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PARLIAMENT OF INDIA
RAJYA SABHA

**THE HINDU MARRIAGE AND
DIVORCE BILL, 1952**

(Report of the Joint Committee)



**RAJYA SABHA SECRETARIAT
NEW DELHI**

NOVEMBER 1954

**Reports of the Select/Joint Committees Report
presented in the Lok Sabha in the year, 1954.**

S.No.	S u b j e c t	Date of presentation
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SIXTH SESSION

1. Muslim Wakfs Bill, 1952 (S.C.) 4.3.54.
2. Special Marriage Bill, 1952 (J.C.) 18.3.54.

SEVENTH SESSION

1. Coffee Market (Expansion Amendment) Bill, 1954 (S.C.) 26.8.54.
2. Rubber (Production & Marketing) Amendment Bill, 1950 together with the Evidence s on the bill dated the 21st and 22nd July, 1954 (S.C.) -do-
3. Displaced persons (Compensation and Rehabilitation) Bill, 1954 (J.C.) 27.8.54
4. Code of Criminal Procedure (Amendment) Bill, 1954 (J.C.) 3.9.54.
5. Constitution (Third Amendment) Bill, 1952. (J.C.) 20.9.54

EIGHTH SESSION

1. Hindu Marriage & Divorce Bill, 1952. (J.C.) 26.11.54
2. Untouchability (Offences) Bill, 1954 (J.C.) 3.12.54
3. Delimitation Commission (Amendment) Bill, 1954. (S.C.) 22.12.54

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THE HINDU MARRIAGE AND DIVORCE BILL, 1952

Composition of the Joint Committee

RAJYA SABHA

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

LOK SABHA

16. Shri N. Keshavaiengar
17. Shri Gurmukh Singh Musafir
18. Shri Ranbir Singh Chaudhuri
19. Shri S. V. Ramaswamy
20. Shri Narendra P. Nathwani
21. Shri Jayantrao Ganpat Natawadkar
22. Shri Fulsinhji B. Dabhi
23. Shrimati Tarkeshwari Sinha
24. Pandit Dwarka Nath Tiwary
25. Shrimati Anasuyabai Kale
26. Shri H. C. Heda
27. Sardar Amar Singh Saigal
28. Shri Suriya Prashad
29. Shrimati Ila Pal Choudhuri
30. Shri Nibaran Chandra Laskar'
31. Shri T. Sanganna
32. Pandit Sheo Narayan Fotedar
33. Shri Paidi Lakshmayya
34. Shri Ram Sahai Tiwari

*Resigned on 1st October 1954 due to ill-health.

35. Shri Panna Lal
36. Shrimati Uma Nehru
37. Shrimati Renu Chakravartty
38. Shri Bijoy Chandra Das
39. Shri Durga Charan Banerjee
40. Shri V. Veeraswamy
41. Her Highness Rajmata Kamlendu Mati Shah
42. Shri B. S. Murthy
43. Shri K. S. Raghavachari
44. Shri Nand Lal Sharma
45. Shri Digvijaya Narain Singh

Shri G. R. Rajagopaul, Joint Secretary and Draftsman,
Ministry of Law.

Secretariat

1. Shri P. N. Krishna Mani, Under Secretary, Rajya Sabha Secretariat.
2. Shri I. Krishna, Under Secretary, Rajya Sabha Secretariat.

REPORT OF THE JOINT COMMITTEE

The Joint Committee to which the Bill* to amend and codify the law relating to marriage and divorce among Hindus was referred, have considered the Bill and I now submit their report with the Bill, as amended by the Committee, annexed thereto.

2. The Joint Committee held twenty-two meetings in all. The Law Minister (Shri C. C. Biswas) who presided over the first fifteen meetings had to give up the Chairmanship owing to ill-health and the Chairman of the Rajya Sabha appointed Dr. P. V. Kane to preside over the remaining meetings of the Joint Committee.

3. Upon the principal changes proposed in the Bill, the Joint Committee observe as follows:—

4. *Clause 1.*—The words “domiciled in India” have been changed to “domiciled in the territories to which this Act extends” to make the position clear, so that the law will be applicable to all Hindus with such domicile, who may, for the time being, be outside the said territories—whether they be in Jammu and Kashmir or outside India altogether.

5. *Clause 2.*—The explanation which was originally confined in its application to Hindus by religion has now been extended to cover Buddhists, Jainas and Sikhs.

6. *Clause 3.*—The definition of “district court” has been modified to make it clear that where there is a city civil court, it is that court alone which shall have jurisdiction under this law. By another amendment, the power to notify inferior courts as district courts for the purposes of this law is sought to be vested in the State Government instead of in the Central Government, as originally proposed.

The definition of prohibited degrees in sub-clause (g) has been expanded so as to include the brother's widow, the paternal or maternal uncle's widow, the widow of the grandfather's or grandmother's brother and the children of brother and sister. In the opinion of the Joint Committee, marriage within such relationships should be discouraged; but wherever there is a custom to the contrary, ample recognition of such custom is contained in clause 5.

7. *Clause 5.*—In sub-clause (iii), the age of the bridegroom and the age of the bride have been raised from 18 and 15 to 21 and 16 respectively. The Joint Committee feel that there is ample justification for the increased age-limits now proposed.

In sub-clause (vi), the amendment will ensure that until the bride attains majority, no marriage takes place without the consent of the guardian-in-marriage. Under the original Bill, consent of the guardian was required only if the girl was between the ages of 15 and 16, and once she attained her 16th year she could dispense with the consent of her guardian although she was still a minor.

* Published in Part II—Sec. 2 of the *Gazette of India*, Extraordinary, dated the 11th December 1952.

8. *Clause 6.*—The Joint Committee feel that it is unnecessary to have such a long list of guardians as proposed in the original Bill and, therefore, the maternal grandfather, the maternal uncle and the residuary relatives have now been omitted. The Joint Committee have, however, included the paternal grandmother as one of the guardians, and with respect to certain relations by half blood, they have inserted a condition that the bride in each case should have been brought up by the relative concerned in his house. It has also been expressly provided that in the absence of any such guardian as is referred to in the clause, consent can be dispensed with.

9. *Clause 8.*—While reducing the quantum of punishment for the breach of any rule respecting compulsory registration of marriages, the Joint Committee have thought fit to redraft sub-clause (1) in order to bring out the intention more clearly. It has further been provided that the rules made under this clause should be laid before the respective State Legislatures.

10. *Clause 10.*—In considering this and the following clauses, the Joint Committee have taken into account the language employed and the scheme adopted in the Special Marriage Act, 1954, recently passed by the Parliament. In view, however, of the fact that Hindu law has so far recognised polygamy, the Joint Committee feel that the approach to the problems of judicial separation and divorce need not necessarily be the same in both the cases and that it is neither necessary nor desirable in the present case that grounds for judicial separation and grounds for divorce should be identical as in the Special Marriage Act, 1954. Moreover, having regard to the high ideals which the Hindu community has always lived up to, divorce should not be made easy and the law should be so framed as to provide the maximum opportunities for mutual adjustment. The scheme of this Bill is therefore slightly different. Apart from changes in the language employed, the major changes made in clause 10 are,—

- (a) 'cruelty' has now a self-contained definition;
- (b) one act of infidelity to the marriage tie now furnishes a ground for judicial separation instead of adultery as proposed in the original Bill; and
- (c) the definition of 'desertion' has been widened so as expressly to include wilful neglect of the respondent.

11. *Clause 12.*—The only change of importance made in this clause is the raising of the period of one year to two years in the proviso to sub-clause (1)(b) as, in the opinion of the Joint Committee, the period of one year is rather short for the purpose.

12. *Clause 13.*—Apart from drafting changes and changes in the periods referred to in some of the sub-clauses so as to bring this law into line with the corresponding provisions in the Special Marriage Act, 1954, the more important changes are,—

- (a) the redrafting of sub-clause (i) so that the leading of an adulterous life by either party furnishes a ground for divorce; and

- (b) the inclusion of two new grounds for divorce, namely, renunciation of the world by either party to the marriage and certain loathsome acts on the part of the husband.

13. *Clause 14.*—This clause has now been omitted because the first two paragraphs have become unnecessary in view of the altered language employed in clauses 11, 12 and 13, and the third paragraph has been removed to clause 23.

14. *Clause 14 (old clause 15).*—In the opinion of the Joint Committee, the subsequent petition under sub-clause (1) need not be based on the facts previously 'proved', but the petitioner may be allowed to urge all the grounds previously urged by him, whether proved or otherwise. Hence the substitution of the word 'alleged' for 'proved'.

15. *Clause 15 (old clause 16).*—A total period of one year from the date of divorce should more than suffice for the purpose of preventing remarriages with indecent haste and it is not necessary that the period of one year should be computed differently in the different cases specified in this clause. The clause has been amended accordingly.

16. *Clause 17 (old clause 18).*—This clause has been redrafted in the light of section 34 of the Special Marriage Act, 1954. The Joint Committee feel that in no case should children be regarded as illegitimate and the clause as amended provides also for the legitimacy of children in the womb at the time of the proceedings.

17. *Clause 18 (new).*—The Joint Committee are of the opinion that it is desirable to provide for the punishment of persons contravening the other important conditions for a Hindu marriage specified in clause 5. Clause 17 (old clause 18) has already made provision for the punishment of bigamous marriages and this clause seeks to punish persons who contravene the conditions specified in sub-clauses (iii), (iv), (v) and (vi) of clause 5. In framing the punishment the Joint Committee have had in mind the gravity of the offence in each case and the punishments prescribed for certain similar offences in the Child Marriage Restraint Act, 1929.

18. *Clause 22.*—In order that reports of judicial proceedings relating to divorce may not produce an unhealthy influence on the public, the Joint Committee have provided that such publication shall have to be with the permission of the court, and publication without such permission has been made punishable. In the United Kingdom, there is a special enactment called the Judicial Proceedings (Regulation of Reports) Act, 1926, which regulates the publication of matters relating to divorce, nullity of marriage, etc., so that unsavoury details do not get unnecessary publicity.

19. *Clause 23.*—The amendment to sub-clause (1)(a) seeks to incorporate the last paragraph of clause 14 now omitted. Sub-clause (2) follows a similar provision in section 34 of the Special Marriage Act, 1954.

20. *Clause 24.*—In this clause as well as in clause 25, the amendments made secure that “alimony” is payable in either case, that is to say, where the husband has no independent income but the wife is possessed of means, she shall be as much answerable for the payment of “alimony” as the husband normally is.

21. *Clause 25.*—In addition to the amendment referred to in clause 24, the amendment to sub-clause (3) seeks to treat the wife and the husband alike so that an order for alimony may be cancelled if either the husband or the wife swerves from the right path.

22. *Clause 26.*—The amendments are of a drafting nature.

23. The Joint Committee recommend that the Bill, as now amended, be passed by the Rajya Sabha.

P. V. KANE,

Chairman of the Joint Committee.

NEW DELHI;

The 25th November, 1954.

MINUTES OF DISSENT

I

For the first time after a period of thousands of years we are introducing a small measure of social legislation. Of course, I feel, in matters of morals and society the less the Government interfere the better. I am ever anxious to have absolutely minimum inevitable interference by Government in the day to day life of our countrymen. Even then, I feel, some interference is called for and justified at the present juncture in our society. From that point of view I heartily welcome this piece of legislation.

I feel, as a nation it looks as though we are very far advanced and progressive in our ideals and outlook but when it comes to brass tacks and regular action in pursuance of our ideal we become extremely conservative. In introducing this measure in this manner, I feel, we are simply tinkering with the issue before us. I feel, we should have gone to the roots and tackled the problem of inequality between the sexes in India by attacking the fundamental cause of such inequality in the woman on account of her helpless economic condition and dependance on man. We should have first introduced the law of inheritance and given equal rights to women therein and then we could have thought of these social measures. Well, it looks as though we should be grateful for even small mercies and even this measure, with all its faults, is most welcome as it seeks to ameliorate the most pitiable condition of the female sex who comprise half, if not more, of the citizens of our country.

Clause 12

Some of us wanted to provide in the Bill relief in respect of a marriage where the respondent was at the time of marriage pregnant by some person other than the petitioner before the court, of course, subject to the very essential, imperative and necessary provisos that the court shall not grant a decree of nullity or invalidity unless it is satisfied—

- (a) that the petitioner was at the time of marriage ignorant of the facts alleged;
- (b) that the proceedings were instituted within a year from the date of marriage; and
- (c) that the marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

But it is a pity this was not accepted by the Committee. This is, in my opinion, a very important omission. I feel this relief should be provided in the Bill in any place considered fit and suitable for the purpose. In fact, a similar provision actually exists in sub-clause (ii) of section 25 of the Special Marriage Act, 1954.

Again, I feel, this is a piece of social legislation. For thousands of years we have had traditional and *shastric* injunctions. Any inroad into long established customs and traditions will certainly lead to not a little resentment. It is, therefore, most welcome and it is a redeeming feature that this is only an enabling measure and not compulsory. It is left to the free will and choice of our countrymen to adopt the salutary provisions herein or not to adopt them and pursue the age-long traditions and customs. It is indeed a great relief for the progressive elements in our country. Yet in a matter of this kind it is very desirable to be slow and cautious. We have duly provided for restitution of conjugal rights, judicial separation, nullity and invalidity of marriage. Let us see how these reliefs are resorted to by our people. At least let us wait for a definite stipulated period. Even the womenfolk have represented in all earnestness that this far reaching relief of divorce be dropped. They apprehend divorce is likely to be misused by men. I feel that the woman has been exploited by the man and held in great subjugation for thousands of years in our country. After all, the apprehensions in the minds of women may not be unjustifiable. Let us not bring our sexual bias to bear upon us when we deliberate over this matter. Let us forget the sex for a moment and think in a most dispassionate manner. To all external appearance the woman is proclaimed to be free and equal and even better. Is she really so? Let us be realistic and magnanimous, and large hearted in our outlook. The two sexes are not admittedly absolutely equal. If we confer equal privileges to both sexes under this Act, we shall certainly be perpetuating the gulf between them. Let us help and foster the step towards equality. With due respect, therefore, to the womenfolk and their feelings I appeal to my friends to do away with this relief of divorce once for all or at least for a definite stipulated time or in the absence of both the suggestions given above, let us heartily agree that in clause 13 the right to divorce be exercised only by women. It does not in any manner, whatsoever, act against the Constitution but it would be deemed to go against it if only we fail to reserve this relief to the woman and perpetuate the inequality by granting it to both sexes.

Clause 29

One word more. In the savings clause 29 of the Bill, I feel, we should also provide against the other significant fact. The parties have not undergone any ceremonies for the conduct of their marriage. Thousands of such marriages have taken place in the South in Madras, known by the name of self-respect marriages and these also should be saved under the savings clause 29.

Except for the above observations I heartily tender my whole-hearted consent for the Report submitted by the Committee.

N. KESHAVALINGAR.

NEW DELHI;

The 16th November 1954.

II

मैं हिन्दू मैरिज एंड डाइवोर्स बिल के विधीनिर्बंध भाग से सहमत हूँ। मैं एक समय में एक ही विवाह (मोनोगैमी) का दृढ़ समर्थक हूँ। मैं यह भी मानता हूँ कि समाज की वर्तमान दशा में स्त्री और पुरुष दोनों को विशेष परिस्थितियों में सम्बन्ध विच्छेद डाइवोर्स और पुनः संस्कार का अधिकार देना आवश्यक है। मैं इस बिल के जिस अंश से असहमत हूँ, वह यह है कि इसे केवल हिन्दुओं तक परीमित किया गया है। मेरी राय है कि यह बिल भारत के प्रत्येक नागरिक पर लागू होना चाहिये। मेरे इस विचार के चार आधार हैं :

पहला : कानून में सम्प्रदाय या धर्म विशेष का भेद करना हमारे संविधान के मौलिक सिद्धान्तों के विरुद्ध है।

दूसरा : यदि मोनोगैमी अच्छी है तो उस से लाभ उठाने का प्रत्येक भारतवासी को अधिकार होना चाहिए और यदि मोनोगैमी अभिशाप है तो उसके परिणामों से मुस्लिम स्त्रियों की भाँति हिन्दू स्त्रियों को भी बचाना चाहिए। केवल इसलिए कि संसद् में मुस्लिम स्त्रियों की संख्या कम और आवाज कमजोर है, उन्हें मोनोगैमी के लाभ से वंचित करना सरासर अन्याय है।

तीसरा : कहा जाता है कि इस कानून को मुसलमानों पर लागू करना उचित नहीं, क्योंकि उन्हें मोनोगैमी लगाने पर धार्मिक आपत्ति है। यह युक्ति यदि ठीक है तो करोड़ों हिन्दुओं को, जिनका विश्वास है कि तलाक हिन्दू धर्म के विरुद्ध है, यह शिकायत होना स्वाभाविक है कि भारतीय गणतन्त्र में हमारी धार्मिक भावनाओं की उपेक्षा और मुसलमानों की धार्मिक भावनाओं की इज्जत की जाती है। हिन्दू जनता में यह भाव अब भी उत्पन्न हो चुका है और आगे भी इसके और बढ़ने की आशंका है।

चौथा : और अन्तिम कारण यह है कि इस कानून के सब भारतवासियों पर लागू न होने से इससे बच निकलने का एक बहुत अच्छा रास्ता बना रहेगा। जिन्हें एक से अधिक शादियाँ करनी होंगी, वे धर्म परिवर्तन कर लेंगे। इस प्रकार इस कानून से मत परिवर्तन का रोग और बढ़ जायगा, जिससे जनता में असन्तोष उत्पन्न हो जायगा।

इन कारणों से मैं इस कानून के केवल हिन्दुओं तक परीमित होने का विरोधी हूँ। इसका प्रयोग सब भास्तीयों पर समान रूप से होना चाहिए। मेरा यह भी विश्वास है कि यह कानून वर्तमान रूप में दूर तक न रह सकेगा, ६० वर्षों के अन्दर या तो यह सब भारतीयों पर लागू हो जायगा, अथवा इसका रूप सर्वथा बदल देना पड़ेगा।

नई दिल्ली :

इन्द्र वि० वाचस्पति

१९ नवम्बर १९५४.

