[Mr. Deputy-Speaker]

being a Member of the Select Committee and moving an amendment, through a motion. He did not make the motion at all.

The question is:

"That the Bill further to amend the Coffee Market Expansion Act, 1942, be referred to a Select Committee consisting of Shri R. Venkatraman, Shri C. R. Narasimhan, Shri Birendranath Katham, Shri Laisram Jogeswar Singh, Shri Vyankatrao Pirajirao Pawar, Shri Chandra Shankar Bhatt, Shri Amar Singh Sabji Damar, Shri Goswamiraja Sahdeo Bharati, Shri Wasudeo Shridhar Kirolikar, Shri Raghavendrarao Srinivasrao, Shri H. Siddananjappa, Shri N. Rachiah, Shri K. Sakthivadivel Gounder, Shri George Thomas Kottukapally, Shri N. Somana, Shri Hem Raj, Shri P. C. Bose, Shri Nayan Tara Das, Shri Bhagwat Jha Azad, Dr. Satyanarain Sinha, Shri Gajendra Prasad Sinha, Shri Baij Nath Kureel, Shri Vishwanath Prasad, Shrimati Ganga Devi, Seth Achal Singh, Shri Har Prasad Singh, Shri Badshah Gupta, Shri K. G. Wodeyar, Shri R. N. Singh, Shri K. A. Damodara Menon, Shri K. Ananda Nambiar, Shri M. D. Ramasami, Dr. D. Ramchander, Shri Y. Gandilingana Gowd, Dr. Indubhai B. Amin, Shri D. P. Karmarkar, and Shri T. T. Krishnamachari with instructions to report by the last day of the first week of the next Session."

The motion was adopted.

SPECIAL MARRIAGE BILL

Mr. Deputy-Speaker: The House will now take up consideration of the Special Marriage Bill brought up by the hon. Minister of Law, Shri Biswas. I have got a list of names of hon. Members who took part in the Hindu Marriage and Divorce Bill and also on this Bill, at the time of making the motion for reference to the Joint Select Committee. As the session is coming to a close, just after the hon. Minister concludes, I will request those hon. Members who have not yet taken any part in the proceedings, from the commencement of this session down to this day,—they may kindly pass on chits—to speak. I shall give them preference over all others in the House.

The Minister of Law and Minority Affairs (Shri Biswas): What about the time allotted to this Bill? The Business Advisory Committee had allotted eight hours. Does that stand?

Shri H. N. Mukerjee (Calcutta—North-East): In the Business Advisory Committee, we decided on eight hours to be allotted to this Bill on certain considerations. After the Special Marriage Bill was discussed in the Council of States, with some very basic alterations having been made, the whole position has changed to such an extent that I do not think it will be possible for us to have anything like an adequate discussion inside of eight hours.

Mr. Deputy-Speaker: How long did it take in the other House?

Shri Biswas: Eight sittings—seven days.

Mr. Deputy-Speaker: How many hours?

Shri Biswas: Eight multiplied by four: 32 hours.

Mr. Deputy-Speaker: Eight hours has been prescribed for all the stages of the Bill, for consideration, for clause by clause discussion and the final reading also. Possibly because it was the originating House, more time was given there and this is only a revising House.

Shri H. N. Mukerjee: Actually, when the Law Minister moved his motion for reference to the Select Committee of the Hindu Marriage and Divorce Bill, he referred to the Special Marriage Bill and said that certain very basic alterations have

been made in the Bill in that House. That being so, since we are meeting till the 21st, there are more than eight hours and we may decide that the rest of the time at our disposal may be devoted to the general discussion of the Bill leaving the other stages to the next session. If there is any divergence of views between this House and the other House, naturally they have to be thrashed out in joint session. That being so, I suggest......

Shri Gadgil (Poona Central) *rose*—

Mr. Deputy-Speaker: Let me understand Mr. Mukerjee's suggestion so that the House may understand it. Thereafter, I will allow Mr. Gadgil and others to say what they have to say. If we carry on the general discussion on this Bill till the end of the session, there will be 12 hours and 45 minutes.

Shri H. N. Mukerjee: In that period of time we can discuss the general principles and then we can leave the consideration clause by clause to the next session.

Shri Biswas: I have no objection to that course. Having regard to the changes that have been made in the other House, it is just as well that Members of this House should ask for sufficient time to examine this Bill.

Shri Gadgil: When this Bill was referred, at the instance of the other House, to a Joint Select Committee, it was then clearly understood that the scope of the discussion, when this Bill would come to this House after it has been passed by the other House, would be completely wide, and that everything could be discussed and it should not be taken as if it is a report from a Select Committee, where further discussion is limited to whatever is stated. In my humble opinion, all the principles on which this Bill is based and passed by the other House and not merely the four main changes made by that House are open for discussion. I may, therefore, request that so far as the giving of opportunity to speak is concerned, it should not be confined to this Member or that Member, because here it is as if it is a new Bill. Therefore, you must use your discretion in a generous manner so that everybody who has something, by way of contribution, to make, should be allowed an opportunity.

Mr. Deputy-Speaker: The hon. Member has always been an exception in this House. I shall try to do so. Of course, I remember fully now that at that stage when the motion for a Joint Select Committee was made, it was clearly understood—if I am not wrong—that it ought not to be understood that this House accepted the principles of the Bill. Therefore, it is entitled to go into the Bill *de novo*. I am not going to shut out anybody; but I will give an opportunity to all the Members who have not taken any part in any of the two debates so far, as much as possible; other hon. Members will also come in when they have spoken sufficiently on this. My concern is that all should get a chance. The discussion will go on till the rest of the session and the clause by clause discussion will be taken up next session. Thus we have got 12 hours and 45 minutes instead of the 8 hours originally allotted for this Bill. It is now agreed upon that this time may be utilised for the consideration stage alone.

Shri Raghavachari (Penukonda): I thought Mr. Gadgil was speaking not only for himself but for all; and you were pleased to say that he would always be an exception.

Mr. Deputy-Speaker: Not he alone; this hon. Member also.

Shri Biswas: Exceptions prove the rule.

Shri R. K. Chaudhuri (Gauhati): Those who have not had an opportunity to speak on the Special Marriage Bill should have an opportunity to speak on this Bill. We

[Shri R. K. Chaudhuri]

must take some part in some marriage (*Interruptions*).

Mr. Deputy-Speaker: So many hon. Members would like to take part in the debate. Order, order. The hon. Minister may resume his seat. Shall I put a limit on the speeches? The hon. Minister would like to have....

Shri Biswas: Half an hour or forty-five minutes.

Mr. Deputy-Speaker: The hon. Minister will have 45 minutes and the other hon. Members, fifteen minutes each, excepting the spokesmen of groups who will have twenty minutes. I shall distribute this discussion among the hon. Members of this House.

Shri Gadgil: A little more time may be given in deserving and exceptional cases.

Mr. Deputy-Speaker: Up to half an hour in special cases.

Shri C. D. Pande (Naini Tal Distt.-*cum*-Almora Distt.—South West-*cum* Bareilly Distt.—North): Those who differ should be given more time.

Shri Biswas: I beg to move:

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

I should like to make it clear at the outset that this is not part of the Hindu Code. There is that misapprehension in certain quarters. It is an attempt to lay down a uniform territorial law of marriage for the whole of India. It will be for you to consider whether the legislation which is before you has achieved that object. If it has not, I shall expect hon. Members to assist the Government in their endeavour to make this Bill a Bill of that character.

Sir, this idea of one territorial law of marriage for the whole of the country is not a new one. It originated—many of us will be surprised to here—so far back as 1868. It was the great Keshab Chandra Sen and leaders like him who felt such a law was necessary. And Keshab Sen took the initiative in this matter. In 1868, he put himself in touch with the then Viceroy and Governor-General, went up to Simla, had discussion with him and induced the Government to accept the principles of such a general legislation for the entire country. That led afterwards to the passing of what is known as the Special Marriage Act, Act III of 1872. It would be a mistake to suppose that that Act was passed only for the benefit of the *Brahmo Samaj*. No doubt, the *Brahmo Samaj*, community was principally concerned in this law, and it has been taken advantage of by members of that community. In order to be able to understand the provisions which were embodied in the original Act of 1872, it is just as well that I referred to a few facts. As you all know, the *Adi Brahmo Samaj* was the original sect of *Brahmos* that was founded by Raja Ram Mohan Roy. Then, about fifty years later, came into existence the progressive sect of *Brahmos* led by Keshab Chander Sen. Now, the marriage law of both the *Adi Brahmo Samaj* and the progressive sect was essentially the Hindu law of marriage, but there was a difference in the ceremony of marriage. The *Adi Samaj* retained portions of the orthodox ceremony, but the progressives omitted it altogether and substituted for it a special form which they devised, consisting principally of an exchange of mutual promises, accompanied by certain prayers. The question arose how far this new form of marriage was valid in law. The authority of custom could not be invoked in its favour, because this was of recent origin. Although the word 'custom' does not and may not bear the same meaning as in English law—for instance, in England, a custom, in order to fulfil the condition of antiquity, must be traceable

to the reign of Richard I—here, in India, I need not go so far back for the validity of custom, and usage for a sufficiently long duration will probably be regarded quite as good as a custom of long standing. As I said, doubts were entertained in many quarters in those days regarding the validity of the form of marriage which the progressive Brahmos adopted, and they themselves referred the matter to the Advocate-General, Mr. Cowie, for legal opinion. I have not got that opinion before me, but the opinion was against the validity of such marriages. Thereupon, the question arose as to what was to be done. In 1868, as I said, Keshab Chander Sen had already conceived the idea, along with some of the leading members of the community in those days, of a general territorial law of marriage. The opinion, which was given by the Advocate-General, gave further momentum to that movement and it then became absolutely essential for the progressive Brahmos to have a legislation which would render marriages celebrated in accordance with their new form valid. They petitioned the legislature for a special Act, and the result was Act III of 1872.

Shri R. K. Chaudhuri: You call that progressive?

Shri Biswas: I am giving you the history of the matter, and it is not for me to say whether this was progressive or regressive or aggressive.

Shri Bogawat (Ahmednagar South): What is the use of interrupting the hon. Minister?

Shri Biswas: The Adi Brahmos refused to believe and let it be believed that they were not Hindus, although they had departed from the orthodox form of marriage in respect of certain matters; in essentials, they accepted it. I need not go into the details of the *vedic* forms and so on and so forth. The Adi Brahmos claimed to be Hindus whereas the progressive Brahmos did not share that view. Therefore, the Special Marriage Act enacted a special form of marriage which would be applicable to persons who were not Hindus. In other words, the scheme of that Act was that communities, who had their own personal laws to govern them, were left to be governed by those laws, and it is only those, who did not belong to any of the recognised communities. ......

Pandit K. C. Sharma (Meerut Distt.—South): Recognised religions.

Shri Biswas: Yes, the communities are referred to by their religions such as followers of the Hindu, Parsi, Sikh, or Muslim religion. It is those who do not belong to these categories who come under this Act, and it was for them that a Special Marriage Act was passed. So far as people professing the religions which I have mentioned are concerned, they were left to be governed by the laws which already applied to them. That Act was passed in 1872, and it does not affect the validity of any mode of contracting marriage. It merely enacts a special form of marriage for certain people who did not claim to be still within the fold of those communities. That is what happened. The Bill was there, and advantage was taken of its provisions in Bengal mostly by members of the Brahmo Samaj, and I do not know what was the case in other parts of the country. You will find that it was laid down in that Act as originally passed that in order to be able to contract a marriage under its provisions, the parties to the marriage would have to sign a declaration that neither of them belonged to any of the religions specified. *i.e.*, any community which had any personal law to govern it. I will just as well read the actual words of that Act.

