We would be happy to see the Pakistan Government pursue their reported decision to its logical conclusion and to agree to the solution urged by India, which would mitigate the sufferings of millions of evacuees in both the countries. However, according to another report published in the Indian Press a few days ago, the Pakistan Minister for Refugees and Rehabilitation is reported to have said at a Press conference that he did not see any basis for further discussions with India on the subject of immovable evacuee property.

The hon. Members are aware that for nearly seven years the Government of India have been endeavouring to persuade the Government of Pakistan to agree to a reasonable solution of this problem. One after the other, our proposals have been turned down or sidetracked by Pakistan. We now feel that a decision regarding the fate of evacuee property in this country can brook no further delay and the Government of Pakistan are being informed accordingly. We are communicating to the Government of Pakistan our intention to acquire the right and title of evacuee owners in their properties in this country and to utilise these properties for giving part compensation to the displaced persons. The final instalment of compensation must await a satisfactory settlement with Pakistan. We are clearly of the opinion that this course of action will be in the interests of the evacuees, inasmuch as a further deterioration of their properties will be halted, and the evacuees will get credit for the value of their properties when a final settlement in respect of the evacuee properties is reached between the two countries. We can have no objection if Pakistan decides to follow a course of action similar to ours. We do not think that the course of action we propose to follow would stand in the way of a settlement of the evacuee property issue between India and Pakistan.

We propose to finalise the details • of the compensation scheme with the least possible delay, and the legislation necessary for its implementation will be introduced in Parliament after Pakistan has been addressed on the subject.

As a sequence to the proposals to which I have just referred, the raisorc d'etre for the continuance 01 the evacuee property law, which we have always regarded as an abnormal law enacted to meet an extraordinary situation, will lose much of its force. We, therefore, consider it proper that the evacuee property law should cease to operate in regard to cases vhere the cause of action may arise in the future. The proposed abrogation of the law in respect of the future cases will. I have no doubt, remove the sense of grievance under which a section of the people in this country has laboured on account of the operation of this law. The Administration of Evacuee Property Act, 1950, will be suitably amended, and for this purpose I propose to introduce the necessary legislation in Parliament as soon as possible. Properties which have already been declared as evacuee property, or which have already become liable to be declared as evacuee property but have not yet been so declared under the existing law will, however, continue to be subject to the evacuee property law and will constitute a pool from which displaced persons will be compensated.

Pending the finalisation of the compensation scheme and the passing of the requisite legislation, we propose to extend the interim compensation scheme to other categories of displaced persons.

THE SPECIAL MARRIAGE BILL, 1952—continued

SHRI P. SUNDARAYYA (Andhra): Sir, before we proceed further I beg to submit that yesterday the Minister in charge of the Special Marriage Bill macte a statement that Government has got a particular view on clause 15, which is under discussion, whereas

[Shri P. Sundarayya.l his view is different. My point of order is this. As long as he is a member of the Cabinet, is he entitled to say so? And, if he says so, is he competent to pilot the Bill in this House?

MR. CHAIRMAN: He made the point very clearly that whatever may be his personal opinion, the Government of India's view is another. He has made that clear and therefore I do not suppose there is any difficulty about his piloting the Bill.

SHRI P. SUNDARAYYA: But he goes on expressing his own viewpoint, and how can he pilot the Bill when he has got a view different from tint of the Government **of India?**

MR. CHAIRMAN: Whatever his personal view may be, he is arguing on the basis of the Select Committee Report. All right, Mr. Biswas.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): Sir, I now take up the amendments which had been moved to clause 15 of the Bill. The amendments of Mr. Tankha and Shrimati Seeta Parmanand were dealt with by me yesterday.

I now come to the amendment which was jointly sponsored by Mr. Dhage, Mr. Tajamul Husain, Prof. Wadia and Mr. Kishen Chand and that refers to sub-clause (e) of clause 15 (1). The amendment is that certain words which are to be found in sub-clause (e) underlined should be deleted. These words were inserted by the Joint Select Committee. Now, Sir, there was an amendment on this point in connection with clause 4. The question is, what are the prohibited relations between whom marriage will not be possible under this BilP Now in clause 4 it was stated that the parties should not be within the degrees of prohibited relationship, and the degrees of prohibited relationship are, according to an earlier clause, the persons whose names are mentioned in two Parts in the First Schedule annexed to the Bill. Objection was taken why these relations were specifically enumerated instead of being described in general terms. Well, we are not concerned with that question now. Now, Sir, it was argued by some hon. Members that the lists of prohibited relations read with the provision made in clause 4(e) would exclude numerous cases of marriage between uncle and niece or aunt and nephew, which are prevalent in South India.

SHRI H. C. DASAPPA (Mysore): Aunt and nephew? Certainly not.

MR. CHAIRMAN: "Uncle and niece"; stop it there.

SHRI C. C. BISWAS: Very well, Sir, I withdraw what I said. Not being very familiar with the customs which are prevalent in South India I should be excused if I made a mistake. Now for that purpose amendments were [1] in connection with subclause (e), that is to say, it was suggested that some words shout. added corresponding to what you find in clause 15(e). That amendment wns put to the vote yesterday and finally lost.

SHRI RAJAGOPAL NAIDU (Madras): That was not put to the vote. I moved that amendment and I withdrew it later.

SHRI C. C. BISWAS: All right. Lost or withdrawn. Therefore, Sir some amendments were either not moved or were moved and withdrawn or were lost. I accept my friend's correction. Now the position is that sub-clause 4(e) stands as it is in the Bill, that is to say, "the parties are not within the degrees of prohibited relationship" without any reference to any customary variations. Now i retain the underlined portion i_n clause 15(1) (e) this will introduce an incon sistency between clause 4(e) and clause 15(1) (e). Sir, we must not forget.....

SHRI P. SUNDARAYYA: How does it become inconsistent with clause 4(e)? Clause 4(e) is about solemnization of special marriages under this Bill whereas clause 15 relates to registration of marriages celebrated in other forms. The context is quite different.

MR. CHAIRMAN: Clause 4(e) states: "The parties are not within the degrees of prohibited relationship" but the degrees of prohibited relationship are not defined there.

SHRI C. C. BISWAS: They are not defined there. They are enumerated in the Schedule. Now if you make an amendment in the Schedule and you include uncle and niece in the Sche dule that will satisfy the purpose, but if you retain these words which are underlined in clause 15(1) (e) then that will lead to an obvious inconsis tency between clause 4(e) and this clause, and that should be avoided. And therefore although this was in troduced .....

SHRI P. SUNDARAYYA: I would like to draw the attention of the hon. Minister to this. In clause 2 "Interpretation" "degrees of prohibited relationship" has been defined. What I say is, instead of the present defini-tion, if the Schedule is amended to allow for "prohibited relationships" which are not contrary to the usage, then how does that clause 4 which yon have passed become inconsistent with clause 15(1) (e) as it is, or even without the underlined modification?

SHRI C. C. BISWAS: For the present I am assuming and I am proceeding on this basis that clause 4 and clause 15 must be reconciled. Now whether you will introduce amendments elsewhere in the Bill, whether the House will accept those amendments or not, I do not know, because as a matter of fact there is no amendment, so far as I have seen, and I do not think there is any amendment now proposed in connection with the defini-tion of prohibited degrees.

SHRI P. SUNDARAYYA: There ii the amendment and it is mine, No, 175.

SHRI C. C. BISWAS: When did you give it?

SHRI P. SUNDARAYYA: It has been given and it is in order.

SHRI C. C. BISWAS: At an earlier stage?

SHRI P. SUNDARAYYA: I have given it two days back. It is on the Order Paper.

MR. CHAIRMAN: Supplementary List No. IV.

SHRI C. C. BISWAS: I have not yet examined List IV. May be, Sir. If that is the case, Sir, we shall consi der it when that clause comes up for consideration. Whether that amend ment will be accepted by the House or not, that is a different matter. Whether Government will accept it, I am not in a position to state all at once. Well, as I just suggested, if you amend the Schedule as it stands by inserting two or more relations who are not now in that list, well, that may be done. That is one way of solving the difficulty. But for the present, having regard to the fact that clause 4 has been amended in the way I have indicated, I think clause 15 must be consistent with it. And there fore, Sir,.....

SHRI P. SUNDARAYYA: Clause 4 is not amended at all. Clause 4 stands as it is in the Bill.

SHRI C. C. BISWAS: What I meant to say was that there was an amend-and that amendment was lster withdrawn. Therefore I take it that clause 4 was accepted by the House in the form in which it stands in the Bill.

SHRI P. SUNDARAYYA: That amendment was only withdrawn. We will press it on another occasion

SHRI C. C. BISWAS: I think I have made myself sufficiently clear to everybody in the House except to my hon. friend Mr. Sundarayya. That is why I am stating, Sir, that for the present we should make sub-clause (e) in clause 15 correspond to sub-clause (e* in clause 4 in the form in which it now stands. This is what I was pointing out. The other thing that I was submitting in this connection is this. It would not be right for us to allow for customary variations as regards prohibited degrees in this clause, not having allowed such an amendment to be included in clause 4.

After all, what is the object of registration of marriage? The object of registration of marriage is this. If a marriage which had been previously solemnized was to be solemnized after the commencement of this Act, what are the conditions to be fulfilled? The conditions are laid down in clause 4. As clause 4 now stands, the Marriage Officer will not allow a marriage to be held under the Special Marriage Act for the first time if any customary variations in regard to prohibited degrees of relationship were to be recognised. Now, the effect of registration should be to make the previous marriage equivalent to a marriage solemnized under this Bill. You cannot therefore by means of registration get what you cannot get directly if the marriage was going to be solemnized on this day. That is the point. Therefore if you look at the conditions which are laid down in clause 15 you will find that they are all conditions corresponding to the conditions under which a special marriage could be celebrated. Take for instance the first condition. It is that neither party should have a spouse living. Here also in sub-clause (b) it says, "neither party has at the time of registration more than one spouse living". Take the next one. Under clause 4 (b) it is said that neither party should be an idiot or a lunatic. Here also you find a similar provision in sub-clause (c). The next condition is about age. Clause 4 (c) says that the parties must have completed the age of 18 years. But in clause 15 you find thai the parties must have completed the age of twenty-one years at the time of registration. Originally there was this difference, but now the House has accepted 21 years under clause 4 and there is perfect similarity between the two provisions. The next condition relates to prohibited degrees of relationship. There it is said; "the parties are not within the degrees of prohibited relationship;". Here also there was the same thing, but the following, words were added on by the Select Committee: "unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two."

SHRI GOVINDA REDDY (Mysore): I want to know whether this inconsistency was not considered in the-Select Committee.

SHRI C. C. BISWAS: It was considered and as I had explained I allowed the Select Committee to have its own say. Anyway the matter would come before the House, and then I did not wish to interfere with any decision which was acceptable to the Joint Select Committee.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): If I may explain, as a Member of the Joint Select Committee, even in the Joint Select Committee the point that the Law Minister is making now was made *viz.* that what is taken away by the right hand should not be given back by the left hand, that is, there should be no contradiction between those two clauses and so marriages like *matul kanya vivah* etc. should not be accepted. This view was expressed at that time also.

SHRI C. C. BISWAS: The question was considered from all points of view and freedom was given to the Members of the Joint Select Committee to put forward their different views.

SHRI K. S. HEGDE (Madras): On a point of order, Sir. An extraordinary convention is being developed in this House. Members of the Joint Select

Committee who subscribed to a particular viewpoint and signed their report come here and tell here on the floor of this House that they were against it. It is strange that the Chairman having signed and submitted the majority report should come here now and say this. It is not parliamentary; it is an extraordinary convention. If there was any difference of opinion he should have expressed it in a note of dissent. Having expressed the majority view, now it is his duty to subscribe to that view.

SHRI M. VALIULLA (Mysore): I agree with that point of order, Sir.

SHRI C. C. BISWAS: I have got my right to express my personal views either in the Select Committee or in the House itself.

SHRI P. SUNDARAYYA: The hon. Minister has no such right.

SHRI C. C. BISWAS: I stated my views quite clearly in the Select Com mittee but it so happened that my views were not accepted by a majority. And as I said, I was willing to abide by the majority in these matters. That is why I signed the Joint Select Com mittee's Report as Chairman, but I had made it perfectly clear.....

MR. CHAIRMAN: Yes, yes.

SHRI K. S. HEGDE: It is a bad convention, Sir.

SHRI C. C. BISWAS: I am not creating any new convention. I am only Expressing my personal views which .....

MR. CHAIRMAN: Order, order. The whole point seems to be that in the Joint Select Committee this particular view was considered and voted down. Now, as Chairman of the Committee you have subscribed to the majority point of view. All that you say is that you had your own personal reservations in the matter but as Chairman and as the Minister in charge of the Bill you are now piloting the Bill and expressing the majority opinion silently suggesting that in your personal opinion it is not the correct view. *(Laughter.)*

SHRI C. C. BISWAS: That is not fair to me, Sir. I have not issued any whip on this matter which I might have done. I stand by the Report of the Joint Select Committee which I signed[1].

MR. CHAIRMAN: Yes, of course. Let us go forward.

SHRI P. SUNDARAYYA: But he has been arguing against the Select Committee. May I know .....

SHRI C. C. BISWAS: If I am interrupted by these questions, as I told my friend yesterday, I could not be expected to be answering all these questions every day. The same questions are being repeated and I am called upon to answer them every time.

SHRI P. SUNDARAYYA: We would like to know whether the Minister, although he has signed the majority report, is going to oppose .....

MR. CHAIRMAN: He is not opposing it.

SHRI C. C. BISWAS: Am I not entitled to point out if there is an inconsistency so that the House may decide?

MR. CHAIRMAN: Mr. Biswas, let us proceed with the Committee's Report and the majority decision which you are supporting.

SHRI C. C. BISWAS: All that I am pointing out is that there is an inconsistency between clause 4 and clause 15.

SHRI V. K. DHAGE: In view of the inconsistency pointed out by the Law Minister, may I know whether the retention of this clause would be in order? The House having accepted clause 4 (e), will it be in orrl°r to discuss that proposition in clause 15?

SHRI C. C. BISWAS: That point is not for me to answer. That is a point which Mr. Chairman will deal with.

SHRI M. VALIULLA: Sir, I say it is not inconsistent at all. Clause 4 relates to new marriages that are to take place while clause 15 deals with marriages that have already taken place. So there is no inconsistency. *(Interruptions.)*

MR. CHAIRMAN: Order, order.

SHRI P. SUNDARAYYA: I would like to point out that clause 4 is for solemnization of special marriages but clause 15 is for registering marriages which have already been celebrated earlier before the commencement of this Act. Clause 15 is therefore entirely different and covers not the marriages that are sought to be solemnized under clause 4 but marriages which have been celebrated in other forms. In such cases the parties can CC'IT.e and register themselves under this Act. As such, there is no inconsistency in clause 15 as it stands.

SHRI K. MADHAVA MENON (Madi the point of order raised by my hon. friend Mr. Dhage is no point of order at all. In the Report of the Joint Select Committee, page 4, clause 15 (old clause 14) it is specifically mentioned:

> "In the opinion of the Joint Committee, the scope of this clause should be widened so as to include within it marriages, which al'hough hit by the rule of prohibited degrees as defined in the Bill, are valid under the personal law applicable to the parties. This clause has been amended accordingly".

There is therefore deliberate mention 01 it in the report. As such, where is the point of order?

SHRI K. S. HEGDE: But the point is that the Law Minister is arguing against it.

SHRI C. C. BISWAS: I was jjoiiit-ing out what had been decided by the Joint Select Committee on clause 15 (1) (e). I also stated at that time that personally I was not happy about this. I merely expressed my personal opinion. I do not for one moment suggest that I db not accept the decision of the Joint Select Committee; I accept it and I stand by it. I submit that I was entitled to say, as I said here, I was not happy about it

SHRI P. SUNDARAYYA: You must resign and express that view.

SHRI RAJAGOPAL NAIDU: On a point of order, Sir. The hon. tho Law Minister, in the capacity of the Chairman of the Joint Select Committee, has expressed the majority view though personally he was against it and he has not appended any minute of dissent for doing so. I would like to know from the Chairman whether he is entitled to argue against it.

MR. CHAIRMAN: He is not arguing, he is just stating his personal view on the matter.

SHRI K. S. HEGDE: Sir, being a very important convention, I quite agree that when the Report of the Joint Select Committee is submitted and where the Chairman has not appended a note of dissent, it is his duty to support it here. But he places the Joint Select Committee Report before us and argues against it. It is just like a lawyer arguing against his own party.

MR. CHAIRMAN: All that he meant to say was that he was not happy about it.

SHRI C. C. BISWAS: I maintain, Sir, that I am not happy about it. But I accept the Joint Select Committee's Report and I stand by it.

SHRI B. C. GHOSE (West Bengal): The point of order was raised and two issues were raised along with it. Does it mean that a member of the Select Committee who has given his opinion, apart from the question whether he

was a Minister or not, cannot change nis opinion when the Bill comes up before the House? Secondly, the question arises whether in a case like this—I do not know what is the precedent in this matter—when a Bill is brought by the Government,—whether it is being piloted as a Government Bill or non-Government Bill—and independence is given to the Members to vote as their conscience dictates, whether a Minister piloting the Bill cannot also express his personal opinion. That is also to be considered.

SHRI P. SUNDARAYYA: Sir, I agree that a Member is entitled to change his opinion by the time the Bill comes :from the Joint Select Committee to the House. Even a Minister is entitled to change his opinion. But I feel that it will be good for the parliamentary tradition and for the smooth working of Parliament if he chooses to resign and do it.

SHRI K. S. HEGDE: Sir, the records may be seen whether he was arguing against it or not.

MR. CHAIRMAN: He has not changed his view from the moment he was in the Select Committee up till now; but both there and here he only expressed some 'unhappiness' about the particular clause, but he has decided to support the majority view both in the Select Committee and here. If he has such a conscientious objection, then what you say may be all right; but it is not so. He is now piloting this Bill as it has come from the Select Committee.

SHRI C. C. BISWAS: Points of order. Sir, have been raised.....

MR. CHAIRMAN: Yes, yes, from many sides: but please go on, Mr. Biswas.

SHRI C. C. BISWAS: For my personal edification, Sir, am I not entitled to express my personal views?

SOME HON. MEMBERS: You are.

SOME OTHER HON. MEMBERS: You are not.

SHRI C. C. BISWAS: For my personal guidance in future, I should like to have a ruling from you whether a Minister who is piloting his Bill has any right to express his personal view or not.

SHRI P. SUNDARAYYA: I would like to draw your attention to the fact that the Constitution enjoins joint responsibility of the Cabinet, and as such, a Minister is not entitled to express an opinion different from that held by the Government, or different from the Government point of view.

MR. CHAIRMAN: Mr. Biswas, you have expressed your views. You are now piloting the Joint Select Committee's report. You had better proceed with it.

SHRI M. VALIULLA: He has said he is not happy with it; supposing we agree with it, will he be happy?

SHRI C. C. BISWAS: If my friends are so delicate that the slightest suggestion from the Law Minister setting out his personal views is to upset them, I can only express my sorrow for my hon. friends here.

SHRI P. SUNDARAYYA: In whatever way you may pass your Bill, people are going to marry and they will continue to do it.

SHRI C. C. BISWAS: I strongly object to the statement which is quite unbecoming of a Member of this House.....

SHRI P. SUNDARAYYA: I can say that it is quite unbecoming of a Minister to say so.

SHRI C. C. BISWAS:..... to make personal remarks and to hurl flings aimed at a particular Member. This is not the way, Sir, in which we are accustomed, as Members of Assemblies. to function.

SH^I P. SUNDARAYYA: Nor are we.

SHRI C. C. BISWAS: We do not draw our inspiration from elsewhere.

SHRI P. SUNDARAYYA: Sir, I would like him to repeat that.

MR. CHAIRMAN: Mr. Biswas, please go on to the next amendment.

SHRI C. C. BISWAS: I now come to the last amendment moved by Mr. Kishen Chand. It raises a very important point. His point is this. Now, under the provisions of clause 15, any marriage celebrated whether before or after the commencement of this Act. may be registered under this Act only if both the parties agree. But, his suggestion is that registration may also be allowed at the instance of either party to the marriage; even where the parties do not agree it should be possible to get the marriage registered and he wishes it should be allowed, not for all purposes under this Bill, but only for the purposes of "annulment, judicial separation and divorce".

There are other consequences of a marriage under this Act. But it is only as regards annulment, judicial separation and divorce that Shri Kishen Chand suggests that it should be open to either party to apply for registration of a marriage.

There may be hard cases, Sir. I admit it. But such a provision would be necessary only where the parties had previously married under a law which did not give them the same facilities in respect of these matters as the present Bill does. I do not know if in such cases it would be possible to confer on them these rights even by enacting a new law. Any way, Sir. the Hindu Marriage and Divorce Bill has been placed before the House, and if my hon. friends will have a look at it, they will find that that Bill makes express provision for judicial separation, annulment of marriage, divorce, etc., almost in similar terms as this Bill does. So these rights of divorce, judicial separation, annulment of marriage etc., are going to be given to Hindus. And the existing marriage laws of Christians, Parsis and Muslims already allow them these rights.

SHRI KISHEN CHAND (Hyderabad): On a point of personal explanation, Sir. Even among Muslims, if a woman seeks divorce, she loses all dower and alimony etc. Therefore, I had introduced this amendment providing that if a Muslim woman seeks divorce under this Special Marriage Bill, she will be entitled to alimony and maintenance, etc., which she could not get under her personaL law.

