THE DEPUTY CHAIRMAN: I shall put Amendments Nos. 1 and 2 to the vote. The question is:

1. "That at page 2,—

(i) lines 25 and 26 be deleted; and

(ii) after line 30, the following be inserted, namely:—

'(ii) "sessions judge" means a session judge or an additional sessions judge as defined in section 9 of the Code of Criminal Procedure, 1898;'".

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

2. "That at page 2, after line 28, the following be inserted, namely:—

'(hh) "offence of political character" means an offence regarding which a fugitive criminal is either accused or convicted, for having committed or attempted to commit an extradition offence, either in his individual capacity or as a member of an organised movement, either by acts or omissions or by words spoken or written or by signs or by visible representations or otherwise, in violation of the laws of the State in his pursuit to achieve social justice or economic equality or liberty of the subjects or political freedom for his country or in the course of his efforts to prevent war or preparation for war;'".

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill.

The motion was negatived.

Clause 2 was added to the Bill.

Clauses 3 to 37 were added to the Bill.

The First Schedule and the Second Scheduled were added to the Bill.

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

SHRI BIBUDHENDRA MISRA: Madam, I move:

"That the Bill be passed."

The question was proposed.

SHRI BHUPESH GUPTA: Mr. Kumaran wants to speak.

THE DEPUTY CHAIRMAN: Are you making him speak, Mr. Bhupesh Gupta? I do not think Mr. Kumaran wants to speak.

The question is:

"That the Bill be passed."

The motion was adopted.

THE CHRISTIAN MARRIAGE AND MATRIMONIAL CAUSES BILL, 1962—continued

THE DEPUTY CHAIRMAN: Mr. Kumaran, you were speaking on the Christian Marriage and Matrimonial Causes Bill. You had not finished your speech.

SHRI P. K. KUMARAN (Andhra Pradesh): Madam, the other day I was suggesting that mixing up of religious and legal institutions was not desirable. I hope the Select Committee will consider this suggestion. If this suggestion is accepted, there will be no complaint from any group or denomination of churches that they are not recognised nor will there be any boasting from any group that while they are recognised their rival groups are not having that status.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY) in the Chair]

Another point which I would like to refer to is the question of prohibited relationship. In the olden days the old system of joint families prevailed.

[Shri P. K. Kumaran.]

Marrying in the same family group was considered necessary, so that the properties did not get dispersed. But now the joint family system has disappeared or is fast disappearing. Property relations have changed and yet in some parts of the country amongst certain castes and communities the old customs go on. Madam, modern science—biology teaches us that marriage within the same blood group between very close relations is bad for the posterity, that children born out of such wedlocks in the course of one or two generations become subject to some handicap or the other. Hence I feel that the list of prohibited relationships included in the First Schedule is not exhaustive. Relationships up to the fourth generation should be included in the Schedule. This is also necessary for marriages in all communities, so that the future generations may not suffer from any mental or physical hardships.

Madam, I welcome Clause No. 29(1) where safeguarding of legitimacy has been provided. Supposing even within the prohibited degree of relationship provided here, intimacy develops between a male and a female and a child is born, but the marriage may not be legal and hence according to law the marriage does not exist but the child is there. Co in such cases, in order to provide for the legal rights of the child to exist and also to claim the properties and benefits of being the child of the couple, this provision is a welcome one and I welcome that provision.

Regarding the divorce clause, equal status is given to men and women. Some people are against this clause on the plea that this will spoil the social life. But I am afraid it is not the social life, it is the socio-economic life of the society, economic and emotional life of the society which gives room for divorce. Hence I feel that this clause will not do any harm to the society. On the other hand, it is a welcome clause. In the absence of such a clause what will happen is that instead of legal divorce there will be desertions. Except for these points, I welcome this Bill which is the first attempt to codify all the different rules that are existing and the different practices that are obtaining in the country and I have no hesitation in supporting it.

SHRI B. K. P. SINHA (Bihar): I feel that this Bill is good as far as it goes. It is clear that even in the Christian society there are many sub-sects and sub-sections. Each one of them is governed by different sets of customary laws or statute laws in respect of marriage and divorce. This Bill seeks to unify the law of marriage and divorce in the Christian community. But then I am conscious and, I think Members of Parliament are conscious that we are legislating in the year 1962. We have set before us in the Constitution the ideal of evolving a unified people and while religious beliefs, religious practices, have been protected from any parliamentary encroachment in the Constitution, the Constitution itself leaves it open to Parliament to legislate in matters like marriage and divorce. If I mistake not, the Directive Principles of State Policy embodied in the Constitution also says that it shall be the endeavour of Parliament to evolve a unified civil code for this country. The Christian society in India is a very advanced society. I will not be wrong if I say that in advancement, in progressiveness, in education, it ranks only second to the Parsees. There are at least 3 religious groups in India, three communities if you will like to call them—the Parsees, the Christians and the Hindus—who are advanced enough to have one uniform civil code or civil law. I, therefore, feel that the time has come when the Government should seriously think of having a unified legislation for the whole country if possible, if not, at least a unified civil code for these three important communities of this country. The words 'national integration', 'emotional integration', are very much in favour these days. There is hardly a day when we do not come against these words a dozen or two dozen times. National integration demands

that in certain matters, a basic unity, a basic conformity, is achieved between the various communities of this country. We know that in England waves and waves of foreigners came but they were all—not absorbed—but the original residents and the newcomers mixed together and mixed so well that a new society was evolved and in the evolution of a new society a uniform civil law is of great help. For a unified nation, there must be a unified people, a unified society. Therefore, I feel that the Government should not be inhibited by any considerations; for these three communities, at least, are now prepared to have a uniform civil code.

