

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

New Clause 4 (Amendment of Section 11)

Mr. Deputy-Speaker: The hon. Law Minister has sent in a new amendment.

Sri A. K. Sen: Sir, I beg to move:

Page 2,—

after line 22, insert—

4. Amendment of section 11.—

In section 11 of the principle Act, in clause (vi), after the words "from the family of its birth", the words "or in the case of an abandoned child or a child whose parentage is not known, from the place or family where he has been brought up" shall be inserted.' (6).

Mr. Deputy-Speaker: It is a consequential amendment. I hope the House will agree. The question is:

Page 2,—

after line 22, insert—

4. Amendment of section 11.—

In section 11 of the principal Act, in clause (vi), after the words "from the family of its birth", the words "or in the case of an abandoned child or a child whose parentage is not known, from the place or family where he has been brought up" shall be inserted.' (6).

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That Clause 4 be added to the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Shri Vidya Charan Shukla (Mahasamund): Sir, you expressed the hope that the House would agree with the amendment of the Law Minister. Is it in order for the Chair to express any hope of that kind?

Shri A. K. Sen: Where it is consequential, it is in order. It is for the guidance of the Members.

Mr. Deputy-Speaker: I am taking the House into confidence.

The question is:

"That clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

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

Shri A. K. Sen: Sir, 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.

15.07 hrs.

CHRISTIAN MARRIAGE AND MATRIMONIAL CAUSES BILL

Mr. Deputy-Speaker: The hon. Law Minister may move his motion for reference to a Joint Committee.

Shrimati Renu Chakravartty (Barrackpore): Sir, I would like to make one submission. Many of us have been put on the Joint Committee. Just as in the Hindu Code Bill where some us were permitted to speak in the first reading of the Bill even though we were put on the Select Committee, this being a social measure of some controversy, would it not be possible for you to allow some of us to participate in the first reading of this Bill?

Shri Gauri Shanker (Fatehpur): There is no motion before the House.

Mr. Deputy-Speaker: Yes, the hon. Minister may move his motion.

The Minister of Law (Shri A. K. Sen): Sir, I beg to move:

"That the Bill to amend and codify the law relating to marriage and matrimonial causes among Christians be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—

Shri Mulchand Dube, Shri Asoke K. Sen, Shri Bibudhendra Misra, Shrimati Yashoda Reddy, Shri Liladhar Kotoki, Shri Sudhanu Bhusan Das, Shri Maheshwar Nayak, Pandit Dwarka Nath Tiwari, Shri Ram Dhani Das, Shrimati Kamla Chaudhuri, Shri Baij Nath Kureel, Shri Harish Chandra Mathur, Shri Daljit Singh, Shri P. R. Patel, Shri T. H. Sonavane, Shri V. B. Gandhi, Shri Joachim Alva, Shri P. Govinda Menon, Shri Mathew Maniyangadan, Shri A. M. Thomas, Shri A. Nesamony, Shri T. Abdul Wahid, Shrimati Renu Chakravartty, Shri M. Kumaran, Shri U. M. Trivedi, Shri Rajendranath Barua, Shri Yashpal Singh, Shri A. E. T. Barrow, Shri G. G. Swell and Shri Sivamurthi Swamy; and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House, relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

Sir, this measure has been long over-due. There have been persistent demands from various Christian churches in this country as also from individual members of the Christian community for a consolidated law on the subject of Christian marriage and divorce. It is an antiquated fact that Christians have so long been governed by a foreign law with regard to their conditions of marriage. The English law applied and the English statute covering marriages applied. The Indian statute only related to the procedure for marriage and substantive law of marriage was regulated by a foreign law. So, the law relating to marriage and divorce has to be gathered from several statutes.

So far as the National Christian Council of Nagpur is concerned, there has been a demand from 1955 onwards that the Government should bring a Bill as soon as possible. From 1952 there have been individual representations to the Government on the subject. In 1958, Shri N. G. Goray, a Member of the Opposition, introduced a Bill relating to Christian marriages and divorce. The Government then assured that the whole matter would be referred to the Law Commission for examination and then the Christian community as such would be consulted and then a comprehensive Bill would be introduced in this House.

We, therefore, referred the matter to the Law Commission and they were initially requested to make certain recommendations for the purpose of eliciting public opinion of the Christian community. The Law Commission gave the matter their very deep consideration and formulated their recommendations. After inviting the

opinions of responsible persons they drafted a Bill in the form of their recommendation.

Shri D. C. Sharma (Gurdaspur): Who are those responsible persons?

Shri A. K. Sen: Many people representing various interests. Why should he be so bothered about this?

Shri D. C. Sharma: I want to know who those responsible persons are.

Shri A. K. Sen: There are many excepting Shri Sharma.

Shri Shree Narayan Das (Darbhanga): So he is not a responsible person?

Shri A. K. Sen: I can assure Shri Sharma that his name does not figure in the list of responsible persons in this connection.

They made their recommendations in the form of a draft Bill. They also annexed explanatory notes and circulated the draft Bill throughout the whole country, to the different High Courts and other responsible public bodies. Thereupon they made their 15th report and placed it before the Government, and the Government have considered this and have now brought forward this Bill. Though the matter has gone through a very long and elaborate stage of eliciting public opinion and many witnesses had been examined by the Law Commission and elaborate evidence was taken, notwithstanding that, having regard to the fact that it is a Bill of very great importance touching a very important community of India, and also touching on their personal law, it is considered necessary that the matter should be considered again by a Joint Committee so that we may have again a final review of the whole matter and all persons who may like to be heard by the Joint Committee may be so heard and after hearing them the Joint Committee may send us their recommendations.

The scheme of the Act, first of all, is to deal with the conditions of

marriage which, as I have said, up to now has been regulated by the English statute. We have in the Bill followed the recommendations of the Law Commission in formulating certain conditions regarding the age of consent, the question of minor spouses, the consent of guardians in their cases and the question of prohibited degrees. In Specifying the prohibited degrees we have taken into account customs which have a long-standing application in certain areas so that the ancient notions of consanguinity may be followed to the extent customary laws in such matters could be allowed. For instance, marriages between uncles and nieces are not prohibited according to Catholic law; and according to customs obtaining among the Christian community too, as among certain Hindu communities in India, maternal uncles are not debarred from marrying their nieces. We have allowed, as in the Hindu Marriages Act, such customs to be preserved where they apply. We have, therefore, set out in Chapter II the conditions of marriage which will govern a valid Christian marriage.

