

[Secretary.]

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to the Council that the Council do join in the said Joint Committee and communicate to this House the names of members to be appointed by the Council to the Joint Committee."

PAPERS LAID ON THE TABLE

FINAL ORDER NO. 10 OF THE DELIMITATION COMMISSION, INDIA

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C C BISWAS): Sir, I beg to lay on the Table a copy of Final Order No. 10. made by the Delimitation Commission, India, under section 8 of the Delimitation Commission Act, 1952 (Placed in Library. See No. S-139/54.)

REPORT OF THE JUTE ENQUIRY COMMISSION, 1954

THE MINISTER FOR COMMERCE AND INDUSTRY (SHRI T. T. KRISHNAMACHARI): Mr. Chairman, I beg to lay on the Table a copy of the Report of the Jute Enquiry Commission, 1954. (Placed in Library. See No. S-140/54.)

THE SPECIAL MARRIAGE BILL, 1952—continued

SHRI GOVINDA REDDY (Mysore): Sir, when the House rose yesterday afternoon I was just saying that although very lucid speeches explaining the objects of the Bill and particularly how it was purely a voluntary and optional measure had been made in this House, still objections were raised to the Bill on the ground of religion and

particularly on the ground of custom. I fail to see how this measure could be objected to either on the ground of religion or on the ground of custom. Religion in my opinion is dynamic; it is never static. Religion develops our faiths and beliefs widen according to the changing times and according to the changing environments and social conditions. If religion should remain static then it can be presumed that there is something wrong with it. If religion is not conducive to social welfare at any point of time I am sure it will be departed from. Well, it is very interesting to see how people who do not want to encourage liberal measures make religion and custom a pretext to obstruct liberalisation of the measure.

For instance, let me take my own religion, Hinduism. I have yet to see, a religion which has a wider outlook and which has accommodated all conceivable circumstances, as Hinduism has done. In this connection, taking marriage into consideration, Hinduism has accommodated all conceivable forms of marriage. In fact, when we consider those forms of marriage that were in usage in ancient days, I consider this Bill of the Law Minister as a retrograde measure. He, at the close of this twentieth century wants, if a marriage is to be performed between two adults, a declaration to be made, notice to be given to the Marriage Officer, age to be certified by the parent or guardian and witnesses to be there and then some sort of undertaking to be given, all this sort of thing.

Well, in our ancient times we had the *gandharva* system of marriage where, without witnesses, with only God as witness, a man could take a woman for his wife. It might not have been countenanced during all the Vedic period, but, it was a form of marriage which was recognised. When we consider this form of marriage, should we not concede that the ancients were wiser than us and were more liberal than us? They considered that when social exigencies did demand freedom in marriage, it should be there:

Well, there was the system of *niyoga* marriage which was sanctioned and according to which marriages did take place. Of course, such form of marriage took place under very exceptional circumstances. By this system of marriage, when a brother is affected with an incurable loathsome disease and his line is going to be extinct or if he is absent for more than twelve years, another brother is permitted to marry his wife. Well, as things can be visualized, this must have been a very rare form of marriage. Then we have the *anuloma* marriage according to which higher caste people marry in lower castes and the *pratiloma* marriage according to which men belonging to lower castes marry in the higher castes. Then we had the *rakshasa* system of marriage where a man by sheer physical force married a woman. Even that was a type of marriage recognised although it was discountenanced.

Well, it is clear that it was very wise to have provided that way in those days when we consider to what level we have descended today on account of having rigid customs. We can appreciate the liberal outlook that prevailed in those days among our ancients.

Even taking Islam, Sir, it also does not prevent marriages from out of Islam. A woman, of course, in Islam is prohibited from marrying outside the Muslim community but a man is not prohibited from so marrying. He is only prohibited from marrying an idolatress, but he is not prohibited from marrying a *kitabia*, for instance, a Christian or a Jew. In fact marriages have taken place and Muslim men have married outside their community and all the same they have remained Muslims, respectable Muslims. I need not quote names here. Every Muslim and every Indian knows it.

SHRI RAJAGOPAL NAIDU (Madras): On his marriage what is the religion of the idolatress?

SHRI GOVINDA REDDY: Under Islam a Muslim is not permitted to marry an idolatress.

SHRI RAJAGOPAL NAIDU: If he marries what happens?

SHRI GOVINDA REDDY: There have been such marriages and they have still continued to remain as Muslims and nobody has taken exception to such a marriage. This Bill only %vant to extend it to all communities. When a Muslim man is permitted to marry outside his community now, instead of restricting it to *kitabias*, it may be extended very rightly to other communities as well, and when a man is permitted to marry outside his community, why should not a woman be married likewise? Now, our conception of woman has changed and the women themselves have changed their outlook and we have to adjust to the times. And I appreciate very highly the advice given in this connection by Prof. Wadia yesterday. In fact, he said, in the interests of the Muslim community itself, they should encourage marriages under this Bill. Well, we must have ventilation in religion, otherwise our religious chambers will be filled up with poisonous gases and if we do not have free ventilation, it may turn out to be fatal to the whole of us. So whether it is Islam or Hinduism or Christianity or any other religion, it must change as the social outlook of the people changes, as the habits of the people change and as the knowledge of the people is widened.

Custom has been made one of the grounds and custom, as we all know, is indefinable. It is never uniform. If there is a custom prevalent in the North, there will be a different custom altogether in the South in relation to marriage. And custom itself may be the result of the social problems that may be pressing upon society at a particular period of time. I may point out to this House one custom which may appear to us to be very strange but still it was there. It shows how customs do arise and what value we should attach to those customs. I am referring to the Namboodiris in the South. The Namboodiris are the Brahmin community in the South. Bhagwan Shankaracharya took his birth

[Shri Govinda Reddy.] in this community. Among the Nam-boodiris it was a custom that only the eldest member of the family should marry and the other members should not marry. Possibly this custom arose because women in that community were rare. We can quite see that.

MR. CHAIRMAN: Mrs. Lakshmi Menon questions.

SHRI GOVINDA REDDY: I am coming to that. The other members of the Namboodiri community could marry, but they could not marry in their own community, they married among the other classes. They devised other means for marriage; for facilitating the purpose of making women available to the unmarried Namboodiris; polyandry was encouraged. This custom did prevail—but I am glad that it is now fading out—for a long time. So, customs of this kind are there. Customs relating to marriage have cropped up in various ways. In my own community, women were rare about 30-40 years ago and women were not equal to the number of men so that whenever a bride was available there was very keen competition. In fact, about 30 years ago when a bridegroom had to be married in my community, his physical strength was tested just as in olden days physical contests were held to test their strength. And certain forms of meeting expenses and all that mainly by the bridegroom's party came into vogue. In other communities where women are more in number than the available number of men there was

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): May I ask, whether at this stage of the Bill all this is relevant?

SHRI GOVINDA REDDY: I may point out to the hon. the lady Member that I am speaking on customs as objection has been taken on the ground of custom. I am only trying to show to the House that custom should not be regarded as something static, as something that should come in the way of

a liberal measure like this. So in communities where there were more girls than boys, the system of dowry came into vogue and it has been the ruin of many Indians today. In the Hindu society if two persons get married their happiness will last till a girl is born to them and as long as she has not passed the age of 8.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS) : I If I may interrupt for one moment, the question of custom has been raised in the Bill not in connection with the general question of marriage but in relation to prohibited degrees. If there is customary variation of prohibited degrees, the question is whether that should be recognised, and that point has been dealt with in clauses 4 and 15.

DR. SHMMATI SEETA PARMANAND: Hear, hear.

SHRI GOVINDA REDDY: I may be permitted to point out to the hon. the Law Minister that I was not referring to the custom that has been referred to in the Bill, but I was referring to the objection taken to this Bill on the ground of custom.

I was saying that this dowry system, this *dahej* system, had come into existence because of that factor and my point was to show that what was advanced as a reason that there was a prevalent custom was not a sound argument against this Bill. That was all my point. You will bear with me when I say that what we have recognised as custom has led to much social evil. Two of the hon. Members, Mr. Mahanty and Janab Mohd. Ismail, have questioned whether the masses were ready for this liberal measure.

DR. P. C. MITRA (Bihar): May I know whether the practice of the majority is custom or not?

SHRI GOVINDA REDDY: The practice of the majority is custom but it is a tyranny which all reasonable people should prevent.

MR. CHAIRMAN: It is getting late. Go on.

SHRI GOVINDA REDDY: Yes, Sir, I will finish just now. I will only say a few words on the clauses.

MR. CHAIRMAN: You can do that when we discuss amendments.

SHRI GOVINDA REDDY: I will not repeat the arguments that have already been advanced. I was saying that this social evil had gone too far. If you ask a poor clerk who gets Rs. 100 or Rs. 150 as to why he takes bribe and other illegal gratification, he says, 'I have two daughters to marry off and each daughter requires Rs. 5,000. What can I do?' Such evils have cropped up. People who make custom a pretext for everything must try to examine and see whether our society is not being ruined by these deag,customs. whether the society is not groaning under the crushing weight of custom and whether it is not time for us to bid good bye to customs. If people are now for economic freedom, they will cry from the housetops that they are sick of these customs.

Now, I will come to the two or three points which are most important and in discussing these points I will not repeat the arguments that have been already advanced. One is about the much debated clause 19. It has been pointed out that it is quite unnecessary. In my own opinion I think it has been put here because perhaps the framers of the Bill wanted to make a concession to the orthodox sections. I would like to give a clue to the hon. the Law Minister: "Do not try to give concessions to the orthodox sections." When you begin to ask them, they will grow big and assume importance and will try to put all sorts of arguments, but if you do without consulting them they would not mind it at all. They will say, "All right go ahead". Then I want to know, how, in spite of the preponderating opinion of lawyers and judges that this clause should go, the Law Minister can maintain that this should remain. I have examined four sets of opinions

that have been furnished to us, and among them there have been numerous Bar Associations—some 50—District Judges and High Court Judges—I have a list of them here—and there have been a number of advocates who have all said that this clause 19 should go and that it is not necessary.

SHRI RAJAGOPAL NAIDU: The hon. the Law Minister was also of the same opinion when he moved the motion for reference to the Select Committee.

SHRI GOVINDA REDDY: I will read out the names of the judges.

MR. CHAIRMAN: It is not necessary. We all know—very respectable judges.

SHRI GOVINDA REDDY: Then, here is the Bombay Government. Of course, the Bombay Government is not wholly for it but it wants it to be modified. West Bengal is for removing it altogether; the Punjab Government is wholly for it.

SHRI C. C. BISWAS: I pointed out all that in an earlier speech.

SHRI GOVINDA REDDY: The Madras Government wants to make it optional. District and Sessions Judges who have been administering law for a long time have all said—there are about 40 to 50 of them in the list—that this clause should go. May I ask what is the point in retaining this ' clause? It does not serve any purpose. A partition may be enforced as the hon. Minister himself said by any member of the joint family expressing a wish to separate if his brother marries outside his community. In clauses 20 and 21 it has been said that it is the law of succession that will govern. If the law of succession is to govern even if he should remain in the joint family, then nobody is affected as the Indian Succession Act will come into operation. What is the purpose that this clause serves then?

I come to the question of divorce. I agree with my hon. friend Shri K. S.

[Shri Govinda Reddy.] Hegde. He said that when we had decided that two adults could marry it should also be made available that if they wanted to divorce, they should be free to do so. I am against this condition of three years. It is very restrictive. As we all know, when people marry, if at all any differences crop up between them it is only in the beginning not after a long time. If they discover that their temperaments are not suited to each other or one has weakness which cannot be concealed or something like that, that will be discovered soon after the marriage. The provision here is that they can present a petition only after three years from the date the marriage is registered. I feel that if they can pull on for three years, I am sure they will be able to pull on for the whole of their life-time. If divorce is to be provided at all, it should be provided without any restriction. There should be no time restriction. Of course, I am for retaining that clause but a provision should be added that whenever a divorce petition is presented, the Marriage Officer should be entitled to register it.

Then, comes the much-debated question of the schedule. Well, it has been pointed out that the degrees of prohibited relationship in the schedule should not be there and I have given an amendment to that effect. In the South there are communities which marry within these prohibited degrees. In fact, my community is one such. In my community we have certain right of preference. If my sister has to marry her daughter and if there is an unmarried brother remaining, she must first offer her unmarried daughter to him. That is the custom in that part of the country. When 80 per cent, of the people come under these prohibited degrees and marry, and when they are used to marrying under these prohibited relationships and when there is nothing wrong, why should we impose this prohibition and keep them out of the field? It will then mean that this Bill will be open only to the remaining 10 or 15 per cent, of the people.

Then, there are biological reasons, as my hon. friend stated. I have some experience of men marrying their nieces. I have never come across any deformity either of body or of mind in the progeny. I have seen them quite normal, just like any other children. Therefore, I think it would be wise for the hon. the Law Minister to drop out this schedule and have some other clause. Anyhow, he should drop out such ridiculous things as a man marrying his father's widow, his mother and such other things.

- Under clause 17, only 15 days are provided for appeals from orders under section 16. This, in my opinion, is too short a time. One of the parties may be ill, or the parties may be prevented from filing an appeal. I suggest at least 30 days' time should be given for filing an appeal.

SHRIMATI PARVATHI KRISHNAN (Madras): Mr. Chairman, I wish to deal only with some general aspects of this Bill and not to go into any of the details because from the list of amendments that have been given notice of it is clear that there will be sufficient time for expressing one's opinion on the various clauses in the Bill. Before I proceed, I would like first to draw your attention to a rather astounding remark that was made on the floor of this House. The remark by one of the hon. Members is that in his opinion this Bill is really providing certain rights for abnormal cases, making provision for cases of what he termed aberration. He is a person of certain standing in the State that I come from. He has been a Minister for many years and it is in all humility that I beg to point out that far from being a Bill providing certain rights for cases of aberration or for abnormal cases, it is really a Bill, in my opinion, which is one step forward towards a national civil code. It is certainly not aberration, if a woman wants to have equal rights in marriage; it is not abnormal if the women in our country demand that they should be emancipated. It means that all those pledges, all those promises

that were put before them by the leaders of the Indian National Congress are now being fulfilled, are now being brought into law. It is amazing that these claims of the women of our country can be termed as an aberration, can be termed as cases of abnormality.

Even more amazing is it that a Member from the province which gave to India Shri Raja Ram Mohan Roy who fought for the welfare of women—it is astounding that an hon. Member from that province—should lend himself to the same amazing reactionary opinion. (*Hear., hear.*) For once, I speak on behalf not only of this side of the House but of all the hon. lady Members who happen to be on the opposite side also.

AN HON. MEMBER: If they are prepared to accept.

SHRIMATI PARVATHI KRISHNAN: I can see they are willing to accept from the expression on their face.

MR. CHAIRMAN: What the hon. Member said was that routine marriages were normal; romantic marriages were different.

SHRIMATI PARVATHI KRISHNAN: Be that as it may, Sir, the arguments that they put forward were certainly not in regard to romantic or routine marriages. The arguments that some of the hon. Members were brave enough to put forward were from those who were bold enough to go outside the narrow confines of a particular sect, the narrow confines of a particular religion which are not mental aberrations, which are not abnormalities. And, I wish to record my protest against such an opinion and to maintain that this measure, however halting it might be, however limited it might be, is certainly one, that is welcome to the women in this country.

DR. RADHA KUMUD MOOKERJI (Nominated): My point was that there was no demand for it.

MR. CHAIRMAN: What do you know? (*Laughter.*)

SHRIMATI PARVATHI KRISHNAN: Ever since the birth of the national movement in this country our women have been educated to emancipation; that is, they have been educated to the idea of being free from social and feudal ties. On every platform people were propagating women's right to divorce, their right to equality in other respects, and these have been carried out with blessings, at times perhaps unwilling, and inspiration from the leaders of the national movement; and, naturally today in this country, after many years of struggling against foreign domination, against the social and feudal bondage that resulted therefrom, there is a widespread demand for reform of every kind, particularly for complete emancipation of our women. One of the hon. Members who spoke yesterday said that time was an important factor; time was very valuable and, in his learned opinion, time was being wasted on this subject because there was no demand for such a measure and because it was only in the minds of the Government to bring this measure in order to foist on the people an appearance of dealing with something that was important, while really we were having more important things to take up. I certainly have not stood up here in order to make a suffragist speech or as an ardent feminist, but I would beg to submit most humbly that the time that is being spent here in discussing this Bill is certainly not wasted, because the measure that is before us is a far-reaching measure, and it is a measure that is to provide certain rights for men and women in our country.

We know that there are three things that are very necessary for a nation to be happy. And if a nation is to progress, it must indeed be happy. Firstly, the men and women of our country must be happy and must be contented. It is not merely a question of giving them sufficient material well-being; it is not merely a question of dealing

[Shrimati Parvathi Krishnan.] with economic problems alone, but side by side with the economic problems there are also social problems to be tackled, also social problems to be solved. Secondly, in no country you will find a happy and a united people, in no country you can guarantee progress, unless the rights of motherhood are protected, so that one can be ensured that the nation will be blessed with happy, healthy and intelligent children. So long as the women-folk are held back by social and feudal ties, so long as the right of motherhood is not recognised as one of the basic rights of women in any country, you cannot ensure a generation in the future which will carry forward all the glorious ideals that have been held up before our people for complete emancipation and for real progress in today's social conditions. And lastly, one must realise that with changing conditions laws and regulations will also have to be changed. In so doing, obviously we do not want to go against the personal feelings or against the personal beliefs of the citizens of a State. But at the same time, as society progresses, we will have to look forward, we will have to change our laws and our regulations in order to keep pace with the progress of mankind.

Let us not look only within the narrow confines of our country. Today, internationalism is on the front page of history. And if we are to be true to our country, if we are to be true to the ideals of our great nation, then we will have to keep pace with all the other countries in the world which are progressing. And we should not look backward; we should not, so to say, look to the old superstitions, to old feudal ties, to old social ties, but be bold enough to take a forward step and educate the people of our country step by step, so that they may also keep pace with the other countries in the world. And that is why I welcome this Bill, because for the first time equal rights in marriage are being granted. Whereas in the earlier legislations that have been passed

there have been various restrictions or various drawbacks, today, in this Special Marriage Bill, we find for the first time equal rights in marriage. Previously, one had to give up one's religion or one had to declare that one had given up his religion in order to marry someone from a different community or in order to have a civil marriage. Today that is not necessary. Two people belonging to different religions, without eschewing their religious beliefs, can yet marry under this law, and men and women can have equal rights for themselves. This is an important feature, and one should certainly welcome it. In spite of the halting measure that is before us, this very basic and very important feature of it must be recognised, must be welcomed. Any law referring to marriage should certainly be conducive to enable the men and women of our country to lead a life of happy and permanent association.

