

15.04 hrs.

Title: Combined discussion on the Marriage Laws (Amendment) Bill, 2001; Indian Divorce (Amendment) Bill, 2001 and Code of Criminal Procedure (Amendment) Bill, 2001.

MR. SPEAKER: Hon. Members, as decided in the Leaders' meeting yesterday, the Bills at serial number 23, 24 and 25 in today's List of Business may be discussed together as the subject matter of all these Bills is co-related.

The Code of Criminal Procedure (Amendment) Bill, 2001 is in the name of Shri L.K. Advani who has authorised Shri Arun Jaitley to pilot the Bill on his behalf.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I beg to move:

"That the Bill further to amend the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955, as passed by Rajya Sabha, be taken into consideration."

"That the Bill further to amend the Indian Divorce Act, 1869, as passed by Rajya Sabha, be taken into consideration."

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration."

Sir, would you like me to explain what the three Bills are about?

MR. SPEAKER: You can explain the three Bills together.

SHRI ARUN JAITLEY: Sir, you have already mentioned that the subject matter of the three Bills is inter-related.

The Marriage Laws (Amendment) Bill, 2001 deals with four different legislations. It is intended to have a limited purpose in each of the four legislations - namely, the Indian Divorce Act, the Parsi Marriage and Divorce Act, the Special Marriage Act, and the Hindu Marriage Act - for different provisions with regard to payment of maintenance to wife, particularly when the matrimonial proceedings are pending before the court. Experience has been that these matrimonial proceedings carry on for a very long time and, therefore, it takes a very long time before the orders can be passed for payment of maintenance to the wives.

The object of amendment of these four personal laws has been to create certain provisions, which are in the nature of welfare provision, in these laws. The first provision is that in addition to the alimony or maintenance which is paid to the wives, uniformity has been given to all the laws that the legal expenses of proceedings are also to be given. There was a provision in some laws and not in the others.

The second provision is that though there is a provision for grant of interim maintenance, if interim maintenance itself takes years to be paid to the wives, they, in the absence of any other source of livelihood, can be pushed to a stage of destitution. A uniform provision has now been created in all the laws which mentions that in the maintenance proceedings, as far as possible, the court shall endeavour to see that maintenance orders are passed within a period of sixty days from the moving of the application. Within sixty days, the ladies, therefore, must get the orders of maintenance.

The third part of this amendment is again to bring uniformity that even expenses of maintenance and education of all minor children, when maintenance is sought for them, shall also be concluded within a period of sixty days. This is the object of the Marriage Laws (Amendment) Bill.

The second Bill, which is the Indian Divorce (Amendment) Bill, 2001 is a very substantial amendment. I must mention that the Indian Divorce Act was legislated in the year 1869 and this was the exact replica of the English Matrimonial Causes Act, 1857. In this Act, there were several provisions which were discriminatory for women. England itself repealed that Act in the year 1923, but it is only after 132 years of its inception that we are considering amendments to this particular law.

There have been several instances in the past where the Law Commission had recommended that certain provisions of this Act be amended. The Law Commission's 15th, 19th, 22nd, and 164th reports recommended substantial changes to this Act. Subsequently, different High Courts had quashed at least two provisions of this Act as being discriminatory for women. Section 10 of the Act provided for grounds of divorce, or grounds of dissolution of marriage. I am correcting myself and I am preferring the use of words 'dissolution of marriage' because one of the

factors, particularly in a large section of Christians, says that marriages are really not intended to be divorced. So, through the Act, the community had suggested the use of words 'dissolution of marriage'. Even though the word 'divorce' has always existed in the title, we are consciously respecting that sentiment and using the words 'dissolution of marriage'.

The grounds of dissolution of marriage which were available to a wife were entirely different. The grounds available to a husband were many more. For instance, for a husband, adultery itself was a ground against the wife. But as far as the wife was concerned, in addition to adultery, she had to prove something else - adultery with cruelty, adultery with bigamy, adultery plus something else. Therefore, even if the husband was implicit of committing adultery, this was not a ground available to the wife. The courts had held that this provision which gave different grounds to both the husband and wife was discriminatory, smacked of gender bias and, therefore, they considered it necessary that the vacuum created by striking out of Section 10 had to be filled up again.

The second ground, when this Bill was introduced in the December Session of last year, was that unlike in other personal laws, the District Judge is entitled to grant a decree for dissolution of marriage or divorce. In this case, the decree requires to be confirmed by a full Bench of the High Court. So, members of the Christian community not only had to wait for a very long time but had to spend money to go to the High Court. Three judges of the High Court would constitute the full Bench, and it is only after the full Bench confirmed the decree that dissolution of marriage could have been granted.

One of the courts had held that this provision was also very onerous, and therefore, it required to be relooked into.

This Bill was referred to the Standing Committee. Different members of the Christian community, particularly, organisations of Christian women, and organisations of churches, had addressed themselves to the Government. The Government, before introduction of the December, 2000 Bill, also had consulted them. We found that these two areas were the areas of consensus. Therefore, it was introduced with the limited purpose of these two purposes along with consequential changes.

When the Bill went before the Standing Committee, several organisations, particularly, all the Christian communities appeared before the Standing Committee. It has also been the policy of the Government continuously that when personal laws are changed, views of the communities are seriously looked into and respected. Members of the community appeared before the Standing Committee. The Standing Committee had made several suggestions. Barring one, the Government had accepted all those suggestions. The suggestions are: Section 7 of the Act be amended. Section 7 says that 'because it was an Act of 1869, based on the English Act of 1857, that judgements and orders passed by English courts would constitute as a precedent for the purposes of this law.'

Now, the Supreme Court has also taken a view that after 1947, when India became an independent sovereign State, laws of another country could really not be *ipso facto* applied to us. Therefore, this was not a correct provision. So, Section 7 is sought to be repealed.

There was also certain provisions which provided for a discriminatory treatment, particularly, when there are serious grounds for dissolution of marriage, such as, adultery. There was again a discrimination that there could be a case against wife or any person that the wife was living with or the adulterer and the money was caused to be paid by him. All these provisions were discriminatory because no corresponding provision for the husband was available. So, the community suggested that these discriminatory provisions be removed.

There were also provisions that the maximum amount of alimony or maintenance that could be given to a wife would be capped to one-fifth of the husband's income. This is not the position with regard to the other personal laws and, therefore, there was a demand that this one-fifth cap should be removed. That has also been sought to be removed.

Finally, there was also a provision that in case the wife has an allegation of adultery against her, she loses her property in favour of the husband or the children. There was no corresponding provision that the husband would lose it. So, the community had suggested to the Standing Committee that this provision also be removed.

So, we have accepted all these suggestions. With all these suggestions, the Bill has already been passed by the Rajya Sabha. I am placing the Bill for consideration of this hon. House. It is a very important piece of legislation. Initially they were reluctant to change that law and subsequently, the entire community, particularly on account of women's empowerment and high levels of literacy rates, they all have complete consensus. Even in the Standing Committee, there was a consensus in order to amend the law.

The only suggestion which was made by the community and which we have not accepted is that they wanted the parallel courts, which are to be constituted by the Judges also to be empowered in relation to grant of dissolution of marriages. Now, that has not been acceptable because under our legal and judicial system, it is only the courts constituted under the Constitution and law which have the legal authority, and the courts constituted by the

religions organisations are not formally recognised as far as the Indian law is concerned. So, that suggestions did not find favour. The Standing Committee referred it to us and it did not approve it and it has not found favour with the Government either.

Sir, the third legislation is also a very important piece of legislation. It is an amendment to section 125 of the Code of Criminal Procedure.

Section 125 of the Code of Criminal Procedure is a criminal law provisions intended to save the destitution or starvation. It relates to non-earning members of a family, it relates to wives, it relates to minor children, it relates to aged parents who do not earn and are unable to support themselves. Now, this provision provided an upper limit, a cap on the maximum amount of maintenance which could be granted under this provision against a person whose earning was Rs. 500. This amount of Rs. 500 was fixed in the year 1955, and the cost of living has increased, the income has increased, and the inflation itself has increased. The Law Commission had suggested some years ago that this amount of Rs.500 be increased and capped at Rs. 5,000. The Government considered that matter and it was felt that when incomes are so variable in the society, rather than having to amend the provision repeatedly, there is no need to have a cap. After all, this is a matter of judicial discretion as to how much amount would be granted taking into consideration the requirement of the wives, the children or the aged parents, as also the life style and the incomes of the husbands.

Therefore, we have suggested a couple of changes to Section 125. The upper cap of Rs.500 is sought to be removed. Just as we have done it in the context of personal laws, we have created a provision - which did not exist, although there was a judicial opinion that such a power was there - for payment of interim maintenance and have also provided that this interim maintenance, preferably and as far as possible, should be decided within a period of 60 days from the date of the application. These laws are intended not only to strengthen the gender justice but also to provide for people who are, on account of social circumstances, in a position of distress. The most important one is the Indian Divorce Act which is intended to remove the discriminatory parts of the law and replace them with non-discriminatory parts.

I must mention a point which I had forgotten earlier. One important addition which our community had suggested to the Indian Divorce Act was to create a provision for dissolution of marriage by mutual consent. Now, this was not in the original Bill which we had introduced. It was felt by the members of the community and the Standing Committee that even when husband and wife agree to live separately dissolving their marriage, it should not be necessary that one should have to go to the court and make serious allegations against the other spouse. Both of them can, in a civilised manner, give consent to dissolution without stating the reason and the reason being that they are unable to live together. In other laws, the Hindu Marriage Act and the Special Marriage Act, the period when they should be living apart was one year but the community felt that in this case, the period should be experimented as two years. Therefore, that was respected by the Standing Committee and we have accepted that suggestion.

With these observations, I commend to the hon. House that these three important pieces of legislations be taken up for consideration and passed.

MR. SPEAKER: Motions moved:

"That the Bill further to amend the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955, as passed by Rajya Sabha, be taken into consideration."

"That the Bill further to amend the Indian Divorce Act, 1869, as passed by Rajya Sabha, be taken into consideration."

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration."

SHRIMATI MARGARET ALVA (CANARA): Mr. Speaker Sir, I believe that for the Christian women in this country, the Bill which has today been introduced marks indeed a step forward. Compared to most other communities, the Christian women have had much higher literacy rates and there has been much more of awareness and enlightenment. Yet, if you look at the laws governing marriage and divorce among Christian women, you find that they are still 150 years behind our time. I, today, thank the Law Minister and the Government for having responded to our demands. In fact, these amendments have been given in the reports of the Law Commission since 1950s. There have been a number of judgements by the High Courts and the Supreme Court pointing out that most of these provisions affecting women of the Christian community were so much discriminatory against women.

15.18 hrs (Shri Devendra Prasad Yadav *in the Chair*)

Yet, the sensitivity of the successive Governments in touching personal laws of minority communities went on delaying the process and there was always a question that the community should respond positively and that there should be a move from the community. Therefore, we women, particularly from the Christian community, had to wait since Independence till now, even for those laws which the British Parliament had amended as far as their own situation was concerned, to get it amended here in India. I must say that it was not very recently that a provision existed that laws passed by British Parliament would be applicable to us in India, to our community and the Government did not think it necessary up till now even to abolish it.

More than that, I must say that there has been unanimity, as the Minister has said. He has explained all the provisions and there is very little for me to explain beyond that. I must say that unanimity, among all the churches, was brought about and I pay tribute to the Christian women groups and organisations which have been lobbying since 1980s to get these amendments passed. When I was the Minister for Women and Child Development in the Rajiv Gandhi Government, we made this demand and Shri Rajiv Gandhi, having faced the repercussions of the Shah Bano case and judgement, said to me, "Go and get me 10,000 signatures of Christians asking for the change and I will respond."

I said, 'We got 10 lakh signatures from round the country, of men and women supporting the amendments of the Christian laws'. We presented them and said, 'Here we are and we want change'. Of course, it did take time. You know the religious hierarchy moves a little slowly. It took time to convince the Churches of North India, South India and the CBCI. The Church authorities, the women groups and some others had approached the Law Minister for amendments. I am very grateful that the Government has responded to our demands and these changes have come. I must say that marriage and divorce, probably is a very basic issue in the lives of people. Marriage is something which each religious group or each community celebrates in its own way. There are problems in the country. Even today, marriages are not registered. In many cases women are paying the price for having no registration because the husband just says, 'This is not my wife, I do not know who she is and she is claiming to be my wife'.

The second thing which exists today, which needs to be taken note of is the law on bigamy. You are not supposed to marry a second woman under the civil and other laws. But the provision is that the complainant must be the aggrieved party. So, unless the wife complains, the State does not take note of the man who married for the second or third time. Very often, when these women come to us for advice or consultation, we ask 'Why do you not file a criminal complaint?' They say that if they do that they would be thrown out of the house and that they have nowhere to go. They ask, 'Unless the States help us where will we go?' ...(*Interruptions*) I am talking of the general law which is true for Hindu women. *â€* (*Interruptions*)

I am talking of the general law as it exists today. If you are justifying everybody else doing the same thing, then why are you talking about Muslim Law? I am talking of others who do not have a personal law providing for it, still doing it and getting away with it against the law. That is why I am saying that there is need for protection of women under all the laws.

I am grateful that as far as the Christian women are concerned, these amendments have been brought today. The most important thing is maintenance. The cap has been removed. That means this limit of Rs. 500 no longer exists. And also it is not just one-fifth of the income, but it can be what is considered to be proper. The other important thing is the time limit. Now, the application, as far as possible, should be disposed of within sixty days. The Minister said that it is sixty days from the day of application. It is not so. It is sixty days from the day on which the notice is served on the husband. I must say that there are problems in this because very often serving the notice on the husband becomes the most difficult procedure for a woman.

SHRI ARUN JAITLEY: Conscious of this fact, in a corresponding change that we have suggested to the Code of Civil Procedure, which is before the Standing Committee, we have enlarged those modes of service from only through Registered Post or bailiff to new technology areas like e-mail etc. Of course, a lot of people do not have access to it. We have also provided for service by couriers.

SHRIMATI MARGARET ALVA : I am grateful to you for that, because in the old system it used to take two years to serve a notice on the husband. I am glad that that has been modernised and changed.

I must also point out that one of the points that we were objecting to all along was the discrimination on the grounds of divorce or dissolution as we call it. It is because, as you said, women have to prove adultery plus something else, whereas a man can say adultery and get the divorce proceedings going. The entire law was so vague against women that it was impossible for a woman to look for justice.

I, of course, come from a community where we neither recognise divorce nor re-marriage. So, it does not affect us.

Marriages among the Catholics are supposed to be a sacrament and the vow says 'until death do us apart'. So, we neither have divorce nor re-marriage. But, for the majority of the Christian groups which recognise divorce and dissolution, this comes as a great step forward as far as women are concerned.

