#### SPECIAL MARRIAGE BILL-Contd.

Mr. Speaker: We will now proceed with the further consideration of the Special Marriage Bill. Hon. Members are aware that the motion for consideration of the Special Marriage Bill, 1954, as passed by the Rajya Sabha, has already been discussed for three days during the last session. The Lok Sabha has devoted about twelve hours over the motion for consideration of the Bill. The general discussion on the motion for consideration of the Bill was not concluded when the last session adjourned on the 21st May, 1954. It was agreed during the last session that one day more will be allotted for the general discussion on the Bill in the next session and thereafter clause by clause consideration of the Bill will be taken up.

The House will conclude the general discussion on the Bill today. After the Minister for Law has replied to the debate, I shall put the motion for consideration to the vote of the House at 1-15 P.M.

Therefore, now we will take up further consideration of the motion:

"That the Bill to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce, as passed by the Rajya Sabha, be taken into consideration."

Shri N. C. Chatterjee (Hooghly): Sir, I am obliged to you for giving me a chance of participating in the discussion today. I was personally a little handicapped during the last session as I had spoken rather strongly on this Bill somewhere in Hyderabad and for that there was a good deal of misunderstanding. Sir, I spoke very strongly because I honestly felt strongly on certain aspects of this very important Bill.

The hon. Law Minister, my friend Shri Biswas, in his very elaborate opening speech has tried to emphasise the aspect that it is a permissive Bill,

it is not a compulsory measure, it is a non-communal and non-sectarian measure, it is meant to be all-pervasive and that, therefore, it is not a measure which ought to provoke very much comment. I am afraid, it is not quite correct and I shall endeavour to point to my hon, friends in this House that, although it is prima facie permissive, it has got certain features which will lead to very serious effects on sacramental marriages, specially the Hindu marriages.

There is a clause which is rather extraordinary, and is of a revolutionary character. This is a clause which was not in the original Special Marriage Act as it was passed in 1872. You know, as my friend the hon. Law Minister has pointed out, this Bill was passed at the instance of Shri Keshab Chandra Sen and Brahmo leaders who wanted a particular kind of civil marriage not restricted by the injunctions of Hindu laws, because they wanted to marry outside the caste, in the same gotra and so on. These were not permissible at that stage and therefore they wanted such a Bill. But, these restrictions are now gone. Two legislations have come into being in 1946 and 1949 and a good deal of the raison d'etre of that old Act has now gone. First of all, under the Hindu law as it now stands, there is no restriction with regard to caste or sub-caste, or gotra or pravara. Anyone can marry outside the caste and that marriage will be perfectly valid. The law has been put beyond any doubt. I am reading to you from the latest edition of Principles of Hindu Law by Mr. D.F. Mulla-the latest edition has been edited by a great judge and great jurist, Mr. Justice Mukerjea. He has pointed out that in two respects the law is now perfectly clear. First of all, he has pointed out:

"It is now provided by the Hindu Marriage Disabilities Removal Act, 1946, that notwithstanding any text, rule or interpretation of the Hindu Law or any custom or usage, a marriage between Hindus, which is otherwise valid, shall not be invalid by reason only of the .

[Shri N. C. Chatterjee]

fact that the parties thereto belong to the same gotra or pravara."

This, Sir, is one important change which was effected. The second important change which has been effected is this, that by the Act of 1949, all restrictions with regard to inter-caste marriages have gone.

# [PANDIT THAKUR DAS BHARGAVA in the Chair]

Now, when I made my comment in my speech in South India, I made it with a purpose and that purpose is this. I maintain and I ask all my hon. friends to consider seriously this aspect of the problem. Is it right that the Upper House should take charge of this Bill in the initial stage? Which is the proper forum for the consideration of such an important and controversial measure which will affect the lives of millions of people, the welfare of individuals, the welfare of society at large and the welfare of the entire nation? I am very happy to find that some hon. Members on the opposite benches also feel like that and the first speaker who followed the non. Law Minister, Shri C. C. Shah said:

"If I may respectfully say so, Sir, I regret that this Bill which is so important and which is so controversial, should have been introduced and discussed first in the Council of States and then brought to this House. And I am also urging that the convention should be immediately introduced that all and controversial important measures like this should first be introduced in this House before they are taken by the other House."

It is not a question of prestige, it is not a question of dignity; but, it is a question of principle, the essential question of this bi-cameral parliamentary system. We have been elected by adult suffrage. We reflect the popular will and in respect of any measure like this, which will have

tremendous consequences on the whole national set-up, it is important vital that the popular and House democratically elected should have the first say in the matter. Shri C. C. Shah has also rightly pointed that it will save a lot of time and it will also save a good deal of complication. Sir, you know that certain amendments have been made by the Upper House which have made the Bill more controversial and the hon. Prime Minister who addressed this House on the last day of the last session, also said that this Bill as it has emerged from the Council of States requires amendment. I am reading, Sir, the exact language of Pandit Nehru:

"I think that as the Bill has emerged from the Council of States it would be desirable to make some alterations and amendments."

He did not specify what amendments and what alterations should be made, but I have no doubt that the hon. Prime Minister was thinking of a very revolutionary clause which has been inserted by the Upper House, namely, the clause regarding divorce by consent. Divorce by consent is repugnant to the basic principles of Hindu marriage, repugnant to the entire system on which Hindu family life rests. This is unknown in English Law. As a matter of fact, if you go to any Divorce Court in England, you will find that the first issue that is adjudicated upon by the Divorce Judge will be: has there been any consent between the parties to get the divorce? It may not be raised at any pleading, but in the English courts, French courts and also in most of the Continental courts, the first thing that requires adjudication is: is there consent between the parties to get the divorce? (Interruptions). Ĩg it a matter of friendly compact between the husband and wife so that the holy union should be disrupted? As you know,-you are a distinguished lawyer yourself--- in the English Courts there

is a Proctor attached to every divorce judge and that Proctor makes an independent enquiry, because on the face of things there may be a good case, and good lawyers may be engaged. The whole thing goes on for days, elaborate evidence is taken and then the judge makes his finding, but it may be that there were some facts which were not placed before the court deliberately although eminent lawyers might have appeared. Therefore, in the western countries where you have provision for divorce, they take this important precaution: let there be no divorce by consent, by arrangement or by contract.

An Hon. Member: What is the harm done by the way?

Shri N. C. Chatterjee: I am honestly of the opinion that it will lead to companionate marriages, it will lead to convenient marriages, it will lead to some kind of *muta* marriages, may be for seven days or ten days, and I think.....

Shrimati Renu Chakravartiy (Basirhat): Read the clause please.

An Hon. Member: That is better than polygamy (Interruptions).

Mr. Chairman: Let him proceed in his own way.

Shri N. C. Chatterjee: I know that some people, who think they are progressive, are in favour of divorce by consent. I maintain I am also progressive and that is why I accepted a seat on the Untouchability Bill Committee. I honestly feel as the President of the biggest organisation in India of the Hindus that if Hinduism has to live, untouchability must die and that is why I joined the Committee. (An Hon. Member: Question). That is the cardinal principle of the organisation to which I belong and of which I am the temporary head. What I am pointing out is that you must know and realise the basic principles of Hindu marriage.

Shri S. S. More (Sholapur): May I make a submission that this Bill does not refer to Hindu marriages?

Shri N. C. Chatterjee: It does refer and I am sorry that Mr. More has not read the Bill. If Mr. More had taken the trouble of reading the Bill, he would have realised that one of the most important clauses is this, namely, that under this Bill, after it is enacted, Mr. More who married Mrs. More ago, can go with her to the years Marriage Registrar and have their marriage registered under this law, and then he will cease to be governed by the Hindu law of succession and will be governed by the Indian Succession Act. Not only that. Under this Bill, there is provision for retrospective application of the law of divorce to sacramental marriages which took place twenty or thirty years back. I am opposed to that on principle. I am that you have no right 10 saying tamper with sacramental marriages. A man marries a woman under the Hindu Law and a Muslim gentleman marries a Muslim lady under the Muhammadan Law, knowing perfectly well the obligations of the respective laws. When a Hindu marries a Hindu woman under the Hindu Law he knows that there is an indissoluble union, there can be no divorce and it must be a permanent partnership, eternal fellowship for self-fulfilment and for the development of societydharma, artha, kama, moksha. It is incapable of termination by bilateral arrangement or contract. The man and the woman accept their union with the full knowledge of their obligations -and they live together. As a matter of fact, there may be children who are born to them. Suppose a man was married thirty years ago and has sons about 25 or 20 years of age, what you are doing here is that you are allowing that marriage to be registered by that man.....

The Minister of Law and Minority Affairs (Shri Biswas): That is only optional.

**Shri N. C. Chatterjee:** Look at the absurdity of the thing. Immediately that marriage is registered, that man is governed by the Succession Act. Not only that. His son, who is 25 years cld

### [Shri N. C. Chatterjee]

and who may have married under the Hindu law or the Hindu sacramental system and who may have children, will cease to be governed by the Hindu law; he will be governed by the Indian Succession Act.

Shri Biswas: That is not the effect of this Bill.

Shri N. C. Chatterjee: I am pointing out that this retrospective application of the provisions of the Bill to sacramental marriages is not proper and is not desirable and it is destructive of the basic principles of the Hindu ideals of marriage. You should not, therefore, tamper with sacramental marriages. The Doctor behind me is saying "Nobody is forcing you". He does not know our society, he does not know our country and he does not know at least the women of India.

**Dr. Jaisoorya** (Medak): I am highly flattered.

Shri N. C. Chatterjee: According to this Bill, in India if a man gets the signature of his wife to an application for registration, he can file it and get the marriage registered, and immediately-the next day or the day after-he can go to the court and apply for a divorce on certain grounds specified, maybe cruelty, may be adultery or any one of the grounds prescribed for the purpose. You know our country, you know how helpless the people are and you also know the standard of literacy in the country. I think Acharya Kripalani was quite right when he said that it will be the easiest thing for the husband to get the consent of the wife. Is it desirable, having regard to the state of society,-they are not economically competent; they are not hundred per cent. literate as in other countries- that you should allow the husband to get the consent or signature of his wife, and next day get it registered and then apply the Indian Succession Act. Not only that. The man can go and have a divorce in the court. I beg of this House to consider whether it would be desirable to have sacramental marriages interfered with, the Hindu marriages tampered with

by the provisions of this Bill. Whodemanded this?

Shri S. S. More: All of us.

Shri N. C. Chatterjee: Let him gohome and ask and get the consent of his wife before he says this.

Sardar Hukam Singh (Kapurthala-Bhatinda): He will get it without any hesitation as you said.

**Shri N. C. Chatterjee:** For effecting this remarkable change or a revolutionary change like this, the House should have got the mandate of the nation. It was not there in the Hindu Code Bill; it was not in Sir B. N. Rau Committee's report. It was never placed.....

Shri Biswas: Sir B. N. Rau was not called upon to consider the Special Marriage Bill.

Shri N. C. Chatterjee: I am obliged to my hon. friend for his intervention. It does not matter whether it is the Hindu Marriage Bill or any other Bill. Did you ever consult the nation? Did you ever consult the electorate? Did you ever ask for the mandate of the country? You want divorce by consent. The hon. Law Minister himself has pointed out-I think he is right there, although we differ on many points-that something like this law was existent only in Soviet Russia. Outside the communist countries, not in the United States of America, not in Australia, not in Canada, there is this kind of law. I am quoting the Soviet civil law, a portion of which was read out by the Law Minister:

"Either spouse had complete freedom to discontinue without stating the reasons therefor."

Therefore, you can say. 'I do not like any longer my wife.' Finished. The divorce was recorded by the civil registry office not only upon a declaration by both the spouses but also upon a unilateral declaration by the spouse of his or her desire to discontinue conjugal life. You send a postcard to the Registration Officer: 'I do not like any longer my wife.'

The Minister of Defence Organisation (Shri Tyagi): She can do likewise.

Shri N. C. Chatterjee: You have not heard me. The Soviet civil law said that not only upon a declaration by both the spouses but also by the unilateral declaration by the spouse, conjugal life could be discontinued. Therefore, it would be quite all right if we have unilateral declaration. One may like it, and say it is very desirable. I say it is very undesirable; it is destructive of the basic principles of Hindu concept of marriage. So many empires have crushed into ruin; so many dynasties have sprung and have gone into oblivion; so many civilizations have ceased to function at all, but Hindu civilization and Hindu society still live. Why? Not because of anything else but because of certain vital principles to which it clings and one of the principles was this: the purity of domestic life, and the high standard of chastity of women which it enforced. That purity and chastity have been the great principles which are vital and which have preserved Hindu society and Hindu civilization. Will you in any way destroy that? Will any one want to affect that organism and that great principle? In Soviet law really, the entry of divorce in the civil register was made just to record fact that the there has been а dissolution or there has been a disruption of conjugal rights. No evidence, no grounds, nothing of that sort. In Soviet Russia itself they have changed the law, and they are trying to tighten it up. The same thing is happening even in countries like England and America. They know that family life is going to pieces and they are trying to make divorce stricter. I am only saying this: Men and women have married under the Hindu law, or under the Muslim Law or under personal laws and they have entered into scramental marriages accepting the full liabilities and the full obligations of such sacramental marriages. What business have you to interfere with or

to tamper with, such marriages? Why do you give loop-hole in these cases and say that even then, the divorce clauses will be applicable on registration? Then, what is the raison d'etre? What is the object of having a Hindu marriage taken to a divorce court? 1 cannot understand. You have already a Bill dealing with all Hindu marriages with the possibility of divorces of such Hindu marriages. Make it an all-pervasive Bill applicable to all citizens, if you have the courage to say that by having one marriage law in secular India, you are trying to implement the basic or directive policies of the Constitution-makers. I can understand that. But you are not doing it. You are having a Hindu Marriage and Divorce Bill. The Select Committee is going on. When you are having provision for Hindu marriages and divorces of such Hindu marriages, why do you allow, by a side wind, this kind of attack and this kind of dissolution of Hindu marriages? It is not logical. With great respect, I would say that it is not right.

The other point I want to make is this. I am suggesting, in all seriousness, that this legislation should be applicable only to marriages contracted between persons belonging to different religions. I want to add a clause to sub-caluse 2 of clause 1 that this Act shall only apply to certain marriages—I am reading an amendment which stands in the name of Pandit Thakur Das Bhargava—amendment No. 221:

Shri Biswas: What number?

Shri N. C. Chatterjee: Possibly, the Law Minister had not the time to look into.....

Shri Biswas No, no. I wanted the number.

Shri N. C. Chatterjee: I apologise to my learned brother. It is amendment No. 221 by Pandit Thakur Das Bhargava. It reads thus:

"In page 1, after line 10, insert:

(2A) This Act shall only apply a to marriages contracted between

[Shri N. C. Chatterjee.]

persons belonging to different religions.'"

There is a good deal of force in it. You know the background in which the Special Marriage Act was passed, und it was mainly at the instance of certain sections of the pepole like the Brahmos, in Bengal and members of Prarthana Samaj and so on. Even up o 1923, when a radical amendment was made, caste restrictions continued. As I have pointed out, at the present moment, caste, sub-caste, gotra and pravara restrictions on Hindu marriages have all been removed as a legislations: result of three Act **EXVIII** of 1946. The Hindu Marriage Disabilities Removal Act, then Act XXI of 1949, The Hindu Marriage Validity Act and Act XIX of 1937, Arya Marriage Validation Act. Therefore, there is no longer any bar to the marriage of Hindus among themselves on account of caste, sub-caste or gotra or pravara restrictions. Only when a wants to marry outside the Hindu Hindu religion, then, the Special Marriage Act was found necessary.

Shri Biswas: The Special Marriage Act, as amended in 1923, did not provide for marriages between persons of different religions.

Shri N. C. Chatterjee: I am obliged for the elucidation, but I never asserted that it did. I know the Act as it stood. I have got the Act in front of me. The original Act said:

"Whereas it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsee, Buddhist or Jain religion, it is hereby enacted as follows:"

Then Dr. Gour's Act came and the smendment added:

"All persons who profess the Hindu religion..." etc.

But up to 1946, there were caste restrictions on inter-caste marriages and also restrictions regarding gotra, pravara and so on. What I am pointing out is this. Now that those restrictions have gone, there is absolutely no reason why, if a Hindu wants to marry a Hindu-may be outside his caste-there should be no bar. There is absolutely no bar, no restriction. All those restrictions have been swept away.. Therefore, this Act can be or need be invoked by a Hindu only when he wants to marry a non-Hindu. There is no question of invoking the Act if he is going to marry a girl professing the Hindu religion. Therefore, I am saying that I am wholeheartedly commending, to the consideration of my hon. colleagues in this House, that an amendment like that suggested by Pandit Bhargava is desirable. Do not throw the door open too much and make the loop-hole too big.

Now, look at clause 15 of this Bill. I am pointing out that this is objectionable. Clause 15 of the Bill says:

"Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, or under this Act, may be registered under this Chapter by a Marriage Officer....."

This will enable all Hindu marriages contracted during the past ten years, 20 years, 30 years or 40 years, to be registered and the effect will be immediately that is done the divorce clause will become operative. This clause 27 reads:

"Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent, etc., etc."

Really, although you are enacting the Hindu Marriage and Divorce Act, you are giving here retrospective effect, making it, first of all, possible for Hindu marriages solemnized 20 or 30 years ago to be registered and then allow this divorce clause to be fully operative in case of such marriages.

## 757 Special Marriage Bill 1 SEPTEMBER 1954 Special Marriage Bill

Then, if you compare clause 27 with the divorce clause in the Hindu Marriage Bill you will find that there is remarkable difference. In one case a single act of adultery is quite enough; in the other case the wife must be a concubine, or the husband must keep a concubine. When this Parliament is going to legislate with regard to Hindu marriage and divorces, is it right to parallel kinds of legislation, have performed twenty years marriages back being liable to be dissolved on the grounds mentioned in the Act and another Hindu Marriage and Divorce Act where the divorce can be had on other grounds, conflicting grounds, not co-terminous, not comparable? I submit, Sir, that is not proper.

Shri M. S. Gurupadaswamy (Mysore): Why do you deny the advantage for them?

Shri N. C. Chatterjee: You would not understand-what can I do?

Sir, I have all along maintained that it is a slander to say that Hindu law is static. Hindu law was never static. As a matter of fact, Hindu law has been dynamic. You know Hindu law has been a part of the common law in the country: therefore, it has developed, it has progressed according to the development of social conscious-The greatest fetter on the ness. development of Hindu law was foreign domination. Up to that stage Hindu law had progressed and developed. You know commentaries came; Mitakshara came, Dayabhaga came. They reflected the popular will of that time. commentators brought the law The into harmony with the existing practices. The Vedas are not the immutable and the only source of law. However much Manu might be maligned, he was the greatest jurist in Asia or in India. Sir, what did Manu say? He pointed that there were four sources of law-Sruti, Smriti, Sad-1char (healthy customs), and Equity and good conscience.

The greatest tribute was paid to custom and usage: that means recognition of the social consciousness and the realisation that law must be put in harmony with progressive social consciousness. The trouble was that when the British judges came they wanted to take us back to the days of Manu. Thereafter Hindu law made no progress; it remained static. Now that we have got rid of foreign domination that bar is gone and there should be development of social consciousness and full progress in that direction.

10 a.m.

I was listening to the debate on the untouchability Bill attentively. I could not participate in it because I was on the Select Committee. You also spoke and you pointed out that mere legislation is futile in these fields, unless social consciousness is properly aroused. If you simply enact legislation of this kind, it will lead nowhere. That will sometimes be sterile, as it has often happened.

Now I want to point out to you, Sir, that the only Muslim member of this Joint Committee has also strongly opposed that Muslim marriages should be brought within the scope of this Bill. He has pointed out that it is not right. He has given some good reasons. He says:

"The opinion of the Muslims is definitely against this Bill as it is against the *shariat*. • • • It is unfair and unjust to force this Bill on the Muslims."

He continues:

"Those who register their marriages under the Act are governed by the Succession Act and hence those who would have inherited from them under their personal law are deprived of such right of inheritance, but on the other hand persons who register their the marriage under this Act are not debarred from inheriting from relations under their their personal law. Thus third parties are definitely affected adversely by this Bill and mutuality in the law of inheritance is violated. Therefore bare justice requires that a proviso should be added to clause 1 to the effect that this Act shall not apply to Muslims."

#### [Shri N. C. Chatterjee]

One point I am trying to make out is this. There is a clause here in this Bill which makes provision for automatic severance of the Mitakshara coparcenary-clause 19. If you enact this clause as it stands it will have very deleterious effect on good many business houses. I know, my hon. friend Mr. Biswas knows, many people who come from big industrial cities like Bombay, Kanpur and Calcutta know that there are in those cities hundreds and thousands of Mitakshara joint families who have big business concerns. There may be limited companies, but the managing agents often joint family concerns. If one are member of a big Mitakshara family marries somebody under this Act, immediately there is a severance of the joint family and not merely of the family but also of the joint joint family business. You know, Sir, that the law is clear that you can have unilateral declaration by even by a co-parcener the disruption of one Mitakshara coparcenership. This will affect all coparcenary business. I think, Sir, this was not in the original Act. It was brought in when Dr. Gour made his amendment.

I want this House to seriously consider whether this is right and proper. If a Hindu marries a Hindu girl, or a Muslim marries a Muslim girl why should the status of the family be affected if the other members of the family treat them as honoured members of the same coparcenary or same family. I think, Sir, this requires careful consideration.

There is also one other aspect. I have read Shrimati Sushama Sen's minute of dissent on this point. This clause 21 reads:

"Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (XXXIX of 1925) with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act."

Sir, this is a very serious thing. I do not know whether it would be proper to make the Succession Act applicable in all such cases. The Joint Committee have said in their note on this clause:

"One of the chief reasons why persons marry under this law is that in case of intestate succession, the Succession Act will apply and it would be extremely inconvenient to have different laws of succession applicable to different types of property."

Mrs. Sen who knows something of the Brahmo Samaj and the progressive elements at least in that Samaj point out that that is not correct. She has pointed out that that is not the object for which such marriages are contracted. She says:

"It may be recalled that this clause was not in the parent Act of 1872 which was initiated by the Brahmo leader Keshub Chunder Sen and was passed into Act III of 1872. I have consulted some prominent members of the Brahmo Samaj. They are definitely against this clause."

I think even if you want to help the progressive elements you should know and realise that there is a strong feeling on this point. You should try to find out whether there is really any justification for making compulsory application of the Indian Succession Act, thus destroying and putting out of operation the Hindu Law of Succession in such cases. There are many other points which will require discussion and we will have to make our submissions when you tackle it clause by clause. What I point out is this: as you are having a separate Bill dealing with Hindu Law of Marriage and Divorce, it would not be right and proper to make any changes here so

as to affect the Hindu marriages or so as to make this Act applicable to the existing sacremental marriages contracted under the Hindu law.