Shri R. K. Chaudhuri: If the hon. Minister will excuse me, he is handling this legislation as a sort of brief. I would like him to emphasise those points which coincide with his personal view, so that we may be guided by them.

Shri Biswas: If my hon. friend has a little patience, he will have everything from me. Possibly I may ex-

[Shri Biswas]

ceed the time-limit because I want to satisfy all the hon. Members.

Mr. Deputy-Speaker: The hon. Minister may take as much time as he wants.

Shri Biswas: I was just going to read from the Act of 1872.

It says:

> "Marriages may be celebrated under this Act between persons neither of whom, professes, the Christian, or the Jewish, or the Hindu, or the Mohammedan, or the Parsi, or the Buddhist or the Sikh or the Jaina religion."

Then you were required to sign a declaration in the prescribed form stating that you did not belong to these religions. The result was that in a large number of cases, although the parties claimed to be not Hindus on signing such a declaration to get married under this law—well, this was hardly the right thing to do; at any rate that was the opinion held by many people—when the question of succession arose, these parties who had married under this Act were not then prepared to say that they were not Hindus, because they wanted to have the benefits of the Hindu law for the purposes of succession.

Shri Gidwani (Thana): Only for marriage they said they were not Hindus.

Shri Biswas: Only for the purposes of marriage under this Act they gave the declaration that they were not Hindus.

An Hon. Member: Very wise people.

Shri Biswas: Wise or unwise I do not know, but this question arose in many cases and the Privy Council had to give its decision. The Privy Council said that mere departure from orthodox forms would not make a Hindu cease to be a Hindu. Then, there were cases in which it was held that the declaration required by the Act of 1872 was only for the purposes of marriage and would not affect the question of their being Hindus or non-Hindus for other purposes. So, the position was rectified in such cases. But, instead of depending upon the judgments of courts which might—on this last point I do not think there is a Privy Council decision—differ from one another, and the judgment of one court might not be accepted by another; instead of relying on such uncertain factors, many leaders thought that the best course would be to amend the legislation, and the honour of initiating such legislation fell to the late Sir Hari Singh Gour. He said: "what is this; for one purpose you say, I am not a Hindu, and for another purpose you claim to be a Hindu. It does not help anybody to encourage such practices. It is better that the Legislature should intervene, amend the Act and provide for marriages under that Act even between persons who would not be prepared to forswear their religion". Then, this amendment was introduced.

[PANDIT THAKUR DAS BHARGAVA *in the Chair.*]

After the words which I have already read, these words were added:

> "or between persons each of whom professes one or other of the following religions: Hindus, Buddhist, Sikh or Jaina religion, upon the following conditions:"

Shri Algu Rai Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): Not Muslims?

11 A.M.

Shri Biswas: Not Muslims. I will explain it; just hold yourself in patience.

Sir, it was provided that if either party to the marriage belonged to one of these religions which are specified here, well, then the marriage could be solemnized under this Act. The religions which are specified in this context are: Hindu, Buddhist, Sikh or Jaina; Christian, Jewish, Mohammedan and Parsi religions are excluded.

Shri R. K. Chaudhuri: If either of the party belongs to Hindu religion, will they be governed by this Act? Supposing a Muslim wanted to marry to Hindu...

Shri Biswas: Under the provisions of the original Act, none of the parties to the marriage could belong to any of the recognised forms of religion mentioned therein. Now, two persons if they belong to the same religion will be allowed to marry, but this privilege is confined only to Hindus, Buddhists, Sikhs and Jains. That is because the main rights which were secured by this Act were monogamy and divorce. The religions which were excluded already provided for monogamy and divorce. The Christian marriage is monogamous and divorce is permitted. Muslims also have the right of divorce, though it is not monogamous.

Shri Punnoose (Alleppey): How do you say that Christians also allow divorce? Christian law does not allow divorce.

Shri Biswas: Except Roman Catholics. Sir Hari Singh Gour did not include these religions on the ground that those who professed them already enjoyed the benefits which it was the object of this law to provide for. That is the explanation. Although among Christians the Roman Catholics have recognised monogamy but not divorce, these exceptions were not taken into account, but it was on the general ground that the exclusion was made.

Then Sir, the question arises in what respect the present Bill which is before you is a departure from the original Act. I was questioned in the other House as to why I had not introduced just a short Bill amending the Special Marriage Act, just as Sir Hari Singh Gour amended the Act in 1923 by the addition of a few words. I was asked why I did not similarly bring in a Bill which will say that marriages will now be permissible under this law even where the parties belonged to different religions; that is to say, people could marry under this law irrespective of any religion—a Hindu could marry a Muslim; a Muslim could marry a Christian; a Christian could marry a Jain and so on. The question was put to me whether in this way it would not have been enough to bring in a short amending Bill making such a provision.

Shri R. K. Chaudhuri: Freedom of marriage.

Acharya Kripalani (Bhagalpur *cum* Purnea): And communists?

Shri Punnoose: Communists marry Praja Socialists.

Shri Biswas: Unfortunately, the stage has not yet been reached when the law will recognise these distinctions, either for political or social purposes.

An Hon. Member: It is all inclusive.

Shri Biswas: Sir, I will ask you to compare the Bill as I introduced it, the Bill as it has emerged from the Select Committee and the Bill as it has been passed by the Council of States. If you make this comparison, that will provide the answer to the question and complete justification for the step I have taken, —a step to bring a consolidated law into existence. If you refer to the Notes on Clauses which were appended to the Bill as I had introduced it, you will find a long list is given there of clauses which corresponded to existing provisions of the Special Marriage Act. I made no change whatsoever. I left those clauses as they were, specifically pointing out what they were. The idea was this. The original Act was enacted, as I have said, in 1872. Much water had flowed down the river since, and I wanted to find out the reactions of the public not merely to the fundamental change regarding the religion of the parties between whom marriages could be celebrated, but also to the other provisions—whether or not in public opinion they had become out of date and what changes

[Shri Biswas]

they suggested in respect of those matters. The opinions we received amply justified my action, because many amendments, many changes, were suggested in respect of some of the original provisions of the Act of 1872 which were retained in the Bill. Then, as I said the Joint Select Committee also got an opportunity because the Bill was not limited to any particular matter. It laid the whole Act open for discussion and amendment, if necessary, and they seized the opportunity of introducing vital changes.

Take for instance, the question of divorce. The original Act merely stated that the provisions of the Indian Divorce Act will apply, but the Divorce Act itself is a very old enactment. It applies to Christians here now. The Christians are not satisfied with its provisions. That Act requires to be amended in accordance with changing conditions. It has got to be brought up to date. In point of fact, I may state that we have under consideration a revision of the Indian Divorce Act for Christians, and the Christian Marriage Act is also under consideration. But, here what the Joint Committee did was to have a set of self-contained provisions for divorce to be applicable to marriages under this Act included.

Then, in regard to other matters also, you will find changes were made. As regards divorce, there were changes made, but the most, what shall I say, revolutionary change was made by the Council of States itself. Of course, if the whole Act was not open before them, if there was only short amending Bill, all this possibly would have had to be ruled out as outside the scope of the Bill. But I was in favour of comprehensive self-contained legislation which would take full note of the changes which have taken place in society since the original Act was passed in 1872.

There can be no doubt that this Bill has aroused considerable interest not merely among Members of Parliament but also outside if I can judge from the telegrams and letters I have been receiving almost every day. One interesting letter I might refer to in passing. One gentleman writes: "I have a daughter to marry, age such and such, complexion like this, qualifications such and such and so on and so forth: I want a bridegroom who should have these qualifications. But I leave it to you to choose the bridegroom for my daughter, and I want that this should be the first marriage to be solemnised under this Act, and it should be solemnised in your presence". I have not yet sent a reply. Possibly I shall do so after I get the reactions of this House. So, I say there can be no question that this Bill has aroused a good deal of interest among all sections of the community.

Shri Gidwani: Has the hon. Minister accepted the proposal? Is he arranging the marriage?

Shri Biswas: Did I not say I have not yet sent the reply and I am waiting for the reactions of this House?

Shri R. K. Chaudhuri: On a point of information, has he sounded the bachelor Members of this House with regard to that proposal?

Acharya Kripalani: Dr. Gidwani is a bachelor.

Shri R. K. Chaudhuri: No, you have not done it.

Mr. Chairman: The hon. Member need not interrupt.

Shri Biswas: Notwithstanding opposition, there has been a large measure of appreciation of the scope and object of this legislation. In fact, in the other House, if I might refer to it, the test that was applied in considering the amendments was whether the particular amendment would or would not encourage and facilitate marriages under this law. If they thought any provision would operate

in the slightest degree as an impediment, they at once said, delete it. What does that show? So great was the anxiety to have marriages solemnized under this uniform code of territorial law of marriage, that all obstacles were sought to be removed. They said, unless you did that, you would not attain the objective which is set out in article 44 of the Constitution.

This is a permissive measure. It is open to any parties to marry under the conditions laid down here if they so choose. It is not suggested that they must marry under this law. Much of the opposition is based on this misapprehension, as if the Hindus were bound to and could marry only under this law.

Then, another question was asked. The Hindu Marriage and Divorce Bill is already before the House. That also provides for monogamy and divorce. It was asked, why then have this separate law for the Hindus? Well, merely because the personal law of one community requires monogamy and permits divorce, it does not follow that there must not be a general law, and the general law must not make any provision for parties who have their own personal laws to govern them. If the Hindus think that the Hindu Marriage and Divorce Bill, when it becomes law, will give them all that they want, they need not come under this. This is purely permissive.

Shri Gidwani: My question is why should a secular State have a special law for it?

Shri Biswas: I shall leave all these questions to be decided by the parties concerned. We need not act as advisers.

Let me now refer specifically to some of the salient features of this Bill. The first is, as I have already pointed out, marriage under this law will not require the parties to forswear their religion or to declare that they do not belong to any religion. Any two persons residing in India will be eligible to marry under the provisions of this law. It is permissive, no doubt, but it is compulsory only to this extent that if they marry under this law, the conditions herein laid down must apply. They must make up their minds as to whether they wish to be subjected to these conditions. If they do not choose to be subjected to these conditions, it is open to them to discard this, and to marry according to the law which now governs them.

The Act of 1872 applies to two categories of persons, firstly to persons who do not profess any of the major religions of the country, and secondly to persons who profess the Hindu, Buddhist, Sikh or Jain religions. The result is that this Act does not permit any inter-religious marriages, unless the parties are prepared to forswear their religions. If they are Hindus, then both of them must be Hindus; if they are Buddhists, both of them must be Buddhists; if they are Sikhs, both of them must be Sikhs, and if they are Jains, both of them must be Jains, in order that they might marry under the Act of 1872, as it stands now. For the first time now, we are going to do away with all distinctions based upon religion. The Bill, if passed, will permit of inter-religious marriages. Religious differences are put out of the way altogether. Government feel that the time has now come when religious difference should not stand in the way of a couple getting together, if they feel that their lives are cast together, and the fact of their marriage should not in any way affect their religious beliefs. That is the main change.

Some Hon. Members: We on this side are not able to hear you.

Shri Biswas: If I turn to your side, the other side will not hear; if I turn to the other side, this side will not hear.

Mr. Chairman: If there is perfact silence in the House, it is likely that the hon. Minister will be audible.

