

ANNOUNCEMENT RE. TIME-TABLE
FOR BUSINESS.

MR. DEPUTY CHAIRMAN: Before I call upon Mr. Madhava Menon to speak. I would like to make an announcement regarding the time-table for the remaining part of the current session. I have to inform the House that the Business Advisory Committee has settled the following time-table for Government legislative and other business for the remaining part of the current session of the Rajya Sabha:

Time proposed
in the Rajya
Sabha.

1. The Hindu Marriage and Divorce Bill (excluding the time taken today) 11 hours.
2. Preventive Detention (Amendment) Bill 10 hours.
3. Tea (Second Amendment) Bill 1 hour.
4. Indian Tariff (Third Amendment) Bill 1 hour.
5. Prevention of Disqualification (Amendment) Bill 1 hour.
6. Resolution *re*: Railway Convention Committee's Report 4 hours.
7. Appropriation Bill (General) 2 hours.
8. Appropriation Bill (Andhra) 1 hour.
9. University Grants Commission Bill (Reference to Joint Committee) 3 hours.
10. U.P.S.C. Report (Debate on Private Member's motion) 3 hours.
11. Debate on Progress of Planning 5 hours.

In order to be able to fulfil this programme the House will also sit on Saturday, the 11th and Saturday the 18th December 1954, and also between

5 and 6 in the evening. Is it the desire of the House to sit between 5 and 6 today?

SEVERAL HON. MEMBERS: No, no.

SHRI H. C. MATHUR: May I know, Sir, if the Business Advisory Committee had been coerced into fixing these timings because the period of the session at which the Committee met was too late in the day for it to advise Government and the Chair in this matter, instead of meeting on the first day when the session began?

MR. DEPUTY CHAIRMAN: I was present at the meeting of the Business Advisory Committee and if you can take my word, I think it was an agreed programme that the Business Advisory Committee arrived at.

SHRI H. C. MATHUR: No, Sir . . .

MR. DEPUTY CHAIRMAN: No, no.

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

MR. DEPUTY CHAIRMAN: Yes, Mr. Madhava Menon.

SHRI K. MADHAVA MENON (Madras): Sir, I will not be able to finish if I start now.

MR. DEPUTY CHAIRMAN: You may begin now and continue after the lunch break.

SHRI K. MADHAVA MENON: But I will not be able to attend after the lunch interval. So I would give my chance to some other Member.

MR. DEPUTY CHAIRMAN: Has Mr. Kishen Chand given notice of an amendment?

SHRI KISHEN CHAND (Hyderabad): Yes, Sir, but I will not speak for more than fifteen minutes.

MR. DEPUTY CHAIRMAN: I do not want to shut out anybody. I will first

[Mr. Deputy Chairman.]
give a chance to those who have not sent in amendments and then call those who have sent in amendments.

SHRI SUMAT PRASAD (Uttar Pradesh): Sir, this Bill has led to a great deal of controversy. Opinions in progressive sections have welcomed it as a Bill which will go a long way in bringing about equality between man and woman, while orthodox sections of the Hindu community think that it is an inroad upon the sacramental rights of Hindus. The high ideals of marriage which were laid before us by our *rishis* remain as ideals and very few persons live up to those ideals. For instance, it has been ordained that a man and a woman have no right even in their married life to sexual intercourse unless they do so with a desire to beget children and if they violate this, then it is considered by our *shastras* that they commit the sin of adultery. But how many people live up to this ideal? So we have to make adjustments and this measure of divorce has become necessary on account of the changed circumstances of society in which we are living.

1 P.M.

The high ideal of *pativrata* is to be adored but if a woman cannot live up to that ideal and if her husband is disabled or becomes seriously ill or if there is some other justifiable cause, then certainly she should not be forced by society to live up to the high ideal of *pativrata* for, in that case, apparently she will be living all right but she may have to lead a life of infamy and shame. Therefore, I submit that on account of realistic considerations divorce has to be allowed under certain restricted circumstances. This Bill, I say, has taken care to see that divorce is not granted merely for the asking. This right is given only under certain circumstances. Strictly speaking, this right, if given, will not much improve the position of women.

MR. DEPUTY CHAIRMAN: You may continue in the afternoon, Mr. Sumat Prasad.

Mr. Karmarkar, could you sit from 5 to 6 P.M. today?

SHRI D. P. KARMARKAR: I have no objection, Sir.

MR. DEPUTY CHAIRMAN: I think if we sit one hour extra each day, it will give three hours more and we can accommodate more Members.

SHRI D. P. KARMARKAR: I very humbly agree, Sir.

MR. DEPUTY CHAIRMAN: We sit from 5 to 6, i.e., up to 6 P.M. so as to give opportunity to as many Members as possible.

SHRI D. P. KARMARKAR: In fact I thought myself that we could cut out two hours from another Bill and add them on to this so as to provide opportunity to as many Members as possible.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2-30 P.M.

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

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

SHRI SUMAT PRASAD: Sir, the Hindu Widows' Re-Marriage Act was passed about a century ago, but the measure has not become popular and very few widows take advantage of that. Even those who want to marry are under a certain disability and they find it very difficult to get a suitable husband for them. I think the case of a divorced woman will not be better and it will be difficult for her to secure a suitable husband; she will be under a disability. This measure has got to be passed for in hard cases it will give some relief. Under certain circumstances divorce becomes inevitable as it will stop a greater evil and will save certain sisters from unnecessary hardship. This is after all an adjustment and I believe very few persons will take advantage of this measure.

So far as clauses of the Bill are concerned, I want to make certain observations. Now, for instance, in U.P. and other parts of the country where *Mitakshara* prevails, *sapinda* means seven degrees in the line of ascent from the father and five degrees from the mother. In this Bill I see that five degrees are provided in the case of father and three degrees in the case of mother. I would suggest that the existing practice may be maintained, that is, seven degrees in the line of father and five degrees in the line of mother. The people of Bombay will not suffer from any difficulty as it has been provided in the Bill that if there is a custom to the contrary, the custom shall prevail.

Similarly, I find that in the case of prohibited degrees, marriage can take place, according to the scheme of the Bill, between the children of first cousins. This will not meet with approval in U.P. as there is no custom like that.

Then, clause 11 of the Bill declares marriages mentioned therein which are governed by sub-clause (1) (a) to be null and void. In sub-clause 11(1) it has also been provided that if such marriages are permissible by custom or law, then this clause will not affect them. Under these circumstances the two provisions nullify each other. It would be much better if the provision of clause 11(1) (a) be not given retrospective effect. Then there will be another difficulty. If a marriage is declared null and void and one of the partners dies, then the other will not be able to inherit because it is placed under the category of 'void', and not of 'voidable.' If it is considered necessary then in case there are more wives than one it be made possible for any one of them to get the marriage dissolved. It is much better that clause 11(1) be placed in clause 13 providing for divorce and on this ground also one of the wives may apply for divorce.

Then, similarly there is another clause, clause 12, and I am referring

to clauses ¹²(1) (a) and 12(1) (b). Now particularly referring to clause 12 (1) (a) it will be difficult after the lapse of a term say of 15 years, to prove that at the time of marriage the husband was impotent. On this ground I would submit, Sir, it would be much better that this provision be deleted from here in the Bill and it may be allowed to remain only as a ground for divorce and provision be made in clause 13 to this effect.

Then, I come to clause 14. In clause 14 it has been laid down that for three years marriage generally cannot be divorced. Supposing the husband changes religion, then it will be impossible for the wife to pull on with him even for a single day. Under these circumstances, it is no use prolonging this agony and the wife should be allowed to institute a suit for dissolution immediately.

This clause 25 has perhaps been taken from the Bombay Divorce Act. I find that it reads: "Any court exercising jurisdiction under this Act may, at the time of passing any decree....."—that is, it covers both cases, the case of divorce and the case of judicial separation—but the next few lines make it clear that it will not cover the case of judicial separation. I read: ".....order that the respondent shall, while the applicant remains unmarried....."—so this implies it will cover cases of divorce only; it will not cover cases of judicial separation. Now I refer to the provision in the Indian Divorce Act. In that Act there is a clear provision for alimony in case of divorce as well as of judicial separation. I think it should be re-drafted and a similar provision made in this Bill also.

Then, I want to say something about restitution of conjugal rights. Many other Members have spoken about that. I think this clause is more or less redundant. Even under the existing law it is impossible to force any man or woman to have restitution of conjugal rights. Attachment of property only takes place. So it is much better if this clause is deleted if the

[Shri Sumat Prasad.] husband or the wife, as the case be, deserts each other for a period of two years, then it will be a very good ground for judicial separation and then later on it can be made a ground for divorce. The principle involved in the Bill is that in case of hardship a husband or a wife may be provided with a remedy. After all the remedy of divorce is not a very desirable one. It disrupts harmony. However, it is a measure by way of adjustment. So, Sir, care should be taken to make it not very easy and to let the restrictions which have been provided in this Bill remain as they are. Only under certain circumstances it should be made expeditious, *e.g.*, in the case of conversions.

If retrospective effect is not given to the provisions of the Bill, particularly regarding divorce, then it will meet to some extent the criticism of the orthodox Hindu section of the society.

So far as monogamy is concerned, everybody has approved of that. I do not find even a single woman who has opposed this or has provided any contingency where a departure should be made from that. It will make home life for women more happy and it will stop to a great extent the question of desertion.

I agree with Mrs. Munshi that it is much better if a provision is made that before marriage it may be necessary to have medical examination, for in that case many complications which arise later on will be avoided. Sir, I support the principle underlying the Bill.

श्री डी० नारायण (बम्बई) : उपसभा-पति महोदय, बड़े हर्ष के साथ मैं इस विधेयक का समर्थन कर रहा हूँ। बहुतों को शक था और खास कर के मेरी बहनों को कि शायद यह बिल लाया ही नहीं जायेगा परन्तु आज हम देख रहे हैं कि जिस किसी भी रूप में क्यों न हो,

सब को पसन्द हो या न हो, वह बिल आज हमारे सामने है।

आज इस तरह के कानून बम्बई, मद्रास और सौराष्ट्र में मौजूद हैं। अच्छा होता कि इस कानून को बनाते वक्त वे तमाम कानून विचार में लाये जाते और कुछ ऐसा कानून बनाते जिससे कि जिन राज्यों में इस तरह के कानून बने हैं उनमें और इसमें कोई फर्क नहीं आता। कल यहाँ एक सवाल खड़ा किया गया, डा० कुंजरू साहब ने सवाल उठाया कि बम्बई राज्य का जो कानून है वह इससे कुछ भिन्न है। उस पर हमारे माननीय मंत्री ने कहा कि आप ऐसा अमेंडमेंट पेश कर सकते हैं जिससे कि वह रिपील हो जाय। मुझे कुछ आश्चर्य मालूम हुआ कि अगर कोई राज्य आगे बढ़ जाना चाहे या प्रोग्रेसिव होना चाहे तो उसको यहाँ से कहा जाय कि नहीं हम आपको पीछे खींचना चाहते हैं, आप आगे न जायें। इससे तो यही अच्छा होता कि उनको बुला कर के या उनके सलाह मशविरे से इस तरह का कानून बनाया जाता जिससे कि यहाँ के कानून में और राज्यों के कानून में कोई फर्क नहीं रहता।

इस विधेयक को देखने से यह साफ़ प्रतीत होता है कि इस विधेयक के दो उसूल हैं, एक द्विभार्या प्रतिबन्ध और दूसरा तलाक या डाइवोर्स। द्विभार्या प्रतिबन्ध एक ऐसी चीज है जिसको एक आदर्श की दृष्टि से सब मानते हैं। यदि पुरुष के लिये एकपत्नीव्रत होने की आवश्यकता है तो मैं नहीं समझता कि हिन्दुओं के लिये ही यह आवश्यक क्यों बनाया जाय और मुसलमानों के लिये और औरों के लिये क्यों न बनाया जाय। मैं इस हिसाब से नहीं कह रहा हूँ कि मुसलमान मज-

हम से अलग हैं या हम कुछ अलग हैं, मैं यह एक इंसान की हैसियत से कहता हूँ कि यदि एकपत्नीयता होना पुरुष के लिये बहुत अच्छी बात है तो वह सब पुरुषों के लिये खास कर के हिन्दुस्तान में रहने वाले सब पुरुषों के लिये, जहाँ कि स्त्रियों और पुरुषों की संख्या करीब करीब बराबर है, होनी चाहिये। डाइवोर्स तो मुसलमानों में पहले से है ही।

आज यह देखा जाता है कि स्त्रियों के साथ जितना न्याय होना चाहिये उतना नहीं होता है। “जिसकी लाठी उसकी भैंस” यह कहावत मशहूर है और स्त्रियों के बारे में इस कहावत का प्रायः प्रयोग किया जाता है। हम लम्बी चौड़ी, बड़ी-बड़ी बातें भले ही करें परन्तु स्त्रियों के साथ जिस तरह से बर्ताव किया जाता है उसे देखते हुये हमें यह सोचने का आज़मौका है कि हम ऐसा विधेयक बनावें जिससे कि स्त्रियों को अधिक न्याय मिले और उनके साथ समता का सम्बन्ध स्थापित किया जाय।

श्री किशोरी राम : अब तक क्या अन्याय हुआ है ?

श्री डी० नारायण : अन्याय की बात करते हैं? आज ही देखिये कि पुरुषों के हजार गुनाह माफ हैं परन्तु यदि स्त्री से एक गुनाह हो जाय, यहाँ वहाँ कोई गलती हो जाय तो उसको समाज में बदनाम होना पड़ता है।

श्री बी० बी० शर्मा (उत्तर प्रदेश) : माफी तो कहीं नहीं है।

श्री डी० नारायण : लेकिन 'आपकी प्रतिष्ठा में तो कमी नहीं होती। अच्छा मुझे बोलने दीजिये।

विवाह के लिये जो मियाद रखी गई है उसका कुछ भाइयों ने विरोध किया। मैं तो १६ और २१ वर्ष का इसमें जो सुझाव है उसका समर्थन करता हूँ। कहा गया है कि देहाती जनता में इसका पालन नहीं होगा। मैं आपसे कहना हूँ कि जिस देश में ८० फ्रीसदी लोग अपढ़ हैं, जहाँ सौ में अस्सी जनता देहात में रहती है वहाँ समाज सुधार के बारे में जनता कुछ तो पीछे रहेगी ही और उसके पालन कराने में कुछ दिक्कतें तो पैदा होंगी ही। शारदा एक्ट के बारे में क्या हुआ। १३ वर्ष की उम्र पहले रखी थी फिर भी ८ या १० वर्ष की उमर में शादियां लोग करते थे और आज भी जब कि वह १५ वर्ष हो गई है तब भी उसका पालन सौ टका हो रहा है ऐसी बात तो नहीं है। तो समाज सुधार के बारे में देहाती समाज को कुछ आगे खींचना ही होगा और धीरे धीरे उसे अच्छी बातें मनवानी होंगी। इस लिहाज़ से जो मियाद यहाँ रखी गई है उसको मैं बेहतर समझता हूँ।

अब मैं धारा १० और १३ की ओर आपका ध्यान खींचना चाहता हूँ। ये दोनों धारायें जुडीशियल सेपरेशन और डाइवोर्स के बारे में हैं। इनमें इनके लिये जो कारण लिखे गये हैं वे अलग अलग लिखे गये हैं। मेरी निगाह में इसका कोई आवश्यकता नहीं थी कि कारण अलग दिये जायें। कहीं कहीं कुछ शब्दों का ही फर्क दिखाई देता है और कहीं कुछ बातें कम कर दी गई हैं। कलाज़ १५ में है “a virulent form of leprosy or venereal disease” और कलाज़ १३ में है “virulent and incurable”। मुझे डर है कि आप किसी दो डाक्टरों को

[श्री डी० नारायण]

बुला लीजिये तो उनकी राय एक न होगी कि लेप्रासी विरलेंट है या नहीं है। एक डाक्टर कहेगा कि विरलेंट है और दूसरा कहेगा कि नहीं है। फिर आज कल के माडर्न मेडिकल साइंटिस्ट्स का यह कहना है कि लेप्रासी अच्छी हो सकती है इन-क्योरेबिल नहीं है। यहां डाइवोर्स के क्लार्ज में लिखा गया कि इनक्योरेबिल लेप्रासी हो तो डाइवोर्स मिले। मैं तो यह कहूंगा कि अगर लेप्रासी के कारण से डाइवोर्स देना चाहते हैं तो विरलेंट और इन-क्योरेबिल दोनों शब्दों को निकाल दीजिये, सिर्फ लेप्रासी रखिये। न्यायाधीश अपनी निगाह से देख लेगा कि लेप्रासी है या नहीं।

