

SHRI B. GUPTA: Sir, I know the active consideration.....

MR. CHAIRMAN: I am telling you that I have asked the Home Ministry to give us a report about that question of Kurnool firing. That is number one. No. 2, the hunger-strike of the policemen in the country.

SHRI B. GUPTA: Hunger-strike of the policemen of West Bengal, and military being called to suppress.....

MR. CHAIRMAN: I know it. We read the papers; and we know what things agitate you, and we immediately, even without your giving notice, take action on those things.

SHRI H. D. RAJAH (Madras): That is the best thing that we have heard, Sir.

SHRI B. GUPTA: I would be quite satisfied with your active consideration, but when it goes for active consideration to the Secretariat, especially to Dr. Katju, nothing takes place, and nothing moves there.

MR. CHAIRMAN: It is all right. Next, Dr. Katju.

PAPERS LAID ON THE TABLE

PRESIDENT'S ACTS UNDER THE ANDHRA STATE LEGISLATURE (DELEGATION OF POWERS) ACT, 1954

THE DEPUTY MINISTER FOR HOME AFFAIRS (SHRI B. N. DATAR): Sir, I beg to lay on the Table a copy of each of the following President's Acts, under sub-section (3) of section 3 of the Andhra State Legislature (Delegation of Powers) Act, 1954:—

(i) The Indian Bar Councils (Andhra Amendment) Act, 1954 (No. 7 of 1954).

(ii) Sri Venkateswara University (Amendment) Act, 1954 (No. 8 of 1954).

(iii) The Madras Tenants and Ryots Protection (Andhra Amendment) Act, 1954 (No. 9 of 1954).

(iv) The Societies Registration (Andhra Amendment) Act, 1954 (No. 10 of 1954).

(v) The Madras Motor Vehicles (Taxation of Passengers and Goods) Andhra Amendment Act, 1954 (No. 11 of 1954).

(vi) The Andhra Preservation of Private Forests Act, 1954 (No. 12 of 1954).

(vii) The Andhra Christian Marriage Validation Act, 1954 (No. 13 of 1954).

(viii) The Andhra Inam Tenants Protection Act, 1954 (No. 14 of 1954).

(ix) The Madras District Boards (Amendment) Andhra Second Amendment Act, 1954 (No. 15 of 1954). [Placed in the Library. For (i) to (ix) see No. S-486/54.]

THE HINDU MARRIAGE AND DIVORCE BILL, 1952—continued

MR. CHAIRMAN: We now take up clause 19. There is one amendment by Dr. Shrimati Seeta Parmanand.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): I don't wish to move that amendment.

MR. CHAIRMAN: Very good.

Clause 19 was added to the Bill.

MR. CHAIRMAN: Now we come to clause 20. There is one amendment of Mr. Rajagopal Naidu.

SHRI RAJAGOPAL NAIDU (Madras): Sir, I beg to move:

220. "That at page 10, line 6-7 the words 'and may, at the hearing, be referred to as evidence' be deleted."

MR. CHAIRMAN: The clause and the amendment are before the House. Any remarks?

SHRI RAJAGOPAL NAIDU: Yes, Sir. The object of my moving this amendment to clause 20 is that I want to delete the words "and may, at the hearing, be referred to as evidence." in sub-clause (2) of clause 20.

[MR. DEPUTY CHAIRMAN in the Chair]

Sub-clause (2) of clause 20, as it stands, reads as follows:

"The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence."

I want these last few words, namely, "and may, at the hearing, be referred to as evidence," to be deleted. We know that pleadings in a court of law cannot be relied upon as evidence, unless it is proved by the petitioner or by the respondent who alleges certain facts either in the petition or in the counter by getting into the box. But now, as the clause stands, the petitioner may file a petition alleging certain facts, and because a provision has been made in the Bill that the petition may be referred to as evidence, it might happen that the petitioner may not go into the box to prove the contents of the petition. If the same kind of provision is made in the case of counters also. I have no grievance at all. But if only the petition filed by the petitioner can be referred to as evidence in the case, what about the counter filed by the respondent? Are they also to be referred to as evidence in the case, or is it necessary that the respondent will have to get into the box and prove his case? We know that the general rule is that pleadings, unless the parties making the pleadings go into the box and then prove, are not usually admissible in evidence. And we have a provision in the Code of Civil Procedure—Order 8, Rule 5—that if any fact is alleged by the petitioner in the

petition, and if it is not controverted by the respondent, then it is admissible in evidence. Suppose it is controverted, then the petitioner will have to get into the box and prove his case. What will happen now, as the clause stands? The petitioner will allege certain facts in the petition, but will not go into the box, because there is a provision in the clause that it may be referred to as evidence. The petitioner will say. "Here is my petition, and it may be treated as evidence." The respondent or the counter petitioner will not be given an opportunity to cross-examine the petitioner. There is that difficulty in this case. And the hon. Minister, who has the experience of the law courts, and who himself was a practitioner, will certainly know the difficulties that will arise in this case. If an opportunity is to be given to the petitioner to treat the petition as evidence in the case, an equal opportunity should be given to the counter petitioner to treat the counter as evidence in the case. If that is done, I have no objection. And further, there is a similar provision made in the Indian Divorce Act, which is of the year 1869 or 1870. Probably, the same provision has been copied from the Indian Divorce Act. But let the hon. Minister remember that the Indian Divorce Act has come into being long before the Code of Civil Procedure has come into being. And probably, the framers of this Bill have simply copied it from the Indian Divorce Act. And I do not think that this provision need be there after the passing of the Code of Civil Procedure, which is of the year 1905.

THE MINISTER FOR COMMERCE (SHRI D. P. KARMARKAR): Is it my hon. friend's point that affidavit should not be a sufficient evidence, and that *viva voce* should be an evidence? My friend, Diwan Chaman Lall, has probably heard him better, and he may kindly clarify it for me.

DIWAN CHAMAN LALL (Punjab): May I just say one word in regard to this? The position seems to be that

[Diwan Chaman Lall.]
my learned friend wants the petition which is filed in a divorce proceeding to be considered as evidence under the law of evidence. But he says that if you are going to do it as far as the petition is concerned, you must give the same right to the rejoinder which is to be given by the respondent. But may I draw my learned friend's attention to this that the basis of a law suit in regard to this Bill is the petition, but the petition by itself has no value as evidence? It may be tendered but its value as evidence is nil. If you are going to open up the Evidence Act to include even the respondent's rejoinder and then may be another rejoinder from the petitioner, where are you going to end? It is merely for the purpose of satisfying the provisions of the law that the original petition, verified according to the law, will be considered as part and parcel of the evidence on record in that particular case. I think personally that, since it, by itself, has no value as evidence, we might leave it as it is. That is my first reaction.

SHRI RAJAGOPAL NAIDU: If it is verified petition, proof is required, but if it is affidavit and petition, direct proof is not generally insisted upon. That is the difference.

SHRI D. P. KARMARKAR: I think the matter is quite clear. Every petition will contain certain facts. It alleges certain facts, but they have to be proved. The petition by itself has no value as evidence, but it is the basis. The facts given might be right or wrong. They have got to be proved by other evidence.

SHRI RAJAGOPAL NAIDU: Why this provision at all in the Bill?

MR. DEPUTY CHAIRMAN: The question is:

220. "That at page 10, lines 6-7, the words 'and may, at the hearing, be referred to as evidence' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 20 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

Clause 21 was added to the Bill.

MR. DEPUTY CHAIRMAN: Motion moved:

"That clause 22 stand part of the Bill."

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

177. "That at page 10, lines 16-17, the words 'except with the previous permission of the court' be deleted."

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

DR. SHRIMATI SEETA PARMANAND: The reason for my asking that the proceedings should be *in camera* and for the words "except with the previous permission of the court" be deleted is that it should not be possible to allow the proceedings to go to the press so as to develop a taste for reading such scurrilous proceedings and also to avoid undue public interest in matters which are entirely personal. This matter was discussed fully when the Special Marriage Bill was before the House and it was then decided to change the wording to what is now here. So, I say that the clause should read ".....it shall not be lawful for any person to print or publish any matter in relation to any such proceeding." It should stop here. The other words "except with the previous permission of the court" should be omitted. The amendment is, I think, self explanatory, and I will not take up any more time of the House.

SHRI B. GUPTA (West Bengal): Sir, we support the amendment for the deletion of the words "except with

the previous permission of the court." It is clear from the language that even the Bill does not contemplate that such proceedings should frequently go to the press. If it is so, why do you keep these words "except with the previous permission of the court" here? I think the whole thing may be deleted. The press should be kept out altogether. It should be decided between the parties and the court, and no third parties should be brought in except those who are necessary to the proceedings themselves.

SHRI D. P. KARMARKAR: I was surprised to see that the hon. Member did not give any arguments in support of her case. Normally, court proceedings should be open to everybody, to the public, but we say here that in the case of such proceedings if either party so desires, then they shall be *in camera* and it shall not be lawful for any person to print or publish any matter in relation to such proceeding except with the previous permission of the court. We give the court the discretion, and I am certain that the court will do only what is proper.

MR. DEPUTY CHAIRMAN: She does not want any discretion left to the court.

SHRI D. P. KARMARKAR: She has not said anything in support of that contention.

SHRI B. K. MUKERJEE (Uttar Pradesh): I want to seek clarification on this. Does the word "publish" here refer to law journals also? If you are going to prevent the printing and publishing of anything in connection with these cases, may I know whether law journals also will be prohibited from publishing the judgments?

MR. DEPUTY CHAIRMAN: That is what it comes to if the amendment is accepted.

The question is:

177. "That at page 10, lines 16-17, the words 'except with the previous permission of the court' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 22 stand part of the Bill."

The motion was adopted.

Clause 22 was added to the Bill.

MR. DEPUTY CHAIRMAN: Motion moved:

"That clause 23 stand part of the Bill."

PANDIT S. S. N. TANKHA (Uttar Pradesh): Sir, I move:

178. "That at page 10, in line 28, the words 'or condoned' be deleted."

179. "That at page 10, lines 28 to 30, the words 'or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty' be deleted."

181. "That at page 10, lines 33 and 34 be deleted."

SHRI B. GUPTA: Sir, I move:

180. "That at page 10, line 33, after the word 'improper' the words 'and wilful' be inserted."

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

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, my amendment No. 178 wants that in sub-clause (1) (b) of clause 23, the words "or condoned" should be omitted after the words "where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at". The rest of the sub-clause will remain as it stands. My amendment No. 179 wants the deletion in the same sub-clause of the words "or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty". In sub-clause

[Pandit S. S. N. Tankha.]

(1) (d) the words are "there has not been any unnecessary or improper delay in instituting the proceeding." I want this sub-clause to be deleted as a whole. The reason why I want these changes is that according to the matrimonial law and the rulings given by the various courts both in England as well as in India on the Indian Divorce Act, it has been held that, if cruelty is the ground upon which divorce is claimed and the aggrieved party does not go to court soon after, then it will be considered by the court that there has been a condonation of the cruelty. In the same way, if adultery is committed by the husband or the wife and no proceedings are taken by either party in court without delay, then it will be considered that that act of adultery has been condoned. It is true that there is another principle of law which is sometimes applied in such cases and according to which these acts of adultery or cruelty can be later on relied upon again but the question before the court will be whether or not they are revived. Therefore, to avoid this difficulty, I have tabled that these words regarding condonation be deleted. The conditions in India and in other countries where the divorce laws prevail are very different. Our Hindu society in which this law was not prevalent up to this stage, has always discouraged the idea of divorce or the leaving of the husband's home by the wife. It is in fact considered a very unsocial and immoral act on the part of the wife to leave the husband's home whatever his faults may be. Therefore, in the present state of the society, every endeavour will be made by the members of the family of the parties in which such acts of cruelty or adultery occur either on the part of the husband or the wife, that the matter should not go to the court and, therefore, the parents of the parties as well as the friends and relations will all try to compel them not to go to court, unless, of course, they are ultimately forced to go to it after some time. Therefore, when these matters go to the court ultimately, question will arise

before the court whether or not those previous acts of cruelty or adultery should be considered as condoned. Under the English law as well as under the Indian Divorce Act there is a special provision regarding condonation of adultery and a test has been prescribed for its determination, namely whether or not the wife or husband has resumed marital relations, and if it is found that they have resumed conjugal relations then only will it be considered that the previous acts of adultery have been condoned but if they have not, then it will not be considered that condonation has taken place. But, here in our law which we are now enacting, we have not made any provision of that type which I think, was very necessary to come to the conclusion whether or not condonation had taken place. Therefore, if the law, as enacted herein, remains, then every time this matter will have to be considered by the court and the court may or may not come to that conclusion in each individual case whether or not condonation has taken place and since there are no particular tests laid down by which the court may be guided in this matter, it will always be at their whim to come to the finding whether a particular act has been condoned or not by either party. To avoid all these difficulties and since it is our desire that the women of India should have the maximum benefit of this law, it is not only desirable but absolutely necessary that these words should be deleted in the clause.

Now as regards sub-clause (d)—the deletion of the entire clause—the same argument applies viz., that every effort will be made by interested parties and relations to prevent the parties from going to court at the earlier stages of estrangement between the couples and supposing at the first instance when any lapse takes place, either of cruelty or adultery, a wife does not go to court and when it occurs for the second time then also she does not go to the court but when it occurs for the third time and when she goes to the court, the court may

say, "You have already condoned those acts and have delayed in taking proceedings so we don't allow to come up now and take advantage of those previous acts of cruelty or adultery." This will be very unfair in families which are accustomed to an entirely different way of living than the other European countries. Therefore, I would suggest that this clause also be deleted.

SHRI S. N. MAZUMDAR (West Bengal): Mr. Deputy Chairman, Mr. Tankha has argued mostly about the legal side. I shall do so from the human side. As we know, the condition of women today in India is that they are dependent on their husbands economically and not only economically, we also know the psychological make-up of our women. Now this word "condonation" if this is kept here, it will mean a great hardship because we know that there are various forms of cruelty. There may be several types of cases. Where a wife is economically completely dependent on the husband, she has to put up with certain things. Therefore, she cannot take recourse to this. It was explained while this was being discussed in the Select Committee that say, the husband gives the wife 3 slaps and for 6 months the wife puts up with that, and after that period there is any fresh act of cruelty and the husband gives her another slap and then the wife goes to the court, it will be taken as a fresh act of cruelty. That is true. With this fresh act of cruelty it will be treated as cruelty. The whole background may also be considered but my point is—and I want you and the hon. Minister to take this into consideration—that for 3 months the husband gives the wife slaps or treats her with various forms of cruelty including mental cruelty. The wife has no other means and cannot go to the court but after a certain period she also feels that she cannot put up with it or due to some circumstance she feels herself in a position to go to the court to seek relief but then she is liable to the charge that she has condoned these acts of cruelty and

so she cannot get relief unless and until a fresh act of cruelty is committed.

Secondly, let us take also another case. We know Indian wives. Apart from the question of economic dependence, they try to put up with their husbands to the utmost limit of their patience. Psychologically also we take up the case. She is so dependent on the husband that she has no personality of her own and to the utmost limits of her patience she tries to bear with the whole thing. That will also come, so far as I understand, under the term "condonation" and so, when after putting up a desperate effort to bear the whole condition, she comes to a stage when her whole mental equilibrium is completely destroyed, she cannot put up with it any longer and she goes to the court to seek relief—then what will be her position? It is liable to be interpreted that as she has condoned this act of cruelty, so she cannot get relief. You know in this connection the whole question of cruelty also will have to be considered because while we consider cruelty as a ground for judicial separation or divorce, the tendency which we have seen on the floor of the House of various speakers is to emphasise only on the physical side of cruelty. The hon. Minister the other day was giving an example that suppose the husband brandishes an axe, that will be a reasonable apprehension for her life but apart from the physical side of cruelty, there is the mental side of cruelty. Say, a husband does not slap his wife, does not physically ill-treat her, does not even insult her in so many words but treats her with so much contempt that the personality of the woman is insulted and day by day she is to put up with it. We know that as regards slaps, so far as I remember and if I am wrong Dr. Kane can correct me, that Kautilya allowed a wife to sue in the court if the husband gave her more than 3 slaps even at that time. At that time she was enjoined only to put up with 3 slaps and not more. After the fourth slap, she was allowed to sue in

[Shri S. N. Mazumdar.]

the court. That was so many years ago. Now, we know when we are proceeding with this Bill on the admission that woman is also equal to man, that she has equal rights, but then when this question comes to say, the treatment of the husband is such that wife's personality or dignity as a human being is insulted day by day—and there may be various forms—the treatment of the husband may be such that without saying any harsh words, without actually committing a gross act of insult or cruelty he treats a woman in such a manner that her whole mental equilibrium is on the verge of being destroyed, what do we do? She will try naturally to put up with the whole thing, to the utmost limit of her patience. But when that limit is exceeded, when it reaches the breaking point, then she goes to the court. There she will be told, "You have condoned the whole thing. There has been no fresh act of cruelty. So you will have to wait for a long time" and it may be that the man does many more acts of cruelty. You know, Sir, how such cases occur, and how there are suicides committed, when the whole mental equilibrium of the woman is destroyed. Her mental health is completely destroyed and the result affects not only the parties to the marriage but also the children and the whole family. That is why I urge upon the hon. Minister to accept our amendment.

DR. W. S. BARLINGAY (Madhya Pradesh): I have to speak only one or two sentences and I will not take much time. I want to support the amendment proposed by Mr. Tankha and apart from the reasons which he has given and which Mr. Mazumdar has given in this connection, the one reason that I should like to give is that the law should be as simple as possible and the law ought not to give rise to complications. It ought to be capable of being clearly understood by all the parties concerned and litigation ought not to be protracted, if we can help it. Now, the amendment says that words

"or where the ground for the petition is cruelty the petitioner has not in any manner condoned the cruelty" be deleted. If these words are deleted, it is not going to affect in any way the right of divorce either of the man or of the woman concerned. On the other hand, if they are not deleted, what will happen is that a lot of wrangling in the court will go on. This sort of wrangling has to be stopped and I think that is a good ground why these particular words ought to be deleted from clause 23.

DEWAN CHAMAN LALL: I do not have to say much about this matter, because I should have thought that the matter is simple enough. My learned friend Pandit Tankha moved an amendment wanting the deletion of the provision regarding condonation. I do not think at that time he was really applying his mind to the matter properly. It may be that I have misunderstood him or perhaps he has misunderstood the position. Now, what does condonation mean? It is an extraordinary thing, how these extraordinary English words which have a Latin base have a Sanskrit foundation, because Latin is 95 per cent. Sanskrit. Condonation comes from "con" meaning "with" or "intent" and "donare" which is the same as our "dan karan" that is to say giving—the same as the Sanskrit word "dan." That means giving away, intentionally; that is to say, agreeing with the state of affairs voluntarily; to put up with a certain state of affairs, when a particular cause has risen to do something; to give away with intent. When a husband and wife after a particular act of, say, adultery, find that a particular cause has arisen for divorce, but they themselves agree to stay together, then I consider that the matter is at an end, as far as the court is concerned, and the court should not interfere with that particular case. But if after some time, another cause arises, as Mr. Tankha knows, that cause is not barred. What is barred is the previous cause which had arisen and which had been condoned and given up so

far as the parties are concerned. And the court should not interfere with that position. At the same time the parties should not have the right to go back again to the previous act which they themselves have voluntarily given up and giving it as a cause for interference some ten or five or three years later. At a certain stage there was a cause and they gave it up and they should not revive it now. That is as regards condonation.

As regards the question of law, as my hon. friend knows, there is a section, I think it is section 7 of the Indian Divorce Act, which makes the principles of the English law applicable. Section 7 reads thus:

"Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which in the opinion of the said Court, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief:"

Therefore, it is quite clear that in interpreting the word "condonation" or this particular clause, the courts in India will be guided by the principles laid down in the various rulings both in England and in the Indian courts.

There is one other point that has been raised with regard to "cruelty". But, before I come to that. I would like to complete this argument by adding this with reference to my learned friend's argument that section 14 of the Indian Divorce Act says:

"No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued."

So that point is quite clear now. One cannot allow the parties to take advantage of a state of affairs which they themselves have voluntarily and willingly abandoned and go back a

number of years to a state of affairs which no longer is valid.

PANDIT S. S. N. TANKHA: That is exactly what I was submitting. This clause does not exist in the proposed provision of this Bill. In other matrimonial laws they have it there and according to which no condonation will be presumed to have taken place unless cohabitation has been resumed or continued by the parties. We are not imposing such a condition in our Bill and that is a very great shortcoming.

DIWAN CHAMAN LALL: My learned friend must remember that the word here in clause 23 is:

".....the petitioner has not in any manner condoned the cruelty".

and where the ground is adultery, that the adultery has not been condoned. And my learned friend very well knows that there is a legal significance to the word "condoned". Moreover as is explained in section 7 of the Indian Divorce Act, the provision is guided by the provisions applicable to the Matrimonial Causes Act. So whatever is valid there will be followed here with regard to the explanation of the word or what "condonation" means. As I have already explained under section 14 of the Indian Divorce Act, the term "condonation" has been explained and I do not think any judge sitting to decide this matter would take any other line than the line that has already been laid down with regard to "condonation".

With regard to cruelty, again I do not understand my learned friend. Cruelty is a matter which gives rise to judicial separation and not to divorce, as far as we are concerned. When cruelty is feared and judicial separation is granted, one of the effects is that the two parties live separately. That is exactly what happens. If they then come to live together, live a married life again that would be condonation. Surely, it is too much to ask this House to say that when the two

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parties have given up the cause which gave rise to judicial separation and have come together again, we should ignore that for the purpose of divorce. The ground that was given was cruelty on which judicial separation was granted; two years after that the cause arises for a dissolution of marriage. In the meanwhile if the two parties have come together that means the condonation of the cruelty and for all purposes they come together. Surely you do not want to revive a matter which has already been given up voluntarily by these two parties. Therefore, I suggest that my learned friend may withdraw his amendments and leave the provision as it is.

SHRI B. GUPTA: I want to speak, Sir.

MR. DEPUTY CHAIRMAN: I think it has been sufficiently discussed.

SHRI B. GUPTA: He has made certain points and I want to say something about it. I do not know if you are in such a hurry. In that case, we can all go home.

MR. DEPUTY CHAIRMAN: I think sufficient has been said about the matter. I have called the Minister.

SHRI B. GUPTA: That does not matter. I have to reply to certain points made by Diwan Chaman Lall.

MR. DEPUTY CHAIRMAN: Mr. Mazumdar has spoken.

SHRI B. GUPTA: He did not touch these points and, moreover, after the Minister has spoken, we cannot do anything. If I get up and interrupt the Minister you will say that it is not right. I have given amendments and in future, we shall draft amendments in such a way.....

MR. DEPUTY CHAIRMAN: Three or four Members have given amendments but let one of them speak.

SHRI S. N. MAZUMDAR: We are not insisting that all of us should speak.

SHRI B. GUPTA: We are not insisting like that and I have also not spoken.

MR. DEPUTY CHAIRMAN: Let us not waste any more time.

SHRI B. GUPTA: If you think that that is the way to conduct, it is all right.

MR. DEPUTY CHAIRMAN: I think sufficient has been said about this in the debate.

SHRI B. GUPTA: I thought the Chair would help us in the debate.

I have heard Diwan Chaman Lall and that is why I get up to speak. I have no quarrel with him when he explains the word "condonation" in that particular way. I think he is quite right when he says that there is the element of intent, that is to say, something which is done intentionally. He need not go into the Latin phraseology or the etymological meaning; we quite understand the meaning. Normally, "condonation" does not mean something which is absolutely unintentional or something which the parties did not know of; but the fact remains that in cases that are likely to be covered by this clause when the court may take certain things as "condonation" when, in fact, it is not so. It is quite understandable if the interpretation is given as has been given by Diwan Chaman Lall. Take an English County or a village. Normally, we cannot overlook the social conditions there; if there is cruelty, normally they separate from each other. That is possible for them to do so, especially for the women, because they are also engaged in certain industry or in some employment and are in a position to earn their living. Therefore, they have got a certain measure of confidence which is denied to women in our country. Imagine a similar case in a village. A husband is living in adultery; this has been made a ground for divorce. It may not at all be possible for the wife even to ventilate her grievance; she may not go out of

the confines of the house and whatever legal remedies are there will not at all be available to her although it may be perfectly valid to say that they are open to her; it may be that she will not even dare to speak to the neighbour about it because she will fear that in case the husband comes to know of it, her life will be rendered more miserable than it is. Such is the case in our country. It may be that she has to keep silent in such cases, looking for an opportunity when she can exercise that right, go to the court for remedy or redress. If she goes to the court, shall we say, taking the help of some relative which she may procure after a good deal of effort, the husband may go to the court and say that after the alleged acts of adultery, the wife had been living with him and that the very fact that the wife had been living with him in the same house, under the same roof should leave the court to presume that there had been a condonation on her part. That is how the case would be argued in a court of law. In circumstances where men and women are free, where they have all got equal opportunities in life, when they can separate at will, such a thing could be understandable but not in the context of our society where things stand on an entirely different footing. Therefore, I say: to interpret it in the literal way or to follow the English meaning and the English jurisprudence in this matter would not be right if we keep in mind the society in which we are living in.

Then comes the question of cruelty. Let us see what will happen in England. If a husband beats the wife she walks out of the flat, takes a taxi or the tube and goes to some friends or she may still settle with the husband. Some people may even do that but she can easily get out of the house; she will not be confronted with a situation where she has to face starvation or the absence of any shelter or care. Normally, they have got their own jobs and they earn their livelihood and live on their own earnings; but that will not be the case when similar things take place in our

Indian society. If, for instance, a husband in a village beats his wife and if the wife wants to go away, what can she do? She cannot do anything because lots of handicap will be in her way and she would not be able to get out of the house at all. It may be that she would be staying there for three or four or five days or even five weeks and then secretly, somehow or other, would send a letter across to some of her relatives—brothers or like that—and then manage to get out of the house. Probably, taking advantage of that, she would go to the court for redress. In that case, the husband would come and tell the court that she had condoned that act of cruelty—even if it is a continuing cruelty, that is to say, the last act was preceded by similar acts of cruelty—and the court, from the fact that she had been living with him for seven or eight weeks after the last alleged act of cruelty would presume that she has condoned this thing. Now, the court will be helpless. The court will be asked by the lawyers of the husband to go by the judicial interpretations, the Case law and the English laws. Lawyers like Diwan Chaman Lall, partly by legal powers, partly by charm and partly by the way of putting the case, will melt the heart of any reasonable judge and the decree will go against the unfortunate wife. That is what will happen.

DIWAN CHAMAN LALL: I wish you would smile like that always.

SHRI B. GUPTA: Therefore, I say, English education is very good. Oxonian education is better but I do not think that we should always go by that. I have got a London Degree and he has got an Oxford Degree. I think between us we can be able to keep that in the cold storage.

DIWAN CHAMAN LALL: Between us, we are both uneducated.

SHRI B. GUPTA: Let us not go by this; let us go by the commonsense and relate that commonsense to the actual conditions. After all, jurisprudence is something which is not static; it is something which is

[Shri B. Gupta.]

dynamic. It has to be progressive and it has to be interpreted according to the changes in reality in the social life, even in private life if we have to deal with such private life. Therefore, I say that it would be too rigid an interpretation to put if you keep this clause like this. In most cases, in 99 out of 100 cases, the whole thing would operate against the wife. If you had created a situation in which men and women are equal, in which a woman can get out of the house the moment she likes without any fear of starvation, lack of shelter etc., I could have understood this clause being retained here as it is; but you start with the initial disadvantage for women. In such a case to introduce such clauses as this would be really taking away the rights that you have given to women and in actual practice, the courts will have no other alternative but to submit to the rigid interpretation of law especially when such interpretations are made by eminent lawyers of Diwan Chaman Lall's stature.

Therefore I would ask the hon. Minister to accept the amendments that we have given and make it reasonable, sensible and acceptable to all.

DR. SHRIMATI SEETA PARNAND: Sir, I would like to say a few words on this because it is a matter that concerns women more and as they have not the money to plead in such cases. So the question of proceedings in court should really be made as easy as possible. It should not be necessary under this clause to refer, for interpreting the terms in this Act, to the Indian Divorce Act or to some other Act. It should be possible, if necessary, where a woman is not able to engage a lawyer and such eminent lawyers like our friend Diwan Chaman Lall—his fees would be too high—for women themselves to plead their cases, and, Sir, divorce has not been found so difficult in China, as I have already said where a simple village woman is able to put her case. So all these legal complications, whether cruelty has been condoned or not, should not be kept in the clause. After all is a

woman going to be punished for having made an attempt, after a decree of separation, to again come together and reconcile? And if the man again plays his old game of being cruel to her, is her reconciliation going to be pleaded against her? So I feel that nothing would be lost if this particular sentence which the hon. the mover wants to drop be deleted. If anything everything should be easy, divorce could be made easy, the proceedings in the court could be easy and so many complications would be saved. And the purpose of the law, I may appeal again to the hon. Minister-in-charge, is to make things easy for the parties and particularly for a party which has no money, if at all very little, which will be the case for some time at least to come. So I hope in every thing that affects women, the attitude that he has been taking, that perhaps there has been special pleading on the part of women, will not be taken, and he will kindly accept this amendment.

SHRI D. P. KARMARKAR: Sir, my task has been rendered easier by Diwan Chaman Lall intervening. With very great respect I must say that I cannot see the rationale behind it unless it be that a man or a woman should go to court for a single act of alleged cruelty although it might have been condoned by either party. Also I find, Sir, very significantly that amongst the movers of the amendment, the lady Members, Shrimati Parvathi Krishnan, who is anxious to uphold the cause of women has been discreetly silent on this point.

SHRIMATI PARVATHI KRISHNAN (Madras): No, no.

SHRI D. P. KARMARKAR: Apart from that, Sir, I do not rest my arguments on her silence, but I think that it is a touchy matter. (Interruptions).

If there are two talking when I am speaking I cannot hear one or the other. Coming to the merits of the amendment the idea is clinched like this. Do our friends who are proposing this amendment want that after marriage the parties should be really

unhappy? My friend over here is worried about slaps, slaps not prolonged slaps. That is another matter. Suppose there has been cruelty and it has been condoned by the parties. It may be tolerable in the first instance. That for one instance of cruelty there should be divorce is not our intention. In so far as it is humanly possible and consistent with self-respect, the husband's and the wife's relations must continue. It should not be that they should immediately look into the law, the strict interpretation of the law and run to the lawyer. That should not be our attitude. That is the reason why it has been put that whether in the first instance the cruelty has been condoned by the other party. Let us not try to reopen the chapter on the same kind of action. (*Interruption*).

My friend appears to misunderstand. If there is a fresh ground of action.... (*Interruption*). The thing is that she interrupts before she understands. Sir, if there is.....

DR. SHRIMATI SEETA PARMANAND: I understand that the hon. Minister said: "I misunderstand" and I said: "Not at all".

SHRI D. P. KARMARKAR: Now about this cruelty, if there is a fresh act of cruelty that will automatically also render compulsory the court to take the earlier act of cruelty also into consideration. It is not as if it is wiped out or time-barred. So far the court to decide on divorce a fresh act of cruelty is necessary.