KAZI KARIMUDDIN (Madhya Pradesh) : Sir, ttay I tell my hon. friend that a Muslim woman does not lose her right to dower?

SHRI C. C. BISWAS: What I am trying to point out is this. Without going into details of the provisions for divorce, judicial separation etc.-^vhich exist in the marriage laws of communities, I say that substantially the amendment which Shri Kishen Chand has moved is for the benefit of Hindus—or I shall put it in another way—is for the benefit of persons domiciled in India who are not Muslims, or Christians, or Parsis^ or Jews. Now so far as Christians and Muslims are concerned, they have got the right of divorce already provided for them under their personal law. So also as regards Parsis, and as regards Jews, etc. The only community which does not now possess the rights of divorce, etc.. is the Hindu community, for which the Hindu Marriage and Divorce Bill is going to be enacted. Now, Sir. all these rights which you find in the Special Marriage Bill are going to be provided for the Hindus in that Bill. That shows that even without allowing registration it will be possible for the Hindus, who do not enjoy these rights, to get these rights when the Hindu Marriage and Divorce Bill is passed. Well, they have waited for so long. Can they not wait for another few months only, because that Bill has been already introduced and this House has referred it to a Joint Select Committee. It is coming up next week possibly, in the other House when that

House will allot its quota to the Joint j Committee. The Joint Committee will meet shortly, and we expect, Sir, that if not in this session, in the next session the Bill will become law, and all those rights will be conferred on Hindus.

9AM ^nc* ^e wor d 'Hindu' has been defined there in a very wide sense. It includes Buddhists, Jains, Sikhs and every other person who is not a Muslim, Christian, Parsi or Jew. Therefore it is a very comprehensive Bill, and if that Bill becomes law. all these rights will be provided. A Hindu who is married under his personal law will, under that Act, when it is passed, be entitled to apply for divorce, apply AcV judicial separation, apply for nullity of marriage etc. There is no point now in departing from the scheme of this legislation.

MAJ .-GENERAL S. S. SOKHEY "Nominated): May I ask the hon. Minister to address all of Ms? He is always addressing only those who are sitting on his right.

SHRI C. C BISWAS: I am speaking to all the hon. Members although I am looking at you all the time, Sir.

MR. CHAIRMAN: Yes, yes.

SHRI C. C. BISWAS: Therefore what I am suggesting is that there is no point in registering a marriage in the way suggested by my hon. friend. Mr. Kishen Chand. Therefore I oppose his amendment.

SHRI P. SUNDARAYYA: He has not spoken on my amendment.

MR. CHAIRMAN: Do not bother.

Now the first amendment I am putting is by Shri Tankha.

The question is:

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

The motion was negatived.

MR. CHAIRMAN: Mr. Vaidya's amendments are barred. Now, Shrimati Seeta Parmanand's amendment.

The question is:

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."

The motion was negatived.

MR. CHAIRMAN: The question isr

2.2. 63 and 134. "That at page 6, lines 40 to 42, the words 'unles:; 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."

The motion was negatived.

MR. CHAIRMAN: The question is:

136. "That at page 6, aftei line 46, the following be added, narae-ly:-

'(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 orly for the purposes of annulment, iudicial separation and divorce, and due notice of such registration will be given to the other party.'"

The motion was negatived.

MR. CHAIRMAN: The question is:

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

The motion was negatived.

MR. CHAIRMAN: The question is:

"That clause 15 stand part of the Bill.

The motion was adopted.

Clause 15 was added to the Bill. ■ Clause 16 was added to the Bill.

MR. CHAIRMAN: Now we come to •clause 17. There are two amendments, Nos. 137 and 81. Those who wish to move can move their amendments.

PANDIT S. S. N. TANKHA (Uttar Pradesh): Sir, I move:

137. "That at page 7, lines 12-13, the words "refusing to register a marriage under this chapter' be deleted."

SHRI GOVINDA REDDY: Sir, I move:

81. "That at page 7, line 13, for the words 'fifteen days' the words 'thirty days' be substituted."

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

SHRI GOVINDA REDDY: This should be accepted because we have already accepted an amendment to a similar effect to clause 8. There the appeal time provided was only 15 days. My amendment was that it should be 30 days, and here also it is the same. The time provided is 15 days, and the amendment is for 30 days.

PANDIT S. S. N. TANKHA: Yesterday I moved a similar amendment in another clause whereby I wanted it to be made open for any person who is aggrieved against an order of a Marriage Officer to appeal. That unfortunately was not accepted by the House.

MR. CHAIRMAN: Therefore, you don't want to press this amendment.

PANDIT S. S. N. TANKHA: No, Sir.

♦Amendment No. 137 was, by leave, withdrawn.

MR. CHAIRMAN: Then, there is only one amendment left. The ques- I tion is:

81. "That at page 7, line 13, for ' the words 'fifteen days' the words 'thirty days' be substituted."

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*For te)(t of amendment see above.

The motion was adopted.

MR. CHAIRMAN: The question is:

"That clause 17, as amended, stand part of the Bill."

The motion was adopted.

Clause 17, as amended, was added to the Bill.

MR. CHAIRMAN: The motion is:

"That clause 18 stand part of the Bill."

There are some amendments.

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

138. "That at page 7, lines 23 to 26, the words 'and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in al! respects be deemed to be and always to have been the legitimate children of their parents" be deleted."

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): What about my amendment, Sir?

MR. CHAIRMAjXf: They are all out of order, new clauses 18A, 18B and 18C.

KAZI KARIMUDDIN: Sir, I move:

168. "That at page 7, at the end of line 26, the following be added, namely: —

'but they shall not inherit except from their parents'."

MR. CHAIRMAN: Then, No. 173, by Mr. Biswas.

SHRI C. C. BISWAS: Sir, I move:

173. "That at page 7? *in* line 19, for the word 'Where' the words 'Subject to the provisions contained in

sub-section (3) of section 24, where' be substituted."

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

SHRI KANHAIYALAL D. VAIDYA: Before we proceed, I want to say something on my amendment.

MR. CHAIRMAN: I will give you a chance of saying that, but you cannot question the decision of the Chair.

SHRI KANHAIYALAL D. VAIDYA: I won't do that, Sir. I want to say something only on *my* amendment.

PANDIT S. S. N. TANKHA: Sir, my amendment to clause 18 is to the effect that this clause should end with the words "Where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall as from the date of such entry, be deemed to be a marriage solemnized under this Act". The clause should end here and the words "and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents" should be deleted.

First of all, I would like to say, Sir, that the Bill as introduced in the other House did not contain the latter portion of this clause. These words have been added by the Joint Select Committee. My fear is that by the retention of these words in this clause you are opening the floodgates for litigation. It is certainly true that this litigation will benefit my class, *viz.* the lawyer class, but all the same I would warn the House of the implications of those words and would ask the House to consider with a cool mind the consequences of the retention of these words. You are well aware, Sir, that there are two kinds of properties—the self-acquired or separate properties and the joint family properties. In the first class of properties, viz. separate or self-acquired properties, the owner has the fullest right to make a gift or make a will'm respect of his propert ies, and therefore in such cases where the owner has two wives, one the law ful: d wife and the other who has been accepted to be his wife though she has not gone through any formality of marriage .....

SHRI RAJAGOPAL NAIDU: That is only concubinage, and the law of concubinage will apply.

PANDIT S. S. N. TANKHA:..... it would be open to that owner in his lifetime to give away his property either wholly or partly to the children born out of this unholy alliance, and in such a case, perhaps the retention of these words will not adversely affect any person if the father chooses to give away his property to such children. Now, let us consider the case of those who own joint family properties, particularly those governed by the Mitak-shara law, in which a child acquires rights by birth. In that case, what would be the position? With regard to marriage which have not been solemnized in any recognized form but which are now attempted to be registered under this Act, the position will be that whereas formerly the children born out of the recognised form of marriage were alone entitled to a share in the properties with the father, since they acquired their rights in the property by birth, but now by the acceptance of this clause as it s1 ands before us now, the children born of the lawful, marriage and the childrer born out of the unholy alliance will have an equal share in the properties, with the result that the share of those who have acquired the properties by right of birth will be affected by the inclusion of additional sharers. Now, is that at all fair? Suppose there are three sons by the first lawfully wedded wife and there are three sons by another woman not lawfully married, whom the father now wishes to benefit. It is a very well-known fact that usually the father is more attached to the second younger

[Pandit S. S. N. Tankha.] wife, and I shall not be surprised if to the detriment of the sons of the first wife, the father would now want to get his second marriage registered under this Act and thus give a share in his property to the children of the unholy alliance also. Therefore, I would ask the House to very cooly consider the implications of the retention of these words and not be led away by the interests of the children who were not considered legitimate up till now. With these words, I would ask the House to delete the latter portion of the clause and allow the first portion only to remain as has been suggested by me.

KAZI KARIMUDDIN: Mr. Chairman, the implications of clause 18 are very serious. It is laid down in the clause as follows:

> "All children born after the date of the ceremony of marriage ..... shall in all respects be deemed to be and always to have been the legitimate children of their parents."

In other words this means that even if children are born within two months after registration, they will be legalized under this clause and if they are legalized, they will be legitimate children of their parents. The first point which I want to raise in this connection is that these children will inherit from their parents under clause 21 under the Succesion Act. Once they are legalized they are legitimate children, even if they are illegitimate under the personal law of the Muslims they will inherit from other relations also and if they are governed by the Succession Act, the other relations will not be entitled to inherit from them. Therefore the implication of this clause is that the third parties are affected. I want the Law Minister to look into the matter. This view has been expressed by Mr. Bocker also in his minute of dissent. He says:

> "Those who register their marriages under the Act are governed by the Succession Act and hence those who would have inherited from them under their personal law are deprived of such right of inheritance but on the other hand the persons who register their marriage under this Act are not debarred from inheriting from their relations under their personal law."

As an instance of this, under the Mohammadan law, if the son dies and leave grand-children, the grandchildren are deprived of their inheritance in preference to other relations. Under the Succession Act there is a special provision. They are entitled to a share under the Succession Act. Now those relations who are entitled to inherit if the son dies and there are grandchildren, will be deprived of their share under the Succession Act and those who are illegitimate children under the personal law and those who are legalized under clause 18 will be entitled to inherit from third parties and other relations. Suppose there are two brothers, one brother who is a Muslim and who does not marry under this Act has no issues, has no wife and leaves inheritance, now the children who are born of the other parents will be entitled to inherit under the personal law from the brother who has no issuss and who has left the property. Thus this is giving special advantage to those who are married under this Act. Therefore my submission is that this law affects the third parties and I hope that this unfair advantage will not be given 10 those whose parents were married under this Act.

SHRI KANHAIYALAL D. VAIDYA: Sir, my amendments are concerned with clause 18 which says:

> "shall in all respects be deemed to be and always to have been the legitimate children of their parents"

But it is silent on this. What about the children? Sir, we are giving to the society a new law based on equality of sex but we don't provide any protection to the children. Unless all those things that are mentioned in my amendment, are given to the children, this Bill will fail. While we are giving these things to the society—all those rights—you are not giving the protection which is required for children born

out of such marriages. In our country there are thousands and thousands of women and children and they are either being treated as criminals or they have to live on the mercy of others or they have to live on prostitution. I think I may be allowed to move my amendment.

MR. CHAIRMAN: I am not allowing them because they are outside the scope of this Bill. You are allowed to talk on the general proposition. Those amendments are not allowed.

SHRI KANHAIYALAL D. VAIDYA: Sir, I request you to allow them.

MR. CHAIRMAN: I am sorry, I cannot.

SHRI KANHAIYALAL D. VAJt^A: I want to speak on general principles.

MR. CHAIRMAN: You can talk on this but not on your specific amendments which are disallowed as they are outside the scope of the Bill.

SHRI KANHAIYALAL D. VAIDYA: I can refer to them?

MR. CHAIRMAN: Generally you can talk if you want to. Not on the amendment.

SHRI KANHAIYALAL D. VAIDYA: But I think the Law Minister will consider seriously the point which I have raised in my amendment. Unless you give protection to those children, what will happen to those children? They will have to go to destitute homes or they will have to rather take to prostitution. We are not going to encourage these institutions of prostitution and begging and all the criminal type of activities. There are no children's homes. It is shortage of those necessities that the country is facing. There are millions and millions of children and they are not properly looked after even by the parents and they have rather given up their religion and they are being sold to Christian Missionaries in this country. So far as Children's Homes are concerned, they are •nothing but simple poor men's homes where some beggars or some children are given protection. Therefore making a legislation of this nature and particularly wnen you have raised the age to 21, I think it is in the interest of the country that you should give serious consideration to the problem of children and particularly all those children who are born out of wedlock. You are dealing with a law which is dealing equally with the males and females in the society. You are trying to create a new social order based on your Constitution. You have given the right of equality of sex. So unless you give serious consideration to these problems, I think this law will not serve any purpose to the marriage institution and will not be conducive to the healthy growth of social order in the country because those children who will be governed under this law will not get the protection and unless they get it and the parents are satisfied in their social necessities and other things, I think your new society and the country cannot prosper. So I press that you should do something so far as the children and the right of husband and wife are concerned.

SHRI K. S. HEGDE: Mr. Chairman, my hon. friend from Madhya Pradesh presented to the House a certain difficulty and asked us to consider the amendments.

AN HON. MEMBER: Not Madhya Pradesh but Madhya Bharat.

SHRI K. S. HEGDE: I am sorry. The difficulty that he was entertaining is probably due to not sufficiently appreciating the wording of clause 18. Clause 18 cf the Bill read with clause 15 of the Bill provides for a contingency where celebration of a marriage might have taken place much earlier—supposing 2 or 3 years earlier—and the registration of the marriage may take place hereinafter after the passage of this Bill. What is provided in clause 18 is, once the marriage is registered under the present Act, the marriage shall be deemed to have been a valid transaction from the date of the celebration of the marriage. So if a man marries a

[Shri K. S. Hegde.l woman with child and a child is born within two months of the marriage, here is an illegitimate child to which ycu are extending legitimacy and certain rights to property but what is provided in clause 18 is that merely because 01 certain want of legal formalities the marriage might have been deemed to be invalid under the existing law but might have taken place 10 years back, it is legalized by the provision of clause 18 and it dates back the validity of marriage. So I would invite the attention of the hon. Member to the words employed in clause 18 and also to those used in clause 16. It is stated in clause 18 that:

> "Where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter the marriage shall as from the date of such entry, be deemed to be a marriage solemnized under this Act."

And it further states:

> "and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents". „

Therefore, this is a clause which is enlarging certain rights which does not exist under the law as it stands at present.

Another misapprehension that is shared by the hon. Member is that he thinks this is a limiting Act and not an enlarging Act. I shall explain myself. He thinks this is an Act intended for somebody who has no other go. It is not so. We, many hon. Members of this House believe that this is the first step towards the bringing in of a common Civil Code. This is an Act which confers more and more rights. This is not an Act which imposes limitations. Wherever it is possible, the idea is t° enlarge the rights, to get more and more people to come under the Act, and we are looking forward, in the immediate future, to a time when probably most of the Indians will get married under this Act and leave severely alone the present custom which has got its own limitations. So it is no good when we consider an Act of this type, a liberalising Act, to think in a very narrow way. We should try to remove as many obstacles as possible. But accepting the amendment of Kazi Karim-uddin would be accepting obstacles in the way of the full implementation and realisation of this measure. So I oppose the amendment.

MR. CHAIRMAN: Yes. Dr. Kunzru, you wanted to say something?

SHRI H. N. KUNZRU (Uttar Pradesh): Yes, but Shri Hegde has said very well what I wanted to say and so I do not want to say anything now.

SHRI P. SUNDARAYYA: Sir, I would only submit that this is one of the most progressive provisions in the whole measure which the hon. Member's amendment seeks to remove. So I request the hon. Law Minister to stick to the original provision and not to accept the amendment proposed.

SHRI C. C. BISWAS: Sir, I cannot quite understand the amendment moved by my hon. friend from Madhya Pradesh. After a great deal of thought the Joint Select Committee accepted this addition to clause 18 and it was done with a definite purpose. The whole object is, as I explained it in my opening remarks, if there is any question as to the validity of any previous marriage, if it is registered under this *ket,* Ihen the marriage should be regarded as valid. That was one of the main objects of clause 15. Now, so far as the concluding part of clause 18 which was added by the Joint Select Committee is concerned, that only confers the status of legitimacy on children born of the parents previous to registration. That is about all that it does. If they were not legitimate.

strictly speaking, after the registration, they will be deemed to be legitimate with retrospective effect. Sir, I should think that everyone in this House would welcome such a provision. After all, the children who are born, are not responsible for their legitimacy or illegitimacy. However harshly you may deal with those who have illegitimate relations and produce the offsprings, no blame ought to attach to the offsprings themselves. Therefore, Sir, if by virtue of registration we can render those who might otherwise be regarded as illegitimate, legitimate, no harm is done. On the other hand, it is doing a piece of social service. Therefore, no objection should be raised tc such a provisions as this, unless rights to property or other important rights are affected or interfered with. There will be no difficulty in the matter of succession. You will find it provided in clause 21, which deals with succession, that succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the Indian Succession Act. The question is, wher ther the children of a marriage now registered, who are born before registration can be regarded as if they were issues of a marriage actually solemnized under this Act. What is the effect of registration? Will the children on whom legitimacy is conferred by this provision be regarded as children of a marriage solemnized under this Act, with full rights of inheritance to the property of the person marrying, and will succession to their property be also regulated by the provisions of the Indian Succession Act? In other words will registration attract the provisions of clause 21 regarding succession in the case of children born before registration in the same way as in that of children who are born after registration? That is the question which has got to be considered. Sir, I would not hazard an opinion myself. That is a question which is not wholly free from difficulty. But even so, there need not be any objection to this provision.

Suppose the children who were born before registration of a marriage are allowed by virtue of registration to be legitimate, and thus given the same position as the other children, what difference does it make? The fact that they were illegitimate before and are now rendered legitimate, would only entitle them to inherit the father's property simultaneously with the children who may be born after registration; in other words, all the children will share equally in the inheritance.

SHRI K. S. HEGDE: The birth of every child affects the position.

SHRI C. C. BISWAS: Yes, and therefore, what does it matter if the other children are declared legitimate now?

PANDIT S. S. N. TANKHA: May I ask the hon. Law Minister whether this will not mean divesting the persons of the rights which have been vested in them in respect of the property? They had acquired certain rights by birth. The property vests in them along with the other sharers in the joint family property which by this amendment you will indirectly divest them namely of the share that they have already acquired in the property, and this I believe, the law cannot allow.

SHRI C. C. BISWAS: As a matter of fact, even for children born of a marriage actually solemnized, their rights cannot accrue by birth. We are here concerned with succession, which opens on the death of the last owner, and there can be no question of divesting. It is only on the death of the person who marries that the rights of others to his property will accrue. There is, therefore, no question of a vested right being divested. We are only saving that certain children born previous to registration will be deemed to be legitimate, and they will succeed to their paternal property equally with after-born children.

MR. CHAIRMAN: Yes. the next amendment.

سید مظہر امام (بہار) : میں
جاننا چاہتا ہوں کہ کیا ایک

[Syed Mazhar Imam.]

الجتمیت چائلڈ محض قانون میں
لکھہ دینے سے ھی لیجتمیت سمجھا
جانے گا -

f[SYED MAZHAR IMAM (Bihar): I want to know whether an illegitimate child will be considered to be legitimate only by a legal provision.]

تجمل حسین (بہار) : بیشک
سمجھا جائے گا -

t[SHRi TAJAMUL HUSAIN (Bihar): Surely it will be considered so.]

SHRI C. C. BISWAS: That is the very object of this provision.

The next amendment of mine is No. 173 in List II. In order to understand this amendment, we should refer to clause 24 of the Bill which deals with void marriages. There it is stated that:

> "Any marriage solemnized under this Act shall be null and void and may be so declared by a decree of nullity if.—
>
> '(i) any of the conditions specified in clauses (a), (b), (c) and (e) of section 4 has not been fulfilled.'"

And then it has been declared that the marriage which is registered will be deemed to have been solemnized under this Act. Now, it is very .difficult to fit in the case of a marriage which is registered and therefore deemed to be solemnized under this Act with what you find in clause 24. In the case of a marriage which is registered, the conditions which are required to be fulfilled are set out in clause 15 itself. Therefore, I shall move, Sir, in connection with that clause 24, an amendment which really goes with this. That amendment is "Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within **the meaning** of section 18, but the **re-**

t English translation.

gistration of any such marriage under Chapter III may be declared to be of no effect" that is to say, nullified, "if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15". Now all these sub-clauses (a), (b), (c) and (e) of clause 4 seem to be inappropriate in the case of a marriage which is deemed to be solemnized under the Act. Therefore I am moving this. It makes no difference in substance.

KAZI KARIMUDDIN: Sir, there is no reply to my amendment.

SHRI H. N. KUNZRU: We have not been able to follow quite clearly some of the remarks made by the hon. the Law Minister.

SHRI C. C. BISWAS: Now, with reference to what my hon. friend Dr. Kunzru said, if there is any point which requires clarification and on which he had not been able to follow what I had said, I shall be very glad to offer such explanations as I may. Now the question which was raised by the amendment of my friend Kazi Karimuddin raises a very important issue, namely, whether the children who will be now declared legitimate, will be entitled to share in the property of their parents or not.

SHRI S. MAHANTY (Orissa): Why not?

