THE HINDU MARRIAGE AND DIVORCE BILL, 1952—continued

MR. CHAIRMAN: We now take up clause by clause consideration of the Hindu Marriage and Divorce Bill.

[MR. DEPUTY CHAIRMAN in the Chair.]

श्रीमती शारदा भार्गव (राजस्थान): उपसभापति महोदय, मैंने २६ वें नम्बर पर जो संशोधन रक्खा हैं उस पर मुझे कुछ कहना हैं ।

MR. DEPUTY CHAIRMAN: Both 26 and 31?

श्रीमती शारदा भार्गव : जी हां, दोनों पर ।

क्लाज ३ की परिभाषाओं के अन्दर एक स्थान पर "सपिंड रिलेशनशिप" के अर्थ बतलाये गये हैं । जहां तक मेरा ज्ञान हैं, मनुस्मृति में लिखा हुआ हैं कि "सपिंडतातु पुरुष सप्तमे विनिवर्तते" । इसके माने यह हैं कि सपिंड पुरुष की तरफ से सातवीं पीढ़ी तक होता हैं । इस विधेयक में इसके लिए दिया हुआ हैं :

"(f) (i) "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother".

एक तो मदर की सपिंड के अंदर लाइन आती ही नहीं हैं । दूसरी चीज यह हैं कि मदर की तरफ से जो थर्ड जेनरेशन दिया हुआ हैं, उससे मैं सहमत नहीं हूं । शायद ऐसा कहा जायगा कि बहुत सी जगह ऐसा कायदा हैं कि मदर की तरफ से थर्ड जेनरेशन में भी विवाह हो जाते हैं। थर्ड जेनरेशन के माने यह हैं कि एक स्त्री अपनी मां के भाई के लड़के से भी अपनी लड़की की शादी कर सकती हैं । जो आपस में फर्स्ट कजिन्स होते हैं । मैं इससे सहमत नहीं हूं और ऐसे विवाह को गलत समझती हूं । यह मैं इसलिए नहीं कह रही हूं कि यह धर्म पर आक्षेप हैं इसलिए मुझे आपत्ति हैं, बल्कि मुझे मालूम हैं कि साइंटिस्ट और डाक्टर लोग भी कह चुके हैं कि जितना ही ब्लड रिलेशन दूर हो उतना ही शादी करना ठीक हैं, और जितने नजदीक रिश्ते में विवाह होते हैं उनमें दोष होता हैं । यदि ऐसा कहा जाय कि कहीं कहीं ऐसी रीति हैं कि नजदीक के रिश्ते में शादियां होती हैं तो उनके लिए तो पहले ही से धारा ५ की उपधारा ४ व ५ में अलग प्रोवीजन रख दिये गये हैं जो यह हैं :

"(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of. a marriage between the two;

(v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them per mits of a marriage between the-two;".

"(v) if the two are second or-third cousins

इसके माने यह हैं कि सपिंड सम्बन्धी और प्रोहिबिटेड सम्बन्धी में साधारणतया विवाह सम्बन्ध वर्जित हैं, परन्तु यदि देश के किसी भाग में ऐसे विवाहों का चलन हैं तो वर्जित नहीं करते हैं । यानी जब आप उसको एक तरह से ढील देते हैं चूंकि वहां एक कायदा चल ही रहा हैं । तो फिर साधारण नियम क्यों गलत बनाये जिसमें इतने नजदीक रिश्ते में शादी हो सकती हैं । इसलिए मेरा संशोधन मान लिया जाय जिसमें मैंने सपिंड में माता का सम्बन्ध न रखने को कहा हैं । क्योंकि सपिंड शब्द में माता का सम्बन्ध आता ही नहीं हैं । दूसरी चीज यह हैं कि माता की तरफ से तीन ही पीढ़ी के अन्दर विवाह करना साइंस के हिसाब से भी गलत हैं। माता की ओर के सम्बन्ध पांच पीढ़ी तक वर्जित कर दिये जायं वह मैंने एक दूसरे संशोधन ३१ में दिये हैं । इसमें माता और पिता दोनों ही की ओर के पांच पीढ़ी के सम्बन्धों को दिया हैं जो विवाह के लिए वर्जित होने चाहियें । यहां पर मैंने प्रोहिबिटेड रिलेशनशिप में एक उपधारा और बढ़ा देने के लिए कहा हैं । वह इस प्रकार हैं :

or if one is the father's or the mother's first or second! cousin of the other;".

इसके मानी यह हैं कि मां और बाप दोनों की तरफ से ५ पीढ़ी तक विवाह वर्जित होना चाहिए यानी इसमें फर्स्ट कीजन्स में तो वर्जित हैं ही सेकेंड और थर्ड कीजन्स में भी विवाह वर्जित कर दिया जाय तो अधिक उचित रहे। मेरे दोनों संशोधनों का मतलब यह हैं कि पांचवीं पीढ़ी के अन्दर विवाह बंद कर दिया जाना चाहिए। मेरा संशोधन कोई नयी धारा नहीं हैं केवल परिभाषाओं की धारा हैं जो सपिंड तथा प्रोहिबिटेड रिलेशनशिप की सीमा दी गई हैं उसको हम थोड़ा और आगे बढ़ाना चाहते हैं। तथा इन संशोधनों को कर देने से जो पब्लिक में इस विधेयक के विरोध में यह कहा जाता हैं कि इसमें भाई बहिनों का विवाह कराया जा रहा हैं वह विरोध भी मिट जायगा। विरोध तो बहुत से लोग धर्म के आक्षेप के नाम पर भी करते हैं और कभी कभी नासमझी से बिना कारण भी परन्तु मैं तो साइंटिस्टस और डाक्टर्स के पॉइंट आफ व्यू से भी कहती हूं कि तीन पीढ़ी के अन्दर विवाह वर्जित होना चाहिए। अतः पब्लिक के सही और विज्ञान के आधार पर उठाये गये विरोध को अवश्य मंजूर करना चाहिए। मेरे ये संशोधन आशा हैं स्वीकार होंगे। अपने संशोधनों पर मुझे बस इतना ही कहना हैं।

SHRI S. C. KARAYALAR (Travan-core-Cochin): Sir, I wish to support the amendment moved by Mr. Bisht <Amendment No. 22). The expression •"custom" and "usage" are denned in the first portion of clause 3(a). It says that 'custom' or 'usage' signifies any rule which, having been continuously and uniformly observed for a long .time, has obtained the force of law among Hindus in any local area, etc. Jn order that a "custom" or "usage" may be called as such, it must have been continuously observed; it must .have been uniformly observed; it m-ist have been observed for a long time; and it must have obtained the force of law. This is the first portion. Now, In addition to that, you are trying to superimpose other conditions, namely, that the rule must be certain; it must not be unreasonable; it must not be opposed to public policy. When a "custom" or "usage" has acquired the force of law by its continuous observance and by its uniform observance and for a long time, then it has become law. But you are trying to dislodge that position by superimposing conditions which are contained in the proviso. When it has become law, when it has obtained the force of law it must be certainly reasonable and certain. I cannot understand why Xhese additional conditions should be superimposed upon what are contained in the first portion of this clause. As a matter of fact, if you use the proviso, then it becomes uncertain. There is an element of uncertainty introduced into the law, which is against public policy. So, I would suggest that this proviso be altogether deleted, because it is a surplus according to me; all the requirements of custom or usage are contained in the operative portion, that is, in the first portion. I do not see why other conditions should be superimposed. If it is done, it becomes uncertain. The object of all legislation is to make law certain and not make it uncertain.

SHRI H. D. RAJAH (Madras): Sir, some others have to say something on this matter.

MR. DEPUTY CHAIRMAN: Order, order. Mr. K. "B. Lall is to speak. Please do not spring a surprise like this. Mr. K. B. Lall.

SHRI K. B. LALL (Bihar): Sir, I do not want to make a speech. As I have already said, I only want that the word "Hindu" shall be construed to mean any person residing in India irrespective of his or her following any religion. In order to make the amendment consistent, I have tabled that amendment. Now, I have reconciled to the inevitable and there is no need' for a speech.

MR. DEPUTY CHAIRMAN: Mr. Karmarkar.

THE MINISTER FOR COMMERCE (SHRI D. P. KARMARKAR): Sir, Dr. Kane will speak.

DR. P. V. KANE (Nominated): Sir, shall I address only on the question of policy, or on all the amendments?

MR, DEPUTY CHAIRMAN: All the amendments are open.

DR. P. V. KANE: I particularly want to speak on two amendments, namely, the omission of the words "opposed to public policy" and *"sapinda* relationship". With regard io the omission of the words "opposed to public policy", so many conditions have been put in. They have put in ' 'uniformly', 'continuously', 'observed for a long time'; that it has obtained the force of law in the particular community or among the HindSis. These have been laid down. But in all those cases you find that certainty and not being unreasonable and not being opposed to public policy. That has been always insisted upon by the decisions not only of the High Courts, but of the Privy Council also and it is absolutely necessary that the words "not opposed to public policy" should be there, because somebody might say: "it is our custom to indulge in wine drinking at a marriage." That would be opposed to public policy. At least in the Bombay Presidency it is so. So the words "opposed to public policy" are absolutely necessary. That is, briefly, as regards the words "opposed to public policy".

As regards *"sapinda* relationship}", there seems to have been some confusion in this, namely, *"sapinda* relationship" under the Mitakshara system and the Dayabhag system are entirely different. We are here following the Mitakshara system and restricting it to some extent. You will find that in the original text the *"sapinda* relationship" is said to be seven degrees on the father's side counting in the father's line andfl£P degrees on the mother, ~~coming~~, through the mother. But that is not an absolute rule. But will find tho Mitakshara itgelf mentioning the words भौतीत्य मातृत: पञ्जातीत्य पितृत:

where it has been laid down that only three degrees on the mother's side and five degrees on the father's side need be looked to. But ultimately the majority rule prevailed. According to the Mitakshara, many sages have said seven degrees and five degrees on the father's and mother's skie, respectively; that it may be applicable to Brahmins. As regards Kshatriyas there were different degrees. What we have proposed is to. put five degrees on the father's side and three degrees on the side of the mother. But you will notice that, by custom even this is not observed. In many communities a maternal, uncle's daughter can be married, although she is within three degrees on the mother's sidq. Similarly, in. certain other communities, the paternal aunt's'daughter or mother's sister's daughter also is eligible for marriage. They are within the three degrees of prohibited relationship. We have, therefore, to find out a *via media*

Now, that we are migrating from one part of. India to another it is absolutely impossible to find out exactly, in what relationship a woman or a bridegroom would be compared to. their ancestors, whether it is seven degrees above or not. Practically it is very difficult to find out seven generations, it is almost impossible. Therefore, we have followed a middle course, namely, five degrees on the father's side and three on the mother's side. That has been followed and it has been made subject to clause 5(v). If you look at clause 5(v) we have stated there as regards *'sapinda* relationship'.

"the parties are not *sapindas* of each other unless the custom or-usage governing each of them permits of a marriage between the two;". So, custom has been recognised in clause 5(v). Custom is not an easy thing to prove and, therefore, custom has been defined there; that it must satisfy different conditions. Therefore, the ordinary rule will be applicable everywhere, that is, up to five degrees on the father's side and three degrees on the mother's aide.

As regards the Dayabhag, the *"saoinda* relationship" for marriage

is far more extensive than even the Mitakshara system. Raghunandana. who is a great commentator, has said what will bring in the ninth from the common ancestors. Therefore, some *via media* had to be suggested. On the other hand, *"sapinda* relationship" is a good thing, because biologically also it is a good thing. Therefore, five degrees and three degrees have been laid down— not that they were not at all thought of by the Hindu lawyers of the ancient days. You will remember that the rules of Raghunandana are laid down only as regards the Dayabhag system.

In the Yajnyavalkya *smriti,* these were not applicable to the *Sudras* strictly. Now, we are going to be a casteless society; all the same we have recognised actual facts. At present people think that there are a majority of *Sudras* among 'the Hindus. Therefore, all these interests have to be somehow or other reconciled—these different ideas. Therefore the sub-clause relating to *"sapinda* relationship" has been put in.

As regards prohibited degrees of relationship, they are more or less the same as *"sapinda* relatAomship". You will notice that in all the text books on Hindu law, Dr. Gurudas Banerjee's book on marriage and stridhana Mayne's Hindu Law, etc. two categories of conditions are laid down, namely, sapinda relationship and prohibited degrees. In those cases, formerly it was the 'Gotra' that was to be on the prohibited degrees. A 'sagotra' wife could not be married: Yajnyavalkya himself says, she must be:

उद्वहेत द्विजो भार्यां मसपिण्डा यवीयसीम् ।
अरोगीणीं मातृयतीयसमान्त वर्गोंभजाम् ।।

She must not be of the same 'gotra'. The bride and the bridegroom must be of different *gotras.* But by the Act of 1949, this legislature did away with the impediment as regards 'gotra' and *'pravar'.* Now, prohibited relationship is very restricted here. Under the Special Marriage Act. there is an appendix in which is given the prohibited relationship, namely, a man cannot marry 37 relations; a woman cannot marry 37 relations. They expressly mention these in that appendix, but that is rather a dan gerous proposal. There is no *sapinda* relationship under the Special Marri age Act. Sometimes there will be difficulty, and therefore degrees of prohibited relationship are put in. These two are not exactly parallel. They are overlapping to some extent. For example, under some such sys tem a Brahmin's wife or widow will not be within the "sapinda relation ship". In Dayabhag system, for ex ample, a brother's widow may not be held to be a *"sapinda'* in the strict sense. Therefore, these two are sepa rately given. Let there be no confu sion. If you look at the degree of pro hibited relationship, if one is a lineal ascendant of the other, he be comes a *sapinda* relation. In the same way brother and sister are *sapindas* of each other, but in order that the prohibited degrees should be sepaj- rately and clearly mentioned, they have been mentioned; more or less, they are illustrations of the rule of *sapinda* relationship. But in some books, *gotra* is put under prohibited degrees. Now, *gotra* has gone. A father and a son have the same *gotra,* and a mother and a son have the tame *gotra.* But *gotras* have been done away with. Therefore, degrees of prohibited relationships are put in. So, these two are abso lutely necessary. And all that has been done is that *sapinda* relation ship has been narrowed down. And what the lady Member here wants is recognised by nobody, namely, three degrees from the mother's side.....

SHRIMATI SHARDA BHARGAVA: Five from the mother's side, for tb* two will be second or third cousins.

DR. P. V. KANE: But no degrees I are mentioned.

SHRIMATI SHARDA BHARGAVA: Second and third cousins mean tb*

[Shrimati Sharda Bhargava.] degree. In the dictionary it is quite clear about ' the first cousin, the second cousin and the third cousin.

DR. P. V. KANE: First cousin means, for example, brother's and sister's children, and their children will be second cousins. ,

SHRIMATI SHARDA BHARGAVA: That is right.

DR. P. V. KANE: They will be no doubt within five degrees, but even beyond that there may be five degrees. The third cousins also will be within five degrees. But then, why cousins only? You should expressly put down the degrees. That will be proper. That will be according to the ancient Hindu law. In the present circumstances, we want to restrict it. So, it will be better if we say that counting through the mother it should be three degrees, and counting through the father, it should be five degrees. We shall be going back, no doubt, beyond the Mitakshara law to some extent, as it was, but then there have been so many exceptions to the rule. As I said, maternal uncle and his niece are allowed to be married in some castes and places. And even among the Brahmins of Kolhapur you will find that the maternal uncle can marry his own niece. Now, all these things have, as I said, eaten up the original rule, and it is better to restrict it, in *view* of the fact that marriages have become very difficult. In the first place, eligible bridegrooms do not want to marry, and the result is that the age of girls has been rising to anything among certain communities. Therefore, this has been put in as five and three. And I can tell you from my experience during the last 20 years that so many people come and say, "My son wants to marry this, X, girl." Ultimately when you put down the relationship, it is found that that girl is fourth on the mother's side. That is, she cannot be married to that boy under the Mitakshara rule. Then the son says, "Either I want to marry this particular girl, or I remain a bachelor." And when asked, I say not as a lawyer, but as a man of practical experience, "You take courage in both your hands and do it, and if anybody later on comes forward with an objection, the law will make the whole thing right in some way. So, what we have done is that we have provided a *via media,*

SHRI D. P. KARMARKAR: I am grateful to Dr. Kane for the clarification he has given on this point and for the advice he has given to this House. And I endorse all that he has said. About amendment 21, I regret very much that it is no* acceptable to us.

MR. DEPUTY CHAIRMAN: No. 21 is not moved.

SHRI D. P. KARMARKAR: About amendment No. 22, Sir, Dr. Kane has said something, and I have nothing further to add. Regarding amendment No. 23, Sir, I feel that the definition of the words "district court" is wide enough and it includes the Panchayat, if that is recognised as a court under the local law. So, Sir, very respectfully I do not feel myself in agreement with it. No. 24 is not acceptable to us. About amendment No. 25 I should just like to say a word that this Explanation is put in only to obviate a doubt which may arise whether the word 'ancestor' will include the father. No. 26 has been moved, and sufficient has been said about it, and I hope the House entirely agrees with what Dr. Kane has said. Then, amendments Nos. 27, 28 and 29 have not been moved.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): About my amendment No. 30, Sir, I was not allowed to speak.

MR. DEPUTY CHAIRMAN: Anyway, you are too late now. I looked at you, but you did not speak.

DR. SHRIMATI SEETA PARMA NAND: I have not been allowed to.....

SHRI D. P. KARMARKAR: Anyway, I may assure her that I will be doing no injustice to her in ray reply. Sir,

this is not acceptable to us even under the existing Hindu law. Rules relating to *sapindas,* rules relating to prohibited degrees, are directly concerned. There is no doubt a certain overlapping between the two, but each expression has got its own meaning. And our intention is that both the rules should be satisfied, wherever applicable. Now, if these words are .omitted from 'prohibited degrees' on the ground that they are obnoxious or <on the ground that they are covered by sapindaship, the answer is that in •certain parts of India the rule of sapindaship is not generally accepted. Therefore, the retention of this definition is absolutely necessary.

DR. SHRIMATI SEETA PARMANAND: Then I would like to know the reason why you say 'brothers' and 'sisters'. In what part of India do they marry? Why is it neeessary to put it here?

SHRI D. P. KARMARKAR: Uncle and niece can marry.

DR. SHRIMATI SEETA PARMA NAND: I am referring to sub-clause (iv) here which says "if the two are brother and sister ....."

SHRI D. P. KARMARKAR: Some times, Sir, we have to accept certain things .....

DR. SHRIMATI SEETA PARMA NAND; Sir, I want to .....

MR. DEPUTY CHAIRMAN: Order, order, you cannot make another speech.

DR. SHRIMATI SEETA PARMANAND: I have not spoken on this.

MR. DEPUTY CHAIRMAN: Why did you not get up? Order, order. Please resume your seat now.

SHRI D. P. KARMARKAR: In spite of what she says, the result is that nobody would marry like that—a brother and & sister.

Then, Sir, about amendment No. 31, as I said, we do not want ~ to widen the scope of 'prohibited degrees'. If we do so, marriages may become void, and this may lead to undesirable consequences. Sir, 1 have nothing more to add regarding the amendments on this clause.

SHRI J. S. BISHT: Sir, I beg leave to withdraw my amendment.

Amendment No. 22* was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

> 23. "That at page 2, lines 23-24, after the words 'civil court' the words 'or Panchayat Sabha' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

> 24. "That at page 2, after line 31, the following be inserted, namely:—
>
> *'(ce)* the expression 'Hindu' in this Act shall be construed to mean any person residing in India irrespective of his or her following any religion.'"

The motion was negatived.

SHRI J. S. BISHT: Sir, I beg leave to withdraw my amendment.

Amendment No. 25* was, by leave of the House withdrawn.

SHRIMATI SHARDA BHARGAVA: Sir, I beg leave to withdraw my amendments.

Amendments Nos. 26* and 31* were, by leave of the House, withdrawn.

*For text of the amendments Nos. 22, 25, 26 and 31, see cols. 1596 & 1597 of Debate dated llth December 1954

MR. DEPUTY CHAIRMAN: The question is:

30. "That at page 3, lines 14 to 16 b_e deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

MR. DEPUTY CHAIRMAN: Motion moved:

"That clause 4 stand part of the Bill."

SHRI B. K. MUKERJEE: Sir, I move:

205. "That art page 3, lines 27 to 30 be deleted."

M5R. DEPUTY CHAIRMAN: The clause and the amendment are now open for discussion.

SHRI B. K. MUKERJEE (Uttar Pradesh): I feel that these lines are not necessary in view of the fact that subclause (b) is there. I do not understand the intention in incorporating this sub-clause as it is almost the same as sub-clause (b). The only thing in this sub-clause (a) is_r that they want to make customs and usages as part of the law. I do not know if there is any custom or usage which is part of the Hindu Law. Of course, I know that Hindu laws are sometimes based on customs and usages. But no custom or usage can be part of the law. If it is part of the law, it is law.

SHRI RAJAGOPAL NAIDU (Madras): They will have the force of law.

SHRI B. K. MUKERJEE: Law can be based on custom, but custom does not become part of law. That is my objection. The motive seems to me to declare all customs and usages in the Hindu society as superseded by this law, but there are certain clauses in this very Bill which deal with customs and usages. That is my objection. I think that the object will be well-served by sub-clause (b). Therefore, sub-clause (a) is not needed.

SHRI H. D. RAJAH: In this subclause it is said that "any custom or usage as part of that law in force", etc. In certain parts, according to custom which is for a long time operating, people get married but they don't come anywhere under the rule or the law that is in force. For example, I will tell you just what is happening, in some places. They do not believe in *saptapadi,* but they are Hindus. They do not give up the Hindu religion. In the presence of those who are assembled, a man gets up—probably the leader of that group—and he says, "I hereby declare these two people man and wife." Now, it is not here recognised as a custom or usage as-part of the law. I want Mr. Kane or our hon. Minister to enlighten this House as to how that marriage is considered in terms of this law.

SHRT RAJAGOPAL NAIDU: I rise to oppose this amendment, moved by Mr. Mukerjee. Sir, if one knows the fundamentals of the Hindu Law, one would know that custom and usage are one of the sources of Hindu Law.

SHRI B. K. MUKERJEE: I sarid that law can be based on custom.

SHRI RAJAGOPAL NAIDU: There are three sources of the Hindu Law. The first source of Hindu Law is what we call Smritis or Dharma Shastras. The second source is the commentaries and digests, and the third source is custom, what is called in Sanskrit *sadachara.* Custom having the force of law is one of the important sources of law. This is recognised by Manu, Yajnavalkya and Narada. Customs play such an important role In the process c»l the evolution of law that they have the force of law. I can say with boldness that custom and usages have become so important in the principles of Hindu Law that today there are as many customs and, usages in Law as there are enactments under Hindu Law. For these reasons

1 strongly oppose the amendment moved by Mr. Mukerjee.

DIWAN CHAMAN LALL (Punjab): I think that my friend who has moved this amendment is not really aware of the fact that, as my friend who spoke just now has said, there are three different sources of Hindu Law, *i.e.,* the *Srutis* or the four vedas and then the Smritis, the commentaries and of course the digests, about which mention has already been made, of Manu, Yajnavalkya and Narada and then custom. Now, we say here '•custom or usage as part of that law". It is true that the Hindu Law consists of custom and usage and the other things that I have mentioned. Therefore, it is quite correct and logically and legally correct to use this particular expression here. I tlo not know, but probably my learned friend objects to this expression on the ground that it should not read like this but that it should read "custom or usage which has the force of law", but the Hindu Law consists of these things and that is where my friend has gone wrong. Therefore, the wording here is absolutely correct from the legal as well as from the factual point of view.

DR. P. V. KANE: I want to say that under the ancient Hindu law, there are three sources of law. ~~a||x)i<~~: qrtft qrf; Usage, immemorial usage, is transcendental law. "S|cr TO^T: ^ftl *XJcf* =s," These-'are the sources of Hindu Law, but custom does not mean any practice. It must be ancient. So, a custom when you prove that it is part of the law, is even superior to the Vedic law. That has to be remembered. Suppose the Vedas say one thing and then a custom is there which satisfies the conditions laid down in 3(a), then that custom will be superior to the Vedic law. Therefore, the wording here is quite correct, *viz.* "custom or usage as part of that law". Suppose, some people say that a marriage will be regarded as marriage by two people drinking wine together, it will not satisfy the condition laid down.

It will not be ancient. It may be opposed, similarly, to public policy, and therefore such a custom will not be law. If it is proved that the maternal uncle's daughter or the paternal aunt's daughter can be married according to custom, although you will find in the Smritis such marriages are not proper, such marriages will be. recognised. In the south of India, such marriages have been recognised and they are now having the force of law. Therefore, I submit that the wording here "custom or usage as part of that law" is quite correct.

SHHX D. P. KARMARKAR: Sir, I have nothing more to add. I oppose the amendment.

SHRI B. K. MUKERJEE: On a point of clarification. Are the Vedas and the Smritis to be treated in the same way as this legislation will be treated? There are the Vedas and then there are legislations passed by Assemblies like this. Are the Vedas to have the same force as legislations passed by such Assemblies, that is what I want to know.

SHRJ B. GUPTA: More speeches will mean more confusion.

MR. DEPUTY CHAIRMAN: Do you want to press your amendment?

SHRI B. K. MUKERJEE: It will not be passed. Therefore, J withdraw my amendment.

Amendment No. 205* was, by leave, of the House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

MR. DEPUTY CHAIRMAN: Motion moved :

"That clause 5 stand part of the Bill."

Fo$_r$ text of amendment. sec "-1685 supra.

:SHRI S. MAHANTY (Orissa): I move :

34. "That at page 3, line 42, for the word 'twenty-one' the word 'eighteen' be substituted."

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

35. "That at page 3, line 43, lor *ihe* word 'sixteen' the word 'fifteen' toe substituted."

SHRIMATI K. BHARATHI (Travancore-Cochin): Sir, I move:

36. "That at page 3, line 43, for the word 'sixteen' the word 'eighteen' be substituted."

4. r.M.

SHRI KANHAIYALAL D. VAIDYA ..(Madhya Bharat): Sir, I move:

37. "That at page 3, at the end ,of line 44, after the word 'marriage', the words 'provided that if the bridegroom is a widower and has completed the age of forty years, he ^cannot marry a bride, even though *A* widow, who is less than twenty-one years' be added."

SHRI B. GUPTA (West Bengal): Sir, I move:

40. "That at page 4, line 7, for the word 'eighteen' the word 'sixteen' be substituted."

SHRI KANHAIYALAL D. VAIDYA: *J&x,* I move:

41. "That at page 4, line 8, after the word 'years', the words 'but has completed the age of sixteen years' be inserted."