On the floor of this House varied opinions have been put forward for divorce and against divorce. And I would like to state my emphatic opinion that I am happy indeed that the right of divorce is now being granted equally to men and to women. It is not that I advocate the breaking up of marriages. Far from it, the right of divorce is necessary to provide a sound and a more firm basis for marriages under this law. When such a provision is there, one can be sure that mutual respect and conscious efforts on the part of both, husband and wife, to continue their life together will be possible. It makes all the difference when the wife knows that she is not forced to live with her husband, but it is a matter of her own adjustment. It makes all the difference psychologically. At the same time it has indeed been one of the key problems before the women's movement in this country to fight for this equal right, because we know that it has been very easy in this country for the men-folk to discard their wives for one reason or another. Cases are there which can be enumerated in millions where husbands have

discarded their wives either because there is no son to inherit the property or because he feels that his wife is not fashionable enough, and now that he has become a leading official in the Government and has to entertain people, it is far better that he should marry somebody educated, somebody forward, and so on. The reasons are multifarious; the cases are without number. But today by this Bill women now will have a safeguard against such discrimination. A woman now in our country will be able to say, "All right, if you want to have a fashionable wife, walk out of the house and have your fashionable wife, and I will also be free to follow my own life in future without being tied by social and feudal ties; I will also be able to look forward to a life perhaps with somebody who would be a real companion and not just a master in the house who wishes me to have his boots polished, to have his clothes ironed and so on."

SHRI K. B. LALL (Bihar): But what will be the fate of the wife if she is ugly?

SHRIMATI PARVATHI KRISHNAN: For that we need a definition. We cannot find it in the dictionary.

DR. SHRIMATI SEETA PARMANAND: Perhaps there are some men who can admire brains also.

SHRIMATI PARVATHI KRISHNAN: You have just stolen the words out of my mouth.

MR. CHAIRMAN: Yes, yes.

SHRIMATI PARVATHI KRISHNAN: I do not think we are here to discuss that problem. And further, the right of divorce is also a guarantee that children will not be forced to lead a life of misery. Many are the cases in this country and in many other countries where, because of social and feudal ties, because it is not possible for husband and wife to separate as friends—they are forced to live as enemies—the children are faced with a life of hardship and a life of cruelty. Only last week, when the Children Bill

was being discussed in this House many of us who have had experience of juvenile courts, spoke on juvenile delinquency. It is my firm opinion that if men and women are given this right to form an association based on mutual respect, and are also given the right to separate if temperamentally or for other reasons they are not able to live together, we can rest assured that the children will be assured a happy life, and they will not have to live with the father and the mother who fight like a cat and a dog and quarrel from morning till night due to differences about sugar in coffee and salt in tea. They will have the assurance that they can live with one or the other parent and live a happy life divorced from mental hardships and mental cruelty.

Therefore, when looking at this right of divorce, one must remember the children, the future generation, for whom we have claimed and are claiming to strive, and who will be inheritors of a nation that should be free of all religious, social and feudal ties which have held our country back for so many long years.

SHRI J. S. BISHT (Uttar Pradesh): What are the feudal ties in marriage?

SHRIMATI PARVATHI KRISHNAN: They have already been referred to. I have referred to a particular one and that is that in our society today it is the women who have been held down and who are unable to free themselves from the social ties of marriage, because of the old feudal outlook with regard to marriage.

Next, I would like to refer particularly to the schedule. I associate myself with the opinion which maintains that this schedule is really unnecessary and that many of the relationships mentioned in this schedule are really amazing; it is surprising that they should have been mentioned. In connection with this, I would like to draw attention to the Mar-

[Shrimati Parvathi Krishnan.] riage Law of the People's Republic of China, because I feel that it would be beneficial for the Members of this House if I read out a particular reference there in regard to the instances under which men and women can marry. It says:

"No man or woman in any of the following instances shall be allowed to marry: —

(a) where the man and woman are lineal relatives by blood or where the man and woman are brother and sister born of same parents or where the man and the woman are half-brother and half-sister. The question of prohibiting marriage between collateral relatives by blood within the fifth degree of relationship is to be determined by custom;

(b) where one party, because of certain physical defects, is sexually impotent;

(c) where one party is suffering from-venereal disease, mental disorder, leprosy or any other disease which is regarded by medical science as rendering the person unfit for marriage."

This is article 5 of the Marriage Law of the People's Republic of China, and I feel that sub-section (a) is sufficient to cover the Schedule that has been given in this Bill without having to detail the various "mother's mother's", "father's father's", "grandfather's mother's", and so on.

Lastly, I would like to draw attention to one particular point and that is the restriction on divorce. Once the right of divorce is recognised, I fail to understand why any restriction should be placed upon it. As I said earlier, I look upon the right of divorce as a right to be given in

order to ensure that people will not be forced to live together if they find that for some reason or the other, they are unable to pull on. Once the right is granted, I fail to see why we should attach to it certain provisions which make it a very halfhearted measure. Once the right is recognised and once the right is granted, I feel that the right of divorce should be absolute without any strings attached to it. Society will have to exert its pressure upon the husband and wife and try to arbitrate to bring them together again. If that is not possible, they should certainly be allowed to divorce each other. Why this three year limit? Why do you want the man and woman to put up with three years' misery if they want to separate much earlier than that? Why not leave it to them to decide when and why they should separate? There is always the danger of children. If the husband or the wife discovers early enough that they are not suited to each other, why do you compel them to live together? Once again, there is the problem of children. Why not give the absolute right of divorce without this restriction? The only restriction that I would like to suggest is that no husband should be allowed to bring in any petition for divorce while his wife is expecting, because we know that the strain of such a thing is not normal, and we also know that the expectant mother should be provided with happy surroundings, should be free from all worry, if her child is to be a healthy one and if she is to have a happy time as a mother. Therefore, this is the only restriction that I would like to put forward' before the House for its consideration. The only restriction that I would request the hon. the Law Minister to include in the Bill is the restriction that no husband should be allowed to file a petition for divorce while his wife is expecting, because this is one of the things necessary to ensure a happy child and to ensure a happy motherhood.

Concluding, I would like once again to request hon. Members to judge all measures by certain standards. In this case, the most important standard is that every country must have laws that will conform to its particular conditions, that will satisfy the needs of its people generally and at the same time help to advance the well-being and the development of the entire nation. Claiming to be a secular State, it is indeed very important that a measure like this should be passed, that we should go step by step forward towards finally establishing a truly secular State. Claiming to have equal rights for men and women in this country, it is very necessary that a measure like this should be passed in order to ensure that men and women in our country enjoy equal rights in marriage. With these few words, I would like to extend my support to this Bill.

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRIMATI MAYA DEVI CHETTRY
<West Bengal):

श्रीमती मायादेवी छत्री (पश्चिमी बंगाल):
उपाध्यक्ष महोदय, आज इतने दिनों से इस हाउस (House) में विशेष विवाह विधेयक पर बहस चल रही है और इस सम्बन्ध में आलोचनाएँ भी बहुत ऊँचे दर्जे की हो रही हैं। इस बिल (Bill) को इस सदन में लाने के लिये मैं माननीय ला-मिनिस्टर (Law Minister) साहब को धन्यवाद देती हूँ और साथ ही साथ सेलेक्ट कमेटी (Select Committee) के मंत्रियों को भी धन्यवाद देती हूँ। पर मुझे दुःख के साथ कहना पड़ता है कि सेलेक्ट कमेटी इतनी सittings करके भी इस सम्बन्ध में अभी तक किसी निश्चित फैसले पर नहीं पहुँच सकी और उसके मंत्री यहाँ आकर डिबेट (debate) में भाग ले रहे हैं। जब सेलेक्ट कमेटी के

मंत्रियों ने बहस में भाग ही लेना था तो उन्होंने इतना समय क्यों नष्ट किया ?

अब मैं धर्म के सम्बन्ध में, जिसका इस बिल से सम्बन्ध है कुछ कहना चाहूँगी। जब एक लड़का, चाहे वह हिन्दू हो या मुसलमान हो, किसी अन्य धर्म की लड़की से शादी करता है तो वे दोनों अपने अपने धर्म में बैठ जाते हैं, यह ठीक है। किन्तु यह अनुचित बात है कि जब एक हिन्दू लड़का एक मुसलमान लड़की से शादी करता है और उसे अपने घर में ले आता है तो वह चाहता है कि लड़की हिन्दू धर्म का अपनाएँ और लड़की चाहती है कि लड़का मुसलमान धर्म का अपनाएँ। इस तरह से आहिस्ता-तः शादी के दो चार दिन बाद तीन चार महीने बाद, उनके दिलों में असंतोष की भावना पैदा हो जाती है और उनका आपस में मोह, प्रेम फीका पड़ने लगता है। उन दोनों में आपस में अशान्ति होने लगती है कि हमने इस एक्ट (Act) के माबहत क्यों शादी की और अपनी जिन्दगी को क्यों बर्बाद किया। वे यह सोचने लगते हैं कि किस तरह से डर्टिवोर्स (divorce) करें और इसी के फेर में लग जाते हैं। इसीलिये ऐसी अशान्ति पैदा होने के बाद फिर उनके बच्चे हो जायें, सन्तान हो जाय तो और भी डिफिकल्टीज (Difficulties) एराइज (arise) हो जाती हैं। हमारे समाज में जो बच्चा पैदा होता है, संतान पैदा होती है तो यदि वह लड़का है तो पति चाहता है कि अपने लड़के का नाम राम रखें और पत्नी चाहती है कि उसका नाम रहमान रखा जाय। तो इसी राम और रहमान नाम के पीछे झगड़ा शुरू हो जाता है, पति कहता है तुम्हारे धर्म से मिलता जुलता नाम क्यों रखें और पत्नी कहती है तुम्हारे धर्म का नाम क्यों रखें। पति कहता है यह तो मेरी संतान है, इसमें मेरा रक्त है, मेरा ब्लड (blood) है, इसीलिये मैं इसका नाम राम रखता हूँ। इस तरह आहिस्ता आहिस्ता दोनों में जो मनमुटाव शुरू हो ही रहा था अब और ज्यादा शुरू होने लगेगा। अब जब वह बच्चा धीरे-धीरे बड़ा होने लगेगा और थोड़ी अक्ल आने लगेगी तो माता पिता

[Shrimati Maya Devi Chetty.]

उसको स्कूल में भर्ती करने के लिये ले जायेंगे। वहाँ भी माता चाहेगी कि बच्चे का नाम रहमान लिखवाया जाय और पिता चाहेगा कि नहीं, उसका नाम राम लिखवाया जाय। इस तरह के झगड़ें दोनों में दिन-प्रति-दिन बढ़ते ही रहेंगे। बड़ा होना पर बच्चे का कितना धक्का लगेगा यह सोच कर कि किस नाम से उसको पुकारा जाय। स्कूल के साथी भी उससे पूछेंगे कि तुम कॉन हो, तुम्हारा क्या नाम है, तुम्हारे पिता का क्या नाम है।

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Bharat):

श्री गांधीकृष्ण विजयवर्गीय (मध्य भारत):
आप तां बिल के खिलाफ बोल रही हैं ?

SHRIMATI MAYA DEVI CHETTRY:

श्रीमती माया देवी छेत्री : अंत में समर्थन तो करना ही होगा। हम लोग बड़ी बड़ी आलोचना करके इतने ऊंचे स्तर पर बहस को उठा ले गए हैं कि बीच में एक वैक्यूम (vacuum) पैदा कर रहे हैं। आप लोगों को चाहिये कि इस बिल की फाउंडेशन (foundation) ठीक करें और इसे फिर रीड्राफ्ट (redraft) करें। हमारा समाज अन्य देशों के समाज की तरह नहीं है। अन्य विदेशों के नमूने देख करके हमारे हाउस में भी मेम्बरों ने नमूने पेश किये हैं जिनकी आवश्यकता हमारे हिन्दुस्तान में नहीं है। हमारे हिन्दुस्तान का आदर्श, हमारे हिन्दुस्तान की इज्जत और उसकी यूनिटी (unity) की ओर आज सब मुल्क देख रहे हैं और उसकी सम्यता को, आदर्श को सीख रहे हैं। आज हमारे देश की औरतें राष्ट्रीय स्तर में ख्याति पा रही हैं। इसी तरह आफिसों में नौकरी-वाकरी के कामों में और दूसरी दूसरी जगहों में औरतें आगे बढ़ रही हैं, क्या राजनीति में, क्या शिक्षा में, सब दिशा में वे आगे चल रही हैं। आज हमारे गुणों को अन्य देश भी अपना रहे हैं। तो आज हम एक दिन के भीतर अपने आईन को, अपने नियम को और अपनी रीति को एकदम से बदल देना चाहते हैं। जिस

तरह से हम लोग स्टेप बाई स्टेप (step by step) आहिस्ता आहिस्ता आगे बढ़ते जाते हैं उसी तरह से हमारा आईन भी परिवर्तित होना चाहिये। हम यह नहीं चाहते कि हम हजारों वर्ष पीछे रह जायें, सीता और सावित्री के जमाने में रह जायें। समय के अनुसार हम लोगों को अपना आईन भी आगे बढ़ाना चाहिये। पर वह भी नहीं होना चाहिये कि हम लोग यहां आईन पास करें और कल समाज में और अपनी साधारण जनता के आगे गिर जायें। आज हम पॉलीटिशियन्स (politicians) हो कर के यहां सेंटर (centre) में, केंद्र में, चुन कर आए हैं और अपना मनमाना आईन बना रहे हैं। इस कानून से किसको ज्यादा धक्का पहुंचेगा यह न सोच करके अपना मनमाना कानून बना रहे हैं। कितने पॉलीटिशियन्स हैं जो केंद्र में, हजारों भारतवासियों का प्रतिनिधित्व कर के आए हैं और अपने मुल्क का आईन बना रहे हैं। आप लोगों को आईन बनाने से पहले जनसाधारण लोगों के जो नियम हैं, रीति हैं, रहन-सहन हैं और उन लोगों के मन में क्या विकास हो रहा है, इन सब चीजों को देखना चाहिये। और समझना चाहिये कि उनके ऊपर उसका क्या प्रभाव पड़ेगा। मेरे कहने का मतलब यह है कि आहिस्ता आहिस्ता हम सब लोग आगे बढ़ें तो अच्छा होगा और एक ही बार में इतने ऊपर उठने की कोशिश नहीं करनी चाहिये।

इसी लिये हम चाहते हैं कि अगर एक धर्म वाला दूसरे धर्म वाले के साथ शादी करे तो यह नियम होना चाहिये कि स्त्री उसी धर्म को मानेगी जो कि उसके पति का धर्म है क्योंकि किसी भी कम्युनिटी (community) में आप देख लीजिये, पति के धर्म के नाम पर ही स्त्री का धर्म माना जाता है। इसीलिये जैसा साधारण विवाह में होता है उसी तरह इस स्पेशल (Special) एक्ट (Act) में भी यह नियम रखा जाय कि स्त्री को अपने पति का ही धर्म अपनाना होगा। ऐसा करने से परिवार में बाद को किसी तरह की अनहैप्पीनेस (unhappiness) या गोलमाल नहीं

रहेगा। साधारण प्रकार के झगड़े तो जीवन में होते ही रहते हैं। परिवार के अन्दर मां-बाप, लड़के-लड़कियाँ, बाल-बच्चों में गोलमाल होना तो एक स्वाभाविक बात है। यदि ऐसी साधारण बातों को लेकर डाइवोर्स (divorce) करना चाहे तो ऐसे आदमी कभी भी सुखी नहीं हो सकते। तो हमें यह चीज निश्चित करनी है कि इस बिल के मुताबिक दो अलग धर्म वाले शादी करते हैं तो फिर स्त्री का धर्म पति का ही धर्म हो, यह बात यहाँ स्पष्ट रूप से होनी चाहिये।

हमारे देश के धर्म में संतान का क्या आदर्श है? हमारे यहाँ पशुओं की तरह यह तो नहीं है कि जो भी माता हो, जो भी पिता हो। और संतान भी न तो धर्म, न तो जाति और न तो जातीयता का गौरव रखने वाली एक अजीब किस्म की हो। हमें अपने संतान द्वारा एक सोसायटी (society) का निर्माण करना है और उसके द्वारा भारत का निर्माण करना है। हम ऐसा भी नहीं चाहते कि हमारे यहाँ कोई ऐसी संतान हो जिसके बाप का पता नहीं, जिसकी मां का पता नहीं और जिसके धर्म का भी पता नहीं। अगर हम इस तरह के लोगों की एक अलग सोसायटी बनायें या कोई अलग क्लास (class) बनायें तो फिर आदिस्ता आदिस्ता उनका भी एक अच्छा खासा जमघट हो जायगा। आज हम जो आर्देन बना रहे हैं वह मनुष्य के लिये बना रहे हैं। पर हमारा जो आर्देन है वह ऐसा कम्प्लीकेटेड (complicated) है कि हमें संदेह होता है कि इसको पास करके हम लोग समाज का कितना कल्याण कर सकते हैं। इसलिये मेरा यही अनुरोध है कि बच्चे के रिजिजन को भी पिता का ही रिजिजन मानें और जो पत्नी है वह भी अपने पति का ही धर्म मानें। यह नहीं होना चाहिये कि अगर लड़की होगी तो मां का धर्म मानेगी और लड़का होगा तो बाप का धर्म मानेगा। यह कैसे हो सकता है जब कि एक संतान में एक भाई और एक बहिन हैं तो भाई बोलें कि मेरा नाम और मेरा धर्म यह है और लड़की बोलें कि मेरा

नाम यह है, मेरा धर्म यह है। इसलिये लड़का हो या लड़की, दोनों का धर्म वही होना चाहिये जो कि पिता का है। इस बिल में यह चीज लाने से आगे पैदा होने वाला गोलमाल और असन्तोष मिट जायगा क्योंकि शादी करने से पहले स्त्री और पुरुष दोनों को मालूम होगा कि स्त्री का धर्म वही होगा जो पति का है और उनसे जो संतान पैदा होगी वह भी पिता का धर्म मानेगी अगर किसी औरत को शादी करने से पहले यह शर्त पसन्द हो तभी अदालत उसकी स्वीकृति देगी।

क्लाज (Clause) ४ में उम्र के बारे में लिखा है। आप लोगों ने इसमें १५ वर्ष की उम्र लिखी है। मेरी समझ में नहीं आता कि १५ वर्ष के बच्चे इस बिल के अनुसार कैसे शादी कर सकेंगे और अपना भार स्वयं उठा सकेंगे। जो १५ वर्ष का बच्चा होता है उसके दिमाग में यह बात कैसे हो सकती है कि शादी करके एक समाज बनायेंगे और अपना घरबार तैयार करेंगे। १५ वर्ष के लड़के और लड़की तो पढ़ने वाले और दूध पीने वाले होते हैं। मेरा कहना है कि ऐसे बच्चों को इस बिल के अनुसार विवाह नहीं करना चाहिये, ऐसे लोगों को विवाह करने के लिये कोर्ट (court) को इजाजत नहीं देनी चाहिये। जब लड़की २० वर्ष की हो जाती है और लड़का २५ वर्ष का हो जाता है तब ही इस बिल के अनुसार शादी कर सकें नहीं तो साधारण रीति से जैसे कि माता पिता १५ वर्ष में या १५ वर्ष में करते हैं, उसी तरह करते हों। परन्तु इस बिल के अनुसार शादी तब हो जब लड़की २० वर्ष की हो और लड़का २५ वर्ष का हो ताकि उनको पूरी तरह से मालूम रहे कि इस बिल से शादी करने के बाद उनकी समाज में क्या स्थिति होगी और फॅमिली (family) में क्या परिणाम होगा। इस बिल के अनुसार १५ वर्ष की उम्र में शादी करना, मेरी समझ में एकदम ही अनुचित है।

दूसरी बात इसमें पैतृक सम्पत्ति के बारे में है। अगर कोई लड़का विदेश में पढ़ने के लिये गया और वहाँ से एक मंम ले आया और इस

[Shrimati Maya Devi Chettry.]

