

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

**THE SPECIAL MARRIAGE BILL,
1954—(continued).**

SHRI B. K. P. SINHA (Bihar): Mr. Deputy Chairman, I compliment the previous speaker, Mr. Sundarayya, for his rational approach to the whole question. I had certain misgivings that emotion may creep into this debate and that we might not be able to judge the amendments on their merits. The hon. Mr. Sundarayya has set us on the right lines and we should emulate him, follow his example.

The question is: Are the amendments which have been suggested by the other House reasonable or unreasonable. It is the only point of view, it is the only standard, from which we should judge the amendments. The first important amendment is that which reduces the age of marriage for girls from 21 to 18. I think it is a proper amendment. The other House has taken note of the biological fact that girls attain adolescence at an earlier period than the boys. Marriage for them at that age becomes a biological necessity and therefore the age of 18 for girls is quite proper. It has been suggested by some that, if the age is reduced to 18, there should be a provision to make it obligatory on the girl to obtain her guardian's consent.

MAJ.-GEN. S. S. SOKHEY (Nominated): May I remind the hon. Member that there is no girl or boy mentioned in the Bill; there is mention only about females and males.

SHRI B. K. P. SINHA: I take it that it is the Doctor's view that a girl is not a female. By providing for consent between 18 and 21, we would be giving the girl the right to marry between 18 and 21 by one hand and taking it away with the other. The opinions of the girl always differ from those of her father. A chasm of 20 years separates the parents from

the progeny. Their ideas differ in the circumstances it would be proper to assume that consent would not be forthcoming easily. Therefore, the other House has rightly, while reducing the age from 21 to 18, not provided for the consent of the guardian between the ages of 18 and 21.

The second amendment relates to future marriages between parties within the prohibited degrees. I think this amendment is also quite reasonable. After centuries of experience, people realised that endogamy or marriage between near relatives had an adverse effect not only on health but on morality as well and ultimately on society. Therefore in the course of centuries the rule of exogamy was prescribed. It is our experience that where endogamy operates even to a limited extent, it has a deleterious effect on the progeny. I come from the town of Gaya. There is a community there called Gayawalas. There were 1300 families some hundred years ago, but then they had the evil practice that they would marry only amongst themselves. The result has been that now only about 300 families remain, and the rest have died out. Similar is the experience of Prayagwalas at Prayag. It is common knowledge that the monarchs of Europe developed the fatal disease called hemophilia because they had only a very limited circle within which they could marry. The results of research also confirm this view. I am reminded, Sir, in this connection of a very eminent English scientist. I forget his name but he is the gentleman who came to Calcutta, had some incident with a journalist and fasted for two or three days. Hon. Members may perhaps remember his name. In a very illuminating article he has recorded the result of his researches and his conclusion is that amongst those who are insane, 13 per cent, or 14 per cent, are the progeny of marriages between first cousins. The incidence is lower in the progeny of marriages between second cousins, but even then the percentage is sufficiently high. In view of this experience, it

would not be proper for us, we are introducing a sort of Civil Code for the whole of India, to make any exception in favour of local customs. My hon. friend, Mr. Sundarayya, said "If it is good for past marriages, why should we not apply it for future marriages also?" No doubt we cannot touch past marriages. There is a doctrine known in law as *fatum valet*. What is an established fact shall not easily be disestablished. The marriage is there and unless there are very compelling reasons, the marriage should not be declared null and void, but there is no such reason in the case of future marriages. People say, "If a local custom is there, why should we not allow it to prevail?" If we make an exception and give a concession to a local custom in some place, there is no reason why we should not make a concession to local customs prevalent in wider regions. If we make this exception, I am afraid we shall not be able to make any change in the Hindu law, because people in one place are wedded to one set of customs and people in larger areas are wedded to another set of customs. It is precisely the function of this sort of legislation to obliterate these customs and bring a sort of rationale into them and introduce harmony and unity in this great country.

Then, another amendment introduced in the Lok Sabha introduces a very desirable change. We failed to introduce any machinery of conciliation in divorce proceedings. They have filled that lacuna. They have provided for a machinery of conciliation. A machinery for conciliation is an accepted part of any civilised divorce law in any part of the world today. Such a machinery exists in France. In England, at the magisterial level, there is a Probation Officer whose duty it is to see that differences between the parties do not develop to such an extent that divorce becomes necessary. Some years ago Lord Justice Denning, an eminent Judge of England, reported on the Marriage and Divorce Laws there. His suggestion was that even

the High Court a machinery of conciliation should be introduced.

MR. DEPUTY CHAIRMAN: Mr. Sinha, you are concerned only with the amendments that have come from the other House. Please don't go beyond that.

SHRI B. K. P. SINHA: They have introduced conciliation and I am speaking on that.

MR. DEPUTY CHAIRMAN: Speak about the amendments—whether they are acceptable or not. Because the time at our disposal is very short.

SHRI B. K. P. SINHA: I shall be as brief as possible.

MR. DEPUTY CHAIRMAN: You have only 5 minutes more.

SHRI B. K. P. SINHA: I did not know.

MR. DEPUTY CHAIRMAN: 10 minutes are already over.

SHRI B. K. P. SINHA: I should have got this information earlier. Then in the U.S.S.R., also at one stage the right of divorce at will was there but then later on by experience they realized that there should be a place for machinery of conciliation and it was introduced there also.

SHRI C. C. BISWAS: Also in China.

SHRI B. K. P. SINHA: Yes, it is therefore a beneficent amendment introduced in the other House. Then there is divorce by mutual consent. While we have recognized this principle, the other House while affirming this principle, have put in certain restrictions. Now in a divorce several parties are concerned. The children are there, society is there and while every society recognizes that parties should have some freedom in the matter of divorce, every society has prescribed and every law has prescribed that divorce should not be very free and very easy. So this restriction introduced by that House is in line with the feelings and opinions held on the subject of divorce by progressive sections in advanced countries,

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it has not been urged but it may be urged by some that divorce by mutual consent is unknown to other systems of law. That is a fact but in England at least opinion has veered round to the view that they should have divorce by mutual consent. Lord Justice Denning also has recognised this principle. Of course he has put some restrictions by putting 7 years. We have put in a lesser period—3 years. There is no reason why the parties who do not want to live together should be forced to *live* together and then after passing through the devious ways of adultery, cruelty etc. ultimately go to court for a divorce. Adultery, cruelty etc. happen precisely because parties don't want to live together.

MR. DEPUTY CHAIRMAN: That principle also is accepted by the House. We are concerned only with the restrictions that the other House has suggested. Come to them.

SHRI B. K. P. SINHA: Exactly. That is why I urge that these restrictions are proper restrictions. The restrictions should have been there but it was, by a sheer oversight, that we did not put them and now that they have been put, we should have no hesitation in accepting those amendments.

Mr. P. Sundarayya referred to the provisions regarding the illegitimate and legitimate children and the right to inherit the property of the collaterals. Now every law must have some sanction behind it. We have prescribed that marriages which conform to certain standards shall be proper and valid marriages. If it does not, it shall be an illegal marriage and shall in some cases be a nullity. It is only in those cases that the children shall be declared illegitimate. What would be the check on the parties so far as the question of violation of those provisions are concerned? If we do not recognize all marriages entered into in violation of this Act, some consequences must be there. The

parties don't suffer under any provision of this Act. But the parties would be restrained simply because this provision about illegitimate children is there. It is out of love for their children that they shall not easily violate these provisions. So from that point of view this is a proper provision. The next question is, while the parties may be free to do anything, there is no reason why even if I violate the law, I commit a mistake, and my children should take advantage of that and should be entitled to inherit the property of those also who feel differently from ourselves? Collaterals may feel differently and why is it then that the law should compel the collaterals by a process of devolution and succession to transfer their properties to the illegitimate children? He raised again the question of registration. The hon. Minister has already pointed out that the question of registration which we have introduced is a verbal change and those amending words bring that particular clause in conformity with a previous clause. It is nothing more. I therefore feel that all the amendments suggested are proper and reasonable amendments and this House should accept them.

SHRI RAJENDRA PRATAP SINHA: Mr. Deputy Chairman, I shall draw your attention to amendment No. 2 as proposed by the Lok Sabha. Sir, you will find that I have tabled an amendment to this amendment of the Lok Sabha. I would like that clause 4(c) should read as follows:

"The male has completed the age of 21 years and the female the age of 18 years provided that if the female has not completed the age of 21 years, she has obtained the consent of her guardian to the marriage."

Sir, my hon. friend who was just speaking before me has objected to my amendment. I know my esteemed friend and from whatever little I know of him, I am not very sure whether

he has spoken from his own convictions or from the obligations of the whip issued today.....

SHRI B. K. P. SINHA: Not at all.

SHRI RAJENDRA PRATAP SINHA: Sir, I attach very great importance to this clause particularly sub-clause (c) as I think that this is the foundation clause in the Marriage Bill that we are going to enact and the marriages that would take place under this Act should be proper marriages and marriages based on sound foundations. Then alone shall we have happy and lasting marriages performed under this Act. You will appreciate, Sir, that originally also it was provided that if the marriage was to take place at 18, the consent of the guardian was essential. This House raised the marriage age to 21 and therefore the consent clause was dropped.' Now, Sir, the Lok Sabha has reduced so far as the age of the girl is concerned to 18 years but unfortunately they have not provided for the consent clause which my amendment provides. Sir, at the outset I would like to make clear that I am against this Bill. I am not against inter-communal and inter-caste marriages. I am not against giving liberties to the young couples. But at the same time I would not like to have provisions which may lead to the breaking up of the families and which may remove the restraint that a parent is entitled to exercise upon his child. I cannot imagine why we should apprehend all sorts of things and always labour under the fear that the parents - will always be hostile to the interests, well-being and wishes of their children, ^cannot consider this as a normal thing to happen, I would on the other hand, think that the parents would be always anxious for the happy married life of their children and they will always like to consider the feelings and the wishes of their children. All that I want is that this House should consider whether the age of eighteen is the correct age, when a young person can bring a balance to his or her judgment and take a correct

decision in such an important matter marriage. Sir, I am not against marriage at the age of eighteen, I welcome it. I think that so far as physical attributes are concerned, females in India can be married at the age of eighteen. But the point to be considered is whether she would have attained the mental maturity which is required for a proper consideration of all the pros and cons of a marriage proposal.

In modern life we have enough of opportunities for the two sexes to meet and boys and girls come to know each other at an early age. Now, it is quite likely that at this age of eighteen which is a critical age, the person may take a fancy for some other person, she may get infatuated for the other, I would say. And it is recognised fact that sex is not the only consideration in a match. Sir, modern youth, psychologically speaking, is a complex person, much more complex than his or her predecessor in the bygone days. She or he is the product of conflicts of our age and she or he is torn by the conflicting urges of our times. And ours, as you know, Sir, is a transitional period when the old values and concepts which were the anchor of life in the past are fast crumbling or disappearing; and new ones have not yet taken root. The youth has to bear the burden of this change. Infatuation, after all, is a fleeting phenomenon. But in matrimony we must aim at harmonising the different urges of the couple. This harmony alone will make the marriage a lasting and happy one. When the old sanctity of married life is fast vanishing, when it is not a sacramental marriage, when it is not a lifelong companionship, it seems to me that there is all the more reason why the marriage should be based on very sound and sure footing. The two souls should be harmonised in the modern sense of the word.

Sir, even in the western countries j we find that they lay great stress upon

[Shri Rajendra Pratap Sinha.]
 the s and there they feel that mature judgement should be brought to bear upon the problem of matrimony. Secondly, they lay great emphasis on the fact that the couple should know each other, the young persons desirous of entering into matrimonial alliance should know each other sufficiently long and sufficiently well. Therefore, I would like this House to consider whether at this tender age of eighteen the young girl—you may call her a female—will be mature enough to take such a critical decision, to weigh the pros and cons of a matrimonial proposal. I emphatically deny that she is mature enough to take such a decision. Sir, at the age of eighteen she will not have time enough to know the other person sufficiently long and sufficiently well, to know him intimately so that she could decide whether the young man is a fit person to be taken as a spouse and life-long companion. Therefore, I would on these grounds very strongly urge the House to accept the amendment that I have tabled.

