

an independent body set up by Parliament and in doing their work, we must have some faith in the way they carry on the work. If the Commission is not doing its work properly and if there are irregularities, of course, we can ventilate those grievances and see that they work properly. For that the proper forum is the Parliament. I hope the hon. Minister will take note of the views expressed here and see that the Commission adapts itself to the suggestions made on the floor of the House.

Mr. Deputy-Speaker: The hon. Minister will reply tomorrow evening at five o'clock so far as this matter is concerned.

COFFEE MARKET EXPANSION
(AMENDMENT) BILL, 1952

Mr. Deputy-Speaker: The House will now take up legislative business.

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg for leave to withdraw the Bill further to amend the Coffee Market Expansion Act, 1942.

The reason is merely this. The Bill has been before the House for more than a year and a half. Certain changes were necessary. But, most of these changes could be made later in the Select Committee but there will be a certain amount of procedural difficulty with regard to one particular change, namely, we have suggested that the cess that should be levied by the Coffee Board should be raised and for this we have to get the sanction of the President. So, I have obtained the sanction of the President and, if the House will permit me to withdraw the Bill, I shall be moving another Bill in which we are putting in this provision amongst others for levying a higher rate of cess for the necessary sanction has been obtained.

Mr. Deputy-Speaker: Is it annexed?

The Minister of Commerce (Shri Karmarkar): Yes; it is annexed.

Mr. Deputy-Speaker: The question is:

“That leave be granted to withdraw the Bill further to amend the Coffee Market Expansion Act, 1942.”

The motion was adopted.

COFFEE MARKET EXPANSION
(AMENDMENT) BILL

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to move for leave to introduce a Bill further to amend the Coffee Market Expansion Act, 1942.

Mr. Deputy-Speaker: The question is:

“That leave be granted to introduce a Bill further to amend the Coffee Market Expansion Act, 1942.”

The motion was adopted.

Shri T. T. Krishnamachari: I introduce* the Bill.

HINDU MARRIAGE AND DIVORCE
BILL—Contd.

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the motion moved by Shri Biswas on the 10th May, 1954, in respect of the Hindu Marriage and Divorce Bill.

Shri Tek Chand (Ambala-Simla): May I make a submission? I had not quite concluded my submissions yesterday, and if I were to be given a few minutes more I will feel grateful that I may at least be able to finish my unfinished say.

Mr. Deputy-Speaker: Yesterday, it was said definitely that I will call upon the Law Minister, that all discussion regarding this Bill was over

*Introduced with the recommendations of the President.

[Mr. Deputy-Speaker]

except for the reply of the hon. Minister. I do not intend going back on what I said.

The Minister of Law and Minority Affairs (Shri Biswas): I shall be very brief in my reply. There is only half an hour left. There are only just a few general points which I shall advert to.

I believe I have reason to be satisfied with the reception which the Bill has met with in this House. There has been, first of all, a complaint of delay in bringing this measure before Parliament. Well, Sir, I do not know if my lady friends who have made this complaint should labour this point. It is like flogging a dead horse. We have now got a horse which is very much alive and kicking. Apply your whip so that the horse may be stirred into activity, but without giving any kicks. The Bill is going to the Joint Select Committee. Try to improve the Bill in every possible way, so that it will meet the desires and expectations of hon. Members here.

After dealing with this preliminary objection, I go to the other points which were made. There was forthright opposition to the Bill, I believe, only from two hon. Members. One was from the Jan Sangh representative, Shri U. M. Trivedi. And the other was from Shri Tek Chand. If I may refer, Sir, to your attitude, I will not say it was half-hearted opposition, I will say it was half and half—probably a little less than that. Because, you supported monogamy whole-heartedly. As regards divorce, you only wanted to suspend it for five years. That was not whole-hearted opposition. So I think it was less than fifty per cent.

Let me come to the opposition like that which came from my hon. friend Shri Pande. The question was asked as to why this Bill was brought forward when there was a

Special Marriage Bill. The answer is very simple. The Special Marriage Bill applies to all. It is on an all-India basis. This is a Bill for Hindus. It is quite true that Hindus will be able to marry under the Special Marriage Bill when it becomes law.

