

31st August 1939

THE
LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume V, 1939

(30th August to 22nd September, 1939)

TENTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1939



NEW DELHI
GOVERNMENT OF INDIA PRESS
1940.

Legislative Assembly.

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MR. N. M. JOSHI, M.L.A.

RAJA SIR VASUDEVA RAJAH, C.I.E., M.L.A.

CONTENTS.

VOLUME V—30th August to 22nd September, 1939.

	PAGE.		PAGE.
WEDNESDAY, 30TH AUGUST, 1939—		WEDNESDAY, 30TH AUGUST, 1939— <i>contd.</i>	
Members Sworn.	1—2	The Indian Rubber Control (Amendment) Bill	149
Starred questions and Answers	2—14	The Indian Arbitration Bill—Introduced	149
Statements laid on the Table	15—70		

CORRIGENDA.

In the Legislative Assembly Debates, Simla Session, 1939,—

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| <p>(1) Vol. V, No. 3, dated the 1st September, 1939, page 221, line 2 from the bottom, for "part (b)" read "parts (b) and (c)";</p> <p>(2) Vol. V, No. 5, dated the 5th September, 1939,—</p> <p>(i) page 366, line 19 from the bottom, for "wheehher" read "whether";</p> <p>(ii) page 377, line 17, for "officers" read "officer";</p> | <p>(3) Vol. V, No. 6, dated the 8th September, 1939, page 390, line 4, after "14th March, 1939," insert "in this House";</p> <p>(4) Vol. V, No. 13, dated the 20th September, 1939, page 744, in the subject-heading to short Notice Question, for "Convention" read "Conversion";</p> <p>(5) Vol. V, No. 14, dated the 21st September, 1939, page 832, line 12 from the bottom, for "presonnel" read "personnel".</p> |
|--|--|

I and II when the Legislature is in session—Ruled out of order	72—73	Select Committee not concluded	171—217
Governor General's assent to Bills	73—74	FRIDAY, 1ST SEPTEMBER, 1939—	
Statement laid on the Table <i>re—</i>		Starred Questions and Answers	219—33
Net earnings of recently constructed railway lines.	74—75	Resolution <i>re—</i>	
The Insurance Rules, 1939, and the United Kingdom—India Trade Agreement Rules, 1939	76—111	Non-Indian Companies and Protective Tariffs—Negatived	233—57
Registration of Foreigners (Exemption) Order, 1939.	111—12	Deduction of the amount of Provincial Employment Tax from the Income-tax payable to the Central Government—Withdrawn	257—68
Report on the progress of the Schemes financed from the Grants for Rural Development	112—47	Appointment of a Committee on the "Bunder Boat" disaster—Negatived	269—77
The Indian Railways (Amendment) Bill—(Insertion of new section 42B)—Motion to continue adopted	148—49	The Commercial Documents Evidence Bill—Presentation of the Report of the Select Committee	278

CONTENTS.

VOLUME V—30th August to 22nd September, 1939.

	PAGE.		PAGE.
WEDNESDAY, 30TH AUGUST, 1939—		WEDNESDAY, 30TH AUGUST, 1939—contd.	
Members Sworn	1—2	The Indian Rubber Control (Amendment) Bill	149
Starred questions and Answers	2—14	The Indian Arbitration Bill—Introduced	149
Statements laid on the Table	15—70	The Indian Tea Cess (Amendment) Bill—Introduced	149—50
Motion for Adjournment re—		The Medical Diplomats Bill—Introduced	150
Compensation for Indians who suffered during Burma Riots—Disallowed by the President	71	The Code of Civil Procedure (Amendment) Bill—Introduced	150
Majdia Train Disaster on the Eastern Bengal Railway Disallowed by the President	71—72	The Indian Census Bill—Introduced	150
Despatch of Indian troops outside India—Disallowed by the Governor General	72	The Indian Salt (Amendment) Bill—Introduced	150
Special reservation of posts and fixing minimum remuneration for Anglo Indians—Not moved	72	Motion re Report of the Pacific Locomotive Committee—Postponed	151—64
Grievances of Muslim employees on the Eastern Bengal Railway—Disallowed by the President	72	THURSDAY, 31ST AUGUST, 1939—	
Issue of Ordinances Nos. I and II when the Legislature is in session—Ruled out of order	72—73	Members Sworn	165
Governor General's assent to Bills	73—74	Starred Questions and Answers	165—70
Statement laid on the Table re—		Panel of Chairmen	171
Net earnings of recently constructed railway lines	74—75	The Hindu Women's Right to Divorce Bill—Discussion on the motion to refer to Select Committee not concluded	171—217
The Insurance Rules, 1939, and the United Kingdom—India Trade Agreement Rules, 1939	76—111	FRIDAY, 1ST SEPTEMBER, 1939—	
Registration of Foreigners (Exemption) Order, 1939	111—12	Starred Questions and Answers	219—33
Report on the progress of the Schemes financed from the Grants for Rural Development	112—47	Resolution re—	
The Indian Railways (Amendment) Bill—(Insertion of new section 42B)—Motion to continue adopted	148—49	Non-Indian Companies and Protective Tariffs—Negatived	233—57
		Deduction of the amount of Provincial Employment Tax from the Income-tax payable to the Central Government—Withdrawn	257—68
		Appointment of a Committee on the "Bunder Boat" disaster—Negatived	269—77
		The Commercial Documents Evidence Bill—Presentation of the Report of the Select Committee	278

	PAGE.		PAGE.
MONDAY, 4TH SEPTEMBER, 1939—		FRIDAY, 8TH SEPTEMBER, 1939—	
✓ Statement by the Leader of the House <i>re</i> the International Crisis	279—80	Member Sworn	389
Starred Questions and Answers	280—306	Starred Questions and Answers	389—96
Unstarred Question and Answer	306	Committee on Petitions	396
The Indian Rubber Control (Amendment) Bill—Presentation of the Report of the Select Committee	306	Presentation of the Report of the Public Accounts Committee	396
Statement laid on the Table <i>re</i> —		The Indian Railways (Amendment) Bill—Presentation of the Report of the Select Committee	397
Objects on which the Aviation share of the Petrol Tax Fund was expended during the year 1938-39	307	The Repealing and Amending Bill—Presentation of the Report of the Select Committee	397
Notification prohibiting the emigration of unskilled labourers from British India to Ceylon for the purpose of unskilled work.	308	The Indian Carriage by Air (Amendment) Bill—Introduced	397
Resolution <i>re</i> Payment of contributions from Railway Revenues to General Revenues—Adopted	308—22	The Defence of India Bill—Referred to Select Committee	397—426
The Indian Census Bill—Passed	322—48	The Indian Tariff (Fourth Amendment) Bill—Passed	426—27
The Indian Salt (Amendment) Bill—Passed	348—49	The Commercial Documents Evidence Bill—Passed as amended	427—30
The Indian Railways (Amendment) Bill—Referred to Select Committee	349—51		
The Code of Civil Procedure (Amendment) Bill—Passed	351—52	MONDAY, 11TH SEPTEMBER, 1939—	
The Indian Tea Cess (Amendment) Bill—Passed	352—53	✓ Speech delivered to the Council of State and the Legislative Assembly by His Excellency the Viceroy.	431—34
Statement of Business	353	Members Sworn	435
TUESDAY, 5TH SEPTEMBER, 1939—		Starred Questions and Answers	435—55
Member Sworn	355	Statements laid on the Table	456—63
Starred Questions and Answers	355—59	Declaration of exemption under the Registration of Foreigners Act	464
Unstarred Questions and Answers	360—61	The Indian Oaths (Amendment) Bill—Appointment of certain Members to the Select Committee	464
Motion for Adjournment <i>re</i> Government of India's decision on questions of Indian Defence—Talked out	361, 374—88	Motion <i>re</i> Report of the Pacific Locomotive Committee—Amendment negatived	464—83
The Indian Tariff (Fourth Amendment) Bill—Introduced	361		
The Defence of India Bill—Introduced	362	TUESDAY, 12TH SEPTEMBER, 1939—	
The Medical Diplomas Bill—Passed	362—67	Starred Questions and Answers	485—91
The Indian Arbitration Bill—Referred to Select Committee	367—74	The Defence of India Bill—Presentation of the Report of the Select Committee.	491
		The Indian Carriage by Air (Amendment) Bill—Passed	491—92
		The Indian Rubber Control (Amendment) Bill—Passed as amended	492—94
		Consideration of the Report of the Public Accounts Committee	494—95

	PAGE.		PAGE.
TUESDAY, 12TH SEPTEMBER, 1939—contd.		MONDAY, 18TH SEPTEMBER, 1939—	
Demands for Excess Grants	496—506	Starred Questions and Answers	61F—14
The Indian Railways (Amendment) Bill (Insertion of new section 42B)—Passed	506	Resolution re—	
The Repealing and Amending Bill—Passed as amended	506—08	Appointment of a Committee to inquire into the affairs and general administration of the East Indian Railway—Negatived	615—23
Statement of Business.	508	Provincial Autonomy for Baluchistan—Negatived	623—47
THURSDAY, 14TH SEPTEMBER, 1939—		Payments of compensation to the Bengal Provincial Railway by the East Indian Railway—Withdrawn	647—48
Member Sworn	509		
Starred Questions and Answers	509—34	TUESDAY, 19TH SEPTEMBER, 1939—	
Transferred Questions and Answers	534—40	Member Sworn	649
The Indian Oaths (Amendment) Bill—Presentation of the Report of the Select Committee	540	Starred Questions and Answers	649—83
The Indian Aircraft (Amendment) Bill—Introduced	540	Ruling re Motion for an Excess Grant negatived at a previous Session	684
The Panth Piploda Courts (Amendment) Bill—Introduced	540	Statement laid on the Table re acceptance of Tenders by the High Commissioner for India	684
The Defence of India Bill—Discussion on the consideration of clauses not concluded	540—88	The Indian Air Force Volunteer Reserve (Discipline) Bill—Introduced	684—85
FRIDAY, 15TH SEPTEMBER, 1939—		The Registration of Trade Marks Bill—Introduced	685
Starred Questions and Answers	589—91	The Motor Vehicles (Amendment) Bill—Introduced	685
Short Notice Question and Answer	591	The Insurance (Second Amendment) Bill—Introduced	685—86
The Hindu Women's Right to Divorce Bill—Motion to refer to Select Committee negatived	592—96	The Defence of India Bill—Discussion on the consideration of clauses not concluded	686—736
The Contempt of Courts (Amendment) Bill—Circulated	596—600		
The Indian Bar Council (Amendment) Bill—Circulated	600—03	WEDNESDAY, 20TH SEPTEMBER, 1939—	
The Hindu Women's Rights to Property (Amendment) Bill—Circulated	603—05	Starred Questions and Answers	737—43
The Muslim Intestate Succession Bill—Introduced and referred to Select Committee	605, 606—09	Short Notice Question and Answer	744
The Indian Penal Code (Amendment) Bill—Introduced	605—06	Message from the Council of State	744
The Indian Merchant Shipping (Amendment) Bill—Introduced	606	The Defence of India Bill—Passed as amended	744—93
The Press and Registration of Books (Amendment) Bill—Introduced	606	The Indian Aircraft (Amendment) Bill—Passed	793
		The Panth Piploda Courts (Amendment) Bill—Passed	793—95
		Resolution re Amendment of the Resolution on Road Development—Adopted	796

THURSDAY, 21ST SEPTEMBER 1939—	PAGE.	THURSDAY, 21ST SEPTEMBER, 1939— <i>contd.</i>	PAGE.
Member Sworn	797	The Insurance (Second Amendment) Bill—Passed	838—41
Starred Questions and Ans- wers	797—300	The Registration of Trade Marks Bill—Referred to Select Committee	841—45
Amendment in the declara- tion <i>re</i> Registration of Foreigners Act	800	Statement of Business	845
The Workmen's Compensa- tion (Second Amendment) Bill—Introduced	801	FRIDAY, 22ND SEPTEMBER, 1939—	
The Indian Arbitration Bill —Appointment of certain Members to the Select Committee	801	Starred Questions and Ans- wers	847—66
Consideration of the Report of the Public Accounts Committee	801—16	Unstarred Questions and Answers	866—73
Demand for Excess Grant	816	Statements laid on the Table	873—74
The Indian Oaths (Amend- ment) Bill—Passed	816—31	The Indian Arbitration Bill —Appointment of Mr. F. E. James to the Select Committee in place of Mr. A. Aikman	874—75
The Indian Air Force Volun- teer Reserve (Discipline) Bill—Passed	832—35	The Workmen's Compensa- tion (Second Amendment) Bill—Passed	875—900
The Motor Vehicles (Amend- ment) Bill—Passed	835—37		

LEGISLATIVE ASSEMBLY.

Thursday, 31st August, 1939.

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

MEMBER SWORN.

Mr. Douglas Colin Campbell, M.L.A. (Government of India : Nominated Official).

Mr. President (The Honourable Sir Abdur Rahim) : Before proceeding to the business of the day, the Chair would like to draw the attention of Honourable Members to the fact that the seating arrangements have been altered today, and the arrangements that used to prevail before have been restored. The Chair thought that since the Members of the Congress Party had decided not to attend this Session at all, it might conduce more to the convenience of the Members if the seats on the left, instead of remaining vacant, were occupied by other Members moving up to those seats. But the Chair received a representation yesterday after the rising of the Assembly on behalf of a large Group that they would not like to occupy the seats thus left vacant, especially as it might happen that the Congress Members might change their decision and decide to reoccupy their seats. Owing to this objection on the part of a large group of Members to the seating arrangements made yesterday, the Chair ordered the alteration that has been made today.

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

†28*—37*.

APPEAL IN THE BANDRA PASSENGER BOAT COLLISION CASE.

38. *Mr. Lalchand Navalrai : (a) Will the Honourable the Commerce Member be pleased to state if it is a fact that an appeal has been preferred by the British India Steam Navigation Company in the Bandra passenger boat collision at Kiamari's case ?

(b) Is it a fact that a reference was made to the Commerce Department that a representative on behalf of the Government of India be appointed to represent Government side in the High Court in England ?

†These questions were withdrawn by the questioners.

(c) Have the Government of India appointed any such representative? If not, for what reasons have Government not arranged for such a representation?

(d) Have Government made any other arrangement to safeguard public interests and the interests of the victims of that collision before the High Court in England? If so, which? If not, why not?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : (a) and (b). Yes.

(c) and (d). The Government of India did not make any arrangements for their representation at the appeal or the representation of other interests before the High Court in England as, after careful consideration, they came to the conclusion that such arrangements were not necessary.

Mr. Lalchand Navalrai : May I know from the Honourable Member if Government made any representation or gave any evidence there in order to present the view of the Government of India with regard to this tragedy?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : Sir, I should like to explain that the appeal was to the Admiralty Court, where no question of fact would be raised, but purely technical questions relating to navigation laws would be examined. We also understood that the Board of Trade would be represented by counsel at such appeal. Therefore, it was considered superfluous to have a special legal representative of the Government of India in connection with that appeal.

Mr. Lalchand Navalrai : May I know whether, with regard to the compensation, which has been the subject of my question here, to the heirs of these victims, that question was pertinent to the Admiralty Court or the High Court, or not?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : It was not.

Mr. Lalchand Navalrai : And it will be pertinent before the Board of Trade and the other Board mentioned by the Honourable Member?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : The Board of Trade was represented by counsel before the Court of Admiralty in England. The question of compensation to the victims was not pertinent before the Court, and, therefore, neither the Government of India nor the Board of Trade through counsel could have raised any question about compensation.

Mr. Lalchand Navalrai : Will that question be pertinent to the Government of India?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : No, Sir, but it will be pertinent before a Civil Court if the parties go before a Civil Court.

Mr. Lalchand Navalrai : But if the parties do not.....

Mr. President (The Honourable Sir Abdur Rahim) : That is all hypothetical.

†39*—43*.

REPRESENTATION FROM INDIANS IN SOUTH AFRICA ABOUT RECENT LEGISLATION.

44. *Mr. Muhammad Azhar Ali (on behalf of Dr. Sir Ziauddin Ahmad) : (a) Will the Education Secretary be pleased to state whether Government received any representation from Indian settlers in South Africa about recent legislation ?

(b) Did the Government of India get any report from the High Commissioner for India in South Africa ?

(c) Was any representation made by the Indians in South Africa that our representatives should be withdrawn ?

(d) Will Government lay on the table the statement describing the correct position and the action which the Government of India have already taken or propose to take to ameliorate the condition of Indians in South Africa ?

Mr. G. S. Bozman : (a) and (c). Yes.

(b) Government have been in constant touch with their Agent General in South Africa.

(d) An Act, designed mainly to restrict Asiatics in the Transvaal to their present trading licences and residential sites during the next two years, was passed in the Union Houses of Parliament on the 12th June. Negotiations on the objections of principle raised by both the Government of India and the Indian community in South Africa are still in progress and are of such a nature and at such a stage that I regret I am unable to make any statement.

Sardar Sant Singh : May I know if Government will be in a position to make a full and complete statement about the situation in South Africa during this Session ?

Mr. G. S. Bozman : I am unable to prophesy.

Mr. Lalchand Navalrai : May I know if the Government of India have made any representations to the Government of the Union of South Africa ?

Mr. G. S. Bozman : I have already stated that negotiations are in progress.

Mr. Muhammad Nauman : With regard to the answer to part (b) of the question, may I know what is the content of the report which Government have received from their Agent General ?

Mr. G. S. Bozman : I have stated that Government are in constant touch with their Agent General in South Africa. There is no specific report.

Maulana Zafar Ali Khan : Do Government contemplate having recourse to retaliation because of South Africa treating Indians in such a manner ?

Mr. G. S. Bozman : I must repeat that I am unable to prophesy.

†These questions were withdrawn by the questioner.

REMOVAL OF ILLITERACY OF ADULT POPULATION IN THE CENTRALLY ADMINISTERED AREAS.

45. *Mr. N. M. Joshi : Will the Secretary for Education, Health and Lands be pleased to state whether in the centrally administered areas any special efforts are being made by Government or by Local Bodies to remove illiteracy of the adult population ; if so, will Government be pleased to state briefly what they are ?

Mr. G. S. Boxman : A statement containing the information is laid on the table of the House.