Now about this condonation of adultery also, then about the addition of the words "and wilful" after "improper", I think the present wording is quite good enough. We say: "there has not been any unnecessary or improper delay in instituting the proceeding". It is good enough. I do not think anything is added by my friend by the amendment that is sought to be added. I oppose the amendments.

Now, Sir, I think it necessary with the permission of the House to propose certain consequential amendments in

view of the fact that we have made some change in an earlier clause in respect of the provision for adultery certain consequential changes are necessary in clause 23(1) (b) and I move them, Sir, as follows:—

"(b) where the ground of the petition is the ground specified in clause (e) of sub-section (1) of section 10 or in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to, or connived at, or condoned the act or acts complained of or where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty, and"

This is absolutely consequential. This does not alter the law at all.

SHRI S. C. KARAYALAR (Travancore-Cochin): I want some clarification regarding the language of this clause 23 (1)(b) dealing with adultery and condonation of adultery. You can condone only a specific act of adultery; living in adultery cannot be condoned. It is a contradiction in terms.

MR. DEPUTY CHAIRMAN: That is why this amendment.

SHRI S. C. KARAYALAR: Even then the word "condonation" cannot be applied to "living in adultery". Condonation can apply only to a specific act or acts. Condonation cannot apply to a state of affairs.

SHRI D. P. KARMARKAR: It will be absolutely beyond any reasonable doubt. Acts which constitute living in adultery one can understand also. The wife will say: "You have been very bad; you have been coming late for the whole of last year; don't do so hereafter" that is condonation. Whether it is one act, two or three, does not make any difference. Therefore, we have said "act or acts complained of".

*Amendment No. 178 was, by leave of the House, withdrawn.

*For text of amendment vide col 2106 *supra*.

MR. DEPUTY CHAIRMAN: The question is:

179. "That at page 10, lines 28 to 30, the words 'or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

180. "That at page 10, line 33, after the word 'improper' the words 'and wilful' be inserted."

The motion was negatived.

*Amendment No. 181 was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: Now comes the consequential amendment proposed by the hon. Minister. The question is:

"That at page 10, for lines 26-30, the following be substituted, namely:—

'(b) where the ground of the petition is the ground specified in clause (e) of sub-section (1) of section 10, or in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to, or connived at, or condoned the act or acts complained of, or where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty, and'."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 23, as amended, stand part of the Bill."

The motion was adopted.

*For text of amendment *vide* col. 2106 *supra*.

Clause 23, as amended, was added to the Bill.

1 P.M.

MR. DEPUTY CHAIRMAN: Now we come to clause 24. There is one amendment.

SHRI B. GUPTA: Sir, I move:

182. "That at page 11,—

(i) in line 3, the word 'either' and the words 'or the husband, as the case may be,' be deleted;

(ii) in line 4, the words 'or his' be deleted; and

(iii) in line 6, the words 'or the husband' be deleted'."

MR. DEPUTY CHAIRMAN: Clause 24 and the amendment are open for discussion.

श्रीमती सावित्री निगम (उत्तर प्रदेश) :
उपाध्यक्ष महोदय, इस विधेयक के सिलसिले में जो इंडाइट और डाइट आलोचना स्त्री सदस्यों पर हुई है उसके सम्बन्ध में मुझे एक सेन्टेंस कह देना है। इसके पहले कि मैं इस संशोधन का समर्थन करूँ और सरकार से यह अनुरोध करूँ कि यह अमैडमेंट स्वीकार कर लिया जाय मैं यह कहना चाहती हूँ कि कुछ लोगों ने यह कहा कि स्त्री सदस्यों का दृष्टिकोण फीमिनिस्टिक है, कुछ ने यह भी कहा कि वे चरित्रहीन बहनों को भी स्काट फ्री छोड़ना चाहती हैं और एक बात यह भी कही गई कि उनको बिल पास करने की बड़ी उतावली है। यह आलोचना हमने बड़े धीरे के साथ बरदाश्त की क्योंकि हम जानते हैं कि इस सारी आलोचना में कोई सच्चाई नहीं है। मैं पूर्ण विश्वास के साथ यह कह सकती हूँ कि यदि किसी भी स्त्री सदस्य ने स्त्री का दर्जा उठाने के लिये कोई मांग की है तो उसने यह समझकर ऐसा नहीं किया है कि स्त्री का दर्जा समाज में उठाने से केवल स्त्री को ही लाभ होगा। जब समाज में स्त्री का दर्जा ऊँचा उठेगा तो उससे सारा समाज का दर्जा ऊँचा उठेगा और जब समाज का दर्जा

ऊंचा उठता है तो हर पुरुष का चाहे वह पति हो, पिता हो, पुत्र या कोई भी हो उसका दर्जा भी स्वयं ऊंचा उठ जाता है ।

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

मैं सभी सदस्यों को यह विश्वास दिलाना चाहती हूँ कि इस सदन में एक भी स्त्री सदस्य ऐसी नहीं है जिसमें इतनी सेलेफिशनेस हो कि वह अगर जान जाय कि इस विधेयक द्वारा केवल स्त्री को लाभ होने वाला है और पुरुष को हानि होने वाली है तो वह उन लोगों की कतार में सब से आगे न खड़ी हो जो इसका विरोध करें । हम लोग कभी भी यह नहीं कर सकती हैं कि जिस चीज से सिर्फ स्त्री को फायदा हो केवल उसी चीज की मांग करें और जिस चीज से पुरुष को फायदा हो उसकी मांग न करें । स्त्री और पुरुष का इतना गहन सम्बन्ध है कि इस प्रकार से किसी भी सवाल को "विमोन वर्सेस मेन" बनाना अर्थात् अनुचित है । पुरुष कोई आसमान से नहीं उल्टक पड़ता, वह भी स्त्रियों की ही संतान है, उनके ही पिता, पति या पुत्र हैं, जिनके लिये कि हम यह एक छोटा सा अमेंडमेंट लायें हैं और केवल जिन्हें हम एलिमनी का एकाधिकार दिलाना चाहते हैं । यह तो भारतीय पुरुषत्व का घोर अपमान होगा यदि कोई भी पुरुष अपनी स्त्री के टुकड़ों पर पलने की बात भी सोचे, अपनी कल्पना में भी इस बात को लावे, अपने मन में भी यह लावे कि वह अपनी स्त्री के टुकड़ों पर पले । स्त्री जो कि एकनामिकली बैकवर्ड है, सोशली बैकवर्ड है, जिसको कि न समाज ने और न धर्म ने अधिकार दिये हैं, जो कि एकनामिकली शैटर्ड है, उस स्त्री के टुकड़ों पर पलने की हमारे साहसी पुरुष कभी भी इच्छा कर नहीं सकते हैं ।

श्री डी० पी० करमरकर : I should not like to interrupt my hon. friend. अगर मैं हिन्दी में कह सकूँ तो कहूँगा कि आपको जो कुछ कहने को है वह आपने कह दिया है । मैं आपको रोकना नहीं चाहता हूँ लेकिन शायद कभी कभी ऐसा भी हो जाता है कि यह

रिपिटेशन अननसंसरी हो जाता है और उससे केस वीक हो जाता है ।

श्रीमती सावित्री निगम : रिपिटेशन तभी होता है जब कि आप ऐसा एटीट्यूड दिखाते हैं । जब माननीय करमरकर साहब का यह एटीट्यूड हो जाता है कि जहाँ स्त्रियों का सवाल होता है वहाँ वह उसे एक मजाक की बात सांचते हैं तब हमारे लिये यह जरूरी हो जाता है कि एक एक चीज को बार बार रिपीट करें और इसीलिये मैं बार बार रिपीट करना चाहती हूँ । मैं सरकार से अनुरोध करूँगी कि उन चीजों पर खास तौर से गौर करें जिन चीजों से कि स्त्रियों को किसी तरह का सरंक्षण मिलने वाला है । सरकार ने बहुत से मामलों में बड़ी दूरदर्शिता और बुद्धिमानि दिखाई है जैसे कि करमरकर साहब ने वायगेमस मौरिज की वाइफ को यह अधिकार दिलाया है कि वह तलाक दे सके, उसी तरह से इस क्लॉज के बार् में भी करना चाहिये । क्या हमारे पुरुषों का दहेज से पेट नहीं भरा है जो कि वह चाहते हैं कि दहेज भी लें और स्त्री के पिता की जायदाद में से एलिमनी भी लें । इस अनजस्टीफाइड डिमांड को रोकने के लिये ही यह अमेंडमेंट लाया गया है । एक लालच की वजह से ही एलिमनी की डिमांड की जा रही है वरना पुरुषों को कोई हक नहीं है कि इतना दहेज वगैरह लेने के बाद फिर एलिमनी पर भी निगाह डालें । इसलिये श्रीमन्, मेरी प्रार्थना है कि इस संशोधन को स्वीकार किया जाय ।

SHRI S. MAHANTY (Orissa): Mr. Vice-Chairman, it is my painful duty to urge before this House not to be carried away by the impassioned eloquence of my hon. friend Mrs. Savitry Nigam and agree to the dropping (Interruptions). I do not like that this issue should be considered from a partisan point of view. The question here is not between man and woman; the question is not here whether it is chivalrous on the part of man to claim maintenance from the wife or not. It is a legal question but thereby I do not mean to say that the legal question is eschewed of socio-logical or human considerations. Not

[Shri S. Mahanty.]

that. I am urging this House to consider this issue of maintenance *pendente lite* and permanent to the husband if the wife has the means to pay and if she is responsible for the disruption of the marriage not from a sentimental or emotional point of view but from a practical and common-sense point of view. Now two very powerful arguments have been urged against this provision. The first ground urged is chivalry. So long man has been considered the devil of the drama of marriage.

DR. SHRIMATI SEETA PARMANAND: By whom?

SHRI S. MAHANTY: By my esteemed friend Dr. Seeta Parmanand.

DR. SHRIMATI SEETA PARMANAND: I have been misunderstood, Sir.

SHRI S. MAHANTY: Then you have not sufficiently made yourself understood.

SHRIMATI PARVATHI KRISHNAN: All social reformers have to put up with misunderstanding.

SHRI S. MAHANTY: So the question of chivalry is quite irrelevant here. Now, if you are going to adduce that reason you are going to make this as repugnant as adultery. Sir, you know in the Indian Penal Code for adultery, though it is not a unilateral offence, the man is punished alone not the woman. Similarly, if you are going to accept the deletion of this provision, you will be making a discrimination between man and woman and you will be penalising the man if he is found responsible for the disruption of marriage by making him alone pay alimony. You will not be touching the woman. I ask: what justification is there for that kind of discrimination? There are in the provision itself two important riders which I wish my hon. lady friends should take into consideration. The first condition is if they are found

responsible for the disruption of marriage and that is most important. And the second condition is if they have the means to pay. Therefore, into this scheme of things how does the question of chivalry come in? We are talking of chivalry. It is an idea which we have borrowed from Elizabethan England. I ask you: how many Drakes are there today? How many Sir Walter Raleighs are there today to throw their cloaks across the muddy paths of ladies? If you want that the position of Indian women should be equated with that of the position of women of Elizabethan England, well, I am in favour of it and I will vote for it. But it does not look nice and it is not proper that when it suits your purpose you will say chivalry and when it does not suit your purpose you will say equality of status. Why are you so keen on equality of status only with regard to right but not with regard to liabilities? So this point about chivalry should not be urged with any seriousness.

It has also been urged that the women of India are disinherited. They have no property. Wherefrom are they going to pay alimony? This is another kind of superstitious thought. For example, if my wife divorces me.....

SHRIMATI PARVATHI KRISHNAN: Is it going to happen?

SHRI S. MAHANTY: I say if my wife is going to divorce me and if I am to pay alimony, certainly I am not going to pay her from out of my patrimony, I have to pay from my income. Alimony or maintenance is paid not from the property but from the income.

Now, let us go the census papers of 1951. I was looking through the census papers to find out what is the economical position of women in India. Now, I will give here a few figures, and I would urge the hon. Minister in charge of the Bill to just listen to these figures. Now, out of the total of 356.62 million of Indian population

we have got 58·51 million working class male population and 12·53 million working class female population. From this you will find that so far as the economical status of these women is concerned, one-fifth of them are quite independent in their livelihood. Out of these again you will find that in the rural areas, in the countryside where women are considered to be disinherited, to be without any property and all the rest of it, they are 12·11 females with independent means of income.

* SHRI B. GUPTA: Working class women? How many working class women.....

SHRI S. MAHANTY: These are census papers; you must have read them. They are working women. They earn their income. Similarly, working class men number 57·62 million. They are all workmen and if they are all workmen, then the others are work-women. That makes no difference. The limited issue before us is whether the women in India have got any property or income to pay alimony or not. Then, if we go to the non-agricultural classes—and I think most of these divorce cases will arise only in the urban areas among the non-agricultural classes—we find that out of the total non-agricultural classes, those who have got income from non-agricultural sources are 57·00 million males and 50·54 million females.

DR. SHRIMATI SEETA PARMANAND: How many women?

SHRI S. MAHANTY: 50·54 millions. These are from the census papers. You can look up from the library.

DR. SHRIMATI SEETA PARMANAND: Are these working?

SHRI S. MAHANTY: They are non-agricultural classes—like my hon. lady friends. Out of them those who are self-supporting are 28·66 million males and 4·68 million females. These are the figures. And how does it lie in the mouth of my friends to say that

women in India have no property out of which they can pay maintenance?

Then, women are also employers; and they employ men also. What is their figure? The male employers are 1·02 million while female employers are 0·79 million. So, in the face of this, one cannot argue with any amount of seriousness that women in India have no property, have no income out of which they can pay maintenance *pendente lite* to their husbands if the court decides that the woman, that the wife is responsible for the dissolution of the marriage and has the means to bear it. I am citing a hypothetical case.....

DR. SHRIMATI SEETA PARMANAND: Sir, may I ask him a question, in respect of these figures which he gave just now. What is the percentage of income of these 4 million women? What is the percentage of income of these 28 million men who earn?

SHRI S. MAHANTY: With all respect to my hon. lady friend I cannot undertake to educate her.

DR. SHRIMATI SEETA PARMANAND: Sir, “lady friend” has a very bad meaning in the English language. I would again insist that he should use the expression “lady Member” and not “lady friend” for any ladies.

SHRI S. MAHANTY: Sir, I am doing some injustice to the words “lady friend” when I address her (Dr. Seeta Parmanand). She should not feel so touchy about the use of the words “lady friend”. I do not understand it.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): You may hereafter refer to her as “honourable Member” of the House.

SHRI H. D. RAJAH (Madras): On a point of order, Sir. The question of using “honourable” in this House does not arise at all, because in your name no “honourable” is attached. Who is “honourable”, I want to know.

SHRI S. MAHANTY: Sir; that kind of insinuation does leave a bitter taste in my mouth. I wished only to be more courteous to her. If she does not like that kind of address, that "lady friend" has got a different connotation.....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I think we had better address the Members as hon. Members.

SHRI S. MAHANTY: Sir, as I was saying before I was unnecessarily interrupted I cannot undertake to educate the hon. Member—the hon. Member who asked me a question about percentages—I cannot undertake her education here on the floor of the House within a span of fifteen minutes. She can go to the library and there she can find out all the figures that she requires to her entire satisfaction.

We have made leprosy a ground for divorce. Now, a woman may have lived with a man as wife say, for ten years. After ten years this poor man is struck with leprosy. She goes to a divorce court and gets a decree of divorce; at the fag end of his life he is sent away without any maintenance, without any one to whom he can go. What kind of morality is this? Therefore, what I suggest is let it not be said that men are going to rob women. Nothing of the kind. It should be remembered that in America, alimony is a racket there and divorce is one of their gold mines. Therefore, in America women are known as 'gold diggers'. Sir, I am concluding. I do not want to take more time of the House. What I urge is that there is every justification why this provision should be retained. It is in conformity with the temper of the age; it is in conformity with the demand of equality of sexes; it is in conformity with everything that the resurgent womenfolk of India hold sacred and its deletion will be a step backward. So, I commend this clause to the House.

DR. SHRIMATI SEETA PARNANAND: Sir, I am speaking on amend-

ment No. 182. According to clause 24 as at present the husband will also get alimony. The amendment seeks to delete the word "either" so that only women will get alimony, not men. First of all, I would like to point out that when we enacted the Special Marriage Bill we have not included this in that Bill, and all of us know that that Bill is meant more for educated women, advanced women. It was not thought possible or necessary then that this alimony should be or could be paid by women to men. It seems to me—in Hindu society where women are economically backward, educationally backward, where the law of divorce is to apply for the first time, where the very clause of divorce and its implications are so novel—that it is like putting the cart before the horse, if I may use that very useful and eloquent phrase. In our Hindu society, even to accept money connected anywhere with a woman or a daughter, etc., is considered to be somewhat repugnant. And how much more should it be so for a man to accept money from his wife in such cases? But that may not be a very cogent argument in the new society. Still, it is some argument which might appeal to some people who lay such value on the traditions of our Hindu culture. But as we are dealing with divorce, I think, I had better leave that point.

When some argument does not suit the hon. Minister, he is very fond of saying "What is happening in the Western countries? We need not go ahead of those countries". I would like to tell him, therefore, that alimony, even in an advanced country like the U.S.A., is to be given to a man only in four States out of all the States, and that too has been done very recently. Even in England, a woman does not pay the alimony, where so many of them are earning, and so many of them have estates and have been educated for the last nearly 80 years or so. So, I feel, the hon. Minister will admit this fact. When, I pointed out something about

the restitution of conjugal rights and when I wanted that thing to be changed to only the reconciliation of conjugal differences, he argued that that was the phraseology used in Western countries, and so on and so forth. I would also, Sir, put the same argument to him by saying that alimony is not permissible to a man in England, and when this legislation is being introduced for the first time in India and when it is being made applicable to the Hindu society, it is not necessary to introduce this particular clause about alimony to a man here. In England, if a woman leads an adulterous life or is guilty of one or two other things, her property by law does not pass to her descendants but goes to the husband. That is the only sort of clause in which a man is allowed to benefit from a divorced woman's property. So, for that reason also, it is not right that alimony should be given to men at this stage and women should be frightened out of their wits by the passing of this clause. They would wonder as to how many calamities now have come upon them. As it is, this law not being correctly explained to them, they are unnecessarily worried about the hardship. As it is, the hon. the Minister in charge, and the House have not accepted some of the amendments, particularly the amendment giving only to women for the next ten years the right of divorce except in four cases of hardship, which we think was a very equitable one. That would have given women the necessary time to become conversant with this law. However, I do not like to go into that argument at this stage. But as these things have not been done, at least one thing should be accepted, and that is that this alimony which has not been given to men under the Special Marriage Act, which is meant, as I have said, for a more progressive society, should not be given here to men.

Then, with regard to the argument put forward by Mr. Mahanty—I am glad you are in the Chair—although you cannot speak, I know what view you hold on this question, because

when you were speaking on the Special Marriage Bill, you yourself had referred to cinema actresses and so on who should give alimony. And I had asked you the percentage of such cinema actresses out of the total number of our countrywomen. If for that reason this provision about alimony to men is inserted here, it would lead to very great hardships, and our countrymen will be anxious for the hand of our cinema actresses, perhaps for the sake of getting some alimony.

SHRI H. P. SAKSENA (Uttar Pradesh): I may be permitted to ask one question of my hon. friend, Dr. Seeta Parmanand. When she refers to the countrywomen not earning anything, I would ask: What percentage of the countrywomen does require this law of divorce and marriage? I would require that reply from her.

DR. SHRIMATI SEETA PARMANAND: I am very glad that the question has been put, Sir. The countrywomen who do not require this law have already got this law, because they are the working class women, who, by custom, have got the benefits of the Divorce Act. It is the middle class women who require this law, because they have not got this provision, and they are, as I have pointed out, the most ill-treated women very often, and they will have to suffer the consequences of their educated husbands coming in contact with other educated women colleagues and having second marriages and their consequences like flirtation. So, as was pointed out, while speaking on this Bill, by Mrs. Lakshmi Menon when the Bill was referred to the Select Committee,—and I can say my lady friend, Mrs. Menon—this law is meant, really speaking, for the middle class women, because the rich people can take care of themselves on account of their wealth, and the poor people have already got these facilities available to them. Therefore, I say that it is not, at this stage, necessary to give this right to men to ask for alimony. I may also say that it might have been seen—I do not know why men do not

[Dr. Shrimati Seeta Parmanand.] admit it—that women have generally shown a more equitable outlook, except under this Bill for asking for certain privileges only for a short period until the social conditions change. And so, when women get rights in succession, when women advance educationally and when they get jobs when they want, and when the salaries are more or less equalised, then, I am confident that women themselves will come forward and ask for legislation on an equal basis. It is for this reason that I feel that the time is not yet mature when this provision of alimony should be extended to men.

I have to say one more thing, Sir. The hon. Minister always gets naturally the last chance to speak, and at that time, when he wants to dismiss an argument, he does so by saying that it is not a solid argument or by saying that the mover has not understood it. That is an easy way of dispensing with an argument. I hope that if he wants to ask any further questions before he makes such remarks which are in a way derogatory, he would give the mover a chance to make it clear that the mover has understood that he has maintained. Thank you.

SHRIMATI PARVATHI KRISHNAN: Mr. Vice-Chairman, I wish to say a few words on this amendment, not from a sentimental or an emotional standpoint, about which Mr. Mahanty seems to be so much worried and so much nervous. We women are very realistic. Of course, we are sentimental—(Interruption). And as for emotion, I think, we will leave emotion to Mr. Mahanty, because, according to a well-known saying, taste is the mark of an educated man, imagination is the sign of a productive man, and emotional balance the token of a mature man. And, I claim that our emotion is a balanced emotion, and therefore we speak from a very mature standpoint, and not purely from a sentimental standpoint that

seems to frighten Mr. Mahanty out of his wits so easily.

The reason why we have put this amendment before the House is that in our country today the vast majority of women are economically dependent on men. In spite of all the jugglery, in spite of all the antics, mental and otherwise, that Mr. Mahanty indulged in, using figures that are only suitable to his argument, in spite of all that, the reality that has been accepted on the floor of this House time and again.....

SHRI S. MAHANTY: How?

SHRIMATI PARVATHI KRISHNAN: is that the vast majority of the women in our country are economically dependent on the men. It is only when the right to work on a uniform pay is in vogue throughout on the basis of complete equality between men and women, it is only when property rights are guaranteed to women, that the provision in the Constitution regarding complete equality between men and women will become a reality and not just a clause in the Constitution of our country. Mr. Mahanty trotted out these figures. I would just like to ask one question, and that is, "Are we legislating for the few, or are we legislating for the majority?" Surely in any measure of social reform like this, we are legislating only for the majority of the people in the country, and, therefore, the various clauses in the measure should reflect the needs and the conditions and the demands of that majority. I would, therefore, request the hon. Minister to remember that the principle underlying this Bill is that it guarantees two rights. On the one hand, it guarantees the right of monogamy. Which section in society today in our country is going to benefit from this major right which is being guaranteed by this Bill? Surely the House must be unanimous in the feeling that the section which is going to benefit from this right are the women of our country. Once again I would like to say that it is the women who are economically dependent on men;

and, therefore, if this measure is to be a reality; if the underlying principle, if the guiding principle of this Bill is to be followed, then, it is only logical that, when women today do not have property rights in the country, when women are economically and socially backward, this particular clause should also reflect this principle of guaranteeing rights to women. It is from this angle that we ask for this clause to be amended. It is only from this realistic angle, guided by this main principle which is underlying this measure, that we have put forward this amendment so that, when we give relief to women who have so far been suffering from social and economic disabilities, that relief should be a complete one and not a very half-hearted one. If we look to the Bombay and Madras Acts, there we see that alimony is granted to women only, and I am sure that the hon. Minister, being so well-informed, being so widely read and coming from one of those States, is equally aware that that has not created the problem of women deserting their husbands who are ill with leprosy and who need to be looked after, and throwing them out on the streets with a beggar's bowl and so on and so forth. We must remember the tradition of our country. We must remember the culture of our country. We must remember that in India women have that sense of responsibility, that sense of loyalty, which can never be undermined and which will never go, and I do not think that such a danger is likely to arise just because men will not be given the right to alimony. Therefore, I would like to urge upon the hon. Minister once again that he should accept our amendment and in this way make this measure a measure that is palatable, that will be consistent, because, I feel that the hon. Minister, in the words of a certain famous writer, knows his subject thoroughly well, he gives it all that he has got, his opinions are considered and his listeners' are not.

PANDIT S. S. N. TANKHA: Mr. Vice-Chairman. I am one of those who have tabled this amendment that the hus-

band should not be given any alimony under clauses 24 and 25. I am afraid there has been a complete misunderstanding on the part of our lady Members so far as the provisions of these clauses are concerned. They seem to be under the impression and have the fear that, if the clause as it is, is allowed to remain, then every husband will get alimony from his wife, irrespective of her income or means. That is not so. The provision of the clause is that the husband will be entitled to get alimony only where the means of the wife is sufficient to pay the alimony and where the husband has little or no independent means for his existence.

DR. SHRIMATI SEETA PARMANAND: Surely all of us know that.

PANDIT S. S. N. TANKHA: Therefore, there is no question of this clause being taken advantage of by the husbands. But the point of view from which I have urged that this provision should not be allowed to remain is that I consider it most derogatory to the honour of the man to ask for alimony from his wife.

DR. SHRIMATI SEETA PARMANAND: Man is so superior.

PANDIT S. S. N. TANKHA: Man has always maintained his wife and children. He tries his utmost to do it. He labours, works for maintaining them. Now, for him to ask the wife, "Since you have independent income or means, you will have to give me alimony on divorce." does not seem right or honourable on his part to do.

SHRI H. P. SAKSENA: But she ceases to be the wife.

PANDIT S. S. N. TANKHA: My friend forgets that when one demands alimony, it can only be from one's wife or husband that it can be demanded and not from any third person.

SHRI H. D. RAJAH: Divorced wife.

SHRI H. P. SAKSENA: The moment the petition for divorce is presented, the relationship of husband and wife ceases. Let my friend study his law further.

PANDIT S. S. N. TANKHA: Therefore, I submit that there is no fear that this provision is likely to be misused by men, but as I have submitted already, it does not seem proper for men to demand this. It may, at the most, be done only in cases where the husband is unable to earn his living, not because he does not want to work for a living but because, on account of bad health or other malady, he is unable to earn his living. Then only, if at all, of course, he may be allowed to get alimony from his wife and not otherwise. Since I have not tabled the amendment in that form, I cannot plead for that change, but all the same I submit.....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): Logically you support?

PANDIT S. S. N. TANKHA: Sentimentally and from the point of view of honour, I consider that it should not be allowed.

SHRI H. D. RAJAH: Sir, the most rational clause in this irrational Bill is this clause 24. I am glad to say that the Select Committee utilized its time and energy in evolving an equitable law in this matter. Let us meet the arguments of the ladies. When it is a question of touching the purse, all women are united, whether they belong to the Congress Party or the Communist Party. This clause is perfectly in consonance with the Constitution, it is perfectly in consonance with the equality of rights, it is perfectly in consonance with equality of status conferred by the Constitution. Our idea of evolving the Constitution was that there should not be discrimination either based upon sex or upon religion or upon anything in the world except the relationship between human being and human being. In one breath our lady Members shout

for equality of status. In another breath they say that they were all oppressed considerably and in a third breath they claim divorce and in the fourth breath when they want divorce and when they have got their own independent means of livelihood, they will not part with a farthing to the man who was divorced. I know of instances in India where there are dummy husbands and prosperous wives. In such a case what happens to that poor man whom one fine morning the lady decides to kick out? I know where they are having not only independent means but also earning capacity to the utmost extent and having large amounts to their credit. It is not ancestral property. The lady Members questioned regarding the denial of the right to ancestral property. The Hindu Code is coming again with regard to the property rights. Of course, I am not one who believes that the man alone should inherit the property. The sisters, the lady of the house must have equal rights. That is apart. But with regard to this Bill, if you go to a logical conclusion, I must congratulate the Select Committee for its profound wisdom and for their labour in which they have put this wonderful clause in this Bill. Now, if there is one thing which is rational in this, it is this clause. Now after all, why this hue and cry? If the man has his own income, he is asked to pay the cost as well as maintenance. If the lady has her own income, then only the court says, "You pay something for the divorce that is granted". Another argument which was raised opposing this clause was that many people do not have the wherewithal. If they don't have the wherewithal, the question of payment does not arise at all and you say that there are only very few ladies who are rich and if this legislation should not apply to them, it does not matter. A law is not conceived for a very few people or for many people. A law is a law. It is conceived in such a way that it must be uniformly applicable to everybody. After all, what is the serious objection for the lady if she

has the means to pay? You want divorce and you want to get out from the clutches of the husband. Of course, do by all means. So also is the case with the man who wants to get rid of the wife and he pays for it. It is on a basis in which the man has his rights and he has earned his income and he shares that income when he does not want that wife and a divorce is granted. In the same way, with an equality of right and status for the women, why should she go down in the eyes of law and why should she feel that she is weak with regard to that particular matter, that she will not pay alimony to the man who is divorced and kicked out of his own home? So we have to make a differentiation between the two—property right which is denied to the woman and which is inherited by the man—because property is generally inherited by men only. This is a rational clause in this Bill. The clause says:

“the petitioner’s own income and the income of the respondent, it may seem to the court to be reasonable.”

You have conferred upon the court the responsibility to look at the Act in a justiciable manner and say what the court thinks reasonable. The woman is put on an equal footing with regard to this law and the court have got the right to determine what is the reasonable amount to be paid as alimony or maintenance or cost. The court will go into the merits of the lady’s or the gentleman’s case, see whether they have got enough resources out of which this payment can be made, etc. I don’t see any reason why my hon. and distinguished friend Karmarkar should accept this amendment. He will be doing it at his own peril because in a State where equality of right has been conferred and so much agitation takes place in every respect, he should not make these women unequal on this basis alone that they cannot be asked to pay to the husband. The Select Committee which reflected the Government’s opinions to a large extent has brought about a wonderful, rational, and decent clause in this Bill and the Government will

have to eat its own words and policy if they adopt this amendment.

SHRI KISHEN CHAND (Hyderabad): Mr. Vice-Chairman, several lady Members have imputed emotional arguments to Mr. Mahanty. I humbly suggest that there is no question of emotion or chivalry at all. It is a matter of simple and plain argument. There are two parts of this amendment; one is who is the guilty person and the other the capacity to pay. It is not as if the guilty person was the husband and the woman had to pay alimony; that is the greatest mistake of understanding. If the person who is making a petition is the husband and he says that the wife is leading an adulterous life and on the basis of that he is asking for divorce and the second condition is that the husband has not got the means to institute these proceedings or any means of livelihood, only in that case the husband will be given an alimony. It is not a general question as supposed by the lady Members of this House who opposed it and said that because there was no equality in property rights, and the women were economically dependent on men, therefore, no alimony be demanded from women. I admit that economically women are poorer than the men of this country. I admit that economically only a very small percentage of women are independent—that the men have got the largest share of the economic wealth of this country. I don’t deny that. The only question is the apportionment of guilt. We want to preserve family life. We don’t want divorce cases to increase. If Members want to encourage adultery among women, it will be surprising for the descendants of Sita and Savitri.....

