

- (iv) Ministry of Finance (Revenue Division) Notification No 42 C Exc, dated the 1st November, 1954 [Placed in the Library See No S-462/54 for (1) to (iv)]

MINISTRY OF FINANCE (REVENUE DIVISION) NOTIFICATION PUBLISHING AMENDMENTS TO CUSTOMS DUTIES DRAWBACK (EMBROIDERED GOODS) RULES, 1954

SHRI A C GUHA Sir, I also lay on the Table, under sub-section (4) of section 43B of the Sea Customs Act, 1878 a copy of the Ministry of Finance (Revenue Division) Notification No 118, dated the 9th October 1954, publishing certain amendments to the Customs Duties Drawback (Embroidered Goods) Rules, 1954 [Placed in the Library See No S-416/54]

Sir, if you will kindly permit me, I would like to draw the attention of hon Members to the fact that item (iv) in the first list of notifications concerns the integration of the former French territories with India I think that it is the first Government document to be laid on the Table of the Sabha concerning the French territories

PETITION REGARDING THE HINDU MARRIAGE AND DIVORCE BILL, 1952

SHRIMATI PARVATHI KRISHNAN (Madras) Mr Chairman, I present a petition signed by 22,260 petitioners regarding the Hindu Marriage and Divorce Bill, 1952

THE HINDU MARRIAGE AND DIVORCE BILL, 1952—continued

SHRI M P N SINHA (Bihar) Sir, I am resuming my speech I now refer to clause 5, sub-clause (iii) which relates to the marriageable age of a girl and a boy It has been proposed that the minimum age limit for a girl should be 16 years and that for a boy

should be 21 years Some friends have presented their notes of dissent and there is a section of opinion that the age limit should be 15 for girls and 18 for boys, as originally fixed in the Bill I do not agree with that view and I think that the age of the girl, the minimum age of the girl should remain at 16 and that of the boy at 21 for the simple reason that before that age the girl or boy is not ripe for marriage Another relevant factor in this regard is education I mean that education should be completed or it should be well in advance before a marriage is contracted I do not think that there will be any serious objection from the villagers also, because as my hon friends know, the villagers are not the same as they were before

Now, I come to clause 8 which deals with registration of marriages I know that it will be very difficult for the Government to make a provision for the registration of all marriages It is admitted on all hands that it will be desirable to have the marriages registered, because I do know in my State that there have been quite a few cases where the husband had disowned a wife or a wife had disowned a husband In such cases, if there is some documentary proof, it will not be easy for people to do that, but it is difficult at this stage, I take it, to make an amendment for this I suggest that some power should be given to the States whereby they can make suitable arrangements for the registration of all the marriages, that is, it should be made obligatory for the marrying party

[MR DEPUTY CHAIRMAN in the Chair]

Then another thing There should be a provision made that where the parties or one of the parties, either the man or the woman, who had already been married before the commencement of this Act, want their marriage to be registered, there should be no objection in allowing that In fact, there should be a provision that such registration could take place Then, I will refer to section 9

PANDIT S. S. N. TANKHA (Uttar Pradesh): Sir, on a point of information, may I know what will be the advantage in the registration of marriages, which have been solemnized earlier when the Act is being made retrospective?

SHRI M. P. N. SINHA: There is no provision for registration of marriages that have already taken place. This is considered desirable for certain reasons. There is no harm in having a record of previous marriages. It is not a very serious matter for contention.

I now come to clause 9, which in my opinion is a very important clause and my feeling is very strong about this. This relates to the restitution of conjugal rights. By this clause something is going to happen which should not be permitted in a civilised society. What is this conjugal right? Mostly it will be used against the woman, I am sure, so that a woman, or a girl, will be forced to live with her husband, as wife. In other words, she will be forced to cohabit, to have intercourse with her husband. This is a natural course between a man and wife, but to make it obligatory, or to force either party, and much more the girl to have intercourse with the man, I think, is something which I call preposterous. You will say that it is the natural course of the marriage. I do not agree, Sir. It is one of the reasons for the marriage, but there are other grounds as well. Suppose the girl is unwilling for this act, or the man is unwilling for this act, there is provision made for separation and in that case instead of forcing either party to take recourse to intercourse, it is better that the aggrieved party should go to court and have separation. I wonder how this was actually introduced in this Bill and why it was not deleted by the Select Committee.

Then, referring to clause 10, judicial separation, I have to make one suggestion. You will find that there is a sub-clause (2) which reads like this:

"Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so." This is contradiction in terms. Firstly, if it is to be according to the wish of the party, then the other provision, viz., if the court thinks fit, becomes redundant. If the court thinks fit and the parties do not want it, then also it becomes wrong. Therefore, I say that this sub-clause (2) is contradiction in terms and it will take away much of the force of clause 10. This should be deleted.

I now refer to clause 12—voidable marriages. In this there are only two grounds given. You will see that any marriage solemnised before the commencement of this Act shall be voidable and may, on a petition presented by either party thereto, be annulled by a decree of nullity on either of the following grounds. The grounds given are only two: (a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; or (b) that either party is an idiot or was a lunatic at the time of the marriage, provided that no petition under this subsection shall be presented after two years of passing of this Act. Sir, I want to state that there are other important grounds for filing a petition under this clause 12. These are the only two grounds given, namely, that he was impotent or that he was a lunatic. There may be other grounds for filing such a petition. For example, I think, cruelty should be one ground, then suffering from venereal diseases and leprosy, because these are treated as obnoxious and in such a condition a petition could be filed under clause 12. So, these should be inserted in that clause. Then, Sir, if you refer to clause 13 it deals with divorce. One of the grounds given in that clause is given under sub-clause (vii), which states as follows:—

"(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive, or"

Well, this relates to both, a man and a woman. It is intended that a period of seven years should elapse before he or she can apply for divorce. I think, Sir, this period should be reduced to three years, because if a man or a woman is not heard of by the persons who are likely to hear about him or her, the period suggested by me is quite enough. Why wait for seven years? I think that even the period of three years is more than what it should be, but I would not be very drastic about it, and I would therefore suggest that it should be three years.

Then, Sir, about clause 14—No petition for divorce to be presented within three years of marriage—I have already told you that I am of the opinion that for this purpose a period of one year should be enough. In fact there should be no period. The grounds given are cruelty, venereal diseases, leprosy, desertion, and all that. Suppose a woman has been deserted by her husband for a period of one year, that should be considered as sufficient indication of the fact that she has not been taken care of. So Sir, there should be no limit to the period in the first instance. But, if some period has to be fixed for filing a petition, then it should not be more than one year.

Again, Sir, I find in clause 15 it is said that "Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the court of the first instance." It might be argued, Sir, that this proviso is inserted in order to make it a little difficult for people to get divorce. But, Sir, once a divorce is granted, I do not think it is proper to put any time limit about remarriage. I suggest that there should be no time limit, and

either party should be able to remarry at any time after a decree is passed.

Then, Sir, I refer you to clause 22 which says that "Proceedings may be *in camera* and may not be printed or published." Sir, it looks quite all right that these proceedings should be *in camera*. But there is another side of the picture also, and I am in difficulty about it. I am just expressing my views. Well, personally speaking, I think—and I agree with that view—that a divorce should not be made easy. This provision about divorce should be used only in urgent cases. The intention behind the proceedings *in camera* is that the public should not know the names of the parties to the divorce, nor should it know the causes given and everything should be done in a respectable way. But it can also be said, Sir, that this will embolden the parties to file petitions. A respectable man may not like to be dragged to a court if he can avoid it. But if the proceedings are *in camera*, it will be a favourable point for those who would like to have a divorce. Personally speaking, I think, Sir, that when the law is there, there is not much ground in saying that the proceedings should be *in camera* alone. On the other hand, power can be given to the courts. It should be said that where the court desires that it should be *in camera*, it may be *in camera* but the proceedings should not be *in camera* at the desire of the parties.

Then Sir, there is this clause about alimony. Well, I find that the Government themselves are opposed to this clause. The hon. Minister, while speaking on the Bill, said that he would welcome and accept any amendment, if it comes, deleting this clause from the Bill. This shows that it would be done, because they are a majority Party, and if the Congress wants it, this clause would be removed. And my lady friends here also very much want it. But my point is this. There are some cases where I find that the daughter of a rich man marries an educated man—a fairly

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good man—but he is not rich. And suppose, Sir, she creates some circumstances under which it becomes necessary for the man to file a petition for divorce, or she takes it upon herself to file a petition, and the court is satisfied and grants a divorce decree, well, in such a case, I think, this young man, who, if he had not married that rich lady, could perhaps have been better off, should be entitled to get alimony. Of course, there are also some conditions attached to his getting alimony—so long as he has not remarried or he has no other income. I am sure, Sir, that there will be only very few cases of this type. Well, in that case, if this clause is allowed to remain on the Statute Book, it will rather help and not be an obstacle in the way of a happy life.

Sir, one hon. lady friend from these benches has placed petitions signed by some ladies—quite a large number of ladies—and we also have received—and I believe some other hon. Members also have received from them—a letter signed by Shrimati Anasuya Gian Chand and Hazara Begum, and we find that they all want that the distinction between different communities, sought to be made in this Bill, should be removed. That is to say, they want that this law should be applicable to all the communities in India. I am, Sir, strongly of the opinion that this kind of law should be applicable to all Indians alike. If you make some invidious distinction on account of some established customs prevailing in some families, then why should you not allow it in the case of different sections among the Hindus?

When the Bill was referred to a Select Committee in this House, one of our Muslim friends, Mr. Tajamul Hussain, made a very spirited speech and supported the stand that it should apply to Muslims also. It may be said that some Muslims are opposed to it. But it is also true that quite a large number of hon. Hindu Members here are opposed to the present Bill and there is a strong Hindu opinion outside

also against this Bill, but we are not saying that this Bill should not be passed because of that. The view of the Government is—and for that matter the view of the Congress is—that that should not be a ground for rejecting the Bill, because they are convinced that this is for the well-being of our society. I will appeal to my hon. Muslim friends that they should understand the implications of what they are doing today by their obstinate attitude in this matter. They are doing a grievous wrong to Muslim society for which they will repent later on.

KAZI KARIMUDDIN: (Madhya Pradesh): Question.

SHRI M. P. N. SINHA: If this is good for the Hindus, I think it should be equally good for the Muslims. All the grounds that are advanced in the case of the Hindus are applicable to Muslims also. As a matter of fact, the condition of the women among the Muslims is worse than among the Hindus. In a matter of this kind, you will have to take a bold step, you have to be foresighted. I will once more appeal to my Muslim friends to consider this very seriously. As far as the Bill is concerned, my friend, Mr. Mahanty, raised a point of order yesterday, and there was a ruling given by you, which was quite correct. What he said was that being the Government, why should you enact a separate law for a particular community? If you say that it is a question of religion with which you should not interfere, then there are many things in this Bill which are against many things said in the Hindu religion and which have been sanctioned by Manu and other law-givers.

I will refer only to two or three points from the petition I mentioned.

“Though we approve of the Registration of marriages, some simple workable method should be adopted for rural women, whose difficulties should be taken into consideration.”

I have already referred to that.

“In the section “grounds for divorce” where it is stated that a year should elapse if either party is suffer—

ing from leprosy, etc., we suggest that this is not in the interest of the health of the children and therefore petition for judicial separation should be made as soon as the fact of the disease is established."

Then they say:

"The period of three years for applying for divorce after judicial separation should be shortened to one year."

I have already made my submission on this point.

"Divorce proceedings should not be started if the woman is pregnant."

"The right of divorce should be given to wives of bigamous and polygamous marriages contracted before the passing of the Act."

I think this is also important. If you give the right of divorce on certain grounds to women who marry after the passing of this Act, I think that on the same grounds you should also give the right of divorce to women who have already married and are suffering under the handicap of being one of the two or more wives.

"The courts should not continue to have the right to grant restitution of conjugal rights and those who do not desire to live together should be allowed to have the right of judicial separation."

That I have already submitted.

"In support of our stand, we are presenting a petition to Parliament supported by 21,800 signatures from all over the country."

These two ladies who have made this petition represent a body whose membership is 1,21,000.

I think, Sir, I have had my say on all important issues except one. Something has been said in support of polygamy that it becomes necessary when one needs a son for one's spiritual

benefit. I think such people have forgotten that in the same Hindu religion there is a provision for adoption. The adopted son takes the place of the natural son and he can give *pindas*, he can do all the *karmas*, and such things done by him will be equally conducive to the elevation of the spirit of the father. And therefore there is no necessity to marry a second time for the sake of a son. The necessity for a son was visualised by our great *rishis* and therefore they provided for the adoption of a boy.

In the end, I will say once more that we are grateful to the Government for having brought forward this useful measure and I think all the Members or at least most of them will support this measure.

SHRIMATI MONA HENSMAN (Madras): Mr. Deputy Chairman, I have got a few remarks to put before you on this Bill and in order to save the time of the House, you will forgive me if I make a comprehensive speech touching on the different clauses so that you may not have to listen to me again. Also you will forgive me if I refer from time to time to my notes so that the different points that have to be brought before us may not be omitted by me, and also that I may not wonder from the point.

Now, let me begin by congratulating the Government on bringing in this Bill which has long been awaited. This Blue Book which contains the clauses for Hindu Marriage is going to be far more important to the country than any White Paper that has ever been issued. We owe this to the very earnest and gracious work of our Law Minister whom we are so pleased to welcome back today and to the untiring efforts of Mr. Karmarkar, our Union Minister for Commerce, who has already piloted the Coffee, Rubber and Tea Bills so successfully, and is now piloting the Marriage Bill, With even greater success. There is usually coffee and tea served after marriages in this country but in this House we have decided to work the other way, in that we are now having

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the Marriage Bill before us and had the Coffee and Tea Bills passed by the House the other afternoon. Sir, I am grateful to the House for taking so much interest in marriage. It shows that the Ministers have been so happily married that they think of bringing forward this Bill to make others, perhaps less fortunate than themselves happy too!