बिल के अनुसार शादी कर ली तो अगर फौमली के जां मंम्बर्स हैं वं राजी हैं तो फिर आप इस बिल में यह क्यों रखते हैं कि वह पतूक सम्पत्ति से वींचत हैं ? आप जबरदस्ती उसको पतूक सम्पत्ति से क्यों वींचत करते हैं ? यह बात इसमें नहीं होनी चाहिये । अगर पिता या पिता के पिता अपनी संतान से राजी न हों तो वह एक कांडी भी नहीं दंगे और घर से बाहर निकाल दंगे परन्तु जब वह लोग राजी हैं तो फिर यह कानून क्यों बना रहे हैं कि उसको पतूक सम्पत्ति नहीं मिलनी चाहिये जां कि उसको साधारण स्थिति में मिलती हैं । इस बिल के अनुसार शादी करने के बाद भी अगर परिवार वाले खुश हैं और घर में रखने के लिये तैयार हैं तो उसको वह पूरा हक मिलना चाहिये जितना कि दूसरे भाइयों को मिलता है और जो के उसे साधारण स्थिति में मिलता है ।

इसमें मेन्टेनंस (maintenance) के बारे में भी कहा गया है । जब पति अपनी स्त्री को त्याग देता है तो उसको मेन्टेनंस एलाउंस देना पड़ेगा । इसमें यह होगा कि जब पति को मालूम होगा कि इस बिल के अनुसार शादी करने से हमारे सम्मान में धक्का लग रहा है तो वह रोज बरोज झगड़ा करेगा और यह कोशिश करेगा कि स्त्री खुद ही इस्तीफा दे दे कि मैं इस तरह के हसबैंड (husband) को नहीं चाहती हूँ । तो ऐसी हालत में हसबैंड को छोड़ नहीं देना चाहिये । जितने दिन तक वह स्त्री धर्म में रहती है, किसी दूसरे से शादी नहीं करती है उतने दिन तक उसके लिये और शादी से जो संतान हुई है उसके लिये पूरा पूरा खर्च हसबैंड को देना चाहिये नहीं तो यह होगा कि लोग इस तरह शादी करेंगे और दो या तीन वर्ष के बाद किसी न किसी तरह से झूठा नाम करके छोड़ देंगे और फिर दूसरे से शादी कर लेंगे । इस तरह तो समाज में बहुत गड़बड़ी हो जायगी । हम जो समाज को ले कर आगे बढ़ना चाहते हैं, भारतवर्ष को एक नया रूप और रंग देना चाहते हैं उसी समाज में अगर ऐसी अशान्ति पैदा कर देंगे

तो फिर किस तरह से एक होकर और यूनाइटेड (united) हो कर आगे बढ़ सकेंगे । तो श्री कन्हैयालाल डी० वैया (मध्य भारत) : ऐसी शादी नहीं हो सकती है । ऐसा कानून में है कि १५ दिन में बम्बई जा कर शादी नहीं कर सकता है ।

हो उतने दिन तक अपनी माता के साथ रहें लेकिन जब वे बालिग हो जायें तो यदि माता की राय हो तो पिता के साथ उनको रहना चाहिये । अगर ऐसा नहीं होता है तो पिता बिल्कुल फ्री (free) हो जायेंगे और दूसरी और तीसरी शादी करते करते मनुष्य के रूप में नहीं रह जायेंगे । इसीलिये ऐसा होना चाहिये कि पुरुष जब स्त्री को डाईवॉर्स कर देगा तब भी वह फ्री नहीं रह सकता है ।

इसमें यह है कि अगर शादी के लिये १४ दिन का नोटिस (notice) देता है तो १४ दिन के बाद शादी कर सकता है । तो अगर कोई यहां दिल्ली में रहता है, वह बम्बई चला जाय और बम्बई जा कर १५ दिन का या १४ दिन का नोटिस देकर शादी कर ले तो उसको कौन रोक सकता है ? वहां किसी को पता भी नहीं होगा कि यह आदमी अपने धर्म के अनुसार दूसरी शादी कर चुका है या नहीं, क्योंकि कोई जान पहचान वाला वहां होगा नहीं, १४ या १५ दिन रहने वाले के बारे में किसको क्या पता हो सकता है । इसीलिये हमारी राय है कि नोटिस का पीरियड (period) कम से कम एक महीना होना चाहिये । अगर ऐसा नहीं हो तो लड़के और लड़की को अपने स्थान पर आ कर शादी करनी चाहिये ।

SHRI KANHAIYALAL D. VAIDYA
(Madhya Bharat):

MR. DEPUTY CHAIRMAN: Mr. Vaidya, you should speak to the hon. Member through the Chair.

SHRIMATI MAYA DEVI CHETTRY:

श्रीमती मायादेवी छेत्री : अब चैप्टर ६ (Chapter VI) में चैस्टटी (chastity) की बात है। जितने दिन तक वाइफ (wife) चैस्टटी में रहती है उतने दिन तक डाइवॉस करन के बाद हसबैंड मॅनटॅनॅस एलाउंस देगा। तो मेरा कहना है कि पुरुष लोग सदा इस कोशिश में रहेंगे कि कोई एंसी तरकीब निकालें कि इसको एलाउंस देना बन्द हो जाय। हमारी भारतीय सभ्यता में जो कि अभी भी चल रही है उसमें यदि एक स्त्री दूसरे पुरुष के साथ कहीं बात करती हुई देखी जाय या उसके घर में ज्यादा आते जाते देखी जाय तो भी उसकी चैस्टटी नहीं रहती है। तो एंसी हालत में कभी भी पुरुष यह क्लेम claim कर सकता है कि हमारी स्त्री चैस्टटी में नहीं रहती है इसीलिये एलाउंस देना बन्द। एंसी बात नहीं होनी चाहिये। चैस्टटी की बात यहां से उठा देनी चाहिये। जब तक वह दूसरे के साथ शादी न करे तब तक उसको एलाउंस दिया जाना चाहिये।

अब जो आब्जेक्शन (objection) करते हैं उसके लिये एक हजार रुपया सिक्योरिटी (security) रखी गई है। इससे मालूम होता है कि हम लोग बहुत ऊपर में चल गये हैं। आईन एक साधारण आदमी के लिये, एक गरीब आदमी के लिये होना चाहिये। जैसा कि मैंने पहले भी कहा है, आईन केवल ऊपर वालों के लिये, या शहर में रहने वालों के लिये नहीं होना चाहिये। यह आईन सारे हिन्दुस्तान के लिये बन रहा है, हिन्दुस्तान के कौने कौने में जितने भी गरीब और धनी लोग हैं सभी के लिये बन रहा है। इसीलिये इस बिल को एंसा बनाना चाहिये कि सब इससे लाभ उठा सकें। तो आब्जेक्शन करने के लिये एक हजार रुपया जमा कराना बहुत ही ज्यादा हो गया है, और उस दशा में जब कि मालूम नहीं है कि वह आब्जेक्शन ठीक भी होगा या फिर भी उसको इतना डिपॉजिट करना पड़े यह बहुत ही ज्यादा है। मेरा निवेदन है कि इसको बहुत ही कम

रखना चाहिये। कम से कम २०० रखना चाहिये जिससे गरीब भी फायदा उठा सके।

जो कुछ मैं बोलना चाहती थी उसको और बहुत से माननीय सदस्य बोल चुके हैं इसीलिये अब जो कुछ बोलू वह रिपीटीशन (repetition) हो जायेगा अतः मैं इस बिल का समर्थन करते हुए समाप्त करना चाहती हूँ। समर्थन तो करना ही होगा परन्तु अपने ला मिनिस्टर साहब से इतना अवश्य कहूंगी कि जितने मेम्बरों ने यहां पर अपनी राय प्रकट की है उसको ध्यान में रखते हुए इस बिल को फिर रिड्राफ्ट करें जिससे कि उससे जनसाधारण को फायदा मिल सके और जनसाधारण के लिये यह हानिकर न हो। हमको एंसी कोशिश करनी चाहिये कि एक अलग सांसाइटी न बन सके और हम एक अनुचित समाज तैयार करके देश को कमजोर न बनायें। केवल इतना ही मेरा अनुरोध है।

[For English translation, see Appendix VII, Annexure No. 253.]

MR. DEPUTY CHAIRMAN: Shri mati Mona Hensman. I would like you to avoid repetitions, Madam. There are nineteen speakers more and I want to call upon the Law Minister to reply today.

SHRIMATI MONA HENSMAN (Madras): Mr. Deputy Chairman, I am aware of that and I am also aware that so many other points that I had thought of have been covered by other people and so I will leave them alone. I do not propose to deal with controversies, but with definite points of positive issue.

MR. DEPUTY CHAIRMAN: Thank you.

SHRIMATI MONA HENSMAN: I do assure you that it is time all of us who are women and who have dealt with various women's organisations and associations should also put the points of view of such of those Members who have approached us. I know that you

[Shrimati Mona Hensman.] are the champion of the rights of women as well as the rights of this House and, therefore, I have asked you to permit me to speak today.

Some Members of this House have already said that this is a retrogressive Bill while other Members have called it a progressive one; if it be retrogressive, it does not matter; for those communities that are ahead of the general marriage law of the nation can just stay ahead, but those who look upon it as a progressive Bill should be permitted to take advantage of this. It has been asked as to why this should be termed a special Bill. We women feel that it is special in this sense that it is going to uphold the Constitution and the law of the Secular State by giving us a right to keep our religion in inter-religious marriages. It is no solution, what one hon. Member has suggested that we should have non-communal marriages, nor is it a solution to say that we should arrange our property rights for women in other ways. We all have heard that the course of true love never does run smoothly and I take it that this is one of the Bills that is going to help the cause of true love. There have been many obstacles in the past preventing men and women of different religions, who are perhaps romantically inclined or drawn together in other ways, from coming together. Up to now, unless we have had the same religion, we have not in this country been permitted to keep our former faith, or profess our own faith actively and yet take a partner in life who belongs to another faith. I speak with some assurance and it is not from the point of view of self-advertisement but because I know I have been fortunate in having been able to represent women's associations abroad. I have been in Geneva, in China, Burma, Ceylon, in New Mexico, in the United States and Canada, in the United Kingdom, in Italy and France and, in none of these places have I found that there

was any restriction on a man marrying a woman belonging to another religious faith. I would remind you and this House that we in this nation and in this country have put a ban on inter-religious marriages. It would be a pity to do that when everybody who marries, whether rich or poor does so with a view to forming a family or a dynasty.

We women have perhaps wished to express our point of view here for two reasons. Young people, when they are thinking of marriage will naturally approach the mother before the father to find out the view of the family, because they have usually talked more about these intimate matters with the mother. I think, Sir, from your own experience you will find that the younger members have confidence in those who have brought them up and to whom they have told their childish secrets. Then again, we women also wish to know what is in the minds of our men. It has been one of the secrets of our power—I won't give away the other secrets, but this I will give away today. We try to find out what is happening in the minds of men and then we form our own opinions and gradually try to propose to those very men the ways and ideas that we would have them hold. We leave it like a seed to grow and, three years, five years or ten years later, depending upon the nature of the men we have married, we get the results, we get things done in the way we want done. Now, a new point of view has been put forward. We welcome the new point of view.

Now, up to this time we have counted the blessings of heaven resting on those whose marriages have been arranged by the family in accordance with the advice of relations on both sides, who have looked to the background upbringing characteristics considered desirable. Now, in these days of daring initiative and adventure, young people are aware of inventions of science.

Now, up to now, we have had, in this country, the usage of marrying in our own community; we ourselves have put religion in the forefront and when we have looked for husbands and wives for the younger generation, we naturally choose those with a background, with desirable attributes and naturally of our own religion. But now, the younger generation is seeing more inventions in science, they are seeing more power used in other ways, they are supporting new things in the Five Year Plan, they are being taught new ways in agriculture; and so, perhaps, they are also seeing new ways in marriage and here they are coming out of the parental fold; they are going to marry not so much by distinctions in religion as on the ground of morality. They wish to have the foundations of morality, of truth and honesty, of justice, of purity and of faithfulness to ideals, of loyalty to God and to man made in the image of God. So far we have preached in season and out of season that one man is as good as another, and the gospel of equality in everything but faith and religion. This stands at the root of marriage. We would all agree and we have learnt not to emphasize our differences but to agree on the unity of the moral code that all religious uphold insisting on the virtues of truth and honesty, justice and piety, faithfulness to ideals and loyalty to God, and to man, made in the image of God. Is it a sign of intolerance, Sir, that we have preferred to marry a partner of our particular religions or a sign of conservatism that parents have fondly imagined that children should be brought up in a home where a single and common religion is professed? Be this as it may, the younger generation prefers love to overcome all obstacles and all differences. Up to now we have been thinking of within our own groups and our own communities

but now the tolerance of the younger generation will break forth, whether

we like it or not, and I take it that the hon. Law Minister has come forward with this Bill in accordance with the wishes of the people. In my community, if we marry someone of another faith we have to say—at present under the Civil law—that we do not continue to enjoy the faith and the freedom to exercise or propagate our own faith. Now, we all know of instances—I will **not** multiply them for each Member of this House can think of such instances also—where people of one faith marrying another have had to do this, have had to go and live, for instance, in French India for a month in order to exercise their rights under their old religion after marriage. The problem comes when there are children.

Now, this Bill, in no way, tries to legislate for the children. It may be that one party marrying the other will be influenced by the faith of the other and by conviction or for convenience's sake one party may adopt the freedom of the other party's /religion. On the other hand, if they have to part for any reason whatever, if it is parting by divorce, for instance, probably the parent who has taken or has been given custody of the children will bring those children up in his or her own faith. If *two* young people marry under this law, they are going to care more for religion than the young people who marry in the ordinary way. Before registration, they will have to talk over the possibility of what religion they want their children to be brought up in. It may be that each has decided to keep his or her own religion but they will have to talk over if, in the modesty of things not before marriage, at least during marriage or at least and at last when the child is coming. There has been an instance, that some of us know, where a Hindu girl married a Muslim gentleman. They have been perfectly happy for twenty seven years but, Sir, one child of this

[Shrimati Mona Hensman.] family has found that neither the Hindu religion nor the Muslim religion is attractive as practised in that family. Probably we think that the mother's influence will prevail because after all the mother is usually the centre of the family—and the father leaves it to her to bring up the children in regard to religion, worship and other important things.

I agree that the registration of marriage is primarily a contractual affair but the contractual side of it could be covered by the ordinary civil law and it is the religious side that we are engaged upon at this moment. Moreover, the prohibited degrees of relationship in the Schedule have aroused very much controversy. I do not propose to enter into this controversy as to whether to delete the list or in any way to put forward arguments on the other side but I do feel that it is useful in a country like ours. A suggestion has been put forward that this should be withdrawn, that it is a shameful thing for other nations to know of some of the relationships that pertain to custom and usage in this State, but that is a very inferiority-complex point of view. Why should we not come forward with a schedule containing those degrees of relationships that are prohibited? The point that aroused so much comment and controversy is the grand-father's widow. In these days when men of sixty still marry girls of eighteen and twenty, it is quite possible that the gentleman in question, the grandfather, may have lost his son and his grand-son or at least his son may have died in some disaster or war and the grand-son may be far more of an age to marry that poor man's wife or widow than he himself was. The family may suggest that in the interests of the girl, to provide for her and to keep the house-hold and the property together the young man should marry her to give her assistance and support. This should not

be allowed; whether it is a matter of convenience or whether it is a matter of justice, is another matter. It is a matter of sentiment and if we feel it is repugnant that this relationship be entered into, why should it be wrong to put it down in a Schedule that a man may not marry his grandfather's widow or step-mother? Really, I fail to see why we cannot, put things clearly and say two and two make four; they do not make five.