DR. SHRIMATI SEETA PARMANAND: Where is the guilt referred to?

SHRI KISHEN CHAND: The question of guilt comes in by the use of words the respondent and the petitioner. The whole idea is this that the person is a petitioner, if he has applied for divorce on the basis of something done by the respondent, i.e., the petitioner applies for divorce be-

[Shri Kishen Chand.]

cause the respondent has committed some mistake and, therefore, the guilt arises on account of the mistake of the respondent. The word petitioner does not apply to the person who asks for alimony, but it applies to the person who has asked for divorce proceedings. So the person who has petitioned for divorce proceedings claims that the respondent has done something contrary to this Act and wants to get relief. The petitioner who has applied has indirectly insinuated that the respondent has done something against this law on the basis of which he has applied for certain reliefs. Then that petitioner, if he is poor, whether it be the wife or the husband, cannot proceed in the matter. I gave the example of a wife who is a rich woman and the husband is a poor man and the wife is leading an adulterous life and the husband wants relief. But he has not the money to proceed in this case. Do you want this adulterous life to continue for ever? I am surprised that we the descendants of Sita and Savitri should encourage adulterous life in this country. I do not think there is any justification for any hon. Member to condone a thing which is particularly against the provisions of this Bill. Therefore, as I was submitting, the words "petitioner and respondent" have to be carefully kept in view. It is not as if any woman seeking divorce will be afraid that as she is seeking divorce, she may have to pay alimony, that is not provided in this clause. If the woman is the petitioner, the respondent will be the husband and in that case, the respondent will have to pay the alimony, that is to say, the husband will have to pay the alimony. I submit that by appealing to sentiment, by raising the slogan that the women will be frightened, that women will have to pay alimony in any and every case, the speakers have created an atmosphere of sympathy and it seems to me that the sympathies of several hon. Members have been won over on that basis. I maintain that in this law, we should not think of chivalry; we should not

think of the economic condition of men and women. All we have to see is whether the alimony is paid by the guilty person. If the guilty person is a man, he has to pay it to the wife or woman. And in so far as this clause is going to discourage women who are leading an abnormal life, it will be beneficial to society. I may point out that at present in our society, a large number of ladies are earning huge sums as lady doctors, lady barristers, lady lawyers, cinema stars and cinema actresses. (*Interruption by Dr. Shrimati Seeta Parmanand.*) Their number may be very small. But the Bill will apply only to a small number; it will not apply to all women. This Bill is not going to apply to every woman, who is.....

PANDIT S. S. N. TANKHA: The hon. Member probably means to say, this provision will not apply to all, and not that this Bill will not apply.

SHRI KISHEN CHAND: Yes, I mean that this provision will apply only to such persons as are earning.

SHRIMATI PARVATHI KRISHNAN: That is encouraging polygamy.

SHRI KISHEN CHAND: But there is provision about polyandry also side by side with that regarding polygamy.

I will conclude by saying that this is a very good clause and it will help in the preservation of our society and the marriage tie. I support the clause in the form as it is recommended in the Bill.

DR. W. S. BARLINGAY: Sir, I have only a few remarks to say and I will be very brief. I am one of those who have very great sympathy for the ladies and their point of view.....

DIWAN CHAMAN LALL: Because you are handsome.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): The hon. Member is quite chivalrous.

DR. W. S. BARLINGAY: And if it is a question of doing injustice I would certainly say that we had better do injustice to men rather than to women.

Women in this country have already suffered far too much and I would say frankly that if now you want to do injustice, we had better do injustice to men and not to women. But with all this, nonetheless, it does seem to me, reading these two clauses of the Bill, namely, clauses 24 and 25, that there is not much point in what the ladies have been saying in this connection of alimony. This question of alimony has really nothing to do with sex at all. What has it to do with sex? It all depends upon the question whether the man or the woman has got the property or has not got the property. It all depends on having the property. It is not a question of having a particular sex. Sex, it seems to me, is quite irrelevant in this connection. In these two clauses, the discretion has been given to the court, just as in ordinary civil suits, with regard to the payment of cost. What happens in ordinary cases is that discretion with regard to the cost is given to the court. In the same way, the discretion with regard to alimony has been given to the court in this case. I do not see any reason why the ladies should complain on this point. After all what have we to do? We ought to do justice to as many people in the country as possible. It is no use saying that we are going to do justice to 60 per cent. and injustice to the remaining 40 per cent. There is nothing of that kind. If we can do justice even to 99 per cent. or even 100 per cent. of the population, why not do it? Therefore, with all respect to our women and with all the sympathy that I have got for them, and in spite of the fact that I am prepared even to do injustice if necessary, to men, with all this, I say, with all the rationality that I have—to borrow Mr. Rajah's words—that there is no justification whatsoever for the amendment which the women Members have proposed now. So far as alimony is concerned, what is relevant is not the sex at all. What is relevant is the property which the parties possess and in this country, at any rate theoretically, it is possible that women may have property and correspondingly the husband

of a particular woman may not have any property at all. Therefore, I do not think that there is any point in the case which is sought to be made out by the women Members.

DIWAN CHAMAN LALL: Mr. Vice-Chairman, this particular clause, clause 24, has led to a very heated debate regarding the rights of woman *versus* the rights of man, in regard to the disposal of their properties in the matter of a dissolution of a marriage. I submit that the original draft which was presented to the Joint Select Committee by the Government did not include this particular provision of making the wife also liable to the payment of alimony. This, as you will notice while reading the draft itself, was an innovation introduced into the measure by the Joint Select Committee. It appears to me.....

PANDIT S. S. N. TANKHA: Perhaps, at the instance of Mr. Mahanty.

DIWAN CHAMAN LALL: My learned friend here says that it was introduced at the instance of somebody. I was a member of the Select Committee, but I do not remember.....

DR. SHRIMATI SEETA PARNANAND: At the instance of Mr. Mahanty.

DIWAN CHAMAN LALL: And even if I had recalled the name I would not be.....

SHRI S. MAHANTY: Sir, for the information of my hon. friend Diwan Chaman Lall and also that of the House I can say that that innovation had the distinguished sanction also of Acharya P. V. Kane in the form of an amendment.

DIWAN CHAMAN LALL: I am not entitled to refer to the proceedings of the Select Committee, except those that are before you now, and in the measure as it is before the House there are certain words and lines underlined in the Bill that is now before the House after it has passed

[Diwan Chaman Lall.]

the signature of the Joint Select Committee, and those that are underlined are the innovations that have been introduced. And from this we can gather, although we are not entitled to refer to what has happened in the Select Committee, that this innovation has been introduced by the Select

Committee. It is quite immaterial as to who was responsible for this innovation. It is entirely immaterial. I have the greatest respect for my friend Mr. Mahanty and for his great sincerity. Everything that he touches he touches with great sincerity and I have great respect for the legal knowledge, the wisdom and the scholarship of my hon. friend Dr. Kane but we have to look at it from the point of view of the importance or the practicability of it under the circumstances of today. Alimony is a matter which has been dealt with since the year 1869 under the Indian Divorce Act. We are now introducing the provision of the Divorce Act in a certain measure into Hindu society. What was true and good from 1869 up to date as far as the Indian Divorce Act is concerned, I submit, should be considered to be good and true in this new measure we are introducing.

SHRI S. MAHANTY: May I interrupt my hon. friend? Is it the contention of the hon. Member that the Indian society has not moved since 1869? Have not the circumstances changed also?

DIWAN CHAMAN LALL: My learned friend has completely misjudged what I have said; if he would only contain himself in patience and listen to what I am saying he would understand that my argument was not that; my argument is that the Indian Divorce Act was introduced into this country in 1869; this particular provision was introduced by that Act and it has stood the test of time since then; today, we are introducing a new thing into Hindu society and that is that we are making it possible under

the law for people to obtain a divorce. Let us wait and see how that operates. It has operated since 1869 upto now; as far as the special classes are concerned who are governed by the Indian Divorce Act. Something new is being introduced now and the provision that has stood the test of time may be given some time more to operate as far as this new measure is concerned. That is my argument not that Hindu society has stood still; it has not stood still. If my hon. friend would look at the problem from the point of view of Hindu society, he would know that practically every bit of legislation that has been enacted for the benefit of Hindu society all that is called the law governing Hindu society, he will find that it is a law that has grown by usage and change. Change has been the essence of the development of Hindu law as far as our society is concerned but here we are introducing an innovation. Before you introduce the innovation, you change it straightaway. It appears to me to be a very illogical position to take up.

SHRI S. MAHANTY: How?

DIWAN CHAMAN LALL: You have, for instance, provision here regarding alimony, under the Indian Divorce Act. It says, "in any suit under this Act, whether it be instituted by a husband or wife and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit". This is *pendente lite* but it continues also in regard to a settlement after the suit has been decreed. Now, it is only the wife that can ask for this. What my learned friend Mr. Mahanty and his supporters should have done—which they have failed to do—is to introduce another clause into this measure, not referring to alimony which all the accepted jurisprudence of practically every land that I know of.....

SHRI S. MAHANTY: It is not alimony. We are considering maintenance.

DIWAN CHAMAN LALL: The word is alimony. Maintenance has got another legal meaning. I do not know if my hon. friend Mr. Mahanty is a lawyer or not but maintenance has another significance as far as the Hindu community is concerned and my learned friend should confine himself to the provision that we are discussing now. We are discussing the provisions of clause 24 which is maintenance *pendente lite* and expenses of proceedings.

SHRI S. MAHANTY: Nothing to do with alimony: That is what I pointed out.

DIWAN CHAMAN LALL: Maintenance *pendente lite*.

SHRI S. MAHANTY: I am quite prepared for that part.

DIWAN CHAMAN LALL: I quite agree; I entirely agree and I must humbly apologise for the mistake that I have made. Maintenance *pendente lite* while the proceedings are going on. But it is the same thing. Now, the next clause which has to be read along with this, is about permanent alimony and maintenance. Once you grant the principle of maintenance *pendente lite* which in these clauses means exactly the same thing as alimony—and nothing else—then you have got also to consider what the permanent effect will be after the decree has been passed. What will be its effect? In either case, the principle that is being sought to be introduced is the principle that the wife should also be made to pay where the court so decrees to the husband in all cases, whether she is guilty or not. Is that the correct position? Even if she is guilty or not, if she is capable of paying, she must be made to pay. I submit that this goes against all canons of justice. What my learned friend should have done is to have looked up the provisions regarding settlement. My learned friend will find provisions regarding settlement in the Indian Divorce Act. The way to deal with this matter is to introduce a new clause regarding settlement

which is the accepted method of dealing with such matters where it may be necessary for the wife's property to be utilised for the purpose of the maintenance of the husband on the one side or it may be the maintenance of the children. I refer my hon. friend Mr. Mahanty to section 39 of the Indian Divorce Act which says, "Whenever the court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if the wife is entitled to any property, the court may, if it thinks fit, issue and order such settlement as it thinks reasonable to be made of such property or any part thereof for the benefit of the husband or of the children of the marriage or of both". Now, this is absolutely and completely on a par with the latest provisions of the British law on the subject which are to be found in section 24 of the Matrimonial Causes Act, 1950. Here it is a question of adultery only but divorce can be had in England not only on the grounds of adultery but also on the grounds of desertion or cruelty. So in either of those three cases, a settlement can be ordered of the wife's property by order of the court. The power is given to the court to order a settlement of the wife's property for the benefit of the husband and for the benefit of the children. That was the proper method by means of which this matter should have been handled instead of making this new provision which savours of a vendetta of the men against women taking advantage of the position as conditioned by the principle of equality.

SHRI S. MAHANTY: Why not bring in an amendment on the floor of this House as you did on the last two occasions?

DIWAN CHAMAN LALL: If any one were to bring in an amendment, I personally would be entirely with him in order to make the law logical and make the position logical. If any hon. Member wishes to table amendments on these lines I promise to support

[Diwan Chaman Lall.]
that amendment regarding settlements. It would be right; after all, if the husband has no property and the wife has property, it is necessary that the court should take notice of that and make it possible for the children and the husband to be supported out of the property owned by the wife. I entirely agree but I say that this is an entirely wrong method of doing it. It savours, as I said, of a sort of vendetta of the man against woman. It savours of something which is not acceptable to the jurisprudence of most civilised country that I know of and I suggest, therefore, that this particular provision should not be supported and that suitable amendments moved in regard to this matter may be supported.

DR. P. V. KANE (Nominated): I want to say something, Sir, as my name has been mentioned.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I shall bear that in mind.

SHRI RAJAGOPAL NAIDU: I rise to support the various amendments tabled by hon. Members. Sir, we know that a Hindu woman has been economically dependent upon her husband for ages and even today that is the case in the case of most of the Hindu women. Hindu women should not be compared with the women belonging to other religions. Other religions certainly provide property rights to women but in the case of Hindu women, right till the year 1937, there was absolutely no right conferred upon Hindu women to own any property. It is only in the year 1937 that a Hindu widow was given certain rights. A widow or a widowed daughter-in-law got certain rights in that year but even then they were given only limited interests in the husband's property. I am not talking of the *stridhan*; such cases are very limited. It is only now, probably in the course of one year or so, we are going to enact the Succession Act which is going to be a part of this Hindu Code wherein we are going to

provide a share for the daughter in the property of the father. Now at this stage, is it not premature on the part of this House to make a provision in this particular Bill under clause 24 making a woman pay maintenance *pendente lite* and expenses of proceedings to the husband? It sounds to me really atrocious, even before the woman is granted any right to own any property under the Hindu law, if a woman is asked to.....

SHRI S. MAHANTY: From the income, not from property.

SHRI RAJAGOPAL NAIDU: If a woman is asked to pay maintenance to the husband it really sounds to me atrocious.

My friend Diwan Chaman Lall has been pointing out certain matters which, in my opinion, would really apply to post-decree cases. Suppose there is a decree for dissolution of marriage on certain grounds, all the arguments advanced by my friend would certainly apply; there should be a provision made for settlement of property if the property stands in the name of wife. We are now concerned with only the provisions contained in clause 24. I went through the various provisions in the Indian Divorce Act as well as in the English Matrimonial Causes Act. I did not find anywhere that when a proceeding is pending in a court of law, the wife is asked to pay maintenance to the husband. I do not know wherefrom the hon. mover of this Bill has picked up this provision. Probably some hon. Member should have suggested it in the Select Committee and it got into this Bill. I do not find anywhere.....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): It is there in the Special Marriage Act also.

DIWAN CHAMAN LALL: No, no.

SHRI RAJAGOPAL NAIDU: I do do not know, Sir, how that happened.

SHRI S. MAHANTY: All these are not the last words of human intelligence.

SHRI D. P. KARMARKAR: Nor are my hon. friend's.....

SHRI RAJAGOPAL NAIDU: I shall only request the House to bear with me for five more minutes. Section 19 of the Matrimonial Causes Act deals with alimony and maintenance in case of a divorce or nullity of marriage. What all I want to say is that even this English law provides for interim maintenance during pendency of the litigation only in certain cases, not in all the cases. This clause, in this Bill goes far beyond the provisions made in the English statutes and grants interim maintenance in all the cases. That is the worst of it. Section 19 of the English Matrimonial Causes Act of 1950 refers to alimony and maintenance in cases of divorce and nullity of marriage and clause (1) thereof reads: "On any petition for divorce or nullity of marriage, the court may make such interim orders for the payment of alimony to the wife as the court thinks just." And this provision is made applicable only if the petition for divorce is presented by a wife on the ground of her husband's insanity, nothing else. Then, in section 20 that deals with judicial separation interim maintenance is ordered to be paid by the husband to the wife, not by the wife to the husband except in the case of the husband's insanity.

Then again, I come to clause 24.

SHRI D. P. KARMARKAR: May I indicate to the House, Sir, that I propose to accept the substance of the amendments?

SHRI RAJAGOPAL NAIDU: I am glad that.

SHRI GOVINDA REDDY (Mysore): We would persuade him to retain the clause as it is.

SHRI S. MAHANTY: Let it be left to the House; let there be division.

SHRI RAJAGOPAL NAIDU: Mr. Vice-Chairman, lest the hon. Minister should change his mind I would immediately sit down so that he may accept the amendment.

DR. P. V. KANE: Sir, when the original draft was placed and there was a committee appointed I could not attend the committee and, therefore, I put together numerous amendments in one place and handed it over to Mr. Biswas. I think this was also included, but when I was the Chairman I did not move that amendment; that was taken up by other people and I must explain this. If you look at the original draft the wording was "Alimony *pendente lite*". Similarly, it was only "Permanent alimony" and there was no word like "maintenance". Then when I presided as Chairman I brought to the notice of the Members that I was not moving my amendment. Some other mover of the same amendment pressed for it. Then I said that the word "alimony" meant this. I brought the Oxford English dictionary and showed that and said, "You are changing the meaning of 'alimony' occurring in the English language; Indians are changing the meaning." Therefore, I asked them to add "maintenance" and that was added. In clause 24 it was put in as "maintenance *pendente lite* and expenses of proceedings" and in clause 25 "Permanent alimony and maintenance". I did not say anything myself. I left off my amendment. I do not deny I had given it but there were fifty amendments given and all were given together. This was taken up by some other Member and the majority passed it. On the contrary I told them that no system of law has so far dealt with alimony to the husband. Of course, much can be said on both sides and if the women are so very vociferous about equality and all that then there is nothing wrong in the husband claiming like rights. After all in clause 24 what is done is that both sides' income is to be seen. Originally some suggested "not income" but "ability to earn" for the wife. Then I showed to them that there may be

[Dr. P. V. Kane.]

ability to earn but one may not find jobs. Therefore I said, "Don't put 'ability to earn'; put down 'income' for both parties." Therefore it was done in that way. So I do not want to resile. Now that the hon. Minister has accepted the amendment this may be a cry in the wilderness. I leave it to the good sense of the House to accept or reject it. I only wanted to make a personal explanation.

SHRI H. C. DASAPPA (Mysore): I think the clause as it is had better remained without being tampered with at this stage. I do not think I should add to what has been said in support of its retention, but this much I can say. In certain States already women have been given rights. My friend Mr. Naidu to whose ideas I have always great respect said that the Hindu law.....

SHRI RAJAGOPAL NAIDU: It is only under Marumakkattayam law in Malabar.

SHRI H. C. DASAPPA: He said that the Hindu law did not provide any rights of inheritance and so on to women. The whole of *stridhan* is theirs and you cannot say that that is not property. And what is more, certain States have already given rights of succession to women, for instance, in Mysore the unmarried daughter gets a certain share, may not be the same as for a son, in Baroda also and so on. That is one reason. The second reason is this, namely, I do not know what the experience of my hon. friends here is—that now-a-days the tendency is for the husband to earn and have all the properties in the name of his wife.

SHRIMATI CHANDRAVATI LAKHANPAL (Uttar Pradesh): Only on paper.

SHRI H. C. DASAPPA: If there are men who contradict that statement I have no objection.

SHRI B. GUPTA: It may be the practice being indulged in in some quarters of your State.

SHRI H. C. DASAPPA: What do you mean? I am speaking of the Hindus. I am not retreating to this State and that State. At least with regard to the Hindu Code why does my friend not get this out of his brain?

Now, it is a fact that quite a number of people have properties in the name of their wives. It is not as though it is only nominal as the hon. lady colleague seems to suggest but it is so in fact. Supposing a man has got all the properties in the name of his wife and for some reason this unhappy situation were to arise he will be thrown in the streets for no fault of his own; he may be the petitioner himself. So what I say is this. In view of the very fine safeguard which the Joint Committee has provided here in this clause it may remain just as it is.

SHRI B. K. MUKERJEE: Sir, I would like.....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): We are already on this clause for an hour and a half.

SHRI B. K. MUKERJEE: This is a most important thing and opinion is very sharply divided. Therefore, I think I may contribute something. I am not at all anxious to speak only for the sake of speaking. I stand here to oppose this amendment. This amendment was, in my opinion, already negatived while we were discussing clause 13. At that time there was one amendment, No. 140 by our opponent, a Member from Madhya Pradesh and she wanted to introduce a one way traffic in this legislation but this House negatived that amendment. The House did not like to have one way traffic in this law. Therefore, after passing that clause 13 having negatived that amendment No. 140, I do not understand how this question of superiority and inferiority between one section and another section comes in.

SHRIMATI CHANDRAVATI LAKHANPAL: May I ask if men and

women do really stand on an equal footing?

SHRI B K MUKERJEE. I am coming to that point. Now we negatived that and it has been brought again by those Members who are opposed to us—they object to the term “friend” being used. Now their argument is that they are inferior today and they want superiority or equal right with men. Now this very amendment shows their influence. Three women Members along with three men Members have given notice of this amendment. These three women Members not only influenced those three men Members of this House but also I think the hon. Minister in charge of the Bill and if not I am afraid he will also be influenced by them to accept this amendment. When they can influence not only those three Members but the hon. Minister in charge of the Bill and also perhaps some other Members, while we who are all speaking against the amendment cannot influence them, I find that they stand on even a higher footing than we do.

Now, my second point is that they enjoy better status in the life of the society today. See how they are treated. I will explain my point by an illustration. Take for instance a railway train or take the case of a bus. You see that in railway trains they have got a compartment marked “Only For Ladies” and men are not allowed there whereas ladies can come and occupy men’s compartments.

SHRI D P KARMARKAR. Is that your grievance now?

SHRI B K MUKERJEE. I am showing how they enjoy a better status. Our Ministers when they travel, they get saloons but when we travel we have got to travel by second class compartments. Of course, we have got no grudge against the Ministers. But because the Ministers are .

SHRIMATI PARVATHI KRISHNAN. On a point of clarification, Sir. The hon. Member being a renowned labour leader in this country, I would like to ask him whether the principle of equal pay for equal work is applicable throughout the country.

SHRI B K MUKERJEE. Yes, I am coming to that. I will explain that. In the illustration which I gave, you will find that in the railway trains there are

DR P V KANE. The Railways Act provides for those things.

SHRI B K MUKERJEE. My point is that they enjoy a higher status than we do.

Now, I will come to the next point. The hon. lady Member asked me whether equal pay for equal work was allowed or not. Of course, she said that I was a renowned labour leader. I take it as a compliment specially as it comes from that side. But I can tell her probably even before she was born we were raising slogans from the trade unions in this country for equal wages for equal work. And at that time there was no lady Member as far as I remember. Of course, I am subject to correction. In those days when we raised those slogans and pursued those slogans and we obtained results, there were no lady Members.

THE VICE-CHAIRMAN (SHRI V K DHAGE). Mr Mukerjee, we are on this amendment on *maintenance pendente lite*.

SHRI B K MUKERJEE. Yes, Sir. I am speaking on that. Because they say that they do not enjoy equal rights I want to prove that they in fact enjoy more rights than we do.

Then, this question of economic dependence was raised. One of the hon. lady Members who is opposed to us stated that there would be very few divorces under this Act in this

[Shri B. K. Mukerjee.]
country. If that is so why should we worry so much for those few cases? We need not think of those few cases, if they be few. She also argued that women were economically dependent on men and she stated that this legislation would affect the middle class only in this country. Now, I may inform her and the House through you, Sir, that a majority of the middle class men in this country today are economically dependent on somebody or the other. That means they do not earn sufficient to make both ends meet. They are not in such a pecuniary position so as to be able to pay any maintenance for their wives and now *vice versa*; if we take it that women also cannot pay maintenance, then they stand on an equal footing. And so what is the objection to retain this clause as it is?

The only request that I have to make to the hon. Minister in charge of the Bill is that he must not be carried away by the sentiments of the Members who spoke in favour of this amendment. Their arguments were purely sentimental; there was no valid reason behind their arguments and, therefore, I would request the hon. Minister in charge not to be carried away by the sentimental speeches made by them. He has got to go by the facts and figures which my hon. friend Mr. Mahanty cited. He must go through the Census Report and see what is the pecuniary condition of men and women in this country.

SHRI GOVINDA REDDY: Sir, the principle underlying this and the next clause has been.....

SHRI H. C. DASAPPA: Sir, is he qualified to speak?

SHRI GOVINDA REDDY: I will now qualify myself.....

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): He is a Member of this House and so far as I am concerned, he is qualified to speak.

SHRI GOVINDA REDDY: The Minister's attitude towards this clause is to discourage me from qualifying myself. Sir, the principle is that any party which goes to court under this Act should get not only the cost of the proceeding, but also maintenance or alimony. It is entirely unfair for the fair sex to take a discriminatory attitude. They want that if the party to a suit is a woman, she only should have the right for the relief under these two clauses. But if the party is a man, they do not want him to get the relief. Well, I fail to understand why this discrimination should be made at all. In fact, it would have been very fair for the fair sex to have insisted on equality, as in everything else in this respect also. The objection that because women have not right to property in this land, they should not be made liable to the penalty under these two clauses, is not a sound objection. I am sorry that the hon. Minister also has taken this view. His view does not come at all in the way mostly for this reason that although women have no right to property in this country, still in the cases which go to court under this section, mostly the women or the petitioners will be rich. It is only the rich woman that would seek divorce under this clause. No poor woman in this country can afford to seek divorce from her husband. That is because the women in this country—taking the very argument that women in this country have no property rights—are mostly dependent on their husbands, whether the husband is a good fellow or a bad fellow; whether the husband is true to her or unfaithful to her. She will have to drag on her existence in his company. So it is inconceivable that a poor woman or a middle class woman will go to a court of law seeking this remedy. And if women at all go to court to seek this remedy, it is only the well-to-do women, women who have got property, that will go to court. By what right of conscience can we say that women who have property should not be made to pay either alimony or maintenance?

It is, after all, left to the court to decide. It is not obligatory on the court to grant alimony or maintenance. The court has its discretion. It will look into the circumstances of the case and then it is only when the court finds that the party has the means to pay the expenses of the proceeding, or the alimony or maintenance that the court will decree. So the objection that because women have no property rights, they should not be made liable for the relief under these two clauses is not sound objection.

Secondly, something was said about precedent. The hon. Diwan Chaman Lall and other friends said that there was no precedent in any law of the country. Maybe, there is no precedent, but why should we not create a precedent?

SHRI S. MAHANTY: There are precedents.

SHRI GOVINDA REDDY: We are heading on to the 21st century. What is the use of quoting English law of the 18th century, 19th century? Let us take a progressive view of things. When it does not affect the majority of people, when it affects only those who deserve to be made liable for the penalties under these two clauses, why should we not provide? After all, we are not amending an old law. We are making a new law. When we are making a new law, why should we not take a new step, making a departure from the old rule of law? When we make no discrimination in anything between man and woman, why should we make here a discrimination between man and woman? Therefore, I see no reason why these two clauses should be amended. I plead very humbly but very insistently to the hon. Minister to retain the clause as it is and not to accept any amendments.

[MR. DEPUTY CHAIRMAN in the Chair.]

श्री गोपीकृष्ण विजयवर्गीय (मध्य भारत) :
उपाध्यक्ष महोदय, क्लोज २४ पर काफी बहस हो

चुकी है। मेरा ख्याल है कि बहस में गम्भीरता की बजाय विनोद का भाव पैदा हो गया है, और स्त्री सदस्य एक तरफ और पुरुष सदस्य दूसरी तरफ हो गए हैं जिससे विनोद का अंश और ज्यादा आ गया है। सेलेक्ट कमेटी में भी शायद विनोद के मूड में इस धारा को पास कर दिया गया है। मुझे स्त्री सदस्यों के साथ सहानुभूति है

पंडित एस० एस० एन० तनखा : आपका वह ख्याल गलत है।

श्री गोपीकृष्ण विजयवर्गीय : और श्री तनखा ने भी आर्ग्युमेंट दिया था कि न्याय, ईसाफ और समानता की दृष्टि से महिलाओं को यह मंजूर करना चाहिए कि वे भी एलिमनी देने के लिए तैयार रहें। दक्षिण भारत से जो मंत्री यहां आये हैं वे इसके ज्यादा पक्ष में हैं, शायद इसलिए कि उधर की तरफ रिच महिलाएं ज्यादा हैं, लेकिन दक्षिण भारत की अपेक्षा उत्तरी भारत में महिलाओं की हालत कुछ कमजोर ही है। और चीक हम पहली दफे यह डाइवर्स का एक नया कानून पेश कर रहे हैं इसलिये मेरा ख्याल है कि अगर भविष्य में ऐसा मालूम हो कि महिलाओं को भी एलिमनी देना आवश्यक है तो फिर यह काम फ्यूचर लीजिस्लेशन के लिए छोड़ देना चाहिए। इसलिए यह जो अमंडमेंट १८२ है इसी पर कोई साहब, या स्वयं मिनिस्टर साहब, कोई सुधरा हुआ संशोधन बतलायें जो कि इस लाइन पर हो कि उसमें ऐसी व्यवस्था हो कि स्त्रियों को एलिमनी देने का, या खर्चा देने का विधान निकाल दिया जाय और उसे सिर्फ पुरुषों पर ही लागू किया जाय, तो बहुत अच्छा हो।

SHRI B. GUPTA: Sir, we are glad that you are here now. Let me speak. You will not have heard the speeches personally, being absent here, that had been made from that side of the House in support of clause 24 in the Bill.

MR. DEPUTY CHAIRMAN: You are not going to repeat any of them, I am sure.

SHRI B GUPTA They would not support the amendments that we have moved, and by now they have developed an apprehension that for a change the hon Minister, by temperament and by looking into our amendments, might find his way to accepting them. Therefore, I think, gentlemen like Mr Mukerjee seemed apprehensive. On this side of the House, there, of course, is our indomitable Shri Mahanty who quotes statistics from the wrong angle. I cannot help it. He gave a lot of statistical figures in order to show how independent women are, how relatively independent they are, almost they compare equally with men. Anyway, if he would carefully look into the statistics again—instead of trying either to educate anybody here on the floor of the House or educate anybody elsewhere, if he would try to get rid of the wrong type of education as far as these statistics are concerned—he will realise that the vast majority of women in our country are undoubtedly dependent on men. Now, if he has not realised this simple fact, I think it will take him a little time to realise what he is talking about. As far as Mr Mukerjee is concerned, he said that some of the women here were having a one-way traffic. I am very glad that he wants to assume the role of a traffic constable to regulate the traffic. Has he realised that so far the traffic has been one way and the attempts in this House had been to open the other way? That is to say, let there be traffic so that women can freely move a little. But there again our hon friend, Mr Mukerjee will join issue with us and stand as a traffic constable showing the red light when the green light should be shown and showing the green light when the red light should be shown. He is a queer type of traffic constable that we have got. I think there will be a jam and accidents if these gentlemen are allowed to stand in the way. Leaving aside that for the time being, let me deal with some of the points made by Shri Govinda Reddy. He is a very sober person and speaks very soberly and also qualifies for

speaking on such matters. Now, he says that this clause should be retained as it is. The main question before us is one of social approach. Now, there may be cases where women can pay alimony or even the cost of any proceeding under the provisions of clause 24. We are concerned here with a social legislation, and that social legislation should have a sort of social pose. Now, if you look at the society as a whole, it cannot be said that the majority of the women—even in classes where they earn money—are self-sufficient, solvent or independent, and all that sort of thing. That is not at all the position. Therefore, I say that we should not have this kind of a provision here, because it would not be in consonance with the realities that we have in the country today.

