

up to the third week of December, 1954 Hence, I am unable to attend this session of the Parliament.

I should be grateful if you would request the House to grant me leave of absence for this session under the circumstances aforesaid."

Is it the pleasure of the House that permission be granted to Mr. K. S. Hegde for remaining absent from all meetings of the House during the current session?

(No hon. Member dissented)

MR. CHAIRMAN: Permission to remain absent is granted. I have received the following letter from Mr. V. G. Gopal:

"Since Shrimati Gopal is not keeping well, I regret that I will not be able to attend the current session of the Rajya Sabha.

I request you to please excuse my absence and grant me leave for the same."

Is it the pleasure of the House that permission be granted to Mr. V. G. Gopal for remaining absent from all meetings of the House during the current session?

(No hon. Member dissented)

MR. CHAIRMAN: Permission to remain absent granted.

#### PAPERS LAID ON THE TABLE

NOTIFICATION PUBLISHING FURTHER AMENDMENT TO THE CINEMATOGRAH (CENSORSHIP) RULES, 1951.

STATISTICAL INFORMATION RE WORKING OF THE PREVENTIVE DETENTION ACT, 1950

THE PARLIAMENTARY SECRETARY TO THE MINISTER FOR INFORMATION AND BROADCASTING (SHRI G. RAJAGOPALAN): Sir, I lay on the

Table, under sub-section (3) of section 8 of the Cinematograph Act, 1952, a copy of the Ministry of Information and Broadcasting Notification S.R.O. No. 3474, dated the 17th November 1954, publishing further amendment to the Cinematograph (Censorship) Rules, 1951 [Placed in the Library. See No S-460/54]

THE MINISTER FOR COMMERCE (SHRI D. P. KARMARKAR): Sir, on behalf of Dr. Katju, I beg to lay on the Table statistical information in the form of statements regarding the working of the Preventive Detention Act 1950, during the period 30th September 1953 to 30th September 1954. [Placed in Library. See No S-465/54]

#### THE HINDU MARRIAGE AND DIVORCE BILL, 1952—continued.

DR. SHRIMATI SEETA PARMANANI (Madhya Pradesh): Mr. Chairman yesterday I was dealing with how China had solved the problem of introducing social legislation for the minorities, and I said, that she had while giving liberty to the Chinese minorities to bring in legislation themselves gradually, thought out a method by which education would be entirely controlled by the State, and started five institutions for the training of teachers for minorities, each of them making provision for something like 3,000 teachers; that is to say, 15,000 teachers, out of whom at least 5,000 would be coming out every year to give education on a national pattern where, incidentally, religion would be put in the background. This would automatically solve the problem. China though Republican, is dictatorial and can do things in this manner, whereas we are a democratic country and we expect our minorities to come up themselves with legislation. Here, I would say one word more to my Muslim brethren who feel touchy about the legislature touching even with a pin of tongs, I should say, anything connected with their social customs which they say, are closely associated with their religion.

[Dr Shrimati Seeta Parmanand]

[THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN) in the Chair]

I would request them to follow the example of Turkey, to take a trip to Turkey for about six months, and see how in the changing conditions of the world today we have to divorce social matters from religious matters.

I come now to the objection from an important section of the Hindu society, viz, the Hindu Mahasabhaites, the Jan Sangh people and others who, on orthodox grounds, object to any interference with the Hindu social life by legislation until all the communities are brought under a common legislation, until the whole country has a civil code, and who say that no legislation should touch the Hindu sacramental marriage. I would like to ask these people whether they are the only custodians of the Hindu religion. Why do they think that they alone

12 Noon have the monopoly of looking to the interests of the Hindu society? After all, all Members of this House, Members who are for this type of change, women, particularly of this House, Members who are for this type of change, women, particularly of the well-known all-India organisations like the All-India Women's Organisation women of experience and ability, women who have always given their time for bringing in measures for the all-round betterment of their sisters, are equally interested in safeguarding the nature of Hindu society. It is said that in order to gain their ends they have—not finding any other support—brought out these two pamphlets a few days ago in order to show the nature of objection to divorce and in order to show the evil effects of divorce, they have printed in this little pamphlet all scurrilous things against western society. I think it is a very mean thing to resort to these ways. After all, if somebody else from outside or somebody who was against Hindu society wanted to do the type of gutter searching work as Miss Mayo did, I am sure he will be

able to bring out a similar pamphlet. I need not remind the House, as it would change the level of the debate, of the dirty books that are easily available at our Railway platforms and our ancient books like *Kama Shashtra* and some other *sutras*. But there are books of that type which do not do any credit to the Hindu society also in this matter. So it is no use.

SHRI H P SAKSENA (Uttar Pradesh) They are books of education regarding sex.

DR SHRIMATI SEETA PARMANAND: It depends on what use is made of them. They may have been books of education but the use they are put to today by people who want to make money by misguiding the younger generation is the point at present under consideration. I would ask the House to note that the fanciful arguments that people of this type of thinking are putting forward are equally strange. One argument I mentioned was about the way in which the Muslims would gain advantage over Hindus over polygamy. I will not go into that but they also say that a man would change his religion if he wants to marry more wives than one, if monogamy were to be enforced. Madam, I would ask these people whether women, in order to avoid a polygamous marriage or in order to curtail the polygamous right of the person before the Special Marriage Act was passed in 1872, ever took advantage of this change of religion and became Christians or.

KAZI KARIMUDDIN (Madhya Pradesh) They belonged to no religion.

DR. SHRIMATI SEETA PARMANAND: At that time they belonged to no religion but they did not change their religion in order to get advantage of this. I would also point out that if I were to be a staunch Hindu, I would rather not have such bogus Hindus in the Hindu fold and would be ashamed of their belonging to the Hindu religion who, on the slightest excuse, were prepared to change their religion in order to take advantage of the polygamous law of another religion. There is an-

other very strange thing .that these people in order to make out a case against the Bill, have been doing. While the Bills are sent for eliciting public opinion, they usually keep quiet but when the Bill is before the House, they go on holding meetings and send petitions. I would ask them, if they have real interest in what they are doing, why they have woken up at the eleventh hour to raise these objections, because I think they are very well aware that the society in general, which is realistic, knows that the concept of Hindu religion is not actually being practised in life and so their attention would not be held by these people for a long time. So when the Bills are sent for public opinion, you would find there are hardly any opinions sent but later these people attend huge meetings and then send out petitions. I would request these protagonists of Hindu culture and Hindu religion rather than devote their attention to these things particularly rather than wanting to stop these which would infringe the rights of women, which would infringe the freedom and rights of equality given to women, to look after the resurrection of Hindu religion and putting it on a high pedestal, by looking to the resurrection and renovation of our dilapidated temples, by seeing that the temples are in such a condition that people go and worship regularly and by seeing that in places, even as sacrosanct and as highly revered by the Hindu society as the Badrinath temple and the Kasi Viswanath temple, regular daily discourses are held in the morning and evening where people could attend the sermons—I don't mean more recitation or incantation of *mantras* of Bhagwad Gita but I do mean those discourses which would explain the real tenets of Hindu religion—are given there. I have said once before that the Hindu temples and places of worship of the Hindu society—the majority of them are in the worst possible condition in our country. The Gurudwaras of the Sikhs and the mosques of the Muslims as well as the churches of the Christians are in far better condition and have a pleasanter

appearance if you were to go and see them. We have to admit that. Does this do credit to our real interest for preserving our Hindu culture and raising the status of our religion?

Having dealt with these objections, I don't think it is necessary to go into further details over the objections raised by the orthodox sections of the society. I would like to deal with some fears entertained by women because the question would be again and again asked by some Members here, as they perhaps do not know the facts, whether we are sure, when we are asking for these measures to be passed, of the support of our sisters. Madam, women's objections yesterday I classed as mostly uninformed and sentimental and I have found by speaking at women's meetings and gatherings that if things are clearly explained to women, they are all for this measure being passed which, they understand, is not an enforcing measure but a measure to give relief only to such sisters as have been unfortunately married. It is said that

मूढः पर प्रत्यय नेय बुद्धिः

"Moodha" is usually put in Sanskrit as equivalent to *mugdha* and *mugdha* is the name given to "woman" who is silent mute, i.e., not well-informed, but I would like to blame my brethren for having reduced our sisters to such a stage, by leaving them backward educationally so that they have become really.

मूढः पर प्रत्यय नेय बुद्धिः ।

They have not the means to find out by study. I am not generalising. I am talking only of those people, who, being ill-informed, are taking objections. Let me not be misunderstood. They are raising these objections because the people who explain things to them would at meetings ask them 'Do you want divorce?'

Naturally, they fear whether they have just then to say whether they would have divorce and whether they would have to abide by it! If the

[Dr. Shrimati Seeta Parmanand.] matter were to be properly explained to them with all its implications, then they would certainly see the real meaning of the provision for divorce. Today, even women have not remained so backward as not to be able to understand if things are put to them, not in an interested but fair manner. They have also to be told by their menfolk—but how can men tell them such things?—that they will get the right of succession, that they will be entitled to property as daughters and wives, that they may get a full share of the property also. They have to be told of the various results of the changed economic circumstances, how many of them are holding jobs now and how many more of them may have to take up jobs. And then they will realise that the pitiable things depicted as resulting from divorce are not facts but all fiction. After all, the women who have been here,—I am talking of Delhi—they do not mean the whole of India. After all, divorce is already granted in some parts of the land, in States like Bombay and Baroda, and women have to be told that there have not been such serious calamities in those States where divorce is already made available to those who need it. After all, these women have to be told that divorce is only the natural corollary of monogamy which, of course, they want. These 60,000 women who have been going and seeing Members of Parliament from house to house—I mean their representatives—should be told the real position. I am told they have signed a memorandum against divorce. But they have to be told the real position.

These women, I am happy to see, are in favour of changing the Hindu law. They do not say, "Don't touch the Hindu law". They have said that they want monogamy. They have also said that they want separation. What they say they do not want is divorce. So the question is only one of explaining things to them correctly. I would thank the sponsors of these meetings, who collected so many signatures for making it clear to the House that

women are in favour of this Bill on the whole, that they are in favour of Parliament making changes in the Hindu Code. The only thing which, for want of information, they seem to be up against is the provision for divorce being introduced. These ladies have to be told of the great care that the drafters of the Hindu Code Bill have taken in providing one or two "cooling chambers" as I would term them, before allowing anybody to proceed towards divorce. I am going to suggest it, and I hope the House will agree to it as a special concession, that divorce should be made available only for a period of 10 years. In that case all these fears would go. It may look a very drastic suggestion.

SHRI S. MAHANTY (Orissa): Are women Scheduled Tribes?

SHRI H. C. MATHUR (Rajasthan): Is the hon. Member serious?

DR. SHRIMATI SEETA PARMANAND: I am sure Mr. Mathur will now question it.

SHRI H. C. MATHUR: No, no, not so far as I am concerned.

DR. SHRIMATI SEETA PARMANAND: I am calling these provisions "cooling chambers". Also, instead of the term "restitution of conjugal rights" I would suggest the use of the words "conciliation of conjugal differences", and this has been done in other countries, in western countries like the United States of America where they are adopting such devices. This has been done in China. The term "restitution of conjugal rights" sounds barbarous enough. If you were to call it "conciliation of conjugal differences" that would provide a sort of "cooling chamber". Also, we have said: "No divorce until three years after the marriage, that is to say, until the parties have had some time to adjust themselves". That would provide against anybody in a precipitate manner proceeding, in the first flush of disagreement, to a court.

Secondly, there is "separation" before taking up divorce. That also

would be a cooling chamber. And, Madam, if, after all these things, the people do not feel happy, and if they cannot get on happily together, then it would be absolutely an insult to human dignity and an insult to women's freedom to force the couple to live together. I would not say of women only, but even of men.

**SHRI H. C. MATHUR:** Thank you.

**DR. SHRIMATI SEETA PARNAND:** And I would advise my sisters not to forget human nature. They have advised separation. They have in their appeal said that if there is separation, the chances of conciliation and of the marriage not breaking up for good are immense. But, Madam, if as a result of the separation, because of the people not having any liking for each other, of their not caring for each other, they resort to immorality, what kind of an asset would that be to Hindu religion and to Hindu society? What kind of a home will that particular home be? What effect will it have on the children? These are the points they have to consider. One does not decide these things only on hearing. One has to take into consideration the practical aspects of all these things. Instead of now raising all these fears, they should put confidence in the women's old organisations and in women who have been for a very much longer time in the field of social reform and have devoted their thought to these matters. They should see to the education of their children, particularly at home and also in the schools, and they should see that some love for religion and some love for Hindu traditions are developed in the younger generation. Having liquidated all responsibility people of our generation now are blaming the younger generation for asking for these reforms and also for having come to a stage where these reforms have become a necessity. They have also to be realistic and they should see what is happening in the world around us. The world has come into such close contacts, by these scientific inventions, by television, by radio, the cinema and

cheap and easy literature and journalism and as a result of wider education that it is impossible to keep our younger generation and the people for whom we are making this legislation uninfluenced.

Economic conditions to which we have been driven and which we have accepted as a matter of course also make it necessary to change the existing laws, laws which are not very conducive to peace at home. Men and women have to work together in all spheres of life, especially in offices. In some of the offices in Bombay particularly and in other advanced States where women's education has advanced so much, you would find, if not more women than men, at least half and half of women and men working. Is it humanly possible always to prevent some kind of emotional entanglement from resulting? And if it does result, is it desirable in the interest of the people as also in the interest of the children that such disharmonious relations which perhaps may result from their desire to take a new step should be allowed to continue?

Then we come naturally to the question of the effect of divorce on the children and the most important question that is being posed today in American magazines is whether the effect of a broken home is more dangerous to children than effect of a disharmonious house or it is the other way round. It is, of course, a matter of opinion.

