

20th January, 1922

THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

SECOND SESSION

OF THE
LEGISLATIVE ASSEMBLY, 1922



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LEGISLATIVE ASSEMBLY.

Friday, 20th January, 1922.

The Assembly met in the Assembly Chamber at Two of the Clock.
Mr. President was in the Chair.

GOVERNOR GENERAL'S ASSENT TO BILLS PASSED BY THE LEGISLATURE.

Mr. President: I have to announce that His Excellency the Governor General has been pleased to give his assent to the following Bills passed by the Legislature since the commencement of the present Session :

- The Indian Marine (Amendment) Act, 1921.
- The Indian Works of Defence (Amendment) Act, 1921.
- The Negotiable Instruments (Amendment) Act, 1921.
- The Carriers (Amendment) Act, 1921.
- The Indian Lac Cess Act, 1921.
- The Indian Post Office (Amendment) Act, 1921.
- The Indian Penal Code (Amendment) Act, 1921.
- The Cattle Trespass (Amendment) Act, 1921.
- The Maintenance Orders Enforcement Act, 1921, and
- The Land Acquisition (Amendment) Act, 1921.

THE CIVIL MARRIAGE (AMENDMENT) BILL.*

Dr. H. S. Gour (Nagpur Division : Non-Muhammadian) : May I refer, Sir, to your ruling on the last occasion with reference to a question put by Sir Jamsetjee Jejeebhoy as to whether in referring a Bill to a Select Committee this Assembly stands committed to the principle of the Bill ?

I understood, Sir, that you said that the House stood committed to its principle. In this connection, I venture to draw your attention to the following facts. If we turn to the Standing Orders in the Manual of Business and Procedure, page 23, we find that, when a Bill is introduced, or on some subsequent occasion, the Member in charge may make one of the following motions (I leave out the irrelevant portions — 'that it be circulated for the purpose of eliciting opinion thereon'—that is to say, the Bill may be

* Continued from the Proceedings of the Legislative Assembly Debates, Vol. II, page 1650.

[Dr. H. S. Gour.]

circulated for the purpose of eliciting opinion thereon, either upon its introduction or at any later stage. Now if we turn to clause 71, we have :

'After publication in the Gazette of a Bill, as required by the Rules, the Select Committee to which the Bill has been referred shall make a report thereon. The Select Committee shall in their report state whether or not, in their judgment, the Bill has been so altered as to require re-publication.'

Then, clause 74 on page 27 :

'(1) After the presentation of the final report of the Select Committee on a Bill, the Member in charge may move . . . (b) that the Bill as reported by the Select Committee be re-committed either (i) without limitation, or (ii) with respect to particular clauses or amendments'

And I leave out the irrelevant portion.

(c) that the Bill as reported by the Select Committee be re-circulated for the purpose of eliciting further opinion thereon. (2 If the Member in charge moves that the Bill be taken into consideration, any Member may move as an amendment that the Bill be re-committed or re-circulated for the purpose of obtaining further opinion thereon.'

It would thus appear that there are two distinct stages at which a Bill may be circulated to the public for eliciting their opinions thereon. The first stage is - before it is committed to the Select Committee; and the second stage is reached after the Select Committee have submitted their report. Now, if the basic principle of circulating a Bill for eliciting public opinion thereon be to collect opinions with a view to guide this House to form its own opinion, then it follows, as a matter of logical sequence, that we cannot be committed to the principle of the Bill either before or after it is referred to the Select Committee. Otherwise it would be futile to refer the Bill for obtaining further opinions of the public if this House is adamant to all objections raised either as to its details or to its principle. I also venture to submit that a large number of Bills are introduced in this House and the Legislature recognises that in a great many of them there is no principle at all. For instance, take the Income-tax Bill or take the Court Fees Act, the Limitation Act, or what is known to lawyers as Bills for fiscal and processual purposes. They are, from all accounts, Bills which simply lay down a certain procedure, and, in the strict sense of the term, it cannot be said that they have any principle, in the sense that there is no underlying principle beyond that there is a certain procedure prescribed and that procedure must be followed in consonance with the terms and tenor of the enactment concerned. But even in such cases, which alter the substantive law, it will be sometimes difficult to ascertain where the principle ends and the procedure begins and what amount of amendment of detail would alter the principle, and the result may sometimes be that the procedure and the amendments have been so made and are so numerous as to entirely eat into the principle of the Bill, reminding perhaps Members of the House of the Irishman, who had his coat all in tatters with very little left of it except perhaps the ends of the sleeves and bits of the coat, and who, when asked what he was clad in, replied 'in fresh air.' I submit that cases may occur where the principle is overlaid with so many details that very little of the principle remains. In those cases it will be very difficult to see, after the Bill comes back to this House, as to what is the course which this House must adopt, and whether

the rejection of the Bill is possible in view of the acceptance of the principle. I would submit that if it is once laid down as a rigid rule that after the committal of a Bill to the Select Committee, this House is irretrievably committed to its principle, it would be very difficult indeed to enunciate what 'principle' means and how far it has been affected by the amendments made in the Select Committee. I would, therefore, Sir, ask you to interpret this question in a somewhat liberal sense. The whole of the Standing Orders are now before a Sub-Committee and I draw the attention of that Sub-Committee to this question, and I have no doubt that they will bring in some sort of symmetry as regards the points I am raising. But, in the meantime, I wish to point out that the Members of this House who have spoken in opposition to the Bill are all agreed, so far as I have been able to understand them. I submit I have seen everyone of them, I have seen their leading protagonists, for instance, Sir Sivaswamy Aiyer and one or two others, and they are all agreed that a *prima facie* case has been made out for some alteration in the existing marriage law, and that, therefore, this Bill should go to the Select Committee. But they desire, and it is a very natural desire which I appreciate, that the Select Committee should be free to examine the Bill in all its details with a view to provide suitable safeguards for those who have objections to its terms, and who feel that they would be prejudicially affected thereby. Now, Sir, that, I submit, is a very natural desire. Those who go forward have no business to interfere with those who are left behind. Those who are left behind have an equal right to be left behind, and those who go forward have an equal right to go forward. One should not disturb the right of the other. That, I submit, is, in short, the attitude adopted by the opponents to the Bill, and I agree that so far as this Bill is concerned, there should be a round-table conference of the supporters of the Bill and of its opponents, and we should thrash out this long-pending question which has been agitating the Legislature and the public mind ever since the days of Henry Summer Maine in 1868. If you, Sir, can make my passage clear to the Select Committee, it will obviate the necessity of any detailed reply, and it will also facilitate the work of the Select Committee and of those who have supported or opposed this Bill.

Mr. President : The Honourable Member wishes to know whether the application of the Standing Orders commits the Assembly to the principle of a measure when that measure is referred to a Select Committee. Reference to a Select Committee does, in fact, commit the Assembly to the principle of the measure, and I am not going to be drawn into a hair-splitting competition with the Honourable Member as to what 'principle' means in that sense. But, substantially, it matters very little whether you speak of the principle of the Bill, of its scope or of its substantial purpose. Difficulties may arise on individual measures as to the exact scope of a measure, but the Chair will deal with each of these as they arise.

