

and large, the quality of our exports has been free from objection. Cases do, however, arise in actual practice where complaints are received from foreign importers against individual exporters or in respect of certain consignments. When such cases come to the notice of Government, investigation is instituted with a view to taking remedial action. Effective check on quality can be made only after standards for the types that enter our export trade, are fixed, provided the exporter and importer agree to abide

by them. Standards are being worked by the Indian Standards Institution.

(c) Mainly Brazil, Tanganyika, ' Union of South Africa and Rhodesia . also compete with India to some extent.

#### **IMPORT OF MEDICINES AND MEDICAL STORES**

163. SHRI B. P. AGARWAL: Will the Minister for COMMERCE AND INDUSTRY be pleased to state the value of imports of medicines and medical stores during the last three years (year by year)?

THE MINISTER FOR COMMERCE AND INDUSTRY (SHRI T. T. KRISHNA-MACHARI) : A statement is attached. [See Appendix V, Annexure No. 95.]

#### **POPULARIZATION OF SOFT COKE**

164. SHRI M. VALIULLA: Will the Minister for PRODUCTION be pleased to state:

(a) whether soft coke is popularized in rural areas; and

(b) what are the methods adopted to see that more rural population make use of soft coke?

THE MINISTER FOR PRODUCTION (SHRI K. C. REDDY) : (a) and (b). A Committee, known as Soft Coke Cess Committee, constituted under the Indian Soft Coke Cess Act, in 1930, used to popularize soft coke by means of intensive propaganda through house to house visits, practical demonstrations, free distribution of soft coke

to new consumers, advertisements and pictorial posters, participation in exhibitions and melas etc. As a result of its activities the demand for soft coke reached the limit that was possible for the Railways to handle after meeting the minimum essential requirements of other consumers, and there was no need felt for the continuance of the Committee's activities. The Committee was, therefore, abolished in 1948. Since then no special steps are being taken to encourage the extended use of soft coke in rural areas. The existing demand for soft coke is much more than what the Railways can carry. The Government are fully in favour of the popularization and the extended use of soft coke in rural areas and means for improving the over-all transport availability for coal including soft coke are constantly engaging their attention.

#### **STOWING IN COLLIERIES**

165. SHRI M. VALIULLA: Will the Minister for PRODUCTION be pleased to state:

(a) the number of collieries which are stowing and which are not stowing;

(b) whether Government insist on the collieries which are not stowing to take to stowing;

(c) what is the cost of a stowing plant; and

(d) whether collieries which have started stowing enjoy any special concessions?

THE MINISTER FOR PRODUCTION (SHRI K. C. REDDY): (a) The number of collieries now stowing is 53. The rest of the 830 collieries in India do not stow.

(b) Stowing so far has been mainly voluntary in nature. In a few cases, the Chief Inspector of Mines has ordered compulsory stowing in the interest of safety. Under the Coal Mines (Safety and Conservation) Act, 1952, the Government have power to order compulsory stowing in the interest of safety

and also in the interest of conservation of coking coal. No orders under this Act have, however, so far been issued.

(c) The cost of stowing plant may vary from Rs. 50,000 to several lakhs. There is a stowing plant installed in the Jharia Coalfield serving group of ■ collieries at a cost of approximately Rs. 60 lakhs.

(d) Yes. (i) In respect of hydraulic stowing 75 per cent. of the cost of stowing subject to a maximum of Rs. 1-4-0 per ton of material actually stowed underground, and in the case of dry packing .85 per cent of the total cost of stowing subject to a maximum of Rs. 1-9-0 per ton of material actually stowed underground is reimbursed to the colliery undertaking stowing.

(ii) Quantities of metallurgical coal produced by stowing are not taken into account for purposes of fixing production limits under the orders for ■ "pegging" the production of coking ■ coal.

#### SETTLEMENT OF INDIANS IN MALAYA

166. SHRI M. VALIULLA: Will the PRIME MINISTER be pleased to state:

(a) whether any pilot schemes have been prepared by the Government of the Federation of Malaya for settling Indian labourers in Malaya:

(b) if so, how many Indians will be settled there; and

(c) whether the Indian settlers who are already there will be given the land or whether fresh migration of Indian labour is called for?

THE PRIME MINISTER AND MINISTER FOR EXTERNAL AFFAIRS AND DEFENCE (SHRI JAWAHARLAL NEHRU) : (a) Yes. Two Pilot schemes have been prepared by the Government of the Federation of Malaya for immediate execution. One of them will make State lands and the other Estate lands available to Indian labourers in Malaya. In three out of the nine States in Malaya some progress has

already been made. Our Representative in Malaya is pursuing this matter with the local authorities in Malaya.

(b) It is not possible just now to estimate the number of Indians that will be settled on land.

(c) Only Indian labourers permanently settled in Malaya will be eligible.

#### INDUSTRIALISTS' ASSISTANCE TO NATIONAL PLAN

167. SHRI M. VALIULLA: Will the Minister for COMMERCE AND INDUSTRY be pleased to state:

(a) whether there is any proposal from Indian industrialists to assist the National Plan; and

(b) if so, what is Government's reaction to it?

THE MINISTER FOR COMMERCE AND INDUSTRY (SHRI T. T. KRISHNA-MACHARIJ : (a) I am not sure which proposal the hon. Member has in mind. Proposals are made to Government from time to time by various industrialists on various aspects of the National Plan.

(b) Does not arise.

#### COLLIERIES PRODUCING METALLURGICAL COAL

168. SHRI M. VALIULLA: Will the Minister for PRODUCTION be pleased to state:

(a) whether the Coal Board has drawn up a list of collieries producing metallurgical coal for the purpose of conserving such coal in those collieries;

(b) whether it is a fact that better varieties of metallurgical coal like Dishergarh and Ponati have been left out of the scheme of conservation; if so, what are the reasons for this omission; and

(c) whether the list drawn up and published by Government and the Coal Board contains collieries which do not contain metallurgical coal?

THE MINISTER FOR PRODUCTION (SHRI K. C. REDDY): (a) Yes.

(b) The available results of analysis and the technical opinion obtained thereon showed that the coking index of the coals from these two seams was low and the coke produced was not hard. Coal of Disergarh and Poniat seams has, therefore, been classified as non-coking coal.

(c) The list drawn up contains only collieries classified by the Board as producing metallurgical coal.

#### EVACUEE PROPERTIES IN INDIA

169. SHRIMATI SHOILA BALA DAS: Will the Minister for REHABILITATION be pleased to state:

(a) what is the total number of moveable and immoveable evacuee properties in Orissa which have already been vested in the Custodian;

(b) what is the total amount of property and estimated monthly income from all the various evacuee properties which have been vested in the Custodians;

(c) whether all incomes from these evacuee properties are collected regularly; if not, why not;

(d) whether a very large amount of arrears in respect of these evacuee properties have accumulated; and

(e) if the answer to part (d) above be in the affirmative, whether Government will lay a statement on the Table showing how from month to month these arrears have accumulated?

THE DEPUTY MINISTER FOR REHABILITATION (SHRI J. K. BHONSLE): (a) to (e). The information is being collected and will be laid on the Table of the House in due course.

#### REHABILITATION OF DISPLACED PERSONS FROM WEST PAKISTAN

no. SHRI M. VALIULLA: Will the Minister for REHABILITATION be pleased to state:

(a) how many new towns have been, built for rehabilitation of refugees from West Pakistan and which are those towns;

(b) how many persons in each town, are rehabilitated; and

(c) how many hospitals, schools, colleges, vocational or technical institutions and training centres have been opened in each of these new towns?<sup>1</sup>

THE DEPUTY MINISTER FOR REHABILITATION (SHRI J. K. BHONSLE): (a), (b) and (c). The information is being collected and will be laid on the Table of the House.

#### INTERNATIONAL ORGANISATIONS WORKING IN INDIA

171. SHRI M. VALIULLA: Will the PRIME MINISTER be pleased to state:

(a) the number of international organisations belonging to the United Nations Organisation working in India at present; and

(b) the amount which each of these organisations spent in India during the year 1952?

THE PRIME MINISTER AND MINISTER FOR EXTERNAL AFFAIRS AND DEFENCE (SHRI JAWAHARLAL NEHRU):

(1) World Health Organisation.

(2) United Nations International Children's Emergency Fund.

(3) International Labour Organisation.

(4) Regional Office of International Labour Organisation for South East Asia.

(b) Food and Agricultural Organisation.

(6) United Nations Technical Assistance Administration.

(7) United Nations Educational, Scientific and Cultural Organisation.

(8) United Nations information Centre.

(b) Complete information is not available with the Government of India.

THE SPECIAL MARRIAGE BILL, |  
1952—*continued*.

MR. CHAIRMAN: The hon. the Law Minister, Mr. Biswas. The Special Marriage Bill.

SHRI RAJAGOPAL NAIDU (Madras) : Sir, before this is taken into (consideration, I would like to raise a point of order.

SHRI D. D. ITALIA (Hyderabad): 'Sir, on a matter of information, it is said that the Select Committee 'shall make a report to this Council by the end of August 1953'. Is it 1953 or 1954. Sir?

SHRI RAJAGOPAL NAIDU: I have a point of order which is more substantial than the one taken up by my friend hon. Shri Italia. I feel that this Bill cannot be taken into consideration at this stage without the recommendation of the President, for the reasons that if this Bill is passed and made into law, it involves a certain amount of expenditure from the Consolidated Fund of India. Sir, I shall soon go into the provisions in the Bill as to what would be the expenditure from the Consolidated fund of India if this Bill is made into law. Sir, I invite the attention of the House to article 117 (3) .....

MR. CHAIRMAN: You raised this question on the last occasion, or was it Janab Muhammad Ismail who raised it and it was over-ruled?

SHRI RAJAGOPAL NAIDU: Last time it was Janab Ismail who raised an objection which was under article 110; my objection now is not under article 110. but under article 117(3), -not even under article 117(1). I have gone through the objection raised by Janab Muhammad Ismail previously. I have been saying that the objection raised at the time when that Bill was introduced was under article 110 of the Constitution, that it constituted a Money Bill. The reply of the hon. the Law Minister then was that the objection was fantastic. He may agree even now with the hon.

Minister that if anybody raises an objection that it is a Money Bill, the objection would be fantastic. But if this Bill is passed and becomes law, it would mean a certain amount of expenditure from the Consolidated Fund of India, *e.g.*, some of the provisions of the Bill as clause 3 and other clauses. May I read article 117(3):

"A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill."

Sir, if it is a question of any taxation proposal, then it comes under article 110, in which case the Bill cannot be introduced in this House. First we have to seek and get the permission of the President, if it is a Money Bill or even a Finance Bill; in any case we have to get the permission of the President if it comes under article 110 or article 117(1). In this particular case, it is enough if the recommendation of the President is sought at any time before the Bill is taken into consideration. It may be argued that it is not the stage when we may be said to be considering the Bill. Sir, leave to permit the Bill to be introduced has been granted; now there is a motion for consideration to refer the Bill to a Select Committee.

AN HON. MEMBER: May I know, Sir, on a point of elucidation, what is the clause in the Bill that will involve expenditure from the Consolidated Fund of India?

SHRI RAJAGOPAL NAIDU: Let not my friend be in a hurry. Whether we are considering the Bill at this stage will be an objection that may be raised by the hon. the Law Minister. The motion to consider the Bill and remitting it for eliciting public opinion would amount to consideration. The motion for referring this Bill to a Select Committee or a Joint Select Committee would

[Shri Rajagopal Naidu.] amount to consideration in my opinion; consideration will not merely mean consideration clause by clause and passing the Bill; that alone would not amount to consideration. Consideration to refer the Bill to a Select Committee will also amount to a motion for consideration. So, in my opinion, we are now considering the Bill and referring it to a Joint Select Committee.

My hon. friend has been raising an objection. He wants to know what is the clause in the Bill which if passed and made into law would involve expenditure from the Consolidated Fund of India. May I point out that it may be a charge of one pie on the Consolidated Fund of India, or even of one rupee? Or, it may be a charge amounting to several lakhs or crores of rupees. Even if it is an expenditure of one pie, Sir, it would involve an expenditure out of the Consolidated Fund of India, in which case the recommendation of the President is necessary before the Bill is taken into consideration. May I point out clause 3 of the Bill, wherein it is said:

"For the purposes of this Act, the State Government may, by notification in the Official Gazette, appoint one or more Marriage Officers for the whole or any part of the State."

It may be said that it is an expenditure from the Consolidated Fund of the State, so the Central Government is not concerned with it. I shall leave that there; I may even say that this will not amount to any expenditure from the Consolidated Fund of India though it may involve expenditure from the Consolidated Fund of the respective States.

Then take clause No. 3(2) which says:

"For the purposes of this Act in its application to the citizens of India outside India, the Central Government may, by notification in the Official Gazette, appoint one or more Diplomatic or Consular

Officers to be Marriage Officers for any country, place or other area outside India."

It may even be said in this particular case that there are already Diplomatic and Consular Officers in the foreign countries and that this is an extra duty that may be imposed upon them. Then, comes the maintenance of the register, appointment of some clerical staff.....

THE MINISTER FOR WORKS,  
HOUSING AND SUPPLY (SARDAR  
SWARAN SINGH): Printing in the  
Gazette.

SHRI RAJAGOPAL NAIDU: My hon. friend the Minister for Housing interrupted even without understanding the implication and sarcastically said "printing in the Gazette". This should not be taken in such a light vein as that. It may be argued that in that case with this clause in the Bill, it cannot be introduced either in this House or in the other House. There may be some provision in any Bill to incur expenditure out of the Consolidated Fund of India. To save all this, it is my suggestion that before the Bill is taken up for consideration, the recommendation of the President should be obtained. In this particular case, after the Bill is considered by the Select Committee and by the House if the President does not recommend the consideration of the Bill, what would happen? I do not presume it is going to be so, but supposing for instance the President does not recommend, what would happen? Much time of the House would have been wasted. So, in order to avoid any technical objection that may be raised at any moment, I would suggest that the President's recommendation be taken before the Bill is taken up for consideration.

MR. CHAIRMAN: Mr. Biswas.

SHRI J. R. KAPOOR (Uttar Pradesh) : Sir, before the hon. the Law Minister is requested to reply, some other point of view may also be placed before him.....

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS) : May I point out, Sir, that this question has been raised already when this Bill was moved in this House for circulation.

I know it was an objection raised under article 110, that it was a Money Bill. Objection was also raised under article 117(3), and I endeavoured to the best of my ability to answer that objection, and the House was satisfied. Sir, let us not reduce the provisions which are found in the Constitution to '*reduc-tio ad absurdum*'.

The President, I am sure, will be more reasonable than my hon. friend over there, and he will *not* refuse his recommendation if his recommendation is asked for, neither will he refuse to signify his assent to the Bill on the ground that his recommendation has not been previously obtained, because some expenditure might possibly have to be incurred on the maintenance of registers, etc. I do not think that anybody will take such a view. We are to take a broad view of the provisions of the article.

We know that this Bill provides for the appointment of no officers by the Central Government. The only officers for whom provision is made are officers of the States. Therefore there is no question of our drawing on the Consolidated Fund of India. Then, as regards the Marriage Officers who will be appointed for marriages abroad, our Consular Officers and Ambassadors, who are already in receipt of salaries because of other services which they are now rendering, will be requested to officiate at these marriages which may take place abroad. The number of such marriages will not be very large, and this would not entail any extra payment to these officers.