Then the solemnisation of Christian marriage is dealt with in Chapter III. As is well known, under the Christian Marriage Act of 1872, which holds the field now, civil marriage was made optional and sacramental marriage was not made compulsory. We have retained the same scheme, namely, that those who want to have sacramental forms of marriage would be entitled to have them and those who want civil marriage under the Christian Marriage Act would be entitled to have civil marriage.

There was some dispute with regard to the question as to whether the Christian Marriage Act should or should not deal with civil marriages at all. Some people thought that since we have a separate law relating to civil marriages, we should not allow Christian marriages again to have a form of civil marriage. But, having regard to the fact that this form of

[Shri A. K. Sen]

civil marriage, as regulated by the Christian Marriage Act, is ancient history and having regard to the fact that as the civil marriage Act does not apply particularly to the Christian community, we thought it necessary, having regard to the majority of opinion of the Christians on the subject, that we should retain the civil form of marriage under the Christian Marriage Act.

With regard to divorce, we have introduced some of the modern elements in the law of divorce. For instance, under the existing law whereas adultery simpliciter was enough to entitle a husband for divorce, a wife could not seek divorce only on the ground of adultery unless it was coupled with desertion or cruelty.

Shrimati Renu Chakravarty: Or bigamy.

Shri A. K. Sen: Yes, or bigamy. It was the most discriminatory form of legislation, so far as women were concerned.

Shri Tyagi (Dehra Dun): What was the harm?

Shri A. K. Sen: Whereas a husband could sue his wife simply on the ground of adultery, a wife could not sue her husband if he was adulterous unless she proved cruelty, or bigamy or desertion. That is why we have made the grounds the same as under the Hindu Marriage Act and we have also given more equal treatment to the spouses in the matter of divorce. For example, we have made leprosy a ground for divorce.

Shri Tyagi: A husband, after all, is the earning member of the family and should be given some preference over the wife.

Shri A. K. Sen: If Shri Tyagi is anxious to retain the premium on adultery, I shall not quarrel with him,

but I do not think a majority of the members will support him in this matter.

Shri U. M. Trivedi (Mandsaur): Everything is adulterated now.

Shri Khadilkar (Khed): Biologists consider that man by nature is polygamous. So, in the western law relating to divorce this discriminatory treatment is there.

Shri A. K. Sen: In the Bar for a long time I have heard plenty of complaints to the effect that the other sex is also equally polygamous. We need not decide here as to which sex is more polygamous. But let us debar polygamy from the point of view of sustaining the bond of marriage and let us agree that there should be equal treatment given to both the sexes in this matter.

Leprosy and venereal diseases have been made additional grounds for divorce which is only reasonable. The old antiquated law did not recognise leprosy or venereal diseases as a ground for divorce.

With regard to judicial separation too we have introduced the modern elements in the matter of judicial separation and have made a provision for that.

These are the main features of the Christian Marriage and Matrimonial Causes Bill and I think instead of dealing with the individual clauses it will be best to deal with the principles of the Bill at this stage and to refer the Bill to the Joint Committee for a detailed consideration of the matter.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to amend and codify the law relating to marriage and matrimonial causes among Christians be referred to a Joint Committee of the Houses consist-

ting of 45 members, 30 from this House, namely:—

Shri Mulchand Dube, Shri Asoke K. Sen, Shri Bibudhendra Misra, Shrimati Yashoda Reddy, Shri Liladhar Kotoki, Shri Sudhansu Bhushan Das, Shri Shri Maheshwar Nayak, Pandit Dwarka Nath Tiwari, Shri Ram Dhani Das, Shrimati Kamla Chaudhuri, Shri Baij Nath Kureel, Shri Harish Chandra Mathur, Shri Daljit Singh, Shri P. R. Patel, Shri T. H. Sonavane, Shri V. B. Gandhi, Shri Joachim Alva, Shri P. Govinda Menon, Shri Mathew Maniyangadan, Shri A. M. Thomas, Shri A. Nesamony, Shri T. Abdul Wahid, Shrimati Renu Chakravartty, Shri M. Kumaran, Shri U. M. Trivedi, Shri Rajendranath Barua, Shri Yashpal Singh, Shri A. E. T. Barrow, Shri G. G. Swell and Shri Sivamurthi Swamy; and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House, relating to Parliamentary Committees will apply with such variations and modifications as the Speaker make make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

Shri Maniyangadan (Kottayam): Sir, I beg to move:

1355 (A) LS—8.

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th October, 1962."

Mr. Deputy-Speaker: Both the motions are before the House now.

Shrimati Renu Chakravartty: Sir, I want to plead with you that because some of the clauses of this Bill will be quite controversial some of us who are on the Joint Committee may also be permitted to participate in this debate as was done in the case of the Hindu Code Bill. Normally, if one is on the Select Committee that is not the convention.

Mr. Deputy-Speaker: That can be done only in exceptional cases because there are 30 hon. Members on the Joint Committee and if all the 30 hon. Members want to speak other hon. Members may not at all have any time. 3½ hours is the time allotted for this and if there is time, I will permit two or three hon. Members who are on the Joint Committee.

Shrimati Renu Chakravartty: That means nobody from our Party will be able to speak on this.

Mr. Deputy-Speaker: Shri Kappen.

Shri Maniyangadan: But I would like to say a few words regarding my motion.

Mr. Deputy-Speaker: He is a member of the Joint Committee.

Shri Maniyangadan: Sir, I would like to say something about my motion.

Shri A. K. Sen: I do not know how an hon. Member who has consented to be a member of the Joint Committee can move a motion for circulating the Bill for eliciting public opinion.

Shri D. C. Sharma: I think, it is a very wholesome practice that members of the Joint Committee should not be allowed to speak.