A further point has been raised by the Honourable Member that, in so far as the Standing Orders permit of circulation for the purpose of eliciting opinion after the return of a Bill from the Select Committee, that must imply that the Assembly is open to reconsider its endorsement of the principle of the Bill. Now the procedure under which Bills are dealt with is that, in the first place, after introduction, a debate takes place in which the principle alone can be discussed, and in which the details of the Bill may only be brought in

[Mr. President.]

incidentally to illustrate the principle. The Bill is then either taken into consideration on the floor of the Assembly, or passes to the Select Committee. In that case, the Assembly, or the Select Committee proceeds to the examination, clause by clause, of the Bill in detail. Amendments, no doubt, may be made in a measure during that stage which will considerably alter the bearing of its principle. On that ground then, when the Bill returns from the Select Committee, it is open for the Chamber to say whether this is the form in which they intended the principle to apply; and, in order that they may be given the opportunity of a final judgment in that matter, the motion is put from the Chair that 'this Bill be now passed'. At that stage, if that motion is passed, then the Assembly stands finally committed to the principle of the Bill, unless indeed the other Chamber introduces further amendments which call for reconsideration.

The application of the procedure for 'the circulation of a Bill for eliciting opinion' after the Bill has been considered by a Select Committee is only provided so that, where changes of substance have been made by the Select Committee on which the Assembly has any reasonable doubt, they may desire to have further opinion upon it. But in that case, the motion that the Bill be circulated for the purpose of eliciting opinion is a subsidiary motion and it does not stand in the same position as a motion of that character made at an earlier stage of the Bill.

The Honourable Member's difficulty arises, I gather, out of the position in which his own measure stands at this moment. But he is a good enough lawyer to know that if I were to follow the advice that he has been giving me I should be violating the principle underlying the old legal adage that 'hard cases make bad law'.

Mr. W. M. Hussanally (Sind : Muhammadan Rural) : Sir, may I also inquire about one point? I suppose the motion that the Bill be referred to a Select Committee is going to be put to the vote. At the last meeting, Dr. Gour proposed some additional names of members for the Select Committee and I should like to know whether they are to be included in the Select Committee or whether we shall be given an opportunity of proposing the other amendments which stand in our names. Because it seems to me, from a Muhammadan point of view, that it is very important, if this Bill is going to a Select Committee, to have two gentlemen on it who will put before the Select Committee the view point of Muhammadan Law.

So far as the first list submitted by my Honourable friend, Dr. Gour, is concerned, it contains only a few names of gentlemen who are perhaps committed to the principle of the Bill and who have approved of it, but the subsequent list proposed several other names who are against the Bill. I suggested in my speech on the last occasion that the motion be split up into two parts, first of all whether the Bill should be referred to a Select Committee and if that is carried, then to propose the names of the members of the Select Committee.

Mr. President : The motion at present before the House is :

'That the Bill further to amend Act III of 1872 be referred to a Select Committee consisting of the Honourable Dr. T. B. Sapru, the Honourable Sir William Vincent, Mr. Percival, Mr. Cotelingam, Mr. Joshi, Chaudhri Shahab-ud-Din and Dr. Gour.'

In the resumed debate Dr. Gour asked permission to add a certain number of names to that list, and those names have not yet been put from the Chair. If it is convenient to the Assembly that I should divide that motion, which I have just read, into two parts, I am willing to do so. Therefore the motion now before the House is :

‘ That the Bill further to amend Act III of 1872 be referred to a Select Committee. ’

Mr. T. V. Seshagiri Ayyar (Madras : Nominated Non-Official) : Sir, I am sorry I was not here when the Bill was last discussed. I hope I may not be repeating what has been said by the previous speakers, but I think I should not give a silent vote on a question of this great importance. Sir, I think the objection to the legality of these marriages is unreasonable, and I hope to convince the House, from personal experiences, which I shall relate, that that attitude should not be adopted. Sir, last December I attended a marriage between two persons who were undoubtedly as good Hindus as anybody sitting in this House, and they had to go through the formality of declaring that they were no longer Hindus before contracting the marriage ; unfortunately I was one of those who had to sign the register of this marriage as a witness. I know that subsequently and before the marriage the couple have been living as any good Hindu can be expected to live. Now, the result of saying that as Hindus they cannot contract these mixed marriages is to drive these people to a subterfuge. Is it to the good of the country, is it to the good of the community that these people should be obliged to have recourse to this kind of subterfuge ? Sir, moreover, as has been pointed out by my friend, Dr. Gour, outside British India such marriages can be celebrated, and, why should we in British India, who profess to have advanced a great deal, denounce these marriages and drive these people to the inconvenience of going to some other place and getting themselves married there and afterwards coming and living in our midst ? Why should we allow that reproach to be made against us ? Now, Sir, there are three instances at least in Madras—well-known instances—and I believe my Madras friends will bear me out when I say that in these instances of mixed marriages, the contracting parties have been allowed to live amongst us. They are respectable people and they have been received in Hindu society as any other orthodox Hindu has been received. In one case, a non-Brahmin has married a Brahmin girl, in another case a Brahmin Barrister has married a Nayar girl, and in the third case a Madras Ayyangar Brahmin has married a Punjabee girl. All these are very respectable people. All these people are received and welcomed in society, and why should their issues be debarred from certain rights and be regarded as being beyond the pale of Hindu religion. Is it good that this thing should be done ? There are certain theories in Hinduism which have been hampering the progress of this country considerably, and, among these, is the principle of untouchability which has driven a large number of Hindus from the fold of Hinduism into other religions, namely, Muhammadanism and Christianity. Are we going to add another to the sins of Hinduism ? Are we going to drive some of the intelligentia of the country also from the fold of Hinduism, because we are intolerant and will not allow these marriages to be celebrated and considered as legal. The result would be that these people would be obliged to declare that they are not Hindus. I hope the House will ponder over this very deeply before they say these marriages are illegal ; it would be an unreasonable attitude to adopt. But I must

[Mr. T. V. Seshagiri Ayyar.]

point out that there are serious difficulties in the way, especially in regard to inheritance, and, unless these are got over, the Bill should not be allowed to proceed any further. I shall not occupy the time of the House for a very long time, but I must point out two or three instances in which a change should be made by the Mover of the Bill before the Bill is allowed to proceed to Select Committee.

Now, Sir, one point has been referred to by my Honourable friend, Sir Sivaswamy Aiyer, and that is, succession as collateral of the issues of the mixed marriage to the estate of a deceased orthodox Hindu. Now, a deceased orthodox Hindu, who disapproves of these mixed marriages, is entitled to expect from persons who inherit his property that some sort of religious oblation should be offered to him. It is true that in all cases the test of inheritance is not the capacity to offer religious oblations, but religious oblations have played a large part and are playing a large part in our laws of inheritance. Under these circumstances, if an orthodox Hindu's property is allowed to be inherited by a collateral who is the issue of a mixed marriage, it would go very much against the grain of Hindu Law. Unless you are able to make a provision that the issue of these marriages shall not lay claim to the property of the orthodox Hindu, I cannot allow this Bill to go into Select Committee. Sir, that was my view when I happened to occupy a different position and when I was called upon to give my opinion upon the Bill of Mr. Basu. I then stated that, unless a Bill which is introduced into the Legislative Assembly makes it clear that the issue of mixed marriages shall have no claim to succeed as collateral to the estate of an orthodox Hindu, the Bill should not be passed into law. That is one matter which, if it can be cleared in the Select Committee, I for one shall be prepared to vote for its going to the Select Committee.

There are two more matters and they are of equal importance. One of them relates to the management of religious endowments. Here is a private donor who endows property either to his family deity or for the purpose of some festivals in a temple or for the income being given in charity at stated intervals. The question that I ask is this. Is it right that the issue of these mixed marriages should be allowed to manage the property, to conduct festivals in a Hindu temple, to conduct the family worship or to conduct the feeding or other charities which the founder had originally resolved upon.

It is only right and proper that the orthodox relations who follow in the footsteps of the persons who founded these charities, should be allowed to manage them solely. Therefore, unless you make it clear in this Bill that the issue of these marriages shall have absolutely no right to manage these religious endowments, the Bill should not be allowed to go to the Select Committee.