डा० राधा कुमुद मुकर्जी (नामनिर्देशित):
इफेक्शस लेप्रासी रखिये।

श्री डी० नारायण : इनफेक्शस के बारे में भी दो मत हैं। इसलिये मैं कहूंगा कि सिर्फ लेप्रासी शब्द रखा जाय। यह कोई ऊंची और अच्छी बात नहीं है कि एक दूसरे को दुख और आपत्ति के वक्त में छोड़े और अगर कोई जाना चाहता है तो वह इसलिये नहीं जायेगा कि लेप्रासी विरलेंट हो गई है बल्कि ज्यों एक दूसरे के दिल में लेप्रासी के कारण नफरत पैदा हो गई है उस वजह से इससे फायदा उठायेगा। इसलिये मेरा तो यह विचार है कि विरलेंट और इंक्योरेबिल लेप्रासी की जगह सिर्फ लेप्रासी रखा जाय।

दूसरी बात वेनैरियल डिजीज के सम्बन्ध में है। इसमें भी वही चीज है कि डाक्टरों का काम बनेगा, और कुछ नहीं होगा। आप जानते हैं कि दुर्भाग्य से डाक्टरों के सर्टिफिकेट आप जितने चाहें उतने पैसे से मिल सकते हैं। कोई वेनैरियल डिजीज

इंक्योरेबिल है या नहीं, इसके बारे में कई रायें हो सकती हैं। इसलिए गरीब प्रजा को, गरीब जनता को डाक्टरों के और पड़े लिखे लोगों के सुपुर्द करना ठीक नहीं होगा।

तीसरी बात यह है कि जुडीशियल सेपेरे-शन के लिये सेक्सुअल इंटरकोर्स एक कारण लिखा गया है। सेक्सुअल इंटरकोर्स साबित होने पर कोई व्यक्ति जुडीशियल सेपेरेशन प्राप्त कर सकेगा। मैं आपसे कहना चाहता हूं कि आप ऐसे केसेज को साबित कैसे कर सकेंगे। यह साबित करना बड़ी मुश्किल बात है, और हिंदुस्तान जैसे देश में जहां कि दो रुपये, या पांच रुपये में गवाह मिल सकते हैं, वहां किसी को फंसाना एक मामूली बात हो जायगी। और दूसरी एक बात आपको ध्यान में रखनी चाहिये कि पुरुष के बारे में सेक्सुअल इंटरकोर्स की कोई बात कही जायगी तो इससे उसकी प्रतिष्ठा नहीं बिगड़ेगी, परन्तु स्त्रियों के बारे में सेक्सुअल इंटरकोर्स का दोष लगाया गया तो वह स्त्री समाज से उठ जायगी। डाइवोर्स हो जाने पर उससे कोई शादी नहीं करेगा। इसलिए सेक्सुअल इंटरकोर्स की बात इस तरह से यहां रखना ठीक नहीं है।

इसी तरह से एडल्टरस लाइफ जो लिखा गया है उसके बारे में भी मेरा यह कहना है कि उसकी जगह आप जिस तरह के बोम्बे ऐक्ट में उसके लिये प्रोवीजन है, उस प्रोवीजन को पसन्द कर लें तो बहुत अच्छा होगा क्योंकि एडल्टरस लाइफ का शब्द ही ऐसा है जो एक तरह से तिरस्कार व्यक्त करता है।

श्री डी० पी० करमरकर : बोम्बे के ऐक्ट में क्या है?

श्री डी० नारायण : मैं अभी कहता हूं। वह यह है:

"That the defendant of a husband has another woman as a concubine or if a wife is a concubine of another man or leads the life of a prostitute."

श्री० डी० पी० करमरकर : अगर प्रास्टी-ट्यूट है तो आप माफ करेंगे ?

श्री डी० नारायण : मैं माफ नहीं कर रहा हूँ, मैं इसको इसलिये पेश कर रहा हूँ क्योंकि जो कौन्क्युबिन या प्रास्टी-ट्यूट होगी वह जाहिरा होगी, उसके बारे में साबित करना कोई मुश्किल काम नहीं होगा। एडल्टरस लाइफ या सेक्सुअल इंटरकोर्स, जो किसी कारण या गलती से चोरी छिपे हो जायगा और जिसके जाहिरा होने के कारण से स्त्री को इच्छा विरुद्ध जो दुनिया से उठना पड़ेगा, समाज से उठना पड़ेगा, उससे जो फल मिलेगा वह इससे नहीं मिलेगा क्योंकि उसने एक रास्ता पसंद कर लिया है। इसलिये मेरा कहना है कि मेरी इस बात को मंजूर कर लिया जाय।

श्री डी० पी० करमरकर : माननीय सदस्य की यह राय है कि कोई आदमी या औरत को एडल्टरस न कहा जाय, कौन्क्युबिन कहा जाय ?

श्री डी० नारायण : मेरे कहने का मतलब यह है कि मौजूदा धारा से स्त्री को बदनाम करने की कोशिश की जायगी और यह ठीक नहीं होगा क्योंकि इच्छा विरुद्ध उसकी समाज से प्रतिष्ठा जाती रहेगी।

एक बात मुझे खास कहनी है डाइवोर्स के बारे में। वह यह है कि क्लॉज १३ में डाइवोर्स के जितने कारण लिखे हुये हैं, उनमें सबसे ज्यादा महत्व का एक यह कारण भी होना चाहिये कि जिसने दो

विवाह किये हैं और जिसकी दो बीबियां जिन्दा हैं वहां पर पहली या दूसरी जो मांगे उसको डाइवोर्स मिले। (Time bell rings) आप जानते हैं कि दूसरी बीबी तभी की जाती है जब पति पहली बीबी को पसन्द नहीं करता है। इसलिये पहली बीबी को तो डाइवोर्स का अधिकार होना ही चाहिये। जैसा कि बोम्बे ऐक्ट में अधिकार दिया गया है, क्योंकि सबसे ज्यादा अन्याय यदि किसी पर होता होगा या अपमान सहन करना पड़ता है तो वह पहली बीबी को करना पड़ता है। ऐसी हालत में उसे हक होना चाहिये कि वह डाइवोर्स ले सके। परसों हमारे माननीय मंत्री जी ने अपने प्रस्तावित भाषण में यह कहा कि किसी को पहली स्त्री से लड़का न हुआ तो उसने दूसरी शादी कर ली। यदि लड़का होना आवश्यक है तो मैं पूछना हूँ मंत्री महोदय से कि आगे जो नये विवाह होंगे उनमें क्या पुरुषों के लिये लड़कों की जरूरत नहीं मालूम होती। आप मिहर्बान होते हैं तो पुरानों के ऊपर ही होते हैं, नयों के ऊपर क्यों नहीं होते ? अब इस कानून के मुताबिक जिनकी शादी हुई और लड़का न हुआ तो उसको आप दूसरी शादी करने की इजाजत नहीं देते और जो शादी कर चुके हैं उनके लिये यह कह कर इजाजत देते हैं कि नहीं साहब, लड़का न होने के कारण उन्होंने दूसरी शादी कर ली। इसलिये आपकी यह बात बुद्धिसंगत नहीं है। इसलिये मेरा कहना है कि बोम्बे ऐक्ट की तरह इस विधेयक में भी, जिन के दो बीबियां हो उनमें से एक बीबी को डाइवोर्स मांगने का अधिकार रहना चाहिये।

श्री डी० पी० करमरकर : पहली बीबी को, दूसरी को नहीं।

श्री डी० नारायण : कलाज १३ के त्त में "गिल्टी आफ रेप, सोडोमी और स्टैएलिटी" की जगह "कन्विक्टेड" जा जाय तो वह स्त्रियों के लिये बहुत हल बात हो जायगी क्योंकि अगर यह पब्लिश हो जाय कि उसने रेप या सोडोमी की है तो उस बहन के लिये ठीक कारण हो सकता है कि वह डाइवोर्स ले सके। अगर वह दोष लगाएगी, गल्टी बनाएगी गवाह लायेगी तो उसके लिये बहुत मुश्किल काम होगा उसको पब्लिश करना और आपस में बैर भोलाना। इसलिए "गिल्टी आफ रेप, सोडोमी और बेस्टैएलिटी" की जगह आप "कन्विक्टेड" लगा दें।

आखिरी बात मुझे यह कहनी है—जो बड़ी अच्छी बात इस बिल में है—धारा २२ के सम्बन्ध में कि कैसेज इन कैमरा सुने जायें। परन्तु इसमें भी मैं यह कहना चाहता हूँ कि "if either party-so desires or if the court so thinks fit" इन शब्दों को निकाल दिया जाय, इनकी कोई आवश्यकता नहीं। मैं तो कहना चाहता हूँ कि हर एक डाइवोर्स का केस इन कैमरा चले क्योंकि देश की हवा ऐसी है, देश के अखबार ऐसे हैं कि जहाँ कहीं छोटी सी बात मिल जाती है तो उसको बड़ा चढ़ा कर के दिखलाते हैं। इसलिए मैं यह कहूँगा कि आप ऐसा कर दें कि डाइवोर्स की हर बात इन कैमरा हो। मेरे कहने का मतलब यह है कि जिस देश में इतने अपढ़ लोग हैं, जो बेवारे गावों में रहते हैं, उनके लिये कानून सीधा सादा बनना चाहिये। उनके लिये इतने कॉम्प्लिकेशन पैदा करना कि डाक्टर की जरूरत पड़े, वकीलों

की जरूरत पड़े, गवाहों की जरूरत पड़े ठीक नहीं। उनसे तो बेवारों की मौत आ जायगी। कहां से वह डाक्टर लायेंगे, कहां से वे वकील लायेंगे और कहां से वे गवाह लायेंगे। इसलिये इसको जितना सीधा साधा बनायेंगे उतना देश का भला होगा।

मैंने दो चार सुझाव जो यहां पर किये हैं, मुझे उम्मीद है कि आप उनको मान लेंगे और उनके ऊपर सोच विचार कर के उन्हें इसमें दाखिल कर लेंगे।

MR. DEPUTY CHAIRMAN: Dr. Subbarayan.

DR. P. SUBBARAYAN: In view of the point of order, I raised this morning, I do not propose to speak though I did want to speak on this very important and progressive measure.

श्रीमती चन्द्रवती लखनपाल (उत्तर प्रदेश) : उपाध्यक्ष महोदय, वर्तमान युग परिवर्तन का युग है। आज हमारा समाज एक महान क्रान्ति के अन्दर से गुजर रहा है। चारों तरफ तरह तरह के परिवर्तन नजर आते हैं, सामाजिक और आर्थिक परिवर्तन हो रहे हैं। उन परिवर्तनों का प्रभाव हमारे जातीय जीवन के हर पहलू पर पड़ रहा है। चारों तरफ परिवर्तन हो रहे हैं, लेकिन एक चीज ही है जिसके ऊपर परिवर्तन के युग का कोई असर नहीं पड़ा है, और वह है हमारा सामाजिक विधान। आज सदियों गुजर जाने पर भी, सैकड़ों वर्ष बीत जाने पर भी हमारा सामाजिक विधान वैसे का वैसे ही अटल और अपरिवर्तित खड़ा है। होना तो यह चाहिये था कि जैसे जैसे समाज की चालें बदलती, सामाजिक और आर्थिक व्यवस्थाएं बदलती, वैसे वैसे हमारा सामाजिक विधान भी बदलता। किन्तु वैसे नहीं हुआ

और उसका परिणाम आज जो होना चाहिये था वही हमारे सामने उपस्थित है। चारों तरफ असंतोष है : स्त्रियों में असंतोष, पुरुषों में असंतोष, हर जगह असंतोष ही असंतोष नज़र आता है। किन्तु उस असंतोष के पीछे आज वह कौनसी भावना है जो कार्य कर रही है ? उसके पीछे प्रजातंत्र की भावना है, समानता की भावना है, समान अधिकार की चाह है जिसमें कहीं भी कोई भी विषमता न रहे। विषमता को दूर करने की भावना, सब तरह के भेद-भावों का अन्त करने की भावना आज इस असंतोष के पीछे कार्य कर रही है। इसी भावना को आधार बना कर हमारे देश ने अपनी सदियों पुरानी पराधीनता की बेड़ियों को छिन्न भिन्न कर दिया। आज इसी भावना के आधार पर दूसरे एशियाई देश स्वतन्त्र हो रहे हैं और अपनी पराधीनता की बेड़ियां तोड़ रहे हैं।

आज जबकि चारों ओर स्वतन्त्रता का युग है, स्वतन्त्रता और समानाधिकार की आवाज़ है, भारतीय स्त्री ही एक ऐसी है जो कि जब वह अपनी ओर देखती है तो वह यह अनुभव करती है कि उस की समाज के अन्दर एक बड़ी अजीब अवस्था है, उसकी और पुरुष की स्थिति में आपस में बड़ा भारी भेद है। स्त्री अपने भौतिक और मानवीय अधिकारों से वंचित रखी गई है और इसका परिणाम आज जो स्त्री के अन्दर होता है असंतोष का, वह स्वाभाविक ही है। किंतु इस असंतोष और निराशा में डूबी स्त्री के लिए आज स्वतन्त्र भारत का संविधान मुक्ति का संदेश लेकर आया। इसके अतिरिक्त अपने देश के विचार-

शील व्यक्तियों का भी उसको समर्थ प्राप्त हुआ। उन सब बातों का य असर हुआ कि आज एक आवाज़ दे में उठती है समान अधिकारों की और पुराने कोड को बदल देने की।

3 P.M.

आज हमारे सामने जो नया विधान लाया जा रहा है वह उस असंतोष को जो कि आज हमारे समाज के अन्दर स्त्रियों और पुरुषों के अन्दर है, दूर करने उद्देश्य से है। कहा जाता है कि यह विधान केवल स्त्रियों की मांग पर लाया जा रहा है, जैसा कि कल श्री सक्सेना ने कहा था कि यह विधान कुछ फैसल बिल स्त्रियों की—तितलियों की—मांग पर लाया जा रहा है, लेकिन मैं उन बातलाता चाहती हूँ कि आज का विधेयक है वह तितलियों की मांग नहीं, किन्तु और भारत की संभ्रा महिलाओं की मांग पर लाया जा रहा है। यह विधेयक उन महिलाओं की मांग पर लाया जा रहा है जो घरों की चूल्हों के अन्दर बँधी हैं, जो कि सदियों से पुरुषों के अत्याचार सहती चली रही हैं। उन सब स्त्रियों की भावना इस विधेयक के अन्दर अंकित और प्रतिबिम्बित हो रही है। यह जो विधान उसमें भारतीय महिलाओं की और भारतीय विचारशील पुरुषों की भाव प्रतिबिम्बित है।

इसके अतिरिक्त, आज मैं उन लोगों के बारे में कुछ कहना नहीं चाहती जिनको सामने की विषमता दिखाई दे रही है। जैसा कि मैंने कहा हमारे समाज के अन्दर कई तरह की विषमताएँ हैं, आज हमारा समाज का के अन्दर से गुज़र रहा है। किन्तु

[श्रीमती चन्द्रवती लखनपाल]

लोग अब भी हमारे देश के अन्दर ऐसे हैं जिनको क्रान्ति दिखाई नहीं देती, उन लोगों से भुझे कुछ कहना नहीं है। मुझे तो उन लोगों से कहना है जिनको यह विषमता दिखालाई दे रही है, जिनको आज यह सामाजिक क्रान्ति दिखालाई दे रही है जिसके फलस्वरूप आज इस सदन के सामने यह विधेयक प्रस्तुत किया गया है। उन लोगों का कहना यह है कि आज समाज के अन्दर जो विषमता और भेद फैला हुआ है, समान अधिकार देकर उसको दूर कर सकते हैं। इसलिए वे कहते हैं यदि स्त्री को तलाक का अधिकार मिलना चाहिये तो पुरुष को भी क्यों नहीं मिलना चाहिए। इसीलिए उनका यह कहना है यदि स्त्री को पुरुष एलीमनी दे तो क्यों न स्त्री भी पुरुष को एलीमनी दे इस तरह की विचारधारा आज हमारे अन्दर काम कर रही है। किन्तु मैं इस सम्बन्ध में यह कहना चाहती हूँ कि मैं इस विचार धारा से बिल्कुल असहमत हूँ। अगर इसी तरह की धारणा को लेकर हम स्त्री और पुरुष के बीच की असमानता को दूर करना चाहते हैं तो यह गलत है। हम स्त्री और पुरुष को समान अधिकार देकर ही विषमता को दूर कर सकते हैं, इस बात से मैं सहमत नहीं।