SHRI RAJAGOPAL NAIDU: Am I to take it then from the hon. Minister that this Bill will not involve the expenditure of even a pie from the

Consolidated Fund of India? If he gives that assurance, I would withdraw my point of order.

SHRI J. R. KAPOOR: There is an obvious aspect to this question which unfortunately seems to have been missed both by the hon. Minister and my hon. friend, Mr. Naidu, and that obvious aspect is that clause (3) of article 117 prohibits only the passing of a Bill and not the consideration of a Bill without the previous approval of the President. So far as clause (1) of article 117 is concerned, even introduction and consideration are barred, but so far as clause (3), is concerned, it is the passing of the Bill which is barred and not the consideration. We all know, of course, that there are several stages, between the initial consideration of the Bill and the final passing thereof—consideration by the Council and reference to Select Committee, first reading, second reading, third reading, etc., and it is in the final stage only that the question of the passing of the Bill arises. Between all these various stages, one does not know whether this House will or will not agree to any particular item of expenditure which may be involved if the Bill is enacted into law. I therefore submit that there is no force in the contention that the Bill cannot be considered at this stage. Certainly it can be considered, and ultimately when it comes to a question of passing the Bill, the question would arise whether the various provisions of the Bill which we have passed in the second reading of the Bill involve any expenditure from the Consolidated Fund of India, and at that final moment, the question may arise whether according to the provisions of article 117 it is necessary to obtain the previous sanction of the President for passing it. I submit, therefore, that at this initial stage there is no force in the contention put forward before us by my hon. friend, Mr. Naidu.

SHRI C. C. BISWAS: This point, had not been overlooked by me.

[Shri Rajagopal Naidu rose.]

MR. CHAIRMAN: Well, your question is whether it will involve the expenditure of even a pie from the Consolidated Fund of India. Every Bill that comes up here may involve some expenditure from the Consolidated Fund of India. But that does not necessarily imply that all such Bills will come within the scope of clause (3) of article 117 and require recommendation of the President. Mr. Naidu's point is that this Bill requires the President's recommendation before it is taken up. But Mr. J. C. Kapoor says that it is only at the last stage, *i.e.*, before it is passed, that it requires the President's recommendation. There is also another article of the Constitution, namely, article 255, which says that no Act of Parliament shall be invalid by reason only that some recommendation or previous sanction required by the Constitution was not given. "Taking all these things into account I hold that it is not right for us to stop the consideration of the Bill at the present moment.

SHRI C. C. BISWAS. Sir, hon. Members will remember that on the last day of the last session, I placed before the Council the resolution which stands in my name on the

- Order Paper today. That was a resolution for reference of the Bill to a Joint Select Committee of both Houses. I gave the names of certain Members of this House who would
- constitute the Select Committee. I had suggested at the time that I might be given some time to select the names, but the Deputy Chairman who was occupying the Chair said
- that I should give the names and that it would be open to me to amend the list later on. Since I gave those names, I have ascertained whether the Members whose names I had given were willing to serve on the
- Committee. I have received some refusals.

Shri Govinda Reddy, Shrimati J. Pushpalata Das, Dr. Raghu Vira,

Shrimati Maya Devi Chetty, Shri J. S. Pattabiraman, Shrimati Chandra-vati Lakhanpal and Shri Rajagopal Naidu have signified their unwillingness to serve on the Select Committee.

Therefore, with your leave, I beg to place the alternative names before the House. May I do so or should I place the full list?

PROF. G. RANGA (Madras): Full list will be better.

SHRI C. C. BISWAS: Dr. Shrimati Seeta

1. Parmanand
2. Shrimati Savitry Nigam
3. Shrimati Violet Alva
4. Khwaja Inait Ullah
5. Shri M. Valiulla
6. Dr. P. C. Mitra
7. Shri R. P. Tamta
8. Shri B. K. Mukerjee
- II. Shri Rama Rao
10. Shri H. N. Kunzru
11. Principal Devaprasad Ghosh
12. Shri V. K. Dhage
13. Shri Rajendra Pratap Sinha
14. Shri Amolakh Chand, and
15. The mover.

PROF. G. RANGA: May I ask, Sir, whether any attempt has been made to give representation to all the groups in this House?

SHRI H. N. KUNZRU (Uttar Pradesh): Is it necessary?

SHRI C. C. BISWAS: An attempt has been made to make it representative of different groups in the House.

As hon. Members are aware, Dr. G. V. Deshmukh had on several occasions in the past introduced Bills in the then Legislature for purposes of extending the benefits of the Special Marriage Act, 1872, to persons professing the Hindu, Buddhist, Sikh or Jain religion who had been married

under their own personal law and who desired to obtain the benefits of that law. The Government feels that the time has come when the benefits of this Act should be available to all persons irrespective of their religion. That explains the genesis of this legislation.

As the Council is aware, this Bill was circulated by a motion adopted by the Council on the 7th August 1952 for the purpose of eliciting opinion thereon by the 31st December 1952. The opinions received indicate that the Governments of Madras, Bombay, West Bengal, Orissa, Punjab, Hyderabad, Madhya Bharat, Travancore-Cochin, and Vindhya Pradesh, and the Chief Commissioners of Ajmer, Coorg and Tripura are in favour of the Bill, while the Government of Bihar is against it.

AN. HON. MEMBER: Only one? Very reactionary.

SHRI C. C. BISWAS: The Governments of Assam, Madhya Pradesh, Mysore, PEPSU, Rajasthan, Saurashtra and Himachal Pradesh, and the Chief Commissioners of the Andaman and Nicobar Islands, Bilaspur, Bhopal, Delhi, Cutch and Manipur have expressed no opinions on the provisions of the Bill. As regards the High Courts, and Courts of the Judicial Commissioners, the Chief Justice and one Judge of the Assam High Court, two Judges of the PEPSU High Court, three Judges of the Nagpur High Court, the Chief Justice and some Judges of the Punjab High Court, the Chief Justice and three Judges of the Orissa High Court, Shri Sapru and Shri Chaturvedi, Judges of the Allahabad High Court, the Chief Justice and eleven Judges of the Madras High Court, the Judicial Commissioners of Bhopal, and Kutch are in favour of the Bill. We have since received the opinion of the High Court of Calcutta, and that High Court is also in favour of the Bill. But Shri Ram Xabhaya, Judge of the Assam High

74 C. S. D.

Court, and three Judges of the Madras High Court have expressed their opinion against it. The Judicial Commissioner, Ajmer, the Judges of the Mysore High Court, and the High Courts of Bombay, Hyderabad, Saurashtra and Travancore-Cochin have expressed no opinion. So far as private individuals and public bodies are concerned, the Bill has received a generous measure of support from these sources, but Muslim opinion is definitely against the Bill, because it is, in their opinion, opposed to their Shariat. This is the gist of the opinions we have received.

PROF. G. RANGA: Do Christians also come into it?

SHRI C. C. BISWAS: They do come into the Bill. The Christians have not expressed any opinion against it.

One of the chief features of this Bill is its extra-territorial operation. That you find in the very opening clause.

SHRI ABDUL RAZAK (Travancore-Cochin) : Was any opinion received from the Bar Association of the Madras High Court?

SHRI C. C. BISWAS: Many Bar Associations have expressed their views. I cannot say, without reference to the brief opinions, whether the Bar Association of Madras did express any. I expect they did so but I shall verify and let the hon. Member know.

SHRI RAJAGOPAL NAIDU: They have, and it is a lengthy one. I had gone through it.

PROF. G. RANGA: Are they in favour?

SHRI RAJAGOPAL NAIDU: Yes, they are in favour.

SHRI C. C. BISWAS: In so far as marriages abroad are concerned, the Bill deliberately confines itself to



[Shri C. C. Biswas.] marriages celebrated between persons both of whom are citizens of India. Complicated questions arise in the case of marriages abroad when only one of the parties is a person domiciled in India. If this question is to be considered, it must be considered separately, and it may be necessary for Government to introduce in Parliament later on a Bill dealing with foreign marriages on the lines of the English Foreign Marriage Act of 1892. Under that Act a marriage solemnized in a foreign country between parties of whom one at least is a British subject is declared to be valid as if it had been solemnized in the United Kingdom with due observance of all forms required by law. With respect to marriages abroad where both parties are domiciled in India, no difficulties are involved and all that the present Bill seeks to provide is to authorize our Diplomatic Officers to solemnize such marriages.

Numerous suggestions have been made for the improvement of the Bill. Within the short time at my disposal, I am afraid it is not possible for me to refer to all of them. I will therefore refer briefly to some, of the more important suggestions and criticisms.

PRINCIPAL DEVAPRASAD GHOSH (West Bengal): Will the hon. Minister kindly narrate in brief the gist of Hindu opinion?

SHRI C. C. BISWAS: The opinions have been in the hands of hon. Members for quite a long time.

THE PRIME MINISTER (SHRI JAWAHARLAL NEHRU): Who are these Hindus whom the hon. Member refers to? Most of us are Hindus here who are expressing our opinion.

SHRI C. C. BISWAS: I would refer the hon. Members to the opinions which have been in their hands and it is for them to judge which is Hindu, which is Muslim, which is Christian and which is this or that.

PROF. G. RANGA: You yourself started the thing by saying that Muslim opinion is against.

SHRI C. C. BISWAS: One suggestion was that some qualification—should have been laid down for Marriage Officers who may be called by some other name but I think there is no need to specify any such qualification, because Government is expected to appoint suitable persons for the purpose. The existing Act— Act of 1872—the original Act—does not lay down any such qualification and it has worked quite satisfactorily.

With respect to clause 4 which lays down the conditions relating to solemnization of special marriages— that is a very important clause—it has been suggested that impotent persons, lepers and persons suffering from venereal diseases should be prohibited from marriage. At the present stage I don't think it will be possible to give effect to any of these suggestions even if found acceptable. It has also been suggested that the • parties who marry under this Act should have completed the age of 21 years at the time of marriage. This, if necessary, could be considered by the Select Committee.

There is one important point to which I should like to draw attention. Under the Bill as it stands, breach of any of the conditions which are laid down in clause 4 will render the marriage invalid. It is a point for consideration whether the breach of rule (d)—"each party, if he or she has not completed the age of twenty-one years, has obtained the consent of his or her father or guardian to the marriage"—should invalidate the marriage. It may well be that the father and mother may give their consent later on. The clause requires that the consent must have been obtained at the time before the marriage takes place, otherwise the marriage will be invalid. It will be for the Select Committee to consider whether this;

rule should be made a mandatory rule or merely directory, as in England.

Then I come to another sub-clause of clause 4—the definition of degrees of prohibited relationship. This has been criticised either as going too far or as not making sufficient provision with regard to certain recognized customary marriages, especially marriages in South India. So far as the present Bill is concerned, it should not be difficult to draw up a list of prohibited degree which should be reasonably satisfactory. After all, for the purposes of this Bill it is not necessary to recognize any particular custom or other particularly when such customs appear to be opposed to the law of eugenics. There is no need, for example, to permit a marriage between an uncle and a niece. In fact the definition might be amended in order to exclude the children of brothers and sisters also. The main object of this Bill is to permit marriages between persons who profess different faiths, and in almost all such cases there will be no question of the parties being related to each other within the degrees of prohibited relationship either of consanguinity or of affinity. These questions will only arise if the parties belonging to the same faith want to marry under the special law, and so far as that aspect of the matter is concerned, in my opinion, there is no need to recognize any custom, if we feel that the custom is not supportable apart from the personal law. I have received representations on behalf of Parsees who point out that according to them, marriages between children of two brothers and two sisters are very common. It is said that the proposed Bill will cause great hardship to them. This is again a matter which may be considered by the Select Committee.

With respect to marriages solemnized outside India between persons who are domiciled in India, a comment has been made that no such

provision is necessary. While this is true, all that the Bill seeks to achieve is, as I have already said, to authorise our Diplomatic Officers abroad to get such marriages performed in their presence, if the parties so desire, so that due notice can be taken of such marriages.

Then I come to clauses 5 to 13. These deal with procedural matters and have not evoked much criticism. Suggestions, however, have been made that "Marriage Officers" should dispose of all objections to a marriage rather than that courts of law should be asked to do so, so that delays may be avoided. This is a suggestion which also can be considered by the Select Committee. But the question would be whether Marriage Officers would be competent or would have the necessary machinery to arrive at correct decisions. Other minor suggestions have been made, with regard to altering the period of notice and so on. These are matters which can be thrashed out in the Select Committee.

Then I come to Part III which begins with clause 14. It is a special provision designed to validate a marriage which would have been perfectly lawful if it had been solemnized under this law, but doubts exist as regards its validity under the personal law applicable to the parties. I am sure this provision would be welcomed by all.

Then comes Part IV, in one sense, the most important part of the Bill dealing with the consequences of marriage under the Act. And here rightly, it has evoked a great deal of comment and criticism. It has been asked why, where two persons professing the same faith marry under this Act, there should be a severance of such persons from the joint family to which they belonged previously, as laid down in clause 18 of this Bill. Clause 18 says:

"The marriage solemnized under this Act of any member of an undivided family who professes the

[Shri C. C. Biswas.] Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family."

I must admit that there is a great deal of force in that argument. Judges of the Calcutta High Court also have criticised this and have suggested certain alterations. At one stage it was felt that the provision in the Bill should not apply, for example, to two Hindus marrying, the intention being that all such cases should be left to be governed by the Hindu Law. On the other hand, it has been urged that the rights of parties marrying under this Bill and the rights of children of such marriage in the property of their parents may not be the same as the rights which would be available under their own personal law, if the parties concerned had married under that law. So the Act should apply in all cases, irrespective of whether the parties profess different faiths or the same faith. It may also be noticed that under the existing Act III of 1872, it is open to the parties professing the same faith to marry under that Act and come under the provisions of that Act as regards all other matters. Having, therefore, accepted the position that persons professing the same faith can marry under this law, what we have to consider is, to what extent any such marriage should affect their rights with respect to the families to which they belong and to the joint family property in which they have a share. Perhaps—I am offering a suggestion only—a provision stating that it shall be open to the parties concerned to ask for a partition of the joint family property and stating at the same time that the other members of the family may buy out the share of the persons marrying under this Act, may be more equitable than the provision now made in clause 18.

Another question which has raised some comment is, what would be the religion of the issue of a marriage solemnized under this Act? Here

again, it may not be difficult to provide that either at the time of the marriage or at any time subsequent thereto, the parties should declare in writing, probably by a registered document, that the issue will be governed by some particular law or the other. In the absence of any such declaration, it may be prescribed that the children will profess the religion of their father.

Then I come to another important clause in this part, and that is clause 23, dealing with succession to property of parties married under this Act. This question presents several problems. The first question is where both parties to the marriage profess the same faith, whether we should not regulate succession by applying their personal law rather than by applying the Succession Act. In this connection, I would like to submit that the Indian Succession Act should be regarded as a uniform civil law applicable in matters of succession generally, particularly as its provisions relating to succession are very equitable. Therefore, we might apply the Succession Act to regulate succession, and not the personal law of the parties. In fact, if the parties desire that their own personal law should regulate succession to their properties, there is no need for them to marry under this Act. Perhaps, Sir, even if you retain the present provision, namely, that the Succession Act would apply in such cases, it may be necessary to make certain amendments, because, as was pointed out by one hon. Member when I was moving for the circulation of the Bill, there are certain sections of the Indian Succession Act which expressly declare that the provisions of that Act regarding both testamentary and intestate succession will not apply to Hindus, Muslims, Buddhists, Sikhs or Jains. I refer to sections 29 and 58. It may be that if we retain this provision of the Bill, it will be inconsistent with the provisions of the Succession Act. So we shall have to reconcile the two by means of an amendment. That again

is a point to be taken up in the Select Committee.

