections to municipal and legislative bodies without securing beforehand the blessings of the Syedna; and above all, from having any social contact with a person subjected to Baraat, even if the person is one's husband, wife, brother, sister, father or son. The weapon of Baraat has been used to compel a husband to divorce his wife, a son to disown his father, a mother or refuse to see her son, and a brother or sister to desist from attending the marriage of his or her sister or brother. An ex-communicated member becomes virtually an untouchable in the community, and besides being isolated from his friends and nearest relatives, is unable to attend and offer prayers at the Bohra mosque. Even death does not release him from the taboo, for his dead body is not allowed to be buried at the community's common burial ground. Bohra Jamats in India and abroad are not allowed to frame their own rules and regulations, but are subjected to authoritarian constitutions granting absolute power to the Syedna and his nominees. Millions of rupees are collected every

year from Bohras in India and abroad as customary taxes and Nazaranas by the Syedna and his nominees, but the Syedna is not accountable for them to any one. The Syedna also claims to be the owner of all the Bohra mosques and the sole trustees of all Bohra trusts, and where the account of any of these trusts are audited, the work is done by a firm composed of some members of the Bohra Community who are also bound by the Misaq given by them to the Syedna.

For obvious reasons, it is almost impossible to improve this situation by organising a reform movement from within the Bohra community. Any person who fails to obey implicitly the orders of the Syedna and his Amils commits a breach of his Misaq and is liable to be subjected to Baraat or social boycott. The consequence is that although a large number of Bohras resent the disabilities imposed upon them by the priestly class, they are unwilling to give any public expression to their resentment. We thus found that although a systematic public campaign was organised in the Bohra community to condemn our Commission and to put a stop to its enquiry, quite a few of the campaigners wanted us to carry on the work.

While the majority of dissenters are thus unwilling to express their opposition to priestly domination, those who have the courage to do so are unable to carry on a reform movement from within the community. Although they are willing to accept the religious, as distinguished from the secular authority of the Syedna as an essential part of their faith, Baraat is proclaimed against them, and being thus deprived of social contact with other Bohra brothers and sisters, their movement has only a peripheral impact on the community.

The situation therefore calls for the authority of the State to be invoked for passing suitable legislation to relieve the hardships of the community, without encroaching on the fundamental rights which it enjoys as a religious denomination. Under Articles 25 and 26 of the Constitution, members of the community have the right to freely protest, practice and propagate their religion, to establish and maintain institutions for religious purposes, and to manage their own affairs in matters of religion. These rights, however, do not prevent the state from making any law (a) regulating or restricting any economic financial, political or secular activity, which may be associated with religious practice, or (b)

providing for social welfare and reform.

We will indicate in this chapter the types of enactments which are required for regulating the economic and secular activities of the Bohra priesthood and for providing social reform in the community. Before doing so, however, it is necessary to emphasise that such legislation is not likely to be passed and implemented unless it receives the active support of all progressive sections of the Indian people, including those belonging to the minority communities. We appeal in particular to Indian muslims to peruse this report, see the ghastly picture of persecution which it presents, and decide whether legislation is not necessary to regulate the secular activities of the Bohra priesthood and to introduce social reform in the Bohra community.

We recommend the following types of legislation in order to mitigate the evils described in the earlier chapters.

I. Baraat or social boycott should be made illegal and penalised as an offence.

The full facts about the Baraat and its consequences were obviously not placed before the Supreme Court when it decided the case Saifuddin Saheb Vs. State of Bombay (AIR 1962 S. C. 853). Baraat among the Bohras is not proclaimed for religious apostasy, nor does it merely imply exclusion from communal worship and use of communal property. Baraat is proclaimed for non-conformity in secular matters and it implies complete social boycott, isolation from close relatives and friends, loss of business and employment, and virtual imposition of untouchability. Contrary to the view expressed by the majority of the Supreme Court in the above case, abolition of Baraat is undoubtedly a matter of urgent social reform.

We are, however, of the view that in drafting a law for the abolition of social boycott, the defect which induced the majority in the Supreme Court to declare the Bombay Prevention of Ex-Communications Act, 1949, to be invalid, should be avoided. It is also desirable that a law against the imposition of social boycott should be of general application and should not be confined to the custom of Baraat in the Bohra community. As a model of such a law, we recommend Bill No. 67 of 1977 which has been introduced in the Lok Sabha (House of the People) by Dr. V. R. Pandit, M.P. and is circulated for eliciting public opinion. A copy of the Bill is annexed to this Report at Appendix "H".

II. We have seriously considered the question whether the abolition of Misaq should be recommended as a measure of necessary social reform. There can be no doubt that in so far as the Misaq involves an undertaking to accept the guidance of the Syedna in religious matters, it represents an essential feature of Bohra faith and calls for no interference. But we have seen in Chapter IV that the Misaq is so far-reaching as to involve unconditional surrender to the Syedna in secular as well as religious matters and that it amounts to a virtual charter of slavery. We have also seen in subsequent chapters that it is the breach of Misaq in secular matters which is made the basis of all-sided persecution of dissenting Bohras. We therefore recommend that the Syedna should in the first place be requested to limit the Misaq to obedience of his directions in religious matters. If he refuses to do so, the giving of Misaq in its present form should be prohibited by law.

III. It is essential that all the trusts where the Syedna claims to be the sole trustee, and the receipt and expenditure of all the customary taxes and nazranas, should be regulated by suitable legislation. Acts like the Wakf Act of 1954 and the Durgah Khwaja Saheb Act of 1955 show that such legislation is constitutionally valid. Since many of the trusts receive income from different parts of India and abroad, and since the customary taxes and Nazaranas are also collected in India and other parts of the world, legislation for the regulation of such trusts and income should be the responsibility of Parliament rather than of any State Legislature. "Trust and Trustees" is a topic in the Concurrent list of the Indian Constitution (Schedule VII, List III Item 10).