But I would certainly say that the effect of a broken home is less injurious than that of a disharmonious home. Children are of a very receptive mind and the scenes that they may see of neglect and quarrel between the parents and the neglect of the parents that follows as a result of the discord or lack of harmony in the home are bound to leave their marks on the children and it has been noticed that children of such homes usually become quarrelsome. I would then like to tell my sisters that it is not right to judge whether divorce is

[Dr. Shrimati Seeta Parmanand.] necessary in certain cases or not from the examples of oneself, one's happy position or on the example of one's relations. That would be too lopsided an argument in matters of public importance; nor should any one bring in legislation or give that colour to legislation which will only influence or help a particular group though that kind of tendency sometimes is seen in legislation pertaining not only to these social matters but in other business matters also. Some of our sisters have been even arguing that if a woman is good, she must be able to keep her husband; on the face of it, every fairminded person will see how limited the vision of such people is. This is a very common argument advanced by women who have been fortunately happily married and who happen to hold some position of importance in society. It takes two people to make a marriage happy and it is a truism to say that. These people have to realise that it is not only the woman, howsoever good she may be, who can make marriage happy that the man has also to play his part. So, Madam, such arguments by people holding such important positions are misleading the innocent sisters which has resulted in the bogey of opposition that has come from my sister and I am very sorry to say that.

After this, I would like to take you to the history of divorce in other countries and I would like to say that we are trying to do here today what has been going on in other countries for the past 75 years, what the Christians were agitated over in about 1875 or so the Hindus are doing today. Perhaps the Muslims will do it tomorrow.

KAZI KARIMUDDIN: There is already divorce among Muslims.

DR. SHRIMATI SEETA PARMANAND: The man has the right but the woman can only separate.

KAZI KARIMUDDIN: That is incorrect. Even woman has the right.

DR. SHRIMATI SEETA PARMANAND: It does not solve the prob-

lem unless women also are given the right.

KAZI KARIMUDDIN: Muslim women get that right.

DR. SHRIMATI SEETA PARMANAND: I would not like to enter into a personal discussion but would be very glad to have a discussion on this matter with the hon. Member outside the House if he chooses to do so.

It is wrong to think that divorce is going to bring calamity in the society because it is equally wrong to think that happy marriages will go as under. The happily married will not even remember that there is such a thing as divorce available. The idea of divorce comes into the mind only when there is some cause for disharmony or disagreement. It may be argued that the very fact that an escape is possible will make the parties think of divorce; on the other hand you have to think that if an escape is not possible, the differences between the parties will become more accentuated.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): Dr. Parmanand, I would request you to be as brief as possible. I have before me a list of 24 speakers. As you have already spoken for nearly an hour, I would request you to close your speech.

DR. SHRIMATI SEETA PARMANAND: Madam, perhaps you were not here yesterday; I took fifteen minutes and am speaking today for about 20 minutes.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): You had 20 minutes yesterday. I have got the record here.

DR. SHRIMATI SEETA PARMANAND: It is wrong also to think that divorce will be freely resorted to by our sisters. The example of the Widow Remarriage Act is there and in spite of facility of widows to be

remarried being there the hold of tradition on our women is such that only very few people have made use of the provisions and so even if the divorce law is passed, only very few people will make use of it. I think divorce, instead of making the parties think of the facilities available, would act, if anything, as a deterrent and a kind of control. Men who have so far had the right to polygamy will now have to observe monogamy and they will think twice before treating a wife in a way as to make her think of divorce.

I would like to give the House a bit of information about conditions in China. Our sisters think that our women, being ignorant and illiterate, would be harassed as a result of divorce being granted. The harassment can come in two or three ways. Firstly, it may be said that these women may not be in a position to take advantage of the legal facilities available or to go to a pleader, etc., to put up their case before him. To get over all these difficulties, they have introduced what are known as People's Courts in China to decide divorce cases.

SHRI J. S. BISHT (Uttar Pradesh): What are these People's Courts?

DR. SHRIMATI SEETA PARMANAND: Social legislation is implemented through these. They call everything "People's" e.g., People's Republic of China. That is the terminology. They have established, for social legislation, a court where there are one man and two women. They have done away with all pleaders.

SHRI J. S. BISHT: Done away with the rule of law altogether?

DR. SHRIMATI SEETA PARMANAND: No, I would not say that. What is being done is that in social legislation, complicated issues which will harass the illiterate parties have been done away with.

SHRI H. P. SAKSENA: Like this controversial measure?

DR. SHRIMATI SEETA PARMANAND: They have enabled the people to put facts only and not to resort to the subterfuge, the intricacies of law and the cunning practice of manipulating the law in order to seek loopholes. The hon. the Commerce Minister will appreciate it as in business circles these people seek to do such things.

SHRI D. P. KARMARKAR: I appreciate this.

DR. SHRIMATI SEETA PARMANAND: They do not allow these things to happen in social legislation. They do not allow the pleaders to appear in these cases and the parties do not find it necessary even to bring witnesses. I attended a divorce court in Peking and there even the village girl who was married to a post-graduate law student was able to put her case frankly, in a straight forward manner and better than her husband who was trying to hide certain things.

So, Madam, credence and preference is given to honesty and I would like incidentally to tell the House that as a result of this liberty and freedom given to women, there has been such a fund of enthusiasm, of latent energy released which has been responsible for creating a new atmosphere in China. This has brought about all the changes that you see talked about and printed in the newspapers about the rapid progress of China

Women who in the past have been treated in a feudalistic manner and suppressed and oppressed and who had to submit to all kinds of oppressive laws, realise how under the new regime they have been given equality with man not only in letter but actually in practice. I would therefore, Madam, tell those people who want to oppose divorce or who entertain any fears about divorce to take three or four steps. Establish free legal aid societies—if they so much care for their sisters that they should not be oppressed—explain this law to them and establish non-official reconciliation clinics as they are trying to do

[Dr. Shrimati Seeta Parmanand.]  
in America today. After seeing the rise in the number of divorce cases in America, today the cases are brought by social workers first to reconciliation clinics and as a result of that nearly 40 to 45 per cent. of the cases, which would otherwise have gone to divorce courts, are being withdrawn. So if we devote all our energy, which we are devoting at present to agitating the minds of people by starting this kind of opposition to a subject like this, to organizing legal aid societies for women and doing these other things I think it would be a better help to them and then it will be appreciated by their sisters.

With regard to the signatures published, I would like to utter here a word of caution because these might be utilised, if nothing is said about them, later on in a way which should not be. After all, Madam, what are signatures? We do not want to have battles of signatures put up in the House, somebody saying 20,000 signatures have been put, another person saying we have collected 60,000. Somebody will have to go and then collect 80,000. They have their value no doubt, because they serve to educate the public perhaps one way or the other—it depends on the people who educate them—but they should not be taken as proof positive here. If we were to follow that line of argument, then the signatures of all the women above the age of majority in the country will have to be taken. What are even a hundred thousand signatures, considering the number of women who would be affected? So, while appreciating or while I do not want to deprecate the efforts of those who have taken the trouble of winning support for the appeals, while not quite appreciating the efforts or the misguided efforts of those who have not explained the issues properly to the people, I would like to remind the House that that should be hardly the criterion that should be used. I would like again here to emphasise that if the Succession Bill had been introduced and passed in this House and if the

cart had not been put before the horse, the whole thing would have been so much simplified. Also not much time of the House would have been taken, and these doubts would have been set at rest.

Lastly, speaking on divorce as such, I would like to say and remind the House that for the emancipation of women and for the improvement in the economic position of women and in the change of their status and their rights as free citizens of India and the freedom which they must enjoy, it will be absolutely wrong to withhold these privileges which not only this Bill but the Hindu Succession Bill should grant. And I would like to remind my friends on this side that when we are so anxious to mention the name of Gandhiji for showing how he would have looked upon a thing, I would like to mention here and say that Gandhiji would have been not only willing to bless this Bill but would have himself agitated for this and such other measures to be passed much earlier. I would like to remind the House that the Congress Party as such is pledged to passing this Bill. I would also like to remind the Hindusabhaitees that, as during the last Parliament they questioned the right of the Parliament to proceed with the Bill because they had not obtained the mandate from the country, they cannot take that objection now because they have now got the mandate.

And now I will briefly touch upon some of the clauses of this Bill. To begin with I would proceed with the.....

SHRI J. S. BISHT: May I rise on a point of order? I think time should be equally rationed out. May we know how many speakers there are and how many hours are going to be allotted? We do not know how many hours have been allotted. If time is rationed out among the different speakers we shall have no objection

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): There is a list



of 24 speakers and I have already appealed to the good sense and the good will of Dr. Seeta Parmanand in view of the importance of the Bill to allow others also to have some say or some opportunity to speak on this Bill and I am sure she will concede that point.

SHRI K. B. LALL (Bihar): It is better to ask Dr. Seeta Parmanand that she should not be so long in her speech when there are others to speak, and thus retard the quick passage of the Bill.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): These interruptions are really retarding, retarding her and also the quick passage of the measure.

DR. SHRIMATI SEETA PARMANAND: Madam, I have heard these objections and I really feel that I would put a question to them to ask whether they have raised these objections when other Bills were there on the floor of the House and whether they remember how time had been given, for instance, an hour and a half to Dr. Ambedkar on a former occasion. I cannot understand why they have been urging us to speak for only ten minutes on an important Bill like this, which affects all women. I hope you will give a woman full chance which she should have, even three times the time given to any man. Then, Madam, may I ask you also to notice the number of women in the House and the number of men in the House and as such will you kindly give sufficient time to the former to present the women's point of view?

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): Dr. Parmanand, do you think this is relevant? It is not relevant at all. You are inviting these interruptions by such observations.

DR. SHRIMATI SEETA PARMANAND: It is a very important point. I am submitting, as far as the present Bill is concerned. Are there many women speakers who have given their names?

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): There are a number of women also who are to speak.

DR. SHRIMATI SEETA PARMANAND: It cannot be compared with the number of men, if I may submit it again.

Now, if I may be allowed to do so, I would like to point out that it was rather an unhappy coincidence that the Bill should have been styled the 'Hindu Marriage and Divorce Bill'. If anything, it has hurt the sentiments of people. After all, the Special Marriage Act was not called the Special Marriage and Divorce Bill. There was no need to give that title. Perhaps for this reason, for putting the word 'divorce' in this Bill, people have been put up against this Bill unnecessarily, because it is inauspicious to think of marriage and divorce together, particularly in Hindu society, which is not used to the idea of divorce. Perhaps I hope one day when all the communities have divorce laws on par, an entire divorce Bill, the Indian Divorce Bill, will be passed as a general law inserting therein perhaps provisos that such and such provisions do not apply to certain communities.

Then, I would like that in the Definitions, I mean, in clause 3(g) (iv), the portion "if the two are brother and sister" should be dropped. It is a very strange thing to put in a Hindu Marriage and Divorce Bill, especially when the clause eliminating *sapinda* relations is there and even in Christian and other societies the idea of marriage between brother and sister is never contemplated. So, to put specifically the words "if the two are brother and sister" was not at all necessary and it is rather obnoxious, if I may use that word. I can understand the latter portion, things like uncle and niece or children of brother and sister, because certain communities in the south recognise these marriages, but I certainly do not think

[Dr. Shrimati Seeta Parmanand.] that Government and the Select Committee should have allowed this addition of brother and sister, which is taken from the Special Marriage Bill—but that law is applicable to all sections of the society, all citizens of the country.

Then I would like to suggest that it would not be right just now to raise the age to 16. In the rural areas, as was pointed out yesterday by several speakers, people have not advanced to that stage of being able to look after their daughters in the house up to the age of 16. 15 is advanced enough. When we were considering the question of age in the Special Marriage Bill it was thought that when this Bill came up it would not be advanced as much as under that Bill.

With regard to guardianship—clause 6—I would like to point out that when there is a proviso that when the girl is staying with any relative like brother or uncle, it should also have been put that if she happens to stay with her sister or even if her uncle is not necessarily paternal or maternal, or if she is staying with her aunt, they should be considered as guardians. The question is not that of legal responsibility or of maintaining that girl. After all, even the paternal uncle may not necessarily be paying for her keep up because she may have property belonging to her. It is a question in our society of paying respect to elders and it would look very wrong if, for instance, a girl who is staying with her sister were just to walk out of the house and decide to marry someone even against her wish. If anything would be breaking the discipline in a Hindu home, that in my opinion would be breaking the discipline.

About clause 7, I would like that in addition to ceremonies, registration should also be recognised as one of

the forms of marriage. It may be accompanied by a *hom* as has been rightly pointed out in one of the Minutes of Dissent, I think, by Mr. Tankha. This will enable people who do not want to incur heavy expenditure to have marriages performed in a very inexpensive manner.

Clause 8 refers to States adopting this legislation. It leaves a loophole for people to have marriages in States which do not adopt this legislation or any of the clauses about registration. The word used in clause 8 should be 'shall' and not 'may'; otherwise it would be difficult to prove marriages. So I would suggest instead of leaving it to the option of the State to register marriages, they should be compelled to do so, by using the word 'shall' in that clause.

About restitution of conjugal rights, I have already said that as it has been considered a barbarous custom or provision, it should be changed to reconciliation of conjugal differences. And I would point out here that in a later clause, clause 23 (2) it has been provided that before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. Mark the word 'reconciliation'. It is already provided for and there would be nothing wrong in making the change here in this clause also.

With regard to divorce, as I have already pointed out, in view of the fact that men have enjoyed these rights of polygamy for centuries and inflicted so much injustice and cruelty on women, it would not be asking too much if we were to ask for a provision by which except in cases of incurable diseases the right of divorce were to be given only to women for a period of ten years. It does not mean that women are asking for special privileges when they are claiming all these equalities. After

all, even under the Constitution the tribal people have been given certain tribal privileges and they have been given ten years' time to come up with the rest of the country and on a par with that it would not be wrong to give the right of divorce only to women.

Then, about clause 22 I would like to suggest that the proceedings should be compulsorily *in camera*.

With regard to alimony, again I would like to say that women have not had the right of property for a long time. They have had to submit to the indignity of dowry being paid to make up or to compensate for whatever defects there might have been. So alimony also should not be made payable by women. The provision which the Select Committee has put in that women should pay alimony should be deleted. We are all for having equal rights but that will come in course of time. It would also look more chivalrous. It is said that the days of chivalry are gone; they have not gone yet; they are going. When we have absolute equality, it can easily go.

