

be expected. For instance, today, as I have already said, it is difficult to get people to bring their old and useless cattle to the Gosadans which have been established. Likewise, not every State Government is equally able for various reasons to set up Key Village Centres and Gosadans, despite large financial assistance promised by the Central Government.

In addition to all that I have indicated above, the Government have now also decided to appoint a Committee of experts to consider without delay what steps should be taken—

(1) to prevent the killing of milch cows, particularly in the cities of Calcutta and Bombay, even when they had gone temporarily dry;

(2) to make the present law on the subject more effective so as to put an end to such evil practices as 'phooka';

(3) to explore the possibility of making milk-powder in suitable centres; and

(4) to impose some effective control on the inter-State movement of cattle.

I hope, Sir, that the statement I have made so far will convince every reasonable person, both inside and outside the House that the Government is in earnest to tackle this problem and is in fact tackling it with utmost vigour and circumspection. But in view of the opinion given by the Attorney General and since it is a fact that the States are dealing with the matter, as indeed is their legitimate power and responsibility under Item (15) of the State List, the Government has no option but to oppose the Bill, if it is pressed to vote.

9 A.M.

ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL

The Minister of Rehabilitation (Shri A. P. Jain): I beg to move for leave to

introduce a Bill to abrogate the evacuee property law in respect of persons who have done or do any act on or after the 7th day of May, 1954, which if done before that date would have rendered them subject to that law and to amend the Administration of Evacuee Property Act, 1950 for that purpose and certain other purposes.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill to abrogate the evacuee property law in respect of persons who have done or do any act on or after the 7th day of May, 1954, which if done before that date would have rendered them subject to that law and to amend the Administration of Evacuee Property Act, 1950 for that purpose and certain other purposes."

The motion was adopted.

Shri A. P. Jain: I introduce the Bill.

TERRITORIAL ARMY (AMENDMENT) BILL

The Minister of Defence Organisation (Shri Tyagi): I beg to move for leave to introduce a Bill further to amend the Territorial Army Act, 1948.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Territorial Army Act, 1948."

The motion was adopted.

Shri Tyagi: I introduce the Bill.

SPECIAL MARRIAGE BILL—contd.

Mr. Deputy-Speaker: The House will proceed with the further consideration of the following motion moved by Shri C. C. Biswas on the 19th May, 1954, namely:

"That the Bill to provide a special form of marriage in certain

cases, for the registration of such and certain other marriages and for divorce, as passed by the Council of State, be taken into consideration."

I believe Shri R. K. Chaudhuri was in possession of the House.

Shri Gadgil (Poona Central): May I make a request, Sir? Since one hour has already been taken in this miscellaneous business, I request that the consideration stage may not be closed today. In any case it is going to the next session of Parliament. I request that, in view of the importance of this matter and some of the very wild things said yesterday, this discussion should not be closed today and should be carried over to the next session.

Some Hon. Members: Yes.

An Hon. Member: Wild or wide?

Shri V. G. Deshpande (Guna): Wise?

The Prime Minister and Minister of External Affairs and Defence (Shri Jawaharlal Nehru): I am put in some difficulty. I do not want in this measure or any like measure any restraint or limitation on a proper debate. It is an important matter and any feeling that it has been rushed through would not be desirable. On the other hand, not this Bill, but this matter, if I may say so, broadly, has been before this Parliament or its predecessor ever since it began. Hopes deferred make the heart sick. Some of us feel pretty sick at the long delays that have occurred year after year, session after session. It is not the fault of the House; for some reason or other, it has so occurred. Therefore, it is not a question of allowing another day. As the hon. Member Shri Gadgil says, it is obvious that we cannot pass it this session. If another day is given to it in the next session, it could not make much of a difference. I agree to that proposal but with this proviso, if I may say so, or expression of wish that nothing will be allowed to come in the way of its rapid consideration in the next session.

Mr. Deputy-Speaker: So, it has been clearly understood that one day more

will be allotted for consideration; at the end of that, consideration will close and clause by clause consideration will be taken. Until the Bill is finished, no other work will be allowed to interrupt it.

Shri R. K. Chaudhuri (Gauhati): I entirely agree with my hon. friend...

Mr. Deputy-Speaker: The hon. Member will have an eye on the clock simultaneously.

Shri Syamnandan Sahaya (Muzaffarpur Central): An exception in his case, Sir.

Shri R. K. Chaudhuri: I entirely agree with my hon. friend Shri Gadgil who just now said that some very wild things were said yesterday. One of the wild things was some sort of a saucy remark which was made by hon. friend Shrimati Renu Chakravartty which flabbergasted me altogether. I could not deliver a speech in a proper frame of mind.

So much so that my hon. friend, Pandit Thakur Das Bhargava (who was in the Chair) characterised my speech as somewhat irresponsible. Therefore, I beg of you only this: that today the hon. Members of the House as well as your goodself would give me an opportunity of saying what I have really to say in this matter.

Mr. Deputy-Speaker: What about what he has already said?

Shri R. K. Chaudhuri: I have given my explanation.

Shri Syamnandan Sahaya: He was disturbed.

Shri R. K. Chaudhuri: Flabbergasted. Let us examine this Bill in the light of what I have said, that I give my wholehearted support to this Bill. Not only wholehearted support, but I want the scope of this Bill to be somewhat enlarged. That being my view, it is my duty to present to the House the overall picture of a legislation of this kind. After seeing that overall picture, the hon. Members of the House will be able to come to a conclusion whether they should support,

[Shri R. K. Chaudhuri]

amend or throw out this Bill. The overall picture is this. Here is an expeditious and speedy form of marriage, cheap, which has been presented before the public—cheap marriage. You have not to utter any incantation; you have not to have any *navan* or any ceremony. All that you have got to say is this. The boy says: 'I take you as my wife' and the girl says 'I take you as my husband' and the marriage is completed, entirely completed.

Mr. Deputy-Speaker: Signature and registration will be necessary.

Shri R. K. Chaudhuri: Afterwards that is necessary—signature or, as my hon. friend said, thumb impression. The law is applicable to all—the thumb impression for both boys and girls saying that the marriage has been registered. This temptation has been thrown even to the Hindus by the hon. Minister who has been all his life.....

The Minister of Law and Minority Affairs (Shri Biswas): Can't they be above temptation?

Shri R. K. Chaudhuri: somewhat orthodox in his view. About ten years ago he carried an opinion on this subject and that opinion is entirely different from the opinion which he is now expressing or which he is not expressing.

Shri Algu Raj Shastri (Azamgarh Dist.—East cum Ballia Dist.—West): He is the Law Minister.

Shri R. K. Chaudhuri: Now he is the Law Minister. I do not think that my hon. friend will throw out his conscience merely because he is the Law Minister. But a long and continued association with the progressive section of people in Delhi City has somehow ameliorated his strict views about Hindu marriage.

Shri Biswas: That has been denied to me.

Pandit Thakur Das Bhargava (Gurgaon): What was his view ten years ago?

Shri R. K. Chaudhuri: I am serious. My remarks should not be taken lightly.

श्री जलन्धर राय रावतः : डिप्टी स्पेकर साहब, जमी रोहिणी कुमार चौधरी महोदय ने कहा कि आज जो हमारा ला मिनिस्टर साहब हैं, दस साल पहले इस बारे में उन की कुछ राय थी। वह राय क्या थी इस को भी तो वह पढ़ कर सुनायें।

Shri R. K. Chaudhuri: I think the hon. Minister will agree that he had quite contrary views about marriage.

Shri Algu Raj Shastri: What are those views?

Shri Biswas: I never expressed any views about Special Marriage.

Shri R. K. Chaudhuri: What I say is that you are now throwing a temptation—you' means the Law Ministry—before Hindu youths, that they can adopt this expeditious form of marriage if they like. That is the temptation which you have thrown.

Shri Biswas: I have a better opinion about Hindu youths. They will rise above temptations.

Shri R. K. Chaudhuri: Let me not be disturbed. I ask the hon. Minister if he was in favour of divorce ten years ago. So the circumstances, the environments of Delhi, have made him change his mind and allow the marriage of a divorcee women. What are the circumstances? I do not want to probe into anybody's private life. I do not want to do that.

Shri N. C. Chatterjee: (Hooghly): This is a slur on Calcutta ladies. I strongly protest against this.

Shri R. K. Chaudhuri: I ask this question of the hon. Minister. We should also be given an insight into the circumstances which have.....

Shri Biswas: I disclaim inside knowledge of Delhi ladies. (*Interruptions*).

Shri R. K. Chaudhuri: I said, Sir,— and I repeat it most seriously—that I do not really wish to probe into the life of the hon. Minister, but I am only asking this: what are the reasons for his changing his mind with regard to persuading the Hindus to accept divorce as part of their law? That was what I wanted to know.

Now, as I was saying, the overall picture is this. This is a cheap form of marriage I have presented to you. If you are poor, if you are an Indian, if you are a Hindu, accept this cheap form of marriage. Then there are certain circumstances. From sweet 16 up to 21 years of age, a girl has to spend her time somehow, reading books, learning cooking, reading novels, dance, music and all sorts of society life in order to qualify herself for a special marriage. All these six years she must wait. They are in society. It so happens that between the age of 16 and 21 is a critical age for a girl.

Mr. Deputy-Speaker: The hon. Member is contradicting himself. He says that this is a cheap form of marriage. At the same time, he says the age-limit is increased to 21 and that makes it difficult, and he is protesting against it.

Shri Syamsandan Sabaya: He wants to bring it down to 18.

Mr. Deputy-Speaker: By bringing it down, is it really made cheap?

Pandit Thakur Das Bhargava: He has wholeheartedly supported the Bill.

Mr. Deputy-Speaker: I cannot understand it. I am here to interpret to the House what the hon. Member is saying. There seems to be an apparent inconsistency in what he says. Either it is cheap in which case reduce the age, or if he wants to make it hard, increase the age-limit, so that no girl will be waiting

for some other man five years later and will marry immediately under the old form of marriage.

Shri Biswas: If the choice is between making it cheaper and making it sweeter, he will make it sweeter.

Shri R. K. Chaudhuri: I get bewildered. Yesterday Acharya Kripalani was saying that instead of 21 years, it should be raised 35. Now I think the hon. Minister is prepared to lower it from 21 to 16. For girls it should be 16 years. Let me present what I wanted to say. Here we have got a cheap form of marriage. But our girls have to wait for six long years in order to entitle themselves to this marriage. These six long years are the most critical period of their life.

Mr. Deputy-Speaker: It is open to them to marry under the old form of marriage.

Shri R. K. Chaudhuri: Expensive. Does not believe in sacrament. This is the order of the day. No belief in sacramental marriage. Here is a temptation. I am accusing him of throwing this kind of temptation before our Hindu boys and girls. Then it goes still further. If you Mr. A want to marry Miss B, have your choice. Come on and have this form of marriage. You need not have the consent of your parents about this marriage. Come straightway. I am here to give you this permission. Hindu boys and girls need not take any permission from their parents and come and marry under this Act. That is what he says. What he says after that is this. 'Well, if you do not agree for sometime after marriage, if you are tired of each other, have a divorce. If you are tired of each other have a divorce'.

Shri N. S. Jain (Bijnor District—South): Why not trial marriages!

Shri R. K. Chaudhuri: Divorce will be allowed under this law, if they are tired of each other.

Mr. Deputy-Speaker: Is it one of the grounds for divorce that they must be tired? (*Interruptions*).

[Mr. Deputy-Speaker]

Acharya Kripalani was saying yesterday that one of the conditions for marriage was that they should be mad.

Acharya Kripalani (Bhagalpur cum Purnea): If it is folly to marry, then it is double folly to marry and then get a divorce.

Mr. Deputy-Speaker: Then, does the hon. Member want a divorce without a marriage?

Shri R. K. Chaudhuri: Why does the hon. Minister throw this sort of bait when the old Shastric marriages also were much more different than this? Why does he want this divorce for these persons who are governed by this law?

Acharya Kripalani: He does not want it.

Shri R. K. Chaudhuri: I do not know; he has introduced the divorce provision in the Hindu Marriage and Divorce Bill. He is in favour of divorce.

I quite see that at a certain stage of life, one gets tired of his mate and wants to bring about some sort of separation. But then, here, you have got divorce. You can divorce, but then, if, by chance, a certain boy, say A, wanted to marry Miss B while she had been married to C, there is another chance open to these people to marry again: the girl whom the boy wanted to marry and the boy whom the girl wanted to marry. I want to say one thing, and I hope my hon. friend, the Minister of Law, in his Delhi life, has not forgotten it altogether. It is said in our shastras: '*Paradareshu Matrivat.*' You should look upon another man's wife as a mother, but when I have the prospect of marrying that girl, after divorce, why should I look upon her as mother? If you can look upon a married wife as a mother, then, how can I, after divorce, go and marry her? This is the question that I put to the hon. Minister. Has he thrown out this idea altogether? '*Paradareshu*

Matrivati'. My contention is that my hon. friend—and all Hindus know this: that verses were chanted in his house and we went to listen: *Sankirtans* were sung in praise of Hindu religion. He is destroying the whole fabric of Hindu religion by bringing those persons, whom we should look upon as mothers, to the matrimonial market again. Has he not done a great disservice to the Hindu religion by having this amendment in the Special Marriage Bill?

Babu Ramnarayan Singh (Hazari-bagh West): No.

Shri R. K. Chaudhuri: My friend, Shri Ramnarayan Singh is already in the film world. His pictures have appeared and he is naturally contaminated.

So, I was saying that you should not do anything which might throw mud unnecessarily on Hindu religion itself. The acid test of monogamy is divorce. Hindu shastras say and Christian edicts say that there should be only one wife for a man throughout his life, not merely one wife for a period of life but one wife throughout his life. That is monogamy which is taught by the Christian religion. That is monogamy which is taught by Hindu religion. A Hindu says that even after death, the husband and wife will meet in heaven. So, the acid test of monogamy will be: are you prepared to have divorce or not? If a man who has four wives is a sinner, then, is it monogamy if a man, who is allowed to have divorce, may have a dozen wives in his lifetime? Is it monogamy to have a dozen wives or is it monogamy to wait for the death of his beloved wife and to marry immediately after? Monogamy should have been decided upon the acid test whether you are changing your wife either by divorce or by death, or whether you are sticking to one wife throughout your life. That is the sort of monogamy I want. I would advocate that sort of monogamy. But as between the

two, who is correct? That is, between the man who takes the responsibility of any girl whom he is spoiling and lives a married life with her, and the man who is having 16 mistresses under this law which is now being considered by the House, as put before the House by the hon. Law Minister, which is the one you want? You can have only one wife, but there is no bar to have 16 mistresses and yet remain a law-abiding citizen! If by chance, because the first wife did not have any male child or because on account of the illness of the wife, you have a second wife, then you are immoral. This is the kind of marriage which the hon. Minister has placed before us. If you do not get a child by the first wife, you are quite at liberty to divorce her and marry again. If your first wife develops an incurable disease of which he is...

Mr. Deputy-Speaker: It is addressed to me!

Shri R. K. Chaudhuri: You will excuse me. When the Chair is occupied by somebody else, then he or she may not like my saying so!

Mr. Deputy-Speaker: Hon. Member may say, "if the first wife..." whosoever it might be, but not my first wife!

Shri R. K. Chaudhuri: I am very sorry that the House is treating me very lightly.

Mr. Deputy-Speaker: No. The hon. Member is very serious.

Shri R. K. Chaudhuri: As between the two, monogamy is what you want to insist upon. Monogamy is zealous of morality. Now look at the views of Shri B. Das. I shall give the views through his spectacles. What I say is: which is the basis of morality that has to be considered? Judging by the basis of morality, I submit that there should not be any divorce on the basis of morality. Let us follow the Christian, Catholic method. Let us have monogamy, but do not

have divorce. I think most of my friends will not agree.

Mr. Deputy-Speaker: The hon. Member seems to have converted. Why does he anticipate their opinion?

Shri R. K. Chaudhuri: Let us all follow the Catholic method. If you want to have divorce, let us have monogamy. That is what I will say.

Shri D. C. Sharma (Hoshiarpur): What is that kind of monogamy which allows you to have 16 mistresses?

Shri R. K. Chaudhuri: My friend is a very cruel man. He wanted to introduce a legislation in this House that after a certain age, 40 or 45, no man can marry again. That is his legislation. That is peculiar.

Well, this is the overall picture. How can our girls wait till 21 years? If, in the meantime some sort of accident happens, what happens? I think the Deputy Minister of Health has proclaimed that there should be no objection to the use of birth control methods. That is the society in which we are living. After the marriage by mutual consent you have divorce with mutual consent without any restriction at all. After that, waiting for a year and then re-marriage. In this matter of waiting for one year before re-marriage, I have the most serious objection. Usually, this law is meant for the benefit of the women who are persecuted and who are coming with applications for divorce. Most of the women in that position are women with no property in their possession. When they present these petitions for divorce, the cost or expenses of the petition are found by the prospective husband. He is in the offing there. Will that man wait for one year before he can marry that woman. He may not wait. When the expenses for the divorce proceedings are given by that man, he may not be waiting for one year. If you want to confer the benefit on the woman, let her have the second marriage as soon as possible. Leave the society free; do not

[Shri R. K. Chaudhuri]

allow a number of persons to hunt after her; let her immediately marry the person who is waiting for her and who has been bearing the costs of the divorce. This period should, therefore, be limited to three months. This is the period of limitation under the Muslim law; he has to wait for three *muddats*. Let us have three months so that the man who is expecting her, the villain of the piece may get what he wants quickly. Otherwise, he may also change his mind. Another girl may come in his view and he may change his mind. Therefore, I say that this one year should be changed to three months as it is in the Muslim law.

There is another question which I would like to ask the hon. Minister. Who wants this divorce law in India? Do the Muslims want it? They have already got it. Do the Hindus want it? Except possibly 905 per cent. of the population of India, the Hindus do not want divorce. Who wants it then? Would the hon. Minister advocate divorce amongst his relations? For whom is this law intended? For whom are we going to suffer all this sacrifice which this law will bring about. It is said that the law is being promulgated for the benefit of a large number of people. Is this going to benefit a large number of people at all? If you want, why not go a step further and introduce the Gretna Green match? The hon. Minister knows all about it.

Shri Syammandan Sahaya: The hon. Minister may know that but we do not know.

Shri R. K. Chaudhuri: Gretna Green is a certain place. If you go there and live as husband and wife for a night, the marriage is complete. That is a place somewhere near the borders of Scotland.

An Hon. Member: Muta marriage?

Shri R. K. Chaudhuri: No. Why not introduce this match? Why

should he follow the usual course? It extends to all territories except Jammu and Kashmir. Why except Jammu and Kashmir? If any place in India is as beautiful as Gretna Green, it is Kashmir. Why should we exclude Kashmir from the operation of this Bill? That is an ideal place for marriage.

Shri C. D. Pande (Naini Tal Distt. cum Almora Distt.—South West cum Bareilly Distt.—North): Kamarup or Kamakhya is better.

Mr. Deputy-Speaker: For marriage let them go there; who prevents it?

Shri R. K. Chaudhuri: That is an ideal place for marriage. The atmosphere of Kashmir brings about the marriage of even persons who were hitherto determined not to marry. My hon. friend Mr. Gidwani is not here. I would have asked him.....

Shri Syammandan Sahaya: He is here very attentively listening to you.

Shri R. K. Chaudhuri: After the latest pronouncement of the hon. President, I would have advised him to proceed to Kashmir immediately....

Mr. Deputy-Speaker: Let us not pursue this matter in Kashmir. It is more in the minds of the couple—whether it is Kashmir or some other place. The hon. Member has taken sufficient time.

Shri R. K. Chaudhuri: So far as the nullity of the marriage is concerned, I want to ask this question of the hon. Minister. Under clause 24 of the Bill,

“Any marriage solemnized under this Act shall be null and void and may be so declared by a decree of nullity if,—

(i) any of the conditions specified in clauses (a) (b) (c) and (d) of section 4 has not been fulfilled;”

Under those conditions comes the nullity of marriage on the ground of

prohibited degrees. I submit that when the man and the woman both know that they are within the prohibited degrees of relationship and make a declaration that there is no prohibited degree, why should you allow that marriage to be declared null and void after a certain number of years? I asked the hon. Minister whether there is any time limit for that. My hon. friend said that there is no limit prescribed for that. Am I right? Then, I would draw his attention to this clause—33(d)—where it is said—

“there has not been any unnecessary or improper delay in instituting the proceeding;”

What does that mean? That means that there should be some sort of period of limitation. If the principle is that there should be some sort of limitation of time, why don't you prescribe openly some period of time and say that after so many years no marriage would be declared null and void. I submit that parties, with their eyes open, knowing the fact of the prohibited degree of relationship have entered into the marriage. Why should it be declared, say after 20 years or 10 years or 15 years, null and void? You should put a limitation and should not leave it to the discretion of the court to find out whether there has been any unnecessary or improper delay.

Mr. Deputy-Speaker: There are many others who want to participate in the debate. The hon. Member has taken nearly half an hour.

Shri R. K. Chaudhuri: Am I to stop here, Sir?