SHRI C. C. BISWAS: If they were illegitimate, possibly they would not be entitled to full rights of inheritance from their parents. Accepting that position, what is the effect of declaring them to be legitimate? Would they still be entitled to inheritance? That is the question he has raised. Now that will depend upon what is the effect of registration. If the registration means that the marriage will be deemed to have been solemnized under this Act, then their rights of succession, meaning rights of succession to the property of the parents, will be regulated by clause 21. That is the answer to the question whether they would **be entitled** to **inherit from their parents**

because they are now declared legitimate. They might have been illegitimates, and then, but for this provision, they would not have any rights of succession to their putative father. Now the question is whether the fact that they are now declared legitimate after registration entitles them to succession to property.

DR. SHRIMATI SEETA PARMANAND: How were they formerly illegitimate? They were never illegitimate.

SHRI C. C. BISWAS: Well, that is the point. That will depend upon whether clause 21...

SHRI B. C. GHOSE: Well, clause 21 only says that the Indian Succession Act shall apply. Do I understand[1] that the Indian Succession Act will apply to a marriage deemed to be a marriage solemnized under this Bill as per clause 21?

SHRI C. C. BISWAS: It ought to apply according to my reading.

SHRI B. C. GHOSE: Will they share in the properties?

SOME HON. MEMBERS: Yes.

DR. SHRIMATI SEETA PARMANAND: On a point of clarification. If they are the children of marriages which had[1] been celebrated according to custom, why should they be consider-•ed illegitimate at all? They were never illegitimate. I do not think that the word "legitimate" is a happy expression. The question is that for purposes of succession under the Indian Succession Act they may not be considered legal heirs. That is the meaning according to me but I would like to have a clarification if I am wrong.

KAZI KARIMUDDIN: The Law Minister probably has not listened to my speech and therefore no reply has been given to the point raised by me. My point is this. Those who are born of this parentage will be entitled to succession to the property of their parents under the Succession Act but other relations will not be entitled to inherit under "the personal law from the parents of these children. But these children, when they are legalised under clause 18, will be entitled to inherit under the Mohamma-dan law also because they are declared legal and legitimate childern. So they will be inheriting from third parties who have no connection but the third parties cannot inherit under the Succession Act but these children will inherit from them also. So this is a double advantage and this will be encroaching upon Mohammadan law and in respect of those people who are not parties to this marriage.

SHRI C. C. BISWAS: The answer is very simple. As a matter of fact I had indicated it. It is this. Tbe question is whether these children who are now declared legitimate will be regarded as issues of a marriage solemnized under this Act. If they are regarded as issues of a marriage solemnized under this Act they will be entitled to inheritance, not otherwise. That is a point on which, I said. I would rather reserve my opinion.

SHRI B. C. GHOSE: We are passing an Act and we should know what is.....

SHRI C. C. BISWAS: If you refer to clause 21 you find, Sir. it is said: "succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage". Now the Succession Act provides the list of heirs and there children are mentioned. The question is whether the word "children" as occurring in, I believe, section 37 of the Indian Succession Act, will include these children. But then they are not children of a marriage solemnized under this Act. They are children of a marriage which by virtue of registration is deemed to be solemniz ed under this Act. and if a marriage which is solemnized in some other form is by virtue of registration to be deemed as a marriage solemnized under this Act, well.....

SHRI K. S. HEGDE: There will be different types of status.

SHRI C. C. BISWAS: There would be considerable force in the argument that

[Shri C. C. Biswas.l they should have the status of children born of a marriage actually performed under this Act. That is the position, **Sir.** That is my view, but it is quite possible that a different view may be taken. That is what I indicated[1]. We want that a marriage after registration would be regarded as a marriage actually solemnized under this Act for all purposes. If for any reasons the marriage as originally celebrated is of doubtful validity and the children might be regarded as illegitimate, they will now be declared legitimate if the marriage is registered, and will have the status of legitimate children with retrospective effect.

KAZI KARIMUDDIN: Sir. my point has not been replied to. What has been urged is that they are legitimate children. I do not dispute that. What I have been submitting is that children born of this parentage will be entitled to inherit under section 37 of the Succession Act and they will also be entitled to inherit from third parties. So they will be entitled to double inheritance, once from their parents and again from third parties who are not parties to this marriage.

SHRI C. C. BISWAS: That may be so and that will be so. That cannot be avoided.

SHRI K. S. HEGDE: Mr. Chairman, the hon. the Law Minister instead of throwing light has probably thrown a lot of confusion into the discussion. He seems to have, like a Judge, reserved certain opinion which might have been very helpful to the House. In Kazi Sahib's amendment a certain principle is involved. It is true that children are legitimised for all purposes. I do not contribute to the view that there can be different types of legitimate children, one for one purpose and another for another purpose. But the question before the Hoi^se is, would you accept the consequences of that legitimacy or not? As Kazi Sahib very rightly put it, once you legitimise **them,** they can inherit both from the parents and also from others. But kindly cons.der the converse cases. Suppose a Muslim marries a Muslim and then registers under the Special Marriage Act. Wnat happens if you accept Kazi Sahib's amendment then that the child will only get from the parent and will be debarred from getting from the others. Supposing even a Muslim marries legitimately under this Bill, if you accept, the amendment, the effect is that you deprive the children of all their rights. The alternative before the House is either you stop the rights of certain persons who get additional rights or deprive them of all rights to which they are otherwise entitled. The object of the measure is one of enlarging the. rights and not of limiting them. If two alternatives are before the House and two consequences flow, do please accept the one that enlarges the rights and not the one that limits them. While it may take away the rights in a few cases where they ought to be taken away, is also takes away the right of many people who are entitled to that right. So I would beg of the House not to accept the amendment of Kazi Sahib.

MR. CHAIRMAN: The question is:

138. "That at page 7, lines 23 to 26,. the words 'and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents' be deleted."

The motion was negatived.

MR. CHAIRMAN: The question is

168. "That at page 7, at the end of line 26, the following be added, namely: —

'but they shall not inherit except from their parents'."

The motion was nagatived.

MR. CHAIRMAN: Now. amendment No. 173,

SHRI M. VALIULLA: I have got something to say on the amendment of the hon. the Law Minister before it is put to vote.

MR. CHAIRMAN: Not at this stage. You must have asked before I started putting the amendments.

The question is:

173. "That at page 7, in line 19, for the word "'Where' the words 'Sub- - ject to the provisions contained in sub-section (3) of section 24, where' be substituted."

SHRI GOVINDA REDDY: But there is no sub-section (3) to section 24.

MR. CHAIRMAN: When you come to clause 24 you can raise the question.

SHRI K. MADHAVA MENON: On the face of it it is wrong. As it is, there is no sub-section (3).

MR. CHAIRMAN: But the Law Minister has read out what sub-section (3) is going to be.

SHRI C. C. BISWAS: Yes. I began by saying that this and another amendment which I shall move in connection with clause 24 go together and that is why I read out the other amendment also. I read out my amendment No. 174 then and if you want. I can read it once again.

MR. CHAIRMAN: That is not necessary.

The question is:

173. "That at page 7, in line 19, for the word 'Where' the words 'Subject "to the provisions contained in subsection (3) of section 24, where' be substituted."

The motion was adopted.

MR. CHAIRMAN: The question is:

"That clause 18, as amended stand part of the Bill."

The motion was adopted[1].

Clause 18, as amended, was added to the Bill.

MR. CHAIRMAN: Now, we take up clause 19. There are seven amendments. Amendment No. 23 is out of order, as it is a straight negative.

[MR. DEPUTY CHAIRMAN in the Chair.J

SHRI GOVINDA REDDY: Sir, I wish to submit for reconsideration that all negative amendments be not disallowed. When it is a clause which is included in another clause, an amendment to delete the former clause is perfectly valid if a clause is redundant for instance. So in certain circumstances negative amendments are allowed. That is what I want tc submit. Here the clause is redundant.

MR. DEPUTY CHAIRMAN: Is it the whole clause or sub-clause?

SHRI GOVINDA REDDY: Whole clause, Sir.

MR. DEPUTY CHAIRMAN: That is out of order.

SHRI GOVINDA REDDY: It cannot be out of order for this reason. If it becomes unnecessary by virtue of another clause, then the amendment for the deletion of that clause will be quite valid. Here my point is that clause 19 is quite unnecessary because we have provided in clauses 20 and 21 for succession to property, that this is the status of the member who marries under this Act. Therefore when a status is already prescribed there, is determined there. this clause which is going to say something again is quite unnecessary. It is redundant.

MR. DEPUTY CHAIRMAN: If you want, you may oppose it. This refer* to partition of the family and the other one is in regard to succession.

SHRI GOVINDA REDDY: In effect it means the same thing.

MR. DEPUTY CHAIRMAN: I rule it out of order.

SHRI TAJAMUL HUSAIN: May I know at what stage we can oppose it? Now or later?

MR. DEPUTY CHAIRMAN: Afterwards.

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

24. "That for the existing clause 19, the following be substituted, namely:—

'19. *Effect* of *marriage* on *member of undivided family.*—Any member of an undivided family which professes the Hindu, Buddhist, Sikh or Jain religion, marrying under this Act, shall not be deemed to sever from such undivided family if he does not elect to be governed by the Indian Succession Act, 1925 (XXXIX of 1925).*"

SHRI J. S. BISHT (Uttar Pradesh): Sir, I do not want to move amendment No. 25.

SHRIMATI PARVATHI KRISHNAN (Madras): Sir, I move:

26. "That at page 7, at the end of line 32, the following be added, namely: —

'if at the time of the marriage any such member makes a declaration for securing such severance'."

SHRI KISHEN CHAND: Sir, I move:

140. "That at page 7, at the end of line 32, the following be added, namely: —

'unless the man by a specific declaration before the Marriage Officer desires to retain membership of the joint family'."

SHRI S. MAHANTY; Sir, I move:

27. "That at page 7, after line 32, the following proviso be added, namely: —

'Provided that a marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jain religion to a person professing identical religion shall not be deemed to effect the severance from such family.'"

SHRI B. M. GUPTE (Bombay): Sir, I move:

83. "That at page 7, after line 32, the following proviso be added, namely: —

'Provided that this shall not apply if the other party to the marriage also professes the Hindu, Buddhist, Sikh or Jain religion.'"

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

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, the amendment I have given notice of is very clear. I feel that the word "severance" occurring in clause 19, should have been put under the clause for "interpretation" or "definition" namely under clause 2; because, the word "severance" has been subjected to many a judicial interpretation and has been interpreted differently. It has been taken in some cases to mean that under the amended Act of 1923 the person marrying under this Act has no claim even to the share in the property. On the other hand, it means that the person who is severing from an undivided family is entitled to a share in the family property, but *afterwards,* he is not entitled to live in the same house, he is not to claim a-share in the continuous income from the joint family property. I should like to refer, at this stage, to the interpretation given to the word by the hon. the Law Minister when he opened the subject. He said that this word "severance" does not mean severance for

worship of a common deity, or enjoy ing other benefits like a common kit chen etc. It is not understood what could have been the meaning of "severance" if you could not be severed for worship and cooking, etc, as this clause which had to be put, according to the note submitted then by Shri Tej Bahadur Sapru and Sir Hari Singh Gour, would show. *In* fact severance for this pur pose was desired. This was to apply to people from different religions who marry. It can be easily understood in the case of a Hindu marrying a Christian who would not be tolerated by some extreme, orthodox people, and would not like the newcomer to use the common house, to worship in com mon the ancestral deity and so on. That is why I say that the word "sev erance" should be properly interpreted so as not to leave it as a question of doubt and provide a good field for lawyers to reap a harvest of litigation and also put the married couple in great difficulties. There are a lot of people who think today that they have pro gressed so much that there is not going to be any objection to people marrying in different castes and in different re ligions living in the same family. That is a matter of opinion. Still, Sir, the law is to provide even for a few cases where there are some orthodox mem bers of a family who do not like the idea that one of them should marry in **a** different religion and yet continue to be a member of the joint family and continue to live in the same house and continue to worship the family gcd. Such people should not have to put up with the consequences of his being in the family. What is envisaged in the amendment (No. 23*)* is that severance should not be made automatic and it should be left to the members to re unite at a future date. It is only from this point of view that I have given notice of this amendment. It says .....

MR. DEPUTY CHAIRMAN: It is clear, it is not necessary for you to read it again.

DR. SHRIMATI SEETA PARMA NAND: Some Members .....

MR. DEPUTY CHAIRMAN: They are all so interested, all **of them have read** it.

DR. SHRIMATI SEETA PARMANAND; Where the parties belong to the same religion, a Hindu marrying a Hindu, the severance would not be automatic. It would also be another aspect of the question: it is not common worship, common kitchen, but the question of succession where the parties belonging to the same religion come under ihe Special Marriage Act for the benefit of succession and monogamy. The Law Mi nister has stated that when the compre hensive Hindu Marriage and Divorce Bill is passed, this may not be neces- sary. So, as I have said ear- lier, this Bill puts the cart before the horse and complicates things. So long as the Bill is considered in its entirety, it is necessary that two people to be married should decide between themselves whether they would like to be governed by the Indian Succession Act or the other Hindu Succession Act. I shall explain the position.

MR. DEPUTY CHAIRMAN: That is what you have been doing all along; you have been explaining.

SHRI B. C. GHOSE: She is trying to convince the House over and ever again.

DR. SHRIMATI SEETA PARMANAND: Sir, the personal laws of inheritance take different lines. Under the Indian Succession Act, the benefits go mainly to the issue of the person and particularly to the wife. The wife, in some cases gets one-third share and the first five thousand, or an equal share, and so on. The fact is clear that under the Indian Succession Act. the woman and the direct issue of a person have the right to inherit property. So, the man should not be given the advantage of getting the entire benefit of the **Indian** Succession Act and claim also a right of automatic severance and claim a portion of the family property under the Special Marriage Act.

SHRIMATI PARVATHI KRISHNAN: Sir, I wish to move this amendment because I feel that this clause 19, as it stands, really goes against the very spirit of the Act, because, in this Act we seek to enunciate the principle lhat marriage by registration does not mean ostracism. We seek to give opportunities to as many people as wish *to* register themselves under this Special Marriage Act, and a clause like this takes away from the very spirit of the Act. It seeks to differentiate between the sacramental marriage and the marriage under this Act and by having a clause like this, we are ipso ■*facto,* saying "any one marrying under this Act, breaks away from the joint family or from his family'. By having such a clause, one creates a position where it seems a? though there is a port of stigma attached to the person who is marrying under this Act. Both the people, husband and wife, may belong to the same religion; and inside the family there may be no wish or desire for such separation and even if they did not belong to the same religion, the person who might be coming from a different community or belonging to a different religion may be a very welcome addition to the family. Therefore, I feel that this automatic severance that is provided for in clause 19 will create a situation where it makes it very difficult for such families to continue without having to break up. I feel that this clause which is almost like penalising the progressive nature of this Act should be amended 30 that it is left to the individuals concerned and an option is given to them to sever from the family if they wish to do so. If there are differences within the family, then, such an amendment as I am putting forward will provide for a severance, at the same time, where families wish •to remain united, where there are no

ements, it is our duty to see that s'ich a thing is not denied to them. It Is for this reason that the amendment is brought forward. As it is. the clause takes away from the spirit and progressive nature of the Bill.

SHRI KISHEN CHAND. Sir, in the notes of dissent appended to the Select Committee's report, several Members have pointed out that the insertion of such a clause will come as a handicap and act as a great deterrent for marriage under this clause. I think my wording is a little more clear. The original clause remains as it is. The amendment (No. 140) says:

> "unless the man by a specific declaration before the Marriage Officer desires to retain membership of the joint family".

I thought it was a better way of putting it; it is not in any way different from the amendment moved by Shrimati Parvathi Krishnan. The woiding of my amendment, I think, is bettec

SHRI S. MAHANTY; My amendment No. 27 is not the same. What I intend to say is that I have tried to evolve a sort of synthesis between clause 19 as it stands and the various points of view which have been expressed thereon. As it has been stated again and again, this Bill is not intended for the large majority of people who would always prefer to marry under their own personal law. This law is being provided for abnormal case's. This has been admitted and I need not go into that. Now the question is: What is a family? A family is a primary unit of society which represents a certain set of traditions or conventions. Now if a particular member of that family elects to break away from that set of conventions, well, he loses all his moral right to continue as a member of that family. In such a case severance from joint family is only fit and proper. But if two members professing the same faith marry under this Act, there is no reoson why severance should be clamped down upon them. That is my point, Sir.

MR. DEPUTY CHAIRMAN: Is your amendment the same, Mr. Gupte?

SHRI B. M. GUPTE: No. There is a difference between his amendment and mine. If a Hindu marries a Sikh, his amendment will not apply

but mine will, as both are governed by the Hindu Law. I would like to explain, Sir, why this amendment will be necessary. Many a time it has been shown that there is no necessity for this clause at all because under the Hindu Law any coparcener has the right to ask for severance of the joini status without assigning any reasons. The mere expression on his part is enough. Therefore there was no necessity for this clause. But a reply was given by the Law Minister and the Joint Select Committee that parties can re-unite. The reply would have been correct if the joint status and the re-union status were the same. But it is not so. One is the creation of law and the other of the act of parties. If there is a minor coparcener, there cannot be any re-union even though all the adult parties may be willing to have it. This clause is not necessary even for those coparceners ■who are violently opposed to a marriage under this Act, because such people will not wait even for solemnization of the marriage. As soon as a notice is given, they will express their right to sever, and severance will be there. So this clause is not in any way helpful to those who oppose, but at the same time it imposes hardships on those who do not oppose, because they will not be in a position to re-unite even though they may wish to do so 1 therefore submit that if we are not ready to go the whole hog, at least my amendment which concerns all those who are governed by the Hindu Law, should be accepted.

SHRI H. C. DASAPPA: The hon. Members who have moved their amendments, I am afraid, have not applied their mind to clause 21 regarding the basis of succession among those who marry under this Act. Now either we must decide that the Succession Act applies to the couples who marry under this Act or we must come to an understanding that they will be guided by their personal law, the personal law of the male members. But if clause 21 has to come into effect and if We are all agreed that we must take the benefit of the Indian Succession Act, then, I think clause 19, as it stands, has a place. Otherwise I am unable to follow all this. Can we think of a couple who is married under this Act remaining coparceners in an undivided family and later when the joint family property has been developed walking away with all the properties when it cTBes not suit them to remain in the family? Should they not, right from the beginning, make it absolutely clear as to under what law they wish to be governed so far as succession and inheritance are concerned? Therefore, Sir, if clause 21 remains as it is, clause 19 must have a place.

SHRI B. K. MUKERJEE (Uttar Pradesh): If we cannot accept the amendment for the deletion of this clause, I am going to support the amendment standing in the names of Shrimati Parvathi Krishnan and Shri Bhupesh Gupta—amendment No. 26. To my mind, apart from raising the question of property, this has got a psychological effect also, if a law is enacted to compel separation of the parties taking advantage of this Act. Marriages between persons professing different religious faiths are supposed to be encouraged under this law. But whatever we give with the right hand to those persons who prefer to solemnize their marriages under this law we are taking away that concession with the left hand. The psychological effect will not be so much in respect of the property question as it will be in respect of the penalty question. It will act as a penal clause if we say, "If a Hindu boy marries a Muslim girl, he will be separated from the family; he will be separated from the society itself." That operates as a penalty against his marriage. Therefore, if the whole clause cannot be deleted, the next best thing will be to leave it to the parties concerned to decide whether they want to go out of the family or they want to remain in the family. We cannot give this power to other members of that family. The parties should not be forced out of the family. Therefore I support this amendment. It is better than the amendments standing in the name of either Mr. Kishen Chand or Mr. Gupte. I feel

[Shri B. K. Mukerjee.] that we must leave it to the discretion oi the parti^ concerned to declare whether they want to remain in the family or they want a severance.

SHRI H. N. KUNZRU: Mr. Deputy Chairman, the Select Committee gave a great deal of attention to this particular clause, and I think that after considering all aspects of the question it decided to retain the provision contained in clause 19. I think that On the whole it arrived at a wise decision. How are we, Sir, to decide whether the view taken by the Select Committee was sound or not? Are we to be guided solely by sentiment and call it—as one hon. Member did the other day—the most vicious clause in the Bill or should we consider the effect of the omission of the clause on the rights of the wife and the daughters? The report of the Select Committee makes it clear that, if no severance from the joir.t family takes place, the daughters will not inherit any portion of the joint family property. There are cases and there may be cases where a man who marries under the civil marriage law may not be earning anything but may be dependent on the interest of the money invested by him along with his brothers. What is to happen in such cases? Neither the wife nor the daughters can have any share in the property of this man, because, as the right to property depends on survivorship, no person can be supposed to have any definite rights at any time, but if clause 19 is retained, *i.e.,* severance from the joint family is agreed to, then under the Indian Succession Act the wife will have a share, since there will be a national division of the property amongst the brothers, although they may continue to live in the same house and manage their property jointly. It is not necessary even after the severance from the joint family takes place, that the brothers or the members of the joint family should go to a court of law in order to have their shares determined. They can live together as they were doing before the marriage under the civil marriage law, but legally the property of the person who marries under the civil marriage law will be separate from that of his brothers. Consequently in that case, when he dies, his wife and his daughters will have a share in his property, but if he remains a member of the joint family and no severance from the joint family takes place, neither the wife nor the daughters will inherit any portion of his property.

SHRI RAJAGOPAL NAIDU: Then the Indian Succession Act will apply.

SHRI V. K. DHAGE (Hyderabad): That is with regard to separate property.

SHRI RAJAGOPAL NAIDU: Undivided property.

