

NOMINATION OF MEMBERS TO JOINT COMMITTEE

JOINT COMMITTEE FOR MAKING RULES UNDER SALARIES AND ALLOWANCES OF MEMBERS OF PARLIAMENT ACT, 1954.

Mr. Speaker: In pursuance of the provision in sub-section (1) of section 9 of the Salaries and Allowances of Members of Parliament Act, 1954, I nominate the following ten Members from the Lok Sabha to serve on the Joint Committee of both Houses of Parliament for the purpose of making rules under section 9 of the said Act:

Shri Satya Narayan Sinha, Shri Bhagwat Jha Azad, Shri U. Srinivasa Malliah, Shri Diwan Chand Sharma, Shri Jagannath Kolay, Shri Govind Hari Deshpande, Shri Nemi Chandra Kasliwal, Shri N. C. Chatterjee, Shri Kamal Kumar Basu and Shri Asoka Mehta.

CONVICTION OF MEMBER

Mr. Speaker: I have to inform the House that I received the following telegram yesterday:—

"On 15th September at 12-15 hours Shri Nalla Reddi Naidu, Member Lok Sabha, was arrested under Sections 143 and 447 I.P.C. at Karivena Village Andhra State in connection with an agrarian satyagraha and taken to Stationary Sub-Magistrate, Nandikotkur. for trial—DISPOL KURNOOL RURAL".

I have received the following further telegram today:—

"Reference arrest of Shri Nalla Reddi Naidu, Member, Lok Sabha. He is convicted and sentenced to 6 months R.I. under Section 143 I.P.C. and 3 months R.I. under Section 447 I.P.C., both sentences to run concurrently, by Stationary Sub-Magistrate, Nandikotkur, and sent to Allipuram Jail, Bellary.—DISPOL KURNOOL RURAL ANDHRA STATE."

MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTIES) BILL.

The Deputy Minister of Finance (Shri A. C. Guha): I beg to move for leave to introduce a Bill to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic."

The motion was adopted.

Shri A. C. Guha: I introduce* the Bill.

SPECIAL MARRIAGE BILL—contd.

Clause 27 — (*Divorce*)—contd.

Clause 27-A—contd.

Clause 33.— (*Duty of court in passing decrees.*)—contd.

Mr. Speaker: The House will now proceed with the further consideration of the Bill to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce, as passed by the Rajya Sabha. The amendments also will be taken into consideration.

The House will now resume discussion of clause 27, new clause 27-A and clause 33 of the Special Marriage Bill. As already intimated by Members, the following amendments to clauses 27, 27A and 33 will be moved subject to their being otherwise admissible:

Nos. 510, 142, 386, 387, 201, 88, 436, 50, 408, 437, 409, 51, 144, 278, 463, 145, then 89, 146 and 412 which are identical, 438, 147, 202,

*Introduced with the recommendation of the President.

then 148, 414 and 439 which are identical, 440, 441, 203, 442 and then 90 and 149 which are identical, 443, 204, then 91 and 151 which are identical, 150, 444 then 92, 205, 206, 280, 328, and 469 which are identical, 327, 153, 518, 207 then 94 and 154 which are identical, 416, 156, 157, 53, 95, 470, 208, 158, 495, 200, to clause 27.

Nos. 54, 96, 97, 471 to New clause 27A.

Nos. 214, 496, 520, 168, 497, 169, 521 to Clause 33.

As the House is aware, 4 hours have been allotted for the disposal of this Group of clauses, out of which 2 hours and 2 minutes have already been availed of yesterday and 1 hour and 58 minutes will be available to-day. This will mean that the discussion on these clauses will terminate at about 2 P.M. If the House agrees, these clauses and the amendments may be put to vote at 2-30 P.M.

The next group of clauses, viz., 28 to 32 will be taken up by the House at about 2 P.M. One hour has been allotted to this group and after these are disposed of, the House will take up the last group, viz., Clauses 34 to 50 and Schedules, Clauses 1 and 2 and the title for which two hours have been allotted. That will complete the clause-by-clause consideration stage of the Bill today.

I would request members to hand in at the table within 15 minutes the numbers of amendments which they propose to move to Clauses 28 to 32 and 34 to 50, and the Schedules.

The position is that if the amendments are given now, the office can prepare the list and an announcement can be made as to which of the amendments are going to be moved.

Shri R. D. Misra (Bulandshahr Distt.): I beg to move.

In page 9, before line 1, insert:

**"CHAPTER VI-A
DIVORCE"**

Shri Bogawat (Ahmednagar South): I beg to move:

In page 9, omit lines 5 and 6.

Pandit Thakur Das Bhargava (Gurgaon): I beg to move:

In page 9, lines 5 and 6, for "committed adultery" substitute:

"had sexual intercourse with any person other than the spouse".

That in the amendment proposed by me as No. 386 above, add at the end:

"within two years of the presentation of the petition for divorce".

Acharya Kripalani (Bhagalpur cum Purnea): I beg to move:

In page 9, line 5 after "committed" insert "acts of".

Shrimati Jayashri (Bombay Suburban): I beg to move.

In page 9, line 6, after "adultery" insert:

"or unnatural offence."

Shri Sadhan Gupta (Calcutta—South—East): I beg to move:

In page 9, line 8, for "three years" substitute "two years".

Shri Dabhi (Kaira North): I beg to move:

In page 9, omit lines 10 to 16.

Shri H. G. Vaishnav (Ambad): I beg to move:

In page 9, line 11, after "offence" insert "involving moral turpitude".

Shri M. L. Agrawal (Pilibhit Distt. cum Bareilly Distt.—East): I beg to move:

In page 9, line 16, after "years" insert "or more".

Shri H. G. Vaishnav: I beg to move:

In page 9, line 17, for "since" substitute "after".

Shri Dabhi: I beg to move:

In page 9, line 18, for "cruelty" substitute:

"such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the respondent;"

Shri Bogawat: I beg to move:

In page 9, line 18, for "cruelty" substitute:

"such cruelty that the party victim to it feels it unsafe to live together;"

Pandit Thakur Das Bhargava: I beg to move:

In page 9, line 18, for "cruelty" substitute:

"such cruelty as would render it unsafe for the petitioner to live together with the respondent".

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

In page 9, line 18, after "cruelty" insert "which endangers the life of the petitioner."

Shrimati Renu Chakravartty (Basirhat): I beg to move:

In page 9, lines 19 and 20, for "continuous period of not less than five years" substitute:

"period of not less than three years".

Shrimati Jayashri: I beg to move:

In page 9, line 20, for "five years" substitute "three years".

Dr. Rama Rao (Kakinada): I beg to move:

In page 9, line 20, for "five years" substitute "two years".

Shri H. G. Vaishnav: I beg to move:

In page 9, line 20, for "five years" substitute "three years".

Shri Sadhan Gupta: I beg to move:

In page 9, line 20, for "five years" substitute "two years".

Dr. Rama Rao: I beg to move:

In page 9, omit lines 22 to 25.

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

In page 9, for lines 22 to 25 substitute:

"(f) has knowingly or unknowingly infected the petitioner with venereal disease; or".

Shrimati Renu Chakravartty: I beg to move:

In page 9, line 22, for "five years" substitute "three years".

Shri H. G. Vaishnav: I beg to move:

In page 9, line 22, for "five years" substitute "three years".

Shri M. L. Agrawal: I beg to move:

In page 9, line 22, for "five years" substitute "three years".

Shri Sadhan Gupta: I beg to move:

In page 9, line 22, for "five years" substitute "two years".

Shri M. L. Agrawal: I beg to move:

In page 9, line 24, after "form" insert "or from leprosy".

Shri Raghavachari (Penukonda): I beg to move:

In page 9, lines 24 and 25, omit:

"the disease not having been contracted from the petitioner".

Shri M. L. Agrawal: I beg to move:

In page 9, omit lines 26 to 29.

Shrimati Jayashri: I beg to move:

In page 9, line 26, for "five years" substitute "three years".

Shrimati Renu Chakravartty: I beg to move

In page 9, line 26, for "five years" substitute "three years".

Shri Sadhan Gupta: I beg to move:

In page 9, line 26, for "five years" substitute "two years".

Shri Raghavachari: I beg to move:

In page 9, omit lines 30 to 32..

Shrimati Jayashri: I beg to move:

In page 9, lines 30 and 31, for "seven years" substitute "five years".

Dr. Rama Rao: I beg to move:

In page 9, lines 30 and 31, for "seven years" substitute "five years"

Shrimati Renu Chakravartty: I beg to move:

In page 9, lines 30 and 31, for "seven years" substitute "three years".

Shri Sadhan Gupta: I beg to move:

In page 9, lines 30 and 31, for "seven years" substitute "two years".

Shrimati Jayashri: I beg to move:

In page 9,—

(i) omit lines 36 to 38; and

(ii) line 39, for "(k)" substitute "(j)".

Acharya Kripalani: I beg to move:

In page 9,—

(i) omit lines 36 to 38; and

(ii) line 39, for "(k)" substitute "(j)".

Shri N. C. Chatterjee (Hooghly): I beg to move:

In page 9, omit lines 39 to 41.

Pandit Thakur Das Bhargava: I beg to move:

In page 9, omit lines 39 to 41.

Shri Gidwani (Thana): I beg to move:

In page 9, omit lines 39 to 41.

Shri Mulchand Dube: I beg to move:

In page 9, omit lines 39 to 41.

Shri Venkataraman (Tanjore): I beg to move:

In page 9,—

(i) line 38, omit "or".

(ii) omit lines 39 to 41.

Shri Bogawat: I beg to move:

In page 9, line 39, for "one year" substitute "three years".

Shri Jhunjhunwala (Bhagalpur Central): I beg to move:

In page 9, line 39, for "one year" substitute "six months".

Shri Raghavachari I beg to move:

In page 9, lines 40 and 41, omit—

"or the parties refuse to live together and have mutually consented to dissolve the marriage".

Shri S. V. L. Narasimham (Guntur). I beg to move:

In page 9, line 40, for "or" substitute "and".

Dr. Rama Rao: I beg to move:

In page 9, line 40, for "or" substitute "and".

Shri H. G. Vaishnav: I beg to move:

In page 9, lines 40 and 41, for "consented" substitute "given free consent".

Shri Bogawat: I beg to move:

In page 9, line 41, add at the end:

"and there being no fraud, coercion, undue influence or misrepresentation;".

Shrimati Renu Chakravarty: I beg to move:

In page 9, after line 41, insert:

"provided that the court shall not grant a decree under clause (k) unless (i) it is satisfied the consent of either party to the divorce was not obtained by coercion and (ii) a six months period of reconciliation efforts by the courts have failed;"

Shri B. P. Sinha (Mongnyr Sadrum Jamui): I beg to move:

In page 9, after line 41, insert:

"(1) has not, if female, attained the age exceeding forty-five, and, if male, exceeding fifty-five".

Shri S. V. L. Narasimham: I beg to move:

In page 9, omit lines 42 to 44.

Shri Mulchand Dube: I beg to move:

In page 9, line 42, after "on the" insert "additional".

Dr. Jaisooraya: I beg to move:

In page 9, line 43, after "sodomy" insert "with her, homo-sexuality".

Dr. Rama Rao: I beg to move:

In page 9, after line 44, add:

"Provided that no petition for divorce by the husband shall be admitted when the wife is with child (pregnant)".

Shri R. D. Misra: I beg to move:

In page 9, after line 44, add:

"Provided that if the marriage of the parties has not been solemnized under the Special Marriage Act, 1872 (Act III of 1872) or under this Act, a petition of divorce may be presented to the district court either by the husband or the wife on any of the grounds specified in clauses (a)

to (k) after expiry of one year from the date of the commencement of this Act."

Dr. Jaisooraya: I beg to move:

In page 9,—

(i) line 3, after "district court" insert "(1)";

(ii) line 41, add at the end "or";

(iii) line 42, for "and" substitute "(1)";

(iv) line 44, add at the end "or"; and

(v) after line 44, add:

"(iii) by either party when both parties to a marriage have lived apart for a period of not less than five successive years and neither party had applied for judicial separation, restitution of conjugal rights or divorce or having applied for them, not been granted relief, and there seems no reasonable grounds for reconciliation."

Shri Dabhi: I beg to move:

In page 9, after line 44, insert:

"27A. Notwithstanding anything contained in section 27, no court shall entertain any petition for divorce, if the husband and wife have lived a married life for a period of twenty years or more."

Shri S. V. L. Narasimham: I beg to move:

In page 9, after line 44, insert:

"27A. Notwithstanding anything contained in section 27, a petition for divorce may be presented by a wife to the district court that her husband has, since the solemnisation of the marriage, been guilty of sodomy, rape or bestiality."

Shri Venkataraman: I beg to move:

In page 9, after line 44, insert:

"27A. *Divorce by mutual consent.*—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of the parties made not earlier than one year after the date of the presentation of the petition referred to in sub-section (1) and not later than two years after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree."

Shri Dabhi: I beg to move:

In the amendment proposed by Shri R. Venkataraman and Shri Kotha Raghuramaiah printed as No. 97 in List No. 3 of amendments, in sub-section (2), for "and that the averments in the petition are true" substitute:

"that the averments in the petition are true and that the consent of either party to the petition was not obtained by force, fraud or misrepresentation."

Acharya Kripalani: I beg to move:

In page 11,—

(1) after line 7, insert:

"33. *Duty of court in passing decrees.*—(1) In any proceeding

under Chapter V or Chapter VI the court shall first refer the matter to a Board of Conciliation consisting of three married persons of not less than 45 years of age, one of whom shall be a person of legal or judicial experience and the Board will try to bring about conciliation between the parties within such time specified by the court and shall submit a report to the court recommending the action proposed to be taken in the matter. The court shall, after taking into consideration such report pass such order or decree as it thinks fit"; and

(ii) for line 8, substitute:

"(2) In any proceeding under".

Shri R. D. Misra: I beg to move:

In page 11, for lines 12 to 16, substitute:

"(b) where the ground of the petition of the husband is adultery, the petitioner had filed a complaint against the person who committed adultery with the respondent and that such accused person was convicted under section 497 of the Indian Penal Code (Act XLV of 1860) by the criminal court or was acquitted on doubt by such court; or where the ground of the petition of the wife is adultery she had made an application under section 23 of this Act for judicial separation on such ground and the court granted a decree for judicial separation; or where the ground of the petition is cruelty the petitioner made an application to the court under section 23 of this Act and the court granted a decree for judicial separation; or where the ground is desertion under sub-clause (b) of section 27, the petitioner presented a petition under section 22 of this Act for restitution of conjugal rights and the court granted a decree for restitution of conjugal rights, be-

[Shri R. D. Misra]

fore the presentation of the petition; and”

Shri Venkataraman: I beg to move:

In page 11, after line 16, insert:

“(bb) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force or fraud; and”.

Shrimati Renu Chakravartty: I beg to move:

In page 11, omit lines 17 and 18.

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

(i) In page 9, line 20, for “five years” substitute “three years”.

(ii) In page 9, line 22, for “five years” substitute “three years”.

(iii) In page 9, line 26, for “five years” substitute “three years”.

Shri M. S. Gurupadaswamy (Mysore): I beg to move:

In page 9, for lines 19 to 21, substitute:

“(e) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition; or”.

Shri Jethalal Joshi (Madhya Saurashtra): I beg to move:

In page 11,—

(i) after line 7, insert:

“33. *Duty of court in passing decrees.*—(1) In any proceeding under Chapter V or Chapter VI, the court shall first refer the matter to a Board of Conciliation, and the Board shall try to bring about conciliation between the parties within a period not exceeding one year and shall submit the report to the court recommending the action to be taken in the matter. The court

shall, after taking into consideration such report, pass such orders or decree as it thinks fit.”; and

(ii) for line 8, substitute:

“(2) In any proceeding under”.

Shri R. D. Misra: I beg to move:

In page 11, omit lines 19 and 20.

Shrimati Renu Chakravartty: I beg to move:

In page 11, after line 24 insert:

“Provided that all petitions shall be disposed of within a period of six months from the date of application.”

Shri Venkataraman: I beg to move:

In page 11,—

(i) line 8, after “decrees.—” insert “(1)”; and

(ii) after line 24, add:

“(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.”

Mr. Speaker: The amendments that have been moved are now placed before the House for discussion.

Shri Dabhi: Several important amendments have been moved by members. Some who have moved amendments have not got the chance, or may not get a chance. I therefore request that the time may be extended.

Mr. Speaker: I think it is a position which cannot be helped. It is not that every Member who moves an amendment will necessarily get a chance, when there is such a large number of amendments and a large number of speakers and allotment of time is

made according to the convenience of the House. That is not possible.

Shri Venkataraman: Mr. Speaker, yesterday I just commenced my speech trying to draw the attention of the House to the basic philosophy from which this clause 27 was attacked. My esteemed friend, Shri C. C. Shah, started with the premise that marriage is sacred and indissoluble, because we have regarded our relationship as something which is sacred, which has come down from the past generations and it is now a sort of an innovation which is made by the so-called reformists to break up society.

[MR. DEPUTY-SPEAKER in the Chair.]

Sir, I would invite the attention of my hon. friend to the provisions of this Special Marriages Act as it now exists. He will find that divorce is nothing new, but has been provided for in this very Act. Secondly, even in respect of Hindu Marriages, it has already been provided in the Acts in Madras and in Bombay that there can be divorce under certain circumstances and conditions. We are not trying to do anything new now, but only clarifying the various grounds on which divorce can be granted.

My hon. friend said that sub-clauses (a) to (j) of clause 27 relate to certain offences, mistakes or misdeeds performed by the other person, so that one is entitled to ask for dissolution of the marriage. He very strongly criticised the provision with regard to divorce by mutual consent. May I ask him, Sir, why if in the case of desertion, if in a case in which one spouse deserts the other and runs away and be absent for a period of three years, a divorce can be granted, why could not the same divorce be granted when two people agree to have it in a period of two years? As the clause 27 (b) now stands—about which no objection has been taken in this House—if one of the parties deserts the other, the other is entitled

to ask for a dissolution of the marriage and get a decree of divorce. If that is so, why should not, when both parties agree to dissolve the marriage they be allowed to do so? There is nothing so absurd, so reactionary as Mr. Chatterjee said yesterday; in these provisions. He said that in no country in the world, do you find a similar provision except in totalitarian countries, and then by way of a refresher course in geography, repeated the name of everyone of the countries. May I ask him, Sir: are there not communities in India which have divorce by even less than mutual consent now? I know of communities where the parties go before the headman of the caste and break the cooking pot and the dissolution of the marriage is complete. Perhaps, if Mr. Chatterjee were a judge he might say, "I would not accept it as proper dissolution of marriage". But Mr. Chatterjee will not get that chance or opportunity, because none of the members of that community have ever challenged this particular way of dissolution in a court so far. Parties have accepted it and society has accepted it. Therefore, even if all the enlightened wisdom of some of the Members would not accept the system, still the parties by virtue of accepting that kind of divorce will not give an opportunity for the court to express an opinion against it. I again asked him why he should not refer to some other parts of India where a divorce by mutual consent already exists. I referred in my speech in the second reading to the system which prevails in Malabar. An Act has been enacted by the Madras Legislature the *Marumakkattayam Act*, in which it has been provided that if there is mutual consent, the parties have to go and file a petition, and on the presentation of the petition, they have to wait for a period of six months, after which they can renew the petition and get an order for divorce, the only thing to be proved there being that they mutually agree to separate. So, we need not go and borrow all the wisdom of the other countries in the

[Shri Venkataraman]

world when we have enough of it in our own country, when several communities are practising it and when the system has worked so well in our own country. After all, when we realise the background that this is not a law which will apply to all the people but will apply to only those who elect to come under it. I do not see what objection they will have to the system of divorce by mutual consent while it is available and is practised by certain communities in this country.

I would now refer to one or two safeguards that are necessary. It may be that in a huff, in a quarrel, in the heat of passion, the parties may get angry with each other and say that they will divorce. Society and law. I agree, ought not to encourage such momentary passion to come in the way of their proper life in the future. That is why, if you kindly look at my amendment No. 97, you will find that, firstly, the parties have to live separately for a period of one year, and then they must be able to say that they are not able to live together, which includes they are unwilling to live together. My hon. friend, Pandit Thakur Das Bhargava, made a great point and said "Why do you say that they have not been able to live together? Suppose one of the two persons has to be abroad on some business, will it not come under that clause?" My answer is that the clause is put so wide as to include people who refuse to live together as well as people who do not want to live together. That is why "they have not been able to live together" has been used by me.

These two conditions are not enough and one other condition is necessary before a petition can be filed, and that is, that they have mutually agreed that the marriage should be dissolved. Unless all the three conditions are satisfied, namely, that they have not been living together for a period of one year, that they are not willing to live together and

that they have mutually agreed to separate, no petition can be presented. Even when a petition is presented, it is not unilateral petition presented by one party, but on the contrary it is a petition which will have to be presented by both parties. It is said—and there is apprehension on the part of my sisters in the House—that this consent may be obtained by coercion, fraud, misrepresentation, undue influence and so on. I beg to submit that this is without foundation, because for a period of one year they have to live separately and you cannot say that this fraud, misrepresentation, coercion, etc., will continue for a period of one year, and then, when both parties file a petition, the court will not immediately pass a decree, but will adjourn the petition with the result that for a period of one year, they cannot renew it and there will be no decree.

Pandit Thakur Das Bhargava: The parties to the application will be only the husband and the wife. What will be the enquiry? Both will admit the fact.

Shri Dhulekar (Jhansi Distt.—South): No enquiry is necessary.

Shri Venkataraman: When both parties come to the court and say that they have agreed to live separately and that they have lived separately for one year, there is a period of one year before the petition can again be taken up. During this period of one year, whatever little undue influence, misrepresentation, fraud, etc., there may be would completely be dissolved, and you cannot say that when the parties are living separately and far away from each other, one of them still continues to exercise undue influence or fraud or coercion on the other. Therefore, my submission is that this apprehension is wholly without any basis. When the parties come to the court, the court will have to be satisfied, as my amendment No. 520 will show, that this consent has not been obtained by force or fraud. It is on the

satisfaction of all these things that the decree for the dissolution of marriage can be given. I do not see why this clause should excite such a great amount of opposition when in the other clause we are going to allow, in the case of desertion, a petition by one party and there will be no enquiry about any fraud or force or undue influence. My submission is that we are really labouring under an illusion. It is a misapprehension and there is absolutely nothing which puts this clause in a different footing from the other clause which I have referred to.