Apart from that, if any concession is to be made on this score, we may provide that the parties will, by a registered document, provide at the time of their marriage or at any time before their death, that succession to their property will be governed by some particular personal law.

A further question has been raised and that is, when the person marrying under the law had children by his former marriage which was not solemnized under this law, what is the law of succession under which the children of the former marriage would come? Would they be entitled to their share in the property? I confess this question is one which presents some difficulty and will require careful consideration.

This is a new point which had not occurred to me when I was preparing the Bill.

Then comes clause 21 which allows parents of children marrying under this Act to adopt any person as their son. This is objected to on the ground that marriage under this Act should not be regarded as putting an end to all parental relationships. For the time being, however, it may not be possible to omit this clause altogether, having regard to public sentiment in the matter.

We come next to clause 22 which makes the provisions of the Indian Divorce Act applicable to divorces under this legislation. It has been alleged in some quarters that the provisions of the Divorce Act are out of date and require to be completely overhauled. Sir, I had a conference of representatives of the Christian community and their opinion was that the provisions of the Divorce Act should be substantially altered. The matter is now under consideration. So, this objection is not altogether unfounded. Government

is seriously considering whether the time has not come for overhauling the Indian Divorce Act. The critics of clause 22 say that the provisions in the Hindu Marriage and Divorce Bill respecting divorce in themselves mark a great advance on this branch of the law, and it has been suggested in one or two quarters that the relevant provisions of the Hindu Marriage and Divorce Bill should be incorporated in this Bill instead of leaving the parties to be governed by the provisions of the Indian Divorce Act. Without saying anything more, I think, Sir, that this is a useful suggestion and will have to be considered by the Select Committee. If so desired, clause 22 may be replaced by a complete set of self-contained provisions relating to divorce.

Sir, I will not take up the time of the House any more. I have outlined in brief the main provisions of the Bill and the general criticisms which have been offered. The opinions received so far show that the public is generally in favour of the Bill. In fact, the provisions of the Bill may be expected to produce a salutary effect in our attempt to produce a homogeneous society in India, although such a process may be a very long drawn out process.

The Bill is purely an enabling measure, and it does not compel a man to act against his wishes, but j\* must be admitted that even to tn\* limited extent that the Bill goes, tnt Bill is a welcome measure and may, in fact, be described as the first attempt of Government to secure for the citizens a uniform civil code in one branch of the law.

Sir, I will conclude by adding one further remark. In the Resolution I moved on the last occasion, the date by which the Joint Select Committee should submit its report was stated to be the end of August 1953. That date will doubtless have to be altered. There are two amendments: one suggests 30th November and the other 31st December. I am not quite sure

[Shri C. C. Biswas.] if the date may not have to be extended even beyond that, because the date of the next session has not yet been announced, and then, Sir, the Select Committee cannot be constituted unless the other House nominates its representatives. Now, that House is going to adjourn on Friday next and I am not at all sure that this resolution which is to go to the other House will have a chance of being placed before it before it adjourns. In that case, the Select Committee cannot be constituted till some time in the next session and then the Select Committee will begin its work. It may be that the Select Committee will begin its work in the third week of November or in the early part of December—I cannot say.

SHRI RAJAGOPAL NAIDU: In that case, Sir, I suggest that we have a Select Committee of this House only.

SHRI B. C. GHOSE (West Bengal): No, no.

SHRI C. C. BISWAS: I am only telling you that there is a chance of there being delay in the constitution of the Joint Select Committee. Therefore, Sir, the date of submission of the report by the Joint Select Committee should be altered to, say, the middle of January or some such time.

SARDAR SWARAN SINGH: It may be two months after the constitution of the Select Committee.

SHRI C. C. BISWAS: My colleague suggests "two months after the constitution of the Select Committee". I accept it. The Select Committee may be instructed to make a report to this Council within two months from the date on which the Select Committee is constituted.

DR. SHRIMATI SEETA PARMA-NAND (Madhya Pradesh): In that case, the Select Committee should only be of this House because otherwise it will cause unnecessary delay.

SHRI C. C. BISWAS: My motion was for the appointment of a Joint Select Committee and, therefore, the Select Committee cannot be fully constituted unless the representatives of the other House are also selected.

DR. P. C. MITRA (Bihar): Only one question, Sir. I want to know whether this marriage is to be considered as promiscuous marriage or not?

MR. CHAIRMAN: Let me put the motion.

DR. SHRIMATI SEETA PARMA-NAND: Sir, why should the hon. the Law Minister not ask the other House to sit one afternoon, as they have been doing?

SHRI B. C. GHOSE: We cannot ask the other House.

MR. CHAIRMAN: Motion moved:

"That the Bill to provide a special form of marriage in certain cases, and for the registration of such and certain other marriages be referred to a Joint Committee of the Houses consisting of 45 members, 15 members from this Council, namely: —

1. Dr. Shrimati Seeta Parmanand
2. Shrimati Savitry Nigam
3. Shrimati Violet Alva
4. Khwaja Inait Ullah
5. Shri M. Valiulla
6. Dr. P. C. Mitra
7. Shri R. P. Tamta
8. Shri B. K. Mukerjee
9. Shri Rama Rao
- in Shri H. N. Kunzru
- 1 Principal Devaprasad Ghosh
- 1 Shri V. K. Dhage
- 1 Shri Rajendra Pratap Sinha
- 1 Shri Amolakh Chand, and -j
- 1 Shri C. C. Biswas

and 30 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 Committee 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 within two months after its appointment."

The amendment\* are not pressed in view of the changes made. This is open for discussion.

DR. P. C. MITRA: My question has not been answered

SHRI K. B. LALL (Bihar): Before YOU allow the debate on this to proceed, Sir, I would like to make a submission. From the Order Paper I see that only today is allotted for this and perhaps it is going to be referred to the Select Committee today. There will be a large number of speakers and, if it is to be referred to the Select Committee today, then, some method must be found out to give an opportunity to every Member who wants to speak. What happens otherwise is that in the beginning one speaker is given one hour, the second is given forty-five minutes and so on and in the end people who really want to make some submission are not given the opportunity. If this will be continued beyond today, of course, you can give as much time as you like—that is quite all right—but

if it is going to be according to the Order Paper and if it is to be referred to the Select Committee today, then some way must be found out to give as much time as possible to accommodate the large number of Members who are desirous of speaking.

SHRI B. C. GHOSE: I think, Sir, that there is no presumption in what he has stated that this is going to be finished today and may not be continued tomorrow. The debate will take its course.

MR. CHAIRMAN: If the House is really anxious for a Joint Select Committee, it should hurry up its proceedings to enable the other House to consider this question before it is adjourned. But, if it is intended to do something else, then it is for you to do as you like, but all that I am saying is that it would be wise for us to complete it before this noon.

I have got here a number of names of Members who wish to speak on this question. Shri B. K. P. Sinha.

DR. SHRIMATI SEETA PARMA-NAND: Sir, I want to speak.

SHRI B. RATH (Orissa): Do you mean that names should be given.

MR. CHAIRMAN: No, but I have just got a few.

SHRI TAJAMUL HUSAIN (Bihar): May I know whether I have to catch your eye or send my name?

MR. CHAIRMAN: I will catch the eye.

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRI B. RATH: Then you may put *my* name on.

SHRI B. K. P. SINHA (Bihar): Mr. Deputy Chairman, this measure is both welcome and unwelcome. Its main purpose is to provide a wider area for civil marriages. It is now open for persons professing different

[Shri B. K. P. Sinha.] religions to be united in holy wedlock to lead a happy married life without the nightmare of unhappy consequences that follow from illegal marriages haunting them. Even if two persons professing different faiths married under this Act their progeny shall not be considered illegitimate and so many legal consequences to their disadvantage will not follow. That is essential of this measure and it is welcome to me.

Going into the details I find that this Bill has many imperfections. Sir, this is *par excellence* legislation by reference. Clause 19 of this Bill makes the Caste Disabilities Removal Act with slight modifications applicable to persons married under this Act. Clause 22 makes the whole of the Indian Divorce Act, at least its provisions relating to marriage and divorce, applicable to marriages solemnized under this Act. Clause 23 lays down that "Succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the Indian Succession Act." Legislation by reference Sir, is now a well-accepted device. But this device, has its uses and has its limitations. It is useful when the reference is to one or two well-known provisions of some other law, to one or two definite sections. In that case it would shorten the work of the legislatures and lighten the burden of the draftsman. It does not make the legislation unintelligible or difficult of reference. But if much too liberal use is made of reference by legislation and if by reference, whole Acts, at least sections counted in scores are made applicable to a particular Bill then legislation by reference instead of being useful becomes rather dangerous. It gives rise to many conflicting questions of interpretation. It very often produces quixotic situations and difficult legal conundrums which the courts are hard put to solve. Courts therefore, Sir, look at legisla-

tion by reference on a liberal and voluminous scale with disfavour. Jurists have condemned it in no uncertain terms. It is not fair, Sir, either to the legislators or to the legislature. When a whole measure is before us, the anomalies and inconsistencies which might have escaped the eyes of the draftsmen might not escape the legislators. They may pick them out and then those inconsistencies and those anomalies may be removed. If that is not done and whole Acts or scores of sections are brought into operation by mere reference then legislators are reduced to accepting the thing *in toto* or rejecting the thing *in toto*.

Take the instance of this Bill. The Divorce Act has been brought into operation. It contains provisions for divorce, for alimony and for the care of children. We do not know what those provisions are. If the provisions in whole are a mere part of this Bill, we may have accepted some of them, modified some of them and rejected some of them. Now we are reduced to accepting them *in toto* or to rejecting them *in toto*. We do not know what anomalies will possibly arise if we accept all these *in toto*. It is just possible that there might be anomalies but there will be no chance to clear them. Then legislation by reference is unfair to the people at large as well. It is a well-known maxim of law that ignorance of law is no excuse. But this maxim has its corollary. Its first corollary is that the law must have wide publication. Another equally important corollary is that the law must be easy of reference. It must be intelligible to the people and when law is found in different fragments, in different pieces, it is unintelligible. To be intelligible it is to be pieced to

gether. Sometimes it becomes difficult for the people to know what the law is and I am sure that many a man in future will take advantage of this Act when it is put on the statute book without realising what he is bargaining for. He will

simply refer to the clauses of this Bill but he will have no idea of the Succession Act, the Divorce Act, or the Caste Disabilities Removal Act. To the extent, Sir, that this Bill makes liberal provision for legislation by reference this measure is faulty. It may be argued by the hon. Minister that this measure has been there since 1872. I ask how many have taken advantage of this measure and therefore the occasion never arose for discovering the anomalies and inconsistencies. Henceforth a very large number of people are likely to take advantage of this Act. In all fairness to them it would have been proper if all the provisions relating to succession, divorce and inheritance had formed part of this Bill. This legislation moreover takes a mechanical view of law-making. Legislation is not merely perfection in draftsmanship. Legislation is not merely lifting bodily some provisions of some sections out of an Act of a country or of some other country and incorporating them as clauses of the Bill. Legislation is an organic process. It is a part of the organic growth and development of society. Legislation should not ignore the particular stage society has reached, should not ignore the particular society for which it is framed and for which it is meant. From this point of view, Sir, the framing of every legislation, especially legislation on marriage and divorce, should be preceded by mature deliberations and laborious enquiries in the field of human endeavour and relations that the legislation seeks to regulate and control. This Bill is conspicuous for the violation of these salutary principles of law-making. Marriage and divorce are an integral part of the life of man. They have immense influence on the happiness, health and welfare of men and consequently of society. It would have been better if Government had constituted a small

committee giving that committee wide powers to take evidence both oral and documentary, to refer to books or

documents on marriage, sexology, sexual relations and eugenics and thereafter come to some definite conclusions. That committee would have taken note of Indian society, its needs, its opinions and its reactions and thereafter that committee would have put forth a draft proposal. That is what is done even in countries like the U.K. Recently they changed their marriage laws but that was preceded by elaborate enquiries by a committee. Nothing like that has been done here. This legislation is in my opinion merely an amending legislation. It does not introduce anything new. It is a modified copy of the Special Marriage Act of 1872. The Act of 1872 was passed 80 years back. That Act incorporates the ideas of the mid-Victorian gentlemen on marriage and divorce. Since then, Sir, our ideas of sex and of marriage and divorce have undergone a revolutionary change. Sex has been rescued from the darkness in which it was immersed for ages. The whole field of sex has been subjected to research by men who have made sexology their life's occupation and preoccupation. Today, Sir, we do not consider procreation the be-all and end-all of marriage. Marriage is not today what the great Victorian gentleman considered it. Marriage today has some higher purpose behind it. It is not merely the physical union of two beings; it is the union of two souls, the union of two intellects, for without that a higher life would become impossible. It is in view of the realisation of this fact that the divorce laws of many countries put emphasis now on psychological incompatibilities as one of the reasons for divorce. This Bill bodily lifts the provisions of the 1872 Act and incorporates them here. It takes account of only physical incompatibilities. In the modern age that is not enough. Many advanced States have incorporated psychological incompatibility in their divorce laws,

and there is no reason why we should not follow that advanced practice by incorporating something of that nature



[Shri B. K. P. Sinha.] in a measure which is brought here in She year 1953.

Sir, coming to something more prosaic, I have found that the sexologists and psychologists are all agreed that sexual maladjustment is one of the prime causes of marital unhappiness. It leads to breaking up of homes. It makes life an unrelieved misery. Therefore, sexologists have been putting forth the plea that sexual maladjustment should be a ground of divorce. I have yet to come across a country which has incorporated this healthy provision in its divorce laws. But that is no reason why we should not break fresh ground. I wish something of that nature were adopted or incorporated in this Bill. But since this Bill is a replica of something that is 80 years old, nothing is found here. This Bill gives legal recognition to the principle of eugenics by banning marriages between idiots or lunatics. I wish that this provision were made more comprehensive and the Resolution of the hon. Member, Mrs. Munshi, were made the basis of some such provision in this Bill. Its provisions regarding divorce, Sir, are also archaic. Divorce is a necessity, but it is a tragedy. It is a tragedy not merely for the parties involved. Sometimes it produces reactions which the parties cannot get over even for their whole life. It is a greater tragedy for children; it is a tragedy for society; it is a tragedy for the relations of the parties involved. Therefore, most of the modern States while recognising the necessity of divorce make provisions for intermediate institutions or courts. In the interests of children and of society at large, it is the function of these courts to try to assuage the feelings of the parties in the divorce cases and prevent divorce. Take for instance Russia. In Russia, the right of divorce was unlimited. Anybody could obtain divorce at any time for the mere asking. In 1937 or in 1946—I am not sure, but later on—there was a change in the Russian law. Now all divorce petitions have to go before the Peo-

ples' Court. It is the duty of the Judge of the Peoples' Court to try to bring the parties together, to try to improve their relations, and see, if possible, that the incident or the ill-feeling does not culminate in divorce. They are given six months' time. It is only when the Peoples' Courts fail that a regular suit has to be filed in a regular court and a divorce is granted. In America recently there was an unofficial committee which suggested something on these very lines. They suggested some machinery whose purpose would be to see that if possible, divorce proceedings do not reach the culminating point. And this suggestion of this committee was welcomed even by the Catholic Church. Some such provision ought to have been incorporated in this Bill also.

