

[Mr. Deputy Speaker]

Shri Sivamurthi Swami, Shri M. R. Krishna, 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.

HINDU MARRIAGE AND DIVORCE BILL

The Minister of Law and Minority Affairs (Shri Biswas): I beg to move:

"That this House concurs in the recommendation of the Council of States that the House do join in the Joint Committee of the Houses on the Bill to amend and codify the law relating to marriage and divorce among Hindus and resolves that the following Members of the House of the People be nominated to serve on the said Joint Committee, namely, Shri N. Keshavaiengar, Shri Gurmukh Singh, Musafir, Shri Ranbir Singh Chaudhuri, Shri S. V. Ramaswamy, Shri Narendra P. Nathwani, Shri Jayantrao Ganpat Natawadkar, Shri Fulsinhji B. Dabhi, Shrimati Tarkeshwari Sinha, Pandit Dwarka Nath Tiwary, Shrimati Anasuyabai Kale, Shri H. C. Heda, Sardar Amar Singh Saigal, Shri Suriya Prashad, Shrimati Ila Palchoudhuri, Shri Nibaran Chandra Laskar, Shri T. Sanganna, Pandit Sheo Narayan Fotedar, Shri Paidi Lakshmayya, Shri Ram Sahai Tiwari, Shri Panna Lal, Shrimati Uma Nehru, Shrimati Renu Chakravarty, Shri Bijoy Chandra Das, Shri Durga Charan Banerjee, Shri V. Veeraswamy, Her Highness Rajmata Kamalendu Mati Shah, Shri B. S. Murthy, Shri K. S. Raghavachari, Shri Nand. Lal Sharma and Shri Digvijaya Narain Singh."

*The mover has been nominated by the other House.

Mr. Deputy-Speaker: Of which he is a Member.

Shri Biswas: This is a simple motion soliciting the concurrence of the House to the recommendation of the Council of States for joining the Joint Select Committee, and also for nominating Members to serve on the Committee.

The House is well aware that this Bill is the first instalment of the lapsed Hindu Code Bill to which a reference was made by the President in his Address to both Houses of Parliament on the 16th May 1952. The House is also aware of the various stages through which the Hindu Code Bill passed without any definite result having been achieved.

In some form or other, the process of codifying parts of Hindu law or the whole of it has been before the legislature from the year 1939. Hindu law, as has been pointed out, is a spacious structure with many schools, and what the Rau Committee attempted was to evolve by a judicious selection and combination of the best elements in each of such schools a system which, while retaining the distinctive character of Hindu law, would satisfy the needs of progressive society.

Hindu society has never been static. In the old days, the task of codifying the law from time to time was performed for the people by successive law-givers and commentators who, by a well thought out process of selection and exposition of the ancient texts, moulded the law to the needs of the times while appearing to make no change. Very often irreconcilable viewpoints were reconciled by them in conformity with the changed conditions, because Hindu law had to keep abreast of the times.

The old commentators are now gone and we have the Legislature and the courts of law instead. The latter cannot, obviously, perform the function of moulding the law, and it is, therefore, for the Legislature alone to study the

changes which have taken place in society and to make or amend the laws accordingly.

Hon. Members are aware that the attempt to codify Hindu law began somewhere in 1939 and has gone on ever since. While codification was opposed by many as being impossible and as being fraught with grave danger to Hindu society, there were many others—reformers, if you choose to call them so—who wanted to march ahead in the light of the changes which had taken place. To them codification was in the best interests of the country and would tend to make the law certain and at the same time mark the progress that had taken place in Hindu society.

Hon. Members are well aware of the vicissitudes through which the Rau Committee Code has passed. From a Bill or Bills providing for better rights for women in property in 1939, the attempt to codify the Hindu law has passed from stage to stage, a complete picture of the Hindu Code being presented to the Legislature in 1947. This Bill was further revised by the Select Committee in 1948, and even after protracted discussions over a long period, all that could be done with the Bill was to get four of the preliminary clauses passed when the provisional Parliament was dissolved. Bitter opposition was then being voiced at every stage to the Code, both in Parliament and outside Parliament, and the opposition was based very often on imaginary and fantastic grounds. In view of the opposition and in view of the slow progress of the Bill, Government decided to split the Code into parts, so that its passage could be rendered smoother.

All this history is common knowledge, but I am repeating this for reasons which will be apparent in a few moments.

The Hindu Marriage and Divorce Bill, as I have said, is the first instalment of the Hindu law, and deals with marriage and divorce as its name implies. The Bill was introduced in the Council of States in 1952 and

now comes to this House with the motion that this House may also join in the Joint Select Committee which is to be appointed to consider the Bill and the opinions received thereon.

Many have criticised the long delay that has taken place and is taking place in the passage of these Bills and some have gone as far as to question the intentions of Government and all those who are sponsoring the Bills. To women, the delay has been a bitter cause for complaint. Those who know anything of Hindu women know that their lives are usually a round of duties, leaving them little chance to think about their rights. When, therefore, women ask for better rights, no one can wish to be anything but helpful. But, as they themselves must realise, the question, from the very nature of things, does not admit of a quick solution. As I have said, the remedy lies only in legislation, and if legislation is to succeed, it must be generally acceptable to the public. As the Rau Committee themselves observe, they set out with the object of producing a Code of Hindu law which would be—I am quoting their words—"acceptable to the general public". And you know what pains they took to ascertain public opinion and satisfy themselves on this point. So, if there is to be legislation, it is essential to carry the public or a large section of the public with you. It is, therefore, worth while spending some time and labour in order to get a good law which will be acceptable to the people. It is also essential that all sections of thought should be given a hearing if a good law is to be enacted. Judged from those standards and judging from the opinions which have now been collected on the Bill, I am extremely glad to say that the delay which has taken place, if it is delay, is fully justified. The bitter opposition voiced by the public from 1948 to 1951, as evidenced by the sheaves of telegrams which poured into the Secretariat from all quarters of India has now been replaced either by resolutions pressing for this speedy enactment of the Bill and complaining bitterly against the delay which has taken place or by

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well-intentioned criticisms of the Bill for the purpose of improving it. What does this change in the attitude of the people reveal? In my opinion, the propaganda which was then being carried on by certain sections giving the public a perverted picture of the Hindu Code has nearly died down, because the real objectives and aims of the Bill have now received sufficient publicity in all parts of India and there has been a general appreciation of the progressive character of the legislation. People have now begun to take a correct view of the provisions of the Bill and therefore rightly wish us to forge ahead taking due account of their comments and criticisms, all offered in a helpful spirit. With these I shall deal later on.