DR. R. P. DUBE (Madhya Pradesh): What about the Members of this House?

SHRIMATI MONA HENSMAN: If the hon. Dr. Dube will wait a moment, I will tell him that there are still one or two Members who have not yet braved the adventure of marriage. I hope they will now be influenced, not by the divorce part of this Bill, but by the marriage part of it and go further than they have done up to now. Now, I think, Sir, that the Members of the House will be claiming a lot of your time during this coming week because every Member, whether of my sex or of the other sex, would like to say something important and weight about this Bill, since it has now been delayed not only for weeks and days but for months and, I might even say, by some of us for years. Therefore, today we celebrate an event—something that is an important matter to the social structure of our country. Sir, in legislating for marriage, we have unfortunately to have the concomitant of divorce but let it not be thought either in this House or outside in our country that we are legislating for divorce. That is a very secondary matter. We are legislating for the marriages that are going to make the country strong, that are going to remain a sacrament as they have been in this country. I may say that no marriage has ever been more of a sacrament than the Hindu marriage. We in our religions may take vows for life but in the Hindu religion we take vows for eternity—we vow to be faithful till the sun endures; while the moon shines, while the stars look down on us—

such promises are made, and we should remain true to them and they are woven into the social structure of our lives.

(Dr. Shrimati Seeta Parmanand rose to interrupt.)

Sir, I will not yield to any one, not even to a lady Member at this point if you do not mind. Because, I don't want to detain the House for long and interruptions lengthen speeches unduly. If any hon. Member has anything to say, she can have her say later. I am not yielding the floor.

Now, Sir, you will remember that among the number of opinions that were sent to us, there have been certain opinions that have told the Law Minister that in certain sections of the Hindu community divorce has already been practised on a somewhat large scale but among the educated classes and, perhaps, the classes that have had more of the structure of social religion, it has not yet prevailed. Now of course, where one class or section ends, the other begins, but we cannot be sure of the boundary line, so no one can say divorce has been impossible in the Hindu religion. We are now a nation based on a socialistic and on a really democratic basis and we are not concerned as to whether one part of a community is governed by one or another law. The whole community stands or falls together. Coming to the Bill itself, I would like to start with clause 9 because it comes first. The matter of prostitution of conjugal rights has a very important place in this Bill. We ask that every effort should be made to have a compromise effected before anybody brings in any legislation or appeals to legislation for a restitution of the rights that have been given to them by custom and by religion and this compromise would be effected by the court perhaps or by authorities before the law is asked to interfere. Now there are one or two cases and one or two places where conjugal right may not be quite in order or in the interest of the parties concerned. If you will

forgive my taking particular cases, I am thinking for instance of a person (who usually is a man) who has it in his power to inflict himself on rather a shrinking, rather an affectionate, rather a fearful type of woman and it may be that he might lead her by a certain amount of bullying or worse a life of such danger, fear, mental horror that she may not be prepared to stay with him. Our society is such at the moment that we need propaganda. Parents may be very sympathetic with their daughters. The whole country may be anxious that she should stay in the home where she was born and leave the gentleman to whom she has been attached by the law of marriage in either form later, if he wishes. He may get divorced or choose to live alone, but straightaway the family loses face in our country if on a permanent basis the daughter goes back and remains in the home where she was born. Therefore in such cases there should be extreme care taken to train the public to realize that restitution of conjugal rights may not lead to the success of a marriage. If efforts at reconciliation have failed or if by any chance it has been found impossible for the two parties to live together, then of course clause 9 would drop and perhaps the clause about divorce might be introduced and adopted. We ask for a certain amount of public propaganda to show that where a girl may be married to a man under circumstances which she may not be prepared to face and yet she may not be able to return to her home and the children may be left with him or may be with her, she may then be able to claim maintenance or alimony in due course.

Then you will forgive me if I refer in some detail at this stage to the clauses where we talk of void marriages. I come to clause 13. There are certain laws all over the country that make marriages null and void but when you are considering a relationship such as marriage, it becomes a very important thing that there should not

be any interference with the sacramental marriage. This clause 11 perhaps is the only one that the public on a religious basis may object to. Even in Acts like Sharda Act some 25 years ago under which marriages of children under 14 years of age were forbidden, which was introduced on the floor of the different Houses of the States and at the Centre, even there, we did say that when a girl had been married, it was extremely difficult, if not possible, to render such a marriage null and void. Now society has moved on. There are different clauses and different circumstances in which marriage may be annulled. That should apply, if need be, to Hindu marriages just as much as to any other marriage because it is not right that any community should not share all the rights and privileges that we have considered may be given to all the men and women in this country; but in clause 13 when it comes to divorce, we have noted that the divorce does not apply as it does under the Special Marriage Act, to a marriage that has been performed previous to the introduction of this Bill. Many families either for lack of children or for other reasons may have men who have taken to themselves a second wife. I would plead that in this clause 13 another little sub-clause be introduced to permit the forsaken or the neglected wife, (only if it can be proved that she is forsaken or neglected), who is not getting emoluments, or any maintenance and any part of the husband's money or any house to live in—in that case I would ask the hon. Minister in charge to allow a sub-clause to have such a woman put in for a divorce—not to separate the two, for, of course already they must be separated if she is forsaken or neglected—so that she may not be left to starve or have to earn her living in a shameful or in an ignominious manner or be thrown back on a family who may or may not be able to support. I have known of cases where women, for no fault of their own have been left like this because the marriage has been celebrated at a

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time when the people were young, and the couples were chosen for each other by older people and the girl has remained where she was faithfully and was truly a wife in every sense of the word, accepting the security of a wife. And the husband either through absorbing other ideas or ideals or because he thought his work demands it or for any other reason, has taken a town wife or a fashionable wife or a modern wife who can paint her finger nails, play bridge or canasta and sometimes can sit with him in the clubs while his first wife, even if she were asked to do this would not be able to help him with dignity and would not entertain some of the new friends also in the way he would like her to entertain them. So the simplest thing has been for the gentlemen in question A, B or C—fortunately there are not many in our country, but still there are some such—to take up a new kind of life and leave the other wife to manage as best as she could perhaps giving Rs. 75/- or Rs. 80 for her and her children which was sometimes hardly enough to keep body and soul together particularly in these days. I would again urge on the hon. Minister to think very seriously about permitting some other sub-clause to be introduced whereby divorce may be permitted, divorce with maintenance for the woman neglected or forsaken as a first wife may be permitted in addition to the clauses (i) to (x). This is a matter for consideration and I do not suggest it as an amendment because I feel that the hon. Minister and the Ministers in charge are the right people to suggest what should be done in this matter. But we have now a real difficulty in clauses 24 and 25. This has already been referred to by the hon. Member who has spoken before me. But that will not prevent me or other Members in this House from speaking about this matter again. It is not because we are feminists that we say that these clauses need a little change. They are quite in order, if only certain words were deleted from them. On page 11, in

clause 24, if you cut off the words "or the husband" and in clause 25, if you leave off the words "or his maintenance" then these clauses would fall into line with what is obtaining generally these days. I for one am very much for equality of women with men, for the married women and also for the unmarried women in all spheres. We have stood for that equality on the floor of this House more than once. We have also said that both man and woman should be equally treated. But, Sir, I would invite the attention of the hon. Minister in charge, the Minister for Law, to the abrupt change, to the meaning behind these words occurring in these clauses. The Hindu woman has got no authority, no legal sway over her movable property or her immovable property. Her movable property must follow a certain line of action, of descent and succession. Immovable property she has none that she can sell away. She has not even a cheque book that she can sign without the authority of her husband. She is not as independent in these respects as perhaps some of her sisters of other religions are or those in other social organisations and I am still hoping to see on the Statute Book a law that gives equal division, equal inheritance to the woman as it gives to the man, whether they be Hindus, Muslims, Christians Parsis, Buddhists, Jains or Sikhs. But until that happens, this order giving the husband maintenance, this order giving him alimony is, I would say, absolutely null and void. It does not agree with the practice that is going on in the country. It does not even agree with what will occur in the law courts. If a man were to go tomorrow and ask for alimony from his wife, well, she may give him a part if she is earning, from the money that she earns from her salary. But she may lose the job tomorrow. She may resign the job or she may be thrown out of the job. What then is to happen?

KAZI KARIMUDDIN: What happens if the husband is thrown out?

SHRIMATI MONA HENSMAN. She has nothing else to depend upon, to fall back on. A law that the man should get alimony or maintenance from the woman is absolutely contrary to the law or practice as it stands in the community over which this law is going to operate. Therefore, I would only ask that this provision should be made null and void not that the marriage should be made null and void when it applies to the women supplying the alimony or maintenance but that the alimony provision be null and void. Alimony according to the dictionary as the hon. Minister said yesterday, means only what is given for the maintenance of the woman, if the woman goes to the court and asks for maintenance and the court agrees to it, because of her separation or divorce. It has not up to now got the new cognisance or cognation of a man going to court and asking for maintenance. Sir I would, if I may, invite the attention of the hon. Minister to an article which appeared in the Times of India of day before yesterday where the question of alimony for a man has been discussed from the point of view of western countries and how we have to learn from that. In cases of unemployment, where the woman is earning and the court has said that she must pay a certain amount to her husband if he is out of employment, from her own earnings. She often throws up her job, not because she does not want it, not because she does not want to give a portion of the earning to her husband, not because she does not want to keep her husband, but because when out of a job, they both get more from the unemployment doles than they would get when only she is in employment. And so it is not a matter of equality. If the woman is earning she will certainly give the necessary help to her husband.

KAZI KARIMUDDIN: Question.

SHRIMATI MONA HENSMAN: And if she does not and if he is in such a state that he should have to take

her assistance, that he is without sustenance or subsistence, then, Sir, leave it to them to arrange matters. But very often the opposite does not happen, for when a woman is put away, she has no place to go to, and therefore it has been the law, not only of this land, but of all nations, that such a woman can claim and get alimony, can claim maintenance from the man. I would not say anything more now on this topic although one could speak for several more minutes on it. I would leave it, to you, Sir, in the hope that the good sense of the hon. Minister and of the other Members would be exercised upon this subject and they would continue this argument favourably when their turn comes. I am quite sure that in almost all families this matter of supporting an unemployed husband would be more a matter of arrangement than one of the law courts—and so it is against all good sense to retain it in this Bill.

Now I would like to say something about the marriage age being raised to sixteen. Sir, there are two points of view on this question. In urban areas, in educated and well-to-do families, where we want the girls to have as much of childhood and girlhood as possible where the responsibilities of married life and motherhood should be delayed until she is able to take them up more fully and more perfectly, in those areas, Sir, we have always stated that as far as possible the girl should be married late, we would welcome 16 and even 18 as the right age, not perhaps 20 because a woman becomes major at 18. When the Sharda Act was introduced some 25 years ago there was a good deal of excitement and certainly a good deal of research put into the matter. The age then fixed for girls was 14 which we have now abandoned, and abandoned quite sensibly, for 15. But even now a large number of women and unmarried girls in this country do not live in towns or under educated conditions. It may be that a few well-to-do fami-

[Shrimati Mona Hensman.]

lies do, but that is not the case in the agricultural areas where it is almost impossible to segregate the sexes after the ages of 15 or even 14. Sir, you know the life of the farmer in the villages where a man sees the sun rise and set, the moon and the stars come out and the budding graces of his adolescent daughter develop by his side. He sees the difficulties of adolescence, the carvings and the natural likings. He also knows what is going around him in the world and he knows that there is no security for his daughter, if anything were to happen to him, unless she has a husband and a home. Therefore, I would put forward the plea that for the present, the age of 15 be retained for the whole country because the majority of the country live in the villages and not in urban areas and we are mainly an agricultural people. If the age is fixed as 16 nobody would be happier than those who live in the urban areas. But even if one girl in a village, is ruined, even if one home in the country is made unhappy, because of the raising of this age by one year the blame would be ours. It may lead to a great deal of deceit also on the part of parents. They may be led to denial, Sir, of the correct age of their daughter. The parent may easily say and swear even that his daughter is 16 when she is only 15. How can an ordinary man know, Sir, the difference between the ages of 15 and 16, physically and biologically? And the welfare of the child is made to depend on one year more or less, and the parents may well be asked by the parties to swear that the daughter is older than she is. They may give the wrong age simply because the parties want to get the girl safely married, well married and also because they do not want to lose a very good husband. Sir, in the matter of education of our children, when the students come to the ages of 18 or 19, we press them to study further, to take up their medical course or the B.A. course or the B.Sc. course and so on. because we feel that their minds are

alert and they should not lose this opportunity. But if a suitable husband comes along and the family want the marriage to take place then there is nothing to prevent the marriage taking place and the education being continued either under the care of the father-in-law or the care of the mother and father.

When it comes to the agricultural district and the industrial district and the factory girl, the parents who live in the poorer parts of cities and the parents who live in the wide open villages, then, it is that consideration which must be given for the lower age, and this point of the minimum age obtainable, will, I am sure, be dealt with in a very able manner by the Minister concerned but the raising of the age from 15 to 16 may wait, Sir, for an amendment later on to be brought in future year to this Bill, nearer the time of perfection of marriage.

I have Sir, already dealt with the question of annulment of marriage except about the grave danger of foisting charges. The only reason for annulment should be—as was mentioned by the hon. Minister yesterday and I would repeat that this has not been put into the Bill—the one mentioned in the Special Marriage Act. If, at the time of marriage, a man finds that the girl he is going to marry is already with child and that not by him there should be some provision for that marriage not to go through or, if the parties find immediately after marriage, that the girl is with child, that marriage should be declared null or void. We welcome this clause and again we women congratulate the Government on having adopted that phrase about the legitimising of children and of providing that no child in future, whether born before or after marriage, should pay the penalty of its accidents of births. It did not ask to be born and it should not pay the penalty of having one known parent or no parent or of not knowing its parents or of being without a home. Therefore, Sir, we con-

gratulate the Government most heartily on the clause allowing all children to be legally recognised. I will not take up more time of the House because I know how many people wish to speak, but I trust that very weighty consideration will be given to the points that have been already brought up by me and that will be brought up by other Members. We again congratulate the Minister on having undertaken this bold step, a step for which he will be criticised but where he will stand firm.

