[Shrimati Lakshmi Menon.] under their existing conditions of service or to accept the conditions of service prescribed under the West Bengal I rules. If an employee is found unsuitable for retention, compensation will be paid to him in the form of a gratuity or pension.

(10) The maintenance of the Poor Fund will be a charge on the revenues of the corporation.

(11) Arrangements will be made for a detailed study on the spot of Chandernagore's budget under three heads: —

(a) Central subjects, such as income-tax;

(b) State subjects to be taken over by the West Bengal Government; and

(c) Local items to be administered by the corporation.

(12) The question of relaxing, for a specified period of time, the upper age-limit for candidates for Government service from Chandernagore will be considered.

(13) When the corporation is established, it will not be necessary to increase its finances by a subvention from excise and other receipts. The corporation will have its own finances raised by taxes. Expenditure on the usual State services, *e.g.*. general administration, education, medical and public health measures and such other branches of the administration, will be the responsibility of the State Government.

(14) Early steps will be taken to confer Indian citizenship on the people of Chandernagore by legislation under entry 17 in list 1 and Article 11 of the Constitution.

NOMINATION OF THE BUSINESS ADVISORY COMMITTEE

MR. CHAIRMAN: I have to inform hon. Members that in pursuance of sub-rule (1) of Rule 28A of the Rules of Procedure and Conduct of Business in the Council of States, I have nominated the following Members to be members of the Business Advisory Committee: —

Shri S. V. Krishnamoorthy Rao, Shri A. N. Agrawal, Shri Amolakh Chand, Shri T. V. Kamalaswamy, Shri A. Satyanarayana Raju, Shri S. N. Dwivedy, Shri H. N. Kunzru, Shri S. N. Mazumdar, Shri T. D. Pustake.

THE SPECIAL MARRIAGE BILL, 1952—*continued*

MR. CHAIRMAN: We now pass on to the discussion of clause 25 of **the** Special Marriage Bill. Shri Lavji Lakhamshi.

SHRI LAVJI LAKHAMSHI (Kutch): Sir, I have moved the following amendment: —

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".

Sir, my amendment relates to **the** second proviso to sub-clause (1) of this clause. It appears that there is a mistake either in the printing or in the drafting. This proviso relates to sub-clause (iv) which says that a marriage solemnized under this **Act** can be voided on the ground that the consent of either party to the marriage was obtained by coercion or fraud and the proviso is to the effect that in **the** case specified in clause (iv), the court shall not grant a decree unless it is satisfied that:

"(a) proceedings were instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or

(b) the petitioner has with his or her free consent lived with the other party to the marriage as husband • and wife after the coercion had ceased or, as the case may be, the fraud had been discovered."

Here, the words "not" is missing in part (b). And if we add the word "not" there, the thing becomes confused. And so I have moved the other part of my amendment—that in this proviso, for the words "unless it is satisfied that" you substitute the word "if". So we should have the subclause (a) to read as "(a) proceedings were not instituted within one year— etc." Obviously, the intention is that the party who seeks to avoid this marriage has to go on the ground that there was coercion exercised or fraud exercised and the party should come up within one year after the discovery of the fraud or the stopping of the coercion. Otherwise the marriage cannot be avoided. And, secondly, if the party has lived with the other on free consent after the discovery of the fraud or after the coercion has ceased then also he or she will r.ot be entitled to get a decree anuliing the marriage. So here the word "not" must be there. Otherwise the thing becomes meaningless.

Therefore, I submit that my amendment may be accepted.

MR. CHAIRMAN: Then Shri Biswas has got a consequential amendment.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS) : An amendment is now necessary in consequence of the amendment which was yesterday accepted by the House to clause 24. In sub-clause (2) of clau.se 25, the House will see that there is a provision relating to legitimacy of the child. Now, having regard to th<e amendment accepted yesterday, there will now be no difference between void and voidable marriages. Therefore it if considered better, instead of having two provisions, one in respect of void marriages and another :n respect of voidable marriages, to have one clause. Therefore, I beg to move:

"That lines 22 to 26, that is, rub-clause (2) of clause 25, be deleted."

After line 26. I want a new clause to be added in the following terms. I shall put it as 25A and the new heading will be "Legitimacy of children of void and voidable marriages:" "Where a decree of nullity is granted in respect of any marriage under section 24 or section 23, any child who would have been the legitimate child of the parties to that marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree or nullity at the date of the decree shall be deemed to be the legitimate child notwithstanding the decree of nullity". That is what I propose to put

SHRI K. S. HEGDE (Madias): Would you kindly read it because I would like to know how the children are to be affected?

MR. CHAIRMAN: "Legitimacy of children of void and voidable marriages:" "Where a decree of nullity is granted in respect of any marriage under section 24 or section 25, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree of nullity at the date of the decree shall be deemed to be their legitimate child notwithstanding the decree of nullity".

SHRI RAJAGOPAL NAIDU (Madras): Why repeat the word "legitimate" twice?

SHRI C. C. BISWAS: You wili find, Sir, that that is the language of subclause (2) of clause 25. Now that the distinction between void and voidable marriages in this respect has been removed, there is no point in having two separate clauses, one for legitimacy of children of void marriages and another for legitimacy of children of voidable marriages.

SHRI K. S. HEGDE: Why do you want the words, "at the date of the decree"?

SHRI C. C. BISWAS: Now, it is j annulled by a decree of nullity; if it is void, of course, the annulment will take effect from the date of marriage; if it is voidable it will take effect from the date of the decree. Now, as a matter of fact where the marriage is void and still it is said that the children will be legitimate, of course, they will be legitimate with effect from the date of the marriage.

SHRI K. S. HEGDE: What would become of the child who has been conceived but was born after the decree was passed? That is why, I would like you to examine this. Supposing a woman is carrying nine months at the date of the decree?

MR. CHAIRMAN: We understand.

SHRI C. C. BISWAS: 1 underhand that.

डा० पी० सी० मित्रा (बिहार): एबार्शन करा दीजिये ।

J[DR. P. C. MITRA (Bihar): Go in for abortion.]

SHRI K. S. HEGDE: With the permission of the Chair, we can take this up a little later.

SHRI C. C. BISWAS: This hypothetical question did not strike me at all. That has got to be provided for.

MR. CHAIRMAN: All right. Mr. Hegde, you wanted to speak. I want to tell you before we proceed further that this Bill should be disposed of today. If we are unable to do it by one o'clock, we meet at 4 p.M.

SHRI P. SUNDARAYYA (Andhra): Not 4 P.M. Sir, but at 4:30 P.M.

SHRI K. S. HEGDE: Sir, I am supporting the amendment moved by Dr. Seeta Parmanand for the deletion of sub-clauses (ii) and (iii) of clause 25(1).

fEnglish translation.

Not that I subscribe to the view that even if there is venereal disease or the woman has been pregnant at the time of the marriage, the marriage should be accepted and the husband should take the good with the bad. 1 would not like to enact a law which is not possible to be effectively enforced. The majesty of the law depends upon its efficacy and if we enact a law which it is not possible to enforce in an effective manner or which will give room for needless litigation then the law, instead of doing any good to society, will be a source of difficulty. After all, in one sense, Sir, law is an essential part of our life. There are so many mistakes in life and necessarily the law cannot protect or cannot rectify all our difficulties in life.

Now, the difficulty that I am anticipating, Sir, is what would happen in a litigation that might be launched under sub-clauses (ii) and (iii). Any disappointed husband might go to the court and say, "My wife was suffering from venereal disease at the time of the marriage". Imagine yourself, Sir, how exactly the proof is to be given. It may be six months or twelve months after the marriage. Now, the doctors may be able to find out the fact of venereal disease but when exactly it started might be a difficult question for any one to prove. Now, the question is, who had the first benefit of it.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): My amendment for medical certificate would have done it.

SHRI K. S. HEGDE: I am sorry that my hon. friend is always weeping over spilt milk. She has moved that amendment.

DR. SHRIMATI SEETA PARMANAND: Who spilt it?

MR. CHAIRMAN: You are supporting it for another reason and she is objecting to it.

SHRI K. S. HEGDE: I did not oppose the amendment at all. If she was not able to persuade the Members of the

House to accept that clause, she must try to make the best of the bargain. I thought my hon. friend was particular about the amendment that she had moved; if that was not so, it was open to her to have withdrawn it. Now, having moved it, when somebody else supports it, she is fighting shy of the very amendment.

Now, Sir, sub-clause (ii) says, "the respondent was at the time of the marriage suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner."

Now, I would like the hon. the Law Minister to examine, with his experience as a judge for a number of years, whether this will not open the floodgates of litigation, whether this will not give room to further confusion, whether this will not give room to unnecessary trouble without any corresponding benefit. Would It serve a social purpose or would it be merely an instrument of oppression in the hands of persons who want to wreak their vengeance for other reasons quite without justification?

I then come to sub-clause (Hi). However laudable the object may be, in the actual implementation the provision in question is likely to defeat the very objective and may have a bad repercussion. As such, I would request the House to delete the two sub-clauses and accept the amendment of Dr. Shrimati Seeta Parmanand, whether she likes it or not.

SHRI P. SUNDARAYYA: Sir, I support this. I too have given a similar amendment to omit sub-clauses (ii) and (iii). I cannot understand how such things could be incorporated even in a draft Bill. These things are not capable of being proved, as the hon. Mr. Hegde said, and it is such a vexatious proceeding. Unless some people want to take delight in bringing all things before the court of law, there is no point in having these two subclauses. This is not good for a civilised society and I hope that this House will vote for our amendment and get these sub-clauses deleted.

MAJ.-GENERAL S. S. SOKHEY (Nominated): Sir, I would like to say a few words on the question of venereal disease provisions in the Bill.

MR. CHAIRMAN: We have nothing to do with venereal diseases. There need be no general discussion on those diseases.

MAJ.-GENERAL S. S. SOKHEY: Members who have spoken about it are those who wish well of the people but they are misconceiving the whole problem. One hon. Member was moved to severe emotional state because she received letters from some people, young girls, who got venereal disease soon after marriage. The hon. Member believes the problem could be met by getting a certificate of freedom from venereal disease. I want to assure the House that it is easy to prevent the spread of venereal disease. We can rid the country of that disease. But at present, nine-tenths of the people do not get any medical aid at all. We should work for good medical facilities in the country.

DR. SHRIMATI SEETA PARMANAND: Is the hon. Member speaking on the amendment?

MR. CHAIRMAN: That is what he is saying.

MAJ.-GENERAL S. S. SOKHEY: Furthermore, those who wish to prevent the spread of the venereal diseases through marriage by the means of a medical certificate, also support the Ayurvedic and Unani System of medicines.

Now, Ayurvedic and Unani practitioners cannot diagnose these diseases properly and early enough. What I would like to tell the House is that they can eliminate this clause for the simple reason that what they desire can be achieved more effectively by providing good medical care to all the people free of cost, but it will have to be scientific medicine. Let me also

[Maj.-General S. S. Sokhey.] assure them that venereal diseases have a totally different significance from what they had even ten years ago. Today, gonorrhea is curable within twenty-four hours and syphilis is almost as easily curable. It will not hurt the feelings of hon. Members if they realised that they are attaching too much of importance to these diseases, while they should be taking a broader point of view. For instance, in the Bill, tuberculosis is not mentioned which is a much worse disease today than venereal diseases.

SHRI P. T. LEUVA (Bombay): I have moved the following amendment:—

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

The portion that I want to be deleted is 25(1) (ii) which says that if "the respondent was at the time of the marriage suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner", the petitioner was entitled to a decree for voiding the marriage. Now, if this clause is retained, the position becomes that the law is recognising illegitimate relationship prior to marriage because a person cannot contract venereal disease at the time of marriage unless and until both the parties have relationship before the marriage. I have therefore moved the amendment that no person should be allowed to take advantage of a course of action against the respondent when both of them had done the wrong. It might be that the disease might have been contracted from the petitioner. Even then it would be giving sanction to illegitimate relationship before the marriage. I, have therefore, moved this amendment for the purpose of deleting sub-clause (ii) of clause 25(1).

Mr. Sundarayya has said that in no civilized country such clauses are in existence. 7 may inform him that England is a civilized country and both the clauses (ii) and (iii) are grounds for voiding the marriage in England. Such is the case in America and other countries. I do not know in so far as the position in Soviet Russia is concerned. I think there is no difficulty of divorce there. Anybody can get divorce on no ground whatsoever.

DR. SHRIMATI SEETA PARMANAND: Question, question.

SHRI P. T. LEUVA: Now I shall touch on 25(1) (iii). Suppose a woman is pregnant at the time of marriage, the husband having no knowledge of it. Now, do you mean to suggest that the woman who had conceived through some other person should be foisted on a person who does not know about it, who is quite innocent, and also that he should be the father of the child who has been begotten by somebody else? If you retain that clause, my hon. friend Mr. Hegde said, it would lead to infinite amount of litigation. Law is always meant for litigation. You cannot avoid litigation when you are enacting legislation. I would, therefore, submit, Sir, that so far as sub-clause (iii) is concerned, it should be retained. But sub-clause (ii) may be deleted from here as I have an amendment to clause 26 having the effect of this sub-clause (ii).

SHRI C. C. BISWAS: Sir, I am prepared to accept amendment No. 180 of Mr. Leuva. I may also inform the House in this connection that I shall also accept amendment No. 169 of Mr. Leuva to clause 26 as what is contained in this clause 25(1) (ii), though sought to be deleted here, will be transposed to clause 26, and this is made there a ground for divorce.

MR. CHAIRMAN: You may speak on this when we come to clause 26.

SHRI C. C. BISWAS: I simply wanted to say that I propose to accept that amendment also because it goes along with this. That disposes of amendment No. 34 moved by Mrs. Seeta Parmanand.

Then I come to Mr. Vaidya's amendment. He wants the addition of the words "or ~ny loath-sortf

disease" after the words "venereal disease". The phrase "loathsome disease" is somewhat vague. What is "loathsome" and what is not "loathsome" one does not know. So far as venereal disease is concerned, that is well known and there can be no dispute. So, Sir, I cannot accept the amendment.

Then, we come to Mr. Mahanty's amendment. He wants that at page 9, lines 1 to 3 and lines 13 to 21 be deleted, that is to say, clause 25(1) (iv) relating to the consent of either party to the marriage being obtained by coercion or fraud. It is said that now that the age of marriage has been raised to twenty-one years, there is no reason why you should allow this clause (iv) to stand. But if, as a matter of fact, even adults are induced to consent to the marriage by force or fraud, why should not the force or fraud be allowed to invalidate the marriage? After all, a marriage is a contract.

SHRI S. MAHANTY (Orissa): But where is the scope tur it?

SHRI C. C. BISWAS: The scope for it is this. As a matter of fact, that will dep< rid upon whether there has been any coercion or whether fraud has been practised. Well, we cannot anticipate that. That will all depend upon the facts of each case, whether one party has obtained the consent of the other party by coercion or by fraud; and if so, why should such a marriage be allowed to stand? That is the question. These terms "coercion" and "*>-aud" have been used and are explained in the Indian Contract Act so that there is no difficulty in finding out whether any coercion has been exercised or whether any fraud has been practised, and there is the proviso also which governs this subclause, namely, "Provided further that in the case specified in clause (iv), the court shall not grant a decree unless it is satisfied that proceedings were instituted within one year after the coercion had ceased, or, as the case may be, the fraud had been dis-covered." That means that you must take action within a reasonable period, and if there is no coercion still operating, then, of course, there will be no decree of nullity. Similarly, if the parties have condoned the coercion or fraud, and they have been living together as husband and wife, then there will be no decree of nullity. That proviso is also there. These two provisos, therefore, do give complete protection in all possible cases that we could think of.

Then, my hon. friend Shri Kanhaiyalal Vaidya's amendment seeks to insert a new sub-clause (v) to guard against sex-txansformation. Well, ...

MR. CHAIRMAN: We are legislating for the normal, not for the abnormal.

SHRI C. C. BISWAS: Therefore, I do not think I am called upon to assign any special reasons why this amendment should not be accepted.

Then, Sir, I come to amendment No. 89, and I shall accept this only with a slight verbal alteration. It relates to the second proviso which reads, as it stands, like this: "Provided further that in the case specified in clause (iv), the court shall not grant a decree un less it is satisfied that proceedings were instituted within one year after", etc. That appears to be clumsy. Therefore, the words "unless it is satisfied" .....

SHRI K. MADHAVA MENON (Madras): It is an obvious mistake. Let us leave it to the draftsmen to correct it.

SHRI C. C. BISWAS: The amendment seeks to substitute the word 'if' for the words 'unless it is satisfied that', and to add the word 'not' in the next line. I will just alter that and would put it like this—'if proceedings had not been instituted within one year..... The substance remains the same. So I would accept that amendment with that modification.

SHRI LAVJI LAKHAMSHI: That is exactly my amendment.

DR. SHRIMATI SEETA PARMA NAND: We would like clarification about the exact fate of .....

MR. CHAIRMAN: The exact fate **has** to be decided by your vote.

DR. SHRIMATI SEETA PARMANAND: The Law Minister said that he was transferring certain portions :to clause 26. Which are they?

MR. CHAIRMAN: The Law Minister accepts the deletion of clause 25, subclause l(ii), that is, the amendment of Shri P. T. Leuva (No. 180).

SHRI C. C. BISWAS: Yes, Sir, I accept the amendment that sub-clause f<l) (ii) that is, "the respondent was at the time of the marriage suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner", he deleted.

MR. CHAIRMAN: I am putting, one toy one, all these amendments. You had better be careful. You proceed ■very cautiously and see what you are voting for.

The question is:

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

(After taking a count) The amendment is negatived.

MR. CHAIRMAN: The question is:

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

The motion was adopted.

MR. CHAIRMAN: Amendment No. 97 is barred in view of the fact that amendment No. 180 has been accepted. When venereal disease goes, loathsome disease disappears.

SHRI S. MAHANTY: Sir, I beg leave to withdraw my amendment No. 33.

The amendment* was, by leave, withdrawn.

MR. CHAIRMAN: Amendment No. 89. It is only a verbal amendment.

*For text of amendment, *vide* col. 5527 supra.

The Law Minister has suggested a modification. I am putting the Law Minister's amendment to that amendment first.

The question is:

"That in amendment No. 89 **for** part (ii) the following be substituted:—

(ii) in line 15, for the **words** 'were' the words *had not been' be substituted."

The motion was adopted.

MR. CHAIRMAN: I will now put amendment No. 89, as amended. **The** question is:

"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, for the word 'were' the words *had not been' be substituted."

The motion was adopted.

MR. CHAIRMAN: The question is:

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'."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That clause 25, as amended, stand part of the Bill."

The motion was adopted.

Clause 25, as amended, was added to the Bill..

MR. CHAIRMAN: We now pass on to clause 26. There are 31 amendments.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): Sir, I move:

145. "That at page 9, line 27, after the heading "Divorce.—" the following be inserted, namely: —

'Divorce shall be granted when husband and wife both desire it. In the event of either the husband or the wife alone insisting upon divorce, it may be granted only when mediation by judicial process has failed to bring about a reconciliation.' "

SHRI V. K. DHAGE (Hyderabad): Sir, I move: —

35 & 146. "That at page 9, line 34 \ for the words 'three years' the words 'two years' be substituted."

SHRI TAJAMUL HUSAIN (Bihar): Sir, I move:

66. "That at page 9, lines 39 to 42 be deleted."

SHRI KISHEN CHAND (Hyderabad) : Sir, I move:

147. "That at page 9, line 44, for the words 'with cruelty' the words 'with continued cruelty for a period of at least one year resulting in mental or physical injury' be substituted."

SHRI GOVINDA REDDY (Mysore): Sir, I move:

90. "That at page 9, for lines 45 to 47, the following be substituted, namely: —

'(e) has been declared by a competent authority to be incurably unsound in mind; or'."

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

37. "That at page 9, line 46, for the words 'five years' the words 'two years' be substituted."

SHRI GOVINDA REDDY: Sir, I move:

91. "That at page 10, lines 1-2, the words 'for a period of not less than five years immediately preceding the presentation of the petition' be deleted."

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

38. "That at page 10, line 1, **for** the words 'five years' the words 'two years' be substituted."

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

98. "That at page 10, line 3, **after** the word 'leprosy' the words 'or any loathsome disease' be inserted."

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

39. "That at page 10, lines 5-6, **for** the words 'seven years' the **words** 'four years' be substituted."

40. "That at page 10, line 8, **for** the words 'two years' the words 'one year' be substituted."

41. "That at page 10, line 12, **for** the words 'two years' the words '**one** year' be substituted."

43. "That at page 10, after line 13, the following new sub-clause be inserted, namely: —

'(j) has lived apart from **the** petitioner for one year or more and the parties refuse to **live** together and have mutually consented to dissolve the marriage'."

42. "That at page 10, in line 14, after the word 'and' the brackets and figure '(i)' be inserted; and at the end of line 16, the following be added, namely: —

'and (ii) by the husband on the ground that the wife has, since the solemnization of the marriage, been guilty of bestiality or homosexuality'."

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

148. "That at page 10, line 14, for the words 'and by the wife' the words 'and the wife may also petition' be substituted."

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

44. "That at page 10, after line 16, the following proviso be added, namely: —

'Provided that no petition for divorce by the husband shall be admitted when the other spouse is with child; provided, however, that no woman shall be debarred from applying for divorce when she is with child.'"

Sir, I am not moving my other amendment No. 36.

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

149. "That at page 10, after line 16, the following be added, namely:—

'(2) The husband shall not apply for a divorce when his wife is with child. He may apply for divorce only one year after the birth of the child. In the case of a woman applying for divorce, this restriction does not apply.

(31 The consent of a member of the army on active service who maintains correspondence with his or her family must first be obtained before his or her spouse can apply for divorce.

(4) Divorce may be granted to the spouse of a member of the army who does not correspond with his or her family for a subsequent period of two years from the date of the marriage.'"

SHRI P. T. LEUVA: Sir, I move:

169. "That at page 9, after line 47, the following be added, namely: —

'(ee) has for a period of not less than five years immediately preceding the presentation of the petition been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner; or'."

SHRI TAJAMUL HUSAIN: Sir, I move:

190. "That at page 9, line 34, for the words 'three years' the words 'one year' be substituted."

191. "That at page 9, line 46, for the words 'five years' the words 'one year' be substituted."

192. "That at page 10, line 1, for the words 'five years' the words 'one year' be substituted."

193. "That at page i0, lines 5-6, for the words 'seven years' the words 'one year' be substituted."

194. "That at page 10, line 8, for the words 'two years' the words 'one year' be substituted."

195. "That at page 10, line 12, for the words 'two years' the words 'one year' be substituted."

SHRI P. SUNDARAYYA: Sir, I move:

181. "That at page 10, line 5, for the word 'seven' the word 'two' be substituted."

182. "That at page 10, after line 13, the following new sub-clause be inserted, namely: —

'(j) has lived apart from the petitioner for one year or more and the parties refuse to live together and have mutually consented to dissolve the marriage'."

201. "That at page 9, line 46, for the words 'five years' the words 'three years' be substituted."

202. "That at page 10, line 1, for the words 'five years' the words 'three years' be substituted."

SHRI P. SUNDARAYYA: Sir, so far as my amendment No. 203 is concerned, I want to change the words "five years" to "three years".

Sir, I move:

203. "That at page 10, lines 5-6, for the words 'seven years' the words 'three years' be substituted."

92. "That at page 10, lines 11-13 be deleted." •

MR. CHAIRMAN: The clause and the amendments are before the House. I want you to be as brief and as pointed as possible. As I said, there will be an afternoon session if we cannot get through with this Bill now.

SHRI M. VALIULLA (Mysore): Monday, Sir.

MR. CHAIRMAN: Let us earn a reputation for expeditious despatch of business and not waste Parliament's time or the tax-payer's money.

SHRI TAJAMUL HUSAIN: Mr. Chairman, you have warned us that if we do not finish by 1-15, we must sit in the afternoon. You have also told us to be very brief and therefore I am going to be very brief and to the point.

Sir, I will take up my amendment No. 190. Under clause 26(b) no divorce can be granted if, say, the husband deserts his wife for three years, until the third year has expired. My submission is that the moment he deserts his wife and it is known to the wife that he has deserted her, there is ground for divorce. The maximum period I would like to allow is only one year instead of three years. My amendment amounts to this. If a husband deserts his wife or if a wife deserts her husband, the husband or the wife should wait only for one year after desertion and not three years. At the end of one year he or she would be entitled to go to the court and say that one year has lapsed and that he or she would like to get a divorce.

Sir, my next amendment (No. 66) is with regard to clause 26(c). It says that "if the husband or the wife is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code", no divorce will be granted to him or her till one of them had waited for a period of at least three years. I see no reason for it. When the judge has pronounced his judgment that he or she will have to undergo imprisonment for seven years, the presumption is that he or she will remain there for that period.

SHRI V. K. DHAGE: What about the appeal?

SHRI TAJAMUL HUSAIN: Sir. it is common sense. It is well understood that he will be asked to undergo imprisonment only after the appellate court has given its decision, that is after the appeal to everybody, the High Court, the Supreme Court and even to the Almighty has been disposed of. And when it has been decided that the man will remain in jail for seven years, what is the sense in making the woman wait for full three years? Therefore, Sir. I want the leader of the House to accept this simple amendment of mine. I say, instead of waiting for three years— there should be no waiting at all when the final judgment is delivered—she should be made to wait only for a period of one year and then she should be entitled to go to the law court and apply for divorce. By waiting for three years unnecessarily, no useful purpose is going to be served by the husband or by the wife. Therefore, I move that the proviso be deleted completely.

The proviso to sub-clause (c) of clause 26 says:

> "Provided that divorce shall not be granted on this ground, unless the respondent has prior to the presentation of the petition undergone at least three years' imprisonment out of the said period of seven years;".

I should like to ask the hon. the Law Minister why a woman should wait for a period of three years when the final decision has been made by the final court, unless the reply is that he may be pardoned after a few years even though he may be sentenced for seven years or more.

My third amendment is No. 191; this is with regard to sub-clause (e) which says: "has been incurably of unsound mind for a continuous period of not less than five years immediately

[Shri Tajamul Husain.] preceding the presentation of the petition". If the husband is of unsound mind, no divorce will be granted to the wife till five years have elapsed. That is to say, the poor wife has to live with her husband who is insane, who is mad, for full five years. See the hardship and torture. I think one year will be quite sufficient; let the mental expert or the doctor say that it is an incurable disease, or not likely to be cured within a particular period. One year's time is sufficient for the wife to remain with the husband or the husband to remain with the wife who is mad, who is shouting 'ah!' the whole day and night. If unsoundness of mind is a ground for divorce, I think it is right that this has been made a ground; I can't understand why you should allow a period of five years to elapse. The maximum period I would like to give is one year. I would request the hon. the Law Minister to accept my amendment of one year instead of five years.

Then comes sub-clause (f) and my amendment No. 192. The clause says: "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". My argument, Sir, is the same; my reason is the same. The husband or the wife has to wait for a period of five years. I say "wait for one year". Sir, I need not repeat my argument. I want "one year" for "five years". '9 A.M.

My next amendment (No. 193) is with regard to sub-clause (g). The sub-clause reads:

> "has not been heard of as being alive for a period of seven years or more by those persons who wouL naturally have heard of the respondent if the respondent had been alive".

In effect, if the husband is absent, is absconding, no divorce could be granted to the wife for seven years. Why ■ woman wait for seven long years when the husband deserts his wife who knows that he will not be returning and whom he is not maintaining? Why should she wait for full seven years? The mere fact that he is away for a long time is a clear indication that he does not want her. This is in the English law; Sir, everything being copied from the English law is very bad.

DR. P. C. MITRA: But you are speaking in English.

SHRI TAJAMUL HUSAIN: Sir, the hon. friend to my right is saying that I speak in English. He is objecting to my speech in English. But he puts his objection also in English! For the sake of my hon. friend if I speak in my own mother-tongue, he would not be able to understand a word of it although he comes from the same province as I do; he won't understand my Hindi.

MR. CHAIRMAN: Go on, Mr. Husain.

SHRI TAJAMUL HUSAIN: So, this waiting for seven years. Supposing the wife is made to wait for the husband for seven years; goodness knows what is to happen. She might become old. Or, *vice versa,* if the man is to wait for an absconding wife for full seven years, he too might get old, he may not be able to find another wife to his liking. So, I would like my amendment (No. 193) to be accepted. There is no change of any basic principle or anything; it is simply one year instead of seven years.

Next I come to sub-clause (h) and my amendment to it is No. 194. The clause says:

> "has not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against the respondent".

The clause states that after judicial separation, after the pronouncement of judgment of judicial proceedings, the husband and wife have not cohabitated tie another or have not had any sexual intercourse with one another

for a period of two years or more, then he or she is entitled to go to the law courts. I want to make the period as short as possible so that there may be less hardship on the party aggrieved.

Sir, my last amendment is No. 195, it is with regard to sub-clause (i) which says:

> "(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".

I have said earlier that there should be no such thing as restitution of conjugal rights. If the husband does not want to live with the wife or if the woman does not like to remain with the husband, what is the use of going to a law court and seeking restitution of conjugal rights? Why should she, the woman, make her husband yield to her wishes, or the husband make the wife yield to his? At least the man has a meaning in saying so; he can do something against the woman; but the woman can't do anything against the man if he refuses to yield to her. So, if she or he refuses to come and live together after a period of one year according to my amendment, they should be entitled to sue for divorce.

I think, Sir, I have obeyed your instructions to be very brief.

SHRI GOVINDA REDDY : Is that so? Oh!

. SHRI V. K. DHAGE: Sir, there are various amendments in my name which pertain to the change of the period provided in various sub-clauses of clause 26. I shall not speak on each of them because some of them have been explained by my friends.

Now, Sir, clause 27 provides for a period of three years for the presentation of the petition, and under clause 28 the period for the remarriage has been kept to be one year after the dissolution of the marriage. Now, Sir, three years plus one year, *i.e.,* four years seem to be compulsory before any perfect relief can be had. But before the decree is granted, the court, for the passing of the decree, might, in litigation, take at least two years. It will thus be seen, Sir, that nearly a period of six years will have to elapse before any relief can be had by any one of the two parties. This period, Sir, seems to be pretty long. And therefore I have given notice of these amendments in the various clauses reducing the period so that the hardships may be less and less.

The important amendment of which I have given notice is No. 43. It says:

> 43. "That at page 10, after line 13,. the following new sub-clause be inserted, namely: —
>
> > '(J) has lived apart from the petitioner for one year or more and the parties refuse to live together and have mutually consented to dissolve the marriage.'"

This means. Sir. that the dissolution of marriage may take place by mutual consent. The matter was discussed in the Select Committee, and many of the Members who have appended their Minutes of Dissent have agreed that there must be some provision by which by mutual consent a marriage may be dissolved. Now, Sir, if that does not happen the parties to the marriage who would like to have their marriage dissolved would resort to some circumvention of the various clauses that are passed. And I would like to draw your attention, Sir, to the fact that a very dirty practice might perhaps be resorted to. It would be like this. Under clause 23, which has been passed, a judicial separation is possible. Now. imagine that the two parties who would not like to bring up charges of adultery, etc., would under clause 23 ask for a judicial separation, and during the period of separation the wife or the husband, whoever is seeking a divorce, arranges things in such a way that she lives with another person or he lives with another woman. Let us also assume, Sir, that there is, during this period, an issue born. Now under clause 24, which has

[Shri V. K. Dhage.] already been passed, such an issue will not be illegitimate if after the aiasolution of the previous marriage this marriage takes place. I don't know whether the Law Minister has caught this point.

MR. CHAIRMAN: Yes, yes.

SHRI V. K. DHAGE: Now, Sir, instead of allowing the parties to resort to a method of this type, by the use of the very provisions which have been passed here, for getting the benefit of the marriage being dissolved without resort to a court of law, by preferring the causes, which are enumerated in clause 26, namely adultery, etc., I feel that it would be much wiser not to allow any kind of immoral, as we might put it, act to take place, and allow the parties to dissolve their marriage by means of mutual consent, I have stated here. I shall not elaborate that point much further.

Now, Sir. another amendment that stands in my name is amendment No. 42. It reads as follows:

> 42 "That at page 10, in line 14, after the word 'and' the brackets and figure '(i)' be inserted; and at the end of line 16, the following be added, namely: —
>
> 'and (ii) by the husband on the ground that the wife has, since the solemnization of the marriage, been guilty of bestiality or homo-sexuality.' "

"We find, Sir, in clause 26 it is stated in the end as follows:

> ".....and by the wile on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality."

If women are to have a relief of this kind against their husbands for acts of this kind committed, it stands to reason that men also should get a similar relief against their wives for committing the very same kind of act. Now, Sir, we have to see whether we want the people, who marry under this law, to live happily or whether we want them to suffer misery during the course of their married life for the acts which the wife has committed. I would like to point out, Sir, that homosexuality is a thing which exists, because that is a point which some of the people might perhaps raise- Yesterday, when the question of frigidity was raised, some hon. Members here said that it was merely psychological, while other Members also said that impotency was also psychological. Both were curable. There was evidence in the books of people who had studied this subject that it was also congenital. But for me now it is rather too late to deal with the subject, and I will not touch it. I will only take up the question of homosexuality.

Sir, it is found that where there is a segregation of sex, *i.e.,* people belonging to different sexes are kept separately or where the customs are such that people of two sexes are not socially allowed to get together, men resort to sodomy and women resort to homosexuality. In this connection, Sir, I might refer to a book known as "The Well of Loneliness" by Radcliffe Hall. This book was banned in England when it was published, but later the ban was removed. This is the autobiography of a woman dealing with the homosexual life she led. When it was published, there was a howl. Similarly, Sir, progressive writers in India have also been dealing with this subject in their stories. One such story in Urdu, which I came across, written by a lady author was in a book known as 'Taraqqi pasand a dab'. There was a story with the title 'Lihaf. 'Lihaf was a story dealing with homosexuality. This, Sir, will show that homosexuality amongst women is generally to be found in such communities where segregation is prevalent, namely, where the purdah system is very strictly followed. I therefore feel, Sir, that homosexuality does exist in India, and to a large extent in places where *purdah* is rigidly observed.

I will now recite to you the behaviour of a homosexualist.

MR. CHAIRMAN: Why do you want that?

SHRI V. K. DHAGE: To show how it affects the marriage.

MR. CHAIRMAN: Yes, it does affect. We accept that it affects. Now proceed further.

SHRI V. K. DHAGE: Sir, you accept.

MR. CHAIRMAN: No, no. I am not accepting myself. The House accepts il.

SHRI H. P. SAKSENA (Uttar Pradesh) : Is the hon. Member recounting stories of his own State, the State of Hyderabad?

SHRI V. K. DHAGE: Sir, I am very sorry .....

MR. CHAIRMAN: .....for the in terruption.

SHRI V. K. DHAGE: Sir, I was referring to his own State.

DIWAN CHAMAN LALL (Punjab): Sir, I do not want to interrupt my hon. friend. But may I ask him something in regard to what he said previously ' in connection with his amendment? His amendment is No. 43. It states as follows:

> "has lived apart from the petitioner for one year or more and the parties refuse to live together and have mutually consented to, dissolve the marriage."

These are the two conditions. Does he agree to both the conditions or would he not change the word 'and' to 'or'?

SHRI V. K. DHAGE: I will accept that modification, as it improves it further.

We may take a few cases to show how men suffer under the present law. The present law merely states: "and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality." Let us imagine a case where the wife is used to homosexuality. What is the remedy for the husband? Here is the case of a lawyer whose wife left him and went away with another woman.

SHRI K. S. HEGDE: You cannot make a rule for exceptions. We are not legislating here for exceptions.

MR. CHAIRMAN: Your amendment wants the right of emancipation for the husband also. It is understood, and no stories are necessary to commend it.

SHRI V. K. DHAGE: It says:

> "What could he do about it? He can't get a divorce. For how can he prove that there is any harm in his wife living with another woman? To the world these two women seem perfectly innocent in their rela tions..... "

DR. SHRIMATI SEETA PARMANAND: Are these cases from India? I would like to know how they are relevant, if they are not cases from India.

SHRI V. K. DHAGE: These are cases from England.

DR. SHRIMATI SEETA PARMANAND: If they are not cases from India, why attach this indirect stigma to the Indian women?

SHRI V. K. DHAGE: There is no question of attaching any stigma. It is a fact that human beings are the same everywhere.

> " ..... The husband is not able to prove her infidelity although his wife as much as admitted it to him. Also, this woman has done the same thing several times before, with other women. But there he is. He has no wife; cannot get a divorce. And consequently cannot remarry, although his wife has a lover, as surely as though she were living

[Shri V. K. Dhage.]

with another man. Yet the law does not recognise this situation."

SHRI K. S. HEGDE: For the information of my hon. friend, the English courts have held it to be cruelty and have given relief to the husband.

(

SHRI V. K. DHAGE: This has been admitted by the English courts. When this law was being passed in England, Lord Hailsham said .....

MR. CHAIRMAN: He said something in support of your view.

SHRI V. K. DHAGE: If you will give me a minute, Sir, I will find out. Lord Hailsham said:

> "Unnatural or pervert practices by a wife with another woman do not entitle the husband to a decree of divorce, but it is submitted that they could be taken into account as part of a course of conduct amounting to legal cruelty."

This is what Mr. Hegde has just pointed out, but is this the real way? If the wife is given the right to divorce her husband on the ground that her husband has been guilty of rape, sodomy or bestiality, then on that very ground the right of divorce should be given to the husband also.

Since you are not inclined to give me more time to give cases of commission of acts of bestiality, etc., on the part of the woman, I would only say that my amendment should be accepted so that there is perfect reciprocity.

PANDIT S. S. N. TANKHA: Sir, in moving my amendments Nos. 146 and 148, I have to say a few words in support of what has already been said on the subject. The provision of subclause (b) of clause 26 is that a petition should not be granted for a divorce unless three years have elapsed. I find that this provision has not been taken from the Indian Divorce Act which has been existing up till now. Section 22 of that Act says:

> "No decree shall hereafter be made for a divorce o mensa et **toro,** but the husband or the wife may obtain a decree of judicial seperation on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards....."

So, I see no reason why the provision of two years has been increased to three years in the present Bill. I would submit that this period of three years is bound to work greater hardship than the period of two years has been doing so far. In fact, I am of the view that one year is quite sufficient and I agree with my hon. friend, Mr. Dhage, in his amendment No. 43 with the incorporation of the word 'or' in place of 'and' as suggested by my hon. friend, Diwan Chaman Lall.