You will also find that a change has come over in the Legislature itself. Judging from the speeches delivered when the Hindu Code Bill was before the provisional Parliament, one would have thought that it would have been a well-nigh impossible task to get any part of the Hindu Code Bill through the Legislature. But the reception which this Bill had in the Council of States recently was entirely different. Such indeed was the general support it received that I am encouraged in fact to think that the old difficulties have vanished and that this first instalment of the Hindu Code will now be welcomed by the House as well as by the public in the same spirit in which it has been presented before them.

The present Bill is a somewhat simplified version of that part of the Rau Committee's Code which dealt with the subject of marriage and divorce. In preparing the draft of this legislation, I have had the advantage of having before me the original draft, the revised version of the Select Committee, the discussions which took place both in Parliament and at the informal conference held under the chairmanship of the then Law Minister in 1950, the discussions which took place at the conference in Trivandrum to consider

the laws applicable to persons governed by the *marumakkattayam* and *aliyasantana* laws and the Government amendments which were pending before the provisional Parliament when that was dissolved. The earlier drafts proceeded on the footing that all laws relating to marriage and divorce applicable to Hindus should be contained in one enactment, and therefore dealt with both sacramental (or, as it was called *dharmic*) marriages and civil marriages. I felt, however, that civil marriages as such should be dealt with separately, in a law which should, as far as possible, be uniformly applicable to all the inhabitants of this country. With this end in view, I introduced in the Council of States in 1952 a Special Marriage Bill dealing with such marriages, and I am again happy to say that this Bill was welcomed by the country generally. A Joint Committee of both Houses subjected the Bill to a very critical examination, and submitted a very valuable report, and though the Council of States made certain changes—of a somewhat drastic character in the Bill as reported on by the Joint Select Committee—the Bill was passed there on Saturday evening last. It will now come before this House, and the House will doubtless give it the fullest consideration which such an important measure demands. Hon. Members will understand, therefore, why the Hindu Marriage and Divorce Bill eliminates from it all provisions respecting civil marriages.

10 A.M.

I already gave a brief account in the Council of States of the other changes that have been made in the present Bill as compared with its earlier counterparts, and I should be wanting in courtesy to this House if I did not briefly touch upon the main changes here. The Bill will now apply to Hindus wherever they may be—whether in or outside India. The Bill will also give recognition to customs and usages

where they differ from orthodox Hindu law. The House will recollect that a good deal of controversy took place on the question of recognition of customary forms of marriages and dissolution of marriages and generally of customs in vogue south of the Vindhya. This Bill will give full recognition to all such customs. After all, 'custom', as defined in the Bill itself, means well-established customs which are not opposed to public policy, and there can be no objection to recognising such customs. In the Bill recognition is given to customary variations, both as regards the rule of *sapinda* relationship and the rule of prohibited degrees, as affecting the right to marry. Recognition is also given to customary forms of divorce or special forms of divorce available under special laws, like the laws of Malabar. The subject of void and voidable marriages has been dealt with a little more scientifically, and a few other minor improvements have also been carried out.

Apart from the main changes mentioned above, the subject-matter of the Bill may be broadly divided into three categories: firstly, the abolition of caste as a necessary requirement for a valid marriage; secondly, enforcement of monogamy; and thirdly, divorce or the dissolution of marriage on certain grounds.

The controversy relating to the abolition of caste restrictions for a valid marriage has not much force after the enactment of the Hindu Marriages Validity Act, 1949 (Act XXI of 1949). In this respect, I may add that if any member of the Hindu community wants to follow the orthodox system which requires that the bride and bridegroom should belong to the same *varna*, same caste, same sub-caste, etc., there is nothing in this Bill which can prevent him from giving effect to his wishes or to what he regards as his *dharma*. In the same way, if a Hindu who does not believe in caste or sub-caste, marries under this law, the law regards his marriage also as valid.

As far as the marriage law is concerned, there is no kind of imposition at all. As I stated in the other House, the provisions are only of a permissive or enabling nature, and do not impose any obligation whatsoever on the orthodox. Their only effect will be to give a growing body of Hindus, men and women, the liberty to live the lives which they wish to lead, without in any way infringing the similar liberty of those who prefer to adhere to the orthodox ways.

With respect to monogamy, there is general support to the view that all Hindu marriages should be monogamous. Polygamy was never encouraged in Hindu society, and the present Bill boldly seeks to recognise the fact that polygamy is not permissible under Hindu Law. Some persons—fortunately a small section of male Hindus—felt that to enforce monogamy by statute may drive people to forsake their religion for another religion which will permit them a plurality of wives. The fear is groundless. A woman member of the Hindu society, on the other hand, neatly countered it by saying that, if monogamy was not enforced, Hindu women might become Christians to secure the benefit of monogamy. There is no evidence, in any monogamous society, to show that people change their faith only for enjoying the doubtful benefits of polygamy, nor can one believe that the desire to have a multiplicity of wives is so strongly embedded in the heart of every Hindu that he will forsake his religion, his law, etc., and embrace another religion simply to fulfil that desire. Even the dissenting member of the Rau Committee merely expressed the opinion that it is not necessary to make monogamy a rule of law, as for economic reasons the vast majority of Hindus are monogamous. If that be so, I say, translate what is a rule of practice into a rule of law, and do justice to the mothers of the race.

Divorce has always existed in Hindu Law and was known to large sections

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of the community. Although marriage is regarded as a sacrament, cases have occurred where marriages had to be declared null and void for certain reasons, e.g. in a recent case before the Bombay High Court, a marriage was declared void because one of the parties thereto was impotent. If marriage is a sacrament and is binding, then there can be no method by which dissolution of such a marriage can be obtained. The Bombay decision is only one example of such a case where relief had to be given to the parties in view of the difficult situation in which they found themselves. In the same manner, there are many hard cases where relief in the shape of judicial separation of divorce is necessary. I need not, however, labour these points because these provisions have been generally welcomed. And, in fact, the Governments of Bombay, Saurashtra and Madras have, long ago, stolen a march on us.