SHRI H. N. KUNZRU: My hon. friend, Mr. Rajagopal Naidu, says that the Indian Succession Act will apply to the property of the person who, after marrying under the civil marriage law, dies. I am afraid that his ideas on the subject are not! quite clear. The Indian Succession Act can apply only when the share of the person who dies, after marrying under the civil law, is determined. How is that to be determined since no severance from the joint family takes place? If there is any other way of doing it, you can omit these words, but I think the retention of these words is necessary in the interests of the wife and the daughters. If any other form of words can be devised to effect the same purpose, I do not mind. The point that we should have to consider is whether we want the wife and the daughters of a person marrying under the civil marriage law to have any rights in his property or not. It is all very good talking about the duty of a joint family and so on, but we must decide really whether we want wife and daughters of the person to have a share in his property or not.

SHRI V. K. DHAGE: A share in the joint property also.

SHRI H. N. KUNZRU: There is one more point to be considered. It is quite possible that a man who marries in an unorthodox way may be earning

something, may have some property-earned by him. In that case, of course, the Indian Succession Act will apply to his property, and his wife and daughters will have share in it, but is there any reason why they should be deprived of a share in the joint family property? After all, the person who marries under this civil marriage law has certain rights in the joint family property. Are his wife and daughters supposed to havemormally no interest in it? I think that can hardly be contended by us in view of the opinions that many of us have expressed on this question in connection with the discussion of the Hindu Code in the Provisional Parliament. It may be that my hon. friend, the Law Minister, has already drafted a law in regard to the share of the wife and daughter of a Hindu in his property, but the law is not yet before us. We do not even know whether even the draft of the law is ready. When it will be ready and when it will be passed by Parliament, we do not know. It is therefore necessary that we should, in considering clause 19, pay due regard to the rights of the wife and the daughters of a man before agreeing to delete it. Its deletion will be a retrograde move. Apart from this, is it a fact that the Hindu joint family is such a vital institution? Or is it slowly disintegrating? It is a matter of common knowledge that the Hindu joint family has been disintegrating for a long time. If a man dies leaving three or four sons, in the vast majority of cases, they will not continue to live together, and even if they continue to live in the same house, they will take care to divide the property amongst themselves so that the share of each person may be definitely known to him. What advantage shall we confer on anybody by omitting clause 19? We cannot save the joint Hindu family which is already dying from destruction in a few years. We cannot change the effect of the social and economic laws that are in operation now.

SHRI RAJAGOPAL NAIDU: The joint family system will never die unless the law makes it die.

MR. DEITJTY CHAIRMAN: We need not go into that larger issue now.

SHRI H. N. KUNZRU: Has he the courage to fly in the face of facts and say that the joint Hindu family is not dying and will continue to live unless its death is decreed by a law? The facts of present day life are known to everyone. We can say from our experience whether the joint Hindu family is an exception rather than the rule at the present time.

SHRI GOVINDA REDDY: It has been dying for half a century.

SHRI H. N. KUNZRU: I agree with my hon. friend Mr. Reddy who says that it has been dying slowly and surely for about 50 years. Then why should we retain that institution and be unjust to the wife and daughters of a man? I think, considering all the circumstances, it is not merely desirable but necessary that clause 19 should be retained. Every notion of fairness requires that the House should agree to it.

SHRI K. S. HEGDE: This is a very-important clause. Some of the special laws are going to be affected.

MR. DEPUTY CHAIRMAN: AIL points have been urged.

SHRI K. S. HEGDE: I am going to show the effects.

MR. DEPUTY CHAIRMAN: Then we will have to sit in the afternoon.

SHRI K. S. HEGDE: That is another aspect. This clause is likely to have very mischievous consequences about it. I shall presently present before you certain problems and I would retjuest the House to see how we can. solve them. You have provided for registration of the marriage under clause 115 which has been passed by the House. Supposing a man has married under the Hindu Law and he registers his marriage and he has got some children; now what happens to

;Shri K. S. Hegde.] that marriage? Does he become separated from his children or not immediately after the marriage is registered? A man with children registers the marriage and the wording used is "The marriage is solemnized under this Act". The moment Re registers a marriage, at that very point of time, he gets himself divided and the children separate from the father from that moment and they take their share from the -moment onwards and a separation takes place. Suppose after the registration you have some more children and along with these children the separated children also will get the property on his death. The children bom after registration will not get the full shares. That is one consequence.

SHRI C. C. BISWAS: I did not understand the point.

SHRI K. S. HEGDE: I shall again ■analyse it. 'A' with 3 sons gets his marriage registered. Immediately they are divided in status.

MR. DEPUTY CHAIRMAN: Under the Hindu Law children take only through the f athei.

SHRI K. S. HEGDE: But they have a right of separation. Immediately they are divided in status.

MR. DEPUTY CHAIRMAN: The father's property is to be determined
first

SHRI K. S. HEGDE: It is a right by birth.

MR. DEPUTY CHAIRMAN: On the death of the father they .....

SHRI K. S. HEGDE: Even before the death of the father they have a right to claim their share. On registration of the marriage, each one of the child gets his share because they are in the eyes of law divided in status. The father gets only one-fourth of the property. Now the father gets three more children after the marriage. On his death the property goes under the Indian Succession Act i.e., all the six boys and along with other daughters share the one-fourth property whereas the first three boys who are born under the ordinary Hindu Law will get their share under the Hindu Law and in addition they get their share of the father's one-fourth share under the Indian Succession Act. That is, the one-fourth share of the property will be divided by 6 or 7 or 8 depending on the number of children.

AN HON. MEMBER: That is inevitable as they are of two different types.

SHRI K. S. HEGDE: As between the two sets of children, one set will get one-third of the property and the other set will get l/24th share. That is one aspect. Take another aspect. Under certain systems of law like Marumakkattayam and Aliyasantha-nam they are entitled to claim property rights as a group. They are not getting anything individually till a certain event takes place. That is a valid law. Take for instance that, I get the right as a Kavaru. But meanwhile I am divided in status by my marrying and registering the marriage and I am no more a member of the family. I would not share in the property. What happens to me? These aspects have not been borne in mind. Both under the Marumakkattayam and Aliyasanthanam laws we have no right of claiming an individual share so long as the common ancestor is there, so far as the property is concerned. It can be a physical jointness and nothing else. Legally we are severed from the joint family. What property do I get? These are the aspects, practical aspects apart from the general principles, that you have to take into consideration. You must realize that you are providing a special law taking into account a number of existing customary laws. You are not affecting them. So long as those customary laws exist, they will have their own peculiarities. You ignore them. Obviously those who were in charge of this Bill were not aware of a number of customary laws like Marumakkattayam law or Aliyasanthanam law. They have not taken note of them.

Take the Aliyasanthanam law. Under section 35 of that Act any Kavaru represented by the majority can alone claim the right to the property. Under sub-section (4) no individual member can claim the right to property, so long as the common ancestor lives. What is going to happen in contingencies of this type? The basic idea behind it is to exclude as many people as possible from the operation of this law. So while on the one hand you give the right, on the other hand you take the right away. It is a reactionary mind that has been working behind the curtain.

SHRI H. N. KUNZRU: It is a liberalising mind.

SHRI K. S. HEGDE: It is not. Dr. Kunzru said that the joint Hindu family is dying out. Why don't you bury it? You are keeping the ghost, you want it for the purpose of worship. I am one with you in demolishing the joint family but don't pretend to demolish it by this clause.

By this clause you are trying to prevent the right to property of the man who is trying to take advantage of the liberalising provisions of this Act and the existence of a provision like this is a definite bar against the proper implementation of this Act. What will be the result? After all men love their property as much as their wives. Temporarily they may love their wives more than their property but in the ultimate analysis property is a big consideration. But so lpng as you put this clause in this way. certainly that will serve as a big deterrent of taking advantage of this Act. As such I request the House to delete the clause No. 19 which is a very mischievous one in its implications.

SHRI GOVINDA REDDY: I consider this clause as quite unnecessary. Unnecessary for this reason that if we should argue that any member of the joint family, any co-parcenary could object to the marriage, as the Law Minister has admitted and as It is clear, it is open to any member to seek partition. There will be no obstacle in the way of partition.

PANDIT S. S. N. TANKHA: He will have to go to a court of law.

SHRI GOVINDA REDDY: He need not. All partitions don't go to court. By consent of the parties they may partition.

PANDIT S. S. N. TANKHA: If there is no such consent, then they will have to go to the court.

SHRI GOVINDA REDDY: Even without any marriage taking place, if any co-parcener objects, then they are free to go to a court of law.

PANDIT S. S. N. TANKHA: But why put such a member of the family In the position of a plaintiff.

SHRI GOVINDA REDDY; That aspect is always there. It is not a new thing which comes in because of the deletion of this clause. The other argument was that because we have defined the succession of that person who marries under this Bill and because his share in the joint family is not determined, therefore this cannot have any force. Therefore there must be severance from the family so that his share may be determined and the wife and daughter may inherit. The joint family is not only a union for property, there are other things, sacred things, attached to it *viz.,* food, worship and other things. Then have we ■ to say that because we have definite or separate property law, the law of succession, the whole family should be separated? It is our intention in providing in this clause to see that those who marry under this Act should not, even in the matter of worship, be united? That is something which is qiute unnecessary. And apart from other reasons, it is quite unnecessary for the purposes of this Act. Suppose we do not have this clause, clause 19 in this Bill, what is the harm? The only thing that could be said is that the share of the man is not determined and therefore, there will be trouble in the matter of succession. But even

[Shri Govinda Reddy.] now such problems are there and they are being solved. Suppose a man lends money to a coparcener and the latter does not pay back the debt. Then he sues the party in a court of law. The same sort of question is here. The creditor proceeds against the undetermined share of the debtor.

AN HON. MEMBER: Proceeds against what?

SHRI GOVINDA REDDY: Against the undetermined share he will proceed and the court shall decide what his share of the property will be and after the decree it will be set off against the debt. So I say it is not any new problem that has come up now. The same thing has been there . all along. He will remain a member of the joint family. Now there is a separate law when it comes to a matter of the wife succeeding the husband or the daughter succeeding the father and certainly the share of the successor will be determined.

SHRI V. K. DHAGE: But how wiH the share be determined when the property is a joint one?

SHRI GOVINDA REDDY: The share of the coparcener is there. Suppose there are three brothers and.....

AN HON. MEMBER: What does the daughter get?

SHRI GOVINDA REDDY: No, the daughters do not get any share in the joint family property. The daughter gets her share when the father gets his. Suppose there are three brothers and they are in a joint family and the share of each in this property can be determined. The proportionate share of each is known.

SHRI V. K. DHAGE: If he dies joint? What will happen?

SHRI GOVINDA REDDY: If he dies . joint, the matter has to be determined by the court. There is the law for it. It will be determined according to the Succession Act. The father's share will be given to the daughter or the wife will succeed to that share.

SHRI V. K. DHAGE: No, no. How can that be?

MR. DEPUTY CHAIRMAN: Order, order.

PANDIT S. S. N. TANKHA: Sir, my hon. friend is entirely wrong in his exposition of the Hindu Law.

MR. DEPUTY CHAIRMAN; Let him go on in his own way.

SHRI GOVINDA REDDY: A credi tor lends money to a coparcener and the coparcener dies. What is the re medy for the creditor? In that case he will proceed against the joint fami ly. The creditor will be given remedy against the share of the.....

SHRI V. K. DHAGE: Against the entire joint family property?

SHRI GOVINDA REDDY: Yes, if the other members are also involved. If you make out.....

MR. DEPUTY CHAIRMAN: Please address the Chair,

SHRI GOVINDA REDDY: Yes, Sir. If it is made out that the whole debt was for a family necessity, then of course, he will have a remedy against the property of the joint family, otherwise not.

Therefore, I do not see that because of these reasons, this clause should remain here. Even if there is a real difficulty, that difficulty will be solved out in the working of the Act. Unless this clause is found to be absolutely necessary, why should it be included in this Bill? I feel that it is absolutely unnecessary.

SHRI TAJAMUL HUSAIN: Sir, just one minute.

SHRI GOVINDA REDDY: Sir, I have not finished, just one point more, I have to deal with. Various authorities that are now dispensing justice in **the**

country, all the district and sessions judges, some of the judges of the High Court, bar associations, bodies •well-versed in the law, they have all thought this provision unnecessary. When they have all said that this clause is unnecessary, why should we introduce it in the Bill at all?

MR. DEPUTY CHAIRMAN: Do you mean to say that the Joint Select Committee did not consider all that?

SHRI GOVINDA REDDY: No, I do not say that the Joint Select Committee have not considered this point. But my argument is that the Law Minister should tell us why this clause should remain when the preponderance of legal opinion is that this clause is unnecessary.

SHRI TAJAMUL HUSAIN: Sir .....

MR. DEPUTY CHAIRMAN: You have just one minute.

SHRI TAJAMUL HUSAIN: Sir, you gave two minutes to my hon. friend » here and he took ten minutes. But I say I will take one minute, and it will he only one minute, provided, of course, that nobody interrupts.

Mr. Deputy Chairman, I appreciate •every word that has fallen from the lips of my hon. and revered friend Pandit Kunzru; but I find that this clause 19. if it is not deleted, will cause some hardship somewhere. I will give you, Sir, one concrete example. Now, if a Hindu marries a non-Hindu, say an Anglo-Indian, he is at once sepa rated from his joint family. And say, after a few months, the man dies, leav ing the Anglo-Indian girl as his widow. She inherits under the Indian Succession Act, all his property which was separated from his brothers. *Now*.....

AN HON. MEMBER: Where is the iiarm?

SHRI TAJAMUL HUSAIN: There is harm. Sir, let me finish. Part of my one minute is already gone.

MR. DEPUTY CHAIRMAN: You can have a few extra seconds.

SHRI TAJAMUL HUSAIN: She marries again, say an Englishman—she can do it—and the property will be there in her name and she can sell it and both of them can go out of this country. Do you think that is reasonable? Is there no hardship in that? Is there no hardship caused by that to those brothers? Therefore, I submit that many Hindus, many members of joint Hindu families who come under the Mitakshara law, who would like to marry under this Act, would be frightened to marry under this Act.

AN HON. MEMBER: Ask for severance as soon as the marriage is fixed.

SHRI TAJAMUL HUSAIN: If he does not want severance, but wants to marry under this Act, what hap pens? Now, Sir, under the Consti tution, a man has the right to do any thing he likes in the world, provided he does not interfere with the rights of others, provided he does not injure others. Now, if a Hindu marries un der this Act, he is severed from the joint family. Therefore, does he **not** affect the rights of his brothers and the rights of all those who are copar ceners? These are serious difficulties, Sir, and .....

MR. DEPUTY CHAIRMAN: And so 1 you oppose it?

SHRI TAJAMUL HUSAIN: Sir, that was my amendment, but you ordered that amendment meant for deletion should not be moved. Of course, this provision does not affect me at all. I am not governed by the Mitakshara law; but I feel that there is something wrong somewhere. It is for those who are affected by this clause to accept it or not. I have nothing to say.

SHRI M. VALIULLA: Sir, what is the whole purpose of this law? **For** what purpose is this measure being enacted? Its purpose is to see that a man should not have more than **one**

[Shri M. Valiulla.] wife and that the woman should have the same rights as the man. But all these ideas and conditions will be fulfilled when the Hindu Marriage Bill is passed into law within the next few months. In that Bill there will be provisions to say that a man should have only one wife and the other provisions also will be there and that measure will be before us in another two months. Why not wait for a few more months? Two months is not a long period. Why have all these clauses in this present Special Marriage Bill?

Secondly, Sir, there will be some sort of a narrowness in the working of this measure. There is to be the joint family only if the woman marries a Sikh or only if she marries a vegetarian and so on. You restrict it to particular communities; why should it not include Jews, Christians, Muslims and so forth? The amendment here is that if they marry within particular groups, they do not lose the right of membership of the joint family. A Brahmin can marry a scheduled caste member and be in the joint family. Why should not this apply in the case of Jews, Christians and so forth? The point is that they do not want to give the same status. For such purpose, there is the Hindu Marriage Bill. Mr. Govinda Reddy has more or less forgotten Hindu Law. When a man becomes a member of the joint family, he is governed by the Hindu Law and when a gentleman dies, his wife and daughters do not get any shares. Women are now fighting for their rights but they should realise that under the joint family system—if this amendment is retained—they do not get the rights and if they do not want to get rights, let them go to the Hindu Marriage Bill. Now, Sir, if the Hindus say that they want to be governed by the Hindu, the Mussalmans may say that they want to be governed by the Muslim Law, the Jews may say that they want to be governed by the Jewish Law and the Christians may say that thev want to be governed by their own laws, the Parsis may say that they want to be governed by their own law and, therefore, what is the need for one common code? Under the circumstances, I oppose the amendment, Sir.

SHRI GULSHER AHMED (Vindhya Pradesh): I will just give one instance, Sir, I will say that the deletion of this clause will work hardship. Supposing, there are two brothers. One is married under the Special Marriage Bill; the other is married. This man had married according to the Hindu Law and, later on, gets himsedf registered under the Special Marriage Act. From that moment, his law of succession becomes the Indian Law of Succession. Sir, if the other brother dies leaving a wife and a daughter, what will happen? The man who has registered under this Act can claim the property as being a member of the joint family,. as a coparcener and the wife will get the right of the deceased only and the daughter, if she is unmarried, the right of getting some money for marriage. After the death of the widow, this second brother who has taken advantage of the Special Marriage Act will be left as coparcener ^ of the property of his brother. If this man dies—who has registered under the Special Marriage Act—leaving a widow and a daughter, the whole property will go to the widow or the daughter but that the other brother will not be entitled to get any share from the property of this brother. If this clause is deleted it will work great hardship and my suggestion is that it should be retained.

SHRI P. SUNDARAYYA: Sir, under the Hindu Law if there are some difficulties, they could be overcome, if the whole intention of this clause is only to assure a right to the widows and daughters in the property of the joint family. Therefore, it is in the interests of women but our objection is from this angle that by making a distinction between Hindu Marriage and Special Marriage you are giving a sort of penalising idea. Towards avoiding that, we have directed alii our efforts.

MR. DEPUTY CHAIRMAN: Declaration?

SHRI P. SUNDARAYYA: Our amendment No. 26 presumes that no severance takes place in the joint family unless he or. -'she declares. Shri Kishsn ('hand's amendments say thai severance be taken for granted unless at the time of marriage he declares before the Marriage Officer that he wants to continue to be a member of the joint family.

MR. DEPUTY CHAIRMAN: The other members of the family must also agree. It does not depend mainly on the persons who marry but depends upon the other members.

SHUT P. SUNDARAYYA: If the othei members do not want to continue, they can take suitable measures.

MR. DEPUTY CHAIRMAN: You want them to go to court?

SHRI P. SUNDARAYYA: They need not go to court; they can demand on their own right to divide. They need not go to the court. Here we are object, ng to the clause 'as it is giving an idea of penalisation to the people ■who want to marry under this Act.

MR. DEPUTY CHAIRMAN: What do you say to Dr. Kunzru's point?

SHRI P. SUNDARAYYA: In spite of that, if either our amendment or that of Shri Kishen Chand.is accepted, then the onus of losing {hat advantage, if there is really any advantage, would be on the man who is marrying and, as such, I would appeal to the House, especially to the Law Minister, to see that when following the ideas that are there, without depriving the wives and the daughters of their shares. let the onus be on the person who is going to solemnize his marriage under this Act, instead of taking that away, by law, which would give a feeling of being penalised or that something different is going to be given. One of these amendments would serve the purpose; we need not delete the whole clause. We pan keep the whole clause but let the onus be put on the man.

MR. DEPUTY CHAIRMAN: Mr. Naidu, have you got anything to add? Be brief, please. We have spent nearly *one* hour over this clause.

SHRI RAJAGOPAL NAIDU: I .will try to be brief.

There are two,things to be considered in this clause. Are we to consid in this Bill that the persons who come forward and marry under this Special Marriage Act should inherit according to the Indian Succession Act or whether we should provide a special type of marriage irrespective of how they are going to inherit. I find from the Statement of Objects and Reasons of this Bill that there are two objects; the first and the most important object is to provide a special form of marriage for Indian nationals abroad. That is the most important object of this Bill. The second object of this Bill is to permit persons who are already married under the other forms of marriage to register their marriages under this Act. So. Sir, these are the only two objectives we find given in the Statement of Objects and Reasons. Property question was not a matter of important consideration according to the Statement of ■ Objects and Reasons.

MR. DEPUTY CHAIRMAN: The Bill has to provide for all the consequences of marriage.

SHRI RAJAGOPAL NAIDU: If the Bill has to provide "for all the conse quences of marriage, then. Sir. it is safe for us to delete clause 21 but if We ought to provide that those who are married under this Act will have to inherit under the Indian Succession Act.....

MR. DEPUTY CHAIRMAN: You may oppose it when that clause is taken up.

SHRI RAJAGOPAL NAIDU: The question is that if. clause 19 we,re to remain .....

SHRI C. C. BISWAS: It is not a question of others inheriting their properties under the Succession Act.

SHRI RAJAGOPAL NAIDU: Therefore, my opinion would be that if clause 10 were to be retained, clause 21 has also to be retained but if clause 19 has to be deleted then clause 21 has to be suitably amended.

MR. DEPUTY CHAIRMAN: You can speak when clause 21 is taken up.

SHRI RAJAGOPAL NAIDU: But if this clause is to be retained as it stands, it would act as a deterrent to orthodox Hindus who would like to marry within their own spheres and if they want to take advantage of the Special Marriage Act. then of course, there will be two kinds of impediments in this case. The first impediment would be that a man will have to get out of the family.

