

SHRI C. C. BISWAS: I cannot move another motion till day after tomorrow. Even if I call a meeting today, the Committee cannot meet before tomorrow. What is to be done?

MR. CHAIRMAN: You bring the motion tomorrow. What I say is you call the Select Committee to meet today, have the matter reconsidered there and then come forward with a fresh motion tomorrow morning. We will allow you to move it.

SHRI C. C. BISWAS: I am entirely in the hands of the House. I withdraw it.

THE SPECIAL MARRIAGE BILL, 1954

THE MINISTER FOR LAW AND
MINORITY AFFAIRS (SHRI C. C.
BISWAS): Sir, I beg to move:

"That the following amendments made by the Lok Sabha in the Bill to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce be taken into consideration namely:—

1. "That at page 1, line 1, for 'our Republic' substitute 'the Republic of India'".

2. "That at page 3, for line 6, substitute:

'(c) the male has completed the age of twenty-one years and the female the age of eighteen years;'

3. "That at page 3, lines 16 and 17, for 'fourteen' substitute 'thirty'."

4. "That at page 6, for lines 13 to 16, substitute:

'(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and"

5. "That at page 6, after lines 47, add:

'Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.'

6. "That at page 7, line 19, add at the end:

'and for the purposes of this section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.'

7. "That at page 7, after line 35, insert.

'and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.'

8. "That at page 8, after line 46, add:

'Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared to be null and void or annulled by a decree of nullity any rights in or to the property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring

[Shri C. C. Biswas.]

ing any such rights by reason of his not being the legitimate child of his parents.' ”

9. “That at page 9, line 20, for ‘five years’ substitute ‘three years’.”

10. “That at page 9, line 22, for ‘five years’ substitute ‘three years’.”

11. “That at page 9, line 26, for ‘five years’ substitute ‘three years’.”

12. “That at page 9,—

(i) line 38, omit ‘or’; and

(ii) omit lines 39 to 41.”

13. “That at page 9, after line 44, insert:

‘27A. *Divorce by mutual consent.*—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than one year after the date of the presentation of the petition referred to in sub-section (1) and not later than two years after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.’ ”

14. “That at page 10, line 4, for ‘the marriage’ substitute:

‘entering the certificate of marriage in the Marriage Certificate Book’.”

15. “That at page 11, after line 16, insert:

‘(bb) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and’.”

16. “That at page 11,—

(i) line 8, after ‘decrees.—’ insert ‘(1)’; and

(ii) after line 24, add:

‘(2) Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.’ ”

17. “That at page 13, line 45, omit ‘truth of the’.”

18. *Consequential amendments adopted at the Third Reading stage—*

(i) That the re-numbering and re-lettering of the clauses and sub-clauses consequential on the amendments made by the House be carried out together with corrections of cross references;

(ii) That the various definitions in clause 2 be re-arranged according to alphabetical order; and

(iii) That the word ‘and’ occurring in clause 16 at page 6, line 26, be omitted.”

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, this motion is being made under our Rules of Procedure. I believe the rule is 100. It is just as well that I should place that rule before hon. Members and explain to them the exact scope of the discussion which is now to begin here. Some amendments had been moved in the Lok Sabha. Hon.

Members will remember that after long debates this House made certain important changes in the Bill as it had been introduced in the Council of States as it was then called. Then the Bill was subjected to meticulous scrutiny in the other House and as a result of very long discussions there, certain changes were made. About 140 amendments had been tabled; not that they were all taken up, but quite a large number were actually moved and considered. As a result, many of the amendments were rejected, but a number of important amendments were made.

'2 Noon

Under our Rules of Business these amendments have now to be considered by this House. It is very important that this House should accept those amendments, otherwise a deadlock would take place which can be resolved only by a Joint Sitting of both Houses, which I submit would not at all be desirable. I would make an earnest appeal to Members of this House that they will accept these amendments and when I place these amendments one by one before them, they will see that there is not much there to quarrel about because all the questions which are involved in these amendments had been considered at great length. The discussion was a threadbare one. Opinions differed and opinions will differ if you discuss these matters over again for any number of days. So there must be difference of opinion. We must accept that position. On certain points we have different opinions. Therefore I suggest that the House will not gain much by reopening discussion on every one of these amendments. The amendments are quite acceptable. I shall just call attention to some of the important amendments. The first is this I ought to have stated the position in regard to the Rules. The Rules provide that in the course of considering the amendments, we can only suggest amendments relevant to those which have been moved and accepted by the other House. That is all. You cannot introduce any new matters. The

