PAPERS LAID ON THE TABLE

ANNUAL REPORT OF THE INDIAN COUNCIL OF AGRICULTURAL RESEARCH FOR 1951-52

THE MINISTER FOR AGRICULTURE (DR. P. S. DESHMUKH): Sir, I beg to lay on the Table a copy of the Annual Report of the Indian Council of Agricultural Research for the year 1951-52.

APPROPRIATION ACCOUNTS (POSTS AND TELEGRAPHS) 1951-52 AND THE AUDIT REPORT, 1953, THEREON

THE DEPUTY MINISTER FOR FINANCE (SHRI M. C. SHAH): Sir, I beg to lay on the Table, under clause (1) of article 151 of the Constitution, a copy of the Appropriation Accounts (Posts and Telegraphs) 1951-52 and the Audit Report, 1953, thereon.

THE SPECIAL MARRIAGE BILL, 1952—*continued*

SHRI K. MADHAVA MENON (Madras): Mr. Chairman, it being a measure of social reform or supposed to be a measure of social reform, I support the Bill; but, I must say that this Bill is very narrow, illiberal and halting measure, absolutely not satisfying the requirements which it is supposed to meet. It is supposed to improve Act III of 1872 and provide for marriage in certain cases, but I am afraid that in many respects it has not been an improvement.

I want the House to consider what is the real object of this Bill. The real object of this Bill is to help certain unfortunate cases of marriages which are not performed, which the parties have not been able to perform under various circumstances. It is not intended to provide for usual, ordinary cases, and it is not for that purpose that this Special Marriage Bill is being passed. The usual cases are the normality. People marry according to the customs of the community, according to the wishes of the parents or guardians, according to the religion. But there are some stray—if I may use the word—'aberrations' where parties are not able to marry at all because of certain laws or legal objections, or they are not able to get the consent of the parents or guardians. Such difficulties may arise in very rare cases and it is with a view to providing for such abnormalities or aberrations that we are having this Special Marriage Bill. Therefore, our object should be to make it as easy as possible for people to marry, to make it easy for the parties to the marriage live peacefully as husband and wife and to make the children born of them legitimate. We should not put every handicap in the way of the parties at every turn. What is given by the right hand is sought to be taken away by the left in this Bill. Practically, the Special Marriage Act of 1872 is much more helpful in such cases.

SHRI K. S. HEGDE (Madras): It is not given by a willing hand at all.

SHRI K. MADHAVA MENON: Yes, it has been extorted. If it is extorted, something better should have been extorted than this.

Sir, in the Act of 1872, one very important objection is that if the parties want to avail of it they have to renounce their religion. It is to avoid the necessity of renouncing religion, perhaps, that we want to improve on that Act. Why I say that this Bill is very, very halting is.....

SHRI RAJAGOPAL NAIDU (Madras): This Act of 1872 was amended in the year 1923.

SHRI K. MADHAVA MENON: My friend says it has been amended subsequently, in 1923. I do not know that. Anyway, the Select Committee has made it very difficult to take advantage of this for various reasons.

Under clause 2(2), the only person to give the consent shall be the father, and, after the father, the mother, but the expressions 'father' and 'mother'

do not include a step-father and a step-mother. What about the cases where one of the parties may be 21 and the other 18? If they have no parents, they will have to wait till both of them have crossed the age of 21. This seems to me to be an unhelpful attitude. That is, however, a minor matter.

Coming to clause 4 in chapter II, 'Conditions relating to solemnization of special marriages', I want only to compare the provisions of the Act of 1872 where section 4 says:

> (1) "neither party must, at the time of the marriage, have a husband or wife living"; (2) the man must have completed his age of 18 years, and the woman her age of fourteen years, according to the Gregorian calendar; (3) each party must, if he or she has not completed the age of 21 years, have obtained the consent of his or her father or guardian to the marriage".

In this Bill, it is:

> "(a) neither party has a spouse living";

all right; then

> "(b) neither party is an idiot or a lunatic".

I have not so far seen any legal definition of the word 'idiot' anywhere: perhaps it is defined in the 'Lunacy Act'.

Again, Sir, clause 7 says:

> "Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4".

It says, any person in the street, any blackmailer, can object; we are aware, Sir, of these professional blackmailers, professional witnesses, and it is given to any of these people to raise the objection.

With regard to the definition of the word 'idiot', I looked into the meaning of the word in the Oxford Dictionary. It says:

> *Idiot:* an ignorant, uneducated man; (*many of us are*);
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> a simple man; (*certainly he should be allowed to marry!*);
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> clown; (*clowns should not be prohibited from marrying*);
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> a layman; one not professionally learned; (*also*):
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> a private man; a person so deficient in mind as to be permanently incapable of rational conduct; a person of weak intellect, a jester; etc.

So the definition in a dictionary ranges from 'an ignorant, simple man' to 'a man of weak intellect'. It rocks like a pendulum from an ordinary uneducated person to an ignorant fool—from one end to the other.

Reverting to clause 7, any person in the street may object to the marriage and say 'he is an idiot or a lunatic'. These are for abnormal cases where the parties find it difficult to marry; they do not think they are idiotic because they want to marry! The definition as suggested by Shri Govinda Reddy in his amendment: "(a) has been declared by competent authority of unsound mind." may be possible of proof. As it is, the clause is having the difficulty of proof even. That is one of the ways in which we have been kind or liberal with regard to some unfortunate people.

Then, I come to the 'degree of prohibited relationship'. If the Select Committee had stated that and had stopped with that, it would have been all right. But they have appended a schedule proclaiming to the world as if we are in the habit of marrying our

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mothers, grandmothers and so on. If this kind of list enters the statute book it will sound as if we are used to marrying such prohibited relations. What would others outside our country feel when they read this? See sub-section (4) of section 2, in the old Act of 1872. It says:

> "the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal".

Now, in the measure, a list of objectionable degrees of relationship is given This is most disgusting

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Then, Sir, about the 'Marriage Officers'. All these formalities have to be done in a quasi-judicial capacity, what is the qualification prescribed for these officers? The Bill does not seek to define his qualifications, nor do the rules provided under the section attempt to prescribe his qualifications

I come to clause 12 This relates to the place and form of solemnization of marriages, this is not so very objectionable as clause 7 which says: "any person may object to the marriage". My objection is, the power that is given to 'any person' to object is not very helpful Either the parents or the guardian should object and not 'any person' In England, we have a similar piece of legislation. Even in the original Act, Act of 1872— "any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2" In England, when the original Act was passed it was said that parties used to go out with thousands of pounds in their pockets to silence the hundreds of possible objectors who were going to blackmail them If you give the right of objecting to 'any and every person', it is going to be the case here also; if you put that as 'the father, mother or the guardian', well, I can understand that. But this 'any person' is very, very objectionable

Then, Sir, I find that clause 14 is absolutely unnecessary. A fresh process for notice is provided for which is quite unnecessary because it involves great difficulty

Then, Sir, clause 15 says that "any marriage celebrated whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872, or under this Act " I find no necessity for the words "under this Act". They seem to be redundant

Then sub-clause (e) of clause 15 says that "the parties are 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." Sir, under the law prevailing in my part of the country, what we call the Marumakkattayam Act, marriage with father's sister's daughter or with mother's brother's daughter is supposed to be the most approved form of marriage I know that in many parts of Madras a marriage with father's sister's daughter or with mother's brother's daughter is supposed to be the most appropriate form of marriage. But it is now prohibited under this Act The hon. the Law Minister has explained it very clearly that if the custom of a community permits a certain marriage, there should be no objection. Then why should we not be allowed to do this according to our custom? I am sure such mistakes must not have been intended to be committed by the framers of this Bill. Therefore, they should now be corrected.

Then, Sir, clause 19 is one of the most objectionable clauses There are various amendments proposed in respect of this clause. It says:

> "The marriage solemnized under this Act of any member of an undivided family who professes the

*Expunged as ordered by the Chair.

Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family."

I do not see why there should be compulsory severance. Severance is provided for under the Hindu Law. It need not be made compulsory for every member to get himself severed from the family. In my opinion, Sir, that is another way of taking away with the left hand what you want to give with the right hand. Therefore, do not be halting like this.

Then, Sir, there are provisions about void and voidable marriages. There again, as I have already pointed out, the idiot pursues the poor parties everywhere. Sir, there are certain cases where you may provide a punishment for improper marriage. Suppose there is a case where a man has hidden the fact that he has a spouse; three or four years have elapsed and it is found out that they have got children also. Then, in such a case you may provide some punishment for the man himself. Why do you punish those children? Why do you want the children to suffer by making that marriage void? Such things should be looked into very carefully.

Clause 41 of the Bill reads as follows:—

"Save as otherwise provided in Chapter III, every person who, being at the time married, procures a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be, and the marriage so solemnized shall be void."

When you say that the marriage so solemnized shall be void, you are penalising the children also.

Then, Sir, one word about divorce. I do not see why people should be nervous about the provision for divorce here. We are not marrying for the pleasure of divorcing each other. Sir, I come from Malabar, and, according to our custom, divorce is very easy but it is not at all common. This custom was codified in 1926, the Malabar Marumakkattayam Act. There is a provision for divorce in that Act. It was passed in 1926. According to that Act the wife or the husband has only to put in a petition to the court that he or she wants to be separated. No reasons need be stated and there shall be no enquiry. There shall be no washing of dirty linen in the court. The court gives time for six months to the parties so that they may try to come together—a sort of *locus pœnitentiæ*—and then at the expiration of that period, if they do not come together, the court orders divorce. So, Sir, divorce is so easy. And yet, what is the result? From 1926 to 1954 there have not been more than half a dozen cases of divorce. As I said earlier, nobody marries with the idea of divorcing. There may, of course, be some hard cases. By all means, provide for them. But one need not be so nervous about the question of divorce at the very mention of the word. Sir, I can appreciate objections on the ground of religious sentiments. That is not a matter of logic and reason. We can sympathise with such people, but we need not abuse them. Sir, one minute more. I will give one example. When the Temple Entry Bill was on the anvil of the Madras Legislature, I had to see one of the oldest gentlemen there, the Zamorin of Calicut. He was 86 years old. He called me and said "Look here, are the untouchables going to enter the temples by a Bill?" I did not want to offend that old gentleman. I simply kept quiet. He again asked me "Are they going to enter into our temples?" I did not want to tell a lie to him. So when he asked "Can this Guruvayur Temple at least not be exempted from the entry of untouchables?", I replied to him by saying that if Guruvayur Appan did not like them to enter the temple, they could never enter the temple, no matter the Madras Government passed any

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number of Bills. So, Sir, why should we people oppose like that? We do appreciate those difficulties. We need not unnecessarily offend the people who raise objections on the ground of religious sentiments. We can only pray that they may be given such wisdom that they may not try to make themselves miserable with the passing of time.

Sir, most of the amendments are designed to make this narrow Bill narrower. A few amendments such as those moved by Mr. Govinda Reddy and Shrimati Parvathi Krishnan are liberalising, but most of the amendments are unfortunately very, very narrow. I want those gentlemen who have given notice of such amendments to realise that we are only providing for exceptional cases, a very small number of cases, abnormal cases, and in such cases we ought to make things more easy and helpful to them and not put difficulties in their way.

SHRI TAJAMUL HUSAIN (Bihar):

شری تجمل حسین (بہار) : جناب چیرمین صاحب - اسوقت تک ہمارے ملک میں کوئی ایسا قانون نہیں ہے کہ ہندو اگر غیر ہندو سے شادی کرنا چاہتا ہے تو اس قانون کی رو سے اسکی شادی ہو سکے - یا اگر مسلمان چاہتا ہے کہ وہ کسی غیر مسلمان سے شادی کرے تو وہ بھی نہیں کر سکتا - یہو بات عیسائیوں اور پارسیوں کے ساتھ بھی ہے - اس ملک میں جتنے لوگ ہیں اگر وہ چاہتے ہیں کہ انکی شادی اس قانون کے ماتحت غیر مذہب والوں سے ہو جائے تو ابتک کے قانون کے مطابق نہیں ہو سکتی ہے - یہاں تک کہ ۱۸۷۲ع کا جو سپیشل میرج ایکٹ (Special Marriage Act) ہے اس میں بھی یہی لکھا ہوا ہے کہ جب تک دونوں لا مذہب نہ ہوں ان میں شادی نہیں ہو سکتی یعنی دونوں پارٹیوں کو یہ کہنا پڑیگا کہ ہمارلوگوں کا کوئی مذہب نہیں ہے - یہ نہیں ہے کہ سنہ ۱۸۷۲ع کے ایکٹ کے ذریعے سے ایک ہندو اور غیر ہندو کی شادی ہو جائے بلکہ صاف صاف اس میں یہ لکھا ہوا ہے کہ ان دونوں میں شادی ہو سکتی ہے جبکہ کوئی مذہب نہیں ہے - وہ ہندو ہوگا نہ مسلمان - تو یہ سنہ ۱۸۷۲ع کا ایکٹ ہے -

اب یہ جو بل ہمارے سامنے آیا ہے اس میں پہلے پہل یہ قانون آیا ہے کہ دو غیر مذہب والے اپنے اپنے مذہب قائم رکھ کر شادی کر سکتے ہیں یعنی اگر ایک ہندو چاہتا ہے ایک غیر ہندو سے شادی کرنا تو یہ جو قانون ہم لوگ بنا رہے ہیں اس کے ذریعہ سے وہ شادی کر سکتا ہے -

اب سوال یہاں پر یہ پیدا ہوتا ہے کہ آیا اس بل کے ذریعہ ۱۸۷۲ کے ایکٹ میں جو تبدیلی کی گئی ہے وہ بل کی سپرٹ کے مطابق ہے یا نہیں- ۱۸۷۲ کے ایکٹ میں اور اس بل میں جو فرق ہے وہ بہت تھوڑا ہے - وہ بنیادی اصول (basic principles) جن کی بنا پر یہ تبدیلی ہوئی ہے ان

میں یہ ممکن نہیں - ایک زمانہ میں تو شادی بہت کم سنی میں ہوتی تھی - اب زمانہ ایسا بدل گیا ہے کہ جو لڑکا اپنی شادی کرنا چاہتا ہے اسکی اتنی حیثیت ہونی چاہیئے - اتنی آمدنی ہونی چاہیئے کہ وہ اپنا خرچ چلائے اپنی بیوی کا خرچ چلائے اور اپنے بچے کا خرچ چلائے - ۱۸ برس کی عمر کیا ہے - ۱۸ برس کی عمر صرف یہ ہے کہ وہ لڑکا سپنڈنگ (spending) ہوگا - اسکول یا کالج میں پڑھتا ہوگا - وہ اس وقت کسی صورت میں ارن (earn) نہیں کر سکتا ہے - ایکسیپشنل کیسیز (exceptional cases) ایسے ہو سکتے ہیں جن میں وہ ارن کرتا ہو - مگر عام طور پر اس ملک میں یا دنیا کے جتنے ممالک ہیں ان میں ۱۸ برس کی عمر میں لڑکوں کو بالغ مان لیا جاتا ہے - لیکن اس عمر میں لڑکے کے پاس ابھی اتنا سرمایہ نہیں ہوتا ہے ابھی اس کے پاس اتنا روپیہ نہیں ہوتا ہے کہ وہ گھر کا خرچ چلا سکے - اس لئے مجھے لا منسٹر صاحب (Law Minister) کو یہ رائے دینا ہے کہ اگر ممکن ہو — میں نے اس پر امنڈمنٹ (amendment) بھی دیا ہے --- تو اس ۱۸ برس کی عمر کو اور بڑھا دیں - میرے خیال میں ایسی عمر رکھی جائے کہ وہ لڑکا اس کا خرچ برداشت کرنے کے قابل ہو جو کہ ۲۴-۲۵ برس کے اندر ہو - کیونکہ اس سے کم عمر میں لڑکے میں سے ایک تو یہی ہے کہ دو مذہب والے شادی کر سکیں - اور دوسرا یہ ہے کہ آزادی کے بعد اگر کوئی ہندوستانی اس ملک کے باہر کسی غیر ملک میں رہتا ہے تو وہ وہاں بھی شادی کر سکتا ہے - اس کے علاوہ کوئی خاص بیسک چینج (basic change) اس بل کے اندر نہیں ہے -

اب یہ سوال ہے کہ اس چیز کو امپروومنٹ (improvement) کہیں گے یا نہیں - اگر ہاوس (House) سمجھتا ہے کہ یہ امپروومنٹ (improvement) میں داخل ہے تب تو بل ضرور پاس ہو جانا چاہیئے - میری سمجھ میں نہیں آتا ہے کہ امپروومنٹ ہے بھی یا نہیں آخر سب کو معلوم ہے کہ یہ بل پاس ضرور ہوگا - ہمیں اس سے متعلق چند رائے دینا ہے خاص کر لیڈر آف دی ہاوس (Leader of the House) کو کہ وہ ان پر غور کریں تاکہ جب یہ بل پاس ہو جاتا ہے تو اس میں اتنے چینجیز (changes) ہونا مناسب ہے یا غیر مناسب ہے -

اس بل میں لکھا ہوا ہے کہ ۱۸ سال کی عمر کا لڑکا یا لڑکی اگر شادی کرنا چاہتے ہیں تو اپنے گارجین (guardian) سے کینسینٹ (consent) لیکر کر سکتے ہیں - اس سے متعلق مجھکو یہ عرض کرنا ہے کہ ہمارے ملک کے لئے ۱۸ برس بہت کم عمر ہے - اب زمانہ اس قدر بدل گیا ہے کہ اس

[Shri Tajamul Husain.]