Shri Biswas: Incidentally, I may also point out that the law will also apply to citizens of India, who may be residing abroad, and who want to take the benefit of this measure. So far as India is concerned, any two persons residing here, whether they are citizens or not, may marry under this law, and this will be the territorial law of marriage for India. As regards marriages abroad, it is only citizens of India, who are residing abroad, who will be entitled to marry under this Act.

Shri R. K. Chaudhuri: Can the Hindus residing in Pakistan, but who have not come to India, marry under this law?

Shri Biswas: If they are citizens of India, they will be entitled to marry even in Pakistan. But if they are not citizens of India, they cannot.

Shri Radha Raman (Delhi City): If one is?

Shri Biswas: This question was also raised in the other House. What about those cases in which one of the parties to a marriage abroad is an Indian citizen, while the other is not? That raises the question of marriages between citizens of this country and non-citizens of this country. That is a subject which should form the basis of special legislation on the lines of the U.K. Foreign Marriages Registration Act—I may not be giving the name of that Act correctly—but here, I may state that Government have under consideration such a measure. That will be a separate legislation dealing with cases where one party is a citizen of India residing abroad, and the other is a foreigner.

Shri Gidwani: But here, a citizen can marry a non-citizen.

Shri Biswas: Those cases will form the subject-matter of new legislation which Government have under contemplation.

Shri Radha Raman: Can we not include it in this?

Shri Biswas: It will not be appropriate here. That is a different question, and therefore, it ought to be dealt with on a different basis.

Another special feature of this Bill is in regard to registration of marriages. It is not a provision for registration of marriages solemnised under this Act. That is quite a simple matter. Even under the Hindu law, you may require, if you so choose, that what is called a sacramental marriage or *dharmic* marriage should also be registered for statistical purposes and so on. It is not that kind of registration, which I am speaking of, in connection with this Bill. The provision for registration here is that marriages which might have been solemnised in other forms will also be eligible for registration under this measure. The effect of the registration will be as if the marriage had been solemnised under the provisions of this law. It will attract the benefits which this law seeks to confer.

There are various questions of detail involved in this, which were raised there, and which may have to be solved here as well. I may just indicate one or two of these, for instance. The original idea was this. Suppose this law in its present form was in force at the time the previous marriage took place, the test is whether that marriage could then be solemnised under the Act. If so, it should be possible for the parties to the earlier marriage to get that earlier marriage registered under the provisions of this Act. The consequence will be that the provisions of this Act will apply retrospectively. That was the basic idea. But in working it out, several difficulties had to be faced. What would happen, if that earlier marriage was invalid? Will registration cure invalid marriages? Supposing it was invalid according to the law under which that marriage took place then, would it still be registrable so as to cure that defect? Then, the question of customary variations in certain respects, which would go to the root of the validity of the marriage, was also raised.

In South India, as we know, marriages are contracted between near relations, which would be considered repugnant in many other parts of the country. In Madras, I am told, a person could marry his sister's daughter. But that is considered to be within prohibited degrees of relationship in other parts of the country, and such a marriage would be regarded as an invalid or void marriage. In the present Bill, we have a provision in this regard. Although it is a general obligation that the parties must not be within certain prohibited degrees of relationship, we have not sought to define the degrees of prohibited relationship in terms in which they are defined in the Hindu law, by saying that they must not be *sapinda* relations; they must not be within so many degrees on the father's side, and so many degrees on the mother's side, and so on. What we have done as a result of the Joint Select Committee's advice is to prepare lists of relations who would be regarded as prohibited for purposes of marriage.

These lists were prepared without any reference to customary variations. These lists—one for man and one for woman—were prepared on general grounds of eugenics, that is, relations who would be considered consanguinous, between whom marriages should not be allowed on eugenic grounds. It is only such persons who are sought to be included in these lists. But if you have to admit customary variations, the lists would have to be very much widened or curtailed. We thought that this was a general measure for the whole of India and there ought to be no place in it for variations because of custom. If you want to marry according to your customary law, it is open to you to do so. You need not come under the provisions of this Act. This being an Act for the whole of India, irrespective of caste, community, religion and so on, it will not do to introduce or to find place for customary variations; it must be a general law applicable to all. If you say that we must make provision for the custom which prevails in Madras, then I will also have to provide for the custom that prevails in U. P. and so on. There are so many varieties of customs in such a wide country; that cannot be helped. Are you, therefore, going to burden this general law with exceptions derived from or based on these various customs? The line that Government took was to avoid all reference to customs. When the Joint Select Committee was considering this question, they thought that in the case of marriages solemnised previously but proposed to be registered under this law, some allowance ought to be made for customary variations and, therefore, they introduced an amendment to clause 15 in which it was said that the degrees of prohibited relationship which were specified in the two lists should be subject to customary variations. I might just as well read only three or four lines regarding the change that they have made. The clause stood originally like this:

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

The Joint Select Committee added after these words some other words reading as follows:

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

Not in respect of marriages solemnised for the first time under this Act, but in respect of marriages solemnised previously under some other law is this exception made, that is to say, if that marriage was solemnised in accordance with the custom, then that also should be registrable under the Act. These are the questions which this House will have to decide. What I was just pointing out at this stage was that this new provision for registration of previous marriages is one of the special features of the Bill.

In this connection I might just refer to one other small point of controversy. In stating who are the parties

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who are entitled to register their previous marriages, we have said that one of the conditions to be fulfilled for registration is that so far as the previous marriage is concerned, a ceremony of marriage must have been performed between the parties and the parties must have been since living together as husband and wife. The question was specifically raised: does this cover marriages in regard to which some doubts might be entertained as to whether they were valid or not? Will invalid marriages or marriages of doubtful validity be covered and made valid by the fact of registration? That was one point which was raised and it would have to be considered by this House.

Shri R. K. Chaudhuri: What is the force of custom in this law? Is custom at all recognised?

Shri Biswas: The principal provision is that there is no place for custom. But these changes were sought to be introduced.

Then we come to the provision for divorce. As I have said, the Act of 1872 made the Indian Divorce Act applicable. The Joint Select Committee has now formulated a set of provisions which will cover the whole ground of divorce so far as divorce under this law is concerned. As I said, the Divorce Act is now regarded as out of date and it is under consideration, what changes should be made. In England, for instance, there has been a new Divorce Act passed, I believe, as recently as 1950.

These are the important features. First of all, there is monogamy, to which I have already referred, then divorce, then registration, and then this elimination of all considerations of religion. Then I suppose it would be appropriate if I now drew the attention of the House to four of the more important changes which have been made in the Bill in the Council of States. The first of these relates to the increase of the age-limit for marriage of boys and girls to 21. The provision in the Bill was—you will find that in clause 4—that the parties had completed the age of 18 years and that each party, if he or she had not completed the age of 21 years, had obtained the consent of his or her father or guardian to the marriage. The Joint Select Committee did not accept this proposal and they raised the age-limit for marriages to 21—both for the boy and the girl. Consequential on this, the provision for guardian's consent has gone out. With the age as 21, they will be majors and therefore there is no question of obtaining consent. Consent was required only in cases where the parties were 18 but below 21 years of age. Of course, 18 in the original Bill as I introduced it, was the limit laid down. That is because 18 is the age of majority under the Indian Majority Act for ordinary purposes.

Shri R. K. Chaudhuri: What is the age of majority under the present Act?

Shri Biswas: The age under the present Indian Majority Act is 18. But the Indian Majority Act does not apply for purposes of marriage and some other things. But we took the age limit.........

Shrimati Sushama Sen (Bhagalpur South): The Joint Select Committee, as far as I know, raised the age of the girl to 18, not to 21, and of the boy to 21. I think the Council of States made it 21, not the Joint Select Committee.

Shri Biswas: Whether the Joint Select Committee made the change or the Council of States made it, does not matter. The change has been made. There have been so many changes, so many discussions that I confess that I sometimes get mixed up, and I will ask the House to excuse me if I make such mistakes.

Shri C. D. Pande: You did not make the mistake. You were correct. She did not understand you.

Shri Biswas: The Bill as it is now before you makes 21 the age limit and

therefore all reference to guardian's consent has been eliminated. Of course, arguments can be advanced on either side.

Then the next change is as regards prohibited degrees. That I have already touched. I have read the amendment which was introduced in the Joint Select Committee to clause 15. That was not in the original Bill as introduced. The other House also retained this provision in clause 15. There were numerous amendments on one side or the other, but then ultimately, by a vote—I mean to say, it was a free vote in the other House—it was passed. Acting on my own personal view, I feel that in matters of social legislation, the decision should be left to the House, without a party whip. That is the course I follow.

Shri C. D. Pande: It has been agreed to by the party also.

Shri Biswas: If drastic changes are considered revolutionary, then, some sort of request—I don't say whip—will have to be made to those......

An Hon. Member: Persuasion.

Shri Biswas: ......who are of that point of view. If anybody has conscientious objection, nobody will force him to go against his conscience. I think the best course would be that hon. Members should meet and discuss among themselves as to what should be the attitude. That might save a lot of time. If, clause by clause discussion goes on, if every clause is sought to be changed by an amendment, then it might require a far greater number of days, and therefore, at least for my sake, I would appeal to hon. Members to come to some agreed decision outside the House so that I may be saved the trouble of answering to every amendment. I am here to serve you, and I shall do my best.

The next question is regarding the legitimacy of children born of marriages which may be declared void. What marriages will be declared void or regarded as void? There should be marriages held in contravention of the basic conditions of validity of marriage, as laid down in the Act. These conditions are to be found in clause 4:

"(a) neither party has a spouse living;

(b) neither party is an idiot or a lunatic;

(c) the parties have completed the age of twenty-one years;

(d) the parties are not within the degrees of prohibited relationship; and

(e) where the marriage is solemnized outside the territories to which this Act extends, both parties are citizens of India domiciled in the said territories."

These are the main conditions. If you insist on these conditions, then, there must be some sanction for it. Otherwise, if you say that although we are laying down these conditions, these conditions may be violated, with impunity, without attracting any adverse consequences, this becomes nugatory. So, some provision will have to be made in order that these conditions may be followed, as they are intended to be followed. But, at the same time, we have to recognise that we may be thereby vesting the sins of the parents on the children who may be born of an invalid or a void marriage. How are they responsible for their status? They have been brought into existence by parents by means of a union which is considered to be invalid, void, and so on. Therefore, we examined this clause to find out which of these conditions might probably be relaxed. Take, for instance, the condition regarding age. Suppose, the real fact is, that a party to the intended marriage, is 18 years of age. But the girl or the boy, in order that they may be enabled to marry, suppress the real fact, or it may be, they do not know the correct age.

In the declaration, they have got to give the age. They give it as permissible under the Act. Then it

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comes out upon evidence that that is not the correct age. Are you going to scrap that marriage merely because they were not of the requisite age at the date of marriage, although, at the date when the objection is raised, they had been living together, and had now grown up to be of sufficient age ? Would it be right in such a case to declare that marriage illegal and therefore to bastardise the children? That is not right. In England also, although the age is recorded, the age-limit is very low there—15. I believe any marriage which is held against the statutory age-limit is still allowed to stand, if, at the time of the objection, the parties have grown sufficiently old.

The other question is this. We say he or she must not be a lunatic or an idiot. After all, it is difficult to determine who is an idiot or who is a lunatic. The disqualification is that he must not be a lunatic or an idiot at the date of marriage. It is just possible and there have been cases where although a person is declared a lunatic, a few years later, he becomes sane. One does not know when such a thing will happen. It is very difficult even for doctors—I am not a doctor—to say, to pronounce that a man is incurably of insane mind. He has to keep the man under observation. He may have to be placed before a psychiatrist. My friend, Dr. Jaisoorya will tell you whether it is possible to cure a person, who is supposed to be a lunatic, of his lunacy. Therefore, that is a condition which you may excuse in the interests of the children. So, the original provision we made was that...

