

THE DEPUTY CHAIRMAN: The Law Minister is here and if he wants to say anything he is welcome to do so.

THE MINISTER OF LAW (SHRI P. GOVINDA MENON) I have nothing to say except that the Bill, and you will see, has nothing to do with any special occasion and Parliament has got power to legislate on the subject of this Bill. This is a Bill which seeks to empower the Government to issue coins and there is nothing wrong in it.

SHRI SUNDAR SINGH BHANDARI : There you see, Madam, now that the Law Minister has given quite an altogether different version...

THE DEPUTY CHAIRMAN : You cannot speak again and again. You may say whatever you want to say in a minute or so.

3 P. M.

श्री सुन्दर सिंह भंडारी : मैडम, मेरा निवेदन है कि मैंने जिस शंका की तरफ संकेत किया कि शायद सौ रुपये तक की साधारण करेंसी के सिक्के जारी करने का अधिकार सरकार लेना चाहती है और इसमें कमोमोशन या स्पेशल आकेज्शन का बन्धन अपने ऊपर लागू करने की उसकी मंशा नहीं है और इसीलिये मेरा यह कहना है कि एम्स एंड आबजक्ट्स के बिल्कुल विपरीत है, फाइनेंशल मेमोरेंडम के बिल्कुल विपरीत यह संशोधन लाया जा रहा है, जो किसी भी प्रकार से संसदीय परम्परा के अनुकूल नहीं है।

THE DEPUTY CHAIRMAN : The question is :

"That at page 1, for lines 7 to 10, the following be inserted, namely :

'(2) In section 6 of the Indian Coinage Act, 1906 (hereinafter referred to as the principal Act), after the words "of such denominations not higher than one rupee" the words "and of such denominations not higher than one hundred rupees on special occasions only" shall be inserted.'

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

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

SHRI JAGANNATH PAHADIA : Madam, I move :

"That the Bill be passed."

The question was put and the motion was adopted.

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THE SPECIAL MARRIAGE (AMENDMENT) BILL, 1966

THE MINISTER OF LAW (SHRI P. GOVINDA MENON) : Madam, I move:

"That the Bill further to amend the Special Marriage Act, 1954, be taken into consideration."

This is a very simple Bill. I would draw the attention of the House to section 27 of the Special Marriage Act which lays down the grounds on which a decree for divorce may be granted by a court. There are several grounds given but this Bill does not seek to touch grounds (a) to (h). There is no lacuna found in those grounds. But with respect to grounds (i) and (j) some difficulty has arisen. Sub-clause (i) and (j) reads as follows. A petitioner can have a suit for divorce if he or she :—

"has not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against the respondent; or

(j) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent;"

The clauses, as they are, place the position like this. A petitioner in a matter for judicial separation and a petitioner in a matter for restitution of conjugal rights, after a period of two years, if these conditions are there, may sue for divorce, but at the same time the same right is not available to the respondent. What has happened on many occasions is this. A petitioner gets an order for restitution of conjugal rights or for judicial separation and then the petitioner it may be the wife in certain cases or the husband in certain other cases sits upon that order without doing anything.

[Shri P. Govinda Menon]

The respondent, all along, is debarred from marrying a second time even though a period of two years would have elapsed. This follows on account of the way in which the sections have been enacted. Now, it stands to reason that if there is an order for judicial separation or an order for restitution of conjugal rights and if cohabitation is not resumed, in the first instance, then the right of suing for divorce should be available to both the spouses. It is in order to effectuate this objective that this amendment is being introduced. With respect to a similar provision in the Hindu Marriage Act an amendment was carried in this House and in the other House and it has become law. It stands to reason that a similar amendment should be passed with respect to the provisions in the Special Marriage Act also. That is the only object of this amendment.

The question was proposed.

SHRI S. K. VAISHAMPAYEN (Maharashtra): Madam Deputy Chairman, I support the Bill moved by the hon. Law Minister. As has been explained by him the object of the Bill is very simple. It removes a lacuna or a defect that is there in the original Special Marriage Act, 1954. I need not dilate upon it. As has been explained by the hon. Law Minister the lacuna is that the party who goes in for a decree from the court for judicial separation alone has the right to apply for divorce and this right is not made available to the other party against whom the decree for judicial separation has been obtained. So it is a simple Bill and also a meaningful one. It puts both the parties on the same footing and does justice to both the parties who are affected. From this point of view it is a welcome Bill.

As a result of this I find that there is an awareness in the Law Ministry or the Minister of Law is aware that there is some sort of deficiency in certain laws. I wish he applied his mind to similar deficiencies in a number of other laws which relate to social reform. That is a suggestion which I would like to submit for the consideration of the hon. Law Minister. I think there are about six hundred laws on the Statute Book. It may be more or it may be less. We have been going on passing laws, but we have never made any effort to review them to see what deficiencies are there, whether the provisions are adequate or not according to the new situation and new conditions, whether the expressions are vague or whether they need clarification.....

SHRI AKBAR ALI KHAN (Andhra Pradesh) : The Law Commission is dealing with it.

SHRI S. K. VAISHAMPAYEN : I wish speedier and more serious attention should be given to this particular question and more so to laws relating to social reforms. For instance, there is a law restricting child marriage. This law is on the Statute Book, but it is not being implemented. The reasons for its non-implementation should be found out. It should be found out whether the provisions are adequate or not. Research should be made on the Act which is there. The object of the Act which is there is laudable. It is to take our society forward on progressive lines. If such an Act is not being implemented, we should find out the reasons and we should find out which are the provisions due to which the Government or the administration is not able to Act. As a result, as far as my information goes, today in our country despite the Child Marriages Prevention Act 20 to 30 per cent of the marriages take place between a boy and a girl who are below 14, or even a boy and a girl who are even of ten years or eight years of age. This is something which was never meant by our law-makers. They wanted to prevent all this. They wanted to develop ours as a modern society and for other different reasons a healthier type of society. But this very object stands defeated because there must be some provisions which are not adequate, whose expressions are vague. Similarly I will give another example about the Dowry Prevention Act. Today dowry is prohibited throughout the country. It is a very good measure. But the purpose of the Act stands defeated because there are certain lacunae, there are certain provisions which are very vague, there are certain expressions which are very vague, due to which the Government or the administration cannot act and take notice of this particular Act. That is why today we find dowry prevalent in a different form, in a new form. The very purpose, the very object of this Act is defeated. Therefore, my humble submission to the Law Minister is that so far as the laws relating to social reforms are concerned—up to now we have given serious attention to social reforms and we had so many laws, but we have not implemented them in the spirit in which they should be implemented. As a result what we find is that our people are still steeped in ignorance, in certain prejudices, due to which they cannot come out. Today we find there is some sort of resistance to family planning, whereas if we had implemented some of these laws I think this resistance would have gone.

SHRI BRAHMANANDA PANDA (Orissa) : How many children have you?

SHRI S. K. VAISHAMPAYEN : I have got three children according to the norms laid down by the Government.

श्री० ए० जी० कुलकर्णी (महाराष्ट्र) : सिर्फ दो बच्चे हों। दो बच्चों का स्टेण्डर्ड है।

SHRI S. K. VAISHAMPAYEN : I have got three children according to the standard norm for family laid down by the Government.

SHRI A. G. KULKARNI : Please stop there now.

SHRI S. K. VAISHAMPAYEN : So my humble submission is that the Law Minister should review laws relating to social reforms and see that those provisions which come in the way of the implementation of these Acts are removed. Certain expressions are vague due to which the administration cannot act. They should be made more specific just as they have made specific this particular provision. In that way they can see that all laws relating to social reforms are put into practice and our society is led on progressive lines.