Then, another important point has to be taken into account, and that is this. If you keep such a provision under certain given conditions, the conditions in which we find ourselves placed it would operate against the interests of the women, not against the interests of men, if I have to make a choice between the two. Because it is they who are handicapped, not men. Therefore, I say that in effect it would terrorise the women and would create difficulties in their way, when, according to you, they would be justified in exercising certain rights that you have granted to them in this enactment.

Now, a reference has been made to English law and to other laws. Diwan Chaman Lall has made such references. And I think the hon Dr Kane who is quite well-versed in Hindu law, and is very proud of it, and rightly so,—one should be proud of his own system of law with an open mind to change it—will clarify the position. I say that we need not go by any precedent. It is not a question of whether we are creating a precedent or following a precedent. It is a question of recognising certain basic fundamental facts of law, and on that basis formulating certain principles of law. That is what we are concerned with. Let us not go to England. We need not look to England for this kind of a

simple thing. We have a society with which we are very familiar, as far as its problems are concerned. Its difficulties are very well-known to us, and we can get sufficient arguments from the facts of life to formulate our views one way or another. Therefore, I say that let us not at this stage introduce these ideas here as we have introduced. It is all against the realities now.

Then, a point has been made about the succession laws and other things. These things are not forthcoming, they are being delayed. I could have understood such conditions being appended in a comprehensive Hindu Code which would bestow on women the same property rights as it bestows on men. But this is a piecemeal legislation. And we do not know when the other things will come before us. Let us not anticipate anything. I, therefore, say that there will be a hardship, and there will be an injustice, done to women. This is yet another point.

Then, about chivalry and other things, I think these are a little amazing. I have often pondered as to what would happen to our debate, had we not here Mr. B. K. Mukerjee speaking on that side of the House. Now I have heard him with great interest. As you know, I do not go to cinemas, I do not go to any circus, or anything of that sort. Only I like to sit here and to enjoy the debate and get myself instructed, and also entertained. And let me say, Sir, that but for Mr. B. K. Mukerjee, my life would have been very harsh, miserable and dry.

MR. DEPUTY CHAIRMAN. Leave alone Mr. Mukerjee.

SHRI B. GUPTA: Sir, the ancient lawyers were used to talking with knowledge, with wisdom and with courage. But now I find that he has taken their place, but he is making a ridiculous mess of the whole thing and I do not know whether there will be any lawyer on that side of the

House to redeem the Hindu law, and to recover it from being treated in that manner by Mr. Mukerjee. A good thing is that after making the speech he leaves the House.

MR. DEPUTY CHAIRMAN: And you are speaking in his absence. It is very bad.

SHRI B. GUPTA: It upsets me, Sir, because if he had been present, my speech would have been good. Anyway, I thought that the Government were thinking in terms of accepting this amendment that we have tabled. I have no fascination for the words that we have suggested. Words may be altered. But let us have that accepted by the Government side, and let us recognise the fact, as it is today, and not as we would like it to be. Much remains for the future to decide. And, I think, the hon. Minister, who was at one time a lawyer

DIWAN CHAMAN LALL: Eminent.

SHRI B. GUPTA: a very eminent lawyer at that time, is trying to be an eminent Minister in the Commerce and Industry Ministry. I do not know what will happen to our commerce and industry. But I can at least hope that he will preserve his eminence in this field of law, because in the other field there is a lot of mess, chaos and crisis. At least in this matter he will try to retain his eminence and maintain all the glory that he once enjoyed! Therefore, I think he would find himself in agreement with me and accept the amendment, although I am quite aware of the danger that he may not accept it. I do not want to create any undue influence on him.

MR. DEPUTY CHAIRMAN. He can take care of himself.

SHRI B. GUPTA: He should accept the amendment, forgetting that I have spoken.

SHRI D. P. KARMARKAR. Mr. Deputy Chairman, I had indicated at

[Shri D. P. Karmarkar.]
the time of my opening speech, when I made the first motion, when I came to clauses 24 and 25 which came out the Joint Committee, that I was a little unhappy about the change that the Joint Committee had made in the original version.

DR. SHRIMATI SEETA PARMA-
AND: Hear, hear.

SHRI D. P. KARMARKAR: That is matter of fact; there is nothing to say "Hear, hear". What is coming in, you can hear. That was my reaction when I started piloting the Bill, and after having heard all the discussion, it is not a question of emotional cumbling or anything of that sort. In any case, when we enter the portals of this House, I think it is always safe to forget all our emotions outside. It is not the emotional reasons or some other reasons that have prompted me to say that I am rather strengthened in the view that I took at that time. And, as I indicated a little earlier, I will be prepared to accept the substance of the amendments on this point. I say substance because it needs a little redrafting.

SHRI S. MAHANTY: On a point of order, Sir, I venture to think that the Minister said in the course of his last speech that he would leave it to the sense of the House.

MR. DEPUTY CHAIRMAN: That is why he is saying "in consonance with the sense of the House."

SHRI D. P. KARMARKAR: Sir, I am very happy that my friend reminded me of what I said, which I already remembered. I said advisedly that I felt myself a little strengthened.....

DR. W. S. BARLINGAY: I would like to ask one question for the sake of clarification. That would help him.

MR. DEPUTY CHAIRMAN: After speaks.

SHRI D. P. KARMARKAR: I am not running away. I will be prepared

to clarify all the points that might be raised after I have finished. As I said, I feel myself a little strengthened in what I said before. And, therefore, I am taking one step further, and I am commending the substance of the amendment to the consideration of the House. In fact, I have taken the precaution of having the draft ready in case the House accepts the substance of these amendments. And I have given a copy of the draft there. It reads like this. Clause 24 will read as follows:—

"Alimony pendente lite.—Where in any proceeding under this Act it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding and weekly or monthly, during the proceeding, such sum as, having regard to the husband's income, it may seem to the court to be reasonable."

I think that is quite clear.

Clause 25 will read as follows:

"Permanent alimony and maintenance.—(1) Any court.....

MR. DEPUTY CHAIRMAN. We can take it up later on.

SHRI D. P. KARMARKAR: I will read this so that the House can have a clear idea. Both of them actually run together.

SHRI S. MAHANTY: They are very very different.

SHRI D. P. KARMARKAR: We can cut out discussion, later on on this.

"(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, pay to the wife for her

maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding her life as, having regard to her own income and other property if any, the income and other property of her husband and the conduct of the parties, it may seem to the court to be just and any such payment may be secured, if necessary, by a charge on the immovable property of the husband

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party vary, modify or rescind any such order in such manner as it may seem to the court to be just

(3) If the court is satisfied that the wife in whose favour an order has been made under this section has remarried or has not remained chaste, it shall rescind the order"

MR. DEPUTY CHAIRMAN I think it is in order

DR. W S BARLINGAY Sir I would ask the hon Minister one question May I have his ears?

SHRI D P KARMARKAR Yes, both of them

DR. W S BARLINGAY If we keep these clauses as they are are they going to bring any hardship to any wife even in a single case? That is the question I ask Will these clauses work any hardship even in a single case?

SHRI D P KARMARKAR That is an argument, and not a request for clarification

Having heard the arguments here taking all factors into consideration, taking into consideration the fact that in the present condition of the country women do not have the capacity to pay this, taking all these into consideration, I have come to the conclusion .

DR. W S BARLINGAY He has not answered my question at all

MR. DEPUTY CHAIRMAN. That is not a question It is another argument

DR. W S BARLINGAY Supposing we leave the clauses as they are, can the Minister show us even a single instance in which these clauses are going to create hardship?"

SHRI D P KARMARKAR It does not matter either way, but having considered everything that has been said on the floor of the House all the arguments for and against, I consider it wise to accept the amendment I have suggested

MR. DEPUTY CHAIRMAN I will first put Mr Karmarkar's amendment to the vote If it is accepted all the other amendments will go The question is:

That, for clause 24 the following be substituted:

"24 *Alimony pendente lite* — Where in any proceeding under this Act it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may on the application of the wife, order the husband to pay to her the expenses of the proceeding and weekly or monthly during the proceeding such sum as, having regard to the husband's income, it may seem to the court to be reasonable"

The House divided

AYES—32

Akhtar Husain, Shri

Alva, Shrimati Violet.

Amolakh Chand, Shri

Banerjee, Shri S.

Bedavati Buragohain, Shrimati

Bisht, Shri J. S

Chaman Lall, Diwan.
 Chandravati Lakhanpal, Shrimati.
 Daga, Shri Narayandas.
 Doogar, Shri R. S.
 Gupta, Shri B.
 Gupta, Shri R. C.
 Karumbaya, Shri K. C.
 Leuva, Shri P. T.
 Malviya, Shri Ratanlal Kishorilal.
 Mazumdar, Shri S. N.
 Naidu, Shri Rajagopal.
 Nausher Ali, Syed.
 Parmanand, Dr. Shrimati Seeta.
 Parvathi Krishnan, Shrimati.
 Pushpalata Das, Shrimati.
 Reddy, Shri K. C.
 Savitry Nigam, Shrimati.
 Sekhar, Shri N. C.
 Sharda Bhargava, Shrimati.
 Singh, Sardar Swaran.
 Sinha, Shri B. K. P.
 Subbarayan, Dr. P.
 Sur, Shri M. M.
 Tankha, Pandit S. S. N.
 Trilochan Dutta, Shri.
 Vijaivargiya, Shri Gopikrishna.

NOES—40

Adityendra, Shri.
 Ahmed, Shri Gulsher.
 Barlingay, Dr. W. S.
 Chauhan, Shri N. S.
 Dasappa, Shri H. C.
 Deshmukh, Shri N. B.
 Dhage, Shri V. K.
 Dube, Dr. R. P.
 Gupte, Shri B. M.
 Gurumurtny, Shri B. V.
 Italia, Shri D. D.
 Kane, Dr. P. V.
 Kapoor, Shri J. R.
 Kaushal, Shri J. N.
 Kishen Chand, Shri.

Lakhamshi, Shri Lavji.
 Lall, Shri K. B.
 Mahanty, Shri S.
 Mahesh Saran, Shri.
 Malkani, Prof. N. R.
 Mathur, Shri H. C.
 Mazhar Imam, Syed.
 Mookerji, Dr. Radha Kumud.
 Mukerjee, Shri B. K.
 Pande, Shri T.
 Pustake, Shri T. D.
 Raghubir Singh Panjhazari, Sardar.
 Rajah, Shri H. D.
 Ray, Shri S. P.
 Reddy, Shri Channa.
 Singh, Shri R. K.
 Singh, Shri Sardar.
 Singh, Shri Vijay.
 Sinha, Shri R. B.
 Sinha, Shri R. P. N.
 Tamta, Shri R. P.
 Vaidya, Shri Kanhaiyalal D.
 Varma, Shri C. L.
 Venkata Naravana, Shri Pydah.
 Vyas, Shri Krishnakant.

3 P.M.

The motion was negatived.

MR. DEPUTY CHAIRMAN: All the amendments also naturally go.

The question is:

"That clause 24 stand part of the Bill."

The motion was adopted.

Clause 24 was added to the Bill.

MR. DEPUTY CHAIRMAN: The motion is:

"That Clause 25 stand part of the Bill."

The whole question has been thrashed out and there should not be any discussion. I will put the amendments but there should be no speeches

SHRI B. GUPTA: There will be speeches because we will try to convince these people. We don't give up our right of speech.

MR. DEPUTY CHAIRMAN: You move your amendments.

SHRI H. C. DASAPPA: May I rise to a point of order? So far as this question in principle is concerned, the hon. mover also coupled clause 25 along with clause 24. If the amendments relate to any other thing except that the husband and wife should be on the same level, be equally liable, those amendments may be allowed but so far as the amendments relating to this particular principle are concerned, I think those all will be out of order because the hon. Minister himself coupled clause 25 with 24.

SHRI B. GUPTA: I oppose that point of order. Just because the hon. Minister reads.....

SHRI B. K. MUKERJEE: On a point of order, Sir. There is one point of order before the House.....

SHRI B. GUPTA: I am on a point of order. I think you must have your patience. Victory should not make you dizzy with success. My point is.....

MR. DEPUTY CHAIRMAN: What is your point of order?

SHRI B. GUPTA: How can you know unless you allow me to speak? All the amendments that are tabled here to clause 25 are absolutely relevant and they should be discussed and I think the Chair would not be justified in ruling them out because the other amendments had not been accepted. Now it is true.....

MR. DEPUTY CHAIRMAN: Mr. Gupta, the House has accepted the proposition.

SHRI B. GUPTA: I am coming to that.

MR. DEPUTY CHAIRMAN: You want to support the proposition? The House has accepted the proposition that during *pendente lite* the court can give alimony to the husband if the wife is in a position to bear the burden and has got enough property to give the alimony. That is the position now. So to deny it after the decree of divorce I think will not be in consonance with the principle already accepted by the House. So such of those amendments as relate to that particular point will be out of order. That is Mr. Dasappa's contention.

SHRI B. GUPTA: I was trying to come to that and I have been interrupted. Clause 24 relates to maintenance *pendente lite* and expenses of proceedings and clause 25 is regarding permanent alimony, and maintenance. You might say that with regard to maintenance the decision has been taken and nothing should be moved since it has been decided. With regard to this question of permanent alimony, I feel that the whole matter should be thrown open for discussion. What is meant by "permanent", what is meant by "alimony", whether the English word "alimony" should be used in that manner—all these questions are very material. Maybe, certain arguments should not be repeated. I can quite understand that position. But alimony is alimony and you cannot alter this thing, and the Government has not moved an amendment, bringing in another word there. Therefore, I say, let us view it from the angle of alimony. The word, "alimony" as has been pointed out, has certain connotation and a certain accepted meaning. To what extent it is applicable or not, should be discussed. There are, of course, other elements which are not covered by clause 24 and, therefore, I submit that discussion should be permissible on them.

SHRI D. P. KARMARKAR: I would only like to point out that whatever the technical position may be, so far

[Shri D. P. Karmarkar.]

as the whole discussion is concerned and so far as I could understand it in my humble manner, I think we treated the whole subject as being one—alimony, maintenance, while proceedings are pending, after a decree—everything was taken together and no distinction was made between maintenance *pendente lite* and expenses of proceedings and permanent alimony and maintenance. We have discussed the whole matter threadbare. Of course, technically speaking, we can spend another three hours, discussing and repeating all the grounds. But the substance of it has been already discussed, and on this side of the House we did not interrupt the discussion because this was an important point. But as you rightly observed, the principle of it has been decided in clause 24. Of course, it is open to anyone to say that the principle may be changed in reference to clause 25, because in one case it is permanent and in the other it is temporary alimony. Technically that can be held. But as I said, the substance of it has been discussed and normally we do not allow discussion to cover the same ground. So let us take it that the point has been decided so far and in any case the discussion so far as clause 25 is concerned, may be limited to be “off” the point of alimony by the husband or by the wife and.....

SHRI H. D. RAJAH: Yes, that is right.

SHRI D. P. KARMARKAR: My friend Shri H. D. Rajah also, I am glad admits it. And so this is what I would like to submit. Of course, we can all go on, and the capacity for speaking is there, but in view of the fact that the substance has been discussed and also as many would like to say something at the third reading stage of the Bill, and as we are looking forward to the advice given at that stage, I would appeal though not to the technical sense of my hon. friend Shri Bhupesh Gupta, but to his reason

and to see that so far as these amendments are concerned, we may take it that the discussion has been thorough as regards the granting of alimony by the husband to the wife or by the wife to the husband and then proceed further with the amendments.

MR. DEPUTY CHAIRMAN: He can speak on the subject of grant of permanent alimony, confining the remarks to the relevant aspects of the question.

DIWAN CHAMAN LALL: May I say a word with reference to this point of order that has been raised? You, Mr. Deputy Chairman are quite right when you laid down the rule that when any amendment has been accepted, then the principle of that amendment rules out all other amendments of the same nature. If you see rule 194(3) of the Rules of Procedure, you find it stated: “An amendment on a question shall not be inconsistent with a previous decision on the same question.” A previous decision has been now taken. Therefore, any debate on that principle is obviously ruled out.

MR. DEPUTY CHAIRMAN: Yes, that will be the position.

DR. SHRIMATI SEETA PARMANAND: Sir, I want to make one small submission and it is this. When the division bell is ringing, people come in who have not even heard what the point to be decided is, what the amendment is. Even the Minister in charge.....

MR. DEPUTY CHAIRMAN: We are not on that point and the division is over. I do not want anything to be said about the division.

DR. SHRIMATI SEETA PARMANAND: I only want that the same thing may not happen in the next division. We may have another division.

MR. DEPUTY CHAIRMAN: That is all right. So far as the question of discrimination between husband and wife is concerned, all those amendments will be barred. Therefore,

amendments Nos. 183 and 184 are barred. Amendment No. 185 remains, part (ii) of No. 186 remains and also Nos. 187 and 188 remain, also 189. Shri B. Gupta's amendment No. 190 remains, also his No. 191. Prof. Malkani's No. 192 remains. Therefore, all these amendments that I have mentioned and the clause itself are now open for discussion.

PANDIT S. S. N. TANKHA: Sir, you have said that my amendment No. 189 remains. But I beg to submit that it is really a consequential amendment. In view of the fact that a decision has already been taken on the point that the husband will be entitled to alimony from the wife, I think the condition, or the stipulation, that he should remain chaste during that period must continue to remain in the Bill.

MR. DEPUTY CHAIRMAN: Yes, that remains. I have not ruled it out.

PANDIT S. S. N. TANKHA: But I have asked that these words be deleted from the clause. I had contemplated that clause 24 would be amended. But in view of the decision taken by the House, my amendment No. 187 also is barred.

MR. DEPUTY CHAIRMAN: Yes, I see. Thank you very much, amendment No. 187 also is barred.

The hon. Members may now please move their respective amendments.

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

185. "That at page 11, for lines 28 to 32, the following be substituted, namely:—

'(3) If the court is satisfied that the wife has had sexual intercourse with any man other than the husband himself it shall rescind the order.'

SHRIMATI CHANDRAVATI LAKHANPAL: Sir, I move:

186. (ii) "That at page 11, in lines 29—32, the words 'or, if such party

is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock' be deleted."

SHRIMATI SAVITRY NIGAM: Sir, I move:

188. "That at page 11, after line 32, the following new sub-clause be added, namely:—

'(4) if the husband fails to pay the alimony in time to the wife, he shall be required to pay a sum of money to be determined by the court as penalty to the wife.'

Sir, I also move:

189. "That at page 11, lines 29—32, for the words 'if such party is the wife, that she has not remained chaste, or if such party is the husband, that he has had sexual intercourse with any woman outside wedlock,' the words 'or if she has been leading an adulterous life' be substituted."

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

190. "That at page 11, lines 29—31, the words 'if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he' be deleted."

I further move:

191. "That at page 11, line 31, the words 'with any woman' be deleted."

PROF. N. R. MALKANI (Nominated): Sir, I move:

192. "That at page 11, lines 29—32, for the words 'if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order', the words 'if either party has had sexual intercourse with any person outside wedlock, it shall rescind the order' be substituted."

MR. DEPUTY CHAIRMAN: Who speaks? Nobody?

DR SHRIMATI SEETA PARMANAND: Yes, Sir.

MR. DEPUTY CHAIRMAN. Yes, Dr Seeta Parmanand. How can there be any discussion without the hon. Member speaking?

DR SHRIMATI SEETA PARMANAND: Sir, I have to make a few remarks which will be relevant in connection with the whole matter. I do not think that permanent alimony can be put on the same basis as maintenance *pendente lite* and I say this because the circumstances and the considerations that have to govern the two are quite different. When the proceedings are going on, it is not known who is going to win the case. Moreover, though the matter may be said to have been decided on the principle of equality being given to the husband along with the wife in clause 24, I feel that when taking into consideration the question of permanent alimony, it is possible that even hon. Members here may take a different view.

Then, the other thing is that when a division bell rings, so many people come into the House and they do not know the reason for this change.

(Interruption)

MR DEPUTY CHAIRMAN: Order, order.

DR SHRIMATI SEETA PARMANAND: I am entitled to speak. I am not going to give way.

SHRI B. K. MUKERJEE: On what amendment are you speaking?

DR SHRIMATI SEETA PARMANAND. I am putting this point to you that they do not know the reasons for which the division bell rings. The Minister who ordinarily does not accept any amendments has accepted an amendment at the eleventh hour.

SHRI D. P. KARMARKAR: May I correct my hon. friend? It was at

the first hour that I had agreed to this, if she cares to look at the proceedings.

DR SHRIMATI SEETA PARMANAND: But the House did not know this.

MR. DEPUTY CHAIRMAN: Please do not make such aspersions against hon. Members of the House who are as responsible as yourself.

DR SHRIMATI SEETA PARMANAND. I would only make this submission that when the question of inheritance comes, we will remember this voting and remember the people who are so proud of equal rights.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat). Every day you say like this.

DR SHRIMATI SEETA PARMANAND. as to what they have to say about the share of the daughter being equal to that of the son.

With regard to amendment No 185, I want to say that I have advocated the dropping of the word "chaste". I was sure that the amendment with regard to not giving this right to the husband would be accepted and hence the portion relating to the husband is not there but as the hon. Minister has been making suitable changes to fit in with the principle that he accepts, if he accepts the principle that no order should be passed on vague grounds of unchastity of a woman but only on the grounds that the court is satisfied that the wife has had sexual intercourse with any man other than the husband concerned, then it is only a question of mere words. I am not asking for the principle to be changed—I want to make that very clear so that I am not charged later on the ground that women do not worry whether women are leading an immoral life or not—but only want a mere change in the words.

MR DEPUTY CHAIRMAN: Unless he accepts the amendment, I am not going to allow any more amendment.

DR. SHRIMATI SEETA PARMANAND: He is not there.

SHRI KANHAIYALAL D. VAIDYA: He is here.

MR. DEPUTY CHAIRMAN: Mr Pataskar is here

DR. SHRIMATI SEETA PARMANAND: I am making an appeal to him that I only want a change in the word.

SHRI KANHAIYALAL D. VAIDYA: Is there any convention?

MR. DEPUTY CHAIRMAN: No, it is only a suggestion.

DR. SHRIMATI SEETA PARMANAND: The principle should not be difficult to accept.

MR. DEPUTY CHAIRMAN: You can discuss it with him, Madam.

SHRI B. GUPTA: Sir, we have just now had a very interesting spectacle of heroic victory by the champions of reform led by Field Marshal Shri B. K. Mukerjee. I wish them all luck.

MR. DEPUTY CHAIRMAN: No aspersions.

SHRI B. GUPTA: No, Sir, it is not an aspersion. After all, how many Field Marshals there are. Anyway, if you do not like it.....

MR. DEPUTY CHAIRMAN: Do not make such remarks.

SHRI B. GUPTA: Anyway, I wish them all luck. Now, Sir, as you have ruled out some of the amendments that we had tabled, I will not speak on them. I think I can say a few words on this permanent alimony irrespective of what happened before, and what has been decided which is not acceptable to us at all. Permanent alimony is a charge, a continuing charge and is much more exacting than maintenance that may be charged in the case of a pending proceeding.

SHRI J. S. BISHT (Uttar Pradesh): Which is the amendment to which you are referring?

SHRI B. GUPTA: I speak first of the clause, then on the amendment and then I oppose something. There are three clear stages. Now I am on the clause as it is. I say that this thing should not be there. Since we have decided to alter the meaning of the word alimony I think we should not introduce this business of permanent alimony here. That should be avoided.

MR. DEPUTY CHAIRMAN: Even that is relative. Everything is relative. There is nothing permanent in this world.

SHRI B. GUPTA: Something is permanent as conservatism of Mr. Mukerjee is permanent.

MR. DEPUTY CHAIRMAN: If the husband remarries, the alimony goes; if the wife remarries the alimony goes.

SHRI B. GUPTA: Supposing she does not marry?

MR. DEPUTY CHAIRMAN: Then he will have to pay.

SHRI B. GUPTA: Anyway then, I know you are a very able lawyer but the trouble is that you will not be there to defend the wives. If we had your services all the time, I think I could sit down.

This should be deleted. I think that some suitable amendment should be found, even if it is a question of your having the pound of flesh.

Amendment No. 190 is a new thing and does not relate to what you have been good enough to rule out. In simple English, without legal quibblings, it means that we want it not to apply to women. Of course, we should not use the word "chaste" but the new expression, "has had sexual intercourse". I do not know how this expression will be interpreted by the

[Shri B. Gupta.]

courts because the idea varies from time to time and from place to place, also from age to age, as you will note. Now, there was a time when even coming out in the street and walking there was considered by the society to be lacking in chastity. In conservative societies, if you do certain things which are perfectly acceptable in modern society, it might be construed as something which would border on unchastity or doing something which chaste people, according to them, are not expected to do. I need not go into that because the word has a very wide connotation. Since that word has not been defined, I think it should be avoided. Having gone through the previous provisions of the Bill we have certain clear opinion that instead of saying all this, "Sexual intercourse" and all that, we should put it in a simple and proper language which would be understandable and would leave no room for varied interpretations by the court. Otherwise, I think, it would operate against the women. Let it not be understood that anybody is supporting unchastity or holding a brief for those people who do not live a chaste life. We are not concerned with that aspect of the matter here; we are concerned with certain cases of alimony being withheld from women. That is the point. Now, in a case where it is proved that the woman has had sexual intercourse, alimony can be withheld. Now, this change of wording should be acceptable, as far as the wording is concerned. I have no particular fascination for any particular phraseology provided the sense is carried by a suitable expression. I know that feeling will be roused on that side of the House. I do not see Mr. Mukerjee here; if he had been here he would have been a little sensitive to this thing. I want the deletion precisely because that clause if left as it is, is likely to be interpreted in a diverse manner. Such may add a stigma to certain people that they did not observe chastity. That is why I say that we should not have this; if we

were making an international law, if we embodied such expressions, they would have meant nothing at all. However we have to consider that we are making a provision for our Indian society. In the United States it would have made no sense. In England probably it would have a little more sense. We are concerned with what it means in India where it will be interpreted in a particular way. Therefore, I say that when matters go to the law courts, the tendency on the part of our lawyers is to quote the cases from the United States court proceedings or from the court proceedings in the United Kingdom, proceedings from the Privy Council and all that in order to prove the case they had been briefed for. Therefore, I say: Take this word, and I think my amendment is quite clear; it is quite categorical and I do not know if Diwan Chaman Lall who has been unofficially advising the Government all the time here would kindly consider my amendment.

DIWAN CHAMAN LALL: Which amendment are you talking about?

SHRI B. GUPTA: 190.

DIWAN CHAMAN LALL: What my hon. friend is saying in regard to 190 is entirely different to what is contained in 190. If my hon. friend reads 190 in connection with clause 25 then he may be able to explain what his standpoint is. What is the standpoint?

SHRI B. GUPTA: My standpoint is the deletion of the words.....

DIWAN CHAMAN LALL: What is to be deleted and what is to be inserted?

SHRI B. GUPTA: "if such party is ...".

MR. DEPUTY CHAIRMAN: He wants that some words be deleted in lines 29—31.

SHRI B. GUPTA: I want that the words "if such party is the wife, that she has not remained chaste, or, if such

party to the husband, that he" be deleted.

Then I say in my amendment, No. 191, "That at page 11, line 31, the words "with any woman" be deleted.

Now the words "with any woman" in my amendment No. 191 would be redundant, if the other thing in 190 be accepted and the portion suggested by me is deleted. Now I can read out to you what the clause would read: "If the court is satisfied that the party in whose favour an order has been made under this section has remarried or has had sexual intercourse outside wedlock, it shall rescind the order." Now is it clear? This is my amendment.

श्रीमती चन्द्रवती लखनपाल : श्रीमन्, इससे पहले अमंडमेंट पर हालांकि मैं बहुत बोलना चाहती थी लेकिन इसिलिये नहीं बोली कि शायद आप फिर इस क्लॉज पर बोलने की इजाजत नहीं देंगे। आशा है कि इस अमंडमेंट पर पूरी बात कहने के लिये आप मुझे इजाजत देंगे। स्त्रियों के विषय में कोई भी कानून पास करने से पहले हमारे लिये यह देख लेना जरूरी है कि स्त्रियों की साइकालोजी क्या है और स्त्रियों की साइकालोजी के बारे में स्त्रियां ही ज्यादा अच्छी तरह से बतला सकती हैं।

SHRI GOVINDA REDDY: That is inscrutable.

श्रीमती चन्द्रवती लखनपाल : मेरा आशय यहां पर यह है कि जो शब्द "चेस्ट" यहां पर रखा गया है वह यहां से हटा दिया जाना चाहिये क्योंकि उससे स्त्रियों पर ज्यादाती होगी।

हमने एलिमनी की व्यवस्था उन स्त्रियों के लिये रखी है जो निस्सहाय हैं, निराश्रय हैं और जो अपनी गुजर अपने आप नहीं कर सकतीं। मुझे ऐसा लगता है कि ऐसा सोचा जा रहा है कि जैसे ही एलिमनी का यह क्लॉज प्रीक्टिस में आया, मारी की सारी स्त्रियां एलिमनी के लिये अपनी दरखास्तें लेकर कोर्ट में दाँव पड़ेंगी। मैं स्त्रियों की तरफ से इतना कह सकती हूँ कि ऐसा नहीं है। जो स्त्रियां अपने पैरों पर खड़ी

हो सकती हैं और जो अपने आप रुपया कमा सकती हैं वे कभी भी इसे अपने आत्मसम्मान के उपयुक्त नहीं समझेंगी कि जिस पति को उन्होंने छोड़ दिया है या जिसने उनको छोड़ दिया है उससे एलिमनी मांगें। वे एक बार भूखों मरना पसन्द करेंगी लेकिन जिस पति को वे छोड़ चुकी हैं या जो पति उनको छोड़ चुका है उसके दरवाजे पर जाकर भीख नहीं मांगेंगी। इसबोर्ड के लिये भी यही है। लेकिन आप लोगों ने आज यह दिखला दिया है कि आप इस चीज में विश्वास नहीं करते। मैं अपनी बहनों की तरफ से दृढ़तापूर्वक कह सकती हूँ कि वे इस चीज को कभी भी अपने आत्मसम्मान के लिये नहीं मान सकतीं।

MR. DEPUTY CHAIRMAN: Any comment on that issue is now barred. Now, we are concerned only with the chastity of the woman or the faithlessness of the man. Only on those points you please speak.