Mr. N. M. Joshi : May I ask that the Honourable Member might read his statement if that statement is not very long because my question does not require a very long statement, as otherwise the Honourable Member is putting me at a disadvantage by laying the statement on the table.

Mr. G. S. Boxman : I have no desire to place the Honourable Member at a disadvantage, but the point is that there are four centrally administered areas, and conditions in these areas vary one from another.

Mr. Lalchand Navalrai : May I know, now that this literacy campaign has been started in Sind, have the Government of India given any help to the province of Sind ?

Mr. G. S. Boxman : I understand that the question refers to centrally administered areas.

Mr. N. M. Joshi : In view of the fact that the House has sufficient time during this question hour to hear even a fairly lengthy reply, will the Honourable Member kindly read out his statement ?

Mr. G. S. Boxman : Sir, answers to questions are prepared irrespective of whether there is a large attendance in the House or not. The statement has been laid.

Mr. N. M. Joshi : May I ask, Sir, whether it is not for you to decide whether the Honourable Member should read the statement or not ? If the statement is long, it need not be read, but if it is not long, he can read it in five minutes.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair does not know if the statement is long or not, or whether it consists of a lot of figures ?

Mr. N. M. Joshi : It only consists, I believe, of half a page.

Mr. President (The Honourable Sir Abdur Rahim) : If the Honourable the Secretary for Education, Health and Lands has no objection, he may read the statement.

Mr. G. S. Boxman : I have no objection, Sir. The statement is as follows :

Ajmer-Merwara.

Twelve adult schools were being maintained by the District Board and the Co-operative Department up to the 31st July, 1939, in rural areas, but these schools had to be closed owing to the scarcity prevailing in the province at present. Two adult schools are, however, being continued in urban areas.

Baluchistan.

Owing to financial reasons, neither Government nor local bodies have been able to make any special efforts to remove adult illiteracy, but classes for adults have been started recently in some of the private schools in Quetta.

Coorg.

One night school is being run by the District Board and another has recently been started by Co-operative Society.

Dahk.

There are at present 19 schools for adults in the province—15 managed by the District Board in rural areas, three by urban local bodies and one (for prisoners) by the Prisoners' Aid Society in the District Jail. A scheme for the extension of adult education is under consideration by the local authorities.

Mr. N. M. Joshi : May I ask whether the Government of India are interested in the question of the removal of illiteracy of the population in the centrally administered areas ?

Mr. G. S. Bozman : Yes, Sir.

Mr. N. M. Joshi : May I ask whether the Government of India will make a plan for removing the illiteracy within a reasonably short period and if there are any difficulties, will they state them ?

Mr. G. S. Bozman : I can inform the Honourable Member that the educational policy in all the centrally administered areas is now very closely under review.

Mr. N. M. Joshi : May I ask when the Government of India began to take the review of this situation ?

Mr. G. S. Bozman : A particular review has been undertaken since the arrival of the new Educational Commissioner.

Mr. N. M. Joshi : May I ask how long that review will take ?

Mr. G. S. Bozman : I am unable to prophesy.

SYSTEM OF COMPULSORY PRIMARY EDUCATION IN THE CENTRALLY ADMINISTERED AREAS.

46. *Mr. N. M. Joshi : Will the Secretary for Education, Health and Lands be pleased to state :

(a) in which of the Centrally administered areas there is a system of compulsory primary education and for how many years ; and

(b) whether Government propose to extend early the system to all the areas under their control ; and if not, why not ?

Mr. G. S. Bozman : (a) A statement containing the information is laid on the table of the House.

(b) Government will consider the extension of compulsory primary education to areas considered suitable for the purpose, as and when circumstances permit.

Mr. N. M. Joshi : May I ask the Honourable Member to read the statement again ?

Mr. President (The Honourable Sir Abdur Rahim) : If the statement is not long, it should be read.

Mr. G. S. Boxman : Sir, the statement is as follows :

Ajmer-Merwara.

Compulsory primary education has not been introduced in any part of Ajmer-Merwara. A scheme for bringing selected urban and rural areas under compulsion was recently under consideration, but had to be postponed for want of funds and on account of the scarcity prevailing in the province at present.

Baluchistan.

Compulsion has not been introduced in any part of Baluchistan. The earthquake of 1935 destroyed many of the schools in rural and urban areas and all available funds are being applied towards the reconstruction of the educational system. The introduction of compulsory primary education is not feasible at present.

Coorg.

Compulsion has not been introduced in Coorg for want of funds.

Delhi.

Compulsory primary education was introduced in four out of nine administrative areas of the Delhi Municipality in 1926-27. Two more areas were added in 1927-28. The remaining three areas will be brought under compulsion when finances permit.

Ten out of fifty-six school areas of the Delhi District Board were brought under compulsion during the years 1928-32. Later on it was withdrawn from two areas on account of village factions, and applied to one new area. Thus nine areas are now under compulsion. The finances of the District Board are in a bad state owing to poor harvests and further expansion of compulsory primary education is not possible at present.

Mr. N. M. Joshi : May I ask if the Honourable Member is aware that the Government of India spend more money on the higher education of a few thousand people and that they spend less money on the primary education of a large mass of people ?

Mr. President (The Honourable Sir Abdur Rahim) : That is a matter of argument.

Maulana Zafar Ali Khan : With regard to the statement about Baluchistan, is it not a fact that the Wardha scheme has been introduced there compulsorily by the educational authorities although the people of Baluchistan did not want that scheme ?

Mr. G. S. Boxman : I have no such information.

Maulana Zafar Ali Khan : Will the Honourable Member find it out ?

Mr. G. S. Boxman : I shall be glad to make enquiries.

Mr. N. M. Joshi : May I ask whether it is the policy of the Government of India to spend more money on higher education than on primary education ?

Mr. G. S. Boxman : The question refers only to compulsory primary education, and I feel that I am not called upon to discuss the difference between higher education and primary education.

Mr. N. M. Joshi : May I ask whether it is the policy of the Government of India not to spend sufficient money on the primary education ?

Mr. G. S. Boxman : No, Sir.

†47*

PANEL OF CHAIRMEN.

Mr. President (The Honourable Sir Abdur Rahim) : I have to inform the House that, under sub-rule (1) of rule 3 of the Indian Legislative Rules, I nominate Dr. Sir Ziauddin Ahmad, Mr. M. S. Aney, Sir Cowasji Jehangir and Mr. A. Aikman on the Panel of Chairmen for the current Session.

THE HINDU WOMEN'S RIGHT TO DIVORCE BILL.

Mr. President (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the motion moved by Dr. G. V. Deshmukh on the 18th February, 1939. In putting the motion, the Chair will omit the names of the Honourable Sir Reginald Maxwell, Mr. C. J. W. Lillie and Mr. A. K. Chanda as they have ceased to be Members of the House. The motion runs thus :

“ That the Bill to give a right to divorce to Hindu Women under certain circumstances be referred to a Select Committee consisting of the Honourable Sir Muhammad Zafrullah Khan, Mr. Ghulam Bhik Nairang, Maulvi Syed Murtuza Sahib Bahadur, Mr. F. E. James, Mr. Suryya Kumar Som, Mr. Bhulabhai J. Desai, Shrimati K. Radha Bai Subbarayan, Sirdar Jogendar Singh and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

The Chair would remind the House that Dr. Deshmukh himself finished his speech, and there was another speaker, Sir Nripendra Sircar, who also made a speech.

Sardar Sant Singh (West Punjab : Sikh) : With your permission, Sir, I wish to bring to the notice of the House that I have received certain communications from Dr. Deshmukh that on account of his unavoidable absence from the House, he desires the leave of the House to have this debate postponed to the next Session.....

Mr. President (The Honourable Sir Abdur Rahim) : If the Honourable Member wishes to move any motion for the adjournment of the debate, that is a different matter, but the Chair cannot take any notice of such remarks as he is making.

Sardar Sant Singh : Then, with your permission, Sir I move :

“ That the debate should now stand adjourned.”

Mr. President (The Honourable Sir Abdur Rahim) : Motion moved :

“ That the debate should now stand adjourned.”

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House) : Sir, I am afraid we cannot accept this motion for the reasons stated yesterday. We are not supposed to know—at any rate, we are not supposed to say—why the Honourable Member in whose name the motion stands is absent. We know that his absence is not due to unavoidable reasons, and I am quite certain that now that the Honourable Member, Mr. Bajoria, is here, it will really be a saving of time to go on with the motion. I do not think the motion will be concluded today and in any case no reason has been advanced why the debate should be adjourned.

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : Sir, I want to bring to the notice of the House that the Honourable Member in charge of the Bill made a personal appeal to me in Bombay and he

[Mr. M. A. Jinnah.]

regretted very much that he was unable to come. He has since written to me a letter asking me to appeal to the Government, having regard to the importance of the Bill and he being the Member in charge, to allow the matter to stand over. He has also sent me a telegram, and, so far as the Muslim League Party is concerned, we have no objection if the Government see their way to allow the postponement of the debate on this motion.

Mr. N. M. Joshi (Nominated Non-Official) : Sir, I would like to support this motion. Sir, the very fact that I am present in the House shows that I do not approve of the policy of the Congress Party in not being present in this House.

An Honourable Member : It is the fault of Dr. Deshmukh to belong to the Congress Party.

Mr. N. M. Joshi : It may be a fault. I do not know whether it is the fault of a man to belong to a party and to follow its policy, with which at any rate so far as I am concerned, I do not agree.

Sir, my reason is this : the Bill deals with a very important subject, and if the House is to take a decision on a Bill of this nature, it should be the decision of the whole House. It is not easy for non-official Members to secure discussion on important Bills in this House and when a Bill of this nature in which a very large community is deeply interested comes before the House, whether the Honourable the Mover of the Bill was right or wrong in absenting himself from the House, it is the duty of the House to see that that subject gets a proper discussion. The Honourable the Mover of the Bill may have introduced the same because he is interested in the subject, but he is not the only man who is interested. I feel the whole House is interested, a very large number of Members who are present here are interested and, therefore, if the subject is to get a proper discussion on it, may I also add a proper decision on it. then, Sir, it is necessary that the House should be fully representative when a vote is taken. I, therefore, feel that the motion made by my Honourable friend, Sardar Sant Singh, should be accepted by the House.

Sir Muhammad Yamin Khan (Agra Division : Muhammadan Rural) : Are you sure that the Congress Party will attend next Session ?

Mr. N. M. Joshi : I do not know. I am not a representative of the Congress Party in this House. I shall try myself to be present in the House.

Mr. M. S. Ansy (Berar : Non-Muhammadan) : Sir, although it is well-known that personally I am not in favour of the principle which is embodied in this Bill, I am in support of the motion which has been moved by my Honourable friend, Sardar Sant Singh, and the reason is this. This is primarily a Bill which affects the Hindus as such and the absence of the Congress Party means the absence of a considerable, nay a majority of Hindu Members of this House (Interruption) : I am not prepared to accept what my Honourable friend, Mr. Jinnah, says. He is entitled to have his own interpretation. I submit that a discussion of a Bill that primarily affects the social customs and religious usages of the Hindus is really of no use if a majority of the Hindu Members are

absent from this House. It will be a decision arrived at not on the votes of those who are likely to be affected by this Bill. I do not question the constitutional right of the House, but simply pointing out what is the proper thing for us to do. Therefore, in order to avoid that sort of undesirable situation in which we shall find ourselves landed I believe the suggestion that has been made that the debate should be adjourned to the next Session should be accepted by the House. My second reason is this. In accepting this motion for adjournment we shall be showing our regard for the importance of the measure itself. This is my next point. If we do not adjourn the debate, the Honourable the Leader of the House remarked that it is quite possible since my Honourable friend, Babu Baijnath Bajoria, has now arrived, that the debate might go on and it might easily be carried on to the next Session. But no one of us is willing to make an irrelevant speech simply for the purpose of protracting the debate or taking it on to the next Session. That is not our habit at any rate. I am sure that my Honourable friend, Babu Baijnath Bajoria, is not likely to make a speech simply for the purpose of prolonging the debate. That is not his habit also. I take strong exception to the remarks made by the Honourable the Leader of the House against Babu Baijnath Bajoria.

The Honourable Sir Muhammad Zafrullah Khan : I believe I am right in saying that Babu Baijnath Bajoria said at one time that his speech would take a whole day. I was referring to that observation.

Babu Baijnath Bajoria (Marwari Association : Indian Commerce) : I did not say any such thing.

The Honourable Sir Muhammad Zafrullah Khan : If the Honourable Member did not make any such observation, then I withdraw my remark.

Mr. M. S. Aney : My point is this. Those who are likely to be affected by this Bill are not here. at any rate a majority of the Members are not here, on the consideration of whose views it shall be proper for the House to come to a definite decision on the point. Under these circumstances I think the Honourable the Leader of the House will be well advised in accepting the suggestion that has been made by my Honourable friend, Sardar Sant Singh.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That the debate should now stand adjourned ”.

The Assembly divided :

AYES—18.

Abdullah, Mr. H. M.
Aney, Mr. M. S.
Ashar Ali, Mr. Muhammad.
Bhutto, Mr. Nabi Baksh Illahi Baksh.
Datta, Mr. Akhil Chandra.
Essak Sait, Mr. H. A. Sathar H.
Habibur Rahman, Dr.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.

Lalchand Navalrai, Mr.
Maitra, Pandit Lakshmi Kanta.
Nauman, Mr. Muhammad.
Rafiuddin Ahmad Siddiquee, Shaikh.
Sant Singh, Sardar.
Siddique Ali Khan, Khan Bahadur Nawab.
Som, Mr. Suryya Kumar.
Yamin Khan, Sir Muhammad.
Zafar Ali Khan, Maulana.

NAMES—27.

Abdul Hamid, Khan Bahadur Sir.	Machewra, Mr. J. A.
Ahmad Nawas Khan, Major Nawab Sir.	Menon, Mr. P. A.
Aiyar, Mr. T. S. Sankara.	Menon, Mr. P. M.
Bewoor, Sir Gurusath.	Miller, Mr. O. C.
Bhandarkar, Mr. K. Y.	Mudaliar, The Honourable Diwan
Bosman, Mr. G. S.	Bahadur Sir A. Ramaswami.
Campbell, Mr. D. C.	Mukerji, Mr. Basanta Kumar.
Caroe, Mr. O. K.	Nehru, Mr. B. K.
Clow, The Honourable Sir Andrew.	Rahman, Lieut.-Colonel M. A.
Crofton, Mr. D. H.	Raisman, The Honourable Sir Jeremy.
Dalal, Dr. R. D.	Roughton, Mr. N. J.
Dalpat Singh, Sardar Bahadur Captain.	Sheehy, Mr. J. F.
Gorwala, Mr. A. D.	Sher Muhammad Khan, Captain Sardar Sir.
Greer, Mr. B. R. T.	Sivraj, Rao Sahib N.
Hodson, Mr. D. C.	Spence, Sir George.
Jawahar Singh, Sardar Bahadur Sardar Sir.	Sukthankar, Mr. Y. N.
Kamaluddin Ahmed, Shams-ul-Ulema.	Talukdar, Mr. J. N.
Khan, Mr. N. M.	Thorne, The Honourable Mr. J. A.
Kushalpal Singh, Raja Bahadur.	Zafullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim) : The debate on the original motion will now proceed.

Bhai Parma Nand (West Punjab : Non-Muhammadan) : Sir, the book of opinions on this Bill makes very interesting reading. The Bill has been considered to be very controversial and no definite opinion could be formed about it. The opinions, I find, are mostly given by lawyers and judges and there is a wide difference of views among them. The common people who are affected by the Bill have offered no opinions; probably they treat it with indifference or have not been consulted at all. Taking the opinions, you find that more than eighty are opposed to the Bill; others are in favour of it but even they have expressed doubts as regards its utility or acceptance by the common people.

The first great objection to the Bill is, from the legal point of view, namely, that it is inadequate, insufficient and defective as it does not provide the procedure for getting divorce and for the maintenance of children if there be any. I do not attach any importance to these defects as I am opposed to the very principle underlying the Bill. Referring to the opinions again, there are more than 20 which say that it is a one-sided Bill,—while the privilege of divorce is not granted to husbands it does not stand to reason to give the right to wives. If the law is to be made for removing the difficulties of wives, why should not this apply in the case of husbands; if some women suffer trouble at the hands of their husbands, there are husbands also who suffer on account of the bad behaviours of their wives. So if the right of divorce had been allowed to both parties, there would have been a reasonable case for the wives and in that case they could have judged their position correctly. However, as it is, I do not see why this right should be given to wives alone. It may be said that the husband can marry a second wife during the life time of the first and thus save himself from troubles

arising from the marriage, but that does not solve the difficulty because it does not give the husband the right to divorce his wife and it will only mean a premium on polygamy.

My real objection, however, is that in Hindu society there is no room for divorce. It may be that in certain Smritis of old, some *slokas* may be found permitting women to get separation but they were exceptions and for hundreds and thousands of years, this custom has had no place in Hindu society. If we want to create a radical change in society there must be very sound reasons for doing it.

On going a little further we find that marriages of Hindu youngmen and girls are invariably arranged by their parents, and neither of them has got a free hand in choosing their companion for life. Everything in this connection is looked into by the parents of these youngsters, and thus, they are not considered so free to break off that connection. If it is contended that according to modern ideas a new generation has sprung up of youngmen and women who wish to have more freedom including divorce, then I would advise such of them to have recourse to the Civil Marriage Act. For them law is already there. They can themselves arrange for their marriage and take advantage of the divorce law at any moment they like. But as regards the rest of the population in whose case the marriages are arranged by the parents, they will be better let alone, because if a young girl is divorced, she will find it hard to go about in search of a husband for herself. In her first case, she was not a free agent, nor could she take any part in the choice of her husband,—the marriage was arranged by her parents or guardians. Under such circumstances, if the girl or the woman gets divorce, I do not think society will look on with favour her going about and seeking for a husband.