There is one other matter. I am not exhausting all the points, but am just mentioning those that come readily to my mind. This one was mentioned to me by Rao Bahadur Rangachariar, and that is, Sir, that where an orthodox father has an only son and that son contracts a mixed marriage, it should be permissible for the orthodox father to adopt a son to himself.

Now I will mention to the House in a minute why that should be so. Where an orthodox father has an only son and he marries a Sudra girl or, for that matter, a Muhammadan girl, it will be impossible for the funeral obsequies of that orthodox father, when he dies, to be performed by this son. It is impossible in the eye of the Hindu Law; it is impossible according to the Hindu religion that such a thing should be done. And yet the father would like to have his funeral service performed by somebody who can take the place of his son. According to Hindu Law, if he has a son living he cannot adopt another son; and what is to be done in those circumstances? Unless, therefore, we make provision that, where the son of an orthodox father has contracted a mixed marriage, it will be open to the father to make another adoption, this Bill should not be allowed to go any further. It is a very serious matter, and I think Hindu opinion will be completely upset if this provision is not made.

It may or may not be possible to make provision for all these things in Select Committee. I personally, having regard to the frame-work of the Bill, doubt if all these amendments which I have suggested can be brought in in Select Committee. If they can be brought in, I have no objection to the Bill going to Select Committee. I wish the Legal Member were here to advise us as to whether, having regard to the nature of the Bill, it is possible to bring in these various amendments which I have suggested. But if it is not possible, then I certainly think that the Bill should not go to the Select Committee. The proper procedure then would be, having regard to the opinion of a large number of Members of this House that some law should be enacted, for the Mover of this Bill to withdraw it, and to bring forward another Bill embodying the suggestions which I have just put forward. Unless that is done, I for one would be totally opposed to the Bill proceeding any further, because it is clear that these amendments which I have suggested are of vital character. It may be said: 'We will pass this Bill and bring in a Bill as regards succession'; but that is quite unthinkable, because, if you pass the Bill, the result of it will be that it will create vested rights. The right will become indefeasible and the Inheritance Bill may not be easy to bring in and pass very soon, and the result will be that there will be a great deal of confusion. Under these circumstances, unless the Mover of the Bill, or unless the Legal Member can assure us—and I want the assurance from the Legal Member—that, if the Bill goes to Select Committee, the suggestions I have put forward can be embodied in it there, I am totally opposed to the Bill proceeding any further in its present shape.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I wish to support the Bill on secular grounds and to oppose it on religious grounds—from the Muhammadan point of view, and I hope the learned Mover of the Bill, and specially my Muhammadan colleagues who may follow me will satisfy me and meet my objections. I am in sympathy with the Bill and am ready to give my support to it if my objections on religious grounds are met; otherwise not. In this connection, I cannot do better, so far as my support of the Bill goes, than to quote the learned Mover of the Bill himself. I may be just permitted to read it. In page 24 of this pamphlet on the Civil Marriage Bill he says:

'At present our lives are spent in water-tight compartments. We may have, it may be, our bosom friends amongst Muhammadans and Christians, but our friendships cannot

[Khan Bahadur Sarfaraz Hussain Khan.]

develop into alliances. Each race preserves its exclusiveness by a fancied notion of its own superiority. It is jealous of the progress of another race. These inter-marrying races have for ages thrown India open to the attack of foreign powers. And India is as weak to-day as it ever was before in its history. The fact that British guns protect us from external aggression and internal strife is entirely to the presence of a superior power, the withdrawal of which may immediately bring into play those disintegrating forces which have made India a prey to foreign invasions. All lovers of our country must realize this essential source of its weakness. Nationality means unity. Unity is not possible without the recognition of equality. Equality implies the enjoyment of that elementary freedom in the matter of food, friendship and marital alliance which is the birth-right of every civilized being.

So far as Indian nationality is concerned, and so far as the protection and safeguarding of individual liberty is concerned, I do support this Bill; but I have a religious objection too, and it is this. From a Muhammadan point of view I must say that the learned Mover's quotation of Mr. Ameer Ali is not convincing, not quite to the point and fails to meet my objection. I may, therefore, also be permitted to quote from page 26 of the pamphlet of the learned Mover of the Bill. It is this :

'The Muhammadan Law recognises the lawfulness of unions between Moslems and Non-Moslem females belonging to all moral creeds. . . . It is a mistake to suppose that under the Mussalman Law, a Moslem may marry a woman belonging to the revealed faiths *only*, by which are meant Islam, Christianity and Judaism. Marriages are allowed between Moslems and the free-thinkers . . . A Moslem may, therefore, lawfully intermarry with a woman belonging to the Brahmo sect. Nor does there seem to be any reason why a marriage with a Hindu woman whose idolatry is merely nominal and who really believes in God, should be unlawful. The Mughal Emperors of India frequently intermarried with Rajput ladies, and the issue of such unions were regarded as legitimate, and often succeeded to the Imperial throne. What the Muhammadan Law requires is that any such union should not lead to the introduction of idolatry in a Muhammadan household.'

But this does not apply, in my opinion, to the case of non-Muhammadan husbands and Muhammadan wives; it only applies to Muhammadan husbands and non-Muhammadan wives. I quote, Sir, from a much higher authority, in support of my view, than that of Mr. Ameer Ali, *viz.*, the revealed book which is the main-spring and fountain-head of Islamic Law, I mean the Holy Koran. So far as my knowledge of it goes, the question of marriage is dealt with in two places of the Holy Book, and here I am addressing my Muhammadan friends chiefly, *viz.*, in Sura Baqar, Ruku 27, and in Sura Maeda, Ruku 1.

The English translation would be :

'Sura Baqar, Ruku 27: Mushrik women until they accept Iman, that is true faith, do not perform *nicah* with them. Mushrik males, unless they accept Iman, do not give you women in marriage to them.'

The other is Sura Maeda, Ruku 1, of which the English translation would be :

'Lawful are the virtuous women to you who are *Momina*, namely Muslims, or are among those to whom revealed books have been given, before you.'

The commentators of the Koran have, by common consent, made marriages with only the Jewish and Christian women permissible. This now applies to the marrying of Muhammadan males with non-Muhammadan

females, but it is quite silent on the marriages of non-Muslim males with Muslim females, and so far as this goes, as I understand it, there is no reference to it. I do not therefore, from the purely Muhammadan religious point of view, see how these marriages can be allowed as contemplated in the Bill. I, therefore, hope that my Muhammadan friends chiefly would satisfy me on this point, or the learned Mover himself.

Haji Wajihuddin (Cities of the United Provinces : Muhammadan Urban) : Sir, I rise to oppose the Bill on grounds, which, as far as I know, no one else has yet expressed except my Honourable friend, the Member for Karachi, Mr. W. M. Hussanally. No doubt, Sir, the House will agree with me, that religious susceptibilities carry weight and are not to be trifled with. According to several enactments, it has been effected that, in matters relating to marriage, Muhammadan Law only shall be applied to Muhammadans. It was necessary to keep up the religious non-interference policy of the Government. Now, as any marriage of a Moslem male or female with a Hindu male or female as this Bill proposes to do, is a mere nullity in the eyes of Muhammadan Law, so it is a clear encroachment upon the religion of the Muhammadan community. How astounding was it, Sir, when in the very beginning of the discussion, the Honourable the Home Member announced that Government's attitude was of neutrality, and that the Members of the Executive Council will take no part in the discussion. It would have been far wiser on the part of Government, Sir, if they would have never allowed the introduction of the Bill and would have asked the Honourable Mover first to consult public opinion and to prepare them to receive this unwholesome food.