इस सम्बन्ध में मैं आपके सामने एक उदाहरण प्रस्तुत करना चाहती हूँ। मान लीजिये दो व्यक्ति हैं। एक के पास दस रुपया है दूसरे के पास १०० रुपया है। आप दोनों को बराबर राशि देना चाहते हैं। मान लीजिये आपने दोनों को ५०-५० रुपया दे दिये। इस तरह से एक के पास १५० रुपये हो गये और दूसरे के पास ६० रुपये हो गये।

यदि आप दोनों को समान अवस्था में रखना चाहते हैं, तो आपको, जिसके पास १० रुपया है, उसे आपकी १४० रुपया देना होगा, जब वे दोनों बराबर राशि पर पहुच जायेंगे। तब आप उन को समान अवस्था में ला सकेंगे। अर्थात् जिसके पास कम है उसको आपको ज्यादा देना पड़ेगा। इसी प्रकार दूसरा उदाहरण लीजिये। एक रेस (दौड़) है, उसमें दो व्यक्ति हैं। उनमें ५ एक व्यक्ति 'क' है और दूसरा 'ख' है। 'क' 'ख' से सौ कदम आगे है। दोनों एक ही वेग से दौड़ दौड़ते हैं। अगर दोनों एक ही वेग से दौड़ते रहेंगे तो दोनों में फासले का अन्तर बना रहेगा। अगर आप चाहेंगे कि दोनों के बीच जो अन्तर है वह दूर हो जाय तो हमको पहले उन दोनों को एक रेखा पर लाकर खड़ा करना होगा, एक लाइन पर खड़ा करना होगा। अर्थात् जो सौ कदम आगे है उसको सौ कदम पीछे हटाना होगा या जो सौ कदम पीछे है उसको सौ कदम आगे लाना होगा। अगर हम दोनों को समान गति से बढ़ने देंगे तो दोनों के बीच जो अन्तर है, जो फासला है, वह हमेशा ही बना रहेगा। इसलिए मेरा यह कहना है कि स्त्री और पुरुष आज एक जीवन की दौड़ में भाग ले रहे हैं। पुरुष स्त्री से सौ कदम आगे है और स्त्री पुरुष से सौ कदम पीछे है। अगर हम दोनों को समान अधिकार देते हैं तो दोनों के बीच अन्तर हमेशा ही बना रहेगा, अर्थात् स्त्री पुरुष से हमेशा सौ कदम पीछे हो रहेंगी। अगर हम यह चाहते हैं कि दोनों समान स्थिति से फायदा उठायें तो हमें पहला काम यह करना पड़ेगा कि दोनों को पहले एक जीवन स्तर पर लाकर खड़ा करें, अर्थात् या तो हमें पुरुष को पीछे

लाना होगा या स्त्री को आगे ले जाना होगा जिससे कि उनके बीच में सौ कदम का अन्तर है वह दूर हट जाय । इसका अर्थ यह हुआ कि पुरुषों के अधिकारों पर कुछ नियन्त्रण करना होगा और स्त्रियों को कुछ विशेषाधिकार देने पड़ेंगे । अगर हम ऐसा नहीं करेंगे तो हम स्त्रियों को पुरुषों के समान नहीं ला सकेंगे । और जो विषमता है उसको दूर नहीं कर सकेंगे ।

‘मोनोगेमी’ के सम्बन्ध में इसी नियम का पालन किया गया । इस विधेयक द्वारा हमने मोनोगेमी का जो रिवाज, जो प्रथा थी उसको बन्द कर दिया, पुरुषों के अधिकारों पर नियन्त्रण कर दिया और पुरुष जो स्त्रियों से आगे खड़ा हुआ था, उसको थोड़ा पीछे हटा कर दोनों को एक लाइन में लाकर खड़ा कर दिया, जो ठीक ही किया । लेकिन हमने डाइवोर्स के क्षेत्र में क्या किया, यहां पर हमने उस नियम का पालन नहीं किया । डाइवोर्स की मांग तो स्त्रियों की थी, इस क्षेत्र में जो भी सुविधा मिलनी चाहिये थी, वह स्त्रियों को ही मिलनी चाहिये थी, पुरुषों को तो पहले से ही बहुत सी छूट मिली हुई है । पुरुष जब चाहे शादी कर सकता है । जब चाहे तब पहली स्त्री को छोड़ कर दूसरी, तीसरी, चौथी और पाँचवी शादी कर सकता है । आवश्यकता तो स्त्री की थी जिसको इस बारे में छूट दी जाती । यह मांग तो स्त्रियों की थी कि उन्हें विशेष अस्थायी में सम्बन्ध विच्छेद का अधिकार दिया जाये । किन्तु ‘डाइवोर्स’ का अधिकार पुरुष और स्त्री दोनों को इस विधेयक में दे दिया गया है । इसका नतीजा यह होगा कि जैसी स्थिति

आज कल हमारे देश की है, उसमें पुरुष इस अधिकार का दुरुपयोग स्त्री के विरुद्ध करेगा । स्त्री इस हथियार के होते हुए भी उसमें ज्यादा फायदा नहीं उठा सकती । इसके अर्थ यह हुआ कि स्त्री को अधिकार देना या न देना बराबर हो जाता है । स्त्री और पुरुष को समानाधिकार, डाइवोर्स का अधिकार, देने का अर्थ यह हो जाता है कि पुरुष तो इस अधिकार से फायदा उठा सकता है किन्तु स्त्री नहीं । इससे तो स्त्री पुरुष का अत्याचार का शिकार बनी रहेगी । मेरे कहने का मतलब यह है कि स्त्री से जीवन की दौड़ में पुरुष सौ कदम आगे है, यदि हम चाहते हैं कि दोनों का स्टेटस एक हो जाय, तो जीवन की दौड़ में दोनों को एक ही रेखा पर लाकर खड़ा करना होगा । हमें पुरुष के अधिकारों पर थोड़ा नियन्त्रण करना होगा और स्त्रियों को विशेष अधिकार देने होंगे । जब तक हम स्त्री को पुरुष के साथ एक लाइन पर खड़ा नहीं करेंगे, उनको विशेष अधिकार नहीं देंगे तब तक स्त्री और पुरुष समान स्थिति में नहीं आ सकते स्त्री और पुरुष उसी हालत में एक स्थिति में आ सकते हैं जबकि हम उनको एक स्टेटस पर ले आवें । हमारी बहन श्रीमती लीलावती मुशी ने कहा कि दोनों को समानता का अधिकार चाहिए । मैं भी इस सिद्धान्त का समर्थन करती हूँ, समानता के अधिकार से प्रायः मैं सहमत हूँ, इस तरह दोनों को समान अधिकार प्राप्त होने चाहिये । किन्तु समान अधिकार उसी स्थिति में दिया जाना चाहिये जबकि दोनों को एक स्टेटस में लाया जाय, एक लाइन में जब तक दोनों को खड़ा नहीं किया जायगा तब तक आप समानता का सिद्धान्त लागू

[श्रीमती चन्द्रवती लखनपाल]

नहीं कर सकते हैं। इसलिए अगर हमें समानता का सिद्धान्त अपनाना है तो स्त्री को विशेष अधिकार देने होंगे और उसको पुरुष के बराबर में लाना होगा।

इसी प्रकार एलिमनी के सम्बन्ध में भी यही नियम लागू है। समानता का नारा लगाने वालों ने यह कहा कि स्त्री को अगर एलिमनी मिलती है तो पुरुषों को भी मिलनी चाहिये। यह ठीक है लेकिन आप वस्तुस्थिति को देखिये। दश की वास्तविक स्थिति क्या है? आज हमारा समाज की स्थिति यह है कि पुरुष कमाता है लेकिन स्त्री नहीं। आज जायदाद का अधिकार पुरुष को प्राप्त है; स्त्री को नहीं। सम्पत्ति का मालिक पुरुष ही होता है, स्त्री नहीं। इसके अतिरिक्त समाज में सारी सुविधाएं पुरुष को प्राप्त हैं। स्त्री को केवल डिसेम्बलिटीज प्राप्त हैं। आज समाज में कृपाभाजन पुरुष ही हैं, स्त्री नहीं हैं। ऐसी अवस्था में जब समाज के अन्दर दोनों के स्टेटस भिन्न भिन्न हैं, दोनों के स्टेटस में जमीन आसमान का फर्क है तो दोनों से एक सा रोल, एक सी ही जिम्मेदारियों की आशा क्यों की जाये। जो वस्तुस्थिति है उससे आंखें मूंद करके अगर हम कानून बनाने बैठेंगे, तो लोग हमें क्या कहेंगे? लोग हमारे ऊपर हंसेंगे। इसके अतिरिक्त कि क्या यह न्याय है, क्या यह बुद्धिमत्ता है कि स्त्री पुरुष को एलिमनी दे? मैं कहना चाहती हूं कि समानता के समर्थकों को ऐसी स्थिति नहीं पैदा करनी चाहिये जिस से अन्याय बढ़े। ऐसा करने में जो समानता लाने का आप का उद्देश्य है वह पूरा नहीं होगा और विषमता बनी रहेगी।

मैं एक बात और यह कहना चाहती हूं कि हमें यह ध्यान रखना होगा कि तकलीफ कहां है और जहां तकलीफ है वहां से उसको दूर करना पड़ेगा। इस सिलसिले में मैं यह भी कहना चाहती हूं कि पॉलीगेमस विवाहों के अन्तर्गत चाहे पहली स्त्री हो, चाहे दूसरी स्त्री हो, चाहे तीसरी स्त्री हो, जो भी रिलीफ के लिये प्रार्थना करती है उसको मौका मिलना चाहिये। ऐसा

कोई बन्धन होना चाहिये कि पहली को मौका मिले, या दूसरी को मौका न मिले या तीसरी को मौका न मिले। हमें यह देखना चाहिये कि तकलीफ कहां है। मुझे आज शिकायत इस बात की है कि जहां कांटा नहीं लगा है, वहां आप कांटा निकालने को दौड़ते हैं, जहां घाव है ही नहीं वहां मरहम पट्टी करने के लिये जाते हैं। मेरा कहना यह है कि जहां घाव है वहां मरहम पट्टी कीजिये, जहां कांटा लगा है वहां से उसको निकालने के लिये जाइये। अगर आप ऐसा करेंगे तो जिन की तकलीफों को दूर करने के लिये यह हिन्दू मैरिज बिल लाया जा रहा है और जो लाखों और हजारों बहनें मुक्ति की प्रतीक्षा कर रही हैं, उनको हम वास्तव में रिलीफ पहुंचा सकेंगे। उनको हम रिलीफ तभी पहुंचा सकेंगे जब कि जो सिद्धान्त मैंने आप के सामने रखे हैं, उन पर हम चलेंगे। वह सिद्धान्त यही है कि हम स्त्री और पुरुष दोनों को समानता का अधिकार दें। आज प्रजातंत्र के युग में कोई भी विचारशील व्यक्ति इस सिद्धान्त का विरोध नहीं कर सकता। मैं इसकी सब से बड़ी समर्थक हूं। स्त्री और पुरुष दोनों को समानता के अधिकार मिलने चाहिये। लेकिन जो उनको समानता के अधिकार मिलें वे थियोरीटिकल न हों बल्कि वास्तविक हों। वे ऐसे हों जो कि जीवन में अनुभव किये जा सकते हैं और जो जीवन में देखे जा सकते हैं। हमें ऐसी समानता नहीं चाहिये कि जो कहने के लिये समानता हो लेकिन वास्तव में उसका असर उलटा पड़ रहा हो।

मैंने सेलेक्ट कमिटी के अन्दर एक यह सुझाव रखा था कि कम से कम १० साल के लिये केवल स्त्रियों को ही डाइवोर्स का अधिकार मिलना चाहिये। इसके लिये यही कारण और युक्तियां मैंने वहां रखे थे कि स्त्री को इस प्रकार का विशेषाधिकार देकर ही हम स्त्री पुरुष दोनों को इक्वल स्टेटस पर ला सकते हैं—दोनों को समानता के स्थान पर ला सकते हैं। सेलेक्ट कमिटी में इस पर विचार हुआ लेकिन कोई खास असर नहीं पड़ा और इसको वह समर्थन प्राप्त नहीं हो सका जो होना चाहिये था।

श्री डी० पी० करमरकर : क्या स्त्री को १० वर्ष तक पूर्ण स्वतंत्रता दी जाय ?

श्रीमती चन्द्रबती लखनपाल : डाइवोर्स का अधिकार १० वर्ष तक केवल स्त्री को ही दे दिया जाय । यह अधिकार पुरुष को १० वर्ष तक नहीं मिलना चाहिये ।

अन्त में, मुझे पूरी आशा है कि जो विचार मैंने सदन के सामने रखे हैं, उन पर सदन गंभीरता के साथ विचार करेगा और पहले १० वर्ष तक डाइवोर्स का अधिकार केवल स्त्री को ही दिया जाये इस सम्बन्ध में जो मैं अपने विचार अमेन्डमेंट के रूप में आगे लाऊंगी उनको पास करेगा ।

SHRI TRILOCHAN DUTTA (Jammu and Kashmir): Mr. Deputy Chairman, an hon. Member of this House today raised the matter of the application of this Bill to Jammu and Kashmir State. Clause 1, sub-clause (2) of the Bill makes an exception in the case of my State. The hon. Member, Mrs. Munshi seemed to be sure that constitutionally this Bill could be applied to the Jammu and Kashmir State just as she said that it had been considered in the case of removal of untouchability. I may assure her that none will be happier than ourselves if in the present context of constitutional relationship, such a solution of the matter could be found. In any case, I am sure that my State welcomes this Bill as a very desirable piece of legislation and I hope that, before long my State will have a measure on similar lines passed by its own Assembly. Let there be no doubt about that point. We have the proud privilege of being citizens of India and we are very jealous of that privilege. We have acceded to India and our accession to India is irrevocable. We have maintained that accession, that connection, in spite of all the difficulties, in spite of all the destruction, that we have been subjected to. We were always a part of India, are a part of India and will remain a part of India in spite of the war and destruction that we were subjected to,

despite all the threats of future war and international intrigue of the enemies of peace and progress. Our national movement led by the great organisation, the National Conference, went always in unison with the great national and freedom movement of India. Our heart beats in unison with yours and will continue to do so.

So, I welcome this Bill and wish to join others in congratulating the Government for bringing forward this measure. I want to make a few general observations also as regards this Bill. Just as there are two main features of this Bill, i.e., monogamy and divorce, there are two main counts of objections too, so far as I understand. Number one is that this Bill does not uniformly apply to all communities of India. Secondly, that this Bill would disrupt the Hindu society, and that this goes counter to the orthodox or the *Shastric* view of life.

So far as its application to the other communities is concerned, I think that those who oppose the Bill mainly mean the Muslims. I hold that this measure is very beneficial and it should apply to all communities alike but I agree with the position as it stands now that it should not immediately be made applicable to all and I maintain that there is nothing unconstitutional or communal about it. It is according to the objective situation as it obtains today. We cannot afford to forget the circumstances and the past history. The schisms and the dents caused in our society by foreign rule are still there. We are very happy that they are being healed but let them be healed perfectly. In that case all the people, all the communities of India will come to have a uniform civil code as it has been advocated by certain hon. Members of this House.

The other day, an hon. Member of this House—probably, Dr. Shrimati Seeta Parmanand—referred to China in this connection. China is a country which could not be called reactionary, which could not be said to have any

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communal feelings. Our Prime Minister Panditji has been deeply influenced by China because they are doing some really good things.....

PROF. N. R. MALKANI: He said that he was deeply impressed, not influenced.

SHRI TRILOCHAN DUTTA: He said that he had been influenced by China in certain things and China had been influenced by him in certain matters. But 'impressed' may be a more correct word. So, I said, in China so far as the national minorities were concerned, they were not hasty in imposing social legislation on them. Leave aside social legislation. Take the question of land reforms. Land reform is a measure upon which their edifice of the stability of the country, the mass awakening and the mass consciousness were, to a very large extent, built, but you will be surprised to know—probably most of you may know it—that land reforms had not been applied so far as the Muslims and other national minorities were concerned. This is what I found when I went to China about two years back. So, I submit that there is nothing very bad about it. We know that India is marching ahead now—we are marching on very healthy lines under the leadership of our great Prime Minister, and, no doubt, very soon the time will come when we will have uniform personal code or such Acts which will apply uniformly to all communities and all the people.