whole Bill is not open to discussion before the Rajya Sabha now. So they are the limits within which the discussion must go on. Turning now to these amendments, the more important of them are these. If you look at the list the first one is regarding the heading. Instead of 'Our Republic' substitute "the Republic of India". The next one is regarding the age of marriage. Hon. Members will remember that in the Bill as originally introduced, the age was 18 for both. Here the age was raised to 21 for both. The Lok Sabha has now made it 21 for the male and 18 for the female. That is the amendment made. Along with this there was a clause which was a part of the original Bill that because the age was fixed at 18, they provided for the consent of the father or mother or some other guardian. In the Lok Sabha there were amendments similarly moved by those who wanted the lowering of the age or acceptance of the lower limit but then when the House decided to raise the age for males to 21 and retain the lower age for females, then there were amendments to the effect that in the case of the girl consent should be obtained from the father or mother or the guardian. But when the motion regarding age was accepted by the House, the Speaker was pleased to give the ruling that that ruled out all the other amendments regarding consent of the guardian. Therefore although this question had been discussed, that was not put to vote and the amendment which was carried was that regarding fixing the age of the male at 21 and the age of the female at 18. I find that an amendment has been tabled asking that in the case of the girl the consent of the father or mother or guardian should be obtained. I suggest that the House will not press that amendment because this is the only amendment now and if that is done, that might lead to a deadlock which I am anxious to avoid, if possible.

SHRI RAJENDRA PRATAP SINHA. (Bihar): No, there is no deadlock. The other House will accept it.

SHRI C. C. BISWAS. I am making my appeal and it is for the House to decide. The next amendment is a very minor amendment to clause 5 *viz*, for 'fourteen' substitute 'thirty'. That is the period of residence. The Bill requires that before the parties can give notice of marriage they should have been residing within the area of the Marriage Registrar for a certain number of days. The number of days in the Bill was 14 and now it has been raised to 30

Then I come to the amendment to clause 15 (e) which is important. That deals with the question of prohibited degrees in the case of marriages which may be registered under the provisions of clause 15. Now, hon. Members will remember that when this Bill was under discussion, there was a sharp difference of opinion as to whether customary variations should be allowed in respect of marriages to be solemnized under this Act.

SHRI H. C. DASAPPA (Mysore): To be only registered.

SHRI C. C. BISWAS: ... and also in respect of marriages which are to be registered. I am not going to recount the discussion. What the other House has done is this. They did not reconcile the apparent inconsistency between clause 4 and clause 15 by including this exception in favour of customs in both places. They retained it in clause 15 but omitted that in clause 4. The change which the other House made was to allow the exception in clause 15 in favour of customs but limit this only to marriages which took place before the Act comes into operation—not to marriages which will take place after the Act has come into operation. The reason is this. It was really pointed out in this House, if I remember aright that otherwise it should be possible for anyone to evade clause 4. Suppose clause 4 stood without any such proviso, then what will happen is that a person may marry under his personal law today and then shortly afterwards, get it registered under this enactment. He could not

marry straightaway under this Act. Because he will be met with this hurdle of being within the prohibited degrees as defined in the Schedule. Therefore what he might do is this—marry under the personal law which does not allow these customary variations and then get it registered and therefore it will enable him to evade the provisions of clause 4. For that purpose it was provided by the other House that so far as marriages which took place before the Act comes into effect which are required to be registered, by all means allow them to be registered notwithstanding that those marriages did not comply with the rules of prohibited degrees as you find in this enactment. This is the change made.

Then we come to the next amendment which is in clause 18. The question was about the rights of children who are declared illegitimate to inherit from persons other than their own parents. Now it is accepted in both the Houses that children who might otherwise, strictly speaking, be regarded as illegitimate, should not be regarded as illegitimate *i.e.*, for the sins of the parents do not bastardise the children. That was the principle accepted. Now the question was raised that it was all right but then what about the estates of collateral relations? One can understand that, so far as parents are concerned, the children should be entitled to succeed to the estate of the parents even if they were illegitimate there can be no objection to allowing them rights of inheritance in so far as their parents' property is concerned. But what about the property of collaterals? The collateral relation or the brother might very well object that he will not allow the illegitimate children of another brother to inherit his property in preference to the legitimate children of his own.

Therefore, that objection was considered to be a reasonable one and effect was given to that objection by making this provision and so it is added both to clause 18 and to clause 26.

KAZI KARIMUDDIN (Madhya Pradesh): But, Sir, a similar amendment was moved in this House.

SHRI C. C. BISWAS: And so what is proposed to be added is:

"Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents."

KAZI KARIMUDDIN: But, Sir, a similar amendment, I say, was moved in this House also.

MR. DEPUTY CHAIRMAN: Order, order. Let him finish his speech.

KAZI KARIMUDDIN: But I was submitting that a similar amendment was moved in this House, but it was not accepted.

MR. DEPUTY CHAIRMAN: All right.

