

ANNOUNCEMENT RE CHANGE
OF ENACTING FORMULA IN
BILLS

MR. CHAIRMAN: As Members are aware, the form of the Enacting Formula in Bills introduced in Parliament was recently changed so as to read "Be it enacted by Parliament in the — Year of our Republic as follows". This new formula has already been adopted by the House in respect of one Bill, *viz.*, the Prevention of Disqualification (Parliament and Part C States Legislatures) Amendment Bill, 1954, which has also since been assented to by the President. There are two other Bills, namely, the Muslim Wakfs Bill and the Children Bill which have already been passed by this House. In both these cases the Enacting Formula continues to be as previously, *i.e.*, "Be it enacted by Parliament as follows". For the sake of uniformity, I have made the necessary corrections in the Enacting Formula of these two Bills by introducing therein the words "in the Fifth Year of our Republic". In cases of Bills which are pending before the Council, I would suggest that necessary amendments for the purpose should be formally moved and adopted.

The proposal was agreed to.

SHRI K. S. HEGDE (Madras): On a point of order. So far as the Preamble is concerned, it is a part of the Act. I am in entire agreement with you, but except by an amendment, could it be done with the concurrence of the House?

SHRI RAJAGOPAL NAIDU (Madras): Under the rules, the Chairman is authorized.

MR. CHAIRMAN: Under rule 94 I have the necessary powers. Patent errors can be corrected and obvious mistakes can be set right.

ALLOTMENT OF A DAY FOR DEBATE ON FOREIGN AFFAIRS

SHRI TAJAMUL HUSAIN (Bihar): Is there any likelihood of this session being extended beyond the 18th?

MR. CHAIRMAN: It depends on you.

SHRI TAJAMUL HUSAIN: I am glad you have told me that.

MR. CHAIRMAN: I think it will be the final thing.

SHRI RAJAGOPAL NAIDU (Madras): We find that in the other House a day is allotted for a debate on foreign affairs. May I request the Chairman for allotting a day for that?

MR. CHAIRMAN: We are having one day, *i.e.*, the last day for Foreign Affairs Debate. Mr. Giri.

THE INDUSTRIAL DISPUTES
(AMENDMENT) BILL, 1954

THE MINISTER FOR LABOUR (SHRI V. V. GIRI): Sir, I beg to move:

"That leave be granted to introduce a Bill further to amend the Industrial Disputes Act, 1947."

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Industrial Disputes Act, 1947."

The motion was adopted.

SHRI V. V. GIRI: Sir, I beg to introduce the Bill.

THE SPECIAL MARRIAGE BILL,
1952—continued

MR. CHAIRMAN: Shri Biswas to reply.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C.

BISWAS): Sir, the question of age-limit for marriage has been discussed and different views have been expressed by hon. Members. So far as Government are concerned, their views are embodied in clause 4 (c). According to them, the parties should complete the age of 18 years. At the same time I stated that Government were willing to leave the matter to the decision of the House. Objection has been taken to that attitude. I really don't know what Government ought to do, when they find that there is sharp divergence of opinion. If they leave it to the House, then they commit a blunder and they are accused of irresponsibility. If they impose their views, that is compulsion, that is undemocratic and that is going athwart the sense of the House. Government have expressed their opinion which is embodied in the Bill and if there is a very great difference of opinion, is it very wrong to say that the House should decide for itself. There are different points of view. As a matter of fact some of my friends say that boys and girls should be allowed to marry very young. Very sound proposition.

SHRI P. SUNDARAYYA (Andhra): Nobody has said it.

SHRI C. C. BISWAS: Our Hindu laws have advocated marriage at the age of 9.

SHRI P. SUNDARAYYA: Nobody has said that boys and girls must be married very young. That is a total misrepresentation of the whole discussion.

SHRI C. C. BISWAS: It all depends on the social conditions at the time. In our Sastras you will find that it was a meritorious act if you give away your daughter in marriage at the age of 9 but nobody would think of it as something reasonable or practicable nowadays. Times have changed. The reason why we put down 18 is that that is the age of majority. The Indian Majority Act 26 C.S.D.

no doubt says that for purposes of marriage the Majority Act will not apply. Still that was accepted and has been accepted as a fairly reasonable age when men and women, or boys and girls might be supposed to have attained years of discretion. They could be left to judge for themselves in the various transactions of life, and so we thought if we put it down at 18, that would be quite reasonable.

HON. MEMBERS: No.

DR. SHRIMATI SEETA PARNAND (Madhya Pradesh): That was a marginal view at the Select Committee.

SHRI C. C. BISWAS: Some of my hon. friends have said that there should be one age for boys and another for girls. The girl's age might be lower. Possibly they will have more of romance if they begin at an earlier age. Whatever it is, so far as men are concerned, they should be deprived of that.

MR. CHAIRMAN: Let us be serious.

SHRI P. SUNDARAYYA: Nobody has suggested marriage below 18 years. He is misrepresenting the whole discussion.

SHRI C. C. BISWAS: I will not accept the amendment that if we keep the age of 18, that should prevent marriage under this Act. 18 is quite all right. If you make it 21, there is no harm either because at 21 the parties will no doubt have attained a maturer age. They will be in a much better position to judge and decide for themselves. It will all depend upon the parties themselves.

SHRI T. PANDE (Uttar Pradesh): Is he ready to accept our amendments?

SHRI C. C. BISWAS: And those who are of the opposite point of view will ask "Is the Law Minister willing to accept our amendments?"

HON. MEMBERS: We are agreed on 21.

SHRI C. C. BISWAS: The question which ought to decide the matter is what is a reasonable or sufficient age to enable the parties to decide whether they should marry under this Act. One advantage of keeping the age at 18 is this. Although that is the age of majority, still we have provided—I don't know the attitude of the House—that if it is retained at 18, then up to 21 the guardian's consent will be necessary and that will act as a very valuable check in many cases. Whether the boy or the girl is sufficiently mature at 18 will depend on individual cases. In some cases a boy of 14 may be quite mature intellectually. You look at the instances in life in the university examinations. Someone passes with credit, possibly stands first in the list when he is 12, and others, even at 17, cannot pass the examination. It all depends on the degree of mental development. So also in the case of girls, some girls attain maturity of judgment quickly. In many personal laws the age of puberty is regarded as the appropriate age for marriage. Marriage is also allowed before puberty. Now you have got to fix a limit. So we fixed the limit at 18 because that is the ordinary age of majority recognized under the Indian Majority Act and that has been found to be working well and has been accepted without any objection. So we thought that if we stuck to 18, that would be the best in the circumstances. But as I said when there is so much divergence, let the House decide for itself but I would like 18 to be retained and I would like the provision for consent of guardians to be retained between the age of 18 and 21.

SHRI TAJAMUL HUSAIN (Bihar): Sir, one question I would like to ask of the hon. the Law Minister. He said at the end of his remarks

that he liked the age to be retained as it is. May I know if he gives us permission to vote in any way we like?

SHRI C. C. BISWAS: I am not imposing my views upon any one.

SHRI P. SUNDARAYYA: In fact the hon. Minister has not replied or expressed his opinion on the main issue that has been discussed yesterday. It is not a question of whether the marriage should take place at the age of 18 or 21.

SHRI KISHEN CHAND (Hyderabad): The hon. Member is making a speech.

SHRI P. SUNDARAYYA: No, I am not making a speech; I am only seeking clarification. I want to know whether the Government's intention in bringing forward this provision with 18 years age limit is to allow this Special Marriage Act to be taken advantage of or not. That is the angle from which the arguments have proceeded. We are not arguing it from the abstract angle as to what is the most suitable marriage age; but this is what the hon. Minister has done. When this Special Marriage Bill has been brought forward, is it the intention of the Government to allow people to take advantage of it and do you fix the age at 18 as reasonable for this purpose?

SHRI C. C. BISWAS: We place the measure before the House and it is for hon. Members to decide what they want. I am not touching the personal laws of the various communities.

MR. CHAIRMAN: I now put the first amendment to clause 4 (c).

The question is:

3. "That at page 3, line 18, after the words 'eighteen years' the words 'but where the bride and bridegroom do not belong to the

same caste or community, they have completed the age of eighteen and twenty-one years respectively, consent of the guardian not being necessary to the bridegroom' be inserted."

SHRI RAJAGOPAL NAIDU (Madras): Sir, may I point out that it was only amendment No. 58 that was under discussion yesterday?

SHRI S. MAHANTY (Orissa): Which is the amendment put to vote?

MR. CHAIRMAN: The one which I have just read; No. 3.

SHRI RAJAGOPAL NAIDU: Increasing the age from 18 to 21 for the bride and the bridegroom?

MR. CHAIRMAN: Yes. Where the bride and the bridegroom do not belong to the same caste or community, if they have completed the age of eighteen and twenty-one years respectively, consent of the guardian is not necessary to the bridegroom.

PROF. A. R. WADIA (Nominated): Sir, we did not discuss this amendment. The discussion yesterday was on the other amendment.

DR. SHRIMATI SEETA PARMANAND: No, I spoke on my amendment.

MR. CHAIRMAN: These two amendments relate to sub-clause 4(c).

SHRI V. K. DHAGE (Hyderabad): Sir, this amendment was never discussed by any Member. The only question discussed was whether the age should be 18 or 21.

MR. CHAIRMAN: That is the point.

SHRI V. K. DHAGE: No. This particular amendment that is now being put to vote deals only with the case in which the bride and bridegrooms belong to different castes.

MR. CHAIRMAN: Both the amendments relate to clause 4 (c).

SHRI RAJAGOPAL NAIDU: Sir, with great respect to the Chair, I would point out that yesterday we were discussing only the amendment which finds a place at the top of page 4—amendment No. 58.

SHRI B. C. GHOSE (West Bengal): Sir, if I may explain the position. The other amendment is the simple one of increasing the age from 18 to 21. But all the amendments to clause 4 (c) were under discussion since all were moved. But I understand the sense of the House is to take up the other amendments first and then take up Dr. Shrimati Seeta Parmanand's amendment.

DR. SHRIMATI SEETA PARMANAND: Yes, that is the position.

MR. CHAIRMAN: That is all right, then. And so, the question is:

The question is:

4, 58 and 114. "That at page 3, line 18, for the word 'eighteen' the word 'twenty-one' be substituted."

SHRI TAJAMUL HUSAIN: Yes, that is the amendment that was discussed.

MR. CHAIRMAN: Those in favour will please say "Aye".

(Several hon. Members said "Aye".)

MR. CHAIRMAN: Those against it will please say "No".

(Several hon. Members said "No".)

MR. CHAIRMAN: I think we have to count.

SHRI RAJAGOPAL NAIDU: We want a division.

SHRI P. SUNDARAYYA: It is a most important clause and they are

[Shri P. Sundarayya.]
trying to sabotage the whole measure in this manner and the Government is allowing them to do it. We must have a division.

DR. SHRIMATI SEETA PARMANAND: There is no question of any one trying to sabotage the measure.

SHRI P. SUNDARAYYA: It is sabotaging the Bill.

SHRI B. K. MUKERJEE (Uttar Pradesh): Sir, that is unparliamentary language that the hon. Member just now used. Will the hon. Member be asked to withdraw his expression—the word he just now uttered—sabotage?

SHRI P. SUNDARAYYA: The word "sabotage" is not unparliamentary.

MR. CHAIRMAN: Hon. Members will please sit down. I will put the question again. The question is:

4, 58 and 114. "That at page 3, line 18, for the word 'eighteen' the word 'twenty-one' be substituted."

The House divided:

Ayes—57.

Noes—52.

AYES

Agnibhoj, Shri R. U. (Madhya Pradesh).

Agrawal, Shri J. P. (Uttar Pradesh).

Ahmad Hussain, Kazi (Bihar).

Aizaz Rasul, Begam (Uttar Pradesh).

Bharathi, Shrimati K. (Travancore-Cochin).

Bisht, Shri J. S. (Uttar Pradesh).

Bodra, Shri T. (Bihar).

Chandravati Lakhanpal, Shrimati (Uttar Pradesh).

Chauhan, Shri N. S. (Uttar Pradesh).

Dwivedy, Shri S. N. (Orissa).

Faruqi, Moulana M. (Uttar Pradesh).

Gupte, Shri B. M. (Bombay).

Gurumurthy, Shri B. V. (Hyderabad).

Hans Raj, Shri (Punjab).

Hemrom, Shri S. M. (Orissa).

Italia, Shri D. D. (Hyderabad).

Jafar Imam, Shri (Bihar).

Jalali, Aga S. M. (Jammu and Kashmir).

Keshvanand, Swami (Rajasthan).

Khan, Shri Akbar Ali (Hyderabad).

Kishen Chand, Shri (Hyderabad).

Kishori Ram, Shri (Bihar).

Krishna Kumari, Shrimati (Vindhya Pradesh).

Lakshmi Menon, Shrimati (Bihar).

Lall, Shri K. B. (Bihar).

Mahanty, Shri S. (Orissa).

Mahesh Saran, Shri (Bihar).

Maithilisharan Gupta, Shri (Nominated).

Malkani, Prof. N. R. (Nominated).

Malaviya, Shri Ratanlal Kishorilal (Madhya Pradesh).

Mazhar Imam, Syed (Bihar).

Mujumdar, Shri M. R. (Madhya Pradesh).

Mukerjee, Shri B. K. (Uttar Pradesh).

Nagoke, Jathedar U. S. (Punjab).

Naidu, Shri Rajagopal (Madras).

Nihal Singh, Shri (Punjab).

Pande, Shri T. (Uttar Pradesh).

Fanigrahi, Shri S. (Orissa).

Parmanand, Dr. Shrimati Seeta
(Madhya Pradesh).

Pattabiraman, Shri T. S. (Madras).

Pheruman, Sardar D. S. (Punjab).

Prasad, Shri Bheron (Bhopal).

Rukmini Arundale, Shrimati (Nominated).

Satyanarayana, Shri M. (Nominated).

Savitry Nigam, Shrimati (Uttar Pradesh).

Sharda Bhargava, Shrimati (Rajasthan).

Sharma, Shri B. B. (Uttar Pradesh).

Singh, Shri R. K. (Uttar Pradesh).

Singh, Shri Vijay (Rajasthan).

Sinha, Shri B. K. P. (Bihar).

Sinha, Shri R. B. (Bihar).

Subbarayan, Dr. P. (Madras).

Tajamul Husain, Shri (Bihar).

Tankha, Pandit S. S. N. (Uttar Pradesh).

Thanhlira, Shri R. (Assam).

Varma, Shri C. L. (Bilaspur and Himachal Pradesh).

Wadia, Prof. A. R. (Nominated).

NOES

Abdul Razak, Shri (Travancore-Cochin).

Abdur Rezzak, Khan (West Bengal).

Abid Ali, Shri (Bombay).

Agrawal, Shri A. N. (Uttar Pradesh).

Ahmed, Shri Gulsher (Vindhya Pradesh).

Amolakh Chand, Shri (Uttar Pradesh).

Beed, Shri I. B. (West Bengal).

Biswas, Shri C. C. (West Bengal).

Dasappa, Shri H. C. (Mysore).

Das, Shri Jagannath (Orissa).

Deshmukh, Shri N. B. (Hyderabad).

Dhage, Shri V. K. (Hyderabad).

Dharam Das, Shri A. (Uttar Pradesh).

Doogar, Shri R. S. (West Bengal).

Doshi, Shri Lalchand Hirachand (Bombay).

Dube, Shri B. R. (Orissa).

Dutt, Dr. N. (West Bengal).

Hardiker, Dr. N. S. (Bombay).

Hathi, Shri J. S. L. (Saurashtra).

Hensman, Shrimati Mona (Madras).

Karayalar, Shri S. C. (Travancore-Cochin).

Karimuddin, Kazi (Madhya Pradesh).

Karumbaya, Shri K. C. (Ajmer and Coorg).

Kaushal, Shri J. N. (PEPSU).

Leuva, Shri P. T. (Bombay).

Madhavan Nair, Shri K. P. (Travancore-Cochin).

Mazumdar, Shri S. C. (West Bengal).

Mazumdar, Shri S. N. (West Bengal).

Menon, Shri K. Madhava (Madras).

Menon, Shri V. K. Krishna (Madras).

Misra, Shri S. D. (Uttar Pradesh).

Mookerji, Dr. Radha Kumud (Nominated).

Nausher Ali, Syed (West Bengal).

Parikh, Shri C. P. (Bombay).

Parvathi Krishnan, Shrimati (Madras).

Pawar, Shri D. Y. (Bombay).

Raghubir Sinh, Dr. (Madhya Bharat).

Rajagopalan, Shri G. (Madras).

Rao, Shri Krishnamoorthy (Mysore).

Reddy, Shri A. B. (Andhra).

Reddy, Shri Channa (Hyderabad).

Reddy, Shri Govinda (Mysore).

Shaik Galib (Andhra).

Shrimali, Dr. K. L. (Rajasthan).

Sokhey, Maj.-General S. S. (Nominated).

Sumat Prasad, Shri (Uttar Pradesh).

Sundarayya, Shri P. (Andhra).

Surendra Ram, Shri V. M. (Madras).

Vaidya, Shri Kanhaiyalal D. (Madhya Bharat).

Valiulla, Shri M. (Mysore).

Variava, Dr. D. H. (Saurashtra).

Vijaivargiya, Shri Gopikrishna (Madhya Bharat).

The motion was adopted.

MR. CHAIRMAN: We pass on to the next amendment.

Dr. Parmanand, your amendment No. 3 which reads, "but where the bride and bridegroom do not belong to the same....." is barred.

We now pass on to the other amendments. There are a number of amendments and what I propose is that those who have moved the amendments may just speak for two or three minutes—not longer—and the Law Minister will reply at the end and then I will put the amendments, one after another. First is

Mr. Govinda Reddy. Have you got anything to say?

SHRI TAJAMUL HUSAIN: He has said it already.

SHRI GOVINDA REDDY (Mysore): Not on this.

MR. CHAIRMAN: As briefly as possible.

SHRI GOVINDA REDDY: Sir, by my amendment No. 72, I have retained this clause substantially in the same manner as it is found in the Bill. I have suggested two changes; the first change is the recasting of the clause for this reason. Under this Bill, the clause as it stands is, "notwithstanding anything contained in any other law for the time being in force relating to solemnization of marriages, a marriage between any two persons may be solemnized under this Act....." I have retained up to that. What follows after, that is, "if at the time of the marriage....." and this means that at the time of marriage neither party should have a spouse living, neither party is an idiot or a lunatic and so on. Well, Sir, these are not words which should be found in an enactment. This is not the exact language. If at all we should lay down these conditions, the conditions must be definite. Now, Sir, what does this mean? 'Neither party has a spouse living'—supposing the spouse died the day before, would it not be against public morals to marry on the very next day? Under the clause as it stands, even if the spouse died an hour earlier, marriage will be allowed. Maybe such things may not happen but, Sir, when we are enacting, we must enact in as exact language as possible.