Sir, Hindu society is very conservative. Whether greater freedom should be allowed to Hindu women or not, I cannot say. My point is simply this, that our Hindu society is still conservative. In fact, their conservatism has gone so far that even today, inspite of our advance, Hindu widows of respectable families are not allowed to get married again. Of course, some marriages do take place, but respectable Hindu families look down upon such cases. Thus, if widows are not permitted to remarry, how is it possible for society to tolerate the sight of young girls who have been divorced seeking a husband? The whole question is, whether the Hindu society as a whole wants this reform or not, and whether this reform is urgently needed or not. I do not think Hindu society, as such, wants this reform. Reform may be good or bad, but the question is whether the majority of the Hindus would favour the principle embodied in this Bill. If divorce is permitted by law, there will be no limit to second and third marriages. Therefore, I say, Sir, that the principle underlying the Bill is open to most serious objection, it does not suit the Hindu society, and the Society is not prepared to accept it. Of course, the opinions of lawyers or judges might be different, they may be in favour of the principle of this measure, but they look at the whole question from a strictly legal point of view without visualising what harm will result if unrestricted freedom is given to women. Men as well as women are bound by the rules of Society. Women too have to live according to certain social standard, we cannot allow our women to go about and do what they like; but as I said, if there are certain women who

[Bhai Parma Nand.]

wish to enjoy complete freedom, they can easily have recourse to the Civil Marriage Act.

In conclusion, I say, so far as divorce is concerned, it cannot be permitted as long as the same freedom is not permitted to husbands, because for centuries men have been made to stick to one wife only, except in very exceptional circumstances when they were allowed to have a second or a third wife, and that too with the consent of the first wife if she were alive. There is no justification for introducing this change for women at this stage. Here, I may be excused for saying one thing. Divorce law has been passed by our Muslim friends, but the case is entirely different so far as Muslims are concerned. In their case the husband was allowed to divorce his wife any time he chose. The same freedom or permission is not given to wives and, therefore, it was just and proper that a similar freedom be given to the wife also.....

The Honourable Sir Muhammad Zafrullah Khan : That is a misstatement.

Bhai Parma Nand : Legally, the law did not allow it. I am not talking of the Islamic law. I am talking of the law as it was in use, I mean the British law. There are High Court rulings which allowed the husband alone to divorce his wife at any time he liked. Now, you have given this right to the wife also, and I think you have done the right thing. But in the case of Hindus, as the husband has no right to divorce his wife, it is quite premature to give that right to women on flimsy and frivolous excuses. Excuses of course can be found for divorce,—I shall not enter into the details of those flimsy excuses such as impotency, etc. A wife can claim for this right only when and if the husband has got it and not otherwise. For these reasons, Sir, I oppose the very principle underlying this measure, and I hope that our friends on this side, who are not concerned with this matter, will help us in throwing it out.

Mr. Lalchand Navalrai (Sind : Non-Muhammadian Rural) : Sir, I am sorry that Dr. Deshmukh is not present in the House today to cross swords with my friend, Mr. Bajoria. I would have liked to give way to Mr. Bajoria to speak before me, but I do consider that he is a diehard orthodox and he will have to convince the House, if it is not already convinced, that this measure which has been brought forward by Dr. Deshmukh is an ill-advised one. I am not a diehard orthodox, I move moderately, and when I see that there are social customs which it is reasonable to remove, I would be the first man to go in for it. The House knows that on the question of early marriages I had also moved in the matter for changing the custom. Therefore, I hope that I shall not be blamed if I give my own opinion on this Bill. Dr. Deshmukh is not present here, for which I am sorry, but I shall have to say that he is riding a high horse. He wants things to be done which are not suitable for the whole of India at present. He belongs to Bombay and he has lived in western countries and Bombay is well-known for having many persons, young and grown up, who get fascinated by the fancies and fantasies which they see in Bombay. But they do not think of the whole of India where the old customs and manners are keeping Hindus in their family, not disintegrating them. Bombay, I should say, is already, three-fourths of it, disintegrated in that sense.

An Honourable Member : What about Sind ? *Om Mandli* !

Mr. Lalchand Navalrai : Sind is quite different; I will come to Sind very soon. The effect of the *Om Mandli* has also come from Bombay, I should say that. What I submit now is this. Dr. Deshmukh is now in that environment where he gets blind to the considerations and circumstances of the Hindus outside Bombay. Those who have gone to Bombay and seen it know how this too much of freedom is working there. Dr. Deshmukh is not in the prime of his life and I do not think he has any personal attraction for such things or any of his relatives has any personal axe to grind, so I do not say that he has brought this Bill from any personal motives.

An Honourable Member : Are you certain about it ?

Mr. Lalchand Navalrai : I know him. I know his nature. But he is misguided. Dr. Deshmukh forgets that those who have been allowed so much freedom in other countries are now repenting. Look at America. You have read in papers, I have heard from many men. I had been to America myself and I know. I learnt from them that they are now deploring for having gone too far and too fast.

An Honourable Member : Who is deploring ? Men or women ?

Mr. Lalchand Navalrai : Both of them I assure you, because you see women also are suffering on account of no marriage at all. There is the right of divorce in those countries, but there is virtually no marriage system at all and therefore, their grievance begins from there. Now, even here many of the girls, who get the so-called higher education, say they are not going to marry and we know what it leads to. I will not dilate on this point at any great length. Dr. Deshmukh said the other day that this is only an enabling Bill, and that it is left to the option of a woman whether she claims the right, and he also asked, what are we going to lose if this Bill is passed ? But he does not see that one or two cases of that kind will give an encouragement for divorce being the fashion of the day.

An Honourable Member : What is the harm ?

Mr. Lalchand Navalrai : The harm is this. Dr. Deshmukh asked me, "What do you lose if this Bill is passed ?" My reply to him then was, "*Om Mandlis* will be perfected."

The Honourable Sir Muhammad Zafrullah Khan : What is *Om Mandli* ?

Mr. Lalchand Navalrai : I will give you a tit bit of it. When I told Dr. Deshmukh that *Om Mandlis* would be perfected, what I meant was that he wanted to give excessive freedom to women to disown their husbands, to disown their houses, to leave off their children and go and remain at a place where they will be given that so-called loose liberty. That contamination or disease came from Bombay. The *Om Mandli* man was a Sind-work merchant who had his office in Bombay and he made some of his *chelas* in Bombay. Then, he went to Calcutta and spoiled the atmosphere there, and then he thought of his own home and came back to Sind to destroy all the decency and decorum of these girls and women. I tell you what happened. Dr. Deshmukh should realise that if things happened like that and so much freedom is given to the women, then there is a great danger ahead. To put it only in a few words, when the *Om Mandli* was started, the women left their husbands and told them

[Mr. Lalchand Navelrai.]

that they were no more their wives, and went and became members. Girls were misguided, they went and said that they were not going to marry and that they were going to belong to this *Mandli*. Is this good for the country, I ask. In one word, it has been condemned by all the people in Sind, by the Government itself, and the Government has now put a ban on this *Mandli* and the wives and the girls have been restored to their guardians. What would have been the effect if this Bill had been in force? No Government could have interfered and there would have been chaos in the society. Would you allow that?

The second point urged by Dr. Deshmukh was that this Bill is necessary, because there is a frequency in husbands' cruelly kicking their wives, and, therefore, a Bill like this would give a chance to the wives to get free by a divorce.

Now, is that the real remedy? There are *panchayats*, intervenors and other respectable gentlemen who could intercede to see that the parties are reconciled. I do not at all agree with this bold assertion that he has made that husbands are doing this frequently. It may be so in Bombay, but I know that even in Bombay it is not so. It was perhaps on some cursed thirteenth day of a month that Dr. Deshmukh conceived this Bill. Of course he has made a name among the women. I may tell him that last time when Sir N. N. Sircar spoke on this Bill, he pointed out that women also had passed resolutions that they will not touch this Bill unless the right of divorce was mutual. Now, Sir, it is only proper that when a wife gets a right to divorce her husband, the husband should also have a corresponding right to divorce the wife, but this Bill does not provide for that. I do not see why we should waste time over a Bill like this. The women supporters of Dr. Deshmukh would have been well advised to tell him to drop this defective Bill. It has become a corpse. Still Dr. Deshmukh would like to follow it to the grave, though not attending its burial. Last time, Sir N. N. Sircar expressed his own opinion as well as the opinion of the Government and said that the majority of the opinions received was against this Bill and that Government could not force the pace in a social matter like this. In those circumstances, Dr. Deshmukh would have been well advised to drop the Bill, but he has not done it. I do not want to stand in the way of my friend, Mr. Bajoria, but I want to say a few words on the religious side. Dr. Deshmukh says that he is a *pucca* Hindu. Some one asked him "Are you a Hindu", and Dr. Deshmukh said "Yes, surely I am a Hindu." Yet he now wants to give up the customs and practices of his forefathers. He says that the ancient law in regard to commensality and other matters should be changed, probably because the western people have changed them. The western countries have got their own customs and manners, and I do not see why we should not preserve our own customs and manners, and blindly follow them. I say that Dr. Deshmukh has not given us any good reasons why we should change our customs. Further on, he says that the Bill is a restricted one, and we have nothing to lose and we are not going the whole hog. He has mentioned four circumstances in which divorce can be given to the wife, but I say that once you allow such a change you will see how many other Bills come in. You have got a Bill for giving property rights to women. You say that right of divorce

should be given and then you will say that they must be free to marry in any way they like. I say this will spoil and destroy the well conceived and authoritaded Hindu law which has been ruling the Hindu society for centuries. Dr. Deshmukh says that cases are occurring in India in which a married Hindu woman's life is made unbearable under circumstances brought about by her husband. Now, he stultifies himself. He says that the wife will have the right of divorce if the husband acquires impotency which is incurable any time after the marriage. Is that the fault of the husband? Has he brought it on himself? The husband will like to keep his potency very well. He would not like to be impotent. He has not given any instances to illustrate his point. He makes a general remark, and he wants this Bill to be passed. Anyway, Dr. Deshmukh has acquired reputation or notoriety for this measure. In Sind too everybody asks "What about Dr. Deshmukh's Bill?" There have been debates in Sind among women on this question and you will find many of them also against this Bill. Those who apply powder and paints to their faces are in favour, but the rest are all against it. Then, to be serious, I come to the second condition he has mentioned. That is, "if a husband changes his religion". Now, it has happened in Hyderabad that some very well-known families have turned Muham-madans and their wives also went with them. I do not see why he should make this a condition for divorce. Then, the third reason he has given is this, "if her husband married another woman while the first marriage is in force". Now, the point is this, and on this also I can assure the House, at least so far as my part of the country is concerned, that if a Hindu male goes into a second marriage, then the *Panchayats* become very strong. Even in my place where I reside, whenever there is any such question, the *Panchayat* pulls up those people, and they only give the permission when they can prove that they do it either with the consent of the former wife or when the wife is not able to procreate, and, in those exceptional cases, this is allowed. But if this Bill is passed, what will happen? The husband who has been living happily with his wife overnight, in the morning, as soon as he marries a second time, the first wife will have a right to go away. I know many Muham-madans also have two or three wives, but they treat them all right, they keep them in separate portions of the house, they give them maintenance. Why should it be that this practice should be interfered with? There are many men in Sind, Muham-madans, who have married two, three or four wives. Why should it be that on that account the wife should at once have the right to leave the husband? That would destroy the system of the Hindu family. We see that now-a-days everybody is for himself, and God is for all. Sir, I was once travelling from London to America and a lady from America was travelling with me. I asked her where she had gone and what opinion she had about London and American life. She told me what the conditions of family life were in Western countries and America, and how in London she found more family life. In some houses she found that not only the husband and wife or the children of that house, but even distant kindred of theirs, their cousins and others, were meeting together and joining at the table. And she said, that would never happen in America now-a-days. In America, there are many instances in which the husband and wife do not own each other. The husband goes out, the wife is also out, where they go they do not know.....

Sir Muhammad Yamin Khan : Was she a married lady ?

Mr. Lalchand Navalrai : I did not ask that question. Anyway, she looked to me to be a good woman. So, Sir, what I am submitting is that these grounds that Dr. Deshmukh has given will lead to many more difficulties, many more troubles and many more disadvantages which Dr. Deshmukh could not see through. What about poor people ? Now, it is proverbial that if you keep two utensils together, they will be clashing each other some time. So, in a family, where these little things do take place, why care for them, especially if we have not cared for them so long,—and now on account of a little bickering the wife may say, "I am going away. I have a right to do so, by this Bill."

Sir Muhammad Yamin Khan : They are not utensils, but they are swords in the same sheath.

Mr. Lalchand Navalrai : That, again, is a question of experience. I need not elaborate the point over this matter.

Mr. N. M. Joshi : Do it—we are interested.

Mr. Lalchand Navalrai : Are you interested over the *Om Mandli* affair ? Dr. Deshmukh is your guide. What I submit is this. On this Bill we have already had the opinion of a good Hindu, I mean one whose opinion should weigh much, and that is Sir N. N. Sircar....

Mr. N. M. Joshi : Why do you label us differently—we also are good Hindus ?

Mr. Lalchand Navalrai : Now, my Honourable friend, Bhai Parma Nand, says that much of the opinion of lawyers and others was in favour of the Bill. I was wondering what statement he was making. Here is the statement made by Sir N. N. Sircar.

Babu Baijnath Bajoria : When did Bhai Parma Nand say that ?

Mr. Lalchand Navalrai : I cannot say exactly, but he said that the opinions are taken from lawyers and others and much of that was in favour, but anyway the opinion here is very plain.

Sir N. N. Sircar says :

"I venture to submit, Sir, making all allowance and as I said giving Dr. Deshmukh the benefit of doubt wherever it can be reasonably argued both ways as to whether the matter is within or without the scope of the Bill, there cannot be the slightest doubt that the majority of the opinions received is against them."

Now, there can be nothing more clear than that, and I do not think that in a matter like this the majority opinion should be thrown out or lightly treated.

Mr. N. M. Joshi : The wrong people were consulted.

Mr. Lalchand Navalrai : Dr. Deshmukh went all over the place to get opinions and he said he had got a lot of opinions and he read those opinions, but they were self-sought. I hope the House is going to throw out this Bill.

Babu Baijnath Bajoria : Sir, I rise to oppose this Bill. My Congress friends are always saying that they have come here to the Assembly and also they have joined the Provincial Legislatures and accepted office all for the purpose of wrecking the constitution, but let us see how Dr. Deshmukh has pursued this policy of wrecking. On this very Bill, instead of wrecking the Assembly, we find him wooing the Government. The House will remember that in September last, here in Simla, he wooed

the Leader of the House and got this Bill introduced on an official day. Again his wooing went on successfully till a certain time, the Bill was circulated for public opinion, also through official favour and on an official day. But, unfortunately, for Dr. Deshmukh there was divorce even before wedding. Government could not go any further and left Dr. Deshmukh to himself.

Mr. N. M. Joshi : You also did some wooing of the Government.

Babu Baijnath Bajoria : Sir, the very idea of divorce is absolutely repugnant and abhorrent to Hindu ideas. I say that in the hoary history of Hindus throughout the ages there have not been any cases of divorce amongst the Hindus of the higher castes. But before I come to that part of my speech, I would like to give some history of the attempts that have been made in this House about getting such Bills passed in the House, but they have all been unsuccessful. This is the third attempt. The first two attempts were made by Sir Hari Singh Gour. He brought such a measure, and in the first attempt it had to be withdrawn. Even a strong reformer like Lala Lajpat Rai also opposed that Bill and it had to be withdrawn. In the second attempt, a Bill was introduced, circulated and re-circulated, and it was on the anvil of this House for two years and never saw the light of the day again. This is the past history of such Bills in this House. Dr. Deshmukh says that he has brought this Bill for the emancipation of women and for the benefit of women. I also say that I oppose this Bill for the benefit of women.

An Honourable Member : Then, you are not for the emancipation of women.

Babu Baijnath Bajoria : This Bill, far from emancipating women, will take them to the abyss according to the Hindu religion and the path which I am suggesting will take them to Heaven. After all, why should there be a marriage at all ? This is a question which I will try to answer. Before I come to the practical points which have been raised, I would like to ask for the indulgence of the House for a few minutes to deal with the theoretical side of the question. Is marriage a solemn and sacred right meant to unit a man and a woman both on this side of the grave and beyond or is it merely a business contract entered into by two individuals of opposite sexes for mutual satisfaction and, therefore, terminable at will ? Why is marriage performed ? Is it only for procreation ? I say, no. Procreation is not the sole aim of marriage, because animals have also managed to procreate and perpetuate their species without the intervention of priests and churches and even without entering into a contract, temporal or spiritual. But a human child, unlike the offspring of the lower animals is born almost entirely helpless and is dependent on the mother for a much longer period than its sub-human cousin. The mother during this period, at any rate, has to depend on the father for her daily bread ; and it is just possible that it was out of this necessity of maintaining contact with the father of the child that the institution of marriage was gradually evolved. The human male, throughout the whole course of his history, has never been very remarkable for the constancy of his affections ; and the female must have realised that it was necessary by some device or other to tie him down to herself and the child as long as possible. The intervention of the holy man was sought as it was he with his eyes turned heavenward that was held in the greatest awe and reverence. The holy man became a priest,

[**Babu Baijnath Bajoria.**]

lectured the human male on his duties towards the female, advised the lady to be obedient and blessed the union and possibly threatened it with a curse in case his instructions were disobeyed.

Mr. N. M. Joshi : Who was this holy man ?

Babu Baijnath Bajoria : This is that holy man before whom even a Christian, a Muhammadan and even a Hindu goes and who performs the marriage.

The modern spirit, however, has played havoc with ancient religious beliefs and customs, and both men and women in all countries have begun to doubt whether marriage is not after all only a secular institution for regulating the relation of the sexes and whether the priests, the churches and the holy men should at all be allowed to have any say in the matter. The success or failure of marriage, it has been claimed, should be judged by the happiness of the married couple and of the offspring of their union. The husband and the wife should be free to live together or to separate provided the interests of the children have been secured and neither the church nor the State should have any moral or legal right to tie together a man and a woman if they have begun to feel that the tie does not conduce to their happiness.

In most countries of the West, the formalities of religious marriages have become matters of option and the Registrar has stepped in where formerly priests used to preside. In Soviet Russia where religion is regarded as a relic of ancient superstition, the intervention of the priest in matters of marriage has been practically done away with ; and in America where the church is tolerated for its artistic value.....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member need not go all over the world. The Bill refers to Hindu marriage and the Hindus are mostly to be found in India.

