

HINDU MARRIAGE AND DIVORCE
BILL—*continued.*

Mr. Speaker: The House will now proceed with the further consideration of the motion moved by Shri C. C. Biswas on the 10th May, 1954.

Shri D. C. Sharma (Hoshiarpur): Yesterday, in the few minutes that were available to me, I said that this Bill was a marriage between the forces of change and progress and the forces of well-intentioned and liberal orthodoxy. I must say that in bringing this Bill forward, our law Minister has fulfilled the pledge that was given to our nation not only at the time of the general elections, but also in the Presidential Address to which we listened in the beginning of this session. We are, therefore, doing our duty by our country and by our nation, and by the people at large, by bringing forward this Bill. At the same time, I wish to say that our Constitution lays down certain provisions.

[**MR. DEPUTY-SPEAKER** in the Chair]

Our Constitution guarantees political equality; our Five Year Plan is a step in the direction of economic equality and our Constitution also gives us religious equality and freedom to profess any faith. I confess this Bill takes us in the direction of social equality and the doctrine of social equality is a doctrine to which nobody can take exception.

I also congratulate the Law Ministry for the very simple draft of this Bill. I am familiar with the drafting of Bills in this House and I must say that there are some Bills wherein the law is not intelligibility but obscurity. Once the poet Robert Browning was asked to explain some of his lines. He said, 'While I wrote this poem, the Almighty God and I knew the meaning but now only the Almighty God knows the meaning of the poem and not I.' Sir, when I look through the legislation about our estate duty, I sometimes think that some of the sections are so obscurely and ambiguously worded that I wonder if the draftsman will himself understand the meaning of

these sections. I must say that this Bill has made an improvement in that direction and it is more or less intelligible.

This Bill, I need not say, is the logical outcome of the forces of social progress that we set in motion some time ago. In 1939, we passed a Bill and then we said that we would codify Hindu law in such a way that it makes a judicious selection and combination of all the best points in the Hindu *shastras* and in the Hindu customs and Hindu usages, without in any way changing the basic concepts of Hindu society and the Hindu social order. I believe that this Bill eminently fulfils those conditions.

There was a time when law-givers and commentators like Manu and Yagnavalkya used to modify the laws in accordance with the changed circumstances of society. But, today we have not such august law-givers, of that calibre and that status. Therefore, it is left to our Legislatures to frame those laws which fulfil the changed needs of society. I am glad that this has happened. Of course, the Hindu Code Bill, which was presented to this House sometime in 1947 had a very stormy career. But, I am glad that this Bill, which represents more or less the wishes of the people, the needs of the people will not have that kind of bitter opposition which the Hindu Code Bill had. It is because the Hindu Code went through stormy waters. When you go through stormy waters there is a lot of sediment that comes up and the waters get muddy. Passage of time has allowed us to see to it that the mud and turbulence has not only settled down at the bottom but that we have now the clear waters of public opinion before us.

It has been asked whether this Bill is in consonance with public opinion. I do not know what people mean by "public opinion". I think an hon. Member of this House said the other day, "Public opinion, what crimes are committed in thy name!" I do not want to talk about public opinion in that

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sense. I would only say, "Public opinion, what claims, fantastic and extravagant claims, are made in thy name!" People say that this Bill offends public opinion. Then I should like to come to the conclusion that this public opinion is something which is rather fantastic and imaginary, which does not exist anywhere. If public opinion is the criterion of this Bill, I will say that public opinion has, by far and large, approved this Bill. When I was fighting my election and was visiting villages and towns, and sizable towns, I found that on the walls of shops and houses it was written in very bold letters that we must do away with the Hindu Code Bill. Wherever I went I found posters to that effect. Wherever I went, I found big letters painted on the walls of shops and houses to that effect. I must say that in my constituency and in the constituencies of almost all the Members of this House, the Hindu Code Bill was a big issue. There were two issues prominent in my constituency and one of these issues was the Hindu Code Bill. All the pros and cons of the Hindu Code Bill were presented to the electorate at large by the various parties. If we have been elected, it is because the electorate has accepted the Hindu Code Bill which is a step forward and I must say that the electorate, by far and large, in many parts of the country, has given its verdict in favour of it.

I remember the statement which was made by our Prime Minister. He said that he fought his election by and large on the issue of this Hindu Code Bill. That was a very live issue in his constituency, a very controversial issue, an issue which provoked much anger, much temper, much hot controversy and I think that issue was settled by the electorate and it was made possible that this Hindu Code Bill should not be dropped. At the same time, I think that most of the States in our country have expressed themselves in favour of this Bill. If there are 27 States, I find that 15 States have expressed themselves categorically in

favour of this Bill. Eight have remained neutral. If there is a voting and if the voting goes in favour of one party, it is always taken for granted that the neutral persons have gone in favour of that party which has won. Therefore, I think, it is not 15 States that have voted in favour of the Bill, but it is really 23 States. I think there are only two States which said that the time was not yet ripe.

You will be surprised to hear that yesterday I received a letter from some place in South India. The letter was written in Tamil. My address was also written in Tamil and I could not understand it or read it. I am very sorry to say so. So I sent that letter to a friend of mine who hails from the South and asked him to translate it for me. It was written in that letter that we must support this Bill and, we must work for this kind of beneficent social legislation. Therefore, I think, public opinion, whether in towns or in villages, whether among the educated classes or among the uneducated classes, is fully alive to this measure and, I think, is in favour of this Bill.

I do not want to talk about the resolutions which have been passed by the All-India Women's Conference. They have branches all over the country and they have passed several resolutions in favour of this Bill. I should say that public opinion in India by far and large is overwhelmingly in favour of this Bill. Therefore, I think, it should have a very smooth passage and it should try to bring about a better state of affairs.

I must say that this Bill is simple for one reason. There is in it marriage and divorce; there is the validity of marriage and guardianship of children; and all these provisions are given in this Bill. How marriage can be declared null and void and all other things are there. To say that our Hindu society will be disrupted because we are using these provisions for divorce, the basic character of the Hindu family will be changed because

we are doing all this, is not doing justice to this Bill. I think they are talking without the book. They are talking about these things without having read and properly understood the provisions of the Bill. The progressive provisions adopted in this Bill is hedged around with so many conditions which do not militate against its usefulness but which, at the same time, guarantee that this measure will not be abused. I think that this is a very wholesome principle in the Bill. The usefulness of the Bill has not been curtailed, but the possibilities of its abuse have been minimised. I find that this idea runs throughout the Bill and it is very wholesome. I do not want to say that the conditions of marriage, which have been laid down, are more or less acceptable to all. I think an hon. Member over there said: "why should idiots be debarred from marriage?" I do not say these were his very remarks, but he referred to idiots in that way. According to a very great scientist, everyone of us is an idiot in something and a genius in other things. But I think an idiot is one who is congenitally a mental defective or a mental defective otherwise. We are taking into account this definition of the word 'idiot'. Of course, I do not think any woman would have an idiot as her husband. Therefore, a man who is congenitally a mental defective should be debarred from marriage. At the same time, a person, who is congenitally a lunatic, should also be debarred from marriage. If a person happens to be a waster or belongs to a family of wasters or enjoys the unmitigated reputation of being a waster and shows no signs of improvement, he should also be debarred from marriage, because I know so many noble women in India who have suffered as they happened to marry men whom I describe as wasters. I think we need a provision more against the wasters of our society than against anybody else. I know, without looking into the dictionary what an idiot means, we all know who is an idiot. We know who is a lunatic. We are talking of the degrees of lunacy, but it is very difficult to spe-

cify who is a waster. It is very difficult to try to define a 'waster', but some provision should be made in the law for stopping a waster from marrying. People should not get unnecessarily nervous about the Bill. Of course, I know there are some persons who get very touchy when we talk about the Bill; their suspicion is raised to the highest point and the defensive mechanism comes into play to the fullest extent when you mention this Bill, but I say that this is only an enabling measure and a permissive measure. If you want to have a *dharmic* kind of marriage, you can have it; if you want to have a civil marriage, you can have it; there is no bar placed on anybody so far as his right to celebrate his marriage in a particular way is concerned. *Dharmic* type is suited to some temperaments and the civil marriage type is suited to some other temperaments. The freedom of choice is given in the Bill so far as these two types of marriage are concerned. At the same time, I would say that the *dharmic* type of marriage is an ideal thing. Whatever you may do, you cannot do away with the priests in India; you cannot do away with the sanction of priests in India. The priest is a benevolent person and a good-natured person, and he is not that kind of person who tries to create difficulties. The priest is a person who wants our social mechanism to continue to function with the utmost efficiency.