Regarding the other amendment on page 17 of the Consolidated List, I find that the words in clause 26 are:

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

It means that both the husband and the wife can apply for divorce on any of these grounds. Now, coming to page 10 of the Bill, the words used in line 14 are:

> "and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality."

These wordings of the Bill give one the impression as though the former conditions (a) to (i) do not apply to the wife. To make things quite clear, the wording should have been, "and also by the wife on the ground..... , etc.", that is to say, that these are the additional grounds upon which the wife can petition. Therefore, Sir, I have suggested my amendment. That will make the position clearer and will go to show that the wife, in addition to the powers given to her under (a) to (i), has also some other ground

upon which she can apply. I think this amendment should be acceptable to the hon. the Law Minister. It may be in any suitable form which he may like—and I have no objection to that —but it should be made clear that the wife has these extra grounds for petitioning in addition to those already conferred on her in the previous subclauses.

SHRI P. SUNDARAYYA: Sir, my amendment is No. 182 in Supplementary List IV. Apart from my supporting the various amendments of Mr. Dhage, I have given notice of this and also of amendments Nos. 201, 202 and 203. The purpose of all these amendments is to make the divorce a little more lenient instead of as difficult as has been provided in this, while at the same time preserving the marriage and also giving time enough for reconciliation. In this clause it is provided that a wife can claim divorce only three years after desertion, or imprisonment, etc. Mr. Dhage's amendment is that it should be two years. I certainly feel that two years is quite enough for this prirpose and it should be a sufficient ground for divorce. In the other clauses too the period should be reduced to two years instead of three years. In any case if the House at present accepts two years, then it will be a more progressive thing than demanding one year itself as many people may think that one year is too short a period and it will be nothing but' playing with the institution of marriage. Instead of saying that you can come for a divorce after one year, it will be far better to say 'if there is mutual consent, then they can come at any time for divorce.' But let us not also show in our laws that we are playing with the marriage institution or with the conception of marriage itself nor do we take the sexual relations between man and woman as something to play with. We take it seriously. So I say that 2 years would have been better than three years but if the amendments of Shri Dhage are not acceptable to the House, then I have moved Amendments Nos. 201, 202 and 203 to bring in conformity with 3 years at least. Clause 26(a) says:

> "has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition."

PANDIT S. S. N. TANKHA: That is subclause (b).

SHRI P. SUNDARAYYA: I am sorry. It is (b). Then (c) says:

> "is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code provided three years have elapsed".

Then in (e) it says:

> "has been incurably of unsound mind for a continuous period of not less than five years immediately preceding the presentation of the petition."

Amendment No. 201 says that instead of 5 years, it should be 3 years.

DIWAN CHAMAN LALL: Why not one?

SHRI P. SUNDARAYYA: For the simple reason that once you say till three years she has to wait for demanding a divorce, let there be uniformity of 3 years and let us not increase it to 5 years. If he is incurably of unsound mind, why should you wait for 5 years? Three years is more than enough. I don't know—I am not a medical man; perhaps Dr. Sokhey might be able to say—if he is of an incurably unsound mind, if he cannot be cured in five years. In any case let us make it 3 years instead of 5 years. I support generally everything for 2 years but suppose they don't accept it—as it is likely they may not—then let us make it at least 3 years in every case and not make it more difficult to get divorce.

Similarly (f) says:

> "has for a period of not less than five years immediately preceding the presentation of the petition been suffering from leprosy, the disease

[Shri P. Sundarayya.]

not having been contracted from the petitioner".

I don't understand this. If you say that leprosy and V.D. are curable, then you should not make it a ground for divorce at all. Leave it to the free consent of the man and woman for divorce. Once you make it a ground for divorce, that means the disease is advanced to such a stage that it cannot be cured at all, that it is better to divorce. Then in that case why keep it for 5 years? So. either the whole clause should be omitted or if it is to be retained, it should not be for more than 3 years to bring it in relation with the whole clause. Similarly (g) says:

"has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive".

This question of 7 years has been brought in because you cannot prove desertion, etc., in such cases. So the question of whether he is alive or not has been brought in. Even in those cases it should not be 7 years. It should be 3 years. Three years should have been ground enough for a wife to claim a divorce but it does not mean that the wife must necessarily come to claim divorce. It will not be understood by anyone like that.

PANDIT S. S. N. TANKHA: May I inform the hon. Member that there is provision under the Indian Evidence Act regarding this matter also, namely, that 7 years must elapse before a person can be presumed as being dead? Therefore, if we substitute here any other period lesser than that period of seven years, it will be going against that provision of our law.

SHRI P. SUNDARAYYA: That is an additional argument for me to cut it down from 7 to three years. Legally after 7 years he is considered to be dead, then she need not come in for divorce. Automatically she can marry.

SHRI K. S. HEGDE: In fact this clause itself is not necessary because under the Evidence Act at the end of 7 years he should be presumed to be dead.

SHRI P. SUNDARAYYA: The purpose of the sub-clause is not to say what she is to do. when he is presumed to be dead. Naturally she can marry Then this clause is unnecessary. The purpose of this clause is if the wife has not heard about the husband for a period of years, then she is also entitled to come and claim divorce. Naturally it should not be 7 years; it should be a lesser period. Shri Dhage has suggested 4 years. I have suggested 2 years. If that is not accepted, I have given another amendment for three years to make it consistent with other amendments. So that, if you make it a ground for divorce—and it should be a ground, because if the husband or wife has not heard from the other party, and they cannot prove any other ground, so that it should be a ground for divorce—then the period should be reduced.

SHRI J. S. BISH^(Uttar Pradesh): What will happen to prisoners of war or those missing? Will this period of three years apply to them also?

SHRI P. SUNDARAYYA: Yes. What is the main idea behind divorce? Whether he is a prisoner of war or whether he is completely missing or whether he is in jail as provided in the other clauses—he may be in. jail for 20 years—these are enabling clauses for a man or woman when they find that their spouse is not there and after waiting for 3 years also he or she cannot lead a normal married life, then he or she requires that "I shall be freed so that I can re-start my life with some other spouse". The purpose of divorce is that. Therefore, if a person is missing, if he is unheard of for a long time, then naturally the wife waits as long as possible.

AN HON. MEMBER: If she is a good wife.

SHRI P. SUNDARAYYA: It can be either the husband or the wife that is

missing and so the other party waits for the return of the missing one. But if the party does not want there is nothing to compel the person to seek divorce. It is something for the party to decide. If the husband or the wife wants it, he or she can seek divorce. If you bring in the question of a soldier heing away for a number of years, then that is a different question and you may have to bring in a separate provision to cover such cases. During a war, the soldier husband may be away for more than three years.

SHRI K. S. HEGDE: But that will not be a case of being unheard of. We know where the soldier is, but he is not available,

SHRI GOVINDA REDDY: The fate of a soldier's wife.

SHRI J. S. BISHT: He may not be heard of also.

SHRI P. SUNDARAYYA: Sub-clause {h) says:

> "has not resumed cohahitation for a period of two years or upwards after the passing of a decree for judicial separation against the respondent;

and sub-clause (i) says:

> "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;"

These periods should be reduced to one year in each case. Judicial separation itself shows that the parties cannot get on together. They are separating because they are not happy when living together. And so after one year, they can go and claim divorce, if in the meantime they could not make up any differences that may be existing between them. Yesterday, when the House was discussing the question of restitution of conjugal rights, many hon. Members expressed the opinion that judicial separation was only the first step towards getting divorce. In fact, there is *no* law to compel a man or woman to live together as husband and wife, if they do not like it. So they have judicial separation and the next step is to claim divorce. But this they cannot do unless two years have elapsed, as the clause now stands. I do not see any reason why the period should be more than one year. Therefore, my suggestion is to reduce the period here to one year.

SHRI V. K. DHAGE: Then the hon. Member is supporting my amendment.

SHRI P. SUNDARAYYA: Yes, I am in favour of the hon. Member's amendment. I would recommend my new sub-clause (j) to be inserted, namely: —

> "(j) has lived apart from the petitioner for one year or more and the parties refuse to live together and have mutually consented to dissolve the marriage."

DIWAN CHAMAN LALL: You want to have it as "or have mutually consented"?

SHRI P. SUNDARAYYA: If the hon. Law Minister, if the House would be prepared to accept it as "or" I will be one with them. But unless they are prepared to agree to it, I will not be prepared to accept "or" because the parties who mutually consent to dissolve the marriage, are entitled to do it. That is our stand and if the House agrees with this stand, none will be happier than we who stand for progressive views. But taking the present situation as it is, I am not completely happy about it, because I do not know the reaction of our Law Minister.

MR. CHAIRMAN: Yes, go on.

SHRI P. SUNDARAYYA: So I do not say "or"~here, and if it is accepted as it is, I will be happy. And even that will be a tremendous progress over the present state of the clause.

I am very unhappy about these lines — lines 14 to 16 on page 10—and though I have not unfortunately been able to move any amendment to that effect, I

[Shri P. Sundarayya.] wish we could avoid having to mention all these things about rape, sodomy and bestiality. Instead of taking up the proper attitude, Shri Dhage has moved that the provision should apply to the woman also. But I do not understand why at all we should make mention of this in the Bill. Unfortunately, I have not moved an amendment; but if the hon. Minister agrees with this view, he can himself bring forward an amendment and we will be one with him in supporting it. The provision says that since the solemnization of the marriage, if it is proved that the husband has committed rape or any of the other offences, then she can claim divorce. Why say all that? If adultery is a ground for divorce, then naturally rape also is as it follows, unless a man in a particular case commits rape on his own wife, in the sense that she is below age, she is less than 15 years and so on. But, of course, such cases do not come in here, because this Bill is for persons who marry under the Special Marriage Act and that they can do only when they are at least 2I.SHRI C. C. BISWAS: It does not say "rape on the wife."

SHRI P. SUNDARAYYA: I agree. But if it is rape on somebody else, how can rape be committed without committing adultery?

MR. CHAIRMAN: They have got definitions for these things.

SHRI P. SUNDARAYYA: I have gone through the definitions of these things, Sir. And if the lawyers say that it is committed by force or .....

SHRI GOVINDA REDDY: You cannot commit adultery without the party's consent, whereas rape involves force without consent.

SHRI P. SUNDARAYYA: In any case you could stop with rape and not proceed to refer to sodomy and bestiality. *(Laughter).* I am sorry, Sir, if I am misunderstood. I am saying that in this law, you can stop with referring to the word "rape" and you could have left out the other things like sodomy, bestiality, homosexuality. All these aberrations exist and we need not bring them in our law. All of them could be covered by the word "cruelty" or if you accept my amendment suggesting "mutual consent" or Mr. Dhage's amendment, that will meet the requirements. Let us not make either our courts or our laws a forum or means to satisfy some curious minds, some perverted minds to get a sort of delight from these things. Unfortunately, there is no amendment moved for the deletion of these words. But if the hon. Law Minister is pleased to bring forward one. I am sure everybody would be happy to support it. They would like to omit these words from the clause.

I would support Shrimati Parvathi Krishnan's amendment also, that is t& say, amendment No. 44. That amendment is:

> "That at page 10, after line 16, the following proviso be added namely: —
>
> 'Provided that no petition for divorce by the husband shall be admitted when the other spouse is with child; provided, however, that no woman shall be debarred from applying for divorce when she is with child'."

SHRI RAJAGOPAL NAIDU: Why?

MR. CHAIRMAN: A little gallantry.

SHRI P. SUNDARAYYA: The reason why a husband should not claim divorce from his wife when the wife is with child is this.

SHRI V. K. DHAGE: By whom?

SHRI P. SUNDARAYYA: That we have already made null and void and, therefore, the question of 'by whom' does not arise. Here the question is when the wife is there, when the marriage is not declared null and void under clause 25, then naturally it is presumed that the child she is bearing is his own unless it is proved

otherwise. Therefore, Sir, when the woman is carrying, the best facilities for mental peace and rest should be given. At that time let her not be dragged into a court of law under the •divorce proceedings. Let the child be born and if the husband does not like to live with her, he can certainly bring his case then. It is only that no divorce proceedings should be instituted when she is carrying.

These are the various amendments and I would like the House to consider them carefully and make this Bill a really enlarged one.

DR. SHRIMATI SEETA PARMANAND : At this stage, I would like to ask the Law Minister one question as to whether he has transferred 25(1) (iii), that is, "respondent was, at the time of the marriage, pregnant by some person other than the petitioner" to clause 26? He has to make it clear.

SHRI C. C. BISWAS: Sub-clause (iii) -of clause 25(1) stands as it is.

SHRI P. SUNDARAYYA: These are the various amendments and I would like the House and the Law Minister specially to consider and make divorce under this progressive Bill a much more reasonable thing. In fact, let us claim, after making this law. that this Bill, if not a compulsory civil code is an optional civil code which we can put before the public.

SHRI H. P. SAKSENA: I want to know whether any provision has been made in the case of a wife whose husband has gone underground?

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat):

श्री कन्हैयालाल डी० वैद्य (मध्य भारत): अध्यक्ष महोदय, विवाह के इस सारे कार्यक्रम में हम अब विवाह विच्छेद पर आ रहे हैं। यह एक बहुत महत्व का प्रश्न है। इस देश में विवाह विच्छेद के प्रश्न पर बहुत मतभेद है। इस देश के करोड़ों व्यक्ति ऐसे हैं जो विवाह विच्छेद को अनुचित मानते हैं और इसका विरोध करते हैं। मूलतः इस विवाह सम्बन्धी कानून का इस देश में जो व्यापक विरोध हुआ और हो रहा है, उसका मूल कारण ही यह विवाह विच्छेद है। विवाह विच्छेद को न तो हमें प्रोत्साहन ही देना चाहिये और न पिछड़े हुए ख्यालात को ही स्वीकार करना चाहिये। लेकिन मैं यह जरूर कहूंगा कि इस कानून में विवाह विच्छेद के विषय में आपको कोई सिद्धान्त ऐसा निश्चित कर लेना चाहिये जिससे विवाह विच्छेद सरल हो जाय और आवश्यकता पड़ने पर ही उपयोग में लाया जा सके।

[MR. DEPUTY CHAIRMAN in the Chair.]

समाज में जो छोटे २ व्यक्ति हैं उनके सामने हमें एक आदर्श रखना है ताकि वे शादी के बाद अपनी जिम्मेदारी को पूर्ण रूप से निभा सकें। उनके सामने विवाह विच्छेद का जब यह कानून रहता है तो उनके सामने एक प्रश्न यह भी रहता है कि अगर हम विवाह के ऐसे कानूनों के अन्तर्गत शादी कर अपने सम्बन्धों को ठीक तरीके से नहीं निभायेंगे तो विवाह विच्छेद के अन्तर्गत हम एक दूसरे से अलग हो जायेंगे। अगर हमने इस कानून को सुधारक के ढंग से उनके सामने रखा तो उनको मौका मिलेगा कि वह समाज में एक आदर्श जीवन रक्खें। लेकिन मैं नहीं समझता कि इस कानून के अन्तर्गत हम इस तरह की कोई बात करने जा रहे हैं।

हमारे देश में दो हजार वर्षों से इस विषय में जो कानून अमल में आ रहा है वह किसी सिद्धान्त पर आधारित है। हमारे देश में पिछड़े हुए वर्गों में, आदिवासियों में, जो जंगलों में रहते हैं, उनके यहां विवाह के सम्बन्ध में नियम बने हुए हैं, बड़े आदर्श नियम हैं और इस कानून से बहुत आगे हैं। उन लोगों के वहां विवाह विच्छेद के सम्बन्ध

[Shri Kanhaiyalal D. Vaidya/]

में भी बहुत अच्छे नियम बने हुए हैं। जब कभी दो पक्ष विवाह विच्छेद चाहते हैं तो तीसरा पक्ष इन दोनों में आपस में समझौता कराने की कोशिश करता है। जो तीसरा पक्ष निर्णय देता है वह दोनों को मान्य होता है। इस तरह से या तो विवाह विच्छेद का प्रश्न हल हो जाता है या विवाह विच्छेद हो जाता है। हमको विवाह विच्छेद के सम्बन्ध में इस तरह के नियम बनाने चाहियें कि लोगों को कठिनाई न हो और न ही इस प्रथा को प्रोत्साहन मिले।

मैंने इस सम्बन्ध में जो एमेन्डमेन्ट (amendment) दिया है उसका अर्थ यह है कि विवाह विच्छेद तब ही हो सकता है जब कि पति और पत्नी दोनों चाहते हों। अगर दोनों में से कोई भी विवाह विच्छेद चाहता हो तो वह उसी हालत में स्वीकार किया जाना चाहिये जबकि अदालत द्वारा दोनों में समझौता कराने के सब प्रयत्न निष्फल हो जाते हों। अगर इस सिद्धान्त को नहीं माना गया तो विवाह विच्छेद से बहुत लोगों को परेशानी उठानी पड़ेगी और मुकदमे बाजी बढ़ जायेगी। जब तक आप इस सिद्धान्त को इस कानून में नहीं लायेंगे तब तक मैं नहीं समझता इस धारा के कारण विवाह विच्छेद सरल बन सकेगा। अगर आपने इस सिद्धान्त को स्वीकार नहीं किया तो इस धारा द्वारा देश में विवाह विच्छेद के सम्बन्ध में मुकदमेबाजी बहुत बढ़ जायेंगी।

माननीय मित्र श्री सुन्दरैया ने कहा कि "सौडमी" (sodomy) को इस धारा से हटा देना चाहिये। मैं अपने मित्र से पूछता हूं कि यह रोग देश में किस हद तक फैला हुआ है, क्या उन्हें इसका ज्ञान है ? उत्तर प्रदेश और अन्य प्रान्तों में लाखों लोग इस विनाशकारी रोग में फंसे हुए हैं। समाज में ऐसी बहुत सी माताएं और बहिनें हैं, जिनके पति इस रोग में फंसे हुए हैं और विधवा के समान जीवन व्यतीत कर रही हैं। इस बीमारी से समाज के अन्दर एक भयंकर स्थिति पैदा हो गई है और अगर हमने इसके लिये उचित कदम नहीं उठाये तो इससे हमारे समाज को बहुत हानि पहुंचेगी। जैसा कि मैं पहले कह रहा था इस कानून के अन्दर विवाह विच्छेद के सम्बन्ध में तथा सार्टिफिकेट (certificate) और अर्जी देने की जो व्यवस्था है, उसके द्वारा समाज के अन्दर सुधार आने वाला नहीं है। इस तरह आप समाज के अन्दर सुधार नहीं ला सकेंगे, इससे तो और भी ज्यादा दिक्कतें बढ़ जायेंगी।

अब मुझे दूसरे अमेन्डमेन्ट के सम्बन्ध में कहना है जिसमें लैपरेसी (leprosy) रोग के सम्बन्ध में.....

MR. DEPUTY CHAIRMAN: All these points have been urged earlier. It is not a general discussion. Just say a few sentences on each amendment and please finish in two or three minutes.

SHRI KANHAIYALAL D. VAIDYA:

श्री कन्हैयालाल डी० वैद्य : मैं केवल दो मिनट में ही अपना भाषण समाप्त कर दूंगा।

MR. DEPUTY CHAIRMAN:

उपाध्यक्ष महोदय : दो मिनट में आपका भाषण समाप्त होना चाहिये।

SHRI KANHAIYALAL **D. VAIDYA:**

श्री कन्हैयालाल डी० वैद्य : तीसरा अमेन्डमेन्ट मेरा १४९ नम्बर है। इस अमेन्डमेन्ट द्वारा मैं यह चाहता हूं कि जब स्त्री गर्भवती हो तो उसका पति विवाह विच्छेद के सम्बन्ध में किसी प्रकार की दरख्वास्त नहीं दे सकता है। पति उस अवस्था में

सम्बन्ध विच्छेद के बारे में दरख्वास्त दे सकता है जब कि स्त्री का बच्चा हो गया हो और उसकी उम्र एक साल की हो गई हो। अदालत का भी यह फर्ज हो जाना चाहिये कि इस तरह की अर्जी को वह तब तक न सुने जब तक कि बच्चे की उम्र एक साल तक न हो जाय। जब स्त्री पुरुष से सम्बन्ध विच्छेद चाहती है तो उस पर किसी तरह की पाबन्दी नहीं होनी चाहिये।

इसी तरह से फौज में जो लोग काम करते हैं उनके लिये इस कानून में किसी प्रकार की व्यवस्था नहीं की गई है। पहले हमारे देश की जो फौज थी वह मर्सीनरी (mercenary) थी किन्तु अब हमारा देश आजाद हो गया है, अधिक से अधिक लोग फौज में भरती होते हैं। इसलिये इस कानून में उनके अधिकारों की रक्षा की कोई व्यवस्था अवश्य होनी चाहिये थी।

श्री सुन्दरैया जी जब इस धारा पर बोल रहे थे तो उन्होंने इस बात को स्पष्ट करने के लिये कोई प्रकाश नहीं डाला, और न धारा में ही इस विषय में कोई बात स्पष्ट रूप से कही गई है।

इस सम्बन्ध में मेरा सुझाव यह है कि स्त्री और पुरुष, जो भी सम्बन्ध विच्छेद चाहते हों, फौज में उस स्त्री और पुरुष की राय ले ली जानी चाहिये जो कि फील्ड (field) में हो।

इसके साथ ही साथ मैंने यह भी सुझाव रखा है कि अगर कोई स्त्री या पुरुष शादी के बाद दो वर्ष से फील्ड में काम कर रहे हैं और दोनों में कसी प्रकार का पत्र व्यवहार नहीं है तो उस स्थिति में उनको विवाह विच्छेद का मौका दिया जाना चाहिये अगर उनमें से कोई चाहता हो। इस धारा में फौज के आदमियों के लिये ऐसी कोई व्यवस्था नहीं है। इस तरह से फौज में काम करने वालों के हितों को नुकसान पहुंचेगा। इसलिये मैं माननीय मंत्री जी से अनुरोध करूंगा कि मेरे अमेन्डमेन्टस (amendments) को स्वीकार कर लें तो ज्यादा अच्छा होगा।

[For English translation, see Appendix VII, Annexure No. 282.]

SHRI .GOVINDA REDDY: If a party to a marriage has to get relief under this sub-clause (e), Sir, **the** other party must have been incurably of unsound mind for a continuous period of not less than five years immediately preceding the presentation of the petition. It means that the parties can present a petition only five years after the marriage even supposing that on the date of the marriage the person is incurably of unsound mind. This presents some difficulties.

The first thing is, after the presentation of the petition, the petitioner must come and prove to the court that the other party was incurably of unsound mind for five years. Well, Sir, for one thing that prolongs the cass and then it puts on the party the burden of proving the continuous incurable insanity for five years. Also, Sir, it means unnecessary hardship. When we are contemplating cases of "incurably of unsound mind", if the party has an unsound mind of an incurable nature, then where is the point in asking the parties to wait? If it is a case of incurable unsoundness, then the party should be allowed to prove it to the court earlier or get the party adjudged by the competent authority and thus get the relief earlier. There is already one clause in this Bill putting restriction on petitions for divorce during the first three years which itself is a hardship and which I do not like and if the husband or the wife is "incurably of unsound mind" say from the day immediately after their marriage, they will have to tolerate it for three year?. That itself is a sufficient hardship. I do not agree with that condition. But why prolong this torture for two yeftrfi more under

[Shri Govinda Reddy.] this clause 26? And for what purpose'? If you say simply 'of unsound mind' I can understand it because it is not so harmful as being 'incurably of unsound mind' and there will be the hope of his being sound in mind in course of time by treatment. Unsoundness of mind is a wider term than insanity or idiocy. Some unsound people are harmless and many are harmful and violent. When an unsound person is violent, where is the point in asking his or her partner to remain with him or with her for a period of five years? Therefore I have suggested the amendment to replace the present 26(e) to the effect that the party can be adjudged by competent authority as being of unsound mind. That should suffice and no period should be fixed here because there is already the general restriction of three years on petitions for divorce after marriage.

PANDIT S. S. N. TANKHA: What is the meaning of "competent authority"? Competent medical authority?

SHRI GOVINDA REDDY: At present there is a provision in the Lunacy Act that if there is an unsound person, anybody can present a petition to the District Magistrate. The competent authority under the Lunacy Act is the District Magistrate.

MR. DEPUTY CHAIRMAN: You refer to the provisions in the Lunacy Act.

PANDIT S. S. N. TANKHA: He wants tne court to declare it. He does not perhaps want the competent authority to be the medical authority.

SHRI GOVINDA REDDY: May be a medical authority or a legal authority. It may be both.

As for the other thing in sub-clause 26(f) I have suggested an amendment for the omission of the words "for a period of not less than five years immediately preceding the presentation of the petition". Please remember that it is a case of leprosy. With great respect to the Law Minister who said that he had gone into the question of leprosy and the nature of the disease, I must say that the conclusion he has arrived at is not entirely correct. I admit that leprosy is a disease which is not contracted easily but I do not know the nature of the cases which had been represented to him. If it is a question of other parties, I 10 A.M. mean other relations going and visiting the leper or a medical attendant visiting a leper that is entirely different, but here it is a case of the partner, the wife or the husband and they are in close contact with each 'other always. Here the contact is for a longer time than that of the relations or the medical attendant. Supposing it is the case of the wife then the wife naturally will use the husband's bed and his other things which are usually used by both. It has been decided by the medical authorities that the parties are liable to contract the disease by such close contact, the contact of the sweat of the leper or the phlegm of the leper. Sir, leprosy, we all know, is a loathsome disease. It is a terrible disease. Why should we stay the party from getting relief earlier when it is established as a fact that the other party is suffering from the disease? It is a deadly disease. Of course, it is said now that the leper can be cured, but nobody can say that the leper can be cured within a certain period of time. On the other hand, medical authorities, I believe, do say that it is a prolonged cure. It is not an immediate cure: it is not a quick cure. Even supposing there is the cure, why should we make the other party wait for getting the relief. This section is optional. It is only when the party to the marriage is willing to get a divorce that this section applies. So when it is optional, if the wife and the husband choose to remain together even when one is a leper nobody compels them to separate. Therefore this portion can conveniently be omitted and I hope the learned Law Minister will accept this amendment.

SHRI KISHEN CHAND: I have moved an amendment to clause 26(d).

Clause 26(d) reads: "has since the solemnization of the marriage treated the petitioner with cruelty". I submit, Sir, that the word "since" and the word "cruelty ' will have to be defined very carefully because it may mean 'since the solemnization of the marriage'. That means continuously for the period from the solemnization of the marriage till the date of the petition.

SHRI K. S. HEGDE: The reference is to the point of time and not to continuity.

SHRI KISHEN CHAND: Since when or for what period the cruelty has taken place? The aim of my amendment is to replace the words "with cruelty" by "with continued cruelty for a period of at least one year resulting in mental or physical injury". That is a clear definition, and if this is added, it will not give rise to legal proceedings and complicated explanations by the parties in court. Therefore, I think, Sir, this amendment should be inserted. I shall say one more thing. Several members have pointed out with respect to 26(b) that if any party has deserted the other for a period of three years the party should be enabled to claim divorce. This period of three years is in consonance with clause 27 where also a period of three years has been prescribed. So the period in this case should be reduced from three years to two years if in clause 27 it is reduced from three years to two years. These should go together.

Then as pointed out by hon. Members there is no sense in keeping subclause (g) here as under the Penal Code it is well known that a person who has not been heard of for seven years is supposed to be a dead person.

"Then there is no necessity also for keeping sub-clause (c), and it should be completely omitted because if any person is punished under the Penal Code, the period of punishment will be seven years. He will come under some other clause, and so we need not mention such cases here. Therefore, I think there is no need for keeping it.

MAJ.-GENERAL S. S. SOKHEY: May I have a couple of minutes, Sir? I think if we take up the enumeration of medical conditions as grounds of divorce in such detail it is going to create one difficulty after another. There are very many medical conditions which a House like this cannot provide for. Legislating for leprosy, venereal diseases, unsoundness of mind, frigidity, etc., would only lead to difficulties and complications, and I would advise the House not to make this Bill appear ridiculous. The best way to provide for meeting such contingencies as are discussed now is to permit a marriage to be dissolved if advised by a competent medical authority on medical grounds. I think if we say something to that effect, it would be far better and I would ask the Law Minister to accept this proposal.

SHRI K. S. HEGDE: To borrow your own yesterday's words, it would be very costly.

DR. SHRIMATI SEETA PARMANAND: Medical certificates cannot be trusted according to the Law Minister.

MAJ.-GENERAL S. S. SOKHEY: The State must provide competent medical authorities to advise. It must become regular part of health aid. If we do that it is my belief that the Bill will become much sounder and much easier to comprehend and to be applied. Unsoundness of mind—there are so many different types of unsoundness. If we do not terminate the relationship early enough in some we are not only doing damage to the two persons involved but also we are doing damage to the children to be born. I would ask this House to remember that marriage Is a very important human institution. It is not only important to the individuals who engage in it but also it is important to the future generation. It is essentially a relationship entered iifto by two persons on mutual consent arifl keenness and it should be treated as profoundly significant to them. It is not a perpetual warfare between the

[Maj.-General S. S. Sokhey.]

two. The assumption behind the Bill seems to be that the man and the woman who are married are in a state of perpetual warfare. It is not so. We should look at the relationship in a different way and make a Bill suitable to that state. I am very happy that Mr. Dhage has suggested that if the parties have lived apart for one year or more and the parties refuse to live together or have mutually consented to dissolve the marriage, divorce should be allowed. I hope this will be accepted. This will redeem the whole Bill. If you accept this amendment, it will make the Bill civilised and if you add further that the marriage can be dissolved on the advice of a competent medical authority the rest of the clauses can be done away with, I repeat that marriage is an important human relationship and not a warfare between the parties all the time.

SHRI P. T. LEUVA: Sir, my amendment No. 169 seeks to add a new subclause (ee) after sub-clause (e). The new clause reads as follows: "(ee) has for a period of not less than five years immediately preceding the presentation of the petition been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner; or".

DIWAN CHAMAN LALL: May I ask my hon. friend to speak a little louder? We are unable to understand exactly what he is referring to.

SHRI P. T. LEUVA: Sir, I have moved an amendment to clause 26 for the addition of a fresh sub-clause to be numbered as (ee). The effect of that clause is, if a respondent has for a period of not less than five years immediately preceding the presentation of the petition been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner, a petition for di/vorce may be presented. Formerly this clause in a slightly different I **form** formed part of clause 25.

Now, there are two limitations. One is that the petitioner is not the person responsible for the disease and the second is that the disease should have continued for a period of five years. The basic idea underlying this is that if a person suffers from any disease he should be given some time so that if possible the disease might be cured and the petitioner may not be compelled to ask for a divorce. Sir, every Member who took part in the debate today said, "why compel a person to remain with the other partner if that partner is suffering from a loathsome disease or leprosy or insanity?" May I ask one question? We are all always thinking about the person who is not suffering. We do not seem to be concerned at all about the person who is affected and suffering from a disease. We have absolutely no sympathy for the person who has contracted the disease. Suppose the wife becomes insane. You have no sympathy for her. If she has become insane, discard her and after one year the husband can marry again. There is no sympathy for the poor wife who has become insane, and who is suffering. Is it not the duty of the husband to look after her, lend her his assistance, love and help in those days? Do you want him instead to go to the court and say that he wants a divorce from his wife? Similarly, according to this provision, if a person gets leprosy, the wife would at once say, 'why should I stay with him? He has got this disease. Let me go and ask for a divorce'. But, Sir, this is the time when she should stay with him and nurse him. This is not the time to ask for a divorce. What is the basis for marriage after all? Is it a contract? So far as I am aware, the provisions of this Bill do not reduce marriage to the status of a contract. It is something more than that. We have not yet reached a stage when we think that we can have contractual marriages. We do not believe for a moment that marriage should be reduced to the ridiculous status of a contract. It is definitely something more than that. It is not a question of going to court now and then and asking for a divorce. It is not a contract which can be dissolved at any

time. Let us have some sanctity, some sacredness about this affair. After all. children are going to be born and what atmosphere are you creating for them? When you say, 'let us have a divorce by mutual con sent' what is the basis on which you say that? Do you want these matri monial ties to be reduced to that ridi culous state that a person who marries today can ask for a divorce the next day? Then what is the use of having any Marriage Bill at all? Why not live just as husband and wife together without any ceremony whatsoever? Why have all this farce at all? Why do you go to the Marriage Officer and .....

MR. DEPUTY CHAIRMAN: Please confine your remarks to your amendment.

SHRI P. T. LEUVA: Please permit me to speak on the whole clause, Sir, because an attempt has been made to suggest that mutual consent must be sufficient for the purpose of getting a divorce. I want to know what is the ground for that. Is it a civilised thing to ask for divorce on mutual consent? What is this? What is the conception of civilisation? Is it culture to say that two persons who are solemnly married to each other must be allowed to separate if they agree? Is it culture? Is it civilisation?

MAJ.-GENERAL S. S. SOKHEY: Very much so.

SHRI K. MADHAVA MENON: Do not impose your conception of civilisation upon all of us.

SHRI P. T. LEUVA: I am talking of the civilisation of the country as a whole. What is the basic idea of marriage under the Hindu Law, under the Mohammedan Law? I know something about law. Even in Christian Law, is it a contract? It is something more than a contract. You cannot reduce everything to the status of a contract. Even customs are not contracts. Customs arose because the necessity was felt for them. When you say that we can get divorce by mutual consent, is it civilisation?

MAJ.-GENERAL S. S. SOKHEY: It is. civilisation.

SHRI P. T. LEUVA: According to you, it may be civilisation. According to the traditions of this country, it cannot be civilisation, so long as you say that. Do you want to create such an atmosphere in your own home? If the marital tie is to be regarded as one of contract, capable of being broken at any moment, what would' be the effect on the children? Will they have any respect for the father or the mother? They will develop no respect at all for family life. It is a question of current knowledge; you can find it out from books.

MR. DEPUTY CHAIRMAN: Mr. Leuva, you are going far beyond the' point.

SHRI P. T. LEUVA: Sir, I was saying that marriage is not a mere contract.

MR. DEPUTY CHAIRMAN: The very fact that we are passing this legislation is that it is on a contractual basis. So, if you are opposing the Bill *in toto,* that is a different thing.

SHRI P. T. LEUVA: Sir, I was submitting that marriage is something more than a mere contract.

SHRI K. S. HEGDE: Then, you have not followed the legal implications.

SHRI P. T. LEUVA: I don't think I need go to Mr. Hegde for learning law.

SHRI K. S. HEGDE: Anyhow, it means you have to go somewhere!

SHRI P. T. LEUVA: Do we want stability in married life? My hon. friend, Shri Sundarayya was say ing .....

SHRI P. SUNDARAYYA: Sir, I have never said that we do not want stability in married life. My hon. friend, I am afraid, is not quoting' rrie correctly.

SHRI GOVINDA REDDY: Sir, it is the marriage of 21-year old people.

SHRI P. T. LEUVA: Sir, I am opposing all the amendments. I hope that this House will not pass such a piece of legislation and reduce marriage to a mere farce.

SHRI K. MADHAVA MENON: Sir, I appeal to the hon. the Law Minister to accept some of these amendments because it is rather a very delicate point with some of us to vote against his proposals, even though he has said that we may vote as we like. Sometimes we have to vote for the amendment which he opposes. There are some amendments which are necessary and they can be accepted and he can save us from this delicate situation.

For instance, this amendment No. 43 of Mr. Dhage:

> "That at page 10, after line 13, the following new sub-clause be inserted, namely: —
>
> '(j) has lived apart from the petitioner for one year or more and the parties refuse to live together and have mutually consented to dissolve the marriage'."

The speaker, who has just now spoken before me, exhibited a curious idea of civilisation. It was a novel conception. Of course, notions of civilisation differ, but I feel that it is the height of civilization and culture if people, after living for some time find it impossible to live together, mutually agree to dissolve the marriage. Why should civilization stand in the way of their being allowed to say so or do so? Sir, is it civilization to make them live together even though they do not like one another? Sir, divorce is not a thing which everybody and anybody likes. Nobody marries for the sake of the pleasure of effecting a divorce. It is in human nature, in the very blood of everyone of us to carry on smoothly as long as we can, iron out the differences and live amicably as long as possible, and not to think of divorce.

There is a funny story that used to be told with regard to this. When a person died and ascended high into the heavens, he was stopped before the gate of heaven. The man at the gate asked him: "Had you been through purgatory?" The man said "No". The gate-keeper said "Then, you can't enter heaven". The man pleaded: "But, I am a married man". The man at the gate then said: "Now it is all right, you can enter". Then another man was similarly stopped and asked "Had you been through purgatory?" The reply was: "I married twice". The gate-keeper immediately remarked, "Heaven is no place **for** fools". So, Sir, men do not marry for the pleasure of divorce.

AN. HON. MEMBER: That proves the sanctity of marriage.

SHRI K. MADHAVA MENON: It is not a matter of pleasure for anyone to marry, get a divorce and marry again. It is not with that idea that divorce is provided for here. It is within our knowledge that there are some cases where the parties would like to be separated from each other. Supposing law or custom does ,not favour such a separation, then, as it is put in in this amendment, mutual consent to get the marriage dissolved should be a valid reason.

Likewise, there is another amendment tabled by Shrimati Parvathi Krishnan (No. 44). This says:

> "Provided that no petition for divorce by the husband shall be admitted when the other spouse is with child; provided, however, that no woman shall be debarred from applying for divorce when she is with child."

This is a very good amendment for the protection of the woman concerned or the child concerned. It should be accepted.

Then, there is the amendment suggested by Mr. Sundarayya. That is a very salutary and a good thing. Instead of five years and one year, he has chosen to adopt the middle course of

three years. It is very good. And it will be good if the Leader of the House accepts it.

There is another amendment by Mr. Dhage. The counterpart is as revolting as the original section itself, that is, at page 10: " ..... and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality". This is as revolting as the counterpart suggested by him.

I should like to invite the attention of hon. Members to page (xxxvi) of the Minute of Dissent of Shri Tek Chand, where he says in paragraph 53: "The last part of clause 26 where it furnishes additional grounds of divorce to the wife, has introduced an incomprehensible inconsistency". Then paragraph 54 goes on to say "Bestiality is an offence which can be committed by a man as well as by a woman. In its heinousness, it is equally abominable. There is no reason why the wife alone should be entitled to divorce and the same right should be denied to the husband, when the same offence has been committed by the wife".