श्रीमती चन्द्रवती लखनपाल : श्रीमन्, मैं यही कहने जा रही हूँ कि एलिमनी का सम्बन्ध उन्हीं स्त्रियों से है जो अपने पैरों पर खुद खड़ी नहीं हो सकतीं और जिन को सहायता की आवश्यकता है। ऐसी स्त्रियों के हितों की रक्षा करना हमारा कर्तव्य है और अगर हम कोई भी ऐसी व्यवस्था करते हैं जिससे निस्सहाय स्त्रियों को एलिमनी न दी जा सके या एलिमनी से वे फायदा न उठा सकें तो वह व्यवस्था निश्चित रूप से ठीक नहीं है। मेरा यह कहना है कि यह शब्द "चेस्ट" जो यहां पर रखा गया है इससे एलिमनी की जो व्यवस्था है वह सारी की सारी बेकार हो जाती है। इसका कारण यह है कि इस शब्द का मिसयूज किया जायगा, इसको एक्सप्लायट किया जायगा। इस शब्द से पति महोदय, फायदा उठावेंगे। वे स्त्री पर झूठ आक्षेप लगायेंगे जिससे वे एलिमनी देने से बच सकें। मामला कोर्ट में जायगा। स्त्री बेचारी निस्सहाय होगी। उसके पास कोई ऐसा साधन नहीं होगा जिससे वह अपनी रक्षा कर सके। इसके विपरीत पति महोदय सब साधनों से सम्पन्न होंगे। उनके पास रुपया होगा, बुद्धिमत्ता

[श्रीमती चन्द्रवती लखनपाल]

होगी, पेशवा होगी, लीगल एंड होगी। लेकिन वह बंचारी स्त्री जो निस्सहाय हैं, निरक्षर हैं, जिसके पास पैसा भी नहीं है, आप सोच सकते हैं कि लिटिगेशन में पड़कर वह किस तरह अपनी रफाई दे सकती हैं।

दूसरी बात यह है कि हमारा समाज ऐसी परित्यक्ता स्त्रियों के प्रति पहले से प्रिजुडिस्ड होगा। इसका परिचय यहाँ पर ही मिल रहा है जैसा कि उस दिन श्री मुकर्जी ने कहा था कि डाइवोर्सड स्त्रियाँ डाइवोर्सड पुरुषों से शादी करें। हमारा समाज में होगा यह कि यदि किसी स्त्री पर उगली उठाई गई, उस पर झूठा ही आरोप लगाया गया तो वह सच मान लिया जायगा। इसका नतीजा यह होगा कि स्त्री एलिमनी सं वंचित रहेगी। वह बदनाम हो जायगी और हमारी भाषा में एक कहावत है कि 'बद अच्छा बदनाम बुरा'। वास्तव में बदनाम स्त्री के लिये सोशल डेथ हो जायगी। वह हमेशा के लिये कर्डम हो जायगी। आप समझ सकते हैं कि ऐसी स्त्री के लिये कौन सा रास्ता बाकी रहेगा। उसको एलिमनी भी नहीं मिलेगी और उसकी सारी रंप्रेशन भी खत्म हो जायगी। उसके लिये कैश पतन का एक रास्ता रह जायगा। इसीलिये मैं कहती हूँ कि यहाँ पर 'चैस्ट' शब्द लाना स्त्रियों को शेमफुल लाइफ लीड करने के लिये बाधित करना है।

इस लिये मैं इसका जोरदार से जोरदार शब्दों में विरोध करना चाहती हूँ। मैं ज्यादा समय नहीं लेना चाहती। मैं आशा करती हूँ कि श्री भूपेश गुप्ता और श्रीमती सीता परमानन्द तो पहिले ही "चैस्ट" शब्द को हटाने का समर्थन कर चुके हैं, और जो भी दूसरी बहनें यहाँ पर बैठी हैं या जो विचारशालि भाई यहाँ पर बैठे हैं वे सभी इसका समर्थन करेंगे।

MR DEPUTY CHAIRMAN: Penalty clause, Mrs Nigam Be very brief

श्रीमती सावित्री निगम : श्रीमन्, अभी बड़ी खुशी मनाई गई और कहा गया कि हमारी आवाज बड़ी धीमी है। सच्ची आवाजें सदा ही

धीमी होती हैं और मंजारीटी कैसे बनती हैं यह सभी को पता है।

SHRI B. K. MUKERJEE: May I know, Sir, on what amendment she is speaking?

MR DEPUTY CHAIRMAN She has moved 188 and 189. If you do not pay alimony in time, you have to pay penalty.

SHRI B. K. MUKERJEE: As you have ruled out the earlier amendment this also has to be ruled out

MR DEPUTY CHAIRMAN: No, no. I have not ruled this out.

श्रीमती सावित्री निगम : श्रीमन्, यह जो मेरा १८८ नम्बर का अमेन्डमेंट है वह बहुत ही इन्नोसेंट है। वे सभी लोग जो कि दुनिया और समाज की दशा का अध्ययन केवल अपने परिवार से नहीं करते या केवल किताबों में ही गड नहीं रहते बल्कि जन-जीवन की कराहती हुई, सिसकती हुई, आवाजों को सुनते रहते हैं वे जानते हैं कि मध्यवर्गीय स्त्रियाँ किस प्रकार नैतिक, धार्मिक और सामाजिक मान्यताओं में पिस रही हैं। वे यह भी जानते होंगे कि स्त्रियों के पतन का एकमात्र कारण जो है वह आर्थिक दुर्दशा है।

MR DEPUTY CHAIRMAN: I want you to confine your remarks only to the penalty clause, which you want the House to adopt. Let us not talk about this 'naïve, dharmic and arthic' conditions Please confine your remarks to the penalty clause.

श्रीमती सावित्री निगम : जी हाँ, पेनाल्टी क्लॉज पर ही मैं कह रही हूँ।

श्री उपसभापति : अच्छा कहिये।

श्रीमती सावित्री निगम : मेरे सामने ऐसे केसेज रोज आते रहते हैं और मैंने उनको अपने रजिस्टर में भी लिख रखा है कि कोर्ट ने केवल रोटी पानी भर के लिये स्त्री के फेवर में कुछ थोड़ा सा मॉर्टनेस दिये जाने की डिक्ली दे दी लेकिन

वह मेंटनॅस भी एक दो महीने के बाद नहीं दिया गया। कोर्ट हो, भारतीय समाज हो, या संसद हो, सभी जगह उसी मनोवृत्ति का राज है। धर्मा और संस्कारों के कारण जो बात यहां है वही वहां है। इसलिये यदि किसी तरह से स्त्रियों को रोटी के गुजार के लिये मेंटनॅस मिल भी जाता है तब भी क्या हालत होती है वह मैं आपको बताती हूँ। मेरे रामने रोज ऐसे केसेज आते हैं। मैं आपको बड़ी इन्फोर्मेट सी बात बताना चाहती हूँ।

डा० आर० पी० दुबे (मध्य प्रदर्श): लेकिन आप बड़े ज़ोरों से कह रही हैं। हमारे ही बदौलत आप यहां हैं और आप कहती हैं कि हम कुछ करते ही नहीं।

Mr. DEPUTY CHAIRMAN: The time is coming when you will have to suffer for all these things, Mr. Dube.

श्रीमती सावित्री निगम : मैं यह बता रही थी कि जब कोर्ट मेंटनॅस मुकर्रर कर देती है तो एक दो महीने पीत महाशय मेंटनॅस का रुपया देते हैं और उसके बाद वह फिर बैठ जाते हैं। अब स्त्री फिर कोर्ट में जाय, एप्लीकेशन दे, वकील के पास और पेशकार के पास जाय। इसके लिये उसके पास पैसा होता नहीं, क्योंकि यदि उसके पास पैसा हो तो वह पीत से एक पैसा भी लेना पसन्द नहीं करेगी। जो लोग भारतीय स्त्रियों की और विधवाओं की स्त्रियों की बराबरी करते हैं वे सत्य को धोका देते हैं और अपने को धोका देते हैं। भारतीय नारी ने आज भी अपने ऊंचे चरित्र को बनाये रखा है और वही संस्कृति की, धर्म की सब से बड़ी संरक्षिका है।

Mr. DEPUTY CHAIRMAN: I am very sorry, Madam. *Bhartiya sanskriti* does not come in this penalty clause. I want you to be relevant otherwise I will have to ask you to sit down.

श्रीमती सावित्री निगम : मुश्किल यह है कि आप हमारी हिन्दी में बोली हुई बात को समझ नहीं पाते हैं।

श्री उपसभापति : मेहरबानी से अपने अमेंडमेंट के बारे में ही कुछ कहिये।

श्रीमती सावित्री निगम : हालत यह है कि स्त्री बंचारी के लिये कोई रास्ता नहीं रहता है.....

श्री उपसभापति : स्त्री बंचारी का कुछ नहीं है, लेकिन मेहरबानी कर के आप अपने अमेंडमेंट पर ही कहिये। आपका इरादा यही तो है कि जो हसबैंड एलिमनी नहीं देते उनके ऊपर पनाल्टी लगाना चाहिये।

श्रीमती सावित्री निगम : हिन्दी बातों के ऊपर यह बड़ी ज्यादाती है कि हम लोग अपनी कोई बात नहीं कह पाते।

श्री उपसभापति : मेरा कहना है कि आप अमेंडमेंट पर बोलिये।

श्रीमती सावित्री निगम : तो मैं यह कहना चाहती हूँ कि दो एक महीना मेंटनॅस देने के बाद पीत महाशय देना बन्द कर देते हैं। स्त्री मेंटनॅस लेने के लिये बहुत परेशान होती है और परेशान हो कर लेना ही बन्द कर देती है। उसके बाद या तो वह नौकरी ढूँढने लगती है या उसे किसी आश्रम में आश्रय लेना पड़ता है। जब उसको वहां भी आश्रय नहीं मिल पाता तो जैसा कि बहान चन्द्रवती जी ने कहा, उसके लिये सिवाय पतन के रास्ते पर जाने के और कोई चारा ही नहीं रहता है। तो जो पुरुष स्त्रियों का सम्मान करते हैं और चाहते हैं कि उनके चरित्र में और आचरण में आर्थिक कारण बाधक न हों और अपने चरित्र की, अपने सतीत्व की और अपने परिवार की वह रक्षा कर सकें और जो पुरुष स्त्रियों का आदर करते हैं वे सब इस अमेंडमेंट का समर्थन करेंगे। इसके अलावा भी मेरा दूसरा संशोधन १९६ नम्बर का है। उसके ऊपर अभी बोलूँ या बाद में बोलूँ ?

Mr. DEPUTY CHAIRMAN: Sufficient has been said, Madam. Please sit down.

Do you want to speak, Mr. Tankha?

PANDIT S. S. N. TANKHA: I just want to put one question, Sir.

MR. DEPUTY CHAIRMAN: Why do you question her? She is not a lawyer like you.

PANDIT S. S. N. TANKHA: It is a very relevant question, Sir.

मैं सिर्फ यह पूछना चाहता हूँ कि अगर शॉहर अपनी बीवी को एलिमनी नहीं दंगा तो उसके ऊपर आप पेनाल्टी लगा दंगी। लेकिन इस पेनाल्टी को बीवी कैसे वसूल करेगी? जब एलिमनी वसूल नहीं कर सकती तो फिर पेनाल्टी कैसे वसूल करेगी?

डा० श्रीमती सीता परमानन्द : पेनाल्टी के हर से दंगा।

श्रीमती सावित्री निगम : अपने दूसरे सशोधन पर मैं बोलना चाहती हूँ।

MR. DEPUTY CHAIRMAN: I am now thinking that I should have ruled your amendment out of order.

PROF. N. R. MALKANI: Sir, there is my amendment No. 192.

MR. DEPUTY CHAIRMAN: But that is the same thing.

PROF. N. R. MALKANI: But I have to say something.

MR. DEPUTY CHAIRMAN: Then be brief. You will have only one or two minutes.

PROF. N. R. MALKANI: I am never long-winded. Sir, my amendment is a very small thing but a very necessary thing. You have used two kinds of languages, perhaps meaning two standards of morality. And I say that there should be only one standard of morality. Therefore, I say that if you want to use the word "chaste", I have no objection if you use the same word with regard to man. And if you want to use the words "sexual intercourse", use them also for women. There should be no difference about the use of the language. Otherwise the word

"chaste" would have any meaning, vague, indefinite, and perhaps to the detriment of women. Therefore, I say that the same language should be used for both, whether you accept the latter or the former.

श्रीमती शारदा भार्गव (राजस्थान) : उपाध्यक्ष महोदय, अभी जब पिछली धारा पर मतदान हुआ तो उसके बाद कुछ सदस्यों ने कहा कि आप हार गईं। मैंने उस पर यह उत्तर दिया कि मैं तो नहीं समझती कि हम हार गईं क्योंकि हम तो माइनारिटी में हैं ही और माइनारिटी में होते हुये भी इतने पुरुषों ने हमारा साथ दिया अतः उसे मैं अपनी जीत ही मानती हूँ। हार नहीं मानती।

श्री उपसभापति : आपका तो कोई अमेंडमेंट नहीं है ?

श्रीमती शारदा भार्गव : तो क्या क्लोज पर मैं नहीं बोल सकती ?

श्री उपसभापति : अच्छा बोलिये, सिर्फ एक मिनट में।

श्रीमती शारदा भार्गव : दूसरी बात मुझे यह कहनी है कि मुकजी साहब ने कहा कि स्त्रियों और पुरुषों में डिस्क्रिमिनेशन नहीं करना चाहिये। मैं उनको याद दिलाना चाहती हूँ कि अभी पिछले सेशन में ही एडमिनिस्ट्रिटिव सर्विसेज के जो रूलस पेश हुये थे उसमें जो डिस्क्रिमिनेशन किया गया था कि विवाहित महिलाओं को एडमिनिस्ट्रिटिव सर्विस में न रखा जाय, उसका आप लोगों ने बड़ी जोरों से समर्थन किया। क्या वह डिस्क्रिमिनेशन की बात नहीं थी? आज जब स्त्रियों की तरफ से डिस्क्रिमिनेशन की बात कही जा रही है तब आप लोग उसका विरोध कर रहे हैं। मैं तो यही मानती हूँ कि हम महिलायें माइनारिटी में हैं, इसलिये यह बात है। फिर भी जिन लोगों ने हमारा साथ दिया और हमारा समर्थन किया उनको मैं धन्यवाद देती हूँ।

"चेस्ट" शब्द जो धारा २५ में आया है उसके बारे में मैं यह कब्रना चाहती हूँ कि "चेस्ट" शब्द

बहुत ही वेग हैं और स्त्रियों के बारे में "चेस्ट" शब्द का प्रयोग करना महज समाज को धोका देना है। श्री मलकानी ने कहा कि पति और पत्नी दोनों के लिये एक ही शब्द होना चाहिये, अतः "चेस्ट" शब्द निकाल कर जो शब्द पुरुष के लिये रखा गया है वही शब्द स्त्रियों के लिये भी रखा जाय, यह ज्यादा उचित होगा और मैं मलकानी जी के संशोधन का समर्थन करती हूँ।

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): Sir, this is a very simple provision, and I need not dilate upon it. It appears as if a battle royal is being waged between a man and a woman. But that is not so. I think this sort of a provision is most desirable in a measure like this. Of course, I will not dilate any further. This provision seeks to provide for permanent alimony and maintenance. It is a very simple provision. After all, we should see what is the nature of the amendments that have been proposed. The lady Member, Dr. Seeta Parmanand, wants only a change in the wording. According to her, there is no change in the meaning. Since that is so, I do not see any reason why there should be any change. And then, as regards amendment No. 190, I have carefully tried to understand it, but in view of some provision in clause 24, that amendment makes no meaning. Therefore, I cannot accept it. Then, with regard to amendment No. 186, I think, it needs no argument to say that that amendment is not at all necessary. The hon. lady Member said that women did not run after alimony. I also admit it; I also move in society, and I know much about the middle classes and the lower middle classes. And this is not going to affect very many people. Ordinarily, husbands and wives try to adjust themselves. Why should we presume that all husbands will be demons incarnate? We should not try to create another problem in our country, viz. man v. woman. With respect to amendment No. 188, I might say that that also is more or less a vindictive amendment.

Why should we make it penal? It is not desirable always to harp upon the idea that the woman is always helpless. I think both, man and woman, can be helpless or both can be helpful. Normally we find that men and women adjust themselves. And I think this is a simple provision which should stay. I, therefore, do not propose to accept any amendment, and I request that this simple clause may be passed.

MR DEPUTY CHAIRMAN: The question is:

185 "That at page 11, for lines 28 to 32, the following be substituted, namely:—

'(3) If the court is satisfied that the wife has had sexual intercourse with any man other than the husband himself it shall rescind the order''

The motion was negatived.

MR DEPUTY CHAIRMAN: The question is:

186 (11) "That at page 11, in lines 29—32, the words 'or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock' be deleted"

The motion was negatived.

SHRIMATI SAVITRY NIGAM: Sir, I beg leave to withdraw my amendments.

*Amendments Nos 188 and 189 were, by leave of the House, withdrawn.

SHRI B. GUPTA: Sir, I beg leave to withdraw my amendments.

*Amendments Nos 190 and 191 were, by leave of the House, withdrawn.

*For text of amendments Nos 188, 189, 190 and 191, see col 2178 supra.

MR. DEPUTY CHAIRMAN: The question is:

192. "That at page 11, lines 29—32, for the words 'if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order', the words 'if either party has had sexual intercourse with any person outside wedlock, it shall rescind the order' be substituted."

(After a count) Ayes—17; Noes—22.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 25 stand part of the Bill."

The motion was adopted.

Clause 25 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we take up clause 26.

SHRI B. GUPTA: Sir, I move:

193. "That at page 11, for the existing clause 26, the following be substituted, namely:—

"26. *Custody of children.*—(1) In any proceeding under this Act, the court shall pass orders to the effect that the mother shall be entitled to the custody of the children until they attain the age of twelve after which such orders may be modified in accordance with the wishes of the children:

Provided that the court may deny custody of the children of twelve years or below to the mother if the mother is insane or found morally degenerate.

(2) The court may, from time to time, make orders with respect to the maintenance and education

of such minor children consistently with the wishes, whenever possible, and also revoke or suspend such orders, provided that such revocation or suspension shall be made consistent with the requirements of the children's welfare, and where the children are in the custody of the mother, with the mother's right to such custody."

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

194. "That at page 11, lines 33-34, for the words 'In any proceeding under this Act, the court may,' the words 'The mother shall be considered the natural guardian of the children even after divorce, but the court may, however,' be substituted."

PANDIT S. S. N. TANKHA: Sir, I move:

195. "That at page 11, after line 44, the following proviso be added, namely:—

'Provided that it shall at no time be competent for the court to grant the custody of a boy below the age of five years and of a girl below the age of seven years if the mother desires or is willing to retain their custody except where she is adjudged to be of immoral character.'

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

PANDIT S. S. N. TANKHA: Now, Sir, why do I want this amendment? As you know, Sir, under the Hindu law, guardianship of the child is with the father. Although under law this is so, yet it is a great hardship both for the mother as also for the child, to tear the child away when it is of a very young age. I have known of cases, in which a divorce court, even where there was no allegation of immorality against the wife, has at its whim, directed that a boy of four

years should be removed from the mother I consider, it was most wrong of the court to do; and since there is danger that such orders may be passed hereafter also, I consider that a certain minimum age should be prescribed before which the court will not be competent to take away the custody of the child from the mother. I also know of another case in the divorce court, where although there was no allegation of immorality against the mother the two daughters of that lady who were just 7 or 8 years of age were taken away from the custody of the mother and handed over to the father. I consider such orders most unfair and unjust, and against the interests of the children themselves. Since under the previous law it is the court which decides this matter, I do not now want to leave it to the discretion of the court, but I want it to be bound down by the stipulation that if a girl is below the age of 7 years, her custody will not be taken away from the mother, and if a boy is below the age of 5 years, his custody will not be taken away from the mother. The only exception to this rule will be where a mother, supposing she wants to remarry, does not want the custody of the child, or where, because of the immorality of the mother the court does not think it expedient to place the custody of the young child in her care. It is only then that such custody should be allowed to be taken away from the mother and not otherwise. We know that under the Mohammadan Law the rule of custody is that a girl, until she attains puberty, remains under the custody of the mother, and a boy, until he attains the age of seven years remains in the custody of the mother. But since the Hindu law has no such stipulation and the guardianship of the boy or the girl remains with the father, it is necessary that in making provision for guardianship under this enactment, some restrictions should be imposed, and the ages suggested by me are the very minimum, which I consider to be reasonable. I am willing to accept the amendment of Mrs Parva^{hi} Krishnan—I think it is No 104—

where she says that the custody of the child until the age of twelve years should not be taken away. I am willing to accept that position, if the House accepts it, but in case it is not agreeable to accept her amendment, then I would press for my amendment, and I hope it will be accepted by the House.

4 P.M.

श्रीमती सावित्री निगम : उपाध्यक्ष महोदय, अनेक बार कई सदस्यों द्वारा इस बात का समर्थन किया जा चुका है कि बच्चों की सरक्षकता का, गार्डियनशिप का, अधिकार प्रकृति ने भी मा को दिया है, इसलिए उसका अधिकार सबसे बड़ा है और वह अधिकार उसको दिया जाना चाहिए। इस बात का ध्यान में रखते हुए मैं श्रीमती पार्वती कृष्णन के अमेन्डमेंट का, जिसमें उन्होंने बारह वर्ष की अवस्था तक मां को सरक्षकता का अधिकार रखा है, हार्दिक समर्थन करती हूँ। इसको प्रवृत्त करने के लिए कि मा को यह अधिकार देना सतान के हित में, मा के हित में और परिवार के हित में सबसे अच्छा रास्ता है, मैं सदन में एक मिनट के अंदर दो तीन बातें कहूँगी।

पहली बात यह है कि आप स्वयं ही सांच लें कि जो व्यक्ति अपनी पहली पत्नी का आदर नहीं करता और नई पत्नी करने के लिए उसे ठुकरा देता है वह उस नई पत्नी के होते हुए पहली पत्नी के बच्चों की क्या पर्वाह कर सकता है। फिर एक विमाता जो कि बिलकुल इनएक्सपीरिएन्स होगी वह कैसे उस बच्चों को स्वीकार कर सकेगी? इसलिए माता पिता की गलती से, कमजोरियों से या दुश्चरित्रता के कारण, एक अबाध बच्चों को पिता की कस्टडी में दे कर हम दुर्गचार करते हैं और उसके जीवन को एबनार्मल बना देते हैं, और बच्चों को माता के प्रेम और वात्सल्य की गोद से उठाकर पिता की कस्टडी में रख देते हैं।

दूसरी बात मैं यह कहना चाहती हूँ कि जिस पिता ने दुश्चरित्रता के आधार पर बच्चों की मां को तलाक दिया है यदि वह सतान लड़की हो, तो मैं आपसे निवेदन करना चाहती हूँ, सरकार

[श्रीमती सावित्री निगम]

से निर्वद्वन करना चाहती हूँ कि बारह साल के बाद भी किन्हीं हालातों में उसकी कस्टडी पिता को न दी जानी चाहिए। इसका कारण यह है कि पिता तो स्वयं ही दुश्चरित्र होगा और आस-पास जो वातावरण होगा वह भी विषाक्त होगा, और उससे कन्या का जीवन नष्ट हो जायगा। इसलिए, मैं सरकार से प्रार्थना करना चाहती हूँ कि बारह साल के बाद भी माता को बच्चे का संरक्षण दिया जाना चाहिए और इस सम्बन्ध में जो संशोधन रखा गया है उसको मान लिया जाना चाहिए, और साथ ही साथ बच्चों की सेंटेंसेस के लिए मां को कुछ रुपया दिलाया जाना चाहिए।

DR. SHRIMATI SEETA PARNAND: Sir, I am speaking on my amendment No. 194, and it is based on the birth right of the mother—and the child also. The mutual relation demands that the child should be looked after by the mother and the mother has the prior right to look after the child, even in preference to that of the father. The clause as it is does not recognize this right. It says: "In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions....." That means it does not recognize, before putting down in so many words, the natural right of the mother to be the guardian of the child. Well, as I have said in my speech on the first reading of the Bill, that nature even has given the custody of the child, from the very time of conception, to the mother and it is not right not to recognize that right in our legislation, as it does not take away the right of the court in cases of desirability of a change. The insertion of the words which I have suggested does not take away the right of the court to change the order from time to time as circumstances always may demand. I do not want to repeat the arguments put forward so well by Mrs. Savitry Nigam, how a step-mother or even the father, with the limitations that he has, will not be able to look

after the child in the same way. Even giving the physical comforts is not the only thing that a child requires. The mother's touch, the mother's look even at the child has some value, emotional as well as educative, which nothing else in the world can make up. In order to recognize this natural right, the mother's place in our family, in our society and in our legal system, these words must be put there and I do hope that the hon. Law Minister would accept this amendment. Recognizing this and wanting to give women their due place, his other colleague has so eloquently put in the speech which he made when replying to the speeches on the first reading that they are fully conscious that women in Hindu society have held such a high position, how they have helped to preserve the Hindu culture, Hindu religion, how though the men may have the right, women have the veto in day to day life—we have seen an example of that veto just now over the alimony division, but that is by the way. So, I would appeal to him to put these few words as suggested in the amendment.

SHRIMATI PARVATHI KRISHNAN: Sir, in putting this amendment before the House, I wish to make it clear that it is in the interests of children that we have brought this amendment. It has been recognized throughout the ages, in every stage of society and civilization, that the mother is the natural guardian of the child. In the mother's absence—whether it be because the mother has been ill; or the mother has left the child an orphan at an early age; or for various other reasons the child is separated from the mother—the child's life is always incomplete. As I said earlier in my first speech, the greatest literature, perhaps in the world, has come into being glorifying the beauty of motherhood, glorifying the love of the mother for her child, of the child for the mother. It is not just mischance; it is not just by any accident that poems and great stories have not been written about the glories of the father's love for his child or the child's

love for his father. It does not mean that fathers also do not love their children, but what is the reality? When a child is ill, even if the child be at the age of fifteen or thirty, and needs attention at night, is it the father or is it the mother who is to be found at the bedside of that child—be it of any age? Right from the time of birth, as long as the mother and father are living, the reality is that it is always the mother who is there, to smooth the fevered brow, to wipe the sweat from the forehead of the feverish child. And the father will be snoring in the next room.

SOME HON MEMBERS No, no

SHRIMATI PARVATHI KRISHNAN Of course, he will be available for ringing up the doctor or for taking the car out and doing all those manual duties. But it is the spirit of motherhood always which really rules humanity and the natural right of the mother to be the guardian of her child should be recognized by all humane people, by all people who are in favour of social reform and social measures. I wish to make it absolutely clear that this is not a question of the equal rights of men and women. It is becoming rather monotonous to have one side saying that men are lining up against women and on the other side that women are lining themselves up against men. I do not subscribe to that view, because I feel that progressive people do not differentiate between one sex and another; they look upon society as a whole, they feel that civilisation can develop only when social reforms are brought forward and when society as a whole is raised to a higher level. There is, of course, the time-honoured argument that I am sure so many of our hon friends would like to get up and urge, "What if the mother pampers the child? The discipline of the father is necessary so that our future citizens can grow up unspoilt, disciplined, with honour, integrity and so on and so forth." For that, provision is made in this amendment, and that

is what I would like to draw the attention of hon Members to:

"The court may, from time to time, make orders with respect to the maintenance and education of such minor children consistently with the wishes, whenever possible, and also revoke or suspend such orders, provided that such revocation or suspension shall be made consistent with the requirements of the children's welfare, "

I want to emphasise the word "welfare." If there be cases where it is felt that the mother is pampering the children too much as a result of being separated from the husband, she might be giving in too much to the children so that they are growing wilful and without discipline, to guard against that difficulty, there is a provision here by which children can be rescued from that danger. Therefore, there need be no apprehension on that score.

The second argument is what would happen if the mother, who is divorced, is leading a life of adultery or is morally degenerate and so on? There, again, to safeguard against such cases also, there is a provision that the court may deny the custody of the children of twelve years or below to the mother if the mother is insane or found morally degenerate. I am sure that the Members of this House will have no quarrel with this amendment and that they will, in the largeness of their mind, having the interests of the future generation of this country at heart, having the interests of those children who will be inheriting the provisions of this law, and also having in mind that children should as far as possible be left with their mothers having all these in mind, unanimously, large-heartedly and open-heartedly accept this amendment.

SHRI KISHEN CHAND I want to speak

MR DEPUTY CHAIRMAN I have to bring to your notice that we will have to finish this Bill, including the

[Mr. Deputy Chairman.]
third reading, today. Mr. Bhupesh Gupta will co-operate.

SHRI KISHEN CHAND: I entirely agree that children should be well-looked after, but after all it is a question of which party is more educated. Suppose the atmosphere in the house is one of illiteracy; naturally the children will not be brought up properly. If the mother is more educated, I think the custody should be given to the mother. If the father is more educated, the custody should be given to the father. But, may I draw your attention to the fact that in boys' schools, I know definitely, the other boys will make the life of the boy of a divorcee almost impossible? If the other boys ask him, "Who is your father?" and the boy tells them, "My father has divorced my mother. I am without a father.", then naturally his life will become impossible in the school, and he will not be able to get proper education in the school. Specially in the case of boys, the custody should be with the father, as far as possible. Therefore, I submit that the clause as it stands in the Bill should be retained and that the amendment should not be accepted.

SHRI P. T. LEUVA (Bombay): I want to ask a question of the hon. Minister. I am not speaking on the amendments. I am confining myself to the last three lines of the clause: "and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made." Now, the order may be made by the trial court, and then the matter may go in appeal to higher courts, even to the Supreme Court. Now, the order passed by the Supreme Court becomes the final order, and then that order has to be obeyed, but according to the clause now, "the court may also from time to time revoke, suspend or vary any such orders and provisions previously made." It is not clear which court is meant. This will create hardship.

MR. DEPUTY CHAIRMAN: It means the court of original jurisdiction.

SHRI P. T. LEUVA: The court may also revoke, suspend or vary any such orders and provisions previously made. This order may mean the order passed by the court which originally decided the case or by the appellate court. So, if you retain this, difficulties of interpretation may arise in future. Suppose a case has been filed in the Supreme Court it may very well be argued that it is the Supreme Court which will be giving the final orders and so that Court alone can revoke, suspend or vary any such orders and provisions previously made.

MR. DEPUTY CHAIRMAN: Suppose the original court passes an order and then the Supreme Court on appeal modifies that order; even then the court of original jurisdiction can modify the orders.

SHRI P. T. LEUVA: If the order of the appellate court is binding, then that order can only be changed by the court which passes the final order.

SHRI H. V. PATASKAR: Not necessarily.

SHRI P. T. LEUVA: Probably my hon. friend is thinking of maintenance, 489. So far as 489 is concerned, there is a specific provision that, if there is any change in the circumstances of either party, then the court has the right to vary the maintenance order. But those words are not used in this clause.

SHRI H. V. PATASKAR: In the case of a maintenance decree, supposing the original decree is Rs. 100 per month, and then it goes to the higher court. It may pass orders for some other amount. Still the court of original jurisdiction can vary the decree if circumstances so require. Here also the governing provision is just on the lines of that. If circumstances change and the court thinks it just and proper, the original court will vary the order.

SHRI P. T. LEUVA: In the case of maintenance, that power has been given, but here that power has not

been given to the court of original jurisdiction.

SHRI H. V. PATASKAR: I have considered my friend's point. The governing provision is that the court may pass such orders as are just and proper and even after the Supreme Court.....

SHRI P. T. LEUVA: Here also if the intention is that the original court can change the orders, when there is a change in circumstances, the wording must make it clear.

SHRI H. V. PATASKAR: It presupposes.

SHRI P. T. LEUVA: But it is not clear here.

SHRI H. V. PATASKAR: So far as I find, the position is the same. However, the matter may be examined.

