

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

The Title was added to the Bill

SHRI F. H. MOHSIN: Sir, I beg to move:

"That the Bill, as amended, be passed."

MR. CHAIRMAN: Motion moved:

"That the Bill, as amended, be passed."

Now, Shri Dinesh Joarder.

SHRI DINESH JOARDER: Sir I again would like to draw the attention of the hon. friend, Shri Mohsin, the Minister to one thing.

I would request him at this stage even if he could omit this language 'the regional groups and other classes'. A valid question has been raised by my friend Shri Jamillur Rahman. That is regarding some specific instruction as to by what time investigation should be completed. I hope you were also in the Committee on the Cr. P. C. Bill. We fought a long battle to fix-up the minimum time limit within which the investigating officer should report and submit his charge-sheet or final investigation report to the court. That time was fixed with certain exceptions; or with the permission of the trying magistrate, the time can be extended.

Here on page 3, Clause 4, what is stated is this:

"The State Government may, for the purpose of providing speedy trial of scheduled offences committed in disturbed areas, by notification in the Official Gazette constitute as many Special Courts as may be necessary in or in relation to such disturbed area or areas as may be specified in the notification."

The speedy trial is the only thing that is there in the whole of the Bill. There is no other provision about the time by which the investigating officer would complete and submit his report

to the special court. It is not mentioned at all. This is a lacuna and the police will get the upper hand and will get enormous powers. That power is also there under clause 6. So, I apprehend that this Bill may ultimately go against the innocent people. I would therefore, request the Minister to reconsider at this stage even whether a certain improvement can be made in this Bill.

SHRI F. H. MOHSIN: I have already replied to all these points. There is no new point raised by him.

SHRI MD. JAMILURRAHAMAN: I think a valid point was raised by Shri Joarder.

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

17.53 hrs.

MARRIAGE LAWS (AMENDMENT) BILL

MR. CHAIRMAN: Now, we take up the Marriage Laws (Amendment) Bill. Shri Gokhale.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Sir, I beg to move:*

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

The history of development of Hindu Law shows that it was never static and it had changed from time to time so as to meet the challenge of the changing requirements of different ages. The Hindu Marriage Act, 1955 (25 of 1955) which is one part of the codification of personal laws, became law on the 18th May 1955. It applies to all persons who are Hindus as defined in that Act.

Since the passing of the Hindu Marriage Act, various suggestions for amending the same as well as the Special Marriage Act, 1954 were received from some Members of Parliament and from the general public and even Bills moved by certain Members for the purpose. The Special Marriage Act, 1954, being a civil law, applicable to all, has necessarily to keep pace with any reform in the field of matrimonial laws. The Bill is primarily intended to bring about liberalisation of provisions relating to divorce and enable speedy disposal of matrimonial cases.

Since the Government felt that the reform of personal laws is a matter of great importance which deserves to be examined by the Law Commission of India, a reference was made to it and the Commission which was asked to examine various matters pertaining to the matrimonial law applicable to Hindus and the provisions of the Special Marriage Act, presented the fifty-ninth Report suggesting amendments to the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. While the Government was actively considering the Report and finalising a Bill to implement the recommendation of the Law Commission, another important Report, namely, the Report of the Committee on Status of Women in India was received which *inter alia* dealt with reform of matrimonial laws as well. They have, while generally supporting the recommendation of the Law Commission, made certain additional suggestions, such as, the making of provision for divorce by mutual consent for all spouses and divorce on repudiation of marriage before attaining the age of eighteen years for a girl who was subjected to child marriage.

We have considered the recommendations and the present Bill is intended to give effect to the recommendation with suitable modifications. I shall now proceed to explain briefly the legislative proposals.

Section 5 of the Act deals with conditions of Hindu Marriage. One of the conditions is that neither party

shall be a lunatic. The term 'lunatic' is not defined in the Act and having regard to the meanings assigned to the term, there is no scope to take into account the different degrees of lunacy and its effect on matrimonial relationship.

So the section is being amended to make clear the circumstances in which unsoundness of mind, mental disorder, insanity or epilepsy shall invalidate a marriage. Section 9 of the Hindu Marriage Act provides for restitution of conjugal rights where either the husband or the wife withdraws from the society of the other without reasonable excuse. There are conflicting decisions regarding the burden of proof of reasonable excuse. It is proposed to make it clear that the burden of proof of reasonable excuse shall be on the party who withdraws from the society of the other spouse.

(b) Another recommendation of Commission is that the grounds for judicial separation and the grounds for divorce under the Hindu Marriage Act may be brought on par as is the case under the Special Marriage Act. Section 10 is being amended for the purpose. Section 12 is also being amended to provide that "fraud as to the nature of the ceremony of marriage or as to any material fact or the circumstances concerning the respondent" shall constitute a ground for avoiding marriage.

(c) Another important recommendation of the Commission relates to liberalisation of the grounds for divorce (this incidentally shall apply for judicial separation also) on the following matters, namely:—

(i) At present a party to the marriage can seek divorce on ground of adultery only where the other party is "living in adultery". This ground was difficult to substantiate before courts and it is proposed to make it clear that a single act of voluntary sexual intercourse with any person, other than his or her spouse, shall constitute a ground for divorce.

