

[Shri K. K. Desai]

reasons for modifying the decision. Since then, there has been a debate in the House. I have also had an opportunity of meeting the representatives of both bank employees and managements. Government feel that *prima facie* case exists for a further enquiry into the matter and have decided to entrust it to Shri Justice Rajadhyaksha, Judge, Bombay High Court. A copy of the terms of reference to Shri Justice Rajadhyaksha is placed on the Table of the Sabha

SPECIAL MARRIAGE BILL—contd.

Mr. Speaker: The House will now proceed with the further consideration of the following motion moved by Shri C. C. Biswas on the 16th September, 1954, namely:—

“That the Bill to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce, as amended, be passed.”

The House will resume further discussion on the third reading of the Special Marriage Bill. As the House is aware, 2½ hours have been allotted for the third reading stage, out of which 45 minutes have already been availed of yesterday and one hour and forty-five minutes still remain. This would mean that the third reading stage will conclude by about 1-45 p.m.

Pandit Thakur Das Bhargava (Gurgaon): May I make a submission? We saved something like 35 or 37 minutes on the various clauses of the Bill. We concluded the discussion on the clauses in much less time than was allotted. I would, therefore, request you to kindly give that time for the third reading.

Mr. Speaker: Are we not restricting ourselves to the total time allotted to this Bill? What is the position? I believe the facts, as disclosed to me by the Secretary, go against the argument of the hon. Member, and perhaps, if I have to stick to the total allotment, then the time-limit will be curtailed and forty-five or forty

minutes only will be left. All that was intended was that the adjustment of time between the various stages may be made as the House likes, but it was clearly understood that the total allotment should not be exceeded.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): Only forty minutes are left

Mr. Speaker: I have already stated in the announcement which I made on the basis of two and a half hours, that one hour and forty-five minutes are there. That means, hon. Members are getting one hour more.

An Hon. Member: We want more time.

Mr. Speaker: That would be changing the allocation substantially. There would be difficulty about the rules. I think we must stick to the allotment of one hour and forty-five minutes. We knew that some more time will be taken on the clauses and therefore, the original proposal of having three hours for the final stage was restricted to two and a half hours. Our anticipations have proved correct. It is no use going by the old arrangement of three hours. As it is, we are exceeding the time. I believe the House is agreeable to the excess time given.

Shri M. S. Gurupadaswamy (Mysore): We can sit half an hour more.

Mr. Speaker: If you strictly go by the rules, as some Members would like me to, the allocation would be disturbed even if you sit longer. Therefore, I am taking the sense of the House now without formally.....

Pandit Thakur Das Bhargava: These rules are certainly not mandatory. Even now, we have not been sticking to the original time-table to the minute. We have exceeded the time in certain clauses, and not exceeded it in certain others. We can sit for one hour more. The rules are not mandatory.

Mr. Speaker: I am not treating the rules as mandatory. If I were to do

so, I would not speak of one hour and forty-five minutes now. All these rules are for the convenience of the House, as I have always held. It is the pleasure of the House to adjust its business as it likes. One hour and forty-five minutes will be there.

Shri Satya Narayan Sinha: That is in excess of the time allotted by the Business Advisory Committee.

Mr. Speaker: Not in excess of the allotment of two and a half hours.

Shri Satya Narayan Sinha: That is in excess of the total.

Mr. Speaker: By one hour. There is always scope for adjustment. You cannot go by minutes and seconds in this matter. An allocation was made and it only gives a rough picture as to how the business will be conducted and in what time it will be finished.

Shri M. A. Ayyangar (Tirupati): On the whole I must congratulate the House for having passed this Bill, though essentially it is a controversial one. There has been no heat. There has been a spirit of accommodation exhibited in the House.

As the name itself indicates, the Special Marriage Bill is a special Bill and therefore, it ought not to be used except in exceptional circumstances where the ordinary law regulating marriages of the various parties does not provide sufficient scope. The original Special Marriage Act was introduced and passed in 1872 at a time when inter-caste marriages were not allowed in the Hindu society. In 1946, Pandit Thakur Dās Bhargava.....

Pandit Thakur Das Bhargava: In 1949.

Shri M. A. Ayyangar: In 1949, Pandit Thakur Das Bhargava, introduced a Bill which was a single-clause Bill providing that notwithstanding anything to the contrary in any text of Hindu law or custom, the marriage of a member of one caste with a member of another caste or any other sub-caste is valid. Therefore, so far as Hindu society is concerned, persons from any caste or community can

marry any person from any other community or caste. Only a man cannot marry a man and a woman cannot marry a woman. Therefore, if the Hindu law, as amended, permits inter-caste marriages, it stands to help to consolidate the Hindu society. Similar provisions exist in the Christian Marriage Act, Parsi Marriage Act, the Buddhist law which follows the Hindu law and so on. Difficulty arises, in the absence of provisions as in the Special Marriage Act, when inter-religious marriages have to be solemnised. Therefore, this Act may be used by those persons who belong to different religions, and who celebrate and solemnize marriages, without disowning religion. I would appeal to persons belonging to other communities as far as possible to respect and continue their customs except in cases where anything is contrary to their conscience.

It is argued here that marriage is not a divine institution. I do not want to place it so high. But, all the same, I would like to urge upon all Members belonging to all sections to consider if marriage is not essentially a human institution. There are no marriages among animals. We are evolving from the animal stage where promiscuity is the rule. Here some people say, but I do not admit that it is right, that we have introduced a progressive piece of legislation. I am asking them to consider and also all Members to consider whether going back to promiscuity is progress. Therefore, if anybody can marry anybody else and he has only to declare with fourteen days' notice that he intends to marry another, that there is no spouse living, you can very well go to the Registrar and say, I am your wife and you are my husband.....

An Hon. Member: Why not?

Mr. Speaker: Order, order.

Shri M. A. Ayyangar: I am coming to "why not".

Mr. Speaker: I may just remind the House that the time given for the third reading is a limited one. I find

[Mr. Speaker]

a large number of Members are anxious to say something. They should get a chance. If interruptions continue, the speaker will be justified in continuing longer, with the result that the other Members will be crowded out. I should request the Members not to interrupt and the speakers not to take an unduly long time.

Shri M. A. Ayyangar: I would not take much time.

Dr. Rama Rao (Kakinada): On a point of order, the House has almost accepted the Bill. Can one hon Member say that the Bill encourages promiscuity within the meaning of the Bill?

Mr. Speaker: I see no point of order in it. It is only an expression of opinion which the hon. Member has given here. The scope of the third reading is well known. It is restricted to the changes made during the clause by clause stage. But, even at the third reading stage, an hon. Member is perfectly within his rights to say, I oppose the Bill, it must be thrown out. In maintaining his opposition to the Bill he is entitled to set out, not at length, but in short, the various grounds on which he objects to the Bill. Therefore, it is competent to take objection to what was said or what was passed even at the second reading or clause by clause stage of the Bill.

Shri M. A. Ayyangar: My object is not to condemn the Bill, but only to say that as much inducement should be given to persons to marry as far as possible and as much regulation and restriction should be placed against their separation. The institution of marriage has worked very well all over the world. It is essentially an institution brought about in the interests of law and order, in the interests of peace and amity, and marriage, according to us, is not for the purpose merely of sex, as was said here, and not merely for com-

panionship. (An Hon. Member: Who said?) It involves the production of children. We ought not to leave a legacy behind which will be a liability on the coming generation. Society depends upon the quality of its citizens and on proper citizens coming into being. That is ignored if the parties can come together as they like and if they do not like, liberty is given to them to separate and they can go away. In between, they might have created liabilities for the State to take care of by way of children. Is that right? I only say it may be right under particular circumstances. My object is not to condemn the Bill as a whole, but to say that in its application, people should have that other fact about children before them, and that we are now legislating for cases, exceptional cases, where marriages have to take place against the ordinary law or in contravention of it. Normally, the law must contribute to the growth of society, it must induce people to marry and not induce them to separate. Those will be the considerations both before the public and also before the courts in trying to grant decrees for nullity or divorce.

Now, regarding solemnisation of the marriage you know a member elected to a Panchayat Board, or a District Board or a Legislative Assembly or to Parliament, takes a solemn oath of allegiance to the Constitution. In marriage, two persons, the husband and wife are brought together. Even in a partnership in a small, petty trade, two persons have to engross on stamp paper, and it is very difficult for them to separate without notice. If I take a house on rent, the landlord must give notice of termination for fifteen days; if I take a yearly lease, for six months. But in the marriage contract under this Act there is no solemnity prescribed under this Act. People can go and stand before any Registrar of any religious denomination and say:

"I take you as my lawful husband", or "I take you as my lawful wife". And is it not necessary for this to be a life long union so that the children may live with both the parents may copy their example, and may in future become heroes and heroines of our country? What stands in the way of making a solemn declaration that they will live together for life? It is not inconsistent with ultimately getting divorce in exceptional cases. Neither party is bound by the oath for all time. This is not inconsistent with obtaining divorce later. I would have very much welcomed an oath or declaration—whether they believe in God or not—or a solemn affirmation: "We shall live together. Our hearts have mixed like the Jamna with the Ganges, like water with water. Let us not try to separate." I am sorry that has not been included in this Bill. (*Interruptions*)

So far as separation is concerned, I understood from Shrimati Jayashri Rajjee, who wanted an opportunity to speak but did not get it yesterday, that the All-India Women's Federation themselves were against divorce by consent. They wanted some limit, that within a year divorce ought not to be allowed, so that opportunity may be given to them to reconcile with each other. I hope that would not be brought into force.

Now, take one instance. Some exception was taken to the decree not being based on ground of collusion, i.e., if there is collusion between the parties. Some hon. Member here took exception and wanted to have the word "collusion" deleted. We will assume that at the time of marriage, the husband is a very rich man. The wife marries him with love and affection for life. Suddenly he becomes a pauper, a bankrupt, losing all his wealth in business. Suppose she says: "I married you at a time when you were rich. I can no longer serve you." Is this what has been taught to us by the Ramayana? Sita married Rama at a time

when he was the son of Dasaratha, and supposing at the time she had to go to the forest she had said: "I am the daughter of Janaka. I will go back to my father's house". (*Interruptions*) Therefore, this is against all the traditions that we have imbibed and inherited. It is not as if other institutions have to be copied. There is a world of difference.

I also want to just avoid an impression that I am a red hot or die-hard conservative. I went to Canada, and you, Sir, were also there. I was taken to a house so that we may know something of their family life. A young woman was there. I asked her: "How long does your husband stay away from you?" She said: "He is employed in the Rubber Tyre Company. He goes away for a fortnight at a time". I asked her: "What will you do if he does not come after a fortnight?" She said: "I will chase my husband and bring him back to my house." I asked her: "Why don't you divorce him?" She said: "My mother divorced my father ten years ago and the children were left in the lurch. It is only last month we induced our father and mother to remarry and we are happy today." Do we want that?