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, I support the amendments which have been made by the Lok Sabha in the Special Marriage Bill now before this House. There are five or six major and important amendments which have been effected, the rest are more or less unimportant or consequential. I shall deal only with such of them as are important. The first of these, Sir, is the decision of the Lok Sabha to reduce the age of marriage of girls from 21 years, which we had fixed to 18 years. You will remember Sir, that at the time this question was being agitated in this House, the problem before us was whether or not we should let the guardians interpose between the wishes of the persons who are to marry or to allow the parties to marry without the consent of the'r guardians. And Sir, we came to the conclusion that since this was a special form of marriage in which it was possible that a boy or a girl might marry outside his

aar community, possibly such a union may not be acceptable to the parent, or guardian, and so the parent or guardian may not be prepared to give his consent. Therefore, Sir, it was thought desirable that the question of the consent of the guardian, should be done away with, by fixing the age of marriage of both the boy and the girl at 21 years. Sir, I might tell you that I was also a party to that decision. I was and still am certainly of the opinion that the age of 21 is the more desirable age for both the boys, and the girls than 21 and 18 or 18 and 18. Now, Sir, the main consideration which had led the Lok Sabha to change the age of marriage, specially in regard to the age of the girls is that it was of the view that since in India girls mature at an earlier age.....

MAJ.-GEN. S. S. SOKHEY: You mean females.

PANDIT S. S. N. TANKHA: Yes, Andl also become old at a much earlier age than in the Western countries, therefore, it will not be right to marry girls at a later age namely at 21, because it would mean that they would be entering into wedlock when a part of their youth had passed by.. I do not recognise the validity of this argument and speaking for myself I consider that a girl or woman is in the prime of her life and in the full bloom of her youth between the ages of 21 -and 25.

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At the age of eighteen Sir, the girl is still really young and does not attain real maturity, although physically she may have attained maturity. All the same, whether these biological factors are correct or not, since the Lok Sabha has found it more desirable that the age of the girl should be reduced—I think that decision is based more on the point of view held by the lady Members both of this House as well as of that House who are of the view that girls should be married at a younger age, that such a change has been made—I see no adequate reason

to dissent from that view and I do not think it is a matter on which we should quarrel with that House and veto that part of the amendment thus placing ourselves and that House in great difficulty with regard to the passage of this measure.

Coming now to the second question. Sir, namely the amendment of clause 15(e), with regard to the registration of marriages performed before the passing of this Act, the only change which the Lok Sabha has made is that it has now provided that in regard to marriages which have taken place before the passing of this Act, if those marriages when solemnized, were valid under any law, custom or usage having the force of law, then those marriages will be allowed to be registered under this Act whereas marriages which take place after the passing of this Act, if they are performed within the prohibited degrees not permissible under this law, then they will not be permitted to be registered under the Act. I think, Sir, this is a very wholesome change because if we allow custom to play a part even after the passing of this Act then there is no point in our providing under the Act that, for purposes of marriage the prohibited degrees shall be such and such. If the prohibited degrees were still to be governed by custom, local usage and all that sort of thing, then it would be that any person, even though marrying outside the prohibited degrees prescribed under the Act would be entitled to get their marriage registered and thus circumvent the Act by this means. And that is, what the amendment seeks to prevent under the Act and, therefore, I support this amendment and I consider that it is a very salutary change.

The third major change which the Lok Sabha has made is in clause 18 to which they have added a proviso. They have also added a similar proviso to clause 26. These provisos are to the effect that the children who may have been illegitimate before the registration of the marriages under this Act,

and who are legitimised under the Act by the fact of the registration of marriages, shall inherit the property of their parents only and not of other persons in the family. My friend, Mr. Sundarayya has taken strong exception to this provision but I do not think he has rightly understood the intention of this change. What the change intends is that those children who, had this Act been passed would have been considered illegitimate and not entitled to succeed to the property of any person other than their parents, will not even after the passing of this Act be entitled to that other person's property but shall only be entitled to the property of their parents. I do not see, Sir, what objection there can be to this. Such children having so far been considered as illegitimate children, namely before the passing of this Act, the registration of the marriage of their parents, would not have been entitled even to the inheritance of their parents' properties. Now, by the change made by the Lok Sabha they will be entitled to the property of their parents, but they will not be entitled to the property of other persons. Now, where is the objection to this amendment? After all the children will not suffer in any way by the proposed change because they would not be entitled to that property even otherwise. The passing of the proposed amendment does not make any change to their detriment. Since persons other than the parents did not recognise those children as legitimate children it is only right and proper that these children should not be made to inherit their properties, but the properties of their parents only who have had their marriages registered under the Act and thus given legitimacy to their illegitimate children.

The next important change is in clause 27 whereby the period of five years for continuous sufferance from insanity, leprosy or venereal diseases which was required to entitle a party to claim divorce from the other has been reduced to three years. This period was considered inordinately long by the Lok Sabha and they considered that it would not be right, to ask the

L.Pandit S. S. N. Tankha.] married couples to wait for this long period. Therefore Sir, they reduced the period to three years and I think it is quite reasonable and should be accepted by UB

Now, Sir, the only major change to which some exception can be taken is the clause about the dissolution of a marriage by mutual consent. The Lok Sabha has without doubt recognised the principle which this House had enunciated, namely that divorce should be allowed by mutual consent. The only change that they have now proposed is that with a view to preventing a large number of persons going in for divorce in the heat of the moment or in the heat of a family quarrel, they have provided that the parents so seeking divorce should be made to wait one year longer in order to enable them to go back to their homes, coolly think over the matter and then decide for themselves as to whether or not they would still insist upon getting the divorce. This change has, more or less, been motivated because of the fact that it is not the intention of this Bill to break up the homes or » break up the marriages but to keep them together so long as it is possible and to grant relief only where it is found that it is not possible for the parties to live together as husband and wife. There is only one little thing about the change made that I would like to mention and that is that the words which the Lok Sabha has employed in the proposed change are not very happy and do not really convey the exact intention of the Parliament in enacting this sub-clause. The words to which I take exception are in clause 27A. "Subject to the provisions of this Act and to the rules made thereunder, '» 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". The words "that they have not been able to live together" are capable of being read in

another light, namely that there may have been certain extraneous circumstances other than the volition of the parties themselves which prevented the parties living together, but that is, not what is really intended by these words in the Act. The real intention is that in spite of the effort of the parties to live together they cannot reconcile themselves to living together, and as such, have decided to separate but the words employed in the amendment do not convey that meaning and are capable of being read in another manner also. However, this is a small matter and if it is found at any time.....

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

PANDIT S. S. N. TANKHA:that the interpretation of this clause *bj* the courts has been different from that intended by Parliament then of course suitable changes can be made later on: and as such I support the amendment.

Another change which the Lok Sabha has made under this clause provides that the Court, when the parties finally go before it one year after the date of the presentation of the former petition, should before granting any relief, try to bring about a compromise between the parties, so far as may be possible. This Sir, is a very healthy suggestion and the courts should make earnest effort to bring about such a reconciliation between the husband and the wife and thus keep together the family. Of course, if it is not possible, then there is no other alternative but to grant them a divorce. With these words, Sir, I support the amendments made in the Bill by the other House.

JANAB M. MUHAMMAD ISMAIL SAHEB (Madras): Mr. Deputy Chairman, at the outset I would refer to amendment. No. 2 in the set of amendments that have been placed before the House. Sir, the history of the idea of an age limit contained in this amendment is well-known to the House. The Bill, when it was originally introduced in the House, had the age limit of eighteen years for both boys and;

girls, who wanted to marry under the Special Marriage Bill. It, also attached a proviso to this age limit. Sir, saying that if either of the party is below twenty-one years of age, the consent of the guardian should be obtained. Then during the consideration stage, Sir, in this House, this age limit was raised to twenty-one years in both the cases. But in the Lok Sabha the age limit has been retained for the males and it has been reduced in the case of females.

Now, Sir, I have tabled an amendment which would reimpose the condition that the female, if she happened to be below the age of twenty-one years, must obtain the consent of her guardian if she wants to take advantage of the provisions of the Special Marriage Bill.

Sir, when on a previous occasion this question of age was debated in the House, there were several Members who urged and said that while men and women at the age of eighteen were considered fit and capable to manage their affairs, why should they not be considered fit to decide on the question of their marriage as well? That was the point, Sir, that was raised by them, that at eighteen years of age boys and girls are considered capable to manage their own affairs, for example, to dispose of their properties, enter into contracts and so on; then why should they not be credited with the capacity to come to a right judgment in the matter of the marriage under this Act? That analogy does not hold good here. With regard to the ordinary affairs which boys and girls of eighteen are managing by themselves, they are in the midst of their family; their parents are there; their relatives are there and these young men and women would have the benefit of the counsel and advice

MAJ.-GEN. S. S. SOKHEY: Sir, we must settle the question of the language of sub-clause (c) of clause 4 because the clause says 'male and female' while every hon. Member is talking of boys and girls and men and women. I want to point out to the hon.

Minister that when we talk of rabbits we talk of male rabbits and female rabbits and when we talk of mice we talk of male mouse and female mouse and it is perfectly true, when the British were here, we were natives and we had vernaculars and we had male natives and female natives. Where is the necessity for such 'male' and 'female' expressions today? The hon. Minister must have heard that we have gained our independence and since then we have become men and women and boys and girls; we are no longer male natives or female natives, and I would ask him to change the words because the words 'male' and 'female' in this context are both bad

English and insulting.

MR. DEPUTY CHAIRMAN: What is your objection?

MAJ.-GEN. S. S. SOKHEY: We should use the term 'men and women' and not 'male and female'. It should be 'boys and girls' and 'men and women'.

MR. DEPUTY CHAIRMAN: When Mr. B. K. P. Sinha was speaking, you took exception to the word 'girls'. Now you are taking exception to the words 'male and female'

MAJ.-GEN. S. S. SOKHEY: It is both insulting and bad English.

MR. DEPUTY CHAIRMAN: Order, order. It is already there in the Bill.

JANAB M. MUHAMMAD ISMAIL SAHEB: With regard to this I have no objection to taking that advice of a doctor with regard to the right expressions to be used in connection with men and women.