SHRI J. S. BISHT (Uttar Pradesh): £>ir. I move:

42. "That at page 4, line 8, the words 'if any' be deleted."

SHRIMATI CHANDRAVATI LAKHAN-■PAL (Uttar -Pradesh): Sir, I move:

43. "That at page 4. after line 9, the following be added, namely: —

'(viii) if the party is a widower. he shall marry a widow; and if the party is a widow, she shall marry a widower.'"

SSHRI S. MAHANTY: Sir. I move:

44. "That at page 4, after line 9, the following be added, namely:—

'(vii) the parties produce a medical certificate of fitness for marriage to the effect that neither party is suffering from leprosy, venereal disease, idiocy or lunacy in areas where the State Government so notifies.'"

SHRI B. K. MUKERJEE: Sir. I move :

206. "That at page 3, lines 42 to 44 be deleted."

I also move:

207. "That at page 4, line 7, for the word 'eighteen' the word 'twenty-one' be substituted."

SHRI RAJAGOPAL NAIDU: Sir, I move:

208. "That at page 4, after line 9, the following be inserted, namely: —

'Explanation.—For the purposes of this section, the custom or usage in force in certain parts of the territories to which this Act extends permitting of marriages between the children of a brother amd a sister or maternal uncle and niece shall be deemed to have the force of law for the purposes of this Act.'"

MR. DEPUTY CHAIRMAN: Clause 5 and the amendments are open for discussion.

[THE VICE-CHAIRMAN (SHRI V. K. DHAGE) in the Chair.]

SHRI J. S. BISHT: Sir, if my amendments are accepted, the result will be that the clause wiH run as follows:

"(lii) the bridegroom has completed the age of eighteen years and

the bride the age of fifteen years at the time of the marriage;"

The reason for moving this is very simple, *viz.,* that under the Child Marriage Restraints Act—popularly known as Sharda Act, the age of marriage is already laid down, *viz.,* for the bridegroom 18 years and for the bride 15 years and that Act is already applicable to all the communities in India whether Hindis, Muslims, Sikhs, Parsees, Jews or Christians but by raising this age to 21 and 16 we are unnecessarily trying to complicate matters and create difficulties.

The second point of very great importance is this that this Hindu law will now be applicable throughout the length and breadth of India—not only in the cities where people are well educated but also to all places. In fact only 15 per cent, of the people are literate and 85 per cent, are still illiterate and our experience is that even today, nearly 20 years after the Sharda Act was passed, it is often ignored. We must also remember that after 1947, many States were integrated with India specially the Part B States where the Sharda Act did not apply. For instance in Rajasthan or Saurashtra etc. the people are now getting gradually accustomed to the Sharda Act and the age limits of 18 and 15. It will still take some 10 years to come upto that level. Suddenly to push it now to 21 and 16 would be very illogical. I suppose Parliament wants that the laws that it passes should be complied with otherwise mere legislation on paper will have no value at all. I therefore hope that the House will accept the age of 18 for the bridegroom and 15 for the bride. Later on, after 20 or 25 years when the people have attained a higher rate of literacy and if the marriage age automatically rises, it may be changed in the future but at present if we jump suddenly from 18 to 21 for boys, we will only make this law ineffective. I therefore move that my amendment be accepted.

SHBI H. D. RAJAH: Sir, I wish to-say a few words with regard to marriage age. In the Select Committee after mature consideration about the various aspects of our life in the country they have come to this age of 21 for boys and 16 for girls but now because *ot* the Sharda Act, an attempt is being made to restore the original age. So far as the boy is concerned, 1 can say he may have attainea a mature attitude of mind when he completes the age of 18 but I cannot say the same thing with regard to the girl. Now you are trying to go retrograde with regard to the girl. With our provision in the Constitution that in every way the man is equal to the woman, now you make a distinction, between the boy and girl. With regard to boy and girl, you can also give a certain age but if it was left to me, I would raise the age of the girl to 18. That will be in accordance with the Indian tradition and custom. They would like to see that the girl also is brought up properly, that she is given full education—I don't mean collegiate education—I mean every education—so far as a girl is concerned and for her to be able to run the family when she takes to a husband, and she will have some responsibility to herself and will do her work in a proper way. We have also the age under the Majority Act where it is said that a boy attains majority when he completes 18 years. So if any serious objection is raised, I would suggest a compromise formula that at least let the boy be of complete 18 years of age amd the girl 16. This will be a *via media* between the two instead of going back to the Sharda Act and taking shelter under it. I strongly recommend that the age of the boy, even though 21 is desirable, may be-left at 18 but the age of the girl should be retained at 16.

SHRI RAJAGOPAL NAIDU: Mr. Vice-Chairman, I rise to speak on the amendment proposed by me by way of explanation to clause 5. The object in proposing it is that it is a prevalent custom in South India, at any rate among the Tamilians and the Andhras,

[Shri Rajagopal Naidu.] that a brother marries the sister's daughter and that a maternal uncle marries his niece as the case may be. A sister, if she has a daughter, can demand as a matter ol right her brother to marry her daughter. For 4 or 5 generations in some families the brothers have been marrying only the sister's daughter, but we find that in the definition clause, a brother is prohibited from marrying the sister's daughter as we find that it would come within the degrees of prohibited re lationships. We know that a similar enactment also has been made in the case of the Special Marriage Act but not much opposition was there in the House because that was only a permissive measure. But this Bill will apply to all the Hindus by force of law and so, we. coming from the South will have to be a little more alert about this point. When I went through the various provisions in this particular Bill, a certain doubt has been created in my mind which if cleared, by the hon. Minister in his reply, I will certainly withdraw my amendment. But if he is not in a posi tion to clear my doubt, I am afraid, I have to press this amendment.

I wiH take the hon. the mover of the Bill to clause 11. I will refer to sub-clause (2) under that clause. In .sub-clause (2) it is stated:

> "Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

I am primarily concerned with clause "5 (iv). There the initial presumption is that if a brother marries his sister's daughter, or if a niece marries her uncle, because they come under the prohibited degrees of relationship, the marriage would be null and void.

SHRI D. P. KARMARKAR: But -clause (iv) says: "..... unless the cus tom or usage governing each of them permits of a marriage between the two;".

SHRI RAJAGOPAL NAIDU: Yes, yes. I am coming to that also. Now, I wiH take the hon. Minister to clause 4—the clause dealing with the "Overriding effect of Act". There it says:

> "Save as otherwise expressly provided in this Act: —
>
> (a) any text, rule or interpretation of Hindu law or any custom or-Hsage-as-patLjaHha* ~~kw~~ *ev* a«y—eastern or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;".

Now, in clause 5 (iv) you say that a marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: —

> "(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;".

Therefore, reading clause 5 (iv) coupled with clause 11(2), we have to presume that the marriage is initially null and void and a court also can grant a decree of nullity. If a party goes to court the respondent has to prove that the marriage is celebrated in accordance with custom and usage.

SHRI D. P. KARMARKAR: That is right.

SHRI RAJAGOPAL NAIDU: So the initial presumption is that the marriage is null and void. But in the majority of cases in the South, the brother marries only the sister's daughter as a matter of right. And here you say the marriage ab initio becomes null and void and if a party can also go to court and get a decree of nullity to that effect, I fail to understand why such a hardship should be brought about on so many who marry

under this custom and usage. This is a custom which in the South has existed from time immemorial and which has the force of law. When that is the case, I do not want any doubt or ambiguity to be created in the minds of the public in the South. That is why I want this explanation to be added. I want from the biological point of view, of course, that the mar riage of brother and his niece should not be encouraged. But then there is this custom and usage in the South which has the force of law and so where that is the case. I feel that a specific provision should be made, at any rate for the millions and millions of Hindus who remain in the South who today are only governed by this custom of the brother marrying the sister's daughter or the uncle marry ing the niece.

SHRI H. D. RAJAH: And that is common in Maharashtra also.

SHRI RAJAGOPAL NAIDU: I can speak about Tamilnad and Andhra with a certain amount of authority. That is why I have put forward this explanation, to make it specifically clear:

> *"Explanation.*—For the purposes of this section, the custom or usage in force in certain parts of the territories to which this Act extends permitting of marriages between the children of a brother and a sister or maternal uncle and niece shall be deemed to have the force of law for the purposes of this Act."

I do not seek to delete the concerned item from the list of degrees of prohibited relationships. It should remain there: but at the same time, I want that this custom and usage which has been there from time immemorial and which has the force of law, should be recognised as such. It is better and safer if this provision that I have suggested does find a place in this particular Bill

श्रीमती सावित्री निगम (उत्तर प्रदेश) : उपसभाध्यक्ष महोदय, मेरी समझ में नहीं आता कि यह सोलह और एक्कीस वर्ष की अवस्था की जो व्यवस्था हमारी सिलेक्ट कमेटी ने की हैं, किस तरह से कंट्रोवर्शियल बन रही हैं और क्यों इस पर बहस की जा रही हैं ?

SHRI RAJAGOPAL NAIDU: May I request the hon. Member to speak in English at least when she is speaking on my amendment? Otherwise I will not be able to understand her. And the hon. Member can speak in English.

SHRI H. D. RAJAH: Yes, she can speak in English.

SHRIMATI SAVITRY NIGAM: But I am not speaking on the hon. Member's amendment.

श्रीमती सावित्री निगम : कहा जाता हैं कि इस सम्बन्ध में पन्द्रह और अठारह वर्ष की उम्र का समर्थन किया जाय । मैं उन लोगों से यह पूछना चाहती हूं कि आखिर आप लोग पीछे की ओर क्यों देखना चाहते हैं, क्यों नहीं समय की प्रगति के साथ आगे बढ़ना चाहते हैं । शारदा एक्ट में विवाह की उम्र १५ और १८ वर्ष की रखी गई थी और वर्तमान परिस्थितियों में, इस पांच-सात वर्षों के अन्दर होने वाली प्रगति को देखते हुए यह निश्चय हैं कि १६ और २१ वर्ष की उम्र रखने में कोई बाधा नहीं आ सकती हैं । जो लोग शास्त्रों की दुहाई देते हैं, उन लोगों से कहना चाहती हूं कि शास्त्रों में यह भी लिखा हैं कि विवाह की उम्र १६ और २५ वर्ष की भी होनी चाहिये । इसके समर्थन में, मैं यह कहना चाहती हूं कि अगर वह उम्र रख दी जायेगी तो किसी प्रकार की बाधा उपस्थित नहीं होगी । किन्तु लोगों ने इस सम्बन्ध में यह कहा हैं कि अगर यह उम्र रख दी जायेगी तो कानून का उल्लंघन होने लगेगा । मेरा उन लोगों से यह कहना हैं कि हम जो भी लाज बनाते हैं, वह इसीलिए बनाते हैं कि उन लाज का लोगों द्वारा समुचित पालन हो सके, समाज का स्वस्थ तरीके से विकास हो सके और इन्सान को अपनी उन्नति करने का पूरा पूरा अवसर मिल सके । श्रीमन्, वैसे कोई भी ला ऐसा नहीं हैं

[श्रीमती सावित्री निगम]

जिसका उल्लंघन न किया जाता हो, अगर किसी ला का उल्लंघन किया जाता हैं तो इसका अर्थ यह नहीं हैं कि हम गलत लाज नहीं बना सकते हैं । जो लाज अच्छे होते हैं उनको तो लोग मानते हैं और जो अच्छे नहीं होते हैं उनको नहीं मानते, यह बात उचित नहीं हैं । शारदा एंक्ट के बारे में जो लोग यह कहते हैं कि उसका असर जनता में अच्छा नहीं हुआ वे सच्चाई को धोखा देना चाहते हैं । मैं यह बात मानती हूं कि शारदा एंक्ट का उल्लंघन होता हैं । इसके भी कारण हैं, एक तो लोगों में, विशेषकर गांव की जनता में शिक्षा का अभाव हैं और कुछ लोग मजबूरी से ऐसा करते हैं । अब हमारा देश स्वतंत्र हो गया हैं । सारे देश में शिक्षा का फैलाव बढ़ता जा रहा हैं । देश में एक्सटैन्शन सर्विस गांव गांव में खोले जा रहे हैं, जिससे गांव की जनता में दिन प्रति दिन जागृति होती जा रही हैं । जनता में ज्यूं २ ज्ञान बढ़ता जायेगा वह अपने कानूनों का अच्छी तरह से पालने करेंगी ।

अगर हम इस बिल में लड़की की उम्र को कम करेंगे यानी १५ वर्ष रखेंगे तो गांव वाले जो कि लड़की की उम्र को फिजिकली बतलाते हैं, वे १२ या १३ साल की लड़की को १५ साल की बतला देंगे । गांव वालों से जब पूछा जाता हैं कि तुम्हारी लड़की या लड़के की उम्र क्या हैं तो वे कहते हैं कि हमको मालूम नहीं हैं, यही होगी चौदह पन्द्रह वर्ष की, किन्तु अगर हम १६ वर्ष की उम्र रख देते हैं तो उम्र के बताने में हर एक को आसानी होगी । इसके साथ ही साथ गांव वाले अब देखते हैं कि उनकी लड़की काफी बड़ी हो गई हैं तो जाति बहिष्कार के डर की वजह से वे शारदा एंक्ट से अपना बचाव करते हैं । इसलिए अगर हम लड़की की उम्र शादी करने के लिए १६ साल निश्चित कर दें तो उसमें धोखा खाने की कम गुंजायश रहती हैं बनिस्बत १५ साल के ।

इसके साथ ही साथ मैं यह भी कहना चाहती हूं कि हम देश में फैमिली प्लानिंग चला रहे हैं, हम यह भी जानते हैं कि देश की पापुलेशन बढ़ रही हैं । यह भी आप सब को मालूम हैं कि जितनी जल्दी शादियां होती हैं उतनी ही जल्दी सन्तानों की संख्या बढ़ने लगती हैं । इन सब बातों को देखते हुये और जमाने की रफ्तार को देखते हुए हम लोगों को चाहिये कि १६ और २१ वर्ष की आयु का जो सजेशन सिलेक्ट कमेटी ने एबली रखा हैं उसको हम लोग मान लें ।

SHRI S. MAHANTY: May I speak, in support of my amendments, Sir?

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Yes, you can speak.

DR. SHRIMATI 9EETA PARMANAND: Those people who have given notice of amendments should be allowed to speak first; otherwise, it would be difficult, to know which amendment is dealt with.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Here we are concerned with the age of marriage and Mr. Mahanty has given notice of two amendments, numbers 34 and 44.

SHRI D. P. KARMARKAR: Whosoever catches your eye may be allowed to speak. If you accept this convention, people will go on moving irrational amendments.

SHRI M. P. N. SINHA (Bihar): 1 wanted to speak on this amendment, Sir.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE) : You will be able to speak after Mr. Mahanty has spoken.

SHRI B. K. MUKERJEE: May I know whether those who have given, notice of amendments will be allowed to speak or not? Or, is it that anybody who stands up will be given the chance of speaking?

THE VICE-CHAIRMAN (SHRI V. K. DHAGE) : I shall take into consideration those who have given notice of amendments but then it is quite possible that those who have given notice of_

amendments may probably be not alert. In that case anyone who catches my eye will certainly have a chance.

DR. SHRIMATI SEETA PARMANAND: Mr. Mahanty's amendment is not to be found anywhere, Sir. Number 34 is not in his name.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): If you read the addenda that was circulated yesterday you will notice that Mr. Mahanty has given notice of two amendments for this clause, amendment numbers 34 and 44.

SHRIMATI CHANDRAVATI LAKHANPAL; I also want to speak on this, Sir. My amendment No. 43 is there.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE) : This clause relates to the age of marriage. Mrs. Savitry Nigam has just spoken in favour of the ages of 16 and 21; Mr. Mahanty has given notice of an amendment that the age 21 for the boys should be reduced to 18 and, therefore, I think it is proper that Mr. Mahanty speaks on that particular amendment.

SHRI B K. MUKERJEE: There are other amendments also.

SHRI H. D. RAJAH: They will come later.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I think I will be quite aware of that.

DR. P. V. KANE: May I suggest this? Those who have moved amendments will be called upon to speak first, one after another and then the others. That way we can speak on all the amendments; otherwise, we shall go once forward and then come back.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): AS I said, I shall certainly have due care for those who have given notice of amendments but it may so happen that those persons may not be quite alert and I cannot keep waiting here ior them. Then, whoever catches my eye will be entitled to speak.

SHRI S. MAHANTY: Sir, I rise to speak in support of my amendment No. 44. I am aware of the practical difficulties which might be adduced by the hon. mover of this Bill to this amendment. Now, the fact has to be remembered that under clause 13 marriage can be dissolved if a party suffers from leprosy, venereal disease or lunacy etc. Now. it is only fit and proper that if Government or society allows the dissolution of marriage on certain grounds then it behoves that society also to see that those grounds or pitfalis are obviated. My amendment only seeks that there should be a sort of compulsory medical examination of the parties seeking marriage. I feel that this wil] be a first step towards nationalisation of health. The contention that the practical difficulties are great are of really no matter because we have provided for a registration; we are certainly going to take certain steps by which there will be some kind of organisation—whatever it may be—where marriage registers will be kept and so on and so forth where the parties can go and register themselves. We have also been planning, the first Five Year Plan, the second Five Year Plan and so on and so many dispensaries are to come up. We are contemplating of a time when there will be a dispensary for every 2.000 people. As a first step towards nationalisation of health. I think this amendment should be accepted by the Government. There should be no difficulty; moreover, the amendment only says that this has to be enforced in areas where the State Government notifies. The whole thing should be left to the discretion of the State Government. In such cases where medical facilities can be provided for, I do not think there should be any objection from the Government. I have got nothing more to add so far as this amendment is concerned.

Coming to the amendment on the age. I have full sympathy with the amendment that has now been placed

[Shri S. Mahanty.] on the floor of the House that the ag< should be 18 for boys and 15 for girls

THE VICE-CHAIRMAN (SHRI V. K DHAGE) : Your amendment is oni} regarding the age of boys.

SHRI S. MAHANTY: 1 am coming to that, Sir. I have heard the impassioned speech of the hon. lad: Member who preceded me. I have got every sympathy with her proposal that the age of marriage for the boys should be 18 and for the girls 16 but Sir. having heard all the arguments which have been adduced in favour ol this amendment, I venture to think that this Bill will be am illegitimate marriage between our pre-conceived notions and progress. We want progress but what do we mean by progress? Do we mean that children in the cradles should be given in marriages? After all. I am not one who thinks that progress only means marrying at a later age. One has to remember that even in the Elizabethan age which was said to be the Golden Era of England, girls were given in marriage when they were two or three years old.

SHRIMATI SAVITRY NIGAM; Do you propose to bring that here also?

SHRI 9. MAHANTY: I will, if you still persist in it.

SHRI D. P. KARMARKAR: No, she does not persist.

SHRI S. MAHANTY: So, the question of progress does not rest only on marrying at a particular age. I say, as a sort of illustration, that even in Elizabethan England which produced all the great genius of English History girls were being given in marriage while they were three years old. Therefore, I am not one who thinks that 18 or 16 is an immutable concept; but the reason why the Select Committee thought it fit to fix that limit is this: Number one is the population problem. When the question of population control comes in, it is said that to tackle this population problem, early marriage should be discouraged. When we say that the age should be 21 for boys and 16 for the girls, you call us impractical and reactionary. Well, Sir, one does not really know where progress ends or begins.

Coming to the second point, I quite conceive that there is a great deal of difference between the girl of 15 and 16.

SHRI D. P. KARMARKAR: Really?

SHRI S. MAHANTY: There is. The hon. Minister knows it better.

SHRI H. D. RAJAH: Within that period one child can come.

SHRI S. MAHANTY: But the ques tion is, what is the public policy in volved? It has to be viewed not from the sentimental point of view of a feminist but from the practical point of view of a sociologist. It may be quite normal for the hon. lady Members to seek divorce for the womenfolk of India in the coming elections to pamper to their tastes .....

SHRI D. P. KARMARKAR: Elections have nothing to do with divorce or marriage. Marriage and divorce will continue for ever.

SHRI S. MAHANTY: I was trying to say that it is quite possible, to placate the sentiments of the womenfolk at large by just bringing in an amendment which has no policy behind it, which has pre-conceived notions behind it. What do you mean by fifteen or sixteen? Suppose I bring in fourteen you will say that it is reactionary. If I say sixteen it is also reactionary. What immutability is there about fifteen? The consideration which weighed with the Select Committee in fixing the age of the girl at sixteen was from the population point of view. And No. 2 is what do you want? Do you want that there should be healthy fathers, mothers and children or not? If you want that there should be healthy fathers, mothers and children then 1 think twenty-one and sixteen are the

bes\ ages for boys and girls respectively.

SHRIMATI SAVITRY NIGAM; We support it,

SHRI S. MAHANTY: I am just speaking. I do not know whether I *am* supporting or opposing, but there is the amendment in my name standing that the boy's age should be 18.

AN HON. MEMBER: That is also retrograde.

SHRI S. MAHANTY: Another public policy is involved in this question. Now taking into account the human weakness as it is, the human nature as it is, if we allow young men till they are twenty-one years to go about then I venture to think, Sir, there will be too many sowing of wild oats.

SHRI D. P. KARMARKAR: In some of the States they are going about already.

SHRI H. D. RAJAH: And your colleges are responsible for this.

SHRI S. MAHANTY: Therefore we certainly do not want that that kind of thing should be encouraged. There fore we propose that the age of. the boys should be eighteen. Of course no one will go in for marriage now-a-days at the age of eighteen because we pro vide the minimum age of eighteen. Now, Sir, I know of cases in most respectable families in my part of the country, most aristocratic *kayastha* families where it is considered as a sort of degradation not to give a girl in marriage before her eighteenth year. At the same time I know of many other cases and in 99 per cent, of such cases girls are not being given in marriage even though they are past twenty-one and boys generally do not come in for marriage until'they have got their own means of ; livelihood, until they are assured of a decent in come and so on and so forth. There fore, simply because we provide her a minimum limit it does not mean that everyone will go and marry in his eighteenth year and from the public policy that I have now urged .....

SHRIMATI SAVITRY NIGAM: We have to change the psychology of the country.

SHRI S. MAHANTY: Who will change, Madam? But until they are changed these considerations have to be before us. We cannot afford to be as irresponsible as the .....

AN HON. MEMBER: Lady Members of the House.

SHRI S. MAHANTY: I need not take more time of the House and I commend my amendment for the acceptance of the House.

SHRI D. P. KAJEtMARKAR: What is your exact suggestion, Mr. Mahanty? You want twenty-one and sixteen?

SHRI.S, MAHANTY:, In the matter of medical certificate my amendment is self-explanatory.

SHRI D. P. KARMARKAR: That is right, but in the matter of age what does my hon. friend want?

SHRI S. MAHANTY: Of course, I generally stand by my amendment.

श्रीमती चन्द्रवती लखनपाल : उपसभाध्यक्ष महोदय, मेरे अमेंडमेंट का आशय यह हैं कि क्लाज ५ में मैं यह जोड़ना चाहती हूं कि विडोअर्स केवल विडोज से ही शादी करें और इसी तरह से विडोज केवल विडोअर्स से शादी करें । इसके कारण हैं । इसका सब से बड़ा लाभ जो होने वाला हैं वह यह हैं कि विधवाओं की समस्या हल हो जायेगी । आपको ज्ञात हैं कि अपने देश के अन्दर विधवाओं की समस्या एक बड़ी भारी समस्या हैं । । यह समस्या आज हजारों और लाखों की नहीं हैं बल्कि करोड़ों की समस्या हैं । देश के अन्दर शायद ही कोई परिवार होगा जिसमें कोई न कोई विधवा न बैठी हो और परिवार का वातावरण विधवा के आंसुओं से उत्पीड़ित न हो । इसलिये विधवाओं की समस्या को हल करना हमारा एक मुख्य उद्देश्य हो जाता हैं ।

[श्रीमती चन्द्रवती लखनपाल]

इसी उद्देश्य से हम विडो रिमैरिज एक्ट लाये लेकिन उसमें कुछ लूपहोल रहे और वह एक्ट आज कितने साल बीत जाने पर भी एक डैड लेटर की तरह रद्दी की टोकरी में पड़ा हुआ है । उसका जो सब से बड़ा लूपहोल था वह यह था कि जो विडोअर हैं, जो विधुर हैं उनके ऊपर कोई बन्धन नहीं लगाया । आज हमारे देश में हालत यह है कि कोई भी विडोअर किसी भी कुमारी लड़की से शादी कर सकता है और उसके लिये ऐसा कोई नियम नहीं है कि वह विधवा से ही शादी करे । इसका नतीजा यह हुआ है कि आज विधवाओं की समस्या वैसी की वैसी ही बनी हुई है, उसमें जरा भी अन्तर नहीं आया है । यह तो एक बिल्कुल जाहिर सी बात है कि अगर विडोअर को यह आजादी होगी कि वह कुमारी से विवाह कर सके तो बेचारी विधवा की बात पूछने वाला कौन है और विधवा से कौन शादी करेगा ? इसका असर यह पड़ा है कि विडो रिमैरिज एक्ट बन जाने के बाद भी विधवा की समस्या वैसी ही उग्र और कठिन बनी हुई है जैसी कि पहले थी ।