†I agree with the prohibitory provisions of the Hindu Marriage and Divorce Bill. I am a staunch supporter of monogamy—one wife at one time. I also hold that in the present condition of the society it is necessary to confer on both the husband and the wife the right to divorce and remarriage under certain special circumstances. But

I am in disagreement with that provision of the Bill which restricts its application to Hindus alone. I am of the view that the Bill should be made applicable to every citizen of India. I hold this view for four reasons.

Firstly, it is contrary to the fundamental rights laid down in our Constitution to discriminate by law against a community or a particular religion.

Secondly, if monogamy is good, then every Indian should have the right to derive the benefit thereof and if it is a curse then like Muslim women, Hindu women too should be saved from it. It is sheer injustice to deprive Muslim women of the blessings of monogamy only because their number is small and voice is feeble in our Parliament.

Thirdly, it is argued that it will not be proper to apply this measure to the Muslims because they have religious objection to monogamy being imposed on them. If this argument is right, then it is natural for the Hindus who hold the belief that divorce is contrary to the Hindu religion, to have the grievance that in the Indian Republic their religious sentiments are ignored while those of the Muslims are respected. This feeling has already arisen in the minds of the Hindu public and it is apprehended that it would grow more intense in future.

Fourthly and finally, as this Bill is not uniformly applicable to all Indians, there would remain a very effective means of circumventing it. Those who want to marry more than one wife will change their religion. Thus this measure will further aggravate the evil of conversion which would arouse public discontent.

For these reasons, I am opposed to the measure being applicable to the Hindus alone. This should be made uniformly applicable to all Indians. I also believe that this measure will not continue, as it is, for long. Within ten years it will either become applicable to all Indians or will have to be radically altered.

INDRA VIDYAVACHASPATI.]

NEW DELHI;

The 18th November 1954.

III

I differ from the majority of my colleagues on the following matters:—

Clause 11

Clause 11 [excluding the proviso to sub-clause (1)] as passed by the Joint Committee, runs as follows:—

"11. *Void Marriages*.—(1) Any marriage solemnized before the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if,—

- (a) a former husband or wife of either party was living at the time of such marriage; or

- (b) the parties at the time of such marriage were within the degrees of prohibited relationship.

* * * *

(2) Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

Clauses (i) and (iv) of section 5 are practically the same as clauses (a) and (b) of clause 11 (1) above. Clause (v) of section 5 is to the effect that the parties should not be *sapindas* of each other.

Now, I am not opposed to clause 11 as such, but my objection is against the words "on a petition presented by either party thereto". I want that these words should be deleted from clause 11. My reasons for the deletion of these words are these:—

(1) We must first understand the exact meanings of the words "void" and "voidable". "The distinction between void and voidable transactions is a fundamental one. An agreement or other act which is void has from the beginning no legal effect at all, save in so far as any party to it incurs penal consequences, as may happen where a special law both makes the act void and imposes a penalty. Otherwise, no person's rights, whether he be a party or a stranger, are affected. A voidable act, on the contrary, takes its full and legal effect, unless and until it is disputed and set aside by some person entitled to do" (Pollock on Contract, 5th Edition, page 8). If this is the distinction between void and voidable transactions, I fail to understand why a marriage which is null and void under this Act can be declared so only on a petition presented by a party to such a marriage? Why should not any person be entitled to present such a petition? If only a party to a marriage, which is *ab initio* void, is to be entitled to present such a petition, there is no point in making certain marriages null and void and certain others voidable.

It is argued that why should a stranger who is not a party to a marriage be allowed to poke his nose therein? The answer to this argument is three-fold:—

- (1) In the first place even persons who are not a party to a marriage may be interested in getting the marriage declared void. For instance, if a co-parcener of a joint Hindu family marries a woman who is related to him within the prohibited degrees of relationship, a son born of such a woman would be illegitimate and he would have no right in the co-parcenary property. But unless such a marriage is declared null and void by a decree of nullity, this illegitimate son could get all the rights of a co-parcener in the family, and thus the rights of other co-parceners in the co-parcenary property would be affected. So, it cannot be said that persons other than the parties to a marriage have no business to interfere therein.
- (2) In the second place, such marriages are opposed to public policy and as such the whole society has interest therein.

- (3) Thirdly, how can you expect a party to a marriage come forward and ask the court to declare the marriage null and void? Suppose a Hindu aged 25 marries his paternal uncle's daughter aged 21, can you expect that either of these two persons would go to a court and ask it to declare the marriage void? The answer is 'no'.

Lastly, it is argued that though a marriage which is null and void under the Hindu Marriage and Divorce Bill yet it cannot be declared so, under this Bill, by a decree of nullity on a petition presented by a person who is not a party to the marriage, any person can go to the civil court and get it declared to be so. My reply to this argument is as follows:—

- (1) In the first place, I am not sure whether any person can go to a civil court and get a marriage declared as null and void, on the ground that it contravenes the provisions of clause 11, if it is allowed to remain as it is. It is an accepted fact in law that when a special law makes provisions for specific matters and gives jurisdiction to the court established under that law to try and decide those matters, the jurisdiction of ordinary courts to try and decide those matters under the general law is ousted. Hence no person other than a party to a marriage, solemnized under the Hindu Marriage and Divorce Bill, will be entitled to obtain a decree of nullity thereof from the civil court as this matter has been specifically provided in this special Bill.
- (2) In the second place, if a stranger is entitled to obtain a decree of nullity of such a marriage, he should not be compelled to file a regular suit which would take years to decide, when the simple and speedy remedy of a petition provided in this Bill is available.
- (3) Lastly, even in the Special Marriage Act, 1954, which gives greater freedom to the parties to a marriage than is being given by the Hindu Marriage and Divorce Bill, if right is given to any person to get a marriage solemnized under that Act declared null and void by means of a petition, there is no reason why such a right be not given to him under the Hindu Marriage and Divorce Bill.

Section 24(1) of the Special Marriage Act, 1954, runs as follows:—

“Any marriage solemnized under this Act shall be null and void and may be so declared by a decree of nullity if.....”.

Now, if the words “on a petition presented by either party thereto” are not considered necessary to be inserted in section 24 of the Special Marriage Act, there is no necessity for inserting them in clause 11 of this Bill.

In the above circumstances, I am strongly of the opinion that the words “on a petition presented by either party thereto” should not find a place in clause 11 of this Bill and should be deleted therefrom.

Clause 12

Sub-section (ii) of section 25 of the Special Marriage Act, 1954, runs as follows:—

“Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,.....
.....(ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner;”

I suggest that a similar clause should also be inserted in sub-clauses (1) and (2) of clause 12 of this Bill.

I know of a case in which a young Hindu widow concealed from the youngman, whom she wanted to marry, the fact of her being pregnant by some other man, the youngman was not able to detect, at the time of the marriage, that she was pregnant as she had conceived only two or three months before marriage. So, it is absolutely necessary that a clause similar to sub-section (ii) of section 25 of the Special Marriage Act should be inserted in both the sub-clauses of clause 12 of this Bill.

PROPOSED NEW CLAUSE 18A

I am glad that the Committee has introduced a new clause (clause 18 of the Bill as amended), which provides on the lines of the Child Marriage Restraint Act, 1929, for punishment for contravention of the conditions specified in sub-clauses (iii), (iv), (v) and (vi) of clause 5 of the Bill. The Joint Committee did not, however, accept a suggestion made by me for the introduction of a new clause, similar to section 12 of the Child Marriage Restraint Act, 1929, empowering the court to issue injunction prohibiting marriage in contravention of the provisions of the Hindu Marriage and Divorce Bill. It needs no argument to convince anybody that it would be more desirable to prevent, if possible, a person from committing a particular undesirable act rather than to allow him to commit that act and then to punish him for the same. I, therefore, propose that the following new clause be introduced in this Bill:—

“18A. (1) *Power to issue injunction prohibiting marriage in contravention of this Act.*—Notwithstanding anything to the contrary in this Act, the court may, if satisfied from information laid before it through a complaint or otherwise that a marriage in contravention of the provisions of clauses (iii), (iv), (v) and (vi) of section 5 of this Act has been arranged or is about to be solemnized, issue an injunction, against any person mentioned in section 18 of this Act, prohibiting such marriage.

(2) The court may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(3) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section, disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months and with fine which may extend to one thousand rupees.”

PROPOSED NEW CLAUSES 18B AND 18C

I suggest that the following new clauses, similar to sections 8 and 9 of the Child Marriage Restraint Act, 1929, be introduced in this Bill:—

“18B. *Jurisdiction under this Act.*—Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1898 (V of 1898), no court other than that of a presidency magistrate or a magistrate of the first class shall take cognizance of, or try, any offence under this Act.

18C. *Mode of taking cognizance of offences.*—No court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.”

FULSINHJI B. DABHI.

NEW DELHI;

The 22nd November, 1954.

IV

Clause 18

I wish to record my note of dissent on clause 18 of the Bill which provides for punishment for breaches of provisions contained in sub-clauses (iii) to (vi) of clause 5 of the Bill.

Even apart from the question of desirability of raising the age limits of the parties to a marriage from 15 and 18 years, being the present limits, particularly in view of the varying social conditions prevalent amongst the Hindus in different parts of the country, clause 18 will, in my opinion, be void in law as being discriminatory *qua* the Hindus, in violation of Articles 14 and 15 of the Constitution of India. While in case of communities other than the Hindus, marriages between brides and bridegrooms of any age above 15 and 18 years respectively will be valid, in the case of Hindus the bride and the bridegroom, though they have completed 15 and 18 years of age respectively, will, unless they have also attained the ages of 18 and 21 years respectively, render them liable to criminal prosecution. The provisions of clause 18 thus suffer from the drawback of arbitrary discrimination between one citizen and another merely on the ground of religion which is not permissible under the provisions of our Constitution.

I submit, the proper remedy lies the other way. If the respective age limits of the parties to a marriage are to be raised above those fixed under the Child Marriage Restraint Act, 1929, (XI of 1929) (popularly known as the Sharda Act) that Act which applies equally to all communities should be suitably amended.

Clause 29

Sub-clause 3 saves customary and special laws to obtain the termination of a Hindu marriage. So far as customary law of divorce is concerned, it should be noticed that while in respect of marriage caste distinctions are eschewed under this Bill the authority of the caste institution is allowed free scope in respect of divorce. I

recognize the necessity of saving people residing in rural areas or forming a class of persons socially backward from being driven to ordinary courts of law for getting divorce and the desirability of providing for them a more readily and cheaply available forum for obtaining divorce. There is, however, a lurking danger in providing for customary divorce inasmuch as it may entail the continuance of the authority and prestige of the caste organisation. While, therefore, in the present conditions customary divorce may be tolerated attempts should be made to replace the caste organisations by *Panchayats* or other local bodies, wherever they exist, by vesting jurisdiction in divorce matters in the latter bodies. This would achieve the desired object without the disadvantage of the authority of caste organisations being given a chance of survival on account of their jurisdiction in divorce matters.

There are some minor points in the Bill on which also I am unable to agree with the Committee. I reserve liberty to move amendments with regard to them.

NARENDRA P. NATHWANI.

NEW DELHI;

The 23rd November, 1954.

V

This Bill is intended to codify and amend the laws relating to marriage and divorce among the Hindus. The amendments are mainly intended to remove some of the disabilities suffered until now by married Hindu women. The most important among such provisions are the enforcement of monogamy and the granting of the right to apply for divorce under certain circumstances. In spite of the hue and cry raised against this Bill by the conservative sections among the Hindus, it is undeniable that the reforms contemplated in this Bill can by no means be characterised as revolutionary measures. Nor does the Bill seek to do away with all the disabilities in all spheres of life from which women in Hindu society suffer today. It only seeks to remove some disabilities within a restricted sphere, namely, marriage and that too within the orbit of the existing economic subservience of women to men. In short, the changes to be brought about in Hindu society by the present Bill are overdue reforms which will help the said society to move with the spirit of the times as well as the spirit embodied in our Constitution regarding the equality of the sexes in the matter of the fundamental rights. We fully support the principles underlying these measures as a step towards social reform.

But in spite of our general support we are compelled to write and submit this minute of dissent regarding some of the shortcomings of the Bill which either tend to defeat or unjustifiably circumscribe the very purpose for which this piece of legislation is going to be enacted.

We shall first mention the most important ones among the points where we disagree with the opinion of the majority of the Joint Committee.

Clause 13

1. In clause 13 we proposed the insertion of a new sub-clause as follows:—

“A wife who has completed 18 years of age may also present a petition for the dissolution of the marriage on the ground that her husband has married again before the commencement of this Act and the wife so married is living at the time of the presentation of this petition.”

This is actually on the lines of a similar provision in the Madras Act. The main purport of this amendment is to provide relief to the wife or wives of polygamous or bigamous marriages solemnized before the commencement of this Act. The Bill as it stands does not provide any relief in these cases. Considering the various handicaps and disabilities from which women suffer it cannot be denied that in such cases either the consent of the previous wife is not at all asked for by the husband before marrying for the second or third time or the previous wife is forced by circumstances to give her consent. Monogamy is sought to be enforced by this Bill and bigamy made punishable in cases of marriages solemnized after this law comes into force. But relief is not being provided to such wives of pre-Act marriages on the ground that Hindu Law has so far recognised ploygamy and it is wrong to assail the pre-Act marriages. But our amendment does not mean that all pre-Act polygamous or bigamous marriages will be automatically assailed and dissolved. It is only a permissive measure providing the right to seek relief to the wife of such a marriage only if she desires to have it. Moreover, it is not a fact that this Bill leaves all pre-Act marriages untouched. In clauses 11 and 12 either party to a marriage solemnized before the Act is given the right to present a petition under certain circumstances for the declaration of the marriage as null and void. Our amendment does not call for a blanket nullification of all pre-Act polygamous or bigamous marriages but only serves to give the right to seek divorce to that wife of such a marriage who sorely needs and is desirous of having that relief. There is no justification to refuse to give her that right and to force her against her will to put up with intolerable conditions.

Clause 9

2. In our opinion clause 9 should be deleted. This provision regarding the restitution of conjugal rights is another serious shortcoming of the Bill. The idea that one of the parties to the marriage being unwilling to live with the other should be forced to do so by the decision of the court is preposterous. It is inhuman and immoral to compel two people to live as husband and wife when one or both find it impossible to do so.

It was argued in support of the retention of this clause that now the court cannot force the party to abide by its decree, the only penal provision being the attachment of the property, if any, of the offending party. But this is also coercion in another form and no less objectionable than an open and direct form of coercion.

Another argument in favour of retaining the clause was that failure to comply with a decree of restitution of conjugal rights has

been provided as a ground for divorce and this offers a more dignified way of obtaining a dissolution of marriage. But we fail to find any reasonableness in this argument. If it is agreed that the other grounds for divorce or most of them involve the washing of domestic dirty linen in court and it is preferable if that can be avoided in that case it would be far better and straightforward to provide that refusal by either party to a marriage to live with the other for a given period should be a ground first for judicial separation and later for divorce. We actually suggested this amendment in clause 11. There need not be any apprehension that acceptance of this amendment will lead to easy dissolution of marriages or to coercion of the wife by the husband to obtain divorce. The procedure will be first a petition for judicial separation and if the court passes that decree then only two years after that a petition for divorce can be presented. In all the stages of the proceeding the court will have ample opportunity to try for reconciliation between the parties or to see whether there has been coercion on the wife or not.

Clause 10

3. The Joint Committee has incorporated a self-contained definition of cruelty in clause 10. This was accepted after a prolonged discussion. But in our opinion this definition leaves entirely out of consideration mental cruelty which is no less intolerable and injurious than physical cruelty. The said definition is no doubt wider than that in the Bill presented before the Committee. But we think that instead of trying to definite the conditions where cruelty would be a ground it would be better to keep it as cruelty without definitions and leave it to the court to decide upon the nature and effect of cruelty.

Clauses 24 and 25

4. We are strongly opposed to the changes made in clauses 24 and 25 by the Committee. We hold that this will defeat the very purpose of the Bill. The vast majority of our women are economically dependent on men and in an inferior position. It is this condition which is one of the main reasons why women have to put up with any indignities and hardships in marriage. Only when the right to work and living wage is guaranteed to women and is in vogue for the vast majority of them, only when women are given the right to inherit equal share of property that the question of making man and woman equally responsible for the payment of alimony can be reasonably considered. Otherwise it is futile to argue on the basis of a few select among women having big independent incomes. Moreover, it should be borne in mind that in no other country alimony is payable by the woman. In fact the word alimony means that the man has to pay for the maintenance of the woman.

5. In clause 25 we desire that the word "chaste" be deleted and a more specific adjective such as leading "an adulterous life" or at least "has committed adultery" should be substituted. Because it is easy to give a woman a bad name especially to one who is a divorcee in our society and it will be easy for men thus to get out of economic commitments. That loophole being kept open for men will also defeat the purpose of the Bill in many cases.

Clause 26

6. In clause 26 we are of the opinion that it should be clearly laid down that the mother should have the custody of the children upto the age of 12 years except in circumstances where she is unsuited for the purpose, namely, where she is insane or where the court considers it morally harmful for the children to stay with the mother. After the children completing 12 years of age the custody question should be settled in conformity with the wishes of the children. We wish to emphasize that the question of the custody of the children is of utmost importance and it is generally used by men as the greatest stick to beat the women with. What has a woman left in her life when she is deprived also of her children. There were cases where the woman being economically dependent pressure was brought upon her and the children were taken away. We want clearly to prevent such incidents.

There are some other clauses also where we do not entirely agree with the majority of the Joint Committee. Our point of view is given below.

Clause 5

Sub-clause (iii).—Though we are not in favour of child marriages we think that under the present conditions in the country the raising of the age limit will be to a great extent unreal and will unnecessarily restrict the scope of the Bill.

In sub-clause (vi) we feel that with the raising of the age limit of the bride the provision for the consent of the guardian is unnecessary and will create complications.

Clause 10

Sub-clause (1) (c).—In this sub-section the Committee has added the words "virulent form of" before "leprosy or venereal disease". We do not agree to this. Leprosy and venereal disease, apart from the question of being in a virulent form or not, are such loathsome diseases that one should not be compelled against one's wishes to live with the other party under such circumstances. It should not be forgotten that the provisions are only permissive. If one is quite willing to put up with the other party nothing prevents him or her from doing so.