In this connection the Law Minister has already suggested that whatever provision has been made in this Bill has also been made in the Hindu Marriage Act of 1955. Of course I am not a legal pandit, I cannot say very authoritatively anything about it. Since that amendment is there, the hardship that was being caused to one party has been removed just as it has been removed now through this Bill. If that provision is there, I have nothing to say. So far as my information goes, section 488 of the Criminal Procedure Code comes in the way. Therefore, there is still need for amending the Hindu Marriage Act that is there.

I would give another submission before the Law Minister. If there is some such thing that is coming in the way of the other party being put to certain hardship as a result of a decree obtained for judicial separation, that hardship should also be removed for such marriages which have been solemnised under the Hindu Marriage Act.

With these words, I support this Bill.

श्री बी० एन० मंडल (बिहार) : उपाध्यक्ष महोदय, जो संशोधन बिल इस हाउस के सामने रखा गया है, उसके संबंध में मुझे विशेष कुछ कहना नहीं है, सरकार जो इस संबंध में करना चाहती है वह करे। लेकिन जो बात

मेरे दिमाग को परेशानी कर रही है, उसको मैं सदन के और सरकार के सामने रखना चाहता हूँ। हिन्दुस्तान का अभी जो समाज है उसमें मैरियेज के बारे में अनेक तरह के लाज हैं। कोई मोहमडन ला के जरिये, कोई हिन्दु ला के जरिये गवर्न होता है। हिन्दु ला में बीते दिनों कुछ अमेन्डमेंट भी हुआ है लेकिन जो जनरल डेवलपमेंट अभी तक समाज का हुआ है, हिन्दु राज्य के जमाने में मुसलमान राजाओं के समय में समाज में जो परिवर्तन हुआ है और फिर अंग्रेजों के समय में जो परिवर्तन हुआ है और अभी जो परिवर्तन हो रहा है और संसार भर में जो साइन्स वगैरह का भी परिवर्तन हुआ है, उन सारे परिवर्तनों को सामने रख कर इस मैरियेज को प्राबलम पर फिर से सोच विचार करने की जरूरत है और कोई एक रास्ता, कोई एक कानून उस संबंध में बनाने की जरूरत है। क्योंकि समाज में मैं एक एनोमेली देखता हूँ। कोई एक तो आदमी शादी कर लेता है लेकिन उस आदमी को अगर रोजगार दिल्ली में मिल जाता है तो उसको दिल्ली में रहना पड़ता है और उसकी स्त्री अपने घर में बंदी रहती है। इस ढंग से देखने पर तो यह प्रतीत होता है कि नैचुरल अर्ज जिसकी पूर्ति के लिये मैरियेज इन्स्टीट्यूशन खड़ा हुआ है, उस इन्स्टीट्यूशन पर फिर से सोचने और समझने की जरूरत है। जो इन्स्टीट्यूशन अब तक हम लोग कायम कर चुके हैं, वह वर्तमान समाज का जो विकास हुआ है उसमें फिर नहीं बैठता है। मोहमडन ला में एक प्रकार का मैरिज है जिसको मुताह कहते हैं, जिसमें एक दिन के लिये भी शादी हो सकती है, दो दिन के लिये भी शादी हो सकती है, दो महीने के लिये हो सकती है . . .

उपसभापति : यह तो स्पेशल मैरियेज है।

श्री बी० एन० मंडल : मेरे कहने का यही मतलब है कि एक कांप्रिहेन्सिव मैरिज ला बनना चाहिये और उस मैरिज ला में जो समाज का विकास हो चुका है और जिस परिस्थिति में हम लोग काम कर रहे हैं इन

[श्री बी०एन०मंडल]

दोनों की मिलावट से कौन सा अच्छा मैरियोज का इन्स्टीट्यूशन हम खड़ा कर सकते हैं, इस पर हम सरकार का ध्यान खींचना चाहते हैं।

श्री पीताम्बर दास (उत्तर प्रदेश) : इस बिल के संबंध में ला मिनिस्टर साहब की जो स्पीच हुई थी, उसको मैं बड़े गौर से सुन रहा था। जो कारण उन्होंने दिये हैं वह मन को लगने वाले कारण हैं। पहले हमने विवाह सम्बन्ध विच्छेद के बारे में जो प्राविजन्स बनाये थे, उनका परिणाम यह हुआ कि जुबीशल सपरे-शन और रेस्टीट्यूशन आफ कान्जुगल राइट्स के अधिकार प्राप्त करने वाले पक्ष के हाथ में इतनी आजादी रही कि दूसरे पक्ष को वह परेशान कर सके यह बात न्याय संगत नहीं है। इस एमेंडिंग बिल के द्वारा उसी दिक्कत को दूर करने की कोशिश की गई है। जब सम्बन्ध विच्छेद का सवाल आया ही है तो दोनों पक्षों को समान अधिकार होने चाहियें। यह समझ में आने वाली बात है, इसलिये इस बिल का मैं स्वागत करता हूं। बहुत आवश्यकता थी कि इन एमेंडिंग प्राविजन्स को लाया जाय। लेकिन इस अवसर का उपयोग मैं एक और बात कहने के लिये करना चाहता हूं। हमारे देश की परम्पराओं में तो विच्छेद का सवाल कभी आता नहीं था।

हमारे यहां ऐसे उदाहरण मौजूद हैं, जहां स्वयं स्त्री ने यह इच्छा प्रकट की कि अपने पति के साथ उसका जन्म जन्मान्तर तक पति और पत्नी का नाता बना रहे और इस जन्म में तो छोड़ने का सवाल ही नहीं है। मैं इस सदन को याद दिला दूँ शिव और पार्वती की उस कथा को जिसमें शिवजी ने पार्वती जी से प्रसन्न होकर कुछ वरदान मांगने के लिए कहा था। तब पार्वती जी ने कहा कि आपके साथ रहने का मुझे सौभाग्य प्राप्त हुआ है, तो वरदान की अब क्या आवश्यकता है। परन्तु शिवजी ने कहा कि आज कुछ अवश्य मांगों, क्योंकि आज हम बहुत प्रसन्न हैं। तो पार्वती जी ने कहा, अच्छा, अगर वरदान देना है तो यह वरदान दीजिये कि मेरा और

आपका जन्म जन्मान्तर में भी पति और पत्नी के रूप में नाता बना रहे। यहां पर मैं पार्वती जी की बुद्धिमता की प्रशंसा करूंगा कि उन्होंने यह साफ नहीं किया कि पति कौन बने और पत्नी कौन बने। उन्होंने केवल नाता मांगा। लेकिन ये परम्पराएं अब नहीं रही। जब हमने संबंध विच्छेद का कानून बनाया तो यह कह कर बनाया है कि शायद स्त्री पर ज्यादाती हो रही है कि उसको सदा के लिए पति के साथ बांध दिया जाय। इस विवाह संबंध से छुटने का कोई प्राविजन होना चाहिये।

मैं इस लम्बी बहस में नहीं जाता हूं कि यह अच्छा हुआ या बुरा हुआ। मैं केवल इतनी बात कहना चाहता हूं कि जब हमने परम्परा को छोड़ कर इस पद्धति को अपना ही लिया है और इस संबंध में कानून भी बना लिये हैं, तो हमारे देश में बमने वाला जो सारा समाज है, उसके ऊपर समान रूप से इस तरह का कानून क्यों नहीं लागू होता है। इस बारे में यह नीति नहीं होनी चाहिये कि उनके लिए दूसरा कानून है क्योंकि उनकी दूसरी उपासना पद्धति है। अगर कोई दूसरी प्रकार से उपासना करता है, तो उसके लिए अलग प्रकार का कानून लागू किया जाता है यह उचित मालूम नहीं देता है। अपनी परम्पराओं को मनुष्यता के नाम पर, इन दी नेम आफ ह्यूमैनिटी अगर तिलांजलि देकर कुछ जब अधिकार देने का प्रयत्न किया गया है समाज में तो तर्जें इबादत के आधार पर वह अधिकार समाज के एक वर्ग को दे देना और दूसरे को न देना, मैं यह ज्यादाती समझता हूं। इसलिए इस अवसर पर ला मिनिस्टर साहब से आपके द्वारा मैं यह अपील करना चाहता हूं कि we should have a uniform civil code which should apply equally to all the citizens of India irrespective of what their method of worship is.