I must mention here that the most discriminatory clause which existed was that when a man filed a case for divorce on the ground of adultery and won the case, then, all the property of the woman, whatever she had, automatically went to the husband. But when a woman filed a case for divorce on grounds of adultery and got divorce, she did not get any property of the husband transferred to her. It was just a one-way traffic sort of a thing when the woman lost to the husband. But when the husband was charged with adultery and found guilty, he never gave any of the property to the wife. Such provisions, I believe, are totally against the spirit and directives of the Constitution which has been existing since 1950. But these women have still been subjected to this discrimination because personal laws were not to be touched. The women have to awaken our own men, our Church authorities and institutions, and a demand has to come from within the community saying that we want justice. We demanded the community's support and demanded justice. We went round mobilising opinion within the community. I must say today that in spite of some people who may still have reservations, the overwhelming majority has supported the cause and therefore we stand here for the amendments.

They have also introduced the provision for mutual consent. It is a question of divorce or dissolution by mutual consent, as the hon. Minister has said, where we can go and get this done without all the procedures of waiting and fighting each other in the court. Here also, I must say that the question of not having to go to the High Court and wait for six months for a decree to be made permanent, is going to help us very much. But the most important thing is the provision now that even expenses of the proceedings are to be recovered...*(Interruptions)*

SHRI M.V.V.S. MURTHI

: Are you supporting the provision of mutual consent? *(Interruptions)*

SHRIMATI MARGARET ALVA : Yes. If they agree, it is all right. If both of them agree, after a period of living apart for two years, it is all right...*(Interruptions)* I know that there are pitfalls. But there are pitfalls in divorce also. There is the provision of living apart for two years. In fact, when this amendment came earlier, we had opposed it. But I must say that today when the entire community has responded amongst us and asked for it, I do not want to be the only voice against it. Even the women's organisations and groups have supported this saying that they cannot wait for many years where there is cruelty and desertion. There are all sorts of reasons why they are not living with their husbands. Without spending money and too much time, they would like to be able to do this. I realise that there are cases where this can happen abroad and this is being done without their knowledge.

There is just one more point. There was one more piece which we had presented to the Government. This is the Draft Christian Marriage Bill which was, by mutual consent among all the Christian groups, discussed. We wanted a comprehensive Christian Marriage Bill. This was circulated. The Government took into account the amendments proposed by the Christian community as also all the Churches. The amendments were all put in the chart form and circulated. They are before the Government.

Mr. Minister, I realise that you do not want to rush into things. But I am appealing to you to consider this. You have taken very progressive steps to help us. I believe if we have a comprehensive law called the Christian Marriages Act, it would help us. In fact, within the community, it has been discussed in detail and a consensus has emerged. I would appeal to the hon. Minister that maybe in the coming months if he could call a meeting of all the Christian groups together and discuss this, send it to the Standing Committee for a final view, we would be very grateful.

Having started the process, we do hope that the Government would go ahead and complete the process of codifying Christian law and making the community at least to say that we, within the Christian community, have no discrimination against the women and that there is justice for all sections.

I congratulate the Government for the initiative taken and I do want to say that the Minister has been most responsive whenever we sat with him to discuss these issues. It is essentially because of him that we have been able really to see the light of day. I support the Bill on behalf of all the women in my community.

SHRI V.P. SINGH BADNORE (BHILWARA): Sir, I rise to support all the three Bills – Marriage Laws (Amendment) Bill, 2001, Indian Divorce (Amendment) Bill, 2001 and Code of Criminal Procedure (Amendment) Bill, 2001. The sequence is little wrong. We have alimony first and the divorce next. It should be the other way round. We have divorce and then the alimony comes into place. But, I welcome these three Bills.

The important thing about these three Bills is that this is the Year of Empowerment of Women. The timing is also so right that all these three Bills are supporting the empowerment of women and the cause of women. That is why I also want to congratulate the Minister on this. Shrimati Margaret Alva was saying that these have been pending for

a very long time. It was only with the initiative of the Minister that we have got to see the Bills thus far. There is another angle to it. The Minister, being an eminent lawyer, has also been trying to get the theory that justice delayed is justice denied and has initiated fast disposal of cases in the fast track courts and the alimony is decided in 60 days. It is a welcome move.

As Shrimati Alva was saying very rightly, there are hundreds of reasons and hundreds of ways that the lawyers can put forth to really delay giving alimony to the wife. A lady is in distress. She is traumatised by what has happened. On the top of that, she does not know as to where to go. She has a residence problem. If she wants to go to her parents, they are not ready to accept here. That is another thing which I would like to bring to the notice of the Minister that in the measures that are going to be made and in the directions that are going to be given, something should be said about the residence also. Alimony is given to her. Money is given to her for the education and maintenance of her children, but what about residence? When the lady is in distress, the brothers turn their faces; her parents turn their backs to her. That is the time she wants to also have some sort of a roof over her head. Something should also be done about that.

There is also a measure which really reinforces our effectiveness and commitment to the Article 15 of the Constitution, which gives special direction to the women and children. That is also, I think, a very important piece of legislation. There are also some other anomalies. For example, maintenance is fixed. But in that, her standard of living should also be taken into account.

SHRIMATI MARGARET ALVA : That cap has been removed. Now, there is no limit.

SHRI V.P. SINGH BADNORE : It is under consideration. It should not be like income-tax. There should be other considerations like her standard of living she is enjoying. The car that she drives should also be considered in the directions and measures that are going to be taken.

Then, for example, if the alimony or the maintenance is fixed at Rs.5,000 or Rs.10,000, after 10 years this amount would not be worth much. So, this alimony should be based on price index, just as it was done in the case of the salary of Members of Parliament in the Bill which was passed a few days ago. This kind of measure should be followed here also. If the alimony is Rs.5,000 today, it will become Rs.6,000 after two or three years and Rs.10,000 after five years or so.

I think, everybody in this House is in agreement with these three Bills. An hon. Member very rightly said that this is really meant for the women belonging to the Christian community, Hindu religion and Parsi community and wanted to know whether Muslim women also do not want to get something like this. I am not making this into a controversy like Shah Bano case or anything like that. But do they also not look forward to a progressive step like this? Are they not a part of the society? Are they not a part of the Indian system? Would they not be wanting a progressive step in the right direction? This is what I want to enquire from the Minister.

In the end, I support all these three Bills.

*SHRIMATI MINATI SEN (JALPAIGURI): Thank you Mr Chairman Sir for giving me an opportunity. At the outset I would like to say that my party and I welcome both the Bills viz. The Marriage Laws (Amendment) Bill, 2001, and the Indian Divorce (Amendment) Bill, 2001. I would like to raise some salient points on the Marriage Laws (Amendment) Bill, 2001. The purpose of the Marriage Act Bill is to enable the wife to present for expenses of the proceedings and alimony pending the suit so that the wife and minor children do not face any difficulty. An attempt has also been made in the said Amendment Bill to expedite the divorce proceedings and as such it has been proposed to dispose of the proceedings as far as possible within sixty days. In my view, the word "as far as possible" is a misnomer in the present socio-economic scenario. Because by this the proceeding will be time consuming and move at snail's pace. Thus the adverse party will take advantage of it. So my suggestion is the word "as far as possible" be deleted from the Chapter III, IV and V.

In this context I would like to mention some necessary amendments in the Marriage Law and Maintenance Law of our country. As we know that in order to substantiate a valid marriage in the Hindu Marriage Act, Special marriage Act and Parsi Marriage Act, the bride and bridegroom must have to attain the age of 18 years and 21 years. In this context my proposal is to amend the age limit of both the bride and bridegroom by enhancing it to 21 and 23 respectively. Firstly because almost sixty percent of the village girls are put in wedlock at the age of 15-16 years by their parents by falsely representing the age as more than 18 years. As a result, the child marriage cannot be restrained. Secondly it has been elicited

from recent statistics that 20% to 30% growth of birth can be controlled if the mother is more than 21 years.

In this context I must mention that the Child Marriage Restrained Act, 1927, through which the solemnisation of marriage under the age of 21 years and 18 years has been made punishable with imprisonment of three months or fine. The provisions of this Act are too liberal to show any viable performance in restraining the child marriage. As a

result of which we are facing staggering problem of population in our country. So, I feel that penal provision of this Act is required to be made more stringent. So the amendment for the Child Marriage Restraint Act, 1927, is urgently needed.

Mr. Chairman Sir, I crave leave to submit for the amendment or the provisions of section 18 of the Hindu Adoption and Maintenance Act. As per provisions of the said Act only the legally married wives are eligible for maintenance. In our society, a large number of women suffer exploitation because of bigamous marriages. All of us are aware that the law does not allow to provide any maintenance to a woman whose marriage is void under the Hindu Act. Although illegitimate child can inherit the property of his or her illegitimate father as per the provisions of the Hindu Succession Act. The legal protection should be given to such woman who has not been informed of the husband's earlier marriage when she was married to him or the husband obtained her consent by playing fraud on her and deceiving her. If it is felt that a particular enactment causes hardship or inconvenience, it should be redressed by legislation. So my proposal is to amend the provisions of section 18 of the Hindu Adoption and Maintenance Act by giving wider meaning to the word 'wife'.

Before I conclude, on behalf of my party I once again welcome the Bills and thank you for giving me an opportunity to express my views on these Bills.

(* English Translation of the Speech originally delivered in Bangla)

SHRI M.V.V.S. MURTHI: Mr. Chairman, Sir, it is a welcome sign to amend these personal laws. So, I welcome these three Bills, namely Marriage laws (Amendment) Bill, 2001, Indian Divorce (Amendment) Bill, 2001 and Code of Criminal Procedure (Amendment) Bill, 2001, brought by the hon. Minister. The merit of all these amendments is that the petitions of alimony, maintenance or for the education of the children would be decided within 60 days, whereas in the past, particularly if the male is influential enough, the case of granting alimony used to go on for years together. Now, it has been cut short to 60 days.

Secondly, there are certain progressive amendments which have been brought for the dissolution of the marriages, but I am afraid whether this provision could be effectively utilised or will be utilised to the detriment of innocent girls. This aspect has to be examined, because ours is a poor country. Poverty and illiteracy are very much there in many parts of our country. We have to examine whether we have progressed enough, but the learned lady Members have supported this measure. So, I cannot oppose it, because it is their prerogative and right.

Sir, there are so many anachronistic laws and procedure in India and one of our learned Members, Dr. Nitish Sengupta has written a book on this. It is worth reading, but there is not much time to quote anything from that book. Our country is united, but there are so many personal laws which are creating problems many times.

Our is a country of not only Hinduism but also of several other faiths. We should not forget that ours is a secular State. One day or the other, this country should also adopt uniform personal laws. Then only, we would be unified. Today, it may not be possible. I may not have much support in this House to say about this matter. But several progressive and developed countries do not have too many personal laws.

Our learned Law Minister is a luminary in these laws.

SHRI P.H. PANDIAN (TIRUNELVELI): He is a luminary and also illuminating. ...(*Interruptions*)

SHRI M.V.V.S. MURTHI : He is also illuminating in the House. One day or the other, we should codify all our personal laws and do justice to the voiceless people. Otherwise, many of these laws, including the marriage laws, are being misused. We see it in several places that the male asks: "There is no evidence of marriage. Where is the evidence of marriage?" The marriages should be registered compulsorily, whatever may be the faith.

There should also be one husband and one wife. That theory should also come into effect.

SHRI P.H. PANDIAN : It is already there. Otherwise, one could be penalised.

SHRI M.V.V.S. MURTHI : It is not so in all personal laws. ...(*Interruptions*) You are also an advocate but you do not have uniform laws.

SHRI P.H. PANDIAN : No, no; 'bigamy' is already prohibited, that is, one husband and one wife.

SHRI M.V.V.S. MURTHI : Bigamy is prohibited for Hindus.

SHRI N.N. KRISHNADAS (PALGHAT): Under the Muslim Personal Law, there will be four wives. ...(*Interruptions*)

SHRI M.V.V.S. MURTHI : I am talking about India. There are only about one or two minutes for me to speak.

I appreciate that, at least, an attempt has been made to bring down the difficulties of the womenfolk, the children, the destitutes, and also the starvation deaths by way of these Amendments. I welcome them. But it should be without going to the court. How should it be decided within 60 days? A mere petition should decide it. It should not be dragged on again. How is this to be settled? Maybe in his reply, he would enlighten us about the situation. With these words, I support these three Bills.

SHRI SHIVRAJ V. PATIL (LATUR): I am not here to make a speech. I just want to put one question to the hon. Minister. I would like to say that the amendments are of salutary nature. We welcome them and support them. But I have a doubt in my mind. On the ground of virulent and incurable form of leprosy and venereal disease in a communicable form, a marriage can be dissolved. Why should it not be on the ground of AIDS? Now, probably, AIDS is more dangerous than these two diseases. I just wanted to understand it from the Minister.

SHRI ARUN JAITLEY: I will reply later on.

श्री धर्म राज सिंह पटेल (फूलपुर) : सभापति महोदय, मैं सरकार द्वारा प्रस्तुत तीन विधेयकों - विवाह विधि (संशोधन) विधेयक, भारतीय विवाह-विच्छेद (संशोधन) विधेयक और दण्ड प्रक्रिया संहिता (संशोधन) विधेयक - का स्वागत करता हूँ। मैं कहना चाहता हूँ जो बिल सरकार द्वारा प्रस्तुत किए गए हैं, उनको बहुत पहले लाना चाहिए था। तलाक (विवाह विच्छेद) की बीमारी सबसे ज्यादा शहरों में फैल रही है और महिलायें सबसे ज्यादा परेशान हो रही हैं। हम लोग लगातार देख रहे हैं, ऐसी बहुत सारी महिलायें हैं, जो शादी होने के तुरन्त बाद परित्यक्त कर दी जाती हैं। ऐसी स्थिति में दस-दस सालों तक मुकदमा चलता रहता है और उन्होंने फिर विवाह भी नहीं किया है। मैं इस बिल का स्वागत करता हूँ और इतना ही कहना चाहता हूँ कि 60 दिनों में जो गुजारा-भत्ता देने की व्यवस्था की है, इसमें कुछ ऐसा उपाय किया जाए, जिससे गुजारा हो सके। इसके साथ ही जो कम उम्र की लड़कियाँ हैं, कम समय में ही छोड़ दी जाती हैं, अधिनियम में क्या आपने कोई प्रबन्ध किया है कि एक-दो साल के अन्दर ही मुकदमें का फैसला हो जाए।

DR. A.D.K. JAYASEELAN (TIRUCHENDUR): Mr. Chairman Sir, I rise to support the three Bills, namely, Marriage Laws (Amendment) Bill 2001, Indian Divorce (Amendment) Bill 2001 and Code of Criminal Procedure (Amendment) Bill, 2001.

These are reformative Bills and I think, it is a landmark in the process of judicial reforms and women empowerment. As you are aware that this is the "Year of Women Empowerment", our hon. Law Minister has done justice to them. It is a progressive measure. We know the prevailing conditions in our society. It is really unfortunate that even after 54 years of Independence, the women are treated like animals. They are treated as slaves in many of the houses.

We have the joint family system. There is some blessing because of the joint family system, but there are curses also because of that. There is a fight between the mother-in-law or sister-in-law and daughter-in-law and like that. Some people want to become heroes outside and when they cannot become heroes, then they go and beat their wives in the house. They want to become heroes not inside the Parliament but inside the house. So, many women are abandoned in a way, their life is really miserable.

