

[Shri Mohammed Yunus Saleem]  
have been received and the members of all the communities are prepared to accept the Bill.

Regarding Mr. Menon's observation I have submitted that the question of definition of "net income" was considered by the Kerala High Court. From the observations of the Kerala High Court it appeared that the net income, according to Thier Lordships, included the expenditure incurred by a trustee or a manager. As it is, certain amounts are to be spent for cultivation over that land. Those expenses were also to be taken into consideration for determining the net income. It was not the intention at the time of bringing the legislation to exclude the small amount of 5 per cent. or 6 per cent. which is to be taken from the mutawalli. If that kind of interpretation is given to the word "net income" no income will be available to the Wakf Boards for effective administration of the Wakfs. Therefore, this amendment has become necessary to make the position clear, that the net income means the gross income after deducting revenues or taxes which are to be paid towards the particular property held by the particular mutawalli.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is

"That the Bill, as amended, be passed "

*The motion was adopted*

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : We now take up the Foreign Marriage Bill.

#### REFERENCE TO TRAFFIC RESTRICTIONS IN CONNECTION WITH PRESIDENT NIXON'S VISIT

श्री राजनारायण (उत्तर प्रदेश) : श्रीमन्, मेरा एक खास आपसे निवेदन है। आज जब हम यहाँ से जा रहे थे, तो जो सामान्य रास्ता है साउथ एवेन्यू में जाने का, वह रास्ता रोक दिया गया। निक्सन साहब आने वाले हैं 31 को और अज है 29 तारीख, और आज ही से हम लोगों का सामान्य मार्ग जो है उस पर व्यवधान हो रहा है। तो मैं यह जानना चाहता हूँ कि कल से क्या उस ठीक

रास्ते पर से हम आयेगे या नहीं? हमारी भी कोई झूटीज है, हमारे भी कोई राइट्स हैं या नहीं, या जब चाहे जैसे चाहे हमको ट्रैफिक पुलिस रोक दे। तो मैं चाहता हूँ कि कोई ऐसा प्रबन्ध घर विभाग करे कि जो आवागमन को, यातायात को कन्ट्रोल करे वह एम० पी० ज० को सदन की कार्यवाही में भाग लेने के लिये आने दे। (*Interruptions*) हमको तो 11 बजे पहुँचना होता है और मान लीजिए उन्होंने हमें लम्बा रास्ता दे दिया।

उपसभाध्यक्ष (श्री महावीर प्रसाद भार्गव) : ठीक है।

Mr. Hathi has taken note of it

#### THE FOREIGN MARRIAGE BILL, 1963

THE DEPUTY MINISTER IN THE MINISTRY OF LAW AND IN THE DEPARTMENT OF SOCIAL WELFARE (SHRI MOHAMMED YUNUS SALEEM) : Sir, I beg to move

"That the Bill to make provision relating to marriages of citizens of India outside India, as reported by the Joint Committee of the Houses, be taken into consideration "

Sir, the 23rd Report of the Law Commission deals with the law of foreign marriages. There is at present considerable uncertainty as to the law governing foreign marriages. The existing legislation touches only the fringes of the subject and the matter is, therefore, left to be governed by principals of private international law which are by on means well settled. The matter is further complicated by reason of their being in our country a number of systems of marriage and marriage laws applicable on the basis of religion. There is no uniformity among the religions in this country. Even among the Hindus, there are different systems recognised for the performance of marriage. Among Muslims also different sects observe different rites for the performance of marriage. Therefore, this difficulty is felt.

An attempt was made in the Special Marriage Act of 1954 to remove the uncertainty to some extent by providing that marriages abroad between citizens

of India who are domiciled in India might be solemnised under that Act. When that Bill was before Parliament, it was strongly suggested and several hon. Members urged that this was not adequate and that a provision should also be made for cases where one of the parties alone is an Indian citizen. The then Law Minister had given an assurance to the hon. Members of Parliament in the course of the debate that Government would after careful consideration introduce suitable legislation on this subject of foreign marriages. In pursuance of this, the matter was referred to the Law Commission. The Law Commission, after making a comprehensive survey of the law relating to the subject and after surveying the position obtaining in other countries, recommended the introduction of legislation modelled on the English Foreign Marriages Act, 1892 and the Australian Marriage (Overseas) Act, 1955, with certain modifications to suit the conditions obtaining in our country.

This Bill was originally introduced in this House sometime in May 1963. Then the motion for reference of the Bill to a Joint Committee of the Houses was moved in this House and it was adopted the same day. Subsequently the matter was referred to the Lok Sabha. The Third Lok Sabha was dissolved on 3rd March 1967, before any action could be taken pursuant to the message.

**श्री राजनारायण (उत्तर प्रदेश) :** क्या आप पढ़ रहे हैं ?

**SHRI MOHAMMED YUNUS SALEEM :** I am referring to my notes which I am entitled to.

**श्री राजनारायण :** क्या यह [नोट आपका बनाया हुआ है ?

**SHRI MOHAMMED YUNUS SALEEM :** The Third Lok Sabha was dissolved before the Bill could be referred to a Joint Committee. Therefore, it became necessary to have a fresh motion for this purpose. I moved this motion in this House in May 1968 to refer the Bill for consideration by a Joint Committee. After the motion was passed by this House, the matter was referred to the Lok Sabha and the Lok Sabha concurred in the motion. The Bill was then referred to a Joint Committee and the Joint Committee has given serious consideration to all the clauses of the Bill.

**श्री राजनारायण :** यह कैसे मालूम कि सीरियस कंसिडरेशन हुआ ?

**SHRI MOHAMMED YUNUS SALEEM :** Because I was present at every sitting of the Joint Committee and I have myself taken part in the deliberations of the Committee. In my presence the statements of the witnesses were recorded and discussions took place. Therefore, from my personal information I say that the matter was very seriously considered by all the hon. Members.

**श्री राजनारायण :** इसमें सीरियस नहीं कहें। कहिये सामान्य ढंग से विचार किया।

**SHRI MOHAMMED YUNUS SALEEM :** Sometimes hon. Members are not serious. Therefore, you think that the matter does not receive serious consideration, but it is only for a moment. When a matter is considered, it is always considered seriously, particularly when it is considered by a Joint Committee.

Sir, this Bill seeks to provide for an enabling form of marriage more or less on the lines of the Special Marriage Act, 1954, which may be availed of in the case of marriages outside India. It is enabling in character in the sense that it would be open to a party to marry thereunder or under any other law. The form of marriage provided in the proposed legislation would not be in suppression of, but only in addition or as an alternative, to any other form of marriage that may be permissible. In this respect the Bill is intended to be complementary to the Special Marriage Act, 1954.

The proposed legislation can be availed of for the solemnisation of a marriage in a foreign country not only when both the parties to the marriage happen to be citizens of India but also when only one of the parties to the marriage is an Indian citizen. The Bill embodies suitable provisions as to the capacity of the parties to a marriage and as to the validity of a marriage. These provisions are based upon the provisions of section 4 of the Special Marriage Act, 1954.

**श्री राजनारायण :** श्रीमन्, क्या मैं एक प्रश्न पूछ सकता हूँ ?

**उपसभाध्यक्ष (श्री महाबीर प्रसाद भार्गव) :** उनको खत्म करने दीजिए।

**श्री राजनारायण :** मैं यह जानना चाहता हूँ कि इंडियन सिटिजन, मान लीजिए कोई मुस्लिम है और किसी फारेन मुल्क में किसी एक लड़की से उसने शादी कर ली तो क्या मुस्लिम पर्सनल ला उस पर लागू होगा कि नहीं लागू होगा क्योंकि मुस्लिम पर्सनल ला में चार शादी हैं, छः शादी तक हैं, कैसा है, हमको याद नहीं है, मर्द को यह हक है कि यह जितनी औरत चाहे रख सकता है। औरत को यह हक नहीं है। तो इस संबंध में क्या वह मुस्लिम पर्सनल ला उस मुस्लिम के साथ भी लागू होगा जिस मुस्लिम ने किसी विदेशी महिला के साथ अपनी शादी कर ली। इसकी सफाई इसमें मैं चाहता हूँ, है या नहीं है।

**SHRI MOHAMMED YUNUS SALEEM:** Sir, just now I submitted that this proposed legislation is an enabling legislation. It will be open for the parties to approach or not to approach the registering officer for registration of the marriage. If the parties choose to be governed by the provisions of this Act, they will go to the registration officer. Otherwise, it is not necessary for them. It is for them to decide whether they would like to be governed by the provisions of this Act or not. Therefore, the question put by my friend does not arise.

