

## GRAIN BANK FOR SURPLUS FOODGRAINS

290. SHRI GOVINDA REDDY: Will the Minister for FOOD and AGRICULTURE be pleased to state:

(a) whether Government propose to create a grain bank for surplus food grains; and

(b) if so, what steps have been taken in that direction?

THE MINISTER FOR FOOD AND AGRICULTURE (SHRI RAFI AHMAD KIDWAI): (a) and (b). The Government of India actually held a large reserve of food grains in the last two years and have now decided to take steps to maintain a reserve stock consisting of wheat and rice to the extent of 15 lakh tons. Steps have already been taken by Government to construct some godowns for storage of the reserve at suitable places and further action on the scheme is in progress.

## PAPERS LAID ON THE TABLE.

## BUDGET ESTIMATES OF THE EMPLOYEES' STATE INSURANCE CORPORATION

THE DEPUTY MINISTER FOR LABOUR (SHRI ABID ALI): Madam, I beg to lay on the Table a copy of the Revised Budget Estimates for the year 1953-54 and Budget Estimates for the year 1954-55 of the Employees' State Insurance Corporation. rpUw I«.1,O»M»«3, &-««««- fS.o

## THE HINDU MARRIAGE AND DIVORCE BILL, 1952—continued.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): Now, we come back to the discussion on the Hindu Marriage and Divorce Bill. There are quite a number of speakers today. We have a time limit up to 3 P.M. in which the Minister also will have to reply. So, I shall request Members strictly to reserve their remarks on fresh points and not indulge in repetition.

SHRI H. P. SAKSENA (Uttar Pradesh): One point, Madam. If it is thought proper by the Government to confine this discussion on the Hindu Marriage and Divorce Bill to lady Members alone, we, men, may retire from the House for the time being.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): The lady Members have finished. It is for the men now to finish.

SHRI K. B. LALL (Bihar): Will you go by the names given to you or will you leave the Members to catch your eye?

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): I have got a few names given to me.

SHRI K. B. LALL: Then my name also may please be taken.

SHRI H. D. RAJAH (Madras): Madam Vice-Chairman, I shall resume my speech on this Bill just now. The Directive Principles of State Policy are clear with regard to this Bill—Article 37 says:

"The provisions contained in this Part shall not be enforceable by any court, but the principles there in laid down are nevertheless fundamental....."

—mark the word "fundamental" here—

".....in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

I will take the House next to the provisions of article 44, which says:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Now, reading these two articles of the Constitution together, you will find that this Bill is unconstitutional and improper.

[Shri H. D. Rajah.],

First of all, what does this Bill aim at? It aims- at discrimination in this way that, when this Bill passes into law and when I desire to have another wife, I become automatically a criminal whereas my hon. friend, Mr. Abid Ali, with four wives may be still a respectable citizen of this country and will continue to be a Deputy Minister of the State. If this is not discrimination, I do not know what will be the other word which will be used about it. The Bill is not only unconstitutional and improper, but it creates a new class of people in this country. If this Bill is passed, the Hindus who are the dominant elements of the population, these communal beings, will have the law for themselves; they will have only one wife for themselves, or only one husband for themselves. When they are in a situation like this, what does it mean? It means that they are following in the footsteps of Hitler. They are going to be the Aryans, and the rest of the population—my poor Muslim brothers and sisters—will become an inferior race in this country. When this Bill is passed into law and covers only one community, that particular community will be in a superior position economically, and the poor Muslims, with four wives to each man and with twenty children, will grow numerically so fast that in the course of another ten years this country will be 30 per cent. Hindus and 70 per cent. Muslims. Look at the economic aspect of that question. They will become either rabid communalists—the counterpart of the Hindus who have brought forward this Bill in this House—or they will become victims of communism. I can understand why the Communist Party is so anxious to sponsor this Bill and support it.

SHRI P. SUNDARAYYA (Andhra):  
•On a point of order, Madam.....

SHRI H. D. RAJAH: There is no point of order here. Let him hear me first.

SHRI P. SUNDARAYYA: I can certainly raise a point of order. When a point of order is raised, any hon. Member who speaks must give way. What the hon. Member has said is completely irrelevant to the Bill.

SHRI H. D. RAJAH: This is not a point of order. This is a point of opinion.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): Let Mr. Rajah continue.

SHRI H. D. RAJAH: The position in respect of population in this country may be reviewed.

DR. SHRIMATI SEETA PARMA-NAND (Madhya Pradesh): Is he in order in making these remarks now? They may be in order if the motion is for circulation, but not now.

SHRI H. D. RAJAH: Under the setup of this Bill, I cannot have one more wife, while my Muslim friends can have and can still be respectable citizens. This discrimination is totally repugnant to the Constitution, is uncalled for, and must be vehemently opposed.

The second important matter is this: What will happen, assuming that this Bill is passed? Our population is 400 millions, of whom 80 millions are Muslims and 320 millions are Hindus. Out of them, even if you assume that the proportion of man to woman is fair, there will still be some surplus left on the side of women—What will happen to them? They become husbandless. They are thrown, on the mercies of others. The alternatives given to them by this Bill are to become either prostitutes or join the other faith. That is the position to which they are now reduced. If you make them embrace the other faith, then you become active agents of the other faith. I want to ask my Hindu friends in this House in all seriousness: "Why are you so selfish in your outlook? Why do you want this privilege and economic perquisite

to yourselves alone? Why don't you extend the same privilege to the Muslims also?"

DR. SHRIMATI SEETA PARMA-NAND: Charity begins at home.

SHRI H. D. RAJAH: Just think of the feelings of a Muslim sister against whose wishes her husband brings in another wife into the house. What will be the feelings of that lady? What are your feelings about it—you who talk so much about yourselves? Cultivate a sense of equality. Be kind. Be generous.

(Dr. Shrimati Seeta Parmanand rose to interrupt.)

SHRI H. D. RAJAH: I do not want any interruption. I request you, Madam, and the other hon. Members here to consider the question in such a way that it gives complete equality of rights and equality of benefits and equality also on the economic front. Do not create an inferior race called Muslims, because they are being governed by the Shariat law. And do not create a superior race of Aryans. After all, the problem of population is vitally connected with the problem of marriage and divorce. In England, for example, how did they tackle this problem? An hon. Member here quoted Bernard Shaw, but he misquoted him. When Bernard Shaw saw that in that country every man was having 1½ wives and every woman was having 1½ of a husband, what was the solution he gave? He suggested that the ladies must have the right to bear children without husbands being foisted on them. What a magnanimous suggestion he made! How did it work? During the period of the last ten years 1,85,000 babies were produced by such unmarried English women.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): Please come back to the Bill.

SHRI H. D. RAJAH: They were taken to America by the American

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Government. It was the problem of children. Do you expect a new situation to arise in this country whereby you will force a certain proportion of the Hindu population to the other faith? I want you seriously to ponder over this matter. Instead of having one uniform code for every citizen of this country, you are doing a gross injustice to one community as against another.

Now, Madam, I have said something about the constitutional impropriety of this Bill, I will go one step further. I am not going to enter into any details. I only want to touch upon the provision contained in clause 18. This clause 18 is a wonderful clause—punishment of bigamy. "Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly." How wonderful and how incongruous! This clause refers to any marriage "between two Hindus solemnized" Therefore, I suppose that if the spouse is a Hindu and the man marrying is a Hindu, now in that condition when there is already a marriage, if he takes to another Hindu woman, he is punishable under that section. He becomes a criminal. But then what happens? If that Hindu takes to a Muslim woman, if that Hindu takes to a Christian woman, what happens?

SHRI C. G. K. REDDY (Mysore): It is not a marriage at all.