Babu Baijnath Bajoria : Very well, Sir. In these days of so-called female emancipation, divorce has become a craze amongst a section of the educated Hindu ladies, but I must say that it is only a negligible section of the Hindu ladies and the number of those who are in favour of this Bill can be counted on fingers' ends. The vast majority—I should say 99 per cent. of the women—are against such a measure. As a matter of fact, the Hindu women who have got really the Hindu culture in them are more opposed to such a pernicious Bill than men themselves because by marriage they have got a certain amount of safeguard and protection. They get their residence, maintenance and status in the society. After all, it is not to the advantage of women to get divorced except when some arrangement has already been made beforehand about their re-marriage. It is generally said that in divorce cases even in other communities, there is always a history behind a divorce suit. If it is not so and if it is only a question of mal-treatment of the Hindu woman, then I should say that the position of the Hindu women will be much worse after divorce. Who is going to marry her ? We know that in Bengal and in our own community also it is very difficult to get married even spinsters and girls without giving big sums as dowry. Who is going to marry a divorced woman ? Divorced women even in other countries are looked upon as not very desirable women.

Sir, no case has been made out at all for a divorce. Even when Dr. Deshmukh was challenged by Sir Cowasji Jehangir as to what chance this Bill had, he said : " I do not bother about this Bill at all. I am only educating the public opinion ". I say again that he has purposely not come here today. If he had wanted to come, he would have got the permission. The same thing happened, if I remember aright, about two years ago, when Dr. Deshmukh, Dr. Bhagavan Das and Mr. B. Das got special permission from the Congress Party to attend the Delhi Session of the Assembly to sponsor their social reform Bills.

Mr. M. S. Aney : I can inform my Honourable friend that on this occasion for good reasons or bad, the Congress Party was adamant and definitely laid down that for no reason, whatsoever, should the Congress Members attend the Simla Session. So my Honourable friend need not dilate upon that point.

Babu Baijnath Bajoria : Sir, the Hindu marriage as I said before is a sacrament. It is not a contract at all just like a Christian marriage or Muslim marriage is considered to be. It is the belief of the Hindus that the union of a man and a woman is not only for this life but even after the death of both of them. These ultra-reformers want to set aside this holy sacrament. I may say that even in my own community there are many ardent reformers and I had a talk with them about this matter. Though they are whole hoggers in other respects, yet they could not subscribe to this doctrine of divorce propounded by Dr. Deshmukh. Dr. Deshmukh says that this is cent. per cent. Hindu measure. I say that there is not an iota of Hinduism in this measure. It is cent. per cent. an anti-Hindu measure. Dr. Deshmukh says that orthodox people like Mr. C. Rajagopalachari have blessed this measure. We all know what sort of orthodoxy does Mr. C. Rajagopalachari profess.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must not discuss people who are not present here.

Babu Baijnath Bajoria : I am only repeating what Dr. Deshmukh said, because the people at large will be under the impression that this measure has the support of the orthodoxy in the country.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must not discuss the beliefs of any man who is not present here.

Babu Baijnath Bajoria : I only wanted to refute the statement that Mr. Rajagopalachari is an orthodox man. He is not an orthodox man.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member ought not to make such allegations. He must proceed with his speech.

Babu Baijnath Bajoria : If these ultra-reformers and their wives really do want to have the benefit of the divorce laws, there is already a course quite open to them and they are free to adopt that course, and that is the Special Marriage Act. But they will not do that, because the marriage under the Special Marriage Act is not considered a Hindu marriage at all. What these people want to do is this. They would like to call themselves cent. per cent. Hindus, they would like the marriage to be performed according to Hindu rites and still they would violate 100 per cent. in every matter the tenets of the Hindu shastras. This cannot be tolerated in the least.

[Babu Baijnath Bajoria.]

I will now briefly refer to the class of persons to whom Bills are generally circulated for eliciting public opinion. As has been rightly pointed out by my Honourable friend, Bhai Parma Nand, the Bill is circulated to Judges and lawyers and other English educated persons for their opinion. The marriage laws as they affect the Hindu society are based on Hindu shastras and so I think it is the imperative duty of the Government to elicit the opinion of the learned Pandits in the country about such matters. If we get their opinion, it is only then we will be able to follow this measure more intelligently. As regards the shastras, it is really a pity that some quotations or rather misquotations were made by Dr. Deshmukh and it is also a pity that a humble Member like myself who is not well versed in shastras should be called upon to refute those allegations. What will the learned Pandits in the country at large think if the shastras are discussed in the House by men like myself or Dr. Deshmukh ?

Supposing divorce is allowed, how will the next marriage of the wife take place according to the Hindu shastras ? According to the Hindu shastras, a girl is to be given away in marriage by her father or in his absence by her nearest male relative. In this case she is already given away with water and *mantra*. How can she be again given away by anybody else, because after her marriage she does not belong to the same gotra as her father. She changes her gotra to that of the husband. If the husband quarrels with his wife and if the wife is divorced, is she going to be given away again to anybody else by the husband himself ? She cannot be given away. In this connection, I will read a sloka about this matter which will explain the position clearly :

"Adbhirvachacha dattayam mriyetasya varo yadi, Na cha mantropacita syat kumari pitureva sa".

It means that a wife given to the husband with water and *mantra* by her parents cannot again be given away. It is also mentioned that marriages can take place only once. I will again quote another sloka :

"Sakridansho nispatati sakrit kanya pradiyate sakridaha dadaniti trinayetani sakrit sakrit".

This means, one can get one's share partitioned only once, only once can a girl be given away in marriage and only once can a gift be made. According to us, Hindus, a girl is given away as a gift to the husband. So after her marriage, neither her father nor any other relatives in her father's branch has got any right over her.....

An Honourable Member : What about widow remarriage ?

Babu Baijnath Bajoria : Widow remarriage is not at all recognised by Hindu shastras. I do not want to go into that matter now. As has already been pointed out, though Hindu widow remarriage is allowed by legislation, how has that law fared at the hands of Hindu widows themselves ? It was admitted by Dr. Deshmukh and Sir Nripendra Sircar in their speeches on this Bill that it has remained a dead letter and though the Bill was passed in 1856 as yet no respectable Hindu widow has taken advantage of it. This Bill, Sir, if passed, will break up the family. In the family after all there should be some tolerance among the different parties and if this law permitting separation exists they will be tempted to divide ; but if there be no other alternative for them

but to remain together, they will after some time get reconciled. The Honourable Mr. Ramdas Pantulu who is a Congressman and reformer said the other day in the other House that it is frequently seen that these educated young women often manage to decoy young husbands from their old-fashioned wives. He also said that you often find half a dozen Julietts playing to one Romeo. If we want to copy western ideas we should take only those which are good and not those that are bad. Divorce is a great evil in Europe and America, so much so that the Lord Chief Justice of England was painfully compelled to compare the divorce system with a dog's license, suggesting at the same time that before long divorce should be obtainable in the post offices on payment of a nominal fee of five shillings only. That is how a judicial luminary with large experience has denounced this system. Again, the Houses of Convocation contemplate not to get intending couples united in wedlock unless and until they give a pledge not to recognise the divorce laws. I would have liked to show the evils of divorce in other countries like America and Russia but in obedience to your ruling I will desist from doing so. A non-Hindu cannot understand what a Hindu husband is to a Hindu wife, nor can it be understood by those pseudo-Hindus who are dazzled by the paints and powders and the so-called freedom of women in the other countries. Dr. Rabindra Nath Tagore.—I am quoting Congressmen and reformers only,—said to an English audience in England :

“ With the Indian woman the husband is not a person but a principle and a tradition like your patriotism and loyalty ”.

What a wife is to a Hindu husband is also well illustrated by a verse in the Ramayana where God Ram Chandra referring to Sita says :

“ *Karyyeshu mantri karanoshu dāsi, dharmeshu patni kshamayā dharitri, sneheshu mātā shayaneshu rāmā range sakhi Lakshmana sa priyāmē* ”.

“ In counsel she is my counsellor, in action she is my servant, in religious performances she is my partner, in tolerance she is like the earth, in affection she is like unto my mother, in bed she is my wife and in play she is my companion. ”

That is the Hindu ideal of a Hindu wife.

Now, who are the people who want these changes ? They are those who have no faith whatsoever in their religion. They think that social reform means breaking away from the social codes of Hinduism and the overthrow of the Hindu theology on which the social code is based. The reformers are mostly persons with a westernised outlook on life and no faith in the principles of Hindu religion as stated in the Shastras. These men are, fortunately, few in number though they are very vocal ; and as they are mostly learned in English education and hold high positions they can make themselves felt, while persons like ourselves who are men of business and conservative and orthodox and do not indulge in politics go unrepresented and the opinions of millions of men like us are of no avail.

Sir, the other day Dr. Deshmukh said in his speech that Mr. Savarkar, the President of the Hindu Sabha, approved of this Bill. He did not approve of the principle of this Bill. My friend, Dr. Deshmukh, was entirely wrong in making the statement he did. I have read Mr. Savarkar's speech very carefully, and as far as I could make out, he has strongly opposed the principle of this measure.

[Babu Baijnath Bajoria.]

Now, with regard to the lot of women, it is said that this law is required to better the lot of our women. Even taking hard cases,—in every society there are bound to be hard cases,—I do not think it can be claimed either by our Christian or Muslim friends, that there are no quarrels in their homes,—but comparatively speaking, I may say that in Hindu homes and Hindu families there is more peace and more quiet and less trouble, because the husband knows that, however much he may dislike his wife, he will have to put up with her during his life time, and the wife also in her turn tries to reconcile herself, and so they tolerate each other much better than if they have a chance of separation by means of the divorce law.

Then, Sir, another thing which Dr. Deshmukh said was there were the horrors of Brahmacharya. Sir, Brahmacharya is considered among the Hindus as a very great thing. Those who do not marry, those who conform strictly to the rules of Brahmacharya are regarded with great respect, while my friend, Dr. Deshmukh, characterises them as horrors of Brahmacharya. If one lives a well regulated life, my friend regards it as horrors of Brahmacharya. God save us from such friends. This is all what I can say.

Further, he said that the bogey that a Hindu marriage is a sacrament is absolutely wrong. Sir, I was really surprised and shocked to hear that statement from one who calls himself a Hindu when he says that a Hindu marriage is not a sacrament. That it is a sacrament is universally accepted by every one, and I, therefore, treat the statement of my friend, Dr. Deshmukh, that a Hindu marriage is not a sacrament with the contempt it deserves.

Then, he quoted a few slokas and pointed out that in such and such Shashtra divorce has been allowed. But I say emphatically that he was entirely wrong. The meanings and interpretations which my friend, Dr. Deshmukh, gave us the other day are entirely wrong. He mentioned specially one sloka “ *nashṭe mritē prabrijatē klibē cha patite pātan* ”, etc., etc., and observed that according to this sloka a woman can go and marry another husband. Now, what exactly is the meaning of this sloka ? It is not that she can go and marry another husband, but the proper meaning of this verse is that—“ *Nashṭe* ” that if a woman finds her husband departing from the righteous path, *mritē* that if the woman is bereft of the husband by death caused to him, “ *prabrijatē* ” that if the husband goes over to his Guru's house for receiving Brahmacharya instructions, *Klibē*—if the husband proves to be imbecile, i.e., unable to rise in spiritual sphere, *patitē* if a husband had a spiritual rise and now he has been subject to a fall in such cases the woman shall have recourse to a separate “ *pāti* ” for the purpose of spiritual rise.

Mr. Umar Aly Shah (North Madras : Muhammadan) : You are entirely wrong.

Babu Baijnath Bajoria : It means a Dharmapathi.

Mr. Umar Aly Shah : You are absolutely wrong.

Babu Baijnath Bajoria : You can have your say later when your turn comes, but this is my version.

Mr. Umar Aly Shah : Yes, but you have no right to give out a wrong meaning.

Babu Baijnath Bajoria : I do not claim to be a Sanskrit scholar, but it is the interpretation which has been given by high learned authorities.

Mr. Umar Aly Shah : It is a wrong interpretation.

Babu Baijnath Bajoria : This is a version not from me, but from authoritative persons who, I have every reason to believe, know the Shastras, and I have a better right to interpret these slokas than my friend, Mr. Umar Aly Shah.

Then, Sir, I do not propose to go into the clauses of this Bill, because Sir Nripendra Sircar spoke in his speech on each of them and pointed out the legal difficulties and impropriety of most of them. I am personally against the very principle of this Bill. According to me, and according to the Shastras, a woman cannot leave her husband however bad he may be. I will quote again another sloka, and I will ask Mr. Umar Aly Shah to correct me if I am wrong.....

An Honourable Member : Do not invite trouble.

Babu Baijnath Bajoria : I am not afraid. This sloka says :

“Duhshilo durbhago vridhho jado rogya dhanopiwa, Patihī sribhirunahatavyo lokepsubhir patakt.”

This is from Bhagwat, Skand 10, Chapter 29, sloka 21. This is also again repeated in Ramayana :

“Vridhha rogavasha jada dhanahina, andha badhir krodhi atideena, Aisehu patikar kiya apmana, nari pava yamapur dukha nana.”

The meaning of this is—Even if the husband is wicked, ugly, old, foolish, diseased, poor, still a wife who wants salvation must never desert him. Now, Sir, when everything goes on well, no law is required, no injunction from the Shastras is required. All these laws are made only to prevent trouble, so that the family may not be disrupted. According to us, orthodox Hindus who believe in our Shastras, if a wife ignores or treats contemptuously her husband she goes to *Narak* or hell and in her next life she becomes a girl widow. I have got further slokas but, as has been pointed out by my Honourable friend, Mr. Umar Aly Shah, there are not many gentlemen here who will understand slokas, otherwise I have got any number of them here.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member need not go through all that, as
1 P.M. according to himself most of the Members here

do not understand Sanskrit.

Babu Baijnath Bajoria : I have given only a few slokas to refute the version and the interpretation which was given by Dr. Deshmukh, and I shall not go into this matter in great detail.

Sir, in the land of origin of divorce, the same is considered as a disease, and is no longer a fashionable disease like shortsightedness for which spectacles are taken, but is held to be an epidemic like small pox, a pest like rinder-pest. In the West it has threatened to become not only a contract but one that could not be kept. The Bill proposes to keep the door ajar that way foreboding doorlessness at a future date. I differ from the principle fundamentally.

[Babu Baijnath Bajoria.]

It must be made patent that the loftiest aspect and argument sees, at least in our case, marriage as a divine institution. And for this logical reason, those who believe in this, the millions of Hindu India would not believe in divorce. Most relations in various aspects of life would suggest revolt. The labourer, the capitalist, the rulers, the ruled, the soldiers, the politicians, all may inevitably point to revolts, because those relations are originally only founded upon force or self-interest. Force can abolish what force can establish; self-interest can abolish a contract when self-interest has dictated the contract. But the love of a man and woman is not an institution that can be abolished, or a contract that can be terminated. It is something older than all institutions or contracts, and something that is certain to outlast them all. The Hindu woman believes, since the dawn of her intellect and faith, or more properly it is in the blood of her to believe that her husband is pre-destined, her husband in this life is the same as that of previous lives and of lives to come.

Marriage has but a glamour to the couple. Marriage gives a status by itself. The dignity arose wholly and entirely out of her fidelity. They were regarded as having a certain dignity because they were dedicated in a certain way, as bound to do certain duties. This eternal fidelity of a woman to her husband made her sublime—an ideal of the womanhood—which still runs high in the heart of hearts of every Hindu woman of India. It was this high ideal of life which made every woman of India as superior to any of other countries in national integrity or honour.

There is a spirit penetrating all our society and particularly so-called reformers today by which the exception is allowed to alter the rule. The consequences would be that promiscuity, intemperance, immoral liaisons, indiscipline and disruption of social bonds would follow.

The unfortunate woman who cannot tolerate the man she has taken as her husband is not encouraged to return to him or tolerate him, but encouraged to choose other man.

Mr. President (The Honourable Sir Abdur Rahim) : What is the Honourable Member reading from ?

Babu Baijnath Bajoria : These are my notes. I am reading from my own notes.

But the point cannot be missed that she is permitted to loosen the universal bond which has kept millions of others normal. Because one has fallen into a pit, one is allowed to burrow in it like a rabbit and undermine a whole countryside.

I have a right to go further into this matter, but as Dr. Deshmukh and others from whom he could have got sympathy for this Bill are not here, I do not think it will be much use for me to dilate on the other numerous points which this Bill raises. This Bill is absolutely un-Hindu and I am glad that Government is also going to oppose this Bill, because if this Bill is passed, it will mean, according to the Hindu ideas, farewell marriage, farewell purity, farewell chastity, farewell legitimate offspring, farewell family happiness, farewell Hindu joint family.....

An Honourable Member :and farewell Dr. Deshmukh !

Babu Baijnath Bajoria : With these few words, I oppose this Bill.

Sir Muhammad Yamin Khan : An appeal has been made by some Members who have spoken already from the Congress Nationalist Benches that we Mussalmans should refrain from voting one way or the other. (*Honourable Members from Congress Nationalist Benches :* "No, no".) I thought that Bhai Parma Nand said that, but if I am wrong, of course I would withdraw my statement.

Mr. M. S. Aney : He did not say that.

Sir Muhammad Yamin Khan : Then I am sorry. In any case it has been our practice never to interfere in the social reforms of the Hindu community by throwing in our weight against the decided majority of the particular community concerned. It is for them to bring about reforms in their community and we have got to be guided mostly by the views which are expressed by a majority of them in this House. We do not want to know how many Members are absent or present but, as the House is represented by them today we shall go by the views of those Hindu Members who are present today. What I feel is that most of them are opposed to this measure.

Mr. N. M. Joshi : No, no. Who told you that ?

Sir Muhammad Yamin Khan : What I think is that most of them are opposed to this. Whatever our decision may be later on, I want to express one thing, namely, that there have been views expressed for and against the Bill.

