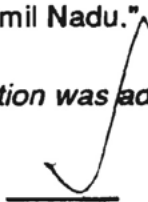


MR. CHAIRMAN: The question is:

India.

"That this House approves the Proclamation issued by the President on the 30th January, 1988 under article 356 of the Constitution in relation to the State of Tamil Nadu."

*The motion was adopted.*



16.51 hrs.

PARSI MARRIAGE AND DIVORCE  
(AMENDMENT) BILL

[English]

MR. CHAIRMAN: Now the House will take up item No. 12 of the agenda. Shri H.R. Bhardwaj.....

THE MINISTER OF STATE IN THE  
MINISTRY OF LAW AND JUSTICE (SHRI  
H.R. BHARDWAJ): Sir, I beg to move:

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

The law relating to Marriage and Divorce among Parsis is contained in Parsi Marriage and Divorce Act, 1936. Since the enactment of this Act no substantial amendments were carried out in view of the declared policy of the Government not to effect any changes in the personal laws of the minority communities unless the initiative therefor comes from the minority communities themselves. Such an initiative has now come from the Parsi community in the form of two sets of proposals: One from the Chairman, Board of Trustees of the Parsi Panchayat, Bombay and other from Mrs. Meher Master-Moos representing the Federation of Parsi Anjuman of

The Minorities Commission had also received both these proposals. The Minorities Commission had considered these two sets of proposals and had recommended that since the Bombay Parsi Panchayat is a representative body of the Parsi community and it has taken into consideration the opinions of similar other such Panchayats within the country, the amendments proposed by the Bombay Parsi Panchayat should be given preference and be adopted.

The proposals were also circulated among the State Governments and the Union territory administrations for their comments. The majority of the State Governments and Union territory administrations have recommended the acceptance of the proposed amendments. The Government has, therefore, decided to go ahead with the proposed amendments and as a result thereof has brought the present Bill.

The main purpose of the amendments incorporated in the Bill is to bring the provisions of the Parsi Marriage and Divorce Act, 1936 in line with the provisions contained in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

The Child Marriage Restraint Act, 1929 was amended in 1978 to provide therein that the marriageable age in the case of male shall be 21 years and in the case of female 18 years. It is proposed to bring the provisions of Parsi Marriage and Divorce Act, 1936 in tune with this amendment. Section 3 of the Act is therefore proposed to be amended for that purpose. It has also been proposed to provide therein that the children of marriages which are declared invalid under the Act shall be deemed to be legitimate children.

Sections 19 and 20 of the Principal Act

make provision for appointment of seven delegates to help the presiding judge of the Parsi matrimonial courts in matrimonial matters. Now-a-days it is difficult to get seven delegates for this purpose. It has therefore been proposed to reduce the number of delegates from seven to five. It has also been proposed that the courts can decide the matters relating to interlocutory proceedings, alimony, maintenance, matters relating to custody and education of children etc. without the help of the delegates.

Another important amendment proposed is to add a new ground for divorce; the ground of insanity of either spouse after the marriage. The existing clause (b) provides relief on the ground that the dependent is of unsound mind at the time of his marriage and has been habitually so upto the date of filing of a suit. The new ground provides relief if insanity supervenes after the marriage. It has also been proposed to insert a further ground of cruelty for obtaining divorce under the Act. Presently cruelty is a ground for judicial separation under section 34 of the Act. Both these proposals are on the lines of the provisions contained in the Hindu Marriage Act, 1955.

Both the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 provide for a divorce by mutual consent. It is thought necessary that when both the spouses are ready to break the marriage tie by mutual consent, they should be allowed to do so. The new section 32B is therefore proposed to be inserted in the principal Act to provide mutual consent as a ground for divorce.

It has also been proposed to insert new section 32A to provide an additional ground for divorce when there is no resumption of co-habitation or restitution of conjugal rights for a period of one year in pursuance with a

decree granted by the court. These are some of the important proposals contained in the Bill. The Bill also contains certain other amendments which are of a consequential nature.

Sir, I request the Bill be considered.

MR. CHAIRMAN: Motion moved:

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

[Translation]

\* SHRIMATI N.P. JHANSI LAKSHMI (Chittoor): Mr. Chairman, Sir, I welcome the Bill to amend the Parsi Marriage and Divorce Act, 1936.

The Parsi Marriage and Divorce Act was enacted in the year 1936. Now it is more than 50 years since the original Act was made. Sir, the outlook of many religions has undergone a sea change. The society is advancing very rapidly. I am proud to say that our Parsi brothers are most progressive minded section of our society. They have made valuable contribution in all fields. Though their number is less, the contribution they made is quite remarkable. Now this amending Bill has been brought forward at their instance. It reflects their progressive outlook and intention to march ahead in tune with the changing times.