However, what is done can never be undone. A great responsibility is placed upon our shoulders, and we should proceed as prudently and cautiously as we can.

The main argument upon which the Honourable Member has based his Bill, are, as far as I perceive, two in number. Firstly, he says that, when a civil marriage law without reference to race, religion or social distinction exist in all European countries, then there is no reason why his country should be deprived of this liberty; and, secondly, the Bill, when enacted, will help in the formation and consolidation of a united Indian nationality. To sum up this reasoning, I may say that he intends to erect in India, after the fashion of the West, a huge structure of nationality over the ruins of its religious sanctity.

But I should assure the Honourable House that it is no better than Utopia. No community, whose morality and social status has fallen low in the eyes of its fellow brethren, can ever be politically strong.

As a matter of fact, India is not Europe. One is in the East while the other is in the West. Under the circumstances, may I ask how far it will be true to say that what is good for one must also prove equally beneficial to the other.

Moreover, I cannot conceive of any Indian, who has the least germs of patriotism left in his heart, that he will ever consider for a moment of sacrificing the sacred traditions of his own country for the sake of adopting foreign ideas and principles.

[Haji Wajihuddin.]

As for this unique idea of human progress and unity, I should point out to the Honourable House that it has not even proved successful in Europe. The ever increasing number of divorce cases in Europe and America, which are surely the result of such indiscriminate unions, give us a good lesson and we should fly with horror from the idea of importing such deplorable scenes into our own mother-land under the protection of law.

In my humble opinion, the sanctity of marriage is closely connected with that of religion. No other law has power enough to check the ever rising current of human lust. So, no sexual union can ever be given the sacred name of marriage, unless it has been performed with all the solemn ceremonies of a religion. One of the supporters of the Bill told us the other day, that marriage should be a matter of love and affection and not of compulsion. But I may be permitted to say that, if nothing but love and affection are to be taken into consideration, then there will be no necessity of anything like marriage. Those who are of this opinion must know that law regulates, checks and restrains all human sentiments within proper limits.

Now, again, coming to the religious point, I should express my deep regret that some of my co-religionists, and, especially, the old Honourable Member from Eastern Bengal, have expressed their opinion in favour of the Bill. I may be pardoned, if I candidly say that those who are in favour of this Bill, know very little about the religion they themselves profess. For the Muhammadan it is not a controversial point, but a plain principle laid down in the Holy Koran in such emphatic and clear language that it has left no scope for dispute. It says (translated into English):

‘Marry not women who are idolators until they believe; verily a maid servant who believeth is better than an idolator, though she pleases you more; and give not women who believe in marriage to idolators until they believe; for verily a servant who believes is better than an idolator though he pleases you more.’

Now I should like to answer the objection raised in this House by citing historical examples of Akbar and other Mughal Princes who often married Hindu and Rajput ladies. In this connection I consider it sufficient to quote the Honourable Syed Ali Imam, who said in his speech dated 7th March, 1912, as published in the Government of India Gazette, 1912, Part IV, page 87 :

‘That, in these instances, it was found necessary before the imperiousness of Muhammadan Law for these ladies to make a formal profession of Islam before the marriage took place.’

I shall not tire the Honourable House any longer and will conclude my remarks by observing that the Muhammadan community is not in the least prepared to accept any such enactment, which is an open attack upon their religion, and I, this very day, warn this House, warn the Government, warn India, nay the whole world, that if the Bill is ever enacted, it will surely be attended by serious consequences of the most evil description.

With these few words I strongly oppose the Bill.

Rana Umanath Bakhsh Singh (United Provinces : Nominated Non-Official) : Sir, I rise to oppose Dr. Gour's Resolution for a Select Committee

to consider his Bill. I oppose it on my behalf and on behalf of the community to which I have the honour to belong. The Resolution has already been strongly opposed by some of the Honourable Members of this House and although it does not require any further opposition, still I deem it my supreme duty to give expression to my feelings. As a Hindu and a believer in the Hindu Shastras, I think I can safely give vent to the feelings of the Hindus on this point. No Hindu who believes in his Shastras, can like the proposal of Dr. Gour. Much has been talked about the definition of a Hindu. From my point of view, that Hindu is not a Hindu who does not believe in the *Varnashram Dharam*. I do not know what Mussalmans, Jains, and other communities think upon this Bill. They are the fit persons to represent their social and religious feelings. But, so far as I have heard, I think that the other communities also do not like it. The question raised now by Dr. Gour was raised on previous occasions also, and on every occasion it evoked a strong protest throughout the country. The reasons put forth by the Honourable Mover are not cogent. He gives the example of the European countries and says that, because there is no restriction of race, religion, or social distinction in marriage in the European countries, therefore there should be no restriction of race, religion, or social distinction in this country. Also I think he is not justified in this. Let Dr. Gour understand that the manners and customs of the European countries are quite different from those of India. So the example of European countries is not applicable to this country. In European countries there is no such diversity of religious and social manners and customs as in India. Here, there are several religions and several castes, namely, Hindus, Muhammadans, Christians, Parsis, etc. Even amongst the Hindus there are several castes and sub-castes, and each caste has got a different tradition and history of its growth. The difference between the manners and customs of one caste and the other is very wide. I should like to draw the attention of the House to one most important point, namely, that marriage in our country is regarded not as a contract, but as a religious ceremony that is *sanskrit*. A Hindu marriage, once performed, cannot be cancelled for life. A Hindu cannot religiously marry with a member of any other caste. If he does so, he transgresses the law of the Shastras, and his children will not be able to perform religious rites for their ancestors. The marriage of a Hindu is a sacred duty and not an enjoyment. It is incumbent on a Hindu to perform the *Shradh* of his ancestors and he is in duty bound to leave behind a legitimate issue, who will continue the proper line and will perform the religious rites. I am particularly speaking on behalf of the Hindus and am submitting before the House what the feelings of the Hindu community are on this question. In my opinion, Dr. Gour's Bill will give a strong blow to the most vital principle of Hindu society and so it can never be supported by responsible Hindus.

I submit, Sir, that this Assembly is not entitled to decide any such question or to recommend any such measure which will affect the social and religious principles of a society, and thereby will wound the feelings of the members of that society. In my opinion, the things which vitally concern society and religion should be entirely left to the social and religious organisations.

I hope the Government will fully realise the feelings of the vast population of this country on a question like this and will never give the approval to the Bill.

[Rana Umanath Bakhsh Singh.]

When the matter of the Bill is undesirable from 'the social and religious point of view, then the proposal for a Select Committee is quite unnecessary.

I hope Dr. Gour will realise the feelings of the people of India on this question and will not press the matter any further.

With these few remarks, Sir, I beg to appose the Resolution of Dr. Gour.

Rai Bahadur Bakshi Sohan Lal (Jullundur Division: Non-Muham-madan): Sir, from Act III of 1872 it appears that all the well-known religions of the world, the Christian, the Jewish, the Hindu, the Muham-madan, the Parsi, the Buddhist, the Sikh and the Jain religions, did already prescribe certain rules and forms of marriages for persons belonging to those religions. The question seems to have arisen in 1872 to prescribe a special form and rules for the marriage of persons who profess not to belong to any of these religions. So far as Hindus are concerned, the marriage is not only a civil contract but it is a religious sacrament and it prescribes certain rules which are based on their religion. It says that the marriage must be restricted to the *varna*. There are four *varnas*, Brahmin, Kshatriya, Vaish and the Sudra, and that a Brahmin must be married to a Brahmin woman. A Kshatriya man to be married to a Kshatriya woman, a Vaishya man to be married to a Vaishya woman, and a Sudra man to be married to a Sudra woman.