Coming to the merits of the Bill itself, in my opinion the degrees of prohibited relationship given in the Schedule to this Bill are not very satisfactory because this Bill permits what I may loosely term as 'cousin marriages'. The First Schedule which lays down the prohibited relationships in Parts I and II, does not take into account the modern researches in biology. I am reminded in this connection of an essay 'Cousin marriages' which forms part of a book 'What is life?' by the famous scientist Haldane who is now working on a special assignment in the State from which the hon. Minister comes. Now on the basis of his researches he writes in that essay that cousin marriages are responsible for deformed children, children with inadequate mental capacity and children who inherit hereditary diseases and if there were no cousin marriages, at least 13 per cent. of the mentally deformed or diseased children would not be there.

SHRI SHEEL BHADRA YAJEE (Bihar): Same Gotra marriages are allowed.

SHRI B. K. P. SINHA: Sagotra marriages and cousin marriages are not the same thing. That needs no explanation. Therefore, I feel that the time has come when while legislating for a particular community, we should take note of these discoveries or researches in modern science and biology. Restrictions are being removed but then concessions are made to customs or customary laws or a statute law which are not in conformity with the views accepted by modern science. Cousin marriage in certain contingencies, in certain circumstances, may be a necessity. We know that even in the orthodox Hindu society in the South, cousin marriages in some cases, are permitted. They have the Sanskrit sloka: दक्षिणे मातुली कन्या Even in Bengal, among the Kshatrias cousin marriage is prevalent but why? It is because the Kshatrias in Bengal normally went with the invading Moghul armies. They were few in number and they wanted to retain their purity of blood and, therefore, they started marriages in their close families. The same is true of the Brahmins of South India and the customs of the Brahmins of South India became prevalent in the South Indian society as a whole. Now that the area open for marriage is very wide, there is no reason why the Hindu society should have cousin marriages and there is no reason why in the Christian society also we should have cousin marriages. Simply because a practice has been there, it is no ground for continuing the thing when it is not scientific. I find that this Bill lays down the grounds by clause 30 for divorce. It was been my grievance both when the Hindu Law of Marriages was discussed, the Special Marriage Law was discussed and when this Bill is being discussed, that we are adopting in our Bills the pattern set by the British laws of the late 19th century. There has been a recent amendment in the British Law of Divorce but that amendment is really based on a proposal of the year 1910—50 years back. We conform to that, but since then there have been great advances in psycho-analysis and in psychology and this Bill and the other Bills recognise only the physical causes as a valid ground for divorce. By and large modern psychology is

[Shri B. K. P. Sinha.]

of the view that marriages break more because of temperamental differences in a couple, for if there is no temperamental adjustment between a husband and a wife, whatever the physical suitability of one to the other, that marriage is unhappy. It has an extremely adverse effect on the progeny of that marriage. The family life becomes unhappy. The children are neglected. Therefore, in many advanced countries temperamental maladjustment is also now a ground for divorce. That does not find a place here. I feel that the Select Committee will go deeply into this question and they may introduce it as one of the grounds for divorce.

3 P.M.

Next I would like to make another suggestion on a matter which caused a great deal of heat in the past in this Parliament when the question of marriage and divorce was discussed in relation to other measures, namely, divorce by consent. I have consistently advocated divorce by consent. I do advocate it even now. If two persons, fully grown up and fully mature, do not want to live together, I do not see any reason why the law should compel them to live together. Law's compulsion really leads us nowhere. The two legally continue to be husband and wife, but they really cease to live as husband and wife. They actually live separately, and that introduces the element of unhappiness in the family. The children are neglected. Moreover, this is one of the potent causes for the prevalence of immorality in society. Therefore, the time has come when divorce by consent should be allowed.

I have one more suggestion to make. I was surprised to find that in clauses 44 and 45 of this Bill which deal with maintenance *pendente lite* and permanent alimony and maintenance, it has been provided that the husband also will be entitled to these benefits if he is not in a position to support himself. I do not know, Mr. Vice-Chairman, what has been the prevalent law among Christians in this respect. This innovation, I remember distinctly, was introduced here in the Special Marriage Bill by a special amendment introduced in this House which later on the other House accepted. But somehow or other, it strikes me as extremely unreasonable. While we talk of the equality of sexes, even now Mr. Vice-Chairman, man is man and woman is woman and somehow or other, my manhood revolts against the idea of a husband getting maintenance *penente lite and permanent alimony* from a divorced wife. Therefore, I feel that the gentlemen Members of the Select Committee will see to it that at least in this respect we do not go by our peculiar notions of equality before law and say that a husband should be maintained by the divorced wife.

AN HON. MEMBER: What harm is there?

SHRI B. K. P. SINHA: It looks to me so laughable and so incongruous.

In conclusion, Sir, I would only refer once more to what I said earlier about cousin marriages. I find that a memorandum has been circulated by some Christian body. I do not know what it is actually. It has got a big name—Pentecostal Church of God. They are also of the view that the degrees of prohibited relationship should be extended; otherwise there is the danger that what till now have been considered incestuous marriages in Christian society, would be permitted by this law.

Otherwise I feel that this Bill is a proper measure. It is based on the recommendations of an expert body—the Law Commission—and there can possibly be no objection to it. It is good as far as it goes and I have simply urged that it should go a bit further and we should have a uniform civil code.

SHRI M. RUTHNASWAMY (Madras): Mr. Vice-Chairman, even at this rather

advanced stage in the journey of this Bill I would appeal to the Law Minister that he should, on behalf of the Government, withdraw it. It is for two reasons that I make this appeal, one is a sectional reason and the other a national reason. The sectional reason is that no large body of Christians have asked for this legislation. I can speak with authority for the Roman Catholic community which forms about half of the Christian population. Although Catholic witnesses have appeared before the Law Commission, there has never been a demand from the Roman Catholic community for a change. They are quite satisfied with the Indian Christian Marriage Act of 1872 and they have all the rights and liberties that they claim for their form of marriage and there has not been any active demand from the Roman Catholic community. I may say so also on behalf of the Church of England community. It is only a small section of Christians who have asked for this piece of legislation.

