

we may be engaged on the Preventive Detention Bill. I should like the House to realise that it may be necessary for them to sit beyond the 12th.

MR. CHAIRMAN : AU that I would beg the House to consider is to have some consideration for time, j So far as this particular Special Marriage Bill is concerned, it is going to be ! circulated for getting public opinion and it may not be in the same shape as it is, when it comes from the Select Committee. Then we will have adequate time for the consideration of the detailed provisions of the Bill. But since the Law Minister himself has entered into some of the provisions of this Bill, there will be the temptation on the part of other Members also to refer to the sam* matter,—I am merely giving the possibility of it. When we want a l general discussion only, wa must I ourselves set the example and say that the details are not for us to consider now, but these are the miin items and then consider them. Bat if j we speak about consanguinity, divorce, and all the rest of it, then of course, everybody would say, "Since you have started, why not I?" I mean, I the temptation is there. But as I j said the attempt should be to resist the temptation.

PANDIT S. S. N. TANKHA (Uttar Pradesh) : May I know how many more days beyond the 12th are wa likely to sit? Could we get some rough idea ?

SHRI N. GOPALASWAMI : There is one Bill that I shall have to handle in the other Hous; tomorrow—the Air Ports Reserves Bill—and that will be passed by the other House when we are engaged on the Detention Bill and after being passed, it has to come here ; and I do not think it will take much time because there has been a great deal of agreement in the Select Committee. But.....

MR. CHAIRMAN : But it all depends.....
38 C.S.D.

SHRI N. GOPALASWAMI : Yes.

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

DR. P. C. MITRA: Sir, before the amendment is moved

MR. C H A I R M A N : No, the amendment comes first.

DR. P. C. MITRA : Sir, only just me question, if you will permit me.

MR. CHAIRMAN : What is it Dr. Mitra ?

DR. P. C. MITRA : Sir, in 1793 the Government of India declared that all courts should decide in the case of all marriages whether the Hindu 0: the Miftammadan Law will apply. After tnat, in 1372 the law was amended because ch; members of the Brahma Samaj pressed on the Government the fact that the courts had declared their marriages invalid and their progeny illegitimate. And so in 1872 a fresh law was enacted. Now, I want to know under whose insistence this proposed law is coming up. That is my question.

MR. CHAIRMAN : That is not a question.

JANAB M. MUHAMMAD ISMAIL SAHEB (Madras) : Sir, I move :

That at the end of a; imtion for thi ward and figures '31st Dissmbsr 195-** the word aid figures '31st January 1953' be substituted.

Sir, this means that if the amend-¹ ment is accepted the period will be extended by one month. The hon. Law Minister was pleased to place a sort of interdict on putting to him questions on the provisions contained in this Bill.

[Janab M- Muhammad Ismail Saheb.] I only want to know how, without putting questions, the implications and the principles, at least the fundamental principles, of the Bill can be brought out and how the public, whose opinion is being sought, are to understand the implications of the Bill before they give their opinion. However, Sir, I do not wish to deal elaborately with the matter at this stage and I shall confine myself to the broad principles and to one or two features of the Bill.

The Bill, as has been explained, purports to provide for a special form of marriage which can be taken advantage of by any person irrespective of the lakh which either party to the marriage professes. That, as has been pointed out, is the fundamental feature of the Bill and from this provision flows and emanates complications, and I shall deal with some of them at present. The Bill, then, provides that the succession to the property of the parties shall be regulated by the Indian Succession Act and not by their personal laws which they have been following hitherto. The other alteration which the Bill makes in the present position is that it makes certain changes in the degrees of prohibited relationship. For example, according to the Hindu law, an uncle can marry a niece and according to the personal law of Islam, children of brothers and children of sisters can marry. The Bill seeks to change this arrangement. Of course, I have, in my mind, very clearly the statement made by the hon. the Law Minister the other day that this Bill is only optional. Having that in mind, I am dealing with the Bill, and I want the House to see whether it is purely optional and innocuous affecting only the persons who marry under this Bill or whether it also affects the rights and privileges of other persons in the various communities of the country. According to this Bill, a person is allowed to give up his religion, that is the law laid down by his religion with regard to marriage and with respect to other things in life. The person who marries under this Act is recognised as following his religion and his own personal law. It is this

position which creates complication at times of an iniquitous nature with the other members of society or the community to which the one who marries under this Bill belongs. Take for instance, the case of a Muslim. He solemnizes his marriage under this Bill. Then, succession to his property and to that of the issue of the marriage is governed by the Indian Succession Act. So far as his property is concerned and so far as the property of the issues of the marriage is concerned, this Bill is clear and it says such properties shall be governed by the Indian Succession Act. But, what about the property which the party who marries under this Bill may inherit from others and from his relations? Supposing, Sir, if the person marrying under this Bill had gone clean out of the personal law which he has been following before his marriage, then, the other relatives will inherit the property to the exclusion of this person. This Bill, Sir, does not speak of that contingency. Probably, the person who marries under this Bill will claim the property under his personal law, the law laid down by his religion. The law laid down by Islam with regard to gifts, endowments, wills and certain other things is different from the one that is laid down by other personal laws and other statutory laws. Now, the person who marries under this Bill will be governed in the manner of gifts, in the matter of endowments and such other things by the Muslim law, whereas his property and the property of his issues will be governed by the Indian Succession Act. Therefore, Sir, the provisions do not provide for mutuality. The property of the party marrying under this Bill is taken away under the purview of the personal law which he has been following, at the same time depriving some of the rights of the relatives.

At the same time it does not yield a similar advantage to the relatives. Therefore, Sir, I say that in this sense it is not truly optional. It affects the rights and privileges of the members of the community to which the party belongs. Then again, Sir, a man marries now in accordance

with the terms of this Bill, but what right has he got to bind the issues of the marriage ? When they come of age they may think differently, but this Act, for ever, affects the rights of those issues with regard to property. Is it fair ?

Now, the hon. Minister said that the Indian Succession Act really applies to the property of a Muslim or a Hindu if he marries under this Bill. Is it really so, Sir ? There is a doubt in this connection which I want the hon. the Law Minister to clear. If he will look into the Indian Succession Act, he will find that under Part V relating to Intestate Succession, section 29 (1) says—I am only reading a portion of the section—"this Part shall not apply to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina." Then, again, Sir, there is another section under Part VI—section 58 (1)—which says "the provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan, nor, save as provided by section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina." These are the two important provisions. These sections would make it appear that there is some doubt. With reference to the parties marrying under this Bill, is it clear that they will be governed by anything other than their respective personal laws which they have been following before their marriage ? Even if it is taken that only personal laws will apply to succession to their properties, then what about the children ? A Hindu marries a Christian or a Christian marries a Hindu. What about the children ? Which personal law will apply ? Even apart from the provision that has been laid down here under this Bill, what will be the law of the children ? The Indian Succession Act is not exhaustive ; it does not provide for every contingency that may arise. Then what is the law—the personal law—that will have to be followed with reference to the issues of the marriage ?

Now, I want to know whether there is really a demand in the country

for this Bill. If one does not want to follow his religion so far as marriage is concerned, he is free to do so under the existing 1872 Act, but what is interesting is he wants to give up his religion in a certain matter and he wants to follow it in certain other respects. It is very difficult because if he thinks that marriage is of supreme importance—marriage of a certain kind, a certain character—then he is free to do as he pleases under the present Act. But how many people have taken advantage of the present Act, is the question. Not many, Sir. And Government have not provided us with any relevant figures. If they had done so, it would have been interesting to study them, but then they cannot give any figures, because there are not many cases of such marriages. When there is not such a demand from the people, when the present Act is not popular, what is the justification for bringing in this more drastic measure which is bristling with so many complications ? Because this fact is lurking at the back of their minds, it is because of this fact, that they have brought forward this motion for circulating the Bill for eliciting public opinion. So far so good, because they did not, for one thing, want to compel the people to follow what they think is for the good of the people.

Now, Sir, the hon. Minister raised the question of article 44. He says he has got a right and also a duty of compelling the people to give up their law and he even went so far as to say, Sir, that he would compel the people through the House to abjure their claim in regard to certain other matters. Now, Sir, is the position under the Constitution consistent with the line he has taken ? Of course, article 44 says that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. Please see the wording of this article, Sir. It does not say that the State shall provide the citizens with a uniform civil code. It says the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. That means they will study the views of the people

[Janab M. Muhammad Ismail Saheb.] and the conditions of society and then make an endeavour in that direction. That is the direction that has been given under this article. Moreover, another important thing which we will have to bear in mind is the Part under which this article has been placed. It is under the Chapter on Directive Principles of State Policy that the article has been placed and article 37 in this Chapter says that the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Sir, this article is not therefore justiciable; it cannot be enforced in any court of law. However the latter part of article 37 says that it shall be the duty of the Government to do that. Then what is the remedy? If the Government fails to do it, they will have to go before the public. The ballot box will be the final deciding factor under such circumstances. All that article 44 says is 'that the State shall endeavour' and in endeavouring to do that, they will have to study the feelings of the people. Now, this, as I said, is a non-justiciable article. As against this there is article 25 (1) which belongs to the justiciable portion of the Constitution. It says :

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

I know this right is governed by certain qualifications. I know there are certain conditions laid down. But we cannot in any sense say that 'the conditions laid down with reference to this article are conditions that will be laid down with reference to any other article. We cannot say that such conditions can ever form a substantive part of an article. The fundamental and substantive portion of the article is that every person shall have the right to profess, practise and propagate religion. Now, I want the hon. Minister to see whether this Bill

does not contravene the provisions of this article. I want him to ponder over the contention of his that people can be compelled to abjure their faith.

Again, Sir, in this matter I want to make one point clear. So far as the Muslim personal law is concerned, our belief is that it has not been laid down by any human agency, not even by the Holy Prophet; our belief is that that law is laid down by Kalamullah—the Word of God. We have no choice in the matter whether we would follow it or would not follow it. We have not the choice to say that we shall follow so much of His law and not the other part of the law. That is our belief. This is a fundamental matter connected with religion. Therefore, is it right, and is it consistent with the Constitution of the country to compel the people to give up the faith which they derive from God? It is not really the function of a secular State to exercise such compulsion. What is a secular State? A secular State does not mean that it is hostile to any religion. It only means that it does not adopt a State religion; that it does not prefer one religion to another; and that it does not favour one religion as against another. That is what a secular State means. At the same time a secular State is also precluded from interfering with the religion of the people. It must adopt a neutral attitude in that matter.

Sir, with reference to another question which I raised, as to whether this Bill can be brought before this House, the hon. Law Minister said that my contention was fantastic and that if my contention were to be held valid, then no Bill could be brought before this House. These remarks of his are no reply to the points which I raised. They may be fantastic according to him, but what is the reply he gave? Did he show that the articles I referred to did not apply to this case? I would be really very sorry if my contention were to be held valid and if no Bill were capable of being brought before this House. I would be really very

sorry if such a contingency were to arise. However, we must go according to the Constitution. I quoted on that occasion article 117 which says that a certain class of Bills shall not be introduced in the Council of States. Then I requested you to read that with article no, particularly subclauses (c), (d) and (e) of clause (1). It reads :

"For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely" ;

and after sub-clauses (a) and (b), sub-clause (c) is :

"The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund

and sub-clause (d) is :

"the appropriation of moneys out of the Consolidated Fund of India ;" ;

and (e) is :

"the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the withdrawal of the amount of any such expenditure ;".

There is no limit laid down as to the moneys that may be taken out of or paid into these Funds. It may be one rupee, or it may be a crore of rupees. But what does the provision in the Constitution as it stands mean ?

SHRI C. C. BISWAS : May I invite my hon. friend's attention to this provision :

" For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with the matters mentioned there ? Does this Bill only contain provision for appointment of Marriage Registrars and nothing else ?

JANAB M. MUHAMMAD ISMAIL SAHEB : There can be no Bill which will be dealing only with such a matter as that. Then, Sir, it has to be read along with article 117. A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (e) of clause (1) of article cannot be introduced or moved except on the recommendation of the President, and a Bill making such provision cannot be introduced in the Council of States.

I happened to light upon another section which says that if there is any doubt as to whether a Bill is a Money Bill or not, that question shall be decided by the Speaker of the House of the People. Bills of such a doubtful nature can be introduced only in the other House. Therefore what I say is that my contention was not and is not without substance and it cannot be simply dubbed as fantastic and crushed aside. The hon. Minister did not deal with this article and did not answer my point.

I have shown that this Bill introduces a measure of compulsion. It affects the rights of not only the people who marry under this Bill but also of people who do not marry—the relatives of the parties who marry under this Bill. And what is the object of such a Bill ? A uniform civil law. Why do you want a uniform civil law ? We want harmony in the country. Not physical unity where every man in the country will be physically the same as every other man in the country and wear the same cap, wear the same coat, wear the same dhoti. It is not that kind of unity which we want—unity in appearance or in certain actions. This kind of regimentation of humanity cannot be effected, Sir, for any length of time and it is not good. It was not good in the past and it won't be good at present also. Put what we really want is harmony, good-will and tolerance amongst our people. That can be brought into being, Sir, even while people follow different religions. That has been shown by the history of other countries and again the fact that in spite of regimentation they did not have this harmony also has been shown by the history of the world. Therefore, we should aim at real harmony in the hearts of the people and for that purpose we want tolerance of each other's views and their good-will. In that case, if we are able to achieve this in a larger and larger measure,

[Janab M Muhammad Ismail Saheb.] we shall have what we want and we shall be able to take our country to progress and further progress.

Now, Sir, as I have already said, the motion for circulation itself implies that the Government are in doubt about the popularity of such a measure as this. Therefore, Sir, it is good that they are now moving for circulation. In that connection, Sir, what I want is only this that there should be a little more time for the people to express their views. In our country, Sir, there are people of different professions and different faiths and they may take time to express their views in the matter. Therefore, 6 months *in* such matters *is not* a long period. Therefore my amendment is a very modest one and I wanted only a month more. Now, even out of the six months which my amendment postulates, more than half of the month would be gone before the circulation is started. Therefore, Sir, I think that at least this much favour the Law Minister can show for the expression of the views of the people and accept my amendment.

IVU. CHAIRMAN : You have got now before you Mr. Biswas's motion for circulation of the Bill for eliciting public opinion thereon and Mr. Muhammad Ismail's amendment that '31st December 1952' may be substituted by '31st January 1953.' The two things are open for discussion.

KHWAJA INAIT ULLAH : Why not the principle of the Bill also? Can't we discuss the principle of the BM ?

MR. CHAIRMAN : Yes, to some extent. You will have opportunities of discussing the principles in detail at so many stages.

SHRI TAJAMUL HUSAIN (Bihar): Mr. Chairman, you advised us to be very brief, precise and to the point. I am going to follow your advice and I am sorry to say the last speaker did I not accept your advice. It was given ! to every Member of the House.

Sir, I support the Bill entirely although in my humble opinion it does not go far enough. I want, Sir, one common law for the whole of India. I want one law of succession, one law of inheritance, one law of divorce, marriage, etc. etc.

SHRI M.VALIULLA: One religion also ?

SHRI TAJAMUL HUSAIN : We are not talking of religion or no religion. We are talking on this Bill and I express my opinion, Sir, that I am in support of this Bill and I would go a step further and say that since the Constitution says that we must have one civil code for the whole of India, that should come one day. That is all I am expressing. I see no reason why interruptions should begin at the very initial stage when I have started my speech. Sir, this Bill has improved the Special Marriage Act of 1872. In my opinion, it would have been better to amend the Act itself because this Bill is more or less a mere repetition of the Act of 1872 with, of course, some improvements. But Government want to bring a new Bill. I accept that. Government want this Bill to be sent for eliciting public opinion thereon. I support this motion, Sir, although I think it would have been better to have sent it to a Select Committee. Now that this Bill is going for eliciting of public opinion, I wish, with your permission, Sir, to make a few suggestions to the public.

Under clause 4, sub-clause (c) it is provided that both the parties must be above the age of 18. I want, Sir, the public to consider whether it would be right for a boy under the age of 21 to marry under this Bill. I entirely agree so far as the girl is concerned, that girls should marry under this Act as soon as they have attained the age of 18 but I think, Sir, it would not be right to permit an Indian boy to marry at the age of 18. That is one suggestion.

My second suggestion is, Sir, that under clause 4, EipUiuioi I, first: cousins under this Bill cannot get

married. I entirely agree, Sir. First cousin' has been defined as two children of two brothers—one probably having a son, the other probably having a daughter. They should not marry. I entirely agree. Next, two sisters having two children—one sister having a son and the other having a daughter—they should not be married. I entirely agree. But I do not see any reason why the children of a brother and a sister should marry. They are also first cousins. Supposing I have got a son and my sister has got a daughter. Why should they marry? I would like the public to consider this point also. They should also be treated as of a prohibited degree. I would go a step further and say: Why not the second cousins also as long as they are blood relations?