Shri A. K. Sen: How can he oppose its reference to the Joint Committee when he has consented to be a member of the Joint Committee?

Shri Maniyangadan: I am not going to speak on that. I have moved my motion. My only submission is that I do not think that there is any strict rule in this regard. There are exceptions also. It is allowed on certain occasions, as you were pleased to say.

Shri U. M. Trivedi: You cannot have it both ways.

Shri Maniyangadan: In certain contingencies Members are allowed to speak. I have moved my motion and I only want to speak in support of my motion.

Shrimati Renu Chakravartty: This is not a new thing. It has taken place in the case of all the three Bills which we have already passed. In the case of the Hindu Code it was permitted. It is very controversial and before it goes to the Joint Committee we want to put it before the House.

Shri A. K. Sen: I am not opposing their speaking. What I was opposing was an hon. Member who has consented to serve on the Joint Committee bringing in a motion for not referring it to the Joint Committee.

Shri U. M. Trivedi: That is right. If an hon. Member agrees to be on the Joint Committee—the consent of hon. Members to serve on the Joint Committee is obtained beforehand—how can he move a motion for circulation? The very principle of its going to the Joint Committee is accepted when he agrees to serve on the Committee.

Mr. Deputy-Speaker: He has agreed to be a member of the Joint Committee. How can he move the motion for circulation?

Shri U. M. Trivedi: He must have forgotten it.

Mr. Deputy-Speaker: There is a ruling saying that a Member who has been proposed to serve on the Joint Committee is not even called if he has moved an amendment to the motion for reference of the Bill to the Joint Committee. This is something similar to that.

An Hon. Member: By the very nature of it he is excluded.

Mr. Deputy-Speaker: Shri Kappen.

Shri Kappen (Muvattupuzha): Mr. Deputy-Speaker, Sir, in discussing this Bill I want to point out certain matters which may be considered by the Joint Committee. It has been pointed out by the hon. Minister that there has been a wide demand and representations that legislation like this should be brought forward. I also find from the Fifteenth Report of the Law Commission that there was also a representation saying that this law should not be extended to the previous Travancore-Cochin State. If we go through the Report of the Law Commission, we will find that the Law Commission brushed aside that representation because, it is said, though there were written representations nobody came forward to give oral evidence. That was because, as can be seen from the Appendix, there was no sitting of the Law Commission anywhere in the Travancore-Cochin State which has now merged in Kerala. The sittings were in Bombay, Madras and Calcutta. That was the reason why there was no oral evidence given as people had to go to Madras or Bombay. Therefore I suggest that the Joint Committee may be pleased to call for evidence and take evidence, if necessary, by going to the former Travancore-Cochin State. This is a law which very vitally affects a section of the people there. For the last 1,500 years they have been getting on very well without any legislation whatsoever. As pointed out by the Law Commission, 50 per cent of the Christian population of India is Catholics and the Catholics have got very definite principles regarding marriage which are very strictly enforced. As

a result of that, family life in the Catholic community is well knit. As a result of that, they have been able to advance socially, economically and culturally. I would request the Joint Committee to go into the question how far the provisions of this Bill would be conducive to the benefit of the community.

I will just refer to one or two matters in the Bill. First with regard to the application of the law. It is mentioned in the Bill that this law is applicable to a marriage between Christians. There have been representations to the effect that the law may be made applicable to marriages between Christians and non-Christians if necessary. I do not understand why, if one of the parties happens to be a non-Christian, it cannot be brought under the purview of this Bill. I would urge that that point may be very seriously considered. At a time when we are progressing and we are encouraging inter-communal marriages, why should a provision be made that this law is applicable only to marriages between Christians? Let us encourage inter-communal marriages and provide for it in the Act. Therefore, I would request the Members of the Joint Committee to very seriously consider that question.

Then, there is the definition of Christians. A Christian is defined as a person who professes the Christian religion. I submit that that definition would mean one who professes the Christian religion at the time of marriage. Is it enough for a man to say that I am a Christian at the time of the marriage? I think the definition is inadequate. Various definitions have been suggested to the Law Commission. If we go through the 15th Report of the Law Commission, we will see that. Therefore, this definition is inadequate and vague. The Joint Committee may be pleased to go into the question and find a better and proper definition of a Christian.

Then comes the question of solemnisation of the marriage. I have already

said that the Law Commission has pointed out that more than 50 per cent of the Christian community belong to the Catholic community. The Catholic community has, as I have already said, strict rules regarding marriage. There are definite provisions in the canon law. In fact, marriage is a sacrament, a very important sacrament. According to the Catholics, it is a part of their tenets, it is a part of their religion, it is part of their belief that a marriage should be solemnised by a Catholic priest in a Catholic Church as per provisions of the canon law. This Bill allows a Catholic marriage to be solemnised by a Minister of a recognised Church. It has been pointed out by the Law Commission in its 15th Report, quoting the Supreme Court, that religion includes not only the tenets of the religion, but also the practices of religion. The Fundamental Rights provided in the Constitution allows any section of the people to practise, propagate and believe any religion they like. When marriage is a sacrament which forms a tenet of the religion, I would submit that this provision would be an inroad into the fundamental rights allowed by the Constitution. This matter also may be taken into consideration seriously by the Joint Committee at the stage of consideration.

A Minister is not defined in the Bill. It is said, Minister of a recognised Church. Who is a Minister? What are the qualifications for a Minister? That is not defined. What are the qualifications of a Minister who has to solemnise the marriage?

Shri Tyagi (Dehra Dun): How can a Minister do this job? Do you expect a Minister to solemnise a marriage?

Shri Kappen: I am sorry, Shri Tyagi probably has not gone through the Bill. It is provided in the Bill as Minister.

Shri A. K. Sen: There are Ministers in Churches. We are not the only Ministers.

Shri Kappen: I refer to the provisions of the Bill where the word 'Minister' is mentioned. I would request the Joint Committee to seriously consider the question of defining who is a Minister. According to me, the provision for declaration of a Church as recognised is defective. One or two Churches are mentioned there as recognised Churches. There is in Kerala, for example, a very important Church—our Deputy Minister Shri A. M. Thomas belongs to that Church—the Jacobite Church.