इसका एक और भी बड़ा भारी दुष्परिणाम हुआ है । वह यह है कि आज कल हमारे देश के अन्दर बहुत से अनमेल विवाह, अनईक्वैल मैरिज, होती हैं । वह इसीलिये होती हैं कि एक पचास साठ साल का विधुर २५ या २० साल की कुआंरी लड़की से शादी कर सकता है । आप सभी जानते हैं कि ऐसे अनमेल विवाह का क्या परिणाम होता है । एक १८ या २० साल की कुआंरी लड़की है तो उसके मानसिक विकास और मैंटल डैवलपमेंट में बमुकाबिले उस आदमी के जो कि ५० साल का विडोअर है फर्क होना बिल्कुल लाजमी है । इस प्रकार से इन अनमेल विवाहों से समाज के ऊपर बहुत बुरा असर पड़ता है, बहुत से सोशल ईविल्स पैदा होते हैं और सोशल ईविल्स की वजह से हमारे समाज का नैतिक स्तर नीचे जाता है । इसलिये यदि इस क्लाज को जोड़ दिया जाय तो विधवाओं की समस्या बहुत कुछ हल हो जायगी । आजकल जो अनमेल विवाह होते हैं उनकी संख्या भी कुछ कम हो जायेगी । इसके अलावा एक और अच्छा प्रभाव पड़ेगा, और वह यह कि बच्चों का लालन पालन अच्छी तरह से हो सकेगा । आज आप देखते हैं कि जो विडोअर्स शादी करते हैं वे खास तौर पर कहते हैं कि अपने बच्चों के लिये शादी कर रहे हैं । वे कहते हैं कि हमारे बच्चे हैं इसलिये हमें दूसरी शादी करनी ही होगी । लेकिन आप देखें कि वह १५ या २० साल की लड़की जो कि स्कूल या कालेज में पढ़ रही है जब अगले दिन अपने पति के घर शादी के बाद जाती है तो वह पाती है कि वह मां बन गई है । वह इसके लिये कभी भी तैयार नहीं होती है और न वह इस योग्य ही होती है । इसी वजह से हम देखते हैं कि स्टैप मदर अपने बच्चों के साथ बुरा व्यवहार करने के लिये मशहूर हैं । इसमें उनका कोई दोष नहीं है । इसमें यदि किसी का दोष है तो वह हमारे समाज के नियमों का है जो कि यह इजाजत देता है कि ५० या ६० साल का विडोअर एक १५ या २० साल की कुआंरी कन्या से शादी कर ले । इसका असर हमारे बच्चों के ऊपर पड़ता है और उनके अन्दर तरह तरह के काम्पलेक्स पैदा हो जाते हैं । यह तो आप जानते ही हैं कि जिन बच्चों को घर के अन्दर शान्ति और सुख नहीं मिलेगा और स्टैप मदर से ऐसा व्यवहार मिलेगा तो वे कैसे समाज के स्वस्थ नागरिक बन सकते हैं । जब हम सारे विवाह की संस्था पर विचार कर रहे हैं और विवाह संस्था के अन्दर जो बुराइयां आ गई हैं उनको दूर करने जा रहे हैं तो क्या यह हमारे लिये आवश्यक नहीं है कि विधुर और विधवा की शादी के सवाल पर भी विचार करें क्योंकि इससे अनेकों समस्यायें हल होती हैं ।

मैं यह देख रही हूं कि माननीय मंत्री महोदय मेरी बात को सुन भी नहीं रहे हैं क्योंकि वह तो यह समझते हैं कि यह तो एक ऐसा प्रस्ताव है जिसके ऊपर कोई ध्यान देने की आवश्यकता नहीं है । ऐसा उन्होंने पहले से ही सोच रखा है ।

श्री डी० पी० करमरकर : नहीं, नहीं, हमारा ऐसा इरादा नहीं हैं । आपको मैंने ठीक से सुन लिया हैं । कभी कभी ऐसा होता हैं कि एक दो मिनट के लिये जरूरी मामलों पर डिसक्शन करना पड़ता हैं, लेकिन मेरे भाई वैद्य जी बैठे हुये हैं वह ठीक तरह से सुनते हैं और नोट मुझे पास कर देते हैं । ऐसी बात कभी कभी एक आध मिनट के लिये होती हैं । मैं ठीक से सुनता हूं और आपकी बात मैंने सुन ली हैं ।

श्रीमती चन्द्रवती लखनपाल : धन्यवाद । मैं सम्झती हूं कि इसके खिलाफ एक आर्गूमेंट हो सकता हैं और वह यह हैं कि आप कहेंगे कि इससे जो व्यक्तिगत आजादी हैं, जो फ्रीडम आफ चॉइस हैं उस पर पाबन्दी लगती हैं । यह ठीक हैं लेकिन हमें तो यह देखना हैं कि पाबन्दी का असर क्या होता हैं । वैसे तो आप देखेंगे कि पांचवें क्लाज की हर धारा विवाह करने वालों के ऊपर पाबन्दी लगाती हैं, एज की पाबन्दी हैं, सपिंड रिलेशनशिप की पाबन्दी हैं । तो यह क्लाज तो पाबन्दी लगाने के लिये इस बिल में रखा ही गया हैं । देखना यह हैं कि इस पाबन्दी का परिणाम क्या निकलता हैं । अगर इससे समाज की भलाई होती हैं और समाज की अनेकों समस्यायें हल होती हैं तो मैं सदन के सदस्यों से अनुरोध करूंगी कि वह इस छोटे से क्लाज को अवश्य जोड़ें । आज हमारे देश के अन्दर हजारों लाखों और करोड़ों की तादाद में सिसकती हुई विधवा बहनें हैं, उनकी तरफ से सदन के सदस्यों से मैं अपील करूंगी कि वे इस छोटे से क्लाज को इस बिल में जोड़ें । मैं तो यह अर्ज करूंगी कि यह समस्या इतनी बड़ी हैं कि इसके लिये एक अलग बिल लाया जाना चाहिये।

डा० श्रीमती सीता परमानन्द : दूसरे हाउस में आ गया हैं ।

श्रीमती चन्द्रवती लखनपाल : हां, लोक सभा में एक सज्जन इस तरह का बिल लाये हैं और शायद हमको भी लाना पड़ेगा । मैं तो यहां सिर्फ एक छोटा सा सब क्लाज, क्लाज ५ में जोड़ने को कहती हूं इसलिये मुझे पूर्ण आशा हैं कि इस गम्भीर समस्या पर गम्भीर विचार होगा और मेरे संशोधन को पास किया जायेगा ।

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Shri B. K. Mukerjee.

श्रीमती सावित्री निगम : मैं इस पर बोलना चाहती हूं ।

उपसभाध्यक्ष महोदय (श्री वी० के० धगे) : आप जरा बाद में मौका लें तो अच्छा हैं । मैंने श्री मुकर्जी को मौका दे दिया हैं ।

श्रीमती सावित्री निगम : क्या मैं इस क्लाज पर बोल सकूंगी ?

उपसभाध्यक्ष महोदय (श्री वी० के० धगे) : जी हां ।

SHRI B. K. MUKERJEE: Sir, this House is well aware that there is a big section of the Members of this House who are in a shivering hurry to get this legislation passed without a moment being wasted and.....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): You mean lost?

SHRI D. P. KARMARKAR: He means wasted.

SHRI B. GUPTA: What is shivering hurry?

SHRIMATI PARVATHI KRISHNAN: (Madras): Because it is winter.

SHRI B. K. MUKERJEE: They sometimes think that they monopolise all the intellect of the world.

SHRIMATI PARVATHI KRISHNAN: We are prepared to share it with you.

SHRI B. K. MUKERJEE: Those who are in favour of passing this legislation without any discussion think that it is their monopoly to have all the wisdom and they do not consider tho«e

[Shri *B.* K. Mukerjee.] who want to discuss this Bill to improve it as intelligent men. Sir, I find tliat over this sub-clause TBI) of clause 5 there is a sharp difference of opinion among those who think that it is a prerogative of theirs to teach others. My amendment is a compromise to that. There is one section which wants the ages to be 18 and 16, while some others want some other ages to be fixed. My"' amendment seeks to delete this entire sub-clause. If you do that, there will be no dispute at all, If anybody wants, they can bring an amendment to the other Act, the Child Marriage Restraint Act, raising the ages but in this'legislation we need not go and override that legislation. That legislation em. braces all sections of the community and here if we incorporate this sort of provision, it is not proper. The Child Marriage Restraint Act has a wider scope than this Bill. Therefore if we pass this Bill, that will be another source of discrimination. Therefore my argument is if you delete this sub-clause here and' go back to the Child Marriage Restraint Act for the purpose of age, we can avoid all this waste of time in discussing whether the age should be 15 or 18. I do not know who is more progressive. Both claim to be progressive. One section wants 15. and another section wants 38.

DR. SHRIMATI SEETA PARMANAND: On a point of clarification, Sir. Does he want the entire clause 5 to be deleted altogether?

THE VICE-CHAIRMAN (SHRI V. K. DHAGE) : Only sub-clause (iii) of clause 5.

SHRI B. K. MUKERJEE: So 18 will be the age for both. I want to say here that the Child Marriage Restraint I Act will apply here so far as age is concerned so that if any Member feels that he will be more progressive by raising the ages, he may bring an amendment to that Act.

SHRI H. D. RAJAH: That is only prescribing a minimum. The Sharda Act only says'thai the minimum age shall be 15 for girl and 18 for the boy. It has nothing to do with this.

SHRI B. K. MUKERJEE: My point is that anybody who feels it is more progressive to raise the age to 21 or 25, he can then bring an amendment and. anybody who feels it is more progressive to reduce the age he can also bring an amendment and at that time all these, arguments can be made and we car> decide the issue one way or the other. That is all about my amendment to sub-clause (iii) of clause 5.

Then I have to speak on my other amendment (No. 207) which relates to sub-clause (vi). Here again I do not know whether there will be any Member who will think it progressive to have some other age. I want, in stead of 18, to raise the age to" 21. Because in our country women gen erally—and particularly girls up to the age of 18; we call them girls—are not properly trained or educated. They are all dependants on their parents or brothers or on some other relations and if we permit them, without the consent of their guardian, to choose a husband for themselves, they are apt to make a mistake. Therefore till such time as they leavg their uni versities, till they become grown up when they can choose which way they are to go in their life.....

SHRIMATI PARVATHI KRISHNAN: How many of them go to universities?

SHRI B. K. MUKERJEE: .....for the purpose of guardianship I want the age to be raised to 21 instead of 18. If a girl wants to marry before she is 21 years of age, she must obtain the per mission of her guardian because at the age of 18.....

SHRI D. *P.* K ARM ARK AR: She has no discretion?

SHRI B. K. MUKERJEE: .....while she is still in the university.....

SHRI B. GUPTA: University?

SHRI B. K. MUKERJEE: Yes; all this legislation is "meant for those girls who go to university. We are not talking of people residing in the rural areas.

SHRI D. P. KARMARKAR: According to him in the villages discretion may come by the age of 18 but in towns it does not come before *21.* Is that his argument?

SHRI KANHAIYALAL D. VAIDYA: I want to know from the hon. Minister whether the Bill is only meant for university girls.

SHRI B. K. MUKERJEE: There are many people who feel that way and I am one of them.

Now, I want to support one of the amendments moved by my hon. friend Shri Rajagopal Naidu. I support that because customs and usages are not uniform throughout this country. South has got one custom while the North has got some other custom. In Madras there is one custom while in Delhi there is another custom; one custom in Bombay and yet another in Saurashtra. So the customs are not same or uniform throughout. 9o, as the customs differ, we cannot bind down those people who have got a custom prevalent in one area to adopt the custom prevalent in another area. If we have got any respect for customs and usages, let them enjoy their customs.

Now, there is another amendment moved by my friend Mr. Mahanty, which I have got to oppose. I oppose his amendment. I do not want that there should be a system of medical certificate for the purpose of marriage. As you know, there are some systems of medical examination or medical certificates for certain purposes. For instance, my friend Mr. Mahanty might be aware that in Government services. in some factories and other places, the employees, if they want to enjoy leave, have *gbl* to obtain medical certificates to get medical leave. And what percentage of those medical certificates is correct, only the Government can assess that. As far as our knowledge goes, a large majority of such certificates are obtained by payment of a fee to the doctor. Therefore, if we incorporate *an* article like this in this Act, we will be encouraging corruption. The doctors by getting a fee of Rs. 16, will issue a certificate, no matter whether he suffers from a disease or not.

Now, regarding amendment No. 43, I, of course, support that amendment, but that amendment requires a little amendment. For instance, the widow has got to marry a widower; a person who divorces his wife will not marry a virgin girl—he must marry a girl who has divorced her husband.

SHRI D. P. KARMARKAR: So that a bad man will necessarily marry a bad girl?

SHRI B. K. MUKERJEE; Let him. I support her amendment, but I request her to amend her amendment in such a way that those people who were married once, must not marry a girl who was not married before.

SHRIMATI K. BHARATHI: Sir, it is *a* painful affair for me to move the amendment No. 36 in this House, because I fear that mine may be a lone voice; it may meet with little mercy and scant courtesy. Yet, I feel it to be my duty to sponsor this amendment even if I know that I am waging a losing battle. But I have to appeal to my honourable colleagues here to consider this point with kindness and foresight expected of us, the elders.

Sir, in our country what stands in the way of the emancipation of women is the child marriage—I would call even a girl of 15 or 16 a child. It may be very beautiful to sing "Kusume Kusumolpathi", meaning a flower born on another flower, as the great Kalidasa has sung. But to me it is a pitiable sight to see a child of 15 encumbered with all the responsibilities of another child! To allow a girl of 15 to undergo the painful ordeal and risks and responsibilities of becoming a mother is gross injustice in my view. Sir, left to myself I would raise the age of girls for marriage to 21 even. We very seldom come across well-td-do and educated people, marrying their girls at an early age of 14, 15 or 16. Is it

[Shrimati K. Bharathi.] because that they are in the dark about *srutis* and *smritis* and the sweetness of the age of 17 that they marry their girls late? They could afford to have expert medical aid and experienced nurses to look after the babe and baby mother. Yet, they know that an early marriage is, in many ways, detrimental to the girl's future.

Sir, one of the essentials of the emancipation of women is to raise the age of marriage for girls. One of the methods to eliminate child mortality in this land is to raise the age of marriage for girls. One of the ways for limiting our ever increasing population is to raise the age of marriage for girls. We are living in an era of changes. Our nation is progressing by leaps and bounds in the different spheres of our social, political and economic life. We are moulding up many a progressive piece of legislation to suit our present day conditions. We have already deviated from our old paths in customs and usages. We know that laws and rules are but customs and usages. The days when female infants were thrown into the holy Ganges and widows were burned alive in the name of *'sati'* have changed and the Hindu community has survived these changes. Sir, I have to appeal to the hon. Members here to reflect a moment, before you legislate in the name of the villagers. Is it not a simple fact when I say that a girl of 15 may not have the mental and physical development to cope with all the duties of a wife or mother. I cannot understand why some of my friends here, particularly people who think themselves to be possessed of all the progressive views under the sun, should sponsor an amendment to decrease the age to 15. Do they think that the rural areas must remain in darkness and filth and ignorance, so that they may for ever remain as a field of exploitation for their own political purposes? Do they think that the sunshine of a better life will never grace our unfortunate brethren of the working classes? I cannot agree with the argument that because it is difficult to keep apart boys and girls, in the villages, of the working classes, where they have every chance to mix up very freely, that the law should be there to marry them early, that is, to protect their misconduct. So, the law is to encourage misconduct. We are here legislating for the uncultured beasts not for the future, well-balanced, well-educated, self-contented' sons and daughters of India. Why not every girl be given a better chance for education? I believe that our Government is striving hard to achieve that end. Let the girl be free to study and equip herself for a good future than to encumber her with unwanted children, which will certainly be the case if she is married at 16. She can also have an effective role in choosing a husband with the consent of her parents, so that in future there may not arise a ground for divorce. Sir, instead of framing rules for divorce and judicial separation, it is better to adopt the method of prevention of divorces. Prevention is better than cure. Here we are preparing ground for divorce first by allowing child marriage, and' then we are devising different methods of divorce and judicial separation, etc. In Travan-core-Cochin, from where I have the privilege to come, we had these divorce provisions long, long ago—about 36 years back. We are not in a hurry to marry our girls, not even in rural areas. Mind you, in Travancore-Cochin, 70 per cent, of the women are literate and about 50 per cent, get college education. We marry our girls very late, but we hear very little of divorces. Mr. Madhava Menon told you that there were only twelve cases within these 36 years. So, what I would suggest is that it is better to raise the age, if not to 18, at least to 16. It is very wrong to deviate from the Select Committee's Report in this respect. Sir, I was much pained to hear some of our very learned friends here speak of the failure of the Sharda Act,—due to lack of propaganda and the people due to ignorance disobeying or defying laws. With due respect to them, let me ask them: Are we still living in the same conditions as when the Sharda Act was passed? Have we

not now every resource before us Ior effective propaganda, so that the nooks and corners of the villages may resound by the proclamation of the Government? Can't we educate the rural people as to the harm done to the girls by early marriage through cinemas ana radios?

Sir, I would once more request my friends here to consider this point with thoroughness and foresight. We are not here to cater to primitive tastes.

2 P.M.

DR. SHRIMATI SEETA PARMANAND: Mr. Vice-Chairman, to begin with, I will speak on the amendment standing in my name, which seeks to reduce the age as proposed by the Joint Committee from 16 to 15; that is in conformity with the Child Marriage Restraint Act. The reasons for this, Sir, are based on my personal experience, in the villages and in the rural areas of the country. As was put down by the lady speaker, Mrs. Parvathi Krishnan, and as I had also made it clear in my speech, the conditions in the villages are such that it becomes difficult for parents to keep their daughters unmarried up to the age of even 15, and as a result of that, Sir, the object laid down by the Child Marriage Restraint Act is also not being served. Our aim, particularly after our freedom, has to be to create respect for law, and to make our citizens law-abiding. Sir, the new legislation has to take into consideration the practical conditions with regard to this, and see whether enforcement of the law laid down is there. With regard to amendment No. 34, I am not in agreement with those who want to reduce the age of boys. That is, I would like their age to be kept at 21, as suggested by the Joint Committee. This might sound contradictory, but here again, Sir, it is based on practical experience. Nothing very much is going to be lost, Sir, by keeping the age of boys at 21. The same difficulties which are applicable to girls, do not apply in the case of boys. And also, Sir, from the point of view of putting some sort of a check on our population growth, it is desirable that we should make an attempt to raise that age with regard to the girls. I would say, Sir, that within about ten years, when our people are conversant with the aims and objects of this legislation, and when we have been able to spread education to the rural areas, the raising of a girl's age would be possible, not only to 16 but to 18. Incidentally, Sir, some women doctors have told me that from their experience they have found that the most suitable age for a girl, from the point of view of child bearing, and from the point of view of early maturity, is between 15 to 19 or 20, and they feel that then there are the least possible difficulties in child bearing. But, Sir, with that view I do not agree entirely.

SHRI S. MAHANTY: Is there any medical opinion?

DR. SHRIMATI SEETA PARMANAND: Yes, this is the medical opinion.

SHRI S. MAHANTY: Will you please quote it?

DR. SHRIMATI SEETA PARMANAND: I will be able to give it perhaps tomorrow—something written. But, Sir, with that also I do not entirely agree, because I know that the medical science has developed so much that a child-birth is painless even at a little later date. So, that need not weigh as an argument with us, but later on, we can try to raise the age of girls to 18.

Sir, with regard to the amendment moved by the hon. Member, Shri Rajagopal Naidu, I have to say that it has been neeessary only because, Sir, my amendment seeking to delete subclause (iv) in clause 3 has not been accepted. That clause, Sir, has unnecessarily included the relationship of uncle and niece, and brother and sister, and the children of brother and sister etc. as being prohibited under the example of *sapinda* relationship. If that had not been there, Sir, then it

[Dr. Shrimati Seeta Parmanand.] would not have been necessary to bring in this amendment. But, Sir, even so I would submit that sub-clause (iv) of clause 5 makes it quite clear beyond any shadow of doubt that cus tomary law would override other res trictions, because it says " ..... unless the custom or usage governing each of them permits of a marriage betweer the two;". That being there, Sir, it is not at all necessary to accept that amendment.

I would like to say *s* word with regard to the amendment moved by *my* friend, Mrs. Chandravati Lakhan-pal, relating to a widower's marriage only with a widow. Sir. I know that it would rather be difficult to incor-porate this amendment just now, but one of the objects for moving amendments, I think, has to be to educate public opinion, and at a suitable time, to bring in legislation either through a Private Members' Bills or by suitable amendments to legislation. At this moment, not having had enough opinion even from women's organisations on the point, perhaps,—why perhaps, I think, Sir, most certainly, as far as I can see—the hon. Minister is not going to accept it. But I do feel that there is real need for such an amendment, especially as there is such a divergence between the ages of the widowers marrying and of the girls that they marry. And, if, Sir, the Widow Remarriage Act, which we have passed, has to be actually availed of and women taking advantage of it, then, Sir. this is one of the ways by which young widows wil] be able to find suitable bridegrooms. If, as I feel it, there had been a little addition in this to the effect that the disparity between the age of a widower and that of a widow would not be above say ten years, then perhaps some of our men friends would have been in a mood to accept this amendment.

Sir, with regard to the speech made by the hon. friend, Mr. B. K. Muker-jee.—he is not in the House now—I would not like to say anything except that all these attempts, Sir, are just.

to put a hindrance in the effective operation of this legislation, and to put the clock back, if I may say so. So. I would oppose his amendment. Thank you, Sir.

श्री कन्हैयालाल डी० वैद्य : उपसभाध्यक्ष महोदय, इस सदन में बहस सुनने से कुछ ऐसा पता चलता है कि हम कहीं पीछे तो नहीं जा रहे हैं। अभी श्रीमती सीता परमानन्द जी ने जो भाषण दिया उसको सुनकर बड़ी हैरानी हुई। आपके भाषण का सारा मतलब अगर लिया जाय तो यह है कि देश की आर्थिक स्थिति अच्छी नहीं है, लोगों के घरों में खाने पीने की अवस्था ठीक नहीं है, इसलिये लड़कियां ज्यादा दिनों तक घर में नहीं रखी जा सकतीं।

DR. SHRIMATI SEETA PARMANAND: He has missed the point.

SHRI KANHAIYALAL D. VAIDYA: I have not missed it. I have understood it.

SHRI D. P. KARMARKAR: You have caught the point.

श्री कन्हैयालाल डी० वैद्य : जो सुधार के बड़े राग अलापे जाते हैं उनमें श्रीमती जी सदैव आगे रहती हैं। शारदा एक्ट हमने शायद २५ साल पहले पास किया था। उस समय की अवस्था में और आज की अवस्था में अगर कोई परिवर्तन नहीं हुआ है तो मैं समझता हूं कि हमें पहला काम आर्थिक सुधार का करना चाहिये क्योंकि इसके बिना हमारा कोई सोशल सुधार नहीं हो सकता है।

बहुत से सदस्यों ने यह कहा कि शारदा एक्ट अमल में नहीं आ रहा है, चाइल्ड मैरिज रेस्ट्रेंट एक्ट भी अमल में नहीं आ रहा है, विडोज रिमैरिज एक्ट भी अमल में नहीं आ रहा है, तो फिर अमल में क्या आ रहा है ? जब वे एक्ट अमल में नहीं आ रहे हैं तो फिर यह एक्ट कैसे अमल में आयेगा ? इस तरह की दलीलें सुन कर मैं हैरान हूं। हां, श्रीमती भारती देवी और श्रीमती चन्द्रवती जी ने जो कुछ कहा

उससे कुछ सांत्वना मिली हैं । वास्तव में जो मैंने दो संशोधन रखे हैं वे बालविवाह और वृद्ध विवाह की रोक के विषय में हैं । ये दोनों इस देश में महान रोग हैं और अगर आप विवाह संस्था के कानून में इनकी रोक के लिए कोई व्यवस्था नहीं करते हैं तो मैं समझता हूं कि वही स्थिति चालू रहेगी जो कि अब हैं कि कानून बना हुआ हैं लेकिन फिर भी महीने महीने भर के बच्चों की शादी होती हैं और पुलिस और शासन खड़ा खड़ा देखता ही रहता हैं और उसके ऊपर कोई रोक नहीं होती हैं । यही हाल वृद्ध विवाह का हैं । जिसके पास पैसा हैं वह पचास या साठ साल का होते हुये भी हजार २ हजार में १५ साल की लड़की से शादी करने का मां बाप से सौदा कर लेता हैं और शादी कर लेता हैं । सुधारक लोग अदालतों के दरवाजे खटखटाते हैं लेकिन अदालतें कहती हैं कि कानून में कोई धारा नहीं हैं कि वृद्ध विवाह की रोक हो सके इसलिये इसमें हम दखल नहीं दे सकते हैं और इस तरह से ५० साल के बूढ़े के साथ बच्चियों की शादी हो जाती हैं । इसके बारे में व्यक्तिगत रूप से मैं कई उदाहरण पेश कर सकता हूं ।

श्रीमती चन्द्रवती लखनपाल : मेरा संशोधन मान लिया जाय तो यह बात ठीक हो जायेगी ।

श्री कन्हैयालाल डी० वैद्य : नहीं, मेरा संशोधन दूसरा हैं । मेरा संशोधन यह हैं कि यदि किसी पुरुष की उम्र ४० वर्ष की हो चुकी हैं और वह विधुर हो चुका हैं उसकी पहली या दूसरी स्त्री मर चुकी हैं, तो कम से कम उनको यह इजाजत नहीं होनी चाहिये कि वह १५ १६ या १८ साल की कुआंरी कन्या से शादी कर ले । कम से कम उनके लिये इस कानून में ऐसी रोक अवश्य होनी चाहिए कि जिस कन्या की या विधवा की उम्र कम से कम २१ साल हो उसी से वह शादी करें । आपको कम से कम थोड़ी बहुत रोक तो ऐसी शादियों के बारे में लगानी ही होगी ।

यही प्रश्न बच्चों के विवाह के बारे में हैं । जो धारा इसमें रखी गई हैं उसमें कहा गया हैं कि अगर अवस्था १६ से कम होगी तो गार्डियन की मंजूरी से शादी हो सकती हैं । इसका मतलब यह हैं कि कानून में जो उम्र के लिये व्यवस्था की गई हैं उसका कोई भी मतलब नहीं होगा क्योंकि १० साल की बच्ची की शादी भी गार्डियन की मंजूरी से जायज शादी मान लेंगे । यह तो बच्चियों की शादी कराने के लिये खुला प्रोत्साहन हैं । अगर इस कानून में ऐसा लूपहोल रखते हैं तो फिर व्यवस्था में कोई सुधार नहीं हो सकता । इस लिये मेरा निवेदन हैं कि इन दो संशोधनों में जो बातें रखी गई हैं उन पर विचार कर के इस प्रकार की रोक लगानी चाहिये अन्यथा बाल विवाह और वृद्ध विवाह रुकने वाला नहीं हैं । इससे देश का सर्वनाश हो रहा हैं और यह एक भयंकर वस्तु हैं । जैसा कि श्रीमती सीता परमानन्द ने कहा हैं कि आर्थिक स्थिति ठीक नहीं हैं इसलिये १८ और १५ वर्ष की अवस्था रख कर काम चलाना चाहिये ।

डा० श्रीमती सीता परमानन्द : मैंने २१ और १५ कहा हैं ।

श्री कन्हैयालाल डी० वैद्य : आप अपने समाज के लिये १५ कर रहीं हैं वही तो गड़बड़ हैं ।

डा० श्रीमती सीता परमानन्द : मेरा अपना कोई समाज नहीं हैं । मेरा समाज पूरा हिन्दुस्तानी समाज हैं ।

श्री कन्हैयालाल डी० वैद्य : मैंने आपके स्त्री समाज के लिये कहा हैं । मैं यह मानता ही नहीं हूं कि हिन्दुस्तान के अन्दर किसी समाज में भेद हैं । जब हम एक क्लासलेस सोसाइटी बनाने जा रहे हैं तो फिर मैं यह मानता ही नहीं कि हिन्दुस्तान के अन्दर कोई समाज दूसरे समाज से भिन्न हैं ।

डा० श्रीमती सीता परमानन्द : मैं केवल स्त्री समाज को ही नहीं देखती हूं ।

श्री कन्हैयालाल डी० वैद्य : कम से कम स्त्री समाज को मैं बहुत आदर की दृष्टि से

[श्री कन्हैयालाल डी० वैद्य]

देखता हूं। मेरी अंत में प्रार्थना है कि यह संशोधन जरूर स्वीकार किया जाना चाहिये।

SHRIMATI PARVATHI KRISHNAN: Mr. Vice-Chairman, I would first like to say that I am neither shivering nor in a hurry with regard to this legislation or with regard to this clause. The reason why we have brought forward these amendments to take the ages back to 15 and 18 is this. I am not an advocate of the old *Shastras* in their fossilised form, nor am I an advocate of the newly-found, new fangled eugenics which are being trotted out on the floor of this House, but I would like to say that I am an advocate of realism in regard *to* this legislation. As I said in my speech, having regard to the social, economic and literacy position in the country, taking that into consideration, to rush ahead and prescribe what many feel, as a sort of perfect age for marriage, I think, would be running against the times. Of course, it may seem a little contradictory that, while asking for a progressive measure like, this, asking for a great social reform like this, one puts forward a plea for the lowering of the marriage age, but that is where realism comes in. Why we introduce social reform is that, by so doing, cer tain benefits are being conferred on the majority of our people, and so we should create a position where they can make use of those benefits and not create hurdles, create a position where this social reform, once it becomes law, could be implemented and become a reality, which will need still further hurdles and still further hindrances to be overcome. I want to make it clear that it is not as a fanatical feminist fighting for the rights of women, that it is not in defence of old fossilised ideas, it is not as an idealist, but DureLv as a realist that I venture to bring for ward this amendment, and I have every confidence that the Hon. Minister who has been auite realistic so far

SHRI D. P. KARMARKAR: I wish the realism extends to many other matters.