I have only one more point to touch upon and that is that this Bill emphasises the beauties of monogamy, the harmony of life where one husband and one wife at a time live together. There are, Sir, in our country, one or two communities, large minorities of them, where perhaps this ideal does not prevail and I would call upon them with all the strength and all the earnestness at my command to bring about, for themselves and by themselves a state of monogamy in their social life—that would not mean anything different from the rest of the nation—so that uniformly we may go forward with one husband and one wife at a time, trying not to go to the law courts about them and making sure that our world is our home and our home is in the world.

SHRIMATI PARVATHI KRISHNAN (Madras): Mr. Deputy Chairman, I wish to express, at the very outset, the support that we extend to this Bill. On behalf of 22,300 signatories I had the honour this morning of presenting a petition representing the support of such a large section of women throughout this country. These 22,000 signatures represent women not only from Delhi or from Bengal but from throughout the country and when the report is presented later on, hon. Members will see how from every section of society, not only women but men also, have signed that petition. A Member who has preceded me has already made a reference to the points

raised in that petition and so I do not wish to dilate any more on that. While we, as a party support this Bill, we must make it absolutely clear that we do not feel that it is going to solve the problem finally. We welcome it because we know that it is a very essential measure in our country; we welcome it because, in so far as it goes, this piece-meal measure guarantees and bestows certain benefits, particularly on women. On the one hand we find that it restricts polygamy and bigamy which have been the bane of the women of our country for innumerable years, and, on the other, it creates the right of divorce. Although we do not either advocate or accept that people will queue up outside divorce courts, at the same time we feel that in any civilised country it is necessary that such a right should exist for those few people who find it impossible to live together as husband and wife. In supporting this right, we support it from the angle that it is an essential right of the individual to be able to live a life of happiness and a life free from all worry; we also maintain that in such cases where reconciliation is absolutely impossible, to safeguard the interests of the children, to prevent children being born and brought up in an atmosphere of unhappiness, an atmosphere of petty strife, an atmosphere of constant friction between father and mother, it is very necessary that this right should be bestowed and should be guaranteed to our people. While supporting this Bill for these two principle reasons, it is also necessary to make our position quite clear that we do not think that with this Bill the complete emancipation of women in our country is necessarily guaranteed, because, emancipation does not come only from a few words that are written in the Constitution of our country; emancipation cannot emanate only from such measures as these and it will not come unless and until the property relations in our country are such under which women also get a right to property and thus get a full guarantee for their economic

[Shrimati Parvathi Krishnan.]

rights Unless that is done, no other right conferred by these various measures of social reform can be of complete benefit to the women of our country. If women of our country are to benefit fully; mere measures of social reform such as this would not do; the feudal system which, as we maintain, is the root of so many ills, which inflict social disabilities on our women and it will have to be done away with root and branch Therefore, in supporting this Bill we have no illusions as to its limitations. I reiterate the stand that we took when the Special Marriage Act was being discussed that we are always prepared to welcome, support and enable the Government to pass all those measures, however small, which go one step further towards taking our people along the path of progress and along the path of complete freedom. I see Mr. Karmarkar is nodding his head in agreement.

THE MINISTER FOR COMMERCE (SHRI D. P. KARMARKAR): I say that we shall take you through all those steps.

SHRIMATI PARVATHI KRISHNAN: It is indeed a pleasure once to see him being so affable and agreeable today

SHRI D. P. KARMARKAR: Thank you.

SHRIMATI PARVATHI KRISHNAN: . after the rather disgruntled position that he found himself in yesterday over a different matter, I would like to assure him that when he is there to bring a progressive measure, a measure that takes us forward, a measure that is going to bring benefit to large sections of the people, then he can always rest assured of our support and our wholehearted support at that.

To come back to the Bill, Mr. Deputy Chairman, as I said, the factors that are outstanding are that the right of polygamy is now restricted

and the right of divorce is now granted by this measure Therefore, we see that there is some redress against the inequalities and the hardship of compulsory and arbitrary marriages The Bill, as it has emerged from the Select Committee, has, however, in my opinion, a great deal of room for improvement and I would like to refer to those few clauses which, to my mind, need amendment in order to make this Bill what it should be within all the limitations.

In clause 5 the age limit has been raised

MR DEPUTY CHAIRMAN: You can continue at 2-30, Madam The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one of the clock.

The House reassembled at half past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRIMATI PARVATHI KRISHNAN: As I was saying earlier in regard to the age of marriage, we find in clause 5 that the Select Committee has raised the age to 21 and 16 for the bridegroom and bride respectively and we have brought forward an amendment to have the ages brought back to 15 and 18. The reason for this has been very ably dealt with by Mrs. Hensman already. In today's conditions, when bringing in any measure for social reform, one should not rush too much ahead of the times and should take into consideration certain other drawbacks, certain other difficulties and conditions that exist in the country so that when such a measure is brought, it can be fully utilised and can be fully beneficial. Today the majority of our people live in the villages, live in the rural countryside, and it is a well-known fact that there marriages take place at a very early age. In fact it is even difficult to find out the exact ages of the people because I am sure every hon. Member present here must have come across such experiences as meeting

people and asking them how old they were, when they were born and so on and they would have received such vague replies as: "Well, my eldest son was born the year when there were those big floods during Diwali" or "My daughter was born the year when rice was decontrolled or the month after rice was decontrolled" or "I was married that year when some great man in some foreign country died" not knowing very much who exactly it was and so on and so forth.

DIWAN CHAMAN LALL (Punjab).
No particular connection!

SHRIMATI PARVATHI KRISHNAN:
Yes, no particular connection.

(*Interruption.*)

I am not yielding the floor, Mr. Deputy Chairman, and I do not intend to be flippant; it is not as a matter of joke that I am giving these examples but that is the reality today. That is how the majority of our people are. Those are all the landmarks that are there for the majority of our people. It is because of the low standard of literacy, because of the social backwardness in our country, that this happens to be the reality. That being the case, although it is admirable indeed that we should take our people forward and bring them up to the standard of 1954 as it exists in the more advanced countries, at the same time let us not run away from realities, and when we bring a measure of this kind we should make it a measure that is practicable, and if we raise the age limit then what will be the net result? Out of the number of marriages that will take place those which would fall into the purview of being declared void or voidable at a later stage will be very large. Here again what do we think of first? We will have to think of the fate of the children who will be born of those marriages because those marriages would take place in good faith, not that intentionally people would be out to circumvent the law, and therefore I think it would be advantageous and I think

it is very necessary that we should keep the age limit at such a stage where it would be far more practicable.

Coming to clause 9, a much debated and very controversial clause, the subject that has been discussed at length during the discussions on the Special Marriage Act was so.....

SHRI D. P. KARMARKAR: May I interrupt on a point of clarification? What would be the women's general reaction to 15 or 16 according to my friend?

SHRIMATI PARVATHI KRISHNAN: Well, the women's general reaction, if I can presume to speak on behalf of the women in our country is: I think the women's general reaction would be in favour of 15 with the necessity of the guardian's consent up till the age of 16 and 18 for boys. I might point out that, for instance, if you go into the villages in the South—I do not presume to know so much of the conditions in the North—but certainly in Tamil Nad and Malabar today if you go into the villages there, you will find that the old Grandmas and Grandpas, the old Pas and old Mas also, if a boy or girl is at the age of 13 or 14 and yet even the thought of marriage has not occurred to the parents, they remind them of their marriage. It becomes an affair for the whole village and you will find that in their evening meetings when all the people of the village get together this subject is brought up again and again and the parents will be warned that it is time that the girl was married because she is going round with this boy or that boy and it is time, if it was the case of a boy, that the boy was married. It is a very good thing. Why not do their marriage? Why should the parents delay? And so on. So I feel that it would be a welcome improvement to the Bill if this age limit is changed.

Next comes clause 9, the clause about which so much of controversy has existed. There are two sides to the question. One is that it is really

[Shrimati Parvathi Krishnan.] putting on the Statute Book a custom that is commonly known as a very barbaric custom because in our country the economic and the social status of women being what it is, it is inevitable that mostly such a provision militates against the women and restitution of conjugal rights becomes really the right to force a woman to go back to her husband. A decree by court really in effect becomes the right of the man in many cases to bring back a wife who might have left him even for some valid reason or other and she has very little means of redress. On the other hand you have got the opposite side of the question, that sometimes third parties come in, the side that has been dealt with yesterday, and either the bridegroom's people have sent the bride back because they have not been satisfied with the amount of dowry or because they have been upset by some petty insult by the other side during the wedding or the bride's people have taken the bride back because they have been insulted by the bridegroom's party and so on, and therefore this clause would create the possibility of the court helping the bride and bridegroom to get together in spite of the objections and the hurdles and hindrances that are put up by the third parties. Therefore we have brought forward an amendment and if that amendment is accepted, then conditions will be created where, in such cases, where the bride and the bridegroom wish to get together it will be possible. I shall speak in detail on the amendment when we get the discussion clause by clause.

Coming to clause 13, the famous clause which grants the right of divorce, why is it that in this clause the Select Committee has thought it fit to leave out the two grounds for divorce which have been included in the case of judicial separation, that is, the grounds of cruelty and the grounds of desertion when in our country today the most of the recurring grounds which would occur for divorce are these two, that of cruelty and that

of desertion? The army of abandoned wives is by no means a small one in this country; and it is indeed strange that those who have been deserted by their husbands—the husbands have left them either to get married again or because they might have left them for various reasons, economic and otherwise,—those wives have to go through the whole gamut of judicial separation, wait for that time limit that has been fixed, and then again apply after that for divorce. Therefore, we feel that certainly these two grounds for petitioning for divorce should be included in clause 13 to enable such sufferers as a result of desertion and cruelty to apply for divorce without having to go through that long period of judicial separation. And lastly with regard to this particular clause, why is there no provision for those women who, as I said earlier, are abandoned wives, who before this Bill becomes an Act have been deserted by their husbands and the husbands have married a second or a third time? The argument there on the one hand is that may be they do not want to have such a divorce. There are so many cases where the wives live happily together with their husbands. When I was speaking to one hon. Member yesterday, it was pointed out to me that when the anti-bigamy Act was being discussed in Madras, then one of the people who was there present raised the point that he was already happily married to two wives. They were one large happy family and he saw no reason why his family should be broken up. This is a point that has got to be met. Therefore the suggestion is that being a permissive clause there is no reason why it should not be included. Therefore those who wish to continue living happily can do so whereas those who are suffering as a result of the second marriage should have the right to apply for divorce. This is very necessary for two reasons. Firstly, there are a large number of such women within my personal knowledge who are just awaiting this Act in order to avail themselves of this right so that they can economically be free and so that they can lead an independent

existence. Today conditions are such that the majority of them having been deserted and their husbands having married a second time, they have no means of subsistence, have no means of livelihood. They have to bring up and educate their children under the most difficult hardships and they are unable to make two ends meet. They are in the most desperate conditions. If this right were granted to such wives, they would then be in a position to apply for divorce, to apply for maintenance for their children and in that way, will be able to lead an independent existence free from worry and bring up their children who are the future generation of this country in such conditions as are the rights of those children which should never be denied to them under any condition whatsoever.

This clause 13 granting the right of divorce is a clause that has raised tremendous apprehension in the minds of a section of our people. That is quite true and that is really something which we should take into consideration and we must dispel all doubts of the people who are afraid of this right and who fear that marriage would lose the sacramental side of it and that the people would take marriage very lightly. We must make it quite clear to them that the right of divorce is not going to militate against the sanctity of marriage. As I said earlier, the right of divorce will only enable those few people and as time goes on, as our nation progresses forward, the number of people will become fewer and fewer, who really suffer as a result of certain difficulties which they cannot overcome. Two people may be perfectly good friends; at the same time they may not be able to live together as husband and wife and why should they be condemned to live together as husband and wife because of the outmoded idea that their marriage should not be broken up? Why should they live in unhappiness when they could remain as friends, but apart. We must have faith in our people. It is no good talk-

ing in idealistic terms; it is no good talking in terms of old, defunct philosophical ideas; we must have faith in our people. We must remember that we belong to a country that has got a very old, very respected and very ancient civilisation. People who have that heritage will certainly never become barbarians; they will never start rushing in and out of the divorce courts but will be certainly cultured enough and civilised enough to make use of such provisions only when there is no alternative before them. And if we had such faith in our own people, there is no need for those who are apprehensive of this clause to have those fears. So I appeal to them—have faith in your people. Give them this right that is very necessary if you are to have happiness throughout all sections of society.

And lastly, I would like to touch on the clause about alimony. This again is a controversial clause and I feel that the clause as it stands today is certainly, to use a phrase that has oft been used by another hon. Member of this House, putting the cart before the horse. Remember that this is Hindu Marriage and Divorce Bill and that Hindu women have no right to property. So long as that right is not there, so long as you do not grant them economic equality, this is a completely meaningless clause because how many women in this country would be in a position to give alimony to their husbands when they have no right to property whatsoever?

SHRI J. S. BISHT (Uttar Pradesh):
But it does not specify.....

SHRIMATI PARVATHI KRISHNAN:
I am not yielding the floor. You will all have your own opportunities to reply to me when the time comes. And you are lucky enough to be speaking after me. Perhaps I will have a chance for a counter-reply later on also.

In those few exceptional cases which one might think of hypothetically where the wife happens to be rolling in riches, surely the court will be in

[Shrimati Parvathi Krishnan.]
a position to come to some sort of settlement. Where the husband is the poor and benighted victim of such a rich wife, he will surely be protected by the court. But in the social and economic fabric as it exists in our country today, this is certainly a clause that is unpalatable, that is unnecessary and that should be removed from this Bill. Alimony should be only payable by the husband to the wife.