SHRI G. R. PATIL (Maharashtra) : Madam Deputy Chairman, I rise to support the Bill with a few observations. At the outset I wholeheartedly congratulate the Law Minister for bringing forward

this legislation which is removing an injustice that was being done after the passing of this Special Marriage Act. In the case of a petitioner who has obtained a decree for the restitution of conjugal rights, the petitioner alone, even after a period of two years, if the conjugal rights are not restituted, can file a suit for divorce. Even though she is the respondent and even if she does not commit any mistake, she does not get any right or she has no right under the old or the previous Act. Therefore, to remove this anomaly and injustice this legislation has been brought forward.

While supporting the Bill, I may draw the attention of the hon. Law Minister to a glaring defect that may be there, not under this Act but as far as the Special Marriage Act is concerned and also the Act relating to the Hindus which has been passed in the year 1956 is concerned, I think under Section 488 of the Criminal Procedure Code which was enacted some 70 years ago and which embodies the provision to the effect that a married woman is entitled to have a maintenance allowance and also have a separate living. Why I am bringing this to the notice of the hon. Law Minister is this. Though there may not be a large number of cases to that effect, after the passing of the Hindu Marriage Act, 1956, I do not find why this Section 488 of the Criminal Procedure Code should be allowed to remain on the Statute Book as it is. In fact, under that section, if a married woman gets an order from the court, she is entitled to get a maintenance allowance no doubt, but also a right to live separately from the husband. And if that is still to continue, then it will mean that she need not obtain any decree of judicial separation and without obtaining a decree for judicial separation, she can live separately.

SHRI B. D. KHOBARAGADE : That can be possible only in certain circumstances.

SHRI G. R. PATIL : There are circumstances. And secondly, she can also claim a good amount in the name of maintenance. And in spite of all this, the husband will be debarred from bringing any suit for divorce against this woman. So, I personally see that as far as Section 488 is concerned, there are not so many cases. But at least taking into consideration the passing of the Hindu Marriage Act, 1956, it should also be amended and a provision should be made therein to the effect that if there has been no resumption of cohabitation as between the parties to the mar-

riage for a period of two years or upwards after the passing of a decree for separate maintenance under Section 488 of the Criminal Procedure Code.

Therefore, while supporting this Bill, I would also urge upon the Law Minister kindly to consider this aspect of the matter also.

I have nothing more to add to this. But by way of commending what my hon. friend just now said, I would say about passing separate legislations for separate communities in this country that the time has come for this country to consider whether there can be a uniform code of civil laws for all the citizens. In fact, we have different laws for the same citizens. Because of that, a very anomalous position is also being caused in our country. I feel that it is high time; when the country is marching ahead and the ideas of equality and also of socialism and opportunities in all the fields are being advocated, I do not know why certain sections of the community be not allowed to have all these opportunities in this country.

Thank you.

THE DEPUTY CHAIRMAN : Mrs. Paranjpye.

SHRIMATI SHAKUNTALA PARANJPYE (Nominated) : Madam Deputy Chairman...

SHRI BRAHMANANDA PANDA : Madam, I have a very radical suggestion. I am not speaking. I will take only two minutes.

THE DEPUTY CHAIRMAN : Submission you want to make? On what?

SHRI BRAHMANANDA PANDA : On this.

THE DEPUTY CHAIRMAN : On what Mr. Patil said ?

SHRI BRAHMANANDA PANDA : On the whole thing, on the Bill itself.

THE DEPUTY CHAIRMAN : All right. Just two minutes.

SHRI BRAHMANANDA PANDA : All married people know that marriage is light and shadow affair. Those who have separated, why should we not give them a chance to get united again? Why keep them apart always? With your permission, I am quoting one of our best poets, Stephen Spender :

[Shri Brahmananda Panda]

Our harsh tongues of today would
run in tears,

Back to this buried NOW become the
past,

In the cool shades we would unclasp
our fears,

Transform to love at last.

Therefore, I request the Minister to withdraw the Bill and circulate this couplet to those divorced people who are having a separation document in their hands.

SHRI B. D. KHOBARAGADE : For information, will the hon. Member say whether this particular couplet had any effect on any couple?

SHRI BRAHMANANDA PANDA : It is for the House to decide.

THE DEPUTY CHAIRMAN : You can give an amendment.

Yes, Mrs. Paranjpye.

SHRIMATI SHAKUNTALA PARANJPYE : Madam, I rise to support the Bill and I am very glad to see that the injustice that was prevalent is being sought to be removed and the Government is going to do it. However, several cases have come to my notice which had not all come under the Special Marriage Act. But as they apply to marriage, I crave your goodness to let me talk about it.

One case which was recently brought to my notice was that of a person from Bengal who is separated from his wife for nine years. I believe it was she who brought some complaint against him, and she was granted a maintenance allowance, as mentioned by Mr. Patil just now. And for nine years she has been living separately. She will not go back to her husband, and this husband now is deprived of the right of having a married life, of having children and all that. Now he is the only son in his family. This is really a case which has gone to my heart. They will come under the Hindu Marriages Act because he is married according to the Hindu Marriage Act. I feel it is not only after judicial separation that it should be made possible for the other party to ask for divorce, but in all cases where maintenance is being paid by the husband he should be allowed to sue for divorce.

I am bringing my amendment. I do not know if you are going to accept it. But I am going to make the point right now in case you rule it out of order. At present the law makes provision for two

years of judicial separation before a divorce can be applied for. I feel, Madam, that in this progressive or deteriorating state of society two years is a little too long a period because people who get married especially under the Special Marriage Act are already of an advanced age. After their having entered the wedlock, if they find that they cannot pull on a certain time is wasted in trying to manage to live together. When they find that it cannot be done, they apply for judicial separation and judicial separation is granted. Now they have to wait for two years before either of them can apply for divorce. I think this is too big a period especially in the case of girls. A girl under the Special Marriage Act gets married at the age, say, of 30 or 32 years. Then after some time they find that they cannot pull on. She gets judicial separation and after two years she applied for divorce. She is over 35 by the time she gets divorce. So I beg of you, Madam, that 35 years is a fairly advanced age in the case of girls, and I think these two years should be reduced to one year. It will make it easier for the girl. I do not mind the man also having to wait for one year. I hope you will rule the amendment that I have sent it in order. I do not propose to talk on the amendment any more. But this is the thing that ought to be taken into consideration.

Divorce, I think, should be made easy and not difficult because people do not want to go in for marriage divorce unnecessarily. It is not like going to the cinema and coming out of it. People marry and put in every effort to make it a success and when they cannot make it a success, it is really unjust and hard on them to make it difficult for them to separate amicably. Thank you.