Sir, I was making a submission that the Joint Committee had very seriously considered all the clauses of the Bill and had also proposed certain amendments, particularly the amendment providing that the Marriage Officer should record his reasons if he refuses to register a certain marriage. In the original Bill it was not there, but the Joint Committee came to the conclusion that when he refuses to register a marriage, he should record the reasons thereof.

One hon. Member, Mr. Shiva Chandra Jha, has given a very detailed dissenting note and that also will be taken into consideration.

Taking all these aspects into consideration, I hope that the Bill would receive the upport of the Members of this House.

*The Question was proposed.*

**THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) :** I may tell the House that the time allotted for this Bill is two hours. I have got about 10 names

before me. So I would request hon. Members to limit their remarks to about 10 minutes each.

**श्री मानसिंह वर्मा (उत्तर प्रदेश) :** उप-सभाध्यक्ष महोदय, मैं सोच नहीं पा रहा हूँ कि इस बिल का समर्थन किया जाय या विरोध किया जाय क्योंकि जिम प्रकार से यह बिल आ रहा है उससे ऐसा प्रतीत होता है कि सरकार भी इस बिल को पास करने में बहुत जल्दी करने वाली नहीं है। 1963 में यह बिल किसी न किसी रूप में आता रहा है और 7 वर्षों के बाद अंतिम रूप ले सका है और अब इस हाउस में अंतिम रूप में आया है, तो इससे प्रतीत होता है कि सरकार भी ऐसा समझती है कि इस बिल की कोई विशेष आवश्यकता नहीं है। मैं समझता हूँ कि हमारे यहां जो स्पेशल मरेज ऐक्ट था उसमें कुछ वांछनीय संशोधन करके कुछ डिज़ायर्ड अमेन्डमेंट करके इस बिल का काम पूरा किया जा सकता था और इसके उद्देश्य की पूर्ति हो सकती थी। अलग-अलग प्रकार के विवाहों के लिए अलग-अलग कानून बनाने में सुविधा नहीं होती है बल्कि समस्याएं और बढ़ती ही चली जाती हैं। अभी हमारे मित्र श्री राजनारायण ने एक उदाहरण दिया। यह जो बिल प्रस्तुत है उसके मातहत हमारे कुछ नवयुवक विदेशों में जाकर शादी कर सकते हैं। इस तरह के शादी करने की शर्त यह है कि उन्हें कहना पड़ता है कि इससे पहले उनकी शादी नहीं हुई है। इस तरह की बात कहने से उनकी शादी विदेशों में हो सकती है। फिर साल दो साल रहने के पश्चात् जब वह भारतवर्ष में लौट कर वापस आता है और आने के बाद एक स्त्री के रहते हुए भी दूसरी शादी कर लेता है तो यहां पर इस तरह का कोई ऐसा कानून नहीं है जो उसको दूसरी शादी करने से रोके। वह कहता है कि हमारा मजहब इस तरह की शादी करने की इजाजत देता है तो हमें कैसे कोई शादी करने से रोक सकता है। कहने का अभिप्राय यह है कि इस तरह से एक नई समस्या पैदा हो जाती है। इस बिल के मुताबिक एक आदमी जो विदेश में जाता है या रहता है वह वहां पर शादी

कर लेता है और जब वह यहाँ लौटकर आता है तो उसको दूसरी शादी करने से कोई कानून नहीं रोक सकता है। इस तरह से वह दूसरी और तीसरी शादी यहाँ पर कर सकता है। हिन्दूओं में भी दो शादी करने का रिवाज है। जो सरकार। कर्मचारी है उनके लिए दो शादी करने का बंधन है, लेकिन जो साधारण लोग हैं वे दो शादी कर सकते हैं और कोई कानून उनको इस तरह की शादी करने से नहीं रोक सकता है।

मेरे कहने का अर्थ प्रायः यह है कि जब इस प्रकार से अलग-अलग प्रकार के बिल बनाये जाते हैं तो उससे समस्या बढ़ती ही चली जाती है, घटती नहीं है। यह एक बड़ी विडम्बना है कि हमारी सरकार अपने आपको सिक्कूलर कहती है। जैसा कि अभी माननीय मंत्री जी ने बतलाया कि यहाँ पर जो विवाह के कानून हैं वह बड़े कम्प्लीकटेड हैं, जटिल हैं। जटिल होने का कारण यह है कि इस देश में नाना प्रकार के मत वाले लोग रहने हैं, नाना प्रकार के मजहब के मानने वाले लोग रहते हैं और नाना प्रकार के रीति रिवाजों को मानने वाले लोग रहते हैं। उन सभी बातों को मिलाकर किस तरह से एक जैसा कानून बनाया जा सकता है। मैं समझता हूँ कि यदि इस बात पर गम्भीरता पूर्वक विचार किया जाय तो इस प्रकार का कानून बनाया जा सकता है जिसमें किसी मत विशेष या किसी मजहब विशेष का नाम लिये बिना शादी के सबंध में कानून बनाया जाय। अगर हम अपने देश में धर्म-निरपेक्ष राज्य कायम करना चाहते हैं तो हमें इस देश में विवाह के सबंध में एक जैसा कानून बनाना चाहिये। अगर हम इस तरह की व्यवस्था नहीं कर पाते तो इससे धर्म निरपेक्षता को बढ़ावा नहीं मिल सकता है।

मैं माननीय मंत्री जी को याद दिलाना चाहता हूँ कि इस तरह का कानून बनाना कोई असम्भव बात नहीं है। हमारे प्राचीन भारतवर्ष में इस प्रकार के कानून थे। मैं मनु को उदाहरण देना चाहता हूँ। मनु ने इस प्रकार के

8 विवाहों को जायज बतलाया और उस समय जो लोग जिस व्यवस्था के अन्तर्गत होते थे वे इन 8 तरीकों में से किसी एक तरीके को छोट लेते थे और विवाह सम्पन्न कर लेते थे। मैं समझता हूँ कि उस समय के समाज की कुछ ऐसी व्यवस्था रही होगी और उसी व्यवस्था को दृष्टि में रखकर इस प्रकार 8 तरीकों के विवाहों की व्यवस्था कर दी गई थी और जिस को जिस तरह का विवाह का तरीका सूट करता था वह उस तरीके से विवाह कर लेता था। जब वह विवाह करता था तो वह अपने मजहब की रीति रिवाजों के मुताबिक करता था और यह पता नहीं चलता था कि यह मुस्लिम है, ईसाई है या फिर कोई दूसरे मजहब का मानने वाला है। ऐसा कोई धर्म वाला नहीं था जो किसी दूसरे तरीके से विवाह करता।

अभी माननीय मंत्री जी ने कहा कि हिन्दूओं में भी अनेक प्रकार के मत मतान्तर के लोग हैं और उस सबके लिए एक तरह का विधेयक नहीं बनाया जा सकता है। लेकिन मैं यह निवेदन करना चाहता हूँ कि विविध प्रकार के मत मतान्तर के होते हुए भी इस प्रकार का एक कानून बना सकते हैं जो सब लोगों के लिए मान्य हो क्योंकि यह सरकार अपने को धर्म निरपेक्ष सरकार कहती है। हमारे देश में जितने मत वाले लोग हैं उनके लिए विवाह के सबंध में एक इंडियन मैरिज ऐक्ट के नाम से कानून बनाया जाना चाहिये और उसमें हर तरह के विवाहों के सबंध में कानून का विधान होना चाहिये और अलग अलग प्रकार के विधान विवाह के सबंध में नहीं बनाये जाने चाहिये। इन सब बातों को भली प्रकार से सोच विचार कर सरकार को एक जैसा विवाह के सबंध में कानून बनाना चाहिये था। सरकार ने इस तरह का कोई बिल नहीं बनाया है और जो विधेयक वह लाई है उससे भी नाना प्रकार की समस्याएँ आगे चल कर उत्पन्न हो सकती हैं।

श्री राजनारायण : 8 प्रकार के विवाह कौनसे हैं ।

श्री निरंजन वर्मा (मध्य प्रदेश) : राक्षस, पिशाच, गान्धर्व और कितने प्रकार के आप चाहते हैं ।