اس قانون کے اندر لوگوں نے ایڈوانٹیج (advantage) لینا شروع کر دیا تو میں کہتا ہوں کہ زیادہ شادیاں ہونگی اور آبادی زیادہ بڑھیگی - اس کو بھی ایک معقول وجہ سمجھ کر عمر اتنی کم نہیں رہنے دینا چاہیئے -

میں اس چیز کے بہت خلاف ہوں کہ کوئی شخص مجھے شادی پر کسی دوسرے کو دیدے - شادی ایک بالکل پرمانینٹ ایرینجمینٹ بیتوین دی تو (permanent arrangement between the two) ہے - دو آدمی ہیں وہ شادی کرنا چاہتے ہیں، خوش رہنا چاہتے ہیں، ایک دوسرے سے محبت کرتے ہیں ایک دوسرے کی ریسپیکٹ (respect) کرتے ہیں تو پھر کیا ضرورت ہے کہ ہمارے باپ اور چچا آ کر شادی کریں - اس لئے اس قانون میں سے گارجین شپ (guardian ship) کا معاملہ بھی ہٹا دیں تو میرے خیال میں ایک امپروومنٹ ہوگی -

اس کے بعد کلاز ۸ (clause 8) کے سب کلاز (sub-clause) کا مطلب یہ ہے کہ میریج رجسٹرار کے سامنے جس وقت شادی کی اطلاع (نوٹس) جائے اسوقت دنیا میں جو جی چاہے اس جگہ آکے آبجیکٹ (object) کر سکتا ہے کہ صاحب اس کی شادی نہ ہو- اسکا پروسیجر (procedure) یہ رکھا گیا ہے کہ میریج افسر (marriage

کے لئے بہت مشکل ہے کہ وہ اپنی فیملی (family) کو میںٹین (maintain) کر سکے- میری رائے ہے کہ لڑکے کے لئے ۲۵ برس تک کی ایج (age) ٹھیک ہوگی - اور اگر آپ اس قانون میں دونوں کے لئے ۱۸ کی بجائے ۲۱ برس کی عمر رکھ دیں تو فائدہ یہ ہوگا کہ لڑکے اور لڑکی کی شادی ۲۱ برس سے کم میں نہیں ہو سکیگی - لیکن لڑکا ۲۱ برس کی لڑکی سے شادی کرنے کے لئے شاید تیار نہیں ہوگا- اس حالت میں بھی لڑکے کی عمر ۲۵ برس اور لڑکی کی عمر ۲۱ برس آٹومیٹیکلی (automatically) ہو جائیگی - اس لئے میرا سجھاو ہے کہ اگر مناسب سمجھیں تو ایج کو اسطرح آپکو انکریز (increase) کر دینا چاہیئے - اسکی وجہ یہ ہے کہ، جیسا آپ اچھی طرح جانتے ہیں ، ہمارے ملک کی آبادی بہت بڑھ رہی ہے - کم سے کم اس ایکٹ (Act) کے اندر تو یہ پابندی لگنا ہی چاہیئے - یہ دوسری بات ہے کہ ہندوؤں یا مسلمانوں یا اور مذہب کے لوگوں کو اس بات کی آزادی ہو کہ وہ اپنے ریت و رواج اور طریقے پر جس ڈھنگ سے کرتے آئے ہیں شادی کریں مگر اس ایکٹ کے اندر اس عمر کے نیچے شادی نہ کرنے دی جائے -

ابجیکشن کر دیا جائیگا تو شادی ہونے میں دیر ہو جائیگی - اس لئے میرا کہنا ہے کہ جب کبھی کوئی آدمی شادی کے بارے میں آبجیکشن کرے تو اس کے لئے رقم ڈپازٹ کرنے کی ایک شرط لگا دی جائے - اگر آپ چاہتے ہیں تو ایک سو روپیہ بھی ہو سکتا ہے - اور ایک ہزار روپیہ بھی ہو سکتا ہے - جب کوئی شخص آبجیکشن کرنا چاہے تو اس کے لئے یہ ضروری ہو جائیگا کہ وہ پہلے فکس (fix) کی ہوئی رقم ڈپازٹ کرے اس کے بعد ہی اسکا آبجیکشن انٹرٹین (entertain) ہو سکتا ہے -

دوسری بات جو مجھے کہنی ہے وہ یہ ہے کہ آپ نے پارٹی کو اپیل کرنے کا جو اختیار دیا ہے میرے خیال میں اس سے شادی کرنے میں بہت دیری ہو جائیگی ڈیلے (delay) ہو جائیگی آپ میرج آفیسر ایسا رکھئے جو کہ ریٹائرڈ جوڈیشل آفیسر (retired judicial officer) ہو - جو کہ دونوں پارٹیوں میں شادی کرا سکے - اس کے بعد مجھے یہ کہنا ہے کہ شادی سے متعلق اگر کسی کو اپیل کرنا ہو تو اس کے لئے الگ الگ اپیلیٹ کورٹ (appellate court) بنا دیا جائے - اگر آپ میرے اس سجیشن (sugges-tion) کو مناسب نہیں سمجھتے تو میرا دوسرا سجیشن یہ ہے کہ ڈسٹرکٹ جج (district judge) جسکے یہاں اپیل دائر کی جائیگی - اس ایکٹ (officer) کو اختیار ہے کہ وہ جس سے چاہے آپکے بارے میں انکوائری (enquiry) کرے - اور انکوائری کے بعد اگر اسکو پتہ لگیگا کہ آبجیکشن صحیح ہے یا غلط تو اسے وہ خود ڈسائڈ (decide) کر لیگا -

کلاز ۸ کے سب کلاز ۲ میں یہ دیا ہوا ہے کہ آبجیکٹر (objector) نے آبجیکشن (objection) کیا ہے اس کو میریج افسر اپہولڈ (uphold) کر سکتا ہے یعنی آبجیکٹر نے جو کہا ہے اسے ٹھیک مان سکتا ہے - اسکے علاوہ کسی بھی پارٹی کو اختیار ہے کہ وہ ڈسٹرکٹ کورٹ (district court) میں اپیل کر سکتے ہیں -

اس سے متعلق مجھے یہ کہنا ہے کہ فریویلس آبجیکشن (frivolous objection) روکنے کے بجائے آپ نے ہر شخص کو یہ اختیار دیدیا ہے کہ وہ جو آبجیکشن کرنا چاہے کر سکتا ہے - تو میرا کہنا یہ ہے کہ جب کوئی شخص اسطرح کا آبجیکشن کرتا ہے تو اسکو اس کے لئے کچھ روپیہ ڈپازٹ (deposit) کرنا چاہیئے - تاکہ وہ کسی طرح کا آبجیکشن کر سکے - اگر آپ نے ڈپازٹ کرنا منظور کر لیا تو بہت سے لوگ یوں ہی فریویلس (frivolous) آبجیکشن کر دیتے ہیں وہ کم ہو جائیگا - اس کے ساتھ ہی ساتھ بہت سے لوگوں کی آبجیکشن کرنیکی منشا یہ بھی ہو سکتی ہے کہ اگر اس طرح کا

[Shri Tajamul Hussain.]

رجسٹرار کے آفس میں ہی کی جاتی ہے - مگر اس قانون کے اندر یہ ہے کہ جتنی بھی شادیاں ہونگی رجسٹرار کے آفس میں ہونگی - اور اگر پارٹی یا رجسٹرار چاہےگا تو گھر میں بھی شادی کی رجسٹری ہو سکتی ہے - اگو کوئی شخص کسی ڈوکومنٹس کا رجسٹریشن کرانا چاہتا ہے تو وہ اسی حالت میں گھر میں کرا سکتا ہے- اگر وہ بیمار ہو یا بوڑھا ہو اور مر رہا ہو یا کوئی پردہ کا رواج اختیار کرتا ہو - اس طرح کی حالتوں میں رجسٹرار کا گھر میں جانا مناسب معلوم ہوتا ہے - مگر جب پارٹی ینگ (young) ہے اسی طرح کی بیماری میں مبتلا نہیں ہے کسی طرح کا پردہ اختیار نہیں کرتے ہیں—پردہ والی عورتیں تو اس ایکٹ کے ماتحت شادی نہیں کرینگی— تو اس حالت میں رجسٹرار کا ان کے گھر میں جانا اور شادی کی رجسٹری کرانا کسی طرح بھی مناسب نہیں معلوم ہوتا ہے - اگر پارٹی رجسٹرار سے کہتی ہے کہ صاحب ہمارے یہاں تشریف لائیے پارٹی میں شریک ہوئیے اور ہماری شادی کی رجسٹری بھی کر دیجئے - تو اسطرح سے گھر میں جاکر شادی کی رجسٹری کرانا مناسب بات معلوم نہیں ہوتی"- جب سول میرج (civil marriage) ہے تو اس کو آفس میں جانا ہی پڑیگا - کیونکہ اس ایکٹ میں زیادہ تر باتیں سول میرج ایکٹ (Civil Marriage Act)

میں یہ لکھ دیا جائے کہ ڈسٹرکٹ جج کو اس طرح کی اپیلوں کا فیصلہ ۳ مہینے کے اندر دینا ہوگا - یا کوئی وقت مقرر کر دیا جائے ورنہ ہمارا تجربہ یہ بتاتا ہے کہ جب سول کورٹ (civil court) میں کوئی مقدمہ جاتا ہے تو اس میں برسوں لگ جاتے ہیں- اس بات کی کوئی گارنٹی (guarantee) نہیں ہوتی ہے کہ دو تین برس کے اندر ہی وہاں سے فیصلہ ہو سکیگا - اس طرح سے کئی برسوں تک لوگوں کو فیصلہ کا انتظار کرنا پڑتا ہے - اس لئے میں لیڈر آف دی ہاؤس سے جو کہ اس بل کے انچارج ہیں یہ اپیل کرتا ہوں کہ وہ ایک حد مقرر کر دیں کہ ڈسٹرکٹ جج کو اتنے وقت میں فیصلہ کرنا ہوگا - اور اس بات کی اجازت نہیں ہونی چاہیئے کہ ریویزن (revi-sion) کے لئے ہائی کورٹ میں جائے -

اس کے بعد کلاز ۱۲ میں لکھا ہوا ہے کہ شادی رجسٹرار کے آفس (office) میں ہوگی - اگر میرج آفیسر چاہے اور پارٹی کی خواہش ہو یعنی اگر پارٹی والے یہ چاہتے ہوں کہ انکی شادی گھر ہی پر ہو تو رجسٹرار ان کے گھر میں ان کی شادی کی رجسٹری کرا سکتا ہے - اس سے متعلق مجھے یہ کہنا ہے کہ ہمارے یہاں قانون ہے کہ ڈوکومنٹس (documents) کی رجسٹریشن (registration) کے لئے جو بھی کارروائی کی جاتی ہے وہ صرف

اب مجھے کلاز ۱۳ پر کچھ کہنا ہے - اس میں یہ لکھا ہوا ہے کہ جب شادی ہو جائیگی تو دونوں پارٹیوں کو ویٹنس کے ساتھ ساتھ میرج سارٹیفیکیٹ بک (marriage certificate book) میں سائن (sign) کرنا ہوگا تبھی شادی مکمل قرار دی جا سکیگی - اب سوال یہ اٹھتا ہے کہ اگر کوئی پارٹی لکھنا پڑھنا نہیں جانتی تو اس حالت میں کیا ہوگا - اس بل میں اس طرح کی کوئی بات نہیں لکھی ہوئی ہے کہ اگر پارٹی جاہل ہو تو تھمب امپریشن (thumb impression) لگا سکتی ہے - اس کا مطلب تو یہ ہوا کہ جو پارٹی دستخط کرنا نہ جانتی ہو وہ اس ایکٹ کے ماتحت شادی نہیں کر سکتی - اگر یہ بات ہے تو بالکل غلط ہے -

اب مجھے کلاز ۱۴ کے سب کلاز ای [sub clause (e)] کے متعلق عرض کرنا ہے -- اس میں یہ لکھا ہوا ہے کہ کوئی شادی یا میرج ہو سکتی ہے بشرطیکہ وہ پروہیبیٹیڈ ڈگری (prohibited degree) کے اندر نہ ہو - لیکن کچھ حالتوں میں جہاں پر کسٹم (custom) یا قاعدہ ہو وہاں پر اس طرح کی شادیاں ہو سکتی ہیں- لیکن میرا کہنا یہ ہے کہ آپ نے قانون کے اندر جو پروہیبیٹیڈ ڈگری بنا دی ہے اس میں شادی نہیں ہو سکتی - اس میں لکھا ہوا ہے کہ فلاں سے شادی نہیں ہو سکتی ہے -- اس کا بیسک سے ہی لی گئی ہیں - ایک طرح سے کاپی (copy) کیگئی ہے -

اب مجھے کلاز ۲۲ کے متعلق کچھ عرض کرنا ہے - اس کلاز میں یہ دیا ہوا ہے کہ شادی تب تک کمپلیٹ (complete) نہیں ہوگی جبتک کہ دونوں پارٹیاں میرج آفیسر اور تین وٹنیس (witnesses) کے سامنے کسی لنگویج (language) میں جو کہ پارٹی سمجھ سکتی ہے یہ بات نہ کہیں :

"I (A) take thee (B) to be my lawful wife (or husband)."

تو میرا کہنا یہ ہے کہ اگر پارٹی اس طرح کی لنگویج کا استعمال کرے جو کہ رجسٹرار سمجھ نہ سکے تو کیا یہ مناسب معلوم ہوتا ہے - فرض کیجئے کہ شادی بہار میں ہونیوالی ہے - بہار کی زبان ہندی ہے - اور پارٹی جو ہے وہ آندھر (Andhra) کی رہنے والی ہے اور وہاں کی زبان بولتی ہے - تو یہ کیسے ممکن ہے کہ میرج آفیسر ان کی زبان کو سمجھ سکیگا - اس قانون میں یہ ہونا چاہیئے تھا کہ پارٹی ایسی زبان جسکو میرج آفیسر سمجھ سکے استعمال کرے - مگر اس قانون میں اس طرح کی کوئی بات نہیں رکھی گئی - مجھے امید ہے کہ اس بات پر ضرور غور کیا جائے اور اس میں جو کمی رہ گئی ہے اسکو دور کیا جائیگا -

[Shri Tajamul Husain.]

پرنسپل (basic principle) یہ ہے کہ کزن (cousin) سے اور نیس (niece) سے اس ایکٹ کے مطابق شادی نہیں ہو سکتی - لیکن جس شخص کی شادی کسٹم (custom) کے ذریعے ہو چکی ہے وہ شخص اگر اس میں رجسٹریشن کرانا چاہتا ہے تو وہ کرا سکتا ہے - آپ کو معلوم ہے کہ ڈریویڈینس (Dravidians) میں اور مہاراشٹرا میں اپنی بہن کی بیٹی سے یعنی اپنی نیس سے شادی ہوتی ہے جو کہ ہم نہایت ریپلسیو (repulsive) سمجھتے ہیں- لیکن ان کا جو کسٹم ہے اس کے اندر ہوتی ہے - میں نے یہاں کے ایک ممبر صاحب سے اس بات کو پوچھا تو انہوں نے یہ بات بتائی - اگر یہ بات غلط ہے تو آپ مجھے بتا سکتے ہیں - آپ مجھ سے زیادہ جانتے ہیں - لیکن مجھے یہی معلوم ہوا ہے کہ بہن کی بیٹی سے شادی ہو سکتی ہے - تو وہ شادی کرنے کے بعد اگر اس میں رجسٹریشن کرانا چاہتے ہیں تو کرا سکتے ہیں - میرے خیال میں یہ بہت ہی ریپلسیو ہے - ابھی مجھے معلوم ہوا - پہلے مجھے معلوم نہیں تھا کہ سارے ساؤتھ انڈیا (South India) میں باپ کی بہن کی بیٹی سے شادی ہو سکتی ہے - یہ چیز مسلمانوں اور پارسیوں میں بھی ہے - تو اپنی اپنی جگہ پر یہ بات ٹھیک ہے - لیکن جب اسپیشل میرج ایکٹ (Special Marriage Act) بناتے ہیں تو اس کے اندر اس طرح کی شادی کو کیوں لاتے ہیں -

اب میں دو منٹ اور لونگا - میں کوئی تقریر تو کر نہیں رہا ہوں - صرف کچھ سجیشن دے رہا ہوں - تو کلاز 19 کے اندر جوائنٹ فیملی (joint family) سے سیوریرنس (severance) کا جو ذکر ہے بہت سے قابل ممبران اس سے متعلق اپنے خیالات کا اظہار کر چکے ہیں - لیکن یہ بات میری سمجھ میں نہیں آئی کہ جب ایک ہندو کی ایک ہندو سے شادی ہوتی ہے تو پھر جوائنٹ فیملی سے الگ ہونے کا کیا سوال رہ جاتا ہے ؟ اگر ایک ہندو ایک غیر ہندو سے شادی کرتا ہے تو میں مان بھی لوں کہ اس طرح کا سوال ہو سکتا ہے - لیکن جب ایک ہندو سے ایک ہندو کی شادی ہوتی ہے تو پھر یہ سوال کیوں اٹھایا گیا ہے ؟ معلوم نہیں کہ ایسا کیوں رکھا گیا ہے - جو اس معاملہ میں ایکسپرٹ (expert) ہیں وہ بتائیں کہ اس کی وجہ کیا ہے اور کس وجہ سے ایسی بات رکھی گئی ہے کہ الگ ہو جانا چاہیئے -

اس کے علاوہ مجھے کلاز ۲۲ کے بارے میں عرض کرنا ہے- یہ ریسٹیچوشن آف کنجوگل رائٹس (Restitution of conjugal rights) سے متعلق ہے -

ہمارے یہاں بھی اسی طرح سے ہے کہ اگر کوئی ساتھ نہیں رہنا چاہتا ہے تو وہ ڈائیورس دیدے- اس کا ایک طریقہ یہ ضرور ہے کہ قاضی کے یہاں جانا پڑتا ہے اور کہنا پڑتا ہے کہ ہم دونوں ساتھ نہیں رہنا چاہتے - لیکن یہاں آپ کہتے ہیں کہ وہ یہ ثابت کرے کہ ایڈلٹری (adultery) ہوئی ہے - اگر وہ نہیں چاہتے ہیں کہ ڈرٹی لنن (dirty linen) کو کورٹ میں جاکر صاف کریں اور اگر وائف اور ہزبینڈ (wife and husband) دونوں میوچولی (mutually) راضی ہیں تو پھر ان کو ڈائیورس کرنے کی اجازت دیدی جانی چاہئے - انگریزوں کے خیال کو چھوڑ دیجئے کہ جبتک ایڈلٹری ثابت نہ ہو تب تک ڈائیورس نہیں ہو سکتا - ہمارے لوگ انگریزیت سے اتنے بھرے ہوئے ہیں کہ جو بھی قانون بناتے ہیں اس میں وہاں کی ہی نقل کرتے ہیں -

10-00 A.M.