SHRIMATI PARVATHI KRISHNAN: ..... will be even more realistic and accept the amendment that we have proposed with regard to age.

Now, I wish to say a few words about the amendment brought forward by Mrs. Chandravati Lakhanpal. 1 oppose the amendment because I fee! that that again is very unrealistic. I know that the angle taken is that it will help a child widow and so on amd so forth. I could not completely follow her speech as unfortunately I am still backward in my knowledge of the Rashtra Bhasha, but what I feel about this amendment and also the amendment Mr. Mukerjee has brought forward is that it seems almost as though they look forward to a large number of deaths and a larger number of divorces in this country because, if you restrict this way that a widow could marry only a widower, then you will have queues of widows waiting outside the house of a man who is a prospective widower and *vice versa.*

SHRIMATI CHANDRAV.ATI LAKHANPAL: You are doing an injustice to people of your own sex.

SHRIMATI PARVATHI KRISHNAN: It is completely unrealistic. Let me finish. Sometimes, such statements add to the zest of the debate.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Let there be no quarrels between the lady Members of the House.

SHRIMATI PARVATHI KRISHNAN: You need not have any apprehension on that score. I feel that, in our country, where we have in the past fought for reforms like widow re-marriage, because in so many cases child widows have had to put up with a life of humiliation, a life of slavery, a life of dependency on the menfolk of this country; we must not support an amendment like this. What would it mean? It would mean that those who are widowed young, whether a widower or widow, when widowed young, they will be restricted in their right of re-marriage and I don't know

why this should be done. One must realize that widowhood does not overtake only those who are old or only those who are young. Death does not recognize age and therefore to bring an amendment like this is certainly not going to be helpful or in any way going to help our people to forward in any manner.

Lastly, I would like to support the amendment brought forward by Mr. Naidu because as he made quite clear when he was speaking, his amendment reflects the reality that exists in the South particularly in Andhra and in Tamil Nad and this question has been brought forward again and again and I don't wish to take the time of the House any more but only add my voice to his and appeal to the Members once again from the angle of realism that they accept this amendment in order to ensure that the people of the South also wil] be able to appreciate this measure when it becomes an Act and will also be able to realize the benefits that they get therefrom.

PROF. N. R. MALKANl (Nominated): Sir, I myself feel like supporting the amendment that the ages should be 18 and 14 for boys and girls. I belong to a very small community, a community which now suffers from very late marriages. The average age for girls would be about 22 and for boys 27 and' there are a number of girls to be married and there are a number of boys not married. It is very common in my community. But only 20 years ago I was married when I was 20. My son who is 27 is not yet married. Yet in rural areas, marriage used to take place between 10 and 14, even among the literates. So far as the marriage was concerned, they were very backward and the average age of marriage was 10 or 12—but under 14. If you take the whole of India, you wil] find that the people in the rural areas would be very backward in this matter. It will take some time yet and there is no hurry about it. If we fix a higher age, we have not the organisation to enforce it. Why make a kind of provision in the law and then allow i breaches and when a breach is commit ted, then put the process of law into force—all that is very difficult to en force. In these matters you should not go only by educated opinion. You should go by public opinion. Opinion in the rural areas has not yet gone ahead. We must also remember that elections are due in two years and this matter may be misrepresented and fhis may harm the Government very much. I therefore say, 'Go slow, or rather hasten slowly' and as soon as public opinion is ready we will hasten the whole way.

SHRI MAHESH SARAN (Bihar): Sir, I will just take a couple of minutes and not more. I think it has been very wisely worded by the Select Committee and the ages of 21 and 18 are the proper ages because this is not an ordinary measure but an extraordinary measure. We were not used to marriages between the different castes of Hindus, Buddhists and Sikhs and others which have been allowed here. Then there is provision for divorce and people with mature mind should marry and it would be proper that for progressive people the ages should also be progressive and therefore I support the original clause.

[MR. DEPUTY CHAIRMAN in the Chair.]

DR. P. V. KANE: Mr. Deputy Chairman, I shall have to say something on some of the amendments that have been moved. First of all, I come to the ages because on that a great deal of discussion has taken place. My personal opinion is this that the ages 15 and 18 are quite good. You must re-member that we are not legislating for college girls alone but we are legislating for at least 300 millions of Hindus. The whole population of Indii is 360 millions and barring Muslims and omitting 60 millions, still there are about 300 millions. All these amendments are generally urged on by some motives about their own educated communities. We have to legislate in a way that we make it easy for the people to obey the law and not flout it as was done in the case of the Sharda Act. Remember, we are not

[Dr. P. V. Kane.] supposed to be moving faster than the advanced nations of the West. Even in England the minimum age is 16 years for boys or girls. We are going to have 16 and 21. So we are wiser than the most advanced nations jn the West. You should remember two things—first the vast number of people who are going to be affected by this measure. This is a code for all Hindus including among the word 'Hindu' Jains, Sikhs etc. and secondly we are addressing 300 millions at least 80 per cent, of whom are illiterate. They don't know how to read and write their own vernaculars. That has always to be kept in mind and so we should not put forward something which will be no doubt very good but that will be coming after you make every man a literate person who can read for himself and find' out what is good for him but that will come only say after 20 years. For one generation it cannot come.

I will take the amendments seriatim. Although as Chairman I had to sign, my own personal opinion is that 15 and 18 are the proper ages. 18 for the boys and 15 for girls, and there is another reason for it. Thousands of men are still under the opinion which they cannot carry into practice *viz.,* that a girl must be married before the age of puberty. That is at least the implied idea of almost everybody. Even those who are compelled to get their girls married later than 15, 16 or even 20, they are all the time feeling that they are helpless and therefore they are committing something which is not good. Therefore I am suggesting that if we secure 15 and 18, that is the best thing for us and it was suggested that the wording should be here like this but that is not so.

> "The bridegroom has completed the age of 21 years and the bride 16 years".

They want to change that into "15 years or the age at the time of the marriage under the Sharda Act".

You must remember that we are codifying the law of marriage and, divorce for the Hindus and if we say 'Something as in the Sharda Act', the.Sharda Act may be repealed so far as. that is concerned. , So what I submit is that if you are making a general code, you must have a complete code and you may put in here the ages but not refer to the Sharda Act. You can say that because later on the Sharda Act may be repealed. So I don't agree with the suggestion to amend the third sub-clause unless you can simply add the words:

> 'the bridegroom and the bride have got the ages contemplated or laid down in the Sharda Act'

but that would not be quite proper.

As regard^some of the other amend ments, I should like to say a few words and first of all about this amendment about a certificate which is a very important thing. I think it has been moved—I mean amendment No. 44 which asks for a medical certificate of fitness to be produced by the parties. But even now an immense number of our people are without the means to get the help of medicines or medical attendance. How can we ask them to go and -get a medical certificate that they are free from leprosy, venereal disease, idiocy or lunacy? For all this, you mav have to go to four different experts which means each Rs. 20 or Rs. 40 or it may even be a fee of Rs. 100 for a certificate. Surely that cannot be. So I am opposed to all these requirements. I do not know whether under any system of law a certificate of this kind is required. I am not cognisant of any, and if somebody is cognisant, I would very much like to be informed of it.

SHRI D. P. KARMARKAR: Nobody appears to be.

DR. P. V. KANE: And now as regard's the widowers and widows, I think it was Mr. Vaidya who has suggested the amendment:

> "That at page 3, at the end of line 44, after the word 'marriage', the

words 'provided that if the bridegroom is a widower and has completed the age of forty years, he cannot marry a bride, even thougn a widow, who is less than twenty-one years' be added."

SHRI D. P. KARMARKAR: And not *vice versa"!*

DR. P. V. KANE: No, not *vice versa.* But the difficulty is, this amendment may be against the Constitution, for every man has the right to marry whomsoever he can catch. Of course, I am not a judge, but I can argue as a lawyer and[1] say that this provision will be against the Constitution.

DR. SHRIMATI SEETA PARMANAND : A man can marry at any age?

SHRI KANHAIYALAL D. VAIDYA: Are we interested in such old marriages continuing?

DR. P. V. KANE: After all it is for the House to decide. But you know even in such matters as rent control and all that, the people got round the law by resorting to "pugrees" etc. so also they may resort to giving the wrong age. The age may not be given properly by both the parties. And as legislators we should not be so emotional. We are passing from a polygamous society and a non-divorcing society to a monogamous and divorcing society, if I may say so. I don't mean that necessarily every marriage will have a divorce. Therefore, we should be cautious not to be influenced by emotions or to be carried away by them. Therefore I am opposed to this.

SHRIMATI CHANDRAVATI LAKHANPAL: My amendment prevents that problem.

DR. P. V. KANE: Yes, the amendment says that a widower shall marry only a widow. But there also, the same difficulty will come in and apart from the constitutional difficulty, suppose a young man has the misfortune to lose his wife at the age of 24. You have fixed the age for the man as 21 and so he may lose his wife within a year of his marriage and if he is to marry again only a widow, then such a young widow may not be available; which means you effectively prevent the young man from re-marrying. Well, I cannot accept the amendment, but it is for the House to decide. There are, however, these practical difficulties and let us consider them. Let us not be carried away by emotions. We are legislators and not simply emotional people. So let us apply our minds to the difficulties of people, whatever we may feel, and let us see what other difficulties there will be, by this emotional appeal. All these suggestions are really emotional appeals and they do not stand to reason, as matters stand at present.

I think I have dealt with almost ail the amendments, except the one relating to the marriage of maternal uncle and niece, No. 208 moved by Shri Rajagopal Naidu. First of all, on Its merits itself. I oppose the amendment, in the sense that we are not going to specify or specifically enumerate the different customs to be recognised by law. That must be left to the parties. They must produce the proper evidence and the court will decide the matter. If you r/ut iown this one custom or usage here, then other people might get up and say, "We must have these other things also with reference to our marriages to be put down specifically." So that is my objection, on the merits of it.

We have, however sufficiently provided for such customs and usages. We have said in clause 4 (a5:

> "any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act:".

And what is the provision? That you get in clause 5(iv):

> "the parties are not within the degrees of prohibited relationship, unless the custom or usage govern-

[Dr. P. V. Kane.]

ing each of them permits of a marriage between the two;".

So the Act itself provides for these customs and usages as regard's degrees of prohibited relationship and also the *sapindas* relationship. The Act itself recognises them and therefore provision is made in this Act about them. And there,, is no conflict between sub-clauses (iv) and (v) of clause 5. My submission would be that it is something like a rule, an exception and a counter-exception, all put in that form. First of all, you say all laws which are in conflict with this wiH be practically over-ruled. And then there are the exception and the counter-exception in sub-clauses (iv) and (v), as it were. Therefore, on account of this fact, and also on account of the fact that there is great difficulty in enumerating the customs, *on* these two grounds, I feel that the amendment should not be accepted.

I think I have dealt with all the amendments, Sir.

MR. DEPUTY CHAIRMAN: Has the hon. Minister anything to add?

SHRI D. P. KARMARKAR: I think Dr. Kunzru has to say something.

SHRI H. N. KUNZRU (Uttar Pradesh): I really do not have much to say, especially after what Dr. Kane has stated now. But perhaps I may add a word or two about the amendment which proposes that the age of marriage for boys and girls should be reduced to 18 and 15 as laid down in the Sarda Act. The Sarda Act is a general Act and it applies to all communities. If. therefore, we want to change the age of marriage of boys and girls, this should be done by amending the Sarda Act and not by raising the age-limits in this Bill. Many amendments have been put forward with the object that this Bill should be made applicable to all communities. The desire for having a common Civil Code which covers all sections of the community is general. In this matter and in the matter of age, that uniformity can be attained and has been attained. There is no reason why, therefore, we should depart from it. If we think that on general grounds, boys and girls should marry at a higher age, then we should amend the Sarda Act. so that the law may apply to all sections of our population. I do not, however, think that it is necessary to alter the law in order to induce boys and girls to marry at a higher age than at the ages permissible now under the Sarda Act. In no country, I think, is the law changed in accordance with the changing practice. In England, for instance, though the age at which a girl can marry—the age of consent—is sixteen, nevertheless, we all know that girls marry at a much higher age. The present age limit, it is clear therefore, does not stand in our way, and in the way of all those who want that men and women should marry when they are older. This being the case, there is no ground why we should alter the Sarda Act only so far as the Hindu community is concerned. We have a general law on this subject and let us continue to have it. If you want to make any amendment, let us make it in the general law so that all the sections of the community might be brought under it.

SHRI R. C. GUPTA (Uttar Pradesh): I have only one submission to make so far as clause 5 is concerned. I am really in agreement with the provision that the age-limits should be 18 and 15, but I do not see how it would be proper to include a clause here, when the Sarda Act is already in existence. If you are going to make any departure from the provisions of the Sarda Act, then you will be laying down two principles.

The Sarda Act is really an Act which applies to all. If the Sarda Act is good for all, I do not see why a departure should be made here in respect of the age. My first submission is that this clause should be deleted altogether; it is not necessary that it should be included in this Bill, but if it is to be included then such mar-

riages should not be made voidable. The ages should be 18 and 15 and not 21 and 16, as provided for. If it is not accepted, the consequences will be very serious.

There is one thing more which I would like to stress and[1] that is with regard to clause 4 of the Bill which provides for the overriding effect of this Act. The idea seems to be that ali the customs and usages and pro visions of specific law should be done away with, whereas sub-clauses (iv) and (v) make an exception in respect of customs and usages. I am quite aware that these customs and usages are necessary because.....

MR. DEPUTY CHAIRMAN: That has been provided for.

SHRI R. C. GUPTA: .....they are observed in particular parts of the country and, therefore, it is for this reason that they have been exempted. If that is so, then what was the object of clause 4? The idea is to codify the law and if it is a codification why leave these things to custom and usage? It is not a good codification that you keep usages and customs alive along with codification, especially when the customs and usages are numerous and indeterminate and probably they require lot of oral evidence in each case. Those customs and usages should be very well defined and it should be laid down in the. law that such and such customs and usages should be recognised and no other, or else, clause 4 should not be there. The very idea of codification is that we want to eliminate those things where oral evidence may be necessary. Now, in order to prove custom, a lot of oral evidence is necessary, as everybody connected with the law courts knows. I do not know what, object would this provision serve. It should not be included here.

SHRI D. P. KARMARKAR: Sir, in view of the discussions, for and against the various amendments .....

SHRI B GUPTA: There are certain points which have not been touched,

MR. DEPUTY CHAIRMAN: It has taken nearly 1J hours and every one has spoken.

SHRIMATI SAVITRY NIGAM: I also want to speak, Sir.

MR. DEPUTY CHAIRMAN: After Dr. Kane has spoken....., there is no need.

SHRI B. GUPTA: He might have, Sir. but we have got certain points to urge.

MR. DEPUTY CHAIRMAN: Mr. Mazumdar has spoken.

SHRI S. N. MAZUMDAR: No, Sir, not I.

SHRI B. GUPTA: Supposing he had? I want to ask what harm is there in my speaking.

MR. DEPUTY CHAIRMAN: Mrs. Krishnan has spoken on it.

SHRI 9. N. MAZUMDAR: But she has not touched that point.

MR. DEPUTY CHAIRMAN: I have called Mr. Karmarkar.

SHRI B. GUPTA: You have called him? All right, you may un-call him also.

SHRI D. P. KARMARKAR; Mr. Deputy Chairman, I shall be brief.

Sir, I accept amendments Nos. 34 and 35 and I should endorse what my friend Mrs. Parvathi Krishnan said about that point—I wish she were a little more reasonable in other matters also but that is a different matter— and I also appreciate that, when I say I accept this amendment.

My hon. friend over there, Mrs. Bharathi said .....

MR. DEPUTY CHAIRMAN: Your amendments are accepted.

SHRI H. P. SAKSENA (Uttar Pradesh) : Louder and slower please, so that we may hear.

SHRI D. P. KARMARKAR: I know that when I mention the names of ladies, my hon. friend is interested. I

[Shri D. P. Karmarkar.] was saying, Sir, that I appreciate what Mrs. Bharathi said but she comes from a very advanced State and we do not base the age on the merits strictly of particular areas. Even if this law is not there, in cities where people are educated, people will not think of marrying off tKelr daughters below the age of 15 but, as it was observed before this House, this becomes quite impracticable of operation in the rural areas.

I should like to stress one point arising from my friend Mr. Rajagopal Naidu's amendment No. 208. I entirely appreciate what he said but when he said only South India, I should also like to tell him that the same custom obtains in Mysore—which may be part of South India—and in parts of West-em India and so it is difficult to And out where exactly this custom prevails and one does not know exactly at the moment where it prevails. I know that this particular custom referred to by my friend has been judicially recognised also we do not seek to interfere with that judicial decision and that is precisely the reason why not only this but also other customs which we wanted to save, irrespective of the provisions of this Bill, have been incorporated. Therefore it is that we find it difficult to particularise. Were this the only custom and nothing else, it needs hardly an assurance from me that it should be mentioned specifically because that is a custom recognised by the courts of law.

SHRI RAJAGOPAL NAIDU: My only complaint is the presumption that such marriages are void under clause 11(2).

SHRI D. P. KARMARKAR: My hon. friend very well knows that no one can prevent any other party from being a defendant. For that reason, my hon. friend who is nothing else but honest, I am quite sure, can be brought in as ar defendant by any man in the street, who can say that he borrowed Rs. 50 from him. It is an absolutely false complaint. The I point that I was trying to make is that when a party goes before a court of law as a defendant, the issues are not considered separately. When a custom is judicially recognised, it will not be difficult for a party to prove and the subordinate court is bound to respect what the superior courts have said. I have nothing to say except that I appreciate my friend's difficulty find I am quite sure he will appreciate my difficulty and that he will withdraw his amendment.

SHRI B. GUPTA: My point, Sir, is about the age of consent.

SHRI D. P. KARMARKAR: A lot of points were made out about widow re-marriage. Much has been said by my friend Dr. Vaidya. Well, there is something in what Dr. Vaidya—I always would like to call him 'Doctor'—says and I sympathise with him. No cne would like an old man, whether he is a widower or not, marrying a very young girl. Our sympathies are with them and our sympathies may also be with the reverse, a widow of 40 marrying a young boy of 25. It plays both ways and it is very difficult to make provision for all such things which we might consider undesirable. Therefore, Sir, I beg to oppose that amendment.

The other amendment of my friend Mrs. Lakhanpal has been replied to and I should think that in the eyes of law it is not necessary artificially to limit the age of widows or widowers if other things are quite good. It is not necessary to limit the normal operation of the law. I suppose, Sir, I should not waste the time of the House on the other amendments.

SHRI B. GUPTA: What about amendment No. 44? You have now brought down the age of marriage in the case of women to 15. It was on the previous age that the age of consent was given as 18. Are you now prepared to reduce it?

SHRI S. N. MAZUMDAR: Automatically it should be done.

SHRI H. D. RAJAH: They are agreeing.

MR. DEPUTY CHAIRMAN; Are you accepting No. 40?

SHRI D. P. KARMARKAR: No. Sir, we cannot accept it. We oppose it.

MR. DEPUTY CHAIRMAN: The question is:

206. "That at page 3, lines 42 to 44 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

36. "That at page 3, line 43, for the word 'sixteen' the word 'eighteen' bt substituted."

Ths motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

34. "That at page 3, line 42, for i the word 'twenty-one' the word 'eighteen' be substituted.

It is accepted by Mr. Karmarkar.

The motion was adopted.

MR. DEPUTY CHAIRMAN: The next amendment also is accepted. It is No. 35.

The question is:

35. "That at page 3, line 43, for the word 'sixteen' the word 'fifteen' be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: Mr. Vaidya, do you want me to put your amendment to the vote?

SHRI KANHAIYALAL D. VAIDYA: Yes, Sir, I press it.

MR. DEPUTY CHAIRMAN: The question is:

37. "That at page 3, at the end of line 44, after the word 'marriage' the words 'provided that if the bridegroom is a widower and has completed the age of forty years, he cannot marry a bride, even though a widow, who is less than twenty-one years' be added."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Do you want me to put your amendment, No. 40, to the vote?

SHRI B. GUPTA: I withdraw it.

The amendment* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

41. "That at page 4, line 8, after the word 'years' the words 'but has completed the age of sixteen years' be inserted.

The motion was negatived.

Amendment No. 42* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: rThe question is:

43. "That at page 4, after line 9, the following be added, namely:

'(viii) if the party is a widower, he shall marry 3 widow; and if the party is a widow, she shall marry a widower,'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The next amendment is in the names of Mr. Dhage and Mr. Mahanty. They are not here.

The question is:

44. 'That at page 4, after line 9, the following be added, namely: —

*For text of amendments Nos. 40 and 42, *see col.* 1689 supra.

fMr. Deputy Chairman.]

'(vii) the parties produce a medical certificate of fitness for marriage to the effect that neither party is suffering from leprosy, venereal disease, idiocy or lunacy in areas where the State Government *so* notifies.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: Now comes amendment No. 207. Mr. Muker-jee, do you press it?

SHRI B. K. MUKERJEE: My object has been attained. Government has accepted that.

MR. DEPUTY CHAIRMAN: It is barred then.

Do you press your amendment (No. 208), Mr. Rajagopal Naidu?

SHRI RAJAGOPAL NAIDU: No. Sir.

The amendment* was, by leave of H:e House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That Clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added Io the Bill.

M.R. DEPUTY CHAIRMAN: Now T/e come to New clause 5A sought to be inserted by the amendment of Mr. Karimuddin. He is not here and so H is not moved.

Now we take up clause 6. There are amendments. Those who are present will please move their amendments.

PROP. N. R. MALKANI: Sir, I beg to move.

48. "That at page 4, after line 17, the following be added, namely: —

'(dd) the maternal grandfather;'."

DR. SHRIMATI SEETA PARMA NAND: Sir, I move:

"49. "That art page 4, after line 19, the following be added, namely: —

'(ee) the maternal grandfather;

(eee) the maternal grandmother;

(eeee) the sister (as between sisters the elder being preferred);'."

52. "That at page 4, after line 23, the following be added, namely: —

'(ff) the sister by half blood;'."

53. "That at page 4, after line 25, the following be added, namely: —

'(gg) the maternal uncle by full blood;

(ggg) the maternal uncle by half blood;'."

57. "That at page 4. after line 29, the following be added, namely —

'(i) the paternal aunt; (j) the maternal aunt;'." SHRI B. GUPTA: Sir, I beg to move:

50. "That at page 4, lines 20 ta 23 be deleted."

51. "That at page 4, lines 26 tc 29 be deleted."

SHRI B. M. GUPTE (Bombay): Sir, I beg to move:

56. "That at page 4, after line 29. the following be added, namely: —

'(i) the maternal grandfather;

Provided that the bride is living with him and is being brought up by him;

(j) the maternal uncle by full blood; as between maternal uncles the elder being preferred:

Provided that the bride is living with him and is being brought up by hirn.'"

SHRIMATI SHARDA BHARGAVA-Sir, I beg to move:

*For text of amendment, see eat. 1690 *supra.*

58. "That at page 4, after line 20, the following be added, namely: —

'(i) the maternal grandfather;

(j) the maternal uncle by full blood; as between maternal uncles the elder being preferred;

(k) the maternal uncle by half blood; as between maternal uncles by half blood the elder being preferred :

Provided that the bride is living with him and is being brought up by him.' "

SHRI J. S. BISHT: Sir, I beg to move:

59. "That at page 4, lines 38-39. for the words 'the consent of a guardian shall not be necessary for a marriage under this Act' the words 'the consent of the district court shall be obtained for a marriage under this Act' be substituted.

60. "That at page 4, line 42, the words 'for whose marriage consent is required' be deleted."

SHRI B. K. MUKERJEE: Sir, I beg tc move:

209. "That at page 4, line 38, for the words 'a guardian', the words 'the District Magistrate' be substituted and the word 'not' be deleted.

MR. DEPUTY CHAIRMAN: The amendments and the clause are open for discussion.