उपसभाध्यक्ष (श्री महावीर प्रसाद भार्गव) : आप बीच में बात न कीजिये और श्री मानसिंह वर्मा जी को बोलने दीजिये ।

श्री मानसिंह वर्मा : इस विधेयक के पहले जो स्पेशल मैरिज ऐक्ट था उसके अनुसार कोई भारतीय विदेशों में जाकर शादी नहीं कर सकता था, लेकिन आज जो विधेयक सदन के सामने लाया गया है उसके द्वारा कोई भी भारतीय विदेश में जाकर शादी कर सकता है। जैसा कि अभी आपने बतलाया कि उन दोनों में से अगर एक विदेशी हो तो उसके लिए किस प्रकार कानून लागू होगा, उसका प्राविजन इसमें दिया गया है। मैं समझता हूँ कि शादी का ऐसा विषय है, यह एक ऐसा धार्मिक कार्य है, जिसमें सरकार को किसी प्रकार का दखल नहीं देना चाहिये और नहीं उसे कोई अधिकार मिलना चाहिये। सरकार को तो इस तरह के कानून में इस प्रकार के अधिकार मिलने चाहिये कि जब इस तरह की शादी होती है तो वे ऐसी न हों जिससे अपने राष्ट्र को किसी प्रकार से कोई हानि हो जाय। तो इस चीज में सबसे बड़ी आवश्यकता यह बात देखने की है।

मैं समझता हूँ कि जो भारतीय यहाँ से विदेशों में जाते हैं उनमें से अनेक वहाँ शादी कर लिया करते हैं। उनमें एक ही प्रकार की भावना होती है रोमांस की। वहाँ पर जाकर रोमांटिक भावना के कारण जब किसी लड़की से लव हो गया, उसके पसन्द आ गई तो फिर वहाँ पर वे लोग आपस में शादी कर लेते हैं। किन्तु जब से ससार के अन्दर एक बहुत बड़ा राजनीतिक वातावरण पैदा हो गया है तब से हर एक राष्ट्र दूसरे राष्ट्र की नीति को गिरा कर अपने को सर्वोपरि बनाना चाहता है। इस तरह

से आज सारे ससार में कूटनीति और डिप्लोमैसी चल रही है और नाना प्रकार से चालें चली जा रही हैं। इस बात के संबंध में सरकार को सतर्कता बरतने की आवश्यकता है क्योंकि जब हमारा नौजवान विदेश में जाकर किसी लड़की से शादी कर लेता है, तो यह देखना चाहिये कि लड़की की नागरिकता क्या है, उसका बैकग्राउण्ड क्या है और उसके परसनल व्यू क्या है तथा किन भावनाओं को लेकर वह हमारे नौजवान के साथ आ रही है। इन सब चीजों के बारे में देखना आवश्यक है। इन सब बातों को प्राचीन काल में भी देखा जाता था। प्राचीन काल में एक राजा दूसरे राजा के वहाँ लड़कियाँ भेज करता था और उनसे कहा करता था कि तुम जाकर वहाँ पर शादी करो और भेदिया का काम करो। इस तरह से वहाँ पर जाकर लड़कियाँ मिपाही और भेदिया का काम करती थी। तो हमें इन सब बातों की तरफ बहुत सतर्कता बरतनी होगी।

हमारे कानून में एक लैकुना है और वह यह है कि जो लड़की भारतीय लड़के से विदेशों में शादी करके यहाँ आ जाती है उसको यहाँ पर भारतीय नागरिकता मिल जाती है। दूसरे देशों में इस प्रकार का रिवाज नहीं है। रूस के बारे में मुझे मालूम है कि वहाँ पर जो लड़की विदेश से लाई जाती है उसको नागरिकता नहीं दी जाती है। काफी अर्से तक उसको ट्रायल पर रखा जाता है और उसकी परीक्षा ली जाती है कि किस प्रकार से और किस मोटेव को लेकर यह लड़की यहाँ पर आई है। कुछ देश ऐसे हैं जो इस प्रकार के विवाहों को प्रोत्साहन नहीं देते हैं। मैं जब किसी बिल के संबंध में बोल रहा था तो मैंने उस समय एक उदाहरण दिया था। मुझे याद है कि मेरे एक मित्र जो शिक्षा विभाग में थे चीन चले गये थे। वहाँ पर जाकर सबसे पहले प्रश्न उनसे यही किया गया है :

"Are you married?"

"No, Sir."

"Then go back to your country, get yourself married and then come back here."

उसके अधिकारियों ने कहा कि हम इस बात को पसन्द नहीं करते कि आप यहाँ पर अविवाहित होकर के रहे। हम जानते हैं कि आप यहाँ पर लडकियों से शादी कर के रहेंगे तो उसमें समस्याएँ पैदा होगी। तो हमको भी इस प्रकार के कानून बनने चाहिये क्यों कि जो हमारे नौजवान बाहर चले जाते हैं वे वहाँ पर विशेष रूप से कम भावनाओं के वशीभूत होकर और जो अनेक प्रकार के आकर्षण उनके सामने आते हैं उन आकर्षणों के कारण विवाह सम्बन्ध में बंध जाते हैं। जिसमें आगे चलकर उनके पारिवारिक जीवन में, हमारे समाज के जीवन में और मैं तो कहूँगा कि हमारे राष्ट्र के जीवन में भी अनेक प्रकार की समस्याएँ उत्पन्न होने का अन्देश बना रहता है।

ये मैंने अनुरोध करने इस बिल के विषय में कही है। अब मेरे अपने जो आव्रजर्वेन्स है इस बिल के क्लॉज के विषय में वे मैं कहना चाहूँगा इस बिल के क्लॉज, 4, पेज (4) पर यह जो लिखा है कि किन कडीगस में शादियों को इजाजत मिलेगी उसमें (ए) (बी) और (सी)। मे यह दिया आ है।

“(a) neither party has a spouse living,  
(b) neither party is an idiot or a lunatic”

इसमें मैं यह समझता हूँ कि एक बहुत जरूरी चीज छोड़ दी गई है और वह यह है

“Should be free from venereal disease”

“छूत की बीमारियाँ उसको न हों” ये शब्द जरूर होने चाहिये मैं समझता हूँ कि अब भी यदि माननीय श्री महोदय इन शब्दों को इसमें जोड़ ले तो बहुत उत्तम होगा।

इसके पश्चात् क्लॉज 5, पेज 5, पर आप देखिये कि यह जो दिया है।

“When a marriage is intended to be solemnised under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the First Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days”...

ये जो 30 डेज हैं मैं समझता हूँ कि इस अवधि को बढ़ा देना चाहिये क्योंकि मैंने जैसा कि अभी निवेदन किया कि विशेष रूप से इस प्रकार की जो शादियाँ होती हैं वे भावनाओं के वशीभूत होकर के होती हैं। एक आवश्यकता है, एक जोश होता है और उस समय हमारे नौजवान यह सोच नहीं पाते हैं कि उनका भविष्य क्या होगा और आगे चल कर के उनको किन किन समस्याओं का सामना करना पड़ेगा। इसलिये इसमें जितनी देर हो सके उतना ज्यादा अच्छा है। चट मगनी पट विवाह वाली बात नहीं होनी चाहिये कि इधर नोटिस दी और उधर इजाजत मिल जाय और शादी हो जाय। हमारे सामने इस प्रकार के कई उदाहरण हैं कि जिन्होंने जल्दी में शादी कर ली, वे बाद में सिर पकड़ कर रहे गये और उनका पारिवारिक जीवन समाप्त हो गया। इसलिये मैं समझता हूँ कि इस अवधि को बढ़ा कर के कम से कम तीन मास कर देना अच्छा होगा।

इसके पश्चात् क्लॉज 7 में यह लिखा हुआ है :

“Where a notice under section 5 is given to the Marriage Officer, he shall cause it to be published--”

तो नोटिस को पबलिश किया जायेगा। इसमें (ए) और (बी) में जो है वह ठीक है, लेकिन बहुत बड़ी चीज यहाँ पर छोड़ दी गई है और वह यह है कि नोटिस माता-पिता या सरक्षक को भी मिलनी चाहिये। इसमें इसका कोई प्रावजन नहीं किया गया है। वास्तव में होता क्या है कि मा-बाप यहाँ से बच्चे को पढ़ने के लिये भेज देते हैं और बच्चा वहाँ पर पढ़ते-पढ़ते इस चक्कर में फँस जाता है। मैं इसको फँस जाना ही कहूँगा क्योंकि वह उसमें से निकल नहीं सकता है। फिर वह शादी के लिये आवेदन पत्र देता है और उस आवेदन पत्र को पबलिश करने की बात इसमें लिखी हुई है। लेकिन इसमें जहाँ पर और बातें लिखी हैं वहाँ पर यह नहीं लिखा है जो कि सबसे आवश्यक है कि जो माता पिता या सरक्षक हैं उनको

[ श्री मान सिंह वर्मा ]

भी इसकी सूचना दी जायगी। आज होता यह है कि उनको इसका पता ही नहीं लगता है बल्कि इस बात की कोशिश की जाती है कि उनको पता न लगे और अगर उनको पता भी लगे तो जब वे शादी कर लें उसके बाद लगे।

इसके पश्चात् क्लॉज 11, सब-क्लॉज 3, पेज 6 पर यह दिया हुआ है :

"11 (3) : where a Marriage Officer refuses to solemnize a marriage under this section, any party to the intended marriage may appeal to the Central Government . . ."

