

LEGISLATIVE ASSEMBLY DEBATES

THURSDAY, 18th FEBRUARY, 1932

Vol. II—No. 1

OFFICIAL REPORT



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LEGISLATIVE ASSEMBLY

Thursday, 18th February, 1932.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President in the Chair.

APPOINTMENT OF THE COMMITTEE ON PETITIONS.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Under Standing Order 80 (1) of the Legislative Assembly Standing Orders, I have to appoint a Committee on Petitions. I have therefore to announce that the following Honourable Members will form the Committee:

Mr. Arthur Moore,

Sir Abdullah Suhrawardy,

Diwan Bahadur Harbilas Sarda, and

Mr. B. Sitaramaraju.

According to the provisions of the Standing Orders, the Deputy President, Mr. R. K. Shanmukham Chetty, will be the Chairman of the Committee.

STATEMENT OF BUSINESS.

The Honourable Sir George Rainy (Leader of the House): With your permission, Sir, I desire to make a statement as to the probable course of Government business in the week beginning Monday, the 22nd. On that day the order of business will be:

- (1) motions to take into consideration and pass the Wire and Wire Nail Industry (Protection) Bill;
- (2) a motion to circulate the Bill further to amend the Workmen's Compensation Act, 1923, which was introduced by the Honourable Sir Joseph Bore yesterday;
- (3) a Resolution which stands in my name dealing with import duties on galvanized iron, steel pipes and sheets;
- (4) a Resolution which stands in the name of the Honourable Sir Joseph Bore dealing with the Draft Convention of the International Labour Conference concerning hours of work in coal mines.

On Tuesday, the first legislative business will be motions to take into consideration and pass the Bamboo Paper Industry (Protection) Bill. Thereafter any business not concluded on Monday, will be taken up, and finally, if any time is available, the debate on the motion that the Report of the Public Accounts Committee be taken into consideration will be begun.

On Wednesday, any business left over from Tuesday's List will be taken in the order in which it stood on that list.

For Thursday, we are asking a direction from the Governor General to present the Railway Budget. If any business remains over from the previous day's list, it will be taken after the presentation of the Railway Budget. At present it is not proposed that the House should sit on Friday or Saturday.

Mr. R. K. Shanmukham Chetty (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Mr. President, with your permission I would like to make a suggestion in regard to the procedure as to the agenda for to-day. As our Standing Orders stand at present, in the ballot Bills which have already been introduced and with reference to which motions for circulation or consideration by the Select Committee have been given get priority over motions for leave to introduce the Bill. Now, this Standing Order works as a great hardship in the case of Members who want leave to introduce their Bills. The practical consequence of this is that if any one does not get a chance of introducing a Bill in the beginning of the session, he practically does not get a chance for three years. I propose, Sir, to give notice of a suitable amendment to our Standing Orders to rectify this grievance, but in the meantime, I would with your permission move that in the Agenda for to-day items Nos. 7 to 66, which comprise motions for leave to introduce Bills, may be taken up in that order first, and after these are disposed of, items Nos. 1 to 6 may be taken in that order. I have got the permission of Honourable Members in whose name items 1 to 6 stand in the Agenda paper, and if you, Sir, agree to this suggestion, and if the House would agree, I would like that this procedure be adopted to-day.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair has repeatedly stated that with practically the unanimous consent of the House such variations in procedure can be allowed. The Chair sees no objection to the suggestion which has been made, but wishes to know whether there is practical unanimity in the House, in favour of the suggestion. Is there any objection to the course suggested by the Deputy President being adopted for to-day's procedure?

The Honourable Sir George Rainy: I do not rise to object, but there are one or two remarks I should like to make. In the first place, so long as the Standing Orders remain in their present form, nothing that is done to-day could of course debar any Member of the House, whether a Member of Government or not, from raising an objection if on any subsequent occasion it was intended to follow the same procedure. That, I think, is clear. In the second place, I should like it to be understood that at this stage Government are not expressing any opinion whatsoever on the suggestion that the Standing Order ought to be amended. That will be considered at the proper time if a motion is brought forward. Subject to these two remarks I do not propose to offer any objection.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair has made it clear repeatedly that any change of procedure, as proposed on the present occasion, will only be accepted by the Chair if there is a practical unanimity in the whole House. That is the answer to the first point made by the Leader of the House. As regards the second point, it is clearly open to the Honourable House to consider any motions for the amendment of the Standing Orders which may be brought forward and to take such attitude in regard to them as they may deem proper. I take it that there is no objection. I will therefore accept the procedure suggested by the Deputy President.

THE INDIAN INCOME-TAX (AMENDMENT) BILL.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): I move for leave to introduce a Bill further to amend the Indian Income-tax Act, 1922. Honourable Members who have got a copy of this Bill before them will find that there are 54 signatures appended to this Bill. That shows at once the strength of feeling on this side of the House in favour of this Bill. I know that this Bill is defective in its drafting. I would ask the Honourable occupants of the Treasury Benches to assist us in putting it in proper shape. The object of this Bill is to provide for a judicial control of the assessment of income-tax and that is a principle upon which I think there would be no difference of opinion between ourselves and the Honourable Members on the other side of the House. Sir, I move.

The motion was adopted.

Sir Hari Singh Gour: I introduce the Bill.

THE INDIAN "KHADDAR" (NAME PROTECTION) BILL.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muhammadan): I move for leave to introduce a Bill to provide for the protection of the names "Khaddar" and "Khadi" used as trade descriptions of cloth spun and woven by hand in India. Sir, I move.

The motion was adopted.

Mr. Gaya Prasad Singh: Sir, I introduce the Bill.

THE INDIAN COASTAL TRAFFIC (RESERVATION) BILL.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to reserve the Coastal Traffic of India to Indian Vessels.

The motion was adopted.

Mr. B. V. Jadhav: Sir, I introduce the Bill.

THE HINDU UNTOUCHABLE CASTES (REMOVAL OF DISABILITIES) BILL.

Mr. R. K. Shanmukham Chetty (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to remove disabilities affecting the untouchable castes of the Hindu community. It has been represented to me, Sir, by some of

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my friends, that the Bill does not go far enough. My object in introducing this Bill is to give an opportunity to this House to rectify a great blot that now rests on Hindu society. I do not propose in the later stages to make any attempt to hurry through this measure. I propose to move such a motion as would give ample opportunity to this House to record its opinion on the subject. Sir, I move.

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I oppose the introduction of the Bill because it is based upon a fundamental misconception of the rights of the so-called untouchable castes. With regard to the principle of the Bill, I have nothing more to say now; with regard to the rest of the Bill, I reserve my remarks for the further stages.

Mr. President: The question is:

“That leave be given to introduce a Bill to remove disabilities affecting the untouchable castes of the Hindu community.”

The motion was adopted.

Mr. R. K. Shanmukham Chetty: Sir, I introduce the Bill.

THE PREVENTION OF DEDICATION OF DEVADASIS BILL.

Mr. R. K. Shanmukham Chetty (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to prevent the dedication of women to service in Hindu Temples in British India.

The motion was adopted.

Mr. R. K. Shanmukham Chetty: Sir, I introduce the Bill.

Sir Hugh Cocke (Bombay: European): I rise to a point of order, Sir. Mr. Chetty mentioned that he had got the permission of the Members who had the first six motions on the paper that these should stand over till the other subsequent motions were got through, and on that ground you allowed these introductions to proceed. I do not know whether Members who have got Bills to introduce had notice of this. It seems to me very unfair that certain Members should not be able to introduce their Bills because they did not know that a new procedure was going to be adopted. I was about to rise just now to suggest that these Members should have notice of this new procedure, but perhaps all the introducers of the Bills have been notified. Whether that is so or not I do not know.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair recognizes the force of the point which the Honourable Member has made. At the same time the Chair wishes to emphasise the fact that it is the duty of all Honourable Members of this Assembly to be present in their seats when the Assembly is sitting (Hear, hear). It has been a matter of regret to the Chair that the attendance has been so poor on many occasions.

THE HINDU INHERITANCE (AMENDMENT) BILL.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move for leave to introduce a Bill to amend the Hindu Law of Inheritance. I need hardly remind the House that this subject has also been exercising the minds of several Honourable Members and that is my excuse for introducing this Bill. I do not claim that I have exhausted the list of all the possible heirs who deserve a high place in the catena of the Hindu order of inheritance, but this will go some way towards mitigating a glaring defect in Hindu law. Sir, I move.

Mr. President: The question is:

"That leave be granted to introduce a Bill to amend the Hindu Law of Inheritance."

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I beg to oppose the introduction of the Bill . . .

Mr. President: The Honourable Member can say "No" when the question is put.

The question is:

"That leave be granted to introduce a Bill to amend the Hindu Law of Inheritance."

The motion was adopted.

Sir Hari Singh Gour: Sir, I introduce the Bill.

THE CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL.

Mr. Bhuput Sing (Bihar and Orissa: Landholders): Sir, I beg to move for leave to introduce a Bill to amend the Child Marriage Restraint Act, 1929. This Bill has been designed with a view not to repeal the Act but to obviate certain difficulties which have arisen or may arise hereafter, as has been explained in my Statement of Objects and Reasons. Sir, I have nothing further to add at this stage. I move.