The national reason why I want the Government to withdraw this Bill is that it should wait for the formulation of a national civil code. One of the Directive Principles of State Policy incorporated in the Constitution is that the State shall endeavour to secure for the citizens a uniform civil code which will operate throughout the country. And this is a matter of immediate concern now. We are all concerned about national integration and I should imagine that legal integration, the integration of the legal life of the people, of the life lived in the law by the people, is one of the most powerful influence towards national integration. The laws that prevail in our country are a veritable jungle. They are as bad as if not worse than, the laws that prevailed in France before the French Revolution. Voltaire said about the laws of that time that peopte changed their law as they changed from one stage coach to another. And that, unfortunately, is the legal experience of our own people. People in the South are governed by one system of Hindu law. People in the North are governed by another system of law and large communities are governed by customary law even with regard to such matters as marriage and succession. The national integration of many modern countries has been either preceded or accompanied by the formulation of a national civil code. The French Revolution was soon followed by the formulation of the French Civil Code, the initiative being taken by that great Frenchman—he was not exactly a Frenchman by origin—Napoleon Bonaparte. And more important than his military victories is his work for the formulation of the French Civil Code as that is one of the most memorable things that he did. Similarly, Germany's unification in 1870 was followed soon after by the framing of the German Civil Code. So it was with Italy when it was unified at about the same time. Of course, difficulties have been advanced with regard to the formulation of a national civil code in India. The first hurdle which the attempt to formulate a national civil code or even a Hindu Civil Code had to face was the opposition of orthodoxy, because it was contended that Hindu Law was largely based on divine writings or the shastras or the smritis and that it would go against the grain of Hindustan itself to make any changes in the law.

But then, instead of taking the Hindu law, if those who were charged with the duty of formulating a common code for all India had taken the citizen as such, whether he was a Hindu or a Muslim or a Christian or a Parsi and framed a civil code for him, then all the difficulties and the obstacles and the hurdles which the framers or those who were attempting to frame a common Hindu Code met with would not have been formidable. Just as it was found possible to formulate a common constitutional code for all the citizens of India irrespective of their religious or social or communal differences, the for-

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mulation of a common civil code would have been possible if the citizen had been taken as a citizen. Inspiring themselves with the principles of the Constitution, namely, "Liberty, equality and justice" if the framers, those who attempted to formulate a Hindu code had gone on to this much greater task of formulating a common civil code for all the people of India, that attempt would have met with greater success than the attempt to formulate a common Hindu Civil Code has met. In these matters also, what is known as the strategy of indirect approach might have been tried with greater success. In political, military as well as in social matters, the strategy of indirect approach would have yielded much better results than a direct attack. In fact, this common code should be based not only upon the principles of liberty, equality and justice incorporated in our Constitution, but it should also look to the promotion of the economic and social progress of the country. Laws should be judged from the present standpoint of economic and social progress and if those who may be charged with the duty of formulating a common code for all India had been inspired by these principles and had adopted these methods, I think greater success would have attended their efforts than the efforts which crowned the work of those who tried to form a common Hindu Civil Code. The progress towards uniformity has already begun in regard to marriage. The Special Marriage Act of 1954 and the Hindu Marriage Act of 1958 have almost brought about a uniform marriage code for all Hindus and a Divorce Act has also been passed for Hindus. A common civil code, therefore, is an urgent necessity. It is, as I pointed out, an additional means of promoting national integration Just as the Constitution of India served as an instrument of political education, a common civil code for all the people of India, for all the communities in India, would prove a powerful influence for the legal unification and the legal education of the people of the country.

If the Ministry does not agree to withdrawal, as I have by my speech spoken myself out of the membership of the Select Committee—I believe according to a convention which prevails in this House and which I do not think prevails anywhere else, one who speaks at the first stage of a Bill renounces all right to become a member of the Select Committee—I would make certain suggestions to the Select Committee and to the Minister.

First of all, with regard to the definition of a Christian, the Bill says that a Christian is one who professes Christianity but I think mere profession will not do. The wording should be "professes and practises Christianity". A Christian is one who not only professes but also practises Christianity because Christianity has not only certain doctrines and certain dogmas but it has also certain rituals and certain sacraments and practices the performance of which makes a Christian continue to be a Christian. For instance, one is not born a Christian as one may be born a Hindu. He has to be baptised before he can be called a Christian. In the later stages of life, there is Holy communion and confirmation which makes him a strong Christian and the sacrament of marriage and other sacraments which mark later stages in his life. And unless a man practises these sacraments, unless a man practises the way of Christian life, he cannot be considered to be a Christian just as a person baptised as a christian who renounces all these practices, is not considered as a Christian.

SHRI SHEEL BHADRA YAJEE: Suppose a Christian is Godless, then what would you call him?

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): If a Christian is an atheist he cannot be a Christian.

SHRI M. RUTHNASWAMY: How can a Christian be Godless? It is a contradiction in terms.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): He cannot be a Christian and also an atheist.

SHRI B. K. P. SINHA: Mr. Vice-Chairman, I want another clarification. You say that he should not only profess but also practise. This means that you must constitute some body to judge whether a man is practising Christianity or not.

SHRI M. RUTHNASWAMY: According to the Catholic Church, if a man goes to sacrament and communion and confession at least once a year, he is considered to be a practising Christian. If he does not do that, then, he ceases to be a Christian.

SHRI B. K. P. SINHA: There must be somebody to judge.

SHRI SHEEL BHADRA YAJEE: Who will judge?

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): Please go on. You are losing time. We have already taken fifteen minutes for this Bill more than the allotted time. There are still four more speakers.

