

follow the same procedure, give show cause notice, frame charges, call the parties and so on. This, again, takes years and years. There are no short-cuts. There are no summary trials, there are no special courts. The period taken is very long. There are innumerable difficulties which have to be faced in the operation or functioning of this Act. I would appeal to the Government to think about it.

About the custody of children also the situation is very defective, whether the child will go to the mother or to the father. To a child who remains with the mother or the father for eight or ten years, obviously the mother or father can do so much of indoctrinating or brain-washing that the child will have no independent judgment in all these matters and will not know his or her own best interests. Though I am for the child getting the utmost care from the mother primarily, sometimes I think mother cannot do justice to the children. They are too indulgent, too affectionate, too soft. A certain amount of discipline that the father gives, a certain amount of control that the father exercises, the authority that he exercises in the house, these are very necessary for the better bringing up of the children. Seeing all these things, I feel that the law is extremely defective about the custody and bringing up of children. A small child of 5 or 10 has to give its choice whether it will go with the mother or with the father. The child goes with one parent and that parent may work against the other parent and do brain-washing for the child and the child will not know really where his or her best interests lie. In such cases the father suffers as much as the mother due to the separation from the child.

Considering all these things which I have myself noticed, I would urge upon the Government to take a liberal view of the matter and not oppose every Bill that is brought in on a non-official day, but get public opinion on

this Bill. Recently Shri M. P. Bhargava brought in a Bill which fortunately was passed. That Bill also took care of some of the defects found in the working of this Act. But some more points need to be corrected and so I would urge upon the Government to kindly examine the entire matter and get public opinion, get the reactions of the people and then take the necessary steps to amend the law wherever it is necessary. I think it is very necessary to amend certain provisions of the law in order to take care of certain situations, and the sooner we examine the whole question and take steps about it, the better it will be. Thank you, Madam.

### **RE CALLING ATTENTION TO A MATTER OF URGENT PUBLIC IMPORTANCE**

THE DEPUTY CHAIRMAN: As regards calling the attention of the Minister of External Affairs, it was to be taken up here after it is over in the other House. Now that would be taken up here at 2.30 P.M. as the Minister is in the other House and is not yet free.

### **THE HINDU MARRIAGE (AMEND- MENT) BILL, 1962 (TO AMEND SECTIONS 2 AND 10)—contd.**

SHRI R. S. KHANDEKAR (Madhya Pradesh): Madam Deputy Chairman, I give my general support to the Bill introduced by my hon. friend, Shri Sitaram Jaipuria. Though I say that I give it my general support and, personally I have no objection if the Bill is circulated for getting public opinion, as far as I am concerned. I am opposed to such personal laws because I want that there should be one civil law for the entire country and there should not be such a sort of legislation having laws like this for Hindus, Muslims, Christians, Jains and so on. There should be one code and one civil law. That is what I want. There should

[Shri R. S. Khandekar.]

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be one Act by which the entire proceedings in this country could be governed. Madam, for long time we have been conservative. Events of the recent past have abundantly proved that we cannot afford to remain in such scattered compartments and it is all the more necessary in the changing world that there should be one nationality, one country and one citizenship and one civil code. There should not be these personal likes or dislikes or these laws based on religions, castes or communities. Therefore, though I do not oppose this Bill, I wait for that day—and it would be a good day—when such personal laws based on religion re abolished and there will be one code and one legislation for the entire country. The amendment moved by my hon. friend here is one little step further in this direction and I support it.

As far as the Jain community is concerned, old history apart—I do not want to quarrel with my hon. friend who said that Jains and Hindus have fought—Hindus and Hindus have fought, everybody has fought everybody previously . . .

SHRI LOKANATH MISRA (Orissa):  
Even Communists and Communists fight each other.

SHRI R. S. KHANDEKAR: Yes, they too fight. So this is no reason why Jains should not be included in the word "Hindu". As far as the other provisions of the law are concerned, Jains are governed by Hindu Law, Hindu Law is applied to Jains also in many respects. Therefore, there should not be any difficulty in the word "Jainas" being abolished here and the provisions of the Hindu Marriage Act should apply to Jains also. As far as the ideal that I was referring to a little while ago is concerned, this is one step forward. We have abolished the Jain community.