Then, so far as the second objection is concerned about this Bill being likely to disrupt the Hindu society, as going counter to the *Shastric* view of life, I don't agree with that contention. Why do we respect our prophets, our great men, our great law givers and wise men? They are respected even now because those great men, those law givers, those prophets gave us the solution for the social ills then prevailing. They gave solutions for very acute problems facing the people then. That is why they were able to command the respect and veneration

of the people of those times, and no religion, no society, no great man has ever put his foot down and said that after him, no changes could be made so far as bringing about solution of the social problems subsequently is concerned. I have all respect for my Muslim friends and I hope I am not far wrong in saying that if the great Prophet allowed the Muslims to have four wives, I am told that historically it was so because when he came, Arabs had so many social ills and one of them was that a Bedouin married even 100 wives. The Prophet did not want to scare away the people or to shock their consciousness by bringing them straightaway to one wife. So he said 'All right, you can have up to four wives.' Similarly, so far as the Hindu society is concerned, it could not be said that changes were not made from time to time. It is a different thing that so far as the ignorant people were concerned, there was a sort of religious halo around about everything. That is different.

Now let us take widow marriage. Time was when in the Hindu society widow marriage was not considered to be a good thing. I distinctly remember having read in one of the works of Swami Vivekananda that the reason why widow marriage was banned among the Hindus was that at one stage in the Hindu society, the number of women became far larger than the number of men and so the Hindu law givers at that time ordained—we must remember that Hindu society was full of vigour, full of life, and they wanted to maintain that vigour and life—that in future no widow should re-marry because thereby she would evidently be encroaching upon the right of one of her sisters. That is how it came about.

The greatness, the vigour of Hindu society has consisted in its catholicity, its tolerance, its capacity for adjustment to the objective situation, and we shall be doing great service to the Hindu society if we let that keep on, if we make changes in our social structure, in our social laws, according to the demands of the situation.

It looks my time is up but I wanted Sir, to refer to a few clauses of the Bill. Now I shall not refer to the points already raised by other hon. Members. I would like to give my opinion so far as this question of reconciliation is concerned. An hon. Member had said something about it. I would like to invite the attention of the House through you, Sir, to the absolute necessity of having better arrangements for reconciliation. In this Bill I find that so far as judicial separation is concerned or consideration of divorce is concerned, this is to go before the district court. As you know, Sir, the district courts are so much over-worked, they have so much of other civil work before them that they have neither the time nor the patience to approach the question with a human and a patient mind. I do not mean to say that they are not human; of course they are human, but they are too over-worked to have either the time or the patience for this kind of work, to understand the differences between the parties, between the husband and the wife and to bring about reconciliation. Therefore, I would submit that for some time, at least for ten years, let us have special courts for this purpose—sort of reconciliation courts. Or if you cannot do it, let us statutorily attach some reconciliators to such civil courts. And these should, if possible, be necessarily women because it is the woman who, with her sympathetic heart and human understanding, can do it best. After all, this Bill is being framed in order to free the Hindu woman of certain disabilities—certain social disabilities she is suffering under. Therefore, I would submit that, in the event of acute differences cropping up between the husband and the wife and institution of a case by either for judicial separation or divorce, there should be special courts, if possible, presided over by women magistrates, or if that is not possible, special courts with women reconciliators so that they could bring about reconciliation. I remember having witnessed a case in a People's Court in China and the case that was then before the court was very

pertinent to the issue now before us. A woman had brought a suit against her husband saying "I have separated from him and I won't permit him to reside with me. He, being a worker in a factory, should go to the workers' dormitory. I do not want to live with him." That was what she said. The husband was very hot about it and said, "I won't go to the dormitory. She is a bad woman. She has illicit relations with someone else. So I will continue here." The woman too was very hot, hot in the face, hot in the ears. But I found the woman reconciliator very calm and sweet, explaining to them both, and remonstrating with them. She told the husband, "Well, I think, for the present, your wife is very hot about it. She has strong feelings about it. So why not go to the dormitory for some time? I know after some time reconciliation will come about and you will be able to live together." Well, I don't know what happened later on, but the husband went quietly to the dormitory.

So, I submit the chances of reconciliation are there and we should have special machinery for concentrating more on reconciliation than on the grant of judicial separation or divorce. If the latter is inevitable, let it be, but that should be the last resort.

Then I want to say something about clause 9.

MR. DEPUTY CHAIRMAN: It is time, Mr. Dutta.

SHRI TRILOCHAN DUTTA: Pardon?

MR. DEPUTY CHAIRMAN: You have already exceeded the time-limit by four minutes.

SHRI TRILOCHAN DUTTA: Sir, I wanted to say something on certain clauses of the Bill which have not been referred to by speakers heretofore but if there is no time, I shall sit down but I will conclude by reminding the hon. Members of this House that today the eyes of not only the enlightened sections in India, but of the whole of womenkind are on us and we are

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also at the bar of judgment of the whole world. Our great Prime Minister, Shri Nehru, has raised us in the estimation of the world, in the councils of the world, by his policy of objectivity, peace and progress. Let us not shake the confidence and the esteem that we have achieved in the eyes of the world. Let us not give them the impression that internally or in fact we are orthodox, conservative, insular and retrograde. Let us keep up our reputation.

Moreover, we have seen that so far as the women Members of this House are concerned, they all spoke unanimously and with great feeling about the Bill, and that means that the words came from their hearts. Great hopes are pinned on us by our daughters and sisters. We love and respect them, no doubt, but let us win their gratitude too by agreeing to the passage of this Bill. I support this Bill.

SHRI R. C. GUPTA (Uttar Pradesh): Sir, there is no doubt that the present Bill is a highly controversial one and there are good reasons for it. People outside this House and also in this House seem to be arrayed in two camps, one in favour of the Bill and the other against it. And the reason for this is not far to seek, because the orthodox sections think that the present Bill is an attack on religion, whereas the other section thinks that it has nothing to do with religion, that it is because of the necessity of the times that this present measure has been brought up. I feel that the truth lies on both these sides. There is no doubt that this Bill is in some ways a departure from the orthodox Hindu religion. But at the same time it is also true that it is not really an attack on Hindu religion. Hindus have enjoyed this right of divorce directly or indirectly in a large measure and in a number of cases. More than 40 per cent. of the population enjoyed this privilege of divorce by virtue of customs and usages. It is true that the higher castes, the higher classes of

Hindus did not allow this custom apply to them. But now the question has come up to the fore because of western education and because the impact of western thought and there is a demand for dissolution of marriage on certain grounds. I think that there is some justification for this demand because we cannot deny the fruits of education to half the population. And if as a result of that education and as a result of the impact of the western education the demand is made by the women of India is reasonable for men not to concede this demand, if it is within reasonable limits? Therefore, I would not like to enter into this question as to whether it is an attack on Hindu religion or not. I would personally not like to have a clause dealing with divorce, I am certainly not opposed to it, because I know there is a demand for it in the country from a large section of women.

This Bill contains provisions regarding marriage and divorce. A large number of the speakers, practically all who spoke before me have spoken only on the question of divorce and very little has been said on marriage. My objections to this Bill relate to that portion of it which deals with marriage. It seems to me that there has been no demand put forward by the women of India or anybody else so far as marriage portion of it is concerned except in one particular that there is a demand for monogamy. This demand, probably, was not necessary in order to introduce monogamy for the simple reason that in actual practice Hindus have been observing monogamy for a very long time. Of course it cannot be denied that there are certain persons, whose number is not very small, who indulged in polygamy. The Hindu religion all along was monogamy. I would have no objection, and I still have no objection, if this marriage portion of the Bill contains a clause relating to monogamy alone. This Bill should be a very simple measure containing only clauses guaranteeing two rights

monogamy and the other of dissolution of a marriage under given circumstances but, I find, in this Bill a lot of other provisions have been incorporated and some of them have been bodily borrowed either from the Special Marriage Act or from other Acts. They seem to have encumbered the measure and have made the Bill, to a certain extent obnoxious. Clauses 11 and 12, to my mind, are the most objectionable clauses. They relate to void and voidable marriages. I do not see any justification for introducing these two clauses. There was no demand on behalf of the women of the country that the marriage should be declared void or voidable, what they wanted was a dissolution under certain circumstances, when they cannot live on with their husbands and they wanted certain rights to be granted to them in consequence of the dissolution in the form of alimony or maintenance. If you allow these two clauses, clauses 11 and 12, to remain on the Statute Book the effect would be disastrous. The children of such marriages would actually be deprived of the inheritance which they would otherwise get from their ancestors. At the present moment, if the marriage takes place between a girl and a boy when they are younger than 16 and 21 respectively as laid down in clause 5, a decree of nullity is granted and the result of such a decree would be that the children would only inherit the parents and nobody else. What will happen to those children? Who will take care of them and what will be the share of inheritance which they will get? They will simply be deprived of all their rights. In order to solve the problem of a few women in the country, you will be creating a colossal problem of numberless children who will come into existence by virtue of the marriage between the couple whose marriage is declared null and void. My respectful submission to the Government is that they should drop these two clauses. Both these clauses, clauses 11 and 12, contain two parts, one dealing with past marriages and the other with marriages that take place after this Bill is enacted. I think both these

parts are obnoxious and not one of them should be kept. The object is monogamy and that would be served if you penalise the person who does not observe monogamy. If a man marries twice, he should be held to be guilty of bigamy and you may give him deterrent punishment, you may send him to jail even. I would not have any objection. He may be penalised in some other way, for example, you may provide that he would have to give his second wife a half share in his property if he marries while his first wife is alive. That may be a good thing but you should not lay down that if he marries again while his first wife is alive he would not only be held guilty of bigamy and penalised in the form of giving maintenance and alimony but on top of that, the issue of that marriage should also suffer in that it should not inherit from anyone else but the parents. I would say that it would be illegitimate. This issue is considered as legitimate only for certain purposes, that is the issue can inherit the parents and not beyond that. What is the fault of the children who are being deprived of their rightful share? Why should they be punished in that manner? These two clauses seem to have been borrowed bodily from the Special Marriage Act. That is a special enactment but here we are concerned with the entire community which contains about 80 per cent or 90 per cent of illiterate people, they do not understand their rights and liabilities.

I will refer in this connection to clause 5. There are six conditions laid down therein and some of them make the marriages voidable. What really pains me is the second condition, which says, "neither party is an idiot or a lunatic at the time of the marriage". If a marriage between such parties takes place, what is the fault of the children and why should they be disinherited? It is no fault of theirs if a marriage between such parties is performed either by the parents or by the parties themselves if they had attained the prescribed age. I really cannot understand why the children should be penalised.

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The third condition speaks about the age of marriage. The bridegroom should be more than 21 and the bride more than 16. I can only refer to the experience of everybody in respect of the Sarda Act. In spite of that Act, marriages are performed in very very large numbers which offend the provisions of that Act. The Sarda Act lays down that the girls should be more than 14 years at the time of marriage but beyond stating that, it did not provide that if such a marriage were performed the marriage would be void or voidable. If this rule is to be followed strictly, I can, with confidence, say that there will be millions of marriages in the country wherein you will have to enforce this strict provision of the law and thus declare such marriages void or voidable, as the case may be. I think the gravity of these two provisions was not realised when they were incorporated bodily from another enactment, which is a specific and special enactment.

Similarly, there is clause 6 relating to guardianship in marriage. Where was the necessity for providing a separate guardianship in this Bill? We have today, another Bill pending in the Lok Sabha—the Minority and Guardianship Bill—and we have also the Guardians and Wards Act. You may have a simple provision here saying that the consent of a guardian is necessary, whoever may be the guardian. Everybody knows who the guardian is, whether it is under the Guardians and Wards Act or whether under the Bill that is now pending.

MR. DEPUTY CHAIRMAN: You have only two minutes more, Mr. Gupta.

SHRI R. C. GUPTA: Yes, Sir, I am just finishing.

I would submit one thing more and that relates to clause 25 which contains provisions about permanent alimony and maintenance. Probably the idea is to allow permanent alimony and maintenance in case of judicial separation as well as divorce but the

language leaves room for doubt that it applies only to the case of divorce. If the intention of the Government is to exclude judicial separation, I think Government should revise that intention.

SHRI D. P. KARMARKAR: It says, "...in any proceeding under this Act...."

SHRI R. C. GUPTA: That is all right; in the beginning, the language is very wide and it seems to include both judicial separation and divorce but if you come below down you will find the language as follows: "...the respondent shall, while the applicant remains unmarried....".

Now in the case of judicial separation there is no question of married or unmarried. The couple is married and then they remain married so that the use of the word 'unmarried' here excludes judicial separation altogether. The clause is to be revised in my opinion.

One thing more and I shall finish. In this Bill an attempt has been made to place males and females on an equal footing so far as alimony, maintenance and all that are concerned. I think, it is very hard and it is neither just nor equitable and the husband should not be permitted to get maintenance or alimony from his wife; it is the right of the women. We want to uplift and better the lot of the women. Now if there is such a husband who wants to depend upon the earnings or the property of his wife he does not deserve the right to be placed on an equal footing with woman here. Such cases will be hardly .001 per cent. and for them no provision seems to be necessary. This Bill is intended to benefit the women of the country and this provision should remain for their benefit only. I think that this is a slur on man and this part of the provision should go.

May I have your permission to say one thing more with regard to the 'application of the Act.'

Mr. DEPUTY CHAIRMAN: You should have to regulate it to your time also; it is one minute more.

SHRI R. C. GUPTA: In sub-clause (1)(c) of clause 2 you say that this Act would not apply to a Muslim, Christian, Parsi or Jew by religion, and then you add: "unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed." I think this sub-clause should go. This measure applies to Hindus only. You have coined a particular definition and you say 'Hindu' is one who is not a Muslim, Christian, Parsi or Jew by religion. The other communities left out or some of them may later on desire that this Act should be made applicable to them. Therefore, to enable the Government to do this easily, you may put in a clause in this Bill—and I think it will be very beneficial—that the Government by notification would have the right to include any territory desiring to come under the operation of this Act or any community or particular tribe desiring to do so. Such a provision might serve the purpose better without the necessity of having to bring forward amending Bills.

श्री कन्हैयालाल डी० वेंच (मध्य भारत) :
उपाध्यक्ष महोदय, हम आज जिस विवाह संस्था के सम्बन्ध में कानून ला रहे हैं, वह दो हजार साल पुरानी एक ऐसी संस्था है कि जिस में इस देश में पचास तरह के रोग घर कर गये हैं। आज हमारे देश में स्त्री एक खच्चर की भांति विक्रय की वस्तु बनी हुई है। जिस प्रकार हम बाजार से एक खच्चर ले आते हैं और उस पर सवारी करने के साथ साथ जितना बोझा चाहते हैं उतना बोझा लादते हैं, इसी प्रकार स्त्री के साथ जो चाहे विवाह कर सकता है। यह हमारे देश में स्त्री की दशा है।

श्री एच० पी० सक्सेना : आप के हिस्से में ?

श्री कन्हैयालाल डी० वेंच : देश में सर्वत्र बहुत अधिक है। मैं यह कहूंगा कि इस देश में स्वतन्त्रता प्राप्ति के बाद जैसे जैसे हम सामन्तवादी संस्थाओं पर प्रहार करते हैं, वैसे वैसे इस देश में तूफान खड़े होते हैं। इस सदन में भी अगर वह पुराना सामन्तवादी मनोवृत्ति का तूफान हो तो हमें उस सामन्तवाद को खत्म करना है। स्वतन्त्रता प्राप्ति के बाद हमें अपने देश में सामाजिक और आर्थिक क्रांति के कार्य को पूरा करना है। जो विवाह संस्था की समस्या है वह भी उस सामाजिक और आर्थिक कार्यक्रम से बहुत कुछ सम्बन्ध रखती है।

आप इस बात को भली भांति जानते हैं कि इस देश में छोटी छोटी बच्चियों का विवाह होता है। माता पिता अपनी छोटी बच्चियों का विवाह अपनी इच्छा से कर देते हैं। एक कहावत है कि गाय और कन्या जहां भेज दी जायं वहां चली जाती हैं। गाय को कसाई के घर भेज दीजिये तो वह उसके घर चली जाती है। यही हालत हमारे यहां कन्याओं की है। स्त्रियों की है। इसके साथ साथ आप यह देखिये कि यदि किसी स्त्री के पति की मृत्यु हो जाय, तो वह स्त्री अशुभ मानी जाती है। जीवन भर उसको काले वस्त्र पहन कर रहना पड़ता है। उसको अपने सारे आभूषण को त्याग देना पड़ता है। उसको बहुत ही अपमानजनक जीवन बिताना पड़ता है। यह है हमारे यहां स्त्री समाज की दशा। उसे सब प्रकार के अत्याचारों का शिकार होना पड़ता है। सम्पन्न घरों की बात छोड़ दीजिये। जिन घरों में आज रोटी की चिन्ता है उनकी दशा देखिये।

MR. DEPUTY CHAIRMAN: These general observations are out of place here. Please give your observations on the particular clauses of the Bill, how you want to improve them, whether by deletion or amendment, and they will be quite relevant.