Another thing is that when once they get married, their fathers also keep their hands off their daughters. When the woman goes back to her father saying that her husband beats her up, he would ask her not to come to him. He would ask her to go to him or go to hell. This is the attitude of the people. In some cases it has happened also. So, I think, the hon. Minister has done justice to the women. I think extra consideration may be given to women folk because they are the voiceless people in our society. They go to court for divorce as it is the last resort because we do not have any other way. If they want to leave, they have to go to court, otherwise they commit suicide. Sometimes, they are declared or made mad by their in-laws and things like that. It has happened, as we have seen newspaper reports.

Another thing is regarding financial assistance to them. We know, we live in poverty, for their maintenance and existence people do not have money.

Where from they will get money for going to the court? So, there is drain on their financial resources also. If that lady goes to his father, he will say, 'I am already in debt. I paid dowry and spent so much of money for the marriage'. So, he is helpless. Though he wants to help his daughter, he cannot do anything because he does not have money. So, this is the situation. To make it easier, actually, the period has been limited to 60 days. It is a welcome measure. I think, the hon. Minister can explore whether it is possible to minimise this period to 30 days. It may be difficult but he can explore it because during this period, they have to experience this trauma and agony. They are having one step on the street and having one step inside the House. They are neither inside nor outside. This is the pitiable and miserable plight of women in our country. They have to depend on others. Most of the women do not have any income. That is the problem. If they have their own income, then they need not bother about other people. So, the Government has come to their rescue through this Bill.

There is no mention about the recovery of amount from the respondent. I think, it may be enacted in the Civil Procedure Code or something like that. It has not been mentioned here. This will be another problem. For that also, they have to once again go to the court and they have to knock the doors of the lawyers. So, there must be a

definite provision for that also. In case, they fail to pay that money within 60 days, what punishment will they get? If it exceeds 60 days, what will happen? Will the judges made accountable? Will they give explanation and if so, to whom? So, this is not very clear to me and it may be clear to the legal *pandits*. So, they must be made accountable to somebody. You have mentioned only 60 days here. Suppose if it is not over within 60 days, then who is accountable for that? The judges must give explanation. It must benefit the women in a way. In such cases, I think, the women will enjoy the benefit of this law.

In regard to this Christian law, I do appreciate that our Minister has been consulting many Church leaders. Many of the Church leaders expect still more from the Minister in course of time. My humble request to the Minister is that the Catholic Bishops and the leaders of the National Council of Churches in India need to be consulted. If they are consulted and a consensus is arrived at, then it will solve many of the problems. Otherwise, unnecessarily it will become another politics in our country. So, I really appreciate the Minister for this and I also congratulate him for the excellent work that he has done.

With these words, I support this Bill.

SHRI S. MURUGESAN (TENKASI): Mr. Chairman, Sir, on behalf of our Party, AIADMK, I am participating in this discussion. I welcome the amendment made in the Sections 125, 127 and 128 of the Criminal Procedure Code and also in the Divorce Act. The Law Minister, being an eminent lawyer, knows the practical position of the people of India.

As far as the Criminal Procedure Code – Sections 125, 127 and 128 – is concerned, the judicial magistrate shall have the power to order of maintenance. Prior to this amendment, the magistrate, in his power, can order not exceeding Rs. 500. In this legislation, the upper limit varies according to the standard of living prior to their separation and the economic conditions of the couple. I would like to draw the attention of the hon. Law Minister to one or two points.

16.00 hrs.

The judicial magistrate shall not exercise his discretion in fixing the upper limit exorbitantly as per his whims and fancies. The Bill should postulate that aspect also. There should be a safeguard against such hazards in disposal of cases. In the same Amendment, there should be check on the judicial magistrates who dispose such cases. The supervisory magistrate should keenly watch this.

Then, the maintenance case should be disposed of early. The time limit is 60 days. Our hon. Law Minister has already said it on the floor of the House that in future the courier service must be used. We also welcome this.

The other point is, usually the Court gives adjournment once in 15 days or once in a month. Practically the proceedings cannot be completed within 60 days. So, I would draw the attention of the Law Minister that in cases under Section 125 of Cr.P.C., the adjournment should not exceed one week. Then alone the case could be completed in 60 days.

I welcome the interim allowance and maintenance provision. This is more important. This provision for interim allowance will really give benefit to the sufferings. The interim allowance for conducting the case for maintenance should be collected from the other side before the next hearing. It should be a conditional one. Only on deposit, the other side should be heard.

Then, as far as the Indian Divorce (Amendment) Bill is concerned, this amendment is not only welcome from the women side but from the men side also because we are also some times affected. That is why, we also welcome this Indian Divorce (Amendment) Bill. With these words, I conclude my speech.

श्रीमती रेनु कुमारी (खगड़िया) : सभापति जी, आज जो लोकसभा में बिल आया है उसके लिए मैं माननीय कानून मंत्री श्री अरुण जेटली जी को हृदय से बधाई देती हूँ। आजादी के 54 वर्षों के बाद ये ऐसे कानून मंत्री हैं जिन्हें महिलाओं की नारकीय स्थिति का ध्यान आया है और इन्होंने सदन में इस बिल को लाने का काम किया है, जिसके लिए वे बधाई के पात्र हैं। अधिकांश महिलाएं चाहे किसी भी जाति, धर्म और क्षेत्र से जुड़ी हों, वे पुरुषों पर आश्रित हैं। एक ओर वेद में कहा गया है कि "यत्र नार्यस्तु पूजयन्ते स्मन्ते तत्र देवता" यानी जहां नारी की पूजा होती है वहां देवता बसते हैं। वहीं दूसरी ओर महिलाएं आज पीड़ित और त्रस्त हैं और अपने अस्तित्व के लिए आज भी संघर्ष कर रही हैं। महिलाओं की स्थिति अच्छी नहीं है, इसलिए एक कवि ने कहा है कि "अबला जीवन हाय तुम्हारी यही कहानी, आंचल में है दूध और आंखों में पानी"। आज उसकी यही स्थिति है। रामायण में भी कहा गया है कि "कत विधि सिरजहिं नारि जग माहि, पराधीन सपनें सुख नाहि"। नारी शुरु से ही पराधीन रही है। सभी जानते हैं कि स्वतंत्रता कितनी सुखद और अनमोल चीज है। लेकिन यह नारी का दुर्भाग्य है कि उसको बचपन में पिता के अधीन, युवा वस्था में पति के अधीन और वृद्धावस्था में पुत्र के अधीन रहना पड़ता है।

इस तरह नारी अपने जीवन काल में कभी या हमेशा किसी न किसी पुरुष, चाहे वह पिता रूप में आए, पति रूप में आए या पुत्र रूप में आए, उसके अधीन रहना पड़ता है। संविधान में उसे समान अधिकार मिले हैं लेकिन इसके बावजूद हमारा देश पुरुष प्रधान देश है जिसके चलते आज भी महिलाएं दोहरी नागरिकता जी रही हैं और महिलाओं को अधिकार नहीं मिल रहे हैं। उन्हें सिर्फ कर्तव्य ही पूरा करना पड़ रहा है। इसे देखते हुए मंत्री महोदय जो बिल लाए हैं, उसके लिए वह बधाई के पात्र हैं। ईसाई महिलाओं के बारे में बहुत सी बातें हो चुकी हैं। मैं नहीं चाहती कि इस बारे में ज्यादा कह कर सदन का समय लूं क्योंकि बहुत से सदस्य इस पर बोलने वाले हैं। 10-12 वर्षों से ईसाई महिलाएं संघर्ष कर रही हैं। आज वे बहुत खुश होंगी क्योंकि इस विधेयक से उन्हें ज्यादा अधिकार मिलने वाले हैं। यह महिला अधिकार वर्ग है।

इस वाँ ऐसा विधेयक लाकर सचमुच महिलाओं को सम्मानित करने का काम हुआ है। मंत्री जी ने महिलाओं को एक अनूठा उपहार देने का काम किया है।

शादी एक पवित्र बंधन है और पवित्र रिश्ता है। यह संसार शादी करके ही चलता है। ब्रह्मचर्य आश्रम के बाद गृहस्थ आश्रम में प्रवेश करके जीवन का उद्देश्य पूरा होता है लेकिन आपस में विश्वास न हो, आपस में कलह द्वा हो तो ऐसी परिस्थिति में रिश्ते को तोड़ देना अच्छा होता है। मंत्री जी ने इस बिल में जो संशोधन किया है उसमें "यथासम्भव" शब्द का प्रयोग किया है। "यथासंभव" किस लिए? इससे पुरु को एक कवच मिल जाएगा। इस बिल से महिलाओं को जो अधिकार मिलने वाले हैं, वे नहीं मिलेंगे। "यथासम्भव" शब्द को हटा दिया जाए। (व्यवधान) वैसे मैं कम समय ले रही हूँ लेकिन आप इशारा करेंगे तो मेरी बोलने वाली बात भी खत्म हो जाएगी। जब महिलाएं प्रताड़ित होकर घर से निकलती हैं तो उसे कहीं शरण नहीं मिलती है। पुरु प्रधान समाज उसे इज्जत की नजर से नहीं देखता है। उसकी मानसिक और सामाजिक क्षति होती है।

यहां गुजारे भत्ते की बात हो रही है। उसे न्यायाधीश के मन पर नहीं छोड़ना चाहिए। यह देखना चाहिए कि पति की आय के कितने स्रोत हैं? उसके पास कितना काला धन और सफेद धन है। महिलाएं पुरु के साथ रहती हैं। वह हर चीज में अर्धांगिनी कहलाती हैं। यह न्यायाधीश तय न करे कि उसे इतना गुजारा भत्ता दिया जाएगा। उसे गुजारे भत्ते के रूप में कम से कम 50 प्रतिशत मिलना चाहिए। यदि वह 50 प्रतिशत नहीं दे सकता तो कम से कम वन थर्ड जरूर मिलना चाहिए। महिलाओं के साथ एक समस्या है कि उसके साथ छोटे-छोटे बच्चे रहते हैं। बच्चों के गुजारे के लिए गुजारा भत्ता मिलना चाहिए। 14 वाँ तक बच्चा अपनी माँ के साथ रहे, इसलिए उसकी पढ़ाई-लिखाई की व्यवस्था करनी चाहिए। इसी सदन में मैंने पैट्रोलियम मंत्री जी को एक महिला का आवेदन दिया था। वह महिला एक साधारण टीचर है। उसके पति ने उसे 10-15 साल पहले छोड़ दिया। आज भी वह अपनी कहानी सुनाती है तो रोने लगती है। उसे कोई न्याय नहीं मिला और न ही मुआवजे के तौर पर राशि मिली। उसके दो छोटे-छोटे बच्चे हैं। दिल्ली या किसी दूसरे शहर में पढ़ाई कितनी महंगी है, उसे आप समझ सकते हैं। पैट्रोलियम विभाग में उसका पति काम करता है लेकिन मुझे इस बात का दुख है कि मंत्री जी के यहां से भी नैगेटिव जवाब आ गया।

इसलिये, मैं माननीय मंत्री जी से कहना चाहूंगी कि क्या वे यह बिल किसी राजनैतिक कारणवश तो नहीं लाये हैं?

सभापति महोदय : आप समाप्त कीजिये। मेरे पास माननीय सदस्यों की सूची लम्बी है जिन्हें इस विषय पर बोलना है।

श्रीमती रेनु कुमारी : सभापति महोदय, बहुत महत्वपूर्ण मामला है। आप मुझे दो मिनट और दीजिये। मैं मंत्री जी से पूछना चाहती हूँ कि क्या उनके मन में वोट बैंक की भावना तो नहीं है क्योंकि मैं देखती हूँ कि यह पुरु प्रधान समाज है। इसमें महिलाओं की क्या इज्जत है, यह सब आप भी जानते हैं। मैं बताना चाहती हूँ कि महिलाओं की न कोई जाति होती है, और न ही कोई धर्म। वह जिस पुरु के साथ ब्याही जाती हैं, वह उसी जाति और धर्म की हो जाती हैं और उससे जो बच्चा पैदा होता है, वह भी उसी जाति और धर्म का होता है।

सभापति महोदय, माननीय मंत्री जी जो बिल लाये हैं, वह अच्छा है लेकिन जिस नीयत के साथ वे इसे यहां लाये हैं, क्या उन्हें विश्वास है कि इससे महिलाओं को ठीक से न्याय मिल सकेगा। इसी संदर्भ में मैं धारा-125 का जिक्र करना चाहूंगी। हम सब आज तक शाह बानो प्रकरण भूले नहीं हैं। जिस समय कांग्रेस की बहुमत सरकार केन्द्र में थी, उसने धारा 125 में संशोधन कर दिया था और शाह बानो को एक किनारे कर दिया था। क्या इस प्रकार मुस्लिम महिलाओं द्वारा भी तीन बार तलाक, तलाक, तलाक शब्द कहने से उसे पुरु से छुटकारा मिल जायेगा।

सभापति महोदय, अभी न्याय की प्रक्रिया बहुत लम्बी, उबाऊ और खर्चीली है। माननीय मंत्री जी ने इस बिल में सुझाव रखा है कि दो साल तक पति-पत्नी को अलग रखकर टैस्ट किया जाये लेकिन मेरा कहना है कि महिला आर्थिक रूप से कमजोर होती है। वह कहां से पैसा लायेगी, अपना गुजारा कैसे करेगी? माननीय मंत्री जी इस बिल में यह गारंटी कर दें कि 60 दिन के अंदर उसका निपटारा कर दिया जायेगा अन्यथा न्यायालय उसके लिये दोगी होगा अथवा ऐसा कर दें कि वह महिला अपने पति के साथ एक साल तक रहे। (व्यवधान)

सभापति महोदय : अब आप बैठ जायें। अन्य बोलने वाले सदस्यों के साथ आप न्याय करें।

श्रीमती रेनु कुमारी : सभापति महोदय, अंत में यही कहना चाहूंगी कि प्रिदर्शिनी मट्टू हत्याकांड हुआ जिसका फैसला न्यायाधीश ने 450 पेज कादिया। उस फैसले में लाचारी महसूस होती है। न्याय बिक जाता है, वकील बिक जाते हैं। इसी प्रकार दिल्ली में जेसिका लाल हत्याकांड हुआ जिसमें तीन गवाह मुकर गये और उस मामले में न्याय नहीं मिल पाया है। सभापति महोदय, बिहार के पटना शहर में इसी प्रकार का एक शिल्पी गौतम हत्याकांड हुआ जिसका न्याय आज तक नहीं मिला। (व्यवधान)

सभापति महोदय : अब आप बैठ जायें। आपकी बात हो गयी है। अन्य सदस्यों को भी बोलना है।

श्रीमती रेनु कुमारी : सभापति महोदय, मैं कानून मंत्री जी से आग्रह करना चाहूंगी कि वे स्वयं एक अच्छे, कुशल अधिवक्ता है। वे इस बात को अवश्य ध्यान में रखेंगे कि महिलाओं के बलात्कार के जितने केस आते हैं, उनका फैसला तुरंत आये। इसके लिये एक व्यापक कानून बनाने की जरूरत है। (Interruptions) *

सभापति महोदय : अब आपका भाग रिकार्ड में नहीं जायेगा। मि. ए.के. सांगतम।

(* Not Recorded) (व्यवधान)

श्री राजेश रंजन उर्फ पप्पू यादव (पूर्णिमा) : सभापति महोदय, पटना में शिल्पी गौतम काण्ड हुआ था, जिसकी डी.एन.ए. टैस्ट की रिपोर्ट आ गई है। डी.एन.ए. टैस्ट रिपोर्ट सी.बी.आई. के पास जमा है। इसमें सी.बी.आई. क्या कर रही है।

सभापति महोदय : आप अपना आसन ग्रहण कीजिए, आपकी कोई बात प्रोसीडिंग्स में नहीं जायेगी। (व्यवधान) *

(* Expunged as ordered by the Chair.)

