BILLS, AS PASSED BY THE RAJYA SABHA

Secretary: Sir, I lay the following Bills, as passed by the Rajya Sabha, on the Table of the House:

(i) The Drugs (Amendment) Bill, 1954;

(ii) The Railway Stores (Unlawful Possession) Bill, 1954; and

(iii) The Dentists (Amendment) Bill, 1954.

SPECIAL MARRIAGE BILL—*Contd.*

Mr. Speaker: The House will now proceed with the further consideration of 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 Rajya Sabha.

We were to proceed with the clause by clause consideration.

Clause 2.— (*Definitions*).

Shri S. S. More (Sholapur): Regarding clause 2, I submit that it is a definition clause. Yesterday, when I was participating in the general debate, I raised the question that in clause 27, the word 'adultery' has been used. If we look to section 497 of the Indian Penal Code, there the adultery is conceived in a different context. It has been made criminal there. I feel that when a particular word has become subject of legislation in any enactment, unless there is some special definition, that general definition will stand. Clause 27(a) reads:

> "has since the solemnization of the marriage committed adultery; or"

I raised the point that 'adultery' in section 497 of the Indian Penal Code means intercourse with a woman, who is, to the knowledge of the person committing the adultery, the wife of any other person.

Now, under the English law, there are two types of adultery, adultery in the single and adultery in the double. When a married man has intercourse with a maiden or widow, then it is supposed to be single adultery. But when the woman who is a party to the adultery is also married, and her husband is existing, then it becomes double adultery. For the information of my hon. friend the Law Minister, I would refer him to the definition of the word 'adultery'.

Mr. Speaker: I just want to save time. The hon. Member's point seems to be that the definition clause should include a definition of adultery also. That seems to be his point.

Shri S. S. More: Yes.

Mr. Speaker: Well, I can see the difficulty which the hon. Member feels perhaps in taking up clause 2 at this stage; and that would be that, if we take up clause 2 at this stage and pass it without amendments, later on, it will be difficult to include the definition of 'adultery', if it is so considered necessary as we go on with the Bill. The short point is that I should postpone consideration of clause 2 at the present stage, and proceed with clause 3. I may say that the hon. Member may have a discussion on this point with the hon. Law Minister, because I find that the hon. Member has not given notice of any amendment in respect of the definition of adultery.

Shri S. S. More: May I suggest a *via media*? We may pass clause 2. If the hon. Law Minister accepts my argument, we can have a special definition under clause 27, by way of explanation.

Pandit Thakur Das Bhargava (Gurgaon): May I submit to you on this point that I have given notice of an amendment, by which I have sought to substitute the words 'commits sexual intercourse with any

person other than the spouse'? That solves the difficulty. We need not define the word 'adultery'. Adultery, as understood in the Indian Penal Code, means intercourse with the woman who must be married one. According to British law, I do not know what it means. But the difficulty will be overcome, if we accept the amendment of which I have given notice today. There will be no difficulty in that case. We need not define the word 'adultery' here at all.

Mr. Speaker: I should like to know the reaction of the hon. Law Minister. Is he going to accept this amendment?

The Minister of Law and Minority Affairs (Shri Biswas): I leave the procedure to you. I am prepared to accept any procedure. If you say the definition clause should stand over till the other parts of the Bill have been disposed of, and then if any changes have got to be made either by way of addition or by way of substitution or by way of amendment, that can be taken up later, on that point I am entirely in your hands.

But so far as the present question is concerned, I quite recognise the force of the amendment which hon. friend Pandit Thakur Das Bhargava proposes. In fact, in connection with the Hindu Marriage and Divorce Bill, which is now before the Joint Committee, this question was raised, and there we have not only made adultery a ground for dissolution or divorce or whatever it is, but we have also said that sexual intercourse with any other woman....

Pandit Thakur Das Bhargava: With any other person. It has to include the male also.

Shri Biswas: ...or between a man and a woman who is not his wife, will also be equally—I will not say penal—a ground for taking action under the provisions of this Bill. If that is proposed, that can be taken up, and the question of adultery may also be taken up, in that connection. Adultery in divorce laws has a recognised significance. Therefore, there need not be any apprehension. If it is proposed to extend the scope, that is a different matter; that has been proposed by Pandit Thakur Das Bhargava. But adultery has a special meaning, because that is the word used in all divorce Acts that I have come across...

Shri S. S. More: I accept the authority of the hon. Law Minister.

Shri Biswas: Let me finish. Adultery is defined in the Indian Penal Code in a certain way. It means sexual intercourse of a man with a woman not his spouse. That is so.

Mr. Speaker: My present point is only just not to have this long discussion and take up the time. Therefore, I was suggesting that this point may be discussed between the hon. Members and the hon. Minister, outside. I am only concerned about the procedural point here.

Shri Biswas: I should be very glad to meet my friends and come to some sort of an understanding.

Mr. Speaker: At this stage, the only point I am concerned with is the procedural one. I do see the difficulty. It is just possible that the hon. Law Minister may not agree either with the proposal of Shri S. S. More, or with the proposal of Pandit Thakur Das Bhargava, and in that case, if clause 2 is passed, there will be a difficulty again, in having a suitable amendment, even if the House comes to the conclusion that that amendment is necessary.

Therefore, what I would do here is that I will take all the amendments that are tabled in respect of clause 2, dispose them of, and not put clause 2 to the vote of the House. I will keep that open, so that when we come to clause 27, if the hon. Minister and the hon. Members concerned have come to a conclusion and have an agreed amendment after discussions that might take place between them, that

[Mr. Speaker]

can be put through; Further hon. Members wishing to move amendments will have time by then to table further amendments, if they take care to do so from now.

Now, does Dr. Jaisoorya want to move his amendments? There are two amendments of the same type, Nos. 177 and 178.

Dr. Jaisoorya (Medak): I beg to move:

In page 1, line 16—*after* agent *insert*:

"appointed by the Government of India".

In page 1, line 20—*after* Commission *insert*:

"appointed by the Government of India".

Mr. Speaker: These amendments are in list No. 5; hon. Members have got a printed consolidated list. Does the hon. Member want to say anything in support of his amendments?

Dr. Jaisoorya: Nothing. I have only suggested these amendments.

Shri Biswas: I submit these amendments are wholly unnecessary. The consular officer must necessarily be appointed by the Government of India, because we cannot impose duties on consular officers of foreign governments. For a similar reason, if my hon. friend will turn to the General Clauses Act, section 214, there too he will find that the definition does not say that he should be appointed by the Government of India. So it is wholly unnecessary.

Mr. Speaker: Does the hon. Member want to press his amendments?

Dr. Jaisoorya: No, I do not want to press them.

Mr Speaker: So I do not place them before the House. Now there is amendment No. 290.

The hon. Member Shrimati A. Kale is absent.

Shri Ramachandra Reddi (Nellore): May I draw your attention to the fact that the printed consolidated list has not been circulated?

Shrimati Renu Chakravartty (Basirhat): Yes, it has not been circulated.

Pandit Thakur Das Bhargava: I understand it is being circulated now.

Mr. Speaker: The different lists are circulated and there are running numbers. The consolidated list is an additional one for convenience. I believe it does not include list No. 7. So it is not circulated from that point of view. This amendment is in list No. 7. But anyway we need not trouble ourselves with it because the hon. Member who tabled the amendment is not present in the House. So it falls through.

Then there is amendment No. 222 in list No. 6.

Shri Mulchand Dube (Farrukhabad Distt.—North): I beg to move:

In page 2—*after* line 25, *add*—

"*Explanation V.*—Notwithstanding anything contained in Parts I and II of the First Schedule, a man and a woman shall be deemed to be within the degrees of prohibited relationship if a marriage between them is prohibited according to the customary law prevailing in that area".

This is a piece of social legislation and I take it that the object of all social legislation should be to promote unity and solidarity in the society. Now, the two Parts of the Schedule mentioned in the Special Marriage Bill permit marriages between persons which would otherwise be prohibited according to Hindu sentiment. For instance, the children of cousins can inter-marry. This kind of thing is repugnant to Hindu

society and goes directly against the sentiments prevailing among them. My submission is that this should be qualified and the law should be as it is at present, that is, among Hindus the prohibited degrees of relationship should continue to be the same as they are at present. If any inroads are made in that respect, the persons who undertake such marriages or enter into such marriages would not only incur the contempt of the rest of the society, but this kind of thing may create antagonism and may be the cause of the disruption of their society. So my submission is that in social legislation the sentiments of the people who are likely to be affected thereby should receive primary consideration, and if such a thing is incestuous or repugnant to the sentiments of Hindus, there is no reason why this should be introduced at the present stage.

Shri Biswas: I cannot accept this amendment for the simple reason that if my hon. friend wishes to add to the list given in the Schedule or to subtract from the list, he can do so. But there is no need to make a cross reference to custom at this place where you have the definition of degrees of prohibited relationship. This is a law not for Hindus only but for all persons. Now it will not do, therefore, to define the prohibited degrees of relationship in terms of the Hindu law in general terms here—so many degrees on the father's side, so many on the mother's side and so on. Therefore, what has been done is to adopt the formula which has been accepted in the marriage laws of other places. We have given a list. It makes it quite easy for one to know—the man and woman between whom marriage will not be permissible. Nothing would be easier than to find out who are in the list and to know at once whether marriage can take place with that man or that woman. Now, if you introduce custom, here, because we have got to preserve the special rules of Hindu law, that will not be proper. Therefore, I suggest that if my hon. friend wishes to make any addition to that list or to take away any of the persons named in that list that is another matter; that can be done when we come to deal with the Schedules when my hon. friend may table amendments in connection therewith. Therefore, I am unable to accept this amendment by way of an explanation to the definition of degrees of prohibited degrees of relationship under sub-clause (f) of clause 2.

Mr. Speaker: Does the hon. Member want to press his amendment?

Shri Mulchand Dube: No, I do not want to press it.

Mr. Speaker: If he does not want it to be put to the House, I think he may better accept the hon. Minister's suggestion of moving such amendments as he likes when the Schedule comes in.

Shri Mulchand Dube: That is all right.

Mr. Speaker: The difficulty will be that if this is negatived now, the question might arise when the amendments to the schedule come as to whether those amendments will not be barred by the decision of the House.

Shri Mulchand Dube: I do not want to press it.

Mr. Speaker: So, I am not placing it before the House.

Shri Venkataraman (Tanjore): I beg to move:

In page 2, *after* line 25 *insert*—

"(ff) 'guardian' for the purpose of any marriage under this Act means the guardian, if any, appointed or declared by a court, and in the absence of any such guardian, the father and after the father the mother, the expressions 'father' and 'mother'

[Shri Venkataraman]

not including a 'step-father' and a 'step-mother'."

The point in this amendment is this. I have given notice of an amendment—No. 62—reducing the age from twenty-one to eighteen years in clause 4(c). I want to provide that in case a person has not completed twenty-one years, but has completed eighteen years, the marriage should take place only with the consent of the guardian—father or mother—and for that purpose a definition of 'guardian' becomes necessary. Therefore, I have moved this amendment.

Shri Biswas: I accept this amendment in view of the other amendment of which he has given notice; I hope the House will accept it.

Mr. Speaker: Is the wording all right?

Shri Biswas: Yes.

Shrimati Renu Chakravartty *rose—*

Mr. Speaker: Let me place the amendment before the House. Now, why does the hon. Member say '(ff)'?

Shri Venkataraman: When the Lok Sabha Secretariat draft it, they will give the proper sub-clause heading. It should fit in with the alphabetical order.

Mr. Speaker: All right. Amendment moved:

In page 2, *after* line 25 *insert*—

"(ff) 'guardian' for the purpose of any marriage under this Act means the guardian, if any, appointed or declared by a court, and in the absence of any such guardian, the father and after the father the mother, the expressions 'father' and 'mother' not including a 'step-father' and a 'step-mother';".

Shrimati Renu Chakravartty: Sir, on this point of giving first priority to the court guardian, I have just a few doubts in my mind. Often court guardians are appointed in cases where the father has not been able to look after the property. When it comes to a question of human relationship, however bad a man may be as far as the control over property is concerned, we find that the father will be much more impartial or a much more correct judge than a court guardian.

I remember we also discussed this point in the Select Committee and certain arguments were raised. The court guardian may have certain interests. He may arrange for a marriage in which he is also interested. Therefore, in the arrangement of the marriage at least it is the father who ought to have the priority, though, in the management of the property, the court guardian may have the priority. Therefore, I feel that when the father is living, in the matter of giving consent for the marriage of his child, he should have the priority, and then only the court guardian.

Shri Raghavachari (Penukonda): I wish to submit for the consideration of the House that the definition now given is defective. Difficulties will certainly arise in the matter of the application of the thing. For instance, Mr. Venkataraman's amendment refers to a guardian appointed by court or declared by a court. It will imply, as you can easily see, that for every marriage the court is going to appoint a guardian. What he means evidently is that there is a guardian already appointed under the Guardian and Wards Act and not a guardian appointed or declared by a court for a marriage. That is one difficulty which arises. It may mean that for every marriage a guardian has to be appointed by the court. It is just possible to raise that kind of contention unless you

add the words, 'under the Guardian and Wards Act'.

Shri Venkataraman: Guardian, if any appointed.

Mr Speaker: Let him finish.

Shri Raghavachari: Even, 'if any' is added, it does not exclude the possibility of an interpretation that the court must have to be approached. That would create difficulty and trouble.

The other point I wish to submit is that it contemplates the guardian's consent only in the case of a person who is to be married happens to have a father or a mother alive. In the case of an orphan what will happen. It is not in every case of an orphan that a court guardian is appointed. Therefore, my submission is that instead of first of all putting the word 'guardian' under clause 2, it should be as it has been proposed in the other Hindu Marriage and Divorce Bill that when the consent is held necessary, then we shall define who is the guardian and think of it in its entirety.

Shri S. S. More: I oppose the guardian appointed or declared by court coming into the picture where the consent to the marriage is given. I am talking about Hindus. Supposing the ward belongs to a particular community and the guardian appointed or declared by court belongs to another community. He will not be conversant with the customs and conventions of the community of the ward and that will create complications. I am not against such a guardian giving consent. But, looking to our social structure. I would rather stand by the definition suggested by the Select Committee. I am referring to page 2 of the Select Committee's Report. They have not given it out as a definition but as of sort of a suggestive clause:

> "Subject to the provisions contained in any law, for the time being in force, whenever the consent of a guardian is necessary for a marriage under this Act, the only person entitled to give such consent shall be the father and after the father the mother. But the expressions father and mother do not include a step-father and a step-mother."

According to this recommendation of the Select Committee, the guardian appointed by court does not come in.

I refer to another social problem. So many refugees have come and many of them are orphans. They have lost their parents and some of them do not know the whereabouts of their parents. If the clause stands as it is, that is, if the father or mother is existing, wherever they may exist, then no other person will be competent to give his consent. Let us visualise a case. A has come here as a refugee. His father or mother may be existing in the Pakistan area. If they are alive then no other person can step into their shoes and say that he is standing in the shoes of his father. So many legal interpretations are likely to be advanced if this clause, even as suggested by Mr. Venkataraman is allowed to stand. I would rather request the Law Minister to defer judgement and go into all the implications because it will be a clause susceptible of many interpretations. Instead of making up his mind quickly, I would rather request him to defer judgment. Let us apply our minds. So many complications are likely to arise and the danger is that if the condition is not properly fulfilled, the marriage is likely to be declared void. The children will also suffer because the child born of a void marriage will be declared illegitimate. Looking to the far-reaching implications, let us defer judgment for some time and let us apply our minds to it

Shri Tek Chand (Ambala-Simla): This question assumes very great importance from the point of view of law. The word 'guardian' is not an absolute term. It is a relative term. The guardian must be of a ward and a 'ward' under the Indian Guardianship Act must be a minor, the age of majority being 18, with two exceptions. I will deal with these exceptions in a minute. The result is that, barring these two exceptions, you cannot conceive of a person above the age of 18 having a guardian. You cannot talk of guardianship when you are talking of a person above the age of 18. Such a thing does not exist.

The two exceptions are these. In every State there is a Court of Wards Act. To a person who happens to be a ward of the Court of Wards the age is extended beyond 18. There are also cases where guardianship is assumed by the Court of Wards as such and when the court is the guardian. But, in either case, the guardian court is the guardian of a ward above the age of 18. Therefore a person above the age of 18 is not amenable to any guardianship because he is not a ward and he is not capable of being a ward. He is not even the ward of his father. Father's relationship may continue, but the father's guardianship as such ceases when his son attains the age of 18. Therefore, even in the case of a father, he is not the guardian of his son above 18. Therefore, the moment you introduce the notion of guardianship *vis-a-vis* a young person above the age of 18, to my mind, it is a contradiction in terms. Such a person is not a ward and therefore the question of guardianship does not arise at all.

Assuming there is a guardian. Guardians, as you very well know, are natural guardians or guardians appointed by the court. Natural guardians, as you know, are parents and in the case of a married lady, of course, the husband. But, so far as the court guardians or guardians appointed by the court are concerned, they may be guardians of the person or they may be guardians of property. In this case, if he is to give consent for the proposed marriage, is he going to be the guardian of the property or is he going to be the guardian of the person. All these matters require very careful scrutiny and I submit with all the emphasis at my command that the advisers do not appear to have devoted sufficient attention to this difficulty that is bound to creep in and it was for this reason that when the matter was before the Select Committee, to avoid this difficulty the age was raised from 18 to 21, with the result that a person under 21 does not require any guardian and no guardianship question generally arises. It was for this reason that this difficulty was overcome. Therefore, my submission is that the moment you talk of guardians, you cannot talk of guardians in the case of person above the age of eighteen, barring the two exceptions of the Court of Wards and the court guardians.

Thirdly, the law introduces a distinction between persons who have parents alive or who happen to have guardians, and persons who have not such guardians or parents. The law will not look at the uncle or the elder brother as guardians although they might be having the best interests of their nephews or nieces or younger brothers or younger sisters. The law does not visualise that. The result, therefore, is that in the case of people who have no parents, people who have no guardians appointed and whose estate is not under the Court of Wards. The society is not going to protect them, not going to guide them and not going to have a say in the matter whether they are entering into a matrimonial contract which is to their detriment ruination and disadvantage. Under these circumstances, the best formula

is the one that was adopted by the Select Committee that the age must be raised to 21, in which case the question will not arise. The amendment, as it is, is full of difficulties and it bristles with anomalies of law.