Coming then, Sir, to some minor imperfections, I feel that the area of prohibition is not wide enough. Marriage was so long operating under two limits, the outer limit, and the inner limit. We are expanding that outer circle. Now, a man professing any faith can marry any person professing another faith. The inner circle was already there. But as the hon. Law Minister has himself mentioned, there are in some Indian societies certain customs which are not in harmony with modern eugenic laws or principles. I think the inner limit, the inner circle, of prohibition should be widened, and it should be brought in conformity with modern eugenic laws. I recently read, Sir, a book by an eminent British scientist. I forget his name. But the book is known as "Essays on Life". He had carried on research for a number of years, and his conclusion was that amongst the mentally defective people there was a high proportion of progeny of marriages between first cousins. Second cousin marriages also produced unhealthy results on the progeny. The bad effects went on decreasing with the increase in the distance of relationship. That is why most of the civilised and advanced people adopted exogamy as a rule of marriage in life

INow, I wish that we had taken advantage of all the knowledge contained in the branches of eugenics and the scientific knowledge available to us.

The hon. Law Minister has already pointed out some of the defects. I do not know what complications will arise if there is no severance. I have not analysed the law from this angle. It is just possible that there may arise some complications or they may not arise. If no complications arise, there is no reason why we should have severance. Severance is something which nobody relishes. Westerners speak critically of a joint family. But it has become a part of our thinking, of our process in life; and it has numerous advantages. So, if this type of marriage in the absence of severance does not give rise to many unsolved problems, then we should have no severance. That is my suggestion.

Then, Sir, coming to succession, we find that the Bill lays down a particular rule of succession, *i.e.*, the Indian Succession Act. I know that nobody should be free to carve out a particular line of succession for himself or for his progeny, because in that case there would be legalistic chaos. But then we have certain well-defined rules of succession, laws of succession. The Hindu Law is there; the Muslim Law is there; the Indian Succession Act is there. It should be open to the parties who marry under this Act to choose the law of succession under which they and their progeny would like to live. That option should be given. Suppose a very devout Hindu takes advantage of this law, marries a Christian lady and he does not want a severance from his family and he does not want to change his law of succession, the principle of succession, and his wife is agreeable to that, then there is no reason why he should be forced to change to the Indian Law of Succession.

Then, Sir, the provisions about adoption are archaic. I do not know, probably this law was enacted when we had extremely orthodox notions. And when somebody took advantage of this law, he became an outcast; he lost his religion; and he was no good for religious purposes. The Hindu law enjoins that children should perform certain religious ceremonies for their parents. It was considered proper in 1872 that if such a child leaves the pale of his own religion, his own society, his parents should be free to adopt. But today our ideas have changed. Our religious ideas have also changed. Any man, whether he has married in his own caste, in his own religious group or outside his religious group, is today considered competent to perform all the religious ceremonies. Why then should his parents be given the right to adopt a child? The right of adoption is not looked upon with favour. I remember that when Dr. Ambedkar introduced his Hindu Code Bill, he had in mind the idea of taking away the right of adoption. He incorporated that provision for adoption with very great hesitancy. Therefore, Sir, I suggest that this right of adoption should go.

Then, Sir, with regard to the age of consent, it has to be raised to 21 years. We are passing through a period, as demographers say, of "breeding storms"—people are multiplying with great rapidity. To put a check to that, it is essential that the age of consent, the age of marriage, should be raised. And in a law of this type I feel that the age should be 21 years and the provisions relating to the consent of parents or guardians should be removed. It is not necessary for such provisions to be here.

Then I would like to know from the hon. Minister—he is not here now—as to what shall be the effect\* of registration and what shall be the effect of invalidation of marriage on the children. When a marriage is declared invalid,

[Shri B. K. P. Sinha.]

would the children out of such marriage existing at the date of invalidation become illegitimate? Would the children that would be coming forth in the future become illegitimate? Also what shall be the effect of this declaration of illegitimacy on the property rights and on the future prospects? I should like to seek a clarification from him on all these points.

Then, Sir, this Bill treats registration and solemnization as two things apart. My suggestion is that we should not give any place here to solemnization of marriage. Registration should ipso facto operate as solemnization. In Russia there was some such provision in the old law but they have introduced a change now. They had made a distinction between registration and solemnization. They put particular emphasis now on solemnization. In my opinion, that is a retrograde step. There should be no place for solemnization. Mere registration should operate as solemnization, and all the consequences that are to follow, will follow by mere registration. Otherwise, difficult legal situations may arise. Suppose that *saptapadi*, which is essential for a Hindu marriage, is not performed, and thereafter they come and get their marriage registered, what shall be the effect of this registration on their progeny. Registration is there, but solemnization is defective. How will it affect the parties? How will it affect the children to come? I would like to know that from the Law Minister. I feel that because it may give rise to unforeseen problems, it is necessary that mere registration should be enough. Sir, I have pointed out these imperfections. It is too late now to urge that this Bill should be withdrawn and another Bill brought forward. But it is necessary that the hon. Law Member should keep these things in mind and within a year or two years or three years he should have a regular committee which should have opinions of High Court Lawyers,

opinions of sexologists, opinions of psychologists, opinions of psychiatrists, and opinions of Pandits, and thereafter after due consideration, have a general marriage law.

SHRIMATI LILAVATI MUNSHI (Bombay): Sir, I do not want to go into the merits of the whole Bill at this stage because it is going to the Select Committee and most of the grounds will be covered there; and I am sure when it emerges out of the Select Committee, the Bill will attain much more perfection. Sir, in the Bombay Divorce Act which we passed in 1947, leprosy and lunacy are there as grounds for divorce. Much water has flowed under the bridge after that and we can improve upon it. We can say that people suffering from loathsome diseases also should be prevented from marrying. When the hon. Law Minister read out the opinions, we found that some people had urged that this also should be included as one of the grounds.....

SHRI K. B. LALL: Sir, the point is not clear. We cannot hear.

MR. DEPUTY CHAIRMAN: The hon. Member will kindly speak through the mike.

SHRIMATI LILAVATI MUNSHI: I was saying, Sir, that as the Bill is going to the Select Committee, I do not want to take up the time of the House by going into the various aspects of the question, because I am sure, when it emerges out of the Select Committee, it will have attained greater perfection. There is one point, however, which I wanted to urge. And that is that leprosy, an incurable disease or a loathsome disease should be made a ground for divorce as well as for prevention of marriage. I was glad, Sir, that in Bombay, in 1947, it was provided in the Divorce Act that leprosy is one of the grounds for divorce. Then we were new to the legislature. Now, Sir, between 1947 to 1953, much water has flowed under the bridge and public opinion is much more advanced now

than it was then; and I am sure that there is so much of public opinion in this matter that it would like to prevent marriage between parties if one of them is suffering from any incurable disease like leprosy or any other loathsome disease. This provision will be very welcome.

If the law of eugenics demands that the marriage of near relatives should be prevented there is greater reason for preventing marriages above mentioned. Sir, there are so many cases of marriage between people professing different religions, and marriages, between near relatives are also permissible in some religions. Sir, if eugenics does not allow this marriage between near relatives there is also greater ground for prohibiting marriages between parties one of whom suffers from incurable or loathsome disease.

There are a number of things I wanted to say; I do not know whether I should say them at this stage, because the hon. Member who was just speaking also referred to some of them. He spoke on the law of divorce and incompatibility of temperament. There is one point mentioned from which I differ. We are not advanced to that extent and I do not think that we are in favour of quick marriages and quick divorces. Our conception of marriage is quite different and so I do not think that we can accept that.

Besides, there was one other point which was mentioned by the hon. the Law Minister that the joint Hindu family would be dissolved automatically .....

SHRI RAJAGOPAL NAIDU: There will be severance.

SHRI C. C. BISWAS: There is a provision in the Bill to that effect.

SHRIMATI LILAVATI MUNSHI: Sir, while enacting legislation, we shall have to take into consideration both

the advantages and disadvantages of the joint family system. There may be disadvantages in the joint Hindu family; there are advantages also; when people become ill, they are looked after by the other members of the family; when they die, other members look after their children; when people become unemployed, they are supported by other members and they are not thrown in the streets. There may be many disadvantages but there are a number of advantages too. Unless we provide workhouses, poor-houses and homes for children and the aged people, it will be unwise to scrap everything that we stand for; and so, in the present circumstances, I do not think it will be advisable to discourage the joint Hindu family system because, as I have said before, it protects widows, children, unemployed and diseased persons who are part and parcel of the family and who are looked after by other members of the joint family. Sir, that is all that I have to say at this stage.

SHRI B. RATH: Sir, .....

SHRI K. B. LALL: Sir, is it according to the list of names given that you are calling on Members to speak?

MR. DEPUTY CHAIRMAN: I can see you, Mr. Lall, I can see you.

SHRI B. RATH: Sir, As the Bill is going to a Joint Select Committee, I would just mention about some of the provisions contained therein, for consideration of the members of the Committee and will not consider the Bill as a whole, which can be done afterwards. I feel that this Bill, as it has been drafted, should not be understood as being intended only to provide for marriage between persons belonging to different religions. It must be understood that in our Hindu system, marriage has become so very complex and has become such a burden on the parents that it needs some change and some way out. We know the prevalence of the dowry system in our country owing to which it

[Shri B. Rath.]  
**has** been very difficult for middle-class people to find partners for their children. Unless a certain amount of dowry is promised, no marriage is possible, in spite of the fact that the parties desire the marriage. Also, the form is such that you will have to spend huge amount even for a single day in order to solemnize the marriage. In these circumstances, it is but necessary to find a way out for those persons who want to get married, at the same time, also, want to have the marriage with the least amount of expenditure. It is also applicable to others who are put into a disadvantageous position if they adopted their own religious forms of marriage; and as such I welcome the Bill. But, I feel that, in spite of the fact that the Bill has been there for the last so many months, our Law Minister has not been able still to make up his mind as to what he is going to do with the Bill. I am sorry to observe that he has proved as a stumbling-block to the passage of this Bill. On the last occasion, at the last moment, he brought a motion before the House for consideration of the Bill, and on this occasion he is bringing the motion before us when the other House is going to adjourn. I am sorry, Sir, whatever it may be, it reflects the way in which his mind is working.....

MR. DEPUTY CHAIRMAN: Mr. Rath, let there be no imputation of any motive or insinuation.

SHRI B. RATH: I mean no imputation, Sir.....

MR. DEPUTY CHAIRMAN: That House is also equally responsible; they have been engaged on important business.

SHRI B. RATH: The business should have been arranged otherwise. It is no insinuation. It is a cut and dried fact.

MR. DEPUTY CHAIRMAN: It is a question of priorities.

SHRI B. RATH: Some Members of this House and of the other House do not consider this Bill as important as other Bills, but I differ from that opinion. I feel that this is an important Bill and needs the greatest consideration and the quickest legislation.

Now, coming to the Bill, I will just come to clause 4 of the Bill. Here, certain qualifications are given. I will give you some typical examples. A Hindu male under the Hindu Law can marry many times. He may abandon his wife after some years of married life. Will you please consider as to what will happen to those who have been abandoned? I know of hundreds of cases where wives have been abandoned after many years of marriage, but they cannot marry again. What are you going to do with such cases? I know of another case where, a Government employee, educated, in high position, who was married earlier, suddenly decided to marry again.

SHRI TAJAMUL HUSAIN: She must have been a fine girl.

SHRI B. RATH: He abandoned his wife. What will happen in such cases? Will this woman who has been abandoned have the right to remarry or not, if it is proved that she has been abandoned, she has been neglected, by her husband?

With regard to the age, if you fix the age at 21, I have no objection. You fix it at 20 or even 25, I have no objection, but I do not agree with this provision for the consent of the parents. If the persons can marry, if they have attained the marriageable age, they should be allowed to marry. Is it only the consent of the parents that will change everything? Will the mere consent of the parents bring about such relationship between the married couple that there will be no unhappy incidents afterwards in their married life? I cannot understand this. I know of a case where very recently an educated girl of about 19 wanted to marry a young

man who was well educated and was drawing—I won't say a handsome salary but—between Rs. 200 and Rs. 300 a month, but the parents of the girl thought that it was below their dignity to get him as their son-in-law because they came from a higher ladder of society. The boy and the girl married, but the girl was snatched away because the man could not go to court. Under the old law that was there, they had to denounce their religion, but they were not prepared to do it to get married, because unless that was done, they had to take the consent of the parents. So, that was the stumbling block. I can give very many incidents of this nature. All that I want to urge is that there is necessity to simplify our marriage system. There are a good many good parents but there are also parents who will not give up their old habits. They do not want to see any changes. I am not criticising anybody. What I am suggesting is that the social conditions are fast changing and they must be taken into account. Previously, we were not willing to send our girls to schools and colleges to get their education. The best qualification for a girl was that she should know how to cook well, how to satisfy her husband, how to look after the household affairs. These were sufficient qualifications. Now, I would ask how many parents here would like to take an uneducated girl, whom one might call a rustic, as a bride for their son.

DR. P. C. MITRA: No, no.

SHRI B. RATH: Dr. Mitra wants to object to my observations. I do not know whether his son is educated or not or whether his daughter-in-law is educated or not.

DR. P. C. MITRA: I want to know how many of the Members here would want to marry their son to a divorced lady?

SHRI B. RATH: If my son wants to marry a divorced girl, I will not mind it.

DR. P. C. MITRA: You are the only one.

SHRI B. RATH: I cannot understand this provision about the obtaining of the parents' consent. If you think that boys and girls should attain sufficient mental maturity before they marry, you can raise the\* marriageable age. I will agree with you there. You are bringing forward the Hindu Marriage and Divorce Bill in which you say that after attaining the age of 18, the consent of the parents is not necessary. That is the provision in the other Bill. Then why under this Bill should you raise it to 21? Let there be some uniformity. Let there be some uniform code.

With regard to guardians, I would like to know who is a guardian. Have you defined the term 'guardian'? Any man can come and claim to be the guardian of the children. Any brother who was never interested in the well-being of his younger brother can at the time of his marriage come and say, "You have not taken my permission and so no marriage can take place." A maternal uncle can come forward and do the same thing. There is a particular type of maternal uncles who want to save their nephews and nieces from the so-called unhappy marriages. So the word 'guardian' must be defined. I feel that they must be such persons as have been declared by law or appointed by the court and in their absence the father or the mother or any person with whom the child is living, and none else outside these.

With regard to the procedure, I have one general observation to make, that the procedure mentioned here is not one which will enable marriage being solemnized in the shortest possible time. Anybody can go after the notice is given and say that the marriage cannot be held. If any young man has an enemy, he can come forward because any man can come forward and he can say that this man cannot marry. Mere-

[Shri B. Rath.] objection is sufficient. The certifying Marriage Officer will direct him to go to court and he will go and file a suit in the court and that is sufficient. On a certificate that he has filed a suit, the marriage is stayed and there is the harassing procedure in a civil court which takes about 3 to 5 years and sometimes even as much as 6 years for a decision to take place. Do you want this state of things to happen? As an alternative I would suggest that the Marriage Officers, being State employees, should be of such category as would be able not only to register marriages but would be competent to decide such cases summarily, if there is any objection. The Munsif in any District Court or a Sub-divisional Court may be appointed as the Marriage Officer in which case he may be empowered to go into the merits or demerits of the case, in case there is any objection. If necessary he will give notice to the persons who are interested in the marriage and hear them and summarily decide; and, of course, if the parties are not satisfied with his decision, they may prefer an appeal to the highest court of judicature in any State whose decision will be final. Thereby the period of uncertainty is reduced to the minimum and the mischief that is intended to be played by any person who has nothing to do with the marriage and who might do it out of animosity or jealousy may be put a stop to.