Lower down, in paragraph 55, he says: "The other unnatural offence, if strictly construed, can be committed by the male partner only, but a woman also can consent to being a catamite. I therefore suggest that the language of section 377 of the Indian Penal Code should be borrowed, with suitable changes, and the commission of an unnatural offence by either party, unless condoned by the petitioner, should be made a ground of divorce".

If at all it is necessary then it is better to use the language of the Indian Penal Code.

DIWAN CHAMAN LALL: Sir, I do not think it necessary to answer all the criticisms that have been levelled or the general remarks in regard to this matter but will only answer such as those that my learned lawyer-friend from Bombay, Mr. Leuva, has referred to. This is not a question of opposing *in toto* the measure at this stage which my hon. friend Mr. Leuva seems to consider to be in his competence by entering the lists in regard to this debate. At the present moment, we are concerned with this particular clause 26 which deals with divorce.

In regard to this matter, no doubt our ancestors in their wisdom considered that, as far as the sacramental marriage was concerned, divorce was not expected. But my learned friend knows that there is customary law. Law itself is to a large extent based on the source of customary law. With certain large communities such as the Hindus the customary law has grown to such an extent that it is now easy for one to get a divorce; it is because of this difficulty of getting over the injunctions of the law as enjoined by our *Shastras* and by our ancestors that we are trying to provide for it legally. Times have changed, society has undergone a change, difficulties arose; but as far as the sacramental marriage is concerned it has remained exactly as it was some thousands of years ago. Hence it is that society began to find other ways and means of solving these difficulties. Take the case of certain Jats in the Punjab. Although they are "governed by customary law, that is the Hindu law of marriage—they are governed by it today—they are capable of effecting a valid divorce by writing on a piece of paper that they agree to a divorce. It is legal. It is so considered by authorities. It is a part and parcel of Hindu custom that has grown up because of the difficulties that stood in their way, in view of the sacramental marriage being indis-soluable. In this connection, what we are here proposing to do is for two sane individuals to be governed by a sane law and prescribing a civilised procedure. That is what we are attempting to do. So, I request the hon. the Law Minister to consider this. He will, I hope, make it possible to accept some of them, because in these amendments it is attempted to bring the law more in line with civilised thinking than the provisions, as they stand, would permit.

For instance, Sir, we have the question of the disease of leprosy. My

[Diwan Chaman Lall.] learned friend here raised the question regarding leprosy. Why do you make it possible for two people to continue to live together and make them unable to separate for a period of five years when one of the parties is affected by a very fell disease? My friend, Mr. Govinda Reddy, has laid great stress upon this, and I agree with him entirely. Why should we make it possible? Why for five years? I do admit that certain cures have been recently discovered in regard to leprosy. But they are not infallible cures. Why should one compel the two parties to remain tied, one to the other, in the case of leprosy for a period of five years? Where does the sanctity of five years lie if the disease has been contracted and the disease is there and if the other party to the marriage desires to dissolve the marriage, because they cannot continue to live together—aesthetically it may be, medically it may be? It may be that it is utterly impossible for a healthy person to continue to live in the same house with the person that is infected. Why do you compel that person to continue to live like that for a period of five years? Therefore, Sir, I feel that the amendment that has been moved in regard to this matter should be accepted by my friend, the Law Minister.

Now, Sir, there is another clause here in regard to the question of incurably unsound in mind for a continuous period of not less than five years. It says "incurably of unsound mind for a continuous period of not less than five years". After all you do want a healthy race, Sir. If for a period of one year one particular partner is incurably of unsound mind and the other partner desires a separation, why don't you permit it? Why don't you permit the marriage to be dissolved, because, obviously, even if the incurability is removed after a year, the nervous stigma will remain? You cannot be certain that the offspring born of a marriage like that will be as healthy as even my hon. friend, the Law Minister, himself. You cannot expect it. Therefore, if a situation like that arises, I submit that it is necessary from the medical point of view, from the national point of view and from the point of view of procuring healthy children, that if one of the parties to a marriage of this nature desires to separate after a year when it has been definitely found that the unsoundness is of an incurable kind, then permission should be given for that marriage to be dissolved.

Then, Sir, there is one other point in regard to divorce which has been raised. That is relating to the amendment that has been moved by my friend, Mr. Dhage. Now, I beg of this House not to be led away by the arguments which are very ancient arguments and which have, time and again, been exploded, such as those my hon. friend Mr. Leuva raised on the floor of this House. If this measure is going to be of any validity, I beg of this House to give its consent to this very simple amendment that has been moved by Mr. Dhage. That amendment is No. 43.

SHRI K. S. HEGDE: We agree.

DIWAN CHAMAN LALL: I am very glad that my learned friend, and a very able lawyer, who has distinguished himself in regard to these debates and who has thrown a great deal of light on this subject during the course of this discussion, is also of the same mind as we are that this particular amendment must be accepted. If that is accepted, what will happen? One thing will happen, and that is this. If two people, who mutually consent to enter into a marriage, discover after some time that they simply cannot continue to live together, then they can mutually consent to separate and be parted and thus break the contract. Now if the House considers that two people can contract—mutually agree to contract—a marriage, why can't those people agree also to break that contract? There should be no absolute sanctity attached to that particular contract. We should not compel them to enter into a course of perjury in order to dissolve their marriage. If we do not do

that, what will happen? This 'cruelty' clause will be utilised for the purpose of committing perjury in order to obtain the dissolution of the marriage or some other clause will be utilised for this purpose when the breaking up of the marriage by mutual consent is not granted by this measure. There fore, Sir, I submit.....

SHRI TAJAMUL HUSAIN: One more thing—the proviso to sub-clause (c). Why should a man wait for three years?

DIWAN CHAMAN LALL: I shall come to the proviso to sub-clause (c) about seven years' imprisonment. But before I do that, Sir, there is a speech that has been very innocently made 'by my friend, Mr. Kishen Chand. He has tried to define the words 'cruelty' and has tried to lay down the limits for that expression in the most innocent way by saying that if you leave it just where it is, there will be lots of legal complications and the law courts will get involved in this matter. His amendment says: "That at page 9, line 44, for the words 'with cruelty' the words 'with continued cruelty for a period of at least one year resulting in mental or physical injury' be substituted." Now I ask my hon. friend this question: Does he understand the significance of cruelty in married life? Has he any knowledge of the cases that have come to the courts in regard to this particular matter? If he has any knowledge of this, he will realise that not for three years, but not even for three minutes would a situation like that be permitted— where one spouse is guilty of cruelty to the other and yet he can for three years continue to inflict that cruelty upon an innocent person. I appeal to the humanity of hon. Members here to consider whether they would be prepared to accept a proposition like that. I do hope that not one of them will be found to support my learned friend, Shri Kishen Chand, in trying to prolong the agony of this cruelty which may cause intense suffering physically and mentally for a period of three years. Sir, cruelty is cruelty, and if that can be established, that is a sufficient ground for the purposes of establishing conditions for obtaining a divorce. *(Interruption.)* My learned friend reminds me that a stray assault has never been held to be a sufficient ground to establish cruelty. But I am also reminded of the fact that the law, by judicial action, has been widened out to a very great extent in other countries, because they are convinced that if two people really cannot agree to live together, every reason should be found to set them apart. In America, in the olden days, the word 'cruelty' was interpreted by a judicial decision to mean this. A case came up where a lady was granted divorce on the ground of mental cruelty caused because the husband neglected to cut his toe nails. Therefore, in order to get over the difficulties that have been placed in trying to get the two people apart who do not want to remain together, we must not be guilty of any hypocrisy here. We must try and give every reason for two people to try and get apart and dissolve their marriage, if they do not agree to live together. Then, my hon. friend drew attention to the question of seven years' imprisonment, and I take it that he does not agree that there should be this long period.

SHRI TAJAMUL HUSAIN: After the final decision.

DIWAN CHAMAN LALL: I have not -the slightest doubt that what my hon. friend is saying is correct. If one party does not agree to wait for a period of seven years to which the person has been sentenced by final appellate authority there is no reason why that party should not be permitted to exercise its right to dissolve that marriage on that particular ground.

SHRI TAJAMUL HUSAIN: The party will have to wait for three years and then alone apply.

DIWAN CHAMAN LALL: My hon. friend should remember that after a man has been sentenced to seven years, he can, by his good conduct in

[Diwan Chaman Lai].] the jail, earn a remission of at least three years, so that fn reality he will be in jail only for four years. If he wants the other party to wait for three years, I have no objection. I am for making the provision as easy as possible so that every contingency may be considered and every assistance given to those who wish to dissolve their marriage when they do not desire to live together.

Some Members raised the question of venereal disease and also wanted to have a period of five years on **that** particular ground. The arguments that I have advanced in regard to leprosy are also applicable in regard to venereal disease. Why five years if it is harmful? My learned friend knows that it is a communicable disease, a very serious and harmful disease as far as the women are concerned. If that is so, then why wait for a period' of five years? It is loathsome, and if one party is suffering from that loathsome disease, the other party cannot continue to live with that spouse who is suffering from this disease. Therefore, it should be the right of the other party to go before the court and demand dissolution of marriage on that ground.

In regard to (g) much has been said and I do not think that anything more is necessary, but in regard to the last portion of clause 26—"and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality"—my hon. friend to my left has given notice of an amendment saying that it should read "and by the wife also on the ground....." This makes things very clear, and I think it should be accepted. I do not desire to go into this particular matter. It is not necessary to do so. A distinction has to be made in reference to the word 'rape' between rape and adultery, and I presume that my learned friend, the Law Minister, has brought in this, because he has kept that particular distinction in his mind. Therefore, I think that it is necessary to add these words here.

I do not think that there is anything more to be said in regard to this matter except just one particular word of caution. We are marching today in a world which has shrunk so much that you can have your dinner in Delhi and have your breakfast in Rome. The world has shrunk so small, and naturally the cultural effect of what is happening around us cannot leave us untouched, and if other peoples in other parts of the world are marching towards a progressive future, it is necessary that we too in our country should march towards that progressive future, and must not be left in a century which is dead and gone but must assimilate those new and progressive ideas in order to make our own society much stronger than it would be otherwise, and it is for this reason that I commend the amendments that have been suggested, and especially commend the particular amendment of Mr. Dhage in regard to dissolution of marriage by mutual consent. If that is accepted, I am quite certain that there will be no difficulty whatsoever in making this measure a really progressive one.

(Shri K. S. Hegde rose to speaK.)

MR. DEPUTY CHAIRMAN: Only if there are any new points.

SHRI K. S. HEGDE: Mr. Deputy Chairman, I was really surprised to hear my hon. friend, Mr. Leuva, when he tried to explain his new philosophy. The guardian angels who are behind this Bill are still haunted by the old idea of sacramental marriage and have refused to see that this is merely **a** contractual marriage. I would only request the House to consider that we are living in a progressing world, and we must give up the idea that one or the other party to a marriage is a mere instrument for procreation. We must realise that they are companions for happiness, companions who would shed light, not merely physical but also intellectual. If this is the background in which you are providing the clauses, then we must also provide that a man has got a right to be with his wife and the woman also has **a**

right to be with her husband, and that the deprivation thereof must be for a very short period. I am not saying that people should—as one hon. Member cynically remarked yesterday— marry today and divorce tomorrow. All that we need to provide is a reasonable period for *locus pceniten-tice* to allow the parties to consider whether they cannot reconcile themselves, and with that object in view, I would commend the amendment moved by Mr. Dhage which is more or less like the amendment moved by Mr. Vaidya that where the parties have lived apart for one year or more and refuse to live together and have mutually consented to dissolve the marriage, divorce should be allowed. Similarly, I commend the amendments moved by Mrs. Parvathi Krishnan and Mr. Sundarayya. There is no point in trying to give with one hand the rights •of a contractual marriage and take them away with the other hand by putting in impossible conditions—seven years, ten years, etc. After all, you-are not marrying merely for the sake of the marriage ceremony. If the House remembei-s that the whole thing is contractual, I think it will agree that separation must be made as easy as possible.

PANDIT S. S. N. TANKHA: On a point of information. Sir. With respect to the amendment (No. 44) of my hon. friend, Shrimati Parvathi Krishnan,, I wish to know what exactly she means by the use of the words "when the other spouse is with child". If she means a woman carrying a child, then I would like to submit that there are two technical legal words which are used for cases like this— "big with child" or "carrying a child". She can use either of these terms, and I hope this suggestion will be acceptable to her.

SHRI C. C. BISWAS: Many speeches have been made by different hon. Members on this clause. After listening to them, it seems to me that in our attempt to simplify the law of marriage we might be over-simplifying it. We have heard about progress, | we have heard outright condemnations i *29* C.S.D.

of the ancient conservative Hindu system, and we have heard a lot of other things. It all depends upon our view and attitude towards matrimony as to whether we should accept these amendments or not. The questions which have been raised by these amendments have all been very carefully and very fully considered by the Joint Select Committee, and, as far as I can see. no new points have been raised here. After mature consideration the Joint Select Committee came to the conclusions which are now embodied in the Bill. The Bill has been drafted on the model of existing statutes, not merely in other countries but also in this country, in respect of these matters. For instance, you have the Act in Bombay, you have the Act in Madras, you have the Part C States Marriages Act. All these were carefully considered and then this Bill was produced as a result of such con-sideration. It was not in a spirit of half-heartedness or irresponsibility that we have sought to enact these provisions. After all you will see that those who have supported the principles of the Bill have recognised the fact that under this law. many of the fetters to matrimony have been removed. The few conditions which have been retained are absolutely the minimum which any civilized country will accept as fundamental condition? of marriage. Is it wrong to provide that there must be no other spouse living at the date you propose to marry? Is it a great objection to provide that at the date of marriage neither party should be a lunatic or an idiot?

SHRI K. S. HEGDE: We are now on the dissolution of marriages.

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SHRI C. C. BISWAS: Quite so. I ask, what is the basis on which this law has been framed—the basis which has been accepted by this House? Let us not forget that. Having said so, it ill becomes those who approved of these principles to say that marriage ought to be made as easy as possible.

SHRI P. SUNDARAYYA: Nobody has ever said that.

SHRI C. C. BISWAS: I mean, that the dissolution of marriage should be made as easy as that. We were reminded more than once during the last few days that we must see to it that the parties are allowed to marry each other if they love each other, if they respect each other, if they honour each other. I ask in all seriousness— is it a sign of respect, of love, if after a few months you find she has lost her complexion, that you should discard her or if she has got some disease which you suspect to be almost incurable, that you should throw her away?

MAJ.-GENERAL S. S. SOKHEY: Who says that?

SHRI C. C. BISWAS: Where is the love, where is the respect, where is the honour if you make conditions quite so easy for putting an end to the marriage?

SHRI K. S. HEGDE: Don't create a ghost to destroy.

SHRI C. C. BISWAS: I am not creating a ghost—that is the ghost which has been conjured up on the floor of this House. It is not my ghost, it is a ghost of the hon. Member.

DIWAN CHAMAN LAL: May I interrupt my hon. friend? My hon. friend is advancing an argument. May I ask him if it is a question of honour, if three years later they would be satisfied, if it is a question of 36 months, they would be satisfied?

SHRI C. C. BISWAS: I shall come to that later. But I am trying just to put the broad picture before you, the picture which my hon. friends—many of them—have drawn and the picture which is represented in this Bill—the difference between the two. That is what I was going to point out. What is our approach to this problem? Marriage ought to be allowed, freed from many of the restrictions which are now an impediment. At the same time we must also attach some sanctity to matrimony, and see that it lasts as long as possible. Leaving it to the discretion of the parties without any rules is a very simple thing to say. If any man meets a woman and they love each other, they may marry, and let them continue in that state as long as they like and then put an end to> it when they like. You need not take any care of the children. Do you solemnly suggest that that marriage should be allowed to be dissolved merely because the parties wish it? You say, what is the point in forcing them to continue marital relations although they no longer are fond of each other—they have forgotten all their past? But I say, what about those whom they have brought into existence? They are not responsible. Some provision has to be made for them. I know only yesterday or the day before yesterday I was handed over a copy of this little book 'The Marriage Law of the People of China'. I don't know if most of my friends have seen this book. My friend Shri Vaidya must have made a deep study because all the amendments which he has tabled are copied from the marriage law of the Republic of China, even this amendment which we find here about the divorce conditions which reads:

> "The husband shall not apply for a divorce when his wife is with child. He may apply for divorce only one year after the birth of the child. In the case of a woman applying for divorce this restriction does not apply."

This is a word for word copy of what ib contained in this book. Also the other amendment about correspondence with spouse. That is all right, but I say 'Hasten slowly'. We shall possibly at some time later have a replica of this law in this country, but the time is not yet. Let us not hasten so fast. Let us go a little slow. We are legislating for the whole country where there are people of different faiths, different religions, who follow different modes of life and so on. We are trying to have a law which will be suited to all as things stand at present. It is no use advancing with rapid strides which might suit the fancies of some and might not be

acceptable to others. We want to produce a law which will be acceptable to all so far as we can foresee, and then when the time comes, if we find that this has worked very satisfactorily and people really want further advances, there will be no difficulty in having an amending law or a new law which will give effect to those advanced ideas—but not yet, I say. That stage has not yet come.

I shall now deal with some of the objections which were raised with reference to the amendments. Take this question of lunacy or of unsound mind. A lot of things were said. One amendment says: 'If somebody-declares a person to be of unsound mind—some competent authority declares a person to be of unsound mind—then only should unsoundness of mind be allowed to be a ground for divorce'. Who is the competent authority? There is no competent authority now under the Indian law. There is a Lunacy Act but I don't know whether my hon. friends know what the provisions of that Act are. That Act provides for an inquisition but what is the result of an inquisition? There is no finding that the man is of incurably unsound mind. If the inquisition finds the person to be of unsound mind and that he is unable to manage his affairs, etc., then he is remitted to an asylum for treatment. The finding of the Inquisition Court does not amount to a finding that he is not incurably unsound, or that he is incurable. No, that question does not arise. As a matter of fact, if you compare the provisions of the English Act, there is sense in that. Unfortunately, we have not got any such provision here.

SHRI KANHAIYALAL D. VAIDYA: There is much in the Chinese Act.

SHRI C. C. BISWAS: Under the grounds for petition for divorce, one of the grounds is that the respondent—

> "(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition."

And what is "care and treatment" is also stated:

> "For the purpose of this section a person of unsound mind shall be deemed to be under care and treatment—
>
> (a) while he is detained in pursuance of any order or inquisition under the Lunacy and Mental Treatment Acts, 1890 to 1930, or of any order or warrant under the Army Act, the Air Force Act, the Naval Discipline Act, the Naval Enlistment Act, 1884, or the Yarmouth Naval Hospital Act, 1931, or is being detained as a Broadmoor patient or in pursuance of an order made under the Criminal Lunatics Act, 1884."

So there is the provision for keeping the person under medical treatment for a continuous period of five years. And even then, if she or he does not recover, that will be a ground for divorce. See the humane considerations which have prompted the legislation there regarding this matter. And what should we do? I know of many cases in which men and women have become insane, but they carried on. Then they may get well. But it is suggested that as soon as there is unsoundness of mind, you throw the person away.

SHRI K. S. HEGDE: But the hon. Minister is making a mistake. Your section speaks of "incurable" insanity.

SHRI C. C. BISWAS: In the absence of other provisions, if the question of keeping the patient under treatment for a continuous period of five years had been a practical proposition, we could have inserted it. But in default of that, we are providing that he or she must have been at least for a continuous period of five years of unsound mind. We are not putting unnecessary difficulties in the way of separation or in the way of allowing divorce. We should also try to look at the matter from the point of view of the unfortunate spouse who gets this disease, who suffers from mental

[Shri C. C. Biswas.] defect. Therefore, we do not propose to say "Separate as soon as one is found to be of unsound mind". We say that he or she must be proved to have been of unsound mind for a continuous period of five years. Then only will it be open for either party to apply for the divorce. That is one provision.

SHRI GOVINDA REDDY: But the.....

MR. DEPUTY CHAIRMAN: Order, order. You have had your say.

SHRI C. C. BISWAS: Sir, you will find similar provisions in the Bombay and Madras Acts also. I am quoting from the Bombay Hindu Divorce Act in which section 3 says:

> "The husband or wife may sue for divorce on one of the following grounds:".

And one of the sub-clauses says: "that the defendant has been a lunatic for a period of not less than seven years before the institution of the suit."

SHRI K. S. HEGDE: But where is the expression "incurably and continuously" in that provision? The hon. Minister does not follow the implication of these words.

MR. DEPUTY CHAIRMAN: You have had your say. I do not want hon. Members to disturb the hon. Minister.

SHRI C. C. BISWAS: There, they have said that the person should have been a lunatic for a period of not less than seven years. As a matter of fact, objection has been taken to the period of five years. In the Madras Act, I believe it is five years. And I find, the word "incurable" is there in that Act. In the Madras Act—The Hindu Bigamy Prevention and Divorce Act, Act VI of 1946—the grounds for dissolution of marriage are stated in section 5. And sub-clause (e) runs as follows:

> "has been incurably lunatic for a continuous period of not less than five years immediately preceding the presentation of the petition."

We are reproducing the exact words here.

SHRI GOVINDA REDDY: But why not let us take a progressive view of the matter?

11 A.M.

SHRI C. C. BISWAS: It all depends upon your idea of progress, your idea of what constitutes progress. If looking after or looking to the protection of, or giving what is due to, the party to the marriage, who is suffering from this defect, is not progressive, well, the hon. Member is entitled to have his own ideas of progress; that is all I can say. But that was my idea and that was the idea accepted by the Joint Select Committee, and if you go against that, then it will be your responsibility and not mine.

SHRI K. S. HEGDE: On a point of information, Sir.

MR. DEPUTY CHAIRMAN: Order, order. The hon. Minister may go to the next point.

SHRI C. C. BISWAS: The question of leprosy I have already dealt with on a previous occasion and I do not want to take up any more of the time of the House on that. My ideas which have found favour with the Joint Select Committee are there. Whether leprosy is incurable or not is a ques tion which has to be decided by com petent authorities. It is not at all admitted by competent authorities, and by competent authorities I mean leprologists who have made a study of leprosy their profession and say that the disease is not incurable. Their view is that leprosy is not contagious. Of course, it makes the patient look very ugly. If somebody gets lepvosv, he.....

Sum GOVINDA REDDY: Did the hon. Minister say that leprosy is not contagious?

SHRI C. C. BISWAS: Yes, it is said by experts that it is not contagious.

MAJ.-GENERAL S. S. SOKHEY: If leprosy is not contagious, then how does it arise?

MR. DEPUTY CHAIRMAN: Order, order. Let the hon. Minister proceed.

MAJ.-GENERAL S. S. SOKHEY: The hon. Minister just now made a statement and so I am asking him the question: If the disease is not contagious, how does it arise?

SHRI C. C. BISWAS: I will make over to the hon. Member the literature supplied to me by the Leprosy Association and he can satisfy himself.

SHRI GOVINDA REDDY: Then why not.....

MR. DEPUTY CHAIRMAN: Order, order. If you go on at this rate, there will be no limit.

SHRI K. MADHAVA MENON: Some of us agree about leprosy and lunacy, but what about mutual consent?

SHRI TAJAMUL HUSAIN: What about absence in jail?

SHRI C. C. BISWAS: That provision also, I think, has been taken from some other law.

SHRI TAJAMUL HUSAIN: An old law?

SHRI C. C. BISWAS: We have provided for seven years. Sometimes the sentence may be commuted, or remitted or set aside on appeal. Therefore the mere fact of a sentence being pronounced for a period of 7 years' imprisonment or for a longer period is not enough. The proviso says—and the proviso was added by the Joint Select Committee on the model of similar provisos elsewhere—that the respondent had undergone at least three years' imprisonment. This is done after taking into consideration the time taken in appeal, etc. It is assumed that normally it will take not more than three years to dispose of an appeal. If for three years he has been actually undergoing the sentence, that ought to be enough. He or she need not wait for seven years. I ask hon. Members if that is a reasonable provision or not. Or suppose the party applies for mercy; to wait till the mercy petition is disposed of, the limit of three years is given in the proviso. So when the person has been actually for three years in jail, then the divorce ought to be allowed. Some consideration was paid to the feelings, sentiments and requirements of the other party. That was all.

SHRI TAJAMUL HUSAIN: But mercy petitions arise only if the sentence is for transportation for life or death, not in the case of a sentence for seven years' imprisonment.

SHRI C. C. BISWAS: I am afraid I cannot discuss with the hon. Member. Seven years is a reasonable period because under the Indian Evidence Act, if a man is not heard of for seven years, then he can be presumed to be dead.

If there is a sentence of seven years he is as good as dead and, therefore, that ought to be a ground for divorce. That, Sir, explains this clause.

There are a series of amendments seeking to reduce the different periods which have been prescribed in the different clauses of this Bill, generally five years. Sir. that is a well-knit scheme which is embodied in the Bilk based on existing statutes, as I said, not merely in other countries but also in this country. Therefore, I would appeal to the House—if that is worth anything—that they should not disturb this scheme.

MR. DEPUTY CHAIRMAN: I think it should be the other way about, "not only in this country but also in other countries" because they are supposed to be advanced countries.

SHRI C. C. BISWAS: That is so. I" thank you, Sir, for the correction you have suggested. So I say, it is just as well that we should not disturb

[Shri C. C. Biswas.] this scheme. Let us see how it works. If there is anything which we find by experience operating with hardship in reasonable cases, there is nothing to prevent us from amending this law. Let us make a start and when we make a start, let us accept the proposals which after mature consideration the Joint Select Committee has approved. That is my appeal to the House.

SHRI GOVINDA REDDY: It is apparent, Sir, that some of these will cause hardship.

SHRI C. C. BISWAS: I would not exercise the power of issuing a whip; that I have not. I have left it to the House because I believe in the good sense of the House. The House will exercise its good sense and will support the proposals which have been accepted by the Joint Select Committee. If there is any case for making a change, that change can always be made.

There is one amendment of my friend, Shri Kishen Chand about continued cruelty. That has already been dealt with by some other hon. Member and I need not go into it again. I think we have practically finished, except this—whether or not you should give the husband the same power to ask for a divorce as to the wife. Well, we have given both to the husband and the wife the same powers except that we have said in the last part of the clause that the wife may seek divorce on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

(Interruption.)

MR. DEPUTY CHAIRMAN: Order, order, Mr. Tajamul Husain.

SHRI C. C. BISWAS: We have not allowed the same privilege to the husbands, and let the husbands decide whether they want that privilege. That is all that I can say.

(Interruption.)

MR. DEPUTY CHAIRMAN: Order, order, Mr. Tajamul Husain. The hon. Member cannot go on speaking unless he catches the eye of the Chair.

SHRI C. C. BISWAS: Sir, I have no knowledge about these offences. Mr. Dhage has explored this question very thoroughly and has delved deep into it; he has also fished out instances to support his case. Whether women may be or are guilty of homo-sexuality or not, I do not know; I do not know the experience in Hyderabad and I confess to complete ignorance, but my own idea is that women are less susceptible to such unnatural offences than men. There might be cases, as my hon. friend Shri Tek Chand of the other House has pointed out in his Minute of Dissent. I do not know the meaning of the word and unfortunately I forgot to look into the dictionary; the word he used was catamite. Now, I do not know what catamite is.

DIWAN CHAMAN LALL: It is a woman who is a sophist. A catamite is a female passive instrument.

SHRI C. C. BISWAS: Whether women consent or not, I did not concern myself with catamites. Therefore, if catamites do present a problem, that problem may be solved hereafter not now.

I believe, Sir, I have dealt with the various points. Shall I come to mj own amendment? I have already dealt with mutual consent.

MR. DEPUTY CHAIRMAN: Please come to your own amendment.

SHRI C. C. BISWAS: This is as a result of the amendment accepted yesterday in clause 24. I would combine the provisions and so I would take it up in the third reading. I will not take it now. I oppose the amendments

MR. DEPUTY CHAIRMAN: You have proposed clause 25A.

SHRI C. C. BISWAS: That would be dealt with later on.

MR. DEPUTY CHAIRMAN: It is consequential on the deletion of subclause (2).

SHRI B. C. GHOSE (West Bengal): That has not been deleted, Sir?

SHRI C. C. BISWAS: I oppose the .amendments except No. 169 moved by Shri P. T. Leuva on page 2 of Supplementary List I. As a matter of fact, I have suggested that the clause which is now sub-clause (ii) in 25 (1) should he transposed to clause 26 dealing with •divorce, and Mr. Leuva's amendment gives effect to that suggestion and so I accept that.

MR. DEPUTY CHAIRMAN: I suggest that all these consequential amendments may be taken up at the third reading stage.

SHRI C. C. BISWAS: This is not consequential, Sir. Mr. Leuva moved for the deletion of sub-clause (ii) of clause 25(1). At the same time, I suggested a complement to that to be found in his amendment No. 169 for clause 26.

MR. DEPUTY CHAIRMAN: I am not suggesting about Mr. Leuva's amendment. I am suggesting that your amendment may be taken up at the third reading.

SHRI C. C. BISWAS: Yes, it will come at the third reading stage.

SHRI B. C. GHOSE: Clause 25(2) "has been passed?

MR. DEPUTY CHAIRMAN: Clause 25 (j) (ii) has been omitted. Three lines have been omitted and, as a ■consequence of that, certain other -amendments are now being moved.

SHRI B. C. GHOSE: What has been done in clause 25(2)? What did we do when we dealt with clause 25? What exactly has been done there?

MR. DEPUTY CHAIRMAN: Clause 25(2) is being omitted and 25(1) (ii) has been omitted and 25(1) (i) and (iii) is passed.

SHRI K. S. HEGDE: Both have been passed, Sir.

(Interruption.)

MR. DEPUTY CHAIRMAN: Order, order, let there be no disturbance. Mr. Ghose, I believe you are clear.

SHRI B. C. GHOSE: Yes. because I raised it.

SHRI K. S. HEGDE: On a point of order, Sir. Dr. Seeta Parmanand's amendment was for the deletion of clause 25(2) and that was defeated by the House.

MR. DEPUTY CHAIRMAN: Are you talking of (ii)? We are not on 25(2) now. Let there be no confusion.

MAJ.-GENERAL S. S. SOKHEY: The Law Minister supports amendment No. 169.

MR. DEPUTY CHAIRMAN: I am not hearing you, Dr. Sokhey.

MAJ.-GENERAL S. S. SOKHEY: The Law Minister supports amendment No. 169 which says, "has for a period of not less than five years immediately preceding the presentation of the peti tion been suffering from venereal dis ease in a communicable form ....."

MR. DEPUTY CHAIRMAN: What is it that you want?

MAJ.-GENERAL S. S. SOKHEY: How is it that anybody can be suffering from venereal disease for three to five years?

MR. DEPUTY CHAIRMAN: He has replied.

MAJ.-GENERAL S. S. SOKHEY: He has not. I would like to hear him.

MR. DEPUTY CHAIRMAN: Order, order. We will take up amendment No. 145 first.

SHRI J. S. BISHT: Would it not be better if the amendment moved by the hon. the Law Minister and the one that he is accepting—that of Mr. Leuva —were disposed of first? Otherwise, there will be a lot of confusipn. We do not know which is accepted and which is not.

MR. DEPUTY CHAIRMAN: He is accepting only Mr. Leuva's amendment.

SHRI J. S. BISHT: And then he has got his own amendment.

MR. DEPUTY CHAIRMAN: It will be taken up at the third reading stage.

The question is:

145. "That at page 9, line 27, after the heading 'Divorce—' the following be inserted, namely: —

'Divorce shall be granted when husband and wife both desire it. In the event of either the husband or the wife alone insisting upon divorce, it may be granted only when mediation by judicial process has failed to bring about a reconciliation'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The Question is:

35. "That at page 9, line 34, for the words 'three years' the words 'two years' be substituted."

(After taking a count) Ayes—21; Noes—41. The amendment is lost.

The motion was negatived.

MR. DEPUTY CHAIRMAN: 146 is, therefore, barred. 190 is also barred.

SHRI TAJAMUL HUSAIN: How is 190 barred, Sir? Mine is "one year".

MR. DEPUTY CHAIRMAN: When the House has not agreed to "two years" it does not agree to "one year".

SHRI TAJAMUL HUSAIN: I do not think so.

MR. DEPUTY CHAIRMAN: The question is:

6G. "That at page 9, lines 39 to 42: be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

147. "That at page 9, line 44, for the words 'with cruelty' the words 'with continued cruelty for a period of at least one year resulting in mental or physical injury' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The next amendment is No. 90.

PANDIT S. S. N. TANKHA: It should be, Sir, "of unsound mind" instead of "unsound in mind".

SHRI GOVINDA REDDY: "unsound in mind" is all right.

MR. DEPUTY CHAIRMAN: Mr. Tankha, it is not necessary. That is correct.

The question is:

90. "That at page 9, for lines 45. to 47, the following be substituted. namely: —

'(e) has been declared by a competent authority to be incurably unsound in mind; or'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendments Nos. 37 and 191 are barred.

SHRI S. MAHANTY: How will the defeat of the longest period also mean the defeat of the shortest period?

MR. DEPUTY CHAIRMAN: If the House does not agree to three years it means it does not agree to two years also. Do you mean to say that they-will agree to a shorter period?

The question is:

201. "That at page 9, line 46, for the words 'five years' the words 'three years' be substituted."

(After taking a count) Ayes—22; Noes—38. The amendment is lost.

The motion was negatived.

DIWAN CHAMAN LALL: On a point of explanation, may I ask as to how it is possible to consider that a venereal disease can exist for five years if a cure is possible?

MR. DEPUTY CHAIRMAN: We are not at this stage concerned with medical opinion. It is for the experts to say.

Then we come to amendment No. 169.

SHRI P. SUNDARAYYA: Let us dispose of (f) first. Sir, and after we finish that—it deals with leprosy—we can come to this amendment No. 169 dealing with venereal diseases. The period mentioned for leprosy may be altered and in that case this amendment may be affected. Let that be disposed of first.

MR. DEPUTY CHAIRMAN: How does it make any difference? They are two different diseases. We have passed that stage now.

The question is:

169. "That at page 9, after line 47, the following be added, namely: —

'(ee) has for a period of not less than five years immediately preceding the presentation of the petition been suffering from venereal disease in a communicable form the disease not having been contracted from the petitioner; or'."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

91. "That at page 10, lines 1-2, the words 'for a period of not less than five years immediately preceding the presentation of the petition' be deleted."

(After taking a count) Ayes—22: Noes—33. The amendment is lost.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

202. "That at page 10, line 1, foi the words 'five years' the words 'three years' be substituted."

(After taking a count) Ayes—22; Noes—32. The amendment is negatived. So the other amendments Nos. 38 and 192 are barred.

The question is:

98. "That at page 10. line 3, after the word 'leprosy' the words 'or any loathsome disease' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendments Nos. 39, 181, 193 and 203. I will put No. 39 which wants to substitute four years.

The question is:

39. "That at page 10. lines 5-6, for the words 'seven years' the words 'four years' be substituted."

(After taking a count) Ayes—16; Noes—39. The amendment is negatived. Amendments Nos. 181, 193 and 203 are barred.

Amendment No. 40. The question is:

40. "That at page 10, line 8, for the words 'two years' the words 'one year' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 194 is identical to amendment No. 40. So it is barred. Amendment No. 92.

SHRI P. SUNDARAYYA: Sir, I am not pressing that.

'Amendment No. 92 was, by leave,, withdrawn.

*For text of amendment, *vide* col.. 5552 *supra.*

MR. DEPUTY CHAIRMAN: The question is:

41. "That at page 10. line 12. for the words 'two years' the words 'one year' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 195 being the same, it is barred. Now let us take amendment TSfo. 43 as proposed to be amended by Diwan Chaman Lall by the substitution of the word 'or' for the word 'and' ■where it occurs first in the amendment.

DIWAN CHAMAN LALL: Sir, may I ask for a division on this? It is important that I want it to be recorded.

(Interruptions.)

MR. DEPUTY CHAIRMAN: drder. order; the Members will please resume ;their seats.

The question is:

43. "That at page 10, after line 13, the following new sub-clause be inserted, namely: —

'(j) has lived apart from the petitioner for one year or more or the parties refuse to live together and have mutually consented to dissolve the marriage'."

The House divided: Ayes— 57; Noes—45.

AYES

Abdur Rezzak, Khan.
Adityendra, Shri. Agrawal,
Shri A. N. Ahmad Hussain,
Kazi. Ahmed, Shri Gulsher.
Aizaz Rasul, Begam.
Akhtar Husain, Shri.
Banerjee, Shri S. Barlingay,
Dr. W. S. Bharathi,
Shrimati K.
Chaman Lall, Diwan.
Chauhan, Shri N. S.
Deshmukh, Shri N. B.
Dhage, Shri V. K.
Dwivedy, Shri S. N.
Ghose, Shri B. C.
Hegde, Shri K. S.
Hemrom, Shri S. M.
Khan, Shri Akbar Ali.
Khan, Shri Barkatullah.
Kishen Chand, Shri.
Krishna Kumari, Shrimati.
Lakshmi Menon. Shrimati.
Madhavan Nair. Shri K. P.
Mahanty, Shri S.
Mahesh Saran. Shri.
Mazumdar, Shri S. N.
Menon, Shri K. Madhava.
Mukerjee, Shri B. K.
Naidu, Shri Rajagopal.
Obaidullah, Shri.
Panigrahi, Shri S.
Parvathi Krishnan, Shrimati.
Pattabiraman, Shri T. S.
Pa war, Shri D. Y.
Rajagopalan, Shri G.
Rao, Shri V. P.
Ray, Shri S. P.
Reddy, Shri Govinda.
Shaik Galib.
Shetty, Shri Basappa.
Singh, Shri Raghbir.
Singh, Shri Vijay.
Sinha. Shri B. K. P.
Sinha, Shri Rajendra Pratap.
Sinha, Shri R. P. N.
Sokhey, Maj.-General S. S.
Subbarayan, Dr. P.
Sumat Prasad, Shri.
Sundarayya, Shri P. Surendra
Ram, Shri V. M.
Tajamul Husain, Shri.
Tankha, Pandit S. S. N.
Thanhlira, Shri R.

Vaidya, Shri Kanhaiyalal D.
Varma, Shri C. L.
Venkata Narayana, Shri Pydah.