Again the list has another value— that of propaganda against such union in future. These prohibited degrees in marriage are very much like prohibition. We do not talk much about it. We do not enforce complete temperance on anybody in a prohibition state, but we make it more and more impossible there by custom and usage by the public vote for liquor to be used freely in the homes of self-respecting citizens. Therefore, at this stage we would not interfere with the clauses 15 to 18 covering the registration of such marriages as have been contracted within the prohibited degrees. Therefore, even we are not interfering with the private views or customs or usage of anybody, of even the smallest tribal sect, but we do feel that there should be intensive propaganda done forthwith regarding the degrees of prohibited relationship so that at least our children's children would think, when they are arranging marriages, of arranging marriages outside the degrees of prohibited relationship which are enumerated in the lists and which will serve as a pointer for the purpose. It may be the third generation or the fourth generation; that will take it up. It doesn't matter, whether in 1954 or in 2000 A.D. this advance in ideas takes place.

Then, one hon. Member here said that he had not had any opportunity to see any bad effects from a niece marrying an uncle, but, in my small sphere I have seen diseases multi-

plied and increased by these contrac- j
tions and in one family of which I i know
of the children's parents are i uncle and
niece, they are very clever, j the children
are clever also to the j nth degree that
they just cannot adjust themselves to
life or fit into] our society, and this is not
strange when we remember that the mother
is the first cousin of her own children, of
her own son and daughter. It is a
peculiar relationship, an abnormal
relationship needing big adjustments in
more ways than one.

I will repeat that the retention of j the
lists containing the degrees of prohibited
relationship is necessary so that they may
have the propaganda value and may appeal
to the good sense of the younger
generation and to future generations so that
they should avoid such marriages, and if
not today at least from 2000 A.D. onward
marriages within the degrees of prohibited
relationship may be a thing of the past.
The older generation to whom the younger
people go to arrange their marriages,
which still is the case throughout the
eastern countries, may arrange the
marriages in such a way so that they do not
fall within the degrees of prohibited
relationship, and this they should do if they
are interested in the health and happiness
of the future generation.

Then, I come to clause 25 relating to
voidable marriages where it talks about
disease. It would be excellent to have a
medical certificate in the case of any man
or woman who wants to be married under
this Bill. It need not be made compulsory
but it may be suggested—because some
of the clauses dealing with divorce are
dealing with matters that should be
decided by a doctor definitely before the
marriage takes place, not after.

Now, I come to clause 27, relating to
restriction on petitions for divorce during
first three years after

marriage. Much has been said against this
clause, but I welcome these three
years of security to both parties. Perhaps
freedom means two things. One is the
complete freedom which has been given
in this Bill for, say, A to choose B as
partner and vice *versa*. There is also the
freedom for both A and B to adjust them-
selves within the period of three years
and to get on happily or if that is not
possible, to apply for divorce on the
grounds set out in the clause. In any
case there is the three years' security
both to the husband and to the wife
within which they can adjust
themselves. We have heard an hon.
bachelor Member say on the floor
of this House that the first three years of
marriage are the most difficult and that if
A and B can arrange to live together
peacefully or adjust themselves within
the first three years they will probably
live happily ever after. From my greater
experience and knowledge I can say that I
have found that the period between 10 and
15 years after the marriage has taken place
and even during the period of 15 and 20
years of the marriage there have been
just as difficult moments, just as
difficult problems cropping up as in the
first three years. Probably the effulgence
of romantic passion will carry the couple
easily through the first three years and
probably the birth of a child or two during
that period may bring about a reunion
between them and the difficulties
between them may disappear. The
birth of a child may bring about the
union not only of mind but of body and
of spirit. So three years are surely not too
long a time to ask them to wait and adjust
themselves. We have got three years for
so many other things and so many other
limits. This Bill does not ask them to sit
side by side each day; we do not ask
them to breakfast together or dine
together on each of the 365 days or 366
days of each of

! the three years. But they could
1 separate perhaps for a time. They

[Shrimati Mona Hensman.] may quarrel sometimes and after sometime making up the very same quarrel may be the cause of bringing them closer together. They may settle their differences and come to to a viewpoint that both can see. Sometimes if the lady or the gentleman of the family goes home to her or his parent they may see reason more quickly by missing each other. The lady may make this complaint to her father, "He is treating me like a piece of furniture" and the man may make the complaint, "She does not cook well." Well, it is quite likely that once they are apart and these things are likely to happen again, as this was a marriage of love to start with, within the three years there is a reasonable time to enable them to come together again, and fall out and come together >et again. In any case I leave it to the House to decide this point. I also beg to differ from one of the hon. Members who holds the view that a woman who is having a child should be excluded from divorce proceedings while she is pregnant and that no divorce proceedings should be instituted against her during that period because sometimes the divorce proceedings might concern that very child and it may not do good to the child to have a period of tension, of cold war preceding its birth.

Now, let me sum up this Bill by saying that it gives us certain advantages, and the greatest is the advantage of individual religious freedom which the House will agree is no small thing. Moreover, it gives us the blessing of monogamy to which divorce is only a corollary which may or may not be used. In those communities that have had provision for divorce, how many women have come forward for a divorce? How many men have come forward to cast aside their wives? Very few. This is a permissive Bill and everybody must I bear in mind from beginning to end that nobody need be married or

registered under it unless they choose this form of marriage and unless they seek the blessing of monogamy in this. Thirdly, they also have the benefit of the Indian Succession Act which perhaps is fairer than customary laws. If it is not considered fairer by the parties concerned, they can remain in their own communities, but if they think it is fairer, why should not their children have their shares as laid down in the Indian Succession Act? This is an epoch-making Bill. Of course its effect has still to be seen. It is to bring new life to those who choose to be married or registered under it. It gives the protection of the law to the wishes of the people. It is a challenge to the country. Is it too much to ask that this House not only considers it, not only argues it but also passes it and sees to its implementation? It will surely not be an additional yoke to marriage but it will implement the spirit of social reform and spiritual freedom.

SHRI T. BODRA (Bihar): Mr. Deputy Chairman, after hearing the important speeches of many of my predecessors I have got nothing much to add except to make a few suggestions in respect of clauses 3, 8 and 13. The hon. Law Minister has already suggested that the Marriage Officers will have to be appointed for registering the marriages of these couples, but from this clause 3 it is not very clear whether these officers will be judicial, executive or revenue officers. When we read" the other chapters I presume that the enquiries that will be held by the Marriage Officers will be in the judicial form. That means that if there are objections, some of the witnesses on behalf of the applicants will be examined and cross-examined as well as some of the witnesses on the side of the objectors will also be examined and cross-examined. That means that the enquiry will be conducted by the Marriage Officer in a judicial form. In my opinion as this

clause 3 is not very clear about that matter I would suggest that some judicial officers vested with first class magisterial powers should be set apart in each and every district for registering the marriages of the couples under this Special Marriage Bill.

Now, I come to clause 8 in which the Marriage Officer has been vested with powers to allow or disallow such marriages, to hear objections as well as to give his findings. If I am permitted to read clause 8, it reads like this: "If an objection is made under section 7 to an intended marriage, the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it." It is apparent that the Marriage Officers are being vested with vast powers and if the Marriage Officers at times become indiscreet or corrupt or come to hold personal prejudices, there is nothing binding on the Marriage Officers who disallow such marriages. Therefore, in clause 8 I would suggest that the Marriage Officer should be compelled to reduce into writing the reasons for such refusals when an objection petition is presented to him. Reasons for such refusals should be entered in a separate book which should also be kept permanently just like the Marriage Register. That is the case in the registration of documents. When a District Registrar or a Sub-Registrar refuses to register a document, the reasons for such refusals have to be reduced into writing and kept in a separate book which is known as Book No. 2. Similarly, when couples get married under this Bill and when such marriages are being validated, it is equally important that the reasons for such refusal should be recorded in writing and preserved. Whenever an objection petition is filed and after due enquiry if the Marriage

Officer comes to a finding that he should disallow the marriage, the reasons for his finding should be entered in a separate book which should be kept for a hundred years just like the Marriage Register which is kept for 100 years.

Coming to sub-clause (2) of clause 13, it says:

"On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with."

That means whenever there is a question of title, whenever there is a question of inheritance of the properties, the children will have the benefit of taking out certified copies of the documents from the Marriage Registers and, therefore, I would suggest that in clause 13, it should be put down that the Marriage Certificate Book should be kept permanently for 100 years and secondly in clause 8, I would suggest that the Marriage Officer whenever he happens to disallow, after a due enquiry, the application of the couple, should enter his objections—reduce them into writing—for disallowing such applications in a separate book which should also be kept for 100 years.

Lastly, in sub-clause (2) of clause 8 we find that if the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of fifteen days from the date of such refusal, prefer an appeal to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the Marriage Officer shall act in conformity with the decision of the court. But there is nothing in this clause to compel the Marriage Officer to grant a certified copy of his objections to the couple. I submit that

[Shri T. Bodra.]

the couple must have the right to be supplied with certified copies of such refusals so that they can immediately take action and prefer an appeal to the superior court.

Again, I find that the Marriage Officers are not to take more than 30 days for the purpose of enquiring into the matter and arriving at a decision. I beg to point out that this limitation of the period to 30 days is too short a time to enable the Marriage Officer to have sufficient chances and opportunities to conduct an enquiry on an efficient basis. Suppose there are objections from far-off and distant places, from the hilly tracts of the land, from those parts of the country where the rivers are not bridged and it happens to be rainy or monsoon season, it is not possible for the Marriage Officer to issue summons and notices to the witnesses who may be required to give evidence before him for the enquiry. When you confine the time to 30 days, what is the legal effect after that period is over? Suppose a Marriage Officer has not been able to conduct the enquiry within the period of 30 days, what will be the legal effect? Will that be time barred? I put this question to the hon. the Law Minister whether it is his intention to make the order of the Marriage Officer a spent bullet after the period of 30 days is over. I, therefore, suggest that this limitation of time should not be prescribed in sub-clause (2) of clause 8 but on the contrary it should be added that the Marriage Officer shall not take more than 30 days from the date of the objection except on exceptional and reasonable grounds. If some such thing is added there, then certainly the Marriage Officer will be helped much in conducting a proper enquiry and he will be able to do justice to the objections filed, otherwise if there is this time limit, as it is there, the enquiry will be nothing but perfunctory and summary. And that is why I have given this suggestion.

1 SHRI H. C. DASAPPA (Mysore): Mr. Deputy Chairman, the impression that one might get when one listens to the discussion and the range of criticisms offered on this Bill might be that the general body of the House is against the Bill itself. But when one gets closer and analyses the various speeches, it is not difficult to find out that on fundamentals practically all are agreed. I say very advisedly 'practically all', because here and there there may be an occasional voice trying to question the very fundamentals themselves.

I for myself cannot understand how these stray voices could do so at this stage when we have taken up the report of the Select Committee for consideration. Conventions are there, the rules are very clear on the subject that the principles of a Bill cannot be questioned at this stage. But even so, there is an attempt to make out that there is not much of a demand for a measure of reform of this type. In the first place, I question the fact itself that there is not much of a demand for a reform of this kind. There has been no poll taken nor public opinion ascertained through referendum as to whether the country needs such a reform or not. But granting for a moment that there is not that tremendous urge or demand for a reform of this nature, are we to go by a simple formula of the majority decision for effecting a piece of social justice on which there could be very little dispute? For rather than going into the question of counting of heads and ascertaining the demand, I wish these friends who talk of the absence of demand would go into the question of the intrinsic justice in a measure of this kind. If every piece of legislation that we undertake has got to depend on the volume of public opinion, I wonder what would have been actually the result if, for instance, we had taken an opinion on the question of the removal of un-touchability. I am fairly certain that

it would have gone against its removal. Even now after so many years of the working of the Constitution of India if merely votes are to be taken of the masses, possibly the vote will go against the removal of untouchability. Therefore, when we find that social justice as well as the personal rights which a citizen could exercise demand a legislation of this kind, it is only proper that that is provided for; and that is what yesterday some of the speakers made out that this being a permissive legislation there ought to be no objection on the part of anybody because the rest of the marriage laws remained absolutely unaffected. It is nothing but a perverse instinct in man, I consider, that would think of raising an opposition to such a wholesome permissive piece of legislation as the one we are discussing today.

From the number of notes of dissent that have been appended to the report of the Joint Select Committee as well as the range and variety of the amendments suggested and also from the different views that were expressed, it looks to me that there is room for a lot of difference on many of the non-essentials in the Bill. It is not that the essentials are attacked; essentials such as, for instance, the insistence on monogamy; non-denial of property rights of those who have recourse to marriage under this Bill, etc. These are the fundamental things in the Bill and they are not attacked by any of the hon. Members; and, therefore, I think this is a measure which the House as a whole should welcome and welcome warmly.

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The reason also for this variety of views may be due to the obvious fact that our Hindu law is such a strange thing that there is hardly any aspect of it which does not infringe on the religion at some point or another whether it is the question of marriage, or inheritance or suc-

cession. This may be true of certain other faiths also. I think this is one of the reasons why there is so much of criticism on some of these points. As so many hon. Members in this House have made out; our outlook on religion should not be a static thing; it must be a sufficiently dynamic thing. We must never be forgetful of the larger interests of the country and of securing social justice to the people when we have made laws for the country.

Prior to the attainment of freedom, there were naturally difficulties in the matter of resorting to social legislation. The Government being a foreign one, was reluctant to put its hand into such measures as they were afraid that they would be interfering with the religious practices of the people. One of the reasons why we fought and struggled for our freedom was that we could lift our society, our nation, from the ruts into which it had fallen and put it on the rails of progress. Now that we have attained our freedom, it is only meet and proper that the Parliament of India should concern itself in trying to effect those reforms in the body politic which are urgently called for in order to meet the growing wishes and requirements of the nation.

I would like briefly to refer to a few of the main objections which from my point of view have a certain validity about them. Let me take the question of notice, for instance. The Bill provides for a notice being given to the Marriage Officer. It says: "The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office." For the life of me I cannot understand how this can be treated as notice to those people who may have something to say about the union of two persons unless they are able to read the mind of the couple and the Marriage Officer, or unless there is some telepathy passing between

[Shri H. C. Dasappa.] the parties, and their parents or guardians or the Marriage Officer. I do not imagine that there will be a ghost of a chance of notice by those interested unless there is some wider publicity given to it. I would therefore join with my friends in urging the need for publicity of this in some papers which have a fairly wide circulation and also intimating the parents and guardians concerned about the prospective union. I think that is an amendment which the hon. the mover or sponsor of the Bill could readily accept.

Then, I come to the anomalous position that subsists between clause 4(e) and clause 15. Let us see the effect of the two clauses. In the case of clause 15 provision is made for registering marriages performed or solemnised outside this Bill, marriages performed according to the customary law. There is provision for tolerating certain relationships which Schedule I does not contemplate. We are prepared to register those cases under the Special Marriage Bill. When, however it comes to a question of direct solemnization, we fight shy of recognising those prohibited relationships valid under customary law.

When the clauses are explained in the body of the Report of the Select Committee, generally some of these points have got to be met and sufficient reasons given for us to intelligently understand the difference in such viewpoints. But I do not see any such clarification and cannot understand how this anomalous position can be reconciled. Now, supposing in the case of a couple appealing for solemnization of a marriage by the Marriage Officer they stand in the degree of prohibited relationship allowing by custom, it becomes a bar. The Marriage Officer cannot solemnize such a marriage. You cannot change their course of affection and their love merely because you are

not prepared to register their marriage. They, of course, resort to some other form of marriage and get married. After marriage they come to the same Marriage Officer and say "We are married; you recognise our marriage and enrol us in the register." Then, the Marriage Officer cannot deny them that right at that stage. Now, here is a very extraordinary and funny situation. We cannot adopt such an inconsistent attitude. What is sauce for the goose must be sauce for the gander, and we cannot in the same register have certain customs recognised in the case of marriages already performed and deny the same thing to those who come to us in the first instance to have their marriages solemnized under the Bill itself.

I will only refer to one or two things more. One is about the familiar contentious clause, clause 19. Now this is a clause on which I have thought over and I do not see, it is altogether free from difficulties. My first reaction was that it was wholly unnecessary for the obvious reason that severance is a thing which could easily be obtained by a mere unequivocal declaration of your intention to sever. This is a well-known principle of law. Now this marriage is either countenanced by the undivided family or it is not countenanced. If it is countenanced and if the person who is going to marry has no objection, then one naturally feels that there should be no objection to their continuing in their undivided status. If on the other hand, there is any adult member in the undivided family who does not countenance this alliance, it is very easy for him to at once seek a division in the status of the family. So there is no need for this legislation to come to the rescue of the undivided family. There has been an attempt on the part of some hon. Members to make out a case for saying that this is a concession to conservative elements. But I am unable to understand how this is a concession to conservative elements, because if the undivided family members do not want this marriage, they

can easily enforce severance in their status. So I do not believe there is much of a concession to any element in the society, much less the conservative element. But the trouble starts when it comes to the question of the rights of the children of this marriage. In case the girl that is ushered into the family belongs to a different community or a different caste or religion, can we give the offsprings of that couple the same coparcenary rights as to the other members of the undivided family? That is a difficult question. So I think what is at the back of the sponsors of the Bill is this. Let us have a simple thing, namely whoever wants any benefit under this Bill should forego such coparcenary rights as he and his children can have in an undivided family subsequent to marriage by taking his share and walking out and should allow his succession to go on the basis of the Indian Succession Act. That is a simple thing. We have got to choose between the one and the other. Life is generally not a clear-cut thing so that all merit is on the one side and all demerit is on the other. It is a combination of both these things. And therefore, either we have this clause as it is or we better adopt a new one of allowing the succession to go on on the basis of the personal law of the male member of the union. That would possibly be the second alternative. So, I feel that the thing is not free from difficulties, and therefore, this is a matter on which I would like to hear further arguments at the time of taking up the amendments.