Again, I read the other day there is one young lady who married the daughter of a high personage (*interruptions*)—I am sorry, the son. The daughter is most prominent because they want equal rights and status. Now the son of the high personage was married to some lady, some cinema star. But then, she divorced him or he divorced her, and she married another. I read the news in the newspaper that two children of hers were picked up in the streets, having been left by her in some hotel to be taken care of, herself having gone away on her honeymoon with a new husband. Do we want to repeat that story here? I am very sorry. What is the meaning of merely copying a thing which is being experimented upon in another country? We

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have had experiments in our own country. Read the *Mahabharata* as to why all the women in a particular village were married to all the men in the village. Gradually, a woman could marry a number of men, a man could marry a number of women at a time.....Today, we are introducing monogamy, but a man cannot marry simultaneously five women and a woman cannot simultaneously have five husbands but one after another. That is, polygamy is repeated, polyandry is repeated. What is this, another form? Physically, it is impossible for a man to have five wives at a time, nor is it physically possible for a woman to have five husbands at a time, but the same thing is repeated. I can marry and divorce and re-marry a year later, and before I close my eyes, I can marry fifteen times. Is it not polygamy? Is it not polyandry? What is it that we are about? How are we advancing in the ladder of evolution? We are getting back to the law of the jungle. I would not cast any aspersion.

Anyhow, we have passed this legislation. My interest is only to see that to the best of our ability we raise the moral standard in our country and see to it that domestic happiness is restored and conserved. It is for that that Vatsyayana wrote the *Kama Sutra*. I am not giving to refer to many other things. When the Maharishi wrote the *Kama Sutra*—there were the *Dharma Shastras*, there were the *Artha Shastras*—he put the question to himself as to why a Maharishi should write the *Kama Sutra*. He said: "Are *Kama Sutras* prevalent among the animals? Are they wiving and having *sringara rasa* there". It is only man who covers himself and woman who covers herself, and with all the riches and all the power outside, husband and wife fight like cats and dogs at home. Is it not to be regulated? Under these circumstances, our people thought that if two people wanted to come together and marry, no opportunity

should be given to them on a small pretension or pretext to go out.

It was again said this was a permissive legislation. I find that this word is used again and again not in its proper import. If it is permissive, why don't you allow a man to marry his sister? It is also permissive. But, are you not imposing restrictions? Restrictions are necessary in one case, they are not necessary in the other case. Why should you have the prohibited degrees of marriage? This argument is not sound at all. It is not really permissive. Am I to be allowed to commit suicide? No. There is legislation that I ought not to. The Penal Code imposes punishment. In the circumstances, it is not proper to say that this is permissive legislation. Why don't you allow a minor to marry? Why should you raise the age to eighteen?—because, the minor will not be able to judge his own future.

It was said again and again that sex is not in the bargain. If it is not so, I would have no quarrel. Divorce would not come in so far as old people are concerned, after sixty. (*Interruptions*).

An Hon. Member: May come.

Shri M. A. Ayyangar: In between, young men and women with plenty of youth marry, and the moment the man goes and sees a cinema and comes back, he beats his wife because his wife is not as good as the cinema star. That is what is going to happen in our country.

Pandit K. C. Sharma (Meerut Dist.—South): To the cinema they go together.

Shri M. A. Ayyangar: Therefore, my fear is it is like changing coats and shirts. That is what is going to happen in our country. An army of unmarried women, an army of unmarried men, and children without

parents will come into existence in this country.

There are gospels. We swear, I swear by the Vedas. Others swear by the Bible, and there are those who swear by the Koran. And my friends swear by Marx. My Veda, the Bible and the Koran have stood the test of time. Marx has yet to stand the test of time. I have no quarrel. I would, therefore, urge upon all sections of the community not to go away with the impression that the less of the tie of marriage is there, the higher we rise in the ladder of evolution. Marriage is essentially a human institution which we have brought into existence. We have passed through various stages of getting women married. In Malabar, the *Marumakkattayam* law is obtaining. You do not know, Sir, that in the *Marumakkattayam* law, it is not the father that is spoken of. The man describes himself as the son of his mother.

Shrimati Renu Chakravarty (Basirhat): What is wrong in it?

Shri M. A. Ayyangar: Absolutely nothing wrong. Marriage is a very simple ceremony there. They give *pan* and there is marriage. And then they go straight to the husband and say: "I place this cloth," which is an indication of divorce. Do you want such cheap divorces? Why should people marry at all in that case? Further there, they, men and women alike inherit mainly the mother's property. Are we prepared to change over to that system?

Lastly, any kind of marriage between any man and any woman can produce children. Take the case of a race horse. Do you allow it to mix with a draught horse? Selection is made to ensure good quality of the progeny. But in the case of marriages under this Act anybody can mix with anybody and produce any kind of stupid children in this world! What is this? Is it only the eye, the nose and the face which should be the

decisive factors in fixing a marriage? Are we reverting to the law of the jungle? Are we not to create a divine set of people who will be the future heroes and heroines of this country?

Notwithstanding the fact that prohibited degrees have been brought down, I do not know whether the next generation may not say that a brother can marry a sister. According to Mandal's law the idiosyncrasies of parents among animals will persist for generations. My friend Dr. Jaisooriya will support me in this. Is this law to be ignored in the case of man? A man must marry only a woman; he cannot marry a man. Is this all that counts?

In all humility, I am suggesting to my friends here and outside to consider this matter deeply. From the long speeches made here, it would appear that marriage is a purely feminine institution. How can a woman marry without a man? Man is as much responsible for marriage as a woman. It is as much a man's problem as a woman's. To bring in economic issues into this discussion is wrong. I support this measure but with this qualification that it must be used in a restricted manner, not abused, not misused. I am not attributing motives to anybody. All of us are jointly interested in bringing in a new state of society into existence, able to stand by itself, and we will be one of the topmost nations of the world.

May God bless us!

Shrimati Renu Chakravarty: May I make a submission? I did not want to disturb the previous speaker, but he has damned a whole section of our society, the Malayalee people, as promiscuous.

The second point I want to ask is whether people who have married under the Special Marriage Act of 1872 produced worse children than the hon. Member?

Mr. Speaker: In fact, there is no point of order or anything. The hon. Member can express her views if she gets an opportunity to speak.

Now, before I call upon some other Member of the House to speak I have to decide or announce the time of voting, because this discussion will be over at 1-45 p.m. Shall I fix it at 2-30: will it be convenient?

Hon. Members: Yes.

Mr. Speaker: So it is fixed at 2-30 after the lunch hour. That means the House will proceed to voting before Private Members' Business. It will be necessary then to sit a longer time, whatever it may be, as much time as is taken out of Private Members' Business—Private Members' Business may be given full time.

Then there is another aspect to which I wish to invite the attention of the House. Though I said some adjustments may be made in the allocation for purposes of better discussion depending upon the nature of the business before the House, it will be necessary to put through all the programme as settled by the Business Advisory Committee. In case it does not become possible to do so within the time at the disposal of the House, there is no other alternative for the House but to sit longer every day and make up the time and finish the business. I have no objection to a little adjustment here and there by half an hour or fifteen minutes. But we must bear in mind that we must make up the business.

Now I shall call upon Mr. Mukerjee.

Shri H. N. Mukerjee (Calcutta North—East): Mr. Speaker, I find some difficulty in following up my hon. friend the Deputy Speaker. I do not propose to emulate him.

[MR. DEPUTY-SPEAKER in the Chair]

I shall begin by saying that it is not often that we find ourselves happy when the legislative process in this House is concluded. But this time we feel that there has been some real good work done. In some respects we would have wanted to go even further than the Bill has gone, but we know that in the present set-up, where economic inequality and the spiritual deprivation which it inevitably entails is tragically widespread and impinges particularly on the women of our country, we cannot have that kind of really simple, effective and humane legislation that we want. Even so, Sir, the Special Marriage Bill registers a considerable advance in our present context and for that certainly the House can congratulate itself.

Sir, we have seen during this debate not only what everybody expected, namely strenuous arguments to the brief of obscurantism which were put forward by my friends like Mr. Chatterjee, but also a very much more perikous symptom, namely, the reactionary revivalism which is still rampant in the ranks of the Congress Party,—a revivalism to which almost unbridled expression was given by yourself when you were speaking from the floor of the House, a revivalism which had to be kept in check during the proceedings of this House by repeated interventions in the debate by the Prime Minister. Now, these interventions of the Prime Minister were highly welcome, but they showed very clearly that the Congress Party as a whole far from being a party of progress, is very different and all the force of its leader's personality and prestige had to be brought to bear repeatedly throughout the proceedings to ensure the Bill's passage without serious reactionary amendments. The speech which we have just heard underlines the fear that I am expressing and I think it bodes very ill for the party because it harbours within its ranks people who are socially so reactionary that they cannot possi-

bly take a human view of matters, that they cannot possibly be parties to that kind of reconstruction which we want in the life and economy of our country.

I do not wish to speak entirely in a vein of seriousness, because we have been discussing an institution which is so solid, which is so strong that we can afford to laugh at it. Just as a person can laugh at himself if he is self-confident about himself, so our society has laughed at the institution of marriage from time to time. You, Sir, perhaps know the nursery rhyme:

"Needles and pins, needles and pins;
When a man marries, his trouble begins."

I have heard somebody saying that the married estate is like a beleaguered fortress; those who are outside want badly to get in and those who are inside want equally badly to get out. Then, Sir, there was a wise Frenchman Montaigne who wrote in his *Essays*: "A good marriage would be between a blind wife and a deaf husband". There was a good Clergyman, Thomas Fuller; who advised:

"Deceive not thyself by over-expecting happiness in the married estate. Remember the nightingales which only sing some months in the Spring, but commonly are silent when they have hatched their eggs."

Then there was the great Swift who wrote:

"What they do in heaven we are ignorant of; but what they do not we are told expressly, that they neither marry nor are given in marriage".

I will give you another instance of what Dr. Johnson said when he saw a chap who had married a second time:

"Alas! another instance of the triumph of hope over experience".

We have been able to laugh at marriage in this way. Society has

formulated these proverbs and things of that sort, because after all it is an institution which has evolved spontaneously, naturally and inevitably out of life. It is really a symptom of the solidity of the institution of marriage. In actual fact marriage is a process of settling down, an assumption of generally humdrum responsibilities. Actually the frenzies and the felicities of love to which the world's great literature remains incontrovertible witness, belong to an ambit of experience which, generally speaking, knows neither cause nor cure. Law is meant for the generality of marriages which, whatever the facilities for divorce or the lack of it, are more than likely to endure as lifelong associations. It is, therefore, in this context that we have to look at the problem.

Why is it that we have to provide for certain changes in our marriage law? It is because, it is absolutely cruel, it is inhuman, it is derogatory to human dignity if we refuse reasonable facilities for divorce when marriage no longer can be continued on those terms which are self-respecting for human beings. We have heard arguments refusing reasonable facilities for divorce. Some Members have tried to invoke transcendental and sacramental reasons, and some Members have mentioned other kinds of reasons—technical and legal reasons. But, we have to remember that, if we refuse reasonable facilities for divorce, if this House—as the Prime Minister has pointed out yesterday—compels two people to live together against their will; if we compel them to live together and to have physical association when the spiritual tie between them no longer exists, it will lead to unhappiness and serious consequences. It happens in life—there is no getting away from it—that sometimes two people cannot continue to live together without very serious damage to themselves. Now you make them live together, and I say that is vulgarity of the lowest order. If we are going to justify such indecency and vulgarity

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on the strength of something alleged to have been sanctified by scriptural or juristic ideas of some time or other that is something which this Parliament would not accept. It is necessary for us to remember that we must not do anything which callously increases the unhappiness and the frustration which is there in society. I know that happiness is not a commodity which the law can dole out, but the object of this law is—as has been repeatedly pointed out—the minimisation of misery. It may not perhaps secure the maximisation of happiness without concomitant legislation in the social and economic sphere on a very large scale which the Government of today is not even prepared to contemplate. But, at least let us try to minimise the misery. That is why we are going to pass this legislation and that is why I say this House will wish it godspeed.