I have to refer to another amendment of mine to clause 33. In the speech of Acharya Kripalani and a few others, both during the second reading and subsequently, they made a really important point that before the court grants a decree for divorce, it should try to bring about a reconciliation. There is considerable force in that argument. The only thing is that I am unable to agree to the amendment as proposed by Acharya Kripalani for this reason that he wants that a reference should be made to a board of conciliation consisting of three persons. That, I submit, will lead to multiplicity of proceedings. What I have suggested in my amendment No. 521 is simpler. The very court, to which a petition for divorce is presented, will try to bring about a reconciliation between the parties, and if it fails to bring about such a reconciliation, then it will proceed to grant divorce or deny it as the case may be. My amendment reads like this—"Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties". This gives the court, to which a petition for divorce is presented, the authority and the duty of bringing about a reconciliation. The reference to another body will only lead to multiplicity of proceedings, and that

is why I am not in favour of the other amendment. There is also the question of delay. Therefore, I think that the amendment which I have proposed would meet the requirements of the situation.

With regard to clauses (e), (f) and (g) where a period of five years has been prescribed as the minimum in the case of unsoundness of mind or venereal diseases or leprosy, before the petition for divorce can be presented, the period appears to be too long, and I would heartily support any amendment which reduces the period to three years. A period of five years, particularly when it is stated to be continuous, will so prolong the agony that at the end of it people may despair of getting any relief under this Act.

The Prime Minister and Minister of External Affairs and Defence (Shri Jawaharlal Nehru): Mr. Deputy-Speaker, yesterday, speaking on this clause, Acharya Kripalani drew attention, I think, to the first part of this clause, namely, (a), and said that it would be unfortunate if by some occasional lapse all these results might follow. May I say that quite apart from the particular point that he raised, I entirely agree with his broad approach to this question? But the question here is not enumerating a number of things. The question that ultimately arises is the question that when two people find it impossible to get on together whatever the cause, what is to be done about it? I am prepared, if I may say so, to forgive not one lapse but many but I am not prepared to forgive the intolerable position of two persons who hate each other being tied up to each other. Therefore, I welcome this clause here. I welcome particularly the amendment that my colleague, Mr. Venkataraman, is moving to it in regard to divorce by mutual consent. That has been brought into the picture by the Rajya Sabha in another form. I think the form suggested in the amendment moved—I believe it is amendment No. 97 of

[Shri Jawaharlal Nehru]

Mr. Venkataraman and Mr. Raghu-ramaiah—is a much better way for various reasons. I entirely agree that in this matter the ultimate reason for divorce and a break-up is that two persons cannot continue to live together in peace and amity. At the same time, we must now not allow them in a fit of temper to come to a decision which affects their lives. Therefore, one should allow time for consideration, for reconciliation and all that. I, therefore, welcome this amendment which gives a year's time.

Also in another part of this Bill there is a clause, and I believe that there are two amendments, one by Acharya Kripalani and one by Mr. Venkataraman about this conciliation and attempt at reconciliation. I attach a great deal of importance to such attempts being made. I think the best course is to allow the court to make these attempts. The court may take any move it likes. There is no reason why the court should not adopt the method suggested by Acharya Kripalani to do that. But to bind the court down by a rigid procedure in this matter where flexibility is important would not, I think bring about the results aimed at. The point is: we must have some kind of procedure and the court should be definitely directed to try to bring about that.

I suppose it is almost too late in the day for arguments to be advanced in regard to divorce and the desirability of allowing for divorce. Therefore, I shall not say much about it. We are dealing in these matters with something that is some kind of relationship which is extraordinarily delicate and difficult; often it may be very fine and often it may be the most horrible thing in existence. We talk about marriage and we talk about divorce. I feel that in all these talks perhaps the subject that we have in our mind is—well, the sex relationship which is naturally a part of marriage. But surely marriage is something much more than

sex relationship. Marriage is companionship; marriage is comradeship; marriage is helping each other, co-operation in the task and all kinds of things. I am by no means minimising the sex part of it but I say that it is something bigger than this business of talking in terms of sex and sex alone, as if that marriage meant a sort of wallowing in the bed all the time? I do not understand. Some hon. Members spoke. One should marry; a widow should not marry. I do not understand this business, this kind of thing. It simply means that he is thinking in terms of sex and nothing else and I object to this approach to this question.

Perhaps all problems, all human problems, can be listed in terms of human relationships—all problems, I will say: personal, domestic, national and international: the relationship of the individual with the individual, the relationship of the individual with the group and the relationship of the group with the group. All these things come under those various headings. So this matter of certain relationship, in spite of many thousands of years and practice, has grown no easier. It is full of difficulty and in fact hard enough. Perhaps the difficulties as well as, perhaps, the successes become all the greater when the individual or the group becomes more sensitive and more advanced because you do not want either party to be subordinated intellectually, mentally, physically or in any way to be made a kind of just the reflection of the other and have no individuality of his or her own. Now, when you have highly developed human beings it requires much more of the spirit of accommodation, of understanding of adjustment and of tolerance—tolerance even of errors and faults for them to succeed in life. Of course if you treat them as merely two persons who occasionally or frequently indulge in the sex process and nothing more, then difficulties may be limited perhaps. But if you take a larger view—as you must—then the

question becomes one not of enumeration in this law or any other, when a person has committed this or that offence you have to provide something for the law's sake but ultimately it is a question of your finding a way to encourage happy marriage.

Many people seem to imagine that by bringing in divorce you break up the system of marriage. I am absolutely convinced that by bringing in divorce you make for happier marriages normally. I cannot speak of individual cases. People may use or may abuse anything that may be laid down or without the law they can do as they did.

We are often told that there is something against our basic conventions and ideas and Hindu society. It seems to me that almost anything can be said in that way because Hindu society is so wide so broad based and so various that you can say anything about it either historically or actually today. While we talk about Hindu society are we talking about a few high caste people who are Hindu society or are we talking and thinking in terms of 250 or 300 million—whatever the figure may be of Hindus in this country. When we want to impress other people with numbers, we shout: we are 270 million Hindus in this country but when we come to brass-tacks and when we talk about reforms, we think of a certain small group at the top. You cannot have it both ways: either this way or that way. Apart from that what is the conception? In order to get the conception, with all deference I say that you should not read some fixed rigid enactments, commandments of Manu or anybody else. Of course even there you find a wide variety.

But you should rather look into the social life, as far as we can see it as evolved in our country in the past ages. We can see that in a variety of ways: probably, almost a better way than any, is to have some glimpses of the social life as they are found in our older books. Take our oldest drama. Take one of our oldest plays,

the *Mrichchakatika*. Read it if you have not read it. See the tender humanities that are found in the play. There is no rigid puritanism and punishment of a woman or a man but a human approach to these difficult problems of life. *Mrichchakatika* was probably written in the fifth century A.D., that is about 1,400 years ago or more. You may call it as a play slightly—not artificial—anyhow, I need not describe the play. The point is that the man who wrote it, to some extent, inevitably reflected the life in his day. If you read that play, you see a society which is highly cultured, highly developed. The individual is highly developed. The development of the individual is not in saying big things or broad things or shouting them out. You judge of an individual from the way he treats another individual. The test of an individual, is how he treats his neighbour, his wife, his son or anybody. How he behaves to another, how an individual functions in social relationship, that is the test of the individual. If you apply this test our people in those days were amazingly advanced and tolerant and generous in outlook.

I was talking about tests. There is another test. In primitive societies we had totems and taboos. I wish to say nothing against totems or taboos. But, normally speaking, totems and taboos are instances of primitiveness. The more a society grows, the less the totems, less the taboos. Because, you replace totems and taboos by self-restraint. That is again a test of society's growth: self-restraint, not the application of the rod of the policeman. I use this word; you may apply it in any way you like. But the principle is the same. In the international affairs you try to avoid war or something approaching war for the solution of problems. In the national sphere, you try to settle problems peacefully. In the same way, in the domestic sphere, in the husband and wife sphere, cultured society avoids the rod of the policeman, of the law coming down and punishing you for everything. I do not think that we can do away with

[Shri Jawaharlal Nehru]

that in the international or national or other spheres. That is a different matter. But, the principle is the same. It is a sign of the culture of a society, of a nation, to do away with the approach of the use of violence. If that is so in other spheres, much more so is it necessary in this intimate, domestic sphere of the family. Whether it is husband and wife or father and child or parent and children, the rod is not supposed to be a good way of dealing with the situation. I use the word rod here. I include in it the law which oppresses which constrains, which restricts, which punishes one party as it does in the present conditions.

It is no doubt true that our laws, our customs,—for the moment I am speaking of the upper strata—do fall heavily on the womenfolk. That is why we are introducing other pieces of legislation. This has nothing to do with the Hindu law. This is a voluntary permissive piece of legislation which people may accept or not. If they marry in this way, they accept certain consequences. I do not see how anybody can object to this kind of thing. Even though one may object, one has no reason to restrain other people, who do not object, in having their way. I do not understand it. But, I venture to say that there is something more than that. If you restrain others, you bring in the primitive conceptions of totem and taboo. I am afraid all our people are not out of these primitive conceptions of totems and taboos. We still live a clan life and think in a clan way and many of our troubles are due to that fact. Therefore, I beg this House to consider this broader point of view.

First of all, this is a permissive piece of legislation, meant only for those who accept it, who want to abide by it and come under its fold. It is not right for anyone else, who does not approve of it, to prevent them from doing so. Secondly, on the merits, it is a right piece of legislation. I hope that the basis of this

legislation will not only be confined to those few, but will spread and bring about a certain uniformity in our nation.

Most of all, I would beg to submit to this House one point. I am speaking here in regard to divorce. Divorce must not be looked upon as something which makes the custom of marriage fragile. I do not accept that. If that is so, I say that marriage itself has become a cloak. It is not a real marriage of the minds or bodies or anything. It is just an enforced thing which has no value left in ethics, morality, if you compel and force people in this way. Certainly stop them from acting rashly. Give them time. Make attempts to bring about conciliation. If all that is no good, don't permit a state of affairs which is, I think, the essence of evil, which breeds evil, which is bad for them, which is bad for the children, bad for everybody. I would particularly beg the House to consider that this clause about divorce by mutual consent, subject to time, subject to reconciliation, subject to all such approaches, so that nothing may be done in a hurry, is a right clause, is a proper clause and that it will produce a happier adjustment, a better relationship between the parties than will be produced if one party thinks that he can misbehave as much as he likes and nothing will happen.

Again, it is another question. The House knows that customs have grown up under which different standards of morality are applied to men and women. I think, on the whole,—I cannot speak for everybody—you will find women standing up for this right though some men may challenge it because men happen to be in a dominant position. Let us be clear about it. I hope they will not continue in that dominant position for all time. That is a different matter. You cannot maintain these different standards of morality. Therefore, the approach in this Bill is not to maintain these different standards, but to bring about a certain measure of equality in them.

It is true that you cannot do this by law only. It is custom, it is education, it is basically the economic position of the individual. If the economic position is bad, it is bad and somebody else may exploit. That is a different matter.

Another approach has to be made about it. It cannot be allowed as an excuse if some people say that if you have divorce by mutual consent, the husband will exploit the wife, will kick her out and force her to give consent. It is not an impossibility. It is a possibility that may happen as many worse things often happen. I do not think it will happen if you give time. If the husband wants to behave in that way, the sooner the wife is rid of him, the better. I beg to support this clause and the amendment moved by Shri Venkataraman and Shri Raghuramaiah.

Shri A. M. Thomas: (Ernakulam): My reaction to the clause as adopted by the Rajya Sabha is not quite favourable. This point was brought to the notice of the Members of the Select Committee and they were not in favour of the adoption of a clause which allows divorce by mutual consent. Even the Members of the Select Committee who were in favour of the adoption of a clause which allows divorce by mutual consent wanted to have several safeguards to that clause. I will draw the attention of the House to page xi of the Report of the Joint Select Committee. Hon. Members Sucheta Kripalani, K. A. Damodara Menon and Rajendra Pratap Sinha write:

"The unpleasantness involved in a divorce suit has in no way been reduced under the new provisions of the present Bill. We, therefore, feel the provision of mutual consent as one of the grounds for divorce would have helped to eliminate the above mentioned difficulty. As a safeguard against hasty divorce action it may be provided that in such cases divorce proceedings

shall be kept pending for one year thus giving an opportunity to the contending parties to reconsider their decision and withdraw the petition if they so desire."

So that, even the minority of the Select Committee which was for adoption of a clause providing for mutual consent, was not for unconditional acceptance of such a provision, and so there is much weight in the amendment that is moved by my friend Shri Venkataraman that divorce by mutual consent cannot in any way be adopted unconditionally.

Shri Venkataraman as well as some other Members who spoke on this clause stated that divorce by mutual consent obtains in some parts of our country. Shri Venkataraman pointedly referred to the statute law in Malabar. I wish to state that I also come from a State wherein there are provisions embodied in certain statutes mainly relating to people who follow the *Marumakkattayam* system of law, providing for divorce by mutual consent as per a registered document of dissolution. There are also provisions in these Acts allowing one of the parties to present a petition before the district or principal court of civil jurisdiction, praying that the marriage may be dissolved. Notice will be issued to the other party, and if the other party appears and within a period of six months the petition is not withdrawn, the court will pass a decree nisi to the effect that the marriage will be dissolved. But we have to understand when we adopt these provisions as they are, that conditions in that State are a little different from the conditions in other States.

Shri Velayudhan Quilon *cum* *Ma-*
velikkara—Reserved—Sch. Castes):
More progressive.

Shri A. M. Thomas: I believe that the adoption of an unconditional clause providing that marriage may be dissolved by mutual consent may adversely affect the interests of women, because women are likely to be

[Shri A. M. Thomas]

prevailed upon by men and it may not be difficult to obtain the consent of the woman. But, in that State, the status of women is quite different. Several complications with regard to inheritance and succession will also arise if you allow marriages to be dissolved by mutual consent. But, in Travancore-Cochin, wherein this provision for divorce by mutual consent exists, the inheritance is through the female, so that my humble submission is that there the woman is in a dominant position.

Kumari Annie Mascarene (Trivandrum): Exactly!

Shri A. M. Thomas: So much so, she will not be adversely affected on the pecuniary side if there is this sort of provision in the statutes existing there. Not only that. The provisions in those statutes were incorporated because there were customs and usages obtaining in those communities allowing for divorce by mutual consent. It was only a recognition of the existing law. I must state here...

Kumari Annie Mascarene: Is the *Marumakkattayam* law still existing? Not in Travancore, in Cochin alone.

Shri A. M. Thomas: I may state that even in that State wherein these so-called progressive provisions exist; the elite of the community is not reacting favourably to this provision. I must state, having had intimate knowledge of the conditions there, that those people who follow the system of *Marumakkattayam* inheritance are not, even now, very happy over this provision existing in those statutes. I may say the advanced section rebels against incorporation of such a provision.

Mr. Deputy-Speaker: Order, order.

Shri A. M. Thomas: It is stated by Members like Shri Chatterjee that the marriage is a sacrament.

Mr. Deputy-Speaker: Order, order. Let there be no talk across the

table or across the benches. There is no harm if the hon. Member waits if he is to be heard by the other Members. If they are not interested in hearing, if they are interested in talking, sitting here and carrying on conversation, I will *chup chop*, other hon. Members will also keep quite for some time.

Shri A. M. Thomas: This is a Bill providing for a special form of marriage. It may be stated to be a contract by mutual consent. The parties come together even then. The wording of the proviso to clause reads:

"Provided that it shall not be complete and binding on the parties, unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,—“I, (A), take the (B), to be my lawful wife (or husband).”

So that I would submit there is something more than the element of contract existing even in the form of marriage that we allow under this Special Marriage Bill.

Sir, When you spoke on the Bill, you were pleased to recite certain stanzas which are recited at the time of solemnization of a Hindu marriage. I may, with your permission, just state one or two sentences from the scripture which are recited at the time of the Christian marriage. This is what will be recited:

"For this cause shall a man leave father and mother and shall cleave to his wife and they twine shall be one flesh, wherefore they are no more twine but one flesh. What, therefore, God hath joined together let not man put asunder."

From this, it will be seen that the community to which I belong also entertains the system of marriage as an institution and as a sacrament, and I was very sorry to

hear Mr. Chatterjee use the words that registration of a marriage under this Bill is Christianisation of marriage, or something like that. I was very sorry to hear that, because I do not think the Christian religion contemplates or takes marriage in such a light vein.

Kumari Annie Mascarene: Pure ignorance.

Shri A. M. Thomas: And I would submit that even with all the progress that we have made, I would strongly plead that on the sanctity of the marriage tie the spiritual health of a nation depends. So that, I would, in all humility, suggest that we should not adopt the clause as it is, as has been suggested by the Rajya Sabha. Even those Members who are enthusiastic to have such a clause by mutual consent may have their clause only with sufficient safeguards—leaving the parties sufficient time to think over the matter and with full knowledge of the consequences of the step which they are going to adopt.

I oppose the clause as it is, and even if any provision with regard to divorce by mutual consent is adopted, it can only be on the lines suggested by my friend Shri Venkataraman.

Shri Frank Anthony (Nominated—Anglo-Indians): Mr. Deputy-Speaker, I rise to support the principle of divorce by mutual consent, subject, of course, to certain necessary safeguards and qualifications

My first difficulty, however, about supporting this sub-clause (k) is one which arises from my feeling that the clause itself is not legally or even grammatically clear. We are aware of the fact that not only lawyers, but our courts are often caught up in legal niceties consequent on certain grammatical ambiguities. Now, my own feeling is this. I do not know who is in charge of piloting this particular clause.

An Hon. Member: There is nobody here.

Shri Raghuramaiah (Tenali): The whole House.

Shri Frank Anthony: I am making a point which I believe...

Shri Venkataraman: A Minister is coming, another Minister.

An Hon. Member: Where is he?

Shri Venkataraman: The Commerce Minister is coming.

The Minister of Law and Minority Affairs (Shri Biswas): Could I not have a glass of water even?

Shri Frank Anthony: I do not wish to deny the law Minister any kind of drink.

Shri Biswas: I have cut my lunch for the day.

Shri Frank Anthony: What I was trying to draw the Law Minister's attention to was this, that on a plain grammatical reading, the clause is not clear. I have had not a little experience of appearing in divorce cases, and he may be aware of the fact that there was a tremendous conflict of judicial interpretation as to whether the word "last" qualified "resided", or "resided together". Some judges interpreted 'together' as qualifying 'resided', and other said it only qualified 'resided together', with the result that in many cases, even though for many years, the parties resided they could not file a petition for dissolution of marriage. So, when we have this conflict of judicial interpretation, why not say what we mean to say?

1 P.M.

Shri Biswas: What clause are you referring to?

Shri Frank Anthony: I am referring to sub-clause (k) of clause 27. My own feeling is that it can very well be argued that this clause...

Shri Biswas: Better scrap sub-clause (k), and all these difficulties will disappear.

Shri S. S. More (Sholapur): No. no.

Shri Frank Anthony: I will not be facetious. I would ask the hon. Minister to pay serious attention to what I am saying.

I feel that the first clause may well be interpreted as being disjunctive in respect of the remaining two clauses. If you see the sub-clause as it stands, it reads:

"...that the respondent has lived apart from the petitioner for one year or more..."

It may well be argued in terms of this particular clause that that gives, merely because they have lived apart for one year, the right to petition for divorce. I will presently give my reasons for that. After this phrase, what do we see? We see:

"or the parties refuse to live together and have mutually consented to dissolve the marriage;"

Probably you mean that 'have' and 'mutually consented together' to dissolve the marriage' should qualify both the previous parts. But it does not mean that. Even grammatically, it is a solecism.

Shri Biswas: May I point out to the hon. Member that this sub-clause was introduced in the other House by an hon. Member who himself admitted, after it had been passed, that there was a mistake in it? That is why you will find the word 'or' in the sub-clause. What he meant was 'and'. He put it as 'or'. I am not responsible for all this. So, do not blame the Law Minister for these imperfections.

Shri Frank Anthony: I am not blaming. I am only pointing out the obvious difficulty that will arise

Shri A. M. Thomas: He has an amendment for the purpose.

Shri Frank Anthony: I am sorry I did not see that amendment. I am

glad of it, for that clears my difficulty.

With regard to the merits, I agree with my hon. friend who has preceded me that we must give the greatest possible hostages to the sanctity of the marriage style. After we have said that, we must also provide for the fact that marriages do fail, that they have failed, and that they cease not only to have any sanctity but they become in fact absolute mockeries of what they were intended to be, and it is for this kind of cases that we must have these realistic provisions.

I am aware as a practising lawyer that this provision with regard to divorce by mutual consent represents a great advance. It is even an advance on the British law. We do not have a comparable provision in the British law. But that is no reason why we should reject it or shy at it. **Shri N. C. Chatterjee,** I believe, —I was not in the House when he spoke— inveighed against this provision, because he said one of the underlying principles in respect of divorce is the strict injunction to the courts to scrutinise evidence and to search for the remotest semblance of collusion. That is true. In divorce, there is this duty enjoined on the courts to outlaw collusion in the most rigorous possible manner. I do not know what your experience of the divorce courts is. But my experience is this, and I say it with all respect, that in nine out of ten cases, fraud is perpetrated on the court. That happens in spite of the fact that there is this injunction that the court shall outlaw and prescribe collusion. In nine cases out of ten, the decrees for dissolution are secured because of collusion between the parties.

There are two reasons for it. The first is this. We know that a man or a woman happens to be living openly in an adulterous manner. But how can we secure evidence in this country? I am talking of evidence of respectable persons. You may

look through report after report of your divorce cases, and what do you find? The kind of evidence that is usually adduced is the evidence of a servant. It may be true. Usually, it is procured evidence. We do not agree to appear as witnesses in matters which concern a husband or a wife, and that is why it is almost impossible in India, at any rate, for people to secure evidence of what is actually happening, through the mouths of respectable witnesses. If your neighbour's wife, to your knowledge, is living in an adulterous manner, I am quite certain that you would refuse, if your neighbour asked you to come into the witness-box to depose to the adultery. If I were asked, I would refuse to do it. Because of this, it is virtually impossible to get correct or *bone fide* evidence. The second reason is this. Most people, even though their relations have become estranged, are reluctant, are loathe to wash dirty linen in public. Even though his wife may have left him, even though she may have an adulterous liaison, still the man is loathe to wash that dirty linen in public. And what happens in nine out of ten cases? Evidence is supplied, false evidence is supplied either by the one party or the other. That goes before the courts, and that is how the decrees for dissolution are secured today.