Now, Sir, under clause 5 of the Bill, both parties have to give notice to the Marriage Officer that they intend to marry. Under clause 7 any person can object to the marriage within 30 days of that notice. Under clause 8 it is provided that if anyone objects on the grounds mentioned in this Bill, then the Marriage Officer, if he is satisfied, sends the objection to a court of competent jurisdiction, which means a civil court. It may mean a munsif or a subordinate judge. The appeal would go to the judge. * Second appeal may go to the High Court. Another appeal may come to the Supreme Court. Sir, my only point is that there will be a considerable delay. There is a couple who have chosen to marry under this Act. Somebody objects rightly or wrongly. Suppose wrongly. Then the case goes up to the Supreme Court. You know, Sir, how much delay there is—3 years, 4 years, 5 years. It is a question of marriage. I submit, therefore, that the public should consider this aspect also and see whether they should try and find out ways in order that there is no considerable delay in the matter.

Then under clause 13, if there is no marriage within three months—which is the notice period specified—the parties will have to give a fresh notice. My only submission is that,

if they have to give notice after the expiry of three months because they could not marry within that time for some reason or other, no objection should be allowed thereafter. I hope I have made my point clear. The parties had gone before the Marriage Officer and told him that they wanted to marry. He puts it on the Notice Board and then within thirty days objections can be raised. But, after the three months' period has expired, the parties should have got married but somehow or other, the parties are unable to get married. Then fresh notices should be given, I agree, but no more objections should be allowed. Otherwise, the difficulty would be this: Suppose two people want to marry each other. Now, there is a rich man who wants to marry that girl and he raises an objection and it goes to the courts. There is a delay of some months or even three or four years, and then the case is decided. The two wanted to marry but could not marry within three months. No doubt, they have to file a new application.

DR. W. S. BARLINGAY (Madhya Pradesh): On a point of order, Sir, is this all relevant here? The motion before the House is for circulating this Bill for eliciting public opinion.

SHRI TAJAMUL HUSAIN: This Bill is to be circulated for eliciting public opinion. While it may be circulated for eliciting public opinion, I am mentioning the points that the public should consider. I was saying, Sir, that objections should not be allowed to be raised again. Otherwise, there will be still further delay and the aim of the young people to get married would be frustrated. Therefore I submit that the public should consider this point also, because nothing is mentioned in the Bill.

Then, Sir, coming to clause 9, if the objection, in the opinion of the trial court or the appellate court, is not *bona fide*, then the objector can be fined. I think the public should consider this point also. If the objections are frivolous with a view to delaying or preventing the marriage or if the

{Shri Tajamul Husain.] objections are malicious, then the object should be prosecuted under the Criminal Procedure Code and punished. And finally, Sir,

KHWAJA INAIT ULLAH : He said "finally" before.

SHRI TAJAMUL HUSAIN: I did not hear the interruption.

MR. CHAIRMAN : The point is that you said "finally" once before.

SHRI TAJAMUL HUSAIN : That was with regard to the points, which I thought, should be considered by the public. Now, Sir, this is with regard to the suggestions I would like to make to the House. Sir, I appeal to the House, through you, to accept the motion of the hon. the Law Minister. This does not interfere with the fundamental right of anybody. It does not interfere with the religion of anybody. There is no compulsion. It does not compel anybody to marry. It is optional. If you do not want to marry, it is all right. But if you want to marry, you must be governed by this Act. If you want to marry, you will be tied down to the clauses here. If you do not want to marry, you may remain happy anywhere you like.

Then, let me say a few words as regards what fell from my friend, Mr. Mohd. Ismail. He is a learned man. Therefore, I have to be very careful. I have not been able to appreciate one point. The motion is for circulation. % One month more, how does it make any difference ? I cannot understand. One month more in the public life either this way or that way will make no difference. He said something about Muslims. I entirely agree, but who is asking him to go near it? I do not advise him to go near it. I do not advise his children to go near it. He does not believe in it. We are only making a law for those who want it

The next point is, how one can inherit his father's property if he marries under this Bill. If a Muslim marries under this Bill, he will be .subject to the provisions of the Indian

Succession Act. As regards myself, the Muslim law is perfectly clear. My hon. friend will agree with me— he is more learned than I am—that my submission as regards the Muslim* law of inheritance is correct. When a Muslim dies, leaving his heirs who have become Christians, Hindus, Jews or Parsis, succession will be governed by the law of the deceased and not by the law of the inheritors— That is the Muslim law. Therefore, if a Muslim marries under this Act, his children or his heirs would inherit under the Indian Succession Act, and he will himself inherit his father's* property under the Muslim law, if his father was a Muslim at the time of his death. That is the Muslim law. I do not know the position with regard to Hindus and Christians.

One Member said that the public don't want this Bill. We are their representatives. I would suggest this to the hon. Law Minister. The hon. Law Minister is busy elsewhere ; \ when two Ministers sit together, we can never get their ears. The hon. Law Minister wants this Bill to be circulated for public opinion. He will agree with me that this Bill is more-or less a repetition of the Act of 1872 with slight improvements. Supposing I it is to go to the public for opinion and if it is the opinion of the public— I wrongly—that the Bill should be thrown out, that they don't want the Special Marriage Bill, look at the disaster. It should go to the Select Committee. We are the representatives of the people. Are you going to repeal the Special Marriage Act if they don't want it ?

(Janab M. Muhammad Ismail Saheb-got up to interrupt.)

I am not prepared to reply to his-questions. I am taking a very drastic view. If the public favour this Bill there is no trouble. If they don't want this and if they say 'we have to repeal this' what are we to do ? We are their representatives. It will be disastrous to repeal that Act.

SHRI T. PANDE (Uttar Pradesh) : If people are against the Bill, we have-

to do it. Because people are the masters of the Government.

SHRI TAJAMUL HUSAIN : A point was made that under the Constitution one is entitled to profess, preach and propagate his religion and this Act will go against that provision of the Constitution. I beg to differ from him. If I want to marry under this Act, he can come and preach to me and he can persuade but if I insist, I have a right to marry. How is it against the Constitution ? How does this Act prevent him from preaching his religion or propagating his religion ? It does not interfere at all.

Then he says that the Muslim law is divine. I agree. He must also admit that every law, every religious law, is divine. Everybody believes his law to be divine. We are not doing anything. We are doing something for anybody who wants to be under this Act. It is not against any Muslim law. He says that this Bill under the Constitution cannot be introduced in this House. That point has already been answered by my learned friend the Law Minister and he will reply to it again. Mr. Ismail thinks this cannot be introduced. He is against this and he thinks it interferes with his religion. Constitutionally if this Bill cannot be introduced, then it gives him an excellent opportunity to get it declared *ultra vires*. He should be very happy over it. Because when the Bill is passed and made into law, he can go to the Supreme Court and get it declared *ultra vires*, and he should be happy. As regards his objection that it is only a Money Bill and cannot be introduced here, I would say that if this proposition is correct no Bills can be introduced here.

SHRI H. P. SAKSENA: Mr. Chairman, I beg permission to congratulate the House as well as myself for the facility that has been accorded to us to introduce a Bill originally in this House, the Council of States. It is the first occasion that we have been given the opportunity of introducing a Bill originally.

hope that this will form the precedent and many more opportunities will be afforded. I have a complaint against: my hon. friend Mr. Tajamul Husain. He has stolen a march over me in two-respects. In one respect, he replied to all the points that had been raised by; my hon. friend Mr. Muhammad Ismail. Now one thing I could not understand in the speech of Mr-Ismail was his reference to divinity-I always thought that divinity was indivisible. It applied to the entire-universe, to people of all manner of persuasion and faith, but he appeared to me to be claiming an exclusive right over God also. Then his idea of a secular State appeared to me to be-a very narrow one. Probably he does-not understand the importance and the significance of a secular State-At any rate, I don't share his views. The secular State puts no fetters on anybody's faith or religion. Everyone is as free as a bird to profess what, faith or religion he or she likes. Now, with this import of secular State it will become a man to come forward and say that his religion is being interfered with or his faith is going to-be disturbed. Nothing of the kind. I don't want to enter into any detailed examination of the Bill that has been introduced. As you advised us, this is not the stage for that sort of examination. It is going to be circulated for eliciting public opinion. Happily enough, the Bill has been introduced by the hon. Law Minister who is a host in himself so far as legal matters are concerned. He has been in the Bench, at the Bar and-knows the laws not only of this country but of the entire universe. He is, so-to say, comparable to that great legislator who gave us an immortal code, the great Saint Manu and whatever he does and whatever Bill he brings, forward in this House should ordinarily

be treated as something that has.....
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SHRI C. C. BISWAS : I have no ambition of being a 20th Century Manu.

SHRI H. P. SAKSENA : It is a matter of opinion. It is my opinion ; it may not be yours.

[Shri H. P. Saksena.] I was telling the House that anything that came from him has ordinarily to be treated as having received his best juristic attention. Now, the Hindu Code known as "Manu Shastra" provides for eight forms of marriage, and yet we find that people are not satisfied with such a large number even and they marry in a manner which does not conform to any of these eight forms of marriage. I am therefore, very sorry for the hon. Law Minister, for all his efforts at bringing the law of marriages into a complete marriage law are in danger of not succeeding and his object will be jeopardised because there is a certain invisible force known as Cupid who or which recognises no man-made law and hence there will be marriages and marriages which would not conform to any of the provisions embodied in this Bill. I should have thought that the time of this new-born Independent Sovereign Republic of ours should have been more profitably devoted to consolidating the State, to producing more and more of food grains, to producing more and more wealth and to producing less and less of children. But, Sir, here I find that we are tempted to fritter away our energies in making inroads into the realm of social life of the community. Social legislation is always a controversial affair. It may be agreeable to some, it may not be agreeable to others. Unless, of course, there is an imperative necessity to bring forward a law without which the community is in danger of suffering very severe hardship, there should, ordinarily as I say, be no interference with social matters. Things should be left to shape themselves. But, since it has been thought proper by the authorities, by the Government, and the party of which I have the honour to be a member, to introduce this measure, I recommend that the Bill be circulated for eliciting public opinion.

DR. SHRIMATI SEETA PARMA- \ NAND (Madhya Pradesh) : Sir, I rise to speak on this Bill with a sense of frustration and also of disappointment. I say this because I feel the purpose behind the Bill could have been easily achieved by bringing in

some amendments to the Bill itself, as has been pointed out by the Law Minister already. I have had some discussions with him on this point. I feel that it is difficult to rouse the enthusiasm of the people and invite their opinions on a Bill again and again. It is for that reason it would have been better to put this Bill through with a few amendments that were necessary, without sending it out for eliciting public opinion. Even if it had to be circulated, it could have been done in another way. Even now, if the Law Minister would be kind enough to agree to it, I would make one suggestion. The Hindu Code Bill on which so much time and money have been spent and opinions invited and to which the Congress Party has already pledged itself.....

AN HON. MEMBER : No, no.

DR. SHRIMATI SEETA PARMA NAND :could at some stage be brought in as was mentioned in the President's Address and the portions about marriage and divorce in that Bill could have been introduced along with this Bill as a permissive measure, if necessary, for the time being, and sent out for public opinion along with this. I would even go one step further, as has been demanded by certain sections of the Women's Associations, and say that a Civil Code would be even better for all India, to unify the country. And even that could be done as a permissive measure by putting it before the people even now, as a unifying gesture and mentioning that this optional Act would become compulsory only after the lapse of fifteen or twenty years. After all, in all civilised countries of which we are talking again and again, a common Civil Code for the people is a symbol of their unity. There are countries which have different communities, professing different religions, but all conforming to the same Civil Code. There is, I think, Czechoslovakia or perhaps Yugoslavia where there are a number of Muslims and that is a country in point with a common Civil Code. Similarly, Sir, there is nothing for any community to feel that any infringement of its rights or encroach-

ment of its civil law would result from a common Civil Code, if it is made optional. Look at the Roman Catholic lies. They are as staunch religionists as any other people in our country who place the first value on their religious principles. Yet they have their civil rights as a permissive measure and they use them. Nobody boycotts them or says anything about them. After all, religion is a personal matter and social rights are a different matter. This is a sign of the evolution of society. By and by, by gradual evolution religion becomes such an entirely personal matter that it is not even discussed openly in daily life. It has been suggested that disharmony would result. May I ask you how it would cause disharmony? For example, people of two religions live in the same house without the slightest reduction in the harmony existing in the house. If a house can be taken as an example of harmony, then there is bound to be harmony in the country and, after all, is not a small house a symbol of our country? I would, therefore, say, Sir, that the present Bill is, in my opinion, like an imposter who does not want to acknowledge his ancestor. It is just a repetition of the 1872 Act and practically, three-fourths is a word-to-word repetition. Why then call it a new Act? If the hon. the Law Minister had no intention of bringing the marriage and divorce section of the Hindu Code Bill as it has emerged from the Select Committee he could have taken at least some of the clauses from that which would make this Bill a little more perfect. I refer to clause 16 of the Hindu Code Bill under the Marriage and Divorce Chapter which lays down that a fine should be prescribed for filing in an invalid objection. That would not have been objectionable. There are several other things of this nature and, as I have just said, we should not go into these details here; especially, as the Law Minister has said that no question should be asked at this stage, I would not even mention such questions. Reference to first cousins, *i.e.* to brothers' and sisters' children has been omitted. The implication is that perhaps the Muslim

community is left out. This should not happen in a secular State. I do submit that such measures should not take the time of the country, of the administration and of the people because, as I said, we cannot arouse enthusiasm again and again by asking people to think of this thing, of the Hindu Code and of this Bill separately. If this Bill could be stayed and brought up in the next session, nothing very much would be lost. The marriage and divorce sections of the Hindu Code Bill should be introduced as a permissive measure, as an optional law, along with this Bill and, if possible, that would be even better. The Civil Code could be introduced later on on the same lines.

I would like to mention one point here, though I would not go into details. It was mentioned by the Law Minister that in ancient times marriages of girls aged 9 or so were common and now the age limit has been raised. I would like to submit here, Sir, that in still more ancient times, marriages of very much grown-up adult women were common. If you were to think of marriages of Seeta, Draupadi, Shakuntala and Subhadra. Everybody knows that during the 'Smriti' period, the privileges enjoyed by Hindu society were great but they were withdrawn on account, I think, of our national disturbed conditions later.

DR. P. C. MITRA: There were no marriages but only 'swayamvaram'.

DR. SHRIMATI SEETA PARMANAND: I would not, Sir, take very much more time—though so many improvements in the present law are necessary, *e.g.* a boy of 21 cannot, on his own, decide whether he could take such a responsible step and that age will have to be raised to 1024. There are various other points and I think this is certainly not the stage where we should debate them and I would appeal to the Law Minister to very graciously respond to the great demand of all Women's Organisations and, also in consideration of the money spent by the Government on the Select Committee, introduce along with this Bill the marriage and divorce portions

[Dr. Shrimati Seeta Parmanand.] and send the two Bills for eliciting public opinion. But, Sir, half a loaf of bread is better than none and so, he should, at least include these provisions and bring it to the Legislature next time.

SHRI B. GUPTA (West Bengal) : Mr. Chairman, at this stage of the discussion of such a measure which is of undoubted importance, even if it is halting, we can only signify our general attitude towards it. Sir, law of marriages as indeed any other private law, calls for drastic reforms—reforms that are necessary to bring such laws not only regulating the private life but also bearing on the social life,—to the tune of the changing times. Sir, in this respect, the Government has been at great fault. They have been in power for a number of years, five years. Nothing has been done with a view to altering the existing laws where they come in the path of social progress. The Hindu Code Bill which was brought up has been shelved and our law-givers on the other side of the House have ample time to pass the Preventive Detention law, but have no time, and none at all, to introduce such urgently needed social reforms. I do not know, Sir, what they want. They want probably to fetter the society rather than liberate it from the bonds that are really preventing us from advancing along the line of progress. Even so, I welcome whatever little step, however haltingly they take, in the direction of social emancipation.

Now, Sir, we know very well that no basic legal reforms are possible unless at the same time they are based on the foundations of economic and social reforms. This is something which I know would not easily enter into the heads of traditional lawyers ; but those who believe in sponsoring social reforms, those who want to change the face of the society will well realise that the laws, and, for that matter, any other institution of that sort, have risen from certain social conditions. When the social conditions begin to change it becomes necessary that law should also be changed.