श्री बीo बीo दंशपांड' (गुना) : सभापति महोदय, इस विधेयक का नाम बहा अर्थ पूर्ण हें । इसका नाम हें विशेष विवाह विधेयक और में समझता था कि इसको विशेष विवाह विधेयक इसलिये कहा गया हैं कि यदि कोई सर्व सामान्य जो विवाह हैं उसके सिवा किसी विशेष परिस्थिति में विवाह करना चाहता हैं तो उसके लिये यह विधेयक लाया गया हैं । अर्थात धर्म शास्त्र के अनुसार अग्नि और बूाह्मण के समच या अन्य पद्धति से जो विवाह करते हैं उनको छोड़ कर जो स्वेच्छाचार से विवाह करना चाहते हैं उनके लिये यह विधेयक लाया गया हैं । शास्त्र में तो तरह तरह के विवाहों का वर्णन हैं ।

> यत्र यत्र हरिणीटशांक्रमः तत्र तत्र मदनस्य विक्रमः

अर्थात जहां हरिणी के सद्दश सुन्दर आंखें हां वहां मदन का प्रभाव पड़ता हैं।

तो पथ्वी पर बहुत प्रकार के विवाह हो सकते हैं" और उनसे होने वाली सन्तान नाजायज न हो इसलिये इस स्पेशल मेंरिज की आवश्यकता हो सकती हैं। मैं तो इसको फिजियालाजिकल मॅरिज कहुंगा । उन सारं विवाहों को मान्यता दने वाला कानून पहले भी बनाया जा चुका है। में समझत्ता था कि जो सामान्य से अलग दूसरी पद्वति से विवाह होते हैं उनको मान्यता दने के लिये हमारं विधि मंत्री यह कानून लाये हैं । लैकिन अब मालूम होता ¥ कि हमें इस धर्म निरपैद्ध राज्य में एक आदर्श विवाह पद्धति दी जा रही हैं। यह तो हम समझ सकते थे कि अगर कोई अत्यन्त अपवादात्मक परिस्थितियाँ में विवाह हो उसको बँधानिक स्वरूप दंने के लिये और उसके फलस्वरूप जो सन्तीत हो वह अवैध न हो इसके लिये कोई कानून बनाया जाय । लेकिन जब यह कहा जाता हैं कि हम हिन्दू विवाह पद्वति से या नूसरी परसनल ला बाली विवास बत्नतियों से अच्छी

पद्वति ला रहे हैं और उसको एक मांडल ला के रूप में ला रहे हैं, तो हमको यह देखने का अधिकार हैं कि यह आदर्श विवाह पद्वति हमार सामने हमार आदर्श से कोई ऊंचा आदर्श रखती. हे या नहीं।

में दो इष्टियों से इस विधेयक को देखना चाहता हूं। यह विशेष पिवाह विधेयक दो बातों पर निर्भर हैं, एक तो मॉनोगॅमी ऑर दूसरी डाइवोर्स । मॉनोगॅमी हम समझते थे। उसका अर्थ हम सीता जेंसी पतिव्रता स्त्री और रामचन्द्र जेंसा एक परिन व्रत पुरुष से समभन्ते थे। लेकिन में अब चिनॉती के साथ कहना चाहता हूं कि. It is not monogamy; it is

both polygamy and polyandry. मेरी समझ में यह मॉनोगॅमी नहीं आती हे । रामचन्द्र जी के एक पील्न व्रत को हम समझ सकते थे जो सीता के हर जाने पर बन में 'हा सीते' 'हा सीते' कहते हुए घुमते थे । हमार यहां तो यह एक पीत्न व्रत था। लेकिन आज तलाक का अधिकार दिया जाता है। तलाक देने के बाद पति दूसरी स्त्री से विवाह कर लेता है और स्त्री दसरं पति से विवाह कर लेती हैं। जैसे कि मिसेज सिम्पसन ने अपने चार पहले पति जीवित रहते हुए भी इस मॉनोगॅमी के कानून के अन्दर एडवर्ड से विवाह कर लिया था। इस विधेयक के अन्दर स्त्री पुरुष पच्चीस पच्चीस पति औरं पत्नियों के जीवित रहते हुए भी आगे विवाह कर सकेंगे और उसको मॉनोगॅमी कहा जायगा । यह तो एंसी बात हैं जैसे कोई आदमी जो कि एक थाली भर लहुहु खा रहा है यह कई कि. में तो एक लहाडा ला रहा हा क्योंकि में एक बार में एक ही खाता हूं। इसी तरह से इस विधेयक के अनुसार एक पुरुष पीत्नवत और एक स्त्री पीतव्रता कही जायगी चाहे वे कितने ही विवाह क्यों न कर लें. यदि वे एक समय में एक विवाह करें।

Shri Biswas: I do not think we have yet come to that stage.

Dr. N. B. Khare (Gwalior): It is rather the reverse.

भी बीo बीo दंशायांड': प्रश्न यह हैं कि अब जो आप समाज के सामने आदर्श रिखना चाहते हैं उसके अनुसार पच्चीस स्त्रियों के जीवत रहते हुए २६वीं स्त्री से शादी करने वाला पुरुष परिनवत कहा जायगा और अपने पच्चीस पतियों के जीवित रहते २६वें पति से शादी करने वाली स्त्री पतिवता कही जायगी । परन्तु हमारा आदर्श इस प्रकार का नहीं हैं ।

यहां बहुपत्नीत्व के विरुद्ध बहुत सी बातें कही जाती हैं । में उनसे पूछना चाहूंगा कि क्या बहुपत्नीत्व से ये बातें अच्छी हैं? ਸ यूछना चाहता हूं कि आप देखें कि हमार बहुपत्नीत्व के आदर्श में मानवता और सहानूभूति और औदार्थ ज्यादा है या आपके इस आदर्श में । यह डाइवोर्स का कानून में उठा कर दंखना चाहता हूं। इसकी धारा २७ में दिया है कि किन किन अवस्थाओं में पति पत्नी को डाइवोर्स द सकता है । इसमें पहला कारण तो यह दिया हुआ है कि उसने व्यभिचार किया हो । हमार यहां व्यभिचार के कारण कोई पत्नी को छोड नहीं सकता है । हमार शास्त्रों में दिया हुआ है कि रजसा शूध्यते नारीः मासिक धर्म होने के पश्चात हम स्त्री को स्वीकार कर लें। यीद वह स्त्री गर्भवती हो गयी हो तो सन्तान होने के पश्चात उसको स्वीकार कर लेना चाहिये यह शास्त्रों की आज्ञा हैं। आगे चल कर इसमें दिया है कि यदि पत्नी को कोढ हो जाय तो उसको छोड़ा जा सकता है । हमार प्राने आदर्श के अनुसार चीद पत्नी को कोई एसी बीमारी हो जाय तो हम उस अवस्था में दूसरा विवाह कर सकते हैं। शास्त्रों में आज्ञा है कि एसी अपवादात्मक स्थिति में कि सन्तान न हो या कोढ आदि एंसा रोग हो जाय तो दसरा विवाह किया जा सकता है और उस स्त्री की जो कि रोगिणी हे हम अपने घर में रख कर सेवा सूश्रूषा करते हैं । आप उसको निकाल कर डाइवोर्स कर दंते हैं । मैं आपसे प्छना चाइता हूं कि कौन सा आदर्श ज्यादा मानवता पूर्ण है, कौन सा ज्यादा सहान्भूति पूर्ण हे आँ काँन सा ज्यादा आँदार्यपूर्ण हैं।

इसके आगे यह हैं कि अगर किसी को सात साल की सजा हो गई हो तो एंसी अवस्था में हाइचोर्स हो सकता है । जिन लोगों ने भारत की स्वतंत्रता की लडाई में भाग लिया उनमें से बहतों को आठ आठ दस दस साल की करेंद्र की सजा हो गयी थी। इस कानून के अनुसार एंसी अवस्था में पत्नी उस पति को छोड़ कर दूसर से विवाह कर लेगी । एंसा कानून आप बना रहे हैं । में समभत्ता हूं कि हमार यहां का जो बह विवाह तत्व हैं वह आपकी इस मॉनोगॅमी ऑर हाइवोर्स से बहुत ज्यादा उदारतापूर्ण हैं । में यह मानने के लिये तैयार नहीं हूं कि आज आप इस कानून के दूवारा ज्यादा उदारता दिखला रहे हैं। हमार यहां दूसरा विवाह करने की अनुमति केवल अपवादात्मक स्थिति में हे स्वेच्छाचार से दूसरी पत्नी करने की आज्ञा नहीं हैं। हमारं यहां विधान हें कि यदि कोई बिना कारण अपनी पत्नी को छोडता है तो उसे सजा दंनी चाहिये । हमारं विधि मंत्री एंसा बिल लाते तो हम उनको धन्यवाद दंते ।

इसके अतिरिक्त जो आप इस कानून में धारा १४ लाये हैं जिसके अनुसार हिन्दू पद्वति के अनुसार किये हुए किसी भी विवाह को तोड़ा जा सकता है, क्योंकि आपने इस धारा में रिटास्पीक्टन इफेक्ट से रजिस्ट्रेशन का अधिकार दिया हुआ हैं, आप कहते हैं कि यह अधिकार परमिसिंव हैं। इसमें कहा गया है कि रजिस्ट शन में पत्नी की अनुमति होनी चाहिये। अगर कोई पति अपनी पत्ली को नहीं रखना चाहता है तो इस धारा के आधीन उसको अपनी पत्नी के हस्ताचर लेने में और मौरिज को रजिस्टर करवाने में बडी आसानी हो जायगी । और उसके पश्चात यह म्यूचअल कंसेंट की बात आ गयी हैं। म्यूचअल कर्सेंट से डाइवोर्स दने की बात मेरी समझ में बूरी हैं और जब हमने पहले यहां पर यह विधेयक पेश किया था तब भी काफी बुरा था लेकिन कॉंसिल आफ स्टंट से आने के बाद तो में देख रहा हूं कि यह और भी बरा और आपत्तिजनक हो गया है और आज जो विधेयक अपने वर्त्तमान रूप में हमार विचारार्थ हें वह ठीक उसी प्रकार का हैं जैसे संस्कृत में एक कडावत है कि :

# विनायकं प्रकुर्बाणोरचयामास बानरम् ।

मूर्ति तो गणेश जी की बनाने गर्थ, लेकिन मूर्ति बन गयी इन्मान जी की । उसी तरह से यह बिल भी एक बिल्कूल दूसरी चीज बन कर हमार सामने आया है और माइन नोशन के मताबिक उसको और भी ज्यादा प्रगतिशील बनाया गया है और इस विधेयक को अधिक से अधिक प्रगतिशील और माहर्न बनाने के लिए जो एक रंस सी चल रही हैं उसको बंख कर मुझे रामावण की वह कहानी याद आती हैं जब श्री रामचन्द्र लंका से वापिस आचे तो एक बडा भोज हुआ था। बंदर लोग जब भोज में बैठ तब किसी ने नींचू का एक बीज ऊपर उडाया जिसे दंख कर एक बंदर ने कहा कि यह बीज इसना जंचा उडता हैं, में इससे ज्यादा जंचा उड़ सकता हूं और उसने कदाल मारी। उसकी देखा दंखी और बंदर भी कदाल लगाने लगे. सब बंदरों ने कुदुना शुरू कर दिया और जिसका नतीजा यह हूंआ कि भोज अलग रखा रह गया ठीक उसी प्रकार इस विधेयक के सम्बन्ध हमारा तथाकथित प्रगतिशील लोगों का दृष्टि-कोण और आचरण रहा हैं। पहले कहा गया कि हाइवोर्स एंहल्ट्री के बिना पर होगा. दूसर उनसे और आगे बढ गये और कहने लगे कि हम इसके और आगे जाना चाहते हैं कि अगर सात वर्ष से पति की कोई खबर न मिले, तो भी डाइवोर्स हो सकता हैं। फिरएक नेकहा परस्पर सहमति से मिलना चाहिये और अब तो संशोधन आया है कि बिना सहमति से वॅंसे ही तलाक मिलना चाहिये । इस तरह हम दुखते हैं कि डाइवोर्स के बार में एक रंस शुरू हुई है कि देखें कॉन कितना आगे जा सकता हैं और क्या कर सकता हैं। में यह बतलाना चाहता हूं कि आपकी इस तथाकथित प्रगतिशीलता के कारण अगर किसी पर अन्याय होने वाला है तो वह स्त्रियों पर होने वाला हैं क्योंकि यह आप क्यों भूल जाते हैं कि "द आर मॅन मेड लाज" । एरुवों ने यह सब कानून बनाथे हैं और स्त्रियों की बतलाते हैं कि हमने यह कानून आपके फायद के लिये बनाये हैं लेकिन असल में अगर किसी के साथ अन्याय होने वाला हैं तो वह स्त्री मात्र के साथ होने वाला

हें क्योंकि स्वी कभी अपना घर और परित नहीं छोडना चाहती हैं। उसका बच्चा होता है उसका घर होता हैं. डाइवोर्स कोई देना चाहता हैं तो पुरुष दुना चाहता है । डाइवोर्स दूने के लिये प्रेच उत्सक रहता है और यह कानून पास करके हम स्वियों को बतलाना चाहते हैं कि हम इसके दूवारा आपको एक बड़ा महान अधिकार देने वाले हैं और इन महान् अधिकारों के लिये आप आन्दोलन शुरू कीजिये । में तौ दंहातों में जाता हूं, नीची कॉम में डाइचोर्स है, यह हाडवोर्स का फॉशन हो चला है लेकिन दरअसल देखा जाय तो बडी बडी एंडवांस्ड फौँमिलीज में भी स्त्रियां डाइवौर्स नहीं दुना चाहतीं हैं. वह भी पतिव्रता हैं । डाइवोर्स शब्द देखने में अच्छा लगता हैं और लेक्चर में इसका पच लेना अच्छा मालम होता है और इस तरह का कानून ला कर पूरुषों ने स्त्रियों को बताया हैं कि हम आपके लिये हाइवोर्स का अधिकार म्याचअल कंसेंट पर दिलवाने जा रहे हैं लेकिन में चैतावनी दुना चाहता हूं कि पुरुष जो अपने घर में एक मुगल और डिक्टेंटर के समान होता हें, इसलिये म्यूचअल कसेंट यह स्त्रियों की सहमति होने वाली नहीं हैं और दरअस्ल इससें पुरुष को सहमति का अधिकार मिलने नाला हैं। में कहता हूं कि इसका परिणाम एक ही होने वाला है कि कोई पुरुष अगर अपनी स्त्री से नाराज हैं और उसको छोड़ दुना चाहता हें तो उसको इसका अधिकार मिल जायगा । होगा यह कि पहले दोनों अपना विवाह रजिस्टर करा लेंगे और विवाह को रजिस्टर कराने के पश्चातू दोनों जा कर परस्पर सहमति से तलाक दंकर मर्द उस बेचारी यद्व औरत को छोड़ दुंगा। यह हक आप इस विवाह विधेयक से दुने जा रहे हैं । में अपनी बहिनों को बता दंना चाहता हूं कि उन्हें इस धोखे में नहीं आना चाहिये और समझना चाहिये कि ये पुरुष जो अपने को बहुत उदार और प्रगतिवादी कहते हैं. ''द' वांट ट हेंव दी बेंस्ट आफ बोध वर्ल्ड स ''। यह परम्परा और धर्मशास्त्र दोनों के विरुद्ध हैं। मैं आपको बत्तलाऊं कि हमार दक्तिणी हिन्दूस्तान में मामा का विवाह अपनी भांजी के साथ ही सकता है लेकिन आप तो यरोप के कानूनों में से प्राहिविटंड

[श्री वी० जी० द'शपांड']

डिगीज दंख कर बढं प्रगतिशील बन गये हैं और इतना महान कानून आप यहां पर लाये हैं और कहते हैं कि यह कानून ठीक हैं, तो म 'पूछला हूं कि यह प्रौहिबिटंड डिग्जि रख कर आप कॉन आदर्श उपस्थित कर रहे हैं ? और जब मामा की भांजी के साथ शादी करने কা सवाल आता हे तो उसके लिये आपको परम्परा की क्यों याद आती हैं? में कहता हूं कि जब आप इस तरह से शादी करने जा रहे हैं तौ ीवल्कूल साहब बन जाइए, यह प्राहिविट**ंड** हिगीज के चक्कर में क्यों पडते हैं। कानून में अएक लिस्ट काफी बडी सी प्रौडिबिटंड रिलेशन-शिप्स की दी हुई हैं कि उनके बीच में शादी नहीं हो सकती हैं और इसको आप समझते हैं कि हमने बडी प्रगति की हैं। उसमें लिखा हें कि पुरुष किस किस से शादी नहीं कर सकता हैं। वह अपनी मां से, बाप की विधवा से. मां के बाप की विधवा से और मां की मां से शादी नहीं कर सकता है और इनको रखते हुए आपने इसको बड़ा आदर्श विधेयक बताया है - आँर कहा गया है कि यह प्रौहिबिटंड डिग्रीज बडी सिम्पलीफाईड हैं लेकिन वाकया यह नहीं हैं। ''बिकाँज मेंटर्स आर मेड टू सिम्पल । इट इज नॉट सो सिम्पल ए थिंग"। यह दावा इनकी और से यहां पर किया जाता है कि मन् ऑर - याज्ञवल्क्य बहुत एंटीक्वेटंड और कम्प्लीकेटंड चीज द'ते हैं । हमार आधूनिक यूग के मनू और 'याझवल्क्य बडी सिम्पल चीज दंते हैं' कि दादी के साथ शादी न करो, दादी की मां के साथ शादी न करो या बाप की मां के साथ शादी मत करो. इस तरह की प्रोहिबिटंड डिग्रीज यहां पर दी गयी हैं विवाह के बार में, लेकिन मेरी एक बात समझ में नहीं आती कि डाइवोर्स के सेत्र में इतनी लम्बी छूट क्यों दी हैं ? यदि विवाह के समय इसको कोढ हो या इम्पोर्टंट हो या और कोई दूसरी वेनरल डिजीज हो इसका सर्टिफिकेट ले न आयें तो वह विवाह नहीं होने देना चाहिये क्योंकि हमारी राय में तो ''प्रीवेंशन इज बेटर देन क्योर' । आपको शादी से पहले डी हर सरह से पार्टी के फिट होने का सार्टिफिकेट लेना चाहिये साकि डाइवोर्स की नॉंबस ही न आये....

**एक माननीय सहस्य :** इम्पोर्टसी का टेस्ट कर्रेंसे हो ?

श्री बीo जीo इंशपांड': यह डाक्टर लोगों का काम हैं। अब बाहर के लोग आयें और सब जांच करें, इसलिये में तो यही कहूंगा कि आप पुराने सीथे सार्द विवाह चलाइये। वेंसे मेंने इस सम्बन्ध में एक अमेंडमेंट भी दिया हैं कि इन चीजों का ध्यान रखना चाहिये और इन हालतों में भी विवाह नहीं होना चाहिये।

आगे चल कर में आपसे कहना चाहता हूं कि में छोट छोट बच्चों का विवाह करने के विरुद्ध हूं । आप कहते हैं कि सोलह साल और अट्ठारह साल की लडकी का स्पेशल मेरिज बिल के अन्तर्गत विवाह होना चाहिये। में कहता हूं कि छोट बच्चों को इतने बड़ प्रयोग में नहीं भेजना चाहिये। में कहता हूं कि २९ साल नहीं २४ साल का पुरुष और २४ साल की पत्नी हो. तब विवाह होनां चाहिये। एक आदर्श विवाह में पति पत्नी की उम में कितना अन्तर होना चाहिये, यह कुछ नहीं दिया है। इसमें तो इस तरह की बातें लिखी गई हैं जैसे कि दादी के साथ शादी नहीं कर सकता हैं। ७० साल की ऑरत हो और २९ साल का लडका हो तो इसके अधीन शादी कर सकते हैं, यह आपका आदर्श विवाह का नम्ना हे जो आप दुनिया के सामने रख रहे हैं। में चाहता हूं कि २ र साल की उम् जब तक नहीं होती हैं तब तक उनको अधिकार नहीं दुना चाहिये कि वह विवाह कर ।

आगे चल कर में थोड़ा ज्वाइन्ट फॉमिली प्रापर्टी के सम्बन्ध में कहना चाहता हूं। आप इस एकल कुटुम्ब पद्धति के टुकड़ टुकड़ कर रहे हैं, तो इस सम्बन्ध में में यह बरूर चाह्ंगा कि जो लोग स्पेशल मीरिज के अन्दर विवाह

करना चाहते हैं उनको ज्वांइंट फौँमिली में नहीं रहना चाहिये और न ही उनको ज्वाइंट फौंमली की प्रापर्टी में हिस्सा मिलना चाहिये । इमारी परानी परम्परा में इस प्रकार की जो जायदाद होती हैं और सम्पत्ति होती हैं वह धर्म काया के लिये पिता से पूत्र को दी जाती हैं ताकि वह धर्मवत कार्य और आचरण कर. धर्म का संचालन कर, इसके लिये उसको यह सम्पत्ति दी जाती हें और में समभाता हूं कि आप जो प्रॉंग्'सिव आइडियाज वाले हैं उनको प्राइवेट प्रापर्टी से कोई लगाव भी नहीं होना चाहिये और आशा करनी चाहिये कि आप उसके लिये भगड़ींगे भी नहीं । आप तो निजी और वैयक्तिक सम्पत्ति को जरूरी चीज मानते नहीं है और आप की नजर में यह बड़ी एन्टीक्वेटंड और रीएंक्शनरी चीजें हैं इसलिये उसकी आपको परवाह नहीं करनी चाहिये। लैकिन जो आदमी धर्म के अन्सार चलेगा और धार्मिक पद्वति के अन्सार विवाह करंगा उसको उस सम्पत्ति से वंचित न रखा जाय क्योंकि आखिर विवाह भी तो ए क धार्मिक कृत्य हैं और पत्नी धर्म का मुख्य सिद्धान्त हैं। इस विवाह से पत्नी कोर्ड কা धर्म हो नहीं सकता और आप यदि अपने मन की इच्छा के अनुकृत विवाह करना चाहते हैं तो पहले की जो इनहीरिटंड प्रापर्टी हे जितनी ज्वांडट फौमली प्रापर्टी हे उसमें आपको कोई हिस्सा नहीं मिलना चाहिये। He should be disin-अन्त में जब यह क्लाज आयेगा herited तब में इस पर बौलने वाला हूं।

में आप से एक ही प्रार्थना करूंगा और वह प्रार्थना यह है कि आप के हाथ में कान्न बनाने का अधिकार आ गया हैं । जार्ज वाशिंगटन को उसके पिता ने एक फरसा बकशीशा में दिया था । उस ने बागीचे में जा कर जो सब से अच्छा पेड़ था उसी पर कुल्हाड़ी चलाना शुरू कर दिया । इसी तरह से आप ने भी यह सोचा कि कान्न बनाने का अधिकार हमार हाथ में आ गया हैं इसलिय पहले कुल्हाड़ी किस पर चलाई जाय ? आप ने सब से पहले हमारी प्राचीन, पीवत्र और गम्भीर विवाह संस्था के ऊपर ही कुल्हाड़ी चला दी ।