NOES Abid Ali, Shri.
Amolakh Chand, Shri. Bisht, Shri J. S.
Biswas, Shri C. C. Chandravati Lakhanpal, Shrimati. Dasappa, Shri H. C.
Das, Shri Jagannath. Dave, Shri S. P.
Deogirikar, Shri T. R. Doogar, Shri R. S.
Doshi, Shri Lalchand Hirachand. Dutt, Dr. N. Hathi, Shri J. S. L. Jain, Shri Shriyans Prasad. Kapoor, Shri J. R.
Karayalar, Shri S. C. Karimuddin, Kazi.
Karumbaya, Shri K. C. Kishori Ram, Shri. Lakhamshi, Shri Lavji. Lall, Shri K. B. Leuva, Shri P. T. Malviya, Shri Ratanlal Kishorilal. Maya Devi Chettry, Shrimati. Mazhar Imam, Syed. Misra, Shri S. D. Mookerji, Dr. Radha Kumud.
Pande, Shri T.
Parmanand, Dr. Shrimati Seeta. Pillai, Shri C. N. Raghubir Sinh, Dr. Rao, Shri Raghavendra. Reddy, Shri Channa.
Rukmini Arundale, Shrimati. Savitry Nigam, Shrimati.

Sharma, Shri B. B.
Shrimali, Dr. K. L.
Singh, Sardar Swaran.
Sinha, Shri R. B. Tamta, Shri R. P.
Valiulla, Shri M. Variava, Dr. D. H.
Vijaivargiya, Shri Gopikrishna. Vyas, Shri Krishnakant. Wadia, Prof. A. R.

The motion was adopted.

MR. DEPUTY CHAIRMAN: Amendment No. 182 of Mr. Sundarayya's is barred. Then, the next amendment is No. 42 of Mr. Dhage's.

The question is :

42. "That at page 10, in line 14, after the word 'and' the brackets and figure '(i)' be inserted; and at the end of line 16, the following be added, namely: —

'and (ii) by the husband on the ground that the wife has, since the solemnization of the marriage, been guilty of bestiality or homosexuality'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The next amendment is No. 148, that of Mr. Tankha.

PANDIT S. S. N. TANKHA: Sir, what is the position? Does the hon. the Law Minister think the word 'also' is or is not necessary?

MR. DEPUTY CHAIRMAN: It has been already discussed. The Law Minister has told you that he does not accept any of the amendments. Do you want this to be put to vote?

PANDIT S. S. N. TANKHA: Yes, Sir.

MR. DEPUTY CHAIRMAN: The question is:

148. "That at page 10, line 14, for the words 'and by the wife' the words 'and the wife may also petition' be substituted." The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

44. "That at page 10, after line 16, the following proviso be added, namely: —

'Provided that no petition for divorce by the husband shall be admitted when the other spouse is with child; provided, however, that no woman shall be debarred from applying for divorce when she is with child'."

{After taking a count) There are 29 for and 53 against.

The motion was negatived.

MR. DEPUTY CHAIRMAN: Now I will put amendment No. 149. Subclause (2) of this amendment will be barred, Mr. Vaidya. Therefore, I am putting only sub-clauses (3) and (4) to the House.

The question is:

149. "That at page 10, after line 16, the following be added, namely: —

'(3) The consent of a member of the army on active service who maintains correspondence with his or her family must first be obtained before his or her spouse can apply for divorce.

(4) Divorce may be granted to the spouse of a member of the army who does not correspond with his or her family for a subsequent period of two years from the date of the marriage'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 26, as amended, stand part of the Bill."

The motion was adopted.

Clause 26, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we take up clause 27. There are two amendments, one by Shri Tankha and the other by Shrimati Parvathi Krishnan.

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

150. "That at page 10, in clause 27,. for the words 'three' years', wherever they occur, the words 'one year' be substituted."

SHRIMATI PARVATHI KRISHNAN: I don't move my amendment.

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

PANDIT S. S. N. TANKHA: Sir, it is provided under clause 27 that no petition for divorce shall be presented to the district court unless at the date of the presentation of the petition three years have passed since the date of the marriage. I have tabled my amendment to the effect that the period of three years should be changed into one year. I have done so because, Sir, I consider that this period of three years is too long. If the parties are unable to live together and there have been grounds to justify a divorce, and if each of the parties is entitled to a divorce, I see no reason why they should be prevented from applying within a shorter period than three years. I consider that a period of one year is more than sufficient for this purpose. Sir, I have also suggested that wherever the words 'three years' occur, they should be substituted by the words 'one year'. I have known of many instances, Sir, in which the husbands and wives have found within the course of one year that they cannot pull, on together. And if they themselves believe they cannot live together, why should this restriction of three years be put on them to-remain together for such a long period? I see no justification for it. The period of one year is necessary only to afford them an opportunity to come together within that period, if it is possible. But if it is found after the period of one year that they cannot live together, then I find no justification for their being made to live together for a

period of three years and from this point of view I have tabled my amendment.

SHRI 'P. SUNDARAYYA: Sir, here the period of three years has been provided for. Shri Tankha has already said that it is too long a period. Apart from that, just now we have passed a clause which says that after one year if they find that they cannot live together, with their mutual consent, they can file a petition. But here you are prohibiting them from applying for a divorce within three years after their marriage. Therefore, when mutual consent is there, to put this clause here providing for three years, would be anomalous. In fact, Sir. our amendment becomes consequential. So they must be allowed to come with a petition after one year especially when we have already passed one clause to this effect.

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, after what has already been done it may not be of much use to say anything, as the hon. Member has pointed out. But I think there are so many points still to be considered and perhaps necessary. At that time, Sir, it would have been better if that clause had been passed with the provision of three years and not one year, and all these things would not have happened. Mr. Tankha mentioned that he knew of various cases where the people had not been able to get on within one year after their marriage. But I know of several more cases, Sir, where there was no agreement within one year, but there was understanding established in the second or the third year. In America, where divorces have been very easy, they are now trying to establish what they call marriage clinics for reconciliation, between married couples because very often they feel that the divorces which are got through the courts can be avoided through the medium of social workers, doctors and businessmen. They have people from all walks of life on these clinics. They feel that if *so* much money can be spent for curing diseases like cancer, etc., why should not the Government spend money and establish clinics for bringing about more harmony and happiness in the country? Sir, we a;¬e introducing this new legislation, and, as a matter of fact, we have copied this divorce provision from the Hindu Marriage and Divorce Bill that is before us, and I feel that instead of giving an impression to the people that we want to make divorces in this country easy, it is very necessary that we should convince them that we are proceeding with caution and give relief only in cases of-hardship. One year is too short a time to decide whether there is any chance of reconciliation, particularly in adult marriages. These marriages will be in the case of people of 21 and above. Where they grow together from an early age as at present, there is plenty of scope for mutual adjustment. In orthodox marriages they live together in joint families, and so there is a greater chance, by force of circumstances, for adjustment in those cases, but where marriages are of people of 21 and of people of different communities, differ-ences may arise even within one year, and if we allow this facility, I think, out of sheer cussedness or obstinacy, people will rush to divorce courts after one year for which they will repent later on. In America we have to remember that people have gone to divorce courts three times and have married four times again—I mean the same couple. We do not want to reduce our matrimonial system to a farce. We want to preserve its dignity. If we want this privilege, it does not mean that we want to introduce frivolity in marriage. I would like the House to see that, if this point had been made clear even after the division bell rang, I am confident that the division results would have been different. Had the three year period been introduced, there would not have been any division. I hope the other House will rectify this. Sir, I am against this amendment.

SHRI M. VALIULLA: There is no inconsistency if we retain clause 27 as it is. The amendment that we have passed does not go against this clause.

[Shri M. Valiulla.] According to the amendment, one year's separate living gives cause of action for divorce. If you retain clause 27, it means that the cause of action for divorce arises two years after the marriage and also any time after three years. Dr. Seeta Parma-nand felt that there will be cause of action within one year of the marriage. This is not so. I hope this will dispel her fears.

SYED MAZHAR IMAM (Bihar):

سید مظہر امام (بہار) : جناب والا ! کلاز ۲۶ (clause 26) میں جو امینڈمنٹ (amendment) آیا ہے اس کے بعد کلاز ۲۷ میں یہ جو ایک سال کے لئے امینڈمنٹ لایا گیا ہے وہ میرے خیال میں بہت ضروری ہے - اگر آپ تین سال رکھتے ہیں تو اسکے معنی یہ ہوئے کہ شادی کی تاریخ سے تین سال مانے جائینگے - اور اگر آج دونوں پارٹیوں کے درمیان ڈفرینس (diffe-rence) ہو گیا ہو تو وہ تین سال تک انتظار کرتے رہیں کہ کب تین سال پورے ہوں اور کب ہم ڈایووررس (divorce) لیں - میرے خیال میں یہ ایک بڑی ریڈیکولس (ridiculous) بات معلوم ہوتی ہے - سوال یہ ہے کہ آپ میوچیول کنسنٹ (mutual consent) کی اجازت دیتے ہیں اور پھر قانون کے ذریعے سے انکو پابند کرکے تین برس تک الگ رکھتے ہیں تو میرے خیال میں ہر ایک شخص سوچ سکتا ہے کہ ایک شخص ۲۱ برس میں شادی کرتا ہے اور اس کے بعد دونوں کے اندر اگر ڈفرینس ہو جائے اور وہ تین سال تک انتظار کریں تب جا کر ڈایووررس کے لئے پٹیشن (petition) دیں یہ بات بہت ہی ریڈیکولس معلوم ہوتی ہے - اس لئے میں اس امینڈمینٹ کو سپورٹ کرتا ہوں -

[For English translation, See Appendix VII, Annexure No. 283.]

MR. DEPUTY CHAIRMAN: So you support the amendment.

SYED MAZHAR IMAM: Yes, Sir.

SHRI KISHEN CHAND: Now that the age has been raised to 21, I think automatically it should be understood that these three years should be reduced to one year, especially when we have provided for divorce by mutual consent.

12 NOON.

MR. DEPUTY CHAIRMAN: The question is, one year from what?

SHRI KISHEN CHAND: "Three years since the date of marriage"—it has been provided here.

SHRI P. SUNDARAYYA: From the date of marriage.

MR. DEPUTY CHAIRMAN: Under the amendment which we have accepted, a petitioner must say that for one year they have not lived together. One year from what? It is one year prior to the petition. Here, it is three years from the date of marriage.

SHRI KISHEN CHAND: In the amendment which has been passed, the parties must say that they have not lived together for one year prior to the petition. Without this amendment, it will mean a period of four years.

MR. DEPUTY CHAIRMAN: Actually, three years are reduced to two years. By accepting the previous.

amendment, it is reduced to two years. That is what I mean.

SHRI KISHEN CHAND: My submission is that this additional period of three years will make it too long a period especially when we consider that they are marrying at 21. I submit that it should be reduced to one year.

SHRI C. C. BISWAS: In the previous amendment which the House has accepted, as you have yourself pointed out, it is not stated from what period one year will count. Some parties may be living quite happily for several years and then at the end of that period, they may say, "We would like to part. We have not lived together for one year prior to this date, and have refused to live together from that time." Three years since the date of the marriage may have already expired at the time of the presentation of the petition as provided for in clause 27. There is no inherent inconsistency between the provision which has already been accepted by the House and the provision in clause 27. If it had been one year from the date of marriage, then there might have been some inconsistency. Those who have suggested easy divorce on this ground should have made at least some provision in terms of what is provided in this Marriage Law of China:

> "The District People's Government, after establishing that divorce is desired by both parties and that appropriate measures have been taken for the care of children and property, shall issue the divorce certificates without delay."

SHRI V. K. DHAGE: Custody of children is provided for in clause 36.

SHRI P. SUNDARAYYA: The hon. Minister just now said that those who have moved the amendment regarding mutual consent to separate, should have made some provision for the custody of the children. Clause 32 deals with giving relief to respondent and clause 36 deals with the custody of children. Both these things are already there as part of the Bill. So, the remark of the hon. Minister is irrelevant.

SHRI C. C. BISWAS: Sir, I oppose the amendment.

MR. DEPUTY CHAIRMAN: The question is:

> 150. "That at page 10, in clause 27, for the words 'three years', wherever they occur, the words 'one year' be substituted."

(After taking a count) Ayes—19;. Noes—30.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

> "That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 28.

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

> 46. "That at page 10, lines 45-46, the words 'and one year has elapsed thereafter but not sooner' be deleted."

MR. DEPUTY CHAIRMAN: Clause 28 and the amendment are open for discussion.

SHRI V. K. DHAGE: Sir, this is a very reasonable amendment which I have tabled and it is only with the intention of providing the relief that is available after divorce to the parties trying to seek remarriage. We have just now passed that no divorce petition can be presented for three years. Take, for instance, that spmeone has been guilty of adultery 'sdon after marriage. Whatever may be the offence, the person will have to wait for 3 years before presenting that petition and after that there will be another 1 or 2 years in trying to get

[Shri V. K. Dhage.] the party convicted of adultery and having the final decree of divorce. But then there seems to be no reason why after the 5 years' period he should still wait for one year without having the remarriage performed if there be a possibility of a remarriage. I therefore feel that this seems to be a very reasonable amendment and I hope the House will accept it.

SHRI P. SUNDARAYYA: Sir, I only wish to add this. After all, when these laws are made for marriage, the intention is that the young people should marry and live happily and at the same time we don't want them to take marriage lightly. We have therefore provided for 3 years. When that is there and then the divorce itself is granted, again making them wait for another year would be nothing but ■cruelty.

MR. DEPUTY CHAIRMAN: So re-marriage also should be equally easy?

SHRI P. SUNDARAYYA: That would mean prolonging the period. By that time the period of youth itself will be over.

MR. DEPUTY CHAIRMAN: Remarriage between the persons who are divorced—is it not?

SHRI V. K. DHAGE: They may marry some other person.

MR. DEPUTY CHAIRMAN: What do you mean by remarriage?

SHRI P. SUNDARAYYA: Why do you prevent young people from marrying? You say here:

> "Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, and one year has elapsed thereafter but not sooner, either party to the marriage may marry again."

Ultimately after so much period of reconciliation, etc., are finished and when actually a divorce is granted, again to ask them to wait for a year is meaningless. Therefore, our amendment should be accepted.

DIWAN CHAMAN LALL: I am indeed very sorry that proper guidance has not been given in regard to the provisions of this measure and had proper guidance been given, we would not be finding ourselves in this contradictory position in which we find ourselves by the clauses that we have accepted. Here, for instance, as my friend has already pointed out, we had accepted a clause under which adultery is a ground for immediate divorce. Yet we go on to another clause—we accept that—we make the parties wait for a period of three years after the cause for divorce has arisen, continue to live in the same house or if they don't live in the same house, continue to take on the obligation of marriage for 3 years when the cause had already arisen and the cause is absolute. I cannot understand how hon. Members can possibly accept the sentimental plea of my hon. friend and. accepting the sentimental plea, enter into a contradictory state of affairs and accept a contradiction of this nature. Another contradiction of a similar nature would arise, if we are not very careful with the rest of the clauses of this measure. What is it that we are trying to do in respect of clause 28? Some of my hon. friends are apparently greatly enamoured of Anglo-Saxon jurisprudence. This particular clause deals with the law as is applicable in Great Britain and partly here under the Indian Divorce Act in reference to decrees *nisi* and decrees absolute. This is an explanation in the law as it exists today under the Indian Divorce Act. Now, is there any reason, is there any sense in delaying the remarriage of two divorced persons by importing clause 28 into this Act? If the cause has arisen, if after due processes of law a dissolution has been ordered by the competent authorities, then why do you compel the two people to wait for a period not of one year, Mr. Deputy

Chairman, but wait for a period of one year after the final thing has been -done? If you look at the clause, it will mean this:

> "If there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, and one year has elapsed thereafter but not sooner, either party to the marriage may marry again."

All that process has to be gone through •first and one year has to elapse thereafter but not sooner. It is a year after you have gone through the legal process that you ask these two parties to wait before they can remarry. Now what is the justification for this? I can understand the Canonical Law, the Church Law in England, which was responsible for these delays in regard to remarriages of divorced persons. I can understand all that but I do not understand now in the year 1954 importing ideas of the early nineteenth century or early seventeenth century into a legislation which is supposed to "be a model, which is supposed to be progressive. Is there any justification for it? I don't know, I don't seem to have heard one single word from any-"body in justification of this particular ■delay that is sought to be imported for remarriage after the due process of law has been gone through and a dissolution has been effected of the marriage. I would like to have heard some reasons advanced. Is it children? They are protected under clause 36. "He has protected them already in every manner that he could under the provisions of this measure. Therefore, "I submit that we should not burden this particular Act with unnecessary legislation, unnecessary delays or irksome delays which are going to militate against the happiness of the people who are involved. If a divorce Tias been effected, obviously those two people cannot be brought together again. Often it means that a divorce is effected because of other parties— third parties—who are waiting to re-'■marry and you are preventing that a-emarriage. You are not helping the process of morality by doing that nor are you helping the happiness of the people who have to wait for this particular purpose. I do submit that there is no justification whatsoever for our tying ourselves down to Anglo-Saxon ideas in regard to this matter. If a thing is good, if a thing is in the interests of the parties concerned, let us accept that without thinking about the provisions that may have been applicable and right probably from the point of view of Anglo-Saxon jurisprudence. Therefore I submit that in these circumstances (it is my own personal experience in divorce cases that I have had to do) it has been very difficult for the parties to wait some time, even the particular period. Only the other day there was a case of this nature where because of the law a valid marriage had to be declared a nullity *ab initio* in spite of the fact that children were born of this valid marriage because after the dissolution of the first marriage the second marriage was entered into within a period of 3 days of that dissolution. A decree absolute was given but under the Indian law, unlike the English Law, even after the decree absolute has been given, you have to wait for six solid months before marrying again. No thought has been bestowed on this aspect. No conception of the difficulties that face parties presented itself to those who drafted this particular measure, especially this particular clause. I, therefore, submit that in view of the arguments that I have advanced my learned friend will be agreeable to accepting the amendment which would at any rate mitigate the severity of this particular clause.

SHRI K. S. HEGDE: Mr. Deputy Chairman, I have been trying to understand what exactly is the *raison d'etre* behind this clause. It is true that the party comes to the court for a dissolution of marriage. The next.....

MR. DEPUTY CHAIRMAN: Is the-hon. Member supporting the amendment?

SHRI K. S. HEGDE: Yes, Sir. In such a request for dissolution of marriage, two things arise for consideration.

MR. DEPUTY CHAIRMAN: One or two sentences wold suffice, because Diwan Chaman Lall has already spoken at length.

SHRI K. S. HEGDE: I thought democracy consists of discussion and then decision by majority. If you do not want me to speak I shall sit down.

MR. DEPUTY CHAIRMAN: Yes, majority of votes.

SHRI K. S. HEGDE: Two problems might present themselves in such a case for dissolution of a marriage. One is about the parentage of the child.

MR. DEPUTY CHAIRMAN: You can speak when we come to the clause dealing with children.

SHRI K. S. HEGDE: But I have not made it clear why exactly I am referring to that clause here. I can understand a certain period being allowed before a *decree nisi* is passed. But I cannot understand why, once a decree is passed, any restriction should be placed on the parties. That is the point I am trying to explain. The period prior to the passing of the decree will be there for the parties to effect a compromise or settlement. There is usually this *locus pcenitentiaz* given. Many courts give it. In many courts, they do not even touch a case for a period of a year so that the parties might effect a settlement or a compromise between themselves. The judges call the parties to their chambers and try to reconcile them. That is all to the good.

And, there is also the problem of the parentage of the children, as I have already referred. I fully appreciate that point of view. But why place restriction on the parties after the dissolution of the marriage? You know very well, Sir, the law's delays. That is well known. An application for divorce may drag on for years. And then there is the appeal also allowed. Even this process of litigation may take up more than three years. Is this a penal clause? Do you want to penalise the person wftio wants to obtain a dissolution of marriage? Do you consider a request for dissolution of marriage a crime? If that is the idea, then I am opposing it. It is a barbarous provision—this clause ■— and probably in its setting, it will have mischievous implications.

SHRI P. T. LEUVA: Sir, I support the amendment which seeks to remove the period of one year. It appears that the .....

SHRI RAJAGOPAL NAIDU: Is the hon. Member supporting or opposing the amendment?

SHRI P. T. LEUVA: I am supporting the amendment. The clause has apparently been based on the analogy of the English law. In the English law, there are two stages. There is^ the *decree nisi* and then the decree absolute. The decree absolute is passed after six months and after that decree is passed, the decision is final. But before the decree absolute is-passed any person can object to the dissolution of the marriage. The idea of having this provision in the English; law is to see that a decree is not obtained by collusion. So any party can go to the court and object to the decree absolute being granted. But what is the purpose served in having such a provision in our Act? So far as our Act is concerned, there is no-setting aside a decree which has been, once passed. That can be done only by a suit of appeal. Suppose a woman is married to a man who is very cruel and .....

MR. DEPUTY CHAIRMAN: Don't go to suppositions. Come to the facts.

SHRI P. T. LEUVA: We have agreed that divorce can be by mutual agreement. We have accepted the amendment to that effect. Then why should we want to fetter the discretion of the parties after that, if they want tc* marry anyone else?

MR. DEPUTY CHAIRMAN: That will do. Yes, Mr. Lall.

SHRI K. B. LALL (Bihar): Sir, I oppose this amendment. I have been hearing those who have been fighting for the cause of liberalism in everything and it seems to me 1)hat they are framing the law or seeking to frame it in such a way that there may be no sacredness left anywhere so far as marital life or marital relations are concerned.

I submit, Sir, that some such restriction there must be, on those who want to remarry. Even in the Muslim community they have a period of abstinence which they call "Iddat". The parties practise or observe abstinence so that Uie foreign blood may disappear completely from the system. Even according to our own system, if we do not observe certain rules the issues born are termed "Varna Shanker". "Varna Shanker" does not mean issues born of couples of two different castes or two different nationalities. When there is blood of two male persons in the body system of a woman then the issue born has blood in his system of more persons than those of mother and father. Our *Gita* speaks of such "Varna Shanker" and not against marriage of two couple of pure blood, be they of wlhatever caste or nationalities. Hence the idea is that the persons marrying should have pure blood. Therefore, we must have a certain period fixed, after divorce and it should be only after that period is over that the parties can go in for another marriage.

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI K. S. HEGDE: There is a little blood pressure, that is all.

SHRI K. B. LALL: And this period of one year is not too much and people must not be so very impatient as not to be able to wait even for one year. It seems to me that the only happiness that is sought in married life is sexual indulgence. That is not the fact. There are so many other factors that go to make happiness in married life. And therefore, Sir, I oppose the amendment.

SHRI C. C. BISWAS: Sir, an hon. Member supporting the amendment suggested that I am standing in the way of the happiness of the parties wanting to marry. But ideas of happiness differ. Suppose a wife, after the marriage, starts carrying on with another man, and then the husband sees what the wife is doing and he, following the line of least resistance, applies for divorce and there is a decree of divorce. Then the woman goes and marries the man with whom she has been carrying on. Then whose happiness are we speaking of? That will be the happiness of the woman who has been carrying on, but it will not be the happiness of the man who was the husband. So I say, ideas of happiness differ. Whose happiness do we seek? That is the question.

MAJ.-GENERAL S. S. SOKHEY: The happiness of society.

SHRI C. C. BISWAS: It will be an indecent thing to go and marry the very next day the divorce has been obtained. If that is your idea of happiness, that they should be allowed to marry in this manner, that there is no indecency in that, then please yourself, I do not mind.

That was inserted because I thought that there should be some decency even after divorce proceedings have taken place. After divorce, there must be some decency so far as the public are concerned. If we do not want it, let there be a marriage again, the very next day, and let the House please itself.

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

SHRI V. K. DHAGE: Yes, Sir.

MR. DEPUTY CHAIRMAN: **The** question is:

46. "That at page 10, lines 45-46, the words 'and one year has elapsed thereafter but not sooner' be deleted."

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

SHRI P. SUNDARAYYA: You must vote for us, Sir.

MR. DEPUTY CHAIRMAN: I have to exercise my casting vote.

SHRI TAJAMUL HUSAIN: Call a division, Sir. Let us go to the lobby.,

SHRI P. SUNDARAYYA: No, Sir, give us your casting vote.

MR. DEPUTY CHAIRMAN: I will have to give my casting vote which I do not want to do.

SHRI B. K. MUKERJEE (Uttar Pradesh): On a point of order, Sir; we (had one division and on the same ■question we cannot have another division.

MR. DEPUTY CHAIRMAN: This is a different matter. Let there be a division.

DIWAN CHAMAN LALL: On a point of order. Sir, is it not a fact that your casting vote could be legal only in a division but not when you ask people to stand up, one side or the other? There are quite a number of people now present who were not present then.

MR. DEPUTY CHAIRMAN: That is why I am calling a division.

MR. DEPUTY CHAIRMAN: The question is:

46. "That at page 10, lines 45-46, the words 'and one year has elapsed thereafter but not sooner' be deleted."

The House divided:

Ayes—43; Noes—49.

AYES

Abdul Rezzak, Khan. Ahmed, Shri Gulsher. Aizaz Rasul, Begam. Banerjee, Shri S. Barlingay, Dr. W. S. Chaman Lall, Diwan. Chauhan, Shri N. S. Deshmukh, Shri N. B. Dhage, Shri V. K. Dwivedy, Sf.iri S. N. Ghose, Shri B. C. Gurumurthy, Shri B. V. Hegde, Shri K. S. Khan, Shri Barkatullah. Kishen Chand, Shri. Krishna Kumari, Shrimati. Lakshmi Menon, Shrimati. Leuva, Shri P. T. Mahanty, Shri S. Mahesl'.i Saran, Shri. Mann, Lt.-Col. J. S. Mazumdar, Shri S. N. Menon, Shri K. Madhava. Naidu, Shri Rajagopal. Parmanand, Dr. Shrimati Seeta. Parvathi Krishnan, Shrimati. Pattabiraman, Shri T. S. Pawar, Shri D. Y. Rao, Shri V. P. Reddy, Shri Channa. Reddy, Shri Govinda. Shetty, Shri Basappa. Singh, Babu Gopinath. Sinha, Shri B. K. P. Sinha, Shri Rajendra Pratap. Sokhey, Maj.-General S. S. Sundarayya, Shri P. Surendra Ram, Shri V. M. Tajamul Husain, Shri. Tankha, Pandit S. S. N. Vaidya, Shri Kanhaiyalal D. Venkata Narayana, Shri Pydah. Vyas, Shri Krishnakant.

NOES

Adityendra, Shri.
Agrawal, Shri J. P.
Amolakh Chand, Shri.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bisht, Shri J. S.
Biswas, Shri C. C.
Dasappa, Shri H. C.
Das, Shri Jagannath.
Dave, Shri S. P.
Deogirikar, Shri T. R.
Doogar, Shri R. S.
Dutt, Dr. N.
Hardiker, Dr. N. S.
Hathi, Shri J. S. L.
Hemrom, Shri S. M.
Italia, Shri D. D.
Karimuddin, Kazi.
Karumbaya, Shri K. C.
KisTiori Ram, Shri.
Lall, Shri K. B.
Malviya, Shri Ratanlal Kishorilal.
Maya Devi Chettry, Shrimati.
Misra, Shri S. D.
Mookerji, Dr. Radha Kumud.
Mukerjee, Shri B. K.
Obaidullah, Shri.
Pande, Shri T.
Panigrahi, Shri S.
Pushpalata Das, Shrimati.
Raghubir Sinh, Dr.
Rajagopalan, Shri G.
Rao, Shri Raghavendra.
Saksena, Shri H. P.
Savitry Nigam, Shrimati.
Shah, Shri M. C.
Shrimali, Dr. K. L.
Singh, Sardar Swaran.
Singh, Shri Raghbir.
Singh, Shri Vijay.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Subbarayan, Dr. P. Sumat Prasad, Shri.
Tamta, Shri R. P. TRhanhlira, Shri R.
Valiulla, Shri M. Variava, Dr. D. H.
Vijaivargiya, Shri Gopikrishna. The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 28 stand part of the Bill."

(After taking a count) Ayes—44; Noes—21.

The motion was adopted.

Clause 28 was added to the Bill.

MR. DEPUTY CHAIRMAN: There is an amendment to clause 29 both in the name of Mr. Tankha and in the name of Mr. Sundarayya.

PANDIT S. S. N. TANKHA: I do not move it.

SHRI P. SUNDARAYYA: I move:

151. "That at page 11, line 8, for the words 'three years' the words 'one year' be substituted."

Why should there be three years? I want one year.

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

SHRI P. SUNDARAYYA: Sir, my amendment is simple. I cannot understand why the Bill makes provisions which are more and more vexatious. Even when all the grounds for divorce are there for a woman to file a petition why must she be resident there for three years? It is something which cannot be understood, Sir. Suppose a couple is married in Madras. They come and settle in Delhi. Now she cannot file a petition under Chapter V or under Chapter VI unless she lives here for three-years. Even if she lives for one year the court should be competent to take into consideration her petition. There

[Shri P. Sundarayya.] need not be three years for the court itself to take cognizance of the matter. If she is not entitled to make the petition here then it means that from Delhi she will have to go back to Madras to file the petition. That is again an anomalous position and it should not be so. One year should be sufficient for the purpose. In fact it would have been better if any court had been able to take up the matter were a petition made to it. Instead of making a muddle of it and making it so very expensive I think Government should accept one year instead of three years and I hope the Government and the Law Minister will not stand on prestige but will see the reasonableness of this amendment and accept it.

SHRI C. C. BISWAS: This provision is to apply to cases where the wife is residing in the territories to wjhich this Act extends and the husband is not residing there and if the wife in these circumstances wishes to bring a proceeding for divorce against her husband she must have been residing there for this period of three years. There is no other reason for this except to check hasty applications for divorce as far as possible.

MR. DEPUTY CHAIRMAN: The question is:

151. "That at page 11, line 8, for the words 'three years' the words 'one year' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 29 stand part of the Bill."

The motion was adopted. Clause 29 was

added to the Bill.

MR. DEPUTY CHAIRMAN: There are *no* amendments to clause 30.

Clause 30 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 31.

DR. SHRIMATI SEETA PARMANAND: I move:

47. "That at page 11, at the end of line 22, the following be added, namely: —

'and shall not be open to **the** press in any case'."

SHRI P. SUNDARAYYA: Sir, I move:

183. "That at page 11, lines 21-22, the words 'if either party thereto so desires or if the district court so thinks fit to do' be deleted."

DR. SHRIMATI SEETA PARMA NAND: Sir, I would like this addition "and shall not be open to the press in any case" for the simple reason that the proceedings should not create an unhealthy flavour for matters of this kind amongst the public. They are calculated to have a deleterious effect on foe younger generation. Sir, it has been left in the previous clause open to the discretion of the court to decide at the request of the parties whether the proceedings would be open to the public or not, but it is not clear whether the proceedings not being open to the public in the court would exclude press also because it has been found by experience in America, Sir .....

SHRI K. S. HEGDE: Once it is in camera the question of the press cannot arise at all.

MR. DEPUTY CHAIRMAN: It is not open to the press.

DR. SHRIMATI SEETA PARMANAND: My amendment says, even if foe parties do not mind the case being held in open, i.e., not being *in camera,* it should not be open to the press because the experience in America, Sir, is that divorce proceedings have led to bad effect on the children and the school children usually discuss these things. This matter becomes known to them because of the matter being reported in the press otherwise none of the school friends of a child of a divorcee would have heard of it. la order to guard the interests of the

children particularly and also not to create bad taste in the matter, though divorce proceedings may be open to the public, they should not be open to the press. I hope with these few remarks I have made my point clear to the Members of the House and it is not necessary to add anything further.

SHRI K. S. HEGDE: Sir, on Dr. Seeta Parmanand's amendment (No. 47) I want to raise a point of order.

MR. DEPUTY CHAIRMAN: The amendment has been moved. What is your point of order now? She has •even spoken on her amendment.

SHRI K. S. HEGDE: The House cannot discuss the amendment in the form in which it has been moved because it comes into conflict with article 19(1) (a) of the Constitution. Reasonable restrictions can always be put. If you are excluding the entire public, it is all right.

MR. DEPUTY CHAIRMAN: What exactly is your point of order?

SHRI K. S. HEGDE: My point of order is this. A proceeding of this nature can certainly be held *in camera.* But once it is held *in camera* everybody is excluded, both the public and the press. You cannot make a distinction between them by ma[1]' open to the public, at the same time excluding the press. If you do that it comes into conflict with the provision of the Constitution relating to freedom of speech and expression. Of course, you have the right of excluding everybody but you cannot discriminate against one section of the peoplp. If you allow the public to be present and say that the press cannot publish it, there will be another difficulty which you will appreciate. The press may publish something which may not be genuine news and you may not be able to prevent that. So my suggestion is that an amendment of this type excluding only the press is not tenable.

MR. DEPUTY CHAIRMAN: **It** is **not** a point of order. You are only arguing against the amendment. You may oppose the amendment on these grounds.

SHRI TAJAMUL HUSAIN: Sir, my submission is this.

MR. DEPUTY CHAIRMAN: I believe you have finished, Mr. Hegde?

SHRI K. S. HEGDE: On the point of order I have nothing more to add.

MR. DEPUTY CHAIRMAN: I do not hold it is a point of order.

SHRI K. S. HEGDE: In that case I will try to develop the argument. I entirely agree with Dr. Seeta Parma-nand that proceedings of this nature must be held *in camera* as far as possible. I for one would agree that all proceedings irrespsctive of the desire of the parties should be held *in camera.* It would be a very good thing.

SHRI P. SUNDARAYYA: Then you 'support my amendment.

SHRI K. S. HEGDE: Yes, that is what Mr. Sundarayya's amendment means. But if you say that you will exclude the press, it is not proper. You want a certain section of the people to come and hear your dirty stories but at the same time you say to the press, 'do not publish it'. That is not right. A more appropriate procedure would be to have all these divorce cases *in camera.* There will be no difficulty at all about that. The judges can deal with them in their chamber.

, DR. SHRIMATI SEETA PARMA-. NAND: Then the words "if either party thereto so desires or if the district court so thinks fit o do" may be omitted.

SHRI P. SUNDARAYYA: Then you support my amendment. That will do.

SHRI TAJAMUL HUSAIN: Sir, in my opinion, if this clause is retained, that is, if the divorce proceedings are

[Shri Tajamul Husain.] to be jheld *in camera,* the result would be that there would be more divorce petitions than you would find ordinarily if they are to be held in open court.

SHRI C. C. BISWAS: Let us have more divorce cases.

SHRI TAJAMUL HUSAIN: That means the Law Minister is encouraging divorce. I submit, Sir, that the proceedings should be held in the open court. This clause should be deleted.

MR. pEPUTY CHAIRMAN: Mr. Tajamul Husain, you need not labour on this point, because your's is a negative amendment and it is out of order.

SHRI TAJAMUL HUSAIN: It may be out of order, but I am speaking on the clause. Sir, this clause Should be deleted. Whether it is in writing or oral, it makes no difference. If you have the proceedings conducted in open court, there will be a smaller number of divorce cases. That is my point.

SHRI P. SUNDARAYYA: Sir, my amendment seeks to delete from this clause the words "if either party thereto so desires or if the district court so thinks fit to do". If these words are deleted, it would mean that the proceedings under this Act shall be conducted *in* camera. The reason why I move this is that we do not want to give unnecessary publicity to this kind of proceedings. Marriage as well as divorce is an entirely private affair and we would like it to be confined to the parties concerned, and of course to the judges who conduct the proceedings. Mr. Tajamul Husain says that if you hold it *in camera,* there will be many cases. I think it is a totally wrong argument.

Now, I heard an interruption from the Law Minister saying 'let us have more divorces and tfiere will be too much happiness'. This kind of attitude on the part of the Law Minister is not at all justified. After all, we do not want it to happen in such a way that a man will marry today just to ask for divorce tomorrow. The Bill is not conceived in that spirit. The clauses are not there with this idea that we shall marry today and get divorce tomorrow and have another-marriage the day after. If that is the spirit, the Law Minister can say that. But when we are discussing a serious Bill, and once you accept that in certain cases divorce is necessary, it is for that purpose that we are making the provisions. When such is the case, to go on making sarcastic remarks about divorce and other tilings does not befit the high rank which the Law Minister is holding or his capacity as Leader of this House.

As regards the proceedings, they should be held *in camera* in order to avoid all kinds of unnecessary publicity, and all kinds of poking into this matter, so that the matter may be; settled between the parties and the judges. The judge himself, while conducting the proceedings *in camera,.* can bring his own authority, intelligence and influence to bear and see whether some settlement could not be-arrived at. But once you open it to-the public, the whole thing will be abused. My amendment is very reasonable and it should appeal to every Member of this House who is really interested in seeing that the marriages-are kept enduring and divorces are-utilised only very rarely, and as suchi. there should be no objection on the-part of the Law Minister to accept this.

SHRI RAJAGOPAL NAIDU: Mr-Deputy Chairman, we all know that there are so many newspapers in our country, so many dailies and so many weeklies thriving mostly by publishing certain obscene matters, matters which do not happen in the courts of law. They just go and stand in the verandah—newspaper representatives—listen to something, either understand or misunderstand the proceedings of the court and publish. what they like. If there are certain dailies and weeklies that have got a large circulation it is because they publish such obscene things. If we want to see that such things are not.

published, we have got to accept the amendment of Mr. Sundarayya. But I have got one doubt in my mind about the matter. It is only a doubt and that is whether an enactment like this can prevent a newspaper or a daily or a weekly from publishing the judgment of the court. Because the moment a judgment is pronounced, it becomes a public document. I would like to know from the hon. Minister whether we can prevent the newspaper from publishing any judgment that is pronounced by a court of law. And the question is not only with regard to judgment. Once the judgment is pronounced they can take certified copies of the evidence that was led and that evidence can also be published. These are the things which we have to consider very seriously and try to see whether we can enunciate some law even to prevent the publication of the judgment in newspapers. With these words, I support the amendment of Mr. Sundarayya.