اب مجھے کلاز ۲۶ کے پراویزو (proviso) کے بارے میں کچھ کہنا ہے - اس میں لکھا ہوا ہے کہ اگر ہزبینڈ ۷ برس کیلئے کنوکٹ (convict) ہو جائے تو اس کی بیوی اسکو ڈائیورس کر سکتی ہے - لیکن تین برس تک اس کو چپ چاپ بیٹھے رہنا پڑیگا- جب تین برس تک وہ جیل میں گھٹ لے تب اس کے بعد بیوی سول لا (Civil Law) میں بھی یہ ہے کہ اگر بیوی اپنے شوہر کے ساتھ نہیں رہنا چاہتی تو کورٹ اسے رہنے کیلئے مجبور کر سکتی ہے - اسی طرح اگر شوہر بیوی کے ساتھ نہیں رہتا ہے اور بھاگا ہوا ہے تو کورٹ کے ذریعہ سے بیوی اس کو اپنے پاس بلا کر رکھ سکتی ہے - ۔۔۔۔ا میں یہ ٹھیک نہیں ہے - اگر بیوی بچے میاں کے ساتھ نہیں رہنا چاہتی ہے یا میاں اپنی بیوی کے ساتھ نہیں رہنا چاہتا ہے تو پھر اگر بردستی اسے رکھینگے تو اس کا نتیجہ یہ ہوگا کہ روز لڑائی جھگڑا ہوتا رہیگا اور گالی گلوچ ہوتی رہیگی - صاحب، اگر میں اپنی بیوی کے ساتھ نہیں رہنا چاہتا ہوں تو پھر مجھے کیوں پکڑ کر بیوی کے پاس لیجایا جائے اور کہا جائے ،،چونکہ تم قانون کے اندر شوہر ہو اس لئے رہو،،- یہ چیز بلکل بیکار ہے- ابھی ہمارے مالابار کے سابق منسٹر صاحب نے فرمایا ہے کہ ان کے یہاں بہترین قسم کا ڈائیورس ایکٹ (Divorce Act) ہے جس میں کہ ریزن اور گراونڈ (reason and ground) دینے کی کوئی ضرورت نہیں ہے - صرف جج کے یہاں جاکر پیٹیشن (petition) دیدے کہ ہم میوچولی (mutually) اکٹھے نہیں رہنا چاہتے تو اس کے لئے ۶ مہینے کا وقت دیا جائے گا اور اگر اس بیچ میں میل ہو گیا تو ٹھیک ہے نہیں تو پھر الگ الگ ہو گئے -

[Shri Tajamul Husain.]

ڈائیورس کی اپلیکیشن (application) کورٹ میں دے - اس طرح سے اگر بیوی کو ۷ برس کے لئے سزا ہوئی ہے تو شوہر ۳ برس تک کچھ نہ کہہ کر سکتا ہے -

[MR. DEPUTY CHAIRMAN in the Chair.]

کیا یہ ممکن نہیں ہے کہ جیسے ہی ۷ برس کا کنوکشن (conviction) ہو ویسے ہی درخواست دیدی جائے اور ڈائیورس ہو جائے - مان لیجئے کہ تین برس تک شوہر جیل میں رہتا ہے اور جب ڈائیورس کی اپلیکیشن دیجاتی ہے اور کسی طرح سے ایک مہینہ کے بعد ہی شوہر کو پارڈن (pardon) ہو جاتا ہے تو اس حالت میں کیا ہوگا ؟ میرے خیال میں کنوکشن کے وقت سے ہی ڈائیورس کی اجازت مل جانی چاہیئے - یہاں بھی انگریزی لا کے مطابق ہی کیا گیا ہے - میری عرض ہے کہ انگریزی قانون کو چھوڑ دیجئے - اگر ڈائیورس کرنا ہے تو کنوکشن کے وقت ہی ڈائیورس کا حق دیجئے - ۳ برس تک کے لئے روکنا بالکل بیکار ہے -

اب میری لائق دوست مسیز منشی نے کہا تھا کہ اگر عورت پرگنینٹ (pregnant) ہو اس کو حمل ہو تو اس کا سب سے آسان طریقہ انہوں نے یہ بتایا تھا کہ لیڈی ڈاکٹرس سے اس کا ایکزامینیشن (examination) کرا لیا جائے - میرے خیال میں یہ بالکل نامناسب بات ہے - یہ ہو سکتا ہے کہ شادی ہونیوالی ہو اور لیڈی ڈاکٹر پہونچے اور جانچ کرے اور اگر ایک مہینہ کا حمل ہے تو لیڈی ڈاکٹر کو پتہ بھی نہ چلے کہ حمل ہے یا نہیں -

DR. P. C. MITRA (Bihar):

डा० पी० सी० मित्रा (बिहार) : रांची में एक क्रिश्चियन के बारे में ऐसा हुआ है।

SHRI TAJAMUL HUSAIN:

شری تجمل حسین : میں یہ مانتا ہوں کہ شادی سے پہلے حمل نہیں ہونا چاہیئے - میرا کہنا یہ ہے کہ ایک پیریڈ (period) فکس (fix) کر دیا جائے کہ اتنے دن کے بعد شادی ہو سکتی ہے تاکہ یہ پکے طور سے معلوم ہو جائے کہ عورت کو حمل ہے یا نہیں - ہمارے اسلامک لا (islamic law) میں یہ ہے کہ اگر شوہر مر جاتا ہے یا اس کا ڈائیورس ہو جاتا ہے تو تین یا چار مہینے تک شادی نہیں ہو سکتی کیونکہ اتنے دن کے اندر پتہ چل جاتا ہے کہ عورت کو حمل ہے یا نہیں -

DR. P. C. MITRA:

डा० पी० सी० मित्रा : सिर्फ तीन दिन के अन्दर मालूम हो जाय गा।

SHRI TAJAMUL HUSAIN:

شری تجمل حسین : ہمارے یہ جو نہایت ضعیف اور بزرگ ممبر ہیں ان کو دو یا تین دن میں ہی

معلوم هو جائے گا - وہ زیادہ ایکسپرٹ هیں اور بہت بوڑھے بھی هیں -

DR. P. C. MITRA:

डा० पी० सी० मित्रा: डाक्टर से एक दिन में मालूम हो सकता है ।

SHRI TAJAMUL HUSAIN:

شری تجمل حسین : هو سکتا هے که آپ کا ایسا پرسنل ایکسپیریںس (personal experience) هو میرا نہیں هے -

DR. P. C. MITRA:

डा० पी० सी० मित्रा : तीन रोज में तो जरूर मालूम हो जायगा ।

SHRI TAJAMUL HUSAIN:

شری تجمل حسین : اگر تین روز میں هی ڈاکٹر معلوم کر لیتے هیں تو ٹھیک هے - اگر تین روز میں یہ ثابت هو سکتا هے اور پتہ لگ سکتا هے که حمل هے یا نہیں تو تین دن کا هی ٹائم (time) دیا جائے -

DR. P. C. MITRA:

डा० पी० सी० मित्रा : जरूर मालूम हो सकता है ।

[Shri Tajamul Husain.]

شری تجمل حسین : همارے یہ ممبر صاحب چپ رهیں تو کچھ بولوں - وہ مجھے بیکار کے لئے انٹرفیر (interfere) کر رهے هیں - میں دعا کرتا هوں که ڈاکٹروں کی قابلیت اتنی بڑھ جائے که جسوقت کنسیپشن (conception) هو اس وقت معلوم هو جائے -

زیادہ تر همارے ملک میں هوتا یہ هے که عورت کا دارومدار مرد پر هوتا هے - مرد کماتا هے - روپیہ لاتا هے اور خانہداری کے لئے هاؤس هولڈ (household) کے خرچ کے لئے دیتا هے -

SHRI H. P. SAKSENA (Uttar Pradesh): Wife is the mistress of the household.

SHRI TAJAMUL HUSAIN:

شری تجمل حسین : وہ تو میں مانتا هوں - مگر وہ خود کما نہیں سکتی اسکی اپنی کچھ آمدنی نہیں هے - وہ ان پڑھ هے - ایسی حالت میں جب اسکو ڈائیورس ملتا هے تو اسکو حق حاصل هونا چاهیئے که اس کو هسبینڈ (husband) سے ایلیمنی (alimony) ملے --

اب دوسری طرف دیکھئے - ایسے بھی کیسیز هیں که عورت بڑی امیر هے اور اس کا شوهر بڑا غریب هے - اس کے پاس ایک پیسہ بھی نہیں هے - مان لیجئے که ایک خوبصورت لڑکا هے جسکے پاس روپیہ پیسہ کچھ بھی نہیں هے اس کے ساتھ ایک اور عورت شادی کر لیتی هے - اگر کچھ دنوں بعد ان میں آپس میں نہیں بنتی هے اور اس شوهر کو ڈائیورس مل جاتا هے تو چونکہ وہ غریب هے اسکی کوئی آمدنی نہیں هے اس لئے اس کو بھی ایلیمنی ملنی چاهیئے - میرے کہنے کا مطلب یہ هے که ایلیمنی عورت

[Shri Tajamul Hussain.]

اور مرد دونوں کو ضرورت کے مطابق ملنی چاهیئے -

آپ دیکھینگے کہ پیج ۱۸ پر لکھا هوا هے : (page 18)

AB must be married; AB must be a widower; AB must be a divorcee. But supposing he is a divorcer. What happens?

MR. DEPUTY CHAIRMAN: Divorcee is neuter gender; it includes both man and woman.

SHRI K. S. HEGDE: The initiative need not be with him.

MR. DEPUTY CHAIRMAN: One who has divorced.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): Man or a woman.

MR. DEPUTY CHAIRMAN: You must refresh your knowledge of English language.

SHRI TAJAMUL HUSAIN: My knowledge may be defective, but, Sir, here it is. However, we will discuss it at the time when I discuss my amendments.

نو مجھے آخر میں عرض کرنا هے - جیسا کہ میں نے اس روز جناب لا منسٹر صاحب سے سوال بھی کیا تھا کہ اس قانون کے اندر دیا گیا هے کہ فلاں فلاں حالات میں شادی نہیں هو سکتی - اور کن وجوهات پر میرج (marriage) وائڈ (void) هو سکتی هے - مگر جیسا کہ آجکل سلنے میں آ رها هے - اگر هسبینڈ ایند وائف میں سے وائف مرد هو جائے یا هسبینڈ عورت هو جائے تو وہ بھی ڈیوورس کا ایک سبب رکھا جانا چاهیئے - انہوں نے جواب دیا کہ یہ سوال بہت فار فیچڈ (far-fetched) هے اور اس لئے اس کو هم نے نہیں سوچا هے - مگر اس بل کے سولھویں صفحہ میں ۱۳ نمبر پر ایک عجیب بات لکھی هے

"A man cannot marry his father's father's mother."

تو دیکھئے فادرس فادرس مدر کی کیا ایج هوگی - میرج کے وقت جبکہ یہ بالکل ناممکن معلوم هوتا هے کہ ایک لڑکا اس عورت سے شادی کریگا - مان لیجئے کہ لڑکے کی عمر انداز سے بیس برس هے - اس کے فادر کی ایج ۴۰ سال هوگی اور فادر کے فادر کی عمر ۶۰ برس سمجھ لیجئے اور اس کی ماں اس سے بھی بڑی ۸۰ برس کی هوگی --- میں انداز سے کہہ رها هوں—یعنی ایک ۸۰ برس کی بڑھیا سے ایک ۲۰ برس کا لڑکا شادی کریگا -

MR. DEPUTY CHAIRMAN: No young man will ever marry such a woman. Why do you worry?

SHRI TAJAMUL HUSAIN:

شری تجمل حسین : میرا پوائنٹ (point) یہ هے کہ ۲۰ برس کا لڑکا ۸۰ برس کی عورت سے کبھی شادی نہیں کریگا - ناممکن هے - امپاسبل (impossible) هے - میں نہیں مان سکتا هوں اسے - شاید کوئی کر لے - ایسا بل سے معلوم هوتا هے - شاید هی هندوستان میں کوئی ایسا بیوقوف

گدھا ملیگا شادی کرنے کیلئے- تو یہ بھی ایک ایکسپشنل کیس (exceptional case) ھے - اسی طرح سے یہ بھی ممکن ھے کہ ایکسپشنل کیس کے اندر بیوی جو ھے وہ شوھر ھو جائے، مرد ھو جائے تو اس حالت میں کیا کیا جائے -

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Is this parliamentary language, Sir?

SHRI TAJAMUL HUSAIN:

شری تجمل حسین : بالکل پارلیمنٹری لینگویج (parliamentary language) ھے - کہیں ایسی لینگویج میں نے کہی ھے جو پارلیمنٹری نہ ھو- تو میں زیادہ وقت آپلوگوں کا نہ لونگا - مجھکو یہ کہنا ھے کہ جب آپ نے یہ قاعدہ رکھا ھے کہ ایک لڑکا اپنے باپ کے باپ کی ماں سے شادی نہیں کر سکتا ھے تو پھر کیوں نہ یہ پراویژن (provision) بھی کر دیا جائے کہ اگر کوئی مرد عورت ھو جائے یا عورت مرد ھو جائے تو ڈائیووَرس مل سکتا ھے -

[For English translation, *see* Appendix VII, Anexure No. 246.]

MR. DEPUTY CHAIRMAN: Shrimati Savitry Nigam.

SHRIMATI SAVITRY NIGAM (Uttar Pradesh):

श्रीमती सावित्री निगम : (उत्तर प्रदेश) : उपाध्यक्ष महोदय, मैंने सिलेक्ट कमेटी (Select Committee) की बड़ी दिलचस्प बहसों में हिस्सा लिया था। लेकिन फिर भी एमेंडमेंट्स (amendments) की बहुत मोटी-मोटी और लम्बी-चौड़ी लिस्ट देखकर मेरी इच्छा दोबारा बोलने को हो आई। उन बहसों में भी और सदन के और सिलेक्ट कमेटी के दरमियान एमेंडमेंट्स की बहस में भी बहुत सी ऐसी बातें गुजरी हैं जिनको देखकर हंसी भी आती है और आश्चर्य भी होता है।

श्रीमन्, वैसे तो स्त्रियों को जहां तक अधिकार देने की बात होती है या उनको किसी तरह से सुविधाएं दिलाने की चर्चायें होती हैं, सभी लोग बड़ी लम्बी-चौड़ी स्पीचें (speeches) दे डालते हैं और ऐसा प्रतीत होता है कि दुनिया के आधे से अधिक लोग प्रोग्रेसिव (progressive) हो गये हैं और नई आवश्यकताओं का अनुभव करते हुए उन्होंने जीवन की नई मांगों और मूल्यों को मान लिया है। किंतु जब वास्तव में कोई नई सुविधा देने की बात या नये कानून में कोई नई तब्दीली लाने की बात होती है तो अकसर जाहिर हुआ, सेलेक्ट कमेटी में भी और सदन में भी, कि कभी न खत्म होने वाली लम्बी-चौड़ी बहसें चल पड़ती हैं। इसलिये, श्रीमन्, इस बिल में इतने अधिक उलझाव आ गये हैं और यह जरूरत से ज्यादा लम्बा हो गया है। अगर कोई अनजान व्यक्ति इसे देखे तो यह लगेगा जैसे कि तमाम कमजोरियों और कमियों का एक पिटारा बन गया है।

श्रीमन्, विवाह एक ऐसा विषय है जिसके सम्बन्ध में जितना अच्छे से अच्छा कानून बनाया जा सकता उतना ही अच्छा था और उतना ही व्यक्तियों और समाज के लिये हितकारी था। किंतु वह न हो सका। वहां सेलेक्ट कमेटी की बहसों में जब कभी जरा भी ऐसी बात आती थी कि स्त्रियों को थोड़ी सी सुविधाएं दिलाई जांय तब या तो अधिक संख्या में लोग उसका कड़े तरीके से खुल कर विरोध करने लगते थे या कभी धर्म की, कभी संस्कृति की बात और कभी रीतिरिवाज की दुहाइयां चल पड़ती थीं, और जो लोग हमारा साथ भी देते थे बड़े हाफहर्टेडली (half-heartedly) बहुत सकुचा कर और झिझक कर। इसी का नतीजा यह हुआ कि हम छोटी-छोटी बातों के लिये भी झुकने, गिड़गिड़ाने लगते और ऊटपटांग, बे-सिर-पैर के एमेंडमेंट्स भी हम लोगों को मान लेने पड़ते। श्रीमन्, ऐसा विचित्र रवैया बहुत दिनों तक न चल सकेगा। जहां भी सुधार दिलाने की बात आई वहां पुरुष और स्त्रियों के दो दल बन जाते हैं और आपस

[Shrimati Savitry Nigam.]

में एक दूसरे का विरोध करने लगते हैं । मेरा तो, श्रीमन्, यह कन्विक्शन conviction है, यह विश्वास है कि स्त्रियां कभी भी अपने अधिकारों के लिये लड़ने वाली नहीं हैं । और लड़ें भी किससे ? अपने पिता से, पति से, भाई से या बहनों से ?

SHRI K. S. HEGDE: On a point of order, Sir. The practice in England is that, so far as the Members of the Select Committee are concerned, those among them, who have put in Minutes of Dissent, speak only on the points raised in their Minutes of Dissent while speaking on a Bill reported on by a Select Committee and they do not speak on other portions of the Bill. They are having a convention like that and I would commend that convention for your consideration as I feel that it is a proper convention for us to follow.

SHRI C. C. BISWAS: I would like to know from the hon. Member which are the amendments in favour of women which were unceremoniously rejected by the Select Committee.

MR. DEPUTY CHAIRMAN: The convention is that Members of the Select Committee, who have given Minutes of Dissent, should confine their remarks only to their Minutes of Dissent. It is a healthy convention which we should follow.

SHRIMATI SAVITRY NIGAM: But he raised this point because he could not apparently follow my speech.

SHRI K. S. HEGDE: May be that.