The motion was adopted.

Mr. Bhuput Sing: Sir, I introduce the Bill.

THE CHILD MARRIAGE RESTRAINT (REPEALING) BILL.

Khan Bahadur Haji Wajihuddin (Cities of the United Provinces: Muhammadan Urban): Sir, I beg to move for leave to introduce a Bill to repeal the Child Marriage Restraint Act, 1929.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I oppose the motion.

Mr. President: The question is:

"That leave be given to introduce a Bill to repeal the Child Marriage Restraint Act, 1929."

The motion was adopted.

Khan Bahadur Haji Wajihuddin: Sir, I introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Sardar Sant Singh (West Punjab: Sikh): Sir, I beg to move for leave to introduce a Bill further to amend the Code of Criminal Procedure, 1898. I have given my reasons for amending the various sections of the Code of Criminal Procedure in my Statement of Objects and Reasons. Sir, I move.

The motion was adopted.

Sardar Sant Singh: Sir, I introduce the Bill.

THE CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to amend the Child Marriage Restraint Act, 1929.

The motion was adopted.

Raja Bahadur G. Krishnamachariar: Sir, I introduce the Bill.

THE CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL.

Khan Bahadur Haji Wajihuddin (Cities of the United Provinces. Muhammadan Urban): Sir, I beg to move for leave to introduce a Bill to amend the Child Marriage Restraint Act, 1929, for certain purposes.

The motion was adopted.

Khan Bahadur Haji Wajihuddin: Sir, I introduce the Bill.

THE INDIAN TRUSTS (AMENDMENT) BILL.

Mr. R. K. Shanmukham Chetty (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Trusts Act, 1882, for a certain purpose.

The motion was adopted.

Mr. R. K. Shanmukham Chetty: Sir, I introduce the Bill.

THE INDIAN REGISTRATION (AMENDMENT) BILL.

Sardar Sant Singh (West Punjab: Sikh): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Registration Act, 1908.

The motion was adopted.

Sardar Sant Singh: Sir, I introduce the Bill.

THE INDIAN LIMITATION (AMENDMENT) BILL.

Sardar Sant Singh (West Punjab: Sikh): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Limitation Act, 1908.

The motion was adopted.

Sardar Sant Singh: Sir, I introduce the Bill.

THE INDIAN TRUSTS (AMENDMENT) BILL.

Seth Haji Abdoola Haroon (Sind: Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill further to amend the law relating to Private Trusts and Trustees.

The motion was adopted.

Seth Haji Abdoola Haroon: Sir, I introduce the Bill.

THE SPECIAL MARRIAGE (AMENDMENT) REPEALING BILL.

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill to repeal the Special Marriage (Amendment) Act, 1928.

The motion was adopted.

Raja Bahadur G. Krishnamachariar: Sir, I introduce the Bill.

Mr. B. Das (Orissa Division: Non-Muhammadian): I shall be grateful, Sir, if I am allowed to introduce my Bills. I am sorry I was not in my seat when my name was called.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): I am afraid I cannot allow the Honourable Member to introduce his Bills now.

Mr. B. Das: Sir, may I point out that this has never been the practice of the House.

Mr. President: Order, order. I have already given my ruling. The Honourable Member can give notice and take his chance at the next opportunity.

THE HINDU MARRIAGES DISSOLUTION BILL—*contd.*

Mr. President: The House will now proceed with the further consideration of the motion moved by Sir Hari Singh Gour.

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadian Rural): Sir, I had given notice of a motion that the Bill be re-circulated for the purpose of eliciting opinions thereon a second time. I think I ought to explain that that motion was given after discussion with my Honourable friend Sir Hari Singh Gour and as the motion has already been moved by my friend Mr. Raju, it is no use my wearying the House again.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): You cannot repeat it.

Raja Bahadur G. Krishnamachariar: Very well, Sir. Another motion of which I had given notice

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadian): If my learned friend is going to move for the re-circulation of the Bill, I will accept his motion.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): That amendment has already been moved. Therefore he cannot move it again.

Mr. R. K. Shanmukham Chetty (Salem and Coimbatore *cum* North Arcot: Non-Muhammadian Rural): The object of Sir Hari Singh Gour is to intimate to the House that he accepts that motion with a view to cut short the discussion, if necessary.

Mr. President: Four Honourable Members have given notice of a further amendment and Raja Bahadur Krishnamachariar is one of them. The Honourable Member has intimated his intention of accepting the amendment for re-circulation. That is quite sufficient.

Raja Bahadur G. Krishnamachariar: Sir, so far as the motion to re-circulate the Bill is concerned, it is perfectly true that at one time I had agreed that it would be the better course. But now I find that there is absolutely no use in wasting the time of the House now or hereafter by

keeping the Bill alive. The Bill has absolutely no life, and it is practically now gasping for its last breath. Besides, the view point which I have the honour to represent in this House has not been placed on the record and I mean therefore to oppose the original motion. With regard to the other motion of which I have given notice along with three other Members, I at any rate do not propose to move it. Therefore, Sir, with your permission I shall state the grounds of my objection to this Bill.

Four years ago my Honourable friend introduced this Bill and after some discussion it was withdrawn by him. It is however necessary for me to refer to certain incidents that happened at that time in order to show how the present Bill is absolutely out of place, and so far as the circumstances in which it has now been introduced are concerned, there has been no change since the last Bill was allowed to be withdrawn. At that time when he introduced his Bill, the late Lala Lajpat Rai put a question to him. "My friend says, the Bill is intended to remove certain doubts regarding dissolution of marriage among persons professing the Hindu religion. Has he shown where the doubt is?" The same question now arises, he has not shown where the doubt is. Except what the Bill says, and except for the speech made by the Honourable the Mover of the Bill, it would be found that there is absolutely no doubt in the Hindu Law, at any rate from his standpoint, so far as this question is concerned. The old law-givers according to him, specifically stated that this has been the Hindu Law for over 3,000 years and consequently there is absolutely no doubt so far as the Hindu Law is concerned. In his reply to the question of Lala Lajpat Rai, my Honourable friend said that there were hundreds of cases which had been decided by courts holding that the Hindu Law, as it existed at present, did not give matrimonial jurisdiction to courts in respect of disputes between Hindus, and consequently he proposed to remove that defect. Now, his statement on that point in the Objects and Reasons given in this Bill only repeats the position that, so far as the Hindu Law is concerned there is no doubt about the right but that it is absolutely silent as regards the matrimonial jurisdiction. The result of it is that if my friend wanted to make provision for that, he ought really to have brought in a Bill to supplement the Hindu law as he understands it by giving courts matrimonial jurisdiction. But this he does not do. Upon the merits of the Bill the late Lala Lajpat Rai, who claimed and I think justly claimed to be even a greater social reformer, opposed this Bill on the ground that this sort of piecemeal legislation in respect of Hindu law, without considering how it would affect the other relations, would be ill-advised, and that my Honourable friend's eloquence was misplaced. Having said that, he suggested that this Bill should be withdrawn and that another Bill should be, if necessary, brought forward later on. Accepting that suggestion, my Honourable friend said at that time: "My Honourable friend is perfectly right that the time is not yet ripe and because that time is not yet ripe, I take his advice and I will renew this measure on a more propitious occasion". That withdrawal was allowed by this House. The position then was that an attempt was made frankly and directly to attack the Hindu law in relation to marriages and the motion was opposed and eventually withdrawn, upon the ground that the time was not then ripe. Four years later he has simply copied out the same Bill and has introduced it. May I respectfully ask him how the time which was then unripe has ripened now and how this is a better occasion than the former one in order to introduce this Bill? So far as

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I have been able to understand his speech, he has not given reasons or the facts upon which he has come to the conclusion that the time is ripe for introducing this Bill. On the contrary, if the attitude of the House which was evidenced by the incident of last Saturday is to be judged as the proper state of mind in which this House is with reference to this Bill, not only is the time not ripe yet but the House is not at all prepared to give my friend any occasion to waste its time any more in discussing this Bill. Consequently so far as the time is concerned, the present seems to be even more unripe than the former occasion. I have read and tried to understand the speech which my Honourable friend delivered the other day in moving his motion to refer the Bill to the Select Committee. I have not been able to understand why he has again persisted in bringing forward a Bill only providing a thing which according to him is absolutely clear but failed to provide for the *lacunae* which according to him exists in the Hindu law. He says he does not merely ask for a processual law but that he wants to have it declared that for the reasons stated by him a marriage may be dissolved or declared null and void. He has referred with great triumph to the Baroda Act which shows a great deal of progress made in the Indian States as compared with British India. I shall have to say later something in detail about that, but on the present occasion I shall invite the attention of the House to the fact that the Baroda Act has got between 40 and 50 sections and it gives elaborate detail as to what has got to be done when you want nullity of marriage, dissolution of marriage or judicial separation. That Act provides elaborate details as to what the party who wants relief from a court should do before he can get that relief. My Honourable friend, Sir Hari Singh Gour, forgets all that. Supposing the Bill is passed what is the remedy for the wife, what is the remedy for the children?