Sub-clause (1)(d).—In our opinion the other party being continuously of unsound mind for a period of not less than one year should be a ground for judicial separation.

Clause 12

The proviso at the end of sub-clause (1) should be omitted or at least the time limit should be extended. Because one year is too short a period for many people, particularly those living in the villages to come to know of the provisions of this piece of legislation. When it is intended to give relief under these circumstances, that intention will be largely defeated by prescribing such a short period for the presentation of the petition.

Clause 13

In sub-clause (iii) the word "incurably" before the words "of unsound mind" should be omitted. The word "incurably" is a very vague and wide term and thus will give rise to unnecessary complications.

In sub-clause (iv) the words "a virulent and incurable form of" before the word "leprosy" should be deleted. The reasons for this suggestion have already been explained elsewhere.

The following new sub-clauses should also be inserted:—

(x) has deserted the petitioner for a period of at least three years immediately preceding the presentation of the petition; or

(xi) has since the solemnisation of the marriage treated the petitioner with cruelty.

These grounds are included in those for judicial separation. So there can be no objection to the grounds as such. We do not agree with the majority view of the Committee that it is neither necessary nor desirable that grounds for judicial separation and grounds for divorce should be identical. We fail to appreciate how the high ideals of Hindu marriage will be lowered if these grounds are also included in those of divorce.

Clause 16

In the proviso the period during which remarriage is not permitted should be reduced from one year to six months. The idea behind the proviso is that there should not be indecent haste in remarriage after obtaining a decree for divorce. In our opinion six months period is sufficient for the purpose.

Clause 23

In sub-clause (1)(b) the word "condoned" should be deleted. Sub-clause (1)(c) should be deleted.

The following sub-clause should be inserted:—

"(e) where the respondent to the petition under this Act is a woman and at the time of the hearing of the petition she is in an advanced stage of pregnancy the court shall, if required by the respondent, adjourn the hearing until one month after she is confined."

This proviso is necessary from the consideration of the health and peace of mind of the would be mother.

RENU CHAKRAVARTTY.

BIJOY C. DAS.

S. N. MAZUMDAR.

NEW DELHI;

The 25th November 1954.

Hindu marriage is an institution of enormous antiquity, which has well stood the test of time. The present Bill seeks to superimpose certain features upon the traditional and time honoured texts on Hindu Marriage Law; hence the controversy over some of its provisions.

But my opposition to this Bill does not arise out of the fact that Hindu Marriage Law is ancient; therefore it should not be transgressed. Law is the codified norms of a society in a given context of time. As the time changes, the society also undergoes change, old norms give place to new and therefore the law also must change. Nor I take exception to monogamy, which was the approved rule in Hindu society, even though polygamy existed to some extent.* Monogamy is the story of the progress of the elemental man from the darkness of the paleolithic caves to the hearths of a family home. Therefore no one should take exception to the provision of monogamy, which the present Bill seeks to enforce statutorily. Nor divorce is a provision which the present Bill seeks to introduce for the first time. To the utter chagrin of Manu, according to Kautilya's "Arthashastra" (c. 300 B.C.) while marriages contracted in accordance with approved forms, could not be dissolved, divorce could in certain cases be obtained by the husband or the wife, if they had married in the unapproved form; as for example in the Asura form.† Furthermore, in case of "*Nashte mrite, prabrajite, klibe cha patite patau*", a wife could remarry after divorcing her former husband. The present Bill seeks only to enlarge the scope of application of divorce, which is perhaps well warranted under the stress of changed circumstances.

Hindu Law was never static or orthodox, which can be borne out by the fact that the Hindu Law givers recognised the validity of a Gandharva form of marriage based on mutual lustful admiration on an equal par with the Brahma form of marriage with nobler values as its basis. Therefore I have not much quarrel with the provision of Divorce, statutorily, as a legal provision, though I certainly differ from it, from a sociologist's point of view.

In countries like the United States of America, the United Kingdom and many other European countries, divorce has so completely disrupted the stability of marriage and family that marriage reform in those countries is being contemplated on the lines of remaking marriage instead of breaking it by divorce. It has been pointed out by reliable statistics that divorce is alarmingly on the increase, since the termination of World War II and in one of these statistics it has been claimed that by 1975, one may expect that 50 per cent. of marriages will end in divorce.‡ In recent times numerous books

* Chap. IV, para. 62, Mayne on Hindu Law and Usages. (11th Ed.).

‡ The Remaking of Marriage instead of Divorce, by Roman Pretzel.

† Arthashastra, III. 3. Shamsastri, 191.

have been published in America and elsewhere on the theme that divorce is not the final answer to the problem of unhappy marriage.*

Years ago Roman Rolland said:—

“The solution India has given to the problem of women, the family, love and of marriage is indeed grand.”

Frederic Pincot said:—

“Everything tending to the peace and well-being has been long since reduced by the Hindus to well-ordered rules. We have very little to teach them in matters of social philosophy. Any introduction among them of our crude ideas can only result in mischief and tend to bring the Hindus to the same chaotic scramble of antagonistic interests which is the characteristic of our own disgraceful muddle. All parties are unanimous in opinion that Hindu married life is an exceptionally happy state and that is the clearest proof of the excellence of the system and the severest condemnation of those who are seeking to unsettle it.”

Another writer Benet said:—

“The whole social system of the Hindus postulates exceptional integrity.”

At the same time I do concede, Hindu marriage though a sacrament is also a civil contract, which takes the form of a gift in ‘Brahma’, a sale in the ‘Asura’ and an agreement in the ‘Gandharva’† forms of marriages. Therefore the right of either party to terminate a contract of marriage by a writ of divorce is legally and juristically irresistible. Only future will show if marriage reform by divorce will mend marriage or end it.

But my main opposition to this Bill emerges out of the fact that the Hindu Marriage and Divorce Bill seeks to discriminate one community of citizens against another and hence is repugnant to the very secular spirit of the Indian Constitution.

Art. 44 provides “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” If there is to be national consolidation for all, there should be a uniform personal law for all, in secular India. If personal law of the various sections and communities of people in India is different, it emphasises that each section or community is different from the other and it definitely hinders the process of unification. Therefore, instead of a Hindu Marriage Law, a Muslim Marriage Law or a Special Marriage Law, a uniform Marriage Law should have been enacted for the citizens of India as a whole.

* It is not possible within the restricted scope of a Minute of Dissent to discuss those authorities. “Unhappy Marriage and Divorce”, by Edmund Bergler, M.D. (New York International Universities Press) and “Marriage Is On Trial”, by Judge John A. Sbarbaro (New York, Macmillan) are two such works which may be profitably persued by those interested in the subject.

† Muthuswami Mudaliar V. Masilamani (1910) 33, Mad. 342, 355.

Arts. 5—11 of the Constitution lay down the definition of a citizen of India. According to these Articles a Muslim is as good a citizen of India as a Hindu.

Art. 15(1) of the Constitution proclaims "The State shall not discriminate against *any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

It does not require much advocacy to establish that the present Bill seeks to discriminate against the Hindus—or precisely speaking that particular class of Hindus who had deep emotional faith in indissoluble marriage tie and who were epicurean enough to accept polygamy—on grounds only of RELIGION. If polygamy is bad it must be declared so for the citizens of India as a whole. If divorce is worthwhile it must be provided for all classes of citizens in India. Even the Hindus of Jammu and Kashmir who are fullfledged citizens of India will not come under the provisions of this piece of legislation. Therefore to sum up, the Hindu Marriage and Divorce Bill not only discriminates against a community of citizens on grounds "ONLY OF RELIGION" but also on the ground, of "PLACE OF BIRTH". Therefore I venture to think that this piece of legislation is retrograde in spirit and is *ultra vires* of Art. 15(1) of the Constitution. Thus the very rationale of marriage reform in India is taken away by the discriminative conception of the present Bill.

Now I wish to refer briefly to some points which I have not been able to see eye to eye with the Committee and also where I feel that sufficient consideration has not been given to some important aspects.

Clause 8

In view of sub-clauses (2) and (5) this clause seems unnecessary and irrelevant. Taking into account the general illiteracy and ignorance of the laws of the land, prevailing in our countryside the provision for registration of Hindu marriages, will prove irksome and harsh for the people. Its deletion will not materially affect the Bill either in construction or in principle.

Clause 9

Restitution of conjugal rights smacks of eighteenth century approach to the problem of unhappy marriage. It is true the court with its well developed social conscience may lead an unwilling horse to the water, but it can never force the horse to drink. The Government will be well advised to delete it.

Clause 13

The underlying principle of the clauses on nullity of marriage and divorce is to exempt pre-Act marriages from the operation of this Bill. It has received well merited recognition in clauses 11 and 12. Similarly, clause 13 should have been so drafted as to leave pre-Act marriages outside the scope of its application. There is no gainsaying the fact that if this clause is given retrospective effect it will result in the disruption of many a home and family.

Clause 14 and 15

Countries where divorce is permitted by law, the provisions for divorce are so stringent that in extreme cases only, marriage disputes are carried to the courts for dissolution by a decree of divorce; for remaking of marriage by psychological adjustment is more desirable than breaking of marriage by divorce. After all monogamy with easy divorce is riotous polygamy on instalments.

Even the Marriage Laws of the Union of Soviet Socialist Republics which are said to be very humane, liberal and progressive, in Art. 19 (a) of the Code of Laws on Marriage imposes a fee of 100 rubles for merely presenting a petition for divorce. After a divorce is granted the court imposes a further fee of 500 to 2000 rubles to be paid by one or both spouses, according to the discretion of the court for recording the decree. (*Vide* Art. 138, *ibid*). The whole idea is to make divorce as rare and as difficult as possible for the stability of family and society. With that end in view the following suggestions may be examined:—

(a) It shall not be competent for any court to entertain any petition for dissolution of marriage by a decree of divorce unless at the date of the presentation of the petition five years have elapsed since the date of marriage. Relaxation may be made only in cases of extreme hardship as contemplated in the proviso to sub-clause (i).

(b) In the proviso to clause 15 “three years” may be substituted for “one year”.

(c) Suitable fees may be prescribed for presenting a petition for divorce and then for recording a decree of divorce.

Clause 19

Even among 80 per cent. of India's Hindu population—in the so-called lower classes—divorce was well recognised and practised. The village elders decided marriage disputes and granted divorce since time immemorial.

The procedure was simple and unexpensive. But the clause under reference empowers the district court only to entertain every petition under this Act. In consequence it leaves millions of poor people harassed with marital difficulties to the tender mercies of “Marriage Lawyers”—who will thrive henceforth on broken hearts—and the expensive protracted proceedings of a civil court. Nothing could be more detrimental to popular interests than this. The clause needs suitable amendment to avoid such contingencies.

SURENDRA MAHANTY.

CUTTACK—2;

The 23rd November, 1954.

VII

Clause 24

I disagree with the decision of the Joint Committee—that women also should pay maintenance *pendente lite* and expenses of proceedings.

The woman should not be called upon to pay *pendente lite* expenses. In many cases she may not be in a position to pay at all. On top of being driven from her husband's protection, if she has to pay, it would indeed become very difficult for her.

Clause 25

In regard to clause 25, I would like to say that when divorce is sought by the wife on grounds of any illness *e.g.*, leprosy, lunacy idiocy, etc., surely, the wife should pay whatever she can, for the treatment of her husband, or for his looking after, as the case may be.

Having enjoyed his house, protection and all amenities if the husband is suddenly struck with lunacy, or leprosy, is it not inhuman and unwomanly to leave him without some compensation, whatever that may be? It is quite understandable that the wife may find it impossible, or even dangerous to live with the husband; it is even understandable that she may seek to build her life again; but surely all tenets of fairness and decency demand that she at least does whatever she can to the best of her ability in such circumstances. I would strongly recommend that a clause specifying this provision should be added after clause 25.

ILA PAL CHOUDHURI,

NEW DELHI;

The 25th November, 1954.

VIII

A great deal of thought has been given to the provisions of this Bill by the Joint Committee. But in my opinion, a few matters require reconsideration although there is no necessity to defer the measure for this reason.

Clause 24

The first one relates to clause 24 by which a new principle has been incorporated in the marriage and divorce laws of this country, namely, that alimony shall be payable under certain conditions, by not only the husband but also the wife. This appears to me to be repugnant to the well accepted canons of jurisprudence in respect of this matter.

Clause 13

2. In regard to clause 13 dealing with the conditions under which a marriage can be dissolved, the first ground laid down under sub-clause (i) is "leading an adulterous life". It appears to me to be quite unnecessary to change the phraseology adopted for the purposes of judicial separation. Under sub-clause (e) of clause 10 judicial separation can be obtained on the proof that the party complained against has had sexual intercourse with any person other than his or her spouse. The need to prove that the guilty party is leading an adulterous life appears to me to be quite unnecessary.

3. Again, under sub-clause (5) of clause 13 it is stated that a divorce can be had on the ground that for not less than three years immediately preceding the presentation of the petition the guilty party has been suffering from venereal disease in an incurable form

I suggest that this proposition is completely divorced from the realities of the situation. In present conditions venereal disease which is a most loathsome disease is quickly curable under the new techniques available to medical science, whereas formerly syphilis took two or more years to be brought under complete control, this is not the situation today. Hence sub-clause (v) will remain a dead-letter. Instead I suggest that the contraction of venereal disease should form a ground for a petition for divorce. Similarly, in the provisions relating to judicial separation, namely, sub-clause (c) of clause 10, the period of one year should be eliminated and the mere fact of the contraction of venereal disease not necessarily in a virulent form (which has no meaning) should form the basis for a petition for judicial separation.

4. This is a progressive measure which will effect the necessary adjustment in social matters amongst those sections of the Hindu community which are not governed by custom or by special State legislation and are unable to obtain relief in the matter of judicial separation or divorce. It does not provide all that is desired by progressive-minded people who feel that the Hindu society, in order to remain vigorous, has to adjust itself to changing circumstances; but this is a trial that is being given to the adoption of a general system of divorce and judicial separation applicable to all Hindus. As such it is a most desirable measure and will, no doubt, lead to further legislation after a period of trial in which its efficacy will be considered and measured. Hinduism has always been tolerant—a way of life which has accommodated the extremes of religious philosophy from the atheists on the one side to the believers of many gods on the other. Its philosophy has a multitude of variations unknown to any other great religion. This spirit of tolerance should govern the notions of those who advocate what they call, an orthodox view. In order that the Hindu society may not disintegrate, whenever rules and injunctions became ossified, custom generally came to the rescue of this society and permitted what the strict injunction of the law did not. Hence it was that the system of divorce amongst many communities grew up and was recognised by and had the force of the law. What is being done now is the taking of a positive step towards progress in order that the dangers to which Hindu society is exposed may be avoided. The progress to be achieved should keep in step with the altered conditions of society in which we live today. This is the great justification for the measure as it emerges from the deliberations of the Joint Committee.

DIWAN CHAMAN LALL.

NEW DELHI;

The 25th November, 1954.

IX

I have to submit the following note of dissent in respect of the Hindu Marriage and Divorce Bill:—

Clause 5

The insignificant position which the Hindu widow occupies must call for some relief to her in dealing with the problem of marriage. At present in Hindu society it is very common for widowers of advanced age to marry virgins, even of 15 years of age, and this

necessarily leads to unequal marriages and ends consequently in unhappiness, divorce and disruption of family life. Furthermore, the stigma attached to remarriages by Hindu widows continues in spite of legislation. It will, therefore, be desirable to make a provision in this Act that, a Hindu widower shall not be permitted to marry a virgin but must marry a widow. Such a provision will advance the movement for remarriage of Hindu widows which has been the subject of legislation but has hardly advanced the cause. It will remove the stigma attached to remarriage by Hindu widows and will do away with unequal marriages. The age ratio between the remarrying widow and the widower may also be fixed as it is fixed in sub-clause (iii) of clause 5.

Clause 13

The right of divorce which is provided under this Bill is a new and untried weapon. The age-old propensity of Hindu males to tyrannize over the females must make this right a very unsafe weapon in their hands. The principle of equality, therefore, would find no place in the provision of this right. The correct principle would be the grant of relief to the Hindu woman suffering under the tyranny of the Hindu male. I am, therefore, convinced that at least for a limited period of time the right to claim divorce should be given only to the wife and not to the husband. There is every likelihood of the right being misused if it is given to the husband, and the experience of all the past centuries of the attitude of the Hindu male to the Hindu female must not be lightly disregarded. On the other hand, the Hindu wife is not likely to abuse this right and will use it cautiously due to her deep regard for moral and spiritual values, her love of children and family, and also her economic dependence.

Looked at from this point of view, any argument based on alleged discrimination between man and woman will vanish.

I, therefore, suggest that clause 13 should be suitably amended so as to provide the right to present a petition of divorce only to the wife and not to the husband. This may be done for a limited period, say for ten years, at the end of which the position may be reviewed and suitable amendments made, if found necessary.

It is also necessary in my view to provide a right of divorce to all the wives of polygamous marriages which took place before the commencement of this Act. It is argued that all such previous polygamous marriages should be saved in the interests of the family. This, however, is not a correct approach. Every wife added by the Hindu husband must cause great unhappiness to the one who is discarded and all such wives must have a right to free themselves from the bond of marriage if they desire so to do. This principle has been recognized in the State of Bombay under the Bombay Hindu Divorce Act, 1947, and it is difficult to imagine why it should not be recognized in this Bill. It is said that in any case such a right should not be given to the last wife because, she married with open eyes and with full knowledge that her husband had previous wives. This, however, overlooks the dependent position of the Hindu woman who when pressed or forced by the father or other guardian will have little choice left but to enter into the proposed polygamous marriage. Under such pressure or force very young Hindu women have been

known to have married men almost on the point of entering their graves. The argument, therefore, must lose all its validity. I suggest, therefore, that this principle should be recognized and provided for in clause 13.

Clauses 24 and 25

It was suggested in the Committee that the right of claiming alimony from the wife should also be provided in these clauses, and the principle was accepted by the Committee.