SHRIMATI SAVITRY NIGAM:

श्रीमती सावित्री निगम : अगर हेगड़े साहब ने मेरा भाषण सुना होता और समझा होता तो इस तरह की बातों के कहने की आवश्यकता नहीं पड़ती । श्रीमन्, मैं श्री माधव मेनन के कथन का समर्थन करती हूं । आप जरा हमदर्दी से गौर करें, जो अभागे व्यक्ति भूल करते हैं, अनुचित समबन्ध स्थापित करते हैं वे अपने आप ही अपने को काफी सजा दे लेते हैं । परिवार, समाज और जाति से बहिष्कार, अपमान तथा घृणा भी उन्हें मिलती है । इसलिये उनके प्रति हमें कठोरता के स्थान में उदारता दिखानी चाहिये, उन्हें क्षमा करके गलती सुधारने का अवसर देना चाहिये ताकि आने वाली सन्तानों पर, अपनी पीढ़ी पर प्रभाव न डाल सकें ।

श्रीमन्, मैं यह कहना चाहती हूं कि बदलते हुए जमाने की जरूरतों के अनुसार हमें अपने जीवन के कानून, अपने नियम, मान्यतायें और मूल्य बदलने होंगे । हम कठोर और विषम नैतिक नियमों का हानिकारक फल पिछली सात आठ शताब्दियों से देखते आए हैं । जितनी ही हमने कठोरता बरती और कानूनों को एक पक्षीय विषम और सख्त बनाया, नैतिकता का उतना ही पतन हुआ । इसलिये हमें उन नियमों के बन्धन कुछ ढीले करने होंगे ।

अब मैं प्रोहेबिटेड डिग्रीस (prohibited degrees) के बारे में कुछ कहना चाहती हूं । जैसा श्री माधव मेनन जी ने कहा है कि हम लोगों ने बहुत कठोरता बरती है । इस सम्बन्ध में कुछ ढिलाई के जो एमेंडमेंट हैं, यदि उनको भी मान लिया जाय तो वे बहुत हितकर होंगे । वैसे हम सब मानते हैं कि संयम और सदाचार का पूरा-पूरा पालन हर प्रकार से होना चाहिये किन्तु यदि कोई व्यक्ति किसी ऐसी महिला से सम्बन्ध रखने लगता है जिससे कि वह समाज या जाति की दृष्टि में गिर जाता है तो वह सचमुच गलती करता है । फिर भी हम उसकी गलती का दण्ड उसके निर्दोष बच्चों को न दें और शादी लीगल (legal) रखी जाय तो आप ही बताइये कि क्या हानि होगी ? आप ही बताइये कि यदि इस मामले में थोड़ी उदारता दिखलाई जाती तो हम मानवता का कितना बड़ा कल्याण कर सकते । क्योंकि पति का दण्ड माता-पिता के बच्चों को देना सर्वथा अनुचित और अमानुषिक है । श्रीमन्, बहुत सी ऐसी जातियां हैं जिनमें ऐसे रीति रिवाज हैं जिनके द्वारा जैसा कि अभी बताया गया है, मातुल कन्या को या बहन की लड़की को वरण करने का पूरा-पूरा अधिकार है । फिर हम इस बिल में ऐसी कोई शर्त लगाकर यह नहीं रखना चाहते हैं कि वे लोग इस बिल का लाभ न उठा पावें ।

श्रीमन्, कानून मंत्री महोदय ने एक बात कही थी कि मुसलमान सम्प्रदाय वालों ने इसका विरोध किया हैं । हां किया होगा । मैं मानती हूं कि उनका कहना बिल्कुल सही हैं । किन्तु श्रीमन्, ऐसे विवाहों से जहां तक लाभ उठाने का प्रश्न हैं, उसका सम्बन्ध किसी भी मुसलमान व्यक्ति से नहीं हैं, मुसलमान पुरूष से नहीं, वह तो केवल मुसलमान महिलाओं से ही सम्बन्धित हैं । किन्तु मुसलमान महिलाओं में से एक ने भी एतराज नहीं किया कि इस बिल को उन पर लागू न किया जाये । इस लिये उनकी मौन स्वीकृति अपने आप मिल गई, इस बारे में हमें ध्यान देना होगा । इस बिल को इस योग्य बनाना होगा कि मुसलमान भाई और बहनें भी इससे उचित लाभ उठा सकें ।

श्रीमन्, श्री हैंगड़े साहब ने (reciprocal alimony) की मांग की हैं, उस पर मैं बिना कहे न रहूंगी । मेरा उनसे प्रश्न हैं कि आज देश की कितनी स्त्रियां ऐसी हैं जो सैल्फ सपोर्टिंग (self-supporting) हैं और जिनको इकोनोमिक इंडपेंडेंस (economic independence) मिली हैं । आप ही बताइये कि आर्थिक परतंत्रता के इस युग में गृहित नारी कहां से धन लायेगी पति के देने को । फिर यदि उसे पिता से कुछ सम्पत्ति मिली जिस पर बेचारी गुजर बसर कर सके तो किसी भी पुरूषार्थी पुरूष का पौरूष और सम्मान इतना झुकना चाहिये कि वह बेचारी स्त्री से ऐलीमनी वसूल करे । हां, इससे हानि यह होगी कि उल्टी झूटी गवाही दिलवाकर पति महाशय अपने को "ऐलीमनी" की जिम्मेदारी से बचा लेंगे और बिना कुछ दिये हुए बच निकलेंगे ।

श्रीमन्, अगर बिचारी पत्नी की आय १०० रू० होगी और पति की एक हजार की आमदनी हैं तब भी पति महाशय उल्टा दावा करके साफ निकल जायेंगे और दो चार गवाह पेश करके अपने को बचा लेंगे । इसीलिये श्री हैंगड़े महोदय से निवेदन हैं कि वे अवश्य ही इस एमेन्डमेंट को विदड्रा (withdraw) कर लें ।

इसी तरह से क्लाज (clause) **उन्नीस में,** जिसमें परिवार से सेवेरेंस severance) की चर्चा हैं उसमें भी सुधार होना आवश्यक हैं । यद्यपि बहुत से माननीय सदस्य इस पर अपना मत प्रकट कर चुके हैं । किन्तु मैं यह अवश्य कहना चाहती हूं कि किसी वस्तु के साथ जब बहिष्कार की बात जोड़ी जाती हैं वह पूरी वस्तु समाज की घृणा का पात्र बन जाती हैं । इसलिये किसी व्यक्ति को विवाह की भेंट न देकर सजा देना और परिवार से जबर्दस्ती अलग कर देना अमानुषिक तथा अन्यायपूर्ण हैं । यह क्लाज इस बिल पर एक बड़ा कलंक हैं और इसके कारण कोई भी व्यक्ति इस नये कानून का फायदा न उठा सकेगा । इस क्लाज के द्वारा सम्मिलित परिवार को जबर्दस्ती तोड़ना पड़ेगा, यह सर्वथा अनुचित हैं । इसलिये ला मिनिस्टर साहब से प्रार्थना हैं कि इस आखरी समय में भी इस क्लाज को हटा दें । हमने सेलेक्ट कमेटी में भी इस पर अनेक प्रकार से प्रार्थना की थी लेकिन वहां पर भी यह बात सम्भव न हीं हो सकी पर मुझे पूर्ण विश्वास हैं कि पूरे सदन की राय को देखकर, इस पर अवश्य ही विचार किया जायेगा ।

श्रीमन्, इस विधेयक के क्लाज पैंतीस के सब-क्लाज sub-clause) तीन से ये शब्द "is not leading a chaste life" अवश्य ही लाइन (line) से अलग कर दिए जायं । क्योंकि इस प्रकार हर अनाचारी पति अपनी पत्नी पर झूटे दोष लगाकर "ऐलीमनी" से बच जायेगा और बेचारी पत्नी धन के अभाव से अपनी निर्दोषिता को प्रमाणित भी न कर पायेगी । इस तरह से मुकदमे के कष्टों और झमेलों में रहा सहा रूपया खोकर कभी-कभी तो स्टारवेशन (starvation) की हालत में पहुंच जायेगी । अब भी स्त्री समाज के रजिस्टर पर ऐसे १३२ केसेज cases हैं जिसमें बहिनों ने ऐलीमनी के लिये अप्लाई (apply) कर रखा हैं । मगर आजकल होता यह हैं कि

[Shrimati Savitry Nigam.]

एक दो महीने तक एलीमनी मिल जाती है फिर उसके बाद बन्द हो जाती है । स्त्री के पास इतना धन तो होता नहीं है कि वह बार-बार कोर्ट (court) में जा सके । इसलिये मेरी प्रार्थना यह है कि इस क्लाज को बिल्कुल हटा दिया जाना चाहिये ।

श्रीमन्, कौन नहीं जानता कि हमारे समाज ने स्त्रियों के चाल-चलन को एक खिलवाड़ बना रखा है । छोटे २ शहरों में यदि कोई स्त्री किसी व्यक्ति से मिलती जुलती है तो लोग उसका अनुचित लाभ उठाते हैं । उसे बिना मतलब बदनाम कर देते हैं । श्रीमन्, यह सब को विदित है कि एक भारतीय स्त्री को यदि सूखी रोटियां भी शान्ति से मिल जायें तो वह कभी स्वप्न में भी अपने पति को छोड़ना न चाहेगी । भारतीय नारी के सतीत्व के गौरव का जिसे जरा भी सम्मान है और ज्ञान है, वह कभी इस क्लाज को यहां पर रखने को तैयार नहीं हो सकता है । इसलिये, श्रीमन्, इस क्लाज के सब-क्लाज तीन से ये शब्द "not leading a chaste life" को तुरन्त डिलीट (delete) कर दिया जाना चाहिये ।

इसके अतिरिक्त यह भी कहना चाहूंगी कि जो लोग इस बिल की तरह तरह की कटु आलोचना करते हैं और कहते हैं कि इसमें इतना झंझट डाल दिया गया है कि यह समाज के लिये इतना उपयोगी और लाभदायक नहीं रहेगा जितना कि रहना चाहिये, उनसे मेरी प्रार्थना है कि वे सिलेक्ट कमेटी की प्रोसीडिंग्ज (proceedings) को मंगा कर पढ़ें और देखें कि उसमें कितना एतराज हुआ है । श्रीमन्, मुझे विश्वास है कि सदन के सभी सदस्य इस बात में पूरी-पूरी सहायता और पूरा पूरा सहयोग माननीय ला मिनिस्टर महोदय को देंगे और जो कमियां सिलेक्ट कमेटी से बिल आने पर भी रह गई हैं उनको यहां या तो सरकारी तौर पर एमेंडमेंट्स लाकर या दूसरे हाउस (House) में एमेंडमेंट्स ला कर दूर कर दिया जायेगा और इस बिल को इस युग की मांग के अनुसार, जमाने की पुकार के अनुसार उपयोगी और लाभदायक बनाया जायेगा ।

[For English translation, *see* Appendix VII, Annexure No. 247.]

DR. RADHA KUMUD MOOKERJI (Nominated): Sir, I wish to say only a few words from which it should not be construed that I am placing my views on the Bill before the House. I am only speaking from a detached and scientific point of view, and I wish to ask the hon. the Law Minister a preliminary question. What is the basis on which he is introducing this piece of social legislation? I want to ask him whether there is any widespread or intense demand for it in the country or whether this piece of legislation has proceeded from his own brain.....

SHRI C. C. BISWAS: My brain is not so fertile.

DR. RADHA KUMUD MOOKERJI: I wish to ask him whether this piece of legislation has been inspired by his moral zeal for leaving the country or the society better than he found it.

SHRI C. C. BISWAS: It was already there and I took it up.

DR. RADHA KUMUD MOOKERJI: As a Member of Parliament, I should like to say that Parliament's time is very valuable and it has to solve so many urgent problems. I do not know whether there is any strict principle on the basis of which such pieces of legislation are being introduced from time to time.

As regards the demand in the country for this legislation, I do not think that the country believes that Hindu society would be going to rack and ruin or would be disintegrated unless this piece of legislation is at once introduced.

MR. DEPUTY CHAIRMAN: Dr. Seeta Parmanand will answer you, Dr. Mookerji.

DR. RADHA KUMUD MOOKERJI: I want to apply a practical criterion

in the light of which the urgency of such legislation could be easily judged. Here we have this distinguished House of Elders which, I take it, is representative of public opinion in the country. I wish to ask in all humility and respect whether there is any Member of this House who is prepared to say today that he or she expects that such abnormal cases of marriage will crop up in the family with which he or she is concerned. I am sure every Member in this House will say that he or she for himself or herself does not expect any such case of abnormality cropping up in the near future in the family and therefore if this House reflects the public opinion of the country, I think that perhaps the time of Parliament will be better utilised in trying to solve some of the more urgent problems of the day, especially economic problems, than indulging in this piece of social legislation by which the internal unity of the country, which is so much to be valued in the present crisis through which we are passing, would be disturbed by uselessly stirring up public opinion on matters that are not at all quite urgent. I do not like to commit myself either way to the principles or the various provisions of the Bill except to say that I find that it is absolutely atrocious to be associated with that kind of * * * drafting about the list of prohibited relationships. I think the Law Minister is wise enough because of his vast and long judicial experience to find out some far more.....

DR. SHRIMATI SEETA PARMANAND: Then, why did he not give an amendment, Sir?

SHRI C. C. BISWAS: On a point of order, Sir. Having regard to the fact that the Bill was referred to a Select Committee by this House, is my hon friend now entitled to reopen the question of the principle of the Bill, having regard specially to the fact that this legislation has been before the country since 1872, it was amended in 1923 and it is now proposed to amend it in 1954?

DR. RADHA KUMUD MOOKERJI: I am not raising the question of the principle underlying the Bill. All that I want to know is, on what basis do you come before the House with a fresh piece of legislation? Is it on the basis of an acute public demand?

MR. DEPUTY CHAIRMAN: It is not a fresh piece of legislation. It is old wine in a new bottle.

DR. RADHA KUMUD MOOKERJI: * * * * *

I feel that any sane man would perhaps walk out of the House. It really passes my comprehension how it can be contemplated that a son can marry his mother. I do not know how a sane brain can lend itself to such a kind of draftsmanship.

SHRI C. C. BISWAS: If my hon. friend will look into Gurudas Banerjee's Tagore Law Lectures, he will find it mentioned there that under the law it is possible for a person to marry a widowed mother-in-law. What does he think of that?

SHRI K. S. HEGDE: It is better that the Law Minister replies at the end. There may be many other points

DR. RADHA KUMUD MOOKERJI: That may occur in a book or a treatise, but in an enactment, if this kind of thing is permitted, I am afraid the whole world will cast reflections on our system of marriage.

MR. DEPUTY CHAIRMAN: The law has to provide for all situations.

DR. RADHA KUMUD MOOKERJI: I would conclude by repeating my previous point, that is, the Law Minister should explain the basis on which he decides to come forward with such measures, whether there is an acute widespread demand in the country or whether there is any democratic principle which can justify the introduction of such pieces of legislation from time to time.

*Expunged as ordered by the Chair.

SHRI H. N. KUNZRU (Uttar Pradesh): Mr. Deputy Chairman, I welcome the Bill that is before the House. We have had, up to the time the Special Marriage Act of 1872 was passed, laws with regard to marriage which depended on the personal laws of the parties concerned, but there was no law relating to the territory as a whole. That is why there were personal laws but not territorial laws applicable to persons living within the territory of India. The Special Marriage Act of 1872 compelled people of the faiths mentioned in it to renounce their faiths before they could take advantage of that Act. The amendment of the Act in 1923 removed this difficulty in certain cases only and there was, therefore, need for a general territorial law which should permit people with views different from those ordinarily held by people to marry in accordance with their own ideas without having to renounce their faiths. We have, for the first time, made an attempt to pass such a territorial law in the measure that is before the House, and I, therefore welcome it wholeheartedly.

Now, this measure should not be regarded as an attack on any religion. England is a Christian country; it has an established Church; nevertheless, it has a Civil Marriage Law; and no one has said that in passing that law, Parliament was attacking the Christian religion. Similarly, Sir, though the personal laws of the people living in India may be different in certain respects from the provisions of the Bill—that we are not discussing—it should not be regarded as an attack on any religion. And, England is not the only country where the Civil Marriage Laws exist. There are other countries, too, where the large majority of the people profess the Christian faith with Civil Marriage Laws. This again shows that Civil Marriage Law in this country, too, can be passed consistent with the respect of the Government for all forms of religion.

Sir, the hon. Member who preceded me has asked why this legislation has to be brought forward. He wanted to know whether there was a public demand for it and Government thought it necessary to satisfy that demand. I should like to point out that such laws are not passed in accordance with the demands of a majority. They are always passed to protect the rights of minorities. In 1872, the Special Marriage Act was passed not because there was a demand from large sections of different communities for such a measure, but only because it was felt that there were people with certain ideas, call them advanced ideas if you like, to whom it would be a hardship, consistently with their beliefs, to marry in accordance with their personal laws. If the Act of 1872 has been radically amended in certain respects, so radically amended as to require the substitution of a new law in place of the old law, it does not require any fresh justification. The fact that there are a [illegible] of educated men and [illegible] the country who would like to take advantage or who are in favour of the provisions of the Bill before the House, that is sufficient justification for considering it.

DR. P. C. MITRA: Such people are in a minority.

SHRI H. N. KUNZRU: An hon. Member says that such people are in a minority. I have already pointed out that such laws which are of a permissive nature are not passed for majorities. They are intended only to protect the rights of minorities.

DR. P. C. MITRA: Rights of minorities? Pick-pockets also?

SHRI H. N. KUNZRU: My friend, I am afraid, is speaking without understanding what I have said. The majorities may follow their own beliefs, but they have no right to tyrannise others and force their views down the throats of other unwilling people whose ideas are different from theirs. The protection of educated

minorities is the duty of all Governments. And, my hon. friend, the Law Minister, is, I am glad to say, performing that duty by bringing forward the measure that we are now considering.

(*At this stage Dr. Radha Kumud Mookerji entered the House.*)

MR. DEPUTY CHAIRMAN: Dr. Mookerji, Dr. Kunzru is answering your point.

SHRI H. N. KUNZRU: Sir, Dr. Mookerji was not present in the House when I was answering him. The question put by him does not arise, the question as to whether there was any widespread public demand for such a legislation. The Special Marriage Act of 1872 was passed not in accordance with the wishes of the majority of any community but in order to protect the rights of a minority which thought that the old forms of marriage were not in accordance with its point of view. It is clear, therefore, that a Bill like the one that is before the House does not need the consent of large sections of the people. If it can be pointed out—undoubtedly it can be pointed out—that there are educated men and women all over the country who want a new marriage law which would be more consistent with their ideas and the present-day conditions. That would be a sufficient justification for undertaking such a legislation.

DR. RADHA KUMUD MOOKERJI: Then, democracy is a government for the minority.

SHRI H. N. KUNZRU: Democracy does not exist only to protect the majorities and to strengthen their grip on the minorities; the business of a democracy is to protect all sections of the people as far as possible. There is no reason why in the matter of marriage the majority should be allowed to dictate its views to the dissenting minority. The Bill is a permissive measure. It does not impose any new form of marriage upon an unwilling people. All that it seeks to do is to permit those people, whom the old forms do not satisfy, to marry in accordance with the forms taking account of the present day conditions, including the vast changes that have taken place .....

DR. RADHA KUMUD MOOKERJI: Members of this House do not contemplate such cases cropping up in their own families.

SHRI H. N. KUNZRU: I do not know what my hon. friend means by putting such a question over and over again. Why should not the Members of this House imagine that some members of their own families may want to marry in accordance with the Bill that we intend to pass? My relations have, with the consent of their parents, in several cases married under the civil law.

DR. P. C. MITRA: How many of them?

SHRI H. N. KUNZRU: My hon. friend seems to be incapable of understanding the point that I want to make. I shall not, therefore, waste any arguments on him.

Sir, I am thoroughly in favour of the principles underlying the Bill. I was a Member of the Select Committee and I took part in the discussion of many of the clauses. But this does not mean that I attended every meeting of the Select Committee. However, generally speaking, I concur in the views of the Committee. There are, of course, a few points in respect of which I should like to make a few suggestions to the House.

SHRI K. S. HEGDE: With the greatest respect to the hon. Member, could he, Sir, be permitted to dissent from the report to which he has not appended a Minute of Dissent. It is a matter of convention. Should we allow it?

MR. DEPUTY CHAIRMAN: He has told the House that he could not attend all the meetings.....

SHRI K. S. HEGDE: That does not give him any right.

MR. DEPUTY CHAIRMAN: He can make suggestions.