SHRI K.A. SANGTAM (NAGALAND): Mr. Chairman, Sir, thank you very much for giving me this opportunity to speak on this Bill. I would first like to congratulate Shri Arun Jaitley, the hon. Minister for Law and Justice for recognising the sentiments of the Christians by using the word 'dissolution' in place of 'divorce'. The Christian community value this word because according to Christian customs, no divorce is permitted after marriage. Marriage could be dissolved only upon the mutual consent of the partners.

Shrimati Margaret Alva has already spoken elaborately on Christian marriages and all such things. Here I would not

like to speak or debate on the Marriage Laws (Amendment) Bill, 2001. Most of the North-Eastern States predominantly have a Christian population, especially my State of Nagaland has 90 per cent Christian population.

Sir, when after a political upheaval the State of Nagaland came into existence, the Government of India had made a 16-point agreement with the Convention of the Naga People. The State of Nagaland was constituted as a political necessity in total recognition of the genuine aspirations of the Naga people. Accordingly, an agreement was signed 16-Point agreement with the Naga leaders and the Government of India which is called the 16-Point Agreement.

Sir, it is clearly mentioned in the 7th point of the 16 points in the Agreement and an Act of Parliament also was enacted, known as the 13th Constitution Amendment Act of 1962. I would like to quote the relevant portion of article 371A :

371A. Special provision with respect to the State of Nagaland.-(1) Notwithstanding anything in this Constitution,-

(a) no Act of Parliament in respect of--

(i) religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

- i. administration of civil and criminal justice involving decisions according to Naga customary law,
- ii. ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

Sir, what I am trying to point out is that by this provision, the Government has given the guarantee to the people of Nagaland that it shall not interfere with the customs, religious and social practices of Nagaland. I would not like to say much on this but I just wanted to stress this point in order that it could be incorporated into the Act and the Government could accordingly give protection to the State of Nagaland. Therefore, whatever other provisions are there, I would not like to argue on those points.

Sir, but the fact is that the holy sacrament of marriage takes place in the church in accordance with the Christian rules. But outside that when a person dies and whatever is the inheritance and whatever the divisions, it goes by the customs.

Because we have sixteen different Naga tribes in Nagaland and each tribe has got its own peculiar customary law, guarantee was given to us by the Constitution of India under article 371(a). I would like to reiterate that protection guaranteed by this august House through the Constitution of India.

With these words, I conclude.

डॉ. रघुवंश प्रसाद सिंह (वैशाली) : समापति जी, 4 बजे नियम 193 के तहत खाद्यान्नों की अनुपलब्धता के कारण देश में उत्पन्न स्थिति पर बहस होनी चाहिए थी। उसे कब लेंगे? (व्यवधान)

समापति महोदय : रघुवंश जी, आप तो बीएसी के भी सदस्य हैं। इन बिलों पर जो समय तय किया गया है, उसके बाद 193 की चर्चा लेंगे। आप कुछ देर इंतज़ार कीजिए।

डॉ. रघुवंश प्रसाद सिंह : कितने बजे चर्चा शुरू होगी? (व्यवधान)

समापति महोदय : आपकी पार्टी की भी महिला सदस्य हैं। आप उनके साथ तो न्याय कीजिए।... (व्यवधान)

SHRI ANADI SAHU (BERHAMPUR, ORISSA): Thank you, Mr. Chairman, Sir. I also thank Shri Raghuvansh Prasad Singh for having been very kind enough to sit down.

Mr. Chairman, Sir, I stand here to support the three Bills presented to this House. After the eloquent speech of the Law Minister, and an equal elucidation of Madam Margaret Alva, I do not think it is necessary for me to again go into the details of the Bills.

Sir, the Christians say, 'God has united, let no man divide'. The Hindus say, 'Marriages are decided in Heaven'. But I, as an atheist, would say, 'No marriage is decided in Heaven; and God does not unite people'. In the present day context, there are discordant views in marriages, and divorces are quite natural. Since it is necessary to have laws and codes for different people who have personal laws, a number of laws have to be amended. I being an atheist, I would like to say that personal law should be one through out the country. That will help us in solving many problems that this society has been facing for the last many hundreds of years.

डॉ. रघुवंश प्रसाद सिंह : एक ही कानून होने से सब मंत्री बैठे रहे जाएंगे। (व्यवधान)

सभापति महोदय : आप अपना स्थान ग्रहण कीजिए। हमने अनादि साहू जी को बुलाया है।

...(व्यवधान)

सभापति महोदय : रेणु जी, आप बोल चुकी हैं। अब बैठे-बैठे न बोलें।

SHRI ANADI SAHU : Sir, it is my belief that there should be a uniform law to regulate marriages, divorces and, once divorces are decided, alimony or maintenance will follow. We have seen that the issue of maintenance has been creating problems. For political considerations also maintenance has had some sort of up and down stream course. Take the case of 1986 when a very secular section of the Criminal Procedure Code was given a religious tint, a religious colour, as a result of which the Criminal Procedure Code, which has been prepared long back in 1898 and amended in 1973, which is purely secular in character, became some sort of a tainted law. Now, this amendment to Sections 125, 127, and Section 128 so far as maintenance is concerned, is a good step forward. But the first one about alimony and all those things about all those laws – Parsi laws, Christian laws, Hindu Marriage Code and all those things - in my honest opinion, should have become one. Since we are not able to make a uniform civil code and a uniform marriage law, it is natural for the Government to come up with different amendments to suit the necessity of the day.

It was referred to the Standing Committee. Dr. Raghuvansh Prasad Singh was also a Member of that Standing Committee. I was also there and Shri P.H. Pandian was also there in that Standing Committee. After due deliberations and taking into consideration the representations of different Christian bodies, so far as the Christian Amendment Bill is concerned, it was decided. The catholic in unison and 29 churches gave presentations. There are also a large number of churches in this country. I am happy that the Syrian Christians also helped. They Syrian church is the oldest church in the country. They live in Kerala. I think, they are the first Christians who had come to India. Later on, Romans became Christians.

Sir, I am thankful to the Syrian Christians who agreed to the process of Diverse Laws to see that there is no confusion about it. But so far as the maintenance is concerned, still there are some difficulties.

Mr. Chairman, in clause 2(2) of the amending provision of CrPC, there is certain ambiguity. I think, the law makers at a later stage may think of amending it. Clause 2(2) of the CrPC amendment says: "Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or if so ordered, from the date of the application for maintenance or interim maintenance."

So, the option has been given to the court. Now, 60 days period has been fixed for the order. But in my honest opinion, it should be from the date of application because it is the destitute woman who has been asking for maintenance money. If it is given from the date of order -- that means, after 60 days -- what would she be doing if she has borrowed money from the people for surviving, to keep her body and mind together and to survive physically?

This part of the clause, in my honest opinion, should be amended at a later stage to see that it should be from the date of application. That will help the women who are in distress.

MR. CHAIRMAN : Please conclude now.

SHRI ANADI SAHU : I think, since the hon. Chairman has asked me to conclude, with these words I support these Bills and conclude my speech.

श्रीमती कान्ति सिंह (बिक्रमगंज) : सभापति महोदय, आपने मुझे बोलने का अवसर प्रदान किया, उसके लिए मैं आपको धन्यवाद देती हूँ। आज माननीय मंत्री महोदय श्री अरुण जेटली जी द्वारा विवाह विधि (संशोधन) विधेयक, 2001, भारतीय विवाह-विच्छेद (संशोधन) विधेयक, 2001 और दंड प्रक्रिया संहिता (संशोधन) विधेयक, 2001 पारित किए जाने का प्रस्ताव किया गया है, यह बहुत ही सराहनीय कदम है।

सभापति महोदय, आज देश की आधी आबादी महिलाओं की है। उनके आंसू पोंछने का जो काम इन विधेयकों द्वारा किया गया है यह बहुत अच्छा कदम है। यदि देश की आधी आबादी के आंसू पोंछने का काम नहीं किया जाता, तो यह देश की प्रगति में बाधक बन सकता था। इसलिए मंत्री जी बधाई के पात्र हैं। मंत्री जी ने भारतीय विवाह-विच्छेद विधेयक के जरिए संबंध विच्छेद रहने तक निर्वाह के लिए गुजारा भत्ता देने का जो प्रावधान किया है, उसके लिए भी मंत्री महोदय बधाई के पात्र हैं। जो संबंध-विच्छेद, यानी डाइवोर्स किया जाता है, अर्थात् यदि किसी महिला को उसका पति डाइवोर्स देता है, तो उसको समाज और परिवार में अच्छी दृष्टि से नहीं देखा जाता और ऐसी स्थिति में जो आपने इसमें प्रावधान किया है और 60 दिन का जो समय निर्धारित किया है यह बहुत अच्छा किया है। मैं तो इससे भी आगे जाकर

कहना चाहती हूँ कि 60 दिन भी बहुत अधिक हैं और कम समय होना चाहिए क्योंकि जब किसी महिला को डाइवोर्स किया जाता है और उसे घर से निकाल दिया जाता है, तो वैसी स्थिति में महिला की हालत बहुत दयनीय हो जाती है और 60 दिन तक वह अपना गुजारा कैसे और कहां करेगी ?

जैसा श्री अनादि साहू ने कहा, जिस दिन से आवेदन दिया जाता है, केस लड़ना हो या जीवन भत्ते के रूप में पैसा देने की बात हो, अगर उसी तारीख से वह भत्ता दिया जाए तो मैं समझती हूँ कि इससे उस महिला को बहुत राहत मिल सकती है। साथ ही, जैसे श्रीमती रेनु कुमारी ने कहा, यथासंभव 60 दिन के भीतर, जो कहा गया है, पुरुष प्रधान देश में पुरुषों को बाहर निकालने के लिए यह शब्द जोड़ने का काम किया गया है। इसलिए यथासंभव शब्द को निकाल देना चाहिए। साथ ही बच्चों और पिता के भरण-पोषण, शिक्षा इत्यादि के लिए भी 60 दिन का समय निर्धारित किया गया है, जो ठीक है लेकिन सबसे बड़ी बात यह है कि क्या 60 दिन में न्यायिक प्रक्रिया पूरी हो सकती है? आज के परिवेश में जैसे चल रहा है, न्यायालयों में काफी केसेज लम्बित हैं। मंत्री जी जो डाइवोर्स का नियम लाए हैं कि 60 दिन के भीतर फैसला कर दिया जाएगा, चाहे सिविल कोर्ट हो चाहे फ़ैमिली कोर्ट हो, जब से नोटिस जारी किया जाता है, क्या यह संभव हो सकता है? **वै. (व्यवधान)**

सभापति महोदय : अब समाप्त कीजिए।

श्रीमती कान्ति सिंह : आप यदि इस तरह करेंगे तो मैं कहूँगी कि भेदभाव कर रहे हैं।

सभापति महोदय : आप ऐसा नहीं बोल सकती।

श्रीमती कान्ति सिंह : मैं अपने शब्द वापिस लेती हूँ लेकिन मुझे बोलने का मौका दिया जाए।

सभापति महोदय : आसन के लिए सब बराबर हैं।

श्रीमती कान्ति सिंह : मुझे बोलने का समय दिया जाए, इसके लिए मैं निवेदन करती हूँ।

सभापति महोदय : और भी माननीय सदस्य बोलने वाले हैं। उनके साथ भी न्याय कीजिए।

श्रीमती कान्ति सिंह : 500 रुपये की अपर लिमिट को खत्म किया गया है, इसके लिए मैं मंत्री जी को बधाई देती हूँ क्योंकि 500 रुपये रिक्शा पुलर या मामूली सा चतुर्थ श्रेणी कर्मचारी भी कमा लेता है लेकिन यदि किसी महिला के लिए 500 रुपये निर्धारित करते हैं तो उसके साथ न्यायपूर्ण ही नहीं बल्कि बर्बरतापूर्ण बात होती।

आप इसाई महिलाओं के डाइवोर्स के बारे में जो बिल लाए हैं, जिसमें 3 से 10 आइटम बढ़ाए गए हैं, मैं उसके लिए भी आपको बधाई देना चाहती हूँ क्योंकि हिन्दू विवाह कानून में इस तरह की प्रक्रियाएं पहले से थीं। अब इसाई महिलाओं के लिए करने जा रहे हैं। विधि आयोग ने अपनी रिपोर्ट में लिखा था कि भारतीय इसाई विवाह अधिनियम, 1962 और भारतीय तलाक अधिनियम, 1969 इसाई महिलाओं को समान अधिकार नहीं देता। इन विसंगतियों का विरोध न केवल विधि आयोग द्वारा हुआ था बल्कि उच्च न्यायालय कोलकाता, मद्रास और मुम्बई द्वारा भी किया गया था और उसकी भर्त्सना भी की गई थी। इसी तरह धारा 96 और 20 के तहत यह जरूरी माना गया था कि अगर नीचे की अदालत से डाइवोर्स हो जाता है तो उसे उच्च न्यायालय से भी सहमति प्राप्त करनी पड़ती थी। उसमें तीन जजों की बेंच का होना जरूरी था। तीन जजों की बेंच की जो बात कही जा रही है, मैं समझती हूँ कि यह संभव नहीं हो पाता कि कभी तीन जजों को बैठने का समय मिलता हो। इसाई महिलाओं के लिए क्लॉज 4(ए) में व्यवस्था जो दिया गया है कि आम सहमति के मातहत, यानी अगर दोनों की सहमति हो जाए तो डाइवोर्स दे सकते हैं या विघटन कर सकते हैं।

जिस तरह से हिन्दू विवाह अधिनियम में एक वा का समय निर्धारित किया गया है, उसी तरह इसाई महिलाओं के लिए दो वा की अवधि नहीं होनी चाहिए, बल्कि उनके लिए भी एक वा की अवधि की जाये। साथ ही इसमें लिखा है कि दो वा अलग रहने के छः महीने बाद उसमें तारीख पड़ेगी और उसके बाद 18 माह तक जज उसको रोक सकता है। दो साल तक पति-पत्नी अलग रहेंगे तभी पिटीशन दाखिल होगी और उसके बाद 18 महीने तक जज उसको अपने पास समझने के लिए रोक सकता है। मैं समझती हूँ कि इस प्रक्रिया के तहत बहुत ज्यादा विलम्ब हो जाता है। ऐसी हालत में उनका बुढ़ापा आ जायेगा तो फिर डाइवोर्स होने से कोई फायदा नहीं होता है।