An Honourable Member: That will be supplied by the Select Committee.

Raja Bahadur G. Krishnamachariar: I have been hearing for some days in connection with these Bills that every imbecile attempt to introduce legislation is justified by the fact that the *lacunae* should be rectified by the Select Committee. That is not the rule. The rule is that in the second reading, the principle should be absolutely and finally decided. So far as I can see, once in the second reading the principle is admitted, the only opportunity that Honourable Members will have to get the Bill rejected is when the motion for third reading that the Bill be passed is made either as amended or not amended. The Select Committee has absolutely no right, for instance, to say what shall be the procedure, when you yourself do not want to say what the procedure is. If you say that the procedure shall be of a certain kind the Select Committee may for instance say that there is contradiction between that and another Act and they may so adjust the two that one may co-ordinate with the other. It is a mere irregularity or a drafting mistake which would bring into existence unworkable conditions and this can be rectified by the Select Committee. If you decide upon the principle that divorce is allowed under the Hindu law you cannot place upon the heads of the gentlemen composing the Select Committee to decide what shall or shall not be the procedure to give effect to that principle. That is not the law and that is

not the procedure; that is not, so far as I can understand it, the manner in which legislation should be introduced. And no one knows that better than my Honourable friend Dr. Gour, and consequently it is that he said in his speech that he was not asking for a processual law. Having said that how can the Select Committee sit down and make it up for him? Consequently, Sir, the position is this. He introduced a Bill four years ago in order to declare what according to him is perfectly clear according to Hindu law. He said there was a defect in the Indian law; that defect has not been attempted to be rectified by him. He again wants the same declaration and how, I respectfully ask, is the time ripe so far as this legislation is concerned? He has not been able to show that.

Then, Sir, he says,—probably I have not been able to understand the language or the idea underlying it,—but he says:

“I wish to point out to Honourable Members that even within the narrow confines of customs, and custom so well recognised as it is in the case of the Sudras, the courts give decisions based on the facts in each individual case, and it is a notorious fact—a fact which has been recognised, as I have said, in the numerous decision of the various courts—that if a party goes to court for a declaration that the marriage of the parties has been dissolved under the customary law and by the caste Panchayat, the court still demands evidence the quantum of which naturally depends upon the caste of the parties.”

I do not know exactly what the grievance is. He says that if the caste panchayat according to existing custom dissolves a marriage the person who wants to enforce the relief through the court is told by the court to bring some evidence; in other words, without producing evidence you cannot get the relief that you want. Is it the idea that when this Act is passed the court will be entitled to pass an order without any evidence whatsoever. You have still got to produce evidence of impotency; you have still got to produce evidence of the two other factors that would enable a woman to obtain a divorce; and consequently I do not understand what it is that the Honourable Member wants or what are the defects in the existing law about which he complains.

Sir, that is the position, and if the speech of my Honourable friend on the present occasion be read, you find it is a jumble of irrelevance, and ill-considered and ill-digested arguments which do not go to support the position that he wanted to make.

Now, Sir, so much with reference to what he wants this House to do. Now, as regards the subject-matter of the Bill itself it is, as he frankly admitted, an interference with the Hindu law of marriage. Now, Sir, according to the authorities, according to the view of the Government which they have been holding from the earliest times, among Hindus marriage and religion are two words which mean the same thing. The idea has been pressed by the Government of India whenever a question relating to Hindu marriage arose. As to the policy which Government follows in dealing with a Bill of this nature and which the present Law Member repeated only the other day, it has been going on without a change from the very earliest times, namely, from the year 1872. That policy and principle of the Government of India is not to interfere with the present laws and customs of the different peoples of India unless they have very strong and conclusive evidence that the change is desired by the people who are affected. That, Sir, was laid down by Mr. Jenkins, sometime Home Member of the Government of India, in connection with a Bill that was attempted to be introduced to amend the Act of 1872 and

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the same has been from time to time repeated by every Honourable Member who represented the Government of India whenever such a Bill was introduced.

Now, I shall come to the point whether there is a demand for this legislation. Who demands that this legislation should be brought into existence? It is a pity that my Honourable friend, Mr. Das, who began very well in stating the entire absence of any demand on behalf of the so-called discontented wives and widows did not unfortunately pursue the subjects. Has my friend got any evidence before him that there is a demand, a real demand, an honest demand, about this? No. He has not produced any evidence, but on the contrary he regretted the fact of the Bill having been sent for opinion to mere men and that the women had no chance to give expression of their opinion. You will find in the notice of motion that stood in my name for re-circulation that I have at my friend's suggestion specially said "eliciting the opinion especially of women."

An Honourable Member: Of girls in schools and colleges?

Raja Bahadur G. Krishnamachariar: I cannot say whether my Honourable friend, by oversight or mistake or by forgetfulness failed to notice the fact that the most important ladies' association in Western India, an association whose opinion was flourished in our face when the previous Bill was being discussed, have given it as their opinion—printed along with the other opinions—that this Bill was not wanted and that it will create great mischief among the Hindus, and that they cannot support the Bill for dissolution of Hindu marriages by Sir Hari Singh Gour. It cannot therefore be said that women's associations were not invited to give their opinions. Their opinions were received; but as the saying goes, you can merely take a horse to the water—you cannot make him drink: you can ask them for their opinions; and when they recorded their opinions the result was against my friend.

In addition to that, who wants this legislation? My question is, "Who has made this demand for this legislation?" It is a libel on the race which produced a Sita or a Savitri that its modern representatives should claim to be freed from what their Holy Shastras teach them to be an irrevocable union for a contingency which they know is caused by their own *karma*. With very few unfortunate and obstinate exceptions, the Hindu wife regards her husband as the incarnation of Vishnu, is quite content with her lot and would never utter a word against her lord, whatever other moral, social or physical defects may exist among Hindus.

As pointed out by Mr. Justice Manmathanath Mukerjee:

"It cannot be gainsaid that much of the happiness that exists in Hindu homes is due to the conception which the Hindu wife fondly entertains of her spiritual union with her husband. A Hindu wife scarcely thinks of a declaration as to the invalidity of her marriage or a decree for its dissolution. The tie, to her conception, is knit by God and is indissoluble. To introduce an idea based on principles of contract, which are entirely foreign to the conception of Hindu marriage, will be to destroy the peace and happiness of many a home and will bring incalculable suffering to the offsprings. It is true that there are cases in which the Hindu wife has to suffer, but they are few and far between. Once the door is opened, all the deplorable consequences that divorce laws have brought in their train in other countries will appear in Hindu society, and the society will be altogether undermined."

An Honourable Member: What page are you reading from?

Raja Bahadur G. Krishnamachariar: I cannot give the page: I have extracted these quotations and had them typed out, from the opinion of, Mr. Justice Manmathanath Mukherjea.

If I had the time

Honourable Members: Go on: this is a Bill, not a Resolution.

Raja Bahadur G. Krishnamachariar: I do not want to waste the time of the House. If I had the time I could quote from the Shastras to prove the indissolubility of marriage and how, even in the face of those untold sufferings that my friend has tried to depict in his speech, no Hindu wife, if she is worth the name, ever speaks of any grievance at all against her Lord: after having lived a married life for a long time, owing to certain bodily infirmities, a Hindu wife will not want to separate from her husband and abandon her home and want to go and live apart in order to procreate and beget children. That is not the ideal of a Hindu wife; that has no foundation in our dharma; and my friend who, being obsessed with a desire to reform the Hindu society, and with a passion to relieve the social side in the Hindu society from its religious trammels, has unfortunately painted to himself conditions which do not exist except in his own imagination and tried to make a law which is already clear and omits to do what he says ought to be done in order to give effect to that law. Leaving these people alone, do the other members of the Hindu community want it? It has been observed by them that it is a dangerous innovation which would subvert Hindu society and that it would open a wide door to unnecessary, scandalous and expensive litigation and make unscrupulous women rush to court at the instigation of undesirable persons to prove that their husbands were impotent or imbecile. Above all, even the society known as the Arya Samaj do not support the Bill. The President of the Arya Samaj at Campbellpur has recorded his opinion that:

"The Bill proposed is not a sound one and is not helpful in ameliorating the state of the Hindu Society, but on the other hand, it will have a very damaging and destructive effect in increasing in the majority of cases unnecessary litigation which is quite undesirable for a poor country like India."

Those are some of the opinions that my friend obtained upon his Bill of 1928; and if you analyse the opinions you find that there is not even 10 per cent. in favour, all the rest being against his Bill. Men with different ideas of social organism have all joined and opposed his Bill, and government after government have said that it is a dangerous innovation and that unless the community wants it such a piece of legislation ought not to be undertaken.