Mr. Deputy-Speaker: He may reserve his further arguments to the clausewise discussion. I do not want to prevent the hon. Member from speaking.

Dr. Jaisoorya (Medak): There are others who have not spoken on this at all.

Shri R. K. Chaudhuri: I have one or two suggestions to make.

Mr. Deputy-Speaker: All that can stand over for the clauses.

Shri R. K. Chaudhuri: Sir, there is a mention of collusion. When you are allowing a consent divorce, what is the idea of having a collusion? You are saying that both parties may consent to a divorce; at the same time, you say that they must state in the petition that there is no collusion between the two.

There are many other things that I want to say. I will say them later.

Thank you, Sir, for having given me this opportunity.

Shrimati Jayashri (Bombay—Suburban): Sir, in my opinion the Bill does not go against the guarantee of fundamental rights incorporated in the Constitution because it does not seek to enforce its provisions on any one who does not want to act according to this law. It is a permissive measure. At the same time, it is in consonance with the provisions laid down in the Constitution. Clause 44 of the Constitution says that the State shall endeavour to create a uniform civil code for the entire nation. A uniform law is the idea. It should be achieved, as far as possible, on the basis of the accepted general principles of social reform, concerning the law of marriage. As the Bill is meant to revise the Act of 1872—including some new clauses with a view to make it more useful and beneficial—it will be wise to revise the same very carefully.

Mr. Deputy-Speaker: The hon. Member will kindly come to the front seat. The reporters have not been able to take down her speech so far.

Shrimati Jayashri: I would say that as the Bill is meant to revise the Act of 1872, by including the various new clauses with a view to make it more useful and beneficial, it will be wise to revise the same very carefully and cautiously, and make this new Act as self-sufficient as possible and without giving room for any discrepancies. Only just now

[Shrimati Jayashri]

we heard Shri Rohini Kumar Chaudhuri, and others also, treating marriage very cheaply and speaking very lightly of it.

Shri R. K. Chaudhuri: I have suffered enough tyranny at the hands of women in my life.

Shrimati Jayashri: Today, the forms of marriage differ in India according to the various personal laws. From the rational point of view, I should say that marriage is a voluntary association of two individuals attached to it. It is the duty of the State to protect its rights and enforce its obligations. Marriage, therefore, must be a civil contract, as far as the State is concerned. On this ground, I would say that the few desirable things which are introduced in this new Act are extra territorial application, the raising of the age of marriage, or the age of consent for girls....

Pandit Thakur Das Bhargava: There is no mention of the age of consent in the Bill.

Shrimati Jayashri: It is the age of marriage. I would also say that this age should be kept according to the old Act, in which 18 was the marriageable age. This is, really speaking, following section 3 of the Indian Majority Act, and I would request that the age should be kept at 18 and not raised to 21, because in our country, and also in foreign countries, even for the special marriage, they have kept it at 16. In England they have kept it at 16. I would suggest that 18 is a quite reasonable age for girls in the Bill and it should not be raised to 21.

The other important change made in the Bill is in regard to the registration of marriage already solemnized. I think we should restrict this clause to those marriages which have already taken place in the past. It should not apply to future marriages,

because otherwise it will create confusion. As Shri Rohini Kumar Chaudhuri also pointed out, you are contradicting yourself. In clause 4 you are laying down some prohibited relationships, and in clause 15 again you say that, according to usage and custom, marriages will be allowed. There will be contradictions and confusion will be created, and so I would appeal to the hon. Law Minister to find out some solution by which this clause can be applied only to those marriages which have already taken place in the past, and for the future, we should restrict it and say that they should be governed by the present Act. Clause 15 should not apply to those marriages which take place in future. I know that many people, especially young people, would like to take advantage of this registration, because as you all know, in the Hindu Law, especially the women have got many disabilities and they would rather be governed by the Indian Succession Act and would prefer that their marriages should be registered. So, it is a benefit to them, and I am sure that women will welcome this clause, but as I said, some change should be made in this also.

Coming to clause 22 regarding restitution of conjugal rights, as most Members have pointed out already, I would like to appeal to the Minister to do away with this clause. It is a remedy which does not agree with our present civilisation. I would give an example. Our leader, the Prime Minister, mentioned about a case the other day, in which a marriage was solemnized when the bride saw some water oozing from the hands of the bridegroom—he was suffering from some disease—and so she was shocked and she asked her father not to let her go with him, but, according to the Hindu Law, the bridegroom filed a suit against the girl. I would ask the Members here, who are fathers, whether they would like to send their daughters to such a husband and whether they would approve of this barbarous law on our statute books.

Mr. Deputy-Speaker: Oozing of water is one of the grounds for divorce?

Shrimati Jayashri: In regard to judicial separation, I have sent in an amendment that judicial separation can be obtained on the ground of desertion. If we do away with this clause, then on the ground of desertion for two years, judicial separation can be given and I have sent in an amendment to that also.

Then, coming to the chapter on divorce, I would say that sub-clause (j) of clause 27 should be removed. Yesterday we heard our revered leader, Acharya Kripalani, talking very lightly, I should say, about divorce and about women's desire for it. He said that women are clamouring for it. I was surprised to hear it. Why should women clamour for a thing, by which they know they will be turned out of their houses, that is, if this divorce is given to them? Looking at society as we find today, what do we find? Women are not asking for divorce for the sake of justice being done to them. Women are asking for disabilities to be removed. What do we find in our own society at present? Women are treated like *chappals*—in fact, a pair of *chappals* are treated much better than our women are treated.

Mr. Deputy-Speaker: This is an extreme view.

Shrimati Jayashri: It is all very well for Kripalaniji to say that women are better halves. He says so because he has got such a nice and good wife and he himself is a gentleman, but how many such people there are in this country? Millions of women are suffering from these disabilities. We find so many women going to houses of ill fame. What for? Why should they go there? Do they want to leave their family and children? I was informed by Raj Mata that hundreds of girls are sold in Tehri-Garhwal. Are women to be treated like chattels and commodities to be sold in markets?

Shri C. D. Pande: But there is free divorce there.

Shrimati Jayashri: I am not talking about divorce. I am talking about the disabilities under which hundreds of women are suffering. If we have an ideal society, I should say that women will be the last persons to ask for divorce. We want a happy house; we want a happy family; we are not clamouring for divorce as some of the hon. Members were saying yesterday. I know what will happen if this Bill is passed. Women will suffer, because men will find out so many ways by which to throw away their wives. But that is not the way to solve this problem. We should find out what will be the nature of the society under which there will be no divorce. Why should we have such a clause here, if the society is ideal, as we envisage it to be? But I would ask hon. Members whether our present society is such an ideal one.

Mr. Deputy-Speaker: But since monogamy is introduced the husband can not take another wife.

Shrimati Jayashri: But we want protection for women. That is the reason why this clause is kept here. To protect the women there should be monogamy. If the monogamy clause is broken, I think women have no other way than to go to court and ask for divorce, and if by that they can be given some alimony, they can live in peace and harmony.

Sir, I would just mention for the sake of Members some cases of divorce in Baroda State. The divorce Law was there since 1939. They have given instances for which women had gone to courts. What are these? They are cruelty, desertion and cruelty, desertion by husband, cruelty and habitual drunkenness by husband, and impotence. If we lay down these particular grounds, and only to these we restrict people seeking divorce, I do not see any harm in agreeing to this clause.

At present, I am not in favour of this new clause added regarding mutual consent. I feel that our people

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are not sufficiently educated yet to understand, and, perhaps, the women themselves will suffer because men might force them to consent. That is my fear. I would request hon. Members to go slow and not to have this new clause introduced in this Bill and to restrict it only to the grounds which are given in the original Bill.

In regard to alimony and maintenance sub-clause (3) of clause 36 reads:

"If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, it shall rescind the order."

This provision is very vague. The wife might be innocently going to a cinema or a restaurant with another man and it might be said that she is not leading a chaste life. I would request that this clause should be made very clear. With this object in view I have given notice of an amendment, which I am sure the House will accept. Otherwise, I am afraid it will do harm to women.

With regard to children, I am glad that sufficient guarantee is given for the safeguard of children. Yesterday I was sorry to hear Mr. Tek Chand saying that they should not be given rights in the property of their father. But it is not the fault of the child that the child is born. The State should guarantee to look after the child if the father does not. I am, therefore, glad that this clause is here, because it will safeguard the interest of the child whether in marriage or out of marriage.

The last point I would like to mention is that as the Bill is going to be applied outside India, lest this might be mixed up with other special Acts, we should name it as the "Indian Special Marriage Act" instead of "the Special Marriage Act".

Mr. Deputy-Speaker: Shri Lakshmayya.

I shall call one Member from this side and one from the other.

Shri C. D. Pande: On this Bill the side should be calculated by the opinions held.

Mr. Deputy-Speaker: How am I to find it out?

Pandit Thakur Das Bhargava: Those people who have not spoken on any of these Bills, should get some preference.

Shri Lakshmayya (Anantapur): Sir, I thank you for the opportunity given to me to participate in the discussion of this Bill. I was amazed at the statement made by the previous speaker, the lady Member, that women are being treated as chattels. We are all aware how the most influential of the people and the richest of the zamindars who behave like tigers outside conduct themselves like lambs in their houses. The women, according to Hindu conception are called 'grihalakshmis', goddesses of the house. You would have heard of the proverb: "Intlo Egalapuli, Bayita Pedda puli" Though we are considered to be big tigers outside, we have been reduced to the position today that we are being called as hen-pecked. Still women are clamouring and shouting. I am in favour of their plea if they fight for their rights to properties because I feel that it will increase their status, their position in the house etc. Even with regard to family matters, if they want the extraordinary and uncommon rights like divorce—and all this, I am afraid how far this will go.

I would congratulate the hon. Law Minister for bringing these two important Bills relating to marriages. In a sense, marriages are related not only to the persons concerned but to the society and the nation as a whole. The institution of marriage, as you said last time, is a human institution. It keeps the moral world in being and secures it from untimely dissolution. That is one thing.

As a personal affair, marriage with a good woman is a harbour in the tempest of life whereas marriage with a bad one is a tempest in the harbour. Therefore, from the beginning woman has been held in high esteem and a wife is considered to be a casket of jewels and a gem of many virtues. She has been shown high respect. I agree it should be so: because she will be the mother of future citizens. Of course, in some parts of villages, it may not be so. That does not mean they are treated like—chattels all over the country.

While considering the Bills relating to marriage, you must consider them very carefully and proceed very cautiously because an uncertain marriage law is a national calamity. Therefore, since it would affect the society and the nation if bad law is enacted the law relating to marriage should be stable and sound. We must take the opinion of all the people into consideration and then codify the law in as best a manner as possible for the benefit of the nation. Our nation is really a progressive nation and we want progressive measures. This is one such measure and this is why I want to congratulate the hon. Minister. I welcome it with all the defects and drawbacks in it. But these can be amended and rectified by some alterations here and there after eliciting the opinion of the hon. Members and some experienced people. That is a different thing.

This Bill has got certain general features. Monogamy and divorce are the two such features. I might say that this is not a new law altogether. The only thing is that it relates to people of all religions irrespective of caste, community and religion. That is one excellent feature in this Bill. Let it be so when the society is progressive. From the olden days our society was not static but it was dynamic. We had a number of forms of marriages probably eight viz. (1) Brahma, (2) Daiva, (3) Arsha, (4) Prajapatya, (5) Asura, (6) Gandharva, (7) Rakshasa, (8), Paisacha. Besides

these, there were customary marriages. I do not want to explain these because I have no time now. Further, the hon. Members are aware of these. Our society was not backward because it has recognised even the ten types of children as follows:

Kunda, Kaneena, Krithaka, Sahodaja, Golaka, Kreetha, Datta, Swayam-praptha etc.

10 A. M.

Karna was the son of a maid (unmarried woman). He is called *Kaneena*, Pandavas are considered to be '*Kundas*', Kauravas are said to be '*Golakas*'. That means we are not teaching a new law to our society. According to the social conditions, our people of ancient days—seers and sages—had adjusted the society according to prevailing conditions. But the question is how far we should go.

The Bill, as it is, provides for special forms of marriages and I think a number of highly educated and socially advanced people might rather choose these. There is another Bill for the Hindus—that is the Hindu Marriage Bill. With several advantages and easy forms, the disadvantage is also there. The sweet things will generally carry the germs of disease along them. It would affect inheritance, succession, severance from the joint family, etc.

Another thing is that it has provided for divorce. I am not for divorce. Our Hindu society, from the very beginning is quite advanced and it has provided for divorce in certain special circumstances. I feel that divorce should not be encouraged by making all sorts of unwise provisions. In section 27, you will see that a divorce petition can be presented for committing adultery. Can a husband go to court and make an allegation against his wife saying 'my wife has committed adultery' or 'she is suffering from leprosy or some venereal disease'? Is it decent? These are, to my mind, most reprehensible and repugnant. We have never heard of

[Shri Lakshmayya]

that in our society. Now they have to come into the court. If at all they want to separate and they are enamoured of a divorce, let it be by mutual consent. Let this clause be deleted. They can attend the court and say—'We want to separate; please permit us'. They can as well plead before the court if they want divorce. The court must grant some time for reconsideration—six months or one year—so that they may be given a chance for re-union or reconciliation. After that chance is given and if they had not taken advantage of this, then they can separate. Why are these eleven points enumerated here one after another as grounds for divorce? Why should we expose ourselves to the other countries by making all these wild allegations? Though it has come in the old Act, very few had taken advantage of it. Why should we make it so easy and enforce it? When monogamy is there, this is unnecessary, as you said last time. Why do ladies want that we should observe strict monogamy? Why should they insist on divorce, when monogamy is observed? Our Rama was an ideal monogamist. You will find in Ramayana that, when he was asked to marry again for performing *Asvamedha*, since widower should not, according to our scriptures, perform it, he said 'No; I do not want to do so.' He did not re-marry in spite of endless arguments. He said 'I will stick to my principle whether I do this *Asvamedha* or not'. To remove this difficulty, a golden image of Sita was made and was put by his side and he performed the *Asvamedha*. That shows how closely we followed monogamy. When monogamy is provided in the Bill, why should there be a divorce? What would be the fate of that fellow—the monogamist? when his wife deserts him he has to live in wilderness.

But there is one thing. It has got two sides. We want that our wives should be, like Sita, perfect women but we do not want to be like Rama, that is the difficulty. That is the reason

why our lady Members are pressing for divorce and such other safeguards. Once monogamy is provided in the Bill and is strictly followed it is unnecessary that the divorce clause should be there. If at all it is approved by the majority of the House and the Law Minister is very much persistent that it should be there, let them go to the court, let them have a chance and after one year or six months they may be divorced. Let it not be by filing a petition on those grounds and making wild allegations.

Coming to the clauses, in clause 4 with regard to the age I endorse the view of many hon. Members here that the age-limit for the girl should be reduced to eighteen, of course with the consent of the father or the *de jure* guardian.

With regard to clause 7 which deals with objection to marriage I fail to understand how *any person* is given a right to file an objection in court. When we have made marriage under the Bill very easy for the new youths who are fashionable, highly educated, highly advanced to go in for the girls of other castes or communities, why should we put an obstacle in the way and why should any man be entitled to come and file an objection? I can understand if the father or the mother or the brother or uterine brother comes forward and file an objection. But why should a third person come and file an objection? Some restraint must be there. Otherwise blackmailers and mischievous persons will take advantage of it just to threaten the person or extract money. Of course the penal clause is there. But meanwhile he will try his best to extract money. When people are given a free choice, why should we place any obstacle in their way? If at all the hon. Minister or this august House wants that the words "any person" should be there, it may be provided that the objector, who is a third person, unconcerned with the marriage should deposit a reasonable

amount in the Court, say, a thousand rupees or five hundred or even two hundred, similar to the provision contained in the Sarda Act or in the Bigamous Marriages Act of Madras. He can then file an objection and the matter can be proceeded with by the court. That is my humble view with regard to clause 7.

With regard to clause 6, sub-clause (2) says that the Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office. This is not enough. It should be published in a widely circulated paper. That is absolutely necessary for wide publication. Then the parents who may be far away will come to know, or those that are interested will come to know and will file the objection. It is not enough for this purpose if the notice is "affixed to some conspicuous place in the office of the Marriage Officer".

Then with regard to severance from the joint family, of course youths foolishly or wisely go in for a girl and marry under this Act. But the mere marrying of a girl under this Act should not result in his severance from the joint family. I am referring to clause 19. If his brothers or the other members of the joint family insist upon it, let the severance take place. But why should this Act enforce such severance on that person? If his brothers or other members of the joint family desire, let him continue as a member of the joint family.

These are my humble suggestions for the present. I hope I will have a chance to speak at the time of the amendments because I have tabled some amendments. Then I will express my views fully. Sir, I have done.

श्रीहर ठाकुर दास भार्गव : जनाब डिप्टी स्पीकर साहब मैं आप का बड़ा मशकूर हूँ कि आप ने मुझ इस बकरी मामले में बोलने का मौका दिया ।

Shri Venkataraman (Tanjore): We shall be grateful if he speaks in English.

श्री बी० एल० बरूवाल (गंगानगर-इंजिन-रहित-अनुसूचित जातियाँ) : श्रीमान् जी, कल जब पीठित ठाकुर दास भार्गव चंवर पर विराजमान थे तो उन्होंने मुझ से वादा किया था कि मुझ को कल बोलने का मौका मिलेगा। परन्तु आज मुझ समय न दे कर स्वयम् बीक में बोल रहे हैं। यह क्या मेरे साथ अन्याय नहीं है ?

Pandit Thakur Das Bhargava: To the hon. gentleman who is objecting I said yesterday that he will be given an opportunity as he is one of those who has not spoken so far in the session.

Mr. Deputy-Speaker: Why did he not get up yesterday?

Pandit Thakur Das Bhargava: He said he sent a chit yesterday. I did not know. He is reminding me that I should not speak and that I should give place to him. I would like him to bear in mind that he and I are in the same boat at the present moment and that the whole thing is in the hands of the Deputy-Speaker and not in my hands.

Mr. Deputy-Speaker: I have been sitting here for a long time and I wanted the hon. Member to come here and take the Chair. I therefore called upon him so that he may speak before he comes here and calls upon other hon. Members.

Shri K. K. Basu (Diamond Harbour): Merely because he has to relieve the Chair the hon. Member should not get an opportunity!

Mr. Deputy-Speaker: He gets it by his own right.

Pandit Thakur Das Bhargava: I have not spoken on any of the Marriage Bills. I fall under the category mentioned by you, that is of those who have not spoken on any of the Marriage Bills. And if my friend comes to know that I have devoted something like sixty hours to the study of this Bill alone, he will not grudge me this opportunity.

[Pandit Thakur Das Bhargava]

I was submitting that on a matter of this moment it is but right that Members should be allowed to express themselves fully. In 1949 I brought in a Bill and you, Sir, were presiding then, and you will remember that a revolutionary Bill was then passed by the House, perhaps much more revolutionary than the Bill which we have got now. We owed that Bill to Shri Vithalbai Patel whose picture hangs here. And at that time, in 1949, I said when you were presiding that the Bill may be called 'the Patel Act'. That was certainly a revolutionary Act in the sense that since the Hindu community was exploited and brought under foreign domination it had ceased to have ventilation for itself, its laws were framed not by itself but by foreigners, and during the British regime we found that the position became so static that persons belonging to different communities were not allowed to marry each other. It so happened that in the Allahabad High Court a case was brought, and it was held that the marriage of a Kshatriya lady with a Brahman was not proper and was not a legitimate marriage. At that time, in 1921 or thereabouts, it was felt by Shri Vithalbai Patel that this was a very great wrong, and he brought in a Bill in this House, but he did not succeed then. And look at the times when I brought in the same Bill and you were presiding. It only took five minutes to pass that Bill, and thereby all the marriages between the various sections of the Hindu community, Buddhists and Jains and Sikhs were all declared valid and allowed in future. It was passed in five minutes. Because, the society wanted it. And today I again take this occasion of paying my tribute to Shri Vithalbai Patel who was the author of that Bill.

After that Act of 1949 nothing has happened so far which has taken away the authority or the validity of that Act. Today according to that law every marriage among Hindus, to whatever caste they may belong and

among Hindus, Buddhists and Sikhs and Jains is perfectly valid.

The lacuna today is that if a Hindu wants to marry any person not belonging to his faith, for instance, a Muslim or a Christian, or if a Christian or a Muslim wants to marry a Hindu girl, there is no law for that. That is the sole difficulty. That defect has not been solved. When the Britishers passed this Bill, that is, the Special Marriage Bill of 1872, the Hindu had to declare that he was not a Hindu and the Muslim had to declare that he was not a Muslim, and others had to make a similar declaration before their marriages could be solemnized. In 1923, when Dr. Gour piloted his Bill, an innovation was made. The House will be grieved to know that Dr. Gour was concerned to accept that innovation. Previously, if a Hindu or a Muslim or a Jain or a Sikh wanted to marry a girl who did not belong to his faith, he had to declare that he was not a Hindu or a Sikh or a Jain. You had to forswear your religion practically. In 1923, you had not to forswear your religion. Because, in 1923, it was enacted that Hindus, Sikhs, Buddhists and Jains could marry among themselves and still retain their religion and need not take a false oath. At the same time, such conditions were imposed on that marriage that in practice, he was no longer a Hindu. He had to say that his right of adoption could not continue. He had to leave his connection with the Joint Hindu family and his succession was to be governed by the Indian Succession Act. Dr. Gour would never have accepted them. He was so cornered that either he had to accept them or his Bill would not be allowed to be passed. So he had to accept these conditions and he succumbed to the temptation of getting his Bill enacted in however objectionable a form.