Shri Inder J. Malhotra (Jammu and Kashmir): Who is the Minister there?

Shri Kappen: That is because my hon. friends do not understand what is meant by Minister.

Shri A. K. Sen: They have seen only one type of Ministers.

Shri Kappen: They know one type of Ministers. The Bill knows several kinds. There are some recognised Churches. For example, the Roman Church is mentioned there. To get recognised they have to put in a petition before a committee. Clause 7 provides for it. Suppose that committee does not care to look into the petition. What is the remedy? There is no provision for an appeal.

Shrimati Renu Chakravartty: Minister of a recognised Church: they do not have to put in a petition.

Shri Kappen: Those who are recognised need not put in a petition. There are Churches which are not recognised. They have to put in a petition before a committee. Suppose the committee does not care to look into the petition. What is the remedy? I request that the Joint Committee may be pleased to make a provision for an appeal if the committee does not care to look into that petition.

Then, we come to the question of the conditions of a valid marriage. The Indian Christian Marriage Act of 1872 left this to the personal law of the

parties. According to me, this was very wise. Because, the conditions laid down in the Bill for a valid marriage would create some difficulties for certain sections of the Christian community. That point also may be considered by the Joint Committee at the stage of consideration of the Bill. For example, among the conditions for a valid marriage, persons standing in a certain relationship are not allowed to contract a marriage between themselves. According to the Catholic Church, there is provision for exemption in certain cases. That is a wise provision. The Pope has got the right to exempt. The relationship is recognised there. Certain relations cannot marry. But in exceptional cases—exceptional cases may arise also—the Pope is given the right to give exemption. That exemption is not provided here. For example, it may so happen that illegal intimacy may develop between two persons of very near relationship. Then, to say that such people cannot marry means that the child will be illegitimate. Therefore, I would submit that provision for exemption may be provided. And that power also may be given to the various churches concerned.

The marriageable age of a bride is fixed as fifteen, but in the next clause, it is provided that when the bride is under the age of eighteen, she has to get the consent of the guardian or has to go to the district court. We know, as a matter of fact, that there are children whose parents are not known, and who have no relations whatsoever, and this has already been spoken of in the course of the discussion on the previous Bill relating to adoptions. There are illegitimate children whose parents are not known, and who have nobody in this world. Where will they get a guardian? They will have to go to the district court, according to the provision here. Generally, they will be poor people. So, how can they go to the district court? Therefore, in such exceptional cases, I would urge that some provision may be made by the Joint Committee that without the consent of the guardian, they may be allowed to contract a marriage.

Then, there is a provision in the Canon Law for a man to marry without solemnisation in a church or going to the registrar of marriages, when he is at the point of death. Let me give an example, A man may have been living with a woman without a valid marriage, and at the point of death, he may want to legitimise his children; in the Canon Law, there is a provision that he can solemnise the marriage in the presence of two witnesses. A representation has been made to the Law Commission in this regard, but the Law Commission have brushed that aside saying that that would lead to so many difficulties and there would be spurious marriages. I do not think that that is a justification. I would request the Joint Committee to consider this matter also in the course of their deliberations, and make a provision for such exceptional cases.

Then, we come to the question of divorces. It has been repeatedly pointed out by the Law Commission that certain sections of the Christian community are averse to divorce. And I would certainly urge that divorce should not be encouraged. We have seen the result of encouraging divorce in America, where there are thousands of cases of divorce; because the husband happens to snore at night, the wife goes to the divorce court and gets divorce easily. That is not suited to the tradition of India. It is the tradition of Savitri which we are having. Therefore, I urge that the provision for divorce should be made very strict.

This measure has been described as a very progressive measure by the hon. Law Minister because the woman also can seek divorce on the ground that the man has committed adultery; that benefit has now been extended to the woman also. Formerly, the provision was that mere adultery by the man was not enough, but something more was needed such as cruelty or desertion and so on, before a woman could ask for divorce. As the hon. Minister has pointed out, that

discrimination also has now been removed.

I would suggest that divorce must be made much more strict and much more difficult to obtain, because if we enlarge the scope of divorce, then we shall have a number of illegitimate children who will have no parents to look after them. They may be legitimate, but they will be abandoned, the father or the mother gets divorce, and there will be nobody to look after them; neither the father nor the mother will then feel the responsibility to look after those children. So, that is a matter which has to be very seriously considered. Do we want such children as we have got in America or in England? Do we want such cheap divorce here? Do we want to disintegrate the family? The Indian family is a well-knit family. The obligation of the children to the parents should also be very seriously considered. Whereas in America, the parent is sent to the houses or homes for the old, here, the parents are looked after by the children; they love their parents, and they care for them, because the family is well-knit. So, there should be no question of easy divorce. Therefore, I would request the Joint Committee in the course of their deliberations to restrict the possibility of getting divorce, and to make the law very strict in this regard.

I have already mentioned one fact namely that among the recognised churches, the Jacobite and the Marthomite churches may also be included, because they form a large section of the Christian community.

I, therefore, request the Joint Committee to give serious thought to the points that I have raised.

Shri Priya Gupta (Katihar): The subject before us for discussion today is one where I would request hon. Members of the House to look to the actual perspective of the society in which we live or the social set-up of ours. Today, in India, there are

[Shri Priya Gupta]

Christians of different conventions practices and habits in different parts of India, as there are people belonging to other faiths.

Moreover, today, as the matter stands, we have got one thing to consider, namely the relationship between man and man, which cannot be in a vacuum, and which can be filled up with either full formality or full sincerity or a part of formality and a part of sincerity. This aspect of the relationship between man and man, between woman and woman and between man and woman is what governs the fundamental things which we are going to codify here.

The fact remains today that a mother has got to be satisfied by hearing from her friend that her son loves her, and only then she feels satisfied that her son loves her. Similarly the husband will not be satisfied until he hears from others that his wife is devoted to him and she loves him, and reciprocally, the wife also gets the same feeling, and the son also gets the same feeling of affection for his father and mother. This is the fundamental basis of relationship which should not be lost sight of while framing this enactment.

