

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shri Velayudhan Quilon *cum* Malvelikkara—Reserved—Sch. Castes): More progressive.

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