In respect of such trusts and incomes we recommend legislation as mentioned below:

- (a) The Syedna claims to be the sole trustee, if not the sole owner, of all Bohra mosques. (We have seen a copy of a judgment of the Madras State Wakf Board dated 1-7-1962, where a claim made by the Secretary of a Bohra mosque that the mosque properties were not Wakf properties but were the personal properties of the Syedna, was rejected.) It is necessary to have a law to regulate the management of the Mosque properties. The law should provide for a Board of Trustees with the Syedna as its Chairman. It should be necessary to keep regular accounts and the

- same should be open to inspection by members of the community.
- (b) A similar law is necessary for the management of all the trusts of which the Syedna or his family members are the trustees. The law should provide a scheme for the appointment of trustees, an independent Secretary and the necessary staff. The Government should have the right to designate a Chartered Accountant to audit the trusts' accounts, which should be open to inspection by members of the community.
 - (c) In many charitable trusts set up by individual Bohras, the settler was pressurised to make the Syedna or his nominee the sole trustee. A provision should be included in the enactment visualised by (b) above to enable the District Judge of the district where the office of such a trust is located to frame a suitable scheme for the management of the trust under a more representative Board of Trustees.
 - (d) Most of the customary payments made by Bohras to the Syedna or his Amils and described in Chapter XII of this Report are impressed with obligations in the nature of a trust. A separate law is necessary for the accounting of the amounts received and their expenditure for the welfare of the community. The law should provide for a scheme of management by a Board of Trustees who would represent the interests of the entire community, and for getting the accounts audited by an independent firm of auditors designated by the Government. The accounts should be open to inspection by members of the community.

On the basis of the available material, we are not able to say whether the amounts collected as Nazaranas and Salams described in Chapter XII are also trust properties. This will depend on the purpose for which the payments are made. It appears, however, that if the amounts do not partake of the nature of trust property, they would be personal income and would be liable to income tax. Since the amounts are customary payments made on certain occasions, they are not receipts of a casual and non-recurring nature so as to be exempt from income tax assessment.

IV. We have referred in this Report to the ways in which the Syedna or his nominees influence the elections to municipal and

legislative bodies. We have pointed out that such practice, apart from constituting a corrupt practice when done with the consent of a candidate or his election agent, is by itself an offence of "undue influence" under section 171-C of the Indian Penal Code and is punishable under section 171-F of the Code. We hope that this clarification will result in the discontinuance of such electoral interference by religious heads. In any case, the present law is sufficient to meet the situation and additional legislation is not called for.

V. We have seen in an earlier chapter how Bohra Jamats in India and abroad were compelled to accept authoritarian constitutions under which autocratic powers were granted to the Syedna and his nominees. Pressure for the acceptance of such constitutions could be exercised because of the force of Misaq and the fear of Baraat. If Baraat is made illegal and if the Misaq is either improved or prohibited, the aggrieved Jamats will be free to make such alterations in their constitutions as they may desire. No additional legislation appears to be necessary for this purpose.

APPENDIX A

(See Chapter I)

Ahmedabad,
21st February, 1978

Dear Sir/Madam,

You may be possibly aware that the National Executive Council of the Citizens for Democracy has appointed a Commission to investigate into, and report on, the alleged infringement of human rights of reformist members of the Dawoodi Bohra community in the name of the high priest by the Bohra priesthood and their associates. Shri Narendra Nathwani, a retired Judge of the Bombay High Court and a present Member of the Lok Sabha, is its Chairman. Its members are the following:—

- (1) Shri V.M. Tarkunde, a retired Judge of the Bombay High Court and the General Secretary of the Citizens for Democracy and the President of the Supreme Court Bar Association.
- (2) Dr. (Miss) Aloo Dastur, Head of the Department of Political Science of Bombay University.
- (3) Dr. Moin Shakir, Department of Politics of the Marathawada University, Aurangabad.
- (4) Dr. Alam Khundmiri, Department of Philosophy of Osmania University, Hyderabad.
- (5) Shri C. T. Daru, Member-Secretary.

The Commission has prepared a questionnaire for this investigation which is enclosed herewith. It will help the work of investigation very much if you send true and correct written replies to the questions after carefully reading the questionnaire. If there is not enough space in the form for the reply, you may use a separate paper for that purpose.

Please fill in the form and despatch it to the Commission at

the following address with your signature and your name and full address:

Nathwani Commission.
C/o. C. T. Daru,
9, New Alkapuri Society,
Gulbaino Tekro,
Ahmedabad 380 015 (India)

In case you desire not to disclose your name to others for any reason, kindly say so clearly in your letter. All information given in the form shall be kept strictly confidential. Moreover, please also state clearly whether you desire to give oral evidence in support of the information supplied by you.

You are expected to send your reply within 21 days of the receipt of the questionnaire by you.

It is necessary to clarify that it is not the function of the Commission to inquire into the truth or falsehood of the religious tenets or beliefs of the Community. It shall be the duty of the Commission not to encroach upon, in the slightest manner, the right of the freedom of religion as guaranteed by the Constitution of India in its letter and spirit.

It is hoped that you will co-operate with the task of the Commission by sending your replies as early as possible.