Shri M. P. Mishra (Monghyr—North-West): The hon. Member is being surrounded by priests.

Shri D. C. Sharma: And he is a priest gone wrong. The principle of the *dharmic* marriage is this:—having taken these steps, we have become companions; may I retain that companionship and never part from thee, nor thou from me? Let us always take counsel together. Let us join in our aspirations, our sorrows and our vows." Can an ideal of marriage be higher than this? Has any society produced a higher ideal of marriage? No society has given such a high ideal as this, but the difficulty is this. What happens in this is that in the place of

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the pronoun 'our', we have the pronoun 'my'. As society is constituted, not only in India but also elsewhere, man thinks that he has the right to break these vows and do all kinds of things, but a woman must be very strict in the observance of the vows. What I say is that this kind of one-sidedness should disappear, that is to say, it should be based on the principle of reciprocity, upon the principle of mutuality and upon the principle of co-partnership. If the man goes wrong, the woman should be permitted to call his honesty into question. If the woman goes wrong, the man should have the same right. As our society is constituted at this time, I must say that women are not given a fair deal, and I think that the Bill is there to give the woman a fair deal. I welcome the measure for another reason. We are here trying to do away with the bogie of caste. If I say that this is a step in the direction of establishing a casteless society, some friends of mine over there will kick up a row. Whether they kick up a row or not, I must say that this Bill does away with caste so far as marriage is concerned. It is a very good measure for that and it is in conformity with some of our *shastras*, *Bhagwat Gita*, etc. The *Gita* says:

चातुर्वर्ण्यं मया सृष्टं गुणकर्मविभागशः ।

The four *varnas* have been created by Me, not according to birth, but according to *karmas*, quality and other things.

I am glad that the Bill is going to enforce monogamy. If anybody takes exception to this, I say that he has no social conscience. In the House a question was put about the plurality of wives. What is this plurality of wives? The system of plurality of wives is not only prevalent among our officers, but it is also prevalent among other sections of the society; and we know that this system of plurality of wives works havoc. I know some persons, who were married when they were 21 or 22 and when they were graduates. Afterwards they did

well in life and as soon as they had done well in life, they discarded their wives and tried to marry other women. I must say that this is a canker in our society and it must be done away with. If the Bill does not do anything else, it at least does this thing, namely, that it makes monogamy enforceable by law.

So far as divorce is concerned, I do not wish to say much. I must say that the conditions of divorce, the conditions for declaring a marriage null and void are limited in so many ways that there is no danger of their being abused. So, nobody need feel apprehensive about the abuse of these provisions. Here is a book written by a Professor of Hindu law, in which is given a number of quotations from several of our ancient authorities like Manu and Yagnavalka. So, if a provision has been made about divorce, I do not think anything revolutionary has been done in this Bill. I think, Sir, public opinion already knows it and public opinion is not going to get worried.

There are certain suggestions which I want to make to our Law Minister and one of them is this, that the age of marriage should be raised both for boys and girls. Our society has now progressed sufficiently and it is time we raised the age of marriage for boys as well as girls. I do not, however, wish to specify the age. It should also be made a condition of marriage that the bridegroom, or the bridegroom's father, or the bridegroom's mother, or any of the bridegroom's relation should not ask for any dowry from the parents or the guardians of the bride. Sir, I think this is a very serious lacuna in our Bill. You have put forth all the conditions of marriage, but you have not put forward one condition which is at this time making our marriages a farce, if I may say so, which is making our marriages a commercial proposition. Unless this is done the utility of this Marriage Bill will not be as much as it would otherwise be. I would, therefore, suggest that we should take a leaf from the book of the Punjab which has passed

a Bill with regard to the abolition of dowry. We must make this a condition. At the same time, we should also see that there is no black-marketing so far as this dowry system is concerned. You may prohibit dowry by law, but dowry may be taken by people through subtle, underground or subterranean means. It should however be made a penal offence for anybody to ask for dowry. If a man is willing to give, let him give. But no one should make it a condition precedent to marriage.

At the same time I say that before divorce proceedings take place, there should be a committee of conciliation appointed by the judge which should see that a reconciliation may be brought about. Only if it fails should proceedings start. I say in all humility that proceedings of divorce cases should not be reported in the Press. They should not be open to the Press. I do not cast any reflection on my friends of the Press. The other day I looked through a paper. There was a banner headline. I thought some external affairs business was being referred to. But it happened to be the proceedings of a divorce case; the photograph of the divorcee and the person who was going to get a divorce were there. The proceedings had been reported at great length. I say we should see to it that we do not make divorces colourful and glamorous as it is made in our cinema. If we do so, it will have a very bad social effect. We should look at it from a scientific angle, not from the angle that Hollywood looks at it, or others look at it. Divorce should not be treated lightly. I think it should also be seen to it that the proceedings of a divorce case are held *in camera*.

At the same time I would say that the provision regarding desertion should be made a little more stringent, because as it is worded it may lead to some kind of abuse. We should see that desertion which is wilful and deliberate is discouraged; sometimes a man may desert merely to get a divorce. So, the provision regarding desertion should be made more stringent.

I should in the end say that by bringing forward this Bill our Law Minister has done something which is socially desirable. There are some persons who think marriage is a sacrament. I know marriage is a sacrament. I look upon it primarily as a sacrament. But I must say that marriage has also a social value, a spiritual value and an emotional value. We should try to combine the sacramental, social, spiritual and emotional values of marriage. Without giving up the sacramental value of marriage, we have tried to see in this Bill that the social, spiritual and emotional values are also kept intact. I, therefore, welcome this Bill and congratulate the hon. Law Minister for bringing forward this measure.

Shri Gadgil (Poona Central): Mr. Deputy-Speaker, the objective that is laid down in our Constitution is that we are to establish in this great and ancient land a casteless and classless society. It has also been laid down that ours is a democracy, a democracy not merely in form, but also in content.

Now the conception of democracy, in my humble view, consists of three aspects: political equality, social equality and economic equality. So far as political equality is concerned, we have already achieved it by having adopted a system of universal franchise. So far as economic equality is concerned all sincere efforts are being made by the Government of the day at any rate to reduce as much as possible the inequalities of wealth and thereby create an atmosphere in which equality will one day or the other take root. Now, the third equality, namely social equality has also been, to some extent, at least on paper, achieved by adopting a section in the Constitution which says that untouchability is a crime and is completely abolished. Now social equality has a very wide connotation. It means that all persons irrespective of sex, religion, are to be equal in all matters and that there should be no man-made impediment placed anywhere which will prevent a full enjoyment of freedom as guaranteed by the Constitution. Therefore, this Bill which

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relates to Hindu marriage and divorce is an attempt in the field of social matters to secure as much equality as possible between men and women.

The history of this legislation extends over a quarter of a century. Several attempts have been made in the past to introduce the law of divorce so far as Hindus were concerned which have not so far met with success. You, Sir, are aware that in the year 1936 Dr. G.V. Deshmukh, who was a great enthusiast about social reform, brought several bills in order to remove the inequalities between men and women, and his attempt included also the introduction of a Bill for divorce so far as Hindus were concerned. That Bill was discussed, but, as was well known, the Government of the day did not like to proceed in the manner in which some of us expected, and under one pretext or other the Bill could not be put on the statute book. The several efforts made thereafter in this connection were detailed by the hon. the Law Minister yesterday. In the election manifesto which was put before the electorate in the General Elections in 1952, the promise was made by the Congress Party, to which I have the honour to belong, that these matters would be put on the statute book. In pursuance of that promise this Bill has been brought. I am therefore very happy at the fruition of our efforts—though you, Sir, differed from us in certain matters, but by and large you were very progressive and continue to be so even now—I am really happy that in a few months' time this Bill with such modifications as in the wisdom of the Members of the Select Committee may be necessary, will be put on the statute book.