Shri Sadhan Gupta (Calcutta South-East): I for myself do not see why we should have to introduce guardians when we prescribe that the age of marriage will be the age of majority, namely, eighteen years. At eighteen, every person is free to deal with his property and to act as he likes, and the law imposes no disability on him. Only the Indian Majority Act has introduced a very peculiar distinction that when by accident a guardian happens to be appointed of the person or property, the age of majority will be deferred. There is no logic behind that provision in the Indian Majority Act. Either you say that a person does not attain majority before he is twenty-one and so he will not be allowed to exercise discretion in vital matters before he is twenty-one years old, or you say that he is fully mature at the age of eighteen and he is entitled to use his discretion in such matters when he is eighteen years old. There is no logic in saying that if you do not happen to have a guardian appointed by the court, you have either the discretion or the maturity at the age of eighteen and if you happen to have a guardian appointed by the court, either of your person or of your property, you do not become mature enough until you are twenty-one, as if the accident of the appointment of a guardian regulates the maturity of the person. Whatever the logic of the Indian Majority Act may be, I think there is no sense in introducing that logic in the law of marriage. Either you agree that at eighteen you have discretion enough to choose your spouse or you do not. We do not admit that eighteen is not mature enough age for our purpose in India and so we have fixed the age of majority at eighteen and we should also fix the age of marriage at eighteen. There is no sense in introducing a distinction or rendering that age of majority nugatory by providing that between eighteen and twenty-one, you require the consent of a guardian. Therefore, we should take the age of eighteen as the age of marriage.

If there is no guardian appointed by the court, if there are no parents living, a person will be fully mature at eighteen and will be allowed to contract a marriage, but if he has a guardian appointed by the court or his parents living, he must get their consent. This distinction between prospective spouse of different categories, prospective spouse who have their parents living or their guardians appointed, and prospective spouse who do not have such guardians is invidious and offends against article 14 of the Constitution because the position becomes that they are not treated on an equal footing.

[SARDAR HUKAM SINGH *in the Chair.*]

I would advocate the reduction of the age from twenty-one to eighteen, and I oppose the introduction of this amendment.

Shri Barman (North Bengal—Reserved—Scheduled Castes): I also support the points that have been made by the previous speaker. It is only in the case of a minor that the court intervenes at the instance of a third party so that the property in that case may not be mismanaged. There are two kinds of guardians appointed for that purpose—guardian of property and guardian for the person of the minor. The father and the mother are the natural guardians, and even in cases where the guardian of the property may be some other person, the court appoints the father or the mother as the guardian of the person. In cases where they are not appointed as guardians of the person, there must be some defect in the father or the mother, perhaps of re-marriage, or there may be some allegations against them that they are not the fit per-

[Shri Barman]

sons to be the guardians of the person. If we retain this clause as it is, we should make it clear that only in the case of guardians of persons, where the court appoints them as guardians of the person of the minor, the guardians may have precedence over the father and the mother. The points that have been made by Shri Sadhan Gupta are substantial. It is only to safeguard the interests of the minor, so far as the property is concerned, that court guardians are appointed. It cannot be contended or argued that because a guardian has been appointed, the person on reaching the age of eighteen is not competent to contract his marriage, while another person, for whom no guardian has been appointed by the court, is quite competent to contract his marriage. There seems to be no logic in this.

I also hold that the provision for the consent of the court guardian is quite unnecessary and it should not be there. As soon as a minor, for whom a court guardian is appointed, attains the age of eighteen, he should be quite free, like other persons for whom a court guardian is not appointed, to contract the marriage. I support Mr. Gupta's points.

Shri Raghuramaiah (Tenali): I rise to support the amendment moved by my friend, Mr. Venkataraman.

The main objection to this amendment seems to be that once a person reaches the age of eighteen, there should not be any more trammels put on him or her and that he or she should be free to enter into marriage without any permission from the parent or the guardian. The whole point is that the special marriage which this Bill seeks to regulate is not an ordinary marriage with the ordinary incidence of marriage. For instance, you will find that there are provisions which affect the joint family status and various other legal consequences follow marriages under this Act which do not normally follow in the case of a marriage under the ordinary Hindu law or of a marriage under the ordinary Muhammedan law. Now the whole idea is that although a person above 21 may be trusted to enter into a marriage fully concious of the legal disabilities or legal privileges which accrue from a marriage, under this Act, it is proposed to take certain precautions in the case of a person above 18 and below 21, the presumption being that a person above 21 can be better trusted to appreciate the consequences of a marriage than a person between the ages of 18 and 21. Even then, it is only where there is a guardian appointed by the court before marriage, or the father or mother alive that the requirement of guardian's consent is called for under this amendment.

It has been suggested that where there is a guardian of a person and a guardian of property there may be some confusion. I quite agree. I do not think my hon. friend would have any objection to the addition of the words "of the person" after the word "guardian" in the amendment. That would obviate any difficulty.

A point which my hon. friend Mr. Tek Chand raised is that a guardian appointed will cease to have any jurisdiction after the person reaches the age of 18. Well, a guardian appointed under the Guardians and Wards Act continues to have jurisdiction till the boy or girl reaches the age of 21. Assuming for a moment that my hon. friend is right and that the guardian ceases to function after the age of 18, obviously there is no question of any consent at all of such a guardian—he goes out. I say that assuming my hon. friend to be right...

Shri Tek Chand: Of course. I am right.

Shri Raghuramaiah: Another point that is raised is that where there is a father, it would not be proper to over ride him and make only the consent of the guardian or the person appointed by the court necessary. Actually, under the provisions

of the Guardians and Wards Act, where there is a father, provided he is found to be fit to be a guardian, there can be no question of appointing any other person as guardian. The appointment as guardian of any other person than the father, in a case where a father is alive, will arise only where the father is found unfit to be the guardian. Therefore, there is no conflict at all.

Somebody said there is some amount of discrimination. The whole idea is that if a boy is unfortunate enough not to have any guardian or father or mother, he should be fortunate enough to exercise his discretion in his own way and there should be no further trammels put on him. The object of this amendment is that if a person is below 21, some additional precautions should be taken in cases where there is a guardian appointed by court or the father or the mother. Of course, if there is neither the father nor the mother, nor a guardian appointed by court, he should be free to do what he likes with himself.

Shri S. S. More: That amendment does not say that.

Mr. Chairman: The hon. Member on his legs does not give way; in such cases the hon. Member interrupting must address the Chair.

Shri S. S. More: Whenever we speak, we are supposed to address the Chair.

My point is this. The hon. Member was saying that when a person intending to marry has no father or mother living, or no guardian appointed by the court, he is free to marry according to his sweet will. But if this amendment is accepted and the age of marriage of a person is reduced to 18, as is sought to be done under clause 4, then obtaining the consent of some guardian will be a condition precedent to the registration of marriage. In that case he will have to go in search of some guardian, or procure some guardian for himself; otherwise the marriage will be void. That is what the amendment implies.

Shri Raghuramaiah: I am afraid the hon. Member has not understood me. He could have waited till that amendment comes. In the amendment it is made clear that where there is a guardian already appointed only then his consent should be obtained. If there is no guardian there is no question of anybody's consent at all. This will be made clear in the main amendment. My hon. friend should hold his soul in patience till the amendment comes.

Now, all that is purported to be done is that only in a case where a father or mother or court guardian is there then, the consent of the guardian should be obtained. Somebody asked why we should make a distinction between father or mother and an uncle or aunt. The distinction is obvious. We do not take it that an uncle or an aunt will take as much disinterested interest in a young man or young woman as a father or mother does. Therefore, we want to make it clear that only in the case of a father or mother or a guardian that this consent is necessary. I therefore suggest the addition of the words "of the person" and support the amendment.

Pandit Thakur Das Bhargava: Sir, in my humble view we are debating this point rather prematurely. We do not know the nature of the amendment that will be accepted and what will be the age fixed for marriage. If the age of marriage is fixed at 21, as is sought to be done in the amendments tabled by some of the hon. Members, it is a question as to whether we should allow guardians to come in.

According to some, for instance, my hon. friend Shri Sadhan Chandra Gupta, by the age of 18 a boy or a girl attains sufficient maturity to understand what is good for him or her; according to others, this is a matter of exceptional importance, as at that age a boy or a girl would not be sufficiently experienced and if the advice or the permission of a guardian is made compulsory it would

[Pandit Thakur Das Bhargava]

be for his advantage. In my humble opinion it is quite true, as Shri Raghavachari has put it, that we should draw a distinction between a person appointed guardian of property and the person appointed guardian of person. According to the Indian Majority Act a man will attain majority at the age of 21. I should think that if only a guardian of property is appointed, he is not the proper person to give advice, or whose permission should be sought. Those who are of this view think that all sorts of guidance should be provided to this young man or girl because at this age youth is usually rash and inexperienced. Of course, if there is a guardian of person, his permission or advice may be made compulsory.

According to Hindu law as well as Muslim law a girl attains majority at the age of 16: according to Hindu Law boys also attain majority at that age. But according to the Indian Majority Act, boys and girls attain majority at the age of 18. If they are good for doing all other business in life, this argument is not without force that they can contract marriage. If, therefore, the House, accepts that the proper minimum age for a boy is 21, and for a girl it is 18, and the House thinks that this is a sufficiently good age, I think there is no necessity for a guardian. We should decide this question of guardianship after we have decided the question of age. But if the consent of a guardian is considered to be necessary, only the guardian for person should be considered the proper person for giving advice. In certain cases the guardians can go to a court for advice. The court which is the guardian of all minors, of all orphans and protector of all persons in this country in proper cases its advice may be sought, so that the guardian may not take upon himself the responsibility. We may even change the rules and suggest some modification that the courts should be consulted in such matters, as in cases when minor's property is sought to be sold.

It may be as pointed out by Shri More—that a guardian may be of a different faith. In such cases it may be difficult for the guardian to come to a proper conclusion whether the marriage is proper under all the circumstances. In that case the permission of the court may be made compulsory for the guardian to obtain.

I should say one thing more. In these cases, according to ordinary law also, the father is the guardian, and in the absence of the father the mother is the guardian, and the guardian is appointed only in cases where the father is not a proper guardian for some reasons or the mother is not a proper guardian. So this guardian will certainly be better than the father or the mother, because he will only be appointed if the father and the mother are not proper guardians. So I should think that the provision that the opinion of the guardian may be taken is certainly necessary. And I cannot agree with my hon. friend Shri Tek Chand when he says that at the attainment of the age of eighteen such guardian ceases to be a guardian and the ward becomes major. As I understand the law, where a guardian has been appointed for a person the ward attains majority only at twenty-one. There will be very rare cases when the father and mother are not proper guardians, then in those cases the guardian will be appointed. And he will be the proper person to be consulted, not the father or mother.

As regards orphans I do not agree with my hon. friend Shri Sadhan Gupta that there is no good reason why the Indian Majority Act has got this provision. In the case of orphans, where the protection of father and mother is taken away from a certain person, he goes about in the world and rubs his shoulders from a different standard, a different standpoint. He has to do his own business from the very start and he acquires experience which a person who has the protection of father and

mother does not acquire. When a person is appointed a guardian the guardian does all the work and the ward has no experience. Therefore it is in the Majority Act that when a guardian is appointed the persons attains majority only at twenty-one.

This is a very proper amendment and I request my hon. friend Shri Venkataraman to agree to put in the word "guardian of person" in it. Then it will be better. Otherwise, guardian of property should not have any voice in the determination of this matter.

Shri N. C. Chatterjee (Hooghly): This is a very important matter and requires careful thinking. I would suggest for the consideration of my friend Shri Venkataraman and also for the consideration of the hon. the Law Minister that this sub-clause should stand over till we finalise the question of age. Because until that is done, it will to some extent be an academic discussion that we are engaged in.

With great respect to my learned friend I want to point out that section 4(2) of the Guardians and Wards Act only talks of two kinds of guardians, guardians of persons and guardians of property. It has been repeatedly held by the Punjab High Court, the Allahabad High Court and other High Courts that guardians of personal property are not guardians of marriage.

The Punjab High Court said:

> "This Guardians and Wards Act contemplates, as section 4(2) will show, only two kinds of guardians, *viz.*, guardian of person, and guardian of property of minors; it does not relate to guardians for marriage of (female) minors. Therefore, this Act will not debar a guardian for marriage from bringing a regular suit in the civil court to establish his right to give the minor in marriage, as against the guardian of the person of the minors."

Because that Act has nothing to do with the guardianship of marriage, and although you may appoint a guardian of person, he does not get any right to determine the question of the minor's marriage. The Allahabad High Court has taken the same view. It said:

> "This Guardians and Wards Act deals with questions of guardianship and custody of minors, and does not empower the Court to enquire into the question of marriage."

The same view has been taken by the Calcutta High Court and other High Courts. It would not be right to say that because some person has been appointed guardian, either of property or of person, he should be given a *crate-blanche* to decide to whom the girl should be married.

And there is a serious lacuna in Shri Venkataraman's amendment. It says "in the absence of any such guardian"—that is a guardian appointed under the Guardians and Wards Act—"the father and after the father the mother" shall be the guardian. But suppose there are no father and no mother. Then this Act becomes thoroughly nugatory. Therefore there is a serious lacuna here. As you know, under the *Mitakshara* school of Hindu Law, which governs the lives of at least twenty crores of human beings throughout the country, the priority of guardians for marriage is (I am quoting from Mulla's book) father, paternal grandfather, brother, and then mother. Therefore, the brother should also have the right. Suppose the father is not there. Should not the brother have a right to decide what should be done? Our law, that is the Bengal school, places maternal grandfather and maternal uncle before mother; otherwise, father, paternal grand-father, and then the mother and then the brother. Where the father has deserted his wife and his daughter, then the mother gets the right—I am again quoting from Mulla's book. So it is not father in every case. Suppose

[Shri N. C. Chatterjee]

the father is living and has deserted his wife and daughter. The mother can still give the daughter in marriage even without the consent of the father. That question should also be considered.

The Speaker has ruled—you, Sir, were here when he gave the ruling—that he is not going to finalise clause 2 at this stage. The point that my friend Shri More has referred to would be kept standing. I am requesting that this clause should be kept standing till we determine the question of age and finalise it. We can possibly consult among ourselves, consult Shri Venkataraman and the Law Minister and put our heads together and formulate a better amendment which will deal with all aspects of the matter, and not make the Act nugatory. You can make it twenty-one, twenty-five or thirty-five according to Acharya Kripalani and not give any right between eighteen and twenty-one. But if you want to give it between eighteen and twenty-one, do not make it so difficult and peculiar a law which will be futile and illusory. I am suggesting that this clause should stand over until the age is determined.

Mr. Chairman: May I know the reactions of the hon. Minister of Law, whether he agrees to the clause standing over?

Shri Biswas: As a matter of fact I had suggested to the hon. the Speaker when he wanted to know my reactions to the other proposal which was made, that I should like the whole of the definition clause to stand over. But the Speaker was pleased to rule that all the amendments which are there on the Order Paper regarding clause 2 should be discussed, but that if there is any difference he will not put the particular amendment to the vote; the actual voting will stand over till the whole Bill is disposed of. I am entirely in the hands of the Speaker, of yourself, of any Chairman. I am always anxious to meet my hon. friends and this is a matter which does require consideration. I have to place some considerations before the House, and if you want me I shall do so even now. But if it is the desire of the House and if you agree, I have no objection to this standing over till the question of the age of marriage is settled. And that would be, if I may say so with respect, only a rational procedure.

Mr. Chairman: Then I think we need not proceed with the further discussion of this amendment. We might now agree to its standing over and after consultation when the stage comes decide it.

Shri Frank Anthony (Nominated—Anglo-Indians): I have an amendment to clause 4(c) which bears on this question, almost on all fours. Instead of holding it over, the House may be induced to accept my amendment with regard to minimum age for contracting marriage.

Shri Biswas: There are numerous amendments on this point.

Mr. Chairman: We will be coming over to that.

Shri Frank Anthony: If the Law Minister's suggestion is adopted that we should discuss the matter and hold over the voting, I would like to make a few comments at this stage.

Shri Biswas: The result is that the whole thing regarding clause 4 will be gone into here *de novo*. If you take up clause 4 now only with reference to your specific amendment on that clause, then when the other amendments come to be taken up, we shall have a repetition of the same arguments and possibly you yourself will also like to join at that stage.

Shri S. S. More: I support this.

Mr. Chairman: Then, this amendment also stands over. We proceed to the other clauses. Clause 3.

Shri Lokenath Mishra (Puri): That means that this clause will again be discussed.

Mr. Chairman: Yes. Clause 3.

There are no amendments. I shall put it to the vote.

Shri Raghavachari: With your permission, Sir, I wish to point out one thing. If the consideration of the entire clause 2 is to be postponed, when we come to the consideration of the other clauses which have reference to the words defined in clause 2, unless the definition of every word is not finalised, it will be difficult to make up our minds on the clauses which contain these words. Therefore, my submission is this. The Speaker was pleased to rule that on such of the other matters contained in clause 2 which are essential and must be considered, we may go on, with them but things which are consequences or relate to particular new matters to be included in the later portion of the Bill those may be kept over. Otherwise, my fear is this. The words 'degrees of prohibited relationship' occur in some clauses. What is a prohibited degree of relationship would not be clear. Therefore, we cannot make up our mind whether to permit these words to be there or not, These difficulties arise. Therefore, I submit for your consideration that the other portions of clause 2 which are essential and which determine the meaning of the words essential for the consideration of other clauses might go on.

Shri Sadhan Gupta: When this question came up in connection with the definition of prohibited degrees, the Speaker had directed that clause 2 would be discussed, but would not be put to the vote and that it will be voted after the other clauses had been gone into and the implications of clause 2, on the other clauses considered. I think that that procedure may be profitably followed.

Shri Biswas: The suggestion is that so far as this particular amendment is concerned, hon. Members who have spoken on this might meet the Law Minister and then we might come to some agreed decision. That is the best course, instead of going on with the discussion now, hearing me and then leaving the voting for the present. We can come to some agreement. That would be the best thing. In substance we are agreed on what should be put down. Therefore, it is only a question of adding one word here and taking away another word there, and so on.

Mr. Chairman: There is some force that we might again come across certain difficulties if we leave it altogether. We might discuss it now. I think that is the best thing. There is no harm in it. There are no other amendments. The clause is open to discussion. We might have some discussion of this clause and we do not take a decision so far as it is concerned.