Yours faithfully,
C. T. Daru
for the Commission

Questionnaire
Section 'A'

CIVIL LIBERTIES AND HUMAN RIGHTS

- Q. 1.** Do you agree that in India all communities irrespective of religion, caste or creed enjoy equal rights and liberties in social, political and religious matters?
(1) Yes (2) No (3) D.K.
- Q. 2.** If no, mention the communities which do not enjoy the same indicating their sect.
- Q. 1.** Do you think you have a right to express your own opinion on matters pertaining to your community?
(1) Yes (2) No
- Q. 4.** If not, why not?
(1) Only the Priest or his agents have the right to do so.
(2) It is against the social custom followed by the community.
(3) It is against the religious tenets to do so.
(4) You are afraid of the consequences of your action.
(5) Any other
- Q. 5.** Do you have the freedom to Yes No
(a) Form a union, association, mandal or co-operative organisation?
(b) Establish and/or administer (with funds collected by you or from the public) any welfare institution such as a school, society, bank, trust, musafarkhana, orphanage, co-operative store, home for widows and aged?
(c) Mobilise members of your community to create public opinion on issues pertaining to your community?
(d) Advocate for or join any organisation which is striving for reforms in the community?
(e) Publish a newspaper or a periodical?
(f) Read any daily newspaper or a magazine without taking prior permission of religious head?
- Q. 6.** Do you think the permission of the religious head should be sought in these matters?
(1) Yes (2) No
- Q. 7.** If yes, is it because
(a) It is a custom in the community to do so.

- (b) It is right to seek the blessings of the religious head before starting a venture.
 - (c) Our religious tenets demand it.
 - (d) You incur the divine wrath thereby.
 - (e)
- Q. 8.** If no, it is because—
- (a) It is repugnant to self respect.
 - (b) It is against the constitution of the country.
 - (c) It involves financial and other implications.
 - (d) It violates the fundamental human rights provided in the U.N. Charter.
- Q. 9.** While granting the permission were any conditions laid down which came in the way of your fundamental rights and liberties?
- (1) Yes (2) No.
- Q. 10.** If yes, please specify the conditions.
- (a)
 - (b)
 - (c)
 - (d)
- Q. 11.** In the administration of organisations started with the permission of the religious head, have you or any one known to you experienced any interference from the religious head or his agent?
- (1) Yes (2) No.
- Q. 12.** If yes, please specify the difficulties encountered.
- Q. 13.** In your opinion does the holy Quran enjoin the seeking of permission from the religious head of his agent, for the above mentioned activities?
- (1) Yes (2) No.
- Q. 14.** Have you, or any of the persons known to you done any of the things mentioned above without the permission of the religious head or his agent?
- (1) No.
 - (2) I have done so.
 - (3) My relative, friend, acquaintance has done. (Please name the person and relations.)
- Q. 15.** If (2) or (3) what were the consequences suffered?
- (a) Social boycott.
 - (b) Excommunication.

- (c) Discrimination.
- (d) Victimisation.
- (e) Ordered to close down or dissolve the institution.
- (f) Any other.

Q. 16. In your opinion do they deserve to face such consequences?

- (1) Yes (2) No.

Q. 17. If yes, is it because

- (a) They have defined the religious order.
- (b) They should be punished for breaking the social custom.
- (c) Why do they want to be a member of our community if they do not adhere to beliefs and customs ?
- (d)
- (e)

Q. 18. If no, is it because

- (a) There was nothing wrong in not seeking the permission.
- (b) Individuals have a right to act in the way they like so far as they act within the framework of law.
- (c)
- (d)
- (e)

Q. 19. Please state whether the following is false or true.

True/False

- (a) There is an organised campaign against the reformist Bohras.
- (b) School children are made use of in this campaign.
- (c) Children of reformist Bohras studying in Bohra Schools are harassed and victimised.
- (d) The reformists are trying to break the community.
- (e) The reformists are trying to belittle our religion by speaking false stories.

Q. 20. Do you have the freedom to

- (a) Vote for a party/candidate of your choice ?
- (1) Yes (2) No.
- (b) Stand as a candidate during the general or civic elections without the prior permission of the religious head
- (1) Yes (2) No.

Q. 21. Is any direct or indirect pressure exercised on the members of your community to vote in favour of only such candidates who have taken permission from the religious head if the candidate belonged to the community or received his blessings if the candidate is from any other community?

(1) Yes (2) No.

Q. 22. In your community is there a compulsion to write Abde Syedna (slave of Syedna) and Amate Syedna (in case of women) on every invitation card, letters to religious head and his officials or any other Jamaat correspondence?

(1) Yes (2) No.

Q. 23. If one does not do so what are the consequences?

- | | | |
|-----------------------------|---------|--------|
| (a) Social boycott | (1) Yes | (2) No |
| (b) Excommunication | (1) Yes | (2) No |
| (c) Discrimination | (1) Yes | (2) No |
| (d) Victimisation | (1) Yes | (2) No |
| (e) Marriage is not blessed | (1) Yes | (2) No |
| (f) Any other | | |

Q. 24. Do you agree that in order to enable every citizen to exercise his civil and human rights the following should be done?

(a) To amend the Protection of Civil Rights Act 1955 to include all citizens of India irrespective of caste, creed or religion.

(b) To adopt a Uniform Civil code.

(1) Yes (2) No

(c)

(d)

(e)

Section 'B'

Social Boycott and Excommunication

Q. 1. Do you think that the practice of Baraat or Social Boycott is consistent with the tenets of Shia Ismaili Tayabi sect of Islam?

(1) Yes (2) No.

Q. 2. In your community is Baraat or Social Boycott imposed?

(1) Yes (2) No.

Q. 3. If yes, it is imposed

(a) Since which year?

(b) By whom?

(c) Throuh whom?

(d) How is it made known to the public?

(e) How is it implemented?

Q. 4. If you have the knowledge, give details of persons and families on whom social boycott was imposed.

Name of Person/Family	Year in which S.B. imposed	Reasons for which S.B. imposed
--------------------------	----------------------------------	--------------------------------------

(a)

(b)

(c)

(d)

(e)

Q. 5. If there were any instances where social boycott was imposed and subsequently withdrawn please state

Name of Person/Family	Year of imposition	Reason for imposing	Reason for withdrawing
--------------------------	-----------------------	------------------------	---------------------------

(a)

(b)

(c)

(d)

(e)

Q. 6. Were the victims given an opportunity to beheard before imposing social boycott?

(1) Yes (2) No.