With regard to custody of children clause 26—it is left to the court to decide taking all the circumstances into consideration. I want to point out that it should be the mother; even Nature gives the custody of the child to the mother and as such the right of the mother to have the custody of the child should be put in so many words here. That would be giving her the proper place.

I would not like to say anything further. I know I have tried the patience of hon. Members. I am not able to understand why they should be impatient; perhaps my brethren do not want that any point should be clarified so that they can take objections. I do not know what their reason is but I am very sorry, Madam, that you should not have wanted me to go on. But I am sure you are here not as a representative

of women but as the Chair and perhaps you have to take into consideration the wishes of the House and but for that I am sure you would have wished otherwise. Thank you, Madam.

SHRI H. N. KUNZRU (Uttar Pradesh): Madam, the question of the reform of the Hindu Law has been under consideration for nearly 14 years. All aspects of the question have been considered and Hindu opinion has been fully consulted. Seldom could any measure have been scrutinised more carefully than the proposals made for bringing the Hindu Law in accord with the times that we are living in. I hope therefore that this Bill will not merely be approved of by progressive opinion but will, if its provisions are honestly explained, be accepted by the general body of those to whom it applies.

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, the Select Committee has improved upon the Bill in several respects. Nevertheless, there are certain points that call for comment. The most important of the points that I have in mind refers to the application of the provisions contained in this Bill. Clause 2 makes it clear that this Act will apply to Hindus, Buddhists, Jains or Sikhs by religion. Nevertheless, clause 29(2) lays down that nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act. This seems to me to be an extraordinary position. I turn to the minutes of the meetings of the Select Committee in order to find out why the Select Committee had kept alive certain measures relative to the dissolution of marriages that were passed when an all-India law was not in force on this subject. I know that there are at least two States in which such laws have been passed, namely,

[Shri H. N. Kunzru.]

Bombay and Madras. The minutes of the Select Committee, however, throw no light on this point. All that is stated there is that clause 21 was passed without any change. The minutes do not even disclose whether there was any discussion on this clause in the Committee. Apparently, the clause was passed without any discussion. It is, therefore, necessary for us to pay careful consideration to the situation that has been created by clause 29(2). In so far as custom has been saved, one can understand the justification for it. The customs in different States are due to the different conditions prevailing there, the sentiments of the people and so on and their continuance may not, therefore, be regarded as discriminatory. But when the laws passed by the Bombay and Madras States on this subject are the same, the question arises as to whether this is discrimination or not. Article 14 of the Constitution lays down; "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The question that we have to consider is whether the saving of the Bombay and Madras laws relating to the dissolution of marriage is repugnant to article 14 of the Constitution or not. This matter was previously considered several times and it was never suggested that the laws relating to the dissolution of marriage in any State should be continued after an all-India law had been passed. Some explanation was, therefore, needed in the report of the Select Committee for the view taken by it, as it seems to me, for the first time. But in the absence of any justification provided for this in the report of the Select Committee, we have to consider the question in the light of such knowledge as we have.

The first question that arises is whether the people of Bombay and Madras have the option, when presenting petitions for divorce, to ask for the application of the all-India law

or of their State laws. This fact itself seems to me to be discriminatory. Other States may not have passed any law on this subject, but is the continuance of the laws passed, continuance of the laws prevailing in such States as have passed them, in conformity with article 14 of the Constitution? Unless it can be shown that there are special conditions in the States of Bombay and Madras, which require that they should be differently treated from the other States, I think, it cannot be said that the provision made in clause 29(2) is not contrary to article 14. The observance of customs can be defended on the ground that I have mentioned; but the continuance of the rights conferred by laws passed by Bombay and Madras seems to me to be totally unjustified.

Now, Sir, apart from the fact that the citizens of Bombay and Madras appear to have the right to claim whether the all-India law should be applied to them or their State laws, there are other considerations also which show that the continuance of the laws that I have referred to is not merely undesirable but is contrary to the Constitution. One of the grounds . . .

THE MINISTER FOR COMMERCE (SHRI D. P. KARMARKAR): If my hon. friend is on the point of the repeal of those Acts, giving this Act the whole way, I should like to inform him, so that it might help him to know, that so far as we in the Government are concerned, if any amendment is brought before this House for the repeal of those Acts, we are prepared to accept it.

SHRI H. N. KUNZRU: I am very glad to know that. It will not, therefore, be necessary for me to argue this point at length. I shall, therefore, not refer to the points that I wanted to bring to the notice of the House.

But there is still one other matter which, I think, ought to be brought to the notice of the House and that is contained in clause 11 of the Bill.

1 P.M.

Sub-clause (1) of clause 11 states as follows:—

“(1) Any marriage solemnized before the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if,—

(a) a former husband or wife of either party was living at the time of such marriage; or

(b) the parties at the time of such marriage were within the degrees of prohibited relationship.

Provided that no such marriage shall be, or shall be declared to be, null and void if the marriage was valid under any law, custom or usage in force at the time of such marriage.”

Now, Sir, there are two things that I should like to bring to the notice of the House in this connection. One is that the proviso is obviously meant to save the Madras and the Bombay Acts. But, apart from that, it is clear from paragraph (a) of sub-clause (1) that it is only the second wife or the second husband who has been given the right to ask for a declaration of nullity of her or his marriage.

MR. DEPUTY CHAIRMAN: I think you may continue in the afternoon, Dr. Kunzru.

SHRI H. N. KUNZRU: All right.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 3-30 P.M.

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

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

SHRI H. N. KUNZRU: Mr. Deputy Chairman, when the Sabha adjourned,

I was dealing with clause 11 of the Bill. I pointed out that the acceptance of an amendment by Government with regard to the discontinuance of the Bombay and Madras Acts to which I had referred earlier would still leave us with clause 11 which needed careful consideration. I read out sub-clause (1) of clause 11 and was drawing the attention of the House to the proviso when the House adjourned. In order to make my argument clear to the House, I shall read out the proviso which runs as follows:

“Provided that no such marriage shall be, or shall be declared to be, null and void if the marriage was valid under any law, custom or usage in force at the time of such marriage.”

The object of this proviso seems to be to allow a petition to be presented by either party for a declaration of nullity of the marriage only in Bombay and Madras. The language, however, is not quite clear to me. It is said that a petition may be presented provided that no such marriage shall be, or shall be declared to be, null and void if the marriage was valid under any law, custom or usage in force at the time of such marriage. The Bombay and Madras laws deal not merely with marriages taking place after the commencement of those Acts but also with marriages that have taken place earlier. It is obvious that, so far as marriages that took place after the Acts were concerned, they were illegal and no remedy is needed in that case. It is only in the case of marriages solemnised before the commencement of those Acts that relief might be needed, but the language that I have read out shows that it will have to be proved that the marriages, when solemnised, were not illegal. Obviously, those marriages were not illegal at the time they were solemnised under the Acts I have referred to. If, however, I am wrong in this interpretation and the proviso falls to the ground when the Government accepts an amendment for the purpose

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of discontinuing the Madras and Bombay laws relating to the dissolution of marriages.....

SHRI J. S. BISHT: In that case, what will happen to the marriages solemnized under the ordinary Hindu Law?

SHRI H. N. KUNZRU: That is what I am going to deal with now. Even then the position will be unsatisfactory. Clause 11 would apply not merely to certain States but to the whole of India. The right of presenting a petition for a declaration of nullity of marriage would be conferred only on the second wife, for the language of paragraph (a) of sub-clause (1) is "a former husband or wife of either party was living at the time of such marriage". Now, it is quite possible that in certain cases the second wife might have been induced to agree to her marriage on account of her being deceived by the person who married her, but in the majority of cases, it is well known that the second wife is the favourite wife. If therefore, anybody needs relief, it is the first wife, but the language of paragraph (a) of sub-clause (1) gives relief only to the second wife and not to the first wife who needs it more. Government must make up their mind as to what they want to do. If they want to take into account marriages which were contracted before the passing of this Bill, then there is no need for the proviso and paragraph (a) should be so changed as to apply to the first wife. Now, the question arises whether the application of the Bill when passed to the pre-Act marriages would be desirable on grounds of policy or not. Clause 11, even if amended, would not compel any person to ask for a decree of nullity. If a man has married twice and his wives are living together with him happily, they will be under no compulsion to present a petition to any court for a declaration of nullity of marriage.

SHRI J. S. BISHT: They are void marriages under clauses 11.

SHRI H. P. SAKSENA: Because they will be polygamous.

SHRI H. N. KUNZRU: My hon. friend behind me asks whether I want to make such marriages void *ab initio*. It does not matter to me whether they are void or voidable but the advantage in making them void is that a petition may be presented and this procedure will be much less costly than a suit.

SHRI J. S. BISHT: On a point of information, Sir, I may point out that under law there is very great difference between the words 'void' and 'voidable'. 'Void' means void *ab initio*. If you make them 'void', then people who married ten years ago would find that their marriage is declared null and void and the children born and all their rights and liabilities would be affected. In fact, the whole thing becomes very, very complicated. The best thing would be not to touch marriages solemnised before the Act comes into force except in Bombay and Madras.

SHRI H. N. KUNZRU: I am not in favour of any special provision for Bombay and Madras. I think myself that on the whole it would be desirable to extend the application of this Act to marriages solemnized before its commencement. I have already pointed out that no man or woman would be under a compulsion to ask, if I may use non-technical language, for the dissolution of the marriage. It is only in those cases where, say, the first wife is being cruelly ignored, has been deserted and is being treated in a most undesirable manner that dissolution would be asked for.

SHRI J. S. BISHT: But that would be only if it was made voidable. In a void case you are not to ask for anything.

SHRI H. N. KUNZRU: This is entirely a question of procedure. This matter can be considered by Government but for my present purpose it is a matter of detail. The main question that I am concerned with is whether there is to be any relief granted in respect of marriages

solemnized before this Bill is passed into law and I contend that some relief should be granted. What procedure should be laid down for granting that relief is another matter. I have no doubt that it is only in a few cases that advantage would be taken of a provision of the kind that I have recommended but even if it was taken advantage of in a few cases, there is no reason why we should compel any person to remain unhappy for the whole of his or her life. If anybody feels that his life can become happier if he takes advantage of a provision like the one that I am in favour of, there is no reason why we should regret the enactment of such a provision. I hope that what I have said with regard to clause 11 will receive the careful attention of the hon. Minister in charge of the Bill—Mr. Karmarkar.

I shall now come to the grounds on which divorce can be granted. One of the grounds for divorce is 'leading an adulterous life'. Now, how is a husband or a wife to prove that the other party is leading an adulterous life? For a single act of adultery only a petition for judicial separation is permitted. In the case of a single act of adultery, a petition may be presented for judicial separation provided that the other party after solemnization of the marriage, had sexual intercourse with any person other than his or her spouse. In the case of a single act it is only a petition for judicial separation that is permissible under clause 10. But under clause 13 which deals with the conditions relating to divorce, it must be proved that the other party was leading an adulterous life. Now, how is this to be proved? Suppose six months or a year after a marriage has been solemnized the wife discovers that her husband has had illegal sexual connection with another woman, she protests against it and the husband repents and about six months later she again finds that her husband has been guilty of the same kind of conduct, she may expostulate again with the husband and the husband may again

promise to improve but may, six months or a year later, fall a victim to the temptation to which he succumbed twice earlier. Now, if proof of these acts was given, would they be regarded as showing that the husband has led an adulterous life or would the Court say that as such acts had taken place after long intervals, it could not be said that their commission showed that the husband was leading an adulterous life? It will be very difficult, Sir, I submit, to interpret this language.

Take again another fact into consideration. No petition for divorce under clause 14, can be presented within three years of a marriage. It is well known that it is exceedingly difficult to find such a proof of marital infidelity as would stand scrutiny in a court of law. But if no petition for divorce can be presented within a period of three years of the marriage, would it be possible to obtain any proof of that later? The witnesses may have dispersed or disappeared.

SHRI D. P. KARMARKAR: Clever persons do not leave any trace.

SHRI H. N. KUNZRU: Apart from this, the witnesses, even if available, after three years may say "Well, the cases on which divorce is going to be asked for, are old cases. Have there been any recent cases?" and if the aggrieved party is unable to point out such a case, he or she can get no relief. I understand that the object of using these words 'leading an adulterous life' is not to make divorce easy and it is to make it possible for the parties concerned to be reconciled to one another. But I submit, Sir, that the language is such as to defeat its own purpose. It not merely delays the request for divorce but makes it virtually impossible to prove the grounds on which divorce can be asked for. I submit, therefore, that this matter requires much more consideration than Government have yet given to it.

Now, in the light of the provisions of clause 14, consider two or three other provisions of clause 13 also.

SHRI D. P. KARMARKAR: Would not the proviso meet with the latter point made just now? I am referring to the proviso to sub-clause (1) of clause 14. Would that not help the hon. Member's point?

SHRI H. N. KUNZRU: I shall deal with that later. I am coming to that.

Now, there are several grounds on which a suit for dissolution of marriage can be filed but I want to refer to only three of them. They are: conversion of a Hindu to another religion, renunciation of the world by entering any religious order, and the commission of rape, sodomy or bestiality. I was asked by the hon. Minister in charge of the Bill whether clause 14 would not meet the objection that I had urged against the use of the language 'leading an adulterous life'.

SHRI D. P. KARMARKAR: No, that is not it. I have understood what my hon. friend had to say about adulterous life. I was referring to the point about years.

SHRI H. N. KUNZRU: The proviso, Sir, makes it possible for a High Court in cases of exceptional hardship to allow a request for divorce to be made even before the expiry of three years since the solemnization of the marriage. Now, consider this special power vested in the High Court.

SHRI D. P. KARMARKAR: Application has to be made under rules to be made by the High Court.

SHRI H. N. KUNZRU: Yes, under the rules to be made by the High Court. Now, if a man ceases to be a Hindu by conversion to another religion, what is the purpose in asking the woman to wait for three years before seeking divorce? And mind you, it has to be remembered that conversion to another religion is not a ground for judicial separation so that for three years a Hindu woman whose husband has become a Muslim or Christian is subject to the will of that husband. If she leaves his house

and refuses to have anything to do with him, he can file a suit for restitution of conjugal rights and if that suit is decreed it will depend on the will of the court whether non-compliance by the wife of the court's decree will be regarded as contempt of court or not. Usually, I understand that the courts would take no action where a decree for restitution of conjugal rights continues to be disregarded.