Shri Tek Chand: Get their marriages registered.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): A common law would have been better.

Shri Biswas: There is nothing to prevent any two Hindus marrying under the ordinary law. This Bill seeks to amend the ordinary law so as to make certain portions of it compulsory. In other respects this Hindu Marriage and Divorce Bill is optional. I shall come to that in detail presently. But, as regards monogamy, if this Bill becomes law, every Hindu marriage must be a monogamous marriage. In order mainly to secure that object, it is necessary to have a separate Bill. For that purpose I say a separate Bill is absolutely essential, and the mere fact that there is another Bill which permits marriage between two Hindus and will secure monogamy, is not enough. We want to make monogamy compulsory as a rule of law for all Hindu marriages. That is the object which I am explaining.

Shri Nand Lal Sharma (Sikar): Monogamy means one at a time?

Shri Biswas: Then comes the opposition which was voiced by my friend Sardar Hukam Singh. He said that this Bill was entirely different from the Bill which was included in the Hindu Code. That was compulsory, whereas this is permissive and that is why opposition has now subsided. If I may say so with respect, my hon. friend is mistaken. He need only refer to.....

Sardar Hukam Singh (Kapurthala-Bhatinda): I said, that I welcomed it.

Shri Biswas: As a matter of fact you were trying to belittle the fact to which I drew attention. Although there was so much opposition at that stage, there is not much opposition at this stage. That is the point I am explaining. He said that that was compulsory and, therefore, there was so much opposition. If you now bring forward a compulsory measure, do you think that there will be similar opposition? This Bill is not different from the other. The word 'may' is no doubt used in clause 5. Clause 5 reads:

"A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled..

The word 'may' does not mean that it is open to two Hindus to disregard these conditions when they marry. In the other Bill there was provision for sacramental marriage and also for civil marriage, both embodied in the same code. That was the idea and therefore it was said that a marriage may be celebrated by Hindus either according to civil marriage procedure or according to the sacramental procedure. Therefore it was different in form only, otherwise it was just the same so far as the ordinary law of Hindu marriage is concerned. You will compare the provisions of the one with those of the other, and you will find that they are just the same. Therefore, this Bill retains its old character, and still the fact remains that there has not been so much opposition.

I have tried to distinguish the different kinds of opposition. With regard to the first category,—those who were opposed to this on principle, Members like Mr. Trivedi, my friend over there representing the Ram Rajya Parishad and Mr. Tek Chand.....

Shri Tek Chand: Representing sanity.

Shri Biswas:...of which he has the monopoly, and I wish him all luck.

—I will not make the vain attempt and try to reconcile the irreconcilable. They have their eyes and ears open, but if they choose to keep them closed I cannot help it. They will refuse to take note of the changing conditions; they will live in the dead past and they will not open the windows of their minds just to receive new light which is there.

Sir, where there is a wrong there must be a remedy. This may not be possible in every case, but where it is possible, it must be allowed. If there are cases in which people feel after marriage that they are not happy and their lives will be doomed if they live together, it will not be right to force them to live together. If there are such cases, it is just as well that the law should provide for a remedy. The cry has been raised that this will mean disruption of Hindu society. Sir, I have not such a poor idea of Hindus, Hindu society or Hindu religion. Hindus, Hindu society and Hindu religion have withstood the shock of centuries.

Shri Nand Lal Sharma: Not on account of you or these ideas.

Shri Biswas: And, neither my friend Mr. Nand Lal Sharma, nor Mr. Trivedi could weaken the vitality of Hindu society.

You, Sir, if I may say so with respect,.....

Shri R. K. Chaudhuri (Gauhati): On a point of information, would the hon. Minister tell us that the question of divorce should always accompany the monogamy idea? Cannot you have monogamy without divorce?

Shri Biswas: I know that the Catholics, for instance, have monogamy, they have no divorce. I am not suggesting that you cannot have monogamy without divorce. As an abstract proposition, it may be possible. Look at the problem from the practical point of view. You are introducing monogamy for the first time

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amongst the Hindus. If that is so, it is only right and proper that you should also concede the right of divorce.

You, Sir, did not say that divorce should not be allowed at any stage. For five years—that is what you said.