Q. 7. State whether the following is false or true and if true specify with examples.

- (a) Long standing marriages were broken and/ or organised attempts were made in that direction after imposing social boycott against a person or family. (1) True (2) False
- (b) Unwilling persons were coerced to practice social boycott against a particular person or family under threat of their own boycott. (1) True (2) False
- (c) The community is subtly directed not to buy any goods from the shop or factory of a person or family against whom social boycott has been declared. (1) True (2) False
- (d) Bohra employees are being forced to leave the employment of the person or family against whom the social boycott has been imposed. (1) True (2) False
- (e) Bohra employer is coerced, on pain of his own social boycott, to terminate service of his Bohra employee if a social boycott has been imposed on the later or his family. (1) True (2) False
- (f) The person or the family against whom social boycott was imposed was prevented from practicing his/their religion by forcibly stopping him/them to enter the community mosque for prayers. (1) True (2) False
- (g) The person or the family under social boycott was forcibly or by dubious means prevented from burying its dead in the public burial grounds reserved for Bohras. (1) True (2) False
- (h) Father/mother, wife/husband have been separated from each other or children or vice-versa because of the imposition of social boycott against any of the party concerned. (1) True (2) False
- (i) Bohra social reformers and those who support them on principles were cursed and provocative language used in the mosque during the prayers and sermons by the head priest or his agent and a climate of hatred against the social reformer. (1) True (2) False
- (j) At times people attending the prayer in the (1) True

- mosque were called upon by the head priest or his agent to wage a religious war (Jehad) against the Bohra social reformers. (2) False
- (k) Social reformers have been physically assaulted, intimidated in the Mosque during prayers. (1) True (2) False
- (l) Socially boycotted family finds it almost impossible to choose a spouse from the community. (1) True (2) False
- (m) From the year 1917 to year 1948 the social reformers and the intellectuals who expressed even feeble voice of dissent were excommunicated without being given an opportunity to be heard. (1) True (2) False
- (n) Such arbitrary excommunication was taken to the Court of law. (1) True (2) False
- (o) After the enactment of the Bombay Prevention of Excommunication Act in the year 1948-49 the practice of excommunicating a person in Bohra community has been given up. (1) True (2) False
- (p) Prior to the filling of suit by the then Advocate General of Bombay, in his capacity as a public trustee, against the Bohra high-priest in the year 1917 for his accountability of public funds under his control, there was no practice of excommunication or social boycott on social grounds. (1) True (2) False
- (q) The reason for resorting to excommunication by the religious head after the said suit in the Bombay High Court was to see that no member of the community dares to defy the religious head. (1) True (2) False

- Q. 8. Is the excommunication by the religious head still practiced? (1) Yes (2) No
- Q. 9. If yes, is it resorted to after placing the matter before a meeting of the Jamat? (1) Yes (2) No
- Q. 10. Is the person concerned given an opportunity to be heard? (1) Yes (2) No

Q. 11. Is it imposed on the ground of

(a) Deviation from religious doctrines. (1) Yes (2) No

(b) Propagating the need for social reforms not touching religious doctrine ? (1) Yes (2) No

Q. 12. If you know please give specific instances of excommunication ordered after 1948.

Name of Person/Family	Year	Reason
-----------------------	------	--------

Q. 13. In your opinion what measures should be taken to remedy this?

(a) Suitable legislation

(b)

(c)

Section 'C'
Taxes, Levies, Nazaranas & Salams

Q. 1. Do you have to pay any taxes, levies, nazaranas and salams to the high priest or his agents?

(1) Yes (2) No

If yes, please specify.

Types of Taxes	Levies	Nazaranas	Salams	Amount	Purpose
----------------	--------	-----------	--------	--------	---------

(1)

(2)

(3)

(4)

Q. 2. In your opinion

Is it necessary to do so?

(1) Yes (2) No

(a) if yes, why?

(1) It is our community custom.

(2) Its funds help in enhancing community welfare.

(3) Fear of harassment.

(4) Any other.

(b) If yes, they are collected

(1) By whom?

(2) Monthly, quarterly, half yearly and annually.

(c) If not, why not?

(1) There should be no compulsion.

(2) It leads to corruption.

(3) Any other.

Q. 3. What happens if any one fails to do so?

(1) Social boycott.

(2) Excommunication.

(3) Discrimination.

(4) Victimisation.

(5) Permission to solemnise marriages/burial withheld.

(6) Any other.

Q. 4. Do you have to contribute to funds for schools, colleges, hospitals, dispensaries, mosques, musafir khanas, madrasas etc. started directly or indirectly by the high priest or his agent?

Yes

No

If yes, how much have you contributed per year on an average?

Q. 5. Is it true that the Government or local civil authorities give land for use of the community for burial of its dead?

Yes No

Q. 6. Is the burial ground of the town of the residence granted by the government or the local civil body?

Yes No

Q. 7. Is there a practice of reserving a grave for you and your family by giving the price in advance for so doing?

Yes No

If yes, what are the criteria for fixing the price for reservation of the burial place?

Q. 8. Have you or anyone known to you paid any price for burial or any member of your/his/her family in particular burial ground?

Yes No

If yes give details.

Q. 9. Is there any tax/levy known as Haqun Nafs (a levy on the dead) for the salvation of the deceased?

Yes No

Q. 10. For whom is the levy known as Nazar Mukam?

Q. 11. Who is collecting the same?

Q. 12. Is there any system of awarding any titles by the headpriest to the members of the community?

Yes No

1. For what consideration?

2. Type of titles.

3. How much.

4. Any other.

Q. 13. On what occasions are such titles being awarded?

Q. 14. What are the criteria of awarding such titles?

Q. 15. Is there any Nazrana to be paid to the headpriest and his family members while receiving such titles by the person who is receiving such titles?

Yes No

If yes, how much.