AN HON. MEMBER: Not the Jain community.

SHRI R. S. KHANDEKAR: No, I mean as far as the marriage law is concerned, we apply the Hindu Marriage Act also to the Jains. At least the Hindu community has been consolidated so far as its marriage law is concerned. I, therefore, welcome this provision.

As far as the provision for judicial separation is concerned, personally I think that marriage is an institution which stabilises society. But when it becomes almost impossible to live happily together then I think that divorce should be easily available and there should not be many impediments in obtaining a divorce. From that point of view, I think the Special Marriage Act is a *good* Act and the provisions of the Special Marriage Act should be applied so far as divorce is concerned. So far as judicial separation is concerned, the present working of the Hindu Marriage Act—the experience of lawyers and litigants in the courts is not very happy. As has been already pointed out, these proceedings linger for a considerable time in the courts and the very purpose for which the application for separation is made, is defeated. Therefore, there should be a second look. On these provisions also and necessary amendments should be brought in this Act as far as divorce is concerned. Therefore, these provisions may also be sent for getting public opinion. Opinions should be invited from the public. Unfortunately, ours is a very old and conservative society. Of course, we take pride in the fact that our society has got ancient traditions of thousands of years and all that. It is true that we have a good culture and all that. But it has some very bad elements also. There is, for instance, this conservatism and we suffer in our society from this conservatism and all the ills that are allied with conservatism.

Therefore, it is not possible to have a dynamic change in our law. Our society is still conservative but the time has come when drastic steps should be taken not only in respect of politics and political ideology but also

in respect of social legislation. We must no longer be conservative and we must take some dynamic steps. The conception of marriage, divorce, etc., needs to be revolutionised. I would, therefore, request the Government to avail of this opportunity and look into the provisions of the Hindu Code so that all these personal laws could be abolished and we could have one civil code as early as possible.

With these words, Madam, I support the Bill.

SHRI DEBABRATA MOOKERJEE (West Bengal): Madam Deputy Chairman, I am afraid the speeches, that have been made apparently in support of the proposition that the Bill in question be circulated for eliciting public opinion, happen to have been made in a manner which in no way supports the intentions of the mover of the Bill. The only question that has been raised by this motion, involving reference to a certain method proposed of testing its acceptability, is whether there should be these two amendments, the first in respect of section 2 and the second in respect of section 10 of the Act. The mover put forward the reasons he had in support of the proposition that the word "Jaina" wherever it occurs in the Act should be deleted. Apart from the merits of the question, that is a proposition which could be understood. Similarly, the amendment relating to section 10 is also understandable. But the speeches that have been made in support of the mover's proposition do not have any reference really to the true purpose of the amending Bill. I am constrained to observe with due respect to the speakers that their arguments are in no way germane to the real points sought to be raised by the amending Bill.

As a matter of fact, Kumari Shanta Vasisht, our esteemed colleague, made out an elaborate case for the purpose of reviewing all the provisions of the Act. She referred to the different provisions of that piece of legislation with a view to drawing our attention

to very many lacunae which, according to her, are to be found there. I do not think that is an argument in support of the present proposition. It may well be that some of the criticisms made by Kumari Vasisht are worthy of consideration but they do not fit into the present context.

Similarly, my esteemed friend, the speaker who immediately preceded me raised certain questions which have little to do with the present amending Bill. The question of relevancy apart, I am not sure whether some of the arguments made and repeated are sound; for example, the one that was offered that a second marriage could be contracted deliberately with a view to having the first marriage nullified and avoided. Madam, that is not law as I understand it. Once you contract a marriage for the second time and once that is proved to have been marriage during the subsistence of a previous marriage, the second marriage would not make the first marriage a nullity. This is a misconception behind some of the criticisms made or arguments advanced.