With regard to custody of children, the subject of mother's love for her child or the child's attachment to the mother or the influence that the mother has over the child has been the subject of the greatest literature in every language in the world and we are all fully aware of it. That being the case, it is indeed strange that this Bill should not reflect such sentiments and that the custody of the child should not be left to the mother until the age of 12. It is true that the argument is that in most cases it will be done; it is inevitable and so on. But this is carrying equality too far in a country where equality is not yet a reality in all spheres of life and the custody of the child in my opinion should definitely be left to the mother because it is only in that case that we can rest assured that our future generation who will be the nation builders in the years to come, who will be carrying forward the heritage that we have been lucky enough to inherit, that those children will be brought up by their mothers free from the worry that any child will have when separated from the mother. I know this from personal experience because every time when I return home and see the face of my child I realise exactly what a mother's care and a mother's love means to a child, no matter how close in spirit and in affection the father may also be to the child. It is my personal experience, it is the experience of my friends; it is the experience of the people of the working class and the peasantry amongst whom I have worked.

SHRI D. P. KARMARKAR: What happens to a wife who hates her husband; what happens if there is compulsory custody?

AN HON. MEMBER: That is no compliment to the husband.

SHRIMATI PARVATHI KRISHNAN: It is certainly a compliment to the husband, because I say no matter how affectionate the father may be, no matter how close in spirit the child may be to the father, yet the mother's love is a very dominating factor in the life of any child.

SHRI H. P. SAKSENA (Uttar Pradesh): That is a reality.

SHRIMATI PARVATHI KRISHNAN: In those very very exceptional cases, where it might be that the mother, for various reasons, might be guilty of moral degeneracy or might be guilty of such acts which militate against her being a true mother to her child, then naturally the court will find it fit to decree that the custody of the child should be placed elsewhere. But I feel that the principle, the spirit of this Bill should be that the mother's right to look after her child, the child's right to stay with the mother should be recognised and should be accepted by the law of the land and not only by mere verbal phraseology.

Mr. Deputy Chairman, with these few words I would like to conclude welcoming, once again, this measure, belated though it may be. Fifteen years, the oppressed sections in our country have waited for this Bill and today I hope that there will not be further dilly-dallying, further delay in passing a measure that is a very important measure of social reform to our country. There are many who are awaiting this Bill, who are awaiting with an eagerness and a keenness, because they feel that in it they will see their salvation. They feel that by the passing of this measure much social inequality that exists can be wiped away step by step and gradually. But at the same time we should

not be too complacent and I would like to end on the warning note that I made to the hon. Minister that when we pass this measure, we should not sit back and think that everything has been done to take the women of our country forward to ensure that a new future is being opened up for families to live in complete concord and complete happiness without all those other shackles and other fetters of compulsory and arbitrary marriage. Let us remember that it is only by measures like this that we will enable our women, our country as a whole, the mothers of our children, to march forward, step by step, on their long and arduous task of taking our country forward to be one of the leading countries in this world. Let us not forget this. Let this Bill be discussed and passed in that spirit and on the basis that the Members of this House will unanimously accept the amendments which we have brought forward.

SHRI D. P. KARMARKAR: Sir, I should like to have one point clarified regarding divorce, at this stage. In the case of pre-Act marriages, in all cases where the man has married more than one wife, would my hon. friend make that the only and sole reason for the right to divorce, or is some other reason required like desertion?

SHRI M. P. N. SINHA: Some other reasons also.

SHRIMATI PARVATHI KRISHNAN: I did not follow.

SHRI D. P. KARMARKAR: I want to enquire from my hon. friend. In regard to pre-Act marriages, she suggested that women should have the right to apply for divorce. The question that I am asking my hon. friend, if she does not mind it at this stage, is this. Would she make this very fact that the man had married more than once prior to this Act a ground of divorce? Would that reason alone enable her to have divorce? Merely the fact that he has married twice or thrice, would my hon. friend make

that the sole reason for the right to divorce?

SHRIMATI PARVATHI KRISHNAN: Sir, the point that I was trying to make was that those women who have been the victims of polygamous and bigamous marriages, before this Act, should also be enabled to have the right to apply for divorce ...

SHRI D. P. KARMARKAR: For the reason of bigamous or polygamous marriage?

SHRI T. R. DEOGIRIKAR (Bombay): Mr. Deputy Chairman, I rise to support the Bill as it has emerged from the Select Committee. My reasons are historical and cultural rather than legal. Ever since the advent of British rule and Western civilization in this country, there have been constant attempts to reform the social structure of this country. If we cast a glance at the movements that dominated our public life during the last century, we will find constant struggle, discussion, debates going on between the conservative and the progressive elements in this country. Invariably the woman happened to be the centre of these fights. What should be the age at which the girl should be married?

SHRI S. N. MAZUMDAR (West Bengal): The question was unnecessary.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI T. R. DEOGIRIKAR: Whether women should be allowed to re-marry according to 'Shastras' or not; whether woman should be disfigured after the death of her husband; what should be the age of consent; whether the practice of 'Sati' was good or bad? These problems agitated the master minds in those days. About seventy five years ago, in Poona, there was a big 'Dharma Sabha', 'Sankaracharyas' from all the 'mutts' of India had gathered there and a discussion was going on for one month as to whether the re-marriages were 'Shastric' or not. Unfortunately, the conservatives won the battle, by a single, solitary vote. The social reformers with

[Shri T. R. Deogirikar.]

all vehemence preached that unless we reformed our society, political freedom would be impossible. The political agitators, on the other hand, with equal vehemence said that social reforms have nothing to do with political freedom. The orthodox and the reformers were breaking each other's heads, at least in my part of the country. Curiously enough, the social reformers became moderates in politics and the political agitators became moderates in social reform. All these quarrels ended when Gandhiji worked up social, political and other reforms simultaneously, with his sincerity, with his sacrifice and with his revolutionary urge. The voice of the opponents was silenced, but he had not a smooth sailing. Gandhiji cleared up the social atmosphere and did as much as was possible for him to do under the circumstances. Sir, today we are masters of our destiny. However, we cannot shape our society in any way we like. We are all conscious of the difficulties that lie in our way. We cannot root out the traditional influences of generations and cannot aspire to fashion our society as we like. We are wedded to the past and there is no law, there is no provision in law to dissolve that marital tie. The past is not a hindrance and the future is not a dream-land. In between the two lies the present, loving the past, dreading the past and aspiring for the future. So it is no use saying that the past must be put on the operation table and cut with a surgeon's knife. Liberty, justice and equality, we are pledged to these. We cannot give equality by ignoring justice and liberty. We cannot be just by denying equality and liberty. Sir, we are not going to bring about reforms in that manner and in that spirit. We are doing what our forefathers did, when they were at their best. I am going to show presently how our social life was progressing and retarding from era to era and from age to age. Had there not been any invasions and internecine feuds, our social life would have been as

perfect as it could possibly be. I will narrate briefly how the present Bill is not something astounding, something new.

Sir, the Romans and Hindu Aryans commenced their social development with complete subordination of women in the family, and with complete subordination of men to the headman of the family. The Aryans had to fight with non-Aryans, and as women were incapable of protecting themselves, they were subjected to this subordination. The early *Sutrakars* like *Baudhayan* and *Apastambh* excluded women completely from inheritance and asserted perpetual subjugation of women to men. Their slogan was:

“न स्त्री स्वातंत्र्यं महति”

They said that when she is a girl, she should be under the control of the father; when she is young, she should be controlled by her husband; and when she becomes old, she should be controlled by her sons. That was the first phase in our development.

Gradually, the Aryans conquered the non-Aryans, and as the fear of war disappeared, women got the dignity and honour which they so much desired. They were given equality and liberty. The wives were treated with equality in celebrating solemn rites with their husbands. The queens took equal part in State deliberations, and, on occasions like military display and power. Women were given full liberty to choose their husbands according to their wishes, as is evidenced by the *Swayamvar* form of marriage. Women were allowed to remain unmarried, and nobody brought any pressure on them to go in for marriage. They were poetesses; they were philosophers, and they were *rishis*. They composed hymns and argued with men on intricate problems of philosophy with equal intelligence. This was the second phase, and the highest phase, in the evolution of womanhood in this country. This continued for centuries together. Women were not only treated with equality, but they were considered superior to men.

“अत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः”

Gods took pleasure at places where women were worshipped. That was the highest phase which we reached. The Roman Aryans and the Hindu Aryans were similar in their development up to this period.

In the third phase, one class of Aryans tried to dominate over the other class, and this led to long and murderous wars. The parties in this fight were Brahmins and Kshatriyas, and, both of them, with their cruelty and with their devastation, brought misery and sorrow in the land; life came to be considered as a curse. The woman was considered as a snare and as a burden. The philosophy, art, culture and all our achievements began to disappear. *Karma Siddhanta* or the theory of predestination was told and re-told everywhere. To get out of this misery, one must go to a jungle or to mountains, said they. But this was not possible for all persons. In the society itself, bloodshed and immorality reached heights. Woman was the first victim in this upheaval. The liberty, equality and justice, which she enjoyed for centuries, was taken away from her, and she became a pitiable creature. The whole society became weak, became depraved and ...

SHRI D. P. KARMARKAR: What is this period?

SHRI T. R. DEOGIRIKAR: Yes, I will tell you. The venerable Aryans became worse than non-Aryans. That was the third phase.

Then commenced the fourth phase. From Central Asia came invaders, partly Scythian and partly Mongolian in stock, and they entered India from the North-West. With the help of non-Aryans, they conquered Aryans, and established their kingdoms in the Punjab, Sind, Central India, Rajasthan, Gujerat, and some parts of Maharashtra. The Scythians, the Mongolians, and the non-Aryans were barbarians. Women were treated as slaves in their society; women could be bartered, could be sold, and could be burnt on funeral pyres of their lords and not

of their husbands in order to provide them with comforts in the other world. Kingship is said to be the maker of his times. The barbarous civilisation, if at all it is to be called a civilisation, rushed headlong on our conception of life, and uprooted the social structure completely. Woman ceased to be a deity of peace and goodwill in the family, and instead of that, she became a symbol of corruption and vice. She could not remain celibate; she could not have the choice of *Swayam-var*; she could not marry; she could not seek divorce, and she could not remarry. All sorts of bans were put on her. Polygamy and concubinage, brought by these foreigners, got shelter in our land.

Then came the fifth phase. The dark clouds of the middle ages had disappeared; the *Kala-yug* had gone away. The social and marriage institutions began to be reformed, but on a compromise basis. The old Aryan religion, the old Aryan civilisation, could not be re-established in its pure form. When attempts were made to reform the society, Mohammedan invasion commenced, and the old horror began to be repeated. To protect women became an arduous task. She was not only not allowed to come into the public but even at home, she was kept in *purdah*. I am not going to enter into any details here. We all know how the Muslim civilisation reacted upon our own civilisation. The reforms which our forefathers tried to bring about remained unfulfilled.

Then the British came. During the British period, we had comparatively more freedom, but we had neither the power to make laws nor to execute them. A sense of insecurity was there and inattention to the basic problems was also there, and therefore our reforms could not go much ahead. From this tragic review, it will be seen that we are not what we once were. It is not we but the internal wars and external invasions that have depraved the women to their present condition and deprived them

[Shri T. R. Deogirikar.]

of their rights of inheritance and freedom. Subordination, equality and liberty, demoralisation, barbarity and compromised social order—these were the landmarks in our development. Sir, we are now free, and there is now no possibility of such feuds and such invasions. In passing this Bill, we are simply undoing the wrong of very long standing. The orthodox section in our country should not only not oppose this Bill but should welcome it. This is an attempt to restore our society to its glorious period in our Aryan civilisation. With restraint and vigilance, we can march ahead. Will the Hindu element welcome this Bill? I am sure it will. Sir, I support the Bill.

SHRI S. N. DWIVEDY (Orissa): Mr. Deputy Chairman, I rise to welcome and offer my wholehearted support to this measure, not because it is a consolidated and integrated measure in the matter of social reform but because we feel that this is a step in the right direction. Sir, the bogey of State interference in religious matters has been raised in the country regarding this Bill and even a Member of the Select Committee, in his minute of dissent, goes so far as to say that this Bill, if enacted, would disrupt the Hindu family and society. This bogey is not a new one in our country. Even in the matter of untouchability, it is known to everybody that when Mahatma Gandhi raised a mighty movement in this country against the scourge of untouchability, the Sanatanist and orthodox sections carried on an agitation against his movement. Even as late as 25 years back, when the Sarda Act was enacted, there was an agitation and a hue and cry all over the country that the Hindu society was going to be finished. But experience has shown that the Child Marriage Restraint Act was a move in the right direction and that we had moved with the times. Therefore, this Government, instead of moving in this matter in such halting and hesitating a manner, should have come forward with proposals for reform, not confin-

ing it only to the Hindu society but extending it to every citizen of India. They have not done so. Neither have they told us in what way, in what manner and to what purpose they are going to introduce reforms in the existing social order. There is opposition to this simple measure because the people outside have no idea of what the Government intend to do ultimately. Just as they have given equal rights to everybody in the political sphere without equal rights in the economic sphere, so also in the social sphere there is nothing concrete and definite which the Government have shown that they are going to do. Even in such an important measure such as this which would affect millions and millions of our people, the party in power—the Congress Party—has not been able to sit for the number of days which was necessary to decide as a party whether they believe in measures such as this, and they have given freedom to its members to decide as they like. After all the Bill proposes to introduce only three major reforms. Those are, strict enforcement of the principle of monogamy, provision of the right of divorce under specified conditions and a ban on early marriages. As regards these, I don't think there would be any objection from any quarter even in this House. The speeches that have been made up to this time show that even though there may be differences of opinion on certain clauses here and there, the Bill on the whole is accepted by everybody.