Q. 16. Are receipts given for such of the above mentioned payments?

Yes No

Q. 17. In your opinion should not the high priest or his agents submit an account of such funds to the community?

Yes

No

Q. 18. (a) If yes, it is because—

(1) The community has a right to know how the funds are utilised.

(2) Misappropriation of funds can be prevented thereby.

(3) Any other.

(b) If no, it is because

(1) It is not community custom.

(2) It amounts to doubting the bonafides of high priest.

(3) Fear of consequences.

(4) Any other.

Section 'D'*Miscellaneous Affairs*

Could you please throw some light on various customs and usages in the community such as the occasion of death, community feasts, observance of festivals, naming of the child, beard keeping/trimming, compulsion to wear a certain type of dress, etc. etc.?

Name:.....

Signature

Full Address:

.....
.....
.....

APPENDIX A-1

Following Press-note was delivered to various newspapers and news agencies for publication immediately after the Press Conference addressed by Mr. C. T. Daru, Member-Secretary of the Commission on 6th March 1978 at Ahmedabad. The above press-note was published in the following daily English and Gujarati Newspapers besides various Gujarati periodicals.

English Daily Papers:

"The Times of India"	Ahmedabad Edition	Dated 7-3-78
"The Indian Express"	Ahmedabad Edition	Dated 7-3-78
"The Western Times"	Ahmedabad Edition	Dated 7-3-78

Gujarati Daily Papers:

"Janmabhoomi"	(Bombay)	Dated 7-3-78
"Bombay Samachar"	(Bombay)	Dated 9-3-78
"Jansatta"	(Ahmedabad)	Dated 8-3-78
"Sandesh"	(Ahmedabad)	Dated 17-3-78

Press-Note

National Executive Council of the Citizens For Democracy has appointed a Commission to investigate into and report on the alleged infringement of human rights of reformist members of the Dawoodi Bohra Community in the name of the High Priest by the Bohra priesthood and their associates. Mr. Narendra Nathwani, a retired Judge of the Bombay High Court and a present Member of the Lok Sabha is its Chairman. Other members of the Commission are Mr. V. M. Tarkunde, a retired Judge of the Bombay High Court and the General Secretary of the Citizens For Democracy, Dr. (Miss) Aloo Dastur, Head of the Department of Political Science of Bombay University. Dr. Moin Shakir, Department of Politics of the Marathawada University, Dr. Alam Khundmiri, Department of Philosophy. Osmania University and Mr. C. T. Daru, Member-Secretary.

The Commission has finalised a detailed questionnaire in English and Gujarati copies of which are available from Mr. C. T. Daru, 9, New Alkapuri Society, Gulbaino Tekro, Ahmedabad 380 015 to the members of the community. The Commission will start its hearings after the replies are received.

The Commission has so far received a number of complaints giving specific and concrete instances. They mainly relate to:

- (1) Violation of human rights such as freedom of expression, publication, establishing and administering associations, to vote or stand as candidate in elections.
- (2) Compulsory heavy payment of various taxations without any voice in the management of the funds so collected.
- (3) Punishment for disobedience is excommunication followed by social boycott leading to separation of family members, boycott of business, termination of employment, prevention of prayer in community masjid, burial in the grave yard and marriages, physical assault and harassment of family members of the excommunicated members of the community etc.

The Commission will investigate into these complaints.

A number of letters were received by the Commission protesting against its appointment. These protests were mainly based on the misconception that the Commission's work will amount to interference with religious affairs. It has been clarified by the Commission that it is not its function to examine the truth or validity of the religious tenets and beliefs of the community, its work cannot in any manner interfere with the right to freedom of religion as guaranteed by the Constitution of India.

APPENDIX-B

(See Chapter—I)

PLACES AND DATES OF MEETINGS OF THE COMMISSION

- | | |
|----------------|------------|
| 1. Bombay | 10-11-1977 |
| 2. Bombay | 27-12-1977 |
| 3. Bombay | 12-2-1978 |
| 4. Bombay | 30-4-1978 |
| 5. Gandhinagar | 24-6-1978 |
| 6. Delhi | 22-10-1978 |
| 7. Delhi | 3-2-1979 |
| 8. Delhi | 14-4-1979 |

APPENDIX-C

(See Chapter III)

News item in the 'Nationalist' published from Dar-Es-Salam in its issue dated 15th August, 1968 expelling Syedna from Tanzania.

Shs. 65,000 Illegal transferred

BOHRA LEADER EXPELLED

"NATIONALIST" STAFF REPORTER

The spiritual and temporal head of the Dawoodi Bohra Community, Dr. Syedna Mohammed Burhanuddin Sahib, who arrived in Tanzania on Monday was yesterday served with an expulsion order with instructions to leave the country within twenty-four hours. The Central Council of the Bohora Community in Tanzania in furtherance of his visit had contravened the country's exchange control regulations.

The Council sent Shs. 65,000/- to Mombasa where they were re-exported to India to purchase tickets for the Priest's retinue which comprises more than fifty people. This transaction was made contrary to the advice of the Bank of Tanzania. It is Government's policy that visitors to Tanzanians must pay on their own and not by asking Tanzanians to pay unless certain conditions are met.

It is understood that when the Council asked for permission to purchase the tickets, Bank of Tanzania said this would only be given provided a number of the Priest's followers in Tanzania surrendered their entitlement to basic travel allowance for the year 1968.

Trying to circumvent the Bank's instructions, the Council sent the money to Mombasa presuming that the Tanzania authorities would tolerate permission by the Kenya Exchange Controller to transfer from East Africa funds originating from Tanzania.

The Government statement said Tanzania being a poor country, it is the duty of the Government acting on behalf of all its citizens to prevent the abuse of believers by those who demand money as a religious duty and then use it for purposes which have nothing to do with the spiritual or material welfare of Tanzanian citizens.