Under those circumstances I would respectfully draw my friend's attention to the remarks made by the present Law Member in very eloquent terms in connection with another Bill of his which this House threw out, and ask him to withdraw this Bill and wait for another riper opportunity when the House will not disappoint him by failing to make up a quorum and then take his chance. The Law Member stated:

"So far as the majority communities are concerned, there are two very ancient systems of law. These systems of law, the Hindu and the Moslem systems, have preserved the Hindu society and the Moslem society through all these centuries. Do not play with these systems of laws by bringing forward this sort of piece-meal legislation. It is destructive of the whole structure which has preserved these societies for all these long centuries. It undermines the very foundations upon which these

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social institutions are based, and the institution of marriage is one of the fundamental bases of that foundation. Sir, I do appeal to this House not play with an ancient institution like the institution of marriage."

I cannot put it in more eloquent language and I ask my friend to consider those weighty words.

I cannot put it, Sir, in more eloquent language and I would ask my friend to consider those weighty words and to say
12 Noon. whether he has got any right, whether he has got any mandate from anybody to interfere with those old institutions which admittedly have preserved our society such as it exists to-day when other societies which had even come into existence later have ceased to exist long ago and whose history has only to be dug up from beneath the earth in order to find out how they were living at one time. In these circumstances, I would respectfully submit that the present Bill should not be agreed to by this House. My friend says—"Oh, no, your Shastras are all very well, but they don't help us now", it must be remembered that these Shastras came into existence long long ago; they simply crystallised the different customs which existed at one time, and he says that we have got to adapt ourselves to modern conditions, and that in the modern world everything progresses. Sir, I am reminded of a story of an American who went to see the Alps, after a long time and he asked the guide whether the height of the Alps had not gone a bit higher than when he saw them on his previous visit, and the guide said—"Yes, Sir, everything has gone up since the war", likewise every thing has got to be changed in order to suit the modern conditions, and I have got to adapt myself to that. (Laughter.) I do not want to make numerous quotations to prove the unworthiness of the argument about modern conditions about which my friend speaks so highly, but every Member of this House would admit the authority of the Archbishop of Canterbury as one who at least is interested in the moral welfare of his own community if not in that of other communities. I am told that in the whole of Europe these modern conditions prevail, but I have never been able to get an exact description as to what these modern conditions are; I believe that these modern conditions about which we hear so much in this country now-a-days are those which exist in all Western countries to which every one has to conform to if he wants to be called civilised. Now, this is what the Archbishop of Canterbury says: Speaking on rescue work at the Mansion House, London, the Archbishop of Canterbury is reported to have said that:

"Multitudes of our young people of both sexes, who are supposed to be perfectly respectable, are indulging sometimes habitually, in a manner which would have shamed the men's consciences in the past and brought the most disastrous consequences to the girls. He deplored the new insidious poison in the relationship of the sexes as a result of modern devices and discoveries by which over-indulgence is possible without shameful consequences."

Now, Sir, that is one description of what modern conditions are.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): What has this got to do with the Bill?

Raja Bahadur G. Krishnamachariar: This has got everything to do with the Bill because it is claimed that in order to reform you must reform the Hindu society so as to bring it into line with modern conditions

which are also said to be the same conditions that the old Rishis laid down thousands of years ago. I will now come to what the old Rishis laid down 3,000 years ago, but I shall for the present confine myself to that portion of the argument as to what would be the effect if those modern conditions are adopted in this country.

Mr. B. V. Jadhav: Are you ready to throw away the mandates of the old Rishis?

Raja Bahadur G. Krishnamachariar: What I am ready to do I shall show in a few seconds. But I will only refer to and not quote another statement of the Archbishop of Salisbury where he has referred in even plainer terms to these so-called modern conditions.

Then, Sir, so far as Baroda and Mysore Durbars are concerned, I am afraid in the heat of his enthusiasm my friend Sir Hari Singh Gour included Mysore, Indore and other places where no such Act has so far been passed,—they may pass such Acts in future,—but there is only one place where this Act has been passed, and that is Baroda. I asked the other day if my friend had gone through the proceedings,—if I had offended him in any way in the way in which I expressed myself, I am sorry,—but if he has not really gone through the proceedings,—I am quite prepared to lend him my proceedings if he has not a copy with him,—I do not think he will be happy with the circumstances under which the Baroda Bill came into existence. I will tell you only one out of half a dozen cases because I am afraid my friends here are getting impatient, but I think one is a perfect gem which this House should not miss. After the presentation of the Report of the Select Committee an amendment was introduced which said that this Act shall not apply to any community which does not want it or which has got a conscientious objection. Really speaking, it struck, according to the member himself, at the higher castes. The President, the Dewan said,—“Oh, I cannot allow this; this has already been decided”. By whom? The Council has sat, the amendment has been accepted as in order, and when it came to be discussed you will observe from the proceedings that there was a very strong feeling against this Act in the Council

Sir Hari Singh Gour: No, no.

Raja Bahadur G. Krishnamachariar: It is no good saying “No”.

Sir Hari Singh Gour: The principle of the Bill having been accepted the Members had

Raja Bahadur G. Krishnamachariar: So far as the higher castes are concerned, the question has been decided,—that is what, the Dewan ruled,—and I hope if my friend here will get a similar ruling from you, Sir, he would not grumble. I should be very sorry to be governed in circumstances such as those I have just mentioned by the Act of Baroda, because it is not a proper piece of legislation for us to imitate. Consequently, this Bill cannot be acceptable to this House on that ground. In the first place, it does not give what the Honourable the Mover wants; in the second place, there is no demand; in the third place, conforming to modern conditions it would simply paralyse the Hindu society, and lastly,

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the instance of Baroda would not hold good, because it has been passed on a somewhat,—I shall not say, high-handed manner, but in a somewhat undesirable manner. Now, Sir, I will pass on to my next argument that this Legislature should not and ought not to interfere in a matter like this. I shall explain now what the position of the Government of India Act in this matter is :

“Under the Government of India Act, the operation of the Legislatures in this country was primarily meant for regulating transactions relating to economic and similar matters of a secular nature, between man and man and community and community. In this way it brought under its operation religious sects and communities having different conceptions of social policy and constitution in some fields of life. But this could not be interpreted as authority to operate in the field of religious sociology.”

As has been observed by a distinguished authority, it is difficult under these circumstances for the true Hindu, whose law is based on the Vedas, Smritis and other sacred books and is believed to have a transcendental origin, to imagine or agree that it can be changed by the Legislature of the country and by the votes of men a good many of whom may be or are in fact non-Hindus or are nominal Hindus without any real faith in their religious and social organisation and who, therefore, have no proper attitude for judgment from a truly Hindu point of view or have otherwise no sufficient sympathy for technical knowledge or mental equipment for the purpose. Democracy even in its modern sense was never meant for the effectuation of radical changes in the socio-religious systems of the Hindus or any other community, which takes revelation as embodied in its sacred books as its “socio-religious basis”.

Sir, the recent political outlook of India would have made it clear to the House that the idea of introducing reckless changes into the normal movement of social events in the ordinary process of time, merely upon the basis of chimerical ideas, has taken possession of the minds of a portion of the vocal section of the Hindus themselves, who in many instances are without any consistent theory of work and life. This class of Members is anxious to supplant the existing order of things by the aid of legislation. Religion and social reconstruction based on fundamental Hindu conceptions have no place in their minds. It is absolutely necessary therefore that a Legislature consisting largely of Members with a mentality indicated above should not be allowed to play with the religion or religious rites and usages of the people whom they do not really represent in the matter of religion or sociology. Such Members were not returned on any religious or social ticket and they are not or cannot be deemed to be the representatives of the great masses of the Hindu population or of the Pandits and of Hindus well versed in the Hindu Shastras, who alone are deemed by the great masses of the Hindu population to be their spokesmen and leaders in such matters but who unfortunately have no place in the Legislatures of the country. Many of the so-called leaders often raise the cry of democracy but they ignore the mentality of the vast masses of Hindus and at the same time pretend to be their leaders. They assume an autocratic attitude while professing to act for the betterment of the people's religion and customs. They dare not take such liberty with Muhammadans as was shown when my Honourable friend introduced the Special Marriage Act and got it

passed in 1923. That is my reason for saying that the Legislative Assembly ought not to be allowed to discuss a subject like this.

Now, Sir, I shall turn to the Shastric quotations made by my friend. I do not want to dwell too long on this aspect of the matter because an exhaustive dealing of the Shastras is likely to be considered to degenerate or reduce itself into a learned discussion as was said the other day. Now, the Honourable the Mover based his Bill on the Shastras, and unless this House is going to take what he says as gospel truth, I want to point out that not only do the Shastras not mean what they say but they lay down something entirely different. It is an uninteresting process a dry as dust process if you like and I do not want to tire the patience of the House. At the same time, I feel that it is a case of *zabardast mara rone nahin diya*, "Having been beaten, I want to cry so that I may get over my grief". If you refer to these quotations from the Shastras you will find that excepting the two last passages the rest are entirely irrelevant and so far as these two passages are concerned they have absolutely nothing to do with the question of divorce and they have been drawn out of their context, in order to show that there was religious sanction behind them. There is however a silver lining to the darkest cloud and my friend in his most eloquent way praised Manu who in the dark twilight of Hindu society brought into existence his book which has been considered all these times as a great authority. Manu has certainly to be respected in these matters. I shall only invite the attention of my friend to one matter where Manu lays down who is the proper person to propound the Shastras. Manu says that excepting those who are versed in the Vedas no one can propound the Shastras and the sin of so propounding falls not only on the man who propounds them but also on those who listen and act to his propounding. This being the case, I hope my friend will not visit this Assembly with the sin of acting according to the Shastras as propounded by him.