As Muslims, we must make it clear that our belief is that a man and a woman should have absolute freedom to get separated from each other and they should not be forced to live as husband and wife when they cannot live properly. That is the Islamic law. The Muslim law gives full power to the husband to divorce and it gives great power to a Muslim woman to obtain a *khula* under certain circumstances. As education spread in different parts of the world, many other countries have adopted the same law by passing different Statutes. Among the Christians, there was no divorce for a very long time and among the Roman Catholics there is no divorce even today, but in England we find that the law has made great progress during the last 50 years. The woman has got the right to get herself separated from the husband who does not treat her properly and for this reason we think that if we oppose this law and do not express our opinion in favour of this law, then we shall be wanting in really supporting a law which we take as a torch for the world to follow. I do not think that the provisions contained in this Bill are either sufficient or justifiable. The Bill, as drafted, is hopelessly bad. The foremost difficulty is the first condition which the Honourable Member has laid down—that a woman is entitled to get a divorce if her husband gets impotency during the marriage but what about impotency from the very start ? This Bill is lacking in that respect and there are many other defects but, anyhow, there is only one principle and one principle alone—whether a Hindu woman should be allowed to have a divorce or not. Leaving aside the provisions of this Bill, I think the Select Committee can redraft the Bill and make the Bill good, if only the principle is accepted, namely, whether a Hindu woman should be allowed to divorce or not. I fully recognise the inconsistency in this Bill—that the Bill gives the right of divorce to a Hindu woman and not to the Hindu man. A man can always desert his wife and there have been many desertions. If the woman is bad and

[Sir Muhammad Yamin Khan.]

intolerable, then the man can desert her but he cannot divorce her and it is very hard that any man should call a woman his wife when he cannot live with her for many reasons. Her conduct may be bad and undesirable and still he has to call her his wife and in many cases he has to maintain her. That has been a great hardship on the man and it would have been in the fitness of things if provision had been made to meet this point. Mrs. Subbarayan has given notice of a Bill that equality should be given to both men and women and I do not know whether that Bill is coming before this House or not. If this Bill is supported and passed, then the natural consequence will arise that some Honourable Member of this House will bring forward complementary legislation giving the same powers to men as this Bill gives to women.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Sir Muhammad Yamin Khan : Sir, before the House rose for lunch I was making clear what we feel about the law of divorce and we are glad really that the whole world is coming now to adopt the same view on this point as we have got in our Islamic law. By and by all laws will turn to the same laws as we have got even today, and, as we have got our own law, it will be quite inconsistent if we give our vote against the Bill and against the principles which we think are really good. And when we recognize that women should have an absolute freedom to get herself separated from her husband who does not treat her properly, then, by our vote to thrust or disable any other woman whatever religion or community she may belong to will not be consistent on our part. But we had adopted a kind of policy in the past that we do not want to enforce our ideas upon other people. We have been always trying to show that our principles are good and it is for them to believe in them or to adopt them or not to adopt them, but we can never enforce our views upon them by our vote. That being our case, we think that the arguments which have been advanced here in this House are not such as can guide us in adopting our attitude. I may say one argument which has been advanced by my friend, Mr. Bajoria, viz., that the woman under the Hindu law believes that she has been his wife in the past life, that she is destined to be his wife in the present life and that she is destined to be his wife in the future life—that sort of argument does not appeal to us and I do not think that all Hindus will be believing in such a principle, because the principle of *Karma* is such as will negative this theory of Mr. Bajoria. I may take it that if one Vaishya couple is living where the husband may be a bad fellow and whose deeds in this life may not be such that he may be re-born even as a Vaishya but may be born as a Sudra or may be destined to go down even to a lower degree, and the wife who does acts of great piety and she may take her re-birth in a Brahmin family, then how could they be destined to be husband and wife in the next life? That could not be the theory of *Karma* that on account of the bad deeds of the husband the wife may be punished so much that she might also be re-born, instead of in a Brahmin family, in a Sudra family. That theory, I do not think is in any way sound or is really believed in by all the Hindus.....

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour) : Does the Honourable Member know that there is another kind of theory that on account of the good deeds of the wife the husband can be elevated ?

Sir Muhammad Yamin Khan : If that is the theory that in spite of his bad deeds the wife's good deeds may take him into a higher caste, that will of course nullify the very principle of giving an incentive to a man to be a good man. And what will happen if the husband is good and wife is bad ? Anyhow I am not concerned with that, and I cannot discuss the beliefs of the people because whatever is the belief of a man is to be left to the man who believes in that. Anyhow this is merely a theory and I may say that at least I can talk from some personal experience of many cases which came to me during my practice at the bar, *viz.*, that I have found that many husbands have treated their wives so badly and hopelessly badly that they ought to feel themselves ashamed to call themselves as husbands of these women and to insist upon this that the woman should continue to be his wife. If that is the kind of treatment, then what is the remedy ? The husband can, if he is dissatisfied with his wife, my friend says, take another wife, he can have a third or a fourth wife, but only he is going to give her a maintenance, and he says that maintenance is the only criterion. Well, simply producing children is certainly not the only function of the woman but there is something more. Then may I ask him—is this the only criterion that the husband may give her only some maintenance ? Does that alone make her happy ? Sir, a wife can never be happy simply because she gets a maintenance from her husband. Her life becomes miserable if she finds that there is no love, that there is no response to love, even if she has the right to maintenance. She of course has the right to commit *suttee* when the husband dies, but what is the treatment from the husband's side ? Desertion, cruelty, no response to love, but only giving some maintenance which may not be fit even to keep her body and soul together. That is not a proper criterion for happiness. If a husband can desert his wife and re-marry and have another wife, while you estop women from getting another husband also, this surely becomes a rank piece of gross injustice. In those cases where there is no fault in the woman and all the fault lies with the husband and in these circumstances the Bill aims at this that permission may be given to the wife to seek redress in a court of law to get her marriage dissolved. That is only a permissive law. The law does not say that surely this *will* dissolve the marriage *ipso facto*. No body can say that on account of the happening of such and such an event the marriage is automatically dissolved. A mere permission is given and I do not think that the Bill is really so bad as has been made out ; and I think there will be thousands or lakhs and lakhs of women who would, if their consent were to be taken or their views were to be sought amongst the Hindus, gladly say that they do want that this latitude should be given to them. My friend says that that is the Hindu law, but Hindu law is applicable to many other people who are not strictly abiding by their Shastric law. There are many amongst the Hindus who follow the Hindu law and they are guided by the Hindu law but still they are not clinging to certain texts only ; for instance, amongst my friends the Sikhs, while they follow the Hindu law and are bound, in their marriages and marital relations, and guided by the Hindu law, there are instances where there a second marriage has been allowed to the woman

[Sir Muhammad Yamin Khan.]

from the very beginning. The widow marriage has been practised at least and they are doing it even now. The Arya Samajists allow a second marriage.

My Honourable friend gave us the translation of some Shastras that a girl is given in marriage only once and she cannot be given again. I am not a scholar of Shastras and Vedas but what I could gather from his translation was that these were the narration of facts rather than commandments. The commandment is different from what is a mere narration of facts which is given by a Sanskrit scholar. He may say that a gift is given only once and a girl is also given only once in marriage. All these passages he has quoted in the same categories. He has given it in his own poetic manner and he has given it out that this ought to be the principle of law. If you have given a girl in marriage once, you cannot take her back. It is a gift given to a person once and you cannot take it back. But it does not mean that if the girl becomes a widow, she cannot be given in marriage again. If there are laws which are partial to men and do not safeguard the rights of women, they cannot appeal to those persons who believe that the woman has also got as a human being certain rights which should be safeguarded to her. If in the old order of the world, there were certain practices which disallowed these things, then those practices and customs should not be stuck to now. I do not know if the decisions of the courts are given according to what is written in the Vedas. After all, there are many other categories like the Jains who have got their own law and yet their belief may be different from the orthodox Brahmins. Then, we have the Jat community which has got its own laws and its own customs. That being the case, you cannot make a law which will suit only the requirements of one set of people and may not be suitable to the other community. So, we have to be careful and we must take into our consideration that we do not give our vote to a matter which may not be suitable either according to the circumstances of the country as they are prevailing or against the majority of the bulk of the Hindu society itself. We have to be guided only by the fact whether the Hindu community is prepared to this change or not. If the Hindu community is prepared to have this change, then we are certainly ready to give them our support.....

Sardar Sant Singh : On a point of order, Sir. There is no quorum in the House.

Mr. Deputy President (Mr. Akhil Chandra Datta) : There is a quorum in the House. The Honourable Member can proceed.

Sir Muhammad Yamin Khan : If I may digress because the point of order has been raised, I think I will not be out of place if I make the remark that the debate today is going on on the express vote of the Government against the votes of the non-official Members and it is the duty of the Government Members to keep up the quorum. If they absent themselves during the debate and enter the House only when vote is taken, I do not think they are justified in doing so. They will then be imitating only those Members who are absent from these Benches.

I was saying that our attitude is that we will not enforce our votes to make the decision one way or the other. But we have been asked by people who hold different views on the subject that we should support them. We

find that our natural views are in accordance with the principles of the Bill. But we think that the Bill is very defective and it requires a great deal of modification. It has to be overhauled from the beginning to the end. But we agree with the principle of the Bill. If, however, the Hindu community as represented in this House is opposed to this Bill, we will not thrust our votes against their wishes.

Mr. Umar Aly Shah : Sir, I rise to say a few words on this divorce Bill. I had no intention to take part in this debate, but certain Pandits came to see me in Delhi about it, and that is the reason why I am saying a few words now. There is no doubt that there are many Hindu women who are suffering at present :

*“ Gruhe evasura peedācha,
sagane pati peedanam,
Aasane bandhu peedācha,
yadhā sadho nipeedya the ”*

It means, that there is no family in which a married woman is not subject to restrictions as to the right of sleeping, moving freely and sitting in the presence of her husband, mother-in-law or the widowed sister of her husband, respectively. I am prepared to support this Bill if there is an assurance forthcoming that all the indignities and restrictions which Hindu women are subject to will be removed and that there would be equal rights for husbands and wives in Hinduism. But this divorce Bill which is a very liberal measure can be given support, and I have no objection to support it. There is a Sanskrit quotation which Dr. Deshmukh gave and which also Babu Baijnath Bajoria quoted. It is from Manu Smriti.

Mr. M. S. Aney : It is Parasara Smriti.

Mr. Umar Aly Shah : Yes, Parasara also adopted that sloka. This is the sloka :

“ Naahé mríté pravrajité klibēcha patitau patanu pancha swapatou narinam pati rangyavidhyatē.”

Vidyaranya has given a clear interpretation of this sloka. It means that a married woman can divorce a husband who has vanished, who is dead, who becomes a sanyasi, who is eunuch, who either becomes a scoundrel or changes his religion. The real meaning of the last line of this sloka is that in the circumstances mentioned above the wife can treat the husband as one other than a husband, reassume her virginity and thus earn the rights to divorce and remarriage. In all these circumstances, a wife can reject her husband and take another husband. The wife has got the privilege to take another husband. We read of Nala, when he vanished, Damyanti was about to take another husband in the swayamvara. Mahabharata clearly says so. When Uruchi's husband, Chitrangada, died, she discarded all ideas of widowhood which continue the sacrament of marital ties and took Arjuna as her second husband. My Honourable friend said there can be no question of divorce after the death of the husband. But Mahabharata says that Uruchi divorced her husband and took another husband. I may remind my Honourable friends that Mahabharata is not an ordinary book. “*Bharatam Panchama Vedha*”. It is called the fifth Veda. I may also mention that Machehagandhi after her husband Parasara took Sanyasa married Santanu. This is also mentioned in Mahabharata. When Brihaspati became an eunuch, his wife Tara divorced him and married Chandra. This is also in Mahabharata. I may also cite

[Mr. Umar Aly Shah.]
 the instance of Vali when he became a scoundrel, his wife Tara divorced him and married Sugriva. This is narrated in the Ramayana.

"*Andhara macambaddha, Bhārya yām varjatā vibhu, Andhara macambaddha, Bhāryāyām varjatā sati.*"

Husbands and wives who break the bounds of *dharma* or who become scoundrels can be divorced by their spouses.

These facts every ordinary Hindu knows, not to speak of scholars like my Honourable friend, Mr. Aney. From the Hindu Epics and Dharma Shastras, I can quote several instances where divorce was permitted for women. If there was a religious meeting, I could quote all these instances. But this is not the time, nor the occasion to elaborate them. I have no connection with Hinduism, but I have got many friends and disciples among Hindus, and when I recently went to my place, I had discussed this measure with them. I do not know what the decision of my Party will be in respect of this measure, but I wish simply to point out to the House that in the Epics, in the Dharma Shastras and in the Puranas of the Hindus, there are passages upholding divorce among Hindu women. If only the leaders of the Hindus read and digest the eighteen *Smritis* which confer equal rights on Hindu women, all these controversies about reform of Hindu law would not be there.

Sir Abdul Halim Ghuznavi (Dacca cum Mymensingh : Muhammadan Rural) : Mr. Deputy President, this is an important Bill so far as Dr. Deshmukh is concerned. We do not find Dr. Deshmukh in the House, nor the Members of the Congress Party although this Bill is being debated today. What is the reason for their absence ? What is the reason for the empty Benches in front of me ? We have been told that because troops were despatched to Singapore and Egypt without the concurrence of the Hitlers and Mussolinis of the Congress, they have absented themselves from the Assembly. But the facts are otherwise. They were consulted, and in this connection I will read a few sentences from the *Tribune* which were written by its Special Correspondent, who, by the way, I may say, has the reputation of not authenticating any news which is not borne out by facts. What he says is this :

"From information gleaned from non-Congress Members of the Assembly I am able to say that Mr. Bhulabhai J. Desai had twice been invited...."

Mr. M. S. Aney : I rise to a point of order, Sir. Is all this reference relevant to the Bill under discussion ? The Honourable Member tried to introduce this matter yesterday also, but the Honourable the President rightly ruled that all his observations were irrelevant. I now ask you, Sir, whether the Honourable Member is in order in trying to introduce the same matter again.

Mr. Deputy President (Mr. Akhil Chandra Datta) : All these observations of the Honourable Member are entirely irrelevant to the Bill now under discussion before the House. He will now go into the merits of the measure before the House.

Sir Abdul Halim Ghuznavi : May I point out, Sir, how this is relevant ? I will explain to you, Sir, why you should withdraw your ruling ?

An Honourable Member : Reconsider.

Sir Abdul Halim Ghuznavi : I beg your pardon, Sir, why you should reconsider your ruling.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Chair has given its ruling and it wants the Honourable Member to confine himself to the Bill before the House.

Sir Abdul Halim Ghuznavi : I will content myself by saying that I can successfully show to the world that what they say they do not do, that they say one thing and do another. They sent a letter to the Viceroy and Governor General thanking him for consulting Mr. Bhulabhai Desai.

Mr. Deputy President (Mr. Akhil Chandra Datta) : Order, order. It is not proper for the Honourable Member to go into
3 P.M. all this after the Chair has ruled twice that all this is absolutely irrelevant to the matter under debate.

Sir Abdul Halim Ghuznavi : With regard to this Bill, I wish the Congress Party were here. But the ruling of the Chair and the intervention of Mr. Aney who knows fully well that he was consulted.....

Mr. M. S. Aney : There was no consultation ; I was not consulted at all.

Sir Abdul Halim Ghuznavi : He was informed.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Chair would repeat that it is not at all proper for the Honourable Member to pursue that point.

Sir Abdul Halim Ghuznavi : Very well, Sir. Clause 2 of the Bill says that a wife will have divorce :

“ if her husband married another woman while the first marriage is in force.”

I wonder whether my Honourable friend, Sir Yamin Khan, who supported this Bill has read this clause.

Sir Muhammad Yamin Khan : I have read the whole thing carefully. I did not support any of the clauses. I supported the principle only.

Sir Abdul Halim Ghuznavi : My Honourable friend dealt with historical facts and quoted the Hindu Shastras although he confessed that he was not versed in them. But he said that during his practice at the Bar he has come to learn these things. I say this is a most pernicious, monstrous and atrocious Bill encroaching upon the Hindu religion and usage. Any man who knows anything about the Hindu religion and religious practices knows also that Hindu marriage is not contractual but sacramental. It would be shocking to the Hindu community that a wife should have the power to divorce her husband or the husband should have power to divorce his wife.

Mr. N. M. Joshi : Millions of Hindus possess this right.

Sir Abdul Halim Ghuznavi : Mr. Joshi and his friends may have been doing it.

Mr. N. M. Joshi : My poor friends of the working classes can divorce. It is the friends of my Honourable friend, the rich Hindus, who cannot do it.

Sir Abdul Halim Ghuznavi : They are non-Hindus. They have no religion.

Mr. N. M. Joshi : I protest on behalf of those poor people against that observation.

Sir Abdul Halim Ghuznavi : Sir, let us take this Bill. As drafted, I think Mr. Bhulabhai Desai must have seen it.

Sir Muhammad Yamin Khan : No, he did not.

Sir Abdul Halim Ghuznavi : How does my friend, Sir Yamin Khan, know whether Dr. Deshmukh consulted Mr. Desai or not ?

Sir Muhammad Yamin Khan : I say that an able lawyer like Mr. Desai could not have drafted it.

Sir Abdul Halim Ghuznavi : I can say that not only did Mr. Desai read this Bill, but he passed it as O. K.

Clause 2 of the Bill says :

“ Notwithstanding any custom or law to the contrary, a married Hindu woman shall be entitled to claim a divorce,” etc.

Why not bring Bolshevism straightaway ? Why all this farce of Assembly and legislation ? Have no law. Make this law, “ Your wife, my wife ; my wife, my wife.” The reformers are giving all sorts of liberties and the consequences will be disastrous.

An Honourable Member : You gave the same right to Muslim women by the Bill passed last Session.

Sir Abdul Halim Ghuznavi : I was not referring to this Bill or that Bill. I was referring to the way in which the Hindu reformers are proceeding.

Sir, this Bill which is now before the House, if the Congress Party had been present here today, would have gone through despite the opposition of my Honourable friend, Mr. Bajoria.....

Babu Baijnath Bajoria : No, no, it would have been killed.

Sir Abdul Halim Ghuznavi : My friend says No, No, as if he knows everything. Thank God, they are not here today.....

Mr. Lalchand Navalrai : It is unfair to them.