Dr. H. S. Gour: Where do you find it? Not in the *Smritis*.

Rai Bahadur Bakshi Sohan Lal: If you want me to quote the words, here they are:

'Udbahet deviyo bharyyam savarna lakshanavitam.'

—Manu, Chapter III; Sloka 4.

There are 4 *varnas*, Brahmin, Kshatriya, Vaishya and Sudra.

Dr. H. S. Gour: That is a forgery.

Rai Bahadur Bakshi Sohan Lal: Not forged by me or by any Member of the Assembly since this Bill was introduced. The Hindus are following their so-called forgery as their religious precept.

Then *Manusmṛiti* prescribes certain degrees of prohibited consanguinity. It says:

Asapinda cha ya maturasagotracha ya pitooh; sa prasasta devijatinam darakarmani maithune.'

This means that the girl* must not belong to the *gotra* of the man, and she must not belong to the offspring within seventh degree on the side of the mother of the man. That is, within the seventh degree of generation on the mother's side and the whole *gotra* of the father's side. So it appears that the Hindu religion restricts marriage within the *varna* and outside the *gotra* or caste. The object of this Bill is not only to extend

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the marriage to all the *varnas* of the Hindus but its object is to set aside the rules and forms of marriages of all those religions, Jewish, Buddhist, Hindu, Muhammadan, Parsi, Sikh, Christian, Jain, etc., mentioned in Act III of 1872 as not governed by the Act and to allow inter-marriages between men and women of all religions without regard to their religious precepts. That is, those who do or do not profess any religion will be allowed to marry under Act III of 1872 according to the present Bill which has been placed before this Assembly. But my friends, belonging to the Muhammadan religion, have explained in their speeches that even their religion does not allow a person to be married to one of another religion. A good deal of difficulty will arise if a Hindu is allowed to marry a woman who does not belong to the Hindu religion. According to the Hindu religion and Hindu Law, the wife is enjoined to partake with her husband in all Hindu religious functions, ceremonies and observances. How will a Mussalman or Christian wife join her husband in such observances consistently with her own religion? On marriage, the bride becomes a member of her husband's joint Hindu family. Will not this cause a disruption of the family, if, in a large family, one of the members attempts to introduce a woman of another religion as his wife? How can a Mussalman or Christian woman live comfortably in the house of a Hindu husband consistently with the precepts of Hindu religion which provides that a person who does not believe in the Vedas and Shastras will be turned out—(*Manusmriti* II).

The Bill is not only to cause interference with the Hindu religion but also with other religions which do not allow a marriage with a person belonging to a different religion. A Hindu house will never be a comfortable place for a Muhammadan wife if she has to perform her *namaz* five times daily, not to speak of occasional observances such as the keeping of *rozas* during the whole month of *Ramzan*, and mourning during the *Muharram* month. Immense difficulties in maintaining peace and harmony in married life will be created by the Bill if passed into law, not only during the life time of the married couple but also after the death of one or the other. For instance, the question will arise whether the body of a deceased Muhammadan woman married to a Hindu is to be cremated according to the Hindu Shastras or buried according to Muhammadan religious rites. If a Hindu husband dies leaving a Muhammadan widow, without any sons, the question will arise whether the woman is to bury the body of her husband according to Muhammadan rites or is to cremate the body according to the Hindu Shastras. Disputes are expected to arise at every step and such immense difficulties and troubles will be created by this Bill if passed into law which I do not think can easily be solved. I recommend to the Assembly that this Bill should not be sent to any Select Committee for consideration and that it should be rejected at this stage.

Bhai Man Singh (East Punjab : Sikh) : Sir, I need not repeat the legal difficulties which stand in the way if the Bill is passed into an Act. Much abler lawyers than myself have described them. I can only say that a good many of our civil rights are governed by the personal laws of the Hindus and Muhammadans. They are Orientals, and these personal laws are the outcome of certain ideas and conceptions of life. With the advent of western education we have imbibed certain foreign ideas of freedom. They may have their own value. I have no dispute with them at present. But what is here

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being attempted is to graft western ideas on our oriental personal laws. The Hindu Shastric lawyers made certain rules of inheritance, under which certain relations can inherit to a very great distance. Those laws exist, so far as inheritance is concerned, but we are now trying to graft quite a new system of marriage over them. For my part I think it a strange procedure. Either we should give up our personal laws and have quite new statutory laws in their place, or else, if we want to remain within the fold of Hinduism and enjoy all the rights under the Hindu Law, we must at the same time be bound by certain limitations as regards the marriage law of the Hindus. The same applies to Muhammadans. I am not going to enter into the basic principles involved in inter-marriage, but as a Sikh I have a word to say. Dr. Gour in his pamphlet on the Civil Marriage Bill has enumerated certain classes who, he says, would welcome the Bill. At page 20 of his pamphlet, Dr. Gour says :

‘ But apart from this, there is a definite class of persons who would welcome the Bill. Let me enumerate them.’

And number 3 of that list are the Sikhs. Well, as a Sikh, knowing all the different shades of opinion that the Sikhs hold, whatever may be said on different subjects among the different classes of the Sikhs, I could say, without fear of contradiction, that the Sikh religion does not allow the marriage of a Sikh with a Muhammadan woman. There are four cardinal offences, by committing which a Sikh does not remain a Sikh, and one of them is having intercourse with a Muhammadan woman, and, up till now, no sort of school has cropped up amongst the Sikhs which has allowed any marriage with a Muhammadan woman, so long as she remains a Muhammadan woman. Of course, when she is converted, it is a different matter. The other question is that the Sikh religion does allow intermarriage between the castes, and, so far as our demands are concerned, we could say that we do not want any change in our marriage law. Inter-caste marriage is already allowed amongst us by custom and every marriage which is performed according to the Marriage Act is legal. We are satisfied as far as that is concerned. Taking the religious aspect of the Bill, there are, in every religion, some questions of primary importance and some questions of secondary importance. I am not very well versed in the Hindu Shastras or in the Muhammadan sacred books, but my Muhammadan friends have definitely quoted that they cannot marry an idolatrous wife. If Muhammadan law definitely prohibits any such marriage, I should say it is the primary thing. I was told by my Muhammadan friend (if I mistake not, the Honourable Member from Sind, Mr. Hussanally, outside the House of course) that there are different other customs which prohibit intermarriages between Muhammadans themselves of certain castes, between Shiah and Sunnis. But he told me that these differences are not based on the Holy Koran itself. So if a sect crops up and says that they do not want restrictions, that would be a different thing. But I cannot understand this. A man says that he follows such and such a religion. The basic principle of that religion definitely is that, by committing such and such act, he does not remain within the fold of that religion. I cannot see how we can say here that a Sikh marrying a Muhammadan girl would remain a Sikh and not go out of the Sikh fold, because we

have got certain teachers. If they are free thinkers, they are quite welcome to be free thinkers. Nobody is forced to be within a fold, but he has no business to enforce his ideas on the whole community. There could be another phase of it. In one and the same religion, certain views may crop up and a certain people might say that certain things are not according to the religion, but other Sikhs might say they are. For example, a Sikh might say that intermarriages are allowed between different castes. There is a vast body of opinion about the interpretation of certain scripts. We would say that, if there is a vast body of opinion, let that sect have its own course. That is not the case here. From my experience in the Punjab I could say that there is absolutely no demand for intermarriages between a man and a woman of different religions. This shows that no strong body has cropped up which demands that, according to their own religion, there is no prohibition of that sort. There has cropped up a certain class of free thinkers who say: 'Let there be these prohibitions: We do not care for them'. If I do not care for that, I must be bold enough to say so. What is the use of my being afraid of saying all that and still trying to be a free thinker, and not be bold enough to say that I am not a Sikh. If I want to tread down certain principles of Hinduism I must be bold enough to say so. Now I have to submit another idea of what its effect would be on society. I have to give only one instance about my own province. In my own district especially, and in the Punjab generally, there are many Sardars who have been having wrong relations with Mirasi women, who belong to a low Muhammadan caste. These women generally sing and act as menials to the families of these Sardars and have a right of going to their houses. All these Sardars have been going wrong with them and most of them, if they were allowed, would marry these women. Surely society would not tolerate those women who are of very low character? If such marriages were allowed, they would have the effect of spoiling the whole society. This is the sentiment in my province, and, of course, if you allow this, the result would be that mostly women of bad character would have an influence over bigger people, and that would spoil society, and you would be legalising a scandal rather than be giving liberty to the people. In some cases I do say there is some demand by some persons, but let them be bold enough to say that they are not Hindus and Muhammadans.