SHRI H. D. RAJAH: What happens? He solemnizes the marriage under a certain procedure and he is doing certain things under certain other provisions of the religion and you condone him. I ask: how far can this kind of disparity go on? Madam, New Zealand is a beautiful and small country. It is practising secularism. In that country there are Catholics and Protestants belonging to the Christian faith. There are Jews,

[Shri H. D. Rajah.] there are Hindus, there are Muslims but the law which applies to the citizens of that country with regard to matrimony is a uniform law. That law applies to Hindus, to Christians, to Jews, and to the Muslims. It makes no distinction. When they solemnise their marriages according to the precepts of their religion, they have first of all to get themselves registered as husband and wife and that law provides them the right for divorce. In that case, I can understand it as it applies uniformly to everybody .....

(Time bell rings.)

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA) : Three minutes more.

SHRI H. D. RAJAH: On a Bill there is no time-limit.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA) : There are so many others also who have to speak.

SHRI H. D. RAJAH: So I shall not take much time and will not repeat the argument that has been already given. So this section is like that. Now I come to the other provision where these people recognize marriage of the Hindus on a Saptapadi basis. What is this Saptapadi basis? If in the marriage seven foot-steps are made round the *Agni*, the marriage is supposed to be complete? Now, there is a serious war raging in the South about marriages that have been solemnized without the *Saptapadi*. There is a strong movement in the South called the 'self-respect movement'. They have disowned this Brahmanical order. They do not invite *pandits* or *purohits* for solemnizing their marriages. They collect their friends, sit and declare: "This gentleman is married to that lady", and they don't even exchange garlands. They simply proclaim in the presence of people that that marriage is solemnized. Madam, if that marriage is accepted in society in the South as a marriage, how is he going to tackle it? The High Court of

Madras declared under the present law that those marriages are not properly solemnized. A hue and cry was raised. The Government of Madras have decided to bring in a Bill to legalise them, making these marriages legal, by simply making a declaration by the people who were present at that marriage by coming before an authority and signing a document that this marriage took place there. That is what is sought to be done there.....

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA) : Your three minutes are over.

SHRI H. D. RAJAH: Of course, there are various other details which are the subject matter of the Select Committee. I will only say this. The net result of this law is going to be that the majority of our womenfolk who are attached to their homes and their hearth will remain unsophisticated and unspoilt in spite of this provocation. Certainly, sophisticated and lip-sticked women, who have quarrels with their husbands and who want a change, will resort to divorce courts and will endeavour to pinch other women's husbands. There will be *i. grand* struggle between powder and pomp on one side, and on the other, love, home, and family integrity. Anyway, the masses will be totally unconcerned about these struggles, and in order to benefit a few, the whole country is being thrown into a whirl-pool of confusion. Temptations are offered to both the sexes to create a domestic break-up and this law which is communal is wholly unwanted and unwelcome. You are showing up this country and for this act of treachery, posterity will never forgive you. Withdraw this Bill and bring a uniform Civil Code and we will all whole-heartedly support you, and; see that your desired reform is accomplished.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA) : Shri Bisht.

SHRI J. S. BISHT (Uttar Pradesh): I don't propose to speak now.

MAJ.-GENERAL S. S. SOKHEY (Nominated): Madam Vice-Chairman, my friend, Mr. Rajah, had a good case but I think he has not done justice to it. We have heard a number of speeches, and a good case has been made out that our present practices and customs regarding marriage do not permit of a culture existence, and they stand in need of change. The need for change is admitted on all hands but what is the answer of the Government to it? It is the proposed Hindu Marriage Code. I would like to draw the attention of my friend, the hon. the Law Minister, to the fact that this is a secular State and we are talking today in 1954. If we understand the implications of being a secular State, of living in a modern world, I think my hon. friend would begin to look at the thing in a different manner. This attempt of making Hindu Marriage law is essentially a wrong way of looking at the problem for the simple reason that in any country whatsoever, where a large number of people live in the same tract regardless of their religions, the cultural and social practices tend to be the same. Thus, if there is anything wrong with the Hindu Marriage practices, it is likely to be so with the practices of the Christians as well as of the Muslims. I am personally satisfied that it is so, and there is need for improvement. Therefore, the State should bring out a civil code for marriage which shall apply equally to all the people.

The present attempt is wrong for two reasons. One is that so far as the present Cabinet is concerned, there is none in it who can claim to be a Hindu law giver. I do not think anybody has a right to assume that position.

DR. SHRIMATI SEETA PARMA-NAND: Why not?

MAJ.-GENERAL S. S. SOKHEY: For the simple reason that none of the Members of the Cabinet has any right to make such a claim—I should certainly think that the hon. Pandit Jawaharlal Nehru would disown any

such claim and I do not think the hon. Law Minister has any such right or any other Member of the Cabinet.

Secondly, as members of our government they have every right, and not only right but duty, to the country, to provide not only social guidance, but social conditions for better living for the people. Marriage is a very important institution. It is important from the point of view of the well-being of the two individuals concerned but equally so for the children born. The future of children, and that of society itself depends on the relationship. Therefore, Government, in considering a marriage law, should deal with not the prejudices of the people, but should try to make it an instrument to make life, more cultured and more contented and through it provide for the future citizens of this country—the children. The only thing that can serve such a purpose would be a well thought out Civil Law.

My hon. friend, Shri Rajah, has indicated that perhaps the proposed Hindu Marriage Bill is against the Constitution, that the Constitution does not permit separate laws to be passed for different groups of citizens. I would express no opinion, but this matter is of vital importance and commonsense dictates that this sort of law for individual communities is against the spirit of the Constitution, even if it may not be against the letter of the Constitution. I personally do not know of any secular government anywhere in the world which undertakes to pass religious laws, whether they be in connection with marriage or with any other activity. It is perfectly true that our British rulers did arrogate to themselves the right to pass religious laws. They passed Hindu Marriage laws, Muslim laws and God knows what not. But they also undertook to assert that we were not fit people to rule ourselves, that they were superior people and they were in a position to and they arrogated the right to interfere with every part of our lives. These same rulers of India, who passed laws

[Maj.-General S. S. Sokhey.] relating to Hindu marriages or Muslim marriages never passed any such law regarding Christian marriages in this country or in their own country.

I would ask the hon. Minister for Law to remember that the British left this country several years back and that he is not one of their functionaries. He is now the leader of the Indian people and the Indian people demand that the Government should take the lead in building up a cultured and civilized society. And towards that end, they must make a contribution by bringing in a common simple law for marriage. Such a law would have only about three or four clauses, covering half a page. It would refer to marriage itself, dissolution of marriage and the welfare of children should be such that the people could understand it easily and live up to it. They will enter into marriage as a contribution to their own happiness and that of society. The contingency of dissolution of marriage has got to be provided for because some people might find after entering into a state of marriage that they cannot live together. It has got to be understood that people living in those conditions are not only miserable, but they become mentally and otherwise inefficient and they become less useful citizens and members of society. Therefore, the law should provide for that and we should have simple rules for the dissolution of the marriage. And what is more, they should provide adequate safeguards about the future of the children. Whatever else is done, the future of the children should be properly attended to and safeguarded.