It added "The Government has incontrovertible evidence that all these practices have been involved in the current visit by Dr. Sahib."

In the last few weeks this newspaper has received many letters from Bohra followers pointing out the practice of demanding money. In an editorial last week this newspaper warned against the practice of taking money out of the country in the name of religion.

The full text of the Government Statement is as follows:

"The Government and people of this country have respect for religion and firmly uphold the fundamental right to every citizen to adopt whatever religion he wishes, and to follow its teachings insofar as these are compatible with the equal religious freedom of other citizens. This religious freedom applies to the members of the Bohra Community and will continue to apply to them. The expulsion of Dr. Saheb does not affect their right to worship whomsoever they please."

"Freedom of religion, however, does not involve freedom to disregard or circumvent the exchange control laws of this country. Nor does it involve freedom for any individual or group of individuals to get rich by using the name of religion in order to exploit the poor."

"This is a poor country and it is the duty of the Government, acting on behalf of all its citizens to prevent the abuse of believers by those who demand money as a religious duty and then use it for purposes which have nothing to do with the spiritual or material welfare of Tanzanian citizens. The Government has incontrovertible evidence that all these practices have been involved in the current visit by Dr. Saheb. Despite its reluctance to upset the sincere joy of individual citizens who have been the innocent victims of the exploitation of their beliefs, the Government therefore has no alternative but to demand that this leader's visit should be brought to an immediate end."

"We welcome the fact that many religious leaders are trying to help the poor. We shall not allow others to suck from the poor even that little wealth which they have."

APPENDIX-D

(See Chapter IV)

English Translation of Misaaq produced by the Advocate-General of Bombay as an Exhibit in Suit No. 941 of 1917.

"Then he (the Dae) should begin with praising and adoring God, with praying God for blessing his Prophet and the pure Imams in taking from him the vow of allegiance to God, to his angels, to his Prophets, to the Wasis and Imams and that of the Imam of of his own time. May God bless all of them and the oath of faithfulness to him (i.e. Imam) according to what is prescribed for him in the book of covenant and (he should take vow) that he will believe in God, his angels, his apostles and their Imams, from Wasi to the present Imam that he will perform the devotion outwardly and inwardly, that he will assist the Imam of his time, and will not turn disloyal to him and that he will not divulge anything of the secrets of the Dae to him who does not deserve it and also to him who has not taken the covenant, that he will not be dishonest to any one of the Momins (faithful) who are with him in the covenant, that he will love him who loves the Imams, and will be hostile to him who is hostile to the Imams, that he will sever his connection from their enemies, that he will show sincerity to God and his favourites (i.e. Imam), and that if he will break the covenant then the same thing will be imposed upon him that is imposed upon the breakers of the Oath. He (the Dae) should call them towards the Imam of their time, ascribe the knowledge to him (i.e. imam) and should not attribute a single letter of that to himself (i.e. Dae)."

APPENDIX-E

(See Chapter—IV)

LIST OF CONDITIONS FOR RAZA WHICH ARE IMPOSED FOR GRANTING RAZA

1. Name, membership, constitution etc. or the organisation is to be according to the dictates of the priestly class.
2. Election of the Managing Committee is not to be held. The priestly class selects, appoints and removes the members of the Managing Committee.
3. Donor initiating the activity or organisation has to pay the amount asked for by the priestly class for other purposes also.
4. Donation is not to be used for the welfare or the activities as desired by the donor but the amounts to be handed over to Syedna Saheb. In case of immovable property it is to be dedicated to Syedna Saheb by a wakf trust. Condition in short is to make him the owner of the donated property.
5. Before inauguration of the institution a sizable Nazrana amount should be paid.
6. Priestly class is to be requested to select the person by whom inauguration is to be performed.
7. In case of local activity or local organisation generally the local Amil who is the agent of the Syedna Saheb is to be the President of the function of the organisation.
8. Amount to be collected and persons from whom and the locality from which to be collected should be left to be decided by the priestly class.
9. Persons to be debarred from getting the benefits of the organisation should be left to be decided by the priestly class.
10. After the organisation is started with permission, right should be reserved to the Priestly class to remove the members and office bearers of the organisation. Suitable amendments of the constitution is to be made for this purpose.
11. Priestly class also reserves the right to prohibit persons or class of persons who are not allowed to participate in the activity, address the meeting organised by the organisation and in case of library to ban certain newspapers, periodicals and books.

12. If organisation is started after permission but if not obeying faithfully the dictates of the priestly class then every effort is made to capute it or destroy it by use of social boycott or threat of social boycott. If the organisers persist in continuing its activity independently of the priestly class staff members and persons co-operating in is activities are asked to leave it and persons are prohibited from donating or helping it in any manner and persons taking benefit of the organisation are asked not to take it.
13. Over and above the control of the associations and activities organised by the members of the Dawoodi Bohra Community attempts have been made by the priestly class to control the activities of cosmopolitan organisations like Lions Club:.

APPENDIX-F

(See Chapter VI)

A TRANSLITERATION OF THE FIRMAN (ORDER)

सैयदना की ओर से अनेक भाई यूसुफ नजमुद्दीन द्वारा दिनांक २६ रणम सन् १३९२ हिजरी को उदयपूर की बोहरा जमात के सेक्रेट्री श्री गुलाब अली पिता श्री अब्दुल अली उर्फ कालू भाई को गुजराती भाषा में लिखे गये पत्र का देवनागरी लिप्यांतर ।