मैं आपके माध्यम से एक और चीज माननीय मंत्री महोदय से कहना चाहती हूँ कि जिस तरह का हिन्दू विवाह अधिनियम में व्यवस्था है कि जहां लड़की की शादी होती है, अगर पति चाहता है कि वह डाइवोर्स दे दे तो वहां केस फाइल किया जाता है। दूसरा प्रावधान यह है कि जहां पति-पत्नी रहे हैं, वहां केस फाइल किया जाता है। अगर पति-पत्नी में नहीं पटती है, पत्नी को घर से निकाल दिया जाता है और पत्नी अपने मायके चली जाती है, उदाहरण के तौर पर मैं कहना चाहती हूँ कि अगर लड़की पटना की है और लड़के वाला पक्ष दिल्ली से शादी करना चाहता है तो लड़के वाले लड़की पक्ष को दिल्ली बुलाते हैं और दिल्ली में शादी की जाती है- एक तो यहां और दूसरे शादी के बाद, अगर वह दूसरी जगह रहते हैं, दोनों जगह केस दायर कर सकते हैं, ये दो नियम हैं। दो जगह पर ही केस दायर किया जा सकता है और केस दायर करने की जगह बदलनी होती है तो सुप्रीम कोर्ट से इजाजत लेनी होती है। इसमें इस तरह से संशोधन होना चाहिए कि जहां की लड़की हो, वहां पर ही केस दायर कर सके। अगर वहां केस दायर नहीं होगा तो उसका जो इम्प्लीमेंटेशन होता है या नोटिस दिया जाता है तो नोटिस को पुरुष वर्ग वहां तक पहुंचने नहीं देता है, गलत पता दे देता है। उसकी तामील नहीं होने की वजह से महिला या पत्नी को उसकी जानकारी नहीं हो पाती है कि उसके खिलाफ केस दाखिल किया गया है। वैसे हालात में क्या होता है कि न्याय प्रक्रिया के द्वारा उन्हें जो न्याय मिलता है, वह उसका पालन नहीं कर पाती है और इतनी दूर आकर वह केस नहीं लड़ सकती है। ऐसी हालत में इसमें संशोधन करना चाहिए कि जहां की लड़की हो, जिस जिले की हो, वहीं पर उसे केस दायर करने का राइट मिलना चाहिए, तभी मंत्री जी जो महिलाओं के लिए बिल लाये हैं, महिलाओं की आधी आबादी है, इससे बढ़ी हुई आधी आबादी की महिलाओं को राहत मिल सकती है, इसलिए मैं कहना चाहती हूँ कि इसमें संशोधन लाया जाये।

इन्हीं शब्दों के साथ मैं आपको धन्यवाद देती हूँ।

DR. (MRS.) BEATRIX D'SOUZA (NOMINATED): Mr. Chairman, Sir, I rise in support of the Marriage Laws (Amendment) Bill, 2001, the Indian Divorce (Amendment) Bill, 2001, and the Code of Criminal Procedure (Amendment) Bill, 2001. The Government and the hon. Minister have to be congratulated on pulling off a hat trick. I refer to three progressive laws which make radical amendments in the existing laws related to women. While the hon. Minister is to be lauded and will certainly be blessed by women who have been divorced, it is unfortunate that he has faltered on the threshold of forbidden territory and decided not to go where angels fear to tread.

I refer to the exclusion of the Muslim Women (Protective of Rights on Divorce) and Act, 1986 from the purview of the present Bill and the Code of Criminal Procedure (Amendment) Bill, 2001. Since Independence, the country has been polarised between majority and minority communities. The Government has unfortunately failed. It decided to

dialogue with the clergy and not with the enlightened members of the minority communities. This Muslim Women's Act is one of the most controversial legislation of our day. It was enacted among protests from women groups as well as from the enlightened Muslim intelligentsia. This Act symbolises the loss of secular values and betrayed the communal tendencies of the then Congress Party.

The Act deprived Muslim women of the rights granted under a secular provision of Section 125 of the Criminal Procedure Code, on the basis of religion alone, and this violated the Constitutional mandate of equality.

Under the Code of Criminal Procedure, Section 125 has been amended to raise the amount of allowance. Its non-application to the Muslim women is unconstitutional and discriminatory. It is only the divorced Muslim women who are outside the purview of the family courts....(*Interruptions*)

MR. CHAIRMAN : Please be brief.

DR. (SHRIMATI) BEATRIX D'SOUZA: I have started just now. I have prepared for one year to speak on this Bill. Now, you tell me to be brief. I will be brief as far as possible.

Family matters, because of their complex nature, have been relegated to the family courts and were taken out of the Magistrate's court. It was with this aim that the jurisdiction of Section 125 of the Criminal Procedure Code was specifically given to the family courts. The informal structure of the family court led to a speedy settlement of disputes. Hence the need to bring the jurisdiction for proceedings, under the Muslim Women's Act, back into the family courts. The Family Court Act, under Section 7(1)(c),(d) and (f) gives the court jurisdiction to decide on issues of property and maintenance. Section 3 of the Muslim Women's Act deals with property of women and maintenance could easily be covered under the provision of the Family Court Act. Further Section 7, clause 2 (a) of the Family Court Act categorically gives the court the jurisdiction exercisable by a Magistrate of the First Class under Chapter 9 of the Criminal Procedure Code which includes Section 125. This is also an option given to the parties under the Muslim Women's Act. Section 7(2)(b) also provides for jurisdiction given under these enactments. The Muslim Women's Act, therefore, falls within the ambit of the Family Court Act. The shift in the jurisdiction would not change the substantive part of the legislation. It is only a procedural modification.

The Muslim women are unfortunately being shuttled from one court to the other. This causes immense confusion.

It is 30 years since the Government has looked at maintenance laws and much was expected of this Bill. It was expected that 30 or 35 per cent of the husband's lifetime income would be given as maintenance. In this case, the husband would have to file an affidavit giving details of his annual income. The wife would have to give an assessment of the husband's income and the onus would be on the husband to disprove it. This allowance has not been specified in the Bill.

Under the Supreme Court rulings, an estranged wife can get maintenance from her husband. Also, a divorced Hindu wife can get maintenance from her husband. The proof of marriage according to essential rites is not essential.

This is important. If a woman decides to remarry, refuses to live with her husband or has an extra-marital relationship, she cannot claim maintenance. I would like to know why should maintenance be given to a divorced or separated woman dependent on her morality. Maintenance is not given to a woman for good behaviour but it is given to a woman to keep the body and soul together.

I am a Christian. Probably, I am the only Christian woman inside this House.

Under this Bill, it is left to the magistrate to order such allowance as he considers necessary. We have to first gender-sensitise the Judges, who are, after all Indian men with all the chauvinism of that species, who regard divorce as a moral failing on the part of the woman. ...(*Interruptions*)

I am coming to the Indian Divorce Act. To paraphrase Shakespeare, marriage binds you together with hoops of steel. In the less romantic language of economics, it creates a 'barrier to exit.' All said and done, marriages are not made in heaven. They are made between two fallible people. Even Christian marriages are not made in heaven. Christian theologians have made the distinction between real marriages and actual marriages. They have also recommended dissolution or divorce. ...(*Interruptions*)

I would like to finally touch on the conflict of laws between Catholics – canonical or ecclesiastical and civil. Sir, the 'no exit' situation for a Catholic still exists. Even if a Catholic gets divorced under this Act, the Catholic will still have to go to a Catholic Church to get an annulment. ...(*Interruptions*) If Catholics do not get an annulment and marry under the Special Divorce Act, they will be living in sin. Therefore, this Act is really not very helpful. But, I am sure, the Catholic Church will give us more speedy annulments.

Finally, Section 10(a) introduces dissolution of marriage by mutual consent, and a separation of two years has been introduced, while in other Marriage Acts, it is only a one-year separation. The Minister has already told us about this - two years before and two years after separation. Are only Christian women expected to have so much fortitude to wait for four years to get a divorce?

With these comments and suggestions, I applaud the very comprehensive Bills and support them.

श्रीमती आभा महतो (जमशेदपुर) : सभापति जी, आज यह विवाह विधि (संशोधन) विधेयक, 2001 हमारे कानून मंत्री जी द्वारा लाया गया है, मैं इसका हार्दिक स्वागत करती हूँ और यह बिल सराहनीय है। यह बिल अगर और पहले आता तो हमारी बहुत सारी महिला बहनों को इसकी सुविधा मिल सकती थी। साथ ही मैं भगवान से प्रार्थना करूंगी कि भगवान न करे, किसी की जिंदगी में तलाक का अवसर आये क्योंकि हिन्दू विवाह नीति के अनुसार जब सात फेरे लेते हैं तो सात फेरे का मतलब सात जन्म साथ गुजारना होता है लेकिन सात जन्म न सही परंतु एक जिंदगी साथ जीने का तो अधिकार महिला और पुरुष को मिलना ही चाहिए। फिर भी मैं यह कहूंगी कि इस विधेयक में जो एक वर्ष की अवधि रखी गई है, इसमें संशोधन होना चाहिए। एक वर्ष की जगह पर कम से कम दो या द्वाइ वर्ष या तीन वर्ष होना चाहिए क्योंकि एक वर्ष में शादीशुदा पति-पत्नी एक दूसरे को ठीक से समझ भी नहीं पाते हैं। हिन्दू विवाह रीति के अनुसार कई बार तो वे एक दूसरे को जानते तक नहीं है और एक दिन जाकर शादी तय हो जाती है, लड़की मंडप में जाकर बैठ जाती है और तभी वह एक दूसरे की शकल देखते हैं। इस प्रकार के विवाह भी हमारे भारतवर्ष में होते हैं। इसलिए यह अवधि कम से कम सात या पांच वर्ष या दो से द्वाइ साल रखनी चाहिए ताकि वे एक दूसरे को समझ सकें और अगर समझ सकने के बावजूद भी एक दूसरे के साथ जिंदगी बसर नहीं कर पाते हैं तो फिर तलाक का अवसर देना चाहिए।

साथ ही मैं यह भी कहना चाहती हूँ, जैसा डा. डिसूजा और श्रीमती रेणु जी ने भी कहा, बहनें चाहे हिन्दू हो, सिक्ख हों, मुस्लिम हों या ईसाई हों, जिसका भी तालाक होता है, उसे समान सुविधा मिलनी चाहिए। इसके साथ ही जिनके बच्चे हैं, ऐसी स्थिति में उनको कुछ ही राशि के रूप में अंश न देकर पति की सम्पत्ति के एक-तिहाई हिस्से का भागीदार बनाना चाहिए। कारण यह कि ऐसी परिस्थितियां पैदा हो जाती हैं कि वे समाज में अपने को स्थापित नहीं कर पाती हैं और दूसरी शादी भी नहीं कर पाती हैं। उनको जिन्दगी भर एक या दो बच्चों के साथ जीवन गुजारना होता है। इसलिए ऐसी महिलाओं को पति की सम्पत्ति के एक-तिहाई हिस्से का भागीदार बनाना चाहिए।

अंत में, मैं सरकार द्वारा प्रस्तुत तीनों विधेयकों का पुरजोर समर्थन करती हूँ और आशा करती हूँ कि भविष्य में महिलाओं की रक्षा हेतु विधेयक सरकार द्वारा लाए जाते रहेंगे।

PROF. R.R. PRAMANIK (MATHURAPUR): Mr. Chairman, Sir, I rise to say a few words on the Code of Criminal Procedure (Amendment) Bill, 2001 and support it. This Bill has been brought by the Minister because, as it is mentioned in the Statement of Objects and Reasons, the aggrieved party, the applicant for maintenance has to wait for several years. So, the Minister has brought an amendment to introduce 'Interim Maintenance'. In the principal Act, only 'Maintenance' was there, but the Minister has brought this amendment to provide for immediate relief in the form of 'Interim Maintenance'. Earlier, the amount was very meagre. It was only Rs.500 and now he has waived the upper limit. The Minister has also prescribed a time limit of 60 days to get the 'Interim Maintenance'. Earlier, it used to take years together to get maintenance because it is a very complicated case.

As has been mentioned by hon. Members, the aggrieved party has been taken as wife and the respondent has been taken as husband. Normally, the husband divorces the wife, but the wife can also divorce the husband, if the wife is stronger than the husband. In the book, "Criminal Procedure Code, 1973" written by Shri Basu, it is stated that there is a provision for getting Interim Maintenance. Under Section 125, an order for maintenance of wife, children and parents can be passed. In page 390, under the chapter "Power to make Interim Order for Maintenance" it is stated:

"Having regard to the nature of the jurisdiction under Section 125, it would be competent for the Magistrate to make an Interim Order for Maintenance, subject to the other conditions referred to, pending final disposal of the application. Before making such an Interim Order, the Magistrate may call for an affidavit on behalf of the applicant stating the grounds in support of the claim for Interim Maintenance. If the allegations in the application or the affidavit are not true, it is always open to the person against whom an Interim Order is made to show that the order is unsustainable and that it should be cancelled or modified."

So, an order can be passed for Interim Maintenance by the First Class Magistrate. But still the Minister has brought this amendment to provide for Interim Maintenance. I have no objection to this, but it is already there under the principal Act.

I am speaking on one Bill only.

The magistrate can make an interim order. But the upper limit is not there. It is on the discretion of the magistrate 1st Class. It is based on his thinking. Now, the law must be worded exactly. It should have no ambiguity. The amount of allowance should be objective and not subjective. It should depend on the income of the respondent. According to the amendment, it will be on the discretion of the magistrate as he thinks fit. One magistrate can think that the interim maintenance should be Rs. 10,000 while another magistrate can think that the amount should be Rs. 100. So, how can it be defended in a court? It is according to his thinking. Some Members think that saffronisation of education is good for the society, while some other people think that it is not good for the country. So, it depends on one's thinking. Now, you are leaving it only on the thinking of the magistrate.

MR. CHAIRMAN : You come to the subject.

PROF. R.R. PRAMANIK : Now, they are giving a blank cheque to the magistrate. He can put any amount. The power can be abused. It can go against the applicant. It can also go against the respondent. So, I suggest that there should be an upper limit and also a lower limit. It is for interim maintenance and not for maintenance. The upper limit should be Rs. 1,500 per month and the lower limit should be Rs. 1,000 per month. The discretion with the magistrate should be for Rs. 500 only.

In the proviso, it is interim maintenance for wife or children, father or mother. It should be: 'wives, husbands, children and parents' because it may so happen that the applicant is a husband and the respondent is a wife. It has happened in many places. Though the number is very small, yet it may happen. So, there should be a provision in the law. If a husband comes to a court for maintenance, then, according to this law, he cannot claim because the applicant is 'she', that is, 'wife'. So, it should be: 'wives, husbands, children and parents – father or mother'. If father gets maintenance, the mother will not get it. If the mother gets maintenance, the father will not get it. So, it should be parents, that is, both father and mother. Either you write 'father and mother' or you write 'parents'. It is for interim maintenance.