I would suggest to the hon. Minister to withdraw this Bill and within ten days bring in a proper civil measure. I can help him. We can sit down in the lobby and in half-an-hour, draw up a first-class marriage law. I would urge him to withdraw this Hindu Marriage Bill which

covers as many as 20 pages. It will make life difficult for people and make good work for lawyers and this should be avoided. I say this for the simple reason that if there is a belief, if we consider that our people in certain respects are not living up to high standards, you cannot improve matters by making laws. The proper way to approach the problem would be to create the proper conditions, give the people better education, give them all facilities and reasonable means of improving their lives. Laws cannot take the place of social actions. Laws provide for the maximum amount of personal freedom without impinging on the liberty of other citizens. At the same time they clearly define citizens' duties. This would enable them collectively and effectively to contribute their best to the cultural and economic progress of the society in which they live. Looked at even from that angle this Marriage Bill should be reconsidered. It is punitive in character. I would request the hon. the Minister for Law to withdraw this Bill. It is too silly, it is too punitive, and it is uncalled for. The hon. the Law Minister is an independent citizen belonging to an independent country and he is degrading that independence by following the bad practices of the British. Let our government assume leadership, give a lead to the people to lead a better life. Towards that end, let us have a proper Marriage Bill, a Civil Code Bill, that will apply to all the citizens of India. And I would suggest to the hon. Members of this House that if the hon. Minister does not accept our suggestion, we should make a small delegation and wait on: the hon. the Prime Minister and tell him that laws are being enacted which are damaging our secular State, that they are creating a communal or irreligious State. This must be prevented. I am putting a sheet outside for all hon. Members who choose to go with me on a delegation to the hon. the Prime Minister.

THE VICE-CHAIRMAN (SHRIMATI: VIOLET ALVA): Mr. Tajamul Husain.

SHRI K. B. LALL: Madam, we on this side also stand up.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA) : You will also get your turn.

SHRI TAJAMUL HUSAIN (Bihar): Madam Vice-Chairman, as far as I am aware, every independent and civilised nation has one uniform common law for the whole of that country. Take the case of England, for instance. There they have one common law, one uniform Civil Code for the entire nation. There is no such thing as the Christian law for the Christians or Israelite law for the Jews and so on. There is one law of succession, one law of marriage and divorce, of inheritance, etc., etc. Unfortunately, Madam, we have been under foreign rulers for ages and ages, and the result has been that we do not see the advantages of one uniform code of law which would be applicable to the entire nation. We have not as yet, unfortunately, I say, realised—some of us, intelligent people, have realised it—that we are one nation, and that, therefore, it is a necessity that for our nation there should be one code applicable to every individual. We do not think of the country as a whole. We are so narrow-minded that we think of our group or community only. We are still, I am sorry to say, communally-minded.

In short, I will say that we cannot see beyond our nose. What we do generally is that we want to introduce religion in everything. I would submit, Madam, and every civilised person will agree with me, I hope, that religion and politics are two different things. My religion, for instance, is my own; I owe allegiance to my Creator, I am responsible to Him and to nobody else.

SHRI S. N. DWIVEDI (Orissa): Not even to the Congress Party?

SHRI TAJAMUL HUSAIN: Not even to the Congress Party, as far as my religion is concerned. As regards politics, I am governed by the man-

date of the Congress. But as regards my religion, I care for nobody anywhere in the world but for my Creator. My action and my words will be observed and recorded by my Creator who will reward or punish me as I obey or disregard His divine command. It is no concern of anybody else. Some hon. Members, I find, have opposed the Bill on religious grounds. One Muslim Member and some Hindu Members have opposed the Bill on religious grounds. I will remind the Muslim Members that the Muslims in this country are not being governed by the Muslim Law and *Shara* there is no such thing in India as Islamic Law and *Shara*. It is Anglo-Muhammadan law which was codified by the British under the British rule. Muslim Law and the *Shara* allow Muslims to buy and sell slaves. Muslim law has got its own code of evidence, laws of civil procedure, laws of criminal procedure, law of Tort and Contract, etc., etc., everything combined; but where are they now? The British abolished these Muslim laws but at that time there was no cry that Islam was in danger but when we people are governing our own country, there comes the cry of "Islam in danger". What is this? I cannot understand. I should have thought that when we govern our own country there should be no religious cry on these small matters. When a good Bill is brought by our own Government, there is a cry of Islam in danger.

With regard to my Hindu friends, the Hindu Members who have opposed this Bill, I will say the same thing. Where is *sati* now? The British abolished it. Why didn't they cry then as they are crying now that Hinduism is in danger because our Government has brought up this Bill? It is a great pity. This, our country, is, thank God, not a religious country or a communal country. Thank God, this is not Pakistan where everything is being governed by religion. Here, it is a secular State. We must not have separate laws for every community. We must have, I say, one common law for all. Our Constitution

[Shri Tajamul Husain.] has given us Directive Principles—I think in article 44—which direct us that we must have one uniform civil code, civil law, for the whole of India. There should be no Christian law for the Christians, Israelite law for the Jews, Hindu law for the Hindus and Muslim law for the Muslims. We are bound by the Constitution and that is the only thing that we respect. As regards politics, article 44 of the Constitution says that there should be one law and I am sure that our Government will make that one law. I appreciate the difficulty of the hon. the Law Minister now. I would have welcomed it if he had brought one code but I appreciate the difficulty. He cannot do it now; the difficulty is there. He has to deal with our laws piecemeal and I appreciate his position and I support the Bill. There are, however, one or two suggestions that I want to place before the House and I want those suggestions to go before the Members of the Select Committee. I will take only one or two minutes more.

Now I take up clause 5 which says that a marriage may be solemnized between any two Hindus if the following conditions are fulfilled, namely:—I am dealing with sub-clause (ii)—the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of marriage.

SHRI V K. DHAGE (Hyderabad): Sixteen.

SHRI TAJAMUL HUSAIN: I submit. Madam, that the age of 18 for a boy is too small. What is a boy of eighteen? A student in a school or college! Is it right for us to allow a boy of eighteen who is not an earning member to have a wife and children? He may be starving at that time and his parents will have to support him. I want a man to marry when he is independent, of mature age and judgment; and I do not think that before reaching the age of twenty-four or twenty-five a boy is fit enough, in every sense of the term, to have a wife. Therefore, I would suggest that

the age should be raised. I myself would suggest the age of twenty-five.

As regards the girl, the age specified is sixteen. Madam, we have our customs, both among the Hindus and Muslims—I do not know about the Christians in India—and it is a general custom in India to give our daughters away in marriage when they are very young, two or three years of age, and what has been the result? We have been weaklings as far as the foody is concerned. Especially, that might be one of the reasons why foreigners were ruling over us; for the future, I want our citizens, our nation, to be strong both mentally and physically. If you get a girl married at the age of fifteen, what would she produce? I ask you: what would she produce? Can she ever produce healthy children? Will our citizens in future be healthy if a girl of fifteen gives birth to a child? Therefore, I suggest that this age should be increased.

Then I come to sub-clause (vi) which says that where the bride has not completed the age of sixteen years, the consent of her guardian in marriage has to be obtained for the marriage. I do not want any guardian whether he be the father, grandfather or any one to give his daughter away in marriage. Marriage is for her; she has to choose her partner for life and it is no concern of the father to choose a husband for her.

AN HON. MEMBER: It is only to help her.

SHRI TAJAMUL HUSAIN: I am sure that our girls now do not require any help. I ask these hon. Members: Do their daughters require help from them? No. They are grown up. So, do not give them away in marriage when they are too young; when they attain majority, let them choose their own husbands. They do not require any help.

(Time bell rings.)

I have nearly finished. I know you gave me only ten minutes. I will finish before that.



THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): YOU have taken ten minutes. There are only two minutes more.

SHRI TAJAMUL HUSAIN: I will finish soon. There are only one or two small suggestions.

I now come to clause 8 which says that for the purpose of facilitating the proof of Hindu marriages, the State Government may make rules for registration. I do not like the word "may". I say that registration must be compulsory. I do not care, Madam, in which form the marriage takes place but registration must be compulsory. Let them marry in any form they like but they should go before the Government Registrar and register that marriage. That will facilitate matters and you will know whether bigamy has been committed or not. It is easy to find out if marriages are registered. And, the more important thing is that we must have registration of marriage. As regards marriage and religious ceremonies, let the parties do what they like. This is a matter between God and the parties concerned. The State should not interfere with it. Sub-clause (4) says that if there is no registration it will not be an invalid marriage. I submit that if there is no registration it should not be considered to be a legal marriage. That is my point.