Similarly, Sir, I come to the second sub-clause—"neither party is an idiot or a lunatic". We all know that idiots have lucid intervals; lunatics have lucid intervals. Sir, if an idiot or a lunatic has a lucid interval at the time of the marriage,

then, Sir, this marriage will be allowed according to this clause, as it is worded. Well, it should not be; it will be unreasonable and it would be against public morals to allow an idiot or a lunatic in the lucid interval to marry and a certain period of this qualification is to be fixed. I have said in my amendment three months.

Then in sub-clause (c) I have added the words "by an affidavit", and that I have done for a very good reason because according to clause 11 the parent or the guardian has to go there and sign the declaration. When a declaration has already been filed it would be unreasonable and it would be a matter of inconvenience to the parent or guardian to go there again and appear before Marriage Officer and sign the declaration.

MR. CHAIRMAN: I think your (c) is barred.

SHRI GOVINDA REDDY: Yes, Sir, by virtue of an amendment having been passed mine falls through and now that that amendment has been passed I have no objection to accept that amendment. But I commend this amendment for the acceptance of the House.

PANDIT S. S. N. TANKHA (Uttar Pradesh): I propose in my amendment, No. 112, Sir, that the words "both parties are citizens of India" be added. I have given my reasons for it yesterday and have said that this amendment is mainly to prevent our young men and women marrying the foreigners who are not residents of India. Whether the marriages take place in this country or outside, both parties must be citizens of India. A similar provision is already existing in sub-clause (f) whereby it is stated "Where the marriage is solemnized outside the territories to which this Act extends, both parties are citizens of India domiciled in the

said territories." Therefore I propose, Sir, that a similar provision be made for marriages which take place in India also.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat):

श्री कन्हैयालाल डी० वैद्य (मध्य भारत) : सभापति महोदय, मेरा जो सुधार (No. 113) है वह बहुत महत्व का है क्योंकि अगर आप इस कानून को लागू करते हैं और उसमें यह आज्ञा दी देते हैं कि दो नवयुवक इसके अन्तर्गत शादी करें तो यह बहुत जरूरी है कि जब शादी का सर्टिफिकेट (certificate) देने का काम हो उस वक्त इस बात को अच्छी तरह से देख लिया जाय कि वे किसी नाजायज दबाव में, धोके में या कि लालच से इस काम के लिए राजी नहीं हुए हैं और उन पर किसी तीसरी पार्टी का कोई दबाव नहीं पड़ा है। मैं और इस सदन में बैठे हुये लोग ऐसे कई किस्से जानते हैं जिनमें कि इस तरह की शादी करने के आठ दिन के बाद उन शादियों को खत्म करना पड़ा है। एक मामले में एक नौजवान ने एक लड़की से कहा कि हम क्रान्ति का काम देश के लिये करेंगे, मैं क्रान्ति का काम करने वालों का एक बड़ा व्यवस्थापक हूँ और विदेशों से पिस्तौल और हथियार मंगाता हूँ और क्रान्ति करता हूँ। वह लड़की भी इस बात की आशा रखती थी कि देश में क्रान्ति हो और इसलिये उसने क्रान्ति के उद्देश्य से प्रेरित हो कर उस युवक से अपना सम्बन्ध करना निश्चित कर लिया, शादी भी हो गई लेकिन जब उसे तीन दिन के बाद मालूम हुआ कि यह केवल शादी का स्वीकृति लेने के लिये एक धोका था तो वह सुधार का

[Shri Kanhaiyalal D. Vaidya.]

सारा मज़ाक, रोमांस (romance) और सारा कार्य खत्म करके माता पिता की शरण में आई और माता पिता ने तब अपने संस्कारों के अनुसार विधिवत उसका विवाह किया। एक और भी उदाहरण है कि एक राजा साहब थे, उन्होंने लड़के के लिये एक बन्या की परिवार की लेकिन उस परिवार के बाद जब वह युवावस्था में आई तो उसे उन्होंने स्वयं ही अपने पास रख लिया और उसे एक बड़ा सुधार का रूप दिया। कल एक माननीय सदस्य ने इस हाउस में दिल्ली की उस घटना का जिक्र किया था जिसको कि दिल्ल की जनता और इस हाउस (House) के सब लोग अच्छी तरह से जानते हैं। तो इन सब रोमांस और प्रेम के किस्सों के पीछे कुछ दूसरी बहानियां होती हैं जिनके कारण ये झगड़े अदालत में जाते हैं और जो सुधार करने की प्रवृत्ति है उसको बहुत ठेस पहुंचती है। अगर आप चाहते हैं कि देश में जो पुरानी सामन्तवादी विवाह संस्था है वह खत्म हो और स्त्रियों को आजादी मिले और वे मुकदमेबाजी से बचें तो मैं समझता हूं कि इस कानून में जहां सर्टीफिकेट देने की व्यवस्था है वहां इस तरह की व्यवस्था अवश्य रहे। यह नहीं होना चाहिये कि वह संस्था केवल सर्टीफिकेट दे दे और उसके बाद मुकदमेबाजी शुरू हो। अगर महीने भर के बाद लड़के या लड़की को मालूम पड़े कि उसके साथ फ्राड (fraud) हुआ है या तीसरी पार्टी ने धोका दिया है और उसकी जानकारी से बाहर किसी प्रकार से स्वीकृति ली है तो फिर अदालत में पतराज होगा और उससे जनता मज़ाक

उड़ायेगी कि साहब देखा सुधार कानून का नतीजा कि एक महीने में ही डाइवोर्स (divorce) के लिये जाना पड़ा। हमें डाइवोर्स व्यवस्था को प्रोत्साहन नहीं देना है।

संसार में जितने भी अच्छे अच्छे मुल्क हैं उन्होंने अपने विवाह कानूनों में इस तरह की व्यवस्था रखी है। तो जहां आपने इस धारा में दूसरी बातों के लिये गुंजाइश रखी है वहां इस बात का भी गुंजाइश रखना बहुत आवश्यक है। ला मिनिस्टर (Law Minister) साहब से मैं बहुत नम्रतापूर्वक कहूंगा कि उनको पहले ही स्वयं इस तरह की व्यवस्था कानून में रखनी चाहिये थी या उनको सेलेक्ट कमेटी (Select Committee) में ऐसी कोई व्यवस्था करनी चाहिये थी लेकिन दोनों स्टेजों (stages) पर इस बात पर गम्भीरतापूर्वक विचार नहीं किया गया। मैं समझता हूं कि यह अमेंडमेंट (amendment) बहुत ही महत्वपूर्ण है और यदि आपने ऐसी व्यवस्था इस कानून के अन्तर्गत नहीं रखी तो बहुत झगड़े खड़े होंगे और जिस उद्देश्य को लेकर यह कानून बनाया जा रहा है वह उद्देश्य पूर्णतया असफल हो जायगा। इसलिये मैं आपसे निवेदन करूंगा कि आप इस अमेंडमेंट को स्वीकार करने की कृपा करें

[For English translation, see Appendix VII, Annexure No. 276.]

DR. SHRIMATI SEETA PARMANAND: My amendment (No. 2) prescribes one other condition of marriage, viz., of furnishing a medical certificate and that will of course change the present order of the sub-clauses. I would like it to come

after sub-clause (c). The reason for the amendment here is this. In the clause dealing with "Voidable marriages" we have put down the conditions "the respondent was at the time of the marriage suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner", "the respondent was at the time of the marriage pregnant by some person other than the petitioner". When these are likely to be the grounds for declaring a marriage voidable and when this type of points would be rather difficult to decide, it would be better that a medical certificate is obtained at the time of the marriage. It was pointed out, Sir, that in our country with the shortage of doctors it would be rather difficult to put it into practice. I have already stated in my Minute of Dissent that "Most of such marriages take place in distant places where, these days, even women doctors are posted or would soon be posted under the Five Year Plan Medical schemes. These marriages will be mostly amongst advanced sections of society, who will be always in a position to secure such a certificate from a woman doctor from a near about place, if necessary." These marriages will be mostly inter-communal or inter-caste marriages and the other marriages, as the hon. the Law Minister has so kindly pointed out, will be provided for in the Hindu Marriage and Divorce Bill which, he says, will make this not necessary for marriages amongst the Hindus. These people will always be in a position to secure such a certificate from a woman doctor from a near about place, if necessary. In every district, Government now posts a woman doctor and there are also private practitioners. These marriages will not take place in the villages as a rule as they have their different rules for marriage and so the difficulty of obtaining a medical certificate in the rural areas will not arise. For these reasons, Sir, I

think a medical certificate is both absolutely necessary and is absolutely practicable today in 1954 and onwards.

MR. CHAIRMAN: Amendment No. 7 by Dr. Seeta Parmanand is barred. Amendments Nos. 101, 102 and 103 by Shri P. T. Leuva are barred.

PANDIT S. S. N. TANKHA: Sir, my amendment No. 115 is only consequential. The age of marriage not having been fixed at 18 years the question of the consent of the guardian goes.

SHRI TAJAMUL HUSAIN: Sir, my amendment No. 59 is the same and it is before Mr. Tankha's. Anyway, now that he has spoken, I agree with him that it is consequential and there is no question of guardianship now. Then, Sir, (b) and (c) of Mr. Govinda Reddy's amendment are also about guardianship and they have also to go.

SHRI GOVINDA REDDY: Yes, Sir, I agree.

SHRI TAJAMUL HUSAIN: Dr. Parmanand's amendment on the same page 3.....

MR. CHAIRMAN: That is dropped.

SHRI RAJAGOPAL NAIDU: Sir, my amendment is No. 8. I move:

8. "That at page 3, lines 22-23, after the word 'relationship' the words 'unless the law or any custom or usage having the force of law, governing each of them, permits of a marriage between the two' be inserted."

If my amendment is accepted, sub-clause (e) of clause 4 would read thus, "(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." Sir, I would draw the attention of the hon. Members of this House to clause

[Shri Rajagopal Naidu.]

15 (e). The words underlined there are those substituted by the Joint Select Committee, namely, "unless the law or any custom or usage having the force of law, governing each of them, permits of a marriage between the two". Sir, if anybody wants to marry under the provisions of.....

SHRI V. K. DHAGE: There are amendments that these words in clause 15 (e) should be deleted. Would it be all right if Mr. Rajagopal Naidu takes it up then?

SHRI RAJAGOPAL NAIDU: No; I do not yield, Sir. If my amendment is accepted, the other amendment may or may not stand. My amendment has nothing to do with it. I would welcome clause 15 to remain as it is.

As the Bill stands, it would only mean that certain persons whose relationships are within the prohibited degree in the manner enumerated in Parts I and II of the First Schedule cannot marry. Most of us know—it is well known in South India at any rate—that the sister claims it as a matter of privilege for her daughter to be married by her own brother. If that sister has no daughters, then the cousin sister comes. You will find also in South India that a girl has the right to be married to her father's sister's son. So we have got various customs in the South. It may be said that from the biological point of view it is not proper to marry within prohibited relationship. I quite agree with the biological point of view but suppose a person wants to marry his own sister's daughter under the Special Marriage Act as it stands he will be prohibited. At the same time we find that certain loopholes have been provided in the Bill for him to marry under the customary law and then come and register himself under clause 15 (e).

10 A.M.

SHRI KISHEN CHAND: We have to omit that also.

DR. SHRIMATI SEETA PARMANAND: That is going to be deleted.

SHRI P. SUNDARAYYA: Who is going to delete it?

SHRI RAJAGOPAL NAIDU: I have no grievance at all if that is deleted. But here in clause 4 (e), the words which I have suggested should find a place.

SHRI GOVINDA REDDY: If his amendment is to go in, the word 'and' should be omitted.

SHRI KISHEN CHAND: I have proposed the amendment (No. 116) as great disparity between the ages of men and women is not conducive to happy marriages. Therefore I have suggested that if any person is below 30 years of age, there should not be any great disparity. For example, if the girl is a little over 21 and the man is about 60 years, that type of marriage should not be consummated. I have suggested that there should be a simple formula governing the age between the man and the woman. The usual eugenic point of view is that the age of the woman should be five years more than half the age of the man. That is the accepted formula. According to this, if a man is 50, half of 50 will be 25 and plus five will be 30, that is, a woman of 30 can marry a man of 50. That is the biological point of view and it is supposed to be a good formula. I have only tried to put that formula by saying that there should not be very great disparity in the age of the man and the woman.

SHRI V. K. DHAGE: Sir, there is just one point that I should like to add and that is this. If a married lady is divorced on the ground that

is mentioned in the Bill itself, it will be very difficult for the divorced woman to find a marriageable person again. The social custom is such now-a-days that a divorced lady will find it rather difficult to find another husband and I think that is the additional reason why a medical certificate should be taken first, so that this danger may be avoided.

I should like to oppose, if you will allow me to speak later, the amendment moved by Mr. Rajagopal Naidu.

SHRI P. SUNDARAYYA: How can he speak twice, Sir?

MR. CHAIRMAN: After all these amendments have been moved, one or two Members may say something after which I want the Law Minister to answer, because we do not want a lengthy debate on this.

SHRI KANHAIYALAL D. VAIDYA:

श्री कन्हैयालाल डी० वेंच : सभापति महोदय, मैंने जो यह अमेंडमेंट दिया है कि—

117. "At page 3, after line 26, the following be added, namely:—

'(2) No man or woman shall be allowed to marry where one party, because of certain physical defects, is sexually impotent or where one party is suffering from venereal disease, mental disorder, leprosy or any other loathsome disease which is regarded by medical science as rendering a person unfit for marriage.'

इसके सम्बन्ध में मुझे यह कहना है कि यह दुनिया के सब देशों में एक माना हुआ सिद्धान्त है कि विवाह संस्था को हम एक ऐसी संस्था बनायें जिससे एक अच्छा स्वस्थ राष्ट्र बने और राष्ट्र में जो विवाह संस्था से सम्बन्ध रखने वाले लोग हैं वे सुखी हों, दीर्घजीवी हों और अच्छे स्वास्थ्य को ले कर जीवन व्यतीत करें ।

इसके लिये यह जरूर है कि विवाह के समय ही इस बात की पर्याप्त जानकारी कर लेनी चाहिये कि जो दो युवक अपना विवाह सम्बन्ध स्थापित करने जा रहे हैं वे वास्तव में स्वस्थ हैं और इस योग्य हैं कि विवाह कर सकें । अन्यथा यह होगा, जैसी कि हमारे देश के अंदर विवाह की प्रथायें देखने में आती हैं कि शारीरिक सम्बन्ध प्रारम्भ होने के आठ दिन बाद इस बात का झगड़ा उठ खड़ा होगा कि स्त्री या पुरुष में कोई विकार मालूम होते हैं, और दोनों में से एक को डाइवोर्स (divorce) के लिये अदालत में जाना पड़ेगा । तो यदि आप इस कानून को एक ऐसा कानून बनाना चाहते हैं कि कोई व्यक्ति अदालत में जा कर और सर्टीफिकेट (certificate) की मांग करे कि हम विवाह करना चाहते हैं, हम विवाह के योग्य हैं या नहीं, हम स्वस्थ हैं या नहीं और उससे आप कहें कि इस तरह के छानबीन की जरूरत नहीं, इस बात की व्यवस्था की और देखने की जरूरत नहीं, आप तो विवाह कर लीजिए, सर्टीफिकेट ले लीजिए, सुधारवादी काम कर दीजिये और आठ दिन बाद अदालत में डाइवोर्स के लिए जाइये कि अमुक कारण हैं जिनसे मैं डाइवोर्स चाहता हूं या चाहती हूं, तो मैं कहता हूं कि सारा समाज आपके इस कानून का मज़ाक उड़ायेगा, जो लोग इस के अंतर्गत शादी करेंगे वे भी अपना मज़ाक उड़ावेंगे और जैसा कि माननीय सदस्य, श्री धने, ने कहा, ऐसे डाइवोर्स किये हुए युवक और युवतियों का जीवन, उनका भविष्य, समाज में अंधकारमय हो जायेगा और आज आप जिस विवाह व्यवस्था को सुधारना चाहते हैं उसे आप बनाने के बजाय बिगाड़ देंगे । इसलिए मैं माननीय

[Shri Kanhaiyalal D. Vaidya.]

ला मिनिस्टर (Law Minister) साहब से फिर प्रार्थना करता हूँ कि यह उनका कर्तव्य था कि वे दोनों क्लॉजेज़ (clauses) जो मैंने प्रस्तुत किये वे स्वयं उनको इस बिल (Bill) में रखते। इस व्यवस्था के अभाव में मैं नहीं समझ सकता कि आप इस कानून को पूर्ण रूप में रख रहे हैं ताकि समाज को लाभ पहुँचे। वास्तव में इस कानून में आपने इस तरह की नीति रखी है कि जिससे उसका उद्देश्य खत्म हो जाता है और उससे समाज को लाभ की अपेक्षा हानि ज्यादा पहुँचेगी। समाज उसका मज़ाक उड़ाएगा। इस चीज़ को मैं आक्षेप के रूप में आप से नहीं कहता। आप यहाँ देखते हैं कि आप जो कुछ इस कानून में कर रहे हैं उससे यह मतलब निकलता है, यह अर्थ निकलता है कि, आपने इसके अंदर ऐसी व्यवस्थाएँ नहीं रखी हैं कि जिनसे उन दोषों पर रोक लग सके।

इस स्टेज (stage) में मैं आपसे प्रार्थना करूँगा कि मेरे इस अमेंडमेंट (amendment) को पिछले अमेंडमेंट के साथ स्वीकार करेंगे तो वास्तव में ये खामियाँ दूर हो जायेंगी और जिस स्टेज पर यह पूर्ति करने की आवश्यकता है वह भी पूरे हो जायगी और डाइवोर्स और मुकद्दमे के झगड़े नहीं बढ़ेंगे। इससे आपकी जो स्त्रियों को रक्षण देने की सुधारवादी नीति है वह भी पूरी होगी। इन शब्दों के साथ मैं अपना संशोधन रखता हूँ।

[For English translation, see Appendix VII, Annexure No. 277.]

SHRI P. SUNDARAYYA: Sir, on this question...

MR. CHAIRMAN: Be as brief as possible, and do not speak on the

question that has already been decided.