Sir, as I have been saying, they are in the family. They have got the advantage of counsel, advice and cooperation of their relatives. Therefore it is rightly thought that even at the age of eighteen they will be able to manage their affairs quite properly. But the marriage that is contemplated under the Special Marriage Bill is altogether a different affair. It intro-

[Janab M. Muhammad Ismail Saheb.]

duces a revolutionary idea into the existing social order of things. Now if one wants to marry under the provisions of this Bill he or she would do that in most cases contrary to the desire and wish of their parents and relatives. Therefore they would not have the benefit of the advice and counsel which she or he would have under ordinary circumstances. Therefore it is, Sir, the majority of the Members of this House thought it fit enough to raise the age limit from eighteen to twenty-one and this produced the consequence of doing away with the necessity of obtaining the consent of the guardians. Now the Lok Sabha has retained the age limit of young men who want to marry under the provisions of this Bill at twenty-one and has reduced the age limit of the females to eighteen. Sir, I do not understand the idea underlying this change. Is it thought that girls or young women become as mature when they are eighteen as the boys are at the age of twenty-one? That is the question, Sir. There may be physiological and biological changes, different kinds of changes in the girls; they may become adolescent sooner than the boys, but that is not the question. Whether they have got mature power to judge, whether they have got as much wisdom as the young man is expected to have at twenty-one, whether the girls have that much of wisdom and maturity when they are only eighteen, that is the question. That question was raised by Mr. Sinha, Sir, and I do not think it has been answered. I remember, Sir, years ago there was an investigation by the Oxford University as a result of which it was found that the girls had a more subtle brain, so much so they excelled the boys in algebra, and such other subjects where the science of numbers was concerned. The case of the boy was that he had a more robust brain so that he was superior to the girls in the matter of such subjects as arithmetic although here also the science of numbers is concerned. That was, Sir, I think the

conclusion arrived at as a result of that investigation, but even that investigation did not show whether this more subtle brain or power of ment or whatever it may be, came to the girls earlier than the robust judgment came to the boys. That is the question, Sir, and the lady Members here would claim equality, as much equality for the young woman as there is for the young man. That is one thing. But do they claim age for more wisdom, more maturity for the girls than for boys? That is the question. Sir, and this is a very important matter which would affect them throughout their lives. Therefore it is only fair and just to those young men and women to make them wait until they are twenty-one. It is more necessary, Sir, in the case of girls to make them wait until they are 21 years of age. This is the *raison d'etre* of my amendment. I oppose the amendment that has been proposed by the Lok Sabha. As a matter of fact, I oppose the whole Bill. I have been opposing it from the very beginning, from the stage of its introduction in Parliament. And this is one of the features which is much more drastic than other provisions. Sir, these amendments that have been placed before the House suffer from certain omissions. In this House as well as in the other House, it was urged and it was requested that Muslims might be exempted from the operation of this Bill.

MR. DEPUTY CHAIRMAN: You have already spoken on that aspect. We are now dealing with these specific amendments.

JANAB M. MUHAMMAD ISMAIL SAHEB: When we are considering so many amendments, my point is this important question has not been given sufficient consideration. The Bill was circulated for eliciting public opinion. What for? So that the House may know and respect the views of the public. The Law Minister admitted very clearly that Muslims as a community were stoutly opposed to the Bill and so it is only reasonable that they should be exempted from the

operation of this Bill. It was stated in the other House that.....

MR. DEPUTY CHAIRMAN: This scope of the discussion is confined to the amendments before the House. You are not expected to go beyond those amendments.

JANAB M. MUHAMMAD ISMAIL SAHEB: I say, Sir, that there might have been other amendments too.

MR. DEPUTY CHAIRMAN: We are not concerned with what might have been. We are only concerned with the amendments that have been made by the Lok Sabha and if you have any remarks on those amendments please speak on them. Beyond those amendments, we cannot go.

JANAB M. MUHAMMAD ISMAIL SAHEB: I thought we were engaged on a sort of general discussion and I thought I might say some words *on* the Bill as a whole.

MR. DEPUTY CHAIRMAN: In the beginning itself I made it clear that the discussion is confined only to the amendments made by the Lok Sabha.

JANAB M. MUHAMMAD ISMAIL SAHEB: I obey your ruling. I oppose this amendment.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Mr. Deputy Chairman, I have to make only a few observations with regard to one amendment and with regard to the situation in which we have been placed.

The amendment is with regard to lowering the age of girls to 18. In a way I am happy to see that this is the amendment which I had pointed out in my Minute of Dissent and this is the age which I wanted and that it has now been accepted; in view of the conditions in India the age of 18 is more suitable. I had pointed out that the age for girls should be 18 and for boys 21. Of course, everybody would feel that it would have been better if it had been possible to make it obligatory that the girl below the

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age of 21 should obtain the consent of her guardian.

Now, the point is this that my amendment in this House and I want to bring this to the notice of the House for future guidance, because it is a very peculiar position in which we have been placed here now—for 18 and 21 unfortunately was typed below an amendment which suggested 21 as the age for both boys and girls. Naturally that amendment was first put to vote and my amendment asking for 18 and 21 was barred. In the other House too when the amendment was put

MR. DEPUTY CHAIRMAN: But I want to know how all this is relevant.

DR. SHRIMATI SEETA PARMANAND: This is only to point out that

MR. DEPUTY CHAIRMAN: You may point it out in the Rules Committee. The proper place to point out all these things is the Rules Committee, or discuss it with Secretary as to where the amendment is to be typed and all that.

DR. SHRIMATI SEETA PARMANAND: But now, Sir, the amendment which was really barred in this House is now before us and we are being asked to vote on that. That is what I want to point out.

MR. DEPUTY CHAIRMAN: So you have scored the point.

DR. SHRIMATI SEETA PARMANAND: I would not have made it clear until I had pointed it out. I also wanted to say that other amendments in the other House also have been barred because of this peculiar position, for example, the amendment relating to the consent of the guardian till the girl reaches the age of 21. So I would request the hon. the Law Minister to bring forward a suitable amendment after the Bill is passed making the consent of the guardian necessary when the girl is below 21. I would also like to say that this is not a question of claiming certain

[Dr. Shrimati Seeta Parmanand.] things on the basis of equality. Women want to be practical and they do realise that even a girl should have the right to marry at the age of 18 for considerations which have been amply discussed in both the Houses when the Bill was before us. So I would end my observations with this request that later on an amendment should be brought forward—ali women will welcome it—that the consent of the guardian is necessary till 21.

I would also like to point out that a joint sitting of the Houses is not a deadlock but it is a constitutional solution.

MR. DEPUTY CHAIRMAN: You may discuss it with the Leader of the House.

SHRIMATI LILAVATI MUNSHI (Bombay): Mr. Deputy Chairman, I think this is a much discussed Bill and probably it has taken the longest time in both the Houses. I find, Sir, that the changes made by these amendments from the Lok Sabha are for the better in many respects. After all, this is a trial Bill and it is a forerunner—if I read the policy of the Government correctly of the civil code which is to come. And that is why there is such a great heat in this debate because the orthodox thinks that this is the thin end of the wedge and the reformers think that if they went as far as possible in this Bill they could go even still further in the next one. Sir, mankind can only progress by trial and error and this is one of the trials and we can know later how we progress under this.

Sir, I am not going to go into generalities but I will just make a few comments on the clauses which are referred to here. The question of age is a much discussed one and I understand—because at the time when the debate and voting took place here I was not present that it was by a surprise vote that that clause was passed as well as the clause relating

to divorce by consent. I think the age of 18 for girls and 21 for boys is quite reasonable and the change made is for the better. Sir, the point was urged that consent should be necessary in the case of girls. I do not think that at the age of 18 consent is necessary; if a person can handle his or her own property at that age and is competent to do everything else in law, then why should a girl not be allowed to marry according to her choice at that age. We are really shutting our eyes to realities of the situation because what is happening today is that in villages even girls below 10 or 12 years are getting married in spite of the Sarda Act. If the age is kept as 21 you will be probably putting obstacles in the way of marriages under this Act.

JANAB M. MUHAMMAD ISMAIL SAHEB: Then why 21 for males?

SHRIMATI LILAVATI MUNSHI: As it is, men are marrying at a higher age than the girls. Boys hardly get married at 10 or 12 or even 16 or 18 and so there won't be much harm done. After all, who is going to take advantage of this Bill? Let us understand that. This is a permissive measure and only educated people will come forward to take advantage of this measure, unless of course somebody who is already married and who wants to get a divorce comes forward to get his marriage registered. Or if a Hindu wants to marry a Muslim or a Muslim wants to marry a Parsi—only in such cases people will come forward to get married under this Bill. Otherwise, ordinarily marriages are not going to take place under this Bill and in cases where they do take place, they will be mostly of educated people. At least I presume so. Therefore I do not think there will be any harm in having the boy's age as 21. Now, I come to clauses 5 and 15. I think the changes here are for the better. The provision under clause (e) relating to prohibited degrees of relationship is also to be welcomed. Otherwise there could have been a loophole. People may first marry and

then come and register the marriage that would be wrong. I think this is a change for the better.

Then I come to clause 18. I think this is the most beneficial clause that one can think of. This is about illegitimate children. These children, for no fault of their own, come into this world, and the father escapes all responsibility of maintaining the child, etc. Very often the mother puts the unwanted child in a gutter or a lane or in so called 'ashram', where there is no one to look after it. Because she cannot marry according to orthodox notions and the father also escapes all responsibility and he does not want to recognise the child, the child is put to great suffering. So, I think this is a very beneficial clause that has been put in this Bill. Instead of allowing the father to go scot-free, these children, will be able to inherit and at the same time these children are not a burden on the other relations. I think it is a good thing that has been done and I welcome it.

Then I come to clause 27. I think that also is a good change, especially the provision relating to unsound mind, leprosy, venereal disease, etc. I think 'adultery' should have been added in this clause.

Then I come to clause 27 (k), that is, divorce by consent. As I stated before, it was a surprise vote in this House which set the ball rolling and the ball has gathered more momentum and has come back to us. Of course, there seems to be an improvement. It is a debatable question whether divorce by consent will benefit women or not. It can result in both ways. However, it has been accepted for good or for bad and there it is. Anyway, women are suffering under the present scheme and they are probably going to suffer under the proposed scheme. What will be the sum total of suffering, whether it will be greater or lesser, time alone can show it. This is only a permissive measure and, as I said, a few people are going to take advantage of it and so let us hope much harm may not be done.

Now, there is one thing which I have not understood, Sir. In this clause it is provided that a divorce petition may be filed if the respondent has lived apart from the petitioner for one year. Then in clause 28, it has been stated that three years shall pass since the date of marriage. This would mean that for three years first one must be married, then one must live separately for one year. Am I right?

SHRI C. C. BISWAS: That one year has been included in the three years.

SHRIMATI LILAVATI MUNSHI: Clause 28 also states "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 entering the certificate of marriage in the Marriage Certificate Book." And then one year after that.

SHRI AKBAR ALI KHAN (Hyderabad) : That is for conciliation.

SHRIMATI LILAVATI MUNSHI: Clause 27A (2) 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 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." So one year must pass after the presentation of the petition. Under clause 28, it is three years in the first instance before one can ask for divorce. So it means three years plus one year, that is a minimum of four years must pass before divorce takes effect. The point was made that it is only one year, but it really comes to four years.

SHRI C. C. BISWAS: This House suggested divorce without tears and

[Shri C. C. Biswas.] the other House has made divorce with tears.

SHRIMATI LILAVATI MUNSHI: The Law Minister is very frank about it. Let us see. Time alone will show how women will fare under this Act. We want to change everything and this is one of such changes. Whether it is good or bad, one cannot say. However, it is there. So it is four years in the first instance, and in other cases it is two years and not one year. After the marriage three years must pass, in which for one year one has to live separately. I think there is a misunderstanding about this one year after the presentation of the petition.

MR. DEPUTY CHAIRMAN: That one year is to see whether the parties can come together.

SHRIMATI LILAVATI MUNSHI: In the first years of marriage it is four years and afterwards if divorce is sought it is not less than two years, that is one year for living separately and the second year for reconciliation. Then there is a safeguard that consent should not be taken by force, or fraud or undue influence. But it is very difficult to prove. In many cases, women are illiterate, they can be threatened. I know how women are treated, even when they are young children, how they are treated by *men*; this is a man-made world. I am not a man-hater in that way, but I see this kind of misery inflicted upon women and this is something which we have to think about. So whether the consent is taken by force or fraud, even with these safeguards, one can never be sure about it. Well, there is the last clause, that there will be reconciliation. It is a pious hope but let us also hope that in many cases reconciliation will be effected. Thank you very much. I have done.