Yesterday I listened to certain speeches of my hon. friends. They seem to have been severely shocked at the use of the expressions relating to idiocy, lunacy etc. To any layman it does look very funny that these things should be figuring in such a manner in this piece of legislation. But on a closer examination, I find that this is not anything very strange that we are seeing for the first time today. In the Indian Divorce Act, for instance, there is a reference to

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this lunacy **and** idiocy business cropping up as often as we have got in this legislation. I think when they had these various pieces of legislation before them at the Select Committee stage, they tried to get all these things from the different pieces of legislation and pooled the different provisions together in order to satisfy the largest number of members. I am not very particular about retaining these clauses, because these are fairly well-known things. An idiot or a lunatic person cannot maintain a wife and even without specifically mentioning it, it would be possible to have a divorce. So far as I am concerned, and I think the Mysore law provides for it, I think that where there is incompatibility of temperament, there ought to be room for separation. I wish to incorporate in this Bill a provision to the effect that incompatibility of temperament and mutual consent would be good enough ground for divorce. I see no reason why, having gone so far, we should not try to provide for that also. So if we have got such a wholesome provision, we need not resort to these various other recourses for obtaining divorce. In fact I have seen good women in our country who, when their husbands turn lunatics for any reason—in these days I often wonder how more people have not turned lunatics with all the present stresses and strains in life—do not abandon their husbands by any means. In fact, the best in them on an occasion like this comes to sublimate their lives and they serve most devotedly their husbands. I must say that it is *vice versa* also. Many women who have been suffering from hysteria and other mental disorders are very well looked after by their husbands. Let nobody be under any fear that merely because there is a provision here for divorce, wives will abandon husbands or that husbands will abandon wives. Take the question of imprisonment also. The great Ba! Gangadhar Ti.Jak got a seven year sentence. Would that be a sufficient reason—I don't know their family history—for his wife—the wife of a great patriot like that—to make that

[Shri H. C. Dasappa.] in excuse for seeking separation? I would consider it a monstrosity. It is never done. I do not apprehend that merely by reason of this provision being there everyone will have a lot of fun out of this provision and seek separation. Therefore, I do not think we should get worried at the mere appearance of these phrases in the Bill.

As regards the list of those coming under prohibited relationship, there were even stronger terms used by some of the speakers. I shall not repeat those strong words. They referred to items prohibiting a man from marrying his paternal great grand-mother, or a woman marrying her maternal great grand-father. But these are pieces of legislation which contain such lists. This has not been done for the first time in this piece of legislation. The Parsi Marriage and Divorce Act has got a whole list more or less similar to this. Those who know something about law know - that law is said to be an ass, and so I do not think we need exhibit any surprise at seeing a piece of legislation where things are sought to be clarified. I do not see that this schedule is objectionable in any sense from that point of view, but all the same I would appeal to the Law Minister that this is unnecessary and that it can be obviated by a more general provision even such as the one that we find in the Act of 1872. The question of degree of prohibited relationship is well-known, and a lot of case law has grown round it. It could be left to the different courts to interpret what exactly is the degree of prohibited relationship. Why should we try in this House to provide for every contingency in this Bill? Let there be some work for the courts also. I think we may just as well leave certain things to judicial pronouncements. This ought to be enough protection.

I do not want to take much time of the House. I find that certain of our Muslim friends are feeling that this is interfering with their religion. If

it interferes with any religion, it is more Hinduism than Islam or any other religion, because in Islam women get their own shares in the inheritance and they have a much easier system of divorce and they have already a piece of legislation, the Muslim Divorce Act. So, it is not that their religious habits, customs and practices will be affected more than those of the Hindus. What I would tell them is to take a more liberal viewpoint and co-operate with the rest of the country in trying to have something which is more in accordance with modern trends and views of a progressive people, and not to persist in continually harping that they don't want any of their practices to be touched. They should not be indifferent to what happens to the rest of the country. They must adopt a more helpful attitude and there must be some give and take. This is only a permissive legislation. It does not make it obligatory on any body to resort to the Special Marriage Bill and therefore I hope that they would all wholeheartedly support the measure. Only one thing I will say that in a social legislation like this, the Law Minister need not be meticulous in pushing through every pet idea of his or the pet ideas of those for whom he is the spokesman here. I would plead that, while he may be firm in grasping to his fundamental ideas, he should at the same time keep a more open mind and where he finds a large measure of public opinion in favour of an amendment, he should accept it. We are making a new nation. We have been talking of unity, solidarity, nationhood and so on. We are talking of women's rights. In fact, I was glad that the lady Members here were all unanimous, so far as they were concerned, in supporting this measure. It has been the fashion all these years for all men to expect their wives to be something like the Sita of yore.....

SHRI TAJAMUL HUSAIN (Bihar) : Why not?

SHRI H. C. DASAPPA: Just, wait a bit. Now, the woman turns round

and says, "If you want me to be a Sita, are you like Rama?" I am glad that the time has come when our women too expect their men to act like the ideal person that Rama was. I am very glad that the women of India are becoming conscious of their rights, and I am sure that it is not that they want their rights without their obligations. In fact, this is a very balanced measure. It does no more to the women than what it does to the men. Therefore, I say that this is a fine measure. In fact in one of the aims appended the aim is stated to be to realise a classless and casteless society. This was the grand message which the Father of the Nation left behind for us before he departed from this world. Therefore, if this measure takes us forward by howsoever little an extent, towards that cherished goal and accords recognition to the ideal that all men and women are equal in the eyes of God and in the eyes of the Government. I think it will have achieved a great deal. I have, therefore, very great pleasure in welcoming this measure.

SHRIMATI PUSHPALATA DAS (Assam): Mr. Deputy Chairman, it is rather difficult to speak and touch on any new points at this fag end of the debate, but I would raise those points on which I have some doubt and also make my suggestions about them. According to many, this is not a revolutionary piece of legislation. I too agree that it is not a revolutionary measure. But it is a permissive measure. My friend, Shrimati Lakshmi Menon, did not like the title of the Bill and wanted to change the name of the Bill. She said she could not understand why the word 'special' had been introduced there. It is there because only in special circumstances, we want this special measure. The 1872 Act was perfect in its own way at that time, but things have changed since then, and this Bill is certainly an improvement on the Act of 1872. This Bill accepts monogamy and it has also extra-territorial jurisdiction and admits special marriage between two persons having faith in different religions. Now when this

Special Marriage Bill is brought forward before this House to give special permission on special conditions, there is this clause 19 which is going to nullify all its objects. This clause has been debated upon by all Members except one or two, most of them have opposed this clause and some of them want that it must be deleted and some want some modification. But my suggestion is that when there is so much criticism about this clause, why not we delete it? Why not we give the freedom to the family members to have their discretion? Why should we interfere? When we want this Bill to be a Special Marriage Bill, so we have to consider all the special difficulties and any bar should be removed from the way of the couples who are going to be married under this Bill.

Coming to clause 4, I think after clause 4 another clause can be added to make it compulsory to have health certificates. We have so many conditions for divorce. I am personally against divorce because it brings disruption in our family life at the same time. I am also not for putting any bar against any one in exercising his or her right.

Many people think those who marry under Civil Law are always ready to divorce for any trifling thing and their offsprings become irreligious. I myself have married under the Civil Marriage Act but I am one of the happiest women going on in the Earth. I have nothing to complain and I have brought up my child according to my own faith. So I think we should add a new clause making it compulsory to have the health certificate. I feel it is better to have the health certificate, than going through all the disgraceful things at the time of divorce like filing objection that my husband or wife is suffering from this disease or that disease and he or she is a lunatic, etc. The doctor can examine them secretly and give a certificate. I had a discussion with Dr. Gilder and he says, 'I know of a case where the man was suffering from V.D. and I asked

[Shrimati Pushpalata Das.] him not to marry and still he married and the wife is carrying on with the disease in her. She has not come forward with this complaint to a court." So no woman will come forward and advertise these things except when special circumstances are there like the husband being too tyrannical to her. Only one in a lakh may come forward to take shelter under this law. Similarly if a man who is under the tyranny of a woman wants to avail of this Act, why not give him permission? I think this can be relaxed. Let me quote some examples in my State. You know there are so many tribal people in my State who enjoy right of divorce and even among Hindus we have a system called *Pansinghi Vidhai Diya* by which if the husband and wife cannot pull on together then the husband's party and the wife's* party meet in a public place or in a private house or in the wife's house and they all try to persuade them to live together. If they cannot do it, then they tear the *pan* leaf into two pieces and distribute it to the parties which means they are separate from that time. But no one is taking advantage of it. I know of only one case among caste Hindus but among agriculturist population there are many cases. Even under the Civil Marriage Act, there was only one case.

SHRI GOVINDA REDDY: It is practised in the South also.

SHRIMATI PUSHPALATA DAS: There are many customs which are alike between Madras and Assam. Among the Khasis they have the right of inheritance—the youngest daughter inherits property and among Garoes eldest daughter inherits. In 1942 at the time of war when military people from outside came, then only there were a few cases otherwise we did not have so many cases of divorce. Now there is none but there women have property rights. That is the main thing. I agree with Mrs. Menon when she said that unless we had property rights, this healthy relation between the husband

and wife can never remain. So I feel that instead of going through all the disgraceful things for seeking divorce, why not we stand and say that the doctors should examine the parties and then if necessary say to the parties "You have this defect and so it is better for you not to lead a married life". It will be a healthy thing if we can arrange in that way. That is my suggestion because I feel that instead of going through all the dirty matters and washing dirty linen in public, we can adjust it in a sweeter manner. Even if that clause is to be there, we can add another clause to make it compulsory to have a medical certificate. But the whole thing must be kept as a dead secret.

Coming to clause 7, somehow I find that the right to raise objection is given to any person. That means any man can take advantage of it if he is not friendly with the parties. First I thought in these matters, only relatives should be allowed this right. But now I feel that friends and well-wishers also can be allowed but there must be a security deposit. Mrs. Chettri thought Rs. 1,000 was rather too big a sum but when he is going to challenge about the legality of the intending marriage, Rs. 1,000 or Rs. 500 must be kept as deposit before filing the petition. If that is also added as a compulsory thing, it will be better.

With regard to clause 31 which says that the proceedings may be *in camera*, I suggest that the word 'must' be inserted instead of 'may'. Everything must be *in camera*. Every marriage relationship is a very delicate one. If it is a small rub, they can make it up after some time. If they cannot, that means there is some fundamental difference. Then they go for divorce. In that case everything must be *in camera*.

Now about the religion of the children, I give my own case. I have brought up my daughter according to my own faith. When husband and wife cannot come to any decision at the time of their marriage, how can

they decide about the religion of their children? I think it will be most appropriate if we leave the decision to the mother as generally mothers will have influence over the children as long as they are minors. When they become major, they will either take the mother's or father's religion as they like. Let us not interfere.

Another clause is there which is according to me a little contradictory in forms. In sub-clause (e) of clause 15, it is said:

"(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 each of them permits of a marriage between the two."

Again in sub-clause (e) of clause 4 it is said "the parties are not within the degrees of prohibited relationship". I don't quite follow this. When usages and customs are going to have their own course, these prohibited degrees are meaningless. And that is why so much criticism has been made about this clause. I too agree with those friends that instead of putting a long list, let us adopt an accepted formula. In our parts from the father's side the party must be removed of 7 generations and from mothers' side of 5 generations. When I was in Madras I witnessed some marriages between uncles and nieces. I was surprised and shocked and I could not write to my people about it. Now I could get reconciled to that and most of my friends are married to uncles and nieces. Now it is not as revolting to me as it used to be then. We are allowing customs and usages to prevail. So what we have given with one hand is not to be taken away with the other. Let us be frank and see things as they are. In Dak-shina Bharat this custom is prevalent, though some of these marriages may fall within the prohibited degrees. According to me, they may seem revolting, but they may not be revolting to those who are used to such marriages. *Trsr* fceing so, why not

allow it? Then the thing becomes practicable. After all, this is a Special Marriage Bill; so such special cases have to be dealt with in a special way.

I do not want to repeat the arguments that have already been put forward in this House—though I have already repeated many of them. But when one gets up to speak and has some doubts, one has to express them and so I could not help repeating certain things. One of my Muslim friends opposed this measure, but he did not mention about the Muslim women. I am sure most of them—of course, I do not know all of them and am not acquainted with all who represent the voice of that community but with my little experience, I can say that Muslim sisters will be very happy to have this measure, because though they have property rights, etc., there is no provision among them for monogamy and so they will certainly welcome this measure. No objection has been raised to this Bill, by any Muslim woman, so far as my knowledge goes. Of course, I speak subject to correction. In other parts of the world also Muslim women, we are told, have got the rights mentioned in this Bill. Why should they be denied to our sisters in India:

We are going towards the goal of a uniform Civil Code and this is the first step towards that. Therefore, I do not think there will be any real opposition from any side to this measure. This is the very first step towards the uniform Civil Code and at least in personal law, we must encourage this sort of measures.

Men and women must have the fullest scope for the development of their personality. Let the human souls blossom with full dignity and glory and let there be no hindrance or shackle in its progress. I have given some examples to show that though there were such easy facilities, though there was the right to get divorce, the women have not resorted to them. They did not exercise that right or facility. They will exercise

[Shrimati Pushpalata Das.] it only under special conditions, when the suffering is so great. Therefore, I support this measure and I hope that the hon. the Law Minister will consider some of the useful suggestions made in the amendments also. At the time the amendments come to be considered, he may accept some of them which would improve the measure.

SHRI H. P. SAKSENA (Uttar Pradesh): Mr. Deputy Chairman, in order to allay any doubts, suspicions or misgivings in the minds of my hon. friends of the fair sex—some of whom at any rate, are not fair by the accepted standards of fairness,—I would straightaway say that I entertain no feelings of rancour, hatred or contempt for the measure that is now before us. On the other hand I wish its champions and supporters, the enthusiasts and zealous, all success, all good luck and god-speed in their campaign of a new-found measure for their emancipation. I had thought, that women along with men whose integral half they were, had been emancipated from serfdom long long ago, at least from the time Mahatma Gandhi took up the cause of women in his hands in the year 1930. But I regret to find that women are still suffering from that defeatist mentality and feel that they are still suffering from bondage, that they are still in bondage, in serfdom. If a person is disposed to live in serfdom, no law can free that person from that bondage. If it is of one's own liking then it has come to stay.

I feel, Sir, the House owes a debt of gratitude to my hon. friend Dr. Kunzru—he is not here now—who made it very clear yesterday that this measure was wanted, if at all, by a very small minority of the people of India. To that expression of his and I to that remark of his, I would only add, with your permission, that if it is a minority, then it is a very infinitesimal and microscopic minority. But I say, all good luck and good fortune to that minority, |

whether it is large or whether it is small, because no majority would ever like to trample down the rights and the privileges, though, not well-thought of or premeditated, of the minority. Therefore, I again say that no impediments should be placed in the passage of the measure that we are now considering. In fact, things should be made as easy as possible and the trial or the experiment should be given full scope.

I must, however, refer to the sermon that was read by an hon. lady Member yesterday, to men, of course, that they were keeping the windows and doors of their minds closed. Well, I do not know to whom she was referring; but then I am positive and certain that so far as the windows and doors of my own mind are concerned, they are wide open.

SHRI GOVINDA REDDY: Congratulations.

SHRI H. P. SAKSENA: And the only reservation is that I feel that I have a right to prevent dirt and dust and filth entering my mind and clogging it for a good deal of time. That I won't permit. Beyond that, my mind is wide open to any number of modern and new ideas and I always welcome them, whether it be in connection with marriage or anything else.

Reference was made, Sir, by a very respectable and honourable lady Member today that men have got a tendency to discard their wives who are old-fashioned or who are not modern in the sense that they are not women of society as it is termed, and therefore on that ground and on that ground alone, they scorn their wives or neglect them. And because there is no divorce, they cannot divorce them but they marry again some modern, up-to-date, fashionable lady or girl, whatever it may be. In order to disprove this theory, Sir, I would very respectfully quote three instances—the President, the Vice-President of *India* and the Deputy

Chairman of this august House. They have, in spite of the fact that they are raised to a very distinguished position in our country, never thought of discarding their wives, throwing them away and marrying new ones.

MR. DEPUTY CHAIRMAN: Mr. Saksena, I want to correct you. My wife died ten years ago.

SHRI H. P. SAKSENA: I am very sorry, Sir. Then we sail in the same boat.

My hon. lady friend Mrs. Menon gave me a hint yesterday by suggesting that the title of the Bill—with the permission of the hon. Law Minister, of course,—can be changed and she suggested some other title. Now, with your permission. I also will hazard a suggestion and it is this, that the Bill may better be styled as "Marriage today, divorce tomorrow Bill" and there would be no harm be cause from the trend of speeches that I have heard. I found that the greatest emphasis was laid on the blessing that will flow from this measure in the shape of a right being given to the women for divorce. If it is such a choice blessing, that women cannot be happy without having in their pockets a licence to get a divorce whenever they liked, then certainly the title of the Bill, in order to be more realistic, should be the same and I repeat it.....

SHRI GOVINDA REDDY: It is only to make men more reasonable.

SHRI H. P. SAKSENA:.....for the benefit of Dr. Seeta Parmanand who has just now entered this House that the title of the Bill should be "Marriage today, divorce tomorrow Bill".

SHRIMATI MONA HENSMAN: May I point out. Mr. Deputy Chairman, that ladies have no pockets in their saris.

SHRI H. P. SAKSENA: I had better ignore the interruption.

MR. DEPUTY CHAIRMAN: Probably he means a petticoat.

SHRI H. P. SAKSENA: I have not been able to follow it and I am not in a position to follow it.

DR. SHRIMATI SEETA PARMA' NAND: The hon. Member seems to have a bitter experience of human nature.

SHRI H. P. SAKSENA: But I must quote a couplet from that great reformer of Allahabad known as Maulana Akbar with regard to reforms, whether they be social, religious, cultural or even political. He has composed an immortal couplet and it is this:

“ धोने की है ऐ रिफार्मर (reformer)
जा बाकी,
कपड़े पर है जब तलक कि धब्बा बाकी ।
धो खूब सा धब्बे को पर इतना न रगड़,
धब्बा रहे कपड़े पे न कपड़ा बाकी ॥ ”

For the benefit of my hon. friend Dr. Mookerji, I will translate it. "There is ground and there is room and there is scope for reform, Oh, reformer, wash up a dirty piece of cloth to the extent that the cloth remains and not that the cloth and the dirty spot are both finished together." So, reforms should always be hastened slowly, to quote my friend Prof. Wadia's expression used in another case.