नम्बर वालोद क/१५८/९२

मल्कना के यूसूफे फिल—उदं मिन अबूदे वालिद वाहिल्लाहिल अमीन, नायवे आले ताहा व यालीन हज्जते—अमीरुल मोमिनीन सिफवतो—इमामुल मुरकान, खुद-वतो—अहलल इस्तासां—वल—यकीन, का बतुत्तायफीन व क्रिबतुल अरारफीन, ताखुद—दावतत्योवियंतुल—गुरा व करंतुल—हीन, इमामुल—मुक्कीन, उम्दतुल उल्लुमा आ—उल—मजहिहदीन, मनमरुल—अमन सैयदना व मौलाना अब्दुल कायद जौहर मोहम्मद बरहानुद्दीन इदामल्लाहो जिल्लह अलेना व अला जमीरुल कोमिनीन इला योनिदिन सिक्रतदावतेतैयावियाह, यूसुफ नजमुद्दीन मिन मौजा पूना इला मौजा उदयपूर इला अरतजी कुरुद्दीन, नासे हुदावतिल इमामिया गुलाम अली अब्दुल अली कालुभाई हिफजहल्लाहो त वाला नतहिफहु विस्सलामिल जलील—वल—कगमिल जलील व वाद इलम थाय कि चाहना वि हम्दल्ला हे तआला व मि करवते वलियुल, अलेहिस्सलाम व दासयसहु न ड खेरततो—सऊद है । वीस मिनल माकिफन्नुरानी मौफिक दाखल्ला-हिल अनीने व हजरतुसमियतुल—रुमामिया अरूयउल्ला हो तमवा रूहा—फरमाने आली के कि ।

सैयदना अदूदाइल —नजरुल मिनआसुल—मुतफज्जल ताविल्ला हो उमरवशमरीफ व खलदसुलतानह रूला यामिद्दीन फी हाजल—आम—फिल—मआरिल अक्कूमल फुर-वरी ताहीर आबा द उर्स मुबारक ना मीकाल पर जल्वा फनन यथाहता ते क्कल कस्मादे मुनीर फरमाया मा आया हता कि हुमाक उदयपूर मां बाज नाम मिहाद “युथली” नी संस्था वगैरल—हफन कायम रहे होय छे नेमे बिल्कुल दन्द करवा मां आवे ते अमे वाली नो इध्मनसाल करीने मजदूर संस्था ने भतलकम दरखास्त करी अहमी जुमला कारंवाई ने बिल्कुल बन्द करी देवा माज—आवी छे । वाला अम्ने—आली छे कि चन्दा वसूले हाजल—मिसाल आली अला मल्लेहाल ये नाम मिहाद “युथ लीग” ने विस्ममीम बन्द करावी देवो अने—अहमी जुमला कारंवाई ने खतम करावओ अने तनो मफीस्थरन रिपोर्ट अर्ज करवो । वीह अेम मुस्ताही थयो छे कि ये नाम मिहाद “युथ लीग” वालाओ

कोई बैंक कायम करवानी तजमलिन करी रहया छे लिवालिका अम्ने-आली छे कि अगर यह खबर सही होय तो अे मिसल नी कोई बैंक मिनल मोमिनीन कायम करवा वाबत कुत्अन सुमानिअत करवु । हांजा वस्सलाम ।

दुरर निहार अलहादी अहार मिन शहरे रजहुल अराब सन १९३२ हिजरी ।

APPENDIX-G

(See Chapter XI)

SAFAI CHITTHI (LETTER OF CLEARANCE)

તા. ૧૬-૧૦-૭૭.

અં જુ મ ને હ મી દી

સાન્તાકુઝ વહોરા જમાયત સ્ટેશન રોડ,

સાન્તાકુઝ-પશ્ચિમ, મુંબઈ ૫૦૦ ૦૫૪.

જનાબ કમરલ મુકાસીરીન સૈયદી સફીયુદ્દીન સાહેબ, S. D. T. Sp. Ex. M. ની ખીદમતે આલીયામાં આદાબ-લ-તસલીમાતે ફાખેરા બાદ ગુઝારીશ રે નીચે જણાવેલ બાઈના: સખીલ વીગેરેના પૈસા યુક્ત મળી જવાથી આ બાઈની તરફ જમાયત સાંતાકુઝના લેન-દેનની સફાઈ છે. મઝકુર બાઈના ત્યાં નીકાહ થનાર છે તેમાં અંજુમનને કાંઈ વાંધો નથી તે ઈન્હાઅન અરઝ છે ઝીયાદા અદબ.

નામ : હાતિમભાઈ અખબનઅલી મંત્રી

ઠેકાણું : પરમેશ્વર દશાન, રજહસનાબાદ, હાઝરા સાન્તાકુઝ

દુલ્હા/દુલ્હનનું નામ : હાઝરા હાતિમભાઈ

લી. અબદેસૈયદના (ત. ઉ. શ.)

સહી :—

દી. આર. નેતરલાલા.

અમીલ સાહેબ, ઈંચઝી રીસલ્દ

સાન્તાકુઝ.

APPENDIX-H
(See Chapter XIV)

As Introduced in Lok Sabha
on 15th July, 1977.

Bill No.67 of 1977.

**THE PREVENTION OF SOCIAL DISABILITIES
BILL, 1977**

by

Dr. Vasant Kumar Pandit, M.P.

A

BILL

to prevent the imposition of social disabilities by a member or members of a community on a member or members of his or their own community: to provide for penalties for such an act or acts and for matters connected therewith.