In the end I have to submit one thing. According to the ruling of the Chair we are committed to the principle of the Bill. It is not quite clear to me, however, what we can say is the principle of the Bill. The principle of the Bill should be to liberalise the system of marriage and make the scope wider. If that is the principle of the Bill, then, I think, in the Select Committee, we could go and discuss whether we are to allow intermarriages between different religions or between different castes. If the principle of the Bill is that we are to allow intermarriages between different religions, that would be quite a different thing, and we cannot go and discuss in the Select Committee whether there should be intermarriages between different castes and different religions or not. In the one case, I do say, there is some demand in all the communities and I would allow the Bill to go to the Select Committee. In the other case, I know there is not so much demand. I would therefore request you, Sir, to clear up the point as to what would be the principle of the Bill in this respect and whether we would stand committed to the principle of intermarriages between different castes and different religions or simply to the

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principle of liberalising the sphere of marriage. Whatever may come out of the Select Committee I cannot say.

Mr. H. Sharp (Education Secretary) : Sir, I see that the number of those anxious to catch the Honourable the President's eye is diminishing and I see that the Honourable the Mover is beginning to exhibit anxiety to reply. I therefore take this opportunity of saying, on behalf of Government, that Government remain in this matter absolutely neutral. I am aware that this has already been said by the Honourable the Home Member, but he has asked me to repeat it. I know that what I say will not be altogether pleasing to Haji Waji-ud-din, who is not here, but I nevertheless say it. Of course, if there are official Members here who desire to vote, it is quite open to them to vote as their reason or conscience may dictate, but the Government remain neutral.

Mr. T. V. Seshagiri Ayyar : Before Dr. Gour replies, I should like to have your ruling, Sir, upon the point which I raised. If the matter goes before the Select Committee, will it be permissible to consider the question that the man who has an only son should be allowed to adopt, and also whether it will be possible to consider the other questions raised by me, namely, that the issue of mixed marriages should not be allowed to take any share in the management of endowed properties and that they should have no right of collateral succession.

Unless those matters can be gone into in Select Committee, as I said before, I, for one, will not be able to vote for the Bill. Therefore I want your ruling, Sir, as to whether, when the matter goes to Select Committee, the amendments which I have put forward can be embodied in the Bill.

Dr. H. S. Gour : With reference to what has fallen from the last speaker, may I point out to you, Sir, that it would not be right to fetter the discretion of the Select Committee?

Mr. Harchandrai Vishindas (Sind : Non-Muhammadan Rural) : Sir, I want to say with reference to the remarks which have fallen from Mr. Seshagiri Ayyar both this time and the previous time, that he appealed to the Honourable the Law Member of the Government to enlighten him as to the permissibility of these amendments which he proposes; but I think he should be able to enlighten us, he himself being an ex-Judge, as to what are his views and whether these amendments could properly be made in Select Committee or not.

Mr. President : I cannot give a ruling until I see the amendments. The whole purport of an amendment lies in the manner in which it is drafted; and I am not even prepared to give an opinion on the general subject, as that bears not so much on the rules and Standing Orders as upon the underlying principles of Hinduism, of which the Honourable Member is a better Judge than myself.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : May I rise to a point of order, Sir? As I have supported the principle of the Bill, I should like to mention that this Bill makes no provision against polygamy.

Mr. President: Order, order. The Honourable Member wished to put a point of order. He is not entitled to explain his position under the guise of rising to a point of order.

Mr. J. Chaudhuri: Sir, I was going to say that when I gave my support to this Bill, I supported the principle, not the details of it. But now it has occurred to me that this Bill makes no provision against polygamy. May I ask Dr. Gour if it does?

Dr. H. S. Gour: It does, Mr. Chaudhuri,—Section 2, clause 1 of the principal Bill. You are asking the Chair what you should have asked the Act itself.

Sir, I have listened with very great interest to the debate on my Marriage Bill. I must congratulate my friend, Sir Sivaswamy Aiyer, and my friend, Mr. Seshagiri Ayyar, for throwing a real light on this most difficult question. I consider their attitude both natural and reasonable. They demand, and rightly demand, that, while the reformers have the right to marry under the Civil Law, they must not in any way trench upon the rights of the orthodox; and Mr. Seshagiri Ayyar has spoken in a similar strain. Now, Sir, I wish to give my friends of the orthodox party a clear undertaking that I shall refer the following questions to the Select Committee in connection with my Bill:

- (1) the question of collateral succession;
- (2) the question of adoption;
- (3) the right of residence in the family dwelling-house; and
- (4) the question relating to religious endowments.

I submit, Sir, that these are questions which do not underlie the principle of the Bill, but are necessary safeguards intended for the protection of those who still wish to marry under the orthodox law.

And as regards my Muhammadan friends, I can assure them that if after the report of the Select Committee the bulk of the Muhammadan opinion in the country is hostile to inter-marriages between Muhammadans and non-Muhammadans, I am prepared to cut out the term 'Muhammadan' from that Bill and leave the Muhammadans to their fate.

Mr. W. M. Hussanally: May I inquire how many Muhammadan opinions you have received upon the Bill?

Dr. H. S. Gour: My friend inquires—and this will be the first and last interruption I shall answer.

Sir Jamsetjee Jejeebhoy (Bombay City: Non-Muhammadan Urban): Will the Honourable Member give the same undertaking for Parsis?

Dr. H. S. Gour: And similar safeguards with reference to Parsis . . .

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): And to Sikhs?

Dr. H. S. Gour: To all castes and communities. As regards the question asked by Mr. Hussanally, as to how many Muhammadan opinions I have

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gathered, I have gathered the opinions not of individual Muhammadans, but of Muhammadan provinces, and I can assure the learned interrupter that if he will turn to that premier Native State of India, the dominion of His Exalted Highness the Nizam of Hyderabad, he will find Hindu-Muhammadan marriages customary and in vogue. That is in consonance with Islamic Law (*Mr. Hussanally: No.*)

Mr. President: I must call upon the Honourable Member from Sind to desist from these interruptions.

Dr. H. S. Gour: After that most unnecessary interruption I must resume my reply. You will find that, leaving out rational objectors, reasonable objectors, like my friend, Mr. Rangachariar, Sir Sivaswamy Aiyer, Mr. Seshagiri Ayyar, Mr. Shahani, Sir Jamsetjee Jejeebhoy and others, who are willing that this Bill should be sent to the Select Committee upon the undertakings which I have given, there remain a very few stern and unbending religious Tories and they tell us that this is a measure which trenches upon the fundamental principles of their religious beliefs.