We find that the laws we have got, come from ancient law-givers, whether they are Muslims or Hindus. Whatever be the interpretations about the origin of these laws, they were laid down under certain definite social conditions. These conditions are no longer there and, therefore, it is very very urgent and very very imperative that bold steps should be taken to reform the laws with a view to bringing them inline with the requirements of the present day society. This kind of piecemeal measure only amounts to a sort of pitiful tinkering with the problem that faces us. I hope a day will soon come when we shall not merely go out to elicit public opinion from the people, but go out with a pioneering zeal of social reform to enlighten public opinion. Government takes no step in that direction and you will have realised by now what was happening. Hon. Ministers have started quibbling-in law about social reforms, introducing legal interpretation and all that sort of thing. I believe that if we take that attitude with regard to such measures, if we dig out procedure, get evidence, talk about Hindu law, Muslim law, interpretation of Manu and all that sort of thing, we will not have gone very far. But, of course, I know that the law-givers and the law-makers will have to face such difficulties in the way of their forward march; but then, Sir, what is necessary for them is to come forward with a comprehensive legislation, a legislation which would be all-sided and which shall open a new horizon before the masses. That sort of legislation is necessary. We find here a measure which, as has been rightly described by many hon. Members, is a repetition of the earlier special law on marriage of the last century. This will not enthuse the people. On the other hand, even if we support this sort of thing, it will only enable and give a handle to the social conservatives and reactionaries to bring up all manner of arguments to frustrate it. That is not the way. I wish the Hindu Code Bill had been redrafted in the light of the progressive suggestions that were advanced with a view to approaching the people; but, nothing of that sort has been done-

Now, Sir, marriage, as I said, is an institution which has to be understood in the social context. It is sacrament for the Hindus ; for the Muslims it is a contract, and so on. Let us not go into it. It is an institution which has very many impediments and has to some extent bound society to backwardness. It has particularly condemned in very many ways our women to social disadvantages and disabilities.

Now, Sir, we want this law to be changed because we want the fullest measure of freedom for women. If "this helps it in a little way, we welcome it, because we know that until and unless our women are emancipated, liberated and given their rightful place in the society, India cannot progress at all. Therefore any little step in that direction which brings our women into the main streams of social progress will be welcome. But, unfortunately, Government does not take that view. It -comes with a legalistic outlook. It produces a Bill which is written more or less in the same way as the British used to write laws when they thought it necessary to change certain laws. I think this kind of legalistic approach has to be abandoned and a new social outlook—a new outlook for social reform—has to be instilled into all -such measures that are brought up here. Sir, I hope the Government will make up its deficit on this account and wiH come forward in the next session with a Bill—a comprehensive Bill. I .know the difficulties will be many ; opposition will come from all sides. I know many people will raise many "kinds of bewildering and staggering arguments, but, once you fix up your mind that here_ is our society which has to be dragged out of the darkness of the old social and legal restrictions, you will have undoubtedly found your way out for advance. I hope Government will take that view when it approaches that subject.

Then, Sir, only one thing I wiH say, *viz.*, that in this provision there should not have been any limitation. They have made an optional provision, but at the same time they hava retained the disabilities that exist under the old law ; for instance, disabilities

with regard to family, disabilities with regard to adoption and all that sort of thing continue. I think these should have been given the go-by.

Again, Sir, we find a provision here that parties who have completed the age of 18 years can marry but consent of their parents or guardians will be necessary unless they are 21 years of age. Now we have thought that 18 years' limit is sufficient to protect them from aU kinds of things that some people may imagine.

If they are allowed to marry at 18 years, why should there be again a restriction here ? Why not allow them to do it absolutely freely ? I do not suggest, Sir, that family life should be broken up, but what I suggest here is that if you assume, as rightly you have assumed, that at the age of 18 one gets into his manhood, you should give him the freest possible choice in this matter and you should not bind him indirectly to certain other restrictions. I do not say that all parents are reactionary, nor do I say that they are all unreasonable, but there are parents living in our society who are wedded to old antiquated ideas, so much so that they would, with all deference to them, find it difficult to bring themselves up to the living standards of our sense of values. They may find it difficult to do it. Therefore, I say, in this matter the boys and girls should be given free unfettered choice. They should not be restricted in any manner. Of course, I know, the advantages that are given here will not be available to the villager in the villages where milUons of people Hve—where actually India lives—because what we need there is not just an announcement of the fact that a legislation has been passed somewhere in Delhi. What you need there is really a campaign—a social campaign—and education so that these things may become really available to the people.

You have to change the machinery itself. The machinery of putting up a Marriage Registrar here and there does not help very much. Until and unless the machinery is such as would *mest* the requirements of our society

[Shri B. Gupta.] as it is today and not as you expect it to be, you cannot get very far. Therefore, I fear that this measure would be available to only a small section of the people. Others will not even know of it ; millions will not even know of it. We have got the measure of the last century. Who has benefited by it? It did not go to the villages at all ; it was confined mostly to the towns and the urban population. I do not know how many villagers know its existence even. Therefore, Sir, it is also very necessary, when you sponsor such measures, to ensure that these measures, when they become a part of our legal system, would be readily and easily available to the vast masses of the people. That would call for education, enlightenment and a machinery which would be accessible to the broad masses. With these words, Sir, I support whatever little step the hon. the Law Minister is taking here. At the same time I regret that he has not been sufficiently liberal, he has not been sufficiently broad to extend the field of his legal reform. I hope in the recess that we are having after this session, he will have developed a newer and broader outlook, so that we can find him in this House presenting before us a comprehensive measure of legal reform that is absolutely necessary for social progress.

KAZI AHMED HUSSAIN (Bihar) :

قاضی احمد حسین (بہار) : جناب چیرمین صاحب! جہاں تک اس میں مذہب کی باتوں کا تعلق تھا اس کو ہمارے دوست محمد اسماعیل صاحب نے بہت اچھے اور خوبصورتی کے ساتھ ہاؤس کے سامنے پیش کر دیا ہے، میں اس کی تائید کرتا ہوں۔ اس کے علاوہ میں اپنے دنیاوی تجربہ کی بناء پر مثلاً یہ پیش کرتا ہوں کہ علیحدگی کی ترکیب نیچے درجہ کے ہندوؤں کے اس قانون سے کہیں

آسان اور بہتر ہے۔ ساتھ ہی ساتھ مجھے یہ دیکھ کر حیرت ہوتی ہے کہ ہماری کانگریس سرکار اس طرح کا قانون لائی ہے جو اس وقت بالکل مناسب نہیں تھا۔ مجھے افسوس ہوتا ہے کہ بہترین لوگ ہم نے حکومت کی کرسی پر بیٹھا رکھے ہیں اور اتنا ہوتے ہوئے بھی وہ یہ نہیں جانتے کہ اس طرح کے قانون لانے سے اس کا کیا اثر ملک پر ہوگا اور جہاں تک دیہات کا تعلق ہے وہاں کے رسم و رواج میں علیحدگی کی جو ترکیبیں ہیں ان سے مسودہ قانون کوئی اونچی چیز نہیں ہے۔ جہاں تک مذہب کا تعلق ہے اس کے بارے میں میں دو چار باتیں آپ کے سامنے پیش کرنا چاہتا ہوں۔ ایک چیز اس بل میں یہ ہے کہ ہندو رہتے ہوئے مسلمان سے اور مسلمان ہوتے ہوئے ہندو سے ایک دوسرے کے ساتھ شادی کر سکتے ہیں۔ یہ ایک متضاد بات ہے۔ ہر مذہب میں کچھ پرنسپل ہوتے ہیں۔ اس کے کچھ لڑ ہوتے ہیں لہذا یہاں پر یہ بات کہ ہندو ہوتے ہوئے مسلمان سے اور مسلمان ہوتے ہوئے ہندو سے شادی کریں یہ میری سمجھ میں نہیں آیا۔ ہمارے لئے کوئی دقت نہیں ہے کہ ہم ہندو دھرم کو اختیار کر لیں یا مسلمان دھرم اختیار کر لیں اور پھر کسی قبول کئے ہوئے دھرم کے اصولوں سے شادی کر لیں۔ میرے گاؤں میں ایک ہندو دوست تھے۔ ایک دفعہ آپس میں بات چیت ہو رہی تھی تو ان ہندو دوستوں کا کہنا یہ تھا جن میں ایک پنڈت بھی تھے کہ ہندو دھرم ایک سمندر ہے جس میں تمام مذہب آ سکتے

ہیں اور مسلمان دھرم ایک مہیتے پانی کے تالاب کی طرح ہے - میں سمجھتا ہوں کہ ہندو دھرم یعنی سائن دھرم ایسا دھرم ہے جس میں خودبکتوں سب دھرم سما سکتے ہیں - اگر ایک مسلمان یہ کہہ دے کہ میں سائن دھرمی مسلمان ہوں تو میں حالانکہ دھرم کے بارے میں دعویٰ نہیں کر سکتا لیکن پھر بھی میں یہ کہہ سکتا ہوں کہ اس کے خلاف کوئی تردید نہیں کر سکتا - میں سمجھتا ہوں کہ اگر ہندو دھرم میں کچھ فرق نہ کیا جائے تو وہ تمام دقتیں جو تفریق اور علیحدگی کی ہندوؤں کی شادیوں پر معلوم ہوتی ہیں وہ ساری کی ساری دقتیں دور ہو سکتی ہیں - چہاں تک مسلمانوں کے قانون کا تعلق ہے مجھے یہ کہنے کی ضرورت نہیں ہے کہ اس میں بھی تفریق اور علیحدگی کی کوئی بھی دقت نہیں ہے - میرے خیال میں اسلام دھرم انسانیت کے معیار کو اونچا کرتا ہے اور میں تو مسلم قانون پر فہم (faith) رکھتا ہوں اس لئے یہ قانون جو ہمارے سامنے آیا ہے میری سمجھ میں بالکل نہیں آیا کہ یہ کس طرح سے لوگوں کو فائدہ پہنچا سکے گا - آپ کسی ایک چیز کو اس قانون سے جو پیسے ہے لے لھجئے - اس میں تفریق کا جو طریقہ ہے یعنی دو انسان عورت و مرد جو جدا ہونا چاہتے ہیں وہ آسانی سے جدا نہیں ہو سکتے ہیں - اٹھارویں صدی میں یورپ میں تفریق کے لئے جب کوئی اصول نہیں تھا عورت مرد الگ نہیں ہو سکتے تھے چھٹک زنا ثابت نہ کیا جائے - اس کے لئے بڑے ہڈکامے ہوتے

تھے تو آج بیسویں صدی میں اس طرح کا بل لا کر اس زمانہ کی یاد تازہ کی جانی ہے - میں حیران ہوں کہ ہمارے قانون دان ہم کو کہاں لے جا رہے ہیں - کیا وہ اٹھارویں صدی کی طرف ہم کو لے جا رہے ہیں - مجھے اپنی حکومت سے اس طرح کی امید نہیں تھی کہ وہ اس طرح کا کوئی قانون لائے گی -

میں دیہات کے بارے میں آپ کو بتانا چاہتا ہوں کہ دیہات میں اس تفریق اور علیحدگی کے بارے میں جو رواج قائم ہو گئے ہیں اپر کلاس کو چھوڑ دیتے تو اس میں علیحدگی بڑی آسان ہے - مثلاً اگر کوئی عورت علیحدگی چاہتی ہے تو وہ اپنے پیپر (میگے) میں بغیر کسی اطلاع دئے ہرنے - ای جاتی ہے تو اس کے یہ معنی لگائے جاتے ہیں کہ وہ اپنے شہر کو چھوڑنا چاہتی ہے یا اس سے الگ رہنا چاہتی ہے اور اس پر جو معاملہ ہوتا ہے وہ پنچایتوں کے ذریعہ طے کیا جاتا ہے - اور اس طرح کے بہت سے قانون وہاں موجود ہیں مگر یہ قانون عورت مرد دونوں کو مجبور کرتا ہے کہ زنا کا ثبوت پیش کریں تب ہی وہ الگ کئے جا سکتے ہیں - انگریزوں کے جو قانون ان کے وقت میں یہاں آئے تھے ان کے آنے کے ساتھ ساتھ یہاں کے قانون بھی بدل گئے اور انہوں نے دوسری شکل اختیار کر لی -

آج جب میں دیکھتا ہوں کہ کانگریس جو پہلے بڑے بڑے کام کیا کرتی تھی اب اس قسم کے بیکار قانون لا کر لوگوں میں جیندام ہو رہی ہے تو افسوس ہوتا ہے - اگر

[Kazi Ahmed Hussain.]

وہ لوگوں کے میل کے ساتھ نہیں چل سکتی تو حکومت سے علیحدہ ہو جائے۔ کمونستوں کی تائید تو ہمارے لئے بدنام کرنے کے ہے۔ وہ خوش ہوں کہ ہم خود اپنے کو بدنام کر رہے ہیں۔ میں اپنے کمونست بھائیوں کو مبارکباد دیتا ہوں کہ سرکار اپنے کاموں سے آپ کے مقصد کو پورا کر رہی ہے۔ کمیونسٹ جس بات کو دیکھ میں پہلا کر سرکار کو بدنام کرنا چاہتے ہیں سرکار اپنی کارروائی سے ہی خود جتنا کو اس طرف لیجا رہی ہے۔ میری سمجھ میں یہ بات نہیں آ رہی ہے کہ وہ اس طرح کے بل کو کیوں لا رہی ہے۔ اس سے تو عوام میں برا اثر پڑے گا اور سرکار کے لئے پریشانی بڑھ جائے گی۔ ایسی باتوں کا کوئی مناسب جواب عوام کے سامنے ہم لوگوں سے بن نہ پڑے گا۔ اس لئے میں ان سے کہنا چاہتا ہوں کہ آپ جو کچھ بھی کرنا چاہتے ہیں اس کو سمجھ بوجھ کر کریں جس سے عوام میں کسی طرح کی بے چینی اور فطافطی پیدا نہ ہو۔

آپ لوگوں کو شاید یاد ہی ہوگا کہ ابھی حال ہی میں دہلی میں ایک شادی کے واقعہ میں کتنا بڑا ہنگامہ ہوا تھا۔ اس کی وارداتیں ابھی تروتازہ ہیں۔ جب کہ اس طرح کے شادی کرنے کے قانون موجود تھے تو پھر بھی اس وقت جو ہنگامہ ہوا ہے اس پر سرکار قابو نہیں پاسکی ہے سرکار کی طرف سے کہا گیا کہ دہلی میں 9 لاکھ آدمیوں کو کس طرح سے پولیس روک سکتی ہے تو میری سمجھ میں یہ

بات نہیں آتی کہ اس طرح کے قانون کو لا کر ہندوستان کے کروڑوں لوگوں کو سرکار کی فوج کس طرح سے روک سکے گی۔ جبکہ ہمارے یہاں اس طرح کے قاعدے قانون موجود ہیں کہ اگر کوئی آدمی اپنا مذہب چھوڑ کر ہندو ہونا چاہے، عیسائی ہونا چاہے یا اور کوئی دوسرا مذہب اختیار کرنا چاہے تو وہ کر سکتا ہے۔ اسی طرح شادی کے معاملہ میں بھی وہ ایک دوسرے کے ساتھ کر سکتا ہے۔ تو میری سمجھ میں یہ نہیں آتا کہ اس موقع پر اس طرح کا بل کیوں لیا جاتا ہے جبکہ سرکار کے سامنے بہت سے ایسے اہم مسئلے ہیں جن کو حل کرنا بہت ضروری ہے اس لئے سرکار کو اس طرح کا بل اس وقت نہیں لانا چاہیئے تھا۔

میں ایک بات یہاں پر ہاؤس کے سامنے رکھنا چاہتا ہوں۔ پچھلے جب الیکشن ہوئے تھے تو وہاں ایک بہت بڑی میٹنگ ہوئی تھی۔ میٹنگ میں بڑے بڑے ہندو مسلمان قابل لوگ تھے تو اس وقت اس میں یہ پروپیکلڈ کیا جا رہا تھا کہ پلڈت جواہر لال نہرو بھائیوں اور بہنوں میں شادی کا قانون بلانا چاہتے ہیں تو ایک صاحب نے ایک ہندو مذہب کی کتاب میں دکھایا کہ کسی زمانہ میں ہندوؤں میں یہ جائز تھا۔ ہندوؤں کے مختلف فرقوں میں جو رواج ہے اور مختلف وقتوں میں جو قانون تفریق کا رہا ہے اس کو جائز کر دیا جائے اور ہر ہندو کو اختیار ہو کہ جو اسمرتی یا رواج چاہے اختیار کرے تو اس سے کہیں بہتر

قانون بن جائے گا جو ہمارے سامنے ہے - مسلمانوں کا جہانتک تعلق ہے ان کے یہاں علیحدگی کا بہترین قانون موجود ہے - میرے کہنے کا مطلب یہ ہے کہ روز بروز اس طرح کی باتوں میں حکومت کو نہیں پڑنا چاہئے - اگر وہ اس طرح کی باتوں میں پڑتی ہے تو وہ خود کو اپنے کو پریشانی میں ڈالتی ہے - میں نے اس سلسلہ میں جو الفاظ آپ لوگوں کے سامنے اظہار خیال کے لئے استعمال کئے ہیں اس کا کوئی غلط مطلب نہ لیا جائے کیونکہ میرا سرکار سے صرف یہی کہنا ہے کہ اس کو اس قسم کا بل ہرگز نہیں لانا چاہئے - اس بل میں جو ترمیم ہے وہ پبلک اوپینین (public opinion) کے لئے بھیجا جائے گا تو اس کے بعد سرکار کو بہت سی باتیں معلوم ہوں گی اور یہ معلوم ہو جائے گا کہ پبلک کی کیا رائے ہے - میں یہاں پر ہندو مسلمان، سکھ، عیسائی جن لوگوں کی طرف سے ریپریزینٹیشن ہو کر آیا ہوں ان کی رائے کا اظہار کرتے ہوئے ان الفاظ کے ساتھ اپنی تقریر ختم کرتا ہوں کہ اس بل کو سرکار ہرگز منظور نہ کرے جس سے کہ، عوام میں بے چینی پیدا ہو -

[For English translation, see Appendix II, Annexure No. 76.]