SHRI M. RUTHNASWAMY: With regard to the clause which deals with judicial separation for Christians, I welcome it because the Catholic Church allows judicial separation, but then at the same time the doubtful privilege of divorce is also allowed us, one who takes advantage of the clause allowing judicial separation can also go on to take advantage of the second that allows divorce whereas in the Catholic Church while judicial separation is allowed, divorce is not allowed. I would, therefore, suggest that at the end of that clause, the following may be added:

"Provided that the parties granted judicial separation as a relief from matrimonial troubles shall not have the right to seek further relief under section 30 which grants the right of divorce."

The Catholic Church's objection to divorce is well known. Of course, tears have been shed over the difficulties of an unsatisfactory or an unhappy marriage. The great wit and parliamentarian, Mr. A. P. Herbert, has said that "holy wedlock may even degenerate into holy deadlock". Marriage is not only a contract between two individuals; it is also a social institution. The society as such is concerned in the stability of marriage. Marriage is not merely a matter of love or desire between two people but it is also a character-forming institution and, therefore, in spite of the troubles and difficulties that might occur in the course of marriage, it is well that the two parties, husband and wife, know that they are united for life and having this thought they will be able to adjust themselves to each other and they will be able to solve all the doubts and difficulties that might arise in the course of the marriage. If marriage is a sacrament, and it is allowed to be a sacrament by the Bill, as by the Law Commission and by people who believe in sacraments, then marriage should be indissoluble.

Another small amendment which I would like to suggest is this. Marriage between Christians and non-Christians is not allowed by this Bill, to be performed in Christian Churches. This is a practice which has continued ever since the Indian Christian Marriage Act of 1872 was passed and if the non-Christian in a marriage between a Christian and a non-Christian agrees to be married in a Christian Church, why should there be any objection? When we speak of national integration it is not wise, it is not proper, it is not expedient, to forbid marriages between Christians and non-Christians under religious auspices.

These, Mr. Vice-Chairman, are the few observations that I make upon

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the Bill and if the Bill is not withdrawn, I should like the Select Committee to bear these observations and these suggestions of mine in mind when they try to improve the Bill.

SHRI D. P. SINGH (Bihar): Mr. Vice-Chairman, Sir, as far as it goes, the Bill is a welcome measure, and an attempt has been made in this Bill to keep pace with the times. Mr. Ruthnaswamy has just said that divorce should not be allowed among the Catholics in the Christian community and that the old law should continue. My own feeling is that this is taking a completely wrong view of the changes which have taken place in the mentality of the people, in the mentality of the Christian community. The same argument was advanced when the Hindu Marriage Bill was on the anvil and a lot of objection was raised even at that time to divorce being provided for in the Bill. Now that Bill is an Act and we all know that divorce for the first time has been provided even for Hindus. Now, there is no particular disadvantage accruing from that. We do not see any difficulty that the Hindu community faces as a result of that wholesome provision being inserted in the Statute Book. Similarly, Sir, I personally think that even before the Hindus were prepared for this kind of a provision the Christian community, being a more advanced community because of their education and all that—we all know that they received education earlier because of what the missionaries did amongst them—should have been in a more receptive frame of mind so far as the introduction of this provision is concerned. I would go a step further and say that the provisions of the Special Marriage Act, namely that divorce can be secured by mutual consent, should be inserted in this Bill. I would like the Minister to consider this and I would also like that the Select Committee should give serious thought to this. I should think that since the passing of the Hindu Marriage Act our mind has become more and more attuned to this kind of a change and I think now if this is introduced in this Bill, later on by an amendment to the Hindu Marriage Act this wholesome provision may be introduced there also. And so far as the Muslim community is concerned there should be similar legislation for them also. So I find myself in complete disagreement with Mr. Ruthnaswamy. I have very great respect for his understanding and for his scholarship but with all that I find that it is not possible for me to agree with him at all on this question. I think a great deal of injustice may be done to the Christian community of the law, as it is before us, is not passed.

However, I do agree with one thing that he has said, that the Catholic group among the Christians have probably not been adequately consulted in the matter. When the Law Catholics, maybe, because they are eliciting public opinion, probably the Catholics, maybe, because they are poor or because of other reasons, could not go before the Law Commission.

SHRI M. RUTHNASWAMY: They did go.

SHRI D. P. SINGH: I stand corrected.

SHRI M RUTHNASWAMY: The hierarchy and the representatives of the Catholic community did go and give evidence before the Law Commission.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): You mentioned it.

SHRI D. P. SINGH: I have no kowledge whether there was any real opposition or any strong opposition from the Catholic community.

SHRI M. RUTHNASWAMY: From the Catholic community there was.

SHRI D. P. SINGH: I would, therefore, suggest that this Joint Select Committee can, instead of sitting here, pay a visit to Kerala where most of the Catholics happen to be concentrated, take evidence, know their point of view and try to adjust as much as possible. Even if they do not like the provisions of the Bill as a whole, unless they are very much opposed, the law as it has been placed before this House should be passed. That is my opinion.

Now, one word about this prohibited degree of relationship. It is a fact that even in the Hindu community in certain areas of our country marriages within prohibited degrees of relationship have been taking place and among the Christian community also marriages within prohibited degrees by custom have been taking place. I personally agree with Mr Sinha that marriages within prohibited degrees, in view of the advances that science has made, in view of the knowledge that we have acquired during the last few decades, should not take place at all because it affects the community, it affects the people who contract that kind of marriage. Therefore, I am definitely of the view that although in this Bill it has been allowed in certain cases, in deference to customs, later on, at least an effort should be made by Government and by others concerned to educate public opinion in such a manner that it may become possible after some time to enact a proper law on this subject, so that marriages are altogether prohibited within prohibited degrees of relationship. I, therefore, generally agree with the provisions of the Bill; only I wanted to make some of these suggestions.