Sir Abdul Halim Ghuznavi : Who is to blame ? The Honourable the Deputy President does not want me to state the facts which by themselves would be a censure on the Congress Members for their absence today. Anyway, I want to say one thing here. When we were elected to this House, we got a mandate from our constituencies, and that mandate was that we should protect their interests.....

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Chair would again ask the Honourable Member not to go on like this *ad infinitum*. He must strictly confine his observations to the Bill itself.

Sir Abdul Halim Ghuznavi : Sir, I was only speaking on the Bill. What else was I speaking on ?

Mr. Deputy President (Mr. Akhil Chandra Datta) : As the Honourable Member said that he was only speaking on the Bill, I must make it clear that he was not speaking on the Bill. It is obvious that he got up to say something else.

Sir Abdul Halim Ghuznavi : In view of the Honourable the Deputy President's ruling that whatever I say must be relevant, and since he holds that whatever I say is not relevant, I cannot proceed further, because he says that everything I say should be restricted to this Bill. How can I express my feelings about this Bill unless.....

Mr. Deputy President (Mr. Akhil Chandra Datta) : Order, order, the Honourable Member must not criticise the ruling the Chair has just given.

Sir Abdul Halim Ghuznavi : Very well, Sir, I bow to your ruling. All I now say is, I oppose this Bill.

Maulana Zafar Ali Khan (East Central Punjab : Muhammadan) : Sir, the Bill under discussion was sponsored by Dr. Deshmukh, a Member of the Congress Party. The Congress Party is not here today. We have already enunciated the principle for which we stand in this House. That principle is that we Muslim Leaguers are always on the side of right. If the Congress is on the right, we will be on their side, if the Britishers are on the right, we are with them, and wherever we do not agree with them or the Congress, we sit on the fence. We are the balancing power. Now, Sir, we find that Dr. Deshmukh's Bill contains a principle which is the principle of Truth, and Dr. Deshmukh's Hinduism has borrowed that sacred principle from Islam, and, therefore, it is our duty to support him even during his absence. It is really a great pity that congressmen are not here, and finding that lions are not here, there are so many jackals howling against this Bill. So far as we are concerned, we have already stated that if our congress friends say two and two make four, we will not say that two and two make five, and in their absence we will support the principle underlying this Bill that a Hindu woman should have the right to divorce her husband under certain conditions. Sir, this right was accorded to women over 1,300 years ago by Islam. Christianity did not enjoy that right in the case of women. Christianity said that marriages were made in heaven, those whose hands God has joined no man can keep them asunder. But what was the actual practice ? Marriages were not made in heaven,—they were made in Gretna Green. So this practice went on in Europe. Similarly, the same practice was followed during the course of ages in India. And what was the result ? The result was the Om Mandli, which my friend over there has been deploring so much. Sir, the arguments advanced by my friends, Bhai Parma Nand and Mr. Bajoria, and also by others have not appealed to me at all..

Mr. Lalchand Navalrai : I suppose mine have.

Maulana Zafar Ali Khan : They were the worst reactionaries, and you are a moderate reactionary. You deny to woman the right that was given to her by her Creator. The plight of women in Hinduism has been deplorable from time immemorial.....

Babu Baijnath Bajoria : Question ?

Maulana Zafar Ali Khan : When she was a girl, she was the slave of her parents, her uncle and of her brothers.....

Babu Baijnath Bajoria : She is not a slave. What about Muslim girls ? Are they not obedient to their parents ?

Maulana Zafar Ali Khan : I will come to it presently. When she went to her father-in-law's house, she was the slave of her father-in-law, mother-in-law, of her brothers-in-law and of her husband also. She had no right to inherit property. Whatever was given to her in dowry was charity. Her husband could treat her in whatever way he liked. Her father-in-law, similarly, could treat her according to his whim, and.

[Maulana Zafar Ali Khan.]

therefore, no right of any kind was given to her. Times changed, and now the world has learnt something from the simple faith which is called Islam. Islam gave that right to woman. It raised her from the lowest depths to the highest heights.

Bhai Parma Nand : What about purdah—keeping her inside the house ?

Maulana Zafar Ali Khan : My Honourable friend talks of purdah. If I talk of purdah, then other things will come, then Mahatma Gandhi's philosophy of nudity will come. My Honourable friend says, what about purdah ?

Some Honourable Members : You had better go on.

An Honourable Member : Go on also moderately.

Maulana Zafar Ali Khan : I am moderate. Of course, I respect Hinduism. I respect the millions and millions of Hindus whose civilisation was a beacon of light in days when the whole world was plunged in darkness. I admit all that. But, as Dr. Deshmukh told us the other day when he introduced this Bill, Hinduism is changing from epoch to epoch, it is changing from period to period. When I put in a word and said that supposing a change comes over Hinduism and Hinduism embraces certain principles of Islam, will you be converted to Islam ? He said ; " Whatever else I may become, I won't become a Muslim ". That is by the way. There was another gentleman, my Honourable friend, Mr. Santhanam, who went so far as to declare that the time had come to overhaul the Vedas, to re-write them in the light of the present day needs. This evolution has been going on and a change has come over the mentality of the people. Mr. Bajoria says that we must put a check on this freedom which is degenerating into license. Why ? Because western civilisation is coming from England and from Europe. If western civilisation is coming and carrying everything before it, then it will carry away your customs also, it will carry away your laws also. So, why not check it in the proper way ? You do not check it in the proper way. You try to crush the spirit of woman and tell her that you are not going to give her the right that was given to her by God. Bhai Parma Nand says that widow remarriage was repugnant to Hinduism. Let me tell him there were other things also repugnant to Hinduism. A husband cannot divorce his wife. Similarly, a woman cannot divorce her husband. I am glad that my Honourable friend, Mr. Umar Aly Shah, has quoted chapter and verse from the Mahabharata and produced many instances in which women did divorce their husbands. So, after so many thousands of years, if Hinduism wakes up in the form of Dr. Deshmukh and claims the same right for Hindu women today which was exercised by Hindu women during the days of Mahabharata, where lies the harm ? I admit, as my Honourable friend, Sir Muhammad Yamin Khan, has pointed out, that certain parts of this Bill are defective. bad in law, bad in reason, bad in argument. But the principle underlying it is a sacred principle and we are bound, as Mussalmans, to support that principle. I wish that Dr. Deshmukh had in the first clause of this Bill claimed for men the right to divorce their wives under certain conditions. That was the primary defect which he overlooked.

He does not give the husband the right to divorce his wife, but he gives the woman the right to divorce her husband ; it is all topsyturvy. (Interruption by Babu Baijnath Bajoria.) We have got to face stern facts of life. The change is coming, willy nilly, you must accept that with good grace. You can have your say today, you can make your speech for hours and hours altogether and nobody will say ' No, ' because Dr. Deshmukh is not there, the many stalwarts of the Congress are not there, Mr. Satyamurti is not there, Mr. Bhulabhai Desai is not there.

Babu Baijnath Bajoria : That is why I cut short my speech.

Maulana Zafar Ali Khan : You have cut short your speech, but we are not going to cut our speeches, we are going to do what they could not do, because of their absence—as we think that in certain respects they are right, and in any progressive measure adopted by any one, whether he happens to be a Christian, or a Parsi, or an Englishman or a Hindu, we will certainly support him. But we will oppose with all our power any measure which we think is against our conscience, against the interests of the country as a whole and against the interests of mankind as a whole. There are certain other arguments which, if I were to dilate on during my criticism, would take a lot of time. I see that the Government Benches are opposed to this measure. I see that my Honourable friends sitting here are also opposed to it, and the Muslim League is not in full strength here. If all of us in the Muslim League were present here, we could have given a very good account of ourselves, but even if we lose we will have the satisfaction of feeling that we sided with those who adopted the right course. With these words I support the Bill, by which I mean that I support the principle of the Bill which grants to the Hindu woman the right to divorce her husband in certain circumstances.

Mr. Muhammad Nauman (Patna and Chota Nagpur *cum* Orissa . Muhammadan) : Sir, I had no desire to take part in the debate which only concerns the Hindu community directly, but as reference was made by Bhai Parma Nand to the Marriage Dissolution Bill of the Mussalmans which was recently passed, I think I would be justified if I make some observations on the principle of the " Hindu Women's Divorce Bill " and especially on the psychological aspect of the legislation proposed herein. The question is how far the legislation would be equitable. I hope my Honourable friend, Mr. Bajoria, will agree with me that Hindus are probably one-twentieth of the vast population of the entire world, and he will find that most of the people of the world have appreciated the principle of this law, the principle of giving the right to women for a divorce. The majority of the people of this world, whether in the East, West, North or South, have definitely stated that these rights and privileges are birthrights of women as human beings and could not be refused to them. If they were refused to them in times past by certain sections of the people, it was for certain circumstances and certain reasons. The men wanted their distinct superiority in rights and wanted their wives not as partners but as slaves always tied to them. The time has now come when we must relax these conditions. We may be reluctant to do so but we have to follow the tide of time. My Honourable friend, Mr. Bajoria, may not like it, but he cannot help the stern

[Mr. Muhammad Nauman.]

facts as they are today. I do not propose to make any comment on the Hindu religion of which probably I do not know much at all. From the instances and quotations just given to the House by Mr. Umar Aly Shah who is a scholar in Hindu Vedas and Sanskrit it has been proved to a very great extent,—I should not say to the hilt, but to a very great extent—that the martyrs of Hindu religion and the best heroes of Hindu religion have in their own times appreciated this principle, and in some cases it did so happen that certain women did divorce their husbands.

An Honourable Member : No.

Mr. Muhammad Nauman : I am not going to enter into any controversy on that subject.

In the light of the quotations, given by my Honourable friend, Mr. Umar Aly Shah, I feel that the Hindu religion which gave civilisation to the world about three or four thousand years ago must have had that equitable principle in it. Hinduism claims to be a humane religion. I do not know whether it is a fact that the Vedas have been interpreted properly by those people who are custodians of the religion today but I believe that the Vedas could not have made a distinction between a man and a woman. The practice of Sati was at one time considered to be a pious thing to do. Later on it was proved that it was not at all a humane practice and legislation had to be made to prevent same. I for one am inclined to believe that the great religion of Hinduism could not have made any distinction between man and woman in the matter of their rights. My friend, Mr. Bajoria, has just now stated that widow remarriage, in spite of legal sanction, is a dead letter among Hindus today. If that is the case, what practical objection could there be if this law is also placed on the Statute-book? If the husbands do not treat their wives badly and if the women have no desire for divorce, then why are our Sanatidharmi friends afraid of this Bill. Give your women the right to divorce if they want so. By this Bill you are not compelling women to have recourse to divorce when they do not require it. It may be that no occasion may ever arise for any Hindu woman to have recourse to divorce but why make yourself ridiculous before the civilised world by not granting this right to the woman. It is for the woman to choose and see what is best for her. Besides, a legislation like this will have a moral effect on the class of Hindu husbands who do not treat their wives properly. As Sir Muhammad Yamin Khan has pointed out today we certainly feel that this legislation is not complete and requires lot of overhauling and lot of additions and subtractions. I am not going to enter into the question whether the marriage is a sacrament or a contract but whatever may be the position, we do not want to deprive woman of her inherent right to divorce her husband if her husband is not treating her properly or if a husband is unfit to perform the marital functions of a husband. There can be no reason why liberty of divorce in extreme circumstances should not be given to woman to go away and seek comforts elsewhere. There should be compulsion on the part of the man to maintain his wife properly and this legislation will certainly have the desired effect, because she has been given into his hands by her parents or guardian with full confidence of best relations. Another point is about change of religion in this Bill. Every

one is entitled to have his own ideas about a religion and his views about life after death. A man may have one idea and the woman may have another. If a man has changed his religion to Islam or Christianity or any other it does not follow that the wife and children should also be compelled to change their religion. Why should you compel them to change their religion ?

An Honourable Member : She could not convert herself.

Mr. Muhammad Nauman : In that case, what is she to do ? She will have no companion in the world and will be compelled to a miserable life of separate existence !

Bhai Parma Nand : In the case of Islam, if the wife changes her religion, she can still remain the wife of her Muslim husband.

Mr. Muhammad Nauman : Only if she likes. She may remain as the wife or she may not. This Bill is only in the first stage. After it has gone to the Select Committee lot of things will be changed and new paragraphs will also be placed on the Statute-book.

An Honourable Member : You have no conception of Hindu marriage.

Mr. Muhammad Nauman : I confess I have no practical experience of it but my submission to the House is that this piece of legislation is certainly good and I think it has got the support of all the educated Hindus, as I was told by Dr. Deshmukh and other Hindu friends in the Congress. I appreciate the difficulty of some of my Hindu friends who feel rightly or wrongly that it is an encroachment on their religion. I do not know whether it can at all be taken as an encroachment and from the speeches delivered today I feel that it is not at all an encroachment. I am relying on the statement of Mr. Umar Aly Shah mostly, who quoted Vedas in Sanskrit only a few hours ago. However, we give our full support to the principle of the Bill and I hope that in the Select Committee all the defects of this Bill will be removed. Reciprocal rights should also be given to husbands for divorcing their wives and other defects may also be rectified. We, therefore, support the principle of the Bill. With these words, I resume my seat.

Mr. M. Ghiasuddin (Punjab : Landholders) : I think the attitude of the Party to which I belong has been made clear by the speeches of my Honourable friends, Sir Muhammad Yamin Khan and Mr. Nauman. Very briefly stated, our attitude is this. For one thing, we recognise the fact that the best interpreters of Hindu religion are the Hindus themselves ; and for that purpose, the people best qualified are the elected Hindu Members of this House, because, after all, the Hindu Members sitting on the Government Benches, if they will excuse my saying so, have no conscience of their own. They have to vote according to the instructions of the Leader of the House.

The Honourable Sir Muhammad Zafrullah Khan : How often have you found yourself in disagreement with your Leader ?

Mr. M. Ghiasuddin : I have a voice in forming the policy of my Leader, I may be over-ruled, but the people who sit behind the Honourable the Leader of the House have no voice of their own, they have just to obey. We do not want to interfere in matters which only concern

[Mr. M. Ghiasuddin.]

our brothers of the Hindu community. If it was agreed amongst all the Parties including the Government that on a social measure which merely affected a certain community only the voice of that community should count, then we would have gladly abided by that principle and would have refrained from voting altogether.

Sardar Sant Singh : And then I would have carried all my Bills.

Mr. M. Ghiasuddin : Let the European Group and Muslim League then stand aside and let this matter be decided by the Hindus themselves. But this has not been the convention. (Interruption.) If this is not the case, then the second thing, as far as my Party are concerned, is, that we are prepared to support the majority of the elected Hindu Members ; whichever way they vote we are prepared to side with them.

The Honourable Sir Muhammad Zafrullah Khan : The majority of elected Hindu Members present here are opposed to the Bill.

Mr. M. Ghiasuddin : I do not say " present here " , I say " the conscientious opinion of the majority of the elected Hindu Members " .

The Honourable Sir Muhammad Zafrullah Khan : How will you measure whether it is conscientious or not ?

Mr. M. Ghiasuddin : This is the only criterion by which we propose to judge and so if we come to the conclusion that the majority of the Hindu Members, whichever Party they might belong to, are in favour of this Bill, as we hope and trust they are ; in that case we are bound to support them. Unfortunately this thing cannot be decided today, because the majority of the elected Hindu Members are absent, but we suppose that as the Bill has been sponsored by a Member of the Congress Party, it must have cordial support amongst them and the full support of the Congress. (Interruption.)

An Honourable Member : No.

Mr. M. Ghiasuddin : If Congress were not in favour of this Bill, they would have throttled the Mover of the Bill. As far as the opinion in the country goes, we have had volumes of opinions from both sides,—most people supporting it, some opposing it, and it is very difficult to judge whether this measure is popular in the country or not. I think Government should have been guided by the opinion of the elected Members of the House : and as we think that the majority of the elected Hindu Members at any rate are in favour of the Bill, we are going to support it.

Mr. M. S. Aney : Sir, I regret that the debate over this Bill is taking place under circumstances which are to be deplored. I am not apportioning any blame to anybody and so I have nothing to say as to who is to blame in this matter. It is a Bill which affects the whole of the Hindu community as such. I was glad to hear from the Deputy Leader of the Muslim League Party in the House that they have decided to adjust their attitude.....

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

.....to the one that will be taken up by the majority of the Hindu Members of this House. There seems to be a little difference of opinion between some of the friends on the Muslim League Benches and Sir Yamin Khan himself because, if I understood the statement of Sir Yamin Khan, it was that he wanted to ascertain the opinion of the majority of the elected Hindu Members present in this House but my other friend has in his mind the entire body of Hindu Members of this House. Now, it will be difficult for him to understand what will be the view of the majority of those persons who are absent from this House. Of that there will be no criterion at all ; so he will have to fall back either on the vote of the majority of the Hindus present in this House, or he will have no criterion to come to any decision. I am not here appealing to them to vote this way or that. It is a measure which involves principles and they have to decide what should be the correct and proper attitude to adopt on matters of principle of this kind. If conscientiously they think that it is a matter on which they should vote in a particular way, I would be the last person to come in their way.

Sir, so far as the present Bill is concerned, the speech that was made in this House by Sir Nripendra Sircar disclosed not only the attitude of the Government but I venture to say the general Hindu point of view also and in that speech he has clearly pointed out what are the main defects of this legislation, and he has emphasised the fact that those defects are not merely defects of detail but they are defects which might be considered as defects of principle. Now a Bill like this can be viewed from two points of view. It affects the institution of marriage. As regards the institution of marriage, we know there are two sets of views propounded. There is one set of views which says that marriage is a sacrament and there is another set of views which says that marriage is a contract. Evidently there are those who want to propound the principle of divorce as a necessity to complete the conception of the institution of marriage from the point of view of equity and they are taking what might be called the contractual view of marriage and the contractual view of marriage means this, that it is a matter of contract between the man and the woman and it will subsist so long as the persons who are parties to the marriage think it should subsist, and on certain conditions it is always open to one of the parties to the contract to repudiate the contract. But, in the case of ordinary contracts, we find that if there is a right of repudiation, it is not confined only to one party to the contract. If anybody wants to follow the contractual view of marriage, then he has to see that whatever concession he wants to introduce or whatever facilities he wants to give in favour of one party to the contract, he must make room for extending the same concession to the other party, otherwise the contractual view will not apply.