For maintenance, the upper limit or some percentage – say, 10 per cent, 15 per cent or 20 per cent - of his net income should be there. In a home, there may be many applicants. A wife may be an applicant. The children may be applicants. A father may be an applicant. So, the whole amount should be distributed amongst them. The interim maintenance or maintenance is not for one person. There may be many persons claiming the maintenance.

17.00 hrs.

So, it should be clear and there should be no ambiguity.

Mr. Chairman Sir, I would like to say that it is a long drawn process to get the maintenance. The applicant, I say, is wife and the husband is the respondent, so the wife has to prove in the court before the magistrate that she was legally married. The wife has to prove that she has not indulged in any adultery. She has to prove that she is not living with her husband without any sufficient reason, she has to prove that she has not enough income to maintain herself, she has to prove that her husband has not enough money to maintain her. She has to prove that her husband has not refused or neglected her. There are six factors. So, it may become difficult here to get the final order from the magistrate. It may take years to get the final order from the magistrate.

Mr. Chairman Sir, I would like to ask the hon. Minister that after so many years, if her application is rejected, then what will happen? The hon. Minister is providing a provision in that regard, but what about the money given to the applicant as an interim maintenance? I would like to know whether that would be returned back or where would it go. I want an answer from the hon. Minister.

Lastly, with apologies to my female colleagues, though I am not speaking on behalf of males, in the eye of law, everybody is equal. Man and woman are equal. I have asked the hon. Minister that if the applicant is a husband and the respondent is the wife, for that reason, as I have said, ""wife, husband, children and parents"" should be included.

With these words, I congratulate the hon. Minister for bringing this amendment and I thank you also for giving me an opportunity to speak on this.

SHRI A. KRISHNASWAMY (SRIPERUMBUDUR): Thank you Sir, for the opportunity given to me.

This is a very useful Bill. Those who raised a voice for women's rights since Independence have not bothered about the deserted ones. Only our hon. Law Minister, under the leadership of our dynamic Prime Minister, Shri Atal Behari Vajpayee, has taken a very good step forward.

Sir, in Section 125 CRPC, the deserted women or the father or mother can easily approach the court with the minimum expenses. If they want to go to any other court, they have to spend more, but with a 75 paise stamp court fee and with a Rs.2.25 stamp court fee, they can approach the court for their maintenance. But in the case of interim maintenance, they have to go to an appellate forum.

Sir, you know about the courts and advocates having delaying tactics and how they prolong the case. The utmost result is that both the petitioner and respondent do not get any judgement from the court. They will be settled out of the court by the advocates of both the parties or by village elders or by *Panchayatdars*. They will make a compromise with a one-time settlement because they cannot go to the court every month to get their maintenance amount. So, they get one-time settlement for maintenance and that is all. This is what is happening.

Even before this amendment, the Magistrate will give an oral order in the court and the Panchayat leader will say, 'you have to pay this much money to the deserted woman'. This is what is happening.

Sir, the hon. Minister has brought this Bill but he has not enlightened us as to how long the interim maintenance will be issued to the deserted woman. He may say that it will be issued till the disposal of the case. When will the case be disposed? It will take two or three years. Till then, the petitioner or the respondent cannot stand before the court. So, I would request the hon. Minister to enlighten this House as to how long the interim maintenance will be given. He has to stipulate the period for completing the case.

I would like to suggest that 60 days' period is not necessary for giving the interim maintenance. When a petitioner files the case before the magistrate, he will peruse all the records and take the case for numbering. After the case is numbered, the summons will be issued to the respondent. When the respondent appears before the court, on the same day itself, the magistrate can pass *ex parte* order regarding the interim maintenance. This is my humble suggestion. When the respondent appears before the hon. Magistrate, on the same day itself, *ex parte* order on the interim maintenance can be passed.

There should be some limitation to wind up the case. At least before six months, the case should be completed. The Minister has to find out a solution for this. In the case of a person who is working in a private sector or in a public sector or in Government, the maintenance amount will be deducted from his salary and it will be sent to the deserted woman. But in the case of a businessman and daily *coolies*, they are not paying the maintenance amount properly and they are trying to cheat the deserted woman. For this also, the hon. Minister should bring an amendment.

With these words, I support these Bills.

SHRI P.C. THOMAS (MUVATTUPUZHA): Mr. Chairman, Sir, in order to avoid repetition and to save time, I do not go into the details of the three-in-one Bill.

1708 hrs. (Shri Shrinivas Patil *in the Chair*)

I would like to congratulate the Standing Committee and also the hon. Minister for taking away Section 7 from the Indian Divorce Act. According to Section 7, we should follow the English judgements. Sir, Christianity came to India as early as AD 56, as was referred to by Shri Anadi Sahu. And even in England, Christianity must have come much later. So, we need not follow the English decisions in any way. Therefore, it is right and it is good that we have taken away that clause which says that the English decisions should be followed.

That is the only thing which I would like to add. The provisions which have been added in all these three Bills are very relevant and very necessary. Therefore, I support these three Bills.

SHRI K. FRANCIS GEORGE (IDUKKI): Sir, I rise to support these three Bills that are being discussed here today.

I will very briefly refer to the Indian Divorce Act. As the hon. Minister has said and as has been elaborated by other Members, especially Shrimati Margaret Alva, these Bills seek to rectify the gender inequality and the procedural lapses that existed in the parent Act. The Minister has said that there has been a wide-ranging consultation with the Church leaders and the community leaders, and there has been a consensus regarding the introduction and passing of this Bill. Sir, I agree with the Minister on this. I would like to make one suggestion. I will mention it very briefly. I am not going into any other Bill because all have been discussed and all are in agreement with them.

But the hon. Minister said, there is only one aspect on which the Government or the hon. Minister disagreed with the Church leaders. But I would again refer to it because that is regarding the decisions of the dissolution or annulment of marriage that is being arrived at by the Church courts. As far as the Church courts are concerned, at least in the case of the Roman Catholic Church, the Church courts go through a very elaborate procedure of calling the witnesses and verifying the records. Then only they arrive at a decision of a dissolution or annulment of marriage. I think it is, in fact, even elaborate and very stringent than the procedure that is being resorted to by our civil courts.

So, the Minister said, if we agree to that request of the Church leaders or the community leaders, all the other communities will come forward with the same request and it will be an infringement on the civil law of this land. I fully agree with the Minister. I am not saying that any other law or any other procedure should have an overriding effect in the case, compared to our civil laws. But the point I am trying to make is this. I would request the hon. Minister to consider this point that the records of the procedure of the Church court's decision can be called by the civil court when parties to a dispute in a marriage case approach the civil court after going through these elaborate procedures under the Church court. The civil court can call for the records of the Church courts and verify them. The civil court can avoid consuming all the time again going through all the procedures of a case. If the court agrees, if it is satisfied with the procedures after perusing all the records, if the court is satisfied that justice has

been done, why not the court accept it? Only if the court finds some deficiencies, the court can examine and verify that particular point and then come to a conclusion very speedily.

Sir, that would be in the interest of the litigant also, whoever maybe the party. So, I would again request the hon. Minister to consider this particular point without affecting the civil law or the status of the civil courts of our country. That is all I want to say.

I again congratulate the hon. Minister, all the Members of the Standing Committee and all those who have put in their efforts in arriving at a very happy solution to this very vexing problem that has been, in fact, flogging our sisters in all the communities concerned.

श्री मोहन रावले (मुम्बई दक्षिण मध्य) : सभापति महोदय, मैं शिवसेना पक्ष की तरफ से इस विधेयक का समर्थन करता हूँ लेकिन कुछ बातें माननीय कानून मंत्री जी से अपने ढंग से कहना चाहता हूँ।

अभी श्री राधिका रंजन अपना भाण कर रहे थे। उनके अलावा अन्य माननीय सदस्यों के भाण भी मैं सुन रहा था। मैं उन सब की बातें सुनकर आश्चर्य चकित हो रहा था क्योंकि उनके दिल से जो बात निकल रही थी, क्या वह सचमुच दिल से थी या वातावरण की वजह से निकल रही थी। **In the eyes of law, everybody is equal.** मेरे ख्याल से आप सभी इस बात से सहमत होंगे। हिन्दुस्तान में एक स्त्री के लिये एक हजार इंडियन पीनल कोड में लॉज़ हैं जिन्हें एक तरीके से देखना चाहिये। लेकिन एक मुस्लिम बहन जो किसी की बीवी, मां या बेटा होती है, उसे तलाक देकर रास्ते पर डाल दिया जाता है, उसके बाल-बच्चे रास्ते पर आ जाते हैं - क्या आपका कानून उस पर समान रूप से लागू होता है? हिन्दुस्तान में रहने वाले मुस्लिम के लिये पर्सनल लॉ है लेकिन विश्वभर में रहने वाले अन्य मुस्लिमों के लिये अलग कानून है। मैंने कई मुस्लिम देशों- तुर्की इजिप्ट, ईराक, इंडोनेशिया, मलेशिया आदि का दौरा किया है। अगर वहां औरत को तलाक दिया जाता है तो वह कोर्ट में चली जाती है। अगर शौहर दूसरी शादी करना चाहता है तो उसे पहली बीवी की अनुमति लेनी पड़ती है लेकिन यहां सब के लिये कानून अलग है। स्व. राजीव गांधी के समय में शाह बानो सुप्रीम कोर्ट से अपना केस जीत गई लेकिन इन्होंने उसके लिये पार्लियामेंट में कानून बदल दिया।

मैं यहां सबसे अपील करना चाहता हूँ। हमारी बहन श्रीमती सोनिया गांधी यहां नहीं हैं। वह कांग्रेस की अध्यक्ष हैं। वह भी एक महिला है। यहां सारी महिलाओं ने अपनी भावनाएं व्यक्त की हैं। लेकिन इस बारे में फिर से सोचने की आवश्यकता है। इसे वोटों की राजनीति करके नहीं देखना चाहिए।

सभापति महोदय, कम्युनिस्ट पार्टी के श्री प्रामाणिक जी ने कहा है "**In the eyes of law, everybody is equal.**" इसी बात को लेकर मैं अपील करना चाहता हूँ चाहे हिंदू हो, मुस्लिम हो या क्रिश्चियन हो। हमारी आदरणीय मैडम श्रीमती मार्गेट आल्वा यहां बैठी हैं। कानून सबके लिए समान होना

चाहिए। मैंने मुम्बई में देखा था कि जिन बहनों ने शाह बानो के खिलाफ मोर्चा निकाला था, उन्हें प्रोटेक्शन दिया गया। मैं राजनीति की बात नहीं करना चाहता हूँ। लेकिन जिन्होंने समर्थन में मोर्चा निकाला उन्हें प्रोटेक्शन नहीं दिया गया। आपने मुझे बोलने का समय दिया उसके लिए मैं आपका आभारी हूँ। लेकिन इसके लिए मैं पुनः आप सबसे अपील करना चाहता हूँ। इसी के साथ मैं अपनी बात समाप्त करता हूँ। धन्यवाद।

श्री हरीभाऊ शंकर महाले (मालेगांव) : सभापति महोदय, आपने मुझे बोलने का मौका दिया, इसके लिए मैं आपका आभारी हूँ। तीन भाई थे और एक बहन थी। उनमें हमेशा झगड़ा होता रहता था। भाई बोलते थे कि तुम लड़की हो, लड़की हो। बहन बोलती थी कि मेरे में क्या कमी है। मैं सुबह जल्दी उठती हूँ। अभ्यास में प्रथम रहती हूँ। कभी-कभी मां बीमार होती है तो उसकी सेवा करती हूँ, उसे खाना खिलाती हूँ। उन्होंने परमेश्वर के पास अर्ज की। लेकिन उन्हें याद आया कि प्रभु भी तो पुरुष है, फिर न्याय कैसे होगा। बहनों यह मंत्री महोदय भी पुरुष हैं, यह आपको न्याय कैसे देंगे। इस बिल में इन्होंने ऐसा कुछ प्रावधान नहीं किया कि जिससे झगड़ा न हो। पति-पत्नी दोनों साथ-साथ इकट्ठे रहें, ऐसा कोई कारण नहीं दिया। इस बिल में ऐसा दिखाई देता है कि उनमें झगड़ा होता रहे। इसमें वकील के व्यवसाय का प्रतिबिम्ब दिखाई देता है। वकील झगड़ा निपटाता नहीं, चालू रखता है, ताकि उसके धंधे में वृद्धि हो। इस बिल में कुछ ऐसा ही है।

सभापति महोदय, लेकिन मैं मंत्री महोदय को इस बात के लिए धन्यवाद देता हूँ कि उन्होंने अंग्रेजों के जमाने के 54 साल पुराने दो सौ कानूनों को समाप्त कर दिया है। 1923 का एक गोपनीय कानून है। यह कानून अंग्रेजों ने भारत में अपना राज चलाये रखने के लिए और भ्रष्टाचार फैलाने के लिये तैयार किया था। मंत्री जी इस कानून को भी समाप्त कर दें, यही मेरी उनसे विनती है।

SHRI K.H. MUNIYAPPA (KOLAR): Sir, I will not take more time. In the present context of the procedure and the bottlenecks everywhere, these measures are not sufficient. With this Amendment, we are forcing the judiciary to dispose of the cases within 60 days. It is simply beyond its capacity and even the existing procedural requirements, like recording, documentation, etc. This would also mean that to meet this impossible deadline, the judicial officers might overlook the fine points of law to the detriment of the petitioners. In other words, it is a miscarried justice.

This Amendment attempts to cure a part of the malice affecting our social system of marriage. It is time we attempt to reform the process beyond exploitation by both men and women, instead of attempting a quick-fix solution, like speedy disposal of petitions for alimony and litigation expenses. We should go a little slow in the matter of administrative and judicial reforms, which have an effect on our age-old traditions and customs.

I would also like to mention two or three other points. I will not take more time of the House.

Coming to inter-caste marriages, it is a problem all the time. I would like to inform the hon. Minister, through you, that it is a very typical issue which should be taken care of. The hon. Minister should give a serious thought to it as to how to solve this problem and how to give protection to the inter-caste married couple.

Another important point is about the time limit. I am not particularly objecting to the short time that has been prescribed to give relief to women or men. My only point is that it could be a miscarried judgment, and that is most important. If we go faster, then something may happen. Relief should be given as early as possible to women or men, but the courts should take their own time to give a proper judgment.