Shri S. S. More (Sholapur): Why have this prohibition at all?

Shri Biswas: All these questions will be answered later. Therefore, the povision made by the Joint Select Committee was this: where a marriage is annulled on the ground that either party was an idiot or a lunatic or on the ground that at the time of marriage eiher party thereto had not completed the age, the children begotten before the decree is made shall be specified in the decree and shall, in all respects, be deemed to be and always to have been, the legitimate children of their parents. An argument was raised in the House........

Shri S. S. More: What clause are you reading?

Shri Biswas: Clause 24(2). What was urged in the other House was, why should that be so in all cases. Why should you make an exception only in favour of children in the limited cases where the marriage is void on the ground that the party is an idiot or a lunatic or on the ground that the parties have not completed the age required?

Shri S. S. More: Will you please read from the Bill that has been introduced in this House? The clauses are not identical. We are confused.

Shri Biswas: I was going to say that this is what the Select Committee has done, and I am now referring to the changes made in the Council of States. Please wait till the last word is said on the question. I am just now indicating the provisions of the Bill, as it emerged from the Select Committee, and I am now going to tell you what the Council of States has done about it. What the Council of States did was to provide that irrespective of the grounds on which the marriage is declared void, whether it is because of non-compliance with ground No. 4(b) or 4(c), the children should be declared legitimate in all cases. In other words, even where the marriage was solemnized at a time when there was a spouse living, even if the marriage was solemnized between parties who were within prohibited degrees, we should condone these deviations from the rule laid down in rule 4, in the interests of the children.

We shall declare them legitimate even in such cases. The principle on which the Joint Committee took action was that the matter had to be looked at from the point of view of the

children, still within limits. But in the Council of States, they said it was limited in its scope and the scope should be widened. On whatever ground the marriage is avoided, the children should not suffer. Therefore, the Bill as it now stands before you reads like this, in clause 24.

Shri S. S. More: It is clause 26 now.

Shri Biswas: The numbering has changed and it is now clause 26. It reads:

> "Where a decree of nullity is granted in respect of any marriage under section 24 or section 25, any child begotten before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity."

The question is whether you will retain this provision in this amended form. That will have to be considered; I am not expressing any opinion. As a matter of fact, it was said that whatever we might do with the parents, whether the marriage was void on the ground of their being within prohibited degrees or not, the children should not be bastardised even in such cases. We appreciate that. But, what about succession? If you say that they remain legitimate, then they would be entitled to succeed in the ordinary way. They will be entitled to succeed not merely to the property of their parents, but also to that of their collaterals. So far as the father and mother are concerned, the children are their issues and therefore you may allow them to succeed to the property of their parents even if they are illegitimate— that might constitute a departure from the Hindu law which does not allow any illegitimate child to succeed—

Shri S. S. More: Under some limitations.

Shri C. D. Pande: Except under custom.

Shri Biswas: But so far as collaterals are concerned, if there is a father's brother, he might say, 'why should my property go to them? Why should it not go exclusively to my children, why should it go to the bastard children of my brother.' That is a legitimate objection. So far as the parents are concerned, they brought forth the children and they must take the responsibility for these children as well as for any other child who may be legitimate, whether by a predeceased wife or by a marriage which may be rendered valid by registration. Therefore, it has been suggested that an amendment should be moved to the effect that where such a child is declared to be legitimate, it should be provided that this will not confer on him any rights of inheritance to property other than the property of the parents, and that will be sufficient protection. That is a matter which the House will have to consider.

Shri R. K. Chaudhuri: Is there any time-limit? Supposing a marriage has been allowed within the prohibited degrees, is there any time-limit for the nullification of that marriage or can it be declared at any time?

Shri Biswas: A decree of nullity is provided for in two different kinds of cases. First, in the case of marriages which are void—void *ab initio*—and secondly in the case of voidable marriages. A void marriage means, in law, the marriage has not taken place at all. There is no marriage. There might have been concubinage but not marriage. Therefore, it relates back to the date on which the supposed marriage has taken place. The position will be as if there has been no marriage at all. But, in the case of a voidable marriage, the marriage remains valid till, on certain grounds, the court finally steps in and says that it is void. That becomes void only from the date of the decree of nullity.

Shri S. S. More: Is there any period of limitation?

Shri Biswas: You will not allow me to finish my reply, and you will come

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out with such questions. I was just going to answer the specific question which my hon. friend Mr. Chaudhuri has put to me. Only to give that answer, I was making these preliminary remarks. So far as a void marriage is concerned, there is no time-limit; it is void and it never existed. You can bring that before any court at any time. So far as a voidable marriage is concerned, there is no time-limit also except that it can be avoided only under the specific conditions laid down in the Act. As a matter of fact, the grounds for avoiding the marriage may be discovered at any time later. But it should be in the interest of the parties themselves that action should be taken to avoid the marriage at the earliest possible moment.

There are conditions specified in the clause itself. Suppose a marriage is sought to be avoided on the ground that fraud or force was practised in order to obtain the consent of one of the parties or the consent of the guardian where the guardian's consent is necessary; then the proceedings must be instituted within one year from the date on which the fraud took place or it was discovered. Subject to the provisions contained in the relevant clauses, there is no specific time-limit. for the purpose of avoiding marriages which are voidable and not void.

The last question is of divorce. The change is in support of divorce with consent. The new provision which they have introduced you will find as sub-clause (k) of clause 27:

"has lived apart from the petitioner for one year or more or the parties refuse to live together and have mutually consented to dissolve the marriage;"

The mover of this amendment stated after the amendment had been accepted by the House that the word 'or' had been mis-placed. It should have read:

"has lived apart from the petitioner for one year or more and the parties refuse to live together and have mutually consented to dissolve the marriage;"

In any case it does not express corrrectly what he wanted to propose. What happend was this. He gave notice of the amendment. There was this mistake. He got up; not only did he get up, but many others also got up and said this must be rectified, and that must be rectified, and so on and so forth. In the confusion, what happened, one does not know. When he moved the amendment, he possibly moved it with that mistake and after the clause was passed it was brought to our notice.

Shri D. C. Sharma (Hoshiarpur): May I know where this happened?

Shri Biswas: In the Council of States.

Even if we are to give effect to the wishes of the Council of States in this matter. it will be necessary to amend it for that purpose to give effect to the real wishes.

Shri S. S. More: We become the revising House now. (*Interruptions.*)

Shri Gidwani: Confusion in a confused House.

Shri Biswas: This is a question which will have to be considered, not only to see what verbal change may be necessary to give effect to the wishes of the mover, but also to go into the whole question of divorce by consent. It is a revolutionary measure; it is a departure from anything we know of in the marriage law of any community in India, except possibly in Malabar.

In Malabar, there is a provision for divorce by mutual consent. What I submit is this. Even if you accept this provision, it will be necessary to provide certain safeguards—safeguards, which have only got to be stated to find acceptance everywhere. For instance, you have to make provision for the children; you have got to make some

provision to ensure that the consent of the parties was really genuine and of their own free will, that it was not brought about by a strong husband coercing the weaker party, or even by a domineering wife coercing the poor husband.

Shri R. K. Chandhuri: That is what is generally the case.

Shri Biswas: The court has got to be satisfied that there has been this consent genuinely given. Another point is also to be taken note of. Will you allow a marriage today and a divorce tomorrow morning? There must be some compulsory time-lag between the marriage date and the date of presentation of the petition for annulment on the ground of consent—one year, two years or whatever it is. If these safeguards are not there, it will be very hard and lead to complications. Even in Russia, where divorce by cosent was allowed......

Shri Gidwani: No safeguards have been provided?

Shri Biswas: I am taking a little time to find out the exact provision from the book.

Shri Gidwani: It is in the interest...

Mr. Chairman: Let the hon. Minister proceed in his own way without any interruption.

Shri Gidwani: I wish to put him a question.

Mr. Chairman: The question is not to be put at this stage. Let the hon. Minister finish his speech and then it can be put.

Shri R. K. Chandhuri: The hon. Minister is very helpful.

Shri S. S. More: We are trying to get more light from him.

Shri Biswas: You will please give me some more time to trace it. When I read it, I was very much interested and intrigued, and I must share my knowledge with my hon. friends here.

Shri D. C. Sharma: Very kind of you.

Shri Biswas: My hon. friend here (Shri Venkataraman) will find it out for me. There they have made a rule, if there is to be a divorce by consent, go to the court, state the facts and be done with it. They have provided that some application must be made to the court. There they need not specify any grounds. The court will hold an enquiry into the circumstances which have led the parties to come to such a decision and whether they were justified in calling for a divorce. The whole matter is left to the court, which will find out if there are justifiable causes, and if it is satisfied, it will make adequate provision for the children before granting the divorce. If you are interested in the law on the subject in the People's Republic of China......

Shri R. K. Chaudhuri: Communist China?

Shri Biswas: The hon. Member may apply the epithet he likes. It says:

> "Divorce shall be granted when husband and wife both desire it. In the event of either the husband or the wife alone insisting upon divorce, it may be granted only when mediation by the district people's government and the judicial organ has failed to bring about a reconciliation."

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Even there, there must be some effort made by some responsible people, not interested directly in the parties, to bring about a reconciliation. After all, you may not call marriage a secrament as they do in Hindu law, but some sanctity must be attached to the matrimonial tie.

An. Hon. Member: Really!

Shri Biswas: Therefore, every effort must be made before you allow the parties to separate after they have brought themselves together of their own choice, and that effort must be made in order that they can continue united for as long as possible.

An Hon. Member: What magnanimity!

Shri Biswas: This is a matter which concerns not merely the parties, although they are vitally interested, but it concerns also their issue, and society itself. One swallow does not make a summer, but one bad example might vitiate the whole society. So, we have got to be very careful even when the parties choose to say that they agree to divorce by mutual consent. There must be some efforts made by intermediaries or by responsible people to see if the differences could not be adjusted. After all, life is a series of adjustments in all matters. I will just finish reading this extract:

> "In cases where divorce is desired by both husband and wife, both parties shall register with the district people's government in order to obtain divorce certificates. The district people's government......

Shri R. K. Chaudhuri: Why not the Minister pause for some time till the mike is repaired?

Mr. Chairman: If interruptions are made, the hon. Minister will not be audible. Let the hon. Minister proceed.

Shri Biswas: "The district people's government, after establishing that divorce is desired by both parties and that appropriate measures have been taken for the care of childern and property, shall issue the divorce certificates without delay."

When only one party insists on the divorce, the district people's government may try to effect a reconciliation. If such mediation fails, it shall without delay refer the case to the county or municipal people's court for decision. The district people's government shall not attempt to prevent or to obstruct either party from appealing to the county or municipal people's court In dealing with a divorce case, the county or municipal people's court. must, in the first instance, try to bring about a reconciliation between the parties. In case such mediation fails, the court shall render a verdict without delay. That is a very significant provision which I do not find elsewhere.

> "In the case where, after divorce, both husband and wife desire the resumption of marital relations, they shall apply to the district people's government for a registration of re-marriage. The district people's government shall accept such a registration and issue certificates of re-marriage."