I say that this principle of consent is a good principle. It is a progressive principle, provided we invest it with the necessary safeguards.

In one way, I approve of the first part of Shri Venkataraman's amendment, new clause 27-A, and the amendment to his amendment. I do not agree with the second part of new clause 27-A, where he has said that after the petition has been filed, the matter will have to remain in a state of suspense for a period of one year. I feel that that is contrary to normal judicial practice and principle. I would not mind if you made the period of separation longer, and said

that they should have refused to live together or have lived apart for a period of two years. But once a petition for dissolution of marriage is filed, I feel that it is something which is unknown to our courts to keep a case in a state of suspense, in a sort of suspension. Shri Venkataraman's amendment provides for the maximum of effort at reconciliation, and even the good offices of the courts have been imported in order to bring about a reconciliation. That is why if any amendments are to be accepted, I would suggest that the new clause 27-A—I mean the first part of it—and the amendment to it with regard to the court's offices being used to effect reconciliation may be accepted. But I am definitely opposed to the interposition of this sort of period of anaesthesia, so to speak, for one year, after the petition has been filed.

With these remarks, I support the clause.

Acharya Kripalani: I would like the House to clearly understand the reasons for which this Bill was brought. Just now, the hon. Prime Minister told us that custom weighs heavily upon the women in India. This law is designed to bring so far as marriage relations are concerned, equality, between men and women. But it is forgotten that equality cannot be brought in one sector of life, while in other sectors, inequality prevails. If that prevails, whatever may appear to be as equality in the matter of marriage may produce unthought of and undreamt of inequalities.

Where men and women are not socially, economically and physically equal, equality introduced only in marital relations may not bring about real equality. We must, therefore, understand clearly the society in which we are living, and that society is not going to change so easily as you can change the marriage law. You are not changing economic set up, nor the social set up nor the habits of people; you are only changing the law concerning

[Acharya Kripalani]

marriage. That is all. I fear that there is great danger of inequality being perpetuated when this clause relating to mutual consent is passed. In India, if you kick a wife hard enough and frequently enough, consent will be forthcoming.

Shri Danekar: No, no.

Shri Raghuramaiah: It depends.

Acharya Kripalani: It depends. I know that many so-called cultured, and educated people who have married from ideas of romantic love soon find that that romantic love wears thin, and then the time of kicking comes. If it were not so, you would not find so many dissolutions of marriage in America where every marriage starts with romantic love. You cannot build anything permanent on romantic love. When it disappears, the parties become enemies to each other. In that enmity, the dominant party gains and the dominant party in India socially, economically and physically happens to be the man. Therefore, if a man is tempted to have another wife, because his first love has faded away, because it was based upon flimsy and temporary grounds, it is very easy for him, as I said, to kick his wife hard enough and long enough to get her consent for dissolution of marriage.

Dr. Jaisooria (Medak): You try it yourself.

Acharya Kripalani: The wife will suffer because there is no economic equality. We were told very wisely by Mr. Venkataraman that in certain castes, there is so much divorce that you can break a pot and the marriage is dissolved, I suppose the modern man or woman will have no pot to break. He can break a few glasses and the marriage will be dissolved. That is all very well, but the society in which such a thing exists is a society where physically and economically man and woman are equal. Woman sometimes can bring more money than the man, in Travancore-

Cochin, woman has a dominant position so far as economic independence is concerned. Therefore, there can be no harm there if divorce by mutual consent is the custom there. But where this economic equality does not exist, I am sure instead of giving equality to woman, you will give man a weapon to terrorise his wife. The Prime Minister said, that if the wife is kicked, why should she continue in marriage. That is all very easy to say, but she has to think of her economic position and in the meantime, children may have been born. She has to think of these children; she has to think of many other relationships that have grown up. Therefore, I say instead of giving more rights to the women, instead of bringing equality between men and women, you are putting in the hands of the men a very dangerous weapon. Mr. Venkataraman says—allow that dangerous weapon to be in the hands of the man for one year more. It only means that the man can kick his wife not for a few days, but he might go on kicking her for one year more. This is a very strange way of arguing: one year more of kicking so that the court may know that there has been mutual consent.

I know when the Prime Minister has spoken, anybody else's voice will be in the wilderness and the vote will go against him. But it will not be a reasonable vote, it will not be a vote which is based upon the social circumstances that exist at present in our country; it will be a vote which will go against the equality of women, it will not make for equality of women with men.

Then there is clause 33, to which I have moved an amendment. It is a very reasonable and just amendment. But then, because the Prime Minister has spoken, therefore, that amendment will also not be carried in this House. The final word is always with him. What I propose however is so reasonable that I do not see how

there can be any objection to it. My amendment says:

"In any proceeding under Chapter V or Chapter VI, the court shall first refer the matter to a Board of Conciliation consisting of three married persons of not less than 45 years of age, one of whom shall be a person of legal or judicial experience and the Board will try to bring about conciliation between the parties within such time specified by the court and shall submit a report to the court recommending the action proposed to be taken in the matter. The court shall, after taking into consideration such report pass such order or decree as it thinks fit."

The Government have provided for Conciliation Boards between labour and capital. It appears to me that marriage is even more flimsy nexus than the economic nexus between employers and employees. We have found that these Conciliation Boards, except when the Government deliberately have repudiated their awards, have brought about more peace than existed before between labour and capital. In such a sacred thing, in such a thing which has a bearing upon society, upon future generations, you allow the court to decide, a court that is bound to work under rigid legal laws. The court cannot go outside the legal procedure, but the Conciliation Board has no rigid procedure. It does not proceed according to the technicalities of the law. Moreover, I have suggested that this Board should consist of elderly men and they must be men of standing in society. They can bring the young couple together; they can reason with them, they can bring other influences over them and try to reconcile them. And when that reconciliation is not possible, they can recommend to the court as to what is to be done. They will only recommend. There need not be delay

in this and there will be no multiplicity of hearing of evidence and all the rest of it.

I suggest that in our society—at least in certain sections of our society—where, for the first time, divorce is being introduced this will be very healthy and very helpful. I also submit that many times, even in the West where people are more free in these matters than we are, people do not go to a law court because of possible scandal. If there is a small scandal in the family and you put yourself in the hands of lawyers, the scandal will be magnified and if, beyond that, the proceedings of the court are published in the papers, a small thing is magnified into a big thing. People even in the West hesitate to go to divorce courts because they are afraid that their reputation will suffer and there will be scandal.

Therefore, I say, in spite of what the Prime Minister has said, that my amendment is more suitable to the state of our society than the amendment given by Mr. Venkataraman, which has the support of the Prime Minister. I really see no difficulty in Mr. Venkataraman accepting my suggestion or the Law Minister incorporating this suggestion in the Bill. It is a suggestion that is eminently suitable not only for our society, but, for European society also, where, as you might have read in books and dramas, how difficult it is for a married couple—especially with children—to make up their minds to go to a law court. But, those who cannot go to a law court would very willingly go to a committee of elders, one of whom has legal knowledge.

I have another suggestion to make, another amendment which will come hereafter to clause 32, in which I have said that all the divorce proceedings must be in camera. When I say in camera, I also mean that no newspapers shall be able to report any proceedings in a divorce case. But, I know I am speaking to a House

[Acharya Kripalani]

that has already closed its ears to reason.

Dr. N. B. Khare (Gwalior) rose—

Shrimati Renu Chakravarty: Sir, we have now come to the most important clause of this Bill. It is one which has raised the greatest amount of heat on the one hand. On the other hand, it is the clause to which we have to give the greatest amount of serious thought, because it is these divorce clauses that have to be laid down in such a manner that we are able to regulate the tender human relationships which are inherent in marriage.

I can understand those people who advocate the indissolubility of marriage. How far, modern times want that, we do not know. We do not know whether many of us believe in the seriousness of the marriage. We do believe that every effort should be made to make the marriage a success. We also believe that these human relationships are so tender, so delicate, with so many inuendoes of feelings and problems and that there are circumstances when the two parties cannot pull on together. Then, they must have a right of relief and they must be given the right to withdraw from each other's society and, if they so desire, the right of divorce. It does not mean that by advocating divorce, we want that every marriage should be broken up.

As I said in my earlier speech in the first reading, the basis of marriage is the basis of freedom and equality and it is on that basis that we have fought for the emancipation of women. It is quite true that just by passing the divorce bill we are not going to bring about the equality of women. One of the fundamental things that have come out during the course of the debate is the necessity for economic equality. It is true that we want to enter a caveat against the Government. On the one

hand, the Prime Minister comes forward and pleads for the equality of women; on the other hand, certain rules are framed for the Indian Administrative Service in which they say that married women will not be eligible even to appear for these examinations. It is this economic equality, this participation of women in social production which is really going to be the basis on which equality is going to be built up. That does not mean that because of the prejudices and the great amount of heat that has been raised on this question, we should not take whatever we are getting. I agree that we should have brought other Bills other than these marriage Bills for the emancipation of women. But, if we cannot do that, when these marriage Bills come up, we must see whether these divorce provisions will actually help to further the happiness, to further morality, help to strengthen the mutual relationship between husband and wife. Is that going to happen or are we going to continue to perpetuate a system whereby one party talks about the indissolubility of marriage, thereby implying that all the obligations of the marriage are being carried out by that person, whilst, in fact, we know in how many cases they have been untrue to the pledges which they have given and that marriage is a mockery. Is that the happiness that we are advocating or do we advocate a new era where both sides respect each other honour each other and try together to move forward towards an understanding of mutual respect and love?

I seriously advocate that it is when both sides have equal chances of continuing that married life in an honest endeavour to make the marriage a success, when there is actual freedom and equality in that marriage, only then can the marriage be successful. That is why I believe that the divorce clause makes for happy marriages. I want to bring this point forward. This Special

Marriage legislation has been here for a number of years. Many of us have been married. How many have used this clause for divorce. How many cases are there in which they have rushed to the divorce courts. There is society, there is love for the family and there are children....

Sir, I will plead with you that this is a very important clause and I do speak on behalf of a very large section of women and therefore I must have some more time.

Mr. Deputy-Speaker: I think the hon. Member by her side had just half an hour on this matter. The time fixed is two o'clock.

Shrimati Renu Chakravartty: Already previous speakers have taken more than 20 minutes.

Mr. Deputy-Speaker: Only the Prime Minister. The Law Minister wanted three quarters of an hour and I said half an hour will do...

Shri S. S. More: He is already converted; he need not speak.

Mr. Deputy-Speaker: This has been decided by the House and this must close at four o'clock unless the Leader of the House moves and the whole House accepts that the time be extended. In that case I can sit the whole of the day and devote it for this clause.

Shrimati Renu Chakravartty: But, this clause will not end before 2-15.

Mr. Deputy-Speaker: It must end at two.

Shrimati Renu Chakravartty: One hour and fifty eight minutes; we started at 12-15.

Shri Joachim Alva (Kanara): What about the people who have never opened their mouths at any stage of the Bill.

Mr. Deputy-Speaker: All this must have been advanced when it was made an Order of the House.

Shrimati Renu Chakravartty: I have been making out that there are already marriage laws and divorce laws. The law in Malabar has already been quoted by my friend Mr. Thomas. He is pleading that certain restrictions should be imposed on women. I can quite understand that when women have higher economic rights. I know that Mr. Thomas is naturally speaking on behalf of men. He wants that certain social liberties should be withdrawn. There are the existing customs among many castes. There are the Hindu Marriage and Divorce Acts in Madras, Bombay, Baroda, Mysore and Saurashtra. All these areas have accepted.

Now, I do want to say that although it is true that when it comes to an all-India Act there is a great deal of misconception about this clause of 'mutual consent'. But I would say that, actually, this clause does not exist in the United Kingdom or in the United States of America. Because this does not exist we have seen what has happened in those countries as well as in our own country. We have seen that divorce has really reduced itself—as Mr. Anthony put it—to fraud and collusion. We know that adultery is proved even where there has been no adultery by forced evidence. I would say, that if we accept divorce we must try to make it as clean as possible so that when the parting comes we can part as friends; the children can look upon their father or mother without any sense of disgust and the family is not left with a stigma which makes younger members of family hang down their heads in shame. These are things we have to consider. We cannot just say: no; we are leaving out this clause, because by leaving out this clause you are allowing other clauses to remain. You are driving people to adultery.

The second point is that you are allowing 'desertion'. There is some force in what the other lady Members of this House have said that women are being forced and there is coercion. There may be force or

[Shrimati Renu Chakravartty]

coercion because women are not economically independent. But, that situation will exist even when it refers to other clauses. A man may desert; a man may go away and then the question of adultery comes and she may be forced to say that she has committed adultery. We can put certain clauses whereby we can guard against two factors—force and coercion. I support the amendment that has been brought forward by Mr. Venkataraman in this respect because the National Federation of Women in June, when they met, actually suggested these two amendments. One is that the court should be given the right of full enquiry that the woman has not been coerced into giving her consent; and the second is that a period of six months as time limit should be given within which time reconciliation efforts should be entered into. It is on that basis that we have carried out a campaign and we have found that the misconceptions which originally arose disappeared when women realised that they are being given this chance without having to go through all the dirtiness which this clause on adultery actually entails and which we have seen in the divorce courts all these times.

Sir, I do not want to take any more time of the House. I would just recommend to this House certain other amendments. Firstly I recommend my amendment No. 157, which is practically the same as Shri Venkataraman's except that I have asked for a period of six months for reconciliation, whereas he has suggested one year. The other amendments are regarding 'unsound mind' and other clauses where I have suggested that the period of five years should be reduced to three years. These are the two basic amendments that I have brought forward and I would recommend them to the House.

Dr. N. B. Khare: Sir, I am not speaking on this Bill as a high caste Hindu. I am speaking as a secular

citizen of India. I recognise that in certain bad cases divorce is a necessary evil. It has to be recognised and guarded for; but we must remember that hard cases make bad law and some such a thing has also arisen in this case.

I am fundamentally against this divorce by consent. That is an evil which should not be allowed. Much is said to show that the two sexes are equal and alike. It is not true. Economically physically, psychologically, woman is a weaker sex. It must be freely admitted and man, therefore, has got a dominant position where he rules over the woman and he is bound to do so continuously for a long time to come.

Kumari Annie Mascarene: Not in the least.

Dr. N. B. Khare: In that condition, if divorce by mutual consent is allowed, it will always harm the woman for whom you are showing so much consideration for her protection. It will adversely affect her. No woman once divorced will ever be able to find a husband or any occupation. She would be shunned by society. It is a fact.

An Hon. Member: No, no.

Dr. N. B. Khare: You may say 'no'. I do not care for it. The husband always tries to exploit the weakness of the woman and therefore, it will act as a very bad weapon in the hands of the husband against woman for whom the House is showing so much solicitude. I say, by nature man is a polygamous creature and woman is a 'monoandrous' person. Man will, therefore, take advantage of this to satisfy his natural passions. An Urdu poet has said:

“इलाही कौसी कौसी सुरतें तुने बनाई है
कि हर सुरत कलजे से लगा लेने के काबिल है”।

An Hon. Member: Let us have the translation of it.

Dr. N. B. Khare: You want the translation? It is like this:—

"O' God what kind of strange and beautiful faces you have created on this earth; every face is worth to be embraced."

Therefore, this libertine man will seek to take advantage of this clause 'divorce by mutual consent'. Infatuation is in him. 'Love at first sight' out of which marriage will happen is nothing but temporary infatuation. Today he will feel for a 'lippy' woman; tomorrow he will feel for a 'hippy' woman and day after tomorrow he will feel for a 'witty' woman. What will happen then? Woman will suffer and man will enjoy. I do not want that to happen.

Sir, the Prime Minister admitted the dominant position of man, no doubt, and he quoted in support of this Bill or this clause—whatever it may be—the old ancient drama *Mirchchakatika* by Shudrak, perhaps in the first five hundred years of this century. I think he has misused this drama in support of this Bill. What is the position there? There the hero Charudatta has got a lawfully wedded wife, married according to Hindu Shashtra *Bramha Vivaha*. She is Dhoota by name. In spite of this marriage he keeps the company of a dancing girl—a concubine—by name Vasantasena, but people did not blame him at all. He was highly respected. But there is a change in society today. We have monogamy now and we do not want polygamy. At that time it was not so. It was wrong to quote this drama in support of this clause for divorce, because Dhootabai in spite of the fact that she knew that her husband kept a concubine continued to live with him with the same amount of love as before. She did not divorce. Will the modern women do that? If they do so I will welcome them.

The position is, nobody has wanted this law. Nobody has asked for it.

The general society of all religions—Hindu, Muslim, Christian, Parsi—does not want this. This was wanted by the libertine males, as I said before...

An Hon. Member: No, no.

Dr. N. B. Khare: You may say 'No'; then enjoy yourself.

Mr. Deputy-Speaker: Order, order. Hon. Members—there are a number of males here and a number of ladies also—who have taken part and have supported this particular clause will all come under this qualification or disqualification. The hon. Member ought not have used that expression which I hope he will withdraw: I mean the expression 'libertine'.

Dr. N. B. Khare: I have no objection; if you want I will withdraw.

Mr. Deputy-Speaker: It is not a question of my wanting him to withdraw. A number of hon. Members have supported this particular clause; they cannot be called 'libertine'. Therefore, I hope he will withdraw it. I am asking him to withdraw.

Dr. N. B. Khare: I withdraw, if you so desire.

Mr. Deputy-Speaker: Still the hon. Member has not said he is withdrawing.

Dr. N. B. Khare: I am withdrawing as per your request.

Then, Sir, there is a certain category of females also. This law is inspired by Hollywood. We see cinemas, read stories in American magazines; stories of husbands upon husbands built one after the other like the sky-scraper buildings in New York and Washington. Females may take advantage of all these stories. What is the result? We will have delightful stories of husbands built on flimsy and fickle foundations.

[Dr. N. B. Khare]

There is no doubt that some reference was made to *atmic Vivah* yesterday. I do not understand what the marriage for companionship means or *atmic Vivah* means. Sir, as regards *atmic Vivah* or 'soul marriage', if it is only a 'soul marriage', then why not males marry males and females marry females? Both have souls! This *atmic Vivah* is nonsense.

If this Bill is passed into law—as it will be and if it will be taken advantage of by majority of people of this country,—I must say definitely that the spiritual health of this country will be spoiled. The ancient family life, the household life, of which we are still proud, even under adverse circumstances, even under misery and poverty, will be lost. And what will happen? The future Indian citizen will be born in a maternity home maintained by Government, maintained in orphanages run by Government, educated in schools of Government, work in factories and offices, live in hostels, fall sick in hospitals and die in hospitals. If this law becomes the general law, this will be the fate. I warn the country against this; therefore I am crying hoarse against this Bill.

Shri Gadgil (Poona Central): Mr. Chairman, I think this is a matter in which one should go with a measure of caution and circumspection. I have been entirely for divorce throughout the twenty years that I have spent in this House. At the same time I do not feel that public opinion is ripe enough to accept what is contained in clause (k).

Divorce by mutual consent is something not only unknown to our society, but also it is not to be found in most of the countries which claim to be modern. There is no doubt that we cannot escape world forces. They have affected us in every sphere of our life. But those who are leaders of social thought must consider every step of advance and I do beseech that this

clause as it is, or even in substitution, as suggested in amendment No. 97, should not be accepted.

I want to ask one straight question. Is marriage entirely an affair between two individuals, or has it any social significance? If it has some social significance, then surely divorce must have some social significance. If you allow divorce on the ground of incompatibility of temper, it may be perfectly logical with this Bill, because freedom of marriage is assured, but although it is logical, it is not in the best interest of the country. What will happen? There will be promiscuity. With the literature of the sort we are coming across, with the films which are being exhibited in this country, you have to consider to what extent a provision of this character will affect domestic peace and, I should say, social peace as well. I am, therefore, of the view, that the Bill has gone considerably towards liberalisation.

Many grounds for securing a divorce have been provided. Even without this there are enough grounds, and with the help of clever lawyers enough grounds can also be raised for sustaining a petition for divorce. As it is, it only means that you can marry or solemnize your marriage in the evening and the next morning by mutual consent you can go to a court and get divorce.

Shri S. S. More: It will not be next morning.

Shri Gadgil: If it is a longer period, even then, I say that in an average married life of thirty years, a man can have as many as fifteen wives! Just consider what it means from the social health point of view. Already the figures that are available about certain diseases in this connection are a grave warning to us. Our society, right from ancient times has been known to be progressive in the sense that it progresses as much as the needs of the time really require. Let us not be in great haste to make

out a brilliant example for other countries. Even in the most advanced countries in the matter of sex relation, such as the U.S.S.R. recent trends go to show that what should be considered as a stable situation is that divorce should be a matter of exception. Even where a petition for divorce is made, the instructions I am told are that the judges should try their best to bring about reconciliation and see that divorce is not cheap and the provision made by the law is not abused.

The grounds given are good enough. If you want divorce to be based on the mere ground of mutual consent, just consider what a wide door you are opening for promiscuity. You are in fact ratifying in a legal way past adultery. I have no doubt that the saner section of this House as well as the saner section outside this House, though some of them may not agree completely, will on the whole feel that there has been considerable liberalisation of the law of marriage as well as of divorce. If after three or four years we find that domestic happiness is not secured in the way in which we are attempting, or that social stresses and strains are on the increase, surely Parliament is there meeting twice every year, and on demand on more occasions, and we can certainly come up before the House with necessary amendments. But meanwhile let us not do something.....

Acharya Kripalani: Meanwhile do the wrong thing.

Shri Gadgil: It is possible to equate caution with reaction, I may as well equate recklessness for progress.

I do not wish to say anything further. My own considered view, as a man who has been asking for a provision for divorce in the marriage law of this country for the past twenty years, during which I have been a humble member of this House, is: go with a little caution. The amendment suggested by my hon. friend Shri

Venkataraman is not at all good and it is more likely to be abused than properly used. Sir, I have nothing more to say. I have not spoken for more than five minutes which you were very good enough to give me.

Pandit Thakur Das Bhargava: I must thank you for the opportunity you have afforded me to express my views and to give a vocal vote on this clause. So far as the mutual consent affair is concerned, I am rather surprised that there is some support for it in the House. Shri Venkataraman who is now sponsoring this amendment, is the very member who had sent in an amendment for deleting this clause. There were ten others who had a similar amendment including myself.

An Hon. Member: His amendment is for substitution.