SHRI J. S. BISHT: Because the Civil Procedure Code provides how that decree will be complied with and physical transfer is not there.

SHRI H. N. KUNZRU: But the result of the provisions as they stand will be to compel the wife to leave the husband's roof in order to save herself from his attentions. I ask the hon. Minister in charge of the Bill to tell me frankly whether the special provision to which he referred meets the needs of such a case.

Take again renunciation of the world by a man. Here again, what is the purpose of asking the woman to wait for three years? Is she expected to induce the husband to submit to the ignominy of recanting and going back to the life of a *grahastha*? Far better that they should separate than that he should be tempted to forget his qualms and return to the life that he was leading before he accepted *sanyasa*.

Now, take the last case—the commission of rape, sodomy or bestiality. What is the purpose of asking the woman to wait for three years before asking for divorce in such cases? The High Court may have the power to give relief in special cases but why should this be made subject to the discretionary power of a court which is to be exercised in accordance with the rules that will be made? Why should the request for a divorce be subject to any condition at all? It seems to me that clause 14 is not needed. This question was considered



when the Special Marriage Bill was before the House. Such a provision was inserted in that Bill and it has been repeated here. I was biased in favour of this provision but further thought has made me feel that a clause like clause 14 will serve no purpose at all. It may serve some purpose when either party has to prove that the other party is leading an adulterous life. But in view of the difficulty of proving a charge that a person is leading an adulterous life, I think it would be better if clause 14 were deleted altogether.

The Special Marriage Act makes desertion and cruelty the grounds for divorce but this Bill does not. I therefore turned to the minutes of the meetings of the Select Committee in order to find out the reason why the Select Committee had come to this conclusion. But I find that this is all that has been said in the minutes of the 14th meeting of the Committee: "The grounds for judicial separation in clause 10 were then re-examined to see whether any of them could also be made a ground for divorce, and the Committee felt that desertion, cruelty or adultery should not be made directly a ground for divorce and endorsed the scheme underlying clause 10." In the absence of any reasons given in the Report of the Meeting of the Select Committee, I may be allowed to say that there seems to me to be no adequate reason why in cases of cruelty a woman should not be able to seek divorce. The language of clause 10 which relates to judicial separation on the ground of cruelty is as follows: "has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party".

3 P.M.

Now, the word cruelty has a technical meaning and I believe that this thing has been copied from the English law. I have a recollection that this matter was considered in the Select Committee on the ~~Special~~ <sup>the</sup> Marriage Bill but I ask whether a

special kind of cruelty—cruelty where either party is in danger of losing his or her life—should not be made a ground for divorce. No party would, in that case, be compelled to ask for divorce on grounds of cruelty but it would be left to the party to consider whether it could safely ask for a judicial separation. Taking human nature as it is, I am sure that where relief is sought, judicial separation would be asked for much oftener than outright divorce but if the party feels that his or her life is in danger, there is no reason why the law should take upon itself the responsibility of saying to him or to her, "no, no; this is a figment of your imagination. Your life is not in danger. Even if you die, there is no reason for changing the law". I submit that we should add cruelty of such a character as to endanger life among the grounds on which divorce can be asked for.

SHRI D. P. KARMARKAR: That purpose, according to my esteemed colleague, is not served by sub-clause (viii) of clause 13, viz., "has not resumed cohabitation for a space of two years or upwards....."?

SHRI H. N. KUNZRU: That is after two years; what about cruelty of a dangerous kind? Usually such cruelty will not be accompanied by cohabitation. Indeed, the husband will both desert the wife and be cruel to her. Sub-clause (viii) of clause 13 will not meet the case that I have referred to.

SHRI D. P. KARMARKAR: That is to say—I am trying to understand all these points because I should like to consider them—the wording now has been more generous than the wording that was there; cruelty had to be factually proved but now the cruelty that has to be proved is such as to cause a reasonable apprehension in the mind of the petitioner that it will be either harmful or injurious, let alone dangerous.

SHRI H. N. KUNZRU: I am not objecting to the language as it is in

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the clause relating to judicial separation.

SHRI D. P. KARMARKAR: And two years later she can apply automatically for a divorce.

SHRI H. N. KUNZRU: She can apply for divorce but what if, in the meantime, she loses her life? There will be nobody to apply for divorce then. The object of law should be to provide for conditions which will make reconciliation possible without exposing either party to a marriage at the risk of losing his or her life.

SHRI D. P. KARMARKAR: Let alone danger to life, the moment there is ground for reasonable apprehension in the mind of the petitioner, that is the lady, that it will be harmful or injurious for her, that itself is quite sufficient and she immediately files an application for judicial separation. It is granted if the facts are proved and two years later she can automatically apply for a divorce. There is no question of her continuously being compelled to stay with the man.

SHRI H. N. KUNZRU: How long will the proceedings in the court take? My hon. friend is well acquainted with the practical conditions that prevail in courts of law. He must have come to know it in connection with Dr. Katju's Criminal Procedure Amendment Bill as to what the arrears in the various Courts right up to the High Court are.

There are, Sir, only one or two points that I would like to refer to before I conclude. I have so far dealt with clauses 10, 11 and 12 and I should now like to refer to the clause relating to the age of marriage, i.e., clause 5. This clause fixes the age of marriage as 21 in the case of male and 16 in the case of a female. It is well known, as previous speakers have pointed out, that the provisions of the Sarda Act have not so far been observed; the Sarda Act requires that

for a legal marriage, the age of marriage should be not less than 18 in the case of a male and not less than 15 in the case of a female. It is a notorious fact that this law has been almost completely disregarded in the rural areas. Now, is it right that in such a case we should raise the marriageable age of boys and girls still higher? Do we want our laws to be respected or not, or do we want to create a habit among our people of violating the laws that we pass?

SHRI D. P. KARMARKAR: It has been said that the law is already being violated and so, what does it matter if the age is raised by one more year? That is what is being said; that is not my view nor that of the Government.

SHRI H. N. KUNZRU: The law is certainly being violated but no proper action has been taken in order to familiarise the people with the terms of the Sarda Act. We passed that law and then sat back. We thought we had done our duty what was really necessary was propaganda in the villages in order to inform the people of the provisions of the Sarda Act and the beneficial influence that they would have on the health of the boys and girls if they were observed. Government have done no such thing and have now come forward with a provision making still higher the marriageable age of boys and girls. I submit that this is very undesirable. The marriageable age is rising but if the law is not observed in the rural areas then it is a matter for serious consideration. We should do our best to make the rural people feel that the laws that we pass are meant to be observed. Let us, therefore, do what we can in order to persuade the villagers to observe the Sarda Act before we raise the marriageable age still further. I am not opposed to these ages; in the case of the girls, they may even be higher with advantage to the community but it would be totally ignoring the conditions obtaining to-day to say, when girls are being married even below the age of 15, that

they should not be married unless they are at least 16 years of age.

Sir, the last matter to which I should like to draw the attention of the House relates to the clause relating to voidable marriages, clause 12, I think. It should be provided there as one of the grounds, I mean, an additional ground should be laid down there for a voidable marriage and that is "that the respondent was at the time of the marriage pregnant by some person other than the petitioner." I think my hon. friend the Minister in charge of the Bill promised yesterday to consider such an amendment, I mean, to accept such an amendment if it was put forward.

This is all that I have to say with regard to the Bill. I am entirely in favour of its principle and I freely admit that the Select Committee has improved it, but the points to which I have drawn attention are, I think, worthy of the serious notice of the Government. Unless they are properly dealt with, the purposes for which we are going to pass this Bill will not be fully achieved.

SHRI B. K. MUKERJEE (Uttar Pradesh): Mr. Deputy Chairman.....

MR. DEPUTY CHAIRMAN: But before you begin, Mr. Mukerjee, I want to inform hon. Members that there are 26 names before me. So I request hon. Members to confine themselves to the main points and not repeat what other Members have said.

SHRI K. B. LALL: My suggestion is that it would be better if from the very beginning you fix a time limit. Otherwise in the end when there are many speakers they will get only five minutes each.

MR. DEPUTY CHAIRMAN: I may inform you that the Business Advisory Committee is being called tomorrow and they will fix the time.

PROF. N. R. MALKANI (Nominated): It will be unfair to the rest of the speakers if some Members speak for 1 hour and 45 minutes each and there is not sufficient time for the other speakers. It is very unfair.

MR. DEPUTY CHAIRMAN: That is why I am informing you well in advance. The Business Advisory Committee is meeting tomorrow and they will fix the time-table and perhaps we may have to sit on Saturday also.

SHRI D. P. KARMARKAR: What about 15 minutes each if the House agrees?

MR. DEPUTY CHAIRMAN: Those who oppose the Bill may be given a little more time. Those who support the Bill may do well with less time.

SHRI D. P. KARMARKAR: By this there may be a tendency to speak long. I suggest round about 15 minutes for everybody.

MR. DEPUTY CHAIRMAN: I think the number for opposition is very small. So we may be more generous to them.

SHRI B. K. MUKERJEE: Mr Deputy Chairman, you have been kind enough to allow a little more time to those who seek to oppose this legislation. It is not because of this that I am going to oppose this. I made up my mind to do so before I stood up, before my name was called. And not only that. When I sent my chit, even in that chit I suggested that I might be the single person to oppose this Bill, but in any case I will oppose this. It is not because the time limit is elastic to those who oppose the Bill that I am going to oppose it but because I made up my mind before to oppose it.

Now, as I oppose this Bill I cannot follow suit with the speakers who preceded me. They started their

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speeches by congratulating the hon. Minister on introducing this Bill. I cannot congratulate him on this account because the Government, as some hon. Members said before, has put the cart before the horse, as this is social legislation and other vital social legislation remains to be taken up before this. Social legislation should embrace all sections of the population, the whole Indian nation, all the communities. While one hon. Member raised a point of order, it was ruled out saying that under article 15 of the Constitution special legislation may be made for women and children alone. And if it is so, I take it for granted that this legislation is meant for the womenfolk of this country alone, that is article 15(3) of the Constitution. But this measure does not concern everyone, probably the other sections of the Indian society. Now, the society does not consist of Hindu women alone. Our Constitution provides it and we proclaim that the Union of India is a secular one. If so we have got many things to do for building our society first. I do not think at present we have got really a society because we find that Hindus form a society, Muslims another and Christians a third; that women form one society and men form another. If that is so, then we have got no society. Society will be formed by all people irrespective of the faith and religions they profess. Now, when we are thinking in terms of Hindus and Muslims or women and men, we have got no society at all. We have got to build up the society first so that we can all put our shoulders together for the progress of that society. Now, instead of doing that, the hon. Minister has brought a legislation, for development as they style it to be, but I feel it is the other way about. It will not improve the condition of those people or that section of society whom the hon. Minister means, and some of the Members of this House feel that their conditions will be improved by passing this legislation.

SHRI D. P. KARMARKAR: They have no personal interest in it.

SHRI B. K. MUKERJEE: I do not know. I have no personal interest either. First of all, we have got many things to do in order to build up our society and unless we have a society the question if improving the society does not arise. This is my feeling.

SHRI GULSHER AHMED (Vindhya Pradesh): Are we not in a society today?

SHRI B. K. MUKERJEE: No, we are not in a society today if we feel that women form one society and men form another, that Christians and Muslims form separate societies. India as a nation must have one society.

SHRI GULSHER AHMED: With all the diversity we have got a society.

MR. DEPUTY CHAIRMAN: What applies to woman applies to man also.

SHRI B. K. MUKERJEE: My point is we do not belong to one society, I mean men and women of Hindu, Muslim and Christian communities. My impression of society is that everybody of a nation comes under one society and they must be governed by one law, and the attempt must be to improve the society, whoever be in that society. But this Bill does not provide that.

SHRI GULSHER AHMED: If a labour law is passed, does it not apply to all the labourers, whoever be among them?

SHRI B. K. MUKERJEE: But here it does not affect everybody in the society. When we pass labour legislation it affects all, everybody who is a labourer.

But this Bill does not. This point arises here. If we are passing a legislation for the womenfolk of this country, and not of the whole country but for one community of a

particular religious sect, those who profess a particular faith, whether it will be right for us in this Parliament to pass such a legislation by the votes of those persons who are not interested in the matter. My point is, if we pass a legislation simply for the Hindu women of the land, the women must come and pass that legislation. We cannot go and interfere in their actions.

SHRI D. P. KARMARKAR: May I clear an obvious misapprehension which my hon. friend seems to be under? I think he believes that the point raised by Mr. Mahanty on the floor of the House on the constitutional aspect is that because this is a legislation only for the women of this country, this should not be proceeded with. But that was not the point. The point raised was that it legislates only for the Hindus. I hope I am right. Is that not so?

SHRI S. MAHANTY: Yes.

SHRI B. K. MUKERJEE: Then in that case, I pass on to my next point. We propose to pass a legislation for the Hindus alone; but we have got Members in this House who are not Hindus, persons who do not profess the Hindu religion or faith. I am only drawing the attention of the House to the fact that we should not pass a legislation affecting one section of society in this manner and I want to ask whether the other sections of society would be well-advised to intervene or interfere in the affairs of a particular section. If we want to pass this legislation for the Hindus alone, then the Muslims, the Christians and others should refrain from participating in this debate and also, if there be any chance of a division occurring, they should not participate in that division.

SHRI B. GUPTA (West Bengal): But the capitalists passed labour laws here in this House.

SHRI D. P. KARMARKAR: But he has not attacked Communists.

SHRI AKBAR ALI KHAN (Hyderabad): That also is a convention in some assemblies and if my hon. friend wants, that convention could be observed.

SHRIMATI SAVITRY NIGAM (Uttar Pradesh): No, no, we do not want any such distinction.

SHRI B. K. MUKERJEE: I do not wish that other sections of our society should not participate in a debate or in a division. But what I mean is that it is a distinction that is going to be perpetuated by this legislation meant for a section of the society. Other sections will be excluded from the operation of this law.

