

[Shri S. W. Dhabe]

not interested to leave the matter to the State Governments in order to pass a Bill. Some States may pass and some may not pass. Some have passed only for pension. They have no service conditions. Some have passed for unemployment benefit. Let us bring the rural workers at par with the industrial workers and give them the same benefits. A beginning may be made just now. In the course of time, after two or three generations, I think the rural workers will have the same standard as the industrial workers. With these words, I thank the whole House including the Minister for this. But it is not possible for me to withdraw the Bill as the Government has taken a stand that it is the responsibility of the State Governments.

SHRI DHARMAVIR: I want to explain two or three points which the hon. Member, Shri Dhabe, raised. Regarding the ILO Convention, it is given in Convention No. 141 about rural workers. It is too wide and too liberal and not suitable for our country. We had debated about its feasibility in the Seminar on Rural Areas in January, 1984 and the Seminar found that this definition was unsuitable to our local conditions. The hon. Member mentioned about the uniform report of the Sub-Committee of the Central Standing Committee on Rural Organised Labour. It had gone into the question of a central legislation for agricultural labour. No doubt, the report of the Sub-Committee together with the Draft Bill was considered by the Labour Ministers Conference in 1981. It could not reach any consensus for any such legislation. As I have said, I have no personal grudge against formulating any central legislation. This is the decision of the Labour Ministers' Conference on the report of the Central Standing Committee. Madam, most of the points which have been mentioned in the Bill by Mr. Dhabe like education, drinking water

facilities, health, medical care are also covered under the new 20-point programme, which I have already explained in my earlier speech. Now, it is the State Governments which are really to implement all these programmes. And now adopting such a Bill will only be a duplication. And as I have already explained to administer all this, it requires huge funds in the rural areas and a huge army of establishment.... (Interpretations) Therefore, it is not possible at this stage to accept the Bill. And I again request Mr. Dhabe not to insist for a vote and he should withdraw it. And we are already thinking on the same lines to promote the conditions of the rural workers.

SHRI S. W. DHABE: I am not in a position to withdraw the Bill.

THE VICE-CHAIRMAN [DR. (SHRIMATI) SARAJINI MAHISHI]: The question is:

"That the Bill to make provisions for financing measures for promoting the welfare of labour employed in agriculture and other rural occupations, be taken into consideration."

*The motion was negatived.*

THE VICE-CHAIRMAN [DR. (SHRIMATI) SARAJINI MAHISHI]: Now, we shall take up the next Bill. It is also by Mr. Dhabe.

AN HON. MEMBER: Where is the Minister?

SHRI DHARMAVIR: I am here.

### THE BUDDHIST MARRIAGE VALIDATION BILL, 1981

SHRI S. W. DHABE (Maharashtra): Madam, I beg to move:

"That the Bill to recognise and remove doubts as to the validity of inter-marriages solemnised in

accordance with the Buddhist rites and ceremonies, be taken into consideration."

Madam Vice-Chairperson, it is a very important Bill and it seeks to validate the Buddhist marriages. As you know, Madam, in 1956, due to the inspiration of Dr. Balasaheb Ambedkar, in Maharashtra thousands of families embraced Buddhism. Not only from Maharashtra but from different parts of the country right upto Ladakh and also Bihar, they embraced Buddhism. The Buddhist marriages are governed by the Hindu Marriage Act. Sub-section (ii) of Section (2) of the Act says:

"This Act applies to any person who is a Hindu by religion in any of its form or development including a "Virashaive, Lingayat or a follower of the Brahmo, Prathana or Arya Samaj—be it relevant—to any person who is a Buddhist, Jaina or Sikh by religion, and to any other person domiciled in India having a negative definition of 'who is not a Muslim, Christian, Parsee or Jew by religion,'"