मूफे और भी दूःख होता है कि जब हमार प्रधान मंत्री जी ने वेंदीशक कार्य विभाग पर हाई चर्चा के समय कहा था कि गोआ का विषय तक नहीं आर्यगा स ब **ज**ब तक বিহাদ विवाह विधेयक स्वीकार नहीं हो जाता हैं। मुझे पता नहीं चला कि इस से गोआ का सम्बन्ध क्या है। एक बात तो ठीक हें कि गोआ का विवाह से इस तरह से सम्बन्ध हें कि गोआ दहेज में मिला था। शायद इसी कारण आज प्रधान मंत्री विशेष विवाह विधेयक को स्वीकार करना चाहते हैं कि हो सकता है कि किसी पोर्चगीज लडकी का हिन्दूस्तान के किसी आदमी से विवाह हो जाय और गोआ दहेज में आ जाय । इसी आशा से कि गोआ दहेज में मिल जाय शायद हमार प्रधान मंत्री इस बिल को पहले पास करना चाहते हैं । मैं आप से कडना चाहता हूं कि में इस तरह से इतने महत्वपूर्ण विषय के साथ मलॉल करने के विरुद्ध हूं। हिन्दू धर्म, हिन्दू परम्परा और हिन्दू संस्कृति, में हिन्दूओं के बार में ही नहीं कहता, पृथ्वी की जो संस्कृति है, मानवता की जो संस्कृति हैं उस की बूनियाद अगर कोई हैं तो वह पवित्र विवाह संस्कार हे और हम लोग विवाह को पवित्र संस्कार मानते हैं और जब हम इस को पीवत्र संस्कार मानते हैं तो आप इस तरह से इस का मखाँल न उडाइये । आप बई प्रांग'सिव बन गये हैं, लेकिन आप इस विवाह पद्वति पर आक्रमण न कीजिये । यहां पर जिस तरह से हिन्दू विवाह विधेयक की चर्चा चल रही हैं और जो कानून बनने जा रहा हैं उस में तो हिन्दू विवाह को माचिस सूलगा कर आग लगाने का काम हो रहा हैं। यह बातें नहीं होनी चाहियें। मैं किसी पार्टी की चर्चा नहीं करता हुं लैकिन इस सम्पूर्ण सदन से कह रहा हूं कि यह जो विशेष विवाह विधेयक आया हैं उसे हम को नहीं स्वीकार करना चाहिये।

इतनी ही मेरी प्रार्थना हैं।

श्री भागवत का आवाव (पूर्निया व संधाल परगना) : श्रीमान् सभापति जी, यह प्रसन्मता की बात हैं कि श्री एन० सी० चटजी 'ऑर श्री बी० जी० दंशपांड के बाद मुझ्ने बौलने का अवसर [श्री भागवत भा आजाद]

मिला । इसलिये' कि यह लोग अपने को धर्म का महान् प्रवर्तक समफत्ते हैं" ।

**फूड माननीय सदस्य :** ठंकेदार कहिये ।

भी भागवत्त ठ के बार HIT সাজাৰ : प्रयोग तो का **#**\*\* नहीं যান্য करूंगा क्योंकि वे महानू हैं।। लीक न वे अपने को धर्म प्रवर्तक समझते हैं। में समभत्ता हूं कि इस हाउस में और भी लोग जो हिन्दू धर्म को मानने वाले हैं वह यह समभते हैं कि अगर वह प्रवर्तक नहीं हैं तो कम से कम इस विद्या के ज्ञानी अवश्य हैंं। इन माननीय सदस्यों ने इस प्रकार आरम्भ किया कि इस विवाह विधेयक की कोई आवश्यकता नहीं है. इसलिये कि यह विधेयक हमारी संस्कृति और हमारी सभ्यता पर कठाराघात है । उन्होंने हिन्दू संस्कृति की महानता और उस की विशालता का जो विवरण हमारं सामने रखा है. उस से कोई भी व्यक्ति जो हिन्दू धर्म को मानने वाला इस हाउस में हैं सहमत होगा। हम यह मानते हैं कि हमारी संस्कृति महान और विशाल है। हिमालय पहाड की चोटी से कन्या कुमारी अंतरीप तक और पंजाब से बंगाल तक गंगा और ब्ह्यपुत्र के बीसन में यह सभ्यता रही हैं. इस का कारण यह है कि हमारी संस्कृति ने अपने अन्दर सब धर्मां को समावेश करने की . काफी कोशिश की हैं । श्री एन० सी० चटर्जी हमार सामने यह पेश करते हैं कि हमारी संस्कृति महानू इसलिये हैं कि इस के फंडामेन्टल प्रिंसिपल्स. मॉलिक सिद्धान्त, बहुत गहर हैं। में भी मानता हूं कि उस के सिद्धान्त बहुत बर्ड हैं, लीकन साथ साथ जब वह इस विधेयक पर अपने विचार प्रकट करते हैं तो भूल जाते हैं कि इस धर्म की संस्कृति की विशेषता यह हैं कि उस ने समय समय पर अपने में परिवर्तन किया. समाज के अनुसार, दृंश के अनुसार, वातावरण के अनुसार । इम यह जानते हैं कि सँबर के रास्ते से, हमार पश्चिमी मार्ग से बहत सी जातियां हमार देश में आई । हमार यहां हण आये. शक आये, बहुत सी जातियां आई । हमारं धर्म की विशेषता यह है कि उस ने यही नहीं कि उन सब धर्मों को अपनाया बल्कि उन तमाम जातियां और उन के धर्मा को अपने अन्दर स्थान दिया । परिणाम यह हआ कि हमारा धर्म आज भी समय को चुनॉती द कर. अपनी तमाम कठिनाइयां को चूनांती द कर हमार समाने खडा हैं। इसलिये आज प्रश्न यह नहीं हैं कि जहां वे इस बात पर जोर दंते हैं कि हमारी संस्कृति महानू हैं और हमार फंडामेन्टल प्रिसिपल्स महानू हैं, उसे इमें छोड़ दुना चाहिये । आज हमार धर्म की महानता इसलिये हें कि इस धर्म के अन्दर समय के अनुसार, समय की आवश्यकता के अनुसार परिवर्तन हुआ । इसलिये आज आवश्यकता है कि हम मन के सिद्धान्तों को ही पकडंन बैठं रहें. उसी वक्त के फंडामेन्टल प्रिंसिपल्स को हम न लिये रहें। हमारी आवश्यकतायें बदलती रहती हैं ऑर आज इस देश की पीरस्थिति की आवश्यकता-नुसार हम अपने में परिवर्तन लायें।

हमार सामने राम और सीता का आदर्श पेश किया जाता हैं। ठीक हैं. राम और सीता हमार लिये आदर्श नर और नारी हैं । पंडितों के लिये तो नारायण हैं, लेकिन हम मानते हैं कि जिस समय हिन्दू संस्कृति कगार पर खडी थी और एक धक्के की राह देख रही थी इस मुल्क में उस समय हमार सामने राम ने और सीता नै अपना आदर्श रत्वा । उस समय जो पीरस्थिति थी उस में तुलसीदास ने हमार सामने राम और सीता का आद्र्श रखा और इसलिये हम अपनी रत्ता कर सके । लेकिन में जानना चाहता हूं अपने पंडितों से कि जिन्होंने राम और सीता का नाम लिया है कि आज की परिस्थिति क्या है ? जिस समय लक्ष्मण से पूछा गया कि तुम इन आभूषणों को पहिचानते हो, तो लद्दमण ने उत्तर दिया कि में पेंर की पेंजनियों को पहिचानता हूं। में पूछता हूं कि क्या आज के लद्मण परकी पैंजनियों को पहिचानेंगे या सर का मनटिका? प्रश्न यह है कि उस समय में और आज की पीरीस्थति में यह फर्क हैं। क्या कभी आप ने इस के बार में सोचा है ? उस समय में ऑर आज के समय में बहुत फर्क हैं। उस समय एक विवाह था। हम मानते हैं कि यह उस समय का आदर्श था। लेकिन आज हम इस में तलाक.....

एक माननीय सदस्य : दशरथ ने कितनी शादियां की थीं ?

श्री भागवत का आजाए : हमार बन्धु प्छते हैं कि दशरथ ने कितनी शादियां की थीं । यह बात आप दशपांड जी से पछििये।

मेरं कहने का मतलब यह हैं कि आज यह विशेष विवाह विधेयक इसलिये लाया जा रहा हैं कि आज की परिस्थिति, आज के दंश की आवश्यकता इस बात को मांगती हैं। इसीलिये इम इस को लाते हैं और पास करते हैं।

श्री चटर्जी ने पूछा कि क्या आप ने एलेक्टोरंट से इस के लिये राय ली हैं। में उन के सामने एक मिसाल रखता हूं। जब पंडित जवाहरलाल नेहरू इलाहाबाद गये थे, उन का कंटंस्ट था प्रभु दत्त ब्राचारी से। प्रभु दत्त ब्राचारी ने कहा था कि में अपना कंटंस्ट वापस ले लूंगा अगर पंडित जवाहरलाल नेहरू यह एंश्योरंन्स दें कि वह हिन्दू कोड बिल वापस ले लेंगे। तो हमारं प्रधान मंत्री ने क्या कहा था ?

"All that I can assure is, I will pass this Bill."

Is it not on this mandate that Shri Jawaharlal Nehru has been returned to this House?

आप द'स लें कि यह बात सत्य हैं या नहीं । इसलिये जहां तक यह प्रश्न उठता हैं कि इस के पीछ' एलेक्टोरंट की राय हैं या नहीं में आप को जो मिसाल द' रहा हूं वह इस हाउस के नेता की हैं । उन्होंने इलाहाबाद में प्रभु दत्त ब्रह्मचारी को इस का जवाब द' दिया था।

हमारं सामने तुलना की हमारं मित्र ने बन्दरों की । हमारं सदन के इस ओर के सब सदस्य इस बात में होड़ लगाये हुए हैं कि कॉन बन्दर को कितना जानता हूँ । में आप को एक किस्सा सुनाना चाहता हूँ । एक सेठ था, उस के पास 344 L.S.D. एक घोड़ा था। उस सेठ के एक मित्र ने उस से बोड़ा मांगा। सेठ ने कहा, "मित्र घोड़ा नहीं हें"। मित्र को थोड़ा शक हुआ। वहां मित्र कुछ दूर रुक गया। इतने में घोड़ा दिनहिनाया, उस की आबाज मित्र के कान में पड़ी। उस ने कहा, "सेठ, तुम तो कहते थे कि घोड़ा नहीं हैं, लेकिन वह दिनदिना रहा हें"। सेठ ने कहा कि "मिष तुम ने घोड़ की आवाज तो पदिचानी, लेकिन मेरी आवाज नहीं पहिचानी"। में तुलसीवास को पद्दिचानता द्द, उन की आवाज को पहिचानता।

इस के बाद में कहना चाहता हूं कि उन सदस्यों में और मुझ में यह फर्क है कि वह विवाह को सिर्फ अध्यात्म या धर्म का आधार मानते हैं । में मानता हूं और हमार अधिकांश सदस्य मानते हैं कि विवाह का आधार सिर्फ धार्मिक ही नहीं हैं. आध्यात्मिक ही नहीं हैं. उस का आधार पारिवारिक भी हैं। एक परिवार में दूसर परिवार की नारी विवाह कर आती है तो उस के कन्धों पर बहुत से बोझ पड़ले हैं। उस परिवार के अन्दर उस की जो पदवी हैं उस के अनुसार वह विस्तृत मेंदान में आती हैं। वह अपने अन्दर पति और बच्चों की आधिक समस्याओं को स्थान दंती हैं। इसलिये यह विवाह आध्यात्मिक हैं, यह विवाह आर्थिक हैं. और आध्यात्मिक तथा आर्थिक ही नहीं बल्कि राजनौतिक भी हैं। पति और पत्नी के जोह से बहुत सी राजनीतिक समस्यायें उत्पन्न होती हैं और उस का हम समाधान करते हैं । हमार विवाह का आधार व्यक्तिगत भी है. सिफ धार्मिक नहीं हैं । हमार विवाह का आधार बोदिक भी हैं। हम यह नहीं चाहते कि हम एक स्त्री. पर इस तरह विवाह का बन्धन लगा दें कि वह दाई की तरह काम करती रहे। अगर हमार घर में आदमी चाहिये तो हम यह नहीं चाहते कि अपनी सहगामिनी को जो एक तरह से हमसे कमजोर हैं घर में रख कर उससे सिर्फ काम लें। हम उम्मीद करते हैं कि जो स्त्री हमारी पत्नी या अन्गामिनी बनना चाहती हे वह बॉद्धिक स्तर पर हमारा साथ द सके । हमार्र विवाह का आधार शारीरिक भी है, बायोसाजीक स

[श्री भागवत भग आजाद]

भी हैं । मैं समफता हूं कि हमार विवाह का आधार उतना आध्यात्मिक या धार्मिक नहीं हैं जितना कि आधिक हैं, राजनेंतिक हें, व्यक्तिगत हैं या शारीरिक और बायोलाजीकल हैं । इसलिये सब से बढ़ा डिफरर्रस उनमें और हममें यही हैं और इसीलिये वे इस विवाह विधेयक को नहीं समझ सकते हैं और इसीलिये हमारा और उनका विरोध हें ।

इसके बाद में इस विधेयक की तीन चार धाराओं पर अपने विचार प्रकट करना चाहता हूं। इस विधेयक में विवाह के लिये उम् २१ वर्ष दी हुई हैं। मैं मानता हूं कि जो २४ वर्ष में या इससे ज्यादा अवस्था में शादी करना चाहते हैं उनके लिये कोई रुकावट नहीं हैं। लीकन इस दंश की जो परिस्थिति हैं उसको दंखते हुए और कन्याओं की जो रजस्वला होने की उम् हैं उसको दंखते द्वए उम् १८ वर्ष रसी जानी चाहिये लेकिन हम जोर नहीं दूते कि वह २९ वर्ष न हो । अगर स्त्री और एरुष ९८ वर्ष के हैं तो उनका विवाह यहां हो सकता है। यह विशेष विवाह विधेयक इस बात की इजाजत हैं में यह चाहता हूं। लेकिन अगर कोई २९ वर्ष से ऊपर ही तो उस विवाह में कोई रुकाबट नहीं हैं।

में इस विधेयक में एक ऑर बात का विशेष रूप से विरोध करता हूं। वह यह हैं कि आप इस विधेयक के अनुसार विवाह करने वाले को अपने परिवार से सम्बन्ध विच्छंद करने के लिए मजब्र करते हैं। यानी आप यह चाहते हैं कि अगर किसी लड़के या लड़की को विशेष विवाह करने का अधिकार मिल जाय तो वह अपने परिवार से अलग हो जाय। क्या आप यह चाहते हैं कि अगर कोई स्त्री एंसा विवाह कर तो वह अपने घर को छोड़ कर सड़क पर आ जाय। इस तरह से आप इस विधेयक में जो अधिकार एक हाथ से दंते हैं उसको दूसर हाथ से ले ते हैं। आप उसे विवाह का अधिकार दंते हैं लेकिन उसे अपने परिवार से सम्बन्ध विच्छंद करने के लिये मजबूर करते हैं। अगर आप इस चीज को कानून में रखना ही चाहते हैं तो आप गार्जियन या पिता को यह अधिकार दें कि वह चाहे तो उसे परिवार में रखे या अलग कर दं। अगर मेरा पूत्र उम् आने पर विशेष विवाह विधेयक के अनुसार दिवाह करता है तो यह अधिकार आप मुझे दैं कि मैं उसे अपने परिवार में रख यान रखूं। लेकिन इस कानून से तो आप उसे मजबूर करते हैं कि वह विवाह करने कै बाद अपने परिवार से अलग रहे । इ.स. प्रकार में देखता हूं कि अगर आप इस विधेयक द्वारा दो कदम आगे जाते हैं तो चार कदम पीर्छ जाते हैं। में चाहता हूं कि उसको आप इस धारा १९ में अपने परिवार से अलग रहने पर मजबूर न करें। यह अधिकार आप उसके पिता को इ कि अगर वह उसको अपने परिवार में न रखना चाहे तो न रखे । में समफता हूं कि इस तरह से किसी को अपने परिवार से अलग रहने के लिए मजबूर करना अन्यायपूर्ण हैं।

उसके बाद में तलाक के प्रश्न पर आता हूं। में इसमें एक बात का विरोध करता हूं। वह . यह हैं कि आपने जो प्रावीजन दिया है कि सहमति से विवाह विच्छ'द हो सकता हें यह अन्यायपूर्ण हैं। वह इसलिये कि आज की देश की अवस्था में, और स्त्रियों की आर्थिक अवस्था को ध्यान में रखते हुए, किसी भी पति के लिये अपनी पत्नी से जोर हाल कर कंसेंट ले लेना आसान हैं। इसका मतलब यह हुआ कि इस विधेयक में आपने जो प्रगतिशीलता की बात की हैं उसको साफ साफ इस धारा से कम कर दिया हैं क्योंकि आप कहते हैं कि पत्नी की सहमति से सम्बन्ध विच्छ'द हो सकता हैं। आज समाज में जो स्त्री की स्थिति हैं उसको दंखते हुए थह सहमति किसी भी तरह से जोर डाल कर या इकौनामिक सेंक्शन लगा कर ली जा सकती हैं। इसीलये डाइवोर्स बार्ड कंसेंट का अधिकार र कर आप इस प्रगतिशीलता पर सबसे बडा कठाराघात करते हैं । इसलिये इस विशेष विवाह विधेयक में जो यह प्रावीजन दिया गया हें वह गलत हें और उसको निकाल देना चाहिये ।

इसके अलावा इस विधेयक में और भी धारायें हैं जिन पर मुझे विरोध हैं लेकिन में समभत्ता हू कि इस अवसर पर में अपना विरोध इन्हीं दो धाराओं तक सीमित रखगा और जब नेवीभन्न धाराओं पर बहस होगी तो उन पर में अपने विचार प्रकट करूंगा । लेकिन में यह कहना चाहता हूं कि में इसलिये इस विधेयक का समर्थन करता हूं कि यह आंज समय की 'परिस्थितयां के अनुसार हे यद्यपि हम इस विधेयक के द्वारा उतने आगे नहीं जा रहे हैं जितनी कि आवश्यकता है । अगर हम इसके द्वारा कुछ आगे भी जाते हैं तो इन दो क्लाजेज के द्वारा उस प्रगतिशीलता को पीछ ले जाते हैं। परन्त जब इस सदन में इस विधेयक का विरोध हमार चटजी साहब या दंशपांड साहब करते हैं तो उनका दृष्टिकोण सोलहवीं शताब्दी का होता हैं। आज संसार बहुत आगे बढ गया है। आज इस बीसवीं सदी में सिर्फ शास्त्रों का हवाला दुना तो अन्यायपूर्ण हैं। यद्यपि यह विधेयक उत्तना प्रगतिशील नहीं हैं ंजितना कि होना चाहिये फिर भी में इसका समर्थन करता हां।

Shri Bhandari (Jaipur): The Special Marriage Bill mainly consists of two provisions, one relating to solemnization of marriages and another relating to the registration of marriages.

So far as the solemnization is concerned, I welcome all the provisions thereof, but so far as the registration of marriages is concerned, I have something to say on this important aspect of the Bill.

Chapter III deals with registration of marriages. Clause 15 which begins this chapter deals with registration of marriages celebrated in other forms says:

"Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872), or under this Act, may be registered under this Chapter...."

Now a marriage may be registered which may be a valid marriage or which may be an invalid marriage. The effect of this clause is, as I understood the Law Minister, that even an invalid marriage which has not been performed according to the law in force at that time may be registered. The result is this. Suppose two persons live as husband and wife but there is no marriage in law, no marriage according to Hindu law, Mohammedan law or according to the law of the land, still after ten years they may get their marriage registered. They may have offspring or children in this period without any marriage at all. I would submit that a marriage which is not legal, which is invalid which is not a marriage in law is void and it cannot be deemed to be a marriage at all. I would, therefore, submit that if this is the position, the net result is that even though there is no marriage, still there might be children. Now, this, as a matter of fact, is undermining the very institution of marriage, if I may be permitted to say so. The institution of marriage has been existent in society, so that there might not be any offspring or children, where there is no marri-You are undermining the very age. foundation of the institution of marriage, if you are permitting two persons to have children without marriage, and yet giving them a chance to have their marriage registered after ten or fifteen or even twenty years, so that the children born to them may be regarded as legitimate children even for that period.

Coming to the registration of valid marriages, there might be a valid marriage according to the Hindu law, the Mohammedan law or the customary law. If it is already a valid marriage, then, what is the purpose of registration of such marriages under this Act? I would submit that the purpose of registration of such marriages is to bring those marriages on a par with the marriage solemnized under this Act, and the consequences enumerated in clauses 19, 20 and 21 of this Bill follow. Those consequences are, I may submit, that there might be a breaking up of the

## [Shri Bhandari]

joint family, there might be succession of property under the Indian Succession Act, or there might be judicial separation under this Act, and further, there might be divorce, 88 provided in clause 27 of this Bill. These are the consequences of the registration of valid marriages. Now no one is going to get his marriage registered under this Act, simply because he wants a disruption of the joint family and he wants to get himself separated, because under the ordinary Hindu law, he has just to give notice, and there is separation from the joint family; so there is no need for him to get his marriage registered under this Act for this purpose. So far as succession under the Indian Succession Act or judicial separation is concerned, 1 do not think he is going to get his marriage registered under this Act for any of those purposes. Therefore, what is the purpose of getting a marriage registered under this Act? What for are the parties going to get a marriage which is valid in law, which is valid according to the Hindu law. or the Mohammedan law or the customary law, registered under this Act? It can only be with a view to reaping the benefits of the provisions contained in clause 27 of this Bill. Otherwise, there is no necessity. I would humbly submit, for the parties to get the marriage registered under this Act.

Now the only provision relating to divorce, which is creating difficulty and controversy is that relating to divorce by mutual consent. I am not expressing my opinion on this aspect of the case, as to whether divorce by mutual consent is good or bad. It may be good or it may be bad. If it is good, then you can incorporate that provision under the Hindu law, or the Mohammedan law, and you can bring in a bill for that purpose. After all, there is the Hindu Marriage and Divorce Bill, and you can put in a provision there permitting divorce by mutual consent. You can bring also a law relating to Muslim marriages, and say that even in Muslim marriages, divorce by mutual consent is

permitted. What is the necessity then that a man must go and get his marriage registered under this Act, for getting divorce by mutual consent?