MR. DEPUTY CHAIRMAN: Mr. Mukerjee, this objection had been raised earlier, even before the Bill was referred to the Select Committee. So I think this objection is too late now and you are repeating the old argument. Now that the Bill has emerged from the Select Committee, if you have got anything to say against the clauses as they stand now, I think that will be relevant. Any dilution on this particular point will, I think, be out of order.

SHRI B. K. MUKERJEE: Sir, I did not raise any point of order. I am only stating the grounds on which.....

MR. DEPUTY CHAIRMAN: But I am telling you that this argument was advanced even before the Bill was referred to the Select Committee and at that stage it was perfectly relevant. But the House approved of the principle of the Bill and referred the Bill to the Select Committee. You can now discuss every clause if you have got any objection against them, and that will be relevant. So I would like you to be brief and relevant.

SHRI B. K. MUKERJEE: Sir, this Bill is styled: "The Hindu Marriage and Divorce Bill," and if you look into the definition, you will find that it applies to Hindus, Buddhists, Sikhs and Jains. Now, there are Hindus

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not only in this country, but there are Hindus in other countries. There are Buddhists in this country and there are Buddhists in other countries also. I do not know whether this Bill can be applied to those people also, or whether this Parliament has got any jurisdiction to enact for the Hindus living in Ceylon or the Buddhists living in Burma.

SHRI H. P. SAKSENA: It is given in the Bill itself.

MR DEPUTY CHAIRMAN: You must know it better, as a Member of Parliament.

SHRI B. K. MUKERJEE: I do not think we have got any right to legislate for the people there.

MR. DEPUTY CHAIRMAN: Then it does not apply to them.

SHRI B. K. MUKERJEE: But this Bill does not say that.

SHRI H. P. SAKSENA: It does say it.

SHRI B. K. MUKERJEE: I know it, but the Bill does not say that.

SHRI B. GUPTA: But we passed a Coffee Board Bill; there might be coffee boards in Germany, or Australia and in many other countries.

SHRI D. P. KARMARKAR: Thank you very much.

SHRI B. K. MUKERJEE: I find that

SHRI GULSHER AHMED: . . . that everybody is opposing you?

SHRI B. K. MUKERJEE: Yes

SHRI B. GUPTA: He is the "boy in the burning deck".

SHRI B. K. MUKERJEE: I only want that the Government should

note of what my feelings are and while I oppose this measure, I have every right to give the grounds of my opposition.

SHRI GULSHER AHMED: But they should be reasonable.

SHRI B. K. MUKERJEE: Opportunity will be given to everybody to say what they want. I don't know why my friends on the opposite side are so anxious to cut down my speech

SHRI B. GUPTA: No, no We are really enjoying it.

MR. DEPUTY CHAIRMAN: Order, order. Please listen to him calmly, Mr. Gupta.

SHRI B. K. MUKERJEE: Sir, this Bill is a part of the Hindu Code Bill which aroused in this country a great deal of opposition. So that Bill could not find a place on the Statute Book. It could not be passed in the teeth of the great opposition to it. By dividing it into bits, the hon. Minister wants to evade the opposition of the people of this country, keeping them ignorant and thus they want to pass this legislation hurriedly.

This is a Bill which deals with the Hindu religion.

AN HON MEMBER: It deals with Hindu marriages.

SHRI B. K. MUKERJEE: I need not go into the fundamentals of Hindu faith, because they are always treated lightly by some of my friends in this country and those who sit opposite consider them to be reactionary ideas. And some Members on this side also have secured, while discussing this legislation, what are called strange bed-fellows. They are strange bed-fellows because

SHRI B. GUPTA: Then divorce them.

SHRI D. P. KARMARKAR: If that is his plea, he can try his luck also.

SHRI B. K. MUKERJEE: That stage will come when we pass this Bill and then we will try. These people do not see eye to eye with the present set-up in this country. But they have suddenly found that the Government is very progressive. Here I may, if I am permitted, sound a note of warning to the Government whom these people have always been opposing. These very people now say that the Government is progressive. By introducing this piece of legislation, we have allowed those who were opposers, who do not want to see this country prosperous, who want always chaos to prevail in this country, to come forward to-day and say "Thanks" to the hon. Minister in charge.

SHRI B. GUPTA: May I know what is that party?

SHRI B. K. MUKERJEE: By introducing this Bill we are giving our friends an opportunity to increase their rank and file, by going from door to door and getting signatures. It is not the Members on this side of the House who approached the people from door to door and took signatures. It is these people who always opposed the Government. We have offered them a chance and wait and see the devil will come very soon when they are going to utilise the opportunity that this Bill offered to them. They went from door to door and got signatures.

SHRI B. GUPTA: Does the hon. Member wish to keep his wife in 'purdah'?

MR. DEPUTY CHAIRMAN: Order, order.

SHRI B. K. MUKERJEE: They are opposed to all the measures that have been brought by this Government for alleviating the condition of the down-trodden people of this country. This is a Bill on which they congratulate the Government and thereby they get a chance to go and propagate their

theory of violence to the people of this country.

SHRI B. GUPTA: If I had a wife and my wife had heard this speech, she would certainly have divorced me!

SHRI B. K. MUKERJEE: As I said, we need not go into the religious teachings of the Hindus while discussing this Bill, because our Government do not believe in religion. But this Bill is based, on the one hand, on some of the customs and usages of this country; whereas on the other hand they have altogether ignored them. Now, before this enactment there used to be marriages among the Hindus in this country and these marriages used to be governed by customs and usages.

SHRI D. P. KARMARKAR: Some now obsolete.

SHRI B. K. MUKERJEE: Where it suits them the Government have saved customs and usages; for the reactionaries customs and usages are to be used; for the progressive people also the provision deals with customs and usages. My point, Sir, is that if we depend on customs and usages the whole Bill should be enacted according to the customs and usages prevalent among the Hindu community of this country which differs from area to area. It is not a uniform thing throughout this country. It differs from area to area. But if we depend on customs and usages, let the customs and usages be developed and improved as they develop, but not by legislation. If we try to change the customs and usages in our country by legislation, we will probably fail and miserably fail as we have seen in the case of two legislations of this type which were passed years ago: (i) by introducing the age-limit for marriages, that is a dead letter in our Statute Book; and (ii) the Hindu Widow Remarriage Act is almost a dead letter in our Statute Book. And if you again try, even if we try

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to improve by legislation, we are again going to fail miserably. Now, there is a section which feels that Hindu women suffer, because there is no system of divorce in the Hindu society. But I am sorry to say that they do not know or represent the Hindu community. Hindu community has progressed not by legislation but by developing customs and usages. They have developed a custom in certain areas and in certain classes of people regarding the system of divorce. I feel and I know that this legislation is going to create difficulties in their system of divorce. They have now got an easy system of divorce, but by going through all this process which you lay down in this Bill, it will create not only anomaly amongst themselves, but it will disrupt their social structure. They will have to incur cost also for going to the law courts and it will also encourage litigation. Therefore, it is not right to say that women in Hindu society suffer for want of a provision for divorce, though I am subject to correction if I state that nothing less than forty to forty-five per cent. of the Hindu society has the system of divorce among them.

Now, only the higher class people, the higher castes in the Hindu community, and particularly those who are living in towns and big cities and those who have got education—not the Indian system of education, but those who have got their education in the Western system, feel more today the need for this provision in their social life. My point is that when there is a good system of divorce, we need not go to the Government or the legislatures or the Parliament to introduce a divorce system among this section of the Hindu society. But if these town dwellers, if this section of the Hindu society who are out to save those people who are suffering today for want of a provision in our social life for divorce, want it, they can introduce that without legislation, because there

was no legislation for the Hindu society when they developed a system of divorce. There are sections in the Hindu society where you will find a divorce system prevalent. How did they get their divorce system? They did not wait, they did not come to Parliament for a provision to be made in the Statute Book for divorce.

SHRI B. GUPTA: Was there a Parliament at that time?

SHRI B. K. MUKERJEE: There was, probably you were not born then.

SHRI B. GUPTA: Including Rajya Sabha!

SHRI B. K. MUKERJEE: My point is this. If we insist on this divorce in our society, it will not help. If we do not insist on enactment for divorce, it will help those for whom we have got so much sympathy today. It will save them, it will do them good if we keep away, if we do not pass this legislation, because after this legislation is passed, the society, the Hindu community, will be disrupted. Instead of bringing about uniformity in the society, it will rather be a source of diversity and disruption. Therefore, I say that if we do not incorporate the divorce clause in this Bill, we will rather be helping those for whom the hon. Members, particularly my friend, Mr. Gupta, have got very much sympathy.

SHRI B. GUPTA: I can't quite follow you. Explain a little more.

SHRI B. K. MUKERJEE: By introducing divorce among those sections of the community where there is no such system prevalent, we will be doing injustice to those sections. Some of the speakers have already said that it would have been much better if the inheritance Bill was introduced and passed before this legislation was taken up.



**SHRI D. P. KARMARKAR:** If that Bill is passed, I think my friend would then agree to this.

**SHRI B. K. MUKERJEE:** If you go through some of the Minutes of Dissent written by women Members of the very Committee which went into this Bill, you will find that they stated that women were generally dependent on men. And now, if a husband goes to a court and gets a decree of divorce, the wife will rather be stranded. And, in our society, where 60 per cent. of the population is unemployed today, we cannot possibly provide the womenfolk with employment today, and unless they have got some means to stand on their own legs, either they live an undesirable life or they fall on the shoulders of their parents or other relations for their maintenance.

**DR. SHRIMATI SEETA PARMANAND:** They will get alimony.

**SHRI B. K. MUKERJEE:** I do not know, if a man is unemployed, if he does not earn anything, how he can provide alimony to his wife. You are putting the cart before the horse. Unless we can eliminate altogether this unemployment problem from our country, I do not think that the provision about alimony will go to the rescue of the womenfolk in any way. We have got to see the realities of the situation today. Though the people here, in our country, are unemployed, at the age of 21 or so, when they come out of the universities, they get married. And, before they get any proper employment, before they earn their living, if there is a divorce, I cannot understand how the question of alimony will then be decided by the court, because the man will not have any earnings. Now, those people who are shouting today for the incorporation of his divorce clause in this Bill are mostly our womenfolk. But I say that they are not in a majority, they are in a minority. They will be creating difficulties for those who are not here

and who have got no voice. They do not certainly want a divorce today. If some of our friends go to the villages and insist on the women there to go to the law courts for a divorce decree, they will not easily agree to that, and if they do that, they will themselves be stranded, because they will be left without any means of livelihood.

Now, Sir, one point which relates to the legality of this legislation has not so far been touched. We have still got to consider that. My lady friends here are more impatient than my friends on the Opposition side to get this legislation hurriedly passed. But they are very selfish. I must say that they are very selfish.

**DR. SHRIMATI SEETA PARMANAND:** Sir, may I ask the hon. Member kindly to withdraw the express "my lady friends", because it has not a very good meaning in English?

**SHRI D. P. KARMARKAR:** It may not be so in a technical sense.

**SHRI B. K. MUKERJEE:** Now, Sir, they are selfish in this way. I do not try to go into the legal aspect of this Bill. But one thing will be there when this Bill is enacted and becomes the law of the land. I would like to know, Sir, whether a Muslim lady can seek protection under this law. The Muslim law permits four wives at a time. Now, if anybody has got four wives at a time, and if one wife is not in the good books of her husband, I would like to know whether such a wife can seek protection under this law. There should be no discrimination at all on the basis of birth or faith. Now, if that is so, and if this law as it has emerged from the Select Committee, is passed, here is a provision for judicial separation, for a divorce. Now, a Muslim lady who is very cruelly treated by her husband, I would like to know, whether she will be permitted, or she will be eligible, to seek protection or redress under this law,

[Shri B. K. Mukerjee.]

when it is passed. The law is applicable to all Indian citizens. There can be no discrimination on the basis of religion and on the basis of birth. What happens after this Bill is passed? When it becomes the law of the land, can a Muslim lady who is very cruelly dealt with by her husband seek some protection? And, according to the Constitution of India, there can be no discrimination. If this Bill is passed for Hindus alone, and if a Muslim woman wants to seek redress under this law, the question is whether she will be eligible to do it or not.

SHRI GULSHER AHMED: No.

SHRI B. K. MUKERJEE: I don't want your reply. I think I will get a reply either from the Chair or from the Government at the time when the reply is due.

SHRI D. P. KARMARKAR: Not under this, but under the Mohammedan Law of Divorce.

SHRI B. K. MUKERJEE: I think the Government will be well-advised to seek legal advice on this matter. According to the Constitution of India, there can be no discrimination. Law is law and it must be applicable to all. When a Muslim lady wants to seek redress under this, how can she be debarred?

SHRI GULSHER AHMED: Because this law does not apply to Muslims.

DR. SHRIMATI SEETA PARMANAND: Sir, I think it is too late in the day to discuss the question.

SHRI D. P. KARMARKAR: Let him continue. Otherwise, he will take longer.

SHRI B. K. MUKERJEE: I know she is a Barrister-at-Law but I am asking the Government to consider this. After passing this, what will be the position?

MR. DEPUTY CHAIRMAN: You go to the Supreme Court and they will give you a ruling.

SHRI B. K. MUKERJEE: Another point in this Bill. When we are talking today of co-existence in the world between warring nations, between warring parties as the Congress and the Communists, I do not see any reason why we should not adopt that theory in our homes also. If the wife and the husband are not of one idea, why should they engage in warfare instead of reducing the tension at home. When we talk of co-existence, we must practise in our homes, too.

SHRI B. GUPTA: We don't believe in peaceful co-existence between you on that side and us but we believe in co-existence between two systems.

SHRI B. K. MUKERJEE: Co-existence implies non-violence. You have got your theories borrowed from other countries, whereas we believe in our own indigenous ideas. Our theory is that co-existence means non-violence and if you want to practise it in the political sphere, you must practise it even at home. In our industrial relations we have almost succeeded in this in spite of all your attempts to disrupt us. We have achieved a good measure of success in that field so far as co-existence is concerned, and we are settling our disputes by non-violence means.

SHRI B. GUPTA: Divorce will be perfectly non-violent.

SHRI B. K. MUKERJEE: Then I have got one more word to say about this Bill. This Bill was circulated for eliciting public opinion. We were supplied with the opinions of the various State Governments, various public institutions and individuals too. I believe Members have gone through them. The overwhelming majority of the opinions received are against this Bill.