SHRI KISHEN CHAND: I concur with almost all the amendments proposed by the Lok Sabha 'except for two items and I do feel that in certain' cases where there was some sort of defective language left over,

it has been corrected by them. About one I have sent an amendment. Two hon. Members have already spoken and I was very glad to find that one Member from the Congress benches also supported the idea that where the female is below the age of 21, the consent of the parents may be taken. I submit that there is no objection to marriage; certainly the girl becomes mature earlier than the boy and it is quite feasible that a girl of 18 would like to marry after she has attained that age. But the period between 18 and 21 is a period when she is highly strung and in a very emotional condition. It is possible that in that emotional strain she may enter into a marriage contract which may not be found suitable later on. I know, Sir, that for all criminal purposes 18 is recognised to be the age of maturity, and for the possession of property also, she is supposed to be of age when she has attained 18 years. Therefore, the objection is not on the ground that she has not attained the proper age. The objection is on the ground that psychologically she is in an emotional state, and in that state she is not in a fit position to decide for her life companionship. And therefore, a suggestion has been made that the necessary permission of the guardian to that marriage may be obtained. Sir, the hon. Minister, when he was moving this Bill, pointed out that in the Lok Sabha the majority of Members were in favour of introducing it. But it was ruled out by the hon. Speaker, because the House had earlier decided something against it. Sir, I submit that even *now* if the matter is referred to the Lok Sabha, the majority of them it is my judgment about it—will agree that if the female is below 21 years of age, the consent of her parents may be obtained. I see the Doctor taking a very great objection to the words 'male' and 'female', Sir,

MR. DEPUTY CHAIRMAN: First, he took objection to the word 'girl' also.

SHRI KISHEN CHAND: I submit, Sir, that the word 'female' may have

had some bad meaning when it was used by Englishmen as rulers of this country, but from the dictionary point of view, there is nothing wrong in the words 'male' and 'female', and they very correctly represent the two sexes. I submit therefore that as pointed out by the lady Member, if the females who are below the age of 21 years, contract marriage according to this Bill, there is a great likelihood of their making a mistake and repenting afterwards. The lady Member who spoke before me pointed out that women have been the sufferers during the past centuries in this man-made world. I submit, Sir, that we should be very cautious to see that we do not perpetuate their misery. We should in making our laws be careful that advantage is not taken of the emotional state of a girl of 18 years by a young man who wants to marry her; and therefore I have suggested that the consent of the parent may be obtained.

The second amendment to which I want to take objection is amendment No. 16, which runs as follows:—

"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."

I submit, Sir, that wherever this type of effort is made by the court, to bring about reconciliation, it is unsuccessful. Reconciliations are generally brought about by private agencies. The court should not interfere in these things. The very fact that the court is to interfere will really act as a deterrent. Our object is to bring the parties together as far as possible.

SHRI AKBAR ALI KHAN: On a point of order, Sir, there is nothing for the private agencies to attempt; the period is for one year.

SHRI KISHEN CHAND: It is said here "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." I submit, Sir, that the moment the court tries to make an endeavour in this affair, it will prejudice the case; it will set apart the parties. In England and in America, where divorce is prevalent for such a long time, private agencies have taken up these things, and they have been very successful. Only a few months back, in the Readers Digest, an article was printed in which it was pointed out that up to 90 per cent, cases of reconciliation had taken place among the estranged parties. Therefore I would submit, Sir, that while fully sympathising with the motive behind this amendment—the motive being to bring together the estranged partners—I say that this clause itself will act against the objective which is aimed at by it. Therefore I submit that this amendment may not be accepted.

Then I come to amendment No. 4 which says:

"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."

Sir, during the discussion, when this Bill was in this House, it was pointed out that marriage between cousins, between near relations, between uncle and niece, was not desirable. And I am very glad that this amendment has been introduced by the Lok Sabha, by which only such marriages which have taken place before the enactment of this law can be registered, even if they are within the prohibited degrees of relationship, but marriages contracted after this law comes into force cannot be registered. And therefore

I Shri Kishen Chand.] I wholeheartedly support this amendment.

Then, Sir, about the property, in a joint family or in a Hindu family, where there is ancestral property, the collaterals get all the property. Certainly, Sir, when a young man wants to marry outside the sacramental marriage, under the Special Marriage Act, it should only be the property of the person that should be inherited by his children, whether legitimate or illegitimate. The illegitimate children should have absolutely no right over the property of the collaterals, because to his marriage under the special Marriage Act he has severed his connection with the joint family. And therefore, Sir, I welcome this amendment also.

Then, Sir, about divorce by mutual consent, I wholeheartedly welcome it, because there was a slight mistake of 'or' being substituted for 'and'. In the clause, as passed by the Lok Sabha, it has been set right and further amplified by the addition of clause 27A; and therefore, I support it. Sir, except for two amendments, I support all the amendments made by the Lok Sabha.

SHRI J. N. KAUSHAL (Pepsu): Mr. Deputy Chairman, I rise to support the amendments which have been made in the Bill by the Lok Sabha. One thing that emerges from our present experience is that although this Bill was debated threadbare in our House and was passed after a very careful deliberation, still the whole House now seems to be agreed that it has come back from the Lok Sabha in an improved form. There may be a dissentient voice regarding one or two amendments, but generally speaking the trend of the debate shows that the Members welcome most of the amendments which have been made in the Lok Sabha. It goes to show the wisdom of retaining or continuing the two chambers of the Parliament, because in spite of all deliberations, there was still scope for improvement. We who had passed the Bill are in a sober mood to accept many of the

amendments which were lost here by votes. I would therefore try to bring to the notice of the House that the amendments which the Lok Sabha have made are in fact improvements upon the Bill which was passed by this House.

One very radical change which we made in the Bill was "that divorce should be allowed by mutual consent. This principle has been agreed to by the other House also but the other House has suggested very rightly that there should not be hasty divorces. Because this principle of divorce is being introduced by legislation for the first time in Hindu society, it is but meet and proper that time should be granted to the couple to think calmly and coolly before they decide to break the matrimonial tie. The matrimonial tie, although according to this Bill, will not be the sacramental type, is still one of the most solemn contracts which the parties can come to. They choose their companions for life and if after some experience they find that it is not possible for them to pull on together, then some time must be given to them to get rid of the temperamental differences if they can, and provision has been introduced for this by the Lok Sabha in the form of the reconciliation clause. My friend, Mr. Kishen Chand, was opposing this clause but I do not know on what his experience is based. Whenever there is a dispute between a husband and wife, in courts of law even today efforts are made by the court to bring about reconciliation, and I think that whenever an effort is made by the court itself, there are greater chances of success because the suggestion comes from an absolutely disinterested party, from a judge who feels that it is not always good to disrupt the matrimonial tie, and when he does it, it has been my experience that wisdom dawns at last on the people in more cases than through the efforts of the private agencies.

The other amendment which has been made by the Lok Sabha is regarding the prohibited degree clause.

Unless that amendment is made, it seems there is no fun in introducing a clause on prohibited degree in the law, because when once you have provided that people will not be allowed to marry within the prohibited degrees, then it is futile to give them a chance to marry first without recourse to this law and then to get themselves registered under this Act. That will mean flouting the law which, I think, has been very rightly stopped by the Lok Sabha.

The other amendment which the Lok Sabha has recommended is the amendment regarding the right of inheritance of illegitimate children. In that matter also, it is but right that illegitimate children should inherit the property of their parents but the law is very jealous regarding the property of those persons who were not a party to that marriage. That marriage was an illegal marriage; that marriage did not have the sanction of law and there is no reason why you should force the children born of such wedlock on the other members of the family who want to be more respectful towards the law and who want marriages to be solemnised in a more legal manner.

The only controversial clause is the clause regarding the age of 18 years in the case of girls. Well, on that matter opinions will always differ but it seems that the majority opinion here is coming round to the view that the age of 18 is the proper age in the case of girls. Previously also in our House this matter was decided by taking votes, and a few votes decided it this way or that way. Then an amendment has been tabled here by some members of the Opposition that it should be made incumbent on the girl to obtain the consent of her guardian if she wants to marry between the ages of 18 and 21. I feel that this is putting an unnecessary restraint on the violation of the girl. The only argument that is advanced in favour of this is that it is a very emotional period and she cannot judge who will be a proper companion. I feel that when at

this age for all practical purposes a girl is regarded as a major even for the purpose of entering into contractual obligations with regard to property, etc., there is no reason why the will of the father should be imposed on her in this case, because we know that in many cases the parents will not be giving their consent, and it would only mean delaying the marriage for three years. Sir, I strongly support the amendments in their present form.

SHRI H. N. KUNZRU (Uttar Pradesh): Mr. Deputy Chairman, while there are several amendments made by the Lok Sabha in the Bill which I think are an improvement on the Bill as it was sent up from here to the other House, there are some on the other hand which I cannot approve of. The first amendment which I should like to refer to is that relating to the age of the boy and the girl. The Bill as it was introduced in this House provided that a marriage could be performed if both the boy and the girl were at least 18 years of age but with the consent of their parents. When the Bill was considered here, this House changed this provision and raised the age from 18 to 21 for both boys and girls. There was thus a sort of consistency both in the first Bill and in the second Bill with regard to the age, but in the present Bill, while the age of the girl has been reduced to 18, the age of the boy remains at 21 as decided by this House. Apart from this inequality, the consent of the parents of the girl will not be needed when she is below 21. I see no reason why any alternation, or any kind of discrimination, should be made between boys and girls in this matter. It may be that boys generally marry at a higher age than girls but is there any reason why the law should make any differentiation between them and prescribe a higher age for the boy and a lower age for the girl? Apart from this, I think that if people marry at the age of 18, it is desirable that they *should seek the consent* of their parents. Unless the

[Shri H. N. Kunzru.] parents are always supposed to be against the welfare of their children and determined to oppose their wishes. I think it will be conceded that it will be in the interests of young and immature people that they should consult their parents before taking the decisive step. I should prefer the provision relating to the ages of boys and girls and the consent of the parents to be in the form in which it was introduced in this House but if that cannot be done, I see no reason whatsoever why different ages should be prescribed for the boys and the girls.

PANDIT S. S. N. TANKHA: Should it be 21 for both or 18 also for boys?

SHRI H. N. KUNZRU: I should like the original provision to be restored, *i.e.*, boys and girls whose age is not less than 18 may marry with the consent of the parents; but if the consent of the parents is to be omitted, then I think it is desirable that the age of both boys and girls should be 21. I don't therefore approve of the change made by the Lok Sabha by reducing the age of the girl only. The next amendment to which I shall refer is that relating to clause 15.

Clause 15 provided for the registration of the marriages celebrated whether before or after the commencement of the Act other than the marriages solemnized under the Special Marriage Act provided some conditions were fulfilled and one of the conditions was that the parties were not within the degrees of prohibited relationship unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two. This was in a way a stultification of the purpose of the law itself. What it meant was that even where parties had married whether before or after the commencement of this Act otherwise than in accordance with the conditions laid down in it, their marri-

ages could be registered under this Act. It was virtually made a dead letter. The Lok Sabha has amended this provision and has changed this provision in such a way as to allow marriages that had been celebrated even against the provisions of the Act before its commencement may be registered under this Act.

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

Here again I see no principle underlying this amendment. There is no reason why marriages celebrated otherwise than in accordance with the provisions of this Bill should be allowed to be registered under the provisions of the Bill but if that principle is departed from, I see no reason for discriminating between marriages celebrated before the commencement of the Act and marriages celebrated after the commencement of the Act. The hon. Law Minister who spoke on this subject did not tell us why the Lok Sabha

SHRI C. C. BISWAS: I did explain.

SHRI H. N. KUNZRU: Perhaps I did not hear him.

SHRI C. C. BISWAS: The object is this. Otherwise clause 4 might be evaded.

SHRI H. N. KUNZRU: I don't see how clause 4 could be evaded.

SHRI C. C. BISWAS: May I explain? Take a case where two parties marry under the provisions which are permitted in this clause 15 assuming clause 15 would apply both to pre-Act marriages and post-Act marriages—let us assume that. Suppose a man marries a woman under this Act under clause 4(d), they could not marry if they were within the prohibited degrees as laid down in this Act but they could do so under their customary law. So they would not marry under this Act. They would marry under their customary law which would permit these variations

from the rule of prohibited relationship. Having done that, the next day t>r as soon as this Act will permit, they will have their marriages registered under this Act. Thereby they' will evade the prohibitions which are contemplated in clause 4(d).