SHRI H. N. KUNZRU: Sir, I do not want to transgress any rule or any convention. But, so far as I know, members of Select Committees, even where they have failed to append Minutes of Dissent, have, generally speaking, been allowed to express their views, provided they do not question the main principles underlying the Bill. And, in placing certain suggestions before the House, I shall not be going against the measure as a whole. I am only making a few suggestions in order to improve it, partly because I did not attend all the meetings of the Committee and partly because on further reflection some points have occurred to me which I could not place before the Select Committee.

Sir, the first thing that I should like to refer to is the publication of notices of intended marriages. Under the Bill, where both the parties are living in India, the Marriage Officer, to whom notice is given of the intended marriage, has to inform the Marriage Officer of the district within whose local limits the parties concerned live, or at any rate one of the parties concerned lives. And that Marriage Officer, *i.e.*, the Marriage Officer of the district within the local limits of whose jurisdiction one of the parties lives, is required to cause a copy of the notice to be affixed in some conspicuous place in his office. The Select Committee wanted not merely that there should be that publicity given to an intended marriage, but that adequate publicity should be given to it, and this, it thought, could be secured only if the Marriage Officer of the district in which one of the parties lived as a rule was informed of the intended marriage. This amendment was made in order to ensure that objections to an intended marriage were not easily overlooked.

But I do not know, Sir, what is the procedure to be followed in case an objection is made to a Marriage Officer abroad. It is stated in clause 10 that where the Marriage Officer cannot make up his mind, he should transmit the record, with such statements as he may think fit to make, to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer who shall act in conformity with the decision of the Central Government. Now, Sir, it is true that the Central Government can make any enquiry it likes. It can, if it likes, ask the Marriage Officer of the district, in which one of the parties to the intended marriage is residing, to give notice of that fact to the public by causing a copy of the notice to be affixed in some conspicuous place in his office. But it is quite possible that the enquiries made by the Central Government may be made privately and that those in a position to object to such a marriage might not have a proper opportunity of putting forward their own point of view.

It seems to me necessary, therefore, that clause 10 should be amended so as to require the publication of the notice of an intended marriage even when the parties concerned happen for the time being to be out of the country.

The next point that I should like to refer to is that conditions should be satisfied for a valid marriage, provided a valid marriage can be performed. Under clause 4 the parties should not be within the degrees of prohibited relationship, but under clause 15, people, who have married in accordance with forms permitting such marriages, can get their marriages registered afterwards. There is an obvious inconsistency between these two clauses, and I think that this inconsistency should be removed. I am sure that Government are not thinking of discontinuing marriages that take place between persons in accordance with the law prevailing in their States or in accordance with custom or usage having the force of law. They may be against the ideas of certain sections

of the community, but Government have no intention of interfering with them. Indeed, Government have gone so far as to allow marriages between parties who would not be allowed to marry under clause 4 to be registered after they have been celebrated in accordance with the usual mode followed by the parties concerned. Would it not, therefore, be better for the Government—for us—to allow all marriages in future to take place under clause 4 which are not within the degrees of prohibited relationship unless the law or custom relating to any community allows such marriages to take place? I think that will be a much simpler way of dealing with the matter than the way adopted in the Bill. In England, civil marriages are allowed. I am not sure, but I think that marriages between first cousins are allowed to be registered there. The Law Minister may correct me if I am wrong.

SHRI V. K. DHAGE (Hyderabad): I don't think that is allowed under the English law.

SHRI H. N. KUNZRU: It is not allowed? You have to make up your mind on the merits of the question. If you think that the customary laws of marriage should be permitted, then they should be recognised by the civil marriage law. If, however, we are of the opinion that, though such marriages may take place in accordance with the traditional forms, they should not be recognised by a civil marriage law, then clause 15 is out place in this Bill. It should not apply to marriages celebrated either before the commencement of the Bill or after it has been passed.

11 A.M.

The next point that I should like to refer to is the position of a widow under clause 4 of the Bill.

DR. P. C. MITRA: You mean widow after the passing of this Bill?

SHRI H. N. KUNZRU: Clause 4 says:

> "each party, if he or she has not completed the age of twenty-one years, has obtained the consent of his or her guardian to the marriage."

Is this condition to be applied to a widow? The Hindu Code which was considered by the Provisional Parliament had this provision with regard to valid civil marriages. It was contained in sub-clause (v) of clause 8 of that Bill:

> "Each party has, if he or she has not completed the age of twenty-one years at the time of the marriage, obtained the consent of his or her guardian to the marriage,—
>
> Provided that no such consent shall be required if the bride is a widow."

This undoubtedly related to marriages between Hindus only but is the position altered where one of the parties is a Hindu widow and the other party follows a different religion? The question arises—and this is a very important question—"Whose consent is to be obtained?" The Hindu Widows' Remarriage Act of 1856, section 7, said:

> "If the widow remarrying is a minor, whose marriage has not been consummated, she shall remarry with the consent of her father, or if she has no father, of her paternal grand-father, or if she has no such grand-father, of her mother, or failing all these, of her elder brother, or failing also brothers, of her next male relative."

DR. P. C. MITRA: What is the age mentioned there?

SHRI H. N. KUNZRU: The wording is, "If the widow remarrying is a minor." I do not know what the age of minority for women was at the time but I am sure it was not more than 18. This again shows that the law did not allow the father-in-law or the

[Shri H. N. Kunzru.]

uncle-in-law or the brother-in-law or anybody belonging to the deceased husband's family to have any say in the matter of the remarriage of the widow.

SHRI RAJAGOPAL NAIDU: Sir, may I point out that a marriage under the civil marriage law is a contract, and no person can enter into a contract unless he is a major?

SHRI H. N. KUNZRU: What is to happen where both the parties have completed the age of 18 years? That is my question. If the widow is to obtain the consent of her guardian, who is supposed to be her guardian? It does not seem that her father or mother will have any say in the matter. The only people whose consent will be required will be those who, in all likelihood, will be against the remarriage of the widow.

SHRI C. C. BISWAS: The hon. Member will see that the definition of a guardian for a marriage is virtually given in clause 2(2). That may not be quite satisfactory in its application to a case of the kind suggested by the hon. Member but we have a definition and if it applies, then even in such a case, where the party marrying is a minor widow, the guardian will be the father or the mother or a court guardian, if any, but if there is no father and no mother and there is no court guardian, I don't know what will happen.

SHRI V. K. DHAGE: But in no case should that person be below 18.

SHRI C. C. BISWAS: We are assuming that consent will be necessary. If the consent is necessary, the question raised is, "Who will be the guardian competent to give such consent". If we accept the amendment raising the age to 21, the question of consent will of course not arise at all.

MR. DEPUTY CHAIRMAN: Dr. Kunzru is speaking on clause 4 (d) where the clause refers to minors.

SHRI H. N. KUNZRU: I don't think that this clause 2 (2) to which the hon. the Law Minister has referred.....

MR. DEPUTY CHAIRMAN: It says:

> "Subject to the provisions contained in any law for the time being in force relating to guardians and wards, wherever the consent of a guardian is necessary for a marriage under this Act, the only persons entitled to give such consent shall be the father and, after the father, the mother, but the expressions 'father' and, mother' do not include a step-father and a step-mother."

SHRI K. S. HEGDE: That will not include the contingencies mentioned by Dr. Kunzru that for the widowed daughter-in-law the father-in-law is the guardian and not the father or the mother.

SHRI H. N. KUNZRU: Obviously this definition of "guardian" does not apply to the case of widows.

MR. DEPUTY CHAIRMAN: Where consent is required for the marriage, clause 2 (2) says that it is the father and if there is no father the mother that will have to give it.

SHRI H. N. KUNZRU: I am aware of this clause but it does not.....

MR. DEPUTY CHAIRMAN: The difficulty will be where there is no father or mother.

SHRI K. S. HEGDE: Or even when there is the father or mother, clause 2 (2) only says who is to be preferred—whether the father or the mother or others. It does not contemplate.....

MR. DEPUTY CHAIRMAN: It says father and after the father, the mother.....

SHRI K. S. HEGDE: It only distinguishes as between the two guardians —father and mother—and the father

is having the first choice. Supposing a widow has got father and mother, they are not the guardians of the daughter-in-law. This is not a defining clause. It is only an explaining clause. It does not confer rights.

MR. DEPUTY CHAIRMAN: It enumerates the persons who can give consent.

SHRI H. N. KUNZRU: If "guardian" is defined, I can understand.

MR. DEPUTY CHAIRMAN: It is defined in the Guardians and Wards Act. If consent is necessary, it mentions the father first and then the mother.

SHRI H. N. KUNZRU: If the hon Law Minister, after thinking over the matter again, comes to the conclusion that this definition of "guardian" applies to the case of widow also, I shall have nothing to say.

SHRI C. C. BISWAS: I am very thankful to the hon. Member for pointing out this hypothetical case That has to be provided for and, if necessary, I shall myself move an amendment to cover that.

SHRI H. N. KUNZRU: I now come to clause 19 of the Bill which requires severance from the joint family in the case of civil marriages. This clause has been criticised by many hon. Members. It was discussed, so far as I remember, at considerable length in the Select Committee. There were arguments on both sides but the majority felt that on the whole a provision of this kind was required, in the present social circumstances. I personally am of that opinion. Clause 19 does not make it compulsory for people who are living together to separate. All that it does is to protect orthodox people from associating with persons, who, in some of the deepest matters relating to our lives, have acted on views completely different from theirs.

SHRI K. S. HEGDE: Why not give them the chance of separation? Why make it compulsory?

SHRI H. N. KUNZRU: It will certainly be a hardship if, for the sake of one man, the other people in a family, who may be numerous, have to make separate arrangements for themselves. I think it is simpler and fairer in a case like this that a member of an orthodox family who marries under the civil law should make a separate home for himself. If, however, his people are advanced enough to welcome his continuance with them, this clause will not debar them from allowing the people who have married under the civil law to live with them.

SHRI K. S. HEGDE: It is not the physical separation but the legal separation.

SHRI H. N. KUNZRU: That is the law up to the present time. Marriages have taken place under this law in spite of certain disabilities and the measure before us seeks to remove them.

SHRI RAJAGOPAL NAIDU: Not from 1872 to 1923 but only from 1923 onwards till this date.

SHRI H. N. KUNZRU: I don't know what he means. At any rate since 1923 up to the present, civil marriage has meant severance of connection from the joint family. Nevertheless people have married under the civil law. Surely it cannot therefore be said that this Bill is imposing a hardship on them. I need not go into all the arguments for and against the measure but it seems to me that in the state of society in which we are living, a clause like this is needed. There will be people enough in the country to object to the new measure. Let us not increase the opposition to it by compelling unwilling people to receive persons who have married under the civil law. Is there any advantage under these circumstances in doing away with clause 19 of the Bill?

[Shri H. N. Kunzru]

Lastly, I shall refer to clause 27 which relates to the restriction on petitions for divorce during the first three years after the marriage. The principle underlying this restriction seems to be a sound one. But the Bill itself contemplates cases in which petitions for divorce should be allowed to be considered earlier. Proviso to clause 27, therefore, says:

> "Provided that the district court may, upon application being made to it, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent", etc.

Now, how is the court to determine what is exceptional depravity? The previous clause, that is to say, clause 26, says that a wife can apply for divorce on the ground that her husband has, "since the solemnization of the marriage, been guilty of rape, sodomy or bestiality." Are these things an indication of exceptional depravity or not? Or, will the court have to look into other things to decide whether a man who has been guilty of sodomy or rape or bestiality is exceptionally depraved or not? I think the law ought to be clearer on this point. If all that is intended is that it should be seen whether the husband has been guilty of rape, sodomy or bestiality, or there are other conditions indicating exceptional depravity, then that ought to be made clear. But if exceptional depravity means the irregularities that I have mentioned and something more, then I strongly object to it. In cases like this, if the wife is able to prove that the husband has committed rape or sodomy or has been guilty of bestiality, that ought to be sufficient ground for allowing the petition for divorce to be heard before the expiry of the period of three years after the marriage. Again, Sir, consider the words "exceptional hardship suffered by the petitioner." Suppose a husband is habitually guilty of adultery, or keeps a concubine in the house; is that going to be considered an exceptional hardship?

MR. DEPUTY CHAIRMAN: Adultery itself is a separate ground in sub-clause (a) of clause 26.

SHRI K. S. HEGDE: But he is dealing with clause 27.

SHRI H. N. KUNZRU: Sir, I am dealing with clause 27. Notwithstanding what is contained in clause 26, no petition for divorce can be considered during the first three years after the marriage unless, in the opinion of the court, certain exceptional circumstances exist to justify the consideration of the petition.

SHRI K. S. HEGDE: It speaks of exceptional hardship suffered by the petitioner.

SHRI H. N. KUNZRU: While we have, Sir, the grounds for divorce given in clause 26, would it not be better to indicate which of these grounds, if proved, should be regarded as causing exceptional hardship to the petitioner? If this course.....

MR. DEPUTY CHAIRMAN: It is left to judicial discretion.

SHRI H. N. KUNZRU: But surely, we are considering the rights of the parties to a marriage and we ought to see, in spite of our desire to pass laws conducive to the stability of marriages, that parties who have obviously such serious differences among themselves, are not compelled to live together unnecessarily for three years. I think, therefore, Sir, that this law ought to be made clearer. This limit of three years should be removed.

SHRI K. S. HEGDE: That is better.

SHRI H. N. KUNZRU: And the court should be allowed the right, if

it thinks that some time for reflection should be given to the parties concerned, to postpone the consideration of the application for divorce, for some time, for six months or, say, one year. I think that will serve all our requirements, and at the same time enable the court to deal with hard cases. There is no advantage to society in making people suffer unnecessarily. If the wife, for instance, finds a few days after her marriage that the husband has brought a concubine in the house, she ought to be allowed to ask for a divorce. Similarly, if a husband comes to know that his wife has been guilty of infidelity, he should be allowed to seek divorce from her. The court, however, should be allowed to act as the friend of both the parties. It ought to be made possible for the court, though there is no provision in the Bill for that purpose, to make an attempt to bring the parties together and enable them to come to a friendly settlement among themselves. The court should also be allowed to postpone the consideration of a measure for some time. But a rigid, hard and fast restriction like the one contained in the Bill is, I think, wholly inadvisable.

Sir, with these suggestions which do not affect the principle of the Bill, I give my wholehearted support to it.

SHRI K. S. HEGDE: Mr. Deputy Chairman, I accord my fullest support to the principles underlying this Bill. But I have to submit that I am afraid the Bill has not been conceived in the spirit in which it was intended at the time it was placed before the country. The imprint of conservatism is clear in every clause in the Bill and every effort has been made to defeat the purpose of the Bill.

Before dealing with the clauses of the Bill and the objectives of the Bill, let me for a moment meet the objection raised by my hon. friend, Dr. Mookerji, when he asked the House: "Why is this Bill now before the House? Why are we wasting our time? Is there any precedent at any time for it?" Sir, the hon. Member is a great historian; but historians sometimes forget history. He does not remember that this is not a new piece of legislation that has come before the country or before Parliament.

This Bill in a slightly different form had been passed as a law as early as 1872 and we are only improving certain obnoxious provisions in the Bill.

Answering the question, "Has there been a great demand for this Bill?", as my hon. friend Dr. Kunzru said very correctly, democracy will not survive nor is worth having if it is merely the tyranny of the majority over the minority in every respect. It is true, Sir, that for every compulsory measure, the willing consent of the majority is a necessary condition precedent or that an urge for it is also necessary but in the case of permissive measures, they are invariably provided for the minority and it is for the protection of the minority that the permissive measures have been undertaken. Nobody questions the conservatism of friends like Dr. Mitra, who are permitted to have it for themselves but if any man wants a more liberal measure or a measure which he thinks is more liberal for his own personal affairs, then he must be permitted to have it. This is one of the well accepted canons of democracy and it is with that concept in view that this permissive measure has been placed before the House.

Now, Sir, let us for a time consider what exactly is the objective of the Bill and how far the present provisions of the Bill serve that objective. You will permit me, Sir, to say that this is the first step or, may I say, the first right step in the direction of having a civil code. It is the desire of this country to be one single nation in the real sense of the term. I do not mean to say that to be members of one single nation, we should not

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have different religions. A unity of religions is not a condition precedent for a unity of nationhood; one thing is certain that nationhood would be a mockery if a member belonging to one religion cannot have the facility of marrying a member of another religion. What has happened so far as Hinduism is concerned is that marriage is not considered as a contract. To a Hindu it is a sacrament; it is a sacrament for the female, not for the male.

SHRI J. S. BISHT (Uttar Pradesh): Why not?

SHRI K. S. HEGDE: So far as the female is cencerned, once she marries a man, she is more or less a chattel. She cannot leave her husband whether he is a habitual wife-beater or not, whether he is suffering from some loathsome disease or not. She must be there along with him, she must live with him, but the same rigidity is not applied when it comes to the male member. He can marry as many women as he pleases; even the limitation of the Muslim law of having four does not apply. He may behave in whatever manner he likes and even adultery is not a ground for the woman discarding him.

DR. P. C. MITRA: Enforce that among the females.

SHRI K. S. HEGDE: For enforcing that law, my hon. friend is a little bit too late. I am thinking of generations who do not want those limitations.

Here again, people are permitted to have marriages under that law; nobody compels them. If anybody desires to marry under the Hindu Law they can do so. In the Special Marriage Act, all that is provided for is that we conceive of at least a section—at least a section of us conceive—that there must be equality between male and female, may I say, in all respects. We conceive of marriages as a contract where there are equal rights and equal liabilities, where there are equal duties and equal responsibilities for both the partners in this supreme contract, if I may call so. Now, it is with that objective, it is with that ideology in view that this measure has been agitated for, maybe, by a small section of the people in the country, and it is because of that pressure, however unwilling the Law Minister might have been, he has been compelled to bring this measure before the House. I am advisedly saying "unwillingly" because when he was asked, "why do you bring this Bill?", he said that it was already there and that he was just carrying the load, carrying the responsibility of the Government. It is not so. It is a measure for which there is a demand, an enlightened demand from the enlightened section of the public and it is the duty of the Government to bring it out in that spirit in which it is conceived.

Now, Sir, let us see how far this objective is achieved. I said that every attempt has been made to defeat the very purpose of this Bill. Now, the very purpose of the Bill is to conceive it as a contract where the husband and the wife are considered as full partners. Now, take the idea of a contract. Just now, my friend Dr. Kunzru was dealing with the question of getting the consent of the guardian and the provisions in section 4(d), to my mind, seem to be very obnoxious. For contracts the age is 18 years and, especially, in a marriage contract, I should think that eighteen is more than sufficient because in the case of the females the age of full enjoyment of a married life probably lies somewhere between 18 and 45. It is not the old people that can enjoy the best of their married life. Why are you taking away the right of a woman at the age of 18 to marry whomsoever she likes? Let her parents advise her, let them give a lead but let them not be a stumbling block in the matter. Apart from that, Sir, conceive of a case, as my hon. friend, Dr.