There are some other features of this Bill to which I need not refer at this stage. Many of them have been fully explained in the Notes on Clauses which have been appended to the Bill. The Bill has been widely circulated and Part B States, who had no opportunity of considering it before, have now had a full opportunity of doing so. My hon. friend Mr. Nand Lal Sharma is not here. I find he has tabled a motion that the Bill should be circulated. If that is the measure of the great interest he is taking in this piece of social legislation, I can only express my sorrow and disappointment. The Bill was circulated and opinions were received. Of the 27 State Governments who were consulted, 15 are generally in favour, 8 have not expressed any opinion either way, 2 are for prevention of polygamy but do not favour divorce and only 2 are of the opinion that the time is not ripe for legislation.

An Hon. Member: Which are these two States?

Shri Biswas: I will give the names of these States.

In the first category, States which are generally in favour—fifteen of them—are Bombay, Madras, Orissa, Punjab, West Bengal, Rajasthan, Hyderabad, Saurashtra, Mysore, Travancore-Cochin, Himachal Pradesh, Vindhya Pradesh, Tripura, Coorg and the Andaman and Nicobar Islands.

The second category consists of eight States which have not expressed any opinion either way. They are, Madhya Pradesh, Madhya Bharat, PEPSU, Delhi, Cutch, Bhopal, Bilaspur and Manipur.

The two who are for prevention of polygamy but do not favour divorce are U.P. and Bihar.

And, the remaining two who are of the opinion that the time is not yet ripe for such legislation are Assam and Ajmer.

Sir, by a motion voted on the 16th March, 1954, the Council of States has referred the Bill to a Joint Select Committee with instructions to report on or before the last day of the second week of the next session and has recommended that the House of the People do join the Joint Committee and nominate its Members.

The opinions, so far expressed, as I have said before, are generally in support of the Bill. Some of the more important suggestions on the Bill are as follow:—

(1) There is no need for *sapinda* relationship and degrees of prohibited relationship being separately defined. One set of prohibited degrees should be sufficient.

(2) The list of *sapinda* relations should be extended to five degrees on the maternal side and seven degrees on the paternal side instead of three and five degrees as envisaged in the Bill.

(3) The age of marriage both for the bride and the bridegroom in clause 5 should be raised. The suggestions vary from person to person.

(4) Where the bride has not completed the age of 18, the consent of the guardian to the marriage should be necessary.

(5) Adultery should be made a ground for divorce and not merely for judicial separation.

(6) Provision should be made for a person to take a second wife in certain circumstances with the consent of the first wife, if necessary.

(7) The grounds for divorce should be further enlarged.

(8) Decrees of dissolution of marriages should be subject to confirmation by the High Court.

(9) Parties should be enabled to remarry at any time after dissolution of a previous marriage and should not have to wait for any specified period for that purpose.

(10) The interests of children should be sufficiently safeguarded whenever a marriage is declared null and void or dissolved.

These are only some of the suggestions which have been made and the list is not exhaustive. Many other suggestions have also been made, one of which is by the Government of Madras. And, it is that persons governed by the special systems of law in Malabar, the *marumakkathayam* and the *aliyasanthana* laws should be brought within the scope of this measure by including suitable amendments for the purpose, while, at the same time, preserving for them their special laws.

The Indian Association of Leprologists have also suggested that leprosy should not be a ground for dissolution of marriages. These and other suggestions will doubtless receive the careful consideration of the Joint Select Committee. But, what is really important to observe is that the

Joint Committee can now proceed to its labours in the happy thought that a large majority of the public is behind the Bill.

Sir, as the Bill will be fully examined by the Joint Committee and will eventually come to this House for detailed consideration at the proper stage, I do not think I need take any more time of this House in making this simple motion for concurrence in the recommendation of the Council of States for joining the Select Committee and for nominating the quota of this House to that committee. I move.

Mr. Deputy-Speaker: What has the hon. Minister to say regarding the motion of Shri Nand Lal Sharma that the Bill be circulated? Has it been done already?

Shri Biswas: The Bill was circulated by a motion of this House.

Mr. Deputy-Speaker: By this House?

Shri Biswas: By the Council of States, by a motion on the 20th December, 1952, and the opinions are here. They have already been circulated to the Members of this House.

Pandit K. C. Sharma (Meerut Distt.—South): It has been duly circulated.

Mr. Deputy-Speaker: I am placing this motion formally before the House.

Motion moved :

"That this House concurs in the recommendation of the Council of States that the House do join in the Joint Committee of the Houses on the Bill to amend and codify the law relating to marriage and divorce among Hindus and resolves that the following Members of the House of the People be nominated to serve on the said Joint Committee, namely, Shri N. Keshavaiengar, Shri Gurmukh Singh Musafir,

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Shri Ranbir Singh Chaudhuri, Shri S. V. Ramaswamy, Shri Narendra P. Nathwani, Shri Jayantrao Ganpat Natawadkar, Shri Fulsinhji B. Dabhi, Shrimati Tarkeshwari Sinha, Pandit Dwarka Nath Tiwary, Shrimati Anasuyabai Kale, Shri H. C. Heda, Sardar Amar Singh Saigal, Shri Suriya Prashad, Shrimati Na Palchoudhuri, Shri Nibaran Chandra Laskar, Shri T. Sanganna, Pandit Sheo Narayan Fotedar, Shri Paidi Lakshmayya, Shri Ram Sahai Tiwari, Shri Panna Lal, Shrimati Uma Nehru, Shrimati Renu Chakravartty, Shri Bijoy Chandra Das, Shri Durga Charan Banerjee, Shri V. Veeraswamy, Her Highness Rajmata Kamlendu Mati Shah, Shri B. S. Murthy, Shri K. S. Raghavachari, Shri Nand Lal Sharma and Shri Digvijaya Narain Singh."

There is an amendment in the name of Shri Nand Lal Sharma. This has been circulated. Therefore, it would not be allowed. I would like to hear him.