I record my very strong protest against this attempt to give a right to Hindu husbands to claim alimony from the divorced wife. Such a provision is not made, so far as I know, in any of the Western Codes. The Western Codes proceed on the principle that, on a divorce it is the wife who in the vast majority of cases is likely to need financial help and not the husband. To provide in this Bill, therefore, that a divorced husband should have a right to claim alimony from his wife would, apart from being sensational, also be a disgrace to the Hindu manhood. The attempted alteration seems to proceed on the assumption that man and woman have an equal status which is not a fact. The Hindu woman at present occupies a much inferior status in society and is in a position of economic dependence which is not the case with the Hindu man. Any question, therefore, of economic equality in such a matter must be left out.

I am, therefore, opposed to this recommendation.

I am also of the view that the grant of permanent alimony in clause 25 should not be made dependent upon the continued chastity of the wife, and accordingly the word "chastity" should be removed from that clause. Any attempt to couple the right of permanent alimony with chastity will defeat the purpose of clause 25, namely, to give relief to the wife after dissolution of the marriage. The Hindu male will not stop at making allegations of unchastity against his former wife in order to avoid the obligation of paying alimony to her. With the dominant position which man occupies in the Hindu society he will be able to concoct evidence against the wife and put her in a position in which she may not be able to procure evidence in her behalf or to meet the cost of any litigation which may ensue. The very object, therefore, of providing permanent alimony will be defeated by making chastity a condition of permanent alimony.

Besides, notions of chastity vary from community to community in India. The normal concept of chastity, therefore, may be disregarded if a particular community is able to produce evidence that according to custom an act which would not normally be regarded as one of unchastity is by custom of that community regarded as an act of unchastity and, therefore, a ground for disentitling the woman to the permanent alimony under clause 25. These difficulties should not be lightly overlooked.

Furthermore, the traditional shyness and reticence of the Hindu women in matters of chastity will be a great difficulty in the way of meeting any litigation by the husband attacking her chastity.

Clause 26

I am of the view that there should be a specific provision in this clause that the custody of all minor children shall be with the mother until each minor child completes the age of twelve years. My view is based on two considerations, namely, (1) the well-known and traditional ill-treatment of step-children in the Hindu society, and (2) psychological reasons. On both these considerations it would seem to be a sound measure to provide that the custody of minor children should be with the mother until each minor child completes twelve years of age. On a dissolution of marriage if the minor children are delivered into the custody of the man on the theory that he is the natural guardian and entitled to their custody, it is quite certain that the safety and welfare of the children will be insecure. If the father marries another wife there is every likelihood of the second wife ill-treating the children of the divorced wife. Besides, it is well known that for psychic reasons children are best left with the mother up to a certain age than with the father. The paramount consideration in these cases must be the welfare of the children, and not the punishments of the guilty spouse.

CHANDRAVATI LAKHANPAL.

NEW DELHI;

The 25th November, 1954.

X

It is desirable to have one uniform Marriage Law for the whole of the country. The Special Marriage Act of 1954 was a step in the right direction. Section 15 of the Special Marriage Act gives right to persons who have contracted marriages *in other forms*, to get their marriages registered under that Act. The "Progressive" element of the Hindu Society can take advantage of this Section. Now there seems hardly any necessity, at least immediate, to get the Hindu Marriage and Divorce Bill placed on the Statute Book. At a more favourable and convenient opportunity a uniform marriage law for all communities irrespective of religion, may be introduced. In consistent with our profession of secularism the Hindu community alone should not have been singled out for such reforms against the age long customs and usages.

We do not agree with those who say that the Hindu society has become static. We see it changing with the times, polygamy is greatly disfavoured these days. One can find very few cases of polygamous marriages, and the monogamy is fast becoming the rule of the society.

The opinion in favour of child widow marriage is crystallizing. Even in those clauses where widow marriage is a taboo, opinion in favour of child widow marriage is gaining ground. Customs and rites change slowly. A rude shock may disintegrate the whole society.

It is true, the system of divorce was not unknown to the Hindu society. It is still prevalent amongst a large section of the Hindus but there is a very strong and dominant section of the Hindus who consider marriages sacrosanct, and, also indissoluble even after death. This Bill is going to affect only that section. It would have been in fitness

of things to take their views on the matter. Many of the State Governments have expressed themselves against inclusion of the divorce clause in the Bill. The wishes of those for whom this law is intended should not be flouted.

Now we indicate the clauses in respect to which we could not see eye to eye with the majority of the members of the Joint Committee.

Clause 5

Sub-clause (iii).—We are in favour of retaining the original proposal whereby the marriageable ages for bride and bridegroom have been fixed at 15 years and 18 years respectively. Our view is strengthened by the breaches experienced by the Sharda Act. Even in advanced countries age of marriage has not been fixed very high.

Clause 8

For ages past, marriages in the Hindu Society have been performed according to the old rites. Seldom has there been any case where the factum of marriage has been disputed. There is no necessity nor any case for adding this innovation of registration for the Hindu marriages. Besides causing inconvenience, this will entail unnecessary expenditure. Those who consider Hindu rites obnoxious may take recourse to the Special Marriage Act. Hence we do not agree that this provision should be retained.

Clause 11

Sub-clause (2).—Besides affecting the individual relations of the parties, infringement of clauses (iv) and (v) of clause 5 is a crime against the society and the public. Even if the parties reconcile, the other members of the family or their relations should have a right to present a petition for declaring such marriages null and void.

Clause 12

Sub-clause 1.—There is no necessity for this clause. In any case pre-Act marriages should not be touched.

Sub-clause 4.—Contravention of sub-clause (iii) of section 5 should not be made a ground for voidable marriages. To annul a marriage on the ground of age will be cruel. Special punishment has been provided for the infringement of this sub-clause in clause 18.

Clause 13

Among those Hindus, in whom divorce is prevalent clause 13 will prove irksome and restrictive. They have more liberal customs. Besides, creating complications it will also involve them in expenditure.

The other section of the Hindu society, which considers divorce as irreligious, will take this clause as an affront to their religion and an undue encroachment on their religious rites. So, this clause will be disliked by both the classes of the Hindu society for different reasons. This clause should therefore, be dropped. In case this view is not accepted, the clause should be enforced at least after 5 years from the commencement of the Act. The punishments for infringement of

marriage laws has been provided in clause 18. If the punishment provided is considered to be light, stringent measures may be added.

Clauses 14 and 15

These are consequential clauses linked up with clause 13.

DWARKA NATH TIWARY.

K. M. SHAH.

(Rajmata, Tehri Garhwal).

NEW DELHI;

The 25th November 1954.

XI

Though the Bill is considerably improved as a result of the deliberations of the Joint Committee there are bound to remain differences of opinion in a measure so controversial and complicated as this. Accordingly, there are some points on which I differ from the majority of the Committee, but I do not intend to include them all in this Minute of Dissent. Here I shall confine myself only to two of the more important ones.

In Article 44, our Constitution lays down the Directive Principle of securing for the citizens a uniform civil code throughout the territory of India. No doubt, it is an ideal, difficult to attain in a country, bristling with different customs, usages and traditions in different parts of the territory, and the least we can do for its ultimate achievement is to refrain from creating and perpetuating new and unnecessary diversities. The clause 29 of the Bill maintains in force special enactments about divorce, such as the recent legislation on the subject in the States of Bombay and Madras. (The Bombay Hindu Divorce Act 1947 and the Madras Hindu Bigamy Prevention and Divorce Act 1949. I understand there is a Saurashtra Act also but as I could not secure a copy of it and therefore could not look into its provisions, I am not referring to it in this Minute.) These States—and especially Bombay—can legitimately be proud of the lead they have given to the country, but that is no reason why they should be allowed to have provisions about divorce, different from those applicable to the rest of the country. There is no reason why there should be unnecessary diversity in this matter. The main obstacle in the path of having a uniform Civil Code is that the old customs and usages have gone deep into the minds of the people and therefore, they have to be touched with great care, caution and patience. They can be modified only gradually. But that consideration does not apply here. After all the special enactments in these States introduced a new idea by way of reform, which cannot be said to have become deep rooted within the short period during which they have been in force. The Madras Act is only 5 years old and the Bombay Act older by 2 years more. The personal law of the Hindus is already over burdened with different schools and sub-schools, like Mitakshara, Dayabhag Benaras, Mithila, Madras, Bombay and Mayukh. There is no reason why new such schools should be created or perpetuated in the matter of a new reform like divorce, especially

when we are enjoined by the Constitution to aim at and strive for a uniform Civil Code, governing all the citizens of the country.

Another reason why these enactments should not be saved is that their continuance, would cause much confusion, anomaly, evasion and consequent litigation. It should be noted that the entire Bombay Act and the Madras Act are not saved, but only the divorce parts of them. Now in any such enactments provisions about void or voidable marriages, judicial separation and divorce are inter-related—in fact they are an integrated whole. We cannot take one such part of an enactment and patch it on to other parts of a different enactment without creating confusion and anomaly. An illustration of the result that will flow from the present provisions in the Bill will make this clearer. In States other than Bombay and Madras, if a husband commits a single act of adultery, his wife can, on that ground secure judicial separation first and divorce 2 years thereafter. But in Bombay and Madras States if the husband commits not only a single act of adultery but indulges in an aggravated form of marital infidelity, namely, leading an adulterous life, his wife can obtain only judicial separation and never a divorce. Is not this anomalous? Because of the entirely different system prevailing in Malabar, I would have been prepared to make an exception of the Maru Makkattayam Act, 1933. Only that Act should have been specifically mentioned in Clause 29 (2). In another clause also, the same Directive Principle of the Constitution is disregarded. The Sharda Act was a step in the right direction of framing a uniform Civil Code. In the matter of marriage age, it applied to all Indians, irrespective of their different personal laws. In view of this, there was in fact no necessity to include that point in the present Bill. But even if it was found necessary to do so in order to make this Bill complete in itself, the age limits laid down in the Sharda Act ought to have been mentioned in Clause 5 (iii). Instead a different provision is made for the Hindus only. This is obviously a retrograde step. I might be told that the Sharda Act may be brought in line with this. But the process should have been reversed. Some communities are likely to oppose raising the age of marriage and in view of the opposition I doubt how far and how soon, an attempt to amend the Sharda Act would succeed. Moreover, my objection is not based only on the ground of deviation from the principle of uniformity. I hold that to attempt at present to raise the age in the rural areas is divorced from reality. The Bill would apply as much to the teeming millions residing in the villages, as to the small educated urban section of the community. It is notorious that even the present age limits of the Sharda Act namely 15 and 18 years are widely flouted in the villages. In the circumstances, it is futile for the present to raise them further. Any social legislation, too much in advance of the public opinion in the area of its operation, defeats itself. But it is not merely futile to pass such laws. The evil result does not stop at making that particular piece of legislation, infructuous. It engenders widespread feeling of contempt for law which in its turn affects the stability and progress of the community.

B. M. GUPTE.

NEW DELHI;

The 25th November 1954.

XII

I submit my Minutes of Dissent to the Report of the Joint Committee on the Hindu Marriage and Divorce Bill.

Clause 12

1. Under the modern circumstances when solemnisation of marriages takes place between parties of fairly advanced age, I feel it is necessary to make provisions under clause 12(2) relating to voidable marriages for the following contingency when a husband finds his newly married wife pregnant, at the time of his marriage, by some person other than himself. It should be open to him to get the marriage avoided subject to the conditions noted below:—

- (a) that the husband was ignorant of this fact at the time of the marriage;
- (b) that the marital intercourse with the consent of the husband has not taken place between the parties, after the husband discovered this objectionable pregnancy; and
- (c) that the husband institutes the proceedings within a year of the date of his marriage with that wife.

2. It will be seen that such a provision is actually made in Section 25(ii) of the Special Marriage Act, 1954. A similar provision may be incorporated in this Bill.

Clause 13

3. When a petition for divorce is based on the ground that the other party is leading an adulterous life as provided under clause 13 (i) or that he has ceased to be a Hindu by conversion to another religion as under 13(ii) there is no need to compel the petitioner to wait for a period of 3 years before he files a petition. The proviso to the clause is unnecessarily restrictive. Exemption is to be provided in the clause itself to cover the cases.

K. S. RAGHAVACHARI.

NEW DELHI;

The 25th November 1954.

XIII

I regret it is not possible for me to agree to certain aspects of changes made in the Hindu Law of marriage by this Bill. The fundamental points of difference between me and the Committee are on the clauses noted below:—

Clause 3

2. *Sub-clauses (f) and (g).—Sapinda relationship and degrees of prohibited relationship.*—Under the Hindu Law as it exists today marriage between persons related to each other within seven degrees from the father's side, or within 5 degrees from the mother's side, are prohibited, but according to the change suggested by the Bill sapinda

relationship is defined to mean a relationship which extends only to five degrees on the father's side and to 3 degrees on the mother's side. What is worst is that the degree of relationship is to be reckoned inclusive of the persons marrying thus virtually reducing the *sapinda* relationship only to 4 degrees (exclusive) from the father's side and 2 degrees (exclusive) from the mother's side.

As we are all aware close relationship marriages among the Hindus for ages past have been forbidden and are against the Hindu sentiment and tradition and it is for this reason that such marriages amongst them are almost unknown. To permit closer marriages under the Bill will not only give a rude shock to the Hindu society in general throughout the land but will also deeply hurt their age old sentiments. Moreover, as we are all aware, close breeding is physiologically bad and leads to the deterioration of stock. This conclusion has been arrived at from the experiments which have been made on close breeding amongst animals and from a study of observations on the human races where close relationship marriages are permissible.

I am, therefore, definitely of the view that not only is such a change not needed amongst the Hindus but also that it is fraught with danger to the health and vitality of the generations to come. If at all this change has been deemed necessary in order to benefit the infinitesimal few who marry in close relationship amongst the Hindus then my answer is that such persons can marry under the Special Marriage Act and take advantage of this provision and as such no change need have been made in the Hindu Law.

I am further of the view that if at all this amendment is made then the relationship should be reckoned exclusive of the persons marrying, and not inclusive as provided in the Bill, since to me close relationship marriage not only seems undesirable but obnoxious and repugnant to the best interest of the Hindu family ties and the preservation of the morality, culture and decency of its homes.

Clause 5

3. *Sub-clause (iii).*—The age of sixteen years fixed for the marriage of a girl according to me is rather low and the disparity of age fixed between the two parties is greater than is desirable. I am of the opinion that the age fixed for a girl's marriage should be raised from 16 years to 18 years, not only with a view to bring the ages of the parties to the marriage nearer but also to reduce to a certain extent the growth of population in our country and to enable the girl to complete her education and to reach full maturity for undertaking the responsibilities of motherhood.

Clause 7

4. *Ceremonies for a Hindu marriage.*—I am of the view that marriage under the Bill besides being allowed to be solemnized by customary rites and ceremonies of either party, may also be permitted to be solemnized by registration, where the parties so desire, with a view to simplifying its procedure and to making it less cumbersome and expensive. Such a procedure would have been welcomed by the progressive elements of the society who desired to

get rid of the priestly class in the performance of our Hindu marriages. I am sorry the Committee did not accept this proposal as in its view persons who desired the solemnization of marriage by registration could do so by taking advantage of the Special Marriage Act, but to my mind this is no argument, specially if we bear in mind that marriage under the Special Marriage Act entails compulsory severance from the joint family which is a hitch in the way of many couples for solemnization of their marriage under the said Act.

Clauses 10 and 13

5. *Judicial separation and divorce.*—I am of the opinion that the provisions of judicial separation and divorce be not given effect to retrospectively under the Bill as it would mean giving a handle to those husbands and wives to separate who have for good, or for bad, lived their lives together for years before the passing of the Act.

6. However, to give relief to those unfortunate cases, where the parties, for the fault of one or the other, are virtually living separate, or where, although they be living under a common roof are yet leading a miserable life, I suggest that so far as pre-Act marriages are concerned, the Act be given effect to retrospectively only on grounds of:—

- (a) cruelty, or
- (b) desertion.

7. As a further measure of relief to young couples, who have been married for 5 years or so, previous to the passing of this Act. The part of their married life, I am willing to concede that the Act as a whole may be allowed to be taken benefit of by persons who are married for 5 years or so, previous to the passing of this Act. The Committee however did not accept my suggestions.

Clause 11

8. *Sub-clause (1)—Void Marriages.*—Under this sub-clause, I am of the view, that marriage should also be declared null and void, on the ground that the parties were the *sapindas* of each other. This condition was to my mind necessary because under sub-clause (v) of clause 5 it has been provided as an essential condition for a Hindu marriage that the parties should not be *sapindas* of each other and it follows as a necessary consequence that when this provision is disregarded by the parties their marriage should be declared annulled, as is done in the case of marriages within the prohibited degrees, because by not placing this condition for declaration of nullity of such marriages that sub-clause will become meaningless in practice, as there is no penalty for its violation.

Clause 12

9. *Sub-clause (1).*—For the reasons indicated in paragraph 4 above, I am of the view that sub-clause (1) of this clause should, as a whole, be deleted and that under grounds (a) and (b) no decree for invalidity of marriage be granted to those whose marriages were solemnized before the passing of this Act. Even though the disabilities mentioned under this clause be found to exist in any of the parties to a marriage solemnized before the passing

of this Act yet since the parties have lived together inspite of these disabilities, for a number of years there seems no reason to disturb such marriages after the passing of this Act.

Clause 13

10. *Petition for decree of divorce.*—When we are introducing the system of divorce in the Hindu society the most essential grounds, according to me, upon which a decree for divorce should be granted are:—

- (a) cruelty; or
- (b) desertion for a continuous period of over one year; or
- (c) adulterous conduct of either party after a marriage.

11. These grounds being suggested in addition to those already set out under the various sub-clauses of this clause. Cases of great hardship are not wanting where the husband or the wife on account of one, or the other, of the grounds suggested above has made the life of the other partner miserable and in these cases I consider immediate relief to the innocent party by a dissolution of his or her marriage is absolutely necessary and to disentitle him or her, from obtaining a decree of divorce seems most unfair. There is no point in asking such persons to first obtain a judicial separation and thereafter wait for a further period of two years to entitle him, or her, to get a decree for divorce. In this connection the Committee was of the view that grounds for divorce should not be the same as those for judicial separation and as such it did not accept my suggestion. In my view, as indicated above, these grounds are the most essential grounds for providing relief to the many in our society who are victims to these wrongs.