SHRI KANHAIYALAL D. VAIDYA: If you will allow me some more time I will have an opportunity to deal with the clauses as within 15 minutes it is not possible for me to deal with them I have prepared so many notes and I would require more time to do justice to my speech.

MR. DEPUTY CHAIRMAN: Just come to the clauses. Why all these ramblings?

SHRI KANHAIYALAL D. VAIDYA: I am dealing with the general problem and so far as the general problem is concerned .

MR. DEPUTY CHAIRMAN: The general problem we have discussed; it has come out of the Select Committee, now the Select Committee Report is before you.

श्री कन्हैयालाल डी० वैद्य : मैं यह अनुभव करता हूँ कि इस देश में जो स्थिति इस वक्त विवाह सस्था और स्त्रियों की है, उसको सुधारने के लिये यह कानून बिल्कुल अपर्याप्त है। अपर्याप्त इसलिये है कि आप पूर्ण कानून विवाह सस्था के विषय में नहीं बना रहे हैं। इस कानून में बहुत सी खामियाँ हैं। आप इस बात की रोक इस कानून में नहीं कर रहे हैं कि एक बूढ़ा आदमी एक युवा लड़की से शादी नहीं कर सकेगा। इस कानून में इस बात की स्वतन्त्रता है कि वह एक नहीं चार बार डाइवोर्स करे और १६ १८ या २० वर्ष की लड़की से शादी कर ले।

जैसा मैं कह रहा था, स्त्री आज हमारे समाज में एक व्यापार की वस्तु बनी हुई

है। उसका क्रय होता है, विक्रय होता है। जहाँ गरीबी है वहाँ ऐसे भी प्रश्न खड़े होते हैं कि मनुष्य अपने घर में अपनी कन्या को अधिक अवस्था तक रख नहीं सकता। आप १८ या १६ वर्ष की अवस्था इस कानून में रख रहे हैं। लेकिन एक गरीब आदमी आज अपनी आर्थिक दृष्टि से मजबूर है कि वह अपनी कन्या की शादी जल्दी कर दे। जो दो हजार वर्ष से व्यापार की सस्था चली आ रही है यदि उसमें हम सुधार करना चाहते हैं तो हमें पूर्ण कानून बनाना चाहिये।

इसमें एक व्यवस्था यह भी है कि यदि विवाह करने वाले लोग माइनर हुये तो उनके गार्जियन्स जो हुये उनकी स्वीकृति से विवाह हो जायगा। इसका अर्थ यह हुआ कि माइनर्स की शादियाँ हो सकेंगी। अगर माइनर्स की शादी करना बुरा है और इस सम्बन्ध में आप एक क्रांतिकारी कदम उठाना चाहते हैं, तो यह आवश्यक है कि जब तक आप इस प्रथा को रोकियेगा नहीं, यह बुराई दूर नहीं होगी। इस देश में करोड़ों लोग देहातो में रहते हैं पिछड़े हुये क्षेत्रों में रहते हैं, पहाड़ी और जंगली इलाकों में रहते हैं। जंगली जातियाँ हैं, पिछड़ी हुई जातियाँ हैं, उनको न तो अभी आपकी इस स्वतन्त्रता का कुछ भान हुआ है और न उनके यहाँ कोई रोशनी पहुँची है। उनके यहाँ आपने न तो शिक्षा का प्रारंभ किया है और न उन्हें यह बात मालूम हुई कि उनकी भलाई के लिये सरकार क्या कर रही है। तो यह विवाह का कानून कहीं उनके लिये मूसीबत और बला न बन जाय। कोई भी काम जो सरकार करना चाहती है उसको वह काम इस दृष्टि से करना चाहिये कि सारे समाज का कल्याण हो और जो पुरानी रूढ़ियाँ हैं, रीति-नवाज हैं और जो पुरानी

4 P. M.

बातें चली आ रही हैं उनमें क्रांतिकारी परिवर्तन कर के समाज का ढांचा ऐसा बनाया जाय जिससे कि जो हमारी बहनें क्रय-विक्रय और व्यापार का साधन बनी हुई हैं, वह न हो।

श्री किशोरी राम : ऐसे व्यापार में ब्लैक मार्केट भी होता है या नहीं ?

श्री कन्हैयालाल डी० बेंद्य : बिल्कुल होता है। अगर कोई रेजोल्यूशन ब्लैक मार्केट के लिये आयेगा तो मैं सब बताऊंगा। बड़े बड़े शहरों में जो बहुत से चकले और बाजार फैंके हुए हैं वे हमारी आंख खोल देने वाले हैं। वे हमारी ही बात को, हमारे ही कृत्यों को बताते हैं कि हमने समाज के साथ क्या क्या किया। अगर हमें भारत में जिस प्रकार से नारी की पूजा करने का आदर्श माना गया है उसका कुछ अनुभव होता तो जो लोग इस समय इस तरह की बातें करते हैं वे न करते। मेरा निवेदन है कि जो भी कानून आप बनायें उसे कृपया पूर्ण बनायें और उसे समाज के सब अंगों के लिये बनायें।

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

श्री जे० एस० बिष्ट : बताइये तो कि किस तरह से पूर्णता आये।

श्री कन्हैयालाल डी० बेंद्य : पूर्णता लाने का तरीका यह है कि आप खंडित कानून न लाइये। अभी आप विवाह-विच्छेद बिल ला रहे हैं, फिर उत्तराधिकार बिल लायेंगे। तो मेरा कहना है कि विवाह संस्था के अन्दर जितने प्रश्न हैं उनको एक कानून में लाइये। आपने जो हिन्दू समाज को अलग रखा है उसको अलग रखने की नीति को खत्म कीजिये और संविधान के अन्तर्गत जो हिन्दुस्तान के नागरिक हैं, उन

सब के लिये एक कानून बनाइये। यह जो अलग अलग टुकड़ों में कानून बना रहे हैं वह ठीक नहीं है। हम एक क्लासलेस सोसाइटी बनाने की बात करते हैं और फिर हिन्दू समाज के लिये ही एक कानून बनाते हैं। इस सदन के बाहर बहुत से लोग चिल्लाते हैं, जिन्होंने नारी को क्रय-विक्रय का साधन बना रखा है, वही धर्म के नाम पर हज़ारों दस्तखत करवा कर पेटीशंस सदन में भिजवाते हैं। जो लोग यह आवाज़ उठाते हैं कि यह काम धर्मशास्त्र के प्रतिकूल हो रहा है वे सामन्तवादी तत्व हैं और इन सब तत्वों का हमें मुकाबिला करना है। हमारी सामाजिक क्रान्ति तब तक पूरी नहीं हो सकती जब तक कि हम बिना किसी भेदभाव के सब लोगों के लिये एक कानून न बनायें। कई सदस्यों ने यह प्रश्न उठाया कि मुसलमान भाइयों के लिये और क्रिश्चियन भाइयों के लिये यह कानून लागू नहीं होता। मेरा कहना है कि हिन्दुस्तान में रहने वाले हर एक नागरिक के ऊपर यह कानून लागू होना चाहिये। जब राजाओं का सवाल आया तो सारे राजाओं के साथ एक ही तरह का व्यवहार किया गया। यह नहीं हुआ कि हिन्दू राजाओं को लिया और मुसलमान राजाओं को छोड़ दिया। मुसलमान होने के नाते निजाम हैदराबाद को छोड़ नहीं दिया। तो जो विवाह की संस्था है वह भी एक बिल्कुल सामन्तवादी व्यवस्था है और यदि उसको सुधारना है तो सरकार को चाहिये कि वह सारी सामाजिक स्थिति को ध्यान में रखे।

इसमें यह लिखा हुआ है कि यह सभी हिन्दुओं पर लागू हो जायेगा तो जैसा कि मैं निवेदन कर रहा था कि पहाड़ों में जनजातियां रहती हैं, और भी बहुत से

[श्री कन्हैयालाल डी० वैद्य]

जंगली जातियां हिन्दुस्तान में रहती हैं तो अगर यह कानून उन पर लागू हुआ तो वहां बजाय क्रांति लाने के उनके जीवन को मुश्किल बना देंगे। अब जब कि सेलेक्ट कमेटी से यह बिल पास हो गया है, तब मैं नहीं समझता कि माननीय मंत्री महोदय अपनी तरफ से कोई अमेंडमेंट प्रस्तुत करेंगे और इसकी व्यवस्था अच्छी करेंगे।

श्री डी० पी० करमरकर : अगर आप अमेंडमेंट्स लायेंगे तो उन पर विचार करेंगे।

श्री कन्हैयालाल डी० वैद्य : आपकी बड़ी कृपा है जो आप इस विषय पर विचार करने को तैयार हैं। मेरा निवेदन यह है कि इस बिल से यदि किसी को कुछ कठिनाइयां पैदा होती हैं तो उनको दूर किया जाये।

दूसरी बात मुझे यह कहनी है कि सरकार ने बहुत सारे कानून बनाये हैं, सरकार बहुत से अच्छे अच्छे कानून बनाती है लेकिन वे सिर्फ अलमारियों की शोभा ही बढ़ाते हैं। शारदा ऐक्ट की क्या दुर्दशा हो रही है वह आप सब को मालूम है। शारदा ऐक्ट से सिर्फ अधिकारियों ने नाजायज फायदा उठाया है, अगर कहीं किसी नाबालिग की शादी हुई तो उसमें गड़बड़ डाली और पैसा पैदा किया, इसके अलावा और कुछ नहीं किया। उन लोगों ने उसके क्रांतिकारी उद्देश्य को पूरा नहीं किया। तो मुझे सरकार से निवेदन करना है कि उसे केवल कानून बना कर ही संतोष नहीं कर लेना चाहिये, बल्कि समाज सुधार के लिये देश में वातावरण

का निर्माण करना चाहिये और देश की जनता को समझाना चाहिये कि वर्तमान विवाह संस्था में क्या क्या खराबियां हैं। जब तक कि स्त्रियों के अन्दर चेतना नहीं लायेंगे, उन्हें अपने प्रचार-कार्य के द्वारा जाग्रत नहीं करेंगे तब तक इस कानून का कोई असर नहीं होने वाला है।

हम एक बड़े महत्व का कानून सदन के सामने ला रहे हैं परन्तु समय के अभाव के कारण सदन के बहुत से अच्छे अच्छे लोगों के विचार सुनने से हमको वंचित होना पड़ा है, जिनको कि हम सुनना चाहते थे। इस कानून पर विचार करने के लिये समय का अभाव हो गया जो कि नहीं होना चाहिये था। इसके लिये एक या दो दिन का समय निकालना आवश्यक था क्योंकि जो दो हजार वर्ष की भूल है उसको सुधारने के लिये हम निर्णय करने जा रहे हैं। तो मेरा ख्याल है कि हमें केवल इस बिल को कानून का रूप देकर ही संतोष नहीं कर लेना चाहिये बल्कि समाज में जो खराबियां हैं उनको भी ध्यान में रखना चाहिये और अपनी बहनों को इस बात का पूरा मौका देना चाहिये कि वे इस कानून से पूरा पूरा लाभ उठायें। ऐसा लाभ नहीं उठाये कि धड़ाधड़ डाइवोर्स की दरखास्ते अदालतों में चली जायं।

(Time bell rings)

केवल एक दो मिनट में समाप्त करता हूं। मेरा निवेदन है कि इस देश के अन्दर राम और कृष्ण की परम्परा रही है और हमारे समाज में बहुत सी आदर्श नारियां हुई हैं। मैं कहूंगा कि महात्मा गांधी जिस मां के पुत्र थे या जवाहर लाल जी जिस मां के पुत्र हैं, वे नारियां कोई पेरिस या इंग्लैंड हो कर के

नहीं आई थी और नये स्वरूप से शिक्षित नहीं थीं बल्कि वे सब भारत की नारियाँ थी जिन्होंने कि ऐसे नररत्नों को पैदा किया। इस देश के अन्दर नारियाँ अपना बहुत ऊँचा स्थान रखती हैं और जो भी उनमें गिरावट आई है उसका मुख्य कारण आर्थिक है। सब से बड़ा अभिशाप गरीबी है। अभी श्री आर० सी० गुप्ता साहब ने कहा कि यदि पुरुष स्त्रियों से अपने खर्च के लिये माग करेगे तो पुरुष के लिये यह बहुत बुरी बात होगी। मैं कहूँगा कि आज भी बहुत से पुरुष हमारे समाज के अन्दर स्त्रियों की आमदनी पर गुजर करते हैं, उनकी कमाई में रेंटी खाते हैं और अपनी जिन्दगी बिताते हैं। यह सब गरीबी का अभिशाप है और हमें उस गरीबी को मिटाना है।

तो अन्त में मेरी प्रार्थना है कि इस कानून के अन्दर जो खामियाँ हैं उनको दूर करना चाहिये। उसके लिये प्रयत्न करना चाहिये और जल्दबाजी के अन्दर यह कह कर कि समय नहीं है, जिन पहलुओं पर विचार करना चाहिये उन पर विचार न करे। ऐसी दशा में यह कानून पास तो जरूर हो जायेगा, लेकिन उसका जो क्रान्तिकारी स्वरूप आना चाहिये वह नहीं आ पायेगा। अतः मेरा निवेदन है कि इस विधेयक पर पूर्ण ध्यान दे कर विचार करना चाहिये। इन शब्दों के साथ इस विधेयक को लाने के लिये मैं मंत्री महोदय को और सरकार को बधाई देता हूँ और इसका समर्थन करता हूँ।

DR. RADHA KUMUD MOOKERJI—Madam Vice-Chairman, the observations that I feel inclined to make on the Bill before this House are influenced, among other considerations, by two facts. The first of these facts is that this Bill is opposed by a vast majority

of the Hindu population for whom it is meant. I agree that it is sometimes the duty of the legislature to give a lead to the country and pass social legislation in advance of the times. But normally speaking it is the supreme duty of the legislature to follow the mandate of the people and not go against their expressed wishes. I may be wrong in my assessment of this fact, but I put it to Government and also to this House that they must note that this Bill is highly controversial in character and has been opposed by a large majority of our people. My second fact is this that the Government were pleased to circulate this Bill for the purpose of eliciting public opinion, but unfortunately the Government is not prepared to respect its own commitment in the matter and has practically ignored the most authoritative opinion that has been expressed with reference to this Bill by many competent judges. I, therefore, feel that I am influenced by these two facts which cannot be denied. The first fact is the opposition of the people concerned; and the second fact is that the authoritative opinion of the country is not very favourable to the Bill.

Now, I have also some objections to certain general aspects of the Bill. In fact, I am anxious to record my objections to some of the principles and provisions of this Bill, because, in my opinion, the philosophy upon which it is based is not quite sound from the sociological point of view and militates against the very spirit of Hindu civilization. It seeks to destroy the principle which differentiates Hindu from western civilization. The Bill is inspired by the western view of life which attaches more value to the romance of marital relations and married life than to parenthood in which marriage attains its fruition. The Hindu system conceives of parenthood as something that is permanent, unchangeable, and inviolable. The Bill makes it changeable and subject to emotional whim and caprice. We are always talking glibly and taking pride in India's superiority in spirituality. But spirituality must not be in the air

[Dr. Radha Kumud Mookerji]

It must be embodied in institutions which can influence and shape the common life of the country. It must be brought down from the clouds into the market place, from the sphere of intangible ideas to that of the concrete. The Hindu family is the most typical expression of Hindu spirituality. It is based on the principle that marriage must be indissoluble just as parentage is. It is not subject to the play of passions. It is not subject to the secular law of contract. The Bill seeks to change popular psychology as to the sanctity of marriage and family and loosen the ties of family as the very foundation of society. It thinks more of husband and wife than the father and mother in whom they are to be permanently merged to protect the child and the future of the race. The *Upanishads* presenting Hindu thought at its highest enjoin: "*Pitridevo Bhava Matridevo Bhava.*" The purity, the integrity of the family is a supreme social concern. That is why Asoka, whose ideals we have adopted in fashioning our National Flag, was never tired of preaching that religion like charity must begin at home and be founded on the purity of the family, the cultivation of proper domestic relations towards father, mother, preceptor, friends, acquaintances and kinsmen.