इसके अंतिम शब्द ये हैं :

"shall act in conformity with the decision of the Central Government on such appeal."

इसमें यह स्पष्ट किया गया है कि अपील का जो अधिकार है वह सेंट्रल गवर्नमेंट को दे दिया गया है और उसके लिये समय भी निर्धारित किया गया है कि इतने दिन के अन्दर सेंट्रल गवर्नमेंट में यह अपील कर दी जाय, परन्तु सेंट्रल गवर्नमेंट अपना निर्णय किस अवधि में दे सकेगी, कितने दिन लगायेगी इसके लिये किसी प्रकार का प्राविजन इसमें नहीं रखा गया है। मैं माननीय मंत्री जी से निवेदन करूंगा कि वे इस पर भी विचार कर लें। इसके लिये भी कोई अवधि निर्धारित हो जानी चाहिये कि केन्द्रीय सरकार इस अवधि के अन्दर अपना निर्णय दे दे। अगर चार, छह या सात महीने तक उसको डाल रखा गया तो अपील करने का कोई प्रयोजन नहीं होगा।

अंत में क्लॉज 13, सब-क्लॉज (1) में यह दिया हुआ है :

"A marriage by or before a Marriage Officer under this Act shall be solemnized at the Official house of the Marriage Officer with open doors between the prescribed hours in the presence of at least three witnesses."

इसमें श्रीमन्, "ओपेन डोर्स" का क्या मतलब है, यह मैं समझ नहीं सका। इसको भी मंत्री महोदय समझाने की कृपा करें।

उपसभाध्यक्ष महोदय, साधारण रूप में विवाह के सम्बन्ध में और इस बिल के जो कुछ क्लॉज हैं उनके विषय में जो मेरा अपना मत था और जो मैंने उचित समझा है वह मैंने आपके समक्ष रखने का प्रयत्न किया है और मैं आपके द्वारा माननीय मंत्री महोदय से निवेदन करूंगा कि जो मैंने कहा उस पर वे ध्यान देने की कृपा करें।

DR.(MRS) MANGLADEVI TALWAR (Rajasthan) : Mr. Vice-Chairman, I welcome the Foreign Marriage Bill, 1963 because it fills the lacuna which was in existence in our law. Whether we like it or not, marriages with foreign nationals have come to stay not only in India but all over the world and it is no use closing our eyes to it and just saying that it is not moral or we do not like them on other grounds. The Special Marriage Act, 1954 was there of course but it did not say anything about the marriages with foreign nationals. I agree with the previous speaker that it has taken rather long for this Bill to come to the present stage and whatever may be the causes it is long delayed. However it is better late than never.

I agree with Shri Mallikarjunudu who has given his Note of Dissent and who is of the opinion that this measure should have been an independent and self-contained one and not just a projection of the Special Marriage Act of 1954. He says : that it should have been on the same lines as the Hindu Marriage Act of 1955 or the Special Marriage Act of 1954. So it shows the importance which he attaches to this measure. Marriage with foreigner is of special importance from the individual, community and national points of view. I feel that mixed blood has some good points in its favour. It injects in to the progeny vitality and new vigour and some of the good points of both the nations and nationalities. I know some of the people who are of coloured race in the US are most brilliant and some of them are very good looking too.

Similarly, in our country too you would see that children born of partners belonging to two nationalities have some very good points, and I know, Sir, some of the most happy and good homes are found among those people who have chosen the right type of partners though of different nationalities. Therefore there is nothing to say against such marriages on this score.

Mr. Man Singh Varna has spoken about espionage or spying. Well, Sir, it is for the Political Department to consider that point. Here we are not to consider that point. Here we are considering the social aspect of a marriage, and we do not have any evidence to show that the spouse of an Indian boy is a spy and has come to his country and does something against our country, or that she lives abroad with her husband and does something against our country.

Then, Sir, I also would like to draw your attention to Clause 5 (Notice of intended marriage), Clause 6 (Marriage Notice Book), Clause 7 (Publication of notice) and Clause 8 (Objection to marriage). In Clause 7 it is said that the Marriage Officer shall cause the notice to be published in India and in the country or countries in which the parties are ordinarily resident, in the prescribed manner. Here I agree with the opinion expressed by the previous speaker. It is "in India", the Clause says, and it is left at that. It should be definite. It is "in India". But where are they going to publish the notice? Are they going to publish it in some newspapers or where? There is no mention that it would be published in such a way that the parents or the guardians or whoever are the close relatives of the parties will come to know about it. It should be made definite that the notice should reach the parents or the guardians, and for that purpose longer time should also be allowed than just thirty days. Sir, our young people, specially the student population, who go abroad, are thousands of miles away from their homes and are away from all those who care for them and love them. Therefore they are a special problem. They are in need of care. They are in need of companionship. And what happens? More often than not they fall for a person who comes in contact with them during the early years of their stay. When they live there for a longer time, they come to know the customs etc., and they are exposed to different types of society and different social customs that are not in vogue in our country, and when they go to an European country, somehow the complexion of the Europeans has a special attraction for our young people. Very often they make a wrong choice for companionship. They spend all their money in taking them to cinemas and such other entertainment activities. And sometimes it so happens that they have to marry in spite of the fact that they are not very keen on such a marriage. As was stated it is also the case that some young men are married already here. Therefore if it is all the more important that this notice referred to in Clause 7 should

reach the parents or guardians. At least they should know that they are entering into a marriage contract. It is a contract. It has nothing to do with the religions to which the two parties belong, or any such thing. It is a contract and it gives rise to a certain amount of obligations and has far reaching effects. So if there is already his wife in India, or if the parents have some serious objection to the contemplated marriage abroad, they can investigate into the cause of it and, if possible, prevent the proposed marriage. I need not tell you that these days young people do not listen to anybody, but even then an effort can be made. The other thing that I would suggest is this. We have our Diplomatic Missions in every country and the notice should also be sent to them. They are on the spot and they are the better people to find out the whereabouts of the students, what type of a person the student is, what type of girl he is going to marry, whether he has got money to support his wife, and the children that are to be born, or whether he has spent all his money and is in search of employment, whether the girl is also from a good family and all the rest of it. Therefore I urge upon the Government to consider this point. The notice should be sent to the Diplomatic Missions, and our Missions should be able to look after our students, especially those who are going to get married in foreign countries. Our Missions should pay special attention to our young people who are abroad, who have gone there for studies or in search of employment. Therefore it is absolutely necessary that they should also know; they should keep some kind of record of the students and the young people, especially of those who are already married, and follow closely the whereabouts and doings of the latter, and in some way communicate the developments to their parents in India.

In these modern days as this kind of marriage is a contract marriage, they should have a medical certificate to show that they are free from any type of communicable diseases, which they might have and which, if married, might be contracted by one or the other of the parties to the marriage.

With these words I support the Bill.