So far as the relationship of the mother in general is concerned, I entirely agree with what the hon. lady Members have suggested and I think it is needless to say that the mother in all parts of the world is regarded as the best guardian for infant children. That is normally true, but what we are trying to do in clause 26 is to make provision in respect of those children, whose father and mother have unfortunately resorted to a court of law for getting divorce. Even in those cases, the only suitable provision that could be made is that that court which takes cognizance of this matter shall decide what is just and proper. If we go on enumerating cases of what should be just, it is a different matter. Therefore, the whole idea underlying it is not to show any disrespect, inferiority, inequality to any man or for woman but where to the misfortune of the child the father and mother unfortunately have resorted to a court of divorce,—which I am sure will be on very rare occasions—the court will be given the power to find out and I

am sure in many cases where young people are concerned, no court will be so heartless or cruel to take away the child from the mother and give to the father. But circumstances may be there, as was argued by some, where the mother may not be a proper guardian. It is only in rare cases. The clause is quite proper as it is and it is all agreed and I think it is a universal proposal and it does not require any argument to say so far as the question of custody by the mother is concerned. Now, it is tried to be argued that it is a right. There are some amendments that it is the right of woman to have the custody of the child. There is no question of right. It belongs to both so far as maintenance, education, custody, etc., are concerned. Both the father and the mother are naturally expected to take care of the young children and it is only, as I say, in a few cases of this type that this may arise and this is not the place where the rights of men or women should be discussed and I think, therefore, that my sisters will very patiently try to look into the provision as a provision made for exceptional cases when unfortunately, as I said to the misfortune of the child, the father and mother have resorted to the divorce court, and the only authority to whom the discretion could be given without mentioning or enumerating everything is the court itself and no court is supposed to be so ignorant of the fact that normally young children will be taken care of better by a mother. I have nothing further to add.

DR. SHRIMATI SEETA PARNANAND: This last sentence "and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made" are not there in an exactly identical clause passed by us in the Special Marriage Act. What is the object in adding these lines here?

MR. DEPUTY CHAIRMAN: They are there. If you want I will read

[Mr Deputy Chairman.]
from it. You have missed the line.
In section 38 it says in the Special
Marriage Act:

"May upon application by petitioner revoke, suspend or vary from time to time all such orders and provisions with respect to custody, etc."

It is there. They come in the middle of the section.

The question is:

193. "That at page 11, for the existing clause 26, the following be substituted, namely:—

'26. *Custody of children.*—(1)
In any proceeding under this Act, the court shall pass orders to the effect that the mother shall be entitled to the custody of the children until they attain the age of twelve after which such orders may be modified in accordance with the wishes of the children:

'Provided that the court may deny custody of the children of twelve years or below to the mother if the mother is insane or found morally degenerate.

(2) The court may, from time to time, make orders with respect to the maintenance and education of such minor children consistently with the wishes, whenever possible, and also revoke or suspend such orders, provided that such revocation or suspension shall be made consistent with the requirements of the children's welfare, and where the children are in the custody of the mother, with the mother's right to such custody.'

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

194. "That at page 11, lines 33-34, for the words 'In any proceeding under this Act, the court may,' the words 'The mother shall be considered the natural guardian of the

children even after divorce, but the court may, however,' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

195. "That at page 11, after line 44, the following proviso be added, namely:—

'Provided that it shall at no time be competent for the court to grant the custody of a boy below the age of five years and of a girl below the age of seven years if the mother desires or is willing to retain their custody except where she is adjudged to be of immoral character.'

(After a count) Ayes—9; Noes—20.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 26 stand part of the Bill."

The motion was adopted.

Clause 26 was added to the Bill.

MR. DEPUTY CHAIRMAN: We now come to clause 28.

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

196. "That at page 12, at the end of line 11, after the word 'pronounced' the following be added, namely:—

'by the principal civil court of original jurisdiction and within one month after the decision appealed from shall have been pronounced by a city civil court or any other civil court which may be specified by the State Government, by notification in the Official Gazette.'

SHRI RAJAGOPAL NAIDU: Sir, I move:

224. "That at page 12, lines 9 to 11 be deleted."

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

SHRI J. S. BISHT: The only idea of moving my amendment is to clarify the position. I think for appeals the Code of Civil Procedure is applicable in all cases. I had a doubt that in the case of an appeal from the District Court the time is three months for an appeal to the High Court but in the case of all appeals from say, a Munsif's Court or a Subordinate Judge's Court, the time is 30 days but now the power of trying these matrimonial cases is bound to be given to many civil courts as well as to other courts as the State Government may empower in this behalf and it is quite possible that the City Munsif may be empowered in this behalf in some States. Therefore, it does not seem to be quite fair that there should be this long gap of 90 days for an appeal from the Court of the Munsif or a Subordinate Judge to that of a District Court.

MR. DEPUTY CHAIRMAN: Will not the Schedule of Limitation Act provide for these? Why should it find a place here?

SHRI J. S. BISHT: It lays down here the time. It says that every such appeal shall be instituted within 3 months. This is a new limitation. The second proviso gives a new limitation. That is why I wanted to bring it in line with the law of limitation and the C.P.C.

SHRI RAJAGOPAL NAIDU: Sir, my amendment is for deletion of the last proviso which gives the three month's time.

MR. DEPUTY CHAIRMAN: Don't you want any limitation?

SHRI RAJAGOPAL NAIDU: Yes, because it is not necessary since it is stated in clause 21 that the C.P.C. will

be applicable and when the C.P.C. is made applicable the rules framed by the High Court will also be applicable. In the C.P.C. Order 40 deals with the provision for appeals and section 12 of Limitation Act deals with the details of applicability of limitation.

SHRI D. P. KARMARKAR: I am prepared to have the proviso only. I mean the second.

MR. DEPUTY CHAIRMAN: That should satisfy you also.

SHRI RAJAGOPAL NAIDU: Yes.

MR. DEPUTY CHAIRMAN: The question is:

224. "That at page 12, lines 9 to 11 be deleted."

The motion was adopted.

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

*Amendment No. 196 was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 28, as amended, stand part of the Bill."

The motion was adopted.

Clause 28, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: The motion is:

"That clause 29 stand part of the Bill."

DIWAN CHAMAN LALL: Sir, I move:

197. "That at page 12, line 17, after the word 'different' the word 'religions' be inserted."

MR. DEPUTY CHAIRMAN: Mr. K. B. Lall is not here and so amendment No. 198 is not moved.

*For text of amendment *vide* col. 2208 *supra*.

SHRI KISHEN CHAND We are not moving amendment No 199

SHRI B M GUPTE (Bombay) Sir, I move

200 "That at page 12, line 21, for the words 'any special enactment' the words 'the Madras Marumakkattayam Act, 1932' be substituted"

MR. DEPUTY CHAIRMAN Amend ment No 201 of Shri Kishen Chand is barred

SHRI T D PUSTAKE (Madhya Bharat) Sir I move

202 "That at page 12, after line 22, the following be added, namely —

Provided that in the case of a divorce effected after this Act comes into force, by customary methods such as, by mutual consent, or by a meeting of the caste is reduced to writing executed by the parties to the divorce and registered at the office of a Registrar or Sub-Registrar of documents "

SHRI RAJAGOPAL NAIDU I am not moving my amendment No 223

MR. DEPUTY CHAIRMAN All these amendments and the clause are now open for discussion

DIWAN CHAMAN LALL Mine is a small amendment and

SHRI D P KARMAKAR With a view to save time, I would like to submit that I am prepared to accept amendment No 197 moved by Diwan Chaman Lall

DIWAN CHAMAN LALL I have nothing to say except that this amendment is moved for clarifying the position in view of the provision in the Hindu Marriages Validity Act, 1949

SHRI B M GUPTE My amendment was designed for the purpose of

repealing the State Acts, but that purpose is now served by Diwan Chaman Lall's amendment But I find that the question of the Malabar Act—the Madras Marumakkattayam Act—remains We have to say whether that Act remains or not I feel that the Government wants that Act to continue I am prepared to make an exception of that Act because an entirely different system prevails there and the divorce law under the Marumakkattayam Act is different Therefore, that Act should be preserved I personally feel that the Government also want to preserve it Otherwise they would have included it in the amendment moved by Diwan Chaman Lall

MR. DEPUTY CHAIRMAN But Mr Gupte sub clause (2) protects it, I mean sub-clause (2) of clause 29

SHRI B M GUPTE But if it is to be preserved, it should be specifically stated That is my point

SHRI T D PUSTAKE Sir, I have moved my amendment for two reasons First of all, oral evidence can easily be produced under different pretexts and the court may believe it or may not believe it And in the case of poor women that would lead to lot of trouble and loss Secondly it is very easy to produce evidence for positive things i.e. to say that divorce did take place, but it is difficult to produce evidence that divorce did not take place Moreover such oral evidence can be tampered with This way also women will be in great difficulties I know that there was an Act called Natra Dhanika Act in the former Gwalior State for more than 40 years which provided that if there is a divorce it had to be registered in a court of law I do not seek to have it registered in a court of law but I submit that the fact of divorce should be registered before a Registrar as a document This can easily be done and in the event of judicial proceedings the evidence could easily be produced and the proceedings in the courts will also be shortened I may also submit that in cases of this

nature women can easily be won over for some time, because the man who has committed an offence of bigamy usually cajoles or entreats the woman to say that there was a divorce even when there was none and thus escapes the punishment to which he was liable I know of cases in Bombay Presidency where out of 1 200 nearly 700 people were acquitted and got scot free though they had committed bigamy Therefore I feel that this amendment which is a simple one and which seeks to register the fact of a divorce should be acceptable to the Government There will then be no necessity for oral evidence and perhaps for no judicial proceedings even

SHRI D P KARMARKAR As regards Mr Gupte's amendment

MR DEPUTY CHAIRMAN But he does not press it

SHRI D P KARMARKAR As regards Mr Pustake's amendment there is something to be said from that point of view But as you are aware we do not want to disturb whatever exists at present and this is a proposal requiring the registration of divorce in the Sub-Registrar's office and making it a decisive evidence and all that Frankly, at the present moment I am unable to accept the amendment without further thought But I can assure the hon Member that we will give our thought to it

MR DEPUTY CHAIRMAN The question is

197 "That at page 12 line 17 after the word 'different' the word 'religions' be inserted "

The motion was adopted

SHRI B M GUPTE I beg leave of the House to withdraw my amendment (No 200)

*Amendment No 200 was by leave of the House withdrawn

SHRI T D PUSTAKE I would like my amendment to be put to vote

*For text of amendment vide col 2211 *supra*

MR DEPUTY CHAIRMAN The question is

202 "That at page 12, after line 22 the following be added, namely —

Provided that in the case of a divorce effected, after this Act comes into force, by customary methods such as, by mutual consent, or by a meeting of the caste is reduced to writing executed by the parties to the divorce and registered at the office of a Registrar or Sub-Registrar of documents "

The motion was negatived

MR DEPUTY CHAIRMAN The question is

"That clause 29 as amended, stand part of the Bill

The motion was adopted

Clause 29 as amended, was added to the Bill

MR DEPUTY CHAIRMAN Now we come to clause 30 There are two amendments

DR. CHAMAN LALL Sir, I move

203 "That at page 12, for the existing clause 30 the following be substituted, namely —

'30 Repeals—The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946), the Hindu Marriages Validity Act, 1949 (XXI of 1949), the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 (Bombay Act XXV of 1946) the Bombay Hindu Divorce Act 1947 (Bombay Act XXII of 1947) the Madras Hindu (Bigamy Prevention and Divorce) Act 1949 (Madras Act VI of 1949), the Saurashtra Prevention of Hindu Bigamous Marriages Act, 1950 (Saurashtra Act V of 1950) and the Saurashtra Hindu Divorce Act, 1952 (Saurashtra Act XXX of 1952) are hereby repealed'"

SHRI KISHEN CHAND: Sir, I move: this adultery remains a penal offence. That means besides this divorce, there will be penal action against both the man and the woman.

204. "That at page 12, lines 34-35, after the words and figures 'and the Hindu Marriages Validity Act, 1949 (XXI of 1949)' the words and figures 'and sections 497 and 498 of the Indian Penal Code (XLV of 1860)' be inserted."

SHRI V. K. DHAGE (Hyderabad): Only against the man.

MR. DEPUTY CHAIRMAN: Is the hon. Minister prepared to accept any of these amendments?

SHRI D. P. KARMARKAR: Sir, I am prepared to accept the amendment moved by Diwan Chaman Lall.

SHRI KISHEN CHAND: Sir, I will not take long. I want to submit that these penal clauses in sections 497 and 498 of the Indian Penal Code were enacted on the assumption that in a Hindu marriage.....

SHRI KISHEN CHAND: I think it is most unfair. I think there is no justification to retain that penal clause. Even in the laws of other nations whenever a woman is considered to be the property of man and any other person deprives the husband of his property, penal action is allowed. But the concept has completely changed and, therefore, I submit that it would be very wrong to retain that clause in the Penal Code. This is the most opportune moment to introduce a change and repeal it.

MR. DEPUTY CHAIRMAN: But for that you have to amend the Indian Penal Code. You cannot bring it under this Hindu Marriage Act.

SHRI KISHEN CHAND: But we are repealing so many other things.

MR. DEPUTY CHAIRMAN: But you cannot repeal it in this Act, the Indian Penal Code has to be amended.

SHRI KISHEN CHAND: But it can be repealed under this Act.

MR. DEPUTY CHAIRMAN: All right. Let us have your arguments.

SHRI KISHEN CHAND: Sir, these sections were inserted in the Indian Penal Code on the assumption that a Hindu wife becomes the property of her husband, therefore, it was thought that the wife being the property of the husband, there should be a penal clause. But now that the concept of marriage has completely changed and now that the idea is to have civil marriages between the parties, it should not remain a penal offence at all.

I beg to submit that adultery is a cause for dissolution of marriage under this Bill and side by side with

SHRI D. P. KARMARKAR: As I understand my hon. friend, he wants to have another type of social reform. He cannot have it under this Bill; if he wants to try his luck, he may bring in some such resolution or a Bill when it is relevant. He cannot ask us to withdraw certain aspects of the Penal Code.

MR. DEPUTY CHAIRMAN: Are you opposing it?

SHRI D. P. KARMARKAR: I violently oppose it, Sir.

SHRI B. GUPTA: But you are non-violent, I thought.

MR. DEPUTY CHAIRMAN: The question is:

203. "That at page 12, for the existing clause 30, the following be substituted, namely:

'30. *Repeals.*—The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946), the Hindu Marriages Validity Act, 1949 (XXI of 1949), the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 (Bombay Act XXV of 1946), the Bombay Hindu

Divorce Act 1947 (Bombay Act XXII of 1947) the Madras Hindu (Bigamy Prevention and Divorce) Act 1949 (Madras Act VI of 1949), the Saurashtra Prevention of Hindu Bigamous Marriages Act, 1950 (Saurashtra Act V of 1950) and the Saurashtra Hindu Divorce Act 1952 (Saurashtra Act XXX of 1952) are hereby repealed ”

The motion was adopted

MR. DEPUTY CHAIRMAN The question is

204 ‘That at page 12, lines 34 35 after the words and figures ‘and the Hindu Marriages Validity Act, 1949 (XXI of 1949)’ the words and figures and sections 497 and 498 of the Indian Penal Code (XLV of 1860)’ be inserted ”

The motion was negatived

MR. DEPUTY CHAIRMAN The question is

That clause 30 as amended stand part of the Bill.”

The motion was adopted

Clause 30 as amended, was added to the Bill

MR. DEPUTY CHAIRMAN We now come to clause 1 Amendments Nos 4 and 6 are barred

DR. SHRIMATI SEETA PARMANAND Sir I want to move my amendment No 5 I also want to speak on that

SHRI D P KARMARKAR Before she speaks, I may say that I am prepared to accept it In spite of this if she wants to speak I have nothing to say.

DR. SHRIMATI SEETA PARMANAND You are going to accept it? That is very good

MR. DEPUTY CHAIRMAN What a pity? You have missed a speech

SHRI D P KARMARKAR I am very sorry Sir

DR. SHRIMATI SEETA PARMANAND Sir, I beg to move

5 “That at page 1 line 5, the words ‘and Divorce’ be deleted ”

MR. DEPUTY CHAIRMAN The question is

5 “That at page 1 line 5, the words ‘and Divorce’ be deleted ”

The motion was adopted

MR. DEPUTY CHAIRMAN The question is

“That clause 1 as amended, stand part of the Bill ”

The motion was adopted

Clause 1 as amended was added to the Bill

MR. DEPUTY CHAIRMAN Motion moved

That the Title stand part of the Bill

Amendments Nos 1 and 3 are barred I think No 2 will be accepted

SHRI D P KARMARKAR Yes, Sir

DR. SHRIMATI SEETA PARMANAND Sir I beg to move

2 “That in the Short Title the words ‘and Divorce’ be deleted ”

MR. DEPUTY CHAIRMAN The question is

2 “That in the Short Title the words ‘and Divorce’ be deleted ”

The motion was adopted

MR. DEPUTY CHAIRMAN The question is

“That the Title, as amended, stand part of the Bill ”

The motion was adopted

The Title, as amended, was added to the Bill

MR. DEPUTY CHAIRMAN The question is

‘That the Enacting Formula stand part of the Bill’

The motion was adopted

The Enacting Formula was added to the Bill

MR. DEPUTY CHAIRMAN Mr Karmarkar

SHRI D P KARMARKAR Sir, I beg to move

“That the Bill, as amended, be passed”

SHRI H D RAJAH Sir, before this third reading in this House begins, I wish to make a submission Rule 95 of the Rules of Procedure—sub rule (2)—says, ‘If any amendment of the Bill is made, any member may object to any motion being made on the same day that the Bill be passed, and such objection shall prevail unless the Chairman allows the motion to be made’ In this Bill, so many amendments have been moved and accepted by the Government and it is a matter which requires a clear study and digestion by the Members of this House before they can make up their mind to come and talk about it I would like to have your ruling Sir

MR. DEPUTY CHAIRMAN You will have it, shortly You read rule 95(2) which says, “If any amendment of the Bill is made, any member may object to any motion being made on the same day that the Bill be passed’ You read only the first part, not the later part

SHRI H D RAJAH I read that too, Sir Don’t be partial

MR. DEPUTY CHAIRMAN The second part says, “and such objection shall prevail unless the Chairman allows the motion to be made” Yesterday the House agreed that we should pass all the stages

SHRI H D RAJAH The same day.

MR. DEPUTY CHAIRMAN Yes and you also agreed So, the Chair has allowed it and we shall proceed with it

SHRI B K MUKERJEE May I ask one question? The Chair has already allowed Mr Karmarkar to move the motion and he moved the motion

MR. DEPUTY CHAIRMAN Order, order

Motion moved

That the Bill as amended, be passed”

SHRI H D RAJAH Sir I would like to oppose this Bill I oppose this Bill not because I am against

SHRI H P SAKSENA Have you permitted him to speak Sir?

MR. DEPUTY CHAIRMAN Yes You may get along, Mr Rajah

SHRI H D RAJAH Sir, I oppose this Bill not because I am opposed to monogamy, I oppose this Bill not because I am opposed to divorce but I oppose this Bill because it is unconstitutional and improper We have spent our time and energy in discussing the various provisions of this Bill Now, first of all, what does this Bill indicate? Sir, in a secular State, in a State where we have declared to be non communal, this Bill is 100 per cent communal It refers to Hindu marriages and nothing else.

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

Article 14 of the Constitution says that there is equality of law and equal protection of law and, therefore this Bill which cannot apply to every citizen of our country, becomes out of court in the eyes of the Constitution I would suggest to the Government that either they must eat up the Constitution and keep this Bill or else they must eat up the Bill and preserve the Constitution The point at issue is that under article 15 of

the Constitution it has been said that there cannot be discrimination on the basis of sex, religion or anything. I was proud when this Constitution was passed by the Constituent Assembly truly to the precepts and the conception of the fifty-year struggle of our country for the emancipation of this country, based upon nationhood and not based upon Hindus, Muslims, Sikhs or Christians. When that was the fundamental concept of the Congress, this little man spent seven years of his life believing in Gandhi and the values of Gandhian beliefs that the Congress and its members would be true to their words, true to their fight for liberation, true to the concept of life that they held for the liberation of this country—men, women and children, everybody—on the basis of being an Indian. Indians are a Nation; India is not Hindus; India is not Christians; India is not Muslims. On account of the fanatical agitation of the Muslims, Pakistan was acceded. These Congress leaders were responsible for that massacre arising out of partition of this country. We swallowed it and we accepted it and we followed the principle. After Independence, what is the attitude of the rulers of this country, the Congress Party? They want to create more divisions in the country and they want to compartmentalise legislation and they want to talk as a Hindu, as a Muslim, as a Christian and so on.

Another important matter that you must remember is that you are creating a dual citizenship in this country. The Hindu is elevated to the position of a monogamous animal whereas the Muslims are still entitled to have four wives. Now, if this is not discrimination I cannot understand English. With regard to this, you are conferring a special privilege upon the Muslims. Whereas you have degraded the Muslim sister, by virtue of this Bill, the Hindu sister becomes a superior animal. She has a husband who believes in monogamy; she is entitled to protect herself which I respect but at the same time, Sir, she

denies this fundamental right to her Muslim sisters by which the Muslim sister has become a second rate citizen of this country. The Constitution does not provide for a different citizenship for Muslims, a different citizenship for the Hindus and so on. The greatest disservice that Pandit Jawaharlal Nehru can do to this country is to do away with the right of equality to all the sisters of this country irrespective of Hindu, Muslim or Christian. Let us consider what the position will be after the passage of this Bill. When this Bill becomes an Act, all the surplus women who are today the wives of some Hindu or the other will be husbandless and by the process of the law being taken to the back period also, those ladies also will be made husbandless and in that process what happened in Bengal when those oppressive Hindus ill-treated their widows will happen to all of them. Those oppressive Hindus kept their women perpetually under subjugation. What happened to the Bengal widows will happen to the Hindu women all over India in the course of the years to come if this Bill is allowed to continue as law. All these women who are left out will have either to embrace Islam or any other religion where more than one wife is conceded in this country. It is monstrous; it is not only monstrous but it is improper that a State should legislate a law by which a certain section of women are thrown out to the mercies of other religions. That would mean that this Congress Party which is ruling this country today have become touts and agents of other faiths, especially of Islam. A law must be equitable and a law must be decent. Equality is given to everyone by the Constitution, but that is denied by this Bill. The second point is, what happens to the children that are born. Where a man has more than a wife, certainly the wife can seek redress by way of divorce, but what does happen to the children? They are thrown into the street. There is no provision by which the children have to become the property of the

[Shri H D Rajah.]

State I can understand if there is at least such a provision by which the children are taken care of by Government and it feels it a duty to bring up such children

I want to warn the Government of the far-reaching political significance which our friends in those Congress Benches have not thought of. Let us see what happens assuming that this inequality is perpetrated in this country. A Muslim citizen can have four wives and produce 25 children and a Hindu will have a sophisticated wife who believes in divorce and will refuse to bear even a child. The consequence will be that in the course of ten or fifteen years there will be a complete upsetting of population and you will see only conflict and chaos in this country whereby again the Congress people, God forbid their rule at that time, will have to come to some terms with those and again divide this country and hand over the rest to the Pakistan Government because they will be part and parcel of that faith. Sir, I can understand your doing a thing in the most justiciable manner possible. In Turkey—it is a 100 per cent Islamic State—you have got a provision of a civil code. What does it say? No citizen of Turkey can have more than one wife, they have got a legislation which is based upon a civil code. There are Muslims in France and there are Muslims in England also. What is the law operating in those countries? The law that governs them is the civil law. They can have a marriage performed under civil law and then they can have a marriage performed under the religious concept. Here, that is being denied so far as this country is concerned. In this country, the position is reverse. We all believe in progress but that progress is anti-clockwise in an ante diluvian manner. You have set the clock in a different way.

Sir, Mr Madhava Menon the other day said that H D Rajah wrote a book "Why Marriage?" Sir let me explain that it is not "Why Marri-

age?" but it is "Is it a crime?" Sir, that title, "Is it a crime" was conceived by me when I was undergoing imprisonment in the Thana Jail in Bombay when the first satyagraha movement was on. It was a true delineation of the oppression of a Hindu woman, a married woman who could not have the right to marry again because there was no provision for divorce. That was the point.

THE VICE CHAIRMAN (SHRI V. K. DHAGE) Mr Rajah, don't you think that you need a glass of water?

SHRI H D RAJAH I shall be grateful if you permit it, Sir. I should not be mistaken or misjudged in this House. I am talking to the House out of pure sincerity of conviction and I have a great feeling in my mind.

SHRI D P KARMARKAR Thirst?

SHRI H D RAJAH. Our country wants progress but that progress must be faithful to the Constitution, must be faithful to the secular concept of our life and must be faithful to our laboured work which you have put in solidly for 2½ years as a result of which you have produced what is called the Constitution of India. Ours is a Republic and the Republic must grow well. We are now tendering towards a social State according to the declared faith and objective of our Prime Minister, Mr Nehru. I have served under him in the Congress in the thirties and I had crossed swords with him in Lahore and out of my life I have spent the best part of 12 years in imprisonment on account of the Congress and its movement. So, when I talk of things, I talk with genuine feelings and not because I want simply to be rhetoric in this matter. I am saying to my friends, the leaders of the Congress Party who are running the Government today, "Do not commit suicide." Let the country be safe. Let there be a proper appreciation of the feelings of the people in this country. You have conferred equality of status in every aspect in this country, you have made a provision by which man is equal to man, woman is equal to man. There is no discrimination so far as

the sexes are concerned, there is no discrimination on grounds of religion and no discrimination on any ground whatsoever. The Constitution today gives us the basic strength, namely adult franchise, equality of status and equality in the eyes of the law and equal protection of the law. Having given four noble things, things which are found very rarely in any other Constitution in the world do not eat them up. That is what I ask as a citizen of this country as a representative of the masses of this country and I request you to bring in a law simplifying divorce. Do not have these ludicrous provision of having alimony and taking away that alimony by other provisions, as taking away by the left hand what you have given by the right, by making the provision so simple and easy. Say, a respectable citizen of this country can marry any respectable lady he likes, and if both of them disagree at any time, let them have divorce and be done with it. Let them not be bothered with all these issues. That will simplify your concept of social life of our womanhood in this country irrespective of religion. We may lift every lady in this country on to a high pedestal and we will worship her. Hinduism is such that you find today ten crores of Muslims and two crores of Christians. If Hinduism was not so tolerant these conversions would never have taken place. Therefore what I demand is that we should not bring in the ideals of the Western world.

THE VICE CHAIRMAN (SHRI V K DHAGE) We are talking of marriage, Mr. Rajah.

SHRI H D RAJAH Yes Sir I will take only two minutes more and I will be done with.

5 P.M.

THE VICE CHAIRMAN (SHRI V K DHAGE) It is now 5 of the clock, the usual time for the House to adjourn but if it be the pleasure of the House to sit for some time more I should like to know as to how much extension the House likes.

SHRI B GUPTA I think, Sir, we adjourn now. It is an interesting speech of Mr. Rajah and it will take a little more time also.

SHRI H D RAJAH Only three minutes more and I shall finish.

SHRI B GUPTA Tomorrow we have the Preventive Detention Act and we can delay it for some time and we can have these discussions.

THE VICE CHAIRMAN (SHRI V K DHAGE) I have said that this is the usual time to adjourn but yesterday the House agreed that all the stages of the Bill may be finished today. I should like to know the sense of the House and when the House should adjourn finishing all the stages of the Bill today. Shall we say that we sit till six o'clock and finish all the stages?

SHRI KANHAIYALAL D VAIDYA Till we finish all the stages.

SHRI H D RAJAH Now, Sir, I will not take much time as I have covered many important points which I wanted to refer to but I would only make this appeal to the legislators of our country. Look at this problem in an objective manner. Do not look at these problems in a narrow communal manner. There are provisions in this Bill which do not affect in the least those who do not profess Hinduism. There are a lot of people in this country who do not belong to any religion who do not want to be known by any religion. There is a sense of responsibility growing in them that they should develop this country on a real secular basis without getting themselves attached to any particular religion. You should respect their wishes also. You should do so in consonance with the progress of civilization. As I said, I am not opposed to divorce. I am not opposed to monogamy, but I am opposed to your sectional law and not secular law.

With these few words I commend to this House to throw out this Bill and bring in a fresh Bill on the model I have suggested.

SHRI J S BISHT Mr Vice Chairman, I support this Bill and wish that the House pass it today

With regard to the baseless allegations made by our esteemed friend Mr Rajah I have to point out to him that in this country we have got the Parsi Marriage Act That is a law which governs a very small community consisting of only two lakhs of people and nothing wrong has been found in passing such a law or in maintaining such law in this country He may also know that there is another law, the Indian Christian Marriage Act which governs all the Christians It has got all the provisions of monogamy and divorce Therefore all these communities are already governed by the laws of monogamy

SHRI B K MUKERJEE On a point of information, may I know when these laws referred to by my hon friend were passed?