SHRI P. SUNDARAYYA: Sir, that question I will not touch. I rise to support Shri Govinda Reddy's amendment, namely, amendment No. 72, sub-clause (a) "if, during a period of ninety days immediately preceding the date of notice under section 5." Then, I support Mr. Rajagopal Naidu's amendment, No. 8. If this Act is to be of any use, this amendment should be accepted. I need not say here that the other clause 15(e) should be preserved there itself and also in clause 2 dealing with interpretation and definition, and there also it should be maintained. After all, Sir, we are not framing a Civil Marriage Act.....

DR. SHRIMATI SEETA PARNANAND: We are going to.

SHRI P. SUNDARAYYA: Unfortunately it is not so. If, for the whole of India, we are framing a Civil Marriage Act, then we could have framed rules as to what should be ideal conditions of marriage etc. We are not doing that now. We are taking note of the various marriages under the personal laws which are different and where different conditions exist. This Special Marriage Act is being framed to help those people who do not want to be bound by their own personal marriage laws; they want to take advantage of some progressive law; and when that is so, it is only to enable these people to take advantage of this law that such a provision is being made. Only for that reason you are allowing those laws to exist and allow this marriage to be concluded. This Special Marriage Act is being brought forward to provide additional facilities. As such, you should allow these people to take advantage of those facilities. This Act as it is can be taken advantage of only by a few individuals; in fact this Act is meant to be the first step towards the civil marriage code. Taking advantage of

this Special Marriage Act we can widen the scope by which many marriages may be brought within its ambit. With this object I commend the amendment moved by Shri Rajagopal Naidu and I support it.

[MR. DEPUTY CHAIRMAN in the Chair.]

MR. DEPUTY CHAIRMAN: Many things, for and against, have been said, Mr. Sundarayya; you may be brief.

SHRI P. SUNDARAYYA: I am not taking much of your time; I will finish within two or three minutes. We are opposing Dr. Seeta Parmanand's amendment not because it is not an ideal state of things; not because we do not want to build up an ideal society; it is not therefore a correct thing to do. On the question of this medical certificate that is being required prior to the marriage, you are going to make things rather difficult. You will be making it more and more difficult for people to take advantage of this measure.

SHRI RAJAGOPAL NAIDU: False certificates also.

SHRI P. SUNDARAYYA: That may be. From an idealist point of view I think this may be correct. But taking the present marriage customs and practices, our aim is to see that this Special Marriage Act should be utilised as best as possible and by as many people as possible. If you are decided on that, you cannot be making all these marriage laws which are only applicable in ideal conditions. I am opposing this.

MAJ.-GENERAL S. S. SOKHEY (Nominated): I should like to say a few words on the question of the medical certificates. I think, Sir, people who are proposing it, do not see the significance of their demand. In the first place, India does not have enough medical men and certainly few doctors have all the medical laboratory facilities at their disposal that are needed for a job of this kind. In the absence

of qualified doctors and without proper laboratories, most of the certificates that would be given would not be worth the paper on which they are written. Then, the fees, that are charged for Wassermann test are exorbitant, each test costs Rs. 64 and three tests must be carried out.

DR. SHRIMATI SEETA PARMANAND: It is done free now.

MAJ.-GENERAL S. S. SOKHEY: Not for all. But it is a fact that there are not sufficient numbers of doctors in India. Strictly from a medical point of view, it is not a workable proposition. Most doctors are not in a position to give such a certificate. Even in the case of those who can, the cost involved will be very enormous. What is more? This Bill permits the people who marry under the present conditions of customary law or religious laws to be registered under this law. We are not providing anything new. Because of the special difficulties involved in this process, I don't think we should insist on the medical certificate. It is very likely that if a medical certificate is insisted on, most of the certificates would not be worth the paper which they are written on; it is again because the doctor is not in a position to do the work, to undertake the Wassermann test and other tests necessary. Moreover, at present, we have all sorts of doctors who are registered as practitioners such as Ayurvedacharyas and Hakims. These practitioners cannot diagnose venereal diseases properly. So I feel that this is a fictitious provision and I do request the House not to insist on this thing. We as medical men would welcome medical certificates if it were possible to have the work done. I would go further and demand Government to create medical facilities so that no citizen suffers from venereal disease. They are so readily curable and they are preventable today.

SHRIMATI LAKSHMI MENON (Bihar): Mr. Deputy Chairman, I am very much surprised to hear the preceding speaker speaking against this

[Shrimati Lakshmi Menon.]
amendment of Mr. Dhage and Dr. Seeta
Parmanand.

Sir, during the last few days I have received a number of letters from girls—very heart-rending letters—who have been married without their consent of course, but in whose cases a very bad form of venereal disease was discovered at the time of marriage, and those marriages have been broken up. I have received a number of other letters also requesting me and this House to take this question into consideration, because this is the only method by which such cases can be avoided. Of course clause 25 (1) (ii) refers to a venereal disease in a communicable form. Sir, I would, on behalf of those people who are helpless in this matter, make a definite appeal to the House not to listen to the people who are prejudiced. I am surprised that a man of science of the status of Dr. Sokhey who is interested in eugenics, who is interested in building up a new India, should speak as he did. He should know that this amendment would only help to make the marriages contemplated under this Act more happy. Thank you, Sir.

DR. W. S. BARLINGAY (Madhya Pradesh): Mr. Deputy Chairman, I entirely agree with Maj.-General Sokhey in whatever he has said just now, and I certainly do not agree with Shrimati Lakshmi Menon. The reason is not that I am not in sympathy with her point of view especially the relation to the cases concerned; they are cases deserving consideration no doubt. But the whole point is that with regard to other Hindu marriages you will not be making this a condition precedent at all. And for that reason I do not see why any special provision is necessary.....

MR. DEPUTY CHAIRMAN: This is the Special Marriage Bill.

DR. W. S. BARLINGAY: I know that. But that is no reason why this particular special condition should attach to marriage under this Bill.

SHRI V. K. DHAGE: The Hindu law does not say that good things need not be done.

DR. W. S. BARLINGAY: If it is a condition precedent to all the marriages, then the matter would be different. But when it is not a condition precedent to all the.....

DR. SHRIMATI SEETA PARMANAND: This is a model Bill.

سید مظہر امام (بہار): جناب والا۔ میں سمجھتا ہوں کہ جو یہ امانت لیا گیا ہے اس کی کوئی ضرورت نہیں ہے۔ کیونکہ جب وہ اپنی خیمائی سے الگ ہو کر اور اپنے ریلیجن کی پروا نہ کر کے شادی کرنے کو تیار ہے تو کیا اس میں اتنی بھی سیلس نہیں ہوگی کہ وہ اپنے ہونے والے مسیلت سے کہے کہ صاحب چلو تمہارا ایکزامینیشن کرا لیں اور بغیر ایکزامینیشن کرائے ہم تم سے شادی نہیں کریں گے۔ میں سمجھتا ہوں کہ اس کی کوئی ضرورت نہیں ہے۔ وہ ایجوکیتڈ گرل ہوگی اس لئے وہ کہہ سکتی ہے کہ صاحب چلو تمہارا ایکزامینیشن کرا لیں۔ اس لئے میں سمجھتا ہوں کہ اس امانت کی کوئی ضرورت نہیں ہے۔

†[SYED MAZHAR IMAM (Bihar): Sir, I think the amendment which has been moved is unnecessary, because when a girl is prepared to marry, dissociating herself from her family and disregarding her religion, would she not possess even so much sense as to say to her would-be husband; "Let me have you examined medically. I shall not marry you without having

†English translation.

you examined medically." I think this amendment is not necessary. She will be an educated girl. She can, therefore, say to her would-be husband: "Let me have you examined medically." I, therefore, think this amendment is absolutely unnecessary.]

SHRI V. K. DHAGE: Sir, I would oppose the amendment given notice of by Mr. Rajagopal Naidu.

MR. DEPUTY CHAIRMAN: The whole problem has been thrashed out, Mr. Dhage.

SHRI V. K. DHAGE: No, Sir, I did not speak at all.

MR. DEPUTY CHAIRMAN: When clause 15 was discussed, the whole matter had been thrashed out.

SHRI V. K. DHAGE: But I have something to say now. I did not speak at all at the first stage.

MR. DEPUTY CHAIRMAN: I think the hon. Member is simply wasting the time of the House.

SHRI V. K. DHAGE: I would like to say something on this important matter. I should therefore be given one or two minutes.

MR. DEPUTY CHAIRMAN: All right, you have one or two minutes.

SHRI V. K. DHAGE: Sir, Mr. Rajagopal Naidu began by saying that biologically it was unsound to have marriages of this type.

SHRI RAJAGOPAL NAIDU: I said biologically it sounded well, but it was not an established fact.

SHRI V. K. DHAGE: The other day we were having a conversation with Maj.-General Sokhey on this matter and he said that if two perfect beings could be found, and if they happen to be the sister and the brother a marriage between them could also be valid, but since defects are usually found and since no perfect man or

woman is to be found, it is wiser to keep a distance between them as far as possible, and the marriage between the two will be very much healthy. Otherwise the same defects will be multiplied and the degeneration will be rapid.

SHRI GOVINDA REDDY: There is nothing definite on that thing at all.

SHRI V. K. DHAGE: Now, Sir, in Hyderabad we have a family that marries within itself, and we find, as Maj.-General Sokhey said, that defects keep on multiplying. They have the same kind of defects, short of hearing, short of sight and so on. Among the Parsis marriages between cousins are allowed because.....

MR. DEPUTY CHAIRMAN: All these points have been touched.

SHRI V. K. DHAGE: I don't think they have been touched.

MR. DEPUTY CHAIRMAN: You can take it from me that they have been touched.

SHRI V. K. DHAGE: If you want me not to speak, Sir, I shall stop.

MR. DEPUTY CHAIRMAN: Yes, the hon. Minister.

SHRI C. C. BISWAS: I do not think any of my hon. friends need complain because all these points have been discussed not only by myself but by the various Members who participated in the discussion for the last few days.

Sir, I shall now take up the amendments as they stand on the Order Paper. First of all I will take Mr. Reddy's amendment No. 72, page 3 at the top. The first suggestion is that the conditions which have been postulated in clause 4 must be existent or non-existent as on a date 90 days before the proposed date of marriage. I say that it is not necessary. As a matter of fact, notice of marriage will have to be given. He is taking a hypothetical case; but no such thing will take place. He is contemplating

[Shri C. C. Biswas.]

a case where a man on the morrow of the death of his last wife is going to marry again.

SHRI GOVINDA REDDY: But what about the language?

SHRI C. C. BISWAS: Let me assure my hon. friend that it is based on the language of various other statutes. Look at the Special Marriage Act of 1872. The same language is there, and no such untoward events have as yet happened to which my friend could object.

SHRI GOVINDA REDDY: If it were inexact in the old Act, why should we not make it exact now?

SHRI C. C. BISWAS: The words there are that neither party must, at the time of marriage, have a husband or a wife living.

We have replaced 'husband or wife' by 'spouse'. That is the only difference. That is the only point that he makes. That is not necessary.

Next is amendment No. 112 by Pandit Tankha that 'both parties are citizens of India'. As I pointed out, this is a territorial law of marriage for the whole of India. Even if the parties to the marriage here are not citizens, they can still marry under this Act. It is only when marriages take place abroad, we say that the parties must be Indian citizens. In order to meet the case of the Jammu and Kashmir State, we have provided that they must be citizens of India having had domicile in the country. Therefore it will not do to accept this amendment by Mr. Tankha, that both parties are citizens of India. This is going to be a territorial law for the whole of India.

Then I come to amendment No. 113 that "marriage is based upon the complete willingness of the two parties and neither party has used compulsion and no third party has interfered." If my hon. friend desires that there

should be an enquiry into these questions of fact before the Marriage Registrar solemnizes a marriage, that is a different thing. I can understand it. But how is this to be done? It may be quite all right, but the only thing that the law can provide for is this: If after marriage the parties fall out and are not agreeing among themselves, specified grounds have been given on which they can seek judicial separation or divorce, but how are we to have any evidence that the parties are completely willing? They say they desire to marry and therefore they are giving you notice. If there are any objections, the marriage will not be solemnized. This is sufficient presumption that the parties are willing to marry each other. Otherwise, why should they go through all this trouble and all these processes? This ought to be sufficient safeguard. If, after marriage they fall out, that is their bad luck, or somebody else's bad luck or perhaps somebody else's good luck. It is said here that a marriage must be based on the complete willingness of the two parties. Of course, marriage must be based on the complete willingness of both the parties. We are not thinking of Rakshasa marriages here when one can capture a girl and say, 'You are my wife.'

DR. SHRIMATI SEETA PARMANAND: The parties will be 21, and therefore that question does not arise.

SHRI C. C. BISWAS: A boy of 21 may capture a girl of 18. The other thing is 'neither party has used compulsion, and no third party has interfered.' This is completely unnecessary.

Then I come to Shrimati Seeta Parmanand's suggestion of obtaining a medical certificate. We know what medical certificates are worth, and how many rupees may get a medical certificate for anything that you want. What is the value of such a certificate? On the other hand, I could have welcomed an amendment that in the notice of marriage there must be a

solemn declaration by the parties themselves that they are not subject to any of the impediments to marriage. I could have understood such an amendment, but I attach no value to a medical certificate. I took counsel and I have collected information as regards the practice in various countries regarding medical certificates. If you want a medical examination, that is a different matter. If you say that the State should have laboratories where the intending parties to the marriage should be required to appear before they give notice of marriage for Wassermann tests and other tests, that is a different matter. That will be an effective guarantee that there is no such disease. But what is the use of merely saying that they must produce a medical certificate? I do not attach the slightest importance to these certificates.

DR. SHRIMATI SEETA PARMANAND: Why not ban medical certificates altogether?

SHRI C. C. BISWAS: In one country for instance, a blood test is compulsory. No marriage can be solemnized unless the parties to an intended marriage produce a certificate that a blood test has been conducted by a qualified medical practitioner and in a laboratory approved by the Government of the country. This is Manitoba.

DR. SHRIMATI SEETA PARMANAND: One swallow does not make a summer.

SHRI C. C. BISWAS: There are several swallows here.

MR. DEPUTY CHAIRMAN: You will have to swallow it now.

SHRI C. C. BISWAS: In Canada a similar laboratory blood test must be made before marriage licences are granted. Before a marriage licence could be granted, the parties must be subjected to a laboratory test. I could have understood it if it has been contended that the State must provide facilities for medical tests for, if there is a medical examination at all, it

ought to be an effective examination, not a mere certificate.

DR. SHRIMATI SEETA PARMANAND: This is for communicable diseases. May I submit in all humility that this does not require Wassermann test or any other test?

SHRI C. C. BISWAS: My hon. friend is a doctor, but I do not think she is a doctor in medicine. This question arises incidentally in connection with clause 25 where we have voidable marriages. Sub-clause (ii) says:

"the respondent was at the time of the marriage suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner."

I think this is out of place here. As a matter of fact, this assumes that even before marriage such a disease may have been contracted from the other party. That is not right. We are declaring a marriage to be voidable if it is found that at the time of marriage one of the parties was suffering from venereal disease not contracted from the other party. Well, this assumes that there has been communication between the two. Therefore I shall move an amendment suitably worded and put it in the clause dealing with divorce.

DR. SHRIMATI SEETA PARMANAND: Are you going to delete that?

SHRI C. C. BISWAS: We shall transpose that to the clause dealing with divorce. The parties live together and what is there to show that they may not have contracted the disease after marriage? The disease may be contracted after marriage, and therefore, it should be a ground for divorce. There is no doubt about it.

SHRI KANHAIYALAL D. VAIDYA: Why this Dravida Pranayam?

MR. DEPUTY CHAIRMAN: You accept amendment No. 5. It is only a consequential amendment.

SHRI C. C. BISWAS: The House has decided on what should be the age

[Shri C. C. Biswas.]

limit for marriage. I suggest that all these consequential amendments may be left to the draftsman. He will eliminate words where necessary when the Bill is finalised. Or, as we go on, we can formally do it also.

MR. DEPUTY CHAIRMAN: You accept No. 5 then by Mr. Mahanty and others?

SHRI C. C. BISWAS: That is consequential. We will accept that.

The next amendment is that of Mr. Naidu regarding the customary marriages. This question will be again raised in connection with clause 50 but as I have already said, I for one, cannot accept that amendment and I hope the House will not accept the amendment. You want to make provision for cases where certain marriages are admitted under their personal laws or customary laws. But this is a law which is being enacted for the whole country and therefore we should not introduce variations which can be justified only on the ground of custom. I am not here going to discuss what led to the origin of those customs. There might not be biological.....

SHRI RAJAGOPAL NAIDU: Sir, may I explain that.....

SHRI GOVINDA REDDY: When 80 per cent. of the.....

SHRI C. C. BISWAS: That is my view. By this general law irrespective of religion, irrespective of caste, irrespective of community, anyone living in India can marry under the provisions of this law and we are trying to make such provisions as would be applicable to all. Therefore, we are trying to frame our list of prohibited degrees on eugenic basis. We might have made a mistake and if any of the relations mentioned in this cannot be justified on that basis, please do point it out and we shall strike that out.

SHRI GOVINDA REDDY: What is the harm if this amendment is accepted?

SHRI C. C. BISWAS: If you say that this amendment must be accepted, then there might be other customs in other parts of the country, and do you say that all those should be accepted? Then what is the use of having a general law like this, if it is to be subject to customary laws? You will not leave the parties to be governed by their own customary laws, if they come under this law. But you will say that they should still be governed by their own customary laws.

The next amendment is that of Shri Kishen Chand, No. 116. I don't think he will press this seriously. Mr. Dhage says there should be a medical certificate of fitness for marriage. Apart from the general question of medical certificate, I don't know and the law does not show what constitutes fitness for marriage. Is it a beautiful complexion, or a healthy body or is it intellect?

SHRI V. K. DHAGE: Potency.

SHRI C. C. BISWAS: Then I come to the amendment of Shri Vaidya. He says that if a person is suffering from any of the diseases or defects, it will be one of the grounds of disqualification. How is it possible unless you say that in the notice of marriage they must give a declaration as I suggested? As a matter of fact there are ample safeguards provided in the provisions we have made for avoiding marriage, that is, for declaring a marriage null and void. That is the only way in which we can proceed. Otherwise it will be like saying 'No boy must be a bad boy'. It is only when he behaves like a bad boy that you can call him to account. That is the only way of ensuring that he will not be a bad boy. Similarly if you want to ensure that none of the parties should suffer from these diseases, etc., you can say that if it is found out later, then the marriage will come to an end.

DR. SHRIMATI SEETA PARMA-NAND: If this certificate is not accepted, I may withdraw that but will you make a suitable amendment that the boy should certify at the time of marriage that he is not suffering from V.D., etc., and the girl should say that she is not pregnant by any other man—either of the two?