Recently, the University of Chicago convened a symposium of the learned sociologists of U.S.A. to discuss the vital social problem of America on the future of the American family and the consensus of opinion at the symposium was that family ties must be tightened up as far as possible, in the interests of the child as the supreme concern of society.

Now, as regards the second fact, to which I have referred, I will just place before the House certain very authoritative opinions and I ask the House to consider the importance of these. First, I shall cite the opinion of the hon. the Chief Justice of the Madras High Court—who cannot be accused of any special prejudice in favour of sanskrit culture or learning. He says:

"I would confine the application of the provisions as to divorce only to persons who have chosen to marry under the Special Marriage Act. Those who marry according to the *Sastric* rites should be governed by the spirit of the *Smritis* which is against the doctrine of divorce. Such a course is more advisable at the present state of Hindu society and more suited to the social sense of the community today. I am, in any event, against any provision for judicial separation." Now, I come to the authoritative opinion of Justice Venkatarama Ayyar of the Madras High Court. He says: "Reading the Bill as a whole, the impression which I have formed is that it is not calculated to promote peace and happiness in home Some say that it is purely an enabling measure. But, frankly it must be recognised that an enabling legislation in social matters must result in the entire society being affected.... It is the experience of all societies that if married persons realise that it is not easy to dissolve the marriage, they will adjust their differences and in the long run there will be a happy domestic life. The notion that marriages can be dissolved easily will tend to the break-up of the home on trifles. It is therefore, necessary that the provisions as to divorce should be stiffened." He further says, "Reading the Bill as a whole, it leaves the impression that marriages can easily be dissolved. I should not be surprised, speaking as a Judge of the High Court, if within a few years after the passing of the Bill, it becomes necessary to establish hundreds of courts all over the country for dealing with marital cases under the Act."

SHRI S. N. MAZUMDAR (West Bengal): That has not been the case in Madras, Baroda or Saurashtra.

DR. RADHA KUMUD MOOKERJI: I am simply placing before you some of the opinions expressed.

Now I come to the opinion of Sir S. Varadachariar, who was a Judge of the Supreme Court. He says, "Seeing that in practice monogamy is almost

the rule, opinions may well differ as to the necessity for a statutory prohibition of polygamy. By long tradition in this country, taking a second wife does not always involve a rupture with the first wife, or putting her away."

I do not want to take more time of the House, but I wish the Government especially to carefully examine the opinions of these authoritative lawyers and judges, expressed on the Bill. They should not go by the standard of quantity, but by the standard of quality. With reference to the assessment of these learned opinions, I feel that perhaps there is yet time to make this Bill less inoffensive and more beneficial to the society, for whom it is intended. I agree that there have been some improvements effected by the Joint Committee, on the clauses of the Bill, and when the clauses are taken up, I shall then have an opportunity of saying something on those clauses. But, for the time being, I say that perhaps the philosophy on which the Bill is based is not quite sound from the sociological point of view, and it militates against the very spirit of Hindu civilisation. In fact, we are all proud of the message that India has given to the world, and that message is the message of spirituality, of non-violence, and of universal brotherhood. But I am afraid, this law will let loose the forces of violence within the sacred precincts of domestic life.

श्रीमती सावित्री निगम : उप-सभाध्यक्षा महोदया, इस विधेयक का मैं हर्ष के साथ हार्दिक समर्थन करते हुये माननीय ला मिनिस्टर तथा माननीय करमरकर जी को, जिन्होंने इस बिल को पाइलट किया है, उन सब तमाम बहिनों की ओर से, जो कि इस बिल की बहुत दिनों से प्रतीक्षा कर रही थीं, हार्दिक धन्यवाद देना चाहती हूँ ।

महोदया, इस विधेयक के विषय में यह कहना है कि यह देशवासियों की इच्छा के विरुद्ध है, या देश के लोग इस विधे-

यक को नहीं चाहते हैं, सत्य का एक प्रकार से गला घोटना है । आज से नहीं वर्षों से समझदार देशवासी इस बिल के पास होने की प्रतीक्षा करते आये हैं । इसका सब से बड़ा सबूत यह है कि कांग्रेस ने अपने एलेक्शन मैनीफेस्टो में हिन्दू कोड बिल पास करने की बात कही थी फिर भी ओवर व्हेलमिंग मेजोरटी में कांग्रेस ने आम चुनावों में विजय प्राप्त की । यह इस बात का बहुत बड़ा सबूत है कि देशवासी इस विधेयक का बहुत दिनों से इन्तजार कर रहे हैं और यह विधेयक देशवासियों की इच्छा के अनुकूल ही पेश किया गया है । जैसा कि अमी श्री मुकर्जी साहब ने कहा कि यह जो विधेयक है वह देशवासियों की इच्छा के विरुद्ध है और यह स्प्रिचुअलिज्म और हिन्दुइज्म को धक्का पहुंचाने वाला है, यह सर्वथा गलत है । इसके बारे में जो यह कहा जाता है कि इस बिल का समर्थन केवल वही बहिनें कर रही हैं जिन पर इस बिल का सीधा असर पड़ता है, बिल्कुल गलत है । वे बहिन जिन पर इस बिल द्वारा सीधा असर पड़ने वाला है, वे इतनी दबी हुई हैं, इतनी अत्याचार पीड़ित हैं, कि उनमें बोलने और मुंह खोलने की शक्ति ही नहीं है । इस बिल का समर्थन तो केवल वही सौभाग्यवती स्त्रियां करती हैं जिनमें आज इतनी शक्ति है कि वे अपने पतियों की उदारता और सहयोग के कारण अपनी पीड़ित बहिनों को निरंकुश पतियों के अत्याचार से बचाना चाहती हैं और इसलिए इस विधेयक द्वारा उनका पूरा पूरा समर्थन कर रही हैं । समस्त समझदार स्त्री-वर्ग का विश्वास है कि यह विधेयक ऐसे स्वस्थ समाज का निर्माण करेगा, जिसमें पतिव्रता दम्पतियों का मान रखने

[श्रीमती सावित्री निगम]

वाले नल पैदा हो सकें जो उनके पति-कृत्य की रक्षा के लिए सारथी बनने को तैयार हो सकें। यह विधेयक निःसन्देह देश में एक ऐसे समाज का निर्माण करेगा जिसमें ऐसे बाल्मीकि पैदा हो जायेंगे और ऐसे आश्रम पैदा हो जायेंगे जहां सतियों और सीताओं के सतीत्व की रक्षा हो सकेगी।

हमारे मुकर्जी साहब ने जो रायें पढ़ी हैं, वे उन लोगों की हैं जिनके दिन बीत चुके हैं, जिनका जमाना जा चुका है। आज हमारा देश एक नवीन क्रान्ति युग से गुजर रहा है। इस सोशल लेजिस्लेशन द्वारा देश में एक नई क्रान्ति होने वाली है, इसमें किसी को कोई सन्देह नहीं होना चाहिए। मैं उनसे यह कहना चाहती हूँ कि अभी तक इस तरह का कोई सोशल बिल नहीं था। मैं उन से पूछना चाहती हूँ कि वे बतायें कि तमाम नवजात शिशु कहां से लाये जाते हैं। दिल्ली में पांच महीनों के अन्दर १२ नवजात शिशु मारे गये, इस तरह से यहां पर पाप होता है और हत्याएं होती हैं, उस वक्त उनके स्त्रीचु-बलिज्म और हिन्दुइज्म को किसी प्रकार का धक्का क्यों नहीं लगता? मिस्टर मुकर्जी ने बड़ी अजीब दलील दी कि स्त्रियां जानबूझ कर ऐसे पतियों से शादी करती हैं जिनकी पहले से पत्नियां होती हैं। बड़ा आश्चर्य है कि उन्हें इतना भी नहीं मालूम कि ९९ फी सदी स्त्रियों को कभी स्वप्न में पता नहीं रहता है कि उनके पतियों के दूसरी पत्नियां हैं। मैं उन से प्रार्थना करती हूँ कि वे अपनी राय बदलें और नये जमाने की मांग को सुनें।

हिन्दू सोसायटी के टूटने की, हिन्दू धर्म में धक्का लगने की उन्हें बड़ी चिन्ता है किन्तु

मेरा कहना यह है कि उन्होंने हिन्दू धर्म की महानता को, हिन्दू धर्म की सहिष्णुता को बिल्कुल समझा ही नहीं। हिन्दू धर्म में इतनी सहिष्णुता रही है कि उसके कारण वह अब तक फलता-फूलता रहा है। कौन नहीं जानता पांडवों और धृतराष्ट्र की जन्म-कथा? कौन नहीं जानता पंच कन्यायें अब भी पवित्र मान कर पूजी जाती हैं? हर पूजा के पहले हम पवित्रता के साथ उनका नाम लेते हैं। श्रीमन्, पर हमने सनातन धर्म का पालन नहीं किया, हम तो पोंगा-पंथी में पड़ गये और हमने स्वेच्छाचारिता का धर्म मान लिया।

SHRI K. B. LALL (Bihar): On a point of order. Is it in order to address the Chair as 'Shriman' when 'Shrimati' is there?

श्रीमती सावित्री निगम : सदियों से हमारे देश में ऐसे विषम, विचित्र और पक्ष-पातपूर्ण आर्थिक और सामाजिक नियम बने हुए हैं, जिनके कारण स्त्रियों को निरंकुशता और अपमान सहना पड़ता है। पुरुष वर्ग को तो पूरी तरह से स्वतंत्रता और खुली छूट है कि वह जिस तरह से स्त्री वर्ग को सताना चाहे सता सकता है। कानून किसी व्यक्ति के व्यक्तिगत अधिकारों की रक्षा नहीं करता है, आज का कानून तो रक्षक की जगह तक्षक बन गया है। आज इस तरह के नियम और कानून बन गये हैं जिनके कारण स्त्रियों को हमेशा ही बैकवार्ड रहना पड़ता है और उनमें तमाम सोशल डिसएबिलिटीज और खराबियां उत्पन्न हो गई हैं। हमारा देश वर्षों से गुलाम रहा है और उसमें तरह तरह की खराबियां पैदा हो गई हैं। अब हम स्वतंत्र हो चुके हैं और समाज में जितना भी बुराईयां हैं उनको हमें दूर करना है। आज हम एक सामाजिक

क्रान्ति के युग से गुजर रहे हैं। आज हम इस विधेयक द्वारा उस जर्जर समाज का कायाकल्प करने जा रहे हैं तब हमें इस बात पर पूरा पूरा ध्यान रखना चाहिए कि यहां की स्त्रियां, जो सदियों से पिछड़ी रहीं हैं, उनको पूरा पूरा सरक्षण दिलाने की व्यवस्था करें।

मुझे यहां पर एक बात और कहनी है, जिसका सजेशन श्रीमती चन्द्रवती लखनपाल ने अपने नोट आफ डिसेंट में दिया है। उन्होंने यह सुझाव दिया है कि तलाक का अधिकार १० वर्ष तक केवल स्त्री के लिए ही सुरक्षित रखा जाय, या यह नियम बना दिया जाय कि जितने विडोअर्स हैं उनको विडोअर्स के साथ ही शादी करने का हक हो। अगर हम ऐसा करते तो हम इससे स्त्रियों का स्थान ऊंचा उठाते और यह एक उचित कदम होता।

स्त्री की आर्थिक दरिद्रता को देखते हुए सरकार को दो बातों का ध्यान रखना चाहिए। पहली यह है कि स्त्री के लिए तलाक या जुडिशियल सेपेरेशन के लिए कोई कोर्ट फंस न रखे जाय और सरकार को ओर से फ्री कानूनी सलाह दे दी जाय, जैसे कि सरकारी मामलों को सरकारी वकील देखते हैं, वैसे ही स्त्रियों को कानूनी सलाह दी जाय और जुडिशियल सेपेरेशन के मामले एक महीने के अन्दर तय किये जाने चाहियें।

जहां तक एलिमनी का सवाल पैदा होता है, इस बिल में पुरुषों को भी यह अधिकार दिया गया है कि वे स्त्रियों से एलिमनी पा सकते हैं। यह सब को भली प्रकार से विदित है कि स्त्री को अपने पिता की सम्पत्ति पर कोई अधिकार नहीं है। जब तक हम स्त्रियों को सम्पत्ति पर अधिकार नहीं देते तब तक

पुरुषों को इस प्रकार का कोई हक नहीं होना चाहिए। हमारे समाज में स्त्रियों की आर्थिक दशा बहुत खराब है, वे पुरुषों के मुकाबले आर्थिक दृष्टि के बहुत गिरी हुई हैं। इस तरह उनसे एलिमनी मांगना एक प्रकार से उनके हक को भी मारना है। इसलिए जहां तक स्त्री से एलिमनी लेने का सवाल है, उसको यहां तब तक न लाया जाय जब तक कि स्त्री को जायदाद में हक न मिल जाय। एलिमनी के बारे में जो क्लोज २५ है, उसके सब-क्लोज (३) लाइन तीन में लिखा है "She has not remained chaste" तो इसका नतीजा यह होगा कि हिन्दू मोसाइटी में जो चेस्टिटी का शहरों में मापदंड है कि जहां एक हिन्दू स्त्री किसी पुरुष से बात करने लगी तो सारा समाज कहने लगता है कि यह स्त्री चेस्ट नहीं है और बड़ी खराब स्त्री है, इसी बात को लेकर पुरुष एलिमनी देने से बच जायेंगे। ऐसी स्थिति में एक स्त्री के सम्बन्ध में यह प्रूव करने के लिए केवल एक दर-स्वास्त की जरूरत रहेगी और पुरुष एलिमनी देने से बच जायगा, तो जैसे यह कहा गया है : If she is living an adulterous life or if she is living the life of a prostitute. इसको एक अमंडमेंट स्वीकार करके तुरन्त हटा देना चाहिए।

इसके अलावा मैं एक चीज और कहना चाहती हूं। मैंने ऐसे केसेज देखे हैं कि अगर कोर्ट से डिग्री हो जाती है और मटेनेंस फिक्स हो जाता है, फिर भी पति महोदय एक दो महीने रुपया देकर बन्द कर देते हैं। एक स्त्री बार बार कोर्ट नहीं जा सकती है और इस प्रकार उसको एलिमनी से कोई विशेष लाभ नहीं होता है। जैसा मैंने अमंडमेंट में दिया है, हम को

श्रीमती सावित्री निगम]

एलिमनी के लिए कोई न कोई रोक लगाना चाहिए । जो एलिमनी न दें उनको कुछ न कुछ फ़ाइन देना पड़े । मुझे आशा है कि सरकार मेरे संशोधन को अवश्य स्वीकार करेंगी ।

ऐसा मुझे प्रतीत होता है कि महंती महोदय किसी स्वप्न देश में रहते हैं । जो कांस्टिट्यूशन में स्त्रियों को अधिकार मिले हुये हैं, उन्हीं से उनको ईर्ष्या होती है, यद्यपि मेरा विचार यह है कि यदि उनको चौथाई अधिकार ही मिल गये होते तो आज स्त्रियों की हालत बहुत सुधर जाती । उन्हें यह पता नहीं है कि दहेज प्रथा ने समाज में क्या हैवक क्रिएट कर दिया है । उन्हें यह पता नहीं है कि आज डेजर्टेड वाइल्ड और विडोज़ जिन की सिस-कियां आज हवा में सुनाई पड़ती हैं, उनकी क्या हालत है । किस प्रकार से स्त्री का दर्जा समाज में इतना नीचा है कि उसे जीवन भर एक मृत व्यक्ति के नाम पर रोना पड़ता है । उसे ऐसा करने के लिए विवश किया जाता है । किन्तु इसके विपरीत पुरुष अपनी स्त्री को मृत्यु के १५ दिन के अन्दर दूसरी शादी तय कर लेता है । ऐसी दशा में मुझे ऐसा लगता है कि महंती महोदय किसी स्वप्न देश के रहने वाले हैं । आज २० वीं सदी में भी जो स्त्री के क्रय-विक्रय की कहानी है उसकी ओर महंती महोदय ने ध्यान नहीं दिया ।