Apart from this, how has marriage come about in society? Let us think of the primitive days and consider the purposes for which marriage was required. This is not a matter for laughter. Marriage is not only a certain biological necessity, but there were some other aspects also which compelled society to adopt certain conventions in regard to marriage procedures and marriage rules. Our country has come to a particular status now, and it thinks that some social injustice may have been done to certain sections of society, and in the light of the experience gained, further enactments or amendments to the old laws are required, to remove those injustices.

I have seen Schedule I of the Bill, the list of prohibited relationship. There are many items mentioned there. In some societies even the maternal uncle has got *rajotak sambandh* with the sister's daughter. So the prohibition should be according to the social needs and conventions of the society. In most of the cases, these prohibitions may or may not be taken into account for that purpose. The whole matter will go to the Joint Committee and while dealing with the list of prohibited relationship the Committee will kindly take stock of the actual conventions prevailing in all parts of India.

Then the question was raised, very correctly, as to what provision should be made to cover marriage between a Christian and non-Christian. This should also be considered. Moreover, if this is a question of framing the law in respect of Christians in general, there should be separate codification for the three or four schools (including National Church) of Christians, Roman Catholics, Protestants and others.

Dr. M. S. Aney (Nagpur): May I know whether the prohibition list will not be applicable to all Christians?

Shri Priya Gupta: It is applicable. I have submitted that it should be according to the conventions. Some are to be added or some are to be eliminated. It is a two-way traffic, elimination or addition. These are my submissions.

I believe in one thing, that the relation between man and woman or between man and man or between woman and woman cannot only be governed by a codification of principles by law under the penalty of punishment for violation of the provisions thereof. Fundamentally, the matter of marriage Rules must be approached with this object in view that the conventions and feelings that are there may not be disturbed to

the extent of extending injustice to particular sections.

My submission is this. The law is there quite all right. But our Government should try to collect opinions all over the country bring civic sense, social conception upto level and then preach the required principles to be followed in the society, in addition to making laws. The time given to the Joint Committee to report on the Bill is upto the 30th October or so. But I would again urge upon the Members of the Committee to visit the different sections of this community including all its sub-sections, Catholics, Puritains and others and take their personal opinions (*Interruptions*) There are many things which have got to be known, in spite of our being satisfied otherwise. It is a social conception which is involved and we have to ascertain people's opinions.

I have not got much more to say. I only say that the perspective with which the law is going to be amended must be given due consideration, keeping in view the multifarious and heterogenous character of our society and the conventions and practices prevailing in such a vast sub-continent like India, so that nothing goes out to do injustice to any section of the people.

Dr. Colaco (Nominated—Goa, Daman and Diu): I did not want to make a speech as such. I only wanted to request you to see that some members of the Roman Catholic faith are included in the Joint Committee. But I now understand from my hon. friend that there are two Roman Catholics on the Committee. Thank you very much.

Shrimati Renu Chakravartty: I thank you for permitting me to participate in the discussion on this Bill at this stage. I would like to welcome this Bill because I hope that this will also be the precursor of the Muslim and Poree Marriage Bills which also should be reconsidered and brought up-to-date.

When we had struggled and fought for the Hindu Code Bill and the codification of our civil law, we had faced the same difficulties and the same arguments as are being brought forward today in connection with this Bill. Now, our aim is to codify the civil law. That is what we of the women's organisations and also all progressive opinion in the country had always wanted, that by and by we should try to get a codification of civil law for all the citizens of India, pertaining to matters such as marriage and matrimonial causes, inheritance, adoption and maintenance. We recognise that it is a difficult thing, but it should be attempted. Actually, when we accepted the codification of Hindu law as a first step towards that end—and it was a very big step—we came up against orthodoxy, the deadweight of custom and customary law. Religious fanaticism was put forward as tenets of religion, but modern rational thought prevailed, though there are still shortcomings in the two or three Bills which we have passed as parts of the Hindu code.

Now actually the codification of Christian law, coming after the Special Marriage Act and Hindu Marriage and Divorce Act, gives us an opportunity to examine the actual working of those Acts—the good and the bad features—and we should now incorporate all that has been found to be good and reject all the weaknesses of the earlier Acts, so that the laws which we are making later should be better than the laws which we have passed earlier.

First, let me take the question of divorce, because that is the most controversial aspect. When we passed the Hindu Marriage and Divorce Bill, we incorporated for the first time in the history of Hindu law in our statute, the provision regarding divorce. It was a completely new concept because in Hindu law also the question was always posed that

[Shrimati Renu Chakravartty]

marriage is a sacrament, exactly the same thing as my hon. christian friend on the other side first spoke. Hindu orthodox opinion said, 'our marriage is a religious sacrament and as such we do not accept divorce and we will not allow any dissolution of marriage.' I have also been educated in Roman Catholic schools and I know that Roman Catholics also put forward this same argument, saying that marriage is sacrament.

Shri Maniyangadan: All Roman Catholics put forward that argument. There is no exception.

Shrimati Renu Chakravartty: I am sorry. Did I say there was an exception? It must be a slip of the tongue. I know that all Roman Catholics say that. I did not say there was any exception. All Roman Catholics say that it is a sacrament.

The Indian Christian Act—this is the interesting part—and the English law, to which the hon. Minister alluded, also include Roman Catholics within the definition of 'Christian', and it has always applied also to Catholics. But the point which we want this House and the Joint Committee to consider is that this is an enabling legislation. It is a permissive clause. It does not mean that because Catholics have always fallen within the jurisdiction of this law which has always given the right of divorce, all Roman Catholics should go in for divorce.

We do not want divorce to be applicable to all Hindu families, for instance. Which mad man or woman is there in the whole of India who will recommend divorce and want that everybody should divorce? We want that divorce should be as small as possible, but I do not agree with my hon. friend on the other side who said that if we make it very strict, we shall have a well-knit and a moral society.

16 hrs.