I now come to clause 13. Here are the grounds for divorce, and one of the grounds is "that the husband is keeping a concubine or the wife has become the concubine of any other man or leads the life of a prostitute." This is absolutely redundant, I submit, because prostitution can never be -proved. What I submit is that if either person commits adultery that should be ground enough for divorce and nothing more. Here you have given more chances to men and not to women. You have given equality everywhere except in this clause. Therefore, I want that if either party has committed adultery, that should be a sufficient ground, if it is proved, for divorce.

Now I come to sub-clause (v) under clause 13 which says: "that either party has not been heard of as being alive for a space of seven years or more by those persons who would naturally have heard of it, had that party been alive." Now, that is one of the grounds for dissolution of the marriage or divorce. The period of seven years is a very, very long period. The husband may be a very cruel fellow and to avoid his wife he may be living purposely somewhere without anybody coming to know of his whereabouts and the poor girl—may be, a young girl also—is to wait for the husband seven years in the hope that he would come back and at the end of this period she may become middle-aged or old and may not be of the age to marry again. So the period should be lessened. This clause has been copied from the English law. Do not follow the English in everything. In respect of good points you may follow the English law, but this is a bad point. I think three years should be the maximum period and if the husband or the wife is absent and has not been heard of as being alive . during this whole period, the marriage should be treated as dissolved or the parties may apply for divorce and divorce should be given. You may marry or you may not marry again.

I have got many more points to say but as my time is up, I close.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA) : Mr. Mathur. I would urge the members to realise the time-limit .....

SHRI H. D. RAJAH: I strongly object to this procedure. There is nothing in the Constitution or in any of the rules of procedure to say that a time-limit should be imposed on speeches made in connection with these Bills. I want to have a ruling from you as to under what provisions of the Rules of this House you can impose a time-limit.

THE VICE-CHAIRMAN (SHRIMATI VntET ALVA): We decided yesterday.

SHRI H. D. RAJAH: Who has decided? This House has not decided.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): I would urge the Members to restrict their remarks to ten minutes in consideration of so many Members that are to follow, and also to eliminate repetition.

SHRI H. C. MATHUR (Rajasthan): That is true. I would particularly wish to stress this point that I would rather not like to speak on this Bill as a matter of course because I do not want to permit myself to be restricted in my speech and to permit any time-limit to be imposed.

THE VICE-CHAIRMAN (SHRIMATI VIOLET ALVA): If you have very many fresh points you can put them, but please avoid repetition.

SHRI H. C. MATHUR: I should like to give expression and full expression to my views, and even if they are a repetition, I wish that I associate myself with those views and I give expression to those views. It is therefore that I wish that if it is necessary, a closure might be moved, or if it is considered necessary, the time might be extended. I do not think it is a very healthy practice that, in the consideration particularly of such an important Bill, any time-limit should be imposed.

Madam Chairman, some lady Members of this House and a few others who feel like them have characterised this Bill as a charter of freedom and independence for the emancipation of the womenfolk of India who, according to them, have remained suppressed and dominated for quite a long time, and they feel that with the passage of this Bill everything will go well and we shall be very happy. If this Bill really provides an easy and a ready way for the happiness of the womenfolk, I would be the first to welcome it because I do feel that with the happiness of the women we will be happy. We will have happy homes and everything will be happy. But I think very casual and

confused thinking has been given not only to the principles of this Bill but also to the various provisions, which call for very serious thinking and consideration.

I will first examine this Bill from the aspect that it is being enacted for the Hindus and those who have been bracketed with the Hindus are the Jains, the Sikhs and the Buddhists. Will that concept apply? And, in approaching this problem from that view my angle of approach is definitely that of happiness for the society and that of proper relationship between man and woman, and my conception of relationship is that of mutual respect and that of indispensability of one for the other. I am not one who believes in equality of rights. I think we are proceeding from an absolutely false premise. I think the relationship is of a much higher order and the relationship is much more subtle. When talking of equality we can only talk of competition, rivalry and conflict, but when I talk of relationship between man and woman I talk of the relationship of mutual respect of absolute indispensability of one for the other.

DR. SHRIMATI SEETA PARMA-NAND: How do you have mutual respect without equality?

SHRI H. C. MATHUR: I shall not like to be dragged into this discussion. I see absolutely nothing equal whatsoever, nothing of equality between a woman and a man. Let any hon. Member, whether a lady or a gentleman, tell me what is that equality between a man and a woman.

DR. SHRIMATI SEETA PARMA-NAND: Equal citizenship rights.

SHRI H. C. MATHUR: If there is anything, there is a contrast. It is not a question of equality. Certainly, as I submitted, one is incomplete without the other. The happiness of one depends upon the happiness of another. Even the existence of one depends upon the existence of the other. That, as a matter of fact and according to the Hindu concept, is the

relationship between a man and a woman and certainly that concept is a much higher concept than the concept of equality which has caught the imagination of unthinking people. Madam, I for one have lived the Hindu concept of life and I can speak with pride and with all dignity for the Hindu concept. For whom have we got greater respect than for our mothers? For whom have we got greater affection than for our sisters and daughters? For whom have we greater love than for our wives? Will it not be the natural desire that every Member of this House and every right-thinking Hindu should want that his sisters and his daughters should lead the happiest of lives? But does this Bill contribute to the happiness of the Hindu society? It is only natural that people have talked of religion. People have talked of the sacramental character of marriage and people have talked of the *Vedas*. Anybody who is acquainted with the Hindu concept of life, anybody who has practised the Hindu concept of life, anybody who has read a little bit of the *Vedas* or has tried to understand them will know where the religion and where the *Vedas* come in. It is only gross ignorance or utter conservatism or sheer hypocrisy which "brings in these obstacles in the enactment of this Bill. I am definite and clear that the *Vedas* and the sacramental character of marriage and religion have absolutely nothing to do with this enactment.

TMR. CHAIRMAN in the Chair.] 2

P.M.

And it is only ignorance or conservatism or sheer hypocrisy which presents these unnecessary obstacles. If we do not just permit ourselves to be blinded by prejudice and if we show a little capacity for looking into them, it should be obvious to every one of us that the institution of marriage which regulates our social life is man-made. God never made it. It varies from section to section; it varies from place to place and it varies according to the circumstances in which we have been

living. If it were a God-made law, it should have been the same for every one of us. Even among the Hindus where is the law of marriage which God has made? Even among the Hindus this institution of marriage varies from place to place, from section to section and it varies so often and so radically that it would be absolutely ridiculous to suggest or to think that religion has anything to do with it or that religion stands in the way of an enactment. If we find that divorce is going to contribute to the happiness of the society, certainly there is nothing to stop us from having this institution of divorce. We must have it. I would go a little further and submit that polygamy, polyandry and monogamy are all good or bad according to the circumstances. For instance, if the male population were double that of the female population or if the female population were double that of the male population, none of us would think in terms of monogamy. It would be always in terms of polyandry or polygamy as the case may be. So I would submit that this is governed by the circumstances.

While I do not recognise this hurdle and obstacle of religion to come in the way of this legislation, I certainly do not agree with the line of argument which the hon. Prof. Ranga advanced when he derisively mentioned the Brahminical code on the floor of this House. I must point out that I entirely disagree with him and refuse to accept the claim of Prof. Ranga that the code prevailing among the rural population and the so-called aborigines is that of a higher order and that we shall be effecting an improvement and a reform by reverting to it. That is possibly only accounted for by his over-enthusiasm for the rural peoples' ways and means. I claim some little knowledge of the marriage customs and the ways in which marriages are consummated. I do not know if my hon. friend, Mr. Ranga, knows that among the Bhil tribes elopement is the usual custom. Every Bhil elopes with a girl and after a few days marries her.