SHRI H. N. KUNZRU: I don't understand the Law Minister at all. I see no reason why marriages contracted otherwise than in accordance with the provisions of law should not be allowed to register under it. The question is not of disallowing the marriages under any law from being registered under this Bill but of marriages in accordance with an3' custom or usage having the force of law. I don't want to prevent any person from marrying under any law that appeals to him but I see no reason why after having married in accordance with the law which is different from that laid down in this Bill, he should be allowed to take advantage of this.

SHRI C. C. BISWAS: That was not my view. In the original Bill clauses * and 15 stood on the same footing but I was trying to explain the view which the Lok Sabha took in this matter.

SHRI H. N. KUNZRU: That means he was trying to explain something which is inexplicable.

SHRI C. C. BISWAS: Possibly I would agree with you there.

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Bharat): It may be that they don't want to disrespect the personal law.

SHRI H. N. KUNZRU: There is no disrespect shown to any personal law if a marriage contracted under any personal law is not registered under the Special Marriage Act. I see no reason why the marriages performed under any personal law should be registered under this Act and why this non-registration should be regard-

ed as a disrespect to the personal laws that prevail in this country.

There is another points to which I would like to draw the attention of this House. This kind of treatment, this differentiation between marriages celebrated before the commencement of this Act and those celebrated after the commencement of this Act Ur undesirable and probably not allowed by the law. I will draw the attention of the House to article 14 of the Constitution of India. It says:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

SHRI C. C. BISWAS: This comes within the reasonable classification. That will save it from article 14.

SHRI H. N. KUNZRU: I venture t> think that this classification is no reasonable classification because it is not based on any principle.

SHRI C. C. BISWAS: If it is based on anything, it is based on principle.

SHRI H. N. KUNZRU: The only difference is one of time. If you had said that certain, rights enjoyed by the parties before the commencement of this Act would be respected and those rights would be done away with after the commencement of this Act, then there would have been no discrimination, and then there would be reasonable classification, because the law would be applicable to all classes of persons, both before and after the commencement of this Act, But when you say that a marriage contracted in a particular way is registrable, if contracted before the commencement of this Act, and not registrable after the commencement of this Act if contracted after the commencement of the Act, I see no principle of reasonable classification at all.

SHRI C. C. BISWAS: We have not made such a discrimination, Sir, in the Bill even as amended by the Lok

[Shri C. C. Biswas.] Sabha. All kinds of marriages whether before the commencement of the Act or after the commencement of the Act will be registrable. Only as regards the prohibited degrees, that is ruled out under sub-clause (e), there is discrimination in the application of that rule between pre-Act marriages and post-Act marriages.

SHRI R. N. KUNZRU: That is the provision and the only provision that I referred to and the Law Minister has admitted now that there is discrimination in that matter.

SHRI C. C. BISWAS: The hon. Member said there was discrimination between marriages performed before the Act and those made after the Act. He said that marriages made after the Act and those made before the Act should be equally registrable. He spoke in general terms. I was just pointing out that there was no general exclusion of any kind of marriage":

SHRI H. N. KUNZRU: I referred to the provision, Sir, and there is no reason for any misunderstanding on the part of the Law Minister.

SHRI C. C. BISWAS: The principle was accepted by this House and the only change made was that before the commencement of this Act, this proviso would be made applicable, in spite of the fact that the original Bill did not contain any proviso and this proviso was inserted here. It is a limitation of the application of that principle.

SHRI H. N. KUNZRU: The hon. Law Minister, I am sure against his better judgment, is trying to be loyal to the other House.

SHRI C. C. BISWAS: There is no question of loyalty. I am stating the facts. I am not expressing my own views. My own views are there in the Bill as introduced in this House.

SHRI H. N. KUNZRU: If I understand the Law Minister to say that

this House when it passed this Bill accepted the principle underlying the amendment made by the Lok Sabha, I demur to it. The change made in this House made it possible for all marriages which were contracted contrary to the provisions laid down here with regard to degrees of relationship, whether before or after the commencement of the Act to be registered. Consequently there was no discrimination of any kind. Now there is discrimination made in point of time. Marriages contracted without any regard to the provisions relating to the degrees of prohibited relationship as laid down in this Bill will be registered if contracted before the commencement of this Act but will not be registered if contracted after the commencement of this Act. Is this discrimination or not?

SHRI B. K. P. SINHA: May I point out, Sir, that it is no discrimination?

SHRI H. N. KUNZRU: Is my hon. friend going to point out what the Law Minister himself has not succeeded in pointing out?

SHRI B. K. P. SINHA: I was trying to point out, that there is no discrimination where there is a reasonable basis of classification. It is based on the doctrine of *factum valet*, that is to say, what has gone before and is established, that cannot be disestablished. That is the one obvious basis here. Secondly we seek uniformity so far as marriages made after the Act are concerned and this is the other obvious and reasonable basis.

SHRI H. N. KUNZRU: I am not a lawyer and my hon. friend there is a lawyer; but as it is. I feel that he understands the law much less than a layman can. The doctrine that he referred to only means that existing rights cannot be done away with. But here you say that those people marrying against this Act may be allowed to register the marriage if it was contracted before the Act. Therefore the doctrine he refers to has no application to this matter at all. Consequently it seems to me that this is a

case of discrimination which is highly improper.

Sir, these are the only two points which I think I need speak on at this stage. There were one or two other points which I thought of referring to when I began my speech, but I have taken so much time already and there are, I believe, very many hon. Members desirous of speaking on "this Bill and I would not like to take up any more time.

SHRI RAJENDRA PRATAP SINHA: We would like to hear the hon. Member.

THE VICE-CHAIRMAN (SHRI V. K. DHAGE): I can give you time for speaking about other provisions, if you will finish in five minutes.

SHRI H. N. KUNZRU: I do not want the time, I am mindful of the rights of the others.

श्रीमती चन्द्रवती लखनपाल (उत्तर प्रदेश) : उप-सभाध्यक्ष महोदय, आज यह जो स्पेशल मैरिज बिल लोक सभा के संशोधनों के साथ हमारे सदन में वापस किया गया है, इसमें जरा भी संदेह नहीं कि इस बिल का जो रूप लोक सभा के संशोधनों के बाद हमारे सामने उपस्थित है, वह पहले से कहीं ज्यादा उपयोगी है, पहले से कहीं ज्यादा परिष्कृत और उज्ज्वल है। श्रीमन्, जो संशोधन किये गये हैं वे वास्तविकता पर आश्रित हैं, व्यवहारिक हैं, प्रैक्टिकल हैं और अपने देश की वर्तमान अवस्थाओं के अनुरूप हैं। इसलिए जो बिल का इस वक्त संशोधित रूप है, उसका मैं हार्दिक समर्थन करने के लिए खड़ी हुई हूँ। यह समर्थन मैं अपनी पार्टी की आज्ञा से बाधित हो कर नहीं कर रही हूँ, किन्तु इसलिए कर रही हूँ कि वास्तव में मैं यह अनुभव करती हूँ कि

उन संशोधनों के बाद जो लोक सभा ने इस बिल में किये हैं, बिल का जो वर्तमान रूप है वह पहले से कहीं ज्यादा उपयोगी है, पहले से कहीं ज्यादा युक्ति युक्त है पहले से कहीं ज्यादा विवेकपूर्ण और पहले से कहीं ज्यादा प्रैक्टिकल और व्यवहारिक है।

श्रीमन्, लोक सभा ने बहुत से संशोधन किये हैं, किन्तु मेरी दृष्टि में केवल दो या तीन संशोधन ही ज्यादा महत्वपूर्ण हैं और उन तक ही मैं अपने विचारों को सीमित रखूंगी।

पहला संशोधन तो आयु के सम्बन्ध में है। मुझे याद है कि जब इस सदन के अन्दर आयु सम्बन्धी कलाज पर चर्चा हो रही थी तो १८ और २१ का जो श्रीमती सीता परमानन्द का प्रस्ताव था उसके समर्थन में मैं बोली थी लेकिन उस वक्त यह प्रस्ताव गिर गया था क्योंकि उसके विरुद्ध सदन में बहुमत था। इसलिये जो लड़का लड़की दोनों के लिये २१ की आयु का प्रस्ताव था उसके लिये हाथ उठाना पड़ा था और वह पास हुआ था। जब लोक सभा ने १८ और २१ की आयु का प्रस्ताव स्वीकार किया तो स्वाभाविक ही था कि मुझे प्रसन्नता होती।

जब सेलेक्ट कमेटी से पहली दफा बिल निकला था तो उसमें उसने यह किया था कि लड़के और लड़की दोनों की आयु १८ वर्ष की रखी थी। बाद में हमारे सदन ने उस आयु को २१ वर्ष कर दिया। लेकिन मेरी समझ में नहीं आता कि कुछ लोग लड़का और लड़की दोनों के लिये एक ही आयु रहना क्यों मानते हैं, और कि उनके मन में कौन सी युक्ति काम करती है। शायद वे यह

(श्रीमती चन्द्रवती लखनपाल)

समझने हों कि स्त्री और पुरुष दोनों को समानता के अधिकार मिलने चाहियें इस लिए लड़का और लड़की दोनों के लिए आयु भी बराबर होनी चाहिये। यदि बराबरी के सिद्धान्तों को हम इस प्रकार से देखेंगे तो हम आखिर कितनी दूर उसको ले जा सकते हैं? क्या हम इस सिद्धान्त के आधार पर यह कहेंगे कि चूँकि लड़के और लड़की को बराबरी के अधिकार मिलने चाहिये, इसलिये उनकी लम्बाई भी बराबर होनी चाहिये, उनका मोटापन या पतल्युपन भी एक सा होना चाहिये? मुझे कुछ यह ख्याल में नहीं आता कि अपने समाज में जो ये बराबरी के समर्थक लोग हैं क्या वे इस सिद्धान्त को उस हद तक ले जाना चाहेंगे? मैं यह कहना चाहती हूँ कि इक्वेलिटी आफ सेक्स का जो प्रश्न है, उसको इस हद तक ले जाने की चेष्टा करना कि हर रूप में लड़का और लड़की बराबर हों, उनकी आयु भी बराबर हों, उसका सब कुछ बराबर हो, उसको एक अविभक्तपूर्ण सीमा तक ले जाना है। हमें तो यह देखना है, श्रीमन् कि वास्तव में होता क्या है, व्यवहार में, एक्चुअल प्रैक्टिस में हम क्या देखते हैं फिजियोलोजिकल और मनोवैज्ञानिक पहलू क्या है? हमें यह भी देखना है कि हमारी जो परम्परा की प्रथा है उसके पीछे क्या है। हमारे समाज में यह प्रथा आज की नहीं बहुत पुरानी है कि लड़के और लड़की दोनों की आयु में एक अन्तर रखा जाता है कम से कम चार पाँच साल का। इसलिये नहीं कि वह पुरानी प्रथा है बल्कि इसलिये भी कि उसके पीछे एक मनोवैज्ञानिक और एक फिजियोलोजिकल आधार है, बैकग्राउन्ड