With regard to Chapter IV I have to submit that there are certain provisions with which I cannot agree. Why cannot two persons marrying under this Act have the right to adopt?

SHRI RAJAGOPAL NAIDU: Only among Hindus. There is no adoption .....

SHRI TAJAMUL HUSAIN: Two Members are talking between themselves.

SHRI B. RATH: That is necessary sometimes. Why should not they

have the right to adopt? Is it because the Law Minister thinks that only those Hindus who marry according to Hindu rites have religious sanction behind them and is it that 'पुत्रार्थे क्रियते भार्या' (*Putrarthē Kriyate Bharyā*) is only applicable to them and none else? Is it his contention that marriage otherwise than according to Hindu rites is such that it is only to satisfy the sexual hunger of those persons and that it is not for progeny or children? If that is not so, then those people also must have the option to adopt if they so want. Why should you make a prohibition in legislation that they cannot adopt? I think the Select Committee will consider this aspect of the question. Also, supposing the parents agree to allow their children to marry according to this form, why should there be severance from the family? What is this severance? What does it mean? It has no legal meaning. What is this severance? Will he be severed by any weapon? The so-called severance from the family I should not be applicable. I may agree to give my son in marriage to a girl according to this form but I don't want to separate from my son. Will you force me to separate, I want to know? I have chosen this form of marriage because I don't want to spend any money.

DR. P. C. MITRA: Why do you call it a marriage? It is taking a lady—that is all.

SHRI B. RATH: If my friend is a Hindu and if he believes in marriage in a religious form, why should he be against the development of the Hindu society in another form? This is another form also.

DR. P. C. MITRA: Abolish marriage then.

SHRI B. RATH: Let him not be the custodian of Hindu religion and let him leave a little of it to us also who are also born Hindus. If he does not want this form, he may have it in his own way. If we want it, there must be provision for it.

DR. P. C. MITRA: YOU are at liberty.

SHRI B. RATH: This compulsory provision for severance should not be there and if he wants to have it, it may be made permissible and not compulsory. I am not going to take the other points about divorce etc. but I would suggest that the Select Committee might, while considering this Bill, be permitted also to embody such provisions of the Divorce Act or the Succession Act as are necessary in this Bill itself and make it completely comprehensive. That will be better, I feel.

SHRI K. B. LALL: Sir, I rise to give my support to this Bill but with some observations for the benefit of the Select Committee. " I find that the sponsors of the Bill are very jubilant so much so that they have forgotten their real responsibility and the long-range view that one should take about the consolidation of society. This is a very important piece of legislation. We are putting our hands into the affairs of the nation and into the practices that have been there from time immemorial, and it being our care, we must take note of the signs of the times and how we are going to profit by any change that we propose now. But it seems that the sponsors are very jubilant, and especially the Lady Members of this House. I don't understand that. I read the Bill several times and I asked some of my friends why the ladies were so very anxious that this should be passed even today—that there should be no Joint Select Committee and there should be no chance of delaying it and we must hurry it and pass it even today, if there is any possibility. Some friend told me that they want freedom to marry. I cannot understand that. Those ladies who have got their own consciousness so much have freedom to marry even as it is today. They are marrying even now—I mean those who are conscious of these things and those ■who have understood their responsi-

74 C.S.D.

bilities. Even today they have that freedom.

PRINCIPAL DEVAPRASAD GHOSH: Not all the ladies, I hope.

SHRI K. B. LALL: No, not all the ladies. Not all the ladies will be able to take advantage of even the Bill which you will be passing. On such a question do you expect that society will change over-night as soon as you pass this Bill? I know many good thoughts emanate from our minds; but they remain where they are, they are not able to force society to improve, to influence society effectively. Take the Child Marriage Act that you have passed. How much this Act has been effective, we can search our hearts and find out. It is society that has to bring about the change in the law, it is not the enacting of laws that will change society. Society will force you to change the law. After all laws are merely mirrors in which society can see its own face. As a famous jurist said, "Show me the laws of a country and I will tell you at what stage of civilisation it is." So it is not b> enacting laws here that you are going to change the face of society; rather, society would compel you to change your laws. So you should go cautiously and see how and where we are going. Of course, introduce such progressive ideas as might help the development and growth of society. That is all to the good. But so far as this Bill is concerned, I tried to think about it and find out how society is going to become advanced by this measure. It brought to my mind the picture of a child marriage. A child is not at all concerned about the responsibilities of later life. The child is only concerned with the *tamasha* of th\* marriage, the beating of drums, the feasting, the bright lights and aU sorts of demonstrations, the going out in procession, a number of guests coming and being entertained—all these give the child pleasure and enjoyment, the child thinks this is



[Shri K. B. Lall.] marriage and is happy over it. He never thinks about the responsibilities of marriage.

MR. DEPUTY CHAIRMAN: Mr. Kailash Bihari Lall, please remember that there is a time-limit.

SHRI K. B. LALL: Sir, a time-limit? I was not aware of that.

MR. DEPUTY CHAIRMAN: Give some constructive suggestions to the Select Committee.

SHRI K. B. LALL: All right, I am coming to that. I am trying to be brief.

MR. DEPUTY CHAIRMAN: All this drum-beating is beside the point.

SHRI K. B. LALL: I am trying to finish as soon as possible.

The framers of this Bill, though they may be serious, seem to have forgotten the real aim of a legislation. I support this measure because I agree with the principle behind it. There are certain restrictions at present which stultify the growth of society and they should be relaxed. This Bill differs from the Special Marriage Act of 1872, for there you want a declaration that you forego your religion when you marry, and you are neither a Hindu, nor a Muslim, nor a Buddhist nor a Jain. Today, you give the man liberty in this respect and that is something good and the man can marry without declaring that he is irreligious, that he has no religion. That is understandable. But at the same time, you take away so many rights from the man that it will not be worth the bargain. You take away the right of adoption. This means that this law is going to change the face of society totally. That is what will happen once you take away this right of adoption. Just as Mr. Rath said: if I am willing to marry my son or daughter to a Muslim or a Christian, why should I necessarily cut off connection with

my son and have the right of adoption? Why should my son be debarred from the right of adoption? And then there is separation from the family too. This is something that is being imposed upon society and it will divide society and it is not going to help the growth of our society. I don't see how it will be helpful in that direction. I find the words "shall be" used in all the clauses. For instance:

"The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family."

They do not even use "may". That would have at least left some scope for the man; but you force him to sever his connection with the family. Look at the picture in Japan. There, in a family there are people of different religions. The father may be a Christian, the mother a Muslim and one child may be a Buddhist, and the other a Shinto. As a matter of fact, nobody bothers about the other's religion. Why not try to picture in your own mind the growth of such a society in our own country? That will help the natural development of society and the consolidation of the nation. That would be better than breaking up society and creating one more caste, for that is what I charge you with. You want to create one more caste, call it bastard caste, call it legitimate caste or illegitimate caste. People will point their finger and say, "Here is a society, a family born of cross-breeds." In order to give them that certificate, you bring this measure even though they themselves may not be prepared for that, even if the father, the brothers, the mother and all the relations are not prepared to sever connection, you force the person to sever connection because he has married a certain woman.

SHRI GOVINDA REDDY (Mysore): They will still continue to live

together. This will have only legal effect

SHRI K. B. LALL: That is exactly what I say. Legally you make him the target of the whole of society. That is my point. You want him to sever the connection even though the family is prepared to keep the couple. Similarly about the provision regarding adoption.

With regard to bigamy too, though it may sound strange to my friends, I say, if you want the growth of society, a national society, here, then we should not put forward such a legislation which may help isolation. It is really helping isolation if you ask the Muslims to be away from us. The Muslims are not going to touch even with a pair of tongs any legislation that stands in the way of their rights. They are allowed by their religion to have four wives. If they can have four wives, then they can never take advantage of this law. They are also compelled not to enter into any other marriage. Of course, my friends ask me this question: "You support this Bill; but will you be prepared to marry your child to a Muslim or a Christian?" I say, "Yes, I am prepared, I do not fight shy of that, provided the Muslim or the Christian has not his eyes upon any foreign land, provided he looks upon this as his mother country."

SHRI M. P. N. SINHA (Bihar): But how will you know that?

SHRI K. B. LALL: If they are nationals of this country and of no other country, I will do it. If they feel that the culture of this country is their culture and if they all have faith in this one nationalism, surely I will not fight shy of giving my daughter or son in marriage to a Muslim.

DR. P. C. MITRA: Show an example.

SHRI K. B. LALL: You can see from the way they live and from the

way they think. That amount of commonsense has been given to us. So, if you keep the door open.....

SHRI JAFAR IMAM (Bihar): What do you think about the Muslims who are here at present? Are they Indian nationals? Are they loyal to the country or not?

SHRI K. B. LALL: Surely, they have got every right, as far as politics is concerned, but so far as these social matters are concerned, I ask my friends to search their hearts.

SHRI S. N. MAZUMDAR (West Bengal): All Indians, including Muslims, are full citizens of the Indian Union enjoying equal rights under the Constitution.

SHRI H. P. SAKSENA (Uttar Pradesh) : I submit, Sir, that this invidious distinction should not be argued in this House.

MR. DEPUTY CHAIRMAN: Order, order. Go on Mr. Lall.

SHRI K. B. LALL: Was there a point of order, Sir?

MR. DEPUTY CHAIRMAN: No.

SHRI H. P. SAKSENA: I only tried to bring you to reason.

MR. DEPUTY CHAIRMAN: Order, order. Let there be no talk across the Chamber.

SHRI K. B. LALL: I think Mr. Saksena thinks that he is the repository of all reason.

MR. DEPUTY CHAIRMAN: Please go on, Mr. Lall.

SHRI K. B. LALL: He is such a repository that people get annoyed.

MR. DEPUTY CHAIRMAN: Mr. Kailash Bihari Lall. resume your speech.

SHRI K. B. LALL: The door should be open and society should be helped in such a way that the Muslims

[Shri K. B. Lall.] may be at one with us in our nationalism.

Sir, their object here is .....

MR. DEPUTY CHAIRMAN: You are treading on dangerous ground, Mr. Lall. Come to the Bill; leave the Muslims alone.

SHRI K. B. LALL: I am speaking plainly. It may be dangerous now, but in the long run, if you speak truth and frankly it will pay. That is what I have been doing. I see that the Muslims appreciate when we speak truth. To say that we are Indians and that they are not this, that and the other, that they are foreigners, is to speak ill of them and they, in turn, do the same. They speak about loyalty here and at 12 o'clock they take flight to Pakistan. That is the situation and my speech is the plain truth.

So far as this Bill is concerned, I say that we should keep the door always open for searching of hearts by all persons and people should not be isolated even in our legislation. If you think in terms of isolating them, then we are not helping the development of society and there is no use having such haphazard legislation in which we leave loopholes for the isolation of people. There should be no isolation. Even now, there are some Muslim and Christian friends who are not getting along. They are doubtful as to how it is going to affect their culture, their society, and so on, and you also have a reservation in your mind. When we pass such social legislation, if we have the improvement of our national problems in mind, we should not be narrow minded. That is what I was saying. In the so-called Hindu Society .....

SHRI C. G. K. REDDY (Mysore): So-called?

SHRI K. B. LALL: You have differentiated in the Hindu society .....

SHRI C. G. K. REDDY: Why so-called?

SHRI K. B. LALL: It will take » long time for me to explain.

SHRI C. G. K. REDDY: Then don't, I don't want it.

SHRI K. B. LALL: I am in a hurry because the time at my disposal is limited. I will explain as to why it is "so-called" on another occasion. You will see the Sword of Damocles hanging over my head. Even in this so-called Hindu society, the picture has been depicted to some extent by Mr. Rath just now, and you have seen how it will affect the parties. People sitting on the fence will be waiting for an opportunity—even responsible people—to get rid of the first wife and, in order to get rid of the first wife, there may be cases of murder, wrong and bad allegations against the wife, that she was unfaithful—even though the wife might have been completely faithful—, allegations to blacken her in\* society and to get rid of her. What is the charm for the word monogamy? I do not understand it.

SHRI TAJAMUL HUSAIN: How many wives have you got?

*(Interruptions.)*

SHRI K. B. LALL: The time is short and I may be pulled up again.

SHRI TAJAMUL HUSAIN: On a point of information, Sir. My hon. friend said that he is not charmed' with the word monogamy. Does he like polygamy? Does he like polyandry also?

MR. DEPUTY CHAIRMAN: Order,, order.

SHRI K. B. LALL: Are these interruptions relevant, Sir? I was questioning the charm of monogamy or polygamy or bigamy, whatever you call it.

SHRI RAJAGOPAL NAIDU: What about polyandry?

SHRI K. B. LALL: There are, in our society, such people who used to marry even fifty wives in the old days.

SHRI C. G. K. REDDY: All glory •to them.

SHRI K. B. LALL: According to the social education that we are having, even two wives are looked down upon now. In some cases where there was no progeny, when they want the male line to continue in a family and the male is asked to marry again, he refuses. He says, "I cannot marry for a second time so long as my first wife is living". You have now passed legislation, but Hindu society is going on as it was «even before. But the society has so much advanced that they are now looking down upon two wives. Leave things as they are; don't interfere in such a forcible manner which will have the effect of importing the evil that I have quoted, because young couple, infatuated with love, may think of getting rid of the first wife -or husband. Don't allow this loophole. Let it remain as it is. Make it as simple as possible. Who ever wants may take advantage of these civil legislations and let it be done in such a way that society may not feel that something very forcible is being done and that society itself is going to be broken up. This way, the evils that you never intended will be imported. So, with these few suggestions.....

SHRI GOVINDA REDDY: You want the two wives to remain together and quarrel?

SHRI K. B. LALL: Why should you presume that they will quarrel? I have come across a family in which there were more than two wives and they lived amicably.

MR. DEPUTY CHAIRMAN: You need not go back, Mr. Lall.

SHRI K. B. LALL: Sometimes the first wife has asked her husband to take a second wife in order to continue the male line. In monogamy, I have seen the wife taking up the broomstick and *danda* against the husband. If society goes on like this, I do not know how it will end.

With these words I support the Bill and hope that there will be no more attempt to isolate society but that a great society will be created to take advantage of these things. It is a serious thing; if you go' on isolating in such a way, then a society just like the Anglo-Indians will grow up. Although you will try to cover it up with some respectable words like 'eugenics' or some other word the people in their heart of hearts will brand it as a society of bastards. So let there not be such an encroach- ment on the main body of society and, this is the suggestion that I have to. give and I hope it will be considered.