Shri Nand Lal Sharma (Sikar): It has not been sufficiently circulated, Sir.

Mr. Deputy-Speaker: What is the quantum of sufficiency?

Shri Nand Lal Sharma: The opposition to the notorious Hindu Code Bill has been there for ten years. This has not been sufficiently circulated and the public does not know it at all.

Mr. Deputy-Speaker: I am afraid the same thing can be said about this. The very fact that it has been before the country for a long number of years shows that it has been circulated. It has been circulated by the other House. I feel I am unable to allow this amendment. The circulation by the other House is the same as circulation by this House.

There is nothing to be gained by further circulation. It is a dilatory motion and I am not going to allow it.

The House will now proceed with the discussion of this motion by the hon. Minister

Shri Raghbir Sahai (Etah Dist. —North East cum Budaun Dist.— East): I want to make one suggestion, namely, that copies may be supplied to us by tomorrow morning of the hon. Law Minister's speech that has been just now delivered as I consider that it is a very important piece of document.

Mr. Deputy-Speaker: I shall consider it.

श्री विभूति मिश्र (सारन व चम्पारन):
म पूछना चाहता हूँ कि यह बिल जो सर्कुलेट किया गया है वह अंगरेजी भाषा में सर्कुलेट किया गया है या कि दूसरी भाषाओं में भी। इस बिल का असर जिन लोगों पर पड़ेगा वह हिन्दी और दूसरी विभिन्न प्रान्तीय भाषायें ही जानते हैं। तो यह हर प्रान्त की प्रान्तीय भाषाओं में भी सर्कुलेट किया गया है या नहीं ?

Mr. Deputy-Speaker: Has the hon. Law Minister any information as to whether in the local languages and in Hindi this Bill has been circulated for public opinion?

Shri Biswas: Bills are sent to the State Governments and I have no information as to what the State Governments do. On a previous occasion, I know these draft codes had been drawn up in the different languages. What has been done in the present case I am not in a position to state.

Shri Nand Lal Sharma: I submit that the Bill has not been sufficiently circulated and the public does not know about it at all.

Mr. Deputy-Speaker: I have disallowed his motion already. I will call upon Shrimati Jayashri. Whoever is on the Select Committee will not be called. I therefore request the members of the Select Committee not to rise and try to catch my eye.

Sardar Hukam Singh (Kapurthala-Bhatinda): The names of the members of the Select Committee might be read once more.

Mr. Deputy-Speaker: These are the hon. Members on the Select Committee. I presume they have already consented. It is even now not too late for them to get out of the Select Committee and I have no objection to calling them, but even so they cannot be sure that they will be called. These are the names of the members of the Select Committee.

Shri N. Keshavaiengar, Shri Gurmukh Singh Musafir, Shri Ranbir Singh Chaudhuri, Shri S. V. Ramaswamy, Shri Narendra P. Nathwani, Shri Jayantrao Ganpat Natawadkar, Shri Fulsinhji B. Dabhi, Shrimati Tarkeshwari Sinha, Pandit Dwarka Nath Tiwary, Shrimati Anasuyabai Kale, Shri H. C. Heda, Sardar Amar Singh Saigal, Shri Suriya Prasad, Shrimati Ila Palchoudhuri, Shri Nibaran Chandra Laskar, Shri T. Sanganna, Pandit Sheo Narayan Fotedar, Shri Paidi Lakshmayya, Shri Ram Sahai Tiwari, Shri Panna Lal, Shrimati Uma Nehru, Shrimati Renu Chakravartty, Shri Bijoy Chandra Das, Shri Durga Charan Banerjee, Shri V. Veeraswamy, Her Highness Rajmata Kamlendu Mati Shah, Shri B. S. Murthy, Shri K. S. Raghavachari, Shri Nand Lal Sharma and Shri Digvijaya Narain Singh.

I hope Shrimati Jayashri's name is not in this list.

Shrimati Jayashri (Bombay—suburban): I rise to support the Bill, for which, I should say, the women in India have been waiting since so many long years.

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Mr. Deputy-Speaker: Is marriage a one-sided affair?

Shrimati Jayashri: There are so many women's associations in India who have been protesting against the delay that has been made in bringing this legislation before the House. I will read out a small portion of their resolution:

"The existing Hindu Law regarding marriage and succession, under which women suffer many disabilities, constitutes a contravention of the Constitution. The pending Bills on the Hindu Code have gone through various legislative processes since 1944 and have yet to be placed on the statute book."

So, there is no argument for saying that the Bill was not circulated for public opinion. It has been before the country since nearly ten years now. I am sorry to find that the Government, who had brought forward the Special Marriage Bill and who have tried to see through this legislation as passed in the Council of States, should have not foreseen their way to bring this Bill before the Special Marriage Bill. That legislation is also important, but we had already the 1872 Act, under which our people would have taken advantage of that Bill, while the Hindu Marriage and Divorce Bill was part of the Hindu Code Bill. I should say that when our Government made the proclamation that they will either fall or stay with Hindu Code Bill, we all expected that this measure, which is a part of the Hindu Code Bill, would have got priority. The Government have taken a very long time to bring this legislation on the statute book. The Marriage and Divorce Bill is a part of the Hindu Code Bill, which was before the public since the last ten years. The Hindu Code Bill was circulated for public opinion, was sent twice before the Select Committee and ultimately

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discussed in the Provisional Parliament. That part dealing with marriage and divorce has also been before the public for the last ten years, and yet the Government again took so much time in circulating it for public opinion. Further, it will go before the Joint Select Committee and more time will be wasted on this important measure. There is no end to these dilatory tactics on the part of some of those who do not relish the changes that are necessary in our one-sided marriage laws. As I said in the last general elections, women have supported a large number of Members of both Houses of Parliament on the definite understanding that they will help in passing the Hindu Code Bill. The next elections are not very far away, and I take this opportunity to warn my friends here that the women in this country are alert and they will see that only those Members are sent to this House who are going to support this measure.

Some Hon. Members: No, no.