MR. CHAIRMAN : I should like to point out that at this stage it is a matter for being circulated for eliciting public opinion thereon. The details are bound to be discussed at different stages. I should like the speakers to confine themselves to five minutes hereafter.

SHRI KISHEN CHAND : The hon. Minister has taken over an hour.

MR. CHAIRMAN: That is why hon. Members have had an hour and a half.

SHRI RAJAGOPAL NAIDU : We may be permitted to take at least ten minutes but.....

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KHWAJA INAIT ULLAH : I will not be able to express myself in five minutes.

MR. CHAIRMAN : Let the hon. Member get along first.

KHWAJA INAIT ULLAH :

خواجہ عنایت اللہ : شریمان چہر مہین صاحب ! میں اس بل کو سپورٹ کرنے کے لئے کھڑا ہوا ہوں - جب یہ بل پبلک اوپینین (public opinion) کے لئے جا رہا ہے تو جیسا کہ میرے ایک لایق دوست نے اس کی حمایت کرتے ہوئے ہم لوگوں کی توجہ کچھ باتوں کی طرف دلائی ہے میں بھی چاہتا ہوں کہ ان باتوں کی طرف آپ کی کچھ توجہ دلا دوں -

ہمارے لائسنس صاحب نے اپنی تقریر میں صاف صاف کہا ہے اور ان کی تقریر کا جو سبستنس (substance) میں سمجھ پایا ہوں وہ یہ ہے کہ وہ ایک بل بنا رہے ہیں کنٹریکٹ آف میریج (contract of marriage) جس طرح دنیا میں اور دوسرے مفادے ہوتے ہیں اسی طرح وہ ایک نیا مفادہ یعنی کنٹریکٹ آف میریج (contract of marriage) بنانا چاہتے ہیں - ہندوستان میں جتنی بھی شادیاں اس وقت ہوتی ہیں وہ سب ہی کنٹریکٹ

HON. MUMTAZUDDIN KHAN : J0, no.

SHRI H. P. SAKSENA : It is not a contract, Sir. It is a sacrament.

KHWAJA INAIT ULLAH :

خواجہ عنایت اللہ : میرے کنٹریکٹ کا کہنے کا مطلب شاید آپ نے غلط سمجھا -

SHRI T. PANDE :

श्री टी० पाण्डे : हमारे यहां वह तो बंधन है।

KHWAJA INAIT ULLAH :
خواجه عنایت اللہ : اس کو کنٹریکٹ
نہ کہہ کر بندھن ہی کہیں -

MR. CHAIRMAN: It is not necessary for you to comment on the differences in the matter of religion. Let us proceed on this Bill and speak on the Bill.

KHWAJA INAIT ULLAH: I am supporting the Bill that every marriage especially in Muslim law is a contract between a man and a woman.

DR. R. B. GOUR (Hyderabad) : You speak in English. You know it.

KHWAJA INAIT ULLAH : I cannot express myself in English and I have taken a vow never to speak in English in Parliament. On the contrary I will request you also to try to speak in Hindi.

تو میں عرض کر رہا تھا کہ جب یہ کنٹریکٹ آف مہرج ہے - میرے لایق دوست جناب سمعیل صاحب نے اس بل کو اپوز (oppose) کیا ہے اور یہ کہا ہے کہ یہ مسلمانوں کے لئے اور کسی بھی مذہب کے لئے کمپلشن (compulsion) ہو جائے گا - مجھے تو سمجھ میں نہیں آیا کہ اس بل میں کہاں کس کو مجبور کیا جاتا ہے - کہاں یہ کہا جاتا ہے کہ آپ اس قانون کے مطابق شادی ضرور کریں گی - میں بھی مسلمان ہوں اور مجھے اسلام سے واقفیت ہے - میں دعویٰ کے ساتھ کہہ سکتا ہوں کہ اسلام میں صاف صاف قانون ہے "لا اکرہ فی الدین" یعنی مذہب میں کوئی جبر نہیں ہے - جب یہ اصول اسلام میں موجود ہے کہ مذہب کے معاملہ میں کسی پر جبر نہیں کرنا چاہیے تو کیا یہ جبر نہ ہوگا کہ ہم کسی کو مجبور کریں کہ اگر تمکو شادی کرنی ہوگی تو اسلام کے طریقہ پر ہی کرنی ہوگی - اگر وہ اسلام کے طریقہ کو چھوڑ کر اور دوسرے

طریقے سے شادی کرنا چاہتا ہے تو اس کو ہمیں اجازت دینی چاہیے - ہمارا مذہب ہمیں سکھاتا ہے کہ اس کو اجازت دینی چاہیے - یہ دوسری بات ہے کہ ہم اپنی سوسائٹی میں اس کو مسلمان نہ مانیں اہلحد سے اسے اپنی برادری سے خارج کر دیں اس کی اولاد اور اس کے بچوں سے اپنے بچوں کی شادی نہ کریں - لیکن ہمارا مذہب اس کو اجازت دیتا ہے اور ہم اس کو روک نہیں سکتے ہیں - ہر ایک انسان کو آزادی دینی چاہیے کہ وہ جس طرح سے بھی شادی کرنا چاہے کر سکتا ہے - ابھی ہمارے قاضی صاحب فرما رہے تھے کہ ہم ہندو بننے کی اجازت دے سکتے ہیں لیکن ایک دوسرے طریقے سے شادی کرنے کی اجازت نہیں دے سکتے - آپ اس کو مذہب بدلنے کی اجازت دے سکتے ہیں لیکن اگر وہ دوسرے طریقے سے شادی کرنا ہے تو اس کو آپ مسلمان نہیں سمجھتے - اس لئے کہ اس اپنے طریقہ کو چھوڑ دیا اسلام کے طریقے کو چھوڑ دیا - میں سمجھتا ہوں کہ اسلام میں یہ کوئی زبردستی نہیں ہے کہ تمکو شادی کرنی ہوگی تو اسی طرح سے کرنی ہوگی - جو مذہب چھوڑ کر دوسرے مذہب میں جا سکتا ہے تو پھر کیا وجہ ہے کہ وہ دوسرے طریقہ سے شادی کرنا چاہے تو نہ کر سکے - ہم ہندوستان میں کسی آدمی کو مجبور نہیں کر سکتے ہیں - اگر یہاں "may" کی بجائے "every Indian shall do this" ہوتا تو میں سب سے پہلا آدمی ہوتا جو اس کی مخالفت کرتا - ہندوستان

میں ہو ایک کو آزادی ہے اور آزادی کے
معنی یہ نہیں ہیں کہ ہم ایسا قانون
بنا دیں کہ سارے ہندوستان کی جلتا کو
ایک طریقہ پر مجبور کر دیں -

اس کے بعد مجھے اپنے لائق دوست تحصیل
حسین صاحب کی باتوں کا بھی جواب دینا
ہے - انہوں نے بھی تائید کی ہے اور میں بھی
تائید کر رہا ہوں لیکن میرے خیال میں
وہ تائید کرتے وقت حد سے زیادہ بڑھ گئے
ہیں - انہوں نے کہا ہے کہ سارے ہندوستان
میں ایک ہی قسم کی شادی ہو اور
سارے ہندوستان میں ایک ہی طرح کے
رسم و رواج ہوں - اگر وہ ایسا چاہتے ہیں
تو میں کہتا ہوں کہ وہ غلط چاہتے ہیں -
ہندوستان میں ایک طریقہ کا قانون بنا
دینا سیکولرزم (secularism) کے اور
جمہوری اصولوں کے خلاف مسلمانوں کے
خلاف ہوگا - ہندوؤں کے خلاف ہوگا -
چینیوں کے خلاف ہوگا اور میں سمجھتا
ہوں کہ سارے لوگوں کے خلاف ہوگا -
اس لئے میں سمجھتا ہوں کہ ان کا یہ
چاہنا کہ سب ایک ہی طرح کے ہو جائیں
حد سے زیادہ بڑھتا ہے اور جب کوئی حد
سے بڑھ جاتا ہے تو اپنے آپ کو چھوڑ دیتا
ہے اس لئے میں ان کی بات ہی نہیں
کرتا -

اس کے بعد مجھے لاہور صاحب
سے بھی کچھ عرض کرنا ہے - بحیثیت
مسلمان کے میں نے اپنا نقطہ صاف کر
دیا ہے کہ ہمیں کوئی عذر نہیں ہونا
چاہئے - ہم اجازت دے سکتے ہیں ہر
مسلمان کو کہ وہ ہمارا مذہب چھوڑ کر

دوسرے مذہب میں چلا جائے اس میں
کوئی عذر نہیں ہے - جب ہم اس کو
یہاں تک اجازت دے سکتے ہیں تو پھر
ہم اس پر مجبوری نہیں قائل سکتے ہیں
کہ اگر اسے شادی کرنی ہو تو ہمارے طریقہ
سے ہی شادی کرے - یہ بعد کی بات ہے
کہ ہم دیکھیں کہ آیا وہ مسلمان سوسائٹی
میں رہنے کے لائق رہا ہے یا نہیں - یہ
ہم مسلمان سوچ لیں گے - لیکن ہم اس کو
مجبور نہیں کر سکتے کہ وہ ایک خاص
طریقہ سے شادی کرے -

اب بحیثیت مسلمان ہونے کے نہیں
بلکہ بحیثیت ایک ہندوستانی ریپریزینٹٹیو
(representative) ہونے کے میں لاہور
صاحب سے پوچھتا ہوں کہ جہاں
انہوں نے کچھ ہندوؤں کو اجازت دی ہے
کہ وہ اس طرح سے اپنی شادیوں کو رجسٹر
کرا سکتے ہیں اگر ان کی سوسائٹی
کسی شادی کو منع کرتی ہو اور ایک
نوجوان مرد اور ایک نوجوان عورت شادی
کرنا چاہتے ہیں تو اس کے لئے یہ قانون
بنا دیا ہے کہ اس قانون کے ذریعہ وہ شادی
کر سکتے ہیں؟ وہاں اور لوگوں کو اجازت
کہوں نہیں دی؟ کیا میں ان سے دریافت
کر سکتا ہوں کہ کدوں یہ اجازت دیتے
وقت آپ نے ہندوستان کی ایک بہت
بڑی تعداد کو اس قانون سے فائدہ نہ
اٹھانے کے لئے ایسا راستہ بنا دیا ہے -
ہندوستان کی بہت سی جماعتیں ایسی
ہیں جو آپ کے اس قانون سے فائدہ نہیں
اٹھا سکتی ہوں مثلاً آپ نے کلاز (۴) میں
لکھا ہے کہ ایسے لوگ آپس میں شادی

[Khwaja Inait Ullah.]

نہیں کر پائیں گے - اس قانون کے ذریعہ کچھ لوگوں کو منع کر دیا ہے کچھ لوگوں پر روک لگا دی ہے کہ اس قانون کے ذریعہ شادی نہیں کر سکتے ہیں - اس کے میں سخت خلاف ہوں - آپ کچھ لوگوں کے جذبات کی اس طرح پیروی نہیں کر رہے ہیں اور آپ دھیان نہیں دے رہے ہیں -

ایکسرپلیمنٹیشن (Explanation)

“or the children of two brothers or of two sisters”

کیا ہندوستان کے رہنے والے مسلمان آپ کی رعایا نہیں ہیں - ایک بھائی کا لڑکا ایک بھائی کی لڑکی سے شادی کر سکتا ہے - اگر کوئی ایسا موقع آ جائے کہ خاندان کا ایک مسلمان لڑکا اور اس کے بھائی کی ایک مسلمان لڑکی اپنے مذہب کو چھوڑ دے اور چھوڑ کر اس طریقہ سے شادی کرنا چاہیں تو کیا اس کے لئے رک نہیں ہوگی کہ وہ نہیں کر سکتے - آپ کو یہ خیال کرنا چاہیئے کہ جب آپ ایک قانون بنا رہے ہیں اور عوام کے لئے بنا رہے ہیں اور آپ نے دعویٰ فرمایا ہے کہ ہم ایسا قانون بنانا چاہتے ہیں جو تمام ہندوستانیوں پر لاگو ہو تو ایسا ہی ہونا چاہیئے ورنہ آپ پہلے ہندو کو تو بلانے لگے تھے اس میں سے عیسائی اور مسلمان کو نکال دیا گیا تھا وہ دوسری بات تھی - لیکن اب جبکہ ہم سب کو شامل کرنا چاہتے ہیں تو آپ مسلمان کے ایک بھائی کے لئے کو ایک بھائی کی لڑکی سے شادی کرنے کی اجازت اس قانون کے ذریعہ سے نہیں دیتے -

SHRI D. D. ITALIA (Hyderabad):

श्री डी० डी० इटालिया (हैदराबाद) : आप मुसलमान ही क्यों कहते हैं। पारसी के वास्ते भी क्यों नहीं कहते हैं।

KHWAJA INAIT ULLAH :

خواجہ عنایت اللہ : میں پارسی نہیں ہوں اور ان کے لئے اتنی انتہارتی سے نہیں بول سکتا ہوں جتنی کہ مسلمانوں کے لئے - اس لئے مجھے معاف کریں اس کے لئے آپ کو موقع ملے گا آپ بول لہجئے گا - مجھے پارسی مذہب سے پوری واقفیت نہیں ہے -

اس لئے میں کہتا ہوں کہ آپ اس پر توجہ فرمائیں کہ کم سے کم چار کروڑ مسلمانوں کے ایسے نوجوان لڑکے اور لڑکیاں جو اپنے مذہب کو چھوڑ کر شادی کرنا چاہیں کیونکہ میرے خیال میں وہ مذہب چھوڑ کر ہی آئیں گے تو جب وہ مذہب چھوڑ کر آئیں گے تو آپ کہیں گے کہ چونکہ تمہارے باپ مسلمان ہیں اس لئے تم کو اجازت نہیں دے سکتے - اس لئے ان بھائیوں کے لئے آپ نے ایک ارچن قال رکھی ہے جس سے کہ ہم کہہ سکتے ہیں کہ آپ کا یہ دعویٰ کہ ہم تمام ہندوستان کے لئے یہ قانون بنا رہے ہیں غلط ہے - میں کہتا ہوں کہ آپ تمام ہندوستان کے لئے نہیں بنا رہے ہیں بلکہ مانڈس (minus) مسلمانوں کے لئے یہ قانون بنا رہے ہیں -

ایک بات یہ بھی ضروری ہے - اس طرف بھی دھیان دیجئے - میں نے کہا کہ مسلمانوں کو ہم اپنے مذہب سے نکلنے کی اجازت دے سکتے ہیں - دیکھئے کلز (۱۸) میں آپ نے صاف کر دیا ہے کہ

جب کوئی ہندو کا لڑکا اس طرح اپنے دھرم کو چھوڑ کر ایک دوسرے دھرم کی استری سے شادی کرنا چاہے تو اس کا رشتہ ناطہ ہم کہتے ہیں کہ آپ نے اس میں کیوں نہیں مسلمان کو بھی شامل کیا -

اپنی مرضی پر کھر کو چھوڑ رہا ہے اور اپنے باپ، چچا، بھتی، بلد کو چھوڑ کر دوسری جگہ شادی کرنا چاہتا ہے تو اس کے لئے اسے اتنی قربانی کرنی پڑیگی اور اپنے خاندان کو چھوڑ دینا پڑیگا - اور جب اس نے اس کو چھوڑ دیا تو وہاں اس کا کوئی تکرہ دولت مکن زمین یا باغ وغیرہ پر نہیں رہے گا - مگر اگر وہ کہیں مسلمان ہو اور مسلمان نے ایسا کیا تو اس کا تکرہ ان چیزوں پر باقی رہے گا - اس کے باپ کے مرنے کے بعد وہ اپنا حصہ اپنے بھائیوں سے کٹا لیگا - حالانکہ وہ مذہب چھوڑ کر لامذہب طریقہ سے شادی کر چکا ہے -

جو کہ ہمارے اسلام کے اور ہمارے دھرم کے خلاف ہے - قرآن کے قانون کے خلاف اگر وہ دوسری جگہ شادی کرتا ہے تو لامذہب ہو جاتا ہے - آپ نے اس قانون کی رو سے اسے جایز قرار دیا ہے - آپ کہتے ہیں کہ

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

BEGAM AIZAZ RASUL (Uttar Pradesh) : May I point out that the hon. Member seems to be under some misapprehension. There is no clause in this Bill which says that the contracting parties will have to renounce their religion.