Mr. Muhammad Asbar Ali (Lucknow and Fyzabad Divisions : Muhammadan Rural) : This is what the Members of the Muslim League have said on the floor of this House. You referred to something but I may explain that the Muslim League.....

Mr. M. S. Aney : I have not had the least idea in my mind of referring to the opinion of anybody else, I do not think they have said anything opposed.....

Mr. Muhammad Asbar Ali : You just said that there should be an equitable right to both sides.

Mr. M. S. Aney : If anybody takes the contractual view of marriage and wants to modify the existing usage of the marriage institution, on that basis he cannot ignore the fact that a contract is a bilateral affair and not an unilateral affair. This contract consists of more than one person. There must be two persons to make a contract complete and whatever concessional facility is to be given in the case of one party to the contract must, as a matter of course, be extended to the other party. That alone will be a complete picture from the point of view of a contractual view of marriage. It is perfectly clear that this defect has been pointed out already by Sir Nripendra Sircar and by many other speakers who have just preceded me and those defects were also conceded by the Honourable the Mover of this Bill himself. Therefore, even from the point of view of those who want to look at the institution of marriage as a pure contract and want to make it nothing else but a contract, I think they will find that this Bill is defective in principle itself. You cannot create facilities in the case of one party to the contract and deny those very facilities to the other party and then ask this House to legislate on the basis that the Hindu institution should be taken as a contract and the Bill must be passed.

Mr. N. M. Joshi : The men have the other facility of marrying two wives, what about that ?

Mr. M. S. Aney : I was not up to this time aware that my Honourable friend was a champion of polygamy. It is for the first time that I have heard that he wants to preserve this concession to man in order that this Bill may be passed.

Mr. N. M. Joshi : I did not say that.

Mr. M. S. Aney : Then, do not use that argument at all. Either you must stick to that view and defend this Bill on that ground or you must give up that view. That is the only logical course that you can take so far as this Bill is concerned. However, my Honourable friend is not a lawyer himself and I see that he has not been able to see the flaw in the argument that he wanted to advance in reply to what I was urging here.

Leaving aside that point, if it comes to sacrament, that is a different thing altogether. Here I must first refer to the fact that my friend, Dr. Deshmukh, for whose industry and painstaking habits I have great admiration, has taken the trouble of trying to find out and ransack the translations of all the sacred books that he could lay his hands upon to find out some authorities in support of this Bill. Let me tell this House once for all, notwithstanding the very interesting and informed speech of my Honourable friend, Mr. Umar Aly Shah, to which I do not want to reply in detail because I will have to go into too many unnecessary details, that so far as the idea of divorce is concerned if we want to confine our attention to Hindu Sastras, there is absolutely no sanction for divorce as such. Quotations in favour of re-marriage and quotations that may be construed for some other things may be found and about their interpretations there may be differences of opinion, but so far as the right of separation of husband and wife or dissolution of their marital tie on any particular grounds is concerned, it is to be found nowhere specifically mentioned directly or indirectly referred to in any of the standard text books of Dharma-shastra that I have been

able to read hitherto. I want to tell you something further. In the Sanskrit dictionary there is no word for divorce at all. The words "*Ghatasphote*" and "*Vivahanirakaran*" are words which our modern writers have coined recently to express the idea of divorce but in the Sanskrit literature you will never find any word for 'divorce'. As the institution of divorce was unknown to them there was no occasion for them to coin any expression indicative of the idea of divorce. I challenge anybody to point out to me from the *Amarkosha* and 28 other lexicons in that language which exist at this time, any one word or expression which means 'divorce'. The thing that I am putting before the House is this. So far as the Hindu shastric conception is concerned, they never contemplated the idea of a divorce and, therefore, no word to that effect is given in any dictionary. It does not mean that divorce, as a matter of fact, is not at all existing in the Hindu society today. My Honourable friend, Mr. Joshi, was perfectly right in saying that there are castes in which the usage of divorce exists. It is recognised by the usages and customs of the caste. What happens in such cases is that on a complaint being made by a member of the caste a Panchayat of the caste meets and there certain matters are considered and then it is arranged that a certain woman should cease to be the wife of a particular man or the man should cease to be the husband of a particular woman after getting certain compensation and executing some kind of documents written to testify the fact of willing renunciation of marital rights by one over the other; and thus the marriage is then annulled and they cease to be husband and wife thereafter. That is a kind of usage which is prevalent in certain castes.

The real difficulty of the Sastras comes in for this reason that out of several kinds of marriages, the most common form of marriage that now exists is what is known as the Brahma form of marriage. That is the system of marriage which is now in vogue generally amongst all the Hindus. Now, according to this form of marriage, there are certain conditions which are to be satisfied before a man and a woman can stand to each other in the relation of husband and wife. There are several conditions and I do not want to go into the details. What I want to impress upon the House is that so far as those, who observe the Brahma form of marriage, are concerned, the difficulty is that the girl after her marriage ceases to belong to the family of the father. Brahma form of marriage requires that the girl has to be given in marriage which is called *Kanyadan* and he who is a donor has to consider certain conditions of Gotra, Pravara, Sapinda and certain other things. Now, this woman ceases to belong to her father's family because she takes a different Gotra, viz., the Gotra of the husband and she becomes a member of her husband's family. Had there been the institution of re-marriage in existence at any time, there would have been some reference in the Sastras that in the case of a woman whose Gotra had been changed like this, the original Gotra of her father could be revived under those certain conditions under which she is considered by some persons as authorised by the Shastras to remarry; or in the alternative her husband's Gotra must be taken as her Gotra in selecting her second husband. But no reference in the whole of the law that is laid down on the point of marriage gives any indication or suggestion whatsoever on this important point as well as the allied points of Sapinda, because this kind of difficulty never occurred to them

[Mr. M. S. Aney.]

as they never contemplated the conception of a re-marriage of a married girl even after the death of the husband. However, I omit this portion altogether.

There is another thing which I want the House to consider in connection with this matter. The particular passage to which reference has been made by Dr. Deshmukh and by my Honourable friends, Babu Baijnath Bajoria and Mr. Umar Aly Shah, is a quotation from Parashar and it has been quoted by other Smritis and Nibandhas also. In that passage the words *patihī anyah vidhiyatē* are very important and on those words my Honourable friend has also laid great stress. Still, the idea is that once you are married, you are married for ever. As long as the woman has got one husband alive, she can never have another husband. Once a man is married to a particular woman, he continues to be her husband during the whole of her life time and, as Mr. Bajoria put it, even after his or her death. But we are not concerned with the state of life after death. But during her life time, he will undoubtedly continue to be her husband.

I now refer to the quotation :

“*Nashte mrite pravrajite Klībe cha patite patau, Panchatsvapasu norinam pati ranayo vidhiyate.*”

What was this reference to *anyah patih*, another husband? My friend, Mr. Umar Aly Shah, should have known that there was an institution called Niyog recognised in the old Aryan polity and it was called Niyog-vidhi, because that is its full name. The Niyogvidhi means this. Even when the husband is alive and if it is found that the woman cannot have any children from her husband, then a kind of latitude was given to that woman to get a child born to her from another man. Latitude was extended to childless widows also. That was the position of the Niyog and this *vidhi* was called Niyogvidhi. As a matter of fact, Dhritrashtra and Pandu, the father of Kauravas and Pandavas were not sons by their own father at all. But, although they were procreated on their mothers by another person, Vedavyasa, they were still taken as children belonging to their deceased husband! The husband remained the same although for the sake of another purpose, viz., the begetting of a child a certain kind of latitude was allowed, and another person was permitted to officiate temporarily as their husband for that limited purpose.

Mr. Umar Aly Shah : But Ambika and Ambalika were widows.

Mr. M. S. Aney : In that case, I shall be able to tell you something

of the various kinds of marriages in vogue in those days. There were the Gandharva, the Rakshasa, the Pisacha, the Asura and other kinds of marriages in those days which are collectively described as unapproved forms of marriage. These ladies were dragged in that way from the house of their father and then they were married to the kings. Surely we are not legislating for these kinds of marriages. Those marriages were something in the nature of rights of property over spoils in war. Your adversary defeats you in battle and then takes your daughter in marriage. There were many examples of that nature in olden days. The story of Ulipi, the story of Vali's wife Tara is all of the same type. They are not marriages in the sense in which we are discussing them here. In those cases, the husbands were deceived,

4 P.M.

the fathers of the girls were defeated and the girls were kidnapped and in that way they became the wives of their conquerors. After their marriage when sons were born they were proud to call themselves as sons of those heroes. When Bhima begot Ghadotkacha on a Rakhasa woman, it was not through lawful wedlock. It does not mean there was any regular marriage. Laws are being made under the shastras not for abnormal marriages such as Pisacha or Rakshasa kinds of marriages with which we are not concerned. We have to see whether there is latitude or concession given for divorce or for remarriage in cases of the kind of marriage in vogue, namely, Brahma, Arsha, Daiva, or Prajapatya forms of marriages. I do not think there is any authority which says that in such Brahma form of marriages there is divorce allowed. The text to which reference was made was obviously dealing with *Niyogvidhi*. It may be observed in this connection that many of these observances which were in vogue in previous *Yugas* are proscribed now in the *Kali yuga* as being unworthy observances. It is technically called *Kalivarjya* observances. *Niyogvidhi* is one of such observances. The text quoted has got in my view a clear reference only to *Niyogvidhi*. Permission was given to a woman to take another man as her husband for the purpose of procreating children. But that has absolutely no application so far as shastric injunction for divorce or remarriage is concerned. The position now is this. The text of Parasara, I take it, has reference not to marriage as such but to *Niyogvidhi*. The word, *anyapathi* and the word, *vidhiyate* mean appointment of other husband is permissible. I submit that on the basis of this quotation, it is difficult to say, nay, wrong that Shastras allowed that. As a matter of fact, there is no provision made anywhere that divorce should be permitted to a woman. But I do not mean to say that even if there is no provision, there should be no change in that direction or that a change is not desirable at all. That is not my point of view from which I want to attack this measure. I want to attack the position that the present reforms which they want to introduce has its basis or grounding in the Shastras itself. It has not. You can take it from me that it has not. So far as I know the Shastras, I do not find any reference in any of the texts for divorce to a woman.

Having propounded the view that there is no basis for this reform in the Shastras, I do not say that if the thing is desirable, it ought not to be done. Therein you have to look at the reform from a practical and utilitarian point of view. You have before you the example of a very important piece of legislation which was passed more than 60 years ago. It was a very salutary reform that was introduced in those days. What do we find? Even now there is a very insignificant fraction of the Hindu widows who are inclined to take advantage of that legislation and get themselves remarried. I am referring only to those castes among whom remarriage is prohibited and I am not referring to those castes in which there is usage or there is remarriage going on and for which there is no need for legislation. Among those castes where the practice is not in vogue, we find there is reluctance, there is an unwillingness on the part of guardians of widows or even among the widows themselves for performing remarriage.

An Honourable Member : It is because the woman does not inherit any property.

Mr. M. S. Aney : Now you are asking me to make another law for establishing the right of women to inherit property. I am not now dis-

[Mr. M. S. Aney.]

cussing the law of inheritance. I am only pointing out to the House this one fact that although a very salutary reform has been enacted with the consent of the previous legislature and it is now the law of the land, there is a tendency amongst widows not to take advantage of that law. Now, let us see what are the consequences likely to follow if law of divorce be passed. Suppose the right of divorce is given. So long as there is that tendency of unwillingness or reluctance on the part of men to go in for marriage of women who have been divorced and to take them as wives, it is a dangerous thing to allow anything which will add to the number of unmarried women in the country. Divorce would necessarily mean that you keep that woman without a husband for some time. Even after divorce nobody else would marry that woman, and, therefore, the same difficulty would persist for which you want to provide a remedy in the shape of the present measure. Your idea is not simply that a woman should be free from the troubles of a particular man; that is not the idea of the Bill. You are relying on the texts which are supposed to give liberty to a woman to divorce her husband and to take another husband so that she can lead a comfortable life with somebody else. For that, I submit there must be clear public opinion awakened in the people that they are ready to go in for a girl who is a widow or who is divorced for getting married. Is public opinion so enlightened as that today? Are there no scruples among young men to go in for widows or divorced girls? I can say from experience that there is great reluctance and unwillingness on the part of young men to marry widows or divorced women. I had to deal with some girls amongst my own near circle of relations, some girls who became widows. I find amongst young boys of standing and status a distinct tendency to the effect that they do not want to be married to these widowed girls. Even educated boys insist on having girls who are not widows although on the platform these very boys lecture on the utility of social reform and widow remarriage. When the question of actual widow remarriage came, when proposals were made seriously by me with all the responsibility attaching to such a proposal, I found great reluctance on the part of boys. I do not blame them for that. It is not their fault. There is no public opinion for this reform.

An Honourable Member : But reformers are preparing the ground.

Mr. M. S. Aney : This Bill can be taken up after the ground is prepared. You cannot allow a thing to grow without preparing the ground for it. You are not surely relieving these unfortunate young girls who are widows of their enforced widowhood, how then can you create a situation favourable to these women when their husbands are alive simply because these girls have got themselves divorced from their husbands. Is this not the kind of difficulty that you will create by your measure? So, instead of giving real help and relief to these women who are now labouring under such difficulties, you will simply add to the difficulties. So that is another point which I wish the House to take into their consideration because it is after all a question of preparedness of society to receive these women who are in difficulties in a proper manner. The course of preparation will take its own time. In the meantime you cannot alter the law.....

An Honourable Member : Do not put obstacles in the way of reformers ?

Mr. M. S. Aney : Immediately you pass this measure, there will be women helped and encouraged to get themselves divorced and at the same time public opinion is not prepared to provide for the contingency that may arise therefrom. That is my point. That is my way of looking at the thing. Now, Sir, reference was made to a text as showing that a Hindu girl is a slave to her father and mother, a Hindu woman is a slave to her husband during her youth and a slave of some one else in her old age. But that is not the correct interpretation of that sloka :

" Mata rakshati Koumāre Bharta rakshati yauvane.

Putro rakshati vordhake na stri svatantryamarhati."

It only says that her father protects her during childhood, the husband protects her during her youth and her son protects her during old age. A woman is not able to protect herself without the assistance of these persons during these various stages of her life and I believe it is true of womanhood everywhere throughout the world that they cannot stand on their own legs either for defence or for maintenance. But this does not mean that a woman is treated as a slave. That is an entirely wrong way of interpreting it.

Maulana Zafar Ali Khan : She is not so helpless in the Islamic world.

Mr. M. S. Aney : I do not know about that. It is not my habit to speak of social reform among other communities, because, in the first place, it is out of place, and out of taste, to discuss these things on the floor of this House, and, in the second place, I do not claim to have any intimate knowledge of the situation among other communities. But in my own society the status of women, by means of these quotations is sought to be represented as abominable and one of helplessness, and I am anxious to show that that is not the correct position. The law of inheritance has provided for mothers, sisters and daughters.

An Honourable Member : Only maintenance.

Mr. M. S. Aney : They get shares under certain conditions and a widow is given a life estate. So there is no question of helplessness at all. That is looking at the thing from a different point of view altogether and I cannot stand a charge against the entire Hindu community and Hindu culture that a woman is looked down by the Hindus as a slave. I can give numerous quotations from Hindu mythology and history to show what respect Hindu women commanded. It is said :

" Jatre Nāryastu puḡyanāḡ ramantī tatra devatā."

" Where women are worshipped the Gods themselves come there "

So even the Gods would leave a place where women are not respected. After all there is nothing to be ashamed of, if under the existing economic conditions some of the old rules are not found to be working so satisfactorily. I refer to these things for the sake of removing some misunderstanding which I find prevails among some of my Honourable friends.

Maulana Zafar Ali Khan : My criticism was quite sympathetic.

Mr. M. S. Aney : I never ascribe any motive to any of my Honourable friends when they offer any criticisms. They do it with the best of motives to enlighten us as regards what they think to be defects in the society of their neighbours. They have every right to make those suggestions and I take them in the proper spirit.

[Mr. M. S. Aney.]

Sir, the Bill as it stands is really so defective that it is useless to send a Bill like this to the Select Committee. You cannot expect the Select Committee to prepare an entirely different Bill which will not only include the right of women to divorce but the right of both men and women. Then, women are not always childless and the children will have to be provided for as regards their custody and maintenance, etc. With all these points a new Bill will have to be prepared and the Select Committee will not be able to deal with these points which are not within the contemplation of the framers of the Bill. You can improve a Bill at the Committee but you cannot altogether draft an entirely new Bill. This Bill should, therefore, be withdrawn and somebody equally if not more enthusiastic about the cause of social reform should come forward with another and more well-considered Bill. All that those who say anything in favour of the present Bill is that they favour divorce but that is not the simple principle of the Bill. The Bill says that under certain conditions divorce will be allowed to women only ; if you cannot agree on any one of those conditions you disagree on the principle itself. Therefore, with all my sympathy for Dr. Deshmukh and all the advice that I have been able to give him when he was drafting this Bill, I feel constrained to oppose this Bill and the motion before the House.

Mr. N. M. Joshi : Sir, I rise to support the principle of the Bill, the principle being that marriages shall not be treated as indissoluble but that provision should be made by law for the dissolution of marriages. Being in favour of that principle I support the motion for sending the Bill to a Select Committee. If we consider the state of Hindu society at present much discussion is not necessary to show that there must be some provision for dissolution of marriages in certain circumstances. It has been said that divorce is against Hindu culture and Hindu religion and everything Hindu. In one of the interruptions that I made during the speech of my Honourable friend, Sir Abdul Halim Ghuznavi, I stated that it is the educated classes and classes which regard themselves as higher Hindus which need this reform very urgently. I am not suggesting that there should be no law even for the other communities, but the urgent need for this reform is felt by the educated well-to-do middle classes. My friend, Mr. Aney, admitted that the poorer sections of the Hindu community have greater respect for freedom, greater appreciation of freedom, and whatever may be written in the Hindu Shastras and books, their practice is sensible.

Babu Baijnath Bajoria : He said that practice is confined only to low castes.