SHRI H. N. KUNZRU: He need not leave the family at all.

SHRI RAJAGOPAL NADIU: Sir, I am really sorry for my learned friend, Dr. Kunzru. My friend thinks that if a man marries under this Act he does not leave the family but in law he leaves. There is a division in status.

MR. DEPUTY CHAIRMAN: It only determines his share at the time of his marriage and Dr. Kunzru's argument is that it is in favour of the wife and the children,

SHRI RAJAGOPAL NAIDU: Sir, we all know that after a division, if members of the family live together, they Jive not as members of the Hindu undivided family but they live as tenants in common. Sir, that makes all the difference in this particular case and I would say that if two individuals belonging to the same religion marry, this law should not be made applicable to them to make them automatically get themselves separated from the family.

Then, Sir, I would ask: After all what is the difference between this kind of marriage and the Vedic type of marriage? The difference lies only in the form of solemnization. Even under the Vedic type of marriage two persons of different communities can marry and there is the Caste Disabilities Removal Act, 1850 which removes every disability. In the Vedic type of marriage the solemnization takes place before a *Purohit* who chants *mantras* and under this Act the marriage is solemnized before a Marriage Registrar. If the Vedic type of marriage is registered under this Act why should the man be penalized by making him sever from the joint family which, in my opinion, if clone, will work hardship and no person will come forward to marry under this particular Special Marriage Act.

PANDIT S. S. N. TANKHA: So many persons have already been married under the 1872 Act. People have been married under that Act; how do you say nobody will come forward to marry?

SHRI RAJAGOPAL NAIDU: With great respect to Mr. Tankha, in the 1872 Act this provision was not there. This provision came into being in the year 1923. The object of the original Bill was not this. The object of the original Bill was to provide for certain persons who did not believe in idol worship, for example, Brahmo Samajists, Arya Samajists, etc. That was the original idea. Then the thing came by way of an amendment in the year 1923. Then, Sir, we find even the Judges of the Supreme Court have given opinion in favour of the clause being deleted. That is also there.

Then, my friend Mr. Hegde has already spoken about the Marumak-kattayam law on which I wanted to speak. I will give one illustration only about the difficulties in this Bill. Suppose one has some sons by a pre-deceased wife and having lost his first wife he comes forward and marries under this Special Marriage Act. Suppose that persqn who has married has got brothers and is a member of the joint family, I would like to know from the hon. Law Minister what is to hap-

pen to the children of the pre-deceused wips? Because they have a right, what is to happen to the children of the predeceased wife?

Sum C. C. BISWAS: The predeceased wile's children, when they were born, acquired an interest in the coparcenary and that interest will remain with them.

MR. DEPUTY CHAIRMAN: That is patent.

SHKI K. S. HEGDE: They will also have a right under the Indian Succes sion Act.

SHRI K. MADHAVA MENON: Clause 19 is a bad clause in this Bill, but if it is inevitable, then let us have it in such a way that it would be easy for the parties to take advantage of this Bill. Sir, we are all speaking like the proverbial blind man speaking about elephant by feeling one part of it. Each one of us has got his own particular difficulties in view and so some argue that this clause is in favour of easy access to the Act while others argue that it is a deterrent in having access to the Act. So the best course would be to accept the amendment of Mrs. Parvathi Krishnan and leave it to the person who marries to decide what is best for him.

SHRI H. N. KUNZRU: No, no.

SHRI K. MADHAVA MENON: I think it is better if you want him to take advantage of the Act.

There is one defect regarding the amendment of Mr. Kishen Chand. He puts it the other way about and he wants that it should be presumed that his marriage effects his severance from the family unless he makes a declaration before the Marriage Officer desiring to retain membership of the joint family. If he wants to re-unite the consent of the other members will be necessary. So the best course will be to accept the amendment of Mrs. Parvathi Krishnan whereby we let ihe party decide what is best for him.

11 A.M.

SHRI C. C. BISWAS: We have discussed this matter several times. Of course this question comes up now in connection with this particular clause and the whole field is again open. But, Sir, there are certain basic facts which ought not to be forgotten. Before I deal with them there is just one other factor which I shall remind the House of and it is this. They passed the Estate Duty Act the other day and the Estate Duty Act contemplates notional partition at the date of death of a coparcener. By that notional partition the interest of the deceased coparcener is ascertained and estate duty is levied on that. The family remains joint but there is a notional partition for the purposes of determining the value on which the estate duty will be imposed. That has been done under that Act. Here, Sir, when it is said that the marriage under this Act of a person professing the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family, nothing more is intended than this notional partition so to say.

SHRI K. S. HEGDE: Are they not divided in status?

SHRI C. C. BISWAS: I may not be interrupted, Sir. After I have finished, if there are any points on which hon. Members want clarification, they will kindly state them and I shall do my best to be as helpful as I can.

Now, Sir, a Hindu joint family, as I pointed out, is joint not merely in estate but also in food and worship. Now the material thing which requires consideration is as to what happens on severance so far as the interest of the member in the estate is concerned. There is nothing, if all the other members agree, to prevent a member who marries under this Act staying on in the same house and worshipping the same deities as before, subject, as I have said, to the agreement of the parties. If there is disagreement, marriage or no marriage under this law, any one can separate and nobody can stop it. The only point is whe-

[Shri C. C. Biswas.] ther the law here should be allowed to effect a severance if there ,1s a marriage according to this law. That .is the whole question. If you are.to leave it to their option, the option Is always there. The option . is there not only to separate but also to continue joint. Even if there Is a severance effected by statute it is always open to the parties, if they so intend, to remain united. I pointed that out yesterday and if my hon. friends require any authority in support of that proposition they will find it in any textbook.

SHRI K. S. HEGDE: That is joint living and not joint family. That is the distinction.

SHRI C. C. BISWAS: The question with which .we are mostly concerned is, how will the interest of this particular member in the joint estate be affected if he is severed as a result of this ro,arriage. That is the main question I am considering. In that connection I shall just read out one passage from a judgment of the Judicial Committee: "There is no presumption, when one coparcener separates from the others, that the latter remain united. An agreement amongst the remaining members of a joint family to remain united or to re-unite must be provided like any other fact. It is open to the non-separating members to remain joint and to enjoy, as members of a joint family, what remained of the joint family property alter such a partition. No express agreement is necessary for this purpose" and so on.

And it is further stated in-the book from which I am reading: "When there has been a separation between the members of a joint family, there is no presumption that there was a separation between one ol the members and his descendants. If two brothers A and B separate, there is no presumption that there was a separation between A and his sons or a separation between B and his sons."

So, Sir, this is a statement of the law and it ought to remove any mis conceptions which might exist in the minds of the hon. Members as to the effect of severance. It is not going to do something very very revolutionary or .something which is shocking. Sir, let us see ..... *(Interruptions.)*

MR. DEPUTY CHAIRMAN: Let there be no interruption.

SHRI C. C. BISWAS: Let us see, Sir, what are the benefits which follow from a statutory severance. As I said yesterday it simplifies the law of succession. A member who marries and who is severed from the joint family, may have separate property of his own. That will pass by succession, under clause 21. Suppose he is allowed to remain joint and there is no severance, his interest in the coparcenary will be regulated according to the Hindu Law of joint property. He will have acquired that interest by birth, and it will be an undetermined interest and continues as such. If there are subsequent births, the interest may diminish in quantum as a result of that; if, on the other hand, there are subsequent deaths, it may become larger. So if he remains a member of the coparcenary his interest will be fluctuating. It may increase or it may decrease by the time a partition takes p I ace. Till then that uncertainty will remain. We are all assuming in our discussions that if he is allowed to remain joint, his interest is bound to increase. Nothing of the kind. It may diminish. On the other hand if he is severed from the joint family on the date of the marriage, it may give him something more than he would be otherwise entitled to on a subsequent partition long after the date of the marriage. That will of course depend upon how many new members are added to the family by births. As soon as a new member is added to the family, that affects the quantum of the interest which the other coparceners will be entitled to

on partition. That is the position in | a Mitakshara coparcenary. Therefore it is not always that the member will stand to gain by continuing to J remain in the joint family. He may stand to lose if he .does so./ So that fact cannot be forgotten.

Now, suppose while remaining joint he dies. What happens. Nothing passes by succession. His interest really lapses so to say, and it goes to augment the interest of the surviving coparceners. His interest passes to the surviving coparceners. What about the widow? What about the daughters?

MR. DEPUTY CHAIRMAN: She may claim only a maintenance.

SHRI C. C. BISWAS: No doubt a widow even in Mitakshara family is • now entitled to inherit under the Deshmukh Act. Quite true, but what is the interest she gets? She gets a widow's interest—not the status of a full owner, with rights of disposal, whereas if the Indian Succession Act applies, the widow will be entitled to a stated share, the inheritance along with the children, children including both sons and daughters. The children will all share equally under section 37 of the Indian Succession Act. I would therefore ask hon. Members to consider whether they do not regard this as a benefit which flows from severance as provided for in this clause 19. Sir, I submit that this is a very material and relevant consideration—the interest of the widow, the interest of the daughter. As a matter of fact, this point was stressed very strongly by members of the Joint Select Committee when they pressed for the retention of this clause and I do not at all understand how the existence of this clause will operate as a bar to marriages under this law, seeing that separation will not necessarily involve the separation of the children by the deceased wife. They become members of- the coparcenary as soon as they were born and therefore that right remains. That is not affected by the severance of the father who marries under this law.

Then, Sir, the only other alternative will be to giVe some power to the other remaining members of the family whose interests also require to be considered, as much as the interest of the person who marries. In all fairness they should be given the right to buy off the share of the person who marries under this law, and this right should be guaranteed to them by statute. I do not know whether that would be a more desirable alternative than to allow this clause to stand. Sir, this matter has been discussed so fully here. I read out the whole of the opinion which Sir Tej Bahadur Sapru gave in support of retaining a clause like this and I do not think I should take up any more time of this House.

SHRI TAJAMUL HUSAIN: May I know what was the opinion of the Rau Committee and what was the public opinion?

SHRI C. C. BISWAS: The Rau Committee was not called upon to consider this question. They were not preparing a draft of the Special Marriage Bill. Sir, I oppose all the amendments.

DR. SHRIMATI SEETA PARMANAND: Sir, if clause 21 is taken up along with this, hon. Members will be better able to make up their minds.

SHRI K. S. HEGDE: Sir, I would like to have some clarification on three points. It is a question of law and the clarification may influence the decision of the House. One point is this. The hon. Minister read out from the Privy Council decision and enunciated a principle that when one man claims a share, others are not deemed to be joint. I want to know whether it is the correct position. I am only asking for clarification. To i the extent I know the law, when a

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(Shri K. S. Hegde.] claim for separation is made, there is no general separation. There is only an individual separation.

The other thing that he said was that the claim for separation will be only by the person and the children are not separated: because this is separation enforced by law. you do not make everybody separated. I am not speaking about Mitakshara. Now, are not the sons getting separated from the father even under the very marriage which you are registering?

The third clarification that I want is this. He said that people could remain joint if they chose to. I am not speaking of physical jointness but what will be the legal consequences? That is what I want to know.

SHRI C. C. BISWAS: As I have already stated, as a matter of fact, when a member who marries is deemed to have been severed from the joint family, it does not affect his children by a predeceased wife and it does not affect the other members of the coparcenary. It does not involve the disruption of the entire family. It only severs him from the family. That is my opinion, Sir, and that is supported by what I have quoted from the Privy Council decision.

SHRI P. SUNDARAYYA: If our amendment is accepted.....

MR. DEPUTY CHAIRMAN: We will see about it.

SIIKT P. SUNDARAYYA: Is there any difficulty in clause 21 applying to marriages.....

MR. DEPUTY CHAIRMAN: We will see when we take that up.

SHRI P. SUNDARAYYA: But, Sir, **11 we .....**

Mi:. DEPUTY CHAIRMAN: **How**-can he express an opinion on a clause which is not before the House?

Sum P. SUNDARAYYA: If clause 19 is deleted, I would like to know whether clause 21 will automatically get debarred or whether it will stick on. At least that we must know before we can vote on this.

MR. DEPUTY CHAIRMAN: I think clause 21 will have to be amended.

SHRI P. SUNDARAYYA: That is exactly what we want to know.

MR. DEPUTY CHAIRMAN: We will see about the legal effect afterwards.

SHRI P. SUNDARAYYA: Before we vote on this, we must understand the effect of clause 21.

MR. DEPUTY CHAIRMAN: That fe a different matter, Mr. Sundarayya. This is about the succession to the property of a person who marries under the Special Marriage Act; that is about his position in the joint family.

I am putting the amendments to vote.

SHRI RAJAGOPAL NAIDU: On a point of order, Sir.

DEPUTY CHAIRMAN: What is the point of order at this stage? Order, order.

SHRI V. K. DHAGE: If an hon. Member wants to raise a point of order, should he not have the op portunity .....

MR. DEPUTY CHAIRMAN: Dr. Seeta Parmanand, are you pressing your amendment?

DR. SHRIMATI SEETA PARMANAND: Yes, Sir.

MR. DEPUTY CHAIRMAN: Mr. Bisht.

SHRI J. S. BISHT: I don't move it.

MR. DEPUTY CHAIRMAN: Mrs. Parvathi Krishnan, are you pressing your amendment?

SHRIMATI PARVATHI KRISHNAN: Yes, Sir.

MR. DEPUTY CHAIRMAN: Mr. Kishen Chand.

SHRI KISHEN CHAND: I am pressing my amendment.

MR. DEPUTY CHAIRMAN: Mr. Maharity.

SHRI S. MAHANTY: Sir. I withdraw my amendment No. 27.

* Amendment No. 27 was, by leave withdrawn.

MR. DEPUTY CHAIRMAN: What do you say Mr. Gupte?

SHRI B. M. GUPTE: I press my amendment, Sir.

MR. DEPUTY CHAIRMAN: The question is:

24. "That for the existing clause 19, the following be substituted, namely:—

'19. *Effect of marriage on member of* undivided *family.*—Any member of an undivided family which professes the Hindu, Buddhist, Sikh or Jain religion, marrying under this Act, shall not be deemed to sever from such undivided family if he does not elect to be governed by the Indian Succession Act, 1925 (XXXIX of 1925)'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

26. "That at page 7, at the end of line 32, the following be added, namely: —

*Foi text of amendment, *vide* col. 5446 *supra*

'if at the time of the marriage any such member makes a declaration for securing such severance'."

(After taking a count). Ayes—81, Noes—40.

The motion was negatived.

MR. DEPUTY CHAIRMAN: Th« question is:

140. "That at page 7, at the end of line 32, the following be added. namely: —

'unless the man by a specific declaration before the Marriage Officer desires to retain membership of the joint family'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Mr. Gupte, your amendment (No. 83) is barred when Dr. Seeta Parmanand's amendment is lost.

SHRI RAJAGOPAL NAIDU :Sir, clause 19 does not stand part of the Bill.

SHRI K. S. HEGDE: Mr. Gupte's amendment is not barred.

MR. DEPUTY CHAIRMAN: All right, I shall put it to the vote of the House. The question is:

83. "That at page 7. after line *?,'£,* the following proviso be added, namely: —

'Provided that this shall not apply if the other party to the marriage also professes the Hindu, Buddhist, Sikh or Jain religion'."

The motion was negatived

MR. DEPUTY CHAIRMAN: The question is:

"That clause 19 stand part of Bill."

motion was adopted-Clause. 19 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 20. There are two amendments, No. 84 and No. 141.

SHRI KISHEN CHAND: My amendment should really come as an amendment to clause 21 and not here. The amendment should read like this, Sir:

"That at page 7, at the end of line 46, etc."

MR. DEPUTY CHAIRMAN: I see; then, we shall take it up when we come to clause 21. The first one, namely, amendment No. 84 of Mr. Govinda Reddy, is barred. In effect, there is no amendment to clause 20. Then I shall put it to vote.

The question is:

"That clause 20 stand part of the Bill."

The motion was adopted

Clause 20 was added to the Bill.

MR. DEPUTY CHAIRMAN: There is a new clause, clause 20A. Mr. Naidu, are you moving your amendment No. 85?

SHRI RAJAGOPAL NAIDU: Yes, Sir; I beg to move:

35. "That at page 7, after clause 2U, the following new clause be added, namely: —

'20A. *Religion of children of* per.so/i.s *matryiifQ under this Act.*— (1) It shall be lawful for any two persons professing any two different religions who have their marriage solemnized under this Act to provide by a document in writing signed by both the parties and attested by at least two witnesses that any Child of such marriage shall, during his minority, be brought up in the religion of either of the parties to the marriage.

(2) Any document executed in pursuance of sub-section (1) shall not be valid, unless it is registered under the law for the time being in force for the registration of such documents.

» (3) In' the absence of any such document as is specified in subsection (1), any child of such marriage shall be deemed to be brought up in the religion of the father'."

MR. DEPUTY CHAIRMAN: The new clause, 20A, is open for discussion. Mr. Naidu.

SHRI RAJAGOPAL NAIDU: Sir, this House, by adopting this new clause—20A—will be making this legislation perfect. Otherwise, this piece of legislation will be most imperfect if we do not say to which religion the offspring belongs. This is a very serious lacuna in the Bill. The hon. the Law Minister when he moved the Bill has stated that this aspect would be considered, and I do not know how it has escaped the attention of himself and of the members of the Select Committee. Sir, what is to happen to the children born out. of such lawful wedlock? Suppose the husband beiongs to one religion and the wife belongs to another; and they come forward and marry under this Special Marriage Act. To what religion would the offspring belong? What is the harm, when these parties go before the Marriage Officer, in their giving a solemn undertaking "that the children born out of such solemn wedlock will belong to the religion of the father or mother".

* * * *

Suppose, Sir, no religion has been given to the child. What is to happen? We have to look forward to

*Expunged as ordered by the Chair.

■the various decisions of the High Courts. Who knows, there may be a day when the 'mother will come for-and say, "the child belongs to my religion". Another day, the lather will have to go to the court 10 decide the religion of the child.

In India the law courts have held generally that the child born under the ordinary circumstances must be presumed to belong to the religion of ' its father. The question arises when the father and the mother belong to different religions. A perusal of the decisions of the High Courts will go to show that the child belongs to the religion of the father. Supposing in this Bill, we leave it off completely Without assigning any religion "o the child. then according to the decisions *nt* the law courts it will be the religion of the father. Sir. I will just mention one authority, "14—Moore's Indian Appeals—page 309". There a similar case arose. The point was that the father and mother belonged to different religions and the question arose as to what religion would the offspring belong. Their lordships held that the child will belong to the religion of the father. So, I want in this piece of legislation to make it more precise. Let us see what a judge of the Supreme Court says about our Bill. After reading it, I need not dilate on it any further; it is very clear. It reads as follows: —

> "When persons of different religions marry, to what religion do the offspring belong? 'A child in India under ordinary circumstances must be presumed to have his father's religion and has corresponding civil and social status.' According to this rule if a Hindu marries a Muslim girl, the status of the child of such a marriage is that of a Hindu. Is he to be governed by the personal laws of the Hindus? This will raise difficulties of a serious character in the administration of law. Apart from that, the more serious consequence is that it is very probable that the child will be brought up neither in the Hindu nor Muslim religion nor in any religion. Such a prospect must be viewed with great concern by all persons who have the stability of the society at heart. History has shown that there have been persons who have been atheists or agnostics who have maintained a very high moral standard but such persons are an infinitesimal exception. It cannot be denied that to the vast majority of persons religion is the main factor which binds them to an honest and orderly life. It is no exaggeration to say that it is the unloosening of these bonds that have led to the growth of antisocial elements in the society and how to control such elements has been one of the major problems confronting the States at the present day. I should recommend no measure which will have the effect of weakening the religious sense and it is my view that the Bill as drafted will have that effect."

That is the opinion on this Bill of one of our present Supreme Court Judges.

MR. DEPUTY CHAIRMAN: Have you finished?

SHRI RAJAGOPAL NAIDU: Yes. SHRI KANHAIYALAL D. VAIDYA:

श्री कन्हैयालाल डी० वैद्य: उपसभापति महोदय, मैं श्री नायडू के इस अमेंडमेंट (amendment) का समर्थन करता हूं इसलिये कि यह एक आवश्यक सुधार है जो कि कानून के अन्दर होना चाहिये । इस कानून में पिछली दफाओं में जो व्याख्यायें की हैं या आगे की जिन दफाओं में की गई हैं उनमें कहीं पर भी इस बात की कोई व्यवस्था नहीं है कि ऐसे बच्चों का क्या होगा जिनकी

I Shri Kanhaiyalal D. Vaidya.'