है, यह समझा जाता है और अनुभव यह बतलाता है कि लड़की का जो मानसिक और शारीरिक विकास है वह लड़के की अपेक्षा जल्दी प्रारम्भ हो जाता है। लड़की जल्द मैच्योर होती है उसको प्रौढ़ावस्था जल्दी प्राप्त होती है, इसलिये लड़के और लड़की की जो मेटल एज है, उसमें लड़की की मेटल एज लड़के से चार पाँच साल आगे ही चलती है और इसी आधार पर दोनों की आयु में अन्तर रखा गया है। मेरी समझ में नहीं आता कि जो लोग लड़के और लड़की दोनों के लिए एक ही आयु का प्रतिपादन करते हैं वे क्या समझ कर ऐसा करते हैं। मैं तो यह कहूँगी कि लोक सभा ने राज्य सभा के इस निर्णय के बावजूद कि पति और पत्नी की दोनों की आयु २१ वर्ष होनी चाहिये और सेलेक्ट कमेटी की इस सिफारिश के रहते हुए भी कि दोनों के लिये १८ रहनी चाहिये जो लड़के और लड़की के लिये क्रमानुसार २१ और १८ की अवस्था निर्धारित की है मेरी सम्मति में यह बड़ी साहसपूर्ण और बुद्धिमत्तापूर्ण फैसला है जिसका कि मैं समर्थन करती हूँ और मेरा ख्याल है सबको उसका समर्थन करना चाहिये।

इसके अतिरिक्त, श्रीमन्, दूसरा जो संशोधन प्रोहिबिटेड डिग्रीज के बारे में है उसके सम्बन्ध में मुझे यह बतलाना है कि हमारे देश के अन्दर विवाह के लिये कुछ सम्बन्ध वर्जित माने जाते हैं। हिन्दुओं में माँ की तरफ से पाँचवीं और पिता की तरफ से सातवीं पीढ़ी तक सम्बन्ध वर्जित पीढ़ी के अन्दर माना जाता है। लेकिन अपना देश एक विशाल देश है और उसमें यह जो प्रोहिबिटेड डिग्रीज

का हिसाब है वह सब जगह एक सा नहीं है, कहीं पांच और सात का है वहीं तीन और पांच का है और कहीं कोई इस प्रकार बन्धन है ही नहीं। अपने देश में जो भिन्न-भिन्न विचारधाराएं हैं उसको देखते हुए हमें एक ऐसा रास्ता निकालना था जो सबको ग्राह्य हो सके, सब वर्गों की रुचि को अपील कर सकें, और वह रास्ता निकाला गया। जब स्पेशल मैरीज बिल आया तो उसमें जो धारा रखी गई उसमें प्रोविजेंट्स डिप्रीज ३ और ५ के हिसाब से मानी गई। यह बिलकुल बीच का रास्ता था और सबको ग्राह्य था। लेकिन क्लॉज ४ (डी) के अन्दर वर्जित सम्बन्धों का जो रास्ता बताया गया उसको १५ (ई) के अनुसार बिगाड़ भी दिया गया है क्योंकि जो प्रोविजेंट्स रखा गया उसने क्लॉज ४ (डी) का जो मतलब था वह बिलकुल खत्म कर दिया, और उसी अवस्था में हमने यह बिल पास करके लोक सभा में भेज दिया। निश्चय ही मैं यह कहना चाहती हूँ कि वह जो रूप था वह ऐसा था कि जो हमारे देश के बहुत से देशवासियों को खास तौर से उन लोगों को जो उत्तर के रहने वाले हैं, कभी ग्राह्य नहीं होता। उनके लिये कभी वह रुचिकर नहीं होता क्योंकि आपको शायद याद होगा कि अपने देश में काफी संख्या में ऐसे लोग हैं जोकि इस प्रकार के सम्बन्धों को जैसे मामा-भांजी का सम्बन्ध या चाचा भतीजी का सम्बन्ध है कभी पसन्द नहीं करेंगे क्योंकि यह उसकी धार्मिक भावना को ठेस पहुंचाने वाली चीज है। उसको वह अधर्म के बराबर और पाप के बराबर समझते हैं। इसलिए, श्रीमन्, आज जबकि हम एक स्पेशल मेरेज एक्ट बना रहे हैं और उसे हम सिविल

कोड की दिशा में एक पहला कदम समझ रहे हैं, हमें यह देखना होगा कि इसके अन्दर हमें कोई व्यवस्था ऐसी नहीं करनी चाहिये जो अपने देश के किसी भी सैक्शन के लिये अरुचिकर हो या किसी भी सैक्शन की भावना को ठेस पहुंचाने वाली हो। इसलिए यह तो एक बहुत अच्छी बात लोक सभा के अन्दर इस बिल में की गई है कि वे एक ऐसा संशोधन लाये हैं जिसके द्वारा जो उस प्रोविजन के रखने से एक बुराई रह गई थी, उसके क्षेत्र को सीमित कर दिया गया है और प्रो. एक्ट मैरेजेज तक, अर्थात् इस एक्ट से पहले होने वाले विवाहों तक ही इस व्यवस्था को सीमित कर दिया गया है। अभी डा० कूजरू इस पर बहस कर रहे थे कि बड़ा डिस्ट्रिक्मिनेशन हुआ है। मुझे तो जो युक्तियां (आर्गुमेंट) वे दे रहे थे, बिल-कुल समझ में नहीं आई। जैसा कि विधि मंत्री ने अपने एक्सप्लेनेशन में व्याख्या में बताया उससे मालूम होता है कि जो संशोधन लोक सभा ने किया है उसका साफ मतलब यह है कि क्लॉज ४ (डी) सार्थक बन जाता है। अगर लोक सभा का संशोधन न रहे तो क्लॉज ४ (डी) का कोई मतलब नहीं रह जाता है, वह बेकार और निरर्थक हो जाता है। अभी माननीय बन्धु सुंदरैय्या जी ने कहा कि यदि कोई सिद्धान्त प्रो. एक्ट मैरीज के लिये अच्छा है तो वह पोस्ट-एक्ट मेरेज में भी लागू होना चाहिये। लेकिन मैं यह कहना चाहती हूँ कि यहां सिद्धान्त की बात नहीं है, यह एक सट्टलियत की बात है। हम यहां सिद्धान्त के ऊपर नहीं लड़ रहे हैं बल्कि हम यह अनुभव कर रहे हैं कि एक ऐसा रास्ता निकालना है जो सबको रुचिकर

[श्रीमती चन्द्रवती लखनपाल]

हो, मान्य हो, चाहे कोई उत्तर का रहने वाला हो या दक्षिण का या पश्चिम का सबको वह ग्राह्य हो। तो हम को सहूलियत की दृष्टि से एक रास्ता निकालना है। सिविल कोड के माने ही यह है कि वह सब प्रदेशों के लिए ग्राह्य हो देश का हर एक भाग प्रसन्नता से, बिना किसी रुकावट के बिना किसी ह्यूमिलियेशन को फेल किये हुये, उसे ग्रहण कर सके। इसलिये प्री एक्ट मैरिज के लिये जो थोड़े सी शिथिलता रखी गई है वह तो एक सहूलियत दी गई है उन लोगों को जिनकी पर्सनल ला के अनुसार शादियां हो सकती हैं चाहे वह प्रोहिबिटेड डिग्रिज के अन्दर ही क्यों न हों। तो मैं समझती हूँ कि प्रोहिबिटेड डिग्रिज के बारे में जो संशोधन लोक सभा द्वारा किया गया है वह बहुत ही नतिमत्तापूर्ण और बुद्धिमत्तापूर्ण है और उसका हमें स्वागत करना ही चाहिये।

श्रीमन्, तीसरा संशोधन जिसके बारे में मैं कहना चाहती हूँ वह है—डाईवोर्स वाई म्यूचुअल कंसेंट। मुझे याद है जब इस क्लॉज पर हमारे सदन में बहस हुई थी तो हममें से बहुत सी बहनों ने उसका विरोध किया था। मैं स्वयं भी उन लोगों में से थी जिन्होंने उसके विरोध में अपना हाथ उठाया था। जब हम वोट देने के बाद अपने सदन के अन्दर आये थे तब तक हम यह नहीं समझते थे कि डाईवोर्स वाई म्यूचुअल कंसेंट का जो क्लॉज है वह पास हो जायगा और हमें बड़ा आश्चर्य हुआ यह जान कर कि वह पास हो गया। हमारे आश्चर्य करने का कारण यह था कि हम यह समझते

थे कि देश के लिये वास्तव में यह बड़ा क्रांतिकारी कदम है और जिस रूप में वह पास हुआ उसको हम ग्राह्य नहीं समझते थे। हम यह समझते थे कि यह स्त्रियों के खिलाफ जायगा और इसलिये हमने उसका विरोध किया था।

मेरे विरोध का सबसे पहला कारण यह था कि म्यूचुअल कंसेंट के द्वारा हुए विवाहों में हम देखते हैं कि ऐसा भी बक्त आता है जबकि पति पत्नी दोनों में मतभेद हो जाता है, दोनों में गुस्से की बात होती है। बहुत गुस्से के अन्दर तेजी के अन्दर, जोश के अन्दर जो निर्णय किया जायगा वह जल्दबाजी का निर्णय होगा, वह कभी किसी के लिए हितकर नहीं होगा विशेषकर स्त्रियों के और बच्चों के लिये तो वह वास्तव में हानिकारक हो सकता है। इसलिये समाज के लिये घातक हो सकता है, तो एक यह बजह थी।

हम यह देखते हैं कि म्यूचुअल कंसेंट के अन्दर कोई ऐसी सम्भावना मौजूद है जहां पर पति पत्नी किसी तेजी में आ कर, किसी जोश में आ कर निर्णय कर बैठें कि अलग-अलग रहना चाहिये तो यह निर्णय दोनों का जिन्दगी को बरबाद कर सकता है। न केवल दोनों पर ही इसका घातक असर होगा बल्कि सारे समाज पर उसका बुरा असर हो सकता है। किन्तु लोक सभा ने जो संशोधन किया है उसमें काफी समय दोनों को सोचने और विचारने का दिया गया है। इस सम्बन्ध में मुझे विस्तार में जाने की आवश्यकता नहीं है, उस पर काफी वाद-विवाद हो चुका है, किन्तु जो संशोधन हुआ है उससे जो हमारी शंकायें थीं, जो हमारे

आक्षेप थे, जो हमारे आदर्शवादी थे, वे दूर हो जाते हैं।

दूसरा कारण जिसकी वजह से हमने उसका विरोध किया था यह है कि म्यूचुअल कन्सेन्ट की स्थिति में जो स्त्री है वह कमजोर है हमारे देश की स्त्रियाँ अधिक्षित हैं, उन्हें कुछ अपनी भलाई और बुराई का पता नहीं है। इस बात की ज्यादा संभावना थी कि स्त्री पर जबरदस्ती नाजायज दवाब डाल कर, उसको धोखा दे कर उसको फुसलाकर, उसकी कन्सेन्ट ले ली जाय और उसको लागू कर दिया जाय। स्त्री विचारी का सामाजिक शोषण किया गया है, इसलिये उस स्थिति में हमको सबसे ज्यादा खतरा यह था कि यह जो प्राविजन है "डाईवोर्स बाई म्यूचुअल कन्सेन्ट" का, उससे स्त्रियों को सबसे ज्यादा सफर करना पड़ेगा और स्त्रियों के लिये एक भारी बरबादी का कारण बन जायगा। लोक सभा ने जो संशोधन भेजा है उसमें साफ तौर पर एक क्लॉज रखा गया है जिसमें ऐसी अवस्था में अगर स्त्रियों पर नाजायज दवाब डाल कर, धोखा देकर, उसके ऊपर जबरदस्ती करके उसकी राय ली गई और कोर्ट में रखी गई हो तो कोर्ट उस पर विचार करेगा और ऐसी हालत में वह फंसला रह ही जायगा। इसलिये "डाईवोर्स बाई म्यूचुअल कन्सेन्ट" का जिस कारण हमने विरोध किया था, जो हमारा उसमें शिकायत थी, जो आक्षेप था, जिसको हम बरबादी और खतरे का कारण स्त्रियों के लिये समझते थे, वह दूर कर दिया गया है।

[MR. DEPUTY CHAIRMAN in the Chair.]