SHRI RAJENDRA PRATAP SINHA (BIHAR): No.

SHRI B. K. MUKERJEE: When I am opposing this section on divorce, I am not voicing my own opinion. The Government of my State also

is opposed to this provision for divorce, and so are many other Governments. When the Bill was circulated for eliciting public opinion, we should have respected that opinion but unfortunately we find that we have not given proper consideration to the opinions that we have received. Most of the opinions received are opposed to the passing of this legislation. I feel that the Government will be well-advised to withdraw this and wait for the time when our society will be in a fit condition to have this after the development of our society in all spheres. By development in all spheres I mean a society where there will be no unemployment, where there will be no want.

SHRI B. GUPTA: And where there will be no undesirable husbands!

SHRI B. K. MUKERJEE: Whether Mr. Gupta is married or not, I don't know, but he is certainly not a very desirable husband. Let the States legislate on this subject. I believe there are some States like Bombay and Madras who have legislated for divorce. If any State feels that the society there is in such a condition as to receive this legislation, let it legislate, otherwise it will delay the matter for the appropriate time. Of course, Bombay and Madras are very advanced and they can have this legislation. But most of the other States are opposed to this. My own State Government is opposed to divorce.

SHRI H. P. SAKSENA: Since when has my hon. friend become the conscience-keeper of the Uttar Pradesh Government? I ask.

SHRI B. K. MUKERJEE: That is what the U. P. Government have stated in their opinion. You must go through the opinions you have received.

In the opinion that we have received, U.P.'s reply is also there.

4 P.M.

SHRI B. GUPTA: U.P. has got all types of people.

MR. DEPUTY CHAIRMAN: You have taken 45 minutes. It is time for you to close.

SHRI B. K. MUKERJEE: I was asked about monogamy. I welcome this provision no doubt because polygamy was prevalent in India hundred years ago but today I doubt if any of the 700 Members of Parliament have got more than one wife. ....

AN HON. MEMBER: Some have no wife.

SHRI B. K. MUKERJEE: Some Members have no wife at all. The economic condition of the country has compelled them not to go in for more than one wife. Though the Muslims are permitted, according to their religion and according to Muslim laws, most of the Muslim friends do not have more than one wife today and among the Hindus, though it is not prohibited by any law (except of course in Madras and Bombay), people have thought it fit and they have developed now a system not to marry more than one wife and if anybody by chance even marries a second wife, he is looked down upon and he is hated by all his friends and relations. We don't encourage anybody to take more than one wife at a time. The economic factor is also against those who may be willing to have more than one wife. A man cannot feed one wife and the children by one wife. How can he possibly get more than one wife? Therefore, if it is thought that for prohibiting polygamy and bigamy this legislation is necessary, I will humbly request the hon. Minister in charge of this Bill to set up a machinery or to ask the voluntary societies working in our country for social welfare, if I am permitted to say so; they may be utilized for this. I don't know what welfare they are doing if the Bharat Sewak Samaj cannot propagate among the ladies particularly not to marry husbands who have got a wife already.

[Shri B. K. Mukerjee.]

They should insist on the women not to marry a person who is already married.

SHRIMATI SAVITRY NIGAM: They never do it willingly.

SHRI B. K. MUKERJEE: I want the Bharat Sewak Samaj to be employed for this purpose. Instead of legislations, if we go and do propaganda it will have better effect because as soon as we pass the legislation, as we have seen in the previous social legislations also, the Government keeps its eyes shut and we don't talk of it and therefore the law becomes a dead letter in our Statute. So only for this provision of bigamy, I cannot advise the Minister to pursue this Bill and therefore I would request him to withdraw this Bill and allow the States to legislate on this matter when and if they feel it necessary.

SHRI B. GUPTA: Mr. Deputy Chairman, there have been by now some speeches on this measure and at least we have heard one speech now from Shri Mukerjee opposing this measure. Yesterday Mr. Mahanty was another gentleman who thought it fit in his own way to oppose this Bill.....

SHRI S. MAHANTY: I did not oppose.

SHRI B. GUPTA: .....or to express his opposition to certain provisions of the Bill and he brought in the constitutional question.

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

As far as the speech of Mr. Mukerjee is concerned, it is quite amusing .....

SHRI B. K. MUKERJEE: We are always amusing.

SHRI B. GUPTA: .....and he has been able to make speech, married as he is, with the clear assurance that making such speeches constitutes no grounds for divorce. I wish him luck. Now, he has made out very many point and all the points that he has made and

the manner he has spoken have only gone to show that the opponents of this Bill have really no case to make out. I don't know what the orthodox Hindu lawyers would feel but I have not a doubt in my mind that if the speech had been heard by either Manu or Yajnavalkya, they would have turned in their graves because, wise men as they were, they would never expect a case in their favour to be made out in that ridiculous way.

SHRI H. P. SAKSENA: They were cremated long, long ago.

SHRI B. GUPTA: Don't join him now. He has made certain points and immediately I would like to deal with the points that he has made. But before I come to his points, let me tell him that on this measure we do congratulate the Government. We congratulate the progressive women of India who have, by their united struggle, persevering struggle for a number of years, backed by the justice of their demand and also backed by the support of all men of goodwill have made possible the initiation of such a legislation, though it is already very late today. As you see from the Bill itself, it was introduced in 1948 and three years have gone by and we are discussing today this same measure which could have been passed with necessary amendments in the particular year, viz., 1952. But there are voices to be heard like the voices of Shri Mukerjee and others and there are people outside who make a hullabaloo about this matter in order to delay the passage of such social legislations. Sir, at the same time I would like to tell him that we are not calling the Government progressive because they have brought this measure. Hon. Members of the side of the House sometimes live under such illusions. We welcome it because of the merits of the measure despite its limitations and we welcome it all the more because it comes from a reactionary Government. So therefore, let him not think that we have over-night developed such a lack of sense of proportion as to think that by this legislation, this Government

has become a progressive Government. Nothing of the kind. We only take our hats off to the great women of India and congratulate them on the success they have attained in forcing this Parliament to take up such a measure as this.

Then, the hon. Mr. Mukerjee said—and I don't know exactly what he was trying to drive at except that he ultimately made an appeal to the hon. Minister to withdraw the measure—he said that now 45 per cent. of the Hindus have the right of divorce. And he said he was happy about it that he had no quarrel with that proposition. If it were so, why should he not extend that benefit to the remaining 55 per cent. also? After all, if without the intervention of Parliament and without having such hon. Members as Mr. Mukerjee to deliver speeches, other people could get this right, I mean this 45 per cent. of the people, we can just as well extend that right to another 55 per cent. and thus make it all-embracing.

My hon. friend Mr. Mukerjee also wanted to say that he believes in monogamy. He has not got any quarrel with monogamy. He wants to provide for it. But at the same time, divorce is something which he shudders to think of: it is something which he would not like to support. But we have to endeavour to build up a social system, a right social system and see that divorce does not take place. It will require social adjustments, the setting up of certain equilibrium in society and the undoing of certain mischiefs. It should be our endeavour so to educate and train society as to make life easy for the people so that the divorce law really becomes in practical life a dead letter. That is what we are also aiming at. So you find in the jurisprudence of the Soviet, in the people's courts of China, the priority in such matters is given to seeing how to reconcile conjugal differences and how to avoid a situation where divorce is insisted upon. That is what we stand for. The hon. Member need not have any misgivings about that. He has misgiv-

ings enough in his mind. As far as we Communists are concerned, we stand for happy and prosperous married life. But at the same time, we want to stand for such life, by not denying rights to women, by not putting them into difficulties and handicaps. We stand for giving them equal rights.

Sir, once you accept monogamy, then it stands to reason that you also accept divorce. After all, how can monogamy be ensured without making a corresponding provision for divorce? If some one violates the law of monogamy, there should be this corresponding provision. The one follows the other. But it does not mean that when monogamy becomes the practice of life, then in that society, divorce also becomes the practice of life. Not at all. In this Bill, for instance, divorce is only permissive, for it is a permissive provision that is there in the Bill. Monogamy is a positive, direct mandate of law. After this Bill is passed, nobody, who is a Hindu as defined in this Act can take more than one wife at a time when the other is living. This has become the positive mandate of law. Anyone violating it, would be liable to be punished. But so far as divorce is concerned, it is clear that it is only permissive. It does not mean that the law would say, "You all go to the court of divorce." Not at all. It only makes certain provisions and it is for the parties to the marriage to take advantage of them, in case of necessity. And we know we are a cultured people. We have got a rich and cherished inheritance. We are not people who lived in a semi-barbarous condition and have not become civilised only the other day. With our fine traditions, our fine inheritance and sense of values, such an institution or practice as divorce will be much less and scarcely resorted to than in most other countries. We have that confidence, we have it not only because we have great confidence in our women but we have great confidence in the entire civilisation in which we have been brought up. Therefore, why should anyone have such apprehensions? It is <sup>perverted</sup> and, I would

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say, distorted way of looking at things. It does not recognise the sense of values that we ourselves possess because of our civilisation. That is why the moment they hear the word "divorce," these gentlemen who swear by Hindu law and Hindu religion, throw up their hands in despair and say, "Hindu civilisation is about to be imperilled." Nothing of that sort will happen. On the contrary, by carrying this measure we shall be enriching the civilisation that we have got, and we shall make it much more worth living and we shall extend it to other fields of life where the blessings of this civilisation are not yet known. That is how one should look at it.

I know some hon. Members opposing this Bill deliver lectures on our ideology. It is not an ideological question as far as only our ideologies are concerned. It is just a question of human approach. It is a question of progressive and social approach. We are centuries behind in this field compared to other civilised people. You find these gentlemen speaking as if Hindu law is something which is immutable, something which is unalterable, something which should not be touched, something sacrosanct. But that is not the view of Hindu jurists.

Hon. Members there would not credit me with much knowledge of the jurisprudence of Hindu law, and I do not blame them for that. But I see here the views of one for whom they must have great respect the views the late Shri V. V. Srinivasa Iyengar, who was at one time Judge of the Madras High Court. He argued for the Hindu Code Bill when it was first sponsored and this is what he said:

"I venture to think that all this opposition is based on sentiment and not on reason. I also think that the strength of the opposition

is due to a misconception on the part of the public that what they call Hindu Law has remained the same from remote antiquity up to date. Changes have been made in the Hindu Law by the authors of the *dharmashastras* from time to time, in consonance with changing ideas and requirements. But the people have not appreciated this. Nor have they adequately realised the fact that when the British came to administer the law in this country, they failed to recognise customs and changes in customs which came into existence after the last of the *dharmashastras* had been written. The British went back to *Manu* and the Pundits were no better. They did not declare the law according to the consciousness of the community at the time, as to what the law then was."

Mark these words, from so eminent a jurist of our country, who was also a perfect Hindu and who did not have any such ideologies as we possess. Listen to what your own man has to say. He says that Hindu law is something which has been subject to changes. The British did not alter it just because they did not take the trouble to bring it in line with the developments and the circumstances. As a matter of fact, they were not concerned with the temper of the times, nor with the necessity for a change in order to see Indian society progress and prosper. Therefore, in the name of non-interference with religion, under the so-called Proclamation of Queen Victoria, they went to *Manu* and to the Pundits who held conservatively to certain dogmas and left matters at that. And that is something which is sought to be glorified by some hon. friends both in this House and by some gentlemen outside. Sir, the real position is not so. In fact, usage and customs have modified laws. It may be that there were village institutions to alter the law then prevailing. They introduced usage and custom. It may be that some kings did it, it may be that some other heads of society did it. But the fact remains that they continued to

affect the laws as time rolled by. But here we are, living under different social conditions in a different society where we do not have such law-making bodies in the villages. Today we have State Legislatures, and Parliament and they must undertake the job which at one time belonged to certain other institutions. What was evolved in the old times by usage and custom has to be developed through enactments and legislation in modern times.

If this does not get into the heads of learned men, I do not know how to make them see things for themselves. That is the difficulty with them. When they bring the question of custom or usage, they do not see that these usages and customs continued to change down the corridor of time and this non-recognition of the reality makes them believe that we are doing something which is absolutely impermissible. Nothing of that kind is happening and nobody should feel that way. Therefore, I would tell the hon. Mr. Mukherjee that he is labouring under a misconception. He should read his *aharma granthas* and other books with some more care and with an open mind, not forgetting that he is not living in the days of Yajnavalkya or Manu but in modern times. If he does that, he will find the justice behind the demands of the women and he would see the tenability of the case we are sponsoring and championing in this House. That is all that I have to tell him.

He also talked about peaceful co-existence. A peaceful co-existence between the lamb and the tiger may be construed. Sir, we want peaceful co-existence between man and woman but we want on equal terms. We want the woman to be placed on the same footing as the man and we know it for certain that unless and until women are released from economic bondage, unless and until certain fundamental social transformations are made, unless and until new avenues of earning and livelihood are thrown open to the women in the same way as had been done to them in the Soviet Union

and China, emancipation of woman will still remain a distant cry; yet, at the same time, we feel that some of these feudal systems have to be wiped out and that is something which we can do even here now despite party affiliations and very strong party differences. That is why we have undertaken this legislation which at least would prevent women from being treated as chattel in a house, being given no right whatsoever and left to the mercies of the man. Nobody is saying that all men are bad and that all women are good or *vice versa*. That is not the point at issue at all. The fact remains that certain social institutions created a situation in which one section of the community, if it so desires, or individual members of that community, if they so desire, can become oppressive against the other section of the community. That is why we want a legislation of this kind. The women, if they are given the chance, will tell the story of their lives. If we begin to recount the story of the life of the women in India, that story will tell us very melancholy and really very shocking things. Let us not deceive ourselves by imagining that in our civilisation women are treated as *devis* and *matas*. That is what we have talked about but we have kept women in perpetual social detention and social servitude, under all kinds of restrictions, under constant terror and without any means of livelihood, without any social rights. Having kept them there, it does not lie in our mouths to preach that we have become interested in the welfare of the people and also preach for a welfare state and all that. Your welfare state should be begun in your homes, charity begins at home and if you really mean a welfare state, begin it at least with your homes and see that the women are given the rightful places that they deserve. Therefore, Sir, let us not talk about it.