I shall now place before you the provision in the Soviet Civil Law:

> "Prior to July 8, 1944, either spouse had complete freedom to discontinue marital life without stating the reason therefor. The divorce was recorded by the Civil Registry Office, not only upon a declaration by both spouses but also upon a unilateral declaration by either spouse of his or her desire to discontinue conjugal life. Neither a statement of reasons for such action nor any judicial proceedings were required. The other party was summoned, but in case he failed to appear, the entry of the divorce in the Civil Registry Record was made, and the respondent had no right to oppose the divorce. In other words, just as Soviet marriage was merely a registration of existing marriage, the Soviet divorce was not a divorce but a registration of the fact that cohabitation was discontinued. The court admitted evidence of the fact if it was not registered and attached all legal consequences to it if proved."

All that was wanted was registration of the fact that they had separated by consent. It further says:

> "But since July 8, 1944, divorce has been granted only by the courts and only for reasons which the court deems justifiable." (This is a very important and significant change). "Such reasons are not specified by statute and are left to the discretion of the courts."

That is a very important change. Unfortunately, there are no statistics to show what are the grounds, or

in how many cases the court had refused a decree for divorce or a certificate of divorce. Only incomplete information is at present available regarding the grounds for which divorce is actually granted under the new law. While I am dealing with this, I might just as well read the conclusions regarding the number of cases in which divorce was allowed:

"An analysis of 400 cases decided by eighteen various courts appeared in the July issue of the periodical of the Law Institute of the U.S.S.R. Academy of Science. The author of the article warns that the number of cases examined is too small to justify any general conclusions. His findings are reported here for what they are worth" (and I will also place them before the House for what they are worth).

"Two-thirds of the suits examined either were instituted by mutual consent or were not contested by the other defendant, and in all of these cases the divorce was granted. Thus, it seems that mutual consent may become a ground for divorce in the Soviet Union. Divorce was not granted in six per cent of the total number of cases, but, if contested cases alone are considered, the percentage of divorces not granted is as high as twenty-three. Absence of guilt on the part of the defendant is the reason assigned for refusal to grant divorces. In all cases where divorces were not granted, the parties had children." (In other words if the parties had children, they would not get a divoree). "However, the author is not prepared to state to what extent the presence of children may have influenced these decisions. In the contested cases examined, divorce was granted for the following reasons: the defendant was guilty, in particular he had committed adultery or his behaviour in every day life was proved such as to make life together impossible; mutual guilt made life together impossible; continuation of life together became impossible for reasons for which no party was to blame *e.g.*, long absence or chronic disease."

That is the position.

Shri R. K. Chaudhuri: Adultery is an offence in India. Is it a criminal offence in those countries also?

Shri Biswas: I know nothing about the criminal law in Soviet Union and so I would not hazard any reply to the question. I only looked into the law of marriage and divorce and I thought it useful to place before the House what I found therein.

Shri R. K. Chaudhuri: I want to know whether you look at it as a criminal offence or not?

Shri Biswas: That is all I can say. Sir, I beg your pardon. I began at about 10.35 or so and I thought I would take half an hour or at the most 45 minutes. It is now ten minutes past twelve. I thank you, Sir. for giving me this opportunity and I thank the hon. Members for the attention with which they received my speech.

Mr. Chairman: Motion moved:

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

Shri C. C. Shah (Gohilwad-Sorath): Sir, I thank you for giving me this early opportunity to participate in the debate on this Bill. This Bill and the oher Bill, namely the Hindu Marriage and Divorce Bill which we have recently sent to the Joint Select Committee, are two very important and also very controversial measures, and if I may respectfully say so, I regret that this Bill which is so important and controversial should have been introduced and discussed first in the Council of States and then brought to this House. I

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think there should be a convention that all important and controversial measures should first be introduced in this House before they are taken to the other House; that will save a lot of time and also a great deal of other complications. But, that is a submission which I am making for the consideration of the Government.

Sir, I was saying that this measure is controversial because it touches a province of life which undoubtedly concerns each one of us, literate or illiterate; man or woman, and it touches us so intimately that each one of us holds views upon the subject, sometimes strongly, and all those views are not necessarily what one may call 'rational' because in my opinion there is very little which is rational about marriage or divorce. It is a province of life in which reason rules the least. Therefore, our opinions are based more upon our own experience, temperament, social upbringing and the conditions of life in which we live, rather than a purely rational or intellectual approach to it. I would not therefore be surprised if each Member here has his own views and some of them very strong.

The measure is also very important for this reason that every marriage law seeks to regulate the relations between man and woman. We regulate by legislation many human relations, industrial and others, but, this is a relationship which has the most intimate relationship between man and woman, and any law which seeks to regulate that relationship is bound to be the most important. It affects society in the most intimate manner, and not only it regulates that relationship but it seeks to regulate in a manner which may be distressful to many and impose restrictions which may not be liked, because marriage after all is an institution and is not a personal affair. But in its consequences it is a social institution and therefore has consequences much wider than the personal happiness of the individual spouse concerned in the marriage. Therefore, society seeks to impose restrictions upon the spouses which do not necessarily take into consideration the personal happiness of those who are concerned. Therefore, such restrictions, as I said, are resented on the ground that they either invade upon the individual liberty of the spouses or their personal happiness; and yet, every society has found it necessary to impose such restrictions. If you look at human history, every society and every climate has envolved various forms of marriage right from monogamy, to polygamy, polyandry, group marriages and almost all things. From promiscuity we have travelled to monogamy. It has evolved various forms of divorce. In some cases it has denied divorce while in others it has permitted that under very restricted conditions, and in some cases it very liberally permitted divorce. In some cases even where divorce is liberally permitted, public union has been so strong that in spite of the permission given by law, the parties have not been able to avail of this permission. Marriage touches various aspects of man's life; religion comes in, morality comes in, the psychological development of the individual himself comes in; economic conditions in the society and particularly inheritance have determined the conditions of the forms of marriage. These are all factors which every society must take into account in determining what shape its marriage law must have, and marriage law must necessarily change according to the changing conditions. These two basic conditions, if I may respectfully say so must be observed, when by marriage a man or woman enters into a union where each of them agrees to live with each other, if possible for life, and it is intended to be or ought to be intended to be for life. That is the first consideration of any valid marriage. Divorce may be permitted under certain circumstances, but it is a consequence which follows

under contingencies which are at times beyond the control of the parties and therefore the intention of every marriage law must be to evolve a law which will make for stability of marriage rather than for its instability.

The condition of a marriage law is that it should try to obtain the personal happiness of the individual spouses as much as possible, consistent with the social demands and the necessity of the children. I submit these are the two basic conditions.

We talk too much of religion and morality in marriage, and my respectful submission is that when we talk of religion and morality, we only talk of the Church and priesthood rather than what I may call absolute morality. So far as the morality of the individual is concerned, when he enters upon a marriage in which he says "You are my wife" or "I am your husband", it is the greatest restraint, it is the greatest self-denial which a man or woman places upon himself or herself, and the marriage is founded on that self-denial and restraint. Therefore, the object of every marriage law must be to strengthen that spirit of restraint and self-denial, and not to permit that restraint to be relaxed asily or lightly.

Hindu law in that respect has been very realistic, and very progressive. It has allowed all forms of marriage. It has recognised all kinds of children—eight kinds of marriages and so on; I do not want to go into the history of it. The approach of Hindu law to the problem of marriage has been extremely realistic, and it has changed with changing conditions until the British, after 1857, for reasons of their own, stated that they would not interfere with the marriage laws and in the religious sentiments of the Hindus. Since that time, the law became static, and the time has come when we should take stock, so to say, of the present situation and consider whether the marriage laws of the Hindus, or, for the matter of that, of all the communities residing in India are enough to meet the demands of the situation.

But, even when the Hindu law, taking a realistic approach, recognised various kinds of marriage and permitted divorce and widow re-marriage, it set before itself the ideal that the marriage shall be for life and indissoluble, and it cultivated public opinion to a degree where even the most illiterate man considered it his duty to be able to follow that ideal rather than lightly give up that ideal. That is what we should also try to see, that in trying to change the marriage law to suit the conditions, we do not relax what should be the ideal of any marriage system in any country or in any climate of the world.

The present condition in India is that we have marriage laws which are personal to each community—to the Muslims, to the Parsis, to the Christians, to the Hindus; and among the Hindus themselves there is a varity of customs from one end to another which does not make, in my opinoin, for progress. The time has come when we should try our best to evolve a uniform system of marriage law for the whole country.

The Constitution has envisaged that—and the Constitution has enjoined upon us—we should try to evolve a uniform code and therefore I welcome this effort which is the first step in trying to evolve a uniform code of marriage and divorce which will apply to all communities in India and, as the Law Minister rightly pointed out, a territorial marriage law; because, today India has achieved a political unity which it never had in its history and today the country is ruled under one Constitution which it never was, and therefore it is necessary that the marriage law which governs the entire society should also be, as far as possible, of a uniform level. But that task is not easy and cannot be easily achieved. Therefore, the present Bill is only a permissive piece of legislation. While the Hindu

[Shri C. C. Shah]

Marriage Act or the Muslim Marriage law is compulsory in the sense that a Muslim who wants to contract a valid marriage must contract it in that form. or a Hindu must contract it in that from, this piece of legislation, to begin with, is permissive, but with an effort to evolve and try to induce people to take advantage more and more of this law in order that the system of marriage and divorce may be uniform.

We have two Bills before us—the Hindu Marriage and Divorce Bill and this Special Marriage Bill. My submission is that the two of them are so interconnected that it will be advantageous—I am making this submission for the hon. Law Minister to consider—to consider both the Bills, if possible, simultaneously. Because the Hindu Marriage and Divorce Bill apply to the large majority of the people of the country. The Special Marriage Bill which is intended to be uniform so as to apply to all, must also take into account what the Hindu marriage law is, what the Muslim marriage law is. For example, take the law of divorce. I can understand there being varieties or special custom in the marriage law, but so far as divorce is concerned, I take the view that the divorce law can and must be immediately made uniform so as to apply to all commuities.

For example, take the Hindu Marriage and Divorce Bill and the Special Marriage Bill, and read the grounds of divorce In the Special Marriage Bill cruelty is made a ground of divorce. In the Hindu Marriage and Divorce Bill it is not a ground of divorce. In the Special Marriage Bill adultery is made a ground of divorce. Under the other Bill, only if you keep a concubine or your wife has become the concubine of somebody else it becomes a ground of divorce; but not casual adultery. I do not know whether for a Hindu marrying under the Special Marriage Bill cruelty becomes a ground of divorce, but in the case of a Hindu marrying under the Hindu Marriage and Divorce Bill, he may be cruel but his wife cannot obtain a divorce. That is a thing I cannot understand. I do not know whether it is the view of the legislators that for a Hindu casual adultery is permissible and need not be a ground of divorce unless he keeps a concubine in the house and descends to that level, or his wife becomes the concubine of somebody else. I submit we are making the grounds of divorce, the divorce law itself, the custody of children, the rules of alimony etc., in one economic society, one social fabric. and therefore my submission to the hon. Law Minister is that both the Bills should be considered together. Though in theory the Special Marriage Bill is of wider application, in practice it is really supplementary to the Hindu Marriage and Divorce Bill, and therefore, being supplementary to it, I would say that we first consider the Hindu Marriage and Divorce Bill and then consider the Special Marriage Bill, so that we know precisely where the majority community stands, what it wants, what its needs are, what its views are.

Shri Biswas: Is it your suggestion that though there may not be one uniform marriage law for the whole of India to day, there may be one uniform law in respect of certain parts of marriage law—for instance, questions of divorce, alimony, judicial separation and things of that kind; that these may be the subject-matter of a common law which will apply to all?

Shri C. C. Shah: That is precisely my suggestion. Now, what are the special features of this Special Marriage Bill? I will leave aside the Hindu Marriage and Divorce Bill.