[SHRI MULCHAND DUBE in the Chair]

What has happened in England, let us see that. In England there is only one ground on which you can divorce and that is adultery. That adultery clause is the dirtiest and the vilest clause in the Act, and it is used in the dirtiest ways. As a matter of fact, even though there is only one ground on which you can get divorce, there are so many divorces taking place. We have passed the Hindu Marriage Act some five, six years back. Can we claim that we have a much lower standard of morality than they have in England? It is the society, the social opinion, the situation that prevails in that country, the moral opinion that is there, the economic and the family unit and their attitudes that help in keeping the morals of family life. Therefore, there is no question that divorce should be easy. At the same time, we cannot say that just by having adultery as the one ground for divorce, we shall have a higher standard of morals. That is why you will find here a very good clause, that is the one on the question of the reconciliation court. The court is being asked to make attempts for reconciliation prior to finally going into the entire discussion of dissolution. I think it is a very good clause, which the Select Committee should consider and see how it can be made more effective. That is a point which I would recommend to the Select Committee and this House.

Actually, the Roman Catholic also have divorce in certain cases by Papal dispensation. They have always had it, just as there are certain exceptional conditions laid down by Manu in which a Hindu can also get a dissolution of marriage. Therefore, both the Catholics and the Hindus always regard marriage as a sacrament, and yet both of them, under certain exceptional conditions, are allowed to dissolve marriage. So, the question is not of an indissoluble tie. It is a tie which should not be

lightly treated or lightly torn asunder. Every one agrees on this point.

Now, let us come to the conditions of divorce. We should review the conditions under which dissolution, voidability and nullity as well as separation are permitted. I think we have tried to follow the Hindu Marriage Act in regard to void marriages, i.e., there are only two conditions, bigamy and prohibited degrees of relationship, on which marriages are voidable. I feel the grounds of divorce should on the whole be kept on a par with the law relating to other religious groups. It is not such an impossible thing either, although my Christian friends on the other side, though they said that we should tighten the grounds, did not mention the conditions in which divorce should be permitted. Actually, I am against having adultery as the only ground for divorce as it was in the Indian Christian Act earlier.

Before coming to that, I will take up another condition on which a marriage can be dissolved, and that is the question of the prohibited degrees of relationship. This is being laid down in the Schedule more or less on the basis of the Hindu Marriage Act and I think also the Special Marriage Act. In any case, my idea is that we should try to bring them as close together as possible. As a matter of fact, we have made one general provision in the Hindu Marriage Act that where custom prevails, we should permit marriage within the degrees which would fall within the prohibited degrees of relationship. For example, in South India, marriages between nieces and uncles are permitted. That would be covered by this proviso. I want to say something to this House which may not be acceptable to some people, but I think it is time we should do it ultimately. I am not at this moment proposing that we should bar marriages between the degrees of relationship customary law allows, but I think it is time that in modern India, public opinion should start thinking on

healthy lines regarding this. Marriage between close relations with blood kinship should be avoided as science and biology tell us that they are harmful, and I think that public opinion should be educated in this matter. Even the economic needs of a joint family of keeping the family property with the family etc., are things of the past in many families. So, while I agree that at the moment the law may not prohibit marriage within the degrees of relationship permitted by custom, but public opinion should be roused against it. Although the Law Commission has said that if customs permit, it, the law should not prevent, it they say that they appreciate the sense behind it. That is the idea which I want the leaders of public opinion as they are in this House to take up, because when we go to the Muslim law next, the same thing will be before them. Very close relations are permitted to marry within the Muslim law, and if we permit it in Hindu law, we have to permit it in the Christian law and in the Muslim law. When we go towards a modern law, we should try to rouse public opinion that this should stop, and in future I hope we will be able to bring the prohibited degrees of relationship in keeping with the modern scientific and biological thought.

I welcome the elimination of the difference between man and woman regarding the ground of divorce, namely adultery. I do not want to go into this, this is a very obvious thing that if a man should have the right of divorcing the woman for committing adultery, the woman should have a similar right. Adultery by itself is an ugly enough thing to permit a person to divorce. Actually in the Hindu Marriage Act, because of the same attitude of certain orthodox opinion, we had to change this clause from what it is in the Special Marriage Act, and we have said that only if a man is living in adultery, it can be a ground of divorce. But in the Special Marriage Act, as in the Christian Act, one single act of adultery is enough as a ground for divorce.

[Shrimati Renu Chakravartty]

I personally think that we should have this condition of a single act of adultery as a ground of divorce, but I want this House and the Select Committee to go into the question of the co-respondent. This is one of the ugliest things in the English Law, and unfortunately I felt as I read the Law Commission Report that they are unnecessarily enamoured of the English Law. They go on quoting the Royal Commission and the English Law every time. But I think in some respects our Special Marriage Act is much more advanced than the English Law. In the English Law you have to quote a co-respondent. What happens? It is a vile and ugly thing to try to get people, to try to get evidence, to try to get hotel bills which are completely fictitious, to insist in washing dirty linen in public, naming names which are not very healthy etc. In the Hindu Marriage Act we have not said it is necessary, and I think it should not be necessary even in the Christian law. I think the Christian community is much more advanced socially in many respects, and I think this clause should be on a par with the Hindu Marriage Act and the Special Marriage Act.

Coming to damage for adultery, this also is a peculiar hangover from the English law. In the English Law you need not even sue for divorce, but you can sue for damage. Fortunately, our Law Commission has seen the ridiculousness of this and they have said that you can have damage, because it has been accepted by the Christian law all along, but you can claim damage only if and when you apply for divorce. So, that has been incorporated. We have not incorporated that in the Hindu Marriage Act; we have not incorporated that in the Special Marriage Act. I think Christian society also would not want this to be added. As far as possible, these things should be codified and kept on the same level.

I do not want to go into details. Leprosy has also been made one of

the causes for divorce. I hope, in the Select Committee, we can see what the conditions of divorce should be, like leprosy, desertion, question of cruelty and all those things. They should be brought on a par and should apply equally to the Hindu Marriage Act, the Special Marriage Act and the Christian Marriage Act, because these are, after all, stringent conditions and yet are logically reasonable condition of dissolution of marriage. These things should apply to everybody, Hindus and Christians etc.