बड़े आश्चर्य की बात है कि बहुत से समझदार समझे जाने वाले लोगों ने भी ऐसी अजीब दलील दी है कि अगर इसको सिविल कोड बना दिया जाय तो वे इसे पास करेंगे । यह बिल्कुल एक बहाना है और बिल्कुल एक थोषी दलील है ।

उनका कहना यह है कि यह मुस्लिम समुदाय पर क्यों नहीं लागू होता है । उन्हें चाहिए कि किसी बात के कहने के पूर्व तीन दफा सोच लिया करें । मुस्लिम समुदाय में जो स्त्रियों को अधिकार प्राप्त हैं, वे इतने अधिक हैं कि अगर उनको इस कानून में लायेंगे तो उनको और पीछे घसीट लेंगे । मुस्लिम स्त्रियों को प्रापर्टी में हिस्सा मिलता है और उन्हें मेहर से संरक्षण भी मिलता रहता है । आज मुस्लिम समाज में हिन्दू समाज से स्त्रियों की हालत कहीं अच्छी है । अगर आप यह समझते हैं कि यह कानून अच्छा है तो आपको चाहिए कि आप इस के लिए प्रतीक्षा करें कि यदि वे इसको अच्छा समझेंगे तो वे खुद इसको अपनाने का प्रयत्न करेंगे । यदि आप यह समझते हैं कि यह अच्छा नहीं है तो आप उनको क्यों पीछे घसीटना चाहते हैं ? इस प्रकार यह बिल्कुल थोषी दलील है । वैसे मुसलमानों के प्रति हमें बहुत उदार होना चाहिए और खास तौर से उस समय जब कि माइनारिटीज़ बहुत प्रोग्रेसिव हैं और उनमें स्त्री का सामाजिक स्तर बहुत ऊंचा है । मैं आशा करती हूँ कि जब तक मुस्लिम वर्ग के भाई-बहन इस विधेयक को स्वीकार न करें, इसको हिन्दू वर्ग तक ही सीमित रखना चाहिए ।

प्री ऐक्ट बायगैमस मैरेजज के बारे में जो बात निश्चित हो गई है वह बिल्कुल ठीक है कि स्त्रियों को तलाक का अधिकार मिलेगा ।

कस्टडी आफ चिल्ड्रेन के बारे में मुझे यह कहना है कि मां को ही यह अधिकार १२ वर्ष की उम्र तक मिलना चाहिए । और यदि पिता को तलाक़ दुश्चरित्रता के कारण दिया गया है तो

लड़की के मामले में गार्जियनशिप का अधिकार उसकी शादी तक मां को ही मिलना चाहिए ।

एज के प्रश्न को लेकर के यहां काफी वादविवाद हुआ ।

(Time bell rings.)

मैं केवल दो मिनट में ही समाप्त कर दूंगी । आज के इस प्रगतिशील युग में जब कि फैमिली प्लानिंग का हम लोग समर्थन कर रहे हैं और यह देख रहे हैं कि कितने नन्हे बच्चों की अकाल मृत्यु होती है और नन्हें नन्हें बच्चियां विधवा हो जाती हैं और जल्दी शादी होने के कारण इकोनामिक इंडिपेंडेंस नहीं हो पाती है, ऐसी स्थिति में मेरा निवेदन है कि विधेयक में जो एज निश्चित की गई है वही ठीक है और मैं उसका समर्थन करती हूँ । जो लोग यह कहते हैं कि शारदा ऐक्ट से शादी की उम्र गांवों में नहीं बढ़ी, वे सत्य को धोका देते हैं । वे कहते हैं कि हम को कोई एज लिमिट नहीं रखनी चाहिए क्योंकि शारदा ऐक्ट सफल नहीं हुआ, तो उस दलील का यही जवाब हो सकता है कि डाकेजनी के लिए कानून बनाया है, फिर भी डाकेजनी होती है तो क्या उस कानून को समाप्त कर देना चाहिए और डाके को कोई जुर्म नहीं मानना चाहिए । इसलिए यह जो शारदा ऐक्ट की दलील दी जाती है उस पर कोई ध्यान नहीं देना चाहिए । मेरा निवेदन यह है कि १६ और २१ वर्ष की जो उम्र रखी गई है उसी को स्वीकार करना चाहिए ।

डाइवोर्स के सम्बन्ध में लोगों ने कहा कि यह जो तीन वर्ष की अवधि निश्चित की गई है वह अधिक है । अगर हम इस अवधि को कम करते हैं तो फिर इस

विधेयक से लाभ के बजाय हानि ही होगी आखिर विवाह एक पवित्र बन्धन है । इस लिए उसकी रक्षा के लिए हमको पूरा पूरा सहयोग देना चाहिए । इस बारे में हमें स्टेप बाई स्टेप चलना चाहिए ।

इसी प्रकार ऐसा लगता है कि कांजुगल राइट्स के क्लॉज को मिसेज मुंशी ने समझा नहीं । इससे उन पति पत्नियों को एक होने का फिर से मौका मिलेगा जो कि अपने मां बापों के झगड़े के कारण इच्छा होते हुए भी एक साथ मेल से नहीं रह पाते ।

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): You can speak on these points during the clause by clause consideration. Now you may confine yourself to general remarks only.

श्रीमती सावित्री निगम : अन्त में मुझे यह कहना है कि हिन्दू धर्म और हिन्दू नारी का सतीत्व इतना महान् है कि ऐसे एक नहीं बरन् सैकड़ों विधेयक पास हो जायें तो भी न तो हिन्दू धर्म को चोट पहुंच सकती है और न उसको धक्का लग सकता है । अतः मेरा निवेदन है कि सब को समान भाव से इस विधेयक का स्वागत और समर्थन करना चाहिए ।

SHRI D. D. ITALIA (Hyderabad): Madam Vice-Chairman, I have great pleasure in supporting this Hindu Marriage and Divorce Bill. Some of my friends may wonder why I welcome this Bill. I do so for two reasons. Firstly I think it is high time that some progressive social reforms for the advancement of the vast population of our country are introduced. The growth and progress of our society is entirely depended upon the social reforms and progressive measures that we bring about. Secondly, I support this Bill because I feel that my Hindu friends should not think that the Parsis are against such reforms. The Parsis

[Shri D. D. Italia.]

always welcome such progressive measures. Therefore, I heartily congratulate the hon. the Law Minister for introducing this important piece of legislation in spite of oppositions and various objections raised by the orthodox people. In this Bill, there are two main provisions, viz. monogamy and divorce. I think these are not anything new, because in all advanced countries and also in some of the States in India, and in certain communities such Acts are in existence. Among Parsis, we have a Marriage and Divorce Act which was introduced in Bombay as long ago as 1876. A very large portion of the Parsee population are staying in Bombay. In our Parsee Marriage and Divorce Act there is monogamy as well as divorce. During the last 80 years the Parsees always respected monogamy and they never thought of having polygamy. During the last 80 years I have not heard or seen a single Parsee who has been drawn to the court for polygamy and prosecuted. In my opinion polygamy is practically disappearing from many communities and societies. Even among Muslims where they are free to marry four wives according to Sariat they prefer to have only one wife. I think the economic condition of our country is such that it is very difficult even to maintain one wife and so I don't think anyone will consider having more than one wife. Under the Parsee Act divorce is permissible but even there no one thinks it advisable to go to a court of law for divorce for simple reasons unless the differences are of such a nature as not to be reconciled. Only under compulsion and unavoidable circumstances they have, in a few cases, had resorted to the court for divorce. I am glad that in this Bill marriageable age is going to be raised for girls from 15 to 16 and for boys from 18 to 21 years. It is greatly essential for the couple to understand their responsibilities towards each other and so the marriage age has necessarily to be increased. I think the Bill which is introduced viz., the Hindu Marriage and Divorce Bill is similar in many respects to the existing Parsee Act ex-

cept in one respect viz., in the Parsee Act marriage between cousins is permissible i.e., marriages between the children of two brothers, between children of two sisters and between children of the brother and sister whereas in this Bill marriages between cousins are prohibited. The Parsee population is the smallest in the world and there are hardly 1,20,000 people in this world and for the growth of our community, it is advisable to have marriages between cousins otherwise there will be great difficulty in finding partners for them.

[MR. DEPUTY CHAIRMAN in the Chair.]

As regards restitution of conjugal rights, judicial separation, custody of children, the three years period for presenting divorce petition after marriage, and registration of marriages, etc., they are all provided in our Act too. Some of the hon. lady Members objected to alimony being paid to the husband. When woman wants to have an equal right, I don't understand why there should be discrimination and objection to paying alimony to the husband. After all the court will decide whether the woman is in a position to pay the alimony, and to what extent she will be able to pay and so I think that clause should remain. But to my mind, there is no doubt that a self-respecting husband can never ask for alimony from a divorced wife and disgrace himself. In my opinion marriage must not be considered to be a mere farce and so divorce must not to be made easy. I am glad that in this Bill divorce is made somewhat difficult.

Finally, I would like to draw the attention of the hon. Law Minister to the restriction imposed that after divorce, one or the other cannot remarry before the lapse of one year. I do not understand why there should be such a restriction. In my opinion, as soon as a decree is passed by a court for divorce, and the period of appeal is lapsed, then the parties must be left free to remarry whenever they like. With these few words, I whole-heartedly support this Bill.

SHRI S. N. MAZUMDAR: Mr. Deputy Chairman, I shall not go into all the details because the time is also very short. Is my time fifteen minutes or ten minutes?

MR. DEPUTY CHAIRMAN: You can take fifteen minutes if you want, as the maximum.

SHRI S. N. MAZUMDAR: Then I shall try to economise as far as possible. First I must say that I was rather surprised and pained to listen to the speech of Dr. Radha Kumud Mookerji. I have great respect for him—unfortunately he is not here—and I have read many of his books and in fact I think myself almost as a student of his though I have not been his student directly. Well, when we think of this piece of legislation, it is true that it is a very controversial measure and opinions from different sides have been expressed by eminent persons no doubt but equally eminent persons have expressed their opinions in favour of passing this piece of legislation. Moreover, as has been pointed out by many early speakers, this piece of legislation has been before the country for a long time and we know of this background and so it is not necessary to go into the details of that. The Rau Committee toured the country, and examined witnesses from various sections of life and actually its observation is that among women who opposed the introduction of such measures, they are women from the aristocratic class. But the majority of progressive women were in favour of introducing this piece of legislation.

Now I respectfully like to submit to the opponents of the Bill like Dr. Radha Kumud Mookerji that when we think of such measures, we should also take into consideration not only the spirit of the times but also should re-examine our attitude to the past. We are proud of our ancient heritage and we should preserve all that was fine and best in our tradition. I am in full agreement with that and I am

not less zealous in this matter but in order to take full advantage of our ancient traditions, it is really necessary to have a historical view of that and so far I have come across particularly one author of repute—Dr. Kasi Prasad Jaiswal—whom I found taking a very realistic view and at the same time a scientific and historical attitude to the question of our heritage and also to the question of the development of Hindu society. As has been rightly pointed out by many hon. Members, the Hindu society has never been static because social forces are such that no society can remain static. There have been changes in society—changes for the good and changes for the bad—both. Hindu law has never remained static. There have been changes in it, ideological changes, and the results of these changes we find embodied in our treasure houses of ancient knowledge, in the *Smritis*, in the *Dharma Shastras*, in the *Artha Shastras*, and we should not take only one side of this question. I respectfully submit to those hon. Members who oppose this Bill to go through the interpretations of the development of Hindu society which have been presented by Dr. Jaiswal. He has shown the development quite clearly. Some people seem to think as if there was only one immutable or eternal law based on *Dharma*. That is not the fact. What was prevalent in Kautilya's times was repudiated in the later period by *Manu Smriti*. As regards *Manu Smriti*, according to Jaiswal it was actually compiled in the period of the Brahminical revival, after the Buddhist period. And so many of the liberal things we find in the period of Kautilya are repudiated by *Manu*. But things could not stand there. Things had to develop and due to the influence of various forces, society also had to adapt itself to changed conditions. Therefore, we find that after *Manu Smriti* we find various other *Smritis*. They do not agree with each other on many points. We find that Yagyavalkya to a great extent differs from *Manu*. The position of women in *Manu Smriti* was very inferior; but Yagyavalkya regards woman as a full legal

[Shri S. N. Mazumdar.]

person. He gives woman full rights of inheritance. We find after Yagyavalkya that in *Narada Smriti* they have gone still further and *Narada Smriti* is sometimes called the most secular of the *Smritis*. In *Narada Smriti* which was quoted by some hon. Members here, we find that in certain circumstances the remarriage of even a married woman is allowed. Actually in this Bill we are today not going very far beyond *Narada Smriti*. Later on, it must be admitted, if we look at these things from a historical point of view, that the later commentators of the *Smritis* tend to be more and more conservative in their interpretations. Sir, I would commend—though I am nobody to commend such a great scholar as Jaiswal—a careful study of the views of this eminent scholar. He has pointed out how the conditions of the times were reflected in the *Smritis* in the *Artha Shastras* and in the *Dharma Shastras*. He has pointed out that *Manu Smriti* is a product of the Sunga period, after the down-fall of the former Buddhist kingdoms and after the period of ascendancy of the Brahmins. And in it there were certain, what may be called retrograde steps. In *Yagyavalkya Smriti* which was a product of the period of Satavahana empire, when commerce was expanding, when trade was expanding, when the philosophy of Buddhists had influence, we find there were very liberal provisions. As was pointed out by Shri Gopikrishna Vijaivargiya, one of the important features of this Bill is that it abolishes caste, so far as marriage is concerned. In this matter also, if we go through our past literature, if we take a historical view of the development of our society, we find that in *Manu Smriti* the caste distinctions are not only rigid but *Manu Smriti* is very vindictive against the *Sudra*. But in *Yagyavalkya's* time we find that the treatment to *Sudras* recommended by the *Smriti* is not so vindictive and it is not so rigid. There has been some liberalisation. In this way, if we really look into our heritage, then the lesson which in my opinion we should take from a study of our ancient history

and our heritage, is that Hindu society also was never static, but that it was developing and progressing. It absorbed all that was good, even if it came from outside and it also evolved from within. There were then great conflicts of opinions. There were social changes. There were social upheavals and social revolutions. The philosophy of Buddhists arose and it had a very liberalising influence on our social conditions. We should not forget that. We should also not forget in our zeal to support this Bill the real facts and put some other and wrong interpretation on our history. I would like to mention this just because my hon. friend Shri Deogirikar while supporting this Bill gave an interpretation of history which I think is a wrong one, and which I think would give us a wrong outlook. Unfortunately, I have not the time to go into all the necessary details, but I will only point out here that the position of women in the *Smritis*, in the pre-Buddhist period was inferior and they were definitely dependent on men. Woman was inferior and man was always given the superior place. But after the Buddhist period we find a new outlook or a new orientation, because the Buddhists allowed woman even *pravrajya*. Nuns could own property and she had many other rights. Later on there was again a somewhat retrograde step. It will be wrong to say that only the Aryans honoured women and not the others. I refer to this because there was mention of Mangols and others here. I raise this point here because we should not forget that in India ours is a composite civilization. It is not the product of the Aryan civilization alone. It is a composite civilization for it is the product of the Aryan, the Dravidian, the pre-Dravidian and other civilizations. All these cultures have mingled into one harmonious whole. Let us bear in mind that even in India even today where there exist remnants of the matriarchal system—as for instance in Malabar or among the Khasis in Assam—the position of women is very good, it is not inferior to that of men, and in fact their position is in some respects even superior to that of

men and they have an honoured position.

Coming to the general question of this Bill, I would submit to the opponents of the Bill that if we really want to carry forward our ancient heritage, then we should not think in terms of an immutable Hindu civilisation, as if Hindu society and Hindu philosophy are something hide-bound, something immutable, something which cannot be changed. Secondly, I would like to submit to the opponents of the Bill that while they raise the bogey that with the passage of this Bill, the passage of the enabling provisions of this Bill enabling divorce be sought and granted in certain cases, our society would go to pieces, they are by this argument not doing a service to our society. Actually, I would submit that they are doing a definite disservice to Hindu society. In one breath they raise the argument that our ideals are immutable, that our ideals are so strong that they last for ever. But in the very next breath they advance the argument that if some enabling measure like this Bill is passed then society will go to pieces. I beg to differ from such hon. Members. After all, the provision of divorce is not something new among us. As I have already stated, even in *Narada Smriti* they had allowed the re-marriage of a married woman, though that may not be strictly called divorce. Secondly, Hindu society had to adapt itself to various forces and exigencies. So among the so-called lower castes and in the vast majority of people in Hindu society, divorce was granted by custom. Among these classes in which divorce is easy, divorce is not easily resorted to. I shall not be wrong, I think, if I claim that married life among the so-called lower classes is far more stable and happy than among the others.