Now, the position is this. I want that if any Hindu or any Muslim or

a Sikh or a Jain or any other person wants to marry a girl who does not belong to his faith, the Hindu will be able to say that he is a Hindu, the girl will be able to say that she is a Muslim or a Christian or that she belongs to any particular faith and they will marry and in practice also, they will remain Hindu, Muslim etc. after marriage. I want that the impositions made in 1923 should be revoked.

Mr. Deputy-Speaker: What is the religion of the child?

Pandit Thakur Das Bhargava: Let us first settle the religion of the parties and we shall come to the child later. The child is a subsequent affair.

Shri Gadgil: The child is the father of the man.

Pandit Thakur Das Bhargava: So far as this Bill is concerned, it has been misconceived. No proper approach has been made. The proper perspective is not there. It has not been visualised or framed from the right angle or proper view. Even now some of the old conditions, which Dr. Gour had to accept, which were imposed on those persons, who though, they had not to forswear their religion, had to accept, which were onerous and which no hon. Member should accept, are there. Not only that. There is section 15 of this Bill which gives a sort of preference to the marriages which would be solemnized under this Bill. I do not want that. I do not want that any marriage solemnized under this Act should condemn all the sacramental marriages or all the Hindu marriages or Muslim marriages or Christian marriages. Therefore, I am very much opposed to registration of such marriages under this Bill as are valid today. I shall give the reasons subsequently. My main complaint is that the Government have not been fully alive to the situation. During the last seven years, Government have been preoccupied with other matters. But, these vital matters which go to the root have been ignored by this Government. I have been crying hoarse in this House. My voice is feeble and it has not been heard.

We should have a Ministry for social reforms. We should have a Ministry for the nation-building departments. These matters are very very important. It is not that I am condemning the hon. Law Minister. I have read his speeches in the Council of States in this matter and I have heard his speeches here in this House. I do believe that the hon. Law Minister brings to this subject a mind which is full of social reform ideas. At the same time, it is entirely different from that of a Social Reform Minister. If a Social Reform Minister had piloted this Bill, he would have seen that all these things, which are required for bringing about uniformity in this country, for strengthening this country, for bringing about the solidarity of this country, are not ignored. What do we find in the Bill? What do we find in the policy of the Government? During all these seven years, I have not seen the slightest attempt made by this Government, to encourage inter-caste marriages what to speak of bringing about such marriages. I hold that inter-caste marriages, inter-provincial marriages, are the greatest props on which you can build a strong nation. I do hold that if in the Punjab 2 or 3 lakhs of marriages could be brought about between Hindus and Sikhs, who do inter-marry, all these questions of Punjab, between Hindus and Sikhs would have been matters of the past. Similarly, I hold that even in olden India, if we had our own way, we would have allowed inter marriages and there would have been no difficulty. So far as the Hindu community is concerned, it has got a capacity to absorb all other religions. So far, so many nations with so many religions have come to India and they have all been absorbed by Hinduism. I have no doubt in my mind that if proper steps had been taken by the old Government, this Pakistan would not have come into existence. During these seven years, what attempts have been made by this Government to uproot wrong customs and to introduce inter-caste marriages? Nothing has been done. If this Bill had been brought from that

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standpoint, my humble submission is that we would have got nearer our goal as envisaged in article 44 of the Constitution. In that article, we have put our dream into words. It says:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

I should have thought that at least when the Special Marriage Bill was brought, it would be such as would be acceptable to the all sections of the House and that there will be no diversity in the provisions of this Bill and the provisions of the laws which govern the Hindus, Muslims, Christians, etc. Suppose 21 is regarded as the age, can this apply to the whole of India? I think, not. Suppose the Indian Succession Act is made applicable to persons marrying under this Bill, would all the Hindus accept the Indian Succession Act? Similarly, there are many other provisions. Between the Hindu Marriage and Divorce Bill and this Bill, there is a lot of difference. On the question of divorce, we have got conditions which apply there, but do not apply here; and *vice versa*. May I humbly ask: are we going in for a common civil code. This Bill may apply to 3000 or 4000 or more people? Will this be the code which will be acceptable to 30 crores of Hindus? If you want reform, if you are after a common civil code, you must see that the code that governs 30 crores of people has got all these desirable things enacted into it which may ultimately form the basis of the common civil code. Otherwise, there is no chance of our getting any nearer the uniform code.

What I was submitting is this. The other Act, this Act of 1949 was passed in five minutes. This Bill which applies to a much smaller number of people should not have taken more than half an hour in this House. If this Bill were as a matter of fact confined only to those persons who belonged to different religions who wanted to marry, it would not have taken much time. But, the background is different.

The background is this. Since many years, Hindus having advanced views, and even those who have no advanced views, are chafing under conditions which are unnatural. It is quite right that not only ladies in this country, but many men also want that more ventilation should come into the Hindu law.

It was, therefore, that the Hindu Code Bill was brought in this House and debated for a long time. Now, the real question at issue, why we want more days, why everybody wants to speak, is that the question of divorce, monogamy and many other allied questions which really applied to the other Bill also crop up here and are being debated here. May I humbly submit one point before I proceed further and thus intensify my complaint against the Government in this matter? It is this. If the hon. the Law Minister was allowed to have his own way and he wanted to bring in a Bill of this nature and had brought it as a Minister for social reform, I would have been very happy. I am very glad that the hon. the Law Minister said in this House on the last day when the other Bill was on the anvil:

"It is about economic independence. So far as Government are concerned, economic independence not merely for men but also for women is their objective. There is no doubt about it. So far as women are concerned, most of the speakers who have spoken about it think that economic independence is obtained if the daughter shares in the family inheritance. That will not do. One of the speakers pointed out that in connection with marriage the economic independence which is desired is this: the wife must come to share with the husband the husband's property. I would also say that the husband should share the property of the woman, that is, wife. Both should share the property. It is no use talking that women are the slaves of men in some places and in other places the men are the slaves of women. These

exaggerated statements carry us nowhere. So we have got to take the picture as it is, with all its bright spots and with all its dark spots and try to change the outline of the picture in such a way as will conform to our accepted notions of what is right."

Then, Sir, I intervened and said as follows:

"May I know whether efforts will be made to give practical shape to the views which the hon. Minister has given—that the husband and wife should share together the property?"

Then Shri Biswas said:

"That is my view. In fact, I was wondering if I should not have a general law which will apply not merely to Hindus but to all, and whether there should be a marriage where there is equal distribution of property between the partners. That is in my mind. I have been thinking about it."

Now, Sir, he will go on thinking about it without acting up to it. When both Bills are before the legislature, he has not put in this very thing which was uppermost in his mind and which will settle all questions between man and woman in this country. Because he is the Law Minister, the Bill goes before him and as a Law Minister he goes into the law and he cannot inject his own social reform views into this Bill. My humble submission is this. This is a constructive suggestion which I made long ago in this House when the Hindu Code Bill was being discussed and I am submitting it now for the serious consideration of the whole House and the whole country. In my humble view, when persons unite themselves in their bodies, in their hearts and in their souls, they should be united in property also. By the very act of marriage, all the properties which the husband or the wife possessed should become joint and the earnings should be joint and they ought

to be shared jointly. If this is accepted, then the question of economic independence goes away. My humble submission is this: make any law in this country, make this divorce as easy as possible; yet the real question will never be solved. It is a question of economic independence.

I can understand it when Sitaji said:

मितं ददाति हि पिता मितं भ्राता मितं सुतः
अमितस्य दातारं तु भर्तारं का न पृथयत ॥

'Measured is the contribution made by father, brother or son. Who is there who will not worship the giver of what is unmeasurable.'

This has been the philosophy of Indians. Now, Sir, times have changed. If you want that there should be peace in this land, if you want that the ladies in this country should rise to the full stature of womanhood of which they are capable, if we want that better men should be born in India, we should see that the ladies get economic independence and become fully self-reliant. This is the angle from which I suggest marriage laws should be viewed. We should see that by the very act of marriage, the husband and the wife will become joint partners in the properties that they have. Subsequently, their earnings will be joint. Now, what would happen? We have heard so much about divorce in this House and we are hearing it outside also. In a divorce, in my humble view, in India, it is the woman who suffers, not the man. I cannot understand why it should be said that ladies want divorce. As a matter of fact, ladies are contending against the tyranny of divorce. No lady wants to go away from her husband, her children and her home. It will be merely a house if no lady is there. If the lady is there, it will be a home. Therefore, I submit that so far as ladies are concerned, I cannot think that they should be in favour of divorce if they consult their own interests.

[Pandit Thakur Das Bhargava]

I belong to a very orthodox section of the Indian community. About thirty or more years ago, we passed a resolution in our brotherhood that widows shall be allowed to marry. Though the Widow Remarriage Act existed from 1850, it had no effect whatever and no widow ever married. We allowed it and so far there has been only one or two marriages. Even if you allow divorce, I do not think many divorces will take place. I have got no fear in this matter. I want to submit: why should conditions be allowed to develop in such a manner that there will be many divorces? If the man becomes a joint owner with the woman from the very start, and then they begin to earn wealth, jointly, there is no difficulty. This is not a question of inheritance to which I will come subsequently. This is a question that to start with when a person marries, he and his wife become co-sharers. Now, this suggestion was made by me in 1949. Subsequently it was accepted by very eminent men like Dr. Pattabhi Sitaramayya, Bakshi Tek Chand and many others. I do not take the credit of being the author of this suggestion. In fact, I should not have said that in your face; it was you who in a casual talk remarked like this and I then took it up and did my very best to think about it and develop this point. My humble submission is that I make it most seriously for the consideration of the House, that if in these two Bills we make a provision like this, then we will have solved the entire problem. And we would have raised the stature of women. I cannot think that any woman can be happy when she is economically dependent on her husband or her son or her father or anybody else. The old theory of permanent dependence of women on male relations stands exploded today.

Mr. Deputy-Speaker: The hon. Member's suggestion seems to be that as soon as a man is married, he must give half the property to the wife, so much so that the husband will not

lightly do away with her; but if he divorces her, she will walk away with half the property.

Pandit Thakur Das Bhargava: Exactly. This is your own suggestion. You have only forgotten your own child. That is the difficulty.

My friend, Shri Algu Rai Shastri is not here. When I mentioned it to him, he told me that in the *Sapta Padi* which Hindus observe at the time of marriage the recitation of the first *padi* is like this: 'Let us both begin to arrange for the materials of existence' and in other *padis*.....

Mr. Deputy-Speaker: It is *Isha*. It means 'Let me maintain you. For that take the first step'.

Pandit Thakur Das Bhargava: Similarly, when you look into the others, it will appear that marriage is concerned as a companionship for earning wealth, for producing children and for bringing prosperity to the family and the nation at large. That was the ideal of marriage and that ideal of marriage has not been forgotten by any of us. I maintain that even now, in these days, the Indian home is not less happy than any other home in this world. (*Interruption*). I hold that even today the women in many families are really queens. Acharya Kripalani declared the truth almost in a joking way that husbands were henpecked.

Acharya Kripalani: I did not say it as a joke. I was very serious when I said it.

Pandit Thakur Das Bhargava: He says he said it seriously and I take he said it seriously. This is essentially true of any ordinary Indian home; the woman is the queen. I want to make her a queen not of *bemulk*; Raj but a real queen where she is herself also on a *terra firma*. It is true that Hindu society does not enjoy the provisions of divorce in her laws. At the same time, I know of many ladies who are in great difficulty. Sometime ago when the

Hindu Code Bill was being discussed here, some ladies came to me to canvass my support for their point of view of 'anti-Hindu' law. There were five of them; one was a young girl and the others were old married ladies. When they came to me, I told them: 'Why have you come to me? You know my views already'. They said: 'No, we want you to vote against the Hindu Code'. I said, all right let me examine the question with their help and further told them, that so far as the old ladies were concerned I would just note down the addresses of their husbands and would write to them that they should marry other ladies. I asked them whether they would wish me to do this and would they like to be bound by the replies of their husbands. In effect my question to these married ladies was: Do you want monogamy or not? All of them unanimously said: if monogamy is allowed under the Code, we are all for this Hindu Code.

There was another young lady, about 20 years or so in age. She was very beautiful, and was very educated, and when I asked about her, then those ladies around her told me that this lady is deserted by her husband, that she was not being looked after. Three or four years ago she was married and the husband has got another wife. Then I asked them, what solution they had for cases like this. They said: "It is unsoluble fate; what could they do". In truth there is not one daughter of mine like this. There are thousands and lakhs of such daughters who are in a similar situation. I did not tell them my solution of this problem. Ultimately they agreed with me that the real solution is that she should be allowed to have a divorce from the husband. When we come to these practical difficulties, we realise this. I am also bred up in the same traditions as my other hon. friends, and if I am in favour of divorce, I am in favour of divorce because I look to the realities. I also think,—if you look at the cherished ideals of this country,—that so far as marriage is concerned, it ought to be

indissoluble. Marriage should be a permanent union. And I should think that all the ladies who are sitting here—I am voicing their views—want the same thing that I want. But at the same time, we cannot shut our eyes to the actual realities of the case. A man marries a girl today, and after a week deserts her. What happens to the woman?

Mr. Deputy-Speaker: Cannot he marry another wife under this code?

Pandit Thakur Das Bhargava: When the Hindu Marriage and Divorce Bill is passed, I will then see what happens. So far as this Bill is concerned, I am making a serious proposal to this House. First of all, let us pass the other Bill, and then we shall come to this Bill. If, in the other Bill, we make provisions which are absolutely just, which are such as go beyond the provisions of this Special Marriage Bill, and where women get more rights than under that Bill, where is the question of registration? I do not want that so far as the Hindu Marriage and Divorce Bill is concerned, a woman should get less rights than she is getting here, and I am ready here and now to say that she will get more rights. We are thinking of the Indian Succession Act. I do not know how many Members of this House have read the Indian Succession Act, and how many of them do know what the provisions of that Act are. I may take more time **if I go through those provisions** and try to show that it is a wrong thing to be governed by the Indian Succession Act, so far as the Hindus are concerned, but so far as the Muslims and others are concerned. In fact my apprehension is that all the members do not know what the Indian Succession Act is.

Shri Gadgil: When the new Act comes into force, it will be all right and be on a par with the same provisions, but those who are already married according to Hindu rites, if they want to secure the advantage of monogamy, then, they must get registered.

Pandit Thakur Das Bhargava: Then it comes to the same question: polygamy will be taboo under the new Bill. Let us pass the other Bill earlier. That is the only question.

Shri Gadgil: Those who are married already—what about them?

Pandit Thakur Das Bhargava: Those who are validly married already have nothing to lose. If the Hindu Marriage and Divorce Bill is passed, it will apply to them, and give them full advantages of monogamy, divorce and succession. In regard to marriages which have already taken place and are invalid on account of the absence of a provision which we are now making under clause 4, they should all be validated. All those marriages which come under clause 4 of the old Act should be validated. I do not want that any child born of that marriage should be regarded as illegitimate. Mahatma Gandhi married his son with the daughter of Shri Rajagopalachari. They did not belong to the same caste. Swami Shraddananda gave all his daughters and sons outside his caste. Bhai Parmanand did the same. Thousands of others married this way. I include myself in this case: I got my boys married not among 'Bhargavas'. We knew the consequences; we also knew what we were doing was perfectly right. It was in the national interest what we were doing. At the same time, I know the marriages of all of them are all right now. Such marriages as took place between 1872 and today, or between 1923 and today and which are good according to the present section 4,—they should all be validated as all inter-caste marriages were validated by Act XXXVI of 1949. I have no doubt in my mind. In the old Hindu Code which Dr. Ambedkar placed in the House, at page 21, the only proposal was to validate certain kinds of marriages. There was no proposal for registration of the entire marriages which

are valid according to the Hindu Law. There was no proposal like this. The present one is a new proposal which is astounding. Therefore, I may submit that this Bill is misconceived; the approach is not right; it is entirely wrong. Those who are responsible for this Bill did not visualise the circumstances and the reality of the situation, because there is no social reform involved in it. They look at it from the pedantic point of view, and only from the legalistic point of view to which I object.

I want marriages to take place between the persons belonging to different religions. We ought not to run away from those marriages; we ought not to outcaste and ostracise those people. They are our own people and have married under the law of the land. We will just treat them as our own brethren. We are not going to have an atmosphere of hatred so far as they are concerned. This is the proper approach.

Shri Tek Chand was very eloquent when he was referring to certain procedural matters and rightly so. What is this: if a person belongs to Punjab, and he goes to Calcutta, Bombay or Madras and resides there for fourteen days and becomes entitled to solemnise a marriage there. This is really conspiracy of the law. He rightly put it in more emphatic terms.

Now, I have got no time to go minutely into the detailed provisions of the Bill, and I will not go through those particular provisions at great length, but still, at the same time, I will submit that so far as this section is concerned, which I was just touching upon,—section 10—it has not been properly looked at. Fourteen days are allowed, and then thirty days for finishing up, whether all the proceedings have been furnished or not. We are looking at this matter as if we should run away saying that "nobody likes it and nobody should be allowed to pry into it". This is a travesty of law. This is deceiving the law. It is

committing fraud upon law, to say that the objections will not be allowed or properly investigated.

Shri Venkataraman (Tanjore): Is it not the same thing as the existing law of 1872?

Pandit Thakur Das Bhargava: Then why did we pass the preamble of our Constitution? Why did we say, we shall have social justice in our Constitution? I want that there should be no hide and seek. I want the objections to be properly gone into and thoroughly investigated. Then, I will treat all persons married under the rural laws as equally respectable. I do not want that atmosphere to grow where a person should think that if a person marries under the present Bill he is doing something dishonourable or unjust.

I now come to a very important point. Yesterday, my friend was complaining that in a matter like this, the provisions contained in section 24 and 25 are not enough. I looked into those provisions. Mr. Venkataraman was raising the objection that no other person should be allowed to raise objections on the grounds which are mentioned in section 25 and it is only the husband or the wife who can complain and sue under that provision. I can understand that. When you look to the provisions of the Indian Penal Code—kidnapping, etc.,—if the girl is more than 18 years of age, really the gravamen of the offence is not there, and as a matter of fact, the complainants cannot pursue her. If a woman of 18 years wants to run away, there is no law which could restrain her from doing so. This is perfectly right, but I say that under section 25, any person can bring a petition of that nature. If it is true that all persons are given a right to make a petition for annulling the marriage or for a void and voidable marriage, if every person is allowed, this right is not restricted to the husband and wife. I fail to see that it can be a fair reply to the argument of my friend Shri Tek Chand when he says that so far as

Marriage Officers are concerned, they should also be given power to decide other matters. This, I should say, is a very difficult matter. I should think, for ordinary purposes, it is the parties to the contract that are interested in either annulling or performing it or taking the consequences. But, this is not a matter of that contractual type. It is a matter which relates to the society, which relates to the nation, which relates to everybody and, therefore, we have allowed the Marriage Officer to hear objections even from persons who are not parties to the contract. This is the reason why, in section 25, we have allowed other persons to pry into the private affairs of the couple. Either you restrict it there and only allow the husband and wife to bring petitions; or, if you think that it is a matter of great national importance, then the Marriage Officer should be allowed to go into all the questions and stop improper marriages. The question of fraud and coercion should be gone into at the instance of other people at this stage also, because after the mischief is done there is no use saying that this man made a mistake. It is a matter of vital importance to the girl and to the family and I should think that you should accept the principle that persons other than parties are also allowed to look into the matter or bring objections—they should be allowed to do so in both places. It is not fair that at one stage they are allowed and at the other stage they are not allowed by implication, though they are allowed by law.

I wish to make few more submissions, one about the age and the other about the prohibited degrees as also about joint family or Indian Succession Act. So far I have not touched the provisions of the Bill. I shall be very brief.

Mr. Deputy-Speaker: The hon. Member may have his chance when the clauses come.

Pandit Thakur Das Bhargava: I will only touch on the prohibited degrees, age, the effect on Hindu Undivided Family and the Indian Succession Act.

Mr. Deputy-Speaker: You can come to them later on when we take up the clauses.

Pandit Thakur Das Bhargava: If you think I have taken much time, I will stop.

Shri Jawaharlal Nehru: Sir, you were good enough to observe yesterday that it would be better if those Members who have not had much of a chance to speak during the session could have a chance on this occasion.

Mr. Deputy-Speaker: We have practically finished.

Shri Jawaharlal Nehru: I was going to say, Sir, with all respect, that I entirely agree with your desire to give this chance to Members in this way; and, I would not like to come in the way of others who have a special contribution to make on this subject.