SHRI B. M. GUPTE (Bombay): I support the motion before the House<sup>1</sup> but I want to make some observations for the consideration of the Select Committee. The hon. Minister made a reference with regard to the conflicting customs in the matter of 'degrees of prohibited relationship'. It is true, Sir, that this is a matter in which there is a great diversity and conflict. Some customs permit something and it is prohibited under other customs. But I submit, that there is no reason why this conflict and this diversity should continue, because in my opinion this is a subject which is pre-eminently suitable for scientific treatment and in these matters the voice of science should prevail. In fact my general proposition is, that in this age of great scientific advance, as far as possible, all reforms should be based upon science. But at least in relation to this subject science ought to be able to say how far the mixture of blood between the parties is injurious or beneficial, and if it is beneficial, how far they should be removed from each other. And once this is ascertained the formula

[Shri B. M. Gupte.] should be applied to all parties irrespective of the fact that they profess Christian, Mohammadan or any other religion. I myself would have made concrete suggestions in this behalf but unfortunately for me I could not find out what were the conclusions about this matter arrived at by science. The resources of the Government are far vaster than those that I have or any individual can have. Therefore I request the Government that they should try to find out what is really the conclusion, what are really the up-to-date findings in this matter.

The hon. the Law Minister referred to eugenics. Personally I could not find out what eugenics had to say on this subject. Anyway I submit that the scientific formulae, if any is found, should be incorporated in this Bill and also in the Hindu Marriage and Divorce Bill.

My another suggestion is with regard to guardianship. If the parties do not complete 21 years of age the consent of the guardian is necessary but no detailed provision is made, as is made in the Hindu Marriage Bill with regard to the precedence amongst the guardians. In the absence of such a provision on the lines of clause 6 of the Hindu Marriage Bill, there might be a conflict amongst two or three persons each of whom may claim that he is the real guardian. To avoid this a provision on the lines of clause 6 of the Hindu Marriage Bill should be inserted here also.

With regard to clause 18 I have heard what the hon. Law Minister said but I should like to point out that even if we remove it there will be no harm and there will be no injustice or hardship. I think there is absolutely no reason to keep this clause. In my part of the country, on Bombay and Poona side, many middle class Hindu families are adopting this form of marriage simply under the stress of economic distress. They want a simple and

cheap form of marriage. But many of them do not know that according to law this entails severance of the family. Blissfully ignorant of this, they continue to live jointly. Later on perhaps the astute coparcener may take advantage of this provision: and try to exploit the ignorance of other coparceners. I may be told that ignorance of law is no excuse. But I am not basing my objection on this point only, I want to say that even if we delete this clause there will be no hardship because even under the ordinary Hindu Law any coparcener can ask for severance. He has not to give any reason; mere expression of desire to separate is enough. If on the other hand no coparcener objects there is no reason why there should be compulsory severance of joint status by the operation of law. Therefore there is no necessity to retain this clause.

Then if registration of marriage is permitted under clause 7 of the Hindu Marriage Bill as another form of marriage all the disabilities that are imposed on Hindu family by Part IV of this Bill would be removed automatically. But I know there might be strong opposition to that suggestion and it may not be accomplished. Then in that case as an alternative I would suggest that as far as clause 23 of this Bill is concerned, it should not apply when both the parties are governed by the Hindu law in the matter of succession. If the parties profess Hindu, Buddhist, Jain or Sikh religion, then they are governed by the Hindu law of succession and there is no reason why the Succession Act should be thrust upon them.

Then finally there is one more suggestion I have to make and that is with regard to the publication of the notice of marriage. The provision is that it should be put on the notice-board but I feel that such a thing won't do because nobody will be going to the Collector's office every day for the purpose of seeing what appears on the notice board. Andv

even if one desires to see the board he will find that the board is often so much cluttered up with old and divers sorts of notifications that he will hardly be able to find this particular kind of notice. Therefore I submit that provision should be made that in addition to putting it on the board the notice should be advertised in a newspaper which in the opinion of the registrar has wide circulation in the district.

With these suggestions, Sir, I support the motion before the House.

DR. B. R. AMBEDKAR (Bombay): Mr. Deputy Chairman, Sir, I rise to make just a few observations on this Bill. This Bill, as I read it, is merely a repealing Bill. One can see that from clause 33 of the Bill which says that "the Special Marriage Act, 1872 is hereby repealed." The question, on reading this clause 33, that one begins to consider is whether anything of the Special Marriage Act of 1872 is retained in the present Bill or whether the Bill is a new enactment which contains provisions which supersede the provisions contained in the Act of 1872. Sir, I spent some time in comparing the provisions contained in the old Act of 1872 which is hereby repealed, with the provisions contained in this Bill. And what do I find? If the House would not mind my going through the details of the clauses of this Bill and the comparative statement of the analogous clauses contained in the Act of 1872, the House will note to what extent this measure is a new measure at all. I omit Part I which is entitled 'Preliminary' and which deals with certain definitions and the power of the Government to appoint certain Marriage Officers. The important part is Part II. Now Clause 4 of Part II of the Bill exactly corresponds except for minor changes namely, that the names of the various communities, Muslims, Hindus, Buddhists, Sikhs, etc. have been eliminated—to section 2 of the old Act of 1872. Clause 5 of the Present Bill

corresponds to section 4 of the old Act of 1872. Clause 6 corresponds to section 13 of the old Act. Clause 7 of the present Bill corresponds to section 6 of the old Act. Clause 8 of the present Bill corresponds to section 8 of the old Act. Clause 9 of the present Bill corresponds to section 9 of the old Act. Clause 10 of the present Bill corresponds to section 10 of the old Act. Clause 12 of the Bill corresponds to section 13 of the old one. Clause 14 of the present Bill corresponds to section 20 of the old Act. Then clause 18 corresponds to section 22 of the old Act. Clause 19 of the present Bill corresponds to section 23 of the old Act. Clause 20 corresponds to section 25 of the old Act. Clause 21 of the present Bill corresponds to section 26 of the old Act. Clause 22 of the Bill corresponds to section 17 of the old Act. Clause 23 corresponds to section 24 of the old Act. Clause 26 of the present Bill corresponds to section 16 of the old Act. Clause 27 corresponds to section 21 and the rest of the provisions are just rule-making powers of a very minor character.

The question that I would like to ask the hon. the Law Minister is this. Is it desirable or necessary that an Act 90 per cent, of whose provisions are retained in the Bill should be repealed? Is it not a proper procedure merely to amend the old Act of 1872 and add such of the provisions which appear to be novel so far as this Bill is concerned? I am quite unable to understand this kind of method of legislation. When you repeal an Act, you supersede it either because the Act has become useless or unnecessary or unsuitable for the time then existing. But when you practically adopt 80 or 90 per cent, of the sections of the old Act and incorporate them in your legislation, you are thereby practically admitting that the old Act is a necessary instrument for the purposes for which it was enacted. I do not like this kind of confusion being made.

e. We are here waiting to see what is going to be the fate of the Hindu Code. I

[Dr. B. R. Ambedkar.] understand from the fact that the hon. Minister has only taken up Part I of the Hindu Code that it is quite clear that the intention of the Government is to chisel it out bit by bit and to see whether the thing can be enacted in that form. When the occasion comes for making comment on that Bill, I shall tell my hon. friend the reason why I, who was then in charge, thought that it would create difficulty if we dealt with the Hindu Code bit by bit, if the marriage law laid down one principle of marriage and the law of adoption or the law of inheritance continued as it was in times past. In my judgment it would result in nothing but chaos. That is one of the reasons which compelled me and other persons whom I consulted to think that the method of dealing piecemeal with the Hindu law was a dangerous one and that it would create more chaos than order. However, that is a different point. For the moment I only ask this question: if you are retaining all these clauses why on earth are you repealing the Act of 1872? Why don't you add Part I to it and get your purpose served? That is one thing.

Now, I quite agree with my friend who spoke just before me in some of the observations that he made. Any-one, who has read the debate on the Act of 1872 and even on the amending Bill of 1923, could notice that in the then Assembly, as it was constituted, there was a large body of orthodox people who were bent upon either destroying the Bill or offering a choice to those who wanted to marry outside their caste either to marry or to get out of the family. And Dr. Gour who felt so keen about it thought that it was much better to respect the conscience of the man who thought that he would rather marry a woman or a woman who thought that she would rather marry a man whom he or she loved rather than go after property rights. That is one of the reasons why those provisions were then accepted. It does seem to me that much water has flowed under the bridge. So far as my experience of the Hindu Code

goes and so far as I was able to ascertain the opinion of the members of the then legislature I found that the only objection that they were raising was to the sharing of the property. For the rest of the Bill they did not care anything at all. They were quite prepared for it. Now, I should have thought that my hon. friend should have taken notice of the fact that although the Hindu society is an orthodox society—it has not changed very rapidly and takes a long time to move on—there are times and circumstances which are so forceful that they make it change. They cannot stand where they have been standing for the last so many years. Surely, in a country, so little progressive as ours has been, it should be the duty of the Government to take time by the forelock and to make changes which appear to be supported by society. Instead of that, this Bill appears to me to go back to 1872 although we are living now in the year 1953. All the provisions are provisions which were enacted in 1872. And my hon. friend who comes from Bengal must be knowing fully how timorous the Government of the day was to make any such change. It was only to satisfy what you call the Brahmo Samajists or the Adi-Brahmo Samajists, who felt that they could not believe in idols and that they could not allow their marriage to be solemnized in the presence of idols, but they must perform their marriage in accordance with their own ceremony, that Sir Henry Cotton, one of the greatest jurists in the world, recognised that this was a matter of conscience, and that somehow Government must, in however small a measure it was able to do so, satisfy the conscience of the Brahmo Samajists. It was for these reasons that the British Government imposed these penalties involved in severance from joint family, disallowance of the right of adoption, grant of right of adoption to the father when the son goes out under any such form of marriage, etc. Sir, I should like to ask him now as to what exactly is the difference between what you call a Vedic marriage and a marriage performed under this Bill. What is the difference? As I see it, the difference

is this, that when you perform a Vedic marriage, you call a Brahmin who performs some *Havana*, some *Yajna*, *Agni*, and repeats the *mantras* from some *Shastras* or *Vedas*, or something like that. The other marriage is performed by a Registrar. The only difference between the two is in the method of solemnization. I want to ask: Is this a very great difference? Is this such a radical difference as to require that the law should drive out a man from his family and make a complete severance? Yes, as I said, in 1872, having regard to the sentiments of the people then existing, it was probably necessary for a foreign Government then in office to act very cautiously; but we who belong to the people, and who can know the pulse of the people—how it is beating, how fast, how slow, and in what direction—should certainly show much more courage and go forward rather than take this retrograde step. I am very sorry to say—I am not opposing the motion—that this Bill appears to me certainly very retrograde.

SHRIMATI MAYA DEVI CHETTRY (West Bengal):

श्रीमती माया देवी छेत्री (पश्चिमी बंगाल) : उपाध्यक्ष महोदय, मैं इस विशेष विवाह बिल का समर्थन करने के लिये खड़ी हुई हूँ।

PANDIT S. S. N. TANKHA (Uttar Pradesh): Mr. Deputy Chairman, on a point of order, Sir. I think the practice is that persons who are on the Select Committee do not take part in the debate.....

MR. DEPUTY CHAIRMAN: She is not on the Select Committee.

SHRI RAMA RAO (Madras): Anyway, we want to know whether the Members of the Select Committee can take part in this debate.

MR. DEPUTY CHAIRMAN: No, no. They will not be allowed to take part.

SHRIMATI MAYA DEVI CHETTRY: I have already withdrawn my name from the Select Committee.

MR. DEPUTY CHAIRMAN: You cannot take part, Mr. Rama Rao.

SHRIMATI MAYA DEVI CHETTRY:

श्रीमती माया देवी छेत्री : महोदय, मैं देख रही हूँ कि कितने सौ वर्षों के बाद यह नया चेंज (change) हमारे हिन्दू समाज में आ रहा है इसलिये हमारे जितने भाई हैं वे थोड़ा इसके खिलाफ़ में जा रहे हैं। स्त्रियों ने परिस्थिति के अनुकूल समय समय पर नाना प्रकार के रूप धारण किये हैं और नाना प्रकार के रूप धारण करती हुई हम स्त्रियाँ चली आ रही हैं। आपको मालूम ही होगा कि हिन्दू समाज में स्त्रियों के भिन्न भिन्न रूप शुरू से ही रहे हैं। इसी का एक रूप द्रौपदी थी, एक रूप सीता थी और एक वह रूप भी था जिसमें महारानी कैकई ने महाराजा दशरथ को युद्ध से बचाया था। यदि यह कहा जाय कि स्त्रियाँ घर में ही रहती थीं तो फिर महारानी कैकई महाराजा दशरथ के साथ युद्ध में कैसे गईं! इसके बाद यह परिस्थिति हुई कि पुरुष समाज ने हम लोगों को चहार-दीवारी के अन्दर जकड़ कर रखा, चहार-दीवारी के अन्दर बन्द करके कैदी के रूप में रखा, उसमें भी हम लोगों ने कोई क्रान्ति नहीं की, हम लोग शान्ति से रहे। इतने पर भी पुरुषों को संतोष नहीं हुआ और ऐसा करना चाहा कि बाहर के लोग स्त्रियों के दर्शन न कर पायें और इसी खयाल से उन्होंने हम लोगों पर पर्दा भी लगा दिया। उसमें भी हम लोग शान्ति से रहे। इसके अलावा पुरुषों ने बाल अवस्था में स्त्रियों की शादी करना शुरू कर दिया और स्त्री समाज के ऊपर तरह तरह के अत्याचार करते रहे। बेचारी स्त्रियों को यह भी पता नहीं रहता था कि वे कब जवान हुईं और कब बूढ़ी हो गईं। जिस तरह से पुरुषों ने स्त्रियों को रखा उसी ढाँचे में, उसी साँचे में वे ढलती आईं। होते होते यह समय आया कि पुरुषों को स्त्रियों के ऊपर थोड़ी दया आने लगी और विधवा विवाह का प्रचार हो गया, फिर यह हो गया कि एक एज लिमिट (age



[Shrimati Maya Devi Chetty.]

limit) रख दी ताकि बालविवाह न हो। इसी तरह होते होते पुरुष समाज स्त्री-शिक्षा की ओर भी अग्रसर हो गया और स्त्री-शिक्षा देने लगा। स्त्री-शिक्षा देते देते अब हम लोगों को पुरुषों ने इतना आगे बढ़ा दिया है कि किसी भी क्षेत्र में, चाहे वह राजनैतिक क्षेत्र हो या और कोई क्षेत्र हो, कोई भी बंदिश हम लोगों पर नहीं है। हम लोगों को समान अधिकार दे कर पुरुषों ने आगे बढ़ाया है। ऐसी हालत में जब कि स्त्रियों को सभी क्षेत्रों में बढ़ाया है, तब भी वही हजारों वर्ष के बने हुए, ऋषियों और मुनियों के बनाये हुए, पुराने कानूनों का पालन हम लोग करते हैं, इससे यह होता है कि स्त्रियों में थोड़ा असंतोष तथा क्रांति की भावना आती जा रही है। इसलिये हम लोगों का कहना है कि जैसे जैसे समाज आगे बढ़ता है और जैसे जैसे समय का परिवर्तन होता है वैसे वैसे कानून में भी परिवर्तन लाना चाहिये। वैसे जैसे समाज आगे बढ़ता है वैसे वैसे कानून को भी आगे बढ़ाना चाहिये।

यह बिल (Bill) कोई विशेष उथलपुथल लाने वाला तो है नहीं, एक साधारण बिल है, लेकिन जैसा कि हमारे पूर्व वक्ताओं ने बतलाया है कि इसमें बहुत से दोष हैं। चूंकि यह बिल सिलेक्ट कमेटी (Select Committee) में जा रहा है, इसलिये मैं कहना चाहती हूं कि इसमें कुछ क्लॉजेज (clauses) ऐसे हैं जो कि हम लोगों को पसन्द नहीं हैं और वे क्लॉजेज हैं २०, २१ और २२। इन क्लॉजेज में अगर थोड़ी तब्दीली कर दी जाय तो पुरुष समाज की कोई हानि भी नहीं होगी। इसमें एक क्लॉज यह है कि जो लोग शादी करना चाहेंगे, उनको एप्लाइ (apply) करना होगा। अगर दोनों पक्ष राजी हों, तो एप्लीकेशन (application) देना होगा। हम चाहते हैं कि इसमें यह प्राविजन (provision)