Pandit Thakur Das Bhargava: Substitution is an after-thought. Then, again, as I have been told by the Law Minister it was by a snap vote that this clause got into the Bill in Rajya Sabha and as the author of that clause himself subsequently admitted there was some grammatical mistake in it. This clause had no place in the Bill as it emerged from the Joint Select Committee. I am really unable to understand how the Rajya Sabha decided to incorporate this clause in the Bill.

When we speak of the economic condition of our women, the most important thing that strikes me is our succession law. The Christian law of succession in this respect is worse than our law, which the hon. Minister is sponsoring, so far as ladies are concerned. I cannot understand how people speak on economic questions and yet do not look at the Bill as it is. You, Sir, were the first person to tell us that if the House adopted one provision that by the very fact of marriage the husband and wife's property would be made joint, the problem would be solved. I made a suggestion like that in the House and the hon. the Law Minister expressed himself in

[Pandit Thakur Das Bhargava]

agreement with me; but he has not considered the question and only promised to consider it at any other time. When will he consider it? This is the most important question. We all want that ladies in our country must be economically independent. Unless they are independent, what is the use of passing this clause. This clause will make the position worse. Who wants divorce? It is the men that want it and not the ladies. I think that the whole House is practically opposed to this clause (k) and I have no doubt in my mind that clause (k) will be deleted, but what I fear is that instead of (k), there will come in (k-1) of Mr. Raghuramaiah or of Mr. Venkataraman. I oppose it tooth and nail. So far as the Hindu conception of marriage is concerned, so far as the Christian conception of marriage is concerned, indissolubility and union for life are the very essence of marriage and we have seen that in all the clauses every Member of the House has made an attempt to say, so far as marriage is concerned, that it is not only a contract, but it is a sacred contract to say the least. Why have you put in section 28? For three years nobody will take advantage of it. Why have you put all these obstacles? It is because that marriage should be supported and it should be sacrosanct. All the clauses of the Bill only take us to this view, but at the same time what I am afraid is this. Today you are, by passing this clause, weakening the conception of Hindu society and what has become of indissolubility the integral part of our psychology. Tomorrow you will have nothing but *muta* in this country. We know that *muta* is. Under it a marriage can be for one night or one hour or one year or six months. This is the forerunner of companionate marriages. If in the public mind you weaken the conception of marriage, what is the result? In the other Bill, so far such a clause as this has not been put in, but I am quite sure if you pass this clause here, every attempt will be made to introduce it in the other Bill

also. After all, it is not wise to go far ahead of the times, ahead of the social conscience of the people. It is quite right that we all want this law of divorce because it is necessary, but at the same time what will be the result? You kindly look at the amendment. The amendment says that if the man and the woman live separately for one year and after one year they again come up to the court and say that they have not been able to live together and have mutually agreed to separate, then the court shall say "You are separated". The whole point is that if you say that you mutually agree, the other two things are only euphemism for the first and there is no difference there. There are only two parties, the husband and the wife, and there is no third party at all in the picture so far as application for divorce is concerned.

An Hon. Member: Should not be.

Pandit Thakur Das Bhargava: He forgets that marriage is not an affair between two persons only. It is not a men contract. It is wrong to think so. The children will be there; the society is there; the parents are there and all the family members are also there. Therefore, that marriage is only a contract is absolutely wrong. If it is an ordinary contract, it can be broken by any of the parties unilaterally. Damages can be claimed for breaking the contract, but nobody says here that unilaterally you should cancel the marriage.

Acharya Kripalani: This is the first step. Tomorrow they might say that.

Pandit Thakur Das Bhargava: In a divorce case, the husband the wife will be the only parties. What is the issue between them? Have they agreed to separate? I know what the woman will say. The woman will be coerced, undue influence will be used, and even monetary considerations will come into play. He might say "Take this Rs. 50,000 and you agree to separate." She will readily agree. What would happen then? The issue will be if they have mutually agreed. They

say they have mutually agreed to separate and that they have lived separately for a year although they might have been living together. Who is there to contradict or verify this?

Shri Gadgil. But they are coming together for the purpose of signing the application.

Pandit Thakur Das Bhargava: When a person admits anything against himself, that is bound to be taken as true. In the case of a fraud, the onus to prove it is on the party alleging fraud. Will the wife be able to discharge that? If the court will say "You are bound by your application; can you prove that fraud has been played on you?" She will not be able to do anything. Who are the witnesses in a bed chamber? My humble submission in a matter like this is that if once the woman has accepted, it will only mean that in every case, without any enquiry whatsoever, divorce will be granted, which means that you need not have all the eight conditions and it is enough if you have only the mutual consent clause there.

My hon. friend spoke of Malabar and other places where this has been in existence. As Mr. Thomas pointed out, conditions there are different. I went through the whole country as a member of the Age of consent Committee for ten months and learnt some of the customs in Malabar and other places, which are simply revolting. Evidence was produced before us that according to prevalent custom in certain communities people were married at the age of five or seven to girls of fifteen or seventeen, so that the wife was not meant for the son, but for the father. The custom of divorce by mutual consent which is another name for license in marriage may be there but I am not going to accept this custom. If it was enacted there, why should the whole of the country be bound by such an enacted condition of marriage? This is not the law anywhere else in the world and this is not the law in any other part of India. We know what

is happening in America. In America 45 per cent are having divorces and if you allow this clause of mutual consent, it will become 75 per cent. Taking all the circumstances into consideration, so far as India is concerned, such a clause is against the very conception of marriage and it is also tantamount to wounding the Society in a very vital manner and the whole society will revolt against it.

I know the argument that it is only an enabling measure, but I do not know how that argument can be pleaded in this House. If it is an enabling measure, have you said that it will be only confined to such and such people? I know it will be taken advantage of by everybody. Mr. Venkataraman says that it is the basis of Civil Code of India. If this is the basis of Civil Code of India, then I do not want such a Civil Code. It goes against the very conception of marriage so far as the Hindus, the Christians and other religions are concerned. This is really going far ahead of the times and it is, therefore, better if Mr. Venkataraman withdraws the amendment so as to give peace to the people of this land. Otherwise, many people will feel that this is a thing in which our Parliament is not rightly representing public opinion.

Shri Biswas: When I spoke the other day, I spoke of certain innovations which have been introduced in the Bill. They were two—one was regarding inter-religion marriages and the other was about registration of marriages.

An Hon. Member: What about divorce by mutual consent?

Shri Biswas: Now comes a third innovation—that was not introduced by me—divorce by mutual consent. It was, as I have already pointed out, brought forward in the other House and it was passed by a majority of twelve—I believe the voting was 57 against 45.

Shri Pataskar (Jalgaon): Probably it was a snap vote.

Shri Biswas: It came as a dark horse but at full gallop. (*Interruption*) and it was greeted with thundering cheers by a certain section of the House. If I have correctly judged the sense of this House, I believe the majority of hon. Members are against (*Some Hon. Members: No, no.*).

Shri Venkataraman: Speeches might be against the proposal of divorce by mutual consent.

Dr. Jaisooraya: We deny that.

Shri Biswas: I have not said "the whole House", but judging from the speeches made....

Pandit Thakur Das Bhargava: This is his own view. What is wrong in it?

Mr. Deputy-Speaker: Is it not open to any hon. Member to say that the entire House is in his favour? It may be that ultimately the result of the division will show on which side the voting is there. Why should hon. Members be anxious now?

Shri S. S. More: The Law Minister should not be so unfair to us.

2 P.M.

Mr. Deputy-Speaker: This is a measure where every hon. Member will have his own say. Such hon. Members as have spoken and such of those as could not speak within the time allotted—all of them have got the vote. It is open to the hon. Member when he wants to convince the House to say that according to him he finds so much support. It is open to the others to say at the time of division that there is no support at all. Am I to take an intermediate voting now? Therefore, let him proceed; allow him to go on.

Shri Raghavaiah (Ongole): The hon. Law Minister might have been right or wrong if he had referred to the majority of the speakers. I would respectfully submit that he went out of his way when he said that the majority of the people in the House

are against; it is a very difficult proposition. (*Interruptions*).

Mr. Deputy-Speaker: Order. order. Every hon. Member is entitled to judge from the speeches that have been made and other things whether the majority is in his favour or not. After all, the result of the division will show it.

Shri Biswas: I was just stating what was my reading of the situation. It may be entirely falsified by the vote; that is another matter but I am entitled to say what I could gather from the spoken words but not from the unspoken sentiments lying within the bosom of my hon. friends.

An. Hon. Member: They do not get a chance.

Shri Biswas: There is an attempt, so far as I could see, to keep the wild animal, to curb it and keep it within bounds. Whether it will succeed or not remains to be seen. But I am stating the position as it is.

As I stated, this proposal did not form part of the Bill. The Bill was circulated for opinion. This is a matter, therefore, on which public opinion could not express itself because it was not in the original Bill. Opinions had been received regarding the other innovations but not upon this. That is a fact. If consent is put as the cure to all matrimonial difficulties or troubles real or fancied, then what is to be the position? There can be no doubt that the proposal is regarded by many—I am not using the expression 'majority'—as wholly repugnant to the concept of marriage which has rightly or wrongly held sway among the people of India. It would be a mistake to think that this concept of marriage is based merely on superstitious veneration for our scriptures. It is more durable, more permanent and its foundation are in certain basic considerations which have found favour and acceptance in countries and among people who may be supposed to be above any such weaknesses. I was reading Jeremy Bentham last night. He was not a

man whom you can describe as one obsessed with superstitions or excessive regard for superstition or scriptural authority. What do you find there? I will just place some extracts from his observations. What we find is that this new idea of divorce by consent as the universal salvation of all matrimonial difficulties is the specific contribution of two of the biggest countries of the world, Russia and China...

An Hon. Member: Burma and Scandinavian countries.

Shri Biswas: I say these are the two biggest countries of the world today which have made this specific contribution. I do not know how many other countries might have copied their example but do not please forget that even in these two countries they are in the nature of experiments. In Russia you find that they change the law which had been introduced a few years before. What does that show? They are not satisfied; they are feeling their way and they are trying to cover...

Shrimati Renu Chakravartty: Mutual consent still remains...

Shri Biswas: They had to change the law. I have no time; otherwise I have got it all here, in this book....
(*Interruptions.*)

Mr. Deputy-Speaker: He is only saying that they found with respect to one portion of the law there was need to change; he feels that this also will be changed soon.

Shri Biswas: In this respect I have already pointed out even one of the parties could go and say that he or she has separated from the other spouse and that fact will be registered. This registration was enough. But they were themselves shocked at the result which followed. What happened is that they changed the law in 1944 and then it was provided that divorce should be granted only by the courts and only for reasons which the court deems justified. I was only drawing attention to the

fact that even in these countries where these rules prevail, they are making changes because they knew that it was nothing more than an experiment....

Shrimati Renu Chakravartty: But, this particular clause.....

Mr. Deputy-Speaker: I am not going to allow these interruptions.

Shri Biswas: If you want to introduce divorce by mutual consent, many of us might think it is just as well to wait and see how the experiments have worked in other countries and then introduce it if it is so satisfactory as some of my friends are representing it to be. There is nothing to prevent us from bringing forward an amendment as Pandit Thakur Das Bhargava has pointed out so as to bring the law into conformity with the law in those other advanced countries.

Whatever view we may take, whether we regard marriage as a sacrament or a contract, we must not forget that it is the most ancient and the most important and—perhaps we may say—the most interesting of domestic relations. Mrs. Chakravartty said that we ought not to disturb the happiness of the family. I entirely agree; everyone will agree. The object of marriage is to produce a happy family; the object of divorce will also and should also be to avoid disturbing the happiness of the family. But how are these objects to be secured?

Marriage is an institution. Marriage and divorce may be looked at from two different points of view. The status of marriage is recognised universally, throughout the world; not so divorce; divorce meets with only a partial recognition. There are more than two parties to a marriage and that is why you cannot treat the marriage as a contract. It is not enough to say that it is like an ordinary contract which may be dissolved by the consent of the contracting parties. That is not the

[Shri Biswas]

position. As a matter of fact there is the social aspect. You have got to judge matters with reference to the welfare of the society. We must not forget that and that is why in every country you have legislation coming in for the purpose of regulating marital relations. Otherwise, it may have been allowed to be dealt with on the basis of an ordinary contract. A and B enter into a contract; A and B decide tomorrow to break the contract or dissolve the contract. Well and good. Nobody else is concerned. Whatever they do is all right. That is not the case with the marriage contract. Even if the marriage is a contract and not a sacrament,—I will accept it is a contract—it is not a contract which can be dissolved at the sweet will of the party. That is the point that I should like to make. That is why the authorities who are competent to speak on the subject have made that position perfectly clear. Nobody disputes the necessity of divorce. The best form of marriage is a permanent union, a life-long union. Even so, there are exceptional cases, in which divorce should be allowed. These are only by way of exceptions. That is not a normal condition. That has been pointed out. Marriage is not just an instrument for the gratification of a transient passion. Nothing of the kind. So far as the man is concerned, he may have no objection. What about the woman? I will read one passage.

"The woman has yet an additional interest in the indefinite duration of the marriage. Time, pregnancy, nursing, cohabitation itself, all conspire to diminish the effect of her charms. She must expect that her beauty will decline at an age when the energy of the man is still increasing. She knows that having worn out her youth with one husband, she would hardly find another, while the man will experience no such difficulty.

Accordingly, foresight will dictate to her a new clause in the agreement. If I give myself up to you, you shall not be free to leave me without my consent. The man, in his turn, demands the same promise and thus on both sides is completed a lawful contract founded upon the happiness of the parties".

As he points out later,—

"Love on the part of the man, love and foresight on the part of the woman, the enlightened prudence and affection of the parents, all conspire to imprint a character of permanency on this alliance."

Dr. Jaisoorya: What was the year when it was written?

Shri Biswas: Bentham; you know. If you do not accept Bentham—I do not want you to accept—I am not wiser than Bentham. I am not disputing that for a moment. (*Interruption*).

Mr. Deputy-Speaker: Order, order.

Shri Biswas: It is also pointed out there that though marriage for life may be a very welcome union in general exceptional cases may arise in which the continuance of the union would be a source of lasting misery to either or both of the parties. Therefore, you must allow divorce. This divorce is to be limited by conditions. It should not be allowed at the mere will, sweet will and pleasure of the contracting parties. That is the point I am trying to make out. If the authority of persons like Bentham and Shri Banerjee or other competent like them to speak on this subject, cannot convince them, nothing that I can say will convince them.

Dr. Jaisoorya: He is antiquated. (*Interruption*.)

Mr. Deputy-Speaker: Order, order. The hon. Minister will kindly look at the Chair.

Shri Biswas: Sometimes, so much noise comes from that side that I am forced to turn to that side.

Mr. Deputy-Speaker: If he looks at me, much of this difficulty would be avoided. Hon. Members ought not to be impatient.

Shri Patakar: There are some who are always impatient.

Shri Biswas: If there is disagreement of a lasting nature between the parties, I can understand there can be separation, divorce and all that. If it is disagreement of a temporary character, every attempt should be made to bring them together again and reconcile them.

What is the consequence of allowing divorce by mutual consent? Possibly, if the people find that they are free to separate whenever they like by mutual consent, marriages will not be contracted with that sense of solemnity and with that care as would otherwise be the case. I should also like to quote another authority. I do not know if it will have any effect on some of my friends.

"Generally speaking, the real reason why this ground of divorce which is apparently so unobjectionable—if the parties do not choose to live together, why should they not be allowed to divorce—is rejected in most systems is because it is thought that the consequences of separation which we may bring about by our own choice may well be prevented by some care and self-sacrifice on our part if we knew that there is no choice in the matter. Another reason is that it is apprehended that marriages will be thoughtlessly contracted if it can be dissolved by mutual consent."

That is the point.

Shri Nand Lal Sharma (Sikar): On a point of order, Sir, what are the papers that are being distributed in the House?

An Hon. Member: It is not his concern.

An Hon. Member: Whips.

Mr. Deputy-Speaker: What is the point of order?

Shri Nand Lal Sharma: Can whips be issued in the House in this manner?

An Hon. Member: What is the harm?

Mr. Deputy-Speaker: Order, order. Cannot any hon. Member who passes those papers do it more unnoticed?

Shri Syed Ahmed (Hoshangabad): It is not a Whip; it is only an advice.

Shri Biswas: I was pointing out that on general grounds it is difficult, according to my notion, to support divorce by mutual consent. At any rate, we have not yet arrived at a stage when we can confidently recommend such a proposal. I am quite willing to concede that there may be individual cases where possibly this will be of advantage to the parties. I know of some of these cases myself. As a matter of fact, it avoids undue publicity of many unsavoury details before the public and so on. Sometimes this happens. I know of a particular case where the parties had already agreed that they should have a divorce. The wife had the papers ready for filing her petition for divorce. She actually wrote to her husband that she was going to file a petition in a few days. The husband agreed that he will not oppose the petition. But, somehow the letter which he wrote got into other hands. This was a sort of a lever with the person into whose hands the letter went and he threatened to use it against the wife. The wife was prevented from proceeding with her petition. It is a very sad case. The girl had married not knowing much about the husband. Within a month or two, she was affected by a very bad type of venereal disease which ruined her health. When she proposed to the husband that she may be released, from the marital

[Shri Biswas]

bond, the husband was quite willing and he said, yes, most certainly, because he had a number of women at his command, and therefore he did not care whether his wife stuck to him or not. And so, he gave his consent at once. Unfortunately, she was prevented from getting a divorce because that letter, which would prove collusion was in other hands. In such a case, divorce by mutual consent would certainly be very welcome. There is no doubt about it. It is a very hard case, and if there was mutual consent, as they had already consented, she would have got the divorce or got settled in life by marrying again and so on. So, there will be hard cases, but the point is this: whether, for the purpose of individual hard cases, we should sacrifice the interests of society. That is the main question we have got to consider. I am not suggesting that you should accept my view. Nothing of the kind. You will exercise your own judgment. You know very well how matters stand. You have known many cases. You are not bound by the opinion of this authority or that authority. You are free to vote for yourself. I am not issuing a whip at all. Let me make it quite clear that there is no whip. But I say this, that the amendment in the form in which it has come here from the other House cannot possibly be accepted. Apart from the fact that it is wrongly worded, sub-clause (k) itself ought to be rejected.

As I pointed out in the other House—that is one of the objections which I had raised—you have this marriage by consent. This clause is expressed in such terms. What about the children? What about the other matters for which provision has got to be made? What about an attempt to bring them together? Do not make it so easy? You might make marriage easy, but having made marriage easy, do not make divorce also equally easy. That

would not be right. You do not certainly suggest that it should be made convenient or possible for a man to have as many wives by turns as he likes, only if he can get the present spouse somehow to give her consent. That would not be right. Therefore, the safeguards which Mr. Venkataraman has suggested in the amendment are very essential safeguards. Acharya Kripalani has also stated that his amendment is not in conflict with that suggested by Mr. Venkataraman. He is only suggesting a board of conciliation. (*Interruptions*). The court has to attempt conciliation, but there is nothing to prevent the court from referring the matter to a board of conciliation. So, there need not be any objection to the proposal, but that recognises the fundamental fact that an attempt should be made to keep the parties together.

Mrs. Chakravartty stated that no woman wants to desert the family or to desert the husband. I hope that was true.

Shrimati Renu Chakravartty: Yes, it is true.

Shri Biswas: Yes, and if one could make sure that women would not be anxious for a divorce at all merely on the ground of mutual consent, nothing would make me happier than that, but the trouble is, once you have a law without any safeguards, then what will be the consequential result? That is what we have got to consider.

Shrimati Renu Chakravartty: So you advocate inclusion of adultery for divorce?

Shri Biswas: Because adultery is a ground of divorce, therefore it follows I am advocating adultery in order that the parties may get a divorce! I do not know what line of argument this is. It comes from a lady. I have got, therefore, to accept it in all humility, but, unfortunately, being a man, my judgment does not take me that way.

Shri S. S. More: May I ask the Law Minister what safeguards he visualises for divorce with consent, because he says there might be divorce with consent with necessary safeguards? What safeguards does he visualise?

Shri Biswas: I say if you have to have safeguards, the amendment of Mr. Venkataraman has suggested some safeguards which are the minimum.

Shri S. S. More: Do you accept them?

Shri Biswas: It will be for the House to decide whether the House accepts the principle of divorce by mutual consent. If it does, I would certainly strongly recommend to the House that it accept the amendment moved by Mr. Venkataraman. That is what I am pointing out. (*Interruptions.*)

I believe I have made my position perfectly clear in this matter, and sub-clause (k) must go; that is accepted. All the amendments which have been tabled regarding sub-clause (k) want the deletion of that clause, but all that I suggest is...

Shri Raghavachari: May I point out to the Law Minister that the only safeguard that I can read in the amendment is waiting for one year?

Shri Nand Lal Sharma: That is not a safeguard.

Shri Biswas: I consider them to be safeguards and my suggestion is that if you accept the principle of divorce by mutual consent, then the least you can do is to accept the safeguards embodied in Mr. Venkataraman's amendment. That is my suggestion. (*Interruptions.*)

Just one word regarding sub-clause (k). There are many amendments to sub-clause (k). If Mr. Venkataraman's amendment for deletion of sub-clause (k) is swept away, let it

not sweep away along with it his other amendment No. 97. That is all that I am suggesting. Let that stand by itself.

अलगू राय शास्त्री : (जिला बाजम-
गढ़—पूर्व व जिला बलिया-पश्चिम) यह
क्या है ? यह तो एक तलवार को खिर
पर लटकते रखना है ।

Shri Biswas: As regards the other amendments also, I am prepared to accept (*interruptions*).....

Mr. Deputy-Speaker: Order, order.

Shri Biswas: There were some amendments for reducing the period mentioned in some of these sub-clauses—(e), (f) and (g). Five years has been mentioned in each of these. I am prepared to accept the amendment which suggests three years in place of five years.

Shri N. P. Nathwani (Sorath)
rose—

Shri Biswas: I am calling attention to the amendment to clause 33. I had referred to it. It provides that:

"Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties."

That is amendment No. 521. And along with that is amendment No. 520:

"when divorce is sought on the ground of mutual consent, such consent has not been obtained by force or fraud; and"

That is one of the matters which the court should enquire into.

Shri N. P. Nathwani: On a matter of information, may I know from the hon. Minister what is the attitude

[Shri N. P. Nathwani]

of the All-India Women's Council on this question of divorce by mutual consent?