Then, Sir, the clause regarding 'divorce by mutual consent' has some under fire during this debate, but that is in truth the very best part of the Bill. I have heard it said repeatedly that it is unknown to what some people have chosen to call 'civilised' jurisprudence. Sir, a friend of mine with a flair for research tells me, quoting from Jackson's *Formation and Annulment of Marriage*, 1951 edition, pages 20 and 21, that divorce by consent was allowed in Roman law and in the 18th Century Prussian Code. There is provision for it in Muslim law and apart from the Soviet Union and China—countries for which Mr. Chatterjee and his friends have repeatedly expressed their distaste—Burma and, perhaps Indonesia also today have provided for it. Besides, even if divorce by mutual consent had been frowned upon by every system of what we might choose to call 'civilised jurisprudence', even if divorce by consent was frowned upon by hide-bound lawyers and obscurantist reactionaries, we should incorporate it in our society, if that is how we feel our

mutual relationship requires to be regulated and that is the conclusion which society has reached. There is no getting away from it. Divorce by consent is a matter which surely has been accepted rightfully by the House and will certainly be passed in a few moments' time.

I do not know if Members of this House like Mr. Chatterjee know that we find in the Soviet Union that the number of divorces is and has been very substantially lower than the number of divorces in the so-called western democratic countries even when the facilities for divorce are very much wider. It will be news to many of our friends here to know how the Soviet Marriage laws operate. I am quoting from a Soviet periodical called *News*, No. 13, July 1954—I got it from the Parliament Library—where a Soviet specialist on marriage laws, called Grigory Sverdlov writes:

"In a normal, typical instance, marriage in the Soviet state is a lifelong union. It actually is that in the vast majority of cases, it is expected to be such by the people getting married, and this is the view of it upheld by Soviet public opinion and socialist ethics. And Soviet family law seeks to create every possible guarantee that marriages shall not be dissolved without real need."

Then he further says:

"While lifelong marriage is the rule in the Soviet state, that rule certainly admits of exceptions. If it is seen that the couple cannot go on together, that the family cannot be preserved and termination of the marriage relation is a necessity, the law sanctions its being dissolved."

Then he says:

"The law lays down only a general criterion—the criterion of the necessity of the divorce. This

criterion has been explained as follows in one of the rulings of the Supreme Court of the U.S.S.R.: a marriage shall be dissolved 'If on the basis of the concrete circumstances of the case the court reaches the conclusion that the divorce has been applied for from serious and well-considered motives and that continuance of the marriage would run counter to the principle of communist ethics and cannot provide normal conditions for the couple's life together and the upbringing of their children.'

That, Sir, is the basic principle. Then he further says:

"Naturally, the presence of children in the family makes the court doubly careful. It causes it to consider with especial care whether there are really serious grounds for the divorce and whether, in the interests of the children, the family cannot be kept together. In many cases—but by no means in all—it tends to strengthen the arguments against granting a divorce."

Then he goes on to say:

"You ask whether public opinion in the Soviet Union is mobilised against anyone who wishes to leave his family and take another partner, whether everyone who obtains a divorce although he has children is regarded in this country as an 'absolutely worthless person'. I assure you we do not go in for any such misplaced rigourism in judging of human relationships. But our public opinion and our state do disapprove of individuals who are loose and irresponsible in their family life, who trifle with their family obligations and do not care how their conduct affects their children."

Sir, this is a very clear formulation. It shows how slanderous accusations are spread about the state of marriage

laws in the Soviet Union and China. I am sure, if the real conditions are taken into consideration we shall see how they have got a really sensible society.

Now, Sir, I come to Indian conditions and have to say a few things. I do not see that there is any reason... (Interruptions).

Mr. Deputy-Speaker: There is somebody interrupting you.

Shri H. N. Mukerjee: Sir, I do not yield; I have not much time left.

In our country, we have no reason for fear or for worry; if our social institutions have real vitality, the extension of the area of freedom will not mean chaos, and liberty will not mean libertinism. If we have any faith in ourselves, I would not have spoken in the way you chose to do—I am sorry I have to say this.

I say also, what about our past. I know we could quote from Manu:

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र दृषताः ।

Where women are worshipped, there the gods find pleasure. But in spite of that, what is the total experience of Indian history? What is the lesson that we get? What is the net result of our social relationships? Is it not a fact that our women have suffered under all sorts of degradations? There is no getting away from it.

Several Hon. Members: No.

Shri H. N. Mukerjee: I would recall the lovely and great story of Sita. I would recall the lovely symbolism which Valmiki gives us. What was that symbolism? It was the beautiful story of Sita. When she was utterly weary of the repeated ordeal of fire to prove what was crystal clear, namely, her unimpeachable fidelity and integrity, what did she do? She asked for succour from Mother Earth, and she was received in her lap. That was the poet in Valmiki

[Shri H. N. Mukerjee]

coming out, the poet who found himself much greater and superior to the social reactionaries, to the men who wanted just to keep up whatever the social pattern was at that time. That lovely symbolism is really something which we have got to bear in mind. (*Interruptions*).

Shri Nand Lal Sharma (Sikar): Sita is immortal even today.

श्री अलग् राव शास्त्री (जिला आजमगढ़-पूर्व व जिला बलिया-पश्चिम): राजपूताने की वीर रमणियाँ की कहानियाँ, पद्मिनी आदि की वीर गाथायें, वही पुरानी कहानियाँ तो आज हमारा इतिहास हैं ।

Shri H. N. Mukerjee: I do not yield. I have heard it said over and over again that this Bill is going to encourage polygamy and polyandry. I have heard this argument from people who, I thought, should have chosen their words differently. I do not know how anybody in this Parliament or anywhere else can take up an attitude different from what Jesus Christ did, when a fallen woman appeared before him, and when some of his apostles were trying to make fun of her, he said, "whoever is without sin among you, let him cast the first stone at her." I do not cast a stone at anybody. You Sir, are learned in our ancient lore. Our ancient civilization never cast stones at women. That is why we remember the *Panchakanyas*, who are Ahalya, Draupadi, Kunti, Tara and Mandodari.

अहल्या, द्रौपदी, कुन्ती, तारा, मंदोदरी तथा ।
पंच कन्या स्मरन्निन्त्यं मद्दृपातकलाशनम् ॥

Shri Nand Lal Sharma: It is wrong quotation.

Shri H. N. Mukerjee: Read the life-story of these five girls and you will see there were blots in their moral escutcheon, but in spite of that, it shows what a really human approach our social forefathers had in those

days, how really generous they were, and how really understanding of psychological problems they were. Read the *Mahabharata* any chapter of the *Mahabharata*, and you will find it is full of psycho-analytical lessons which even the modern age has not yet properly imbibed. What does it mean? It shows that our people knew that, of course, nobody can expect to be a perfect human being, and that nobody can expect to parade himself as a paragon of virtue and a paragon of perfection.

I expect Members of Parliament not to come and say, this is going to give a handle to all kinds of libidinous people. This measure has come on the agenda of this Parliament, because it is a human problem, it is a serious problem, it is an earnest problem, it is a really spiritual problem; if you care for the quality of the individual in this country, it is a problem which we have got to tackle. That is the problem which we are trying to solve in this particular way. That is why I say: let us not cast a stone at whoever happens to be before us, let us not cast aspersions on people who are likely or are not likely to take advantage of the provisions of this Bill. Let us examine the provisions of the Bill. Let us see in what conditions, and in what context, certain provisions are being incorporated in our legislation. Let us see how our marriage and divorce laws are going to be liberalised in a direction, which is the only human direction, the only decent direction, the only direction a generous people can take, when it really feels it has got to go ahead, and the only direction which people with a real spark of human feeling in them can take.

That is why I am happy that after all we have reached very nearly the end of the story. We are passing a Bill, which is certainly by no means perfect, but which is certainly, in the context of today, a very substantial advance. It registers progress of a sort which we welcome very cordially.

Several Hon. Members rose—

Mr. Deputy-Speaker: Shrimati Jayashri.

श्री पी० एन० राजभोज (शालापुर—रिश्त—
अनुसूचित जातियां): मिस्टर डिप्टी स्पीकर,
इस बिल के ऊपर मुझे भी कुछ बोलने का मौका
मिलेगा ?

Mr. Deputy-Speaker: Yes. I shall call upon the hon. Member next.

Pandit Thakur Das Bhargava: May I request you to fix some time-limit, so that many Members may be able to speak?

Mr. Deputy-Speaker: Five minutes each. We have got fifty minutes more. Let us try this.

Shrimati Jayashri (Bombay—Suburban): I am glad to get an opportunity to speak on this Bill. The younger generation is attracted towards this special marriage, because it is more liberal in giving rights to women. In this, I agree with Shri H. N. Mukerjee who just now said that the present position of woman in our society is incompatible with her emancipation, with her very development as an individual. She has hardly any independent social or economic existence, and her position is considered only in virtue of her relation with man as his wife, mother or daughter. That is the reason as I said earlier, why the younger generation is attracted to this special marriage.

As in Russia, in India also we look upon marriage as a sacred thing. Marriage is an institution, and we, especially the Hindu women, would never like the marriage tie to be broken. We hate the idea of divorce, or the family breaking up. We know the difficulties that the women will have to undergo by divorce. Silent and dignified suffering is the badge of her sex. In advocating divorce, the desire is not to break up the home, but to make marriage more happy, and therefore, stable. At the

same time we have to be very careful when we lay down the grounds for dissolution of marriage. If we are going to introduce clauses like divorce by mutual consent, which we passed yesterday, I am sorry to say that this Bill will mean more suffering to women and also to the children, because this provision will make divorces more easy. As you have mentioned, some of our women's organisations have protested against this innovation in this divorce clause. In the original Bill which we all supported, this clause was not there. As I said earlier, it is the women who will suffer hardships due to the introduction of this clause. It is from this point of view that I express my regret over introducing this new clause into this Bill.

From a little reading of books and newspapers, I know that easy divorce results in the suffering of children, and there is an increase in juvenile delinquency. So, we have to be very careful when we lay down the laws of divorce. Since we have already passed this clause, I would appeal to the Members to be very careful, when we lay down the laws in the next Hindu Marriage and Divorce Bill; because by that millions of our women are going to be governed. Under this mutual consent clause, really speaking, it is the women who will suffer. As Acharya Kripalani said, the women can be tortured to give consent, and even on trivial matters, people may seek divorce.

1 P.M.

In this way, our society, I am afraid, will be disrupted. We require a stable society for the implementation of our plan and it is a pity that we should have passed this clause in such a hurry yesterday. We should have been given a little more time and opportunity to discuss this clause. As I said, many women's organisations have sent telegrams, and the Law Minister has also received telegrams, disapproving of this clause. I have to put this matter before you because we recently had a meeting of

[Shrimati Jayashri]

the All India Women's Conference and there also we said that we should not support this clause. I am glad that I have got this opportunity to put this point of view before you.