The first and foremost feature of this Bill is that this Bill declares that religion shall be no bar to marriage. That is a fundmental principle underying this Bill, that religion shall be no bar to a marriage between a man and a woman. It is for us to consider whether we approve of that principle.

The second principle underlying this Bill is that any caste or any *gotra* or any *sapinda* relationship except the prohibited degrees will be no bar to a marriage, and the entire object of this is to make it what we may call a civil marriage. It also prescribes a uniform system of prohibited degrees. These fundamental principles underlying this Bill..

Mr. Chairman: Fifteen minutes have already been taken by the hon. Member.

Shri C. C. Shah: It is not often that I take the time of the House. I may, therefore, be allowed to take a few minutes more.

Shri D. C. Sharma: May I know the time that has been allotted for this Bill?

Some Hon. Members: The hon. Member may go on.

Shri C. C. Shah: So far as the prohibited degrees of marriage are concerned, I will only take clause 4. If you look at these prohibited degrees of marriage, you will find that it will shock some, for it permits certain kinds of marriages which in certain parts of the country are regarded almost as incestuous. The problem before us is this. I submit that in a uniform code of marriage law, we must have uniform phohibited degrees of marriage. To permit customary law to come into it would be to deny the fundamental principle of this Bill. When you have to evolve a uniform system of prohibited degrees, you will be permitting some which are unacceptable to a few, and you will be prohibiting some which are acceptable to a few. What is the principle on which you will evolve the prohibited degrees of marriage? The hon. Law Minister has rightly said that it will be the eugenic principle. But one does not know what eugenic principle is this. When you go to evolve a uniform system of prohibited degrees, you can only take the minimum and not the maximum. It is a very acceptable principle that you can only take the minimum, and not the maximum. If you take the maximum, you will be depriving many persons from taking advantage of this Bill, which it is your intention that they should. Therefore, my submission is that we should retain a uniform system of prohibited degrees of marriage, and should not permit the customary law to come in, so far as this Bill is concerned. I shall deal with clause 15(c), when I come to it.

The next question is about age. That is, of course, in my opinion, a minor question. I find that the age of twenty-one has been put here. If it offends the susceptibilities of a few, I should say it should be eighteen for girls, and twenty-one for boys. I would not bring in the consent of guardians, for that introduces complications which we could avoid easily. I would not mind even if it remains twenty-one uniformly for both. But this being a tropical country, I am told, girls may mature early, and therefore, even if it be......

Shri C. D. Pande: Not mentally.

Shri C. C. Shah: ...eighteen, it would not be wrong.

There are many other provisions of this Bill regarding objections, and the manner of dealing with those objections has been dealt with in a very forceful not by my hon. friend Shri Tek Chand—he always writes forcefully. Those objections will be considered at the proper time. But there is one thing where I wholly agree with Shri Tek Chand, and that is in regard to the fact that the objections must be considered by the Marriage Officer, and not by a court of law. I do not want that the marriages should be delayed by the carrying on of a suit, which may take some three years before a decision is pronounced. I, therefore, accept the amendment made by the Select Committee that the objections must be considered by the Marriage Officer, and if any party is aggrieved, then he can go to a court of law.

Now, I come to chapter III of the Bill. I do not want to be misunderstood on this point. I do not object

[Shri C. C. Shan]

to chapter III as such, but my submission will be that chapter III does not serve the purpose for which it is intended, and creates complications which can be easily avoided. Now, what is the intention of chapter III? It permits the registration of marriages which have already taken place; it permits also the registration of marriages which are valid, which may or may not be valid, and which may be of doubtful validity. It permits both, but it does require that a ceremony of marriage must have been gone through. Therefore, it does not permit registration of—if I might call—unions of men and women, in which they never intended to live as husband and wife, but are, for instance, living as paramour and mistress. That is not what is intended to be covered by chapter III. But what is intended to be covered by chapter III is that when a man and a woman have gone through a form of marriage or a ceremony of marriage, but for some reason or another it is doubtful whether that marriagfe is valid,—or even if it is valid,—it should be registered under this Bill. I want to ask, what is the object of doing so.

I shall first take the case of valid marriages. A valid marriage remains a valid marriage. The only objects which you can achieve by registering it under this Act are three, as far as I can see, monogamy, divorce and succession under the Indian Succession Act. So far as marriage and divorce are concerned, the Hindu Marriage and Divorce Bill provides for it. They are already permitted for the Parsis and Christians etc. excepting for Muslims, for whom divorce is permitted, but not monogamy. I shall come to that separately. I ask, how many persons there are who will take advantage of this permissive piece of legislation to register an already valid marriage under this Act, because, so far as marriage and divorce are concerned as I said earlier, the majority community will be governed by the Hindu marriage and Divorce Bill. If a man wants that the succession to his property should be governed by the Indian Succession Act, there is nothing to prevent him from making a will, and then he can give his succession according to his own wishes.

Shri Altekar (North Satara): Under the *mitakshara* law, he cannot make a will. (*Interruptions.*)

Shri Tek Chand (Ambala-Simla): What about succession on intestacy?

Shri C. C. Shah: He can voluntarily separate at any time, and then make a will. There is nothing to prevent him from doing so. As I said, probably one in a thousand, or ten thousand may go out of one's way to take advantage of this.

Shri C. D. Pande: May I point out one thing? This is intended for covering cases of inter-religious marriage, where the parties did not choose to renounce their religions at the time of marriage and yet contracted a marriage. Such marriages are not valid so far, and they will be validated under this Bill.

Shri C. C. Shah: I was considering valid marriages in the first instance. It covers both. That is what I am trying to point out. If you come to marriages which are not valid, we have already passed the Hindu Marriages (Validation) Act. My submission is that to make a law which gives a sort of a blank cheque, that you can enter into any invalid marriage, but that you can at any time come and have it validated under this law, is, I think, passing a piece of legislation which is going too far in my opinion.

Shri Venkataraman (Tanjore): No.

Shri C. C. Shah: You may say, no, of course. There is nothing progressive or regressive about it. You can take it from me. You may consider it more progressive. But opinions differ. But if I am in favour of mono-

gamy, if I am in favour of divorce, and if I am in favour of the view that the woman and the daughter should get inheritance under the Hindu law, there is nothing progressive which you are providing for by this chapter III. That is what I am trying to point out.

I shall now deal with clause 15 (e), wherein the word 'custom' has been added. If your object is to make this piece of legislation as progressive as possible, whatever you may mean by progressive,...

Shri C. D. Pande: All progress in Civil Marriage and all precaution in normal one.

Shri C. C. Shah:...undoubtedly, you may retain this provision there, because all that a man has to do is that even though a marriage under this Act is not permitted under clause 4, he can contract that marriage even though it is within the prohibited degrees of marriage, and quietly come under clause 15, to have it registered. If I might use a language which law is known to, it will be a fraud on the law. But if for progress, you want to permit it, it is for others to consider.

Shri Biswas: A marriage to be registered must not be a marriage under this Act, or the Act of 1872. That is provided for in that clause which reads:

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

Shri C. C. Shah: Under the personal law also.

I shall deal briefly with clause 18, which is another controversial clause. In my opinion, if we are to retain chapter III, clause 18 as it stands must stand for two reasons. The validation of the marriage after registration under this chapter must be from the date of such entry and cannot have retrospective effect, because it will have undesirable consequences. The second part of this clause relates to children born after the date of the ceremony of marriage, and that is intended to provide for marriages which are invalid, and where the children are not legitimate by reason of that; by means of this provision in clause 18, we want that those children should be deemed to be legitimate children. It is intended to cover the cases of valid marriage, where the children themselves are there. As I said, the whole of chapter III, because it provides for two things which are entirely separate, namely, the validation of a doubtful marriage, and the registration of a valid marriage, which are two concepts that are entirely separate, creates a lot of confusion.

Then I come to chapter IV which deals with the consequences of marriage under this Act. As regards compulsory severance from the joint family, strong minutes of dissent have been written, and strangely enough, those strong minutes of dissent come from the lady Members themselves. Shrimati Renu Chakravartty holds views as progressive as any can hold. I am told that section 19 is intended to benefit the women, and yet if woman Members themselves do not want it for reasons which they have explained, it is for Government to consider whether we should insist upon it.

Shri D. C. Sharma: There are women outside this House also.

Shri C. C. Shah: I am not expressing any opinion. All that I was saying...

Shri A. P. Sinha (Muzaffarpur East): There are men also outside this House.

Shri C. C. Shah: As regards section 22, restitution of conjugal rights, I think a stage has come when compulsory restitution of conjugal rights is a thing we should give up. It is a decree which has got no machinery to enforce. There is no purpose in compulsorily ordering it.

Shri Biswas: There are some contracts which do not admit of specific performance.

Shri C. C. Shah: If it is specifically mentioned, I will have no objection.

I will now briefly deal with divorce. I have already said that I consider it is too late in the day to say that there should be no divorce. There may be some who think that way. But I think it is too late in the day. I should think that we must consider divorce to be a sort of necessary evil. While the law should make it easy, public opinion should be so strong that people will not lightly or easily take advantage of it. It should be like widow re-marriage. No law in the world, in my opinion, has given rise to so much perjury in courts as divorce. If you read the proceedings of divorce courts in England or in any of the western countries, you will be amazed at the amount of perjury which the witnesses and the parties can indulge in, and the courts, knowing that it is all perjury, are helpless to prevent it.

Shri D. C. Sharma: What is your remedy for it?

Shri C. C. Shah: My remedy is this. If we are to permit the law of divorce, we should not impose impossible or impracticable conditions. We should permit divorce if it becomes necessary. But, it is no use on the one hand saying that I will allow divorce and on the other, saying that I will impose conditions which are impossible or impracticable. There may be no greater happiness than out of a marital union; but there can be no greater misery than the union of people who are compelled to hold together in a cage, so to say, where they intensely dislike each other. Therefore, there is a test which I put that in permitting divorce, we should see that we do not permit it to a degree where the instability of marriage increases. The hon. the Law Minister just now read out to us some passages from the Soviet law. They began at one end and they are going at the other end. Every society, so far as the divorce law is concerned, went from one extreme to another and the pendulam will continue to swing from one end to the other, whatever may be our personal views.

So far as divorce by mutual consent is concerned. I believe it is a step too hasty. Not that I am opposed to it under certain conditions. But considering the instability of the human mind, considering that man likes more to give up restraints than to keep them, considering the society in which we live today where the occasion to coerce either one or the other into consenting to divorce is there, I think it is a step which is hasty. I do not object to it on principle. On principle, a divorce law must permit divorce even when either party wants it, but it is a purely rational view. That is not the view which we shall ever take on this. Therefore, I submit that so far as divorce is concerned, we ought not to make it impossible or impracticable.

Dr. Rama Rao (Kakinada): I support this Bill in spite of its defects. The main step, as has been pointed out by my friends, is that for marriage under this law one need not renounce one's religion, one need not renounce one's caste. It is a permissive law; we have it after nearly 80 years.

The hon. the Law Minister has given the history of the Special Marriage Act of 1872 commonly known as the Brahmo Marriage Act. There one was compelled to say that one did not belong to any other established religion. Here we have gone one step further and said that any person belonging to any religion, subject to other conditions, can marry under this Act. You know the history of marriage is very long and very interesting, and in some

cases, almost shocking. But we have come to this stage where monogamy is essential. We want monogamy by law, though I know some influential persons, including some Members of this House, do not believe in that, and that at least as far as the Hindu society is concerned it should not apply. There is Mr. N. C. Chatterjee's opinion given before the Rau Committee. 'we are opposed to monogamy being made a rule of law'. There is another very interesting opinion by Mr. P. V. Rajamannar, at that time Advocate-General. of Madras, who said: 'I agree to the provision of divorce, but not to the strict enforcement of monogamy. If monogamy is enforced on a man who is polygamous by nature, it would only lead to increased concubinage'. Well, there are others who say that healthy and wealthy people must be allowed to marry again and so on. But it is generally accepted that monogamy should be enforced by law.