Some Hon. Members: That is right.

Shri N. C. Chatterjee: Shri Raghavachari is quite correct, if I may say so with respect. Prohibited degree of relationship is the very foundation. Unless that is to some extent settled or at least there is some consensus, we cannot proceed with the discussion of the other clauses. That is the main foundation of the superstructure.

Mr. Chairman. This clause is open to discussion now. Hon. Members can give their views.

Shri Biswas: As regards prohibited degree of relationship, there is only one amendment and it has been disposed of already.

Shri Tek Chand: So far as you have been pleased to allow discussion on other points, I wish to bring to your pointed notice the clause in Explanation I, which says:

"Relationship includes—

(c) relationship by adoption as well as by blood."

[Shri Tek Chand]

This clause, as it stands, is apt to create a considerable amount of confusion.

Shri Biswas: May I have your leave to interrupt my hon. friend? Do I understand that we are going on with the discussion of clause and we have finished discussion regarding guardian?

Some Hon. Members: No, no.

Mr. Chairman: I made clear that that amendment would stand over. We will have a discussion on other aspects of this clause. We will not come to any decision. This clause is open for discussion, but without taking any decision so far as that amendment is concerned.

Shrimati Renu Chakravartty: May I also seek a clarification? The hon. Law Minister said that we have more or less come to an agreement in substance, and that it only remains for us to make certain verbal amendments. Is that the sense of the House? As far as the discussion is concerned, I think there is a wide difference of opinion.

Mr. Chairman: We are now discussing the clause.

Shri Tek Chand: I was inviting you to consider Explanation I, clause (c) which says:

"Relationship includes, —

(c) relationship by adoption as well as by blood."

My contention is that the word 'adoption' requires certain clarification. Adoption is a term of art. It is a legal phrase with a special meaning attached to it, when you examine *vis-a-vis* the Hindu law and when you examine it outside the Hindu law, it has a different meaning. So far as Hindu Law is concerned, it is either *dattaka* or *kritrima*. If the adoption is in the *dattaka* form, then, the adopted child is grafted into the family of the adoptive father. It not only establishes the relationship of father and son as between the adoptor and the adoptee, but it also establishes other relationships of uncle and nephew, grandson and grandfather, and so on. That is to say, the adoptee becomes a member of the adopting family not only *qua* the adoptive father, but *qua* other relations of his. That is the *dattaka* form. The *kritrima* form is in the nature of an appointment of an heir. He becomes the son of the adoptive father only, but not a nephew to the adoptive father's brother. Again, where customary law is in vogue in the Punjab among the agricultural classes, the term adoption is used in its very limited sense, namely appointment of an heir without establishing any relationship as between the appointer, his brothers, his uncles and others and the appointee. Therefore, if you are talking of an adoption, it should be confined either to the *dattaka* adoption or the *kritrima* adoption. Take the case of the concept of adoption *qua* Christians, *qua* Muslims it is totally different. In its dictionary sense, any child brought up by a Christian, on whom he proposes to lavish his affection and give some property, is treated as his adopted child, without establishing any relationship of father and son as adopter and the adoptee *qua* Christian law *qua* Mohammedan law, *qua* Hindu law, barring of course, the customary law of Punjab which governs Hindus and Muslims alike. Therefore it is extremely desirable that when you are talking of adoption, you must say that by the process of adoption, a person is amenable to some law *qua* prohibited degree, as if he was born into that family. But, in the ordinary dictionary sense, what you say is, you being a Christian or a Parsi, you bring up an orphan and lavish your affections on that child, and say, I propose to give him my property because I have no son of mine, in that case, though you call him your adopted child in a loose sense and not in a strict technical sense, the question

of creating prohibited degrees cannot arise and should not arise.

Shri S. S. More: I have the greatest objection to this definition of prohibited degree of relationship. It seems to be borrowed from the Marriage Act of 1949 of England, and not only that, but even the Schedule has been copied from that particular enactment.

Now, the point is this. I have referred to it yesterday, and I will not labour that point, but it reads very strange, not to say ridiculous, that we should enumerate all these relationships without taking into consideration the practicability whether such a thing is going to happen. Therefore, I have very serious objection to this particular clause, and to this borrowing lock, stock and barrel the English provisions which are not applicable to Indian conditions.

Then, take for instance the Explanation "relationship by adoption as well as by blood". Mr. Tek Chand was particular to refer to this. Now, what do we mean by this? It means that if "A" adopts "B", then "B" becomes the son of "A" and it is as good relationship as by blood, and then all the prohibited degrees in the case of "A" or his natural son would be applicable to "B", the adopted son. But, what happens to the family from which the son has been adopted? The moment he is adopted, according to our Hindu conception he ceases to be a member of his natural family. If he becomes a regular member of the family of the adopting father and ceases to be a member of the family to which he belonged by birth, then, can he marry the so-called sister in his original family? Can he marry anybody else that belonged to that family? Even though he might be cut off from the original family and tacked on or grafted on the other family, some of the relationships ought to prevail, because these things have been prescribed not for fondling or softening some human sentiments, but from the point of view of eugenics. There is some scientific basis. If by a fiction of law we say that the moment "B" has been adopted by "A", the blood of "A" will run through the body of "B", eugenics will not accept that. It will say that in spite of the adoption the blood that will run in his veins will be not of the adopted father, but of the natural father and the natural mother; and if these prohibited degrees have got any relation to scientific opinion of eugenics, then we might also prescribe some limit for this man also.

As I have said, I do admire the enthusiasm of the Law Minister, but enthusiasm should not be replaced by haste, blind haste. Otherwise, so many complications will arise, and particularly in this legislation which deals with human lives of individuals, particularly at the formative period, such things will be there, and therefore I would say that again all these aspects will have to be taken into consideration.

Shri C. R. Narasimhan (Krishnagiri): The expression in (c) "as well as by blood" will cover the difficulty.

Shri S. S. More: I look to you, Sir, for correction. The words are "relationship by adoption as well as by blood". That is, the natural son will be governed by these prohibited degrees clause as well as the adopted son. Of course, I accept what my friend is saying, because I know I am always very diffident about my legal knowledge. I am not so sure about my knowledge and that is why I tread very cautiously. But my submission is that is a possibility. It will open a sort of door for so many implications, and for that purpose I wanted to say this.

I will not get up now and again and discuss so many clauses. So, I will address the House also regarding this guardian clause.

Now, Mr. Venkataraman has suggested an amendment. I would say again that the Law Minister has borrowed Schedule I from the Marriage Act of 1949, but he has hesitated to borrow Schedule II of this particular enactment, and I would say that Schedule

[Shri S. S. More]

It would be a better guide to us regarding this guardianship. Section 3 of this Marriage Act of 1949 refers to:

"where the marriage of an infant not being a widower or widow..."

This is a point which I want to urge for your consideration, that here every person who is between the age of 18 and 21 has to seek the consent of his guardian. But what about those who have already been once married and fortunately or unfortunately, I do not know—it will all depend on the conditions of the relationship which prevailed—a man becomes a widower or a woman becomes a widow. With prior experience of marital relationship they are better qualified to judge about their own future.

Shri Raghuramaiah: May I interrupt the hon. Member, by way of information? The substantial amendment proposed by Mr. Venkataraman excludes the cases of those widows or widowers or divorces from the requirement of guardian consent.

Shri S. S. More: You are referring to his amendment to clause 4.

Shri Raghuramaiah: That will cover your point.

Shri S. S. More: I have not gone into that amendment. So, I speak subject to correction, because we will have to consider that too.

Then, I will not get up and address any more regarding that point.

Shri Raghavachari: Later?

Shri S. S. More: But here, according to that, consent has to be obtained.

Mr Chairman: I would request the hon. Member to kindly see whether it would be possible to put up or discuss all his amendments now at this stage, even if they come afterwards, because he would not be standing up often. He should confine himself to the present discussion that we have got.

Shri S. S. More: I feel that even this definition which has been suggested or the description of who are guardians is part of this definition clause.

Mr. Chairman: But, again, when we have deferred the discussion to some future time, it would not be advisable.

Shri Raghavachari: I only wish to submit that the words "relationship by adoption" here are likely to create some confusion, unless some other word is added on to the word "adoption". Adoption in the ordinary sense of Hindu law has a specific and special significance and if you do not refer to that particular significant meaning as in the Hindu law, this Special Marriage Bill not being confined only to the Hindu community but for all communities, and when you take that fact into consideration, the question of adoption cannot necessarily mean what the Hindu law means, in which case we must go to the common sense, dictionary meaning, of the word adoption! It is permissible for a man or a woman or any person to adopt a girl or a boy, not necessarily belonging to any particular community like herself or himself. Therefore, you will find that there may be adoption relationship between any two persons. I might adopt a Harijan girl, or a Mohammedan might adopt a Christian boy. And in such a case you cannot exclude that relationship by adoption to be covered by the word "adoption".

Supposing, I adopt a girl belonging to another community, and my own son might well marry her. If you prohibit under this the relationship by adoption, that means she becomes a blood sister and cannot marry my son. But really there is no relationship of blood at all: Therefore, there ought to be nothing to prevent that kind of marriage: Therefore, the words "relationship by adop-

tion" may be omitted. If you wish to add the words to mean particularly the "*dattak*" adoption. I can well understand. It is only the "*dattak*" adoption that makes an *ex parte paterna, materna* etc., as if he is born in the family, and therefore the prohibited degrees of fathers and mothers and all this come in, but not under this Act. Therefore, "relationship by adoption" will create all this trouble. Therefore, if it is intended to confine it only to the peculiar meaning as understood by the Hindu law, it must be "*dattak*" adoption, for there can be no other adoption which brings in the same relationship by way of blood, even in fiction, and it must necessarily be meant to apply only to a large section of the Hindus to whom also this Bill might be made applicable and is applicable. Therefore, I would suggest the words "relationship by *dattak* adoption" would be the best.

Shri Frank Anthony: I rise to support the suggestion which has fallen from the lips of the previous speaker. My hon. friend Shri Tek Chand also adverted to it, when he mentioned the fact that relationship by adoption has a different connotation in respect of different communities.

So far as the Christian community is concerned, I am quite definite that to place an embargo of this description in respect of persons between whom there is relationship by adoption would be resented and opposed, because as Shri Tek Chand has pointed out, this concept of consanguinity is not overlaid on the concept of adoption, so far as Christians are concerned. It is a concept which is more akin to the relationship of donor and donee. I think that is what Shri Tek Chand purported to say.

I think the difficulty will be met, if the suggestion which has fallen from the previous speaker is adopted, and thus it is confined specifically to a particular type of Hindu adoption, where this concept of consanguinity by a process of legal fiction is drawn in.

Pandit Thakur Das Bhargava: May I submit a word on this point? In so far as these words connote relationship by adoption as well as by blood, the previous speakers are quite right that only *dattak* adoption is meant, *i.e.*, when a person is transplanted from one family to another. But I have yet to learn that among Christians also, a sort of personal relationship is created by adoption. It is not created. It is, as my hon. friend said, the case of a donor and a donee. Similarly, under Hindu law also, no relationship is created by the *kritrima* or other forms of adoption. In the Punjab also, we know that so far as the customary law of Punjab is concerned, if a heir is appointed, then there is no sort of personal relationship in the sense that his relations become the relations of the other person. So, the words as they stand are capable of only one meaning, namely, relationship by adoption, where this adoption creates a relationship. Otherwise, there is no relationship at all. Therefore, I humbly submit that the words as they stand are quite clear, and they need not be amended at all. If you are going to put in *dattak* adoption, I think it will be quite unnecessary, because there is no other form of adoption in which a person belonging to one family is transplanted into another family. Even if these words are not there, still it will mean only that. The words are capable of only one meaning, and that is *dattak* adoption. There is no other form in which there is any relationship. In other forms of adoption, the relationship is just the one between a donor and a donee, or an appointer and an appointee. To my mind, therefore, it is quite all right, and the words used here are not at all ambiguous.

Shri N. C. Chatterjee: If you are all agreed as to what is meant, I shall just read out from the *Law*

[Shri N. C. Chatterjee]

Dictionary what it says about adoption. Adoption means:

> "any act by which relationship of paternity and affiliations are recognised as legally existing between persons not so related by nature, the legal act where by an adult person takes a minor into the relation of child, and thereby acquires rights and incurs the responsibilities of a parent in respect of such minor".

Although it is not adoption in the Hindus sense or the *dattak* form, still, the word is so widely put in the *Law Dictionary*, that it may mean any kind of affiliation of a child whom you take into your family, and regarding whom you accept the responsibilities of a father or a mother. Therefore, I think there would be no objection to clarifying the matter and pointing out that you are thinking of adoption in the strict sense of Hindu law. Of course, Sir Dinshaw Mulla begins by saying:

> "Adoption is not recognised by the Mohammedan law, nor is it recognised by the English law or the Parsi law. It is recognised only by Hindu law, but even in that system of law, there may be a family or caste custom prohibiting adoption, and if such custom is proved, effect will be given to it by the courts."

You know that in the *kritrima* form, there is no severance of the adopted boy from his natural family, and he can inherit also the property of the family in which he was born. That is not so in the *dattak* form; where there is complete severance; there is a civil death, and he is born by legal fiction into the adopting family.

I think, therefore, if that was the intention, there is no harm in saying here, relationship by adoption according to the *dattak* form, prescribed by Hindu law.

Shri Raghavachari: 'Dattak adoption' will do.

Shri Biswas: I find that this question of adoption has excited a lot of interest amongst my hon. friends. But it is significant that not one single amendment has come from any one of them.

You have thrown open the whole of clause 2 for discussion. I do not know whether the discussion on this was going to be a repetition of the general discussion, or having regard to the fact that we have as many as three hundred amendments —many more are still to come—we should confine ourselves during the clause by clause consideration, to those amendments only.

Mr. Chairman: I might bring it to the notice of the hon. Minister that even when there is no amendment, still there might be a discussion on the clause.

Shri Biswas: I am not suggesting that hon. Members cannot do it. That is not so. Nor am I raising any point of order or any point of law. But having regard to the fact that we have had four days of general discussion during which we have traversed over the whole Bill, and also the fact that there are about three hundred amendments, which also, I take it, have covered as much of the Bill as hon. Members would desire, having regard to all this, I would like to ask, are we now going to have a general discussion again over specific parts of the clauses. would like to ask are we now going to have a general discussion again been the subject-matter of amendments, or which have not been the subject-matter of previous discussion. My object is this. I do not know what the Business Advisory Committee has done. Originally, the time allotted for this was only a few hours in all. However, that was extended, and there were four days of general discussion. I only want to

make sure if possible, if the House so agrees, that the clause by clause consideration may be limited within reasonable bounds. That is my only object.

Mr. Chairman: That would be a different thing, and I will take the sense of the House on that point. Now, has the hon. Minister got anything to say about these prohibited degrees?

Shri Biswas: I am sorry if I have digressed, but the only object of this digression was to make any position sure, and the position of the House sure, as to the future course of action which lies before us.

However, confining myself to this point of adoption, I will at once inform my hon. friends that the Bill relating to adoption is not yet before the House, that the bill which will form a part of the Hindu Code is not yet before the House. But I might inform hon. Members that according to me, that bill will specifically mention that the *dattak* from of adoption alone will be recognised by law, and not any other form.

Shri Tek Chand: By special marriage law?

Shri Biswas: This question was raised in connection mainly with Hindu law adoption, and so far as Hindu law is concerned, I have already said that that bill is going to form part of the Hindu Code. I did not mean Muslim law or any other law. Why does my hon. friend interrupt me, when I have made the position prefectly clear? (*Interruptions*).

Mr. Chairman: Order, order. Let there be no interruptions. I shall request the hon. Members to allow the hon. Minister to continue.

Shri Biswas: When that Hindu law of adoption comes before the House we will see that it is limited only to the *dattak* form of adoption.

Shri Nand Lal Sharma (Sikar): This Bill should be taken up after that Bill is finished.

Mr. Chairman: Order, order. I would request hon. Members once again not to interrupt, but to allow the hon. Minister to continue his speech.

Shri Biswas: Shri N. C Chatterjee himself referred to Dinshaw Mulla, who, I suppose, may be accepted as some legal authority of some importance—it may not be of the eminence of many of us here. On this, he says expressly:

> "Adoption is not recognised by the Mohammedan law, nor is it recognised by the English law or the Parsi law. It is recognised only by Hindu law, but even in that system of law, there may be a family or caste custom prohibiting adoption, and if such custom is proved, effect will be given to it by the courts."

The adoption that is mentioned here means a valid adoption. If there is a custom under which the adoption cannot take place, such an adoption will not come within this clause. That should be obvious.

Shri Frank Anthony: Let us say what we mean.

Mr. Chairman: I would request hon. Members to allow the hon. Minister to proceed.

Shri Biswas: There are so many words in every Bill which you might say might be made more explicit, but the meaning of certain words is well understood. The word 'adoption' will not be misapplied by anybody who reads this Bill to cover cases to which reference has been made. A Christian nursing a boy and treating him as a boy—that is not consanguinity, that is not a case of such affinity as will prevent marriage. What is the object of preventing marriages by saying that

[Shri Biswas]

these parties are within the prohibited degrees of relationship? What is the basis of prohibition? Consanguinity or near—affinity, almost as near as consanguinity—that is the basic thing. Everyone understands that. The whole scheme is based on the law of eugenics. If prohibition is there, it is more with reference to the relationship that this prohibition has been laid down. You must read it in the context. What is the context here? The word 'adoption' includes relationship by half or uterine blood as well as by full blood, illegitimate blood relationship as well as legitimate, and relationship by adoption as well as by blood. Therefore, if you read this in the context in which the word 'adoption' occurs, there can be no doubt as to what is intended. It is not any sort of nearness such as 'I love this little child. He is very nice. I shall take care of him. I shall be responsible for his education, for his upbringing and so on. Therefore, he becomes as if he was my legitimate child born of my wife'. That is not the meaning. That is another matter. But we are prohibiting marriages between certain people on eugenic grounds. That is the idea of this Bill, and if you read this Bill, that object will be perfectly clear.

Then the question is, why should you not make it clear. If it is not clear to my friends, well, let them table amendments. If there was a lack of clarity in their minds, I should expect them to give notice of some amendments for clarification of this 'ambiguous' word—if they thought it ambiguous. But that has not been done.