Shri Biswas: They are agreed.

Mr. Deputy-Speaker: We have had enough discussion over this matter. I will put the amendments. First of all, let me take up the most contentious portion in relation to sub-clause (k). There is an amendment tabled by Shri Raghuramaiah and Shri Venkataraman. Amendment No. 327. If that is carried, the other amendments to sub-clause (k) will disappear, will be out of order.

Shrimati Renu Chakravartty
rose—

Mr. Deputy-Speaker: But if that is not carried, I will put the other amendments. Nos. 97, 520 and 521. Amendment No. 97 relates to clause 27-A, but this amendment is to clause 27. Therefore, I shall put this amendment No. 327.

Shri Venkataraman: Mr. Deputy-Speaker, there has been a ruling in respect of clause 4 in which the Speaker said that if a matter has been discussed already and a decision has been taken, then he would not allow any other amendment to be placed before the House. At present, objection may be taken that if amendment No. 327 is accepted and sub-clause (k) is deleted, in pursuance thereof my amendment No. 97 is barred on account of the decision. I want to make it clear that this amendment No. 97 is in substitution of sub-clause (k), but because it deals with a separate and a different matter, it has been put in as a separate clause 27-A. Therefore, I would submit that you may put amendment No. 97 to the vote of the House and if it is not accepted, then the other thing may be put to the vote of the House. But, if amendment No. 97 is accepted, then automatically this decision will be binding so far as sub-clause (k) is concerned. I therefore appeal to you to

put amendment No. 97 to the vote of the House.

Shri S. S. More: We support that.

Mr. Deputy-Speaker: What does the hon. Law Minister say on this point?

Pandit Thakur Das Bhargava: Sub-clause (k) ought to be put first.

Mr. Deputy-Speaker: Amendment No. 327 relates to clause 27 (k). What Shri Venkataraman says is that a vote on this may appear to be a vote on the question of retention of sub-clause (k). In that case, the other amendment, i.e., new clause 27-A may be barred implicitly. I would like to hear the hon. Law Minister on this point.

Shri Dhulekar: On a point of order. So far the House has discussed, for a number of hours, the question whether divorce by mutual consent should be permitted or not. Will it not be proper to put this question first, as to whether divorce by mutual consent is accepted by the House or not? Then, the other amendments may be put to the vote of the House, because that will be very clear.

Mr. Deputy-Speaker: I only wanted to hear the hon. Law Minister, as to whether there is any technical or legal objection.

Shri Biswas: Sub-clause (k) introduces divorce by mutual consent. Shri Venkataraman's amendment hedges divorce by mutual consent. If divorce by mutual consent is accepted, then, of course, the new clause 27-A will have application, and this new clause deals with how a petition for divorce is to be presented to the court, how the court is to deal with the matter and at what stage, whether there should be one year's waiting, and so on. These are all the matters provided for in the new clause 27-A. But this depends upon the principle of divorce by mutual consent being accepted.

Shri Dhulekar: That should be voted upon first.

Shri Venkataraman: Amendment No. 97 may be put first.

Shri Biswas: Shri Venkataraman's suggestion is that if amendment No. 97 is put before the House, that involves the acceptance of the principle of divorce by mutual consent, and therefore, it will not be necessary to put the other amendments suggesting the abolition of sub-clause (k) to the vote of the House. That is his point. There is a good deal in it, in view of the ruling which had been given earlier. You can have it either way, but there is a good deal in support of this view. If you put amendment No. 97 to the vote of the House, then it does away with the necessity of putting any number of amendments on sub-clause (k) separately to the vote of the House.

Pandit K. C. Sharma (Meerut Distt.—South): It is for the Chair to put it.

Mr. Deputy-Speaker: It is exactly because clauses 27, 27-A and 33 are inter-related that they ought not for the purposes of voting to be treated as different and distinct portions. Even if we vote on one amendment, I will not treat it as debarring the placing of the other amendment before the House for its vote. I will treat them altogether though for the purpose of convenience, they have been put in separate compartments.

Therefore, first of all, I shall ascertain the view of the House by putting the question as to whether sub-clause (k) should remain or not. Then, I shall put amendments Nos. 327, 520 and 521.

Dr. Rama Rao: If sub-clause (k) is deleted, I hope it will not bar amendment No. 97?

Mr. Deputy-Speaker: I have given a ruling that it would not be barred. I shall take all these three clauses

together, and I shall allow the other amendments also. Amendment No. 327 reads:

In page 9,—

(i) line 38, omit 'or'.

(ii) omit lines 39 to 41.

The lines 39 to 41 referred to above refer to sub-clause (k) of clause 27. By this amendment, they want sub-clause (k) to be omitted. And they have tabled another amendment, viz. new clause 27-A, where they provide for it. Though it is an amendment seeking to introduce a new clause 27-A, I shall treat it as an amendment to the same clause, viz., clause 27, for in amendment No. 97, it is said:

"In page 9, after line 44, insert:

'27A. Divorce by mutual consent:—(1) Subject to.....'

So, this is practically in substitution of sub-clause (k) of clause 27.

I shall first ascertain the vote of the House regarding the general principle as to whether divorce by mutual consent ought to be allowed or not. Thereafter, I shall put this amendment No. 97 to the vote of the House, which deals with the circumstances under which it should be allowed and so on. The vote on amendment No. 327 will not bar amendment No. 97.

Now, I shall put the question to the House. Sub-clause (k) of clause 27 reads:

"(k) 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;"

If this sub-clause (k) goes, notwithstanding the going of that, I shall treat amendment No. 97 by Shri Venkataraman, which provides for divorce by mutual consent subject to certain restrictions and conditions, as not barred. The question is:

In page 9,

(i) line 38, omit 'or';

(ii) omit lines 39 to 41.

The motion was adopted.

Mr. Deputy-Speaker: Now, I shall put amendment No. 97 to the vote of the House.

Shri Dabhi: I have got an amendment to this amendment. It is amendment No. 471, which reads:

That in the amendment proposed by Shri R. Venkataraman and Shri Kotha Raghuramaiah printed as No. 97 in List No. 3 of amendments, in sub-section (2), for "and that the averments in the petition are true" substitute "That the averments in the petition are true and that the consent of either party to the petition was not obtained by force, fraud or misrepresentation."

I have added the words 'undue influence' after this.

Mr. Deputy-Speaker: But these are covered by amendments Nos. 520 and 521 to clause 33.

Shri Dabhi: It must find a place here.

Mr. Deputy-Speaker: It does not matter as to where it is provided for. It is provided for somewhere.

Shri Dabhi: I have added the words 'undue influence' also.

Mr. Deputy-Speaker: All right. You want 'undue influence, force or fraud'. Is Shri Venkataraman willing to accept it?

Pandit K. C. Sharma: On a point of order. Once the sub-clause (k), which provided for divorce by mutual consent, has been dropped, how can amendment No. 97 come? It is an amendment to sub-clause (k), which has been omitted already.

Mr. Deputy-Speaker: I do not know whether the hon. Member was or was not present when I gave my ruling on this. I have already ruled that I shall allow amendment No. 97, notwithstanding the fact that amendment No. 327 has been carried. If sub-clause (k) is omitted, amendment

No. 97 is for its substitution in a modified form. I wanted to take really the sense of the House,—and not sidetrack the issue,—so that hon. Members may come to a definite conclusion as to whether they do want this or not, and if perchance they do want it, with what qualifications and amendments. So far as the inclusion of the words 'undue influence' is concerned, is Shri Venkataraman willing to accept that?

Shri Venkataraman: So far as amendment No. 520 is concerned, I am willing to accept the inclusion of the words 'undue influence' along with the words 'force or fraud'.

Mr. Deputy-Speaker: Then, Shri Dabhi's amendment is not necessary.

Shri Dabhi: But my point is why my amendment should not be included in that amendment of Shri Venkataraman

Mr. Deputy-Speaker: There need not be any quarrel, because both of them are accepted in substance.

Shri V. P. Nayar (Chirayinkil): Why do you exercise undue influence yourself?

Mr. Deputy-Speaker: Is it the desire of the hon. Member that I should put it to the vote of the House? Did the hon. Member indicate that he will move this amendment?

Shri Dabhi: Yes.

Shri C. C. Shah (Gohilwad-Sorath): I think it will be all right to put it in clause 33.

Mr. Deputy-Speaker: Shall I put it to the House? What is the desire of the hon. Member?

Shri Dabhi: I am not pressing it, but the words 'undue influence' should be there.

Mr. Deputy-Speaker: I am following every word that is being said. Therefore, the hon. Member need not repeat it.

Now the amendment, No. 97, moved by Shri Venkataraman and Shri Raghuramaiah says:

"27A. *Divorce by mutual consent.*—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved."

(2) On the motion of the parties made not earlier than one year after the date of the presentation of the petition....

Here I wish to make a small suggestion. In the earlier portion, the petition has to be presented by both the parties. So, I would like to know whether it is not necessary to say here 'On the motion of both the parties'.

Shri Venkataraman: I have no objection. The word 'both' may be added and we may say 'on the motion of both the parties'.

Pandit Thakur Das Bhargava: 'Parties' is plural.

Mr. Deputy-Speaker: "On, the motion of both the parties made not earlier than one year after the date of the presentation of the petition referred to in sub-section (1) and not later than two years after the said date, if the petition is not withdrawn in the meantime...."

Here should it not be 'withdrawn by both parties'?

Shri Venkataraman: I think it is not necessary because the withdrawal can be made by any person. Through-

out the section, we have made reference to application by both parties and then renewal by both parties. Therefore, by implication the point will be covered.

Mr. Deputy-Speaker: Very well. Then I will put it to the vote of the House. The question is:

In page 9, after line 44, insert:

"27. *Divorce by mutual consent.*—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved."

(2) On the motion of both the parties made not earlier than one year after the date of the presentation of the petition referred to in sub-section (1) and not later than two years after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree".

The motion was adopted.

Mr. Deputy-Speaker: What about the other amendments to clause 27? Does any hon. Member wish to press his or her amendment?

Dr. Jaisooria: I have an amendment, No. 200. It is an addition.

Pandit Thakur Das Bhargava: Other amendments have been moved. They have to be voted upon by the House.

Mr. Deputy-Speaker: Whoever wants his amendment to be put to vote, I shall put to vote.

Shri Bogawat: I press my amendment No. 146.

Shri Biswas: I have already stated that I accept amendments Nos. 15, 89, 146 and 412. All these amendments seek to reduce the period from five years to three years in clause 27(e). I accept these amendments.

Mr. Deputy-Speaker: The amendments are Nos. 15, 89, 146 and 412.

Shri Venkataraman: Yes. They deal with the same matter—reducing the period in clause 27(e).

Shrimati Renu Chakravartty: We have got amendments to the same effect. Why should amendments moved by Shri Venkataraman and others only be put?

Mr. Deputy-Speaker: Merely because a number of other hon. Members have tabled the same amendment, I need not put them.

Shrimati Renu Chakravartty: But we have pressed it.

Mr. Deputy-Speaker: All right. I will give my ruling on it later. Let me first put the amendments. If they are carried or rejected, I will then say whether the others are barred or not.

Shrimati Renu Chakravartty: How can you say that our amendments will not be put to the vote of the House?

Mr. Deputy-Speaker: If there are two similar amendments relating to the same matter, it is open to the Chair to take up any one amendment. I am not bound to take up the other amendment. If these amendments are carried or rejected, I will then consider whether the other amendments are barred or not. That is the position. Now, I will take up one after the other. The question is:

In page 9, line 20, for "five years" substitute "three years".

The motion was adopted.

Shri Venkataraman: Now, all the other amendments get barred because they are the same as the one we passed, that is to say, amendments Nos. 89, 146, and 412 are barred.

Mr. Deputy-Speaker: Very well.

Shrimati Renu Chakravartty: Because they have put those amendments, you have taken up only those. You should have put all the amendments together.

Mr. Deputy-Speaker: Are they different from this?

Shri Algu Rai Shastri: They are the same.

Mr. Deputy-Speaker: If they are the same—reducing the period from five to three years—then they are barred. Now, the question is....

Shri Dabhi: My amendments are there.

Dr. Jaisooriya: I have an amendment to clause 27. It is No. 200. It has nothing to do with (k). It is a completely different proposal which I would like to place before the hon. Minister. If he accepts it, all right. Otherwise, I will not press it.

Mr. Deputy-Speaker: It is an additional ground for divorce. Does the hon. Minister accept it?

Shri Biswas: No, I have told the hon. Member that I cannot accept it.

Mr. Deputy-Speaker: Then I need not put it to the House.

Pandit Thakur Das Bhargava: I have got amendments Nos. 386, 387 and 278 to clause 27.

Shri M. S. Gurupadaswamy: There is also my amendment No. 411.

Mr. Deputy-Speaker: Let me take up one after the other.

Pandit Thakur Das Bhargava's amendment No 386 says:

'In page 9, lines 5 and 6, for "committed adultery" substitute "had

sexual intercourse with any person other than the spouse”.

Does it not mean that?

Pandit Thakur Das Bhargava: No. According to section 497 of the IPC, it means a married woman. I want to make it clear in this way sexual intercourse with any woman whatsoever.

Mr. Deputy-Speaker: Does the hon. Minister accept it?

Shri Biswas: No.

Mr. Deputy-Speaker: The question is:

In page 9, lines 5 and 6, for “committed adultery” substitute “had sexual intercourse with any person other than the spouse”.

The motion was negatived.

Mr. Deputy-Speaker: Then there is amendment No. 387.

Pandit Thakur Das Bhargava: You may not put it.

Mr. Deputy-Speaker: It* falls through. Then I take amendment No. 278. It says: “such cruelty as would render it unsafe for the petitioner to live together with the respondent”. That means the degree of cruelty.

Shri Dabhi: Amendments Nos. 50 and 51 may be taken up.

Mr. Deputy-Speaker: I shall put one amendment after another.

When I am placing some amendment, why should he interrupt? I shall put his amendments also if he wants, afterwards. The question is:

In page 9, line 18, for “cruelty” substitute:

“such cruelty as would render it unsafe for the petitioner to live together with the respondent”.

The motion was negatived.

Shri Dabhi: I want my amendments, Nos. 50, 51 and 54 to be put to the vote.

Mr. Deputy-Speaker: Are they covered already? Amendment No. 51 is similar to that of Pandit Thakur Das Bhargava. So, it is barred. I will put 50 to the vote. The question is:

In page 9, omit lines 10 to 16.

The motion was negatived.

Shri Biswas: Sir, the amendments which I have announced that I would accept are amendments No. 16 to clause 27(f) and No. 17 to clause 27(g).

Shri Dabhi: Sir, amendment No. 54 has not been put to the vote.

Mr. Deputy-Speaker: All right, I will put it.

The question is:

In page 9, after line 44, insert:

“27A. Notwithstanding anything contained in section 27, no court shall entertain any petition for divorce, if the husband and wife have lived a married life for a period of twenty years or more.”

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 9, line 22, for “five year” substitute “three years”.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 9, line 26, for “five years” substitute “three years”.

The motion was adopted.

Shri M. S. Gurupadaswamy: Sir, my amendment No. 411 is to sub-clause (e).

*Was deemed to have been negatived.

Mr. Deputy-Speaker: The hon. Member wants to substitute for sub-clause (e) by his amendment.

Several Hon. Members: Sir, this cannot be put because we have accepted three years and he wants five years.

Mr. Deputy-Speaker: The House having accepted three years this will be amended accordingly as three years. Does he want to press the amendment?

Shri M. S. Gurupadaswamy: Yes Sir.

Shri Biswas: Sir, his amendment is really to ensure that the person must be under care and treatment. That I do not accept.

Mr. Deputy-Speaker: The question is:

In page 9, for lines 19 to 21 substitute:

"(e) is incurably of unsound mind and has been continuously under care and treatment for a period of at least four years immediately preceding the presentation of the petition; or"

The motion was negatived.

Shri B. P. Sinha: Sir, I press my amendment No. 53.

Mr. Deputy-Speaker: The question is:

In page 9, after line 41, insert:

"(1) has not, if female, attained the age exceeding forty-five, and, if male, exceeding fifty-five."

The motion was negatived.

Mr. Deputy-Speaker: Now, I will put clause 27, as amended, to the vote.

Shri Raghavachari: Mr. Deputy-Speaker, may I have some clarification? Some amendments are moved. You have put some amendments to the House and did not think of the

rest. As I understand the Member who has moved an amendment must seek the permission of the House for the withdrawal of that amendment; otherwise, the House has to vote upon it, excepting, of course, those that are excluded by the amendments that are already carried. May I know the correct procedure?

Mr. Deputy-Speaker: I am following the rules strictly. The hon. Member is himself a lawyer. Although a number of amendments have been tabled, I have already read out a statement stating the numbers of the amendments, out of those that have been tabled, that have been treated as moved. Then I have asked the Members to state which of these again have to be put to the House. Those that wanted have given out the numbers; others have not. They are, therefore, impliedly, withdrawn. If I had not adopted this procedure, I would have called out the other amendments and asked whether they are withdrawn or not withdrawn. In view of the procedure we have adopted, those amendments which have not been put to the House are treated as having been withdrawn.

The amendments were, by leave withdrawn.

Mr. Deputy-Speaker: The question is:

"That clause 27, as amended, stand part of the Bill."

The motion was adopted.

Clause 27, as amended, was added to the Bill.

Shri Biswas: Sir, I accept amendments Nos. 520 and 521.

Mr. Deputy-Speaker: I will put amendment No. 520 to clause 33 to the House.

Shri Venkataraman: Mr. Deputy-Speaker, you will please add the words, 'or undue influence' after 'fraud'.

Mr. Deputy-Speaker: I will put in the amended form. The question is:

In page 11, after line 16, insert:

“(bb) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and”.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 11,—

(i) in line 8, after “decrees” insert “(1)”; and

(iv) after line 24, add:

“(2) Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.”

The motion was adopted.

3 P.M.

Shri B. C. Das (Ganjam South): Sir, I am pressing amendment No. 168.

Mr. Deputy-Speaker: I will place it before the House. His amendment is:

In page 11, omit lines 17 and 18.

These lines are: “the petition is not presented or prosecuted in collusion with the respondent.” In clause 33 it is stated that the court is bound to look into this question as to whether the petition is presented or prosecuted in collusion with the respondent. I am just explaining to the House what the amendment is so that they may vote on the matter after full consideration. Now, if this amendment is accepted it means that even if collusion is there, the court is bound to give a decree and collusion shall not be one of the grounds for rejecting a petition for divorce.

Shri S. S. More: When we have once stated that the consent shall be there, I cannot understand how this collusion can be a ground for rejecting a petition.

Mr. Deputy-Speaker: Consent might be by collusion or the consent might be obtained by other means that the legitimate means—by paying money and so on.

Shri S. S. More: For that, ‘fraud’ is there.

Mr. Deputy-Speaker: ‘Fraud’ is not money, ‘force’ is not money, ‘undue influence’ is not money; there may be other forms as paying one lakh of rupees so that he may take another wife.

Pandit Thakur Das Bhargava: From sub-clause (a) to (j) collusion can take place and collusion can be a ground for a petition being rejected.

Mr. Deputy-Speaker: The hon. Member who has tabled the amendment wants that collusion should not be a ground for refusal of granting a divorce.

Shrimati Renu Chakravartty: I think then, clause 27 should be exempted. How can you, after having once accepted ‘mutual consent’ as a ground for divorce, say that collusion can be a ground for rejecting a divorce being granted?

Mr. Deputy-Speaker: This sub-clause is not barred by the acceptance of ‘mutual consent’. This is altogether independent. The court can refuse a decree for divorce if it finds collusion in respect of other grounds. The question is:

In page 11, omit lines 17 and 18.

The motion was negatived.

Shri Raghavachari: Sir, there is amendment No. 214.

Shri Venkataraman: Sir, amendment No. 214 moved by Acharya Kripalani is barred by the acceptance of amendment No. 521.

Mr. Deputy-Speaker: It may be cumulative.

Shri Venkataraman: It would depend on the construction of the clause.

In amendment No. 521 the words are:—

“it shall be the duty of the court to make every endeavour to bring about a reconciliation between the parties”.

This means that the court itself can endeavour, but the amendment of Acharya Kripalani is....

Mr. Deputy-Speaker: Will it not be an addition?

Shri Venkataraman: No; his amendment is that the court will necessarily have to refer the matter to a Board.

Mr. Deputy-Speaker: My difficulty is this. Mr. Venkataraman's amendment says that every effort shall be made by the court and if the efforts fail they may proceed to decide. Acharya Kripalani's amendment may be in addition this that it may be referable to those whose advice has to be taken. It may be cumulative.

Shri Venkataraman: The words used in the amendment of Acharya Kripalani are:—

“...the court shall first refer the matter to a Board of Conciliation....etc.”

Mr. Deputy-Speaker: In amendment No. 521 which we have accepted, also there are the words. “...it shall be the duty of the court in the first instance....” and therefore one is overlapping the other. Therefore, I do not allow this amendment.

Shri Raghavachari: Sir, I want to say a few words in support of the plea that the amendment is not barred even though you have already made up your mind.

Sardar A. S. Saigal (Bilaspur): Sir, you have already given the decision.

Mr. Deputy-Speaker: Let us hear what the hon. Member has to say.

Shri Raghavachari: Sir, the point is this. We have been noticing here that they want to accept particular amendments and therefore those amendments are put first and thus exclude all other amendments. This is a matter which by itself is not very fair, because....

Mr. Deputy-Speaker: Order, order. Apart from that, the hon. Member used words which are very bad and which are not parliamentary. When there are two amendments relating to the same matter, one giving power to the court to settle the difference and if their efforts fail to proceed to decide; and the other one to refer the matter to independent bodies who should advise the court in the matter; now, we will assume that I put Acharya Kripalani's amendment first and it is carried. Shall not the very same hon. Member raise the objection that Shri Venkataraman's amendment is barred. Both of them cannot go together. How can two horses run the coach? I do not understand this objection at all.

Shri Raghavachari: What I want to submit is this. The amendment now accepted leaves the responsibility of reconciliation efforts on the court. We know that the court's duty is always there and it has to take many facts into consideration. But, conciliation is an effort which should be at the persuasion of other persons with experience of life and other things. If you read this amendment of Acharya Kripalani it is stated that it must be referred to married people and so on. Therefore, there is some difference between the two and this amendment is not barred.