SHRI C. C. BISWAS: Maybe. All these questions which will be the subject matter of this amendment have been discussed threadbare not only in this House but in the other House as well. That is what I have been pointing out. I do not know if by further discussions there is a chance of attaining unanimity and that is what I was pointing out. I am not suggesting for one moment that this question was not considered. Some of them have been considered and voted upon differently from what the other House has done. I am not disputing that point at all.

SHRI R. U. AGNIBHOJ (Madhya Pradesh): Sir, the point I would like cleared is whether such children would be inheriting from the illegitimate father or from the legitimate father.

SHRI C. C. BISWAS: Sir, I have not heard the expression "illegitimate father". What is provided for here is this. So far as the parents are concerned, I mean the parents of such children, the children, even if they are illegitimate, would succeed to the property of the parents, but not of collateral relations. That is all that is provided for here.

Next I come to the amendment to clause 21. This only supplies what was an omission in the original Bill. The Succession Act will apply to persons who marry under this Act and their children. That is provided in clause 21. But the Succession Act, notwithstanding any restrictions will, it is laid down, apply to persons marrying under this Act. But it was overlooked that it is clearly and expressly provided in the Succession Act that it will not apply to Parsis and a separate chapter had been actually devoted to Parsi Intestate Succession. We got representations from Parsis that it should be clearly provided here that as a result of this Act the general rules laid down in the Succession Act will apply and not the rules which we find in the special chapter on Parsi Intestate Succession. Effect has been given to that demand. And so it is proposed to add:

"and for the purposes of this section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom."

Then we come to clause 26 and there I have already dealt with the question of illegitimate children in connection with the amendment to clause 18.

And so I come to clause 27 which deals with divorce. As regards some of the grounds for divorce which you find in sub-clauses (e), (f) and (g), it was provided that the defect or infirmity or disease referred to therein should have been a continuing disease or defect, for five years. This period of five years has now been reduced in each of these cases to a shorter period of three years.

DR. P. C. MITRA (Bihar): Adultery too?

SHRI C. C. BISWAS: Adultery is not yet a disease.

Then we come to the really most important change regarding divorce by mutual consent. That was the contribution of this House to the Bill. Well, it met with strong opposition in the other House in the initial stage; but later on, Sir, on maturer reflection a different attitude prevailed and what was sought to be done was to introduce certain checks and safeguards which would mitigate what were considered to be defects of the original amendment as adopted by this House. You find that two important provisions have been added. Clause 27(k) which contained the decision of this House regarding divorce by mutual consent merely stated the position in very general terms.

DR. P. C. MITRA: What do you mean by mutual consent?

SHRI C. C. BISWAS: Just a minute.

DR. P. C. MITRA: I can't understand what you mean by that.

SHRI C. C. BISWAS: One of the grounds for divorce is that "the respondent has lived apart from the petitioner for one year or more or the parties refuse to live together and have mutually consented to dissolve the marriage." It was in this bald form.

DR. P. C. MITRA: But what is the

MR. DEPUTY CHAIRMAN: Please hear him, Dr. Mitra.

DR. P. C. MITRA: But, Sir, the.....

MR. DEPUTY CHAIRMAN: Order, order.

SHRI C. C. BISWAS: We delete this sub-clause (k) altogether and we add a new clause dealing exclusively with divorce by mutual consent and this

amendment was expressed in these terms. I will read it out:

"27A. Divorce by mutual consent.—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved."

DR. P. C. MITRA: How a petition by both the parties?

SHRI C. C. BISWAS: I have read it out and it is before the hon. Member and he will find it stated there that the petition may be presented to the district court by both the parties together and.....

DR. P. C. MITRA: But where is the complainant and where is the respondent?

SHRI C. C. BISWAS: Does my hon. friend find the word "petitioner" or does he find the word "respondent" in this particular clause? Why should he raise such questions?

Well, then, we have next to.....

SHRI V. K. DHAGE (Hyderabad): Sir, if I may have a little explanation. In the amendment, No. 13 it is stated that after line 44, insert clause 27A. And so it means that sub-clause (k) remains. I have been trying to understand what exactly it means. Where is it stated that 27(k) is omitted?

PANDIT S. S. N. TANKHA (Uttar Pradesh): Actually 27(k) is omitted.

SHRI V. K. DHAGE: But you don't say anywhere "omit 27(k)".

SHRI C. C. BISWAS: If my hon. friend will please refer to the Bill he

will find that sub-clause (k) of clause 27 is in lines 39, 40 and 41 of page 9; and if he will please refer to the amendment, No. 12, there he will find it stated "omit lines 39 to 41". So that means that that sub-clause is deleted and then comes the next amendment, amendment No. 13 where it is proposed to insert after line 44 on page 9 the clause I have just read out.

MR. DEPUTY CHAIRMAN: It is a separate clause. Yes, please go on.