I would like to make one or two more suggestions before I sit down. Now one of the grounds of divorce, as stated here, is that the respondent has, since the solemnisation of the marriage, committed adultery. This is all right as far as it goes, but I have just a little objection. From this it follows that if the respondent has committed even one act of adultery that becomes a ground for divorce. I would say that in view of the changed times and in view of the mentality of the people trying to keep pace with the changed times, unless you change this to say 'that the respondent has been living in adultery' which means adultery for a certain period, it should not be made a ground for divorce because after all a human being might err sometimes, that does not mean that he has become disloyal. Therefore, some change should be made here on the lines I have suggested.

The second ground given is that the respondent has ceased to be a Christian by conversion to another religion. This also does not seem to me to be a very good reason. I think in my opinion this should not be made a ground. So far as civil marriages are concerned, it is possible for the two parties to retain their separate religions. Similarly in a marriage of this sort also if for some reason the husband or the wife decides to change his or her religion, I think that should not be taken as a ground for divorce. Mr. Ruthnaswamy has dwelt at great length on what should have come first, that a national civil code should have been enacted first. There is just a slight connection between these two. But I personally think that there is not much of a connection. It is not that, if we were to have a national civil code, like the one which he wants, we should not have this legislation. Personally I am for this legislation and I have no doubt that the Joint Select Committee will find that after some time this legislation will be a very popular legislation because it will be in tune with the times. Therefore, with the suggestions that I have made, I whole-heartedly commend this Bill.

PROF. A. R. WADIA (Nominated): Mr. Vice-Chairman, I entirely agree

[Prof. A. R. Wadia.]

with some of the previous speakers who have argued the necessity for a national code. In fact, I wonder whether the time has not come for the Government to take up this proposition very seriously. It was a hundred years ago now that the Parsi Marriage Act was passed and subsequently we have had several marriage Acts relating to different communities. The latest, the Hindu Marriage Act itself, is more or less formed on the model of the English law, which is practically Christian. It means that there is a definite tendency on the part of the Government to make marriage laws converge to a definite model and I think it only requires a certain amount of courage on the part of the Government to face the issue and bring out a marriage law which would apply to all sections of Indians. I am aware that certain difficulties might be experienced in the case of Muslims, but I am perfectly certain that most of the Muslims would welcome a uniform law which makes for monogamy and controlled divorce. As a matter of fact, there is no reason why our Government should fight shy of it, when practically every Muslim country, including Pakistan, is moving away from the orthodox Islamic law of marriage. I think that is a very good reason why the Government of India should take up this question and have a national code.

This Bill is after all to go to a Joint Select Committee and I am perfectly certain that they will consider it in detail. But I should like to make a few suggestions for their serious consideration. Now, the whole of Chapter IV is concerned with the restitution of conjugal rights. Well, I am aware of the legal concept. It is taken from the British law. It has been used practically in all the marriage laws that have been passed in India. But I do wonder whether this concept of restitution of conjugal rights is consistent with the real spirit of marriage or is consistent with our general conception of marriage. Restitution of conjugal rights carries with it a certain idea of force and it seems to be very cruel to force a husband to go to his wife or to force a wife to go to her husband.

DR. NIHAR RANJAN RAY (West Bengal): Of course, it is so.

SHRI B. D. KHOBARAGADE (Maharashtra): In that respect I may mention that this decree can never be executed. It is not executed.

PROF. A. R. WADIA: If a particular husband does not like to live with his wife or a wife does not like to live with her husband, it does not require the interference of law. On the contrary, I have read in some articles that it is not an uncommon thing in America for a divorced couple to live with each other. Now, it seems to me that the whole conception of restitution of conjugal rights should be completely deleted and I do request the Joint Select Committee to give their full attention to this problem and not to be carried away by the mere fact that this has been recognised in the various marriage laws. I do think that it is thoroughly inconsistent. It might have been very good when it was thought that the wife was the personal property of the husband or vice versa. That is not the conception now. Our ideas have changed. And consistent with that it is very desirable that the whole Chapter should be omitted, especially because you find that it is after all a stop-gap. Failure to obey a decree for restitution of conjugal rights has been made a cause for divorce. I do not agree with Mr. Ruthnaswamy in this matter. It is a very high principle to say that once a marriage takes place it should be for life. Unfortunately marriage is between individuals, and individuals can err. It is not desirable that there should not be possibility of putting an end to an unhappy and unfortunate marriage. And if refusal on the part of one party to comply with a decree

for restitution of conjugal rights is an argument for divorce, it is a greater argument for the complete omission of this particular right.

Clause 47 relates to the custody of children. It is rather curious that the passage reads:—

> "In any proceeding under Chapters IV to VII, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible,.."

I suppose 'their wishes' implies the wishes of the children. Now, are children really in a position to express their wishes in this matter? Well, a child of five or six may be more attached to the father or may be more attached to the mother. It is a very dangerous principle to go by the wishes of the children in these matters. For this reason, I think some years ago there was a very healthy principle that the custody of a child should not go to an erring parent. That means if the mother has gone wrong, then the custody of the child should not go to the mother, or if the father has gone wrong, the child should not go to the erring father. I find that the recent tendency among the magistrates and judges concerned is to give preference to the mother, even if she is erring. Personally I think it is a very dangerous principle, even though the child may like it. Usually, of course, we are all attached much more to our mothers than to our fathers It is a common human experience. But in the case of a child, if a mother has gone wrong, is it a healthy thing for the child to be handed over to the mother, irrespective of the fact that the father may be really more loving than the mother? Circumstances of that kind have recently arisen within my knowledge.

Then, in clause 4 (ii) there is a reference to the observance of customs. It says:—

> "the parties are not within prohibited relationship, unless the custom governing each of them permits of a marriage between the two;".