चर्चा इस अमेंडमेंट में की गई है । इस देश में जो सामाजिक व्यवस्थायें चल रही हैं उनमें इस तरह के बच्चों को हिन्दू समाज में वर्णसंकर की व्यवस्था के अन्तर्गत लाया जाता है, और यदि उनकी इस नई विवाह संस्था के अन्तर्गत भी आप कोई निश्चित व्यवस्था नहीं करते, तो इन बच्चों का भविष्य बड़ा अन्धकारमय हो जायगा, उनको समाज के अन्दर स्थान नहीं मिलेगा । ऐसे बच्चों और लड़कों को इस स्थान नहीं मिला, उनको रक्षण नहीं दिया गया जायदाद के विषय में या धर्म के विषय में, और इस प्रकार का अगर कोई झगड़ा खड़ा हुआ तो वे बच्चे इधर उधर मारे मारे फिरेंगे जो कि समाज के लिए, देश के लिए, कोई अच्छे चीज नहीं होगी । जब हम एक स्वस्थ समाज का निर्माण करना चाहते हैं तब उसमें इस बात की आवश्यकता है कि इस मैरिज लॉ (marriage law) के अन्दर जो परिणाम पैदा हों, और विशेषतः विवाह की संस्था में जो परिणाम पैदा होते हैं जिनका असर ऐसे बच्चों के भविष्य पर पड़े, उनके विषय में आप बिल में ऐसी व्यवस्था करें कि उससे उनको धार्मिक दृष्टि से, सम्पत्ति की दृष्टि से, उनके लालन पालन की दृष्टि से समुचित न्याय प्राप्त हो । इस कानून के अन्दर आप शुरू से आखिर तक पढ़ जाइये, कहीं भी सक्सेशन (succession) के बारे में व्यवस्था नहीं है । पिछले धाराओं में जहां हमने वादविवाद किया है जायदाद के विषय में कि बच्चे पिता की सम्पत्ति के अधिकारी हों हैं वहां हमने इस बात का खुलासा नहीं किया है कि पिता के बच्चे के प्रति क्या कर्तव्य है, और बच्चे या लड़के का पिता के प्रति क्या कर्तव्य है । तो मैं समझता हूं कि इस स्टेज (stage) पर भी अगर आप मेरे इस संशोधन को स्वीकार कर लेते हैं तो बच्चों को कम से कम धार्मिक मामलों में रक्षण मिलेगा और उस रक्षण से समाज के अन्दर उनकी जो दुर्गति उस रक्षण के अभाव में होने वाली है, वह रुक सकेगी । इसलिए मैं इस अमेंडमेंट का समर्थन करता हूं ।

LFor English translation, see Appendix VII, Annexure No. 279.]

SHRI T. PANDE (Uttar Pradesh):

श्री टी० पांडे : इस विषय में मैं थोड़े से शब्द कहना चाहता हूं, मेरी श्री मन् से प्रार्थना है कि दो मिनट सुन लीजिये ।

श्री नायडू ने इस विधेयक में जो नई धारा जोड़ दी है मैं उसका हृदय से समर्थन करता हूं और मैं समझता हूं कि डा० सत्यपरमानन्द जी भी इस धारा का समर्थन करेंगे । किसी भी बालक और बालिका का बचपन में ही एक संस्कार होता है, धार्मिक उत्सव होते हैं । आखिर उनका किस प्रकार से लालन-पालन होगा, किस विधि से उनको शिक्षा दी जायगी और उनका क्या संस्कार होगा । यह सोचने की बात है । हर जाति में और हर धर्म में अलग-अलग विधान है । मैं समझता हूं कि नई धारा इतनी स्पष्ट है कि हमारे मंत्री महोदय को और सदन को उसको स्वीकार करने में किसी भी तरह का गुरेज नहीं होगा । इन शब्दों के साथ मैं इस नई धारा का समर्थन करता हूं ।

[For English translation, see Appendix VII, Annexure No. 280.]

SHRI J. S. BISHT: Mr. Deputy Chairman, I have got another amendment on clause 21 which is similar to aiis. That is No. 86.

MR. DEPUTY CHAIRMAN: We will consider it after the fate of this amendment is decided. If this amendment is accepted, yours will be barred.

SHRI J. S. BISHT: If it is defeated?

MR. DEPUTY CHAIRMAN: Then also it will be barred.

SHRI J. S. BISHT: Then, Sir, I would like to say something on this. I would request my friend, Mr. Rajagopal Naidu, to accept my suggestion. Now, Sir, what he says is: "It shall be lawful for any two persons professing any two different religions who have their marriage solemnized under this Act to provide by a document . in writing signed by both the parties and attested by at least two writes..... ". My point is. Sir, that they can do it even if he does not provide for it. If a Hindu marries a Muslim girl, both of them can alter their marriage go to the Marriage Officer and have their document ■istered. Nothing prevents them from doing that. What I submit is thai there should be some provision to the effect that either they agree before the Marriage Officer that the child will be brought up in Hindu faith, or in the absence of that the lather's faith would be followed. There have been such rulings among the Parsis. A Parsi boy married a non-Parsi girl, and it was decided that the child shall follow the religion of the father. That position is accepted everywhere. The child follows the religion of the father. Now there was a viewpoint expressed, I think. by a lady Member here that it should be provided that the child shall follow the religion of the mother. And I have put in in my amendment that if there is no agreement, it will be assumed that the wife or the would-be wile agrees to the child following the faith of the father. On the other hand, if there is an agreement .....

MR. DEPUTY CHAIRMAN: That is contained in sub-clause (3).

SHRI J. S. BISHT: Sir, we have no objection to their following any religion. Let them follow anything, but they must follow something. They should not be allowed to grow wild without any faith or religion.

PANDIT S. S. N. TANKHA: I support the suggestion that some provision should be made in the Bill in respect of the religion of children who are born of the marriages celebrated under this law. As I have submitted previously, Sir, it is very necessary that some provision should be made so that it may be clear as to which law would apply to these children in case they have a chance to get a succession from outside. It is possible that if they are governed by the Hindu law, they may be entitled to certain rights of succession from other sources besides those from their fathers. So some provision should be made here. You may say that unless there is any agreement to the contrary, it will be presumed that the children belong to the religion of the father. It should not be left for the children themselves, when they grow up to the age of 18 years, to decide which religion they would like to follow. There should be some definite provision made here regarding this matter. .

SHRI C. C. BISWAS: Sir, conventions were referred to by some hon Members. I do not know what conventions I should follow. This question was discussed in the Joint Select Committee. The Joint Select Committee decided not to make any provision. Therefore, wo do not have any provision in this Bill. What am I to do? Am I to accept this amendment, although the Joint Select Committee did not accept it? What is the convention that I should follow? If I express my views, which may be different from what is to be found in the Joint Select Committee's report, am I to accept the amendment which the Joint Select Committee refused to accept?

"Expunged as ordered by the Chair.

AN. HON. MEMBER: The House has a right to go against that decision.

SHRI C. C. BISWAS: Am I entitled to listen to the House?

PANDIT S. S. N. TANKHA: Leave it to the House.

MR. DEPUTY CHAIRMAN: The only course open to the hon. Minister, if he agrees with the Joint Select Committee is to oppose the amendment.

SHRI C. C. BISWAS: I must accept the decision of the Joint Select Committee and oppose the amendment. Although I had said I was willing to consider this, there is a diiTerent ruling approved by the House, and 1 must follow the lead of the Joint Select Committee and oppose this amendment, and I oppose it on these grounds that we do not require any express provision for this. The reasons I gave yesterday. What do you gain even when the parties belong to the same religion and the children have the religion of their parents? The difficulties are there and they cannot be avoided. My hon. friend gave a case—I do not know the case under reference—but there also the children had the religion of their parents and still there was some dispute between the father and the mother as to who shouid have the custody of the children and so on. So. these difficulties will be there. If the parents are willing to act in the best interests of their issue, then there should be no difficulty whatsoever. merely because it is not formally stated that they will follow the religion of the father or the religion of the mother.

SHRI B. B. SHARMA (Uttar Pra desh) : Are we free to vote on this amendment?

MR. DEPUTY CHAIRMAN: It is left to hon. Members. It is not for me to say.

SHRI B. C. GHOSE: Members are certainly free to vote as they like.

MR. DEPUTY i:CH AIRMAN: The question is:

35. "That at page 7, after clause 20, the following new clause be add<«(. i i a i m l y : —

"20A. *Religion of children of persons marrying under this Act.*— (1) It shall be lawful for any two persons professing any two different religions who have their marriage solemnized under this Act to provide by a document in w i i t i n g signed by both the parties and attested by at least two witnesses that any child of such marriage shall, during his minority, be brought up in the religion of either of the parties to the marriage.

(2) Any document executed in pursuance of sub-section (1) shall not be valid, unless it is registered under the law for the time being in force for the registration of documents.

(3) In the absence of anysuch document

(4) as is specified in

(5) subsection (1), any child of such

(6) marriage shall

(7) be deemed to be brought up in the religion of the lather'."

(After taking a count[1]). Ayes—13; Noes—17.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The motion is:

"That clause 21 stand part of the Bill."

There are five amendments

SHRI RAJAGOPAL NAIDU: I do not move my amendment No. 28.

MR. DEPUTY CHAIRMAN: Amendment Nos. 86 and 87 are barred. There are only Nos. 29 and 141.

DR. SHRIMATI SEETA PARMANAND: I move:

29. "That at page 7. at the end of line 46, the following be added, namely: —

'Provided that he or she elects to be governed by the Indian Succession Act, 1925 (XXXIX of 1925) at the time of the marriage as mentioned in the certificate of marriage'."

SHRI KISHEN CHAND: Sir. I *move*-

141. "That at page 7. at the end of line 46, the following be added, namely: —

'Notwithstanding anything contained in this section, a man, with the consent of his wife, may desire to be governed by the succession law applicable to his religious faith which he will have to declare before the Marriage Officer'."

MR. DEPUTY/ CHAIRMAN: The clause and amendments Nos. 29 and 141 are now open to discussion.

DR. SHRIMATI SEETA PARMANAND: In view of my amendment to clause 19 making it optional for people not to sever from the joint family if they do not elect to be governed by the Indian Succession Act, not having been accepted, some of the force of this amendment is lost, and the only useful purpose it can serve now would be that, if people ask for reunion with the joint Hindu family, then if they have opted not to be governed by the Indian Succession Act, it might be an argument in their favour for the other members of the joint family accepting them in their fold.

M;R. DEPUTY CHAIRMAN: How your amendment is relevant, I do not know. Clause 21 is imperative. It makes the Succession Act applicable to all parties. Where is the question of election here?

DR. SHRIMATI SEETA PARMANAND : I am adding a proviso.

MR. DEPUTY CHAIRMAN: I think it will be barred. If your intention is that they should be governed by the ordinary Hindu law, then you must have moved an amendment.

DR. SHRIMATI SEETA PARMANAND: That is why I said this has not got much force.

MR. DEPUTY CHAIRMAN: It is barred. I am sorry I did not notice it previously.

.SHRI KISHEN CHAND: Mr. Deputy Chairman, my amendment adds *a* proviso to the clause that "Notwithstanding anything contained in this section, a man. with the consent of his wife, may desire to be governed by the succession law applicable to his religious faith which he will have to declare before the Marriage Officer."

MR. DEPUTY CHAIRMAN: This , is also out of order.

SHRI KISHEN CHAND: The man has got to declare, not the children or anybody else.

MR. DEPUTY CHAIRMAN: " .....a man, with the consent of his wife, may desire to be governed by the suc cession law applicable to his religious faith....." This will be admissible.

DR. SHRIMATI SEETA PARMANAND: This is also barred.

MR. DEPUTY CHAIRMAN: This is an exception to the general rule. You may vote it down, that is another thing, but it can be discussed.

SHRI TAJAMUL HUSAIN: Why should it not be barred"

SHRI KISHEN CHAND: It cannot be barred.

MR. DEPUTY CHAIRMAN: If the House accepts clause 21, the general right will be under the Indian Succession Act to the issues of special marriage. His amendment is to provide for an exception.

SHRI TAJAMUL HUSAIN: When the. law says that (hey will be governed.....

MR. DEPUTY CHAIRMAN: If the House accepts, it will be open. Otherwise it will not be open.

DR. SHRIMATI SEETA PARMANAND: How is my amendment different?

MR. DEPUTY CHAIRMAN: Your amendment is barred.

SHRI RAJAGOPAL NAIDU: That is closed.

SHRI KISHEN CHAND: Sir. I beg to point out **that during the discussion** on the main Bill *on* the first reading he Bi'J. several Members pointed .out that in the fitness of things some >ns who are marrying under this law may find it more advantageous to themselves and to their wives and children to be governed by a law relating to their religion in preference to the law of succession. According to the succession law it is quite possible tha' the children may not get the same share as the parents want to tjive to their children. Therefore, we should give Hue consideration to the susceptibilities of certain persons especially the Muslims who expressed a fear that fhe person will be getting the inheritance according to the Mus im law but his children will be getting property according to the law of succession and it is possible that other members *it* the family may be deprived of their share; they insisted that at least for the Muslims they should give this option that they may be governed by their personal law. I think it is a permissive clause and i! is for the man with the consent of his wife to make a choice. In all such laws where a man is given the righl to choose between two or three different ways of dividing his property, he may select the one which he thinks to be the best. Therefore I submit that such a permissive law should be accepted by the House.

SHRI C. C. BISWAS: In substance the House has rejected Mr. Naidu's amendment and as such I don't think we should accept it.

MR. DEPUTY CHAIRMAN: It is practically the same amendment.

Sum C. C. BISWAS: Yes. As a matter of fact, if this idea is to be accepted, then Mr. Naidu's amendment was certainly more effective. When the House has rejected that amendment, this amendment should be rejected.

MR. DEPUTY CHAIRMAN: The question is:

141. "That at page 7, at the end of line 46, the following be added. namely:

'Notwithstanding anything contained in this section, a man, with the consent of his wife, may desire to be governed by the succession law applicable to his religious faith which he will have to declare lie-fore the Marriage Officer'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 22. Amendment No. 65 by Shri Tajamul Husain and Shri P. Sun-darayya is barred. There is no other amendment. The question is:

"That clause 22 stand part of the Bill."

SHRI TAJAMUL HUSAIN: Sir. I want to oppose the clause.

SHRI AMOLAKH CHAND (Uttar Pradesh): The clause has been **put,**

SHRI TAJAMUL HUSAIN: Why this technical objection from the Whip? Sir. as regards restitution ol' conjugal rights.....

SHRI H. N. KUNZRU: May I know whether clause 21 was put to vote and carried?

MR. DEPUTY CHAIRMAN: Yes.

SHRI TAJAMUL HUSAIN: Now. we arc dealing with clause 22 and we are dealing with restitution of conjugal rights. It means that if a wife does not want to live with her husband without a reasonable cause, then you can take action under this clause. "Without reasonable cause" is a very wide expression. It may mean anything. What is reasonable to one may be unreasonable to others. If she does not want to live with her husband, the husband can go to a law court ind force her to join him and do anything he 'ikes which she *(iocs* not want. I think this is very much against the human rights. If she wants to live separately, why should she be forced? Likewise if the husband (iocs not want to live with his wife, why should the wife compel him to come and live with him and do things which he does not want to do with her. Every-one must be independent. There may not be reasons to go to a court but there are thousands of cases where the husband and wife do not want to live together. Of course in this Bill there is no such thing as divorce by mutual consent. I would have preferred if a husband and wife do not want to live together, they should be granted divorce on an application filed in the court by mutual agreement. Now that does not find a place here. I had given an amendment but that was disallowed. Now the poin[f] j_s T don't think anybody should be forced to come and live with his better half or worse half and do things which he or she does not want to do.

SHRI P. SUNDARAYYA: Sir. this clause is really unnecessary. It is only a relic of the old laws. It is in fact a barbaric relic. In fact it violates the conscience of any civilized being. If a man or husband does not want to live with the other party, why should we give permission to go to the court and ask the court to force the parties?

MR. DEPUTY CHAIRMAN: It will be a step in aid. Sub-clause (b) of clause 23 says .....

SHRI P. SUNDARAYYA: I agree. There I would like it.

(Interruption.)

MR. DEPUTY CHAIRMAN: It is a ground for judicial separation.

SHRI P. SUNDARAYYA : That need not be here. If they want judicial separation, there should be a provision separately or under the divorce clause.

SHRI AKBAR ALI KHAN (Hyderabad): On a point of order. So long as marriages exist and you- accept that notion, provision for restitution of conjugal rights is a concomitant to the acceptance of the institution of marriage. li they feel unhappy they can have a divorce. There is nothing to prevent a divorce but so long as there is marriage existing, it is a concomitant to providing for the restitution of conjugal rights.

SHRI P. SUNDARAYYA: If the wilb? or husband does not want to live with one another, they can claim divorce or as a first step to divorce, even judicial separation. If anything is to be brought, it should be under judicial separation or under clause 26—Divorce. But to keep this here and say that a man can go to a court and demand the restitution of conjugal rights is beneath the dignity of any human being. It is only a relit- of barbarism that is proposed to be continued. This is completely unnecessary in view of clauses 23 and 26. Whatever modification is needed, let us make it there. Let us not carry this barbaric relief in our Statute Book at least from now onwards. That is the reason why we oppose it.

SHRI C. C. BISWAS: I only point out this. There is already provision for a decree for restitution of conjugal rights in Order 21, Rule 32 of the Code of Civil Procedure but that contemplates a suit. The right is given here by petition and the mode of enforcement of a decree under the Code is by attachment of property of the defendant. Here it is otherwise. If for two years there is no reconciliation, a decree for di vorce automatically follows. That is the difference. So the right is there already.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 22 stand part of the Bill."

MR. DEPUTY CHAIRMAN: (After 0 *count)* There are thirty for and five against the clause. So clause 22 is carried.

The motion was adopted.

Clause 22 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, the motion is:

'That clause 23 stand part of the Bill."

PANDIT S. S. N. TANKHA: Sir, there is one amendment to this clause, amend ment No. 30.

MR. DEPUTY CHAIRMAN: Is not Shrimati Parvathi ■ Krishnan moving that amendment?

SHRIMATI PARVATHI KRISHNAN: Yes, Sir. I move:

30. "That at page 8, alter line 16, the following be inserted, namely:—

'(c) on the ground of one of the parties having contracted leprosy.' "

Sir. I bring this amendment before the House because, although it is now believed that leprosy is curable, at the same time, we also know that it is a very dangerous disease and so the husband or the wife should have the right to have a judicial separation as soon as this disease is contracted. In clause 26, it is one of the grounds for divorce. Sub-clause (f) reads thus:

"Subject to the-provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—

* v » * * •

(f) has for a period of not less than five years immediately preceding the presentation of the petition been suffering from leprosy, the disease not having been contracted from the petitioner;"

So you will see. Sir, that sub-clause (f) comes in when the person has for a period of not less than five years immediately preceding the presentation of the petition been suffering from leprosy. And when this provision is given in clause 26, I fail to see why them should not be this additional safeguard for judicial separation also as soon as the disease is contracted.

MR. DEPUTY CHAIRMAN: That is already there. Please see clause 23(11 (a) where they, speak of "any of the grounds specified in section 26 [other than grounds specified in clauses (g) and (h) thereof]". So the point you seek is already covered.

SHRI P. SUNDARAYYA: No. Sir. It is only after the person has been suffering from leprosy for a period of not less than five years that you can present a petition, as mentioned in clause 26.

MR. DEPUTY CHAIRMAN: Then it is for you to table an amendment to that clause.

SHRI AKBAR ALI KHAN: Yes, to clause 26' and not to clause 23.

SHRI P. SUNDARAYYA: But here under this clause, the moment one party contracts the disease the other can ask tor separation. That party need not wait for five years. He is entitled to get this separation. It is a measure <.i .prevention or precaution where under clause 26(f) it becomes a claim lor divorce.

SHRIMATI PARVATHI KRISHNAN: My amendment is necessary for the reason that it enables the respondent to have the right to apply for judicial separation immediately leprosy is contracted and the provision of a period of: five years under clause 26 will enable ■ them to get together again, if they wish after the disease is cured.

MR. DEPUTY CHAIRMAN: Would it not have been the better course to have moved an amendment to clause 26?

SHRI P. SUNDARAYYA: Then there is this danger that, under clause 26 .....

MR. DEPUTY CHAIRMAN: Do you want the five year limit to remain in clause 26?

SHRI P. SUNDARAYYA: No, but the position is this. If we put it in clause 26, then the moment either party contracts leprosy, immediately it becomes a ground for divorce and for that the hon. Law Minister will not agree, nor will the House agree and it will also be too much to demand divorce the moment leprosy is contracted by one of the parties. After all leprosy is curable. So we say, the moment leprosy is contracted, let them separate and when it is cured, they can get together.

12 NOON

DR. D. H. VARIAVA (Saurashtra): Sir, immediately leprosy is contracted, I think it is not necessary for them to have judicial separation. They can live together, because leprosy immediately it is contracted, if it is treated, it can be cured. It is curable now very quickly, say, within a few months and so to ask for judicial sepa ration is not proper.

23 C.S.D.

SHRI KISHEN CHAND: Sir, the question here is this. Leprosy is a contagious disease and if either party contracts the disease, they want temporary judicial separation. During this period of judicial separation, the person can get cured, and then there will be no need to ask for a divorce. So it is just a precautionary measure to avoid the spread of the disease.

DR. D. H VARIAVA: But since the disease is .....

MR. DEPUTY CHAIRMAN: Order, order. The hon. Member has had his say and he cannot speak twice.

SHRI A. DHARAM DAS (Uttar Pradesh): Sir, I wanted to make my submissions at the beginning of Chap ters V and VI, because they include important provisions on restitution of conjugal rights and judicial separation which again includes grounds for di vorce. The provisions in Chapters V and VI taking them both together, re lating to judicial separation and di vorce are very confusing. They appear to be a jumble of provisions in-law and do not fit into any .....

MR. DEPUTY CHAIRMAN: Please confine yourself to the clause before the House.

SHRI A. DHARAM DAS: But I want tc speak on these Chapters.

MR. DEPUTY CHAIRMAN: Please speak on the particular clause that has been taken up.

SHRI A. DHARAM DAS: If you take the help of clause 26 .....

MR. DEPUTY CHAIRMAN: We are not on clause 26, but on clause 23.

SHRI A. DHARAM DAS: Yes, Sir. But in clause 23(l)(a) we find it stated:

"on any of the grounds specified in section 26 [other than the grounds specified in clauses (g) and (h) thereof]."