Kunzru, presented, where the poor girl has lost her husband and wants to marry again. If she is sixteen or seventeen—less than eighteen—she cannot. Why should she wait for the completion of her twenty-first year? Take the other case of getting the consent of the father-in-law or that of the mother-in-law. Do you think that the consent will be given by the father-in-law or by the mother-in-law? They are interested in her not marrying somebody else. That is exactly the question. If you are making this measure a liberal one, why put these unwanted restrictions? If they are wanted restrictions, by all means put them. But to my mind it looks to be more a clog in the liberal measure that we are conceiving of rather than a step in the right direction.

I was quite interested in reading the list of degrees of prohibited relationships. I am not one who subscribes to the view that there should be no type of restriction so far as marriage alliances are concerned. There should be restrictions and the restrictions in clause 15(e) with a slight modification would have certainly served the purpose: "(e) the parties are not within the degrees of prohibited relationship, unless the law or any custom or usage having the force of law, governing both of them permits of a marriage between them", instead of 'each of them'. If that alteration is made, it would be useful. 'Prohibited degree' is a well-known expression in law; the judges know it, the courts know it and, certainly, a son marrying his mother is unheard of. My hon. friend, the Law Minister, also conceived of a case and said that under the Hindu law there was no restriction on a man marrying his own mother-in-law. That is an exceptional case and if we want to provide for it, certainly do provide for it but putting a list at the end and saying that a man shall not marry his mother, a man shall not marry his father's mother or that a man shall not marry his mother's mother, to my mind, looks to be a legislative monstrosity. What are you advertising to the world? Are you telling the people that the Indian people are marrying their own mothers and daughters? You are not supposed to put a legislative restriction on a non-existent thing. Can the hon. Minister cite one single illustration where a man has married his own mother?

SHRI C. C. BISWAS: I can only say that in the English Act of 1949, there is a list wherein you find father and mother specifically mentioned.

SHRI K. S. HEGDE: Under a different set of circumstances, for a different purpose, a list may be enumerated. The genius of the Law Minister seems to be to enumerate a list where there should not be one and not to have an enumeration where there should be one. When it came to the question of the qualifications of the Members of the House, my hon. friend fought shy of enumerating a list where it was evidently necessary.

SHRI RAJAGOPAL NAIDU: Just to say that man is a rational animal.

SHRI K. S. HEGDE: Here it is absolutely unnecessary because the whole thing is protected by clause 15(e). You only require to make a very slight modification; instead of that you have given a list and go on telling everybody, "We are going to put a restriction upon a man marrying his own mother".

SHRIMATI MONA HENSMAN (Madras): Is the hon. Member aware that in the Christian religious prayer book, there are prohibited degrees of marriage and father and mother are mentioned there?

SHRI K. S. HEGDE: I can understand the fact of the Christians at the initial stage mentioning that the mother comes within the prohibited degree but in the year of Grace 1954,

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when everybody knows that it is a prohibited degree without any enumeration, I don't see the necessity.

SHRI GULSHER AHMED (Vindhya Pradesh): What is the harm in stating it?

SHRI C. C. BISWAS: The degree of prohibited relationship may extend to seven degrees on the father's side and five degrees on the mother's side. Even if we do away with the list they will in fact include all these relations probably numbering several hundreds.

SHRI K. S. HEGDE: I think the Law Minister would have done well by putting in a similar wording here rather than naming the prohibited relations. As he very correctly puts it, it may be seven degrees on the father's side and five degrees on the mother's side. That would be a more appropriate way of doing it.

SHRI C. C. BISWAS: The lists were not in my original Bill. The original Bill was in general terms.

SHRI K. S. HEGDE: Quite right, but now why do you allow yourself to be misled on these lines by having all these lists? It is not yet too late to reconsider this matter, and these are the reasons. First of all, it is logically impossible to put it in a strait jacket like this. After all, so far as the question of prohibited degrees is concerned, each area has got its own custom. As my hon. friend Mr. Madhava Menon has said, in that part of the country from which I come and from which Mr. Madhava Menon also comes marriages do take place between a girl and her father's sister's son or between a boy and his father's sister's daughter, but these come within the degrees of prohibited relationship as given in the list. You put restrictions where there should be no restrictions and you remove restrictions where there ought to be restrictions and if you come to my part of the country you will see that between 25 to 50 per cent. of the marriages are on this relationship. It is a well known and well accepted relationship. In fact, among some people you will find that they demand it more as a right. You say that this Bill has been conceived in such a way as not to affect customary law or personal law. But is this the way that you are doing it?

Now, I would suggest it to you and for the consideration of the House, Sir, that this entire list may be removed and we just have a slight modification of clause 15 which would serve the purpose.

Now coming to clause 19, again I am unable to agree with my hon. friend Dr. Kunzru. He said there were arguments on either side. I am unable to find any logical argument that could be advanced in favour of the clause as it is. Let us remember, Sir, that even to-day under the Hindu law, as it exists now, marriages between different castes are permitted, with certain restrictions of course. Now, does it cause any compulsory severance of status? Now, suppose I am married in a different community altogether, it does not cause severance of status and among certain communities governed by the Hindu law to-day marriage with anybody is permitted, for example, among people governed by the Malabar law in whose cases the degrees of prohibited relationship are very narrow. Why should you effect severance of status in their case, who otherwise are permitted by the custom of community to marry outside the community? Now, in this Bill instead of enlarging or liberalising the provisions you have put in unnecessary restrictions on such customs of the community. Now what happens? Supposing a man wants to marry under the Act and he happens to have certain vested rights under the Hindu law as it is, the right of reversion, the right of succession, the right of co-parcenary, all these rights are lost to him by compulsorily making him separate from the

family. Of course, this provision will be serving as a sort of a deterrent and he will think ten times before he takes advantage of the provisions of this Bill

SHRI J. S. BISHT: His right of inheritance is not affected.

SHRI K. S. HEGDE: My hon. friend says that his right of inheritance is not affected. What about his rights of survivorship? What about the right of co-parcenary with the incidental rights added to it? Now, you are making it a penalty for him and if he did avail of the provisions of this Bill he would do so at his own risk. Therefore, the main object of this Bill seems to be to see as far as possible that people do not take advantage of the provisions of this Bill.

SHRI J. S. BISHT: But he can reunite after marriage.

SHRI K. S. HEGDE: How many reunions have taken place? Re-union has been construed by law as something next to impossible. Re-union has got a number of limitations.

SHRI J. S. BISHT: There is no difficulty.....

SHRI K. S. HEGDE: It shows my hon. friend's lack of knowledge of the provisions of law. So far there can be no re-union if there are minors. In how many cases has reunion of the family taken place in the whole of India? It is considered even in law as something next to impossible.

Now, Dr. Kunzru was telling the House that there may be very orthodox people who may not like to live with a man who has married outside the community or outside the religion and that therefore such a man shall be deemed to effect his severance from such family, physically as well as legally. Even if there was just one individual in the whole of the family, say, in a big joint family of 50, who objects to the marriage from outside his community, it shall be deemed to effect his severance from such family. Then, what about the gentleman who marries from outside his religion? He is compelled to separate from the family and lose all the advantages which he would have had, had he continued in the family. So what is there in this provision except that you want that as few people as possible must take advantage of this Bill? If you want to oppose the Bill, oppose it in a straightforward manner, not by these dubious methods. The provision herein merely has the effect of opposing this Bill. You want indirectly to attack the Bill and see that the Bill has no legislative effect. That is the very purpose.

In fact, Sir, as my hon. friend Mr. Rajagopal Naidu has said, when the Act was originally passed in 1872, there was no such clause at all except the clause that you must notionally declare that you do not belong to any religion, but it did not provide for compulsory severance from the rest of the family.

MR. DEPUTY CHAIRMAN: The Act of 1857 did not apply to Hindus.

SHRI K. S. HEGDE: I am referring to the Act of 1872 whereby all that was required was.....

MR. DEPUTY CHAIRMAN: The 1923 Act amended its applicability to Hindus.

SHRI K. S. HEGDE: That is in 1923. All that is provided in the Act of 1872 is that you notionally declare that you do not belong to a particular sect of religion, not that you are debarred from living with the joint family. You are simply to go to the Marriage Registrar before whom you are to make a declaration that you do not belong to a particular religion as laid down by that law, but you continue to be a member of the joint family. There was no compulsory separation under the 1872 Act. It was only after a lapse of about 50 years that the Government brought in the 1923 Act which introduced elements of conservatism and that Act said that when

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you marry under that Act you shall be deemed to be separate from the family. My hon. friend Dr. Kunzru said that this had continued since 1923 and that this clause is in the 1923 Act also. Conservatism should have died a natural death during these 51 years when there was no such conservatism between 1872 and 1923, and there is no point in compelling people to-day to separate from the family when we are trying to do the right thing for the society to-day, which I am sorry others are not able to comprehend.

DR. P. C. MITRA: In the royal family of Britain, Edward had to lose his kingdom only for marrying outside his religion.

SHRI K. S. HEGDE: My hon. friend is beside the point and you will permit me, Sir, to ignore him here although I must show the respect due to his age. Coming to the clause on divorce, clause 26, I am afraid this clause will bring in not merely considerable litigation but considerable types of dirty litigation. I will not mention names but it is a very familiar case not merely to lawyers but to others as well. We know of a case very recently, not very many years ago, that came up before the Nagpur High Court. The husband and the wife had agreed to separate. The husband came forward with the allegation that in the company of his wife he always felt very cold and the wife retorted that in the company of her husband she felt very frigid. Do you want that sort of things to grow? Of course, there are innumerable cases in America where charges of adultery are made and accepted for the mere reason of having divorce without any truth in it. You go to the court and say, 'my husband had an adulterous connection with an unknown person'. The husband merely keeps mum and they get the divorce. What is all that? Is it for washing the dirty linen in the courts of law? Are the people to be tainted with such abnormalities and is life in society to be made unbearable? Instead of that, if you conceive of marriage as a contract, why not treat it as a contract? If two persons have agreed to live as husband and wife for life, but if they find there is some incompatibility between the two, they should be enabled to get out of that position. There may be so many reasons which they would not normally disclose to the public. The best that could be done is this. We are not suggesting something new. You go to the West Coast and see how the law is working there. If the husband or the wife feels that they cannot usefully continue to live together he or she goes to the court and presents a petition to the court which gives a period of six months as *locus pænitentiæ*. The judges try to bring about a compromise and if it is not possible at the end of that period a *decree nisi* is given. Has it worked harshly? Can you say that marriage is the first step towards divorce? It is not so, Sir. After all, once a man and a woman get married, there is a good deal of attachment between them. He would not be hasty in discarding his wife, nor the wife her husband. There is social opinion that has got to be taken into account. As Mr. Madhava Menon has pointed out, there are hardly half a dozen cases after the passing of the marumakkattayam Act, and similar is the case after the passing of the Aliyasantana Act. With my little experience of the law courts in the country I can assure my hon. friends that this divorce will not be encouraged if you make it easy. If on the other hand, you make it more or less difficult and if it can be obtained only by trumping up charges, look at America and see what is happening there. It will not be difficult to make out charges. It is not the divorce that spoils the good name of a society but it is the allegations that are made at each other that spoil the name of the society. After all, everybody wants to be happy and he is trying to find out which

company is best for him. And having done that once, he will be very reluctant to change it unless there are some forcible circumstances or other factors which compel him to discard his companion, whom, more or less, he had accepted for life. So, I would suggest to the hon. the Law Minister and the House that he should consider the provisions of the Marumakkattayam Act and the Alyasantana Act and see whether we cannot usefully borrow the provisions of those Acts rather than put these cumbersome clauses which oftentimes might be very difficult to be enforced. Take, for example, sub-clause (a) of clause 26 which says—"has since the solemnization of the marriage committed adultery." How many true cases of adultery can be proved? But how many false cases of adultery can be brought up is a matter well known to the people who are familiar with the working of the courts. Then take sub-clause (d). It says: "has since the solemnization of the marriage treated the petitioner with cruelty." What exactly does it mean? In fact, one judge of a court in Madras said, an eminent judge who later became judge of the Supreme Court, that beating the wife occasionally was not cruelty. I am only quoting from his judgment, nothing else. He thought that a husband had the right to beat his wife occasionally. What exactly he meant by the word 'occasionally' —whether it is two times a day or something else—I do not know. It is .

MR. DEPUTY CHAIRMAN: It all depends upon the intention, the weapon used and so many other factors.

SHRI K. S. HEGDE: That is the *patria potestas* view point.

SHRI V. K. DHAGE: Maybe the wife likes to be beaten!

SHRI H. C. DASAPPA (Mysore): It may be a demonstration of affection!

SHRI K. S. HEGDE: If it is a demonstration of affection on the part of her husband, then the wife has got the right to say that it is cruelty so far as she is concerned. Sir, many of these things are difficult to prove and, more than that, oftentimes it depends upon the mental make-up of the judges. After all, the judges are human as all other individuals are human. They have got their own pre-conceived ideas. Conservatism is not the monopoly of only a few members of this House. It is also shared by many of the members of the judiciary and old ideas oftentimes are ingrained in them. I am not saying they are wrong and we are right. They seem to claim that after all the wife should not make too many demands. She is there to serve the husband. If you only read some of the judicial pronouncements you will find to what extent the judges can twist the law which is enacted by the legislature. Often times the legislatures are more .....

MR. DEPUTY CHAIRMAN: They interpret the law.

SHRI K. S. HEGDE: The judges even claim the right of making law by interpreting the existing law. It is therefore better that you should leave it to the parties concerned who are the most interested in it rather than leave it to the arbitrary will of some individual who may have his own pre-conceived notions about the subject.

Now, take the question of leprosy and other diseases. Who can prove who is the first sinner? Supposing one of them is having venereal disease and a case comes up. If you want to interpret the provisions of this law, you will have to launch an investigation as to who got it first and who communicated it to the other. The point is: Why not apply a reasonable mind to the provisions of law and see how in practice they can be applied? I am pointing out all these difficulties

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with a view to convincing the House that the best way and the most suitable way in the interests of society is to leave it to the best judgment of the parties concerned and not to impose your own restrictions by saying that they shall have a divorce or shall not have a divorce. If you agree with me on this point, then clause 27 becomes thoroughly unnecessary. As my hon. friend Dr. Kunzru said, we can provide for a period within which the judges may try to find out whether the difference is merely temporary or the gulf is so wide that it cannot be bridged. Rather than acting as judges having rigid rules, if you give them the power to postpone the decision in the matter, they may be able to bring about a reconciliation. If you say that for the first three years of the marriage there will be no divorce, you are making their life impossible. Suppose there is a husband who is a habitual wife-beater, you will make it impossible for the wife to live in the house. Supposing the husband is a man who is suffering from some loathsome disease.

MR. DEPUTY CHAIRMAN: The courts have discretion.

SHRI K. S. HEGDE: Exactly, I was coming to it. The courts have discretion in cases where they consider that there is extreme hardship. One judge might find that chastising a wife is hardship, even as the hon. the Law Minister said on the opening day of the debate that beating children is cruelty to the wife. Some judges might have a liberal mind and apply it in that manner, whereas another judge might find that "though it is a loathsome disease, you have accepted him as husband and along with him you have accepted the disease also. There is nothing very hard about it."

Sir, I would not like to take up the time of the House any more but I would suggest that this Bill or many provisions of this Bill do require reconsideration and if you really intend to usher in this Bill as a liberal measure under which you are converting marriage into a contract and under which you are conferring equal rights on both the partners in the married life, then the Bill must be drafted with greater sympathy and not with a rigidity which will defeat the very objective of this measure.

JANAB M. MUHAMMAD ISMAIL SAHEB *(Madras): Mr. Deputy* Chairman, I am sorry I have to oppose the motion and oppose the Bill. If one goes through the opinions received as a result of the circulation of the Bill for eliciting public opinion, one would find that very large sections of the people are opposed to the Bill and the principles of the Bill. As has been admitted by the hon. the Law Minister, the Muslims by an overwhelming majority have opposed the Bill. They are not for the enactment of such a measure as this so far at least as the Mussalmans are concerned. Sir, we here are not a missionary body nor a reformist group; we are here representing the wishes and the will of the people. And, as such, Sir, it is only relevant and pertinent to ask whether this measure is based upon the will and the wishes of the people.

It is said, and rightly said, that it is necessary to protect the interests of minorities, minorities who happen to differ from the views of the majority. It is so. But, Sir, their liberty and their freedom ought to be respected in such a way as not to encroach upon the rights and privileges of other people

This measure, as I would show presently, really encroaches upon the rights and liberties of other people.

Supposing a man, a Hindu, wants to marry a Muslim; he is at liberty to do so. By all means, let him have the freedom of celebrating such a marriage; society or the community should

not oppose such a union as that. But, then, under the present circumstances, do those parties have no other means or relief? Are they really helpless? It is not so, Sir. There is the Act of 1872; they can marry under that Act. In such an important matter as this, which affects life, affects family life of the people—family life upon which the whole life of the country is based—in such an important matter as that, these persons do not want to care for the views of their community or their respective religions. Let them not care; let them go their own way If they do not want to adhere to their respective religions, the clear and honest thing to do is to declare that they renounce their religions and marry under the existing Act of 1872.

SHRI GOVINDA REDDY (Mysore): Is marriage the only thing that is contained in a religion?

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JANAB M. MUHAMMAD ISMAIL SAHEB: Marriage is not the only thing that concerns religion; but it is such an important matter that it affects the family life and would thus affect the whole country. Society need not have anything to say against such an alliance. Similarly, these people with whom society does not interfere should not do anything which would adversely affect other people in the society. That is provided for under the 1872 Act. But it would appear that many people do not want to take advantage of the provisions of that Act. Have the Government in their possession any figures to show the number of people who have taken advantage of the provisions of that measure?

"This is not a new measure. The measure which is before us is only an amendment of the old measure"—so say some people. It is not correct to say so, Sir. The difference between this measure and the old measure is a vital difference. That difference vitiates this Bill in the view of large sections of the people.

Again, when it is said that the Muslims oppose the Bill it is urged that the idea underlying the form of marriage contemplated by this Bill is a Muslim idea. What is wanted in this measure is that two persons who want to marry have, after satisfying certain prior conditions, to appear before the Marriage Registrar with three witnesses and they have to declare that they are willing to marry each other in the presence of those witnesses and have to sign a register, and the marriage is concluded. It is a civil contract; it is neither a *sanskar* nor a sacrament. Those friends say that this is pre-eminently a Muslim idea and why should Muslims object to it? But they forget that an essential feature of the Muslim form of marriage is that both of them should follow the same religion, Islam or cognate religions. This condition imposes upon them certain rights and also certain obligations; but the present Bill gives only the right to these people and does not insist on their obligations. It is said that the provisions of this measure are only optional and those who want to take advantage of it may do so and others might not go near it. Is it really so? Is it really such a harmless measure? Is it simply optional? It is not correct to say that it is purely an optional measure and it would be fallacious to say so. Clause 21 of the present Bill says that "notwithstanding any restrictions contained in the Indian Succession Act, 1925, with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act". By the parties marrying under this new Act, the right of inheritance to their property is taken away from their personal laws and their rights are to be governed by the Indian Succession Act.