I would respectfully submit that the provisions relating to registration of marriages are not necessary at all. The registration of valid marriages under this Act can only be with a view to reaping the benefits enumerated in this Bill. The first of these benefits, as I have enumerated earlier, relates to the breaking up of a joint family. That is no benefit at all. So far as succession under the Indian Succession Act is concerned, the parties may like it also, but there is provision for succession under the Hindu law or the Mohammedan Then, law etc. there is judicial separation, for which we are already passing the law. Next comes the question of divorce. If you to incorporate provisions for want divorce under the personal law, you may do it. But why have this provision for registration of valid marriages? So far as invalid marriages are concerned, I have already submitted the position. It is a rather curious thing that in clause 15, it is provided:

"Any marriage celebrated, whether before or after the commencement of this Act...."

What is the meaning of the term 'any marriage celebrated'? It has not been defined anywhere. Again among the conditions which are to be fulfilled before a marriage can be registered under clause 15 of this Bill, one condition is as follows:

"a ceremony of marriage has been performed between the parties...."

But we do not know what is the ceremony to be performed. If it is a rite ceremony to be performed under the Hindu law, then it is a valid marriage under the Hindu law. If it is a ceremony which is required to be performed under the customary law, then it is as good as a marriage under the Hindu law. Similarly, if it

is a marriage ceremony to be perform--ed under the Mohammedan law, then also, the marriage is as good as a marriage under the Mohammedan law. We do not know what ceremony is contemplated in clause 15 of this Bill. What is your intention in putting this phrase in this clause? A man may say after ten years, we walked two steps together, that was the ceremony we had ten years back, and we would like to register our marriage now under this Act. Similarly, they may say any such thing and have the marriage registered under this Act. So, have you got any idea as to what ceremony is contemplated? This Bill at least does not say that such and such a ceremony was contemplated under this clause. The result will be this. There might be no ceremony at one time, no marriage at one time, but after ten years, a man may come and say, it is all right, Sir, there had been a marriage ten years before, not according to the Hindu law, not according to the Mohammedan law, not according to any established law, not even according to any established ceremony under customary law, but still there has been a marriage, we would call it a marriage, and therefore, let it be registered now under this Act. Do you contemplate that registration of such a marriage should take place under this clause, without there having been a ceremony of any nature whatsoever? At least, we should have the definition of the sort of ceremony contemplated under this Act.

I would submit that all the provisions relating to the registration of marriages celebrated in other forms are quite new altogether. They did not exist Now, we are going to inbefore. corporate them in this Bill. But what for are we doing so? What is the special reason for it? What is the basic idea behind it? At least. there must be something behind it. From what we have analysed, we find that this registration can be in respect of valid or invalid marriages. So far as registration of valid marriages are -concerned, I would respectfully submit, that there is no necessity for their

registration at all under this Act. Tt can only be with a view to giving the benefits relating to divorce. But then if you incorporate them in the personal law, there ends the whole matter. If it is a question of registration of invalid marriages, I would respectfully submit that it is not a proper course to be followed, because, after all, in Indiaas we have it-and in other countries also, marriage has got a sanctity, marriage has got a place for itself, and unless there is a marriage, there must not be any children. This is our idea, this is the idea of the whole nation, and this is the idea of other countries in the world. (An Hon. Member: Question). Therefore, I submit that registration of invalid marriages should not be permitted under the garb of this Act. Otherwise, what will happen is this. A man and a woman may live together without marriage, have as many children as they like during that period, and after ten years, they will get themselves married under this Act, and after some time, say good-bye also to each other. I do not think that should be the idea in enacting this provision. After a closer analysis, and a meticulous examination of all the provisions of this Act, this is what this provision comes to. So, I do not think the provisions relating to the registration of marriages should have any place whatsoever in this Bill. What could have been achieved by a bare amendment of the ordinary law is sought to be achieved by this dubious method by incorporating a number of provisions for the registration of marriages celebrated in other forms. I think neither the country is ready for it nor has it understood the meaning of the provisions so very carefully, or the effect thereof.

I, therefore, oppose the registration part of the Bill, while supporting the Bill in other respects.

श्री डी० डी० पन्त (जिला अलमोड़ा-उत्तर प्र्व) : जनाव सदर, में इस वक्त अंगूजी में न बोल कर हिन्दी में बोल रहा हूं क्योंकि विरोधी लोग यह न कह बठें कि मेर ऊपर परिचम ने बढा भारी असर ढाला हूँ, इसलिये [श्री ही॰ ही॰ पन्त]

में अपनी प्वीं सभ्यता और मानव सभ्यता को सामने रखता हुआ इस विषय पर हिन्दी में बोल्ंगा।

मेंने देखा कि यहां पर जो इतने लोग बोले शायद बहुत कम लोगों ने इस बात के ऊपर सोचा कि आसिर विवाह है क्या चीज । में ने श्री एन सी० चटर्जी को कहते सुना कि मौरिज एक बड़ी सँक्रेड चीज हैं। बहुत लोग यह विश्वास करते हैं कि इसको ईश्वर ने बनाया था और भगवान कृष्ण और रामचन्द्र की बहुत सी बातें करते हैं। में समभत्ता हूं कि अगर आप ठंड दिमाग से सोचें और अपने शास्त्रों के अनुसार बदि सोचें तो आपको इस बात का पता चल जायगा । यदि भागवत को पढ ंं और कष्ण के बार में पर्व जिनके लिये वह कहते हैं कि हर एक उनका नाम लेता है, उनके बार में सोचें तो वह समझ जायेंगे कि विवाह की प्रथा कोई एंसी चीज नहीं हैं जो कोई बहुत सैंक्रेड हो । बहतो मनुष्य की एक जरूरत हैं और इस कारण यह प्रथा आ गयी। इसे न भगवान ने बनाया था और न यह कहीं स्वर्ग से उत्तर कर आयी हैं । हमार सबसे बई ला गिवर जिन्होंने हिन्दुओं के लिये कानून बनाया है, जिनका नाम वेदच्यास हैं उनके बार में मैं आपको बतलाऊः कि उनके पिता ने भी कोई विवाह नहीं किया था। में नहीं समभत्ता हूं कि मेरिज एक सैंक्रामेंटल चीज हैं, इसमें किसी तरह का कोई बदलाव नहीं होना चाहिये । यह आप लोगों की बिल्कूल गलत धारणा है और इसमें आवश्यक बदलाव और परिवर्त्तन करना जौ हमारौँ सभ्यता हैं और जो हमार धर्मशास्त्र हैं. उनके प्रतिकृत नहीं हैं। विवाह की यही स्थिति किश्चियन मत में हैं। जो किश्चियन मजहब के कट्टरपंथी हैं जो कि क्रिश्चियन मजहब को समझते हैं वह कहते हैं कि विवाद कोई खास आवश्यकता के तौर पर नहीं हैं । टाल्स्टाय ने कहा हैं:

"No man has a right to marry."

मनुष्य को यह हक ही नहीं होना चाहिये कि वह विवाह कर । यह शादी की जो बात चली हैं यह बहुत बाद में चली हें । हमार कात्यायन जूषि के समय तक कोई विवाह नहीं होता था । मर्द और औरतों आजाद रहती थीं ।

श्रीमती विजय सदमी (जिला सखनज----मध्य) : कात्यायन को मर हुए कितने वर्ष हों गर्य ?

श्री डी॰ डी॰ पन्त : में समफता हूं कि उन्ह को मर्र हुए ७००० वर्ष हो गये।

श्रीमती विजय लक्सी : उस के बाद तौ एंटम बम बन गया।

श्री डी० डी० पन्तः में कहता हूं कि यह वात एसे हो गई कि एक बार कात्यायन आषि जब बच्चे थे अपनी मां के साथ राजा के यहां गर्य थे। वहां एक दूसर जावि ने उन की मां को देखा और उस को फुसला लिया । कात्यायन बगैर मां के रह गये। जब वह बड ही गये तो राजा से जा कर कहा कि यह होना चाहिये कि जब एक स्त्री किसी मर्द से विवाह कर लेगी तो वह दूसर के साथ विवाह नहीं कर सकती । और उसी के बाद से यह प्रथा आ गई । अगर कात्यायन मापि इस प्रभाको न ले आते तो शायद यह प्रथा ही नहीं आती । में चाहता हूं कि हमार मित्र ठंड दिमाग से इस बात को सौचें। इस पर वैज्ञानिक दृष्टि हालें। आज कल जो जीवन विज्ञान हें उस के अनुसार भी यदि सौचा जाय, उस के जो उसूल हैं उन के मुताबिक अगर हम चलें तो में नहीं समझता कि कोई विवाह की प्रधा को स्वीकार करंगा । जीवन विज्ञान ਜ ਨੇ अनुसार यह जो स्त्री पुरुष का सम्बन्ध है उस से बच्चे पैंदा होते हैं । जीवन विज्ञान कहता है :

"The function of sex is to create variations."

मुफे में कोई खास गुण हैं, मेरी स्त्री में कोई खास गुण हैं, मेरी जो ऑलाद होगी वह बिल्कुल नई तरह की चीज होगी। में समफता हूं कि जिस समय आदमी दिमाग लगायेगा, रीजन्स के मुताबिक चलेगा तो वह विवाह प्रथा को ही छोड़ इंगा। एक पुरुष एक स्त्री से ज्यादा ऑलाद पेंदा ही नहीं करंगा। इस के बाद अगर स्त्री कोई दूसरा बच्चा चाहती हैं तो वह दूसर पुरुष के पास जा सकती हैं और इसी तरह से पुरुष दूसरी स्त्री के पास जा सकता हैं। इसमें सबसे अधिक variations होंगे।

द्सरी बात यह में कहता हू कि विवाह की बो प्रथा हैं वह एक हद तक हमारी आजादी को मारती हैं। शादी हमारी आजादी को कटल करती हैं। यदि एक स्त्री बच्चा चाहती हैं तो बह मजब्र हैं कि एक आएमी की आजन्म गुलाम बनी रहे। अगर वह एक ही बच्चा चाहती हैं और आदमी के पास नहीं रहना चाहती हैं तो क्या आवश्यकता हैं कि उस को उस बन्धन में बंधित रखा जाय ?

यह बात भी हैं कि समाज में एक विवाह की प्रथा आ गई हैं और इस के रहते हुए हम जितनी सहायता स्त्री पुरुषों की करना चाहते हैं नहीं कर सकते । में समझता हूं कि जितने भी इस बिल में क्लाजेज हैं कोई भी उन में से एंसा नहीं कि उस पर किसी प्रकार का उज हो। सौकिन जैसा में ने कहा है कि जब मनुष्य का एक पर्फेक्ट समाज होगा तो उस में विवाह जैसी संस्था ही नहीं रहेगी क्योंकि यह हमारी कमजोरियों की वजह से हैं। अगर हम विवाह नहीं करते हैं तो अपूर्ण समाज में आपस में लहाई हो जायेगी । अगर विवाह की प्रथा आज नहीं रहती हैं तो जैसे जमीन के पीछ' झगह हआ करते हैं उसी तरह से औरतों के पीछ भी भगई हुआ करेंगे। इसलिये जिस प्रकार धरती अलग २ बंटी हें औरतों को भी अलग अलग रखना अच्छा हे । वरना

"सकल भूमि गोपाल की, या में अटक कहा, जाके मन में अटक हैं सोई अटक रहा।"

अगर हम लोगों को आजादी की आवश्यकता हैं तो जितनी आजादी हम दूं सकते हों उतनी हम को दूंनी चाहिये। कहा गया हैं 'ढाइवोर्स बाई

कंसेन्ट' यानी राजीनामें से डाइवोर्स नहीं होना चाहिये। में कहता हूं कि अगर एक आदमी गलती कर बँठता हैं और उस को सुधारना चाइता हे तो उस को इस का हक होना चाहिये। मान सीजिये कि किसी औरत और मर्द ने शादी करने में गलती कर दी तो आप कहते हैं कि कन्सेन्ट से डाइवोर्स हो ही नहीं सकता, उन को इस का हक ही नहीं है कि अपनी गलती सुधार । यह इस लिये हैं कि हम पूराने शास्वाँ के दास बन गये हैं । वह शास्त्र भी तो मनुष्यों के ही लिखे हुए हैं, जिस वक्त दंश की जैसी परिस्थिति थीं उस समय वॅसा ही शास्त्र लिख दिया गया। अष्ट वर्षात भवेत गाँरी भी शास्त्र में लिखा हूँ । अगर शास्त्रों के अनुसार आठ आठ वर्ष की लड़कियों की शादी कर दी जाय तो इस से एक बहुत बड़ा अन्धेर हो जायेगा । अगर आप शास्त्र की बात मानते हैं तो दस वर्ष के लडक की शादी कर दीजिये। आखिर आप ने शारदा एकट क्यों पास कर दिया ? यह क्यों कानून बना दिया कि १६ वर्ष से पहले लहकी की शादी नहीं होगी ? शास्त्रों को समय समय पर बदलना चाहिये। यह भी एक शास्त्र हे जिसे हम आज कल दंश में चला रहे हैं और जिस के अनुसार हम काम कर रहे हैं"। तो इन सब बातों को देखते हुए में कह सकता हूं कि कोई भी क्लाज इस बिल के अन्दर ऐसा नहीं हैं जो कि हानिकारक हो । बल्कि में समभत्ता हूं कि एँसा बिल वास्तव में आना चाहिये कि विवाह की कोई आवश्यकता ही न रहे ।

11 а.м.

मेर मित्र ने मुता के बार में कहा कि मुसलमानों में मुता विवाह होता हैं। में मुहम्मद को मनुष्य समाज का बढ़ा भारी जीनियस समफता हूं। उस ने निकाह की जो पद्धति रखी वह इसलिये रखी कि जिस में पुरानी विवाह की प्रथा एक दम हटने से लोग चौँक न जायं। मुता जीवन विज्ञान के अनुसार ठीक विवाह हैं। आज कल के पति पत्नी एक ही तरह के बच्चे पैंदा करते हैं, यह सॉन्दर्य शास्त्र के विरुद्ध बात हैं। एक बार बच्चा हो जाय तो फिर उसी तरह का बच्चा दुवारा क्यों हो। फिर नये तरह का [श्री डी॰ डी॰ पन्त]

बच्चा हो, इसीलिये यह मूता की प्रथा को रखा गया था । आप इस बात को भी दीखये कि मूता जो भा वह हर मर्दु और औरत को ज्यादा आजादी दैता था । एक मर्द एक घंट के लिये. दो घण्ट के लिए. एक साल के लिये. या पांच साल के लिये शादी कर सकता हें उस के बाद अपना बन्धन काट सकता हे । अगर विवाह की प्रानी प्रथा न चली होती तो हम दंखते कि दूनियां में मुता ही रहता । वैंज्ञानिक ढंग से मुत्ता ही सब से अच्छी विवाह की प्रथा हैं। इसलिये मेरी अर्ज हैं कि हमें इस पर ध्यान दुना चाहिये कि विवाह क्या चीज है. वह किस प्रकार से होता है और उस का हमारी आजादी पर क्या असर होता हैं । यदि हम इस को समझ जायेंगे तो हम इस प्रकार के विल का विरोध नहीं करेंगे।

कुछ लोगों ने कहा कि औरतों को जबर्दुस्ती पीट कर आदमी कन्सेन्ट ले लेंगे। में कहता ह कि यह गलत बात हैं। वह लोग यह नहीं जानते हैं कि औरत आदमी पर कितना असर रखती हैं। मैं तो समभत्ता हूं कि शायद स्त्री ही जबर्दस्ती कर के कन्सेन्ट ले ले, लेकिन मर्दु उस पर हाथ नहीं उठायेगा। यह कह दुना कि डंडों से आदमी मारकर कंसेन्ट ले लेगा बिल्कूल गलत बात हैं । में खुद विवाहित हूं, मेर चार बच्चे हैं, में जानता हूं कि क्या असली हालत घरों की होती हैं. और औरत कितना असर रखती हैं। में बिल्कूल आजाद आदमी हूं। एक और से तौ आप कहते हैं कि मर्दु और औरतें बिल्कूल बराबर रहें जो कि हमार कान्स्टिट्यू शन ने किया है दूसरी और आप कहते हैं कि स्त्री आज कमजोर हे इसीलये उसे आज हक नहीं दिया जाना चाहिये । जब वह साकतवर हो जार्यगी तब हक द' दिया जार्यगा । आज जब वह इतनी बराबर बनसी हैं तो यह क्यों समझती हैं कि अगर कोई मई कर्सी पर बैठा हो और कोई स्त्री आ जाय तो उसे कुसी को छोड़ देना चाहिये। एक और से बराबर के हक चाहती हैं तो फिर यह प्रिविलिजेज क्यों चाहती हैं। बहरहाल किसी भी पहलू से इंसने से मेरी समझ

में नहीं आता कि क्यों इस बिल का विरोध हो रहा हैं। यह कम से कम चीज हैं जो कि हम आजादी के लिये करवा सकते हैंं।

इसलिये में" इस का प्रासमर्थन करता हू और हाउस से अपील करता हूं कि वह जल्दी से इस को पास कर दूं।

Shri H. N. Mukerlee (Calcutta North-East): You will believe me when I say that I had no intention of intervening in this debate because I wished this Bill to be put as soon as ever that is possible on the statute-book. But I asked your indulgence and requested permission to speak because I thought I should try and give some kind of an answer to the speech which has been made by my learned friend, Shri N. C. Chatterjee.

I have no pretention to legal learning, and whatever law I imbibed at one time has mercifully slipped off my cranium. But I believe that under cover of legal rigmarole, my friend, Shri Chatterjee, has sought to attack this Bill on grounds which do not stand scrutiny. He has, as we expected of him, referred to the glories of Hindu civilisation and its continuity throughout the ages. Now, I yield to nobody in my admiration for the great achievements of Hindu civilisation, particularly because in my own way I have tried to make a study of that civilisation. But it is very necessary for us from time to time to remind ourselves that longevity is not the same thing as life, and the mere fact that Hindu civilisation has lasted through the millennia is not something which should make us get up at any point of time and say that whatever was said at a particular point of time should be current here and now.

**Pandit K. C. Sharma** (Meerut Distt.—South): Longevity without life is unpopular.

Shri H. N. Mukerjee: Personally, Sir, I feel a kind of thrill in my body when I remember my country's past.

Great in the greatness of her adversity, splendid even in the misery and desolation of her age, what cares she for the ephemeral dominance which the mushroom nations of yesterday perk and flaunt before her eyes? I can say that kind of thing; but that is not all. Let us not imagine that we can go on -capitalising on this past legacy of our culture. Let us remember that we try in this way to put up a mantle of myth and cover up our ego against the cold blasts of misery and degradation. Let us remember also that Hindu civilisation has lasted through the centuries because of a particular quality of adjustability, because it knew how to adapt itself to changing circumstances, and that is why I say I can, like the very Devil, outquote Mr. Chatterjee in regard to the Hindu Scriptures. But, I would not try to do so. I say that the quality of Hindu civilisation which has made for continuity, namely, its capacity for adjustability, has got to be remembered.

I Sav this in regard to Mr. Chaterjee's objection as to what he considers to be the principal change incorporated into the Bill by the other House, a change to which he strongly objects, namely, divorce by consent. He says that after all a Hindu marriage is a sacramental marriage and what business has the Legislature to interfere? If two human individuals come together, they marry according to certain rites, recite certain mantramsthey are supposed to have understood the purport of all that-and they have entered into what, according sacrato Mr. Chatterjee, is а Therefore, the mental marriage. Legislature should not intervene. My answer would be two-fold. In the first place, the Special Marriage Bill is obviously a permissive piece of legislation. There is no compulsion on any Hindu to abjure the sacraaspect of marriage if he mental wants to adhere to it. Most of the marriages contracted by Hindus and other people are sure to continue to be peaceful and happy because in normal conditions that is what is to

be expected. It is only the marginal cases that we have to take into consideration. It is our responsibility, as legislators, to see to it that the total volume of avoidable unhappiness in our country is minimised as much as that is possible. Therefore, since this Bill is permissive, I do not see how Mr. Chatterjee's objection can apply.

Then again, I say, divorce by consent is extremely necessary for another reason. Mr. Chatterjee has pointed out how English law does not provide for it. Well and good. It is all right that English law does not provide for it. We have taken many remnants from England but it does not mean that we have tried ourselves irrevocably to whatever English jurisprudence says or does not say. Actually, it is the experience of law courts. which Mr. Chatterjee has in great profusion, the English divorce courts, that the procedure for divorce is an open advertisement for and invitation to perjury. There is no doubt about it. There is the well-known . case of Professor J. B. S. Haldane. who, at present is in this country lecturing at the Indian **Statistical** Institute at Calcutta. He has written in the preface to one of his books that in order to get a divorce from his wife-though both agreed that they should have a divorce-he had to go to a hotel, he had to be a party. absolutely against his will, to the manufacturing of perjured evidence in regard to adultery which he did not commit.

Shri Biswas: Co-respondent hunting.

Shri H. N. Mukerjee: This is .12 thing which happens under the Englaw. English law is in many lish respects so rigid. English law hes still so many birthmarks of medievalism about it. Let us not quote English law or any other authority or foreign law in order to show that divorce by consent is a matter which ought not to be introduced in the legislation of this country.

### [Shri H. N. Mukerjee]

I also say that we should take every precaution in order to ensure that nothing happens which goes against the main principle, which is the minimisation of unhappiness. I know, Sir, that some amendments have been given notice of and they refer to a period to be specified in this Bill, six months or a year, in which period of time the parties would be called upon by the court to reconsider the whole decision. It is not a simple matter for two people to decide that they are going to have a divorce. It is not a simple matter for two people to come to a court and say that they have agreed on divorce. It must be after considerable cogitation. It is only in exceptional cases, it is only because of extraordinary circumstances that people would come forward with that kind of decision of their own before the courts. Even so, the courts would have to be given the opportunity of calling upon the parties before them to go back again and reconsider the whole situation.

I am not acquainted with all the detailed intricacies of marriage laws in different countries, not even with the marriage law of the Soviet Union. But, I find, from whatever reports I get from time to time, that in the Soviet Union, in the Peoples' Courts. when a divorce matter comes up, the judges and the assessors call the parties together and ask them to go back and reconsider the matter and they try to bring all kinds of persuasive influence to bear upon the two parties so that any kind of disruption in the marital relationship does not happen. We can do so; we can easily provide. courts with power to see to it that full and free consideration is given to this matter of mutual consent. I have seen that notice of some amendments has been given. I have heard in this House today that our women are an absolutely helpless quantity. I do not believe that it is a proposition which can be so universally formulated in regard to the women of our country, particularly in regard to that section of

our population which, at least in the initial stages, would like to take advantage of the provisions of this Bill. They are not really so helpless as all that. To counter the possibility of helplessness on the part of women, it is necessary for the courts to be armed with certain rights, to go into the question as to whether or not coercion has been exercised in order to secure consent. That being so, I do not see why Mr. Chatterjee can, in reason, object to the provision of divorce by consent, which has been incorporated in this Bill by the other House.