Mr. Deputy-Speaker: I agree that one refers to the court and the other to an independent body. But, I find that both Mr. Venkataraman's and Acharya Kripalani's amendments want the court or the Board to do it in the first instance. When the House has accepted Mr. Venkataraman's amendment that the court should do it in the first instance, how can Acharya Kripalani's amendment to

refer it to a Board in the first instance be accepted. Therefore, it must have been changed to 'second instance' which he has not done. Under the circumstances I have rightly ruled that this amendment is barred.

Shri B. C. Das: Sir, then there is amendment No. 169.

Mr. Deputy-Speaker: His amendment is that "in page 11, after line 24 insert—provided that all petitions shall be disposed of within a period of six months from the date of application." If it is not done, then what happens? Anyway, I will place it before the House. The question is:

In page 11, after line 24 insert:

"Provided that all petitions shall be disposed of within a period of six months from the date of application."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11,—(i) after line 7, insert:

"33. *Duty of court in passing decrees.*—(1) In any proceeding under Chapter V or Chapter VI, the court shall first refer the matter to a Board of Conciliation, and the Board shall try to bring about conciliation between the parties within a period not exceeding one year and shall submit the report to the court recommending the action to be taken in the matter. The court shall, after taking into consideration such report, pass such orders or decree as it thinks fit." ; and

(ii) for line 8, substitute:

"(2) In any proceeding under".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11, for lines 12 to 16, substitute:

"(b) where the ground of the petition of the husband is adultery, the petitioner had filed a complaint against the person who committed adultery with the respondent and that such accused person was convicted under section 497 of the Indian Penal Code (Act XLV of 1860) by the criminal court or was acquitted on doubt by such court; or where the ground of the petition of the wife is adultery she had made an application under section 23 of this Act for judicial separation on such ground and the court granted a decree for judicial separation; or where the ground of the petition is cruelty the petitioner made an application to the court under section 23 of this Act and the court granted a decree for judicial separation; or where the ground is desertion under sub-clause (b) of section 27, the petitioner presented a petition under section 22 of this Act for restitution of conjugal rights and the court granted a decree for restitution of conjugal rights, before the presentation of the petition; and".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11, omit lines 19 and 20".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 33, as amended, stand part of the Bill."

The motion was adopted.

Clause 33, as amended, was added to the Bill.

Clause 28.—(Restriction on petitions for divorce during first three years after marriage.)

Clause 29.—(Remarriage of divorced persons.)

Clause 30.—(Court to which petition should be made.)

Clause 31.—(Contents and verification of petitions.)

Clause 32.—(Proceedings may be in camera.)

Mr. Deputy-Speaker: The House will now proceed with the consideration of clauses 28, 29, 30, 31 and 32.

The time allowed is one hour. We are now starting this group of clauses at 3-10 P.M. and this will conclude at 4-10 P.M.

Dr. Rama Rao: If we sit one hour extra today, we can complete all the clauses.

Mr. Deputy-Speaker: Is the House in favour of sitting up to 6 P.M. to-day?

Several Hon. Members: No, no.

Mr. Deputy-Speaker: The following amendments will be moved.

Nos. 159 and 209 which are identical, 282, 161, 98, 162 and 519 to Clause 28.

Nos. 210, 163, 211, 164 and 445 which are identical, 284 and 285 to Clause 29.

Nos. 511 and 165 to Clause 30.

Nos. 166 and 212 to Clause 31.

Nos. 167 and 213 to Clause 32.

Dr. Rama Rao: I beg to move:

In page 10, line 1, and wherever it occurs in the clause for "three years" substitute "two years."

Dr. Jaisooraya: I beg to move:

In page 10, line 1, and wherever it occurs in the clause, for "three years" substitute "two years."

Shri Ram Dass (Hoshiarpur—Reserved—Sch. Castes):

I beg to move:

In page 10, line 1 and wherever it occurs in the clause, for "three years" substitute "five years."

Dr. Rama Rao: I beg to move:

In page 10, line 4, for "three years" substitute "two years".

Shri S. V. L. Narasimham: I beg to move:

In page 10, line 4, add at the end:

"except on the grounds specified in clause (k) of section 27 and section 27A."

Dr. Rama Rao: I beg to move:

In page 10, line 6, for "three years" substitute "two years".

Shri N. P. Nathwani: I beg to move:

In page 10, line 4, for "the marriage" substitute:

"entering the certificates of marriage in the Marriage Certificate Book;"

Shri Raghavachari: I beg to move:

In page 10, lines 26 and 27, omit "either there is no right of appeal against the decree or if there is such a right of appeal."

Dr. Rama Rao: I beg to move:

In page 10, lines 29 and 30, omit "and one year has elapsed thereafter but not sooner,"

Dr. Jaisooraya: I beg to move:

In page 10, lines 29 and 30, for "and one year has elapsed thereafter" substitute "and six months have elapsed after dissolution."

Shrimati Renu Chakravartty: I beg to move:

In page 10, line 29, for "one year" substitute "six months".

Shri M. L. Agrawal: I beg to move:

In page 10, line 29, for "one year" substitute "six months".

Shri Ram Dass: I beg to move:

In page 10, line 29, for "one year" substitute "three years".

In page 10, after line 31, add:

"Provided that where the husband has obtained divorce he shall make provision for the maintenance of the divorced wife for three years, in case she is not earning her living."

Shri R. D. Misra: I beg to move:

In page 10, line 35 and wherever it occurs in clauses 31, 33, 35, 36, 37, 38 and 40 after "Chapter VI" insert "or Chapter VI-A".

Shrimati Renu Chakravartty: I beg to move:

(i) In page 10, line 45, add at the end:

"and all such petitions shall be disposed of within six months and if an appeal is preferred it shall also be disposed of within another six months."

(ii) In page 10, lines 48 to 50, omit "and shall also state that there is no collusion between the petitioner and the other party to the marriage."

Dr. Jaisooraya: I beg to move:

In page 11, after line 4, add:

"(3) All matters matrimonial under dispute under this section shall be referred to a specially trained social worker attached to the High Court within jurisdiction, who shall recommend to the Court the desirability or otherwise of granting relief from the sociological aspect."

Dr. Rama Rao: I beg to move:

In page 11, lines 6 and 7, omit "if either party thereto so desires or if the district court so thinks fit to do."

Acharya Kripalani: I beg to move:

In page 11, line 7, add at the end:

"and no part of such proceedings shall be published in any shape or form except with the permission of the court."

Mr. Deputy-Speaker: The amendments which have been moved are placed before the House for discussion:

Shri N. P. Nathwani: I have tabled an amendment No. 519.

Mr. Deputy-Speaker: Why was a bill not passed on to the Secretary, that the hon. Member wishes to move it.

Shri N. P. Nathwani: It is a purely verbal amendment and it is very necessary.

Mr. Deputy-Speaker: Many things may be necessary. Unless previous intimation is given, I would not take an amendment as having been moved.

Shri Biswas: I am prepared to accept that amendment, if it will save the time of the House.

Mr. Deputy-Speaker: I am prepared to make an exception in the present case; but I will not allow this in future.

Shri Raghavachari: I only wish to say a few words: I do not wish to take up the time of the House. I have given notice of an amendment to clause 29, No. 210, suggesting the deletion of the words "either there is no right of appeal against the decree or if there is such a right of appeal". These words to my mind appear to be unnecessary, and do not serve any purpose.

The other amendment of which we have given notice is No. 213, to clause 32 suggesting the addition of the words "and no part of such proceedings shall be published in any shape or form except with the permission of the court."

You know, Sir, that much of these matrimonial cases and proceedings in courts often assume very good food and material for the newspapers, apart from the consequences which it might produce upon the parties. Therefore, it is very essential that publication of it must be only with the permission of the court.

Shri Biswas: In regard to amendment No. 210, moved by the hon. Member, I may point out that these words are necessary. We have defined district court to include the small court if Government so desires. It is not possible to say whether in all cases there is bound to be a right of appeal. Therefore, these words are necessary; at any rate there is no harm in retaining these words.

Shri C. R. Chowdary: Sir, I have moved an amendment to clause 28, No. 98 suggesting the addition of the words "except on the grounds specified in clause (k) of section 27 and section 27A." Under clause 28 the period prescribed for the filing of a petition for divorce is three years. In case of mutual consent, where the parties agree to get themselves separated and have a decree for divorce, these three years' period is unnecessary and may work hardship on the parties. My amendment suggests that this three year period should not be made applicable to parties agreeing to separate by consent and should be exempted from the operation of clause 28.

Mr. Deputy-Speaker: I will now put the amendments to the vote of the House: The question is:

In page 10, line 4, for "the marriage" substitute:

"entering the certificate of marriage in the Marriage Certificate Book:"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 10, line 4, add at the end:

"except on the grounds specified in clause (k) of section 27 and section 27A."

The motion was negatived.

Mr. Deputy-Speaker: To avoid any objection from Mr. Raghavachari, I will put to vote all the other amendments because they have been moved. The question is:

In page 10, line 1 and wherever it occurs in the clause, for "three years" substitute "two years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 10, line 1 and wherever it occurs in the clause, for "three years" substitute "five years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 10, line 4, for "three years" substitute "two years."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 10, line 6, for "three years" substitute "two years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 28, as amended, stand part of the Bill."

The motion was adopted.

Clause 28, as amended, was added to the Bill.

Mr. Deputy-Speaker: I am now taking amendment No. 163 to clause 29 for putting it to the vote of the House.

Dr. Rama Rao: I would like to say a few words on this amendment of mine.

Mr. Deputy-Speaker: Let me make it clear. The clauses 28 to 32 are taken together and hon. Members wanting to speak on any of amendments to these clauses should take all of them together. That is the practice that I have been adopting so far because these clauses have been put into one group. If, however, Dr. Rama Rao wants to speak on his amendment, I have no objection, because there has been some misunderstanding of the position on his part.

Dr. Rama Rao: I want to appeal to the Law Minister to accept my amendment No. 163. The amendment is simply this. After all the trouble, they obtain a divorce, and why should the Law Minister compel them to wait for a period of one year if they want to marry again. Before divorce, of course, it is a step of caution. After divorce has been granted, and after all this heartburning, why should they

wait unnecessarily for one more year and lose whatever chances they have of a marriage?

Shri Biswas: The object is to prevent persons marrying in indecent ways. This provision is there in the existing Divorce Act, where the period of waiting is six months. Now, of course, there is no decree nisi followed by a decree absolute. Therefore, we have increased the period of six months to one year, and that is a recognised practice everywhere.

Dr. Jaisooriya: May I ask whether six months is too indecent?

Mr. Deputy-Speaker: The question is:

In page 10, lines 29 and 30, omit "and one year has elapsed thereafter but not sooner."

The motion was negatived.

Dr. Jaisooriya: My amendment No. 211 suggests six months instead of one year.

Shri Biswas: The same argument applies to 211 also.

Dr. Jaisooriya: In that case, you need not put it to the vote.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

In page 10, lines 26 and 27, omit "either there is no right of appeal against the decree or if there is such a right of appeal,".

The motion was negatived.

Mr. Deputy-Speaker: Only hon. Members who are there can withdraw their amendments. If they are not here, the only course for me is to put those amendments to the vote of the House. The question is:

In page 10, line 29, for "one year" substitute "six months".

The motion was negatived.

394 L.S.D.

Mr. Deputy-Speaker: The question is:

In page 10, line 29, for "one year" substitute "three years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 10, after line 31, add:

"provided that where the husband has obtained divorce he shall make provision for the maintenance of the divorced wife for three years, in case she is not earning her living."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 29 stand part of the Bill."

The motion was adopted.

Clause 29 was added to the Bill.

Mr. Deputy-Speaker: The question is:

In page 10, line 35 and wherever it occurs in clauses 31, 33, 35, 36, 37, 38, and 40, after "Chapter VI" insert "or Chapter VI-A".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 10, line 45, add at the end:

"and all such petitions shall be disposed of within six months and if an appeal is preferred it shall also be disposed of within another six months."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 30 stand part of the Bill."

The motion was adopted.

Clause 30 was added to the Bill.

Mr. Deputy-Speaker: Amendment No. 212 suggests something like a Conciliation Officer or a Divorce Advisory Officer. The question is:

In page 11, after line 4, add:

"(3) All matters matrimonial under dispute under this section shall be referred to a specially trained social worker attached to the High Court within jurisdiction who shall recommend to the Court the desirability or otherwise of granting relief from the sociological aspect."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 10, lines 48 to 50, omit "and shall also state that there is no collusion between the petitioner and the other party to the marriage."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 31 stand part of the Bill."

The motion was negatived.

Clause 31 was added to the Bill.

Shrimati Jayashri rose —

Mr. Deputy-Speaker: The hon. Member has missed the bus. The question is:

In page 11, lines 6 and 7, omit "if either party thereto so desires or if the district court so thinks fit to do."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11, line 7, add at the end:

"and no part of such proceedings shall be published in any shape or form except with the permission of the Court."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 32 stand part of the Bill."

The motion was adopted.

Clause 32 was added to the Bill.

Mr. Deputy-Speaker: We have disposed of this group in less than twenty minutes. The House will now take up the next group of clauses, 1, 2, 35 to 50 and Schedules.

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

Clauses 1, 2, 35 to 50 and Schedules and Enacting Formula.

Mr. Chairman: In regard to clauses 35 to 50 and schedules, and also clauses 1 and 2 and Enacting Formula, the following amendments have been received and they will be moved.

Clause 2: 337

Clause 36: 100, 472, 171, 172 and 170.

Clause 37: 173

Clause 38: 216, 174.

Clause 40: 473, 218.

Clause 41: 219.

Clause 43: 399.

Clause 46: 220.

Clause 50: 102.

The First Schedule: 484, 474, 475, 485.

The Fourth Schedule: 477.

Shrimati Renu Chakravartty: I beg to move*:

In page 2, for lines 5 to 8, substitute:

"(f) 'degrees of prohibited relationship' refers to cases where one of the parties is a lineal ascendant of the other, or was the wife or husband of a lineal ascendant or descendant of the other, or where the two are brother and sister, uncle and niece, aunt and

*Deemed to have been negatived

nephew or the children of two brothers or of two sisters unless the law or any custom or usage having the force of law governing the parties permits of a marriage between the two;"

Shri Mulchand Dube: I beg to move:
In page 11, after line 48, add:

"Provided that no order for maintenance and support shall be made if the wife has been found to have committed adultery or if the decree is founded on any of the grounds specified in clauses (b), (f), (i), (j) or (k) of section 27."

Shrimati Renu Chakravartty: I beg to move:

In page 12, lines 7 and 8, for "is not leading a chaste life" substitute:

"is leading the life of a concubine or a prostitute".

Dr. Rama Rao: I beg to move:

In page 12, lines 7 and 8, for "not leading a chaste life" substitute:

"living with another man as wife, or as a concubine or as a prostitute."

Shri Bogawat: I beg to move:

In page 11, line 48, add at the end:

"and similarly order that the wife shall secure to the husband who is unable to maintain himself, for his maintenance and support such sum and for such period having regard to the wife's property and income she gets".

Shrimati Jayashri: I beg to move:

In page 12, lines 7 and 8, for "is not leading a chaste life" substitute:

"is living with another man as his wife".

Shrimati Renu Chakravartty: I beg to move*:

In page 12, for clause 37, substitute:

"37. *Custody of Children.*—In any proceeding under Chapter V or VI the district court shall ordinarily give the custody of minor children upto the age of twelve years to the mother, after which age the wishes of the children shall be given due consideration in settling their custody. With regard to maintenance and education of minor children the court may from time to time make such provisions in the decree as may seem just and proper with respect to the maintenance and education of minor children, consistently with their wishes wherever possible."

Shri Raghavachari: I beg to move:

In page 12, line 27, for "ninety" substitute "sixty".

Shrimati Renu Chakravartty: I beg to move*:

In page 12, after line 27, insert:

"Provided further all appeals shall be disposed of within a period of six months from the date of appeals."

Shri Mulchand Dube: I beg to move:

In page 12, after line 46, insert:

"(cc) bringing about a reconciliation between the parties;"

In page 13, omit lines 1 to 3.

In page 13, line 8, after "any" insert "other".

Pandit Thakur Das Bhargava: I beg to move:

In page 13, after line 23, add

"Provided that the offence of bigamy shall not be deemed to

*Deemed to have been negatived.

[Pandit Thakur Das Bhargava]

have been committed by any person who contracts a marriage during the life-time of a former husband or wife of such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall before such marriage takes place inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

Shri Raghavachari: I beg to move:

In page 13, line 45, omit "truth of the".

Shri H. N. Mukerjee (Calcutta North-East): I beg to move*:

In page 15, line 7, after "law" insert:

"and all existing marriages to which the Indian Divorce Act would be applicable if proceedings were taken for any relief thereunder".

Dr. Rama Rao: I beg to move*:

In page 16, omit line 15.

Shri Mulchand Dube: I beg to move:

* (i) In page 16, after line 37, insert:

"17A. Female descendants of the father, grand-father or great grand-father howsoever low whether in the male or female line of descent."

(ii) In page 16, after line 37, insert.

*17AA. Male descendants of the father, grand-father and great

grand-father howsoever low whether in the male or female line of descent."

Dr. Rama Rao: I beg to move*:

In page 17, omit line 12.

Shri Mulchand Dube: I beg to move:

In page 19, line 8, after "section 11" insert "on oath or solemn affirmation".

Mr. Chairman: The amendments that have been moved are now placed before the House for discussion.

Now let us take up clause 34. There is no amendment to clauses 34 and 35.

Clauses 34 and 35 were added to the Bill.

Clause 36.—(Permanent alimony and maintenance)—contd.

Mr. Chairman: Now the House will proceed with discussion on clause 36.

Shri Bogawat: Sir, I have moved an amendment to this clause, No. 170.

Under this clause we are giving to the court powers to allow alimony and maintenance to the wife. So far as the question of wife is concerned, it is all right to allow a portion of the property of the husband and also allow monthly allowance or alimony to the wife but now these are days of equality. We are, according to our Constitution, giving equal rights to the ladies. Supposing a man is crippled, is a leper or a lunatic and not able to maintain himself and without any property, and if the lady is earning—the lady who wants the divorce and separation from such a husband she has got some property or some service and is in a good position, is it not also the duty of the wife to maintain such a husband?

An Hon. Member: Absolutely.

Shri Bogawat: I think in such circumstances we must also put some responsibility on the wife who is in

*Deemed to have been negatived.

a better condition and who is neglecting the husband because he is in such circumstances. I have moved my amendment No. 170 to the effect that at the end of line 48 in page 11 the words may be added:—"and similarly order that the wife shall secure to the husband who is unable to maintain himself for his maintenance and support such sum and for such period, having regard to the wife's property and income she gets." Here also I have not stated that we should put a charge upon the property of the wife. It is the first duty of the wife who is in a better condition and who has got property to maintain the husband who is in a peculiar state. So, without making a long speech, may I request the hon. Law Minister to consider my amendment which is also very useful as the husband who is in a peculiar state or condition and who is unable to maintain himself may not have the means to support himself. In such circumstances, I would request the hon. Law Minister to consider my amendment which is not very harsh. It is also according to our Hindu society...

An Hon. Member: Constitution of India and equality also.

Shri Bogawat: So it is the bounden duty of the wife to maintain her husband if she is in a position to do so and if she has her property or if she is in service.

Shri Mulchand Dube: My amendment No. is 472. It reads "Provided that no order for maintenance and support shall be made if the wife has been found to have committed adultery or if the decree is founded on any of the grounds specified in clauses (b), (f), (i), (j) or (k) of section 27." My submission is that if the wife has been found guilty of these offences, then in that case she should not be entitled to any maintenance after the decree has been passed. That is all I have to say in support of it.

Mr. Chairman: Shrimati Renu Chakravartty and Shri Das are not in their

seats to speak on their amendment No. 171. So we can go to amendment No. 172 of Dr. Rama Rao.

Dr. Rama Rao: You can put it to the vote

Mr. Chairman: I have received notice of another amendment No. 100, from Shrimati Jayashri.

Shrimati Jayashri: I would like to appeal to the hon. Members here to substitute the words on page 12, lines 6 and 8 reading thus: "is living with another man as his wife." The words in sub-clause (3) are not very clear. It reads 'not leading a chaste life'. They are very vague and for trifling things, I think our society will blame the women and she will be deprived of the alimony and thus she will suffer. Besides, in the present society she has to depend on the husband's property; she is not independent and her children are to be maintained. Looking to all these, I would like the hon. Law Minister to define 'leading a chaste life' in whatever way this can be substituted. There is another amendment by Shrimati Renu Chakravartty and her wordings are better, I should say. She wants to substitute this by "is leading the life of a concubine or a prostitute". If these words are substituted, the meaning will be more clear instead of these words 'leading a chaste life'. I would request that these words should be substituted by the words 'is leading the life of a concubine or a prostitute.'

Shri Biswas: I shall deal with these amendments one after another. I will take Mr. Bogawat's amendment first "The wife shall be required to pay to the husband who is unable to maintain himself for his maintenance and support such sum and for such period having regard to the wife's property and income she gets." It is not usual for the wife to pay alimony to the husband, that has never been the practice anywhere.

Shri Bogawat: I say the same thing.

Shri Biswas: This question was discussed at great length in the Joint Committee. The Joint Committee decided to retain this clause. If you look at the dictionary, you will find that alimony is provision made by the husband for the wife while the marital relations continue to exist. After all, it is a question of maintenance, not alimony.

Shri Syamnandan Sahaya (Muzaffarpur Central): He is willing to change the word into "maintenance".

Shri Bogawat: Yes.

Shri Biswas: If you look at the Matrimonial Clauses Act of England, there is also distinction maintained between alimony and maintenance.

Shri Bogawat: I have not said "alimony". I have said only "maintenance".

Shri Biswas: It comes under Alimony and maintenance. There is no reason why he should be called upon to provide maintenance for the wife. Maintenance arises only when the marriage is dissolved. In the Divorce Act, this is the word which has been used.

Shri Thimmaiah (Kolar—Reserved—Sch. Castes): Suppose the property is in the name of the wife.

Shri Biswas: The next amendment is that of Shri Mulchand Dube. The court has discretion in all these matters. The amendment seeks to add a proviso:

"Provided that no order for maintenance and support shall be made if the wife has been found to have committed adultery or if the decree is founded on any of the grounds specified in clauses (b), (f), (i), (j) or (k) of section 27."

The whole thing is unnecessary. The court has got discretion. The court will take these things into account.