Clause 14

12. *Period after which petition for divorce can be presented.*—Under this clause I am of the view that the period of three years provided in the clause within which a party to the marriage can not apply for divorce, was too long a period for which the aggrieved party was being made to wait before applying for the desired relief. I had suggested that this period be reduced to one year only which, according to me, was sufficiently long a period to bring about good relations between the parties where they found themselves unable to live together soon after their marriage. The good offices of relations and friends to bring the parties together is also usually exhausted within a year's time after the marriage falls off and as such no real good is likely to be served by compelling the suffering party to wait for three years till after the marriage.

Clauses 24 and 25

Alimony pendente lite and permanent.—Under these clauses the husband has also become entitled to claim alimony from the wife. This addition is not self-respecting for a husband and I am of the view that no such alimony be granted to the husband, unless he is physically unable to work and cannot for that reason support and

maintain himself. With the exception of these observations I agree with the rest of the Report of the Committee.

SHAM SUNDER NARAIN TANKHA.

NEW DELHI;

The 25th November 1954.

XIV

That the present Bill is the first instalment of the old Hindu Code Bill was made clear by the Hon'ble the Minister for Law while recommending the Bill for reference to the Joint Committee of the Houses of Parliament. That the Hindu Code Bill was before the Hindu public of India for the last decade and the Legislatures could not put it on the Statute Book on account of vehement opposition of the Hindu masses, is also as clear as day light.

The present instalment, i.e., the Hindu Marriage and Divorce Bill is also sought to be thrust on the unwilling masses. The two main features of the present Bill, namely, monogamy and divorce have been related to each other in sequence of cause and effect and that is why the evils of divorce have practically eliminated whatever good there was in monogamy, which is prevalent as a rule of practice in the Hindu community as a whole. It is a pity that not only the sentiments of the Hindu masses, especially those of Hindu women but also interests of the people have been voluntarily ignored. The ideals of Hindu marriage and sanctity attached to it by the Hindus from times immemorial have been absolutely disregarded and the Hindu Shastras have been definitely set at naught by the present Bill. I am really pained to note that not a single provision of this Bill can do any good to the Hindu community, but can, on the other hand, be a radical source of disruption of the Hindu hearth and home and thereby the whole of the society.

While fully alive to the constitutional jurisdiction of the Indian Parliament to legislate on all matters concerning the citizens of India, I am not in favour of the interference by a secular State into the religious and socio-religious affairs of one single community, i.e., Hindus alone, especially in teeth of opposition from the Hindu masses, preceptors, acharayas and religious heads of all sects of the Hindus. It is for the first time in the history of India and especially the most unfortunate event after attainment of Swarajya, that the Hindu texts of law, *Shruti*, *Smriti* and other legal treatises are cut off from the social lives of the Hindus.

The territorial jurisdiction of the Bill extends only to the territories of India and hence a gulf created between the Hindus of India and

those outside its territories, e.g., Kashmir, Portugese pockets in India, Ceylon or other countries of the world. Even the Hindus of Jammu and Kashmir will be governed differently from the Indian Hindus. The Bill instead of bringing about uniformity will be a source of diversity and disruption.

According to the orthodox school of Hindu thought the original source of the Hindu Law is the eternal word, the Vedas, that are unaltered and unalterable even in cycles of creations and destructions of this universe. There are main four sources of Dharma Law, *Shruti*, *Smriti*, immemorial traditions (*Sadachar*) and the dictates of conscience, each subsequent being subservient to its antecedent in point of preference and authority. It is an erroneous view brought out by Western scholars of Indian literature that the *Shastras* have been changing from time to time. In reality it is the *Shruti* alone that is the final and self-evident authority by itself, all other sources derive their authority from the Vedas and as such whatever interpretation be put on the different texts of *Smritis* and *Nibandhas* has according to different times and climes, they must all conform to the commandments of *Shruti*, express or implied. The seeming contradictions and contrites in texts are therefore, explained only on the *Mimansa* rule of interpretation and not on the Westerly historical mode which is mostly external and superfluous. The present Bill is not only opposed to the orthodox or *Shastric* points of view, but is also opposed to the so-called liberal interpretation of the *Shastras*. All rules of *Varna-Ashram*, *Sapinda*, *Sagotra* or even sanctity of the Hindu marriage are finished once for all. It is also untrue to say that the Bill is mostly of a permissive nature. Monogamy having been made an inevitable rule of law, it brings along with it a train of consequences including divorce, accusations of disease, character, imprisonment, etc. I had, therefore, suggested that if the sponsors of the Bill were really sincere and wanted to keep it permissive, let them make it optional as well. If a person wanted to discard the age old traditions and the *Dharmashastras*, he was at liberty to get his marriage registered under this Bill and Special Marriage Act and thus receive all the so-called benefits under them. But those who wanted to abide by their *Shastras* and traditions, let them have freedom enough in their own sphere. But this suggestion was not accepted. I am, therefore, constrained to put in my note of dissent mostly on matters of principle in general as also regarding the following points in particular. I further believe that if Government sincerely intend to make the Bill acceptable to the masses, they should invite a conference of scholars, religious heads, *acharyas* of all the sects and denominations in the Hindu community as well as lawyers of eminent repute to discuss and come to some definite conclusions.

Clause 1

1. Sub-clause (1).—The words 'And Divorce' be deleted.

2. In sub-clause (2) the words 'except the State of Jammu and Kashmir' be deleted.

Clause 2

3. The following proviso be inserted after sub-clause (1)(c) of clause 2:—

‘Provided that a person or persons intending to be governed by this Act shall make a declaration to this effect before a competent authority at the time of marriage’.

Clause 3

4. *Definitions.*—Sub-clause (d) be deleted as Hindu Law recognises no uterine relationship.

5. In sub-clause (f) substitute the word ‘fifth’ for the word ‘third’ in line 2 and the word ‘seventh’ for the word ‘fifth’ in line 3 of the said sub-clause. The present definition is altogether arbitrary. Similarly, degrees of prohibited relationship are also arbitrary, many of the important relations are excluded. The affinity of blood in *Sagotra* and the *Sapinda* relationship beyond third degree on the mother’s side and beyond fifth degree on the father’s side are also left out. Similarly, illegitimate relationship is practically no relation according to the Hindu notions of relationship.

Clause 4

6. *Over riding effect of Act.*—Sub-clause (a) is a fatal attack on the Hindu religion by striking away all the Hindu *Shastras*. Even from a reformist point of view, if the present Bill was taken to be the best interpretation of the Hindu text books on law, the authority of the original texts, that remained unimpaired even under Muslim rule or the British regime, has been finished. The *Shastras* can help the society in times of misery even after these Bills and enactments are no more existing.

Clause 5

7. *Conditions for a Hindu marriage* are again arbitrary and admixture of various social ideologies.

(i) the so-called monogamy is only a misnomer for a regularly unprincipled polygamy and polyandry, as both the men and women are permitted to divorce and remarry even hundred times. It is not the ideal Hindu monogamy as was practised by Rama, who never thought of a second wife after Sita was banished and unheard of. The greatest harm it will do is to block the door for a second marriage even when there is no male issue in the family and the wife is agreeable to a second marriage of her husband. It may also leave a loophole for conversion to Mohamadanism where a man could marry four wives without divorcing any one.

(ii) Unsoundness of mind is by itself neither hereditary nor incurable and hence it should not be made an absolute bar to the solemnisation of a Hindu marriage.

(iii) The question of age would create a lot of discontent and persecution as the Bill if, and when enacted is going to apply throughout the length and breadth of India where still the marriages will

be performed before the prescribed age limits. The idea of post puberty marriages is in direct conflict with the Hindu texts on marriage.

(iv) For the purposes of consent of guardian the age must be raised to twenty-one years so as to avoid any danger of raw experience to the girl.

Clause 6

8. *Guardianship in Marriage*.—In sub-clause (c) paternal grandfather be placed before mother where the family is undivided and maternal grandfather and maternal uncle be added after paternal uncle as they have to play a very important role in marriage especially of a girl and sometimes they have to bear practically all the costs of marriage.

Clause 7

9. This clause is simply misleading for the Hindu masses. All authority of *Shastras* having been taken away, the ceremonies are also not made binding but only optional. Again the words in sub-clause (2), "the marriage becomes complete and binding when the seventh step is taken" are also misleading, as the divorce is permitted even in such cases. No divorce has ever been permitted in "*Brahma*" marriage by the Hindu texts. Even Kautilya in his *Arthashastra* clearly lays down "No divorce in *Dharmic* forms of marriage. अविमोक्षो घर्मं विवाहानाम् ।"

Clause 8

10. This clause is intended to take away the authority of rites and ceremonies which have acted as sufficient proof of marriage from times immemorial. Sub-clause (2), will be an invariable source of trouble and persecution to the illiterate persons especially in villages. The liberty of individual to get the marriage registered or not is absolutely taken away. The discretion is left only with the State or State Legislature and not with the Hindu public which will be put to a lot of trouble on this account. The registration being made practically inevitable sub-clause (5) becomes quite shallow and devoid of meaning.

Clause 9

11. This clause is only a stepstone for judicial *separation and divorce* and can serve no other practical purpose, if the punishment as prescribed by 'yagyavalkya',

आज्ञा सम्पादिनी दक्षावीरसुं प्रियवादिनाम् ।

त्यजन दाप्य स्तुतीयांशं मशक्तो भरणं स्त्रियः ॥

could be put in here, it might do some good. But unfortunately the seductions of divorce would be more tempting and would result in breaking of many Hindu hearths.

12. For the purposes of judicial separation 'desertion' should be qualified as being 'malafide' and unsoundness of mind should also be of a dangerous character so as to make it unsafe for a party to

live in his or her company. Cruelty and one act of adultery will bring in more dirty linen to courts and will be a source of perpetual dissatisfaction and disruption in the society.

Clauses 11 to 16

13. Clauses 11, 12, 13, 14, 15 and 16 are all definitely opposed to the Hindu mode of life, sentiments as well as the Hindu *Shastras*. The marriage has been reduced to a mere contract and all the sanctity attached to it from times immemorial is finished. Even among the lower castes where the divorce was permitted by custom the marriage is treated with great sanctity. The absence of divorce among three Vernas acted as a check on them and then the voice of the society, 'the Panchas' is also a further check applied. This unwanted innovation is being thrust on the Hindu masses in the teeth of opposition from teeming millions including the Hindu women. All the great writers on Hindu Law, e.g., Sir Henry Maine, Mullah, Sir Gurudas Banerjee are unanimous in holding that divorce is unknown to the Hindu Law. Even some of the advanced Hindu women organisations who have supported monogamy have with greater force opposed 'Divorce' in any and every form. These provisions, therefore, ought either to be dropped entirely or their operation be deferred till at least 10 years after the passage of this Bill, so as to let the Hindu masses have experience of its practical results.

Clause 17

14. Clause 17, be dropped for the present as the polygamous marriages will still be performed amongst the Hindus in the distant villages and hill regions. This clause will therefore be a source of constant persecution unless and until the masses are educated and prepared for it. The punishment portion be deferred at least to ten years and the polygamous marriages be permitted only in absence of a male issue and with the consent of the first wife. ,

Clause 29

15. *Savings*.—Sub-clauses (1) and (4) are unnecessary and redundant in view of the fact that *gotra* and *pravara* are not recognised even in the present Bill and practically all the provisions of the Special Marriage Act are included in this Bill and that Act itself is also not being repealed.

I have confined my remarks only to main features of the Bill and for want of space could not deal with the provisions more elaborately. I believe the present Bill is going to serve no good purpose, is definitely opposed to Hindu public policy, Hindu *Shastras*, Hindu ideals of marriage and will be a constant source of persecution and disruption of Hindu family and society. I, therefore, appeal that all attempts to enact such a measure be dropped once for all and if at all an attempt is to be made it should be with full co-operation of scholars of Hindu *Shastras* and *acharyas* and religious heads of all the sects and denominations of Hindus.

NAND LAL SHARMA.

NEW DELHI;

The 25th November 1954.

THE HINDU MARRIAGE AND DIVORCE BILL, 1952

(AS AMENDED BY THE JOINT COMMITTEE)

(Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions)

**A
BILL**

to amend and codify the law relating to marriage and divorce among Hindus.

Be it enacted by Parliament in the fifth year of the Republic of India as follows:—

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Hindu Marriage and Divorce Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act.—(1) This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in India who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

5 (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by
10 virtue of the provisions contained in sub-section (1).

3. Definitions.—In this Act, unless the context otherwise requires,—

15 (a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and

20 Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

25 (b) "district court" means, in any area for which there is a city civil court that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

30 (c) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(d) "uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

35 *Explanation.*—In clauses (c) and (d), "ancestor" includes the father and "ancestress" the mother;

(e) "prescribed" means prescribed by rules made under this Act;

40 (f) (i) "*sapinda* relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be "*sapindas*" of each other if one is a lineal ascendant of the other within the limits of *sapinda* relationship, or if they have a common lineal ascendant who is within the limits of *sapinda* relationship with reference to each of them; 5

(g) "degrees of prohibited relationship"—two persons are said to be within the "degrees of prohibited relationship"—

. (i) if one is a lineal ascendant of the other; or

(ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or 10

(iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters; 15

Explanation.—For the purposes of clauses (f) and (g), relationship includes—

(i) relationship by half or uterine blood as well as by full blood; 20

(ii) illegitimate blood relationship as well as legitimate;

(iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

4. Over-riding effect of Act.—Save as otherwise expressly provided in this Act— 25

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; 30

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:— 35

(i) neither party has a spouse living at the time of the marriage;

(ii) neither party is an idiot or a lunatic at the time of the marriage; 40

(iii) the bridegroom has completed the age of twenty-one years and the bride the age of sixteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

5 (v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two;

(vi) where the bride has not completed the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage.

10 **6. Guardianship in marriage.**—(1) * * * * * Wherever the consent of a guardian in marriage is necessary for a bride under this Act, the persons entitled to give such consent shall be the following in the order specified hereunder, namely:—

(a) the father;

15 (b) the mother;

(c) the paternal grandfather;

(d) the paternal grandmother;

(e) the brother by full blood; as between brothers the elder being preferred;

20 (f) the brother by half blood; as between brothers by half blood the elder being preferred;

Provided that the bride is living with him and is being brought up by him;

25 (g) the paternal uncle by full blood; as between paternal uncles the elder being preferred;

(h) the paternal uncle by half blood; as between paternal uncles by half blood the elder being preferred:

Provided that the bride is living with him and is being brought up by him.

30 (2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty-first year.

35 (3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses, or is * * * * * for any cause unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(4) In the absence of any such person as is referred to in subsection (1), the consent of a guardian shall not be necessary for a marriage under this Act.

40 (5) Nothing in this Act shall affect the jurisdiction of a court to prohibit by injunction an intended marriage, if in the interests of the bride for whose marriage consent is required, the court thinks it necessary to do so.

7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered, in such manner and subject to such conditions as may be prescribed, in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees. 15 20

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the * * * * statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee. 25

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry. 30

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal rights.—(1) When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. 35

(2) Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be a ground for judicial separation or for nullity of marriage or for divorce. 40

10. Judicial separation.—(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party— 45

(a) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party; or

5 (c) has for a period of not less than one year immediately preceding the presentation of the petition, been suffering from a virulent form of leprosy or venereal disease; or

10 (d) has been continuously of unsound mind for a period of not less than two years immediately preceding the presentation of the petition; or

(e) has after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse.

15 *Explanation.*—In this section, the expression “desertion”, with its grammatical variations and cognate expressions, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage.

20 (2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

25 NULLITY OF MARRIAGE AND DIVORCE

11. **Void marriages.**—(1) Any marriage solemnized before the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if,—

30 (a) * a former husband or wife of either party was living at the time of such marriage; or

(b) * the parties at the time of such marriage were within the degrees of prohibited relationship * * * * *;

35 Provided that no such marriage shall be, or shall be declared to be, null and void if the marriage was valid under any law, custom or usage in force at the time of such marriage.

(2) Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes
40 any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. **Voidable marriages.**—(1) Any marriage solemnized before the commencement of this Act shall be voidable and may, on a petition presented by either party thereto, be annulled by a decree of nullity
45 on either of the following grounds, namely:—

(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; or

(b) that either party is an idiot or was a lunatic at the time of the marriage:

Provided that no petition under this sub-section shall be entertained after the expiry of two years from the commencement of this Act.

(2) Any marriage solemnized after the commencement of this Act shall be voidable and may, on a petition presented by either party thereto, be annulled by a decree of nullity on any of the following grounds, namely:—

(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; or

(b) that the marriage contravenes the condition specified in clause (ii) or clause (iii) of section 5; or

(c) that the consent of the petitioner, or, where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force or fraud:

Provided that no petition for annulling a marriage on the ground specified in clause (c) shall be entertained if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her free consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered.

13. Divorce.—Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) is leading an adulterous life; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition; or

(iv) has for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or

(v) has for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; or

(viii) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party; or

(ix) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree;

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

* * * * *

14. No petition for divorce to be presented within three years of marriage.—(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition three years have elapsed since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before three years have elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but, if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of three years from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of three years from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said three years.

15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, * * * * * it shall be lawful for either party to the marriage to marry again * * * * *:

Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the court of the first instance.

16. Legitimacy of children of void and voidable marriages.— 5
Where a decree of nullity is granted in respect of any marriage under section 11 or section 12, any child begotten or conceived before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall 10
be deemed to be their legitimate child notwithstanding the decree of nullity:

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void or annulled by a decree of nullity, any rights in or to the 15
property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

17. Punishment of bigamy.—Any marriage between two Hindus 20
solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code (Act XLV of 1860) shall apply accordingly.

18. Punishment for contravention of certain other conditions for a Hindu marriage.—Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of 25
the conditions specified in clauses (iii), (iv), (v) and (vi) of section 5 shall be punishable—

(a) in the case of a contravention of the condition specified 30
in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both;

(b) in the case of a contravention of the condition specified 35
in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both; and

(c) in the case of a contravention of the condition specified 40
in clause (vi) of section 5, with fine which may extend to one thousand rupees.