रख दिया जाय कि अगर बाद में दोनों पक्ष राजी न हों तो उनको विद्वा (withdraw) करने का अधिकार दिया जाय। ऐसा प्राविजन क्लॉज में होना चाहिये क्योंकि ऐसा हो सकता है कि एक हिन्दू एक मुसलमान के साथ या एक क्रिश्चियन के साथ या किसी दूसरे धर्म के साथ जोश में आकर एप्लीकेशन देता है कि वह शादी करना चाहता है लेकिन बाद में सोचने और समझने पर उसे मालूम होता है कि यह उचित नहीं है और शादी करने की किसी की इच्छा नहीं है तो उनको विद्वा करने का अधिकार होना चाहिये, जोकि इस बिल में नहीं है।

दूसरी बात यह है कि जो लड़के और लड़कियां शादी करना चाहती हैं उन्हें अपने गार्डियन (guardian) से पूछना चाहिये। लेकिन यदि एक आरफन (orphan) हो और उसके कोई माता-पिता न हों, कोई अथाराइज्ड (authorized) गार्डियन न हों तो वे लड़के और लड़कियां किस गार्डियन से पूछने जायें। हम एज लिमिट को २१ वर्ष रखना चाहते हैं, क्योंकि ऐसा समझा जाता है कि १८ वर्ष में उनकी बुद्धि परिपक्व नहीं होती है और २० वर्ष से ज्यादा होने पर वह परिपक्व हो जाती है इसलिये वे समझदार हो जाते हैं। हम चाहते हैं कि इसमें ऐसा प्राविजन होना चाहिये कि जिन लोगों के माता-पिता नहीं हैं, अथाराइज्ड गार्डियन नहीं हैं, उन लोगों को भी इस बिल के अन्दर अधिकार मिले।

तीसरी बात उत्तराधिकार के सम्बन्ध में है। स्पेशल मैरेज (special marriage) का यह जो बिल बनाया गया है, उसमें यह है कि यदि कोई दूसरे धर्म के साथ शादी करता है तो वह अपनी पैतृक सम्पत्ति से च्युत होता है। यह नहीं होना चाहिये। जब कोई किसी दूसरे धर्म वाले से शादी करता है और लड़के लड़की के माता-पिता राजी हैं और लड़का लड़की भी राजी

हैं, तो फिर वे पैतृक सम्पत्ति से क्यों च्युत होते हैं। इसलिये हम इसका विरोध करते हैं और चाहते हैं कि पैतृक सम्पत्ति में उनका जो हक रहता है वह मिलना चाहिये।

चौथी बात इसमें यह है कि जो इस तरह से शादी करते हैं वे अपने माता-पिता से अलग होकर समाज से निकल जाते हैं और उनका एक दूसरा क्लास (class) हो जाता है। इसके अलावा यदि माता-पिता के केवल एक ही लड़का है, तो उनको किसी को गोद लेने का भी अधिकार नहीं है। हम चाहते हैं कि यह नहीं होना चाहिये।

हिन्दू धर्म में परम्परा से चला आ रहा नियम है कि यदि किसी के कोई सन्तान न हो तो गोद ले लेते हैं और यदि किसी के लड़का हो और वह अपने समाज से बाहर चला जाता है, तो अपनी सम्पत्ति नहीं पाता है। तो फिर वह गोद लेने का किसी को अधिकार भी न देना, यह एक प्रकार से अन्याय है। इसलिये हम लोग इस बिल को पास करना चाहते हैं, समाज में थोड़ा इधर उधर हेरफेर करके उसे आगे बढ़ाना चाहते हैं। मैं आशा करती हूँ कि सिलेक्ट कमेटी इन सब क्लोजेज को अच्छी तरह से देख कर, अच्छे अच्छे प्राविजन रख कर उनमें सुधार करेगी। हम आशा करते हैं कि यह बिल पास होने के बाद हमारी जितनी बहनें हैं वे उच्छ्वसल होकर आगे बढ़ने की कोशिश न करेंगी क्योंकि हम लोगों को जैसे जैसे समय बदलता है, जैसी जैसी परिस्थितियाँ होती हैं, वैसे वैसे आगे बढ़ना होता है। जैसा कि पुरुष समझते हैं कि स्त्रियाँ ही इस स्पेशल मैरेज बिल को चाहती हैं ऐसा नहीं है। स्त्रियाँ स्पेशल मैरेज बिल कभी नहीं चाहतीं पर उनका यह ख्याल है कि जब कोई स्त्री किसी से विवाह करना चाहती है या कोई पुरुष किसी से विवाह करना चाहता है, तो उनको अपनी इच्छा के अनुसार विवाह करने

का अधिकार पूरा मिलना चाहिये, क्योंकि आप लोगों को मालूम होगा कि पहले भी तो स्वयंवर होते थे, जब किसी लड़के से किसी लड़की को शादी करनी होती थी तो वह अपना जीवन साथी स्वयं चुन लेती थी। तब भी इस तरह के तरीके थे, जिनसे उनको यह निर्णय करने का अधिकार था कि किस तरह से हमारी फेमिली लाइफ (family life) अच्छी होगी। इसके बाद बीच में और तरीके बदले। अब हमें चाहिये कि इस बिल को पास करें, जिससे संसार की अन्य जातियों से हम पीछे न रह जायं।

[For English translation, see Appendix V, Annexure No. 96.]

SHRI RAJAGOPAL NAIDU: Sir, one of the Directive Principles of our State policy is to have a uniform Civil Code. I presume that this piece of legislation which is before us is the first piece of legislation to have a uniform Civil Code throughout our country. It has come up before us, Sir, as a sort of repealing measure, repealing the Special Marriage Act of the year 1872, and when it has come up before us as a repealing measure, it has come up with very great and important changes. I cannot, for a moment, agree with hon. Dr. Ambedkar that this is merely an amending Bill, a Bill which amends the 1872 Act, and that no new Bill of this kind need have been introduced in this House and it is enough if the Act of 1872 is amended in some aspects.

Sir, there are three far-reaching changes in the Bill as compared to the Special Marriage Act of 1872. Firstly, it makes a fundamental change in the basic condition of a valid marriage in so far as it depends upon religion. Secondly, it has extra-territorial operation, which feature is absent in the 1872 Act. Thirdly, there are persons who are married under other forms and they will be required to register their marriages under this Act.

[Shri Rajagopal Naidu.] And such marriages, although solemnized otherwise, will be regarded as if they had been solemnized under the Special Marriage Act. That was absent in the 1872 Act. These are the three main provisions which are at variance with those of the 1872 Act. When the 1872 Act came into force, it declared that marriages could be celebrated as between persons neither of whom professed the Christian or Jewish or Hindu or Mohamman or Parsi or Buddhist or Sikh or Jain religion. That<sup>4</sup>s, if one wanted to marry under the 1872 Act, the procedure was that he had to declare that he did not belong to any of these religions. That was working great hardship, because persons were denouncing their religions in order to get themselves married under the 1872 Act. Then Dr. Gour introduced an amending Bill in 1923 which was accepted with some modifications. According to that, instead of making a declaration of the kind I have mentioned, they had to make a different kind of declaration, viz., that both of them belonged to the same faith—Hindu, Buddhist, Sikh or Jain religion.

PRINCIPAL DEVAPRASAD GHOSH: -One or other.

SHRI RAJAGOPAL NAIDU: This is Dr. Gour's amendment. Both the husband and the wife should belong to the same religion. This has remained the law so far. Now, there is a change in this Bill that the husband may belong to one religion and the wife may belong to another religion. They can come forward and marry under this Bill without at the same time losing the identity of their religions. The husband may retain the religion to which he belongs, and the wife may do the same, but it is not stated anywhere in this Bill what religion the offspring should profess. This is a very serious lacuna in the Bill, and it is high time it was stated whether the offspring should follow the religion of the father or the religion of the mother. Of course, the Law Minister will say that it is enough if at the time of registration it is stated to which religion the offspring should belong. It is for the

Members of the Select Committee to make a note of it and see that some provision is made as to which religion the offspring should belong to.

Secondly, it has extra-territorial operation, about which I need not talk now and waste the time of the House. The other important provision is that persons who had married under any other form will be entitled, after this Bill is passed, to register themselves under this Act and be guided by the principles thereof. This is one of the very serious departures made from the 1872 Act. It is in these three ways that there is a fundamental departure from the 1872 Act. It would take a lot of time if I were to enumerate all my suggestions on the clauses from the beginning to end, but I would, like to mention about a few of the clauses and leave it to the Members of the Select Committee to take my suggestions if they feel that there is something useful in those suggestions. The most important clause in this Bill is clause 18. It deals with the consequences of marriage under this Act. It has one most serious consequence, viz. that if a person marries under this particular piece of legislation, whether he belongs to the Hindu, Buddhist or Sikh or Jain religion, he shall be deemed to have effected his severance from the joint family. My learned friend, Mr. Rath, wanted to know the meaning of the word 'severance'. In legal parlance the word 'severance' would mean only separation from the joint family, not the cutting off of any limb. This is a serious consequence. When the Bill provides that persons belonging to the same religion can marry under this Bill, why should it affect their succession? Why should it affect their inheritance? Why should their personal law be affected? There is some point in saying that if the husband belongs to one religion and the wife belongs to another religion, and if they both come forward and marry under this particular Act, then they will be governed by a separate law of succession, a separate law of inheritance, but if the people concerned belong to the same religion but for purposes of

convenience they come and marry under this legislation, why should their personal law be affected? This is a very serious departure from the present customary Hindu Law.

Secondly, take the instance of a father who was married according to the customary Hindu Law and has living children, say, a son and a daughter. Suppose he comes forward and wants to marry, after the death of his first wife, a second time under the Special Marriage Act. He is separated from the joint family under clause 18. What will happen to the children?

SHRI C. G. K. REDDY: The children will inherit the joint family property.

SHRI RAJAGOPAL NAIDU: The father gets separated and the children will be left in the lurch.

Most important of all, if both the husband and the wife belong to the same religion and they marry under this Act, why should their personal law of succession be affected? Why should the Indian Succession Act be applied to them? Why should their personal law be affected? This is a very serious matter and will have to be considered carefully. I leave clause 18 at that.

Now, coming to the other point as to what religion the offspring should belong to, there is no provision made in the Bill. Will the offspring follow the religion of the father or the religion of the mother or any other third religion? I would suggest that in the ordinary course the offspring should follow the religion of the father. Then again, Sir, I cannot understand how, if two persons belonging to two different religions come forward and marry under this Act, they can maintain the identity of their respective religions? If a Christian woman marries a Hindu and she goes to the church and the husband goes to the temple, I wonder how there can be any understanding of their respective religions and how they can run a good home. I cannot understand how there can be such a piece of legislation in our country. The provision with regard to adoption

should be retained if both the husband and wife belong to the same religion. Then again who is to be the guardian of the minor child. Will the law that is applicable to the Hindus be applied in the case of guardianship of the minors? The law with regard to guardianship in the case of Hindus and the law in the case of Muslims differ. Who is to be the guardian of the child? There is absolutely no provision made. I feel that we have got to include a chapter containing several clauses in the Bill to deal with the religion of the offspring and with the question as to who is to be the guardian of the minor children.

I shall deal only with two more clauses. Clause 4 deals with the nearer relationship. It is stated who belongs to the prohibited degree and who does not belong to the prohibited degree. It is stated in Explanation I: "If the two are brother and sister, uncle and niece, aunt and nephew or the children of two brothers or of two sisters" they come within the prohibited degree of relationship. There are customs and customs. Some people marry brothers' children, some people marry sisters' children and some sisters' children marry brother's children and vice versa. I quite agree with one of the previous speakers that judging from the biological point of view it is certainly harmful.

SHRI C. G. K. REDDY: Not established.

SHRI RAJAGOPAL NAIDU: It may be or may not be established. We have seen instances where if persons marry within the same family circle, they are certainly not at all bright. If one goes outside the family and marries outside, preferably marries outside the community, we find the offspring are brilliant. It is an established theory. That one single thing is sufficient for us to adopt the suggestion that this degree of close relationship should be restricted further. The children of brother and sister should not marry each other. Of course, there is some custom among Hindus in the South according to>

[Shri Bajagopal Naidu.] which sister's daughter is given to the brother but I feel that biologically it is not a sound principle and this being a permissive law, it is not compulsory as in the case of the Hindu Marriage and Divorce Bill, which is being brought before this House. There are certain provisions there which are of a permissive nature but so far as this Bill is concerned it is purely a permissive law. Nobody is compelled to marry under this Bill. It is left to one's discretion. If one chooses, one can marry adopting the provisions of this Bill.

Then at the end I wish to raise one point to which the hon. Minister can reply. In clause 8 it is stated:

"If an objection is made under section 7 to an intended marriage, the Marriage Officer shall refer the objector to a court of competent jurisdiction....."

Is it not necessary for us to define clearly what is a court of competence? Is it the highest court of original civil jurisdiction in a district or in the case of cities, is it the principal court of original civil jurisdiction? Sir, it is high time that we defined it in this particular Bill or in the rules that are going to be enacted under the rulemaking power which you have reserved under the last clause of this Bill. You have to define what is a competent court and without that there will be a doubt and one will have to think whether he has to go to the lowest court of the original civil jurisdiction or the highest court of civil jurisdiction. There are many more who desire to speak on the Bill and I don't wish to take up the time of the House any more. Thank you, Sir.