By negative definition all are considered as Hindus barring those mentioned therein. This Hindu Marriage Act was passed in 1955 for codifying the principles of Hindu marriages and what will be a valid marriage and what will not be a valid marriage. Now, the conditions of the Hindu marriages are given in sections 5 of this Act. A marriage may be solemnised between two Hindus if the following conditions are fulfilled namely neither party has a spouse living at the time of the marriage; at the time of marriage neither party is incapable of giving a valid consent to it in consequence of unsound mind. The other conditions are there. And, the last conditions is that the parties are not within the prohibitive degrees of relationship unless their custom permits the marriage. Now, after section 5, we have got section 7. Section 5 also speaks of the prohibited degrees of relationship and says that the

parties are not spindas of each other unless the custom or usage governing each of them permits of a marriage between the two. Section 7, Madam, is the basis of my Bill. Section 7 says how to perform a Hindu marriage. A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto where such rites and ceremonies include the *satpadi*, i.e., the taking of seven steps by the bride and the bridegroom jointly before the sacred fire and thereafter the marriage becomes complete and binding when the seventh step is taken. Therefore, under section 7 of the Hindu Marriage Act, the marriage is complete and it is only a legal marriage under this Act if *satpadi* is there, what we call *Lajahome* in Hindi, and unless the seventh step is complete, the marriage cannot be said to be proper and legal. Then, section 8 provides that for the purpose of having a record of Hindu marriages the State Government may make rules providing that a party to any such marriage may have the particulars relating to such marriage....

SHRI DARBARA SINGH (Punjab): When you are speaking, at least three Members from the Opposition side should remain in the House.

SHRI S. W. DHABE: If you are not interested in the subject, what can I do?

THE MINISTER OF STATE IN THE MINISTRY OF LABOUR AND REHABILITATION (SHRI DHARMAVIR): But we appreciate your move.

SHRI S. W. DHABE: When we move Private Members' Bills, it is not done on a party basis.

THE VICE-CHAIRMAN [DR. (SHRIMATI) SAROJINI MAHISHI]: Mr. Dhabe, you may please continue. (Interruptions).

SHRI S. W. DHABE: It is said here that for the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that a party to any such marriage may have the particulars of the marriage entered in such manner and subject to such conditions as may be prescribed in the Hindu Marriage Register kept for the purpose.

Now, Sir, the Buddhist marriages do not follow these rules of the *saptapadi*. They have got their own system of performing the marriages. The marriage system of the Buddhists has been described in a case, namely, 81 *Maharashtra Law Journal Babi versus Jayant Mahadev* p. 630.

This is where the difficulty has come in. I read from Annexure D, the note submitted by the Chairman of the Maharashtra Legislative Assembly. It says: According to the custom of neo-Buddhists, the bride and the bridegroom by folded hands in front of the photograph of Babasaheb Ambedkar and Lord Buddha in the presence of assembled guests pray each other *panchshila* and at the end of *panchshila*, the word '*sadhu*' is thrice uttered. After this, the bride and the bridegroom offer garlands to each other and the persons who witness the marriage ceremony shower flowers on them. Later on, the bridegroom and the bride take oath in the presence of assembled guests and the words uttered are: Duties by the bridegroom: I will honour my wife; I will not dismiss or kick my wife; I will not do any bad thing; I will refrain from doing the same; I will keep my wife happy for giving necessary things of life; I will treat my wife ... etc. Then there is another oath in the Buddhist marriage for bride. It is: I will take care of my family members; I will show courtesy to my family members; I will not do a bad thing and will refrain from doing the same; I will protect the house by all means; I will do my household work with due care and curiosity. The marriage

is treated as complete after oath taking.

This is the simple procedure adopted by Buddhists in the marriages. The neo-Buddhists also have got the same type of marriages in Maharashtra and elsewhere. Sometimes the priests come, what is called, *Bhikku*, a monk. Now, under the Hindu Marriage Act, this type of marriage has not been recognised, and for the first time, the question came up before the High Court of Bombay whether such marriages can be recognised under the Hindu Marriage Act. In the famous case of 1973, in the *Maharashtra Law Journal*, page 310—*Shakuntala versus Nilkanth*, the case was of a Buddhist marriage. Though the marriage took place, prosecution was made under section 496 for bigamy. It was stated that this marriage was not valid, and here I will quote from the important decision which has affected about 58,000 marriages in the State of Maharashtra and the number taken together in all other States, would come to about a lakh. Justice Masodkar delivered judgment under sections 2, 5 and 7 and it said: "Home and *Saptapadi* are essentials of a Hindu marriage even according to the Hindu Marriage Act which recognises ceremonial marriage, unless a different ceremony is established by the custom in a particular sect to which the parties belong. To be a custom, the rule must have hardened into law by continuous or uniform observation for a long time. It must be certain, reasonable and in keeping with public policy. Only because marriages according to Buddhist rites are taking place in the wake of social and religious convulsions, the courts cannot be asked to hold that that should be treated as a rule having the force of custom or usage as contemplated by Hindu Marriage Act. Provisions of section 2, Hindu Marriage Act, themselves show that Buddhists are treated as a class different from Hindus and, therefore, if the parties had not converted themselves into Buddhism at