JURISDICTION AND PROCEDURE

19. Court to which petition should be made.—Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together. 45

20. Contents and verification of petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the

case permits, the facts on which the claim to relief is founded and * * * * shall also state that there is no collusion between the petitioner and the other party to the marriage.

5 (2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of complaints, and may, at the hearing, be referred to as evidence.

10 **21. Application of Act V of 1908.**—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908).

15 **22. Proceedings may be in camera and may not be printed or published.**—(1) A proceeding under this Act shall be conducted in camera if either party so desires or if the court so thinks fit to do, and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court.

20 (2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.

23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—

25 (a) any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

30 (b) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(c) the petition is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

35 (e) there is no other legal ground why relief should not be granted,

then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

40 (2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.

24. Maintenance *pendente lite* and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable. 5

25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree * * * * * or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains * * * unmarried, pay to the applicant for her or his maintenance and support * * * * * such gross sum or such monthly or periodical sum * * * for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent. 10 15 20

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just. 25

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order. 30

26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make * * * * * from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made. 35 40

27. Disposal of property.—In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife. 45

28. Enforcement of, and appeal from, decrees and orders.—All decrees and orders made by the court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only:

Provided further that every such appeal shall be instituted within three months after the decision appealed from shall have been pronounced.

SAVINGS AND REPEALS

29. Savings.—(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara* or belonged to different castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954 (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

30. Repeals.—The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946) and the Hindu Marriages Validity Act, 1949 (XXI of 1949) are hereby repealed.

APPENDIX

MINUTES OF THE MEETINGS OF THE JOINT COMMITTEE ON THE HINDU MARRIAGE AND DIVORCE BILL, 1952

I

Minutes of the First meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 11 A.M. on the 2nd August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. P. V. Kane
3. Dr. Raghu Vira
4. Shrimati Maya Devi Chettry
5. Shrimati Chandravati Lakhanpal
6. Shri M. Govinda Reddy
7. Shri Sham Sunder Narain Tankha
8. Shri Surendra Mahanty
9. Shri K. Suryanarayana
10. Shri B. M. Gupte
11. Shri S. N. Mazumdar
12. Shri N. Keshavaiengar
13. Shri Ranbir Singh Chaudhuri
14. Shri S. V. Ramaswamy
15. Shri Jayantrao Ganpat Natawadkar
16. Shri Fulsinhji B. Dabhi
17. Shrimati Tarkeshwari Sinha
18. Pandit Dwarka Nath Tiwary
19. Shrimati Anasuyabai Kale
20. Shri H. C. Heda
21. Sardar Amar Singh Saigal
22. Shri Suriya Prashad
23. Shrimati Ila Pal Choudhuri
24. Shri Nibaran Chandra Laskar
25. Pandit Sheo Narayan Fotedar
26. Shri Ram Sahai Tiwari
27. Shri Panna Lal
28. Shrimati Uma Nehru
29. Shri Bijoy Chandra Das
30. Shri V. Veeraswamy
31. Shri K. S. Raghavachari
32. Shri Nand Lal Sharma and
33. Shri Digvijaya Narain Singh.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

After welcoming the Members of the Committee, the Chairman suggested that the time and dates of the future sittings of the Committee be decided. It was agreed that the Committee should sit up to and including the 11th August 1954, disperse on account of the Independence Day on the 15th, and re-assemble on the 19th August at 11 A.M.

It was further agreed that the Committee should sit from 9 A.M. to 1 P.M. on all days except on the 3rd August when it will meet at 11 A.M.

It was further agreed that although the 10th August was a holiday on account of Id-ul-Zuha, the Committee will meet on that day at the usual time, viz., 9 A.M.

The Committee accepted the suggestion of Shri Sham Sunder Narain Tankha that Members wishing to propose amendments to the provisions of the Bill may give notice of such amendments two days in advance so that they may be circulated to all Members before the respective provisions are taken up for consideration.

The Committee then started consideration of the Bill clause by clause.

Clause 1.—Sub-clause (1) was accepted without any change.

Sub-clause (2) was accepted with the amendment that the following be substituted for the present sub-clause (2):—

“It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.”

Clause 2.—The Committee agreed—

- (1) to substitute in (a) of the Explanation under clause 2 the words “child, legitimate or illegitimate” for the words “illegitimate child” and to insert the words “by religion” after the word “Hindus”; and
- (2) to insert the words “by religion” after the word “Hindu” in line 2 of (b) of the Explanation.

The consideration of the clause was not concluded when the Committee adjourned to meet again at 11 A.M. on Tuesday, the 3rd August 1954.

II

Minutes of the Second meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 11 A.M. on the 3rd August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman*,

Members

2. Dr. P. V. Kane
3. Dr. Raghu Vira
4. Shri Indra Vidyavachaspati
5. Shrimati Maya Devi Chettry
6. Shrimati Chandravati Lakhanpal
7. Shri M. Govinda Reddy
8. Pandit Sham Sunder Narain Tankha
9. Shri Surendra Mahanty
10. Shri K. Suryanarayana
11. Shri B. M. Gupte
12. Shri S. N. Mazumdar
13. Shri N. Keshavaiengar
14. Shri Ranbir Singh Chaudhuri
15. Shri S. V. Ramaswamy
16. Shri Narendra P. Nathwani
17. Shri Jayantrao Ganpat Natawadkar
18. Shri Fulsinhji B. Dabhi
19. Shrimati Tarkeshwari Sinha
20. Pandit Dwarka Nath Tiwary
21. Shrimati Anasuyabai Kale
22. Shri H. C. Heda
23. Sardar Amar Singh Saigal
24. Shri Suriya Prashad
25. Shrimati Ila Pal Choudhuri
26. Shri Nibaran Chandra Laskar
27. Pandit Sheo Narayan Fotedar
28. Shri Ram Sahai Tiwari
29. Shri Panna Lal
30. Shrimati Uma Nehru
31. Shrimati Renu Chakravartty
32. Shri Bijoy Chandra Das
33. Shri V. Veeraswamy
34. Shri K. S. Raghavachari
35. Shri Nand Lal Sharma
36. Shri Digvijaya Narain Singh.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

Clause 2.—This clause was accepted except for the Explanation in respect of which the Draftsman was asked to place before the Committee a revised draft.

Clause 3.—Sub-clause (a) was adopted without any change.

Sub-clause (b) was adopted with the amendments—

(i) that for the words “and includes the High Court in the exercise of its ordinary original jurisdiction and any subordinate civil court” the words “and where there is a city civil court, that court and includes also any other civil court” be substituted;

(ii) that for the word “Central” the word “State” be substituted.

Sub-clauses (c), (d), (e) and (f) were adopted without any change.

The Committee adjourned at 1 P.M. to meet again at 9 A.M. on the 4th August 1954.

III

Minutes of the Third meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9 A.M. on the 4th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. P. V. Kane
3. Dr. Raghu Vira
4. Shri Indra Vidyavachaspati
5. Shrimati Chandravati Lakhanpal
6. Shri M. Govinda Reddy
7. Pandit Sham Sunder Narain Tankha
8. Shri Surendra Mahanty
9. Shri K. Suryanarayana
10. Shri B. M. Gupte
11. Shri S. N. Mazumdar
12. Shri N. Keshavaiengar
13. Shri S. V. Ramaswamy
14. Shri Narendra P. Nathwani
15. Shri Jayantrao Ganpat Natawadkar
16. Shri Fulsinhji B. Dabhi
17. Shrimati Tarkeshwari Sinha
18. Pandit Dwarka Nath Tiwary
19. Shrimati Anasuyabai Kale
20. Sardar Amar Singh Saigal
21. Shri Suriya Prashad
22. Shrimati Ila Pal Choudhuri
23. Shri Nibaran Chandra Laskar
24. Pandit Sheo Narayan Fotedai
25. Shri Ram Sahai Tiwari
26. Shri Panna Lal
27. Shrimati Uma Nehru
28. Shrimati Renu Chakravartty
29. Shri Bijoy Chandra Das
30. Shri V. Veeraswamy
31. Shri K. S. Raghavachari
32. Shri Nand Lal Sharma
33. Shri Digvijaya Narain Singh.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

On a point raised that a reference should be made in the minutes of the Joint Committee circulated to the Members to the amendments which are negatived, the Chairman suggested that if a reference was made to him in connection with any specific amendment he would consider the matter as it has not been the practice so long to make any such reference in the minutes.

Clause 3.—After considering a number of amendments to sub-clause (g) of clause 3, it was decided that that sub-clause and the explanation thereunder be redrafted in the light of the discussions, and placed before the Committee for further consideration.

Clause 4.

Sub-clause (a): After considering a number of amendments this sub-clause was adopted with the addition of the words "as part of that law" after the words "custom or usage".

Sub-clause (b) was adopted without any change.

Clause 5.

Sub-clause (i): After considering a number of amendments the sub-clause was adopted without any change.

Sub-clause (ii): After considerable discussion this sub-clause was accepted with the change that the words "at the time of the marriage" should appear after the word "party" instead of at the end.

A further suggestion that one of the essential conditions for a valid marriage should be that either party may not be sexless was accepted but this suggestion is to be given effect to in clause 13 by providing that a marriage should be dissolved on the ground that the marriage has not been and cannot be consummated by reason of a physical deformity or a physical defect in the other party to the marriage.

The Committee adjourned at 1-00 P.M. to meet again at 9-00 A.M. on the 5th August 1954.

IV

Minutes of the Fourth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9 A.M. on the 5th August 1954, in Parliament House, New Delhi.

PRESENT:

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. P. V. Kane
3. Dr. Raghu Vira
4. Shri Indra Vidyavachaspati
5. Shrimati Maya Devi Chettry
6. Shrimati Chandravati Lakhanpal
7. Shri M. Govinda Reddy
8. Shri Sham Sunder Narain Tankha
9. Shri Surendra Mahanty
10. Shri K. Suryanarayana
11. Shri B. M. Gupte
12. Shri S. N. Mazumdar
13. Shri N. Keshavaiengar
14. Shri Ranbir Singh Chaudhuri
15. Shri S. V. Ramaswamy
16. Shri Narendra P. Nathwani
17. Shri Jayantrao Ganpat Natawadkar
18. Shri Fulsinhji B. Dabhi
19. Shrimati Tarkeshwari Sinha
20. Pandit Dwarka Nath Tiwary
21. Shrimati Anasuyabai Kale
22. Shri H. C. Heda
23. Sardar Amar Singh Saigal
24. Shri Suriya Prashad
25. Shrimati Ila Pal Choudhuri
26. Shri Nibaran Chandra Laskar
27. Pandit Sheo Narayan Fotedar
28. Shri Panna Lal
29. Shrimati Uma Nehru
30. Shri Bijoy Chandra Das
31. Shri V. Veeraswamy
32. Shri K. S. Raghavachari
33. Shri Nand Lal Sharma
34. Shri Digvijaya Narain Singh.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secy., Parliament Secretariat, New
Delhi.*

The Committee reconsidered its previous decision to re-assemble after the Independence Day on the 19th August and decided to re-assemble on the 20th August at 11 A.M. instead.

In connection with the point raised on the 4th August 1954, that a reference should be made in the minutes of the Joint Committee circulated to the members to the amendments which are negatived, the Chairman drew the attention of the members to rule 75 of the Rules of Procedure and Conduct of Business in the Council of States under which all that is required is that a record of the decisions only of a Select Committee should be maintained.

The following revised draft of the Explanation to sub-clause (1) of clause 2 of the Bill was adopted by the Committee:—

“Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.”

Clause 5.—After considering a number of suggestions with respect to raising the age of boys and girls for marriage, *sub-clause* (iii) was adopted with the amendments that for the words “eighteen years” the words “twenty-one years” be substituted and for the words “fifteen years” the words “sixteen years” be substituted.

Sub-clause (iv).—Consideration of this sub-clause was postponed.

Sub-clause (v) was adopted without any change.

Sub-clause (vi) was adopted with the amendment that for the words “sixteen years” the words “eighteen years” be substituted.

Clause 6 was under consideration when the Committee adjourned to meet again at 9 A.M. on Friday, the 6th August 1954.

V

Minutes of the Fifth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9 A.M. on the 6th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. P. V. Kane
3. Dr. Raghu Vira
4. Shri Indra Vidyavachaspati
5. Shrimati Maya Devi Chettry
6. Shrimati Chandravati Lakhanpal
7. Shri M. Govinda Reddy
8. Shri Sham Sunder Narain Tankha
9. Shri Surendra Mahanty
10. Shri B. M. Gupte
11. Shri S. N. Mazumdar
12. Shri N. Keshavaiengar
13. Shri Ranbir Singh Chaudhuri
14. Shri S. V. Ramaswamy
15. Shri Narendra P. Nathwani
16. Shri Jayantrao Ganpat Natawadkar
17. Shri Fulsinhji B. Dabhi
18. Pandit Dwarka Nath Tiwary
19. Shrimati Anasuyabai Kale
20. Shri H. C. Heda
21. Sardar Amar Singh Saigal
22. Shri Suriya Prashad
23. Shrimati Ila Pal Choudhuri
24. Shri Nibaran Chandra Laskar
25. Pandit Sheo Narayan Fotedar
26. Shri Panna Lal
27. Shrimati Uma Nehru
28. Shri Bijoy Chandra Das
29. Shri V. Veeraswamy
30. Shri K. S. Raghavachari
31. Shri Nand Lal Sharma
32. Shri Digvijaya Narain Singh.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

1. Shrimati Maya Devi Chettry proposed that the Committee should continue to sit daily even after the 11th August with a break of one day only on the 15th on account of Independence Day. The

Committee, however, did not agree to revise its previous decision to disperse on the 11th and re-assemble on the 20th August 1954.

2. After prolonged discussion clause 6 was adopted by the Committee, subject to drafting changes, if any, in the following form:—

“6. *Guardianship in marriage*.—(1) Wherever the consent of a guardian in marriage is necessary under this Act, the persons entitled to give such consent shall be the following in the order specified hereunder, namely:—

- (a) the father;
- (b) the mother;
- (c) the paternal grandfather;
- (d) the paternal grandmother;
- (e) the brother by full blood;
- (f) the brother by half blood, provided that the bride is living with him and is being brought up by him.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his twenty-first year.

(3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses, or is for any cause unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(4) Nothing in this Act shall affect the jurisdiction of a court to prohibit by injunction an intended marriage if, in the interests of the bride for whose marriage consent is required, the court thinks it necessary to do so.”

Clause 6 should also make it clear that in the absence of any guardian, no consent should be deemed to be required.

3. A copy of the Hindu Code which contains lists of *Sapindas* and relations within prohibited degrees was supplied to all the Members and the lists were examined in order to determine the relations within prohibited degrees who are not covered by the definition of *Sapinda* relationship. Further examination of the definition of “prohibited degrees” was then postponed.

The Committee adjourned at 1 P.M. to meet again at 9 A.M. on Saturday, the 7th August 1954.

VI

Minutes of the Sixth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9 A.M. on the 7th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. P. V. Kane
3. Shri Indra Vidyavachaspati
4. Shrimati Maya Devi Chettry
5. Shrimati Chandravati Lakhanpal
6. Shri M. Govinda Reddy
7. Shri Sham Sunder Narain Tankha
8. Shri Surendra Mahanty
9. Shri B. M. Gupte
10. Shri S. N. Mazumdar
11. Shri N. Keshavaiengar
12. Shri Ranbir Singh Chaudhuri
13. Shri S. V. Ramaswamy
14. Shri Narendra P. Nathwani
15. Shri Jayantrao Ganpat Natawadkar
16. Shri Fulsinhji B. Dabhi
17. Shrimati Tarkeshwari Sinha
18. Pandit Dwarka Nath Tiwary
19. Shrimati Anasuyabai Kale
20. Shri H. C. Heda
21. Sardar Amar Singh Saigal
22. Shri Suriya Prashad
23. Shrimati Ila Pal Choudhuri
24. Shri Nibaran Chandra Laskar
25. Pandit Sheo Narayan Fotedar
26. Shri Panna Lal
27. Shrimati Uma Nehru
28. Shri Bijoy Chandra Das
29. Shri V. Veeraswamy
30. Shri K. S. Raghavachari
31. Shri Nand Lal Sharma
32. Shri Digvijaya Narain Singh.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

Clause 3.—The Committee considered an amendment by Pandit Dwarka Nath Tiwary to sub-clause (f) already accepted, and adopted that sub-clause without any change.

Sub-clause (g) was adopted with the amendment that to the sub-clause the following be added:—

“children of a brother and a sister; brother's widow; widow of paternal or maternal uncle; widow of paternal or maternal granduncle.”

The Committee also recommended that after the Act is passed, Government should publish a list of *Sapindas* and of prohibited relations.

Clause 5.—Sub-clause (v) of clause 5 was adopted without any change.

Clause 6.—On an amendment moved by a member to reopen clause 6 so as to include in the list of guardians the paternal uncle, the clause was reconsidered and the list of guardians will now stand as under:—

- (a) the father;
- (b) the mother;
- (c) the paternal grandfather;
- (d) the paternal grandmother;
- (e) the brother by full blood and as between brothers, the elder being preferred;
- (f) the brother by half blood, provided the bride is living with him and is being brought up by him (as between two brothers, the elder shall be preferred);
- (g) the paternal uncle by full blood and as between two uncles, the elder being preferred;
- (h) the paternal uncle by half blood, provided the bride is living with him and is being brought up by him (as between two uncles, the elder being preferred).

Clause 7.—After considering a motion that provision should be made for solemnization of marriages by registration and after considering all the other amendments proposed to this clause. it was adopted by the Committee without any change.

The Committee adjourned at 1 P.M. to meet again at 9 A.M. on Monday, the 9th August 1954.