MR. DEPUTY CHAIRMAN: On his choosing to come under the Civil Marriage Act.

JANAB M. MUHAMMAD ISMAIL SAHEB: Under this Civil Marriage Act he is allowed to be a Christian or a Hindu and so on. The thing is that

[Janab M. Muhammad Ismail Saheb.] under the Indian Special Mariage Act of 1872 the Muslims and certain others have been excluded from the operation of that Act. If, however, a Muslim or anybody else seeks to come under this present measure, he is allowed to continue in his religion, but his properties will devolve under the Indian Succession Act. The people who would have inherited from such a Muslim under the personal law are excluded or debarred while he himself is free to inherit from his relatives under the personal law. How is that taken as an option? (*Interruptions.*) Sir, what I say is that the third parties are affected by the exercise of this option and mutuality in the law of inheritance is violated. That is what I am trying to point out. His property, Sir, comes to be governed by the Indian Succession Act.

SHRI K. S. HEGDE: Because he wants it, he chooses it.

JANAB M. MUHAMMAD ISMAIL SAHEB: His relatives who would have under certain circumstances inherited from him are debarred from their rights of inheritance. But the man who exercises the option under this Special Marriage Act shall have the right to inherit under the personal law from his relatives. That is a very important point. He gets the best of both the sides. He inherits under the personal law even though he comes under the present Special Marriage Act but his own property is protected under the Indian Succession Act. Therefore, what I say is that the third parties are affected.

SHRI C. C. BISWAS: The hon. Member may look into the terms of clause 21 where reference is made to the Indian Succession Act. The provision that the Succession Act will apply means only this. Succession to the property of the person marrying and succession to the property of the issues of such marriage shall be governed by that Act. It does not affect the right of the person marrying.....

MR. DEPUTY CHAIRMAN: Mr. Muhammad Ismail feels that even this provision will affect the rights which otherwise they would have.

SHRI C. C. BISWAS: As a matter of fact, the provision in clause 20 protects those rights of the person marrying as if the Caste Disabilities Removal Act had applied.

JANAB M. MUHAMMAD ISMAIL SAHEB: What I ask is this. The Indian Succession Act comes to govern the properties of the parties—and of their issues—who marry under this Special Marriage Act. But then, are they debarred from inheriting from their relatives under the personal law? The Act is silent about that matter. According to this Act, Sir, they can inherit from their relatives even after this marriage is concluded, and as a Muslim marrying under this law is still recognised as a Muslim he may inherit his relatives' properties which would otherwise go to others. Therefore, Sir, I say that the third parties are affected.

Then, Sir, other forms of marriages can be registered under this Bill. And registration can take place even long after children are born, and by that time these children might have come to own properties, and those properties will also be brought within the purview of the Indian Succession Act. This will take place without their consent. That is the point. Sir, there again the third parties are being affected. Now, disposing of one's property without his consent is against all principles of jurisprudence and fairness. Therefore, I say, Sir, that it is not a purely optional measure.

Then again, coming to the degrees of prohibited relationship, I find that certain degrees which are not considered objectionable now by the Hindus are being included in the degrees of prohibited relationship. And many of the relationships which are not considered by the Muslims as ojectionable now are also being included here, for example items 34, 35, 36 and 37 in the First Schedule. Sir, for centuries past the Muslims

have not been holding these as objectionable; not only the Muslims in this country but hundreds of millions of human beings outside our country, have not been considering these degrees as objectionable Therefore, Sir, it is not reasonable to place any restrictions on marriages within such degrees of relationship All these provisions offend the personal law of the people which they have been following all along

Then, another very important point has been raised with regard to the religion of the issues as a result of marriages under this law The hon the Law Minister said that an understanding or an agreement might be arrived at between the parties before the marriage as to the religion of the children But is that sufficient? There are amendments, Sir, which have been given notice of by several hon Members and which deal with this matter Some of them suggest that the children might follow the religion of the father and some others suggest that they might follow the religion of the mother What ever may be said on the merits of these amendments I want to ask one question I want to know whether the State can by law or by rule impose on any party a particular religion Can it enact such legislation? That is the point that requires to be gone into very seriously in view particularly of the secular nature of our State

SHRI H P SAKSENA: There is no compulsion

JANAB M MUHAMMAD ISMAIL SAHEB These amendments suggest that the father or the mother may be enabled by law to compel their children to follow a particular religion

SHRI K S HEGDE: Till they attain the majority age

JANAB M. MUHAMMAD ISMAIL SAHEB: The question of majority is always there But then what law would govern those children? Sir, as I said on a previous occasion this Bill, in my view, really contravenes the fundamental rights guaranteed to our people, the right of professing, practising and propagating their religion This measure constitutes an interference with the religious right of the people Sir, the Law Minister on a previous occasion said that this was only a beginning of the process of compelling people to give up parts of their religion Sir, this is really an encroachment upon the religious rights of the people, and the hon Minister

SHRI H N KUNZRU: Did the Law Minister ever say that this law was only a step towards other laws to compel people to give up their religion?

JANAB M MUHAMMAD ISMAIL SAHEB There are conditions and qualifications for that right, I admit But, Sir to say that those conditions and qualifications might devour the fundamental law itself is rather fantastic

Then, it is pointed out that there is an article in the chapter of the Directive Principles in the Constitution that there should be one common civil law for the whole country It is true but nothing contained in that chapter is justiciable It is only of a directive nature In case this comes in conflict with a mandatory article which is justiciable, which one should prevail?

SHRI K S HEGDE What is the fundamental article that he is talking about?

JANAB M MUHAMMAD ISMAIL SAHEB: The article which says that people have got a right to profess, practise and follow their religion subject, of course to certain conditions

SHRI K S HEGDE: Is marriage part of religion?

JANAB M MUHAMMAD ISMAIL SAHEB: Every personal law, whether it be Hindu or Muslim, is derived from religion It is nothing else.

SHRI K S HEGDE: Islam exists in America where such a fundamental right is also given by the Constitution

MR. DEPUTY CHAIRMAN He is expressing his views

JANAB M. MUHAMMAD ISMAIL SAHEB: Anyway, Muslim law is derived from Islam. What I submit is that they have got a right to follow their own religion. What is contemplated by this Bill is to bring about some kind of unity amongst people. But can unity be effected by such a measure as this? At best, this would only create another community in addition to the already existing communities. It is going to increase the number of communities but is not going to bring about one amalgamated community. What we really want is unity of the heart, harmony. If we want to bring harmony into existence, then what is required is tolerance of other people's views, especially when they do not encroach upon our rights.

SHRIMATI LAKSHMI MENON (Bihar): Mr. Deputy Chairman, I do not think I am going to oppose this Bill but I must point out that this Bill does not implement the aims and objects of measures of this kind. The reason why this Bill is before this House is in a way to implement article 44 of our Constitution. I regard this as the first attempt to initiate procedures for the legislation of a national civil code, but from the discussion as well as from the Minutes of Dissent it is obvious that the Bill is not going to achieve that purpose, because the speeches and the Minutes of Dissent show that we are not thinking in terms of building up an Indian society but are still going along the old, antiquated groove of communal legislation. During the debate you have heard how almost every Member thought in terms of the Hindu Joint family or Muslim religion or Christian religion. No attempt was made to find out how this legislation could be made helpful in building up a secular society.

[THE VICE CHAIRMAN (SHRI B. C. GHOSE) in the Chair.]

Sir, it is said that this Bill is a piece of progressive legislation. What is the progress implied in this leglislation? One might compare this Bill with the engine of a railway train. The engine makes a lot of noise, but the speed of the engine is the same as that of the bogies, but it is not realised. I am sure that the Law Minister must be thinking that this is a progressive measure, because we are making so much noise in making speeches. How can any one call this progressive legislation? I don't know. My objection is also to the title of the Bill. Instead of calling it a Civil Marriage Bill, we call it a Special Marriage Bill and what is special about it except that it continues the Special Marriage Act which was passed about 82 years ago? Sir, when this law was enacted originally in 1872, it was meant to apply to Brahmos who did not accept any of the existing religions, but those days are over now. Today we should make use of this legislation to permit inter-religious and inter-communal marriages, so that the obstacles based on religion and communal organisations might cease to exist. Sir, I was surprised at the statement made by our distinguished colleague, Dr. Mookerji, about the disruption of the family that will be brought about by this legislation. I was also surprised by the statement made by our distinguished colleague, Dr. Kunzru, about legislation being helpful in bringing about a stable family. The stability of marriage as well as family is not ensued by mere legislative enactments. They are the result of social traditions and a proper appreciation of moral values, and therefore this legislation will have no effect whatever in securing the stability of marriage.

Many of the Members in their speeches forgot to see the wood for the trees. They were concentrating more and more on details of the law, and the main objective, i.e., the creation of a secular society based on intermingling of the various communities, is forgotten altogether. One of the speakers coming from my part of the country mentioned justly the way marriages are celebrated in that part of the country and how divorce laws there

were not so difficult, and yet the stability of marriage was not affected at all. The reason is obvious. There, the inheritance law is more liberal, boys and girls inherit in an equal measure. In the rest of India, governed by Mitakshara or any other law, unless you see to it that a girl gets the same kind of share of the family property as the boy, you cannot have easy divorce laws. In our case, when divorce is obtained either by mutual consent or otherwise, there is always the family property to fall back upon. The woman is not dependent upon the alimony that is to be given to her after the divorce proceedings are over. Quite a number of speakers asked why we were having this legislation. Sir, these inter-communal marriages have to take place, and are going to take place as long as our society progresses in the direction it does. In our public life boys and girls belonging to different communities sit together, work together and they are co-operating with each other at all levels of the administration as well as in other walks of life, and it is only natural that they should like each other and there should be marriages between these boys and girls irrespective of whether they belong to one particular community or the other, and it is also necessary that we should have legislation which will protect their rights and encourage such intermingling. One of the previous speakers said that this kind of legislation was going to affect Islam. I hope he knows the traditions of Islamic countries outside India. What is going to happen to the Muslims in China, the Muslims in Soviet Russia, the Muslims in Albania, in Yugoslavia? In 1926, when Turkey adopted a civil code, she did not consult and obtain the consent of the *Mullas* or even public opinion. Kemal Ataturk got hold of the Swiss Civil Code and bodily enacted it as the Turkish Civil Code. But there is this difference. In 1926, when the Swiss Civil Code was adopted, the first thing that he did was to change the inheritance law of the country, so that the Turkish boy and girl inherited in equal measure, but political rights were given to the Turkish women only eight years afterwards. Four years after in 1930 they got municipal franchise, and eight years afterwards only they got national franchise in 1934, whereas in our country we have given all political rights without any property rights. So, if the Law Minister is very serious about implementing article 44 of the Constitution, he should promptly bring in a leglislative measure by which the inheritance laws would be equalised. I am rather surprised that it is a very unimaginative way that we have introduced the Indian Succession Act into this legislation. After all, if property is the basis of right, then we should have better inheritance laws so that people who are affected by this legislation might be well protected by their inheritance rights as well. After all, the Indian Succession Act is not a liberal measure. It is liberal only in terms of the more orthodox laws that we have in this country. Therefore, all that should have been done was to introduce a clause in which it might be said that the widow and the children will inherit in equal measure the assets of the deceased.....

SHRI K. S. HEGDE: That is the Indian Succession Act.

SHRIMATI LAKSHMI MENON: The daughter gets half of what the son gets.

SHRI K. S. HEGDE: You are referring to the Mohammedan law. In fact, the widow is protected better. If the amount is not above Rs. 3,000, it entirely goes to the widow.

SHRIMATI LAKSHMI MENON: Then I stand corrected. One thing that is apparent in this Bill is that we have traversed all over the world in order to find out parallels to what is happening in India when all that should have been done was only to go a little south to find out how liberal laws could be framed, administered and maintained in the society without any difficulty at all. Two of the previous speakers

[Shrimati Lakshmi Menon]

had already referred about Marumakkattayam and Aliyasantanam laws. Another important thing is about the two schedules dealing with the prohibited relationship. If this law is going finally to affect all the communities and secure for the whole country a uniform code under article 44 of the Constitution, then it is necessary that we should not put in these degrees of prohibited kinship which are regarded as objectionable or repugnant by other communities. Sir, I am also coming from a place where the maternal uncles' as well as paternal aunts' children—cousins—could be married but there is this difference. If that is repugnant to a large portion of the people in North India or if the maternal uncle marrying the niece is also repugnant to a large number of people, then in this measure we should not have brought them. Those who follow such customs will naturally be excluded and they will follow their own customs. Because here you want certain norms and standards which could be accepted by all the people not only in India but perhaps in the rest of the world as well, it is immaterial whether those customs are mentioned or not. In my opinion these should not have formed part of this legislation. That is why this Bill is confusing because it is a conglomeration of all the prejudices of 45 Members who formed part of the Select Committee. Sir, I have myself evolved a small formula with regard to the two schedules. The proper thing would have been to have a clause which says that the lineal descendants of a common ancestor or ancestress 3 or 5 degrees removed on either side might be regarded as prohibited relationship—just the lineal descendants. That would avoid all confusion regarding the two schedules that are included in this. That itself shows that we are completely under the influence of the Hindu Law, I mean, the framers of the law as well as the Members of the Select Committee.

SHRI K. S. HEGDE: And the spirit behind it.

SHRIMATI LAKSHMI MENON: And the spirit behind it and every line of it breathes the spirit of Hindu law. There is also an attempt to show that we are very progressive but then we are being held back as we have seen some of the speeches of hon. Members here, bring out that we still think in terms of the old Hindu joint family which does not exist and of a society which died long ago.

One of the previous speakers said with regard to clause 19 that this is an attempt to protect orthodox people. I need hardly say that clause 19 is the most vicious clause in the whole Bill. To think that it is necessary to protect the orthodox people from associating with those whose views are not acceptable seems completely ridiculous. After all, this law is not meant for the orthodox people. The orthodox people can stew in their own laws without being interfered with by this law. It is meant for the progressive people, people who are not conditioned by old orthodox views but people who believe that freedom of marriage and freedom of divorce are as important as anything else in order to make for a happy home.

AN HON. MEMBER: That is why separation is allowed.

SHRI K. S. HEGDE: Orthodox people must find their own homes.

SHRIMATI LAKSHMI MENON: The orthodox people can really go their way. I don't see any reason why we should place an impediment in the way of such marriages so that such marriages do not take place. You are preventing such marriages whereas the whole object of this Bill is to encourage such marriages.

SHRI K. S. HEGDE: Whose object?

SHRIMATI LAKSHMI MENON: Our object.

SHRI K. S. HEGDE: Not the Select Committee's object.

SHRIMATI LAKSHMI MENON: Before I conclude, I should like to say

one thing. My ignorance is responsible for it. Here we have a Special Marriage Select Committee in which 17 Members have submitted Minutes of Dissent and in our own House, out of the fifteen, nine people have spoken against the Bill. What is the purpose of a Select Committee? In my own humble way I thought the purpose of a Select Committee was to come, by means of intimate discussion, to an area of agreement which would not be possible in a big House.

DR. SHRIMATI SEETA PARMANAND: If it is not possible, what happens?

SHRIMATI LAKSHMI MENON: On the other hand, we find that the area of agreement has narrowed down to such a limit that almost every Member holds a different view.

Before I conclude, I should like to insist that it is no good having a legislation of this kind, permissive though it be, unless the property rights are stabilized and unless women inherit and have the same rights to property as men, and also women are given better opportunities for education, etc. Otherwise this kind of permissive legislation will have very little value indeed. Even so, the permissive legislation is to be welcomed, as I said in the beginning, because it does help those who are suffering under hardships since they entertain progressive views regarding marriage and it does help them to come within the ambit of law without being ostracised by society.

I cannot conclude without recalling to my mind the story of the conversation between Alice in Wonderland and the Red Queen When Alice said, "In my country whenever we run fast enough, we reach somewhere", the Red Queen is supposed to have said, "It is a poor sort of place indeed. In our country we have to run fast enough in order to stay in the same place." That is exactly what we have done. We have introduced a measure which does not push us forward but which keeps us in the same place.

PROF. A. R. WADIA (Nominated): Mr. Vice Chairman, I have had the benefit of listening to several interesting speeches already and that has, to a considerable extent, lightened my task. I am rather surprised at the opposition which comes from my friend Dr. Mookerjee. He seems to be living in a world by himself, if he thinks that there is really no demand *or no necessity for a law like this.* And I am equally surprised by the opposition which comes from my Muslim friends because this Bill really is progressive when you compare it with the Special Marriage Act of 1872 and that applies, with reference to the Muslim Community, equally to my community. The effect of the Special Marriage Act of 1872 was that whoever wanted to marry outside his community, had to declare that he did not believe in his religion. Now, it often happens that love is stronger than the sense of religion and the result was that a Muslim or a Parsee or a Hindu, as the case may be, had to declare on oath that he did not believe in any particular religion when he actually did believe. It means it was really a case of perjury. That he did not believe in his religion means he did not have faith in it. It was often a case of perjury and so many marriages did take place under that condition. The Act of 1923 was progressive so far as Hindus, Jains and Sikhs were concerned, but it left off the Parsis and the Muslims out of consideration and so we still suffer under this handicap of having to declare that we are not Zoroastrians or Muslims, if we marry outside the community. So in this sense I welcome this Bill and say it is really a progressive measure I am glad that it is not revolutionary as Shrimati Lakshmi Menon would like it to be. After all, legislation has to keep pace with the advance of public opinion. This Bill does not force civil mar-

[Prof. A R. Wadia.]

riage on all the communities and there is no reason why it should force it. I am afraid Shrimati Lakshmi Menon is some fifty or perhaps a hundred years in advance of her time.

SHRI C. C. BISWAS. She believes Malabar to be the whole of India!

PROF. A. R. WADIA. And if this Act really tried to force this type of marriage on everybody, there would be absolute opposition to it and, therefore, we should be happy and thankful to the Law Minister and his colleagues on the Joint Select Committee that they did not go so far.

SHRI K. S. HEGDE: Legislative progressiveness is of the bullockcart variety.

PROF A. R. WADIA: It is so sometimes, and we cannot help it for law has to keep pace with public opinion. Within these limits, I certainly welcome this as a really progressive measure.