SHRI C. C. BISWAS: On the last point ladies are more competent to speak. In what month are they prepared to declare that they are with child?

DR. SHRIMATI SEETA PARMA-NAND: Let him be more serious.

SHRI C. C. BISWAS: If you require the girl to give a declaration that she was not with child at the time she was going to marry, that would have been different. How could the husband say whether the girl who was being married to.....

DR. SHRIMATI SEETA PARMA-NAND: The Law Minister is misinterpreting me.

MR. DEPUTY CHAIRMAN: You are disturbing too much.

DR. SHRIMATI SEETA PARMA-NAND: It is a very important point.

SHRI C. C. BISWAS: I suggest that my hon. friend and those who are thinking like her should wait and see how this operates. If, as a matter of fact, we find numerous cases coming to light where the girls were found pregnant by some other men before marriage,—they are bound to be made known—then, if necessary, we shall think of suitable amendments but let us not now proceed except on the basis that if such a thing does come to light, there is some remedy given to the husband by seeking for avoiding the marriage. That ought to be sufficient for the present.

MR. DEPUTY CHAIRMAN: I am putting the amendments to vote. First

I will take up the consequential amendment. No. 5.

The question is:

“That at page 3, lines 19 to 21 be deleted.”

The motion was adopted.

MR. DEPUTY CHAIRMAN: Next is No. 72 by Shri Govinda Reddy.

SHRI GOVINDA REDDY: I would suggest that the other amendments be put first because this relates to the whole clause.

MR. DEPUTY CHAIRMAN: They are all opposed by the hon. Minister.

SHRI GOVINDA REDDY: I will accept Mr. Naidu's amendment.

MR. DEPUTY CHAIRMAN: Do you withdraw your amendment?

SHRI GOVINDA REDDY: I press it.

MR. DEPUTY CHAIRMAN: The question is:

72. “That at page 3, for the existing clause 4, the following be substituted, namely:—

‘4. *Conditions relating to solemnization of special marriages.*—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act,—

(a) if, during a period of ninety days immediately preceding the date of notice under section 5,—

(i) neither party has a spouse living;

(ii) neither party is an idiot or a lunatic;

(b) if the parties have completed the age of *twenty-one on the date of solemnization of the marriage;

†. * * * *

*Consequential on acceptance of amendment No. 4.

†(c) Deleted in consequence of acceptance of amendment No. 4.

[Mr. Deputy Chairman.]

(d) if the parties are not within the degrees of prohibited relationship; and

(e) where the marriage is solemnized outside the territories to which this Act extends, both parties are citizens of India domiciled in the said territories.'"

The motion was negatived.

PANDIT S. S. N. TANKHA: Sir, I beg leave of the House to withdraw my amendment.

*Amendment No. 112 was, by leave, withdrawn.

SHRI KANHAIYALAL D. VAIDYA: I beg leave of the House to withdraw my amendment.

*Amendment No. 113 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

2. "That at page 3, after line 17, the following be inserted, namely:—

'(bb) both the parties have obtained a medical certificate from a registered medical practitioner as required in Schedule VI;'"

The motion was negatived.

DR. SHRIMATI SEETA PARMANAND: We will have a division on this.

AN HON. MEMBER: We will stand up.

MR. DEPUTY CHAIRMAN: (After a count) This is the result. There are forty-nine votes against the motion and eleven for the motion, and so the amendment is lost.

The motion was negatived.

*For text of amendments, vide col. 5201 of debate dated 5th May 1954.

MR. DEPUTY CHAIRMAN: The next amendment is that standing in the name of Shri Rajagopal Naidu—No. 8.

PANDIT S. S. N. TANKHA: But what about the other amendment, the one standing in the name of Dr. Seeta Parmanand?

MR. DEPUTY CHAIRMAN: That is No. 7 and it is consequential and therefore barred. We shall now take up amendment No. 8.

SHRI RAJAGOPAL NAIDU: May I request that my amendment be taken up after clause 15?

MR. DEPUTY CHAIRMAN: That cannot be done.

The question is:

8. "That at page 3, lines 22-23, after the word 'relationship' the words 'unless the law or any custom or usage having the force of law, governing each of them, permits of a marriage between the two' be inserted".

SHRI RAJAGOPAL NAIDU: Sir, I am withdrawing my amendment.

The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: Then Mr. Kishen Chand, do you want to press your amendment?

SHRI KISHEN CHAND: Sir, I press it.

MR. DEPUTY CHAIRMAN: Very well.

The question is:

116. "That at page 3, in lines 22-23, after the word 'relationship' the words 'and satisfy the restriction on age disparity governed by clause (h) of sub-section (1) of section 2' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: And then Mr. Vaidya, do you press your amendment?

SHRI KANHAIYALAL D. VAIDYA: Yes, Sir.

SHRI V. K. DHAGE: But there is another amendment (No. 9) in my name, Sir.

MR. DEPUTY CHAIRMAN: No, that is barred because a similar amendment was lost.

The question is:

117. "That at page 3, after line 26, the following be added, namely:—

'(2) No man or woman shall be allowed to marry where one party, because of certain physical defects, is sexually impotent or where one party is suffering from venereal disease, mental disorder, leprosy or any other loathsome disease which is regarded by medical science as rendering a person unfit for marriage.'

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we come to clause 5.

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

10 and 118. "That at page 3, lines 32-33, for the words 'fourteen days' the words 'thirty days' be substituted".

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

PANDIT S. S. N. TANKHA: Sir, in this amendment it has been suggested that instead of 14 days, the period should be 30 days. Clause 5 says that either of the persons who gives notice of the intended marriage should be resident within that area for a period of at least 14 days.

MR. DEPUTY CHAIRMAN: You have already dealt with this in your earlier general remarks.

PANDIT S. S. N. TANKHA: No, Sir, not on this point. The clause says that either of them should be resident for a period of 14 days at least in that place. I have suggested that instead of this period being 14 days, it should be fixed at 30 days. I am aware of the fact that under the 1872 Act, the period was only 14 days, but I ask for this change because, where the notice of the marriage is being given to a Marriage Officer outside the area of permanent residence of either of the parties to the marriage and where the marriage is to be held within that jurisdiction, namely within the jurisdiction of the Marriage Officer outside the area of permanent residence of either of the parties, then, if you will kindly see clause 6(3), it mentions: "Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5"—what does he do? The Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

Now, Sir, this provision has been added by the Select Committee in this Bill. No such provision existed in the 1872 Act. Therefore a period of fourteen days was considered necessary for this notice. Now, in a case where sub-clause (3) of clause 6 will apply, the notice will have to be given to the

[Pandit S. S. N. Tankha.]
other Marriage Officer who will also display it in his office and so fourteen days' time is too short for the transmission of this notice from one officer to the other and for displaying it on the notice board and for being treated as sufficient notice. Therefore, I suggest that when the transmission is made to the other Marriage Officer and he has also to give due publicity to the notice, at least a period of fourteen days should elapse after the publication of notice there before the marriage is allowed to take place. Therefore I have suggested that a period of thirty days should be fixed instead of fourteen days. I think, Sir, it is a very reasonable amendment and the hon. Law Minister will be pleased to accept it.

MR. DEPUTY CHAIRMAN: Mr. Mahanty, have you anything to say?

SHRI S. MAHANTY: I have nothing more to add, Sir.

SHRI C. C. BISWAS: My hon. friends are under a misapprehension. All that is proposed to be done under clause 5 is the fixation of the period necessary for residence before a party can give notice of marriage. It is not a provision relating to the period for objections. All that is required is that one of the parties to the marriage should have resided in the district where the Marriage Officer's office is situated at least for fourteen days to give jurisdiction to that officer to solemnize that marriage. The period under the original Act of 1872 was thirty days but the Select Committee considered that that period should be reduced to fourteen days. The question of the Marriage Officer before whom the first notice goes having to transmit it to the other Marriage Officer in the other district is not involved in this clause.

PANDIT S. S. N. TANKHA: I have not yet been able to understand the point made out by the hon. Law Minister.

MR. DEPUTY CHAIRMAN: To give jurisdiction to the Marriage Officer, a residence of fourteen days is necessary and that is what is provided for in this clause. Nothing more.

PANDIT S. S. N. TANKHA: What will happen where the notice is transmitted to another officer and he has to display it?

SHRI C. C. BISWAS: That question does not arise here.

MR. DEPUTY CHAIRMAN: I do not think that arises here.

PANDIT S. S. N. TANKHA: Then I do not press my amendment.

The *amendment was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: The question is.

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

MR. DEPUTY CHAIRMAN: The motion is:

"That clause 6 stand part of the Bill."

SHRI RAJAGOPAL NAIDU: Sir, I move:

11. "That at page 3, at the end of line 43, the following be added, namely:

'and he shall send a copy of such notice to the parents of the parties to the marriage, and in the absence of parents, to the next of kin'."

11 A.M.

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

*For text of amendment, *vide* col. 5333 *supra*.

73. "That at page 3, at the end of line 43, the following be added, namely:—

'and also by inserting it in any one of the important daily newspapers widely circulated in the district'."

PANDIT S. S. N. TANKHA: Sir, I do not think it is necessary for me to move the amendment No. 119 standing in my name now as the age of marriage under the Act has been fixed at 21. Therefore I am not moving the amendment.

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

74. "That at page 4, at the end of line 5, the following be added, namely:—

'and published in any one of the important daily newspapers widely circulated in the district'."

SHRI J. S. BISHT: Now, that the age has been raised to twenty-one, I do not want to move my amendment No. 12, Sir.

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

SHRI RAJAGOPAL NAIDU: Sir, the intention in my tabling this amendment is that even if the husband and the wife had attained the age of twenty-one, it is necessary that the parents be informed of the wedding. It is only with that intention that I had sent in this amendment, not that the consent of the parents is required in this particular matter, but it may be that a boy and a girl over twenty-one years of age may just think of marrying under the Special Marriage Act. They may go to some place, stay in a hotel for fourteen days and give notice to the Marriage Officer of their intended marriage. The Marriage

Officer will have recourse to only clauses 5 and 6. Now, clause 5 says, "when a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than fourteen days immediately preceding the date on which such notice is given".

Clause 6 says, "The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same".

Sub-clause (2) says, "The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office". It is here, Sir, that I want to add that while the Marriage Officer may affix the notice on the notice board of his office, he may also send a copy to the parents, and in the absence of the parents, to the next of kin.

SHRI P. T. LEUVA (Bombay): What is the purpose?

SHRI RAJAGOPAL NAIDU: So that the parents can be informed of the marriage.

SHRI KANHAIYALAL D. VAIDYA:

श्री कन्हैयालाल डी० वैद्य : उपसभापति महोदय, मेरा उद्देश्य इस सुधार के जरिये यह बताने का है कि जब शादी के लिए सूचना देना इस धारा 6 के अंतर्गत जरूरी समझा गया है तो वास्तव में सूचना का कोई अर्थ होना चाहिये । किसी अफसर के दफ्तर के आगे एक पेंटिंग बोर्ड

[Shri Kanhaiyalal D. Vaidya.]

(notice board) पर कुछ चंज को लगा देने का मतलब सूचना दे देने का नहीं माना जा सकता है। अगर इसको सूचना के अर्थ में मान लिया जाता है तो वह एक नागरिक का यह काम हो जायेगा कि रोज उस अफसर के दफ्तर में जा कर देखे कि मेरे लड़के या लड़की की शादी का नोटिस या दरखास्त तो नहीं चिपक हुई है। इस तरह की खाना पूर का के सूचना का अर्थ पुरा नहीं माना जा सकता है।

माननीय कानून मंत्री जी ने इस कानून को रखते समय यह कहा था कि ब्लैक मैलिंग परपज (black mailing purpose) के लिए या ज्यादा पब्लिसिटी (publicity) के लिए उसको पब्लिश (publish) न किया जाय। तो फि समझ में नहीं आता कि आप धारा छः को क्यों रखते हैं। यदि आप धारा छः को रखना चाहते हैं तो उसका स्वरूप ऐसा होना चाहिये जिससे सबको आसान से, उस जिले में, उस क्षेत्र में, सूचना मिल सके। अगर आपका इरादा वास्तव में सूचना देने का है तो उस क्षेत्र के जिस अखबार में छपवाये जिसका सर्कुलेशन (circulation) ज्यादा हो। जिस तरह से सवा अपने पब्लिक सर्विस कमिशन (Public Service Commission) के नोटिसों और दूसरी तरह की सूचनाओं को छपवाते हैं, उसी तरह से यह सूचना छपी जान चाहिए।

मान लजिये किसी प्रान्त के जिले का कोई लड़का और किसी अन्य जिले का लड़का दिल्ली किसी काम से या पढ़ने के लिए आते हैं। कुछ दिनों बाद वह लड़का जो बम्बई प्रान्त का है और

लड़की जो कलकत्ता का है, आपस में शादी करना चाहते हैं और मेरेज आफिसर (Marriage Officer) के सामने दरखास्त देते हैं। दिल्ली का मेरेज आफिसर इस बात की सूचना बम्बई और कलकत्ते के अधिाारिया के पास भेज देगा और दोनों जगह के मेरेज आफिसर अपने-यहां दफ्तर के नोटिस बोर्ड में उस सूचना को चिपका देंगे। ऐसे हालत में आप कैसे मुमकिन समझ सकते हैं कि उस लड़के और लड़की के माता पिता को यह सूचना मिल जायगी कि उनके बच्चे जो दिल्ली पढ़ने या जिस काम से गये हुए थे, आपस में शादी कर रहे हैं। जब तक आप उस क्षेत्र के किसी अखबार में यह सूचना प्रकाशित नहीं करवायेंगे तब तक उन लोगों को इस शादी का ज्ञान नहीं हो सकता है।

[For English translation, see Appendix VII, Annexure No. 278.]

MR. DEPUTY CHAIRMAN: Your amendment is self-apparent. The hon. Law Minister.

SHRI C. C. BISWAS: Sir, now that the age of marriage has been raised to twenty-one, opportunity ought to be given to the parties to marry, if they so desire, and we do not wish any number of busybodies to come and interfere. The less of such busybodies, the better, Sir.

The question was discussed at great length. Although the Select Committee had fixed the age-limit at eighteen, still they thought that the utmost that could be done—and that would be sufficient—was that a copy of the notice may also be sent to the Marriage Officer of the district in

which the parties ordinarily reside. It may be that two parties want to contract a clandestine marriage. They leave their homes, go elsewhere, stay there for 15 days and give notice of marriage without the knowledge of the parents. Well, if the parents keep any information about their children, they ought to know why they have left the place and in that case they would make it their business to find out what they are after, whether they are giving notice of marriage in any likely place nearabout and so on. They would find that out. Do you improve matters by publishing these notices in newspapers? You will certainly be on the lookout when your suspicion is roused that your children are going to contract some marriage to which you are likely to object and if you are interested in your children you will certainly find out what the position is then and there if necessary by a reference to the Marriage Officer of the district. Even if it is published in the newspapers nobody, who has no suspicion about his children, would find the time to go through the columns of the *Statesman*, the *Hindustan Times*, this paper and that paper. There are so many things appearing in the newspapers. Do they attract your notice? Big estates are being sold for non-payment of revenue and you would find notice of this in the Collector's office or in the Gazette, and that is about all. They are not published in the daily newspapers. Those who have got certain interests they always keep themselves informed and they know where the notice will appear. This point was considered by the Select Committee and they came to the conclusion that if either of the parties to an intended marriage is not permanently residing within the limits of the Marriage Officer to whom the notice of marriage has been given, the latter shall cause a copy of such notice to be transmitted to the Marriage Officer of the district in whose limits such party is permanently residing and that Marriage Officer shall affix it to some conspicuous place in his office. That should be sufficient, Sir, and ad-

vertisement in the daily newspapers is unnecessary.

श्री टी० पांडे : श्रीमान् मैं यह पूछना चाहता हूँ कि एक लड़की बलकत्ते की रहने वाली है और एक लड़का बम्बई का रहने वाला है। दोनों दिल्ली में पढ़ते हैं। कि दोनों ने विवाह कर लिया मगर मां-बाप को पता न चले इसके बारे में तो यह बड़े ऐतराज की बात है। माता पिता को अगर यह चीज मालूम हो जाय तो आपको उसमें क्या ऐतराज है, इसे हमें बता दीजिये।

†[SHRI T. PANDE: Sir, I want to say that if a girl belonging to Calcutta and a boy belonging to Bombay, who are reading in Delhi, get married without the knowledge of their parents, it is highly objectionable. What objection do you have if the parents are informed? Let us know it.]

MR. DEPUTY CHAIRMAN: The age has been raised to twenty-one years.

PROF. A. R. WADIA: What happens if either party has a spouse living?

MR. DEPUTY CHAIRMAN: Everything will have to be mentioned in the declaration.

Are you pressing your amendment No. 11, Mr. Rajagopal Naidu?

SHRI RAJAGOPAL NAIDU: I am not pressing it.

The *amendment was, by leave, withdrawn.

SHRI KANHAIYALAL D. VAIDYA: I want to press my amendments.

MR. DEPUTY CHAIRMAN: The question is:

73. "That at page 3, at the end of line 43, the following be added, namely:

'and also by inserting it in any one of the important daily news-

* For text of amendment, vide col. 5336 *supra*.

†English translation.

[Mr. Deputy Chairman.]
papers widely circulated in the district'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

74. "That at page 4, at the end of line 5, the following be added, namely:—

'and published in any one of the important daily newspapers widely circulated in the district'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 7. There are two amendments.

SHRI RAJAGOPAL NAIDU: I move:

13. "That at page 4, line 8, after the words 'object to the marriage' the words 'by making a deposit in cash of one thousand rupees with the Marriage Officer' be inserted."

SHRI M. GOVINDA REDDY: I move:

75. "That at page 4, line 8, after the word 'object' the words 'by appearing in person before the Marriage Officer or by an affidavit' be inserted."

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

SHRI RAJAGOPAL NAIDU: Mr. Deputy Chairman, it is provided in this clause "Any person may, before the

expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4." That would mean, Sir, that anybody who is interested in demolishing the proposed alliance or in delaying the affair can come forward, write a few lines of objection and simply throw it before the Marriage Officer so that there can be an elaborate enquiry and thus they would try to delay the solemnization. It has been provided, if I remember aright, Sir, in the Child Marriage Restraint Act which is popularly known as the Sharda Act that if an objector comes forward to object to the marriage he will do so after furnishing a deposit.....

SHRI T. S. PATTABIRAMAN (Madras): It is Rs. 100 only.