[Shri H. C. Mathur.] I do not know whether he is suggesting that we should revert to those methods and that those methods are of a higher order.

I am not an apologist for the Brah-minical code of life or for all that it stands for but certainly so far as the concept of Hindu marriage is concerned, it is of a very much higher order because it requires a lot of self-control and self-discipline.

Lady Members, and all of us, Prof. Rariga included, referred to the glory and dignity of the *satis* of this great country. And when they referred to the *satis* of this great country, they referred to them with all the respect and reverence. But the law of *satis* is quite an antithesis of divorce. I do not see how we can reconcile the law of *satis* with the law of divorce; they are absolutely antithesis of each other. But I definitely think that we should be more realistic. What is the state of development of our society? We have got to codify our laws according to the real state of affairs that is obtaining in the country. Therefore, while I concede that it would be more realistic and it would be more correct and in that sense I will have certainly no objection to the right of divorce being granted, it is certainly not possible for me to concede that the law of divorce is a law of a higher order, that it is a law where values are in terms of self-discipline and self-control. To our mind a law of a higher order definitely connotes self-control and self-discipline. That is why I wish to submit this. Let us have a general rule for divorce. I do not object to it, as I have said. But I wonder why it is not possible to have an enabling provision in this very Bill whereby you can have a marriage according to your own concept of life. What is there to stop us from doing that? As I told the House, I am not very keen on that particular issue because I wish we should have laws which are of general application to the entire population. But in this matter we will have to take into consideration certain practical difficulties

with which we are likely to be faced and I wish to invite the attention of the hon. the Law Minister particularly to this. What is going to happen in those areas, say in the Bhil area, where by force of circumstances monogamy is not practicable? What is going to happen? I am sure nobody from Delhi is going to those Bhil areas and marry some of those Bhil girls. Similarly, if you were to go and study the conditions that are obtaining in Hima-chal Pradesh in the hilly tracts there, you will find that by enacting a law you cannot overnight change the traditions, you cannot change their conditions and you cannot change the proportion of population in that area. I would, therefore, definitely like the hon. the Law Minister to throw particular light on the point as to how the situation in these areas is going to be handled or tackled. Sir, when we enact a particular law, it should be the first concern of the State to see that it enacts a law which is acceptable and which it is at least in a position to enforce. The State can do no greater harm to itself than by enacting laws and giving them to the country which the State itself finds it impossible to enforce.

I would, therefore, like the hon. Minister in charge of the Bill to throw some light on this particular question and to tell us how the population in these particular areas will accept the principle. As a matter of fact, every Hindu, not only in profession but in practice, is accepting the principle. We are not talking of the abnormal people, the degenerates; but, how are you going to meet the situation in those areas and a few other areas if you are enacting a law for the entire country? We have to be acquainted with the situation that is obtaining in various parts of the country. There must, I think, be a provision in this Bill as to how we are going to tackle the situation in the particular areas I have just mentioned.

Again, Sir, this law of divorce obtains, as has been pointed out by

my hon. friend Mr. Kishen Chand, in foreign countries. There, in the foreign countries where this law of divorce is obtaining, the womenfolk are almost self-supporting economically. This is, to a very great extent, true also of our rural areas. There again, the womenfolk, almost all of them, are wage-earners and the same is the case with the children. The children from the very beginning start earning wages. The position is entirely different in these particular sections of the Hindu community where divorce is not enforced at present. Unfortunately, they do all the drudgery, all the difficult things of the household; and beyond that, they are not independent economically. Similarly, the situation with regard to their children is also quite different from that with regard to the children of the rural classes. You have got to educate the children and cater to all their needs.....

AN HON. MEMBER: You will have to do this everywhere.

SHRI H. C. MATHUR: In the rural population, I mean to say, the children are not a liability. Those are the real conditions obtaining there. They are almost a sort of an asset. So we have not had to face any sort of problem there. They are not at all a liability, while the children are a great liability in those particular areas where this Bill is going to be enforced. I only wanted to point out this particular difficulty. Of course, there will be certain difficulties regarding women and children in the beginning for quite some time and they will cause us some embarrassment, but in due course of time, the women will become economically independent and possibly our State might develop to that stage when our children will be cared for and looked after by the State.

Sir, we have been enacting the Neglected Children's Act, but everyone who discussed this Act thought that it would take quite a number of years before it could be made effective because we have got to develop an

attitude for it. So also for this we have got to develop that mental outlook which would make things all right, and before that becomes an effective law. I submit that this is a very important aspect which must be considered. I do not say that this need frighten us.

Now, Sir, my other objection to this Bill is regarding succession. I cannot conceive of any law on marriage and divorce without simultaneously considering the law of succession; and I think the law of succession must be considered along with it.

MAJ.-GENERAL S. S. SOKHEY: I have never heard of succession in a marriage law.

SHRI H. C. MATHUR: If my hon. friend knew a little bit of.....

AN HON. MEMBER: ..... law?

SHRI H. C. MATHUR: ..... little bit of the law of succession and knew a little bit of what I am talking about, he would not have raised this objection. The High Court Judges of Calcutta have .....

DR. SHRIMATI SEETA PARMA-NAND: A Succession Bill will be introduced and sent for public opinion before it is considered finally.

SHRI H. C. MATHUR: It must be considered simultaneously with this. There is a very weighty legal opinion; as a matter of fact, the Chairman of the Bar Association of Bengal has said that this law, if passed, will result in nothing but confusion. This is not, mind you, my opinion. It is the opinion of a man who leads legal opinion in Bengal. The Judges of the Calcutta High Court have, as a matter of fact, advised that it would be proper for us to make the necessary amendments in the Special Marriage Bill, that all the purposes of divorce and other allied subjects which you want to achieve through this Bill can be achieved by making certain necessary amendment\*

[Shri H. C. Mathur] in the Special Marriage Bill, and that this Bill is absolutely "fragmentary". I am quoting the very words: "This Bill is inadequate, fragmentary and, if passed, this Bill will lead to nothing but confusion and conflict". That is the definite and weighty legal opinion that has been expressed. We, sitting in the Council of States, should not be -so casual in enacting laws of such far-reaching importance. *m* •»

Then, Sir, my last but most important objection is on the ground that this law is a complete negation of the secular character of our State. I do think there is absolutely no reason why we should have an enactment of this character. Sir, for the first time, we have read in this law that this will apply to Hindus. While opening this discussion we have stated that religion should not come into it. This has got nothing to do with religion. That is the mental outlook and approach that should be given to the people. They say that this law will apply to people who follow Hindu religion. Then, Sir, are you going to have a separate law for the Sikhs, for the Buddhists, and for the Parsis? It is going to work a lot of havoc. This Government, weak as it is, is afraid of the intolerance of the fanatic Muslim opinion in this country. But, it is most heartening to find that the Muslim Members who spoke on this Bill have given the fullest support to this idea and have given us all the necessary encouragement; and the Government should take courage in their hands and they should as has been suggested by my hon. friend, Mr. Sokhey, withdraw this legislation immediately and bring forward a fresh law which will remove all these fundamental objections, a law free from all these objectionable features, a law which will not strike at the very foundations of our nation and our Constitution.