Sir, as regards divorce, there is a viewpoint which says that it is anti-gonistic to our Hindu philosophy as if we are introducing something new and as if, as soon as this right of divorce is given and the Bill is enacted into law, our women folk in hundreds and thousands would come forward and take recourse to divorce. I am told that in Baroda State about thirty years ago this right of divorce was given under a similar enactment but that during the thirty years since the law was enacted and up to the time the State was integrated, there have not been

more than three cases under this enactment. So the people should have no apprehension that by giving the right of divorce, there will be many cases and the family is going to be disrupted or broken.

I would then refer to clause 5 in this Bill regarding age which to my mind is the most essential part of it. By introducing the Sarda Act we had given an age-limit and there was a hue and cry all over the country against that Act. Now we don't propose to go forward by the experience that we have got but we propose only to raise the age to 16 as regards girls. I am in favour of raising this upto 18—the age in which a person gets maturity. I am of the view that the time has come when we should prevent not only child marriages but also early marriages. When the Sarda Act was being discussed, it was stated that that would not be observed under the conditions then prevailing in the country and that that would remain in the Statute Book and people would not obey it but experience has proved otherwise. From the 1951 census it can be seen that between the age-group of 5 to 14, the number of females are 41·99 millions but those married among them are 6·12 millions. That is a model achievement I should say. In a country where about two decades ago child marriage was prevalent everywhere, in every society so to say, this is a model achievement. The State may not forcibly thrust upon the people certain age-limits, but the duty of the State also is to give a direction and the time has come when the society would have to proceed under certain directions if we are after building up a new order of society. Therefore, I feel that we should take measures to prevent early marriages. We are spending money, we are opening centres, we want family planning, birth control etc. and our Five Year Plan is being upset on account of growth of population. We are searching for more money and we are inviting foreign capital. We are doing this and that because we calculate that every year our birth

rate is rising. We cannot feed the new mouths which are coming every day. If we raise this age to 18 you can solve it. I don't know whether it will be acceptable but I feel that between the age-group of 15 to 18 the marriages would be about 10 million and if we increase it from 16 to 18, then the births would be postponed to a later date and it will come to about 50 millions. That will be a good thing and I don't think it will not be conducive to an integrated plan which we want to carry out in this country. So I feel that in view of the status and dignity of women in India, in view of the opinions that have developed in this country to give the womenfolk in this country equal status and dignity, it is equally necessary also that this age-limit should also be increased. There is also another factor. In this Bill we have provided that they have to get the permission of their parents. If we don't want State interference, I also believe that we should not have much interference or pressure from the family or from the society as regards selection and choice of the partner.

AN HON. MEMBER: Should it be twenty-five?

SHRI S. N. DWIVEDY: If you like so. But I don't feel that twenty-five would be a reasonable age.

SHRI S. MAHANTY (Orissa): It is beyond age.

SHRI S. N. DWIVEDY: Yes, I accept it. Already there is a proposal not to stick even to the age that is provided in this Bill and I don't know what is the view-point of the hon. Minister when he moved this Bill. He said that if amendments are brought forward to change the age-limit, that would be welcomed. I don't know whether he was in favour of raising the age or for reducing it to 15. Anyway there are two view-points in this matter and

SHRI D. P. KARMARKAR: There is the third also.

SHRI S. N. DWIVEDY: I don't know whether anyone would like it to be

[Shri S. N. Dwivedy.]

30 or 35. But in this connection I would say that if you want to amend, even the Child Marriage Restraints Act should be amended likewise to make it uniform i.e., 18 and 21 which would be acceptable generally and which will be conducive to the growth of our society. I would also not like that in the selection and choice of partners either the male or female should be under any handicap of social or family pressure. Therefore, if the age is raised to 18, the person would be quite free to decide for himself or herself and would have sufficient time to develop and become a useful and a capable member of the society.

About clause 13, some hon. Members have already asked for some improvements in that but I would only ask the framers and the hon. mover also to see to it whether by keeping it as it is, we will not invite more litigation and whether we would not be responsible to make these people really victims of lawyers and courts? The words used such as "rape, sodomy, adulterous life, unsound mind" etc.—for these words there is no explanation given. When these words go to court—it may be *in camera* or in public—but everybody would try to bring in experts perhaps even from foreign countries—and things will be carried to a length which we cannot imagine. It will have no limit. Therefore, if we do not want these persons to be victims of courts and lawyers, I would like that there must be some explanation given so that this will not lead to such confusion.

I would also like to tell you one thing. I would have been glad if the Select Committee had also taken note of this view point which was mentioned in the Select Committee so far as I know. There is a Minute of Dissent here. This is what I want to quote:

"I feel it is necessary to make provisions under clause 12(2) relating to voidable marriages for the following contingency when a husband finds his newly married wife

pregnant, at the time of his marriage, by some person other than himself. It should be open to him to get the marriage avoided....."

This is the point of view given in this note and I feel that there must be some provision as regards this also in the case of a marriage, in clause 12.

Having said this much, I wholeheartedly support this measure. I also feel that Government must come forward with Bills affecting the entire Indian society and removing all obstacles that stand in the way of our progress and development.

SHRI H. P. SAKSENA: Mr. Deputy Chairman, we are now dealing with that much coveted, much advertised, much desired and

SHRI B. GUPTA (West Bengal): And much delayed?

SHRI H. P. SAKSENA: ...and much loved measure known as the Hindu Marriage and Divorce Bill. Its title has captivated the imagination of the women of this country; of some of the fashionable women; of the society women and the modern women whom some mischievous persons call "butter flies"—I do not call them by that name, for they are very able people, very progressive and they are in the full sense of the term very respectful and very respectable.

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Bharat): And some old men also like the measure.

SHRI H. P. SAKSENA: I do not know why my hon. friend there should refer to old men. I do not know whether he thinks himself to be young in age or young in spirits. I don't know, perhaps he may be neither.

Well, I was talking of.....

KAZI KARIMUDDIN: Fashionable women.

SHRI H. P. SAKSENA: I was talking of my sisters who are in this House

and who have taken very great interest in this Bill. I thought for a moment that when the Special Marriage Bill had been passed and they got out of it the one great blessing that they wanted to have in their possession, I mean the right to divorce, they would be satisfied. Of course the matter of inheritance was there and that has got to be settled to the entire satisfaction of women. I strongly hold that women should have as good a right to inheritance as the men; that daughters should have equal rights as the sons in this matter. There should be no disparity and there should be no differentiation made in that respect. Then perhaps they would think that they are economically on an equal footing, on equal terms with men, and that time, I hope, will come soon, perhaps I would have been happier if it had come earlier, earlier than this Bill which is, after all, of a very controversial nature.

Sir, speaker after speaker before me congratulated the Government on having presented this measure. For my part, I sympathise with the Government for having thrown itself voluntarily into a position of controversy from where it would be very difficult for it to emerge successfully when the elections are there, (*An Hon. Member*: Question) when all manner of lies, falsehoods and untruths would be spread by my own hon. friends of this House who hold very strong views on these matters, perhaps on grounds of religion or other grounds. I look upon myself as the most religious Hindu though I do not stick to those dogmas and ceremonies and rituals that are deemed necessary by some Hindus. I may bathe or I may not bathe. I may eat with a Muslim friend, still I remain a Hindu and nobody can uproot me from my Hinduism, just because I do something which is disagreeable to some friends, Mr. Mahanty, for instance.

Sir, I was just saying that the Special Marriage Act ought to have satisfied the aspirations of my friends;

but that did not happen. My honourable and esteemed friend, Shrimati Mona Hensman, delivered a speech which was worthy of a very enlightened and respectable Hindu woman and she referred to the fundamentals of a Hindu marriage and to that extent I am very grateful to her for having reminded this House, where it seems, as if everybody has absolutely forgotten that there is anything like a sacramental nature in the Hindu marriage. People do not want to utter that word even. It has almost become a matter of disgrace to them to call a Hindu marriage of the olden times of the sacramental type, a marriage. Whether it was sacramental or not, the husband and the wife were bound together to remain faithful to each other not only during their life-time but till eternity. Now, imagine the loftiness and the greatness of the idea which was placed before the spouses when they were going to be married. But, Sir, that sort of thing is gradually becoming a thing of the past and we are so much intoxicated and we have drunk so deep out of the western ideas that the one lesson that we have learnt out of it all is to despise our own things even without understanding them and seeing whether they are despicable or not and to adore all that comes from the West. But then just as with my other friends, I gave my blessings to the Special Marriage Bill, I give my blessings to this Bill also, provided of course that it does not.....

SHRI S. N. DWIVEDY: But you don't give us your support.

SHRI H. P. SAKSENA: But the Special Marriage Bill was of a permissive nature. It was not a compulsory measure. It was not binding on all, on each and every person. But now this Bill is binding in its nature for all Hindus. It is of a compulsory nature, although it is being enacted only for one section of the population, that is to say, the Hindu section of the population. I would very humbly request the sponsor of this Bill—the

[Shri H. P. Saksena]
 shrewd lawyer that he is—to let me know when he replies to the debate, what justification he has to impose this Bill, this unwanted, undesired and un-called for Bill (*An Hon Member Question*) on the twice conquered Hindus who cannot lift their little finger in their own defence and why the Government has not had the courage to touch the personal law of the Muslims, the Parsis or the Christians. I would humbly request him to enlighten the House on that score as to why it was that he thought it easy to enact for the Hindus only. Was it their very great concern about the many ills from which Hindu society was suffering?

Is it not then a matter for the ruling class, for the Government of the day, to be partial to the Hindu society to which most of the members belong and not to care a two pence for the personal laws of the Mussalmans who are in a minority, the Christians and so forth? Then they lay themselves open to that charge.

SHRI D. P. KARMAKAR Just for clarification

SHRI H. P. SAKSENA No, Sir, I am not yielding. His chance will come and I can wait till then for the reply that I have requested him to give me.

Now, Sir, this is one thing about which I am very keen and I request the Government to throw this Bill away and to bring out a comprehensive Bill intended for all the sections of the Republic of India without any frown or favour. Let them have courage enough to bring forward such a Bill and I promise them that I will whole-heartedly support them in such a measure. As a matter of fact, I should have openly opposed this Bill just as I did in the case of the Muslim Wakfs Bill in the beginning of this year when it was brought before this House. I opposed it simply because it was intended for one section of the community and not intended for all the castes and religions. It was the Muslim Wakfs Bill. On the same ground, this Hindu Marriage and

Divorce Bill is anathema to me, I hate the very name of the measure and, therefore, I humbly submit that I would have been a thousand times happier if a Bill intended for all the people residing in this great Republic of India had been brought in; that would have been much better. As it is, I do not want to place any hurdles in the passage of this Bill.

My friends have commented on various clauses, 'clause 9 is good, clause 13 is bad and so on'. That is not my purpose. I am not concerned with the clauses of the Bill, how does it matter whether the age of the girl remains 15 or 16? How does it matter? This is not the time when the girls are married when their mothers are pregnant, it is also not the time when the boys are married when they are not yet born. Those days are gone, these are the days in which girls and boys themselves do not agree to marry unless and until the boys are fit enough to maintain their wives as husbands. With these words Sir, I repeat my grievance that it was not wise and proper for the Government and for its spokesmen to thrust and impose this Bill on the unwilling and twice conquered—as I said—heads of the Hindus and not to have the moral courage to bring anything against the personal laws of the Mussalmans, Christians and so forth.

SHRI S. MAHANTY Mr Deputy Chairman, it is really very difficult to speak on this Bill because there is nothing much to speak about. I am really amazed as to why such heavy weather should be made of monogamy or divorce. Those who are even amateurishly acquainted with Hindu Marriage law must have known that monogamy was well recognised and practised. Even though polygamy was practised to a certain extent, monogamy remained the rule and polygamy was an exception. Divorce was also there according to the famous *sloka* wherein it is said: '*naste, mrite, prabrajite, kilbe, chapatite, patau*'. There were certain other conditions also under which a

woman could seek divorce; if a marriage was not performed according to approved forms of marriage like the *Brahmo* form of marriage, the parties were perfectly free to go and seek a divorce. Therefore, the two main features of this Bill, namely, monogamy and divorce, were there in the Hindu society through the countless centuries of the past. We are going to achieve nothing new at all; we are simply going to codify the existing customs. That is all what is being done and I do not see the point in making such heavy weather about this simple proposition. But many extraneous matters have been imported into the consideration of this matter, for instance, the inequality of sexes, oppression of Indian womanhood and so on. If there are any two words which are most indiscriminately and extravagantly used without understanding their import and meaning, those are 'progress' and 'reaction'. One really does not know where reaction ends and progress begins. You want to start reforming society from marriage while many more pressing problems are awaiting solution. When the country presses that there should be immediate land reforms and that for this immediate legislation should come forth, the Congress Party or the great stalwarts of progress say that there should be a change of heart, that they believe more in change of heart, than legislation as propounded by Vinoba Bhave. When it comes to social reforms what do we find? Whatever may be the public sentiment about it, they say that there must be legislation. So, the little point that I am trying to make out is this; of course; it is another matter for examination as to how far it is desirable to bring about social reforms, however desirable they may be, by legislation, but, we should dispassionately analyse such measures from a legislator's point of view, from a sociologist's point of view, without importing such extraneous considerations as oppression of Indian womanhood and all that. Sir, those lady friends who talk about oppression of womanhood in India will do

better to remember that even now, if they had been born in England, the doors of the House of Lords would have been shut against their faces. It is only in India that the Constitution has given them the right to sit here.

SHRI B. GUPTA: But we are not 'Lords', I suppose, Sir.

SHRI S. MAHANTY: I wonder how this sort of interruption helps.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Will the hon. Member kindly repeat again what he said? He was not quite audible. He said about somebody being shot.

SHRI S. MAHANTY: The doors would have been shut against them.