This Bill mainly deals with three things. The first thing is perfect freedom to every individual to marry if certain conditions are satisfied, and all those restrictions about caste and community, *anuloma*, this, that and the other are removed. Of course they

are already removed by two enactments, one passed in 1946 as a result of the Bill introduced in this House by my esteemed friend, Shri Sri Prakasa, who now presides over the destinies of the Madras State. The other Bill was passed in 1949. This Bill merely ratifies or consolidates the position as it is, but it goes a little further, and that is absolutely necessary. In social matters it is always necessary that from time to time the position ought to be reviewed. What is known as public morality should be taken into consideration and the law should be suitably modified. There are ways and ways in which the current public opinion can be incorporated in a statute. One of them is direct legislation. Another is custom as we develop from time to time, from areas to areas. The third is what is known in English jurisprudence as legal fiction. That is, the law on the one hand continues, and on the other it is substantially changed by judicial interpretations. Here is an honest, straightforward measure which incorporates the current public opinion, and a little more, in a statute. In my humble view it is always necessary in a sort of social legislature that it should foresee the events to some extent and should not allow social matters and events to develop in their own way, in a sort of *laissez faire* manner. In fact it is the business of the State to control certain social tendencies and to give direction, so that the development of the society and the institution will be according to some—I am not afraid of calling it a plan—but according to something about which our ideas are clear.

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Therefore, today, when we are anxious to have a casteless and a classless society, so far as castelessness is concerned, I think this particular measure is the measure that is very likely to bring that sort of thing in actual reality. It is impossible to believe in this century that because a man is born in this community or in that community, or in this caste or that caste, he should be prevented from

marrying a girl of his free choice. In fact, if democracy means anything for a full freedom for the expansion of the individual's personality, then the field of choice for selecting one's mate in life should be as large and as big as possible. The Bill is confined for the time being to the Hindus, as defined in the Bill itself. Left to myself I would have one marriage law for the entire citizenship of this country, so that the whole thing will, according to me, be perfectly satisfactory.

Shri C. D. Pande (Naini Tal Distt. cum Almora Distt.—South West cum Bareilly Distt.—North): What is the difficulty?

Shri Gadgil: You better ask the Government. The difficulties may be real, the difficulties may be imaginary. But I am of this temperament that I never consider good to be the enemy of better. I will accept this. But I will never mortgage my equity of agitation. I am not giving any ultimatum or notice. I am too weak for that. But I shall try to educate public opinion that there should be one civil law for marriage for all people irrespective of caste or community, because I feel that the matter of religion is a matter between the individual and his Maker.

Shri U. M. Trivedi (Chittor): Why not make it today?

Shri Gadgil: Well, as I said, there must be difficulties, real or imaginary. You are free to advance that viewpoint. But knowing some of the difficulties, I would not like to do it today. But as I said, I am not going to mortgage my equity of agitation. I will continue to agitate as soon as this Bill is put on the statute book, for having one common universal code.

The other point is about monogamy. I am glad that so far as this aspect of the question is concerned Government has taken a bold step. Because, there are people even in the judiciary who do not like this provision, namely of having monogamy, to be put on the statute book. I find that some of the judges, including the Chief Justice of the Madras High Court, are of that

view. Now, the point is, if there is going to be perfect equality between man and woman, it is difficult to justify that a man should be allowed to marry more than one wife while the *vice versa* should be looked down upon as very anti-social, irreligious, this, that and the other. Therefore this business of monogamy is not only desirable from every point of view, religious and otherwise, but, as I told my hon. friend the Law Minister a few minutes ago, monogamy is really rationing. That spirit ought to be maintained.

As regards the criticism that if this is made applicable only to the Hindus and not to other communities something very dangerous will happen, I do not think anything of that kind will happen. Monogamy is also there for the Christians, for the Parsees. If it is not available for Muhammadans today, I am told that ninety per cent. of them are monogamists. The remaining ten per cent are not.

Shri R. K. Chaudhuri (Gauhati): On a point of information, what is the percentage of polygamists among Hindus?

Shri Gadgil: On that you will be better able to say. My point is this. We may look at this question from two points of view: from principle, from expediency. If monogamy is good in principle, we ought to accept it irrespective of what other people do. If we discard truth because somebody else has discarded it, that is a wrong approach. It is positively an un-moral approach. Therefore, if monogamy is good, let us have it. Let us also press the Government that inasmuch as they swear by day and night that they are a secular Government, functioning under a secular Constitution, they must make good the claim in the other respect that nobody, who is a citizen of this country, who has accepted the Constitution in which absolute equality of sexes is guaranteed, should be allowed to marry more than one at a time. (*Interruptions.*)

So far as this Bill is concerned, we ought to stand by it and not be affected by such considerations that there are

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other sections in the country or in the community which are free to marry more than one wife.

The next point which is vital and which forms an important part of this Bill is the provision for divorce. Of all the social institutions, marriage is the most important and is one on which those who are least qualified talk most.

Shri Syed Ahmed (Hoshangabad): How long are you going to speak?

Shri Gadgil: This problem must be approached with all the seriousness with which we deal with other important and vital problems. The main reason that is responsible for so many castes in this country is this institution of marriage. Therefore, if we want to achieve our ideal of having a casteless society, we cannot do it better than, I do not say attacking this institution of marriage, by trying to modify it in such a way as to bring it in line with modern conception. As I said, marriage is the most important institution. Our ancient *rishis* also looked upon this institution as important and whenever they had any occasion to deal with it, they dealt with it with a reverence, respect and seriousness which was remarkable. We are asked, this is all right, why should there be legislation. There are *shastras* and marriages can be celebrated according to *shastric* principles. *Shas-tras* were really pieces of legislation in those days because there was no regular legislature as such. Whatever was given by the *Shastras* or *pundits* had the force of pieces of law or legislation. Today, that institution, so to say, has merged into the institution of modern legislation. Therefore, it won't be quite valid to say that social matters should be left free. Similarly, we talk about Hindu *sanskriti* and say that marriage is a sacrament. In the final analysis, it is an agreement or a contract. There is a social side of marriage. There is a religious side of marriage. If we analyse what the bride and the bridegroom say or do at the time when the marriage is solemnised, it is essentially a contract.

Shri Jhunjhunwala (Bhagalpur Central): What are the conditions of the contract?

Shri Gadgil: After all, the father of the bride says *pradasyam*. He repeats it three times: grand daughter of so and so, daughter of so and so, etc., reference is made to three generations. The bridegroom says that he is the son of so and so, grandson of so and so etc., and then says *pratigrinami*. I offer and I take; these are the two essentials of a valid contract. When it is done with the necessary consensus of mind, the contract is complete. We might solemnise a contract by affixing a stamp, by registering it before a Registrar. But, what is necessary is that there must be an agreement between the two that the two must think of the same thing in the same meaning in the same context, whatever may be the secondary or ancillary things. We prefer to call a Hindu marriage a sacrament. I have no objection to that. But, when we are legislating, let us understand the essential nature of that. This is a contract between two people for certain social objectives. Therefore, let us not merely be guided by whatever is stated here and there. If it is a contract, then, whatever contracts are made must be valid according to the prevailing law of the society. If society had changed, if the entire social context and background have changed, it follows that these institutions have also to undergo a change. Therefore, if we say that marriage is a sacrament or anything of the kind, as the Law Member said in his speech yesterday, it is permissive.

Next, we come to monogamy which is the main thing and divorce. On this I also find some reactionary views expressed by highly placed judicial officers from the Madras Presidency. They do not like it.

Shri U. M. Trivedi (Chittor): Why do you call them reactionary?

Shri Gadgil: According to my humble view, that is reactionary which is inconsistent with the present times.

Shri U. M. Trivedi: According to you, everything destructive is a reform.

Shri Gadgil: If according to your conception, anything that is reactionary is a reform, I have no quarrel. Unfortunately, you are in a minority of a small percentage.