SHRI B. D. KHOBARAGADE : Madam Deputy Chairman, I support the Bill. As pointed out by the hon'ble Minister and as mentioned in the Statement of Objects and Reasons the hon'ble Minister wants to remove the hardship that is caused to the party against whom a decree has been passed for judicial separation or for restitution of conjugal rights.

Madam, just now hon'ble Member Mr. Pitamber Das referred to the mythological incident of Shankar-Parvati and he said that divorce was neither prevalent nor welcome in the Hindu society. Perhaps that might have been the position in the past. But he should have also drawn attention to the fact that many women were made to suffer because of such laws. Before the Hindu Marriage Act was passed

a man could marry any number of wives and he could discard any one of them whom he did not like, and ultimately the wife had to suffer.

SHRI PITAMBER DAS : About whom it is said that they suffered, it were they who insisted upon living together as husband and wife—not only in this life but even after they were reborn.

SHRI B. D. KHOBARAGADE : I think you are not in favour of divorce. Now we want to bring the man and the woman on the same level. If a man could enjoy married life by discarding his wife, we want the woman also to get legal divorce from her husband to enable her to enjoy a married life again if she wants to.

Madam, the hon'ble Minister has mentioned that he wants to remove the hardship. But by the present Bill I think complete hardship will not be removed. As pointed out by Shrimati Shakuntala Paranjpye, the hardship will still be there. If you go through the provisions of the Act you will find that if a husband or wife wants to get divorce, he or she will be in a position to get divorce after seven or eight years, not earlier than that. If they cannot live amicably it should be because of a dispute which must have started earlier. Now they are living separately. Some of the provisions say that even the petition for judicial separation or for restitution of conjugal rights cannot be presented to the court until and unless a time of three years has elapsed. And after that time has elapsed, litigation would take two or three years more. If you want to present the petition for judicial separation you have to wait for three years. Then you present the petition. The litigation may take one or two years. The litigants will go to the High Court and in that case it may take three or four years. If you get a decree passed for restitution of conjugal rights, again you have to wait for two years and again face litigation for getting the divorce. Thus the whole procedure involved takes 8 to 10 years. Do you mean to say that the man and the woman should be forcibly separated for 8 to 10 years ?

Madam, I have known quite a few cases of persons who under law could not get legal divorce. But within this period the couple could not live together. The husband living in his home and the wife in her own home. Ultimately in some cases some *via media* was found out. In absence of any provision under law to get divorce the husband and wife agreed to get it by circumventing law. Husband or wife

was asked to present a petition for divorce and the second party was asked not to appear in the court, and there was an *ex-parte* decree of divorce which was not challenged by the other party. So by such mutual consent they used to circumvent the law and got the decree of divorce. It means that there are certain difficulties even today. Those who find it difficult to get divorce circumvent the law and get an *ex-parte* decree. Therefore, what is the harm if we liberalise the provision? If the husband and the wife mutually agree that they should have a divorce, let them be granted divorce and let there be the necessary provision in the law.

Madam, some people might argue that making this liberal provision in law there would be more and more divorces in the country and married life will be endangered. I do not agree with this point of view. In certain communities in India, Madam, divorce by mutual consent is allowed. In spite of this I do not think there are many divorces; perhaps the number of divorce may be one in a thousand or one in ten thousand. We do not have cases like in America where the percentage of divorce is large. In America men and women marry in the morning, quarrel in the afternoon and divorce in the evening. We don't find such cases of divorce in India even among those communities where divorce by mutual consent is allowed. Therefore, if we liberalise the provisions regarding divorce I don't think there will be any encouragement to divorce in this country. But we will be in a position, as mentioned in this Bill by the honourable Minister, to remove the hardship that is suffered by husband and wife. Madam, I would like to refer to another question which has been raised in this House regarding having a uniform civil code. So far as I remember I think it is an enshrined principle in the Constitution of India that there should be a uniform civil code. But at the same time I would like to suggest that we should not make any haste in this matter. Among other religious communities the enlightened people are coming ahead. There is also rethinking among them on these issues. There are progressive people. There are quite a few people, educated and enlightened people, among Muslims who want to change their personal laws, who want their marriage laws to be changed, who want their inheritance laws to be changed, who want the equality of man and woman so far as marriage is concerned. We should encourage such progressive elements in

[Shri B. D. Khobaragade]

different communities, in different religions and when the progressive people in a particular community start an agitation and they start demanding that their personal laws should be changed, I think the day will not be very far when the Government will have to take notice of the progressive elements in those communities and the Government will have to change the personal laws. By changing these personal laws of different communities we will find that the personal laws of different religions—we have different laws for Hindus, different laws for Muslims and so on—after five or ten years, will be more or less similar. The disparity or the dissimilarity has been narrowed down and if it is narrowed down to the minimum extent possible, then we can have one uniform code in India. It is a question of time, may be five years, may be ten years. There is no doubt that this country is going to have a uniform civil code.

SHRI A. D. MANI (Madhya Pradesh) : Who told you that?

SHRI B. D. KHOBARAGADE : It is a question of time. It is my feeling. It is my opinion. There is no doubt, it will be there today or tomorrow. And therefore, we should not make haste and antagonize the minority communities. With these remarks, Madam, I welcome this Bill and I hope the honourable Minister will again take further steps to remove the hardship and make divorce as easy as possible.

SHRI BALACHANDRA MENON (Kerala) : Madam, this is a move in the right direction. I am glad to support it.

[THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) in the Chair]

After all, if a person gets a decree and yet is not prepared to have either restitution of conjugal rights or doesn't want to have divorce, he cannot inflict himself on the other party as long as he wants. This is a correct position and I am glad that this infliction should be ended. It is a very correct thing that the person who gets the decree should not be given the right to continue and demand that the other person against whom the decree has been got should not have the right to get a separation, if he or she wants. I am, therefore, glad that such a Bill has been brought out. But as has been pointed out, the period of two years is too much. It takes time, as has been pointed, five or six years to get a decree, and another two years more

means it will be too much of a period. I would, therefore, say that it should be six months or one year and nothing more than that. Two years is too much. I am not one of those who believe that our ancient people had such idealistic and irrational concept that man and woman even if they did not like each other remained together and wanted to be so tied up even after death as had been pointed out. Nothing like that. It was clear in a number of our *puranas* we have instances where the ancients had extra marital relationship for the sake of children. Those who didn't like to continue as husband and wife got separated also. There has been nothing like that. It is a question of how the family should be kept up. And, therefore, for the family to be kept up, for the children to be properly brought up, it is necessary that the parents should be together, that the parents should have a common purpose. When they differ, it is better they go out. There is no use forcing them. There were 'satees' previously. The poor "satees" were supposed to have burnt themselves on their husband's dead bodies. I am glad that at least now we are doing justice. For two years you are again trying to force the two unwilling to be together. That sort of thing should not be there. I, therefore, believe that this amending bill should be accepted. I would request that the period of two years may be changed and made one year and I would suggest that as far as possible we must see that law should be such that there should not be much of restrictions in such cases. Only when the parties are willing to remain together there is any need for them to continue; otherwise there will be difficulty. It has always been so. This is a Bill in line with the modern trend also. We have seen all along that there has been a feeling that after marriage the wife should be treated as an equal. In our country because of our old traditions and because of the very feudal concepts we continue to treat them as cattle and try to put as much difficulty as possible by refusing to grant them divorce and refusing to grant them cohabitation. So it is absolutely necessary that as early as possible they get the right to go out and when the two people cannot remain together the best thing is to have a separation. I, therefore, fully accept this Bill. But I would request that the period should be made one year.