SHRI C. C. BISWAS: Then the other sub-clause of the clause reads:

"On the motion of both the parties made not earlier than one year after the date of the presentation of the petition referred to in sub-section (1) and not later than two years after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree."

Sir, these are necessary conditions which, I submit, ought to be fulfilled in the case of any proceeding under this Act, whether it is asking for judicial separation or for any other relief. As a matter of fact, the court must hear the parties, be satisfied that the averments made by the parties are correct and the court must also satisfy itself on other points as in clause 33 to which I shall presently refer. It is then and then only that the court would be in a position to make a decree for relief. Here are very necessary safeguards. First of all, there is a time limit. It is provided that the grounds on which this relief may be asked for is that the parties have been actually living separately

for one year at least; then, they find that they cannot live together in future and then they have to come to a mutual agreement that they should separate. It is only after that that they are empowered to present a joint petition to the district court. After presenting the petition, the parties have got to live for one year separately after which they are expected to make a further petition. That is to say, at the end of one year after the presentation of the petition but not later than two years, the district court will take up this matter for consideration. After hearing the parties, after trying to find out whether what the parties have stated is correct or not, the court will pronounce a decree.

DR. P. C. MITRA: Will they remain separate or jointly for one year?

SHRI C. C. BISWAS: If they live jointly during that period of one year, the petition will fail. That is to say, they have given their consent for separation. The consent is to be given jointly and it may be revoked only jointly.

DR. P. C. MITRA: Then where is the separation?

MR. DEPUTY CHAIRMAN: Please read the clause properly. Do not disturb him in the middle.

SHRI C. C. BISWAS: Divorce by consent implies that they want to divorce and, instead of washing dirty linen in public, instead of one party going to the court and telling all sorts of stories just to comply with the requirements of the law, they simply say that they cannot live together, that they have both agreed to separate and ask the court to give them separation. That is all.

DR. P. C. MITRA: Then, it is 'My dear'—so far and no further.

MR. DEPUTY CHAIRMAN: Order, order. You should speak afterwards.

SHRI C. C. BISWAS: We need not worry about Dr. Mitra. His age will

[Shri C. C. Biswas.]
not permit him to address anybody as 'My dear'. He need not worry about it.

I will just refer to clause 33 which gives a new power and imposes a new duty on the marriage court. Before proceeding to grant any relief under this Act not merely divorce by mutual consent, any relief, maybe restitution of conjugal rights or judicial separation or divorce, anything—it shall be the duty of the court. in the first instance, in every case, where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. That attempt will be made and that is a very necessary precaution. I do hope that this attempt at reconciliation will, in most cases, be found actually to result in reconciliation between the parties. After all, Sir, the object of divorce is not to keep the parties separate. If it is possible to bring them together that should be attempted. It should be argued with them and they should be explained the position and they should also be told why they should come together again. That is required to be done under the Statute by every court which has to dispose of these matters. One other fact which the court will have to go into is this: It was stated—you will remember, Sir,—either in this House or in the other House when this question was under discussion that this will result in undue pressure being brought upon illiterate women in the villages in India and that their consent would be obtained by force, fraud or by undue influence and that, in most cases, the result of adopting this suggestion of divorce by mutual consent would be to the detriment of such women. It was suggested that not knowing the full implications they will put their signature or their thumb impression on any paper which is put before them by the husband. This would result in a dominating husband getting the wife to do whatever he likes.

In order to guard against that, it has now been expressly provided that where divorce is sought on the ground of mutual consent, the court has to satisfy itself that such consent has not been obtained by force, fraud or undue influence. Unless the court is satisfied on that point, no divorce will be granted by mutual consent. If you accept this proposition, it will not be quite so easy as it would otherwise be. In view of the new safeguards and checks which have been introduced by the other House, divorce by mutual consent has certainly been improved and has been made very much more acceptable than it would otherwise have been.

These are the main amendments. I believe I have dealt with all of them and I suggest, therefore, Sir, that the House may be pleased to concur in these amendments in order to avoid the deadlock which will only mean delaying the passing of this Bill. As a matter of fact, Sir, it is up to the President either to summon a joint meeting or not to do it. The word is 'may'. Suppose the President does not summon, that means that all the labours are wasted, thrown away and the Bill remains in a state of suspended animation, if not actually dead. That will be the position. I do not suggest that any Member is willing that after so much of labour, so much of trouble, we should have to face such an untoward result. From all points of view, I suggest that the House may be pleased to consider the matter, limiting the discussion only to the amendments which have been made by the other House and not going outside the scope of the amendments and to accept the amendments made by the other House.

MR. DEPUTY CHAIRMAN: Motion moved:

"That the *amendments made by the Lok Sabha in the Bill to provide a special form of marriage

*For text of amendments vide cols. 2991—2994 *supra*.

in certain cases, for the registration of such and certain other marriages and for divorce be taken into consideration."