SHRI D. P. KARMARKAR: Not shot.

SHRI S. MAHANTY: Therefore, let us not make heavy weather about the oppression of Indian women and all that. Earlier I said that if there is one species of oppressed human beings in India, it is the man, not the woman. Women are forgetting their curtain-lectures. Curtain lectures are much more oppressing.

Kazi KARIMUDDIN: Effective, not oppressing.

SHRI S. MAHANTY: Curtain-lectures are more oppressive; nagging is also more oppressive than any oppressive action of man. Cold tea served deliberately in the morning is more oppressive than all the oppressions that the women can imagine.

DR. SHRIMATI SEETA PARMANAND: The hon. Member seems to be greatly oppressed.

SHRI D. P. KARMARKAR: Depressed, perhaps.

SHRI S. MAHANTY: That is quite beside the point.

Let us not try to import all these extraneous considerations. If anyone is to seek emancipation, it is man from the clutches of woman, not

*[Shri S. Mahanty.]

woman from the clutches of man. Probably, it is only one country India in which men have been gallant enough, chivalrous enough to accord the highest respect to women. This has not been equalled in any other country, or in any civilisation. Therefore, these are completely extraneous matters.

Before us, there are four issues: Number (1) is monogamy; number (2) is divorce; number (3) is how far this particular piece of legislation is appropriate, taking into consideration the secular character of the Indian Constitution; and No. 4 is alimony in which I am greatly interested and for which I am ubiquitously cursed. I should first start with alimony. My friend, Mr. Karmarkar would excuse me if I just humbly try to bring it to his notice that, while he was piloting the Bill yesterday, he was piloting it as a member of the Government which was committed to the Joint Select Committee Report. Sir, it was quite beside the point whether he was the original mover of this Bill or not. It was quite beside the point whether he was himself present in the Joint Select Committee or not. The fact is, when he came to this House he came as a member of the Government and he was committed to all the provisions of the Bill as it emerged out of the Joint Select Committee. Of course I do not say that what the Joint Select Committee have said are the last words of human intelligence, I do not believe so. This House is perfectly welcome to change many of the provisions reported by the Joint Select Committee. That is another matter. But I venture to think and I am sure my friend Mr. Karmarkar will agree with me that it was not for him to say in the beginning that he does not agree to the provisions dealing with alimony, and he also omitted another word. He omitted the word 'maintenance' and he said, Sir, in the dictionary 'alimony' means a grant, an allowance which is made by a husband to the wife. Therefore he raised before us a very

simple proposition and asked how a wife could pay alimony to the husband. According to lexicographic meaning, it is something unthought of. But I wonder why he omitted this word 'maintenance' occurring in clause 25, "Permanent alimony and maintenance", I wonder how it did escape his notice. In clause 25 of the Bill it has been stipulated that if a woman has the means and if the court is satisfied that the woman has the means then she will be ordered to pay alimony to the husband if she is found responsible for having disrupted the marriage tie. The same liability is also attached to man, and he will pay alimony if alone he has the means for it.

Before I go to the other aspects of the question for the benefit of the House, if you will permit me, Sir, I will read out 'Alimony' from the "Encyclopædia of the Social Sciences". That this work is authoritative, and is referred to by all sociologists and even jurists, it need not be gainsaid. I am not sure if I will be able to finish it within five minutes and even if I may not, judging the importance of this subject you will kindly allow me a little more time. "Alimony", as the term is popularly understood, denotes the obligation of a husband to continue to support his wife and any dependent children after absolute divorce or judicial separation. As such it is generally understood simply as a provision for maintenance. Historically, however, alimony is to be conceived as any compensation to either spouse for the disruption of the marriage. In the broadest sense it is an adjustment of the economic relations of the spouses. In its origin and evolution it is as much a penalty to prevent divorce as a provision in case of divorce. In ancient patriarchal societies, where divorce was absolutely unlimited for the husband, he might put his wife away without providing for her at all. In a more advanced stage a fixed penalty is often assessed against the husband if the wife is innocent of offence. This right probably arose to prevent blood feuds with the wife's relatives. Thus under

the Code of Hammurabi a husband who divorced his wife without cause had to forfeit to her one mina of silver, and in addition restore her portion. Then it goes on to deal with the provision of alimony in which wife also was paying alimony to the husband in the Greek, the Justinian and Roman times and so on and so forth. Then it says: "The Roman law, which has had most influence upon western institutions, exhibited all these stages of development. Under the *manus* system of marriage the wife had no rights at all, but by the time of Justinian, when husband and wife were upon an equality before the law, it was established that a guilty wife lost her *dos*, and a guilty husband his *donatio propter nuptias*. Both spouses were liable to contribute to the support of the children. In the absence of marriage settlements, however, the guilty spouse forfeited one hundred pounds in gold. In case of divorce by mutual consent the parties could make any arrangement they wished about their property."

Now let us leave these ancient periods, look at the marriage law of China. Look at the marriage law of Soviet Russia. Look at even the marriage law of so many States in the United States of America. Look at Scandinavia. Look at the Netherland countries. Look at Switzerland. In all those countries alimony is not one-way traffic. If a wife is found responsible for having disrupted the marriage, if she has the means, well, there is no reason why she should not pay maintenance to the husband if that husband has not the means and I am really amazed how it conforms to the dignity of the resurgent Indian womanhood to plead for such kind of chivalrous mercy at the hands of the most hated of human species called men.

Again it has been urged, it has been urged with a good deal of vehemence and also with a good deal of logic perhaps: Look here, we in India have no inheritance rights, you men, you inherit everything, we have got nothing, wherefrom shall we pay ali-

mony? Good. But it is not meant for those women, those disinherited women, those who have nothing. It is meant for that class of women, those women who have money to pay and it is for the court to decide—not the legislature, not my hon. friends, but an impartial body—it is for the court to decide having taken into consideration all the facts that have been adduced, to decide whether a wife who is found responsible for disruption of marriage tie, whether she has the means to pay alimony and if she has, there is no reason whatsoever why she should not be asked to pay. It has been said: Look here, we may have no money to pay, even though the court may decree. But most humbly I would like to point out that the film actresses of India earn much more than the President of the Indian Republic—the President of the Indian Republic gets only a beggarly sum of Rs. 10,000 per month!

SHRI B. GUPTA: I would like to be a beggar in that case.

SHRI S. MAHANTY: So for simply giving a signature over a dotted line I know of cases where the fabulous sum of lakhs of rupees had been paid to film actresses. If any such film actress is found responsible for having disrupted the marriage tie, is it contended that she should not pay? And why do you think at all that man should be made the guineapig of the so-called social reformation. Once again I should like to urge that social reformation is not a one-way traffic. Therefore I once again urge upon this House that it is perfectly in conformity with the temper, the tradition and the values which the Indian women are going to uphold, and by trying to oppose that provision they will only be lowering themselves before public estimation, and it will be open for men to say: Look here. They all want their rights but not the liabilities.

Coming to another aspect of the question of alimony, after all, what is alimony? Alimony is an adjustment of the economic life of the spouses.

[Shri S. Mahanty.]

If a man divorces his wife, the economic life of that wife is disrupted. You do not expect her to go to the street, you do not wish that her children should go without shelter and nourishment and education. Therefore the provision of alimony is there for an adjustment of the economic life of the spouses.

We all know well our countryside, my friend Mr. Gupta knows it very well about the countryside of Bengal where he would have found that rich fathers-in-law, if they have no sons, adopt sons-in-law, and as a result those sons-in-law have to live a life of perpetual misery at the sufferance of the wives. Now how is the poor man going to obtain divorce, if he is not granted maintenance *pendente lite* and maintenance permanent thereafter?

Now this law is going to make provisions for aberrations. We have been living by making psychological adjustments. We differ from our wives and our wives also differ from us, but that does not mean that we always go to the divorce courts. After all we have to learn how to live together by psychological adjustment. After all life is an adjustment. Therefore.....

SHRI R. U. AGNIBHOJ (Madhya Pradesh): In the case referred to by the hon. Member will the wife pay alimony or the father-in-law?

SHRI S. MAHANTY: It is not alimony. It is maintenance. It is by the wife to the husband.

4 P.M.

SHRIMATI SAVITRY NIGAM (Uttar Pradesh): No self-respecting man should accept money from his wife.

SHRI S. MAHANTY: So also no self-respecting woman should always claim such chivalrous treatment at the hands of men whom they condemn lock, stock and barrel. That is a completely different thing. What I am trying to make out is that after all is said and done, alimony or maintenance is an adjustment of the economic life of the spouses. You do not find any ali-

mony in English law but there is a reason for it. In the early English Marriage law marriage was indissoluble.

[THE VICE-CHAIRMAN (SHRI R. C. GUPTA) in the Chair]

Now, that concept of indissolubility disappears. We are now going to dispel all those ideas; we do not believe in the indissolubility of the marriage tie. Then may I ask what justice is there to ask the husband alone to pay alimony? You want equality of sexes; equality of opportunities; why in this particular case is this special kind of concession claimed? I would rather leave it at that but I would like to read out another paragraph from this Encyclopædia of the Social Sciences for the benefit of the House. It says: "There was no right to alimony at all in Sweden until the new law of 1920 which established it only in cases of actual want. The reciprocal claims for specific injuries are also law now in the Scandinavian countries, but have been long allowed in Switzerland. Finally, it should be noted that the right to divorce by mutual consent in Russia, Australia, Belgium, Rumania and the Scandinavian countries is itself a solution of the alimony problem, for then the parties may come to an amicable understanding upon the subject without the intervention of the law." Therefore this practice of alimony by the husband and maintenance to the husband is well recognised in Western countries. We bring in Western countries when we want to gain a few points to ourselves but when it means a liability or something we turn our back from them. It is not quite a consistent attitude towards a problem as important as this.

SHRI B. K. P. SINHA (Bihar): Consistency is not the virtue of man.

SHRI S. MAHANTY: Inconsistency is the prerogative of a harlot.

Having said that much about alimony, we now come to another aspect of this question. Yesterday before

the hon. Minister proceeded with this Bill, with all my imperfect knowledge of the Indian Constitution I pointed out that this Hindu Marriage and Divorce Bill as it has emerged from the Joint Committee is *ultra vires* of the Constitution, if we took into consideration article 15(1) of the Constitution in the Chapter on Fundamental Rights. Yesterday I had not much time to develop my point but now I would like to take this opportunity of developing my point and placing my views for such consideration as they may deserve in this House.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): The ruling has already been given.

SHRI S. MAHANTY: Sir, I am not going to criticise the ruling. As you know, I have bowed my head down to the ruling. In fact, I have accepted the ruling but inasmuch as that kind of ruling is going to influence the House which has not had the other side of the picture, for the sake of fuller judgment I am going to place before the House the other side of the picture for such consideration.

SHRI MAHESH SARAN (Bihar): But is that permissible, Sir, after the ruling has been given?

SHRI S. MAHANTY: Sir, I am not questioning the ruling.

SHRI MAHESH SARAN: Then where is the use of pressing the point?

SHRI S. MAHANTY: Why are you getting impatient? It does not pay you to become impatient.

SHRI MAHESH SARAN: But excuse me. It does not pay the hon. Member to press a point that has already been decided upon and waste the time of the House.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): So far as that matter is concerned, he says he is not going against the ruling.

SHRI S. MAHANTY: Yes, Sir. I am not going against the ruling. I am not going to criticise the ruling. But if it is the wish of the House that I should be silent on that point, I am in the hands of the Chair.

What we have to examine is what does this word mean. (*Interruptions.*)

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): I think you had better continue your observations.

SHRI S. MAHANTY: I am not asking a further ruling in the matter. I am only trying to explain my point. For example, I am trying to say that this Bill is most iniquitous and discriminating in effect. How are they going to stop me from saying that? Now, I shall read out article 15(1): "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." Now, what we have to examine is.....

SHRI AKBAR ALI KHAN (Hyderabad): Please read the whole article.

SHRI S. MAHANTY: That is 15(1).

DR. SHRIMATI SEETA PARMANAND: If that article refers only to the ruling and if he is going to speak on that article, he is certainly speaking on the ruling. (*Interruptions.*)

SHRI S. MAHANTY: Article 15(2) says: "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public." And article 15(3) says: "Nothing in this article shall prevent the State from making any special provision for women and children."

Now, Sir, I would ask this House and I would most respectfully urge

[Shri S. Mahanty.]
 this House to examine the meaning of the words 'any citizen' in article 15(1). Now whether 'any citizen' means any citizen within the ambit and within the limit of any particular community or it means any citizen of India as a whole is to be examined. Sir, I have not a closed mind on this; I am placing these doubts before you in all humility. I have no closed mind on the subject and probably none will be happier than me, if I am proved wrong. What we have to examine is—once again I will try to bring before you—what are the connotations of the words 'any citizen', whether they mean any citizen of India as a whole or.....

KAZI KARIMUDDIN: What is the purpose of this examination? The purpose is to disagree with the ruling that has been given.

SHRI S. MAHANTY: The purpose is to show that this Bill is a discriminating Bill and that it is an iniquitous measure.

KAZI KARIMUDDIN: A ruling has been given that it is not a discriminating measure and this will be contempt of the ruling of the Chair.

SHRI S. MAHANTY: I am not going to question the ruling.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): Mr. Mahanty, these details are not necessary. You may just refer to the salient points.

SHRI S. MAHANTY: I am coming to it, Sir.

SHRI B. K. P. SINHA: Sir, I cannot understand one thing. There can be a ruling on the interpretation of the rules of procedure. How can there be a ruling on the interpretation of an article of the Constitution? The Constitution says that the law laid down by the Supreme Court shall be final. Interpretation has to be by the Supreme Court and its interpretation shall be final. That is, outside the House one interpretation and inside

the House another interpretation will prevail. I do not think it can be a matter of ruling.

KAZI KARIMUDDIN: The highest authority in this House is the Chair.