KAZI AHMAD HUSSAIN (Bihar):

قاضی احمد حسین (بہار):

ڈپٹی چیئرمین صاحب! یہ

اسپیشل میریج بل جو قانون بننے جا

رہا ہے اس میں جو بات بہت ہی ضروری ہے اس کو میں نے پہلے ہی عرض کیا تھا مگر اس کی طرف توجہ نہیں دی گئی۔ اس ملک میں شادی بیاہ اور طلاق کے متعلق مسلمانوں کے کچھ قوانین ہیں جن پر وہ عمل کرتے ہیں اور ویسے ہی کچھ قانون ہندوؤں کے بھی ہیں۔ تو جب یہ دونوں الگ الگ قانون مانتے ہیں تو میری سمجھ میں یہ نہیں آتا ہے کہ جب آپ یہ کہتے ہیں کہ ہندو ہندو رہتے ہوئے اور مسلمان مسلمان رہتے ہوئے بھی اس قانون کا پابند ہو اور اس بل کے مطابق ہندو ہندو رہتے ہوئے اور مسلمان مسلمان رہتے ہوئے شادی کر سکتے ہیں۔

AN HON. MEMBER:

ایک آنریبل ممبر: اگر چاہیں

تب -

KAZI AHMAD HUSSAIN:

قاضی احمد حسین: چاہئے کی

تو بات ہے۔ چاہئے کہ تو لوگ میری

سے میری بات بھی چاہ لیتے ہیں

لیکن قانون تو اسے روکتا ہے۔ ہندوؤں کے

کچھ قوانین ہیں ان کے کچھ اصول ہیں؟

ان کی سوسائٹی کے لاز ہیں جو پر

وہ عمل کرتے ہیں۔ ایک مسلمان

جب اپنے کو مسلمان کہتا ہے تو اس

کے معنی یہ ہوتے ہیں کہ وہ اعلان کرتا

ہے کہ اسلام کے کچھ قوانین اور پرنسپل

ہیں جسکا وہ پابند ہے۔ اگر ایک

ہندو یہ کہہ کہ میں ہندو رہتے ہوئے  
ہندوؤں کے قانون کو آبرو نہیں کرونگا  
تو بھی اسکا یہ حق ہے کہ وہ اپنے آپ  
کو ہندو کہے۔ ایسا کہہ سکتا ہے۔ لیکن  
یہ کہنا ایک مضحکہ خیز بات ہوگی۔  
ہم مسلمان مسلمان ہوتے ہوئے اسلامی  
قانون کے بابت نہ ہوں تو اسکی معنی  
ہیں کہ مسلمانوں کے جو قوانین  
ہیں ان کو ماننے ہوئے بھی ہم  
انہیں توڑتے ہیں۔

مسلمانوں کا جہاں تک مسئلہ  
ہے میں آپ سے یہ کہوں کہ جب  
تک اس ملک میں انگریز رہے  
انہوں نے اسلامی قانون میں جگہ  
جگہ اپنے قاعدے اور قانون لگا کر اسکو  
نقصان پہنچایا۔ آزادی کے بعد ہم  
لوگ بھی چاہتے تھے کہ اسلامی  
قانون میں انگریزوں کے زمانے میں  
جو غلطیاں ہوئیں انہیں پھر بدل  
دینگے اور ہندوستان میں مسلمان  
مسلمان رہتے ہوئے ہندو ہندو رہتے  
ہوئے عیسائی عیسائی رہتے ہوئے ہم  
سب لوگ اس ملک میں مذہب  
کو آزادی کے ساتھ زندگی بسر کریں گے  
آپ سے میں ایک اور بات کہوں کہ  
مسلمان مذہب والے مائٹاری میں  
ہیں اور اس لئے ہمارے مذہب  
کے متعلق جو بھی باتیں ہم ماننے  
ہیں ان کا آپ کو خدشہ رکھنا پڑے گا  
اگر آپ خیال نہ رکھیں گے تو اسکی  
معنی یہ ہونگے کہ آپ یہاں کی  
چھوٹی تعداد میں جو مذہبی

مائٹاریز ہیں ان کو بھلا دے رہے  
ہیں۔ میں یہ سمجھتا ہوں کہ اس  
سے پہلے سول میجر کے قانون میں  
انگریزوں کے وقت جو یہ کلاز تھا  
کہ اگر کوئی مسلمان سول میجر کی رو  
سے شادی کرنا چاہے تو وہ یہ اعلان  
کر دیتا تھا کہ میں اسلامی قانون  
کو نہیں مانتا ہوں اور ہندو کہہ  
دیتا تھا کہ میں ہندو قانون کو  
نہیں مانتا۔ اس میں کم سے کم  
لوگوں کو یہ تسکین ہو جاتی تھی  
کہ وہ اپنے مذہب کے اصولوں کو  
نہیں مانتے۔ یہاں ہمارے ملک  
میں سینکڑوں ہزاروں مذہبی  
سوسائٹیاں موجود ہیں۔ سینکڑوں اور  
ہزاروں قسم کے رسم و رواج ہیں، اور  
اس پر بھی ہم سب لوگ ایک  
ساتھ رہتے ہیں۔ یہ کوشش کرنا کہ  
ہمارے ملک کے رسم و رواج اور  
قوانین جو کچھ تو توات سے ملتے ہیں  
اور کچھ صدیوں سے ہماری عادتوں  
سے ملتے ہیں اور کچھ ہمارے فیتو  
ہیں وہ سب ایک ہو جائیں یہ ٹھیک  
نہیں ہے۔ ان چیزوں کی وجہ سے جو  
الگ الگ سوسائٹیاں بن گئی ہیں  
ان کو توڑنا میرے خیال میں تو  
بہت بڑی بات ہے۔

اس کے ساتھ ہی میں ایک بات  
اور کہوں اور یہ میرا اپنا خیال ہے  
کہ یہ قانون جو آپ بنا رہے ہیں  
اس سے مسلمان عورتوں کو نقصان  
پہنچے گا۔ جہاں تک مسلمان

[Kazi Ahmad Hussain.]

عورتوں کا تعلق ہے یہ تو ہے کہ ان کے حقوق اور کم ہو جائیں گے۔ مثال کے طور پر میں کہوں کہ آپ نے اس میں علیحدگی کے جو حقوق رکھے ہیں وہ سنہ ۱۸۷۲ء کے قانون کے ہیں اور میں سمجھتا ہوں کہ یہ ان کے علیحدگی کے لئے دقت طلب ہوگا۔ حالانکہ اسلامی قانون میں عورت کے لئے اگر وہ شوہر سے جدا ہونا چاہے تو بہت سے حقوق موجود ہیں۔ مثلاً اگر ایک مسلمان عورت جسکے تعلقات اپنے شوہر کے ساتھ اچھے نہ ہوں تو وہ قاضی (جج) کے سامنے درخواست دے سکتی ہے کہ اسکو شوہر سے الگ کر دیا جائے۔

AN HON. MEMBER:

ایک انریبل ممبر: اگر شوہر راضی نہ ہو؟

KAZI AHMAD HUSSAIN:

قاضی احمد حسین: تب بھی شوہر کی رضامندی کی کوئی ضرورت نہیں ہے۔ اسکو تفریق کہتے ہیں اور طلاق میں شوہر کو حق ہے کہ وہ عورت کو الگ کر دے۔ تو ہمارے یہاں عورتوں کے حقوق موجود ہیں کہ جب اسکی شوہر سے نہ بنتی ہو تو وہ وجہ ظاہر کر کے اپنی علیحدگی کر سکتی ہے۔ حالانکہ عورتوں کو جو حقوق اور دُر ہوئے۔ ہیں اگر ان کی لست یہاں دی جائے تو شاید بہت لمبی ہو جائے۔ مثلاً جسکو کوئی روگ ہو گیا ہو جو

قابل علاج نہ ہو یا وہ مرد علاج نہ کراتا ہو تو وہ جج کے پاس جائے گی اور وہ اسکو علیحدہ کر دینگے۔ عورت کی جو ضروریات ہیں اس کی جو خواہشیں ہیں اور جو اس کے حقوق ہیں اس کو شوہر پورا نہیں کرتا ہے تو جج کو اختیار ہے کہ عورت کی درخواست پر اسکو الگ کر دے۔ اگر شوہر معجزوں ہو گیا ہو یا نامرد ہو گیا ہو یا عورت کے ساتھ وہ اس طرح کا سلوک نہیں کرتا ہے جو اسے کرنا چاہئے تو وہ علیحدگی کر سکتی ہے۔ اگر شوہر غائب ہو گیا ہو جیل چلا گیا ہو اور اسکے جلد آنے کی امید نہ ہو تو اسے حق ہے کہ وہ جج کے ذریعہ علیحدگی کرالے۔ اس طرح کے بہت سے حقوق اسلامی قانون میں مسلمان عورتوں کے لئے موجود ہیں۔ ہمارا قانون بہت پرانا ہے۔ پرانا اس لئے ہے کہ یہ چودہ سو برس کا ہے۔ صدیوں سے عورتوں کے حقوق جو چھین گئے تھے وہ ان کو اس اسلامی قانون سے سامنے لگے ہیں۔ پھر اس طرح سے آپ اس قانون سے جو کچھ حقوق ملے ہیں انہیں بھی چھین لینا چاہتے ہیں۔ ہمیں یہ تو ہے کہ سوسائٹی کو اگر اونچا کرنا چاہتے ہیں تو اس قانون سے نہ ہوگی۔ کم سے کم ہماری مسلمان عورتوں کو جو حقوق ملے ہوئے ہیں ان میں اس طرح کوئی کمی تو نہ کی جائے۔

اس طرح سے سوچیں کہ شادی کا مقصد منہض نفسانی خواہشات کو پورا کرنا نہیں ہے بلکہ اس کا اصل مقصد انسانیت کو بنانا ہے۔ زندگی میں لطف و سکون حاصل ہو اور آنے والی نسل کی اچھی تربیت ہو۔ وہ ایک اچھا شہری بنے۔ یہی شادی کا مقصد ہے۔ آپ جانتے ہیں کہ مذہب انسان کی زندگی پر بہت کچھ اثر ڈالتا ہے۔ جو لوگ اپنے مذہب کے ساتھ لاپرواہی برت سکتے ہیں جیسا کہ اس قانون میں ہے تو ان کے بچوں کی تربیت کے اوپر کیا اثر پڑے گا۔ اس سے بچوں کی تربیت بہت ہی خراب ہوگی۔ وہ کہیں کے بھی نہ رہیں گے۔ ان کے لئے ایک اچھا شہری بننا مشکل ہو جائے گا۔

فرض کھجئے کہ کوئی عورت چاہے وہ مسلمان ہو یا ہندو ہو اپنے خہالات پر قائم رہتی ہے اور اس کے بچے بھی جو ہوتے ہیں اسی دستور کے مطابق چلتے ہیں تو آپس میں ٹکراؤ ہوگا۔ آپ کو معلوم ہوگا کہ مسلمانوں کے یہاں پانچ وقت کی نماز کی عبادت کی جاتی ہے۔ اگر کوئی اس طرح سے نہایت کوتاہی وہ تھوڑے تھوڑے سمجھا جاتا کہونکہ یہ عبادت نہایت ضروری ہے۔ فرض کیجئے کہ کوئی مسلمان مرد یا عورت ہے تو وہ ہمیشہ یہی چاہوں گے کہ ان کے بچے ہمیشہ خدا کی

عبادت اسی طرح کریں جیسا کہ ان کے مذہب میں ہے اس میں تصادم ہوگا۔ بچوں کی تربیت پر اسکا بہت برا اثر پڑے گا اور اس سے نقصان ہوگا۔ اسی طرح سے قانون بنے تو اس پالیسی سے طرح طرح کے نقصانات ہونگے۔ اگر آپ اس طرح کا قانون بنانا ہی چاہتے ہیں تو اس میں یہ کلا لگا دیجئے جس سے کہ ٹیکلیو کیا جائے کہ میں ہندو نہیں رہنا چاہتا۔ میں مسلمان نہیں رہنا چاہتا۔ اس سے ایک سوسائٹی بن جاتی ہے ہندو ہندو رہتے ہوئے اور مسلمان مسلمان رہتے ہوئے آپس میں شادی کرے یہ دونوں میں سلی ہے۔ چھانٹک مسلمانوں کا سوال ہے آپ حضرات کے سامنے انگریزی ہدایت کا ترجمہ تو ہوگا یا اور اسلامی قانون کی کتابی قانون کو اٹھ کر دیں تو اس میں صاف ہے کہ مسلمان غیر مسلمان سے شادی نہ کریں۔

بعض مسلمان دوست ایسے لوگ ہو گئے ہیں کہ وہ مسلمانوں کے قانون کو نہیں جانتے ہیں۔ وہ قرآن شریف کے معنی بھی نہیں جانتے ہیں اور اسلام سے بھی واقف نہیں ہیں اسلام کے اصلی منشا کو بھی نہیں جانتے ہیں انکا یہ کہنا کہ یہ قانون برا اچھا ہے اور اسلام کے خلاف نہیں ہے۔ ہمیں نہیں ہے۔ اور وہ اصلی قانون سے کچھ بھی واقف نہیں ہیں۔



[Kazi Ahmad Hussain.]

میں کہتا ہوں کہ اگر آپ کو اس طرح کا ریفارم کرنا ہی ہے تو آپ کو ہلکے ہلکے ریفارم کو لاگو کرنا چاہئے۔ اگر آپ اسکو تیزی سے کرنا چاہیں گے تو ہندوؤں کے اندر ایک بڑا ریپوہلشن ہوگا جس کا کہ آپ کو مقابلہ کرنا ہوگا۔

مسلمان تو سارے ملک میں مائنداریتی میں ہیں۔ انہوں نے بھی اپنے ہندو بھائیوں کی طرح آزادی کی لڑائی میں حصہ لیا ہے اور اس ملک کو آزاد کرایا ہے۔ آج ہر اسٹیٹ لوکر اگر وہ اپنے کو ہندو کہتا ہے ہم سے جب چاہے وفاداری کی سند مانگتا ہے اس سے ان کا دل ٹوٹ گیا ہے۔ مسلمان اس وقت خوفزدہ ہیں ان میں آج اتنی ہمت نہیں کہ وہ کہہ سکیں کہ یہ قانون ہمارے لئے تھپک نہیں ہے۔ وہ سمجھتے ہیں کہ اس طرح کی باتیں کریں تو شاید آپ خفا ہو جائیں اور ہو سکتا ہے کہ کل آپ ہم لوگوں کو کونسل آف اسٹیٹس میں جگہ نہ دیں۔ تو اس قسم کی باتیں ہیں اس لئے آپ کو مسلمانوں کے قانون جاننے والے لوگوں سے بھی آپ کو صلاح لے لینی چاہئے۔ آپ کو مائنداریتی کا بڑا خیال رکھنا چاہئے۔ ہندو قانون میں اگر آپ کوئی ترمیم کرنا چاہتے ہیں تو آپ کو یہ حق ہے۔ مگر اس کے ساتھ ہی یہ آپ کو دیکھنا ہوگا کہ عام لوگوں کے لئے وہ قابل قبول ہے

بھی یا نہیں ہے۔ اگر آپ ایسا نہیں کریں گے تو ہماری کانگریس پارٹی جس نے ملک کو آزاد کرایا جو کہ ملک میں زیادہ لوگوں کی ترجمانی کرتی ہے وہ ایسا اعتماد کھو دیگی۔ اس وقت سب سے بڑی بات یہ ہے کہ کانگریس عام لوگوں میں غیر مقبول ہوتی جا رہی ہے۔ ہمارے جو دشمن ہیں اور ہمارے جو مخالف ہیں وہ ہم کو دونوں طرف سے آڑے ہاتھ لیتے ہیں۔ جب ہم کوئی قانون نہیں بناتے ہیں تعلیم یافتہ طبقہ کے لوگوں میں ایک ہلکا سا برپا کر دیتے ہیں کہ سرکار اس طرح کا قانون نہیں بنانی ہے۔ کانگریس کے بھی عجیب لوگ ہیں کہ آگے بڑھنا نہیں چاہتے ہیں۔ اور جب کوئی قانون بنایا جاتا ہے تو وہ دھرم کے نام پر عام جلتا کو اس طرح بھڑکاتے ہیں کہ یہ سرکار تو عام لوگوں کے مذہب اور دھرم میں دخل دے رہی ہے۔ آپ جو یہ قانون پاس کرنے جا رہے ہیں اس سے مسلمانوں، عیسائیوں اور ہندوؤں کا فائدہ ہونے والا نہیں ہے۔ اس سے تو طرح طرح کی کئی دقتیں سامنے آجائیں گی۔ یہ کوئی ریفارم نہیں ہوگا جس سے کہ عام جلتا کو فائدہ پہنچ سکے۔ میں سمجھتا ہوں کہ ہمارے بہت سے دوست جو برلن والے ہیں وہ اس مسودہ قانون کی فلیٹوں کو اور آپ لوگوں کے سامنے رکھیں گے۔