SHRI P. SUNDARAYYA (Andhra): Sir, I want to know the procedure. The motion is for the acceptance of all the amendments. Does it mean that we have to discuss all the amendments?

MR. DEPUTY CHAIRMAN: First, there is general discussion; after that, we will take up the amendments one by one and vote on them. The discussion will be mainly on the amendments, not on the wider scope of the Bill

SHRI V. P. RAO (Hyderabad): The general discussion will be on all the amendments?

MR. DEPUTY CHAIRMAN: General discussion will be on all the amendments.

SHRI P. SUNDARAYYA: After the general discussion, voting will take place?

MR. DEPUTY CHAIRMAN: Yes. and then the amendments will be put to the vote one by one. If there are amendments to any particular amendment, then there will be discussion.

SHRI RAJENDRA PRATAP SINHA: If some one wants to oppose the amendment?

MR. DEPUTY CHAIRMAN: You can oppose it when I put it to vote.

SHRI KISHEN CHAND (Hyderabad): Speak on it as well?

MR. DEPUTY CHAIRMAN: You speak on whatever you want to speak now.

SHRI KISHEN CHAND: This is only on a general basis.

MR. DEPUTY CHAIRMAN: You can take up any particular amendment you want and criticise it.

SHRI P. SUNDARAYYA: Mr. Deputy Chairman, on the whole, many of the amendments that have been passed by the Lok Sabha are welcome to us, and we do support some of them. For instance, the amendment which speaks of the age of the male to be at 21 years and that of the female to be at 18, is one of the most welcome amendments passed by the Lok Sabha. When the Bill was being discussed here in this House, we were for 18 years for both, male and female, though we did not like the idea of guardianship. We were, at that time, even prepared to accept guardianship if the age was fixed at 18 years. This is particularly so because of the fact that in our country when marriages are taking place at comparatively younger ages than 18, 18 would have been the normal age at which the Act would have been useful. So now without guardianship, 18 years for the girl and 21 years for the boy with a difference 3 years between the two is normal and as such this amendment is welcome, and we will oppose any effort to bring back guardianship even to girls who have completed the age of eighteen years because that will be reactionary to what the present position is.

Sir, we would not like amendment No. 3 where the residence qualification has been raised from fourteen days to thirty days. After all it is an increase of 16 days only and so we won't quarrel over that, though the Lok Sabha could have left it at fourteen days.

Now coming to amendment No. 4 we cannot accept this amendment. The proviso proposed to be added reads "Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law

[Shri P Sundarayya]

governing each of them which permits of a marriage between the two" Sir, this was one of the most debated clauses in this House. In fact the Government claimed that this Bill was a first step towards a common civil code, and we also supported them in that claim provided it was justified that this Bill was a first step towards that object. Now under the Hindu Marriage and Divorce Bill, that is going to come before this House, which is now being discussed in the joint Select Committee, and under the Hindu personal law and similarly the Muslim personal law, certain marriages by custom, religion or law are allowed. In all these cases the prohibited degrees of relationship, as defined in this Act, do not exist and as such as hitherto such marriages will be very prevalent in our country and they will take place either under the Hindu Marriage Act or under the Hindu custom, or for the matter of that, under the Muslim Marriage Act or under the Muslim custom, and all those marriages—well, they take place,—will be more than 90 per cent or 95 per cent. Why is it that we make it in this Act that marriages which come under the so-called prohibited degrees of relationship are taboo. If they are proved bad eugenically, well, they can be prohibited, but the scientists are not able to prove it so that they can be stopped, and it is only sentiment. Now I do not want to go into the development of the marriage itself where in earlier periods there were marriages between the first cousins and marriages between sisters and brothers are reported to have taken place. From that the society is advancing rapidly but at the present stage of society in which we find ourselves, when these marriages are quite common to us, to say that we are not to recognise these marriages and refuse to allow them to be registered under the Special Marriage Act is nothing but attaching a stigma to such marriages, under the Hindu

custom and other customs. That is exactly why, Sir, we say that this is a kind of stigma because in particular laws of the land you recognise those marriages and you enact legislation recognising those marriages. On the other hand you are bringing another Special Marriage Act which the Government claim to be a first step to a common civil code and in that you ban these marriages which is totally wrong. In fact when clause 4 was under discussion we wanted to amend it and bring it in conformity with clause 15 namely, that the marriages, even though they come under the degrees of prohibited relationship, if they are allowed by usage, custom or law, should also be entitled to be registered. Of course the clause was not, at that time, in the form in which it was passed later. It was discussed and at that time the Law Minister was not very anxious to include that thing. In fact the Law Minister's effort was to omit sub-clause (e) in clause 15 whereas on that there was a lot of discussion and it is now an amazing thing for the Law Minister to come and say that even in this House there was great opposition to it. I would like to remind the Members of this House that on that there was a heated debate, and when the amendment for the deletion of sub-clause (e) from clause 15 was put here the Law Minister kept silent and when the amendment was defeated by voice vote he did not even demand a division and that shows that the House was not for its deletion. Now, of course, the other House has got every right to come back to the subject and say that some modification is to be made and I would like to point out