डॉ. रघुवंश प्रसाद सिंह (वैशाली) : सभापति महोदय, यहाँ पहला बिल है - विवाह विच्छेद संशोधन विधेयक, लेकिन चार कानूनों में एक साथ संशोधन हो रहा है - यानी फोर इन वन और उसके बाद तीन कानूनों पर एक साथ बहस हो रही है - यानी थ्री इन वन।

महोदय, पीपल्स रिप्रजेन्टेशन एक्ट में भी लिखा है कि यथासंभव छः महीने के अंदर केस का निपादन कर दिया जाए लेकिन अभी तक जितने केस फाइल हुए हैं हिन्दुस्तान भर में इलैक्शन पिटीशन वाले, अभी तक एक भी केस छः महीने में नहीं निपटा बल्कि छः वा भी उसमें लग जाते हैं। पीपल्स रिप्रजेन्टेशन एक्ट में भी इसी प्रकार का प्रावधान है कि छः महीने में इसका निपादन कर दिया जाए लेकिन चार-पांच साल तक उसमें लग जाते हैं। कानून में प्रावधान रहते हुए भी उसमें इतना समय लग जाता है। मैं मंत्री जी से जानना चाहता हूँ कि जैसा इसमें इन्होंने कहा है कि नोटिस तामील होने के बाद 60 दिन, अब नोटिस तामील होने में, नोटिस इश्यु हुआ है, रिसीव नहीं हुआ है, महीने दो महीने तो उसी में लग जाते हैं, उसके बाद 60 दिनों का समय यथासंभव दिया गया है, क्या मलिमथ कमेटी ने जो अनुशंसा की, चार-पांच अनुशंसाएं लॉ कमीशन ने कीं, उसके बाद आप इतना कमजोर कानून क्यों लाए हैं, फिर भी सब लोग वाह-वाह कर रहे हैं। दिल्ली की हाई कोर्ट में करीब 700 ऐसे मामले वाँ से लंबित हैं। उनके अध्ययन के बाद इतना कमजोर कानून यहां आया है। जब पीपल्स रिप्रजेन्टेशन एक्ट में छः महीने वाली बात हाई कोर्ट लागू नहीं कर पाती है तो 60 दिनों में कैसे यह हो जाएगा, इसे हम जानना चाहते हैं। इसलिए मैरिज एक्ट, स्पेशल मैरिज एक्ट, पारसी मैरिज एक्ट, पारसी विवाह विच्छेद एक्ट, सभी कानूनों में बड़ी भारी त्रुटि हमें लगती है।

सभापति महोदय, दूसरी बात मैं यह कहना चाहता हूँ कि सी.आर.पी.सी. में संशोधन कर के 500 रुपए वाली बात को हटा दिया है, लेकिन इसमें मेरी आपत्ति यह है कि कोर्ट को ही पूरा अधिकार दे दिया गया है, जो ठीक नहीं है। अब कोर्ट कौन सा व्यू अख्तियार करेगा, कौन जानता है। वे 1979 के पहले के 500 रुपए का कितना मूल्य आंकेंगे, इसे इतने कंजर्वेटिव ढंग से देखेंगे या नहीं, यह कौन जानता है। इसलिए इसमें कुछ लोअर और अपर लिमिट होनी चाहिए।

सभापति जी, अभी जैसा पी.एम.के. के एक माननीय सदस्य बता रहे थे कि कानून तो अच्छा बना रहे हैं लेकिन इन तीनों कानूनों को एक ही साथ पास करने से इनके बारे में जो रूल बनेंगे, वे कैसे बनेंगे और उनमें संशोधन होगा या नहीं, इत्यादि शंकाएं यहां उठाई गई हैं। मैं चाहता हूँ कि उनका समाधान हो जाए, तो ज्यादा अच्छा रहेगा। चूंकि सभी दल के लोगों ने इनका समर्थन किया है इसलिए मैं भी इन कानूनों के पास हो जाने के हक में हूँ, लेकिन जो शंकाएं उठाई गई हैं, पहले उनको दूर कर दिया जाए।

सभापति महोदय, हमारी जो विवाह पद्धति दुनिया की सर्वश्रेष्ठ पद्धति मानी गई है, लेकिन यहां भी गंधर्व विवाह और लव-मैरिज आदि चल पड़ा है। हालांकि वह सब फेल हो रहा है और यदि इन सब कानूनों का ख्याल किया जाएगा, तो वर्तमान सरकार के सब मंत्री इसमें पकड़े जाएंगे क्योंकि यहां तो बिना विवाह के भी बेटी और दामाद हो रहे हैं। ये सब पकड़े जाएंगे। इसलिए यह सब हमें पता नहीं लगता है। जो शंकाएं उठाई गई हैं उन सब पर विचार कर के कानून पास होना चाहिए।

SHRI ARUN JAITLEY: Sir, a very large number of Members have spoken on this legislation.

SHRIMATI MARGARET ALVA : Mr. Minister, please reply to the last speaker first.

श्री अरुण जेटली : सभापति महोदय, मुझे बहुत चिन्ता हो रही थी कि मेरे द्वारा जितने भी कानून सदन में प्रस्तुत किए गए हैं या सदन द्वारा पास किए गए हैं उनमें से हरेक पर रघुवंश बाबू बोले हैं। पहले कुछ कमजोरी ढूँढते हैं और फिर हक में वोट देते हैं। इसलिए मुझे लग रहा था कि शायद यह महिलाओं के कल्याण का बिल है इसलिए नहीं बोल रहे हैं। इसीलिए मैं बार-बार यहां से इशारे कर के उनसे कह रहा था कि वे इस पर भी कुछ बोलें। उन्होंने दो प्रश्न इस कानून के संबंध में पूछे हैं। सदन के कुछ और अन्य माननीय सदस्यों ने भी प्रश्न उठाया है कि जो 60 दिन की अवधि रखी गई है, उसमें भी " यथासंभव 60 दिन " कहा है, यह किस सीमा तक लागू हो पाएगा- यह बँत ठीक है। यह हक न्यायपालिका को है। उन्हीं के अधिकार क्षेत्र में यह बँत आती है कि अधिक से अधिक शीघ्रता से निपटारा हो, लेकिन कानून की जो नीयत है और कानून बनाने वालों की जो मंशा है, वह कानून में लिखने से स्पष्ट हो जाती है और न्यायपालिका भी उसी के अनुसार प्रयास करती है कि शीघ्र से शीघ्र इस पर कार्रवाई हो।

आपने कहा कि 60 दिन नोटिस देने के बाद □ लेकिन नोटिस तामील होने में ही काफी समय लग जाता है, यह आशंका आपने व्यक्त की। आपकी शंका ठीक है। हमने इस संबंध में सिविल प्रासीजर कोड में भी तब्दीलियां की हैं और नोटिस भेजने का जो पुराना तरीका था उसको बदला है। पहले अदालत की तरफ से नोटिस जाता था या डाक के माध्यम से जाता था उसके अतिरिक्त और तरीकों का प्रयोग भी किया जाता था। अब जो आधुनिक तरीके के लोग हैं और आर्थिक दृष्टि से संपन्न लोग हैं वे ई-मेल पर भी नोटिस की तामील कर सकते हैं और फैंक्स भी कर सकते हैं और अब तो कूरियर सर्विस लगभग हर छँटे-बड़े शहर में उपलब्ध है जो एक दिन में चिट्ठी गंतव्य पर पहुंचाने की गारंटी देती हैं। इन सब माध्यमों को नए कानून में लाने का प्रयास किया गया है। वह कानून शायद संसद के अगले सत्र में आ जाए। इसलिए नोटिस तामील करने में जो ज्यादा समय लगता है उसको भी कम करने का एक प्रयास होगा।

SHRI AJOY CHAKRABORTY (BASIRHAT): If you serve a notice through a processor of the Court, then nobody knows as to when it would reach the addressee. Then they will say that the opposite party is not available so the process cannot be served.

SHRI ARUN JAITLEY: That is precisely why I was telling Raghuvansh Babu that we have now, in the amended Civil Procedure Code which has been introduced, brought alternate methodologies of service of notices also, in addition to the existing method of process serving.

Sir, several questions have been raised. I will first answer the hon. Member who spoke in favour of at least considering on a future date, the suggestion whether church courts, or courts constituted by religious �ecognize�ons, can also be considered. It is a very serious and a very important matter. This was one of the suggestions of various �ecognize�ons before the Standing Committee. The Standing Committee did not agree to it but referred it to the Government. We considered it at length. We felt that we cannot accept this suggestion because once we start �ecognize�o judicial institutions outside the Constitutional mechanism, it will never be confined to one religious denomination. We will have to do it across the board. There will be other demands which will come up. This will not be in consonance with the rule of law as it is accepted in India.

In fact in the 15th report of the Law Commission this question was specifically considered. The Law Commission made an observation which I agree with. It opined, "It is the courts constituted under the law of the country that will

have exclusive authority to determine disputes relating to civil rights, and there can be no surrender or abdication of that authority".

SHRIMATI MARGARET ALVA : Shri Jaitley, can I just say one thing if you do not mind?

The point still remains that the church courts exist and unless the dissolution is confirmed by them, it is not valid as far as the community is concerned. You cannot either remarry or do anything else until the dissolution is confirmed by the church even though you are divorced in a law court.

DR. NITISH SENGUPTA (CONTAI): That applies only for the Catholics, not for others.

SHRIMATI MARGARET ALVA : Yes. Among the Catholics, you cannot accept anything unless it is accepted by the church courts.

SHRI ARUN JAITLEY: There are several kinds of customs which may continue to exist. But conferment of jurisdiction by law on a religious court is something that our rule of law really does not accept.

There were several questions which have been raised in the course of the debate. Shrimati Alva mentioned that the women members of the community really should be complimented. I completely agree with her. In fact, a study will have to be made as to how we have evolved over the last five decades where from a strong opposition to any form of reform there is a near total consensus that we must now change and give the right of equality. Even in December when this Bill was introduced, there were a few disagreeing voices with us. But when the Christian women's �ecognize�ons came and met me, they not only agreed to the two suggestions but their grievance on the contrary was that I had not gone far enough. My response to them was that they should speak to their religious leaders and other leaders of the community and get them to agree because, in terms of personal law our policy has been that we involve the community, and the opinion of the community is always respected when we make these changes. I found that literally within weeks and months a near consensus was presented before us. It is this consensus which actually has enabled this law to be improved upon in such a short period of time.

There are several other areas. Shrimati Alva said that there should be a more comprehensive Bill. Sir, to argue in favour of a comprehensive Bill is relatively easier. But, a comprehensive Bill which encompasses everything is normally a little difficult. In relation to our personal laws, laws are really in two categories. One are laws which �ecognize rituals and customs. It is extremely important that as far as rituals and customs are concerned, the religious feelings and customs of those communities will always have to be respected. Therefore, law should be always reluctant in interfering in those areas. Marriage laws, for instance, fall in the category where a large number of customs, procedures, rituals are involved. In fact, in relation to the Christian community, it is one of the only cases where the marriage law is completely different and the divorce law is different. There is the Indian Christian Marriages Act, and there is the Indian Divorce Act. The two laws are entirely different. At one stage there was a discussion whether these two can be amalgamated and a comprehensive law can be developed on this basis. We find that still there was no total consensus on the subject. Unless we are able to build up opinion in the community itself, it will not be possible to amalgamate the two.

Therefore, we have not touched any aspects as far as the Marriage Law is concerned. The Divorce Law is important; for the reason, there are rights which emanates from the Divorce Law. They are: the rights of custody relating to property, rights relating to marital status and rights relating to amount of maintenance. These are all rights which emanate from the Divorce Law. As far as the rights are concerned, an effort must be made to make sure that the rights, as far as possible, are in consonance with the Constitutional guarantees of equality and human dignity.

Therefore, this law relating to Indian Divorce Act has now been so developed so as to be in consonance with the Constitutional guarantees of equality and dignity.

Sir, several other suggestions have been made. I may mention at this stage that there is one more area particularly in relation to the Christian community where a consensus is developing. Twenty-three Members of Parliament belonging to the community have written to me and some church authorities have also written to me that there is a very cumbersome process which is not applicable to other communities in relation to the law of succession. Whatever procedures in relation to the law of succession have been simplified for other communities, there is still a very onerous and long-winding process as far as the Christian community is concerned. Now, they want that law also to be brought at par.

MR. CHAIRMAN : Hon. Minister, one minute. There is a Message by the Rajya Sabha to be laid.

17.40 hrs.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN

JAITLEY): Sir, as far as the Succession Law is concerned, for instance, the suggestion has now been made from the community itself. We are examining that suggestion. I see a good case where even the Succession Laws now required to be amended and to be reconsidered by Parliament.

Sir, several important issues have been raised in relation to section 125 of the Cr.P.C. Section 125 of the Cr.P.C, in effect, was intended to be a very effective law but it became ineffective because of the ceiling of Rs. 500. One of the Members suggested that 'please keep an outer limit of Rs. 1500. But Sir, I respectfully, disagree with the Member, for the reason, that the ceiling of Rs. 500 was fixed in the year 1955. We have travelled 46 years thereafter. After 46 years, we are still considering in terms of fixing an outer limit. The reason why we have not fixed a cap or an outer limit on this amount of Rs. 500 or whatever is the outer limit is that this has relationship with several factors. The first relationship is: 'What are the reasonable expenses that they have to incur? What are the paying capacity of the husband or the son or the father in the case?'

In this modern world, you may have people with limited income, and you may also have people whose incomes almost touch the sky. Therefore, in those cases where the husband may be earning in lakhs, to say that his wife must only get Rs. 1500 is not justified. Today with Rs. 1500 one may not be even in a position in most of the Indian cities, to get a room on rent. So, Rs. 1500 may not be sufficient actually to make two ends meet as far as the lifestyle of the wife is concerned. That is one of the reason that we have to look at it. We have to look at it without looking at the aberrations of the Western world. The divorce cases in the Western countries have increased. In some countries, it has increased by 50 per cent to 60 per cent. It is not a very happy situation.

But one factor which we have to keep in mind is that once this separation takes place, however cruel it is, the earning hand has to pay heavily for it, and that, in fact, is used as one of the deterrents against the frequent break up of marriages. It is because the break up itself has become a very costly proposition.

PROF. R.R. PRAMANIK: If it is not possible to fix the upper limit, then it should be linked up with the percentage of the net income. Please do not leave it to the discretion of the trying magistrate.

SHRI ARUN JAITLEY: Sir, there is no need to fix an outer amount. There are well respected judicial decision. There are precedents. For instance, the hon. Member says as to what happens to the wife's residence.

Now, the Supreme Court says that the cost of acquiring alternate residence is part of maintenance. Should maintenance be linked only to the salary certificate or income tax return? To this, they said, "No. Look beyond that to the lifestyle." The amount must be such that wife is provided the lifestyle which she would have lived in had she continued to live with her husband. The reason why your argument of percentage will not hold good is this. In one case, he may have to give an amount to wife alone. In another case, it may be to wife and two children and in the third case, he may have to give to aged parents. How can you, therefore, by rule of thumb, have a percentage which will apply in every case? This will depend upon case to case like what is the quantum of income, what is the requirement, how many people are dependant upon them, etc.

Sir, this is the most effective remedy today. It has become ineffective because wife did not want to go to a forum where the maintenance amount was Rs. 500. They would go to the civil courts where it would take years to get maintenance. Today, by putting a 75 paise stamp, you can go to the nearest Magistrate of your area. You need not even go to a district court. You go to the District Magistrate. It is a remedy which costs very little and the Magistrate, as far as possible, within 60 days, will have to determine the amount of maintenance which has to be granted to the wife.