The next amendment is that of Shrimati Jayashri. She says that the wording "is not leading chaste life" is not a happy expression, but that the

wording should be "is living with another man as his wife". If she is living with another man as his wife, she should have re-married him. If she marries, under the clause, the order will stand cancelled. If, on the other hand, she lives as a concubine, then, she is not living a chaste life. She has put me in the horns of a dilemma. I cannot accept this amendment.

Shri Mulchand Dube: May I bring to the notice of the hon. Minister that the court does not seem to have been given any discretion in the matter. What is said is,—

"Any Court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary..."

This clause 36 does not seem to have given any discretion to the court in the matter, that is, to give a decree for maintenance and support for sufficient cause. Even that is not there. It is not even mentioned that he should take this matter into consideration. All the matters that have to be taken into consideration at the time of granting maintenance are not mentioned in the section.

Shri Biswas: I would like to draw the attention of the hon. Member to sub-clauses (a) and (e) of clause 33. It reads

"In any proceeding under Chapter V or VI, whether defended or not, if the court is satisfied that,—

(a) any of the grounds for granting relief exists; and

* * * *

(e) there is no other legal ground why the relief should not be granted."

That vests sufficient discretion in the court.

Shri Mulchand Dube: That is for passing of the decree. That is not for the purpose of granting maintenance or support. That is a different matter. Maintenance is being granted after the decree is passed.

Shri Biswas: The word 'decree' does not occur in clause 33. The wording is:

"In any proceeding under Chapter V or Chapter VI,

* * * *

...in such a case, but not otherwise, the court shall decree such relief..."

'Decree such relief' does not mean that it will pass a decree for dissolution of marriage and consequential reliefs.

Shri Mulchand Dube: I think the hon. Minister has not still caught my point. The court may do certain things at the time of the passing of the decree. Under clause 36, the court is in a position to grant maintenance after the passing of the decree.

Shri Biswas: The wording is: "In any proceedings". At any stage.

Shri Mulchand Dube: We are referring to the powers of the court after a decree has been passed also.

Shri Raghavachari: Clause 33 says:

"In any proceeding under Chapter V or Chapter VI.....

Mr. Chairman: Order, order. We are now considering Chapter VII. The words here are, Chapters V and VI.

An Hon. Member: Alimony is in Chapters V and VI.

Mr. Chairman: We are on Chapter VII.

Shri Venkataraman: I would like to draw your attention to one thing. The clause says:

"Any Court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure....."

That means that the court has discretion either to order or not to order. Simply because the word 'shall' is used, it does not mean that the court is bound to grant maintenance.

Mr. Chairman: I shall put these amendments to the vote of the House. The question is:

In page 11, line 48, add at the end:

"and similarly order that the wife shall secure to the husband who is unable to maintain himself, for his maintenance and support such sum and for such period, having regard to the wife's property and income she gets."

The motion was negatived.

Mr. Chairman: The question is:

In page 12, lines 7 and 8, for "not leading a chaste life" substitute:

"living with another man as wife, or as a concubine or as a prostitute."

The motion was negatived.

Mr. Chairman: The question is:

In page 12, lines 7 and 8, for "is not leading a chaste life" substitute:

"is leading the life of a concubine or a prostitute".

The motion was negatived.

Mr. Chairman: The question is:

In page 11, after line 48, add:

"Provided that no order for maintenance and support shall be

[Mr. Chairman]

made if the wife has been found to have committed adultery or if the decree is founded on any of the grounds specified in clauses (b), (f), (i), (j) or (k) of section 27."

The motion was negatived.

Mr. Chairman: The question is:

In page 12, lines 7 and 8, for "is not leading a chaste life" substitute:

"is living with another man as his wife".

The motion was negatived.

Mr. Chairman: All the amendments are lost. The question is:

"That clause 36 stand part of the Bill."

The motion was adopted.

Clause 36 was added to the Bill.

Clause 37.—(Custody of Children)—
contd.

Mr. Chairman: Clause 37. Amendment No. 173. I shall put the clause. The question is:

"That clause 37 stand part of the Bill."

The motion was adopted.

Clause 37 was added to the Bill.

Clause 38. (Enforcement of and appeal from decrees and orders)—
contd.

Mr. Chairman: Clause 38. Amendment No. 216.

Shri Raghavachari: My amendment is No. 216. Clause 38 relates to appeals. I only wish to amend, thus: for "ninety" substitute "sixty". The clause says:

"Provided that every such appeal shall be instituted within a period of ninety days from the date of the decree or order."

For these appeals, sixty days will be sufficient. Ninety days would only be prolonging the time. I submit that for all reasonable preparation, sixty

days would be sufficient and I want to reduce the period of ninety days to sixty.

Shri Biswas: Ninety days seems to be more reasonable than sixty. Why do you insist on sixty days?

Shri Raghavachari: These are appeals to the district court.

Sardar A. S. Saigal: Let us give more time.

Shri Biswas: We thought that this was more reasonable and that is why we put it.

Mr. Chairman: The question is:

In page 12, line 27, for "ninety" substitute "sixty".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 38 stand part of the Bill."

The motion was adopted.

Clause 38 was added to the Bill.

Clause 40.—(Power of High Court to make rules regulating procedure)
—contd.

Shri Mulchand Dube: My amendment is:

In page 12, after line 46, insert:

"(cc) bringing about a reconciliation between the parties;"

In the rule-making powers of the High Court it should be specified that rules may be provided for the purpose of bringing about a reconciliation between the parties. As it is, the matter has been left vague. All the amendments in regard to the principal clauses in the Bill have been rejected, but I do not think that was the proper place for them. I think this should be provided by a provision that the High Court should make rules according to which the Court should proceed in the matter of bringing about a reconciliation. I read some time ago that there are societies in the U.S.A. which, in the

case of differences between the husband and the wife, attempt to bring about a reconciliation by visiting them, by persuading them and doing such other things. Therefore, the High Court, in its rule-making powers, should be authorised to make rules, so that in case there is difference between the husband and the wife and an application for divorce has been made. They should be brought together and reconciliation should take place. Instead of waiting for a year without any rules, without any procedure, I think it would be best to provide some procedure according to which the High Court will be able to proceed.

Shri Venkataraman: I oppose this amendment. We have left a large part of discretion to the court so that they may bring about reconciliation between the parties without being fettered by any rules, laws, regulations and all that. The very object of giving the discretion to the court to bring about reconciliation is to enable it to exert its personality and try to bring about some sort of reconciliation. Rules will only hamper that process.

Mr. Chairman: May I just know if Dr. Jaisoorya wants to move his amendment?

Dr. Jaisoorya: No, Sir.

Mr. Chairman: The hon. Minister does not want to say anything. Mr. Venkataraman has already replied.

Shri Biswas: I support what Mr. Venkataraman has said.

Mr. Chairman: The question is:

In page 12, after line 46, insert:

"(cc) bringing about a reconciliation between the parties;"

The motion was negatived.

Mr. Chairman: The question is.....

Shri Raghavachari: I have an amendment.

Mr. Chairman: There are only two amendments, Nos. 216 and 174.

Shri Raghavachari: My amendment is No. 218.

In page 13, omit lines 1 to 3.

Sub-clause (e) of clause 40 reads:

"any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (IV of 1869)".

We give this subordinate legislation or rule-making power only to cover matters on which details are not given by an Act, and not to fill in anything which is not provided for in an Act. You will see it reads:

"any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (IV of 1869)".

This is giving too large and wide powers which is beyond the scope of the rule-making powers, because you know that the provision is:

"In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,—"

It must be only something that has some relation with some provision made in the Act, and not for all things not provided for in this Act. Under this rule any rule may be made and therefore I think the language of this sub-clause (e) is beyond the scope of the ordinarily understood rule-making power.

Shri Biswas: It is the High Courts that will make these rules. We can trust the High Courts to act reasonably. There is no fear the High Court will go on doing anything and everything in an irresponsible way. There is no harm in retaining it.

Mr. Chairman: The question is.

In page 13, omit lines 1 to 3.

The motion was negatived.

Mr. Chairman: The question is:

"That clause 40 stand part of the Bill."

The motion was adopted.

Clause 40 was added to the Bill.

Clause 41. (Saving)—contd.

Shri Raghavachari: My amendment is No. 219. It is just a little verbal alteration. It is this way.

The clause reads:

"...affect the validity of any mode of contract marriage."

I wanted to add the word "other" to make the meaning clear.

Shri Biswas: As a matter of fact, it is not necessary, but then, I will not object to its acceptance. Only we have used the word "solemnized", and not "contracting" everywhere.

Shri Raghavachari: In fact, I gave an amendment to substitute the word "celebrate" or "contract" for "solemnizing". The Minister opposed it. There is the word used already.

Mr. Chairman: Do I take it as accepted or not accepted?

Shri Biswas: This is not necessary.

Mr. Chairman: The question is:

In page 13, line 8, after "any" insert "other".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 41, stand part of the Bill".

The motion was adopted.

Clause 41, was added to the Bill.

Clauses 42 to 45 were added to the Bill.

Clause 46— (Marriage Certificate Book to be open to inspection)—contd.

Shri Raghavachari: My amendment is:

In page 13, line 45, omit "truth of the".

We know, Sir, that certified copies are only proof of the contents of the original and not that the certified copies are proof of the truth of the contents of those matters. Of course, the Law Minister is aware of this matter even in connection with the other Divorce Act; and you will find that it leads to this, that if a certified copy is produced, it is conclusive. It is no doubt...

Shri Biswas: I will accept that amendment.

Mr. Chairman: The question is:

In page 13, line 45, omit "truth of the".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 46, as amended, stand part of the Bill".

The motion was adopted.

Clause 46, as amended, was added to the Bill.

Clauses 47 to 50 were added to the Bill.

The First Scheduled— contd.

Shri Mulchand Dube rose—

An Hon. Member: He is moving.

Shri Mulchand Dube: There is an amendment to the First Schedule. I have given notice.

Mr. Chairman: Which number please?

Shri Mulchand Dube: No. 476.

Mr. Chairman: No notice has been received here.

Shri Mulchand Dube: No, Sir, I sent it to Mr. Nandi.

Mr. Chairman: No notice has been received here.

श्री मुखर्जी : मैंने एक चपड़ासी को जो कि हाउस में खड़ा हुआ था उस को अपना अमेंडमेंट रख करने के लिये एक परचा नन्दी साहब की मेज पर देने के लिये दिया था ।

4 P.M.

Sardar A. S. Saigal: This is not correct. When the hon. Member has given a chit, it should have reached the Secretary.

Mr. Chairman: I cannot disbelieve the hon. Member when he says he gave a chit. The amendment has to be allowed. I shall take it that he gave the chit.

The hon. Member can speak on his amendment.

Shri Mulchand Dube: My amendment is No. 476.

Mr. Chairman: But the hon. Member will realise that amendment No. 476 relates to the Second Schedule. We are not considering that at the moment.

Shri Mulchand Dube: I have given for both. There is amendment No. 475 also.

Mr. Chairman: I just read out the number. The hon. Member did not stand up then.

Shri Mulchand Dube: I could not hear it. I am sorry.

Mr. Chairman: The hon. Member may speak on his amendment No. 475.

Shri Mulchand Dube: My amendment is :

In page 16, after line 37, insert:

"17AA. Male descendants of the father, grand-father and great grand-father howsoever low whether in the male or female line of descent."

This amendment seeks to prevent marriages between second cousins at least. The Schedules, as they are framed, permit marriages between second cousins, which are certainly

very objectionable and repugnant to Hindu sentiment. The amendment that I have moved is a provision which was contained in the Special Marriage Act of 1872 also. I do not see any reason why it should have been left out in this Bill. I think it would be in consonance with Hindu sentiments and feelings, if such sort of marriages between second cousins is not permitted.

Mr. Chairman: The hon. Member says that this was included in the original Act.

Shri Biswas: Part II of the First Schedule deals with male relations, and amendment No. 474 of the hon. Member—I suppose that is the amendment he has moved—seeks to put into that group female relations of the father etc. On that ground alone, I cannot accept this amendment.

Mr. Chairman: He speaks about both male and female.

Shri Biswas: I was dealing with amendment No. 474 first.

Mr. Chairman: He has not moved that.

Shri Biswas: I am sorry.

Mr. Chairman: He has moved only amendment No. 475.

Shri Biswas: I find two amendments to the First Schedule, in the name of the hon. Member, and I thought he had moved both.

The hon. Member would not like us to say, son's son, 'daughter's son' and so on, but he introduces a formula resembling what you find in Muslim law. I am not enamoured of that. I do not see why we should make a change and accept that phraseology.

Shri Mulchand Dube: It is in the Special Marriage Act, 1872, not Muslim law.

Shri Biswas: We have said in plain language, son's son, daughter's son, and so on. Why should we go into this mode of designating them?

[Shri Biswas]

I could understand if he had said that we should include relations between whom marriage could not possibly be conceived as a possibility. That would have been a different question, but that is not the object of the hon. Member. He wishes to introduce a new formula which you find in the Muslim law. There is no reason why we should depart from the formula we have already accepted.

Shri Mulchand Dube: It only adds the next generation. Marriages between second cousins are sought to be prevented. There is no other departure from the form in which you have put it. You have mentioned the relations, but I have given a formula. That is all the difference.

Mr. Chairman: The question is:

In page 16, after line 37, insert:

"17AA. Male descendants of the father, grand-father and great grand-father howsoever low whether in the male or female line of descent."

The motion was negatived.

Mr. Chairman: The question is:

"That the First Schedule stand part of the Bill."

The motion was adopted.

The First Schedule was added to the Bill.

The Second and Third Schedules were added to the Bill.

Fourth Schedule—contd.

Mr. Chairman: There is an amendment in the name of Shri Mulchand Dube. Has the hon. Member moved it?

Shri Mulchand Dube: Yes. My amendment is:

In page 19, line 8, after "section 11" insert "on oath or solemn affirmation".

My submission is that the declaration should be on oath or solemn affirmation. I am conscious of the

fact that it is provided elsewhere that if the declaration is found to be false, the party would be liable to be punished under section 193 of the Indian Penal Code. In spite of that, I think it is necessary that whatever declarations the parties make before the Marriage Officer should be on oath or solemn affirmation.

Shri Biswas: The hon. Member is suggesting a change in the certificate of marriage? Is it not so?

Shri Mulchand Dube: No, no. I am referring to the declaration before the Marriage Officer.

Shri Biswas: According to the Schedule, the certificate will be of the following form, namely, I hereby certify that on such and such a day, such and such persons appeared before me, and each of them in my presence and in the presence of three witnesses who have signed hereunder, made the declaration required by section 11, etc. etc.

Clause 11 does not provide for making a declaration on oath. So, how can the certificate to be given under that clause include oath or affirmation? My hon. friend should have moved an amendment to clause 11. That he has not done, or even if he had done, it was not accepted.

Mr. Chairman: The question is:

In page 19, line 8, after "section 11" insert "on oath or solemn affirmation".

The motion was negatived.

Mr. Chairman: The question is:

"That the Fourth Schedule stand part of the Bill."

The motion was negatived.

The Fourth Schedule was added to the Bill.

The Fifth Schedule was also added to the Bill.

Clause 2.—(Definitions).—contd.

Mr. Chairman: Now, I shall put clause 2 to the vote of the House. In

fact, the position in respect of this clause is that we have already accepted sub-clauses (a), (b), (c), (d), (e) and (g). Only sub-clause (f) is yet pending.

I understand there is an amendment to sub-clause (f), tabled by Shri Venkataraman.

Shri Venkataraman: I am not pressing it.

Mr. Chairman: There is no other amendment to clause 2. The question is:

"That clause 2 do stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1.— (Short title, extent and commencement)— contd.

Shri N. C. Chatterjee: There was some amendment to clause 1.

Shri K. K. Basu (Diamond Harbour): I want to say something with regard to clause 50.

Mr. Chairman: I have disposed of all the amendments to clause 50.

Shri K. K. Basu: I wanted to say something by way of clarification.

Mr. Chairman: Later on.

Regarding clause 1, there is an amendment by Shrimati Jayashri. Is she moving it? She is absent. So now I put the clause to the vote of the House. The question is:

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

Shri K. K. Basu: May I with your indulgence put a question to the hon. the Law Minister? I had an amendment to clause 50. Unfortunately, I could not move it, because we have moved rather faster than we have

been doing so long. My amendment is No. 102.

Shri Biswas: To which clause?

Shri K. K. Basu: Clause 50.

Shri Biswas: It is already passed.

Shri K. K. Basu: But I only want to put a question to the Law Minister.

Shri Venkataraman: He can do it in the third reading.

Shri Biswas: What is it that he is asking?

Mr. Chairman: Is it regarding some verbal change?

Shri K. K. Basu: I want clarification. I tabled my amendment* to clarify certain things. The section, as passed, does not solve my difficulty. My question is whether this Act will apply to marriages like those performed under the Christian Marriage Act and others where they are guided by the Indian Divorce Act so far as divorce is concerned. We know that the provision in the Special Marriage Act is much wider than that in the Indian Divorce Act so far as grounds for divorce are concerned. I am putting a specific case. Under the Indian Divorce Act, if the husband deserts, the wife can sue for divorce. But if the wife deserts, there is no provision whereby the husband can sue for divorce on the ground of desertion by the wife. The provisions in this Act in this regard are much more extensive than those found in the Christian Marriage Act or the Indian Divorce Act which are already there for more than 60 years. We should make it more explicit that the provisions that are found in the Special Marriage Act should also apply to the Indian Divorce Act. That is my point. Sub-section (2) (a) is not clear on that point. So I wanted to move an amendment. Unfortunately, I did not have my chance because we thought that it would come up well after four o'clock. If the Law Minister says that my difficulty is solved by the sub-section

[Shri K. K. Basu]

(2) (a) of section 50 as it stands and as passed by the House, then I do not want to say anything. Otherwise, I would urge upon him to see that if it is found that there is some difficulty and it needs to be explained, he might move the necessary amendment.

Shri Biswas: The amendment of my hon. friend is not quite intelligible. I did not quite follow it. Assuming that we accept that amendment, the clause would read like this:

"Notwithstanding such repeal, all marriages duly solemnized under the Special Marriage Act, 1872, or any such corresponding law and all existing marriages to which the Indian Divorce Act would be applicable if proceedings were taken for any relief thereunder.....".

The Indian Divorce Act was enacted for Christians. That is the position. It was made applicable also to marriages under the Special Marriage Act of 1872. Now, we have got self-contained provisions here. Therefore, I do not quite understand it. Possibly, by reason of this amendment, even Christian marriages would be deemed to be marriages solemnized under this Act. That may be the consequence if I accept his amendment.

Shri K. K. Basu: My point is whether the marriages solemnized under the Christian Marriage Act, which in the case of divorce are guided by the Indian Divorce Act, can be made to come under this Act as passed by the House. I told you earlier about a specific example. On the basis of desertion by the husband, the wife can sue the husband; but the husband cannot sue the wife on the ground of desertion by the wife under the Indian Divorce Act. On the other hand, under the Special Marriage Act which we are passing, either party can ask for divorce. So I want to

know whether this can be made applicable in those cases.

Mr. Chairman: How can that be done under this Law? Unless you make a specific reference for amendment of that law, how can the provisions of this law be made applicable there?

Shri K. K. Basu: I was not absolutely sure in what way I could put it.

Mr. Chairman: Therefore, the only course open now is....

Shri K. K. Basu: My intention was this....

Mr. Chairman: The intention may be very good.

Shri K. K. Basu:...that divorces under that Act should be governed by the provisions of this....

Mr. Chairman: I am afraid the only course open is to have recourse to modification of that law.

Shri H. N. Mukerjee: May I ask a question? There is a provision in section 50 which says "all marriages duly solemnized under the Special Marriage Act, 1872, or any such corresponding law shall be deemed to have been solemnized under this Act". Now, would a marriage under the Indian Christian Marriage Act come under the definition of 'any such corresponding law'? Because we have already in the process of discussion of this measure tried to bring under the ambit of this legislation marriages of all sorts, marriages solemnized according to all kinds of customs and conventions. Could we get some kind of assurance from the Law Minister regarding the possible interpretation of this expression 'any such corresponding law'? Our headache is in regard to the possibility of inclusion under this designation 'any such corresponding law' of the Indian Christian Marriage Act, for instance.

Shri Biswas: The only point Mr. Basu made was whether the Christian Marriage Act would be brought within the ambit of the words 'any

such corresponding law'. Well, we left it like that—'any such corresponding law'. Which law would be regarded as a law corresponding to this Special Marriage Act may be a matter of dispute and therefore, we could not specify some Acts. We did not purposely specify any of these Acts. It will be a matter for the court to decide whether any particular Act is an Act corresponding to the Special Marriage Act.

Shri K. K. Basu: Courts are open to us. That we know. Then why should we ask you?

Shri Biswas: The difficulty was this, that if we included one specific Act other than the Special Marriage Act, then we would have had to make an exhaustive list. Therefore, we have left it in that form.

Dr. Jaisoorya: Does the Indian Divorce Act apply any more to this Act?

Shri Biswas: Marriages are not solemnized under the Indian Divorce Act. This is about special marriages duly solemnized under some Act or other. Therefore, the Indian Divorce Act will not come into this.

Shri N. C. Chatterjee: It cannot be referable to that.

Mr. Chairman: We have to dispose of this also. I think there appears to be some mistake here. The words used are—

"Be it enacted by Parliament in the Fifth Year of Our Republic...."

but the usual words are "the Republic of India" for the words "Our Republic". I think we can take it that the House has no objection to this change.

Shri Biswas: I believe an amendment was moved.

Shri N. C. Chatterjee: It was not moved.

Shri Biswas: I beg to move:

"That the Bill, as amended, be passed."

I will not make any speech. If necessary, after the hon. Members have spoken I will wind up the debate.

Mr. Chairman: Motion moved:

"That the Bill, as amended, be passed."

Shri Raghavachari: I have been waiting throughout the passage of this Bill and I am glad that I have an opportunity now to express my views on this Bill, not generally because it would not be relevant now, but on the Bill as it has ultimately emerged as a result of the deliberations of the House.

Before I do that, Sir, I wish to express my dissatisfaction at the way in which this Bill has been progressing on the floor of this House.

Shri K. K. Basu: The Congress is in power and they can do anything.