Now, I do not propose to take much time of the House but I have been urged to say something and I think I should not restrict myself on this occasion. The urge will not take me to any analysis of the various clauses of this Bill. I do not propose to go into them but just to express myself in regard to a few broad aspects of this Bill.

First of all, this Bill, of course, is a separate thing and does not form part of what is called the Hindu Code series of Bills. It is an entirely separate thing. Nevertheless, it is, of course, connected with the various changes that it is sought to bring about so that it may be considered, broadly speaking, as a part of that approach.

During the last many years we have been—we, meaning this House and its predecessors—considering this matter in various shapes and at least on two or three occasions I gave an assurance to this House that we will expedite these matters. But, somehow or other, my assurance did not produce much effect on the situation; and, in spite of our wishes in the

matter, there was and there has been delay. It is true that in a matter of this kind one cannot rush through and one has to give every consideration to various viewpoints in this House as well as outside. Nevertheless, it is rather unfortunate that there has been such considerable delay. Therefore, it is a matter of peculiar satisfaction to me that we are at last coming to grips with these problems in the shape of this Bill and one or two others that are following.

I am not a scholar enough to discuss the niceties or the fundamental points of Hindu law. But, I have dabbled in some broad studies on the subject of law and custom and history and cultural developments and my own conception of Hindu society—as I have gathered it from such reading as I have indulged in—has been that it was always a somewhat dynamic, that it was not a static, conception, an unchangeable conception. Indeed the mere fact that in a sense that conception has lasted for a long time is due not to its static character but to a certain dynamism in it which adapted itself to changing conditions. Gradually, it became rather static, whether in the further development of the caste system or in various other ways. I believe that it was due to the introduction of this static character that made the Hindu society weak in this country and gradually made it completely—if I may use the word with respect—stagnant socially speaking, in spite of many admirable qualities and principles which it followed. Oddly enough, it was a gradual process of becoming static for hundreds of years and the final seal was set upon it with the advent of the British government in this country. Previously, whenever we talked of Hindu law we always talked of Hindu law and custom. Now-a-days one should not attach much value to odd customs; it is confusing. Nevertheless, it was always Hindu law and custom which meant that custom was gradually changing Hindu law. That is, as conditions changed customs developed and they affected the law

in practice, whatever it might have been in the ancient texts here and there. Of course, so far as the ancient texts are concerned, there are so many of them that one can quote scripture for any argument and enough. Anyhow, the coming in of the British power, as I said, made the whole conception static by codifying it, codifying it with the help of the most conservative sections of the community they could find. Naturally, if you try to go back to the written word, it did not allow all the changes that had developed and that were developing and so they codified it in a way which might have been suitable a thousand years earlier and all that could not be changed except by legislation as we are trying to change it now. That is to say, the British were not interested in it this way or that way, but they were only anxious to have some kind of peace in such matters so that they could carry on their process of exploitation or whatever you may like to call it. So, the coming of the British power suppressed this dynamic element in Hindu society. In fact, it made it unchangeable except by legislation and in the early days, of course, there was no kind of legislation. What I venture to say is that the essential thing that kept Hindu society going has been a certain element in it, a certain capacity in it, to adapt itself to changed surroundings and to change. It is apparent that society changes. We live in an age which is completely different, if I may say so, from the pattern of age of our fathers and grandfathers. I do not say that there are not certain fundamental principles which may be considered unchangeable; I do not challenge that. But, so far as human relationship and the rest are concerned, to imagine that they are unchangeable although everything else may change seems to me to be wholly and totally illogical. Therefore, society and organisation of society must adapt itself to the changed environments if it is to survive. And, Hindu society, I think, survived to a large extent because it had that capacity to adapt itself. But,

apart from the legislation that you may enact, it has, because of various factors, lost that capacity. Therefore, it becomes essential that the only way of doing it is by way of legislation. It is no good going back to the written word of a thousand years or three hundred or five hundred years ago which were once respected but which took into consideration the conditions then existent. Obviously, conditions of life have been enormously changed everywhere; in India too. Therefore, that argument has no great force. Most of the world's greatest sages and writers have laid stress on the fact that the mere fact that a thing is old does not make it good and the mere fact that a thing is new does not make it bad. We have to consider it in terms of the present day, in terms of the principles and in terms of society as it has developed, apart for what had been wanted to develop. We have gone through a process of political revolution in this country, resulting in Independence. We are going through a process of economic change. We have gone through it and will go through it more and more rapidly. There is another aspect, which is equally important, and that is social change, and if you take society, it is an integrated whole. I do not think it is possible for you to think in terms of political change ignoring economic change, ignoring social change. Most people now admit that economic change is as necessary as political change. We all work for that now, but some people seem to think that 'social', using the word in a narrower context, change is something entirely different from political and economic and can be kept as a close preserve, as an unchanging thing. I submit that this is not the right outlook, because life is an integrated whole. If you change the political context, if you change the economic outlook of it, it invariably follows that the social context also changes, whether you wish it or not, and even if you do not wish it, it changes gradually through discomfort, conflict etc. which compel you to change it. Therefore, a true revolution in a

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country must take into account the political, the economic and the social aspects of it all together. We may differ as to how to do it, but it is the first question broadly one has to take up now. The person who considers himself a political revolutionary and in the economic sense or in the social sense, if I may use the word without meaning any ill, a reactionary or anything conservative, is not an integrated person; he lives in compartments, something of the type of Jekyll and Hyde business, a bit here and a bit there and will not fit in. An individual may be that and it will only cause some inconvenience and heart-burning, but if society functions in this way, it is bad for society to keep on these compartments or keep on the social aspects as untouchable. Take even this problem of untouchability. I cannot quote the sacred books, but many people hold that the sacred books say that this was enjoined on them—many of the things which are related to untouchability—but we came to the conclusion long ago that not only was it unjust and must be done away with, but, as Gandhiji repeatedly said, that if Hindu society must survive, it also must put an end to untouchability, that is to say, this important social change became essential. Even apart from the justice of it, apart from the question of fitting in with the present day things in the country, it became essential even from the narrower point of view of the Hindu society that it must fit itself into the changed conditions. That argument and that manner of thinking has to be applied to other problems of human relationships also. After all, the biggest problems of the world are those of human relationships, whether it is relationship of one individual with another, of one individual with a group, or one group with another group. I think that argument might include every kind of relationship, whether national, international, individual or whatever it is—group with a group is international—and this problem of human relationship is of high importance and we must think and consider

how, in the world as it is or India as it is, changing before our eyes politically and economically, can we stop it. Whether we try to stop it or not, it does change, and we must come up and catch up to these changes. So far as this particular Bill is concerned, as the House knows, it is a permissive measure; it is not forced on anybody's throat. It is a permissive measure and it is quite essential to have permissive measures as a half-way house to other measures that you may take. You allow people to do it without forcing it and when at a stage it is established, you take another stage. I do not propose to say anything about the clauses of the Bill. I think that as the Bill has emerged from the Council of States, it would be desirable to make alterations or amendments here and there, not to any big principles but in regard to procedure and other things it is desirable, and when the time comes and if I think it necessary, I might say a word or two about those changes. This is not, we all know, any kind of a party measure. It is a measure affecting all of us. The Bill affects not Hindus only, but is permissive for anybody, but I referred to the Hindu aspect because that aspect comes up before us repeatedly in this and other matters.

I welcome this Bill.

11 A.M.

Shri Gadgil: I have heard an excellent contribution made by the Prime Minister, as also some remarkable speeches made yesterday. The approach to this very vital question has been critical, constructive, and, may I add, also cynical on the part of some of our friends on this side. Although the Bill is permissive and the scope of discussion can be legitimately confined to those few things which have been affected, yet you have been good enough to allow a sort of general discussion on principles and philosophy of marriage and divorce. I want just to mention that it is a good thing that after all we are agreed that there should be an institution of marriage.

Although Acharya Kripalani would put the age roundabout 35,—I do not know how he fixed that particular figure, but probably it indicates the fact that his first adventure or misadventure in marital sphere synchronised at that age.....

Acharya Kripalani: It is wrong chronology. I made a good choice but I waited till about my 48th year to have some wisdom. In Bengal people have no wisdom and they repeatedly go on making experiments.

Shri Gadgil: If that expression corresponds with the wisdom he has just referred to, it will be roundabout 50, and in that case, the question of over-population will be finally, effectively and completely solved.

Mr. Deputy-Speaker: As far as possible, any personal references, direct or indirect, should be avoided.

Shri Gadgil: All this has been said and done after consultation. The point is that still the devoted marriage is not out of style or fashion. All our efforts must be made, therefore, that marriage should be a life-long policy, a life-long affair, and in order to secure maximum happiness between the parties concerned, it is desirable that it should be one based on monogamy, with some provision to give relief in cases which are really hard. So far as the discussion that has gone up till now is concerned, many things have been said and I almost thought that marriage has come to be looked upon as some waiting room where there is free entry and free exit; and nobody knows how long one is to stay with another, but I think the man and the woman and the society are the three things concerned in this business. So long as we accept marriage and family as the two solid institutions on which society is based, it behoves us that we should treat this question with the seriousness and responsibility which it deserves.

[SHRIMATI KRONGMEN in the Chair]

Now what should be the age, what should be the provision, this, that and

the other, are matters which cannot be thought of in a mere vacuum. Now the good old approach by the *rishis* was an approach which was thoroughly consistent with the social background. Now the social background has changed. Let us therefore see what is the pattern of life we are now leading, what is the marital status and general situation in this country by reference to figures that are available from the Reports of Census in India and then consider in what way we can progress.

The first point that I want to urge, Madam, is that the pattern of life that we lead has considerably undergone a change. Gradually there has been urbanisation on a greater and greater scale of the population. In a village where practically everybody knows every other person, where the social discipline although unwritten is very strong and effective, where public opinion is integrated and vigilant, many things which we see happening in the urban areas do not happen. Whereas, in towns the situation has changed. We have in this country 73 cities having a population of more than one lakh and about 485 towns with about 20,000 and more of population. In big towns like Bombay, Calcutta, Bangalore, Poona and others, life has come to this that you do not know your neighbour, who stays in the next flat and you go all out of the way to visit a club miles away in order to have some social intercourse with other people. Now that is not the thing one meets with in a village. In a village, as I said, public opinion is very much integrated and vigilant; the parents are there, they meet each other and practically a marriage can more or less be ascertained much earlier than when it actually takes place. When we come to a cosmopolitan city, where education is on a very large scale, there is not that social milieu which we have in a village with the result that boys and girls of different strata of society, of different communities and different religions mix. It is to meet those requirements, to provide adequately so that social stresses and

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tensions will be less that some sort of legislation is absolutely necessary.

There is another matter which one has to take into consideration. As I said, man, woman and society are the three things which must behave in such a manner as to create a climate in which maximum happiness in life is possible. The strength and the courage of the man, the grace and the balance of the woman, together secure the dignity and stability of society.

पयसा कमलं कमलेन पयः ।

पयसा कमलेन विभाति सरः ॥

The *kamal* gives beauty to water; water gives beauty to *kamal* and both together give grace to the lake.

Similarly, if we accept the idea that marriage should be a life-time business, not a partnership at will which can be put an end to whenever one party or the other is dissatisfied, then it is for us to evolve such social institutions, such a social system of discipline, such a legislation as will secure this great objective.

Now, so far as this particular Bill is concerned, as has been said, this is a permissive Bill. For those who are members of the Hindu society, there is the other law, or the proposed legislation that will govern them. This is really meant to be—although it can be taken advantage of by people who belong to the Hindu religion—used by persons who do not belong to the same faith, to the same religion or to the same community. Now we are progressing and if it is agreed that in this matter there should be no sense of frustration at the initial stage, no sense of frustration while the wedlock continues, there should be no sense of frustration when the deadlock ends.

So far as the initial stage is concerned, we have to take into consideration, as I said the other day, the great progress made by women in education. Indian women have come into their own: we cannot disregard that fact.

Shri V. G. Deshpande: What is the percentage of literacy and education?

Shri Gadgil: Whatever it is, the fact that she has been given a vote has added to her self-consciousness. She has become confident and believe me when I say that no woman will take things lying down if man misbehaves. Therefore, it is to the greater advantage of the society, if along with political equality we add social and economic equalities as well, so that there will be greater initiative in our women to add to the glory, and I should say, dignity of our country. So, there must be as wide a field for boys and girls to choose their partners. What is the good now of contending that the girl should marry within the caste, this, that and the other. These restrictions ought to go and they are going. But if they go in the way in which things are developing, it will not be good. As I said the other day, it is the responsibility of those who are leaders of social thought and conduct that they should direct social affairs in such a manner that what follows will be consistent with what we desire and we do not meet with a situation in which we are completely unprepared. I am, therefore, of the view that the girl should be free to marry whomsoever she chooses after the attainment of the age of 18. In this particular Bill, the age has been raised to 21. At the age of 18, if a boy or girl belonging to different communities develops a sort of love with one another, they can live together; nobody can prosecute them because both of them are majors. (An Hon. Member: Calf love). If the boy goes away with the girl, it is not abduction because the consent of the girl is there; it cannot be kidnapping because neither party is a minor. Look at the perversity of the amendment effected by the other House. If they live and do not marry, nothing happens but if they honestly come forward and get married, the law will say 'No, you must attain the age of 21'. Just consider this aspect. A boy of 18 can alienate his property, can mortgage.

transfer or lease or do anything with the property because he is the full owner. He can fight for the country. A recruit is accepted at the age of 18. You give him every power, even to die for the country but you deny him this simple right to choose a mate who will be a life partner—a thing which will give him complete satisfaction and will bring out whatever is best and noblest in his mind; consider this. Consider the social tension and the sense of frustration that the girls will have in regard to such legislation.

People say that if the boy of 18 is allowed to do this or that, he will be a mere pulp in the hands of the girl of 18. I have the authority of my hon. friend Kripalani that most of the men are pulp in the hands of women. It may be true; it may not be true; it may be partly true and partly not true....

Shri D. C. Sharma: You can give your own testimony.

Shri Gadgil: I can confess but not in this House.

An Hon. Member: The cat is out of the bag.

Shri Gadgil: Yes, the cat is very much out of the bag. So, so far as this age is concerned, I am of the view that instead of 21, make it 18. As I said, the boy is quite good at the age of 18 to alienate his property and fight for the country. Do you mean to say that there is no sense of responsibility in him? I do not quite agree.

Secondly, having given such freedom at the initial stage, we must see that the wedlock continues as long as possible and is not, as I said, an affair in which they come together just to part; that should not be the case. How can that be secured? Can it be by passing a law under which, as soon as a marriage takes place, each partner becomes entitled to half the share of the property? You have to consider whether that great and noble conception of marriage should be so vulgarised by togging it with certain

considerations in terms of rupees, annas and pies. You have to consider that. As was said by my hon. friend, Pandit Thakur Das Bhargava, marriage is a partnership not only in aspirations and achievements. It is a partnership in which joy and grief are equally shared. That partnership should continue as long as possible and the social atmosphere and the public opinion as expressed from time to time should be so conducive to this that one should look upon marriage as an institution which will continue till the death of one or the other spouse.

When I said something about the marriageable age, I wanted to mention one thing which I will mention just now. Will you believe that today there are about 1,33,000 widows below the age of 5? That is the position. In 1936 or 1937, when an amendment to the Child Marriage (Restraint) Act was brought, the Government was dead opposed and I gave figures that at that time, there were 1,20,000 widows below the age of one. Then, I asked the hon. Home Member then: 'Does this fit in with your idea of Christianity—this fact that widows should be there below the age of one?' Government first opposed the Bill but later on he came to me and said to me: 'Mr. Gadgil, whatever may be our position, we are going to refer the matter to the Select Committee'. It was then passed. What was the result? The Census Report showed that the percentage of widows below fifteen was 9 per cent. of the total married population. Today, it has gone down to 7 per cent. If, as proposed in the other legislation, the marriage age is raised to 16 years or 18, it is for you to consider things will further improve. I would rather say that it should be 16 with the consent of the guardian, but after 18 no consent is necessary. The Census Report will also show you that the age during which most marriages take place is between 15 and 25.

There is another sociological aspect of this. It is not merely that two

[Shri Gadgil]

persons come together and prefer one to another and get into wedlock. As I said, the consideration so far as the society is concerned, is important—much more important from the point of view of economic progress of this country. There is a particular age during which a man works with full vigour and initiative. All that is affected by the system of marriage. If you see the figures, you will find that as the age group grows higher and higher, there are more and more widows than widowers. All these things have to be taken into consideration. Then, as I said, the general social atmosphere must be such as will be conducive, so to say, to make the people feel that it is much better to continue this lifelong partnership...

Shri D. C. Sharma: I do not think that any census of widowers has been taken in this country. (*Interruptions*).

Shri Gadgil: Widowers are much better left to themselves because they are complete masters of the whole situation. The point is this: what should be our attitude towards divorce? We have adopted monogamy. As I said, the other day, it must not be confined merely to Hindus; there must be one law established. We take pride of the fact that ours is a secular State. There must be monogamy throughout the land. When this is done, it is logical that there should be some provision for divorce but whether there should be....

Mr. Chairman: Order, order. The hon. Member will remember the difficulties of the Chair. There are many hon. Members who want to speak.

Shri Gadgil: If you can give me a couple of minutes, I will close.

Mr. Chairman: I have already given the hon. Member five minutes.

Shri Gadgil: I have nothing more to say.

श्री नन्व लाल शर्मा (स्पीकर) : अध्यक्ष महोदया, मुझ इस बात की प्रसन्नता है कि

इस समय एक भगवती अध्यक्ष पद पर आसीन हैं और वह "धर्म चक्र प्रवर्तनायक" जो लिखा है उसकी भावना को अधिक रख सकती हैं। मैं देख रहा हूँ कि एक भावना समाज में और समाज में नहीं तो इस सदन में प्रतिध्वनित हो रही है और वह यह है कि बार २ यहाँ यह कहा जाता है पुरुष समाज और स्त्री समाज, यह शब्द हमें सुन कर बड़ा खेद हो रहा है कि आज तक जब से विश्व चला है स्त्री समाज और पुरुष समाज अलग २ नहीं रहे हैं। माता की गोदी में पुरुष पलता है और बड़ा होता है और यदि माता चाहे तो वह उसके प्राण भी ले लेती है और जहाँ यह है कि पुत्र के भयंकर से भयंकर शत्रु बनने पर भी उसके प्रति माता बुरा भाव नहीं रखती वहाँ के लिये ऐसा कह देना कि स्त्री समाज कोई अलग है और पुरुष समाज अलग है, यह अत्यन्त अनुचित बात है। मैं यह शब्द इसीलिये कह रहा हूँ कि कुछ पाश्चात्य दृष्टिकोण से चकाचौंध और चमत्कृत लोग ऐसा समझ रहे हैं कि हिन्दू जाति ने स्त्री समाज के ऊपर बड़ा अत्याचार कर डाला। मैं कहता हूँ कि आपने अपने संविधान में उनको इक्वैलिटी आफ राइट्स दिया है लेकिन मैं आपको बतलाऊँ कि हमारा यहाँ तो दीवियों को और माता को वहीं अधिक ऊँचा स्थान दिया गया है। हमारा वहाँ माँ का दर्जा और माँ का मान दसगुना अधिक है। एक सन्यासी के लिये नियम है कि पिता अगर उसके पास आ जाय तो पिता दंड के समान लेंद कर अपने सन्यासी पुत्र को प्रणाम कर लेंकिन यदि माता आयें तो वह सन्यासी पुत्र दंड के समान लेंद कर अपनी माता को प्रणाम करता है। यह हिन्दू जाति है और यह दीवियों का स्थान और आदर है, अब मुँह तो किसी का बन्द नहीं किया जा सकता, जो चाहे कह सकता है।

मेरा मुँह है, मैं कहता हूँ कि मैंने दस हाथ का हरिण देखा तो मुझे ऐसा कहने से कौन रोक सकता है। जिसके जी में जाँ आवे वह बोलता चला जाय और यह कहे कि हिन्दू समाज में दीवियों का अपमान होता है। आज भी जिस