KHWAJA INAIT ULLAH:

All right : خواجہ عنایت اللہ : میں آپ کا مطالبہ سمجھ گیا کہ قانون کے ذریعہ وہ اپنا مذہب نہیں چھوڑ رہا ہے - مگر جب وہ قرآن کے خلاف شادی کرتا ہے تو میں سمجھتا ہوں کہ وہ مسلمان نہیں رہتا ہے - بولے ہی وہ اپنے آپ کو مسلمان کہے لیکن میرے خیال میں چونکہ اس نے مذہب کے خلاف شادی کی اس لئے وہ مسلمان نہیں رہتا - لہذا میں ایسا کہہ رہا تھا - تھیک ہے - ہم اس کو اجازت دے سکتے ہیں لیکن جہاں آپ نے ہندو، بولہ، جین، سکھ کے لئے یہ کہا ہے کہ اس کا تعلق خاندان سے ایکدم ختم ہو جائے گا اسی طرح سے آپ کو یہاں مسلمانوں کو بھی شامل کرنا چاہیئے کہ اگر کوئی مسلمان اس طرح کی شادی کرنا چاہے تو چونکہ مذہب چھوڑ نہیں کرتا ہے اس لئے اسے اجازت دیدے لیکن اس کا خاندان سے کوئی تعلق نہ رہے -

SHRI TAJAMUL HUSAIN : On a point of order, Sir. The hon. Member began his speech, you will remember, by saying that he supported this Bill. Is he entitled now to oppose almost every clause?

KHWAJA INAIT ULLAH : My friend could not understand me. I support the Bill with some defects which I wish to be removed. He has not followed me because I am speaking in Urdu.

MR. CHAIRMAN : Quite right. Goon.

KHWATA INAIT ULLAH (

خواجہ عنایت اللہ : میں عرض کر رہا تھا کہ ہندوؤں کے لئے اور سکھ، بولہ اور جین وغیرہ کے لئے کل (18) میں رکھ دیا ہے کہ ان کا تعلق ان کے خاندان سے کٹ جائیگا لیکن مسلمانوں کے لئے اس میں دیکھ نہیں کہا - پھانٹک ہے کہ اگر ہندو، ایڈاپشن (adoption) کرنا چاہیں تو وہ بھی کر سکتے ہیں - اگر چاہے تو ان

[Khwaja Inait Ullah.]

کے باپ دوسرے لڑکے کو بھی اپنا اپنا
(adopt) کر سکتے ہیں - مگر مسلمانوں
کے لئے یہ ہے کہ اگر وہ خاندان چھوڑ کر چلا
گیا تو بھی اسے جائداد ملے گی۔

اب میرے گھونست بہانوں نے جو
کچھ عرض کیا ہے اس کے لئے بھی میں
ان کو مبارکباد دوں گا۔ لوگوں.....

[For English translation, see Appendix II, Annexure No. 77.]

MR. CHAIRMAN: The hon. Member has taken too much time.

(KHWAJA INAIT ULLAH then resumed his seat.)

MR. CHAIRMAN : Thank you.

SHRI RAJAGOPAL NAIDU : Mr. Chairman, I have to talk with a certain amount of restraint on this Bill. While agreeing that this Bill is in accordance with modern times and modern society, I feel that, based on our Constitution, this is a very serious trespass on the various provisions of the Constitution. Our Constitution is a respecter of religions. Our State is secular. Can we pass any enactment which affects the religious rights of the various races in our country ? If this Bill is made into law, if a Hindu marries a Muslim, what happens to his son ? Will he be a Muslim or a Hindu ? There is a very serious lacuna in the Bill. While we make provision in clause 23 for the succession to property of the parties married under this Bill, I find that nothing is said under this Bill as to what is to happen to the offsprings of such lawful wedlock under this BUI. There is absolutely nothing mentioned in the Bill. If the father happens to be a Hindu and the mother happens to be a Muslim—taking a hypothetical case,—the father will go to the temple, the mother will go to the mosque ; probably the son will go to the church and the daughter may remain an atheist. That seems to be the provision under this Bill. I am sorry to say that there is absolutely no provision here as to what religion the offspring is to profess. Is the hon. Minister going to bring in legislation introducing a new religion in our

country ? I feci very strongly that the law of the land is very seriously encroached by the introduction of this enactment.

Now, Sir, I would like to say that the Special Marriage Act of 1872 need not be interfered with, because under the Special Marriage Act I find that a certain amount of option is left under section 2. Marriages may be celebrated under this Act between persons neither of whom profess the Christian, Jew, Hindu, Mohammedan or Parsi religion, but now you are removing all barriers of religion between the marital parties. Anybody can marry anybody on earth. I do not think, Sir, we can advance to that stage when anybody can marry anybody, when the law of the land is that the State is secular and shall be neutral in respect of religions.

Now, there is a certain amount of controversy whether a Hindu marriage is sacramental or a marriage by contract. A Hindu marriage is a sacramental marriage but at the same time it is also a marriage by contract. It is a marriage by contract in the way of a gift—Kanyadana. In the Brahmo form of marriage, it is certainly a form of contract as also in the Asura form of marriage. If it is marriage by agreement or Gandharva marriage, it is also a form of contract. In the case of Muslim marriage, which is called *nikah*, it is a contract. But the objectives of Hindu marriages and Muslim marriages are different. The objective of a Hindu marriage is to see that he begets a son so that certain rites are performed by the son to the father after the death of the father. The objectives of a Muslim marriage are procreation of children and the legalisation of such children. I am saying this on authority. These are the two objectives of Muslim marriages. Now, my objection is that especially in the case of Muslims, this Bill will seriously interfere with their religion, because I find that this is opposed to the Muslim law. The explanation to clause 4 says:

"Two parties are said to be within the degree of prohibited relationship if one is a lineal ascendant of the other, or was the wife

or husband of a lineal ascendant or descendant of the other, or if the two are brother and sister, uncle and niece, aunt and nephew, or the children of two brothers or of two sisters."

Of course Hindus do not marry the children of the brothers, but I find that Muslims marry children of two brothers. So this Bill is a very serious interference with the custom of marriages among Muslims.

SHRI D. D. ITALIA : in the case of the Parsis also.

SHRI RAJAGOPAL NAIDU : My submission is that very serious consideration and very serious thought should be given before this Bill is made into law. I can also say with a certain amount of authority that this Bill will not be welcomed by the public. Still people are orthodox. This Bill may be made into law 20 or 30 years hence, but today there are so many orthodox people in our country. Still we have respect for our Sanatan Dharma in our country, and so long as we follow the injunctions of Manu, Yagyavalk, Parasara and others, I feel certain that a Bill like this will not be appreciated by the public.

Lastly my personal opinion is that when you make a certain provision in this Bill for the succession to property of the children born of such wedlock, I would say that certain provisions will have to be made as to what religion they should profess.

SHRI T. PANDE :

श्री टी० पांडे : श्रीमन्, शासन द्वारा यह जो विशेष विवाह विधेयक उपस्थित किया गया है, मैं इसका शुरू से अन्त तक कट्टर विरोधी हूँ क्योंकि भारतीय संस्कृति और सभ्यता के यह बिल्कुल विपरीत है। मैं यह जानता हूँ कि समाज सुधार के नाम पर बहुत सी बातें यहाँ पर कही गईं। कुछ भाइयों ने भारतीय शास्त्र, धर्म और उनके पुरातन संस्कारों का न अवलोकन किया है और न अवलोकन करना ही चाहते हैं। वे भ्रष्ट आधुनिक जगत में रहते हैं और वर्तमान आतावरण से इस कदर प्रभावित हैं कि उस से ऊपर उठने को वे तैयार नहीं हैं। उन्हें यह पता नहीं है कि भारत के ऋषियों और महर्षियों

ने हजारों और सहस्रों वर्षों के बाद इस समाज की रचना की है और उसके जो संस्कार हैं, जो परम्परायें हैं, वे इतनी अकाट्य हैं जो इन कानूनों के द्वारा मिटाई नहीं जा सकती हैं। हिन्दू विवाह धर्म और शास्त्र की मर्यादा को प्रस्तुत करते हैं। यह विवाह कोई कांक्ट (contract) नहीं है और न यह आधुनिक पार्लियामेंट या असेम्बलियों के द्वारा बनाये जा सकते हैं। वह क्या है? वह एक पवित्र बंधन है। हिन्दू जाति में विवाह दो आत्माओं का सम्मिलन है। पीढ़ियों से हमारे जो संस्कार हैं वे अकाट्य हैं, उनमें पृथक्करण नहीं हो सकता न पहले होता था और न आज होता है। और मुझे कोई सन्देह नहीं है कि यह कभी भी नहीं होगा। यह सनातन संस्कार है, जिसको कोई हटा नहीं सकता है।

मैं आपसे जनता की राय के सम्बन्ध में भी कुछ कहना चाहता हूँ। इसके कुछ पहले हिन्दू कोड बिल नाम का एक मसविदा भी तैयार किया गया था। पुरातन ऋषि मनु ने, महारिषि मनु ने, जो कानून हमारे लिये प्रस्तुत किया था, और जो आज भी अपनी साधकता के साथ कायम है, उसके बदलने के लिये एक नये आधुनिक मनु अम्बेडकर महोदय उत्पन्न हो गये। उन दिनों वे कांग्रेस के साथ थे। यहाँ एक महिला वक्ता महोदया ने यह भी बतलाया कि हिन्दू कोड बिल कांग्रेस ने स्वीकार कर लिया है। मैं जानता हूँ कि कांग्रेस ने उसे कभी भी स्वीकार नहीं किया। पंडित जवाहरलाल नेहरू ने अपने व्याख्यानो में कहा था कि हिन्दू कोड बिल के सम्बन्ध में यदि जनता की राय दूसरी है तो, हालांकि मैं चाहता हूँ कि वह जरूर पास किया जाय, लेकिन अगर जनता नहीं चाहती है तो हर्गिज पास नहीं होगा। चुनाव के दौरान मैं इसको साफ कर दिया। यहाँ तक कि जो आधुनिक मनु हैं वे पार्लियामेंट के सदस्य भी नहीं हो सके और उनका ओहदा जिससे कि मनु महाराज की गद्दी पर बैठ सकते थे, वह समाप्त

[Shri T. Pande.]

हो गया। किसी तरह वे यहाँ आ गये हैं। उनके प्रति आदर प्रकट करते हुए और उनकी कानून की विद्वता का आदर करते हुए यह कहना चाहता हूँ कि जो मौजूदा समय में समाज है और जो समाज के मौजूदा कानून हैं उनको ध्यान करने के बाद इस कानून को उपस्थित करने की ज़रूरत है। मुझे तो ऐसा मालूम होता है कि गीता में अर्जुन के विवाद में जो एक कल्पना संकर संतान की कौ गई थी वही संकर संतान इस कानून से पैदा होगी। जरा इस बात को सोचें। एक हिन्दू है, एक मुसलमान है, दोनों एक मकान में रहते हैं, मकान २० मंजिला, १० मंजिला या ४ मंजिला है। एक महिला सदस्या ने कहा कि अगर उनमें विवाह हो जाये तो उसमें क्या हो जायेगा? मैं पूछता हूँ कि एक हिन्दू और एक मुसलमान विवाह कर ले और उसके पांच औलादें हैं, अगर कोई हिन्दू २५ वर्ष की अवस्था में किसी मुसलमान महिला से विवाह कर ले और उसके पांच संतानें हों, तो उसको तो हक़ मिलेगा, हिस्सा मिलेगा लेकिन उसके बाद जो उसकी संतानें पैदा होंगी, हिन्दू और मुसलमान से, उसका क्या धर्म होगा? जो वोटर लिस्ट लिखी जायेगी उसमें कौन सा धर्म लिखा जायेगा, उनका नाम क्या होगा, वे जब पढ़ने जायेंगे तो कौन सी भाषा पढ़ पायेंगे, किस संस्कृति और किस वातावरण में रहेंगे? इस विषय पर मुझे गम्भीर आपत्ति है, नैतिक विरोध है। इसलिये हिन्दू संस्कृति और हिन्दू समाज की जो रचना है उसके सम्बन्ध में हमको पूरा विचार कर लेना चाहिये और बिना ध्यान किये हुए, बिना दृढ़ राय कायम किये हुए हम को बौद्धिक तर्कों से किसी भी विषय पर विचार करने की आवश्यकता नहीं है। यह ऐसा देस है कि जिसमें अति शीघ्र परिवर्तन करने की आवश्यकता नहीं है। इसकी कुछ परम्परायें सुसंगठित ढंग से कायम हो चुकी हैं।

इस बिल के हर क्लॉज (clause) के ऊपर, इस विधेयक के हर नियम के ऊपर

में विचार प्रकट करना नहीं चाहता हूँ क्योंकि इसका समय नहीं है। जो ३१ दिसम्बर सन् १९५२ तक के लिये हिन्दुस्तान में इस विधेयक को प्रसारित करने का प्रस्ताव है, उस सम्बन्ध में श्री इस्माइल साहब की राय है कि इस समय को ३१ जनवरी सन् १९५३ तक कर दिया जाये, में इसका समर्थन करता हूँ। इसमें यदि एक मास का समय और दिया जाये तो कोई विशेष बात नहीं होगी और मैं कानून मंत्री से प्रार्थना करूँगा कि यह इतना गम्भीर विषय है और इतना आवश्यक है कि इस सम्बन्ध में चारों तरफ़ जनता की राय मालूम कर लेनी चाहिये।

एक बात मैं और आपसे पूछना चाहता हूँ कि क्या कानून के जरिये से किसी धर्म और जाति में सुधार हो सकता है? मैं इस बात को मानने वाला हूँ कि धार्मिक स्थानों पर जो हिन्दू मन्दिर हैं, उनमें सब हिन्दुओं को जाने की आज्ञा मिलनी चाहिये और जो जो दूसरे धर्म के मानने वाले उसमें जाना चाहें उनके जाने में कोई विशेष आपत्ति नहीं होनी चाहिये, अगर पवित्रता और सफ़ाई से जायें। लेकिन मुझे वह विवाद अच्छी तरह से याद है, जो कि काशी की विशाल नगरी में हुआ, जिसको कि इस बात का दावा है कि वह भारत की ऐसी पुरातन नगरी है, जहाँ से धर्म और संस्कृति चली है। मुझे अच्छी तरह से याद है कि जब पूज्य महामना मालवीय जी जीवित थे और महात्मा गांधी जीवित थे तो एक विवाद उपस्थित किया गया, उसमें बड़े बड़े विद्वानों और पंडितों ने हिस्सा लिया था। प्रश्न यह उपस्थित था कि क्या धर्म और समाज का सुधार कानून से हो सकता है या परम्पराओं से और ऋषियों के द्वारा हो सकता है? महामना मालवीय जी ने जो विचार प्रकट किये, वे मुझे अच्छी तरह से याद हैं। महामना मालवीय ने विद्वान पंडितों और शास्त्रों के उद्धरणों को पेश करते हुए बताया था कि धर्म और समाज में सुधार कानून से नहीं हो सकता है। मैं आपसे यह कहना चाहता हूँ कि

महर्षि दयानन्द ने जिन संस्कारों की रचना की थी, वह क्या पार्लियामेंट के द्वारा की थी ? मैं आपसे पूछना चाहता हूँ, और अपने मुसलमान भाइयों से भी पूछना चाहता हूँ, कि जिस वक्त हज़रत मुहम्मद ने इस नवीन धर्म की रचना की थी तो वे किस पार्लियामेंट के सदस्य थे और किस पार्लियामेंट का उन्होंने आह्वान किया था ? समाज में सुधार कानून से नहीं हो सकता । परम्पराओं से हो सकता है, महर्षियों के आशीर्वाद से हो सकता है, शास्त्रों की आज्ञा से हो सकता है । इसलिये मैं इस विधेयक का प्रबल विरोधी हूँ । हाँ, इस बात को मैं पसन्द करता हूँ कि यह विधेयक हिन्दू जाति के लिये ही नहीं है बल्कि सब के लिये है और यह एक अच्छा लक्षण है जो कि शासन की तरफ से उपस्थित किया गया है । हमें तो कोई भी कानून एक सम्प्रदाय या धर्म के लिये नहीं बनाना चाहिये । सनातन धर्म तो बड़ा विशाल है । अभी एक भाई ने कहा कि यह समुद्र की तरह है । उन्होंने ठीक कहा है । यह बड़ा विशाल धर्म है और इसकी कोई परम्परा कानून या पार्लियामेंट या संसदों द्वारा नहीं बनी है, यह परम्परा सहस्रों शास्त्रों, शासकों तथा ऋषियों द्वारा बनाई गई है । अतः मैं समझता हूँ कि ३१ जनवरी सन् १९५३ तक जनता की राय जानने के लिये यह विधेयक प्रसारित किया जाय ।

[For English translation, see Appendix II, Annexure No. 78.]