4 P.M.

श्री बालकृष्ण गुप्त (बिहार) : उपसभाध्यक्ष महोदय, यह शिष्टायत तो शुरू में ही आई है कि इस बिल को पास होने में 6 बरस लगे गए हैं जबकि वैकिंगबिल एक हफ्ते के अन्दर ही पास किया जा रहा है।



श्री जगदम्बी प्रसाद यादव (बिहार) : आबादो बढ़ने का खतरा था ।

श्री बालकृष्ण गुप्त : इसकी अनावश्यकता तो इसी से प्रगट होती है कि 6 बरस तक यह बिल राज्य सभा, लोकसभा और सेलेक्ट कमेटियों के बीच घूमता रह, लेकिन फिर भी मैं इसका स्वागत करता हूँ क्योंकि बहुत हमारे भाई आजकल विदेश में जाते हैं और वहाँ जाकर किमी विदेशी युवती के प्रेमपाश में बंध जाते हैं तो उन्हें दिक्कतें होती हैं। इसलिए जरूरी है कि उनका रास्ता साफ किया जाय ।

(Interruptions) ज्यों ज्यों हम ज्यादा एक दूसरे के नजदीक आते जा रहे हैं त्यों त्यों देश-विदेश की मेरिजेंज भी होंगी । मेरे पड़ोसी जनसंघी भाइयों को बहुत एतराज है कि जब भारतीय कन्याएँ कुंवारी फिर रही हैं तब हमारे ऊँचे तबके के लोग विदेशी लड़कियों से शादी करें। शायद उन्हें तो इन्दिरा गांधी के बेटे की मोनिया से शादी पर भी एतराज हो । मुझे इस बारे में यही कहना है कि विदेशी लड़कियाँ अगर हिन्दुस्तानी घरों में, उच्च घरों में प्रतिष्ठित घरानों में आ गयी तो वह जासूसी का कार्य करेगी यह धारणा बहुत गलत है । ज्यादा जासूसी तो हिन्दुस्तान में पोलिटिकल पार्टियाँ ही करने को तयार रहती हैं । इस लिए यह सब कहना बिलकुल गलत है कि वे बिचारी औरतें जो अपना देश छोड़ कर यहाँ आ कर बसेंगी वे सिर्फ जासूसी करने आ रही हैं । मैं इस बिल का बार बार स्वागत करता हूँ क्योंकि यह उन नौजवानों के रास्ते से अड़चने दूर कर रहा है जिन को हिन्दुस्तान में लड़कियाँ नहीं मिलतीं । मैं विदेशों में रह चुका हूँ और मैंने अनेक लड़कों को वहाँ शादी करते देखा है । अब तक हमारे भारतवर्ष में यह ऐकट नहीं था । अब यह ऐकट आप पास कर रहे हैं यह बहुत अच्छा कर रहे हैं । कोई न कोई स्कावट किसी बड़े आदमी के लड़के या लड़की को आयी होगी तभी यह ऐकट यहाँ पास हो रहा है । अधिकांश जनता का इस कानून से कोई मतलब नहीं है क्योंकि 52 करोड़ जो लोग हैं उन में से इने गिने बड़े लोग विदेश

जाते हैं और उन के साहबजादो का दिल गोरी चमड़ी देख कर मचल उठता है । उन की सहायता हर एक को करनी चाहिए ।

श्री ओम मेहता (जम्मू और काश्मीर) : आप विदेश में थे तब आप के दिल का क्या हाल था ?

श्री बालकृष्ण गुप्त : कानून आप अब पास कर रहे हैं . . .

श्री जगदम्बी प्रसाद यादव : हुआ तो ऐसा ही था लेकिन कानून नहीं था ।

श्री बालकृष्ण गुप्त : कानून आप अब पास कर रहे हैं और अब मैं 60 वर्ष का हूँ । अब हम से कौन शादी करेगा ? यू तो हिन्दुस्तान में चन्द्रगुप्त के जमाने से ही विदेशियों से शादी करने का रिवाज रहा है । उस ने सेल्यूकस की बेटी से शादी की थी जिस का नाम बदल कर उस ने छाया देवी रख लिया था और हमारे भारतवर्ष में इस प्रकार देश विदेश का सम्मिश्रण होता रहा है । अब शायद हम दक्खिनी हो रहे हैं और प्रगति से दूर भी हो रहे हैं क्योंकि यह देश सड़ गया है और इस लिए इस में नवीन रक्त के प्रवाह की बड़ी जरूरत है । इस लिए मैं चाहता हूँ कि विदेश की औरतें यहाँ ज्यादा आये और विदेशों के मर्द भी हमारी औरतों को ले जाये ताकि अच्छी तरह से आदान प्रदान चलता रहे और दुनिया एक होने में कुछ मदद हो । हम लोग बहुत ज्यादा दक्खिनी हैं ।

श्री मर्नासिंह वर्मा : हम सब जगह ऐड-ल्ट्रेशन रोकने को कोशिश कर रहे हैं और आप शादी का एडल्ट्रेशन चाहते हैं ।

श्री बालकृष्ण गुप्त : सभी चीजों में ऐड-ल्ट्रेशन हो रहा है, दूसरे देशों में शुद्ध खाना पीना तो मिलता है, यहाँ वह भी नहीं मिलता । हमारे कम्युनिस्ट मित्र कहते हैं कि यहाँ पर सब मिला जुला हो, मैं तो यह चाहता हूँ कि सब कुछ मिला जुला हो लेकिन मुझे बड़ा अफसोस है कि जब कोई हिन्दुस्तानी रूसी से शादी करना चाहता है तो उस की इजाजत नहीं

मिलती। श्री ब्रिजेश सिंह और श्वेतलाना को कुंवारी अवस्था में है। यहां आना पटा और वह भादी स्टालिनवादियों ने नहीं मानी। तो मैं चाहता हूं कि हमारे इस ऐक्ट में ऐसी गुंजाइश रहे कि जिम्मे श्वेतलाना और ब्रिजेश सिंह की शादी हो सके क्योंकि उस की शादी से 20 लाख का अस्पताल तो कालाकांकर में बन गया जो काल कांकर के राजा बहुत धनी होते हुए भी अभी तक नहीं बनवाये, उसे एक विदेशी महिला ने एक किताब लिख कर उस की रायल्टी से पैसा इकट्ठा कर के 20,30 बेड का अस्पताल खड़ा कर दिया। हम देखते हैं कि विदेशियों से विवाह करने में कोई नुकसान नहीं है और यह जो झुठी भारतीय संस्कृति और भारतीयों और वो वाह हल्ला होता रहता है उस को विदेशी विवाहों से कोई खतरा नहीं है। जो लोग भारतीय संस्कृति से प्रेम करते हैं वे ही किसी भारतीय से शादी करते हैं। इधर उधर की दकियानुसी बातों को भारतीय संस्कृति कहना बिलकुल गलत है।

मैं यह भी कहता हूँ कि हिन्दू और मुसलमान दोनों में एक ही विवाह प्रथा होनी चाहिए और एक औरत का एक मर्द होना चाहिए और एक मर्द की एक औरत होनी चाहिए। आज जितने भी उन्नत मुसलमानी मुल्क हैं उन में बहु-विवाह प्रथा बंद हो गयी है। इस को भी इस बहु-विवाह प्रथा को बहुत जल्द खत्म करना चाहिए। मैं तलीम साहब से रेक्वेस्ट करूंगा कि वे हिम्मत कर के एक ऐसा कानून यहां लाये जिस में बहु-विवाह मुस्लिम समाज में वर्जित हो जाय और बंद हो जाय क्योंकि यह जो गरीबी गति ने तरक्की की है वह इस लिए की है कि उन को यहाँ बहु विवाह दो हजार साल से बंद है और मैं लोग इनने सड़े और गले हुए इस लिए रहते हैं कि हमारे यहां जिस किसी मर्द को तिनकी औरतें चाहिए वह घर में विवाह कर के उन्हें लाने का हक रखता है। यहां जब हिन्दू कोड बिल पास हुआ था तब भी मुझे खुशो हुई थी। उसी प्रकार

का एक मुस्लिम कोड बिल भी आना चाहिए जिस में बहु विवाह प्रथा हमेशा से देश से हट जाय और चाहे कोई समाज हो, हिन्दू मुसलमान सब के लिए एक ही तरह का कानून होना चाहिए और एक ही तरह के रीती रिवाज होने चाहिए और तभी हिन्दुस्तान एक सभ्य राष्ट्र बन सकेगा और दुनिया की नजरों में ऊंचा उठ सकेगा। हमारे दोस्त मुराहरि ने जो इस कमेटी में थे, उन्होंने कहा कि बहुत से आर्दमियों को बड़ी दिक्कत है इस लिए हम इस बिल को ला रहे हैं। मैं खुशी से इस बिल की ताईद करता हूँ और चाहता हूँ कि उन की अड़चनें मिटें। दो, चार, दस, बीस, जितने भी इने गिने लोग हैं जो विदेशों में शादी करते हैं उन को भी कुछ लाभ पहुंचे तो मेरी आत्मा को संतोष मिलेगा।

SHRI K. P. MALLIKARJUNUDU (Andhra Pradesh): I rise to support the Bill. I had the honour of serving on the Joint Committee where all the aspects of the Bill have been carefully examined and scrutinised. At the outset I should express my thankfulness to the Law Minister or having accepted some substantial amendments which I proposed. Even though they were incorporated by him in his own language I am glad that the substance of some of my proposals has been accepted by the Law Minister.