[Shri A. Dharam Das.l Therefore all the sub-clauses of clause 26, except sub-clauses (g) and (h) come under this clause.

MR. DEPUTY CHAIRMAN: Yes.

SHRI A. DHARAM DAS: Take clause 23. This deals with judicial separation. What is its definition and what are its ingredients? What are its implications? What are its effects? What are its consequences? On all these matters the Bill is silent. If we compare clause 23 with clause 26, we find that except for sub-clauses (g) and (h) all the cases of judicial separation are covered by grounds of divorce in clause 26. In every case of judicial separation, the divorce clause will also be equally applicable and it is not known in which case a decree for judicial separation should be passed and in which"case a decree for divorce.

MR. DEPUTY CHAIRMAN: All cases except those covered by (g) and <h).

SHRI A. DHARAM DAS: It is not clear what relief judicial separation secures for the petitioner as far as this Bill is concerned. In the absence of all this, the need for clause 23 is not established. Its futility and helplessness are apparent on the very face of it. The case under clause 23(l)(bJ "on the ground of failure to comply with a decree for restitution of conjugal rights" is also provided for in clause 26 (i) "has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent;". The simplest remedy for this lacuna is to make the Indian Divorce Act applicable, subject to the express provisions contained in this Bill.

Sir, I submit that I feel rather distressed that the provisions relating to judicial separation and divorce in the Bill have been so haphazardly collected and amended. In a country like ours where about three fourths of the population has been against divorce up tc. this time on account of their religious beliefs, and where such provisions are being introduced in law for them for the first time, and that also in a permissive legislation, I think, we should have been more cautious and we should have paid greater attention to the principles to be observed in making the law on this subject.

Sir, the grounds for judicial separation should be exclusive of the grounds of divorce.

MR. DEPUTY CHAIRMAN: Are you opposing the entire clause?

SHRI A. DHARAM DAS: I am opposing some of the sub-clauses there.

MR. DEPUTY CHAIRMAN: There are only two sub-clauses.

SHRI A. DHARAM DAS: The first sub-clause is, "on any of the grounds specified in section 26" and I am opposing all the sub-clauses contained in clause 26 excepting sub-clauses (g) and (h).

MR. DEPUTY CHAIRMAN: I think the term "judicial separation" is a well-known expression in law and the hon. Member knows the full implication.

SHRI A. DHARAM DAS: Where is the divorce law? The divorce law is the Indian Divorce Act and that does not apply to it.

MR. DEPUTY CHAIRMAN: Order, order. We are here concerned with the simple amendment of Mrs. Parvathi Krishnan only. The hon. Member is making a long speech over the whole clause.

SHRI A. DHARAM DAS: I would like to invite your attention to clause 26, sub-clauses (b), '(c), (d) and (h).

MR. DEPUTY CHAIRMAN: The hon. Member may speak when clause 26 is taken up.

SHRI A. DHARAM DAS: My con tention, Sir, is that some of these subclauses should be brought under

clause 23 and not be allowed to remain in clause 26. Of course that they should not be there, on that I can speak when clause 26 is under consi deration but that they should be inclu ded in clause 23, I cannot have any other opportunity except the present ,one.

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MR. DEPUTY CHAIRMAN: You have said that.

SHRI A. DHARAM DAS: With your permission, Sir, I would take you through those sub-clauses, excepting (g) and (h).

MR. DEPUTY CHAIRMAN: I know what they are; you let me have your comments on clause 23.

SHRI A. DHARAM DAS: The first point is about adultery. My submission is that it should not be there under judicial separation. This is a serious ground and the parties should have the right to go to court and ask for a dissolution of marriage. The next is, "he has deserted petitioner without cause for a period of at least three years"—this, to me it appears, would be more appropriate under judicial separation than under divorce. I would like to suggest that it be brought under judicial separation. The next one, sub-clause (c) "is undergoing a sentence of imprisonment for seven years or more for an offence defined in the Indian Penal Code". The party will have to wait for three years before applying for divorce and it will take about an year or so to get the decree and for the confirmation of it, it will take another year and, in all, it would be 4| or five years before the decree was obtained. A sentence of seven years will ordinarily amount to about five and a half years if the conduct of the prisoner had been good in jail.

MR. DEPUTY CHAIRMAN: I will have to remind the hon. Member that all these points have been covered during the general discussion and I wish the hon. Member does not take any more time of the House on these points.

SHRI A. DHARAM DAS: All right, Sn

SHRI K. S. HEGDE: Mr. Deputy Chairman, I do not see any reason for the existence of clause 23 now and for a proper discussion of clause 23, to some extent it has become necessary to encroach upon clause 26 for the reason that clause 26 is one of the integral parts of clause 23. In fact, it would have been better if there was common discussion of clauses 23 and 26 for the reason that the same reasoning would apply to clause 23 as we give to clause 26.

Now, my difficulty has been that most of the grounds for judicial separation are *ad eundem* the same thing as are for divorce barring sub-clauses (g) and (h).

MR. DEPUTY CHAIRMAN: It has to be necessarily so.

SHRI K. S. HEGDE: Let us leave sub-clauses (g) and (h). What I am pressing for your consideration is, supposing a certain party goes before a court of law for a divorce which is a larger right and has a larger connotation than judicial separation and if the judge is pleased to give only a judicial separation, what will be the effect? Because you are here making a certain term co-terminous with both, you should differentiate between the two. Many of the provisions of clause 26, barring sub-clauses (g) and (h) are exactly the same as for judicial separation.

MR. DEPUTY CHAIRMAN: That has been said by the previous speaker; if there are any fresh points, **you** may give them.

SHRI K. S. HEGDE: The fresh point that I am covering is, who is to choose the mode of relief? Is it the petitioner, is it the respondent, is it the court?

MR. DEPUTY CHAIRMAN: The Bill gives that right to the petitioner.

SHRI K. S. HEGDE: The Bill does not give it to the petitioner but leaves it to the court.

MR. DEPUTY CHAIRMAN : It leaves it to the decision of the court but gives the right of choice of relief to the petitioner.

SHRI K. S. HEGDE: Supposing A applies under clause 26. Is there any thing which precludes the judge giving relief under judicial separation in clause 23? The court may say, "I am not going up to divorce. For the present. I am merely giving judicial separation". All that is required is to say, "if after two years no order under clause 22 is applied, it would have been a ground for divorce" .....

PANDIT S. S. N. TANKHA: There is also provision in the Indian Divorce Act that if the ground taken by the petitioner is not found to be correct and the judge therefore comes to the conclusion that no divorce can be granted, he can still grant judicial separation,

SHRI K. S. HEGDE: Undoubtedly. What I am saying is that you tase away certain of the rights and limitations of the Divorce Act and you are making a special Act. No more will the Divorce Act apply. When there is a general Act and a special Act, the special Act will control the general Act. So far as the question of divorce is concerned in this Act, it will be only within the limits of this Act and you cannot travel outside. We cannot take advantage of the other Act. That is why my submission to the House is that the whole of clause 23 would be unnecessary. All that will be required is sub-clause (b) which could be made one of the grounds in clause 26. As such, this clause may not be accepted by this House

SHRI P. T. LEUVA (Bombay): What about sub-clause (b)?

SHRI K. S. HEGDE: That is exactly what I am saying, make sub-clause (b) one of the grounds in clause 26.

SHRI C. C. BISWAS: Sir, I do not know why there should be so much of objection to this clause. The idea about judicial separation is that you need not force a party to apply for dissolution of the marriage, for declaring it null and void or for voiding it on the ground that it is voidable. You do not \ force them to that course. First of all, let them seek judicial separation and after two years if they are not able to get reconciled, the judge then grants the more drastic remedy of divorce. That is all.

MR. DEPUTY CHAIRMAN: Gives a proDatlonary period.

SHRI C. C. BISWAS: As a *locus 'litice,* a period of two years is provided for. That is provided for in sub-clause (h) of clause 26, "has not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against the res pondent". Similarly, Sir, the next sub clause there, (i), "has failed to comply with the decree for restitution of con jugal rights for a period of two years or upwards after the passing of the decree against the respondent". The whole scheme of marriage law is to give the parties a chance to give them the lesser remedy and then if, in spite of that, they cannot come together, to give them the greater remedy. That is the scheme and that **is** why the **very** same grounds have been set out in clause 23 for judicial separa tion as you find in clause 26 for divorce. Sir, judicial separation is a form of remedy which is very well-known, well-understood, and I do not understand why any hon. Member should have any doubt as to what this means. Judicial separation, restitution of conjugal rights, etc., are already there; they are well-known rights and, therefore, there need not be any misapprehension on that ground, and so, Sir, I say that there is absolutely no justification for accepting these amendments.

MR. DEPUTY CHAIRMAN: What about Mrs. Parvathi Krishnan's amendment?

SHRI C. C. BISWAS: The question is that experts stoutly deny that leprosy is a contagious disease. Sir, if, as is suggested, at the very first appearance of any symptoms of leprosy it should be open to the parties to go and apply for judicial separation, would that be right, having regard' to the generally accepted medical opinion that it is not contagious and so on?

Therefore, if that is the idea, there is no amendment here as to the period of time. Whether you should have the same period of five years as is provided for divorce or whether you should have a shorter period or not. that is a different matter. There is no amendment to that effect. It is now explained by the mover of this amendment that as soon as any sign of leprosy makes itself manifest, the right of judicial separation ought to be there. I do not think. Sir. that would be right.

SHRr P. SUNDARAYYA: Is he prepared to accept any lesser period than five years?

SHRI C. C. BISWAS: As a matter of fact, the Leprosy Association waited on deputation on me. They produced literature. I have not got the litera ture here. They submitted to me a mass of literature. I have studied that and I am satisfied. I myself went down to the Tropical School of Medi cine in Calcutta and I actually met hundreds of persons who are coming here for treatment and after treatment they appear to be perfect and they are certified to be free from leprosy. But I am not suggesting for one moment—■ because I paid[1] only one or two visits— that there is no possibility of contagion from such cured persons .....

SHRI GOVINDA REDDY: But those cases are different.

SHRI C. C. BISWAS: But to say that leprosy by itself ought at once to be a ground for judicial separation or even for divorce without giving a chance to show what kind of leprosy it is will not be fair.

MR. DEPUTY CHAIRMAN: The question is:

30. "That at page 8, after line 16, the following be inserted, namely:—

'(c) on the ground of one of the parties having contracted leprosy.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is;

"That clause 23 stand part of the Bill."

The motion was adopted.

Clause 23 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 24. There are amendments.

PANDIT S. S. N. TANKHA: I am not moving amendment No. 142 but I move No. 143. I move:

143. "That at page 8, line 33, after the words 'an idiot or a lunatic' the words 'at the time of marriage' be inserted.

SHRI V. K. DHAGE: I move:

31. "That at page 8, line 28, the brackets and letter '(c)' be deleted."

32. "That at page 8, line 30, after the word 'impotent' the words 'or frigid' be inserted."

SHRI C. C. BISWAS: I move:

174. "That at page 8, after line 37. the following be added, namely:—

■(3) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III

[Shri C. C. Biswas.] may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.'"

SHRI P. SUNDARAYYA: I move:

179. "That at page 8, lines 32 to 35, the words 'on the ground that the other party was an idiot or a lunatic or on the ground that at the time of the marriage either party thereto had not completed the age of eighteen years be , deleted."

SHRI C. C. BISWAS: I move:

189. "That at page 8, line 35, for the words 'eighteen years' the words 'twenty-one years' be substituted.

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

"SHRI V. K. DHAGE: My first amendment is with regard to deletion of (c) from clause 24 (1). Clause 24 (1) (i) reads in the Bill as "any of the conditions specified in clauses (a), (b), (c) and (e) of section 4 has not been fulfilled". I have moved an amendment to say that (c) should be eliminated. Now sub-clause (c) of clause 4 reads as follows under an amendment that has been adopted by the House: "the parties have completed the age of twenty-one years", and sub-clause (2) of clause 24 will also read as a consequence thus: "Where a marriage is annulled on the ground that the other party was an idiot or a lunatic or on the ground that at the time of the marriage either party thereto had not completed the age of twenty-one years, children begotten before the decree is made shall be specified in the decree, and shall, in all respects, be deemed to be and always to have been, the legitimate children of their parents." That is to say, if the parties have married before the age of 21 the marriage shall be annulled and shall be held to be void but the children of that marriage will be considered to be legitimate. This is rather not quite fair if you will read it in conjunction with clause 15 because under clause 15 if a marriage is celebrated just below the age of 21 in any other form and is registered afterwards the children of that marriage will be legitimate and such a marriage can be registered under clause 15. Now to provide (c) in this clause 24(1) seems to be not quite proper when you take into consideration the provisions of clause 15. I therefore feel that what you are trying to do is that a marriage celebrated in any other form before the completion of the age of twenty-one years and registered under clause 15 of this Bill is proper but if such a marriage below the age of .21 happens to be solemnized under this Act then that marriage will be held to be null and void. That seems to me to be a very incongruous position and I would therefore say that sub-clause (c) of clause 4 should not be applied here and (c) mentioned in clause 24(1) (i) should be deleted.

Another point is this. Supposing these people are below the age of 21 and their marriage has been annulled under clause 24 which however provides that the children born to them before the age of 21 shall be deemed to be their legitimate children. Now there is nothing to prevent these people from appearing before the Marriage Officer after their completion of 21 years of age and asking for their marriage to be solemnized under this Act. There can be no bar to a thing like that. Therefore to say now that under sub-clause (c) of clause 4 the marriage shall be annulled seems to be redundant. What I

mean to say is this. If by any chance a marriage between two people below the age of 21 has taken place under this Bill, that marriage will be annulled under sub-clause (2) the children remaining their legitimate children whereas in the case of a marriage between two people below the age of 21 celebrated before and registered under clause 15 of this Act, by virtue of clause 18 that marriage and those children -will be perfectly valid. But if by chance the marriage happens to be only under this Act and if the party happens to be below the age of 21, while the children will be legitimate the marriage will be void. This seems to me rather a very incongruous position. Now that we are committed to clause 18 as well as to clause **15,** I would think that the elimination of (c) in 24(1) (i) would be rather the best thing to do.

Another amendment that I have moved is to clause 24(1) (ii). In **the** Bill **it** reads: **"the respondent** was impotent at the time of the marriage and at the time of the institution of the suit". I have suggested after the **word "impotent"** the words "or frigid" may be added. Now the idea of a marriage being made void on the ground of "impotent" is that the marriage is not consummated or is not capable of being consummated and that being the case the marriage should be held void. Now, Sir, frigidity is the counterpart of impotency in men, and also the marriage in that case cannot be consummated. That being the case, Sir, I think it is only fair that you should also include the words "or frigid" after the word "impotent". I am quoting, Sir, as to what frigidity is from the sexual point of view, and what is the consequence of frigidity. "There are different kinds of frigidity, or sexual anesthesia, just as there are as many variations in human temperament." At this point, however, we are concerned with the congenitally 'cold' type of frigidity. "The congenitally frigid person is one born deficient in sexual libido, or sexual feeling." This is from the book "Sex and the Love Life" by William J. Fielding.

SHRI AKBAR ALI KHAN: Is he a medical man? Is he an authority on that?

SHRI V. K. DHAGE: I think so. I will quote some other- medical men if you are very much interested in the subject. I am just giving the definition of frigidity. I do not wish to give a lecture on what frigidity is. What I merely mean to say is **that** it is a counterpart of impotency and since it has been provided that a marriage is void on the ground that the person is impotent, similarly marriage should be void if the woman suffers from frigidity. I do not think I need dwell on that point any longer and it was only to substantiate my arguments that I was reading from this book. If Mr. Akbar Ali Khan wants references, I do not mind giving, but I think it is best not to take up more time of the House.

DR. D. H. VARIAVA: Sir, it is not the case. There is difference between impotency and frigidity. I know of many women who are frigid, but who have got many children. Frigidity as a cause for divorce is not right. After all, frigidity is only a state of the mind, but the other faculties for producing children **are** there. In impotency the faculty to produce children is not there, but in frigidity it is not so. I know, as I said, of many women who have got many children but who are frigid. It only means that they do not enjoy the sexual contact but at the same time they submit to it and they do get children. So to make frigidity as a cause for divorce is not the right thing to do.

SHRI GOVINDA REDDY: Is it **not** true also of impotency?

DR. D. H. VARIAVA: If a man is impotent, that means that he is **not**

[Dr. D. H. Variava.] able to produce children. That is the meaning of impotency. But frigidity is only a state of mind.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : Let us not enter into a discussion over the point.

SHRI P. SUNDARAYYA: Sir, my amendment (No. 179) reads as follows:

> "That at page 8, lines 32 to 35, the words "on the ground that the other party was an idiot or a lunatic or on the ground that at the time of the marriage either party thereto had not completed the age of eighteen years' be deleted."

If my amendment is accepted the sub-clause will read thus: "Where a marriage, is annulled, children begotten before the decree is made shall be specified in the decree, and shall, in all respects, be deemed to be, and always to have been, the legitimate children of their parents."

Sir, my point is only this. The marriage may be annulled but why should you make the children illegitimate? Further we have accepted two grounds—idiocy and lunacy—when the children should be considered legitimate even though the marriage may be void. Also we accepted the clause "that either party thereto had not completed the age of 18 years".

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : That will be twenty-one now.

SHRI P. SUNDARAYYA: If children born of marriages consummated before the parties were 21 years of age or if they were idiots or lunatics could be accepted as legitimate, why cannot we accept in the other two cases also, that is. when the spouse is living or when they are within the degrees of prohibited relationship? I would like the children born in these two cases also to be legitimised. Their legitimacy should not be questioned. When we extend legitimacy in two> cases, I would like the same legiti macy to be extended in the other two» cases also. I would request the hon-Minister and the House to consider it dispassionately. I hope all the women Members at least will certain ly support .....

SHRI K. S. HEGDE: Then you put us in the opposition?

SHRI P. SUNDARAYYA: No; I take it for granted that all men. Members—as I am speaking on behalf of the men Members—will vote-for my amendment. I am appealing to the women Members also to vote-for this amendment so that no stigma of illegitimacy will attach to these children. Sir, this is a very reasonable amendment and I hope the hon.. Minister will accept it.

PANDIT S. S. N. TANKHA: Mr. Vice-Chairman, the amendment which I have tabled in respect of sub-clause (2) is that the words "at the time of marriage" should be added after the words "an idiot or a lunatic". I find, Sir, that marriage can be annulled or declared void only on any of the conditions specified in clauses (a), (b), (c) and (e) of clause 4 not having been fulfilled. I take it, Sir,. (hat sub-clause (2) contemplates annulment of marriage in case the condition mentioned in sub-clause (d) of clause (4) has not been fulfilled also. If that is the correct position then I have merely tried to make that position clear by adding the words "at the time of marriage". If it contemplates the declaration of a marriage as null and void even though the party has become lunatic quently, then it is necessary to clarify that position. The clause provides that a marriage is liable to be annulled on the ground that the other party was an idiot or a lunatic, but does not specify at what stage

that disability occurred. Did it occur ; before or after the marriage? Something must be done to make this position clear. I have no objection to making the children legitimate; certainly, they should be legitimised but it should be made clear as to which children does it refer to. An idiot, I understand, is a person who is born with certain mental deficiencies, but a person can become a lunatic at any stage. So if clause 4(b) contemplates only the annulment of marriage on the ground that the person was idiot or lunatic at the time of marriage, as the wordings of the clause clearly go to show, then those words do not provide for those cases where the person becomes a lunatic later on. Therefore, I would like some provision to be made, as to which persons this clause refers to here. It is very indefinite. It may mean at the time of the marriage or it may mean after the marriage. This point may be made clear by the addition of some suitable words. I do not insist upon the inclusion of the words "at the time of marriage" at the place I have suggested in my amendment, but I would, certainly like the point to be made clear definitely. I would also like the children to be legitimised whose father becomes a lunatic subsequent to the marriage.

SHRI P. T. LEUVA: Please see clause 26(e).

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): This is relevant to the condition before marriage. That is entirely different.

PANDIT S. S. N. TANKHA: I do not think it solves my problem.

SHRI S. MAHANTY: Mr. Vice-Chairman, I rise to support the amendment standing in the name of my hon. colleague, Mr. Dhage (No. 32), Sir, as it has been urged by many authorities that impotency is only a temporary, psychological phenomenon, I ask whether impotency is an incurable disease. There are also authorities on sex psychology who have pronounced their views on this matter. I can do no better than quote one such authority, for the satisfaction of the House, who has stated that impotency is a mental aberration, a sort of temporary psychological phenomenon, and it can be cured if it is taken up with sympathy and care. Therefore, Sir, if impotency is to be taken as a cause for declaring a marriage void, what reasons could there be not to include frigidity as a reason to declare the marriage void?

Secondly, Sir, after all, if impotency is to be taken as a ground for declaring a marriage void on account of the fact that lack of potency does not conduce to procreation, then, under the same reasoning frigidity also-is not conducive to procreation. Therefore, if impotency is to be taken as a reason for declaring a marriage void, I think there is enough justification for including frigidity also a ground for declaring a marriage void. In this connection I want to quote from no less an authority than Oswald Schwarz, the author of "The Psychology of Sex". His academics cannot be disputed; he has been a professor of medical psychology in a number of universities in Europe— Vienna, Munich, Berlin, so on and so forth. I shall substantiate my statement by quoting that authority that frigidity in a woman also leads to mental aberrations in the other party and even, at times, culminates in gruesome murders.