SHRI B. GUPTA: Sir, my amendment, if you see, puts certain people out of the category of guardians as far as marriage is concerned. I want that lines 20 to 23 referring to 'the brother by half blood' should be deleted. And again on the same page I want that lines 26 to 29 dealing with 'the paternal uncle by half blood' should be deleted. Now this category of 'brother by half blood' and 'paternal uncle by half blood' should be deleted from the list of guardians who will be there and whose consent will be necessary. Sir. we did not get a chance to speak on that clause, the 'consent clause' 'Consent' itself is something Which is not very desirable. But we realise that we live in a society where in certain cases, especially where between the parties to a marriage the girl is a minor, consent has to be sought; we are not absolutely ruling out that position. But then what happens in our country? When there is no natural guardian especially, people turn up and claim guardianship for various reasons. Now some of them claim guardianship because of property; ethers may have other reasons in mind. But the fact remains that a large number of people become claimants te guardianship and come to lord it over the minor, man or woman. On the contrary, in many eases it has been found that the guardians create difficulties and even these guardians are not actuated by the interests of those of their wards or of those whom they are supposed to look after. It may happen, in many cases, especially when there are properties involved, that the guardians function against the interests of their wards or the persons whom they are supposed to look after. Now with regard to marriage it may be said that since the person below the age of eighteen years would not be in a position to exercise judgment, she should seek the opinion and advice of somebody who is looking after her. Now we are providing for— as we retain some of the sub-clauses under this clause—and some people will be there. Suppose they are not there, then why bring in brother by half blood and paternal uncle by haM blood and all that sort of thing? There is no necessity. I think this would complicate matters and take away much of the grace that is sought to be given under this measure. And 'n any case it will be found that such guardians will not be there either; this type of guardians as envisaged in these particular sub-clauses whose deletion we have sought, will not be available. Therefore it is better not to have such provisions. Now the father will be there, the mother will be there, the paternal grandfather will be there, the paternal grandmother will be there, the brother by full bliKxi

[Shri B. Gupta.] of course will be there the elder being preferred, the paternal uncle by full blood will be there. With these people the list should stop. You need not bring in various other types of people. It may be said that somebody should be there in the absence of the other. Suppose these categories were not there and for that matter suppose the brother by half blood is not available or the paternal uncle by full blood is not available or the paternal uncle by halt blood is not there, what happens in such cases? Does it mean that we go out to find out some other person? 1 should think that no consent will be required in such cases. Therefore I say that we should not make this list long because interference will take place and these people are not always such as would be expected to exercise their judgment in the interests of the» minor woman. It should not be assumed that the categories mentioned in subclauses (f) and (h) wiH exercise their judgment in the matter of consent in the interests of the bride. It may not be so. We should not make an assumption. At the same t'me I do not say that a contrary assumption should be made. Therefore this matter should be left out and 1 think that is good enough. If the bride is so unfortunate as not to have any of these five categories, then let | the matter remain where it is; that is I to say, she should not go out and find someone else to interfere in the matter of her marriage as far as consent is concerned. This is why I say that | this amendment should be accepted. Ther» may be family ties and all that sort of thing. There may be customs and usages in some places. All these things are not to be brushed aside and | ignored. When we are making an enactment we should put it on a reasonable footing. We should not stretch j ourselves too much as to create a sort I of loophole whereby certain people may claim themselves to be' the guardian just to withhold consent or to exert undue .influence on the bride in the inatter of her marriage. I think these j aije-tjiereasons which should be taken *j* into account by the Government; and as you know, Sir, in no progressive law there is any such provision for consent. In no case are so many people brought up in a list whose consent must be sought for marriage in progressive legislation.

3 P.M.

M,R. DEPUTY CHAIRMAN: Mr. Gupta, you appealed to other Members to be short but you are belying your own appeal.

SHRI B. GUPTA: But I do not think I have taken more than five or six minutes.

MR. DEPUTY CHAIRMAN: You have taken more than that. There are so many others and we have still 200 amendments to go through.

SHRI B. GUPTA: So, Sir, in other Jaws there is no such provision for consent!. This consent provision is not something very welcome but since you have got it here, restrict it as far as possible. That is my submission and I think I have been fairly short.

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, there are three amendments in my name, Nos. 49, 52 and 57 and they all deal with the same matter. They all seek io include the nearest female relative & who seem to have been omitted. I c'.'3 submit that if these five or six relatives are included, the list will not become a very long one. On the other hand, if they are omitted it means that except for mother and thy grandmother, the Bill refuses to appreciate the realities of the situation. On account of the influence of the joini family system and resulting closene.-s of ties, wards—maybe boys or girls— do live with their maternal aunt or paternal aunt or they may live with their half-sister. Sir, it may be perhaps pointed out that sisters, aunts and others and even maternal grandmother belong to other families and not being free agents, they will not be able to make any contribution perhaps to actual upkeep of the girls but they will come in here only when Ihe ward is staying with any of them. There is a clause there which says

provided they happen to stay there. When a girl or a boy is staying with any of these relatives mentioned by me, namely, paternal aunt, maternal aunt, sister or sister by half blood, maternal uncle by full blood, maternal uncle by half blood, and does not worry about taking permission of these people—of course, the question arises only when the ward is under-age—I think it would sfow the seeds of indiscipline and it may not speak well for the integrity of a family or the respect we have always for elders. It is Jlrom this point of view, particularly from the point of view of giving woman her place in the family, I have suggested that these few relatives—this is not a very long list—may be included and I hope that the Government will not have serious objection to do so after taking into consideration the points that I have made. It is to meet the desire of people, in view of the T^W position which women are acquiring^ to put women relatives and those on mother's side in this respect on par with exactly their opposits numbers on the father's side and male relatives.

SHRI J. S. BISHT: Sir, I want that for the words "the consent of a guardian shall not be necessary for a marriage under this Act" the words "the consent of the district court shall be obtained for a marriage under this Act" to be substituted. And there is one consequential amendment that at page 4, line 42, the words 'for whoss marriage consent is required' be deleted. What I am submitting is this. When I moved the amendment reducing the age of boys from 21 to 18 and that of girls from 16 to 15, the question arose in my mind that these young girls of 15 should not be left alone if they did not happen to have any of these guardians. It would be a very awkward position. There may be many such girls in orphanages and ojther places and these young girls of IE would be taken away in marriage without anybody's consent at all and then there would be another difficulty. We have also got the Hindu Minority and Guardianship Bill which has been recently referred to a Joint I Select Committee. There you are going to appoint guardians for minors who will be below 18 but her$_e$ you say there is no guardian at all.

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAK): That Bill does not relate to guardian ship in marriage.

SHRI J. S. BISHT: What sort af guardianship is that? You give the guardianship of person, guardianship : of property. A man who is guardian ' of the girl, if she is married some-1 where, he does not know. What sort of guardianship will that be? That is not quite fair. I think there is no harm if you provide this in such an unfortunate contingency where the girl happens to have none of these people. It is very simple. They can go to a district court and make an application and if the district court is satisfied that it is a proper marriage, then the consent will be given, 1 otherwise there will be this difficulty 1 of the girl being married away and even a sort of white slave traffic may go on.

PROF. N. R. MALKANI: My amend-*]* ment is only that the maternal grandfather should be put in here. As a J matter of fact in the original Bill paternal grandmother was not there. Now, she has been put in and I think maternal grandfather should also be put in after her. I think he is more important as a guardian than the guardianship of half-brothers, mater nal aunt and so on.

DR. SHRIMATI SEETA PARMANAND: Only grandfather, not grandmother?

PROF. N. R. MALKANI: I say put him after paternal grandmother. As I said she was not there in the original Bill but she has been put in.

DR. SHRIMATI SEETA PARMANAND: I am asking whether maternal grandmother should not be included.

MR. DEPUTY CHAIRMAN: He is not speaking about that. Yes, Shrimati Bhargava.

श्रीमती शारदा भार्गव : उपसभापति महोदय, वैसे तो श्रीमती सीता परमानन्द ने एक बड़ी लम्बी लिस्ट प्रस्तुत की हैं और अगर उन सब को स्वीकार कर लिया जाय तो मैं बहुत अच्छा समझती हूं, परन्तु मुझे मालूम हुआ हैं कि इतनी लम्बी लिस्ट नहीं बनाई जायगी। इस लिए मुझे इतना जरूर कहना हैं कि जहां कहीं भी मां या बाप का शब्द आता हैं, मैं समझती हूं माता या पिता से ज्यादा संरक्षक और कोई नहीं हो सकता। आपने पेटर्नल अंकिल और हाफ ब्लड अंकिल तो लगा दिया हैं, परन्तु फादर और मदर के बाद ग्रैंडफादर और ग्रैंडमदर ही आते हैं, चाहे वे पेटर्नल हों या मेटर्नल क्योंकि मैं नहीं समझती कि लव या गार्डियनशिप में कोई फर्क हो सकता हैं। मैं मानती हूं कि अंकिल एक दफा विमुख हो सकता हैं मगर ग्रैंडफादर और ग्रैंडमदर का अपने बच्चों के प्रति स्नेह बना रहता हैं। तो चाहे अंकिल गार्डियनशिप के लिए उतना लव कर सकें या न कर सकें, मगर ग्रैंडफादर और ग्रैंडमदर, चाहे वह मेटर्नल ही क्यों न हो, यहां रखा जाना बहुत आवश्यक हैं। इसलिए मैं सब से ज्यादा जोर इस बात पर देना चाहती हूं कि यदि आप लम्बी लिस्ट न बनाना चाहें तो थोड़ा सा यह कर दीजिए कि ग्रैंडफादर और ग्रैंडमदर शब्द के साथ मेटर्नल शब्द भी जोड़ दीजिए, और उसी के बाद सिस्टर को भी रख दीजिए तो और अच्छा हैं क्योंकि मैं यह समझती हूं कि अगर ये तीन एडीशंस हो जायंगे तो बहुत बड़ी कमी दूर हो जायगी। कई दफे ऐसा देखने में आता हैं कि बच्चे के माता-पिता मर जाते हैं तो नाना नानी ही उनको पालते हैं, नाना नानी कभी भी बेमन से उनको अपने पास नहीं रखते इस बात को सारी दुनिया जानती हैं। इसलिए नाना नानी की गार्डियनशिप होनी बहुत आवश्यकीय हैं, यह मेरा कहना हैं।

SHRI. B. K. MUKERJEE: Sir, my amendment runs on the lines of the amendment moved by my friend Mr. Bisht (amendment No. 59), except in one respect. He wants that the consent of t'.ie district court shall be obtained, but I want to make it the district *magistrate.* The district court is presided over by the district judge, but as the district magistrate is the person who is directly concerned with all people in the district and for all purposes the district magistrate comes into the picture, the district magistrate should be the guardian in the absence of any other guardian available, in terms of sub-clause (1) of this clause (clause 6). There may be cases as my sister stated just now, when the maternal uncle or aunt are not available t'.iey may be taken care of by a person who is not a relation even and not included in this list. Naturally the foster father or mother expects that the girl should- be* married to a proper person, but they have got no say in the matter. So, if the district magistrate is there to give his consent, it will be a little check and tie result will be better. As this amendment seeks the Government to take responsibility in this matter, the district magistrate is the proper person. I hope the Government r.hould not have any objection to accept this amendment, namely, in case there is no guardian available as incorporated in this clause [clause 6(1)], the district magistrate will function as the legal guardian of the person.

SHRI B. M. GUPTE: Sir, I wish to speak on my amendment, No 56. 1 must point out that the list as it stands does not include any maternal relations at all and, therefore, I want to add them—to the minimum extent only. They have got natural affection and it happens very often that the paternal relations have got some conflicting property interests. Therefore, the children have to stay with their maternal uncle or maternail grandfather. I therefore submit that at least these two relations should be included in the list with the proviso

that unless the minor stays with them, they will have no right.

SHRI RAJAGOPAL NAIDU: Sir, the only reason that has been given by the Select Committee is .....

MR. DEPUTY CHAIRMAN: There is no amendment in your name.

SHRI RAJAGOPAL NAIDU: No, Sir. The only reason that is given by the Joint Select Committee in its report for the non-inclusion of the relatives on the mother's side, such as maternal grandfather; maternal grandmother, and maternal uncle, is that it will add to the list unnecessarily. I will read only that line that is given in the notes on clause 6 by the Joint Select Committee, where it says: "The Joint Committee feel that it is unnecessary to have such a long list of guardians as proposed in the original Bill and, therefore, the maternal grandfather, tie maternal grandmother, the maternal uncle and the residuary relatives have now been omitted." I do not understand if that should be the only reason given by the Joint Select Committee, then this House should accept the various amendments tabled by the hon. Members in this respect. If we read the draft report of the Hindu Law Committee, we find that the names of maternal grandfather and maternal uncle are included. And if we read the draft Bill also, we find that the maternal grandfather and maternal uncle are included. But strangely enough, the Select Committee has omitted it and the reasons given are certainly not convincing. No one will be convinced by the reasons given by the Select Committee.

Finally, I would like to add one thing. All the sehools of Hindu Law— the Mitakshara school and Dayabhag school recognize this maternal or the relatives on the mother side to be the guardians in marriage.

.SHRI P. T. LEUVA (Bombay): No, no. They are not proper guardians.

SHRI RAJAGOPAL NAIDU: When I speak, I speak with authority. I do not want to waste the time of the House, but since you have questioned me, I shall certainly read a portion from Mayne's Hindu Law. There are many decisions given by the Allahabad High Court in this respect. "..... where the paternal relations refuse to act or have disqualified themselves from acting, the maternal relations, of a girl can select a bridegroom for the girl and arrange for her marriage." This is a decision of the Alia- • habad High Court. I speak only based on certain authorities. Not only the Mitakshara, but also the Dayabhag school has recognized relations on the mother's side as guardians for the girl in marriage. Also, in the ancient texts, *Narada* says that in preference even to the relations on the father's side, who refuse to act as guardian in marriage for the young girl, it is the mother's relative, that will be preferred as guardian. If the only reason that has been given that if these two or three persons are included in the list, it will add to the list, I am really sorry for that. Otherwise, complications will arise.

One more point, Sir. I would even go to the extent of deleting the paternal uncle from the list and include maternal uncle for the simple reason that there is always the property conflict on father's side. Whereas if the mother's relatives, as I said, are included, there is no question of any conflict arising between these two relatives in respect of property. That is the reason why relations on the mother's side should be included and that is what the various authorities-have said.

DR. SHRIMATI SEETA PARMANAND: What about other women, relatives?

SHRI RAJAGOPAL NAIDU: I do-not want to support you on that point.

SHKI H. C. MATHUR (Rajasthan): Mr. Deputy Chairman, I fully support

[Shri H. C. Mathur.! this amendment for the inclusion of the relations on the maternal side and I fully subscribe to the views which were made by the previous speaker. I will not repeat those arguments, but I do wish to emphasise that if the feelings of our Hindu families, how we feel about it, are reflected in the provisions of this Bill, it would be just in the fitness of things if the relations on the maternal side and sisters are included in this list. Otherwise, it would be • absolutely unrealistic. There is nobody who watches the interests of the girl much more than the relations on the maternal side and sisters. We, therefore, strongly feel that they must be included in preference to some who have already been included in this clause.

SHRI H. C. DASAPPA (Mysore): Sir, may I just make an appeal? I onlv want to make an appeal in favour of the amendments to include the maternal relations. We know, as a matter of fact, it is an incontrovertible fact that the maternal relations always evince a great deal of direct interest in the welfare of the minors; in fact, they take a great deal of interest in the selection of partners and in the performance of the marriage. This is a fact which we have been experiencing all our lives. Why then have they been excluded? The only reason that has been given is that the list will be long. I am pretty sure that the Select Committee should have given us much better reason than merely say that the list would be long. There is no other reason. May I also say, Sir, that having regard to the experience we have had in the case of the Special Marriage Act and so on, if we are to go to the Lok Sabha, it is likely that an amendment so reasonable as this will be accepted by them. When there is such a preponderance of opinion in this House—there is hardly a Member whe has spoken against it—I hope the hon. Minister will kindly accept this amendment.

SHRI R. C. GUPTA: Sir, I wish to support Mr. Bishf amendment as well as Mr. Gupte's amendment. I think, Sir, under clause 6 'official guardian' has been completely ignored. There may be cases where a guardian has already been appointed by the court under the Guardians and Wards Act, and the marriage takes place afterwards. Now, under the Guardians and Wards Act, there is already one official guardian appointed, and t'ne person who has been appointed by the District Judge has been appointed after due consideration of the merits of the relations, to whom the notices are always sent. Now, giving other persons a preference over the official guardian, who has been appointed by the District Judge after due consideration, would not be in the interests of the minor. That is one point, Sir, which I wish the hon. Minister to consider.

Secondly, Sir, there is likely to be a conflict between personal relationship and the....

MR. DEPUTY CHAIRMAN: But the official guardian comes in only when there is no natural guardian.

SHRI R. C. GUPTA: There is bound to be a conflict between the paternal relations and the official guardian. Under this provision, what will the paternal uncle do? If he is against the minor, he will give that girl in marriage to a person in whom he has got confidence, and who might admit his claim in the property dispute. So, there is going to be a very serious prejudice to the interests of the minor. That, I think, Sir, has been completely ignored.

And there seems to be another conflict in respect of sub-clauses (4) and (5). Under sub-clause (5), a right has been given for the issue of an injunction, but it has been qualified by the words "if in the interests of the bride for whose marriage consent

is required .....". Now, under sub clause (4) consent is not required. When there is no such relation, no consent is necessary. Then, if any body wants to prevent that marriage which is highly undesirable, he will not be entitled .....

MR. DEPUTY CHAIRMAN: The official guardian can come in under clause 5 .....

SHRI R. C. GUPTA: There is no official guardian. If official guardian is there, it is all right. But his right has not been recognised under this clause. He has been completely ignored. The official guardian should have been included as one of the persons, and he should have been given the first preference, because whenever he does an act, he does it after notice to everybody, and with the consent of the District Judge. But •when he is ignored, there must be somebody to look after the interests of the minor girl. But now under this clause, a paternal uncle might have a vested interest so far as his property dispute is concerned, and he would like to marry the minor girl to a person with whom he might have entered into some secret agreement.

SHRI D. P. KARMARKAR: Regard ing clause 6, Sir, there is much to be said. I very much appreciate the demand with regard to the guardianship list being extended to the maternal grandfather and the maternal uncle. Sir, the original Bill itself contained some provision for that. But then, in view of the fact that the age of marriage for the bride was raised from 15 to 16. the Joint Committee thought that the list may be as short as possible. But in view of the decision taken by this House limiting the ages to 15 and 18, -we do accept the first part of Mr. Gupte's amendment No. 56 .....

SHRIMATI SHARDA BHARGAVA: "You do not accept women .....

SHRI D. P. KARMARKAR: Not the maternal grandmother. We have accepted, half. It is nothing against the ladies as such.

DR. SHRIMATI SEETA PARMANAND: When you don't recognise them, it comes to that.

SHRI RAJAGOPAL NAIDU: But there is a proviso in the amendment that is tabled—No. 56—which says "the maternal grandfather: Provided that the bride is living with biai and is being brought up by him."

MR. DEPUTY CHAIRMAN: Do you accept the proviso also?

SHRI D. P. KARMARKAR: I should think so, It is quite harmless.

MR. DEPUTY CHAIRMAN: Yes, that is the only amendment which he accepts.

SHRIMATI SHARDA BHARGAVA: *I* think it should be accepted in full

SHRI D. P. KARMARKAR: It is open to the House to decide. But i have indicated to the House what 1 am prepared to accept.

DR. SHRIMATI SEETA PARMA NAND: I may say, Sir.....

MR. DEPUTY CHAIRMAN: No further speech.

SHRI D. P. KARMARKAR: Ali right. Sir, in view of the desire of the House, I accept the maternal grandmother also.

DR. SHRIMATI SEETA PARMANAND: What about the sister?

MR. DEPUTY CHAIRMAN: Where does the maternal grandmother come in? Do you accept amendment No. 4» (ee) and (eee)?

SHRI H. D. RAJAH: There also, does the hon. Minister accept the proviso with regard to the matern-J. grandmother?

SHRI D. P. KARMARKAR: Yes.

MR. DEPUTY CHAIRMAN: Now, let us be clear about it. I think the hon. Minister accepts amendment No 49 (ee) and (eee). He does not accept the third one. Is it so?

SHRI D. P. KARMARKAR: Yes, Sir.

DR. SHRIMATI SEETA PARMANAND: Is it permissible to accept only half of an amendment?

MR. DEPUTY CHAIRMAN: Yes, why not? If you want the first two parts of your amendment to be accepted, you have to agree to that.

SHRI D. P. KARMARKAR: Mr. Deputy Chairman, that complication would be there. Therefore, I advisedly said that I would accept amendment No. 56. Subject to that, I am prepared to add the maternal grandmother, because I would not like to accept the half.

SHRI H. D. RAJAH: But you are accepting it along with the proviso?

SHRI D. P. KARMARKAR: Yes.

MR. DEPUTY CHAIRMAN: Do you accept the amendment of Mr. Gupte? Do you also accept (j)? Then (j) becomes (k).

SHRI D. P. KARMARKAR: Yes.

PROF. N. R. MALKANI: Sir, I beg leave to withdraw my amendment (No. 48).

The amendment* was, by leave of the House, withdrawn.

DR. SHRIMATI SEETA PARMA NAND: I do not want to withdraw my amendment, because the hon. Minister has agreed to take only ihe maternal grandmother, but wants to j omit the sister. I want a division on that.

I

MR. DEPUTY CHAIRMAN: All J right: I will put the whole thing to vote. The question is:

49. "That at page 4, after line 19, the following be added, namely: —

'(ee) the maternal grandfather';

(eee) the maternal grandmother;

•For text of amendment, *see* cols, j 1737-1738 *supra.*

J

(eeee) the sister (as between sisters the elder being preferred);'."

DR. SHRIMATI SEETA PARMANAND: I want a division.

MR. DEPUTY CHAIRMAN: (After *taking a count),* Ayes 13; Noes 20.

The motion was negatived.

DR. SHRIMATI SEETA PARMANAND: I want a division.

MR. DEPUTY CHAIRMAN: That is-a division. I can choose either of two-ways.

Amendments* Nos. 50, 51, 52 and 53. were, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: Then: we come to Mr. Gupte's amendment.

56. "That at page 4, after line 29,. the following be added, namely: —

'(i) the maternal grandfather or, if he is not living, the maternaJ grandmother:

Provided that the bride is living with him or her and is being brought up by him or her;'."

SHRI D. P. KARMARKAR: I am not particular about the proviso.

SHRI H. C. DASAPPA: It is quite unnecessary.

SHRI B. M. GUPTE: I have no objection to the deletion of the proviso.

MR. DEPUTY CHAIRMAN: The second proviso, do you want it to-remain?

SHRI D. P. KARMARKAR: It should! be:

"(i) the maternal grandfather; (j) the

maternal grandmother;

For text of amendment's Nos. 50, 5i. 5' and 53. see col; 1738 *supra.*

(k) the maternal uncle by full blood; as between maternal uncles the elder being preferred:

Provided that the bride is living with him and is being brought up by hirn."

SHRI B. M. GUPTE: I accept the change.

SHRI RAJAGOPAL NAIDU: I would like to ask the Minister why he should add a proviso to the last relative in the list and not to the others. There is no proviso for any of the other relatives in the list. So. why should there be one proviso for the last relative in the list?

SHRI D. P. KARMARKAR: Because it is reasonable.

SHRI H. C. DASAPPA: The proviso is there only for half-bloods, never for the full-bloods. In the case of the maternal uncle, the bride is very much near to him. It is only for the half-bloods that we have added the proviso, and very justifiably so.

MR. DEPUTY CHAIRMAN: What do you think. Dr. Kane?

DR. P. V. KANE: I think the proviso should be there. The maternal uncle himself may marry the niece in some cases.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 4, after line 29, the following be added; namely: —

"(i) the maternal grandfather';

(j) the maternal grandmother;

(k) the maternal uncle by full Tslood; as between maternal uncles the elder being preferred:

Provided that th© bride is living ■with him and is being brought up by hirn.' "

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

57. "That at page 4, after hne 29, the following be added, namely: —

'(i) the paternal aunt; (j) the maternal aunt'."

The motion was negatived.

Amendment* No. 58 was, by leave, withdrawn.

SHRI J. S. BISHT: If the hon. Minister has no second thought on this, I will withdraw it.

SHRI D. P. KARMARKAR: On second thought I do not accept it.

SHRI J. S. BISHT: Then I withdraw the amendment.

Amendment* No. 59 and amendment* No. 60 were, by leave of the House, withdrawn.

Amendment* No. 209 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Motion moved:

"That clause 7 stand part of the Bill."

SHRIMATI K. BHARATHI: Sir, 1 move:

61. "That at page 5, for the existing clause 7, the following be substituted, namely: —

'7. *Ceremonies for a Hindu marriage.*—(1) A Hindu marriage may be solemnised by tying the sacred thread *(mangalyasutra)*

*For texts of amendments Nos. 5P, 59, 60 and 209, *see col. 1739 supra.*

[Shrimati K. Bharathi.] round the neck, of the bride by the bridegroom or by performing the *saptapadi* by the bride and the bridegroom jointly before the sacred fire.

(2) The marriage shall be deemed to have been completed after the tying of the sacred thread *(mangalyasutra)* or after the seventh step is taken.' "

MR. DEPUTY CHAIRMAN: Amendment No. 62 is barred.

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

63. "That at page 5, in line 2, after the word 'solemnized' the word 'either' be inserted; and at the end of line 3. after the word 'thereto', the following be added, namely: —

'or by registering the marriage before the Registrar of Marriages by making a declaration that the parties have fulfilled all the conditions laid down for a valid Hindu marriage as required under Hindu Marriage Law, and have performed saptapadi.' "

MR. DEPUTY CHAIRMAN: Now the clause and the amendments are open for discussion.

SHRIMATI K. BHARATHI: Sir, much of what is known as Hindu law is custom which varies from region to region and community to community. Today when we mould, out of all these, something which is fairly uniform for the whole community in a way suited to the modern trends in social relationships and human values, a certain measure of uniformity also has to be evolved as to marriage ceremonies. That is why I suggest this amendment. I don't think the amendment of mine in any way militates against the customary rites and ceremonies, of either party being pursued. It does not veto the *saptapadi* if you adopt the tying of *mangalyasutra* or the sacred thread. You may have all possible rites. With all that you have to prescribe one pattern which should be commonly adopted by all the parties to the marriage ceremonies. Otherwise even legal difficulties may arise Marriage is solemnised among the different communities by different rites. For example, the orthodox method *ot* marriage, i.e., *'savibandham'* in matriarchal system, was by the presentation of clothes by the bridegroom to the bride. Among some others, it is by exchange of rings. There are others who solemnize by clasping hands. There must be sometimes even mock fight and capture. Hinduism, embracing as it does, from the tribal peopl? to the orthodox Brahmins, must have infinite varieties of marriage ceremonies. A marriage may be solemnised between any two Hindus, and these two Hindus may have very varied customs in solemnising a marriage, this may lead to difficulties. As ?. compromise they may have to adopt a-mixture of the rites of both the groups. That may lead to legal difficulties because it is the customary rites of both the parties that are prescribed. Suppose the bride is a Bhil damsel and the bridegroom a Brahmin. The Bhil damsel may like to have the heroic drama of marriage by capture enacted. The bridegroom may like to have a solemn ceremony in which the Kanyaka or virgin is given away to the Brahmin by the bride's father. Then they have to evolve a ceremony in which the drama of capture may be partly enacted, the bride's father intervening— and then presenting the bride to the interloper. Then the ceremony sifl be a hybrid one and may not fulfil the legal requirements. If the amendment is adopted, they can enact any drama of ceremony, only the *mangalyasutra* will have to be tied at some part of the episode, or the saptapadi performed.