Next I come to the question of freedom of choice. After various stages in human history, we generally accept that young men and young women must choose their own spouses. Of course, I know our orthodox friends do not like this. They want to live in feudal and pre-historic times in the 20th century.

Shri Nand Lal Sharma (Sikar): Ram Rajya.

Dr. Rama Rao: Our friends will oppose everything, but they practise everything. (*Interruptions*). I mean is seriously. Hindu law has evolved through so many stages that it contains so many provisions, some mutually contradictory, some very high, some which we have to admit are rather wrong—I would not use a stronger word.

Shri Nand Lal Sharma: Hindu law is there......

Dr. Rama Rao: Hindu law is not the monopoly of our esteemed friend, Sharmaji, but my point is this.

[SHRIMATI KHONGMEN *in the Chair.*]

Shri D. C. Sharma: On a point of order, Madam. Whenever the name 'Sharma' is mentioned, the initials should also be given because there are so many Sharmas here. We get confused.

Shri Nambiar (Mayuram): It is not Shri D. C. Sharma. That is all we want.

Dr. Rama Rao: Before I proceed further, I would like to mention one thing to our friends who fear that religion is in danger. I submit religion is in danger not by such progressive and permissive legislation, but by tightening up the chains they want to enforce. For instance, take the previous Marriage Act which compelled them to renounce religion and accept some other religion or declare that they did not belong to any other religion. We know several people who joined other religions only for the sake of marriage. If our friends are very anxious about their religion, they should welcome this step. Of course 'religion in danger' is an old cry. Christ was crucified because 'religion was in danger'.

Shri V. G. Deshpande (Guna): Christ was the father of a religion.

Dr. Rama Rao: He was crucified later on. Other Christians came. You know the story of Galileo. Galileo, because he invented the telescope and said that the earth and the planets are going round the sun, was hauled up before the religious court. You know, those days the sentences were very harsh, to put it mildly. This great scientist confirmed by the telescope what had already been enunciated by Copernicus that the planets are revolving round the sun and not the sun and the planets round the earth. Then they shouted: "religion in danger." I leave this there.

At the beginning of the past century, when we were burning our widows on the pyre and Raja Ram

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Mohan Roy and others started the movement against the *sati* and William Bentinck helped them, our friends like N. L. Sharmas and Chatterjees—all those people—shouted "religion in danger." Even in our own life-time, the Sarda Act was brought in to prevent marriage of girls of ten, seven, five or even three years. Then also they said: "religion in danger". There has been a cry by wrongly shouting, "religion in danger". It was a step taken by the conservative mind, by the chains that they wanted to enforce, and not by the permissive and progressive step.

Shri Nand Lal Sharma: Not by breakneck speed.

Dr. Rama Rao: I suggest to Shri Sharma and others to use their powers of oratory and scholarship to ask the conservative, old Hindu society to adopt itself to the changing times, and move with the times, and not to justify every wrong custom that has been the bane of this society.

Shri V. G. Deshpande: Members should not justify every wrong piece of legislation.

Dr. Rama Rao: So, in this connection, this cry of 'religion in danger' is no good. Take, for instance, untouchability. There has been no greater disgrace on Hindu society than this most heinous custom of untouchability. Our friends, Shri N. L. Sharma and others, must ask their leaders and other friends to allow these so-called untouchables to enter the temples, and not obstruct them. By their steps, religion is in danger; not by other steps. So, religion is not in danger.

I was listening to Shri Biswas the other day. His point was mentioned also by Shri Nair—about the ancient texts and criticising them. He said it was highly unpatriotic to criticise our ancient texts. Well, ours is a great, old religion. There are so many texts, and there is so much good in them as also so much horrible things. There are what are called *shastras* which give directions. We appreciate them, and we know that in the whole of the human history, nothing resembles our ancient land where there is so much, and we know we are as good as any other society, but that does not mean we accept rotten custom. Rather, good customs have become rotten and we say this is religion, and to criticise that, is wrong! I am prepared to take a lesson from anybody, but I would not believe that all rotten things in the country must be believed in, must be strengthened, must be supported and appreciated. That is not patriotism.

An Hon. Member: Is it 'rotten' or 'wrong'?

Dr. Rama Rao: You can call it 'wrong.' Take this untouchability. Just because some *shastra* says somewhere that a particular thing should be followed, we follow it! Even in *shastras*, most of the things are contradictory, and most of them are interpolations. Take Manu. It is said there that if a non-brahmin hears the Veda, you must pour melted lead into his ears. If you justify these things....

Shri Nand Lal Sharma: I would like to know wherefrom he quotes.

Dr. Rama Rao: I am not a Vedic scholar like Sharmaji, but I don't say that it is written definitely by Manu. There are so many interpolations. (*Interruptions*).

Mr. Chairman: Let there be no talk in the House. Let Dr. Rama Rao proceed.

Dr. Rama Rao: My only point is, things have changed. Many wrong things have been accumulated. Many have been interpolated. Patriotism does not mean that we can justify anything. Just because something is old, ancient, I do not say that to

follow it is patriotic. I think I have taken up much time that is allotted, and I therefore come to the Bill now.

Divorce in marriages is freedom of choice. People must have environmental circumstances where they can choose their own spouses and restrictions must be few and far between. Of course, human society, human civilization, is a history of adaptations, compromises between individual and society. I shall refer to a few aspects of this Bill. First I will take up that most controversial thing, called by the hon. Law Minister as a revolutionary change—that is, divorce. I am referring to clause 27, sub-clause (k). Here, he has already mentioned that there is some confusion about this word 'or'. It was the intention of the mover that it should be 'and'. We have given amendments to that effect, to substitute 'and' for 'or.' So, I request my friends to read this clause and give their opinions. It is not like asking any two people to go to the court and ask for divorce. It presumes certain things, certain restrictions. They have been married for some time. Probably, they have quarrelled, or they have suffered. There are four conditions which I want the House to remember. The so-called divorce by mutual consent has several apprehensions: first, they have lived apart for one year or more; after they have quarrelled or enjoyed life, they are separated; they thought that life was impossible, that life was hell. They are already living for one or more years separately. Do not forget that aspect. Not only that. They refuse to live together hereafter. They come to a decision that they cannot live together any longer. They want divorce by mutual consent. Therefore, when we consider this divorce by mutual consent, we should remember that these people who have married, who have lived together and who have suffered, have now come to the conclusion, most unfortunately, that they cannot live together and life is a hell, life is a misery. Therefore it is an outlet providing them with permission to separation. They have lived separately already. I want Members who oppose this to remember this point. They have decided that they cannot come together and they now wish to be separated. I ask: why compel them to wash all dirty linen in the courts? They think it is impossible for them to live together. They want divorce by mutual consent. Why should you want them to produce evidence of adultery, evidence of cruelty, evidence of medical certificates and all that? If you view this thing in a reasonable and sympathetic light, you would not find it so very revolutionary, so very objectionable, so very frightening.

Now, I come to the question of age. Our friends have been over-enthusiastic about age. They have made it 21 years. That is, a girl aged 20, even though she may be educated and a graduate, if she wants to marry a particular person she cannot do under the Bill as it is. As our friend Mr. Shah said, it should be 18 years. I do not say that all girls of 18 should marry. They must have the freedom to marry. The problem of girls marrying is increasing day to day. It is a problem which many of us know. A man meets a girl; she is an angel for him; he wants to marry her but Mr. Biswas comes in the way and says they cannot marry and she must wait for one year. By that time—I am not saying it as a joke, it is a practical problem for many of us—she misses the chance. She misses the bus. After 21, it is not possible for her to get a suitable match, a suitable young man. If she loses a chance of proper marriage, then a lot of other complications come in. So, it is absolutely unnecessary to make this compulsion. By 18 years, she is already a major and 19 years or 20 years, she must be allowed to marry.

For boys also, of course, it must be 18. I do not want all of them to marry but there must be the freedom. About this age, we may have

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an amendment. I have already given notice of an amendment as a compromise, to make it 18 in the case of girls and, in the case of boys, if the boy is under 21, the permission of the guardian must be obtained, so much so there is a mild restraint on boys marrying under 21. But there can be absolutely no objection to girls marrying between 18 and 21. I think the House will accept that in course of time.

Now, I come to the controversial subject of customary marriages. Hindu law allows customary marriages—and it particularly applies to the South—between two cousins. If two cousins who can marry under the Hindu law want to marry under this law, why should you come in their way? I think of this marriage not as a special or a rare thing. I think, in course of time, for its simplicity, for its economy and for its rational procedure, more Hindus will go in for these marriages, if not for anything else, at least to save the huge expenses which the Hindu families are undergoing. You know that several middle-class families contract debts for marriages. They celebrate the marriages according to the dignity of the family and it results in families clearing off their debts for a period of 20 or 25 years. Sometimes they are ruined by these marriage expenses. If for nothing else, at least to avoid the marriage expenses, people will go in for this. Why not allow them? By custom so many marriages have taken place in South India, Malabar and other places between cousins. A man has got a claim for the hand of his maternal uncle's daughter.

Shri C. D. Pande: And sister's daughter?

Dr. Rama Rao: It is very rare; it is not common but it is allowed. Why prevent such marriages under this? This is a permissive law, enlarging the scope for marriage.

Then they talk of eugenics. What is the meaning of eugenics. This pseudo-eugenics is a rather dangerous thing. What has it taught us? It has taught us nothing except that some characteristics are inherited. Those characteristics which are for the good, if they are both inherited are accentuated; if they are bad, then also they are accentuated. So, if cousins marry there is fifty-fifty chance. If there are good characteristics, then the accentuation is much better. If, suppose, there is lunacy in the family, and both cousins are from the same family, there will be greater chance for the sons and daughters having lunacy in them. But, if there are good characteristics, they are also accentuated. Except this, all these lectures in eugenics are exaggerated and unjustified.

Mr. Chairman: The hon. Member may finish his speech.

Dr. Rama Rao: One point which is not mentioned. It is not in the Bill but several friends are very enthusiastic about it. It is about medical certificates. They say that they are people with great respect for medical opinion. It is a little embarrassing. What is the medical certificate for?

An Hon. Member: Physical fitness.

Dr. Rama Rao: If any man comes to me and asks for a medical certificate for his marriage, I would ask him if he feels the urge for marriage. If so, he should marry.

Shri Nambiar: Desire for marriage should be the fittest thing.

Dr. Rama Rao: So far as venereal diseases are concerned, it is better we forget them altogther. This is a permissive law and I would appeal to the orthodox friends not to get scared about it but to allow such progressive laws so that society may progress.