5 P.M.

Secondly, Sir, some of the States in India had enacted divorce Acts long before this but it is the experience of these States that after such Acts were passed there have been fewer cases of

divorce. Nobody has made the claim that in Madras or Bombay or Saurashtra or even in Malabar where divorce conditions are very easy the Hindu society has gone to pieces. I have not come across even the most stalwart of champions of the Hindu Mahasabha making such a claim. What does it show? It shows that where there is scope for adjustment, where there is a spirit of living with the times, people do adjust themselves. We need not fear that the passing of these enabling provisions will lead to a ruin of the society. It is true that if we take the case of certain Western countries, we will find that divorce has become very easy and loose but there also if we really make a critical sociological study we shall find that this is prevalent only among the parasitic classes and it is only in such cases that there is a rush or a queueing up in the divorce courts. This is evident among the film stars and such other people but honest and poor working people in those countries do not take to such things. Even though such enabling provisions are there, such people have not taken advantage of it and have not rushed to the courts for a dissolution of their marriages. Whenever people live together in matrimony there must be and is bound to be adjustment and a psychological blending. Where a few people go to the divorce courts, they will go there when it has become absolutely necessary and absolutely impossible for them to live together. If we examine the cases the importance of which is rather exaggerated, we will find that this is prevalent only among the exploiting classes, who are now in a decadent state only among the parasitic section where they exalt the cult of sex, exalt the cult of the base instincts in man. It is only in such society that you see this mad rush to divorce courts.

My time is over and so I will not enter into a discussion regarding the provisions of the Bill about which I have given a minute of dissent. I shall refer to those matters at the clause by clause consideration stage.

SHRI K. C. KARUMBAYA (Ajmer and Coorg): Mr. Deputy Chairman,

[Shri K. C. Karumbaya.]

I congratulate the Government and the hon. Minister for having brought up this Bill. It is a very progressive and an important social measure. I wonder why the opposition has brought in too much of heat and controversy in opposing this Bill. The Bill is a very simple one and it revolves on only one thing—monogamy and this also is a permissive thing in nature. The opposition said that this is the first of its kind wherein Hindu society has tried to modify the social custom. As we know, in the last one hundred years, so many changes have taken place in the Hindu society; the aboriginal custom of *sati* or *sahagamana* was abolished about one hundred years ago by one stroke of the pen. The Widow Remarriage Act was introduced as also the Sarda Act. So many social legislations were brought in and the Hindu society has not gone to pieces, as the opposition to this Bill has made out. It is not correct to say that the Hindu society will be ruined; on the other hand, we find that it is progressing slowly. The majority of the Hindus have been practising widow remarriage from time immemorial. Unfortunately, we have no statistics but if we had those facts, we would know that it is only those communities who are supposed to be not so very civilised or who are supposed to be lower in status who have enjoyed their family life better than those so-called higher classes adopting *sati* or *sahagamana* or child marriage. It is only these people who are not adopting widow remarriage.

The word 'co-existence' has been recently brought to the front regarding international life but one of our friends who spoke before me was using that word in a very derisive manner but I would give a different meaning to that word. It is surely in existence from time immemorial; each community in Hindu society has been practising its own ways of social life and customs and they have been living very happily. I would call this co-existence. After all, the Bill before us is permissive in nature.

We tell our friends who oppose this Bill that it is only a permissive measure; nobody is compelled to have recourse to that Bill but we allow only those who want to take advantage of the provisions to do so. Our learned *pandits* have been bringing forth a lot of objection and they have warned us that Hindu society and Hindu culture would go to dogs. We have had so many changes and yet the society did not go to dogs. Whenever social changes are brought, such criticisms are not rare. Such great men as Buddha and Shankara were not spared. Gandhiji also was not spared. When he entertained a *harijan* for the first time in the Sabarmati Ashram, the people refused to give help to the Ashram and Gandhiji was almost under ex-communication. These things are, therefore, not new and I would ask the hon. Minister in charge to see that the Bill is passed as it has emerged from the Joint Select Committee without any change whatever. The Joint Select Committee has given enough attention to it and this Bill suits the present circumstances. After all, it is only a permissive measure. If any change is at all necessary, there is only one and that is with regard to the age of the girls. The age of sixteen has been fixed and it is said that the girls can marry only with the permission of either the parents or of the guardians. The only change necessary is that permission of the parent or the guardian should be obtained till the girl is 20 or 21. There also I do not think that an amendment is necessary and I leave it to the hon. Minister in charge to do. The Bill might be passed as it is and I congratulate the hon. Minister and the Government for having brought the Bill.

MR. DEPUTY CHAIRMAN: Mr. K. B. Lall.

SHRI K. B. LALL: I choose not to speak in protest because I think there is no order followed so far as the calling of the names is concerned.

Unless there is a remedy found, once and for all, I think it is no use speaking.

MR. DEPUTY CHAIRMAN: You are not speaking?

SHRI K. B. LALL: I am not speaking.

SHRI KISHEN CHAND: Mr. Deputy Chairman, we are discussing the motion to take this Bill into consideration. I would have liked the hon. Minister to have given a thorough justification of every clause and explained to us why the clauses in the original Bill were changed by the Select Committee. It is rather curious to find the hon. Minister saying that he is prepared to accept amendments on it; if so the list of amendments should be given by the hon. Minister who pilots the Bill. He must carefully explain what importance is attached to the various clauses and to the alterations made by the Select Committee in them.

Principally this Bill is very similar to the Special Marriage Act except for some minor changes here and there and if it were not for those minor changes I think it would have been far better if the hon. Minister had said that the Special Marriage Act is applicable to all Hindus. By the addition of one sentence there would have been no need for this Bill. When we enact a separate Bill called the Hindu Marriage and Divorce Bill, we must consider what is the basic idea behind this Bill. It has been pointed out by several hon. Members that the basic idea is monogamy and side by side with monogamy the natural consequence of divorce will come in. I fully concur with the idea of monogamy in spite of the fact that there will be certain cases of hardship, and in certain cases women would have preferred bigamy to divorce. Take for instance, the case of a husband who is very very keen to have children and the wife is unable to produce them. Now under this Bill some sort of faked-up excuse will be found for

divorcing the woman. It is quite possible that the woman would have liked to continue as a second wife and permitted her husband to marry again. Anyhow, considering the larger context that the hardship involved will be small as compared with the benefit that will be derived, I would certainly say that I welcome the idea of monogamy. But Members should not be under the impression that it will be an unmixed blessing. Once we adopt this idea of monogamy, the question of divorce arises. I submit, Sir, that the entire discussion in this House is really centring round this idea, and in the matter of divorce whether it should be easier or a little more difficult. As I said before, divorce is a natural consequence of monogamy because in life it is possible that misfits may have married and when misfits have been married, it is not advisable to continue the misery in their life and the law must permit a divorce.

Support for this Bill has come from various quarters for various reasons. Hon. Members of the Communist Party have supported it because in their political theory religion has no place. They think that religion is really a dope for misguiding the poor man, for giving him some sort of consolation, and they want the removal of religion as early as possible. I submit, Sir, that the support to this Bill that has come under the garb of modernism is really an attempt to disrupt society, an indirect attempt to bring religion into contempt. Then on the other side support has come from certain ladies outside the House who probably have frustrated lives or have been childless widows and a large number of signatures have been obtained. But we should carefully consider, when we are examining this Bill, whether the clauses on divorce are really suitable or not, whether they are not too easy, and eventually whether they are not going to lead to the disruption of Hindu or more correctly the Indian society. As a matter of fact, I would have liked that

[Shri Kishen Chand.]

this Bill was called the Indian Marriage and Divorce Bill, and amendments have been sent to that effect, because under the definition of 'Hindu' we have included so many religions of the world like Buddhism, Jainism, Sikhism and many other religions of the tribal people. When you use the word 'Hindu' to cover all these religions, why don't you call it the Indian Marriage and Divorce Bill and in one of its clauses make the exception, that this Bill will not apply to Muslims, etc.? By just that one line that this Bill will not be applicable to the Muslims you could have attained the objects of this Bill and yet not introduce a Bill with a religious name in it in a secular State like ours. I think that the amendments that I have sent in, if adopted, will change the name of the Bill and yet the scope of its application will be the same as at present.

The question of divorce is really dependent upon our attitude to marriage. If marriage means a civil contract between two persons who want to lead more or less independent lives and live together for the sake of economic adjustments, it will give a completely different outlook and in that case I suppose these divorce laws are not easy enough and there should be still more easy divorce laws. There should be a law of mutual consent. One day they are married; the following day they can divorce themselves; as the two individuals want to lead separate lives and their living together will not be conducive to economic necessity. My concept of marriage is different. My concept of marriage is that the two together harmonise in such a way that they really become one person, and if this ideal be adopted the result will be that I shall try to make the conditions for divorce as strict as possible, so strict that very very few persons will be able to take advantage of that provision and in only such cases where there is real hardship divorce will be possible. Otherwise adopt the other concept and go in for laws similar to the Special

Marriage Act where there is mutual consent and you can have divorce at any time. If we concede that the whole structure of society is based on families and we want to live in families, then for the continuity of the family it is essential that when the children are growing up there is no breaking-up of the family. In the first two or three years of married life there is the glamour of marriage. After that children start coming in. There are financial difficulties; there are all sorts of troubles. The result is that the attraction between the husband and the wife is naturally less and it is in this period that the breaking-up of families generally takes place. When the children are growing up, if you break up the family, you are not only separating two persons but you are depriving the children of the guardianship of their parents. Hon. Members have said that the custody of the child should be with the mother. Up to the age of five it may be right, but after the age of five when the child wants education, it is a matter of common acceptance that the guardianship of the father is very essential, the guidance of the father is essential to mould the character of the growing child. So I do not think it will be advisable that after the age of five the child should be placed in the custody of the mother. He should have the custody of the father and yet he wants the affection of his mother; and so the difficulty arises. I have sent in an amendment that no divorce should be possible after seven years of marriage. When two persons can live together for seven years, when they have enjoyed each other's company, and the prime of youth has gone away, when the woman is, about 27 or 28 or the man is over 30, is it fair to break up that family? If they could not adjust themselves they should have known this fact earlier and they should have separated. When they were young they could have married again and they could have settled down in a new life. They would not have so many children. Of course, those who have married in the past, for them

you can give a period of one year during which they can seek divorce. But all marriages that take place after the enactment of this Bill should be governed by this rule that the divorce will only be permissive after two years of marriage and before seven years of marriage has elapsed. After seven years of marriage, whether for good or evil, they are joined together for life and nothing should separate them. It has been pointed out that if a woman or a man becomes unhealthy and contracts any disease after, say, ten years of married life is it fair that after living together for ten years one should divorce the other and not be handy and helpful in taking care of the other?

Then, a great deal of objection has been raised about alimony. One hon. lady Member all the time she spoke was referring to 'the cart before the horse'. I could not understand how the succession law is more important and should be taken up before this Hindu Marriage and Divorce Bill.

SHRIMATI SAVITRY NIGAM: I suppose the hon. Member feels.....

SHRI KISHEN CHAND: I am answering you (Shrimati Savitry Nigam). The hon. Member thinks that in this country where eighty per cent. of the population lives in rural areas, where they have got five acres of land, the daughter should also add to the fragmentation that is already taking place, that out of the five acres of land, the daughter should also be given a share. Probably, she thinks that—under our present law, if the father leaves a debt, the sons have to make it good—the daughter, or son-in-law or daughter-in-law should also be burdened with that debt, debts contracted for giving dowry to the daughters. It is all unrealistic. Persons who have never had children to marry do not realise the difficulty. They do not realise the actual situation. They simply say, "It is putting the cart before the horse." In the urban areas also, how many people

leave property behind? Probably, at the most one house—one house for all the children to live together. The hon. lady Member wants the son-in-law and the brother-in-law to live together and create trouble.

DR. SHRIMATI SEETA PARMANAND. What happens when there are more sons?

SHRI KISHEN CHAND: And then I should like to know: Is this alimony paid out of patrimony or is it a current recurring expenditure from what a man or a woman earns according as he or she is the guilty person? It is a basic fact that it is the guilty person who will have to pay. It is not the innocent person who has to pay even if he is capable of paying. Supposing the wife seeks divorce from the husband on account of some act of the husband, even if the wife is a rich woman and the husband is a poor man, she can claim alimony.

DR. SHRIMATI SEETA PARMANAND: Suppose the husband is the guilty man?

SHRI KISHEN CHAND: If the husband is the guilty person and the woman is seeking divorce and the woman is rich, in that case the husband cannot claim any alimony from the woman, because it is only the guilty person who has got to pay the alimony. On the contrary we expect an adulterous woman who has been divorced by her husband, and if she is a rich woman, she will have to pay alimony. I will give you one example. You know Field Marshal

MR. DEPUTY CHAIRMAN: No names need be mentioned.

SHRI KISHEN CHAND: Well, Sir, he is not a Member here. It is a thing which has come in every paper.

MR. DEPUTY CHAIRMAN: You can say all that without mentioning the name.

SHRI KISHEN CHAND: He was formerly the Commander-in-Chief of

[Shri Kishen Chand.]

India. His wife left him and married some other man. There was a decree, and the injured husband was paid ten thousand pounds as damages. In this House several hon. Members have spoken of a sense of chivalry and that it is against chivalry. I do not see where the conception of chivalry comes in. It is after all a simple case of justice. Whether the party is poor or not, one party is wrong and whichever party is wrong must be made to pay some sort of damages for the wrong inflicted on the other party. It is not a question of chivalry at all. It is a question of right and justice. The alimony will not be paid out of patrimony. If the hon. Member wants the daughters to share the property and the debts of the father, she is welcome to do so; but I think that most hon. Members will strongly oppose that; in the small land that is available in our country as patrimony, they will not introduce the daughter in it at all.

DR. SHRIMATI SEETA PARMANAND: What will you do if you have more sons?

SHRIMATI PARVATHI KRISHNAN (Madras): It would be bad luck.

SHRI KISHEN CHAND: It is not a question of how many sons or daughters one has. Does she want the debt of the father to go to the daughter also? They only want things which are favourable to them and not the unfavourable part at all.

As I said in the beginning, on the whole this Bill, taken together, has tried to compensate for various items. There are some clauses which will act as a deterrent against divorce; and some clauses which will put obstacles in the way of easy judicial separation, and all that thing. On the whole, I think, this Bill is a fairly good attempt at compromising various sections of public opinion. But the spirit of some of the amendments is to so shape the Bill, that the counter-balancing parts are distorted in a way that the balance is lost. So, I would submit that it was the duty of the Minister piloting this Bill to have clearly explained to

us how the Select Committee in their wisdom so adjusted these various clauses that this Bill is more or less approved by all sections of the House, except for some alterations which will have to be made. For example, I may suggest one alteration. In the Indian Penal Code, enticing away a married woman is a penal offence. After the passing of this Bill, there will be no need for such a clause, because marriage is a civil contract and under a civil contract if a woman leaves the custody of her husband, naturally it is a civil act and there will be a civil law under which compensation may be given to the aggrieved person. Similarly, adultery under section 497 of Indian Penal Code will have to be amended. I have sent amendments relating to the repealing clause. I am only referring to clause 30 of this Bill. In the repeals I have added those two sections of the Indian Penal Code.

SHRI D. P. KARMAKAR: Sir, would my hon. friend like that enticement should be free after the passing of this legislation?

SHRI KISHEN CHAND: The hon. Minister has adopted the very idea that it is not enticing away. After all, the woman must be going of her own will. In the fundamental rights if women want to exercise their right, who can stop them? I am trying to say that you have got to be careful; when you draft a Bill you have got to be clear about the basic idea behind it. The basic idea is that it is a civil contract, a civil contract between two persons who want to lead individual lives but live together for the sake of economy and on the basis of that idea the whole Bill has been drafted and society must bear the consequences of that. I support the Bill.

MR. DEPUTY CHAIRMAN: Mr. Hemrom is not here. I think there is nobody else who will speak today. The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at half past five of the clock till eleven of the clock on Friday, the 10th December 1954.