Mr. Chatterjee referred to a speech which the Prime Minister made in the last session and he quoted an extract the Prime Minister's speech from wherein he is purported to have said that certain changes which have been made by the Upper House may have to be reconsidered. I do not know which changes exactly the Prime Minister had in mind when he made a reference to this matter. But, I am sure, as far as divorce by consent is concerned, it was not in the mind of the Prime Minister, because, as far as I know, the Prime Minister is convinced that we should have this kind of progressive legislation. The Prime Minister, in his speech last time which I remember fairly well, tried to point out how there has been in Hindu society a kind of vitality which we ought tobring out creatively. Otherwise, all kinds of social legislation would lead I repeat what I said alnowhere. ready about Mr. Chatterjee's speech. Let us not take this flattering functionto our souls and imagine that because something was said many centuries ago, we can stick to that position over and over again.

In regard to divorce by consent, certain remarks were made in a kind of taste, which I do not happen to share, by my friend, Mr. Deshpande and I wish not to go into details about this kind of thing because it is not fair to our present discussion, because I find many hon. Members of this House come and speak on legislation of this sort without any real kind of serious mental preparation. They simply get up and say things according to their taste. It is with great respect that I say this. (Interruption).

Shri V. G. Deshpande: Sir, a personal reference has been made to me and therefore, I crave your indulgence to make an explanation. I think the hon. Member has not followed what I have said. In fact, I did not refer much to this 'divorce by mutual consent' of which he is taking such a serious view.

An. Hon. Member: You did.

Shri V. G. Deshpande: No. I referred only to one point that this 'mutual consent' will mean, consent only by the husband and nothing more than that. And, about taste, I think he does not know Hindi language properly. My taste is positively better than his taste because he is trying to destroy the marriage; that is what he is trying to do.

Mr. Chairman: There should not be any such personal discussions in the House.

.Shri H. N. Mukerjee: I heard my hon. friend say that if this Bill becomes law, it would mean encouragement not to monogamy but to polygamy, polyandry and things of that He also went on making certain sort. facetious comments in order to substantiate this. He is welcome and he is entitled to say whatever he has got in his mind. Personally, I feel that this kind of thing can hardly be discussed with the amount of seriousness which is necessary when we inject into the discussion this kind of temper. I would say that distempers of the sort envisaged by the Bill do arise in our society from time to time. I am reminded of what was written by a great English novelist in one of his short stories. He ends up his short story with a dialogue between two One said to the other: "Look people. here, there is one job I don't care for". The other man asked: "Which is that". And the answer was: "God's

on Judgment Day". I do not believe either in God or in the concept of Judgment Day, but I do not propose to sit in judgment on the conduct in. regard to marital matters of certain of my people, not only of my countrymen, but of people all over the world. These things happen. Human psychology is a matter the depths of which. we are not going to discuss with any serious intent at this present moment. But, I say, let us not mock at the illfortune of those who suffer from social or personal maladjustment and let us not try to bring forward arguments which are really based upon callous mockery of those maladjustments. which happen in society.

I say, Sir, therefore, let us make up our mind in regard to the objectives of this kind of legislation. I repeat what I said earlier. Let us decide that we must make an effort to minimise, if we can, the total volume of unhappiness in our society and I think, if we set about our work seriously, we can bring about certain improvements in this Bill before us and then this Bill, after it has incorporated into itself other necessary adjustments and improvements, can certainly make a contribution towards minimisation of avoidable human suffering in our country.

भी राभेलाल ज्यास (उज्जेंन) : में इस विधेयक के समर्थन में बोलने के लिये उपस्थित हुआ हूं। इस विधेयक के सम्बन्ध में जो बहस हुई हैं उसके सिलसिले में हिन्दू धर्म ऑर हिन्दू धर्मशास्त्र का काफी प्रयोग किया गया हैं। में समर्फता हूं कि अगर इस दंश को जो कुछ नुकसान हुआ हैं और उसको इति पहुंची हैं तो वह इस तरह की संक्रीचत और संकीर्ण विचात्थारा ने पहुंचायी हैं। दंश में जो भी धर्मशास्त्र बने थे या जो नियम, उपनियम बने थे वह किसी एक जाति विशेष के लिये, वर्ग विशेष के लिये, बल्कि सारं मानव समाज के लिये बने थे। मनु और याझवलक्य आदि ने जो स्मितियां बनाई वह केवल हिन्दूस्तान आँह [Shri Radhela] Vyas]

यहां के दूसवासियों के लिये ही नहीं बनाई थीं, तो **ए**ंसी बनाइ बल्कि वह भी कि उनका हर एक मनुष्य को अनुकरण करना चाहिये। जिस जमाने में वह बनायी गयीं थीं उस जमाने के इतिहास और काल को दुंखते हर वह सर्वथा उपयुक्त थीं। यह "हिन्दू" शब्द का प्रयोग विदेशियों ने पहली दफा हिन्दूस्तान में किया हैं और जैंसा कि हमार मित्र श्री आजाद ने कहा कि 'हिन्दू धर्म के प्रवर्त्तक''. प्रवर्त्तक तो गलत शब्द होगा. कहना चाहियै कथित समर्थक था रचक वह जिस तरह से उस का प्रयोग करते हैं, एक संकृचित और संकीर्ण विचारधारा के अनुसार करते हैं"। यह जो धर्म-शास्त्र बने थे, जैंसे मेंने बतलाया वह हमार कांस्टीदू युशन में जो सिद्धान्त स्वीकार किया गया हें कि यूनीफार्म कोड हो, वह एक यूनीफार्म कोड के रूप में कानून बने हुए थे, आज यह जरूरी हैं कि एक यूनीफार्म कोई बनाया जाये लेकिन उसके लिये अभी समाज में इत्तना लोक शिक्षण नहीं हुआ है कि उसको लाग्द्र किया जा सके। हिन्दूस्तान में इस जनतंत्र के जमाने में लोक शिद्यण के बगेर और मरजी के खिलाफ एक यूनीफार्म कोड बनाया जाये, यह कुछ उचित नहीं था और इस चीज को दीष्ट में स्व कर शासन ने विवाह जैसे कार्य के लिये भी एक थूनीफार्म कोड न पास करते हुए एक स्पेशल मेरिज ला रूपी विधेषक को पैशा किया है जिससे जो लोग इसको स्वेच्छा से स्वीकार करना चाहें और इसका लाभ उठाना चाहें वे इससे लाभ उठायें। में समभत्ता हूं कि विधान में जो एक यूनीफार्म कोड के लिये आदंश दिया गया हें उस दिशा में एक कदम हैं और यह एक एंसा कानून हें जो सार दुंश के लोगों को चाहे वह किसी भी जाति के हों उनसे यह सम्बन्धित हो जाता है और आगे चल करके इसमें संशोधन आदि हो कर और इसका रूप बदल कर यही एक यूनीफार्म कोड का रूप धारण कर सकता ŤI

विवाह के उद्देश्य के बार में कई माननीय सदस्यों ने अपने विचार प्रकट किये हैं । किसी

ने कहा कि इसका आधार सांस्कृतिक है, किसी ने कहा कि आध्यारिमक हैं और किसी ने कहा कि इसका आधार भाँतिक हैं लेकिन अगर हम इस पर बारीकी से विचार कर तो कुछ इनके अलावा और भी हैं और वह यह हैं कि मनुष्य एक समाज में पैदा हुआ हैं, वह बगेर सोसाइटी के नहीं रह सकता हैं और उसको अपने इस जीवन में एक सहयोगी की, साथी की, एक सच्चे मित्र की आवश्यकता होती हैं जिससे कि वह अपने कायों में ठीक सलाह प्राप्त कुरुता रहे और सूख, दःख में उसे सहायता मिलती रहे और उसको संतोष रहे। इसी कारण एक सच्चे मित्र के नाते यह विवाह पद्धति डाली गयी हैं। मनूष्य का काफी लम्बा जीवन होता है और उसे एक सच्चे मित्र की बहुत जरूरत रहती हैं जो कि उसको ठीक सलाह हैं सके और ठीक रास्ते पर ले जा सके, उसको गलत रास्ते पर न ले जाये और दूःख सूख में उसका साथी बने, इसलिये एक सच्चे मित्र के नाते ही विवाह पद्धति एक आवश्यक अंग माना गया हैं और उसी रूप में वह हिन्दूस्तान में हमेशा से लागू रही और आज भी उसी रूप में उसको समझा जाता हैं, भले ही व्यवहार रूप में कहीं कहीं उसके अपवाद आज हो जायें। अन्यथा इसका मुख्य उद्दंश्य यही हे और यही कारण हैं कि विवाह के सम्बन्ध में जो प्रतिज्ञायें की जाती हैं । यह जरूर है कि वह प्रतिजायें आदि आज कल संस्कृत में होती हैं और आज कल संस्कृत पढ़ने वाले बहुत कम रह गये हैं, वह कहते हैं कि धार्मिक पद्धति के अनुसार विवाह सम्पन्न हुआ । संस्कार के समय दूलहा दूलहिन पंडित जो वेद मंत्र उच्चारण करता है वह उसको दूहराते जाते हैं हांलाकि वह उसका अर्थ नहीं समझ पाते हैं, तो भी वह उनको दूहराते जाते हैं अथवा सूनते जाते हैं । विवाह के अवसर पर पति और पत्नी को प्रतिज्ञायें भी लेनी पडती हैं कि हम हमेशा जीवन भर साथ रहेंगे. पति प्रतिज्ञा करता है कि में तुम्हें कभी नहीं त्याग्ंगा और सदा तुम्हार साथ अच्छा व्यवहार करूंगा और तुम्हें कभी धोला नहीं दूंगा आदि। इस तरह की प्रतिज्ञायें उस अवसर पर होती हैं लौकन विवाह के बाद कोई उन प्रतिज्ञाओं को

याद नहीं रखता हैं और आये दिन हम दंखते हैं कि उनका उल्लंघन होता रहता हैं। उसको याद नहीं रहता है कि उसने विवाह करते समय कॉन कॉन सी प्रतिज्ञायें की हैं। यह पद्धति विवाह की हमार यहां चली आ रही हैं। संस्कार के रूप में विवाह होते रहते हैं तो यह उसकी बैंकगूांउन्ड हैं । हिन्दू धर्मशास्त्र और पूराने जो कानून चले आ रहे हैं उन्हीं के आधार पर यह पद्वतियां डाली गयी थीं लेकिन में कहना चाहता हूं कि आज उनको बने बहुत समय बीत गया है और समय का तकाजा है कि एक यूनीफार्म कोड बनाया जाये और जनतंत्री सरकार होने के नाते यह उसका फर्ज हो जाता है कि वह इस जरूरत को पूरा कर । श्रीमानू जी, आज जब कि एक यूनीफार्म कोड बन रहा है, हमार कुछ भाई जो अपने आप को हिन्दू धर्म का समर्थक कहते हैं उसका विरोध करते हैं तो मर्भ बडा आश्चर्य होता है । हम देखते हैं कि हमार इस दैश में कई लोग आये और लूप्त हो गये। गीक आये. ह.ण आये. सीधियन आये यहां पर रहे. लेकिन आज उनका कोई भी अस्तित्व नहीं है क्योंकि सॉमाग्य से हिन्दू धर्म उस वक्त बहुत न्यापक और उदार था. संकीर्ण नहीं था और उसने सबको हज्म किया लेकिन आज हम देखते हैं कि एक जमाना आया जब हमार हिन्दू समाज में संकीर्णता घुसी और हमार इन कथित हिन्दू धर्म के रचकों और धर्म के ठ'केवारों ने संकीर्ण द्दीष्टकोण अपनाया और दंश में कित्तनी ही जातियां पैदा कर दीं और धर्म पैदा कर दिए जिससे हमार बीच में भेदभाव बढते गये । यह कहा जाता है कि मुस्लिम पीरियड में जबर्दुस्ती लोग मसलमान बनाये गये, इसको में मानने को तेंयार नहीं हूं । कुछ जरूर जबर्दास्ती बनाये गये लेकिन लाखों करोडों लोग इस वजह सै मसलमान बन गये कि उन्होंने एक दफा किसी मूसलमान के हाथ का पानी छू लिया और उनके लिये यह समझा गया कि वह लोग जाति सै खारिज हो गये और धर्मच्यत हो गये और खेद का विषय है कि हमार हिन्दू समाज ने उनको अपने में से निकाल दिया। इस तरह से लाखाँ आदमी धर्म का गलत अर्थ समझने के कारण हिन्दू धर्म से अलग हो गये और अपने रिश्तेदारी

सं अलग हो गयं । एंसी भी मिसालें मॉजूद है कि जिन्होंने स्वेच्छा से धर्म परिवर्त्तन किया था। वह पूनः हिन्दू धर्म में आना चाहते ù लेकन यहाँ धर्म के रच्चक और ठंकेदारों ने इस पर आपत्ति की कि एक दफा जो अपना धर्म छोड़ कर दूसर धर्म में चला गया उसको फिर-अपने धर्म में लॉट आने का कोई अधिकार नहीं हैं। इस तरह से उन्होंने लाखों व्यक्तियों को पूनः हिन्दू धर्म में प्रविष्ट होने से वंचित किया। और यही कारण हें कि दुश में बड़ी दुरार पड़ी और अगर आप इंसेंगे जो चीज एक छोटी सी चीज के रूप में पचासों साल पहले शरू हाई थी, उस का यह भयंकर परिणाम हुआ कि दंश के दकह हुए और दंश आज मजहबों के आधार पर बटा हुआ हैं। अगर किसी कारण से दंश की सब से बड़ी चति हुई है और किस ने उस को पहुंचाया है यह आप देखेंगे कि यह धर्म को अपने कहने वाले लोगों और उन के समर्थकों की वजह से हुई हैं। इन चीजों ने देश को काफी नुकसान पहुंचाया है इसे हम को भूलना नहीं चाहिये। आंज दंश के बट जाने के बाद तो इस कानून का स्वागत होना चाहिये अगर हम चाहते हैं कि मानव समाज हमार देश में सखी रहे।

इतना कहने के बाद में कूछ और बातों का जवाब द'ना चाहता हूं । हमार मित्र श्री दंशपांड जी ने प्राहिब्दंड डिगीज का मजाक उहाया। उस में उन्होंने जो नाम गिनाये वह सभी फर्स्ट शैद्ध यूल में दिये हुए हैं कि 'माता, पिता की विधवा, माता की माता', यह तीन शब्द उन्होंने पढ कर सनाये । लेकिन हमारं कानन की क्या मंशा है ? अगर प्राहिष्ट'ड डिगीज में डन तीन को न बतलायें और दूसरों को बतलायें कि मामा की लडकी, बहन की लडकी और बहन की लहकी की लडकी. इन से शादी नहीं हो सकती कर्म काम चल तौ संकत्ता हैं ? प्राहिब्द'ड डिगीज में तौ आप को सभी को बतलाना होगा । आप कहते हैं" कि एंसा कॉन हैं जो माता के साथ शादी करंगा. लेकिन एंसा भी हो सकता हैं । इस समाज में पागल की तरह से काम करने वाले. या अपनी मर्जी के खिलाफ परिस्थितियों से मजबूर हो

[Shri Radhelal Vyas]

कर ऐसा काम करने वाले का अगर एक ਸੀ उदाहरण आ जाये या एसा उदाहरण आ जाये कि जो माता के साथ चरा काम करने के लिये तैयार हो जाये. तो उस के िलिये इस में गूंजाइश होनी चाहिये या नहीं। प्राहिब्ट'ड डिग्रिंज में माता का नाम न लि**खा** जाये तो क्या उस को कोई जायज नहीं कह सकता ? इसलिये अगर यह कानून हैं तो उन सब को भी उस में होना चाहिये। लेकिन जहां ਸ਼ਾਇਵਾਫ हिगीज में २७ स्त्रियौं मदौ के ্আঁৰ ২৩ नाम लिखे ×. वहां उन्होंने केवल २ को पढ कर बतला दिया · और बाकी को नहीं बतलाया, में समभत्ता 度 ँकि इस तरह से असलियत को छिपा कर हाउस को मुगालते में नहीं डाला जा सकता है।

एक बात इस बिल में जरूर हुई है कि पहले जो बिल पेश हुआ था उस में यह चीज थी कि जो स्पेशल मॅरेंज करेंगे उन को एंडाप्शन का अधिकार नहीं रहेगा । अब जो यह बिल हमार सामने राज्य सभा से पास हो कर आया है उस में से थह चीज निकाल दी गई हैं। यह एक चीज हुई हैं। लेकिन साथ ही बिल्कूल निकाल देने के बजाय इस में यह हो जाता कि 'जो भी इस प्रथा से शादी करंगा उस को एंडाप्शन का भी अधिकार रहेगा' तो ज्यादा अच्छा होता । इसलिये कि यह एंडाप्शन की प्रथा हमार यहां रही हैं और इसका स्वागत हुआ हैं। मैं आप को यह मिसाल दूं कि हमार ग्वालियर राज्य में जागीरदारी कानून हें और वहां मुसलमान जागीरदारों को भी यह अधिकार दुंता था कि अगर वह किसी को गोद लेना चाहें तो सरकार की इजाजत से ले सकते हैं, और कई मुसलमान जागीरदारों ने इस कानून का फायदा उठाया और गोद ले कर अपना वारिस मुकर्रर किया । इसी तरह से गोद लेने का अधिकार भी अगर हमार पीमीसव ला में हो तो बहा अच्छा हो । वद्यपि उस में किसी के लिये मुमानियत नहीं हें और में समभत्ता हूं कि हिन्दू समाज ही के लोग इस का फायदा ले सकेंगे. लेकिन साथ में ं जो स्पेशल मेरेज एक्ट बन रहा है वह सब पर लाग् होगा और अगर कोई इस से फायदा उठाना चाहे तो उठा सकता हैं।

दूसर धारा ४ में जहां २९ वर्ष की उम रखी गई है, में समभत्ता हूं कि सहकी की कम से कम ९८ वर्ष की उम् होनी चाहिये और लड़के की कम से कम २९ वर्ष होनी चाहिये। आँद अगर १८ वर्ष की उम हो तो माता या पिता जो उस का संरचक हो उस की सम्मति से विवाड हो, यह उस में संशोधन होना चाहिये। इस की बहुत ज्यादा जरूरत हैं । लेकिन इस के साथ साथ यह संशोधन नहीं होना चाहिये कि लडकी और लडका दोनों १८ वर्ष के हों तो वह माता पिता की सलाह से हो जाना चाहिये। लडकी की उम्हमेशा लडके की उम्से कम से कम चार साल कम होनी चाहिये । इसलिये जो भी संशोधन सुझाया गया है उस में यह हो कि दोनों की उस में फर्क हो लेकिन कम से कम उम १८ साल लडकी की होनी चाहिये।

इसी तरह से धारा ४ में जहां लिखा है :

"The parties are not within the degrees of prohibited relationship."

में समफता हूं कि धारा ९४ में जो प्राविजन हैं उस के अनुसार ही प्राविजन होना चाहिये और वह यह हैं :

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

हमारं यहां कई जगह जैसा कि दंशपांड जीने बतलाया प्राहिष्ट हि गूीज में विवाह होता हैं। महाराष्ट्र में जो चीज आज तक प्रचलित हैं और अच्छी चीज हैं, उसे भविष्य के लिये हमें बन्द नहीं करना चाहिये। हिन्दू धर्म-शास्त्र में झ्मेशा यह रहा है कि कान्त कुछ भी रहा हो, लैकिन अगर कोई कस्टम बन गया है, रिवाज हो गया हैं, और समाज ने उसे मान लिया है तो जो रूडि हैं उस को शास्त्र में ज्यादा वजन दिया गया हैं हमेशा हिन्द धर्म-शास्त्र के अनुसार रुढ़ियां पेंदा होती रही हैं और कान्न बदलते रहे हैं और जिस को सांसायटी ने स्वीकार कर लिया उस को मानने की इजाजत द'ते रहे। हमार यहां हाईनीमक कन्डिशन्स थीं। उसे रोकना और यह कहना कि भविष्य में जहां काफी स्वतंत्रता रिवाजों को मानने में रही हैं वह न होगी यह उचित नहीं हैं। इसलिये १४-ए के अनुसार धारा अ में संशोधन होना बहुत जरूरी हैं।

धारा १९ डिक्लेरेशन के बार में हैं। उस मैं भूभे एक सुझाव रखना है और वह यह है कि हम ने अपने कान्स्टिट्यूशन में खास कर के औध रसी हैं। हम यहां संसदू में आते हैं, इस पीवत्र कार्य को शुरू करने के पहले, या इस की कार्यवाही में भाग लेने के पहले हम को एक प्रतिज्ञा लेनी होती हैं । धारा सभाओं में जाने के श्रहले एक प्रतिज्ञा लेनी पडती हैं। मिनिस्टर अपने पद पर आ कर के वहां का कार्य प्रारम्भ करने के पहले एक प्रतिज्ञा लेता हैं। तो जहां हमें सारं जीवन भर के लिये अपने एक साथी को चुनना हैं और सोच समभ कर चुनना हैं. १८ साल की उम् के बाद ही चूनना है तो उस में किसी मकार की प्रतिज्ञान ली जाये यह उचित नहीं हैं। इसलिये इस हिक्लेरंशन में एक अच्छी प्रतिज्ञा. जिस को सभी जाति वाले स्वीकार कर सकें और शुरू रोज से जो सब पर लागू हो सके, मजहब वगरेंग्रह की बात न आये. लेकिन जो स्वतंत्रता के साथ शपथ के रूप में ली जा सके. सहयोग के साथ बने रहने की प्रतिज्ञा. ए क दूसर के प्रति वफादार रहने की प्रतिज्ञा, था जौ भी उचित समभी आय वैसी प्रतिज्ञा उस में हौनी चाहिये। और यही कारण हैं कि जो संस्कार पहले होते थे उन में. चाहे अग्नि के सामने सप्तपदी के रूप में या और किसी प्रकार से, कोई न कोई प्रतिज्ञा होती थी। में नहीं जानता रेक मुसलमानों में एंसा होता है या नहीं।

चंडित के० सी० शर्माः वहां भी हौता है।

भी राधेलाल व्यास : मेरं मित्र कइत्तं हैं कि वहां भी हौता हैं । हम ने अपने विधान तंक मैं प्रतिज्ञा लिखी हैं, लेकिन जहां हम इतना बढ़ा कार्य करने जा रहे हैं, जीवन में एक साधी को अपनाने जा रहे हैं और उस को निमाने का उद्दश्य हैं, वहां कोई प्रतिज्ञा न हो, यह उचित नहीं हैं। भले ही वह अगूंजी कान्न में न हो, या किसी और विदंशी कान्न में न हो, लेकिन हमार यहां जो परम्परायें रही हैं और जो विचार रहे हैं जन के रहते द्युए इस कान्न में कोई न कोई शपथ होना आवश्यक हैं।