Lastly, I do not know exactly what the attitude of the Government is going to be. I heard that they are going to be neutral in this matter. Sir, I want them not to be neutral. This is a matter affecting the religion and the religious and social usages of the Hindu community. Sir, where it concerns any question of the Christians, Government oppose such a Bill, and where it concerns the Muhammadans they also oppose such a Bill. How then can they, with any show of justice, say that they can be neutral in a matter like this where the Hindu community is affected, when there is absolutely no unanimity in the matter? I want them to remember what Lord Canning said in 1857 in those troublous times. Lord Canning said that it was never the intention of the Government to interfere in any matter connected with the religion or the religious usages of the Hindus. Sir, I appeal to the Treasury Benches. "Do not forget those principles iterated and reiterated in those days, and if you think it is a matter of religion and if you think it is a matter upon which the people feel deeply and if you think it is a matter upon which you have not got that preponderance of opinion which would entitle you to interfere, I say you are in duty bound to resist this Bill"; and I can only say this that the Government of India have unfortunately never understood who their friends have been. At times of political trouble and turmoil they think that the men who give them a little bit of trouble and disturbance have got to be placated, and they think that those

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persons like the members of the community which I represent, who do not grumble but simply go on paying their taxes and leave everything else to Government, can be neglected. I appeal to the Government not to neglect their interests.

Several Members: The question may now be put.

Mr. B. V. Jadhav: Sir, I have great pleasure in supporting the motion of the Honourable Member, Sir Hari Singh Gour. Really speaking, the measure is a moderate one and touches only a fringe of the question of women's emancipation. I am prepared to vote for a more advanced divorce law. But on this occasion I am ready to accept half a loaf than to have none.

Most of those who are out to oppose the Bill lose sight of the fact that the present is only a permissible measure. Only those, who feel misery in married life and consider that release from it will give some relief under the circumstances stated in the Bill, will take advantage of the law of divorce. Every wife of an impotent man, an insane or a leper is not compelled to sue for divorce. Among the advanced communities hardly one per cent. of the miserable women will think of asking for divorce. It is just like the Widow Remarriage Act. It is not incumbent on any widow to remarry. But it makes the marriage of a widow valid and lawful. To be compelled to pass the life with a husband who is impotent or insane or a leper is certainly very cruel and relief should be made available in the cause of humanity.

Some of the bitter opponents of the Bill are basing their opposition on the ground that the measure is against the Hindu Shastras. But I hold that Shastras or religion have no business to inflict misery upon anyone, much less a helpless woman. Religion was never meant to make our pleasures less. This is not a western notion. It is sanctioned in the Mahabharat:

*"Yasya dharmohi dharmartham klesh bhag na sa panditah
Na sa dharmasya vedarthe suryasyandah prabhamiva."*

"One who thinks that suffering is necessary for the observance of religion is not a learned man. He does not understand the true principles of religion, as a blind man does not see the light of the sun", says Manu. But the old Smritikars who are usually quoted are not impartial. If their injunctions be examined we shall see that they have favoured the male sex unduly and did not hesitate to degrade the position of woman. Manu declares that no woman deserves to be free. "At every period of her life she ought to be under the control of some one, a father, husband or even her own son." "When she unfortunately loses her husband she is treated with indignity, cannot use a soft bed, and ought not to eat two meals a day." But there is ground to believe that the original Shastrakars were not unjust. Their texts have been tampered with. The District Judge of Agra says (pages 6, 7 of the opinions):

"It appears that the existing text of Manu has suffered from interpolations and omissions. Two texts in Manu recognise and sanction the second marriage, either of a widow, or of a wife forsaken by her husband, while at one place Manu declares that a man may marry only a virgin, and that a widow may not marry again. This apparent contradiction has arisen from the deliberate omission of part of the original text in an earlier portion of the same chapter. The passages in texts about second marriages seem to have been left out and others of an exactly opposite character inserted when second marriages of women fell in desuetude."

This shows that the books now available are not reliable.

The Hindu religion is a very complex and uncertain thing. Very few can positively say what is and what is not religion :

*"Shrutih smritih sadacharo swasyacha priyamatmanah
Etachchaturvidham proktam sakshat dharmasya lakshanam."*

"The Vedas, the Smritis, practices of the good and what is desirable in one's own estimation : these four are said to be the clues to determine what is enjoined by religion."

In this connection another verse may also be cited :

*"Shrutirvibhinna smritayascha bhinna naiko muniryasya vachah pramanam,
Dharmasya tutvam nihitam guhayam mahajano yen gatah sa pāṇihāh."*

"There are contradictions in the Vedas, there are also inconsistencies in the Smritis. There is no one Muni who is the sole authority. The principles of religion lie hidden in a cave. The only road is the practice of the great."

An Honourable Member: Who are the great, Mr. Jadhav?

Mr. B. V. Jadhav: Not myself but men like Mr. Krishnamachariar. (Laughter.) But in India the practices of great men widely differ. The Honourable Members Pandit Satyendra Nath Sen and Raja Bahadur G. Krishnamachariar are in their estimation pillars of religion and take pride in its punctilious observance. The former will unhesitatingly take water brought by a Shudra. His religion is not injured by that water, which does not get polluted by the touch of a Shudra. But to the Madras Brahmin such water is polluted. He cannot use it. If he does, religion is violated and he must undergo severe penance. Thus we see that the practices of the great are different in different parts of the country. Which should one follow? Brahmins in the north of India can partake of food fried in ghee or oil at the hands of a Shudra. Raja Bahadur will consider such a thing against his religion. There a Brahmin cannot take his food even in the same room with a Shudra; he considers that his food will be polluted by being seen by him. Then the question arises which of the practices is according to the Shastras? Which practice should a religiously inclined man adopt as truly enjoined by the Rishis of the old times? Even in the country south of the Vindhya mountain practices differ. The Brahmins of my part of Maharashtra have adopted post-puberty marriages as a normal practice and hundreds, nay, thousands of such marriages are taking place. Occasionally girls of 35 and 45 are married. I am afraid this might give Raja Bahadur a shock; because in his part of the country girls must be married among the Brahmins before they attain puberty. I speak subject to correction that Pandit Sen from Bengal shares the same view about the sanctity of pre-puberty marriages. But the Brahmins of both these provinces, Bengal and Madras, know and they take part in the celebration of post-puberty marriages amongst the non-Brahmins of those places. And it is strange that they abet the grave breaches of Shastric rule of pre-puberty marriages by the non-Brahmins. One is really puzzled to decide what is the really sound practice. Instances may be multiplied to show the inconsistency of *Achar*, but it is not necessary to do so. Suffice it to say that the practices of the pious do not provide unerring guidance.

Now let us consider the fourth source, namely, dictates of one's own conscience. This is necessarily variable. And no one has the right to say the other one is breaking the rules of religion.

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I hold that in the matter of social reform religious books need not be consulted at all. They are sure to mislead us. There are texts in plenty conflicting with one another. They are really irreconcilable. But our pious and orthodox Pandits are unable to see any inconsistency. They have invented a method of interpretation, called the Mimansa method. The Honourable Member Professor Sen from Bengal will I am sorry to say be shocked at this criticism. The Mimansaks argue in a subtle way and show to their own satisfaction that the inconsistency is only apparent; that both the sages were inspired and incapable of committing any error and that they do not contradict one another. Their interpretation will not satisfy a real searcher after truth, and he will like to use his own judgment to see what the real meaning of the text is. I shall give only one instance. In one of the Smritis there is a text, *vyabhichara dritan shudhih*.

This in plain language means that a woman is free from the taint of adultery after her monthly sickness. But this is in direct conflict with many texts which prescribe dire punishment for such a wicked sin. A Mimansak interpreter explains that the sin was not carnal but only mental. But what sensible woman would ever admit that she loved any one more than her husband and she desired to be unfaithful to him? So all mental sins do go unpunished by any mundane authority and the interpretation although very ingenious is not the correct one. I do not intend to condemn the Mimansa school. They have established many sound canons of interpretation. But they carry certain things to an absurd length such as the dictum that all Smritis are consistent and ought to be accepted.

Although I for myself would not be deterred in my efforts at social reform by the production of texts condemning the reform and would not base my efforts on the support of such texts I shall like to deal with the arguments brought forward in this House by Members who have opposed the motion. In the opinions elicited from leading gentlemen many have based their opposition on the ground of divorce being prohibited by religion. It is necessary therefore to consider this question in some of its important aspects.

The main argument of the opponents of this Bill and of any attempt at marriage reform is that the Hindu marriage is a sacrament and not a contract. This assertion is hurled at the heads of reformers in season and out of season. Every one generally has repeated it more than once and in the opinions almost every adverse opinion mentions it and bases its opposition on it. I myself am a sceptic about it and shall like to examine it briefly.