SHRI C C BISWAS What happened was this. The gentleman who gave notice of the amendment to delete sub-clause (e) simultaneously gave notice of an amendment to introduce the other clause and when he spoke he made that perfectly clear, namely, that there were independent motions

to delete clause (e), but his motion to delete clause (e), as he himself explained in the House, was interlinked with the other amendment of which he gave notice introducing the safeguards. In fairness to him I ought to make that point clear.

SHRI P SUNDARAYYA In spite of the clarification of the Law Minister I would like to submit that clause 15 was discussed after clause 4 had been disposed of. The hon Member might have given similar notice of an amendment that marriages coming under degrees of prohibited relationship could be registered provided they are allowed by custom or law in clause 4. He did not press that amendment at that time, he withdrew it. Then clause 15 was taken up. He now comes and says that there was an amendment in his name as well as other Members' names and that certain other amendments were there to delete that thing and all that. The decision of the House was that if marriages are taking place under personal law, even within degrees of prohibited relationship, they could be registered under this Act. So it is on that voting was pressed and the hon the Law Minister who was opposed to the retention of sub-clause (e), as it was at that time, should have demanded a division, but he kept silent, and of course the decision of this House went to the other House and now here is the modification. What does this modification mean? It means that all marriages that have taken place up to now, under personal law, custom or usage, or up to the date when the President is going to sign this Bill, all marriages which take place within this time only and which even if they are within the degrees of prohibited relationship are all justified and they could be registered under this Act. But any such marriages that will take place after the signature of this enactment by the President or after it is gazetted shall not be registered under this Act. Now this is the new amendment that has come up. What

does that mean? If these marriages are wrong, are unhygienic or un-eugenic and therefore they have to be banned, why then do you recognise those marriages up to the point when this Bill will come to be enacted? Why make a differentiation in the case of future marriages within the degrees of prohibited relationship? Why this double discrimination? While you allow those marriages under the Hindu Marriage Act, while you allow it under other personal laws, when the question of their registration under this Special Marriage Act which you claim is a first step towards a common civil code, arises then you say that you are not going to recognise them, it is a most illogical stand that any Government can take and as such, Sir, we oppose this amendment, not because of the illogicality of the stand of the Government itself but from the mere fact that we want marriages that people recognise, those marriages which other laws also recognise and for them there should be no hindrance if they want to come and take the protection of the Special Marriage Act itself for purposes of registration. So it is from that angle that we say that this amendment should not be accepted and the original proposal as it was there in clause 15 (e) should be accepted.

Now, I come to amendments Nos 5 as well as 8. These two amendments we cannot accept, because they mean that the children will be made illegitimate by the marriages being declared null and void or voidable marriages. Such children are styled as illegitimate children and they are debarred from inheriting property which otherwise they would have inherited. This clause was discussed here threadbare and this House at that time was of the opinion that whatever legal lacunae there might be in a marriage, since the child is born of a woman and a man, of a mother and a father, of a wife and a husband, though that marriage might be in

[Shri P. Sundarayya.] legal terms voidable marriage, the children should not suffer. The woman and the husband are not null and void; they are quite healthy and living; the children are healthy and living. Why do you want to penalise these children? That is why we did not accept this at that time and this differentiation was voted down in the House. All children born of this wedlock should be recognised as legitimate children. (*Noticing Dr. Mitra nodding*) I know you are an incorrigible person in these matters. Therefore there is no point in replying to your nodding at all. This differentiation between legitimate and illegitimate children is totally wrong. I can understand that argument in the case of children born to a woman through some other husband or through some other man before marriage. Why should such children get the property of the successors or of the ancestors? There is some justification in that argument. But when a woman who is openly married to a man is living together with him, because of certain legal lacuna to characterise the children as illegitimate while you allow the marriage to continue, while you allow the man and the woman to continue to live together, is a thing which we cannot understand at all. Sir, that is the reason why this discrimination, this distinction, this black spot of characterising the children as illegitimate cannot be acceptable to us. I would like to remind the House of the Prime Minister's speech under whose leadership the Congress Party functions—"I would have no objection if the original clause as such goes but I do not want to raise a controversy, so I am prepared to accept this amendment." But that is not a correct attitude. In fact, we wanted that there should be no stigma of illegitimacy on children. We cannot understand how he could have accepted such an amendment. The Prime Minister might, in order to satisfy some of the members of his own party, have compromised himself but we cannot compromise ourselves in this respect and

therefore we have to oppose these two amendments.