At the back of all those who preach opposition to this measure lies a sort of a love for the feudal system of having more than one wife. Zamindari abolition bills are there; there was a social

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life that the zamindars had inherited and that also comes down to us. We are clinging to that. I am not blaming individual zamindars—my hon. friend Mr. Chaman Lall is a zamindar, I know, and he has fully supported this measure. I am only talking about the feudal institutions. Why must we cling to them? That is the point. There are people here who think that we are doing something against the Hindu laws and customs. Let me make it clear that Hindu law has been touched many times by usage, by custom, by commentators, by the law-givers, by the Judges, by enactments even and we are not doing something which is strange to legislation or to the country.

Sir, the point was made out that this was fundamentally against the Constitution. I am not concerned with the ruling but you will remember that when the Report of the Hindu Law Committee was first published, the main opposition to the proposals of the Rau Committee was that it was *ultra vires* of the Central Legislature. That was the ~~the~~ main opposition at that time; now, of course the old Central Legislature is not there and we have got a different type of Legislature—Parliament—and above all, we have got a Constitution. To the Constitutional pundits who hold that is *ultra vires* of the Constitution, I say that this is nothing new; they are only following in the footsteps of those old people when they opposed the Hindu Law reforms proposals on the ground that they are *ultra vires* of the Constitution. Nothing *ultra vires* is there in this proposed Bill. I have very carefully looked into the Constitution and it is quite clear that it is not *ultra vires* of article 15 or any of the following provisions of the Constitution. People say that we are discriminating against the Hindu community. Now, may I ask them whether they think that to have two or more wives is beneficial to the Hindus? If they say that it is beneficial, I can understand their point of view that we are discriminating against the Hindu community by taking away that

right of polygamy. But, they do not say so; they say that they are champions, of monogamy; they also praise this particular clause. So, I ask them, if it is our desire to benefit a section of the community, how does it become discrimination against that community? It is an illogical position that they have taken; they are inconsistent in their approach. They say that we are discriminating and yet they say that they support monogamy. What we are doing is only that we are giving certain benefits to the women section of the community. By doing that, one does not discriminate against that section. We give only certain advantages and benefits..

SHRI H. C. MATHUR: It is not discrimination against Hindus but against the Muslims.

SHRI B. GUPTA: Now they say that we are discriminating against the Muslims. This is a new thing and I do not know since when Shri H. C. Mathur has begun to speak for the Muslim community. I should have thought otherwise. If the Bill had said that the Muslims shall not marry more than one wife then I could understand that, according to them we would be discriminating against them; but when we are only saying that the Hindu shall not have the right to marry more than one wife at a time, how do we discriminate against the Muslim? The Muslim has not been touched by this Bill. He remains where he is; he takes any number up to four. In such circumstances, how do we discriminate against the Muslims? Their proposition is ridiculous, illogical and is full of inconsistencies and, if, I may say so, it is one of their most misconceived stunts in order to mislead the people into believing that something is being done which goes against the Constitution, which militates against the Constitution. Gentlemen who oppose this measure advocate this argument knowing fully that there is nothing against the Constitution, but they refer to the Constitution in order to make their case look profound when it is absolutely ridiculous and absurd. That is why



I say that the sooner we do away with this Constitutional humbug the better.

A point was also made about article 29 of the Constitution which 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". Very well, we recognise that right but I would like to know since when the question of having more than one wife has become a sign of culture. I do not understand. If they say that to have more than one wife is a sign of culture, is proof of culture, by all means, adopt that first and then say that this Bill militates against culture, offends the cultural heritage of the people. But, if they think that monogamy should be the law, that having bigamy would be considered, in their considered judgment, as something which is repugnant to good culture, this argument should be abandoned. Therefore I say it stands to reason when we say that by enforcing monogamy and the corresponding right of divorce where it is absolutely called for, we are only protecting the cultural heritage of the people and doing nothing short of that. Therefore, the gentlemen would do well to realize that they cannot always run with the hare and hunt with the hound. That game they must give up. They must frankly come out and say that this is what we stand for: "We would like to have as many wives as we like and these we consider to be our cultural standards and any interference with them we consider to be a denial of the rights under article 29." They do not say such a thing because the false advocates have yet a more false case to propound before the public. Therefore let us not have, as I have said, this constitutional humbug.

Now it has been pointed out by speakers from that side of the House supporting this Bill that it contains certain very good clauses, but in some cases they are not as good as they would like them to be. We have our quarrel with the Government that having sponsored the Bill they have not gone far enough. I can understand

their halting steps their hesitant mood, I can understand as to why they are afraid when in the Party they have to manage such unmanageable gentlemen as Shri B. Mukherjee. But I can tell them that they have got the support—you know whom you have to manage since you are a very hotch-potch family—but I can tell them that the entire country is behind them.

Shrimati Seeta Parmanand said that we must not make much capital out of signatures. Signatures are only a symbol of the popular support that is given for this Bill in the country. Sir, I know 10,000 signatures can be produced against it because I believe there must be at least 10,000 people who oppose this. But you must see that hundreds of thousands of people in all the areas have signified their support. Meetings and demonstrations have taken place in the country to support this measure. You are also aware that even the Congress Party which functions on many occasions like a Rip Van Winkle has woken up to this situation and has undertaken this legislation. Therefore, Sir, we feel that this Bill contains the impress of a very conscious, acute public opinion which has been mobilised in its support and that is how we should look at it.

Now, Sir, as you see, monogamy is sought to be established here—it is a very good thing that it is being done. But the question is that there are some cases which would be considered unjust, some cases where one party to the marriage may have been forced to live under oppressive conditions. There are such cases, as you may know, and in those cases they should be given the right and therefore pre-Act cases should also be covered by this. They should be given the right of divorce, not that we make it obligatory on them to divorce. I would not like even any hon. Member's wife, if he goes off the rails, to divorce him, but at the same time if the hon. Member makes the life of that wife miserable and continues to do so for a long time, and if it is impossible for the wife to live, she should have the right to go to the court. It is only a right; she may or may not exer-

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cise it. But we recognise that right only because we want to honour and cherish what is honourable for them. Therefore Sir, I think that pre-Act marriage cases should also be covered by this measure.

Then about the conditions of Hindu marriage. In these things, as you see, more or less the old pattern has been maintained and to our objections with regard to guardianship and marriage and all that we shall come later when we move amendments. Various other things of a minor nature also we shall take up later.

Now, a sort of distinction is sought to be made, an artificial distinction is sought to be made between judicial separation and divorce. Judicial separation is something which is not commonly known in all the countries. Judicial separation takes place only in a country where there is no serious effort made to reconcile the differences between the parties, to make their married life happy. You will find that in the Soviet Union, in China, when the parties go to the court of divorce, attempts are made to reconcile them, and not this artificiality of judicial separation. Separation is separation call it by whatever name you like, but a good law should see that the husband and wife live together and make their married life a happy one. Therefore, Sir, we feel that when the provision has been made, it should be made along the lines of the amendments that we have proposed.

And then when it comes to the question of divorce, I think we have to say something which, I know, would not be fully acceptable even to some hon. Members who otherwise generally support us. Now, I think that we should make our position very clear about it. If you recognise the right of divorce, as you should—and you have rightly done it—you should not bring in that three year time limit. For three years the whole thing is left absolutely out of our concern. They are left to the mercies of the very social evils that you want to eliminate. Ordinarily, except when the courts think otherwise,

no divorce petition shall lie within three years of the marriage. Now, Sir, how is it reasonable? I would ask the House to ponder over it. Suppose I find that there is a reasonable ground for divorce which you would have admitted if after three years of marriage a petition was filed. Why in that case should the wife or the husband, as the case may be, be forced to continue their married life, should be forced to live under conditions which are absolutely unhealthy for their existence, which are absolutely unhelpful for their social existence or even abhorrent to their existence? I think this is not fair. You should leave it to them. It will be for them to judge whether they should go to the court of divorce or not. But when once you have enumerated the grounds for divorce, at least the time limit should not have been fixed in this injudicious and arbitrary manner. This is something to which we take exception.

Now, I come to restitution of conjugal rights. There the court will say: "I order restitution of conjugal rights" and tell the wife or the husband, as the case may be, "Go and live with the other." Now, it will be a decree given by the court and the court will carry out its decree according to the procedure laid down in the Civil Procedure Code or under the existing law. But the point is not that. Why should the court assume to itself such powers when the parties do not want to live together? For the court to decree that one must live with the other as husband and wife is very unfair, sounds retrograde, and I think that provision should not be there. On the contrary if the court were to intervene in such matters, the intervention should be for bringing about conciliation. Therefore, I see the point when a certain hon. gentleman said that the provision should be conciliation of conjugal right and I support that approach and this is the very right approach to take in such matters.

[MR. DEPUTY CHAIRMAN in the Chair.]

Then, Sir, comes the question of alimony, which again is very impor-

tant. Some hon. Members have said outside and here also: "Why should the woman not pay alimony when the man is liable to pay the same?" Now I do not know how many multi-millionaire wives they have. But the trouble is we are dealing with social legislation; we are dealing with the society. In our society you will find that the women are not given generally proprietary rights—the women who are covered by this law—and they are worse off than men as far as property relations are concerned. Therefore it is very understandable when the suggestion is made that the inheritance law and the property law should be radically altered to place woman on the same footing as man. But this has not been done and the position may continue as it is for long. When such is the case, why should we think that the woman can also pay? We cannot tell them "Pay". Even from this sheer objective point of view it is not right to think that the woman should pay. First of all, you know, Sir, it is not the woman who would go to the court and always do the mischievous thing, and then, what is more, if a decree is made against the woman, where will she find the money? Normally, they do not have any jobs and even if they have jobs they will have to spend whatever they earn for their own living. If the divorce takes place or judicial separation takes place, where would they find the money? Therefore, if you keep that provision it will work as a sort of terror against the women so that what you seek to give them will not come into operation because the women will always think that they might be confronted with a situation when they will, by a decree of the court, be asked to pay alimony to their husbands.....

Now, even from that angle, you will see that whatever good effects the law may have, the other provisions may have, will, to some extent, be cancelled and nullified by such a provision which may seem, at first glance, very innocent, but which is not at all innocent. It must be related to the existing social conditions in which men and women live today, and, having regard

to that, I think, this provision is a serious threat to the rights that are sought to be conferred under the provisions of the Bill.....

MR. DEPUTY CHAIRMAN: It is not in every case that alimony will be granted. Only those who can afford to pay, will pay.

SHRI B. GUPTA: Who knows? We leave it to the Judges.

MR. DEPUTY CHAIRMAN: The court will decide.

SHRI B. GUPTA: I do not know, Sir. Who knows? Then, you can put it as an exception. I know, in the other House, there is a lady Member who possesses a crore of rupees. I do not grudge if, in such a case, the husband were to demand a little bit of alimony.

AN HON. MEMBER: What is her name?

SHRI B. GUPTA: I cannot give the name of an hon. lady. You see, generally, ladies' names and age should not be mentioned.

MR. DEPUTY CHAIRMAN: Ladies or gents, you can't give their names.

SHRI B. GUPTA: So, Sir, this is a general provision. You leave it to the Judge. A middle-class employee will always go and tell the court: "My wife can also pay." So, all kinds of things will be brought up before the court, and it will really be embarrassing for the court to decide it, if the court is right-minded. And if the court is of Mr. Mukerjee's mind, alimony would straightway be granted. Now, Sir, we do not want to gamble with this thing. I say that in our social conditions, women suffer from a considerable number of disadvantages, and, in any case, as far as the property relations are concerned, they are very much 'have nots', if you like that phrase. And, therefore, this provision should not be made, which goes against them. And my objection relates to the principle. Once we have this provision, women, in our society, will be terrified, will be terrorised, before they go

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to the court. They will be afraid of taking recourse to even very legitimate provisions of the law. Therefore, I say, let this particular thing be taken away, and I find the hon. Minister has half a mind to take it away, as far as women are concerned.....

SHRI H. P. SAKSENA: Three-fourths of a mind.

SHRI B. GUPTA: Yes, three-fourths of a mind.

SHRI D. P. KARMARKAR: In all matters, I have a whole mind and not three-fourths.

SHRI B. GUPTA: Then again, Sir, there is this clause 25 which deals with permanent alimony and maintenance. Here again, men and women are put on the same footing, and this is not fair for the same reasons as I have explained just now.

Then comes, Sir, the question of the custody of children. Now, here you read this clause 26. I will not read it for you. Many of you have got children, although not faced with the controversy of custody. But you will realise by reading it how complicated the formulation has been made here, and I can quite see that the gentlemen who have drafted it have done so with a split mind. They had not made up their mind. But we have made up our mind on this point, and we are very categorical about it. We say clearly that the custody of the children up to the age of twelve should be left with the mother, and that should not be interfered with by the court, except on very special grounds like when the mother is insane and is thought to be, in the opinion of the court, degenerated, and all that. Otherwise, Sir, in all other cases, the custody of the child should go, up to the age of twelve, to the mother. I also suggest, Sir, that the wishes of children should also be taken into account. If, for instance, the children wish that they should be left with the father instead of with the mother, I think the courts can go into that provided they are satisfied

that the children so desire. But, generally speaking, if I were to make an ordinary provision in law, I would certainly make it in favour of the mother, unconditionally and categorically. Now, I do not want to deliver a lecture here on the virtues of a mother. We know what motherhood implies. We know that some of the best.....

MR. DEPUTY CHAIRMAN: It is time, Mr. Gupta. You have taken 45 minutes.

SHRI B. GUPTA: I am finishing it. Sir, from our experiences in life—and we know that life is a golden tree—as you will admit, it is the mother who treats when the life is in a formative stage. It is there that we get care and affection the most and we realise her virtues, which endure us in life, when we become great men. And, Sir, we know that in our society especially the mother has a special part to play as far as the bringing up of children is concerned. Having regard to that, I say that from the social angle, from the human angle, or from any other angle, it is the mother who should have the prior claim as far as the custody of children is concerned. I know of a number of cases in Bengal where women have to face indignities and miserable lives, because they know that if they were to separate from their husbands, they would not be able to get the custody of their children. Imagine, Sir, that in such a situation, they submit to the tyranny of their husbands. It only shows how great the women are, as far as the well-being of their children is concerned. They would rather live with their tyrant husbands than part with their children. Such is the tradition of our womanhood, and I think it is a tradition which we very much cherish. Therefore, Sir, from all the experience that we have in our country, in history, in literature, in culture—whatever we see and wherever we look for our guidance—we shall invariably be led to the conclusion that it is the women, the mothers, who should be given the right of bringing up children up to a certain age, after which it will be decided according to the wishes of the

children. Sir, it is not a claim and counter-claim here.....