SHRI RAJAGOPAL NAIDU: Whatever it is, some deposit will have to be made by the objector under the Child Marriage Restraint Act. We also find, Sir, such a provision in several other State Acts. Under the Prevention of Bigamy Act of Madras any person who files an objection is to make an initial deposit of Rs. 250 or Rs. 500. This is only to see that frivolous objections are not made by any one and every one and only persons who are really interested will come forward, make the deposit and raise the objection. Whether it is Rs. 1,000 or Rs. 500 or Rs. 250 it does not matter. What all I want is that there should be some sort of a deposit just to eliminate the possibility of certain frivolous objections being made before the Marriage Officer. That is my only intention in moving my amendment.

SHRI GOVINDA REDDY: In this clause the manner of objection is not made clear. As has been pointed out, an objection will be very important; it may mar the union. Therefore it is necessary that some tight provision is made qualifying the objection. I want it in sub-clause (1) that an objector

must appear in person before the Marriage Officer although sub-clause (3) means to include that the objector should be present in person as sub-clause (3) reads: "The nature of the objection shall be read over to the person making the objection." Still it is not clear. It must be clear in sub-clause (i) that the objector must come in person and make the objection in person

MR. DEPUTY CHAIRMAN: Sub-clause (3) reads: "The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained, if necessary, to the person making the objection and shall be signed by him or on his behalf." Will this not do?

SHRI GOVINDA REDDY: Sub-clause (3) implies that he must be in person but it does not make it absolutely clear. It says "if necessary" it may be read over and explained to the person making it. Although it implies what I want here, my point is that it should be made clear in sub-clause (1) itself so that there could be no room for any doubt. Then I have also added that the objection, when the objector does not appear in person, must be by affidavit. The reason is this. When an objection is made by an affidavit the injured parties will get a remedy against the objector if the objection is malicious. If there be no affidavit any member will prefer an objection and record it before the Marriage Officer. This way the parties affected will not get a legal remedy. Therefore, I say that this amendment is very necessary.

SHRI P. SUNDARAYYA: I support Mr. Govinda Reddy.

SHRI MAHESH SARAN (Bihar): Mr. Deputy Chairman, this measure is a measure which is rather modern and people belonging to the old ideas do not like it. Now coming to the point at issue, if anybody wishes to object he can come in and file a petition of objection and the marriage would, for

the time being, be postponed. When such is the effect of an objection, I think it is necessary that we should put in a provision that some deposit should be necessary before an objection can be entertained.

SHRI RAJAGOPAL NAIDU: Or at least some security.

SHRI C. C. BISWAS: First of all regarding Mr. Naidu's amendment No. 13 asking for deposit, I should say that it is not necessary. You say that there must be a security deposit as a safeguard against frivolous applications being put in, and he cited the Child Marriage Restraint Act in support. Sir, my hon. friend forgets that, although there was that clause in the original Act, that was repealed in 1949 because it was not considered necessary. Where the objection is found frivolous there is the penalty attaching to it. That itself ought to be enough to stop frivolous objections. At the same time it is only fair that there must be a finding by the enquiring authority whether it is frivolous or not.

SHRI RAJAGOPAL NAIDU: Prevention is better than cure.

SHRI C. C. BISWAS: What is the use of imposing a security deposit in advance? I do not know. Either you invite these objections or you do not invite these objections. Our aim is to give facilities to everyone who has any reasonable objection to put forward and we should not make it difficult for him to do so. But in case there is any black-mailer or somebody else and if he puts in an objection, merely because he puts in an objection the marriage is not stopped. Originally the provision was that as soon as an objection was filed, the Marriage Officer would not hold any enquiry, but he would simply say, "well, go to the civil court and have it out there. If the civil court says that the marriage cannot be solemnized, then I shall not solemnize it, otherwise I shall solemnize the marriage." But now by the

[Shri C. C. Biswas.]

amendments made by the Joint Select Committee the Marriage Officer has been vested with the power to enquire into this matter and unless there is an appeal his judgment is final. Only when the Officer refuses permission there may be an appeal; not otherwise. I think, Sir, if, either as a result of the finding of the Marriage Officer or as a result of the decision given in an appeal, it is found that the objection was frivolous, we have made a provision for it in sub-clause (2) of clause 9. Clause 9(2) says: "If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof to the parties to the intended marriage."

SHRI RAJAGOPAL NAIDU: Suppose the objector has no property and he is worth nothing?

SHRI C. C. BISWAS: Suppose he borrows money from you. You go to court, file a suit and obtain a decree against him and if you find that he has no property, well, you thank your stars. What is the use of putting these hypothetical difficulties? We have now made a provision making it easy for the costs to be recovered. This provision was not there in the Bill as it was introduced. I therefore claim that we have made all the provisions that are necessary.

As regards Mr. Reddy's amendment (No. 75), Sir, it is not necessary at all. A person is going to file an objection. In most cases he will go and present it himself and if he does not, he sends it through his agent.

SHRI GOVINDA REDDY: Why not make it clear?

SHRI C. C. BISWAS: We have made it sufficiently clear in sub-clause (3).

It says that the objection shall be read over and explained if necessary to the person making the objection and shall be signed by him or on his behalf. There must be some responsible person, either the objector himself or somebody representing him who must go to the Marriage Officer, and hand over the objection. That ought to be enough. It is not coming by post; either the objector himself or someone on his behalf must appear in person and the objection should be explained to him. It may be that somebody may send in a signed petition, but it is wholly fictitious, but that is guarded against by requiring the petition to be filed either by himself or by his agent who will have to put down his signature in the Marriage Notice Book. That ought to be sufficient and I do not think that we shall require anything more. It is already implied that either the objector himself or somebody representing him will go in person.

MR. DEPUTY CHAIRMAN: You want me to put it to vote?

SHRI GOVINDA REDDY: I beg leave of the House to withdraw my amendment (No. 75).

The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

13. "That at page 4, line 8, after the words 'object to the marriage' the words 'by making a deposit in cash of one thousand rupees with the Marriage Officer' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

*For text of amendment, *vide* col. 5343 *supra*.

MR. DEPUTY CHAIRMAN: Clause 8. There are five amendments.

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

120. "That at page 4, lines 27-28 for the words 'If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage,' the words 'Any party aggrieved by the order of the Marriage Officer' be substituted."

SHRI GOVINDA REDDY: Sir, I move:

76. "That at page 4, line 29, for the words 'fifteen days' the words 'thirty days' be substituted."

SHRI GOVINDA REDDY: Sir, I move:

121. "That at page 4, line 29, for the word 'refusal' the word 'order' be substituted."

SHRI J. S. BISHT (Uttar Pradesh): Sir, I move:

14. "That at page 4, line 31, after the word 'office' the words 'and the decision of the district court on such appeal shall be final' be inserted."

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

122. "That at page 4, line 31, for the comma after the word 'office' a full-stop be substituted, and after the said full-stop the following be inserted, namely:—

"The order of the district court on appeal shall be final."

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

PANDIT S. S. N. TANKHA: Sir, this is a non-controversial amendment

(No. 122). I have proposed the addition of the words "The order of the district court on appeal shall be final."

SHRI C. C. BISWAS: I accept amendment No. 14.

SHRI GOVINDA REDDY: Sir, if any party who has got some grievance against the order, wants to appeal, the period provided is 15 days. I feel this is too short a period. This is a right which the parties will lose. If one or other of the parties is ill, they will lose this valuable right and I think that it should be enhanced to 30 days.

Then for the word 'refusal' the word 'order' may be substituted because it is a better word and a legal word. I hope the hon. the Law Minister will see his way to accept these amendments of mine.

PANDIT S. S. N. TANKHA: In moving my amendment I wish to say.....

MR. DEPUTY CHAIRMAN: So far as No. 122 is concerned, it is accepted.

PANDIT S. S. N. TANKHA: I am speaking about amendment No. 120, Sir. There is just one little error in its wording. It has been put down that I want to substitute the words "Any party aggrieved by the order of the Marriage Officer". The words I want to put are "Any person aggrieved by the order of the Marriage Officer".

MR. DEPUTY CHAIRMAN: You want the objector also to get the right of appeal?

PANDIT S. S. N. TANKHA: My object in moving this amendment is that since clause 8(2) as it stands bars an appeal against the order of the Marriage Officer refusing the objection, it is possible, Sir....

MR. DEPUTY CHAIRMAN: Is it refusal of objection or refusal of permission to marry?

SHRI GOVINDA REDDY: It is only refusal of permission to marry that is made appealable.

PANDIT S. S. N. TANKHA: As it stands, it appears that it is only where the Marriage Officer refuses to solemnize the marriage that the parties can file an appeal against the order, but what I want is that supposing the Marriage Officer says, "No, the objection is frivolous", it should be open to the person objecting to file an appeal against that order of the Marriage Officer.

MR. DEPUTY CHAIRMAN: You want the objector to have the right of appeal?

PANDIT S. S. N. TANKHA: Yes, Sir. My reason is this. Supposing the father of the girl comes and says that the age of the girl is only 18 or 19 years whereas in the notice she has given her age as 21. Now the proceedings which the Marriage Officer will hold will be summary. There will not be any regular proceedings, and no complete record of the witnesses' depositions may be maintained. Therefore, Sir, the father of the girl is aggrieved against such an order of the Marriage Officer and why should not he, the parent, or any other person interested in that marriage be given the right of appeal? I have made it clear by the second amendment which I have proposed under this clause that wherever such appeal has been preferred the decision of the district court will be final.

SHRI P. SUNDARAYYA: I support Shri Govinda Reddy's amendment because it appears reasonable that a little more time should be given for the appeal to be preferred against the order of the Marriage Officer refusing to solemnize the marriage and I hope the Law Minister will find it difficult to accept that.

But, as far as Shri Tankha's amendment is concerned, I oppose it very strongly. This will only make things

very very difficult for people to get married under the Special Marriage Act. We have just now decided that if anybody wants to object he need not pay any deposit. But you now want to make it very free for anybody and everybody to raise an objection against the solemnization of the marriage even after the Marriage Officer had gone into the thing and decided it. Under this amendment, you are allowing some person who is not a party to the marriage, who is not paying any deposit, not only to object but later on take it to appeal court. In these ways, you are making it more and more difficult for people to take advantage of this measure.

PANDIT S. S. N. TANKHA: Sir, it is nothing new, it is already there.

SHRI P. SUNDARAYYA: Sir, this objection is frivolous. Why should any person be given this privilege of putting in an objection even after the Marriage Officer has gone into it and said that the objection is not valid? Why should persons be given the right to go on appealing and appealing against the marriage. This is only creating greater and greater difficulty. It is a totally bad amendment; it should, in fact, be totally opposed.

MR. DEPUTY CHAIRMAN: What has the Law Minister got to say?

SHRI C. C. BISWAS: Before I deal with this, I shall refer to amendment No. 14 of Shri Bisht and Shri Rajagopal Naidu:

"That at page 4, line 31, after the word 'office' the words 'and the decision of the district court on such appeal shall be final' be inserted."

Sir, I accept the amendment subject to a verbal modification. In clause 8. (2) it is said:

"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.'

Now, I will only put at the end of this clause, after the words:

"and the Marriage Officer shall act in conformity with the decision of the court" the words "which shall be final."

MR. DEPUTY CHAIRMAN: Mr. Govinda Reddy, you have no objection to it?

SHRI GOVINDA REDDY: I shall accept it.

SHRI C. C. BISWAS: Then, coming to clause 14.....

SHRI RAJAGOPAL NAIDU: In that case, Sir, clause 17 also has to be amended at the end "shall act in conformity with such decision which shall be final".

SHRI J. S. BISHT: I agree with my hon. friend Mr. Naidu; in clause 17, the decision of the district court should be made final. The actual wording which Mr. Reddy has proposed is there.

MR. DEPUTY CHAIRMAN: What Mr. Bisht says is that the actual wording proposed by Mr. Reddy is already there in clause 17:

"and the decision of the district court on such appeal shall be final".

I do not think it makes any material difference.

SHRI C. C. BISWAS: The words "the decision of the court" occurring in clause 8(2) are there already, and if I add the words "which shall be final", what difference does it make? I suggest it here only because in the context of clause 17, we have to repeat those words.

Then, I come to amendment No. 120 by Shri Tankha. It reads:

"In clause 8(2), for the words if the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage' the words 'any party aggrieved by the order of the Marriage Officer' be substituted."

You will find that the scheme of the Bill is this. As I said—and somebody also ridiculed me for it—the parties to the marriage are the parties really concerned. They are now 21; very well; and they desire to marry and they may marry. The marriage is solemnized. If however the Marriage Officer refuses to solemnize it, then there will be a right of appeal by either party to the marriage. But why should it be open to any other person who feels aggrieved by any order of the Marriage Officer even when he refuses to solemnize the marriage, to appeal?

PANDIT S. S. N. TANKHA: I want the word 'person' substituted instead of the word 'party'.

MR. DEPUTY CHAIRMAN: He wants the right of appeal also to be given to any person.

SHRI C. C. BISWAS: If I understand my hon. friend aright, it is this. The right of appeal should be open to anybody and in every case. The question is: why should it be so? The marriage has been solemnized.....

PANDIT S. S. N. TANKHA: No, Sir, it is about to be solemnized, and the objectors come forward.

SHRI C. C. BISWAS: I am explaining the scheme of the Bill. The Marriage Officer receives the objection and suppose he decides in favour of the objection; then the parties who are really affected by the decision have the right of appeal. What my hon. friend, Shri Tankha, suggests is that

[Shri C. C. Biswas.]

the right of appeal should be open, not merely where the Marriage Officer refuses but also where he agrees to solemnize the marriage, i.e. in every case whether the Marriage Officer upholds the objection or rejects the objection. I think that was the point. The amendment is: "Any party aggrieved by the order of the Marriage Officer" should be given the right of objecting to the order. The order of the Marriage Officer may be one of refusal to solemnize the marriage or agreeing to solemnize the marriage; so, instead of the words "If the Marriage Officer upholds the objection and refuses to solemnize the marriage", it is suggested, the words "any party aggrieved by the order" (of the Marriage Officer) should be substituted.

PANDIT S. S. N. TANKHA: That is the idea, that is right.

SHRI C. C. BISWAS: But the question is whether you should have such a provision. I was pointing out the parties' desire to solemnize the marriage.

PANDIT S. S. N. TANKHA: My difficulty is that the very question of age may be disputed.

SHRI C. C. BISWAS: We know that even in contested cases, the difficulty of proving it is there. Who is to prove the age of the girl, in the absence of medical evidence or other satisfactory evidence? It is rather difficult sometimes to say what the age of a person is. The Marriage Officer will certainly be acting *bona fide* and do his best to find out whether the conditions laid down in clause 4 are satisfied or not. Having done so, he comes to the conclusion that there is no impediment to the marriage being solemnized, and he solemnizes it. Now if after that any body wants to object to the marriage, the court is there. If he wants to object before the marriage is solemnized, he has only to ask for an injunction that the Marriage

Officer should be prevented from solemnizing the marriage even where the Marriage Officer, after an enquiry, decides there is no impediment.

PANDIT S. S. N. TANKHA: May I know if a civil suit will be open once you say that the order of the district court is final. Civil Courts will have no jurisdiction left in them once the order of the district court is made final.

SHRI C. C. BISWAS: If the Marriage Officer refuses, then only is there an appeal to the district court; if it decides that there is no impediment then that becomes final. But what I say is, that as soon as the Marriage Officer says, I am going to solemnize the marriage, there is nothing to prevent anyone from going to the civil court and ask for an injunction

PANDIT S. S. N. TANKHA: Instead of taking the matter up with the civil court, will it not be better to give the right of appeal to the aggrieved party in the clause itself? It will take less time if the matter goes in appeal rather than if the matter goes on the original side of the civil court.

SHRI C. C. BISWAS: Obviously we cannot provide in this Bill all the remedies which are open to a party in a civil court.

MR. DEPUTY CHAIRMAN: Mr. Bisht, what about your amendment No. 14?

SHRI C. C. BISWAS: Sir, about the amendment "30 days" for "fifteen days", I have no objection.

SHRI H. C. DASAPPA: Yes, 30 days will be, I feel, all right

SHRI C. C. BISWAS: For filing an appeal 15 days' period ought to be sufficient. But if the hon. Members say, "No, it must be 30 days", I have no objection. I leave it to the House to decide.

MR. DEPUTY CHAIRMAN: The parties will be anxious to marry early

SHRI GOVINDA REDDY: But some accident may prevent them from coming there

MR. DEPUTY CHAIRMAN: Amendment No. 122 is barred.

Now I shall put amendment No. 120 to the House.

The question is:

"That at page 4, lines 27-28, for the words 'If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage,' the words 'any person aggrieved by the order of the Marriage Officer' be substituted."

The motion was negatived.

SHRI GOVINDA REDDY: Sir, I do not press my amendment No. 121. Therefore I beg leave to withdraw that amendment.

The amendment No. 121 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

76. "That at page 4, line 29, for the words 'fifteen days' the words 'thirty days' be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: Now, I will put amendment No. 14 to the House. The draftsman will correct it. But I will put it as it is. The Law Minister accepts it.

The question is:

"That at page 4, line 31, after the word 'office' the words 'and the decision of the district court on such appeal shall be final' be inserted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 8, as amended, stand part of the Bill."

*For text of amendment, *vide* col. 5349 *supra*.

The motion was adopted.

Clause 8, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, we come to clause 9. There are four amendments.

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

123. "That at page 4, line 36, the words 'when trying a suit' be deleted."

124. "That at page 5, line 5, for the words 'not reasonable' the words 'frivolous or vexatious' be substituted."

KAZI KARIMUDDIN: Sir, I move:

167. "That at page 5, line 7, for the words 'one thousand rupees' the words 'two hundred rupees' be substituted."

MR. DEPUTY CHAIRMAN: The amendments and clause 9 are open for discussion.

PANDIT S. S. N. TANKHA: The first amendment that I have moved is that the words 'when trying a suit' in the opening paragraph of clause 9 be deleted. And why I ask for this is, because I understand that it is the intention of the hon. Law Minister under this clause to provide for the application of the Civil Procedure Code in relation to the matters mentioned in sub-clauses (a) to (e) in the present proceedings also, I entirely agree with this suggestion of his, but I think it is because of bad draftsmanship that these words have been put in where they occur at present in the clause. According to my reading of this clause it means that the provisions of the Civil Procedure Code when trying a suit, in respect of summoning and enforcing the attendance of witnesses and examining them on oath, discovery and inspection, compelling the production of documents, reception of evidence on affidavits, and issuing commissions for the examination of witnesses, etc., will apply in the present

[Pandit S. S. N. Tankha.]
proceedings also. The real intention is that when a civil court is trying any suit, the powers which it enjoys in respect of the matters enumerated shall also be applicable in the present case. Therefore, I think that these words where they occur at present are redundant and make the reading of this clause defective. Therefore, I say, Sir, that these words be deleted and I submit that no harm will be done thereby. Then it will read as follows:—

“For the purpose of any inquiry under section 8, the Marriage Officer shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters.....”