SHRI V. K. DHAGE: Does my hon. friend Mr. Sundarayya think that under the clause as it stands they cannot inherit from even their parents?

SHRI P. SUNDARAYYA: From parents, they can. But other properties, collateral properties, they would not get.

MR. DEPUTY CHAIRMAN: Mr. Sundarayya wants that they should get that also.

SHRI P. SUNDARAYYA: Just like any other child, these children should also get all such properties. The stigma of illegitimacy should not be brought on them. Of course if there is no collateral property, then they won't inherit anything; that is a different matter.

Then, we certainly welcome amendments Nos. 9, 10 and 11 reducing the number of years from five to three. In fact, we had moved similar amendments but unfortunately this House at that time negatived them. We would certainly like the House to now support these changes because, apart from other things, it will give a uniform time for all these things—leprosy, mental illness and venereal diseases. Three years should elapse before a petition for divorce can be presented and three years is quite a long time to see whether the marriage is successful, whether these diseases are curable or not. So all these three amendments are welcome and we do support them.

Now, with regard to divorce by mutual consent, we do accept these changes. When we proposed in this House divorce by mutual consent, we did not do it with intention to destroy the institution of marriage, nor did we press it with a flippant attitude. Instead of washing the dirty linen, if the parties agree that the marriage is

not successful, they can come and say 'relieve us from this mutual obligation so that we can live a more decent life' So the provision that has been made is quite welcome to us. Though our Law Minister has said that these safeguards are such that mutual consent divorce will not be available—nobody is anxious to get divorce easily—the point is that mutual consent is the best method when both the parties feel that they cannot make a success of their marriage. Whatever may be the reason, I am glad that the hon. the Law Minister has changed his opposition to this clause and has come forward to support it. So we do support that amendment.

Coming to amendment No. 14, we cannot support it. Though it looks very slight and verbal, it is a very dangerous amendment. It says that at page 10, line 4, for "the marriage" substitute "entering the certificate of marriage in the Marriage Certificate Book." What does it mean? It relates to clause 28 which says that no petition for divorce shall be presented to the district court unless at the date of the presentation of the petition three years have passed since the date of the marriage. Instead of the date of the marriage, the proposal is that three years have passed since the date of entering the certificate of marriage in the Marriage Certificate Book. Under the clause as it stands, marriage means marriage celebrated under any law; it may be under the personal law also, not necessarily under the Special Marriage Act itself. Now, by making this change, you debar marriages that have already taken place under the Hindu law or the Muslim law or any other law. You want those couples to come and get their marriages registered first and then if they find that they cannot get on they would have to wait for three years more as if the years during which they have been living together as husband and wife under their personal law are not sufficient. You make them wait for

another three years. What is the purpose of clause 15? When you allow all the other marriages to be registered under the Special Marriage Act, you want to give certain facilities and rights to those couples which they do not enjoy under their own personal law under which they are married. There are two important concessions given to them. One is succession and the second thing is that if they find the marriage unhappy and that they cannot get along happily with each other, if they find that their marriage does not rest on mutual respect and consent, if they agree, such marriages can be got dissolved. These are the two important rights. It is to enable persons who are already married under their personal law to take advantage of these facilities and to make their married life better that this provision has been made. Here is this amendment No. 14, at page 10, line 4, saying that a three years period after the marriage is not enough, but they must wait for three years after they get registration under the Special Marriage Bill. This will be nothing but taking away in another way the right which you have given under clause 15 and as such we cannot accept this amendment. Though it looks like a verbal amendment, in fact, it negates, in fact, it makes the law completely useless, as far as very hard cases which come under the Hindu marriages and others are concerned. That is exactly the reason why we are anxious to see under the Hindu Marriage and Divorce Bill, that will come out of the Joint Select Committee, how the divorce clauses are going to be framed.

SHRI C. C. BISWAS: I do not quite follow the objection of the hon. Member and I should like to have a little further clarification. What has been done by this amendment is only to substitute the words "entering the certificate of marriage in the Marriage Certificate Book" in place of the words "the marriage". It does not effect any change. It does not in any way prolong the period.

MR. DEPUTY CHAIRMAN: He opposes it.

SHRI C. C. BISWAS: On the assumption that the substitution of these words means a prolongation of the period.

MR. DEPUTY CHAIRMAN: Mr. Sundarayya, suppose they had married fifteen years ago and they get registered under this Act. Is it your case that the very next day they can apply for a divorce? Three years will have elapsed long before.