Shri R. K. Chaudhuri: Let us have five years.

Shri Biswas: Therefore, it will not do to say that there must not be divorce at all. After all, do not forget that merely because the right of divorce is recognised in this law, every wife or every husband must perforce go to the divorce court. We do not want that. We want to prevent it. It is because we want to prevent it that we are giving this right to them. It is common human experience that if you say to children, you will not have it, at once they will clamour for it. Even adults are not free from this weakness. If you give them this right, in the first flush, there may be a number of applications for divorce. Ultimately, when they know that they have got the right, they will themselves be loth to exercise that right. That is the experience in other countries. There is no reason why this should not happen also with the Hindus. From the granting of the right of divorce, it does not follow that at once you rush to the divorce court. So far as women are concerned, it is not likely that they would take such a step. After all, many of my hon. friends have suggested that unless women are able to stand upon their own legs, unless they are economically independent, they will not sacrifice their own interests by forsaking their husbands. I am quite free to admit that if a woman has some other man in view and there is a difference between her and her husband, she will go to the divorce court just to get rid of the husband. That is a different matter, otherwise, if we assume that persons will behave like normal human beings,

we need not be afraid that divorce will be resorted to in a very large measure. Our ladies are educated now. We are having a larger spread of education among both men and women.

Dr. Suresh Chandra (Aurangabad): What is the percentage of education?

Shri Biswas: Higher than it was before, at any time in India's history. We want that education should be as widespread as possible. Everything cannot be achieved overnight. We have to wait. We are on the march. Therefore, I say that when our people are getting educated, they will see for themselves what has been the experience of other countries where divorce has been in force for centuries. Look at the West; look at America; look at Europe. Married life has not been happy in spite of divorce. They will see for themselves what are the things which, in spite of divorce, have not made for happy married life in those countries.

Shri Tek Chand: Divorces have made marriages unhappy there.

Shri Biswas: Therefore I say that our men and women will take a lesson from those countries and desist from going to the divorce courts if they can help it.

Shri Lokenath Mishra (Puri): Are you then going to teach them a lesson?

Shri Biswas: I want to give them a right. I do not want to deny even in a single case a right which they want.

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Shri Nand Lal Sharma: The right to fall into a pit.

Shri Biswas: Do you think that the divorce courts would be flooded with applications if there is this right and that our ladies would,

with eyes open, jump from the frying pan into the fire? It will not be so.

Shri Lokenath Mishra: On a point of information.

Mr. Deputy-Speaker: The hon. Minister does not give way.

Shri Biswas: There are only fifteen minutes more, and if I am interrupted...

Mr. Deputy-Speaker: Let him go on uninterrupted.

Shri Biswas: I say we do not know if our ancient law-givers came back to life today, whether or not they would themselves have insisted on divorce as a rule of law. As a matter of fact, what was the state of things in those days? We know how strict the texts are, the rules of morality, the rules of chastity, of paternity, maternity and so on. And in spite of that we do find that different kinds of sonship had been recognized, different kind of marriages had been recognized. What for? Because our *shastro*-givers wanted to keep pace with the changing conditions. If they found that irregular relations were established between two persons of opposite sexes, for the sake of the children or whatever it was, they said: "Very well, let this be marriage. Let them not roam about in society as if they were un-touchables." They recognized those marriages as legal marriages. Though they are not approved marriages—disapproved marriages—but still they are marriages all the same. That is the spirit in which our law-givers laid down these rules.

My hon. friend Mr. Nayar was waxing eloquent. He thinks that if he made a tirade against our ancient law-givers, that was the highest form of patriotism he could display. A little knowledge is a dangerous thing—and he was quoting texts not understanding what those texts meant. (*Interruption*) The texts were a part of an integrated system
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of Hindu law, Hindu religion and Hindu morality. Everyone knows, even a tyro who has read even a single page of Hindu law knows, that what is known as Hindu law was a mixture of law, morality and religion. So, merely because in some text Manu says you must marry a girl having these qualifications, it is a great mistake to pour ridicule on that and so on.