And that is, I presume, what the Law Minister wants.

Now, Sir, my second amendment relates to the words ‘not reasonable’ mentioned in sub-clause (2) of clause 9. The sub-clause reads as follows:—

“If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation”

Now I have suggested that the words “frivolous or vexatious” be used instead of the words ‘not reasonable’. The words ‘not reasonable’ are very wide and leave very great scope for the Marriage Officer to reject the objections and to award deterrent punishment to the objectors, while the words ‘frivolous or vexatious’ which have been used in the Civil Procedure Code have a definite meaning under it. The hon. Minister just now, when he was discussing the matter and was speaking on the motion, said that it was only where the objections were frivolous or vexatious that the punishment of damages to the extent of Rs. 1,000 would

be awarded. Therefore, Sir, I suggest that the words ‘not reasonable’ be substituted by the words I have suggested, and that is what, I understand, is the real intention of the hon. Law Minister.

MR. DEPUTY CHAIRMAN: Is your amendment necessary, Mr. Karimuddin?

KAZI KARIMUDDIN: Clause 9 (2) says:

“If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof to the parties to the intended marriage.....”

I am quite prepared to accept the amendment which has been moved by my hon. friend there that instead of the words “not reasonable and has not been made in good faith” the words “frivolous or vexatious” should be substituted. But generally the objectors in our country will be poor people, and it is the common experience of lawyers that for want of money and for want of proper evidence, several allegations are not substantiated in law courts, and if the finding is that the allegation is not reasonable and has not been made in good faith, the awarding of compensation to the extent of Rs. 1,000 will be prohibitive and exorbitant, and the poor people will have to go to the insolvency court if they have no money. My submission is that the words “two hundred” should be substituted for ‘one thousand’.

PANDIT S. S. N. TANKHA: On a point of explanation. I have not suggested in my amendment that the words “and has not been made in good faith” should be deleted. I want those words to remain. Only the words “not reasonable” will be substituted by the words “frivolous or vexatious”. That is all. The words “and has not

been made in good faith" are necessary and must remain.

DR. SHRIMATI SEETA PARMANAND: I oppose the amendment.

SHRI C. C. BISWAS: These amendments are not necessary. First of all the words "when trying a suit" need not be deleted. After all these are the powers which are vested in a court under the Code of Civil Procedure. What does a court do except try a suit? All the acts performed by a court are acts in connection with the trial of a suit.

MR. DEPUTY CHAIRMAN: This is the usual legal language used.

SHRI C. C. BISWAS: I was just trying, for the sake of curiosity, to find out what is the exact provision in the Code of Civil Procedure, but unfortunately I do not have the time to do that. Otherwise, I need not have given any explanation at all.

MR. DEPUTY CHAIRMAN: In the Commission of Enquiry Act, 1952 which was passed recently, the same phraseology has been used.

SHRI C. C. BISWAS: The same wording has been used here. This is a country of lawyers and if there is any substance in it, you may take it from me that it would have been raised.

MR. DEPUTY CHAIRMAN: It will not lend itself to such an interpretation as you gave.

PANDIT S. S. N. TANKHA: Sir, I submit these words may be put in somewhere else other than where they occur.

SHRI C. C. BISWAS: My hon. friend is reading these words out of their setting. He is talking as though these are the powers which are vested in the Marriage Officer when trying a suit. That is not so. These are powers which are vested in a civil court when trying a suit. The Marriage Officer

will have these powers only in connection with the matters mentioned which will arise in connection with his enquiry. The wording here is 'in respect of the following matters'.

Then about the substitution of the words "frivolous or vexatious" for the words "not reasonable", some of my hon. friends suggested that there should be a preliminary deposit of Rs. 1,000 in order to cut out objections. Now, we have said that if the objections are less than 'frivolous'—merely, "not reasonable"—then there should be a penalty, and the amount of the penalty should be left to the discretion of the Marriage Officer, not exceeding Rs. 1,000. That is all we say. Why insist on something more stringent than this? If the objection is not reasonable and has not been made in good faith, then a penalty should be levied. The amount is left to the discretion of the Marriage Officer. Therefore, we need not substitute these words.

MR. DEPUTY CHAIRMAN: The amendment is that the amount should be reduced from Rs. 1,000 to Rs. 200.

SHRI C. C. BISWAS: It does not mean that penalty of Rs. 1,000 should be imposed. It is open to the Marriage Officer to find out whether anything has been done to merit a penalty and then impose it, but it should not exceed Rs. 1,000.

PANDIT S. S. N. TANKHA: So far as the first amendment is concerned, I will leave it to the hon. the Law Minister. He is a better judge than I. If he thinks that these words must remain there, I have no objection.

MR. DEPUTY CHAIRMAN: I will read from the Commission of Enquiry Act. It says:

"The Commission shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure in respect of the following matters:"

PANDIT S. S. N. TANKHA: But the sequence of the words has been changed under the present Bill. That makes all the difference. But, anyhow, I do not press the amendment.

*Amendment No. 123 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

124. "That at page 5, line 5, for the words 'not reasonable' the words 'frivolous or vexatious' be substituted.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

167. "that at page 5, line 7, for the words 'one thousand rupees' the words 'two hundred rupees' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

MR. DEPUTY CHAIRMAN: The motion is:

"That clause 10 stand part of the Bill."

There are two amendments.

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

125. "That at page 5, line 15, for the words 'outside the said territories' the words 'within his jurisdiction' be substituted."

126. "That at page 5, line 19, after the words 'Central Government'

the words 'of the Union Republic' be inserted."

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

PANDIT S. S. N. TANKHA: In the first amendment I want that for the words "outside the said territories", the words "within his jurisdiction" should be substituted. Here in the clause the words are "Where an objection is made under section 7 to a Marriage Officer outside the territories to which this Act extends in respect of an intended marriage outside the said territories"; that is to say, in respect of an intended marriage outside the territories of India. The Marriage Officer himself is outside the territory of India and the application for marriage is being made to him and the objection is being filed before him. Therefore I have suggested that the words "within his jurisdiction" will be more suitable than the words "outside the said territories". "Outside the said territories" may also mean outside the territory of the jurisdiction of the Marriage Officer who is himself outside the territories of India. I do not know if I have made myself clear. An objection is raised under clause 7 before a Marriage Officer outside the territories to which this Act extends in respect of an intended marriage outside the said territories, or in other words that the marriage is intended to be celebrated outside India and an objection is filed before a Marriage Officer outside India. In such a case I submit that instead of the words "outside the said territories" if you put in the words "within his jurisdiction", they will make the clause more intelligible.

In the second place I have suggested that after the words "He shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government" the words "of the Indian Republic" be inserted. The words "Central

*For text of amendment, *vide* col. 5358 *supra*.

Government" have nowhere been defined under this Act and as such the words Central Government may mean the Central Government of the place where the Marriage Officer is, that is outside the territories of India. You have not defined Central Government anywhere.

MR. DEPUTY CHAIRMAN: It is defined in the General Clauses Act. There is no other Central Government in India.

PANDIT S. S. N. TANKHA: Suppose the Marriage Officer is in Great Britain and the objection is filed before him; what is he to do? To which Central Government is he to refer it? I know it means the Central Government of India but it should have been defined under the Act.

MR. DEPUTY CHAIRMAN: We are dealing with Special Marriage Act as passed by the Parliament of India. So the Central Government under the Parliament of India is the Government of India here.

PANDIT S. S. N. TANKHA: But Sir, that Marriage Officer may be under another Government.

MR. DEPUTY CHAIRMAN: Under which Act does he get power?

PANDIT S. S. N. TANKHA: He gets under this Act certainly but you have not defined Central Government here.

SHRI C. C. BISWAS: There is no definition of Indian Republic in any statute but Central Government is defined in the General Clauses Act.

PANDIT S. S. N. TANKHA: If it is defined, I don't press my amendment.

MR. DEPUTY CHAIRMAN: Have you anything to say with regard to the first amendment?

SHRI C. C. BISWAS: Sir, I did not follow him. The language is quite clear. As a matter of fact the clause

provides for marriages outside India. Only instead of saying 'outside India' we say 'outside the territories etc.' which are the words you find in clause 1(2). That formula has again been repeated in clause 3. I don't think we need create any confusion by introducing new words here.

PANDIT S. S. N. TANKHA: Sir, I beg leave of the House to withdraw my amendments

*Amendments Nos. 125 and 126 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 10 stand part of the Bill."

The motion was adopted.

MR. DEPUTY CHAIRMAN: Now we take up clause 11.

SHRI GOVINDA REDDY: Sir, I move:

77. "That at page 5, lines 24-25, for the words 'Before the marriage is solemnized' the words 'The marriage shall be deemed to be solemnized when' be substituted."

MR. DEPUTY CHAIRMAN: Amendment No. 16 is barred.

SHRI RAJAGOPAL NAIDU: Sir, I move:

17. "That at page 5, lines 27-29, the words 'if either party has not completed the age of twenty-one years the declaration shall also be signed by his or her guardian, and in every case' be deleted."

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

18, 79 and 128. "That at page 5, lines 31 to 36 be deleted."

This is a consequential amendment.

*For text of amendments, vide col. 5363 *supra*.

SHRI GOVINDA REDDY: Sir, I wish to say that we have now to define the stage at which solemnization is completed. So I say the most important act which completes solemnization is when the parties come there and the witnesses come there and they sign a declaration in the form specified in the Schedule. That completes the solemnization. We should therefore say that after the declaration is signed, the marriage is solemnized. My amendment says that in the beginning of the clause it should be said, "The marriage shall be deemed to be solemnized when" instead of "Before the marriage is solemnized".

SHRI C. C. BISWAS: May I explain? This amendment is somewhat misconceived. My hon. friend suggests that we should not say at this stage that "Before the marriage is solemnized." This clause 11 refers to the declaration which the parties have got to make and that declaration has to be made before the marriage is solemnized. 'Marriage is solemnized' means the formalities are gone through as prescribed by this Act. That is all. If that is done, it is declaration. Then if you come to the succeeding clause a certificate of solemnization is given. In clause 13 the significance of certificate is given.

SHRI GOVINDA REDDY: The certificate is a witness of marriage.

SHRI C. C. BISWAS: It is proof of the factum of marriage celebrated or performed or solemnized in accordance with the formalities prescribed in the Act. There is no point in saying here that the marriage is deemed to be solemnized, guarding against any possible risk that somebody might think it is not conclusive. That will not be so. Apart from that, you find the expression "deemed to be solemnized" has been used in clause 18. 'Marriage is solemnized' means actual solemnization before the Marriage Officer. 'Marriage is deemed to be solemnized'--that is stated in respect of marriages celebrated in other forms which are

now sought to be registered. There we have used the words that marriages that have been finally entered in the Register shall be deemed to have been solemnized under this Act. So don't introduce the same words 'deemed to be solemnized' in conflicting contexts. So I oppose the amendment.

SHRI P. SUNDARAYYA: In sub-clause (2) of clause 12 it is said:

"The marriage may be solemnized in any form which the parties may choose to adopt."

That means the hon. Minister is envisaging, apart from.....

MR. DEPUTY CHAIRMAN: We are still on clause 11

SHRI P. SUNDARAYYA: It is related to the amendment of Mr. Govinda Reddy and myself. The act of marriage should be finished before the three witnesses. The declaration is there, both the parties sign before the Marriage Officer and the signatures of the witnesses are also there. That should be considered as solemnization of a marriage or ceremony, whatever it is

SHRI GOVINDA REDDY: This formality becomes unnecessary.

SHRI P. SUNDARAYYA: That is accepted. The declaration will be made, the witnesses would be there, both parties will sign before the Marriage Officer and then the Marriage Officer will countersign and if all that is finished, is it not sufficient? That is solemnizing the marriage. Here you say in sub-clause (2) that the marriage may be solemnized in any form which the parties may choose to adopt. That means he is envisaging some other kind of solemnization apart from the registration and signatures. That is exactly why my amendment comes up which says: that a marriage is solemnized when the parties and the three witnesses in the presence of the Marriage Officer sign the declaration in the form prescribed in the third schedule of this Act.

In that case clause 12 is not necessary. The whole of clause 12 will not be necessary. As for making provision for "at the office.....or at such other place ..." you can put it in the rules framed under this Act, and it is not necessary to have such a provision in the Bill itself. You can even change the heading of clause 11 from "Declaration by parties and witnesses" into, say, "Solemnization of marriage". That would make the position quite clear.

SHRI C. C. BISWAS: Clause 11 is condition precedent to the solemnization of the marriage, and in clause 12 they have a declaration to be made in any language understood by the parties

SHRI GOVINDA REDDY: In view of this amendment, clause 12 is unnecessary

SHRI P. SUNDARAYYA: Actually the proviso could be brought under clause 11 itself. Actually, clause 12(2) where you say, "The marriage may be solemnized in any form which the parties may choose to adopt;" that is what is creating serious difficulty. In this Special Marriage Bill, we provide for registration to be the final act of marriage. You can therefore, put in this declaration also under the same clause and the proviso also can be part of the declaration.

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Bharat): Clause 12 is very necessary because it has been.....

MR. DEPUTY CHAIRMAN: We are not now discussing clause 12.

SHRI GOPIKRISHNA VIJAIVAR-GIYA: That is true, Sir, and I am only saying that because of clause 12 this amendment is not necessary.

MR. DEPUTY CHAIRMAN: Then please speak on clause 11.

SHRI GOPIKRISHNA VIJAIVAR-GIYA: Yes, Sir, I am speaking on clause 11. Some kind of solemnization is necessary. There may be

some people who may say that this kind of declaration and the signing in the presence of witnesses, all this is quite sufficient. But all the same, there should be some separate solemnization also and this is provided for in clause 12. Therefore, the amendment is unnecessary.

SHRI C. C. BISWAS: I do not know what the hon. Members mean by these amendments or by such amendments. There are certain preliminaries which have got to be gone through, before the Marriage Officer solemnizes the marriage. These preliminaries include, among others, the filing of a declaration by the parties and provision is made for that in clause 11. The form of that declaration is set out in the Third Schedule. Then, apart from this, the parties may choose some other form of marriage. They might say, "We should exchange garlands and so far as we are concerned, that will be the form of marriage we shall have." If they are Hindus, they may say, "We will have the marriage before the family deity, the two shall have the marriage in the presence of our family deity." It is up to them to have recourse to any of these forms. That is set out in clause 12. That does not in any way affect the question of these statutory preliminaries which they have to fulfil and go through. These preliminaries must be observed. Otherwise there can be no validity for that marriage. No certificate will be granted by the Marriage Officer. But as regards these forms, they are matters of option. They may observe these forms, they may not. They may be quite content with merely signing and filing the declaration. That is about all that they would have. There are, therefore, these statutory preliminaries and in addition to them, the option is given to the parties to have some other form, if they so desire.

SHRI GOVINDA REDDY: If the parties go to the Marriage Officer to get a certificate, where is the necessity for each of them to say, "I take thee as my wife" or "I take thee as my husband?"

SHRI C. C. BISWAS: I may explain. As a matter of fact, in every form of marriage which prevails in any part of the world there is some solemnity attached to it. They say, we marry each other, or something to that effect. It is a sort of a formula, it is the minimum that is required, the very minimum—the least common multiple. The parties must say we accept each other, as man and wife.

SHRI GOVINDA REDDY: But this Bill itself takes away all solemnity attached to it.

SHRI C. C. BISWAS: The statute imposes it as an obligation which you cannot escape.

SHRI P. SUNDARAYYA: Then have the proviso also in the Third Schedule.

MR. DEPUTY CHAIRMAN: I think the position has been made sufficiently clear. The amendment is being opposed by Government.

SHRI GOVINDA REDDY: I am withdrawing my amendment, Sir.

SHRI P. SUNDARAYYA: But I am not withdrawing it.

MR. DEPUTY CHAIRMAN: Have you tabled the same amendment?

SHRI P. SUNDARAYYA: Yes, Sir, I have also got my name in.

MR. DEPUTY CHAIRMAN: All right. I shall put it to vote.

The question is:

77. "That at page 5, lines 24-25, for the words 'Before the marriage is solemnized' the words 'The marriage shall be deemed to be solemnized when' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Now, I think the hon. Minister will have to accept amendment No. 17 which

stands in the name of Shri Rajagopal Naidu.

SHRI C. C. BISWAS: Yes.

MR. DEPUTY CHAIRMAN: It is a consequential amendment.

The question is:

17. "That at page 5, lines 27-29, the words 'if either party has not completed the age of twenty-one years the declaration shall, also be signed by his or her guardian, and in every case' be deleted."

The motion was adopted.

DR. SHRIMATI SEETA PARMANAND: Is this amendment No. 17?

MR. DEPUTY CHAIRMAN: Yes. And amendment No. 18 is also consequential.

DR. SHRIMATI SEETA PARMANAND: But when we have accepted the age as twenty-one, why need amendment No. 17 come in? The words would be automatically deleted.

MR. DEPUTY CHAIRMAN: Amendment No. 17 is accepted and those lines regarding minority go.

Then I put amendment No. 18. The question is:

18. "That at page 5, lines 31 to 36 be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 11, as amended, stand part of the Bill."

The motion was adopted.

Clause 11, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we come to clause 12.

SHRI GOVINDA REDDY: I am not moving my amendment No. 80.

MR. DEPUTY CHAIRMAN: Yes. That is a negative amendment.

SHRI TAJAMUL HUSAIN: Sir, I move:

60. "That at page 5, lines 38 to 41, the words 'or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed' be deleted."

DR. SHRIMATI SEETA PARMANAND: I move:

19. "That at page 5, line 42, for the words 'any form' the words 'any customary ceremony' be substituted."

SHRI TAJAMUL HUSAIN: Sir, I move:

61. "That at page 5, line 47, after the word 'parties' the words 'and the Marriage Officer' be inserted."

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

129. "That at page 5, line 47, for the word 'take' the words 'solemnly affirm and declare' be substituted."

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

SHRI TAJAMUL HUSAIN: Sir, this clause 12 says, that the marriage is to be performed in the presence of the Marriage Officer in the Marriage Office or at any place where the parties desire it to be performed or where the Marriage Officer himself desires.