The hon. Law Minister said, while introducing the Bill, that marriage was the immediate concern of the parties. A court comes to judgment an immortal truth. Marriage must necessarily be the immediate concern of the parties. Granted, I concede it *in toto*, but the point is, where does the State come in if marriage is the immediate concern of the parties? There should be absolutely no interference on the part of the State to legislate and to enact a measure for that. Well, if a measure was needed, it is already there for every community. There is a law regulating marriages, there is the Manu Smriti,

[Shri H. P. Saksena.] there is the Muslim law, there is a law for the Parsis, there is a law for the Christians; for every community, there are laws. If this law were to be brought in as a special type of legislation, then it should have been modified in two sentences; there was no necessity for wasting the money of the tax-payer to the tune of lakhs upon lakhs in discussing this measure here for days and days together. Anyway, as I said before, I do not want to put any impediments in the passage of the Bill.

DR. SHRIMATI SEETA PARMANAND: Where should it be discussed?

SHRI TAJAMUL HUSAIN: You have not replied to Mrs. Parmanand.

SHRI H. P. SAKSENA: Mrs. Parmanand is fond of interruptions and it is very difficult for me to give any reply to her and then I am no match for her.

I am saying that the entire proceedings were over-shadowed by the clause on divorce. Let me remind my friends who are the champions of divorce that divorce is a double-edged weapon. It cuts both ways. Especially, my remarks apply to those friends who have lost their opportunities in the marriage market. It is just possible that as women shall be free to divorce their husbands, husbands will equally, according to this measure, be free to divorce their wives and when those wives are divorced there shall be no opportunity for them in the marriage market. Their condition will be very deplorable and I do not want any sisters and daughters of mine to be placed in a very deplorable position. After all, looking from this standpoint of the parent, it is my duty to utter a word of caution and warning to those who want to go their own way. Go your own way, by all means. I do not stop you but then it is my duty, it is my privilege, it is my responsibility, to utter a word of caution. Whether you heed it or not, whether you mind it or not, it is your

own choice but then I should not be accused of having kept silent and mum.

SHRI V. K. DHAGE (Hyderabad): Those days are over.

SHRI H. P. SAKSENA: I wish they were over but they are not. If you refer me to that, I challenge you to take a census of the people who want this measure. I assure you that out of 360 million people only one in a million will be found to be supporting this measure. Out of 360 million people, you will get only 360.

DR. SHRIMATI SEETA PARMANAND: Question.

SHRI H. P. SAKSENA: Now, I tell you most positively that even the worst enemies of the present day Government of India would not have thought of a better measure to make the present Government absolutely unpopular in the eyes of the masses than this measure. There will be no restrictions, and the friends opposite who are supporting this measure wholeheartedly today will, as soon as they go out or when the next General Elections come, go to the platform, address the masses and tell them, "Look here, here is a Government which is violating all your old laws of coparcenary, consanguinity and affinity and all that, and it is compelling you to marry under Special Marriage Act". There will be no question of the fact that the Bill is only a permissive measure and that it is not mandatory. Nobody will mention it and the only thing that will catch will be that this is a Government where a brother's son is allowed to marry another brother's daughter and a maternal uncle, *mama*, *phoophu* or a *mousa* is allowed to marry his own niece. All this sort of things will arise. And since I look upon myself as a guardian angel of the reputation, the security and the well-being of the present-day Government and since I happen to be a part and parcel of it and since I am one of those persons who have brought about this state of affairs in

our country wherein these lady i friends are functioning as Members I of Parliament, it is my duty to tell them that though they are the champions of the cause of women and are in favour of this measure, while they are ringing the bells today in triumph, they will be wringing their hands like this (shows it concretely) when that eventuality occurs. With these words I give my blessings to the measure and hope that it will find an easy passage, but I do not know whether it will prove baneful or blissful. Time and future alone will reveal that.

BEG AM AIZAZ RASUL (Uttar Pradesh):
Mr. Deputy Chairman, I am grateful to you for calling upon me to speak although I do not think it will be very fair to myself or to the House to put forward my views at the fag end of the discussion. Anyhow, I shall in a few minutes try to express my views V>n this measure.

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

First of all, I should like to welcome this piece of legislation because it certainly is a progressive step forward towards the social legislation that we are intending to legislate for the people of our country.

Much has been said about it during the several days of the debate that we have had and so I shall not tread on the ground that has already been traversed. I would, however, like to say, as I have said just now, that it certainly is a step forward on the old Special Marriage Act of 1872 when parties who wished to marry under that Act, who did not belong to the same religion had to publicly state that they did not conform to any belief or faith. Now that in itself there was a thing which was unnatural and only to satisfy the law they committed legal frauds though in reality they did not give up their particular faith or belief, and to put an end to such frauds this Bill is necessary and, therefore, I congratulate the Government for bringing

forward this measure so that the necessity for giving up one's faith or belief, as is the case under the 1872 Act, no longer arises. In another way too, Sir, this is a progressive measure because it gives the right of divorce to the parties who contract this marriage about which so much has been spoken and to which my hon. friend and colleague the last speaker has just referred. I agree with him entirely that this is a double-edged weapon and I agree with him also that there will be certain consequences caused to women who have lived with their husbands for years and who may become the victims of divorce if their husbands take to divorce. That of course is there but these risks have to be taken in a legislation of this kind although specifically only nine circumstances have been laid down in which divorce can be asked for.

12 NOON.

Now, I shall not go, because of lack of time, into many details of the Bill, but I should just like to say that things have been said about the Muslims on the floor of this House and conjectures have been made about their attitude regarding measures of this sort. I should like to thank my friend Mr. Dasappa who has appealed to the Muslim community to give their support to any measure that aims at national unity. I can assure him that as far as the Muslim community is concerned, I do not think they will ever stand in the way of any social reform of this sort. I can assure him that and I can also assure him that article 44 of the Constitution of India which aims at providing a uniform civil code for the citizens of India, although the provision has been characterised as a pious hope by some Members who made a reference to that, will some time in the future become an established fact and there will dawn a day in India when the different religious communities of this country will feel that the time has come when there should be a common civil code. I look forward to that day with great pleasure.

[Begam Aizaz Rasul.] But I should also like to say that no hurry or haste or force or coercion of any kind should be used for bringing about this very laudable objective. Ours is a secular democratic State and therefore, everything should be done which will infuse a spirit of satisfaction, a spirit of confidence amongst the people living in this country and a feeling should not go about that the majority can impose its will upon the minority. If the Muslims have in any way opposed the application of this legislation to them I do not think that it is from a feeling of antagonism. I do not agree with them either when they opposed this measure. As I have said, I wholeheartedly support it because it is a permissive measure and this fact should not be forgotten. It is a permissive measure and if there are any people who wish to take advantage of it, they are at perfect liberty and they are welcome to take advantage of it. Therefore, the Muslims need not fear that this is an attack on their religion or that anything is being done against their religious principles. The Law Minister has very unequivocally made that very clear and, of course, it is very apparent from the Bill as it is to-day. Therefore, it is not a question of force or repression upon the Muslim community that they should accept this measure. This is a measure which is open to those who wish to marry under this law. It has also made it convenient for people who have already married under any form of religious law to take advantage of this measure and get their marriages registered under this Act. Therefore, all these things are permissive and I visualize certainly that in future there will be many inter-communal marriages. The education that the people are receiving and other forces and considerations of every kind will certainly go in helping people more and more to take advantage of this measure. I am very glad that such a legislation has been brought forward. I think one of the reasons why the Muslims are not very keen or en-

thusiastic about this measure is the fact that Islam by itself has given so many rights and privileges to the people of that community that they do not feel like having any legislation which is not an improvement upon those rights and privileges that they already enjoy. That means they will have no interest in it unless it is an improvement on the already existing law of their religion. Muslims believe that Islam is based on experience of humanity. They also believe that Islam has a code of life which they have followed for the last 1,300 years and found it satisfactory to their needs and requirements. I do not agree with my friend Shrimati Pushpalata Das when she said that Muslim women were unhappy. I do not know what experience she has. Of course, I realise that there are men and women who are unhappy in every religion and you cannot expect any religion or any community the people of which can be hundred per cent, happy. But if abuses take place on any religious ground it cannot be said that it is the religion which is at fault; it is the people who are at fault, the people who have not been practising that religion properly. The same has been the case with the Muslims.

Now, Muslim women have been given right to property. My friend Mrs. Lakshmi Menon said yesterday—and I entirely agree with her—that all political and civic rights were absolutely useless if women were economically dependent upon men. And that I think is the great secret why Muslim women have felt so secure in every walk of life because they have economic independence. I will not go into the details as to what is the share of the woman compared to that of the man, but the very fact that the position of women has been completely recognised in Islam has given rise to a feeling amongst them that they are equal to men. Throughout Islamic history, Muslim women have had these rights, economic as well as the other rights which are now being given under this law and

which are contemplated to be given under the other legislation that will be brought forward in connection with the Hindu Code. Muslim women already enjoy all these rights. The right of divorce, though it may not be as free as some people would like it to be, is there, and this right has been a great handle for women all over the world. I am very glad that one of my friends just now said that divorce was not a desirable thing. In our own religion it has been very very clearly stated that divorce should take place only as a last resort when the two parties completely find themselves in disagreement. The right however is there and women can enjoy it.

The greatest right, which Muslim women have and which I do not find in this Bill, is the question of *mehr* that a Muslim woman is guaranteed at the time of marriage. That is a great economic guarantee to the woman. She may not have any property at all; she may be a poor woman, as happens in most cases, but at the time of her marriage she is guaranteed a certain dowry. It may be money; it may be anything, but she can have it from her husband if she is separated from her husband. This is a great factor and men will not resort to divorce so quickly. I will not go into all these points. I would only like to say that as far as Muslims are concerned, their attitude has always been—and I have been in the Women's Conference and our attitude has also been—that we shall always help every measure in which there is unanimity amongst the people of that community, and I for one will always be ready and anxious to help in this matter. But, of course, we all realise, as the debate in this House has proved, that no social measure can ever be a unanimous measure. But if the Government and the social workers and other parties realise that something is necessary for their community or for their country, then they will have to enact social legislation even in the teeth of opposition but at the same time it is

desirable that more and more people should be persuaded to support such legislation. My friend Mrs. Uma Nehru was telling me only the other day that while she was addressing women's meetings in regard to the Hindu Code and the Special Marriage Bill, the greatest opposition she was faced with was from the Hindu women who came forward and said, "Why are you trying to disrupt our society?". Of course, I have nothing to say on that. It is a thing about which we all have to sit and consider and try to educate those women and convince them that it is in the interests of their rights that all this is being done. They should be made to realise that unless they hold a respectable position in society, no country can go forward. These are the things that have to be told to them.

Now, coming to the provisions of this Bill, firstly I am very glad that this Bill has been brought forward. I think there is unanimity of opinion that the age should be raised from 18 years. I think 18 years is too young age for our young people to realise their responsibilities and to decide about their future and as has been pointed out rightly, they will be mostly college students at that age. So I think it would be better if the hon. Minister would consider the necessity of raising this age to 22 or 23 in the case of boys and to 21 in the case of girls.

¹ As regards prohibited relationship, it has been said in the notes of dissent by certain Members of the Select Committee that although clause 4 prevents marriage within the degrees of prohibited relationship, clause 15 (1) (e) envisages marriages between persons who are within the degrees of prohibited relationship if the law or any custom or usage having the force of law governing each of them permits of a marriage between the two. If that is so, why not say in clause 4 that in such degrees of prohibited relationship as are recognised by custom or other religious belief marriage will be permissible?

[Begam Aizaz RasuL]

I do not think I will take up any more time of the House except to say that I hope that greatest advantage will be taken of this measure and that our country will go forward in the path of progress. This is the first step in social legislation of this kind. This has been before the country for a long time. I welcome this measure and I hope- that the other measures will also be brought forward that will contribute to the progress of the country and to the elevation of the women of this country without whose equal partnership no country can progress.

SHRI KISHORI RAM (Bihar):

श्री किशोरी राम (बिहार) : उपाध्यक्ष महोदय, इस बिल (Bill) के सम्बन्ध में बहुत दिनों से चर्चा चल रही है और इस पर काफी बहस भी हो चुकी है। इस विधेयक के सम्बन्ध में मेरी राय यह है कि अब हमें एक ऐसा विधेयक तैयार करना चाहिये जिससे हमारी संस्कृति दूसरे देशों में आदर्श देने वाली, तथा राष्ट्र को उच्च बनाने में सहायक हो। यह विशेष विवाह विधेयक भारतवर्ष में बसने वाले और सभी धर्मों को मानने वालों के लिये बनाया गया है, इसे मैं उचित समझता हूँ। इस बिल के जरिये सभी धर्मों के लिये एक धार्मिक संस्कारों को एक करने का प्रयत्न देश के लिये लाभदायक हो सकता है। समय परिवर्तनशील है और इसके साथ साथ किसी भी देश के रस्म-रिवाजों में भी परिवर्तन होता रहता है। यह परिवर्तन केवल हमारे ऊपरी रहन-सहन, वेष भूषा, शिक्षा प्रणाली तथा सामाजिक और आर्थिक नियमों में ही नहीं होता बल्कि हमारी मूल संस्कृति और मूल आदर्शों में भी होता है। इस प्रकार का परिवर्तन हमारे देश में हुआ है और हो रहा है। यह तो सब को मालूम ही है कि परिवर्तन ही जीवन का लक्षण है और जीवन के लिये परिवर्तन का होना बहुत जरूरी है। प्रत्येक समाज या व्यक्ति जो संसार में अपनी बुनियादी कायम रखना चाहता है समय के अनुसार और परिस्थिति के अनुकूल परिवर्तित

होता रहता है। अब देखना यह है कि परिवर्तन अगसर है या पीछे ढकेलने वाला है। हमारे देश में तथा देश के निवासियों में जो परिवर्तन देखने को मिल रहा है वह सभी पश्चिमी सभ्यता की देन है। इसमें कोई संदेह नहीं है कि हमारा देश वैज्ञानिक सम्बन्धी बातों में पश्चिमी देशों से बहुत पीछे है और इस दृष्टि से हमें बहुत कुछ उनसे सीखना है लेकिन सोचना यह है कि उनकी सभी बातें हमारे लिये लाभदायक हैं या नहीं ?

आज समस्त भारत में अंग्रेजियत फैली हुई है और इसका एकमात्र कारण यह है कि जब यहां पर अंग्रेजी राज्य था उन्होंने अंग्रेजी को फैलाने के लिये अंग्रेजी शिक्षा द्वारा भारत के पुरुषों और स्त्रियों दोनों वर्गों के ऊपर आक्रमण किया परन्तु जितना वे नारी वर्ग में सफल हो सके उतना पुरुष वर्ग में नहीं हुए और इस प्रकार वह भारत की सभ्यता और संस्कृति को विनाश की ओर ले गये। जिस अंग्रेजी शिक्षा के प्रभाव के कारण युवक नीचे की ओर गिर रहे हैं, उसी शिक्षा को नारी वर्ग में फैलाने का बहुत जोरों से प्रयत्न किया जा रहा है। हमारे देश में आज जो भ्रष्टाचार, व्यभिचार और दुर्व्यसन दिखाई पड़ रहा है वह सब अंग्रेजी शिक्षा की ही देन है।

जिस प्रकार स्कूलों कालेजों में शिक्षा प्राप्त करने के बाद युवक फैशन (fashion) को गुलाम हो रहे हैं उसी प्रकार की रूपरखा स्कूलों और कालेजों में शिक्षा प्राप्त करने वाली युवतियों में भी पाई जाती है। आज की युवतियां इतने महीन और इतने चुस्त कपड़ों का प्रयोग करती हैं कि जिससे उनके अंग आवरण युक्त होने पर भी साफ साफ दिखाई देते हैं और साड़ी का पल्ला कंधे पर इस ढंग से पड़ा रहता है कि सारा बदन ढका हुआ न रह कर, आधा ढका और आधा खुला हुआ रहता है। इस प्रकार की युवतियों में लज्जा और हया नाम की कोई चीज ही नहीं दिखाई देती। सच तो यह है कि स्त्रियों की शोभा उनकी लज्जा में और महत्व उनकी स्थिरता में है।

SHRIMATI CHANDRAVATI LAKH-
ANPAL (Uttar Pradesh): Is this all relevant?

SHRI KISHORI RAM:

श्री किशोरी राम : आप तो बराबर हिन्दी में बोलती हैं । अब भी जरा हिन्दी में ही बोलने की कृपा कीजिये ।

मेरा कहना यह है कि इस विशेष विवाह विधेयक के द्वारा जिस तरह स्त्रियों और पुरुषों का सम्बन्ध जुड़ने वाला है उससे ताँ एसा जान पड़ता है कि यह परिवार से उनका सम्बन्ध तोड़ने वाला है । आवश्यकता तो इस बात की थी कि असवर्ण विवाह करने वाला व्यक्ति समाज या परिवार से किसी प्रकार भी अलग न हो और इसी दिशा में दश तथा समाज का सुधार हो सकता है । और यदि यह बिल सिर्फ भारतीय संस्कृति और भारतीय संस्कार को नष्ट करने तथा निकट सम्बन्धियों में व्यभिचार की वासना को बढ़ाने वाला है तो मैं समझता हूँ कि इससे बढ़ कर दश के लिये घातक बिल और कोई दूसरा नहीं होगा । बस मुझे इससे ज्यादा नहीं कहना है ।

[For English translation, see Appendix VII, Annexure No. 254.]

SHRI J. N. KAUSHAL (PEPSU); Mr. Vice-Chairman, I rise to welcome this measure. I feel that this is one of the progressive pieces of legislation which we have undertaken. Although I quite agree that the legislation will be taken advantage of by a few people and it will be for the benefit of a minor section of society, it does not mean that Parliament should not legislate for that section of the people who want a social measure of this sort to be placed on the Statute Book. There is no doubt that there is a growing demand from one section of the people and even if that section be termed as a minority, I feel it is our duty to legislate for them.

Since under the Hindu law, man has been given the right to marry as many I

wives as he likes, women feel—and very rightly too—that they have been very unjustly treated in that matter. They demand that if man can have more than one wife they (the women) should be given the right to separate from such a man. In my opinion, this demand is very very just; and apart from all these considerations this Bill is of a permissive nature; and, any person who wants to take advantage of this measure is free to marry according to the provisions of this Bill; otherwise, those persons who feel that this measure is not going to do any betterment of society, are at liberty to keep away from it.