I have appended a Minute of Dissent to the Joint Committee Report. My main objection to the Bill was that the Bill should have been of a self-contained and self-sufficient character. My objection was that it ought not to be a kind of referential legislation. It should be an exhaustive code on foreign marriages and it should have avoided all kinds of references to other enactments. As you know, Sir, in this Bill after laying down certain basic principles references have been made to four chapters of the Special Marriage Act of 1954. I can understand our making a referential legislation if the references were only a few but in this case we find that four whole chapters, Chapters IV, V, VI and VII of the Special Marriage Act, have been referred to. Certain variations and modifications have been effected in those Chapters and we are asked to refer those Chapters subject to those modifications and variations made by this enactment.

[Shri K. P. Mallikarjunudu]

So, such kind of referential legislation do not like. That is why I appended m Minutes of Dissent to the Report.

There is another point on which I had to differ and it is this. The Marriage Officer, under the Bill, is empowered to refuse to solemnise a marriage celebrated in a foreign country under certain circumstances. For example, if the marriage is opposed to the principles of *privatae international law* or if it is opposed to the law of the land, the Marriage Officer is given power to refuse to solemnise the marriage. I wanted to add one more condition, so that the Marriage Officer can refuse to solemnise it. There are our Indian citizens who are serving either in the diplomatic service or in the defence service. If it is a girl, it will refer to a boy and if it is a boy it will refer to a girl. If one of the parties being an Indian wants to marry a foreigner while he is in the diplomatic service or defence service, I want that some power should be given to the Marriage Officer. If, in his opinion, such a marriage ought not to be contracted, he should have the power to refuse to solemnise the marriage. I wanted that amendment to be made, but the Law Minister then stated that there are sufficient rules in the disciplinary rules to avoid such contingencies and that there is no danger or threat to the security of our country. Then, I withdrew my amendment. But I would like the hon. Minister to examine that aspect carefully and see whether there are sufficient provisions under the rules to prevent any such contingency. If he is satisfied, then I have no objection in that regard.

Then, Sir, this Bill is based on certain principles. As already enunciated by our Law Minister, it is an enabling Bill. It is a Bill in addition and not in supersession of the laws governing marriages. If a marriage is valid under the existing law, it is not affected by the provisions of this Bill. So, it is only an additional measure enabling an Indian citizen to contract marriage in a foreign country. It is one of the basic principles of this legislation and I think it is a very wholesome provision so far as foreign marriages are concerned.

Then, Sir, the second aspect of the Bill is that it allows for registration of marriages celebrated in other places. If a marriage is celebrated under any other law, including the law of the land, then there is provision made in this Bill to register that marriage. The effect and the consequences flowing from the contract of marriage under this

law will also accrue to the marriages so registered. That is one of the important provisions of this Bill.

Thirdly, this Bill gives all matrimonial reliefs to the parties concerned. As in the Special Marriage Act, this Bill gives all matrimonial reliefs like the restitution of conjugal rights, dissolution of marriage, annulment of void marriages, annulment of voidable marriages and so on. All these reliefs are provided for in this Bill and also there are certain penalties for any violation of the provisions of the Act. On the whole, I believe that this is a well drafted piece of legislation and it deserves support from all sections of the House.

With these few remarks, I resume my seat.

SHRI U. K. LAKSHMANA GOWDA (Mysore) : Mr. Vice-Chirman, Sir, I rise to support this Bill. It seeks to get over one difficulty, in the provision in section 4 of the Special Marriage Act which enables only two people of Indian origin to get married abroad, if they so wish. There is, however, a difficulty if, of the two, one party is an Indian and the other a foreigner. So, this law became necessary and it has come in time to get over that lacuna. This will provide facilities for Indians abroad if they wish to marry a foreigner. Actually as the Dissenting Note of Mr. Shiva Chandra Jha says, it would have been better if there was a comprehensive legislation in this regard. He feels that there may be some difficulty with regard to referential legislation. Reference has to be made to so many different legislations like the Special Marriage Act and this legislation also. This could have been avoided, if there was a comprehensive legislation, but, on the whole, this is a very welcome legislation.

We were discussing the conditions as laid down in clause 4 of the Bill, for solemnization of foreign marriages under Chapter II. These are very welcome provisions. They provide for all the modern concepts and requirements of a marriage, namely, neither party has a spouse living, and also, it makes sure that neither party is an idiot or a lunatic. In this connection I would agree with Mr. Man Singh Varma that it would be better if clause 4 provided for a certificate saying that either or both the parties were free from any communicable or venereal diseases. This has been accepted in most other modern countries. This Bill proposes to solemnise a marriage in the modern concept of things and I think it

is very necessary that such a provision is there, particularly when people are contracting marriages abroad. It will be safe for both the parties. So, I welcome the provisions contained in clause 4 of the Bill and suggest adding what I have proposed.

So far as the Notice intended for marriage is concerned, I agree with Mrs. Talwar that it would be better if the time-limit is extended for filing objections to the marriage. Particularly any objection with regard to whether an Indian marrying abroad is already married in this country is a matter of major importance. The other one with regard to consulting parents, in the modern set up I do not attach so much importance. If a person is already over 21 years of age, he may not be so much concerned about the consent of his parents. He himself might be an earning member and be capable of looking after his spouse and maintaining his spouse. So, from the point of view of ascertaining whether the person is already married in this country or not, it is necessary that a certain time should be given, and this time limit should be longer than what is stated in clause 8 of the Bill.

Speaking generally I welcome this measure. There could be more mixed marriages of this type. As my friend, Mr. Balkrishna Gupta, said, it will bring in new thoughts and ideas into this country. It will try to do away with many of the misconceptions about other countries. In this connection, I would like to stress that if we had more of inter-caste marriages and inter-religious marriages, in this country, we would have had less of communal feelings. It would have been better and casteism and other types of malpractices, which are so prevalent in the country, would not be the case. From this point of view I welcome this Bill, and I hope it will provide an opportunity for Indian going abroad and wishing to get married there that they can do it under the provisions of this Bill rather than going through either the marriage rules of that particular country or religious marriages which they may not be interested in. Again there was a reference about a uniform type of legislation for marriages in this country. I would like to add my own views on that. Certainly in modern India it does not look proper that marriage under the Special Marriages Act or any other Act should be allowed to be performed by different communities as they like. At last in such provisions there should be uniformity. A reference was made that particularly if a person is a

Muslim he can have four wives, or if he is a Hindu, earlier to the passing of the Hindu Marriage Act he could have four or five wives. It has been brought down in the case of one community. Certainly it is desirable that it should be made applicable to all communities so that you will have some sort of a uniform legislation in this country.

With these words I fully support and welcome this legislation.

**SHRI BALACHANDRA MENON** (Kerala): Mr. Vice-Chairman, I welcome this legislation. In this country marriages are considered to have been made in heaven, considered to be so very religious. We are now at least coming to understand one of things. There is something called love. When a boy and a girl meet, and if one of them is an outsider, they can get married and we are making provision for that which is a step in the right direction. It is necessary. We have got so much of bad traditions which have to be fought. To marry one outside his own caste was a crime. When a boy of 21 goes out of India and meets someone and wants to get married, why should he not marry here? Why should he inform his parents? I do not understand that. If those people decide that they should marry, they should be allowed. I was not born in this world because I wanted to be born in this world. That is what the modern young man says. That is what he tells his father. I have nothing to do with you. Into this world I am born. I am not responsible for my birth. I have no obligations to you. You have obligations to me till I become a major. Nothing more than that. If he does not want to, why should the young man inform his parents if he finds a good girl and marries her? I am glad we are doing that, we are helping them to come together. Such healthy marriages must be encouraged. I am not one of those who believe that we are bringing spies when our boys marry outsiders. If two people decide and if they want to marry, every effort must be made by society for them to come together.