But the real point seems to be far from all this. If it is the intention and the desire of the House that the entire position has to be reviewed and the provisions of the Act have to be reconsidered, then the only way of doing it, as far as I can see, is to bring a motion requesting Government to reconsider the provisions of the Act so that Government may have an opportunity of examining them in the light of the criticisms offered and bring forward, if so advised, a comprehensive legislation which would avoid all the pitfalls and get rid of all the lacunae that are said to be found in the present Act. Unless and until that is done, much of what has been said, I say so with respect, is irrelevant to the present proposition that is now before us. The only question which the House is called upon to consider is whether it is right and proper to introduce the amendments to sections 2 and 10 and whether the

[Shri Debabrata Mookerjee.] amendments suggested deserve to be further considered by eliciting public opinion. That being so, Madam, I think this House ought, under your direction, to confine attention to the true scope of the amending provisions sought to be introduced by the mover of the Bill.

KUMARI SHANTA VASISHT: May I clarify one point? What I was saying was that sometimes a party would ask the other party in marriage to contract a second marriage so that it could be used as a plea for getting a divorce, for getting that marriage nullified?

SHRI NAFISUL HASAN (Uttar Pradesh): When a husband or wife contracts another marriage, relations are strained on that ground ....

KUMARI SHANTA VASISHT: I am only clarifying the point that people who want to go in for divorce ask the other party, the husband or the wife to marry a second time so that the first marriage may be annulled. That is used as a ground. The second point I made was that I wanted the entire case to be reviewed and examined, the entire provisions of the Act, so that Government may bring in a comprehensive measure on their own. This is usually done whenever Members ask for something.

DR. SHRIMATI PHULRENU GUHA (West Bengal): Madam, it is known to you and to most of us that only after a great deal of hard work the Government of India could pass the Hindu Marriage Act of 1955. It took a long time for them to bring the Bill and get it passed. Not only the Government but other voluntary organisations and people in general also had to do quite a lot of propaganda for this.

This Bill is intended to give relief to unhappy married couples. It is true that a great deal of relief has come through this Act but all the same the provisions of the law as it stands do not give full relief to the

unhappy couples. Most of the people in India, it must be admitted, do not like to break the marriage. Even when their life is miserable they do not like to go to the court; when life becomes intolerable and when there is no other alternative then they do go to the court sometimes. I am not talking of a few individuals; I am talking of the people in general. They do not want to go to the court because they do not like to bring their private affairs before the courts, particularly in consideration of their children. But whenever they go to the court, they find it very difficult because to go to the court is not an easy thing. Most of the people are afraid to go to the lawyers. I hope my lawyer friends here will forgive me but as ordinary persons, we all know we are afraid to go to the lawyers because we do not know where we stand, how far they will take us and how much money we will have to pay and so on and so forth. So it becomes very difficult for ordinary people, particularly for women, I should say. As a worker I have seen a number of cases where women do not go to the court not only because of considerations of money. I know there is a Legal Aid Committee which helps the people— but still to go to the court again and again they find it difficult. They do not know where to go, they do not know where to stay and so on. So it is necessary, Madam, that now that ten years have passed we must review the Act and I am glad that Mr. Jai-puria has brought forward this amendment.

I would request the Government, if it is permissible according to law, not only to review this point but the other points also. The amendment is moved under the judicial separation section. According to our present Act either party can send a petition for judicial separation on the ground of cruelty, suffering from leprosy and venereal diseases, unsound mind and also adultery. But in the process one has to bring many charges and counter-charges before the court. As has been mentioned by other speakers, it

becomes very difficult for either party to bring up charges and countercharges before the court. I would say it becomes particularly difficult for the mother with a child or children. There may be something in between but to bring them before the court, particularly when the children are there, is not a good thing. So I would request the Government to elicit the opinion of the people on this clause because it will help the parties not to bring charges and counter-charges. We all know that it is the women who suffer most from this. When something is said against her, whether it is right or wrong, people usually believe it and she suffers throughout her life because of that stigma. So, I would request the Government to consider this clause and amend the law not only in respect of this but in respect of other things also so that it will give better relief to the unhappy married couples.