Regarding the judicial separation clause. It is a very good clause which has been incorporated in the Christian Act, that, if after judicial separation has been granted cohabitation does not take place for two years, automatically the marriage is dissolved. We do not have again to petition for divorce. The original decree itself is accepted. I think it is a good clause and we should try to incorporate it in the Hindu Marriage Act and the Special Marriage Act also.

Now, I will say something which may not be acceptable to many hon Members; but it is a point which I want to make. That is regarding the question of divorce by mutual consent. You know that our Special Marriage Act has been the one Act in which we have been able to incorporate this. At that time there was a terrific uproar that if we incorporate this then our family life would be completely destroyed. Some of us argued at that time that it is not so easy as it looks. All these divorces are contested by one party or the other. Personally, I know that in many cases that have occurred how difficult it is to get mutual consent. But in the very few cases where we have been able to get consent, our experience has been that the marriages have been dissolved in a clean manner, with the least rancour and

with the greatest chances of rebuilding one's life without bitterness.

This is a point which I would like the House to consider. What has been the level of depravity to which our society has fallen because of the mutual consent clause in the Special Marriage Act? Nothing at all. I would say that it is much better to have this clause of mutual consent added to the Christian law because this is a much more clean way than having to produce co-respondents and hotel bills and proving adultery. Although I know that there are people who will react immediately to this and say that it will throw open the flood gates of depravity and licence, I personally feel that actual life has proved just the opposite.

I am very glad that the legitimacy of children of void marriages has been granted in this Bill. It is a very good clause. We have always supported it. We do not want that sins of the parents, the mistakes of the parents should be visited upon the children. The children should not be made to suffer in any way.

Regarding the guardianship of minor children I find something to comment upon. I had always regarded Christian society as much more advanced than our society. I have fought, I still fight and would continue to fight that the guardian of the minor child should be the mother unless the court finds that she is immoral or incapable of looking after the child. In so many cases it has happened that one has to continue living in conditions of hell because if the mother goes to court she may not get the guardianship of the child. I know of a case where the father was rich and the mother was only a school teacher and the judge opined that the mother was incapable of bringing up the child to the status of the father and the child was given over to the father who was really quite a depraved man. Therefore, this question of guardianship of the minor child should be clarified.

Dr. M. S. Aney: But if the mother be not earning how will she be able to bring up the child?

Shrimati Renu Chakravartty: Normally, in our society she will never go for a divorce if she cannot bring up the child. If she goes to court for divorce she must have some source of income.

My hon. friend on the other side has raised the point why should it apply to Christians only and that has been replied to by the Law Commission. The Law Commission says there will be one difficulty if marriages between Christians and non-Christians are permitted under this law. That difficulty is that the Hindu will be governed in matters of inheritance by the Hindu law, or if he belongs to the Brahmo Samaj, by the Indian Succession Act. In the case of Christians also, I think, they will be governed by the Indian Succession Act.

The second thing is that in our Special Marriage Act, registration is for the purpose of getting a marriage solemnised between persons of two castes, religions etc. After that you can always have any form of sacramental marriage that you choose to have. Therefore, I do not think that it is at all necessary that it should apply marriages between Christians and non-Christians.

There is another very big point which has been gone into by the Law Commission regarding those to whom it will apply. I am in consonance with the Law Commission when they say that it should apply to all whether they are Indians or non-Indians or Europeans, if the marriage is performed in India and that it should apply to all who are living in India. If the marriage is performed here they must conform to this particular Act. Even to the marriages of those who are domiciled in India or who intend to live in India, even those marriages of domiciled Indians abroad this law shall apply. I think that is the right

[Shrimati Renu Chakravartty]

thing and I support that particular point.

Regarding the question of the recognition of the Church. There are certain important points on which I agree with my hon. friend opposite. There are churches like the Established Church of Rome, the Church of Scotland, the Church of Ceylon, Burma and India. These are recognised straightway. We do not have to petition for recognition on that point. But, I believe there are a large number of churches which are there and which are coming up which will require recognition. And, they will have to petition. It is correct that there should be an appeal regarding recognition of churches. That is a point which we should consider, and consider seriously. Supposing the committee does not recognise a particular church, then, it should have a right to appeal.

I also agree on the question of the definition of a 'Minister'. I am not a Christian and I do not know about the churches of all denominations. But I would imagine that all ministers of churches are ordained according to certain rules of those particular churches. If they are ordained ministers there is nothing to prevent them to solemnise a marriage. If it is otherwise, then, we have to look into it. I also agree that we should not try to limit it only to persons who are licensed. If we can have our purohits, why not the Christian church have those ministers who are ordained by their churches? Why should they have to go first for recognition and then for licence? I think it is a hardship. That should be looked into. These ordained according to the canons of recognised churches must be permitted to solemnise the marriages. Further, taking licences will lead to undesirable influences also.

The last point I want to make is this. I think all our people, whether they are Christians, Muslims or Hindus boast of having well-knit

families. We all know that the Indian Christians are a separate type of entity, separate from the Christians in England although they profess the same religion. You can see that. Therefore, it is our social and economic background that really counts. It is a wrong way of looking at things and to say that because the Catholic family is not permitted to have the right of divorce, so it is well-knit and so it is socially, economically and culturally advanced. I think the hon. Member on the other side did not mean that. I think he meant that in Kerala the Christians, and especially the Catholics, are an affluent, rich and powerful society. But, if you go to Bengal you will find that they are the poorest of the poor and they are not very well-knit, in that sense. I think we have to look upon this provision from the national point of view, of what will be good for everybody. I am sure that we should try and see that this applies to the whole of India, and not exclude Travancore-Cochin. I have tried to get hold of any Bill that was there or any Act applicable there. But I think it is customary law: I do not think it is codified into any law and therefore it was not possible for us to see it. If there is anything good in the Travancore Act, we should certainly look into it and we hope that our friends who will be in the Joint Committee will advise us about them and incorporate them here for the benefit of all, not only for the Christians. We should incorporate them for the Hindu and Muslim sections also if they are good. Therefore, we should not say that this should not apply to Travancore-Cochin. It is one of the most advanced States of India. We should try to have one law for all the Christians in India and see how far we will be able to advance, step by step, towards one codified civil law. That is all I have to say.