SHRI J S BISHT Whenever they were passed I am only stating a certain state of affairs in this country Criticism was made that we were enforcing monogamy and divorce on a particular community What I am pointing out is that this monogamy and divorce already exist in so far as the Parsis are concerned and so far as the Indian Christians are concerned With regard to our Muslim brethren my friend is entirely wrong Their law is much more advanced than the law that is being passed here

SHRI H D RAJAH We know it

SHRI J S BISHT There the daughters inherit like the sons

SHRI H D RAJAH That is another matter

SHRI J S BISHT At the time of the marriage there is what is called as the dower, that is to say even at the time of divorce she can immediately demand it and that is a very

wholesome law The only difference with regard to the Muslims and Hindus is that they can marry up to four no more That is to say the law of monogamy is not being enforced in their case There also in 999 cases out of thousand monogamy is already in practice among them and with regard to that one out of a thousand let us wait for a few years, until our Muslim brethren also see that way or their womenfolk demand that monogamy be enforced by law We have no doubt that very soon, within the next five or ten years they will demand that In those circumstances there is nothing wrong in passing such a law So far as the Hindus are concerned this Bill has already been before the country for the last twelve years, there is nothing very special about it Even those who are critics agree that in 99 per cent cases monogamy is already being observed in this country If so what is wrong in giving it legal sanction? Also there are nearly 45 to 55 per cent of our people say in the Punjab or in the hills and Travancore-Cochin, in Bombay, Madras and various other parts, who are already observing divorce and that is by custom or enforced by ordinary *panchayats* Now you are given legal sanction for having divorce under certain safeguards and in a decent manner So there is nothing very novel in the Bill and it is in accordance with the times

The Bill Sir, as it has finally emerged in my judgment still leaves certain loopholes and I hope that in the Lok Sabha those points may be re-considered because we do not want that a law should go which is still vague or it leaves certain loopholes I point out to my hon friend that under clause 10(1)(e) he is allowing the right of judicial separation and (e) says 'has after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse' On this ground judicial separation has been allowed but divorce has been barred because under the new provision it must be "is living in adultery", not one act of adultery and

with regard to that divorce it says in clause 13 (VIII) 'be dissolved by a decree of divorce on the ground that the other party has not resumed cohabitation for a space of two years' etc Now that is very absurd I go and ask, for divorce against my wife on the ground of adultery I get a decree of judicial separation After two years I go to a court of divorce but I cannot get it because I cannot prove that she has not resumed cohabitation Now I do not want it The man who goes there and asks for judicial separation, he does not want that cohabitation and then she can also come up and defend herself under clause 23 (a) which reads "any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief" She can say "I am ready but it is this man who is trying to take advantage of his own disability and so on and so forth" Therefore, this is a lacuna which I hope will be corrected I mean, if you do not want to give relief for one single act of adultery, don't grant judicial separation at all Let them go together Even for judicial separation there must be a life of adultery This is something reasonable, rational and consistent, otherwise it becomes irrational that you grant a decree of judicial separation but you do not grant him a decree of divorce so that the position is that he cannot remarry and he should be hanging in the air

Then I also submit that this is a law which reforms to some extent, but the main idea was the codification of the law And Hindu law has been the subject of judicial decisions, right up to the Privy Council and every word is known and has got a fixed legal connotation Therefore, the introduction of new words like 'opposed to public policy' or "desertion which includes wilful neglect of the petitioner by the other party" or words like "is leading a life of adultery" is not desirable and we should get rid of these words and only such words should be there which will serve

the purpose and on which there have been judicial decisions all these years. The reason is that we do not want to open the flood gates of litigation We do not want that the law should remain vague. We want that the law should be as simple as possible so that this law which is going to be enforced on thirty crores of people in the villages and in the towns should be so easy that they can easily understand and should not become the paradise of lawyers

SHRI B M GUPTE. Sir, now when we are about to pass this law my first thought goes to the ailing Law Minister No doubt the Bill has been ably piloted by the versatile Minister for Commerce Nevertheless I cannot but feel that the Law Minister is not here on this occasion It is rather unfortunate that he should not have been able to pilot the measure for which he worked so hard I hope he will soon be all right and would be able to complete his task at least in the other House It is also rather sad that his decision to introduce the Hindu Code Bill by instalments was not well appreciated in certain quarters Personally I have no doubt that it was the right decision I have no doubt that the omnibus Hindu Code Bill would not have reached its destination on the Statute Book during the life of one Parliament and all the beneficial measures like this Bill would have been held up indefinitely I, therefore, think that it was the right decision It is a matter of particular gratification to me that the two points for which I wrote the minute of dissent have been upheld by this House The first point related to the continuance of the State Acts and I opposed that provision on the ground that the restricted continuance of these Acts would create new and unnecessary divorces and would cause confusion. The second point I raised was with regard to the raising of the marriage age I opposed that on the ground that it was an undesirable departure from the Sarda Act and that it was divorce from all the realities of the situation in the rural area I am glad that th-

[Shri B. M. Gupte.]

House has passed suitable amendments on both these points. I am, therefore, now in a position to accord my support to this Bill in a more wholehearted manner, than I would have done otherwise. Although I pleaded for the repeal of the State Acts, I must pay a tribute to the Bombay legislature, for the role it has played in the achievement of this reform on an all-India basis. Bombay has the proud privilege of giving a lead to the country in many fields of progressive activities and in this case also Bombay has lived up to that reputation. Seven years ago monogamy and divorce were enacted in the Bombay State and today we are only following that lead. To those who are vehemently opposed to divorce, I should like to point out the experience of Bombay. Seven years ago the Divorce Act was passed, as I said, and the heavens have not fallen there. Not only that, not a ripple was caused on the social scene. Therefore, the opponents of this Bill need not have the apprehension that as soon as this Bill is passed all the courts in the country are likely to be flooded with divorce petitions. After all, what is the right given? It is a restricted right, designed strictly for the relief of very hard cases of unhappy marriages. And I am glad that in this respect this House has maintained the approach of the Joint Select Committee. That approach was characterised by two concepts—the respect for the old ideal, of the past, and the readiness to face the realities of the present. Of course, the idea that marriage is a sacrament, that it is a tie which even death cannot sunder, is a very noble ideal, but the question is whether we can live up to it. The days, the times when that ideal could be lived up to are gone, gone for ever, gone into the limbo of the past. The times in which we live are far different entirely different from those times when there were fewer frictions, fewer tensions and fewer frustrations. Naturally, we have to take notice of the present conditions and the prevailing

trends of thought. The Joint Select Committee and this House have taken notice of them and the provisions that now stand are the result of that attitude. The natural corollary of that attitude is that divorce should be permitted, but it should not be made very easy. To those who want to go to the other extreme, those who want to make divorce very easy, I should like to point out that provision for easy divorce is not likely to lead to happiness in life; that it might induce a kind of irresponsible attitude in which the matrimonial responsibilities are lightly undertaken and flippantly discarded. I submit that in such cases there can be no happiness. So the attitude of the middle path, the golden mean taken by the Joint Select Committee and this House was the correct attitude. After all happiness in marriage presupposes a sense of responsibility and a spirit of accommodation. One must be very careful in choosing one's partner for life. Even after that there must be that will and the determination to live together and accommodate each other because one can not get a partner who has got identical temperament, views, likes and dislikes. Therefore, there must be that spirit of accommodation. But even after that it might so happen that the marriage may turn out to be unhappy. The parties may have miscalculated or wrongly estimated their mutual suitability, or perhaps fate may intervene.

[MR. DEPUTY-CHAIRMAN in the Chair.]

If after the solemnization of the marriage, one of the parties is afflicted by leprosy, who else than fate can be blamed? Even the Gita which preached "Karma Yoga" has said:

दैवं चैवात्र पंचमम्

That means that fate is one of the five factors which affect the results of man's actions. Therefore, even if there is the spirit of accommodation and the sense of responsibility, there may be marriages which may go wrong; and it is precisely to these hard cases of unhappy marriages that the Bill seeks to give relief. I hope that

the parties concerned will realise this and that this Bill will be used in the spirit in which it is conceived. And finally, I hope that ultimately the Bill will succeed in its objective, and thus restore peace, harmony and happiness to those broken homes which are the victims of *bona fide* mistakes of parties or the cruel strokes of fate.

MR. DEPUTY CHAIRMAN: I want to know how long the House is prepared to sit.

SEVERAL HON. MEMBERS: Up to six o'clock.

MR. DEPUTY CHAIRMAN: Then each Member will be allowed only five minutes, and ten minutes to the Law Minister to speak. We have got forty minutes now.

SHRI AHMAD SAID KHAN (Uttar Pradesh): Sir, it was not my intention to intervene in this debate and my task has been made very easy now because my friend Mr. Bisht said something about Islamic Law. My friend Mr. Rajah made certain statements about Islamic Law as if the condition of women under the Islamic Law is very pitiable and that they should also get relief. I only want to make clear what is the position in the Islamic Law of a woman.....

MR. DEPUTY CHAIRMAN: I think we may drop out any discussion on Muslim Law. We are not concerned with it now.

SHRI AHMAD SAID KHAN: That was the only point on which I wished to speak. If you think that it is irrelevant.....

MR. DEPUTY CHAIRMAN: It is not necessary at this stage. We are not concerned with Muslim Law at all. It is not touched by this Bill.

SHRI AHMAD SAID KHAN: In your absence, Sir, certain observations were made. For instance, it was said that polygamy was allowed in the Muslim Law. Well, I would like to put it before the House to consider what the condition was when Islam was born. We know that there were four years of the first World

War, with the result that in all those countries which were belligerents, Governments had to start war baby departments to look after children. This was because there was so much surplus of women upon men. In the same way, after the Second World War the same problem was created in many countries of Europe. Islam, after its birth, for nearly over a century was at war with one country or the other. So you can well imagine what the position was in those countries. There was a tremendous surplus of women compared to men. That was the reason why Islam allowed, made it permissible, that one can marry up to four wives. On the other hand, there is one thing that should be borne in mind and that is that in Islam it is a criminal offence to commit adultery. In European countries it is not an offence to commit adultery. In Islamic Law it is an offence and in the case of an old married man, the offence is of such a grave nature that it should be punished by execution of the man who commits adultery. When Islam took such a grave view of adultery, and when there was a surplus of women, was there any other way out than to allow polygamy? That was the position. And as far as the other rights of women are concerned, my friends are aware of the fact that in Islam even if there is a son, the daughter will get half of the amount of the property, and if there is a wife, the wife will get, the son will get and the daughter will get. As far as the Islamic Law is concerned, it believes in destroying the hoarded money and in distributing it as freely as possible. That was the only thing that I wanted to say.

SHRI RAJAGOPAL NAIDU: Mr. Deputy Chairman, I feel that this Bill lacks in uniformity, and it revels in diversity. We are now concerned in this Bill with marriage and divorce. Let us see whether there is any uniformity that is provided in the form of marriages. My reply for that is that there is absolutely no uniformity presented even in the celebration of marriages.

[Shri Rajagopal Naidu]

Clause 7 reads as follows —

"A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto"

The Constitution provides that there should be a uniform Civil Code. Even in the matter of solemnization of marriages there is no uniformity fixed. In my opinion customs and usages are allowed to play a more dominant part in this Bill than the codification of Hindu Law. Take any clause. Take marriages, take divorce, take dissolution of marriages. We only find that customs and usages are allowed to play a more dominant part than what the statute would provide for. There is a very big loophole, in my opinion, in clause 29 (2) wherein dissolution of marriages by custom is recognised. It reads as follows —

"Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act"

There is dissolution of marriages recognised in the various communities, at any rate in the South in accordance with the customs. Now, if on one side you make certain provisions in this Bill for the husband or the wife to go to a court of law for the dissolution of a marriage, simultaneously, I find, that you recognise custom also for the dissolution of marriages. In my opinion that will certainly defeat the very purpose of this enactment in the matter of making provision for the dissolution of marriages.

Now coming to the other point about maintenance *pendente lite*, unfortunately it has been decided that what will be applied to maintenance *pendente lite* will also be made applicable to permanent alimony and maintenance. All the laws of the country, not only of this country, but elsewhere also provide, that only the hus-

band will have to pay maintenance during the pendency of the litigation. There is absolutely no doubt about that. But with regard to the payment of maintenance after the decree has been obtained for dissolution, the opinions are divided. If the wife is to be blamed for the dissolution of the marriage, if the wife is the primary cause for the dissolution of the marriage, the English law provides that if by the joint efforts of the husband and the wife some property is acquired, and if it stands in the name of the wife then for certain stated reasons the wife will have to pay alimony to the husband. But, on the other hand, we have adopted a uniform rule in the case of maintenance *pendente lite*, and in the matter of permanent alimony also.

Then, I want to deal with one or two more points. It has been stated on the floor of the House by very many Members that this law is not made applicable to Muslims. I have been very carefully listening to the various speeches made by the hon. Members on this Bill. I am yet to find even a single Muslim Member of this House desiring to have a similar Bill to be made applicable to their religion. If there is any necessity if there is any desire, it should come from the Muslim Members of this House. So long as the Muslim Members do not want such an enactment to be made applicable to their religion, and if according to them it affects their religious feelings, it is not for us to impose anything upon them when they do not want such a law to be made applicable to them. (Time bell rings) I do not want to say anything more excepting to say that at least in the future there should be no diversity at any rate with regard to the solemnization of marriages and with regard to their dissolution.

MR. DEPUTY CHAIRMAN Shri R. B. Sinha: I find that there are a few more Members. If necessary, we will sit for a quarter of an hour more.

श्री आर० बी० सिन्हा (बिहार) उपाध्यक्ष महोदय, मैं इस बिल पर बोलना नहीं चाहता

था क्योंकि मैं कास्टलेस और क्लासलेस सांसाइटी का सपोर्टर हूँ, किन्तु जिस विचारधारा के साथ इस बिल का समर्थन किया गया, है उससे मैंने लिए यह आवश्यक हो गया है कि मैं भी इस सम्बन्ध में कुछ कहूँ। यह एक सामाजिक बिल है। इसके लिये या तो लोगों की ओर से एक अर्ज यानी प्रेरणा आती या सरकार की ओर से इसका प्रचार किया जाता।

यह एक प्रोग्रेसिव बिल है इसलिए इसका जनता में काफी प्रचार होना चाहिये था किन्तु ऐसा नहीं हुआ है। हमारे सामने अभी एक एक्ट मौजूद है जिससे शारदा एक्ट कहते हैं। मैं वह सकता हूँ कि वह एक प्रोग्रेसिव एक्ट है किन्तु उसका जनता में अच्छी तरह प्रचार नहीं किया गया, इसी कारण वह एक्ट आज स्टैंड्यूट बुक में एक डंड लैटर के समान पड़ा हुआ है। प्राविजनल पार्लियामेंट में जब हिन्दू कोड बिल चल रहा था, उस समय हमारे राष्ट्रपति जी ने कहा था कि मैं इस पर अपनी अनिच्छा से स्वीकृति दूंगा। मैं आज समाज सेवकों और सीविकाओं से पूछना चाहता हूँ कि उन्होंने इम दिल के सम्बन्ध में तां बड़ी-बड़ी बातें हिन्दू समाज के प्रति कहीं और आरोपण लगाये किन्तु क्या उन्होंने इस बात का भी ख्याल किया कि जनता में जाकर इस बिल की भलाइयों के प्रति जनता का ध्यान आकर्षित करें, और उनको समझाये कि इस बिल के पास होने से इस तरह की भलाइयाँ होने वाली हैं? ६ दिसम्बर से, मैं देख रहा हूँ कि यहां की जो स्त्री सदस्य हैं, वे बार बार कह रही थीं कि हिन्दू शास्त्रों, पुराणों और अन्य ग्रन्थों में स्त्री को उचित स्थान नहीं दिया गया है। किन्तु मैं उनसे पूछना चाहता हूँ कि क्या उन्हें इसके बारे में जानकारी है, या जानकारी रहते हुए भी वे ठीक बात कहना नहीं चाहती? क्या उन्होंने हिन्दू शास्त्रों, पुराणों और अन्य ग्रन्थों में स्त्री के बारे में पढ़ा या कभी जानने की कोशिश की है? हिन्दू शास्त्रों और अन्य ग्रन्थों में आपको यह मिलेगा कि स्त्रियों के बिना कोई भी यज्ञ नहीं हो सकता था। जब कोई नया कार्य शुरू किया जाता था तो उसमें स्त्री को पहला स्थान दिया जाता था।

शास्त्रों और अन्य ग्रन्थों में स्त्री को "लक्ष्मी" और "देवी" कहकर पुकारा गया है। जिन शास्त्रों, पुराणों और अन्य ग्रन्थों में स्त्री को इतना आदर और सत्कार दिया गया है, उसको देखते हुए मैं यहां पर कैसे चुप बैठ रह सकता था? मैं तीन दिन से बराबर यह देख रहा हूँ कि इस तरह के भाषणों का कोई विरोध करता है या नहीं। आखिर किसी समाज के लिए कानून बनाने का कुछ आधार होना चाहिए। हमारे पास आधार है। अगर हिन्दू समाज का कोई आधार ही न होता तो इस कानून की जरूरत ही क्या होती? मैं आपसे कहता हूँ कि मैं उस समाज को मानने वाला हूँ जिसमें न कोई कास्ट हो और न कोई क्लास हो। फिर भी अभी उसका निर्माण नहीं हुआ है।

कुछ बातों के लिये बोलना वाजिब हो गया था, इस लिये मैंने आपका समय लिया। इस कानून को कुछ मिनट के बाद आप पास करने जा रहे हैं। लेकिन मैं यह देखता हूँ कि प्रॉविसेज में हिन्दू समाज के जो रीतिरिवाज हैं उनका न कहीं इसमें मिलान है और न कौन्सिलर में ही यह सेक्यूलर है। यह सेलेक्ट कमिटी में गया और उसके कुल ४५ मेम्बर थे। एक तो ला मिनिस्टर थे। उनके अलावा कुल ४४ मेम्बर रह जाते हैं और उनमें से १० मेम्बरों ने अपना नाट आफ डिरोट दिया है। ऐसे वातावरण में इस बिल को नहीं पास होना चाहिये था। मैं नहीं चाहता था कि इस प्रोग्रेसिव बिल का विरोध करूँ और विरोध करता भी नहीं हूँ। जो विचारधाराएं यहां व्यक्त की गई हैं उनको मद्द् नजर रखकर जब अन्त में कानून मंत्री साहब अपने विचार जाहिर करेंगे तो मैं उम्मीद करता हूँ कि वे दो बातों का जरूर ख्याल रखेंगे। एक बात तो यह है कि हिन्दू समाज को गिरा हुआ साबित करने के सिटार्सल में जो यहां व्याख्यान दिये गये हैं, उसका वे खंडन करेंगे और हिन्दू समाज को ऊंचा उठाने की वे फिर से कोशिश करेंगे।

दूसरी बात यह है कि वे अपने ऊपर इस बात की जवाबदारी लेंगे कि ऐसा प्रोग्रेसिव बिल जिस पर लाखों रुपये खर्च किया जा रहा

[श्री आर० बी० सिन्हा]

हैं उसके प्रचार पर भी कुछ रुपया खर्च किया जायगा ताकि हमारा समाज इस बिल को समझ सके, इसकी मर्यादा की रक्षा करे और इसकी प्रतीक्षा करे, वरना इसकी हालत वही हो जायगी जो शारदा एक्ट की है। आज लोग कहते हैं कि शारदा एक्ट का स्टैंडरूट बुक पर होना एक प्रकार से मखौल है। मैं भी यह कहता हूँ कि यह मखौल नहीं है तो क्या है कि शारदा एक्ट मौजूद है लेकिन कलेक्टर साहब और एस० डी० ओ० साहब अपने बंगले में बैठे हुये हैं और उनके सामने छोट छोट बच्चे और बच्चियां बाजे के साथ पालकी में जा रहे हैं ? ऐसी हालत में उस एक्ट की क्या मर्यादा रह जाती है जिस पर लाखों रुपया खर्च किया गया था ?

अन्त में मैं फिर ला मिनिस्टर से अपील करना चाहता हूँ कि वे अपने व्याख्यान में यह बतलायें कि इस बिल के प्रचार के लिये वे क्या करना चाहते हैं। मैं यह भी आशा करता हूँ कि जो हिन्दू समाज पर आरोप लगाये गये हैं उनका भी वे उत्तर देंगे। इन्हीं शब्दों के साथ मैं आप को धन्यवाद देता हूँ।

DR. P. SUBBARAYAN (Madras): I join Mr. Gupte in regretting that the Law Minister was not here to pilot this measure, but we must also recognise that we have found an able substitute in the Commerce Minister who has piloted this Bill in all its aspects with some determination and courage, if I may say so, but I think that he must also pay his mead of tribute to the Law Minister because the spade-work with regard to this Bill was done at the time of the Special Marriage Act itself which was piloted through Parliament by the Law Minister.

I want to point out to my friend, Mr. Rajah, that he need not be afraid that this legislation will be *ultra vires* of the Constitution. I think it is within the Constitution, because the Madras and the Bombay Acts of which I am aware have been held valid even

after the passing of the Constitution, which means that the legislature of this country has got the power to legislate on measures of this kind. Mr. Rajah, I am afraid, was rather in a pessimistic mood when he feared that the ratio of the population of this country might soon be reversed. I do not think there is such a danger. After all, the Muslims are only four crores and the Hindus are 30 crores. It will take many many long years and Mr. Rajah and I may not be alive to see his pessimism fulfilled.

SHRI H. D. RAJAH: That is your concept of life. "After me, the deluge." That is the view on the side of the Congress.

DR. P. SUBBARAYAN: If Mr. Rajah had only waited, he would have found an answer about this deluge. It is this: Society must progress, and even our Muslim brothers will progress in many ways and there will come a time when we will have a Civil Code for the whole country which Mr. Rajah wants, and I am sure it will come in time. It may even come in our lifetime.

SHRI H. C. DASAPPA: Sooner than Mr. Rajah thinks.

DR. P. SUBBARAYAN: I won't go so far as that. I think it is really a tribute to this legislature that we have passed this measure which has been before the country for over fifteen years now, and I see that our women friends are rather pleased at this. But it is not a women's measure at all. They are mistaken. It is a measure of progress. It is a measure of equality. It is a measure of social reform in which, they must realise, that men are as interested as women are. Some people think that we have given in to our women friends. Nothing of the kind. I look forward to the time when there will be equality in this country, when some of the measures will be such that women and men will be on an equal footing, and if it comes to a question of defending the country—and I hope nothing like that will happen—women will be able to bear arms along with men. I look

forward to the time when we shall have a race in this country worthy of its traditions, worthy of our women heroes who had fought shoulder to shoulder with men, as the Rani of Jhansi did in defence of country. I congratulate the Government specially for the way in which they have piloted this measure and I hope that soon we shall have the Hindu Succession Bill and that the Hindu Code as it was originally introduced will become part of the law of the land before the time of this legislature comes to an end.

SHRI R. C. GUPTA (Uttar Pradesh)

Sir, this Bill will soon become the law of the land and the Hindus will in future be governed by the provisions of this Bill. I wish to congratulate the women of the country who have secured a glorious victory in getting this Bill passed. I wish them good luck. Here is recognition of their right of divorce. I am, however, sceptical about it, but I have no objection to the right being granted by this Bill. As the time is short, I wish to point out to the Law Minister only two features so far as this Bill is concerned. The first one is with regard to "void and voidable marriages." This relates to clauses under which certain marriages will become void and certain others will become voidable. The consequence of this would be that the children born during the currency of such marriages would form a third class of persons in this country. I have heard of only two classes—legitimate and illegitimate. Now if this Bill is passed, a third class will be created—semi-legitimate and semi-illegitimate. The children of such marriages after the dissolution would be entitled to inherit their parents. So to that extent, they will be legitimate but they will not inherit either the collaterals or the ancestors of their parents. To that extent they will become illegitimate. This state of affairs seems to me to be very unsatisfactory. I think the children require protection. There was a demand on behalf of the ladies of the country also. One petition was presented by a lady Member of this

House, Shrimati Parvati Krishnan—signed by over 20,000 persons. In clause 5 of the petition, they further prayed that provisions for guaranteeing the legitimacy of the children be made. In fact this is a right demand and I endorse it—though nothing can be done now of course—but the Government will reconsider the whole thing and in the Lok Sabha a suitable provision should be made. This can easily be effected by deleting the proviso to clause 16 of the Bill. This must be the object of every legislation. So far as possible, the rule must be with regard to legitimacy and not illegitimacy. I am sure that the number of children born of such marriages, after dissolution, would be quite big. It may be that for some time there may not be very large number of dissolution of marriages but when this law is widely known and when dissolutions of marriages do take place in large numbers then the number of such children will be very large. I will content myself by quoting a quotation from this book which I hold in my hand which says, "The effects of divorce upon the children of the divorces are still more grave. It is no doubt true that quite a large number of the divorces are among couples whose unions were not blessed with children. About three fourths of childless marriages terminate in divorce, whereas only 8 per cent of marriages resulting in children so end. Yet the number of children annually involved in the divorces is very considerable and perhaps may go upto 50,000."

The life of these children becomes disorganised even at its initial stage. They are unable to gain equilibrium in the matter of their domestic relations throughout the rest of their life. It is estimated that about 80 per cent of delinquent children come from divorced homes. These children are required to show divided loyalty to both the parents who have now separated. They are moved about like pawns from place to place. An American judge of considerable influence and experience considers the lot of part-time children to be very

[Shri R. C. Gupta.]
 unhappy. In spite of his efforts to the contrary the child can hardly abstain from passing an emotional judgment as to who among the parents was more to blame or at least on whose side he stands, and this preference forbids the continuing of feelings of loyalty that had grown in the previous relationship. Taking advantage of this preference, the children are sometimes even set up by the preferred parent to spy upon the activities of the other. As a result of the bitterness felt by either of the parents towards the child's step-father or step-mother, the child is conditioned against the establishment of good relations with any one of them. Further it gets unsocialised. Dean Gauses of Princeton says that the children who are orphaned through divorce are too uniformly unsocialised and lacking in poise to be successful in future life. Headmasters of many preparatory schools refuse to accept these children because they are afraid of other certainty of failure. I endorse these observations.

MR. DEPUTY CHAIRMAN: Mr. Gupta, Mrs. Parvathi Krishnan also wants to speak. So one of you can speak.

SHRIMATI PARVATHI KRISHNAN: Why do you also subscribe to the women versus men controversy, sir?

SHRI B. GUPTA: Mr. Deputy Chairman, as you know, we have generally supported this measure and it is gratifying today that it is going to be passed with certain improvements although the improvements that we demanded have not all been acceptable to the Government. For this measure, tributes have been paid in the Treasury Benches to the Ministers who are present and to the Minister who is absent for piloting this measure . . .

SHRI H. P. SAKSENA: Sir, may I invite your attention to the fact that for 8 or 9 days that this Bill was being discussed, I kept absolutely mum and silent and today when I wanted to have my say for five minutes and I stood up 3 or 4 times.

MR. DEPUTY CHAIRMAN: You will have your chance. I have got your name.

SHRI B. GUPTA: For piloting this measure tributes have been paid to them. We recognise the services of all those who have made it possible for this enactment but the real pilots of this measure—if we must pay tribute to anyone—are not in the Treasury Benches, but outside, in the country, in the homes of our men, in the homes of our people who have, for the last 12 years, been clamouring for this measure and a tribute is due today to the united womens' organizations in the country, who in the face of our overwhelming opposition at one time organized by certain vested interests, carried with them the public opinion as a result of which it has been possible for us to undertake this legislation. About this measure some of us seem to have certain exaggerated ideas. Some of us seem to think that by such laws we are going to emancipate women. Nothing of the sort. Undoubtedly certain shackles would be cast aside and the way to life would be open to women but, as you know, the emancipation of women lies in the emancipation of mankind from all kinds of oppression—economic, political and otherwise. We look forward to the day when the women of this country would really be fighting along with us,—if it come to that, men, shoulder to shoulder as they fought in the Second Great World War in the Soviet Union. We look forward to that day when the women of our country shall take arms when aggressors dare to attack our country as they did in the Great China. Now, the stumbling block to that development is something which is political, something which should be found elsewhere. I don't know whether Dr. Subbarayan who is anxious to have that day coming nearer to us, would join us in making this day a reality by our common struggle. I think there the parting of what ways has come. Leaving aside that aspect of the story, we feel that this measure, if it is explained to the people, will certainly encourage them to hope that

we in this Parliament are trying at least to enact certain measures of social reforms. It is regrettable today that at this end of the debate, we heard the voice of Mr. Rajah. I wish he had not spoken in that unfortunate accent. He had been 12 years in jail and he fought with the Congress at one time and I think he should realise that he should not go backward and should not put himself on the reverse gear. He should move forward. He thought that these measures might lead to the partition of India again and again and also to certain other things. May I ask him: (*Time bell rings.*) Was it because of this measure that the country had been partitioned or was it due to some other things, certain political arrangements that had been made? Let us not go into that.

In the end I would only like to add that here is a measure which needs to be explained to the people and I think the Congress Party will do well if it directs its Members and organizations to explain this measure to the people of the country rather than spread slander against our party and the democratic movement. I think we could guide the people by explaining this measure to them so that people can really know what has been passed here. Otherwise it will not be good. This is very important. I think an hon. Member who spoke from the other side made a very relevant suggestion.....(*Time bell rings.*)..... that this measure should be explained to the people. I think Government should, if necessary, spend a little money to take this measure to the people so that they know what we have passed and how it has been passed and who are really responsible for making such measures for the country.

SHRI H. P. SAKSENA: Sir, I extend my most hearty congratulations to the champions of this Hindu Marriage and Divorce.....

SEVERAL HON. MEMBERS: No, no It is only a Marriage Bill.

MR. DEPUTY CHAIRMAN: It is now only The Hindu Marriage Bill.

SHRI H. P. SAKSENA: Very well, S.r, I stand corrected. There was nothing new in the Hindu Marriage Bill. Hindu marriages have been performed from time immemorial and if we talk of codifying the system of marriage, this was already codified by *Manu* thousands of years ago. And even today, I am positive that all Hindu marriages will never conform to the manner that has been described here. Anyway, I extend my congratulations to the champions of this measure which is going to be passed into law, though I am very very doubtful about their representative character. I do not know whom they represent. I certainly understand that they represent themselves, but what large numbers of people are behind them, I am not sure.

My hon. friend Mr. Gupta talked of women coming forward to him and fighting shoulder to shoulder with him—in what? I cannot understand. But I know of days when women came out of their *purdah*, breaking away from old restrictions and fought shoulder to shoulder with us in the struggle for the freedom of the country. I cannot forget those days of the struggle for independence; but I am sure I did not find any of these women who are here Members in this Parliament, fighting along with me as compatriots in the Congress, from any of the Provinces. Happily they are now here and they are now establishing their representative character. All honour to them, all luck to them. But I am sure, they were nowhere near the freedom movement.

As regards Mr. Rajah here, it is very hard to understand him, for he has always been an enigma to me. So far as his bitterness towards the Congress is concerned, I do not know what is behind it. I do not know whether he is a disgruntled and frustrated old Congressman.

SHRI H. D. RAJAH: No, not in the least.

SHRI H. P. SAKSENA: Well then, there is no point in his being so bitter and saying that the Congress leaders

[Shri H. P. Saksena.]
were responsible for the massacre of thousands of persons.

SHRI H. D. RAJAH: I have never said that.

SHRI H. P. SAKSENA: He should have some sense of proportion and he should not make such public statements on the floor of the House.

SHRI H. D. RAJAH: No, no, I never said it

MR. DEPUTY CHAIRMAN: Order, order.

SHRI H. P. SAKSENA: Am I wrong, Sir?

MR. DEPUTY CHAIRMAN: That is all right, please go on.

SHRI H. P. SAKSENA: Now this Bill is going to be passed. But I am conscious of the fact that a very large volume of opinion, of Hindu opinion to whom this measure relates and whom it affects, remains muzzled. It has not found any ventilation for its real feelings. I know that there is a large body of opinion among Hindus who do not want any kind of these restrictions to be put on their religious and marriage propositions. Indeed, I was surprised to find in one of the statements that one of the Members of the Select Committee had made in his Minute of Dissent that this was a measure of a permissive nature. But from all the debate that has occurred here, I find that it is a compulsory measure. It is obligatory on all Hindus and I do not know from where that gentleman, the Member of the Select Committee, got the impression that this was a permissive measure. I can understand the Special Marriage Act being termed a permissive measure, but I cannot understand how this Bill before the House can be of a permissive nature.

Now the first fruits of this measure that we are going to pass just now are that there has been a wide estrangement between the Hindu Members of this House on the one side and the non-Hindu Members—the Christian, the Parsi and the Muslim Members on the other. We

have all observed that very few of them took part in the proceedings and most of them did not even attend the sittings, simply because it was a measure which did not apply to them. Our Prime Minister has been stressing unity, unity, unity, hard work, hard work, hard work, to all of us and now we are going to pass a measure .
(Time bell rings.) I am just finishing, Sir. I am just winding up. We are going to pass this measure which is driving a wedge between the various communities residing in this country. I hope, that this measure will not have any baneful effect on the Members and we will continue to live in amity, concord, goodwill and friendship in spite of this measure which may be the source of happiness for prospective divorcees and divorcers but which has nothing to do with many, and which will not even touch the fringe of the countryside where Hinduism resides.