SHRI GOVINDA REDDY: Sir, frigidity is said to be a state of mind.

SHRI S. MAHANTY: Impotency also.

SHRI GOVINDA REDDY: It is a state of body.

SHRI S. MAHANTY: Here I would pause for guidance from our doctor whether impotency is an in curable disease or not. As far as I know, Sir, it is a temporary failure-of certain mechanism .....

HON. MEMBERS: Ohl

SHRI S. MAHANTY: Sir, let me go on.

SHRI K. S. HEGDE: Once an impotent is not always an impotent.

SHRI S. MAHANTY: That is what I say. I am not yielding now to interruptions. Let me go on. I say that there is enough justification why frigidity is to be considered as a ground for declaring a marriage void. On page 207 of his book, "The Psychology of Sex", the author (Oswald Schwarz) remarks: "Once upon a time"—he tells us the story of a peculiar case.

THE VICE-CHAIRMAN (SHRI B. C. <JHOSE) : It is enough if you only read the conclusion.

SHRI S. MAHANTY: It is only four or five lines, I shall read:

> "Once upon a time, there was a man who was deeply in love with his wife. But she was completely frigid. In vain he tried to bring the lively marble statue to life. In vain he raged against her motionless resistance. In despair he felt the scornful smile behind those firmly closed lids. One night he strangled her."

Sir, this is one of the cases; hundreds of cases of this type have happened. So, if impotency is to be counted as a factor that has led to the failure of many a married life, frigidity also should be taken as a reason that will lead to the nullity •of married life. Therefore, Sir, the House should not be prejudiced but should take it (the amendment) in the real spirit and accept frigidity as a ground for declaring a marriage void.

SHRI K. S. HEGDE: Sir, my objection to this clause (No. 24) is three-fold; the first is one of substance; the second is the inconsistency of the Act; and the third is a procedural one. Let me take them one by one. My first objection is one of substance. As my hon. friend Shri Sundarayya has stated, there is no point in seeking to penalise the children for the fault of the parents. It is an old barbaric law which attempts to punish the children for the acts of omission and commission of the parents. We take it that the parent's sin should not be visited on the children, living as we do in this twentieth century. We must try more and more to see that the law legitimises as many children as possible. We, as citizens of free India, must have the maximum protection of law; and our children—as many of them as possible, to a large extent—must be taken as legitimate. Let us do the right thing by these children. I shall give you a concrete case. Let me go to my second point which will illustrate my first point. You will find in clause 2, sub-clause (f) the words:

> " 'degrees of prohibited relationship'—a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship;".

Supposing a man marries his sister's daughter which, under the customary law, is allowed. I feel this is an important matter and I would request the Law Minister to take note of it. A man marries under the customary law and registers under clause 4(e) which applies not only to marriages to be solemnized but to the marriages already solemnized under the customary laws. Even though he registered under clause 15(e), the marriage becomes void and is declared a nullity under clause 24(1). Under clause 4(e) marriage may be solemnized if at the time of marriage "the parties are not within the degrees of prohibited

relationship"; and clause 24 says:

"Any marriage solemnized under this Act shall be null and void and may be so declared by a decree of nullity if—(i) any of the conditions specified in clauses (a), (b), (c) and (e) of section 4 has not been fulfilled;" \

SHRI C. C. BISWAS: May I for a moment interrupt my hon. friend? In the amendment which I have already moved to clause 24, I have said that nothing contained in this section (24) shall apply to any marriages deemed to have been solemnized under this Act within the meaning of section 18, the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15 and nothing contained in clause 24 shall apply.

SHRI K. S. HEGDE: I am obliged to the hon. the Law Minister. If, as has been pointed out by him, we accept his amendment No. 174 under clause 24, the difficulty that I am contemplating will not arise.

Let me go to the next objection. Sir, I was in the Supreme Court yesterday and the day before, and the Lordships of the Supreme Court were regretting the increasing amount of deterioration that has set in in our drafting of Bills. It is especially felt in the way in which marriages have been classified into two—void marriages and voidable marriages. If a marriage is to be made void, it should be from the beginning, *ab initio.* There is no question of nullifying it later on. If you accept the position, what happens is under sub-clause 2 it is only a question of annulment. You are not annulling a non-existing thing. Where is the question of annulling it when it is not existing; but you can declare void whatever is existing. It is only a judicial declaration.

[MR. DEPUTY CHAIRMAN in the Chair.]

Hence, Sir, I submit that there is no question of annulment because the marriage is deemed to be void ab *initio.* Being so, how can you annul a thing that is not existing. Do you want that position? Would the House be satisfied with that? Supposing a marriage has taken place transgressing the limits of law. Will it not be sufficient if we make that marriage a voidable one? I shall give you an instance. Let us suppose that there is a gentleman in Calcutta, and he has a wife. He goes South and wants to settle down there. He marries somebody there and settles down, giving an impression that he has no other wife. In that case, who is to be penalised? Would you penalise the wife and the children and not the gentleman concerned? Are the children to be penalised because somebody had played a fraud? So, let us make room for making a marriage a voidable marriage and not making the marriage void. The children are not to be taken to task for the fault of either the mother or the father. Coming to the original point, it would serve the purpose if you specifically say that the marriage is void instead of making the children illegitimate. Under this clause, you are helping the man who had played a fraud. There is no punishment so far as the parents are concerned. The punishment is there for the children. He is not asked to pay for their maintenance excepting when it comes under the provisions of the Criminal Procedure Code. There is no liability to maintain the children, because you have annulled the marriage. Now for this reason, Sir, I would request the House to accept the amendment moved by my hon. friend, Mr. Sundarayya.

DR. D. H. VARIAVA: Sir, I think what Mr. Mahanty means by impo-tency is that no children can be procured. Sometimes impotency ma*

[Dr. D. H. Variava.J be temporary, and it is quite possible that the man may be impotent to a certain woman only. If he marries another woman, he can produce children. But here the word "impotency" means that he is not able to produce children. And frigidity and impotency are two different items. Frigidity means that the sexual power is there, but the person does not like it. That is the idea of frigidity. Frigidity is not impotency. Frigidity means that there is no desire, but if the act takes place, children are produced. **And** if you make frigidity a cause **for** divorce, then I say that in the case of 25 per cent, of the marriages there will be divorce.

SOME HON. MEMBERS: No, no.

DR. D. H. VARIAVA: Yes, yes, because there are many people who may be frigid, but when they do the act, they produce children. I think that you understand that frigidity is not impotency and the divorce is given not because of frigidity but because of inability to produce children. Sometimes a man is impotent to a certain woman only but not to other women.

SHRI V. K. DHAGE: Is not frigi dity the same way.....

DR. D. H. VARIAVA: Not at all. Frigidity is quite different, my dear man. By impotency we mean that the man is not able to produce any children. But where there is frigidity, children can be produced and are being produced. So these are two quite different subjects. And to make frigidity a cause for divorce is, I think, absolutely groundless. So I oppose this amendment once again.

SHRI C. C. BISWAS: Sir, it is said in amendment No. 31 that "At page 8, line 28, the brackets and letter "(c)" be deleted." Now, Sir, if we accept the amendment which I have already moved, then this question does not arise because the conditions relevant will not be the conditions specified in clause 4 but will be the conditions specified in clause 15.

Then, Sir, comes the question of frigidity. I confess, Sir, I am not an expert in these matters.

SHRI S. MAHANTY: May I ask the hon. Minister as to why, in the case of leprosy, did he go all the way to-ascertain.....

SHRI C. C. BISWAS: If I have made a study of one particular matter, does it follow that I muet study all the things.....

SHRI S. MAHANTY: Your profession demands it.

SHRI C. C. BISWAS: I canot plead personal experience here. (Interrup-*tion.)* Well, whatever that may be, as regards impotency, speaking on the authority of judicial decisions, I can say that it may be with reference to the wife as well as the husband. As regards frigidity well, my hon. friend over there is a medical practitioner and he is competent to speak about it. It is a sort of repulsion and the sexual urge is not there. So no complete and proper sexual intercourse possible. That is all; nothing else. And in no other law have I found frigidity to be a ground for divorce.

SHRI S. MAHANTY: That should not be the reason .....

SHRI C. C. BISWAS: I am only stating what I have found. I might have missed some systems of law. But so far as my investigation goes, frigidity is not reckoned as a ground for divorce in any law, and therefore, let us not introduce this innovation at the very early stage when we are enacting this law.

And then, Sir, I will explain my own amendment. You see that the words which you find in the Bill as drafted will be inappropriate in the case of a marriage which is registered and not solemnized for the first time under the

Act. In the case of a marriage registered under clause 15 the conditions have been specifically laid down. Those conditions correspond substantially no doubt with the conditions mentioned in clause 4. But still there Is some 'difference. And what I am providing for by my amendment is this. It savs:

> "Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of *any* such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the con-•ditions specified in clauses (a) to •(e) of section 15:
>
> Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final."

SHRI K. S. HEGDE: About legiti macy why don't you accept the princi ple of .....

SHRI C. C. BISWAS: That I will explain. Sir, we have proceeded in this Bill on this basis. Certain conditions which are laid down in clause 4 are of the fundamental character, **and** r.on-fulfilment of those fundamental conditions ought not to be overlooked. So far as children are concerned, I have all along maintained that they ought not to be penalised, and therefore, we have provided that children will be regarded as legitimate. It is suggested that this should apply to all marriages, whatever may be the conditions which are violated. If we do that, that really will be rendering those conditions wholly infructuous. There Is no point in saying that these are essential conditions of marriage which must be fulfilled and at the same time allowing people to break them, by declaring the children of such marriage to be legitimate. That is why you find in this sub-clause (2) that it applies only where a marriage is annulled on the ground that the other party was an idiot or a lunatic or on the ground that at the time of **the** marriage either party thereto had not completed the age of 21 years. So, you may ignore those conditions but not the other conditions. For instance, suppose a marriage takes place when there is another spouse living, or **the** marriage takes place within the prohibited degrees of relationship. **The** whole point is, are you or are you **not** prepared to condone the non-observance of those essential conditions?

SHRI GOVINDA REDDY: The marriage becomes void. Why should we penalise the children?

SHRI C. C. BISWAS: We are saying that the children will not get any protection in those cases only to make it less possible for the parties to **the** marriage to break those conditions. That is the principle on which we have proceeded. Certain of those conditions are regarded as fundamental, and if those conditions are not fulfilled, then the children of such illegal marriage will not be recognised as legitimate. I am explaining to you only the principle on which we have proceeded. Sir, I oppose all these amendments.

SHRI P. SUNDARAYYA: May I point out to the hon. Minister that he has recognised the legitimacy of the children born of marriages within prohibited degrees in the case of custom or usage having the force of law? Therefore, it is not fundamental. It is only a question of degree of allowance. Why not consider these children also legitimate?

PANDIT S. S. N. TANKHA: May I know from the hon. Minister what he thinks of my amendment No. 143? Are these words necessary or not?

MR: DEPUTY CHAIRMAN: He has opposed all the amendments.

PANDIT S. S. N. TANKHA: But **he** has not given any reasons nor has **he** stated whether they are, or -are not necessary.

MR. DEPUTY CHAIRMAN: It follows that he thinks that they are not necessary.

PANDIT S. S. N. TANKHA: That is what I want to know. What is his legal opinion about it?

MR. DEPUTY CHAIRMAN: If, in his opinion, they were necessary, he would have accepted the amendment.

PANDIT S. S. N. TANKHA: If he does not consider them necessary, I will not press my amendment.

SHRI C. C. BISWAS: As a matter of fact, clause 4 (b) says: "Neither party is an idiot or a lunatic." It is there. He must not be lunatic or an idiot at the time of marriage.

'Amendment No. 143 was, by leave, withdrawn

1 P.M.

MR. DEPUTY CHAIRMAN: The question is:

31. "That at page 8, line 28, the brackets and letter '(c)' be delet ed."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

32. "That at page 8, line 30, after the word 'impotent' the words 'or frigid' be inserted."

The motion was negatived

MR. DEPUTY CHAIRMAN: The question is:

174. "That at page 8, after line 37, the following be added, namely.—

'(3) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.' "

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

179. "That at page 8, lines 32 to 35, the words 'on the ground that the other party was an idiot or a lunatic or on the ground that at the time of the marriage either party thereto had not completed the age of eighteen years' be deleted."

(After taking a count) Ayes—26; Noes—25.

The motion was adopted.

MR. DEPUTY CHAIRMAN: No. 189. Is it necessary now? The words have been omitted. Since the other amendment has been accepted, this falls through.

SHRI C. C. BISWAS: It is not necessary now. It automatically falls.

MR. DEPUTY CHAIRMAN: The question is-

"That clause 24, as amended, stand part of the Bill."

The motion was adopted.

Clause 24. as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: The motion is:

"That clause 25 stand part of the Bill."

There are a number of amendments.

*For text of amendment, *vide* col. 5508 *supra.*

DR. SHRIMATI SEETA PARMANAND; Sir, I move:

34. "That at page 8, lines 43 to 47 be deleted."

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

97. "That at page 8, line 44 after the words 'venereal disease' the words 'or any loathsome disease' be inserted."

88. "That at page 9, after line 3, the following be added, namely: —

'(v) either of the parties to the marriage has, after the marriage, undergone sex-transformation.'"

SHRI P. T. LEUVA: I am not moving my amendment No. 144. I am moving only No. 180. I move:

180. "That at page 8, lines 43 to 45 be deleted."

SHRI S. MAHANTY: Sir, I move:

33. "That at page 9, lines 1 to 3 and lines 13 to 21 be deleted."

SHRI LAVJI LAKHAMSHI (Kutch): Sir, I move:

89. "That at page 9,—

(i) in line 14, for the words, 'unless it is satisfied that' the word 'if be substituted; and

(ii) in line 15, after the word 'were' the word 'not' be inserted."

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

DR. SHRIMATI SEETA PARMANAND : Sir, the reason why I want these two clauses to be deleted is that they would cause hardship particularly to women as the proof of who contracted disease from whom— now that the medical certificate has not been accepted as a condition for marriage—would be difficult to produce and it might cause harassment. Who is going to prove later on whether the woman was pregnant at the time of marriage? Similarly, "the respondent was at the time of marriage suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner" is there. This is also likely to cause unnecessary harassment to women and only for that reason it would be better to remove these two clauses.

SHRI S. MAHANTY: Sir, I have moved:

33. "That at page ^, lines 1 to 3 and lines 13 to 21 be deleted."

Sir, I am apprehensive of the fact that retention of this sub-clause will throw open the flood-gates of litigation. It has been stated in the subclause that:

"The consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872."

In the Indian Contract Act, 1872, a consent is said to be free when it is not caused by—

1. Coercion,
2. Undue influence,
3. Fraud

so on and so forth.

Here we are concerned only with coercion and fraud. Now, coercion is defined in the Indian Contract Act as follows:

"Coercion is the committing or intention to commit any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement."

iShri S. Mahanty.]

The fact has to be borne in mind that we have raised the age-limit to 21. Moreover, we have eliminated the guardian in between the man who I intends to marry and the woman. Therefore neither there is an agent who can either perpetrate fraud or •coercion and can bring about such a marriage nor can we think of a situation when either the man or the woman will take to any of these things which have been mentioned in section 15 of the Indian Contracts Act. Therefore I feel that coercion has got no meaning in this given context. No coercion can ever be exerted to bring about a marriage under the Indian Special Marriage Act.

Similarly, you will find that "fraud" means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive an' other party thereto or his agent or to induce him to enter the contract:

1. "The suggestion as a fact of that which is not true by one who ■does not believe it to be true.

2. The active concealment of a fact, one having knowledge or belief of the fact.

3. That a promise made without any intention of performing it"

so on and so forth.

What I intend to ask now is how either party is going to prove that the fraud or coercion was exerted. So I venture to think that if we retain this clause, we will unnecessarily throw open the flood-gates of litigation. It will also lead to most frivolous litigations for declaring the marriage void. Therefore under the circumstances, I urge upon the hon. Law Minister to consent to the deletion of sub-clause 4 because it seems redundant.

ME. DEPUTY CHAIRMAN: Shri Vaidya. You can speak on your .amendment on sex transformation.

SHRI KANHAIYALAL D. VAIDYA: Yes. Apart from that there is another amendment reading as follows:

97. "That at page 8, line 44, after the words 'venereal disease' the words "or any loathsome disease' be inserted."

उपसभापति महोदय, इस विषय में मुझे यह कहना है कि आप यह अधिकार दे रहे हैं कि अगर वेनीरियल डिज़ीजेज़ (venereal diseases) होंगी तो वह शादी अनुचित हो जायेगी । ऐसी और भी कई बीमारियां हैं जिनके बारे में इसी प्रकार की व्यवस्था करने की ज़रूरत है । यहां आप वेनीरियल डिज़ीजेज़ को शादी के वायड (void) होने के लिये एक ग्राउंड (ground) मानते हैं लेकिन जो इसी तरह की दूसरी बीमारिया हैं, जो कि लोथसम (loathsome) हैं उनके होने पर शादी को वायड नहीं मानेंगे । अगर आप एक स्वस्थ समाज की व्यवस्था करना चाहते हैं तो वेनीरियल डिज़ीजेज़ के साथ साथ लोथसम बीमारियों को इसमें रखना पड़ेगा । जब आप वेनीरियल डिज़ीजेज़ की वजह से शादी को वायड मानने को तैयार हैं तो यदि इसी तरह की दूसरी बीमारियां हों तो उनके लिये भी व्यवस्था करनी चाहिये अन्यथा लोगों का बहुत अहित होगा ।

मेरा दूसरा अमेंडमेंट यह है :

88. "That at page 9, after line 3, the following be added: —

'(v) either of the parties to the marriage has after the marriage, undergone sex-transformation.' "

यह एक बड़े महत्व का सवाल है । वैसे तो बहुत सारी चीजें अखबारों में आती रहती हैं लेकिन पिछले दो दिनों में ही मैंने दो खबरें पढ़ी हैं । एक तो यह फोटो छपी है और इसमें

लिखा है "अब वह नवयुवक नहीं, नवयुवती है। यह सुन्दरी है रोबर्टा—कुछ समय पूर्व रोबर्टा एक नवयुवक था और सन् ५१ में यौन परिवर्तन के कारण रोबर्ट से रोबर्टा हो गई। रोबर्टा अपनी मां से बातचीत कर रही है।" सदस्यों की जानकारी के लिये इसको मैं टेबिल पर रखे देता हूं।

दूसरी खबर आज ही के अखबार में है। यह लिखा है: "अमेरिकी सेठ स्त्री होना चाहता है।

सानफ्रांसिस्को, मई ६, सानफ्रांसिस्को के ५० वर्षीय पुरुष जोन कैबेल ब्रेकनरिज का अगस्त में, डेनमार्क में, आपरेशन होगा। एक इंगलिस्तानी डाक्टर उन्हें पुरुष से स्त्री बना देगा। श्री ब्रेकिनरिज के बाल लम्बे हैं और वह नाखूनों पर लाली लगाये रहते हैं। उन्होंने कहा कि जब वह स्त्री बन कर लौट आयेंगे तब वह उस युवक के साथ विवाह कर लेगा जिसने उससे सही स्त्री बन जाने का आग्रह किया है। ब्रेकिनरिज अमेरिका के एक भूतपूर्व राष्ट्रपति के परपोते हैं। उनका विवाह हो गया था और उनको एक कन्या भी पैदा हुई। अब वह कहते हैं कि बहुत सालों से उन्हें जान पड़ता है कि वह स्त्री जैसे हैं।" इसको भी मैं टेबिल पर रखे देता हूं। तो इस तरह की घटनायें आज हो रही हैं। जैसा कि मैंने अभी पढ़ कर सुनाया कि एक सज्जन ने तो संतान भी पैदा कर ली तब यह बात हुई। सारे कानून में इस प्रकार की कोई व्यवस्था नहीं है कि अगर शादी के बाद किसी का सेक्स ट्रांसफारमेशन हो जाय तो वे क्या करेंगे। उनको न तो डाइवोर्स करने का अधिकार होगा और न उनकी शादी ही वायड करार दी जायेगी।

SHRI T. PANDE:

श्री टी० पांडे: मैं माननीय सदस्य से कहूंगा कि जब ऐसी अवस्था होगी तो दोनों सहेलियां रहेंगी।

SHRI KANHAIYALAL D. VAIDYA:

श्री कन्हैयालाल डी० वैद्य: हम यह कानून सखी समाज के लिये नहीं बना रहे हैं। हम तो यह कानून एक स्वस्थ राष्ट्र का निर्माण करने के लिये दो युवक और युवतियों की शादी के लिये बना रहे हैं। अगर माननीय सदस्य चाहें तो सखियों की शादियों के लिये कोई कानून बना सकते हैं और उस समय यह प्रश्न दूसरे रूप में आयेगा। इस समय तो मैं समझता हूं कि इस प्रश्न पर गम्भीरता से माननीय कानून मंत्री महोदय को विचार करना चाहिये और मेरा जो संशोधन है उसको जरूर स्वीकार करके ऐसी व्यवस्था की जानी चाहिये कि यदि इस प्रकार की स्थिति पैदा हो जाय तो उसमें उनको अधिकार हो कि वे इस बात को कानून के अन्तर्गत कोर्ट (court) में ले जा कर स्वीकार करा सकें और शादी को अनुचित ठहरवा सकें।

[For English translation, see Appendix VII, Annexure No. 281.]

MR. DEPUTY CHAIRMAN: Mr. Lavji Lakhamshi, you will speak tomorrow.

The Council then adjourned till a quarter past eight of the clock on Saturday, the 8th May 1954.