SHRI HANS RAJ (Punjab):

श्री हंस राज (पंजाब) : मान्यवर  
अध्वान जी मैं सन् १८९४ से कांग्रेस का

मेम्बर चला आया हूँ, सिवाये कांग्रेस के न मैं हिन्दू सभा और न ही किसी और जमायत का मेम्बर बना। सन् १९२४ ई० से मैं यहाँ पर मेम्बर होकर आता रहा हूँ, कभी चला गया तो कभी आ गया, जब कभी कोई जरूरत हुई या जगह खाली हुई, या मुझे बुलाया गया तो मैं आ गया मगर मैंने इस बारे में कोई रिक्वेस्ट (request) नहीं की। मैं अपने जिले की कांग्रेस का बहुत साल तक प्रधान रहा हूँ। मैं प्रायः बोलता कम हूँ। जब एक मर्तबा स्वर्गीय लाला लाजपत राय पर लाठी का प्रहार किया गया था तो उस समय भी मुझे बोलने की जरूरत पड़ी थी, वह भी जब उन पर लाठी का प्रहार हो चुकने के बाद मुझ पर प्रहार किया गया तब मुझे बोलने के लिये मजबूर होना पड़ा। आज यह दूसरा मौका है कि मैं बोल रहा हूँ। मैं बहुत समय से इस बात के हक्क में था कि डाइवोर्स (divorce) का जो हक्क है वह मिल जाना चाहिये। मेरी दो लड़कियाँ हैं और बीस बाईस साल हुए मैंने उनकी सिविल ला (civil law) के मुताबिक शादी की थी, वह गिफ्ट इसलिए कि उनको तलाक का हक्क हासिल हो और लड़का दूसरी शादी न कर सके। लड़की ने विलायत में शिक्षा पाई थी और कांग्रेस का काम करती थी, लड़का भी विलायत में पढ़ चुका था और कांग्रेस का काम करता था, उन दोनों में आपस में प्रेम और प्यार था। वे बड़े खुश थे। दूसरी लड़की को मैं ने नर्सिंग (nursing) की तालीम दी और उसके बाद वह नौकरी करने लगी? फिर उसने एक डाक्टर साहब के साथ शादी करने की स्वाहिश जाहिर की। यह शादी भी हमने कोर्ट (court) में जा कर रजिस्टर (register) कराई ताकि दोनों को उसके मुताबिक हक्क मिलें। तो मैं

आप से यह कहने के लिए खड़ा हुआ हूँ कि इस कानून के बनने से जो लोग डरते हैं, वे न डरें। मेरा ख्याल है अंग्रेजों के वक्त में ऐसा वसीह कानून नहीं था जैसा कि आज पेश हुआ है।

अब मैं विरासत के बारे में कुछ कहना चाहता हूँ। मेरे पास थोड़ी जमीन और जायदाद थी जो मैं ने विरासत में पाई थी। मैं ने सारी उम्र और बहुत से काम तो किये मगर कभी कमाई की फ़िक्र नहीं की। जब मेरी उम्र हुई तो मैं ने इस बात की ज़रूरत समझी कि अपने सब बच्चों को जायदाद का बराबर हिस्सा दे दूँ। चुनावों में ने अपने पड़े लिखे लड़कों को बुलाया और अपनी जायदाद अपने वारिसों को तकसीम करने की मंशा बताई। पहले तो वे चुप रहे। मैं ने उनसे कहा "भाई तुम्हारी मर्जी, मैं तो चाहता हूँ कि अपने जीने जी तुम लोगों में जायदाद बांट दूँ" उन्होंने कहा "हम एक शर्त पर तैयार हैं, वह यह कि सारी जायदाद में से हमारी बहनों को भी हिस्सा मिलना चाहिए"। बीस बरस हो गये जब मैं ने इस तरह से अपने पांच लड़कों और दो लड़कियों में अपनी जायदाद बराबर बांट दी और वे बड़े खुश हैं। इतिफ़ाक से वह जायदाद लायलपुर के ज़िले में थी, जो कि अब पाकिस्तान में है। उसके एवज में हमें यहां जमीन मिल गई है जिस पर मेरे बच्चों ने कोऑपरेटिव फार्मिंग (co-operative farming) के तरीके पर फार्म बना लिए हैं। लड़कों और लड़कियों में आपस में किसी किस्म का कोई झगड़ा नहीं है। एक लड़का नगरानी करता है और सब खुश हैं। तो इस तरह की चीज़ में ने प्रैक्टिकरूनी (practically) अपने घर में कर के देखी है, और मैं आपको यकीन दिलाना हूँ और इस बात का गवाह हूँ कि

भाई बहनों में बंटवारा करने से कोई झगड़ा नहीं पड़ता।

विवाह के लिए सबसे बड़ी चीज़ का होना जो ज़रूरी है वह है प्यार। जब तक आपस में प्यार न हो, शादी नहीं होनी चाहिए, और इस चीज़ के लिए तालीम चाहिए। अपने बच्चों को खूब तालीम दीजिए, और अट्ठारह बरस के बाद उनको इजाज़त दे दीजिए कि जहां उनका दिल करता हो वहीं शादी कर लें। मेरी लड़कियों की शादी के वक्त किसी ने मुझ से दहेज में रुपया या और कोई चीज़ नहीं मांगी। अगर वे ऐसा करते तो मेरी लड़की उसे घर से निकाल देती। लड़कियों और लड़कों को तालीम दीजिए और उसके बाद उनके हक दीजिए और हो सके तो कोई प्रोफ़ेशन (profession) दीजिए ताकि वे अपने पैरों पर आप खड़े हो सकें।

हिंदू धर्म के बारे में लोग तरह तरह की बातें करते हैं। महात्मा गान्धी ने एक बार कहा था कि जिस धर्म की पुस्तक में "मछून" शब्द का होना ज़रूरी है, उस किताब को समुन्दर में फेंक देना चाहिए। हिंदू धर्म कभी इस सिद्धान्त की इजाज़त नहीं देता कि फलां आदमी की शादी फलां दूसरी जाति से हुई है इसलिए वह गलत है, वह कभी ऐसा नहीं चाहता। मैं एक दफ़ा एक इलेक्शन (election) में खड़ा हुआ, और लुधियाना में एक मीटिंग में जब भूलाभाई साहब बोलने लगे तो लोगों ने उनके पास जा कर सवाल किया कि मैं हिन्दू कैसे हूँ, और कहने लगे कि मैं साबित करूँ कि मैं हिन्दू हूँ। उनको यह पता था कि मेरा यज्ञोपवीत नहीं है, और न ही सिर पर चुटिया। वे कहने लगे कि मैं अपनी यज्ञोपवीत या चुटिया दिखाऊँ, और इस तरह से जब मैं साबित कर दूँ कि मैं हिन्दू हूँ तो वो बोलने की इजाज़त दी जायगी। मेरी धर्मपत्नी

[Shri Hans Raj.]

जी भा उस समय मौजूद थीं। मैं मजबूरी के साथ खड़ा हो गया और उनसे बोला कि देखो जी, मां बाप ने मुझे यज्ञोपवीत पहनाया था और मैं उसे पहनता था। मगर एक दिन की बात है कि मैं अपने एक दोस्त के घर गया जिनके यहां उनके लड़कों का यज्ञोपवीत संस्कार हो रहा था। पंडित जी ने लड़कों को यह शिक्षा दी कि यज्ञोपवीत वही पहन सकता है जो कि हमेशा सच बोलता है, झूठ कभी नहीं बोलता, जो चोरी नहीं करता, वगैरह २। मैं ने घर आकर सोचा कि मुझ में तो कुछ अवगुण इस तरह के हैं, इसलिए मैं ने तब ही अपना यज्ञोपवीत उतार दिया था। चोटी के बारे में उन्हें मैंने बताया कि चोटी के न होने के तीन सबब होते हैं : बाज बकत गलती से चोटी कट जाती है, या फिर कुदरती बीमारी या गंज से चली जाती है, और बाज दफा तो अपनी बीबी ही उसे नहीं रहने देती, आप चहें तो मेरी बीबी जी से पूछ लीजिए कि मेरी चोटी कैसे गई। मेरे हिन्दू होने का सबूत यह है कि हिंदुओं की वोटर्स की लिस्ट (voters' list) या किताब जो है उसमें मेरा नाम दिया है। जब तक उसमें मेरा नाम है अगर मैं अछूत भी हूं तो हिन्दू ही हूं मैं अपने आप को बड़ा ऊंचा हिन्दू नहीं समझता। तो मैं यह आपको अपने तजुबों से बतलाता हूं कि न तो हिन्दू जाति खराब होती है, न घर खराब होता है, न जायदाद के बारे में लड़ाई होती है। तो फिर हम इस बिल को क्यों न कबूल करें। मैं इसकी तारीफ करता हूं।

[For English translation, see Appendix VII, Annexure No. 172.]