[Shri H. R. Gokhale]

(ii) Cruelty and desertion which are already grounds for judicial separation are being included among the grounds for divorce.

(iii) A period of three years must elapse now before a petition can be filed for divorce on the ground that the other party has been incurably of unsound mind or has been suffering from a virulent and incurable form of leprosy or venereal disease in a communicable form. This period of three years is proposed to be dispensed with. Further, the ground relating to incurable unsoundness of mind does not seem to cover cases where the mental disorder (including schizophrenia) is of such a kind and to such an extent that the petitioner cannot be reasonably expected to live with the respondent. In the case of mental disorder, it is very difficult to predicate with certainty that it is incurable. This ground is, therefore, being modified suitably.

(iv) The period of two years that must elapse after a decree for judicial separation or for restitution of conjugal rights was passed is proposed to be reduced to one year.

(v) Law Commission has also recommended that a wife should be allowed to seek divorce if a period of one year has elapsed after the passing of order or decree awarding maintenance to her under the Hindu Adoption and Maintenance Act, 1956 or under section 125 of the Code of Criminal Procedure, 1973 unless there has been a reconciliation during that period.

(vi) The Committee on Status of Women in India has in their report recommended that a right of repudiation before attaining the age of eighteen years should be conferred on girls who are subject to child marriages, irrespective of whether a marriage was consummated or not. It is proposed, therefore, to include it as one of the grounds on which divorce or judicial separation should be sought.

(d) The Committee on Status of Women in India have in their Report suggested the incorporation of a suitable provision for divorce by mutual consent in the Hindu Marriage Act more or less on the lines of a provision in that behalf in the Special Marriage Act. The period of waiting after filing of the petition is being reduced from one year to six months in both the Acts. New section 13B is proposed to achieve this purpose.

(e) Law Commission has recommended that the courts may be empowered to pass a decree for judicial separation even where a petition is for a decree of divorce if under the circumstances the court considers it appropriate. New section 13A is proposed for achieving this purpose. This is basically intended to provide an intermediate remedy in cases where the court finds that remedy by way of divorce cannot be given straightaway.

(f) Section 14 of the Hindu Marriage Act provides that no court shall entertain a petition for dissolution of marriage by a decree of divorce unless a period of three years has elapsed from the date of marriage except where there are special circumstances.

18.00 hrs.

The Law Commission has recommended that we may dispense with this period altogether. It is, however, felt that parties to a marriage should not be allowed to rush to court without giving it a fair trial. It is, therefore, proposed that we may adopt a *via media* of reducing the period of three years to one year.

(g) Proviso to section 15 of the Hindu Marriage Act precludes parties to a marriage from marrying again within a period of one year from the date of decree for divorce. We are accepting the recommendation of the Law Commission that this waiting period of one year is not necessary.

(h) Under section 19 of the Hindu Marriage Act a petition shall be presented to the District Court within

the limits of whose jurisdiction the marriage was solemnised or husband and wife reside or last resided together. This has given rise to practical difficulties especially to the wife. The scope of this section is being enlarged so that a petition could be filed in any court within whose ordinary original court jurisdiction—(a) the marriage was solemnised (b) the respondent resides at the time of the presentation of the petition (c) the parties to the marriage last resided together (d) the petitioner resides, in a case where the respondent has not been heard of or resides outside the territories to which the Act extends.

(i) On procedural matters it is proposed that where proceedings seeking relief of judicial separation or divorce are filed in different courts, the court wherein the petition was earlier presented shall try and dispose of all the matters. Expeditious disposal of proceedings, compulsory attempt of reconciliation, facilitating of the admissibility of documents and the making of counter-claims and conduct of all proceedings under the Act *in camera* are among the other salutary reforms proposed.

The Bill contains amendments to some of the provisions of the Special Marriage Act which are similar to those contained in the Hindu Marriage Act. The reasons for amending the provisions of the Hindu Marriage Act will equally apply to provisions similar thereto in the Special Marriage Act as well. Law Commission has

recommended an additional provision pertaining to sections 19, 20 and 21 of the Special Marriage Act. Under section 19 when Hindu, Buddhist, Sikh or Jain marries under that Act, it automatically affects his severance from his family. Section 20 provides that every person whose marriage is solemnised under the Act shall have the same rights and be subject to the same disabilities in regard to right of succession to any property of the person to whom the Caste Disabilities Removal Act, 1850 applies. Section 21 provides that succession to property of persons marrying under the Act will be regulated by the provisions of the Indian Succession Act. A new provision is being made providing that sections 19, 21 and such part of section 20 as creates a disability shall not apply to cases where both parties to the marriage are Hindus as defined in the Act. Clause 22 of the Bill seeks to insert new section 21A of the Act to achieve the purpose.

There are other amendments which are of elucidatory or consequential in nature.

Sir, I have given the broad features of the Bill. Now, I am moving it before the House for consideration.

18.03 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, May 21, 1976/Vaisakha 31, 1898 (Saka).