SHRI T. PANDE (Uttar Pradesh);

श्री टी० पांडे (उत्तर प्रदेश) : उपाध्यक्ष महोदय, दोनों संशोधनों का मैं विरोध करता हूं । मैं स्वयं डाइवोर्स (divorce) में विश्वास नहीं रखता हूं क्योंकि मैं विवाह को एक पवित्र बंधन मानता हूं । मैं नहीं समझता कि आप फैक्टस (facts) को जनता से क्यों छिपाना चाहते हैं, उसमें मुझे तो लज्जा की बात नहीं मालूम होती है । इस किस्म के विवाहों में यदि आप डाइवोर्स की इजाजत देते हैं तो कम से कम जनता को मालूम होना चाहिये कि किन कारणों से डाइवोर्स दिया जा रहा है । जनता को उससे नसीहत भी मिलेगी और उसे ठीक ठीक पता चल सकेगा कि किस मर्ज में मुब्तिला हो कर दो शरीफ युवक और युवतियों ने डाइवोर्स मांगा है । जैसा कि श्री नायडू ने बताया है, जब एक बार जजमेंट (judgment) हो जायगा तो उसको आप किसी तरह प्रकाशन से रोक नहीं सकते हैं—कोई भी उसकी नकल ले सकता है, कोई भी उसे अपने अखबार में प्रकाशित कर सकता है । मेरा तो अपना मत है कि डाइवोर्स का मामला अदालत में पेश हो तो जनता वहां जाय और वहां बातों को सुने और समझे जिससे इस किस्म के जो विवाह हों या इस किस्म के जो डाइवोर्स हों उनके प्रति लोगों में अनिच्छा हो जाय और वे ऐसा विवाह न करें जिसमें डाइवोर्स की जरूरत पड़ती है । इन शब्दों के साथ मैं इस संशोधन का विरोध करता हूं

[For English translation, see Appendix VII, Annexure No. 284.]

SHRI KANHAIYALAL D. VAIDYA:

श्री कन्हैयालाल डी० वैद्य : श्रीमन्, यह जो श्रीमती सीता परमानंद का संशोधन है—"shall not be open to the press in any case" मैं नहीं समझता कि इस तरह की भाषा प्रयुक्त करके किसी कानून में प्रेस की स्वाधीनता को हम ले सकते हैं । यह एक बड़ा अनुचित काम होगा और प्रेस की स्वाधीनता पर एक प्रहार होगा । इसलिये यह एक सर्वथा अयोग्य और बिल्कुल निकम्मा संशोधन है और हाउस (House) को इसे अस्वीकार कर देना चाहिये ।

[For English translation, *see* Appendix VII, Annexure No. 285.]

SHRI C. C. BISWAS: I do not want the House to accept the amendment moved for this reason that you cannot exclude the press and allow the general public. It will not be right and proper. Apart from the constitutional difficulty raised by Mr. Hegde. if you admit the general public to these proceedings, the question is whether you can exclude the press. But the point here is—there is a good deal of force in what has been said by hon. Members—that many dirty things may come to light in the course 01 ihe proceedings and it is not desirable that any publicity, any undue-

[Shri C. C. Biswas.]

publicity should be given to such things. At the same time, publicity is the very breath of democratic life. If there is something very fishy about anything it is just as well that these things should come to light.

DR. SHRIMATI SEETA PARMA-NANDA: Question.

SHRI C. C. BISWAS: Therefore, Sir. to prevent any frivolous or irresponsible divorce petition, I will accept Mr. Sundarayya's objection, if he will leave it to the discretion of the court to decide this instead of leaving it to the discretion of the parties. We may have it that the proceedings will not be held in public unless the court thinks it should be so. Ordinarily, the proceedings should be *in camera,* but if the court desires that it should be public, then it may be held in public. Let us leave it to the discretion of the court In that case, I am prepared to accept it.

SHRI P. SUNDARAYYA: Sir. I would appeal to the hon. the Law Minister. If he agrees with the desirableness of the amendment, then why should he give discretion to the court to hold the proceedings in public without the consent of the parties or either of the parties. In some cases publicity may be desirable and thr> public may be interested to hear what is going on. So, we must not allow it to the discretion of the court to decide. I think therefore that the words "if either party thereto so desires or if the district court so thinks fit to do" may be deleted.

SHRI K. S. HEGDE: Sir, it may be put like this:

> "31. A proceeding under this Act shall be conducted *in camera* if either party thereto so desires unless the court thinks otherwise."

SHRI C. C. BISWAS: Give an amendment of that kind and I shall accept.

SHRI AKBAR ALI KHAN (Hyderabad) : Sir, what is there to be left to the discretion of the court? There must be something to be left to the discretion of the court. Here, as a matter of policy when we think that the proceedings should be held *in camera,* let us say so categorically. I think it is wrong to bring in the court, and leave this matter to its discretion.

SHRI C. C. BISWAS: I do not say that everything should be *in camera.* The court should have the discretion to decide this.

DIWAN CHAMAN LALL: On a point of order, Sir. What is the position that wc are faced with? The hon. the Law Minister has produced this particular clause in the Bill, he has produced no amendment to the clause. The clause says:

> "A proceeding under this Act shall be conducted *in camera* if either party thereto so desires or if the district court so thinks fit to do."

It is clear, if either party were to say it shall not be public or if the court objects to it, nothing shall be public. And now he gets up and says he is opposed to this.

1 P.M.

SHRI C. C. BISWAS: Sir. how is this a point of order?

DIWAN CHAMAN LALL: May I request my hon. friend to keep himself in a cool, collected mood? If my learn ed friend had a difference of opinion, I submit it was up to him to have brought in an amendment. But he puts the proposition before the House and he goes back completely on that proposition. I am opposed to this prohibition of proceedings *in camera.* I do submit, on a point of order, where do we stand?

MR. DEPUTY CHAIRMAN: What is your point?

DrwAN CHAMAN LALL: What is my learned friend's proposition? Is he in favour of the original proposition, or not? If he is not, let us know it, and why does he not bring in any

amendment to this particular clause? After all, you can't play fast and loose with a serious proposition like that. Apart from this point, I entirely oppose the proposition that has been placed before you.

SHRI C. C. BISWAS: It is not a point of order; it is a speech.

MR. DEPUTY CHAIRMAN: What is your point of order, Mr. Chaman Lall?

DEWAN CHAMAN LALL: Sir, I would like to know what is the position of the Law Minister? Is he in favour of the proposition as is placed before you in this clause or are we to accept that he has gone back on **it?**

MR. DEPUTY CHAIRMAN: Th2 position is like this. Mr. Sundarayya has moved an amendment to this clause which, if accepted, would mean that the entire proceedings would be *in camera.*

SHRI K. S. HEGDE: ..... and it is al ways open to the mover to accept it or not.

MR. DEPUTY CHAIRMAN: There is no point of order.

SHRI M. VALIULLA: And when a Member moves an amendment, how can we be sure that the Law Minister is accepting it?

DR. SHRIMATI SEETA PARMA NAND: Sir, ...

MR. DEPUTY CHAIRMAN: Dr. Seeta Parmanand, please resume your seat.

SHRI P. SUNDARAYYA: Sir, I am not accepting the Law Minister's suggestion. As it is. the clause gives discretion not only to the court but to either party. We do not want the proceedings to be public. Now anyone of them can say that the proceedings should not be public. If I accept the hon. the Law Minister's suggestion, only the court could say and the parties •connot say whether the proceedings should be public or not. So, I am **not** prepared to accept it. I press my amendment.

DR. SHRIMATI SEETA PARMANAND: Sir, I withdraw my amendment and accept Mr. Sundarayya's amendment.

SHRI K. S. HEGDE: Sir. about the publication of.....

SHRI C. C. BISWAS: As a matter of fact, we are not discussing here as to what the rights of the press are; if they obtain certified copies of judgment whether they can publish it as evidence and so on, that question does not arise under this clause.

MR. DEPUTY CHAIRMAN: I now put Shri Sundarayya's amendment to vote.

DR. SHRIMATI SEETA PARMANAND: Sir, I beg to withdraw my amendment (No. 47).

The "amendment was, by leave, with-drawn

MR. DEPUTY CHAIRMAN: The question is:

183. "That at page 11, lines 21-22, the words 'if either party thereto so desires or if the district court so thinks fit to do' be deleted."

(After taking a count) Ayes—25; Noes—37.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is;

"That clause 31 stand part of the Bill."

The motion was adopted.

Clause 31 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we ecme to clause 32. There are three amendments.

*For text of amendment *vide* **col-**' 5640 supra.

SHRI P. SUNDARAYYA: Sir, I move:

184. "That at page 11, lines 27 to 33 be deleted."

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

152. "That at page 11,—

(i) in lines 28-29, the words 'or condoned' be deleted; and

(ii) in lines 29 to 31, the words 'or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty' be deleted."

153. "That at page **11,** line 34 and 35 be deleted."

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

PANDIT S. S. N. TANKHA: Sir, as the clause stands in the Bill, the court shall decree such relief if it is satisfied that —

(a) any of the grounds for granting relief exists; and

(b) where the ground of the peti tion is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or, where the ground of the peti tion is cruelty, the petitioner has not in any manner condon ed the cruelty;

and then I come to sub-clause (d)—

(d) there has not been any un necessary or improper delay in instituting the proceed ing; .....

Now in sub-clause (b) I have desired that the words 'or condoned' and the words 'or, where the ground of the oetition is cruelty, the petitioner has not in any manner condoned the cruelty be deleted. And in sub-clause (d) I have desired that that sub-clause as a whole should be deleted.

Now, Sir. I want the House to understand the reasons which have prompted me to bring these amendments. According to me, Sir, they are very important, and unless these words are deleted from the clause, no relief will be granted to the petitioner in most of the cases, at least in so far as it concerns and relates to women petitioners. Why I say that. Sir. is because it is seldom that a wife—about a husband I cannot say, but about a wife I certainly maintain—will ever bring the matrimonial matter to the court of law in the first instance namely where the husband has committed adultery or cruelty on her for tha first time. I do not expect that an Indian woman, knowing as I do her mentality and her outlook, will ever go to* a court of law if her husband has given her a slap on the first occasion. I say,. Sir, that she will never do that. She will put up with it for once, twice and several times, before she goes to a court of law. If you retain these words, regarding condonation in the clause, Sir, I submit that whenever a woman goes to the court of law and says: "My husband has been cruel to *me* throughout by behaving with me in this manner on several former occasions, on the first occasion by giving me a slap, on the second occasion by hitting me, with a stick and'ion theiUhird occasion by doing this or that", it will be taken that all these former acts of cruelty have been condoned and therefore no evidence can be led by her on these points. Therefore, Sir, I say that the retention of these words will really mean taking away from *he girl her right to obtain divorce or judicial separation on these grounds.

Now, with regard to sub-clause (d) also, Sir, I say that in the majority of cases our Indian girls will put up with that, unjust conduct of their husbands on various occasions, even the husbands may also put up with such conduct of their wives likewise as long as they can bear it. And it is possible that because of this the first one or two years may elapse before they actually go to the court of law. My fear is that

when they do actually go to the court, it will be said that proceedings have tieen delayed and that they are not entitled to any relief. Therefore, I submit that it is very necessary to delete these words from this clause. Now, Sir, I realise that in most of the Marriage Acts, both in India as well as outside, such provisions do exist, but I submit. Sir, that there is a great deal of difference between the girls of ■our country and the girls living outride. It is possible, Sir, that a girl ir. the West may not put up with a slap ■even on the first occasion, but I have *no* doubt that our girls will put up with it and will tolerate it as long as they •can possibly bear.

Further. Sir, you will find from the Indian Divorce Act, section 14. that similar provisions did exist there also. **But** I find that a very important portion of the clause as it existed then has been taken away and has not been incorporated in the present clause 32. Under section 14 the words there were:

> "No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued."

Now, Sir. we find that these words have not been retained in the present ■clause 32, with the result that it would be difficult to decide as to whether or not and if so when the girl did actually condone the cruelty. If those words had been retained then the woman would have been held to have condoned the adultery only where she continued to live with her husband as husbVid and wife and resumed conjugal cohabitation. Therefore, Sir, I submit that the House must support me in this Mew that the words which have sought lo be deleted in the clause must be deleted in order to give the benefit of this law to the people concerned.

(Shri P. Sundarayya rose to speak.)

SOME HON. MEMBERS: He can speak in the afternoon.

MB. DEPUTY CHAIRMAN: Then we shall resume in the afternoon. Now we meet at 4 P.M. and sit till we finish all the stages of the Bill. The House stands adjourned till 4 P.M.

The Council then adjourned till 4 P.M.

The Council reassembled at four of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI P. SUNDARAYYA: Sir, my amendment is to omit lines 27 to 33 from clause 32, i.e., sub-clauses (b) and (c). The purpose is the same as that of the amendment by Mr. Tankha, **but** only I want to omit it completely.

SHRI K. MADHAVA MENON: On a point of order, Sir. With the passing of the amendment making mutual consent one of the grounds for divorce, (cl automatically goes, i.e., "the petition is not presented or prosecuted in collusion with the respondent". That automatically goes when mutual consent is one of the grounds of divorce.

MR. DEPUTY CHAIRMAN: Not always.

SHRI H. C. DASAPPA (Mysore): How can there be any collusion when you have provided for consent?

Mb. DEPUTY CHAIRMAN: Anyway, we will hear the reply of the Law Minister.

SHRI P. SUNDARAYYA: I want to omit sub-clauses (b) and (c). Subclause (b) says: "where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or, where the ground of the petition is cruelty, the petitioner **has** not in any manner condoned the cruelty". This completely nullifies **the** ground for divorce given earlier that, if any party commits adultery, the other party will be entitled to divorce. Suppose, for instance, a husband commits adultery. You say earlier **that** even if he commits adultery, for three years the wife cannot seek divorce.

[Shri P. Sundarayya.] For three years she has to put up with it. This, you can say, is condoning. Or. let us say that the wife, in her generosity, condones a single act of adultery on the part of the husband in order to make up for a peaceful life, or in order to win over her husband to normal responsible ways of life; you can turn round and say that she has condoned adultery and, therefore, she cannot have divorce.

Then the second thing is, "where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty". It is not only "condoned the cruelty" but "in any manner condoned the cruelty". What does it mean? Then, cruelty is not denned. If the court sticks to the actual wording, naturally the few grounds which have been provided earlier for divorce will be completely nullified. I think this whole sub-clause is completely unnecessary. Divorce cases will go to the district courts, and by district courts, I take it you mean the courts of the district judges. I think we can expect our district judges to have that much of discretion to judge the cases on their own merits, instead of their being given mandatory directives like this. This is the reason why I want this whole subclause to be completely omitted.

Sub-clause (c) says "the petition is not presented or prosecuted in collusion with the respondent". In every case where the parties mutually consent to divorce, you can say that they have brought the petition in collusion. After the grounds for divorce have been defined and when a clause has been accepted making mutual consent one of the grounds for divorce, naturally this whole sub-clause becomes completely meaningless. Even to make the law properly worded, apart from the question of merits, I think this should go. Why should agreement among the parties become a cause for the negation of the rights of divorce? Let us make a sensible law, which is not contradictory, from chapter to chapter and from clause to clause. I would once again appeal to the Law Minister that we are not anxious to make divorce easy. Again and again, he is talking as though we are very anxious to see that the marriage ties should be broken, that divorce should be made easy and cheap. We are not moving these amendments with the intention of slandering the marriage institution or encouraging promiscuity, but we want to make the law reasonable in the interests of our own society, in the interests of our own lives, I think these two sub-clauses should be omitted. If they are omitted, there will be no harm done to the measure.

SHRI K. S. HEGDE: Mr. Deputy Chairman, the objections raised by my hon. friend, Mr. Sundarayya, are due to a legal misconception. I do not think that his objections are valid. Let me take sub-clause (b): "where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty." Now, my hon. friend seems to think that one act of condoning adultery will itself mean a waiver for further future acts of adultery. It does not mean that every act of adultery is condoned or connived at by the party in question. Because of that one: act of condonation, there is no future bar for applying under this clause, if there is a fresh cause of action. There will be no difficulty at all. Evidently, that mis-conception persuaded my hon. friend to raise the objection that he-ha^f placed before the House.

Now, coming to the question of cruelty, the term 'cruelty' is a term of law, and it has got a legal connotation. It is safer to accept that rather than try to define it here. We know what the meaning of that word is. In fact, this morning the hon. Mr. Dhage was reading it out, and very rightly" the courts have given wider meaning to-the word 'cruelty'. In fact, if you will remember, Sir, the other day you were yourself pleased to say that even the-ill-treatment of children might come-

under the word "cruelty" to the wife because cruelty is not merely physical but also mental and intellectual. When the courts themselves have given a very broad interpretation, I don't think it is necessary to give any definition.

The next point for consideration is: should we take the act of a waiver as a broad waiver of all future cruelties? Supposing there is a waiver: supposing you say you ignore one particular act of cruelty, could it be made again a ground of application in the future? It can only apply to the particular art and not to future acts. As such I don't think that there is any difficulty or legitimate ground which couldlae taken to object to the provision in sub-clause (b) of clause 32.

Let us come to (c) which says:

> "The petition is not presented r.r prosecuted in collusion with the respondent;"

This will apply only for an application for divorce but will not be one that must fall under mutual consent. Mutual consent is not a collusion. Consent is where the parties have agreed, but supposing a specific ground is made by one of the parties saying 'My husband is guilty of adultery', if that allegation is made in collusion, then that should not be made a ground for divorce. I can give an actual case in which I had to appear in one of the courts. Two of the parties were living in Burma; they belonged to my district, they came back. Evidently they had agreed for a divorce. The wife came up with a petition saying that 'my husband never cohabited with me after marriage'. The husband was *ex-parte.* But the judge thought it was not true. He therefore sent her to the doctor and the doctor's report and later his evidence showed that they had lived as husband and wife for a very long time and the allegation that he had never cohabited was not true at all. So we should noT'give room for such allegations, and it is to protect the society against such collusive action that sub-clause (c) has been put in here. I don't think there is any legitimate objection to this clause.

SHRI P. SUNDARAYYA: Does not the hon. Member think that after the clause regarding mutual consent has been accepted, there will not be any party who would bring up the whole of the clauses on adultery and other things and try to act in collusion with the other spouse?

SHRI K. S. HEGDE: There is some force in the argument that is presented by my hon. friend. If the parties are agreed on mutual consent, why should one of the parties come up with a collusive application? Normally they will not, but there may be occasions when they have got to come up with an application.

SHRI P. SUNDARAYYA: But they can come under the 'consent' clause.

SHRI K. S. HEGDE: I will give an illustration. Suppose there is a premarriage agreement. In the agreement, a provision is made in favour of the children too and now they want to get over that agreement altogether. Rather than come up with a petition-where the interest of a third party also is to be found, which will create difficulties, they might come up with, an application of a collusive nature to avoid that agreement. In fact, marriage agreement is not barred under this Bill because in spite of this Bill. parties could enter into agreement where an interest may be created in favour of the children. As such a clause like this, though to some extent it may be superfluous, has got its own value and in certain circumstances is bound to be of use.

SHRI C. C. BISWAS: I don't follow the arguments of *my* friend Mr. Tankha regarding amendment No. 152. He said something about the nature of Indian women, that it will be very difficult for them to prove their cases if this clause stands. I did not quite follow how that would happen. If there is a. petition for divorce and the defence of the husband is that the wife had:

[Shri C. C. Biswas.] condoned the acts on which the petition for divorce is based, had condoned adultery or cruelty or any of these allegations which are made in the application, if the husband says that the wife had condoned all these, then why should there be any difficulty on her part to prove that there was no condonation?

PANDIT S. S. N. TANKHA: That was not what I meant. What I meant was, supposing that on the first occasion of cruelty, which the husband inflicted • on her—say he gave her a slap—and if she did not then go to the court, but allowed that and the second such act also to go unchallenged and went to the court only on the third occasion and[1] then alleged the previous two acts of cruelty also and said that her husband had throughout been treating her in that way then all those acts taken together should constitute cruel-rty within law. The position may then be taken by the court: "You cannot bring in and rely upon the first and the second acts of cruelty as you have condoned them by not challenging them earlier but that he will consider the gravity of the third act only to ascertain whether or not it amounts to cruelty. Now supposing the husband gave a slap only on the third occasion, the question arises whether that third act would amount to cruelty. The court may say that merely giving a slap on the last occasion is not sufficient cruelty under the law and therefore you cannot get the relief, but if it should be possible to consider the cumulative effect of all the instances taken together and for the wife to be allowed to say that the conduct of her husband has throughout been one of cruelty even though she did not challenge earlier. That is what I said.

SHRI C. C. BISWAS: I don't see this •objection to this clause. It will be for the court to decide. If the court decides that all the previous acts of cruelty should also be taken into account although the wife did not object to them, that may be a ground for •appeal to set aside the decree but that is no argument for deleting this provision from this clause. If the court goes wrong, the provision is there for appeal. Why should this provision be deleted? Mr. Hegde has met this point very clearly. He has pointed out that one act of cruelty is not enough. Condonation will be in respect of every individual act of cruelty. Whether the court takes into account, when an application for divorce is made, a specific act of cruelty as a ground, or whether the court takes into account previous acts also which might have been condoned is a different matter. All that is said is this. If there is actual condonation in respect of a cruelty which is alleged, then of course it will not be a ground for divorce. That is all that this clause provides.

On the point of collusion, as a matter of fact whether you allow divorce on this ground or that. I still maintain that even where divorce is allowed by consent, some sanctity must attach, to matrimonial t'es, and therefore if even consent is procured by collusion, that should not justify divorce. That is the object of this clause. When this clause was inserted, divorce by consent was not contemplated by us. That is perfectly true, but even after that amendment has been accepted. I don't think that should make a change so far as this sub-clause (b) is concerned. I will give an illustration. Suppose two persons marry and then soon after marriage the man runs away with another woman or the woman runs away with another man and each says, 'Look here, we thought we loved each other and we would be attached to each other throughout our lives but unfortunately within a few months of the marriage each goes his or her own way' and then they say 'Let us agree to separate'. Now. that is one way of divorce by consent. It. will be for us to dtecide whether you should accept such consent as a proper consent. Will it be consent in the legal sense? Will it be legal consent? Will it be consent in the eye of the law? Each has his or her own way and they

both go the wrong way, and just because they come to a compromise or merely because they have said to each other: "You go your way and I go my way, and let us consent to separate," is that a reasonable ground on which we should grant divorce?

DR. SHRIMATI SEETA PARMANAND: Will the hon. Law Minister kindly give us an example to show the difference between consent and collusion?

SHRI C. C. BISWAS: It is quite possible to conceive of cases where consent may be the result of some form of collusion. That is what I was trying to explain. I do not know what was in the mind of the hon. Member who moved this amendment, what exactly he meant by consent of the parties. Therefore. I feel that even after accepting the amendment yesterday for granting divorce by consent, this provision is very necessary here. It is a very useful provision.

I need not take up any more time of the House. I will only add! that this is based on provisions contained, I believe, in the United Kingdom Matrimonial Act, 1950. Therefore the provision is there in England which is a country where divorce has been in existence for ages, and as a result of all that experience, they have in corporated such clauses into all their marriage Bills all along. Therefore, it is not a very startling thing .....

DR. SHRIMATI SEETA PARMANAND: As a matter of fact we have gone ahead of the law in England in granting the divorce on consent.

SHRI C. C. BISWAS: Even so it does not take away the necessity for having a provision like this in our law, as it is a very necessary safeguard.

PANDIT S. S. N. TANKHA: May I point out to the hon. Minister that there are .....

MR. DEPUTY CHAIRMAN: You have already pointed out sufficiently.

I will now put the amendment to the House.

DR. SHRIMATI SEETA PARMANAND: Will Mr. Sundarayya accept a change in the amendment? If he asks only for the deletion of the subclause relating to collusion, then probably the House will agree with his amendment.

SHRI P. SUNDARAYYA: Sir, I am prepared to accept this change.

MR. DEPUTY CHAIRMAN: That means, you ask only for deletion of sub-clause (c)?

SHRI P. SUNDARAYYA: Yes, Sir.

MR. DEPUTY CHAIRMAN: Does the House permit the hon. Member to make that alteration?

(No Hon. Member dissented.)

Is the hon. the Law Minister likely to accept the amendment in that form?

SHRI C. C. BISWAS: I am not prepared to accept it, Sir.

MR. DEPUTY CHAIRMAN: Very well. I then put it to the House.

The question is;

184. "That on page 11, lines 32 and 33 be deleted."

(After taking a count) Ayes—14; Noes—28

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

152(i). "That at page 11 —

(i) in lines 28-29, the words 'or condoned' be deleted;"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

152 (ii). "That at page 11,—

(ii) in lines 29 to 31, the words 'or, where the ground of the

[Mr. Deputy Chairman.] petition is cruelty, the petitioner has not in any manner condoned the cruelty' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

153. "That at page 11, lines 34 and 35 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 32 stand part of the Bill."

The motion was adopted.

Clause 32 was added to the Bill.

MR. DEPUTY CHAIRMAN: There i are no amendments to clause 33.

Clause 33 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause I 34. There are four amendments.

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

48. "That at pages 11-12, for the existing clause 34. the following be substituted, namely: —

'34. *Alimony* pendente lite.— Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife or the husband has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, as the case may be. order the respondent to pay to the applicant the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the respondent's income, it may seem to the court to be reasonable.'"

SHRI KISHEN CHAND: Sir, I beg to move:

154. "That at pages 11-12, for the existing clause 34, the following be substituted, namely: —

'34. *Alimony* pendente lite.— Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the petitioner has no independent income sufficient for the petitioner's support and the necessary expenses of the proceeding, it may, on the application of the petitioner, order the respondent to pay to the petitioner the expenses of the proceeding and weekly or monthly during the proceeding such sum as, having regard to the respondent's income, it may seem to the court to be reasonable.'"

/ PANDIT S. S. N. TANKHA: Sir, I beg to move:

155. "That at page 12, lines 2-3, for the words 'the expenses of the proceeding, and weekly or monthly during the proceeding such sum as.' the words 'such expenses of the proceeding as it may deem proper and such further sums of money weekly or monthly for her support and maintenance during the pro ceeding as' be substituted."

SHRI S. MAHANTY: Sir, I beg to move:

49. "That at page 12, at the end of line 5, the following be added, namely: —

'and where in any proceeding under Chapter VI it appears to the district court that the husband has no income sufficient for his support and the necessary expenses of the proceeding, it may, on the application of the husband, order the wife to pay to him the expenses of the proceeding, and weekly or monthly payment, during the proceeding, of such sum as, having regard to the wife's means, it may seem to the court to be reasonable.'"

MR. DEPUTY CHAIRMAN: It is a simple matter and all the amendments are about the same clause. Just one or two sentences only need be said. And also it is not necessary that all the hon. Members should speak.

SHRI S. MAHANTY: But. this is a very important clause and.....

MR. DEPUTY CHAIRMAN: If you are preDared to sit up to 8 o'clock. I don't mind.

SHRI S. MAHANTY: Whether we are prepared or not, that does not arise, Sir.

MR. DEPUTY CHAIRMAN: All right, Mr. Mahanty, go on.

SHRI S. MAHANTY: That is quite beside the point.

Well, I am quite aware of the sentiments of the House on this question of alimony.

MR. DEPUTY CHAIRMAN: You want the husband also to be given alimony?

SHRI S. MAHANTY: Yes.

MR. DEPUTY CHAIRMAN: Equality of sexes?

SHRI S. MAHANTY: Not only that, Sir, but also alimony is a mediaeval institution. The fact is, alimony, as the term is generally understood, denotes the obligation of the husband to maintain the wife after absolute divorce or after judicial separation. But as it is, marriage is always a bilateral affair and the disruption of a marriage does not take place only due to the husband. It also takes place due to the wife. What I have proposed is that if the wife has the means and if she is a party to the dis ruption of the marriage, then equity and justice demand, that she should pay the alimony. I am sure jny hon. lady friends, particularly Dr. Shrimati .Seeta Parmanand, will support me in this amendment because.....

MR. DEPUTY CHAIRMAN: Probably she is stoutly opposing it.

SHRI S. MAHANTY: Well, if that be so, that would only show that ladies are there only for their small privileges, but not for their responsibilities, and that certainly would not be a good commentary on the resurgent womanhood of India.

Sir, what I was saying is, this amendment is not repugnant at all to the principle of the equality of sexes which my hon. friend, Dr. Shrimati Seeta Parmanand, has always been advocating and which all of us also have been advocating all these years. Secondly, Sir. I will illustrate my point if you will permit me to take just Ave minutes.....

MR. DEPUTY CHAIRMAN: No, no.

SHRI S. MAHANTY: I have to clarify my points.

MR. DEPUTY CHAIRMAN: You have clarified your point.

SHRI S. MAHANTY: I will be very brief, Sir. I am always brief.

SHRI K. S. HEGDE: Always?

SHRI S. MAHANTY: There seems to be so much prejudice against my amendment. I will try to show how this institution of alimony arose. This institution of alimony is not only legal, but is also a sociological institution. I have tried to understand what this institution exactly is and how it developed and I shall place before the House, for such considera-tion as they deserve, my ideas on this institution.

There was a time once when man had absolute right to divorce. He could go on divorcing but then society resented that idea and, therefore, society came to a particular point of time when it was made compulsory that if a man divorced his wife he shall have to make payment for the maintenance of the divorced wife and her children. Therefore, Sir, in the

[Shri S. Mahanty.] Hamurabi Code which was practically the earliest codification of law we find a provision that if a husband divorced his wife he had to pay to the woman one mine of silver and in addition restore her portion. Thereafter, Sir, in Roman Law, alimony came to be incorporated. What I am trying to say is that alimony was a superstructure on two concepts; first is indissolubility of marriage and the second is economic servility of women. But now, Sir, those concepts have changed.

DR. SHRIMATI SEETA PARMANAND: Not yet.

SHRI S. MAHANTY: Yes, we are going to change them.

DR. SHRIMATI SEETA PARMANAND: Then do not bring the amendment till then.

SHRI S. MAHANTY: Therefore, Sir, if Dr. Parmanand suggests that the women in India should continue in perpetual economic servility, I will withdraw my amendment; but we know, Sir, that we are going to change our inheritance laws, and, in fact, ladies are joining unladylike profes sions even like the police constabulary. In every walk of life they have come and they have competed with men very successfully. There are profes sions like the cinema and the theatre where they .....

DR. SHRIMATI SEETA PARMANAND: How much can the woman police constable pay to her husband?

SHRI S. MAHANTY: The cinema stars and theatre actresses get much more than even the richest professionals in the world.

SHRI C. C. BISWAS: How many husbands have cinema stars for wives?

SHRI S. MAHANTY: Sir, I am not going into that. I have not devoted time to the study of that most interesting question. As the Law Minister asked that very pertinent question, sometimes it does happen that rich ladies having fat bank balances take a fancy upon what you may call do-nothing gentlemen at large. It does happen, Sir; it is a question of our common experience, and we find that sometimes very rich ladies go in for marriage with persons who have no ostensible means of livelihood.

MR. DEPUTY CHAIRMAN: There is section 107 of the Criminal Procedure Code.

SHRI S. MAHANTY: Of course, but then he somehow escapes the penalties of provision 107 of the Criminal Procedure Code and then if he wants to get a divorce, if he has not got the money for it, if he has not the money to allow for legal proceedings, does Dr. Parmanand suggest that the wife should not pay his alimony *pendente lite* and then perpetual alimony if the wife is found responsible for the disruption of matrimony? Sir, whatever may be her opinion or the opinion of those who think on her lines, I put it before the House in all seriousness and in all earnestness that they should try to give their most serious thought, to it and try to see that my amendment is incorporated.

I have got only one remaining point,. Sir.

MR. DEPUTY CHAIRMAN: You: have already taken ten minutes.

SHRI S. MAHANTY: It may be said. Sir, that the amendment that I have proposed does not form part of marriage laws anywhere else in the world. Well, that point was urged to me this, morning by an hon. Lady Member.

MR. DEPUTY CHAIRMAN: We are going to be a model for the world.

SHRI S. MAHANTY: I am trying to say that this also forms part of marriage laws in three American States of Massachusetts, North Dakota and Ohio. Statutes give the husband right to alimony under certain circumstances when he is the injured party. There was no alimony at all in Sweden until the new law of 1920. and even that:

only in case of want. The want must be there and there must also be the capacity to fulfil the want. I am not talking of women who have got no independent means of income or sufficient income. Then, Sir, reciprocal claims for specific injuries are now also allowed in most of the Scandinavian countries. Therefore, Sir, this is not a novel feature; this has been already incorporated in the Progressive marriage laws—Progressive with a big P—of the European countries. This is not repugnant to the spirit of equality of sexes and it is also not repugnant to the spirit of the Special Marriage Bill. Therefore, I venture to think that this House will support my amendment and incorporate it in the Bill so that the emancipated ladies will have their full rights as well as responsibilities.

SHRI KISHEN CHAND: Mr. Deputy Chairman, the first few lines of this clause read, "Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support ....." The whole idea is that if the wife has no independent income sufficient for her, the husband has to pay. Supposing there is a husband who has no independent income for his support, what happens? Therefore, I want that the word "wife" should be replaced by the word "petitioner". It leaves the whole ground clear for both parties to claim alimony. I may point out, Sir, that in America where the statistics of wealth have been taken, it has been found that 60 per cent, of the wealth is owned by women, that the woman has a greater longevity and that the American laws being so made that the division between man and woman being equal, woman on account of longer survivorship goes on accumulating more wealth. Naturally, if our inheritance laws are changed, women will have more money to their credit.

Further, Sir, it is common knowledge that in India,there are a sufficient number of lady doctors and legal practitioners who have very comfortable practices and that their husbands have hardly any income at all and it is only such women who will seek divorce. If they are seeking divorce and if the husbands are to get a little bit of alimony from these women, it would be a discouragement to these women to seek divorce. Therefore, I submit, Sir, that we should substitute the word 'wife' not by 'wife or husband or *vice versa'* but by 'petitioner' or 'respondent'.

MR. DEPUTY CHAIRMAN: Mr. Tankha.

SHRI V. K. DHAGE: I will have to add one or two new points, Sir.

MR. DEPUTY CHAIRMAN: Both the members have covered the same point.

SHRI V. K. DHAGE: I have given notice of an amendment and I should be allowed to speak at least something. Every time it should not be said.....

MR. DEPUTY CHAIRMAN: I do not want you to repeat the argument.

SHRI V. K. DHAGE: I will not repeat the arguments. It has not been the practice with me to repeat any argument. I am very conscious and I submit that I do not repeat the arguments that have been advanced before.

MR. DEPUTY CHAIRMAN: Your argument is the same as that of Mr. Mahanty and that of Mr. Kishen Chand.

SHRI V. K. DHAGE: Let us see, Sir, when I speak.

This clause has been taken from the Matrimonial Causes Act of Britain as the Law Minister just now stated. The words, more or less, appear to be the same but I will point out, Sir, that in this very Act there is a provision. Section 24(1) reads as follows: "If it appears to the court in any case in which the court pronounces a decree for divorce or for judicial separation by reason of the adultery, desertion or cruelty of the wife that the wife is entitled to any property either in possession or reversion, the court may, if it thinks fit, order such settlement as it thinks reasonable to be made of

[Shri V. K. Dhage.] the property or any part thereof for the benefit of the innocent party and of the children of the marriage or either or any of them."

Now, you will see, Sir, that even in this Act. which has been copied by us very religiously, there is some .provision made in cases where the wife happens to be the guilty party that the husband may receive some sort of a maintenance from her. Now, that being the case, Sir, I do not think that the amendment that has been given notice of by me as well as by Mr. Kishen Chand and Mr. Mahanty is out of place. Otherwise, Sir, what will happen is this. Wherever there are one-sided laws existing, it has been found that women have turned out to be gold-diggers. If there is only onesided law, it is likely to act as a sort of a penalty only on the husbands. I therefore beg of the House to accord support to this amendment.

PANDIT S. S. N. TANKHA: I have moved:

"That at page 12, lines 2-3, for the words 'the expenses of the proceeding, and weekly or monthly during the proceeding such sum as,' the words 'such expenses of the proceeding as it may deem proper and such further sums of money weekly or monthly for her support and maintenance during the proceeding as' be substituted."

I have simply redrafted the clause by transposition of words and I do think it is in a better form. If the hon. the Law Minister accepts it, well and good. If not, I won't press it.

DH. SHRIMATI SEETA PARMANAND: I would just add one or two observations, Sir. A reference was made to women's attitude in the matter and I would like to make that position clear. At one or two meetings held outside where there were a number of women attending those meetings, this question was raised as to whether women would be prepared to give alimony to their husbands. I would like to make clear the sense of that meeting and what their attitude-was. It was felt that there would be no objection whatsoever to men being granted alimony by rich wives but—that is a big 'but'—the time is not yet. It is like putting the cart before the horse. Today the rules of succession and inheritance are such that women are not in a position as a rule, at least 95 to 99 per cent, of them, to be able to pay any alimony. I would not like to refer to the cinema actresses and the few lady doctors who may be earning a lot of money. They may be a good attraction for many people to vie for their hand. In the case of actresses, it may be that this restraint of alimony would be a good check on their not seeking so many divorces, but that is an irrelevant question and we need not deal with that. What I would like to bring to the notice of the House is this. Today, as conditions are for-women, even educated women have to devote their whole time to household duties, to the bringing up of children, etc. And, when such is the position so long as exactly half the income of the man is not allotted to the woman for her not only eight hours' work but slaving the whole day in the house, this question cannot arise. The very fact that women have refused to have reserved seats for themselves proves that they exploit every situation to show how they are not open to the charge of Mr. Dhage. If I heard him rightly he characterised them as gold-diggers. The women have shown how fair-minded they are by not wanting to have seats reserved for themselves. It is very unhappy, Sir, that one of our brothers should have made this kind of charge against his very mothers and sisters.

SHRI P. SUNDARAYYA: May I be allowed to .....

MR. DEPUTY CHAIRMAN: No,, please. Mr. Biswas.

SHRI B. K. MUKERJEE: May I know, Sir, if the lady Members have got special privileges in the matter of speaking in this House too? Will it be incorporated in this law?

MR. DEPUTY CHAIRMAN: In the matter whether to accept this amendment or not it is the lady Members who are to uphold the cause of women.

SHRI C. C. BISWAS: Now, Sir, alimony has always been considered to be payable to the wife and not by the wife to the husband.

SHRI S. MAHANTY: That is a medieval concept.

SHRI C. C. BISWAS: Out of sheer curiosity I sent for the Oxford English dictionary and I find the word 'alimony' is there described as a maintenance payable by the husband to the wife. *(Interruption.)*

In spite of what the word may mean, it is always open to provide by law that the wife must also pay to the husband. Nothing will please the husband more than when he gets some alimony—if one might use the expression—from the wife. But I thought man would be chivalrous and allow things to remain as they have remained all along in all marriage laws. I do not know of any provision where the wife is required to pay to the husband —I am speaking subject to correction —and if there is any, I shall stand corrected.

MR. DEPUTY CHAIRMAN: He gave the instance from America.

SHRI V. K. DHAGE: I may just draw his attention, Sir, to the Encyclopaedia *of Social Sciences,* New York, in which it is stated: "Historically, however, alimony is to be conceived as any compensation to either spouse for the disruption of the marriage."