So far as divorce is concerned, the women in this country have grown up in political consciousness.

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): He is a revolutionary.

Shri Gadgil: In the last 50 years, female education has been going on a large scale and certain ideas have taken roots in their minds. They cannot now be considered as mere chattel or some commodity to be sold or purchased. They are eminently human beings with feelings and I think it will be a sad thing to belittle that progress achieved. What is far more important is that in this particular matter, political considerations have rightly entered. One half of the electorate consists of women. Any sensible politician or statesman who is anxious to do something for the uplift of the country can resist this claim only at his peril.

Shri Velayudhan: The cat is out of the bag.

Shri Gadgil: The cat was never in the bag. So far as I am personally concerned, I have supported this measure for the last 35 years. Therefore, there was no cat because there was no universal franchise.

Sardar Hukam Singh (Kapurthala-Bhatinda): And you have availed of the time.

Shri Gadgil: You say that the cat is out of the bag. If you are prepared to accept the force of the argument, then, be with me. It has become necessary to re-think about the entire institution of marriage. We must not insist, just like once a mortgage, always a mortgage, once married always married. That sort of doctrinaire attitude or approach will not be good. Let us, therefore, as responsible

people who are conscious, see that the great society and the community is held together by this institution of marriage; let us not do anything which will affect the fundamental basis of society. But, at the same time, we must not be dead or absolutely unresponsive towards the demands of the times. How shall we do it? So far as women are concerned, we cannot now say "Don't do it." We cannot afford to mark time. Letters and letters have been received by me and most of the people from various associations of women and, in fact, they are considering that this Bill has been delayed long. Now, it is for us to see whether we shall make divorce easy or whether we shall make it in such a manner as to meet the requirements of the situation. If you say that incompatibility of temperament should be a ground for divorce as was done by the other House in a spirit of adventure, it is another matter.

Shri C. D. Pande: They are more progressive perhaps.

Shri Gadgil: Much more than I or you.

So far as religious objection is concerned, everybody knows that the *smritis* have provided for such contingencies:

नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ ।

पंचत्स्वापस्तु नारीणां पतिरन्व्यो विधीयते ॥

Therefore, there is no religious objection to it. The question is: shall we go so fast as in America where a man was introduced to a woman as Mrs. so-and-so, Mrs. so-and-so etc., and then she said "You were my first husband", and he said "You were my first wife". We should see that should not become the current phrase in this country. Therefore, as men who are supposed to be leaders of social thought and conduct, it is our responsibility on the one hand to see that the door we open is not so widely opened as to make society a hopeless jumble without the necessary moral coherence in it; and on the other hand we cannot continue to increase the social tensions and

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stresses which are implicit in a situation in which you refuse divorce in certain deserving cases.

So far as the extent of this is concerned, you will find—I am talking about my province—that in the classes which are supposed to be the lower classes, divorce is there since generations. This business is only confined to the higher castes. This social superiority and arrogance that we belong to the caste Hindus, there is no re-marriage or no divorce, ought to be humiliated in the highest interests of democracy.

There are two things in which a man feels very much annoyed, viz., dining and considerations of marriage. If you do not like to dine with a man who does not belong to your caste, you cannot insult him more. When in 1935 I was elected along with you to the Central Assembly, I tried to invite some Harijan Members with certain Members belonging to the Congress Party from Madras, and I am very sorry to say they declined to accept my invitation to the dinner because they said: "You have invited Harijans".

Shri A. M. Thomas (Ernakulam): Why don't you repeat it?

Shri R. K. Chaudhuri: You can try that invitation now.

Shri Gadgil: Most certainly. I will keep this for consideration on a suitable occasion.

Shri Debeswar Sarmah (Golaghat-Jorhat) rose—

Shri Gadgil: I do not give in to anybody.

Shri Debeswar Sarmah: The speaker was pleased to make some suggestions, but he has been talking on. The other Members must get a chance. We have heard such sermons times without number.

Mr. Deputy-Speaker: The hon. Member has spoken so far for 23 minutes.

Shri Gadgil: I will finish in another five minutes.

Shri Debeswar Sarmah: Some persons are allowed any length of time, and towards the tail end, restrictions of five or ten minutes are imposed. That is what I wanted to submit.

Mr. Deputy-Speaker: The hon. Member by referring to Madras will lead to all sorts of inferences.

Shri Velayudhan: He was telling only a fact.

Shri Gadgil: A clear case has been established for having a law of divorce in this country and some grounds on which divorce could be obtained according to this Bill. Those grounds are good. They may be modified, there may be some addition, but the point remains that if you do not make any provision of that sort, the social tensions, as I have said, are bound to increase.

It is believed by some critics that if you pass this Bill, the courts will be crowded with petitions for divorce. I do not think anything of that kind will happen. There is one very nice provision in the Bill that for the first three years of the marriage, there is no opportunity for petitioning for a divorce. My humble suggestion is that the period should be raised to five, because five years is the period which, according to me, is necessary for the two parties to understand each other, and if they fail to understand each other . . . (Interruption.) I know you have got two views, one to be ventilated here, and the other outside.

Shri N. C. Chatterjee (Hooghly): If a man marries at 60 it may be so, but why should it be so in other cases?

Shri Gadgil: So far as the interpretation of that clause is concerned, I might inform my friend Mr. Chatterjee of an incident which happened in 1936 when the Bill by Dr. Deshmukh was introduced. I was explaining that to a meeting of women and I said: "Look here, you are all for this, but

think twice. Think over it carefully. Think about all its aspects and then agree." I said: "As a man grows, his reputation increases, his prestige increases, but so far as a woman is concerned, here only capital being looks, they wear away as she grows old." (Interruption.)

Shri S. S. More (Sholapur): Is it not unfair to the ladies to say that they have only looks and nothing else? That may be the personal experience of my hon. friend.

Mr. Deputy-Speaker: The hon. Member started quite well saying there should be no discrimination between the sexes, but now he says that only their looks call for any recognition. I think it will be resented. There are many women Members of Parliament who are equally able Members. There are Members who are in the Cabinet. Therefore, the hon. Member started quite well, but ends wrongly.

Shri Gadgil: All that I can say is that I am approaching this problem like a realist, but if other people do not like me to analyse this problem in all its realities, that is another matter. The point is that this question must be approached with due responsibility and you cannot avoid it; at the same time, do not make it so cheap as to bring in social consequences for which we will all have to regret. That is all I have to say.

Shri U. M. Trivedi: There are always two aspects to every case, and if one speaks in its favour, the other who wants to speak against it calls him a reactionary. This generally happens. This sort of hurling abuses against others is one of the weapons generally utilized by those who lack arguments, and the lack of arguments is made up by this abusive process. I want to steer very clear of these abuses. Abuses have been hurled not only by the hon. Member Shri Gadgil, but Shri Khardekar went out of bounds to abuse the whole of the Hindu society. There are some people in this world who are always strange, some who are stranger, and some

strangest amongst all. The strangest among all are those who call themselves independents. When we make a law, those of us who want to make a law must, while doing so call it, making or finding of law, or call it what you will—presuppose a mental picture of what one is doing and why one is doing it. In this particular instance, we have not applied our mind at all to the necessity for the making of this law. Some arguments were advanced that here we are, we are a democratic people, being democratic, we must progress, we must provide for a casteless society, and so on. These are all very nice ideals fit for school and college debates. But we have to face the facts as they are. We have to probe deep and find out whether we are evolving ourselves, or we are entering into a process of involution.

The Hindu society as such, does not like polygamy; rather, it abhors monogamy. Everyone of us wants monogamy.

Shri Debeswar Sarmah: Where do we find it?

Shri U. M. Trivedi: Perhaps, where there is polyandry, we may not find monogamy. It is quite true that perhaps, in Assam, polyandry exists, and therefore, necessarily, polygamy will be absent.

Shri Debeswar Sarmah: I am sorry the hon. Member is hopelessly and miserably wrong.

Shri N. C. Chatterjee: What does Gujerat know about Assam?