इस के पशचात् दफा ९९ में जहां शब्दावली 'ज्वाइंट फॉॅंमिली' रखी गई हैं वह भी उचित नहीं हैं । ज्वाइंट फौंमिली। में अगर एक भाई महज अपना इरादा जाहिर कर दे कि वह संयुक्त परिवार के कृद्भव में नहीं रहना चाहता है और वह आज से अलग होता है, तो वह अपने आप अलाहदा हो जाता हैं। लेकिन जिस कृदम्म में सार कटूम्बी स्पेशल मेरेज ला के तहत में विवाह करना चाहते हैं अपनी पुत्री का या अपने किसी कोपार्सनर का और वह चाहते हैं कि वह हमार्र साथ रहे, तो कानून यह कर दंगा कि वह अलग समझा जायेगा । यह उचित नहीं हैं । जब हम यूनिफार्म कोड बनाना चाहते हैं और साथ में चाहते हैं कि समाज के सब लोग उसे स्वीकार करें. स्वैच्छा से उस के नीचे आ जायें तो यह जरूरी है कि जो कूट्रम्ब उस को अलाहदा नहीं करना चाहता है उस के लिये यह आवश्यक नहीं होना चाहिए कि वह यह समभे कि वह संयुक्त परिवार से जुदा हो गया हैं । इसलिये इस में इतना संशोधन होना चाहिये कि :

"परन्तु यदि कोई परिवार उसकी स्वेच्छा से शादी कर आँर उस को अपने संयुक्त परिवार का ही सदस्य मानना चाहै तो वहां पर यह लाग् नहीं होगा"।

इसके बाद हाइवोर्स बाई म्यूच्अल कसेंट पर में आता हूं। मेर मित्र श्री भागवत भा ने भी बतलाया कि हाइवोर्स बाई कंसेंट नहीं होना चाहिए नहीं तो बहुत सी गलत कार्यवाहियां होने लगेंगी। हिन्दुस्तान में अभी इतना शिच्चण नहीं हैं, हमारा महिला वर्ग अभी इतना शिच्चण नहीं हैं और न इतना शिच्चित है कि हमारी रित्रयां स्वतंवतापूर्वक विचार कर सकें। यह [Shri Radhelal Vyas]

स्थिति अभी पेंदा नहीं हर्द्र हैं । उनको जबरक्स्ती से दबाया जा सकता हैं और उनसे कंसेंट प्राप्त की जा सकती हैं । इसलिये जरूरी हैं कि कुछ बच्चे के लिए डाइवोर्स बाई कंसेंट नहीं होना चाहिये ।

एक बात यह हैं कि जब हम उम्का प्रतिबन्ध रखते हैं कि नाबालिग की शादी न हो और मनुष्य बहुत सोच समझ कर विवाह कर तौ फिर उसे यह अधिकार हो कि वह जब चाहे तब शादी को भंग कर द' यह उपयुक्त नहीं मालूम दता है। इससे एक स्थिर समाज बनाने की जो एक कल्पना है उसमें भी विघन पह सकता है। यह सही हैं कि कुछ एसे अपवाद मिलेंगे कि बिनमें अन्याय होता है लेकिन एसे अपवादों के लिए नियम भंग करना उचित नहीं। एक स्वस्थ समाज के निर्माण के लिए यह उचित है कि लोग ख्ब सोच समझ कर विवाह करों, यह देख कर करों कि लडके या लडकी का चरित्र कौंसा है, स्वभाव कौंसा है, खानदान कौंसा हैं। यह सब चीजें देखने के बाद फॉसला करना चाहिये और फिर शादी करनी चाहिये और इसके बाद जो प्रतिज्ञा विवाह के समय की जाये उसको जीवन भर निभाना चाहिये। साथ ही डाइवोर्स के और कारण हैं जैसे नप्सक होना आदि वह ठीक हैं । उस आधार पर तो डाइवोर्स हो सकता हे लेकिन यह म्यूचुअल कंसेंट से तो डाइवोर्स करना किसी भी सुरत में ठीक नहीं हैं। दूसर जो इसमें नोटिस का नियम रखा है उससे मुझे विरोध हैं। कोई आदमी जो दिल्ली में रहता है वह आसाम में जा कर १४ दिन बस बाये और वहां शादी करने की इच्छा कर सौ एक नोटिस जारी होगा और उसकी एक प्रतिलिपि यहां के डिस्टिक्ट मजिस्टंट को भेज दी जायेगी और यहां के जिले में भी शाया की बार्यगी। लेकिन उसकी मियाद उस टिन से ली जायेगी जिस दिन कि नोटिस वहां चिपकाया गया है तो एसी हालत में वह नोटिस निकालना बेकार हैं । अगर यहां नोटिस लगाना हें तो उसकी मियाद उस दिन से गिनी जानी चाहिर जिस दिन कि नोटिस यहां चिपकाया

गया हैं। में समफता हूं कि इस पर भी विचार किया जायेगा और इस बिल को संशोधनों के साथ स्वीकार किया जाये। इन शब्दों के साथ में आपको धन्यवाद दंते हुए अपना स्थान गृहण करता हूं।

Shri S. S. More: I have very great pleasure in wholeheartedly supporting if we are this measure. I feel that living in mordern times, the conditions under which we should live should also be modern. If, living in mordern conditions, we try to bring something from antiquity, then these two will not reconcile themselves. There will be constant conflict and that conflict will generate some heat and unhappiness. It is accepted by all that under mordern conditions, if there are certain diseases which can be prevented, Government ought to take steps to prevent those diseases. If there are certain deaths due to starvation and other matters which Government can prevent by undertaking certain measures, it is the duty of the Government to prevent such deaths. In the same way, I would say that it applies not only to the diseases of the body but it also applies to the diseases of the mind. Take, for instance, a man who is married, by some accident, by wrong choice, to a lady with whom he cannot carry on smoothly. Does that mean that they should be pinned down to one another in spite of their greatest desire to break away from one another? We are trying to demolish jails but this sort of marriage, unhappy marriage, is a mental jail, the walls of which we must demolish as early as possible.

My friends Mr. Chatterjee and Mr. Deshpande—unfortunately they are not in the House—spoke in a very antiquated strain, and particulary Mr. Chatterjee is very allergic to the word 'revolution.' So I occasionally go to him. Once I was going through the dictionary. I found the word 'revolution' was scratched out from his dictionary. That means that while scratching that word 'revolution' from the dictionary, you can scratch out revolution in the modern conditions of this country. I do not think so. The revolution is not in the dictionary. The revolution is not in the srutis, smritis, of which he talks so glibly. It is in the mind, it is in the air. Everybody who is inhaling oxygen is also inhaling revolution, and millions of Chatterjees -I would say so with all my regard for him-and tens of millions of these Deshpandes, if they stand in the way of progress, will be washed away, will be driven away by these rivers of revolution in spate. That is the lesson of history. I was very much shocked that my friend should be so reactionary.

### Shri N. C. Chatterjee: I was not.

Shri S. S. More: He protests; his protest is so feeble hearted that he cannot put his soul into his protest. What is the way of progress of man? He looks to the times. Are we going to say that Manus, Narads, Yagneshwaras and Jimutavahanas-all respected names-are going to control our modern life? They lived hundreds and thousands of years back, but as a result of their bony hands, the hands of men of such a stature, is it so difficult that we cannot step up with the modern times and conditions? Whenever I look at Biswas, I must say I find in him the infraction of modern sages. Let us have Biswases! Whv should I look at Manu?. What was that Manu? Yesterday, we were discussing the Untouchability (Offences) Bill, Mr. Chatterjee was very proud to say here that he accepted the membership of the Select Committee. But what was the plight, under Manu, of these Harijans? Mr. Chatterjee accepts that untouchability should go, because the untouchables have taken the cudgels, and if Chatterjees and other fellows....

# Some Hon. Members: And Hon. Members.

Shri S. S. More:....and other hon. Members,—I said it in a sporting manner—are like this, it is no use. They are reactionary as far as the public is concerned. But if you go to their own families, if you look into their family conditions, and see how they are brining up their children, you will find they are the most progressive. Their progressiveness is a family affair while their reaction is for world consumption. Some people trade in spurious drugs. They are trading in spurious progressiveness which we are not going to tolerate. Who is Manu?

**Shri Biswas:** It is the heads of families who trade like that; not the younger chaps.

Shri S. S. More : I am accepting that, coming as it does, from an old man with the experience of young people. I can say I am very happy to be in the category of Mr. Biswas and Mr. Chatterjee. On occasions, I have fits of reaction but my children prevent me from being reactionary. They are always agitated and say: 'Let us go ahead, let us go ahead.' That is the call of the future generation. That is the call of the growing consciousness of this country.

I was saying whether we are going back from what Manu has said. It might be in the interests--I do not want to harp on any communal string -but it might be very well for the Brahmins to take about Manu, because Manu gave them vested interests. Not only that; he gave them the religious sanctity for robbing those who were sudras, who were untouchables. I will just quote one verse from Manu. He says that the Brahmin may confidently seize the goods of his sudra slave, for, as the slave can have no property, his master may take its possession. This is the injunction of Manu which Deshpandes and Chatterjees will worship.

Shri N. C. Chatterjee: It is unfair. I never said that Manu should be actually followed in practice today. I only pointed out that Hindu society was never static. It was dynamic; it has progressed from stage to stage, and beyond Manu we have progressed with the recent commentators and later Nibandhakas.

Shri S. S. More: If our country was full of Chatterjees and Deshpandes, Hindu society would have remained static, but the fact was that Yagnesh-

344 L.S.D.

#### [Shri S. S. More]

waras and Jimutavahanas- most of them-were revolutionaries, and it is due to them that society has progressed. But my friend has misappropriattheir credit for himself. ed R is These absolutely wrong. Brahmins, these orthodox Brahmins, want to stand by what Manu has said. Just like marriage, which they consider to be sacramental, they consider these rights also to be sacramental. In our part of the country in Maharashtra-I do not know whether such a practice elsewhere-married obtains women are supposed to go to the banyan tree and say: "Well, I worship you." why? "That this husband be given to me for the next seven generations." The man may be ugly, he might have lost one of his eyes, he may be a flat-nosed fellow, but all the same the grip of religion, the vicious, sinister grip of religion on the poor lady's mind is stronger than steel, stronger than any metal that has been invented by modern science. She may not perhaps be able even to look at her husband during day time, yet she has to go to the banyan tree and pray: that this blessed husband be given to her for the next seven generations.

Sir, this country has achieved political independence; we have yet to achieve economic independence. But political independence and economic independence, if they are to be concretised, there should be mental freedom-freedom for all ladies, Harijans and everybody. That is a condition precedent and if we do not have that mental freedom then I would say that with all our best efforts this country will have no bright future. That is why I counsel my friends: "Let us not pay heed to the voice of reaction." The reactionary elements are there; they are antiquated fellows. They are like our archaic monuments. Let us send them to the Archaeological Departand they will be very happy ment under Maulana Saheb, because he will see that they are properly preserved.

Sir, there is one other point which has raised a storm that is consent divorce. Some of my orthodox friends like Mr. Chatterjee and Mr. Trivedi...

Shri U. M. Trivedi (Chittor): I have not spoken; please do not bring me into the picture.

Shri S. S. More; But I can anticipate your arguments. They have every faith in consent decrees. Whenever they go to the courts they say that consent decree is the best decree. Why cannot, in the matter of divorce, a consent decree could be a good decree?

Sir. I want to draw your attention ...

Shri U. M. Trivedi: According to you a woman is equal to money—a saleable commodity.

shri S. S. More: Sir, I feel discouraged when you are engaged otherwise.

Mr. Chatterjee, I know, is a great storehouse of English law. He has said that England has not provided for such divorces. If you are not going to accept what England says in other matters, why do you try to copy England only in reaction? You are seeking precedents of reaction from every country. I think his speech is the best specimen, the best collection, of reactionary arguments.

Take, for instance, conditions in England. There you have private detectives, who have come into the picture. What is their objective? How do they make money?

I am very allergic to this sort of discussion.

Mr. Chairman: All this talk is connected with the arguments that are taking place—this is part of it.

Shri S. S. More: But that is my weakness.

Shri Biswas: I would ask my hon. friends to spare one minute, so that I may tell them what I conveyed to the Chair.

Mr. Chairman: I was just enquiring from the Law Minister as to what time he is likely to take, so that I may regulate the debate accordingly. I am sorry the hon. Member should have taken exception to it; of course, I can realise his weakness, as he himself admitted it.

Shri S. S. More: Sir, what is happening in England? Private detective agencies have come into existence. Whenever a husband wants to get a divorce from his wife, he engages some detectives to shadow the wife; whenever the wife is keen on getting a divorce, she engages somebody to shadow her husband. Is that the sort of thing that we are going to copy from England? We have had enough of English culture; we have had enough of English legislation. Now at least let us try to do something original, so that other countries may copy us.

We, lawyers have developed a stereotyped mind—a mind which always gropes in precedents. We are not pregared to take courage in our hands. I think it is the function of this Parliament, like that of the Supreme Court, to deliver original judgments and make new laws. That way only can we go ahead.

With these words, I come to some of the important provisions of this Bill. I would like to bring to the notice of the hon. Law Minister that there is no definition of "adultery" here though it appears in clauses 27 and 34. What is the meaning of adultery?. You as an eminent lawyer know that adultery means intercourse with a woman who is the wife of another person. This is the technical definition of adultery. Does the same definition apply here? Then it would mean that if a husband has intercourse with a widow or with a maiden, who is not the wife of any living person, then that would not be adultery.

Some Hon, Members: You are incorrect.

Shri Tek Chand (Ambala Simla): You do not know law; that is wrong.

Shri S. S. More: It is my weakness not to know much and I accept it. Shri Tek Chand, with all the knowledge that he commands, says I am wrong. I am prepared to accept I am wrong, because he will not commit any mistakes. But these are my own reactions. They might not be as learned as Mr. Trivedi's. But in my own ignorant way I am giving my reactions.

Shri Biswas: Do not try to be an expert in adultery.

Shri S. S. More: I leave that privilege to you.

I would now like to draw the attention of the House to clause 25 under which a man or woman can claim a marriage to be void under certain conditions. It is stated "Provided that, in the case specified in clause (ii), the court shall not grant a decree unless it is satisfied,—

> (c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree."

I plead imperfect knowledge of law. But what does this mean? Has it to be positively proved? It has to be negatively proved. And what is there to be proved? Will there be evidence available? These are very delicate matters, but I am approaching them in a scientific manner. So, I will not be open to the charge of obscenity. Some of these things are difficult to prove. It is easy to allege, but it is difficult to prove. So, a piece of legislation that we pass should not look ridiculous in the eyes of the public.

I agree with my hon. friend, Shri Deshpande that the First Schedule is not a good thing. Let us have a look at these prohibited degrees of relationship. When you concretise certain facts, you are reduced to such a ridiculousness. Take for instance page 16 item 28. A man cannot marry his son's son's son's widow. Let us compute it in an arithmetical manner. Supposing A gets a son at the age of 20 and he gets a son B, A will be 40 when B gets a son, C. Then C also gets a son. He has to marry his widow. I have made a simple calculation that A will be at the age of 80 when he

[Shri S. S. More]

could become ripe for marriage or the widow becomes ripe for marriage. It may be legalistic on occasions law is an ass....(Interruptions).

An Hon. Member: There is a driver thereof.

Shri S. S. More: We do say that law is an ass; but law should not be a fool too, in addition. Let us delete all these things; let us say 'prohibited degree'. What are prohibited degrees? They are matters of judicial decisions and other law books. But if you put all these things in a long list, I think we are reduced to a very ridiculous position. If this legislation is taken up by some foreigner, he would get an impression that in India people are out to marry their grandfather's mother and therefore, the sovereign Parliament was forced to say that you cannot marry that lady. By the time he is ready to marry, she will be in her grave safely!

**Shri- Biswas:** You will find similar things in the U.K. Marriage Act: in foreign countries there are precedents...

**Shri S. S. More:** Britisher has gone but we have not yet ceased to be his mental slave (*Interruptions*).

Shri Biswas: It is you that are slavish minded.

**Shri S. S. More:** Simply because the United Kingdom has done this, it does not mean that we should copy it, 'i' for 'i' and 't' for 't'... (*Interruptions*).

**Pandit K. C. Sharma:** All laws are made that way.

Shri S. S. More: I do not want to have too much of your indulgence; I might say that all of us on this side barring a few honourable exceptions, whole-heartedly support this measure but it is our grievance that Government is unnecessarily scared by the voice of reaction and is not taking steps in a courageous manner. They should go ahead. We may disagree with them as far as their other programmes are concerned but as far as their social programmes are concerned; and their efforts to ameleorate the conditions of the people are concerned, we go entirely with them.

Deshpande Regarding ladies, Mr. was unkind enough to say that the wives will be exploited. He seems to have been married long long , ago; looking to our married experience, it is not the ladies who run the risk; it is we rather who run the risk. Therefore, a time will come when you will have to put on the Statute Book somelegislation for the protection of the husbands. We are giving modern education to our children but there are certain undesirable things which are invariably the concomitants of the modern conditions. Let them be modern in every respect and let them learn by experience. Experience is the best teacher though a very expensive teacher; but it teaches us things. which we never forget. I may again. say that we wholeheartedly support. this measure. I would further say that Mr. Biswas should take further courage and go forward more and more progressively so that Manus and all our old rishis may be forgotten and his name might stand high..... (Interruptions).

12 NOON.

Shrimati Vijaya Lakshmi: The only reason why I intervene in this debate today is because on the last occasion when discussion on this Bill took place before the House I was absent, and when the Bill is to be discussed clause by clause I shall be absent again, and I would like to support in the strongest terms a Bill which I do not think goes nearly far enough but which is to be welcomed nevertheless as being a step in the direction of implementing our Constitution.

The second reason which has made me rise today is that I feel particularly sad when, in regard to a discussion of this importance, a discussion which relates to human relations, the approach to a Bill which is intended to strengthen society, to help all those people who are not adjusting to the

# 813 Special Marriage Bill 1 SEPTEMBER 1954 Special Marriage Bill 814

swiftly changing world in which we live to adjust themselves and make a good contribution to the general pattern of life which we are seeking to create in the country, we find that all sorts of irrelevant matters are introduced into the discussion merely to make it into a laughing matter and have it said that the subject is not important enough to be discussed seriously. That is something which is to be deplored.

I find that whenever any legislation which concerns human relations is brought into this House, then this turn is adopted, and I would like to place on record my voice as protesting against this attitude. Because unless we deal with serious things in a serious manner, unless, as my hon. friend Shri Mukerjee so aptly put it, we make some attempt to minimise the scope of human unhappiness, how are we going to go ahead with all those big schemes and plans which we discuss in this House and which we flaunt before the world? We have to begin with a unit. The unit is the home. And if the home is not strengthened, if society is not strengthened, we cannot hope to implement either our Constitution or to live up to those great dreams that all of us dreamed in the past when we were fighting for the liberty of India.

I do not propose to go into the merits of this Bill clause by clause for the obvious reason that it will be discussed at a later time. My purpose is merely to draw the attention of hon. Members of the House to the fact that we should try as quickly as possible to get through a piece of legislation which is completely harmless-because it cannot be enforceda piece of legislation which will more than anything else today create a good feeling in the world regarding the way in which India is moving towards her goal. It is all very well to talk about the various freedoms that we require. We talk about having achieved our political freedom, that we are moving on towards the social and economic freedoms. But speeches are not enuigh. Year after

year we postpone measures which are implementations of that pledge which we have made. And unless such small enactments are made we cannot really expect to command the respect that we deserve, because most of us in this country who are progressive minded do hope and do seek to move quickly towards our goal which is a strong society co-operating for the fulfilment of economic, social and political freedom.

There has been some discussion and some controversy on the question of divorce. This is a matter on which I have always felt very strongly, and circumstances which have happened in India in the recent past-and I make no apology at all for referring to them-have strengthened my belief that something has got to be done very early about providing women in India with the means of separation, should they so desire; and men too for the matter of that. And, at the moment, women have to be helped in every way; they do not have either legal support or even the support of society in many cases and therefore, I mention the word women.

No matter how difficult marital life may be, it is very seldom that an average family or a normal woman attempts to break up the home. Anybody who takes his views of western life and culture from the Hollywood movies, is mistaken, because they do not even represent America. Even in America, which today has perhaps the highest incidence of divorce,---nobody deplores that more than I do-you will find that there is a growing awareness of the fact that whilst there must be of course the opportunity for men and women who cannot live together to separate, there must be provisions to safeguard the marriage as far as possible. That is happening everywhere. Especially, in India, where the concept of divorce is foreign to us, it is impossible to think that just because this Bill is passed, tomorrow, every Hindu woman will get up and say, I leave my husband because I disagree with him about the way he drinks coffee in the morn-

#### [Shrimati Vijaya Lakshmi]

ing or I do not like the shape of his nose. That cannot happen, because, today, we do not even understand the concept of divorce.

This morning, I had a very interesting opportunity of discussing this question with a group of women who had brought a large number of signatures to Parliament. Personally, I do not attach any value to signatures on anything. We want the signatures of the heart, an acceptance of change of hearts. If society would have a changed heart, we want no signatures. The moment one group brings a set of signatures, the next moment you have another group bringing double the number of signatures. I myself have been quite an expert in getting signatures for the Congress, and I know how signatures are obtained. So, they do not carry much weight with me. But, I do want to emphasise this fact and specially draw the attention of these hon. Members who seem to be afraid of divorce, that the first thing that we, who are working for this Bill, have to do is to persuade the women here to understand the concept. It is something foreign to them. They do not know what it means. They are not going to leave their husbands in a hurry. They will suffer innumerable hardships. I think they should not do that. Everything should go as slowly as possible after every other channel has been explor-Nevertheless, it has to be made ed. possible for those men and women who are married and who cannot live together, to become members of a better society and have some one else as spouse as they like. In these days of freedom, we have to give them a certain amount of freedom. If we don't give, it will be taken and а freedom that is taken is always less desirable than the one that is given. I would like to quote for instance the in relationship between the sexes India. Take the suffragette movement in the West. It left a bitter taste; it left a bitter impression and even to day, it is not eradicated entirely. Yet, in India, men and women marched

together because of the influence of Mahatma Gandhi, because of his precepts and lessons and we achieved everything that we wanted and here we are sharing a Constitution which gives us complete equality. But, the many pledges within that Constitution have to be fulfilled and I for one would like that we should move together towards the implementation of these pledges because ater all, the provisions of this Bill are going to affect both men and women in this country.