SHRI P. SUNDARAYYA: No, Sir. I would like to submit that suppose a marriage has been celebrated under the usual Hindu custom. Suppose those people want a divorce

MR. DEPUTY CHAIRMAN. If the present clause stands as it is, the position will be this. Suppose the marriage had been performed fifteen years before and immediately after the passing of this Act, they get the marriage registered and the next day they file a petition for divorce. You want that position to be maintained. Probably this clause is meant to have a uniform period for all marriages registered under this Act. I think that is the object.

SHRI P. SUNDARAYYA. That might be the present argument, but my point is that when you introduce clause 15, what is its purpose? When you enable marriages celebrated in any other form, apart from the special marriages, to be registered under the Special Marriage Act, there is one main purpose—in providing clause 15—namely that other marriages that have been performed under the ordinary Hindu custom or any other custom, in that the man or the woman, whatever the case may be, has certain disadvantages, which we consider is not in consonance with the march of civilization or progress. And it is for this purpose that you want the Special Marriage Bill to be passed, that it should be taken advantage of voluntarily by the people concerned. So clause 15 is an enabling clause for

those persons who are already married under the Hindu personal law or any other personal law. Previously this could not be taken advantage of. You make a provision enabling them to register their marriages, which they have contracted under a personal law, under the Special Marriage Act, so that they can take advantage of this Act. I do consider that by these provisions you are conferring a right on the man and woman to regulate their marriage, to regulate the succession of property to their children. These things are not, therefore, something which you can treat lightly. We consider them a progressive thing in that they make for the marriages to be more pure, more ennobling and more dependent on mutual self-respect. That is exactly why we are supporting the Special Marriage Act provisions and as such clause 15 is rightly there to allow the parties to take advantage of the provisions. Where the marriage cannot be made happy, cannot be on the basis of mutual respect—as many hon. Members in the other House said that if a marriage does not depend upon mutual respect and mutual adjustment, but it depends upon coercion, then it is no more a marriage, it is nothing but a rape—there must be provision for divorce. This divorce clause is there to enable those persons who contracted their marriage under personal law to seek a remedy if they feel it obnoxious to continue their married life which has failed.

SHRI C. C. BISWAS: I would like to draw the hon. Member's attention to the provisions of clause 18, namely, effect of registration of marriage. A pre-Act marriage, if it is registered under this Act, will be deemed to be a marriage solemnized under this Act. Now, this will come into effect only from the date of registration. You will find that "subject to the provisions contained in sub-section (2) of section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall as from the date of such entry, be deemed to be

marriage solemnized under this Act." Now this will come into effect only from the date of registration. The right of divorce is conferred for the first time under this Act. With reference to marriage which took place long ago and which is now registered under this Act, it will only come into effect with effect from the date of entry in the Marriage Certificate Book. My friend assumes that this means that this right would have accrued from the date of the ceremony of marriage. That is not the intention.

SHRI P. SUNDARAYYA: Sir, I do not accept the interpretation of the Law Minister.

MR. DEPUTY CHAIRMAN: The amendment has been proposed so as to bring it in consonance with the wording of clause 18.

SHRI P. SUNDARAYYA: Clause 18 says "the marriage shall as from the date of such entry be deemed to be a marriage solemnized under this Act", whereas in clause 28, it is stated "three years have passed since the date of the marriage". It is not 'since the date of solemnization of the marriage'. If those words had been used it would have been different.

MR. DEPUTY CHAIRMAN: Proposed amendment No. 14 is to bring it in consonance with clause 18.

SHRI P. SUNDARAYYA: That is exactly why I am saying that it makes a material difference. It is not merely a verbal change, but makes a material change. The right which in the earlier Act was provided is taken away, namely, that a couple who married under the Hindu personal law, if they register under this Act, could, if the marriage had taken place three years before, if they want, dissolve the marriage by seeking redress under this Act. Now that has been prevented by the addition of these words. Now they have to wait

for another three years. I want, Sir, that they should not be denied the right to which they are entitled, so that they can live a new life on the basis of mutual respect and other things, and not this life of slavery. As such, Sir, we cannot support this amendment—amendment No. 14.

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

SHRI P. SUNDARAYYA: Yes, Sir, I will finish. Sir, the other amendments are consequential amendments, and as such, there is nothing more to be said.

MR. DEPUTY CHAIRMAN: There is a message from the other House.

MESSAGE FROM THE LOK SABHA

THE INDIAN TARIFF (AMENDMENT) BILL, 1954

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

"In accordance with the provisions of Rule 132 of the Rules of Procedure and Conduct of Business in the Lok Sabha, I am directed to enclose herewith a copy of the Indian Tariff (Amendment) Bill, 1954, as passed by the Lok Sabha, at its sitting held on the 21st September, 1954."

The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

I lay the Bill on the Table.

MR. DEPUTY CHAIRMAN: We meet again at 2.30 P.M.

The House adjourned for lunch at one of the clock.