Shri U. M. Trivedi: That is what I say. I want to confine myself only to the Hindu society which I know, and not to the Hindu society which I do not know. There was no power to prevent a Hindu from marrying as many wives as he liked. With the exception of two gentlemen in the whole of this House, the other four hundred and ninety-eight Members are monogamists. One of those two

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gentlemen is dead and gone, and only one is left among us. (*Interruptions.*)

Shri Debeswar Sarmah: What about marrying one of them?

Shri U. M. Trivedi: If you contradict me on facts, I shall not object.

Shri R. K. Chaudhuri: On a point of information. I want to ask whether it is the intention of the hon. Member that a man who marries five times in his life, one after the other, still continues to be a monogamist.

Shri U. M. Trivedi: I am coming to that very point.

Shri R. K. Chaudhuri: The principle of one at a time, I can understand.

Shri U. M. Trivedi: When this principle of monogamy is not only an accepted principle, but is more than practised by the Hindu society, where does the necessity arise for making this law? For those who consider themselves very highly advanced, and far ahead of their friends, we have already provided the Special Marriage Bill. They may have the monogamy of their choice, they may have the divorces of their choice, they may have the incestuous marriages which they want, and they will have all that which they may call progressive. According to them, everything destructive of the Hindu religion, everything destructive of the old forms, everything which creates chaos in Hindu society is progress. The Special Marriage Bill may appeal to them, and it ought to satisfy them.

If we see the evolution of the Hindu society, and see how divorce as a necessity of sex was there, we find that divorce was allowed only to the lower castes, to those in the lower strata, who had not risen very high. For them, divorce was a very easy and simple affair. It was a simple affair, and even today, it is a very simple affair. It is only among the higher

castes that this temptation to have one woman running from house to house, and not settling down at one place, was forbidden. My hon. friend Shri Gadgil gave an illustration and said, here is a woman who is to be introduced to a man, the man said to her, oh, you are my first wife, and the woman replied, you are my first husband. It was this particular thing that was sought to be avoided in Hindu society; and the Hindu society tried to make the sacrifice that they will not have all these women running about, but that every woman may settle down at one place, and feel, "this is my house, I am part and parcel of this family, and not merely a contractual labourer or slave, who will leave this House so that tomorrow, when I go away, the children and the progeny will be left to hanker for themselves." This sort of a woman running about was not conceived by the Hindu society. They were bent on seeing to it that a woman becomes a part and parcel, and a kith and kin of the whole family; the woman should manage the affairs of the whole family and become a part and parcel of it, so much so that she is looked upon as the head of the family to guide the destinies of the whole family. This is obtaining with you, it is obtaining with me, and it is obtaining with everyone of us. But here you are now, trying to introduce the system of divorce. One of the lady Members of this House, who spoke yesterday said in the course of her speech that even if there is a single case where some sort of difficulty is being felt, for the sake of removing that particular difficulty of a particular individual, a law should be made. I think that it is the most preposterous proposition that has been put before the House.

Shri S. S. More: Why?

Shri U. M. Trivedi: I say so, because law is not meant for exceptions, but for generalities. The general thing is that a law must be made for

the greater good of the whole of the community. Professor Otley has said at one place.....

Shri S. S. More: Not old rishis.

Mr. Deputy-Speaker: They are the rishis in the west.

Shri S. S. More: The Jan Sangh is not supposed to respect the old rishis.

Shri U. M. Trivedi: I do not know from where my hon. friend has got this queer conception of the Jan Sangh.

Shri S. S. More: From your speeches.

Shri U. M. Trivedi: I challenge my hon. friend to point out a single speech by me, by Dr. S. P. Mookerjee or anyone in the Jan Sangh, of that nature. He has perhaps not realised...

Shri Debeswar Sarmah: What about his present speech?

Shri U. M. Trivedi: The present speech you can publish. I have no objection.

If you believe in the Hindu society, if you believe in the Hindu socialistic idea, if you believe in the system of Hindu social security, you will open your eyes wide, and ponder over the thing many times before you make a law of this nature throwing open the portals to immorality. One hon. Member suggested yesterday that we may have divorce by consent. What does it lead to? Let us say it very bluntly, and let us realise what it will mean. You want to be called progressive, and your ideas are that you exchange wives, and you exchange husbands.

Shri S. S. More: He is saying, you, and putting all the things in your name. What will the future generation think of you, if they were to read all these things?

Mr. Deputy-Speaker: I am willing to be the target of attack.

Shri U. M. Trivedi: When a particular measure of evolution was necessary, when we were surrounded by a particular type of wild society, were we more progressive, and more democratic? Had we the courage of our convictions then, we could have lifted that wild society at one stroke. A legislation ought to have been brought forth here and now, that no man shall marry wives during the lifetime of his first wife. I shall not stop there, but I shall provide further that a man who has lost his wife after nearly fifty years of happy company with her, shall not marry again to the detriment of his children. Shri Ramachandra remained a monogamist, even when he was separated from his wife 'Ekapatnivoratha' is as good as 'Pativratha'. If there were a wild society, there would have been something for us to evolve. But here we are reducing ourselves to the bestiality of the sex.

Sari C. D. Pande: Monogamy is one at a time.

Shri U. M. Trivedi: Monogamy is only one at a time, but at the same time, the idea of this Hindu Marriage and Divorce Bill is that you may have as many wives in your lifetime as you like, provided that you don't want to have more than one wife.

Mr. Deputy-Speaker: The Chair represent all the Members here!

Shri Sadhan Gupta (Calcutta—South-East): He should speak in the first person.

Shri U. M. Trivedi: As I was saying in the course of my speech, the fundamental principle of enacting a law is this: the judgment of the average conscience as to the minimum standard of right must be first judged. It must not be that one gentleman is going to suffer or one woman is going to suffer and that therefore we must make the law. Prof. Kenny has put down certain principles which I think even today hold good in deciding whether a particular law must be

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made or not. "Before using threats of criminal penalties to suppress a noxious form of conduct, the legislator should satisfy himself upon no fewer than six points." I am not going to read out *in extenso* all those points, but let me summarise them. "The objectionable practice should be productive not merely of evils but of evils so great as to counter-balance the suffering, direct and indirect, which the infliction of criminal punishment necessarily involves." It should admit of being proved by cogent evidence. The unsatisfactory state of things on the only available evidence has been one great cause of the reluctance of experienced legislators to deal critically with offences that are purely mental like heresy and conspiracy.

Pandit K. C. Sharma (Meerut Distt.—South): Is marriage a criminal offence?

Shri U. M. Trivedi: My learned friend has not yet seen that the bigamy is a criminal offence, which is punishable.

Shri S. S. More: He wants to make monogamy a criminal offence.

Shri U. M. Trivedi: "The law-giver should not prohibit it, until he has ascertained to what extent it is reprobated by the current feelings of the community. To elevate the moral standard of the less orderly classes of the community is undoubtedly one of the functions of the criminal law; but it is a function which must be discharged slowly and cautiously." I would say that if you desire to elevate the moral standard of the less orderly classes,—well, who are the less orderly classes? They are those who can and do marry four wives. Have you tried to elevate their moral standards? Does this law provide for this? On the contrary, under this law, you only want to hit at the Hindu society or at least your desire is that this Bill should hit at the Hindu society. They are not moved by good considerations of democratic principles to raise the moral standard

of those who, amongst us, have fallen very low. So, it is not going to govern a Mohammedan who walks about the streets saying *talak, talak* and divorces his wife. You are not going to prevent them. Why not elevate that position? Why not bring higher standards of life and put them high? My hon. friend says, we will wait for some time. Why wait? Seven years have passed. Those people who have sown the seeds of violence amongst us say, why not completely shed that society from doing this? Even the slightest provocation that we can give to such people is taboo for them, and that is why we are making this law. I do not know what justification Kaka Gadgil has for using an attribute against the Chief Justice of the Madras High Court. He calls him reactionary. I do not know why he calls him reactionary, except that he is not a man who has married at the age of 60. I do not want to offend him also.

Mr. Deputy-Speaker: Is reaction the opposite of action?