Shri H. N. Mukerjee referred to the Soviet Union. I am not familiar about the Soviet Union. But, I would like to tell the House the experience that I had in China, which was very very interesting. I set out two quitelengthy divorce trials in China and had the whole thing translated to me. And I felt as if I was back in India. The girls in both cases were peasant girls. One had been married at the age of eight and she was now 22 and she was seeking a divorce. The other had been married at twelve or fourteen and then she was about 30 years. old. But both had been arranged marriages. In one case it had been a sale; the girl had been sold by the parents to the boy's family. These girls were asking for divorce. In one case there were no children, in the other case there were children. In China in every court there is always one member at least of the Women's Democratic Party, which is an organisation recognised by the Government. A member of this Party always sits in every court to protect the interests of to women should the case pertain women. The minute the arguments were over, this lady was asked to use her influence to bring the two tngether. And she was given a certain time-I think it was a month or two months, quite a short period. The same thing was done in the other case where there were no children. Some days later I enquired as to what the arguments were that this lady was using to bring that husband and wife

together, and I was surpprised to find that in every case her arguments could not have been better put on the highest moral grounds by anybody following the highest tenets of the Hindu Shastras. I mean to say that people who desire society to be built up in the right way, to be strong, that men and women should co-operate fully and make of it a worthwhile progressive thing, must always rely on certain moral stand, and that was the one that was being used in China which everybody has described as a godly state and all the rest of it, in order to preserve the community and society. So, I do not think that we, our women in this country who have been brought up on a certain pattern, who for centuries have been taught to regard their husbands in a certain light, are just going to get up and divorce them because there is an Act permitting us to do so. So, I do hope that hon. Members will wok at this as something that is absolutely essential if we are to preserve our entity. We cannot live in this age of progress, in this age of change, and expect India to remain just sheltered and protected from all the passing winds that blow. They are going to affect us. All these waves of evolution and revolution that are passing through the world are going to make their mark here and if we do not accept them in the right way and canalise their force, they will overflow and we shall be the victims of a flood disaster much worse than those in West Bengal and Assam.

And therefore, I would like, while lending my complete support to this, to say that whilst I do hope a number of things will be modified and changed and expanded when the Bill is discussed clause by clause, nevertheless the general acceptance of the Bill will be accorded to it by hon. Members so that we can move forward with the feeling that we are really getting something done bv which the common people in this country and the thousands, millions of women who really have no protection whatsoever, can feel that they are protected.

This is not the proper place to inject personalities, but because of the fact that I also have been a victim of the fact that the Hindu woman has no status in law, I refer to this; and if I could have been a victim in the position I held in the public esteem when the public did rise up and oppose certain things that happened in my life, how much more are those poor women all over this country who are deprived of all sorts of legal assistance, how much more are they going to suffer? I am referring now to the inheritance part of the thing, not the divorce part, but the two are inseparably linked together, because when you bring forward this Bill it is going to be a useless thing unless you also link up with it the question of inheritance, because where is the woman going? She cannot go back to her parents in this country. The majority of them have not got the means to take them back. I know of cases which I could name here that would shock people, of men who are considered to be honoured members of society, who have just discarded their wives, sent them back to their parents with three or four children and expected them to look after them, while they marry anew a better and a prettier wife. Now, we have to have these protective measures, and therefore, I hope that side by side with this, there will be some consideration of the aspect of inheritance also.

I would like to commend the Bill strongly to the hon. Members.

Shrimati Maydeo (Poona South): I welcome this measure because it is a step towards civil law. When we are required to convince our sisters, they always say, why is the Hindu Code alone taken up, why should it not be civil code. At that time, we can explain to them that this Special Marriage Bill is a step towards civil law, because it has given facility to all the religious communities in this country to marry under this Act. There were some Muslim Members in the Select

# [Shrimati Maydeo]

Committee, one of whom said, I would not like my daughter to marry under Muslim law, after this, but I would ask her to marry under the Special Marriage Act, so that she will get all the facilities of this law. We could explain to our sisters, when we go to them, that here we are having a step towards civil law. After this law is passed some days hence, a demand would come from the Muslim sisters themselves that they want a change in their law and then Government can take up that case very easily.

The other thing I would like to point out is that the Bill when it was introduced in the Rajya Sabha was of a very different nature, and it has emerged from it greatly changed, and this has become a little disadvantageous to the society.

The first provision which I would like to mention in this connection is clause 4 (c) on page 3 of the Bill. In the beginning, when the Hindu Code Bill was taken up, the age of marriage was put at fifteen years for the girl, and eighteen years for the In the Select Committee, bov. it was put at eighteen years for the boy as well as the girl. But in the Rajya Sabha, it has been changed to twentyone Here also. there are some amendments which seek to raise it to twenty-five. This shows that they only want to pretend that they are giving some facilities to the sisters, while in fact they just want to make it more difficult for them. Supposing at the age of eighteen the girl, who is quite mature, goes to her mother and says, I want to marry under the Special Marriage Act, the mother will have to point out to her, you are not allowed to do so until you are twenty-one, so please wait for three years more. Thus, instead of waiting for three years, the girl may go and celebrate her marriage under the Hindu law. So, it will be difficult for them to take the advantage of the Special Marriage Act, unless we keep the

age of marriage to the required limit. So, I feel that eighteen years should be put down as the proper age, and sub-clauses (c) and (d) should be there, as they were in the Bill when it was first introduced in the Rajya Sabha.

The next point I would like to mention is in regard to clause 19 on page 7 of the Bill, which reads:

"The marriage solemnized under this Act of any member of an undivided family..... shall be deemed to effect his severance from such family."

I do not understand why any boy or girl who wishes to celebrate his or her marriage under the Special Marriage Act should be comeplied to sever from his or her family.

I know that parents themselves wish that their children should marry under the Special Marriage Act, and they love them as dearly as they loved them before. So why should they be asked to sever from their families? Moreover, if a boy marries under the Special Marriage Act, he does not cease to be a son to his father. He can offer pindas to his forefathers. So this clause should read like thisthat it shall not be deemed to effect. his severance from such family and he should be kept as a member of his family as he was.

The other clause I would like to mention is clause 27(k), regarding mutual consent to dissolve the marriage. There appear to be two trends of thought in the House: one is so modern that it appears ridiculous and the other trend is so orthodox that those people wish to pin down the sisters to all the orthodox views. Ordinarily, no man or woman would like to have divorce. What is marriage after all? Marriage is only adjustment and give-and-take. So if we keep such a clause for mutual consent, then it will not be a healthy clause for the society. We should

have legislation only for extreme cases. There must be provision for divorce, but it should not be made so easy as could be taken advantage of very easily. So I feel that sub-clause (k) of clause 27 should be deleted altogether.

There are many other amendments also which have come forth to this Bill, but these are the more important and, therefore, I would like to confine my observations only to these few. With these words, I strongly support the measure and hope that all the Members would vote for it.

श्रीमती सभद्रा जोशी (करनाल) : सभापति महोदय. आज जितनी बात इस बिल के बार में हो चुकी हैं उसके बाद कुछ कहने की आवश्यक्ता तो में नहीं समझती, फिर भी जॅसे मिसेज पंडित ने अभी कहा यह मैजर बहुत दर तो नहीं जाता है तो भी चुंकि एक स्टंप है जो आगे चलने के लिये हैं, इसलिये हम लोग वेलकम करते हैं और इसकी सपोर्ट करते हैं। मेरं कुछ साधियों ने चटर्जी साहब ने और देशपांह जी ने इसकी मखालफत की हैं। मझे डस बात से खुशी हुई कि मिस्टर चटजी कोई बहुत ज्यादा इस बिल के खिलाफ नहीं हैं और उन्होंने कोई खास आर्ग् मेंट्स नहीं दिए. उनके बोलने से तो एंसा मालूम हो रहा था कि अगर इम लोग उनसे रिक्वेंस्ट करते तो इसके हक में वह इससे ज्यादा अच्छ एफ वट के साथ बोल सकते थे। एक दो चीजों के बार में दुशपांड जी ज्यादा साफ थे और उनके कहने से साफ बात मालम हो सकी कि वह क्या चाहते हैं । दोनों स्पीकर्स ने सँक्रामेंटल मॅरिजेज के बार में कहा और बतलाया कि हमार यहां शादी का जो रिवाज हैं वह इतना सँक्रेड हैं कि हम जो यह मौरज रजिस्टर करने की इजाजत देने जा रहे हैं यह हिन्दू धर्म पर और हिन्दू समाज पर हम बहुत बडा आघात करने जा रहे हैं. और इस बात का उन्हें बडा रंज हैं। दंशपांड जी ने यह भी कहा कि इस मोनोगामी से जो बहुपस्नी का रिवाज हें वह बहुत ज्यादा मूनासिब हें और उसमें ज्यादा रहम और ज्यादा मनुष्यता पायी जाती हैं । इस बात की मुझ को संचम्च स्शी है कि इतनी

सफार्ड से उन्होंने अपनी बात कह दी क्योंकि जब सफार्ड से बात कही जाती हैं तो वह लोगों की ज्यादा समझ में आती हैं । आज द्वारा मुभ को वह सारी बातें कहना पसन्द नहीं। क्योंकि अगर हम अपनी आंखें बंद कर लैं. जो कुछ इस वक्त हमार यहां होता रहे. जब आंखें बंद करना चाहें बंद कर लें तो कान बंद करने में भी कोई दिवंकत नहीं होती। आज हम लोग परानी बातें कह कर, शास्त्रों का नाम ले कर, या धार्मिक पुस्तकों का नाम ले कर, बड़ी बड़ी बातें बनायें और जो एक्च्रुअल फॅक्ट्रस हैं हमार सामने, हमार समाज में. उन की तरफ न देखें. खासकर हमार पार्लियामेन्ट के मेम्बर एसे हो जायें. तो देश के लिये इस से ज्यादा दूर्भाग्य की बात क्या हो सकती हैं ? दंशपांड जी ने कहा कि सब को पराने जमाने में एक ही पत्नी पसन्द थी. जेंसा कि श्री रामचन्द्र जी ने किया या सीता जी नै किया। सभापति महोदय, पिछले जमाने में अच्छी बातें भी हैं और बरी बातें भी हैं। इसी तरह धार्मिक पुस्तकों की बातें हैं। उन को मझ बहुत ज्यादा पढने का साँभाग्य नहीं मिला है पर कुछ न कुछ पड़ा हैं, कभी कभी पढ़ लेती हुं। तमाम चीबों से एसा मालूम हुआ कि उन में एंसी बातें भी हैं जिन के लिये में कह सकती हूं कि हमें बहुत अभिमान हें और बहुत सी एंसी बातें भी हुइ जिन के लिये हमारा सिर नीचा • हैं । जहां श्री राम और सीता के चरित्र से हमारा सिर ऊंचा है दूनियां के सामने, वहां द्वौंपदी के चीर हरण से हमारा सिर नीचा है. अपने लोगों के सामने भी और दुनियां के सामने भी । यह उस वक्त की बात थी जिस वक्त कि श्री कृष्ण महाराज का जमाना था जिन को कि हम भगवान समझते हैं. उन की आराधना करते हैं। तो इस तरह की पूरानी बातों का जिक्र कहना और एंसा समझना कि हम आज की और से अपनी आंखें बन्द कर लें या समाब की आंखों में धल झोंक दें. यह नहीं हो सकता है।

सभापति महौदब, में बार बार इस सभा का ध्यान इस तरफ खींचना चाहती हूं कि आज पहला फाहव इअर प्लॅन आप ने बनाया ऑर दूसरा बनाने जा रहे हैं, उस में आप ने हजारों स्कूलों का प्राविजन किया कि आप लड़कों को [Shrimati Subhadra Joshi]

पढायेंगे। स्कूल खोलेंगे, लड़कियों के भी स्रोलेंगे और लडकों के भी स्रोलेंगे । पर आप भी जानते होंगे, में भी कभी कभी चली जाती हूं सहकियों के स्कूलों और कालेजों में, उहां कि लडकियां काफी संख्या में शिता प्राप्त करती हैं। हम उन को शित्ता दंते हैं और फिर यह चाहते हैं कि जो हमारी लडकियां पढती हैं. जिन में हम एक स्वाभिमान की झलक पैदा करते हैं वह अच्छा जीवन व्यतीत करें। जब बह लड़की नॉंजवान होती हें तो उस हमारी लड़की का फ्यूचर हमार समाज में आँ र विन्दास्तान में क्या हें ? सभापति महोदय, जिस बक्त में फ्यूचर की बात करती हूं उस समय मेर सामने मिसेज पंडित नहीं हैं जो कि यू० एन० ओ० की मेम्बर हैं. वहां की प्रीजर्डन्ट हैं। या जो इजारों लाखों में से दो. चार. दस. बीस स्त्रियां पालिंयामेन्ट की मेम्बर हो जाती हैं उन का भीवच्य मेर सामने नहीं हैं । वह यहां पर बहुंच गई हैं, न माल्म करेंसे पहुंच गड़ी । Mrs. Pandit is there not because of us but in spite of us. यह तो एक इत्तफाक बात हो गई हैं। मैं हिन्दूस्तान की में रहने वाली उन स्त्रियों ऑर अपनी कन्याओं के वर्त्तमान और भीषष्य की बात कहती हूं, उन बहनों की बात करती हूं बो इमार घरों में हैं क्योंकि स्त्री का जो कार्य . चेत्र हैं. चाहे आप उसे लढाई का मैदान ही समझिये, वह हमार घरों में ही हैं। जो पहले सँक्रेड मॅरंज हुआ करती थीं उन की बात नहीं करती हूं, जो आज की सँक्रेड मेरेंज होती हैं उन की बात कहती हूं, मैं ने पहले भी इस सभा के सामने जिक्र किया कि जो शादियां आप के चारों तरफ हुई, चाहे सप्तपदी से हुई था किसी भी तरह से हुई. उन बहिनों में से मेर पास अनीगनत बहिनें आती हैं। इस का आज भी जिक करना चाहती हूं। अभी हाल में, आजकल में, पांच, छः केसेज मेर पास एसे आए हैं। एक भाई ने अगिन के चारों तरफ शादी कर के, जिस आदमी को स्त्री देवता समझती थी। उसने उस स्त्री को छत पर से फेंक दिया जिसका मुकदमा दिल्ली कोर्ट्स में चल रहा हैं। एक दूसरें भाई

ने शादी की, अग्नि दंव के चारों तरफ घुम कर शादी की। अब में एक उस घर का जिक्र कर रही हूं जिस का रिवाज है कि उस घर की हर जेठानी दंबरानी जो आती हैं वह कूंएं में गिरु कर मर जाती हैं। तो उस भाई की स्त्री करूं में गिर कर मरी हैं। एक तीसरंघर का में जिक्र करती हूं। करॉलबाग में आज एक औरत पिछले दो महीने से दरवाजे पर बैठी हैं और कहती हैं कि में अपना घर छोड कर नहीं जाऊंगी, यहां ही मरूंगी । मोहल्ले वाले बार बार उठा कर उस को दरवाजे के भीसर बिठा दंते हैं और वह बार बार निकाल दी जाती हैं। अभी हाल में उसे जहर दं दिया गया, वह अस्पताल पहुंचाई गई, और फिर अच्छी हो कर घर पहुंच गई । वह अब भी इन्कार कर रही हैं कि में घर छोड़ कर नहीं जाऊंगी. आसिर में कहां जाऊं ? आजकल भी इस तरह की चीजें की जाती हैं। यह दो चार मिसालें वह हैं जो इतनी ग्लेअरिंग हैं जो कि मोहल्ले में फौल गई, घर घर में फौल गई और अखबारों में फॉल गड़ी। लेकिन एसे ही अनगिनत कैसेब रोज होते रहते हैं। तो जिन लडकियों को आज आप पढ़ाते हैं. में उन के फ्यूचर की बात आप से कहती हूं। आप फाइव इअर प्लॅन में अनीगनत स्कूल खोल दें लेकिन में कहती हूं कि अगर आप इस सोशल मेजर से आगे नहीं बढना चाहते हैं तो स्कूल खोलने के बजावे आप यहां एक गिलोटिन बना दीजिये जहां पर fas लडकियां रोज रोज आ कर मरा करें। जन लडीकयों की स्वतंत्रता की बात आती हें तो में आप से प्छती हूं कि आज सॅक्रेमेन्टल मेरंज में क्या बात होती हें ? इस में लड़कियों के गूण की बात नहीं, लडीक यों की पढाई की बात नहीं, या इस तरह की और कोई बात नहीं। सब से पहले उस को देखने चले आ रहे हैं। आज जो तरीका शादी का है उस में सब से पहले दंखा जाता है कि उस की नाक कैंसी हैं, उस का मूंह करेंसा है, उस का यह करेंसा है, वह करेंसा हैं। उस के मुंह को ही देखने का सवाल नहीं हैं। यह सब ईखने के बाद ईखा जाता है ीक. कपडा क्या मिलेगा, बाप के पास पॅसा कितना हैं, और कितना पैसा दुहेब में दिया जायेगा,

जब बह सब बातें तय हो जाती हैं तब सँक्रेड मॅरंड होती हें। और कितने दिन तक यह सॅक्रेड मॅरंब रहती हें यह भी में आप को बताती हूं। में उन बहनों की बात कर रही हूं जो कहती हैं कि इस शादी के बाद में पति के साथ रही, लीकन वह मेरे साथ बात नहीं करता । वह रित्रयां मेरं पास आसी हैंं। कोई बहन आ कर कहती हॅ कि मेर पति ने मुझ को छोड दिया। में बीहनों को भेजती हूं जो जा कर प्रहती हैं कि भाई क्यों छोट दिया तो कोई कहता है कि में ने इस को इसलिये छोड दिया कि यह काली हैं, कोई कहता है कि इस लिये छोह दिया कि दुहेज काफी नहीं दिया गया था। कोई कहता है कि इस लिये छोड दिया कि बच्चा नहीं होता था, कोई कहता है कि इस लिये छोड दिया कि लडकियां ही लडकियां होती थीं। कोई कहता है कि कारण कुछ भी नहीं हैं, कोई ब्राई इस में नहीं हैं, पर बहन जी. जिस दिन से शादी हुई हैं उसी दिन से बह मेरं मन से उत्तर गई । यह फॉक्टूस हैं । नहीं मालूम शास्त्रों में क्या लिखा था। में आप से कहती हूं कि इन किताबों को कोट कर के अगर आज आप समाज की तरफ से मेरी आलों बन्द करना चाहें. मेरी आंखों में धल झोंकना चाईं, तो में इस के लिये तैयार नहीं हूं। इस के बावजूद मुझ को नजर आता है और में चाहती हूं कि इन बहनों के लिये कोई रास्ता अरूत्यार কিবা আए।

जो बातें चट जीं साहब ने इस बिल के खिलाफ कहीं, बही बातें इस के हक में जाती हैं। उन्होंने कहा कि सॅंक्रेड शादी को रजिस्टर करने की बात को वह नामुनासिब समभन्ने हैं क्योंकि Sacred marriage में स्त्रियां जानती हैं कि सब कुछ यों ही रहना है, कहीं जा नहीं सकते हैं, जो कुछ भी हो जाये यह परमेनेन्ट हैं। में प्छती हूं कि एक आदमी को दूसर आदमी पर. एक इन्सान को दूसर इन्सान की जिन्दगी पर एंसी पावर्स दूं दूंना, एंबसोल्यूट पावर दूं दूंना, कहां तक मानवता के साथ जाता हैं? आज जब लेवर ऑर कॉपटल की बात होती हैं, वॅस तो बह प्रानी बात हैं, ऑर कोई इस का साथ आज

कल नहीं दुंता, पर में एक बात जानती हूं कि एक गरीब मजदूर को मालिक के हाथ में द दिया जाए, और अगर उस के पीछ' हुकुमत का पच न हो, कानन उस के लिये न हो, फैक्टी इन्स्पेक्टर्स और लेबर संगठन या लेबर मिनिस्टर्स न हों तो उस गरीव आटमी को कितना एक्स्प्लायट किया जा सकता है यह आप जानते हैं । उसी तरह से जब एक इन्सान का दूसर इन्सान पर, जो कि एक औरत हैं, पूरा अख्ल्यारु द' दिया जाए तो वह पता नहीं कितनी बातौँ में एक्स्प्लायट कर सकता है। अगर उस की तरफ हम हर तरह से तवज्बह न दें तो में कहती हूं कि यह इस दंश के लिये वह दूर्भाग्य की बात होगी । अगर आज के जमाने में समाज केः साथ आजकल के लोगों के साथ और इन्सानियत के साथ ज्यादती होती हैं, एक आदमी को दूसरे आदमी के ऊपर इस तरह से एवसोस्यट पावर दे दी जाए तो यह कहां तक इन्सानियत की बात हो सकती हैं बह हम को समझना है।

एक और बात आज बार बार कही गई । चटजी साहब ने कहा कि मूसलमान भी इस बिल कें विरोध में हैं। इस से मझ्ये कुछ ताज्यूव नहीं हुआ। पर मुझ को यह भी मालूम है कि सेलेक्ट कमेटी में कुछ हमार मुसलमान भाइयों ने कहा था कि हम भी इस से फायदा उठा सकेंगे क्योंकि इस में मोनोगमी क्लाज एक हैं जो चीज कि हमार यहां नहीं हैं। उन्होंने कहा कि यह बो सोजल कस्टम और पर्सनल ला की बात है उस को पहले क्लाज में भी लिख दिया जाए ताकि इस से हम भी फायदा उठा सकें। फिर भी एसे भी मुसलमान हैं जो इसके खिलाफ हैं। वह चटर्जी साह ब क साथ they are ≹ flying together क्यांकि वह एक विचारधाग ¥ जौ कि सिर्फ एक मजहब के लोगों में ही नहीं हैं। वह हिन्दूओं में भी हैं, मूसलमानों में भी हैं और इसिइयों में भी है, और उस विचारधारा के जो लोग हैं वे हर मामले में एक ही रहते हैं । चाहे वह हिन्दुस्तान के टुकई करने की बात हो, चाहे दोनों मुलकों में फिसाद खड़ा करने की बात हो, चाहे मुल्क को पीर्छ ले जाने की बात हो, ₹£

[Shrimati Subhadra Joshi] विचारधारा हर मजहब के लौगों में मॉंज्द हैं। इसी तरह से हमार इस कान्न के बहुत से लांग खिलाफ हैंं। इस तरह के आदमी मुसलमानों में भी मॉंज्द हैं मुझे इससे इन्कार नहीं है।

अब आखिर में में एक चीज कहना चाहती इं। वह यह हैं कि हम चाहे कितने ही कानून बना दें आज हम उनका पूरा फायदा नहीं उठा सकते क्योंकि जॅसा कि चटर्जी साहब ने कहा कि इस बक्त स्त्रियों को कोई इकानोमिक फ़ीडम नहीं हैं। जायदाद में उनका कोई अधिकार नहीं हैं । हमार चटजी साहब कहते हैं कि एसी हालत में उनको डाडवोर्स का अधिकार द' द'ना उन पर ज्यादती की बात होगी। लीकन में इसको ज्यादती नहीं समभत्ती । . पहले तो इन्सान को इन्सान होना जरूरी हैं। प्रापटीं बाद में आती हैं । में प्रापर्टी पर अधिकार लेकर क्या करूंगी जब कि मुझे अपने आप पर अधिकार नहीं हैं । इस वक्त तो मुझे इन्सानों में ही नहीं समझा जाता। तो मर्भ कितनी भी प्रापर्टी दंदी, दहेज दंदी, कपडा दंदी, जब तक · इन्सान को इन्सान नहीं समभा जाएगा तब तक किसी को आप जेवरों से या जायदाद से लाद दें तो वह उसके किस काम के हैं। फिर भी मैं एक चीज के लिए आपसे कहुंगी कि एक स्त्री ंबिसके पास आज कोई आमदनी नहीं हैं, जो कमाली नहीं हैं, जिसका जायदाद में कोई अधिकार नहीं हैं, अगर आप उसके लिए कानून भास करना चाहते हैं तो जरूर कर लेकिन उसको लगवाने के लिए. सरकार को वकील का और कोर्ट के खर्च का सारा इंतिजाम मुफ्त में करना चाहिए। हमारं इस बिल में एक प्रावीजन ई कि अगर कोर्ट चाहे और यह समझे कि स्त्री की अपनी कोई आमदनी नहीं हैं या उसके लिए कोई मदद नहीं हैं तो वह चाहे तो उसके पति की आमदनी में से खर्चा देने का आईर कर सकती हैं। में समभत्ती हूं कि पति की आमटनी में से बेने के बजाय अगर हुक्मत खुद इसका प्रबन्ध कर तो वह स्त्रियों के लिए ज्यादा मनासिब साबित हो सकता है । क्योंकि इसमें चह दंखना होगा कि पति की आमदनी कितनी

हें उसमें से कितना सर्चा दिया जा सकता है. क्या उतने रुपये से मूकद्मा चल सकेगा या नहीं । उसके बाद अगर हाडवोर्स न हुआ और अदालत ने स्त्री के खिलाफ फर्मसला द दिया तो उस हालत में बाद में यह चीज उसकी जान को बवाल बनी रहेगी कि उसने पीत की आमदमी में से खर्चा लिया । अगर कोई दूसरा आदमी उसकी मदद करता हैं तो यह कहा जाएगा कि पैंसा दंकर हाइवोर्स करवाना चाहते हैं । इसलिए यह बहुत जरूरी हैं कि इस मामले में सरकार स्त्रियों के लिए कोई एंसा इन्तिआम कर कि जिससे उनकी तरफ से यह कानून लागू किया जा सके। इस वक्त और भी कितने ही कानून हैं जिनसे स्त्रियों की मदद हो सकती है लेकिन वकील के लिए और अदालत में पैसा सर्च करनं के लिए न होने की वजह से वह उसका फायदा नहीं उठा सकतीं। इसलिए में चाहती हूं कि ये चन्द चीजें जोडकर इस कानन को जल्द से जल्द पास कर दिया जाए। और जैंसा कि श्रीमती पंडित ने कहा कि यद्यपि यह कानून हमको उतना आगे नहीं ले जाता जितना कि इसे हमें ले जाना चाहिए लेकिन चंकि यह एक सही कदम हें में इसको वॅलकम करती हू और इसको सपोर्ट करती हूं।

Mr. Chairman: Thirty-five minutes are left and the hon. Law Minister is likely to take up half an hour for his reply. I do not think I am justified in calling anybody else to speak. I, therefore, request the hon. Law Minister to kindly reply to the debate.