I have checked up and I find that the House has disposed of all the amendments to clause 2, of which notice has been given, except the last amendment, of Shri Venkataraman. I am prepared for a general discussion, but in the absence of amendments, I am not prepared to answer any amendment which may be sprung upon me just here and now. It is obvious that if some amendments are sprung upon me without previous notice, it is not to be expected that I should be armed with all my authorities for the purpose of answering that point. I do not claim to be a lawyer of that eminence. Therefore, if amendments are sprung upon me without previous notice, I have to consider them and not to waste the time of the House, to render my services to the House in the best possible way. That I cannot do unless I have previous intimation of some amendment, might of an intriguing character—I do not know what intrigues my friends may be capable of.

Shri Tek Chand: May I have two minutes to speak?

Shri Lokenath Mishra: May I say a few words?

Shri Tek Chand: Regarding the question of giving amendments, amendments have been given, but unfortunately they are not yet printed. I am sorry they will not be available today; it will take a little time.

Regarding the second point that it is not known to English law, perhaps Mr. Mulla was wrong. There is an Adoption Act in U.K., but it does not carry the same consequences. Therefore, clarification of the term 'adoption' is necessary. There is an Adoption Act in England whereby children are being adopted, but it does not create the same legal effect. Therefore, to say that 'adoption' is unknown to others is wrong. Clarification is necessary. Let the hon. Minister say that it applies to Hindu law adoption only.

Mr. Chairman: The hon. Member should realise that unless there is some amendment before me, I cannot put it to the House. (*Interruption*). Now, as I interpret the direction of the hon. Speaker, we may not put the whole clause 2 to the vote

of the House, yet we can take decisions in regard to the different definitions given in the clause. That sense was expressed by certain Members as well. We have to proceed further with the Bill and perhaps, unless we take some decisions here about the definitions, we might experience certain difficulties. So I will put these definitions separately, one by one, and if we can take decisions about them, we should do so now. I suppose there is no objection to it.

Sub-clause (a) of clause 2 was added to the Bill.

Sub-clause (b) of clause 2 was added to the Bill.

Sub-clause (c) of clause 2 was added to the Bill.

Sub-clause (d) of clause 2 was added to the Bill.

Sub-clause (e) of clause 2 was added to the Bill.

Mr. Chairman: Sub-clause (f) is about degrees of prohibited relationship.

Shri Frank Anthony: It may be held over.

Mr. Chairman: It may stand over.

Sub-clause (g) of clause 2 was added to the Bill.

Mr. Chairman: Now, without takeing any decision on the clause, we proceed to clause 3.

Shri Venkataraman: I presume my amendment No. 291 also stands over.

Mr. Chairman: Yes, it stands over. There is no amendment to clause 3.

Clause 3 was added to the Bill.

Clause 4. —*Conditions relating to solemnization of special marriages).*

Shri Mulchand Dube: I beg to move:

In page 2, line 45, *after* "law" *insert* "or custom".

My submission is that the customary law in regard to the prohibited degrees should be kept intact, and I have nothing to add to what I said in regard to the Explanation which I proposed to clause 2.

Mr. Chairman: Amendment moved:

In page 2, line 45, *after* "law" *insert* "or custom".

Shri Biswas: Sir, it is not necessary. As a matter of fact, law means and includes custom and usage having the force of law and therefore there is no necessity for this.

Shri Mulchand Dube: It is not clear to me, Sir.

Shri Biswas: The word 'law' in this context includes custom and usage which has the force of law. Therefore, I would ask my friend not to press it.

Shrimati Renu Chakravartty: If 'law' includes 'custom', then we need not bring in amendments in many other places where we want that certain degrees of relationship which will be prohibited in certain parts and which will be permitted in other parts as part of customary law and usage should be allowed to marry and to have registration under this. Does it mean that 'law' means 'custom' also everywhere; is it as wide as that?

Shri Biswas: I said, in this context it is not necessary.

Pandit Thakur Das Bhargava: If it is the contention of the hon. Minister that the word 'law', in this context, means 'custom' then he opens a very wide field for custom. The very essence of this Bill is that custom is taboo. We are codifying everything. So, if the word 'law' means also 'custom', then I do not know where the House will stand. I, therefore, very humbly submit that 'law' here means only 'law' and does not include 'custom'. Otherwise, so far as clause 4 is concerned, it means

[Pandit Thakur Das Bhargava]

that the question of prohibited degrees will be determined by custom and that is what we do not want. I oppose this amendment because the word 'law' should be limited to 'law' and not extend to custom.

Shri Syamnandan Sahaya (Muzaffarpur Central): The general proposition enunciated by the hon. Law Minister that 'law' normally includes 'customary law' may be correct up to a point. The whole position is that when you are codifying the law, then if you consider that a custom has assumed the legal effect then it would be desirable in everybody's interest to include it. If the Law Minister is in agreement with the amendment which has been moved, he may either accept it; or, if he does not agree, he may oppose it on the ground of principle. The right course for him will be to accept it. When you are codifying law, there must be such things as precedents and case law and all this should be included in the codifying legislation. I therefore submit that this deserves more attention than it has just received.

Shri Raghavachari: I wish to join my friends in saying that a definite attitude should be taken and it will not do to say that 'law' includes 'custom' also. If you see clause 15, which provides for registeration of marriages under this Act, it does specifically refer to custom in sub-clause (e)—

> "the parties are not within the degrees of prohibited relationship, unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two;"

Therefore, there has been a clear distinction kept between the word 'law' and the word 'custom'. I am opposed to the introduction of the word 'custom'. That is another matter. But, to say that in this particular context, the word 'law' includes also 'custom' would lead to confusion. Not only will it lead to confusion but the scheme of the Bill will be very seriously modified.

Mr. Chairman: I would also request the hon. Minister to just think over it because under clause 4, custom is barred. Has he to say something?

Shri Biswas: As a matter of fact, if you include custom here it will mean that clause 4 will not be amenable to the proviso in clause 15(e). I want that custom should not have any place in the scheme of marriage under this Bill. Therefore, I would welcome it. All that I said was that it is not strictly necessary. If my friends want it to be inserted let it be inserted. That will only strengthen my position.

Mr. Chairman: But the Members do not want that to be inserted.

Dr. Rama Rao (Kakinada): I oppose this amendment because further on, I have my own amendment asking for permission to perform under this law those marriages which can be performed under the customary law. Just now, the hon. Minister said.....

Shri Mulchand Dube: Sir, I beg to leave to withdraw my amendment.

11 A. M.

The amendment was, by leave withdrawn.

Shri V. G. Deshpande (Guna): I beg to move:

In page 3, *for lines* 1 to 11 *substitute*

> "In force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if marriage between them is not permissible by any custom having the force of law."

The purpose of this amendment is this. As the Law Minister said yesterday, according to the original law marriages between different castes only were possible and that with the amendments of Dr. Gour, this became possible without discarding the religion. He says that now marriages not only between two castes of the Hindu community but between a member of the Hindu community and a member of any other community are possible.

Shri Biswas: Between two Hindus or two Muslims or two Parsis and two Jains and so on.

Shri V. G. Deshpande: He says that this Bill is providing for marriages between Hindus and Muslims and Christians and Parsis and others. We were told also that the Special Marriage Bill is introduced here for the specific purpose of having a model law for persons who want to marry outside their religion. Now, we find that this Bill is practically encroaching and trespassing on the jurisdiction of other personal laws. I want it to remain a special law and not the general law of the land. My amendment is that if at all you want to have any legislation of this kind, it should not cover fields which are covered by the personal laws of the different communities residing in this country. I do not want that marriages which are legal by other laws should be performed by taking advantage of this. My amendment wants to restrict the scope of this law. When I compared the provisions of this Bill and the provisions of the other Bill on the Hindu Law of Marriage and Divorce, I found that clause 27 in this Bill and the provisions regarding divorce in the other Bill are practically the same. When you are thinking of liberalising Hindu law, and when you are thinking of making it as good or as bad as possible, I do not think there is any good in forcing two Hindus who can marry perfectly legally under the Hindu law to come to a court and marry under this law. You should not encourage people to go before the Marriage Officer and say that I take so and so to be my wife or husband. We want that in this country the solemnity of the marriage should be retained and the purpose of this law should be restricted to marriages which are not otherwise possible. It should be a permissive law as Mr. Gadgil said here when this Bill came for the first time. I remember Shri Ananthasayanam Ayyangar also said that 'we do believe in the Hindu *shastras* but there are people who do not believe in them. We do not want that their children should be declared illegitimate and we have to make arrangements for those people who do not go by the conventional methods'. I want that this Special Marriage law should be restricted only to those people who are not following the personal laws of the Hindus, Muslims, Christians etc. Therefore, I think the hon. Minister will accept my amendment in view of the statement made by him yesterday.

Mr. Chairman: Amendment moved:

In page 3, *for* lines 1 to 11 *substitute*

"in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if marriage between them is not permissible by any custom having the force of law."

Shri B. C. Das (Ganjam South): As I understand this Special Marriage Bill is intended to make one common marriage law for the whole of India. I oppose this amendment. Now, the purpose of this amendment is to keep different communities of India always separate. This marriage Bill intends that we can have in the near future a common modern law for marriage. This Bill will help to create the psychological atmosphere for that. If we accept the amendment of the hon. Member, it will mean that the Hindus will stick to their own marriage laws, the Muslims to their own marriage laws and the Christians to their own and so on. We as an Indian community

[Shri B. C. Das]

cannot develop one common marriage law and will remain divided. The Bill is a step in the right direction and the amendment seeks to divert the direction.

श्री नंद लाल शर्मा :

धर्मेणशासिन राष्ट्रं न च बाधा प्रवर्तते ।
नाद्यधयो व्याधयश्चैव रामे राज्यं प्रशासिति ।

स्पीकर महोदय, बात यह है कि हमारे दक्षिणी भाई भगवान के नाम से बहुत जल्दी घबरा जाते हैं ।

विवाह के सम्बन्ध में आप इस समय जो कानून बना रहे हैं यह स्पेशल विवाह के लिए है और यह एक स्पेशल सा कानून है । मैं समझता हूं कि हमारे विधि मंत्री जैसे गम्भीर हैं उन्होंने उसी गम्भीरता के साथ यह चेष्टा की है कि हिन्दू कानून को सर्वथा न मिटाया जाय । यह उनको अभीष्ट नहीं है । ऐसी परिस्थिति में हमारे प्रिय मित्र श्री दंशपांडे जी का जो यह संशोधन है कि हिन्दुओं में, मुसलमानों में, ईसाइयों में उनके परसनल ला को जीवित रहने दें, इसको स्वीकार किया जाय ।

एक माननीय सदस्य : उससे क्या फायदा ?

श्री नंद लाल शर्मा : अगर आप हिन्दू जाति को नहीं मिटाना चाहते हैं, अगर आप मुसलमान समप्रदाय को नहीं मिटाना चाहते हैं, अगर आप ईसाई सम्प्रदाय को नहीं मिटाना चाहते हैं तो जब मुसलमान मुसलमान में, जब हिन्दू हिन्दू में, और जब ईसाई ईसाई में परसनल ला के अनुसार विवाह हो सकता है तो फिर उसको आप यह अवसर क्यों देते हैं कि वह अपने परसनल ला को छोड़कर, जो विवाह संस्कार की पद्धति है उसको छोड़कर इस विवाह पद्धति से विवाह करें । अगर उनका परसनल ला इस प्रकार के विवाह करने की आज्ञा न देता तो आप उनको इस कानून में आज्ञा दे सकते थे, । यद्यपि हम उस चीज को भी सिद्धान्ततः स्वीकार नहीं करते । अगर आप यह समझते कि इस प्रकार के विवाह के लिए धर्मशास्त्रानुसार हिन्दू को हिन्दू के साथ या मुसलमान को मुसलमान के साथ विवाह करने की अनुमति नहीं है तब तो आप इस स्पेशल मैरिज बिल में इसको अनुमति देते । और आज जो हिन्दू मैरिज एंड डाइवोर्स बिल आ रहा है उसके अनुसार तो आप डाइवोर्स की बहुत बड़ी छूट भी रहे हैं । ऐसी परिस्थित में कोई कारण नहीं है कि वह विवाह संस्कार को छोड़ और इस कानून के अनुसार विवाह करें । मैं यह बात केवल हिन्दुओं के लए ही नहीं कहता हूं, ऐसा मुसलमानों के लिए भी हो सकता है और औरों के लिए भी हो सकता है, कि यदि वे अपने परसनल ला के अनुसार विवाह कर सकते हैं तो उनको उस पद्धति के परित्याग करने का मौका नहीं देना चाहिए । इसलिए मैं इस संशोधन का हार्दिक समर्थन करता हूं ।

Pandit K. C. Sharma (Meerut Distt.—South): Ever since 1923, this right of marrying under the Special Marriage Act has been given to the followers of the Hindu religion as well as some other religions, and now it is too late in the day to take away that right. As we are progressing in the social sphere, people demand more and more freedom, of course, subject to the decency of public life. It is not possible to take away that right. One thing that I may stress here is that in the matter of marriage, there is not much of Hindu *sanskriti* or Muslim tradition or things like that. As one hon. Member put it, a marriage has a main purpose in view and that is that the thread of the race should continue. There is not much of religion in it, and whatever emphasis may be placed on sacramental marraiges or religious marriages, the fact remains that the purpose of the marriage is the procreation and keeping the thread of the race alive. No marriage is purely sacramental; there is a contractual obligation in it, the maintenance of the wife and so many other things. This clause cannot, therefore, be amended in the way, I

am sorry to say, in which Mr Deshpande wants it done. I oppose the amendment.

Shri C. R. Narasimhan: Sir, I want to put one question to Mr. Deshpande for clarification. If we were to amend this clause in the way in which he suggests, it would amount to permitting the marriage of a brother with his sister. Will it not become permissible under this clause if amended in that way?

Mr. Chairman: One request, if I may be permitted to make, is this. There is an overall limit for the passage of this Bill and that is 16 hours. If we take unduly long for some amendments, perhaps we may find it difficult to go through the later portion of the Bill so thoroughly. I would request the hon. Members to confine themselves to the points that they want to urge and not to take long.

Shri H. N. Mukerjee (Calcutta North-East): You have just referred to the limit being sixteen hours. As far as I know, the Business Advisory Committee has not met and discussed this point, and I am not sure if the House has got reconciled itself to the possibility of completing the discussion inside of 16 hours. I think the matter is tentative and we cannot have a definite ruling at this stage.

Shri N. C. Chatterjee: I support Mr. Mukerjee. That is only a tentative programme drawn up by the Ministry, awaiting the adjudication of the Business Advisory Committee and it has only been circulated. The Committee has not yet met and it will be really impossible to do justice to this Bill within 16 hours with the best attitude of co-operation.

Mr. Chairman: I just mentioned it because I know about it. It is correct that a regular decision has not been taken. The House has full authority in the matter and we will see as we proceed how far we could go on and how much more time we will need. I only drew the attention of the House to the time-limit.

Shri Tek Chand: I respect your wishes in this matter and will try to conclude my submission within the briefest span of time.

The subject matter of Mr. Deshpande's amendment is rather covered by amendment No. 221 by Pandit Thakur Das Bhargava wherein he says that "This Act shall only apply to marriages contracted between persons belonging to different religions." You will find that I have also sent in an amendment to a similar effect, but that is not on the printed list.

The main object or the principal reason for enacting the Special Marriage Act was that there should be no legal impediments in the way, in a vast country like ours, of one citizen marrying another citizen irrespective of the religion or the religious faith which either of them may profess. So far as that object is concerned, I am willing to concede it is very laudable, it is very proper and it is very logical, but once we have that objective in view, to my mind, this Bill oversteps the limits placed by that objective. Therefore, when I am endorsing the amendment under discussion, which, as I said, covers the matter raised in amendment No. 221, my reasons are these. There is a law available where a Hindu wants to marry a Hindu, a Muslim wants to marry a Muslim and similarly a Christian wants to marry a Christian, and, therefore, we should not pass a law which in any way impinges upon the personal laws of the respective people of the different faiths, but the scope of this should be restricted to inter-religious marriages which are not yet recognised by the Christian law or by the Hindu law or by the Muslim law. It will be in the fitness of things that the scope of this Bill should be confined to inter-religious marriages to the exclusion of marriages within the same religious fraternity owing allegiance to one particular system of law. Therefore, I endorse the words that have fallen from

[Shri Tek Chand]

the lips of my learned colleague who has just preceded me.

Shri Lokenath Mishra: Sir, while I would like to support the amendment just now moved by Mr. Deshpande or that is going to be moved by Pandit Bhargava, I do not understand their anxiety to save the Hindu personal law by this particular amendment. The very name of this Bill implies that it is for a special kind of people, with a special kind of ideas, having a special purpose, outlook and way of life. We must be quite clear in our mind about that speciality. That speciality obviously is that the persons who propose to contract a marriage under this measure do not believe in the Orthodox Hindu religion, and for the matter of that, any religion they have gone beyond. Their ideas have transcended the limits of of these traditional law. This important fact must be clearly understood.

In fact, it is absurd—even hypocritical and cowardly—if we seek by this subterfuge or by this back-door method, to evolve a universal personal law of marriage for all Indians. My hon. friend Mr. Das has just now said that he accepts this Bill, for the main or sole reason that it is a precursor of a marriage law for all Indians. If that is the purpose and if Government agrees with that, I should say that Government should have the courage to say so. Of one thing we must be clear: of one thing we must be clear in our conviction, whether we belong to Hinduism or Mohammadanism or Christianity—that we want to get out of the narrow limits of these religions. That does not mean that we are men of no religion.

Sir, very great confusion, appears to me, to have been haunting the minds of all of us—at least of myself. When we are discussing this Bill, so many things of Hindu marriage law have indirectly crept into the debate. We should keep clear of them. It may be that this law is really a precursor to one uniform marriage law for all Indians. If that is so, we should not take pains to discuss Hindu marriage and divorce law or some other law of that kind. If we are clear on that point so much of discussion and so much of confusion would be easily avoided. But if you really mean that there must be a Hindu law, that there must be a Mohammadan law, there must be a Christian law, all different in their own way and above all that, this law will cover all those people who do not like to be administered by those laws that must be made clear.

We have been repeatedly discussing about adoption about guardianship, and consent of the guardian. So far as I understand the scope of this Bill, any idea of adoption, any idea of guardianship, and consent is alien to the basic idea of this law, because this law is based on one fundamental fact that an individual is free, and so has got the right to shape his own destiny and on that basis everything he does is a contract. Therefore any question of guardianship, and consent any question of adoption, or any of the unique conceptions of Hindu law, should have no place here. In fact, I feel grieved that when we are discussing this measure we should bring in so many other marriage laws and make a mess of them.