श्रीमती मणिबेन पटेल (कैरा---दीक्षण) :
उपाध्यक्ष जी, यह बिल जब से शुरू हुआ है तब से मैं समझने की कोशिश कर रही हूँ कि इस का मन्शा क्या है और सब कुछ देखते हुए समाज को इस से लाभ होगा या हानि होगी, दुःख होगा या सुख होगा।

कुछ माननीय सदस्य : दुःख होगा।

दूसरे माननीय सदस्य : सुख होगा।

एक माननीय सदस्य : दोनों होंगे।

श्रीमती मणिबेन पटेल : इस में एक बात है जो मेरी समझ में नहीं आती है। कहते हैं कि जब पति-पत्नी में जमता नहीं है। अगर उन में से एक राजी न हो, तो वे जितनी जल्दी अलग हो जायें उतना अच्छा है। जब पुरुष ऐसा कहते हैं तो सुनते तो बड़ा ठीक लगता है, बहुत आसान बात मालूम होती है, लेकिन जो बहन अपने पति से अलग नहीं होना चाहती है उस को आप इस तरह से जबर्दस्ती क्यों अलग करना चाहते हैं, यह मेरी समझ में नहीं आता है। आप ने इस विधेयक में कहा है "डाइवोर्स बाई कन्सेन्ट"। लेकिन हमारी बहनें आज इतनी पढ़ी-लिखी नहीं हैं जितने कि आम तौर से पुरुष पढ़ लिखे हैं। हमारी बहनें अंगरजी भी पढ़ी नहीं हैं और उन से जबर्दस्ती कन्सेन्ट लेने में कई ख़ास मुश्किल नहीं होगी। और जब वकील उस से मिलेगा तब तो वह परेशान ही हो जायेगी। इस बुरी तरह से वकील लोग औरतों से सवाल पूछते हैं कि वह हाथ जोड़ कर कहने लगती है कि यह हमारी बंद्ध्यती है, हमारे पति की बंद्ध्यती है। आप यह न करें। इसीलिये जहाँ तक डाइवोर्स बाई कन्सेन्ट का सवाल है यह मेरी समझ में नहीं आता है। इसीलिये मैं विनती करती हूँ कि अगर आप इस को पेश करते हैं तो यह भी साँचिये कि इस का परिणाम क्या होगा। अगर आप दीखिये कि

इस से हमारी अधिकतर बहनों को दुःख होगा तो मेहरबानी कर के आप इस को बदलें।

आप को मालूम है कि अमरीका में कितनी आसानी से डाइवोर्स हो सकता है, दूसरे देशों में कितनी आसानी से डाइवोर्स हो सकता है। इसीलिये वहाँ की लड़कियाँ यहाँ आ कर अपनी शादियाँ करती हैं, क्योंकि वहाँ पर इतनी आसानी से डाइवोर्स नहीं हो सकता है। क्या आप हमारे नवयुवकों के मानस को इस प्रकार का बनाना चाहते हैं कि यदि शादी से पहले उन से पूछा जाय कि भाई, तुम इस में क्यों पढ़ते हो, यह शादी तुम्हारी चलेगी नहीं, तो वह यह कहे कि अगर नहीं चलेगी तो मैं तलाक दे दूँगा। डाइवोर्स कर दूँगा। मैं आप को बनी-बनाई बात नहीं, बल्कि एक सही बात बतलाती हूँ। एक लड़के को उस के माता-पिता ने पढ़ने के लिये विदेश भेजा था। जब वह वहाँ से वापस आया तो, जिस लड़की के साथ उस का विदेश में प्रेम हो गया था उस से वहाँ उस ने शादी नहीं की थी। वह लड़की यहाँ आई, उस के वृद्ध दादा ने उस को समझाया कि तू उस से शादी तो करना चाहता है, हमारे रीति-रिवाज उस के रीति-रिवाजों से अलग हैं, हमारा खान-पान अलग है, हम मांसाहारी नहीं हैं, तू ने विदेशों में मांस नहीं खाया, वह मांस खाती है, तेरी उस से पटंगी कैसे? तो उस लड़के ने जवाब दिया कि अगर नहीं पटंगी, तो हम अलग हो जायेंगे। तो शादी के पहले ही हम यह सब बातें शुरू करना चाहते हैं, तो फिर शादी करने की ज़रूरत क्या है? जो लोग इस प्रकार से करना चाहें, करें, हमारे यहाँ बहुत से विवाह धार्मिक विधि से हो गये हैं, लेकिन उन के लिये भी आप कहते हैं कि रजिस्टर कराये जा सकते हैं। इस को मैं किसी भी तरह नहीं समझ पाती हूँ। यहाँ पर जो पढ़ लिखे-लोग हैं, जो कि शहरों में रहते हैं। वे अधिकतर देश के लोग हैं और बड़ी अब पढ़ने के लिये परदेश जानें लगे हैं। जिस को आप माहर्न सांसायटी कहते हैं उस में धूमने लगे हैं, सिनेमा देखते हैं, किताबें पढ़ते हैं। वे लोग

साँचेंगे कि अगर हमारी स्त्री हम को पसन्द नहीं है तो हम अलग हो जायेंगे और इस कानून के अनुसार अपने को रजिस्टर करायेंगे। यह तो हो सकता है, लेकिन बच्चों का क्या होगा। हम ने आपनी आंखों से देखा है कि ऐसे किस्से होते हैं जिन में बच्चे परेशान होते हैं। मान लीजिये कि पति ने पत्नी को छोड़ देने का इरादा कर लिया, पति की बड़ी उम्र होगी तो वह जा कर दूसरी शादी करने के लिये अपने को रजिस्टर करायेंगा और बाद में उस को छोड़ देगा। तो बच्चों का क्या हाल होगा? कभी आप ने इस पर विचार किया है? माता को बच्चे पिता से ज्यादा प्रिय होते हैं इस लिये वह तो छोड़ नहीं सकती, और पिता उस को घसीट कर ले जाना चाहता है। माता का आधार बच्चे ही होते हैं, उन्हीं के सहारे वह जिन्दगी गुजारती है, वह भी उस से ले जाना चाहता है। उन का विचार न कर के आप यह एक्ट बना रहे हैं। इस से समाज का कितना लाभ होगा यह तो मैं जानती नहीं, लेकिन इतना जरूर जानती हूँ कि इस से काफी बहनों को दुःख होगा, क्योंकि आज तक जो हमारा समाज था उस को हम ने इस प्रकार से तोड़ दिया। हमारे यहां दुबारा शादी करने की इजाजत है, लेकिन उस में भी अगर दूसरी शादी करने के पहले पहली पत्नी मौजूद है तो दूसरी पत्नी लाने में संकोच होता था और वह दूसरी शादी करना नहीं चाहता था। मान लीजिये कि किसी आदमी के बच्चा नहीं होता तो पत्नी के दिल में यह चीज रहती थी कि मेरे नसीब में बच्चे नहीं हैं इस लिये उस के पति को दूसरी शादी करनी चाहिये। अब ऐसी कोई बात नहीं होगी। पूछने की कोई बात भी नहीं होगी, अगर किसी के बच्चे हों भी तो भी वह जबर्दस्ती डाइवोर्स ले लेगा। हमारी बहनें इतनी पढ़ी-लिखी नहीं हैं, उन में इतनी शक्ति नहीं है कि वह झगड़ा कर सकें। यदि आप कहते हैं कि आप इस कानून को हमारी बहनों को सुखी बनाने के लिये लाना चाहते हैं तो मैं सरकार से कहती हूँ कि जो कुछ आप को करना है वह तो आप करेंगे ही, आप ने दो रीटिंग कर ही लीं हैं लेकिन आप को इस के असर को

वाच करने की आवश्यकता है। आप को देखना चाहिये कि कुछ बड़े शहरों को छोड़ कर जो लोग हैं वे देहात के ही रहने वाले हैं। जब देहात वाले शहरों में आयेंगे तो वे साँचेंगे कि उन की स्त्री अच्छी नहीं है, उन की स्त्री पढ़ी-लिखी नहीं है, जिस को आप पालिश कइते हैं।

मैं आप को एक दूसरा किस्सा सुनाऊँ। एक डाक्टर साहब इंग्लैंड गये। जब वह वापस आये, तो उन से पूछा गया कि आप की स्त्री है? बाले, हाँ, है। तो उन से पूछा गया कि आप ने उस को पालिश करवाया या नहीं। या जब आप इतना पढ़ी-लिख कर आये हैं, तो कोई अंगरेज या एंग्लो-इंडियन बाई रस्ती है या नहीं जो कि आप की स्त्री को अंगरेजी पढ़ाये, उस के बाल कटवाये या नहीं? तो यह पूछना तो एक मजाक की बात थी। लेकिन बात यह है कि आप इतने लड़कों को बाहर भेजते हैं, पढ़ने के लिये सीखने के लिये। जब वे वहां से पढ़ी-लिख कर आते हैं, तो साँचते हैं कि उन की स्त्री अब उन के काम की नहीं है और दूसरी शादी करना चाहते हैं। इसलिये आज मैं यह कहने के लिये खड़ी हुई हूँ कि आप जरा साँचिये, समझिये कि इस बिल के पास करने से बहनों को फायदा होगा या नुकसान। अभी हमारे भाई ने कहा कि अर्जेंट ह्यूमन प्रॉब्लम है। मैं उन से कहती हूँ कि जब बहनें कहती हैं कि हमें डाइवोर्स बाई कन्सेन्ट नहीं चाहिये तो इस का मतलब तो यह हो गया कि चूँकि यह आप के लिये अर्जेंट प्रॉब्लम है इस लिये आप इस को रखना चाहते हैं।

मैं अब भी सरकार से कहती हूँ कि अगर आज आप इस बिल को नहीं बदल सकते हैं तो मेहरबानी कर के इस के ऊपर ध्यान रखिये कि इस से समाज को कितनी तकलीफ होती है। अगर इस से तकलीफ हो, नुकसान हो तो इस को आप जल्दी से जल्दी बदलने की कोशिश कीजिये।

Mr. Deputy-Speaker: Mr. Raghuramalah.

Several Hon. Members rose—

Mr. Deputy-Speaker: I will call Members from that side also.

Shri Raghuramalah (Tenali): I am one of those who support this Bill as it has finally emerged, of course, not exactly for the same reasons as my hon. friend, Mr. H. N. Mukerjee did. When I heard him I remembered an adage 'save me from my friends'. In this case, I rise to support the Bill in the same measure as he does, but I would like to forget what he said in support of it.

I must, at the outset, voice my very strong protest against some of the remarks made by him about the reactionary nature of this party. It is very unfair, I think, to make a remark like that against a whole party but for whose support this measure would not have reached the stage it has. The word 'reactionary', of course, has got a very peculiar meaning especially when it comes from my friend. Whatever he does not agree to is reactionary and whatever he agrees to is progressive. I was recently in China. There I found most of the women bobbing their hair. I found one who had not. I then asked a Chinese gentleman who was accompanying me how was it that it was very surprising that there was one who had not. He said, 'Don't you know she is reactionary?' Whenever a person exercises his individual judgment which does not strictly conform to the rule of conduct laid down, then it is reactionary I would ask Mr. Mukerjee: is this party which has given the liberty of action, the freedom to vote, reactionary or would he consider a Party which will never give freedom of action in any matter reactionary? I would look forward to the day when he, as leader of his own Party, would give freedom of vote in respect of any measure before this House. I am sorry, I have to make these remarks but I feel that the Deputy Leader of a Party should

not descend to such levels as to castigate a whole Party as being reactionary. But, as I said, save me from my friends: I happen to travel in the same group as he does; so far as this Bill is concerned, but my support is for other reasons.