जाति के अन्दर वर्ष में दो बार भगवती का पूजन होता हो, कुमारी का पूजन होता हो और जहाँ पर छोटी छोटी लड़कियों के चरण पूजे जाते हैं और तिलक लगाया जाता हो और सब प्रकार से पूजन किया जाता हो उस जाति के मुकाबले में हमें अमरीका, रूस और अन्य यूरोपीय देशों का दृष्टान्त देकर बताया जाता है कि स्त्रियों का यह अधिकार वहाँ भी मिला हुआ है, सूर्य को दीपक दिखाने के समान है। आपको पता है कि इस जाति की एक दूबी ने नहीं बल्कि करोड़ों दूबियों ने अतीत में अपने प्राण हंसते हंसते दे दिये लेकिन अपने सतीत्व पर धम्बा लगने न दिया। अभी थोड़े ही दिन की बात है कि जब पाकिस्तान के अन्दर हिन्दू दूबियों पर बर्बर अत्याचार हो रहा था तो उन्होंने अपनी लाज बचाने के लिये कुएँ में छालागं लगा लीं और आग लगा कर जल मरीं जिस जाति की स्त्रियों का यह आदर्श रहा हो, वहाँ यह हिन्दू कोड बिल, स्पेशल मैरिज बिल और तलाक इत्यादि की बातें कही जाय और कुछ दूबियां, दुर्भाग्यवश जिनको अपने घर का पता नहीं है, जब यह कहती हैं कि हम आपसे तलाक नहीं मांगेंगी, हमको खाली तलाक का अधिकार दे दो, हम कौन होते हैं अधिकार देने वाले, आप अपने पुत्र का गला घोट कर मार डालो और पति को भोजन में विष मिला कर मार डाल सकती हैं आप अपने पारिवारिक सुख को स्वाहा कर सकती हैं, लेकिन उन्हें ठंडे दिल से सोचना होगा कि वास्तव में यह तलाक का अधिकार उनको कहां ले जायगा और अन्त में इससे उनका हित होगा अथवा अहित ही होगा। भगवती की शक्ति अपार है, स्वामी रामकृष्ण परमहंस ने बाजार में चलती हुई एक वेश्या को देखा जिसके कि साथ लोग मजाक कर रहे थे, रामकृष्ण परमहंस तत्काल रो दिये और उसके चरणों में गिर पड़े और कहने लगे कि हे माता जगदम्बा तू जो सारं विशय की रक्षा करने वाली मां है, तू अपने पुत्रों की परीक्षा ले कर उनका अगर पतन करेगी इनको कौन उठायेगा ? एक क्षण में उस माता के हृदय से और मन में जितना पाप था वह

धुल गया और वह माता परमहंस के चरणों में गिर पड़ी और उसने अपना वेश्यापन छोड़ दिया। मुझ् जमा करे अगर मैं कहूँ कि आज वह सदस्य जां बार बार स्वी जाति पर पुरुषों द्वारा अत्याचार होने की बात कहते हैं और उनको अधिकार दिलाने की मांग करते हैं, उनमें कुछ ऐसे भी हैं जो अभी कल तक अपनी सैलरीज, आनररीया और अलाउंसज के लिये भगड़ा करते हैं वह कहते हैं कि पुराना धर्म स्टैगनेंट हो रहा है, स्पेशल मैरिज बिल कुछ नहीं है, डाइवोर्स और मैरिज बिल कुछ नहीं है, यह तो केवल वही हिन्दू कोड बिल का दूसरा रूपान्तर चल रहा है और उस को आज हमारा प्रधान मंत्री ने स्वीकार कर लिया। विश्व के इतिहास में किसी देश के अन्दर आप इतना बड़ा और व्यापक विरोध नहीं दिखला सकते जितना कि इस लीजस्लेशन के विरुद्ध १९ वर्ष के अन्दर विरोध हुआ है। १९४२ से और उससे भी पहले सन् २४ से लेकर जब से हिन्दू कोड के बीज पड़े हैं, बेचारी ने पहले सर सुल्तान अहमद का अपना पति बनाया, उनका त्यागपत्र हुआ, डाइवोर्स हुआ, उसके बाद उसने डाक्टर अम्बेडकर को अपना पति बनाया, उनका डाइवोर्स हुआ, सर बी० एन० राव को फिर अपना पति बनाया और उनका भी डाइवोर्स हुआ और आज अब वह श्री बिस्वास के गले में पड़ रही हैं। (Shri Bogawat : It is objectionable). मैं श्री बिस्वास के व्यक्तिगत विचार इस सम्बन्ध में खूब अच्छी तरह से जानता हूँ और इस भीषणपद को स्वीकार करने से पहले उन्होंने इस हिन्दू कोड बिल के सम्बन्ध में अपने विचार प्रकट किये हुए हैं लेकिन क्या करें वह विवश हैं। आज राजसैवक होने के नाते वह कुछ नहीं कह सकते हैं और जो गवर्नमेंट के वहाँ से आवाज आती है उसे स्वीकार करना पड़ता है और वही कहना पड़ता है।

एक माननीय सदस्य : डाइवोर्स कैसे हुआ ?

श्री नंद लाल शर्मा : जितने बेचारी के पति बने सब डाइवोर्स हुए, या यह कहिये कि पोलियेंडरी और पोलिगामी हुई, लेकिन यह जरूर है कि कम से कम पहले पति नहीं रहे।

Shri Punnoose (Alleppey): Is it a fact that the hon. Minister was opposed to the Bill outside the Cabinet?

Shri V. G. Deshpande: Before he became Minister.

Shri Biswas: The hon. Member is referring to an opinion which I had given regarding the Rau Committee's Report. That was an opinion which I gave along with three colleagues of mine on the High Court Bench. But that was expressing, not any official view, but our own personal view as Members of the Hindu Community. And if I remember aright, the attitude which we took up regarding divorce was this, that divorce has been in existence in other countries in the West and therefore the test to be applied is whether in those countries married life has been found to be very happy and that we ought to take lessons from the experience of other countries. And that is exactly what I pointed out in my speech the other day, that our ladies should also profit by the experience of other countries.

Shri K. K. Basu: There is an allegation against the Minister that after he has joined the Cabinet he has changed his opinion. May we know whether he stands by what he has said?

Mr. Chairman: Order, order.

श्री नंद लाल शर्मा : माननीय चेंबरमैन महोदया, मैं अपने विधि मंत्री को धन्यवाद देता हूँ जिन्होंने मंत्रिपद सम्हालने से पूर्व जिस रूप में इस का विरोध किया था उसका स्पष्टीकरण यहां पर अभी कर दिया।

Shri Biswas: In fact you will find references in the Rau Committee's Report in many places to the opinions we had expressed in that note.

An. Hon. Member: You are consistent.

श्री नंद लाल शर्मा : मेरा इस बिल के सम्बन्ध में विशेष रूप से यह निवेदन है कि तीन, चार टस्ट्स इसको दे देने चाहियें। एक

तो यह कि पब्लिक इसको डिमांड करती हैं या नहीं, इस लीजस्लेशन की आवश्यकता है या नहीं और जनता इसे चाहती है या नहीं। यह कोई जनमत जानना नहीं है कि यहां पर चार आदमी खड़े होकर कह दें कि जनता इसे चाहती है और इस बार में कोई अपोजीशन नहीं है, तो हमने तो एक बार नहीं अनेक बार इस बात के लिये चैलेंज दिया है और फिर कहता हूँ कि आप भारतवर्ष के किसी प्रान्त में किसी गांव में किसी नगर में आप लोग इसके लिये वोट कर लें और यदि बहुमत आपको इस बिल के सम्बन्ध में प्राप्त हो जाय तो मैं वही कहूंगा जो श्री अंगद ने कहा था :—

जौं मम चरन सकीस सठ टारी।

फिरहि रामु सीता में हारी ॥

अरं मूर्ख यदि तू मेरा चरण हटा सके तो श्रीराम जी लौट जायेंगे, और मैं सीता जी का हार जाऊंगा। उसी तरह मैं कहूंगा कि अगर जनता का बहुमत आपको मिल जायगा तो मैं आपकी बात को स्वीकार कर लूंगा और अपनी बात को हार जाऊंगा। लेकिन जनता में इसके विरुद्ध कितनी उग्र भावना है यह सब पर विदित है। जब राव कमंटी घूम रही थी तो लोगों ने इस विधेयक के विरुद्ध अपना मत प्रकट करने के लिये अमृतसर और लाहौर के स्टेशनों में रेलवे के डिब्बे तोड़ दिये और काले झंडे दिखाये और मैं कहूंगा कि आज भी वही चीज है और मैं कहता हूँ कि आप दिल्ली शहर में बैठे हैं, मैं कहता हूँ कि अगर यही भाषण जो आप यहां करते हैं उनको पब्लिक में खुले में करें तो आप देखेंगे कि आप की क्या दशा होती है

एक माननीय सदस्य : वही दशा होगी जो आप की होगी।

श्री पी० आर० राव (वारंगल) : आप किस का जिक्र कर रहे हैं, अगर आप डाइवोर्स के बारे में कहते हैं तो गांव में हर जगह इसका रिवाज है

Mr. Chairman: The hon. Member does not yield.

श्री नंद लाल शर्मा : पहली बुद्धिमानी तो यह थी कि कम से कम सती धर्म के मतों के धर्माचार्यों को, जो इस धर्म के तत्वों को जानते हैं, बुला कर पूछ लिया जाता है कि आप के धर्म के अनुसार कौसा विधान बन सकता है। यहां वह व्यक्ति जो अपने स्वार्थों और कामों से बाहर नहीं निकल सकते, अर्थ और काम आदि के अन्दर जिन की बुद्धि लगी हुई है वह धर्म की बात नहीं कह सकते। धर्म की बात कहने का अधिकार उस को है जो कामना में आ कर के, भय में आ कर के, प्राण जाने पर भी अपने धर्म का परित्याग न करे, धर्म के बारे में बात करने का अधिकार उस को है। सही व्यक्तियों के द्वारा ही सदाचार प्रवृत्तियां बताई जाती हैं। यह नहीं है कि जिस ने चाला अपनी मर्जी से सब कुछ कह दिया।

एक माननीय सदस्य : कौन दंडगा उन व्यक्तियों को ?

श्री नंद लाल शर्मा : आप को दंडना पड़ेगा। गस्तों की उपविधियों के अन्दर छिपे रहने पर भी जो दंडना चाहते हैं वह दंड लेते हैं। जो नहीं दंडना चाहते हैं वह नहीं दंडते हैं और कहते हैं कि गल्ला बेचने वाला और साग बेचने वाला क्या समझता है कि आचार क्या है।

Shri Lokenath Mishra (Puri): Is there any such man in India?

Shri Nand Lal Sharma: There are.

Shri Lokenath Mishra: I want directions so that I may go to him.

Mr. Chairman: Will the hon. Member address the Chair?

श्री नन्द लाल शर्मा : इसीलिये, सभानेत्री महोदय, मैं यह निवेदन करूंगा, इस बिल के सम्बन्ध में विशेषकर, कि यह भावना हमें अपने में रखनी चाहिये कि खाली मोनोगैमी, मोनोगैमी कहने मात्र से काम नहीं चलेगा। मैं

न अभी इसी लिये कहा था कि सीता और राम ने जो आदर्श मोनोगैमी का अपनाया वह आज कल के काम वासना के कीड़े नहीं अपनायेंगे। जो व्यक्ति आज डाइवोर्स दे कर कल अपना दूसरा विवाह करना चाहते हैं उन की दृष्टि में तो स्वप्न में भी मोनोगैमी नहीं है। वह तो पॉलिगैमी और पॉलिगैन्डी दोनों को ही अपने साथ रखना चाहते हैं। जहां पर पॉलिगैमी और पॉलिगैन्डी रहेगी वहां पर और कोई भी सिद्धान्त रह सकता है लेकिन कोई आचार का सिद्धान्त नहीं रह सकता है। वह कहते हैं कि थोड़े दिन आपस में मिल लें कहीं पर, मीरड हो कर नहीं, मिल भर लें। मीरड होने का क्या लक्षण है? कितने अंश मिलने के बाद मीरड होता है आदमी? लोग कहते हैं कि विवाह के माने क्या हैं यदि पति पत्नी को कुछ न कह सके और पत्नी पति को कुछ न कह सके? किन्तु इस का यह अर्थ नहीं है कि हमारे घर में सभी जगह स्त्रियां दुखी हैं। हां, जिन जगहों पर वह दुखी हैं वहां पर यह देखिये कि पुरुष कितना सुख पा रहा है। सारा दिन जो बाजार में बोझ ढोता है, कड़ाके की धूप में इधर उधर फिरता है और चार पैसा लाता है, वह भूखा रहता हुआ भी अपने बाल बच्चों को खिलाता है और मन को शान्त रखता है। दूटी फटी झांपड़ी में ही वह रह सकता है, उसी के घर में स्त्री दुखी होती है। पुरुष समाज ही दुखी है, भूखा है और नंगा है तथा गरीब है। हमारे कम्युनिस्ट लोग ही उस पुरुष समाज को उठाये। जिस दिन पुरुष समाज उठ जायेगा उस दिन स्त्री समाज भी उठ जायेगा।

अगर यह स्थिति है कि एक व्यक्ति पापवश, दुर्भावनावश अपनी सती साध्वी और पतिव्रता स्त्री को पीटता है और उस के लिये आप के पास कोई प्राविजन आप के विधान के अन्दर नहीं है तो आप अपने इंडियन पॅनल कोड का संशोधन करें।

श्री पी० आर० राव : वह जा कर के दावा तो नहीं कर सकती।

श्री नन्व लाल शर्मा : मैं कहता हूँ कि पतिव्रत धर्म की व्यवस्था ही हमारा यहाँ चाहिये और वही हमारा यहाँ रही है। उसी के साथ मैं हमारा यहाँ पत्नीव्रत धर्म भी रहा है। राम से बढ़ कर पत्नीव्रत कोई भी हमारा यहाँ नहीं रहा। इस व्यवस्था को राम की तरफ ले जाना चाहिये। लेकिन आप रावण की तरफ ले जा रहे हैं। मैं कहता हूँ कि आज आप लोग राम के आदर्श की उपासी कर रहे हैं। विधान में बदलाव कर रहे हैं और समाज को गलत रास्ते पर ले जा रहे हैं। ऐसी स्थिति में हमारा आप से कोई सम्बन्ध नहीं। आप जिधर जाना चाहें जा सकते हैं, लेकिन अगर आप चाहते हैं कि समाज का चरित्र और आदर्श ऊँचा रहे तो आप को उसके लिये दूसरा मार्ग ढूँढना पड़ेगा। आज समाज को बुरा मार्ग प्रदान करना बुद्धिमानी नहीं है। आप बुराई की परीमेशन तो दें देते हैं फिर कहते हैं कि हम कोई जबर्दस्ती थोड़े ही करते हैं। जितने भी पतन के मार्ग हैं उन के लिये परीमेशन देने के बाद, सुसाइड की परीमेशन देने के बाद आप कह दें कि हम ने तो सिर्फ परीमेशन ही दी है, लोग पागल थोड़े ही हैं कि अपने आप को मार डालेंगे, लेकिन फिर भी हम देते हैं कि आज सुसाइड भयंकर से भयंकर अपराध होते हुए भी लोग सुसाइड करते हैं। ऐसी परिस्थिति में किसी चीज की सिर्फ परीमेशन देने के कोई माने नहीं हैं।

Shri P. R. Rao: I want a clarification.

Mr. Chairman: Order, order.

श्री नन्व लाल शर्मा : एक शब्द ही कह कर मैं इस अंश को समाप्त कर दूंगा।

आप लोग कहते हैं कि स्त्रियों को स्तवरी में, बान्हेज में, रक्खा जाता है। किस की बान्हेज में? पुत्र की बान्हेज में, पिता की बान्हेज में, पति की बान्हेज में? क्या इस का यह अर्थ है कि तीनों ही स्त्रियों के शत्रु हैं, पुत्र भी स्त्रियों का शत्रु है, पिता भी स्त्रियों का

शत्रु है, पति भी स्त्रियों का शत्रु है, जिस के पास वह रहती है? मैं तो कहता हूँ कि शास्त्र ने पुत्रों को भी आज्ञा दी है कि वह माता की आज्ञा का उल्लंघन न करे, पिता की आज्ञा का उल्लंघन न करे, यह सबसे बड़ा दोष होगा, यह कहीं भी द्रमा नहीं होगा।

श्री भागवत भग आजाद (पुर्निया व संथाल परगना) : आप ही शायद लायक पुत्र हैं, आप ही लियाकत के ठकेदार हैं? मैं कहता हूँ कि आप ही लायक पुत्र नहीं हैं।

श्री नंद लाल शर्मा : आप जैसे लायक पुत्रों के कारण ही तो समाज का पतन हो रहा है।

Mr. Chairman: Two hon. Members cannot stand at the same time. Order, order.

Shri Bhagwat Jha Azad: Madam, he cannot give that credit to us. I must say he is the *malayaq* son; I am not. He is responsible for the society going to the devil.

श्री बी० जी० ईशापांडे : यह आप के लिये नहीं है, दूसरों के लिये है।

श्री नन्व लाल शर्मा : मनु और याज्ञवल्क्य और महाभारत के नाम से कई बातें यहाँ पर कही गई हैं। ऐसे लोग न मनु को जानते हैं और न महाभारत को जानते हैं। वह केवल इन शब्दों को कह रहे हैं कोर्टशन को जानते नहीं। यह तो मैं कहता हूँ कि वैसे ही हुआ जैसे "डैविल कोर्टिंग वि स्क्रिपचर्स"।

Shri Nambiar (Mayuram): The scriptures are in the hands of devils.

श्री नन्व लाल शर्मा : जो शास्त्र को मानते नहीं वह अपने स्वार्थ में शास्त्रों को कोट करते हैं। जैसे शराबी शराब पीना चाहता है तो कोई न कोई अपने पास कोर्टशन रखता है। कोई बीड़ी और सिगरेट की उपयोगिता के लिये कोर्टशन ढूँढता है। ऐसे ही अपने स्वार्थ के

लिये आप कोर्टशन दंडते हैं, लेकिन वह मिलता नहीं। यहां जो शब्द कोर्ट किये गये उन को एक हमारे मंत्र ने कोर्ट किया और हमारे माननीय उपाध्यक्ष महोदय ने भी कोर्ट किया तथा एक दो सज्जनों ने और भी कोर्ट किया। लेकिन मुझे खेद से कहना पड़ता है कि जिन लोगों ने मनु का नाम लिया वह यह नहीं जानते कि यह शब्द मनु के नहीं हैं। जहां पर यह शब्द लिखे हुए हैं वहीं पर टीकाकार ने टीका की है

श्री श्री० श्री० सिंह (मुंगेर सदर व जमुई) : मनु का नहीं बल्कि बाहर कहीं का वाक्य यह है।

श्री नंद लाल शर्मा : मैं जानता हूं कि यह मनु का नहीं है, इसीलिये मैंने कोर्ट किया है। जिन लोगों ने मनु की बात कही है कि उन्होंने कहा है कि सती साध्वी स्त्रियों के अन्दर किसी दूसरे पति का भाव नहीं होना चाहिये उन के लिये मैं कहता हूं कि पराशर और नारद ने जहां पर यह कहा है वहां पर पती शब्द ही नहीं है। जो लोग संस्कृत की व्याकरण जानते हैं उन से पूछिये, सप्तमी की अंतिम विभक्ति में पति का एक वचन पत्नी बनाता है पति नहीं बनाता है।

Mr. Chairman: The hon. Member must conclude now.

Shri Nand Lal Sharma: One or two minutes.

Mr. Chairman: No.

Shri Nand Lal Sharma: One minute.

Mr. Chairman: No. I will call another hon. Member. The hon. Member will resume his seat.

Shri Nand Lal Sharma: In one minute I shall finish this point that I have begun.

Mr. Chairman: Order, order. No. I call the next speaker, Shri Raghbir Sahai.