श्रीमती सावित्री निगम : उपाध्यक्ष महोदय, यह विधेयक जिस रूप में भी आज पेश किया जा रहा है उस रूप में ही मैं इसका हार्दिक स्वागत करती हूँ, और माननीय कर्मकर साहब तथा माननीय बिस्वारा साहब को हार्दिक बधाइयाँ देती हूँ।

अभी सिन्हा साहब ने कुछ हिंदुत्व और हिंदू धर्म के विषय में कहा। मैं उन्हें यह विश्वास दिलाना चाहती हूँ कि हिंदू धर्म से जितना उन्हें प्रेम है उतना ही प्रेम मुझे भी है, जितने ऊँचे किस्म का हिंदू मैं अपने को मानती हूँ शायद उतना ही वे भी अपने को मानते होंगे। लेकिन, जो सच्चाइयाँ हैं उनसे हम कभी मुंह नहीं मोड़ सकते। यदि सिन्हा साहब ने राहुल सांकृत्यायन का "मानव सभ्यता का इतिहास" पढ़ा होगा तो उन्हें अवश्य विदित होगा कि एक युग था जिसमें हम सतयुग कह सकते हैं, जिस युग में समाज में नारी को जो अधिकार प्राप्त होना चाहिये उससे भी ज्यादा अधिकार उसे प्राप्त थे। माँ ही गृह की लक्ष्मी और मालिकिन हुआ करती थी। लेकिन एक दूसरे जमाने ने पलटा खाया। गृहिणी को स्वर्ण मुकुट पहना कर घर की चहारदीवारी में बंदी कर दिया

गया और उसको सहधर्मिणी का अधिकार नहीं दिया गया। इस प्रकार जिस दंड में नारी गौरव से आकाश गूंज करता था उस दंड में ऐसा भी युग आया कि उसके पतन से आकाश गूंज उठा। मैं सिन्हा साहब की व्यक्तिगत आलोचना की दृष्टि से ऐसा नहीं कह रही हूँ, बल्कि मैं उन्हें बताना चाहती हूँ

श्री आर० बी० सिन्हा : मैंने जो कुछ कहा उसका गलत अर्थ लगाया जा रहा है

श्रीमती सावित्री निगम : मेरा उनसे अनुरोध है कि मेरा भाषण के बीच कोई आक्षेप न करें। तो मैं बताना चाहती हूँ कि हिंदू धर्म की व्यवस्था में जिस पर उन्हें इतना गौरव है उस पर हमारा दंड की गृहिणियों को भी गौरव है, लेकिन आगे चलकर उस व्यवस्था में नारी का पतन हुआ, जननी को इस प्रकार मजबूर, विवश और तिरस्कृत किया गया कि लाखों की तादाद में वे पीतल जीवन बिताने को मजबूर हुईं। अगर हम हिंदू हैं तो हमें हिंदुत्व पर गर्व होना चाहिए, लेकिन हिंदू शास्त्रों में, हिंदू धर्म में जो कुरीतियाँ पैदा हो गईं उन्हें मिटाने से हमको कभी इंकार नहीं करना चाहिए।

SHRI R. B. SINHA: She is making a misstatement.

MR. DEPUTY CHAIRMAN: Let her go on, Mr. Sinha.

श्रीमती सावित्री निगम : मैं फिर से कहना चाहती हूँ कि वे जिस हिंदुत्व की दुहाई देते हैं, उसमें कृपा कर के गौतम स्मृति के अट्ठारहवें अध्याय को पढ़ें। उसमें लिखा है कि यदि कोई स्त्री वेद पढ़े तो उसके कानों में गरम कर के शीशा डालने का राजा को अधिकार है। उसमें लिखा हुआ है कि यदि कोई स्त्री वेद पढ़े या पढ़ावे उसके हाथ-पैर कटवा देने चाहियें। मर्यादा पुरुषोत्तम राम के बार में शास्त्रों में लिखा है कि उन्होंने शम्भुक नामक शूद्र को इसलिए मरवा दिया क्योंकि उसने वेद पढ़ा था। (Time bell rings.)

MR. DEPUTY CHAIRMAN: They are not at all relevant at this stage. It is time, Madam. Please wind up.

श्रीमती सावित्री निगम : इसलिए मैं उनसे निवेदन करती हूँ (Time bell rings.)

यह इतना इंपॉर्टेंट मोजर है और इस पर कहने के लिये मुझे थोड़ा और समय मिलना चाहिए। अच्छा तो मैं सिर्फ दो मिनट और लूंगी।

MR. DEPUTY CHAIRMAN: No, no. One minute more.

श्रीमती सावित्री निगम : श्रीमान्, जब दूसरे वक्ताओं को अधिक समय दिया गया तो मुझे कम से कम दो मिनट और चाहियें।

MR. H. C. MATHUR (Rajasthan): I shall give my time to her; let her speak.

MR. DEPUTY CHAIRMAN: No, no; I have not got your name at all. You have no speech to make.

श्रीमती सावित्री निगम : उपाध्यक्ष महोदय, मुझे यह दुःख है कि हिंदी की स्पिकिंग में आप हमेशा टाइम का बहुत ज्यादा ख्याल करते हैं।

MR. DEPUTY CHAIRMAN: That is my unpleasant duty. What shall I do?

श्रीमती सावित्री निगम : मैं निवेदन करती हूँ कि जो आलोचनाएं यहां की गई हैं उनका उत्तर देना बहुत आवश्यक है, और उसके लिये मुझे माँका मिलना चाहिए। मैं यह कभी नहीं चाहती कि हम यहां कोई विटरनेस लायें या किसी की भावनाओं को चोट पहुंचाएं, लेकिन किसी को सच्ची बात मानने से इंकार नहीं होना चाहिये। मैं कहती हूँ कि मुसलमानों के धर्म में उनकी औरतों को जो अधिकार मिले हुए हैं उससे कोई आदमी इंकार नहीं करेगा। उनके यहां दहेज की प्रथा नहीं है, स्त्री को संरक्षण देने के लिए मेहर मिलता है, उनके यहां पुत्री को सम्पत्ति में अधिकार है, बहिनों को अधिकार है (Time bell rings.)

MR. DEPUTY CHAIRMAN: You are getting the Succession Act. Why

[Mr. Deputy Chairman.]
worry about that? Dr. Shrimati Seeta Parmanand.

श्रीमती सावित्री निगम : श्रीमन् मुझे बहुत
सी बातें कहने को रह गई हैं ।

6 P.M.

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, I may have to rush with some of the important points that must be mentioned at this stage of the third reading due to want of time.

To begin with, I will associate myself with the expression of our regret at the absence of our Law Minister and I hope that when the next Bill comes, he will be there to give us his advice and pilot the Bill thus giving us the benefit of his mature views. I also must congratulate our Minister for Commerce who has—though the subject is new to him—dealt with this matter in such an expeditious manner—a manner natural to him in the Commerce and Industry business in the House

With regard to the Muslims not having been brought in the Bill, I would only say one thing because other points have been touched. The Pakistan women have themselves asked for monogamy and they are demanding a codification of Muslim Law. Ultimately that will lead to a codification of one civil law for the whole country which will come as an example to be taken from that country. Codification of Hindu law is necessary and once this House has accepted the idea, I hope there will not be any further difficulty. It has been called a woman's Bill. I do not agree. There are two parties to marriage; it can be neither a man's Bill nor a women's Bill. It is a social legislation to see that certain grievances under which people suffered are redressed. As this old custom of polygamy which worked to such disadvantage to the women has been done away with by this Bill, it has been called a woman's Bill but there should be no such question in fact of a man's or a

woman's Bill. We also do not agree to this proposition of man versus woman. It should never be thought of. They have to live in the same house always and that question should never even touch anybody's mind. This is a measure which is touching 1/12th of the world's population. If we are 1/6th of the population of the world, then half of that is 1/12th of the world's population.

MR. DEPUTY CHAIRMAN: What about the other half?

DR. SHRIMATI SEETA PARMANAND: It is an important measure that has been adopted.

MR. DEPUTY CHAIRMAN: You are leaving out the other half.

DR. SHRIMATI SEETA PARMANAND: I do feel, Sir, that after the Bill emerged from the Select Committee enough time was not given to consider and suggest amendments by Members sitting together and I am glad of the first precedent of this kind, namely that of accepting amendments from Members but anyway, it was all to the good and though some more amendments at this stage, had time been available, could have been accepted, I feel that there is a danger of this Bill having to come back from the other House.

SHRI KANHAIYALAL D. VAIDYA: Is it all relevant at this stage?

DR. SHRIMATI SEETA PARMANAND: There is one more thing. Our venerable Mr. Saksena questioned the representative character of the women who have been asking for this Bill. I would like to point out that the various women's organisations, namely, the All-India Women's Conference, the National Council of Women, the Women's Federation, Graduate Women and others have been behind our back.

MR. DEPUTY CHAIRMAN: (to Shrimati Savitry Nigam) There is no point in your collecting the books and going away, Madam. You have to sit and hear the speech of the hon. Minister.

DR. SHRIMATI SEETA PARMA-NAND: Sir, I feel that the most important duty of women now—the point was touched by Mr. Bhupesh Gupta also—remains and that is to educate the women about the clauses of the Bill. I think that every women's organisation will work for this measure but it is an important duty imposed upon them to see that the hardships of the new clauses that are incorporated, namely about divorce etc. (*Time Bell rings.*) are not felt by them. So, it is for them to carry on propaganda for that purpose.

I have to make one last appeal, and that done I will finish. We have all said, and I would again repeat that the real order in introducing this sort of piecemeal legislation should have been to introduce the Succession Bill first as that would have given a clear picture of Hindu women's position under the Hindu Law and the discussion over alimony and such other things would have been very much easier. I feel judging from the time that has been required for the passing of this one portion of the Hindu Code, it will take a long time to discuss that naughty problem of succession and I feel as it is.....

MR. DEPUTY CHAIRMAN: You can raise it somewhere else.

DR. SHRIMATI SEETA PARMA-NAND:.....in spite of the profession of equality, the right given under that Bill as circulated to the public is not on an equal footing. I hope, that a special session of Parliament will be called to pass that Bill, in the life time of this Parliament.

SHRIMATI PARVATHI KRISHNAN: Mr. Deputy Chairman, I join with the hon. Members in congratulating the hon. Ministers who has piloted this Bill. The hon. Minister is already overwhelmed by the many bouquets that have been thrown at him. I will be very brief and say how this measure is a very welcome measure because we feel that it is a measure that brings a large amount of relief to that sec-

tion of society which has suffered from social disabilities for generations but I would just like to touch on one or two points. It is indeed regrettable that after such a heated debate, the clause on alimony has remained as it is and all I have to say is that since this Government is wedded itself to the principle of compensation now it has to remain wedded also to the principle of compensation to men for withdrawing from them in the right of polygamy. That is all I feel I can say in this matter.

Secondly, I also feel that this debate has indeed been a tortuous one to follow because so many hon. Members, if I may respectfully submit, have sort of gone through various mental contortions and acrobatics. On the one hand they demand equality for man and woman in regard to alimony but then when it is a question of chastity and sexual intercourse and so on, then there is a difference to be observed as far as women are concerned and as far as men are concerned. I find that the continuation of the clause is also a very regrettable matter and I trust that a way will be found to remedy that defect.

Unfortunately, since time is very limited. I can not deal with all the points that I feel are important but I would like once again to appeal to the hon. Minister that he should not penalise deserted wives and wives who have suffered from cruelty by preventing them from petitioning for divorce on those grounds. I feel very deeply about this matter and I would urge him again to think about that and see whether that cannot be remedied.

Finally, I would like to touch on the most astonishing mental acrobatic of all that has been reflected on the floor of this House and that is Mr. Rajah, in speaking a few minutes back, came out with a most astonishing statement and that is, he said that this bill was doing away with polygamy, that this bill was so much against the people, so much against this, that or the other and that it would leave the

[*Shrimati Parvathi Krishnan*]

way open to a future Pakistan in our country and that this Bill was leaving the women to the mercies of other women. I fail to see the logic of this theory of a woman oppressing another woman. I would like to assure him that there is one thing and that is women do not quarrel amongst themselves. We are all united and of one voice and we do not quarrel amongst ourselves over this issue. We are all united and our voice is united and it is because the women in our country will be getting a large measure of relief by this measure that you have seen on the floor of this House women Members have been more eager, more keen and more vociferous than others.

SHRI H C DASAPPA Mr Deputy Chairman, I wish to associate myself along with my hon. colleagues in paying a tribute to the great services rendered by the hon. the Law Minister whose absence we regret very much, but, as other hon. friends have said, it has been very ably taken up by my hon. friend Mr. Karmarkar who I must say has shown extraordinary liberality of mind in trying to meet the wishes of the hon. Members here. I must say, at this stage, after the Select Committee's report, he has been pleased to accept a large number of amendments which of course he must have found very reasonable. If only he had not chosen to press his own amendment to clause 24 it would have been cent per cent victory for him. I only wish that at the time of the consideration of the Coffee Bill he had adopted a similar liberal attitude. Then, it is not only the hon. the Law Minister but Mr. Karmarkar also is equally to be congratulated. There are also other friends here and particularly I wish to make mention of my friend Dr. Kane who stepped into the breach at the most psychological moment when Shri Biswas look ill and had been able to present this fruitful measure. I am pretty sure that behind all these people who make their appearance here is the secretariat and they have also done

result of the labour of all fine minds and I think by and large we have presented the country a fairly good bill.

There is just one idea that I wish to put across. Now I know my sisters in the land were very anxious for a reform of this kind. I know also that really the women now have become nervous about the divorce clause and there have been meetings held in certain places where they have expressed their apprehensions that this divorce clause may be used to their disadvantage and not much to their advantage. I am pretty sure that nothing like that would happen and our own experience has gone to show that the mere fact that there is this clause of divorce is not going to upset the entire Hindu society and that it will continue to maintain the fine high traditions of *dharma*, of chastity, of love and service which have been the distinctive features of Indian womanhood.

Then there are certain clauses and in them I think certain expressions could have been very well avoided. This is the production of the Parliament and we should not introduce words like "cohabitation" and so on. It is enough if we mentioned "marital relations". I hope at the proper time they will be able to omit some of these rather crude expressions. I again congratulate Mr. Karmarkar.

श्री कन्हैयालाल डी० बँधा : उपाध्यक्ष महोदय, मैं इस बिल के लाने पर सरकार और मंत्री महोदय को बधाई देता हूँ। कांग्रेस ने और हमारा राष्ट्र के नेता जवाहर लाल जी ने इस विषय को देश के सामने स्पष्ट शब्दों में रखा था। विवाह संस्था के अधिकार व विषय में यह जो सुधार का कानून हम आज इस सदन से पास करने जा रहे हैं, यह हमारा देश के इतिहास में एक उल्लेखनीय घटना है। जिस संकुलर पार्लिसी को लेकर हम चल रहे हैं उसको देखते हुये मैं यह कह सकता हूँ कि वह दिन दूर नहीं है जिस दिन हम एक ऐसा कानून बनायेंगे जो सारा देश की जनता के लिये लागू होगा। आज इस कानून से यह एक बिल्कुल खुली हुई चीज हो जाती है कि २० करोड़ जनता के सामने हम

एक आदर्श उपस्थित करते हैं कि एक पुरुष को एक ही स्त्री रखने का अधिकार है। इस सिद्धांत को हमने स्वीकार किया है और मुझे आशा है कि जो देश में दूसरी जातियां हैं वे भी आगे चलकर इस मानेंगी। उनके कानून में आज भले ही चार स्त्रियां रखने का अधिकार हो, लेकिन जब वे भी इस देश के नागरिक हैं तो मैं समझता हूं कि वे भी आगे चलकर अपने धर्म के रीतिरिवाजों को इस कानून के अन्तर्गत मंजूर करेंगे और एक ही कानून के अन्तर्गत सारे देश की व्यवस्था चलेगी।

मैं पुनः सरकार को इसके लिये बधाई देता हूं।

DR. RADHA KUMUD MOOKERJI (Nominated). Sir, although I must say that I am not in love with some of the principles and provisions of this Bill because I feel that this Bill has laid more stress upon the needs of romance than upon the obligations of married life and progeny, still I feel I must bow to the mandate of democracy and so must accept this Bill with all its imperfections. I congratulate the framers of this Bill on the very important step they have taken in the direction of social reform and I hope that the social millennium will make its advent much sooner than we expect. In that connection I hold up to the supporters of this Bill one great example of modern ideas on social reform. The scene is laid in a rural church of England. In the afternoon were seen two distinguished statesmen of England accompanying their aged mother to the church. And what for? Sir Austin Chamberlain and Mr Neville Chamberlain the Prime Minister of England were there to attend the ceremony at the church as witnesses of the re-marriage of their aged mother, who was the widow of Joseph Chamberlain one of the most distinguished politicians England has seen. I do hope that this example of modernity and westernisation of life will soon be seen in India where there is so much of progressive thought. I, therefore, say that I cheerfully accept

the mandate of the democracy or this piece of social reform.

SHRI V. K. DHAGE Sir, I should not take a long time now when everyone is very keen to disperse, but I should like to add my congratulations to the hon. Minister for having piloted this Bill. During the debate it was a pleasant surprise to know that Mr Karmarkar is quite a good pandit in Sanskrit as well. He was able to quote from the Upanishads, the Manusmriti and I suppose also from the romantic works of Kalidas and I am told that he is going to be a poet very soon. I am particularly happy that this Bill has been passed though Mrs Parvathi Krishnan may not very much like it. The provisions with regard to alimony which were moved by me to be incorporated in the Special Marriage Act have found their way in this Hindu Marriage Bill. In the Special Marriage Act we had one provision with regard to divorce and that is, divorce by mutual consent, incorporated and in this Bill we have taken another step forward by incorporating the provision regarding the payment of alimony both by the wife and the husband.

SHRIMATI PARVATHI KRISHNAN: "Mutual consent" is not in this.

SHRI V. K. DHAGE: Probably Mrs Parvathi Krishnan herself will bring up a Bill to amend it. I should also add my congratulations to Mr Biswas who during the initial stages took great pains in the framing of the Bill. This measure would not have been completed had it not been for Dr Kane who accepted the chairmanship of the Select Committee and replied to many of the points that were raised during the debate. I am also very happy that in spite of his ripe age he has a young heart and was one of those who voted for the provision of alimony in this Bill.

Thank you, Sir.

श्री गोपीकृष्ण विजयवर्गीय : उपाध्यक्ष महोदय, इस बिल का जो कुछ मद्दत्यों ने आर्थिक दल से समर्थन किया है उसका मैं समर्थन

[श्री गांधी कृष्ण विजयवर्गीय]

नहीं करता। कुछ ने इसका मजाक उड़ाया है और कुछ ने हिन्दू संस्कृति का बड़ा ऊंचा नाम ले कर भी उसके अन्दर जो अपवाद की बहुत सी परिस्थितियाँ हैं उनका ध्यान नहीं रखा। वे शायद उनको समझें नहीं।

आज यह जो हमने डाइवोर्स का कानून इसमें जोड़ा है उसका यह मतलब नहीं है कि हिन्दू समाज में और हिन्दू धर्मशास्त्र में इसकी कोई गुंजाइश नहीं थी। “नष्टं मृतं प्रव्रजितं क्लीबं च पतितं पति”। पंचस्वा पत्सु नारीणां पतिरन्यो विधीयते।” इस प्रकार के बहुत से वाक्य हमारे यहां मौजूद हैं। डा० काने साहब इसको मुझ से ज्यादा समझते हैं। इस बिल में एक एक जो धारा डाली गई है वह कोई भी हिन्दू क्लर और हिन्दू संस्कृति के खिलाफ नहीं हैं। श्री मुकर्जी ने चैम्बरलेन की मिसाल दी थी। वह एक एक्स्पेनल, अपवाद स्वरूप परिस्थिति हो सकती है जो कि हिन्दू समाज में सदा मान्य रही है। हिन्दू धर्म का आदर्श इतना ऊंचा होते हुए भी श्री रामचन्द्र जी ने सीता का परित्याग क्यों किया? और भी बहुत सी मिसालें मिलेंगी जिसका मतलब यह है कि हिन्दू समाज में ऐसी परिस्थितियाँ रही हैं, जिनके लिए कोई न कोई गुंजाइश या कोई न कोई विधान निकालना पड़ेगा। यदि कोई मैरिज अनहेंपी है तो हमेशा के लिए, जिन्दगी भर के लिए, किसी स्त्री या किसी पुरुष को पेंनेलाइज किया जाए और उसे दुख में रखा जाए तो यह बात आज के समाज में नहीं चल सकती। दुनिया बदल गई है, हिन्दू समाज बदल गया है, हिन्दू समाज की स्त्रियाँ पढ़ी लिखी हो गई हैं और उनमें काफी स्वाभिमान जागृत हो गया है, दूसरी भी परिस्थितियाँ बदल गई हैं इसलिए यह बहुत ही उचित है कि आज के जमाने के अनुरूप हिन्दू समाज में इस तरह का विधान हो। हमने मैरिज को शाश्वत माना है और उसका ऊंचा आदर्श मानते हैं लेकिन हमें ऐसा विधान लाना पड़ेगा जो कि आज की परिस्थितियों के अनुसार हो। इसलिए मैं कहता हूँ कि युग-धर्म के अनुसार, आज की

परिस्थिति के अनुसार, हिन्दू धर्म को जीवित रखने के लिए जिस स्वरूप में हम इस कानून को पास कर रहे हैं वह समय की मांग है, जमाने का तकाजा है और इससे हिन्दू धर्म की रक्षा होगी। जब हम सब अपवाद स्वरूप परिस्थितियों की बात रखते हुए कानून बनाएंगे तब ही हिन्दू धर्म की रक्षा हो सकती है। इसलिए मैं इसका पूर्ण हृदय से समर्थन करता हूँ चाहे उसमें अपवाद स्वरूप बातें खराब भी नजर आएँ, जो अपवाद स्वरूप बात होती है वह खराब होती भी है लेकिन जीवित समाज में सब तरह की परिस्थितियाँ हो सकती हैं और उसके लिए यह कानून बहुत मुनासिब बनाया गया है। इसकी बहुत आवश्यकता थी और मैं इसका समर्थन करता हूँ।

SHRI D P KARMARKAR Mr. Deputy Chairman, it has been a very great pleasure for me to have been here during the course of this Bill I am deeply grateful to the kind sentiments expressed by hon Members upon the humble work that I have been able to contribute to the piloting of this Bill I thought in my mind, when they were saying that, that they were indirectly paying a compliment to themselves, because if the environment created by the goodwill of the Members was not there, I would have been a very poor instrument indeed. I am therefore, deeply grateful to the House not only for the kind treatment that they have given to me in a sphere which was comparatively new to me from the point of view of piloting but also in a large measure in contributing and making useful suggestions during the course of the debate

At the outset. I wish to express my gratitude to the Law Minister who has been in charge of this measure till now. I express the hope, and I do strongly hope indeed, that he will be able to be back again at his work at the earliest possible moment. I have already said how deeply I am indebted to him for the guidance that he has all along given to me and to his Ministry also I have also paid my

tribute earlier to the Joint Committee, which spent a long time in examining the various provisions—and it is rather a complicated measure. In addition to what I said then, it is my duty now to mention by name the Chairman of the Joint Committee, Dr Kane—who has been taking such a leading part in the proceedings in this House—who has been of such great guidance to me in the piloting of this Bill. Then I owe my thanks to Diwan Chaman Lall for having given a close study to this Bill and for having helped us in the discussions that followed. In a manner, I was all along encouraged by having behind me many esteemed friends, especially Dr Subbarayan whose off-hand remarks were also a source of inspiration, though they may not have been relevant on the particular point. He has been of such a great help to me and a source of cheer besides being my guide in this matter.

It is invidious to pick and choose and mention all names, but I should say that I have thoroughly enjoyed the debates both the short, relevant speeches and the long speeches—and the interruptions which sometimes were for clarifications. In a measure of this kind it would be impossible for us to have all our expectations fulfilled; it would be impossible to expect that all would be absolutely smooth sailing. For a little while the discussion assumed the form of man *versus* woman, especially on the clause relating to alimony. Then there were certain amendments on which I felt that it did not matter either way. If I had succeeded, it does not mean that I would have achieved a Himalayan victory, if I had failed it does not mean that I would have lost very much. Ultimately, as I said some time earlier during the course of the debate, we have to consider in relation to the present, objective conditions of today though a particular method of approach might have been more useful. I believe inherently that instead of the amendment, if the original provision had been accepted by the House, I do not think it would

work disaster so far as the material provisions of this Bill are concerned. There was a point raised by my friend Mr Rajah I had the privilege and pleasure of listening to him very carefully—earlier as it happened to my misfortune I had always missed hearing him. Whenever he made a very forceful speech in the House, every time he came out later, I congratulated him not knowing what he said. Sometimes friends like Mr Rajah laid emphasis on a particular point, goaded to that, not with any bad intention, but in all sincerity. Many a time he has been misunderstood. All that I could gather from what he said in the House, the only useful thing that was there for me was that he was really against piecemeal legislation only about Hindus.

SHRI H. D. RAJAH: Quite right.

SHRI D. P. KARMARKAR: And if we had brought forward a general civil code he would have given his consent to it. But with regard to the principle of this measure monogamy I am quite sure that he is agreed and that he is not for polygamy.

SHRI H. D. RAJAH: Yes, Sir.

SHRI D. P. KARMARKAR: I have no doubt about it. I have no doubt also that he will not allow a husband or a wife to go scot free after committing adultery. He would be the first man to propose divorce. Let me not be misunderstood, I do not want to make any personal comment. What I wanted to invite the attention of the House to was the fact that there were two things which he strongly supported. One was his plea for a general code and in so far as this measure falls short of that he is vehemently, to the nth degree, opposed to this measure. So far as the principles of monogamy and divorce are concerned he is entirely at one with us. Having said that, there is one small point. Having been so much in consonance with the purpose of this Bill, I am sure that he is not going to vote against this Bill. On the essential points about monogamy and

[Shri D. P. Karmarkar.]

divorce, he is entirely at one with me and with the general purpose of this measure. I should like to clarify one point which he raised at a certain stage during this debate. I talked about certain types of marriage which were happening in the south. Now, they have done away with formal ceremony and the like. They resort to a simple method of marriage. They would like to come out from the usually accepted rites and ceremonies. One of his worries was what happens to such marriages. I went a little into the point. The Madras Government and the Madras Legislature have protected such marriages up till a particular time. So far as the subsequent marriages are concerned, they could easily have recourse not to this, but to an equally effective Act, namely, the Special Marriage Act. I thought that this clarification was necessary, because my silence on that point when he raised it, might be misunderstood. I hope that this clarification is satisfactory to Mr. Rajah.

Then, there were certain other points. I need not repeat that the Government is anxious to bring forward, as early as possible, a measure which will be applicable to all citizens. There are certain inherent difficulties which were also evident on the floor of the House. There is a definite law for the Muslims, etc. Just as we consulted the whole Hindu community in respect of this measure, we shall have to give sufficient time to the particular community concerned. That does not lessen our anxiety to give as early a consideration as possible to a uniform civil code. And certainly, it is hardly necessary for us to emphasise that point, because article 44 of the Constitution enjoins on us to make our best endeavours possible to evolve a uniform civil code.

Then, there was another point made about "putting the cart before the horse". I would say that the horse has come before the cart. Marriage has come before succession. There is no question about it. First you marry,

then come the children, and so forth. I am now in a happy position to tell the House that our consideration of the measure regarding "succession" is almost over and we shall be able to introduce that measure shortly, before this House adjourns if at all it is physically possible, if not, in the next session. In any case, it is bound to come during the next session and those of us who have had patience for such a long time, can hold up in patience for a couple of months more.

Then, one precious point was made by my friend over here, Mr. Sinha. He in a manner expressed sentiments which I had the privilege of expressing a little before, namely, sometimes people give expression to views as if they look down upon the present state of the Indian society as something despicable. My hon. friend Shri Deogirikar made broad assertions which might be taken advantage of by unscrupulous people. I entirely agree with him when he says that the Hindu society, as it has passed through the centuries, has shown a vitality, which—if I might say so without disrespect to other communities—is a very rare thing in the world.

Since the House has borne with me for such a long time, I wish to tell them a small story, within my knowledge, in the course of a couple of minutes. When I was in America, I had occasion to visit the Principal of one of the foremost institutions relating to theology in the United States. We discussed various matters. We discussed a little of theology, philosophy, Sanskrit, oriental subjects, etc. At the end of the talk I proposed to him: "Look here, Mr. Principal, it does occur to me that ultimately, whether it is Christianity, or Islam or Hinduism, or anything else, at the substratum of it, at the bottom of it, are some common principles and those principles are the same. Why not people like you and similar people in many other countries come forward and make a universal preaching of the common principles that lie at the sub-stratum of all these religions and

all these creeds?" He was frank He gave me a frank answer 'Mr Kar markar, look here You are about the first person who asked me that question, and you are the first person to whom I reply" He was in India many times "Westerners are apt to emphasise—it happened in the past, it happens even now—there are so many languages so many castes so many creeds, the priest craft, the Brahmin and the pariah, and everything else But I tell you frankly, I have moved round the world and if there is any country in the whole world, if there is any people in the whole world",—I am exactly quoting without any exaggeration—"if there is any one religion or creed or people—call them what you like—that has throughout the whole centuries assimilated many ideas and still retains a rare unity, it is you people You, people, can mix up with Christians, Parsis You are broad in your outlook You do not look upon God as different" I wish he had said that this same type of vitality and liberalism and universalism were given to the other people and then the world would have been happier This is a testimony which I had I entirely agree with my friend when he says that in spite of so many diversities we still disclose a sort of unity which is really our strength

I should not like to detain this House, and I think, in my own humble way, that this measure is a very progressive one We are just introducing the reform in our Hindu society, which I hope everybody would like And, in so far as it gives a uniform law to all Hindus I think it is a very substantial thing Every man and woman who is going to marry under this legislation, will be very grateful to this House I am sure about that

Then, there was one amendment by my esteemed friend, Mrs Seeta Parmanand That was about omitting the words 'and Divorce' from the title That suggestion was made to me earlier, and it struck me as if it were putting marriage and divorce in a balanced scale The whole idea is to

so rivet our attention on marriage, and to so give the people an idea, that the provisions of divorce are there available for necessary cases, and that those provisions about the possibility of a divorce may strengthen the marital tie I think that all the provisions as they exist today in our measure about possible divorces will be a very great deterrent for all possible disharmonies in any home And in my own way as I was thinking about this morning as to what the message of this House would be to all the public, to all the brides and the bridegrooms in the country, so far as I could gather the opinion, apart from the expression of some points of difference and all that I said to myself this, and I hope the House will be interested in these best wishes which will be as follows —

Where reason shines bright and
boundless love prevaleth

Where man and his mate in holy
wedlock, bound, laugh each other's
laughter and weep each other's
tears

Where each day of fruitful toil
blossoms into an evening of endless
cheer,

Where devoted service blunts the
edge of petty disharmony

Where children's smiles their
parents' discords do dispel

In'o that heaven of domestic bliss
my Father, may our Brides and
Bridegrooms awake!

MR DEPUTY CHAIRMAN The
question is

'That the Bill as amended, be
passed'

The motion was adopted

MR DEPUTY CHAIRMAN There
are some messages