Now, it seems to me that it is a very dangerous provision. As was pointed out by Mr. Sinha, there are all sorts of odd customs. He referred to marriages between cousins among certain sections of Hindus. He might have referred with greater justice to a custom which permits an uncle to marry his neice. Is that sort of thing to be encouraged? I do not wish to be dogmatic on this point, but I do appeal to the Joint Committee to seriously consider which are the customs among the Christians which should be allowed by law to continue. So far as I am aware, Christian law is practically based on English law or European law, and I am not aware that it permits marriage between, say, uncle and niece, and even if it is permitted, the time has come when such a thing could be easily prevented by law.

Mr. Sinha was waxing eloquent over the prohibition of marriages between cousins. Personally as a student of sociology, I am in perfect sympathy with that idea, but I do not think that our knowledge has gone so far as to say that it should be made a part of law practically in every community, except among Hindus on the paternal side where marriage between cousins has not been permitted. Assuming that a family is perfectly healthy, such marriages need not necessarily be biologically bad, but it is quite possible that there may be a certain flaw running in a certain family and then marriages between cousins would be undesirable I would rather not say that marriages between cousins should be completely prohibited, but I would

[Pof. A. R. Wadia.]

say that before any marriage is allowed there should be a medical examination of both the parties; there should be a medical certificate to say that the husband is fit to marry, that the wife is fit to marry. I agree that marriage is not merely a matter for individuals. It is essentially a social institution meant for the well-being of society, and in the interests of society a marriage should be between two physically and mentally healthy persons. If either party is defective, marriage should not be allowed. That is the consideration which I should like the Joint Committee to take up seriously, especially when I hope the Government will bring forward a law which could be applied to all sections of the people.

SHRI B. D. KHOBARAGADE: Mr. Vice-Chairman, Sir, I welcome this Bill because I consider that it is a step in furtherance of the Directive Principle which we find in the Constitution. Sir, the Constitution in article 44 lays down that the State should endeavour to secure for the citizens a uniform civil code. Of course, by passing this measure we shall not be able to have a uniform civil code. But after going through the provisions of this Bill I find that they are in conformity with the provisions of the Special Marriages Act and some of the provisions of the Hindu Marriages Act also have been incorporated in this Bill. So, it is clear that we are moving towards having a uniform civil code, uniform at least for laws of marriage and divorce. Sir, the Government should take active steps, so that we can achieve the object mentioned in the Constitution of having a uniform civil code. As pointed out by Prof. Wadia just now, even the Parsis will not mind having such a common code. He represents the most enlightened community with progressive views, and if all those people and the different communities in India do not mind and do not object, then there should be no difficulty in having a common civil code for all the citizens of India without any distinction of caste, community or creed. There should not be any difficulty. At present we are making the Hindu laws, applicable to Sikhs, Jains, Buddhists, and so on, who profess a religion different from Hinduism. When we are compelling those people belonging to other religions, whether they are Buddhists, Sikhs or Jains, to follow the same principles and the same laws that are applicable to Hindus, why should not the Government come forward and try to formulate the common laws that would be applicable at least to other religious communities, for example, Parsis and Christians, which, as has been claimed by an hon. Member, are educated and advanced, so that we can move towards achieving our objective of having one common civil code? Of course, there will be some objection—some opposition from Muslims. But actually there should be no objection. Even in the Muslim countries we do notice today that sweeping laws are being passed and all old traditions and customs are being replaced by modern laws taking into consideration all the scientific inventions and discoveries and researches that have been made in various spheres. Therefore, I would request the hon. Minister to consider this question of having a common civil code for all the citizens of this country according to the directive principle which we have embodied in our Constitution.

Coming to the Bill itself, I would like to make a few observations which I hope the Joint Select Committee will seriously consider. The first is about the title of the Bill. The title of the Bill says: "The Christian Marriage and Matrimonial Causes Bill". This Bill intends to deal with marriage, divorce and other related matters. We have got two Acts—one is the Special Marriage Act which also deals with marriage and divorce, and we have got the Hindu Marriage Act which also deals with marriage and divorce. When we have got these

two pieces of legislation which are called the Hindu Marriage Act and the Special Marriage Act, why should this Bill which also deals with marriage and divorce and other matters pertaining to marriage be called the Christian Marriage and Matrimonial Causes Bill? In my opinion the title of this Bill should be 'The Christian Marriage Bill".

The second point is, whether it is really necessary to have the new law to replace the Act of 1872, because just now one hon. Member here observed that there was no such necessity. He objected on the ground that no demand had been made by the Christian community. In this respect I would only refer to what the Law Commission has said:

> "In India however the law as originally enacted in the statutes of 1869 and 1872 has remained practically unchanged and the criticism that it has become antiquated and to some extent obsolete is well-founded. The need has thus arisen for enacting a law on the topic of marriage and divorce such as will be suitable to the present conditions Indeed private Bills on the subject were introduced in Parliament, and the question of revision of the law on the subject has since been referred by the Government to the Commission."

It is clearly mentioned here that this question was raised in Parliament itself and, therefore, Government had to take up this issue. Moreover, the hon. Minister has admitted that there is one section of Christians who have desired that there should be changes in the Act.