The main objection, so far as this Bill is concerned, has been concentrated on the clause giving right of divorce by consent: People who object to it forget one thing: If their apprehension is that a man will coerce the woman to append her signature to a document which purports to be an application for divorce by consent, the man can still do it. There are a hundred other ways in which he can do it: Let us take sub-clause (a) of clause 27 which now enables a man or a woman to go to court and allege that the respondent has committed adultery. In England and other countries there are innumerable cases where actually no act of adultery is committed but, in order to facilitate an application for divorce, a fraudulent statement is made or a fictitious entry is made in a hotel register and a self-condemning statement is made about having committed adultery and it is put forward as the cause for divorce. If a man in this country is capable of coercing his wife to subscribe to a statement that both of them desire divorce by consent without actual consent being obtained, or without consent being voluntary, what prevents that man from making a statement that he has committed adultery and therefore he would like to have divorce or what prevents him from coercing the woman to say that he has committed adultery and therefore she should be released from the marital bondage? The divorce by consent clause in this Bill is really intended to prevent fraud or fiction which, as I said, prevails in the western countries. More than that, even in such countries like England; it is well known that where people have not got the courage to face problems directly, they have got what is known as the fiction. They resort to all sorts of stories.

Acharya Kripalani (Bhagalpur cum Purnea): Is fiction better than adultery or is it worse than adultery?

Shri Raghuramiah: It is for Acharya Kripalani to say whether adultery is fiction or a reality.

Acharya Kripalani: Which is better?

Shri Raghuramiah: I cannot pretend to be an authority on the subject; perhaps, he can elucidate.

My point is this; that this particular clause is a frontal attack on the subject and prevents people from resorting to fiction or fraud. That is the most important thing. After all, it is no use saying that the moment there is this clause, the whole Hindu society will be destroyed. Hindu society has weathered many storms. It is not as if for the first time we are introducing divorce. I am quite conscious that under this Act others can also marry—people of different religions can marry. But, taking the Hindus, as my friend Mr. Venkataraman pointed out the other day, in Malabar you have got divorce and there are various other groups and communities in India among whom the custom of divorce is very widely prevalent. Instead of quoting cases from the United States and England, where the entire social structure is different why not we look into the cases of these communities and groups in this very country who have had this system of divorce and see how far this system of divorce has actually destroyed the social fabric? We have to depend on something more substantial and solid. Marriage is a sacrament; marriage is not lightly entered into.

Of course, as you, Mr. Deputy-Speaker, have said, it is possible to have at the time of the marriage a sworn statement, a solemn vow that the two shall never part and that they shall be together for life. But, as you yourself would have realised such statement or averment will not always stand the test of time. When

two people marry, they invariably believe that they are going to live together to the end of their lives. Normally speaking, no man or woman marries with the intention of having a divorce. The fact that we take a vow that we would live together to the end of our lives will not help us. After marriage, so many circumstances arise, so many predilections arise and so many kinds of cruelty arise. In that case, what would happen? Mr. Deputy-Speaker, you were good enough to say that this would be a reversion to jungle law. May I know whether it would be a reversion to jungle law to relieve a man or woman of cruelty; will it be a reversion to jungle law to relieve a man or a woman from the.....

Mr. Deputy-Speaker: I am sorry I am sitting here and I am not able to explain from here. I have no objection to the grant of divorce: I have objection only to divorce by consent.

Shri Raghuramiah: I just mentioned it incidentally, Sir.

I consider this Bill a progressive piece of legislation, a redemption from jungle law. You do not expect that two persons who are incompatible, that two persons who are suffering from misery should be forced to continue to live together. To me, Sir, that seems to be very barbaric and I think the sooner we get out of it the better it would be. If the choice is left to me, I would support a clause of this nature not only in this but in every other social legislation that comes before this House. I would do so because of my firm conviction that apart from other communities the Hindu community does not depend, so far as the seriousness of the marriage is concerned, on the existence or non-existence of a clause for divorce. In this, as in all other things, we have got to make changes. We cannot remain stationary. It is said that divorce is a terrible thing and that some people have tried it and they have come back to a state of society where no divorce is possible. I say, let us have our own experience. Let us see whether in our framework of

[Shri Raghuramaiah]

society such a flimsy attitude will be taken towards marriage. I have no apprehensions on this aspect of the matter.

There is one objection, of course, which is possible, and that is that although men may resort to this clause, considering the dependence of women for property purposes on men, women will not be able to resort to it in the same measure as men. There is some substance in it and the only remedy for it is not to stop this measure but to come forward with a measure which gives economic equality to women. Women should have the same rights to property as men have and the sooner that comes, I think, the apprehensions of the people here who are opposing this clause will be very largely removed.

I would specially make an appeal to our Law Minister, whom I must congratulate for having so ably piloted the Bill, and more particularly the part relating to divorce by mutual consent.....

An Hon. Member: He was against that part. Is the hon. Member ironical in his speech?

Shri Raghuramaiah: I am never ironical. When I am congratulating the Law Minister, I think the whole House agrees with me, because he deserves it. Whether he liked them or not, he really put forward all the clauses ably. That is the test of his sincerity. He was there to pilot the whole Bill and nothing but the Bill as it emerged from the Council of States.

I would appeal to the Law Minister to go forward with that Bill which gives women equality with men in respect of property rights, and the sooner it comes, the sooner the objection that is raised from the ladies' section will be removed.

श्री अलग् राघु शास्त्री : उपाध्यक्ष महोदय, अब यह विधेयक कुछ क्षण के भीतर ही विधि

बनने वाला है और मैं इस पर अब तक कुछ बोला नहीं हूँ, मगर बहुत सोचने समझने के बाद मैं ने यह निर्णय किया कि मुझे भी कुछ कहना चाहिये क्योंकि हमारा यहाँ ऐसा कहा गया है : "सभा वा न प्रवेष्टव्या वक्तव्यं वा समजंसम्" या तो सभा में सम्मिलित न हो और हो तो अपनी बात जो ठीक समझते हो उसको जरूर कहो—तो मुझे उसके लिये यह मौका मिला है....

पीठत श्री० एन० तिवारी (सारन दक्षिण) : नहीं मौका मिला तो ।

श्री अलग् राघु शास्त्री : आपको तो मौका मिलना बहुत ही आसान है, कारण आपका जिसमें ऐसा है फॉरन आंस पकड़ लेता है, हम तो दुबले पतले आदमी जरा पीछे रह जाते हैं । लैर, मेरे ऊपर भी निगाह पड़ी, जिसके लिये मैं उपाध्यक्ष महोदय का बहुत आभारी हूँ । अब प्रार्थना है कि जरा शान्ति से दो मिनट मेरी बात सुन लीजिये ।

बार बार इस भवन में औरों के द्वारा और नैत की ओर से भी कहा गया—और जो सुधारवादी लोग हैं और इस मामले में अगुामी कहलाते हैं उनकी ओर से कहा गया है—कि हिन्दू समाज रीति रिवाजों और परिपाटियों में जकड़ा पड़ा है और जरा भी आगे बढ़ने को तैयार नहीं है और इस कारण यह तमाम ऐसे मेजर्स हमारे सामने लाये जाते हैं जो समाज को प्रगति देने वाले हैं और उसके लिये उदाहरण के रूप में कभी चीन की प्रगति बतलायी जाती है, कभी सीलोन की प्रगति बतलायी जाती है और कभी ब्रह्मा की सुनायी जाती है, मानों संसार का हर एक देश अगुामी है और प्रतिक्रियावादी और पीछे चलने वाला अगर कोई समाज है तो वह हिन्दू समाज है जिसकी सभ्यता और संस्कृति सदियों की है और हम सुनते आये हैं और हमारे कानों में यह आवाज हमेशा से पड़ती रही है : "एतद्दृशप्रसूतस्य सकाशाद्गूजन्मनः ॥" स्वं स्वं चरित्रं शिद्धेरन् पृथिव्यां सर्वमानवाः ॥" जगत्वेद की सीधता ने और हमारे प्राचीन

साहित्य ने सारं विरव को पथ दिखाया है । जिस जाति और जिस संस्कृति ने नारी जाति का इतिहास सामने रखा जिसमें हम दखते हैं कि पद्मिनी सरीखी वीरंगनाओं ने अपने यतीत्व की रक्षा के लिये अपनी साधनों समेत बलती चिताओं में अपने को हवन कर दिया और हमारी जिन वीर रमणियों का इतिहास हमारे नारी इतिहास के गौरव को बढ़ाने वाला है आज उस जाति को प्रतिक्रियावादी बता कर उसका उपहास किया जाता है और सारं अनाचार को फैलाने वाली चीजों को रख कर उनको अगुामी स्टैप्स बता कर हमें कोसा जाता है तो हमें बहुत दुःख होता है । इसको सुनते सुनते मैं थक गया, तब मैंने सोचा कि आज मुझे कुछ कहना चाहिये और स्पष्ट करके कहना चाहिये । इस बिल में मैं यह नहीं कहता कि कुछ विशेषतायें नहीं हैं । विवाह की एक ही पद्धति नहीं है, शास्त्रों में आठ प्रकार के विवाहों की प्रथायें दी हुई हैं, मगर उनका अपना अपना स्थान है । गंधर्व विवाह का वह महत्व नहीं है जो दूसरे विवाहों का है । इसी प्रकार दूसरे और भी प्रकार के विवाह हैं, जो कहने को तो विवाह हैं लेकिन उनका वह गौरव नहीं है । इस विशेष पद्धति को सबसे आगे समाज को ले चलने वाली विवाह पद्धति बतलाया जाता है, इस पर मुझे एतराज है । कौन सी एंसी चीज है जो अगर हम प्राचीन साहित्य में तलाश करें तो हमें न मिले । इतिहास हमें बताता है कि भरत का जन्म जिस विवाह से हुआ वह गंधर्व विवाह था । शकुन्तला और दुष्यन्त का विवाह गंधर्व रीति से सम्पन्न हुआ था और जिनके भरत नाम का पुत्र उत्पन्न हुआ और जिसके नाम पर आगे चल कर इस देश का नाम भारतवर्ष पड़ा । इस प्रकार हमारे शास्त्रों में कितने ही प्रकार के विवाह हमें मिलते हैं, मगर प्रश्न यह है कि जिस चीज को ले कर हममें से कुछ लोग एतराज करते हैं वह प्रश्न है इमफीसिस का । विवाह की एक ही पद्धति नहीं हो सकती है । जैसे हमारे भाई रघुसामैया कहते हैं हमारे देश में हिन्दुओं में एंसी बहुत सी जातियाँ हैं जिनमें तलाक भी है, पुनर्विवाह भी है और विधवा विवाह भी है, लेकिन कुछ

जातियाँ एंसी हैं जिनमें यह चीजें नहीं होतीं और जहाँ नहीं हैं उसके भी महत्व को दखना चाहिये और यह नहीं होना चाहिये कि उच्च जाति या वर्ग के लोगों को प्रतिक्रियावादी बता कर सबके लिये उस प्रकार का दरवाजा खोल दें । जो साहस करके विरुद्ध बात करें उनको प्रतिक्रियावादी कहना अनुचित है । विवाह की जो पद्धति सब से अधिक अभिमत है उसमें यह श्रुति आती है :

“प्रजातन्तुम् मा व्यवच्छत्सीः ”

तात्पर्य यह है कि वंश का तोप न हो । विवाह जो होते थे इस दृष्टि से होते थे कि वंश लुप्त न हो । एंयाशी के लिये सुख कामना और ईर्ष्या भाग के लिये विवाह की कल्पना नहीं की गयी है । विवाह की कल्पना उस आधार पर की गयी है जो कि श्रुति में बतलाया गया है :

“प्रजातन्तुम् मा व्यवच्छत्सीः ”