MR. DEPUTY CHAIRMAN: It is time, Mr. Gupta. You please wind up. Just like you, Mr. Vijaivargiya wants to go tonight. So, you give him at least ten minutes' time.

SHRI B. GUPTA: Oh, Yes. Now, Sir, the other points will be taken up—time is so short—when we take up the amendments.

In conclusion, Sir, I would only likely to say a few words. Let us pass this Bill with necessary amendments and I find that the hon. Minister has an open mind in this matter, and by the time he finishes, I hope he would not have his mind closed. Let him take the just amendments, the reasonable amendments, that we offer in this House, and let the Bill be redrafted by pooling the collective wisdom of this House—the collective wisdom that is full of goodwill for women and society in spite of the fact that there are certain discordant voices in this House. Therefore, I say, take these amendments, and pass this measure with the utmost expedition. Do not delay it because of the tactics adopted by certain parties. They are not the tactics of absolute and open opposition like that, but they are the tactics of delay. As far as their downright opposition to it is concerned, they know that their game is lost. They have lost that battle, and now they are trying to adopt these delaying tactics, as far as possible, in order to rouse certain sections of the public against it, suggesting as if it is such a controversial measure or a controversial issue, that the Government should not pass it, at least for the time being. When we are centuries behind, we cannot afford to wait a minute longer; we should pass it as speedily as we can and before the other House adjourns till the Budget session, we should send a request to them to make it a part of the law of the land, so that what the women of India, the people of India, the progressive sections of the communities are demanding, becomes a law of the land. And I make this appeal

to the Government in all earnestness because I feel that there may still be some delay, and I hope, Sir, that other Members will make short speeches like me, and will not make unnecessary amendments, to make it worse, and will only press unitedly for good amendments, after discussing them, so that they will.....

MR. DEPUTY CHAIRMAN: But you have set a very bad example.

SHRI B. GUPTA: No, Sir, because I am making out the prosecution case, as far as Mr. Mukerjee is concerned. Sir, therefore I say that we have discussed this matter for a long time, and I say that the time has come when we must at least pass this social legislation bravely, without hesitation, and without any faltering step, so that at least some good is done to a great section of the people who have been suffering from countless disabilities in our society. I would appeal to them if they believe in a welfare State—I do not know what sort of welfare they believe in—but I would at least ask them to pass these measures immediately in this session and come forward immediately with other laws of inheritance and succession, so that the property disabilities are taken away from women and that they are really within the framework of the present social system, placed, as far as possible, on an equal footing with men. Men and women together by their endeavour, by their genius will rebuild India that we dream of today.

श्री गोपीकृष्ण विजयवर्गीय (मध्य भारत) :  
उपाध्यक्ष महोदय, सिर्फ बाहर जानं की जल्दी के कारण ही दूसरों मंत्रों का समय छीन कर के मैंने आपसे दरखास्त की थी कि मैं थोड़ी बात कहूं।

हिन्दू मौरिज और डाइवोर्स बिल का मैं पूर्ण समर्थक हूं, और उचित समझता हूं कि अच्छी तरह से विचार कर के यह कानून, बहुत जल्दी, अवश्य पास होना चाहिये। इस बिल पर देश में काफी विचार मंथन हुआ है और बहुत समय से, लगभग १०, १२ साल से, यह

[श्री गोपी कृष्ण विजयवर्गीय]

चीज हमारे देश के सम्मने हैं कि हिन्दू धर्म शास्त्र के जो कानून हैं और भिन्न भिन्न प्रान्तां में जो फैसले वगैरह हुये हैं उनको कोडीफाई किया जाय, उनको एक विधान में लाया जाय। शायद उसमें ज्यादा विरोध की आशंका थी और जनता को उसको एक साथ समझाना भी मुश्किल था हालांकि हिन्दू धर्म शास्त्र के सुधार के कानून बहुत कुछ रायज थे और कोई नई चीज उस हिन्दू कोड बिल में नहीं डाली गई थी लेकिन फिर भी लोगों के समझने के भ्रम को दूर करने के लिये इसको अलग अलग हिस्सों में लाया जा रहा है और मेरा ख्याल है कि यह उचित कार्य हो रहा है। अब हमारा काम यह है कि दोनों सदनों से हम इसको जल्दी से जल्दी पास कर दें।

मैं अपने प्रान्त में समाज सुधार का भी काम करता रहा हूँ और इसलिये मैं उचित समझता हूँ कि अपने प्रान्त मध्यभारत की तरफ से इसको पूर्ण समर्थन दें। हमारे यहां जो लोकमत है वह इसके अनुकूल है। मेरा ऐसा ख्याल है कि सदियों से हिन्दू समाज में स्त्रियों पर और शूद्रों पर जो अत्याचार होते रहे हैं उसके लिये अब यह समय आ गया है कि वह समाप्त हो। हिन्दू समाज ने स्त्रियों पर और शूद्रों पर, इन दो वर्गों पर, बहुत अत्याचार किया है। अब हमारा देश आजाद हो गया है इसलिये स्त्रियों की जो अयोग्यतायें हैं, डिसेम्बलिटीज हैं, वे सब दूर होनी चाहियें। स्वास कर विवाह के मामले में जो कुछ त्रुटियां हैं वे दूर होनी चाहियें। हां, स्त्रियों की मुक्ति का यह मतलब भी नहीं है कि स्त्रियां, जैसा कि मिस्टर महन्ती ने कहा था, पुरुषों पर हावी हो जायें और उनसे पुरुष परेशान हो जायें या पुरुषों से स्त्रियां परेशान हो जायें। दोनों अपने अपने कर्तव्यों का पालन करें और उचित समय और मर्यादा में अपने कर्तव्यों को, जो कि कुरुरत ने उनको दिया है, करें। इस समाज की व्यवस्था में उनके जो अधिकार हैं और जो कर्तव्य हैं उनको अदा करें और इसी तरह से पुरुष भी अपने कर्तव्य अदा करें और अपना काम करें। हमें

ऐसी व्यवस्था और ऐसा कानून बनाना चाहिये कि समाज में ये सब दोनों बातें होती रहें।

यूनीफार्म सिविल कोड की बात को कई हिस्टोरी नाट्स में भी उठाया गया है और कई सदस्यों ने भी यहां उठाया है। मेरे ख्याल में यह सवाल जरूरी है, आवश्यक है और महत्व रखता है लेकिन उसकी वजह से हम इस कानून को अभी रोक नहीं सकते हैं। यूनीफार्म सिविल कोड होना चाहिये उसके लिये कुछ मेम्बरों ने इसमें देर लगाने के लिये या इसको रोकने के लिये दलीलें दी हैं। हां, कुछ लोगों ने सच्चाई से इस बात को कहा है और मैं भी इसमें सहमत हूँ कि बहुत अच्छा होता कि सारे हिन्दुस्तान के लिये सक्सेशन के मामले में और और मामलों में एक ही सिविल कोड हो सकता। लेकिन वह बात अभी संभव नहीं है। इस कारण से हमें अभी रुकना नहीं चाहिये। यदि हिन्दू समाज का, जो कि बहुत भारी तादाद में हिन्दुस्तान में रहता है, इससे सुधार होता है तो एक यूनीफार्म कोड के लिये उसको हम रोक नहीं सकते। दूसरे समाज के जो लोग यहां रहते हैं, जैसे हमारे मुसलमान समाज के भाई, यहूदी या क्रिश्चियन समाज के भाई, उनका यह कर्तव्य है कि अगर हमको एक जमात बनानी है, एक भारतीयता का निर्माण करना है, तो भारत में सब लोग एक भारतीयता की बात सोचें, एक हिन्दुस्तानी नेशन की तरह से सोचें। अगर ऐसी बात हो तो बहुत ही अच्छा हो और उसके लिये उन्हें अपनी अपनी जमात में ऐसा वातावरण बनाना चाहिये। मुसलमान भाइयों का कर्तव्य है, मुसलमान समाज के नेताओं का यह कर्तव्य है कि वे बार बार इस तरह से न सोचें कि हम मुसलमान हैं, हम मुसलमान हैं। हम हिन्दुस्तानी हैं, ऐसा सोच कर के कुछ कामना बातें हमें अपने अपने समाज में डालनी चाहियें। जब समाज में इस तरह के विचार परिपक्व हो जायेंगे तभी वह वक्त आयेगा कि सारे हिन्दुस्तान के लिये एक ही कोड बना सकेंगे।

यहां कुछ पेंटीशंस आई हैं, जिनका हवाला डा० मिसेज परमानन्द ने भी यहां दिया है कि बहुत से दस्तखत कर के पेंटीशंस आई हैं और

यहां हाउस में पेश की गई हैं, कि यह बिल धर्म के विरुद्ध है, धर्म में हस्तक्षेप है और इसीलिये यह कानून नहीं बनना चाहिये। दूसरे लोगों ने इस तरह का प्रयत्न नहीं किया, अगर वे ऐसा करते तो और भी दूसरी तरह के बहुत ज्यादा दस्तखत और बहुत ज्यादा दरखास्तें यहां इकट्ठी हो सकती थीं। इसीलिये इस तरह की बनावटी दरखास्तों और पेट्रीशंस का कोई खास महत्व नहीं है और उसमें जो दलीलें दी गई हैं वे भी बिल्कुल गलत हैं।

SHRI H. C. MAITHUR: No, the petitions are in support of this.

श्री गोपीकृष्ण विजयवर्गीय :

But some are against this. कुछ पेट्रीशंस इस बिल के विरोध में भी आई हैं, मुमकिन है कि कुछ अनुकूल भी आई हों। उन पेट्रीशंस में कुछ बातें ऐसी कही गई हैं कि हम धर्म शास्त्र की सत्ता को मिटा रहे हैं और हिन्दू धर्म कभी बदलता नहीं रहा है। उनका यह ख्याल गलत है। दश भर में जो ऐसा वातावरण बना रहे हैं वे दश के लोगों को बहुत ही भ्रम में डाल रहे हैं। मनुस्मृति में भी एक जगह एक बात आई है, "अन्ये कृतयुगे धर्मास्त्रेतायां द्वापरं दपरं। अन्ये कलियुगे धर्मा युगहसानुरुपतः ॥" अर्थात् सतयुग में अलग प्रकार के धर्म थे, त्रेता में अलग प्रकार के धर्म थे और कलियुग में अन्य प्रकार के होंगे। समय समय पर स्मृतियां बदलती रही हैं और समय समय पर भिन्न भिन्न अर्थ किये गये हैं। हमारे हिन्दू समाज और हिन्दू धर्म शास्त्र का जो इंटरिप्रिटेशन प्रिन्सीपल ने ब्रिटिश राज्य के जमाने में कर दिया और उससे हिन्दू स्त्रियों के अधिकारों की जो हकतलफी हुई है उसकी वजह से यह प्रश्न उठाया गया। वह इस वजह से हुआ कि वे यहां के जीवित जागृत धर्म शास्त्र को नहीं समझते थे और उन्होंने कुछ रिवाजों को देख कर के अपना फैसला कर दिया। उस फैसले के होने से यह बहुत जरूरी हो गया है कि कानून के जरिये से हम भी उस धर्म शास्त्र के स्वरूप को कुछ सुधरा हुआ बनायें। हमारे कुछ नदस्यों ने यह आशंका प्रकट की है कि सक्सेशन का कानून पहले आना

चाहिये था और वह नहीं आ पाया है। मरें भी ख्याल से सम्पत्ति सम्बन्धी कानून बहुत जरूरी है और वह जल्दी आता तो बहुत बेहतर था। मेरा ख्याल है कि वह भी जल्दी पास होना चाहिये।

इस कानून में जो डाइवोर्स की धारायें रखी गई हैं उनका मैं समर्थन करता हूं। मेरे ख्याल से डाइवोर्स काफी मुश्किल बना दिया गया है और इतना सरल नहीं है। हिन्दू समाज के अनुसार डाइवोर्स को सरल बनाना उचित भी नहीं था इसीलिये मैं डाइवोर्स की धाराओं का समर्थन करता हूं। इसमें हिन्दुओं की जातियों और उप-जातियों की प्रथा को समाप्त करने का प्रयत्न किया गया है और कार्ट सिस्टम पर एक काफी बड़ा प्रहार किया गया है। किसी जाति का हिन्दू दूसरी जाति के हिन्दू से विवाह नहीं कर सकता है, इस प्रश्न पर शायद ध्यान नहीं दिया गया है। मेरे ख्याल से यह सबसे बड़ी बात है कि हम इस कानून के जरिये से हिन्दुओं में आपस में विवाह होने की इजाजत दे रहे हैं। भारतवर्ष के हिन्दू समाज में अगर सबसे बड़ी कमजोरी है, खराबी है, एक द्वय रोग है तो वह जातिपात की व्यवस्था है। इस कानून के जरिये से किसी भी हिन्दू को दूसरी हिन्दू जाति, उप-जाति की स्त्री से विवाह करने का अधिकार रहेगा और उसी तरह से स्त्री को पुरुष से विवाह करने का अधिकार होगा। इसलिए हमारे इस हिन्दू विवाह कानून का सबसे बड़ा सुधारक अंग यह है कि इससे हिन्दुओं में आपस में अन्तर्जातीय विवाह हो सकता है।

मैं इस कानून को अपना पूरा समर्थन देता हूं। फिर जब इसकी एक एक धारा पर विचार होगा तब मैं उन पर अलग अलग बोलने का प्रयत्न करूंगा। मुझे बोलने का अवसर देने के लिये अध्यक्ष महोदय को धन्यवाद है।

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned: till eleven of the clock on Thursday, the 9th December 1954.