Mr. W. M. Hussanally: I rise to a point of order; is my Honourable friend entitled to call us Tories?

Mr. President: Quite a number of people in the world think it an honourable title.

Dr. H. S. Gour: I cannot reply to individuals, Sir, but I have collected their arguments and summarised them. I shall first deal with the Hindu objections, then with the Muhammadan objections, and lastly with the objections of my esteemed Sikh friend. I am surprised that in this 20th century a member of my own profession should rise up from his place and cite *Manu* in support of his authority and place a ban on inter-marriages. If he had read *Manusmriti* in the original, or any other commentaries of that great law-giver, he would have found that inter-caste marriages were not only customary but common, and not only inter-marriages but inter-racial marriages were common. Authorities after authorities can be cited in support of my contention, and the cumulative testimony of the authorities of the last thousand years contradicts my friend's statement. I do not stand alone in holding this view. That eminent Judge, Mr. Justice Sadashiva Aiyer, in his long, learned and luminous note printed at page 10 of the Paper No. 1 circulated to the Members, which I presume my friend has overlooked, has pointed out that the prohibition against inter-caste marriages was brought about by forging two verses in the *Manusmriti* and the commentaries, and that is the view also of that eminent Sanskritist and scholar, Monier Williams. If he will do me the honour of reading the Introduction to my Hindu Code, he will find a collection of authorities showing how after the revival of Hinduism in the 15th and 16th centuries, wholesale forgeries of our Shastric books were perpetrated for an ulterior purpose, to legalise the then growing custom against inter-caste and inter-racial marriages. As a student of history my friend will see and know that the reason is obvious.

Then, Sir, it has been said that our religion is in danger. We have heard this cry for the last hundred years. (Laughter.) At any rate, we have hear

it said so. In 1868 when the Law Member, that distinguished lawyer, Sir Henry Sumner Maine introduced his Bill for the establishment of civil marriages in this country, a large volume of opinion was collected from the various parts of the country, and it was pointed out that civil marriages would deal a death-blow to Hindu society. And what was the reply of that eminent Jurist? The reply was that, if Hinduism has received any death-blow from any statute law, it has been already given by the *Lex Loci* Act, and that is the view which Their Lordships of the Privy Council in the case cited by my friend, Mr. J. Chaudhuri, have enunciated at page 365, Volume 33 of the Indian Law Reports, Allahabad. Referring to the two enactments known as the *Lex Loci* Acts, Their Lordships say :

‘The intention of both enactments is perfectly clear. By declaring that the Hindu or Muhammadan Law shall not be permitted to deprive any party, not belonging to either of those persuasions, of a right to property or that the law or usage which inflicts forfeiture of rights or property by reason of any person renouncing his or her religion shall not be enforced, the legislature virtually set aside the provisions of Hindu Law which penalise the renunciation of religion or exclusion from caste.’

That is my answer to those who speak and talk about an attack upon their religion. In 1872, Sir, when this Bill was under discussion, Sir James Stephen, another distinguished lawyer, pointed out that it was the duty of the Government to provide a form of marriage to a definite class of people who objected to marry under any particular personal law. The Brahmos, who had moved previously His Majesty’s Indian Government to provide them with a civil marriage law, were given the law known as Act III of 1872, and in the discussions in Council, Sir James Stephen pointed out that besides reformers like the Brahmos, there might arise other dissenting sects, offshoots of Hinduism or of other religious creeds, who may hereafter claim similar rights and privileges, to whom a similar law may be necessary ; and, therefore, what was designated originally as the Brahmo Marriage Act was afterwards converted and altered into the Civil Marriage Act. That was the intention of Act III of 1872, *viz.*, to provide a form of marriage for all persons who dissented from the creed of Hinduism or Islam or orthodox Christianity, for whom, however, a separate Act had already been provided. Now, Sir, this was the state of law and Sir James Stephen did not omit to consider that when he put down in the Act the exceptional clause excluding persons who professed the Hindu, Muhammadan, and the rest of the religions, he thought that Brahmos and Sikhs, the Arya Samajists and the Prarthana Samajists and other reformant classes would necessarily be classed as non-Hindus. Therefore, he thought that he had sufficiently provided for the contingency which the growth of education and the contact with Western ideas would produce in this country. But Their Lordships of the Privy Council, in the judgment which I have cited in the Statement of Objects and Reasons appended to my Bill (31 Calcutta, page 11), on a review of the authorities, came to the conclusion that the term ‘Hindu’ did not exclude either Brahmos or Sikhs or other dissenting members of that religion. That brought the situation to a crisis. Even those people for whom this Bill was originally and primarily designed could not conscientiously marry, because they could not subscribe to the declaration, in the face of the decision of the Privy Council, that they did not profess the Hindu religion, when the Privy Council said that they did not cease to be Hindus by the mere fact that they were Hindu reformers.

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The result has been that a cloud,—a serious cloud—has been thrown upon the legality of marriages that have been contracted under the original Act III of 1872. My learned and esteemed friend, Mr. Seshagiri Ayyar, has pointed out the extreme folly of asking Hindu reformers either to marry under the orthodox law or not to marry at all. He might have gone further and commented upon the greater folly of the Indian Government which comes and says that, if you want to get married, you must have a religion, and, if you have no religion, you shall not have a wife. I am surprised, Sir, that any civilised Government should throw the members of the reforming community into the arms of their orthodox friends. (Hear, hear.) I am surprised that the Indian Government Benches should be so desolate (Laughter) on this occasion when I am waging a war upon what I consider to be the vested rights of a class and upholding the dignity of human freedom of contract. I say that it was the bounden duty of the Indian Government to provide for a general marriage law applicable to those who wished to marry thereunder, and I am here doing a duty which, I submit, lay upon the Government to discharge. I am surprised, Sir, that in spite of the instructions which we received the other day from the Leader of the House and repeated to-day by the Honourable Mr. Sharp, even the official Members who are not Members of the Executive Council are conspicuous by their absence. (Hear, hear.) (*An Honourable Member*: Not all.) But let that pass. I stand in support of my Bill upon the strength, upon the righteousness of my own cause and I do not want any support of those who grudgingly gave it in 1873 and are to-day prepared to throw us to the wolves of the orthodox party. (Laughter.) Now, Sir, I think I have done with the members of my own community. I have made peace with them and I am perfectly certain that every one of my friends belonging to the Hindu religion, belonging to the Hindu community, to use the expression which the Honourable Mr. Rangachariar would prefer, would rally to my support and transmit this Bill to the Select Committee.

I now appeal to my sympathetic opponents of the Muhammadan persuasion. Do you know that I am trying to knock off a few bars from your prison house? Do you know that in introducing this Bill and including you within its provisions I am liberating you from a bondage (Laughter) and a disability from which you have suffered from ages past? Do you know, Sir, that I am fighting the battle of freedom and trying to emancipate you? You may object to-day but your children and your children's children will bless me and my name for having fought in the teeth of the opposition of those orthodox people who had not a long vision and did not see what will be apparent to a child of future years. You all want Swaraj. Can you have, my friends, Swaraj in a divided house. You say, you want the settlement of this question and the emancipation not only of this country but of the whole world. Have you, by your own conduct, and by your own example, qualified yourself to be the redeemer of the world? It has been said, by that very acute writer who was at the bottom of the reforms which have resulted in the creation of these expanded Councils (I mean Mr. Lionel Curtis) in his '*Letters to the People of India*':

'In India, the need for social reform largely arises from custom, which has been crystallised by decisions in the courts under the rigid legal system which we ourselves introduced from the West. . . . In England, I have often heard South Africa branded as the one country beneath the British flag in which marriage between two sections of British subjects

was forbidden. What was my surprise, then, on coming to India, to find that, under a law of that country, no legal marriage between members of two different castes could be solemnised.'