My friend Shri Tek Chand says: "If you have monogamy, if you have this divorce, an army of unwanted men, an army of unwanted women, an army of unwanted children would come into existence." Have we not got the unwanted list even today? Have we not got any number of unwanted men, any number of unwanted women, any number of unwanted children? We want to give them a legal status. If there are unwanted men, unwanted women and unwanted children, let them be persons with a legal status. That is the object.

Shri R. K. Chaudhuri: I do not want to interrupt the hon. Minister, but on a point of information, who will take charge of the divorced men, young and old?

Shri Biswas: The divorced woman will decide that for herself. As a matter of fact, if she has been guilty of conduct which will justify a divorce, that woman will have to suffer for it. There is no question of anybody taking over charge.

Shri R. K. Chaudhuri: I am speaking about the men. (*Interruption*)

Mr. Deputy-Speaker: If hon. Members will keep a little patience and there is not so much noise, the hon. Minister need not be strained to this extent to speak.

Shri Biswas: After all, what is the object of marriage?—there should be peace and harmony in the family. What will make for peace and harmony is not quarrel, friction and all sorts of things like that. On the

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other hand, if you say, separate under proper conditions, that will make for greater peace, greater happiness in the house, in the home. The question is this. You grant divorce. Much depends upon the conditions on which divorce is to be allowed. In modern Russia, the law of divorce is this. Formerly, they said, divorce by consent will be there. You have to apply for a certificate of separation, and you have to go and state that fact. Now, of course, they have abolished that and substituted a different system, and that system is this. You may divorce and separate by consent, but then you have got to go to a court. You need not specify any grounds in your petition; you merely state that you want to separate, and you place all the facts before the court, and leave it to the court to decide whether there should be a divorce or not. In coming to a decision, the court will consider what provision has been made, and whether adequate provision has been made or not, for the children. So, you see that even in Soviet Russia, they have adapted their laws according to changing conditions and needs. Why should we not do the same? We have had numerous complaints. Also, we have had a very wide demand for divorce, it may be, from a certain section of the community. I do not, for one moment, want to say that there is a universal public demand. I do not go into the question whether this was an issue in the election manifesto of the Congress. Some say, it was in the manifesto, and some say, it was not. Leaving that aside, for that does not matter now, I would like to say there has been a demand, and we must not forget the fact that the urge for reform in social matters does not always come from the whole community. It is not always mass initiative which leads to legislation of this kind. It is only the enlightened section who ask for it; it is those who have actually suffered that bring their suffering to the notice of

Government or to the notice of the public. Then, the public take up the matter, and the result is law. There is nothing wrong in it. It is absolutely wrong to suggest that unless there is a universal demand, legislation should not be introduced. I am quite willing to admit that in order that social legislation may succeed, you have got to carry the community with you, and carry the country with you. That condition must be there. Well, try it, and see. I believe, in this matter, judging from recent reactions, we shall be able to carry the people at large with us. Let us try; if we fail, this law automatically becomes a dead letter, and you need not worry about it. So, give the law a dog's chance, I say,—to put the matter in the lowest possible form. Give it a chance, and if there are any improvements to be effected, the Joint Select Committee is there, and I shall leave the matter entirely free to the members of the Joint Select Committee. They can shape this legislation in any way they like. I did the same thing in connection with the Special Marriage Bill. I did the same on the floor of the other House also, and I gave them free votes, because I thought this was social legislation. They did pass certain amendments, which I did not like, and about which I was not happy. I stated that openly on the floor of the House, and incidentally I may say, that although I gave them free vote, because I also had the temerity to state my personal views, which were against the amendments which were moved, I was slandered. It is difficult to please all, or to please any on all matters.

Mr. Deputy-Speaker: The hon. Minister has yet a chance.

Shri Heda (Nizamabad): Moreover, he is representing the Government, and he is not simply a person. (*Interruptions*)

Shri Biswas: I am quite willing. The Government's view is there. It

was there in the Bill as it emerged from the Select Committee. But was I not entitled to tell the House, look here, I stand by this, but this is my personal view? If anyone is attracted to my personal view, if anybody has so much respect for me, which I very much doubt, why should I object to that? (*Interruptions*)

Dr. Ram Subhag Singh (Shahabad South): We have the highest regard for you.