मरा विस्तार हो और उस विस्तार में मातृ शक्ति को नमस्कार करने का महत्व हमारे सामने आता है । मातृत्व भाव की मीढमा हमारे सामने रहती है । मातृ शक्ति वंश की परम्परा को कायम रखती है, संस्कृति को कायम रखती है और वंश रूपी वृद्ध को चलाती रहती है । यह कहना कि विवाह बिना प्रेम नहीं होता किसी हद तक ठीक है लेकिन मैं आपको बतलाऊँ कि उस प्रणय के मूल में वही संतति है । हमारी सरकार को इस विवाह के झमले में पड़ने की क्या आवश्यकता पड़ गयी, वह क्यों इस परेशानी में पड़ी, सरकार के सामने भी वही संतान की दखभाल की समस्या है । प्रेम तो हो गया और आंखों ही आंखों में सब बातें हो गयीं और शादी भी आपस में हो गयी और वे हनीमून मनाने के लिये चले गये । परन्तु इसके फलस्वरूप जो बच्चा उनके पैदा होगा समस्या तो उसकी है कि उसका क्या होगा ? कर्दम और दंवहृती की समस्या नहीं है, समस्या तो समाज के सामने उनसे उत्पन्न होने वाले कीपल की थी । और भी समाज और राष्ट्र के सामने समस्या उस बच्चे की है जो उस प्रणय का परिणाम होता है । उसके ऊपर निगाह है और

[श्री अलगू राय शास्त्री]

हमारे श्रुतिकारों ने भी संतति के ऊपर महत्व दिया है। आदिमियों के मनचलेपन पर कोई जोर नहीं दिया, उनकी काम पिपासा तृप्त करने पर कोई महत्व नहीं दिया और विवाह का सम्बन्ध इस दृष्टि से स्थापित होता था कि समाज कौसा बनेगा, प्रजा कौसी बनेगी और आज भी देश और समाज का ध्यान इसी और होना चाहिये कि राम का दोहन कौसे होगा, समाज में कृष्ण का दोहन कौसे होगा, समाज में अभिमन्यु का दोहन कौसे होगा और स्पष्ट है कि ऐसा आदर्श समाज दूषित चरित्रों के परिणाम से नहीं बन सकता है और उसको उच्चश्रृंखलता के लिये स्वतंत्र नहीं छोड़ा जा सकता है और इसीलिये विवाह को उचित महत्व दिया गया और हमारे यहां सुमंगली की प्रथा इसी दृष्टि से है जो बहुत उच्च आदर्श उपस्थित करने वाली है। यहां पर स्त्रियों को समानता देने का बहुत दावा किया जाता है लेकिन जब मेरे मित्र पीडित ठाकुर दास भार्गव पत्नी को पीत की जायदाद देने की बात करते हैं तो उसको हम मानते नहीं, वह तो मानने की बात है। हां, तो सुमंगली प्रथा में मैं बतला रहा था कि "इसे एक पदीभव" का आदर्श निहित है। पीत का पहला चरण उठते समय पीत पत्नी से कहता है कि तू अन्न के अर्जन में मेरे साथ कदम उठाओ, हम साथ मिल कर कमायेंगे, हम जायदाद इनहीरेट करने वाले नहीं हैं, बाप दादा द्वारा छोड़ी गयी सम्पत्ति को इनहीरेट करना अनावश्यक है, हम एक साथ मिल कर जीवन पर्यन्त निर्वाह करें।

"उर्ज द्विपदी भव । शयस्योषाय त्रिपदी भव । प्रजाम्यः चतुष्पदी भव । पशुम्यः पंचपदी भव । ऋतुम्यः षट्पदी भव । सखं सप्तपदी भव" इस तरह से विवाह में पीत पत्नी अपने उत्तरदायित्व को पहचानते हैं। एक प्रथा होती है जिसमें पीत पत्नी की मांग में सिद्ध भरता है तो अपने हाथ में सन लेता है, और वह भी मिला कर उसकी मांग भरता है और उपस्थित लोग आशीर्वाद देते हैं। वह एक प्रतीक है, सिम्बल है कि तुम मेरे साथ जीवन पर्यन्त

वृद्धावस्था तक यष्टिका ले कर चलने वाली जर्जर अवस्था तक साथ साथ रहो। उसमें यह कहा जाता है कि जब तू ऐसी अवस्था को प्राप्त हो जाय कि तेरे केश ऐसे श्वेत हो जाय जैसे सन के लच्छे होते हैं उस वृद्धावस्था तक साथ रहने की प्रतिज्ञा करता है। जिस जाति ने ऐसी कल्पना की हो और जिसके ऐसे आदर्श रहे हों उस जाति के लोगों को प्रतिक्रियावादी बतला कर उच्चश्रृंखलता का प्रचार करने वाले लोग अपने को अगूगामी कहें तो यह लज्जाजनक बात है और समाज के लिये अभिशाप है। लोग कहते हैं कि हिन्दू समाज बिल्कुल नहीं बदला, दुनियां बदली, सब कुछ बदला, लेकिन हिन्दुस्तान वहीं का वहीं है। हम ने देखा है कि बाढ़ का पानी आता है, नदी के मिट्टी के कगार को काटता जाता है, हम ने देखा है कि पड़े बहते चले जाते हैं, जिन लोगों ने नगरों और गांवों को बाढ़ के पानी में बहते देखा है वह लोग अच्छी तरह जानते होंगे कि गुनाइट राक्स पानी में नहीं चहे। हजारों मन पानी उस के ऊपर से निकल गया, लेकिन वह वहां का वहीं है। हिन्दू जाति अपनी जातीयता के गौरव पर, अपनी प्राचीन संस्कृति की महत्ता पर आज तक स्थिर है, उस को कोई बिगाड़ नहीं सका। मुसलमान उस को कम नहीं कर सके, औरंगजेब उस को फना नहीं कर सका, कोई भी दूसरा उस को फना नहीं कर सका। इस के ऊपर आश्चर्य करने वाले लोग दुःख ही मनाते रहेंगे और यह जातीय जीवन ऐसे ही गौरवपूर्ण सदा रहेगा, चलता जायेगा, इसे कोई मिटा नहीं सकता है और इसीलिये मैं कहता हूँ कि जो हमारा प्राचीन आदर्श है उस का उपहास न कीजिये, उस का मजाक न उड़ाइये। इस स्पेशल मैरिज बिल से हमारी मैरिज को बटरफ्लाई मैरिज न बनाइये। इस प्रकार से दुनियां में दो लोगों का प्रेम हो जाय और वह युवक और युवती जब चाहें विवाह कर लें, जब चाहें अलग हो जायें, इस का रास्ता न खोलिये। इस प्रकार के प्रतिबन्ध लगा कर, जो लोग इस तरह से रहना चाहें उन को हम रोक नहीं सकते हैं, समाज को, एक राष्ट्र के ढांचे में नहीं ढाला

जा सकता है। आप ने बहुत तरह की बातें सुनी होंगी, लेकिन मुख्य बात यह है कि जो लोग इस पुराने विचार के हैं, जो पुरानी पद्धति को मानते हैं, उन की हंसी न कीजिये, उन का उपहास न कीजिये और कदम ऐसा बढ़ाइये कि जिस में युवकों के ऊपर और युवतियों के ऊपर अपने अत्म संयम का कोई महत्व सामने आवे।

—“ब्रह्मचर्येण कन्या युवानं विन्दते पतिम्”---

ब्रह्मचर्य का व्रत ले कर युवती कन्या युवक का वरण करती हैं। आदर्श विवाह यह है। जब वह विवाह करती हैं युवावास्था में तो यह समझ कर करती हैं, इस आदर्श को समझ कर करती हैं कि पदावस्था में भी वह दोनों साथ रहेंगे।

अगर आप एक मिनट और दें तो मैं एक कहानी सुना दूँ। आचार्य कृपालानी ने वह कहानी मुझे सन् १९२० में सुनाई थी। उन्होंने विवाह पद्धति के बारे में बात कही थी। उन्होंने बताया कि एक स्त्री थी जिस का पति कहीं चला गया था। उस के मन में आया कि मैं दूसरा पति कर लूँ। वहाँ एक बूढ़े मियाँ रहते थे। सब लोग संकट काल में उस से परामर्श करने जाते थे। उस स्त्री ने हिम्मत से काम लिया और बूढ़े से पूछने गई कि उस का पति १२ वर्ष से बाहर चला गया है। जब वह वहाँ पहुँची तो देखा कि बूढ़ा नार नार रो रहा है। वह बूढ़े आश्चर्य में आई कि उस आदमी पर क्या मुसीबत आ गई। उस ने पूछा कि बूढ़े मियाँ, क्यों रो रहे हैं। बूढ़े मियाँ बोले रो कर कि मेरे पास एक बधना था, उसी से मैं आवदस्त लिया करता था जब पासना जाता था।

कुछ माननीय सचद्वय : बधना क्या होता है ?

श्री अलगू राय शास्त्री : वह एक मिट्टी का ढाँटा होता है। बूढ़े ने कहा कि उस बधने ने ४० वर्ष तक मेरी सीबंस की। मेरे अपवित्र स्थान को उसी ने देखा, गुप्त स्थान को उसी ने देखा। अब वह टूट गया है, उस को मुझे बदलना पड़ेगा। मुझे गम यह हो रहा है कि अब इस स्थान को एक नया बर्तन देखेगा। यह कहानी

और यह भावनाएँ एक मिट्टी के बधने के साथ लिपटी हुई हैं। तलाक और डाइवोर्स का मामला ऐसा लगता है कि आप इन चीजों का दरवाजा खोलने जा रहे हैं, और जो हमारे ऊँचे आदर्श युवक और युवतियों के सामने रहे हैं उन को मिटा रहे हैं। मेरा आप से कहना है कि आप ऐसे समाज की, ऐसी राष्ट्रीय और सामाजिक व्यवस्था की स्थापना न कीजिये जो कि उन प्राचीन आदर्शों को आदर्श न मानती हो।

श्री श्री० एम० राजगोपाल : उपाध्यक्ष महोदय, मैं कानून बन गया है, जो नियम रखा गया स्पेसिफिक मॅरिज बिल के नाम से उस के बारे में लोगों का कहना है कि हिन्दू समाज और दूसरे धर्मों के लोगों के साथ जबर्दस्ती शादी कराने की व्यवस्था की जा रही है और इसी के लिये यह खास कानून रखा जा रहा है। मगर यह कानून किसी के ऊपर दबाव नहीं डालना चाहता है, किसी के ऊपर सख्ती नहीं करना चाहता है। यह तो लोगों की खुशी की बात है कि वह इस को मानें या न मानें यह कानून इसीलिये बनाया जा रहा है कि जो लोग अपनी शादी धार्मिक कानूनों से नहीं करना चाहते, उन के लिये कोई दूसरा शादी का तरीका हो। धार्मिक कानूनों से शादी करने की किसी की इच्छा नहीं है तो उस के लिये कानून बनाना मेरे ख्याल में बहुत अच्छा है। हमारे हाउस के नेता इतने दिनों से समाज का सुधार करना चाहते हैं और इसीलिये उन्होंने इस कानून का समर्थन किया है। इस से मुझे बड़ा सन्तोष होता है। मैं जानता हूँ कि हमारे चटर्जी साहब, और हमारे दशपाण्डे साहब बड़े पुराने ख्यालात के हैं, इसीलिये उन को अच्छा नहीं लगता है कि हमारे समाज का सुधार हो। लेकिन जिस देश का समाज इस तरह से सुधारा जाता है वह देश जल्दी तरक्की करता है। बहुत से कांग्रेस वालों को भी, जैसे हमारे श्री अलगू राय शास्त्री जी हैं या जो दूसरे पीछत लोग हैं, यह समाज सुधार अच्छा नहीं लगता है, लेकिन जब कांग्रेस का टिकट उन को मिलता है तब वह फॉरन उस को ले लेंते हैं। पर जब उन के नेता समाज का सुधार करना चाहते हैं तो वह कहते हैं कि नहीं होना चाहिये।