So by prescribing this common measure of tying the *mangalyasutra or* performing the *saptapadi* you can avoid all complications. This in no way prejudices the other solemn rites which the parties may freely adopt for their own spiritual or sentimental satisfaction. I belong to a community in which people adopt all sorts of rites of marriages. There may be *saptapadi,* there may be exchange of rings, there may be *kanyadan,* there may be mutual declaration of life-long loyalty, etc. But as a common measure either the presentation of cloth or tying of *mangalyasutra* may be Invariably adopted. It is because the law requires it.

Sir, I hope the House will adopt my amendment which is a simple one and is calculated to make matters simple.

DR. SHRIMATI SEETA PARMA-NAND: Mr. Deputy Chairman, my main object in bringing this amendment is to simplify marriage and make it less expensive and from that point, of view it would have been better if some men Members also had tabled similar amendments expressing their support. When the Rau Committee i draft was made, registration as a form of marriage was suggested and the ground that Hindu marriage not being a contract but only a sacrament, need not be an objection to recognize forms *r>y* registration under Hindu marriage with either the necessary *sapti^adi* being performed or not, leaving it to choice because in the Hindu form of marriage the word *'dadami'* or 'Granhami' are uttered when the father gives the hand of the bride or offers the bride. It is a kind of contract. So by recognizing registration as a form of marriage, sacramental nature of a Hindu marriage is not taken away. For that reason, I feel that it would be a progressive step if this form of marriage is also recognized, as an optional form of marriage so thai: gradually it becomes more and mere common. To say that Hindus who want to marry by registration have the choice of getting married under the Special Marriage Act is wrong because as has been pointed out in another connection, when it was maintained that the Hindu Law on marriage itself need not be codified because the Special Marriage Act was available. The limitations laid down under inheritance are inherent in the Special Marriage Act which Hindus who like to be married under the Hindu Law would not like to come under. For these reasons, I would suggest to the House that nothing would be lost by giving this option. It would be an asset to those who like to marry in the Hindu fold and yet by coming under this Act are able to take recouise to registration of marriage as one of the forms of marriage.

SHRI B. K. MUKERJEE: Sir, I want one clarification. In sub-clause O'i) it is said that the marriage becomes complete and binding when the seventh step is taken. If it is complete and binding then it cannot be void and voidable. I find it a little difficult to understand that if it is complete and binding in this clause, how it can be void or voidable elsewhere in this Bill-That is the clarification I want from the hon. Minister in charge of this Bill.

SHRI R. P. N. SINHA (Bihar): Sir. I want one clarification from Mr. Kar-markar. Supposing after the 8th step, the bride or the bridegroom falls sick, or something happens, what will be the position?

SHRI D. P. KARMARKAR: After the sixth step, between the sixth and the seventh, there is only one step, and he would not fall.

DR. P. V. KANE: I shall first speak on the amendment of Shrimati Bharathi. My submission would be that it is dangerous to specify only two. She specifies the *mangalyasutra* or the saptapadi. That will apply to all the Brahmins. Kshatriyas and Vaisyas. Even Brahmins may be incl ided to perform marriages under the fort,, of

fDr. P. V. Kane.] *mangalyasutra which* will be egainst the Brahminical rules. If it is really "by custom that *mangalyasutra* is tied to the wife, they will prove it by custom. So I am opposed on that •ground. There may be 10 others to be specified. Holding a meeting may also be one form—a meeting, in which some people gather and the bride and the bridegroom may exchange garlands and that may be called a -narriag;: but that will be by custom and not in this front. So I am opposed to that. The *mangalyasutra* may be a good form of marriage but only by custom. I would not allow it to be included here.

As regards the amendment of registration, that is a great confusion. Marriage by registration has different consequence from marriage under this Bill. It is entirely different. I don't want to mix them up. Fov marriages under the Special Marriage Act only 6 persons are required—the husband, the •wife, three witnesses and ihe Registrar — none else.

DR. SHRIMATI SEETA PARMANAND: What about property limitation?

DR. P. V. KANE: If you mix them up, the result will be the Hindu law will not apply. The Special Marriage Act, the Indian Succession Act and the Divorce Act will apply. Therefore it will be a mix up. Don't mix them up. Let them marry under the Special Marriage Act. If they want to remain Hindus and want to marry as Hindus and remain Hindus as far as possible, let them come under this Act. Therefore, I oppose strongly the inclusion of any marriage under the Registration Act here. They may go separately and marry under the Special Marriage Act.

MR. DEPUTY CHAIRMAN: Has the hon. Minister anything to add?

SHRI D. P. KARMARKAR: I have not much to add to the excellent reply of Dr. Kane, I might in addition say that the reason why we oppose amendment No. 61 is that it is not only the known ways of marriage—I m?an the ways and ceremonies known to large numbers—that are intended to be included, but even others. For instance, as my hon. friends there know, there are the Todas who have their own ways of marriage, and there are many ethers like them. We do not want to specify the ceremony and limit it. If you say that it should be *mangalyasutra* or *saptapadi* then it would be limiting it. Our provision is all inclusive. The amendments should not make it restrictive.

SHRI B. K. MUKERJEE: Sir, I have not got a reply to the point that I raised.

DR. P. V. KANE: If the Chair permits me, I shall give the reply now.

MR. DEPUTY CHAIRMAN: It can be raised when we come to the clause dealing with voidable marriages. Let us confine our attention to valid marriages now.

Does Shrimati Bharathi press her amendment (No. 61)?

SHRIMATI K. BHARATHI: No, Sir, I request leave of the House to withdraw it.

The amendment* was, by leave of the House, withdrawn.

DR. SHRIMATI SEETA PARMANAND: Sir, I have not got a reply to my speech or amendment.

MR. DEPUTY CHAIRMAN: So would you like it to be put to the House?

DR. SHRIMATI SEETA PARMANAND: Yes, Sir.

*For text of amendment, see col. 1756 *supra.*

MR. DEPUTY CHAIRMAN: The Question is:

63. "That at page 5, in line 2, after the word 'solemnized' the word 'either' be inserted: and at the end of line 3, after the word 'thereto', the following be added, namely: —

'or by registering the marriage before the Registrar of Marriages by making a declaration that the parties have fulfilled all the conditions laid down for a valid Hindu marriage as required under Hindu marriage law, and have performed saptapadi.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

MR. DEPUTY CHAIRMAN: Pandit Tankha is not here and so amendment No. 65 regarding new clauses 7A to 7J is not moved. We now come to clause 8. Amendment No. 66 is out of order. And No. 67 is not moved as the mover, Pandit Tankha is not here. What about No. 68?

SHRI B. GUPTA: Sir, I move:

68. "That at page 5, after line 21, the following proviso be added, namely: —

'Provided that such compulsory registration of marriages shall not be put into effect in any State and in regard to any section of the people without making adequate and easy arrangements for regisl ration.' "

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

69. "That at page 5, after line 23, the following be added, namely: —

'(3A) It shall be permissible tc all Hindus married before ihis Act to register their marriages under this Act, provided they sign a declaration that the conditions of a valid Hindu marriage as laid down under this Act have been fulfilled.' "

SHRI J. S. BISHT: I move:

70. "That at page 5, line 25, after the words 'open for inspection, nnd' the words 'certified extracts there from' be inserted."

DR. SHRIMATI SEETA PARMANAND : Sir, I move:

71. "That at page 5, for lines 29 to 31, the following be substituted: —

'(5) Every Hindu marriage shil! be registered with the same authority appointed for the registration of births and deaths in rural areas or with such others as the State Government shall appoint.' "

Also—

72. "That at page 5, after line 31, the following be added, namely: —

'('6) Any Hindu marriage performed outside the country shall be registered in the country on return to the country in accordance with the rules laid down for Hindu marriage under the Act.' "

MR. DEPUTY CHAIRMAN: Shri B. K. Mukerjee is not here and so amendment No. 210 is not moved. So clause 8 and the amendments are now open for discussion.

SHRI B. GUPTA: Sir, my amendment seeks to give some sort of a direction to those States where they make this registration compulsory. In this clause it has been left to the States to decide whether they should make the registration of marriages made under this Bill compulsory or not. The matter ends there. It does not say anything beyond that. But what I would like to say in this case is, if

[Shri B. Gupta.l it is left to the States to decide for themselves whether the registration of the marriages should be compulsory or not, we would like to add this provision also:

"Provided that such compulsory registration of marriages shall net be put into effect in any State and in regard to any section of the people without making adequate and easy arrangements for registration."

MR. DEPUTY CHAIRMAN: Even if the clause is not compulsory?

SHRI B. GUPTA: Yes.

MR. DEPUTY CHAIRMAN: The hon. Member will see that the clause does not make it compulsory, it is only optional. The word used is "may".

SHRI B. GUPTA: What I was going to say is that some provision of the sort suggested by me in my amendment should be there in order to make it compulsory for the State also to make adequate arrangements for registration of such marriages. As you know, Sir, certain marriages are even now registered and the arrangements made for the registration of these marriages is not at all satisfactory. Only in the towns they exist to a ce'rtain extent. So it is very difficult for common people, especially in the villages, to avail themselves of these arrangements even if they want to. We want this clause to cover a wide section of the people and we take it that a large number of people will have to get their marriages registered. And so in such cases, I think it is only proper that the State Government should adopt this method of registration and the[1]* should also make proper and adequate arrangements for this registration. I have in mind especially the village areas and there, over vast areas there are no such offices. There is no such mechanism.

DR. SHRIMATI SEETA PARMANAND: Question.

SHRI B. GUPTA: So, I think, in such cases, arrangements should be made. That is to say, no State should embark upon this scheme of registration of marriages without first ensuring that proper arrangements have been made. This is ail that I have to say with regard to this matter. I have not tried to prescribe what should be the nature of these arrangements, for that can be left to the State concerned to decide. It would depend on various conditions prevailing in the area, the state of communication and other things. Therefore, that matter can be , left to the State. But in this enactment, I feel that there should ba some kind of a directive, not a mandatory one, but some kind of a directive that this matter has also to be taken into account and some attention should be given to it before the State introduces the system of registration. Whether it introduces this system with regard to the entire area or for particular sections only, that is a different matter. But in all cases the State should consider the requirements of easy registration. As you know, Sir, arrangements do not exist now or they exist rarely and so it would be a hardship if those who want to register do not have the adequate arrangements for it. Tht object would not be served by inadequate arrangements. So I hope the Government will not find- it difficult to be in agreement with this amendment that I have suggested. I hope they will accept it and add it at the place I have suggested.

DR. SHRIMATI SEETA PARMANAND: Sir, I will first speak on my amendment No. 69 which says:

"That at page 5. after line 23. the following be added, namely: —

'(3A) It shall be permissible to all Hindus married before this Act to register their marriages under this Act, provided they sign a declaration that the conditions of a valid Hindu marriage as laid

down under this Act have been fulfilled.' "

In other words, it means that it has been a monogamous marriage and that it was performed according to the rules concerning age, etc. The benefit of this, Sir, would be that in this way, there would be proof of that marriage and later on it would not be possible for such a person to marry again. Even otherwise the person would not be able to marry, because the spouse would be living. But whatever the advantage of that be, that will be available only in case the proof of the marriage is there and the proof of the marriage is an important thing. Otherwise it may be argued that the first marriage was not performed at all.

As regards my amendment No. 71, that is really a suggestion which is just the opposite of what the hon. Member who sat down just now has made, namely that registration should be -compulsory and I feel that this can be quite easily done. It was stated by Shri B. Gupta, that in our villages there is no mechanism by which marriages can be registered. But I say it can be done easily because wherever there is this arrangement for the registration •of births and deaths, at the same place, these marriages also can be registered. There need not be any difficulty whatsoever. Even the first draft report of the Rau Committee had proposed to make the registration of marriages compulsory. That Committee, with all the evidence available to it must have gone into all the details and the conditions as they existed and have made that recommendation. However, as I find that the Joint Select Committee has not included it in this Bill and as there is no other amendment from anybody else, there is not much chance of the House agreeing to what I have suggested. I should, however, like to put it on record that the way in which, rather the indifferent way in which this matter has been dealt with, this very important matter, is a matter for regret.

4 p.M.

Sir, about amendment No. 72, that is for registration of Hindu marriages performed outside the country, I have to say that the same conditions should apply as apply in the case of marriages performed here. If any marriage, which is to be recognised is to be compulsorily registered then it is necessary that Hindu marriages which are performed outside also should be registered so that proof, in case occasion arises, is easily available. I hope that even though these amendments have not been suggested by the Select Committee in its Report and even though others have not moved similar amendments, at least as a suggestion which comes from somebody who has been interested from the beginning in this legislation and who has given deep thought to it and has had available at her command the views of other women who are taking interest in social reforms, women belonging to the various women's organisations, the House will certainly give it its consideration and, above everything else. I hope that the Government will accept this.

I would like to point out, Sir. that it is very easy here to criticise or say-'yes' or 'no' but Government also must realise that when the reasons which Government has given or the light way in which Government has pushed aside certain cogent reasons put forward here are put to the public, they will not be able to look upon their attitude with complacency.

SHRI J. S. BISHT: Sir, sub-clause (4) of clause 8 of the Hindu Marriage and Divorce Bill says that the "Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given..... ". I am not very happy about it and I feel that there is a chance of this being interpreted variously by varjous courts. Under the ordinary law of evidence, if it were made only a public document, certified copies could be brought to

[Shri J. S. Bisht]

prove but this sub-clause is a sort of a special procedure. It says, "The Hindu Marriage Register shall at all reasonable times be open for inspec tion and shall be admissible as evi dence.....and certified extracts there from shall be admissible as evi dence.....". I agree that certified copies are required because there is only one Register and one cannot go to ten courts. I say, why have this lacuna? My amendment seeks to remove that lacuna so that there is no ambiguity left.

SHRI D. P. KARMARKAR: Sir, I should like to be very brief because many of the points, in my opinion, do not call for a long reply. The first point'that I should like to clear is my friend, Mr. Bisht's position. He seems to be unnecessarily worried about a very small point which appears to be very clear. In fact, the clause as drafted, makes it absolutely clear beyond any shadow of doubt, reasonable or unreasonable, but lest there should be doubt "as tb the nature of this Register, clause 4 lays down that the "Hindu Marriage Register shall at all reasonable times be open for ins-pection". That is one of the elements of a public document and "shall be admissible as evidence"—if someone says that it is not admissible in evidence, that fact also we have made clear and then it says. ".....of the statements therein contained" and further to keep matters still clearer,—we never anticipated that such an amendment would come, still they have made it clear"—we have said "certified extracts therefrom shall, on application, be given by the Registrar on payment to hirn of the prescribed fee". The very fact that it says that the Register shall be open to inspection, that certified copy of the extracts from it could be obtained, is clear beyond a shadow of doubt. It only requires a correlation of the provisions in the Evidence Act, about primary and secondary evidence and the admissibility of secondary evidence. So, I would not go further into this.

Regarding registration, my friend Mr. Gupta has moved an amendment (No. 68) which says, "Provided that such compulsory registration of marriages shall not be put into effect in any State and in regard to any section of the people without making adequate and easy arrangements for registration". It might as well be necessary, if this were right, to add an, amendment to the whole of this Bill that we are passing to say adequate arrangements will be made for the staff to carry out the provisions of this Act.

DIWAN CHAMAN LALL: And the. number of pages of the Register.

SHRI B. GUPTA: Our experience-is that there is no such arrangement. You are making a penal provision here-which says that failure to get registered will impose a liability on the party of having to pay a fine of Rs. 25. Therefore, I say, that when a penal provision is there, it is but necessary that you make proper arrangements.

SHRI D. P. KARMARKAR: I thinkr the States also will look into these-debates and I am quite sure that they will make adequate provisions;. After *ail,* it is a small point.

SHRI B. GUPTA: Why not have it?

SHRI D. P. KARMARKAR: That is-not the point. There are so many cats and dogs which are not harmfuh Why not have them also?

SHRI B. GUPTA: The trouble is that you have too many cats and dogs. That is the only trouble.

MR. DEPUTY CHAIRMAN: Order., order.

SHRI D. P. KARMARKAR: It is a-little redundant, my friend Mr. Gupta may understand, just as his argument was.

Then, Sir, I come to the points raised by Dr. Seeta Parmanand; I aim

sorry, Sir, 1 cannot agree with her suggestions. I do not grudge her claim whatever to be associated with the whole of the women's organisations but I wish she had brought some more solid amendments.

DR. SHRIMATI SEETA PARMANAND: The question is not what you consider solid.

SHRI D. P. KARMARKAR: 'Tt shall be permissible to have a Marriage Register ..... ". It obviously refers to a registration of contract marriages. If registration is needed, then why not take advantage of the Special Marriage Act and I appreciate what she whispered that the succession provi-. sions are different.

DR. SHRIMATI SEETA PARMANAND: That is exactly the reason.

SHRI D. P. KARMARKAR: Clause 8 says, "For the purpose of facilitating the proof of marriage....." and that refers .....

DR. SHRIMATI SEETA PARMANAND: Why did the Rau Committee and the Ambedkar Committee accept it?

SHRI D. P. KARMARKAR; I wish she refreshes her memory about the Rau Committee. I regret that it is not acceptable to us; it is not necessary. Amendment. No. 71 also is not acceptable to us. In the present circumstances, we want it to be left entirely to the State Governments to enforce them at their discretion; it is not for the Centre to come down mandatorily in a matter like that.

MR. DEPUTY CHAIRMAN: That may be provided by the rules.

SHRI D. P. KARMARKAR: Exactly. 72 also is not acceptable to us. Sir, I beg to oppose all these.

Amendment* No. 68 was, by leave of the House, withdrawn.

SHRI J. S. BISHT: Sir, the hon. Minister is satisfied and so I beg leave to withdraw my amendment (No. 70).

SHRI D. P. KARMARKAR: I am entirely satisfied and my hon. friend is also satisfied.

The amendment* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

69. "That at page 5, after line 23, the following be added, namely: —

'(3A) It shall be permissible to all Hindus married before this Act to register their marriages under this Act, provided they sign a declaration that the conditions of a valid Hindu marriage as laid down under this Act have been fulfilled.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

71. "That at page 5, for lines 29 to 31, the following be substituted:—

'(5) Every Hindu marriage shall be registered with the same authority appointed for the registration of births and deaths in rural areas or with such others as the State Government shall appoint.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

72. "That at page 5, after line 31, the following be added, namely: —

'(6) Any Hindu marriage performed outside the country shall be registered in the country on return to the country in accordance with the rules laid down for Hindu marriage under the Act.' "

The motion was negatived.

*For text of amendments Nos. 68 and 70, see cols. 1763 and 1764 supra respectively.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we come to clause 9. There are amendments. Those who are present wiH please move their amendments.

SHRI B. GUPTA: Sir, I beg to move:

74. "That at page 5,—

(i) in lines 36-39, the words 'on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted,' be deleted; and

(ii) in line 39, the word 'accordingly' be deleted.

79. "That at page 5, after line 39 the following proviso be added, namely: —

'Provided that no such decree shall be made unless the court has effected reconciliation between the two parties.' "

DR. SHRIMATI SEETA PARMANAND: Sir, I beg to move:

75. "That at page 5, line 36, for the words 'restitution of conjugal rights' the words 'reconciliation of conjugal differences' be substituted.

76. "That at page 5, line 38, for the word 'legal' the word 'valid' be substituted.

77. "That at page 5, line 39, for the words 'decree restitution of conjugal rights' the words 'advise them to reconcile their conjugal differences amicably' be substituted.

80. "That at page 5, lines 40 to 42 be deleted."

MR. DEPUTY CHAIRMAN: The amendments and the clause are open for discussion.

SHRI H. D. RAJAH: Sir, I have to say a few words with regard to this amendment. Clause 9 is obviously intended to be a via media between a married life and a divorced life. Here it is said, "When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court for restitution of conjugal rights," etc.

Now, Sir. when there is a dispute and a disharmony between the wife and the husband, then only a question of this nature arises. Now in the Hindu society there are various causes which may create a situation of this nature. In that case it is open either for themselves to compromise without having recourse to court or to go to court. But in case they go to court, what will be the effect of it?

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

The fact is very simple. Now you set aside again the other provisions -that are given in this Marriage Bill and you want a comoulsory re-life between the man and the woman. I do not think, Sir, in this modern concept when so much is talked about the requirements of a divorce, that a provision of this class should be in this Bill. Now naturally wher, people want to avail themselves of the entire provisions of this Bill, this become? an anti-diluvian provision. If they do not want each other I can understand it. There is th$_e$ section which is still maintained in the old Hindu law. This provision was specially given be cause there was an attempt on the part of the State to bring back the parties who had been quarrelling so that they can live in amity and peace. But here we have got umpteen provisions by which the parties can either separate or again come back because

in the other clauses you have given sufficient opportunities for the parties' again to make up and come back. Therefore, Sir, this clause is redundent and useless.

The next point with regard to this is that this is inoperative. Even supposing, Sir, that a question of this nature has been taken to court and they decided that this restitution af conjugal rights must be given, there must be a psychological background behind it. The. parties may not be fulfilling their obligations and so really the decree which is given by the court becomes useless. It is not merely a question of an enforcement by ia?' with regard to psychological and biological affairs. Here there are various other things that go with it. The moment the man is allowed to come in he will recall to his mind all the past misdeeds of his wife. He will refuse to do his work. So will De the case with the woman and the moment he is there again she will think ot all the atrocities perpetrated by the mrn which necessarily created the misunderstanding and as such she may refuse to give answers to his questions and she may not talk a word as before. Therefore, Sir. this kind of a lawful provision by which you force a man and a woman if they have come to a sort of misunderstanding, is really very bad and unnecessary, and in all earnestness. Sir, I would request our Minister Mr. Karmarkar to think twice before he accepts to retain this clause in this Bill. I would entreat him to se° that in the modern concept of so many things that have come into play this is Obsolete, redundant *ind* use^ss.

DIWAN CHAM AN LALL: Sir, the very eloquent speech that we have just heard from my learned friend and colleague as well as my neighbour is indicative of the general ignorance of the law that exists in regard to this measure.

My learned friend started talking (about this particular clause as if it was something sudden, as if something has descended upon this House and upon Hindu society suddenly and nothing of this sort was ever heard cf in Hindu law. My learned friend has *also* forgotten that the .....

DR. SHRIMATI SEETA PARMANAND: The lower classes had already their own customs in the matter of restitution of conjugal rights.

DIWAN CH AMAN LALL: My very able and Oxonian friend Dr. Seeta Parmanand talks about the lower classes. I do not know of anv lower classes. The only lower classes 1 know are the ignorant classes. All classes are equal in my eyes and this method of restitution of conjugal rights does not exist only in the so-called lower classes; it is a right recognised by Hindu law and what my learned friends do not realise is that the main objective of this measure is to codify Hindu law, not to try and do away with the salient provisions of the Hindu law or the salutary provisions of the Hindu law, but to try and codify them so that you can go to one particular measure and find all that there is to b_e said in the matter of marriage and divorce. *(Interruption.)*

" If my learned friend Dr. Seeta Parmanand would only hold herself in patience but if she chooses to interrupt me there is a method of interrupting me. of getting up and saying what she wants to say; I am prepared to give way to her. But this sort of unintelligible murmuring that goes on all the time that the debate is on is not only unreasonable as far as she is concerned; it is unreasonable as far as the debate is concerned.

Now I would like to tell my learned friend: Has he read the Hindu law? Does he realise what the Hindu law prescribes today in the matter of the restitution of conjugal rights? It provides for the restitution of conjugal rights. What is the basis for it? If you study it what is the reason behind it? The reason behind it is, generally speaking, where one party is deserted by the other and the other party

[Diwan Chaman Lall. J is probably wanting to claim a certain amount of maintenance being lawfully awarded to the wife or the husband by the other party. Now, restitution means going to the court and saying: "1 have been unlawfully and wrongfully left alone and deserted and without any maintenance and 1 demand restitution of the rights that are my inherent rights as the married wife of that particular individual who has deserted me." That is the basis for it. Now the law today, as it stands among the Hindus, prevents the restitution of conjugal rights from being effected where, for instance, it is a question of leprosy or the husband is suffering from a loathsome disease like syphillis. There the law will not compel the wife to return to the husband, she will not return. There are many other reasons also. For instance, no decree will be given if it is found that there has been cruelty of such a nature as might endanger the life of the respondent. Again if there has been conversion, for instance if the husband has been converted and he still claims the restitution of conjugal rights of a Hindu wife married to a man who has been converted from Hinduism to some other religion the court will prevent restitution of conjugal rights being granted. Those are very salutary safeguards and these safeguards exist today in Hindu law. Of course, it will not be granted on the mere ground that the husband has got a second wife; the question does not arise. You cannot plead that you are separate because the husband has got a second wife. But now after the passing of this measure even that will probably become a ground apart from being a ground for the break up of the tie of marriage. Now therefore when my learned friend said that this is a via media between marriage and divorce, it is nothing of the kind. It is a right recognised by the Hindu law and what we are trying to do in this provision is to make that law sensibly acceptable in modern terms, and codify it for the purposes of Hindu society.

SHRI B. GUPTA: Sir, I do not think I can share the views expressed by Diwan Chaman Lall in this matter when he says that we are merely codifying here the Hindu law. Sir. first of all we are not here codifying—even if it were a codification—the entire Hindu law. Secondly, we are making certain changes in the Hindu law. Whether they recognise it or not, the fact remains that we are introducing certain new ideas in keeping with our times. Take the case of monogamy, for instance. Nobody will say that the Hindu law established monogamy. Nobody will say that monogamy does not exist in practice in most cases but the fact is that bigamous cases cannot be brought before a court of law and penalised as violation of the Hindu law. So at the same time we are introducing here in our code, if you call it a code, a new thing. Therefore it would not be correct to say that we are merely codifying what already exists. We are making certain important changes introducing certain progressive ideas, introducing certain provisions which would fit in with the requirements of our present-day society. Therefore I think that it would not be correct to say that we are codifying the Hindu law.

Then, Sir, the Hindu law itself, so far as we know, has undergone changes. After all, Diwan Chaman Lall himself was saying that the Hindu law emanated from certain sources and these sources made certain changes in the process. Then changes were also made by judicial interpretation. Even by the Privy Council decisions certain changes were made. Then we have already a number of enactments concerning Hindu law which are definite rules of law which did not exist in the old law.

DIWAN CHAMAN LALL: May I interrupt my learned friend? I think he has quite misunderstood the tenor of my remarks. With regard to the question of restitution of conjugal rights we are codifying and amplifying the Hindu law.

SHRI B. GUPTA: Well, in other cases if we are making certain changes let us see whether they warrant a chanpe here also. I am very glad that Diwan Chaman Lall is also of this view. He concedes naturally that in certain other cases changes are to be made and I find support for this from the amendments that have been given notice of and also in his Minute of Dissent. Let us come to this question of the restitution of conjugal rights. I think here is a case where we should try to extend the present scope of the Hindu law or modify the ideas of the Hindu law to some extent.