I have got only one complaint about this Bill. After having stated in clause 4—

- “(a) neither party has a spouse living,
- (b) neither party is an idiot or a lunatic,
- (c) the bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage, and

[Shri Balachandra Menon]

(d) the parties are not within the degrees of prohibited relationship”;

there is a proviso which allows marriages within prohibited relationship if custom allows it. Let us be very clear that in such cases we will not allow people who are very close, such as nieces and cousins, to get married. All such stupid things as close relationship marriages must be stopped. “Provided that where the personal law or a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnised, notwithstanding that they are within the degrees of prohibited relationship”— this has to be removed. (*Interruption*) I want only to point out that at least under this Act we should be very clear that we will not allow marriages between parties who are within prohibited relationship.

I have got only one more point, and it is this. Here is a funny clause, clause 21. If a citizen of India makes a false declaration or false statement, or if he signs a false notice or certificate, he shall be punishable with imprisonment for three years. But a Marriage Officer, who knowingly and wilfully solemnises a marriage in contravention of the provisions of this Act, shall be punishable with simple imprisonment for one year. I do not know where we are. If a citizen commits a mistake or if he wilfully gives a wrong declaration, let him be convicted for one year. If an officer does it, let him be convicted for three years. That is what we want. We want all our officers to be more responsible than the citizens. There must be a higher sense of duty in them. These things are drafted by people who want to safeguard their own skin.

PANDIT S. S. N. TANKHA (Uttar Pradesh) : Mr. Vice-Chairman, I rise to support this Bill and in so doing I would specially like to mention the importance of various clauses in the Bill. As you are well aware, whether we like it or not, marriages are taking place between persons of different castes, creeds and various colours, and not only that but also between persons of different nationalities. Since there was no law which could provide for such marriages of persons of different nationalities, it was thought by the Government that it was necessary to have some legislation on the point. It is true that marriages which are solemnised in this country between persons of different nationalities, if one of the parties to the marriage is an Indian and the other is a foreigner, such marriage can

be registered under the Special Marriage Act. But if one of the persons is an Indian national living outside this country and contracts such a marriage, there was no provision on our statute book to make that a legal marriage. Therefore, this Bill has been brought forward. The first requirement under this Bill is that one of the parties to the marriage shall be a national of India, a citizen of India. That condition is very necessary for the marriage being registered under this Act.

The other thing which I would like you to notice is that a “foreign country” has been held even to include a ship which is for the time being in the territorial waters of any country, so that if any marriage is contracted on a ship, it can also be registered under this Act. It is not necessary that the foreign country should actually be a foreign land.

Then you will see that clause 4 prescribes the ages for the marriage of the parties. The bridegroom should be 21 years of age and the girl 18 years of age.

As we know, in India the age of marriage is different from the age prescribed herein. An essential requirement for the solemnisation of marriages under the Act is clause 4 which says :

- “(a) neither party has a spouse living,
- (b) neither party is an idiot or a lunatic

\* \* \* \*

- (c) the parties are not within the degrees of prohibited relationship.”

This is a very essential and important clause. Though in this Bill the degree of relationship has not been prescribed but according to the old Hindu Law or as it is prescribed under the Special Marriage Act also, there is a slight difference which has been made herein. Now, the proviso to this clause is that though the parties are within the degrees of prohibited relationship,

“... where the personal law or a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized.”

I think this is a very wrong proviso which we are asked to accept in this Bill because firstly it would have been a very good thing if we had accepted the fact that no marriage shall be allowed to be solemnised between persons who are within the prohibited degrees. After all, blood relationship or close relationship of parties goes a long way in deteriorating the physique, intelligence and other things of the human beings. Therefore, it was very necessary to prohibi

marriages within prohibited degrees. And so far as I remember, in the Special Marriage Act we have prescribed that custom will not hold good under that Act, while under this Act we have said that if the custom allows such a marriage, the marriage shall be permissible, but, Sir, I consider this a retrograde step. Then, Sir, in clause 5 it is mentioned that notice of thirty days should be given for a marriage and it is only after the elapsing of that period that the marriage can be performed. My friend, Mr. Man Singh Varma, suggested that it should have been a longer period. I do not think that the Committee considered this aspect of the matter but generally it was of the view that since both the parties to the marriage will be majors and will have the right to contract a marriage, therefore no impediment should be placed in the way of their marriage and that if they have decided to marry then permission should be accorded to them and arrangement for registering their marriage may be made. As such, I do not think it is really necessary to enlarge this period of time.

Then, Sir, regarding the mode of publication of the notice, it has been provided that it shall be published :

"in India and in the country or countries in which the parties are ordinarily resident, in the prescribed manner."

It is true that in this country there are not very many persons who are literate and it may be difficult in some cases for parent to know that their sons or daughters are marrying outside. And it would have been better if a provision had been made that they also should be informed. Or suppose a bridegroom who wants to marry in a foreign country has a wife living in India then the notice should also have gone to her as well, but since difficulty was found in sending such notices, it was decided by the Select Committee that it should be kept as it has now been provided in the Bill.

Then the other objection of Mr. Man Singh Varma has been that no provision has been made as to when and how long after the reference which has been made to the Government under clause 10 by the Marriage Officer was to be sent back by the Government. I have no doubt that the Government will not delay giving its decision on the matter and therefore it was not considered necessary that any particular period should be prescribed. It is possible that the reference coming to the Government of India, their making and inquiry

into the matter and then giving their decision in the matter and returning the same may take time and therefore no such provision was made.

Further you will see Sir, that under clause 13 it has been provided that the parties to the marriage have to make a declaration prior to the marriage being registered and that the declaration should be in a language which can be understood by the Marriage Officer and the witness. I had the privilege of presiding over various meetings of this Joint Committee, I made a suggestion at one of the meetings that it is possible that the parties may take the oath in language which the marriage Officer or the witness cannot understand and therefore may not know whether the parties made a proper declaration or not. It has been provided in the Bill that it should be in such a language which could be understood by the Marriage Officer and the witness and if that is not possible, then an interpreter should be employed.

Then you will see, Sir, that matrimonial relief under this Act is provided in accordance with the Special Marriage Act. As you know, the Special Marriage Act is a comprehensive Act, in itself, but all the same it was my wish that this Act and the Special Marriage Act should be embodied into one Act so that all such sections of that Act which are applicable to this Act are in available in this Bill, otherwise, difficulty will arise that when a foreign Marriage is to take place, anywhere at every such place the parties must have the two Acts before them to know what are the conditions prescribed for their marriage. Therefore, I had made this suggestion that it is very necessary for these two Acts to be embodied into one, and this, I maintain, was not a difficult task. But the Government thought that it was a difficult thing to do and, that both the Acts will be available everywhere and that this provision may be allowed to stand in the manner it has been drafted.

I would again suggest to the hon. Minister that this Act should also include the relevant provision of that Act so that it can be used with ease in all countries outside. They may be separate Acts but they may be supplied in a consolidated form to the people outside this country so that every one can make use of the Acts with ease.

There are one or two other minor things above which I would further like to make mention. In the Special Marriage Act as also in the

[Pandit S. S. N. Tankha]

other Hindu Marriage Acts, there is a provision that it will be essential for the parties to the marriage to have two witnesses to the marriage. But in this Bill it has been mentioned that there should be three witnesses. I want to know why this change has been made. I do not see any particular reason why three witnesses have been provided where two were sufficient. That is the usual form everywhere. In all countries ordinarily two witnesses only are required, one may be from the bride's side and the other from the bridegroom's side or both may be from any of the two sides. Why a third witness has been provided, I do not know. It will only be making a little bit difficult for the people to procure three witnesses for every marriage.

Now, as regards separation or divorce, provision has been made only in the Special Marriage Act so that where the parties fall out and want to separate they will be governed by the Special Marriage Act.

Then, Sir, various penalties have been prescribed for not conforming to the conditions provided in the Bill. If a party contravenes any provision punishment provided in some cases is very small and I think that in such cases it was necessary to provide more deterrent punishment rather than the smaller one provided.

**THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) :** You have taken seventeen minutes. Now you must wind up.

**PANDIT S. S. N. TANKHA :** Now, Sir, clause 20 says :

"Any citizen of India who procures a marriage of himself or herself to be solemnized under this Act in contravention of the condition specified in clause (c) or clause (d) of section 4 shall be punishable—

(a) in the case of a contravention of the condition specified in clause (c) of section (4), with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees or with both."