Shri Gadgil: In the midst of divorce!

Shri Syamnandan Sahaya: Old men beware!

Shri Lokenath Mishra: Therefore I say that the hon. the Law Minister, as representing the Government, should make it clear here and now as to what is their intention. Do they want to keep the personal laws of this country, of course, with modifications, to suit the times? If that is so, they should clearly say so. The provisions of this Bill should be clear in that respect. Let us not make a mess of all these things and make confusion worse confounded. I, therefore, beg leave of you to convey to the Law Minister that it is time that they

should make it clear to the whole nation as to what is their intention—how far they are prepared to go.

The question of party or election does not arise. In fact, this measure touches the very blood, the very soul, the very heart of an individual and we cannot dabble with this Bill in this half-hearted manner.

Shri Biswas: What is the use of waxing eloquent over something which I have made clear at the very beginning?

Shri Lokenath Mishra: It has not been made clear to me. If the hon. Law Minister has stated it, let him restate it. Or, if it is the idea that Hindu personal law will be there, Mohammadan personal law will be there, he is bound to accept this amendment, so as not to make this measure—I should say—absurd and leave an impression of doing things in a surreptitious manner.

That is all that I have to say.

Shri Sadhan Gupta: Mr. Chairman, Sir, I very strongly oppose the amendment that Mr. Deshpande has moved in this House. Now, Sir, we as communists must oppose that amendment, naturally, because it is subversive of all progressive ideas. What Mr. Deshpande seeks to do is to confine the right of marriage under this measure to people of different communities, to spouse of different communities, and to shut out the right of spouse belonging to the same community to marry under this bill.

Now, Sir, this particular Bill provides not only a procedure for marriage, but it grants certain rights, the most important rights being in relation to divorce. Now, Sir, we have not got the Hindu Marriage Bill or any other Bill of that kind before us: we do not know what the provisions of divorce under that Bill will be. What we know now is that under the Hindu Marriage Law, as it exists at present, there is no right of divorce and what we have seen from the draft of the Hindu Marriage Bill that the rights of divorce are not as liberal as we have it under this particular Bill. There is also no attempt to modify Muslim law. Under the Muslim law the rights of divorce given to a woman are very much different from the rights of divorce given to a man and a woman cannot have the right to have divorce, unless it is delegated to her by her husband. Now all this difference there is between marriages celebrated under this particular Bill and marriages celebrated under the personal law, whether Hindu law, or Muslim law.

Now, here I find very strangely enough, and perhaps, not so strangely, that there is very great unity between communal-minded Hindus and communal-minded Muslims

Shri Syamnandan Sahaya: For once they agree!

Shri Sadhan Gupta: They unite in this matter and we have to differ from them. It has been said that it is going to subvert the *shastras* or the *shariat*. The *shastras* will remain, the *shariat* will remain. People are free to marry under the *shastras* or under the *shariat* law. But what we seek to do under this Bill is to allow people who do not want to marry under the *shastras* or the *shariat* to choose a different form of marriage. Why should we not allow them to do so simply for the reason that the spouse belong to the same community? It is said that they have already a law permitting them to marry under. I am not very convinced by that argument, because they may not like to marry under that law, and we need not force them to marry under that law.

The more important thing is the distinction in the right of divorce. The Hindu Law offers no scope for divorce to Hindu spouse both of whom belong to the Hindu religion. The Muslim law offers a different scope of divorce to the man and the woman. And so if a Hindu man and a Hindu woman, or a Muslim man and a Muslim woman want that they should marry under this law and enjoy the rights conferred by this particular

[Shri Sadhan Gupta]

law, then why should we prohibit them from doing so? There is no earthly reason, there is no logic to prohibit them from doing so.

Shri Lokenath Mishra: Should they have the cake and eat it too?

Mr. Chairman: The hon. Member may go on.

Shri Sadhan Gupta: I submit that simply by reason of the fact that both of them belong to the same community we have no right to deprive them of the liberal rights of divorce and other consequences that follow from marriages under this particular Bill. That is my submission and that is why I emphatically oppose this amendment.

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): I feel that the bringing in of this amendment is a dubious attempt on the part of my friend Shri Deshpande to sabotage the spirit of the Bill as a whole.

Shri V. G. Deshpande: No, I want to support it.

An Hon. Member: That is the best way!

Mr. Chairman: Let the hon. Member go on.

Shri Velayudhan: By accepting an amendment like this not only the whole spirit of the Bill but the very principle which the Bill embodies will also be affected. Therefore, it is my humble submission that this amendment is a dangerous one, not only for the Hindu community but for the Hindu social structure as a whole. If it is accepted, it will even prevent marriages between the various communities among the Hindus. I do not know then for what our friend the Hindu Mahasabha leader stands. If it is for a consolidated Hindu religion, I think he is not going to have it by this method; he is going to disrupt Hindu Community.

In fact, I think that the original clause 4 is only a moderate attempt on the part of the Government because it is not affecting the followers of other religions like Christians or Muslims. As my friend has said clearly, we should have a legislation which will embody all the castes and religions in the country.

Shri Lokenath Mishra: Do that.

Shri Velayudhan: It has to be done by you and your party.

Mr. Chairman: I would request the hon. Member to address the Chair.

Shri Velayudhan: I am addressing through you, Sir.

Mr. Chairman: Not only should the Member address the Chair but he should also appear to address the Chair.

Shri Velayudhan: Very well, Sir, I shall look at you while I speak.

Shri N. C. Chatterjee: Not all the time!

Shri Velayudhan: Therefore, a consolidated Bill should be brought which should embody all the castes, communities and religions. It is a common law. At the same time, what has been brought by the Law Minister here in this particular clause is a great advance and progress from the existing situation, circumstances or customs.

References were made to customary law, personal law and marriage. I think even if this clause is adopted, the customary law regarding marriage is not taken away. It will only include a certain fraction of the people who want to go into marriage in a different line. It is only a moderate clause. But it will affect Hindu system as a whole. That must be done.

Shri B. S. Murthy (Eluru): Not Hindu system but Hindu orthodoxy.

Shri Velayudhan: Whatever you may call it. It will affect the Hindu custom as a whole, and that is what is required.

I therefore oppose my friend Shri Deshpande's amendment and I hope the hon. the Law Minister will not accept this particular amendment.

Dr. Jaisoorya: If my hon. friend, Shri Lokenath Mishra, had read the opening speech of the Law Minister he would have seen what the purpose was. It has a limited purpose. I will give the comparison. In Europe there is Christianity. But there are two types of Christianity. One is Catholicism, the other is Protestantism. The Catholic church does not accept the authority of the State in marital matters. On the contrary, it is the Protestant States that have brought in a certain amount of pressure of the State to ameliorate the hardships that will arise out of canonical laws.

I believe already in 1872 this was found necessary, and for Keshab Chandra Sen we brought the Special Marriage Act with certain modifications. I do not know whether the *Brahmos*, for whom it was brought, had ceased to be Hindus. Are they non-Hindus? And yet we will find increasing necessity to depart, not from Hinduism in its essence, but from the riturals and hardships of, shall we say, customary law.

Shri Nand Lal Sharma: From the principles of Hinduism.

Dr. Jaisoorya: Not principles. Principles are never changed. It is but the dead wood we are trying to remove, rotting and stinking.

Mr. Chairman: Would the learned doctor address the Chair?

Shri S. S. More: He is addressing something which could not be addressed.

Dr. Jaisoorya: What is it we are trying to do? These are all various grades. If you want to reform Hindu law, you are welcome. If you want to go back to old customary law, go back. Nobody prevents you. But what right have you to prevent people, who still claim to be Hindus, from rejecting unnecessary things, which they do not consider essential but which others may consider essential? We are trying to simplify things, and to a certain extent I believe we are right in secularising things. This is an initial attempt. It is far from drastic. Mr. Deshpande's proposal, as somebody said, is a surreptitious method of excluding all things and making personal laws permanent, and this measure will become a dead-letter or be vitiated. Those who want to think in liberal and progressive terms, let them do it. There should be no exclusion except, as has been commonly accepted, certain limitations like consanguinity, blood relationship and other generally accepted things. Therefore, all these cries that this is in danger, that is in danger, sacramental rites are in danger are useless. If you want sacraments, do have them. If you do not want it, you can have something simpler. In fact, in Bombay, now, simple marriage ceremonies are taking place. After all the sacraments they go and register. What is there to prevent you.

Shri Gadgil (Poona Central): I feel that the amendment of Shri V. G. Deshpande is the cleverest attempt to sabotage the entire Bill, which is just like guerilla wearfare, with which he is fairly familiar.

Some Hon. Members: Both are Maharashtrian.

Shri Gadgil: In the first place, this clause has been attacked from two different and opposite points of view. One is that it is bad and so it should go; the other is that it is not good enough. I would say that it is most desirable that there should be one universal law of marriage and divorce for all citizens in this country, but so long as it is not possible, whatever is offered should be considered and the good should not be the enemy of the better. That is my approach.

[Shri Gadgil]

This particular provision with respect to marriages is there from 1872 and in a much more liberalised form since 1923, and the Hindu society has put up with it or tolerated it for the last 30 years. I do not know how Shri V. G. Deshpande has discovered only three days ago that this has done a great havoc so far as the structure of the Hindu society is concerned. We are, as a society, moving from status to contract. We all are aware of ages gone by when there was some sort of a peremptory control over the actions of men and women. In modern times, conditions have changed. Therefore, a liberal tendency so far as the marriage law is concerned, is already in evidence over a period of a century. We must go ahead and not think of going back. If for some reason we accept the amendment of Shri V. G. Deshpande, what will happen to those marriages which have already been solemnized under the provisions of the Indian Special Marriage Act? Does it mean that all the children and all that has happened are to be considered illegitimate for the purpose of inheritance, this, that and the other? So far as marriages under the normal Hindu law are concerned, except in the Presidency of Bombay, there is no provision for divorce. Provision for divorce is an absolute necessity in modern days though we do not go as far as divorce on the ground of mutual consent. But, there must be some escape from this life-long imprisonment. On that, everybody is agreed. Therefore, for those who are outside the province of Bombay, who are married or who want to marry and provide for some far off contingency in case there is incompatibility of temper or some other reason that they should have an escape clause as is the case in every contract with any firm, this is a *via media*, because they marry under the Special Marriage Act, they must have this provision. I can tell Shri V. G. Deshpande that during the last 10 or 12 years, in the city and district of Poona, marriages registered under the Indian Special Marriage Act are going up. They are very popular and speaking for myself, out of three daughters that have been married, two have been married under this Act. I have found it personally very good; so far as social opinion is conserned, it is very much liked. Government, as somebody suggested, might have been more liberal. Why is it that Shri V. G. Deshpande, in the year of grace (*An Hon. Member* Disgrace) 1954 is anxious to use his very high intellectual calibre to bring about an amendment of this character? I think this amendment must be opposed.

Shri Barman: I do not know what is the purpose of moving this amendment.

Shri Biswas: The purpose is clear, but the meaning is not.

Shri Barman: Whatever may be his purpose for moving this amendment, going through this amendment, it seems to be an absurd proposition. This clause 4 which defines the conditions relating to the solemnization of special marriages is the only substantive provision in the Bill. As regards that, he wants to delete the whole clause practically and substitute, what? If you read the whole clause together, it comes to this.

> "*Conditions relating to solemnization of special marriages.*— Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if marriage between them is not permissible by any custom having the force of law."

So, the only limitation on the contracting of a marriage between a male and a female is that such a marriage is not permissible under any custom. Only in such cases could these special marriages be contracted. No other law, whatever it may be, either Christian, Hindu or any other religion

will come into play. If you interpret it as I have interpreted it, then, any marriage is good under this law if only custom does not stand in the way. If in the Christian community or Hindu community there is no customary bar or there is no customary law that a marriage can be contracted, they could come and apply for solemnization of marriage under this law. That is an absurd proposition to me. I do not know how it will apply to two persons, who are closely related: say, uncle and niece. No question of prohibited degree; no question of any other relationship or whether there is a spouse living or not. Nothing comes in the way. The only thing that stands in the way is that there is no custom by which they could have contracted the marriage. Then, they can come and apply and have the marriage solemnized and registered. The effect of the amendment is that the whole clause is deleted and the only restriction is that if that marriage could not be performed by the customary law of that community between the two persons who are applicants here, that marriage can be solemnized. That is a proposition which I cannot understand. In the original provision in the Bill, the restriction is, neither party has spouse living. Suppose a man is married and he wants to contract a marriage with another woman and proves that according to the custom prevailing among them there is no way of contracting a marriage, they can apply for getting the marriage solemnized. What is the bar? No ordinary law, that is existing, stands in the way. In the beginning it has been said, "Notwithstanding anything contained in any other law for the time being in force.." No Hindu law or Christian law or Muslim law stands in the way. The only thing is that there is no custom in that community for contracting this marriage. So, they have decided to get their marriage solemnized under this Act. Similarly, if you go to "neither party is an idiot"—that is another matter, qualification. Then, "the parties have completed the age of twenty-one years"—that also goes. So, a boy and a girl of 12 years of age can go and say: "We want to solemnize our marriage under this Act. What is the bar?"

Thirdly, "the parties are not within the degrees of prohibited relationship". That clause also becomes meaningless. So, this is an absurd amendment to my mind. I hope that the House will....

Shri Syamnandan Sahaya: Reject it outright.

Shri Barman:..reject it outright.

Shri Venkataraman: I beg to move:

"That the question be now put"

Pandit Thakur Das Bhargava: May I just know if my amendment No. 221 will be allowed to be moved when it is brought before the House, because my amendment has nothing to do with custom etc.

Shri Biswas: That amendment should not be allowed to be moved in this connection. Let us confine ourselves to Mr. Deshpande's amendment and turn it down.

Pandit Thakur Das Bhargava: My amendment is to clause No. 1.

Mr. Chairman: I do not think that would be barred by this.

Pandit Thakur Das Bhargava: Then it is all right because I propose to speak on that amendment. If that is barred, I will speak now.

Shrimati Renu Chakravartty: If we turn down Mr. Deshpande's amendment, it will automatically be barred, is it not, Sir?

Pandit Thakur Das Bhargava: The Law Minister says it will not be barred.

Shri Biswas: May I explain, with your permission? I am not a master of English, but with such limited knowledge of the language that I have, I fail to understand what is the

[Shri Biswas]

meaning of Shri Deshpande's amendment. It means this. It is only if there is...,

Mr. Chairman: If the hon. Minister is replying to Mr. Deshpande's....

Shri Biswas: The thing is not...

Mr. Chairman: I am going to give him an opportunity, but since the closure motion is moved, I wish to take the sense of the House on that.

Shri N. C. Chatterjee: I want to add a few words.

Mr. Chairman: Now that there is a motion, I must take the sense of the House, unless I be of the opinion that there has not been sufficient discussion. Then alone, I could go on, but I think there has been some discussion. Therefore, I put it to the House. The question is:

"That the question be now put".

The motion was adopted.

Mr. Chairman: Now, I call upon the hon. Minister to reply.

Shri Biswas: As Mr. Barman pointed out, clause 4, with Mr. Deshpande's amendment, will read like this:

> "Notwithstanding anything contained in any law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if marriage between them is not permissible by any custom having the force of law".

It is only those hapless creatures for whom no provision has been made for marriage by custom who will be eligible for marriage under this law.

Shri N. C. Chatterjee: May I ask the Law Minister: was not that the object of the sponsors of the original Special Marriage Act? Was not that the object of Keshub Chandra Sen and other Brahmo Samaj leaders? Did they not want this Act simply because under their personal law they could not marry due to caste and other restrictions?

Shri Biswas: I can quite understand your saying that if any two persons have their personal law of marriage, they should marry under that personal law. But I do not understand how you can solemnly argue that marriages be permissible under this Act only if they are forbidden by custom. Customary law is not the same as personal law. Personal law is something other than customary law. You now say unless there is a bar under customary law, well, you cannot marry under this Act. Therefore, only a very few limited number of persons, hapless beings for whom custom has made no provision, only they can have recourse to this law, as if Government in their great generosity are trying to provide for these destitute persons —destitute in the sense that there is no marriage law for them.

Shri Syamnandan Sahaya: Famine-stricken!

Shri Biswas. Therefore, I do not understand the meaning of this. On that very ground this amendment ought to be rejected.

And then, assuming for the moment that the reference is to personal laws, his amendment is if there are any personal laws to govern any two persons belonging to the same community, well, they should marry under their personal law. What is there to prevent them from marrying under the personal law? Is there any restriction here imposed by this Bill? On the other hand, I have been all along saying if it does not suit you, there is your personal law. Go and marry under that law. Why do you not do that? Nobody compels you to have recourse to this provision. It is only if you consider that these provisions give you certain advantages which you cannot secure by your personal law, then, and then only by your option you may marry under this law. That

is all. Nothing more. And why must he say that if you have a personal law, you have no right to elect to marry under this law? Why should he restrict his choice? I do not know what the age will be. Assuming the age is 18, assuming it is reduced to 18 as I shall submit is the correct age, then you have the consent of the parents up to the age of 21. If in such circumstances, or if they are 21 themselves by their own consent, they marry, why should it be supposed that we must not allow that to be done that such a marriage cannot take place because there is that personal law? By deliberate choice they say the personal law is not good enough. Suppose somebody is anxious to secure for his daughter a full share of the inheritance, he marries under this Act. He gets his marriage—pre-Act marriage—registered under this Act. And then he attracts the provisions of the Succession Act. The Hindu law of succession as it may be accepted, even if it is accepted in the form in which it is published, may not satisfy him. That does not give the daughter a full share. That gives the daughter only a half share. Suppose for some reason or other, a person decides, in the interests of his own family of his own near and dear relations that the Succession Act will be more appropriate, better in his case, why should he not be allowed to take advantage of these provisions? This is only a permissive measure, not a compulsory measure. It is no doubt going to be the territorial law of marriage for India, but then not a compulsory measure for all people in India. If there are personal law, they may marry under them.

The question was put to me: "Well, was it made clear that all personal laws will be abolished?"