SHRI C. G. K. REDDY: Sir, I move that the question be now put.

DR. SHRIMATI SEETA PARMA-JVAND: I second the proposal.

SHRI K. B. LALL: I oppose it.

MR. CHAIRMAN: Yes, the point is this. When a question for closure is raised, the Chairman has to satisfy himself whether there has been an abuse of the rules or an infringement of the right of reasonable debate. I see now that we have taken nearly ten hours over the discussion of this matter, and almost all points of view have been already set forth. It is for you to decide whether you accept the motion or not. I therefore put the question.

The question is:

"That the question be now put."

MR. CHAIRMAN: (A Division being challenged and after taking a count).

The motion is adopted.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): Mr. Chairman, the Bill, I believe, has been sufficiently discussed in the House and all the different points of view, which could be urged for or against, have been voiced! by hon. Members from different sections of the Chamber. As the Bill is going to a Select Committee, I shall be only wasting the time of the House if I discuss the various points which have been specifically raised, especially regarding the provisions of the Bill. The object of sending it to a Select Committee is to have these provisions fully examined, and if there are any amendments or modifications to make, the Select Committee is the best place where that could be done. I will only confine myself to some of the general questions which have been raised here and which perhaps call for a reply.

I will first deal with a point which plausibly looks like a fundamental point—the one raised by my hon. friend, Mr. Rajah. When he began to speak, I thought he was bent upon starting a hare. It was not one hare but a couple of hares that he let loose. In the first place, he tried very solemnly to make the point that in bringing



this Bill before the House, the Government were acting as the agents of the Muslims. In other words, their only object was to throw Hindu girls into the arms of Muslim husbands. He visualised a day—not very far according to him—when the whole Hindu population would find itself automatically converted to Islam. Well, the proposition needs only to be stated to show how ridiculous it is, if I might use that expression in all humility and without meaning any disrespect to my hon. friend. After all, what is the object of this Bill? We are legislating Wombless for Hindus only. I shall deal next with the question as to how far that amounts to discrimination under the Constitution, but for the present let us deal with the merits. He said that if we enforced monogamy among the Hindus, that would mean that we were depriving them of a valued privilege, and imposing a disability on the Hindus, a disability from which we were keeping the Muslims free. As I said, leaving that part of the question aside for the moment, let us see how the introduction of monogamy among the Hindus really means that Hindus will become Muslims. Why should they do this? Is it suggested that the desire to have a plurality of wives is so strongly embedded in the heart of every Hindu that he must forsake his religion, his law, his everything and embrace another religion which will enable him to have a multiplicity of wives? I do not believe, Sir, that this is such a privilege that it will be sought to be secured in every possible way, even by changing one's religion.

SHRI H. D. RAJAH: Discrimination works both ways.

SHRI C. C. BISWAS: My friend says, "Why leave the Muslims alone? Why not introduce a similar legislation for them also?"

SHRI H. D. RAJAH: A uniform legislation.

SHRI C. C. BISWAS: That question has been raised by others also. To

that, the simple answer is that there is not yet that demand from the Muslim community as there has been from the Hindus.

SHRI H. D. RAJAH: What fantastic nonsense.'

SHRI C. C. BISWAS: Let the hon. Member kindly give me a chance. I did not interrupt him at all when he spoke, although he was speaking fantastic nonsense, if I may say so.

What I was pointing out was this. As a matter of fact, in social reform there is no such thing as mass initiative. You do not expect, and cannot expect, complete unanimity from the whole community. It is only the enlightened few who set the lead. And when a proposal for reform comes forward, you should, of course, also hear what the opposition has got to say, and then come to a conclusion. That is the way social reform has been introduced in every society, not merely amongst the Hindus. In every community, the initiative comes from only a limited few.

So far as the Hindus are concerned, this question of reform of the Hindu Law of Marriage has been before the country for over twelve years, and the attempt that was made to ascertain and explore public opinion was as complete as one could wish it to be.

There were two Committees. The second one, the Rau Committee, toured all over the country and ascertained public opinion. They heard witnesses, they received memoranda from all sections, from all classes and from all professions, and then gave the matter their best consideration. The report of the Rau Committee will bear testimony to that.

First of all, they drew up two draft Codes dealing with succession and marriage, and then they prepared the entire draft Hindu Code, and the matter came before the House on more than one occasion. There were differences of opinion on the floor of the House.

[Shri C. C. Biswas.] Whatever the reasons, it was not possible to make much headway.

Then, Sir, having profited by our previous experience, we thought that the best way of introducing the Hindu Code would be to split it into parts and bring it before the House part by part. We were fortified in this by precedents. As a matter of fact, if you look at the Statute Book, you will find so many Hindu Law Acts which have been passed and which deal with vital matters, but they were passed one at a time. They were short Bills and did not rouse much opposition. They got through with very little of obstruction. So, we thought that, having attempted and failed to have a comprehensive Hindu Code Bill passed, the best course, the wisest course, would be to take it up bit by bit. We have followed that course. As a matter of fact, the Rau Committee itself suggested in its first report, that it would be better to present a complete picture of the whole body of Hindu Law before we took up these two Bills on succession and marriage. At the same time, they said when they prepared the entire Code that either course was equally good. That depends upon circumstances and it is for the Government to decide as to how they should proceed. You get the entire Code passed, or if you expect any difficulty, you take it up part by part. Well the attempt was made and we failed. We are now wiser and we are bringing it forward bit by bit. This only means some delay, but if we have been able to wait for hundreds of years, for centuries, I hope five or ten years will not make much difference. It is better that we had it late than that we should fail in the attempt altogether.

Now, coming back to the question of discrimination, merely because a legislation is intended for one section of the population, it does not amount to discrimination. If my hon. friend had only read the judgments of the Supreme Court and the judgments of the other Courts he would have found that

equality before the law does not mean equal law for everyone in the country. You cannot have "the same law for everybody. Take the Children's Bill. Will it be open to the objection of discrimination because it does not deal with adults and therefore would you say that you cannot legislate for children as it does not deal with adults because if you have a Bill, it must apply to everyone in the country irrespective of any distinction in respect of social condition or profession, or of other differences and so on?

DR. P. C. MITRA (Bihar): Children\* Bill will apply to all children.

SHRI C. C. BISWAS: When you are legislating for Hindus, it will apply to all Hindus but a Hindu is not a Muslim and a Muslim is not a Hindu.

SHRI S. MAHANTY (Orissa): Don't get excited.

SHRI C. C. BISWAS: You don't think everyone gets excited as you do. As a matter of fact, there is no discrimination. If I am discriminating between a Hindu and a Hindu, that will be open to the constitutional objection that I am legislating in a way which will not make for equality before the law. If you see the expression used in article 14 you will find it is not merely equality before law but equal protection of the laws. That is the main thing. If one is made subject to a penalty and the other man goes scot-free for the same offence, that is unequal treatment. Is this unequal treatment for Hindus, I ask, because this Bill does not touch Muslims, does not touch Christians? I say, it does not mean unequal treatment in the eye of law. I will only refer my hon. friend to the judgments of the Supreme Court and there he will find the rule of equality before the law is subject to what is called reasonable classification. The whole thing has been brought out very clearly in these judgments which follow the precedents of American and other decisions. If we are introducing something which is so patently unconstitutional, it only

remains for my hon. friend to take the matter before the Supreme Court and the whole thing can be decided in no time.