the time of marriage and there is no proof that Buddhist form of marriage was recognised as a custom in that particular caste to which the parties belonged, their marriage, according to Buddhist rites, cannot be treated as valid marriage on the ground that the term Hindu under the Hindu Marriage Act includes Buddhists and, therefore, for the purpose of the Act even Buddhist form of marriage should be treated as valid one."

"The fact that such marriages are taking place for the last ten or fifteen years is not enough. Nor can it be contended that the exodus from Hindus into Buddhist religion should be taken note of and, therefore, it should be held that Buddhist rights were looked upon as part of Hindu rights and that does achieve a status of custom or usage for purposes of marriage."

The court held that this is not a valid marriage under the Hindu Marriage Act and it acquitted the husband even though he married for a second time. The fact which led to this was that the marriage had taken place, the first marriage, as per Buddhist rights. Then, the husband took another woman. Therefore, the wife filed a complaint under section 496. The husband was acquitted by the first court. The appeal came to the High Court. The High Court held that even though the fact is there that the marriage had taken place, it cannot be said that the marriage is a correct one, a legal one. In para seven of their judgement they said:

"The other contention raised by the learned counsel is based on the term of the Hindu Marriage Act and may be briefly noticed. He says that the term 'Hindu' under the Hindu Marriage Act includes Buddhists. Therefore, for the purposes of that Act, even a Buddhist form of marriage should be considered to be a valid one. He relies on customs and customary law in British India by S. Roy to

point out what constitutes a valid marriage according to Buddhist law. The learned counsel, therefore, argues that several marriages are taking place by this Buddhist rites and the courts should lean in favour of recognising those marriages so as to avoid the social mischief which may result because of such defects."

Then, after quoting from facts and other circumstances, the court came to the conclusion and in para twelve, they said:

"The concept of a Hindu under the Hindu marriage law has not undergone any radical change by the enactment of the Hindu marriage Act. In fact, the basic structure of that concept has not at all been touched and it remains as Sanskar or sacrament. To a Hindu, marriage is not a matter of agreement or contract, but a spiritual union of two souls. Holy invocation before the fire and Saptapadi are the minimum requisites for the solemnisation of Hindu marriage. Unless, therefore, it is established that there is a different custom or any different form of marriage known to Hindu law, those rituals and ceremonies will have to be established by the complainant before any claim that the spouse is guilty of the offence under section 496 of the Indian Penal Code is made in such a case."

The decision has very wide implications. According to this decision, system of Buddhist marriage is not marriage under the law as it is not followed by Saptapadi and Laja Homa. Subsequently, this matter again came up for consideration. A different view has been taken in a subsequent decision in 1981. *Maharashtra Law Journal*, page 614. This was in the case of *Babi Jayant Jagtap vs. Jayant Mahadeo Jagtap*. The Judge of Bombay High Court said, in some cases, marriage can be looked at from a different point of view of custom. He stated:

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"In this case, the bride and the bridegroom belonged to the Buddhist community on conversion from Scheduled Caste. After taking bath and wearing new clothes, they were brought to the marriage hall. They worshipped and garlanded the photographs of Lord Buddha and Dr. Ambedkar. Thereafter, with folded hands before the above photographs, they chanted *Buddham Seranam Gachami, Dharmam Saranam Gachami, Sangam Saranam Gachami* and *Mangla ashtak* were recited. The bride and the bridegroom garlanded each other and took oath to the effect that, as husband and wife, they would henceforth conduct towards each other happily, that they shall conduct their family relations happily."