I did make it clear, possibly in the first speech I made either in this House or the other House, when introducing this Bill, that that is not the object of this Bill, and also, as I repeated yesterday, it is only an approach to what you find in article 44 of the Constitution. We are yet far away, unfortunately we are yet far away from the day when we shall have one uniform law of marriage for the whole of India. We have not yet come to that stage. We are hastening—we cannot say, we may not be hastening slowly, but we are hastening with as rapid a pace as is reasonably right.

A question was raised in the other House: "We are having a new Hindu law of marriage and divorce. What about the Muslim community? Why have you not taken that community in hand?" I said then: "Definitely that will be the next Bill we shall have to consider, but we cannot take up new marriage Bills for all communities at the same time." We have got to profit by experience. We all know what has happened in the case of the Hindu Code Bill. It was introduced twelve years ago and still we are discussing this today. Therefore, we ought to take lessons from past experience, and we had made it quite clear that the case of marriage bills for other communities is not out of ourmind at all. (*Interruptions*)

I will ask my hon. friend to be a little more patient, and we shall finish it when the time comes, and when we think we are ripe for it. We do not wish to raise the same controversy as was raised in connection with the Hindu Code Bill. And then, as a matter of fact, the members of those communities, individuals, parties and so on have got to be consulted. We cannot spring anything upon them merely because we may have the majority vote here. Social legislation ought not to be forced down the throats of any community. We must consult them, we must try to bring them along with us. That is the mode of approach, and that we propose to follow. But it is not correct to say that we are going to do away with all personal laws at one stroke. They will be there, and so long as they are there, they will have full effect. This Bill, therefore, is not intended to limit marriages only to persons

[Shri Biswas]

who have no personal laws of their own. If they have personal laws, it is open to them to marry under their personal laws. This Bill is only an enabling measure. That is all that I have to say.

Shri S. S. More: On a point of order. I do agree with the hon. Law Minister that the meaning of this amendment is not intelligible to us.

Shri N. C. Chatterjee: He is always agreeable.

Shri Syamnandan Sahaya: Not always, only when it suits him.

Shri S. S. More: The opening sentence of clause 4 reads as follows:

> "Notwithstanding anything contained in any other law for the time being in force..."

After this, Shri V. G. Deshpande wants to add very cleverly, that a marriage between any two persons may be solemnized under this Act, if that marriage is not permissible by any custom having the force of law. But even custom has the force of law, and is, therefore, law to that extent. So, we are reduced to this provision that:

> "Notwithstanding anything contained....

Mr. Chairman: But is that a point of order?

Shri S. S. More: Yes, that is a point of order. I am raising this under rule 117 (iii) of our Rules of Procedure, which reads:

> "An amendment shall not be such as to make the clause which it proposes to amend unintelligible or ungrammatical".

My submission is that this amendment would make the clause unintelligible, and to that extent, it is not admissible.

Mr. Chairman: That is no point of order. I shall put the amendment to the vote of the House. The question is:

> In page 3, for lines 1 to 11, *substitute*
> "in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if marriage between them is not permissible by any custom having the force of law."

The motion was negatived.

Mr. Chairman: There are two amendments in the name of Shri Telkikar. The hon. Member is absent.

There is one in the name of Shri M. S. Gurupadaswamy. Is the hon. Member moving it?

Shri M. S. Gurupadaswamy: (Mysore): Yes.

I beg to move:

> In page 3, line 2, *for* "any two persons' *substiute* "any man and woman".

This amendment is a 'clarificatory' one. It is not a substantive amendment to the clause.

Shri Raghuramaiah: Not 'dignificatory'?

Shri M. S. Gurupadaswamy: This amendment makes clear the intention of the framers of the Bill. Instead of the words 'any two persons', I want that the words 'any man and woman' be substituted.

Shri Biswas: May I point out that we assume that marriage can take place only between a man and a woman?

Shri V. G. Deshpande: A revolutionary measure.

Shri M. S. Gurupadaswamy: After all, this is only for purposes of clarification. I have nothing to say about...

Mr. Chairman: I think that the clause as it is is all right, and is sufficiently clear. So, the hon. Member does not press his amendment?

Shri M. S. Gurupadaswamy: No, I want to press it.

Mr. Chairman: If the hon. Member wants to press it, I must put it to

the vote of the House. The question is :

In page 3, line 2, *for* "any two persons" *substitute* "any man and woman".

The motion was negatived.

12 NOON

Mr. Chairman: There is amendment No. 1 in the name of Pandit D. N. Tiwary. The hon. Member is absent

There is amendment No. 57 in the name of Shrimati Ammu Swaminadhan.

Shrimati Ammu Swaminadhan (Dindigul): I beg to move:

In page 3, *for* line 5, *substitute* "neither party has been certified to be of unsound mind".

I would like my amendment to be accepted by the hon. Minister if possible. I want the words 'neither party is an idiot or a lunatic' to be substituted by the words 'neither party has been certified to be of unsound mind'. I think these words will answer the question much better than the words 'idiot' or 'lunatic'. I do not think that a lay person will understand the word 'idiot' to mean a person who is of an unsound mind, because we sometimes call a person an idiot, if we find that he is not very bright or brilliant. I do not know what it means in the legal language, but in ordinary language, the word 'idiot' does not mean a person of an unsound mind.

By this amendment, I want to make it clear for the layman who reads this Act, that what is meant is a person of an unsound mind. I hope the hon. Minister will kindly accept my amendment.

Dr. Jaisoorya: Amendment No. 180 in my name is similar to this. I agree with the hon. Member who has just spoken

I beg to move:

In page 3, line 5, *for* "an idiot or a lunatic" *substitute* "certified to be of unsound mind".

Shri M. S. Gurupadaswamy: I beg to move:

In page 3, line 5, *for* "an idiot or a lunatic" *substitute* "of unsound mind".

Mr. Chairman: Dr. Jaisoorya also is moving his amendment?

Dr. Jaisoorya: Yes

Shri Syamnandan Sahaya: He is also of the new variety.

Dr. Jaisoorya: Absolutely, as compared to you.

Mr. Chairman: Amendments moved:

In page 3, line 5, *for* "an idiot or a lunatic" *substitute* "certified to be of unsound mind".

In page 3, line 5, *for* "an idiot or a lunatic" *substitute* "of unsound mind".

Shri Tek Chand: I also would like to move my amendment to a similar effect. It is No. 2 in list No. 7 which has unfortunately been circulated just now. I want to substitute the words 'a person of unsound mind' in place of 'a lunatic', in page 3, line 5.

Mr. Chairman: What is the number of the amendment? I have not got it with me.

Shri Tek Chand: It is in list No. 7 which has been circulated to us just now. It is put there 'Notice recd. at 10-50 a.m. on 2.9.54'.

Mr. Chairman: You have got the copy, because you submitted that amendment. But it has not been circulated yet.

Shri Tek Chand: However, I may be permitted to make my point.

My submission is that the word 'lunatic' has not got that precise meaning which it is supposed to possess, because lunacy is a species of insanity or unsoundness of mind. Idiocy is another species. And the best description is to be found in section 3 (5) of the Indian Lunacy Act (Act IV of 1912), where the words are 'idiot or person of unsound mind'. The

[Shri Tek Chand]

expression 'unsound mind' is not vague but has got a definite meaning, and this is the expression used in Act IV of 1912. So, the correct expression ought to be:

"neither party is an idiot or person of unsound mind".

Idiocy is, again, a species of what is commonly known as insanity. Similarly, lunacy is also a species. It may very well be that a person may be neither an idiot nor a lunatic, but nevertheless, he may still be a person of unsound mind. That being the position, according to the well-known text on this branch of medical science, there are half a dozen types of mental aberrations. That being the case, it will be in the fitness of things if exactly the same expression as is used in the Indian Lunacy Act (Act IV of 1912), is adopted here.

Shri M. S. Gurupadaswamy: My amendment is very similar. You are aware that for contracting a marriage, consent is very necessary, and for giving consent, both the parties should be of sound mind. There cannot be any consent when there is absence of reason or weakness of understanding or absence of ability to give consent. I may quote imbecility as an instance. People who are suffering from imbecility always lack the power of understanding.

They have no power of reason and their mind is so weak that they cannot give their consent. And consent being the basis for contracting marriage, it is very necessary that both the parties should be of sound mind. Here the provision made in the Bill is restricted to cases of idioy and lunacy. They are only, as my friend put it, species of a genus; they do not cover all cases of unsound mind. 'Unsound mind' being a generic term, it will bring in all cases of this nature. So I submit that there should be deletion of these words "an idiot or a lunatic" and instead the words "of unsound mind" may be substituted. This is found also in English law; it is not a novelty or a new thing. We are copying the English law in certain cases here; we may copy this as well because it is more reasonable. So it covers all cases of people who suffer from the drawbacks of mind or all cases of diseased mind. There are different kinds if diseased mind; we cannot define them here; we cannot narrate and exhaust all the types of diseased minds. But it is very clear that there are numerous cases of diseased minds in our society. It is not wise on our part to permit those persons to come and marry. Consent being the essence of the contract of marriage, we should delete the words "an idiot or a lunatic" and introduce the wirds "of unsound mind".

Mr. Chairman: Shri Chatterjee.

Shri Raghavachari: May I respectfully point out....

Mr. Chairman: I have called Shri N. C. Chatterjee.

Shri Raghavachari: I only want to say one thing with regard to the point he made just now, that consent is an essential thing under this Act. I have not found it anywhere laid down that consent is essential, except inferencially.

Shri S. S. More: Please see clause 25(c).

Shri N. C. Chatterjee: I would suggest that Shri Tek Chand's amendment should be accepted: "Neither party is an idiot or a person of unsound mind". The Lunacy Act gives that expression "idiot or a person of unsound mind" in sub-section (5) of section 3. Of course, it goes without saying that the very fundamental basis of this law is that they must be persons who must not be *non-compos mentis*. That is the main thing. Of course, although there may be a difference on the ground of mental aberration, still the word 'idiot' should be there. Otherwise, it may be argued—having regard to the latest judgement of the Supreme Court—that when Parliament in a Bill had a word and that was dropped

when it was finally passed, Parliament applied its legislative judgement and gave a charter and let it not be argued that idiots can marry under this Act, because the word was there and was taken out. The definition of 'idiot' as given in Tomlin's *Law Dictionary* is: "An idiot or natural fool is one that has no understanding from his nativity, and is, therefore, by law presumed never likely to attain any". Certainly, that should be within the scope of this prohibition so as to have a perfect legal understanding and consciousness so that the thing would be done with a sense of responsibility as to what is happening.

[SHRI BARMAN *in the chair*]

Shrimati Renu Chakravartty: Although I appreciate the reason why Shrimati Ammu Swaminadhan has brought in her amendment, I think we should keep the word 'idiot'. We had actually discussed this in the Select Committee and the hon. Law Minister had quoted to us the same clauses just quoted here that 'an idiot' really refers to those cases of congenital idiocy whereby a man or woman has not attained a level of understanding to be able to give consent. Therefore, that should be retained.

The other point is this. If we have it as 'neither party has been certified to be of unsound mind', the result will be this. Suppose, taking conditions as they are today, a marriage is contracted where a man or woman of unsound mind has not been certified like that, and suppose the woman wants nullity, will that case be regarded as a case for nullity? If you have these words 'neither party has been certified to be of unsound mind' this is the question that rises in my mind, and I would like to be quite sure as to what will be the implications of that.

Dr. Jaisoorya: We had suggested a certificate of unsound mind because the gradations between sanity and insanity or cleverness and stupidity are very very delicate and very wide. For instance, there is the definition of what is a normal personality. This is the medical, psychiatric, opinion: "free from symptoms, unhampered by mental conflict, having a satisfactory working capacity, and being able to love some one other than himself". Who has not got mental conflicts? All have got. But our reaction to a given condition is what matters. Therefore, when you use the words "certified to be of unsound mind", it is a responsibility you are demanding from society, Because, out of enmity, you can declare a man to be of unsound mind. Cases are occuring. We therefore demand a judgement of a man's sanity as abnormal or sub-normal. The word 'idiot' is really 'sub-normal'; we do not use the words 'lunatic asylum' any more...

An Hon. Member; 'Mental hospital'.

Dr. Jaisoorya: We use the words 'mental hospital' and 'mental homes'. But that is a different thing.

We have to be very careful here because neither an abnormal man nor a sub-normal man can accept responsibility; he is not responsible. For instance, very often the question arises, whether an epileptic should be allowed to get married. He is not of unsound mind; but there are moments in epilepsy when he can do things—several cases have happened —whereby he may murder a whole tribe. So this needs to be thought of from the eugenic and medical point of view.

Another question arises. Here the question of mutual consent by two grown-up persons is assumed. His insanity may be shrewdly covered; we do not know the various aberrations of the mind; various cases arose which were discovered afterwards. For instance, extreme jealousy is a form of insanity. It can make a woman's life more miserable than stupidity or imbecility. These are points which we should think of. I suggest my amendment from the medical and psychiatric point of view.

Shri Venkataraman: Mr. Chairman, whatever may be the dictionary meaning of 'idiot' we are all familiar with the definition and the decisions in respect thereon. Particularly, students of Hindu law know that people who are congenitally idiots or lunatics are excluded even from inheritance. There are several decisions defining what is lunacy and idiocy. It is not as if we have nothing to go by when use the expression here. My submission is that as Mr. Chatterjee himself has pointed out, if we drop these words, it is a greater danger than if we do retain it. If we drop it, it would mean that idiots as defined in the various Acts and the judicial decisions would be entitled to marry. I, therefore, submit that we should retain this clause as it is.

Shri Mulchand Dube: The clause should not be in the negative form but in a positive form; that will solve the problem. The clause should read thus:

> "both the parties should be certified to be of sound mind";

I think, if we do it, all the difficulties that we have raised till now will be solved.

Shri Biswas: Very few marriages will then take place.

Mr. Chairman: Has the Minister to say anything?

Shri Biswas: These words have been taken from the Indian Divorce Act. We have similar words also in other marriage laws. It is suggested that the party must be certified to be of unsound mind. But, we cannot forget that there is no machinery in this country for examining any person with a view to finding out whether he is fit for marriage or not on the ground of soundness of mind. (*Interruption*).

In the clause dealing with divorce we have provided that if one of the parties to the marriage be continuously of unsound mind for a certain period then that will be a valid ground for divorce. As has been pointed out by Mr. Venkataraman, these words occur in connection with the law of inheritance in Hindu law and therefore these words have been used as you find in this Bill. They have now acquired a recognised significance. Therefore, I do not think that anything will be gained by altering these words. We are not here holding an inquisition under the Lunacy Act for sending the man or woman to the asylum. That is the reason why that is defined in that way under the Lunacy Act. Because you find that definition in the Lunacy Act, that is no reason why you should have the same definition here. After all, the parties are going to marry, presumably by their own consent. Whatever it is, it should not be difficult for the parties to find out whether the other party is a congenital idiot or a lunatic. Of course, if there is any doubt, there is no compulsion for that marriage. There is a further right given to the parties that if either of them is for over a certain period continuously in a state of lunacy or idiocy, they can have the marriage dissolved. Having regard to all these safeguards, there is no use substituting other words for which have already acquired, in legal parlance, a certain recognised meaning.

Shrimati Ammu Swaminadhan: May I ask a question of the Law Minister? He said that there was no machinery in India to find out whether a person is of unsound mind. But is there any machinery to find out the state of idiocy or lunacy?

Shri Biswas: For the purpose of determining whether a person has to be sent to the Lunatic asylum or not, the person is kept under watch and then you find out whether he is of such a mind as to be sent there. Here it is for the purpose of marriage. Are

you going to send a person to be kept under watch and certified whether he or she is fit for marriage or not? Are you going to say, 'I love this girl; she is so beautiful but you must find out for me after keeping her under watch whether she is fit for marriage and send a report whether she is of sound or of unsound mind'.

Mr. Chairman: Does the hon. Member want to press the amendment?

Dr. Ram Subhag Singh (Shahabad South): Is it suggested that at the time of marriage the parties should be sent to the mental asylum?

Shri M. S. Gurupadaswamy: Sir, my amendment No. 293 may be put to the vote.

Mr. Chairman: What about amendment No. 180?

Dr. Jaisoorya: I withdraw mine because he has given a legalistic definition and I accept it.

The amendment was, by leave withdrawn.

Shrimati Ammu Swaminadhan: After the explanation of the Law Minister, I do not want to press my amendment.

Mr. Chairman: I will put amendment 293 to vote. The question is:

In page 3, line 5, *for* "an idiot or a lunatic" *substitute* "of unsound mind".

The motion was negatived.

Mr. Chairman: Is Mr. B. P. Sinha moving his amendment?

श्री बी० पी० सिन्हा (मुंगेर सदर व जमुई) : सभापति जी, मैं अपने संशोधन नम्बर २८ को मूव* करता हूं जो इस प्रकार है :

In page 3, line 5, *omit* "an idiot or".

मेरा संशोधन यह है कि इसमें से "इडियट" शब्द निकाल दिया जाय क्योंकि "इडियट" की परिभाषा इस बिल में नहीं दी हुई है, इसलिये "इडियट" शब्द का साधारण अर्थ ही लिया जायगा जो कि "मूर्ख" होता है।

Shri V. G. Deshpande: I beg to move:

In page 3, line 5, *after* "lunatic *insert* "or is impotent or is a leper or is suffering from venereal diseases".

I am moving this amendment in order to avoid much litigation and heartburning and evil consequences afterwards. In this Bill, under the clause on void marriages, we find:

> "Any marriage solemnized under this Act shall be null and void and may be so declared by a decree of nullity if—
>
> * * *
>
> (ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit".

If the marriage is to be void on the ground of impotency, I feel that while contracting the marriage itself, precaution should be taken that the parties contracting the marriage are not under any disability which would lead to the marriage being declared void or invalid or on this ground they are allowed to get divorce. We find that in clause 27, one of the gounds for divorce is that one of the parties has been continuously for a certain period suffering from leprosy etc. We want that when we are enacting a model law for marriage, we should see that when they are marrying they do not suffer from any of these disabilities which would ultimately lead to the dissolution of the marriage. I am making this suggestion in order to avoid unnecessary litigation afterwards. The hon. Law Minister has said that in our country there is no machinery to know whether a man is suffering from lunacy or any such thing. If it is possible to ascertain these things after marriage while declaring the marriage void or at the time of granting a decree of divorce,

*The amendment was deemed to have been negatived.

[Shri V. G. Deshpande]

it should be possible to get these things ascertained before the marriage also. As I said in my previous speech, prevention is always better than cure. Simply for the fun of having granted the great freedom of divorce, should we allow marriages that would lead to divorce or their being declared void. I hope the hon. Law Minister will accept this simple amendment.