Shri U. M. Trivedi: Much capital is being made out of this proposition that the hon. Minister, in his opening speech, said that 15 States have supported this measure. Let us analyse the States which have supported it, and the States which have opposed it. Among the fifteen States are mentioned the names of Himachal Pradesh, Vindhya Pradesh, Tripura, Coorg, Andamans and Nicobar Islands. All these States make a population of just sixty lakhs.

An Hon. Member: They are States.

Shri U. M. Trivedi: Yes, they are States. Delhi is also a State. Everything is a State. We should not just take the number of State into account, but the number of people whom they represent.

Shri Nand Lal Sharma (Sikar): The people have not supported it.

Shri U. M. Trivedi: Not only the people but much more. I will read

out from the opinions of all those States which are said to have supported this measure: the judges of the Madras High Court, the judges of the Orissa High Court, the judges of the Rajasthan High Court, the then vacation Judge of the Punjab High Court—all these have disapproved of this measure. So, out of the fifteen States, about six are those whose total population does not exceed sixty lakhs. In four of the bigger States, the judges have disapproved of this measure.

Shri Nambiar (Mayuram): Judges are not representatives of the people. The representatives of the people are here.

Shri U. M. Trivedi: I am also a representative of the people. I am advancing my arguments as a representative of the people.

Mr. Deputy-Speaker: The hon. Member can refer to the opinions that have been received, whether they are from representatives of the people or otherwise.

Shri U. M. Trivedi: I am not talking about the representative character of anybody. Now, there are eight States which have expressed an opinion one way or the other. But which are the two States which have opposed this measure of divorce? They are the two biggest States of India—Uttar Pradesh and Bihar.

Shri S. S. More: (Interruption).

Shri U. M. Trivedi: My only difficulty is, I have made a solemn promise to Mr. More not to run him down, and I will act as a gentleman. Let him behave as he likes. I will go a little further.

Mr. Deputy-Speaker: Is it confined only to this Bill?

Shri U. M. Trivedi: No, for all purposes.

Shri S. S. More: I refute the agreement; I am not a party to that.

Shri U. M. Trivedi: From Paper No. 3, wherein opinions on the Hindu Marriage and Divorce Bill are expressed, I would read a passage on page 98, to which I would subscribe myself. Justice Venkatarama Aiyar says:—

“Reading the Bill as a whole the impression which I have formed is that it is not calculated to promote peace and happiness in home. I realise that there has been latterly a demand for divorce and there is also an enactment passed in Madras providing for dissolution of marriages of Hindus under certain conditions. In social matters, it is a salutary rule that there should be only minimum interference by the Legislature and that must be only for the purpose of remedying evils which are shown to exist. From that point of view there may be some justification for introducing provisions as regards divorce. But, why there should be legislation on marriages, I have not been able to quite appreciate. Many of the proposed provisions will be repugnant to those who believe in *shastric* marriages. It is not suggested that in respect of those marriages there are any evils which call for interference. It might be said that the Act does not prohibit persons from performing marriages in accordance with the *shastras* and that it is a purely enabling an enabling measure. But, frankly it must be recognised that an enabling legislation in social matters must result in the entire society being affected. My opinion is that there is no need to enact any laws with reference to marriages.”

As regards divorce, I say, that it is not a measure which is desirable in the Hindu society. We have been seeing and watching the evils of divorce laws in America. In England today, the judges are reluctant to grant di-

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voorce. And, they are certainly reluctant when they find that there is some sort of collusive action. Here, we want to be so progressive that we say that not only the judge should act upon it but we go open and bare and brazenfacedly before the court and say, here we are in collusion and we have come before you and seek a verdict of divorce. That is the idea of progress that we have. That idea. I should say—I do not want to use the language that it is an entirely shamefully reactionary measure—a desire just to react against Hindu society. It is with that desire we say that we are not stopping at a particular stage. All those things which are taboo even in the society in England and the western countries, we are having. In the western countries also, divorce is not looked upon with very great favour. You and I have not forgotten the days when, for the sake of marrying a divorced woman, King Edward VIII had to give up his kingdom. That means, divorce is not held out to be a very desirable aspect of social life.

An Hon. Member: We have no kingdoms to lose.

Shri U. M. Trivedi: We have a full kingdom to lose. I say every one of us realises how happy and pleasing it is that we have been born in Hindu society. If we believe in the law of transformation, we wish that God makes us born again in Hindu society with a Hindu wife and we might be safe from the suffering that we see in western society. You do not know how happy lives we lead; you want to disrupt these happy lives and I would say that before you proceed further you ponder over these things.

An Hon. Member: What is the advantage of the Bill?

Mr. Deputy-Speaker: The hon. Member has said sufficiently, 'you'. He may change over to 'they' or the 'sponsors of the Bill'.

Shri S. S. More: He is giving his mental reactions. (*Interruption*).

Mr. Deputy-Speaker: The hon. Member must also have an eye on the clock.

Shri Nambiar: He is having both eyes.

Shri K. K. Basu (Diamond Harbour): There is no time-limit for marriages.

Mr. Deputy-Speaker: There is a Bill providing that there should not be a great difference and all that.

Shri U. M. Trivedi: I do not agree with the idea of not applying this Bill to Jammu and Kashmir. Since it is going to the Select Committee, I would ask them to consider it. In this particular instance.....

Shri A. M. Thomas: May I know how many enactments in the past have been applied to Jammu and Kashmir?

Shri U. M. Trivedi: Just probe into the statute book.

Shri A. M. Thomas: So far none.

Shri U. M. Trivedi: You come to me and I will show you.

When we are applying this to Hindus domiciled outside India, we want to say at the same breath that it shall not apply to Jammu and Kashmir. It will be creating a sort of repugnancy and complications when the law is brought into force.

When we have put down a period of three years before an application can be made for obtaining divorce, the Select Committee would do well to make a provision of this type that if a man has led a happy life for 25 years with his wife and then his wife happens to fall ill, such a man should not be allowed to have divorce.

I will go a little further and say that the provision for divorce and the

grounds for divorce speak very lightly of good morals. In all civilised societies, even a single case of adultery is enough for the purpose of asking for a divorce. Adultery is abhorred in India. Those of us who practise in criminal courts know how a single case of adultery or a doubt on the ground of adultery has resulted in murders and many of the murders have been committed on account of adultery. Here, we say that a man can ask for divorce only when the wife has become a concubine of any other man or lives the life of a prostitute. That means that if she commits one adultery, two adulteries, or three adulteries, or if she runs with one, two or five men, then she cannot be divorced. Such a conception is only obtainable in Bombay and whosoever drafted the Bill copied it down from Bombay. I remember a client who came down to me, to consult me when I had been to Bombay recently, trying to get a divorce from his wife. His only complaint was that his wife was occasionally going away at nights and visited a particular friend and living with him. It was only one man. So, she could not be described as a prostitute and because she could not be described as a prostitute, the poor man could not get a divorce and was handicapped and had to carry on. If you want to make this law, make it definite.

An Hon. Member: Are you in favour of divorce?

Shri U. M. Trivedi: I am definitely not in favour of divorce. But, I say if you have to make this law make it as a good lawyer. (*Interruption.*)

Mr. Deputy-Speaker: Let there be no interruptions, please.

Shri Punnoose (Alleppey): He says that with regard to men. I would like to know what he has to say with regard to women, will that be the same in the case of a man concerned?

Shri U. M. Trivedi: I have been saying from the very beginning, over and over again, that monogamy should be

practised. I say that even now. I say that a man should not marry another woman even after the death of the first wife. I am of that opinion. I am equally against any woman doing the same. This seems to me to be the device of immoral people for having as many wives as possible. The Law Minister has no heart in the Bill. In his heart of hearts, he is a good Hindu and does not want the Bill to be brought forward. As a Member of the Cabinet he is being directed from the top and so he has got to place the Bill before us. (*Interruptions.*)

The Minister of Law and Minority Affairs (Shri Biswas): I have a higher conception of my duties than my hon. friend ascribes to me.

Shri C. D. Pande: He says 'duties' and not 'conviction'.

Shri U. M. Trivedi: I know that he is discharging his duties as a very loyal Government servant. (*Interruptions.*)

Shri Biswas: The hon. Member judges others by his own standards.