SHRI N. PATRA (Orissa) : I support this Special Marriage (Amendment) Bill. This is a social piece of amendment to remove hardship caused to the parties even after the judicial separation. Judicial

separation is not the dissolution of marriage. Even in two years of separation, there are instances, we know, of husband and wife living together and messing together; but if there will be no cohabitation, how can you expect—some friend on the opposite was quoting about the example of Lord Siva and Parvathi of those bygone days; that was a heavenly world. Now we are living in a mortal world. We are human beings after all. Does he expect a woman to wait for more than two years if the husband never cares for her? Another friend also suggested not to think of separation or something like that to try that law is intensified or steps be taken that the marriage union is not given a good-bye. Can you expect any human being to tolerate these hardships? Therefore, I find in this amendment some progress. Somebody was suggesting a comprehensive bill without looking into the clauses of the Special Marriage Act itself. It is a comprehensive Bill. It is brought out for a comprehensive purpose. Before 1872 this Marriage Act was restricted to marriage only between the people of one and the same religion. But in 1954 when an amendment was brought, a lot of changes were effected. Under that Act, any two persons can marry irrespective of their religions. The 1954 Act provides the age-limits also—21 years for men and 18 years for women. And a provision for divorce on mutual consent was also made. Now this amendment has been brought forward for the simple purpose of removing a hardship. Instead of giving wholehearted support to this amendment, some Members have quoted the matrimonial relations of Lord Shiva and Parvati—Shiva offering some boon to Parvati and Parvati saying “let us live for ages together”, and so on. These things do not exist now. When there is a hardship, it should be removed. This is a progressive and comprehensive legislation. What better legislation can we think of this than this? I support it whole heartedly.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : Mr. A. P. Chatterjee.

SHRI BHUPESH GUPTA (West Bengal) : Mr. Vice-Chairman, our lady Members are here. Ask them to tell us what arrangement they would like to have, one year or two years.

SHRIMATI YASHODA REDDY (Andhra Pradesh) : We have left everything for men to decide. Especially a bachelor like Mr. Bhupesh Gupta will have better knowledge than all these people.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : I think Mr. Bhupesh Gupta can better settle it with ladies.

SHRI BHUPESH GUPTA : I am making a constructive suggestion. This is a social legislation and woman in our country have suffered....

SHRI B. T. KEMPARAJ (Mysore) : On a point of order, Mr. Vice-Chairman. The hon. Member is not in his seat and he has no right to speak from another seat.

SHRI BHUPESH GUPTA : Shrimati Yashoda Reddy is also not in her seat. We are observing equality. She has shifted there, I have shifted here...

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : No, no, I am not going to listen to you. Mr. Chatterjee.

SHRI A. P. CHATTERJEE (West Bengal) : Mr. Vice-Chairman, Sir, gone are those days of group marriages. You may be knowing, Sir, that in ancient days, there was that system of group marriages; that is to say, one tribal group married another tribal group; that is, a male of a particular group will consider himself married to any female of another group, and any female of a particular group will consider herself married to any male of another group. That was the system of group marriages which has been referred to by Engels in his famous work “Marriage, Family and Property”. But then, ultimately this system gave way to private marriages and Engels has himself said that it was mainly because of female pressure, i. e. each wanted to appropriate one particular male to herself....

SHRI LOKANATH MISRA (Orissa) : Did Engels say that?

SHRI A. P. CHATTERJEE : Well, Engels has not said in this fashion. But it was because of their pressure and because of a sort of social revolution on their part that ultimately the family became the unit of marriage, and not the group as it previously was. But then, though it began in a combination of one male and one female, ultimately it became a world of males....

SHRI LOKANATH MISRA : Was Engels a sexologist also?

SHRI A. P. CHATTERJEE : He was a sociologist, not sexologist. Mr. Misra seems to confuse sociology with sexology, but I may tell him that they are absolutely different sciences.

[Interruptions by Shri Bhupesh Gupta]

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : No, you should not speak from that seat. You better go to your seat.

SHRI A. P. CHATTERJEE : Ultimately it became a world of males, brutal males and domineering males. Of course, the world is fast changing and we may have to say that it is a world of domineering females and brutal females as against the docile males. That is a different question.

SHRI MULKA GOVINDA REDDY (Mysore) : We are seeing in India men being dominated by women.

SHRI A. P. CHATTERJEE : We are still in a world where the female suffers a kind of domination by the male. But that is not the question. The question before us is this, that as far as marital relations are concerned, they have to be made dependent on free will and consent, for what is marriage if consent and free will goes? If consent and free will and love between the couple goes away, then marriage becomes a bond and a prison house. Therefore, Mr. Vice-Chairman, it is all the more necessary that the right of divorce, in order that marriage may be made dependent on free will and consent, is given easily and more freely. I am supporting this Bill with the amendment of Mrs. Paranjpye and if the amendment is not accepted by the Government, even then I would support this Bill because one of its purposes is to make divorce a little easier. I am one of those who feel that the bond becomes easier to bear if either party to the bond knows that he or she can cancel the bond, break the bond, at any time he or she likes. If a person feels that the bond is eternal and everlasting, then that bond becomes really a bond of slavery. But if he or she knows that the bond will be there only so long as he or she wants it, then the bond becomes a bond of friendship and a bond of love. That is why it is necessary that divorce should be made easy.

Mr. Vice-Chairman, Sir, I must say with some amount of regret that even after 20 years of independence, even after so-called Hindu Code and the Special Marriage Act, divorce is not so easy as it is made to appear. If a husband or a wife wants to get a divorce, well, he or she will find insuperable obstacles because he or she cannot prove the various grounds which are given as the grounds for divorce. Even cruelty, as far as I know—I am speaking subject to correction—is not a ground for divorce. It is a ground for judicial separation, if I remember aright the Special

Marriage Act and the Hindu Marriage Act. That is the position. Now, after all it is a grave sociological problem, and this grave sociological problem must not be tinkered with. I may tell you, Mr. Vice-Chairman, that those of us who swear by the eternal verities of Hindu religion—with great respect to them—do not know the mind of even the simple rural folk. We know, for example, how simple rural folk, even illiterate women of the villages, flock to district courts in the different States for securing a divorce from their husbands. Similarly illiterate rural husbands flock to courts in order to get a divorce from their wives. So there is no use in talking of the eternal verities of the Hindu Sanatana Dharma and all that. It is really a sociological problem. It is not a religious problem. And persons who confuse a sociological problem with a religious problem do the greatest disservice to society. The sociological problem must be looked at separately from the religious problem.

4 P.M.

It is not a question of religion at all. Religion after all is a question of personal co-efficiency in regard to man's relations with a higher power. But I do not believe that there is a higher power at all; if somebody believes in it, let him pay his obeisance to that power. If you bring in the question of religion here, you are prostituting religion; it is not religion at all; religion has nothing to do with sociological relations between a man and a woman. Therefore the whole thing will have to be looked at separately from the question of religion. If you look at it from the point of view of sociology, many of your rigidities will immediately vanish, the rigidity of outlook which is standing in the way of greater flexibility of social relations. Therefore I will appeal to the Law Minister who seems to be rather a rational man that he will kindly look into the entire Hindu Code, the Hindu Marriage Act and the Special Marriage Act and see that the entire thing is rationalised. I do not understand one thing. If a couple marries under the Special Marriage Act, they can have divorce by mutual consent but under the Hindu Marriage Act that is not allowed. A person married under the Hindu law will have to have his marriage registered under the Special Marriage Act and go in for that paraphernalia before he can get a divorce by mutual consent. I do not know why actually this should be so. I think if the husband and wife feel that they cannot live together, they should be able to get divorce. Who is the State to bring them together? Why are you interested in keeping an unwilling husband and an unwilling wife together? If they want to

separate, why should they not separate? And, Mr. Vice-Chairman, sometimes it so happens that you cannot bring it under any of the grounds. Is it cruelty? No. Is it desertion? No. Is it foul disease? No. Well, if X thinks that it is difficult to live with Y, why can't a divorce be given in such a case by mutual consent? Therefore I am saying that divorce must be made more easy.