Mr. N. M. Joshi : I do not know whom my friend, Mr. Bajoria, calls as low castes. I do not remember what my friend said, but I do not think that any caste is low, and my friend, Mr. Aney, will not be so unreasonable as to suggest that any caste is low. I have known him for many years. I am quite sure he is not likely to say that any caste is low or high. I am sure of that. Therefore, I won't say that this practice exists in the lower castes. It exists among people who have to work for their bread. It is they who generally appreciate freedom. It is the accumulation of property that brings in slavery. The working classes have not got property. They have greater appreciation for freedom, and the slavish practices that prevail exist only among the middle classes,

and there is reason for it. It is, therefore, wrong to say that divorce is against Hindu culture. What is culture? Nobody has told me yet. Have not the working classes any culture? I should say they have got better culture and more sensible culture than the classes whom my friend, Mr. Bajoria, represents.....

Babu Baijnath Bajoria : They have got the Vedic culture.

Mr. N. M. Joshi : That is also religion. Does my friend, Mr. Bajoria, say that the working classes have no religion? They are as good Hindus as he, perhaps they are better Hindus. In any case, my friend, Mr. Bajoria, has not yet protested to the Government of India for having included these working classes among the Hindus because they have a practice of divorce among them. Sir, the Hindu Mahasabha and all the other Hindu organizations include all these people in the category of Hindus, and when they want any special rights or privileges to increase the number of Hindu population, they include everybody among Hindus,—I don't say wrongly. These working classes who have these practices are also Hindus,—I would say they are perhaps better Hindus, because their religion is a better religion than the religion of my friend, Mr. Bajoria. I, therefore, feel, Sir, that it is wrong to say that the practice of divorce among the working classes is against the culture of Hindus,—may be against the culture of some sections of Hindus. I admit that. That culture is not a right culture, it is a misculture,—I do not know whether there is such a word. Similarly, divorce is not against the Hindu religion either. If Hindu religion is interpreted as being the religion as stated in some of the ancient books, it may be so, but all the religion of the Hindus is not written down in those books. Those ancient books were written thousands of years ago. Does my friend, Mr. Bajoria, maintain that the Hindu religion has not grown after that? Sir, the Hindu religion has grown, the Hindu religion has sanctioned many things which are not contained in those books. Why? Mr. Bajoria himself is doing many things which are not contained in those books.

An Honourable Member : What are they?

Mr. N. M. Joshi : Those books do not say you should travel in a train or a motor car. Is travelling by train allowed by the Shastras? But my friend is travelling.....

Mr. Lalchand Navalrai : Where is it prohibited?

Mr. N. M. Joshi : There are many things in the Shastras which are prohibited and still we are doing them. The Shastras say many things should not be done, yet my friend, Mr. Bajoria, is doing them. According to my friend, Mr. Bajoria, he will only take such things from the Shastras which will suit him best. Shastras are his authority only for such things which he is not doing. It is wrong. You cannot depend upon books which were written thousands of years ago for our guide in modern times. Those books perhaps,—I am not quite sure,—were good enough for those times. I am not prepared to accept those books as my guide today, and I am quite sure my friend, Mr. Bajoria, and those who agree with him do not accept those books as their guide either. They will accept those books as their guide only when it suits them. Sir, it is, therefore, wrong to suggest that divorce is against the spirit of Hindu religion.

[Mr. N. M. Joshi.]

Now, Sir, it was suggested that marriage should be regarded as a sacrament. I do not know why a good religion intended for the spiritual salvation of man should be introduced in a practical matter like marriage. Religion should deal with the spiritual development of man, and, therefore, I do not know how any good religion can interfere in a practical matter like marriage. If a religion lays down that you should think of God say five times a day or once in the morning, once in the afternoon, or that while praying you should say particular words, I can understand it. Religion should deal with spiritual matters, it should deal with the salvation of the soul, and your relationship with God, if you believe in God, but that it should have nothing to do with marriage. I really cannot understand the relationship between religion and a practical matter like marriage.....

Bhai Parma Nand : Civil marriage is quite open to those irreligious people.

Mr. N. M. Joshi : My friend, Bhai Parma Nand, says that civil marriage is quite open for irreligious people. That is quite true, and there are people who do take advantage of the Civil Marriage Act. And let me tell my friend, Bhai Parma Nand, that the younger and educated sections of the Hindu community are taking more and more advantage of the Civil Marriage Act, which they had not done before, because we refused to give them a proper kind of marriage law.

Well, Sir, that is not the point. The point is, I am a Member of this Legislature and I have to do my duty in examining the pieces of legislation which come before it. I do not agree with the view which my Honourable friends of the Muslim League take, that if there is a Hindu Bill, if the majority of the Hindu Members approve of it, the Muslim Members will not interfere. That is the policy which was enunciated on their behalf. I am not prepared to accept that policy. And let me tell my Muslim friends that if there is a Muslim piece of legislation which I do not approve of, I am going to speak against it. Whatever other Hindus may have done, as a Member of this Legislature it is my duty to examine every Bill, whether it is a Bill which affects the Hindus or whether it is a Bill which affects the Muslims. It is my duty to examine it on its merits and vote for or against it. Sometimes the legislation may not be on a religious matter ; there may be a matter affecting the Muslim masses. The Hindus may not be interested, the Muslims who are here may not represent them or they may take a wrong view. Well, it will be my duty to tell my Muslim friends that they may be Muslims but they are not protecting the interests of some sections of the Muslim community.

An Honourable Member : We have got at least one wise man.

Mr. N. M. Joshi : I do not suggest that there is only one wise man, there are many, but I feel that we are here to do our duty according to our conscience and not to represent certain religious communities. We do not consider that marriage is a question which can be decided according to religious tenets. I do not hold that marriage is a sacrament because I feel that the State has a right to give directions under what conditions marriages can take place and under what conditions marriages should be

dissolved. My Honourable friend, Mr. Aney, said that, if marriage is not a sacrament, it must be a contract. Then he said that the contract must be fair to both sides. I agree that any contract to be good should be fair to both sides, and if I were framing a Bill for divorce among the Hindus I should have acted differently from what Dr. Deshmukh has done. I would have given freedom to both men and women, but I do not agree with Mr. Aney when he stated that there is no justification for treating the man differently in this matter. The man has certain privileges in the matter of marriage. Among the Hindus a woman can marry only one husband at a time.....

Mr. M. S. Aney : One husband for all time.

Mr. N. M. Joshi : ... while a man can marry two wives, or even two or more. If a man has got this privilege, so long as he enjoys that privilege, there is nothing wrong if we give a certain privilege to woman without giving that privilege to man. As a matter of fact, the need of men for divorce, as compared with the need of women for divorce, is much less. If a man does not like the woman whom he has married, well, he can marry another woman. And I am sure Mr. Aney who is generally a fair minded man will agree with me that in the case of man the need for divorce is much less than in the case of a woman. If a woman does not like her husband, if the husband is giving her trouble, is disagreeable in some manner, that woman cannot get rid of that husband. But a man can get rid of his wife. In any case the man does not suffer all the disadvantages of having chosen a companion who is not agreeable to him. He can have another companion. I, therefore, feel that my Honourable friend, Mr. Aney, was not quite right in saying that there is absolutely no justification for treating the woman differently. Let me assure him that in a properly framed divorce law I would give the same freedom to man. If I am supporting this measure, I am supporting the principle of divorce.

Mr. M. S. Aney : Not this Bill !

Mr. N. M. Joshi : I am prepared to support that this Bill be sent to a Select Committee. That much support I give to this Bill, and I have confidence that if it goes before a fair minded Select Committee the Select Committee will change it. I have seen Bills changed out of recognition by Select Committees in this House. When the Bills came back they were absolutely different Bills. So the power of the Select Committee to change Bills in order to make them suitable and proper is unlimited, it all depends upon the House. The House can by their speeches give a sort of direction to the Select Committee that the only principle which the House recognises as underlying this piece of legislation is that marriages are not indissoluble, that marriages can be dissolved. If that wide direction is given by the House, as the House has several times done that, then the Select Committee will be free to change Dr. Deshmukh's Bill beyond recognition and make it a good Bill. I feel that Dr. Deshmukh's Bill is not satisfactory. At the same time I feel that it is a Bill which is proper to be sent to the Select Committee. Therefore, I support the motion that it should be sent to a Select Committee. Dr. Deshmukh's Bill has several defects. One of them was pointed out by Mr. Aney, namely, that it is not fair to the man. In my judgment it is not wide enough, it is

[Mr. N. M. Joshi.]

restrictive, the grounds provided by Dr. Deshmukh are not all the grounds on which marriages could be dissolved. I do not wish to go into the details of those questions.

An Honourable Member : Is your name on the Select Committee ?

Mr. N. M. Joshi : I do not know. When I stand to speak on a Bill it is not my practice to find out whether my name is on the Select Committee or not.

The Honourable Sir Muhammad Zafrullah Khan : It cannot be done without your consent. You must know.

Mr. N. M. Joshi : If it is not there and if some people are anxious that I should be there, it is open to them to propose my name and I assure them that I shall not refuse to serve on that Select Committee. Then my Honourable friend, Mr. Aney, pointed out some practical difficulties from which a woman will suffer.

An Honourable Member : Go on till five.

Mr. N. M. Joshi : I was not looking at the clock, that also is not my practice. I am not speaking in order that the discussion should not be finished today. I know there is another non-official day on which the Bill may be finished, but I must say a word about what my Honourable friend, Mr. Aney, said, namely, that we shall increase the number of women who will need husbands. When people choose their wives they have several considerations in their mind. Perhaps one of the considerations is that the companion to be selected should not be a widow or a divorced person. That may be in the minds of some people. But there are people who may have other considerations in their minds. I do not wish to go into that question but I am quite sure my Honourable friend, Mr. Aney, knows that when some people marry they marry on account of love. You may fall in love with a widow or a divorced person.

Babu Baijnath Bajoria : There are romantic marriages also.

Mr. N. M. Joshi : Quite so. Marriages ought to be romantic. But some people marry for the sake of money. I do not know whether Mr. Bajoria will favour that kind of marriage. I only heard those of his views which he had stated in this House. I do not know whether he wants that a man and woman should marry in order that one may benefit by the money of the other party. But there are several considerations on account of which marriages take place. So my Honourable friend, Mr. Aney, need not be very anxious about the fate of the widows or the divorced women. I have no doubt that the community as a whole has treated the widows, especially of the Hindu community, very unfairly by placing on them restrictions which are not placed on the men, restrictions which in my judgment are wrong. Every effort should be made to remove those restrictions. I do not agree with the fears of Mr. Aney that the number of women who may not get husbands will be increased. It all depends upon the number of men and women in the society. If the number of women is too large, it is quite possible that the number of women who need husbands will be larger. I, therefore, feel that fear like the one which my Honourable friend, Mr. Aney, expressed is unfounded and I do not think he need worry about it very much. My

Honourable friend, Mr. Bajoria, thought that the whole Hindu community would be wrecked if we pass this measure. Even if divorce is regarded as harmful, which it is not, it all depends upon whether the whole society is going to take advantage of this measure. If my Honourable friend, Mr. Bajoria, is right in interpreting the mind of the Hindu community, then there is not much danger of the Hindu community being wrecked. Very few people will take advantage of this law and the danger will be very small but the fact is that my friend, Mr. Bajoria, is quite conscious in his mind that the Hindu community is not in favour of the restrictions which he is imposing. The Hindu community will welcome the removal of these restrictions. He knows that very well. Therefore, he is afraid that if the law for divorce is passed, those people who need the help of this law will take advantage but my Honourable friend, Mr. Bajoria, is afraid, though wrongly, that the Hindu community will be wrecked. His fears are quite unjustified. Even if we give freedom to both men and women among the Hindus for divorce, the number of people who will take advantage of this law, ordinarily, will not be very large. Ordinarily, Sir, we stick to our friends. We do not give up our friends. We tolerate their faults and defects. We are not all without faults or defects. If we belong to some party, we generally stick to each other. Simply because a member of a party makes a speech which I don't like, I do not give up that party. I tolerate a good deal and even suffer.

Mr. M. S. Aney : When did you do that ?

Mr. N. M. Joshi : Ordinarily we stick to our friends. We tolerate many inconveniences in our married life. If a man lives in a house for ten or twenty years, he does not like to change that House and is even willing to undergo some inconveniences. I know men have got that conservative habit. Men do not make changes very light-heartedly. Therefore, it is wrong for my Honourable friend, Mr. Bajoria, to be afraid that simply because we pass this divorce law every man and woman will have recourse to it immediately. That will not happen. When we undertake certain obligations, we do not treat those obligations very lightly. We treat them seriously. As a matter of fact, my friend, Mr. Aney, who was supporting my friend, Mr. Bajoria, gave another instance of the conservative character of human nature. He said : We have passed a law giving freedom to widows to marry and what is the result ? Widows are not coming up in their hundreds to marry. That is his complaint. That is exactly my argument. Why should you be afraid of Hindu society being wrecked.

Mr. M. S. Aney : I put the argument the other way. Even if they are willing to marry, there are not men willing to marry them.

Mr. N. M. Joshi : Widow marriages are not taking place not because the men are not coming forward. I take it that there are difficulties in both ways. Widows find it difficult to come forward on account of pressure from the society and of public opinion. The men do not come forward for the same reason but the fact remains that these laws are only permissive measures. If a man wants to divorce a woman or a woman wants to divorce a man, he or she should have the necessary permission. No two men and women should be tied down together to lead an unhappy life. If a man is not happy in the company of a woman, or a woman is

[Mr. N. M. Joshi.]

not happy in the company of man, what is the justification to tie them together for life and make them unhappy ? Sir, Hindu society has done a great harm to itself by the restrictions which it has placed upon its members in the matter of marriage. People marry in order to be happy : and when a marriage has not made them happy, the best thing to do is to allow those people to dissolve the marriage and not only that but to permit them to marry again. Sir, that is the only method of making Hindu society healthy and enabling the members of the Hindu community to be happy. Sir, the restrictions which the Hindu community has placed upon its members has not done any good to the Hindu community in competition with the other communities. Sir, Hindus have got restrictions of various nature,—marriage, food, everything, I do not know where restrictions do not exist in the case of Hindus. Fortunately there are people even like my Honourable friend, Mr. Bajoria, who, in certain matters, do not observe these restrictions, and if we begin to observe all these restrictions I am quite sure my Honourable friend, Mr. Bajoria, will not be able to carry on his ordinary trade, because our Hindu Shastras control almost every action of ours, and what is needed to make the Hindu community stronger and healthier is a greater freedom to the members of the Hindu community. I, therefore, feel that Dr. Deshmukh's Bill should be sent to the Select Committee and I hope that when the Select Committee will consider this Bill it will remove all the defects of Dr. Deshmukh's Bill and make it agreeable to those people who believe in freedom.

An Honourable Member : The question may now be put.

Mr. Muhammad Azhar Ali : Sir, I am sorry to rise at this fag end of the day to speak on this Bill. Sir, so far as I have been able to read the mind of Dr. Deshmukh when he presented this Bill, before the House, I found that the most prominent thing present to his mind was the victimization of the womanhood amongst the Hindu community in India. He knew very well, and everyone in India knows very well, that amongst the Hindu men there is no restriction of marriages and no limit to marriages. A man can marry any number of women he likes. There are instances and illustrations to be found everywhere in every province and especially amongst the rich people. Therefore, the case of a rich man and a moneyed man like my friend, Mr. Bajoria, is absolutely different from the case of other people, that is, the poorer Hindus. So we have to consider, when we argue on this Bill, that the case of rich Hindu men is very much different from and absolutely in contravention of the case of the poorer Hindu people. Sir, there are many inconsistencies, as my friend, Mr. Joshi, pointed out in the present Hindu society, such as we find that Mahatma Gandhi is trying to raise the status of the Harijans. Now, Sir, you cannot find in the Shastras anything about the raising of the status of one community or the other, but still it is a fact that in India that Harijan class exists and, therefore, the Hindu community has had to reform itself. In the same manner, when this Bill was brought up by Dr. Deshmukh in this House his idea was to raise the status of the Hindu women. Sir, the fact remains that when a man can marry any number of women, there is no need for divorce for Hindus. Dr. Deshmukh knew that if a man does not divorce his wife, it does not matter to him at all ;

he can marry any number of women regardless of those who are the victims of that marriage. That was the point very much prominent, I am sure, in the mind of those of his party people as well, when they agreed that this Bill should be brought before the House. Thus, all the arguments that have been advanced by my friends in opposing this Bill will fall on this very ground that the justification for this Bill is that the Hindu male has no need for divorce but the woman has every need for divorce amongst the members of the Hindu community.

Sir, the other day we heard that a Rajah has as many as one hundred and twenty wives and another three hundred wives. We have been reading of these things in the papers. Now, Sir, where is the need for divorce on their part? Even the big Pandits with all their shastras do not come and condemn that Rajah or that rich man on the score that they have got so many wives. Therefore, there was no necessity for Dr. Deshmukh to bring a Bill before this House to give the right of divorce to Hindu men. Sir, my Honourable friend, Mr. Joshi, says that amongst the Hindus he thinks that the mere sacrament for a marriage is not the proper thing, and that marriage being a bilateral act, it ought to recognize that a man has the same right as a woman has. Thus, the human element remains when we have to consider the question of a woman because we know that the question of a man is not to be considered by this House when we are legislating and when we know that he is not in any way victimised. Sir, I think all the arguments, which have been advanced in this House that there is a defect in this Bill because why a man should not have the same right of divorce as the woman is being given by this Bill, fall to the ground. Sir, my friend, Mr. Aney, says that the Hindu society is not yet prepared for such drastic laws. Sir, I really do not consider how this argument could be advanced by a man of the position of my friend, Mr. Aney. Every day in this House we have been listening to our Hindu friends saying that their civilization has gone higher up and that they are in no way inferior to any nation in this world so far as their civilization is concerned, but what do we find from my friend, Mr. Aney, when he says that even today Hindu society is not in a position to adopt this very salutary measure. My friend, Mr. Bajoria, may think it derogatory to adopt such a measure but I think for my friend, Mr. Aney, to say that Hindu society is not prepared for such a salutary legislation....

Sardar Sant Singh : The question is whether it is salutary or not.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member can continue his speech on the next non-official day for Bills.

The Assembly then adjourned till Eleven of the Clock on Friday, the 1st September, 1939.