इसलिए मेरा यह विचार है कि जो भी संशोधन इस बिल में लोक सभा द्वारा

किये गये हैं, वे बहुत ही बुद्धिमत्तापूर्ण हैं, नीतिपूर्ण हैं जिससे "स्पेशल मैरीज बिल" वास्तव में एक सिविल कोड की दिशा में एक प्राथमिक कदम का काम कर सकता है। इसलिए उन सब संशोधनों को जो लोक सभा द्वारा इस बिल में किए गये हैं, मैं हृदय से समर्थन करता हूँ और यह समझती हूँ कि इस सदन के सभी बन्धु "सेन्स आफ फाल्स प्रेस्टीज" को न रख कर, केवल यह देख कर कि यह संशोधन वास्तव में सबके लिये उपयुक्त है, सबके लिए ज्यादा ग्राह्य है, देश के लिए कुल मिला कर ज्यादा रुचिकर है, यह समझकर उनको स्वीकार करेंगे।

BEGAM AIZAZ RASUL (Uttar Pradesh):
Mr. Deputy Chairman, I rise to give my warm support to the Bill that has now been returned from the Lok Sabha after certain amendments. These amendments, Sir, as even said by the hon. the Law Minister, are quite important, but I am very glad to say, Sir, that fundamentally the provisions that were approved of by this House after very careful consideration of the Bill, have been more or less retained in this Bill by the Lok Sabha. If anything, Sir, I must say that they have tried to improve the provisions, the very far-reaching provisions about divorce that we had accepted in this House. At that time the press and many people were of the opinion that we had made a very fundamental and revolutionary change in the social laws of our country by keeping the provision about divorce by mutual consent. I was one of those people, Sir, who had voted for this, and I am very glad that that principle has been accepted by the Lok Sabha. I feel, Sir,—and I felt at that time also—that if two people do not fundamentally agree with each other and would much rather separate, they should not be compelled to live a life of misery and also should

[Begam Aizaz Rasul.] not be compelled to undergo divorce proceedings by legislation, which would cause a great deal of dirty linen to be washed in public, as we see in most countries of Europe, where these divorce provisions have been so much restricted, and therefore it was much better that they should have the freedom to separate under clean circumstances and be able to make *fit* clean separation, therefore, Sir, I am very glad that the Lok Sabha after considerable and microscopic consideration of this provision has agreed to it. but I am very glad also that they have made certain qualifications in clauses 27 and 33 which go, if anything, to improve those provisions and I am very glad that there have been qualifications laid down which will do away with all the necessity of their being in fear of coercion. Any fear or possibility of coercion or fraud or undue influence has also been taken away. Sir, time has been given and they must prove that they have been living apart at least for one year before they can institute any divorce proceedings against each other, I mean, before they can make any application before the court that they want to separate, and also they have been given time to consider over this for a year more and if after the expiry of one year they still feel that they cannot live together they will be allowed to separate. I feel, Sir, that this is a very very healthy provision.

As regards clause 33, Sir, I am very glad that the court will first try to find ways and means to see that, some reconciliation between the parties can be effected. I was very much impressed by this sort of procedure in Japan when I went and visited the family courts there and I think I had an opportunity of mentioning this in one of my speeches before. The main function of these family courts, Sir, was this. When an application for divorce was made in that court, the first and foremost duty of the judge was to see if reconciliation could be effected and if any ways and means could be found by

which this could be done, they tried to keep the family together and retain family life, and I am very glad that this provision has found a place in this very important legislation, and I hope that our courts will be able to conduct these reconciliation proceedings in a manner which will create healthy principles and which will go a long way in creating healthy lives for our people.

Now, Sir, going back to clause 4, I find that the very important change that has been effected has been in the ages of man and woman. They have kept the age of man at 21, and the woman's age has been reduced to 18. I may have thought that perhaps in this eventuality there should have been the guardian's consent. But I do not think that this is such an important matter that we should move any amendment here on this matter or try to pass any amendment here, because what I feel is that this legislation should find its place on the Statute Book as soon as possible. Since the Bill was passed in the Rajya Sabha, a good deal of interest has been evoked in the public, and I have been asked many questions about it. And I have been very amused to find that the impression has gained ground all over—and everyone thinks—that by this legislation we are raising the ordinary age of marriage from 14 and 16, as I now believe, it is, to 18 and 21. And they ask "Why are you raising the age so much, because it will be very difficult for us to marry our children before the ages of 18 and 21?" And I have been trying to explain to them that this is a provision which has been included only in this Bill, which is the Special Marriage Bill, and for ordinary marriages amongst Hindus, amongst Muslims and amongst all other communities the ordinary age that is now prevalent after the Sarda Act—14 and 16. I believe—will remain. It is only for the Special Marriage where the two parties are expected to be mature in mind as well as *in* body in order to be able to decide for themselves, that this age has been raised, and every one who

has been explained this has been very j glad to hear that it is so. Therefore, I feel, Sir, that the public at large is very conscious of these things, and I feel that this is such an important piece of legislation that it will be quite a good experiment in our new society, and we should put it on the Statute Book as soon as possible. I therefore request that this our Rajya Sabha may pass this measure, as it has been sent by the Lok Sabha, without making any amendments.

One point that I would just like to mention, Sir,—I do not want to take much time of the House, because I do not want to go over the ground that has already been traversed, and I feel that there are other speakers also—is about clause 15, dealing with registration of marriages. I do agree, Sir, that if a right has been given to any persons, who have married within the prohibited degrees, to be registered under this Bill, I think it is rather a discrimination not to allow them to be married under this Bill after it becomes an Act, and not even to be registered under this law. I remember, Sir, that under the old Civil Marriage Act of 1872, even amongst my own friends and acquaintances, there were many who married according to their own customary laws or personal laws, and then, as a kind of safeguard, they went and had their marriages registered, or married again, under the Special Marriage Act. Now, Sir, that was a kind of safeguard for those people who were of more advanced views. Now, Sir, this law takes away that right from those people—who can, under their personal law, marry within the prohibited degrees—and they will not be able to register themselves under this law, after this Civil Marriage Act is repealed and this takes its place. Therefore, Sir, that, I feel, is something that should not have been done. But still, I do not think that we should hold up this Bill on that account, and I hope that after gaining some experience by this legislation and after seeing how it works for our

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country—I hope it will work for the good' of our society as a whole—if any changes have to take place, our Government will bring forward some amendments later on. With these few words, Sir, I support this Bill

श्री कन्हैयालाल डी० वेंच (मध्य भारत) :
 उपाध्यक्ष महोदय, इस बिल में लोक सभा द्वारा किये गए संशोधनों के विषय में जो सुझाव इस सदन में रखे गये हैं वे तरह तरह के हैं। कुछ लोग इन सुधारों को ठीक मानते हैं और कुछ इन सुधारों को उतना ठीक नहीं मानते। मेरे पूर्व के बक्तव्यों में से दो महिलाओं ने जिस तरह की विचारधारा रखी उसमें अजीब सा तर्क दिया गया। श्रीमती चन्द्रवती जी ने बताया कि लड़कियों के लिए विवाह की अवस्था १८ साल रखना इसलिए आवश्यक है कि इस देश में लड़के की अवस्था कुछ अधिक रहती है और लड़की की कुछ कम रहती है। इसके पूर्व श्री कुंजरू ने इस बात का स्पष्टीकरण किया था कि इस कानून के द्वारा हमारे विधान के विरुद्ध जो सेक्स का भेदभाव पैदा किया जा रहा है वह कुछ ठीक नहीं ज़रूरत है। मैं नहीं समझता कि डा० कुंजरू का यह आशय था या इस विषय में जो लोग यह धारणा रखते हैं कि २१ वर्ष की अवस्था लड़की की भी होनी चाहिये उनका ऐसा कहना है कि लड़की की भी अवस्था २१ साल की हो—और लड़के की भी २१ साल की हो—लड़के और लड़की दोनों की अवस्था २१ हो, ऐसा मान कर हमने रखा, उसका अर्थ यह नहीं है कि अगर लड़का २५ वर्ष का हो तो इस कानून के अन्तर्गत शादी नहीं हो सकती। जो सारी उनकी विचारधारा है और जो इस विचार को वह प्रतिपादित करते हैं, कि इस देश के अन्दर हम डाइवोर्स की

[श्री कन्हैयालाल शी० वैद्य]

प्रथा को उत्तेजित नहीं करते, मैं तो समझता हूँ कि यह दलील उनकी इस विचारधारा के बिल्कुल विरुद्ध जाती है। अगर आप चाहते हैं कि सोच समझ कर के शादी विवाह हों और इस प्रकार की स्थिति पैदा नहीं हो कि जिससे डाइवोर्स करने के लिए अदालतों में जाना पड़े तो आप अवस्था को ध्यान में रखिये। जितनी अवस्था कम रखेंगे उतने ही झगड़े होंगे और डाइवोर्स के लिए मामले अदालतों में ले जाने पड़ेंगे। बहुत से वक्ताओं ने कहा कि स्पेशल मैरिज ऐक्ट होना चाहिए और यह भी कहा कि हमें पुरानी प्रथाओं का भी ध्यान रखना चाहिये। मेरी समझ में नहीं आया कि जब पुरानी प्रथा उचित है तो फिर इस कानून में डाइवोर्स वगैरह की बात क्यों लाते हैं। लेकिन बात यह है कि आप इधर भी टांग रखते हैं और उधर भी रखते हैं और विवाह के विषय में देश को कोई पूर्ण कानून देना नहीं चाहते। ऐसा कम्प्लीट सुधारवादी कानून विवाह के लिए नहीं देना चाहते कि सुधार के नाने जो लोग शादी करना चाहते हैं वे कर सकें। इस प्रकार से आप सुधारों के बारे में जो स्थिति पैदा कर रहे हैं उससे इस कानून की प्रगति हुई है ऐसा मैं नहीं मानता। मैं तो यह स्पष्ट धारणा रखता हूँ कि २१ वर्ष की अवस्था में रख कर जिस रूप में हमने पहले इस बिल को पास किया था वह वास्तव में हमारा प्रगतिशील कदम था और लोक-सभा से जो संशोधन हो कर आया है उसके समर्थन में जो विचार प्रगट किए गए हैं उनसे इस बात की शक होती है कि हमें कई प्रकार के झगड़े बढेंगे और जो हम विवाह संस्था की पवित्रता

कायम रखना चाहते हैं और चाहत है कि अधिक से अधिक लोग इसका लाभ उठायें उसको आघात लगेगा। अभी हमारी बहन ने कहा है कि देश बड़ा उत्सुक है और इस कानून की प्रतीक्षा कर रहा है। मैं नहीं समझता कि झोपड़ियों में बैठे हुए लोगों को या अशिक्षा के अन्धकार में रहने वाले लोगों को इस बात का कोई ज्ञान भी होने लगा है कि इस देश के अन्दर कोई ऐसा कानून पास हो रहा है उनको तो इसको जानने की फुसंत ही नहीं है। यह कानून तो शिक्षित लोगों तक ही सीमित रहने वाला है।

दो एक महिलाओं ने कहा कि इसका बहुत कुछ असर शिक्षित लड़कों और लड़कियों पर पड़ेगा और दलील देने में कहा कि स्त्री जाति बड़ी भोली होती है और उसके अशिक्षित और अज्ञान होने के कारण पुरुष अनुचित रूप से डाइवोर्स के मामले में उसकी स्वीकृति ले लेंगे। तो यह दो तरह की उल्टी गंगा है। एक तरफ दलील देना कि यह तो शिक्षितों के फायदे के लिए है और फिर इसके बारे में दूसरी बात कहना कुछ ठीक नहीं जंचता है। इस देश के अन्दर जो स्थिति है उसमें १८ और २१ वर्ष के जो अविवाहित लड़की और लड़के रहते हैं वे अधिकतर शिक्षित वर्ग के लोग हैं, जिनके पास साधन हैं वही हैं। छोटी जाति के जो गरीब लोग हैं वे तो शारदा ऐक्ट को भी नहीं मानते हैं और उनमें छोटे छोटे बच्चों का विवाह होता रहता है तो वास्तव में इस कानून के अन्तर्गत अधिकतर उन्हीं लोगों को लाभ मिलने वाला है जो कि शिक्षित हैं। तो फिर इस तरह का तर्क देना ठीक नहीं है कि अशिक्षित महिलाओं पर इस कानून का