SHRI C. C. BISWAS: I do not know whether that bears the interpretation which my hon. friend is seeking to attach to it, but then, leaving aside New York or whatever the country is, so far as the countries of the marriage laws of which we are aware are concerned. Sir, I have not come across any provision anywhere for payment of alimony by the wife to the husband. That is what I am stating.

SHRI V. K. DHAGE: May I for your information read one more passage from the Encyclopaedia?

MR. DEPUTY CHAIRMAN: It is not necessary.

SHRI C. C. BISWAS: Whether we should make such a provision in this Bill is the only question here. There is no precedent for it so far as our part of the world is concerned. That is all that I know, but it is for you to decide whether you should also provide for payment of alimony by the wife to the husband merely because there may be a few instances where the wife is in a position to pay. By and large, it is the woman who would require assistance. If you do not make a provision for alimony in their favour many of the women would be prevented from seeking the relief to which they will now be entitled.

SHRI V. K. DHAGE: We never meant that.

SHRI C. C. BISWAS: So it is from that point of view that .....

SHRI S. MAHANTY: From which point of view?

SHRI C. C. BISWAS: From the point of view that woman is the weaker party in this fight between man and woman.

SHRI B. K. MUKERJEE: May I enquire from the Lady Members whether they agree that they are the weaker party to the contract?

MR. DEPUTY CHAIRMAN: Order, order. I do not want this sort of thing to go on.

SHRI C. C. BISWAS: As far as financial position is concerned, I think I am correct in saying—I have not got the statistics here—that in the matter of average income the woman is in a worse position than the man by and large, and it is on that basis that provision is made for alimony which, as I have said, may look like discrimination in favour of

*Expunged as ordered by the Chair.

[Shri C. C. Biswas.] women. Even our Constitution, although it is against discrimination, provides that we may have some special provision in favour of women, and so 1 still think that men would be doing the right thing if they .acted a little more chivalrously. Sir, I oppose all the amendments.

SHRI S. MAHANTY: Sir, kindly allow me one minute.

MR. DEPUTY CHAIRMAN: No, no.

SHRI S. MAHANTY: But the hon. the Law Minister has misled the House .....

MR. DEPUTY CHAIRMAN: Order, order.

The question is:

43. "That at pages 11-12, for the existing clause 34 the following be substituted, namely: —

"34. *Alimony* pendente lite.— Where in any proceeding under Chapter V or Chapter VI it. , appears to the district court that the wife or the husband has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, as the case may be, order the respondent to pay to the applicant the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the respondent's income, it may seem to the court to be reasonable.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 154 is barred. Amendment No. 155.

PANDIT S. S. N. TANKHA: Sir, I do not press it.

The ^amendment (No. 155) was, by leave, withdrawn.

*For text of amendment, *vide* col. 5664 *supra.*

MR. DEPUTY CHAIRMAN: The amendment of Mr. Mahanty (No. 49) is also barred.

MR. DEPUTY CHAIRMAN: **The** question is:

"That clause 34 stand part of the Bill."

The motion was adopted.

Clause 34 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 35.

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

50. "That at page 12, lines 6 to 15, for sub-clause (1) of clause 35, the following be substituted, namely: —

'(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband or the wife, as the case may be, shall secure to the other party for her or his maintenance and support, if necessary, by a charge on the respondent's property, such gross sum or such monthly or periodical payment of money foi a term not exceeding the applicant's life, as, having regard to the applicant's own property, if any, the respondent's property and ability and the conduct of the parties, it may seem to the court to be just.' "

51. "That at page 12, line 21, after the word 'wife' the words 'or the husband, as the case may be,' be inserted."

SHRI KISHEN CHAND: Sir, I move:

*Expunged as ordered by the Chair.

156. "That at page 12, for lines 6 to 15, the following be substituted, namely: —

'35. *Permanent alimony and maintenance.*— (1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the respondent shall secure to the petitioner for the petitioner's maintenance and support, if necessary, by a charge on the respondent's property such gross sums or such monthly or periodical payment of money for a term not exceeding the petitioner's life as having regard to petitioner's own property, if any, -the respondent's property and ability and the conduct of the parties, it may seem *to* the court to be just.'"

157. "That at page 12, for lines 21 to 23, the following be substituted, namely: —

'(3) If the district court is satisfied that the petitioner in whose favour an order has been made under this section has remarried or is not leading a chaste life, it shall rescind the order.'"

SHRI S. MAHANTY: Sir, I move:

52. "That at page 12, after line 23, the following new sub-clauses be added, namely: —

'(4) Any court exercising jurisdiction under Chapter V or Chapter VI may at any time subsequent to the decree, on application made to it for the purpose, order that the wife shall' secure to the husband for his maintenance and support, if necessary, by a charge on the wife's property, such gross sum or such monthly or periodical payment of money for a term not exceeding his life as having regard to his own property, if any, his wife's property and ability and the conduct of the parties, it may seem to the court to be just.

(5) If the district -eourt is satisfied that the husband in whose favour an order has been made under this section has remarried or is not leading a celibate life, it shall rescind the order.'"

SHRI P. SUNDARAYYA: Sir, I move:

185. "That at page 12, lines 22-23, for the words 'is not leading a chaste life' the words 'is living with another man as his wife' be substituted."

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

SHRI P. SUNDARAYYA: Sir, I oppose the other amendments moved by Mr. Dhage, Mr. Kishen Chand and
Mr. Mahanty.

SHRI V. K. DHAGE: Even before anyone has spoken?

SHRI P. SUNDARAYYA: What is there? The clause and the amendments are there. I oppose, them because it is the same idea which we find has been repeated here that alimony should be given to the husband. The House has rightly rejected this idea already and that is why I oppose these amendments.

Sir, my amendment concerns subclause (3) which says that if the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, it shall rescind the order. My amendment seeks to omit the words "is not leading a chaste? life" and to substitute in its place the words "is living with another man as his wife". Sir, the question of remarriage everybody understands. A woman has no more claim for alimony from her old husband the moment she remarries. But the condition if she is not leading a chaste life can be interpreted in a very, very wide way and any

[Shri P. Sundarayya.] 5 P.M.

slip will be taken advantage of by the husband to stop alimony and it may become a source of litigation. It will be very difficult for the women to go on defending herself. Men who till now are accustomed to dominating over women and who have got queer conception about chasteness are likely to abuse the provision. Even if the woman goes to a cinema, that will be misinterpreted. I do not mean to say that the courts will hold such stupid conceptions of chastity but still we should not give unnecessary scope for litigation or any handle to the old reactionary husbands. Of course, the more progressive husbands would not go in for this sort of thing but the old reactionary husbands will have the chance to make the life of the woman miserable and as such I want those words to be omitted. In case anybody objects by saying, 'suppose a woman lives with another man without undergoing the formality of marriage, even then will she be entitled to receive alimony?, it is in order to meet such arguments that I have suggested the use of the words "is living with another man as his wife". Sir I tiling we have already used similar language—I cannot recall now—I think in the Hindu Marriage and Divorce Bill we have said: that a marriage may be dissolved by a decree of divorce if the husband is keeping a concubine or the wife has become the concubine of any other man or leads the life of a prostitute. Of course. I want to prevent any woman claiming alimony under these conditions, but it would have been far better if these words *haeL* been copied. I do not approve of the word 'concubine' but it is a legal terminology anyway, and it would have been a better wording than what is here. That is why I have suggested the words "is living with another man as his wife". At that time I had not seen this; otherwise I would have added "or leading the life of a prostitute". That will prevent any abuse by women and at the same time prevent the men from making the life of women miserable. Sir, my amendment is a reasonable one and I hope the House will accept it.

SHRI V. K. DHAGE: Sir, there seems to be some sort of misunderstand ing with regard to the amend ment that has been moved. There is no compulsion on the part of the judge to order payment of alimony to the husband. The only condition here is that if the husband is left with no money, if the wife is guilty of such a charge as is set forth here and the divorce is given on that ground, it stands to reason that some sort of maintenance should be given to the husband. It is quite possible that a large part of the money that the wife might come to possess might be that of the husband himself and it is not improper that a portion of it should be given to the husband. In most cases, it has happened that the property belonging to the husband has gone over to the wife .....

AN HON. MEMBER: How?

SHRI V. K. DHAGE: .....as gift or by other means. There are many instances of this. After all, do you mean to say that the husband should, for the rest of his life, starve? Besides, ;we should not think that things are going to be as they are now. Under this law, whosoever marries shall be entitled to the benefits of the Indian Succession Act. It is for the benefit of the wife, the benefit of the daughter that we wanted, earlier, the separation to take place from the joint family; we wanted them also to have a share in the joint family property of the husband. We have given that advantage to the wife and the daughter. Even so, do you mean to say that the life of the woman in future is going to be like that of a slave? By adopting this amendment we are putting both the people on a par. It is not that the wife will be made to pay *alimony* to the husband in all cases. It is only when the circumstances warrant, and when the judge deems it proper that the husband may be given alimony. Take an example. Supposing the husband has no property and he has to* protect the children.

SHRI P. SUNDARAYYA: The children should be handed over to the mother.

SHRI V. K. DHAGE: That again cannot be done. You have to bring in another amendment that the children belong to the mother and not to the father. I have looked into the Matrimonial Causes Act of the United Kingdom also. In these circumstances, do you mean to say that nothing should be done to help the husband? Here are our lady friends who are interested in children; I am interested in children. I think it is only just and proper that when the wife possesses property and when there is no property with the husband, for the benefit of both the husband and the children, the court may give alimony—of course, if the court is satisfied that alimony is warranted by circumstances.

SHRI KISHEN CHAND: Sir, several hon. Members have pointed out that under the matriarchal form of society obtaining in the country, all the property goes to the woman.

SHRIMATI LAKSHMI MENON (Bihar): Sir, on a point of correction. Under the matriarchal system, all the property does *not* go to the woman; it is s^aTted equally.

SHRI K. S. HEGDE: It is shared equally between the two parties.

SHRI KISHEN CHAND: Anyhow, Sir .....

SHRIMATI LAKSHMI MENON: What anyhow?

SHRI KISHEN CHAND: Mr. Dhage has pointed out that under the Succession Law the shares of the boy and the girl are equal. Further, Sir, with regard to the amendment brought in by Mr. Sundarayya, I want to point out why sjo much chivalry is shown in the case of the woman while all the while an attempt is made to put the two parties on a par. It all sounds from the arguments advanced, that the woman can do no wrong and it is always the man who should come in for punishment. It is a question of chaste living. It is quite true that prostitution is not recognised in most countries, and a large number of women in those countries indulge in that profession without ac-tually stating that they are leading an unchaste life, without having the label of a prostitute. Therefore, I submit that such a clause is very essential for the discontinuance of alimony which bars it if she is not leading a chaste life.

SHRI S. MAHANTY: I oppose the amendment of Mr. Sundarayya. The amendment, if I am correctly quoting it, reads like this:

> "If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is living with another man as his wife."

Of course, if she is remarried there is no question; she must live as another man's wife. But here, Mr. Sundarayya is motivated more by extraneous ideas than by precision of language.

SHRI P. SUNDARAYYA: Please read it carefully; I have not said 'and'; I have said only 'or'.

SHRI S. MAHANTY: That makes the position still worse.

SHRI P. SUNDARAYYA: All right, you are prepared to interpret it in any way you like.

SHRI S. MAHANTY: Sir, his amendment will be tantamount to putting a premium on levity. I am thankful he only stops with 'reactionary husbands'. That he has not termed them Anglo-American stooges or war-mongers gives me deep relief.

MR. DEPUTY CHAIRMAN: Mr. Mahanty, you need not say anything about what is unsaid.

SHRI S. MAHANTY: Now, the position is reduced to this according to Mr.

[Shri S. Mahanty.] Sundarayya's amendment. The wife will get alimony if she remains unmarried, but she can lead a kind of unchaste life.

Sir, Mr. Dhage has very lucidly explained my point of view and I need not go over the ground again. I should like to request that the House should give as unbiassed and as unprejudiced a consideration to it as possible and try to see if this amendment could be accepted.

SHRI C. C. BISWAS: Sir, as regards temporary alimony, the wife should not be called upon to pay anything to the husband. That has been decided. That being so, I do not see how it is possible for me to accept this.

Then, as regards Mr. Sundarayya's amendment, he says he has taken it from the Hindu Marriage and Divorce Bill. Though the substance is the same, according to him the language is different. In that Bill, it is said:

"or has not remained chaste".

I do not see any difference between the words "has not remained chaste" and "leading an unchaste life".

Mr. Mahanty has pointed out that living with another man as his wife may be a just ground. If she is marri ed she will of course be living with the husband; if she is living with another man, that means that she is living with another as if he was her husband. What I mean to say is..... ■

SHRI P. SUNDARAYYA: If you find my words wrong, you can see I have taken them from the Hindu Marriage and Divorce Bill.

SHRI C. C. BISWAS: No, it is this that has been adopted:

"If the court is satisfied that the wife in whose favour an order have been made under this section has remarried or has not remained / chaste, it shall rescind the order."

SHRI P. SUNDARAYYA: I am not referring to that clause but to clause 13 of the Bill.

SHRI C. C. BISWAS: He is quoting from the clause where the grounds for divorce are set out and there it has been used in a different context. But the more relevant clause is the one which deals with the question of alimony. I oppose the amendment.

MR. DEPUTY CHAIRMAN: So, you are opposing all the amendments?

SHRI C. C. BISWAS: Yes.

MR. DEPUTY CHAIRMAN: The question is:

50. "That at page 12, lines 6 to 15, for sub-clause (1) of clause 35, the following be sustituted, namely:—

'(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband or the wife, as the case may be, shall secure to the other party for her or his maintenance and support, if necessary, by a charge on the respondent's property, such gross sum or such monthly or periodical payment of money for a term not exceeding the applicant's life, as, having regard to the applicant's own property, if any. the respondent's property and ability and the conduct of the parties, it may seem to the court to be just.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: Now amendment No. 156 is barred. No. 157 is also the same thing. No. 51 (Mr. Dhage's) is also the same. No. 52 (Mr. Mahanty's) is also barred. The only amendment relevant would be Mr. Sundarayya's No. 185.

The question is:

185. "That at page 12, lines 22-23, for the words 'is not leading a chaste

life' the words 'is living with another man as his wife' be substituted."

The motion was negatived.

Clause 35 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we take up clause 36. There are two amendments.

SHRI P. SUNDARAYYA: Sir, I move:

186. "That at page 12, at the end of line 34, the following be added, namely: —

Provided that the children are left in the custody of the mother, unless the children express their desire otherwise.'"

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

53. "That at page 12, line 29, after tiie words 'wherever possible' the words 'but where the religions of the parents differ, the children shall be brought up according to the faith of the father' be inserted."

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

DR. SHRIMATI SEETA PARMA NAND: Sir, this is something about religion. I have suggested that wher ever the religions of the parents differ, the children shall be brought up accord ing *to the* faith of the father. I think there are judicial rulings also on this question, and I do not want to take much time of the House. I feel that there should be some provision for religion.....

MR. DEPUTY CHAIRMAN: But the House has rejected all attempts to provide for religion.

DR. SHRIMATI SEETA PARMANAND: I would put it to the House once again and I would request the House to reconsider it and support me on this amendment.

SHRI P. SUNDARAYYA: My amendment is intended to clarify clause 36. Clause 36, as it stands, provides that the custody of children should be consistently with their wishes wherever possible, and it leaves the entire discretion to the courts. My amendment says that the children should be left in the custody of the mother, unless the children express their desire otherwise. Usually the children come in the custody of their mothers except in very rare cases where they, for some reason or the other, express desire otherwise. We should not leave the entire discretion to the courts. It is a well-known principle that the children should always, except in very rare cases, be left in the custody of their mothers. That principle should be enunciated here and incorporated in our own law. It is for that reason that I have moved this amendment.

SHRI K. S. HEGDE: I am opposing the amendment of Mr. Sundarayya. I would only invite the attention of this House to a recent case that came up before the Madras High Court. I would not mention the names as probably it might be embarrassing to the parties. A certain girl was doing cinema work and was earning a lot of money. The mother herself was not living an exactly chaste life. The question came up before the High Court whether the custody of that child should be given to the mother or the father. Normally the custody of such children is given by the court to the mother. But in that particular case the court thought that the custody should be given to the father. Therefore, I would suggest that in a matter like this it is far better to leave the discretion to the court which, in the ultimate analysis, is the guardian of the minor children and has the interests of the minors, rather than lay down any dictum of, law. It is true, as Mr. Sundarayya said, often times, and probably in most cases, when the children are very young, the mother should be entrusted with their custody rather than the

[Shri K. S. Hefcde.] father, because after all mother is mother and father is father. But to make it a rigid law might prove to be embarrassing and may not be in the interest of the child itself. And this duty has been entrusted to the courts under the Court of Wards Act. It has worked very well and the courts have always taken a particular interest in the future development of the children. And the history of legislation has proved that the legislature had done the right thing in entrusting this great responsibility to the courts, and it will not be proper to disturb that responsibility.

DR. SHRIMATI SEETA PARMANAND: I would add only one word that women on the Select Committee also thought the same way as Mr. Hegde has done.

SHRI C. C. BISWAS: I only want to say this much that as a judge I had to deal with many such cases, and I can assure you that the first thing a judge has in mind is the welfare of the children, and naturally he attaches a great deal of importance to the wishes of the children, and his inclination is in favour of the mother. It is only in special cases depending on the facts of particular cases that he gives the custody to the father. But do not make it a rigid law or a rigid rule, as Mr. Sun-darayya suggests. Sir, I therefore oppose the amendments.

DR. SHRIMATI SEETA PARMANAND: Sir, I beg leave to withdraw my amendment No. 53.

The * amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

186. "That at page 12, at the end of line 34, the following be added, name-ly.—

'Provided that the children are loft in the custody of the mother, unless the children express their desire otherwise.' "

*For text of amendment, *vide* col. .5685 *supra.*

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

'That clause 36 stand part of the Bill."

The motion was adopted.

Clause 36 was added to the Bill.

MR. DEPUTY CHAIRMAN: There are no amendments to clauses 37 to 43.

Clauses 37 to 43 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 44. There is one amendment.

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

54. "That at page 13, line 43, after the word 'solemnizes' the words 'or enters into the register' be inserted."

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

DK. SHRIMATI SEETA PARMANAND: Because we have made a provision in clause 15 for the registration of marriages that have already been solemnized, I think we should also apply it to the registering of marriages in a similar manner. This is really supplying a lacuna that has been left in the Bill perhaps due to an oversight.

SHRI C. C. BISWAS: What I want to point out is that there is no need for making special provision for penalising a Marriage Officer for making incorrect entries in the register.

DR. SHRIMATI SEETA PARMANAND: Why not?

SHRI C. C. BISWAS: For this reason that a Marriage Officer will ordinarily be a Government official and sufficient safeguards exist in the Act to ensure that incorrect entries are not made. Moreover, the entries are signed by the parties to the marriage and also by the witnesses. Sir, I oppose the amendment.

DR. SHRIMATI SEETA PARMANAND: I am not satisfied with the explanation given by the Law Minister.

MR. DEPUTY CHAIRMAN: You -.cannot speak now, Madam.

DR. SHRIMATI SEETA PARMANAND; After all. I can only speak after he has given an explanation.

MR. DEPUTY CHAIRMAN: No, you •cannot speak now.

DR. SHRIMATI SEETA PARMANAND: May I ask a question? How can it apply only to the Marriage ■Officer who solemnizes a marriage and not to the one who enters it in the register?

SHRI C. C. BISWAS: I have nothing to add.

MR. DEPUTY CHAIRMAN: The same officer who solemnizes also makes ihe entries in the register. The question is:

> 54. "That at page 13, line 43, after the word 'solemnizes' the words 'or enters into the register' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The ^question is:

> "That clause 44 stand part of the Bill."

The motion was adopted.

Clause 44 was added to the Bill.

MR. DEPUTY CHAIRMAN: There are no amendments to clauses 45 and 46.

Clauses 45 and 46 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause -47. There is one amendment.

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

> 158. "That at page 14, line 27, the words 'or absence' be deleted."

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

PANDIT S. S. N. TANKHA: Sir, I moved for the deletion of the words "or absence". This clause contemplates the correction of errors in the entries in the Marriage Register. It says:

> "Any Marriage Officer who dis covers any error in the form or sub stance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error..... "

I want the deletion of the words "or absence."

MR. DEPUTY CHAIRMAN: Suppose they are abs?ht from the country abroad.

PANDIT S. S. N. TANKHA: Some notice should be sent to them, and only if they fail to attend should the corrections be made in their absence.

MR. DEPUTY CHAIRMAN: Even if it is an apparent error?

PANDIT S. S. N. TANKHA: The Marriage Officer will correct in the presence of two witnesses.

SHRI K. S. HEGDE: This is a matter of rules under clause 48 (2) (a).

PANDIT S. S. II. TANKHA: Some provision should have been made for a notice to be sent to the parties informing them of the correction which was proposed to be made.

MR. DEPUTY CHAIRMAN: I think the omission of the words "or absence" will be more harmful.

PANDIT S. S. N. TANKHA: My hon. friend to my right tells me that under

[Pandit S. S. N. Tankha.] sub-clause (3) a copy of the entry would go to the parties concerned. That is not so. The copy will not be sent to the parties but to the Registrar-General. Therefore, there is great danger of misuse in this provision and so, the words 'or absence' should be deleted. Provision should be made— even though I have not given any notice of amendment in this regard—that notice should be sent to the parties concerned, and only if they fail to attend, the entries may be corrected in the presence of two credible witnesses. To correct entries in the absence of the parties would be very unfair, and it is liable to be misused by interested persons.

SHRI C. C. BISWAS: The original entries will be there, the corrections will be there, and the Marriage Registration Book will be open to inspection. The parties interested can always go and see, and if the persons concerned are not actually present, then there must be two other credible witnesses.. Ample safeguards have been provided. I oppose the amendment.

MR. DEPUTY CHAIRMAN: The question is:

158. "That at page 14, line 27, the words 'or absence' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 47 stand part of the Bill."

The motion was adopted.

Clause 47 was added to the Bill.

MR. DEPUTY CHAIRMAN: There are no amendments to clauses 48 and' 49.

Clauses 48 and 49 were added to the Bill.

MR. DEPUTY CHAIRMAN: We will take up clause 2

SHRI P. SUNDARAYYA: Clause 2 and the Schedule should be taken up together.

Ma. DEPUTY CHAIRMAN: There are nine amendments to clause 2.

DR. SHRIMATI SEETA PARMANAND: Sir, I move:

166. "That at page 2, for lines -5 to 8, the following be substituted, namely : —

'(f) "prohibited relationship"— two parties are said[1] to be within the degrees of prohibited relationship if one is a lineal ascendant of the other or was the wife or husband of the lineal ascendant or descendant of the other, or, if the two are brother and sister, uncle and niece, aunt and nephew or the children of two brothers, of two sisters, or of a brother and a sister.'"

MR. DEPUTY CHAIRMAN: Amendment No. 172 is barred.

SHRI P. SUNDARAYYA: Sir, I move :

175. "That at page 2, for lines 5-8, the following be substituted, namely:

'(f) "degrees of prohibited relationship"—a man and a woman, if they are lineal relatives, or if the man and the woman are brother and sister born of the same parents or if they are half-brother and half-sister and in the case of other relationships if against usage or custom governing the man or woman concerned[1], are within the degrees of prohibited relationship.' "

176. "That at page 2, line 13 be deleted."

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

187. "That at page 1, line 12, the brackets and figure '(1)' be deleted.'"

188. "That at page 2, lines 29 to 34 be deleted."

MR. DEPUTY CHAIRMAN: Now, we will take up the First Schedule also. There are 11 amendments. Amend[1]-ment No. 159 is negative and so out of order.

DR. SHRIMATI SEETA PARMANAND: I don't move my amendment No. 99.

SHRI GOVINDA REDDY: Sir, I move : —

93. "That at pages 15-16, in Part I of the First Schedule, items Nos. 3 to 14, 18, 20 to 28, 30, 35 and 37 be i deleted."

PROF. A. R. WADIA (Nominated): Sir, I move:

160. "That at page 16, line 27 to 30 be deleted."

DR. SHRIMATI SEETA PARMANAND : Sir, I don't move my amendment No. 100.

PROF. A. R. WADIA: Sir, I move:

161. "That at page 17, lines 27 to 30 be deleted."

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

162. "That at page 16,—

(i) after item 30, the following be added, namely: —

'30A. Sister's daughter's daughter;

(ii) after item 31, the following be added, namely: —

'31 A. Brother's daughter's daughter';

(iii) after item 34, the following be added, namely: —

'34A. Father's Brother's daughter's daughter';

(iv) after item 35, the following be added, namely: —

'35A. Father's sister's daughter's daughter';

(v) after item 36, the following be added, namely: —

'36A. Mother's sister's daughter's daughter';

(vi) after item 37, the following be added, namely: —

'38. Mother's brother's daughter's daughter;

39. Mother's father's sister;

40. Mother's father's sister's daughter'."

SHRI GOVINDA REDDY: Sir, I move :

94. "That at pages 16-17, in Part H of the First Schedule, items Nos. 3 to 14, 18, 20 to 28 and 34 to 37 be deleted."

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

163. "That at page 17 — (i) after item 30, the following be added, namely: —

30A. Brother's son's son;'

(ii) after item 31, the following be added, namely: —

'31A. Sister's son's son':

(iii) after item 34, the following be added, namely:—

34A. Father's brother's son's son';

(iv) after item 35, the following be added, namely:—

'35A. Father's sister's son's son;

(v) after item 36, the following be added, namely:—

'36A. Mother's sister's son's son';

(vi) after item 37, the following be added, namely: —

'38. Mother's brother's son's son;

39. Mother's father's brother;

40. Mother's father's brother's son'."

MR. DEPUTY CHAIRMAN; Amendment No. 170 is barred.

DR. RADHA KUMUD MOOKERJI : Sir, I move:

197. "That at page 15, line 36 be deleted."

Sir, I also move:

198. "That at page 16, line 34 be deleted."

SHRI C. C. BISWAS: I accept those amendments.

DR. RADHA KUMUD MOOKERJI : I am very glad that the controversy has been very well solved.

MR. DEPUTY CHAIRMAN : Clause 2, the First Schedule and the amendments are open for discussion.

DR. SHRIMATI SEETA PARMANAND: Sir. I am speaking on amendment No. 166 on the first page of Supplementary List No. I, Sir, I had given notice of some other amendments for making certain changes in the schedule and also to substitute "any man may marry any of the following:". I have withdrawn them because I feel the wording of the clause before the Select Committee was much better. The wording was like this:

"(f) 'prohibited relationship'—two parties are said to be within the degrees of prohibited relationship if one is a lineal ascendant of the other or was the wife or husband of the lineal ascendant or descendant of the other, or if the two are brother and sister, uncle and niece, aunt and nephew or the children of two brothers, of two sisters."

and I had added 'or of a brother and a sister'. It was not there. So it was felt in the Select Committee that the children of two sisters and two brothers should be excluded though this was done under the Muhammadan law. If niece and uncle were not to marry—though it was allowed in the South—why should the children of brother and sister? What was the custom in Maharashtra and further down South only should not be put there. So this amendment was made. But then the clause as it stood was much better and did not lend itself to the objection of people that the Special Marriage Bill even smacks more of Hindu law and the Hindu society by the inclusion of that prohibited relationship list which was really copied from the Hindu law. So for this reason, instead of having that, I have moved this amendment that we should delete it and put it in a way which does not jar the feelings of any people as it jarred Dr. Mookerji and others and we also thought that it was not the proper way so that people might not say that the Special Marriage Bill was made even to look like a Hindu Marriage Bill. I hope that the original prohibited degrees of relationship, as was indicated and as I have read now, will be accepted by the House, but, Sir, I am sorry to find that even before hearing the people in this House the Law Minister had already indicated[1] that he had accepted a particular Member's amendment. That means all the speeches are in a way useless. I wish he had not given the assurance before hearing us but it was not fair to us to ask us to move our amendments and then reply if he has already committed himself.

PANDIT S. S. N. TANKHA: Which was the amendment on which the hon. lady Member was speaking?

MR. DEPUTY CHAIRMAN: No. 166.

SHRI P. SUNDARAYYA: Sir, my amendment is this. I am opposing the whole First Schedule as it is and, in place of it, define the degree of prohibited relationship in clause 2 itself but in a different way as it is done here. I want it to be put in this way:

"(f) 'degrees of prohibited relationship'—a man and a woman, if they are lineal relatives, or if the man and the woman are brother and sister born of the same parents or if they are half-brother and half-sister

and in the case of other relationships if against usage or custom governing the man or woman concerned, are within the degrees of prohibited relationship."

Sir, I am opposing the First Schedule because I don't want this whole list of fantastic relationships to be there and as such it is even now better though the Joint Select Committee might have advised the Law Minister to prepare that list and most probably at the time the decision was taken they might not have imagined what monstrosity they would be creating by drawing these things. Just now the Minister said that he was accepting the omission of 'mother' and 'father'.

MR. DEPUTY CHAIRMAN: No. Only the first line 'the man shall not marry'.

DR. RADHA KUMUD MOOKERJI: I say that grammar and logic don't require those obnoxious passages. If you say simply 'prohibited relationship' it will suffice.

SHRI P. SUNDARAYYA: I am Sorry, I am mistaken. Shri Mookerji is satisfied if this expression is not there but the whole Schedule is intended to define whom you can marry and whom you cannot marry. If your conscience is going to be satisfied by removing this, my conscience is not going to be satisfied. So I am against the First Schedule. This is a monstrosity of relationships enumerated. Better omit it and let us define them in a much more elegant manner. That is the purpose of my amendment. Before I explain my point of view, what should be the prohibited relationships? But if he wants to retain all these degrees of prohibited relationships, then I would suggest that he may accept the suggestion of Dr. Shrimati Seeta Parma-nand and accept her amendment, for that would give us a better formula, and that would be better than mentioning all these details in the Schedule and being a blot on our Statute Book. It is from that point of view that I suggest that her amendment may be accepted by the Law Minister, in case he is not able to accept my amendment.

DR. SHRIMATI SEETA PARMANAND: I may submit that it is not my amendment but is the hon. Law Minister's own amendment, accepted with a little addition, as it was in the first Bill.

SHRI P. SUNDARAYYA: But I would recommend my own amendment for the acceptance of the House. In clause 15(e) we have agreed to register marriages that have been celebrated under any other form later when the parties attain the age of 21. When they register it in that *way,* then the marriage becomes valid. This we consider is one of the most progressive provisions contained in this Bill, for this measure is the first step towards a common Civil Code. In fact it is not only the first step but something more, because it enables others also to come under this law. The difference between a Civil Code and this law is that the Civil Code would not recognise any other form of marriage, but here this optional law allows others also to take advantage of it and that is exactly the virtue of the Bill. Especially in clause 15, if you are prepared to enlarge the measure to cover all the marriages in India that will help in the bringing in of the common Civil Code. If you want to get all these other marriages also registered under this Act, why should obstacles be placed in the way by your enumerating all these 37 relationships in the Schedule? Of course, I would not like the hon. Law Minister in this House or in the other to come forward and say that there is an inconsistency if we accept these items and so let us remove clause 15(e) from the Bill. Therefore I say, if he is not able to accept my amendment, let him accept the amendment suggested by Dr. Shrimati Seeta Parmanand. Or, amend the interpreting clause 2 to say that prohibited degrees are those that are not guaranteed by or not in consonance with usage or custom, or in some such manner. In any case, the hon. Law Minister should not take away clause 15(e).

[Shri P. Sundarayya.] Therefore, I say the prohibited degree of relationship should be defined as "a man and a woman, if they are lineal relatives, or if the man and the woman are brother and sister born of the same parents or if they are half-brother and half-sister." These are the relations absolutely prohibited in all religions in every custom and they do not take place in any community. And then make provisions for other relations that are in vogue due to custom and usage. That is what my amendment seeks to do. Of course, decades later, when the whole population has been properly educated in matters connected with marriage and eugenics, the whole population may come under this Act and only then will there be the possibility of having a common Civil Code. For that whole social relationships have to be completely changed. But if we are to help the process, we should try to bring in all these marriages that are allowed by custom and usage also. In this connection I might point out that in the Hindu Marriage and Divorce Bill that is proposed to be brought in, you do not stick to these degrees of prohibited relationships. There you are not going to exclude anyone who is married according to custom or usage.

SHRI V. K. DHAGE: May I ask the hon. Member what exactly he means by the term "half-brother"?

SHRI P. SUNDARAYYA: By that term 1 mean brothers born to the same mother, but from different husbands. They are not step-brothers. Stepbrothers would be born to the same father but through different mothers.

SHRI AKBAR ALI KHAN: He means uterine brothers. .

SHRI V. K. DHAGE: Does he mean uterine brothers?

SHRI P. SUNDARAYYA: Yes, or half-blood brothers.

SHRI AKBAR ALI KHAN: If Mr. Sundarayya would be prepared to add the word "law" before the words "usage or custom" then that would meet ail requirements. That would meet all personal laws also.

SHRI P. SUNDARAYYA: I have no objection to adding the word "law".

SHRI V. K. DHAGE: May I just get one point cleared? Suppose there is a husband and there is a wife. Both are husband and wife by second marriage. And suppose that wife had a daughter by her first husband and the husband has a son by his first wife. What is the relationship between these two youngsters?

SHRI AKBAR ALI KHAN: Whatever is not allowed by religion, custom or personal law, will not be allowed. That is the effect of the amendment that is being moved by Shri Sundarayya regarding the schedule of the prohibited relatives attached to this Bill. We need not at this stage go into all these exceptional cases that Mr. Dhage has suggested. A general provision, as suggested in the amendment, will meet all the objections that are made in this connection.

SHRI P. SUNDARAYYA: Mr. Dhage asks what is to happen to these peo ple? If custom and usage or any other law permits such marriages .....

SHRI V. K. DHAGE: Are you willing to.....

MR. DEPUTY CHAIRMAN: Order, order. Let him continue.

SHRI P. SUNDARAYYA: It is not my personal wish that will matter. Let us take things as they are and let us try to make the people as a whole go forward in these matters.

We are not preparing here a civil code today which makes it compulsory for all people to take a kind of marriage. You are not having it just now. Even if you were to do it in some near future time—everyone of us wants to do it—it would be only feasible in certain circumstances. When a thing is allowed by usage, custom or any law,

you cannot abolish it overnight; however desirable it may be, it requires long campaigning, long awakening and an economic change in society. My amendment is very clear, and that is that we should only define those prohibited relations which are not allowed in any religion, in any usage or in any law, and leave the rest of the relationships for custom, usage or law. It will then become consistent and it you accept my amendment, the whole thing will become more or less a civil code.

SHRI AKBAR ALI KHAN: May I request you, Sir, to include the word 'law' which he has accepted in his amendment?

SHRI P. SUNDARAYYA: One word more, Sir. I want line 13 in page 2 to be omitted.

MR. DEPUTY CHAIRMAN: Have you tabled an amendment?

SHRI P. SUNDARAYYA: Yes, Sir, amendment No. 176, "that at page 2, line 13 be deleted". When we define the prohibited relations, adoption should not come in the way.

SHRI GOVINDA REDDY: Sir, I seek the omission of certain relationships in Part I as well as in Part II. For those items for which I have sought omission, many hon. Members have spoken and the need has been explained and, therefore, I am not going to repeat those arguments. Sir. items 30, 35 and 37 in Part I and items 32, 35 and 37 in Part II, as has been shown during the consideration stage, are those which are customarily allowed in the South. Well, Sir, there has been a lot of argument on this and I am not going to repeat those arguments. I can understand, Sir, friends of the North opposing these degrees because these relationships are not current in their pari, that they are not in usage there and, therefore, Sir, they seem to be repugnant to them. I respect their sentiment. Similarly, Sir, I request those Members to respect our sentiments and what is customary in the South. The whole object of this Bill, as I conceive it, is to invite as many people as possible to take advantage of this Bill. If that is so and when these degrees which I have pointed out are widely in vogue in the South, it is no use banning them. That means, it is literally saying "you cannot avail of this Act". Well, Sir, the object of the Bill is not to keep the people.....

DR. SHRIMATI SEETA PARMANAND: Is it not too late, now that we have accepted the clause on prohibited relationship?

SHRI GOVINDA REDDY: No, we have not accepted the prohibited degrees. We are defining the prohibited degrees in the Schedule and, therefore, I am seeking the omission of some of the relationships here. The only argument, Sir, that seems to have some force is the biological argument that was advanced, on grounds of eugenics. Well, Sir, we have not ruled out all those things. It is open for a man of 70 here under this Bill, to walk into the Marriage Officer's office with a girl of twenty-one and marry her. I say that when there is nothing to prevent that, where do our considerations of biology enter?

SHRI H. C. DASAPPA: Or, the other way about, a man of twenty-one marrying a woman of seventy?

SHRI GOVINDA REDDY: Yes, now nothing prevents them from doing so. So, Sir, we have not given consideration to those things. When those things are absolutely possible, why should we not give our assent to what is widely current in the South? That is all that I say and that is the argument which applies to the degrees in Part II also. Well, Sir, I respectfully request friends of the North not to oppose my amendment and also I request the hon. the Law Minister to accept this amendment. If he does not accept this amendment, well, Sir, I can prophesy that this Act will remain a dead letter—in the South at least. We have already crippled the Bill by putting out men and women between the ages of eighteen and twenty-one from this Bill. That has

[Shri Govinda Reddy.] crippled one of its legs; it has got only one leg and if these degrees remain, the other leg also will be crippled and this will remain a dead letter. Therefore, I humbly appeal for the acceptance of this amendment.

PROP. A. R. WADIA: Mr. Deputy Chairman, I am totally opposed to the two Parts in the Schedule as they have been formulated. I do not think they read well. Assuming that they stand, *my* amendment seeks deletion of the last four items in Part I and the last four items in Part II. I personally prefer Dr. Seeta Parmanand's formulation so far as the choice lies between it and the Schedule but I could not possibly accept her amendment because she also includes the cousin marriages among the prohibited degrees, and I should like to argue against it. It will facilitate discussion if we are told at the present moment by the Law Minister whether he is prepared to scrap the Schedule as framed now and accept Dr. Seeta Parmanand's amendment because from that standpoint I would argue against only Dr. Seeta Parmanand's suggestion. Would it be possible for him to say now, Sir?

SHRIMATI LAKSHMI MENON: What about item 30?

PROF. A. R. WADIA: I am personally against it, entirely against it. I do not like it. If the Law Minister can let us know whether he is against scrapping the Schedule .....