In this connection distinction is made between marriages in approved forms and in unapproved forms. The question I would like to ask is whether marriage in any form is a sacrament or only those performed in the approved forms are sacred. Those who take the latter view admit that all Hindu marriages are not sacraments; but only some of them are. The others then fall under the category of contracts. To a Brahmin the *Asur* is an unapproved form of marriage. But almost all marriages in which the bridegroom is above forty, a price for the bride is usually to be paid. It is evidently an *Asur* marriage, and it cannot be turned into a *Brahma* one by using the ceremonial of the latter. One of the Smritikars says: A woman purchased by the payment of bride-price cannot be called a wife. She cannot take part in rites for pleasing either

the gods or the *pitris*. Inspired men know her as a slave. The question arises whether such a marriage is a sacrament.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): May we not take this long essay as read, Sir?

Mr. B. V. Jadhav: Yes, if it is in the hands of everybody else, but as long as it is not so distributed, it cannot be taken as read.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Order, order: I think the Honourable Member's interruption really indicates that the House is getting tired by the inordinately long speeches that the House has had to listen to on Hindu Shastras, but the Chair is helpless in the matter. This is a subject in which the Honourable Hindu Members of the House take a keen interest and feel justified in making elaborately long speeches. The Chair does not propose to interfere with them.

Mr. B. V. Jadhav: The Courts have recognised that divorce is allowed by custom among the Shudras; and according to the Brahmin view in the country south of the Vindhya mountains all non-Brahmins are Shudras. Their population is over 90 per cent. So do these people say that marriage is a sacrament only among the 10 per cent. of the population consisting of the Brahmins only? Marriage among communities allowing divorce and widow-remarriage cannot by any stretch of imagination be called sacramental. In my part of the country a large proportion of the moffusil vernacular papers are eking out a living from the income they get by the publication of notices from wives to their husbands and by husbands to their wives. Their tenor generally is: "I was married to you about 12 or 15 years ago when I was very young, about 3 or 4 years old. I sometimes went to your house to live. But you had married a widow and both of you did not want me in the house. I have been living with my parents, who are poor and cannot feed me. I have incurred a debt of about 300 or 500 rupees. The *sahucar* is pressing me for payment of the debt". She therefore calls upon her husband to pay the debt and take her away, and that she is willing to live with him. But in case he does not pay the debt she would take his non-compliance with the terms of the notice as a divorce and marry another to pay off the debt. The husband in his reply repudiates the statement and asserts that he will prosecute her and her husband for bigamy. The second marriage may or may not take place; but both the parties do not look upon marriage as a sacrament. I am surprised to know that in the sacred land of Pandit Sen—I quote from the opinion of M. M. Harprasad Shastri, page 19—among the Kurmis of North Behar, if the husband in a distant country does not make any provision for his wife living at home, for three years, she often takes a new man. Are these marriages sacraments?

One may say that in these degenerate days of a foreign government people have become irreligious and have not been keeping the sanctity of marriage. Let us examine what the idea of marriage was in the days of the Mahabharat. There are hundreds of texts in that work in which the modern theory of marriage is quoted with approval. But for me an ounce of practice is worth more than a ton of texts. Jayadratha was a noted king and son-in-law of Dhritarashtra. When on his way to marry the Princess he saw Draupadi the wife of the 5 Pandavas. She was very beautiful and he desired to take her away. She did not like the proposal and refused to go with him. By force he placed her in his chariot and

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took her away. At this time Maharshi Dhaumya the priest of the Pandavas expounded what was the recognised law of those days. He said that it was not proper for him to carry away a wife before defeating her husband. His plain meaning was that even a married woman may be carried away by force after defeating her husband. The marriage tie was broken by the might of the other man. Evidently at this period marriage was not looked upon as a sacrament. Instances may be multiplied, but it is not necessary to do so.

Now let us see what the practice in the time of Maharaja Chandragupta was. Vincent Smith says about him that he was the first Indian Emperor who more than 2,000 years ago entered into possession of that scientific frontier sighed for in vain by his English successors, and never held in its entirety even by the Mogul Emperors of the 16th and 17th centuries. His Prime Minister was the famous Chanakya or Kautilya who has written an Arthashastra which may be taken to show what the actual practices in those times were. Marriage in those days was not looked upon as indissoluble. Widow marriage was allowed:

"Mrite bhartari kutumbakama nu shvashurpatidatram niveshakale labhet."

When a widow wishes to marry she should get at the time of the second marriage what was given her by her father-in-law and her late husband. At that time a widow could marry a number of husbands one after another. When a woman has sons from different husbands each one of them was entitled to get the *Stridhan* given to his mother by his father:

"Bahupurusha prajanamputranam yatha pitrudatram stridhanamavasthapayet."

But this is not all. The laws of those days also prescribed the circumstances under which a Hindu married woman of all the four classes was allowed to leave one husband and take to another. Kautilya says:

"Neechatvam paradesham va prasthitah rajakilbishi

Pranabhihanta patitah tyajah kleeopiva pati."

One fallen deeply in vice, domiciled in another country, convicted of treason, who threatens to kill his wife, ex-communicated or an impotent may be given up by a wife. Much capital is sought to be made by the opponents of the Bill of the fact that there is no word for divorce, in the Sanskrit language. Kautilya uses the word *Moksha* or release in that sense. He says:

"Amoksha bhartukamasya dwishati bharya

Bharyayashcha bharta, paraspara dveshan mokshah."

A wife or husband hating the other cannot be released if the other does not agree. But if both hate each other divorce should be given. The law of Kautilya was more reasonable than the present English law which refuses divorce for mutual incompatibility.

On the authority of the interpretation devised by the Mimansa school the Honourable Member Pandit Sen maintained that a deserted wife had to be sent to him and did not get a release. We shall see what the law according to Kautilya was:

"Hasva pravasinam shudra vaishya kshatriya brahmanam bharyah samvatsaram kalam akanksheran, aprajatah, savatsaradhikam prajatah, prativilhitah dvigundam kalam, aprativilhitah sukhavastah vimrityuh, paramchatvari varshani ashtau va jayatah, tato yathadatra madaya vimuncheyuh."

Wives of Shudras, Vaishyas, Kshatriyas and Brahmans who have gone out for a short time should wait for a year if without children, and over a year when they have a child. When provided for they should wait for twice the period. Unprovided for should be fed by their well-to-do relations, but after 4 or 8 years they ought to be released.

When a Brahman goes out to study his childless wife should await for ten years, but one with a child for 12 years:

"Brahmanamadheeeyanam dashavarshani aprajatah, dvadasha prajatah."

One is likely to interrupt me by saying that these marriages in which release is allowed must be all in an unapproved form. But Kautilya is clear on the point. Perhaps in his days there were Acharyas and Pandits who were attempting to enslave the woman. He says:-

"Dharmavivahat kumari parigriheetaram anasvayay proshitam ashrooyamanam apta seerthanyakanksheta savatsaram shrooyamanam akhyaya. . . . tatah param dharmasthāih visrishtha yatheshtham vindeta."

For 7 months should a maiden married with religious rites await a husband who has left her without telling her and whose whereabouts are not known; for a year if they are known. . . . After the prescribed period she may marry another one getting a release from law officers. These extracts will show that in the days of Kautilya there was divorce allowed among all the *Varnas* including the Brahmans and there were Judges appointed by the king.

At the present time in the land of Gujrath there is an influential and numerous community whose religion prescribes that they ought not to marry their daughters at times convenient to them; but on a day very auspicious of course, which is declared for that purpose by the priests of a certain temple. This day is fixed at an interval of 9, 10 or 12 years. On that day all girls between the ages of 1 and above upto 12 are hurriedly married. The parents take the precaution of securing a release for their daughters, whom they remarry to the boy or man of their choice after they come of age. These marriages too are called sacramental in the courts.

I ask Rajabahadurs and Pandits whether these marriages are not Hindu marriages; and whether they can call them sacraments. These are severed not only by the death of the husband but even during the lifetime of the husband for some reason or other. The marriage in the Mahabharat and Chandragupta days was more reasonable and the idea of a sacrament was not attached to it. It is a later development, introduced by those who wanted to enslave the woman. Hindu marriage is complete and irrevocable according to our Pandits when the bride walks 7 steps with the groom. At every step he promises her happiness, prosperity, children, wealth and so on. At the seventh he says "be my friend through life":

"Sakha sapatapadi bhava."

It is a noble ideal indeed, and I am proud of it. The wife as a friend is an absolute equal with her husband with equal rights and responsibilities. If a husband is free to marry again on the death of his wife the latter too must be free to do what she likes. The ideal of monogamy is set there. But selfish man has made a travesty of religion and is oppressing the weaker sex. Pandit Sen tried to enlighten this House by quoting from the opinion of Harprasad Shastri. He bases his argument on the meaning

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of the *Mantras* recited at the time of the celebration of the marriage. But one has to remember that the girl married is very young, under 12 according to the strict observance of the religion as understood by the Brahmins of the South. She is rarely educated. Properly speaking the *Mantras* are to be repeated by the bridegroom and addressed to the bride. They are in a language which is not properly understood by the officiating priest, much less by the parties to the marriage. And the repetition of the *Mantras* creates, it is said, a sacrament.