At the same time, I feel that the Joint Select Committee did not have a very clear perspective of what they really wanted to do and that is why I find there are certain inner contradictions, some of which have already been mentioned by others. One of them I would particularly mention at the present moment. I take it that this measure is progressive in the sense that it enables any Indian, who does not want to marry or cannot marry under his own personal law, to marry and lead a respectable life under this law. From that standpoint, I find that at least two clauses are very retrograde One clause is clause 15(e) to which reference has already been made I do feel, Sir, that the inclusion of these words "unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two" is entirely out of place in this context. After all, we are not trying to force this law on people who accept their personal law and so there is no reason why we should bring this in. Unfortunately we know that in our country our marriage laws constitute a museum by themselves. You have got all sorts of marriage laws and now Government wants to add to the confusion. You add a schedule which contains a list of the prohibited degrees. I do agree with Mrs. Menon that this list has been predominantly dominated by people who believe in Hindu law or the prejudices of Hindu Law and that particularly applies to the total prohibition of marriage between cousins which is to be found in items 34 to 37, in both Part I and Part II of the Schedule. I find my hon. friend Shri Govinda Reddy has gone some way to mitigate the hardship of it, but he has not had the courage to go the whole way. It seems to me that cousin marriage, however repugnant it may be to Hindu sentiment in certain provinces in India, is certainly not repugnant to the general moral sense of the world and practically in all civilised communities you have cousin marriages.

SHRI RAJAGOPAL NAIDU: From the biological point of view?

PROF. A R. WADIA: Yes, I am coming to the biological point of view. So far as the general sense of the repugnance is concerned, it is practically confined to a particular section of the Hindu community—not even to all the Hindus. I remember a case, Sir, which happened very recently where there were two Brahmin brothers holding extremely high offices in Government service. One happened to be in the south and the other happened to be in the north and their children had been brought up practically as strangers, they just occasionally met each other. But in course of time, when the daughter of one brother met the son of the other brother, well, as young people often do, they fell in love with each other and insisted on marriage. The parents

were naturally quite horrified, although they were progressive in their own way But they felt horrified, as this was a revolutionary thing and it would offend the sentiments of their community But the young people were very adamant Now, under this Bill, they would not be able to marry I must say that cousin marriages, are tolerated in my community, and sometimes even encouraged They exist among Muslims and they exist in the Christian community And, therefore, when we have got a general law of this type, I do not see why such cousin marriages should be totally barred and I would personally wish—and I have given notice of an amendment to that effect—that items 34 to 37 should be omitted from both parts of the schedule itself I do share with some hon Members the opinion regarding undesirability of having this full schedule and I wish the hon the Law Minister could find out a way whereby the awkwardness of having to mention all these relationships could be avoided That I leave to expert lawyers and I do not think it would be difficult for them to do it

I may add that if my amendment is not carried, the difficulty would persist For example, in my community, when of two brothers, one continues to be a Parsi and the other becomes a Christian, their children cannot marry each other under the personal law of the Parsis and they will not be able to do so under the present Bill either How are they going to marry? This would create hardship The very purpose of this Act is to provide for these abnormal cases After all, they have got to be attended to

SHRI RAJAGOPAL NAIDU: They can marry under customary law, under clause 15 and then have it registered

PROF A R WADIA: That is a very roundabout way of doing things I would rather say Marry under the personal law or make this law more liberal so that all these abnormal types of marriages could be accommodated.

As regards the biological aspect of cousin marriages, I may say that no scientific conclusion has been definitely arrived at though from the Mandelian standpoint there may be a danger in cousin marriages if there is a hereditary weakness in their family I whole-heartedly support the deletion of clause 19 as it is graceless Its inclusion carries the stigma that a marriage under this Act is not something desirable Why not leave it to the family concerned? That would be far more graceful So far as the other points are concerned, I realise that marriages under this Act should be effected by people with a full sense of responsibility If I may use the expression, they are going to be more or less romantic adventures and therefore the full responsibility should rest on the people marrying Therefore, I am not in favour of such a low age as 18 given in the Bill and I feel that the age-limit should be higher as suggested in many of the amendments I suggest that it should be at least 21 Personally, I would even have it as 25 in the case of men and 21 in the case of women

SHRI V K DHAGE: How if two cousins have to marry?

PROF A R WADIA: How does it matter? After all, it is a matter of responsibility They should share the burden and they should shoulder the responsibility for their own decision

In cases like this, in mature marriages which are contemplated under this Bill there should be no room for the consent of the guardians or of the parents I think that consent ought to be eliminated, still more, the consent of the judicial officer or the civil court That is why Sir, I am entirely in favour of raising the age I am also personally very much inclined in favour of the medical certificate but I am afraid that we are not advanced

[Prof. A. R. Wadia.]

enough in our country to insist on that because there will be practical difficulties in doing so. I also agree that under clause 5, the notice period should be extended to thirty days instead of fifteen days. I do feel that the publication of the notice should not be merely on the notice board of the court which, of course, practically means nothing but it should be published in newspapers and notice should be given to parents. There is one advantage in giving wide publicity to this because there may be a living spouse and under this Bill a person should not have a living wife or husband as the case may be. Sometimes things are done on the sly and if proper notice is not given it may be that such marriages will take place doing great injustice to the living spouse. I also agree that the objector should deposit an amount but it should not be so high as one thousand rupees. An amendment has been given notice of by my hon. friend, Mr. Naidu. I think the amount of deposit should be much lower.

SHRI RAJAGOPAL NAIDU: Because the maximum cost of a thousand rupees is provided in the Bill.

PROF. A. R. WADIA: You may not allow that.

SHRI K. S. HEGDE: The philosophy behind this is, "My marriage is nobody's concern. It is my own concern".

PROF. A. R. WADIA: Supposing a living spouse is there?

SHRI K. S. HEGDE: She deposits the thousand rupees and then gets it back.

PROF. A. R. WADIA: But where is the thousand rupees to come from? It is a real hardship in a poor country like ours. I do hope, Sir, that this House will accept the amendment regarding the religion of the children. I think the Law Minister has an open mind on this because it is a very important thing and I hope that the sensible amendment that has been sent in will be accepted.

I also welcome the idea of recognising the legitimacy of children and guaranteeing them legitimacy under this Bill even in marriages declared void or voidable. Unfortunately, in the past our society has been extremely hypocritical. When I say 'our society' I mean not merely the society in India but the world over, perhaps even more in Europe than in our country. Considering children born out of wedlock illegitimate is adding insult to injury. Therefore, any piece of legislation worth being called progressive, should not recognise illegitimacy in law.

In clause 26(c) the nature of imprisonment really needs to be specified because our recent history goes to show that imprisonment is very often a matter to be proud of, not to be ashamed of, and under these circumstances merely to say that the person has suffered imprisonment for seven years or more should not automatically give rise to a claim for divorce.

I venture to differ from my friend Pandit Kunzru in connection with clause 27. It requires that no divorce application shall be made for three years. Of course, I recognise the cogency of his arguments but then I take it that when conditions are as bad as he paints them, the wife would automatically leave the house. If she were immediately to apply for divorce, there will be no opportunity for reconciliation and a certain lapse of time is desirable. In fact, this law itself provides that in case of extreme hardship the court may permit a divorce application to be made even before the lapse of three years.

In clause 31, I do not see any reason why it should be said that at

the request of this party or of that party, the proceedings may be heard *in camera*. It seems to me that such proceedings must be heard *in camera*. It is not desirable to wash our dirty linen in public. It may be good material for a certain type of journalists but it is not desirable for the public and especially for the younger portion of the public to know about these dirty details. So, I would rather say that all these proceedings must and should be automatically held *in camera*.

Well, Sir, I repeat my statement that this Bill is not revolutionary and we ought to be thankful for it. On the whole, it is progressive and as a progressive measure we ought to welcome it.

I hope my Muslim friends will reconsider their decision. Their marriage law is an extremely sensible law. In fact, this is just an extension of the principles of Islamic marriage law and I do not know why they should oppose it. They should, in the interests of their own religion, welcome it, as, in the interests of mine, I welcome it. After all this is only a permissive measure. It does not destroy our personal law, it does not destroy the integrity of our different communities and at the same time, whenever necessary, it permits people to marry and settle down and lead a respectable life.

SHRI N. C. SEKHAR (Travancore-Cochin): Mr. Vice-Chairman, I rise in support of the principle underlying this Bill.

DR. SHRIMATI SEETA PARMANAND: Louder, please.

SHRI N. C. SEKHAR: I rise in support of the principle underlying this measure but my main purpose is to point out certain chief difficulties or rather certain clauses which do away with what the Bill intends to do. I support the Bill in the sense that it contains certain progressive principles. The principle underlying this Bill is a little bit progressive particularly over the Act of 1872. I have my own understanding of that Act and I am interpreting it not as a lawyer. The law, as then enacted, had a specific purpose in view; it was not a progressive measure or for helping those who wanted a progressive measure on marriages but only to facilitate the foreigner in perpetuating the communal differences and to create conflicts between the various communities in India. It is with that purpose that that Act was adopted but at the same time it was advantageous to those who wanted to enter into love marriages.

[MR. DEPUTY CHAIRMAN in the Chair.]

The Government, before bringing this measure before this House, ought to have studied the working of this Act of 1872 as to how it was affecting our society, how our society welcomed that, etc. Instead of doing that, they have kept the old Act as a basis for their new Bill. Any way, in one way, this Bill is progressive because it refuses to recognise or even consider religion or community as a basis for one entering into mutual union with another. That means, this measure permits any male or female to marry a female or a male belonging to some other community. That is a progressive measure and that allows a male or a female to enter into marriage alliances with anyone of their own choice. At the same time, I do not know whether sponsors of the Bill agree with it or not, but this Bill points out one important fact and that is that the social law has been working which has not been given any sanction or recognition and that is the young male or female members of our society are not observing their religious or caste rights before entering into a marriage alliance. They look at marriage from a practical point of view of democratic principles whether their life would be happier if they entered into marriage

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with a particular person. That is how many marriages are taking place but the effects of such have not been studied. Of course, it is a fact that society as it exists today in our country has certainly made marriages arbitrary and compulsory things, that a father must advise his son that he should marry so and so and the daughter may be advised that she must marry so and so. I know of many cases where sons were compelled by the fathers or by the maternal uncles that they should marry such and such girls even though they did not like the girls and though the girls also did not like the boys. But they were forced to marry although they did not like each other. Under the existing law, that man cannot apply for divorce nor has he the right to demand divorce. Even in the present day society so many young men who are cultured enough, who understand how they should lead their lives happily and how they should build up their happy families and a happy society have taken to such marriages as are contemplated in this Bill, and they have seldom taken recourse to divorce in the course of their lives. I do not think that such marriages will lead to divorce and will not lead to happy living provided they have got a material basis. For our country progressive marriage laws are long overdue irrespective of religion or caste based on the common material basis, but they have not come into being. It may take time. It is not going to take place under the present administration, but it must take place and it is going to take place.

Now, this Bill is giving recognition to those inter-caste marriages that are already taking place without the backing of any statute, but at the same time you will please remember, as Mr. Madhava Menon suggested, that this Bill is giving something by one hand and taking it away by the other. That I find in clause 19. I am surprised to hear even very experienced Members of this Council justifying the existence of this clause there. Certainly it is that clause that does away with the effect of this Bill. If a man is married in another community, he will get himself automatically severed from his family. At the same time if the members of that joint family are mutually agreed, then they can, of course, reunite. That is what the Bill says. It is a deception, Sir. Here it refers to a collective family, and particularly to a Hindu family as the joint family system is prevalent generally among the Brahmin Hindu families. For example, I am a Hindu, but you cannot call me a member of the collective family. Some 28 years ago my family was a collective family, now broken by partition. So when that collective family was partitioned, did it amount to ruining the family? Certainly not. New families were built up based on a material basis. Collective family has a material basis with which to exploit the entire peasantry and other people and to acquire their property and get it under the collective family. It is with that purpose in view that collective family came into being. It is for the material aggrandisement of the family.

I will narrate you an example from my own area of Tranvancore-Cochin as well as Malabar. There is a Brahmin community called the Nambudiris, the priestly community, the so-called high priests, the highest rank in the Hindu society there. That is a collective family and they are governed by the Nambudiri Act. The collective family there is the 'Tharavad'. The head of the family is called the Karnavan of the family. He is allowed to marry not one but two. If he cares he can marry more. All members born of caste marriage are members of that family eligible for equal rights and privileges under the law. With or without dowry, Brahmin girls may be sent to, or taken from other families. With marriage they become members of the families

to which they were sent, and they cease to have any more rights in the families in which they were born. Generally, the Karnavan marries two women from two different families and those girls usually must be given dowry because they will have no more rights in the families in which they were born and the Karnavan accumulates that dowry and it is added to his property. Even if he has many sons only the eldest son has the right, according to the present law, to marry a girl from his own community, not the other sons. If there are, for example, three sons, A, B and C, in the order in which they were born, only A has the right to marry in his own caste, that is caste marriage, but B and C are never permitted to have caste marriages. The Karnavan would stoutly oppose if B and C wanted caste marriages. Thus the father forces all but his first son to content themselves with non-caste marriages from either a Kshatriya or a Nair family. This practice was going on there for centuries. What is the result? The children born of these fathers, B and C, to their Kshatriya or Nair wives have no right of inheritance to their fathers' property. The Karnavan would even induce all his sons other than his eldest son to go and get themselves maintained at the cost of those Kshatriya or Nair families and also get something for the joint family so that he could purchase another property. That is the custom. There is no provision for an ultimate partition at all. The persons affected cannot get the property partitioned at all. Only if he sues the Karnavan in a civil court, the civil court may, if the complaint was found to be reasonable, decide that he should be entitled to receive some income enough for his upkeep and maintenance in accordance with his status by ordering that certain properties be set apart for the purpose. But under no circumstances can he alienate or mortgage or receive in advance the rents of those properties.

1 P.M.

The allowance that is ordinarily given by the Karnavan is that in the case of the second son it will be a good amount and if he is the third son the amount will be less and so on. On the death of the recipient the properties as a whole again revert to the Karnavan and the money given as grants to the second, third and fourth sons, etc., will be stopped by the Karnavan although they might have left behind their wives and children.

What is this law, Sir? There the law gives no protection to the women and the law gives no protection to the child of a particular man who may belong to a Brahmin family but who might have happened to marry a woman of another caste. So this must be checked. Now, there is agitation going on among the Nambudiris who belong to the so-called collective family and they are demanding that there should be partition of the property of the collective family and the share of each should be given to him so that he can maintain his children and he can maintain his wife who at present if he dies become helpless. This clause 19 does not improve matters. The right of inheritance to children is not allowed by this clause to those cases to which I have referred as according to clause 19 a marriage solemnized under this Act of any member of an undivided family shall be deemed to effect his severance from such family. So, Sir, who is the guardian of the child—is it the mother or the father? So the guardianship is denied to the child that is born. The Nambudiri youths demand that they should be given their share of the property by partitioning the collective property. At the same time this clause 19 should be deleted.

That is the suggestion I am putting forth before the House, because you are not helping society to grow in a healthy atmosphere. You are only encouraging concubinage. If the marriage is to be a real marriage based

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on democratic principles the right of inheritance should be there. The wife should be allowed to inherit the husband's property; the husband should inherit the wife's property and the children of both must inherit the properties of the father and the mother. This system must be accepted and introduced in our society. It is very difficult in the present situation for those poor people who sometimes get into marriage under conditions of reciprocal love, and they would be put to a very great difficulty, and this clause which has, knowingly or unknowingly, got into this Bill is an impediment in the way of such civil marriages. So, that clause should be removed or amended in such a way as to give him the portion of the property that is due to him by partitioning the family property.

Secondly, there is this provision about divorce. Divorce is prohibited for the first three years. I do not understand why that clause should be brought in at all. It is unnecessary. Suppose, soon after the marriage the husband or the wife is found to be suffering from leprosy. Why should the Government want these people to wait for three years to sue for a divorce? There should be freedom of divorce. It is not correct to argue that if this freedom is given the society will be disrupted. Never, because when the freedom of marriage and freedom of divorce are granted, people who enter into such marriages will feel that they have their own responsibilities. And they are bound to be conscious of their responsibilities because they will have to support themselves. So, the individuals who enter into such marriages take all these into consideration perhaps more than those who are arbitrarily married into a union. What I am, therefore, suggesting is that the clause relating to divorce should be amended.

Now I come to the clause with, regard to imprisonment. This clause is directed against political prisoners who happen to be in jail. If a husband happens to be a political prisoner imprisoned for 10 or 12 years, his wife can sue him and get a divorce without his consent, simply for the reason that he has been in jail for three years. I know of a case where a person was sentenced for life imprisonment. That was in 1938. But after two or three years of jail life he was released by the Government. But before that his wife was told by her own people that he was not going to come back, that there was no use in remaining isolated and that she had better get remarried. She said 'No, I have lived as his wife all these years and I am going to remain like that. Even if he does not come out, I will die for the cause he is in jail.' But since the society is a feudal society based on the law of conservatism, that woman of 21 years was forced to remarry. And soon after, that is, six months or so after the remarriage, the first husband was let out of jail and the woman told her second husband, who was a good man, 'my first husband has come back. I have divorced him through no fault of mine. Please let me have a glance at him.' The first husband also was a good man. He realised the position and all the three shed tears together. That is the law working in the society. What I demand, therefore, is that this provision to get divorce on the ground of seven years' imprisonment should be deleted. That clause should not be there.

There are many other discrepancies in this Bill but I am not going to dilate upon those things. The chief defects of this Bill are contained in those three clauses and they should be deleted or amended in such a way as to make the Bill fully effective.

SHRI GOVINDA REDDY: Sir, I entirely agree with Prof. Wadia in considering that this Bill is definitely a progressive measure. Although I do agree with the hon. Mr. Madhava Menon that it is halting in many respects and although the hon. Shri

Lakshmi Menon does not think this is progressive, yet I feel that it is a liberalising measure and that as such it should be welcomed by all those who have progressive views. I do congratulate the hon. the Law Minister for piloting this Bill through a Select Committee where I guess there must have been much difficulty and I wish, Sir, that he should take the place of honour in the history of marriages by ceasing to insist upon objecting to some of the amendments which have been proposed here by many of the Members. As was pointed out, the very background of the Bill is emancipation, is liberalising, is transgressing the custom and freeing the people from dead customs. In this background, the Law Minister who is the father of this Bill should see that this process of liberalisation is facilitated at every step. Anybody who has followed the speech of hon. Dr. Kunzru and other members could see that there is no room for any objection against this Bill.

MR. DEPUTY CHAIRMAN: We will continue tomorrow. The House stands adjourned till 8-15 A.M. tomorrow morning.

The Council then adjourned till a quarter past eight of the clock on Tuesday, the 4th May 1954.