Shrimati Jayashri: Hindu society has withstood many shocks and upheavals, and if the ancient ideal of married life has solid advantages to recommend it, it will continue to be appreciated and practised by the large majority of Hindus. The Hindu Law is, and has always been, dynamic and not static, and it has promoted and not hindered progress. Change is the essence of life and this thing can be done by taking into consideration the needs of the changing times. Hindu marriage today is not an equal partnership based on mutual rights. The one-sided law of marriage, women ignorant of their rights and the evil customs that have grown round the institution of marriage, threaten to destroy its very foundation. With the increasing consciousness of women, with her desire to achieve equality, it has become necessary to put marriage on a more rational basis

if it is to be saved from collapse. It is obviously difficult to judge the exact measure of married happiness in any society, and especially as the human being is capable of extracting some happiness of life under the most unjust social order. That is no justification for saying that all marriages are happy and there is no necessity for any law to make the partners in a marriage suitable to each other in their married life. On account of their social and religious traditions our people try their best to adjust themselves to conditions whatever they may be even at the risk of self-repression. Marriage is what it should be, namely, a harmonious co-operation of two lives, capable of contributing to the enrichment of family and society.

Now, Sir, coming to the various clauses of this Bill, I would like to appeal to the Law Minister to include some provision by which the dowry system which is ruining our society can be checked. In the Hindu Code Bill there is a clause as follows:—

“In the case of any marriage solemnised after the commencement of this Code any dowry, even on the occasion, or as a condition, of or consideration for such marriage shall be deemed to be the property of the women whose marriage has been so solemnised.

Where any dowry is received by any person other than the woman whose marriage has been so solemnised as aforesaid, such person shall hold it in trust for the benefit of the woman and shall transfer it to her after her completing the age of eighteen years, or if she dies before completing that age, to her heirs specified.”

I suggest that we should include some safeguard like this to restrain persons demanding exorbitant dowries. The dowry system is growing

even in educated societies. Bride-grooms are asking exorbitant prices. Only the other day we read in the papers of a case where the bride-groom's party after the betrothal where the girl's parents would have spent about Rs. 2,000 to Rs. 3,000, wanted a large amount of money, and on the inability of the girl's parents to oblige them, went away without taking the bride. Such cases are occurring frequently. This dowry system, I am told, has spread to other religions also, like Parsis, and Christians. I suggest that we should include this in the essentials of Hindu marriage.

Then I come to clause 9, restitution of conjugal rights. The women's sub-committee of the National Planning Committee appointed by the Congress suggested:

"We find that the provision for the restitution of conjugal rights still exists in Hindu and Mohammedan law. We feel that in any society that lays claim to any form of refinement or culture a remedy of this character should be excluded from the Statute Book."

If we want to make provision, we could have said that desertion can be made a ground for judicial separation without bringing in this conjugal rights, because as I said, in a civilised society this sort of measure should be done away with.

Then, in clause 10, relating to judicial separation, I would like to add unnatural offence. It may be unsafe for one of the parties to live with the other. This is very important because we find so many rape cases, and other unnatural offences committed.

In clause 12, among the grounds on which a marriage can be decreed as invalid, for the girl I would like to add: "if she is an *akanya*". Recently, there was a case in Bom-

bay, an extract of which I would like to read:

"The society marriage which took place in Bombay, according to Hindu rights two years ago was declared to be null and void by Mr. Justice Tendolkar at the Bombay High Court today on the ground that the bride was an *akanya*, not a complete woman."

Shri Biswas: Is it same as frigidity?

Shrimati Jayashri: They have used the word '*akanya*'.

I shall read out from the press report I have:

"His Lordship said 'that if the plaintiff husband was not entitled to a declaration of nullity, I would have had no hesitation in granting him a decree for divorce under the provisions of the Bombay Hindu Divorce Act.

The husband, a youth of 24, was married to a 18 year old girl defendant, in the city in May, 1950, according to Hindu rites and custom...."

The plaintiff alleged that his wife was an '*Akanya*' etc., etc."

Shri Biswas: "*Akanya*" literally should mean one who is not a girl.

Shri U. M. Trivedi (Chittor): Does "*Akanya*" mean a non-virgin?

Shrimati Jayashri: In clause 13, relating to petition for decree of divorce, in place of sub-clause (1) which reads :

"that the husband is keeping a concubine or the wife has become the concubine of any other man or leads the life of a prostitute;"

I would suggest "frequent acts of adultery during the period of six months or one year of marriage."

[Shrimati Jayashri]

whatever the Law Minister may think proper. This is very difficult because very few people will now-a-days encourage concubines though they may be leading a life of adultery. Women also will not be like prostitutes though they may not be chaste. Instead of this clause, I would suggest some such change "frequent acts of adultery" should be substituted here.

Mr. Deputy-Speaker: How many would be the limit?

Shrimati Jayashri: I leave that to the Select Committee. They may decide this. I would suggest that some such change should be made in this clause.

I would like to refer to clause 9 which deals with restitution of conjugal rights. I would like the Select Committee to consider and provide for cases where there is a desertion for a period of two years or three years.

Then there is clause 23 (c) which deals with a petition not presented or prosecuted in collusion with the respondent. Some of the women's associations have suggested that there are very rare cases in which there is really no collusion and that people had to tell lies. I would suggest that it is not necessary to have this (c) in clause 23.

Mr. Deputy-Speaker: It is left to the court to find out if there is collusion in which case the court will reject the petition.

Shrimati Jayashri: I would suggest that it is not necessary to have that.

Mr. Deputy-Speaker: Otherwise even if there is collusion, the court cannot throw out the petition.

Shrimati Jayashri: People have to tell lies because this clause is there. Really speaking, it is with the consent of both parties that most

divorce cases come before the courts and if you keep this clause.

Mr. Deputy-Speaker: The hon. Member will make divorce very easy. (*Interruptions*)

Shrimati Jayashri: I want our society to proceed gradually and not very fast in making divorce easy. We have in Bombay this Divorce Act. Very few cases come before the courts. It is not so very easy. The women would not leave their homes and rush to the courts for taking resort to divorce. I have got some figures.

Mr. Deputy-Speaker: Has the hon. Member considered the possibility of the man taking advantage of it more than the woman? The hon. Member's approach to this problem is from the woman's point of view.