[श्री पी० एन० राजभोज]

उपाध्यक्ष महोदय, मेरा कहना है कि जो याज्ञवल्क्य स्मृति हैं, या दूसरी स्मृतियां हैं वह बहुत पुरानी चीजें हैं, वह पुराने युग के लिये शायद ठीक रही होंगी, लेकिन आज तो बीसवीं सदी हैं। आज उन पुरानी स्मृतियों और पुरानी रीतियों की बात करना मेरे ख्याल से ठीक नहीं है क्योंकि पुरानी स्मृति और पुरानी रीतियों से हमारा देश आज खत्म हुआ जा रहा है। आज हिन्दू धर्म में जाति पात का झगड़ा इतना बढ़ गया है कि हम अपनी मां बहनों का सुधार नहीं कर सकते हैं। इसीलिये हमारे डॉ० अम्बेडकर साहब ने जो हिन्दू कोड बिल रखा था उस को पास करने में दिक्कतें आ रही हैं। लेकिन मुझे बड़ा सन्तोष है कि यह बिल हाउस में आज आया है और इस से कई प्रकार के लाभ हैं। मेरे ख्याल से समान हक मिलते ही प्रत्येक हमारी महिला को, हमारी बहिन को कई प्रकार के लाभ होंगे। आज हमारे देश में जो मध्यम वर्ग हैं उस का सब से बड़ा फायदा इस बिल से होगा, लेकिन मैं चाहता हूँ कि इस से सभी वर्गों का लाभ होना चाहिये। हालांकि यह बिल मध्यम वर्ग के लोगों को लाभ पहुंचाता है फिर भी मध्यम वर्ग वाले ही इस से नाराज होते हैं। वह इस का ख्याल नहीं करते कि उन को अपनी लड़की की शादी में कितना खर्च करना पड़ता है, कितना दहेज देना पड़ता है। जिस के पास पैसा है वह तो सब कुछ कर सकता है, असली दिक्कत मध्यम वर्ग के लोगों को है। मेरे विचार से पति और पत्नी दोनों की सम्पत्ति की जो बात यहां रखी जा रही है उस में कोई खराब बात नहीं है।

इस में जो यह बात रखी गई है कि लड़की की उम्र १५ वर्ष की होनी चाहिये और लड़के की २१ वर्ष होनी चाहिये, इस से बाल विवाह जो हमारे यहां होते हैं वह भी बन्द हो जायेंगे। हमारे देश में कई प्रकार के बाल विवाह होते हैं, उन के ऊपर रीस्ट्रिक्शन होने चाहिये। जब तक यह रीस्ट्रिक्शन नहीं होते हैं, तब तक मेरे ख्याल से हमारे समाज का सुधार नहीं हो सकता है।

मैं समझता हूँ कि यह जो बिल आया है वह जाति पात को नष्ट करने और सामाजिक विषमता को मिटाने में बहुत लाभ पहुंचाने वाला है। जो हमारे पुराने विचार के लोग हैं उन को समझना चाहिये कि आज दुनिया में सब देशों का ढांचा बदल रहा है और बदलने की जरूरत भी है, जो नहीं बदलना चाहते हैं और पुराने नारे लगाते हैं वह सिर्फ अपनी पार्टी की और अपनी लीडरशिप बनाये रखने के लिये ऐसा करते हैं।

मैं समझता हूँ कि हमारे देश की पुरानी स्थिति, हमारे देश की पुरानी संस्कृति और ऋषि मुनियों की जो बातें थीं, उन से कुछ संस्कृति जो थी वह अच्छी है। कुछ संस्कृति आज ५५ करोड़ आदिमियों की संस्कृति है। यहां की पुरानी संस्कृति खत्म हो रही है, कुछ संस्कृति बढ़ रही है, आज जो दोष हम में हैं, हमें उन को नष्ट करने की कोशिश करनी चाहिये। आज हम में जो सामाजिक विषमता है उस को नष्ट करना जरूरी है। इस के लिये हम चुप नहीं बैठ सकते हैं। आज दूसरे देशों में भी परिवर्तन हो रहे हैं, हम भी चाहते हैं कि जो हिन्दू धर्म है उस की विषमता दूर हो। कहते हैं कि भगवान हैं, देवी देवता हैं, ऋषि मुनि हैं, हम कहीं पर जा कर बैठ नहीं सकते। आज हमारे देश में अस्पृश्यता बढ़ रही है। इस को नष्ट करने के लिये जो स्टेटमेंट हमारे प्रधान मंत्री ने दिया है उस में उन्होंने इन बातों का समर्थन किया है। हमारे ला मिनिस्टर साहब बिल लाये, आप ला के मिनिस्टर हैं, लेकिन फिर भी इस कानून का विरोध किया है, हमारे गाडीगल साहब ने विरोध किया। गाडीगल साहब अपने को बड़े भारी समाज सुधार के प्रणेता मानते हैं। उन की पहली औरत के बच्चे हुए, दूसरी औरत के बच्चे हुए या नहीं मुझे पता नहीं, उन्हें इस बिल से डर लगता है। जो लोग ऐसे स्वार्थी होते हैं उन को देश की भलाई अच्छी नहीं लगती है और न धर्म की भलाई अच्छी लगती है। मुझे पता नहीं है कि हमारे अलग् राय शास्त्री जी की शादी हुई है या नहीं,

लीकन ऐसे ही स्वार्थी लोग इस बिल का विरोध करते हैं क्योंकि इस कानून के पास होने से मीहलाओं की उन्नति होगी। जब तक हमारी मीहलाओं की उन्नति नहीं होगी तब तक दंश आगे नहीं बढ़ सकता है। जो असली बात है वह यह कि हमारी मीहलाओं की उन्नति शीघ्र होनी चाहिये और इसीलिये हमारे पीछे जी ने इस बिल का समर्थन किया है। इस बिल के पास होने से हमारे समाज के प्रत्येक अंग का भला होगा।

पीछे डी० एन० तिवारी : उपाध्यक्ष महोदय, मैं ने जितने भाषण सुने उनमें श्री रघुरामैया ने ही एक ठीक बात कही कि हिन्दू समाज ने बहुत से आनस्ताट्स बरदाश्त किये परन्तु नष्ट नहीं हुआ। मैं समझता हूँ कि यह जो बेंकटारामन् और रघुरामैया आनस्ताट कपल्ल विध मुकजी आनस्ताट है इसको भी हमारा समाज बरदाश्त कर लेगा और छिन्न भिन्न नहीं होगा।

शुरु में जब यह बिल पेश हुआ तो मैं ने इसका स्वागत किया था क्योंकि हमारे समाज में चन्द इस तरह के लोग हैं जो किसी फौबिया में पड़े हुए हैं और उनकी दवा के लिए कोई रास्ता निकालना जरूरी था। इसीलिये उन एफ्लिकटल लोगों को राहत देने के लिये इस बिल की जरूरत थी।

आचार्य कृपालानी : यह बीमारी कांगूस में बहुत घुस गयी है।

श्री अलगू राव शास्त्री : जब से लोग ज्यादातर कांगूस से निकलने लगे हैं तब से।

पीछे डी० एन० तिवारी : तो मैं कह रहा था कि उन लोगों को हमें रास्ता देना था। हम नहीं चाहते थे कि उन लोगों के कारण हमारा समाज गन्दा हो जाय। जो समाज के नियमों को नहीं मानना चाहता शायद हम उसको जबरदस्ती नहीं मनवा सकते, इसीलिये उन लोगों के लिये यह बिल जरूरी था। ऐसे व्यक्तियों के लिये जो अपने मन से विवाह करना चाहें, अन्तर्राष्ट्रीय विवाह करना चाहें, अन्तर्राष्ट्रीय विवाह करना

चाहें या और किसी तरह से करना चाहें उनके लिये इस प्रकार के बिल की आवश्यकता थी। इसीलिये हम नहीं चाहते थे कि इसका इतना विरोध हो। लेकिन यहां पर मॉर साहब ने कहा कि शादी विवाह तो दो हृदयों के मिलन की बात है इसमें बीच में क्या खड़ा हुआ जाय। मैं समझता हूँ कि दो हृदयों के मिलने के अलावा शादी का असर समाज पर भी पड़ता है, बच्चों पर पड़ता है, भावी नागरिकों पर पड़ता है और इसीलिये स्टेट को बीच में आना पड़ता है और इसके लिये कानून बनाना पड़ता है।

इस बिल में जितने प्रावीजन्स हैं उनमें से दो तीन प्रावीजन्स ऐसे हैं जो मैं समझता हूँ कि बहुत हानिकारक हैं और उनको न पास होना चाहिये था। उनमें से पहला संकशन १५ है जिसके अनुसार इस कानून से पहले की हुई सेक्रेमेंटल शादियां की रीजस्ट्री करायी जा सकती है। मैं नहीं चाहता था कि यह धोरे मट्ठा किया जाय। मैं नहीं चाहता था कि समुद्र के पानी को एक नाले में गिराया जाय, मैं नहीं चाहता था कि गंगा के पानी को किसी दूसरी जगह गिराया जाय। जो शादियां हमारे यहां पहले हो चुकी हैं कोई बजह नहीं है कि उनकी सीक्टटी को कम किया जाय। उनमें कोई फुट नहीं है। उनको क्यों रीजस्ट्री कराया जाय। इस संकशन से मुझे कोई फायदा नहीं दिखाई दिया। मैं अभी तक नहीं समझ पाया कि इससे लोगों ने क्या फायदा समझा हालांकि हानि की संभावना बहुत है।

दूसरी चीज जो मुझे पसन्द नहीं है वह है चेंटर २ और तीसरी चीज जिस पर मुझे आपत्त है वह है म्यूचुअल कंसेंट के द्वारा हाइवॉर्स। हम मानते हैं कि हमारे यहां लोग मार्बन नहीं बल्कि अल्टा मार्बन और अल्टा प्राग्नीसब बनना चाहते हैं। हमने देखा और सुना है कि जो बहुत प्राग्नीसब दंश हैं उनमें भी ऐसा सैजसंसन नहीं है। लेकिन हमारे दंश में वह हालत हो रही है जैसी कि देहातों में एक कहावत है कि नया मुसलमान प्याज ज्यादा खाता है। जो लोग यहां प्राग्नीसब बनना चाहते हैं वे बांध और

[पीठित डी० एन० तिवारी]

रास्तां को तोड़ कर आगे आना चाहते हैं। वे यह नहीं जानते कि बांध को तोड़ने से अच्छा अच्छा मकान भी गिर सकते हैं और वह रास्ता कूड़ा करकट में भी ले जा सकता है। हमने केवल अपनी प्रोग्रेसिवनेस के फेर में आ कर इस हाइवार्स बाई कंसेंट के क्लोज को पास किया है।