SHRI S. MAHANTY: I am really amazed at this kind of interpretation. If it is thought that truth is dangerous, if it is contended that I should stay silent—I do not believe in it—I can sit down. But the question is of academic interest also, not only of legislative interest.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): Please proceed.

SHRI S. MAHANTY: I will leave article 15. I will come to articles 5 to 11 about which I did not speak yesterday. Articles 5 to 11 relate to citizenship. Articles 5 to 11 give a description, give a definition of the Indian citizen. Now, according to those definitions in the Indian Constitution—articles 5 to 11—a Muslim is as good a citizen of India as a Hindu. I would like to know if this proposition is going to be contested. No one in his senses will say that a Muslim is not a citizen of India. Indeed, the Muslims in India—and I am very happy about it—derive all their rights and privileges under these articles. We take them, we accept them as citizens of India as much as we ourselves. In fact, communal considerations are repugnant to the very spirit of this secular Constitution of India. While we talk about the Constitution of India we always keep its secular character and ideal in view. But often when we consider a citizen of India, we refuse to take into consideration to what faith he belongs. Under articles 5 to 11 of the Constitution, the Muslim in India derives all his privileges. He is entitled to all the rights that accrue to a citizen of India. If you look at article 16, if you look at so many other articles, you will find that there is absolutely no difference between men professing different faiths so far as the rights of citizenship are concerned. The little point that I am trying to make out is

this: why then this Hindu Marriage and Divorce Bill? Christians have now monogamy; Parsis have monogamy; Jews have monogamy; Hindus, Buddhists, Sikhs, Jains, even the tribal population are going to have monogamy. Even the Muslim women in Karachi—you might have noticed it in the press today—have now submitted a memorandum to the Government for monogamy. Then why not in India?

KAZI KARIMUDDIN: Surely no.

SHRI S. MAHANTY: You may contest. I was not prepared to speak today. Therefore, I have not come with all my papers, but that is quite a different point. What I am trying to say is this that in India now Hindus, Buddhists, Sikhs, Jains, tribal population, Christians, Parsis, everyone will have monogamy except the Muslims? Why not come here with a uniform Civil Code, which is the directive principle of the Indian Constitution? Now, if you say that you are going to legislate only for Hindus, well, I can understand that proposition. Let us examine article 29(1) of the Constitution. It says: "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same." Now, I ask the House how they define the word "culture". Culture does not mean wearing your clothes in a particular manner; culture does not mean eating your food with a fork and knife; culture does not mean how you smoke a cigarette, drink tea or coffee. Culture has got some deeper connotation. Culture in its essence is the substrata on which a civilization is based. Therefore, culture is a more abiding consideration. Now, I am going to interpret culture in this manner. Culture means those trends, tendencies, those factors which have gone in building the character of a nation, in building the history of a nation. One of the elements of Hindu culture is indissoluble marriage tie. Mind you, I do not believe in indissoluble marriage ties; I do not believe in polygamy, or in all these things; I do

not believe even in marriages. That is quite different. What I am saying is this. Hindu culture was based on certain values, certain concepts and one of those concepts was indissoluble marriage tie. Today you may say that we do not believe in marriage ties. Yet those countless Hindus, in hundreds of years, through countless centuries, have lived on this ideal and Hindu marriage has, by and large, stood the test of time. You may differ from it, but the ugly fact is there, the hard fact is there to reckon with. Now, I ask, if you guarantee, according to article 29(1), that any section of the citizens shall have the right to conserve its own culture, what right have you got to disrupt that cultural factor and bring in all those provisions which go to disrupt the indissoluble marriage ties? How can you contend that culture does not mean this? Otherwise, do you think that culture means lipsticks, smoking cigarettes, or drinking whisky? Culture means something more abiding. One of the basis of Hindu culture is indissoluble marriage tie. Therefore, I ask what justification the Government have to bring forward a measure which only applies to a particular community. Therefore, we have to take these factors into consideration here. The Government have come here with a Bill only for the Hindus. They should not have done so under article 44, which is a directive principle of the Constitution which says that there should be a uniform civil code. Even Napoleon of France, I think in the 18th century, gave a uniform civil code. You are talking of progress in the year 1954 and yet you are bringing a Special marriage law, a Hindu marriage law, a Muslim marriage law, a Christian marriage law. Well, I call it a shame. Therefore, to sum up, to me it appears that this is a most iniquitous, most discriminatory piece of legislation. Now, as I have said earlier, all the communities in India, the Christians, the Jews, the Sikhs, the Parsis, the tribal population, the Hindus, the Buddhists, the Jains, everyone will have monogamy, except the Muslims.

[Shri S. Mahanty.]

Why? Therefore, I urge that this House should throw away this Bill, which is so iniquitous, which is so invidious, which is so discriminatory in its nature, and I urge upon the Government to come to this House with a Bill called the "Indian Marriage and Divorce Bill" which will be passed in no time.

Now, there may be another objection to this. What right have you got to lay your hands on the religious faith of the Muslims? I have got every respect for the Islamic faith. I am not speaking as a member of the Hindu Mahasabha or as they are speaking. I have got every respect for them. I respect their sentiments and I would also expect them to respect my sentiments.

SHRI B. K. P. SINHA: You are a Hindu Mahasabhaite in disguise.

SHRI S. MAHANTY: Well, if I am a Hindu Mahasabhaite, my friend is my teacher and I have learnt it from him.....

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): Mr. Mahanty, order, order.

SHRI S. MAHANTY: Sir, I have been interrupted, what else can I say? You scratch every Congressman, you will find underneath a Hindu Mahasabhaite.

DR. SHRIMATI SEETA PARNAND: Question.

SHRI S. MAHANTY: Otherwise, India would not have been partitioned. Jinnah is as much a creation of the Congress.....

SHRI K. MADHAVA MENON (Madras): That is an absolute scandal.

SHRI S. MAHANTY: Your interruptions are more scandalous. Why are you afraid of truth? Do you think that there would have been partition.....

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): Mr. Mahanty, you must please address me and not any hon. Member.

SHRI S. MAHANTY: Sir, I have been interrupted. So, what I was

trying to make out, before I was interrupted by my hon. friend, was this; that this Bill takes away the very rationale of marriage reform in India. I ask the hon. lady Members of this House how they would like the idea, that one section of women in India would be enjoying certain privileges, would be enjoying certain rights, while another section of their sisters would be rotting under certain atavistic conditions. If they want to be progressive, all want to be progressive, and my Muslim friends are quite willing, and they would not put any obstacle on the way of any such progressive legislation. As it is, they are in favour of it. I therefore cannot understand the object of Mr. Karmarkar to have come here with a Bill which has a restricted scope of application. I still do hold and maintain that this is *ultra vires* of the Constitution. If no opportunity is provided here to examine it dispassionately, probably, there would be an opportunity to examine it in the Supreme Court or elsewhere, whether this is not *ultra vires* of article 15(1) of the Constitution, whether the phrase 'any citizen of India' means a citizen within the limitations, within the ambits, of a particular community, or it means a citizen of India as a whole.

Now, Sir, the third thing that I want to say now is about certain clauses. I am sorry I could not come here with my papers, because I did not think that I would be called upon to speak today.

SHRI B. K. P. SINHA: Speak from your memory.

SHRI S. MAHANTY: Now, Sir, clause 14 relates to "No petition for divorce to be presented within three years of marriage." I am giving an amendment, and in fact, I have given notice of it, to the effect that the words 'five years' be substituted for the words 'three years'. Now, what is the purpose of clause 14? Why has a time limit been fixed that within three years no divorce petition should be presented? The very basis of it is that there should be more of psychological adjustment than a divorce,

because, after all, divorce is not the final answer to an unhappy marriage. Now, what is, after all, monogamy with an easy divorce? According to me, it is polygamy in instalments. One wife or one husband at one time is not monogamy. It may be something else. Monogamy means a certain amount of steadfastness, a certain amount of loyalty to either the husband or the wife. Therefore, in the absence of it, monogamy, with an easy divorce, is reduced to a most undesirable kind of polygamy, but in instalments. Therefore, in every country, it has always been the effort, it has always been the desire, to rectify unhappy marriages more by psychological adjustments than by running to a divorce court. In the U.S.S.R., where the marriage law is very humane indeed, where the marriage law is very practical indeed, where the marriage law is very progressive indeed, they have tried to place some kind of obstruction for such easy divorce. Now, Sir, in the U.S.S.R., according to their marriage laws, the courts levy fees of 100 roubles, simply to entertain an application for a divorce. If that 100 roubles is computed in Indian currency, it might mean something like Rs. 150 or Rs. 200. I am not sure, but it will never be less than Rs. 150. Now, think of a spouse, a husband or a wife. If alone he or she has to file an application for divorce, he or she has to pay Rs. 150. Then, when the court records its verdict, it again levies certain fees, somewhere about 500 to 1,000 roubles. Now, you can imagine the idea behind all this. The idea is that these fees will work as a check on frivolous divorce proceedings, because, ultimately, divorce is not the final answer, and we have to rely more on psychological adjustments than on running to a divorce court. If we have monogamy with an easy divorce, I call it the worst kind of polygamy in easy instalments. Therefore, we must also have some kinds of checks in our law, which will discourage such frivolous and hasty divorce proceedings. Now, it may be said that a period of three

years is enough. But I say, make it five years. If there is any case of excessive hardship, then, of course, as the clause contemplates, the court may waive this provision. You are always at liberty to go to a court for obtaining a divorce, but let us raise this time limit from three years to five years, because by that no party is going to be affected in any way. Therefore, I say, Sir, that the purpose of this clause will not be materially affected if we raise the period of three years to five years.

Now, Sir, I come to clause 19, the heading of which is "Court to which petition should be made." Now, according to clause 19, "Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together." It will be apparent from this clause, Sir, that only district courts have been authorised to entertain any application under this law. As I have said earlier, divorce was well-recognised and practised.....

SHRI D. P. KARMARKAR: I am sure that my hon. friend has not read the definition clause; sub-clause (b) under the definition clause.

SHRI S. MAHANTY: I am reading clause 19.

SHRI D. P. KARMARKAR: It has to be read along with the definition of "district court".

SHRI S. MAHANTY: I have read that also.

SHRI D. P. KARMARKAR: It does not look like that.

SHRI S. MAHANTY: Why?

SHRI D. P. KARMARKAR: I thought my hon. friend thought that it was only the district court that could take cognizance.

SHRI S. MAHANTY: You probably anticipated me. I am coming to that. According to the definition clause, "district court" means, in any area for

[Shri S. Mahanty.] which there is a city civil court that court, and in any other area the principal civil court of original jurisdiction, and so on and so forth. A district court means any civil court. It need not necessarily be a district court. Sir, what I am trying to say here is, as I have already said earlier, that divorce was well-recognised and practised by 80 per cent. of the so-called lowerclass Hindu population in the countryside, except the Brahmins, Vaishyas and Kshatriyas. It was well-recognised and practised. Now, what happens in those cases? There are village elders to decide it. This system has been working satisfactorily for all the hundreds of years of our social life. There were village elders; they were deciding the cases to the complete satisfaction of both the parties. So far, there has been no complaint to the effect that any Council of Elders, or any *Pancha Sabha*, or any *Panchayat*, has acted in a manner detrimental to the interests of any of the parties.

SHRI B. K. P. SINHA: Mr. Vice-Chairman, may I try to understand the hon. Member? In the case of the so-called higher classes, where there is no divorce and divorce is provided, he says, it is wrong. In the other cases, where divorce is easy but is now made more strict, he says it is wrong. We do not know what he exactly wants.

SHRI S. MAHANTY: I am probably misunderstood. Whether divorce is good or bad, that is quite beside the point. I am not now dilating on the merits and demerits of divorce.

SHRI B. K. P. SINHA: Then it is criticism for the sake of criticism.

SHRI S. MAHANTY: I am not yielding any more. What I am saying is that divorce was recognised and practised for all these hundreds of years among 80 per cent. of the lower classes of the Hindus, and the procedure they adopted was very simple. They went to the village *Panchayat*, the council of elders, the wife adducing reasons

and the husband adducing reasons. If the husband was found to be at fault, he was asked to pay a sum of money and so on and so forth. My friend is so anxious because he is a lawyer. So far I define a lawyer as a middleman between man and justice. Now, there is a new definition of a lawyer. A lawyer is a middleman between marriage and broken hearts. There is now a new kind of lawyer. We have had criminal lawyers and we have had civil lawyers. Now, there will be another class, marriage lawyers, and this Bill is going to give them a rich harvest. Now, if they had recognised also the traditional procedure of obtaining a divorce, probably the millions of people who live in the countryside—I am not speaking of the urban population who can always rush to the district court or civil court and engage lawyers like my friend over there and get a divorce—it would have been easier for them to exercise their rights. Now, they may probably have to walk a distance of 20 miles or thirty miles to a court.

SHRI H. C. MATHUR (Rajasthan): It may be much more.

SHRI S. MAHANTY: And then they may have to place themselves completely at the mercy of the lawyers.

SHRI D. P. KARMAKAR: Would my hon. friend like divorce to be made easier or more difficult?

SHRI S. MAHANTY: It is a very ingenious question that has been put to me. The question of making divorce easier or more difficult does not arise here. If he is going to accept my amendment and make the period five years instead of three, then probably I may not press this point. But I am not now speaking on the merits and demerits of easy divorce. I am speaking on clause 19 which has nothing to do at all about easy or difficult divorce.

DR. SHRIMATI SEETA PARMANAND: How does the distance between the village and the court get reduced by increasing the period to five years from three years?

SHRI S. MAHANTY: The distance becomes longer psychologically. Distance does not always mean distance in miles. But I am not yielding any more.

SHRI D. P. KARMARKAR: That is also a clever way of avoiding the issue.