VII

Minutes of the Seventh meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9 A.M. on the 9th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. P. V. Kane
3. Shri Indra Vidyavachaspati
4. Shrimati Chandravati Lakhanpal
5. Shri M. Govinda Reddy
6. Shri Sham Sunder Narain Tankha
7. Shri Surendra Mahanty
8. Shri B. M. Gupte
9. Shri S. N. Mazumdar
10. Shri N. Keshavaiengar
11. Shri Ranbir Singh Chaudhuri
12. Shri S. V. Ramaswamy
13. Shri Narendra P. Nathwani
14. Shri Jayantrao Ganpat Natawadkar
15. Shri Fulsinhji B. Dhabhi
16. Shrimati Tarkeshwari Sinha
17. Pandit Dwarka Nath Tiwary
18. Shrimati Anasuyabai Kale
19. Shri H. C. Heda
20. Sardar Amar Singh Saigal
21. Shri Suriya Prashad
22. Shrimati Ila Pal Choudhuri
23. Shri Nibaran Chandra Laskar
24. Pandit Sheo Narayan Fotedar
25. Shri Ram Sahai Tiwari
26. Shri Panna Lal
27. Shrimati Uma Nehru
28. Shrimati Renu Chakravartty
29. Shri Bijoy Chandra Das
30. Shri V. Veeraswamy
31. Shri K. S. Raghavachari
32. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

Clause 8.—After considering the various amendments given notice of, clause 8 was adopted in the following form:—

Sub-clause (1).—For the purpose of facilitating the proof of Hindu marriages, the State Government may, by rules,—

- (a) either provide for the entering in a register to be kept for the purpose called the Hindu Marriage Register of particulars relating to such marriages in such manner and under such conditions as may be prescribed; or
- (b) provide that the entering of such particulars shall be compulsory in the State or in such areas and in such cases as may be specified in the rules.

Sub-clause (2).—In making any rules under clause (b) of subsection (1), the State Government may provide that a contravention thereof shall be punishable with fine which may extend to twenty-five rupees.

Sub-clause (3).—All rules made by the State Governments under this section shall be laid as soon as may be, on the Table of the State Legislature.

Sub-clause (4).—The Hindu Marriage Register shall at all times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

Sub-clause (5).—Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

Clause 9.—An amendment to delete this clause was discussed at great length and was negatived by the casting vote of the Chairman. Further discussion on the remaining amendments to this clause is to be resumed when the Committee meets at 9 A.M. on the 10th August 1954.

VIII

Minutes of the Eighth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9 A.M. on the 10th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. P. V. Kane
3. Shrimati Chandravati Lakhanpal
4. Shri M. Govinda Reddy
5. Shri Sham Sunder Narain Tankha
6. Shri Surendra Mahanty
7. Shri B. M. Gupte
8. Shri N. Keshavaiengar
9. Shri Ranbir Singh Chaudhuri
10. Shri S. V. Ramaswamy
11. Shri Narendra P. Nathwani
12. Shri Jayantrao Ganpat Natawadkar
13. Shri Fulsinhji B. Dabhi
14. Pandit Dwarka Nath Tiwary
15. Shrimati Anasuyabai Kale
16. Sardar Amar Singh Saigal
17. Shri Suriya Prashad
18. Shrimati Ila Pal Choudhri
19. Shri Nibaran Chandra Laskar
20. Shri Ram Sahai Tiwari
21. Shri Panna Lal
22. Shrimati Uma Nehru
23. Shrimati Renu Chakravartty
24. Shri Bijoy Chandra Das
25. Shri V. Veeraswamy
26. Shri K. S. Raghavachari
27. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

With reference to the minutes of the meeting of the 9th August, it was pointed out that a suitable redraft of clause 8 should be formally put before the Committee for its acceptance. The draft suggested in the minutes was not suitable.

Clause 9.—After a short discussion clause 9(1) was adopted without any change, but sub-clause (2) was left over for further consideration, if necessary, after the clauses relating to judicial separation, divorce etc. are disposed of.

Clause 10.—Sub-clause (1).—Part (a) and the Explanation to sub-clause (1) were adopted in the following form:—

“(a) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition;

Explanation.—In this section “desertion”, with its grammatical variations and cognate expressions, means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of the petitioner, and includes the wilful neglect of the petitioner by the other party to the marriage.”

Part (b).—A tentative redraft of part (b) in the following form, namely,—

“(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner

that it will be harmful or injurious
unsafe for the petitioner

to live with the other party.”

was under consideration when the Committee adjourned to meet again at 9 A.M. on the 11th August 1954.

IX

Minutes of the Ninth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9 A.M. on the 11th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Shri Indra Vidyavachaspati
3. Shrimati Chandravati Lakhanpal
4. Shri M. Govinda Reddy
5. Shri Sham Sunder Narain Tankha
6. Shri B. M. Gupte
7. Shri S. N. Mazumdar
8. Shri N. Keshavaiengar
9. Shri Ranbir Singh Chaudhuri
10. Shri S. V. Ramaswamy
11. Shri Jayantrao Ganpat Natawadkar
12. Shri Fulsinhji B. Dabhi
13. Shrimati Tarkeshwari Sinha
14. Pandit Dwarka Nath Tiwary
15. Shrimati Anasuyabai Kale
16. Shri H. C. Heda
17. Sardar Amar Singh Saigal
18. Shri Suriya Prashad
19. Shrimati Ila Pal Choudhuri
20. Shri Nibaran Chandra Laskar
21. Pandit Sheo Narayan Fotedar
22. Shri Ram Sahai Tiwari
23. Shri Panna Lal
24. Shrimati Uma Nehru
25. Shrimati Renu Chakravartty
26. Shri Bijoy Chandra Das
27. Shri V. Veeraswamy
28. Shri K. S. Raghavachari
29. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

Clause 10.—After an exhaustive discussion of the various amendments given notice of by Members, parts (b), (c), (d) and (e) of sub-clause (1) of clause 10 were adopted in the following form:

- “(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party; or
- (c) has, for a period of not less than one year immediately preceding the presentation of the petition, been suffering from a virulent form of leprosy or venereal disease; or
- (d) has been continuously of unsound mind for a period of not less than two years immediately preceding the presentation of the petition; or
- (e) has after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse.”

Discussion on an amendment to insert a new part (f) to sub-clause (1) of clause 10, viz., ‘conversion’ had not concluded when the Committee adjourned to meet again at 11 A.M. on the 20th August 1954. It was suggested in this connection that this question could be taken up, if necessary, after clause 15 is disposed of, as in the event of the time limit in the case of divorce on the ground of conversion being relaxed, there may be no need to amend clause 10 as proposed.

X

Minutes of the Tenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 11 A.M. on the 20th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Shri Indra Vidyavachaspati
3. Diwan Chaman Lall
4. Shrimati Chandravati Lakhanpal
5. Shri M. Govinda Reddy
6. Shri T. S. Pattabiraman
7. Shri Sham Sunder Narain Tankha
8. Shri Surendra Mahanty
9. Shri N. Keshavaiengar
10. Shri Ranbir Singh Chaudhuri
11. Shri S. V. Ramaswamy
12. Shri Narendra P. Nathwani
13. Shri Jayantrao Ganpat Natawadkar
14. Shri Fulsinhji B. Dabhi
15. Shrimati Tarkeshwari Sinha
16. Pandit Dwarka Nath Tiwary
17. Shrimati Anasuyabai Kale
18. Sardar Amar Singh Saigal
19. Shri Nibaran Chandra Iaskar
20. Shri Ram Sahai Tiwari
21. Shri Panna Lal
22. Shrimati Uma Nehru
23. Shrimati Renu Chakravartty
24. Shri Bijoy Chandra Das
25. Shri V. Veeraswamy
26. Shri K. S. Raghavachari
27. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Parliament Secretariat,
New Delhi.*

Clause 8.—As decided at the meeting held on the 10th August 1954, a revised draft of clause 8 was put before the Committee for its acceptance.

Clause 10.—A number of amendments suggesting insertion of additional parts to sub-clause (1) of clause 10 were negatived or not pressed.

Sub-clause (2) of clause 10 was adopted without any change.

Clause 11.—Discussion on sub-clause (1) of clause 11 and amendments thereto had not concluded when the Committee adjourned at 1 P.M.

2. The Joint Committee felt that it will not be possible to present the report of the Committee to the Council of States by the date fixed for the purpose, *viz.*, on or before the last day of the second week of the forthcoming session. The Committee, therefore, requested the Chairman to move the Council to extend the time for the presentation of the report up to the 22nd September 1954.

XI

Minutes of the Eleventh meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 10 A.M. on the 28th August 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Shrimati Rukmini Devi Arundale
3. Dr. Raghu Vira
4. Shri Indra Vidyavachaspati
5. Shrimati Chandravati Lakhanpal
6. Shri M. Govinda Reddy
7. Shri T. S. Pattabiraman
8. Shri Sham Sunder Narain Tankha
9. Shri Surendra Mahanty
10. Shri B. M. Gupte
11. Shri S. N. Mazumdar
12. Shri N. Keshavaiengar
13. Shri Ranbir Singh Chaudhuri
14. Shri S. V. Ramaswamy
15. Shri Jayantrao Ganpat Natawadkar
16. Shri Fulsinhji B. Dabhi
17. Pandit Dwarka Nath Tiwary
18. Sardar Amar Singh Saigal
19. Shri Nibaran Chandra Laskar
20. Shri T. Sanganna
21. Shrimati Uma Nehru
22. Shrimati Renu Chakravartty
23. Shri Bijoy Chandra Das
24. Her Highness Rajmata Kamlendu Mati Shah
25. Shri B. S. Murthy
26. Shri K. S. Raghavachari.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Rajya Sabha Secretariat,
New Delhi.*

Clause 11.—An amendment to delete the whole clause was negatived.

The opening sentence of sub-clause (1) and part (a) of that sub-clause were adopted without any change except for the suggestion that the phraseology may follow the phraseology adopted in the Special Marriage Bill as far as possible.

Consideration of an amendment proposing the insertion of the words "*sapindas* of each other or" after the word "were" in line 1 of part (b) of the sub-clause was postponed.

The proviso was adopted without any change.

The Committee adjourned at 1 P.M. till 9-30 A.M. on Saturday, the 4th September 1954.

XII

Minutes of the Twelfth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9-30 A.M. on the 4th September 1954 in Parliament House, New Delhi.

PRESENT:

1. Shri C. C. Biswas—*Chairman.*

Members

2. Shrimati Rukmini Devi Arundale
3. Dr. Raghu Vira
4. Shri Indra Vidyavachaspati
5. Shri M. Govinda Reddy
6. Shri Sham Sunder Narain Tankha
7. Shri B. M. Gupte
8. Shri N. Keshavaiengar
9. Shri Ranbir Singh Chaudhuri
10. Shri Jayantrao Ganpat Natawadkar
11. Shri Fulsinhji B. Dabhi
12. Shrimati Ila Pal Choudhuri
13. Shri T. Sanganna
14. Pandit Sheo Narayan Fotedar
15. Shri Paidi Lakshmayya
16. Shri Ram Sahai Tiwari
17. Shrimati Uma Nehru
18. Shrimati Renu Chakravartty
19. Shri Bijoy Chandra Das
20. Her Highness Rajmata Kamalendu Mati Shah
21. Shri K. S. Raghavachari
22. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secy., Rajya Sabha Secretariat,
New Delhi.*

Clause 11.—Part (b) of sub-clause (1) and sub-clause (2) were adopted without any amendment.

Clause 12.—Sub-clause (1) was adopted with the amendment that in the proviso thereto "two years" be substituted for "one year".

The opening sentence of sub-clause (2) and parts (a) and (b) thereof were adopted without any amendment.

Discussion on part (c) of sub-clause (2) had not concluded when the Committee adjourned at 1 P.M.

The Committee decided to meet next at 9-30 A.M. on Thursday, the 9th September 1954, and at 4 P.M. on Friday, the 10th September 1954.

XIII

Minutes of the Thirteenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9-30 A.M. on the 9th September 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Dr. Raghu Vira
3. Shrimati Chandravati Lakhanpal
4. Shri M. Govinda Reddy
5. Shri Sham Sunder Narain Tankha
6. Shri Surendra Mahanty
7. Shri B. M. Gupte
8. Shri S. N. Mazumdar
9. Shri N. Keshavaiengar
10. Shri Gurmukh Singh Musafir
11. Shri S. V. Ramaswamy
12. Shri Fulsinhji B. Dabhi
13. Shrimati Tarkeshwari Sinha
14. Pandit Dwarka Nath Tiwary
15. Sardar Amar Singh Saigal
16. Shri Nibaran Chandra Laskar
17. Shri T. Sanganna
18. Shri Paidi Lakshmayya
19. Shri Panna Lal
20. Shrimati Uma Nehru
21. Shrimati Renu Chakravartty
22. Shri Bijoy Chandra Das
23. Shri V. Veeraswamy
24. Shri K. S. Raghavachari
25. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secy., Rajya Sabha Secretariat,
New Delhi.*

Clause 12.—The remaining parts of sub-clause (2) of clause 12 were adopted without any change.

Clause 13.—A motion to delete clause 13 was negatived.

After prolonged discussion, two alternative proposals to insert a new sub-clause to clause 13—

- (i) enabling any wife of a polygamous marriage solemnised before the commencement of this Act (except when she was the sole surviving wife) to file a petition for a divorce on the ground that the husband has another wife or wives living; and
- (ii) enabling the wife to present a petition for divorce on the ground that her husband had married again before the commencement of this Act and that the wife so married was living at the time of the presentation of the petition;

were both negatived.

Having regard to the following facts, viz.—

- (1) that the Committee even though it has already met 13 times and worked on an average of four hours each day, it has not been able to finish more than 12 clauses of the Bill;
- (2) that the discussion of the further clauses require a minimum of 30 hours' sittings of the Committee;
- (3) that the hours of sitting of both Houses of Parliament have been changed from 11 A.M. to 5 P.M. (which may extend to 6 P.M.) thus leaving hardly any time for the members of the Committee to do the work of the Committee as well as prepare themselves for the other work of Parliament; and
- (4) that only fifteen days remained for the submission of the Report of the Committee to the Rajya Sabha, viz., on the 24th September 1954, which is hardly sufficient for the purpose notwithstanding the fact that the Committee proposes to utilise the 2 Sundays intervening for purposes of its meetings;

the Committee resolved that the Rajya Sabha be requested to extend the time for the presentation of the Report up to the last day of the second week of its next session.

The Committee further decided that in order to complete its work expeditiously, it should sit on Sundays, the 12th and 19th September 1954. Thereafter it proposes to meet on the 1st November 1954, if the time for presenting the Report is extended.

XIV

Minutes of the Fourteenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9-30 A.M. on the 19th September 1954, in Parliament House, New Delhi.

PRESENT :

1. Shri C. C. Biswas—*Chairman.*

Members

2. Shrimati Chandravati Lakhanpal
3. Shri T. S. Pattabiraman
4. Shri Sham Sundar Narain Tankha
5. Shri B. M. Gupte
6. Shri N. Keshavaiengar
7. Shri S. V. Ramaswamy
8. Shri Narendra P. Nathwani
9. Shri Jayantrao Ganpat Natawadkar.
10. Shri Fulsinhji B. Dabhi
11. Pandit Dwarka Nath Tiwary
12. Sardar Amar Singh Saigal
13. Shrimati Ila Pal Choudhuri
14. Shri Nibaran Chandra Laskar
15. Shri T. Sanganna
16. Shri Paidi Lakshmayya
17. Shrimati Renu Chakravartty
18. Shri Bijoy Chandra Das
19. Shri Durga Charan Banerjee
20. Her Highness Rajmata Kamlendu Mati Shah
21. Shri K. S. Raghavachari
22. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secy., Rajya Sabha Secretariat,
New Delhi.*

Clause 13.—The Committee discussed at length the general question whether the Hindu Marriage and Divorce Bill should be equated with the Special Marriage Bill in so far as the grounds for judicial separation and divorce are concerned and decided against adopting such a course. The grounds for judicial separation in clause 10 were then re-examined to see whether any of them could also be made a ground for divorce, and the Committee felt that desertion, cruelty or adultery should not be made directly a ground for divorce and endorsed the scheme underlying clause 10.

Sub-clause (1) of clause 13 was under discussion when the Committee adjourned to meet again at 11 A.M. on Monday the 1st November 1954.

XV

Minutes of the Fifteenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 9-00 A.M. on the 23rd September 1954, in Parliament House, New Delhi.

PRESENT:

1. Shri C. C. Biswas—*Chairman.*

Members

2. Shrimati Rukmini Devi Arundale
3. Dr. Raghu Vira
4. Shri Indra Vidyavachaspati
5. Diwan Chaman Lall
6. Shrimati Chandravati Lakhanpal
7. Shri T. S. Pattabiraman
8. Shri Sham Sunder Narain Tankha
9. Shri Surendra Mahanty
10. Shri B. M. Gupte
11. Shri N. Keshavaiengar
12. Shri Gurmukh Singh Musafir
13. Shri Ranbir Singh Choudhuri
14. Shri S. V. Ramaswamy
15. Shri Narendra P. Nathwani
16. Shri Jayantrao Ganpat Natawadkar
17. Shri Fulsinhji B. Dabhi
18. Shrimati Tarkeshwari Sinha
19. Pandit Dwarka Nath Tiwary
20. Shrimati Anasuyabai Kale
21. Sardar Amar Singh Saigal
22. Shrimati Ila Pal Choudhuri
23. Shri Nibaran Chandra Laskar
24. Shri T. Sanganna
25. Pandit Sheo Narayan Fotedar
26. Shri Paidi Lakshmayya
27. Shri Ram Sahai Tiwari
28. Shri Bijoy Chandra Das
29. Shri K. S. Raghavachari
30. Shri Nand Lal Sharma
31. Shri Digvijay Narain Singh.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,*
Ministry of Law, New Delhi.

SECRETARIAT

Shri I. Krishna, *Under Secy., Rajya Sabha Secretariat,*
New Delhi.

The Chairman briefly explained the reasons why this meeting had been called at short notice, and referred to the circumstances

under which the motion he had moved the previous day for extension of the time for presentation of the Report of the Joint Committee to Rajya Sabha was withdrawn.

2. With every desire for expedition, the Committee was satisfied, after full discussion, that for the reasons stated in the minutes of its meeting held on the 9th September 1954, it was not possible to present the Report before the end of the current session. As more time was needed, it re-affirmed its previous resolution on the subject with only one modification regarding the date for presentation of the Report to Rajya Sabha, namely, that the date should be the last day of the first week of the next session instead of the last day of the second week of the next session, as previously proposed.

3. The Chairman agreed to make a full statement of facts in Rajya Sabha the next day in moving the motion for extension of time.