Now, Sir, I want that the marriage should be performed only at the office of the Registrar and nowhere else. Now, Sir, in India, we have got a Registration Act under which many

documents are registered. The Registrar can register a document in his office or, at the request of the parties or at his own initiative, go anywhere else and register it. Now, the reason for this was that the persons who wanted to register a document may be very old, may be dying or may not be able to attend the office. Under such circumstances if a petition is filed before the Registrar that he may kindly come to the house of the party and register the document as the parties themselves are unable to come to his office due to old age, illness, etc., the Registrar used to go to the house. Another reason is, Sir, that in India many ladies are kept in seclusion;

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

they are in *purdah* and they do not like, especially the respectable ladies, to appear in an office or in a court, before the Registrar. They used to file a petition with the registrar saying, "I am a *purdahnashin* lady; I live in seclusion; I do not appear in public and so, please come and do the registration in my house". These are the only two reasons why the registrar does not register the document in his own office but goes to the places where the parties desire him to come.

Now, Sir, in this Bill, the same thing has been introduced without any reason being shown as to why the Registrar should go to the house of the parties. Here, the question of old age does not arise; neither the bride nor the bridegroom is so old or dying that they would require the Registrar to come to their house. Another thing is that no *purdahnashin* lady, I am sure, would like to have her marriage solemnized under this Act.

SHRI GULSHER AHMED (Vindhya Pradesh): Why not?

SHRI TAJAMUL HUSAIN: Because this Bill is a Special Marriage Bill; this Bill is an advanced Bill; it is a modern Bill and these *purdah* ladies

[Shri Tajamul Husain.]
are not modern. If the *purdah* ladies want to get married, I submit, Sir, that they must come before the Registrar and get married there instead of asking the Registrar to come to their houses who would not be able to see their faces even. These are the reasons why I have tabled my amendment. I think the House would accept it. I do not think that in Europe or anywhere else, in England even for instance, the Registrar ever goes to the house of the parties. It is not a religious marriage wherein the priests go to the house and perform so many ceremonies. It is not that; it is purely a civil, social marriage and why should not the parties go before the Registrar instead of the Registrar going to the parties?

With these words, Sir, I move my amendment.

DR. SHRIMATI SEETA PARMANAND: Sir, before I speak on my amendment, I would just like to say a few words about this amendment because the thing is inter-related.

The point in putting this, viz., that the Registrar can go to the house of the parties is that some people, out of sentiment like to marry according to their customary forms. If they so marry then the marriage becomes complete and if they were later on to go before the Registrar they cannot declare that they are not married yet because the *saptapadi* will have completed the first marriage; but if the Registrar were to come to the house of the parties, then, Sir, the two ceremonies will become part of the same thing and that is why it was decided to let this stand as otherwise it would be creating legal difficulties.

I will now say a few words with regard to "any form". Though it might, on the face of it, look somewhat contradictory to the spirit in which we have deleted some of the customary practices like *matula kanya vivah*, etc., I would like to say.....

SHRI GULSHER AHMED: If there are several marriages taking place in the same town, what will the Registrar do? Everybody would like to have him in his house.

DR. SHRIMATI SEETA PARMANAND: They will have to change their time if they are particular in having the marriage performed according to the orthodox form. Ordinarily, Sir, it is envisaged that people who would like to marry under this Act would not very much care to have the religious ceremony, as being auspicious and so on. The experience has been even in families where so many marriages under this Act have taken place that the old relatives wanted the marriages to be celebrated in an auspicious manner, with the *saptapadi* and so on, rites recognised by the Hindu religion, first and then the difficulty arose that it would mean making a false declaration if the *muhurta* was on a Sunday and the registration was on Monday. Ultimately they had to displease the old people by getting the registration done first and then having the other orthodox ceremony. I would leave this and come to the point which I want to make about any customary form of marriage.

As I have said, Sir, if any form is to be permitted at all only to meet the sentiment of people—those people who want to marry under this Act by and by would not be caring to marry under the old orthodox form—it should be a form that is recognised. 'Any form' means what form? After all, the form should have sanction, should have dignity and should be recognised otherwise there is no point. A Member in the Select Committee from Punjab pointed out a custom whereby in villages by just sort of throwing one *chaddar* over the two people, they were considered married; there were some Burmese customs also that were mentioned. So, if a customary form is not there meaning custom of the locality known to people round about, the whole thing has no value at all.

Either the whole thing should be deleted and it can read as, "the marriage shall be binding on the parties unless each party, etc."; if 'any form' is to be retained then for the reasons which I have mentioned above that form should have sanction and dignity and should be a customary form. That is all, Sir.

PANDIT S. S. N. TANKHA: In moving my amendment, Sir,.....

SHRI TAJAMUL HUSAIN: My next amendment, Sir. You are going Member by Member.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): You should have spoken before. Mr. Tankha.

PANDIT S. S. N. TANKHA: In moving my amendment, Sir, I will draw your attention to an error. In the amendment as it is put down on page 8, the words which I wish to be substituted for the word 'take' are "solemnly affirm and declare that I take", and not only the words "solemnly affirm and declare" but "solemnly affirm and declare that I take"—these words are to be substituted for the word "take" in the declaration. Why I ask for this small verbal amendment, Sir, is that I want greater sanctity to be attached to the declaration of the marriage. I think with the addition of these words, "I solemnly affirm and declare that I take thee as my wife" greater importance and sanctity is attached than the words set out at present in the form.

I realise, Sir, that under the Special Marriage Act of 1872, the words were the same as have been provided for in this Bill but, Sir, I do not see any objection to the addition of these words if it is considered proper by the Law Minister; no harm will be done by the addition of these words but on the contrary it will attach greater sanctity and solemnity to the occasion as also to the words which the two parties to the marriage will have to speak before the Marriage Registrar.

SHRI TAJAMUL HUSAIN. Sir, I want to explain.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): Your amendment is self-explanatory and so, there is no difficulty in understanding it. You are saying that the Marriage Officer may not know the language.

SHRI TAJAMUL HUSAIN: Please permit me, I want only one minute. Amendment No. 61 to clause 12 only says that the language should be understood by the Officer also. The parties go before the Marriage Officer and the boy says, 'I take thee as my wife' and the girl says, 'I take thee as my husband'. They may say this in any language but my amendment says that it should be understood by the Officer also. It is quite obvious and I want to say, "understood by the parties and the Marriage Officer". That is all.

SHRI S. MAHANTY: I want to oppose it, Sir.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): There is nothing very much to speak on.

SHRI P. SUNDARAYYA: We have to oppose it, Sir. I am opposing Dr. Seeta Parmanand's amendment because it makes the whole thing fantastic. Her amendment says that marriage will be solemnized only in any customary form which the parties may choose to adopt; but as it is, registration is a form of solemnizing marriages and if her amendment is accepted, it means that no marriage can be registered unless it is solemnized in any customary form.

DR. SHRIMATI SEETA PARMANAND: Not at all; it is optional.

SHRI P. SUNDARAYYA: That is how it looks.

DR. SHRIMATI SEETA PARMANAND: The preceding words are "The marriage may be solemnized" not "shall be solemnized".

SHRI P. SUNDARAYYA: In any case, Sir, as it is in the Bill it is better. By putting in the words "customary ceremony" the whole thing will be confused and there may be the necessity of going to courts to decide the issue whether the marriage was solemnized or not according to the custom

DR. SHRIMATI SEETA PARMANAND: How is it possible?

SHRI P. SUNDARAYYA: Then why should you insist on the word "custom"? They should be at liberty to have their own customary form or not. There are so many other forms also and they may not be according to custom. For instance in the Madras Presidency, because the existing customary form is so reactionary that there is a big movement against this form and so many marriages have taken place, even the Government of Madras has to come—because the High Court held that such marriages are not valid—with a special Act to validate those marriages.

SHRI V. K. DHAGE: What are those marriages?

SHRI P. SUNDARAYYA: Self-respector's marriage, I think. In any case, Sir, they have to bring that thing. So while we are framing a Special Marriage Act why do you bring in "customary ceremony" and customary form and create all the complications? I suggest that the provision should be left as it is and the amendment should not be accepted.

SHRI S. MAHANTY: It is my painful duty to oppose Mrs. Parmanand's amendment. You will recognise that after all customs are degenerated practices, if one is enamoured of customary marriage, well, there are other forms of marriages. This Special Marriage Act is for a special form of marriage, which cuts across the narrow frontiers of all customary rites. Therefore there is no justification in pressing for the customary rites. I further

feel that the whole sub-clause (2) should be deleted because it serves no purpose. It is intended.....

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): There is no amendment to that effect and what is the good of saying that?

SHRI S. MAHANTY: Lastly, Sir, though I have not proposed an amendment to that effect, I would request the hon. the Law Minister to substitute the word "thee" by the word "you" because it not only smacks of biblical pristinity but also it is not conforming to the democratic temper of the moment. "You" will be more democratic and more self-respecting.

SHRI V. K. DHAGE: With regard to the amendment of Mr. Tajamul Husain, that matter was considered in the Select Committee and there only it was provided that it may be made feasible for the Marriage Officer to go to a certain place and that the registration of the marriage may take place. The question of *purdah*, etc., is something which is very fantastic.

श्री गोपीकृष्ण विजयवर्गीय : उपसभा-
ध्यक्ष महोदय, मैं थोड़ा ही समय लूंगा ।
श्रीमती सीता परमानन्द ने जो संशोधन
रखा है वह ठीक नहीं है । एक तरफ
तो वे क्रांतिकार बनते हैं और दूसरे
तरफ पीछे चली जाती हैं । इस में
क्वैस्टमरी मैरेज का सवाल है । यह भी
हो सकता है कि सप्तपद और जो दूसरे
रिवाज हैं, उनको भी संशोधित कर दिया
जाय । वे संशोधित होते रहे हैं, इससे
इन्कार नहीं किया जा सकता है । इसलिए
क्वैस्टमरी शब्द जो है वह हटा दिया जाय
और बिल में जैसा है उस को ही रखा
जाय ।

†[SHRI GOPIKRISHNA VIJAYVARGIYA: Mr. Vice-Chairman, I shall take very little time. The amendment moved by Shrimati Seeta Parmanand

†English translation.

is not a proper one. On the one hand, she poses to be a revolutionary and on the other she follows a reactionary path. This involves the question of customary marriage. It is also possible to reform *Saptapadi* and other customs. It cannot be denied that they have been all along reformed. Therefore, the word 'customary' should be deleted and the wording of the Bill should be retained as it is.]

SHRI MAHESH SARAN: Mr. Vice-Chairman, I have only to add one or two things to what my hon. friends have said. Mr. Tajamul Husain wanted deletion of a certain portion from this clause and he in his speech said that he belongs to a community which is very orthodox and if that portion of the clause was not deleted he will find that very few of them would avail of this Bill. But I just want to tell him that I had been to Bhopal which is supposed to be one of those places where the Muslims are very orthodox. Very ancient families, very well known families are there and during the elections I found fifty women of good families with *burqa* go about canvassing for candidates and being agents of the different candidates. Therefore.....

SHRI TAJAMUL HUSAIN: Not for marriage.

SHRI MAHESH SARAN: Therefore I think it is probable that they will take advantage of this clause to an extent more than he expects they would.

SHRI TAJAMUL HUSAIN: No, no.

SHRI C. C. BISWAS: I appreciate what prompts these amendments. My friend Mr. Tajamul Husain is panic-stricken with the idea that the Marriage Officer would invade the region of *purdanashin* ladies. There need be no such apprehension. This additional portion which he wants to delete was introduced by the Select Committee only to meet those cases where suppose after filing the notice of marriage

and so on they are unable for some reason.....

SHRI TAJAMUL HUSAIN: May I know the reason?

SHRI C. C. BISWAS: Suppose one of the parties to the marriage suffers an accident.....

SHRI TAJAMUL HUSAIN: Therefore, he should not marry on that day?

SHRI C. C. BISWAS: But he may have different notions from my hon. friend Shri Tajamul Husain. He may not be willing.

SHRI TAJAMUL HUSSAIN: There cannot be any consummation of marriage?

SHRI C. C. BISWAS: There may be romantic reasons for making the choice. Suppose you want to register a document on a particular day but you are not in a position to go to the office of the Registrar, and still the document has to be registered on that day; then you can ask for the attendance of the Registrar at your house of course on payment of a fee. This is exactly similar to that, and therefore why should there be any objection? Why should there be any fear in this case of the *purdah* being violated and so on?

Then coming to Shrimati Seeta Parmanand's amendment that the marriage may be solemnized in any customary ceremony, I say, that it introduces the question as to what is a customary form of marriage. It may be in any form under this Act. I may say, for instance, that the form I want is that only my friend Mrs. Parmanand should be present and that will be sufficient. That will not be a customary form and still that may satisfy me. Therefore option is left to the parties to do what they like in any form. There need not be any customary form in the sense of a form recognised by any custom or as you may just as well say, in a recognized

[Shri C. C. Biswas.]
form, but who will recognise? So, there is nothing in that amendment, Sir.

Then my friend Mr. Tankha wants to substitute for the word 'take' the words "I solemnly affirm and declare". Well, I do not know but there may be people who may object to making a solemn affirmation. It may amount to the taking of an oath. Therefore to obviate these objections we have said that if they declare that they want to be man and wife that ought to be sufficient. We have put it in a form which will not give rise to any objection from any quarter.

PANDIT S. S. N. TANKHA: May I submit, Sir, that oath is not necessary in the case of affirmation. There is no oath in this. It is solemn affirmation only without the oath. No oath is taken.

SHRI C. C. BISWAS: Quite so. Still it is not necessary. There is the provision already that if they make a false declaration they will be subject to a penalty. All that sort of thing is provided for and I think that ought to be sufficient.

Then as regards the other amendment No. 61 as to whether the Marriage Officer will understand the language, there is no doubt about it.

SHRI TAJAMUL HUSAIN: You accept it?

SHRI C. C. BISWAS: No, I say it is not necessary. As a matter of fact the declaration is filed before him. He has got to satisfy himself whether it is a proper declaration and so on. That is implied and if the Marriage Officer does not himself understand the language he would have persons who will interpret to him the unknown language of the parties to the marriage. Suppose two persons come from the Frontier districts and they speak in a language which the Marriage Officer does not understand, that

will not mean that the Marriage Officer will not be entitled to solemnize the marriage. For the purpose of understanding the language of the parties he may seek the aid of interpreters

SHRI TAJAMUL HUSAIN: You say: "in any language understood by the parties". The parties have to understand the language because they are loving each other and choosing each other and that will be in their own language. But the more important thing is that the Marriage Officer should understand their language, not merely the parties.

SHRI C. C. BISWAS: You can leave it to the Marriage Officer who will be a judicial officer of some responsibility. He will try to understand and if he does not understand the language he will get somebody there who will explain to him what the language is and so, on that point, there need not be any fear.

Sir, I oppose these amendments.

SHRI TAJAMUL HUSAIN: Sir, I want the leave of the House to withdraw my two amendments (Nos. 60 and 61).

The amendments* were, by leave, withdrawn.

DR. SHRIMATI SEETA PARMANAND: If the House does not feel the need for it, I would like to withdraw my amendment No. 19.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The view of the House has not been taken as yet.

DR. SHRIMATI SEETA PARMANAND: Then I would like to press it

PANDIT S. S. N. TANKHA: Personally I feel my amendment (No. 129) should be accepted, but if the hon. Minister thinks that some difficulty might arise, I am prepared to withdraw.

The amendment* was, by leave, withdrawn.

*For text of amendments, *vide* col. 5373 *supra*.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The question is:

19. "That at page 5, line 42, for the words 'any form' the words 'any customary ceremony' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The question is:

"That clause 12 stands part of the Bill."

SHRI GOVINDA REDDY: Sir, I want to oppose this clause.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): You cannot do it now. Both the clause and the amendments were open for discussion.

The motion was adopted.

Clause 12 was added to the Bill.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): We come to clause 13.

SHRI TAJAMUL HUSAIN: Sir, I move:

62. "That at page 6, at the end of line 6, the following be added, namely:—

'but if any one of them be illiterate, thumb impression shall be put instead of signature'."

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

130. "That at page 6, lines 8 to 11, for the words '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' the words 'evidence of the facts therein stated' be substituted."

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The clause and the amendments are open for discussion.

SHRI TAJAMUL HUSAIN: Sir, it is mentioned in clause 13 that.....

SHRI C. C. BISWAS: Before he takes up the time of the House, may I point out to him that the General Clauses Act defines "signing" as including affixing thumb impression or any other mark? So that need not be a problem

SHRI TAJAMUL HUSAIN: To save the time of the House, Sir, I do not move that. I do not want to take the permission of the House, because I have not moved it yet.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): No, it has been moved already. It has to be withdrawn by leave.

سید مظہر امام : میرے خیال

میں یہ جو دستخط کرنے کی بات ہے

اس کے ساتھ ساتھ فوٹو لگانے کی بات

بھی رکھ دی جائے تو اچھا ہوگا۔

†[SYED MAZHAR IMAM: I think it will be better if a clause regarding the affixing of a photograph is added to the clause relating to the affixing of signatures.]

PANDIT S. S. N. TANKHA: My amendment to clause 13(2) is to the effect that the words "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" should be substituted by the words "evidence of the facts therein stated". That is to say, I consider the words "evidence of the facts therein stated" would be better words to be used to convey the full implications and as such they should be substituted for the existing ones because the existing words circumscribe the ambit of what the conclusive evidence will be, whereas my words leave it open for a determination of the facts as to the matters which can be considered conclusive evidence of the facts therein stated. Moreover, in

†English translation.

[Pandit S. S. N. Tankha.]
the old Act of 1872 also I find the wording in section 14 is—"The said Marriage Certificate Book shall at all times be open for inspection and shall be admissible as evidence of the truth of the statements therein contained." It has left it at that and as such I would like that the words of my amendment be substituted instead of the existing words that occur in that clause.

SHRI C. C. BISWAS: I do not understand what my learned friend wants. If you look at the Fourth Schedule what does it contain? The form of the certificate is set out there. It says: "I, E.F., hereby certify that on such and such a day of such and such month and year, A.B. and C.D. appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required by section 11 and that a marriage under this Act was solemnized between them in my presence." If that is the certificate how can it be any evidence of the fact stated by the parties in the declaration that they were of this age or of that age? The certificate does not purport to give a certificate on all those points, and still you want that the certificate shall be conclusive evidence of the facts therein stated. If you add those words, it will be tautologous. Actually it will come to mean that the certificate will be evidence of what it contains. It takes you nowhere. What is the point in this amendment? I could have understood it if he had said that the certificate would be conclusive evidence of the statements made by the parties to the marriage in their respective declarations or it would be a certificate of the findings which the Marriage Officer arrived at as a result of his enquiry. I can understand that. But purposely in the Bill we expressly said that this certificate shall not be conclusive evidence. I will read out what was in the Bill when it was introduced: "On a certificate being entered in the Marriage Certificate Book by the Registrar, 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"—and these are the words that have been struck off now—"but nothing contained in this sub-section shall apply to render a marriage valid which would otherwise have been invalid". I can understand an amendment that the certificate will be conclusive evidence as to the validity of the marriage, as to whether the conditions laid down in clause 4 had been complied with in substance, not merely in the shape of declaration, but in actual fact, that the parties are of such and such age, they are not within the prohibited degrees of relationship and so on. It is only the fact of the marriage having been solemnized that the certificate proclaims. It does not purport to go beyond it.