Shri U. M. Trivedi: I will now conclude my speech by just quoting from a lecture by Justice Benjamin Cardozo.

An Hon. Member:...of Spain?

Shri U. M. Trivedi: When we are making a law, we must see that--

"What we are seeking is not merely the justice that one receives when his rights and duties are determined by the law as it is; what we are seeking is the justice to which law in its making should conform. Justice in this sense is a concept by far more subtle and indefinite than any that is yielded by mere obedience to a rule. It remains to some extent, when all is said

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and done, the synonym of an aspiration, a mood of exaltation, a yearning for what is fine or high. 'Justice', says Stammler in a recent paper 'is the directing of a particular legal volition according to the conception of a pure community.' * * *

The precept that emerges from this flux seems barren enough indeed till the transfiguring process of creation has proved it to be fertile. You shall not for some slight profit of convenience or utility depart from standards set by history or logic; the loss will be greater than the gain. You shall not drag in the dust the standards set by equity and justice to win some slight conformity to symmetry and order; the gain will be unequal to the loss."

I reiterate this, and most sincerely suggest to the hon. Law Minister and to those friends of mine who will be sitting on the Select Committee, to consider all these aspects and see whether they are going to help the Hindu society to a high plane of life or to a lower plane of life by this measure.

श्रीमती सुभद्रा जोशी (करनाल) : उपाध्यक्ष महोदय, यह भाषण सुनने के बाद मैं भी समझती हूँ कि जो कल कुछ स्पीकर्स का ऐतराज था कि ईडियट्स पर से बार हटा देना चाहिये, अगर वह हटा दिया जाय तो इस बिल की अपोजीशन बहुत कम हो जायगी।

उपाध्यक्ष महोदय, मुझे तो त्रिवेदी जी के इस कहने पर बड़ा भारी प्रोटेस्ट करना है कि अगर यह बिल पास हो जायगा तो औरतें इस घर से उस घर में और उस घर से इस घर में भागेंगी और बिगड़ जायेंगी। उपाध्यक्ष महोदय, मैं कहना चाहती हूँ कि जब कभी हमारे भाई इस बिल के सिलसिले

में या किसी और बात के सिलसिले में औरत का जिक्र करें तो यह याद रखें कि औरत कोई आसमान से गिरी हुई चीज नहीं है, कोई बेजान चीज नहीं है। औरत हमारे घर में माँ है, बच्ची है और बहिन है। और अगर कोई यह कहे कि अगर यह कानून पास हो जायगा तो मेरी मां भाग जायगी, मेरी बहिनें भाग जायेंगी या मेरी स्त्री मुझे छोड़ कर भाग जायेंगी तो यह हिन्दू धर्म के लिये कोई गर्व की बात नहीं है।

11 A.M.

उपाध्यक्ष महोदय, यह बड़े ताज्जुब की बात है और इस से ज्यादा बेवकूफी की और धमंड की कोई दूसरी बात हो नहीं सकती कि हिन्दू धर्म जोकि करोड़ों आदमियों का धर्म है उस धर्म का कुछ मुट्ठी भर लोग अपने को ठेकेदार समझने लग जायें, और तमाम शराफत, तमाम मारेलिटी और तमाम चीजों के बारे में यह समझें कि जो हम कहते हैं वह मारल है और जो दूसरे कहते हैं वह हिन्दू धर्म को गिराने वाली चीज है। इस से ज्यादा नामुनासिब बात आज इस सदन में नहीं हो सकती। त्रिवेदी जी ने कहा कि अगर किसी एक आदमी का या एक औरत का एक्सेप्शन हो तो उस के लिये कानून नहीं बनता। कानून तो आम लोगों के लिये बनता है। यहां पिछले दिनों क्रिमिनल प्रोसी-ड्योर कोड पर बहुत बहस रही। त्रिवेदी जी खुद बैरिस्टर हैं। बहुत सारे केसेज डील करते हैं। हिन्दुस्तान में आम लोग तो कल्ल नहीं करते फिर भी आप ने कल्ल करने को ओफेंस बना रखा है। हिन्दुस्तान में आम लोग चोरी नहीं करते, फिर भी चोरी को ओफेंस समझा जाता है। एक चीज को चाहे कितने कम लोग भी करें, अगर वह बुरी है तो उस का मुकाबला करने के लिये कानून होना चाहिये और अगर कोई चीज अच्छी है तो उस की इजाजत होनी चाहिये।

इस के बाद अध्यक्ष महोदय में कहना चाहती हूँ कि हम को इस हिन्दू मैरिज एंड डाइवोर्स बिल पर अभिमान है कि हमारी सरकार इस को लाई। यद्यपि इतने साल के बाद ही सही, और हम चाहते हैं कि वह पास हो जाय। इस बिल में हिन्दू स्त्रियों को बराबर का अधिकार देने का सवाल नहीं है और न मैं आज हिन्दुस्तान की स्त्रियों के लिये बराबर का अधिकार मांगती हूँ। मैं तो सिर्फ यह कहती हूँ कि हम लोगों को इन्सान समझा जाय यही हमारे लिये बहुत है। बराबर तो न मालूम हम कब पहुँचेंगे। सिर्फ यह समझा जाय कि हिन्दुस्तान की स्त्री भी इन्सान है। उस के भी फ्रीलिगस होते हैं, उस को भी कुछ चीजें अच्छी और कुछ चीजें बुरी लगती हैं, वह भी दुःख और खुशी को महसूस करती है। तो मैं यह काफी समझूंगी कि हम को इन्सान समझा जाय। आज पुरानी बातों का नाम ले कर और हिन्दू समाज का नाम ले कर बातें कही जाती हैं। उपाध्यक्ष महोदय मैं चाहती हूँ कि आज के समाज को दृष्टि उठा कर देखा जाय। शादी को चाहे धार्मिक, या सामाजिक या कांटेक्ट समझा जाय, लेकिन जो आज हमारे यहां शादी होती है उस की शकल क्या है? न लड़की ने लड़के को देखा होता है और न लड़के ने लड़की को देखा होता है। एक दूसरे के बारे में सुना नहीं होता। कोई स्त्रियाँ जाती हैं लड़की को देख आती हैं खासकर लड़की को। लेकिन बहुत कम शादियाँ ऐसी होती हैं जिसमें देखने जाते हैं हिन्दुस्तान में आम लोग तो देखते भी नहीं हैं।

पंडित क० सी० शर्मा : यह पुरानी कहानी है।

श्रीमती सुभद्रा जोशी : अभी तक यही चला आ रहा है कि देखते नहीं। जो आजकल के लोग बहुत तरक्की कर रहे हैं वे देखने जाते हैं। वे भी लड़की को देखने

जाते हैं। शकल देखते हैं, सूरत देखते हैं। चाहे लड़की कितनी ही पढ़ी हुई हो, कितनी ही सुशील हो, कितनी ही गुणवती हो, उस की सिर्फ शकल देखी जाती है और सिर्फ शकल देखने से उस के गुण नहीं देखे जा सकते। और जहां लड़की अच्छी भी है वहां लड़की की बात कम होती है और दहेज की बात ज्यादा होती है। उपाध्यक्ष महोदय, इसी दिल्ली में एक बड़ा शर्मनाक वाकया हुआ। उस के सिलसिले में किसी के कानों पर जू नहीं रेंगी। एक बारात में शादी के बाद पांच हजार रुपये मांगे गये और जब वह रुपया नहीं दिया गया तो लड़का लड़की को छोड़ कर चला गया। और जो घर्म के ठकेदार बनते हैं उन के कान पर जू भी नहीं रेंगी। तो उपाध्यक्ष महोदय, शादी हो जाती है। कहते हैं वह शादी अच्छी है। लोग खुश रहते हैं।