SHRI C. G. MISRA (Madhya Pradesh) :

श्री सी० जी० मिश्र (मध्य प्रदेश) : श्रीमान् अध्यक्ष महोदय, यह विवाह सम्बन्धी विषय, जिसके लिये यहाँ कानून बनाने का प्रयत्न हो रहा है, वह बहुत ही वृहद् विषय है । जो कानून बनाया जा रहा है

MR. CHAIRMAN : Will you please speak near the mike ?

SHRI C. G. MISRA :

श्री सी० जी० मिश्र : जो कानून बनाया जा रहा है उससे पहले कानून से केवल एक मुख्य

परिवर्तन किया गया है कि जो पुरुष और स्त्री अपना विवाह इस कानून के अनुसार करना चाहें वह कर सकते हैं । इस विषय में कोई विशेष आक्षेप करने की आवश्यकता मैं नहीं समझता क्योंकि समाज में आजकल धार्मिक और सामाजिक विषयों में इतनी स्वतंत्रता उत्पन्न हो रही है कि अब यह बहुत कठिन है कि समाज धर्म के नाम पर या प्राचीन परम्परा के नाम पर पुरुष और स्त्रियों को नियंत्रित कर सके । जब हम इस दृष्टि से विवाह को देखते हैं तो एक सीधी सी बात मालूम होती है कि किसी भी पुरुष या स्त्री को अपना विवाह स्वतंत्र रूप से करने का अवसर क्यों न प्राप्त हो । यह तो एक सीधी बात है और मैं समझता हूँ कि हमारे कानून मंत्री और कांग्रेस क्षेत्र के वे विचारक जो इस दृष्टि से देखते हैं वह इसको बहुत सरल बात मानते हैं । दूसरी ओर अगर देखा जाये तो जहाँ तक हिन्दू धर्म या वैदिक धर्म का सम्बन्ध है, विवाह इतनी सरल वस्तु नहीं सोची गई है । मुझे जहाँ तक मालूम है, मुसलमानों में भी विवाह को "सुन्नत" कहते हैं और हिन्दू धर्म शास्त्र में "संस्कार" कहते हैं । वैदिक विवाह संस्कार का सारांश यह है कि मनुष्य और स्त्री विवाह संबंध कर के गृहस्थ बन कर रहें और अपने परस्पर कर्तव्यों के लिये कुछ प्रतिज्ञायें करें जो कि विवाह संस्कार के समय की जाती हैं । मुझे खेद है कि विवाह संस्कार के समय उन प्रतिज्ञाओं का अर्थ हमारे शास्त्री लोग, या वे पंडित लोग जो विवाह कराते हैं, नहीं समझाते । मुझे तो यह भी शोक है कि जो पंडित विवाह कराते हैं वे भी उन संस्कारों का अर्थ ठीक तरह से नहीं समझते हैं ।

मैंने कभी भी यह नहीं देखा कि जब कभी कोई विद्वान शादी कराता है वह उसका मनलव बतलाता हो, या उसमें जो प्रतिज्ञायें कराई जाती हैं, उनका अर्थ पति और पत्नी को बतलाता हो । उनको तो विवाह कराने के पूरे उद्देश्य भी

[Shri C. G. Misra.]

मालूम नहीं होते हैं कि विवाह क्यों होता है। लड़के-लड़कियों की शादी १० या १२ वर्ष में और कभी कभी ८, ९ वर्ष के भीतर ही हो जाती है। तो उस अवस्था में वह लड़का या लड़की शादी के अर्थ क्या समझ सकेगा? अगर उनको उस अवस्था में समझाया भी जाय तो वह समझ नहीं सकते हैं। अगर वह समझ भी जायें तो वह नाबालिग कहे जाते हैं। और उस अवस्था में अगर कोई प्रतिज्ञा की भी जाय तो उसका कोई अर्थ नहीं हो सकता है। अगर हम यह कहें कि उन नाबालिगों में करार (contract) हो गया है तो नाबालिग होने के कारण से वह लागू नहीं हो सकता है। इसलिये जो कोई भी धर्म का मानने वाला है, मैं उससे यह प्रार्थना करना चाहता हूँ कि वे अपने धर्म को समझें। विवाह के सम्बन्ध में जो कुछ कहा गया है उसके विषय में स्मृति और शास्त्र भी कहते हैं। अथर्ववेद में विवाह के सम्बन्ध में बहुत कुछ कहा गया है। अन्य शास्त्रों में जिस प्रणाली का वर्णन किया गया है, वह बिल्कुल वैदिक मंत्रों के आधार पर है।

विवाह क्या है? विवाह के द्वारा एक बालिग पुरुष और स्त्री के लिए यह आवश्यक है कि जो मंत्र विवाह के समय कहे जाते हैं तथा जिन मंत्रों से प्रतिज्ञा की जाती है वह उनके अर्थों को समझें। वैदिक धर्म के स्मृति और शास्त्रों में, जो वेद के अनुकूल हैं, वहाँ पर लड़कों और लड़कियों का बाल विवाह कराने की आज्ञा नहीं थी। उस समय जो प्रतिज्ञा करते थे वह मुख्य करके यह प्रतिज्ञा होती थी कि हम दोनों स्त्री-पुरुष आपस में मिल कर गृहस्थ बन कर रहेंगे। गृहस्थ बन कर रहेंगे, इसके बहुत बड़े अर्थ होते हैं। जब स्त्री और पुरुष गृहस्थ रहते हैं, तो उसके पड़ोसी भी गृहस्थ रहते हैं। जब किसी स्त्री-पुरुष की शादी होती है तो अकेले उन दोनों की ही जिम्मेदारी नहीं होती है बल्कि जो उनके पड़ोसी होते हैं, जो उनके रिश्तेदार होते हैं उनकी भी यह जिम्मेदारी हो जाती है कि उन दोनों पति-पत्नी को

अच्छी तरह से गृहस्थ जीवन व्यतीत करने में हर प्रकार से सहायता दें ताकि वह भविष्य में एक अच्छे गृहस्थ बन सकें और अच्छी सन्तान उत्पन्न करें और साथही वह समाज के लिये और देश के लिये उपयोगी हों। जिस समय उन दोनों की शादी होती है तो उस समय जो उसके रिश्तेदार और पड़ोसी, जो आशीर्वाद देते हैं उसका बहुत ही गहरा मतलब होता है। उसका मतलब यह होता है कि उनके गृहस्थ जीवन में वह लोग उनकी हर तरह से सहायता और रक्षा करेंगे और वह एक प्रकार से अपने ऊपर इस का कुछ भार ले लेते हैं। उसके पड़ोसी का यह कर्तव्य हो जाता है कि वह उस गृहस्थ परिवार की हर प्रकार से रक्षा करें। इसका मतलब यह होता है कि जब कभी उस गृहस्थी में से मर्द कहीं बाहर चला जाता है तो पड़ोसी का यह परम धर्म हो जाता है कि उस गृहिणी की हर तरह से रक्षा करें। आजकल कभी कभी यह देखा जाता है कि गृहस्थी की रक्षा का वचन तो लोग देते हैं मगर उनके भाव शुद्ध नहीं होते हैं। वे लोग अपने कर्तव्य को नहीं समझते कि एक पड़ोसी को दूसरे पड़ोसी के साथ किस तरह का व्यवहार करना चाहिये और उसकी क्या जिम्मेदारी होती है। बहुत लोग आज यह सब बात भूल गये हैं।

तो मेरे कहने का मतलब यह है कि हमारे यहाँ इस तरह के आपसी विवाह हुआ करते थे, मगर उनमें एक महान् आदर्श रहता था। जैसा कि इस एक्ट में दिया गया है, उससे तो यही मालूम होता है कि इस एक्ट के मुताबिक जो शादियां होंगी, वह उसी प्रकार से और तरह की होंगी जिस तरह से छोटे-छोटे बच्चों की शादियां हुआ करती थीं।

अन्त में मेरी राय है कि इस समय तो यह बिल जनता की राय के लिये भेजा जायेगा, अतः इस समय बहस करने की आवश्यकता नहीं है। परन्तु मैं यह अवश्य कहूँगा कि आजकल कांग्रेस क्षेत्रों के अन्दर यह हवा चली हुई है

कि धर्म कोई चीज नहीं है, हमारा कोई धर्म नहीं होना चाहिये। परन्तु हर एक मनुष्य, जो अपने धर्म को मानता है, वह अपने धर्म के सिद्धान्तों को देखें, चाहे वह हिन्दू हों या मुसलमान, और समाज में इस विषय में मार्ग प्रदर्शन करें कि.....

[For English translation, see Appendix II, Annexure No. 79]

(Time bell rings.)

SHRIMATI CHANDRA VATI
LAKHANPAL (Uttar Pradesh) :

श्रीमती चन्द्रावती लखनपाल (उत्तर प्रदेश): श्रीमन्, आज हमारी बहुत सी बहनों को इस बारे में मालूम नहीं था कि स्पेशल मैरिज बिल (Special Marriage Bill) पर इस भवन में इस प्रकार का लम्बा-चौड़ा विवाद शुरू हो जायेगा। कम से कम मैंने तो इस बारे में बहुत गहराई से विचार भी नहीं किया था। यह दुर्भाग्य की बात थी कि जिस समय माननीय कानून मंत्री इस पर अपने विचार प्रकट कर रहे थे उस समय मैं यहाँ पर उपस्थित नहीं थी। इसलिये इस बिल की पूरी तस्वीर मेरी आँखों के सामने नहीं है। लेकिन फिर भी जो कुछ धुंधला चित्र मेरे सामने इस बिल उपस्थित हुआ है उसके आधार पर मैं यह कह सकती हूँ कि मैं और मेरी बहनों को इस बिल के द्वारा स्त्री जाति को जो वरदान मिल रहा है उससे वे संतुष्ट नहीं हैं। इस बात का प्रतिपादन मेरी बहिन डाक्टर सीता परमानन्द, जो मुझसे पहले बोल चुकी हैं, कर दिया है।

वास्तव में मेरा तो यह ख्याल था कि यदि यह बिल पुराने सिविल मैरिज एक्ट (Civil Marriage Act) के साथ एक अमेंडमेंट (amendment) के रूप में इस हाउस में आता तो बहुत ही अच्छा होता। जैसा मैंने अभी मापकी सेवा में कहा कि इस बिल के द्वारा कोई बहुत बड़ा सुधार स्त्री जाति की अवस्था में होने वाला नहीं है। लेकिन फिर भी मैं देख रही हूँ कि इस समय जो बहस इस बिल पर हो

रही है उसमें कितना ज्यादा विरोध दिखलाया जा रहा है।

श्रीमन्, हमारे समाज के अन्दर, देश के अन्दर एक तरह की प्रथा ऐसी हो गई है कि जब कभी स्त्रियों के सम्बन्ध में कोई रिफार्म (reform), कोई सुधार करने का प्रयत्न किया जाता है, चाहे वह समाज की ओर से किया जाय, या संसद् की ओर से किया जाय, उस पर एक तहलका मच जाता है। इस तरह का कोलाहल मच जाता है मानो कोई बहुत भारी बात होने वाली हो। अब से एक साल पहिले जब हिन्दू कोड बिल संसद् के अन्दर आया था, तब उस पर कितनी बहस, कितना विवाद हुआ, यह सबको मालूम है। देश के एक कोने से लेकर दूसरे कोने तक तहलका मच गया, और ऐसी भावना फैल गई कि कोई बड़ा तूफान आने वाला है। श्रीमन्, आखिर इस भारी तहलके और तूफान का यह नतीजा हुआ कि हिन्दू कोड बिल ठण्डा पड़ गया। आज यह जो बिल हमारे सामने आ रहा है वह हिन्दू कोड के मुकाबले में कुछ भी नहीं है, जैसा कि मैं कह चुकी हूँ। लेकिन फिर भी इस संसद् के विद्वानों ने जो यहाँ पर उपस्थित हैं उन्होंने इस पर इतना विवाद चला दिया है, हालांकि उस पर अभी विचार भी नहीं हुआ है। इस प्रकार का आन्दोलन, इस प्रकार की बहस और वादविवाद, जो यहाँ पर हो रहा है उसको देख कर हम सब बहिनें आश्चर्यचकित सी, स्तम्भित सी, होगई हैं।

श्रीमन्, बहुत सी बातें इस बिल के विरोध में कही गई हैं। हमारे एक माननीय सदस्य ने, जो मुसलमान थे, यह कहा कि वह जो कंसेप्शन (conception) मैरिज का समझते हैं उसके अनुसार शादी एक डिवीन ला (Divine law) है, वे शादी के कानून को "कलाम-अल्लाह" मानते हैं। मैं उन महानुभाव से यह पूछना चाहती हूँ कि उनके ये विचार क्या भारतवर्ष के अन्दर ही लागू होते हैं? क्या इस देश के शादी के कानून ही "कलाम-अल्लाह" हैं या टर्की

[Shrimati Chandravati Lakhnupal]

जैसे प्रगतिशील देश में भी "कलाम-अल्लाह" लागू होता है? वहाँ तो स्त्रियों को बहुत आजादी है और वहाँ के मुसलमानों के शादी के कानूनों से वहाँ के कानून बहुत भिन्न हैं।

श्रीमन्, इसके अतिरिक्त एक महानुभाव ने यह विचार भी इस बिल पर व्यक्त किया कि इस बिल से हिन्दू, मुसलमान, पारसी, ईसाई यह सब एक ही कानून और एक ही व्यवस्था में आ जायेंगे और इससे देश के अन्दर आपस में लड़ाई और डिसयूनिटी (disunity) हो जायेगी। यह बात गलत है। विवाह के नियम हो जाने से डिसयूनिटी (disunity) होने की अपेक्षा यूनीफार्मिटी (uniformity) होगी, यूनैटी (unity) होगी, डिसयूनिटी (disunity) कैसे हो जायेगी? इस बिल की सबसे बड़ी विशेषता ही यही है कि इसके द्वारा सब धर्मों के लोग एक दूसरे के निकट आ जायेंगे। मैं तो देख रही हूँ कि जो कुछ भी वहाँ पर इस बिल के विषय में कहा गया है, जो भाषण अब तक हुए हैं उनके द्वारा एक दूसरे के आरग्युमेन्ट (argument) बहुत कुछ कट जाते हैं।

मैं इस समय इस बिल पर पहिले बोलने वाले भाई से, जिन्होंने यह कहा था कि इस बिल के द्वारा हमारे देश की संस्कृति नष्ट हो जायेगी, कुछ कहना चाहती हूँ। श्रीमन्, मैं यह कहना चाहती हूँ कि जैसे जैसे समाज की अवस्था और मांग बदलती रहती है वैसे वैसे समाज के अन्दर जो नियम बदलते रहते हैं, वे भी समाज के लिये उचित व्यवस्था करते रहते हैं। यदि हमारे समाज के विकास के अनुसार हमारे समाज के नियमों में प्रगति नहीं होती, तो हमारे सामाजिक संगठन के अन्दर एक क्रांति पैदा हो जाती, प्रतिक्रिया पैदा हो जाती। मेरे कहने का मतलब यह है कि हमारे समाज की अवस्था के अनुसार हमारे आदर्श और हमारे नियम भी बदल जाने चाहिये। उन्होंने जिस प्राचीन प्रथा का जिक्र किया है मैं उनसे यह कहना चाहती हूँ,

अवश्य ही उस प्राचीन अवस्था में वे प्राचीन नियम ठीक थे, उन प्राचीन नियमों को जो उस समय की अवस्था के अनुसार ठीक थे, पालन किया जाना चाहिये, और हम भी उनमें विश्वास करते हैं, लेकिन वह प्राचीन अवस्था और सामाजिक व्यवस्था जिसमें कि सीता को पतिव्रता बतलाया गया है, उसमें राम को भी तो पत्नीव्रत कहा गया है। मगर आज सामाजिक व्यवस्था बदल गई है और उसके ही अनुसार आज हमारे समाज की व्यवस्था के विकास का क्रम भी बदल गया है, दृष्टिकोण बदल गया है, और उसके अनुसार ही हमारे कानून और नियम भी बदले जाने चाहिये।

श्रीमन्, मैं एक शब्द इस बिल पर और कहना चाहती हूँ। यह बिल जो हमारे सामने रखा जा रहा है, मुझे ऐसा लगता है कि जब यह देश के अन्दर जनता की राय जानने के लिये भेजा जायेगा तो एक तरह से इस पर बेकार तहलका और कोलाहल जनता में मच जायेगा और इससे स्त्रियों के पक्ष में कोई सुधार होने की आशा नहीं दिखाई देती है। इस बिल का यही हाल होगा—“खोदा पहाड़ और निकला चूहा”।

[For English translation, see Appendix II, Annexure No. 80.]