I shall assail this provision from two .angles—firstly from a legal angle and secondly from a social angle. As you know, restitution of conjugal rights even under the existing law is not always given. There are certain limitations. There are certain provisos where even if otherwise the right is available it is not granted. Diwan Chaman Lall himself has given certain cases where the court did not decree restitution of conjugal rights, but you will find in this very clause that a petition for restitution of conjugal rights shall not be made except on the ground for judicial separation or for divorce, it lays down on what grounds one can go and submit a petition for restitution of conjugal rights. Some of the grounds may be covered by the existing law because in such a case the court would not grant restitution. There are other provisions which would be tenable in case of judicial separation such as where the spouse is continuously of unsound mind for a period of not less than two years immediately preceding the presentation of the petition or has after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse. In such cases if the law stands as it is restitution will be granted by the court. Therefore all points are not covered; yet these are very serious grounds on which a party to a marriage may refuse to live as husband, or wife with the other party. These are undoubtedly important grounds which have been taken into consideration by this Bill. When we are thinking of divorce and judicial separation we have in our mind certain very legitimate grounds, social grounds, where normally the married life gets disturbed and where that fact should get the recognition of law. Here again in the case of conjugal rights such things should be allowed to operate. This is one side of the story.

The other side is why must one be forced to live together? The Hindu Law forces it. Society itself has forced this position. If you look at the society, because of the various factors of real life, it has forced women to live with their husbands even when such husbands are unwanted, to live a life which is not beneficial either to the parties or to the society. I do not say such cases are very frequent. There are cases but in the Hindu law there is hardly any provision to protect especially women against such unwanted and unwelcome life. Now. here the very fact that a party is contesting a petition for restitution of conjugal rights should raise the presumption that there is something wrong. Secondly, it should also raise the presumption that the party who is contesting that petition is no desirous of going back to married life again as far as that petitioner is concerned. Now, we should go by certain normal standards. We have all these things before us. There must be certain normal standards. If we force or if the court intervenes and forces the party to go and live with the other party as husband and wife even when in the court the party is coming and saying that he or she is not willing or prepared to go and live with the other. I think that itself is a very weighty fact which must be taken into account—the fact of one party denying that he or she wants to have their married life restored as far as the two parties are concerned. This is a weighty argument against this clause. Socially it is not very desirable. Diwan Chaman Lall is very well versed in other laws and he is familiar with what

[Shri B. Gupta.l happens in other countries. I do not say we should always go by what is happening in other countries. But, you scarcely And such a provision for restitution of conjugal rights in other countries. It is something which we have got handed down to us from the past and everything from the past is not good.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA): Mr. Gupta, we are discussing only amendments and we are not having a general discussion.

SHRI B. GUPTA: I am answering my friend's argument, because the Minister will not be able to make better points than what he has made. Therefore 1 say that in Hindu law there is that provision; you can take as many wives as you like—even IOO wives. There is no legal bar. This is a sort of thing we do not like at all. We consider that reprehensible, although in some religious book such things in some cases are even glorified.

DR. P. V. KANE: May I know on what amendment he is speaking now? I am not able to follow him.

SHRI B. GUPTA: If the hon. the lawyer Member who has come to the rescue of the hon. Minister has not yet understood that the one object of the law is to give some rights to the women and place them on an equal footing as far as possible, then he has understood nothing except legal quibbling and I cannot beat him in that game.

So my hon. friend Diwan Chaman LalPs arguments are not quite acceptable. What my amendment says is this. If you want, keep this restitution; but such order shall be made only when the court has succeeded in bringing about a reconciliation between the two parties. Has my hon. lawyer friend understood that a decree for restoration of conjugal rights should not be made unless and until the court has succeeded in bringing about a re-conciliation between the *two* parties who come to the court. Now we are expecting here that the court will give certain other directions to the entire proceedings. Under the present law the court will see to it that there are certain valid grounds made in the petition and then grant a decree, but we want the court to sit with the parties. to the dispute and see how a reconciliation could be brought about either by persuasion or by explanation or by offering, so to say, their good offices, to give their married life another trial. If both the parties agree and take it as a reconciliation between them before the court and the court decrees on the basis of the consent of both the parties to live together, then restitution should be made. Otherwise not, that is my point. Otherwise it is cruel, it is absurd today in a progressive society to compel a person to go and live either as husband or wife, as the case may be, when before the court the person refuses to return to such a life. It is just diabolical. I do not see an iota of good or progress in it. It may have existed a long time ago, but society itself was entirely different then. We are now living in an entirely different context of society.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA) : Mr. Gupta, I think you have said more than enough. We are discussing the amendment.

SHRI B. GUPTA: Therefo-e, I suppose if my amendment is not acceptable to the Minister, because he seems to be touchy when we move amendments, there is an amendment standing in the name of Dr. Seeta Parmanand which he can accept. Her amendments are also to the same effect. I think these can be accepted and they will not be guilty of conceding my amendments. I would be satisfied even if those amendments are accepted and I shall withdraw my amendment in such a case. But I think that this business of restitution of conjugal rights, which, in effect, would mean forcing people to live.

together as husband and wife, should not be allowed to be retained here, as it would be a blot on an otherwise good and acceptable legislation.

SHRI S. MAHANTY: I hope you will give me a few minutes.

THE VICE-CHAIRMAN (SHRI R. C. GUPTA) ; I would like you to confine strictly to the matter before us.

SHRI S. MAHANTY: Mr. Vice-Chairman, I rise to oppose this clause and urge this House in all seriousness to accept its deletion.

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRI S. MAHANTY: Now, I have already recorded my reactions to this clause in my minute of dissent. Strict ly speaking, this may be quite a worth while provision from a legal point of view, but the fact remains to be said: you can lead an unwilling horse to water, but you can never force it to drink. Now, I shall read this clause: "When either the husband or the wife has, without reasonable excuse, with drawn from the society of the other the aggrieved party may apply, by petition to the district court.....

MT>. DEPUTY CHAIRMAN: Let us have your comments. It is not necessary to read the clause. The Bill has been circulated to all the Members.

SHRI S. MAHANTY: That I accept. I submit that a Member of this House should not be told what to speak and what not to speak. If you do not want me to speak, I shall sit down.

MR. DEPUTY CHAIRMAN: Let us have your comments on the clause.

SHRI S. MAHANTY: I will only give my comments after I read.

MR. DEPUTY CHAIRMAN: But the whole House has read the clause.

SHRI S. MAHANTY: May have read if. Sir.

SHRI D. P. KARMARKAR: I have also carefully studied it.

SHRI B. GUPTA: But some people need reminding.

MR. DEPUTY CHAIRMAN: It is not necessary. We are all responsible legislators. Go on. I just wanted to minimise the time.

SHRI S. MAHANTY: Thank you, Sir. What I was venturing to say was that when either the husband or wife had with reasonable excuse withdrawn from the company of the other —what I want to emphasise is with reasonable excuse—the court should not force restitution. If reasonable excuses are there then, of course, the whole matter may go before the court. If there are unreasonable excuses, then probably the court may allow restitution of conjugal rights.

DIWAN CHAMAN LALL; But you are against it.

SHRI S. MAHANTY: Now, a case—a hypothetical case—was made out both in the Select Committee and on the floor of this House by the hon. Minis ter. A hypothetical case was cited- that a man and a wife have lived happily for a considerable length of time. Now, comes the sinister guardian, the father or the grandmother in the background and withdraws the company of the wife from the husband or *vice versa:* The reasons may be many, probably the dowry agreements were not fulfilled or there might have been manv other reasons. In this hypothetical case what do you advise? If there is ne provision for restitution of conjugal rights in such a case, there will be difficulty. The husband wants to continue with his wife. The wife ia very devoted to her husband, but the sinister guardian comes into the picture. Therefore, to obviate his sinister influence we are making this provision for restitution of conjugal rights. But, Sir, the fact has to be borne in mind that the law does not make provision for aberrations, for exceptional cases. True, such situations might arise. But also the-situation might arise that even witiw

[Shri S. Mahanty.] out the reasonable causes as laid down in this Bill for divorce or for judicial separation for some reason or other the husband and wife do not want to continue in each other's company. Then what course you are going to prescribe? What do you want? After all, we want that the husband and the wife should be happy. With that end in view, the court may order for the restitution of conjugal rignts, but it will be a life of misery; it will be a life of unhappiness from the social point of view. Certainly this .approach smacks of eighteenth century approach to a problem which requues re-thinking.

I shall finish in another minute. Another point has been urged by Diwan Chaman Lall in favour of its retention. He says in the case of apostasy, if we do not make this pro vision .....

DIWAN CHAMAN LALL: I do nol say it. The Hindu Law itself says it.

SHRI S. MAHANTY: The Hindu l^aw has been saying polygamy; from the Hindu Law point of view indissoluble marriage ties are there. But they have been reviewed in the context of changing circumstances. We have thought again about those propositions of Hindu Law. There is nothing im mutable about Hindu Law, after ail. We have given a goodbye to it. So, we have to view things according to the changed circumstances. The question is that in the case of apostasy, the husband says that he has been converted to some other religion. He wants the restitution of conjugal rights, but the wife does not want to continue in the company of that husband. I am not sure if I have followed my friend correctly, from what he said, it seemed to me that there are certain contingen cies like apostasy, and if we have this in our Hindu Code it will be better for us. In that case I argue .....

DIWAN CHAMAN LALL: No, no. What I said was this. Today the legal position is that in certain | circumstances the petition for the restitution of conjugal rights is not granted and I laid down the grounds under which it is not granted.

SHRI S. MAHANTY: I am thankful to the hon. Member for having corrected me. I ask him this question if the parties to the marriage are not willing to continue as husband and wife, what right has the State to work as a most unwelcome pimp between the man and the wife? That >s what I ask you. So, from these considerations I oppose this clause and I urge upon this House to accept its deletion.

SHRI S. N. MAZUMDAR: Mr. Deputy Chairman, this is one of the main points in my Minute of Dissent. So, though I do not like to take much of the time of the House, still I like to make a few observations.

Sir, at the very outset, I will say that even after hearing the able speech of my friend, Diwan Chaman Lall, I am still a member of the lower class, the ignorant lower class, according to him, because, Sir, I have not been much enlightened by his speech. This whole thing was discussed thoroughly in the Select Committee. Sir, I admit that I am a layman, and I do not know much of the law. I confess it. But so far as the points that were raised there are concerned, the section is mainly in favour of the husband. I also came across a comment—I stand subject to correction; I may be corrected by Dr. Kunzru or anyone later on—In the book by Sir Hari Singh Gour on Hindu Code that the underlying assumption was that the husband was entitled to the services of the wife, and this provision about the restitution of conjugal rights comes from there. And I had understood, Sir, from some of the explanations of the Law Minister that for an aggrieved wife the course open to her is to file a suit for maintenance. However, Sir, I do not like to go into all these interpretations of the law, because, as I have already confessed, I am a layman, as far as this matter is concerned. But the majority in the

Select Committee favoured the retention of this clause. But still I remain unconvinced as to the necessity of this. Sir, one of the arguments put forward in defence of the retention of this clause is that the guardian may force either the husband or the wife to live apart, but as the law is there, the parties, according to the clause, are not the guardians. They are nowhere in the picture according to the wording of this clause. It is either the husband or the wife, the parties to the marriage, who are in the picture, who are coming here. And then, Sir, it was also argued in the course of the discussion on the Special Marriage Bill, on the floor of this House, and also in the Select Committee, by the Law Minister that supposing a party refused to abide by a certain decree, the court could not compel that party, whereas, formerly, the court could have compelled the concerned party to abide by its decree or to be punished with civil imprisonment. Now. the only punishment is attachment of the property. But, Sir. I submit that attachment of the property is no Jess a deterrent punishment, and there is no Question of attachment *ot* the property of the guardian. Where is the provision for the attachment of property of the guardian?

Then, Sir, it was also argued that the retention of this clause is helpful in another matter, because it has been provided as one of the grounds of divorce that refusal to abide by a decree for the restitution of conjugal rights will count as a ground for divorce, and it was argued that if that ground is retained, it will avoid the washing of dirty linen in a court, which will be the case if the divorce is sought on other grounds. Sir, everybody would like that the parties which take recourse to the divorce clauses should be saved from the necessity of washing the dirty linen in the public. But what will be the straightforward course? What will be the logical course? The logical course will be to include a ground in the clause for judicial separation to the effect that if the parties to the marriage refuse to live together, then it will be a ground for judicial separation. Now, coming to this, the only strong argument—to some extent—which has been advanced in favour of this is that there should be scope for reconciliation. Well, Sir, we want reconciliation. We do not want that marriages should be solemnized only to be dissolved. But if that is the main aim, and when you are changing the Hindu law, when you are amending it in certain respects, let us take the more straightforward course, and let us not retain this clause which is a relic of barbarism, and which is immoral— the restitution of conjugal rights. Why is it immoral, Sir? When two people do not like to live together, to force them to live together is immoral and inhuman. (Sir, on that basis I say—that is the main consideration—that there should be a straightforward provision for reconciliation between the parties. And let us take the most straightforward and logical course instead of retaining the clause relating to the restitution of conjugal rights. Let us put in a straight clause for reconciliation, or. as it has been suggested by my friend, Mr. B. Gupta, let it be clearly and categorically stated in this clause, if this clause is to be retained, that if there is a reconciliation, only then there will be the question of the restitution of conjugal rights, otherwise not. If that is not accepted, then, Sir, even after al! the enlightenment which has been provided to me. I am bound to say that the retention of this clause will be a relic of barbarism.

DR. P. V. KANE: As regards this provision about restitution of conjugal rights, it has been there for over 70 or 80 years. You know the well-known case of Rakhamabai V. Dadaji. There, the husband sued for the restitution of conjugal rights. It is somewhere about 1887 or there. This right has been recognised in the Hindu Law. And in the Civil Procedure Code, you will find a provision for execution of a decree under Order 21, Rules 32 and 53. A specific provision is made there for the execution of a decree

[Dr. P. V. Kane.]

for the restitution of conjugal rights, and in the case of the wife, it is said there that property may be attached. Similarly, in the case of the husband, ! rule 33 does contemplate that the wife may be the person suing for the restitution of conjugal rights, ano* it is laid down, "Where there is a dec ree against the husband.....". It is not that only the husband will sue the wife. It is very clearly stated here that "Notwithstanding anything in rule 33, at the time of passing a decree against a husband for the restitution of conjugal rights, er at any time afterwards.....". Then, the next rule provides that the husband's property may be attached. This is the Civil Procedure Code of 1908, amended in 1923. So, in modern times it has been recognised, and you have to recognise it. And, secondly, this is more in the nature of bringing about reconciliation. Suppose there is a decree passed, and the wife or the husband does not obey it. Then it leads to clause 13, sub-clause (ix)—Divorce. And you must remember that clause 23(2) provides for making efforts to bring about a reconciliation between the parties. So. reconciliation is not ruled out. In a suit for restitution of conjugal rights there may be a reconciliation or even after the decree is passed, there may be a reconciliation. If nothing is done for several years, then only divorce will come in, and since it has been there for so many years, there is no reason why this remedy should not be there. Let the remedy be there, and I think many people will not take advantage of it.

MR. DEPUTY CHAIRMAN: Mr. Karmarkar.

DR. SHRIMATI SEETA PARMANAND: I have not been given a ince to speak. I have every right to speak, because four amendments are standing in my name.

MR. DEPUTY CHAIRMAN: But be brief.

DR. SHRIMATI SEETA PARMA-NAND: I will try to be as brief as possible, although it is such an important point. I have tabled four amendments.

Sir, first of all, I would like to refer to the arguments put forward by the hon. Member, Mr. Rajah. I am glad to find that he agrees with the spirit behind the amendments that I have tabled. Sir. while dealing with '•his type of clause in the Special Marriage Bill, in the other House, here, and in the Select Committee, it was clearly the view of most of the progressive people that the terminology should be changed. Everybody appreciated the spirit and the idea behind this clause, namely, to bring about through third parties reconciliation between two people who may have, on account of some points of obstinacy or some sort of misunderstanding, separated from each other. Sir, in other countries, this need for starting some sort of agency, particularly a social agency and also some Governmental agency which will bring about reconciliation rather than make the cases lead to separation or divorce, Js recognised. For this reason, it is necessary to change the wording of the clause in order to bring it into consonance with the spirit of the timer. It does not recognise the right of any person to have the company of the other person, be it a man or a woman, against the wish of that person. After all, they are not inanimate beings. I was rather surprised to hear the Minister in charge of this BM[1], Mr. Karmarkar, when speaking yesterday in reply to the debate on the Bill, saying that after all in law, if a person was dispossessed of his house, it was the right of the court to put him back in possession of his house. There is. I submit, a lot of difference between a human being onr[1] a house. The right of possession may have been recognised when there was only one party in society, namely man. It was an one-sided law, but now when there is somebody else also to object to it, when we are thinking of having an equitable law, when there are two people to consider, I think women's point of view also

should be taken into consideration. It is not right for men to argue that -because this type of law was already in existence in the past, it should be continued. 1 have great respect for 'the legal acumen of my hon. colleague, XMwan Chaman Lall. The argument tbat he put forward may have, on "the face of it, some cogency that because we have been trying to codify the Hindu Law. whatever was there before should be put forward again. My friend, Mr. Mahanty, has already replied to him pointedly that we are not trying to codify everything that was there in the Hindu Code, for instance polygamy. We aid
mow making monogamy compulsory.

MR. DEPUTY CHAIRMAN: Please ne yourself to the clause.

DR. SHRIMATI SEETA PARMA-ND: It is a very important clause.

MR. DEPUTY CHAIRMAN: Every clause in this Bill is important.

DR. SHRIMATI SEETA PARMANAND: This is a clause, I submit. which is going to establish some new procedure, some new principles, which .arc not recognisd anywhere and which we are now going to recognise. So, it is important to deal with the points which ar_e relevant. Therefore. I submit that Io put forward that tha argument that the whole Hindu Code is Swing codified here in this law is not correct, and for that reason to say that the present wording shouid be there, is not correct.

Then I would like to refer to the proviso to clause 22 to which reference was just now made by the hon. Dr. Kane, who said that an attempt .at reconciliation has been provided for here. If that is so, I would submit that my amendment does not seek to prevent this but simplv to chan?e the language so that it doe.; not look ps if tii..-. law is dealing with inanimate things but human beings whose feeling should be respected. V.'ith that "i""! ir view, my amendment No. 75 only seeks the replace-
I ment of the words "restitution of con-! jugal rights" by the words "reconeila-tion of conjugal differences". My amendment No. 76 deals with procedure and asks for the replacement of the word "valid" for the word "legal" I am merely pointing out these things for the benefit of Members who might not have taken sufficient interests in these amendments. I hope that ne attempt will be made to cut short the discussion.

MR. DEPUTY CHAIRMAN: You will be *only* delaying the passage of the Bill.

DR. SHRIMATI SEETA PARMANAND: If we do not give sufficient thought to these points, then the other House will be changing these things and then the Bill will have to come back to us and there will be more delay, and then we would have given the impression that a House of Elders had not given sufficient thought to all aspects of the question.

MR. DEPUTY CHAIRMAN: But you have to remember the time limit fixed by the Business Advisory Committee for this Bill.

DR. SHRIMATI SEETA PARMANAND: I am fully aware of it, but we should not hustle through this type of legislation. If I may say so, I had put forward the suggestion that this Bill should not be taken up for two days to give Members full time to consider the various clauses, especially clauses 9, 10, 11, 12 and 13, so that we do not have to hurry through this legislation and so that it will not come back to us, which will be a reflection on the care and I attention we give to such pieces of islation My suggestion was that we could take this up even after the President's speech.

MR. DEPUTY CHAIRMAN: Then i you are for postponement?

DR. SHRIMATI SEETA PARMANAND: My point is that we should not pass it in a hurry without giving

[Dr. Shrimati Seeta Parmanand'.] full thought to it. My amendment No. 77 says that the words "advise them to reconcile their conjugal differences amicably" should be substituted Ior the words "decree restitution of conjugal rights". That will be more in consonance with the spirit of the times and that is why lines 40 to 42 should be dropped altogether, which my amendment No. 80 seeks to do i.e., "Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be a ground for judicial separation," 'etc. as that becomes irrelevant. After the speeches made by both Mr. Rajah and Mr. Gupta and also Mr. Mahanty, who are against the use of this terminology which is not even 19th century but 18th century, it is not necessary for me to add anything more, and~ I hope that as a mark of respect to human personality and human sentiments, they will change this outmoded and antiquated expression, *viz.* 'restitution of conjugal rights' and accept my amendments which do not seek to change the substance of what the Select Committee had suggested but only the wording to a little extent. Thank you.

SHRI D. P. KARMARKAR: Sir. I am afraid I will have to be briefer than what I thought I should be. Sir, in fact I had anticipated some of the arguments which would be raised against this clause in my observations when I replied to the general debate, because they were already in evidence in the Minutes of Dissent and otherwise. So, I very respectfully like to say that I have nothing more useful to add to the observations I had already made in respect of this clause except that I want to point out that even the most modern of my friends will have to appreciate the fact that the law in England on this subject was codified only as late as 1950—not in the seventeenth century or the eighteenth century but just in the century we are living in—-and that even they, even with all their progressiveness. thought it necessary to provide for a similar measure. My hon. friend will not mistake me when I say that, if she had heard me more carefully, she would have realised that I did not use the term as comparable to the possession of a house. It is not the physical part of it that is important. It is not as if the body of the wife or the husband is to be restituted. As I said, it is a question of right. My hon. friend suggested reconciliation. Reconciliation is a happier word than restitution. But restitution has a legal connotation. It is restitution of conjugal rights. It is the restitution of a right. Of course, it involves also the bringing back of the person to the house wherever it is. The emphasis is on the right. My hon. friend will appreciate' that it is not the restitution of the body of the person or something like that. It is the restitution of a right. Even in the U.K., which is more advanced and in any case they have more experience of the law as it stands than we have, even they found it necessary to retain this provision, and so, when we are having boys and girls marrying at 18 and 16, it will be more necessary to retain this provision-in this country where the possibilities are greater of small misunderstandings leading to greater misunderstandings.

(Dr. Shrimati Seeta Parmanand rose to interrupt.)

It is some people's pleasure-
to interrupt. Mine is not.
In any case I was on that point.

Regarding the other aspects of the • amendment, I would like to say *seriatim.* About No. 73, I would like to remind the House of some of the very reasonable arguments given by Mr. Madhava Menon, I think, at the general discussion as to where and how such a clause would be helpful. I regret I am unable to accept No. 74. For instance, compare the Indian Divorce Act and the Special Marriage Act where smilar words are used. I don't know why they should be deleted. Amendment No. 75 is not acceptable tor the reason that the expression used finds a place in the Divorce Act. the case law on the subject and the--Civil Procedure Code. The amendment,,

I should say with great respect, appears to be based on sentiment.

Regarding No. 76, I regret that it is not acceptable to us because it is unnecessary. Moreover, 'legal' is the word used in all corresponding enact ments and we don't want to change the expression merely for the sake of change. Amendment No. 77 is not ac ceptable. About amendment No. 79, I do hope that the hon. mover recogniz es that under clause 23(2), we have given them a direction to see to it that they make all endeavours and do their best possible to bring about a reconciliation. That is their first duty. It is not their first duty to straight away proceed towards separation but they should explore all possible avenues to bring about a reconciliation.....

SHRI S. N. MAZUMDAR: That is in connection with judicial separation and divorce.

SHRI D. P. KARMARJCAR: In all these proceedings. That difficulty arises by not carefully reading through the provision. Regarding amendment No, 80, I regret that it is not acceptable to us. However 1 would like that amendment to be withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

74. "That at page 5,—

(i) in lines 36-39, the words 'on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted,' be deleted; and

(ii) in line 39, the word 'accordingly' be deleted.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

75. "That at page 5, line 36, for the words 'restitution of conjugal rights' the words 'reconciliation of conjugal differences' be substituted.

The motion was negatived. 91

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MR. DEPUTY CHAIRMAN: The question is:

76. "That at page 5, line 38, for the word 'legal' the word 'valid' be substituted.

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 77 is barred.

The question is:

79. "That at page 5, after line 39, the following proviso be added, namely:

'Provided that no such decree s-hall be made unless the court has effected reconciliation between the two parties'."

After a count Ayes—9; Noes 24.

The motion was negatived.

Amendment No. 80* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 9 stand part of the Bill'

The motion was adopted.

Clause 9 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we take up clause 10.

SHRI B. M. GUPTE: Sir, I beg to move:

82. "That at page 5, lines 47 to 49 be deleted."

SHRI B. GUPTA: Sir, I beg to move :

83. "That at page 6, fo$_r$ lines 1 to 4, the following be substituted namely: —

'(b) ha"s treated the petitioner with cruelty; or'."

Sir, I also beg to move:

84. "That at page 6, lines 5-6, for the words 'for a period of not less

*For text of amendment, see col. 1773 supra.

[Shri B. Gupta.]

than one year immediately preceding' the words 'at the time of be substituted."

I also move:

85. "That at page 6, line 7, the words 'a virulent form of be delet ed."

SHRI SUMAT PRASAD: Sir, I beg to move:

86. "That at page 6, line 7, for the words 'a virulent form of lep rosy or' the words 'leprosy or a com municable form of be substituted.

SHRI B. GUPTA: Sir, I beg to move:

87. "That at page 6, line 9, for the words 'two years' the words 'one year' be substituted.

SHRI H. N. KUNZRU: Sir, I beg to move:

88. "That at page 6, line 10, the word 'or' be deleted."

Sir, I also move:

89. "That at page 6, lines 11 and 12 be deleted."

Sir, I also move:

91. "That at page 6, line 13, after the words 'In this section' the' words and figures 'and section 13' be in serted.

SHRI J. S. BISHT: Sir, I beg to move:

92. "That at page 6, lines 17-18, the words 'and includes the wilful neglect of the petitioner by the other party to the marriage' be de leted."

SHRI B. GUPTA: I beg to move:

93. "That at page 6, after line 18, the following be added, namely: —

'(IA) where the parties to a marriage, whether solemnized before or after the commencement of this Act, refuse to live together and present a petition to the district court praying for a decree for judicial separation, the court, on being satisfied that there has been no coercion or undue influ-e)ce brought to bear on either party, may decree judicial separation accordingly.'"

SHRI SUMAT PRASAD: Sir, I beg to move:

94. "That at page 6, after line 18, the following be added, namely: —

'(IA) A wife may also sue for judicial separation on the ground that her husband had married again before the coming into operation of this Act artf such wife is living at the time of the institution of the suit."