With regard to the particular clauses of the Bill, I have a few suggestions to make. The first clause about which I want to say something is the clause relating to the publication of the notice by the Marriage Officers. If the idea underlying the clause is to give due publicity to an intended marriage, then, I feel, the objective has not been served by affixing a copy of the notice on the noticeboard of a particular officer. It does not seek to give any intimation to the persons concerned. The notice ought to be published in the Government Gazette and should be widely circulated in the English and vernacular newspapers so that the news of the intended marriage may reach the interested quarters.

The other clause to which I want to draw the attention of the House is clause 8 of the Bill. In clause 8, the right of appeal has been provided to the court of the District Judge of that particular district; but it is nowhere laid down as in clause 17 that the judgment of that court shall be final. Unless that finality is specifically laid down in the section itself, there is a great danger of that right being abused and further proceedings being taken.

The other suggestion which I want to make is that the right of appeal has been provided only in the case of a refusal by the Marriage Officer. I

[Shri J. N. Kaushal.] do not know why the right of appeal has not been provided to the objector also. If the Marriage Officer rejects an objection without due cause, it is very legitimate that the right of appeal should be provided to the other party also, especially when we have made some provision for saddling that party with costs to the tune of Rs. 1,000 in case those objections are frivolous.

With regard to clause 19, much has been said on the floor of this House, and all that I wish to say is that since we are legislating in a permissive manner, why should we impose this particular clause against the will of the intending parties? My own opinion is that we should give a choice to the parties to decide whether they want to remain members of a joint family or they want to effect a separation. This choice must be given because in the Punjab a son is not allowed to seek partition against the will of the father. So, if a son marries under this Bill and if he wants to separate from the joint family, that choice ought to be given to him. But there should be no compulsion about it.

The other clause in the Bill to which I want to draw the attention of the House is clause 24, sub-clause (2), which deals with the legitimacy of the children. That sub-clause reads as follows:—

"Where a marriage is annulled on the ground that the other party was an idiot or a lunatic or on the ground that at the time of the marriage either party thereto had not completed the age of eighteen years, children begotten before the decree is made shall be specified in the decree, and shall, in all respects, be deemed to be, and always to have been, the legitimate children of their parents."

I do not know why this sub-clause deals only with two cases, while in sub-clause (1) it is said that a mar-

riage can be declared to be void on four grounds mentioned in subclauses (a), (b), (c) and (e) of clause 4. I am not able to understand why legitimacy is confined only to two cases, namely idiocy, lunacy and minority. There seems to be no reason for leaving out sub-clauses (a) and (e). If it is found later on that either party had a spouse living or that they had married within the prohibited degrees, the children ought to be declared to be legitimate.

Then, the other clause to which I want to draw the attention of this House is clause 26, sub-clause (c) which says "is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code". And there is a proviso also which says that "Provided that divorce shall not be granted on this ground, unless the respondent has prior to the presentation of the petition undergone at least three years' imprisonment out of the said period of seven years....." I do not know whether this clause should be retained at all in the Bill.

[MR. DEPUTY CHAIRMAN in the Chair.]

If an innocent man is convicted in a court of law and is sentenced to seven years' imprisonment, then does it mean that he stands the chance of losing his wife also? I personally feel that this clause is out of place and it should not be one of the grounds for divorce.

Then the other clause to which I want to draw the attention of this House is clause 26 (i) about conjugal rights. I personally feel that the period of two years provided for therein is too long a period. Since some time will be spent in taking the decree for restitution of conjugal rights and when either party refuses to perform the decree, no further period like two years should be granted to him. The period of six months or at the most of one year-would be quite enough.

Then in clause 28 again there is one year's period provided after the dismissal of an appeal for the remarriage of the divorced persons. In my opinion, this period of one year after the appeal is again too long a period. As our experience shows, much of the time is taken in the law courts, and after the appeal is decided, the period of one year is unnecessary. It should be a much smaller period.

Then the other clause is clause 30 (2) wherein a departure has been made from the accepted procedure prevailing in the courts of law. It reads as follows:—

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

I do not know why mere averments in pleadings have been treated as evidence in this particular law. Normally averments in pleadings are **not** taken as evidence. They are just taken to be allegations.

The last clause to which I want to draw the attention of this House is clause 35 which deals with permanent alimony and maintenance. I do not know why this clause has been left entirely vague. No grounds and reasons have been indicated in the clause itself on which the court may act. This clause gives absolutely unrestricted powers to the courts. I feel we must indicate our mind in the clause itself as to the circumstances in which the court can exercise its powers under this clause.

In the end I would only say that the Bill has its justification even though the cases that arise are very few and far between. I have in mind two instances. There -was one case in which one of my very near relations was deserted by her husband for no fault of hers, and the trouble originated from a very petty quarrel

in the family. He deserted her and married a second time. Similarly there was another case in which the girl happened to be too simple and she was deserted by her husband, and he married for the second time, and we had to marry the girl for the second time, taking the risks of law. So I personally feel that the time is ripe when the Government should legislate on such matters. And the Government has taken a perfectly right step in bringing forward this-Bill.

SHRI AKBAR ALI KHAN (Hyder abad) : Mr. Deputy Chairman, the Bill has been fully discussed and the various points of view, notwithstanding certain sarcastic speeches, have been put before this House. And we have to admit that there are two schools of thought in this important matter. And we have to give our best consideration to both the points of view, at the same time, pressing and putting before the House and before the country, with reasons and arguments, the point of view which we consider the best in the greater interest of our country. It is a matter of relief to me that the discussion, for and against, has gone on very sound lines, and even our lady Members.....

DR. SHRIMATI SEETA PARMANAND:
Why 'even'?

SHRI AKBAR ALI KHAN: So far as the hon. men Members are concerned, there was some opposition, but this did not apply to the lady Members. That is what I meant to* say. What I want to say is this that so far as this measure is concerned, it is wrong to assume that it interferes with any religion, any denomination or any caste. That approach, in view of the provisions of the Bill and also the law existing now before this Bill is passed into law, is unwarranted. It has been said repeatedly that this is a permissive legislation. I would go a step further and ask: In view of the fact that there are people,.

[Shri Akbar Ali Khan.] no matter how few they may be, who want to exercise their free will and who want to marry in a different caste or a different religion or community, should we, as a democratic republic, as a secular state, say, 'No. We cannot allow you to marry. We would not permit it because it does not agree with the sentiments of the majority of the orthodox people.' The question is simply this: Are we going to put a ban like that or are we going to say to people in our country who, after mature consideration, after giving the fullest thought to the matter, say that they are prepared to marry and take the consequences? Is it for us to say, "No. We will stand in your way. We will penalise you from the property point of view; we will penalise you from the social point of view; we will penalise the children who will be born to you."? Is that the attitude that we should adopt? It is true and I entirely agree with some friends who said that, if some census was taken, 99 per cent, of the people would say, "We do not want this measure. We would marry according to our own custom and personal law". But that is not the point. The point is that we have to look at it from the point of view not of those people but from the point of view of those people who want to marry. That is the position before us and not that we are establishing a civil code for all people with a direction and an obligation that all should subscribe to it. That is not the position at all. If that had been the position, most of us who are now supporting the Bill, I assure you, Sir, would have opposed it. This is an enabling Bill. As some hon. Members have said, another very important point is that you have to see to social justice. There may be many things which, if you take the majority point of view, may not get any support. The greatest example that has been placed before us is that of Mahatma Gandhi. What was the position regarding the Harijan question? What was the position about the rights of women? What was the position as regards the political rights and political aspirations of the people?

There were far too many people who opposed all these beneficent measures. If we think that this is a beneficent measure and we should give the fullest opportunity to those—and the law also should be helpful to them—who of their own free will wants to marry out of religion, we should say, '**God** bless you'. That is the measure that is before us and nothing more. We will tell them, "So far as you enter into it with full responsibility that is legal; so far as your children are concerned, they will have the status of legitimate children of the country". That is the measure before us for us to say, 'Yes' or 'No'. With due respect to many hon. Members who are my elders, for whom I have great respect, I submit that they have completely missed the point.

The other thing that I would like to say is that we are here first and last as Indians, and we have to think of all the measures that are brought before us here as Indians. This certainly implies, certainly indicates, that I have got the responsibility—as a new entrant I feel more that that responsibility is very great—of making laws for 36 crores of people about whom we have to think, and that responsibility, according to my conviction, is not only in this world but also in the coming world, and it will lie heavily on me if I do anything halfheartedly without mature consideration. My submission is that we have to think not only of those who are least progressive but also of those who are most progressive. We have also to take into consideration the sentiments of even the tribal people and also of the views and ideas of friends to my right (Communists). So, in view of that, we have to be cautious, and the very fact that there has been such sharp divergence of opinion even in the Select Committee and there has been acute difference of opinion in this House, shows that this Bill in general is a very cautious measure. If it had been a revolutionary measure, an extreme measure, I think in the context of the situation

.... 111 the conditions which exist now, it would have been a blunder. At the same time, if you had not thought of this and remained where you were in the year 1872, it would have been equally a mistake and a greater mistake. My point is this: We have only gone a few steps further. What could be the reasonable objection at this stage? If there was any objection, why did not people raise their voice against the enactment of 1872, which compelled persons concerned to give up their religion before they could marry. In fact, that was interference with religion. It said that you could not marry unless you gave up your religion. That was the measure of 1872. What the present measure says is, "Religion is your affair. Whatever religion you want to have, you have. If you want to marry out of your religion, we will not stand in your way. We will not impose any penalty on you". Take again the Caste Disabilities Removal Act. Did anybody say then that it was interfering with religion? No. Now we are a republic, and we should try to look at things from a rational point of view, from the humanitarian point of view, and I think that this measure in general with certain modifications which I would also suggest and which other hon. Members have also suggested, is a progressive measure and the Government and the Law Minister should be congratulated for it.

Now, just a few points. For instance, the question of age is there. I think there is practical unanimity that it should be raised to 21 and I am sure the Mover will accept that proposition. There is the question of guardianship. I think there is no question of guardianship in this matter and you should not bring that in. Let the man feel the responsibility economically, socially and then carry this burden on himself. Why do you want to bring in guardianship and say "for people who are of minor age that through their guardians they should enter into this relationship". I

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don't approve of it. Similarly for voidable and void marriages you have put in a list. I entirely agree with those Members who say that there should be a medical certificate furnished saying that there is no unfitness for marriage to either party, there is no V.D. or anything which will ultimately make the marriage either void or voidable. Why do you give these loop-holes? Instead of that, let a certificate be furnished before the Marriage Officer; this will substantially reduce differences and possible litigation.

Then, certainly regarding the list of prohibited degrees I agree in general with the list in different Divorce Acts but we could curtail it and we can have a general provision which will cover them. These are some of the matters certainly, I am sure, that will receive your consideration and your very careful consideration, and necessary amendments made.

As regards other matters, I certainly welcome them. When we say that we, under this law, legalize a marriage, it is our privilege to say that it would be a monogamy. When we say we give you the authority of this law, certainly we are in a position to say that it will not be abused and the law of succession and all these things will be applied in a particular way. It is a sane thing to safeguard the rights of the children. I am very glad that they have also given the opportunity to those who are already married also or to those of mature age if they so like it. It is not that my elder friend Dr. Mookerjee or myself will go and have our marriages under this Civil Marriage Act or my hon. friend Mr. Saksena will have but suppose somebody wants to have the advantage of that, why should he be forbidden? Why should he be told "No, we don't want you to register your marriage under this Act". That attitude is not correct.

So with these general observations I commend the Bill for the approval of this House, It is certainly a social

[Shri Akbar Ali Khan.] measure, it is a very good measure and I am glad about it. As I said, there are people of all castes and religions who have supported it and there are people who have opposed it. Very few, I admit, have opposed. So let it not be considered from any religious or denominational point of view but from humanitarian point of view and this is not a measure, so far as I think, that interferes with anybody as the law of civil marriage existed since 1872. It only gives permission to those who want to take advantage of it and gives certain facilities which were needed. With these few words, I support the Bill.

SHRIMATI CHANDRAVATI LAKH-ANPAL:

श्रीमती चन्द्रवती लखनपाल : उपाध्यक्ष महोदय, इस बिल (Bill) के ऊपर पिछले कई दिनों से बहस हो रही है। यह कोई नया बिल नहीं है। १९०२ में जो बिल पास हुआ था उसी का यह एक दूसरा रूप है। यदि दूसरे बिलों की तरह से इस बिल को भी माननीय विधि मंत्री महोदय एक अमेंडमेंट (amendment) के रूप में लाते तो बहुत अच्छा हुआ होता। जो दो, तीन दिन का समय विवाद में, मैं कहती हूँ कि बंकार के विवाद में, खत्म हुआ है वह बच जाता। श्री सक्सेना जैसे माननीय सदस्यों के मन के अन्दर ईखा गया कि वह भ्रम था कि वे यह समझ रहे थे कि यह एक नया बिल है, उस गलतफहमी से भी हम सब बच जाते अगर इस बिल को एक अमेंडमेंट के रूप में लाया जाता।

SHRI H. P. SAKSENA: Sir, on a point of personal explanation. I stated while speaking on this Bill in 1952 that our new Republic should concern itself.....

MR. DEPUTY CHAIRMAN: Mr. Saksena, order, order.

SHRI H. P. SAKSENA: I am as conscious of its age as perhaps she is,

SHRIMATI CHANDRAVATI LAKH-ANPAL:

श्रीमती चन्द्रवती लखनपाल : श्री सक्सेना ने जो कुछ कहा उससे तो हम सब पर जो प्रभाव पड़ा वह यही था कि वह इस बिल का विरोध कर रहे हैं और यह समझ रहे हैं कि यह एक बड़ा र्वालयुशनरी (revolutionary) और नया मंत्र (measure) सदन में लाया जा रहा है। जो प्रभाव इस सदन के सदस्यों के ऊपर पड़ा वह यही था। खैर, अब इस स्टैज (Stage) पर तो यह बात हो नहीं सकती कि एक अमेंडिंग बिल लाया जाय। इस समय यह विधेयक जो सदन के सम्मुख उपस्थित है सेलेक्ट कमिटी (Select Committee) से गुजर कर आया है। इसके अन्दर कई बहुत अच्छे र संशोधन हुए हैं और कई गतिवियों को सुलभा दिया गया है। इसका क्षेत्र भी बड़ा विस्तृत हो गया है। कई बातें बहुत स्पष्ट कर दी गई हैं और उदार बना दी गई हैं। मैं तो नहीं समझती कि कोई भी विचारशील व्यक्ति इस बिल का विरोध कर सकता है। यह प्रसन्नता की बात है कि सभी माननीय सदस्यों ने, किन्हीं दो-एक को छोड़कर, इसका स्वागत किया है। जिन महानुभावों ने इसका विरोध किया है उनका जिक्र मैं यहां नहीं करना चाहती क्योंकि श्री सक्सेना और डाक्टर मुकजी जैसे माननीय सदस्य जिस युग के प्रतिनिधि हैं.....

SHRI H. R. SAKSENA: She is unnecessarily bracketing me with Dr. Mookerjee. She has not understood my speech at all.

MR. DEPUTY CHAIRMAN: I would like to suggest to the hon. Member that she may express her own views on this Bill instead of replying to Mr. Saksena. The hon. Law Minister will do that.

SHRIMATI CHANDRAVATI LAKH-ANPAL: *

श्रीमती चन्द्रवती लखनपाल : श्रीयुक्त सक्सेना को मैं कभी भी उत्तर नहीं देना चाहती क्योंकि मुझे स्वयं ही इस सम्बन्ध में दो चार बातें कहनी हैं।

श्रीमान्, मैंने अभी निवेदन किया कि यह बिल ऐसा है जिसके ऊपर कोई विरोध किया ही नहीं जा सकता। यह बिल सब प्रकार से युक्तियुक्त और प्रगतिशील है किन्तु फिर भी हमारे कुछ माननीय सदस्यों ने इस बिल के ऊपर कई प्रकार के आक्षेप किये हैं, कई प्रकार की शिकायतें सदन के सामने रखी हैं और उनमें से एक शिकायत यह है कि यह बिल काफी प्रगतिशील नहीं है। मुझे माननीय हेगर्ड और अपनी बहन श्रीमती मैनन से यह सुन कर वास्तव में बड़ा ही आश्चर्य हुआ कि इस बिल के एक एक क्लॉज (Clause) के अन्दर कंजरर्वीटिज्म (conservatism), आर्थोडॉक्सि (orthodoxy) और रिएक्शनरिज्म (reactionarism) की झलक दिखाई देती हैं। मुझे दोनों के विचारों के लिये बड़ा ही सम्मान है और जब मैंने उनके इन आक्षेपों को सुना तो मैंने इस बिल की एक एक धारा को बड़े ध्यान से पढ़ा और मैं आपको विश्वास दिलाती हूँ कि मुझे इस बिल की किसी भी धारा में और किसी भी शब्द में अप्रगतिशीलता, आर्थोडॉक्सि या कंजरर्वीटिज्म की बू तक नहीं आई। इसमें जरा भी संदेह नहीं है कि यह बिल एक प्रगतिशील बिल है। जब से हम आजाद हुए हैं तब से हमने देश के अन्दर एक कास्टलैस (casteless) और क्लासलैस (classless) सोसाइटी (society) के बनाने का स्वप्न देखा है और इसमें जरा भी संदेह नहीं है कि यह बिल एक ऐसा कदम है जो कि हमारे देश में जातिविहीन और वर्गविहीन समाज की स्थापना का जो हमारा स्वप्न है उसको पूरा कर सकता है।

इसके अतिरिक्त इस बिल के अनुसार एक नया अधिकार भी मिल रहा है। वह यह है कि इस स्पेशल मैरिज बिल (Special Marriage

Bill) के अन्तर्गत न केवल भिन्न भिन्न धर्मों और भिन्न भिन्न कम्युनिटीज (communities) में शादियां हो सकेंगी वरन् वे व्यक्ति भी जो कि हिन्दू जाति के अन्दर हैं, जैसे कि ब्राह्मण हैं, वैश्य हैं, क्षत्री हैं या हरिजन हैं, सब