MR. DEPUTY CHAIRMAN: He will reply to all the points at the end.

PROF. A. R. WADIA: Then I shall proceed. The object of my amend ment is to safeguard the cousin mar riages. Now, I am not prepared to argue that the cousin marriages are absolutely the best ones but I do pro test very strongly against including them in the category of prohibited re lationships because the other prohibit ed relations all suggest incestuous mar riages and the cousin marriages do not come within that category.

DR. SHRIMATI SEETA PARMANAND: Question.

PROF. A. R. WADIA: Dr. Parma-nand, like a good lawyer, argues that by putting her amendment she would be escaping the charge that her formulation is the result of Hindu law. I am afraid even her amendment cannot escape that charge. It is definitely based only on Hindu law and on nothing else. I should like to point out, Sir, that so far as cousin marriages are concerned, except a small section of the Hindu community—or may be a big section, it does not matter—there is no religion which prohibits it. Certainly not Zoroastrianism, certainly not Islam, certainly not Christianity. And, even amongst the Hindus, so many types of marriages have been recognised and now they are sought to be entirely barred. If we argue it from the standpoint of law, the general principle which ought to guide us is that a custom or a law which is universally recognised should be recognised and all types of marriages which are universally condemned should not find a place in the permitted marriages.

DR. SHRIMATI SEETA PARMANAND: What is the meaning of cousin marriages according to the hon. Member?

PROF. A. R. WADIA: All the four last items are cousin marriages; father's brother's daughter, father's sister's daughter, mother's sister's daughter, mother's brother's daughter—all these are cousin marriages.

DR. SHRIMATI SEETA PARMANAND: Two brothers' children?

PROF. A. R. WADIA: Yes.

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

Now, Sir, there is nothing of this universality in the prohibition of these cousin marriages. In fact, I should like to know whether there is any country in the world today, apart from a particular section of the Hindus, which prohibits cousin marriages?

SHRI KISHEN CHAND: U.K.

PROF. A. R. WADIA: No, cousin marriages are allowed there.

DR. SHRIMATI SEETA PARMANAND; What about two brothers' children?

PROF. A. R. WADIA: Yes, they can marry. Now, Sir, the only scientific argument that has been held out in this House is about eugenic considerations, biological considerations.

DR. SHRIMATI SEETA PARMANAND: Is the hon. Member sure that first cousins marry in the U.K.?

PROF. A. R. WADIA: Yes, absolutely; under the Christian law. Barring a small section of the Hindus, cousin marriages are recognised everywhere.

Now, Sir, if you look at it from the biological standpoint as was argued by one of my hon. friends, we have not taken into consideration the biological factors. It was very correctly pointed out by Mr. Govinda Reddy that a young • woman can marry a very old man or a very old woman can marry a very young man and this would not be justifiable biologically. Again, Sir, it would be extremely bad from the biological standpoint for a person who is suffering from tuberculosis to marry; we are not prohibiting that. It would be very bad for a person suffering from cancer to marry and yet we are not prohibiting him from marrying.

SHRI V. K. DHAGE: You do not want medical certificates.

PROF. A. R. WADIA: Unfortunately that was thrown out, but if a medical certificate was there all these things would have been pointed out. It would have mentioned whether a person is a fit or unfit person to marry but unfortunately that was thrown out and we cannot help it. My argument is that these are biological considerations which deserve consideration and yet have not been even mentioned. Now, \ so far as cousin marriages are concern- j ed, Sir, I think it is quite correct to say that cousin marriages have al ways been common all over the world. Provided the cousins are really very healthy and come of a very healthy stock, I am not sure that the cousin marriages are at all bad. As a matter „ of fact, Sir, some years ago an ' intensive study of the cousin marriages was undertaken in the Gal-ton Laboratory in England, which is the best place for the study of eugenics in England, and I remember having read a brochure printed On cousin marriages. There the result was quite inconclusive. There was nothing found to condemn_cousin marriages from the biological point of view. The question was really left open. It did not seem to produce any bad results if it did not seem to produce any good results. It was just indifferent. Therefore it seems to me, Sir, that it is extremely undesirable to put cousin marriages in the same category as marriages which are really incestuous in character.' That is our objection, Sir. If these are not omitted this Act may not be made use of by many among whom such marriages take place. I know that clause 15(e) is retained though personally I was entirely for its omission, but it has been retained and to that extent the hardship caused by the inclusion of these relationships would be less harmful.

SHRI K. S. HEGDE: There is just a big bar of public opinion.

PROF. A. R. WADIA: But I do not like on principle that cousin marriages should be placed on the same level as definitely accepted incestuous marriages.

As I was listening to my friend, Mr. Sundarayya, I could not follow him in the beginning though later I saw his point and I entirely agree with him. But somehow his formulation is extremely defective. It is not very clear. As I was reading it, I could not understand what he meant. The meaning became clearer as he was speaking, and if this sort of thing was left as it is, it would create confusion in the

[Prof. A. R. Wadia.] minds of the people. Therefore, I feel, Sir, that if the Schedules are to be kept as they are, it would be in the interests of a sound law to delete lines 27 to 30 on page 16 and the last four items, 34, 35, 36 and 37 on page 17 and I think, Sir, you will be meeting the interests of large masses of people who follow other religions including Zoroastrian-ism, Islam, Christianity, Judaism, etc.

There is just one point more. I was rather pleased to hear from the hon. the Law Minister, when he was arguing against amendments regarding frigidity and against alimony to husband, that those provisions are not to be found in any other law and therefore he did not favour creating a precedent in connection with them. May I appeal to him that he should apply the same argument to the cousin marriages? Here too I wish he does not create any awkward precedent. Let lis forget that we are dealing with this community or that community. The Hindus may find it repugnant. It is a different matter. It is a matter of habit. A North Indian may find it very repugnant that a man should marry his sister's daugnter and yet these marriages are extremely common in South India. Nobody minds it. People are accustomed to it. Apart from that, Sir, I do object on principle that cousin marriages should be treated as incestuous when they are not so, whether from the point of view of religion or custom or science or law. We are creating a bad precedent by condemning cousin marriages in the way in which the present formulation tries to put it. If Mr. Sundarayya's amendment is suitably clarified by the hon. Member I think all these difficulties will disappear.

SHRI V. K. DHAGE: Sir, I do not accept the arguments advanced by Professor Wadia so far as cousin marriages are concerned. On that aspect of the question I think I have spoken before and I do not wish to repeat the same things again. With regard to the amendment that has been moved by Mr. Sundarayya I don't feel that that is quite proper because it seems to me to oe not quite consistent. I had asked him the question whether the daughter of the wife by a previous marriage and the son of the husband by a previous marriage could marry, since they are according to him half-brother and half-sister. Now I think the marriage between such a couple would be euge-nically quite proper because in neither of the two parties, the same blood will be found. Mr. Sundarayya does not want such marriages to take place whereas he would want marriage to take place between the uncle and the niece, between two cousins where the blood relationship is much nearer. I oppose this amendment.

Secondly, Sir, the matter with regard to the Schedule that has been given here was discussed in the Select Committee and it was felt that, unless what exactly is not allowed was put in, it is possible that legal interpretations might arise and people perhaps might be put to difficulty in trying to under-stand as to what is meant in the clause with regard to prohibited relationship, and therefore this list was prepared. Now, Sir, it has been contended that# this seems to be a monstrosity. I do not understand what is monstrous here. Even supposing the amendment of Dr. Seeta Parmanand—which she has redrafted, which was there in the original Bill—is accepted, and if some persons want to know what are all the possibilities by which the marriage is not possible will there be available any well versed person who will be able to say from the wording of the clause itself that this is a thing which he cannot do? I therefore feel that the listing of prohibited relationship is necessary so that even an ordinary man will be able to know what he should not do and whether what he intends to do falls within it. Apart from the question of sentiment being brought into it, we should be able to define it clearly so that there might not be any difficulties due to legal interpretations later on. I therefore feel that the retention of the Schedule will go a long way in avoiding litigation in the matter.

Thank you.

SHRI J. S. BISHT: Mr. Vice-Chair-man, I stand to oppose any proposal which is meant to tamper with these Schedules, whatever may be the reasons. I have listened to Prof. Wadia very carefully and, whatever may be his reasons, however sound they may be, we should see as politicians that we do not go against the wishes of the people. This is particularly a representative body. It must reflect not only the rational proposition but also the sentiments and the feelings of the people whom we represent here. Now | I understand that in Malabar and in Travancore nearly ten million people observe this sort of custom mentioned in items 35, 36 and 37 in each of the two Parts, Part I and Part II, of the First Schedule. That is to say the custom of marrying father's sister's daughter or father's sister's son is prevalent there. Then let us add the Muslims. It. makes 50 millions. Let us add another ten million Christians. That makes 60 million. Out of 360 million people there are only 60 million people in India who observe this custom. All the rest of the 300 million people— those who observe the *Mitakshara* law is the vast mass of the continent of India, and then comes the *Dayabhaja* law which is observed by those in Bengal—are shocked by this sort of custom,

In fact, if some of our hon. Members will remember, at the time of the last general election a dead set was made against the Congress Party by the agents of the other parties by carrying on propaganda that they were going to enact a Hindu Code by which a brother would be allowed to marry a sister because there was some provision in that Bill by which second cousins or third cousins were allowed to marry. But the feeling was so very strong everywhere that it was said that some sacrilege was being perpetrated against the law made by Manu and Yajnavalkya. I say, Sir, it would be shocking because there are Hindu joint families where young boys and young girls live together. Now, we are already opening the doors for marriages between Hindus and Christians, between Hindus and non-Hindus which had been prohibited till now. And if you put in this also, it makes it still more unpleasant and there will be no chance of this Bill having public opinion behind it. Of course, if public opinion advances in 20 or 30 years' time, you may bring in in amendment later on but if you want to have the whole thing all at once, the danger that I see is that this Bill will never reach the Statute Book. The opposition will be strong and stiff.

As for friends of the South,—Prof. Wadia and Shri Govinda Reddy—I would appeal to them in all humility that clause 15 specifically protects them fully. They can marry under their customary law and later come and get registered under this Act because there are certain advantages. You can get the Indian Succession Act applied; you get severance and you get the right of divorce Sir, if this Schedule is not omitted it is said that there would be some sentiment thai the Hindu con ception of marriage was being forced upon others. There is no such thing. The Schedule will remain as it is. The Hindu rights and sentiments will also be respected and protected and at the same time under clause 15 the customs will be protected. Therefore, I would appeal to my friends not to press this but to respect the sentiments of others. It will be wrong to omit items 35 to 37. It will be dangerous from thp point of view of elections on which the safety of the politicians depends. That is a thing which you should not forget. Because we represent them, we have to reflect their opinion. They are to guide us. We cannot just dragoon them into something for which public opinion is not prepared.

SHRI H. C. DASAPPA: Are not people from the South sending their representatives? You perhaps do not mind what happens to those politicians?

SHRI J. S. BISHT: I say that the people from the South are fully protected here under clause 15. You can marry according to your customs and get

LShri J. S. Bisht.] yourself registered under this law. After all, what is there in this law? There is not going to be any particular ceremony—any *barat* or anything. All that you do is, you go to the Marriage Officer and have the marriage registered. You can solemnize the marriage under your custom. All these 2a years all the marriages under this Act which I attended, I have seen there was a regular *barat,* the *saptapadi* oath before the fire and there was also the Marriage Officer. You can have the marriage and get it registered later within two or three days. There will be no difficulty at all. Your rights are fully protected under clause 15. If that were not there, you would be perfectly justified in saying that your rights were not protected. But in this way you wilL be protecting the sentiments of the 300 million persons governed by the *Mitakshara* and *Dyabhaga* law. i would appeal that they should have some regard for those people and not press their amendment.

DIWAH CHAMAN LALL: On a point of order, Sir. I have been just now informed that there is some confusion regarding the amendment that was passed by the House, that is, amendment No. 43. It reads:

> That at page 10, after line 13, the following new sub-clause be inserted, namely: —
>
> '(j) has lived apart from the petitioner for one year or more and the parties refuse to live together and have mutually consented to dissolve the marriage'."

The word 'and' was changed into 'or' When my learned friend who moved this was speaking, I drew his atten tion to the word 'and' and asked him whether he was prepared to substi tute .....

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): That was passed already. Has it any relevance to this clause?

DIWAN CHAMAN LALL: No, Sir. My attention has just been drawn to this.

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): I think it would be much better if you will mention it before Mr. Deputy Chairman who was in the Chair when this was being discussed.

SHRI H. C. DASAPPA: I will not take long after the very clear and lucid speeches made by my friends, Prof. Wadia and Mr. Govinda Reddy. I will only just answer my hon. friend Mr. Bisht who referred to clause 15(e) as a sufficient provision for those who. may desire to observe their customs and marry their cousins. In fact, Sir, that was my very argument why a provision like clause 15(e) should not have found a place in clause 4 also. When we allow such a marriage under clause 15 and make provision for such marriages being registered it will mean that they get all the status and the rights and incur all the responsibilities provided under this Bill. What strange logic it is that you want to prevent such marriages under clause 4! How can you do it? It is impossible. I will show how it is impossible. These marriages between cousins can only have reference to couples of the same religion and same faith and generally of the same community also. It is not as though the cousins will belong to different communities or religions. If the couple belong to the same community and have this relationship, they can certainly take recourse to clause 15(e) and get all the rights and privileges under this Act. That is obvious. Now, if they do not belong to the same community, if one is a Hindu and another is a Muslim or a Christian or of some other religion, the bar of prohibited relationship cannot apply to them at all. So you are effectively preventing a large section of the people who can honestly come before the Marriage Officer in the very first instance and get the benefits under this law. Why encourage people to resort to subterfuges? Is it fair?

SHRI J. S. BISHT: What is the subterfuge?

SHRI H. C. DASAPPA: The subterfuge is to marry under the customary law and then come and get registered

under this Act. What else is it, if it is not subterfuge? That is why I said it would be a very wise thing to have incorporated in clause 4 a provision similar to clause 15(e) but the House did not take it. Of course, I have no quarrel. The House has decided it. Now, it is only a question probably of prestige. Having done that you want to stick on. Having swallowed a camel you strain at the gnat. That is what you would do if you do not accept Prof. Wadia's and Mr. Govinda Reddy's amendments. Therefore I think you will not only help in piloting a measure with a logical structure but also in removing the inconsistency, the obvious inconsistency, in this piece of legislation, by accepting those amendments. You will also at the same time gain the sympathies and blessings of the people from the South. Let them know that even though there is a majority unused to this form of marriages they are not going to tyrannise over the minority, and are prepared to accommodate the minority. I would, therefore, appeal that since it serves no purpose it would be better to accommodate the people from the South and accept the amendments of Prof. Wadia and Mr. Govinda Reddy.

SHRI KISHEN CHAND: Mr. Vice-Chairman, the House has given its verdict during the discussion on clause 4. The House has definitely decided that cousin marriages are not desirable. But now by another clause some Members want to reverse that decision. It has been the practice and convention that in the same Bill once the House has passed a certain clause, Members cannot, through a subsequent clause, try to amend the previous clause. When we were discussing clause 4 this had been made perfectly clear.

SHRI GOVINDA REDDY: Are the degrees of relationship denned there?

THE VICE-CHAIRMAN (SHRI B. C. GHOSE) : The House has not given its verdict on what the prohibited degrees of relationship are.

SHRI K. S. HEGDE: On a point of information, Sir. In fact it was decided that this matter of degrees could be appropriately considered at the time of consideration of clause 2 and the Schedules and that the matter need not be gone into at that stage.

SHRI KISHEN CHAND: I submit, Sir, that when we were discussing clause 4, it was clearly stated by a large number of hon. Members that they wanted cousin marriages and the House has given its verdict against it. My submission is that it is wrong now to reopen the matter. The convention is that in the same Bill we may not discuss over and over again the same matter and bring it up when the House has rejected a certain idea already. That is my submission, Sir. After all the final authority is the majority in the House.

Secondly, Sir, we are bringing in this legislation which is going to act as a model legislation. The Law Minister has pointed out several times that the brothers, even after the break-up of joint family, would continue to live in the same house, continue to work in the same business and so on. When they are living together in the same house, do you think, Sir, it is in the interests of the young persons to consider that there is possibility of marriage amongst them? Will it lead to morality? Is it in the interests of society to allow the children of two brothers to have a feeling that at some subsequent date they may marry? Do you think it is in the interests of the race to permit the marriage between the children of two brothers? In the case of Muslims, I understand, this system is prevalent. There, the girl from the age of 8 is kept behind *purdah.* In the case of Muslims it may be possible, but in the Hindu society there is no *purdah* system. They are kept apart purely from a feeling that they are brother and sister. If you adopt this clause, it will lead to a great deal of immorality.

PROF. A. R. WADIA: Sir, may I point out that I had raised the identical point and at that time Mr. Chairman was in the Chair, and he ruled[1]

[Prof. A. R. Wadia.] that amendments to Schedules would be taken up at the end?

SHRI K. MADHAVA MENON: Sir, I have said during the course of the general discussion mat the Schedules are really disgusting. Apart from this, Sir, what is the object of this Bill? Everyone of us says that it is an enabling measure. Is it our idea to enable to take advantage of this Bill or to prevent people from taking advantage of this Bill? Apart from this, again, everyone of us is speaking that we want a national civil code and this is the first step. What is the use if all the people are not using this measure, and where is the commonality?

AN. HON. MEMBER: It is a moral -code. /-

SHRI K. MADHAVA MENON: I want to answer my hon. friend. He points out that the conception of morality differs with different countries under different conditions. As Mr. Dasappa and Mr. Govinda Reddy have pointed out, almost half of India will not be able to take advantage of this measure. Where is the common civil code that you are going to have if you want the Schedule to be like that? If the amendment of Mr. Sundarayya is accepted it will then be really a civil code and it will really help all people'.

PANDIT S. S. N. TANKHA: Mr. Vice-Chairman, during the course of the first reading of the Bill, I had submitted that it was against my sentiment that there should be close relationship marriages. I had also given various reasons—biological, eugenical and others—for which I thought that such marriages should not be allowed. Now, Sir, it is true, as I said the other day, that experiments relating to the biological considerations, which I had given, had not been undertaken on human beings, but what of that? We can legitimately draw certain inferences from those observations. As such, T was opposed to such marriages.

Besides that, Sir, many marriages provided under this Bill, as given in the Schedules set out in Parts I and II, are repulsive to the sentiments of many of us, for instance the solemnization of a marriage between a person and his sister's daughter's daughter which is permissible under the present Schedule, or between him and his brother's daughter's daughter. Similarly many others, for instance, a marriage with the father's sister's daughter's daughter. These relationships are so common and are so close relationships that the very idea of a marriage between these two relationships seems repulsive to me. I have, therefore, added certain relationships as prohibited relationships besides Ihose prescribed under the Schedules.

[MR. DEPUTY CHAIRMAN in the Chair.]

I have given them in my amendments Nos. 162 and 163.

MR. DEPUTY CHAIRMAN: Is a speech necessary, Mr. Tankhai"

PANDIT S. S. N. TANKHA: I have already enumerated these things in my amendments. I would prefer a small formula to be evolved for defining prohibited degrees. I would have gladly supported the formula of Dr. Seeta Parmanand, amendment No. 166, but there seems to my mind to be one great difficulty about it. In her amendment —though she has mentioned: "if one is a lineal ascendant of the other or was the wife or husband of the lineal ascendant or descendant of the other" —she has not mentioned ascendant or descendant up to which *degree* of lineal ascent or descent. It may mean two, five or seven degrees, or *ad infinitum.* Or, does she mean, as is prescribed under the present Hindu law, seven degrees from the father's and five degrees from the mother's? There is no proper mention of this in her amendment. It should be mentioned clearly in her amendment up to what degrees the ascendency or the descen-dency is to be counted to constitute prohibited relationships in marriage.

As regards the criticisms of my friends from the South who say that certain marriages which have already taken place according to the custom prevalent among them.....

MR. DEPUTY CHAIRMAN: That has been spoken about very, very exhaustively.

PANDIT S. S. N. TANKHA: Sir, I have not spoken on that. It is wrong *to* say that such marriages should not be allowed or recognised by us. 1 will suggest a small formula. I would suggest that at the beginning of Schedules I and II, before the words: "A man cannot marry his", the words "Uuless custom or usage otherwise allows" should be inserted. These words may be added and then the relationships as specified may be enumerated. Then, the matter will be solved and we will no longer be in any difficulty or doubt on that point. But now, Sir, the problem which faces me is that the hon. the Law Minister has accepted the deletion of the words "a man cannot marry his" on page 15 and the words "a woman cannot marry her" on page 16 and as such the words I propose cannot be added here. Therefore, this may be provided at some other suitable place stating clearly that if a custom allows marriages within particular relationships, they will be allowed to take place and will not be deemed as prohibited relationship within this Act.

SHRI C. C. BISWAS: Mr. Deputy Chairman, I have heard no new arguments today in connection with the discussion on the amendments to this clause, clause 2, and the First Schedule. It has only been a repetition of the views expressed by different Members of the House on different days. They have been again repealed today. I, Sir, had also the opportunity to make it clear to the House more than once. But as these points have been reagitated, I might perhaps restate my position without taking up much time of the House.

Sir, first of all the question is whether there should be these Schedules or whether there should be a general formula. I suppose it was Mrs. Menon who said that we were absolutely obsessed with the notions of Hindu law when we framed this Bill. May J point out to her that, as a matter of fact, in the Bill as it was introduced here, there were no Schedules? They came from the Joint Select Committee. In the Hindu Marriage and Divorce Bill which has already been placed before this House there is no reference to Schedules. There also the degrees of prohibited relationships were defined in general terms. But in the Joint Select Committee it was suggested that instead of expressing these ideas in the shape of a formula it would be much better to prepare a complete list. And if there are any items or entries in that list about which there is any dispute, that may be considered quite separately. But as I have emphasised more than once, there is no difference between a list and a general formula.

SHRI K. S. HEGDE: But these aspects were placed by you before the House at the time of the first read ing.

SHRI C. C. BISWAS: Therefore I stand by the lists which have been accepted by the Joint Select Committee and I am not prepared to accept the amendments suggesting their substitution by a general formula. It was at the instance of the Joint Select Committee that the change was made, and I am quite satisfied that it makes for simplicity. I have accepted the amendment of Dr. Radha Kumud Mookerji in which he proposes to delete the words "A man cannot, marry his" and "A woman cannot marry her". *(Interruption.)*

Then, Sir, the question is whether in preparing these lists we have not taken into consideration the prin of eugenics. Prof. Wadia said that we had not borne those principles in mind in regard to other matters. But I do not see how We are concerned wit'i

[Shri C. C. Biswas.] other matters now. The question is whether the degrees of relationship which we have presented to the House today represent the principles of eugenics. We are not concerned with the question whether a tuberculosis male can marry a healthy woman. I did not get any amendments from anyone, not even from Prof. Wadia, that certain diseases should be laid down specifically as disqualifying a marriage except in the form in which we hav* referred to these things. There is no question of the application of the principles of eugenics to those other questions. The question is whether this list is based on eugenics. We are legislating for the whole of India, not for South India, or for a few people in South India. I am not compelling them to scrap their personal law. Their personal law is there. It is open to them to marry under their personal law. But we are here making a law for the whole of India and not merely for ten millions or twenty millions. We are legislating for the entire population

SHRI GOVINDA REDDY: Minus so much population. It cannot be for the whole of India.

SHRI C. C. BISWAS: There might be a much larger population. I have not calculated the number of persons who are against it and who think that I am legislating 'against their interests. I do not know if ten millions const> tute the majority in India.

SHRI GOVINDA REDDY: That is a wrong figure.

SHRI C. C. BISWAS: Therefore, Sir, this is an optional measure, a progressive measure. And it is open to anyone to marry under his personal law. If he finds that any provisions offend
against his cherished ideas, well..... *(Interruption.)*

SHRI GOVINDA REDDY: It is repugnant to the whole country.

SHRI C. C. BISWAS: If you say it is repugnant to the whole country, let us see whether it is repugnant to the majority or not. Let us all consider that question. Therefore, we have not tried to compel those people who would accept one set of relations and not another set of relations.

India is such a vast country. Therefore you cannot give effect to all customs. If you say customary variations will be allowed, the House is entitled to do it, but if you do so, it will cut at the root of the whole policy which underlines this general law for the whole country. It is always open to the parties to marry under their personal law. There is no bar, but if you wish to take advantage of this law, then you must not be within the prohibited degrees. Sir, I oppose the amendments.

MR. DEPUTY CHAIRMAN: *Tie* question is:

166. "That at page 2, for l#es 5 to 8, the following be substituted, namely: —

'(f) "prohibited relationship" —two parties are said to be within the degrees of prohibited relationship if one is a lineal ascendant of the other or was the wife or husband of the lineal ascendant or descendant of the other, or, if the two are brother and sister, uncle and niece, aunt and nephew or the children of two brothers, of two sisters, or of a brother and a sister'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

175. "That at page 2, for lines 5—8 the following be substituted, narne-ly:-

'(f) "degrees of prohibited relationship"—a man and a woman, if they are lineal relatives, or if the man and the woman are brother and sister born of the same parents or if they are half-brother and half-sister and in the case of other relationships if against the la^

usage, or custom governing the man or woman concerned, are within the degrees of prohibited relationship'.".

(After taking a count) Ayes—20, Noes—24.

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 176 is barred. The question is:

187. "That at page 1, line 12, the brackets and figure '(D' be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

■ 188. "That at page 2, lines 29 to 34 be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: We come to the First Schedule.

DR. SHRIMATI SEETA PARMANAND: I would like to point out that if amendments Nos. 197 and 198 are to be accepted, it will make no sense, the Schedule will have no meaning at all.

MR. DEPUTY CHAIRMAN: It has got to be read with the definition clause. So, it makes every sense.

SHRI GOVINDA REDDY: I would like Prof. Wadia's amendment to be taken up first. If passed, I would like *to* omit many of the items in my amendment.

MR. DEPUTY CHAIRMAN: The question is:

160. "That at page 16, lines 27 to 30 be deleted."

(After taking a count) Ayes—23: Noes—28.

The motion was negatived.

PROF. A. R. WADIA: I withdraw amendment No. 161.

* Amendment No. 161 was, by leave, withdrawn.

SHRI GOVINDA REDDY: In view of the decision on Prof. Wadia's amendment, I would not press my amendment.

*Amendment No. 93 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

162. "That at page 16,—

(i) after item 30, the following be added, namely:—

'30A. Sister's daughter's daughter';

(ii) after item 31, the following be added, namely: —

'31A. Brother's daughter's daughter';

(iii) after item 34, the following be added, namely: —

'34A. Father's brother's daughter's daughter';

(iv) after item 35, the following be added, namely: —

'35A. Father's sister's daughter's daughter';

(v) after item 36, the following be added, namely: —

'36A. Mother's sister's daughter's daughter'; and

*For text of amendments, wide col. 5693 supra.

LMr. Deputy Chairman.]

(vi) after item 37, the following be added, namely: —

'38. Mother's brother's daughter's daughter;

39. Mother's father's sister;

40. Mother's father's sister's daughter'."

The motion was negatived.

SHRI GOVINDA REDDY: Sir, I beg leave of the House to withdraw my amendment No. 94.

The * amendment was, by leave, withdrawn.

PANDIT S. S. N. TANKHA: Sir, I beg to withdraw amendment No. 163.

The * amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: No. 197 is accepted by the Law Minister.

The question is:

197. "That at page 15, line 38 be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: No. 198 is also accepted by the Law Minister. The question is:

198. "That at page 16, line 34 be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That the First Schedule, as amended, stand part of the Bill."

The motion was adopted.

The First Schedule, as amended, was added to the Bill.

The Second Schedule was added to the Bill.

*For text of amendments, *vide* col. 5694 *supra.*

MR. DEPUTY CHAIRMAN: The third Schedule.

SHRI C. C. BISWAS: There are two amendments (Nos. 199 and 200) which are consequential. I move:

199. "That at page 18, lines 25 to 29 be deleted."

200. "That at page 19, lines 8 to 11 and 22 to 28 be deleted."

MR. DEPUTY CHAIRMAN: The question is:

199. "That at page 18, lines 25 to 29 be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

200. "That at page 19, lines 8 to 11 and 22 to 28 be deleted."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That the Third Schedule, as amended, stand part of the Bill."

The motion was adopted.

The Third Schedule, as amended, was added to the Bill.

SHRI H. C. DASAPPA: May I bring to the notice of the House that sub-clause (c) of clause 48 (2) is also a consequential thing? It has no place now. The guardian does not appear in the Bill. It says:

"the officer or authority before whom an affidavit under section 11 may be sworn;"

clause 11 says:

"where by reason of illness, infirmity, the distance to be travelled, or for any other reason, it

is not practicable for the guardian to appear in person before the Marriage Officer for the purpose of signing the declaration, the consent of the guardian may be conveyed to the Marriage Officer by an affidavit sworn before such officer or authority as may be prescribed."

MR. DEPUTY CHAIRMAN: That portion referring to the guardian has been omitted in clause 11. But an affidavit would be necessary in cases where the parties cannot come to the Marriage Officer.

SHRI H. C. DASAPPA: The provision relating to guardian itself has gone.

MR. DEPUTY CHAIRMAN: Before the solemnization of the marriage the parties should sign a declaration in. the form specified in the Third Schedule. Even if there is no guardian, for the other parties, in case they are unable to come before the Marriage Officer, an affidavit | will be necessary.

SHRI H. C. DASAPPA: Clause 11 refers only to the guardian and nothing else.

MR. DEPUTY CHAIRMAN: That portion relating to the guardian has already been omitted.

Schedule Four. Amendment No. 55 is barred.

The Fourth Schedule was added to the Bill.

The Fifth Schedule was added to the Bill.

MR. DEPUTY CHAIRMAN: Amendment No. 56 (Sixth Schedule) (new) is barred. No medical certificate is necessary.

We now come to clause 1. There are six amendments to clause 1.

SHRI J. S. BISHT: Sir, I move: 2.9

C.S.D.

71. "That at page 1, line 5, for the words 'Special Marriage Act' the words 'Civil Marriage Act' be substituted."

SHRI KANHAIYALAL D. VAIDYA: Sir, I move:

106. "That at page 1, line 5, the word f 'Special' be deleted."

PANDIT S. S. N. TANKHA: I don't move amendment No. 107.

JANAB M. MUHAMMAD ISMAIL SAHEB (Madras): Sir, I move:

57. "That at page 1, after line 9, the following proviso be added, namely: —

'Provided that the provisions of this Act do not apply to persons following the Muslim personal law'."

MR. DEPUTY CHAIRMAN: Amend ment No. 108 is barred.

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

109. "That at page 1, lines 10-11, for the words 'on such date as the Central Government may, by notification in the Official Gazette, appoint' the words 'at once' be substituted."

MR. DEPUTY CHAIRMAN: Clause 1 and the amendments are open for discussion.

"SHRI J. S. BISHT: Sir, the origin of the Act is in 1872 when this Bill was first produced, it was named Special Marriage Bill only because it, was enacted to validate the marriages of people who had renounced, or who were going to renounce before the Special Marriage Officer, their religions. I believe it was at the instance of a very small group of Brahmo Samaj people in Bengal that this law was framed at that time. Under the strict Hindu law such marriages could not take

[Shri J. S. Bisht] place nor under the Muslim xaw. Hence it was to accommodate a very small, microscopic minority of infinitesimal dimensions that this Special Marriage Bill was enacted. That is why its name was given as Special Marriage Bill. Later on, this Bill was never amended except by a Bill of Dr. Gour in 1923 and therefore the chance of its being made a Civil Marriage Bill could not be availed of because an amendment was carried in which that Special Marriage Act was made inapplicable to the Muslim community. They went out of if. and only Hindus, Sikhs, Jain and Buddhists were allowed to marry within that Act. That again remained a Special Act because it could be availed of either by Hindus only or by those who renounced all religions. This law today is almost a civil law applicable to all communities irrespective of race, religion, caste or creed and is expected to apply to all marriages. It is true that it is of a permissive nature but all marriages are of a permissive nature. In no country does a Civil Marriage Act compel a person to marry any particular person.

MR. DEPUTY CHAIRMAN: You need not dilate on it.

SHRI J. S. BISHT: As the hon. Minister himself said, according to article 44 there should be a uniform Civil Code. Therefore, if we are under the belief that one fine morning we will rise and suddenly find that a Civil Code is before us or a Kamal Ataturk will come forward and get through a Swiss Code in one hour, that is not going to happen. Therefore, it is necessary that we should bring in at least or lay down one brick. Why should we fight shy of this name? Let there be one Civil Marriage Act today so that everybody knows that there is one Act applying to everybody and if it is proved well, in the course of 15 or 20 or 25 years it is quite possible that public opinion may get round and say that we can give up our personal laws. I think it would be a good beginning if we adopt this name. Because there is some i still attached to the word Special Marriage. People think "What sort of special people are they?". Therefore, I submit, let it be given a good, decent name as is given in all other parts of the world, so that people can freely marry under that.

DR. SHRIMATI SEETA PARMA NAND: My amendment is just the same. I would like to make only two points as it is already late and much has been said. The word "Special" when applied to this Marriage Act has so far conveyed to ordinary people the idea that a man could have one wife under the ordinary law and another, a special wife, under this Special Marriage Act.

SHRI V. K. DHAGE: Sir, how long are we proposing to sit? A circular that was circulated to hon. Members said that.....

MR. DEPUTY CHAIRMAN: But I had already announced before we adjourned that we would sit till we finish all stages of the Bill.

DR. SHRIMATI SEETA PARMANAND: Sir, I will not take more than one or two minutes. As I was saying, this name of "Special Marriage Bill" conveyed to ordinary-people that this was meant to enable a man to have one wife under the ordinary law and another under this Special Marriage Law—something special about it. As the hon. Minister himself has said, this is the Special Marriage Act under a new form and otherwise it need not have been introduced. I have said that it would have been better if this Bill had been brought in after the whole Hindu Code Bill, regarding marriage, succession, etc., had been disposed of. Then the discussions on the

clauses of this Bill would have been much easier and without any confusion. But having brought forward this Bill, we should make it clear to the people that the intention is to come up with a common Civil Code later, that this will be a first step towards that. It is better if the people get accustomed to the term "Civil" in connection with this measure even at this stage. After all, there is such a thing as getting used to a particular term, so that the term may not appear as something novel. When you change the name, the people would know that they have had a Civil Marriage Act and that the Civil Code that is to come will be a corollary to it. For these reasons, the hon. the Law Minister will, I hope, be pleased to accept the change of name. This question was actually raised in the Select Committee and the Law Minister said that the term "Special Marriage" was used just to maintain continuity with the existing Act. That kind of continuity is hardly necessary, for we have, I think, advanced enough to see the connection between the two measures, even without this continuity of the name.

MR. DEPUTY CHAIRMAN: Yes, Mr. Muhammad Ismail.

KAZI KARIMUDDIN (Madhya Pradesh): Sir, I have an amendment (No. 165) suggesting a new clause.

MR. DEPUTY CHAIRMAN: Yes, it means the same thing and if Mr. Muhammad Ismail's amendment is defeated yours need not come up.

KAZI KARIMUDDIN: I may be allowed to speak on it.

JANAB' M. MUHAMMAD ISMAIL SAHEB: Sir, my amendment seeks to add the words: "Provided that the provisions of this Act do not apply to persons following the Muslim personal law." It seeks to exclude the Muslims from the operation of this Act. As I have already pointed out, the Muslims by an overwhelming majority have exprelvesand *h-..■■]* like [1]of this Bill isen ed by ,ister also. The >.were cct ofisitionshould b:Sir, Dr. Kunzru the otheiof minorities. Then, m nds of his way of thinkin; o ipport my amendment anand tolerance to the views of r or two members of a minoritj the whole lot of that min is onlyawn to the views ■ such an emphatic mann important communit3'. I have pointed out on a previous occasion how this Bill does affect even th irsons who do not take advantage of it.

- MR. DEPUTY CHAIRMAN: You need not cover those points again.

JANAB M. MUHAMMAD ISMAIL SAHEB: I am not going over the same ground, Sir. I o it just und you of the objections of the 1\ [ito the pro-visions contain his Bill. Oneparticuhich I had not mentioned previouto bei he House. There is a re"called "Foster relationship" in vogue among Muslims i into consideration uestion he dp: elationship act, istaken Bill into at all. It ha?child whi :h i by a woman but not born towhich is born to I. stand on the same footing for the purpo marriage. That is the view of the

[Janab M. Muhammad Ismail Saheb.] Muslims and this has not been taken into account by any of the provisions of this Bill. Sir, I commend my amendment to the House.

KAZI KARIMUDDIN: Mr. Deputy Chairman, my amendment says that Muslims.. . .

MR. DEPUTY CHAIRMAN: You will please speak on the clause, leave your amendment.

KAZI KARIMUDDIN: Special ap peal has been made by hon. Members of this House to the Muslim Members that they should show a helpful attitude and that they should not oppose the provisions of this law which are in the interest of the nation. What I want to submit to the House is that the Muslim Mem bers of this House and the Muslims of India have absolutely no objec tion to the application of the provi sions of the Bill to all the people except the Muslims. I say this be cause, many hon. Members of this House are not aware that the Mus lim law has provisions about marriage and divorce and the provisions mentioned in this Bill are.....

DR. SHRIMATI SEETA PARMANAND: This applies to the citizens of India.

KAZI KARIMUDDIN: The provi sions of this Bill would be applicable to Muslims, though they have got a perfect code regarding marriages, divorces, dower and all that, in res pect of Muslim women. A Member from Nainital has said that there are 60 million people who support the amendment about the prohibited degrees of relations, and unless.....

MR. DEPUTY CHAIRMAN: It is only a permissive law.

KAZI KARIMUDDIN: It is a compulsory law and I can explain how. It is not optional as far as some of the provisions are concerned.

MR. DEPUTY CHAIRMAN: Anybody who wants to take advantage of this Bill can do so and to him the provisions become compulsory.

KAZI KARIMUDDIN: That is a fact,. Sir, but all the same they become compulsory to others also and I shall show hov/. It has, been said by Shrimati Lakshmi Menon that property rights should have been granted to women before enacting this law. I may tell her that Muslim law already gives such property rights to women. Now, the point was raised whether this Bill is an optional law or whether it is a compulsory law in respect of some of its provisions. In regard to inheritance, clause 21 of this Bill says that the parties to this mar-riage will be governed by the Succession Act. By this as I have already stated, the other relations would be deprived of their inheritance of the parental property.