"After the oath was taken, people who were present showered flowers on the bride and the bridegroom and thereafter betel-leaves and betelnuts were distributed to the guests. The husband having been so married previously later married an other woman and on such second marriage a complaint by the first wife under section 494 IPC was filed against him as also against his second wife. The trying magistrate however acquitted both of them on the view that inasmuch as *Saptapadi* and *Lajo* home were not performed the so-called marriage was not legal and consequently offence under section 494 was not made out". On appeal the court had distinguished the earlier case of *Shakuntala*. This was reported in *Maharashtra Law Journal*. The court stated that he had committed an offence and was sentenced to rigorous imprisonment of two years and to pay a fine of Rs 1000 or in default undergo rigorous imprisonment for six months. Therefore a different view was taken in this case in which the husband was convicted and sentenced to two years imprisonment for a second marriage though in the earlier case

the court said that there was no offence committed because the marriage was not as per the Hindu Marriage Act. The observations in this Judgment are very important and I would like to quote the paragraph which has given rise to my Bill and is the basis for this. The Judgment at page 635, 1981 *Maharashtra Law Journal* states:

"A Copy of the Judgment is directed to be forwarded to the Maharashtra Government, Law and Judicial Department, for consideration. The Government of Maharashtra should persuade the Government of India to introduce necessary amendments to the Hindu Marriage Act, 1955, as suggested by the Maharashtra State Law Commission in its Ninth Report on "Some Aspects of the Hindu Marriage Act 1955" since the issues affecting millions of people involving their family social life and legitimacy of their children are involved."

This has created an anomaly. Both are Single Bench Judgments of the courts. One does not overrule the other. The view is that millions of families in Maharashtra and other parts of the country are affected. Their marriages have been held illegal though performed under Buddhist rites.

Before I go to the Ninth Report of Maharashtra Law Commission on the Hindu Marriage Act, I would just like to state that we had earlier in 1937 the *Aryan Marriages Validation Bill* regarding marriages which were performed by the *Arya Samai* system. We have also got validation of other Marriage Acts to which I do not want to refer at this stage, unless the Law Minister replies to this. This Bill, in section 2 provides:

"Notwithstanding any provision of the Hindu Marriage Act, 1955... no marriage solemnised, whether before or after the commencement of this Act, between two persons being at the time of marriage Buddhist by religion, according

to the Buddhist marriage rites and ceremonies shall be invalid by reason only of the fact that it was solemnised according to Buddhist rites and ceremonies not customary of a Hindu marriage”.

We are having such a large section of Buddhist population is covered by Hindu Marriage Act. They have their own system of ceremonies, their own valid system of marriage. These marriages are valid as per their own religion. But they are not valid under this law. So only two courses are open. Firstly, either to have a separate legislation for the Buddhists, which is not necessary because the Hindu Marriage Act itself can make the amendment and provide for separate recognition and registration of Buddhist marriages.

Therefore, under clause 3 of this Bill it is provided by me that rules be made by the State Government for having a separate Buddhist Marriage Register and it is also provided that if they want that it should be made compulsory, they can also make it compulsory at that time. It is also provided in clause 3—which is very important—that the Buddhist Marriage Register will be open for inspection and shall be admissible as evidence of the statements contained therein as a fact of marriage. These entries will be a proof that those Buddhist marriages had taken place.

Now, this is an enabling provision and I hope the Law Minister will accept this. It is only to give relief to a large number of people who are affected by the decision. As it is, a very important question arises out of the judgment on the Shakuntala case and the matter was referred to the Maharashtra State Law Commission, and it has submitted a report on 7th August, 1978. I am informed that the Maharashtra Government has also referred the matter to the Law Ministry saying that this is a very essential subject and it should be clarified that Buddhist marriages were not going to be illegal. Here I would only give a little

background of this report. It has been stated in paragraph 7:—

“During the period 1935 to 1955, several enactments affecting the Hindu law were passed by Central and State Legislatures. The Arya Marriage Validating Act, 1937, declared marriages between two Arya Samajists valid even if they belonged to different castes of Hindus or two religions other than Hinduism. The Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, entitled the Hindu married woman to separate residence and maintenance from her husband under certain conditions. The Hindu Marriage Disabilities Removal Act, 1946, validated marriages between persons belonging to the same *gotra* and *pravara*, and the Hindu Marriage Validating Act, 1949, validated marriages of Hindus, Sikhs and Jains even if they belonged to different religions or castes.