SHRIMATI SAVITRI NIGAM (Uttar Pradesh)

श्रीमती सावित्री निगम (उत्तर प्रदेश) : अध्यक्ष महोदय, मुझे बड़ा खेद है कि अभी हमारे कुछ वक्ताओं ने ऐसे विचित्र तर्क उपस्थित किये हैं कि ऐसा प्रतीत होता है कि मानो हम लोग दो सदी पीछे चले गये और हम लोग इस समय १६वीं सदी में रह रहे हैं। इतना ही नहीं, मुझे तो ऐसा मालूम होता है कि हम अपनी पुरानी संस्कृति के गर्व में इतना भूल गये हैं कि हम अपने समाज की असलियत को देख ही नहीं पाते। किन्तु मुझे यह निवेदन करना है कि हमारे समाज में यदि सुधार और परिवर्तनों की आवश्यकता न होती और हमारा धर्म और समाज सर्वांगपूर्ण होता तो यह सब पतित बहिनें जो आज दृष्टिगोचर हो रही हैं वे कहां से

आतीं और यह स्त्रियों की अधिकारविहीनता और पतन कहां से आता। मैं श्री तारकेस्वर जी से पूछना चाहती हूँ कि क्या उनको सैकड़ों विधवाओं की सिसकियाँ नहीं सुनाई पड़ती, क्या उनको वेध्यालयों में सताई जाने वाली बहनों की कराहटें नहीं सुनाई पड़ती, जो कि आज हमें प्रत्येक शहर में, भारत के कोने कोने में हर जगह साफ दृष्टिगोचर हो रही हैं। मैं उनसे यह भी पूछना चाहती हूँ कि क्या आज हमारे समाज में और हमारे धर्म में जो बड़े विषमताएँ हैं उन्होंने ऐसी कुरीतियों को जन्म नहीं दिया है जैसे कि बहुविवाह, दहेज की प्रथा, अनमेल विवाह तथा स्त्री की निर्धनता आदि। इसलिये, अध्यक्ष महोदय, मैं आपके द्वारा उनसे निवेदन करना चाहती हूँ कि जब स्त्रियों के सुधार के लिये, बहनों के उद्धार के लिये कोई नये नियम बनाये जायें या कानून बनाये जायें तो कभी भी उन जैसे विचारशील लोगों को विरोध नहीं करना चाहिये। हमारे समाज और धर्म के कानूनों में परिवर्तन लाने की आवश्यकता है और यही आज जागृत नारी समाज की मांग है। हमारे समाज में फैली हुई तमाम विषमताएँ जो विधवाओं को जीवनभर दारुण दुःख सहने पर बाध्य करती हैं, और एक जीती जागती सजीव नारी को दूसरों की बासना की अग्नि में जलने के लिये बाध्य करती हैं, इन विषमताओं को दूर करना होगा। और इसके लिये नये नये कानूनों की आवश्यकता है और इसीलिये ला मिनिस्टर (Law Minister) साहब ने इस बिल को प्रस्तावित किया है और मैं इसका समर्थन करती हूँ। लेकिन इसके साथ ही साथ एक थोड़ा सा निवेदन और भी करना है कि यह बिल हमारे सामाजिक नियमों और परम्पराओं में विकास लाने के लिये बनाया गया है और इस के द्वारा समाज में एक नवीन सृजनात्मक क्रान्ति लाई जा सकेगी। इसके बारे में बहुत कुछ कहा जा सकता है। इसके एक एक कलाज पर हेतुराज किया जा सकता है, लेकिन इसकी

इजाजत नहीं है, इसलिये मैं थोड़ा समय लेकर इतना ही कहूँगी कि हमारे देश में फैली हुई अज्ञानता के कारण हमारी जनता में इतना बल नहीं कि वह आत्मनिर्भर होकर अपनी राय दे सके। इसलिये इस सारे बिल की भी वही दशा होगी जो कि पहले हिन्दू कोड बिल की हुई थी और जिसका कुछ नमूना हम यहां भी देख चुके हैं। इसलिये यदि इस बिल को सेलेक्ट कमेटी (Select Committee) के पास भेज दिया जाय और तमाम बुराइयाँ सेलेक्ट कमेटी द्वारा दूर कर दी जायें, जहां सुधार की संभावना है, वहां सुधार कर दिया जाय, तो मैं सोचती हूँ कि बहुत अच्छा होगा। उसमें तमाम महिला संस्थाओं के प्रतिनिधि हों, जिससे वे उसके प्रचार में भी सहायता दे सकेंगी और हमारे विचारों को जनता तक पहुंचायेंगी। इस के अतिरिक्त सेलेक्ट कमेटी में बिल जाने के पश्चात् हमारी सरकार भी इस योग्य हो जायगी कि वह इसका प्रचार कर सके और शिक्षात्मक प्रचार करके जनता को समझा सके कि यह हमारे लिये उपयोगी है। मेरा निवेदन है कि केवल प्रसारित कर देने से ही काम नहीं होगा बल्कि जनता को इसके सम्बन्ध में अच्छी तरह से समझाया जाय।

अतः मेरा निवेदन है कि यदि सेलेक्ट कमेटी में भेजने के बाद यह बिल जनता में जायगा तो इसमें बहुत कुछ सुधार हो जायगा और जो संशय लोगों को हैं, वे भी दूर हो जायेंगे।

[For English translation, see Appendix II, Annexure No. 81.]

SHRI D. D. ITALIA : Mr. Chairman, I rise to oppose this Bill. I am of the opinion that we must not impose any law which will fundamentally affect one's religion. In Parsi religion, under the present laws governing marriages in the Parsi community, marriages between children of brothers and sisters is legal. According to this Bill, if we impose a restriction that such marriages are not to be allowed, then it will affect the Parsi community, because our community is very small. We have in this world hardly one lakh of Parsis and it will be difficult to find

[Shri D. D. Italia.]

children from outside the relations for marriages. The hon. Minister has proposed to circulate this Bill for eliciting public opinion. I wholeheartedly support the amendment moved by our Muslim brother—Muhammad Ismail—that the time limit should be extended to 31st January 1953.

SYED NAUSHER ALI (West Bengal) : I have not opened my Ups for the last two years, but I feel I cannot remain silent on this Bill, for it vitally affects not only this community or that community but the whole of India. Sir, I have not been able to appreciate the observations made on either side of the House, excepting perhaps the observations made by the Communist Member sitting there. Times have changed. The institution of marriage and of property originated from the two primal natural urges of all organism of which the finest manifestation is Man. Society is moving fast. It has moved for thousands of years, but we still look to the remote past, for laws thousands of years back, for regulating the relations between man and man not only in respect of property but also in respect of their relations as man and wife. I think all these laws and forms of marriage are antiquated and quite out of date and our conception both of marriage and of property has got to be revised drastically, if we have to live as a nation. Sir, at this stage of the debate we are not concerned with details but with the salient features of the Bill. The Bill is a permissive one. It does not take away anybody's right. It does not compel a Mussalman not to marry his cousin. Nor does it compel a Parsi not to marry his cousin, if allowed by the personal law of the Parsis. It is merely a piece of permissive legislation and further more, the motion is only for circulation of the Bill for the purpose of eliciting public opinion thereon. At this stage, I think the legitimate course for us all is just to touch upon the salient points in the Bill so that that may be a sort of guidance for our people to give their opinion, upon It is not the time, I submit most respectfully, when we should dilate on the details of the provisions of the Bill

Now, what are the provisions of the Bill ? They are practically the same as the Act of 1872, I think. The only significant difference that it proposes is that unlike the old Act here there is no necessity for a declaration that the parties who intend to be united as man and wife have no faith in any religion. In fact that led to abuse ; that led to hypocrisy. People who wanted to marry did marry, they did believe in certain religion, but still for circumventing the law, they declared : "I am not a Muslim, I am not a Hindu, I am not a Christian and so on." I think such hypocrisy should not be allowed to go on. It should go. Hypocrisy is the greatest curse. And hypocrisy, in my opinion, in respect of sex is most prevalent not only in this country but throughout the world, but perhaps in a greater degree in this country. I only wish that we should be sincere and honest and that we should allow the people to have their own conviction.

In this connection, I should like to draw attention to one fact. Now, we have taken our oath of allegiance to the Constitution. The Constitution in the very first page says about the dignity of the individual and further it says in the Directive Principles that every endeavour should be made for the purpose of having one uniform civil code for the whole of India. I say, Sir, that without tinkering with problems like this, Government should have come forward with a Bill providing for one uniform civil code for the whole of India. The greater the delay, the greater the difficulty. Of course, there will be opposition from the reactionaries and conservatives, but we have got to overcome all those difficulties. We must have one uniform civil code for the whole of India on the basis of the individual as the unit irrespective of caste, creed or sect. That is what is needed.

KHWAJA IN AIT ULLAH : Irrespective of religion also.

SYED NAUSHER ALI : Certainly irrespective of religion also. Of course.

that is the extreme case. But, confining myself to this present Bill, I say tt once that I have not seen anything ki the Bill which is a trespass on the Muhammadan law. I can dilate on this point, but this is not the time. When the time comes, I will show that there is no encroachment whatsoever on the Muhammadan law, as I understand it. Of course, my knowledge is very limited, but from the little I know of Muhammadan law, I can say there is no encroachment whatsoever. On the other hand, I think that this progressive measure which has been brought forward is not only necessary but is long overdue. Further, I have a very great misgiving. If our Government goes on tinkering with problems like this, I am afraid they will simply become unpopular without getting anything beneficial out of such legislation. That is what I am really afraid of. If they really feel that the social order has got to be changed, they should have the courage and the boldness to come forward with a comprehensive legislation on the subject of marriage and of property as well.

SHRI KISHEN CHAND : Mr. Chairman, I partially support this Bill. And yet there are certain parts of it which I think are going to affect our society and are prejudicial to it. As has been said, marriage is partly a sacramnt and partly a contract. Where it relates to the personal life of the prospective husband and wife, I welcome the alterations suggested in this Bill that they can enter into a contract of marriage without declaring themselves to be without a religion. In so far as this permission is given and other restrictions are imposed about consanguinity of relationship, etc., I entirely support the Bill.

The hon. the Law Minister, in introducing the Bill, read out a contract entered into by an hon. Member of this House. If this Bill had been drawn up on the basis of that contract, and if it had also incorporated other clauses, which were very carefully read out by the hon. Minister in support of this Bill, I would have welcomed it still

more. But there is Part IV of this Bill against which I have strong objection. Clause 18 says that the marriage solemnized under this Act of any member of an undivided family shall be deemed to effect his severance from such family. So far it was all right. The joint family system exists in every village of our country, and 80 per cent, of the population lives in the rural areas. If there had been only this clause in the Bill, I would have had no objection. But this is followed by clause 19 which says that the rights and disabilities are not affected by the Act.. A man has effected his severance from a joint family, and yet he can claim a share in the joint property. That will be an indirect way of encouraging people if they want to get out of the joint family system and disrupt family life, to immediately solemnize the marriage under this Act and then claim that they are entitled to the privileges given under clause 19.

Similarly, there is another clause,, clause 22. It has been pointed out by several Members that if we wanted to permit divorce, we should have enacted modern provisions in that respect. We are following the divorce laws of 1872 and yet enacting a modern contract in 1952. Several hon. Members have pointed out that the offspring of such marriages will find great difficulty in adjusting themselves into any set of society. It is a well-known fact that our morality is partly based on religion.. An hon. lady Member has on another occasion stressed the point that we must give religious education and moral education to our young-children. If the offspring of this type of marriage has got to be given a moral education it will be difficult to decide on what religion that moral education should be based. As was stated in the contract which was read out by the hon. Minister, it was decided there that the religion of the offsprings would be decided at a later stage when they reached the age of 21. But moral education has to start at the very beginning. I submit that it will really break up the foundation of our society if these offsprings do not get religious education at an earl} stage. I know that there are some

[Shri Kishen Chand.]

countries of this world where the idea of a secular State has been carried to the extreme and it has become a Godless State and the State itself is the God of that country. But I do hope, and many hon. Members will agree with me, that in our country we have a State which] is secular and yet has got its religion.

SHRI R. P. TAMTA (Uttar Pradesh) :

श्री आर० पी० टामटा (उत्तर प्रदेश) :
माननीय अध्यक्ष महोदय, जो बिल इस सदन के सामने सरकार की ओर से पेश किया गया है, मैं उसका हार्दिक समर्थन करता हूँ और मैं सरकार को बधाई देता हूँ कि उन्होंने इस बिल को इस सदन के सामने पेश किया है। इस बिल के सम्बन्ध में जो विवाद इस भवन में हुआ है और जिस तरह का इसका विरोध किया गया है, उसको सुनकर मुझे ताज्जुब भी हुआ और दुःख भी हुआ। यह कहा गया है कि इस बिल के पास हो जाने के बाद हिन्दुओं के हिन्दू धर्म और मुसलमानों के इस्लाम धर्म में हस्तक्षेप करने की कोशिश की जायेगी और धर्म में हस्तक्षेप होगा। मैं निवेदन करूँगा कि यह बात बिल्कुल गलत है। यह जो कानून बनाया जा रहा है, वह न तो किसी धर्म पर आक्षेप करता है और न किसी को मजबूर करता है कि इस कानून के अन्तर्गत काम करें अथवा इसकी शरण लें। यह कानून तो व्यक्तिगत स्वतंत्रता को मानता है और उन स्त्रियों और पुरुषों को, जो आपस में मिल कर अपनी खुशी से विवाह करना चाहते हैं, उनको विवाह करने की आज्ञा प्रदान करता है। इसमें न तो कोई बंधन है और न किसी के लिये इस बात की मजबूरी है कि वह कानून के अनुसार शादी करे। जो इस से फायदा उठाना चाहते हैं, वह उठा सकते हैं। हमने देखा कि हमारे देश की जो सामाजिक अवस्था है, उसके अनुसार यह कोई नहीं कह सकता है कि हमारे यहां विषमता नहीं है। आज हमारे देश में बहुत से स्त्री-पुरुष, जो कि जान-पात के, समाज के

बन्धन तोड़ कर शादी करना चाहते हैं, एक पवित्र गृहस्थ जीवन व्यतीत करना चाहते हैं, परन्तु समाज के अलावा इस बात की अड़चन होने की वजह से कि कानून उन्हें इजाजत नहीं देता या धर्म इजाजत नहीं देता, एक दूसरे से विवाह नहीं कर सकते हैं। इसका नतीजा यह होता है कि सैकड़ों और हजारों के जीवन बरबाद हो जाते हैं और बहूतों को, शादी न होने की वजह से, मृत्यु की शरण लेनी पड़ती है। यह कानून तो सिर्फ इतनी तरह की सामाजिक विषमता, जो धर्म के नाम पर हमारे समाज में फैल गई है, उसको मिटाने के लिये एक साधन है। जो कानूनी अड़चनें इस तरह के विवाहों के रास्ते में आती हैं, उनको हटाने के लिये यह कानून इजाजत देता है। इस समय एक धर्म को मानने वाला दूसरे धर्म को मानने वाले के साथ, और हिन्दू समाज में तो एक वर्ग का व्यक्ति दूसरे वर्ग के व्यक्ति के साथ, जात-पात की अड़चन व कानूनी रुकावट के सबब से, शादी नहीं कर सकते।