It is heartening to note that certain changes are made in the parent act plugging the loopholes, if there are any, through this amending bill. This Act is being brought in line with the Hindu Marriage Act 1955 and Special marriage Act, 1954. A certain uniformity has now been brought in. Let me hope Sir, that other communities would also

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\* The speech was originally delivered in Telugu.

[Shrimati N.P. Jhansi Lakshmi]  
come forward to change the obsolete laws paving the way for a uniform civil code throughout the country. Religion should not come in the way of dispensing justice. No one to whichever community he may belong, should be deprived of justice. Justice should be equal and be available to every one. Now a good beginning is being made in this noble direction. Let us hope that the day is not far off when a common civil code is made applicable throughout the country. I compliment Parsis for taking this bold step.

Sir, it is proposed in this Bill to reduce the number of delegates from 7 to 5 to assist the Presiding Judge of the Parsi Matrimonial Court. Since it is always not possible to find 5 eligible persons for doing the duty of delegates, it is better to reduce the number further to 3. Hope, the hon. Minister would take note of this suggestion. Moreover, Sir, there is no specific procedure or norm to select the delegates. Qualifications etc. that are required to carry on this noble function are also not clear. Hence I request the hon. Minister to clarify the position. Sir, another important amendment proposed now is to add a new ground for divorce, the ground of insanity of either of the spouses after marriage. Modern medicine has developed to such an extent that there is almost no ailment which is beyond any cure. So it is not advisable to grant the divorce on the ground of insanity immediately. Sufficient intergnum should be provided. The ailing person may get cured during this period. So I request that the bill be amended such a way as to provide sufficient time before granting divorce.

A provision is being made in the Principal Act through this amendment to make mutual consent as a ground for divorce. Mutual consent should be based on honesty. Sufficient care should be taken to see that mutual consent is not forced on either of the spouses by coercion or force. There is get another proposal to make cruelty as a

ground for divorce. The dowry menace is much prevalent in our society. Hence the harassment for bringing in more dowry should also be treated as cruelty for the purpose. If the wife desires, the divorce should be granted to her on this ground.

Sir, what is strange in this Bill is to make conversion as the ground for obtaining divorce. National integration is the need of the hour. We want that the people belonging to various religions should live harmoniously. This harmonious living is better achieved only when there are inter-caste and inter religious marriages. Only then we can promote the unity and integrity of the nation. Even the Govt. is taking all the possible steps to promote such marriages. Hence, making conversion as the ground for divorce is contrary to the principle we preach and practice. Hence I request the hon. Minister to reconsider this particular amendment and withdraw it.

Sir, I consider introduction of this Bill as a progressive step. A good beginning has now been made by introducing this Bill. I hope many more such amendments will come before this House, ultimately leading to a uniform civil code applicable equally to all citizens of his country.

Thanking you for the opportunity you have provided me to speak. I conclude my speech.

17.00 hrs.

[English]

SHRI V.S. KRISHNA IYER (Bangalore South): Sir, when the Muslims Marriage Divorce Bill came here in the last session, the Government had given an assurance that they will come forward with a Bill with uniform civil code. I find that this amendment is in the right direction leading towards it. I do not find any hope of the uniform civil code at

all even after 40 years of independence. We are dealing with every religion separately. We never expected free India to go like this. That is why I am stressing that the Government must take early steps in this direction because there are progressive forces in all religions. It will be discouraging the fundamentalists also. The Government has not taken any action to bring forward common civil code Bill. I would like to know from the Law Minister whether Government had taken any steps in order to bring forward a uniform civil code. I remember as a Congress man, not as a Congress (I) man, that Mahatma Gandhi and Nehru used to say that India will have a uniform civil code but unfortunately, we are going backwards. I would earnestly and emphatically urge upon the Government to make a beginning. In the interest of the national integration, it is necessary that we should have a uniform civil code. I hope the hon. Minister will give a suitable reply to this. So far as this Bill is concerned, it is definitely better than the previous one. I welcome the amendment with the hope that the Minister will bring forward a uniform civil code very soon.

SHRI H.R. BHARDWAJ: Sir, I submit that this is a Bill which is very forward-looking and I also mention that the Parsi community, being a minority community, have gone into a detailed discussion as to what amendment they would like to have in the Marriage and Divorce Act. So, the representation from the community has been accepted in all the States by the relevant forums, namely, by the Parsi Panchayat, Bombay and Anjumans. So, the provisions of this Bill are now equal to the provisions of the Hindu Marriage and Special Marriage Act.

17.04 hrs.