Enactments were also made in the States of Bombay, Madras, Saurashtra and Madhya Pradesh for prevention of bigamy and divorce during this period. The Bombay Prevention of Bigamous Marriage Act, 1947, which happened to be a premier enactment on the subject, invalidated bigamous marriages contracted in the State or even outside the State where either or both parties to such marriage were domiciled in the State, and made such marriages punishable. The Bombay Hindu Divorce Act, 1947, provided for divorce and judicial separation among Hindus, including Sikhs, Jains, Buddhist and followers of Arya and Brahmo Samaj converts to Hinduism. The Bombay Registration of Marriages Act, 1953, provided compulsory registration of marriages in the areas of the State to be notified by the Government. All these were, however, piece-meal measures calculated to provide outlets for re-

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dressal of unhappy marriages. Although they represented undoubtedly a step towards social reform, there was no real attempt at codification of Hindu Law as such."

After giving all this history, it further says:—

"The first step for codification of Hindu Law was the Hindu Marriage Act of 1955. It was followed by other laws like the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956."

Now, in section 7 of the Act—which is the subject-matter of discussion here—it is to be found that the rites and ceremonies of Hindu marriages, unless they are customary, cannot be accepted.

"In order that the rites and ceremonies of a marriage should be regarded customary, they must stand the test of continuous and uniform observance for a long time and assume the force of law, and in case of a family, custom must not suffer discontinuance at any point of time."

In this connection, it was stated before the Commission that as far as the marriages which took place in 1956 are concerned, they did not stand the test of the Hindu marriage as there is no, what you call, 'sanskar'. In para 10—this is very important, Madam—it is stated:

"The courts have been judging validity of Hindu marriages strictly within the framework of section 7—of the Act."

The first case was *Bhaurao Vs. the State of Maharashtra*, AIR 1965, Supreme Court, page 1564, where the Supreme Court had explained the meaning of the word 'solemnise'. In connection with the celebrating of

marriages with proper ceremonies and due form, it is stated:

"It is essential... that the marriage... should have been celebrated with proper ceremonies and due form. Merely going through certain ceremonies with the intention that the parties be taken to be married will not make the ceremonies prescribed by law or approved by established custom."

Then:

"The Supreme Court considered evidence of solemnization of the marriage and found that the marriage was not performed with the customary rites and ceremonies as required by section 7 of the Act and was not a valid marriage under the law. Similar view was also taken by the Supreme Court in *Kanvalram V. Himachal Pradesh Administration* (Punjab case). In this decision, the Supreme Court referred to the observations contained in article 3769 of Pleading, Evidence and Practice by Archibald and a decision in *Morris V. Miller* and observed that even an admission of a marriage is no evidence of a proof of marriage."

Even when both the parties are present and a marriage is taking place, it cannot be accepted as a Hindu marriage under the law. Then:

"These decisions emphasize the need of direct proof that the marriage has been solemnised in accordance with the customary rites and ceremonies."

If you see the Buddhist rites and customs, they strictly do not fall within the provisions of section 7. The Law Commission of the Maharashtra Government considered the matter at length. I do not want to take you through the whole report. I would only like to state that this problem is engaging the attention and is a serious concern of a large number

of people in the State. Now it has been stated that there is necessity to amend the law and unless the law is amended, it would not be possible to solve the problem. In the Committee of Maharashtra State Law Commission, one of the hon. Members of this House was also a member, Mr. J. S. Akarte. Justice Bhole of the other House and some others are the members of this committee. This committee has given an amendment to the Schedule and has suggested that the Hindu Marriage Act should be amended by having a new provision. In the Schedule they have stated that a new section be added, viz:

"(1) Notwithstanding anything contained in section 7, a Hindu marriage may also be a solemnized in the presence of relatives, friends or other persons in any one of the following manners:—

(a) Each party to the marriage making a solemn declaration in the language understood by the parties that each takes the other to be his wife or, as the case may be, her husband, and each party to the marriage garlanding the other

(b) By performance of any appropriate ceremony prevalent in the community to which either party to the marriage belongs.