दूसरी बात में चेंटर ४ के बार् में कहना चाहता हूँ जिसका चटर्जी साहब ने विरोध किया है। उन्होंने कहा है कि सेपरेशन नहीं होना चाहिये। वह कहते हैं कि इस कानून के मुताबिक शादी होने पर आटोमैटिक सेपरेशन नहीं होना चाहिये। मैं ने इसको नहीं समझा। एक कुटुम्ब में रह कर भिन्न भिन्न तरह की शादियां हमारे हिन्दुस्तान में नहीं चल सकती हैं। जो नई विधि से शादी करके परिवार में रहना चाहेगा उसका रहना मुश्किल हो जायगा और उस पर इतना लांछन आवेगा और रोज इतने झगड़े और तकरार होंगे और सिर फुड़ावल होगा कि वह एक मिनट के वास्ते नहीं टिक सकेगा। इसीलिये उनका सेपरेट होना ठीक है।

कहा जाता है कि इन्हीरिटेस में कुछ दिक्कत होगी। लेकिन मैं कहता हूँ कि व्यक्तिगत सम्पत्ति ही आगे क्या रह जायगी जिस के लिये झगड़ा होगा। आप एस्टेट ड्यूटी बिल ला चुके हैं, आप सीलिंग फिक्स करने वाले हैं। तो फिर कॉन सी सम्पत्ति रह जायगी। इसीलिये मैं नहीं समझता कि इसका क्या विरोध किया जाता है। एक दृष्टि से विरोध समझ में आ सकता था कि कानून इस तरह का बन जाय कि लागू न हो सके और उसमें शादियां न हो सकें। इसको मैं समझ सकता हूँ। नहीं तो अन्तर्जातीय और अन्तर्धर्मिय विवाह करके एक परिवार में रहना सम्भव नहीं हो सकता है। तो अब यह कानून पास होने जा रहा है। लेकिन मैं एक अपील जरूर करूंगा कि जो भाई म्यूचुअल कंसेंट द्वारा हाइवार्स और ओल्ड मैरिज की रजिस्ट्री के लिये बहव

उत्सुक हैं वे जरा कांशन से काम लें और अपनी संतति पर निगाह रख के ही काम करें।

Some Hon. Members rose—

Mr. Deputy Speaker: Now it is 1-45.

An Hon. Member: Three minutes.

Mr. Deputy-Speaker: Does the hon. Law Minister want to speak?

The Minister of Law and Minority Affairs (Shri Biswas): About ten minutes I want.

Mr. Deputy-Speaker: All right, the Law Minister.

Shri Biswas: Mr. Deputy-Speaker, when, a little over two years ago, I was speaking in the other House, moving for circulation of the Bill, I said I was feeling a sense of pride that it had fallen to me to sponsor this measure, as I regarded it as a step forward in social legislation and as a definite advance towards the objective embodied in article 44 of the directive principles of State policy. We are now nearing the day when the Bill will be on the statute book and I wish to take this opportunity to express my acknowledgment to Members of both the Houses for the support which they gave to me in piloting this measure through both the Houses. There may be certain features which were not a part of the original Bill, but which have been since introduced, but that does not mean that my original stand is at all shaken. I stand by the Bill—the Bill, with the addition of those clauses which had been introduced later, but they had been made subject to certain safeguards. In fact, it was more on account of the absence of safeguards, more on account of the rather inadequate consideration which had been given in the other House when this proposal was first introduced, that I had to oppose it there. Now, Sir, the measure has been made certainly very much more acceptable.

My hon. friend Shri H. N. Mukerjee read out today from a Russian Journal.

The principles which are enunciated in that article do not differ at all from the principles which I had been contending for and others are contending for. That is not an out and out support for divorce by mutual consent without any safeguards whatsoever. That definitely says that family life has got to be maintained and maintained as long as possible. Marriage is not just a thing to be trifled about, that the parties to the marriage may get out of it quite as easily as perhaps they might have entered into it.

An Hon. Member: What are you doing?

Shri N. C. Chatterjee (Hooghly): Russianising the law.

Shri Biswas: This is, I shall emphasize once again, a permissive measure, but it has to be a permissive measure because, as I had occasion to point out on the first occasion I spoke on this Bill, we cannot but hasten slowly. India is a vast country with diversities of culture, diversities of habits, diversities of customs and so on. Therefore, it will not all at once to impose a uniform code of law in any sphere of life. We have to hasten slowly. Therefore, the measure was purposely placed on a permissive footing.

My hon. friend Mr. Chatterjee waxed eloquent yesterday in his opposition to this Bill. Unfortunately, he spoke,— if I may say so with all respect,— somewhat inconsistently. In one of his flights of rhetoric he said: "Do away with this Bill, this pernicious measure; it has roped in Hindus, Muslims, everybody; it has trampled upon the personal laws of different communities; it has provided for registration, throwing a temptation in the way of one and all; it is likely to cause severance from joint family and what not," and of course, there was divorce by consent. Now, all this would show, according to him, that this was an unwelcome measure which ought to be thrown out without any compunction. In the same breath he went on to say: "Drop the Hindu Marriage and Divorce Bill."

Shri N. C. Chatterjee: The Law Minister has not understood me. I said: "When by a majority you are forcing this measure on the country, for heaven's sake be consistent."

Shri Biswas: I was only trying to point out his inconsistency. I should like to ask him: "What more does he desire? Should this Bill go, or the Hindu Marriage Bill go?"

Shri Nand Lal Sharma:.....Both should go.

Shri Biswas: Then, do not put the case on that alternative basis. That is inconsistent; not only is it inconsistent; a lawyer as he is, I should say that that part of his argument is also un-lawyer-like.

Shri N. C. Chatterjee: I was not talking as a lawyer, but as a man of commonsense.

Shri Biswas: As a matter of fact, at the third reading stage either you support a Bill, or you oppose it; but you do not speak with two voices, opposing it for one purpose, supporting it for another.

Pandit Thakur Das Bhargava: As a lawyer he has divorced commonsense!

Shri Biswas: I can quite understand this sort of divorce by mutual consent!

Shri N. C. Chatterjee: Judicial separation!

Shri Biswas: I do not wish to take much time of the House. One other point which was raised by my hon. friend Mr. Chatterjee, not at the third reading stage, but previously, was about clause 19 relating to succession. Questions were raised as to what would happen to children born of the marriage prior to registration: whether the Succession Act will apply or the Hindu law will apply in the case of Hindus. The position is this. Let us take the case of *Dayabhaga* and *Mitakshara*, families separately. So far as a *Dayabhaga* family is concerned, the right to the property of the father does not arise till the father dies. Then there is no question of any share in

[Shri Biswas]

the property vesting in sons. Till the father dies the sons do not acquire any interest. One of the sons marries. There is no question of severance from the family in the sense of severance in the *Mitakshara*, family. Therefore, we are not troubled by *Dayabhaga* families. A *Dayabhaga* member marries under this Act. He has some children by the marriage prior to registration and then he has children after his registration. Now, when he dies will all the children share equally the property which he leaves behind? Now, I say all the children will share equally, because the right to succession accrues only upon the death of the father and as the father has married under this Act the Succession Act will apply so far as inheritance to his property is concerned and all the children, whether born before registration or after registration, will be entitled to succeed. Under the Succession Act they will equally be entitled to succeed to the property of the father when he dies.

About the *Mitakshara* family the position is slightly different. Marriage of a member under this law will cause automatic severance. The question is whether as a result of severance his sons also will be severed. We are dealing with the question of the right of the sons in respect of the father's property. If he has separate property he always owns the separate property, even when he was a joint member of the coparcenary. He had the separate property for himself and to himself. But when he severs, as a result of the severance, he becomes entitled to his interest in the joint family property. There is a sort of a partition and the exact share is determined and he practically walks away with a particular share in the joint property which becomes his separate property. This property with interest in the coparcenary which now is severed, becomes his separate property. Therefore, you do not speak of succession, excepting in property which is not joint property,

which is a man's separate property or acquired property.

Therefore, the question arises whether sons born to such a *Mitakshara* member before partition would devolve also on those sons. I say it will. It will so far as the other members of the joint family are concerned, my hon. friend said separation of one member will cause an automatic disruption of the whole family. A particular case was cited. I have got that case in Mayne. That does not support the proposition he made,—the latest Privy Council decision.

Shri N. C. Chatterjee: That is the case of a man becoming Christian.

Mr. Deputy-Speaker: When one member goes out of the joint family, or effects a severance, are other members affected?

Shri N. C. Chatterjee: There is automatic disruption and that will affect the joint family.

Pandit Thakur Das Bhargava: This is statutory severance; not partition.

Shri Biswas: This matter has been considered by the Privy Council and a decision given. Let me read out from Mayne on Hindu Law.

"It is now beyond doubt that a member of a joint family can separate himself from the other members of the joint family and is, on separation, entitled to have his share in the property of the joint family ascertained and partitioned off for him, and that the remaining coparceners, without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener has separated from them." This seems to be a

much more satisfactory method of dealing with the question than first to invoke a presumption of a general partition which was never intended, and then to superimpose upon it the second legal fiction of a reunion, which never in fact took place."

2 P.M.

Sir, that is the position on which I took my stand and that is why the Bill was drafted in this way.

Shri N. C. Chatterjee: The question is, when there is statutory severance effected by the language of section 18 or 19, can this principle be enforced?

Shri Biswas: Suppose it is raised in the Supreme Court, raised by my hon. friend there, there is nothing to prevent that. I am only giving you the intention which I had in view while framing this. Suppose there is a different decision by the court on it, if I am here, I will myself come forward with an amendment and make the position perfectly clear.

Sir I have already exceeded my time by ten minutes. I need not say anything more. I only say that the Bill has been accepted by all sections of the House. I hope the Bill will be worked in a satisfactory manner and all parties interested will see that the Bill becomes a success which it is desired to be.

Before I conclude, with your leave, I would like to move a verbal amendment. Sir, I beg to move:

(1) That the re-numbering and re-lettering of the clauses and sub-clauses consequential on the amendments made by the House be carried out together with correction of cross references,

(2) That the various definitions in clause 2 be re-arranged according to alphabetical order, and

(3) That the word "and" occurring in clause 16 in page 6, line 28, be omitted.

Mr. Deputy-Speaker: Before placing the Bill, as amended, before the House. I shall place the verbal amendment as moved by the hon. Minister.

Amendment moved:

(1) That the re-numbering and re-lettering of the clauses and sub-clauses consequential on the amendments made by the House be carried out together with correction of cross references,

(2) That the various definitions in clause 2 be re-arranged according to alphabetical order, and

(3) That the word "and" occurring in clause 16 in page 6, line 28, be omitted.

Pandit Thakur Das Bhargava: Sir, only the last portion may be put to the House. The other portion is only a matter of routine.

Shri Sadhan Gupta (Calcutta-South-East): Sir, it is not yet 2-30. Will you put the amendment to vote now? That is the point.

Mr. Deputy-Speaker: Is it the desire of the House that I should put it off for the present?

Sardar A. S. Saigal (Bilaspur): The Speaker has already decided that voting may be done at 2-30.

Mr. Deputy-Speaker: If the Speaker has already decided, then this will stand over till 2-30. Now we will take up other business.

INDIAN INCOME-TAX (AMENDMENT) BILL

The Deputy Minister of Finance (Shri M. C. Shah): Sir, on behalf of Shri C. D. Deshmukh I beg to move:

"That the Bill further to amend the Indian Income-tax Act, 1922, to provide for the assessment or re-assessment of persons who have to a substantial extent evaded payment of taxes during a certain period and for matters connected