Shri Biswas: Merely on the theory of indissolubility of marriage under the Hindu Law, why should we deny the relief to those who ask for relief, and who deserve relief?

Sir, there is just one fact which I wish to refer to. In the ancient days, there was no law particularly in the modern or Austinian sense of the term. The texts were there, the *shastras* were there. They said:

श्रुतिः स्मृतिः सदाचारः,
स्वस्य च प्रियम् आत्मनः ।

What are the sources of law? *Shruti* is revelation. Then *Smriti*—revelation reduced to writing. Then there is *Sadachar*—look at their vision, their foresight. In spite of the fact that divine texts were there, they said that allowance must also be made for actual customs which must not be ignored. They also say:

स्वस्य च प्रियम् आत्मनः ।

What appeals to you should be followed. If your conscience tells you that that is the right course, you are free to follow that course of action. And mind you, these injunctions, all these dicta were laid down not as a compulsory thing. They were there and they became a part of the law in the modern sense because of the willing allegiance of millions of Hindus to these texts which were not laid down as compulsory texts. So that Hindu law was following this course of development throughout its history except when

the British came. The British came and—I shall assume—for good purposes they said: 'We do not know about this. It is much better to leave the Hindus and the Muslims to be governed by their own personal law'. That gave a certain amount of rigidity and that really stereotyped the Hindu law for these two centuries. It stood in the form in which it was when the British came. Even so, owing to changing conditions, the courts could not resist, I do not say the temptation, but the necessity, of having to make some provision for these changing conditions. That is why the Privy Council decisions have made an inroad into the *mitakshara* joint family in respect of many matters. I say those days are gone; the dark days of subjection are gone. We are a free people, we can now shape the law as we please. Let us go back to the old times, let us lay down certain principles of conduct and leave it to them as free and independent sons and daughters of India, to follow the advice which we give. That is the best thing. Let us try that. I in fact heard a suggestion that we should go back to those days, scrap all these laws and leave it to our people in their own wisdom to follow the advice or injunctions which were laid down for us by our elders. That means we must have some faith, some respect for our elders, but in schools and colleges, nowadays they call their fathers old fools—a very wise thing!—not knowing that their sons will call them even greater fools!

So we have to lay down something, unless we have come to that millenium about which everybody speaks. The reason is this. We have got to make provision for abnormal cases. If men and women behave like normal beings, you do not require law. You do not require the Indian Penal Code if people do not commit offences. Because of these abnormal cases, these aberrations from the normal standards, the law has got to step in. So also in the case of marriage, because if there are cases of aberration, they have got

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to be provided for. So long as law has got to find a place in our national economy, that has got to be provided.

Just one minute more about economic independence.

Shri C. D. Pande: He may continue tomorrow.

Shri Biswas: It is about economic independence. I will finish now. So far as Government are concerned, economic independence not merely for men but also for women is their objective. There is no doubt about it. So far as women are concerned, most of the speakers who have spoken about it think that economic independence is obtained if the daughter shares in the family inheritance. That will not do. One of the speakers pointed out that in connection with marriage, the economic independence which is desired is this: the wife must come to share with the husband the husband's property. I would also say that the husband should share the property of the wife. Both should share each others property. It is no use saying that women are the slaves of men in some places and in other places men are the slaves of women. These exaggerated statements carry us nowhere. So, we have got to take the picture as it is, with all its bright spots and with all its dark spots and try to change the outline of the picture in such a way as will conform to our accepted notions of what is right.

Pandit Thakur Das Bhargava: May I know whether efforts will be made to give practical shape to the views which the hon. Minister has given—that the husband and wife should share together the property at the time of marriage.

Shri Biswas: That is my view. In fact, I was wondering if I should not have a general law which will apply not merely to Hindus but to all, and will provide that upon marriage there

should be equal distribution of property between the partners. That is in my mind. I have been thinking about it.

Mr. Deputy-Speaker: I will place this motion before the House for its acceptance or rejection. The question is:

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

The motion was adopted.

Mr. Deputy-Speaker: The House will now stand adjourned and meet again at 8-15 A.M. tomorrow.

The House then adjourned till Quarter Past Eight of the Clock on Friday, the 14th May, 1954.