(2) Notwithstanding anything contained in section 7, but other provisions of the Act, any marriage solemnized in the manner provided in sub-section (1) at any time before commencement of the Hindu Marriage (Maharashtra Amendment) Act.... shall be deemed to have been, with effect on and from the date of the solemnization of such marriage, good and valid in law."

Then they have also provided other sections where they have suggested amendment of sections 494 and 495 of

the Indian Penal Code about bigamous marriages and made certain other suggestions.

The major suggestion by the Maharashtra Law Commission, therefore, is that the Hindu Marriage Act, 1955 requires a change, and this change is very essential in the modern society. My friend, Shri Darbara Singh was saying something when I was speaking. We are facing similar problem in Himachal Pradesh and other States where Buddhist marriages were held invalid. Buddhist marriages and Buddhist religion are accepted by us. I think it is essential that this Act must be amended and the validation of the marriages should be given retrospective effect.

Sir, if you really want that the Hindu Marriage Act should be useful to the communities mentioned therein this covers not only Hindus, but it also covers Sikhs, Buddhists, Jains and if it is found by change of circumstances that they have got some other system of marriages, it should not be denied to them. In 1955 when this Act was passed, when I was also practising as a lawyer, it was never thought that section 7 (2) would give rise to such an interpretation that the Buddhist marriages would be held invalid. Now under the law as interpreted by the courts the Buddhist marriages are not covered by this Act. So, this Bill has been brought by me to cure the disease and the difficulties which we have found and to give relief to a large number of people whose marriages have already taken place in different parts of the country, where if they go to a court of law, they will be found to be invalid. And also in the future such difficulties should not take place.

At this stage I would only make one more suggestion that registration of marriages is very essential. Separate registers are not maintained. There is no other provision in the Marriages Act, and it has created



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many difficulties and problems in the country. Therefore the Bill have been brought providing that there should be separate registration for Buddhist marriages.

I hope that the entire House will accept it and give relief to the Buddhist who have suffered, not because the law was bad, but because the interpretation of the law has created problems.

Thank you.

The question was proposed.

**THE VICE-CHAIRMAN [DR. (SHRI MATI) SARASWATI MAHISHI]:** Is there any other Member desirous of speaking? I would request him to speak. If there is no Member desirous of speaking, I would request the Minister to speak.

**SHRI DHARMAVIR:** Madam Vice-Chairman, Shri S. W. Dhabe, M.P., has introduced the Buddhist Marriage Validation Bill, 1981, in Rajya Sabha on the 13th of March, 1981. The main purpose of the Bill, as is clear from the Statement of Objects and Reasons appended thereto, is to secure validity of marriage and to validate marriages which have taken place in the past according to the Buddhist marriage rites and ceremonies between persons professing Buddhist religion. Clause 2 of the Bill provides for this.

Clause 3 of the Bill provides for registration of Buddhist marriages and the clause is on the same lines as section 8 of the Hindu Marriage Act, 1955. Clause 4 of the Bill seeks to give Buddhists the benefits of the various provisions of the Hindu Marriage Act.

[Mr. Deputy Chairman in the Chair.]

The Hindu Marriage Act, 1955 applies to Buddhists. Therefore, the provisions contained therein relating to the registration of marriages, would

apply in the case of Buddhist marriages also, and the benefit under the Act would be available to the Buddhists also. In view thereof, clauses 3 and 4 of Shri Dhabe's Bill merely repeat what is already provided for in the Hindu Marriage Act, and the only provision of Shri Dhabe's Bill which requires consideration is clause 2 of the Bill relating to the validity of the Buddhist marriages. 5 P.M.

So far as the validity of marriages between Buddhist (including neo-Buddhists) according to the Buddhist marriage rites and ceremonies is concerned.