You raised a question on which I was a little surprised. You asked as to why should husbands also not be entitled under this amendment to make those applications. Sir, Section 125, as it has been originally framed is a carry-forward of the original Section 488 of the old CrPC. It says to only provide the remedy to a person who refuses to maintain (a) his wife (b) his legitimate or illegitimate or minor child and (c) his father or mother or child upon the age of majority whom you cannot maintain. So, the remedy is in favour of people, that is, children, aged parents and wives who are unable to maintain themselves. For able-bodied human beings, particularly men who are able to maintain themselves, Section 125 was never a remedy. It was never a remedy available under law as far as men are concerned. I think it would be a retrograde step in this century if we say that now we also decide that Indian men must start getting maintenance under Section 125 against their wives because the remedy which was thought of for all these years was only for parents, wives and children and not otherwise.

PROF. R.R. PRAMANIK: Now, there are cases where the husbands get their maintenance from their wives where the wives are stronger than husbands and where wife's income is more than that of the husband.

SHRI ARUN JAITLEY: Sir, those are cases of personal laws where all such cases are maintainable. Section 125 was a remedy always available against man and man was not entitled any remedy under Section 125. That has always been not possible... (Interruptions) A number of Members have raised this question that this was a little

liberal view in favour of husbands. Some views were expressed to make the law tighter against them like why are we giving them 60 days, why not make it 30 days and so on. One hon. Member said that on the first day, an *ex parte* order could be passed. How will these orders be executed? Let us also bear in mind that we are governed by society through a rule of law. This provision is a very onerous provision. If the husband does not pay the amount or the father or the son does not pay the amount, the consequences are not merely warranting in terms of payment of money but it is also imprisonment. It is repeated imprisonment every month. Therefore, the consequences of this being penal, let us not go and create a provision which defies certain norms of rules of law. The normal procedure would be that the Magistrate would give a reasonable time to the husband to file a reply on affidavit, he would take a *prima facie* view on his lifestyle, income, the requirements of his wife, etc. and then fix an amount. To fix the amount without adequate hearing, without even assessing the possible income may create a situation where peopleâ€¦... (Interruptions)

SHRI A. KRISHNASWAMY (SRIPERUMBUDUR): Interim relief is as decided by only the District Magistrate. He may give the final judgement after perusing all records and affidavits. Now, I am asking only about the interim relief.

SHRI ARUN JAITLEY: The consequences of both non-payment of interim amount and final amount are the same. Therefore, there must be some judicial application of mind after which the quantum is fixed.

It is because if quantum is fixed without a proper judicial hearing, then you may actually have a situation which may cause a repression the other way round, that you may give an exaggerated amount which somebody is not able to give. The consequence would be, he cannot pay the amount and he will land up in jail. Therefore, that being the consequence, the hearing and the standards of hearing must be very fair and the judicial application of mind must be full in all the cases at this time.

A very important question was asked by Shri Shivraj Patil. He raised this question that in section 10 when we are adding various grounds of divorce, why are we keeping AIDS out of it? This is the question which has been debated not only in this country but elsewhere also. One view has been, and in fact our source had also occasion to consider it, that there must be a disclosure of this fact as and when the marriage takes place. There was a great debate. One observation that was made was that because you have AIDS, you are not entitled to get married. Somebody has made this observation because it is a communicable disease.

The second view is that if you carry on this kind of an adverse consequence of somebody contracting that disease, then the entire campaign against fighting the disease and fighting the element of untouchability behind the disease will suffer. There have been these views which have been expressed. But we went by the time-tested process. When the community came before the Standing Committee, the original grounds of divorce which we had indicated â€¦.

SHRI SHIVRAJ V. PATIL (LATUR): I am not suggesting that it should be applicable to the marriages in the Christian community only. If this provision becomes applicable, it should be made applicable to all. AIDS is not having impact just on two lives, but it has impact on the progeny also. That is a very important factor.

SHRI ARUN JAITLEY: Sir, when the representatives of the community appeared before the Standing Committee, the proposal which they gave which amended our original proposal was to bring the grounds available at par with various common law grounds which are available across the board to other religious denominations. I have prepared a comparison of the grounds available. On some of the grounds, there can be two views. For instance, one of the grounds which is available in almost every Personal Law now is that voluntary conversion of religion. Some people feel that this really should not be a ground. But this is the ground which is available across the board, in the Special Marriage Act, in the Hindu Marriage Act and in this proposal also. It is not compulsory. If you have a different notion of ideas, then you may be willing to ignore the fact that your spouse has converted to other religion. But if you are possessive of your own religion, and therefore do not accept that, then that is the ground available in several religions itself. It is not compulsory for anybody to file a petition the moment a ground is available. It is still optional to a person that he or she may accept that reality and not file a petition. Now, the language is different. The present law says:

"Has for a period of not less than two years immediately preceding the presentation of the petition been suffering from venereal disease in a communicable form. "

The Special Marriage Act language says:

"has been suffering from venereal disease in a communicable form"

That two years is not there. The Hindu Marriage Act says:

"has been suffering from venereal disease in a communicable form"

The larger opinion is that this language is very wide enough actually not only to take in its definition, venereal disease as traditionally understood but also a communicable disease of this kind which may be communicable as a venereal disease. I think, the language being more or less similar in most laws, we should leave it for the judicial interpretation whether the ailment which has been mentioned and suggested would come in this category or not because there is one view that it perhaps already has covered.

SHRI SHIVRAJ V. PATIL : I would humbly like to submit that this may not cover AIDS. This is applicable only to venereal disease and not to AIDS. I am not suggesting that you should accept it immediately, but please get it examined.

SHRI ARUN JAITLEY: While we discuss it, as I have indicated, we must keep both the viewpoints as far as bringing AIDS in this specific category is concerned.

The entire campaign to remove AIDS gives an impression that somebody who has the disease is an untouchable and cannot lead an ordinary life.

SHRI SHIVRAJ V. PATIL : It is applicable to leprosy patients also....(*Interruptions*)

SHRI ARUN JAITLEY: Yes, it is. The comparative chart shows that the common law grounds which existed the world over which are time-tested are the ones which have been included in this.

A suggestion has been made. It is a very important suggestion. Particularly, a number of women's organisations and NGOs have been demanding compulsory registration of marriages. Shrimati Alva raised this question. Some other hon. Members also raised this question. We have certainly been applying our minds to this issue. We are still in the process of considering what the consequences would be; how would the enforceability of a provision right up to the rural areas of this kind would actually take place. ...(*Interruptions*)

This is a suggestion which has been made. I am also given to suggest this. The example of Maharashtra has been given where they made registration compulsory. We are also trying to examine what are the consequences of making it compulsory. Are you now going to enforce some penal consequences if it is not made compulsory? What is the extent to which this law has actually been implemented? How much is the breach of this law? Particularly, as far as the rural areas are concerned, the breach is there. The over-legislation in all the cases is not a virtue. There is no point in making a legislation.â€¦ (*Interruptions*)

The hon. Member from Nagaland made a mention that there still may be some personal laws, some customary practices particularly in the tribal areas, which are actually different from the substantive law which we are now enacting. All these customary laws in those areas are protected by Article 371(a). Therefore, the new law actually would not in any way affect those areas. The constitutional guarantee given to those areas and to those laws would override any statutory provision which we are enacting today.

A question has been raised with regard to a divorce by mutual consent. The question is: when the Special Marriages Act and the Hindu Marriage Act fixed one-year period of separation before a petition can be filed, why the two-year period be fixed in this law? As I said in my opening remarks, this two-year period has been fixed essentially on the insistence of the Christian community itself. Perhaps I could understand why they insisted on a two-year period rather than a one-year period which is applicable to other laws. The Catholics particularly do not approve of the idea of divorce. According to them, those whom God has united, law and mankind really cannot separate. That is their idea of marriage. Therefore, even in a case where the spouses are living apart, perhaps the intention is to give a little more time for them to reconcile and start living together rather than enabling them to file a petition for dissolution of marriage at the very early stage.

DR. (SHRIMATI) BEATRIX D'SOUZA (NOMINATED): This recommendation has been made by the clergy. They do not get married at all. There is no question of considering their views. They do not get married. How will they know about the problems of married people?...(*Interruptions*)

SHRI K. FRANCIS GEORGE (IDUKKI): I do not agree with the hon. Member. It is always better to give some more time. If they reconcile, it is always good. Those who want to go to court can go earlier....(*Interruptions*)

SHRI ARUN JAITLEY: When we are dealing with personal laws, there are a number of religious sensitivities which are involved. There is an involvement of the community. Therefore, it is always preferable that rather than imposing a legislative dictum upon them, we should go by the views of the community unless there is something which you find inconsistent with your entire rule of law and legal system. There has been a traditional disagreement with the idea of divorce as far as the Catholics are concerned. They do not permit the dissolution immediately on one year of separation. They want to give a little more time for reconciliation. The Standing Committee felt that this is a

reasonable suggestion and we must therefore create a distinction from other personal laws *vis-a-vis* this law. I do not think there is anything wrong with the Government also in accepting that suggestion which the community was trying to make.

श्रीमती रेनु कुमारी (खगड़िया) : दो साल का समय रहेगा, तो परवरिश कौन करेगा, पैसा कहां से आएगा ?

श्री अरुण जेटली : इस कानून में दो प्रकार के परिवर्तन और किए गए हैं। पहला यह कि दो बर्षों के संदर्भ में 60 दिन के भीतर उसका गुजारा भत्ता तय होगा और दूसरा यह कि दो बर्षों के भीतर गुजारा भत्ता मिलेगा। पहले उसकी सीमा 20 फीसदी थी।

सबसे अधिक महिला को जो मिल सकता था, वह पति की आमदनी का पांचवा हिस्सा था। इस संशोधन के माध्यम से 60 दिन में तय होगा और जो 20 फीसदी की सीमा थी उसे हटा दिया गया है। इसलिए इस समय के दौरान भी उसका गुजारा कैसे होगा, इसका भी प्रबंध किया गया है।

One more question was raised – till which time would interim maintenance be granted? Would the interim maintenance be granted for years till the court decides the main matter? Interim maintenances are always interim in character. When court passes the final order, the interim maintenance will go and the final order would prevail. Alternatively, if during this period, if there is any change of circumstances, either in favour of a wife or a husband, husband can come up before the court and say that wife now has an income of her own and husband can come up before the court and say that my own income had disappeared. The wife can simultaneously come up before the court and say that while you gave only Rs. 1,000 and now I find that my husband's income has gone up five times. These are all interim in character. It would be interim till such time when the final orders are passed or wife has her own resources. These are all areas which will be governed by the judicial discretion. In these areas, there can be no rule of thumb which can be laid down by the Legislature. Therefore, we have considered it proper to leave it as far as the Legislature is concerned.

SHRI V.P. SINGH BADNORE (BHILWARA): Could you differentiate between alimony and maintenance, Mr. Minister? You have not touched as to what were the privilege appeals and reviews to the higher courts.

SHRI ARUN JAITLEY : Alimonies can be both in the permanent or in the temporary nature. They can be one-time quantum, courts can fix it. They could be recurring, courts can fix it. As far as appeals are concerned, since in some of these laws, the consequences are also penal, some judicial reviews against that order would always be there. But, it is again for courts to decide. No court is going to say that while it hears the appeal, do not pay anything. The court can say, you pay the amount – 'x' amount or subsistence amount or 75 per cent of the amount. These are all in the nature of orders of money decrees. Particularly, since they deal with human subsistence, we do trust our court to be more reasonable when they pass orders in appeals also. No order in appeal would allow that the children, parents and wife starving and the court says that during the appeal, do not pay anything. Normally, these kinds of appellate orders are not envisageable. Therefore, these are areas which we have left to the judicial review.

With these comments I commend to the hon. Members that this Bill be adopted.

SHRIMATI MARGARET ALVA : What about enhanced maintenance over the years like we talk about the salaries of MPs going up once in five years? Would there be a provision for raising the maintenance?

SHRI ARUN JAITLEY: Interim maintenance orders and final maintenance orders are always interim in character. As I said, change of circumstances always empowers the court to make orders with change. ...(*Interruptions*)

DR. (SHRIMATI) BEATRIX D'SOUZA (NOMINATED): I argued that the Muslim Women's Act need not be amended to allow the Muslim women cases to be tried in the Family Court. Now, they have been shuttled to the Magistrate's Court.

SHRI V.P. SINGH BADNORE : Are you afraid of the saffronisation of education, etc. and that is why you have left the Muslim women out of this Act?

SHRI ARUN JAITLEY: These two questions actually deal with the 1986 legislation. In 1986, there was a specific legislation which carved out an exception to Section 125. Therefore, it created a special procedure. That legislation has been challenged and we are awaiting as far as the final view of the Supreme Court is concerned.

As far as the Legislature is concerned, as I mentioned, for amending and altering legislations of this kind, an effort is always made to involve the community and the opinion of the community itself. Therefore, all efforts should be made even within those communities where you feel that personal law requires further changes to create opinion as far as those communities are concerned. In fact, the evolution of the Christian law itself is an example as to how despite resistance some years ago, finally everybody had come around and agreed to this.

DR. (SHRIMATI) BEATRIX D'SOUZA (NOMINATED): We should have dialogue with different sections of the community. We should have dialogue with the liberal section of the community.

SHRI ARUN JAITLEY: As far as the Government is concerned, we have to dialogue with every section.

18.00 hrs.

SHRI K.H. MUNIYAPPA (KOLAR): How to protect a couple under the law in the case of inter-caste marriage?
...(Interruptions) Will there not be more problems?... (Interruptions)

PROF. R.R. PRAMANIK : I think, it should be 'father and mother or parents' and not 'father or mother'. If it is 'father or mother', then the father will get the maintenance and the mother will not get it. If the mother gets the maintenance, the father will not get it. So, I suggest that it should be 'father and mother or parents'.

SHRI ARUN JAITLEY: Sir, these are time-tested provisions for decades. When you say 'wife or children', it actually means that you are entitled to give it to both of them. It does not mean that if you give it to one, you cannot give it to the other.

...(Interruptions)

PROF. R.R. PRAMANIK : It is 'wife, children'. ... (Interruptions)

SHRI ARUN JAITLEY: All these laws govern inter-caste marriages.

THE MARRIAGE LAWS (AMENDMENT) BILL

MR. CHAIRMAN : The question is:

"That the Bill further to amend the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955, as passed by Rajya Sabha, be taken into consideration. "

The motion was adopted.

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 9 stand part of the Bill."

The motion was adopted.

Clauses 2 to 9 were added to the Bill.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

SHRI ARUN JAITLEY: I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE INDIAN DIVORCE (AMENDMENT) BILL

MR. CHAIRMAN: Now, we come to item No. 24.

The question is:

"That the Bill further to amend the Indian Divorce Act, 1869, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 32 stand part of the Bill."

The motion was adopted.

Clauses 2 to 32 were added to the Bill.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

SHRI ARUN JAITLEY: I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

MR. CHAIRMAN : We go to Item No.25. The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 4 stand part of the Bill."

The motion was adopted.

Clauses 2 to 4 were added to the Bill.

Clause 1, the Enacting Formula and Long Title were added to the Bill.

SHRI ARUN JAITLEY: I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.