श्री रघुबीर सहाय (जिला एटा--उत्तर पूर्व व जिला बदायूं--पूर्व) : सभानेत्री जी, इस बिल पर जो दो तीन दिन से बहस हो रही है उसको

मैंने बड़े ध्यान पूर्वक सुना और मैं इस नतीजे पर पहुंचा हूं कि हमारे इस सदन में इस प्रश्न के ऊपर तीन मुख्य विचार धारण हैं। एक विचारधारा तो अभी श्री नन्द लाल जी शर्मा ने अपने व्याख्यान में हम लोगों के सामने रखी है। वह तो जो पुराने शास्त्र और जो पुराने विचार हैं उनसे जरा भी डगमग करना नहीं चाहते। मुझे मालूम नहीं कि जिस वक्त यहां पर प्राइम मिनिस्टर साहब का व्याख्यान हो रहा था वह उसको सुन रहे थे या नहीं।

श्री नंद लाल शर्मा : वह तो आपकी सांसाइटी को स्टर्नोट कह रहे थे।

श्री रघुबीर सहाय : जैसा कि प्राइम मिनिस्टर साहब ने कहा कि जिस तरीके पर उन्होंने इतिहास पढ़ा है उससे वह एक नतीजे पर आये हैं, उसी नतीजे पर हम लोगों में से अधिकांश आये हैं कि हमारा समाज हमेशा उन्नतिशील रहा है। समय के अनुसार उसने जगह जगह पर तबदीलियां की हैं। श्री नन्द लाल जी शर्मा इस ख्याल के हैं कि जो चीज पांच हजार वर्ष पहले लिख दी गयी है वह आज भी आयत हृदय है, उसमें जरा तबदीली नहीं हो सकती। हम ज्यादा से ज्यादा यही कह सकते हैं कि इस विचार से तो हम सहमत नहीं हैं और हमें अफसास है कि उनके ये विचार हैं। दूसरी तरफ हमने श्रीमती तारकेश्वरी सिन्हा और श्रीमती रंणु चक्रवर्ती के विचार भी सुने। वे दूसरी हद पर हैं। एक इस पार है तो दूसरा उस पार।

श्री श्री० डी० पांडे : चकवा चकवी हो गये हैं।

श्री रघुबीर सहाय : मुझे अफसास होता है कि आज श्रीमती तारकेश्वरी यहां नहीं हैं। जिस वक्त कि कल वह अपना भाषण इस प्रश्न पर दे रही थीं उनको इस बात का ख्याल नहीं था कि उनकी क्या उम्र है। उनको इस बात का ख्याल नहीं था कि उनका क्या तजुर्बा है। लेकिन इस महत्वपूर्ण विषय पर जिस जाशां खरोश से उन्होंने अपनी बातचीत की उससे

[श्री रघुवीर सहाय]

हम लोग तो ताज्जुब में रह गये । वह दूसरी हद हैं ।

तीसरी विचारधारा हम सरीखे लोगों की हैं ।

एक माननीय सदस्य : बुजुर्ग ।

श्री रघुवीर सहाय : हम इस सिर पर भी नहीं जाना चाहते और दूसरे सिर पर भी नहीं जाना चाहते । जो बीच की धारा हैं उस पर हम रहना चाहते हैं ।

एक माननीय सदस्य : लेकिन मन्धकार में डूब जायेंगे ।

श्री रघुवीर सहाय : आप इत्मीनान रखिये । सभानंत्री जी, यह बिल ऐसा बिल नहीं है कि जिस पर यहां इतना बहस मुबाहिसा किया जाय । जिस वक्त पहले हमारे ला मिनिस्टर साहब यह बिल लाये थे और उन्होंने उसको पेश किया था और इस सदन के कुछ सदस्यों ने उस पर अपने विचार प्रकट किये थे तो उस वक्त हमारा यह ख्याल था कि सिलेक्ट कमेटी में जाकर और काऊन्सिल आफ स्टूडेंट्स में जाकर इसमें जितनी खराबियां हैं, वह सब दूर हो जायेंगी और इस हालत में यह बिल आयेगा कि हम उसको खुशी खुशी पास कर देंगे । मुन्त अफसोस के साथ कहना पड़ता है कि वहां से जो बिल आया है तो, आप मुन्त माफ करेंगी, ऐसा मालूम पड़ता है कि बिल्कुल चूं चूं का मुरब्बा है । दूसरे अल्फाज में वह गूठ, बँडएंड ड्रीडफरेंट मॉर्टर्स का एमेलगम है । इसमें अच्छी चीजें भी हैं, मामूली चीजें भी हैं और बुरी चीजें भी हैं । अब यह बिल आ गया है । इस पर विचार करने में हमें जोशां खरोश से काम नहीं लेना चाहिए बल्कि बुद्धिमानी के साथ, जिम्मेदारी के साथ, सोच समझ कर उसकी तमाम धाराओं को देखना चाहिए और इस बात की कोशिश करनी चाहिए कि इसमें जो खराबियां हैं उनको दूर करें और जो इसमें अच्छाइयां हैं उनको रखें । जो मामूली बातें हैं उनमें तरमीम पेश करें ताकि बिल ऐसा हो जाय कि जब वह कानून की शकल में मुल्क

के सामने जाय तो मुल्क कहे कि पार्लियामेंट ने बड़ी जिम्मेदारी के साथ इस बिल को पास किया । जब कि शुरू में ला मिनिस्टर साहब स्पेशल मैरिज बिल को लाये थे और मुन्त बॉलने का माँका मिला था उस वक्त मैं ने इसका स्वागत किया था और आज भी मैं इसका स्वागत करता हूँ और मैं समझता हूँ कि पार्लियामेंट को यह बिल सहर्ष पास करना चाहिए । जिस तरीके पर यह बिल अब आया है उसमें कुछ खराबियां जो पहले थीं वह दूर कर दी गयी हैं । मसलन पहले आप ने प्राहिबिटेड लिस्ट को बिल्कुल गोल मटोल तरीके से रखा था । हर शख्स अपने अपने तरीके पर अपनी राय कायम कर सकता था । लेकिन वह नहीं समझता था कि प्राहिबिटेड रिलेशनाशिप है क्या । अब जिस तरीके से यह बिल सिलेक्ट कमेटी से आया है उसमें आपने सूचियां में यह साफ कर दिया है कि यह प्राहिबिटेड रिलेशनाशिप क्या है । हर शख्स उसको देखकर कह सकता है कि भाई इससे शादी करो और इससे शादी मत करो । मैं इसका स्वागत करता हूँ ।

दूसरी अच्छी चीज इसमें यह कर दी गयी है कि अगर कोई लड़का या लड़की घर से बाहर जाकर दूसरी जगह मैरिज आफिसर को इत्तला दे कि हमारा इरादा शादी करने का है तो यह जरूरी कर दिया गया है कि वह मैरिज आफिसर उस मैरिज आफिसर को भी इत्तला दे जहां के कि वह लड़का या लड़की रहने वाले हैं ताकि वह मैरिज आफिसर वहां वालों को सूचना दे दे कि एसी एसी शादी होने वाली है अगर किसी को आबजंक्शन कल्ला है तो कीर्जय । मैं समझता हूँ कि उसमें एक तरमीम और होनी चाहिए कि जिस वक्त दूसरे मुकाम पर वह मैरिज आफिसर को इत्तला करें तो उनके लिए यह भी जरूरी हो कि वह अपने माता पिता का या गारंजियन का नाम और पता भी लिखकर दे ताकि दूसरा मैरिज आफिसर उस जगह का जहां के वह लोग हैं उनके माता पिता को या गारंजियन को इत्तला कर दे कि एसी एसी

शादी होने जा रही हैं अगर कोई एतराज हैं तो कीजिये । मैं इसका भी स्वागत करता हूँ और चाहता हूँ कि यह तरमीम और कर दी जाय ।

मैं एक तीसरी चीज का और स्वागत करता हूँ । वह यह है । आपने पहले बिल में लिख दिया था कि १९७६ वाला तलाक का कानून भी लागू होगा । वह एक गोल मटोल चीज थी । अब आपने डाइवोर्स के बार में साफ साफ प्राविजन कर दिया है । यह अच्छी बात है गाँ कि मैं आगे चल कर बतलाऊंगा कि मैं उससे बिल्कुल सहमत नहीं हूँ । लेकिन आपने यह अच्छी बात कर दी कि यह साफ कर दिया कि इन इन सुरतों में डाइवोर्स होना चाहिए ।

आपने यह भी बहुत अच्छा किया कि डाइवोर्स के बार में यह प्राविजन किया है कि शादी के तीन साल बाद ही अदालत में डाइवोर्स के मामले में फौसला हो सकेगा । तीन साल से पहिले अगर खास स्थिति होगी तो अदालत माँका दंगी । यह भी बहुत अच्छ है ।

चौथी चीज जिसका मैं स्वागत करता हूँ वह यह है कि इस किस्म की शादी में लड़के या लड़की की उम्र २१ साल की होनी चाहिये । यह पहलू बहुत गौर तलब है । मैं चाहता हूँ कि इसको हमारी बहिनें खास तौर पर जरा गम्भीरतापूर्वक सोचें । इन बहिनें की तरफ से इस किस्म की तरमीम है कि यह २१ बरस की उम्र १९ बरस कर दी जाय । मैं उनकी नीयत पर हमला नहीं करता लेकिन मैं समझता हूँ कि उन्हें बड़ी जिम्मेदारी के साथ यह संशोधन रखना चाहिये । मैं समझता हूँ कि इस संशोधन के रखने में कुछ बुद्धिमानी की कमी दिखाई देती है । यह सही है कि इस किस्म की शादियाँ जो होंगी वह वही शादियाँ होंगी जहाँ पर कि माता पिता की रजामन्दी और उनकी इजाजत का कोई ताअल्लुक ही नहीं होगा । इसके लिए एक नौजवान लड़के को और एक नौजवान लड़की को काफी सूझ बुझ होनी चाहिए कि वह अपनी आयन्दा तमाम

जिन्दगी के लिए फौसला कर सके । ऐसा करने के लिए उसको काफी अक्ल होनी चाहिए । और १९ बरस की उम्र में तो, जैसा कि श्री कृपलानी जी ने कहा, उनकी तालीम भी पूरी नहीं हो पाती है ।

तां मैं इन तमाम चीजों का इस बिल में स्वागत करता हूँ । लेकिन जैसा कि मैं ने कहा इसमें कुछ चीजें ऐसी भी हैं जिनका मैं स्वागत नहीं करता । आपने इस बिल के दफा १६ में, प्राविजन किया है कि जो इस कानून में शादी करेगा वह अपने खानदान से फौरन अलहिदा हो जायगा । मेरी समझ में नहीं आता कि किस दलील से और किस गरज से यह चीज रखी गयी है । मैंने इस सम्बन्ध में संलैक्ट कमेट्री की रिपोर्ट पढ़ी, ज्यादातर मिनेट आफ डिसेंट उस प्राविजन के खिलाफ है, संलैक्ट कमेट्री ने यह जो प्राविजन रक्खा है उसके बार में उन्होंने कहा है कि अलहिदा होने के बाद वह जब चाहें तो फिर शामिल हो सकते हैं । यह दलील मेरी समझ में नहीं आई कि पहले अलहिदा हो जाय और फिर एक हो जाय, यह तो वही हुआ कि जैसे पहले नाक काट लिया और जब नाक कट जाय तो फिर शफाखाने में उसको स्टिच कराया जाय । मैं समझता हूँ कि इस तरह का प्राविजन रख करके ज्वाइंट फौम्ली के ऊपर एक कानूनी हमला किया जा रहा है और उस को तोड़ना चाहते हैं, ज्वाइंट फौम्ली सिस्टम तो आप ही धीरे धीरे खत्म होता जा रहा है, उसको अपने आप खत्म होने दीजिये । लड़के के माता पिता को कोई एतराज न हो वह उसको और उसको इस कानून में ब्याही हुई स्त्री को अपने साथ रखने को तैयार हों फिर भी कानून के जरिये उनको अलहिदा होना पड़े यह ठीक नहीं मालूम देता । यदि वे नहीं रह सकते तो अलहिदा तो जब चाहें हो ही सकते हैं ।

इसके अलावा दूसरी और आखिरी बात कि जिसने इस बिल को बड़ा डिफेक्टिव बना दिया है वह डाइवोर्स में म्यूचुअल कंसेंट का रख देना है । जहाँ तक इस सम्बन्ध में हिन्दुओं

[श्री रघुवीर सहाय]

के विचारों का ताल्लुक हैं सब कोई जानते हैं कि अधिकतर हिन्दुओं के यहां तलाक एक परहेज की चीज समझी जाती है और उचित यह था कि आप आहिस्ता आहिस्ता हिन्दु सोसाइटी को इस ख्याल को अपनाने के लिये तैयार करते मंत्री समझ में नहीं आता कि आप इस विषय में इतनी जल्दबाजी क्यों करते हैं? बेशक बहुत खास खास मामलों में जहां पर कि स्त्रीविद् बेरहमी करता है, औरत की परवरिश नहीं करता है बच्चों के साथ सल्टी करता है और नालायकी करता है बदचलन हो गया हो वहां आप डाइवोर्स का अधिकार दीजिये, लेकिन इस तरीके से जो राईट अभी तक कभी नहीं रहा है और जिसके लिये हिन्दु ओपिनियन इतनी खिलाफ है उसमें अगर आप जल्दबाजी से काम लेंगे तो बड़ा अन्दशा है कि हिन्दु ओपिनियन को आप अपने खिलाफ कर लेंगे मॉने दूसरे परिचय मुल्कों में जहां पर कि यह डाइवोर्स चल रहा है उनके बारे में जानने की कोशिश की कि वहां पर क्या हालत है इंग्लैंड में डाइवोर्स प्रचलित है पर म्युचुअल कन्सेन्ट के जरिये डाइवोर्स नहीं है—एसा ही फ्रान्स में है। रूस के बारे में मॉने किताब पढ़ी तो मालूम हुआ कि सन् १९१७ में जब अक्टूबर का रिवोल्यूशन हुआ था तब एकदम जोश में आकर उन्होंने डाइवोर्स को बड़ा आसान कर दिया लेकिन बाद में उन्होंने उसमें कई तबदीलियां कीं, जब बाद में होश आया और मामला ठीक हुए तब उन्होंने देखा और समझा कि इससे तो हमारा सारा सामाजिक ढांचा और लाइफ ही दरहम बरहम हुई जाती है और उन्होंने सन ४३, ४४, ४५ और ४६ में कानून में बदलाव किये और आज उनका डाइवोर्स कानून एसा है कि जिसमें डाइवोर्स के लिये दरखास्त देने पर मॉर्टिक्स साबित करने पड़ते हैं, वजूहात साबित करने पड़ते हैं, रीजन्स देने पड़ते हैं और अदालत की पहले यही कोशिश होती है कि स्त्रीविद् और बीवी में आपस में सुलह हो जाय, आपस में मामला तय हो जाय और वह पति पत्नी की तरह आगे भी रह सकें, लेकिन

जब अदालत इस कोशिश में नाकामयाब हो जाती है तब उनको मॉका दिया जाता है कि वह ऊंची अदालत में जाकर अपना मामला तें करा लें। मैं पूछता हूं कि जब उन देशों में जहां पहले से डाइवोर्स प्रथा प्रचलित है, जब रूस, फ्रांस और इंग्लैंड में म्युचुअल कन्सेन्ट नहीं है तो आप उनसे दस कदम क्यों आगे बढ़ना चाहते हैं और इसको रखते हैं, मंत्री समझ में एसा प्राविजन रखना नामुनासिब है। इसके लिये दलील यह दी जाती है कि हम म्युचुअल कन्सेन्ट का प्राविजन इसीलिये रख रहे हैं कि हम छीछालेंदर नहीं करना चाहते और डर्टी लिनन अदालतों में वाश नहीं करना चाहते तो उसके लिये मैं आपसे यह कहंगा कि अगर आप डर्टी लिनन वाश नहीं करना चाहते तो तरीका यह है कि जो डाइवोर्स के केस हों वह सब "इन कॅमरा" हों क्या जरूरत है कि एसे कॅसेज में तमाम लोग आयें और आकर यह तमाशा देखें? मैं उन लोगों से कहना चाहता हूं कि आप जाकर अदालतों में देखिये कि ४६८ के मुकदमों में क्या होता है, आप जानते हैं कि दफा १०० के मातहत वारंट से जो औरतें पकड़ कर लाई जाती हैं तो क्या हालत होती है, २६६ में क्या हालत होती है, तमाम दुनिया के लोग और तमाशाई अदालतों में जमा होते हैं, हम नहीं चाहते हैं कि हमारी बहनें जो इस किस्म की मजबूरी की हालत में अदालतों में जाय और जिन को डाइवोर्स पेंटीशन देनी पड़े या जिनके खिलाफ डाइवोर्स की पेंटीशन दी जाय तो उनका इस तरीके से भद्दा प्रदर्शन हो, इसीलिये मैं चाहता हूं कि डाइवोर्स कॅसेज 'इन कॅमरा' किये जाय, इस तरह का इसमें प्राविजन हो जाना चाहिये और यह आप्शनल न होकर ओब्लिगेटरी होना चाहिये, इस तरह के मामले खुली अदालत में होने से पब्लिक ओपीनियन को हम अपने खिलाफ बना लेंगे और एसे प्राविजन जो पब्लिक ओपीनियन को हमारे खिलाफ करे, उनको इसमें नहीं रखना चाहिये, बाकी जितने प्राविजन्स हैं उनसे मैं

सहमत हूँ और मैं बिल का समर्थन करना चाहता हूँ।

12 NOON

Shri Altekar (North Satara): I am rather sorry that my hon. friend Shri Nand Lal Sharma is not here in his seat. He was just saying about some persons quoting from scriptures but I do not know within what category he himself would come in. I claim to know at least much more than what he can claim to know about *vedic* literature, *smriti* literature, *puranic* literature from the original texts. I would like to point out that our society has been a dynamic one. It has been changing from time to time, adapting itself to the circumstances and this has been recognised by our great *dharmashastrakaras*, that is, those who have written the *smritis*. I would also like to point out that in former times, women were also admitted to studies, that is, the *upanayanam* ceremony was quite in vogue for them as for the boys but in the time of Manu that was done away with.

न शूद्रसमाः स्त्रियः । ब्रह्मवादिनीनामुपनयन-
मग्निस्त्कारः

That is what has been said by Harita. They are not like *sudras*. Of course later on there were certain circumstances by which they were denied this right. But so far as women of the twice born are concerned, he says that they have got an equal right to get the ceremony of *upanayana* performed and that they should be taught the sacred scriptures. But Manu has denied that right in later times.

Some Hon. Members: Shri Nand Lal Sharma has come.

Shri Altekar: Yes, I am glad now. Manu has denied that. Therefore, there were customs prevailing at different times and those various customs and rules of law were changing according to the circumstances.

Shri Nand Lal Sharma: They were changing according to the principles laid down.

Shri Altekar: Yes. Now, as my hon. friend wants to know the principle, I would enunciate it for him in the words of Manu himself:

परित्यजेदर्थकार्मार्थं यौ स्यातां धर्मवर्जिता ।

It means, one should not follow the pursuit of wealth and also desires and yearnings of one's own, if they go contrary to the dictates religion. That is the general rule. But he further adds:—

धर्म्यं चाप्यसुखादकं लोकं विद्विष्टमेव च ॥

Even what has been stated to be *dharma* according to the rule of law should also be discarded; but, under what circumstances?

अमुखादकं लोकीविद्विष्टमेव च ॥

If it does not conduce to the welfare of society, and also if it is hated by the people. Then even what is stated as proper and correct according to law becomes improper and should be given up. (*Interruption*) I am not going to yield. I would also like to point out that if the people do not like it, if it is not conducive to the welfare of the society, it has to be discarded. Not only that. Our *Mahabharata* says:

भवत्यधर्मा हि धर्माच्छर्मा भवत्युत ।

कारणाद्दर्शकलस्य दर्शः कालस्तु तादृशः ॥

What was once correct and proper according to the rule of law and what was declared to be illegal at that particular time may become exactly the contrary, when the position changes, the time changes and the climate changes. That has been the rule that was observed by our *smritikaras*. They were greater sociologists than those who say that they are conservatives, or rather, I may say, claim to be *santanists*. As a matter of fact, they knew all these things. They knew that they were not legislating for all the times. They knew what was best for their time. They legislated from their point of view of and need of their time; and they allowed others, according to the time and circumstances to

[Shri Altekar]

introduce changes when the necessity arises. Even the principle of *dharma* has been enunciated as:

प्रभवार्थाय भूतानां धर्मप्रवचनं कृतम् ।

That is what the *Mahabharata* says. The *dharma*, that is law is intended for the progress of society; it is intended for the welfare of society, and if certain circumstances arise which require a change therein, you have to make the change. If it comes in the way of the progress of society, it will have to be thrown away and you shall have to follow a path which would lead to the welfare of society.

यःस्यात्प्रभवसंयुक्तः स धर्म इति निश्चयः।

What is conducive to the welfare of the society, that is the proper law and that only. That has been the principle that was so well enunciated.

I would not dilate much upon this particular point, though I may quote a number of stanzas to this particular effect. But, I would like to point out that this is the principle that has been laid down in order to show what is the proper law and how it is to be legislated according to the change of times. That has been followed and we will find that each *Smṛiti* differed from the others in some respects because those times and places required such changes. That is the position. I would give many other instances, but it will take unnecessarily a long time. I will only give one more instance. In later days it was regarded that if a daughter came of age, that is attained puberty, before marriage then the father, the mother and her relatives will go to hell.

माता चैव पिता चैव ज्येष्ठो भ्राता च सादरः ।
सर्वे ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥

If she attains puberty, before marriage then all these relations will go to hell.

What does *Manu* say? Is our hon. friend going to follow *Manu*?

काममामरणात्तिष्ठद्गृहे कन्यतुमित्यपि ।

Let a daughter remain in the father's house till the end of her life, even though she attains puberty.

न तु वैनं प्रयच्छतु, गुणहीनाय कीर्त्तितु ॥

But never give her to a person who is unworthy of her hand.

That is the point. The welfare of the daughter, the welfare of the society, the welfare of the persons concerned, that was the principle by which the law was being administered and enunciated and this important principle is altogether lost sight of by the so-called *sanatanists* (*Interruptions*).

Now, I come to the question of marriage. Marriage, of course, is a sacrament according to Hindu law. So far as the special marriage law is concerned, I would not have gone too much into it; but, the thing is hereby we are framing a law, which will be the law of the land. Therefore, we have to take into consideration the principle behind marriage because it is the principle of the great law of this land.

Manu and other law-givers have stated that the tie between the husband and the wife is a sacred tie. They have considered this question from the set-up of society and its larger interests. If society is to be stabilised, the basis on which it stands has also to be stabilised. What is the basis of society? Family is the basis of society and the marital tie is the basis of family—the relationship between husband and wife. So, they have considered this question from that point of view. It is not only the man and the woman who are individually concerned, but the welfare of the whole family, the welfare of the society that has been taken into consideration, and therefore, they say—

अर्धं भार्या मनुष्यस्य ।

The wife is half of the man.