Shrimati Jayashri: I am speaking from both man and woman's point of view because both men and women would not rush. Especially the ordinary woman would not do so because they have to depend on man for her maintenance and she will think twice before rushing. It may be that men might like to go to courts but there also I would say that the clause on alimony will prevent them from rushing to the courts.

I wanted to say that we have already got an Anti-Bigamous Marriage Act in Bombay. Dr. Ambedkar once reported in this House that nearly 2,000 marriages were performed in contravention of the Anti-Bigamous Hindu Marriage Act in Bombay State in the first few months of the passing of that Act but formerly frequent cases used to occur. Very few cases went to the court. Similarly, I would say that in regard to divorce also, people are not going to rush to the court. We had these Divorce Acts in Baroda State and in Mysore State also but so far we have not seen that our society is ruined or that our religion

is in danger. I would therefore appeal to the Members here that our marriage laws which are one-sided at present and which are doing injustice to women should be reformed and brought in accord with our Constitution which wants to do justice to both the sexes. So, I support this Bill.

Shri Biswas: I have got to place the matter before the Joint Select Committee and so I should like to understand whether it is her contention that divorce should be allowed even by collusion. Is that all she wants? I want to be clear about it so that I can place the matter before the Select Committee.

Mr. Deputy-Speaker: Even if the court comes to the conclusion and find out the truth that there is a collusive application for divorce, is it the contention of the hon. Member that that collusive application should be allowed by the court?

Shrimati Jayashri: I do not see any harm in it because....

Shri Biswas: I do not want any arguments. Is that all her intention?

Mr. Deputy-Speaker: The Hon. Member does not see any harm in it. The hon. Member was saying that there ought to be no difference or discrimination between man and woman and she is also in favour of monogamy. Would it prevent ill-treatment of the woman? A man cannot marry another woman and a woman cannot marry another man. Is it necessary to include such a provision for divorce immediately along with monogamy in view of what she said regarding the working of the Bombay Act that very few cases had come before the courts?

Shrimati Jayashri: I would say that even if there is one case it is doing justice to the party who is suffering and leading a miserable life. Law must give justice even if one is in a minority.

Shri Khardekar (Kolhapur cum Satara): I congratulate the Law Minister for bringing in this Bill at last—better late than never. Our Government is notorious and has very often been guilty of undue hurry in bringing about unwanted and monstrous legislation. It has also been guilty of inordinate delay in bringing about laws, good and necessary. I congratulate Shri Biswas for bringing in this measure—(An Hon. Member: Say the Law Minister) No, Shri Biswas, because he as an individual is likely to live in history, perhaps otherwise he might not have been born in history.

A reformer has to have plenty of courage and strength. A weak government is worse than useless. I have been wondering as to why this delay has been caused, a delay of nine or ten years, particularly when this Government has an overwhelming majority, almost a brute majority.

I think this particular reform in Hindu law has two kinds of enemies, external and internal: External enemies like, you might call, the Ram Rajya Parishad and so on, this Government has never bothered about and is not bothered about. It is the internal enemies that have checked the progress of any reform in Hindu society.

Having listened carefully to the debates on Seth Govind Das' Bill for the Preservation of Cattle and the Special Marriage Bill, it is my considered opinion that some, if not all, of those who are masquerading as Congressmen are worse reactionaries than even the Sanatanists. (Interruption). I said 'some'. (Shri U. M. Trivedi: Why not all?)

It is said that public opinion is against this measure. I really do not know, unless it is public opinion as has been gathered by the young Raja of Bilaspur. As far as 80 per cent. of the Hindu population is concerned, this Bill has nothing to do with it; they are actually more progressive.

[Shri Khardekar]

So far as the simple, healthy, unsophisticated villagers are concerned, a girl just asks for divorce or walks out. Independent leaders in that community support her, and that is all. We know that out of the remaining twenty per cent., women, as Shrimati Jayashri has said, have all along been for this particular Bill, and progressive gentlemanly opinion, I believe, has been backing it.

I am reminded of what Burke wrote—I am not able to quote the exact words—that where on a common huge animals are grazing or ruminating, there may be a few crickets making plenty of noise, but one must not be swayed by this noise which is more a noise of insignificance. I am very proud of my State, the State of Bombay for having introduced these reforms long ago. And I do not think even the doughtiest champions of Hindu religion would say that Bombay is not a moral State. The kingdom of Morarji is the Kingdom of Heaven on earth, a first-class moral State. Now, we hear the cry that Hindu religion is in danger, that Hindu culture is going to dogs. I want to know whether Hindu religion or Hindu culture is so fragile or weak as to suffer from any reform that is likely to be introduced.

But looking at this dispassionately and objectively I want to know where the danger lies. As has been said by the Law Minister and as one can see by looking at it, the Bill is purely permissive and entirely of an enabling nature. Those who wish to remain orthodox are at perfect liberty to do so. Then what is the objection? The objection that is raised or that is in the minds of the people, I think, is that this may in some way put an end to caste system, that a low caste person will, if he wishes, be able to marry a member of the higher caste. They are afraid of this pollution, and that is where, I think, the poison can be seen.

Nobody forces anybody to divorce. And the point very often has been

brought forth that social reform should not be introduced by law. But where the malady or the disease is so rampant I think it is very necessary that laws must take those reforms in hand. I would have gone a little further and suggested that we should have inter-caste marriages. It would be very radical and almost revolutionary but at the same time it is necessary that all of us who belong to the higher caste should see that in each family there is at least one compulsory marriage from the lower class. That is the only way in which untouchability and the devil of caste system could be put an end to in a short time.

Mr. Deputy-Speaker: It is already being practised.

Shri Khardekar: So Hindu religion means according to these conventional few, the perpetuating of the caste system, the evil of untouchability and the slavery of women. You know that there are two kinds of tyranny which have enslaved mankind, the tyranny of the kings and the tyranny of the priests. Fortunately we have got rid of our rulers, and the few princes that were there have also been liquidated duly. But the tyranny of the priests still continues to dominate the Indian mind. Though superstition and the rest of it, the Indian mind is still under the grip of this tyranny. This tyranny or enslavement of the mind is worse than the enslavement of the body and therefore we have got to get rid of this particular domination. I may very rudely say, this beastly priestly order of Hindu religion has got to go. I say 'beastly' because it has created and perpetuated the caste system, it has continued the stigma of untouchability, it has given inhuman treatment to women. You can see the high caste women when they become widows even at an early age, the way they are treated, in the most crude, inhuman, unjust manner, the head shaved off and so on. This particular priestly order has tortured saints in the past. We have the examples of

Saint Tukaram and Saint Daneshwar. I may not be wrong if I suggest that this led even to the murder of Gandhiji. Refer to the slogans that were raised recently in the Hindu Mahasabha session.