MR. DEPUTY CHAIRMAN: Because the parties chose to take the benefit of this Act.

KAZI KARIMUDDIN: But they will, be entitled to it under the present law because they are deemed to be legal children and they will also be entitled to it under the Succession Act, because of clause 21 of the Bill.

The reply of the Law Minister on this point is very peculiar. The Law Minister said that they may be so, that they will be so and that that cannot be avoided. Now, people are affected by this law. It is no use saying, Sir, that this is an optional law altogether. I had been able to show that in respect of inheritance, the illegitimate or legitimate children of the parents married under this Act inherit even from third parties but the third parties do not inherit under the Succession Act. Therefore, you are not enacting an optional law but you are enacting a law which is compulsory in respect of inheritance. Then, why make a fetish?

There are several provisions of this law which are contrary to the Muslim tenets and Muslim principles. Now,.

Professor Wadia had moved an amendment that there should be marriage between cousins. Now, Sir, under the Koranic Law, it is a provision that such marriage is permitted. Now, if this Act is applied to the Muslims also, they are prohibited from marrying cousins which is allowed by Koranic law.

DR. SHRIMATI SEETA PARMANAND: This is a permissive legislation.

KAZI KARIMUDDIN: There are so many provisions. There is not much time, otherwise I would draw your attention to each of them. There are several provisions which are contrary to the provisions of Islam and, therefore, my submission is that as in the case of the Act of 1872 which was not made applicable to the Muslims and particularly because the bulk of Muslim opinion before this Bill was sent to the Select Committee was that this Bill should not be made applicable to them, this Bill should not be made applicable to the Muslims. I really do not understand why this Act should be made applicable to them.

SHRI B. K. MUKERJEE: On a point •of information, Sir. We were given a circular today that the Council would sit.....

MR. DEPUTY CHAIRMAN: No, no; we sit till we finish this Bill, all stages •of the Bill.

SHRI S. MAHANTY: Are we going •to finish the third reading, Sir?

MR. DEPUTY CHAIRMAN: Yes.

SHRI V. K. DHAGE: Well, Sir, we have been here from 8-15 in the morning and it is already 7'15 P.M. We have done what we could and, I think, under the rules there is a provision. I am drawing your attention to rule 95(2) in which it is stated: ""If any amendment of the Bill is made, any member may object to any motios being made on the same day that the Bill be passed, and such •objection shall prevail unless the Chairman allows the motion to be made." Of course, your discretion is there but your discretion will have to be used taking into consideration the stages that we have gone through so far. Besides, Sir, there have been so many amendments.

SHRI P. T. LEUVA: At this stage, a point of order cannot be raised.

SHRI C. C. BISWAS: Probably we could finish it during the time you are taking in discussing this.

SHRI V. K. DHAGE: I feel, Sir, that we must have time so that we may be able to discuss them properly in the third reading. I submit, Sir, that after the second reading we may adjourn.

MR. DEPUTY CHAIRMAN: Before we adjourned this morning I informed the House that we would have to sit through and finish all the stages. So, there is no point in raking up that question.

SHRI P. SUNDARAYYA: I only want to say that I oppose all the amendments moved to this clause. For instance, take the amendment which wants to make this Act into *a* Civil Marriage Act. It is no more a Civil Marriage Act when it excludes a large number of people of all religion who follow their own customary laws—you are not going to prohibit that and you cannot prohibit. In any case, at the present stage to call this a Civil Marriage Act is nothing except deceiving ourselves. As such, the name "Special Marriage Act" is correct and should not be interfered with.

PANDIT S. S. N. TANKHA: In re. gard to my amendment, I have just to ask this question, Sir. The usual procedure about other Bills is that they are brought into force soon after they are passed. Why is it that it has been provided in this Bill that the Cemrai Government may, by notification, declare on what date it is to be made applicable? I see no reason for this departure from the usual procedure.

S. S. N. '-
the ordinary, all
Acts
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CHAIRMAN: Gov-and
v'idc lor (etc.

UT S. S. JKHA: That
question is

"ister
ficers?

CHAIRMAN: How . hen there are no ru

I \IDU: I would
like to k .other Government
my Act without bring-tles.

C. C. BISWAS: As regards the
it should be
Special Marriage Act or Civil
Marri I should like to pre-
serve the continuity of this legislation :ial
Marriage Act of 1872. personal law still
pre-! applicable to the followers laws along
side this and, just as well that we the
title as it is.

AIYALAL D. VAIDYA:
neither

DEPUTY CHAIRMAN: He has an
8

[AIRMAN: The
question

71. "That at page 1, line 5, for (he words 'Special *M* Act' Ihe 3s 'Civil Marriage Act' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

106. "That at page 1, line 5, the word 'Special' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

57. "That at page 1, after line 9, the following proviso be added, namely:

'Provided that the provisions of this Act do not apply to persons following the Muslim personal law.'"

The motion was negatived.

PANDIT S. S. N. TANKHA: Sir, I do not want to press my amendment (No. 109).

The "amendment was, by leave, Irawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

MR. DEPUTY CHAIRMAN: Amendment No. 165 regarding new clause 1A, is barred as Mr. Ismail's amendment has been defeated.

Wc take up the Title. All the amendments are barred because the title "Civil Marriage Act" has been rejected.

The Title was added to the Bill.

MR. DEPUTY CHAIRMAN: The Enacting Formula. There-is an amendment.

*For text of amendment, *vide* col. 5726 *supra.*

C. C. BISWAS: Sir, I move:

171. "That at page 1, in the En- ; Formula, after the word 'Parliament' the words 'in the Fifth of our Republic' be inserted."

MR. DEPUTY CHAIRMAN: The tion is:

"That at page 1, in the Enacting Formula, after the word iment' the words 'in the Fifth of our Republic' be inserted."

• lion was adopted.

Ms. DEPUTY CHAIRMAN: The question is:

at the Enacting Formula, as amended, stand part of the Bill."

-.dopted.

The Enacting Formula, as amended, I to the Bill.

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

"That the Bill, as amended, be . d."

There are certain consequential is. I move:

1. "That at page 8, lines 32 to 37 be deleted."

2. "That at page 9, lines 22 to 26 be deleted."

3. "That at page 9, after line 26, the following new clause be added, namely: —

'25A. *Legitimacy of children of and voidable 'marriages.*— ere a decree of nullity is grant- Q respect of any marriage under section 24 or section 25, child begotten before the decree is made who would have been Legitimate child of the parties to the marriage if it had been dis- _>d instead of being declared to be null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity.'"

4. "That at page 15, lines 3 and 4 be deleted."

MR. DEPUTY CHAIRMAN: Motion moved:

1. "That at page 8, lines 32 to 37 be deleted."

2. "That at page 9, lines 22 to 26 be deleted."

3. "That at page 9, after line 26, following new clause be added, namely: —

"25A. *Legitimacy of children of void and voidable marriages.*— Where a decree of nullity is granted in respect of any marriage under section 24 or section 25, any child begotten before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity.' "

4. "That at page 15, lines 3 and 4 be deleted."

SHRI B. C. GHOSE: On a point of order, Sir. What is the consequential amendment?

MR. DEPUTY CHAIRMAN: About legitimacy of children.

SHRI B. C. GHOSE: No. What is the clause you are referring to?

MR. DEPUTY CHAIRMAN: Clauses 24 and 25—the same words appear in both the clauses.

SHRI B. C. GHOSE: Clause 25(2) was passed and so, there is no question of a consequential amendment. You are amending that clause and inserting a new clause. I mean when we passed clause 25, we passed it as it was.

SHRI RAJAGOPAL NAIDU: Before that I do not know whether 25(2) was passed.

SHRI B. C. GHOSE: That I asked him and he said.....

MR. DEPUTY CHAIRMAN: On ac count of the legitimacy.....

SHRI C. C. BISWAS: I first mentioned specifically the amendment of clause 48 (2) (c) and that reads "the officer or authority before whom an affidavit under section 11. may be sworn". In view of the guardian being eliminated this becomes useless. It is not necessary. That is the first thing.

The other one is what my hon. friend was referring to, that is to say, in consequence of the amendment accepted to clause 24(2). I read out the draft amendment in the morning when Mr. Hegde raised the question: "What about those children who were in womb, not yet begotten?" I shall point out, Sir, that in clause 24(2), which has now been accepted by the House, the wording is "children begotten before the decree is made". I have revised the draft amendment and it reads like this now:

> "25A. Legitimacy *of children* of *void and voidable marriages.*— Where a decree of nullity is granted in respect of any marriage under section 24 or section 25, any child begotten before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity."

I have left out the words to which exception was taken namely, "at the date of the marriage". Mr. Hegde took objection to "at the date of the marriage". I have avoided those words and 1 have reproduced the language which you find in 24(2^

SHRI B. C. GHOSE: That is not my point. I am not objecting to the clause on lines as proposed by the Law Minister. I am just drawing your attention to certain procedural matters. I wish to know how a new clause can be a consequential clause. A new clause has been inserted.

MR. DEPUTY CHAIRMAN: It is purely a matter of drafting.

SHRI B. C. GHOSE: I have under stood the point. My submission to you was that if this is a new thing, the procedure should be that this might be i˜ecommitted in respect of these two clauses and we will pass them immediately because under the rules it says that only consequential and verbal matters can be set right in the third reading. If that is so, we may be setting a precedent that any thing may be brought in at the third reading stage by way of amendments, and that would be an incorrect pro cedure. In one minute you can re commit these two clauses and we can pass them. You can take up .....

MR. DEPUTY CHAIRMAN: Just consequential and before we proceeded to the next clause this morning; in fact, this point was raised and he said this amendment would be taken up at the third reading. So I do not think there is any point.

SHRI B. C. GHOSE: How can a new clause be consequential? If you think that a new clause can be consequential that is all right.

MR. DEPUTY CHAIRMAN: What we should have done is to put this clause in both 24 and 25. Instead of this what we are doing is that 25A is put in to govern both the clauses and it will be consequential.

SHRI B. C. GHOSE: It does not become consequential.

MR. DEPUTY CHAIRMAN: It was in both the clauses. Even now.....

SHRI B. C. GHOSE: Is it consequential?

MR. DEPUTY CHAIRMAN: It is only a question of drafting.

SHRI B. C. GHOSE: But that was *not* postponed at that time. My objection is only procedural. I am not opposed to the substance of it.

MR. DEPUTY CHAIRMAN: Anyway, you should have taken the objection in the morning.

SHRI B. C. GHOSE: My objection is there. If you rule it as consequential, I am barred out and that is the only ground.....

MR. DEPUTY CHAIRMAN: I do jule it consequential. 1

SHRI P. SUNDARAYYA: Am I to take it from the Law Minister that the final form is like this. "Where a de cree of nullity is granted in respect of any marriage under section 24 or sec tion 25..... , J

SHRI C. C. BISWAS: I will read out to you the remaining portion ..... 'any child begotten before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved in stead of being declared to be null and void or annulled by a decree of null ity shall be deemed to be their legiti mate child notwithstanding the decree of nullity." j

SHRI P. SUNDARAYYA: I just heard the Law Minister saying that he is adopting the words as they are in sub-clause (2) of clause 24. There the wording is a little different—I think I have heard the Law Minister correctly—and I would like that wording to be maintained here, not this wording. As I see it, the difference is this. There the sub-clause says "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". He.ve the language is un- ambiguous, very clear and very simple, whereas it is not so in the draft that has been circulated to us wherein it reads "any child begotten before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a de cree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity". There are some provisos introduced into this draft. We do not know what the implication of these provisos is. When we do not know it we would insist that he should take the wording given in 24(2).....

SHRI RAJAGOPAL NAIDU: There also it is the same thing.

SHRI P. SUNDARAYYA: Then why this proviso? We do not know just now what are the legal intricacies of such a proviso. Unless there is some legal implication, why should this new wording be taken? If this means something different from what 24(2) means, then certainly we would like to stick to 24(2) and not this thing. I would like the Law Minister to accept the wording of 24(2).

MR. DEPUTY CHAIRMAN: There is no change of 24 as it stood after the amendment which was accepted by the House. ,

SHRI P. SUNDARAYYA: I am not clear that 25A does not depart from 24. Personally, Sir, I would like the wording of 24(2). ,

MR. DEPUTY CHAIRMAN: 24 refers to a marriage being declared null and void. 25 is voidable marriage, that is, a decree of nullity is given, and both those are provided in this clause 25A. Regarding 24(2) the portion "children begotten before the decree is made shall be specified in the decree" is omitted in this new clause.

SHRI P. SUNDARAYYA: Not only that, Sir, "shall be specified in the decree" is one thing and "and shall,

[Shri P. Sundarayya.] in all respects, be deemed to be. and always to have been" is quite another.

MR. DEPUTY CHAIRMAN: "shall be deemed to be" is there in the new e. You want the names of the children also in the decree?

SHRI P. SUNDARAYYA: I want the wording in 24(2) without these words ,-hild who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree of nullity at the date of the decree". This proviso I do not want. I would like that the simple wording of 24(2) be adopted.

MR. DEPUTY CHAIRMAN: It is more in favour of the children, I think.

SHRI C. C. BISWAS: This is fairer.

MR. DEPUTY CHAIRMAN: This is in favour of the children.

SHRI C. C. BISWAS: The wording of 24(2) and 25(2) as it stands -now is certainly in favour of the children.

SHRI RAJAGOPAL NAIDU: Probably Mr. Sundarayya's not understanding the matter properly is due to this. In the case of void - marriages, the marriage is void ab initio. If a decree is passed, it takes effect v from the date of the marriage. In the case of voidable marriages, it takes effect from the date of the decree. If this is understood proper] y, there will be no difficulty about it.

SHRI P. SUNDARAYYA: All right. Let the children be specified in the decree.

MR. DEPUTY CHAIRMAN: Suppose some child is omitted, how does it affect?

The question is:

"That at page 3, .lines 32 to 37 be del

The mot adopted.

SHRI J. S. BISHT: Then the '(I)' should also . :ed.

[R. DEPUTY CHAIRMAN: That will be done. Now, clause 25.

The (is:

"That at page 9. 22 to 26 be deleted."

The motion was adopted.

MtR. DEPUTY CHAIRMAN: Clause 25-A.

The question

"That at page 9, after line 26, the following new clause bo added, namely: —

'25A. *Legitimacy of child ren of void and voidable mar riages.*—Whe decree OL nullity is granted in respect of any marriage under section 24 or section 25, any child begotten before the decree is made who would have been the legitimate child of the parties to the mar riage if it had been dissolved in stead of being declared to be null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwith standing the decree of nullity.' "

The motion was adopted.

New clause 25-A was added to the Bill.

MR. DEPUTY CHAIRMAN: There is an amendment to clause 48.

The question is:

"That at page 15, lines 3 and 4 be deleted."

The motion was adopted.

SHRI J. S. BISHT: Sir, in S. [I, page 18, there is a printing mis take.

DEPUTY CHAIRMAN: The printing m will be corred

DEPUTY CHAIRMAN: Motion

'That the Bill, as d, be ;ed."

BBARAYAN (Madras): I want to con- ■ on the has given to every luring the course of the d and tb e he has taken over the there occasions when a great deal of patience was required and I think he has overcome it we!I. I a .he lady Members who have taken such an intei passage of this measure—and I may Dr. Shrimati Seeta satisfied with the way in which the Law Ministc piloted this Bill.

This B'il is only an improvement of an Act which is nearly 80 years old but there is this difference. People who married under the Special Mar riage Act had to declare before the Marriage Registrar that they did not follow any of the recognised religions of this country and I think that was a r,reat disadvantage because there v/ere occasions | eople had to say this merely becau: _ of their c to marry outside their communit am glad tbj has beei ..ere that some of my reconciled to this measure but all tl would say to them is, let us advance, do you want to prevent the progress of society by objecting to neasure when it does not pre-from observing your laws Mid from acting according to your ms if you do not wish to marry under this Act. At the same time, why not enable a young person who desires reform and who wants to marry under this measure to have his own way? The amendment that has been carried, making the age : provides ample safeguard. Unless you attain the age of discretion and you able to judge for yourself, you c ,/ under this Act.

Therefore, with this safeguard I sure everybody will recognise that this is an , We must not forget that socievy has progress- and we are living in times when lie.world wants to be akin, this Act will bring the whole of India to gether. I am sure that people will realise that India will play a more linent part than she is already playing in the comity of nations only when unity is established on all fronts. I feel that marriages under th's Act will help to dissolve the old customs which retard pro- I look forward to the day ihere will be no question of h or South, when marriages be common between the North the South, and all this feeling.....

. SHRIMATI SEETA PARMA-: Not only that, but Hindus and ims or any religion.

DR. P. SUBBARAYAN: Yes, I quite agree. I look forward to the day when we will have a civil code like *Code Napoleon* applicable to the whole society and to the whole of Indi people will feel themselves as ins first and Indians In there will be no question of North or South or even linguistic differences. Ii marriages could be performed between the people of Uttar Pradesh and my part of the country—Tamil Nad—

will be no question of Uttar Pra- ruling the whole of India, as ii : to be the feeling in some of us.

lat I feci it, because I feel I am an Indian and the whole of Indi longs to me. I only feel sorry—though I am not for annulling the pertition— that we have been partitioned, because India will always mean to me as a whole with the hills in the North and the sea on three sides. We can

[Dr. P. Subbarayan.] not help what has already happened but at the same time let India as it exists today feel itself as one and then only we can play our proper part in the comity of nations. We are already playing our part, especially in the cause of peace and that would be heightened still further if all Indians could feel that they are akin and that they take their share in the ordering • of a society not only in this country but in the whole world. In fact, 1 look forward to the day when the world will be one, when there will be no question of colour, caste or creed and when we will really reform the ■world in a manner that will eventually establish peace on earth and goodwill among men.

SHRI P. SUNDARAYYA: Sir, wo would have liked that this Bill had come out of this discussion in a much better form than it had when it wa.s introduced and if only the Law Minister had been a little more sympathetic, then certainly some of these things could have been improved and it would have satisfied all the people belonging to all religions not only here ia the country but outside also. But at the same time I would like to accept that this measure is progressive to the extent that every person under whatever law he is married can get the marriage registered under this Act. That is one of the most important provisions that have been accepted and I hope the Law Minister and the Government will see that the provision embodied in clause 15(e) is not torpedoed in any way. If that is done the whole Act will"become meaningless.

MR. DEPUTY CHAIRMAN: But how can it be torpedoed? It is for the parties to take advantage of it.

SHRI P. SUNDARAYYA: I am not speaking from that point of view. I am speaking in an entirely different context which you, Sir, know quite well. I do not want to refer directly •where the possibility might be.

The second biggest advantage is thet the Indian Succession Act will apply to all marriages registered under this Act. That is a very progressive thing. The third is the right to claim divorce, the only limitation being that before three years it cannot be claimed. Sir, this three years' period, some people may think, can be much more liberalised. You will see, Sir, that this is one of the main progressive things in the Bill. But I would request the Law Minister and through him the Government to see that these provisions are not watered down any more In spite of its good features, I am sorry that it has equally had two or three very great drawbacks. Instead of sticking to the marriage to be performed at the age of 18, it was a wrong thing that we had increased it to 21.

DR. SHRIMATI SEETA PARMANAND : Question.

SHRI P. SUNDARAYYA: You may question it; it is a different thing. But when you have increased the age from 18 to 21, it means this. It does not mean that you have taken away the right of the young couple to marry; but you have taken away that right frem the parents to register their marriages. Even if the parents are in sympathy and they want to get the marriage of their son registered in cases where he is more than 18 and less than 21, it is not permissible now. Actually what we have done is taking away the right of their parents to see that their children are married happily; and by doing this, we have restricted the scope of the measure and have restricted so many people from taking advantage of it and directly registering under it. This is one of the many drawbacks which this House has unfortunately adopted. I would like to warn the enthusiasts of the age of 21. The occasion will not be far off when they will have to stick to their so-called progressiveness. They have argued on the basis of eugenics, en the basis of property and so on. They are very soon going to have the Hindu Marriage and Divorce Bill for discussion where the hon. the Law Minister

has provided that of the parties to the marriage the bridegroom should have completed the age of 18 years and the bride the age of fifteen years at the time of the marriage.

DR. SHRIMATI SEETA PARMANAND: These two circumstances are different.

SHRI P. SUNDARAYYA: I want the enthusiasts of 'age 21' to keep in mind this fact that when that Bill comes up for discussion, they should try to increase the age first to 16 and then at least to 18. Then I can appreciate the progressiveness that has motivated the champions of 'age 21'.

Then, the second thing that has not been accepted is the degree of prohibited relationship. In defining the degree of prohibited relationship it has not taken note of the usage, custom or law that recognises the various marriages throughout the country. In spite of the large number of Members who have spoken opposing it, i* has been adopted, and in spite of that, the definition has not been modified in such a way that the Special Marriage Act would have been taken advantage of by people from practically every corner of India, by persons belonging to every community, caste or religion. This is one of the serious defects that though they have not allowed it they have yielded to it in a roundabout, subterfuge way. It would not have mattered much if they had directly accepted it. This is not very healths, nor is it very good. Even in the civil code, the only way you can define it is to accept the marriage which you are not going to prohibit and allow it to be solemnized under this Act. This is a serious drawback.

The third drawback that I want to poitit out is this. It is comparatively a minor matter. If after all this process of reconciliation, one is not able to get oneself reconciled and, to get divorce, has to wait for another year, this may as well prevent the young people from remarrying.

All the same, in spite of the three drawbacks that I have pointed out, the Bill has emerged in a much better fashion than it was when originally introduced. It was definitely a step forward towards a national civil code; and, if only these three defects had been removed and especially the firs: two defects—then, I think, the law would have been acclaimed as a Civil Marriage Act. Beyond this, I cannot envisage what a new Civil Marriage Act can be. Under the civil code I do not imagine that everybody would certainly have come and registered their marriages. This is really an advance on all previous enactments on the subject.

I would like, in this connection, **Sir,** to say one thing. This is the only occasion where free voting was allowed to all Members and it is gratifying to note that Government did not issue a whip to their party members.

SHRI P. T. LEUVA: Your party not give freedom of vote?

SHRI P. SUNDARAYYA: We of the Communist Party also voted together.

SHRI P. T. LEUVA: Because every one of us is convinced about it.

SHRI P. SUNDARAYYA: Yes, yes.

MR. DEPUTY CHAIRMAN: Go on, let us finish at least at eight o'clock.

SHRI P. SUNDARAYYA: It is indeed gratifying that what has been feared outside this House has not really been borne by actual realities. There has been a campaign in the press that there is going to be a lot of opposition to the progressive marriage laws.

MR. DEPUTY CHAIRMAN: You may take other occasions for saying these things.

SHRI P. SUNDARAYYA: Do not get impatient, Sir. Members belonging to all parties have come forward to state their points of view

[Shri P. Sundarayya.] freely and were anxious to improve the Bill. The discussions have clearly shown that there were more Members on the progressive side than on the reactionary side. In the general discussions on this Bill, it was made very, very clear that we are all anxious that this Bill should become more and more progressive and approach the ideals of a civil code. This itself is an important pointer. I would like the Govern-to take a lesson from this. I hope that the Government would take confidence and courage from these discussions on the Bill and come forward with other progressive social legislations. I would like them to keep this in mind with regard to the Hindu Marriage Bill and the Hindu Succession Act.

DR. SHRIMATI SEETA PARMANAND: Sir, I would like to associate myself with the remarks made by the hon. Member from Madras, Mr. Subbarayan, in congratulating the Law Minister on having patiently borne with a lengthy list of amendments. But I would have liked him, Sir, to accommodate us a little more on some of the amendments. I particularly mention the amendment regarding medical certificate. And I hope, Sir, in the other House this lacuna—which is in my opinion a lacuna—will be rectified because lack of a medical certificate is later on going to mean harassment to women, as will be found out in the cases that will come up for divorce or judicial separation.

Sir, I would also like to thank the Law Minister as leader of the Party in this House for having given us the latitude to vote freely. That has i! very satisfying.

And finally, Sir, on this occasion I would naturally make a reference to my observation that the introduction of this Bill was like putting the cart before the horse, which he was not very pleased to hear. I would really plead quest him to introduce the S in Bill as soon as possi- use before this Bill finally passes from the other House, if the Succession Bill is before the Mem bers, i I when finally passing this Bill.

SHRI J. S. BISHT: Mr. Deputy Chairman, I congratulate the Law Minister on the manner in which he d this Bill. For more than we have been working .....

SHRI KISHEN CHAND: Is it right to thank the Ministers for the piloting and passing of Bills?

MR. DEPUTY CHAIRMAN: Order, There is no point at all.

SHRI J. S. BISHT: We have been working here for more than two years in this new Parliament, and it neon our first experience that all of us have been allowed free voting. And I am sure that the Law Minister him did not make a bad job of it.

There is only one point about the age limit. I was one of those who tabled these motions and I feel very ly about it. I think the re marks made by Mr. Sundarayya should no lowed to go un- challenged. He does not realise that we feel very strongly that these intercommunal marriages should not be allowed. They are against the of nature. *(Inter-In* nature a crow cohab·1s with a crow and a pigeon with a It is only in microco .m, the universe of man, that there is this confusion worse confounded, this attempt to mix and adu" the blood of different races and 5 of men. We do not like this. And that is why the Act of 1372 strictly prohibited such marriages. But today we have relaxed these ' we are agreeable to these marriages only on ths condition

that these young boys and girls, who are moving about freely outside the in colleges and universities, make a decision on their own. And secondly, it is wrong to drag in -its in this matter. Imagine the its who are orthodox. The boy mt to the university. The mother die father who have brought up their child from his birth are very anxious to marry him in their own '.unity. But he goes out and ■ies an Anglo-Indian girl or a Japanese girl. Now, you want that he should go and take the consent of his parents. This puts them in a very awkward and embarrassing position, whether they should Conor they should not consent. You are putting them between the devil and the deep sea. It is very unfair, it is wrong, and it should not be done. That is why there is a iat difference between the Hindu and this law. This is going outside the limits of one's community. Why should we drag in the parents? We want those boys and girls to take that responsibility *on* their oivn alders whether for good or for ill. If the consequences are bad, they must face them. There should be no further complications.

Then, Sir, there is only one clause it which I am unhappy, and I doubt whether it will go through. That was sub-clause (j) of clause 26 which was agreed to this morning, according to which a divorce is allowed now by mutual consent. That is not allowed under any lav/ whether it is the American law, the English law, the French lav/ or the German law. This has- been done for the first time and it has reduced the whole thing to a farce. They marry today and six months or ten months later they go to the court and just get a divorce. My friend, Mr. Sundarayya, was very anxious to emphasise again and again the sanctity of family life. This violates the sanctity of family life. And then there are children. aH the family ;s the unit of the State itself. Its sanctity and its stability must be preserved. If there are certain hard cases, we should not allow those hard cases to make bad law. I thought that the original clause, clause 26, was quite right. However, that is the decision of the Council.

And then, Sir, with regard to .....

MR. DEPUTY CHAIRMAN: The lion. Member cannot go on reviewing all the clauses that have already ! dealt with.

i RAJAGOPAL NAIDU: Mr. Deputy Chairman, probably I am the last person *to* speak on this Bill.

MR. DEPUTY CHAIRMAN: There is one more—a lady Member.

SHTSI RAJAGOPAL NAIDU: Sir,] will be failing in my duty if I do not congratulate the hon. the Law Minister on the manner in which he has conducted the proceedings of this House on this Bill. Sir, much time has been spent by this House on this Bill, and I have got a suspicion that this House will have an opportunity once again to discuss it, though not in its individual capacity, at least in a joint sitting. As we have all seen, several clauses have been decided upon by a very narrow majority of And I am afraid that, when this Bill goes to the other House, in clauses which we have decided upon in one way will be decided the other way there. Then the only other course would be to have a joint sitting of both the Houses and then pass each clause by majority. Sir, 1 feel, and I am cure it is going to happen, that we have a joint sitting, and in such a joint sitting this Bill is going to be passed.

Sir, this Bill had been introduced in a halting way. And there are two clauses in this Bill which, I on the floor of this House, are the most progressive, the like of

[Shri Rajagopal Naidu.] which we do not see in any Constitution in the world. I am talking of democratic Constitution's of the world. The age limit has been raised from 18 years to 21 years. I tried to go through several enactments—of course after the amendment was made—and I found that in no law of any democratic country was there a provision for 21 years' age. We find that everywhere it is 13 years. Sir, I too am, no doubt, one of those who, have voted for it. But if only I had seen all the books on that point, I would not have voted at all.

Secondly, Sir, the other clause which is most revolutionary and which is most progressive is the clause about divorce by mutual consent, the like of which we do not find anywhere even in the American law. I do not find in any democratic country a divorce by mutual consent.

Thirdly, Sir, I feel—and I feel very strongly—that we have failed in giving a religion to the offspring. Sir, I hope the other House would at least be able to see that the child is given some religion. Let the child follow the religion of the father or of the mother, or let the parents come to an agreement, before the child is born, as to whether the religion of the child would be the religion of the father or the religion of the mother. We have failed in our duty to give the child a religion, and I am sure this point will be taken up in the other House and the child will be given some religion. With these few words, Sir, I resume my seat.

8 P.M.

SHRIMATI PARVATHI KRISHNAN: Sir, I had hoped, when you mentioned my name as the last speaker, that I would have the privilege, apart from the hon. the Law Minister*, of being the woman having her usual last word but apparently that is not to be. I associate myself with all those who welcome this Bill with, of course, my reservations. I welcome it because I feel that it is a definite step forward from the previous measure of 1872. It is also a step, although a very halting step, towards a national civil code. I say it is halting because as a result of the prejudices preying on the minds of our elder statesmen, because of the prejudices of the North unfortunately pitted against the South—and certain customs and usages of the South have been decried here—there are many hindrances, many obstacles towards its becoming a national civil code, because, as we have been told, again and again, it is only a permissive measure and not a compulsory Act. Marriage under this Act can be performed, and there is clause 15 which does of course give some measure of relief to those of us coming from the South. It is amazing that one hon. Member, in getting up and associating himself with this Bill, in welcoming this Bill and in throwing bouquets to the hon. the Law Minister, should at the same time shed tears, perhaps not crocodile but very real tears, at the dangers of inter-community marriages. If I may say so, he might have been more honest and opposed this Bill *in toto.*

Even more amazing is his statement that of course there is the provision that only those who have reached the age, the mature age of 21, can take advantage of this Bill. I would like to ask him in all humility, 'Does the bloodstream change between the ages of 18 and 21, so that the bloodstreams of ' different communities and of different provinces, suddenly by some amazing transformation become one and the same, so that it is safe at the age 21 and totally unsafe at the age of 18?' I really fail to follow the logic of that statement. I regret that the age is 21. I am one of those who voted for 18 for the reason that I

feel that when we have a progressive measure coming into being, it should be such that, while it tries to take the youth forward, it must at the same time take into account the existing conditions. They must not be forgotten. Today, in our country it is very common for people to get married at a young age. In many countries of the world there is no such limit as 21, and it is indeed a great pity that this amendment was carried and the age of 21 is the age when one can marry under this Act, because I feel that by saying so, we are really holding back the progress of our country; we are holding back the possibility of the youth of our country belonging to one province marrying into another province, the youth of one community marrying into another community. Dr. Subbarayan mentioned that he hoped that this would be the first step towards a really united India, a united India, that would take a leading place in the comity of nations. If we are to hasten that leadership, then indeed this one clause will really hold us back for a long time, because you are not taking into consideration the existing conditions in the country; you are not taking into consideration the existing sentiments amongst our people.

I would like to refer to one other point, and that is the question of divorce, because there have been, during the discussion, many people who have tried to defeat the purpose of this measure as providing the first step towards a civil code. Bearing in mind the idea and the principle and the philosophy that marriage should be a free association of two individuals, free from all inhibitions and free from any compulsion on the part of society or on the part of one individual or another forcing the others to live together, the right of divorce, as I see it, is not a right that should in any way be hindered. It should be so free, it should be so complete, that it will create the basis

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for a democratic people's society, only bringing such pressure or advice to bear upon individuals so that we can induce them to live together. So long as they are not forced to do it, there is always a chance to bring them together and to effect reconciliation. With these few words, stressing once again that this Special Marriage Bill, giving as it does equality in marriage, equality in succession, divorce by mutual consent and, last but not least, legitimacy to the children who are born in our country regardless of whatever mistakes their parents had committed knowingly or unknowingly, giving these four rights in however halting a manner, in however restricted a manner, I also lend my support to this Bill.

SHRI K. B. LALL: It is already too late, and I want to cut short my speech. I want only to submit that of all the benefits this measure confers, the most beautiful thing is that we have been saved from marrying our great-great-grand-mother or great-great-grand-father. But for the fact that many of my friends have missed this point, I would not have stood up to speak on this Bill at this stage. Besides, I want to make it clear that I have been misunderstood by my lady friends here. I would say that I do not lag behind them so far as liberalism is concerned. I am very, very liberal so far as inter-communal marriages are concerned, even so far as marriages outside of our country are concerned, but I believe in retaining the most essential factors of our nation so that we may feel like ourselves. The one thing that I perceived during the course of the debate was that most of our Members were very impatient to show that they had thoroughly copied and even gone beyond what the people in other countries might be doing. Evidently our friends are disappointed at these restrictions like marrying the great-great-grandmother or great-great-grand-father,

[Shri K. B. Lall.] because evidently what they want is unbridled licence so far as marriages are concerned. It is perhaps not to their taste that such prohibitions should be imposed.

So with this exception only, I think perhaps they may also reconcile to such restrictions that have been imposed under this Bill and as it will not so much affect them also, they may reconcile to such restrictions later on. In the end, I thank once again the hon. the Law Minister.

SHRI C. C. BISWAS: My first words must be words of thanks to the last speaker. I will only hope that it is not merely the great-grand-mother from whom I have saved him. I have also kept the door open for the .great-great-grand-daughter.

Sir, I am very grateful to those of my hon. friends who have given me compliments. I deserve none. I have done my duty. There were certain Members, specially lady Members— I am sorry to miss my friend Mrs. Seeta Parmanand—who were always complaining that I was the arch devil who was holding back all progressive legislation from being brought before the House. I repudiated that charge more than once, and I repudiate it again. It is not my fault that' the Bill could not come earlier. I had introduced the Bill about two years ago and hon. Members ought to be aware what prevented the Bill being brought forward for consideration and ultimate passing till only recently. It had to be circulated. It was not just a mere amendment of the Act of 1872 in respect of one or two matters. It represented a fundamental change. That is what I had emphasised in my very first speech on this Bill, and the discussions which have taken place here for the last seven days were ample testimony to that fact—that the appreciation which I had made on that occasion regarding the nature and character of the Bill was correct. I was anxious to introduce a measure which would be regarded in the country as a progressive measure paving the way for what you find in article 44 of the Constitution—a uniform Civil Code—but we cannot accomplish things overnight. It takes time. As I said when I made my first remarks in connection with the Bill, I do feel proud of the fact that I had some small share in shaping this Bill which, on all counts, is accepted as a piece of progressive legislation although it does not satisfy all of my friends, some of whom would like to go still further. I say 'hasten slowly'. Possibly much sooner than those, who are considered to be conservative today, think, we will have to amend the Bill. As a matter of fact India is advancing and she will go on advancing if only her people realise their own responsibilities. As a matter of fact, whether India makes further progress at a rapid pace or not, will depend upon Indians themselves. They have the opportunity. Therefore when we say that responsibility should be thrown upon our boys and girls, we assume that they will behave like persons with a sense of responsibility. Let us see how the Bill actually works, whether or not our boys and girls in coming together and availing themselves of the provisions of this measure behave in a proper way. Let it not be said that advantage is being taken only for the purpose of —what shall I say? I don't wish to use any strong words only for the purpose of—encouraging habits of licentiousness, unbridled lack of self-control and all that. Let our young men and women act with a due sense of responsibility, let them realize that the future of the country lies in their hands, that India expects that they will bring into existence a generation which will be worthy of free India. We are giving free choice to our young men and women to marry in order that they may produce children who will uphold the cause of liberty who would

.uphold the cause of India, and if that .consummation has got to be achieved, wery much will depend upon the way in which they act under the provisions of this measure. This measure is designed for their benefit, for the benefit of those in whose hands lies the destiny of the country. .In their hands lies the future of .India. Let them shape themselves in the way which the framers of the Bill have in view. The Bill may not have gone far enough—as far .as many of us would wish it to go. Still it is a measure much in advance .of the times, and let us see if this ..succeeds. If the experiment which .is going to be tried on a large scale notwithstanding the restrictions, if that experiment succeeds, I have not the faintest doubt that the whole ■country will then clamour for a Bill which will make such a measure not an optional measure but a compulsory measure for all. Sir, I look forward to that day. I may not live to see that day, but that is the day I ■visualise, and I hope, Sir, that this Bill will pave the way for the early dawn of that day.

MR. DEPUTY CHAIRMAN: The ■^question is:

"That the Bill, as amended, be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN: There are some Messages from the House of the People. The Secretary will read them.

MESSAGES FROM THE HOUSE OF THE PEOPLE

I. THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1954.

31. THE HIMACHAL PRADESH AND BILAS-PUR (NEW STATE) BILL, 1954.

III. THE SHILLONG (RIFLE RANGE AND UMLONG) CANTONMENTS ASSIMILATION OF LAWS BILL, 1954.

SECRETARY: Sir, I have to report to the Council the following messages received from the House of the People, signed by the Secretary to the House:

I

"I am directed to inform the Council of States that the annexed motion in regard to the Code of Criminal Procedure (Amendment) Bill, 1954, has been passed in the House of the People, at its sitting held on Saturday, the 8th May, 1954 and to request that the concurrence of the Council of States in the said motion and further that the names of the members of the Council of States to be appointed to the Joint Committee be communicated to this House.

MOTION

"That the Bill further to amend the Code of Criminal Procedure, 1898, be referred to a Joint Committee of the Houses consisting of 49 members, 33 members from this House, namely: —

1. Shri Narahar Vishnu Gadgil.
2. Shri Ganesh Sadashiv Altekar
3. Shri Joachim Alva
4. Shri Lokenath Mishra
5. Shri Radha Charan Sharma
6. Shri Shankargauda Veerana-gauda Patil.
7. Shri Tek Chand
8. Shri Nemi Chandra Kasliwal
9. Shri K. Periaswami Gounder
10. Shri C. R. Basappa
11. Shri Jhulan Sinha
12. Shri Ahmed Mohiuddin
13. Shri Kailash Pati Sinha
14. Shri C. P. Matthen

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