MR. DEPUTY CHAIRMAN: The clause and the amendments are open for discussion.

DIWAN CHAMAN LALL: May I sug gest that we might sit till half-past five only. Clause 11 is also a very im portant clause and yWe might .begin clause 11 tomorrow and finish the whole thing tomorrow. e

SHRI D. P. KARMARKAR: Shall we sit from 10-30 tomorrow?

DIWAN CHAMAN LALL: And dispense with the question hour.

SHRI B. GUPTA. Question hour is important.

SHRI H. D. RAJAH; Shall we sit at 10 and finish by 11 the questions and then take this up?

MR. DEPUTY CHAIRMAN: Question hour cannot be changed.

SHRI H. D. RAJAH: We will discuss these matters between ten and eleven.

MR. DEPUTY CHAIRMAN: I have to notify the Ministers. It will upset the whole thing. We will sit through.

DIWAN CHAMAN LALL: We shall sit till half past five and see.

SHRI D. P. KARMARKAR: We are prepared to sit till midnight as far as we are concerned.

MR. DEPUTY CHAIRMAN: Tomorrow by 4-30 P.M. we have to finish.

DR. P. V. KANE: We can do away with the question hour tomorrow.

SHRI B. GUPTA: For them it is only answering questions and supple mentaries. For us it is the asking of questions.

My amendment is to substitute b.v the following words "has treated the petitioner with cruelty; or". Here it is a little complicated formula. Here it says:

> "has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party."

That relates to the petition for judicial separation. It is clear from the underlining that these have been added or altered by the Select Committee. We would like to have a very simple formula. So I have moved my amendment. Why did we say so? Firstly we don't know how the words will be interpreted by the Court—the words 'apprehension in the mind of the petitioner'. Now if it is a question of just an apprehension in the mind of the petitioner—an objective fact—that is all right. As long as the petitioner says in a petition that he or she has reasonable apprehension, the matter is settled there. The court will be obliged under this provision normally to give a decree of judicial separation. But then a qualifying clause is added 'reasonable apprehension'. It seems to me that the Court will see whether that apprehension is reasonable or not. That is to say. if I state in my petition that I have got certain apprehension in my mind, it will be the task of the Court, if this amendment were to be accepted, to say whether this apprehension is reasonable. The moment the word 'reasonable' comes in, we have to go through the whole process of legal interpretation. One judge may think it is reasonable and another may not think it to be reasonable. One court may think 'so and another may not. There is no knowing as to what will happen in such cases but the point is that the judicial separation should be decreed, the moment it is found that the Court is satisfied that there is apprehension in the mind of the petitioner. It should be allowed. Those of us who are familiar with cases where the word "reasonable" occurs are apprehensive of such questions of interpretation. There will be a lot of complication and such complications have to be avoided. What will happen is that it will become a lawyers' paradise. Suppose I make a petition that I have apprehension. What will happen? The other party may appoint a big lawyer and when lawyers enter into it, they try logic chopping and say that this apprehension should not be considered reasonable and therefore the petition should be rejected. That will be the line of approach. Naturally it will work to the advantage of anybody who is Tn a position to mobilize good lawyers and such lawyers are here and they can make a mess of very simple things. And usually they make a mess of good things, as far as laiwyers are concerned, for we know many of them. They are sometimes useful, of course, but very often not. They complicate easy situations and make a mess of what are even very good and even simple things. Therefore, I say that this should not be there. And you can see that in the case of a woman, it wiH operate to her prejudice, because she has not had much of an opportunity in life today and it would be very difficult for her to find a good lawyer to come and argue out her case. And also she will always fear that in the event of her making a petition for judicial separation, she might In confronted with having to prove it that her apprehensions are reasonable"; and being based on reasonable grounds. Anybody would admit that our women

[Shri B. Gupta.] do not have a reasonable chance when confronted with a position like that as would arise in such cases. Therefore, I say that it should be simply treated as cruelty. And the court should decide whether it is cruelty or not. The court has been given enough power and the court can exercise its discretion. Once the court has satisfied itself that there is cruelty, when once cruelty has been established, then the court should normally Rive a decree of judici'al separation. Cruelty is a very strong word and cruelty is, after all, something which would and should justify such petition being admitted and granted.

Sir, the other amendment relates to the substitution of the words "at the time of" for the words "for a period of not less than one year immediately preceding" in lines 5-6, on page 6. You will find that in the case of a person of unsound mind, it should be shown that he has been or she has been so for a period of not less than two years before one can expect judicial separation. We are against introducing this time-limit. You see it is for the court ultimately to decide the case one way or the other. Therefore, we say let it be put down only as "at the time" when the petition is made. If the other party, the respondent, is found to be one of unsound mind, it is for the court to decide as to what it should do. In such cases, if it is in an aggravated form, the court will naturally give a decree, otherwise the court will not. The matter will be left to the court, as the court has the ultimate say. To put a time-bar would not be correct. If you leave it like this, then for two years one has to live with a person of unsound mind. And usually the thing will operate against the woman, because man has all the advantages. The woman has to live with a man of unsound mind for two years before she can think of a petition, of making a petition for judicial separation. I think this is very unjust. There are types of lunatics, men of unsound mind. But imagine cases where really it is very bad. The husband is really of unsound mind and that unsoundness is of a very aggravated nature. In such cases it is absolutely unthinkable that the women should not be given the remedy that is sought to be given here, for a period of two years. It is not a good thing to compel a woman to live with a mad man for two years before she may file a petition. It does not show even good com-monsense.

I mean people of sound minds cannot reconcile themselves to such absurd ideas. *(Interruption.)* My point is, I am against this provision that has been made here and I say that one should not be forced to live with a man of unsound mind for two years. They themselves suggest 2 years, for it is not contemplated even by them that one should be forced to live with a person v/ho is of unsound mind, to the very end of his or her life. They also take that view.

They also take that view, but unfortunately here comes the fixing of the time, that is, for two years they have to live separately. That is contradictory and this is something which is very difficult to understand and once you accept a principle, that principle should be logically followed. My amendment should be accepted and you leave it to courts to decide whether the decree should be given or not.

With regard to the others also, you will find the same time limit cropping in. I want the period to be reduced to one year, instead of two years. I urge this for the same reasons as I have advanced in the earlier amendment.

The next amendment relates to the insertion of a new clause. The clause as it is explains desertion etc. I want a new sub-clause as follows: "Where the parties to a marriage, whether solemnized, before"—this is an important thing—"or after the commencement of this Act, refuse to live together and present a petition to the

district court praying for a decree ior ' judicial separation, the court, on being satisfied that there has been no coercion or undue influence brought to bear on either party, may decree judicial separation accordingly". Here, the parties are left as they are and the only thing I want to bring in is the case of the marriages that take place before the commencement of this measure. This will not normally be covered. Therefore, when we are going to make such provisions whereby judicial separation is permitted even for marriages performed within the framework of the Hindu law, it is but necessary that those people who were married before the commencement of this enactment should also be covered. The same moral grounds and the same social justification would be equally true of such cases as occur before the enactment of this measure. There again I say that not one party but two parties should say, after the enactment is passed—they may have been married before—that they do not like to live as husband and wife, the divorce thing is a bit complicated and we shall deal with it when we come to that, that they have tried to but cannot live as husband and wife and that a decree cf judicial separation be granted to them. The two parties to marriage must make that petition and then the court should examine whether one of the parties or both the parties have been led by certain undue influences; if the court is satisfied that they are not led by extraneous considerations, that they are not under pressure or the wrong type of influence, it may say, "Very well, you may now live judicially separated from each other". I think that is a very sensible course one should adopt.

MR. DEPUTY CHAIRMAN: That will do.

SHRI B. GUPTA: We shall come to divorce later, but since you accept judicial separation, we only say that it should not be made much too rigid, in the sense that it becomes very difficult to avail of. If you accept my suggestion, it means that the dirty linen will not be washed in the court. Both the parties say that they are not going to live together; then the court should take steps but not ask one party or the other to prove certain things and rake up the past and all that sort of thing, thus making things very difficult and also very obnoxious. This is very reasonable and, as you know, in one of tfie Acts we have provided for divorce by mutual consent. Here, of course, there is no such provision at least in the proposed amendments.

MR. DEPUTY CHAIRMAN: Leave that alone, Mr. Gupta.

SHRI B: GUPTA: At least in the case of judicial separation, this element of mutual consent should be permitted and when the husband and wife do not like to live together as husband and wife they should be allowed to judicially separate without going in'o other matters. That is why I have suggested my amendment and I hope it will commend[1] itself for acceptance by the Government.

SHRI H. N. KUNZRU: Sir, my amendments are connected with the amendments to clause 13 and their fate will be decided by the action taken by the House with regard to the amendments for clause 14. I suggest, therefore, that they may be held over till clause 13 has been disposed of.

MR. DEPUTY CHAIRMAN: We shall postpone consideration of amendments 88, 89 and 91 till clause 13 has been disposed of.

SHRI H. N. KUNZRU: Before I sit down. I should like to say a word about the suggestion last made by our hon. colleague, Shri Bhupesh Gupta. I should like the hon. Minister in eharg3 of the Bill to take tMs matter into his serious consideration. It is quite possible that in such cases, no doubt, influence may be brought to bear on one of the parties to agree to a petition by consent for judicial separation but the court has been allowed to go into this matter. Besides, as the law will insist on monogamy, it is difficult to see

[Shri H. N. Kunzru.] what immediate advantage any person can derive hy persuading the other party to agree to judicial separation. It is true that judicial separation may, after two years, lead to divorce but if the parties feel so unhappy as to think that divorce will be the only remedy for their unhappiness, then I see no reason why we should stand in t.uMi- way. The proposal made by Shri Bhupesh Gupta will, I take it, not apply to those communities which are governed by custom or usage. Where they want divorce, they will rqfer their grievances to their panchayats but where it is the case of educated people living in towns—quite educated enough—going before a court of law, I see very little danger in allowing them to present an application by consent for judicial separation. There may be some danger of undue influ-en; e being brought to bear on one or th other of the parties but I think that such a danger will be a smaller evil than the undesirability of having cases relating to judicial separation being argued in courts of law being given undue publicity. The courts will undoubtedly check unnecessary publicity but it would be very difficult for courts of law to stop the publication of proceedings in all cases. They may, in some cases where the details will be very unsavoury, make use of their power to limit the publication of the details but in other cases, I think, the "courts will be forced to allow proper publicity.

SHRI J. S. BISHT: May I just enquire whether this will not introduce an element of divorce by mutual consent by the back door?

SHRI H. N. KUNZRU: There is no question of introducing this thing by the back door. We are considering the question of judicial separation; judicial separation may lead after two years, to divorce. Here is the question of adultery. A single act of adultery may entitle either party to a marriage to present a petition for their judicial separation. Judicial separation can after two years be a valid ground, almost judicial separation which continues for two years can be a valid ground for divorce, but in the clause relating to divorce, adultery by itself has not been made a ground for a petition for divorce. We may therefore say: Is not this introducing divorce for a single act of adultery by the back door? If the suggestion that has been made with regard to judicial separation by consent is accepted, it will stand on the same footing as the provision relating to judicial separation for a single act of adultery. I hope, Sir, that the hon. Minister in charge of the Bill will, if he is unable to accept the suggestion, be able to give full and valid reasons for not doing so. I hope he will not content himself simply with saying that this amendment was considered by them in their party meeting or by some people sitting together in the Ministry of Law, and they thought that it would not be desirable in the interests of the public to accept. I think that some more convincing arguments will be used if my hon. friend is unable to accept the suggestion made by Shri Bhupesh. Gupta.

SHRI B. M. GUPTE: I want to delete this ground for judicial separation and transfer it to divorce. Of course, I have tabled a corresponding amendment to clause 13. I want to delete this here because in my opinion logically desertion cannot be a proper ground for judicial separation. In case of desertion the proper relief is divorce and not judicial separation because desertion means that the man has himself abandoned the company of the wife or the respondent has abandoned the company of the petitioner and how can then the petitioner say that she should not be forced to live with him. What is the result of a decree of judicial separation? It is that the petitioner should not be forced to go to the respondent, should not be forced to cohabit with the respondent. The respondent says: AU right. I do not want you. It is a good riddance. Thus putting this ground here simply means

that we are putting the judicial seal of approval on the respondent's wrong doing. I therefore submit that logically this is not a proper ground for judicial separation and the proper remedy in such cases should be divorce itself.

SHRI J. S. BISHT: I have moved "that at page 6, lines 17-18, the words 'and includes the wilful neglect of the petitioner by the other party to the marriage' be deleted." Now this is a novel provision of law that has been introduced. This has not been there in the Special Marriage Act, is not there in the Indian Divorce Act and for the first time something has been put in of which we know nothing at all.

Now if we look for enlightenment at the Report of the Joint Select Committee—I refer to page 4 of the Report —it says only this much that "the definition of 'desertion' has been widened so as expressly to include wilful neglect of the respondent". No reasons have been given as to why this has been included. What are those weighty reasons for including this sort of thing? Firstly I submit, Sir, that the word 'desertion' in fact and as, we understand it means leaving the place where the husband or the wife is living. It says in this clause: "the expression 'desertion', with its grammatical variations and cognate expressions, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party". Up to this it is quite right. But it proceeds further and says "and includes the wilful neglect of the petitioner by the other party to the marriage". That means that the husband and the wife may be living in the same house but they still can come in under this clause and say that the other party is guilty of wilful neglect of the petitioner. Now it is deplorably vague, I mean the words "wilful neglect'. What is 'wilful' we do not know, there have been no judicial decisions on that point so far as the question of divorce arid all that is concerned. Now 'wilful neglect' has been surmised in one way. It was perhaps thought that this was very much in favour of the ladies, that a wife may be in the family, she may not be asked to get out of the house. She may be put in a cattle-shed or be treated as if she is a *pariah* there a:id that should give ground for the wife to come in for judicial separation. But that is only one extreme case that they have put in. But they forget that this remedy will also be available, with the clause as it stands, to the husband also, and I submit that in ninety-nine cases out of a hundred it is the man who will abuse this provision and I would strongly plead with the hon. lady Members to stand up against this provision "and includes the wilful neglect of the petitioner by the other party to the marriage" because in this case the wife living in the husband's place, he can easily come in and say,—put in the evidence of his servants and this and that—that his wife has been guilty of wilful neglect and it is very easy to show wilful neglect by saying: "I went to the house; I did not find my tea prepared in the evening; there was no food prepared; that this and that was not done; that the children were wilfully neglected," and it is very easy to get rid of a wife in that manner. In America, for instance, divorce was granted on the ground of incompatibility of temperament. It is more or less like that. You are opening the door very wide, that is to say, you get divorce by simply coming two years before and saying that your wife is guilty of wilful neglect and two years later the divorce is complete.

I submit, Sir, there is no justification for putting in this new provision which apparently is based on the intention that they want to protect the wife but which will be used only against the wife in these cases, especially in the villages where no wife can get any evidence to favour her. All the families in the village will join the husband in saying that "this woman totally neglected her husband".

LShri J. S. Bisht.] I therefore submit that tlie hon. Minister may seriously consider the deletion of this portion:

SHRI SUMAT PRASAD: Mr. Deputy Chairman, clause 13 provides for divorce in case any of the parties is suffering from virulent and incurable leprosy. Sir, the disease of leprosy may not be incurable or virulent, but at the same time it may be proper for the parties not to live as husband an J wife so long as the disease is there. It has been seen that at times the children of the parents, if any one of them suffers from leprosy, are also lepers.

MR. DEPUTY CHAIRMAN: What is the amendment on which you are speaking, Mr. Sumat Prasad?

SHRI SUMAT PRASAD: I am speaking on amendment No. 86 which seeks to substitute "leprosy or a communicable form of" in place of "a virulent form of leprosy or". And if one of the partners is suffering from leprosy then judicial separation may be claimed.

Then, Sir, as regards amendment No. 94, jn case the husband marries a second wife, it is the first wife who suffers. Now if she is a dutiful wife she does not like that she may lead evidence against her husband of cruelty or desertion but all the same she thinks that her life has become miserable. Then she may come to the court and simply for the reason that her husband has married again she may seek judicial separation. This will give her two years' time. If they reconcile they wiH live together as husband and wife. If they are not reconciled, then she may seek divorce. For this reason I move this amendment that in case of husband marrying a secona time, the first wife may be given the right of judicial separation.

SHRI D. P. KARMARKAR: Sir, regarding the amendment to which my hon. friend Mr. Bhupesh Gupta extended his support and also Pandit Kunzru, I just carefully compared the amendment and the original. Now, in the original what has been laid down is this. On page 6 explanation to sub-clause (1) of clause 10 says: "In this section, the expression 'deser tion' with its grammatical variations and cognate expressions, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage." That is to say, we have made the absence of consent and absence of reasonable cause to be necessary. If I understand my hon. friend Mr. Bhupesh Gupta's argument, he says that this reasonableness of the cause need not be there but if there is consent there should be judicial separation. I should ilke to be correct ed if I am wrong, because that is rather an important point for us and for my friends also. If I am correct in that statement, then we are undoubt edly opposed to it because we want both these things here. Desertion means desertion without reasonable cause and the other thing being without the consent or against the wishes of such party. So far as the amendment seeks to do this .....

SHRI B. GUPTA: I was not dealing with desertion. That was a separate thing by itself.

SHRI D. P. KARMARKAR: I have carefully read it. If I am wrong, I should like to be corrected.

SHRI V. K. DHAGE (Hyderabad): May I just say that what Mr. Bhupesh Gupta is doing is not defining what is desertion but he is adding one more ground for judicial separation.

SHRI D. P. KARMARKAR: I understand that. It is an intelligent way of doing it. We do not want judicial separation in the absence of desertion which means that desertion without reasonable cause is no desertion. Let us be clear about that and that is precisely what makes us opposed to that amendment.

SHRI B. GUPTA: My amendment stands on an entirely independent tooting.

SHRI D. P. KARMARKAR: Footing is different and heading is different. Both is demanded. I will read out amendment No. 93: "Where the parties to a marriage, whether solemnized before or after the commencement of this Act, refuse to live together and present a petition to the district court praying for a decree for judicial separation," that is neither here nor there,

" ..... the court on being satisfied that

there has been no coercion or undue influence brought to bear on either party, may decree judicial separation accordingly." So it is precisely what it comes to. Here what you have provided for is in such a circumstance where the parties willingly refuse to live with each other and also willingly present a petition, then they should be entitled to a decree for judicial separation. That is exactly what we do not want to happen. We have said that desertion should be without the consent and against the wish of the other party. Then only it is desertion. So in spirit we are on the same ground with the amendment except we have put in the negative what they have put in the positive. Desertion should be without reasonable cause. If there is reasonable cause then we do not give judicial separation. That is an important point to bear in mind. We are against judicial separation by mutual consent, to put it briefly. And that is where precisely we get separated from my hon. friend Mr. B. Gupta and my esteemed friend Pandit Kunzru. In view of that I regret very much that I am unable to accept that amendment.

Coming to amendment No. 92, moved by Mr. Bisht, I discussed this question with him and I tried to explain this point to him this morning, but I am sorry I could not carry conviction with him. Wilful neglect may not be necessarily outside the home. There can be such a thing as wilful neglect &1 RSD

within the home. Suppose the husband does not talk to the wife or suppose the wife is recalcitrant from morning to evening. It is for that reason that wilful neglect could cover such things also that the provision has been worded like that. I thought he would agree but now I think in view of this explanation he might agree.

Amendment No. 94, I have dealt with already. Sir, I would like to answer briefly *seriatim* with regard to all these amendments and necessarily with due respect I have to be brief in order to save time. Apparently my hon. friend the mover of amendment No. 82 would like to make desertion a ground for divorce. Sir, the scheme of the entire Bill is different and therefore I am unable to accept it.

Now, coming to amendment No. 83 .....

MR. DEPUTY CHAIRMAN: He wants only simple cruelty.

SHRI D. P. KARMARKAR: Sir, there is nothing like simple cruelty or accute cruelty. Cruelty has been defined and we have gone one step further and I think our provision is much ampler than what it could otherwise have been. Now cruelty is factual cruelty and the petitioner has to prove it. We have gone a step further, and it makes better reading. We have said that the treatment of the petitioner should be such as to cause a reasonable apprehension in the mind of the-petitioner. I wish the House to appreciate the wording of this provision. The burden is not on the party *8 prove actual cruelty but the court has to see to il whether there has been such cruelty and whether the cruelty has been of such a nature as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party. Suppose the husband raises an axe. Raising an axe is not necessarily trying to murder. It may simply be to

[Shri D. P. Karmarkar.] frighten her but the precise question *is* that the lady has to prove that her husband raised the axe and that he intended to kill her and that raised a reasonable apprehension in her mind. The cruelty must be of such a type as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.

DIWAN CH AMAN LALL: It may include even mental cruelty.

SHRI D. P. KARMARKAR: Yes. Suppose he goes on exercising cruelty by signs as to make her day to day crazy, even that type of things wiH come in here. I should think that this clause as has been redrafted by the Joint Committee is distinctly an improvement upon what was there before, and my friend wants to go back on that.

SHRI V. K. DHAGE: What Mr. Bhupesh Gupta says is .....

SHRI D. P. KARMARKAR: I suppose Mr. Bhupesh Gupta will be able to take care of himself. I do not take offence at all.

SHRI V. K. DHAGE: The hon. Minister is explaining the clause and I want to know whether he has understood Mr. Gupta clearly. I would like to understand whether it includes mental cruelty.

DIWAN CHAMAN LALL: Yes; he said so.

SHRI D. P. KARMARKAR: I think I have studied Mr. Gupta very well. Now, coming to amendments Nos. 84 and 85, I very respectfully submit that we have tried to prescribe the lowest period for coming to the conclusion that the disease is really incurable. To widen the scope further will lead to ur.'oreseen results.

DIWAN CHAMAN LALL: May 1 tr.termpt my hon. friend in regard to this particular provision? Would it be agreeable if the clause were to lead like this: After the word leprosy suppose we say, "has immediately before the presentation of the petition been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner"? Then that makes the position clear.

SHRI D. P. KARMARKAR: The amendment is so very tempting that while technically sticking to my version, I would leave it entirely to the discretion of the House. Of course, it sounds beautiful.

MR. DEPUTY CHAIRMAN: Unless the Minister agrees, I do not want vo accept any amendment.

SHRI D. P. KARMARKAR: If the Chair agrees, I have no objection. Sir. it does not matter if that is the onl> condition; otherwise, I hold no strong views on that. Then, Sir, we proceed to amendment No. 85. I suppose that is covered. "Venereal disease in a virulent form" will be substituted by "venereal disease in a communicable form". Since I have commended the amendment that is sought to l>e brought forward by Diwan Chama-n Lall, I would say nothing about amendment No. 85.

Amendment No. 86 is covered by the amendment that is sought to be moved by Diwan Chaman Lall.

Regarding amendment No. 87, J regret that it is not acceptable to us. About these various periods, there can be honest differences of opinion. This was Carefully considered by the Joint Committee. I beg to submit that it will be seen that in some cases the periods have been reduced from the Bombay and Madras Acts and a definite scheme was also adopted.

Regarding amendments Nos. 88. 8a and 91, it has been agreed by the House that these should be postponed. So I won't say anything on them.

Regarding amendment No. 90. Kazi Karimuddin has not moved it.

Regarding amendments Nos. 91, 92, 93 and 94, we have dealt with them. That is all, I think, relating to clause 10.

MR. DEPUTY CHAIRMAN: I am putting the amendments to the vote of the House. Amendment No. 82.

SHRI B. M. GUPTE: Sir, I beg to •withdraw the amendment.

The amendment* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

83. "That at page 6, for lines 1 to 4, the following be substituted namely: —

'(b) has treated the petitioner with cruelty; or'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

84. "That at page 6, lines 5-6 for the words 'for a period of not less than one year immediately preced ing' the words 'at the time of be substituted."

The motion was negatived. Amendment No. 85* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: Amendment No. 86.

SHRI SUMAT PRASAD: Sir. I beg to withdraw the amendment.

The amendment* was, by leave of ihe House, withdrawn.

MR. DEPUTY CHAIRMAN: The ^question is:

87. "That at page 6, line 9, for the words 'two years' the words 'one year' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendments Nos. 88, 89 and 91 by Dr. Kunzru are consequential on clause 13 being amended. These can be taken up at third reading stage. Amendment No. 90 has not been moved.

MR. DEPUTY CHAIRMAN; Amendment No. 92.

SHRI J. S. BISHT: Sir, I beg Io withdraw the amendment.

The amendment* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: Th* question is:

93. "That at page 6, after line 18, the following be added, namely:

'(IA) Where the parties to a marriage, whether solemnized before or after the commencement of this Act, refuse to live together and present a petition to the district court praying for a decree for judicial separation, the court, on being satisfied that there has been no coercion or undue influence brought to bear on either party, may decree judicial separation accordingly."

(After a count) Ayes 6; Noes 17. The

motion was negatived.

MR. DEPUTY CHAIRMAN: Amend ment No. 94.

SHRI SUMAT PRASAD: Sir, I beg to withdraw the amendment.

The amendment* was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: Where is your amendment, Diwan Chaman Lall?

DIWAN CHAMAN LALL: Sir, my amendment is here. This is an amendment to clause 10, sub-clause (te). It is split up into two parts. I move:

"That at page 6, in line 7, the words 'or venereal disease' be deleted;".

"That at page 6, after line 7, the following be inserted: —

'() has immediately before tha presentation of the petition been

*For text of amendments Nos. $2, 85, 86, 92 and 94 *see cols.* 1796, 1797 and 1798 *supra* respectively.

[Diwan Chaman Lall.] suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner; or'."

MR. DEPUTY CHAIRMAN: The question is:

"That at page 6, in line 7, the words 'or venereal disease' be deleted;".

"That at page 6, after line 7, the following be inserted:—

'(ce) has immediately before the presentation of the petition, been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner; or'. "

The motion was adopted.

MR. DEPUTY CHAIRMAN: Tha question is:

"That clause 10, as amended, stand part of the Bill."

The motion was adopted.

Clause 10, as amended, was added fo *the* Bill.

MESSAGE FROM THE LOK SABHA

THE F'REVENTIVE DETENTION (AMENDMENT) BILL, 1954

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed, by the Secretary of the Lok Sabha:

"In accordance with the provisions of Rule 132 of the Rules of Procedure and Conduct of Business in the Lok Sabha, I am directed to enclose herewith a copy of the Preventive Detention (Amendment) Bill,. 1954, as passed by the Lok Sabha at its sitting held on the 13th December, 1954".

I lay the Bill on the Table.

MR. DEPUTY CHAIRMAN: The* House stands adjourned till 11 O'clock tomorrow.

The House then adjourned at six of the clock till eleven of the clock on Tuesday, th» 14th December 1954.