The Deputy Minister in the Ministry of Law (Shri Bibudhendra Mishra): Sir, I am grateful to my

learned friend Shrimati Renu Chakravarty for having clarified most of the points. She has stated that most of the objections that have been raised in this House have already been answered by the Law Commission themselves.

They have discussed the extension of the provisions of the Bill to the old Travancore-Cochin State fully and have stated that though the Syrian Christians are governed by customary marriage, they have tried to analyse the system of marriage that operates among that community and compared it with the system of marriage among the Roman Catholics and found that substantially there is no difference. Therefore, they have recommended that there is no reason why it should not be extended to that area. Incidentally, I may say that the Christian Marriage Act was not so long applicable to Manipur also and they have suggested that this should be extended to Manipur also. It is also a curious thing that while this is not applicable to the areas comprised in the old State of Travancore-Cochin, the Divorce Act is applicable to the area. That also creates anomalies, since it is now intended that the law should be codified, marriage and divorce should be put together. There should not be two Acts as has been the position till now and I do not find any reason as to why it should not be done.

I completely agree with Shrimati Chakravarty that the provisions in regard to marriage and divorce should be the same for all Communities as far as practicable as the society progresses. We have laid down in the Constitution also that there should be a uniform civil code. The Law Commission have also gone into the provisions of the Special Marriage Act and the Hindu Marriages Act and have tried to take some provisions from them. That has happened in the case of divorce. All the provisions that we find in the Special Marriage

Act have now been incorporated in the Christian Marriage Act. In this case also, formerly, only one ground was available for divorce; that was adultery. Now, all the other grounds have also been added.

Objection has been raised about divorce provisions. It is, they say, is opposed to Christian faith and conception of society. The same objection was raised when the Hindu Marriage Act and the Special Marriage Act was passed. That is a thing of the distant past. Now, it has been accepted and it is going into the statute book, whatever be our personal laws. It is not working to any serious disadvantage to the community though it was completely new to the Hindus. It is not new to the Christian law; it has been in operation for the last 90 years and there is no reason why it should not find a place in the present Bill. Again, it does not compel anyone to go to the divorce courts. One can apply for judicial separation. If you are a man who believe in your religion and other things, you need not go to the court for divorce. If you have not gone so far, you may well afford not to go. But those who want to go to the law courts or divorce should not be debarred from doing so.

Many things have been stated about definitions of ministers, etc. The Law Commission has dealt with them at length. There are some chapters recognised in the old Act and they have taken them as the basis and they have taken the new provisions also. There will be a committee which will look into their recognition. Minister of course cannot be defined under this Bill; they are governed by the code of conduct of their own Church, their own rules, etc. It is not only futile but also, I think, not permissible. They are appointed by the Church, governed by their rules. The point about ministers being registered and licensed by the State has been mentioned. It is apprehended that it may be taken as an inroad into the Constitution.

[Shri Bibudhendra Mishra]

This has been sufficiently discussed in the Law Commission report. They have recommended that the form of sacramental marriages which are three under the present Act should be reduced to two: one for those who belong to recognised Churches, and the other, to the rest. Apart from that they have removed the distinction between Indian Christian and Christian, as they do not find any justification for this. They have allowed the civil marriage to remain. Instead of five forms, therefore, that exist under the present Act, they have recommended four forms.

The other things have already been replied to by Shrimati Renu Chakravarty and I need not add much at this stage. It will be considered at length by the Select Committee. There was an amendment for circulating the Bill for eliciting public opinion but of course it has not been allowed. Two reports of the Law Commission, 15th and 22nd reports, have been gone into. The Law Commission sent a questionnaire to the bar councils, High Courts and the Supreme Court as also to the Christian associations and their representations were considered. Two draft Bills were also there before the Law Commission. After all these things, a draft Bill was sent to the Government. Government thought that it would be better if the draft Bill was sent for eliciting public opinion and so it was sent again and now it is again going to the Joint Committee. All that was thought to be desirable have been incorporated and I do not think, if it is an important and serious matter as has been said, any time should be wasted again on eliciting public opinion.

Shri Kappen: May I know whether the Minister is able to provide any appeal from the decision of the committee?

Shri Bibudhendra Mishra: It is a matter for the Joint Committee; not for me.

Mr. Chairman: First, I shall put the amendment to the vote. The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th October, 1962."

The motion was adopted.

Mr. Chairman: Now, I shall put the motion to the vote. The question is:

"That the Bill to amend and codify the law relating to marriage and matrimonial causes among Christians be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—Shri Mulchand Dube, Shri Asoke K. Sen, Shri Bibudhendra Mishra, Shrimati Yashoda Reddy, Shri Liladhar Kotoki, Shri Sudhansu Bhushan Das, Shri Maheshwar Nayak, Pandit Dwarka Nath Tiwari, Shri Ram Dhani Das, Shrimati Kamla Chaudhuri, Shri Baij Nath Kureel, Shri Harish Chandra Mathur, Shri Daljit Singh, Shri P. R. Patel, Shri T. H. Sonavane, Shri V. B. Gandhi, Shri Joachim Alva, Shri P. Govinda Menon, Shri Mathew Maniyangadan, Shri A. M. Thomas, Shri A. Nesamony, Shri T. Abdul Wahid, Shrimati Renu Chakravarty, Shri M. Kumaran, Shri U. M. Trivedi, Shri Rajendranath Barua, Shri Yashpal Singh, Shri A. E. T. Barrow, Shri G. G. Swell and Shri Sivamurthi Swamy and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House, relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appoint-

ed by Rajya Sabha to the Joint Committee."

The motion was adopted.

Mr. Chairman: There is no other business now. The House stands adjourned till 11 a.m. tomorrow.

16.33 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, August 9 1962/Sravana 18, 1884 (Saka).