Mr. Chairman: Let me place the amendment before the House. Amendment moved:

In page 3, line 5, *after* "*lunatic*", *insert* "or is impotent or is leper or is suffering from venereal diseases".

Shri Biswas: If there is no discussion, I shall point this out. The amendment is not acceptable for the very simple reason, viz., who will find out before the marriage whether one of the parties is impotent or not. On the other hand, it is only after the marriage that the parties, having come together and lived together for some time, will be in a better position to judge whether any of the parties is suffering from this defect. Then, that is a ground for the dissolution of the marriage or for judicial separation. But before you marry, you want somebody to go to the doctor to have yourself examined and how will the doctor find out whether you are suffering from this defect. Where is the 'green bed' on which that experiment has to be performed in order to find out whether you are potent or impotent? It is absolutely impracticable.

Shri N. C. Chatterjee: What about leprosy and the other things?

Shri Biswas: Is impotency on the same ground as leprosy? Does impotency appear outside as leprosy does?

Shri N. C. Chatterjee: There are three categories specified here. With regard to impotency, my friend has said that it is premature to find it out before marriage. What about the others?

Shri Biswas: I thought it was only confined to impotency. If it is sought to be made applicable to leprosy and to venereal diseases, I will reply to it.

Even with regard to venereal diseases, how are they to be found out and how can you say that a man is suffering from venereal disease unless you subject him to a medical examination? If a person marries under this Act and offers himself for medical examination, he will declare himself to the other party "I am suffering from this disease". He will not conceal that fact, but he will not submit himself for a medical examination only for the purpose of getting a certificate that he is free from venereal diseases. One does not know the stage at which he is suffering. I am no authority on this. Fortunately or unfortunately, I have not suffered and I have no personal knowledge about it. By the use of penicillin, sulpha drugs, etc., although you may not altogether obliterate this mischief from your system, for the time being you may appear to be positively sound. Therefore, it is not practical politics to suggest that before marriage, a certificate from a medical man that he is free from venereal diseases or from other defects, should be obtained. What is the value of such a certificate? Can you not get this certificate for the asking? I cannot accept the amendment.

Dr. Jaisoorya: I am sorry I cannot agree with the hon. Minister. In Germany there is a law which requires that before you get married, you have got to produce a medical certificate—not from any Tom, Dick and Harry, but from certified Government institutions. If two young people are going to get together, there is a risk which they have got to take. In any case, they are going to spend some money on registration, on getting married and on putting up

a home. There is no argument why they should not spend Rs. 10 or Rs. 15 more to go to a certified Government hospital, where, for instance, a blood test can be done. Let me assure my friend that however much penicillin you may take, there are methods of finding out whether a person is suffering from this disease in an infective form. These tests are carried out for three months before the Government sanctions a certificate to say that the person is not infective.

With regard to impotency, I must agreed with the hon. Minister that it is a very difficult thing to declare a person as impotent unless he proves himself to be so.

Shri S. S. More: Then it is impotency of the medical science.

Dr. Jaisoorya: It is not a matter for fun; we are talking seriously. It is a wrong thing to declare a man as impotent when he is not. There are various things to consider. In India, people get married young, they have no experience and we expect them not to have experience before getting married. These are things which we should not joke about, because it means the future life of our young people. I must agree that there is a difficulty in the determination of impotency because we have to consider very many things and that matter we shall discuss separately later.

Pandit Thakur Das Bhargava: I have given notice of my amendment No. 230 and I hope I will be allowed to move it at the proper time.

Mr. Chairman: I shall now put this amendment to the vote of the House. The question is:

In page 3, line 5, *after* "lunatic", *insert* "or is impotent or is leper or is suffering from venereal diseases".

The motion was negatived.

Mr. Chairman: The amendment by Shri Telkikar is barred and so also the next amendment by Shrimati Jayashri Raiji is barred.

Shrimati Jayashri (Bombay—Suburban): I am not moving my amendment No. 59.

Mr. Chairman: Amendment No. 226 of Shri M. L. Agrawal is also barred.

Shri Frank Anthony: May I have your permission to move my amendment No. 229?

Pandit Thakur Das Bhargava: Are we not going *seriatim*?

Mr. Chairman: That will come later on. Let amendment No. 60 be moved.

Shri V. Missir (Gaya North): I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of twenty-one years and the difference of age between the parties does not exceed fifteen years;"

Shri Dabhi (Kaira North): My suggestion is that all the amendments regarding age may be discussed together.

Mr. Chairman: All the amendments concerning the limitation of age may be moved. Hon. members who have tabled amendments relating to the age may move them.

Shri C. R. Chowdary (Narasaraopet): I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the male has completed the age of twenty-one and the female the age of eighteen;"

Dr. Rama Rao: I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of eighteen years:

Provided that if the man has not completed the age of twenty-one years, he shall have obtained the consent of his guardian;"

Shrimati Renu Chakravartty: I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the woman has completed the age of eighteen years and the man the age of twenty-one years;"

Dr. Jaisoorya: I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of eighteen years:

Provided that the bridegroom shall obtain the consent of his parents or guardian if he is below the age of twenty-one years."

Pandit Thakur Das Bhargava: I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the man has completed the age of twenty-one years and the woman the age of eighteen years;"

Shri Frank Anthony: I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of twenty-one years, or in the case of a boy who has completed eighteen years but not completed twenty-one years, and in the case of a girl who has completed fifteen years and not completed twenty-one years, the consent of the father, if alive or if the father be dead, the guardian of such person, in case there be no such person, the consent of the mother of such boy or girl, has been given to the marriage;"

Shri M. S. Gurupadaswamy: I beg to move:

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of twenty-one years and the difference of age between the parties does not exceed fifteen years;"

Shri R. Venkataraman: I beg to move:

In page 3, line 6, *for* "twenty-one years" *substitute* "eighteen years".

Shri N. C. Chatterjee: I beg to move:

In page 3, line 6, *for* "twenty-one years" *substitute* "twenty-five years".

Shri B. P. Sinha: I beg to move:

In page 3, line 6, *add* at the end:

"in case of males and eighteen years in case of females."

Shri Venkataraman: I beg to move:

In page 3, *after* line 6, *insert*—

"(cc) each party, if he or she has not completed the age of twenty-one years, has obtained the consent of his or her guardian if any, to the marriage:

Provided that no such consent shall be required in the case of a widow, widower or divorce;;"

Shri C. R. Chowdary: I beg to move:

In page 3, lines 7 and 8, *after* "relationship" *insert*—

"unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two".

Mr. Chairman: Amendments moved:

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of twenty-one years and the difference of age between the parties does not exceed fifteen years;"

In page 3, *for* line 6, *substitute*—

"(c) the male has completed the age of twenty-one and the female the age of eighteen;"

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of eighteen years.

Provided that if the man has not completed the age of twenty-one years, he shall have obtained the consent of his guardian;"

In page 3, *for line* 6, *substitute*—

"(c) the woman has completed the age of eighteen years and the man the age of twenty one years;"

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of eighteen years:

Provided that the bridegroom shall obtain the consent of his parents or guardian if he is below the age of twenty-one years."

In page 3, *for* line 6, *substitute*—

"(c) the man has completed the age of twenty-one years and the woman the age of eighteen years;"

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of twenty-one years, or in the case of a boy who has completed eighteen years but not completed twenty-one years, and in the case of a girl who has completed fifteen years and not completed twenty-one years, the consent of the father, if alive, or if the father be dead, the guardian of such person, in case there be no such person, the consent of the mother of such boy or girl, has been given to the marriage;"

In page 3, *for* line 6, *substitute*—

"(c) the parties have completed the age of twenty one years and the difference of age between the parties does not exceed fifteen years;"

In page 3, line 6, *for* "twenty-one years" *substitute* "eighteen years".

In page 3, line 6, *for* "twenty-one years" *substitute* "twenty-five years".

In page 3, line 6, *add* at the end—

"in case of males and eighteen years in case of females."

In page 3, *after* line 6, *insert*—

"(cc) each party, if he or she has not completed the age of twenty-one years, has obtained the consent of his or her guardian if any to the marriage:

Provided that no such consent shall be required in the case of a widow, widower or divorcee;".

In page 3, lines 7 and 8, *after* "relationship" *insert*—

"unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two".

श्री बी० मिश्र : सभापति जी, मुझे अपने संशोधन नम्बर ६० के बारे में कुछ ज्यादा नहीं कहना है, इसलिए कि वह संशोधन बहुत ही सादा है और किसी पक्ष के खिलाफ नहीं जाता है । खास तौर से कानून मंत्री के भी खिलाफ नहीं पड़ता है । जो विधेयक का उद्देश्य है उसके खिलाफ भी नहीं है । और इससे कोई ऐसी बात उपस्थित नहीं होती कि जिससे यह किसी खास तरह की राय रखने वालों के खिलाफ पड़े । इस विधेयक में पहले से २१ साल उम्र दी हुई है । मैं उसके पक्ष में हूं । मैं चाहता हूं कि इस विधेयक के अनुसार २१ साल से पहले शादी नहीं होनी चाहिए । बहुत से संशोधन इस पक्ष में हैं कि १८ साल उम्र कर दी जाय । पर मुझे इस विशेष विवाह के लिए १८ साल की उम्र कम मालूम होती है, इसलिए कि हमारा ख्याल है कि १८ या १६ वर्ष तक लोगों की समझदारी बड़ी गड़बड़ रहती है और वह शादी इस उम्र पर समझदारी के साथ नहीं हो सकती । इसलिए बीस साल के बाद ही ऐसी शादी होनी चाहिए ।

साथ ही इस संशोधन का यह अर्थ है कि हम अनमेल विवाह पसन्द नहीं करते हैं । वैसे मैं इस संशोधन को न भी देता, लेकिन खासकर

[श्री वी० मिश्र]

इसलिए मुझे यह संशोधन देना पड़ा कि इस विधेयक में वर्जित डिग्री की विचित्र कल्पना की गयी है । इसमें नानी की मां से या दादा के बाप से शादी करने की कल्पना की गयी है । जब ऐसी कल्पनायें की जा रही हैं, तो उनके लिए कोई न कोई उपाय निकालना जरूरी है । इसलिए मैं ने यह रखा है कि आप इस बिल में सिर्फ इतना जोड़ लीजिये कि जो शादी २० साल की उम् के बाद होंगी उनके बीच में उम् का फर्क १५ साल से ज्यादा न हो । इससे बिल भी अपनी जगह पर रहेगा और इसमें कोई अन्तर नहीं पड़ेगा और इससे वह सारी बातें बेकार हो जायंगी । इसमें जो शंका नानी की मां से या दादा के बाप से शादी करने को की गयी है इस संशोधन से वह दूर हो जायगी । इस संशोधन को स्वीकार कर लेने से यह समस्या हल हो जायगी । इतना निवेदन करते हुए मैं मंत्री जी से कहता हूं कि वे इस संशोधन को स्वीकार कर लें । इससे यह विधेयक जैसा है वैसा ही रहेगा और उसमें कोई अन्तर नहीं पड़ेगा ।

Dr. Rama Rao: Mr. Chairman, about the age-limit of these young people we must consider several aspects. I am in favour of limiting the age to 18, unconditionally, but I have tabled another amendment as a compromise. Except when one is under court guardianship, a person who is a major can undertake contracts for all practical purposes, after one is eighteen. But here though one is 18 years old, still we are prohibiting them from marrying. From a practical point of view, if a girl of 19 or 20 years wants to marry, I do not see any reason why we should put restrictions in her way Is it the intention of Government to put as many restrictions as possible in the way of people marrying under this law? I can understand my hon. friends of the Hindu Mahasabha. Mr. Chatterjee and Mr. Deshpande, putting as many obstructions as possible in the passage of this Bill, as is shown by the nature of the amendments tabled by them. They have suggested an age-limit of 25 years. That I can understand...

Shri N. C. Chatterjee: That is a good compromise. In fact, the leader of one of the Groups, Acharya Kripalani, has suggested that it ought to be 35.

Mr. Chairman: Whatever is said outside need not be taken notice of.

Dr. Rama Rao: Their intention is to nullify the whole Special Marriage Act. But what is the intention of Government in objecting to the age-limit of 18 unconditionally? I do not mean to say that every girl or every boy aged 18 must marry. But if a girl wants to marry at 20, why should she go for the permission of her father or her mother, particularly, if the marriage is an inter-caste or inter-religious one, to which the parents are likely to object? They must have the discretion and the freedom to marry at that age.

In the course of my speech on the first reading of this Bill I pointed out that it is becoming a problem for our educated girls to marry, because after a certain age the chances of their getting a proper husband go down, so much so there are a large number of educated girls marrying men with wives.

An Hon. Member: You mean married men?

Dr. Rama Rao: Our intention should be to give facilities for these young ladies and young men to marry as they choose. I do not want to compel them at a particular age. So there is absolutely no meaning in putting a restriction that these people must obtain the permission of the father, mother or guardian. And there are other conditions like obtaining the permission of the court and all that.

So I request the House to consider my amendment—so many others also have given similar amendments—and reduce the age to eighteen years unconditionally.

There is one section of people who want to be ultra reformers. They want to advance the age. Of course we are against child marriage. If we are against child marriage, if we are against the marriage of girls and boys at a very low age when they are very young, we should not go to the other extreme and make matters impossible. So I appeal to those people who want to be ultra reformers not to make it very difficult for our boys and girls to marry and take advantage of this very sensible measure.

Acharya Kripalani (Bhagalpur *cum* Purnea): As my name has been mentioned, with your permission I would like to say a few words on this.

Mr. Chairman: But that was about some talk outside. Anyhow I think the hon. Member will finish within two or three minutes.

Shri Biswas: I think Acharya Kripalani will be good enough to speak, and after him Shrimati Sucheta Kripalani.

Mr. Chairman: If Acharya Kripalani wants to take some time I think I should first ask the hon. Minister to give his reactions to all these amendments. After that it will be possible for every Member to make his observations.

Shri Syamnandan Sahaya: In the matter of marriage the Law Minister has no reactions now!

Pandit Thakur Das Bhargava: We want that the Law Minister may be influenced by our speeches.

Mr. Chairman: If that is the sense of the House I have no objection.

Acharya Kripalani: As I understand it, this law is supposed to be based on scientific considerations. It is a law which will apply, so far as I can see, to educated persons, to modern persons, to advanced persons; and it applies to marriages which are not contracted at the bidding of the parents or any other party. The marriages are to be contracted by the parties themselves. In all other kinds of marriage so many other considerations come, but in this kind of marriage no other consideration comes but the affection of the two parties for each other. And so far as I can understand this is the object of the Special Marriage Bill, namely that there will be no restrictions of caste, of religion, of anything else but marriage is considered as a nexus between two individuals. If two individuals are to marry in that fashion, setting aside all other considerations of parentage, of caste, of religion, social, economic and every other consideration, if they are to marry like that, then I submit that even the age of twenty-one is not high enough. At eighteen people are in their schools and colleges. They are not able to understand all the implications of marriage and of married life. Many times they might, as I said in my speech on the general consideration of the Bill, get attracted towards each other. You would only be providing more occasions for divorce if you allow such immature people to contract a marriage of this sort in which neither society comes in nor parents come in. The speech that I made at the time of the general consideration of the Bill excited some kind of laughter and therefore it was considered that I was not serious about this business. I am quite serious, and I think that the age of twenty-one is rather low. But let it be twenty-one and not eighteen. At the age of eighteen now-a-days boys are mere children for purposes of married life. And now-a-days we have such an elaborate course of education that we are not educated even to find out what is right and what is wrong.

Therefore, I will recommend to the House that they allow the age twenty-one, low as it is in my opinion, to remain as it is.

Another thing is that if the age is fixed to 21 the question of guardianship and other things also will not arise.

Shri Venkataraman: It is the object of this Bill to enable as many people to come under this law as possible, because we want that a uniform Civil Code regarding marriage should come into effect; and it cannot be done if you go on putting hurdles after hurdles before it. That is why we want to enable people to marry when they are normally marrying in this country.

Take the case of a woman. It would be very hard on her if she is told that she should wait till twenty-one years of age before she can marry under this law. If she can marry under the Hindu Law at the age of sixteen, why should she have to wait till the age of twenty-one before she can get the benefit of marriage under this law? If we prevent people of less than twenty-one years of age from marrying under this law, the persons who want to get married will necessarily have recourse to some other law by which they can be married.

Acharya Kripalani: We prevent it; don't we?

Shri Venkataraman: At the age of eighteen it is acknowledged in this country that they have attained maturity enough to dispose of their property, act *sui juris*.

Shri Syamnandan Sahaya: It is a question of disposing of the person, not the property!

Shri Venkataraman: Yes. To some people property is very much greater than persons even.

I do not want to be deterred by interruptions. I want to submit that if the person is capable under our law to act independently, take independent decisions and go ahead with the ordering of his life as he likes at the age of eighteen, why should he be prevented for the purpose of marriage alone and made to wait till twenty-one? I quite agree that we ought to provide some sort of guidance or advice in these matters. That is why I have submitted two amendments, No. 62 which reduces the age from twenty-one to eighteen and No. 295 which tries to give some sort of advice or guidance to people who have completed eighteen but are less than twenty-one. The amendment reads:

> "each party, if he or she has not completed the age of twenty-one years, has obtained the consent of his or her guardian if any to the marriage:
>
> Provided that no such consent shall be required in the case of a widow, widower or divorcee".

This would represent the largest measure of safeguard that may be required in cases of persons between the age of eighteen and twenty-one. To prevent them by a blanket ban from marrying below the age of twenty-one would be to deprive particularly women of the chance of being able to marry and get benefits under the Indian Succession Act. Therefore, I submit that if these two amendments are taken together, it would meet to a large extent the objections raised by Acharya Kripalani for whose experience, knowledge and wisdom, certainly we all bow. But, I submit that this would meet the objection and persons of less than twenty-one years of age should take the consent of their father or mother or if there is any guardian, the guardian in this behalf.

There was some confusion in the discussion about this word guardian. I may explain it here. We are not now enacting a law of guardianship. We say that for the purpose of giving consent for the marriage, so and so will be called the guardian. That is all. For the purpose of this Act, the guardian means so and so who will perform only this function and nothing else. He is not the guardian of the property, or of the person. He is called a guardian for the purpose of discharging only one function namely, giving consent to the marriage.