जातियां, सब व्यक्ति, एक दूसरे के साथ बिना किसी रोक टोक के इस बिल के सारे फायदों से लाभ उठाते हुये शादी कर सकेंगे।

इसके अतिरिक्त इस विधेयक में क्लॉज (clause) १५ है जिसके अन्तर्गत वे शादियां जो कि किसी और रीति से हो चुकी हैं वे भी रजिस्टर (register) की जा सकती हैं। यह एक बहुत आगे बढ़ाने वाला, और एक बहुत ही एडवांस (advance) कदम है। यह बात हमारे देश के लिये एक यूनीफार्म सिविल कोड (uniform civil code) बनाने के लिये एक बड़ा तैयार करती है।

किन्तु, जैसा कि मैंने कहा, इस सदन के अन्दर बहुत से लोगों ने फिर भी इस विधेयक का विरोध किया है और वे इस विधेयक से असंतुष्ट हैं। किन्हीं लोगों ने कहा है कि यह विधेयक बहुत तेजी में जा रहा है, किन्हीं ने कहा है कि यह बहुत ही क्रान्तिकारी मंजर है और किन्हीं ने कहा है कि यह बहुत कंजरर्वीटिव मंजर है। मेरा तो विचार है कि इस बिल के अन्दर जो दोनों उग्र विचारधारायें हैं, जो दोनों एक्सट्रीमिस्ट (extremist) व्युज (views) हैं, दोनों का बहुत ही सुंदरता के साथ समन्वय किया गया है। जो बीच का रास्ता है, जो सदा ही गोल्डन मीन (golden mean) की तरह से सुंदर होता है, उसी को इस बिल में अपनाया गया है। किन्तु फिर भी कुछ माननीय सदस्यों ने इस पर बड़े आक्षेप किये हैं। ऐसे बंधुओं से मैं यही कहना चाहती हूँ कि वे इस बिल की भावना को समझें नहीं हैं और इस बिल का जो उद्देश्य है उसको समझें नहीं हैं।

इस बिल का उद्देश्य केवल इतना ही नहीं है कि हम समाज के अन्दर जो विभिन्न मत हैं, विभिन्न वर्गों के जो रस्मों-रिवाज हैं उन सब को इसके अन्दर खपाने और समाविष्ट करने का प्रयत्न करें और इसको एक चूँ चूँ का मुल्बा

[Shrimati Chandravati Lakhnapal]

बना दें क्योंकि अगर हम चाहें भी कि जितने पर्सनल (personal) ला (law) हैं, जितने कस्टमरी (customary) ला हैं उन सब को इसके अन्दर प्रविष्ट कर लें और हम सभी वर्गों को प्रसन्न कर लें तां यह कभी भी सम्भव नहीं हो सकता। सभी को कभी भी प्रसन्न नहीं किया जा सकता और न इस विधेयक का यह उद्देश्य ही है कि सब को प्रसन्न किया जाय और सब के कस्टमरी ला और पर्सनल ला को इसमें समाविष्ट किया जाय। इस बिल का उद्देश्य यह है, जैसा कि मैं समझती हूँ, और मुझमें विश्वास है कि माननीय विधि मंत्री के अन्दर भी यही भावना है, कि इसका द्वारा देश के अन्दर एक प्रगतिशील समाज की स्थापना हो। इस बिल के पीछे यही भावना है कि हम अपने देश के अन्दर एक ऐसे समाज की स्थापना करें जहाँ कि प्रगतिशील हो, और वैज्ञानिक सिद्धांतों पर आश्रित हो। ऐसा समाज स्थापित कर सकें जहाँ अपने जीवन के अन्दर हायर (higher) मॉरल (moral) वैल्यू (value) की उपेक्षा न करें, उनका आधार बनाकर चलें, जहाँ अपने वैज्ञानिकों के नियमों और सिद्धान्तों को आधार बना कर चलें। इस प्रकार इस उद्देश्य को सामने रख कर इस बिल की धाराओं का यदि हम पढ़ने और समझने की कोशिश करेंगे तो मुझमें विश्वास है कि हम ठीक परिणाम पर पहुँच सकेंगे। मैं यह नहीं कहती हूँ कि बिल में जितनी धाराएँ हैं सभी इसी उद्देश्य को सामने रख कर रची गई हैं किन्तु मुझमें यह कहना पड़ेगा कि बिल के अन्दर काफी ऐसी धाराएँ हैं जिनमें उन विशाल उद्देश्यों का तो मैं न आपका सामने प्रस्तुत किया है, संभावना नहीं किया गया। उदाहरण के लिए प्रॉहिबिटेड (prohibited) डिग्रीज़ (degrees) का क्लास ही लें लीजिये, इस पर काफी चर्चा हुई, एक जवर्दस्त मत सदन ने प्रकट किया। हमारे इक्विन के भाइयों की ओर से और दूसरे भाइयों की ओर से यह शिक्षायत की गई है कि यह जो प्रॉहिबिटेड डिग्रीज़ की धारा है उससे उनके पर्सनल ला में एक बड़ी रुकावट होती है।

MR. UKFUTY' (JiAIKIViAN : All these points have been already mentioned. There is very little time.

SHRIMATI CHANDRAVATI LAKH-ANPAL:

श्रीमती चन्द्रवती लखनपाल : प्रॉहिबिटेड डिग्रीज़ के चार में हमें देखना पड़ेगा कि देश में इस सम्बन्ध में जो विभिन्न विचार हैं और जो विभिन्न कस्टमरी लाज हैं, और इस बिल का जो दृष्टिकोण है क्या उनमें आपस में पुष्टि होती है। हमारे देश के अन्दर विवाह के सम्बन्ध में जो प्रॉहिबिटेड डिग्रीज़ का बन्धन लगाया गया है उसका आधारभूत सिद्धान्त यह है कि बायोलॉजी (biology) यूजेनिक्स (eugenics) और शास्त्रों के अनुसार वह माना जाता है कि अगर रुधिर की एकता हो तो सन्तान बीलष्ट और स्वस्थ नहीं होती। इसी दृष्टिकोण का सामने रखकर इस चीज का इतना महत्व दिया गया है।

हमारे प्राचीन गुरुओं के आश्रमों में जो लड़के और लड़कियाँ ज्ञान प्राप्त करवाते थे, उन सभी का गांव एक माना जाता था, क्योंकि एक गांव में विवाह वर्जित था। यह इसीलिए था कि जो लड़के और लड़कियाँ एक साथ पढ़ते थे, उनके मन में किसी तरह की विवाह करने की भावना पैदा न हो सके। वे हमेशा अपने को माई बहन के रूप में समझते और उनके अन्दर अपवित्र विचार पैदा न हों। जब हमारे प्राचीन लोग इस चीज को इतना ज्यादा महत्व देते थे कि वे अपने आश्रम में पढ़ने वाले लड़के और लड़कियों का एक गांव रख देते थे ताकि उनके मनों में किसी प्रकार की भी अपवित्रता उत्पन्न न हो सके और संस्था की मर्यादा और वातावरण फलित रह सके तो मैं चाहती हूँ कि अगर हमने यह बात स्वीकार कर ली कि हमारे देश के अन्दर इस तरह I.P.M. प्रॉहिबिटेड डिग्रीज़ के रिश्तदार चाचा, भतीजी, मामा भांजी, और फर्स्ट (first) कोजिनस (cousins) में शादी हो सकती है तो हमारे देश के अन्दर जो शारीरिक पवित्रता

हैं, जो मर्यादा हैं, जो उत्तम वातावरण हैं, उसको ठँस पहुँचेंगी। इसलिए हमें इन सब बातों को दृष्टितं हुए यह समझना पड़ेगा कि इस बिल में प्रोहीबिर्टड डिग्रीज के बारे में जो व्यवस्था की गई है वह बिल्कुल उचित है और वास्तव में यह बात ठीक भी मालूम देती है। मगर हम यह दृष्टितं हैं कि अगली धारा में एक प्रकार से इस सिद्धान्त को अस्वीकृत कर दिया गया है। जिस प्रोहीबिर्टड डिग्रीज के सिद्धान्त को हमने माना है उसको हम धारा १५ (ई) द्वारा अस्वीकार कर रहे हैं, वापस ले रहे हैं और यह अनुचित मालूम देता है। मंग निवदन यह है कि हमें इस बिल की हर धाराओं को इस दृष्टि से देखना होगा कि जिस उद्देश्य के लिए हम यह बिल बना रहे हैं, जैसा कि मैंने अभी आपके सामने रखा, क्या उसके अनुसार यह पूर्ण रूप से ठीक उत्तरता है या नहीं।

अब मुझे एक बात उम् के विषय में कहनी है। इस बिल में अट्ठारह साल की उम् रखी गई है। किन्तु मंग कहना यह है कि जहाँ तक लड़की का सम्बन्ध है वह उम् बिल्कुल उचित ही है। मगर जहाँ लड़के का सम्बन्ध है वह उचित मालूम नहीं देती। बिल में उम् की जो व्यवस्था की गई है वह समानता के आधार पर की गई है जो कि एक अच्छी बात है। लेकिन साथ ही साथ यह भी देखना होगा कि अट्ठारह साल के लड़के का अट्ठारह साल की लड़की से मुकाबला नहीं किया जा सकता है। दोनों का मानसिक विकास बिल्कुल भिन्न २ तरीके से होता है। अट्ठारह साल का लड़का कच्ची उम् का समझा जाता है, नादान समझा जाता है, उसको किसी भी विषय में गम्भीरता के साथ सोचने की शक्ति नहीं होती है। फिर इस विशेष विवाह जैसे मामले में जहाँ लड़के को अपने परिवार से भी नाता ताँड़ने को बाध्य किया जा रहा है। ऐसे मामलों में ऐसे नव-युवक को जो यह नहीं जानता है कि उसकी क्या जिम्मेदारी है, जो यह नहीं जानता है कि आने वाला जीवन क्या होगा—पर्याप्त जिम्मेदार समझना उचित न होगा। ऐसी अवस्था में अट्ठारह साल

की उम् रखना कोई अक्लमन्दी की बात नहीं। मेरी समझ में कम से कम चौबीस या पचीस साल की उस नवयुवक की उम् होनी चाहिये जिससे अगर आप यह चाहते हैं कि वह अपने आने वाले जीवन को सुखी बना सके, दुनिया की कशमकश में अपने को आगे बढ़ा सके और अपने नये परिवार की नींव रख सके।

इस विषय में ज्यादा कहने का समय नहीं है किन्तु यही निवदन करना चाहती हूँ कि इस बिल को यदि माननीय सदस्यगण इस भावना से देखेंगे, जैसे कि मैं व्यक्त कर चुकी हूँ तो हम ज्यादा अच्छे परिणाम पर पहुँच सकेंगे। इन दो चार बातों को छोड़कर ऐसा प्रतीत होता है बिल ने बीच का मार्ग अपनाया है और एक अच्छा युक्तियुक्त दृष्टिकोण अपनाया है। इन शब्दों के साथ मैं इस बिल का हृदय से समर्पण करती हूँ।

[For English translation, see Appendix VII, Annexure No. 255.]

ME. DEPUTY CHAIRMAN: The hon. Minister.

SHRI KISHEN CHAND: On a point of order, Sir. Unless a closure motion is applied under.....

MR. DEPUTY CHAIRMAN: I think there has been sufficient debate. Members have sent in a number of amendments. Rule 207 says:

"(1) Whenever the debate on any motion in connection with a Bill or on any other motion becomes unduly protracted, the Chairman may, after taking the sense of the Council, fix the hour at which the debate shall conclude.

(2) The Chairman shall at such appointed hour, unless the debate be sooner concluded, proceed forthwith to put all such questions as may be necessary to determine the decision of the Council on the original question."

[Mr. Deputy Chairman.]

I think there has been sufficient debate. You will have opportunities. Do you want me to take the sense of the House?

SHRI KISHEN CHAND; I submit, Sir,

(interruptions.)

MR. DEPUTY CHAIRMAN: Those who want the debate to be concluded may please raise their hands.

AN HON. MEMBER: We have not followed. What is it that you want, Sir?

MR. DEPUTY CHAIRMAN: I am taking the sense of the House as to whether the debate has been sufficient on this Bill or not.

SHRI S. N. MAZUMDAR (West Bengal): Sir, when the hon. Minister himself suggests that it may be continued for two hours.....

MR. DEPUTY CHAIRMAN: We have discussed it for three days. If the House wants to continue, I have no objection. I am taking the sense of the House. I am in the hands of the House. There are 165 amendments of which notice has been given.

SHRI T. PANDE: This Bill is very important. It should not be proceeded with in a hurry. One more day must be given.]

MR. DEPUTY CHAIRMAN: I know it; we have had three days. There are 165

श्री टी० पांडे (उत्तर प्रदेश) : यह बिल (Bill) बड़ा ही महत्वपूर्ण बिल है। जल्दी इसमें नहीं करनी चाहिए। एक दिन और अवश्य मिलना चाहिए।

amendments. (*Interruptions*) Order, order, I think that those who have not spoken so far will certainly have opportunities to speak on the amendments. I feel that there has been sufficient debate. Still, I am in

the hands of the House. Most of the speeches are repetitions of earlier speeches.

SHRI B. K. MUKERJEE (Uttar Pradesh): Is there any Member of the House who wants to take advantage of this Bill if it is passed very soon?

MR. DEPUTY CHAIRMAN: (*After taking the sense of the House*) Very well, a large number of Members want the debate to continue. Mr. Vijai-vargiya.

SHRI GOPIKRISHNA VIJAI-VARGIYA:

श्री गोपीकृष्ण विजयवर्गीय : माननीय उपाध्यक्ष महोदय, समय सिर्फ पांच मिनट रह गया है। मैं अपने प्रदेश, मध्य भारत, में समाज सुधार के कार्यों में दिलचस्पी लेता रहा हूँ और इस बात के लिए निरंतर प्रयत्न करता रहा हूँ कि जात पात को तोड़ कर के एक समाज की रचना कर के उसमें एकता बढ़ाई जाय। मैं अन्तर्जातीय विवाहों के लिए और अन्य सामाजिक कार्यों के लिए दिलचस्पी लेता रहा हूँ। इसलिए मैंने यह आवश्यक समझा कि आज थोड़ा समय ले कर के मैं भी इस बिल (Bill) पर अपने विचार व्यक्त करूँ।

उपाध्यक्ष महोदय, यह स्पेशल (Special) मैरिज (Marriage) का कानून सन् १८७२ से बना हुआ है। सन् १९२३ में इसमें संशोधन हुआ। लेकिन यह बिल वास्तव में उस एक्ट (Act) से काफी परिवर्तित है। इसमें बहुत सी नई धाराएं और नई व्यवस्थाएं शामिल की गई हैं। इसलिए इस बिल की अत्यन्त आवश्यकता थी। संशोधित रूप में यह बिल नहीं आ सकता था और इसलिए इसको एक नये बिल के रूप में हम इस हाऊस (House) के सामने पेश कर रहे हैं। इस स्पेशल मैरिज बिल (Special Marriage Bill) के सम्बन्ध में जो विचार अभी तक व्यक्त हुए हैं उनमें से दो तरफ से इस बिल

पर आक्षेप हुए हैं, एक तो वह विचार कि जो पुराने ढंग के लोगों में, हिंदुओं में से कुछ लोगों ने व्यक्त किये हैं, जैसे डाक्टर मुकर्जी हैं, इत्यादि। दूसरे विचार वह हैं जो इस्माइल सादब ने और दूसरे लोगों ने व्यक्त किये हैं कि यह कानून इस्लाम पर एक हस्तक्षेप है। कुछ मुसलमान मंत्रियों ने बिल का समर्थन भी किया है, इसमें शक नहीं। लेकिन दो तरह के विचार यहां प्रगट किये गये हैं। एक तरफ से हिन्दू कीक्यान्सी विचार और दूसरी तरफ से मुसलमान कीक्यान्सी विचार। तो इस प्रकार अगर दोनों तरफ से आक्षेप होते हैं तो मेरा खयाल से यह एक अफसोस की बात है। न तो आजकल के जमाने में उन कानूनों से चला जा सकता है जो हिंदुओं ने अपने लिए १५०० या २००० वर्ष पहले बनाए थे और न १३००-१४०० वर्ष पहले के इसलामी कानून के मुताबिक चला जा सकता है। आज हम एक नई तवारीख, नई हिस्ट्री (history) से गुजर रहे हैं, और उसी के मुताबिक नये कानून ला रहे हैं। इसलिए हमको आज की परिस्थितियों पर विचार करना पड़ेगा और उन्हीं परिस्थितियों में काम करने के लिए यह कानून हमारे सामने पेश हुआ है।

हमारे उन मित्रों ने जिन्होंने इस कानून पर आक्षेप किये हैं या इसमें खामियां बतलाई हैं, उनमें से सबसे पहले मैं मुसलमान मित्रों की तरफ से जो आक्षेप उठाये गये कि इस

कानून द्वारा मुसलमान धर्म पर हस्तक्षेप किया जा रहा है, उसके विषय में यह कहना चाहता हूं कि आज संसार के अन्य देशों में मुसलमान लोग ही कितने परिवर्तन करते जा रहे हैं, वे कितनी उन्नति करते जा रहे हैं, और वे जमाने की रफ्तार के अनुसार कितना आगे बढ़ चुके हैं, इस ओर उन्हें देखना चाहिए। आज हिंदुस्तान में सभी धर्म के, सभी मजहब के लोग रहते हैं और बहुत सम्भव है, एंसी शादियां हमारे देश में होंगी जो जात पात और धर्म के बंधनों को तोड़ कर की जायें। तो एंसी परिस्थिति में मेरा खयाल है कि मुसलमान लोग, जिनको मैं अपना भाई और इस देश का निवासी समझता हूं अगर चीन और रूस के मुसलमानों की तरह ज्यादा तरक्की पसंद न हो सके तो भी टर्की के मुसलमानों से सबक लें कि किस तरह वे जमाने की रफ्तार के साथ जा रहे हैं।

[For English translation, see Appendix VII, Annexure No. 256.]

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

The Council then adjourned till a quarter past eight of the clock on Wednesday, the 5th May 1954.