XVI

Minutes of the Sixteenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 11-00 A.M. on Monday, the 1st November 1954, in Parliament House, New Delhi.

PRESENT :

1. Dr. P. V. Kane—*Chairman.*

Members

2. Dr. Raghu Vira
3. Diwan Chaman Lal
4. Shrimati Chandravati Lakhanpal
5. Shri T. S. Pattabiraman
6. Shri Sham Sunder Narain Tankha
7. Shri K. Suryanarayana
8. Shri S. N. Mazumdar
9. Shri N. Keshavaiengar
10. Shri Gurmukh Singh Musafir
11. Shri Ranbir Singh Chaudhuri
12. Shri S. V. Ramaswamy
13. Shri Jayantrao Ganpat Natawadkar
14. Shri Fulsinhji B. Dabhi
15. Shrimati Tarkeshwari Sinha
16. Pandit Dwarka Nath Tiwari
17. Shrimati Anasuyabai Kale
18. Shri H. C. Heda
19. Sardar Amar Singh Saigal
20. Shri Suriya Prasad
21. Shri Nibaran Chandra Laskar
22. Shri T. Sanganna
23. Pandit Sheo Narayan Fotedar
24. Shri Ram Sahai Tiwari
25. Shri Panna Lal
26. Shrimati Renu Chakravartty
27. Shri Bijoy Chandra Das
28. Shri V. Veeraswamy
29. Shri K. S. Raghavachari
30. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri P. N. Krishna Mani, *Under Secy., Rajya Sabha Secretariat, New Delhi.*

At the suggestion of the Chairman, the Committee observed one minute's silence as a mark of respect to the memory of the late Shri Rafi Ahmad Kidwai, all members standing.

Further consideration of *clause 13* was resumed.

Sub-clause (i) was adopted in the following amended form:—

“(i) that the other party is leading an adulterous life;”

It was also generally agreed that the wording of this clause may follow, as far as possible, the wording of section 27 of the Special Marriage Act, 1954, and that the expression “either party” in the clause may be changed to “the other party” where necessary.

Arising out of the discussion on sub-clause (ii), the Committee decided that conversion from one religion to another should not be made a ground for judicial separation.

Sub-clause (ii) was thereafter agreed to without any change.

Sub-clause (iii) was adopted in the following amended form:—

“(iii) that the other party is incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition;”.

Sub-clause (iv) was adopted in the following amended form:—

“(iv) that the other party has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy;”.

A new sub-clause (ivā) was added as follows:—

“(iva) that the other party has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form;”.

Sub-clause (v) was agreed to without any change.

Sub-clause (vi) was adopted in the following amended form:—

“(vi) that the other party has not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against the respondent;”.

Sub-clause (vii) was agreed to without any change.

It was decided that with effect from to-morrow, the 2nd November 1954, the Committee should sit from 1 P.M. to 6 P.M. daily.

The Committee adjourned to meet again at 1 P.M. on Tuesday, the 2nd November 1954.

XVII

Minutes of the Seventeenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 1-00 P.M. on Tuesday, the 2nd November 1954, in Parliament House, New Delhi.

PRESENT :

1. Dr. P. V. Kane—*Chairman.*

Members

2. Dr. Raghu Vira
3. Shri Indra Vidyavachaspati
4. Diwan Chaman Lall
5. Shrimati Chandravati Lakhanpal
6. Shri T. S. Pattabiraman
7. Shri Sham Sunder Narain Tankha
8. Shri K. Suryanarayana
9. Shri S. N. Mazumdar
10. Shri N. Keshavaiengar
11. Shri Ranbir Singh Chaudhuri
12. Shri Narendra P. Nathwani
13. Shri Jayantrao Ganpat Natawadkar
14. Shri Fulsinhji B. Dabhi
15. Shrimati Tarkeshwari Sinha
16. Pandit Dwarka Nath Tiwary
17. Shrimati Anasuvabai Kale
18. Shri H. C. Heda
19. Sardar Amar Singh Saigal
20. Shri Suriya Prashad
21. Shri Nibaran Chandra Laskar
22. Shri T. Sanganna
23. Shri Ram Sahai Tiwari
24. Shri Panna Lal
25. Shrimati Renu Chakravartty
26. Shri Bijoy Chandra Das
27. Shri V. Veeraswamy
28. Shri B. S. Murthy
29. Shri K. S. Raghavachari
30. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri P. N. Krishna Mani, *Under Secy., Rajya Sabha
Secretariat, New Delhi.*

The Committee took up consideration of amendments proposing the addition of certain new sub-clauses to clause 13. After a good

deal of discussion, it was agreed that a new sub-clause should be added as follows:—

“(viii) that the other party has renounced the world by entering any religious order.”

It was also agreed that another new sub-clause should be added to clause 13, in suitable language, to provide that any marriage solemnized whether before or after the commencement of this Act, may on a petition presented by the wife be dissolved on the ground that her husband has since the solemnization of the marriage been guilty of rape, sodomy or bestiality.

The Committee then considered a proposal for the insertion of a new clause seeking to provide for divorce by mutual consent. After a detailed discussion in which several members took part, the proposal was negatived.

A proposal for the insertion of another new clause to provide that no petition for divorce shall lie if the husband and wife have lived a married life for twenty years or more was also negatived.

The Committee adjourned to meet again at 1 P.M. on Wednesday, the 3rd November 1954.

XVIII

Minutes of the Eighteenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 1-00 P.M. on Wednesday, the 3rd November 1954, in Parliament House, New Delhi.

PRESENT:

1. Dr. P. V. Kane—*Chairman.*

Members

2. Dr. Raghu Vira
3. Diwan Chaman Lall
4. Shrimati Chandravati Lakhanpal
5. Shri Sham Sundar Narain Tankha
6. Shri K. Suryanarayana
7. Shri S. N. Mazumdar
8. Shri N. Keshavaiengar
9. Shri Ranbir Singh Chaudhuri
10. Shri Narendra P. Nathwani
11. Shri Jayantrao Ganpat Natawadkar
12. Shri Fulsinhji B. Dabhi
13. Shrimati Tarkeshwari Sinha
14. Pandit Dwarka Nath Tiwary
15. Shrimati Anasuyabai Kale
16. Shri H. C. Heda
17. Sardar Amar Singh Saigal
18. Shri Suriya Prashad
19. Shri Nibaran Chandra Laskar
20. Shri T. Sanganna
21. Shri Panna Lal
22. Shrimati Renu Chakravartty
23. Shri Bijoy Chandra Das
24. Shri V. Veeraswamy
25. Shri K. S. Raghavachari
26. Shri Nand Lal Sharma

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri P. N. Krishna Mani, *Under Secy., Rajya Sabha Secretariat, New Delhi.*

The Committee took up consideration of *clause 14*. After discussion it was decided to omit *clause 14* on the ground that the first two paragraphs were unnecessary and the third paragraph could be incorporated in suitable language in *clause 23*.

Clause 15 was agreed to subject to the substitution of the word "alleged" for the word "proved" in the last line of the proviso to sub-clause (1).

Clause 16.—It was agreed that this clause should be redrafted so as to read somewhat as follows:—

“16. *Marriage of divorced persons.*—Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for the respective parties to the marriage to marry again:

Provided that no such marriage shall take place unless one year has expired from the date of the original decree.”

Clause 17.—It was agreed that this clause should be redrafted in the following form subject to drafting changes:—

“17. *Legitimacy of children of void and voidable marriages.*—Where a decree of nullity is granted in respect of any marriage under section 11 or section 12, the children of the marriage, begotten or conceived before the decree is made, shall be specified therein and shall be deemed to be, and always to have been, the legitimate children of their parents:

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void or annulled by a decree of nullity, any rights in or to the property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

Clause 18.—On a suggestion that clause 18 should be omitted, considerable discussion took place and it was decided that clause 18 should be retained.

The Committee adjourned to meet again at 1-00 P.M. on Thursday, the 4th November 1954.

XIX

Minutes of the Nineteenth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 1-00 P.M. on Thursday, the 4th November 1954, in Parliament House, New Delhi.

PRESENT :

1. Dr. P. V. Kane—Chairman.

Members

2. Dr. Raghu Vira
3. Shri Indra Vidyavachaspati
4. Diwan Chaman Lall
5. Shrimati Chandravati Lakhanpal
6. Shri Sham Sundar Narain Tankha
7. Shri K. Suryanarayana
8. Shri S. N. Mazumdar
9. Shri N. Keshavaiengar
10. Shri Ranbir Singh Chaudhuri
11. Shri Narendra P. Nathwani
12. Shri Jayantrao Ganpat Natawadkar
13. Shri Fulsinhji B. Dabhi
14. Pandit Dwarka Nath Tiwary
15. Shrimati Anasuyabai Kale
16. Sardar Amar Singh Saigal
17. Shri Suriya Prashad
18. Shri T. Sanganna
19. Shri Panna Lal
20. Shrimati Renu Chakravartty
21. Shri Bijoy Chandra Das
22. Shri V. Veeraswamy
23. Shri K. S. Raghavachari.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

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Shri P. N. Krishna Mani, *Under Secy., Rajya Sabha
Secretariat, New Delhi.*

Shri Fulsinhji B. Dabhi proposed the addition of four new clauses, 18A, 18B, 18C and 18D to provide for punishment of breaches of some of the conditions laid down in clause 5. After discussion, the Committee agreed to the principle that provision should be made for punishment of breaches under sub-clauses (iii) to (vi) of clause 5. It was further agreed that different punishments may be prescribed for different types of breaches, bearing in mind also the provisions in the Sharda Act. The Draftsman was requested to prepare a draft and bring it before the Committee for consideration to-morrow.

Clauses 19, 20 and 21 were agreed to without any change.

Clause 22 was agreed to subject to the amendment that no proceeding or any part of it shall be published or reported in any manner except with the permission of the court trying the proceeding. Shri Tankha agreed to give a suitable draft for the proposed addition.

Clause 23 was discussed at considerable length, particularly on the question as to whether any provision should be made in the clause providing for the establishment of a Board for reconciliation between the parties. The Committee ultimately decided that a provision on the lines of sub-section (2) of section 34 of the Special Marriage Act, 1954, should be inserted in clause 23.

Dr. Raghu Vira proposed the addition of a new clause to provide that the husband shall not apply for divorce when the wife is with child and that he may apply for such divorce only one year after the birth of the child. After considerable discussion, the following proposition as finally proposed by Dr. Raghu Vira was put to the vote:—

“Where the respondent to a petition under this Act is a woman and at the time of the hearing of the petition is in an advanced state of pregnancy, the court shall, if so required by the respondent, adjourn the hearing until one month after she is confined.”

The proposition was negatived.

Clause 23 was thereafter agreed to subject to the addition of—

- (i) a new sub-clause, in suitable language on the lines of the second proviso to clause 14; and
- (ii) another new sub-clause on the lines of sub-section (2) of section 34 of the Special Marriage Act, 1954.

The Committee adjourned to meet again at 1 P.M. on Friday, the 5th November 1954.

XX

Minutes of the Twentieth meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 1-00 P.M. on Friday, the 5th November 1954, in Parliament House, New Delhi.

PRESENT :

1. Dr. P. V. Kane—*Chairman.*

Members

2. Dr. Raghu Vira
3. Shri Indra Vidyavachaspati
4. Diwan Chaman Lall
5. Shrimati Chandravati Lakhanpal
6. Shri Sham Sundar Narain Tankha
7. Shri Surendra Mahanty
8. Shri K. Suryanarayana
9. Shri S. N. Mazumdar
10. Shri N. Keshavaiengar
11. Shri Gurmukh Singh Musafir
12. Shri Ranbir Singh Chaudhuri
13. Shri Narendra P. Nathwani
14. Shri Jayantrao Ganpat Natawadkar
15. Shri Fulsinhji B. Dabhi
16. Shrimati Tarkeshwari Sinha
17. Pandit Dwarka Nath Tiwary
18. Shrimati Anasuyabai Kale
19. Shri H. C. Heda
20. Sardar Amar Singh Saigal
21. Shrimati Ila Pal Choudhuri
22. Shri T. Sanganna
23. Shri Ram Sahai Tiwari
24. Shri Panna Lal
25. Shrimati Renu Chakravartty
26. Shri Bijoy Chandra Das
27. Shri V. Veeraswamy
28. Shri K. S. Raghavachari
29. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

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Shri P. N. Krishna Mani, *Under Secy., Rajya Sabha
Secretariat, New Delhi.*

Clause 24.—An amendment was proposed to clause 24 that wherever the word “wife” occurred in the clause the word “husband” should also be included, and that the clause should be so redrafted as to provide for maintenance and cost pending the proceedings to either party. The amendment was adopted.

In *clause* 25, a similar amendment as in *clause* 24 was accepted.

It was also decided to omit the words "for the termination of any marriage" in sub-clause (1).

A clarificatory amendment that for the word "property" the words "income and other property" should be substituted was also adopted.

It was thereafter agreed that sub-clause (1) should be redrafted somewhat on the following lines:—

"(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose, order that the respondent shall pay to the applicant for his or her maintenance and support such gross sum or such monthly or periodical payment of money for a term not exceeding his or her life as, having regard to the income and other property of the applicant, if any, the income and other property of the respondent and the conduct of the parties, shall be deemed just, and any such payment may be secured, if necessary by a charge on the immovable property of the respondent."

An amendment to omit the words "has not remained chaste" from sub-clause (3) was negatived.

The Committee adjourned at 4 P.M. for want of quorum, to meet again at 10 A.M. on Saturday, the 6th November 1954.

XXI

Minutes of the Twenty-first meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 10-00 A.M. on Saturday, the 6th November 1954, in Parliament House, New Delhi.

PRESENT :

1. Dr. P. V. Kane—*Chairman.*

Members

2. Dr. Raghu Vira
3. Shri Indra Vidyavachaspati
4. Diwan Chaman Lall
5. Shrimati Chandravati Lakhanpal
6. Shri Sham Sundar Narain Tankha
7. Shri Surendra Mahanty
8. Shri K. Suryanarayana
9. Shri S. N. Mazumdar
10. Shri N. Keshavaiengar
11. Shri Gurmukh Singh Musafir
12. Shri Jayantrao Ganpat Natawadkar
13. Shri Fulsinhji B. Dabhi
14. Shrimati Tarkeshwari Sinha
15. Pandit Dwarka Nath Tiwary
16. Sardar Amar Singh Saigal
17. Shrimati Ila Pal Choudhuri
18. Shri T. Sanganna
19. Shri Ram Sahai Tiwari
20. Shri Panna Lal
21. Shrimati Renu Chakravartty
22. Shri Bijoy Chandra Das
23. Shri V. Veeraswamy
24. Shri K. S. Raghavachari
25. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

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Shri P. N. Krishna Mani, *Under Secy., Rajya Sabha
Secretariat, New Delhi.*

Clause 12.—A proposal was made that clause 12 should be re-opened so as to include therein a provision on the lines of clause (ii), together with the three provisos thereto, of section 25 of the Special Marriage Act, 1954. The proposal was not agreed to.

Clause 25.—Further consideration of the clause was resumed. An amendment for the insertion of the words “or in the case of the husband has had sexual intercourse outside marriage” after the word “chaste” in sub-clause (3) of clause 25 was adopted.

Clause 25 was thereafter adopted as amended.

Clause 26 was adopted, as amended, in the following form:—

"26. *Custody of children.*—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application for the purpose, make all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending or revoke, suspend or vary any such orders and provisions previously made."

Clauses 27 and 28 were adopted without any change.

Clause 29 was adopted subject to the correction of the year and number of the Special Marriage Act in sub-clause (4).

Clause 30 was agreed to without any change.

New Clause 18A making provision for punishment of breaches under sub-clauses (iii) to (vi) of clause 5, which had been left over to be drafted by the Draftsman, was adopted in the following form:—

"18A. *Punishment for contravention of certain other conditions for a Hindu Marriage.*—Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), (v) and (vi) of section 5 shall be punishable—

- (a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees or with both;
- (b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both; and
- (c) in the case of a contravention of the condition specified in clause (vi) of section 5, with fine which may extend to one thousand rupees."

Clause 22 was adopted in the following form as redrafted:—

"22. *Proceedings may be in camera and may not be printed or published.*—A proceeding under this Act shall be conducted *in camera* if either party so desires or if the court so thinks fit to do, and it shall not be lawful for

any person to print or publish any matter in relation to any such proceeding except with the permission of the court."

It was also decided that suitable provision should be added to this clause so as to make the unlawful publication of any proceeding punishable with fine which may extend to one thousand rupees.

The Committee adjourned to meet again at 5 P.M on Thursday, the 25th November 1954, to consider the Report.

XXII

Minutes of the Twenty-second meeting of the Joint Committee of the Houses of Parliament on the Hindu Marriage and Divorce Bill, 1952, held at 5-00 P.M. on Thursday, the 25th November 1954, in Parliament House, New Delhi.

PRESENT :

1. Dr. P. V. Kane—*Chairman.*

Members.

2. Dr. Raghu Vira
3. Diwan Chaman Lall
4. Shrimati Chandravati Lakhanpal
5. Shri M. Govinda Reddy
6. Shri Sham Sundar Narain Tankha
7. Shri B. M. Gupte
8. Shri S. N. Mazumdar
9. Shri N. Keshavaiengar
10. Shri Ranbir Singh Chaudhuri
11. Shri Fulsinhji B. Dabhi
12. Pandit Dwarka Nath Tiwary
13. Sardar Amar Singh Saigal
14. Shri T. Sanganna
15. Shri Panna Lal
16. Her Highness Rajmata Kamlendu Mati Shah
17. Shri K. S. Raghavachari
18. Shri Nand Lal Sharma.

Shri G. R. Rajagopaul, *Joint Secretary and Draftsman,
Ministry of Law, New Delhi.*

SECRETARIAT

Shri I. Krishna, *Under Secretary, Rajya Sabha Secretariat,
New Delhi.*

The Committee took up consideration of the draft Report. The Report was considered and adopted by the Committee.

Minutes of Dissent were received from 17 Members.

It was decided that the Report of the Committee be presented to the Rajya Sabha on the 26th November 1954.

The Committee then adjourned at 5-45 P.M.