PANDIT S. S. N. TANKHA: Sir, I do not press my amendment No. 130.

The amendment* was, by leave, withdrawn.

SHRI TAJAMUL HUSAIN: I would also like to withdraw my amendment No. 62.

The amendment* was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): Clause 14.

PANDIT S. S. N. TANKHA: My amendment No. 131 becomes unnecessary now and as such I do not move it.

*For text of amendments, *vide col.* 5325 *supra*.

SHRI J. S. BISHT: Sir I move:

20. "That at page 6, line 18, after the word 'Government' the words 'or where an appeal has been filed under sub-section (2) of section 8, within three months from the date of the decision of the district court on such appeal' be inserted."

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The amendment and the clause are open for discussion.

SHRI C. C. BISWAS: I accept amendment No. 20 but I suggest for the word "Government" in the amendment the words "Section 5" be substituted.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): Do you agree to the amendment proposed by the Law Minister to your amendment?

SHRI J. S. BISHT: Yes, Sir; I agree.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The question is:

"That for the word 'Government' in line 1 of amendment No. 20, the words 'Section 5' be substituted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): Now, I shall put amendment No. 20, as amended, to the vote of the House. The question is:

"That at page 6, line 18, after the words 'Section 5' the words 'or where an appeal has been filed under sub-section (2) of section 8, within three months from the date of the decision of the district court on such appeal' be inserted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): The question is:

"That clause 14, as amended, stand part of the Bill."

The motion was adopted.

Clause 14, as amended, was added to the Bill.

[MR. DEPUTY CHAIRMAN in the Chair.]

MR. DEPUTY CHAIRMAN: Now, clause 15. Mr. Tankha, do you move your amendment?

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

132. "That at page 6, line 25, after the word 'celebrated' the words 'under any law, or any custom or usage having the force of law' be inserted."

MR. DEPUTY CHAIRMAN: Mr. Vaidya, do you move both of your amendments?

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

133. "That at page 6, after line 29, the following be inserted, namely:—

'(ia) marriage is based upon the complete willingness of the two parties and neither party has used compulsion and no third party has interfered';" and

135. "That at page 6, after line 46, the following be added, namely:—

'(2) No marriage shall be registered where one party because of certain physical defects, is sexually impotent or where one party is suffering from venereal disease, mental disorder, leprosy or any other loathsome disease which is regarded by medical science as rendering a person unfit for marriage'."

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

21. "That at page 6, line 30, after the word 'marriage' the words 'recognised by the customary law of either parties to the marriage' be inserted."

SHRI V. K. DHAGE: Sir, I move:

22, 63 and 134. "That at page 6, lines 40 to 42, the words 'unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two' be deleted."

SHRI KISHEN CHAND: Sir, I move:

136. "That at page 6, after line 46, the following be added, namely:—

'(2) For the duration of one year from the commencement of this law, any marriage previously solemnized under any law, usage or custom, may be registered under this Act by one party only for the purpose of annulment, judicial separation and divorce, and due notice of such registration will be given to the other party'."

SHRI P. SUNDARAYYA: Sir, I move:

178. "That at page 6, line 35, for the words 'an idiot' the words 'of unsound mind' be substituted."

MR. DEPUTY CHAIRMAN: Clause 15 and the amendments are open for discussion. Mr. Sundarayya.

SHRI P. SUNDARAYYA: Sir, my amendment is a very simple one. I want just a change, in place of 'an idiot' in the clause unless the Minister says that the word 'idiot' is much more legally defined than 'a man of unsound mind'. The word 'idiot' is rather awkward; it is better to substitute this word for some other word. I expect that the clause should be retained as it is, especially sub-clause (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."

Why I want the clause to be retained is this. Sir, I find the hon. the Law Minister (Shri C. C. Biswas) consult-

ing somebody else. This is an important thing, Sir, and if he does not listen, what is the use of my explaining it?

MR. DEPUTY CHAIRMAN: You may explain it to the House; the hon. will decide.

SHRI P. SUNDARAYYA: Yes, but I would like the Law Minister to hear what I say.

MR. DEPUTY CHAIRMAN: The Law Minister is wanted.

SHRI P. SUNDARAYYA: Sir, I want clause 15(e) to be retained as it is and it should not be deleted because, after all, this clause 15 is introduced and it is a progressive introduction.

DR. SHRIMATI SEETA PARMANAND: Why do you recognise custom now?

SHRI P. SUNDARAYYA: I am coming to it, Madam. You can be a little more patient and hear what I say. If you have your own fixed views on anything, please have a little patience and hear why I want this sub-clause to be retained rather than

SHRIMATI SHARDA BHARGAVA: The hon. Member should address the Chair and not Madam!

SHRI P. SUNDARAYYA: Till we finalise the Civil Marriage Act and make it compulsory, we recognise all different forms of marriage. Under whatever forms they marry, that marriage is registered under this Act; and if the parties want to take advantage of the succession and other benefits under this Act, they will have to get their marriages registered under this measure. In whatever way or form their earlier marriage has been solemnized, they should be entitled, once they get that registered under this Act, to get the benefit of the Special Marriage Act. If that is the intention of the Act contemplated under clause 15,

it is natural that all marriages celebrated under the various personal laws are recognised and all of them should be allowed to come and register under this Special Marriage Act. As you know, Sir, in present-day India, there are many different religions, different personal laws exist and a vast majority of people have married under these laws and if they want to come and ask the Marriage Officer to register their marriage under this Act, nothing should prevent them from doing so. In the prohibited list, the way in which you have described it, it is practically, as Shri Govinda Reddy has been pointing out, 80 per cent. of the marriages or 80 per cent. of the population who have their marriages celebrated under the personal laws; and they cannot take advantage of this Act because it prohibits many from coming under this measure. As such, instead of encouraging the idea of registration, instead of encouraging the various persons—by which you are coming a step forward to civil marriage—to take advantage of the measure, you should not do anything which will create difficulties. Our only plea is “Make this Act as widely applicable as possible”. That is why we say:

“unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two”.

If under the personal law the marriage is valid, then, why should this Act come in the way and say: You cannot do that? That is exactly the reason why I strongly urge on the hon. the Law Minister not to water down this Act and make it only a piece of legislation which cannot be taken advantage of by the vast majority of our people.

MR. DEPUTY CHAIRMAN: Mr. Kishen Chand.

DR. SHRIMATI SEETA PARMANAND: I think, according to the order, I have to speak before the hon. Member.

SHRI KANHAIYALAL D. VAIDYA: If that is so, I come first.

MR. DEPUTY CHAIRMAN: Let the lady Member have the preference.

DR. SHRIMATI SEETA PARMANAND: Sir, I don't want any preference.

MR. DEPUTY CHAIRMAN: No, you can speak.

DR. SHRIMATI SEETA PARMANAND: Thank you, Sir. I know the attitude of the House to the word ‘customary law’; but some of the hon. Members are feeling shy of being charged with inconsistency. This amendment may seem inconsistent on the face of it but is not so in fact. Sir, if these words are not added there will be a lacuna and it will allow certain people to circumvent the provisions of the Act. I can best illustrate this by giving an example. There have been certain cases of marriages which after their registration, after this facility is given, would come forward to take advantage of it. Supposing there is a lady who has a son whom she wants to please. That son is in love with another married woman with a spouse living and he wants to live with that woman. The mother chooses to pamper the son, and that woman too. She arranges a big ceremony; she issues printed invitations and calls a large number of guests. In the presence of so many guests it is proclaimed that the woman has married such and such a person. This kind of marriage could never have taken place even under the Special Marriage Act or any customary law because they belong to the first two orders of Hindus, that is, the Kshatriyas and the Brahmins. So, Sir, if such people were later on to come for registering under the present measure, what is to happen? It is said that neither party has at the time of registration more than one spouse living. Now at the time of registration if the husband of that married woman is dead, she would be able under this law to legiti-

[Dr. Shrimati Seeta Parmanand.]
mise or legalise a very obnoxious relationship. This might be interpreted as "a ceremony of marriage having been performed" because written invitations were issued saying that she was marrying such and such a person, and so Sir, I have brought in this amendment. It is open to the House to say whether it would like circumvention of law by people as the clause would allow if not amended by the word "customary" only because they are sensitive to the use of the words 'customary law'. That is all that I would like to say, Sir. I would like to add one more thing. Just as people who are asking for certain customary laws to be recognised are charged with being inconsistent, I think, I can equally charge other people who want to be progressive when they are asking for the customary marriages of uncle and niece etc. under sub-clause (e) to be recognised as being inconsistent.

श्री कन्हैयालाल डी० वैद्य : इस कानून के अंतर्गत आप धारा १५ द्वारा तमाम विवाहों को जायज़ करने जा रहे हैं।

†[SHRI KANHAIYALAL D. VAIDYA: Through clause 15 of this Bill, you are going to validate all marriages.]

MR. DEPUTY CHAIRMAN: I think your amendment No. 133 has been rejected. Amendment No. 135 also has been rejected earlier. So they are barred.

SHRI TAJAMUL HUSAIN: My amendment is No. 63. Sir, you will find under clause 15(e) that any marriage can be registered under this Act provided it is not within the prohibited degrees, unless the customary laws allow it. Now what would be the result, Sir? Take the case of Dravidians in Maharashtra. They are allowed to marry their sisters' daughters. That does happen in India. Now if they are so married, would you allow them

to go and get their marriages registered under this Act? This is the only objection I have got. I want to delete these words. I want a marriage to be registered under this Act provided it is not within the prohibited degrees, and nothing more. Therefore the rest of the words in this clause should be deleted.

SHRI KISHEN CHAND: Mr. Deputy Chairman, I have sent in my amendment No. 134 which has been supported by three other Members. The whole discussion from the very beginning on this Bill has been about the prohibited degrees of marriage, and more or less a large number of hon. Members of this House have disapproved of marriages between first cousins or between uncles and nieces. Sir, the whole idea is that we do not want such marriages to be registered under this Act by a back door. We want to retain prohibition against marriages between first cousins and nephews and nieces. But if we keep this additional sub-clause (e), the result will be that they will go through a marriage and then come forward to have that marriage registered under this Act, thereby defeating the very purpose of this Bill. The purpose of this Bill is that marriages between certain relations should not be permitted because they are biologically unsound.

I have also sent in another amendment which is very controversial. That is No. 136. I will be allowed to speak only once. So I will speak on No. 136 also. My second amendment is:

"That at page 6, after line 46, the following be added, namely:—

'(2) For the duration of one year from the commencement of this law, any marriage previously solemnized under any law, usage or custom, may be registered under this Act by one party only for the purposes of annulment, judicial separation and divorce.

and due notice of such registration will be given to the other party.'"

Under this sub-clause if both the parties want their marriage to be registered, they can come forward and get their marriage registered. I submit, Sir, that this law is coming into existence now. It is quite possible that one party wants the marriage to be registered under this Act and the other party does not want this marriage to be registered under this Act. It is a question of divorce, judicial separation, nullity, etc. The whole underlying idea is that without changing the customary laws and without changing the religious laws of marriage prevalent in the various communities, if we can bring in all such unhappy marriages which have been performed under those laws and where one party feels aggrieved and wants to take advantage of divorce laws and judicial separation laws under this Act, that facility should be given to the one party only to come forward and register it under this law.

SHRIMATI LAKSHMI MENON: What about the inheritance laws?

SHRI K. S. HEGDE (Madras): In your amendment you have cleverly left out inheritance.

SHRI KISHEN CHAND: Hon. Members who are more judicially-minded and know more about these things, may put it in a better form, in a better language. I do not know much about these legal things. It will be better if we can remove the hardships caused to the parties and get over the difficulties of those marriages which have been performed under sacrament and under religious ceremony. There are well-known cases of hardship in the marriages performed under the Hindu law and there are certain women who are suffering great hardships; they cannot come forward and register their marriages unless and until both the parties agree to this registration.

I am submitting for the consideration of hon. Members and the Law Minister that if he accepts the idea underlying it, then proper wording could be given to it. If the House does not accept the idea underlying it, then there is no point in trying to improve the wording. Therefore, I move my amendment.

PANDIT S. S. N. TANKHA: May I be permitted to speak on my amendment No. 132?

MR. DEPUTY CHAIRMAN: You have already spoken during the first reading.

PANDIT S. S. N. TANKHA: I may be given an opportunity to explain what I want.

MR. DEPUTY CHAIRMAN: Two minutes.

PANDIT S. S. N. TANKHA: In moving this amendment, what I have to submit is this: The question arises as to what marriages ought to be allowed to be registered under clause 15. The clause, as it stands, merely says:

"Any marriage celebrated, whether before or after the commencement of this Act.....may be registered."

The question arises, "which marriages does this refer to?" Certainly celebrated before, but under what custom or under what law?

MR. DEPUTY CHAIRMAN: Is not 'any marriage' sufficient here?

PANDIT S. S. N. TANKHA: Supposing a man does not go through any form of marriage but says later on that there was a marriage.

MR. DEPUTY CHAIRMAN: You want 'any marriage' to be amplified.

PANDIT S. S. N. TANKHA: The marriages that should be allowed to be registered under this Act are marriages celebrated under any law or custom or usage having the force of

[Pandit S. S. N. Tankha.]
law, whether before or after the passing of this Act. It is not that every marriage should be allowed to be registered.

SHRI C. C. BISWAS: Is not sub-clause (a) sufficient?

PANDIT S. S. N. TANKHA: Here it says, "a ceremony of marriage has been performed", but under what law? If you add the words I suggest here, I have no objection.

DR. SHRIMATI SEETA PARMANAND: That is my amendment.

PANDIT S. S. N. TANKHA: What I want to submit is that it should be made clear that only those marriages can be registered which have so far been recognised, and not mere concubinage. That is what I submit. I think it is very necessary that these words should be added here or in sub-clause (a), wherever it is considered more suitable.

Then as regards the amendment of my friend, Mr. Sundarayya, I do not understand why he wants the deletion of the words "an idiot". An idiot is something quite different from a lunatic or a person of unsound mind. It is a technical term, and you must retain the words "an idiot". You can also add the words "of unsound mind". An idiot is a person who is born with certain disabilities at birth, whereas a person of unsound mind can become so at any stage. These words in law have acquired a certain significance and we must retain the words "an idiot" but also add the words "lunatic or of unsound mind".

SHRI H. C. DASAPPA (Mysore): I would like to say something in favour of retention of the clause as it is:

MR. DEPUTY CHAIRMAN: I had already called the Law Minister. I only allowed Mr. Tankha to speak because he had moved his amendments.

SHRI C. C. BISWAS: Several points have been made in connection with this clause. First of all, I shall take up the first amendment which stands in the order paper, No. 132. Mr. Tankha wants the addition of the words "under any law, or any custom or usage having the force of law", after the word "celebrated". It will be seen that all that we require as regards the previous marriage is that there should have been some ceremony of marriage gone through by the parties and the parties should have lived together as husband and wife. That ought to be sufficient.

PANDIT S. S. N. TANKHA: The ceremony of marriage must be under some recognised form.

SHRI C. C. BISWAS: What is a recognised form? That will create all sorts of difficulties and raise all kinds of questions. Who is to solve those difficulties?

DR. SHRIMATI SEETA PARMANAND: We have solved them until now.

SHRI C. C. BISWAS: In every case the matter must be placed before a court and a decision obtained as to whether the previous marriage was a marriage which was recognised by any law, or any custom or usage having the force of law. This law affords certain benefits, and the whole object is that these benefits should not be withheld from parties who might have been married in some form previously. It must be open to them to come and register under this law.

PANDIT S. S. N. TANKHA: I do not object to that.

SHRI C. C. BISWAS: Therefore, it ought to be made easy for persons to avail themselves of the benefits under this new law. No serious impediments ought to be placed in their way. Suppose there is some doubt about the validity of a certain marriage. They went through some sort of marriage, whatever it was, and if somebody takes

the matter to court, the court may possibly declare the marriage invalid. I know of a case where at the end of many years, after the parties had had several children born to them, one of them, for reasons best known to that party, took the matter to the court and said, "According to the strict law of prohibited degrees in Hindu law books, there was some remote relationship which should make that marriage invalid." There were elaborate hearings in the court, all sorts of questions were raised and ultimately the marriage was dissolved, to the *satisfaction of both parties no doubt*. The children were there and you could imagine what their position was. Now, we want to avoid that. As a matter of fact, in such cases, it should be open to the parties to avail themselves of the provisions found in this Bill.

PANDIT S. S. TANKHA: The contingency which the Law Minister contemplates will not arise because of sub-clause (e) where it says, "the parties are not within the degrees of prohibited relationship, unless the law or any custom or usage having the force of law....."

SHRI C. C. BISWAS: So far as sub-clause (e) is concerned, you know that there is an amendment for the deletion of that sub-clause. As I have already stated to the House, my own view is that it should be deleted, and in that way clause 4 and clause 15 should be reconciled.

SHRI P. SUNDARAYYA: Why did you agree to it in the Joint Committee?

SHRI C. C. BISWAS: I have answered this question and I am not going to answer it every time.

DR. SHRIMATI SEETA PARMANAND: Because of the majority agreeing.

SHRI C. C. BISWAS: As I explained yesterday, I am not prepared to give the same latitude to Members of this House as I have given to the Members of the Joint Committee. If we do that, then there is no end to it, and every one will be pressing his own point of view. I ought to state what the Government's view is, and the Government's view is there in the Bill as it is. So far as the amendment referred to by my hon. friend is concerned, it was inserted there in the Committee.

But this is not my view. It is the view of the Government.

SHRI P. SUNDARAYYA: When the Government's view is one thing, can the hon. Minister come and put forth a different view?

MR. DEPUTY CHAIRMAN: It is an individual view. Will the hon. Minister take more time? Shall we sit in the afternoon?

HON. MEMBERS: No.

MR. DEPUTY CHAIRMAN: Then we will have to sit on Saturday morning. The hon. Minister will continue tomorrow morning. We will sit on Saturday.

The House stands adjourned till 8-15 A.M. tomorrow.

The Council then adjourned till a quarter past eight of the clock on Friday, the 7th May 1954.