In this connection I can refer to socialist laws. I have looked at some of the marriage laws in the socialist countries. They have not given many reasons for divorce. They do not give these catena of grounds. They have a very simple clause 'sufficient cause or reason' and that will be a good ground for divorce. Of course it is left to the discretion of the courts. Suppose the couple says that they are intellectually incompatible, divorce may be given on that ground. Mr. Vice-Chairman, suppose a Congress Minister's wife for example becomes a Communist. Why can't she say "I am intellectually incompatible with my Minister-husband" and why can't she get a divorce? Or it can be the other way about. Therefore, Mr. Vice-Chairman, divorce should be made as easy as possible. It does not mean that when I propound this thesis, I am for marital licentiousness. Mr. Vice-Chairman, even in the socialist countries though divorce can be given for sufficient cause or reason, as I have been prompted by Mr. Balachandra Menon, the number of divorce cases is less in socialist countries than in the capitalist countries. If you look at statistics, you will find that the number of divorce cases or the percentage of divorce cases in socialist countries is much less than in such a Sanatan Dharma country like India. In India the percentage is everyday rising. Still it may not be so high in India. But look at the capitalist America. The divorce law there is quite strict but you will find that marital ties are so easily and often broken there, whereas in the socialist countries it is not so often and so easily done.

SHRI S. S. MARISWAMY (Madras) : Usually Mr. Chatterjee is well informed but unfortunately on this aspect he is rather ill-informed. I may tell him that in America divorce is very easy. There are places like Las Vegas and Reno. If the husband or the wife goes to Las Vegas and says that he or she cannot live together, then immediately a decree is granted, within a few days. There is another place called Reno where if one of the spouses goes and asks for divorce, it is immediately granted and then he or she can remarry.

SHRI A. P. CHATTERJEE: What I am submitting is that the marriage laws in America are strict in regard to divorce. Of course there may be some pockets. For example there is a pocket like Gretnagreen in Scotland where they may not be so strict. But Gretnagreen is not the entire Scotland or the entire England. Likewise there may be Gretnagreens in America. But the whole point is that there are strict marriage laws in America. And we have seen that wherever there are strict marriage laws, divorces are either concealed or open. Therefore in order to make the marriage bond a pure bond, a willing bond and a bond based on love and real friendship and mutual comradeship between the man and the woman, the divorce should be made easier. The Law Minister will therefore be good enough to consolidate all the laws so that there is no distinction made as it is there between the Hindu Marriage Act and the Special Marriage Act in regard to divorce. There should be a consolidated marriage law. That is what I am submitting. I am supporting this Bill from that point of view and, as has been pointed out by one of my predecessors, it is a move in the right direction. And I also support the amendment of Shrimati Paranjpye. Thank you.

SHRI B. T. KEMPARAJ : While supporting this Bill, I would say a few words. It is a happy thing that a Bill of this nature has been placed before this House by the Minister for which he deserves congratulation. The first point is, in so many cases it is our bitter experience that even though a decree for divorce was given, it was very difficult to execute it and on so many occasions, though the divorce decree was obtained by any one of the parties, the decree could not be executed because the other party could not be brought by force or by any other method. Therefore relief has to be given where the parties have separated themselves by a decree of judicial separation or by a decree of divorce. I am very much concerned with the way in which the Member from the Opposition Party spoke. His commencement of the speech was very curious and funny—tribal groups marry tribal groups. Tribes cannot marry another tribe. This is nothing but a fallacy and one is not in a position to know how marriage is conducted. Again he went to the extent of calling parties—brutal females and docile males. All these explanations need not be there. According to the principle of marriage, there is sanctity behind it. Whether the marriage is celebrated according to the Hindu Dharma or otherwise, marriage is a marriage. It is said that marriages are made in heaven. This w

[Shri B. T. Kemparaj]

cannot forget but at the same time due to the change of circumstances and due to the change of conditions, these Acts have been promulgated to see that easy living and easy separation is made possible.

Therefore it is necessary for us to think that wherever the parties are unwilling to live together, they should have a separate living. To that extent even the possibility of having a second marriage after divorce is there. One of the friends went to the extent of saying that a lady has got a preference to get maintenance under the Criminal Procedure Code. I submit that the provision in the Criminal Procedure Code is entirely different from that of the Special Marriage Act and the Hindu Marriage Act. My friend says that it is not possible to have divorce under the Hindu Marriage Act. If he were to go through the provisions of the Hindu Marriage Act, there is the provision there. All the provisions they can have under that Act. Therefore one thing which should have been made clear is how to execute the decree. That method of execution of the decree after obtaining the decree either for judicial separation or for divorce is not explained. For that it is high time that a procedure is laid down as to how these decrees may be executed because it is not possible to execute these decrees under the Civil Procedure Code. With these observations, I support the Bill.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Shri Varma. Only five minutes. We have already gone beyond the fixed time.

श्री निरंजन वर्मा (मध्य प्रदेश) : उप-सभाध्यक्ष, मैं इस बिल के विषय में जो अभी प्रस्तुत हुआ है, विवादास्पद न होते हुए भी उसके संबंध में कुछ बोलना चाहता हूँ। हमारे मित्र ने जो यह बिल प्रस्तुत किया है उसमें किसी बात का विरोध करने की यद्यपि आवश्यकता नहीं है, तब भी उनका ध्यान इस तरफ आकर्षित करूँगा कि हमारी सरकार जो कि बड़ी सिविलर सरकार है वह एक जाति के लिए, एक पक्ष के लिए सारी की सारी अच्छाइयाँ देने पर क्यों तुली हुई है। अगर यह बिल अच्छा है तो ऐसे बिल एक जाति विशेष के लिए ही क्यों लागू किये जाते हैं क्योंकि भारतवर्ष में प्रजातंत्र में रहने वाली सारी जातियाँ हैं, मारे धर्म वाले हैं, उन सब के

लिए यह कानून लागू क्यों नहीं किये जाते। इस देश में सब जातियों के लिए एक सिविल ऐक्ट समस्त मैरेज के बारे में जिसमें कि इस प्रकार की सुविधा हो क्यों नहीं लाया जाता है।

आपस में मनमुटाव हो जाय, उस हालत में किस तरह से डाइवोर्स देना चाहिये, इस प्रकार का अगर कोई कानून आता है तो हम उसका स्वागत करते हैं। हमारे मित्र जो लैफ्ट कम्प्युनिस्ट है, वामपंथी है, उन्होंने इस विषय में कुछ अपनी विचारधारा प्रदर्शित की और उसका उत्तर देना आवश्यक है। हमारे चटर्जी जी ने एक बात कही है कि ट्राइबल एरियाज में मैरेज का जो स्वरूप है उसको देखा जाय। वहाँ भी डाइवोर्स बहुत सस्ता है। हम उनकी एक बात का उत्तर देना चाहते हैं कि हम उस अवस्था से बहुत आगे बढ़ गये हैं। और उस अवस्था से आगे बढ़ते हुए एक नई व्यवस्था में पहुँच गये हैं। हमारे यहाँ पहले भी इस प्रकार के बहुत से विवाह हुआ करते थे। पहले असुर विवाह होते थे, राक्षस विवाह होते थे, पिशाच और गन्धर्व विवाह होते थे, लेकिन उस तरह के विवाहों को छोड़ना उचित समझा गया और उसके बाद अब सोसाइटी में एक ऊँची स्थिति आ गई है। यह स्थिति विवाह के रूप में पैदा हुई है।