I have tried to show that the idea of marriage being a sacrament is later development. It was not known in the days of Kautalya. A majority of the Hindu masses do not look upon marriage as indissoluble. The Bill is supported by Narad, Parashar and Kautalya texts. It is a moderate one and ought to be accepted by this House.

I was really surprised, Sir, to see some of the Pundits here getting support or drawing support from Judge Lindsay and some of the divines of the West, especially of the Roman Catholic Church. They say birds of the same feather flock together, and I am not at all surprised that the Pundits in this part of the country are drawing support to their aversion to divorce from the practice of the Roman Catholic Church. To call in the assistance of Judge Lindsay was really very humorous. Judge Lindsay does not condemn divorce at all but he goes even further and his doctrines are being discussed by young men and young girls in colleges in India nowadays.

I may point out, Sir, that one of the arguments that has been put forward in this House and quoted with approval by some Honourable Members was the opinion of Mr. Manmatha Nath Mukherji. He says that if this Bill is passed into law, untold miseries will follow, the happiness of Hindu houses will be broken and there will be grief and separation everywhere. Does he mean to say that there are thousands of women who are just waiting for this Act to be passed so that they may take advantage of it? If the Honourable Members have at the back of their minds the fear that many women will sue for divorce and in that way the peace of the households will be disturbed, then I submit that this in a way supports the need for such a measure. But if they really think that the Bill is not wanted by the country and that there will not be many such cases which will come before the courts then I do not think why they need take the trouble of opposing the Bill, because it will not disturb the Hindu society at all. The Bill as presented to this House is not against Hindu law. It has been stated that the Hindu State of Baroda has passed such a measure, and that is a very sure sign that it is not looked upon as against religion at all.

The previous speaker has appealed to the Treasury Benches to come to his assistance to throw out the Bill. I shall simply say that if Government is not prepared to support the Bill and if they think that it is for the Hindu people themselves to say whether they do want a measure of this kind or not, it will be proper for them to remain neutral and allow the Members of this House to decide whether it is wanted or not, whether it is premature or timely and whether women should be given relief.

An Honourable Member: Only the Hindu Members?

Mr. B. V. Jadhav: I shall say all the Hindu Members, but I consider my Muhammadan friends also Hindus as they live in Hindusthan.

Sir, I whole-heartedly support this Bill.

Mr. Muhammad Yamin Khan (Agra Division: Muhammadan Rural): Sir, I as a Muhammadan would refrain from voting on any side on this Bill. I do not want to interfere with the religious ceremonies or religious usages of the Hindus. I do not think that it is right and proper for any Mussalman to come forward and give help to one side or the other in such matters when it is not really required by the Hindu public. But I have been approached by several Hindu Members that I should express my opinion and lend as much support as I can to this Bill. This was probably because I have been consistently from the very beginning of the present Indian Legislature supporting measures of this nature as they came up before this House. I lent support to Sir Hari Singh Gour's different Bills from 1921 up to now, and I think any measure which brings some kind of relief to the oppressed classes of any community should be supported from all quarters. If I were convinced that this Bill really interferes with the Hindu religion, I would be the last person to open my lips on this occasion; but I think the case has been very well made out by the different speakers that it does not interfere with the Hindu religion but it only interferes with a custom which has prevailed for many years and which has been accepted by practically the ignorant classes as their religion. I must con-

1 P.M. gratulate my friend, Mr. Jadhav, on the very eloquent and very good speech to which he has really given great attention and he has quoted a lot of Sanskrit authorities. In this Bill I think there is only one principle which I can support and that principle is that some kind of relief must be given to women when they find that they have been really not treated as they ought to have been treated by their parents in whom really the responsibility lies for giving them in marriage. There are many parents who do not consider at all the interests of the young girls when they give them away in marriage to men. They have got different notions; they have got their own interests; they have got such kind of ideas which really conflict with the ideas of the girl herself; and that used to be the practice, although I am glad that it is dying out that a man of 60 years or 65 years used to get married to a girl of 10 or 12, or even less. Such cases have occurred and they have been reported in the papers and in many law courts. If that be the case of the society and if it be the case which is prevailing in the public that Hindus are prepared to ignore the rights of their children like this, that they are ready to give away their small daughters to old men in this way, then certainly if a voice comes from any aggrieved person or a man who takes sympathy for such girls, then he deserves a great deal of support even from those people who are not really wanted to give support on such occasions. I think that what this Bill aims at is that if the parents were not really careful in choosing a husband for their daughters—because a woman has got no power to contract her own marriage, she doesn't know probably the man to whom she is going to get married and she never sees him and the man himself does not know her and the marriage is arranged by the intervention of a *nai* or barber who goes about and takes a message that this is the girl who is to be married to somebody else and probably the parents of the girl do not know the future husband of their daughter—then certainly it is but right that a certain kind of remedy should be given to those women who think they have been placed in a condition which really requires redress

Diwan Bahadur T. Rangachariar (South Arcot *cum* Chingleput; Non-Muhammadan Rural): What is this barber business? I do not understand.

Mr. Muhammad Yamin Khan: Probably my learned friend does not know: but that is the custom prevailing in the North of India. (*Cries of "No" and "Yes".*) It is the barber who takes the message . . .

Mr. D. K. Lahiri Chaudhury (Bengal: Landholders): Do you know the story of Nala and Damayanti? Where was the barber there?

Mr. Muhammad Yamin Khan: I do not know very many of the customs that prevail in different parts of the country. But from what I know from my little experience, so far as these marriages are concerned, this is how they are arranged. If my learned friends will allow that I am not going to interfere really with any usages; but what I want to point out is even if it is not done by a barber but by a learned Brahmin, it is all the more sorrowful that a learned Brahmin should go about and arrange such kind of marriages. I would rather give latitude to a barber, but I cannot extend the same latitude to a learned Brahmin. If that is . . .

Diwan Bahadur T. Rangachariar: It is a gross calumny on the parents to say that they do not take care of their children.

Mr. Amar Nath Dutt: It is a libel which is privileged within the safe precincts of this House.

Mr. President: Would it not be better for the Honourable Member to restrict himself to the motion before the House and not refer to Hindu customs in general?

Mr. Muhammad Yamin Khan: I know that in many other religions this divorce was not allowed, and I know that as far as the Christian religion was concerned this was not allowed; but after some time when the demand came from the advanced community and when the law was made by men, who came as representatives, this law of divorce was allowed. In this case, as far as religion is concerned, I have got nothing to say; it is for my Hindu friends to say or not; but I only know that there are grievances and there are grievances of women. That is my personal experience, because as a legal practitioner I have come across many cases where I have found that really injustice has been done to women; and in that case when I am living in India I have round about me many Hindus living and I know their feelings and it is not only for the Hindu Members that they must speak about Hindu feelings; I know about the Hindu feeling as much as any Honourable Member in this House is expected to know about the Hindus. That is the feeling. If a law is made by men, it is not right that men should insist that they should be the law-makers and they should not allow women to have any voice, and if the women-folk come forward now and say that their rights should be safeguarded, if they want their voice to be heard in matters affecting their future, then certainly that voice must be heard and consulted; and if a grievance has been made out by my Honourable friend the learned Mover of this Bill, or by my learned friend, Mr. Jadhav, and other supporters of the Bill, then I certainly think that the voices of the women, who are really the persons

going to be affected by this law, should be allowed to be heard and should be allowed to prevail; and it will be right that it is left entirely to them whether they want to have a law of this kind or not, and whether they should be allowed divorce or not. I think the motion moved by my Honourable friend for re-circulation is a proper motion, and I will support it, although if it had been for reference to Select Committee, I would have refrained from voting or interfering at all. But when it is going to be re-circulated in order to elicit the views of the Hindu women, I think this House will not be justified in not lending full support to it and stopping from receiving the views of those who are really affected by this Bill. With these words, I support the motion for re-circulation.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Honourable Members will have seen that on the Order Paper today there is notice of an amendment from four Honourable Members of whom two have already spoken on the subject; that amendment is the further consideration of the motion be adjourned *sine die*. It has been repeatedly ruled that such motions are of a dilatory character, and that they can only be moved at the discretion of the Chair. On the present occasion there is no difficulty in deciding the issue, because an amendment for recirculation which is also of a dilatory nature has already been moved; and the Chair therefore does not propose to allow another dilatory amendment to be moved.