Thank you, Madam.

श्री विमलकुमार मन्नालालजी चौरङ्गिया (मध्य प्रदेश) : उपसभापति महोदया, जो विल माननीय जयपुरिया जी ने प्रस्तुत किया है, उसके बारे में मैं भी अपने विचार व्यक्त कर दूँ। बहस के दौरान श्री जयपुरिया जी ने कुछ बातों की ओर ध्यान आकृष्ट किया और यह कहा कि जैनों की और हिन्दुओं की कई धार्मिक परम्परायें एक जैसी हैं। उदाहरण के लिये उन्होंने बताया कि दीवाली है, रक्षाबन्धन है, इन्हें जैन भी उसी तरह मनाते हैं जैसे अन्य भारतवासी हिन्दू मनाते हैं। उपसभापति महोदया, मैं थोड़ा उनसे मतभेद रखता हूँ। अपनी-अपनी धार्मिक क्रियाएँ अपने अपने त्यौहार मनाने के कारण कुछ भिन्न-भिन्न हो सकते हैं। जैन रक्षाबन्धन किस कारण मनाते हैं? उनका कारण दूसरा है। ब्राह्मण लोग हिन्दुओं में भी किसी आधार पर मनाते हैं। श्रावणी का पूजन होता है, उनका अनुष्ठान चलता है, उनकी क्रियाएँ चलती हैं, जनेऊ बदलने का

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काम चलता है। हिन्दू समाज के अन्य लोग रक्षाबन्धन को भाई-बहन के आपसी व्यवहार के रूप में मनाते हैं। जैनों में इसकी परम्परा अलग है। उनमें इसका आधार उस दिन को माना गया है जब कई संन्यासी एक साथ चारों ओर से घेरे जाकर जलाए जाने को थे। उस समय उनकी किसी ने रक्षा की थी और उस रक्षा के आधार पर रक्षाबन्धन का त्यौहार मनाते हैं। जैन भी अलग रूप में मनाते हैं, हिन्दुओं में भी अलग-अलग सम्प्रदायों के लोग अलग-अलग तरीके से त्यौहारों को मनाते हैं, इसलिए यह कहना कि यह त्यौहार एक ही कारणों से सब लोग मनाते हैं, ठीक नहीं है। मैं इसको मानने को तैयार नहीं हूँ।

दीवाली को ले लीजिये। दीवाली हिन्दुओं में साधारणतः लक्ष्मी-पूजा के रूप में और इस भावना के साथ मनाई जाती है कि आज के दिन लक्ष्मी की पूजा की जानी चाहिए जिससे कि हमारा धन-धान्य, सुख-समृद्धि बढ़ती रहे। जैन इसको दूसरे आधार पर मनाते हैं। उनकी मान्यता है कि उस दिन उनके जो जीविसर्वे तीर्थकर थे वे निर्वाण को गए थे। इस खुशी में और साथ ही उनके गणधर गौतम को कैवल्य ज्ञान प्राप्त हुआ था। उस खुशी में वे दीवाली का त्यौहार मनाते हैं। यह कहना कि जो उत्सव हैं उन्हें सब लोग मनाते हैं और इस दृष्टि से वे एक हैं, कुछ ठीक बैठता नहीं। यह जरूर है कि यहाँ पर रहने वाले चाहे हिन्दू हों, जैन हों, सिख हों—हिन्दुस्तान में उत्तर से दक्षिण तक चले जाइए—सब दशहरे का त्यौहार भी मनाते मिलेंगे, रक्षाबन्धन का त्यौहार भी मनाते मिलेंगे, दीवाली का त्यौहार भी मनाते मिलेंगे, होली का त्यौहार भी मनाते मिलेंगे।

THE DEPUTY CHAIRMAN: Mr. Chordia, you may continue after the recess. Now, Mr. Jaganath Rao will make a statement.