Coming to certain fundamental points, we have to accept this view that old order changeth, yielding place to new. Society is not static. It cannot be. It is dynamic. And so must law be. There are some who want to live in the past. It is like trying to make mummies live. The past cannot be re-created and lived. It is not desirable, it is not possible. We have to re-create and re-shape the past in the light of the present, looking to the surrounding circumstances, with an eye to the future. All that is good in the past should be followed. But it should have a firm foundation too. An old building five thousand years old cannot be good for human habitation now. It may be dangerous. Nor is it convenient to live in it. Similarly with regard to our social and legal structure. I may illustrate this by one very famous example from literature. In England, there was a time when Shaw was becoming popular. There were a few young men who declared that Shaw was perhaps better even than Shakespeare. Some people went to Shaw and asked him his opinion. Shaw said, yes. Oh yes; Shaw is of course better than Shakespeare. How? Because Shaw is taller than Shakespeare. Why? Because Shaw stands on the shoulders of Shakespeare, meaning thereby that to the knowledge that Shakespeare had of the 16th century, Shaw added the knowledge of the next three centuries and he could feel sure of seeing a little further. We have the advantage of the past and if we make use of that advantage, we could have a much better idea of the present and the possibilities of the future.

There is no doubt that our *Rishis* were great men. They were prophets. But, is it possible that whatever they laid down is for all eternity? A *rishi* is, after all a human being, and perhaps the best among us. Infallibility is only in the nature of the gods. If

is human to err. I may give one example. I do not think that many would doubt the statement that persons like Gandhiji or Vinobha have something of a *Rishi* in them. We know that Gandhiji was very dogmatic and considered that whatever he said was true. In ninety nine cases out of 100, that came true. When in the hundredth case, he found that he had committed a mistake, he had the goodness and greatness to admit his mistake and sometimes the mistake of a great man, he admitted, was Himalayan. If we had the advantage of having in our midst Manu and other law givers, we would have also known from them how they would endorse or correct their rulings in the light of the present circumstances. I think these ancient *rishis* must be laughing at us when we merely parrot them or say that whatever they laid down is true for eternity or has the stamp of eternity. It is wrong to take the *rishis* as a sort of text books and not to have any possible change in them.

Here, I would refer to a very remarkable remark made by Shri Tandon when he gave the most rational exposition of the *Kumbh Mela* tragedy. He said,—I am quoting from memory—that the greatest *rishi* is intelligence, reason, and that has always to guide us; we should not be blind followers. The 20th century is an age of interrogation. It is right and proper for us every time to ask questions. Because, to ask proper questions is more than half knowledge. It is the way towards wisdom. The glory of the Hindu religion lies in its being dynamic. It is the one religion,—I am proud of belonging to it and I think most or all of us are—which does not depend on any text, which does not follow any particular prophet because no prophet has given us the religion as such. It is the accumulated knowledge and wisdom of ages and as such it goes on increasing, developing and growing. Therefore, those who are the champions of Hinduism in the most fanatical way, as to make it go into a rut, as to make it be atrophied or dead, are

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the worst enemies of Hinduism. I shall give one example. Marriages are supposed to be made in heaven. I do not know if heaven had no other business than match making in this world. It is said, once a marriage, always a marriage, no divorce, and so on. Take the case of pilot Monsieur Robert Covell who was transformed into Mademoiselle Roberta Covell. What would happen? If there is not to be divorce, the husband and wife would be of the same sex. It would be a very awful thing. This kind of dogmatically sticking to the old laws is not particularly happy. What I think is that in spite of the fact that very intelligent people are of the *sanatanist* type, most of them have spirituality on their lips and materialism in their heart.

11 A.M.

Then, I come to the most important part of the Bill: the general effect that this Bill would have. It will definitely lead, if certain other things are done, for the economic independence of women. This Bill will lead to the emancipation of women. Women have been regarded here in certain backward areas as though they were property, as though they were chattel or even cattle. I do not want to hurt anybody's religious feeling. The cow is as dear to me as to anybody else. Cow is a good animal. There are some who are very anxious for the protection of the cow; but they do not bother about women. They will consider the cow as the mother; but the real mother, the natural mother, they will consider as though she were a slave. This is unfortunate. Our Constitution has given political rights to women. In the preamble, we also find that the Constitution aims at introducing social and economic justice. This Bill does give a social right. But, I think unless women are given rights to property, unless as in the case of the Scheduled Castes, certain reservations are made for them in the services, services which they can render, they cannot have any independence as individuals. If half of humanity is not well developed individually and so on, the nation cannot go on.

Respect for women is the true measure of civilisation; *Yatra naryastu poojyante ramante thatra devatah*; and so on. The hand that rocks the cradle rules the world. I may add that the sweetest hand that shapes the child is the hand of the mother.

Then, I come to divorce. I may have too progressive ideas; but I hope you will listen to me with patience. It is a contract for the better or worse, if we take the European system of marriage. Even there, even among the Catholics, divorce is allowed, not granted by the courts, but by the Pope in certain rare cases.

Kumari Annie Mascarene (Trivandrum): No divorce; only separation.