अध्यक्ष महोदय, हमारा देश १५ अगस्त, १९४७ को कोई पहली बार स्वतंत्र नहीं हुआ है, बल्कि इससे पहले भी अनेक बार स्वतंत्रता प्राप्त कर चुका है। शिवाजी ने मुगलों को हटा कर हमारे देश में महाराष्ट्र राज्य की नींव डाली और पंजाब में सिखों ने स्वतंत्र राज्य स्थापित कर लिया था। और सन् १८५७ में भी हमारा देश प्रायः स्वतंत्र हो गया था, लेकिन उस स्वतंत्रता की नींव कच्ची होने की वजह से हमारी यह स्वतंत्रता बहुत दिनों तक कायम न रह सकी। अब हमारा देश फिर स्वतंत्र हुआ है और लोक-राज्य की स्थापना हुई है। लोक-राज्य की स्थापना करने के बाद हमें यह देखना चाहिये कि लोक-राज्य की हमारी जो इमारत है, उसकी जो बुनियाद है, वह पक्के ढंग पर हो, वह ऊबड़-खाबड़ धरती में न हो, पक्की

समतल जमीन पर हो। जब हम आलीशान इमारत बनाना चाहते हैं, तो इसको देखने के अलावा कि गारा, ईंट और चूना निर्दोष है, यह भी देखना होता है कि जिस जमीन पर इसकी बुनियाद रखी जाये वह जमीन भी समतल हो और उसमें ऊबड़-खाबड़ न हो। इसी तरह देश में स्वतंत्रता के बाद जिस लोक-राज्य की स्थापना हो रही है, उसको सुदृढ़ करने के लिये, उसकी बुनियाद पक्की बनाने के लिये यह आवश्यक है कि यहां के रहने वालों में समानता हो, सामाजिक विषमता न हो, जात-पात के कारण भेदभाव न हो। यह इस देश के रहने वाले महसूस करें कि वे एक राष्ट्र के रहने वाले हैं। मैं समझता हूँ कि यह कानून हमारे देश में एक नवीन राष्ट्र की भावना पैदा करने वाला है।

हमारे देश में, हमारे समाज में जो जात-पात की बुराईयां हैं, जो विषमताएँ हैं, उनको दूर करने के लिये ऐसे कानून की आवश्यकता थी। मैं मानता हूँ कि इस कानून में बड़े संशोधनों की जरूरत है, ताकि यह देश के लिये अधिक उपयोगी सिद्ध हो। इसमें जो यह धारा है कि इस कानून के अनुसार शादी करने वालों का उसके परिवार से सम्बन्ध छूट जायेगा, यानी शादी के बाद स्त्री-पुरुष का परिवार से सम्बन्ध नहीं रहेगा, यह बात गलत है। इसी तरह की अड़चनें जो १८७२ का कानून था, उसमें भी थीं और इन्हीं अड़चनों के कारण वह कानून केवल कागज पर ही रह गया और लोगों ने उससे अधिक फायदा नहीं उठाया। अतः मैं आशा करता हूँ कि इसमें संशोधन होगा और यह कानून हमारे समाज और देश के लिये लाभकारी सिद्ध होगा। और हमारे देश में ऐसे राष्ट्र का निर्माण होगा, जिसमें समानता होगी और सामाजिक विषमता सदा के लिये दूर हो जावेगी और सामाजिक एकता और समानता के आवरण पर देश में एक ऐसे वर्गहीन समाज की स्थापना

होगी, जिसमें कोई अंचा, कोई नीचा नहीं होगा। यह कानून इस तरह के वातावरण को देश में, जात-पात के झूठे बन्धनों को दूर करके, पैदा करेगा, जो हमारे लोक-राज्य की पक्की बुनियाद साबित होगी और हमारी यह स्वतंत्रता चिरस्थायी होगी।

[For English translation see Appendix II, Annexure No. 82.]

SHRI KARTAR SINGH (PEPSU) : Mr. Chairman, when I said that I will take only one minute, I presumed that I was not going to make any speech. I have to give one suggestion only which is important. This Bill deals with marriage, divorce, inheritance and succession. Now, some time hereafter, whether in the next session or in the first part or in the second part, we may be moving the Hindu Code Bill before this House and in that Hindu Code Bill there will be provisions for marriage, divorce, inheritance and succession. I do not know how the chapters with regard to marriage, divorce, inheritance and succession would apply to the Sikhs. I therefore suggest that the present Bill should come after that Bill. We have been reading in the papers that the Hindu Code Bill will be placed before the House in parts, etc. Now we shall have a complete picture only after we have fully considered that and that is going to affect more than 300 million people of India. Therefore it is too early for me to give any opinion on this Bill. I think it would be in the best interests of all concerned that first we should have that Bill so that subsequently, in the light of that Bill, we may not have to alter or modify this Bill afterwards and then it will simply be a waste of time and public money. So, Sir, my submission is that this Bill should come only after the Hindu Code Bill has been considered by this House.

KHWATA INAIT ULLAH : Is the Hindu Code Bill coming in the next session ?

MR. CHAIRMAN : That is the question which he has raised.

SHRI G O V I N D A R E D D Y (Mysore) : Mr. Chairman, I agree with all hon. Members who have dealt with this Bill and said that the present need of the country is a uniform civil code. But since our Government is not prepared to do that and since something is better than nothing, I do support this motion for circulation.

I am not very sanguine about the results of circulation, Sir, as many of the hon. Members have said that it is bound to raise a storm of opposition. Well, Sir, here we had some instances, e.g., that Sanatan Dharma says that marriage is a *pavitra* institution and that marriages which are not performed according to Sanatan rites are not *pavitra*. Well, Sir, this is an argument which only irreligious people or people who have not understood Hinduism can advance. You know very well, Sir, and you have dived deep into our ancient law, our religion and philosophy. You know how Hinduism has adapted itself from time to time with every changing circumstance. If there is one cosmopolitan religion in this whole world, it is Hinduism. If there is one religion which has adapted itself to every time beginning from pre-historic times to the present times, it is only Hinduism. But here they say that this does not permit this thing or that thing. I ask, Sir, why not look to our *rishis* to whom we could trace our *gotras* and our *gotras* run after them. Vedas have recognised this *niyoga* system of marriage. (Interruption). Have not the Vedas recognised the system of *niyoga* marriage which according to our present standards is immoral ? Have we not recognised such marriages ? Have we not worshipped those who have married under these circumstances ? Well, Sir, as Shrimati Savitri Nigam had said, it is *jhuth* to say that religion comes in the way and the religion does not recognise such marriages. I would like to point out one thing. Did not the Mughal Emperors marry Hindu wives and leave Hindu wives to remain as Hindu wives ? Do we not see in Agra and the palaces there and in Delhi in the Red Fort where palaces were being built for Hindu wives and they inherited

them ? (Interruption from several hon. Members).

Now, Sir, if it is left to the people to change religion, it won't change. Did we change *sati* ? But we changed it because the British came and we were compelled to change it. Did we change any of our orthodox systems unless we were compelled to do so ? So, Sir, Government would be well advised not to tickle this society by small measures like this, but should bring forward one big measure outright—a wide civil code measure and let it be stormed by the Opposition and then we will be able to face it.

With these few words, I would like to support the present measure.

SHRI K. B. LALL : Mr. Chairman, I too support the Bill because I have no option.

MR. CHAIRMAN : Mr. Kailash Behari Lall, you always spoil your case by saying that you support the Bill because you have no other option.

SHRI K. B. LALL : I had very much wished that it should have gone straightaway to the Select Committee and that is why I say that because the Government have chosen to send it for eliciting public opinion, there is no option for me. As to the public opinion, I may only say that already it has been so much muddled that we cannot expect anything good out of it again. We would have done better if we had taken into account all those opinions that have already been expressed on this matter before. Now this House has given the picture of the entry of an elephant in the land of the blind. Everybody saw

MR. CHAIRMAN : We know it.

SHRI K. B. LALL : It is said that everything is offended ; Sanatan Dharma is offended, Jain Dharma is offended and it is said that the children born of such marriages will only be bastards. We cannot understand that it can be so. My only regret is that the Bill has not gone far and

it has not done away with the disabilities that were already existing. I can only say that it looks as if the heart and the mind were totally divorced at the time of drafting the Bill. The heart is beating for reform but the mind is still wedded to conservatism. I am asking why it should not be taken advantage of by a member of the joint family. I have got personal experience in my place. I have seen people living together in the same family although they have married not according to the choice of the members of the family and besides, here it is exercising a little bit of compulsion if the boy born of such marriage is not dependent upon the father's property. Why should he be separated and disinherited? He inherits the property of his grand-father. Why should therefore the father and the son both stand in equal position in the family? And as soon as the child comes in the womb of the mother, he comes there in the family by his own right. Why should a father be given the right of compelling the would-be son—the grand-child of his grand-father? I think this is nothing but compulsion.

Then again, in the matter of adoption, why should not the man marrying under this law adopt? He can claim as much of *sanskar* of the religion that he professes as his father might do. Why should we presume that he has gone out of religion, he has gone out of his society, he has gone out of his family and traditional law that governed the family? So all these things are to be considered.

(Time bell rings.)

I had something more to say but since the time bell is there, I will close my speech here.

(Shri C. C. Biswas rose to speak)

MR. CHAIRMAN : Please be brief.

SHRI C. C. BISWAS : Sir, if I had any misgivings about the propriety of the motion I had moved, all my doubts have been dispelled by the debate that we have had. The Government did not wish to rush through this

measure for the reasons I explained. As I said, opinion was divided. Some said the Bill went too far, while other said the Bill did not go far enough. Under these circumstances, the Bill has to be circulated for eliciting public opinion. This is not the stage at which we should go into the merits of the various provisions. That time will come after the Bill has been circulated and we have had the views of the public. But I may answer one particular objection which was raised by the first speaker on the constitutional aspect of this matter. Reference was made to articles no and 117 of the Constitution. I again characterise his objection as fantastic. He referred to article no. I will refer him to the word "only" in the second line. "A Bill shall be deemed to be a Money Bill if it contains *only* provisions dealing with all or any of the following matters." Sir, his point was that, as this is a Money Bill, it cannot be introduced in the Council of States and therefore it must be thrown out. This Bill does not contain any provision dealing with any of the matters mentioned in this article. When I pointed this out, he dropped article no and went on to article 117. What does article 117 deal with? Article 117 consists of three clauses. Clause 1 of this article says, "A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article no" I will challenge my hon. friend to point out any single provision of this character in this Bill. It is no use pointing out that if you want to appoint a Marriage Officer, you are bound to pay him, but even so, the money is bound to come from the Consolidated Fund. In the first place, Sir, Marriage Officers will be appointed by the States. So even if they are paid, the money will not come from the Consolidated Fund of India. Then if you turn to the next clause, that also does not apply, because it provides that :

"A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for

[Shri C. C. Biswas.] licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation, of any tax by any local authority or body for local purposes."

Clause (3) is in more general terms :

"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 j I am unable to see how this Bill comes within the mischief of this article. It does not involve expenditure from the Consolidated Fund of India. Even supposing officers were appointed, they need not be paid any remuneration. Officers who have other duties to perform might just be asked to act as Marriage Officers also. The work of Marriage Officers will not be so heavy as to keep them busy the whole of the month or even the whole of the day. Surely any officer can act as a Marriage Officer, and there can be no question of expenditure of money. At any rate, the Bill does not contain any such provision. That is my answer to his point.

I shall now deal with the other points which were raised. Reference was made to the Hindu Code Bill. I forgot to refer to it in my opening remarks. There is no desire on the part of the Government to put the Hindu Code Bill relating to marriage in cold storage. Nothing of the kind. I wanted to introduce this Bill this Session, but unfortunately owing to my pre-occupations here, I could not complete that work. I was examining the draft which has been prepared. I have seen only a part of it. I could not complete the entire job, and that is the reason why I find myself unable to present to the House the draft Hindu I Code Bill.

SHRI B. GUPTA : Is the hon. Minister facing any difficulties from high quarters ?

SHRI C. C. BISWAS : Nothing o the kind. I don't know what his sug gestion is.

SHRI B. GUPTA: It is obvious.

SHRI C. C. BISWAS. As I said, I was very anxious that I should be in a position to introduce the Bill, but I could not complete my examination of the draft. But let me tell my hon. friends there that the Bill which I shall bring forward will not be exactly a replica of Dr. Ambedkar's draft.

SHRI B. GUPTA : Better or worse ?

SHRI C. C. BISWAS : The matter requires very careful consideration, and possibly the whole approach may have to be different. One of the first things that I will do in the next session is to introduce that measure. So, the lady Members who seem very anxious to liberate the millions of Hindu women who are now supposed to be suffering from unspeakable disabilities, may rest: assured.

Then, Sir, as regards a uniform civil code, some Members said that the Government" must take courage in both their hands and not bring in legislation of this kind which is nothing but "tinkering" with the problem, but you see what the position is. This simple measure which is only a permissive, enabling measure, has raised so much opposition. I am not one of those who believe that you can accomplish this object effectively by rousing passions and raising controversies. The thing is we have to educate the country.....

{Shri B. Gupta interrupted.}

SHRI C. C. BISWAS. : If my hon. friends on the other side apply a little of their energies to the task of educating the public so that they might accept the idea of a uniform code, then they will be helping the Government.

SHRI GOVINDA REDDY : They believe only in opposition.

SHRI C. C. BISWAS : To bring about that consummation, the Government are obliged to feel their way up. They cannot do everything all at once, unless my hon. friends here are all

willing and anxious to co-operate with the Government. I do not think I need say anything more except on one point. Somebody said with reference to clause 4, this is against the Muslim law. It is useless to expect that a provision of this nature can incorporate all the rules which prevail in different systems.

KHWAJA INAIT ULLAH : What about including Muslims in clause 5 ?

SHRI C. C. BISWAS : These clauses are based on the existing Special Marriage Act.

SHRI RAJAGOPAL NAIDU : What is the religion that the offspring has to profess ?

SHRI C. C. BISWAS : It is a very difficult question. As a matter of fact, first of all, it was provided in the draft that the father and the mother should under this Act execute declaration as to what religion their children should profess. That was admittedly unsatisfactory, and that was cut out. I should like to have the opinions of my hon. friend and others as to how that question may be solved. It is a difficult question.

SHRI RAJAGOPAL NAIDU : Shall we determine it ten months after the passing of this Act ?

MR. CHAIRMAN : This is not the stage at which the questions ought to be raised. It is a simple motion for circulating this Bill. All kinds of details which are contentious and controversial " have been raised. We will have enough time after the general public of India and the Select Committee of this House have pronounced their comments on all these contentious questions. The question is :

That at the end of the motion for the word and figures '31st December 1952' the word and figures '31st January 1953' be substituted.

The motion was negatived.

MR. CHAIRMAN : The question is :

That the Special Marriage Bill, 1952, be circulated for the purpose of eliciting opinion thereon by the 31st December 1952."

The motion was adopted.

MR. CHAIRMAN : I want to say that it has been represented to me that to meet at 3 o'clock would be rather inconvenient and a suggestion was made that we should meet at half past three. I have no objection to it provided that it goes from half past three to half past six.

DR. P. C. MITRA : No.

MR. CHAIRMAN : Either from three to six or from half past three to half past six. If you are able to complete the business you will go. There are only two Bills before you— The Cantonments Amendment Bill and the Copyright Resolution. These are the two things. If you are so anxious to complete by six, it depends on you. 3-30 will be the starting hour. The House stands adjourned till half past three.

The Council then adjourned till half past three of the clock.

The Council re-assembled after lunch at half past three of the clock, Mr. DEPUTY CHAIRMAN in the Chair.

THE CANTONMENTS (AMENDMENT) BILL, 1952

THE MINISTER FOR DEFENCE (SHRI N. GOPALASWAMI) : Sir, I beg to move :

That the Bill further to amend the Cantonments Act, 1924, be taken into consideration.

Sir, not many words are required from me in placing this motion before this Council. Hon. Members are aware as to how cantonments came to be established in the country and how they have grown. Cantonments were primarily intended for quartering troops and for such quartering it was necessary that amenities and conditions should be established in such areas which would conduce to the maintenance of the proper health of the troops stationed therein. But, as time went on, the populations in these areas grew and various ancillary activities came to be established, and it was considered that some form of municipal government should be established for the purpose of looking after these matters. The result was the