Sub-clause (c) of clause 4 gives the age. It says :

"the bridegroom has completed the age of twentyone years and the bride the age of eighteen years at the time of the marriage."

Sub-clause (d) relates to degrees of prohibited relationship. If there is contravention of this provision, there is provision of simple

imprisonment which may extend to 15 days only. This is too short a period. Such a marriage should be held as void because the parties being under prohibited relationship such a marriage could not be performed, but by giving wrong particulars they have contracted that marriage. Therefore, the period of imprisonment should have been much more. I should have thought that an imprisonment of five years should at least have been provided. A fine of Rs. 1,000 is all right. There will be a number of persons who would have their marriage solemnised and pay Rs. 1,000 and undergo an imprisonment of 15 days. Therefore, I think that the punishments provided are not deterrent enough and they should be more severe.

**SHRIMATI SHAKUNTALA PARANJPYE (Nominated) :** Sir, I agree with many Members who spoke before me that it has taken a terribly long time to bring this Bill before this House. Political cum economic measures are brought in overnight and attempted to be passed within a fortnight. This Bill was first introduced in 1963. Then in 1965 the Ministry of Law was to have given their opinion on the subject. Anyway, it is now introduced and late though it is I welcome it.

As the House is well aware, there is a lacuna in our legislation. I know personally there have been people waiting and waiting for this Bill to become an Act so that they could find some relief. I have been receiving letters every session asking me to see that this measure goes through.

While I agree with the provisions that have been introduced and I also agree with my friends, Mr. Balachandra Menon and Mr. Tankha, I do not agree with the proviso under clause 4 which says :—

"Provided that where the personal law or a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship."

I think it should not be because we are going in for a progressive measure and this is definitely a retrograde step and it should not have been allowed in this Bill.

With regard to the conditions that have been imposed upon the parties to get

married, I know some Members said that it should be 90 days instead of 30 days. I think Mr. Man Singh Varma said that. But I think the real purpose behind any marriage should be that it should be easily contracted and it should be possible to dissolve it as easily. I think as time goes on marriages are contracted at a very advanced age. It is not only in the case of your marriage with a foreigner, but even if you marry a person from your own community at an advanced age there are greater chances of the marriage not coming off and parties not being able to adapt each other to themselves.

श्री मानसिंह वर्मा : आप शादी को खिलौना बनाना चाहते हैं कि जब चाहा तब बनाया और जब चाहा तब तोड़ दिया। आप अपना बहनों का भी खयाल कीजिये।

SHRIMATI SHAKUNTALA PARAJPYE : You will excuse me if I give my own example. I know I was married to a foreigner. I was married in January 1935 and in January 1937 I got my divorce. इसको खिलौना कहिये साहब। But when we came to know that we could not get on by mutual consent, without illwill we were able to dissolve our marriage. That happened in Switzerland. I am glad to say that the Swiss law is such a simple law that it could be done. That is what I would like to see happen in our country also. I do not say that it should be dissolved. If you want to be married for seven *Jinnas* you are welcome. But for people who cannot pull on together, I think it is hell to keep them together. The amendment that I moved to the Special Marriage Act was, I am glad to say, accepted by the Law Minister. Every session I had to contact the Minister of Parliamentary Affairs and ask him to get that legislation through in the other House; otherwise it may lapse, Heaven knows. That could be borne in mind. That amendment was accepted and the period of waiting after marriage, before a petition could be written for the dissolution of the marriage, was reduced to a year. When that is accepted in the Special Marriage Act, it will also apply to this Act and it will be incorporated in this Act also. I agree with some Members who said that these two measures should have been printed together because I have had to get the other Act every time to verify whatever was referred to in the Special Marriage Act. I do not know why we save on trivial

things while we are spending lavishly on other things. I support this Bill and I hope the House will accept it. But I must make this point that social legislation should be given a certain amount of time in the business of the House. I find that this legislation has been put off and put off. We do not get any social legislation through or discuss any social legislation in this House. It has always got a step-motherly treatment and I hope Members also will exercise their rights to demand social legislation. After all, unless we progress socially, we are not going to be better citizens and better countrymen.

—Thank you.

SHRI MOHAMMED YUNUS SALEEM : Mr. Vice-Chairman, Sir, I am indeed very much grateful to the hon. Members who have supported the Bill. Some hon. Members have made certain suggestions. I will try to deal with them briefly.

Mr. Man Singh Varma pleaded for a uniform marriage law. It is well known that under article 44 of the Constitution of India such a legislation is contemplated. But, for having a uniform law of this type, public opinion has got to be prepared and in course of time we shall be able to introduce legislation in this regard. As I have said in my opening speech, this Bill is complementary to the Special Marriage Act in this sense that the Bill is another step in the direction of a uniform code. Mr. Varma also made a suggestion that it should be made a condition that parties to a marriage should be free from venereal disease, etc. This matter was raised before the Joint Committee also and consideration was given to it. But since this type of provision did not find a place in the Indian Marriage Act, it was decided unanimously that provision of this type should not also be incorporated in the present Bill.

As regards clause 7, a suggestion was made that notice should be sent to the guardians. I may submit that rules may be provided for this purpose under clause 7(b) to achieve this result.

My friend, Mr. Mallikarjunudu, made certain suggestions. He made the point that the whole Bill, particularly clause 18 is referential. This refers to a question of form. In the present case, however, such a criticism does not appear to be valid because the proposed legislation is intended to be complementary to the



[Shri Mohammed Yunus Saleem]

Special Marriage Act and the two laws have to be operated together.

As regards his other suggestion that clause 11 of the Bill should be amended so as to empower the Marriage Officer to refuse to solemnise marriages of diplomatic officers and Defence personnel with foreigners, I must submit that there are rules to that effect. If any person is an officer or an employee in an embassy or in a foreign office, he is not permitted to solemnise his marriage to a foreigner unless he seeks prior permission of the Government. Therefore, he will not be able to solemnize the marriage in a foreign land ordinarily unless he obtains such permission. In the same manner there are rules and orders—this matter was also considered by the Joint Committee—in the Defence Ministry also that prior permission of the competent authority is necessary for the marriage of a member of the Forces with a foreigner. If any officer of the Defence Services contravenes these rules, he will be losing his job; he will no more be a member of the Defence Services. Therefore, a provision to that effect is not necessary in this Bill.

Shri Balachandra Menon pointed out that in Clause 21 the punishment for contravention has been provided as three years while in clause 22, for an officer, the punishment will be only for a year. But he forgets that if the registration officer solemnises a marriage contrary to the provision of the Act, he will not only be liable to be punished to undergo imprisonment for one year, but he will also have to lose his job. Therefore, he is getting this punishment also. I think with that reply he will feel satisfied that adequate punishment has been provided for an officer who contravenes the provisions of the Act.

SHRI A. D. MANI (Madhya Pradesh) : Do not punish people unnecessarily.

SHRI MOHAMMED YUNUS SALEEM : Nobody will be punished unnecessarily unless he contravenes the provisions of the Act and the offence is proved against him.

Mr. Tankha made certain suggestions, particularly with regard to clause 4. In the Joint Committee his suggestions

were considered—he was also a Member of the Joint Committee—and a proviso to clause 4 regarding custom was added by the Joint Committee to be in conformity with section 4 of the Special Marriage Act, 1954. I hope he remembers this; when this discussion took place, he was present there. He also asked why the number of witnesses is three. I would remind him that this question was also discussed. This is in conformity with the Special Marriage Act, 1954, which also provides for three witnesses. Therefore, this objection also does not hold good.

Regarding the other objections which were raised, they were also discussed and considered by the Members of the Joint Committee and after exhaustive discussion this Report of the Joint Committee was submitted. I hope the Bill will be passed by the House.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

“That the Bill to make provision relating to the marriages of citizens of India outside India, as reported by the Joint Committee of the Houses, be taken into consideration.”

*The motion was adopted.*

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : We shall now take up clause by clause consideration.

*Clauses 2 to 30 were added to the Bill.*

*The First, the Second and the Third Schedules were added to the Bill.*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

SHRI MOHAMMED YUNUS SALEEM : Sir, I move :

“That the Bill be passed.”

*The question was put and the motion was adopted.*

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at two minutes past five of the clock till eleven of the clock on Wednesday, the 30th July, 1969.