Bhai Parma Nand (Ambala Division: Non-Muhammadian): Sir, I have a very high regard for the great merits of my friend Sir Hari Singh Gour and I appreciate his earnestness for the cause of amelioration of the Hindu society, but I feel it my duty to oppose his present motion. Much of the earlier portion of the debate was carried on from the point of view of the Shastras, as to what the Shastras say about marriage and about the dissolution of marriage. Both sides have produced evidence in support of their contention. I think, Sir, it is possible to produce quotations favouring one view or other regarding this question. Therefore, I feel that I should try and take this debate out of the plane of religion. I do not think the Smrithis have the same position as the religious scriptures of the Hindus. Smrithis are law books made by men, and if the Smrithikaras or the authors of these codes had the right to make those laws, we, as legislators of the Hindu community, have the same right to exercise that power. Leaving this question aside for the moment, I want to say one more word. I am not an orthodox man. I do not oppose this Bill from the orthodox point of view, on the contrary I believe in special reform and I will go one step further and say that I want Hindu society to be reconstructed on a new basis; the Hindu system of marriage is no doubt one of the main foundations of the Hindu society. Well, Sir, I would take this question away from the field of religion and try to examine it on a different ground to which reference was made by my Honourable friend Mr. Joshi, that is, from a rational point of view. I would divide human society into two classes. As we find mankind is divided on this question; there is a class of society which bases its social system on divorce, while there is another class which does not permit divorce; the Hindu society belongs to the latter and believes in marriage as a sacrament, and it does not allow, whether by custom or in obedience to the laws of the scriptures or Smrithis, the re-marriage of women.

[Bhai Parma Nand.]

There are certain animals and also certain species of birds which live in pairs. According to the Hindus, marriage is permanent companionship, and when a man and woman are once married, they are united in an indissoluble union.

An Honourable Member: You want to compare us with animals? (Laughter.)

Bhai Parma Nand: This is really an animal instinct, and we find it displayed in certain animals and birds. According to the law of evolution, we find that man has developed many of his instincts from his animal ancestors. It is those very instincts which are the foundations of the primitive morality in human society. Similarly by the study of sociology, you will find that most of the customs and usages of mankind have been founded on those instincts as they have come to us from the animal kingdom. Again, Sir, man is a social animal. If we have to live in society, we cannot but be bound by certain rules of society; if we want to live in perfect freedom without caring for society, we shall have to run away to the jungles and live there as we like; as long as we live in society we have to observe the customs on which our society has been founded.

My point is this. My friends Messrs. Jadhav and Joshi have urged that we should try to examine the question from the point of view of utility. They have however not been able to show wherein lies the necessity for divorce. As I said before, there are two classes of society, one favours divorce and the other does not; if we examine both these forms of society, we will find that there are good as well as bad points in both. One society has got accustomed to one kind of usage and the other to the other kind. I do not understand the reason or the necessity of bringing in divorce and introducing this change in the former simply for the sake of imitation. It is urged that there is necessity for this change in order to ameliorate the condition of women. I quite realise there are certain cases in which Hindu women are maltreated, and it is a very commendable idea to find out a solution for their difficulties. At the same time I may point out that in societies which allow divorce you will find such cases of misery and trouble in far greater number. You may change a custom, but by doing so you won't be able to improve the condition of every member of the society. By trying to remove the trouble of a few, you will be courting trouble for many. Let us take the case of the evil of poverty. We know under the modern economic conditions of our society, there are millions of people who live on the verge of starvation. There are so many among us who cannot get even one meal a day, but can we find out any magic rule which as if by one stroke can change all this and remove the misery existing in mankind? Similarly whatever custom you might like to follow or whatever custom you might hold up as the ideal, you will always find some individuals at least who will suffer from the evils arising out of it. For that simple reason, you cannot take away all the restrictions which society has imposed upon us.

Then there was the question of freedom; it was said we should give freedom to everybody. As I said before I say again that we are social beings, and if we are to live in society we cannot have perfect freedom and do whatever we wish to do. We must be bound by certain rules and restrictions. Man naturally is inclined to fall a victim to many vices,

but it is mostly the pressure of society, the pressure of the social customs enjoined by society that keeps him under check and in proper discipline. Therefore, complete freedom is an impossibility.

Then, Sir, my Honourable friends Messrs. Jadhav and Joshi went further. They were not satisfied with this measure as being only of a permissive character to be made applicable only to certain cases. They wanted that divorce should be permitted whenever a woman wished to be free from bondage. They think that that will be a fine solution for the evils that exists in our society at present. But, Sir, it should not be forgotten that if you allow this freedom to wives, you will also have to give the same privilege to husbands. What would be the consequences? You will find that most husbands would like to desert their wives. Many people are prevented from doing so on account of the social fear; but when they begin, in this poor country you will find millions of women without any support and protection and there would be far greater misery and unhappiness than there is now.

Another point has been raised, why a man is allowed to marry two or three times, and the same right is not given to women. To answer this question, we have to go to nature. We find in the animal kingdom that the male is a polygamist while the female is a monogamist. This is the reason why a female does not wish to go to a second male. We find it among animals, that once the sexual desire of female is satisfied, she is not stirred to go to male again. But the condition of male is different. So in the case of men, if one is not satisfied with one wife, he can have another. There is no limit to his nature. But with regard to woman, she does not want to have another husband. It is not in her instinct. It is for this reason that a woman has got strong and most faithful love for her husband, while the same kind of love and affection is not expected from the husband.

It was said that this measure is only permissive not compulsory. It may be so, but if you allow this thin end of the wedge, you do not know where the process will stop. In a short time you will be changing the entire basis of society.

Again my Honourable friend Mr. Jadhav was quoting instances of cases where marriage was not held a sacrament. There may be certain such cases but they have to be taken as mere exceptions. We have to see what the established custom of the society is, which has continued for ages. We have to take it as a fact that even in the olden days in India, a woman was not allowed to have a second husband. My learned friend Dr. Gour says in his statement of the Bill, that a second marriage was not permitted, but in its place *niyog* was allowed in the three exceptional cases, which he has made the chief grounds of his Bill. Now, *niyog* was a custom by which a wife, if her husband was unfit to produce a child, could seek another man's help to produce an issue. (Laughter.) It is not a matter for laughter. The point is rather deep. According to the Hindu idea of marriage womanhood could not be separated from motherhood. A woman must have a son or issue by the husband. If the husband was unfit to produce a child, what was the alternative? One was as is proposed, the dissolution of marriage. This they did not tolerate. The other alternative was *niyog* by which a woman had an issue through another man, with the permission of the husband; but she could not marry this other man. This custom of *niyog*, however

[Bhai Parma Nand.]

much you may ridicule it now, cannot be judged by the standard of morality of these days. Those, who permitted this, did not think that a woman was simply an object of enjoyment. They believed that the most sacred duty of woman was to be a wife and mother and that could only be done by her getting a child. Personally I treat this practice of *niyog* as an exception. At the worst you can call it misbehaviour on the part of the wife. But don't we find so many wives not keeping faith to their husbands for various such reasons, if that be so, where is the harm in a wife getting a child through another man, with the sanction of the husband? Whatever you may think or say about it, the fact remains that the ancient Hindus did not allow dissolution of marriage though for such exceptional cases they allowed *niyog*. I think, Sir, the custom of *sati* too is another proof. We now think that *sati* was a ridiculous and barbarous custom. In its origin however it was not so. Even now I know of cases of young wives who could not tolerate the idea of separation from their husbands and who voluntarily preferred death to living after their husbands' death. This is the instinct of a faithful young wife and to this is due the origin of the practice. Later on corruption set in and wives were forced to burn themselves along with their dead husbands. Many innocent girls were made victims of this evil practice. But it is to be noted that it is wife's instinct that she cannot tolerate the idea of being a polygamist. She has lived with one man, she has loved him with all her heart and it is not possible for her to transfer that love and affection to another man even after his death. This was the ideal that was before the *satis* and it was this which induced them to burn themselves in the funeral pyre of their husbands.

Now I come to another point, namely, the widow remarriage. My point is this that the Hindus who don't allow a widow to remarry another time, how could they allow dissolution of marriage in order to allow a wife to marry again. In this matter I have some experience of the trend of public feeling. Personally, I am in favour of widow remarriage. In the course of Hindu Mahasabha meetings and on other occasions we have had it approved very often by thousands of people, but at the same time I must confess that they were so afraid of the public opinion outside the meetings that they would not have the courage to translate their views into a comprehensive resolution. Widow remarriages do take place, the idea is gaining ground every day, but Hindus would not allow this fact to assume the shape of an open resolution on the part of any public meeting. I think the first essential step on the road to social reform would be to train Hindu society in the idea. There will come a time when we will be in a position to judge whether the Hindu society is prepared to take another further step.

In conclusion I want to point out clearly that in my view, this Bill is not a measure of social reform, but rather a measure of social destruction; therefore I would most respectfully ask the Leader of the Nationalist Party to withdraw this Bill altogether. I am definitely in favour of social reform, but to change the basis of Hindu society altogether from "no divorce" into that of "divorce" is a thing which the Hindu society at the present stage cannot even dream of.

The Assembly then adjourned for Lunch till Twenty Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes to Three of the Clock, Mr. President in the Chair.

Mr. Amar Nath Dutt: Sir, after the long speech of our friend from Bombay, I feel that

Mr. K. P. Thampan (West Coast and Nilgiris: Non-Muhammadan Rural). Sir, there is no quorum.

(The bell rang.)

Mr. President: Order, order: As there are only 21 Members present, the House will adjourn till Monday, the 22nd February, at 11 o'clock.

The Assembly then adjourned till Eleven of the Clock on Monday, the 22nd February, 1932.