असर पड़ेगा। इस तरह का विधान पहले से ही चला आ रहा है, इसके लिए १८७२ का ऐक्ट बना हुआ था। जब कानून मंत्री ने इस कानून को रखा था तो उसकी भूमिका रखते हुए बताया था कि देश में जो १८७२ का कानून प्रचलित है उसके अन्तर्गत ऐसे विवाह होते आ रहे थे।

5 P.M.

मेरा यह निवेदन है कि जो स्थिति इस कानून में निर्माण की जा रही है और जो संशोधन लोक सभा से इस सदन में भेजे गये हैं, उनसे इस कानून का जो क्रांतिकारी महत्व था वह समाप्त हो जाता है। यह ठीक है कि लोक सभा ने इसको यहां भेजा, इस लिए कानून मंत्री महोदय न यहां रख दिया। कई बातों में कानून मंत्री महोदय के निजी विचार कुछ होते हैं और यहां उनके विचार कुछ होते हैं। पिछली बार भी ऐसा हुआ था। अभी भी जब कुंजरू साहब ने कुछ प्रश्न किये, तो उन्होंने कुछ बातें कहीं।

दूसरी जो महत्व की बात है वह म्यूचुअल कंसेंट की बात है। म्यूचुअल कंसेंट के बारे में हमने पहले एक बहुत सीधी सी बात रखी थी। उसमें हम ने "इफ" "बट" "लेकिन" "अगर" "मगर" "परन्तु" "चूंकि" नहीं रखा था। अब इस संशोधन में १४ लाइनें बढ़ा दी गई हैं। एक वर्ष तक जो दरखास्त देने वाला हो वह अलग रहे और एक वर्ष तक अलग रहने के बाद जब वह दरखास्त दे तब मैजिस्ट्रेट देखेगा कि वह एक वर्ष तक अलग रहा या नहीं रहा। इस प्रकार जब तक वह दो साल तक तपस्या न कर ले, तब तक कुछ नहीं होने वाला है और मैं नहीं समझता कि जिस तरह के लोग इस कानून के अन्तर्गत शादियां करने वाले हैं

वे ऐसे तपस्वी जीव होंगे कि वे दो वर्ष तक विवाह बन्धन से मुक्त हो कर बान-प्रस्थ या ब्रह्मचर्य का जीवन व्यतीत करेंगे और दो वर्ष तक प्रतीक्षा करते रहेंगे। फिर दो वर्ष बाद अदालत में लड़े हो कर यह कहेंगे कि हम बिल्कुल शुद्धरूप से दो साल तक ब्रह्मचर्य से रहे और ईमानदारी का जीवन व्यतीत करने रहे और अब हम कोर्ट से यह निवेदन करते हैं कि हमने म्यूचुअल कंसेंट के आधार पर जो आवेदन पत्र दिया था कि हमारा विवाह बन्धन नहीं चल सकता, उसको स्वीकार कर लिया जाय। तब जज महोदय उसकी जांच करेंगे

श्री बी० के० पी० सिंहा : ब्रह्मचर्य आवश्यक नहीं है।

श्री कन्हैयालाल डी० वैद्य : मैं म्यूचुअल कंसेंट की चर्चा कर रहा हूँ। इसमें आप कानून में देखें, कई जगह पर ऐसी बातें हैं कि अपील हो सकेगी। यदि किसी जरा सी बात की भी अपील हो गई तो कई साल लग जायेंगे। अदालतों में अपीलों की हालत हम रोज अखबार में पढ़ते हैं और सुनते हैं। कल गृह मंत्री जी ने अपने एक विल के सम्बन्ध में चर्चा करते हुए बताया था कि एलेक्शन पेटीशनस तीन तीन चार चार साल से चल रहे हैं। यह भी एक दूसरा नमूना होगा कि डाइवोर्स के लिए दो साल तक तपस्या कीजिए और फिर तीन चार साल तक अदालतों में दौड़िये। इस तरह यह ऐसा प्रोसीड्यूर है कि म्यूचुअल कंसेंट की जो धारा आपने रखी है, उसकी आपने टांग तोड़ दी है। जिस तरह से आपने इसमें प्रतिबन्ध लगाये हैं कि एक साल तक वह अलग रहे, उसके बाद मैजिस्ट्रेट के यहां दरखास्त पेंडिंग रहे और दूसरी कार्यवाहियां हों, उससे अच्छा तो यह था कि

[श्री कन्हैयालाल डी० वैद्य]

यह म्यूचुअल कंसेंट की धारा ही निकाल दी जाती ।

यह ठीक है कि समाज सुधार के सम्बन्ध में आप क्रांतिकारी कदम उठाना चाहते हैं और दुनिया को यह बताना चाहते हैं कि हम समाज सुधार कर रहे हैं । लेकिन पिछली बार जब मैंने बहुत से संशोधन रखे थे, तो माननीय मंत्री महोदय ने यह कहा था कि आपने तो चाहना ला की नकल करके रख दिया है । १८७२ का जो सिविल मैरिज एक्ट है, उसमें भी आपने इंग्लैंड की नकल करके रखा है । मैं यह निवेदन करना चाहता हूँ कि जिन्होंने चाहना ला को पढ़ा है, वे जानते हैं कि जो वहाँ की पार्टी है, जो वहाँ की जनता है, वह १८ महीने तक उस पर विचार करने के बाद इस निर्णय पर पहुँची है कि म्यूचुअल कंसेंट डाइवोर्स के लिए आवश्यक है । यहाँ यह कहा गया है कि डाइवोर्स के लिए जो दरखास्तें आयें, उन पर यह प्रयत्न करना चाहिए कि किस प्रकार से समझौता हो जाय और वे पति पत्नी की तरह से रह सकें । वहाँ भी ऐसा है कि जब म्यूचुअल कंसेंट के आधार पर दरखास्त दी जाती है तो कोर्ट समझौते का प्रयत्न करती है । तो ये दो बातें ऐसी हैं जो सुधार के नाम पर की जा रही हैं और जिन पर आज हम विचार कर रहे हैं । जैसा प्रधान मंत्री जी ने आज कहा, वे चाहते हैं कि विवास के सम्बन्ध में क्रांतिकारी सुधार हों । लेकिन जैसा सुधार लोक सभा ने इसमें किया, यदि वह यहाँ भी वैसा ही पास हो गया, तो जो पुराने विचार धारा के लोग हैं न उनको ही आप खुश कर सकेंगे और न जो नये विचार धारा के लोग हैं उनको ही आप

खुश कर सकेंगे और न जो इस बिल का क्रांतिकारी स्वरूप है, उसको ही आप कायम रख सकेंगे । म्यूचुअल कंसेंट के बारे में इसमें इतनी कंडीशन लगा दी गई है कि उसका कोई अर्थ ही नहीं रहता है । इस से अच्छा यह होगा कि म्यूचुअल कंसेंट की धारा को ही निकाल दीजिए और जो पहले से व्यवस्था चली आ रही थी वह चलती रहे ।

एक बात बड़ी खुशी की हुई है । एक ऐसा संशोधन हुआ जिस पर एक बहन ने दुःख प्रकट किया कि जो प्रोहिबिटेड डिग्री की शादियाँ कर लेंगे या करते रहेंगे उनके लिए अच्छी सुविधा नहीं रखी गई है । उनके लिए यह सुविधा थी कि वे इस कानून के अन्तर्गत शादी कर सकते थे । अगर प्रोहिबिटेड डिग्री की शादी किसी ने कर ली है, तो इस कानून के पास होने के बाद जिन्होंने शादी की है वह दूसरा विवाह कर सकेंगे । इस प्रकार दो विवाह करने की प्रथा थी वह इस संशोधन से ठीक हो जाती है ।

इसमें एक विचित्र बात पैदा की गई है । जिनको इल्लेजिटीमेट चाइल्ड माना जायगा, उनकी बड़ी बुरी स्थिति होगी । सम्पत्ति पर उनका कोई अधिकार नहीं होगा । आखिर उनकी जिम्मेदारी किसके ऊपर होगी ? स्पेशल मैरिज बिल का जो आप क्रांतिकारी स्वरूप रखना चाहते हैं उसका अर्थ यह होना चाहिए कि आप एक शक्तिशाली समाज का निर्माण करें । आप इस प्रकार के बच्चों की जिम्मेदारी न समाज पर रख रहे हैं और न माता पिता पर रख रहे हैं । इस तरह अगर आप ऐसे बच्चों के अधिकार पर हथौड़ा मार देंगे, तो मैं नहीं समझता कि यह बिल इस देश के अन्दर एक अच्छे समाज का

निर्माण करने में सहायक होगा। कानून में इस प्रकार के बच्चों की व्यवस्था अवश्य होनी चाहिए। इस प्रकार के बच्चों को अपने अधिकार से वंचित करने से मैं समझता हूँ कि हम एक हैल्दी समाज बनाने में कैसे सहायक होंगे। इसलिए मैं समझता हूँ कि इन सब बातों पर हमें सोच समझकर विचार करने की आवश्यकता है।

कुछ लोगों ने कहा कि बहुत अकलमन्दी से सोच करके वहाँ से यह बिल भेजा गया है। इससे मैं यह समझता हूँ कि हम लोगों ने अकलमन्दी से काम नहीं किया। ऐसी बात नहीं है। हमने जल्दबाजी में ऐसा किया था। एक बहन ने कहा कि मैं समझ नहीं पाई थी। विचित्र तरीके की बातें कही जाती हैं। हमने बहुत अच्छी तरह से सोचा था, समझा था, डिबीजन हुए थे, नाबालिगों की बात नहीं थी, सब बालिग और समझदार लोग थे। इस तरह का जो तर्क दिया जाता है उससे इस हाउस की डिगनिटी पर प्रभाव पड़ता है। हम लोग भी जो काम करते हैं बहुत सोच समझ कर करते हैं और उसकी जिम्मेदारी लेने के लिए हम को तैयार रहना चाहिए।

मैं नहीं समझता कि इस प्रकार के सुधारों को केवल स्वीकार कर लेने से देश में एक क्रांतिकारी कानून लागू हो जायगा। वैसे मैं यहाँ तक कहने के लिए

तैयार हूँ कि अगर ज्वाइंट सेशन करने की भी आवश्यकता हो, तो उसे हमें करना चाहिए और इसी लिए विधान में ऐसी व्यवस्था रखी गई है। आप समाज सुधार का एक क्रांतिकारी कानून बनाने जा रहे हैं। इस लिए अगर दोनों हाउसेज एक साथ बैठ कर विचार करें तो मैं समझता हूँ कि उससे देश का काफी कल्याण होगा। देश इस कानून का स्वागत करेगा और उसे आगे ले जाने में यह कानून सहायक होगा।

इस लिए मेरा हाउस से यह निवेदन है कि इन सब संशोधन पर आप बहुत संजीदगी से और सोच समझ कर विचार करें। आपको जो निर्णय करना हो, करें लेकिन जहाँ तक इस क्रांतिकारी स्वरूप का सम्बन्ध है, उस में एक तो अवस्था में जो परिवर्तन किया गया है और दूसरे डाइवोर्स बाई म्यूचुअल कंसेंट में इफ एंड बट लगा कर जो प्रतिबन्ध लगा दिये गये हैं, उस स्वरूप को नष्ट होने से बचाने के लिए पूर्व स्थिति को मेनटेन करना चाहिए। इन शब्दों के साथ मैं इस कानून का समर्थन करता हूँ।

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

The House then adjourned at five of the clock till eleven of the clock on Thursday, the 23rd September 1954.