Acharya Kripalani: Who is to appoint this guardian?

Some Hon. Members: Who is he?

Shri Venkataraman: The father will be the guardian. If there is no father, the mother will be the guardian. If there is a guardian appointed by the court, that man would be the guardian. That is the clause which I have submitted in the definition section.

The only question to which the House has to address itself is whether it is right to prevent women from marrying under this law until they become twenty-one years of age. That is the only question we have to face. Opinions will differ on this matter. We cannot arrogate to ourselves all wisdom and dictate to other. We can only submit our points of view. My submission is that we ought not to prevent men or women of less than twenty-one years of age from entering into a marriage under this Act, provided they get the consent.

Some Hon. Members: Why?

Shri Venkataraman: I can understand the other point of view also. Left to myself, it is absurd that a person who is a major, who is an independent person, should go and take the consent of his father or mother or guardian for contracting a marriage. I would go even to that extent. Unfortunately, we are not able to carry the entire country and all the Members of this House to that extent. Therefore, a compromise was suggested by which some sort of guidance would be available to the people who are over eighteen but less than twenty-one years of age. These two amendments taken together, I submit, will be a great advance on the law and practice as now obtaining and would really be helpful to the people.

Mr. Chairman: Shri M. S. Gurupadaswamy:

Some Hon. Members: Shrimati Sucheta Kripalani, Sir.

Shrimati Sucheta Kripalani (New Delhi): I do not want to speak.

Some Hon. Members: All sections want to hear you.

Mr. Chairman: I do not understand: Shri M. S. Gurupadaswamy, you do not want to speak?

Shri M. S. Gurupadaswamy: I thought Shrimati Sucheta Kripalani was going to speak.

Mr. Chairman: But, she is not willing to speak.

An Hon. Member: She will speak if Acharya Kripalani goes out.

Mr. Chairman: Shri M. S. Gurupadaswamy will go on.

Shri M. S. Gurupadaswamy: I want to narrate a case. It is not a story; it is a case that I came across. I know a particular instance where the step-mother is twenty-two years of age, the step son is 35 years and the father is 60 years.

Shri Syamnandan Sahaya: Only?

Shri M. S. Gurupadaswamy: Only. My amendment is to meet that contingency. The purpose of my amendment is to avoid the great disparity or the great gap between the ages of the partners. It is horrible to think and it is inhuman that the mother is 22 years of age whereas the step-son is 35 years. If we consider only the age, then the age of the step-son is sufficient to marry the step mother of 22 provided she had not been so.

According to the laws of eugenics, it is known that there should not be any great disparity between the ages of the partners. I have suggested in this amendment that the disparity or difference between the ages of the partners should not exceed 15 years.

1 P. M.

Dr. Ram Subhag Singh: Who should be the older of the two?

Shri M. S. Gurupadaswamy: I think the question is becoming more intriguing and more complex. I am

[Shri M. S. Gurupadaswamy]

not here to argue whether the husband or the wife should be the more aged. Normally it is understood that the husband should be more aged than the wife.

Some Hon. Members: What is your view?

Shri M. S. Gurupadaswamy: That is the normal practice. Of course, there are abnormal cases.

I want the Members to look at this problem very seriously because the Members who laugh at this, seem not to have undergone this experience.

An Hon. Member: Did you?

Shri M. S. Gurupadaswamy: Of course, I am equally inexperienced. But, I have observed cases as I quoted just now. It is unthinkable and unreasonable to allow a man of 60 or 70 or 80 to marry a young girl of 20 or 21 years, whereas the sons born of that man are 30 or 40 years old. It is really scandalous and it does not in any way add to the happiness of the partners themselves. I feel very strongly on this point, however much our friends here may think in a very light-hearted fashion.

Shri Syamnandan Sahaya: Everybody is in your favour.

Shri M. S. Gurupadaswamy: Such a state of affairs should not be allowed to continue hereafter. We are fixing the age limits for boys and girls at twenty-one. All right; it is a very good thing. We should also prescribe an upper limit for the difference in age between the partners.

Shri Bhagwat Jha Azad (Purnea *cum* Santal Parganas): If the man is above fifty, let him get the consent of his children, half a dozen of them.

Shri M. S. Gurupadaswamy: I very much like that idea. But, in any way, let this difference be fixed as 15 years. No man or woman should marry each other if the difference of age between the two people is beyond 15 years. It is in conformity with all the good laws of eugenics. I beg to submit that this amendment is very important and I request my friends here to accept this amendment.

पंडित ठाकुर दास भार्गव : चेअरमैन साहब, मैं ने एमेन्डमेन्ट नम्बर २२७ मूव किया हैं । मेरी अदब से गुजारिश यह हैं कि हम को यह फैसला करना हैं कि लड़के और लड़की की मिनिमम उम्र क्या होनी चाहिये । आम तौर पर जो ख्याल किया जाता हैं वह यह हैं कि मुनासिब एज क्या हैं । मैं निहायत अदब से अर्ज करना चाहता हूं कि यहां सिर्फ सवाल मिनिमम एज का हैं । इस में दो बातें गौर करने के काबिल हैं । पहले तो फिजिकल मैच्योरिटी की बात और दूसरी बात यह कि उस के अन्दर इतनी समझ और इतनी ताकत आ गई हैं कि वह अपना भला बुरा समझ सके । मैं अर्ज करना चाहता हूं कि जहां तक फिजिकल मैच्योरिटी का सवाल हैं, १६ बरस की उम्र काफी ख्याल की गई हैं मैडिकल साइन्स की तरफ से । गवर्नमेन्ट ने एक एज आफ कन्सेन्ट कमेटी १९२८ में मुकर्रर की थी, जिस का मैं भी मेम्बर था । मैं ने सारे हिन्दुस्तान का दौरा किया और बहुत से डाक्टरों की राय ली । सब डाक्टरों की राय यह थी कि जो पराशर व मनुस्मृति में एज थी वह ठीक थी । १२ बरस की उम्र में लड़की को मेन्सेज शुरू होते हैं । और मेन्सेज शुरू होने के तीन साल बाद तक लड़की की शादी नहीं होनी चाहिये । इस तरह से १६ बरस बनता था । मैडिकल साइन्स ने भी फैसला किया कि १६ बरस ही सही उम्र हैं । जहां तक फिजिकल मैच्योरिटी का सवाल हैं, वह भी १६ बरस में ठीक हो जाती हैं और यही उम्र मैजारिटी की हिन्दू ला में भी करार पाई गई थी जब तक कि इंडियन मैजारिटी ला पास नहीं हुआ था। इसी तरह से मोहमडन ला में भी करार पाया गया था ।

मुझे अफसोस हैं कि मैं इस बात में अपने बुजुर्ग आचार्य कृपालानी से मुत्तफिक नहीं हूं कि यह एक्ट सिर्फ उन लोगों के लिये बना हैं

जो महज मोहब्बत के लिये शादी करते हैं। अगर जनाब इस एक्ट का मुलाहजा फर्मायेंगे तो देखेंगे कि इस के अन्दर दूसरी शादियों के रजिस्ट्रेशन का कानून है। अगर एक शख्स ने हिन्दू ला के अन्दर, जिस में कि लड़की की उम्र १६ साल और लड़के की २१ साल की उम्र रक्खी है, शादी की हो तो वह भी अब इस में रजिस्ट्री करा सकता है। अब पिछली बात नहीं रही है। साथ ही दोनों हिन्दू हों तो भी शादी हो सकती है इस एक्ट के नीचे और दोनों मुसलमान हों तो भी शादी हो सकती है, जब यह बिल पास हो जायेगा। यह एक जनरल ला बन रहा है जिस को कि हम स्पेशल मैरेज ला कहते हैं। यह जनरल ला बन रहा है और सब के वास्ते है, इस लिये आप को सब से पहले यह देखना होगा कि आप ऐसी मिनिमम एज न रख दें जिस से कि आइन्दा बहुत से लड़के लड़कियां मुसीबत ख्याल करें और हम हमेशा लड़ाई किया करें।

Acharya Kripalani: This is by consent. Mutual consent is not the parent's question at all.

Pandit Thakur Das Bhargava: It is a parent's question.

राज्य सभा ने एक अमेंडमेंट रखा है वह यह है कि लड़के या लड़की की उम्र २१ साल से कम नहीं होनी चाहिए। लेकिन जो आज ला आफ दी लैंड है वह यह है कि पन्द्रह साल की उम्र की लड़की की शादी हो सकती है। सारे हिन्दुस्तान में यह शादी की उम्र शारदा एक्ट के मुताबिक १८ और १५ है। और यह इसलिए है कि आम तौर से हर मां बाप की यह ख्वाहिश होती है कि उनके सामने लड़की की शादी किसी अच्छे खानदान में हो जाय। आम तौर पर यह होता है।

Shri Tek Chand: That is an arranged marriage.

पंडित ठाकुर दास भार्गव : यह एरेंज्ड मैरिज जरूर है लेकिन मैं अदब से पूछना चाहता हूं कि क्या आम तौर से ऐसा नहीं होता है। मैं तो खुद इस राय का हूं कि १८ वर्ष की लड़की की शादी होनी चाहिए, क्योंकि मैं चाहता हूं कि लड़की में शादी के पेश्तर पूरी तरह से फिजीकल और मेंटल मेच्योरिटी आ जाय और मैं समझता हूं कि १८ साल पर लड़की में यह मैच्योरिटी आ जाती है कि वह सोच सकती है कि...

आचार्य कृपालानी : लड़के में तो नहीं आती।

पंडित ठाकुर दास भार्गव : इसी लिए तो मेरा अमेंडमेंट है कि लड़के की उम्र २१ साल होनी चाहिए और लड़की की १८ साल होनी चाहिए। मैं ने इस किस्म का बिल १९४९ में हाउस में पेश किया था और अर्ज किया था कि लड़के की उम्र जो १८ साल की है वह बढ़ा दी जाय और लड़की की उम्र जो १४ साल थी वह बढ़ा दी जाय। बड़ी मुश्किल से गवर्नमेंट ने लड़की की उम्र को १४ से १५ वर्ष किया लेकिन लड़के के लिए हमारे गाडगिल साहब ने जो कि उस वक्त गवर्नमेंट के स्पोक्समैन थे यह कहा जो हमारा एक रिक्रूट फौज में और नेवी में जाता है क्या वह बच्चा पैदा नहीं कर सकता। मैं ने उनसे पूछा कि क्या उसका कोई यह इम्तिहान भी होता है कि आया वह बच्चा पैदा कर सकता है या नहीं। मैं अदब से अर्ज करना चाहता हूं किसी सूरत में भी लड़के की उम्र २१ साल से कम नहीं होनी चाहिए। मैं वेंकटरमन साहब के इस अमेंडमेंट से मुतफिक नहीं हूं कि लड़के की उम्र २१ साल से कम रखी जाय। हिन्दुस्तान में जब शारदा एक्ट बना था तो लड़की की उम्र का झगड़ा था लड़के की उम्र का झगड़ा नहीं था। लेकिन अगर हम चाहते हैं कि हमारी एक मजबूत कौम बने तो हमारा फर्ज है कि हम शादी के लिए लड़के की उम्र २१ साल से कम न रखें। लड़की की बात और है क्योंकि लड़की और लड़के की साइकालाजी में फर्क है। इसको हिन्दुस्तान में सारे मजहब वाले मानते हैं और इस बात को सब लोग जानते हैं कि लड़की जल्दी जवान हो जाती है और लड़का देर में जवान होता है। इसलिए मैं अदब से अर्ज करता हूं कि दोनों पाइंट्स आफ व्यू से, यानी उसकी फिजिकल मैच्योरिटी के ख्याल से और उसकी

[पंडित ठाकुर दास भार्गव]

मेंटल मैच्योरिटी के ख्याल से, लड़के के लिए मिनिमम एज २१ होनी चाहिए और लड़की की १८ होनी चाहिए। राज्य सभा ने रखा है कि दोनों की उम्र २१ साल की हो। तो मैं अदब से अर्ज करूंगा कि ऐसी हालत में वेंकटरमन साहब की जो तजवीज है गार्जिअन की वह माकूल ही है।

कृपालानी साहब ने फरमाया था कि २१ वर्ष के लड़के और लड़कियां तो कालिज में पढ़ते हैं। लेकिन जहां तक लड़की का ताल्लुक है हर एक बाप १८ बरस की उम्र में यह चाहता है कि उसकी शादी हो जाय। शायद ज्यादा पढ़े लिखे लोग ऐसा न मानते हों। लेकिन जिन लोगों में मैं रहता हूं मैं जानता हूं कि उनको यह फिक्र है। जब से लड़की पैदा होती है तब से उनको यह फिक्र रहती है कि इसकी शादी किसी अच्छे खानदान में हो जाय। और बहुत से आदमी ऐसे हैं जो इस बात से डरते हैं कि अगर लड़की १८ बरस से ज्यादा की हो जायगी तो कहीं उसका चाल चलन खराब न हो जाय।

Acharya Kripalani: May I submit that these persons will not marry under the Special Marriage Act?

पंडित ठाकुर दास भार्गव : अगर आप इसमें यह कर दें जैसा कि मेरा अमेंडमेंट है कि यह बिल मुखतलिफ मजहब वालों की शादी पर ही लागू होगा, तो मैं कृपालानी साहब के साथ एग्री करूंगा। अगर आप मेरे अमेंडमेंट को कबूल करवा दें तो मैं उनसे एग्री करूंगा। मैं कृपालानी साहब की तवज्जह दिलाना चाहता हूं.....

Mr. Chairman: The hon. Member may go on in his own way. There may be difference of opinion.

Pandit Thakur Das Bhargava: The point is this. He has objected. So I wanted to say to Mr. Kripalani.....

Mr. Chairman. Each one may have his own views. Each one must be allowed to express his own views.

पंडित ठाकुर दास भार्गव : मैं ने एक अमेंडमेंट भेजी थी जिसमें यह लिखा है कि यह बिल उन्हीं लोगों को आप कनफाइन कर दें जो दूसरे रिलीजन्स में शादी करते हैं। अगर आप ऐसा कर दें तो ये जो लोग २१ और २५ और २५ रखना चाहते हैं उन पर यह लागू हो। जो कि फ्रेश पास्चर्स एंड फील्ड्स एन्ड में यकीन करते हैं वे इसके मातहत शादी कर सकते हैं। मुझे कोई एंतराज नहीं है। लेकिन अगर आप चाहते हैं कि यह बिल सब को कबूल हो और इस से वे लोग भी फायदा उठायें जो कि परसनल ला के मातहत शादी करते हैं तो यह जरूरी है कि आप लड़के के लिए २१ साल रखें और लड़की के लिए १८ साल रखें। इससे ज्यादा एज लड़कियों के लिए रखना दुरुस्त नहीं होगा। मैं निहायत जोर से अर्ज करूंगा कि लड़की की उम्र २१ साल रखना बिल्कुल गलत है। आज कानून यह है कि एक १८ साल की लड़की अपनी सारी जायदाद किसी को दे सकती है। और आपने क्या रखा है? आपको मालूम है कि एज आफ कंसेंट क्या है। मैं ने कोशिश की थी कि आप इसको १५ से १६ कर दें और नान मैरीटल में १८ कर दें, लेकिन हमारे होम मिनिस्टर साहब ने जो कि इस वक्त तशरीफ ले गये हैं आबजेक्ट किया। आज एज आफ कंसेंट तो १५ साल है और शादी की एज २१ साल रखी जाती है। इससे ज्यादा एबसर्ड बात और क्या हो सकती है। अगर आप चाहते हैं कि मुल्क में सोशल पीस कायम रहे और लड़कियां बदनाम न हों, तो यह जरूरी है कि एज आफ कंसेंट और एज आफ मैरिज एक रखिये। अगर आप ऐसा नहीं करेंगे तो दंश के साथ अन्याय करेंगे। आपको यह भी सोचना है कि एज आफ कंसेंट क्या रखें। मुझे मालूम हुआ है कि जहां तक मैरिज का सवाल है जो दूसरा बिल, हिन्दू मैरिज और डाइवोर्स बिल, आने वाला है, उसकी सिलेक्ट कमेटी में यह तजवीज किया गया है कि शादी के लिए लड़के की उम्र २१ साल हो और लड़की की १६ या १८ साल हो...

सरदार ए० एस० सहगल (बिलासपुर) : २६ साल ।

पंडित ठाकुर दास भार्गव : हमको तो अपने साथ सारे मुल्क को ले चलना है और मैं समझता हूं कि सारे मुल्क के लिहाज से १६ साल की उम्र भी ठीक है लेकिन लड़के की उम्र २१ साल से कम नहीं होनी चाहिए । अगर वहां लड़के की उम्र २१ रखी गयी है तो क्या यह बिल उसके पीछे चलेगा । तो मैं यह अर्ज करना चाहता हूं कि इस कानून के लिए लड़के की उम्र २१ साल से कम नहीं होनी चाहिए पर लड़की की १८ से ज्यादा रखने के लिए किसी को मजबूर नहीं करना चाहिए । हां अगर कोई इससे ज्यादा उम्र में शादी करना चाहे तो वह कर सकता है । मैं समझता हूं कि २१ और १८ की उम्र काफी है और इस उम्र में लड़का और लड़की अपना भला बुरा सोच सकते हैं । इसलिए मैं अर्ज करूंगा कि जो अमेंडमेंट में ने रखा है वह सबसे माकूल है और उसको मंजूर फरमाया जाय ।

Several Hon. Members *rose*—

Shri Raghavachari: On a point of order, Sir. In the course of the discussion...

Mr. Chairman: Order, order. I have to make an announcement first

RESIGNATION OF MEMBER

Mr. Chairman: I have to inform the hon. Members that Shri Shiva Narain Tandon has resigned his seat in the House with effect from the 27th August, 1954.

SPECIAL MARRIAGE BILL—*Contd.*

Shri Raghavachari: Mr. Chairman. Sir, in the course of the discussion it was stated that the Select Committee on the other Bill under consideration has dicided this and that. It was stated by the speaker and it was confirmed by hon. Member Mr. Saigal. Is it permissible that the matter that is under discussion in a Select Committee be stated on the floor of the House or published like that?

Mr. Chairman: I think that general mention is not absolutely prohibited I did not notice that any statement made in the Joint Committee has been specifically mentioned here *verbatim*. If there is a general mention, I do not find any harm in it.

The Lok Sabha then adjourned till a Quarter Past Eight of the Clock on Friday, the 3rd September, 1954.