And this principle was further expanded when, later on Katyayana Brihaspati and others tackled the question of the inheritance of widows. They said that so long as the widow is alive, in the absence of sons, no one else can inherit.

यस्य नापरता भार्या र्दहाधीं तस्य जीवति ।

One whose widow is remaining behind, survives him his half body is there, no one can inherit.

जीवत्वर्धशरीरं तु कथमन्यः स्वमानुयात् ॥

When the other half is living how can any one else inherit?

Later on inheritance was given to women which was not there originally. Will Shri Nand Lal Sharma accept it? Of course, that is the principle which has been the most important one from the point of view of the marital relationship. So long as this stable principle is to remain, the marriage should be indissoluble and, therefore, Manu has stated.

सकृदंशो निपतति सकृत्कन्या प्रदीयते ।

Just as partition is allowed only once so also the daughter can be given in marriage only once. They have also recognised certain exceptions to that. If there was partition and some property was not brought in the hotchpotch because of some fraud that was perpetrated by a senior member of the family or a senior coparcener against the interests of the other coparceners or minors the partition can be reopened. Truly as Manu says:

So, under hard circumstances, in depressing and miserable circumstances, there shall also be an exception.

अन्यान्यस्या व्यभिचारो भवेदाभरणान्तिकः ।

The fidelity of one spouse to the other ought to be life-long. That must be the rule for the good of every one concerned: the husband, the wife, the children and the society. So, though marriage can take place once only—it is indissoluble no doubt—there are some exceptions and the exceptions

prove the rule. Under exceptional circumstances, we shall have to make some provision for these hard cases. That is my point and which we have to bear in mind. That is the most important question to which all should devote their attention in a very dispassionate way.

I would like to point out that we want to protect the interests of women even with greater zeal than they themselves can urge. I have the greater confidence in our Indian womanhood than women themselves possess. We are more careful about their interests. We shall make provisions which are quite necessary for that purpose. When divorce is needed and necessary, in very hard cases, it will have to be provided for. But, it should be done in such a way that the remedy should not prove worse than the disease. That is the point that we have to take into consideration.

We know our own society; we know how widow remarriage even though it is allowed is looked upon by the society. The widows, if they remarry, are not looked upon with as much respect or the society does not favour that angle of vision. Much worse would be the condition of those who will get a divorce. Of course, when it is absolutely necessary, when life becomes unbearable, it will have to be allowed. But, let it always be in the interest of the women and not otherwise. We must frame the law of divorce in such a way that man will not take undue advantage of it. I would rather say that divorce should be at the instance of the aggrieved woman and it should be very difficult for the man to have it. We must take into consideration the present context of things because man is the dominant partner even now.

The Minister of Home Affairs and States (Dr. Katju): No.

Shri Altekar: Of course, it may be denied. The hon. Minister is entitled to hold his own opinion. I am speaking about the objective condition

Mr. Chairman: The hon. Minister is not in his seat.

Shri Altekar: I say money and wealth never get old. One who is in possession of them holds rather a very important position. He can wield the greatest influence even over his own wife and also on society. Therefore, I would like that he should not take undue advantage of the provisions of this Bill and that divorce should be made very difficult for him. Therefore, I say only under certain very intolerable conditions and with due restrictions divorce by mutual consent should be allowed. But, let it not be degraded to the position of the butterfly philosophy of marriage.

Chaucer in his Canterbury Tales had spoken of the Lady of the Bath. There among many persons that were going on a pilgrimage, was the Lady of the Bath. He says of her "husbands at the Churchgate she had eight". That shows how society looks down upon divorce even there; and here also we must take care that it does not degenerate into an immoral institution. My important view about the situation is this. Let us, under very hard conditions, make allowance for divorce, but what is most important is—I do not wish to take an unnecessarily long time dwelling on this point—that the position of women on the economic basis should be very sound so that men will not think of divorcing them and even the divorce itself is made impossible by introducing monogamy. She should have a right in the property of her husband, and if she so likes, let her have in case she is ill-treated, a right of separate residence. There should be provision for separate residence and maintenance—not by judicial separation, because it will lead to divorce and the man would get rid of her. Let the woman, who is ill-treated or not properly taken care of, have an equal right in the property of her husband, that is, let her get according to her choice a share or maintenance equal to the husband's share in the property of her husband. Her

position would then be sounder; she would be having the relief of living separately—of course she must lead a pure life. But at the same time the husband would not be in a position to marry again owing to the law of monogamy. That will set him right.

Mr. Chairman: The hon. Member has exceeded his time-limit.

Shri Altekar: I shall conclude here. Therefore, the man would not be in a position to re-marry and the lady is also given sufficient relief and some sort of maintenance. Such a provision if introduced in this Bill, will improve the condition of women better than by what has been provided now.

Mr. Chairman: With so much tribute being paid to women, I would now call a lady to speak. Shrimati Uma Nehru.

श्रीमती उमा नेहरू (जिला सीतापुर व जिला खेरी—पश्चिम) : आज दो रोज से हम बराबर इस हाउस में बैठे हुए अपने भाइयों के विचार और व्याख्यान सुन रहे हैं। मैं समझती थी कि यहां जो व्याख्यान होंगे वे इतने जोशीले और गुस्से के नहीं होंगे। आज जो बिल हमारा सामने पेश है वह बहुत विचारणीय है। हमको इस बिल पर संजीदगी के साथ विचार करना चाहिये क्योंकि शादी का सवाल जो है वह कोई खेल नहीं है। मैं देख रही हूं कि इस बिल पर हाउस में तरह तरह की बातें कही जा रही हैं। कहीं तो हमको पूजनीया कहा जाता है और कहीं हमको महज खिलौना समझ कर हमारा जिक्र किया जाता है। आज मैं अपने भाइयों से कहना चाहती हूं और मां की हिसियत से भी कहना चाहती हूं कि अगर आप हमको माता की हिसियत से देखते होते तो आप हाउस में वे बातें न कहते जो कि आपने कहीं और जो कि बिल्कुल जंबा नहीं हैं और गलत हैं। आज मैं अपना स्त्री का हृदय हाउस के सामने रखना चाहती हूं। जब पुराने शास्त्रों की चर्चा में सामने आती हैं तो मैं खुद चाहती हूं कि काश वह जमाना आज होता कि हम भी जब

माला गले में डालते। मैं तो चाहती हूँ कि आज सत्यवान और सावित्री का जमाना होता। मैं तो चाहती हूँ कि हमारा यहाँ सीता जैसी स्त्रियाँ और राम जैसे पुरुष होते। लेकिन इस वक्त अगर हम असलियत देखते हैं, अगर हम प्रीक्वल लाइफ को देखते हैं तो हम चारों तरफ समाज को गिरा हुआ देखते हैं और समाज ही क्या बल्कि हम स्त्री को भी गिरा हुआ देखते हैं। आज सवाल यह है कि हमारी राजनीतिक आजादी के बाद हमारी सामाजिक आजादी भी होनी चाहिये। जब हम इस प्रश्न पर विचार करते हैं तो हमको स्त्री के बारे में विचार करना पड़ता है। स्त्री के बारे में जब हम विचार करते हैं तो हमको देखना होता है कि स्त्री समाज में क्या है। हमारे कुछ भाइयों ने भारतीय नारी का जिक्र किया था। आज मैं नारी होकर भी यह रामझूती हूँ कि समाज में १० फीसदी एंसी जातियाँ हैं कि जहाँ डाईवर्स आदि चीजें, जिन्हें हम गलत मानते हैं, राज्य हैं और कानूनी तौर पर राज्य हैं। उनकी पंचायतें उनको मंजूर करती हैं। चन्द लोग जो कि मिडिल क्लास के हैं उन पर आज मुसीबत आई हुई है। जो कि चन्द मिडिल क्लास की स्त्रियाँ हैं उनको हम रंशमी कपड़ा, बनारसी कपड़ा, हीरें और मोती पहने देखते हैं। लेकिन आपको नहीं मालूम कि यह कितनी गिरी हुई स्त्रियाँ हैं। यह बात नहीं है कि हमारे पुरुष हम पर अत्याचार करते हैं लेकिन समाज की जो स्थिति आ गई है उसमें जैसी माता होनी चाहिये वह नहीं दिखाई देती है। इस संसद् में जो स्त्रियाँ बैठी हुई हैं उनमें बड़ी से लेकर छोटी तक की यह नीयत है कि स्त्री आगे बढ़े, स्त्री पूजनीय होने ताकि उसके जो बच्चे हैं वे जैसे आज दिखाई दे रहे हैं उससे अच्छे हों। यह उनकी स्वाहिश है। इसीलिये समाज में परिवर्तन करने की जरूरत महसूस हो रही है। मुझे ताज्जुब हुआ कि जब कल एक भाई ने कहा कि जो स्त्रियाँ इस संसद् में हैं उनका पश्चिमी झुकाव है। लेकिन आज मैं अपने उन भाई से कहती हूँ कि पश्चिमी स्त्रियाँ का और हमारा और सारे संसार की स्त्रियाँ का एक ही सवाल है। कोई फर्क नहीं है। अभी मेरे भाई आलतेकर ने कहा कि

अगर हमको अपने पति की जायदाद में हिस्सा मिलने लगेगा तो स्मूथ रिलिंग हो जायगा और शान्ति हो जायगी। मैं उनको बताती हूँ कि हम हरीगज एंसा नहीं चाहतीं। हम बताना चाहते हैं कि हम अपने घरों को तबाह नहीं करना चाहतीं। हम वे भारतीय स्त्रियाँ हैं कि जिन्होंने नालायक से नालायक पतियों को संभाला है। हम वे स्त्रियाँ हैं कि अगर घर में कोई खराबियाँ होती हैं तो हम उनको ओढ़ लेती हैं या ढक लेती हैं। हम चौराहे पर खड़े होकर घर की बुराई को प्रकट नहीं करतीं। लेकिन मैं कहूंगी कि हमारे साथ जो बर्ताव हुआ है, मैं अत्याचार नहीं कहूंगी क्योंकि हाउस में भाइयों का बहुमत है, वह ठीक नहीं होगा। हमारे हृदय को देखो। मेरी बहुत सी एंसी मित्र हैं कि जिनको बहुत मुसीबतें हैं। मैं एक लड़की को जानती हूँ जो कि सहते सहते मर गई। उसका पति घर में आता नहीं था। केवल भोजन करने आता था। उसके अलावा उसका पता नहीं था कि वह कहाँ रहता है। कहीं उसने अपने खेल कूद के लिये एक औरत रख छोड़ी थी। वहीं जाता था। वह लड़की कुछ कुछ कर तपीड़क से मर जाती है लेकिन अपने पति के नाम पर मरती है। उसने अपने घर को नहीं छोड़ा और हजार सम्भाने के बाद भी वह अपने मकें तक नहीं गई। तो हमने तो इतना संक्रीफाइस किया है साथ ही आपको मैं यह भी कह दूँ कि धर्म धर्म क्या पुकारते हो। चारों तरफ धर्म की पुकार मची हुई है लेकिन हमारे सामने धर्म की पुकार आप क्या रखते हैं। आप देखिये कि अगर किसी ने यहाँ के धर्म को कायम रखा है तो वह भारतीय स्त्री ने रखा है। आपने नहीं धर्म को कायम रखा है। मैं आपको हर चीज बतलाती हूँ। न हमने अपनी पोशाक बदली, न हमने अपना खाना पीना बदला। चाहे आपने हमको विलायत घुमाया या अमरीका घुमाया पर हमने अपना तर्ज नहीं बदला और इसी वजह से आज भारत कायम है, मिटा नहीं है। जब मैं स्त्री के बारे में हाउस में या कहीं भी सुनती हूँ तो एक सबसे तकलीफदेह चीज जो मेरे सामने आती है वह यह है कि उसको एक खिलाँना समझ कर उसकी चर्चा की जाती है।

[श्री मती उमा नेहरू]

कल जब चौधरी रोहिणी कुमार ने बातें कहीं तो मैं उनके सफेद बालों को देखती थी, उनकी उम्र को देखती थी और सोचती थी कि वह क्या बातें कह रहे हैं। अगर उनको माता की हींस-यत मालूम होती तो किसी भाई के मुंह से कभी ऐसी बातें न निकलतीं। तो यह तो मैंने जनरल बात कही और यह बात मैं फिर कहना चाहती हूँ कि यह अच्छी तरह समझ लिया जाय कि औरत को खिलौना न समझा जाय।

इस बिल के बारे में सबसे पहली चीज जो मैं कहना चाहती हूँ वह यह है कि हम शादी करके अपने घर को बिगाड़ना नहीं चाहतीं। वही शादी सक्ससेसफुल होती है जहाँ एक दूसरे की बरदाश्त होती है, एक दूसरे में अडरस्टैंडिंग होता है। उसी घर में अमन और चैन होता है। लेकिन कुछ घरों में ये चीजें नहीं होती हैं। आज हमको भी डाइवोर्स का नाम बहुत अच्छा नहीं लगता। हमको बिल्कुल अच्छा नहीं लगता। लेकिन जब ऐसी स्थिति हो जाती है कि कोई इलाज ही नहीं रहता तो हम क्या करें। क्या आप चाहते हैं कि हम अपनी पुत्रियों को जिन्दा मार डालें? ऐसी हालतों में ही यह डाइवोर्स का सवाल पैदा होता है। आपने क्या हमको खेल की चीज समझा है या इतनी हलकी चीज समझा है, क्या जिसने आपको पैदा किया है उसको आप ने इतना हलका समझा है कि हम हर रोज़ जाकर डाइवोर्स किया करेंगी।

आपकी बात अच्छी नहीं लगी, आपकी नाक अच्छी नहीं लगी, आपका कान अच्छा नहीं लगा तो हमने डाइवोर्स कर दिया, यह बात बिल्कुल गलत है लेकिन मैं आज अपने भाइयों से कहना चाहती हूँ कि यह बात आज पाई जाती है, घर में खूबसूरत स्त्री मौजूद है लेकिन फिर भी पति महाशय एक दूसरी स्त्री पर फिदा है और उस पर जान निसार किये दते हैं यह चीज हमें देखने में आती है।

अब इस बिल के ऊपर मैं आती हूँ। मुझे यह कहना है कि इसमें २९ वर्ष की जो उम्र रखी गई है, मैं चाहती हूँ कि वह उम्र १८ वर्ष हो। अगर कोई मेरी लड़की १८ वर्ष की है और वह अपनी कॉम में नहीं किसी दूसरी कॉम में शादी कराना चाहती है तो उसका धर्म है कि वह मुझे पहले बतलाए, वह कोई चार नहीं है कि घर से भाग जायगी वह मुझ से चर्चा करेगी, अब अगर मैं उससे सहमत नहूँ तो आपस में सलाह मशवरा हो सकता है, वाद विवाद हो सकता है लेकिन वह मुझसे सलाह करेगी इस बात के लिये कि मैं चाहती हूँ कि मैं ऐसा घर करूँ, अब आपका यह सोचना कि वह लड़की भाग जायगी मेरी समझ में आपका यह डर बिल्कुल बेबुनियाद है, मैं जानती हूँ कि जो लड़कियाँ अपने मजहब के खिलाफ शादी करती हैं वह शादी करने से पहले मां बाप से उसका जिक्र कर देती हैं, इसलिये आप इस चीज के प्रीक्टिकल पहलू को देखिये, मजहब एक बिल्कुल ड्रीमलैंड में रह कर फेयरी टेल की सी तस्वीर बनाते हैं जिसको देख कर मुझे ताज्जुब होता है। मैं लड़की की उम्र १८ वर्ष रखवाना चाहती हूँ, अब यह कहना कि १८ वर्ष में लड़की को समझ ही नहीं होती और उस उम्र में जो चाहेगा उसे बहका लेंगे, यह मेरी समझ में नहीं आता, यह बहुत कुछ इस बात पर निर्भर करेगा कि आपने अपनी लड़की को कौसी तालीम दी है, शिक्षा दी है और क्या उसको बनाया है? और मैं कहूँगी कि अगर आपको यह डर है तो जाहिर है कि आपने उनको जितनी शिक्षा दी जानी चाहिये वह नहीं दी है।

जहाँ तक डाइवोर्स का ताल्लुक है, अभी मेरे एक भाई ने जो यह सुझाव दिया कि उसकी प्रोसि-ट्रिडिस "इन कॉमरा" में होनी चाहिये, मैं उनके सुझाव से पूरी तरह सहमत हूँ और मैं चाहती हूँ कि ऐसे भ्रममलाल "इन कॉमरा" में तय किये जायं, इसके साथ ही मैं यह भी नहीं चाहती कि डाइवोर्स की नीयत होवे और तीन २ वर्ष तक हम अदालत में एक दूसरे से भिड़ते रहें, मैं उनका स्प्रीडी डिस्पोजल चाहती हूँ क्योंकि

जिस वक्त इन्सान यह सोच लेता है कि इससे मैं जुदा रहूंगा तो एक दूसरे के लिये इतनी नफरत बढ़ जाती है कि उनका आपस में मिल कर एक दिन के लिये रहना भी दुश्वार हो जाता है, और कुछ दिन भी एक साथ रहना उनको बर्दाश्त नहीं होता है, इसीलिये मैं चाहती हूँ कि जब इस विधेयक पर अगले सेशन क्लोज बाई क्लोज विचार किया जाय तो इस बात को ध्यान में रख कर उसमें आवश्यक सुधार किया जाय ।

और अधिक न कह करके मैं इतना ही कहना चाहती हूँ कि आज इस बात की बड़ी आवश्यकता है कि हम भारतीय नारी का समाज में जो उपयुक्त स्थान उसका होना चाहिये उसको दिलाने का इन्तजाम करें और जैसा कि अभी हमारे एक भाई ने कहा कि हमारी मातायें भगवती और शक्ति का रूप हैं तो इसको मानते हुए निश्चय जानिये कि अगर स्त्री को उसका दर्जा नहीं दिया जाता तो वह मौजूदा सूत को बदल करके रहेगी ।

Dr. Jaisoorya: Madam Chairman, I am rather in confusion as to which Bill we are discussing. From what I have heard, most people are thinking that we are continuing the discussion we had the other day on the Hindu Marriage and Divorce Bill, especially my little friend Mr. Nandlal Sharma.

Very few people know that the Special Marriage Bill has already been there; it was made in 1872. It was made because certain groups felt that the old traditional method was too rigorous and unbearable. Therefore the Special Marriage Act was made by the Britishers. It is a fact that it was in existence and still is in existence. Fifty-seven years ago my late revered father and mother married under that Special Marriage Act; and twenty-five years ago, I married under that same Act. Right or wrong I was a participant to that and had to declare in those days: "We are no

longer Hindus. "Does it make us less Hindu because at that time we were compelled to say that we were not Hindus? Maybe by doing this, in the orthodox, narrow sense, we were probably not very good Hindus, not very good Muslims, not very good Parsis, but let us hope that we have justified the claim that we are good Indians.

Now the point is this. Here comes a claim that all that we should do must be sanctioned by ancient traditions. All right. In that case many of the laws are not in keeping with our ancient traditions. For instance, Manu made laws not only about society; he made civil laws on judicial procedure, recovery of debts, deposits, sale without ownership, laws about partnership, non-payment of wages, non-performance of agreements, defamation, assault, hurt, theft, adultery, gambling, betting and also traffic rules. Now all those were replaced by modern statutes made mainly by the Britishers. I have not heard any orthodox Hindu lawyer getting up and saying: "My Lord, I refuse to argue this case, because it is not based on the law of Manu." Now, how much of Hindu law has remained after all the alterations that have been made? What is there left of *Mitakshara*, if we are so very particular, so conscious, so devoted, so loyal to the ancient law?

Here is the Report of the Hindu Law Committee. There one Pundit Raj Bulaqui Ram Vidyasagar, President of the Anti-Hindu Code Committee, Amritsar, said:

"There should be no deviation from the law as laid down in the *Mitakshara*." But almost immediately afterwards on a question of daughter's share he said:

"Even if the *Mitakshara* says, that a daughter must be given a share, I will not agree to it."

The Bihar representative of the Hindu Mahasabha said:

"Our belief is that Hindu law is of divine origin. It is not a king-

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made law. If there is any codification, we shall be governed by the king-made law and cease to be governed by divine law."

Yet, in reply to Dr. Mitter who asked: "The clause giving absolute right to women in accordance with the *Mitakshara*, do you agree to it?" They said:

"No, we prefer the Hindu law as interpreted by the Privy Council to the *Mitakshara*."

I want to remind the House that Vijnaneswara in the 11th century had considerably modified Yagnavalkya and had given absolute right of property to women. Now the Judicial Committee of the Privy Council did not agree with this. Why? Because even the women in England did not have the property rights at that time. So, they rejected this and accepted the limited estate recommended by Yagnavalkya. In other words these Britishers put the clock back of India's progress by nine hundred years. Am I to accept the history of *Dharma Shastras* as given by Prof. Kane? I am given to understand that Prof. Kane is a recognised authority on the history of the *Dharma Shashtra*. I am ignorant of these things but I have not heard of Mr. Nand Lal Sharma as an authority on the history of the *Dharma Shashtra*. I am accepting what is accepted everywhere.