#### Shri Biswas rose-

Mr. Chairman: There are five minutes left.

**Shri Jhunfhunwala** (Bhagalpur Central): I had requested only for five minutes

**Mr. Chairman:** Nobody requested me for five minutes. At the same time, I do not think it will be possible for any Member to deal with the subject within five minutes. Therefore, I have called upon the hon. Minister. Shri U. M. Trivedi: With due deference, I would like to have some time to speak.

Shri Jhunjhunwala: We can have the reply tomorrow.

Mr. Chairman: It is not possible, because Mr. Speaker has already remarked that this will be finished today. Even on the last occasion, when this Bill was discussed, he gave the House the undertaking that it must be finished today. So, it must be finished today. but if the hon. Minister agrees to talk for 25 minutes only, I can call on other Members to speak.

Shri Biswas: I shall abide by the directions of the Chair. So far as I am personally concerned, if the hon. Members wish to speak for another half an hour, I do not mind deferring my reply till tomorrow if necessary, subject to your consent.

Mr. Chairman: We must finish it today. If the hon. Minister agrees to take, say, 25 minutes, then I can call another Member.

Shri Biswas: I agree.

Mr. Chairman: Yes, Mr. U. M. Trivedi. You may speak for not more than ten minutes.

**Shri U. M. Trivedi:** I shall be as brief as possible, and I promise not to take more than ten minutes.

I would not have ordinarily risen to take part in this debate at this stage but for the fact that some people have got fossilised ideas. I say fossilised in the sense that after reading books from various sources, they develop a particular pattern and they cannot get out of that pattern of ideas. That which is written in that book or that which they have conceived is the only thing progressive in this world and is the only thing which they can call progressive. The rest is reactionary. However reactionary or renegade they may be, they consider themselves progressive. It is with this little preamble that I rise to speak on this Bill.

Mr. Chatterjee has given a very good resume about this law but we have not cared to listen to it. The other sobar speech that we heard today in support of this Bill came from. Shrimati Vijaya Lakshmi. We appreciate it, but at the same time, we cannot appreciate this desire on the part of certain Members to have the marriage relations in our society, between Hindus and Hindus, put down to the level of mere monetary considerations, mere goods, mere chattels. It is this conception which does not, or should not exist in our society. To : Hindus, a woman was never a chattel: she is not a chattel today and she will never remain a chattel at any time to. come. It is this conception of reducing a woman to the state of chattel which. we do not like. It is true, and the hon. Minister has agreed, that he has put down this schedule by copying it from. the United Kingdom schedule. I say it is not merely a schedule which he has copied but he has copied the whole law from there. Where does the necessity arise for making this law, Special Marriage Bill, applicable to the Hindus? We are having another law which is just following in the wake of this Bill, and we call it, the Hindu Marriage and Divorce Bill. How has the necessity arisen today to incorporate the very terms of that Bill intothis Bill? We cannot understand it. We cannot follow the logic of it.

A point was made that we are being looked upon, as several other nations do look upon us, as progressive, and to get that certificate of being called progressive, to obtain that certificate of international fame-of being called progressive-we want to give up all. that is dear to us, dear not only to us, dear to the community at large. We forget the ordinary principles of evolution and the development of higher morals. In England, society has sowell developed that people like to tell the truth: people do not hesitate to tell the truth. Here, unfortunately. due to years of slavery under the British and the Mohammadens wetake pride in doing things which nobody who sets a high standard of

# [Shri U. M. Trivedi]

morals would do. We had however, a particular type of evolution going on in marriage sacraments. Among the lower strata of our society divorce was in vogue, even without the interference by the courts. Ordinary panchayats could sanction divorce, and hundreds of divorces were taking place. There were also remarriages. Nobody ob-.jected to them. But women belonging to the higher strata of society refused seek divorce or remarriage, and to following their examples divorce was being given up by women of the lower society, because they too strata of wanted to set before them higher moral standards. Society was evolving in this way. It is that desire to reach a higher moral plane that is the keynote of any progressive society. We are going to completely forget that idea. We are going to degrade ourselves, because certain other nations have **chosen** to degrade themsleves. They may attempt to evolve. But we must .go back a hundred years.

This measure which you are trying to put on the statute book I consider to be a renegade and retrogressive one.

One lady Member, Mrs. Subhadra in her speech cited certain Joshi. examples. The first thing that struck me like the saying of the late revered Dr. Syama Prasad Mookerjee: "India, that is Bharat, that is U.P.", according to this Member, India that is Bharat, that is Delhi. She cited some examples of Delhi and made it appear as though it applied to the whole of India. Miss Katherine Mayo took pains to find out the bad things in us. Like a only gutter inspector she could observe the <sup>1</sup>bad practices among us. Mrs. Joshi has also cited a few instances of women being ill-treated by their husbands in Delhi. But, on the other hand, there -are many examples of women living happily with their husbands. Kasturba was not an educated lady, yet she led the life of the wife of a saint, the greatest man of our counrty. Everywhere, with all of us, we have got good wives. What is there to complain -about?

**Shrimati Renu Chakravarity:** Does the hon. Member contend that educated women do not live happily with their husbands?

Shri U. M. Trivedi: If education is meant only for giving up husbands, then I do not like that education at all.

Shri Biswas: The hon. Member's time is up.

**Shri U. M. Trivedi:** I wanted to have a little more time. But as I will have an opportunity to speak when we take up the clauses, I do not wish to take the time of the House any longer.

Shri Biswas: Mr. Chairman, I feel that I am not called upon to speak at very great length. This Bill has been under discussion for quite a long time; we had three days during the last session and we have had nearly one whole day, today. I am glad to find, notwithstanding friends like Mr. Chatterjee, Mr. Deshpande and one or two others, that there is a general measure of support. My only regret is that in making their criticisms my hon. friends had not always kept in view the scope and object of this Bill and had not a realistic view of this Bill as compared to those which it seeks to replace.

There was first of all, the original Special Marriage Act of 1872 as enacted in that year. Then came the amendment of Sir Hari Singh Gour in 1923 and now comes the present Bill which marks, as I had occasion to point out when I was moving this motion last. session, a definite and a very important departure from the previous Bill as amended in 1923.

Under the Act as it stood in 1872, marriages were permitted only between "persons neither of whom professed the Christian or the Jewish or the Hindu or the Mohemmadan or the Parsi or the Buddhist or the Sikh or the Jaina religion or between persons each of whom professed....." Then came the amendment of 1923 which added, in addition to the above, "or between persons each of whom professed one or the other of the above religions....." That is to say "between Hindu, Buddhist, Sikh, etc....."

In other words, the position was this. Under the 1872 Act, those who married under it had to say that they did not -neither of the parties- belonged to any of the specified religions, that is to say had no personal laws of their own. If you had a personal law which governed you, you were not permitted to marry under the Special Marriage Act of 1872. In point of fact, however, marriages did take place between parties who did belong to these religions, in spite of the prohibition, but they made false declarations to the effect that they did not belong to these religions.

In order to get rid of this evil practice of making false declarations, Sir Hari Singh Gour said: "What is all this? Do away with these provisions and allow marriages between persons who belong to these prohibited religions." But the condition he made was that both the parties must belong to the same religion. Now the characteristic feature of the present Bill is that we are doing away with any difference in the matter of religion for the purpose of marriage. Those persons who belong to defferent religions might also marry; a Hindu may marry a Muslim: a Muslim may marry a Hindu; a Hindu may marry a Christian, and so on. That is the characteristic feature.

In judging this Bill, you must not apply the tests which you would apply if you were dealing with, say, a Marriage Bill only for Hindus or only for Muslims or only for Christians. It is a general Bill; it approximates to а uniform code of law for marriage for the whole of India. approaching to what is laid down in the Directive Principles of the Constitution in article 44. Therefore, we must judge the Bill with reference to the scope and object of this measure; it ₩ill not do to apply other tests.

It is said: Well, there is a Hindu Marriage and Divorce Bill; why then is this Bill brought forward? This is not meant only for Hindus.....

Shri N. C. Chatterjee: That was not the point. The point was why introduce Chapter IV; do not have it.....

Shri Biswas: I have not much time to deal with that point. I shall deal with that when you come to that particular provision in that Chapter to which he is taking objection. We shall have time enough to discuss that in the course of clause by clause consideration. If I digress into that, possibly I shall take more time then I have at my disposal now.

The first point that I want to emphasise for the consideration of the House is that you must not apply other tests for the purpose of appraising this measure which is a unique measure so far as India is concerned, introduced for the first time in this year, not before. We must not get away from that basic fact.

Then, as I was saying, although it, was criticised during the last session, there was an under-current of feeling that the country needed such a measure. Because we are no longer in 1872 or even in 1923; we have other ideas; society has progressed. Social legislation must keep pace with the times. And, as I have always maintained, it is the function of law to keep pace with and march abreast of the times. If there have been changes in social conditions, laws must adopt and be adopted to them. And that has been the characteristic feature of Hindu Law as well, as my hon. friends rightly pointed out. It is the adaptability of that law which accounts for its vitality. the inherent vitality which has kept notwithit alive through centuries standing the innumerable shocks that it might have received. It has survived them, and it will survive still. And if this, namely this Special Marriage Act, is regarded by some of my hon. friends as a shock to Hindu religion or Hindu culture. I am sure that Hindu

### [Shri Biswas]

religion and Hindu culture and Hindu civilization will be able to bear this shock.

Shri Nand Lai Sharma (Sikar): I suppose it is not the last shock.

Shri Biswas: I wish my friend had spoken in English. In that case I could have followed him much better. He gave me a shock which I could not absorb!

I will just now deal with a few points -not all, because I cannot cover every point-in a general way, only the important questions. Take the question of age. Different views have been expressed as to the age of the parties for marriage under this law. Leaving aside the suggestions which were made by Acharya Kripalani in the House on the other occasion, bordering almost, I will not say on the ludicrous, but at least humorous, there are only two suggestions worth considering, namely whether we should retain the age of twenty-one years as suggested by the Rajya Sabha, or whether we should restore the age of eighteen years as recommended by the Joint Committee. Eighteen years, as we know, is the age of majority for practically all purposes. And the personal laws of the parties allow marriage long before the age of eighteen. If under the ordinary law a person is competent to enter into any form of contract when he has attained the age of eighteen, there is hardly any reason why he should be made to wait till he attains the age of twenty-one for the purpose of entering into a marriage. Moreover, fixing the age at twenty-one may probably deny to the couple the advantage that they might otherwise have had in having the advice of their guardians, as we provided in the original draft of the Bill. It is common knowledge that in India women in particular mature early, and therefore to make them wait till they attain twenty-one years may not be very desirable. On the whole, the

proper course in my opinion will be to restore the age of eighteen and provide that where the parties are between the ages of eighteen and twentyone, the consent of the guardian should be obtained. This is a matter which the House will have to decide.

In this connection one other point may also be considered. Because the age was raised to twenty-one we eliminated all reference to guardians. If, however, you accept the proposal to reduce the age to eighteen, then you have got to restore that provision. If a guardian is necessary, the expression should be so defined as to restrict it to certain well defined persons like father, mother and the court guardian, so that other pepole who are not interested in the marriage do not interfere with the well being of the couple.

1 P.M.

Then, I come to the question of the apparent inconsistency between clause 4(d) and clause 15(e) as regards customarv variations in the prohibited degrees. This matter has been dwelt upon at great length by many speakers on the last occasion and also by several speakers today. While some wanted the inconsistency to be removed by recasting clause 4 (d) in the same manner as clause 15(e), there were others who felt that customs should have no place in this Bill and therefore clause 15(e) should be recast in the form in which clause 4(d) appears. This is a matter, again, which the House will have to decide for itself. This matter requires very careful consideration. I may state my own view and it is this. In a Bill of this nature, there should be no room for any custom. We are enacting a law for all. Therefore, there is no room for any custom. If any one wishes to follow the customary law, it is open to him to marry under his personal law.

Shri N. C. Chatterjee: He cannot have it both ways.

Shri Biswas: He need not marry under this Special Marriages Act.

There is another point. If one custom prevailing in one part of India is recognised, there is no reason why another custom prevailing in another part of India should not be similarly recognised. Customs may vary not only from place to place, but also from community to community. This is a general law which, as I have said is intended to apply to all persons in India who may seek to take advantage of it. No doubt, it should be so framed that the maximum number of persons become eligible to take advantage of these provisions. From this point of view, the prohibited degrees have been so defined as to constitute a minimum restriction. In framing such a definition regard was had to what may be termed the law of eugenics. In the olden days, when community life was more common and people lived together, the prohibited degrees were naturally much wider. The ancient sages felt that unless some strict rules were laid down, the living together of men promiscuous and women might lead to the lowering down of morals in society, and therefore the prohibited degrees were so fixed as to leave out the possibility of any alliances taking place within the community. Those reasons are not valid now. In fact, the sapinda rule, so far as the Hindus are concerned, has already been broken in many parts of India. In the circumstances, it was felt that we should aim only at a prohibited definition of rational modern degrees, having regard to conditions. It will not do to define prohibited degrees in terms of the Hindu law, up to seven generations on the father's side and up to five generations on the mother's side. This is a law for all, and to calculate the degrees in that way would be not a very easy matter. Therefore. to specify the relations who come withthe prohibited degrees was the in easiest thing.

Shri N. C. Chatterjee: Shri S. S. More was not serious.

Shri Biswas: Shri U. M. Trivedi suggested that we were copying this country or that country. We are not like 344 L.S.D. slaves. The slavish complex is not mine, but of the hon. Members who take that view. They betray a slave mentality and a slave complex.

If I may refer to my friend Shri Tek Chand, we have read his minute of dissent and seen in what terms he has expressed himself there. In a strong language (Some Hon. Members: As usual.) he has characterised those provisions regarding the procedure for solemnisation of marriages in this Bill, as opening the door to fraud, corruption, blackmail and such like things. Very frightening words, but it is very difficult to follow the arguments. The Marriage Officer who must necessarily dispose of the proceedings in a more or less summary manner cannot be expected to go into things as if he was a civil court deciding a civil suit. The parties are sufficiently aged to know what they are doing and if there is any coercion, fraud, blackmail or such like thing, Mr. Tek Chand's services will be always at their disposal!

Shri N. C. Chatterjee: On proper consideration!

**Shri Biswas:** Of course! So, the parties will not be left without a remedy, and the Penal Code has not yet been a dead letter. In fact, in clause 25(3) of the Bill itself we have said how the parties affected may obtain relief and remedy.

I also do not understand why any and every person should have the right to object to a marriage on all sorts of possible grounds and so stand in the way of the happiness of the parties to the marriage who are the persons most vitally interested.

This brings me to the other question of publicity. Well, that is a very minor matter. We are going to provide not only that notice of the marriage will be published in the area where the District Registrar's office is situated, but also that notice will be given personally to the guardians, and that ought to remove all possible objections. That provision is not

#### [Shri Biswas]

there, but I shall be quite prepared to accept such an amendment.

Then comes the question of registration. That again is an important innovation-the right to register a marriage previously solemnized. As the Bill stands this registration is open both in the case of marriages which took place before the Act comes into force and marriages which are solemnized after the Act comes into force. A compromise has been suggested. The suggestion is that we should make it applicable only to pre-Act marriages, not to post-Act marriages, because if it applied to post-Act marriages, the result might be a successful evasion of clause 4 (d), if you leave out of it all reference to custom etc. It is laid down there that you must not come within the prohibited degrees of relationship as specified. It was said: "Well, what people will do is, they will marry according to their personal law which permits of customary variations today; after that is over, the next day they will apply for registration and thus they will evade clause 4." There is a good deal of force in that argument, and so the suggestion has been made that this clause 15, the registration clause. should be limitted only to post-Act marriages. That again is a matter which the House, I hope, will carefully consider.

Then there are other questions also to be considered in this connection. Well, I will reserve that till the next stage.

Shri B. N. Misra (Bilaspur-Durg-Raipur): What about the mutual consent?

Shri Biswas: I shall not deal with registration any further. I am proceeding serially. Then, the question of joint family, clause 19, has received the greatest attention in the other House and also in this House. But the fears, are rather sentimental. What will happen is this. If the fact of

marriage effects a severance from the joint family, the member of the joint family who marries under this Bill will be reduced to the status of a Dayabhaga coparcener, and not a Mithakshara coparcener. It does not cut him off from the right of common worship with other members of the family. He has not got to go out lock, stock and barrel. It only affects a notional partition. That is to say, his interest in the coparcenary property, which was a fluctuating interest, which would vary with deaths and births in the family, will become fixed just as under the Estate Duty Act; notionally, he will be a member of an undivided family, and therefore, you know exactly what his share or interest is. That is the effect of severance. There is nothing else. We are providing that if he has children by the first wife, it does not affect them; those children will be governed by their own laws, such as the Hindu law of succession, for instance. But so far as the man who marries, who will be served from the family is concerned, supposing he has any issue by the marriage, the Indian Succession Act would apply to them.

**Shri V. G. Deshpande:** What will happen if he marries the same wife, and registers that marriage?

Shri Biswas: I shall come to that at a later stage. What I am pointing out now is that severance from a joint family does not necessarily mean that the man has got to get out of the house lock, stock and barrel. On the other hand, there is a good deal of advantage. If the Indian Succession Act is to apply, that means his daughter will get a full share, and not merely a half-share that is going to be provided in the Hindu Succession Bill. For those people, who are situated like myself, who unfortunately are blessed only with daughters and no sons, T may think that this is a much better thing to have.

Shri A. M. Thomas (Ernakulam): Daughters are more affectionate. Shri N. C. Chatterjee: He cannot apply for registration.

Shri Biswas: I was only arguing that the Indian Succession Act is sometimes a benefit, and not a disadvantage. That was what I was pointing out.

1 now come to the question of divorce by consent. This is one provision which has evoked the greatest controversy. It is quite true that in advanced many of the countries, divorce by mutual consent is not permitted. Having regard to the sanctity of marriage, and having regard to the fact that the State is interested in preserving marriages and not in breaking them, except in extreme cases, divorce by mutual consent may not be looked upon with favour. Moreover, in India, this provision is quite capable of being particularly because the misused, woman has no economic independence and is still in a very backward state. It is not necessary to say that divorce by mutual consent exists even in some parts of India like Malabar, or, say, in our neighbouring country, Burma. The property laws in these two territories, Malabar and Burma, are so framed that their women need not be at the mercy of men for anything, and therefore, divorce by mutual consent has probably not produced any disastrous consequences. In passing, I may observes that I have received representations from one or two persons from Malabar, complaining of the position of men in that society, and comparing their lot with the lot of Hindu widows in the rest of India. Consequently, it is not correct to draw any inspiration from the south-west corners of India always. If this provision were allowed to remain-and that is one more important point which I would like to mention-it may very well happen that in no case will the consent of the woman be voluntary

On the other hand, it would be argued that where two parties have so fallen out that the relationship between the two has become so estranged that it has become impossible for them to live together any longer, and where there is no other matrimonial fault, it is but right that they should be allowed to separate. This is really not making a mockery of marriage, but merely providing a better method by which such persons are allowed to part in peace.

Perhaps if the clause was redrafted so as to provide that the application to court should be jointly made, that after the application a period be allowed for *locus paenitentiae* and that certain other conditions should precede the maintainability of such application, it may be made more acceptable. But this is a matter which the House will carefully consider when we come to the clause by clause stage.

I do not think I need take up any further time because I have dealt with the important points, and detailed consideration will wait till we take up clause by clause.

Mr. Chairman. The question is:

"That the Bill to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce, as passed by the Rajya Sabha, be taken into consideration."

The motion was adopted.

Mr. Chairman: The House will now stand adjourned till 8-15 a.m. tomorrow.

The Lok Sabha then adjourned till a Quarter Past Eight of the Clock on Thursday, the 2nd September, 1954.