बहुत से मित्रों का यह ख्याल है कि पहले डाइवोर्स की प्रथा नहीं थी। हमारे मित्र मेनन जी ने एक बात कही। उन्होंने कहा कि सनातन धर्म और हिन्दू धर्म में यह कल्पना है कि हमेशा हमेशा के लिए पति पत्नी का संबंध रहेगा। हम उनका ध्यान एक बात की तरफ आकर्षित करना चाहते हैं कि यह रोग कुछ भाइयों को हो गया है कि हिन्दुस्तान की अच्छाइयों की तरफ तो कभी ध्यान नहीं देंगे, अगर बाहर के देशों की कोई अच्छी बात हो तो उसकी तारीफ करेंगे। मैं अपने कम्प्युनिस्ट भाइयों से यह बात पूछता हूँ कि उन्होंने इस सदन में इस बात पर बल क्यों नहीं दिया कि जैसे लेनिन ने रूस में एक सिविल ला बनाया उसी तरह से हिन्दुस्तान

में एक सिविल ला क्यों नहीं बनाया जाता। इस तरह का सिविल ला हिन्दुओं, मुसलमानों, ईसाइयों और पारसियों के लिए बनाया जा सकता है और इस तरह की जो अच्छी अच्छी बातें हैं वे सब के लिए लाई जा सकती हैं। एक कानून में सब अच्छी बातों का संग्रह किया जा सकता है। लेकिन उन्होंने इस प्रकार की कोई बात नहीं कही।

हमारे मित्रों ने यह बात भी कही कि डाइवोर्स का कानून सस्ता होना चाहिये क्योंकि यह कानून अभी अभी आया है। हम इस बात का उत्तर देना चाहते हैं कि हमारे यहां मनु ने और दूसरे शास्त्रकारों ने डाइवोर्स की कैसी व्यवस्था होनी चाहिये, क्यों होना चाहिये, इन बातों के बारे में प्रारम्भ से ही बहुत कुछ लिखा है और इस चीज को हम बराबर मानते आ रहे हैं। हमारे यहां यह नहीं है कि डाइवोर्स नहीं हो सकता है। यह तो परिस्थिति पर निर्भर करता है अगर किसी स्त्री का पता 7 या 8 वर्ष तक नहीं चला और वह अज्ञातवाम में चली जाय, उसका कोई पता न चले, जैसा कि हमारी हिन्दू धर्म में है और इस संबंध में उसी आधार पर कानून बना भी है। तथा उसके बारे में सारी व्यवस्थाएं हैं। जो हिन्दू ला है वह संस्कृत शास्त्रों का ही अनुवाद है। हमारे यहां इन सब चीजों के बारे में व्यवस्था थी। यहां पर कुछ और बातें भी कहीं गई हैं लेकिन मैं उनका यहां पर जिक्र करना नहीं चाहता हूं क्योंकि मेरे पास समय कम है।

एक बात का मैं जिक्र जरूर करना चाहता हूं। हमारे मित्र ने कहा कि डाइवोर्स ईजी होना चाहिये। हम उनका ध्यान इस बात की ओर आकर्षित करते हैं कि हर एक देश की अलग अलग परम्पराएं हुआ करती हैं और हर एक देश की स्थिति अलग अलग हुआ करती है। क्या हम अपने देश को नेलसन का देश बनाना चाहते हैं जो कि ब्रिटेन का एक बड़ा सेनापति था। क्या आप इस देश को भोरों और तितलियों का देश बनाना चाहते हैं।

मैं एक बात और पूछना चाहता हूं। हमारे मित्र श्री चटर्जी एक एडवोकेट हैं और मैं उनसे यह जानना चाहता हूं कि वे बतलाये कि इंडियन पेनल कोड की 377 धारा अरब देशों में क्यों नहीं है? उसका कोई कारण होना चाहिये। उसका कारण है। अलग अलग देशों की अलग अलग परिपाटी होती है। हमारे देश में इन्स्टाईसिंग वीमन, किडनैपिंग वीमन, क्योंकि हम तो वकील हैं और यह जानते हैं कि स्त्री को अपने पोजेशन में रखने के बाद एक घंटे के अन्दर उसका बयान बदला जा सकता है। जिसके कब्जे में वह रहती है उसी के मुताबिक वह बयान देती है। इसलिए जो दो वर्ष की मियाद रखी गई है उससे पति और पत्नी के बीच में समझौते की भावना को बढ़ाने के लिए रखी गई है ताकि वे पति और पत्नी के रूप में रहने के लिए तैयार हो जायें। इस चीज में कोई बुराई नहीं है। लेकिन जिस क्षण मनमुटाव हो जाय, उस क्षण श्री चटर्जी के अनुसार डाइवोर्स दे दिया जाय, यह उचित मालूम नहीं देता है।

SHRI A. P. CHATTERJEE: May I ask a question? While there is no section 377 of the I. P. C. in the Arab World, will he also enlighten whether there is an offence under section 377 any longer in England after the Homosexuality Act there?

श्री निरंजन वर्मा: अलग अलग देशों के लिए अलग अलग कानून लागू होते हैं। तो क्या आप हमारे देश में ब्रिटेन और अरबों का कानून लाना चाहते हैं। इसलिए मैं यह निवेदन करना चाहता हूं कि डाइवोर्स के संबंध में बिल या रूल में जो दो वर्ष की मियाद रखी गई है वह सही है। क्या आप चाहते हैं कि एक दिन के अन्दर ही ज्युडिशियल सेपरेशन की आज्ञा दे दी जाय और इस तरह की दरखवास्त लेकर अदालत के पास पहुंचा जाय और उसको डाइवोर्स की आज्ञा दे दी जाय? ऐसी बात नहीं होनी चाहिये। इसमें जो दो वर्ष की मियाद रखी गई है वह इसलिए रखी गई है ताकि पति और पत्नी के बीच में मनमुटाव हो गया है

[श्री निरंजन वर्मा]

उसको दूर किया जा सके। इस बीच में उनके दिलों में गुड़विल आ सकती है और वे पति और पत्नी के रूप में रह सकते हैं। इसलिए हमारी बहन श्रीमती शकुंतला परांजपे ने दो वर्ष की जगह एक वर्ष रखा है और जिसके बारे में हमारे योग्य मित्र जोरों से समर्थन कर रहे हैं, उसका मैं विरोध करता हूँ। मैं यह निवेदन करना चाहता हूँ कि मूल में जो दो वर्ष की मियाद रखी गई है, उसी को ही रहने दिया जाना चाहिये। इसलिए मैं उसका समर्थन करता हूँ।

इसलिये हमारी बहन शकुंतला जी ने जो दो वर्ष की जगह एक वर्ष रखा है और अनेक मित्रों ने बड़े जोर शोर के साथ और ताकत के साथ जो एक वर्ष का अनुमोदा किया है, मैं उसका विरोध करता हूँ और जो मूल में दो वर्ष है वही रहना चाहिये और मैं उसी का समर्थन करता हूँ।

SHRI P. GOVINDA MENON : Mr. Vice-Chairman, I am extremely thankful to the large number of Members who had advanced very enlightened views on several aspects of marriage and divorce during this debate although I should say that most of those views had no bearing on the very narrow point which is covered by this amending Bill.