**MR. DEPUTY CHAIRMAN:** Will you take more time?

**SHRI DHARMAVIR:** I will take only five minutes.

**SHRI S. W. DHABE:** Let him finish, Sir.

**SHRI DHARMAVIR:**....it may be mentioned that the decision of the Bombay High Court in *Shakuntala vs. Nee.Kanun* (1973 Maharashtra Law Journal 310) gave rise to the apprehension that such marriages might not be valid. The whole matter was gone into by the Maharashtra State Law Commission in their Ninth Report on some aspects of the Hindu Marriage Act, 1955. This report was submitted to the State Government of Maharashtra on the 7th August, 1978. The Maharashtra Law Commission favoured an amendment of the law to provide for a form of marriage on the same lines as the form of marriage in vogue amongst the Buddhists. In December, 1979, the Government of Maharashtra forwarded a copy of the report to the Central Government with a request that an all-India legislation on the lines suggested by the Maharashtra Law Commission for amending the Hindu Marriage Act might be undertaken. It may be mentioned in this connection that the amendment suggested by the Maharashtra Law Commission are broadly

on the same lines as those suggested in the Bill introduced by a private Member (Shri Shiv Dayal Singh Chaurasia) in Rajya Sabha for amending the Hindu Marriage Act. When the Bill came up for consideration in 1979 the Member withdrew the Bill on the assurance that the Government would circulate it to State Governments/Union Territory Administrations for their opinion. The Bill was accordingly circulated for opinion and the States of Assam, Bihar, Madhya Pradesh, Himachal Pradesh, Punjab and Uttar Pradesh expressed themselves against any amendment of the Hindu Marriage Act on the lines proposed in the Bill. The remaining States/Union Territories had either no comments or had agreed with the provisions of the Bill. A statement in fulfilment of this assurance was sent to the Rajya Sabha Secretariat on the 30th June, 1981 for being laid on the Table of the House.

In the meantime, the Bombay High Court had occasion in its decision in *Baby vs. Jayant* (AIR 1981 Bom. 283—Judgement dated 29.1.1981) to consider the whole matter comprehensively and review its earlier decision in *Shakuntala vs. Neelkanth*, case. In the said case of *Baby vs. Jayant*, the Bombay High Court held that marriages performed according to the Buddhist marriage ceremonies will have to be treated as Hindu marriages performed according to the customary rights of the parties to the marriage and that such marriages are valid under the Hindu Marriage Act. The High Court distinguished its earlier decision in *Shakuntala vs. Neelkanth* on the basis that the parties in that case were Hindus and that, therefore, a marriage between them performed according to the Buddhist rites cannot be construed as valid.

It is understood that an appeal against the decision of the Bombay High Court in *Baby vs. Jayant* is pending before the Supreme Court.

SHRI S. W. DHABE: It is not correct. It was dismissed by the Supreme Court.

SHRI DHARMAVIR: It is pending before the Supreme Court. It is felt that on merits the Supreme Court will uphold the decision of the High Court. It is, therefore, considered not necessary to undertake any legislation on the lines of clause 2 of Shri Dhabe's Bill. (*Inter-uptions*).

MR. DEPUTY CHAIRMAN: Let him explain I will allow you to seek clarifications.

SHRI DHARMAVIR: Sir, let me finish and I will clear all the points.

As already stated, the remaining operative clauses of Shri Dhabe's Bill, namely, clauses 3 and 4, do not involve any change in the law as the position is the same under the existing provisions of the Hindu Marriage Act, 1955.

In view of what has been stated in the preceding paragraphs, the Member may be informed that though an appeal against the decision of the Bombay High Court in *Baby vs. Jayant* is pending before the Supreme Court, Government is of the opinion that the law as laid down by the Bombay High Court and is correct and will be upheld by the Supreme Court, and that, therefore legislation on the lines of the Bill is not necessary. After the decision of the Supreme Court, if they differ from the Bombay High Court, the Government will not hesitate to come forward with a suitable legislation.

Therefore, I would request the hon. Member, Shri S. W. Dhabe to withdraw this Bill, as it is pending before the Supreme Court for a final decision.

MR. DEPUTY CHAIRMAN: Mr. Dhabe, you will reply afterwards. Now, Special Mention. Shri Husen Dalwai.

#### REFERENCE TO THE SITUATION ARISING OUT OF THE DISMISSAL OF TEACHERS AND EXPULSION OF STUDENTS BY THE VICE-CHANCELLOR IN ALIGARH MUSLIM UNIVERSITY

, SHRI HUSEN DALWAI (Maharashtra): Mr. Deputy Chairman, Sir, with your permission I wish to mention a matter of urgent public importance in this House. The Vice-Chancellor of the Aligarh Mus-