Then a note of ejaculation or exclamation follows. I do not know what would have been his surprise if he had known that, even amongst persons of the same caste, there are as many as five thousand sub-castes. Only yesterday (the Honourable Mr. Bajpai will bear me out), one member of the orthodox community assured me that his was a decadent community. Some ten years ago, they numbered about 15 lakhs. Now they number only 7 lakhs and have no less than 5,000 sub-castes and these sub-castes do not intermarry. The result then is that marriage is confined to half a dozen families and such is the scramble for boys that people are known to offer half their fortune to secure eligible husbands for their daughters.

Now you are the brothers and fathers of your female relations. You have daughters, you have sisters. Do you not deplore the fate of your womenfolk who are reduced to that condition? Do you not know that in Bengal, since the days of Snehalata, girls have committed immolation because they were afraid they were becoming marriageable, which meant utter ruination to their fathers? Do you not pity, I ask the poor parents in Bengal, who for the sake of an eligible match for their daughters, have not only to spend all that they have but to strain their credit to the utmost, and that they and their descendants die in poverty and want because they say they were condemned to possess a daughter? Are you prepared to support such an institution? Have you no pity within your human bosom to uplift the people who suffer from these cruel wrongs? You are sitting here not merely as the representatives of small local constituencies which you represent. You are sitting here to represent the spirit of India; and it is crying aloud, crying for vengeance against these old obnoxious customs. Rise above these petty considerations. Rise above these petty jealousies. Discard your privileges, and act like men, I have been told, Sir, by my Muhammadan friends that, under Islamic Law, inter-marriages are permissible and are permitted between Muhammadans and Christians and Jews, but there can be no inter-marriage between Hindus and Muhammadans. I ask my Muhammadan friends what does that imply? If marriages are permitted between Muhammadans and Christians and Jews, where is the marriage law to solemnise these marriages? If and because there is no marriage law in this country, my Bill, if passed into law, will enable you to contract marriages permissible under your sacred Koran. We have been told, and we have been told more than once, and, I am surprised, by no less a person than Rao Bahadur Rangachariar, that, if these marriages are allowed, 'I do not like it'. Did my friend think that the moment this Bill becomes law, I shall lay him by the heels, drag him to the registrar's office (Laughter), assign to him a wife and drive both of them in a carriage and pair, force them to forsake their family gods, to leave their family dwellings and to stop all the solemn ceremonies of the orthodox creed? If my friend is under that impression, I stand up to disillusion him. He need not marry again, unless he likes: and I therefore say that all the lurid picture which he has presented to this House of marriages contracted under this pernicious and obnoxious law which I have the honour to ask this House to send to the Select Committee, is as good as never passed because it is purely optional and permissible. It places a new weapon in your armoury,

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It does not call upon you to use it unless you like. It gives you a new right but you need not exercise it. This, I submit, is my objection to my friend who gives me abundance of individual sympathy but has objections on religious grounds. So long as those objections remain insurmountable, I may assure my Honourable friend that he is at liberty to let this Act alone. It is entirely in his discretion whether he uses it or not; and that is my reply to the opposition created by the vivid imagination of some of my friends who sit behind me. They say: 'you present this Bill and ask this House to send it to the Select Committee. How can it be done? What will happen? This has never been done before. How can we do it now?' My friends, I deplore the mind from which these words come. I feel that they betoken a spirit of irrational conservatism that lags behind but is afraid to go forward or even to look forward. I say to you, my brethren, that, if you desire any progress in this country, it can never come unless you unite, and union is impossible so long as you remain as you are and continue established in an archaic form of society. India in the past was an isolated country; it is now exposed to international competition and you will not be permitted to live in your own land and will be supplanted by those who have the right to live here, because they are better disciplined, more civilized, more catholic in thought and more cosmopolitan in deeds. The ideas of the past must be forgotten. I have told you, my friends, and I repeat once more that if you value political progress, if you think that Swaraj is close—I myself think it is—it is necessary that, in your Pilgrim's Progress to the Promised Land, you travel united in thought and action. If class fights against class, caste against caste and race against race, that time, of which you dream, of seeing a United Federation of Indian States, will never come. And even if it came, believe me, it would go as quickly as it came.

Now, Sir, I shall just advert to my friend who represents the Sikh community. He has also conscientious objections to the details of this Bill. If I have not misunderstood him, he recognises the necessity of inter-caste marriages. I have already given him the assurance that the matter will be laid before the Select Committee and, if my Muhammadan brethren remain as obdurate as they seem to be, I am not going to drive them into the reform fold. On these grounds, Sir, I hope that my measure will receive the unanimous support of this House and move one more step towards the Select Committee.

Khan Bahadur Sarfaraz Hussain Khan: I should like to ask a question. There is no doubt that Dr. Gour has made a very stirring appeal. But he has not met my objections. He has used about one hundred of sentences but he has not said one word to meet my objection, which is based on the text of the Koran.

Mr. President: Does the Honourable Member wish to ask a question? I have already told another Honourable Member that he is not entitled to explain his personal position under the guise of a point of order.

Dr. H. S. Gour: I shall break my rule once more in the hope of winning over not only the Assembly but the vote of my friend on the left. My reply to his question is that no less a man than the Right Honourable Ameer Ali, a Member of the Privy Council and a dispenser of justice in the Court of final

appeal from this country, has adverted to that passage and pointed out that the word 'Iman' means 'believer,' *i.e.*, believer in one God; otherwise the Prophet would have interdicted inter-marriages between Muhammadans and Christians and Jews. If the word 'Iman' means the true Muslim faith, that other passage which says that it is legal to marry a Christian and a Jew would be impossible and unmeaning. Therefore I reconcile the two phrases. The interpretation of the Doctors of Muhammadan Law for the last 1,200 years has been that it means true believer in one God, and therefore you will not transgress any written text of the Holy Writ in voting for the Select Committee, which I am asking this House to send this Bill to. I now move, Sir, that this Bill be sent to the Select Committee.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : As my name has been mentioned by the Honourable Member, after hearing his reply, I propose to continue to be the wolf, and I therefore propose to vote against the motion.

Mr. President. The question is :

'That the Bill further to amend Act III of 1872 be referred to a Select Committee.'

The Assembly then divided as follows :

AYES—25.

Aiyer, Sir P. S. Sivaswamy.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Dentith, Mr. A. W.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Iswar Saran, Munshi.
Joshi, Mr. N. M.
Kabiraji, Mr. J. K. N.
Keith, Mr. W. J.

Lindsay, Mr. Darcy.
McCarthy, Mr. F.
Misra, Mr. P. L.
Nag, Mr. G. C.
Percival, Mr. P. E.
Rao, Mr. C. Krishnaswami.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Shahani, Mr. S. C.
Vishindas, Mr. H.
Way, Mr. T. A. H.
Zahiruddin Ahmed, Mr.

NOES—27.

Abdul Majid, Shaikh.
Abdul Quadir, Maulvi.
Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Faiyaz Khan, Mr. M.
Hajeebhoy, Mr. Mahomed.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Jatkar, Mr. B. H. R.
Jejeebhoy, Sir Jamsetjee.

Man Singh, Bhai.
Mudaliar, Mr. S.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Sarfaraz Hussain Khan, Mr.
Singh, Babu B. P.
Singh, Rana U. B.
Sinha, Babu L. P.
Sohan Lal, Bakshi.
Subrahmanayam, Mr. C. S.
Wajihuddin, Haji.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 24th January, 1922.