It was said by more than one Member that we should not have special enactments but there should be a common Code which would be applicable to all people. By and large it is correct but let me remind those Members that this Special Marriage Act is one such Code. It applies to all citizens of India irrespective of caste or community. It is an enabling legislation, no doubt, but still it is an Act under which any two citizens in India, man and woman, may get their marriage registered and their married life regulated and controlled. So this is one of the enactments which hon. Members should remember is a common Code. When reference to a common Code is made, I think what friends have in mind is the desirability of having personal laws which will govern all communities in India, throughout the country. That is no doubt a desirable objective, but may I remind Members of the long number of years

through which we had to work in Parliament to have even the Hindu Code Acts placed on the Statute Book in the years 1955 and 1956? That covers one community in India, the Hindus, who are a majority community. But even a great leader like Pandit Jawaharlal Nehru had to fight his way for several years before he could persuade Parliament and the country to accept the provisions contained in the various Hindu Code Acts.

SHRI PITAMBER DAS: Because they applied to one community alone.

SHRI P. GOVINDA MENON : That is not the reason why it was opposed. Let us face facts. The reason why it was opposed was that the orthodox Hindus did not like the provisions contained in the Hindu Marriage Act and in the Hindu Succession Act. Now, Sir, the Hindu Succession Act, for the first time, provided that daughters and sons of an individual shall have equal shares in the property left by their father. I consider that to be a great step forward in the evolution of personal laws in India. For years, for centuries, daughters were left without any right in the property of their fathers. But it would be news to hon. Members in this House that there have been persistent demands on me and on the Law Ministry, to amend that provision, from certain regions in India. From Haryana, Punjab and Himachal Pradesh have come requests that this particular provision under which equal rights have been given to daughters and sons in the property of their fathers should be changed. Now that is one extreme view. The other extreme view propounded by progressive friends in this House today is that, irrespective of community, everywhere in India, you should have a common Code for all people. My attempt would be to take a middle course under which we will not go to either extreme.

Now take the case of divorce. Mr. Chatterjee very vehemently advocated for a system under which there will be free divorce, which means divorce without any impediments; if husband and wife say that they shall separate, then they should separate. But at the same time it should not be forgotten that there are communities in India, enlightened groups of people who think that marriage is a sacrament.

SHRI A. P. CHATTERJEE : That theory is gone.

SHRI P. GOVINDA MENON : That is gone for you, but I know of several who think otherwise; take the Christians, particularly the Catholics who believe that

marriage is a sacrament. Can I make an inroad against their faith by a simple legislation before this House? Now, Sir, the Hindus also, particularly these who follow the *Smritis*, not, for example, Hindus such as I am, because in my community marriages and divorces were free, and we have not been the worse for it—I speak of the Marumakkattayam community, but by and large among the Hindus. . . .

SHRI A. P. CHATTERJEE : In your community the husbands go to the wives' houses.

SHRI P. GOVINDA MENON : Please do not revel in irrelevancies. Now, at this moment, by and large, the Hindus believe that among them also marriage is a sacrament. The Hindu Marriage Act passed in 1956, which provided for divorce among the Hindus, made an inroad into that belief, and to that extent modern society tried to approximate itself to new ideals in the world. It is easily said that divorce should be free, but in societies the world over, divorce is not made free, particularly in the interests of women, because the women in many countries still are economically dependent, and who would suffer by free divorce will be the women who will be left without support. I am not speaking of the women who are economically independent, they can afford to be divorces and still be not in trouble, but with respect to the large majority of women in our country—I would say 99 per cent of women in the country—free divorce will be a curse, and therefore I would be very reluctant to accept the plea for free divorce although the progressive views expressed here may be glamorous.

SHRI A. P. CHATTERJEE: Mr. Vice-Chairman, Sir, he is misquoting. We did not suggest free divorce, we only wanted that divorce be made easy.

SHRI P. GOVINDA MENON: I will be very reluctant to make divorce so easy, as has been recommended by Mr. Chatterjee. Also, as I said, none of these questions arises here.

This amendment is intended to remove an anomaly. In sub-sections (i) and (j) of section 27 there is an anomaly in that after a judicial separation is granted by a court it is not open to both parties to move for a divorce. It is just to get over that difficulty that this amendment has been introduced. Both parties should have the right and I am glad to note that every Member of the House who spoke has supported the essential view contained in this amending Bill.

Now, Sir, there is an amendment to this amendment and I am not inclined to be technical over this matter. It is for you to consider, Sir, whether it is in order under the Rules, under one of the Rules—I forget the number. Now there is a good deal of substance in that amendment which I am inclined to accept, and if you are. . . .

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : You mean Shrimati Shakuntala's amendment.

SHRI P. GOVINDA MENON : Yes. Now the reason is this, Sir. First of all please refer to sections 22 and 23. Section 22 speaks of suit for restitution of conjugal rights. Under the conditions prevailing in the country today it might take a few months, if not years. Even after a decree for restitution of conjugal rights is obtained it is open to move for judicial separation under the next section, section 23. That also may take some time. After the decrees are obtained, it is said that a period of two years should elapse before a decree for divorce could be prayed for under certain conditions and that proceeding also will under the present conditions in the country take some time in the courts. Now the principal reason why a period has been fixed is that in these matters of personal relations there should be a *locus paenitentiae* provided; that is to say, there should be provided a time within which the parties may have second thoughts. If mutual friends could settle the differences between the parties to bring them together some time should be allowed. That is the object of this provision. Now the suggestion is that it need not be two years but only one year. I have no objection to that.

SHRI K. P. MALLIKARJUNUDU (Andhra Pradesh) : May I seek one clarification? If I am not wrong, there is a Special Marriage Bill which has been referred to a Committee I believe and this entire question can be reviewed at. . . .

SHRIMATI SHAKUNTALA PARANJPYE : That is Foreign Marriage Bill.

SHRI K. P. MALLIKARJUNUDU : I am sorry.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is :

"That the Bill further to amend the Special Marriage Act, 1954, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN): We shall now take up clause by clause consideration of the Bill.

Clause 2 was added to the Bill.

Clause 3—Amendment of section 27

SHRI P. GOVINDA MENON : Sir, I move :

3. "That at page 2, line 12, for the figure '1966' the figure '1968' be substituted."

SHRIMATI SHAKUNTALA PARANJPYE : Sir, I move:

4. "That at page 2,—

(i) in line 10, for the words 'two years' the words 'one year' be substituted ;

(ii) in line 15, for the words 'two years' the words 'one year' be substituted."

The questions were proposed.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : Law Minister, anything to say?

SHRI P. GOVINDA MENON : It is just a formal amendment.

SHRIMATI SHAKUNTALA PARANJPYE : And my amendment has been accepted by him already.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is:

3. "That at page 2, line 12, for the figure '1966' the figure '1968' be substituted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is :

4. "That at page 2,—

(i) in line 10 for the words 'two years' the words 'one year' be substituted;

(ii) in line 15, for the words 'two years' the words 'one year' be substituted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is :

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 1—Short title

SHRI P. GOVINDA MENON : Sir, I move :

2. "That at page 1, line 4, for the figure '1966' the figure '1968' be substituted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is :

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Enacting Formula

SHRI P. GOVINDA MENON : Sir, I move :

1. "That at page 1, line 1, for the word 'Seventeenth' the word 'Nineteenth' be substituted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is :

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

SHRI P. GOVINDA MENON : Sir, I move :

"That the Bill, as amended, be passed."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The Bill, as amended, is passed. We go on to the next item.