SHRI H. D. RAJAH: On a point of order, Sir. I cannot go to the Supreme Court till the whole time is wasted in this and in the other House and this matter is made into a law. I want to prevent it in advance and make a secular law.

SHRI C. C. BISWAS: I am thankful to my hon. friend, and the House will be thankful to him, for the great public spirit he is exhibiting, because he does not want to waste so much time of this House or of the other House, and then have to take this matter to the Supreme Court. It is those who will find themselves affected that will go to the Supreme Court whether today, tomorrow or the day after. Therefore, merely because you cannot wait till the Bill is passed, it does not mean that the Bill must be open to objection and must suffer from any constitutional infirmity. Government would never have brought up this Bill if there had been the slightest doubt that there was any such infirmity. This question was considered by the Law Ministry itself, not now only but in connection with previous Bills. This matter was considered in connection with the Bombay Act. This is not a new question which is being brought forward for the first time by my hon. friend. This matter had been considered, and whether our view is right or wrong, well, we act according to our views and we have brought this Bill before you, because we honestly believe that this does not offend either against article 14 or article 15 of the Constitution, nor is it any infringement of the Directive Principles. Certainly my friend is quite right when he points to the Directive Principles and asks if we are not proceeding towards that goal. I had said more than once here when I introduced the Special Marriage Bill that that was only the first step in that direction, but you cannot take this step all at once. On this very question, If 4 C.S.D.

you look at one article of the Constitution, what do you find there? It is this. In article 44 it is laid down that the State should endeavour to secure a uniform civil code throughout the country! That presupposes that there are separate personal laws now for separate sections of the population. What does that show? Does it show that according to the Constitution all the existing personal laws of the different communities are to be scrapped and removed from the Statute Book because they are against the Constitution? Were they to be declared void till this ideal state of things was attained? That was not in the mind of those who framed the Constitution. Therefore, at any rate for some time, for the interim period, there must be different laws governing the different sections of the population.

SHRI H. D. RAJAH: Atrocious!

SHRI S. MAHANTY: For how long will that interim period continue?

SHRI C. C. BISWAS: That does not matter. We are concerned with the legal point which is this: Merely because we have to wait 5, 10 or 20 years before we achieve what is set out in the Directive Principles, the law which is in force during the interim period does not become illegal or unconstitutional. That is the point. %

PRINCIPAL DEVAPRASAD GHOSH (West Bengal): Here in this Bill, one course of conduct is made an offence for a certain section of the community and an identical course of conduct is not an offence for another section of the community. And it is made a criminal offence under the Indian Penal Code!

SHRI C. C. BISWAS: This Bill seeks only to modify the personal law of the Hindus. The personal law of the Hindus is not the same as that of any other community. If this Bill becomes law, it will not affect the law of any other community.

SHRI H. D. RAJAH: Can the hon. the Law Minister enlighten us as to Whether there is a personal law for a Hindu as such? I want to know what is the codification of law and whether it applies only to a Hindu? Who is a Hindu, I want him to explain.

SHRI C. G. K. REDDY: When a closure motion was adopted, it should have been taken that the question should be immediately put; even then the sense of the House was that the debate should close. I should most humbly request the hon. Leader of the House .....

MR. CHAIRMAN: The Leader of the House has a right of replying.

SHRI C. C. BISWAS: Nothing will make me happier if I can cut short my speech. In fact I began by saying that there was no use wasting time. But because my friend, Mr. Rajah, raised what he thought was a very novel point, and which struck the House as such, so far as I could see, I thought it called for a reply, and that is why I wanted to say something. As to the other question why the Hindus were singled out for special legislation, well I have already given the reply. It is because there was a demand from the enlightened section of the community.

SHRI P. SUNDARAYYA: His speech did not require an answer.

SHRI H. D. RAJAH: Because I attacked the Communist Party.

SHRI C. C. BISWAS: I repeat what I said. The best course would be to get the Hindu Code passed as soon as possible, and thereafter to take steps to have a Committee appointed for the purpose of consolidating the Muslim civil law. Do not think for one moment that we have not in view a codification of the Muslim personal law, but then for that purpose, necessary steps will have to be taken, and Muslims will have to be given the same

opportunities as has been given to the Hindus. We are not committed to a codification or modification of the Hindu law only. Let it not be supposed that this Bill is something flung at the Hindus and that other communities are being left safe. Well, such legislation is not an attack on any community from which it requires to be protected. So far as the present Bill is concerned, I say that it is meant to advance the community along the path of progress.

Sir, I have only two amendments. That only shows my anxiety to get this Bill passed as quickly as possible. In the names I gave, there appear the names of two Members who are going to retire on the 2nd April. They will probably come back but in that case they will have to be sworn in again. This Resolution will now go to the other House. If it goes with these names as originally proposed, an objection may be raised in the other House that because two of the Members will lose their seats on the 2nd April—and the other House would not take it up before 2nd April—the Committee has not been properly constituted. However, in order to avoid these objections, I am dropping those two original names and I beg leave of the House to propose two other names in the places of those two.

PRINCIPAL DEVAPRASAD GHOSH: Including your own?

SHRI C. C. BISWAS: So far as the Minister is concerned, he need not be a Member of any House in order that he may be put on the Committee of either House.

MR. CHAIRMAN: All right. What are the names?

SHRI C. C. BISWAS: So far as the Minister is concerned, let me say that he is the person who is most anxious to get out of this Committee. My experience on this Marriage and Divorce Bill has taught me enough.

MR. CHAIRMAN: What are the names?

SHRI C. C. BISWAS: The names that are proposed to be dropped are Shri P. T. Leuva and Shri Amolakh Chand—the latter, not because he is Deputy Whip, but because he is retiring on the 2nd of April.

DR. P. C. MITRA: They are already elected.

SHRI C. C. BISWAS: And in their place I would substitute the names of Pandit S. S. N. Tankha and Shri B. M. Gupte.

SHRI C. G. K. REDDY: And what is the other amendment?

MR. CHAIRMAN: There is no other amendment.

The question is:

"That the Bill to amend and codify the law relating to marriage and divorce among Hindus be referred to a Joint Committee of the Houses, consisting of forty-five members, fifteen members from this Council, namely:

1. Dr. P. V. Kane.
2. Shrimati Rukmini Devi Arundale.
3. Dr. Raghu Vira.
4. Shri Indra Vidyavachaspati.
5. Diwan Chaman Lall.
6. Shrimati Maya Devi Chettry.
7. Shrimati Chandravati Lakhanpal.
8. Shri Govinda Reddy;
9. Shri T. S. Pattabiraman.
10. Pandit S. S. N. Tankha.
11. Shri Surendra Mahanty.
12. Shri K. Suryanarayana.
13. Shri B. M. Gupte.
14. Shri S. N. Mazumdar.
15. Shri C. C. Biswas (*the Mover*).

and thirty members from the House of the People;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee;

that in other respects, the Rules, of Procedure of this Council relating to Select Committees will apply with such variations and modifications as the Chairman may make;

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

that the Committee shall make a report to this Council on or before the last day of the second week of the next session."

The motion was adopted.

#### THE PRESS (OBJECTIONABLE MATTER) AMENDMENT BILL, 1953

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N. KATJU): Mr. Chairman, I rise to move:

"That the Bill to amend the Press (Objectionable Matter) Act, 1951, as passed by the House of the People, be taken into consideration."

Mr. Chairman, this Bill has aroused great excitement.

SHRI S. MAHANTY (Orissa): Justifiable excitement.

"UK. K. N. KATJU: But I do hope that in this House which is supposed to be the House of the elders.....

SHRI S. MAHANTY: No, no.

SHRI H. D. RAJAH (Madras): No, no.

SHRI P. SUNDARAYYA (Andhra): This is the Council of States and not a House of elders.