[HON. DEPUTY SPEAKER *in the Chair*]

I am grateful to the hon. Members for

the support they rendered to me. The issue of the uniform civil code is wholly a different issue and that is a matter about which we have spoken in the House that any laws regarding the marriage and maintenance and divorce relating to the minority communities will always be considered at the initiative of the community itself. That is what our founding fathers gave assurance to them that contrary to their will, nothing will be done in their marriage and maintenance matters. They are matters which are wholly personal. There are various systems in our country. We are a secular society and we are proud of it. That is one thing that India possesses. Hindu is proud of being Hindu and a Muslim is proud of being a Muslim and so on. But all of them are Indians and that Indianness has to be appreciated. Nothing should be done to divide this Indianness. Our diversity should be ultimately reflected in unity of India and that is where we would like to consider to what extent the personal laws of the communities can be changed. I quite appreciate that the ultimate goal for any society is naturally to have common codes, as far as possible and in India I can proudly say that 95 per cent of our laws are common; our civil law is common, our criminal law is common, our evidence law is common. But sometimes there is a conflict regarding personal laws like marriage laws etc. It is a personal matter for a man; somebody would like it to be performed in this way and somebody else would like it to be performed in another way. That is the system we have adopted for ages and, therefore, initiative for any change must come from the community itself. For minorities, we have a consideration and assurances have been given by Dr. Ambedkar, Nehru, Indiraji and others and as I have told in this House earlier also these assurances coming as they were from the founding fathers of the Indian Constitution have to be respected. Nothing should be done in a hurry, but something which the nation as a whole suggests at a particular time will be very much welcomed.

[Sh. H.R. Bhardwaj]

As far as this Bill is concerned, I submit that a particular community has made certain suggestions after a lot of deliberations to meet the exigencies of time. May be in the next few years some other community may like to amend Acts pertaining to their personal laws. The need of the hour is that we progress and the education spreads, we will have such amendments and at one point of time, we will have almost a common civil code. That is the goal which is laid in the Constitution.

With these words, I request that this being a very progressive legislation, the Bill may be passed.

MR. DEPUTY-SPEAKER: The question is:

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

*The motion was adopted.*

MR. DEPUTY-SPEAKER: Now, we will take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 8 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 8 were added to the Bill.*

**Clause 9 (Insertion of new sections 32A and 32B)**

Amendment made:

Page 3, (i) line 27,—

*for "1987" substitute "1988"*

(ii) line 44, —

*for "1987" substitute "1988" (3)*

[SHRI H.R. BHARDWAJ]

MR. DEPUTY-SPEAKER: The question is:

"That Clause 9, as amended, stand part of the Bill"

*The motion was added.*

*Clause 9, as amended, was added to the Bill.*

*Clauses 10 to 20 were added to the Bill.*

**Clause 1**

Amendment made:

Page 1, line 4, —

*for "1987" substitute "1988" (21)*

[SHRI H.R. BHARDWAJ]

MR. DEPUTY-SPEAKER: The question is:

"That Clause 1, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

**Enacting Formula**

Amendment made:

Page 1, line 1,—

for "Thirty-eighth" substitute "Thirty-ninth" (1)

[SHRI H.R. BHARDWAJ]

MR. DEPUTY-SPEAKER: The question is:

"That Enacting Formula, as amended, stand part of the Bill."

*The motion was adopted.*

*The Enacting Formula, as amended, was added to the Bill.*

*The Title was added to the Bill.*

SHRI H.R. BHARDWAJ: I beg to move:

"That the Bill, as amended, be passed"

MR. DEPUTY-SPEAKER: The question is:

"That the Bill, as amended, be passed"

*The motion was adopted.*

17.10 hrs.

#### REPEALING AND AMENDING BILL

[English]

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): I beg to move:

"That the Bill to repeal certain enactments and to amend certain other enactments, as passed by Rajya Sabha, be taken into consideration."

Sir, this Bill is one of those periodical

measures by which enactments which have ceased to be in force or have become obsolete or the retention whereof as separate Acts is unnecessary are repealed or by which formal defects detected in any enactment are corrected. The enactments which are sought to be repealed are mentioned in the First Schedule, and the enactments which are sought to be amended are mentioned in the Second Schedule, to the Bill. The amendments proposed in the Second Schedule are purely formal in nature and are aimed at correcting technical errors or defects. The notes on the Second Schedule appended to the Bill indicate briefly the reasons for the amendments that are proposed to the various enactments contained in that Schedule.

The last repealing and amending Bill was passed in 1978 covering Acts upto and inclusive of the year 1975. In the present Bill, Acts from 1976 upto the year 1984 are being covered. It affects 261 enactments. This measure is of a very non-controversial and formal nature and is referred to as the "scavenging of the statute book".

I commend this motion for the acceptance of the House.

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill to repeal certain enactments and to amend certain other enactments as passed by Rajya Sabha, be taken into consideration".

SHRI AJIT KUMAR SAHA (Vishnupur): Mr. Deputy Speaker, Sir, there is a whole list of Bills which the Government says is one of those periodical measures by which the enactments which have ceased to be in force or have become obsolete are repealed or by which the formal defects in any enactment are corrected. Sir, now, we have to go by what the Minister has said. The Minister