Shri Raghavachari: I wish to be perfectly within my limits and it is this. In fact, we have not been able to find as to who exactly is in charge and is responsible for the passage of this Bill. I have found, sitting here, other people also who claim responsibility; and unfortunately, that is my impression. The whole matter appears to be a managed affair that particular amendments alone must be the subject matter of discussion or expression of opinion of this House. I have not been questioning the right of the Speaker who is there to regulate and conduct the proceedings properly. There is something like a distinction permissible between the amendments moved by the Government and the amendments moved by other ordinary Members. It is certainly open to the Minister in charge to say that he accepts a particular amendment and they will, certainly, have precedence. But the whole procedure that has been on, looked to me to be a little improper....

Mr. Chairman: The hon. Member is exceeding the limits of proper discussion in this respect. I will request him, so far as the Chair is concerned, not to cast any sort of aspersion, either directly or indirectly. To say that the Chair has been treating a

[Mr. Chairman]

particular amendment in a particular manner is certainly a reflection on the Chair, and I would request him not to cast this reflection on the Chair. I would request him not to cast such a reflection even unconsciously. After all the Chair represents the House.

Shri Raghavachari: I would be very happy to withdraw it, Sir. I do not mean anything against the Chair, but, I want to express dissatisfaction not against the Chair but against the procedure that has been going on before our eyes, in this House, not one day, but throughout the debate, particularly with reference to this Bill.

I wish to express that I have not been against this Bill at all and there is no point at this stage or age for anybody to bother about the main provisions of the Bill. But, what really matters is this. I have found that the Government and the Opposition have been concentrating on abstract proposals and they seem to be absolutely unconcerned about the language that they are using in the Bill, clause after clause, or the effect of one clause on the others, or the effect of the clauses on the accepted moral principles of life. Their attention seems to have been side-tracked by three things, (i) whether we shall have divorce, (ii) whether we shall have divorce by mutual consent and (iii) the question of age of marriage.

When we pass a law, it is the language of the sections that have to be enforced by the courts that also matters. If anything was pointed out as a defect, the only answer was, the court has discretion. When legislation is passed and one portion of it goes against another portion, the court has no discretion to construct a new law. The court will simply say this is inconsistent with the other portion. The whole purpose for which we are here will be defeated.

Another matter which has been stressed and which I would also wish

to say is this. There is the Hindu Marriage and Divorce Act. The language used in that is not the same as here. In fact, it is found that the language used, as passed here, is not very helpful. For instance, one of the grounds for divorce is adultery. In fact, an amendment was moved here that it should be sexual relationship with another person who is not the spouse. It is a most happy expression (*Interruption.*) It was a most comprehensive expression. You know, as a lawyer, that when the word 'adultery' is used, certainly, it will not be interpreted as having the meaning as defined in the Indian Penal Code and we will go to a dictionary to find out the meaning. There is a distinction between this kind of relationship between a married woman and an unmarried woman. It would have been covered very well and comprehensively by the phrase which was accepted in the other Bill.

Another point which most offends my sense of propriety of morality is this. I cannot help referring to clause 18, as it is passed. Clause 18 says :

"Subject to the provisions contained in sub-section (2) of section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents."

I am sorry, I made a mistake in reading clause 18; I should have read clause 26. Kindly see clause 25, which says :

"Any marriage solemnized under this Act shall be voidable

and may be annulled by a decree of nullity if—

* * *

(ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner;....”

The consequence will be when that marriage is declared null and void. Clause 26 makes a most abominable change.

No doubt, they have provided a proviso that the illegitimate child, which was really the cause of the divorce or the separation between man and woman, succeeds to the property of the divorcing man calling him ‘father’. It is revolting to my sense of morality in public life. It may be a progressive view of the highest order that we do not want to make a distinction between legitimate and illegitimate children. They are very broad-minded people. But, surely, there is a feeling that man cannot be fathered like this. If that is the highest ideal, I would suggest the simplest course, would be to abolish marriage. Let there be no question of marriage at all. All are children of God and we can treat them all alike. But, it is certainly revolting. This is an instance which shows, to my mind, that we are more concerned with rushing through the matter and some kind of proviso is brought in at the eleventh hour and passed. The whole law is thus enacted and God alone knows what the ultimate result will be.

Then, Sir, I wish to say something about the provisions in this clause. *viz.*, 27. I feel that Dr. Jaisooriya’s one clause was sufficient: “If you do not like, we shall say good morning and good bye to each other and then get out.” Why all these clauses from (a) to (k)? They are all unnecessary. For instance, take the clause “has deserted the petitioner without cause for a period of at least three years....”. Desertion is living apart and even if a man is undergoing a sentence he has deserted her. There is no need for that clause. There are

some other matters like this. Therefore, the whole matter has proceeded not on a scientific way of looking at these matters, but simply, some law, some passage, some special marriage and some satisfaction.

Another point on which I wish to say one or two words and then stop, is that I have not been able to feel the need or the necessity for this Chapter IV at all. I have carefully considered and my own judgment is that this Chapter and these provisions compelling separation and a different kind of succession only act and react against more people coming under this law. Certainly it will not make for more people coming under this. The highest ideal that they wanted to propagate on the floor of this House was freedom. If people like it let them come in. Why should you stand in their way? Therefore, there is an element of freedom. I for one would agree if there is an element of freedom to come and register oneself under this Act. But, when you say: if you register here you will be away from your parents, away from your brothers, you will be away from your property and you will have some other mode of succession to your father, mother, grandfather and all that; is it not compulsion? All these things automatically follow and therefore this is nothing but compulsion. Are you not compelling a man who wants to marry to accept the other things? The argument will be that he comes with open eyes. He has chosen this with all the restrictions. If that is your argument, why do you want a man who has once chosen a particular form of marriage already to change his choice now? He knew all the consequences of his marriage when he married. Why do you want him to register under this new set up. You call this freedom. There is an element of compulsion everywhere.

Therefore, Sir, apart from the technicalities, on the broad ground on which they want to claim a great advance, in reality these provisions come in the way of advancement. A

[Shri Raghavachari]

man thinks ten times whether he should go and get himself registered under this Act at all

I do not want to elaborate, Sir. You yourself when your turn came, have elaborated before the House that the rules of succession here may make havoc. Therefore, Chapter IV really hurts the particular special purpose which they claim to be behind this Act.

Then, one other matter—namely the ‘maintenance’ provision about which I may say a few words. I have found in the Bombay Act and in the Madras Act, maintenance is payable to the divorced wife only if the divorce is the consequence of particular things for which the man is responsible. Now, we have provided that whoever is responsible or whatever is the reason, there must be some maintenance proceedings under this Chapter VII. Apart from the word ‘may’ on which Mr. Venkataraman wanted to lay some emphasis as giving discretion to the court, there is another phrase and that is ‘conduct of the parties’. The word ‘conduct’ is there. I do not know how far the word conduct will be inclusive of all these circumstances; if only they had looked into the other Acts providing divorce and maintenance, they could have found them useful and the acceptance of the amendment proposed by my friend over there would have been most helpful.

Sir, on the whole, though there is plenty of room for controversy to be raised if the same schedule I is put into any other Act, this happens to be the Special Marriage Act and nobody seems to have bothered. Personally I wish happy passage of the Act and hundreds of people come and register themselves, under this Act but my own feeling is that the provisions that they have now incorporated deter and debar many from taking advantage under this law.

Mr. Chairman: Shri N. C. Chatterjee.

Dr. Jaisooraya: Sir, he spoke this morning and he is again allowed to speak.

Shri N. C. Chatterjee: I did not speak this morning at all. Sir, we have reached a stage when you are bringing down the curtain on the final stage of the drama.

Shri Biswas: Not all. Do not be so optimistic. There is the Joint Session.

Shri N. C. Chatterjee: But I only regret that it is a tragic drama. There are millions of Hindus in this country who will regret that we are doing something against the cherished principles of Hindu law. There are millions of Muslims who will also regret that Muslim marriages are also sought to be brought under this Special Marriage Bill. They will naturally express their dissent. I only hope that while we are making a drastic attempt to make divorce easier, we are not really divorcing ourselves, this Parliament, from the cherished principles of our great Hinduarian civilisation. What is that principle? What is the great principle which the Hindu civilisation has taught us? I am reading from Dr. Radha Krishnan's communal lectures which he delivered at the Calcutta University some years back. You know, Sir, he is not merely the Vice-President of the Republic of India, but he is the foremost philosopher which India has produced and the greatest ambassador of Hindu civilisation who is to take our message and preach the same to the world outside.

He is saying:—

“In India the sacramental marriage requires people of face risks and not to have faith in the great enterprise.”

I am sorry, Sir, that this sacramental marriage is sought to be roped in under this Special Marriage Bill. Then the great Radhakrishnan says:

“People enter into married relationship for the development of individual integrity, for the adaptation to reality, without which

there is no happiness for individual or society."

Honestly, Sir, those who have been to European countries and have seen western civilisation function, specially of the havoc that has been caused by easy divorce and the matrimonial laws of those countries, will regret that we are also trying to make divorce easy in this country. We are today deluding ourselves by calling ourselves progressive; but you are really making our jurisprudence a copy of the Soviet and satellite countries. Nowhere in the world has the divorce by consent existed. It was in a crude form in Soviet Russia and now it is in China.

An Hon. Member: Burma also.

Shri N. C. Chatterjee: And, you are now having this. What I say is: you are doing something which is not proper and something which is repugnant to all our ideals which we cherished throughout our millenium. Divorce should not be made easy. It is a drastic remedy which will uproot one's own life and involves other lives as well. It leads children to divided life and divided loyalty. In the interest of society and the interest of the future generation, we ought not have made divorce easy. I honestly feel that you are doing something which is really opposed to all basic principles of marriage and will make family life very slender of cohesion. You are trying to emphasise that marriage is a mere contract and it will not be part of the life of the human soul. I only hope, wish and pray that very few people will come under this Indian Special Marriage Act which will stand to the lasting credit of my hon. friend Mr. C. C. Biswas. There was no Chapter III at all from 1872, as I said and there was absolutely no necessity of bringing any Hindu marriages and Muslim marriages under the scope of this Bill. It would have been much better if they had been left out. But you are determined to do it. We thought that when there was to be no whip there will be

greater play of our own volition. Unfortunately, we have been disappointed. Sometimes whipping came in and it has gone possibly on party lines and we have lost.

I honestly feel that the electorate would not like it; the country will not like it. If the Law Minister and this House are honestly convinced that this kind of a Special Marriage Act will do some good to the country, for heaven's sake do not proceed with the Hindu Marriage and Divorce Bill. There is an organisation called Varnasharam Swarajya Sangh in Bengal, which the hon. the Law Minister, Mr. C. C. Biswas knows. It represents the ultra orthodox Hindu section in the State of Bengal. They said: "For heaven's sake do not have any Hindu Marriage and Divorce Bill". They are opposed to this kind of codification and introduction of divorce in Hindu law. They said: "If there are progressive people or fashionable people, or college students, or so-called civilised men and women, who want to marry under this law, give them the option." If you have a provision like clause 15, there will be no necessity for a Hindu Marriage and Divorce Bill. I ask the hon. Minister seriously to consider whether there is really any necessity for a Hindu Marriage and Divorce Bill if you are satisfied that there was need for clause 15. You are allowing persons who have married under the respective laws of the Hindus and the Muslims, or who have inter-married to take advantage of this measure. Why then have a Hindu Marriage and Divorce Bill, especially when you are thinking of a uniform code for the whole of India. It will not be liked by the millions of people of this country, both Hindus and Muslims. I say that there is no justification now for you to proceed with this Bill, especially when you have got clause 15 and the other clauses which enable Hindus and Muslims who have married under their personal laws to register their marriage under this law and to apply for divorce and for judicial separation.

[Shri N. C. Chatterjee]

I am, Sir, not happy over the other clauses of this Bill also. It is not necessary for me to enumerate them. For non-Christians who are going to marry under this law you are going to make the law of succession applicable. Is it fair? Is it proper? Are you really progressive? You say that every boy, Hindu or Muslim, who marries under this law will automatically be compelled to be governed by the law of succession, which is only applicable to Christians. I think this is a retrograde step, which you have taken and on which I cannot congratulate you. What was the fun, what was the point, in making a Hindu boy marrying a Hindu girl to be governed by a different law of succession? That is defeatist mentality, which is unworthy of a Parliament representing millions of people, crores of people who are Hindus in this country. A Muslim boy and a Muslim girl marrying under this Act will be governed by the Christian law of succession. There was no point in doing that. There was also no point in casting a slur on this kind of marriage.

If I may say with great respect, you are quite right when you said that this provision of clause 15 is itself derogatory to Hindus, derogatory to Muslims—it casts unmerited slur. You say that Hindus who have married under Hindu law and have children can have their marriage registered to get certain benefits. This is something which is nothing but derogatory to Hindus; it is also derogatory to Muslims. It is tantamount to saying make your marriage perfectly civilised and get the benefit of this Act. It is a slur on the personal laws of Hindus as well as Muslims. It should be expunged from this statute which deals only with special marriages and which ought to have been confined, according to my humble submission, to it. I hope the time will come when you will have to amend it. If you have a real, uniform civil code you will have to amend this, or to repeal it. Either

the present Law Minister or the future Law Minister will have to consider the question of amending this provision.

You are not consistent; you are not logical; you have not got the courage of your conviction; you are putting some kind of a slur on people who marry under this measure by saying that they will be governed by another law of succession. You are also saying that he immediately goes out of the family he is practically ostracized by virtue of clause 18 which you have passed.

Now that they have passed clause 15 of this Bill, I hope, Sir, that the hon. the Law Minister and my hon. colleagues of this House will seriously consider whether it is any good proceeding with the Hindu Marriage and Divorce Bill. You thought that the Hindus who come under this law, should be given facility for getting out of the matrimonial bond on some ground or another. You have provided for that. You wanted Muslims also to be given that opportunity of getting out of the matrimonial bond. You have provided for that. I maintain that certain aspects of this Bill are contrary to Hindu law and against our cherished ideals of religion and society. But you have got it. Why proceed with the Hindu Marriage Bill. I still maintain with a certain amount of regret that the provisions you have made in this Bill will not lead to enduring unions, and they will help people to get out of matrimonial bonds on very flimsy grounds, thus putting in peril the good of family life and also the ideals of our society which we have always held as sacred and dear. That is what I do not like. It may tend to dissolve family life and will imperil the future of our children and I do not think it is really a progressive measure in that direction.

When the whole of the Christian world, the so-called democratic, progressive world, is tightening up divorce laws, we are trying to go

ahead much better than the Christian countries and have for the first time in the history of any democratic country divorce by consent, unheard of and unknown to any civilised society. I say, Sir, that the implications of these things we have got to seriously consider. I only hope Sir, that these done-away marriages will be confined to a few people and will not be availed of on a very large scale, and I hope and wish, thereby the scope of this mischief of this legislation will be to a large extent minimised.

Dr. Jaisooriya: I have not got very much to say except that I am very unhappy both ways. I have heard Mr. Chatterjee on a number of occasions and he says the same thing, including the commas, semi-colons, etc., which are exactly reproduced each time.

Shri Algu Raj Shastri: Then, you always oppose him in the same strain.

Dr. Jaisooriya: I would have liked to have heard some new arguments against this Bill, with which I myself am very dissatisfied, and the reason is: Because the hon. Minister is quoting from Jeremy Bentham, and I am quoting from Kinsey. There are differences of approach. Our knowledge of Biology has improved and advanced very much from the time of Jeremy Bentham. If you make laws for social phenomena, for the most enormous and dynamic things known as human reactions to environments, then the question arises whether you are going to make them on theories or on a deep study of facts. Whatever Mr. Chatterjee may say, I am going to quote to you from a very modern writer, one of the greatest modern men, who says—

"The man who, without caring to understand a girl's psychology, attempts to take or takes possession of her body by force, only succeeds in arousing the fear, horror, concern and hatred of the girl. Deprived of the affection and sympathetic under-

standing she longs for, she becomes obsessed with anxiety, which makes her nervous, uneasy and dejected. She either suddenly becomes a hater of the whole male sex altogether or hating her own husband, gives herself to other men as a form of revenge."

This modern book was written sixteen hundred years ago by a man called Vatsyayana. There cannot be anything more modern than what Vatsyayana has said in his *Kamasutra*. In the face of that, to quote to me Jewish pathological-Catholic concepts of human relationship is what I cannot understand. Certainly everybody talks of eternal bondage, marriages are life-long unions, to each other, and says that marriages are made in heaven and broken on earth. Do the intermediaries make the marriages in heaven? Mr. N. C. Chatterjee has quoted all the laws of all the civilised countries, America, Patagonia, Kamchatka, Toronto, Nicaragua and Tapioca etc.; but next door is Burma and next door is China and I do not know by what stretch of imagination or on what new authorities he calls China a satellite.

Shri N. C. Chatterjee: A Soviet satellite.

Shri S. S. More: Not a Hindu Mahasabha satellite.

Dr. Jaisooriya: Certainly, he cannot say that Burma is also a Soviet satellite. From time immemorial, the Burmese woman has had all the rights that the Indian woman has not got even today, nor even the Chinese woman. She always retained her own Burmese nationality, whether she married a Hottentot or anyone else.

Secondly, there are three systems of divorces in Burma: divorce by mutual consent, divorce by the order of the Council of Elders and the so-called divorce by the order of the King. A Burmese woman, the moment she gets married, gets fifty per cent. share of the husband's property. All these things, she has got

[Dr. Jaisoorya]

quite by a stroke of genius, and quite independently. Pandit Bhargava—now, the Chairman—said, and it is true that Indian women have got *de jure* equality; but *de facto* economic and social pressure of laws. She still has not got fully. (*Interruptions.*)

Shri Algu Rai Shastri: She is much better.

Dr. Jaisoorya: I have got only one point to mention. It is no longer a question of debate or dispute whether, under the Special Marriage Act, there should be any provision or not for divorce as Mr. Chatterjee and others pleaded. The question is—divorce is there—shall we improve it? Is there reason to improve it as compared to the old Indian Divorce Act or not? That is the only question. It also depends upon your attitude whether you read Bentham or some more modern book....

An Hon. Member: Vatsyayana.

Dr. Jaisoorya: Mr. Deshpande said: 'I am prepared to forgive an occasional adultery by a woman but I do not want divorce.' My friend, Shri Tek Chand, here has a much more solid, primordial, bold and robust way of saying things and he said, 'If a man comes home and finds his wife in a compromising position with her paramour and beats her and her paramour and therefore, invites imprisonment.....' That is a different outlook from Mr. Deshpande's. This is more accurate and more correct of the attitude of the male and it is written: "It may be a fact that the male's extra-marital activities do not do so much damage to marriage, or the wives may be more tolerant of their husbands' extra-marital relations, or the wives may not comprehend the extent to which the male activities are actually affecting the stability of their marriages. Contrariwise, like the true mammal that he is, the male shows himself more disturbed and jealous and more ready to take drastic action if he discovers

that his wife is having extra-marital relations."

An Hon. Member: Is this Bible?

Dr. Jaisoorya: It is from the latest report of Kinsey, page 436. It is an old axiom: the more strict you are in monogamy and the more strict in the divorce laws, the greater is the hetero-sexual act on the part of man and adultery on the part of woman. I am talking seriously...(*Interruptions.*)

An Hon. Member: Confidence begets confidence.

Dr. Jaisoorya: For whom are we making these laws? We are making these laws for our young men and women of India....

An Hon. Member: For old folk also. They can register themselves.

Dr. Jaisoorya: I want to ask you: Is this the testament of our faith in the young people of India? Here is the first thing that the Chinese have done—I am not tired of quoting the Chinese. Well, here is article 2: 'Bigamy, concubinage, child betrothal, interference with the re-marriage of widows, and the exaction of money or gifts in connection with marriages, shall be prohibited. Is it barbaric? I agree with this; all right; I am barbaric. If I say that both the husband and wife shall have equal right in the possession and management of family property. Is that something barbaric! I accept it. All right, I am barbaric.

5 P.M.

Shri Tek Chand (Ambala-Simla): Don't make us barbaric.

Dr. Jaisoorya: Then,

"Marriage shall be based upon the complete willingness of the two parties. Neither party shall use compulsion and no third party shall be allowed to interfere."

Is that barbaric?

For thirty years, the Chinese people fought for their freedom. They have achieved freedom not by negotiation, but by driving Chiang Kai-Shek out. Do you mean to say that these people who have so fought, have made these laws for the purpose of making the whole of China into a mass brothel? It is because they have faith in their young people. It is the young people who are going to take over the responsibilities. I say, I have faith in our young people. How can you teach and how will young people learn to take over responsibilities, unless you thrust responsibility upon them? I say, here we are giving you a freedom that we ourselves never enjoyed.

Shri Tek Chand: Throw temptations.

Dr. Jaisooriya: This is new India. Don't let our prejudices, our weaknesses, our cowardice pass on to them. We have faith in the young people. We say, it is for you to be responsible. If people have no faith in the young people, there is no future for our country.

Shri Algu Rai Shastri: The time for cowardice is up.

Dr. Jaisooriya: As far as I am concerned. I say, leave it to the young people. Somewhere Harder has said.

"Lock it in cloisters.

Lock it in caves,

The *zeitgeist* will find a way to escape."

The *zeitgeist* is the new freedom, the emancipation of women, without which this country cannot be consolidated, without which you cannot have social revolution, without which we cannot consolidate our freedom. That is how I look at it. I have great faith in our women, in our young people. The impression that one gets from this debate is that it seems that every man in India

is a scoundrel and every woman a weakling.

Some Hon. Members: No, no.

Dr. Jaisooriya: That is how some people seem to look at it. We must tell our young people, these are your responsibilities, things that we never enjoyed, we give them to you.

The hon. Minister will remember that when one of the Members of the other House got married, he had the courage and his wife had the courage to say, there is no law by which we can get married—because he said that he intended to keep his religion and she said that she intended to keep her religion—and therefore we openly declare thereby that we shall take each other as husband and wife without the aid of any known legal ceremony. My father, old man, 81 years then, went up to him and said, "Mr. Dhage, I am proud of you, you have done a thing which many of us wanted to do, but did not have the courage to do; I shake hands with you in admiration; I am proud of you." Therefore, if you do not give this freedom to our young people, the younger generation is going to take the law in its own hands and it will shape its own destiny. All your laws cannot stand up before their destiny. It is they whom we expect to take advantage of these laws and not you and I.

MESSAGE FROM THE RAJYA SABHA

Secretary: Sir, I have to report the following message received from the Secretary of the Rajya Sabha:

"I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on Thursday, the 16th September, 1954, passed the enclosed motion concurring in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Constitution of India. The names of the members nominated by the Rajya