Shri Khardekar: The names might differ, the essentials remaining the same. We say, marriage is a sacrament. I think the responsibility of an individual is greater the moment grace and spirituality disappear. If you look at marriage spiritually, I think the moment that I do not want my wife to be my wife and the moment she feels that she does not want me to be her husband, then, to continue that relationship is a relationship of sin. Then, there are many people who raise the question, what about children? I think an unhappy household is the worst nursery for children. Imagine a father and mother quarrelling and using abusive language and making all sorts of monstrous allegations; is that a proper education for a child? For example, imagine a wild pig fighting with a cat in a jungle; naturally the flowers are crushed. If the human pig fights with the female cat, the children not only get a distorted personality, but they are likely to be crushed, because children are the best human flowers imaginable. I go to the extent of saying that where divorce is concerned, do not ask why. If you ask why, if you want reasons, if certain details have to be satisfied, lawyers, police and law courts all these come

in and I think we have had enough discussion to show that justice is perhaps not properly done. The reason is this. Take practical cases. Take the question of adultery. Now, normally, would a wife, a woman, be able to prove this against the husband, with no means, little money, with no friends, unless she is a woman of notoriously loose character, helped by a number of goondas? I do not think a decent woman, were she to rely on this ground for divorce, would be able to get a divorce, whereas, in the case of a man with means, with friends, with lawyers to help him to concoct stories, to fabricate evidence and with the police, or people anxious to oblige them, we do not know the fate of the woman.

Then again, in the divorce proceedings when certain charges are made against one party or the other, they are a very ugly thing, they are obscene, and they are almost a profanation. Particularly, imagine a divorce suit going on between mother and father, and the children studying in colleges and so on, all this dirty family linen being washed in the law courts and some of the papers glorying in highlighting all these proceedings—imagine the result on the children, the coarsening result that it will have. So, if two people do not want to live together as husband and wife, let them separate, and there is no reason why you should not allow them to separate, because, continuing in an unhappy manner I do not think serves any purpose.

I want to say a few words about bigamy, monogamy, polygamy, polyandry and the rest of it. Here I want to say that no moral fetish should be made about it. One man, one woman or one woman, one man is a good rule, but it is a matter more of convenience. It is based on the assumption that the number of the sexes—males and females—is approximately the same. Imagine a war breaking out and half the men being killed. We may have to resort to some sort of custom—I do not mean law—that it would be better for one to marry two, and I think the Pandavas did quite well. Five of

them loved Draupadi, and what is more, they loved each other as brothers.

Mr. Deputy-Speaker: The hon. Member is pleading for the other one.

Shri Khardekar: I come to that. I want you to understand the human mind. You know, Sir:

"Age does not wither her charm
Nor custom stale her infinite
variety.

Kings and Caesars bowed down to
her."

If a question were to be asked of hon. Members: "Would you have one-thousandth part of a Cleopatra or the complete monopoly of a very ordinary person?" I say in all seriousness, it is very difficult to decide—or, if a progressive woman were asked: "Would you have one-tenth or one-hundredth share of a Don Juan or a complete monopoly of a weedy weakling?" Now, the main function of the woman is to perpetuate the species and therefore she is interested in having the best possible children.

Mr. Deputy-Speaker: I am afraid the hon. Member is just overstepping the mark.

Shri Khardekar: The main function of the woman is that she is Nature's chief functionary for perpetuating the species. A woman would prefer a one-thousandth part of a first rate man than a weedy, weakling person as a husband, because it is entirely for the perpetuation of the species in the most healthy manner.

Then, I come to some of the amendments that I have sent only this morning. As I said, adultery or such conditions should be done away with, because it would be impossible for the woman to prove this. It would be easier for the man. Then again, dirty linen should not be washed in the open, and I would have told the story from the Bible had not my learned friend Pandit Thakur Das Bhargava stolen a march over me, because he told that particular story about adultery.

[Shri Khardekar]

Now, we find there is a clause in the Bill that if one of the parties is an idiot or of unsound mind, it can lead to severance of the marriage or separation and so on. This is rather strange. Many of us are idiots. The dictionary meaning of the word "idiot" is certain deficiency in mind and lack of reason. How would you certify any husband to be an idiot? I do not know. Personally, I want to ask who is an idiot? An idiot is one whose reason is being rather conquered and subordinated by his emotion and who for a time loses his intellectual balance. Again, I would say that women as a rule would love idiots, because no self-respecting woman would like her husband to be more intelligent, more clever than her and so on. Because, a woman likes to mother and smother the husband, because she has always that feeling of superiority.

Then, I have one or two other suggestions to make. Venereal disease has been stated as one of the grounds. First of all, we are living in a scientific age, and venereal disease is something that can be completely cured. That is the expert opinion, but the other thing is we seem to have that moral sort of feeling and we do not seem to get over it. There can be persons suffering from venereal disease in spite of the fact that they are entirely innocent. The infection may be caused without their having done any mischief whatsoever. It may have been caused through drinking from a glass which has been used by some syphilitic person suffering in the worse possible manner, or by using the clothes used by a patient suffering from these diseases. Therefore, my suggestion is that this should not be a ground for divorce or separation.

Then, we hear that three years after marriage are to elapse before you can send a petition. This way, four or five years will probably elapse before one can get separation and get remarried. When feelings are against each other and they are not likely to

live as husband and wife, although they may be forced to live in the same house, this sort of enforced celibacy is a very great danger to society, and therefore, my submission is that some of these clauses may be looked into and removed or suitably altered.

On the whole, as I said, I accept this particular measure. I do not think it in any way goes against the spirit of Hindu religion or Hindu culture. Take my own case to see what Hindu religion has done for me. It has given peace to me. It has brought about harmony, and it has introduced a sense of justice. Apart from that, if Hindu culture has a distinct meaning, it looks to certain higher values, we look more to spiritual matters and lay less emphasis on material things. Looking at this Bill, I do not know in what way it comes in the way of your religion or your spiritual values.

Shri D. C. Sharma (Hoshiarpur): I think this Bill makes a happy marriage between reform and mild orthodoxy. It is a liberal measure, and I must say that most of its provisions are based on a spirit of moderation, on a spirit of compromise.

Mr. Deputy-Speaker: The hon. Member may continue later, another time.

PEACEFUL USES OF ATOMIC ENERGY

Mr. Deputy-Speaker: The House will now take up the discussion on peaceful uses of atomic energy. The time allowed for the entire discussion is two hours. How much time will the hon. Prime Minister take?

The Prime Minister and Minister of External Affairs and Defence (Shri Jawaharlal Nehru): Certainly not more than half an hour; possibly less.

Mr. Deputy-Speaker: What about the hon. Member, Shri Saha?