An Hon. Member: Please read out; do not show these books; there are many books here.

Dr. Jaisoorya: Here is a statement from the history of the *Dharma Shashtra*—Page 882: "It is on account of the general attitude of religious tolerance that the *Smritis* and the digests prescribed that even the usages of heretical sects should be enforced by the king." In other words, in ancient India, they were very tolerant and they allowed things.....

An Hon. Member: They are not Members of the Hindu Mahasabha (Interruptions)

Dr. Jaisoorya: Because of our rigidity, great reformers arose. For instance, in Maharashtra we had Gnaneshwar, Tuka Ram; Eknath; and Jyotiba Fule; in the Punjab we had Dayanand Saraswati, in Bengal we had Ram Mohan Roy and Vidya Sagar and so many others and in Andhra men like Veeresalingam Pantulu and all of them were persecuted for the same ideals. But the mentality is the same yet. In spite of that I say the caravan goes on; progress cannot be stopped.

An Hon. Member: Caravan goes and dogs bark.

Dr. Jaisoorya: Now, the point is this. This Act is a permissive measure and applies to those who accept its principles; it is not compulsory. That is the main point.

Mr. Chairman: I will request the hon. Members to address the Chair.

Dr. Jaisoorya: It is left, Madam, to those who subscribe to its principles. Obviously the very fact that we have accepted this means that to a great extent we have departed from the stringent rituals. Those who want to get married according to the ancient customs are welcome to do so. This is a permissive measure of a secular nature. It says that we want to create a bridge by which the narrow confines of our social order can be broken in order to create greater consciousness of India. It is left to you. If you accept the provisions, it is good. If you do not, go back to your own.

Yesterday, I heard an objection from Mr. Iyyunni. He belongs to a faith that does not recognise divorce. For instance, if you look at the Christian church, it has not recognised it. Hindu custom among the higher classes does not recognise divorce. There is no sanction as yet in the *Smritis* for divorce but a large amount is customary law and that is the saving grace. The written law applies actually to ten per cent of the population, the intellectuals who happily or unhappily had to play a vital role

in this country. Therefore, any ameliorative measures that are brought by such Bills are actually a struggle of a progressive State against the orthodox church. Therefore, we have to judge: where are we going?

In 1869, an alien Government—the British Government—made a law in this regard called the Indian Divorce Act to be applied to people with an alien faith, known as Christianity. What was there Indian about it? In those days, we were helpless; we did not know what to do. So they applied the Indian Divorce Act of 1869 to the Special Marriage Act of 1872. Strange as it may seem, it is surprising that in the year of grace, 1952, in post-revolutionary India, the Law Ministry of my friend, the hon. Law Minister, could not think and realise that this is post-revolutionary India; and without a change of syllable, had bodily lifted that re-actionary, ante-deluvian Indian Divorce Act of 1869 with all its mistakes—even spelling mistakes and definitions too—and had presented it to the people of India in 1952, calling it a post-revolutionary measure. There are a lot of weaknesses, anomalies, contradictions that have arisen because of the indiscriminate and thoughtless and somewhat—I do not want to use that word—way in which it has been brought forward. Even a line here or a line there has not been changed. The basic difficulties, the basic weaknesses remain.

My hon. friend there raised a question—an “idiot or lunatic”. Those words exist in the old Indian Divorce Act of 1869. From that time medical science has progressed a good deal so that I am here to tell you that it is idiotic to use the word ‘idiot’. It shows that the mentality of the legal department has not changed. That is why that I have been insisting that when you make social laws, it is not like laws of property; here it goes deeper and human relations are involved. It is not based on the antique idea of property or some inanimate immovable property.....

How many minutes more can I have, madam?

Mr. Chairman: Two minutes.

Dr. Jaisoorya: Two and a half minutes. It should be based on the proper understanding of deep human factors that govern emotions. That is what I wanted them to understand.

In America, every court has got what we call the clinical psychiatrist. He sees the background of the crime and the social aberrations. All these things have now developed during the last 20 or 25 years. Unfortunately for us, we are still in the same mentality as we were in 1869. We still seem to believe that the British had gone on a long holiday and put the same laws into operation but do not realise that this is post-war India, post-revolutionary India. Unless you bring about a social revolution, there is no hope of consolidating our economic revolution or even our political revolution. That is the point which our departments have not understood.

Shri Biswas: It is upto the doctors to carry on a revolution on those lines.

Dr. Jaisoorya: I was happy to hear from the hon. Law Minister yesterday that the Indian Marriage Act of 1872 is out of date. Now we should hurry up, because that is the basis of all the—shall I say—prejudices on which these laws have been made.

Shri Biswas: We received several opinions, but none from my hon. friend pointing all this out.

Dr. Jaisoorya: You never asked me. You never put me on the Committee also. I came as an interloper. That is your mistake, not mine.

There are two more points. It is no use discussing the Bill clause by clause. But I want to show you one anomaly. Clause 4 will show you an extraordinary anomaly. You have to read clause 15(e) which says that “the parties are not within the degrees of prohibited relationship, unless the law or any custom or usage having

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the force of law, governing each of them permits of a marriage between the two." What have they put here? While clause 4 says that the parties should not be within the degrees of prohibited relationship, under clause 15 "any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act" can be registered under this Act. In other words it means this. Suppose for instance marriage between an uncle and niece is allowed in some places. My father first married his own niece. Those things are prevalent in South India. It means he can come here and say "I want to register my marriage under this Act". I am referring to those who have already married before this has come into force. Those that happen afterwards are different. I am pointing out only a few glaring things. There are many more.

Shri Biswas: All this has been already pointed out by many speakers.

Dr. Jaisoorya: I also want to point it out to you.

Finally I want to say this. In social matters the aim of law should not go beyond its effectiveness. If we make laws that are not effective, that do not understand the emotions of the people, naturally we will not succeed because those laws become obsolete, they become oppressive. Here I have a statement by Prof. Karl N. Lewellyn, Professor of Law, Columbia University.

Mr. Chairman: The hon. Member may just give the substance of it.

Dr. Jaisoorya: This is all that I want to read. He says:

"If the New York law should prove to be failing of its very purposes and is also costing what we know it costs in misery when mismatched couples are held together in law, but not in fact, then the case for changing the law would become difficult to deny."

It is only when she is driven to utter despair that a woman wants divorce. Biologically a woman wants a home, biologically she wants children, she wants security, safety and stability. If a woman is driven to that extreme desperate condition where even death is considered preferable she says 'I want a divorce'. I do not think any law or anything that has recourse to proof of utmost cruelty, adultery, prohibited degrees and all these things is going to help. When the content is lost, when in spite of all attempts there is no basis for further remaining married, no law is going to help you or make you good citizens.

Shri Venkataraman: After the very learned discourse on a subject of eternal interest between man and woman, may I crave the indulgence of the House to deal with the clauses in the Bill and with the scope of the Bill in relation to them? Even if this House were to decline to pass this Bill, the country would still have an Act which is very much like the Bill that is before this House. The Act of 1872 which provides for special marriages between persons belonging to different religions would still be available to the people of this country. The clause there, relating to divorce, to enable persons who have married under this Special Marriage Act would still be available to them. It is therefore profitless to go on with an elaborate discussion as to whether divorce should be allowed or not. We are not discussing the question whether society would be better off with divorce or without divorce, because, as I said, it has already been concluded by an enactment which will govern persons who will be married under this Act. Similarly, people who in future get married under this Act or get themselves registered under the new provisions of this Act would continue to be governed by the provisions of this law. Therefore I would confine my remarks to a consideration of the Act of 1872 and the modifications which we have

suggested in the Bill before the House. Whether they are an improvement or whether they detract from the advantages of the original Act is the matter that is essentially before the House and that has got to be considered. If it is an improvement the House will support it. But if it takes away any of the existing privileges or if it hinders society in its normal functioning, then we would certainly make improvements in the original Act in such a manner as would suit our present conditions.

The original Act provided certain conditions under which that Act would be applicable. The improvement that we are suggesting under this Bill is that any Indian citizen should be enabled to marry any other Indian citizen provided they are not prohibited from doing so under the clause relating to prohibited relationships. So long as they are not within the degree of prohibited relationship any Indian citizen should have the right to marry any other Indian citizen and be governed by the provisions of this Act. If we pass this Bill it does not automatically apply to everyone of us here. I know most of the people in this country would not care to marry under this Act and may not care to register themselves under this Act. Nevertheless, if persons want to be governed by the provisions of this law and they want to take advantage of what they consider is a progress of society, then we as representatives of the people ought not to stand in the way of those who want to take the benefit of this Act. Therefore it is that I venture to submit that in so far as this Bill enables Indian citizens to marry between themselves, subject always to the provision relating to prohibited degrees of relationship, we as representatives of the people should encourage that sort of marriage being performed. We always talk in terms of a uniform civil code. But, if we introduce a uniform civil code today in this House, I am sure that the entire House will be up in arms against us saying.....

An Hon. Member: No.

[MR. DEPUTY-SPEAKER in the Chair]

Shri Venkataraman: Sorry; the majority in the House would be against it on the ground that it interferes with personal freedom, that it interferes with past traditions and so on. If you want to introduce at some stage or other a uniform civil code, we will have to start it from the position in which it will be optional for the people to be governed by it. When more and more people come under the provisions of that law and ultimately it is found that the persons who have come under that law are larger in number than the others who have not, then it may be time for the Government to say that that law be applied uniformly to all people. Therefore, this is the first step towards having a uniform civil code in respect of marriage and divorce.

Yesterday, Shri Tek Chand was bitterly, complaining about the provisions of clause 4. He said, you have not provided for a marriage, which has been brought about by force or fraud, being objected to before the Registrar of marriages. My first answer is that this Bill merely carries out the existing provisions in regard to this matter, in the Act of 1872. My learned friend should have brought before this House cases of force and fraud having vitiated marriages between 1872 down to today to prove that this law is inadequate or has been abused or misused. On the other hand, he referred to me and said, I am innocent of law, and referred to the cases in the English Chancery courts and English Divorce courts. I have not been able to find those cases because he had not given the reference. I am sure that so far as the Act of 1872 is concerned, we have not heard of any judicial pronouncement in which it was complained that the Registrar of Marriages had not got this authority and therefore it has led to force and

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fraud being exercised in registering these marriages. On the other hand, as I said yesterday itself, the chances of force or fraud being exercised on a person over 21 years of age are very few. Then, it is not as if the civil law of the land is dead. Any person who thinks that force or fraud is being exercised can always go to the police and ask for help. Any person interested in preventing that marriage which he considers is being celebrated under force or fraud, can always go to a civil court and ask for an injunction. On the other hand, the suggestion made by my hon. friend Shri Tek Chand of clothing the Registrar with authority to enquire into the facts as to whether there has been force or fraud is likely to lead to very many complications. The Registrar is not a judicial authority. He cannot hold an enquiry which will be equal to the one conducted under the Civil Procedure Code unless you have or make provision for a judicial enquiry of the kind that can be conducted under the Civil Procedure Code in the matter of evidence being taken, of witnesses being summoned and examined and cross-examined. Unless all that elaborate process is gone through, it would not be possible for an executive officer like the Registrar to find out whether there has been force or fraud. Therefore, that suggestion is wholly unacceptable. It is wrong to clothe an executive officer like the Registrar with powers of a judicial officer and then say that he has mis-exercised all these powers. Supposing the Law Minister had come forward in this Bill with a provision like that, I am quite sure that the legal acumen of my hon. friend Shri Tek Chand would have been up and he would have said, look at the fantastic law, an executive officer who merely records or registers the fact of a marriage is clothed with authority of enquiring into whether there has been force or fraud in this matter. It is essentially a judicial function. I do not think there is much force in the contention that clause 4 suffers from any lacuna.

1 P.M.

The other point which my hon. friend Shri C. C. Shah made was that Chapter III should be completely deleted from this Bill. He said that marriages performed in accordance with customary rights should not be allowed to be registered under this law. I quite agree that there is no such provision in the Act of 1872. But, you are introducing an innovation which is an improvement on the existing law. It is an improvement in this way. A person may have married without knowledge of the benefits of the Special Marriage Act. He might come to know that if the marriage is registered under the Special Marriage Act, he would get certain benefits by way of monogamy, right of divorce, right to inherit property in accordance with the Indian Succession Act and so on. Why should those people be prevented from registering themselves under the new law? Hon. Members have to clearly bear in mind permissive and optional pieces of legislation. Nobody is compelled; no person who is married under the Hindu Law would be compelled to come and register himself under the Special Marriage Act. If I had married, say 1940, and I want to register myself and get the benefits of the Act in 1955, I should not be prevented from taking the benefits of this Act by saying that chapter III should be wholly deleted. We have only to see whether by such a provision we are likely to cause any damage either to the joint family or the family of which he is the head in any way. My submission is that clause 18 of this Bill has completely safeguarded these cases. It is only on the date on which his name is entered in the register that clause 19 comes into operation. It is only that date that operate as a separation of that Member from the joint family. It does not become retrospectively operative from the date of his marriage. The date of registration is the crucial date for the purpose of severance from the family. Supposing A, with two sons, who is married in 1940, registers himself in

1955, it is only A that would go out of the family and not his two sons. I am sure that the hon. Law Minister will bear me out, because from a reading of clause 19, this is clear. Some Members said in the course of the discussion that he and his children would be compelled to go out without their will. It is not so. On the other hand, clause 19 makes it clear that it is that person who registers under this law that would go out of the family and that the children will continue to be members of the joint family. Any children born to this person who registers himself after the date of entry in the certificate book will share his property with his widow in accordance with the Indian Succession Act.

Shri Bogawat (Ahmednagar South): What are the advantages or benefits of registering valid marriages?

Pandit Thakur Das Bhargava: Will the previous progeny be excluded from the share when inheritance opens?

Shri Venkataraman: Two questions have been asked. I will answer them. What the advantages of registration are, could be left to the person who registers himself to decide. If my hon. friend thinks that he has no advantage, he need not register himself. If I think that I have advantages under the Indian Succession Act, I will go and register. Therefore, I need not answer that question. So far as the other question is concerned, that is a legal conundrum. I do not know, what my hon. friend Pandit Thakur Das Bhargava says may be the interpretation. He says that the children who are born before the date of the registration would be entitled to inherit along with the other children who are born after the date of registration. I think it is a possible interpretation. I do not see anything wrong in it. If his interpretation is right and true, there is nothing wrong. The children will get the benefits of the joint family properties as well as the properties of the father.

Shri Altekar: That should be made clear.

Shri Venkataraman: According to me, the clause is very clear. The clause does not throw any doubt on the position of the other members of the family existing on the date of the registration. That is my point. So far as future children are concerned, it is an open question. My view would be that the children along with the children who are born before the date of the registration would be still entitled to inherit the property of the person who registers himself.

Then the next question which has been agitated very much relates to the legitimacy of children. My friend, Mr. Chowdary made some point yesterday and he said: why should the children who are declared legitimate under clause 24(1) (ii), which relates to nullity of marriage being granted on the ground of the respondent being an impotent person, get the right of inheritance? Sir, the law declares these children born before the date of the decree for nullity as legitimate children. (*Interruption by Shri Bogawat*). I would ask the hon. Member not to have a running commentary on my speech. If he sits a little farther, I would be able to speak with less distraction.

Mr. Deputy-Speaker: He need not talk. Let there be no running commentary like this. Let hon. Members hear with patience what he has to say and when their opportunity comes, they may speak.

Shri Venkataraman: Thank you very much.

As it is now, the children who are declared legitimate, irrespective of the fact whether they were or were not legitimate, should have the right at least to inherit the property of the parents; the father and mother. In case it is not possible to find out the father, still it is quite easy to find out the mother and the children should be entitled to inherit the property of the mother. Therefore, the clause as it stands, requires a certain modification. A proviso may be added in this

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clause that children declared legitimate under clause 24 will be entitled to inherit the property of the parents, namely, father and mother, and not of any others. The collateral conscience will be saved. As it is, the number of people who wish the right of inheritance being given to the children.....

Shri C. R. Chowdary (Narasaraopet): The point I raised was this. If the respondent was impotent at the time of marriage and also at the time of the presentation of the petition for a decree, the court can declare that the child is legitimate. But the society will feel it and will not agree with the finding of the court, because the respondent who was impotent at the time of marriage was not competent to beget a child. How can a child born before the date of the decree of nullity be declared a legitimate child of parents, one of whom is impotent? How will the society take it? It will cast a reflection on the chastity of the woman or her *dharma* or whatever it may be. Therefore, to avoid that contingency, it has to be reconsidered.....

Shri Venkataraman: I can answer that point by giving an illustration, but since you will clamp the time-limit on me, I will reserve it for the clause by clause consideration stage.

I will now proceed to the next point which has caused very great controversy in this House, namely, divorce by mutual consent. The hon. the Law Minister in the course of his speech referred to the law in the Soviet Union and China. We need not travel so far outside India. In our own country, we have laws which permit divorce of persons at will, not even with mutual consent. The *Marumakkattayam* Act of 1933 passed by the Madras Legislature provides for dissolution of a marriage by giving a notice of six months, and thereafter the marriage is declared dissolved. (*Interruptions*). I have many friends in Malabar and I can very well say that this law has not brought about

the disruption of society, as hon. Members were trying to make it out in this House. I will only say this, that the clause, as it has been passed by the Council of States, leads to a considerable amount of confusion, as the hon. Law Minister himself said. What we should guard against in these matters is allowing a momentary passion to become the final act of dissolution between the parties. Some *locus paenitentiae*, some time for reconsideration should be given and it is for that purpose that I would suggest that we should adopt the same language of the law which has been adopted in the *Marumakkattayam* Act of 1933 in Madras. With your permission, I will only read three sentences. The law provides:

"A copy of such petition shall be served at the expense of the petitioner on the respondent."

"On the motion of the petitioner made not earlier than six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the court shall, on being satisfied after such inquiry as it thinks fit that a marriage which is valid under section 4 was contracted between the parties, by order in writing declare the marriage dissolved."

Therefore, if we introduce a similar provision here by which we will ask the parties who have mutually consented to have their marriage dissolved, to file a petition in court, and after the lapse of one year if they are of the same mind still, to come forward again with another petition for a decree of dissolution, we would more than protect and safeguard the interests of women who may be compelled to give their consent.

Sir, a lot was said in this House as to the propriety of allowing dissolution of marriage by mutual consent.

Shri Gadgil: Does it contemplate a decree nisi, a decree final, in the amendment as proposed?

Shri Venkataraman: No. What it says is this. Any time the party who wants to have the marriage dissolved can go and file a petition. Then six months afterwards, they will renew the petition to the court and say that during the six months they have lived apart, they have refused to live together—one of the conditions prescribed—and then the court will have no option, on being satisfied that they have continued to live apart or they have refused to live together, that they have mutually consented to have their marriage dissolved, but to pass an order for dissolution of the marriage, I think that is the proper thing to do. To force a union of two people who do not want to live together and who are all the time fighting against each other is, I am afraid, another form of forced labour; it is nothing less than that. To talk of Hindu *dharma* and then to say that you cannot dissolve the marriage because the woman would be left in the street, as most of these Members were trying to say, is really a veiled argument in their own favour to see that they get the benefit of the law which they are just enjoying now. It is always the conceit of man that he knows not only his interests but the interests of the woman whom he has married. Has not the time arrived for a woman to say whether she would continue to live with the respondent or not and whether she would take the benefit of a law which is at no time made compulsory on anybody, which only enables people to take the benefit of this legislation, if they so desire to come forward and take it?

MESSAGE FROM THE COUNCIL OF STATES

Secretary: Sir, I have to report the following message received from the Secretary of the Council of States:—

"I am directed to inform the Lok Sabha that the Council of States, at its sitting held on Friday, the 14th May, 1954, adopt-

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ed the following motion concurring in the recommendation of the House of the People regarding the appointment of six members from the Council to the Committee to review the rate of dividend which is at present payable by the Railway Undertaking to the General Finance as well as other ancillary matters in connection with the separation of the Railway Finance from the General Finance:—

"That this Council concurs in the recommendation of the House of the People that the Council of States do agree to the nomination by the Chairman of six members from the Council to the Committee to review the rate of dividend which is at present payable by the Railway Undertaking to the General Finance as well as other ancillary matters in connection with the separation of the Railway Finance from the General Finance."

2. I am further to inform the Lok Sabha that at the sitting of the Council of States held on Wednesday, the 19th May, 1954, the Chairman announced that the following six members of the Council had been nominated by him to the said Committee:—

- (1) Shri Lal Bahadur Shastri
- (2) Shri R. M. Deshmukh
- (3) Shri B. C. Ghose
- (4) Babu Gopinath Singh
- (5) Shri T. V. Kamalaswamy
- (6) Shri V. M. Obaidullah Sahib."

PAPERS LAID ON THE TABLE

RAU COMMITTEE'S REPORT ON D.V.C.
AND GOVERNMENT'S DECISIONS
THEREON ETC.

The Minister of Planning and Irrigation and Power (Shri Nanda): I beg to lay on the Table of the House:

- (i) Rau Committee's Report on the