Then, the third point that I would like to refer to is the question of marriage between two persons belonging to different religions. Just now Mr. Ruthnaswamy has referred to this point also. He has pointed out that there is a custom prevalent among certain Christian communities that if both the parties, the bride and the bridegroom, agree that their marriage should be solemnised according to Christian rituals, then even though one of the parties is not a Christian and belongs to another religion, Hindu, Muslim or any other religion, the marriage may be solemnised according to Christian rituals. In this respect, I would like to point out that we should make a general rule that, when the parties belong to different religions—Hindu, Muslim or Christian—and if both the parties desire that the marriage should be solemnised according to the religious rituals of one party, then the law should allow it to be performed in that way. Suppose there are two persons belonging to different religions—one is a Christian and the other is a Muslim or a Hindu—and if both the parties agree that their marriage should be solemnised according to Hindu rituals or Muslim rituals, there should be no difficulty. When both agree, they should be allowed to solemnise the marriage according to Hindu or Muslim rituals. The same thing should apply between two persons belonging to different religions, whether they are Muslims, Christians, Hindus, Jains or Sikhs, because that would help to integrate this nation greatly. Today, of course, there is a provision under the Special Marriage Act, and the marriage of persons belonging to different religions can be solemnised under that Act. But suppose they want to perform their marriage according to religious rituals, then this sort of legislation creates impediments in their way. Therefore, I would like to suggest this. At least, let us make a beginning here in this Act. I would like the Joint Select Committee to consider this question and amend clause 4 and say that marriages between two individuals belonging to different religions could be solemnised under this Act also. And if desired, provisions of this Act could be made applicable to such marriages in all matters pertaining to marriage and divorce.

Then there is the question of prohibited relationship. Sir, under clause 4(ii), it has been stated thus:—

[Shri B. D. Khobaragade.]

"....unless the custom governing each of them permits of a marriage between the two;".

So, we are again introducing here the element of custom. We are trying to evolve a common code which would be applicable to all the citizens of this country irrespective of their caste, creed or religion. This is the object according to our Constitution.

SHRI A. D. MANI (Madhya Pradesh): Customs are there.

SHRI B. D. KHOBARAGADE: That is what I say. It should be irrespective of caste, creed, religion or anything. There is the Directive Principle of the Constitution. We should have a thing only based on social principles, social justice and social conscience and we have to do away with all these customs whether they are religious or not. So, here by introducing this element, we are again providing different laws for people who profess the same religion—the Christian religion. There may be different customs among the various Christian communities themselves and, therefore, there will again be different laws based on different customs and thus there will be a conflict of laws. I think this is not a good system. When we are moving towards the objective of having a common code, let us achieve this objective so far as one religious community is concerned. Today in Kerala among the Christians there is some custom according to which two individuals can marry but according to this Bill, they come within prohibited relationship. In Northern India, we find that they do not come under prohibited relationship under this Bill, but there may be different customs prohibiting such marriage and, therefore, they cannot marry. Therefore, there will be two different laws, a different law for the Christians who hail from Kerala and another different law for the Christians who come from the north. In this way, we shall not be able to achieve our objective of having one common code. At least when we are trying to codify this law, we should try to remove the element of custom completely. We should formulate laws only after taking into consideration all the pros and cons and not base laws on customs. If you think that provisions of prohibited relationship should be made liberal, that should be done. So far as I see, I think the list of prohibited relationships is a most liberal one. As pointed out by one or two hon. Members, even marriages between cousins or between the uncle and the niece are allowed under this Act. So, it is a most liberal one. I do not know what sort of relationship is still persisting which the Christians would like to remove from the category of prohibited relationship and allow them to have their marriage solemnised. I do not think there is any such prohibited relationship. So, there is no point in introducing this element of custom. Therefore, I would like to request the Joint Select Committee to consider this question whether they can completely remove this element of custom.

Then, I would like to point out that we should try to make divorce as easy as possible. Certain Christians, particularly those belonging to the Roman Catholic Church, have objected to divorce. But, Sir, in Western countries where the Christian people are in a dominating position, they have provided for liberal divorce laws. I think this is based on human considerations also. If two persons marry but because of certain difficulties they are not in a position to live together—maybe their nature is different, their character is different, there may be certain difficulties—and cannot lead a happy married life and if ultimately they decide to live separately, it should be allowed. There are so many instances where due to some sort of difference between the husband and the wife, they live separately for years together. Before the Hindu Marriage Act was passed, there were hundreds of instances among the Hindu communities where the husband and the wife

lived separately, the wife living with her own parents and not with her husband, and both of them were condemned to lead that sort of life because there was no provision for divorce. Their life was full of miseries. We should try to remove those miseries from the lives of those people. Therefore, if it is possible for us to make the divorce laws a bit more liberal, we should do it.

So far as the question of judicial separation is concerned, judicial separation should be there.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): You come to the next point. We are far behind the schedule. We have yet another Bill.

SHRI B. D. KHOBARAGADE: After judicial separation also, the aggrieved party has to file another petition for divorce. There should be no such difficulty. Immediately after a decree is passed for judicial separation, the aggrieved party should be allowed to file a petition for divorce, and divorce should be granted as early as possible. So far as the restitution of conjugal rights is concerned, as pointed out, it is inhuman that such a sort of provision should be there and, moreover, it is the general experience in the courts of law, that the decree for restitution of conjugal rights is never executed. So it is a mere farce. It is only a waste of time and makes life of the husband and the wife more miserable. If they cannot agree to live together and they are living separately, there should be no provision for restitution of conjugal rights. Either party or the aggrieved party at least should have the right to file a petition for divorce immediately.

4 P.M.

I wish to make one more remark. The provision in clause 32 says that no petition for divorce can be presented to the court unless three years have elapsed since the date of the marriage. Of course, there is a proviso to that clause which says that if the court thinks that there is some sort of hardship caused to the aggrieved party, then the court might reduce that time also. In my opinion it is not proper to give these powers to the court. If we think that it really causes hardship to the parties, and it does cause hardship, then we should remove this clause completely. There should be no time-limit prescribed—of three years. Immediately after the marriage, if the parties to the marriage consider that they cannot live happily, then either party or the aggrieved party should be allowed to file a petition for divorce without waiting for three years or without waiting for the goodwill of the court to reduce that time.