SHRI S. MAHANTY: Now in 'his clause 29 we have recognised custom. We could also have recognised the traditional and customary methods of seeking divorce. Now, the very ingenious question has been put to me, "Do you want easy divorce or difficult divorce?" As I have said earlier, I stand for difficult divorce, because I believe more in psychological adjustment than in divorce. Now, how my friend thinks that, by recognising the traditional methods of obtaining divorce, we will be making divorce easier, I cannot understand. What is the statistics? We do not all come from the U.S.A. or the U.K. We all come from the villages, from the countryside. After all, my friend comes also from the countryside. Does he mean to say that in his village where such divorce procedure is followed, there are too many divorces? Simply because I have got the right to commit suicide, I am not going to commit suicide. What I was trying to say is that you should not make these village people walk miles and miles to these lawyers who will now be known as marriage lawyers.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): One need not go through lawyers.

SHRI S. MAHANTY: I am not going to yield to him. Now, I do not think I need waste the time of the House by dilating on certain proposed amendments to certain of the clauses. At the time of the second reading, probably we can more fruitfully deliberate over those issues. Now, before I resume my seat, I have only one appeal to make. Law is not something static. After all, law is only a codified norm in a given context of time.

The Hindus were not conservatives or static people. Even the Hindus had their *Gandharva* form of marriage. Even the most modern of the moderns cannot imagine how the gréat Dushyant married Sakuntala behind the back of her father by simply exchanging rings.

SHRI D. P. KARMARKAR: Adoptive father.

SHRI S. MAHANTY: The Hindus recognised that form of marriage and did not consider the issue as illegitimate. The Hindus were never static. At one time they recognised even the *Neog* form of marriage. The *Neog* form of marriage was also well-known till the last century, and it was recognised in certain sections. This will show that the Hindus were never static. Law changes as the society changes, as circumstances change. Therefore I do not think it behoves us to make heavy weather over these clauses which are well warranted in the present circumstances. We welcome monogamy.

DR. SHRIMATI SEETA PARMANAND: Hear, hear!

SHRI S. MAHANTY: There is nothing to hear, because monogamy is a welcome thing. Even if we are epicurean enough to like polygamy, thanks to the Congress Party and to the rising cost of living index, we cannot afford that luxury. Economic conditions are forcing people who believe in polygamy to take to monogamy. Therefore, monogamy is coming and with monogamy, divorce is inevitable. If you want monogamy, there must be divorce. Otherwise, how can you put an end to unhappy marriages? Therefore, I welcome these two features which are the main features of the Bill. Before I take my seat, I once again urge the hon. Minister not to proceed any more with this Bill but to drop this Bill and come to this House again with a Bill called the Indian Marriage and Divorce Bill. Now, there is no point in making any discrimination only against the Hindus.

(Shri B K P Sinha rose to interrupt)

SHRI S MAHANTY I am not yielding any more You will get your chance I will not take any more time of the House I welcome this Bill and I wish the Bill a safe passage (Laughter) Not this Bill but the Bill which the hon Minister has promised I am not talking of this Bill but the Bill which he has promised I wish that Bill a hearty welcome and a safe passage Thank you

DR SHRIMATI SEETA PARMA NAND Mr Vice-Chairman, Sir, before I begin to speak on the Bill perhaps I think it would be right that I should refer to some of the points raised by the hon Member who spoke just before me because I think tomorrow when I resume my speech, they will have no reference to the context Sir, I don't know what impression the speech made on the Members of the House but the feeling I had was that he was both for and against the Bill, as some Member put it Though he had asked the hon Minister to withdraw the Bill, he has asked him also to bring forward a Bill—what Bill he did not say clearly, but I take it that he wants a Bill which will be applicable to all citizens of India When the Special Marriage Bill was before this House, it was said that that was the beginning of the Civil Code what was to come Another thing, while I listened to his speech, I felt when he was dilating for such a length of time on alimony was that dowry is such a bad and vicious habit that it creates a sort of craving for money, that it makes people cast lurking avaricious eyes on alimony should the time come The moral is 'Don't take dowry' Secondly he went on dilating about the polygamous rights of the Muslims which were not fair to the Hindus who would be forced to accept monogamy There again, I felt that there was some sort of complex in the mind of the speaker which would be a suitable subject, I think, for psychoanalysis because he said and he asked the sisters how they would like to

enjoy the privilege of monogamy—he has admitted that the privileges would be for the sisters—when their Muslim sisters would be denied those rights. One might ask him whether the lurking fear is not that he was likely to be deprived of the rights of polygamy and that is why I said, 'Hear, hear', when he said that he welcomes monogamy when his Muslim brothers will have the right of polygamy. Lastly, he said that our Indian sisters would not have been able to get the rights they have been able to get under the Constitution and other rights that they are demanding, and had they been in England, the doors of the House of Lords would have been shut against them But I would like to put it down that our brothers have benefited by asking for democratic rights and self-government for our country by seeing these things from western democracies and they have, after seeing the benefits, conferred on the English sisters by their brothers, rights in the Parliament, have done so without our having to agitate and we are sure, with the same generosity of heart they are going to give us all the other privileges or rather the long kept-back rights which have been denied to them—all the rights either of property etc Lastly, one more point that I did feel was that when he talked of there being a need for having to start a movement for the emancipation of men I could not help feeling that he must have come into contact with women whose personality and ability have overwhelmed him and that is a great compliment to those nearest to him in his family, who are our sisters.

I would like now to begin with the Bill and say that at long last one hurdle in the Hindu Code Bill is being crossed and that will be a welcome thing indeed but I would here like to go back to the phrase I have had to use again and again and to which my friend Mrs Parvathi Krishnan referred that I was fond of using *ie*, in bringing this Bill, Government has put the cart before the horse As has been rightly pointed out and as I have several times tried to put it to the

Government, the Law Minister, the Prime Minister, the Leader of the Congress Party and in Parliament, even at this stage when the Hindu Marriage and Divorce Bill emerges from this Select Committee, it would not be a bad thing to refer the Succession Bill to a Select Committee so that the people, who are apprehensive about the pitiable condition of women under divorce on account of their present economic position, would be reassured after knowing what women's position as envisaged in that Bill is going to be. If time had permitted, it would have been even better to wait taking this Bill into consideration until the other Bill *i.e.*, the Succession Bill had not only emerged from the Select Committee but had passed both the Houses. Because that is real crux of the problem over which women are apprehensive. Having been denied the right to inheritance and having been again and again grudged the rights of equality by certain sections of their brothers, they are not quite sure how finally the Succession Bill will emerge. Before I proceed further, I would like to welcome the new Minister of Law—the Minister of State, Mr Pataskar—because I feel that coming from Maharashtra which has already accepted the law of divorce and coming from Bombay State which is already progressive in these matters and other aspects on Hindu law, he will certainly make a good contribution which will help our present Law Minister.

Coming to the objections to the Bill which have to be met with, not only objections to the Bill which come on the floor of the House but objections to the Bill which are voiced outside through meetings in which Members of Parliament take prominent part and objections which are put to the Members of the House by our sisters going from house to house, objections which are sent to us through pamphlets and objections which are finally put through petitions before the House—and being a Member of the Petitions Committee, I feel it my duty to deal with them at some

length—these objections can be divided into five groups. I call them political, religious sentimental, fourth should be innocence—I will not call it ignorance—and fifth is interested. The political and religious objections are mostly taken by two or three groups of people. The first group is certainly a group which, like the Hindu Mahasabhaites, though convinced of the validity of their arguments for a change in the Hindu law, likes to take something only as a weapon with which to beat the Government, something for the sake of opposition. Secondly the religious objections from some of the people who are really orthodox in their views—people like those of the Ram Rajya Party or the Jan Sangh Party or people like religious heads or of some Mathas. Then sentimental objections and innocent objections—I would usually attribute them to our sisters because of the lack of opportunity they have to get correct information on the Bills, the text of the Bill, opportunities to discuss the Bill so that they can take resort to reason and because of the innocent way in which they are led by those with whom they live, maybe their fathers or husbands or brothers and usually they would say 'yes' to whatever those who usually think for them would tell them. Those are innocent objections based on ignorance and finally those objections of people who are interested *i.e.*, people who are today taking advantage of polygamous marriages. I wish to point out that this class includes members—I would not mention their names—of even our highest service. There are members today in the Secretariat, members almost at the highest stage in services, who have married two wives and in some cases those people who are concerned have shown their disapproval of such things. There may be thousands of others but I am giving these few examples of people in the services because it is really a matter of disgrace, that when living in the centre of things and in the central capital and holding positions of responsibility, when one's behaviour has to be a model behaviour as the best under the law, that one should be respon-

[Dr. Shrimati Seeta Parmanand.] sible for breaking such things. Sir, I need not go into the history of Indian womenhood and the survey of what Indian women were in the past. That has been done very well by my hon. friend Shri Deogirikar and which specially met with the approval of the House. Everyone is very fond of recalling the quotation:

“यत्र नार्यस्तु पूज्यन्ते
रमन्ते तत्र देवता : ”

It is true certainly that there was a time when conditions were that way. But due to vicissitudes of Indian history woman's position also has gone on changing and we came to such a stage when woman's position came to be

स्त्री पृत्रञ्च दासश्च

त्रयेव अधनाः स्मृताः

when she is classed along with a “*dasa*”. It would be too tedious to go into these examples. You will find various quotations giving either the glory of Indian women, their attributes and abilities or running them down as being the most fickle and unreliable persons.

Here I would like to congratulate the Communist Members of this House and the Communist Party as a whole, for giving their unstinted support to this measure. Not only the women of that Party but also other women of the Democratic Women's Front, took a good deal of trouble in collecting certain signatures and educating the women on the merits of the Bill. The only thing that I do not like about the stand they have taken is the plea they have made to include the Muslims in this legislation, but to that I will come presently.

Now, what are the objections of the Hindu Sabhaites? I was glad to know that my hon. friend Shri Mahanty is of the Hindu Sabha and so he will be the channel through which my remarks will go to the proper people. They have said that Parliament has no right to legislate for a section of society. A ruling has been

given on that portion and I would only deal with that aspect of the question from the practical angle.

SHRI S. MAHANTY: Under which article of the Indian Constitution?

DR. SHRIMATI SEETA PARMANAND: A ruling has already been given by the Chair and I would not go into that aspect of it. I would only ask these people one question. When they are convinced that a thing is good—and they do not deny that such a change in the legislation is necessary, their only plea being that it should cover the entire country—when they are convinced of the desirability of the legislation, why is it necessary to wait if 80 per cent. of the community or 80 per cent. of the citizens are ready for it? There is a saying in Marathi:

खाईन तो तुपाशी नही सोइद उपाशी

which means “Either you eat bread with ghee or you go hungry.” That should not be the attitude. There is a Sanskrit saying:

सर्वनाशे समुत्पन्ने अर्द्धं त्यजन्ति पण्डिता :

Half a bread is better than none, as we all know. If the whole cannot be achieved immediately, or if it is no desirable to proceed with the whole matter, it is better to take half. Lastly, I would like to ask, if the Hindu community is educationally more advanced, why should it not go ahead with the target of progress that it has set for itself? Why should it wait until the whole country can be carried along with it? Referring to the Muslims, Parsis and Christians I would like to say that all that the Bill imposes is monogamy and then the right to divorce is a consequential measure. With monogamy I will deal later also with inheritance. The Christian and Parsis already enjoy these rights. With regard to the Muslims the woman has the right of inheritance. A guardianship right she enjoys by preference to man. The only question is

that of polygamy. Sir, some objectors have gone to the extent of putting forward and almost laughable objection, namely that 'if Muslims were to be allowed to go on with polygamy, their population would increase out of all proportion; and this objection has been put down in a leaflet that has been sent to us from some "Math" in South India.

Sir, I would like to deal with this question of Muslims and polygamy. Muslims in India, I do not know for whose fault, were educationally backward and so they are not able to see eye to eye with other countries like Turkey where they have brought all the people to see that social legislation has nothing to do with the real meaning of religion. We can also benefit a good deal from what the Chinese have done for their minorities. China has 13 minorities and Muslims form one of them. They have nearly 30 million Muslims there and they have given these minorities also a period, just as we have done for our tribal people, ten or fifteen years, I forget the exact figure, by which they should put forward suggestions for social legislation for themselves. They have also done what I may call a clever thing, I don't know if that is the correct word, by which they have taken complete control of the education of the people and under that scheme they have opened six minorities teachers colleges in which they keep teachers for training for four years. They are there so indoctrinated with the ideals of the present Chinese political set-up that when they go out—and they alone can teach to those minorities—and teach the younger generations, within this period of 10 or 15 years, they would set no value by religion. If you talk to young Chinese folk about religion, they would tell you that religion is for the old people. They feel religion an obstacle to national progress. I need not dilate on that for we all know the Communist ideology

and outlook on religion. But the point is that they have, in spite of their dictatorial powers to do what they like, decided to leave the minorities alone for the present, causing as little disturbance as possible, to decide their own social legislation in course of time, within the period given to them. Sir, if we are in a position here to educate our people, Muslims and everybody alike and to develop in them a national outlook and the ability to put the national interest first and above everything else, I am sure the Muslims also and the others too, will come forward to accept one common civil code. But we cannot sit here idle and look with complacency on the conditions of things that are there. They ask, "Why should not Government include the Muslims also in this Bill?" I do not like to say that the Communists have such a hold on the people, but with the hold they have, instead of trying to put forward suggestions which would certainly create difficulties for the Government, the Communists should use their influence with the people to educate them to accept this national outlook and put it above everything else. Perhaps they are already doing it, I don't know, but you should not make the people Godless.

If we do not do this, if the Muslims do not do it, I would like them to take a warning from things in China—and there are Muslims not only in China but also in Russia—after a generation or so, they would not only be prepared to accept a civil code, but would be prepared to give up or bypass religion altogether.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): The hon. Member may continue her speech to-morrow. The House stands adjourned till 11 A.M. to-morrow.

The House adjourned till eleven of the clock on Wednesday, the 8th December 1954.

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