WHEREAS it has come to notice that the practice of imposing social disabilities prevails in certain communities, which amongst other things deprives their members of the rights and privileges to which they are entitled by reason of birth or otherwise and which results in flagrant violation of their fundamental rights as citizens of this country;

AND WHEREAS in keeping with the spirit of social change and democratic set up of our country and in the larger public interest it is expedient to prevent the imposition of such social disabilities and to provide penalties for such an act or acts and for matters connected therewith;

Be it enacted by Parliament in the twenty-eight year of the Republic of India as follows:—

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| Short title extent and commencement. | 1. (1) This Act may be called the Prevention of Social Disabilities Act, 1977.
(2) It extends to the whole of India.
(3) It shall come into force at once. |
| Definitions. | 2. In this Act, unless the context otherwise requires,— |

- (a) "Community" means a group of members who are connected together by birth, conversion or performance of religious rites or ceremonies or whom belong to the same religion or religious creed and include a caste or sub-caste;
 - (b) "members" means, a person, whether male or female, who is a member of any community.
3. A member shall be deemed to have imposed social disability on a member of his community if he—
- Imposition of
social disabilities.
- (a) denies, prevents or obstructs or causes to deny, prevent or obstruct any member of his own community from having access to or from using any place of worship or prayers or any place intended to be used for performing any religious ceremony or rite, prevalent or practised in his community.
 - (b) Prevents or obstructs or causes to prevent or obstruct any member of his community from having access to or from using any place used or intended to be used for a charitable, religious or public purpose and on behalf of the community and which is normally available for use to or by any member of his own community;
 - (c) prevents or obstructs or causes to prevent or obstruct any member of his community from enjoying any benefit under a charitable trust of Wafk created for the benefit of his community;
 - (d) prevents or obstructs or causes to prevent or obstruct any member of his community from having access to or using the facilities of any school, education institution, medical institutions, community hall, club hall, cemetery, burial ground or any other place used by or intended to be used by, or for the benefit of, his community;

- (e) prevents or obstructs or causes to prevent or obstruct any member of his community from observing any social or religious custom or usage or ceremony or from taking a part in a social or religious function congregation, assembly, meeting or procession.
 - (f) prevents or obstructs or causes to prevent any member of his community from establishing or maintaining such social, professional, or business relations as he would ordinarily establish or maintain with other members of his community;
 - (g) incites, provokes, or encourages any member of his community directly or indirectly to sever social, religious, professional or business relations with any other member or members of his community;
 - (h) refuses or denies or causes to refuse or deny to any member of his community the right to perform such marriage, funeral or other religious ceremonies and rites as members of his own community usually and ordinarily perform;
 - (i) prevents or obstructs or causes to prevent or obstruct any member of his community from entering, lodging in or otherwise using any Dharmashala, Sarai or Musafarkhana which is ordinarily open to members of his community; or
 - (j) prevents or obstructs or causes to prevent or obstruct any member of his community from entering or using any place of worship such as temple, mosque, church, gurudwara or any cemetery, crematorium or burial ground which is ordinarily open to members of his community.
4. (1) Whoever imposes any social disability or any member of his community shall on conviction be punished with imprison-

ment of either description which may extend to six months or with fine, which may extend to one thousand rupees or with both.

- (2) whoever aids or abets in the commission of any offence punishable under this Act or connives at the commission of any such offence or harbours any offender or destroys any evidence shall on conviction be punished with imprisonment of either description which may extent to six months or with fine, which may extend to one thousand rupees or with both.
5. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act—
 - (a) shall be cognizable, and
 - (b) may, with the permission of the Court be compoundable.

Offences under this Act to be cognizable and compoundable
6. (1) A police officer may—
 - (a) remove or cause to be removed any barricade or obstruction erected, placed or found in any place, if such police officer has reasonable ground to believe that the barricade or obstruction was so erected or placed in order to be used for the purpose of committing an offence under this Act; or
 - (b) open or cause to be opened any gate or door, if such police officer has reasonable ground to believe that such gate or door was closed for the purpose of committing an offence under this Act.

Police Officer to take action in case of imposition of social disabilities.
- (2) Whenever a Police officer has reasonable ground to believe that any person is likely to commit an offence under this Act, he may arrest such person without a warrant and deliver him into the custody of the officer-in-charge of a police station who

may either release the person arrested on his executing bond with or without surety for his appearance in a Magistrate's Court or take or cause to be taken the person arrested before a Magistrate within twenty-four hours after the arrest.

- (3) When a person appears before a Magistrate in compliance with a bond executed by him under sub-section (2) or is brought before a Magistrate, he may require such person to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour for such period not exceeding three years as the Magistrate may think fit. If after due inquiry, the Magistrate is satisfied that such person should execute a bond with or without sureties, the Magistrate shall make an order accordingly and the provisions of section 107 and sections 112 to 123 (both inclusive) of the Code of Criminal Procedure, 1973, shall supply to or in relation to all orders to furnish security made under this sub-section.

STATEMENT OF OBJECTS AND REASONS

The outdated and unconstitutional practices such as untouchability, boycotts, etc, are still practised in various communities in the country, resulting in great harassment to individuals or groups. The harassment so caused, naturally gives rise to illfeeling and disharmony towards each other. This has far-reaching effects on the social life of the community. It is, therefore, necessary to root out these evils by putting a stop to the imposition of the various social disabilities. The objective can be achieved by enacting a suitable legislation for the purpose and also for providing punishment to those who indulge in such evil practices.

Hence this Bill.

New Delhi.

The 15th June, 1977.

VASANT KUMAR PANDIT

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3. A member shall be deemed to have imposed social disability on a member of his community if he—
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 - (g) incites, provokes, or encourages any member of his community directly or indirectly to sever social, religious, professional or business relations with any other member or members of his community;
 - (h) refuses or denies or causes to refuse or deny to any member of his community the right to perform such marriage, funeral or other religious ceremonies and rites as members of his own community usually and ordinarily perform;
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may either release the person arrested on his executing bond with or without surety for his appearance in a Magistrate's Court or take or cause to be taken the person arrested before a Magistrate within twenty-four hours after the arrest.

- (3) When a person appears before a Magistrate in compliance with a bond executed by him under sub-section (2) or is brought before a Magistrate, he may require such person to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour for such period not exceeding three years as the Magistrate may think fit. If after due inquiry, the Magistrate is satisfied that such person should execute a bond with or without sureties, the Magistrate shall make an order accordingly and the provisions of section 107 and sections 112 to 123 (both inclusive) of the Code of Criminal Procedure, 1973, shall supply to or in relation to all orders to furnish security made under this sub-section.

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