1 P.M.

श्रीमती कमलेंदुमति शाह (ज़िला गढ़वाल–पश्चिम व ज़िला टिहरी गढ़वाल व ज़िला बिजनौर–उत्तर) : सभानेत्री महोदया, इस विधेयक में जहां तक एक पत्नित्व का प्रश्न है उसका तो मैं स्वागत करती हूं, परन्तु इस बात के विरुद्ध अवश्य हूं कि विवाह जैसे पवित्र बन्धन को केवल एक आपस में के अस्थायी समझौते अथवा ठेकेदारी का रूप दिया जाये ।

मुझे यह भी शंका है कि असवर्ण तथा विभिन्न धर्मावलम्बियों के बीच विवाह होने से हमारी धार्मिक पुरातन संस्कृति की रक्षा तथा हमारी उन्नति कहां तक होगी । आज हम गाय बैल इत्यादि की जाति तथा गुण का विशेष ध्यान रखने लगे हैं जब कि यही बात हम पर भी लागू है ।

यह विधेयक हिन्दू ला, इस्लामिक, जूइश और पारसी धर्म तथा इन समुदायों के वैवाहिक सिद्धान्तों के विरुद्ध है, विभिन्न जातियों पर, जिनके अपने व्यक्तिगत नियम हैं, समान विधान स्थापित करके, इसको उन पर लागू करना सुलभ नहीं है ।

समाज के कल्याण व शान्ति के लिये अति ही आवश्यक विवाह जैसे दृढ़ बन्धन की उपेक्षा करने वाला यह विधेयक, मेरे विचार से, हमें सहायता नहीं पहुंचा पायेगा । सम्भव है, कुछ विवाह विच्छेद के इच्छुक पति और पत्नियों को पृथक करके उन के कष्टों को कुछ काल के लिये यह विधेयक कम कर सके, परन्तु अन्त में स्त्रियों और विशेषकर बच्चों के लिये यह अहितकर ही होगा । इस विधान से विवाह विच्छेद ही बढ़ेंगे जो किसी भी देश के लिये सम्मान की वस्तु नहीं है । इसका प्रभाव पारिवारिक शान्ति पर पड़ेगा, भावी सन्तानों का गृहस्थ जीवन छिन्न भिन्न होकर उनके धार्मिक संस्कारों को दृढ़ होने का अवसर ही नहीं मिलेगा । माता पिता के अस्थायी सम्बन्धों को देख कर, उन बच्चों के चरित्र पर क्या प्रभाव पड़ेगा, और हमारे देश के ये भविष्य कर्णधार कितने बलशाली होंगे यह अनुमान आप लोग स्वयं लगा लें । यह अनाथालय के बालकों से कम न होंगे ।

यह भी सर्व विदित बात है कि हिन्दू कोड बिल को अधिकांश लोगों ने नहीं अपनाया । उसी को अब अन्य रूप में फिर समाज के सामने ला कर रखा जा रहा है । इससे न समाज का हित ही हो सकता है, न यह उसे मान्य ही हो सकता है ।

इस विधेयक से उन युवक युवतियों को प्रोत्साहन मिलेगा, जिनकी बुद्धि कार्य के परिणाम का विचार करने के लिये परिपक्व नहीं हुई है, जिससे शान्तिमय पारिवारिक सुखी जीवन के स्थान में इन युवतियों का जवानी भर दर दर भटक कर, बुढ़ापे का कोई सहारा ही नहीं रह जायेगा. और पवित्र विवाह बन्धन ढीला हो कर सामाजिक पतन हो जायगा, पाश्चात्य देशों का हाल मैं देख चुकी हूं ।

इस विधेयक को मुख्यतया हम स्त्रियां अपने कष्ट निवारण का एक मात्र साधन समझ रही हैं, परन्तु यह हमारी भूल है । मुझे शंका है कि इस विधान से कहां तक हमारे कष्ट दूर होंगे । इन कष्टों का आरम्भ हमारे विदेशी आचरणों से प्रभावित होने के कारण हुआ, जिससे हमारे जीवन के शान्त और सरल वातावरण में असंतोष की एक लहर दौड़ गई, और अब स्वतंत्र होने के बाद भी हमारे देश में पाश्चात्य शिष्टाचार घटने के बदले बढ़ ही रहा है और हम सब यह भूल ही से गये हैं कि हमारे नियम भी किसी उच्च आदर्श की नींव पर खड़े थे, जिन से केवल शारीरिक सुख न मिल कर मानसिक बल और शान्ति भी मिलती थी । इस विधेयक के समर्थकों की आशा निराशा में परिणित हो जायेगी जब वे देखेंगे कि कास्टलेस व क्लासलेस

[श्रीमती कमलेंदुमति शाह]

समाज ऐसे निराधार यत्नों से स्थापित नहीं किये जा सकते। सेकुलरिज्म और डिमाक्रेसी समाज पर बलपूर्वक थोपी नहीं जा सकती। हमारा वर्णाश्रम धर्म विभिन्न वर्णों में कार्य के उचित विभाजन के लिये है। हम अपने पूर्वजों के अनुभव व बुद्धिमानी से परखे हुये परम्परा प्राप्त नियमों में वर्तमान आवश्यकतानुसार कुछ परिवर्तन भले ही करें परन्तु उन्हें सहज में ही त्याग देने से हम न सुखी होंगे न अपने लक्ष्य पर ही पहुंच सकेंगे। हमारी पुरातन संस्कृति समूल नष्ट हो जायेगी। धर्म निरपेक्ष राज्य में धार्मिक विषयों पर हमें सोचकर ही चलना चाहिये। यह विधेयक तो मनुष्य की धार्मिक स्वतंत्रता का अधिकार ही छीने ले रहा है।

हमारी अधिकतर जनता में पुनर्विवाह व विवाह विच्छेद है ही उच्च व मध्य वर्ग की आवश्यकतानुसार वर्तमान विधान में ही जिसमें सब बातों के लिये विस्तार है, कुछ संशोधन किये जाने ही पर्याप्त होते। स्त्रियों के कष्टों को कम करने के लिये विवाह विच्छेद के अतिरिक्त और साधन भी हो सकते हैं जो में ने अपने मतभेद की व्याख्या में, सुझाव के रूप में दिये हैं।

यदि आज हम में से कई दुखी हैं, तो इस का कारण केवल हमारी अपना कर्तव्य भूल जाने के कारण, मानसिक निर्बलता ही है। जो लोग अज्ञानवश हमें पुरुषों की दासी कहते हैं, वे यदि ज़रा विचार से काम लें तो देखेंगे कि, पुरुष कैसा ही हो, स्नेह व सेवा बल से सौम्य हो कर हमारे ऊपर निर्भर हो जाता है। हमारे अधिकार पुरुषों से कदापि कम नहीं हैं। मेरे विचार में तो अधिक ही हैं।

अन्य देशों के अपनी पसन्द के विवाहों का, जिनका अनुकरण हम लोग करना चाह रहे हैं, क्या परिणाम होता है, इसका मैं आपको एक छोटा सा उदाहरण दूंगी।

A man who committed suicide left this note:

> "I married a widow with a grown-up daughter. My father fell in love with my step-daughter and married her thus becoming my son-in-law, and my step-daughter became my mother because she was my father's wife.
>
> My wife gave birth to a son, who was of course my father's brother-in-law, and also my uncle for he was the brother of my step-mother."

Dr. Jaisoorya (Medak): This is an ancient joke, three decades old, that appeared in the papers.

Shrimati Kamlendu Mati Shah: "My father's wife became the mother of a son, who was, of course, my brother, and also my grandchild for he was the son of my daughter.

Accordingly, my wife was my grandmother because she was my mother's mother, I was my wife's husband and grandchild at the same time—and, as the husband of a person's grandmother is his grandfather. I am my own grandfather".

भारत की स्त्रियों के आत्मबल के कारण आज भी इस देश का सिर सगर्व ऊंचा है। हमें उसी आत्मबल को जगाना होगा, परन्तु यह तभी होगा, जब हम दया, क्षमा, सेवा, त्याग, सहनशक्ति इत्यादि, अपने स्वाभाविक गुणों को, जिन से पुरुष तो क्या विश्व भी जीता जा सकता है, न बिसारेंगी। अपने घर की सुव्यवस्था हमारे लिये एक साधारण वस्तु है। देश के वीरों की मातायें होने के नाते, साम्राज्यों का निर्माण व संहार भी हमारे ही हाथ में है। जब हम ही अपना कर्तव्य भूल जायेंगी, तो हमारी संतानें तो केवल अपना बल, उद्‌जन अस्त्र जैसी वस्तुओं को ही सार समझ कर, विश्व संहार में ही लगा देंगी। इसलिय हमें याद रखना है कि हमें अपनी

largne --

मर्यादा का पालन समुद्र की तरह करना होगा, नहीं तो और भी अधिक कष्ट की भागी हम ही होंगी ।

Shri N. Somana (Coorg): I was one of the Members of the Select Committee which went over this Bill for a number of days and considered various provisions. As it has now emerged from the Council of States, I am somewhat surprised to see a few provisions in it, which, according to me, cannot be accepted at all.

The first provision over which we had a lot of discussion was the question of age. As hon. Members have already spoken, the Council of States has increased it from 18 to 21. I feel. as some hon. Members have already felt, that the age of 18 should have been there. We had also made a provision in the Bill, as we reported in the Select Committee, for consent of the guardian between the ages of 18 and 21. In doing so, we strictly conformed to the Age of Majority Act, and I should think that it conforms generally to the consensus of opinion in the House. I hope that this hon. House will make the necessary alteration and accept the proposal that we made in the report of the Select Committee.

Mr. Chairman: The House is very much in disorder. Will hon. Members in the House please resume their seats?

Shri N. Somana: Coming to the question of clause 25, I also find that an important provision that had been made by the Select Committee has now been altered by the Council of States, and that refers to the question of one of the persons who after having got registered under this Act, is found to be suffering from venereal disease in a communicable form. I really could not understand why the Council of States should have left it out under the clause relating to viodable marriages. After all, as some persons have put it, if it is really found, after marriage, that one of the parties was suffering from venereal disease in a communicable form and the disease not having been contacted from the petitioner, I think it ought to be a reasonable ground for setting aside that marriage. I should not think that anybody should be compelled to continue the marriage under such circumstances. I hope this matter also may be considered by this House and suitable amendments made in that connection.

The other point I should like to refer to is the new clause that has been put in by the Council of States, that is. clause 26. That also sounds somewhat funny, because clause 26 reads :

> "Where a decree of nullity is granted in respect of any marriage under section 24 or section 25, any child begotten before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity."

I think this provision is not salutary and I may quote an instance how it sounds somewhat ridiculous. If you look at clause 24, you find that one of the causes for declaring a marriage null and void is that the respondent was impotent at the time of the marriage and at the time of the institution of the suit. If the respondent was impotent and if the marriage is to be declared null and void by a decree of the court, I fail to understand how a child born or deemed to have been born out of the couple should have been considered as legitimate. It sounds rather funny. I think the hon. Council of States have not applied their minds to this provision at all. On the other hand, if you look at the provision that the Select Committee

[Shri N. Somana]

had provided for in clause 24 of the original Bill, under the heading 'Void marriages', sub-clause (2) reads as follows:

"Where a marriage is annulled on the ground that the respondent was an idiot or a lunatic or on the ground that at the time of the marriage either of the parties thereto had not completed the age of eighteen years, the children begotten before the decree is made shall be specified in the decree, and shall, in all respects, be deemed to be and always to have been, the legitimate children of their parents."

I think that this should have been a very acceptable proposition and I do not see why the Council of States have thought it fit to delete this clause and substitute sub-clause (2), which reads as follows:

"Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final."

So, instead of the original clause 2 which I just now referred to, they have put in this clause 2, and instead of making the children legitimate under this clause they have put in a consolidated section under clause 26 which is a new clause inserted by the Council of States and which, as I said, has absolutely no purpose and sounds to be somewhat odd.

Mr. Chairman: Order, order. The hon. Member may continue tomorrow.

The Lok Sabha then adjourned till a Quarter past Eight of the Clock on Thursday, the 20th May, 1954.