These observations, I hope, would be considered by the Joint Select Committee and they would make the necessary amendments in this Bill. Thank you.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI BIBUDHENDRA MISRA): Mr. Vice-Chairman, I do not want to repeat what I have stated while moving the motion. Some suggestions have been made and very valuable suggestions too. They will receive consideration by the Select Committee. I will only tell Mr. Ruthnaswamy that there is no question of withdrawing the motion, because the Christian Marriage Act and the Divorce Act were based on the English models which existed in England about a century back, and though there have been a number of social changes there and also the law has been amended keeping pace with it, in India it has remained the same, and there has been clamour all around that we must have some amendments to the present law. In fact, it will be seen that though we have not as yet been able to evolve a common civil code, all the social legislations that are being made in the present day, social legislation regarding marriage, divorce, etc. are converging towards a common code. There is no doubt

[Shri Bibudhendra Misra.]

about it and the Christian Marriage Act, so far as marriage and divorce provisions are concerned, is based on the same pattern as the Parsi Marriage Act or the Hindu Marriage Act or the Special Marriage Act. It was also considered by the Law Commission, not only considered by the Law Commission, but a draft Bill on the lines of the recommendations of the Law Commission was circulated for eliciting public opinion, and those recommendations of the Law Commission are contained in their Fifteenth and Twenty-second Reports. So there has been much thought bestowed on it. Of course, here and there, on this provision or that provision, there may have been a difference between one section of the Christian community and another, but that is a very immaterial point, I mean a very minor point which can be thrashed out in detail in the Select Committee, but to say that some sections of the Christian people are content with the law as it is and that it needs no change, or that the proposed law should be withdrawn is a proposition with which no right-thinking man can agree.

With these words, Sir, I commend the motion for reference to Select Committee.

DR. M. S. S. SIDDHU (Uttar Pradesh): May I seek a clarification? In clause 30, in the matter of divorce, it is said,

> "for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy;".

Now as far as modern knowledge is concerned, these two expressions, "virulent and incurable form", and the period of "three years", are all incompatible with one another. What I mean to say is this. Leprosy is no longer the so-called "incurable" in the strict sense of the term, and as far as perfect cure is concerned, still we do not have it. That is my point number one.

And my second point is this. It is said,

> "for a period of not less than three years immediately preceding the presentation of the petition, been suffering from veneral disease in a communicable form;".

Now if these two provisions in clause 30 are taken with clause 32, where before three years one cannot seek divorce, it comes to this that for three years a person has to put up with this communicable disease, and if he can so put up for three years, then whatever harm it was supposed to do would have been done within that period of three years. That is why I want to know what actually is meant by these expressions, "virulent and incurable form of leprosy", and "venereal disease in a communicable form" and "three years."

SHRI BIBUDHENDRA MISRA: Sir, I am not an expert in the line, but I can only say that the same words also occur in the Hindu Marriage Act and the Special Marriage Act, and the same wording is also contained in the draft Bill given by the Law Commission itself. It is their wording. Of course, this suggestion that has been made will be considered by the Select Committee, but I am not an expert to say whether it can be cured within three years or not.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): The question is:

> "That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to amend and codify the law relating to marriage and matrimonial causes among the Christians and resolves that the following members of the Rajya Sabha be nominated to

serve on the said Joint Committee, namely:—

1 Rajkumari Amrit Kaur
2. Shri Jairamdas Daulatram
3 Shri A C Gilbert
4. Shrimati Jahanara Jaipal Singh
5 Shri Dayaldas Kurre
6. Shri Bansi Lal
7. Shri A. D. Mani
8. Shrimati Uma Nehru
9. Shri Mulka Govinda Reddy
10. Shri M. H. Samuel
11. Shri M. C. Shah
12 Shri Awadeshwar Prasad Sinha
13. Shri P A. Solomon
14 Shri Thomas Srinivasan
15. Shri A. M. Tariq."

The motion was adopted.

THE ADVOCATES (THIRD AMENDMENT) BILL, 1962

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI BIBUDHENDRA MISRA): Sir, on behalf of Shri A K Sen, I beg to move

"That the Bill further to amend the Advocates Act, 1961, as passed by the Lok Sabha, be taken into consideration."

Sir, the amending Bill is very simple in nature, and I am sure it will receive the approbation of all sections of the House. I will only narrate the background. Under the Advocates Act what has been provided is that any graduate who has passed the Law examination has to take an examination prescribed by the Bar Council concerned and has to pass that examination before he could be enrolled as an advocate And there was an exception to it that this would not apply to all those people who had passed before February, 1962, because it was thought that the Bar Councils would not have come into existence and would not have framed the rules by then, and, therefore, they were all exempted But after that law was passed, it was found that though the Bar Councils had been formed the rules had not been framed, as a result of which the graduates who passed after February, 1962, could neither come under the excluded category, nor were there any rules which entitled them to appear for any examination or to undergo any training Therefore, great hardship was experienced by all the students. We thought that the Bar Councils would frame the rules in time. But that was not done for some reason or other, and again, though some Bar Councils framed the rules, they had to get the concurrence of the Bar Council of India, which met only on July 16 and July 18 Now, there were a good many representations; in fact many Members of Parliament were interested and they discussed and they said that the date should be extended. Mr Sheel Bhadra Yajee, a Member of this House, and some Communist friends of the other House, Mr. S M. Banerjee and others came and said that this date should be extended Therefore, in order to meet the situation, so that the student mass may not be in trouble, the Government decided that the extension should be granted—the extension at present is granted only up to February, 1962—up to February, 1963 so that, in the meantime, the Bar Councils may frame rules, and those rules will be applicable only to greduates who pass the Law examination after 1963 This is the main purpose of this amendment. From our experience also it has been seen that the Bar Councils in some cases have not framed rules in proper time It was thought necessary that the rule making power should not be taken away and that the Government should be entitled to frame rules in consultation with the All India Bar Council in case State Bar Councils do not frame rules In regard to the new insertion here, seeking to give Government that power, it has been categorically stated that they will operate only so long as the State Bar Councils