आखिर ऐसे लोग भी हैं जो यह ब्याल करतें हैं कि एबडक्टड औरतें अपने भगाने वाल से बाद में लव करने लगती हैं और उन के साथ आराम से रहने लगती हैं, इसलिये बहुत से लोग ऐसे भी हैं जो समझते हैं कि हमारा सब का वैवाहिक जीवन बड़ा सुखी है और हम बहुत आराम से हैं, लेकिन मैं कहूँ कि वह यह आराम का स्टेन्डर्ड अपने नजरिये से देखते हैं, औरतों के नजरिये से बहुत कम लोग देखते हैं, कोई उन से पूछता तक नहीं कि उन के ऊपर क्या बीतती है। त्रिवेदी जी ने कहा कि हम ने मोरैलिटी को हिन्दू समाज में सुरक्षित रखने के लिये यह सैक्रीफ्राइस किया। हम अभी तक यह समझते थे कि यह सैक्रीफ्राइस बेचारी औरतें खुद अपनी करती हैं, लेकिन आज त्रिवेदी जी से यह मालूम हुआ कि यह सैक्रीफ्राइस वे कराते हैं। हम समझते थे कि यह स्त्रियों की सैक्रीफ्राइस है, स्त्रियों का बलिदान है कि मुंह पर ताला लगा कर तमाम किस्म के दुःख और तकलीफ को सहन करती हैं और अपने घर

[श्रीमती सुभद्रा जोशी]

में रहती हैं और इसलिये रहती हैं कि वह घर-उन का अपना है वहां उन की इच्छत है, वहां उन का पति है और वहां उन के बाल-बच्चे हैं इसलिये घर में रहती हैं और निवेदी जी का यह कहना कि बिल पास हो जायेगा तो स्त्रियां घर-घर भागा करेगी और यहां वहां जाया करेगी, मेरी समझ में यह बात जरा मुश्किल से आती है। दूसरे आज जो अनागिनत-लेमों के कान डाइवोर्स की बात सुनते ही खड़े हो जाते हैं और कहते हैं कि यह आप क्या बात कह रही हैं। मैं उन को बतलाऊं कि आज हमारे समाज में डाइवोर्स नहीं है पर क्या हालत हो रही है? मैं समझती हूँ कि सामाजिक काम-करने वाले पुरुषों और स्त्रियों के पास अनागिनत बेचारी मुसीबत की मारी बहिनें आती हैं और लड़कियों के मां-बाप आते हैं और कहते हैं कि हमारी लड़की को उस के पति ने छोड़ दिया है, हमारे यहां तलाक तो नहीं होता है लेकिन स्त्री को छोड़ दिया जाता है, या शादी कर के ले ही नहीं जाते हैं, या करने के बाद छोड़ देते हैं। उपाध्यक्ष महोदय, मैं अपने अनुभव से कहती हूँ कि जब हमारे यहां ऐसी बहिनें अपनी दुःख भरी द्वास्तान ले कर आती हैं तो हम अपने यहां से कुछ बड़ी-बड़ी बुजुर्ग बहिनों को भेजते हैं कि जा कर उस पति महोदय से बात कर के, या सास-ससुर से बात कर के उस बदक्रिस्मत बहिन को उस के घर में वापिस बिठाने की कोशिश करें। जब हम उन के घर वालों से पूछने जाती हैं कि उस को क्यों छोड़ा तो जो उन की-तरफ से जवाब मिलता है उस को सुन कर बहुत शर्म महसूस होती है और हर एक सदस्य जानता है कि कैसा जवाब मिलता है? कोई कहता है कि इसलिये छोड़ दिया कि हम को दहेज काफ़ी नहीं दिया गया था जितनी उम्मीद थी, कोई कहता है इसलिये छोड़ दिया कि काली थी और हम को पसन्द नहीं थी,

कोई कहता है इसलिये छोड़ दिया कि उसके बच्चा ही नहीं होता था, कोई कहता है कि इसलिये छोड़ दिया कि उस के लड़कियां ही लड़कियां होती थीं, लड़का नहीं होता था, कोई कहता है कि वह बीमार हो गई थी और बीमार को मैं नहीं रख सकता था उस के साथ निबाह नहीं हो सकता था इसलिये छोड़ दिया और एक महोदय ऐसे निकले जिन्होंने बड़ी सफ़ाई से कहा कि हालांकि उस के खिलाफ़ मेरे पास कुछ भी नहीं है, पर बहिन जी, जब से मेरी शादी हुई है वह मेरे मन पर कभी चढ़ी ही नहीं इसलिये मैं ने उस को छोड़ दिया। उन्होंने इस बात को बहुत सफ़ाई और ईमानदारी से तसलीम किया कि उस के खिलाफ़ कुछ नहीं है, लड़ती भी नहीं, यह भी नहीं, वह भी नहीं। लेकिन पता नहीं कुछ ऐसी बात हुई कि वह मुझ को पसन्द ही नहीं आई, मैं उस को नहीं रख सकता इसलिये छोड़ दिया। उन बदक्रिस्मत लड़कियों का हमारे यहां क्या होता है, चाहे वह किसी अमीर की हों, अथवा गरीब की, ऐसी अभागी लड़कियों के लिये हमारे देश और समाज में कोई ठिकाना नहीं है, आखिर उन के मां-बाप कब तक उन बेचारियों को अपने पास रख सकते हैं, न उन को कोई पाल-पोस सकता है और न उन को कोई आश्रय दे सकता है और न कोई उन को खिला पिला सकता है या पढ़ा-लिखा सकता है, हमारी बदक्रिस्मती ऐसी है कि पति के घर से टुकरा दिये जाने के बाद स्त्री के लिये दो रोटी टुकरा प्राप्त करने के लिये और कोई तरीका नहीं है सिवाय इस के कि वह अपनी इच्छत बेचने पर मजबूर हो। मैं जानती हूँ कि मैं यह बहुत कड़वी बातें कह रही हूँ लेकिन चूंकि मैं भी उस समाज में हूँ इसलिये मुझे बहुत सफ़ाई के साथ यह कटु सत्य आप के सामने कहना पड़ रहा है। मुझे भी यह सब बातें कहने का उतना ही

अधिकार है जितना कि दूसरों को, मैं किसी दूसरे को कोई समाज की तरफ से कहने का ठेकेदार नहीं समझती, हर एक को अपनी बात कहने का पूरा हक है। और अपने समाज की जो बुरी बात हो उस को कहने का मैं उतना ही अधिकार रखती हूँ जितना कि त्रिवेदी जी रखते हैं। मैं इस चीज को सफ़ाई से कहना चाहती हूँ कि ऐसी स्त्रियों के लिये हमारे यहाँ कोई इन्तजाम नहीं है जिन को कि पति द्वारा छोड़ दिया जाता है, लेकिन अगर यह बिल पास हो जाय तो उपाध्यक्ष महोदय, मैं समझती हूँ कि हमारी बदकिस्मत बहनों की थोड़ी रक्षा हो सकेगी, फिर लोग इसलिये नहीं छोड़ सकेंगे कि बच्चा नहीं होता, काली है या पढ़ी लिखी नहीं थी इसलिये हम ने छोड़ दिया। उस को बाकायदा मजिस्ट्रेट के सामने और जज के सामने साबित करना पड़ेगा कि वह क्यों उस को छोड़ना चाहता है, अभी कोई पूछने वाला है नहीं। लड़की के मां-बाप जाते हैं लड़के के पैरों पर पगड़ी रखते हैं, भाई लाटियाँ ले कर जाते हैं, समाज और बिरादरी जुटाते हैं पर कोई कुछ नहीं कर पाता.....

Mr. Deputy-Speaker: How does this help? There can be a divorce.

श्रीमती सुभद्रा जोशी : अगर यह क़ानून पास हो जाय तो स्त्रियों की रक्षा हो जायगी.....

Mr. Deputy-Speaker: How?

श्रीमती सुभद्रा जोशी : इस क़ानून में आप ने ५, ६ या ७ शर्तें रखी हैं, अनलिमिटेड आज्ञादी नहीं है कि जब चाहा छोड़ दिया। आप ने शर्तें प्रोवाइड कर दी हैं कि जिन के मातहत ही कोई व्यक्ति अपनी पत्नी को डाइवोर्स कर सकता है, उन के बाहर वह अपनी पत्नी को नहीं छोड़ सकता है।

दूसरी चीज, उपाध्यक्ष महोदय, स्त्रियों की तरफ से जो डाइवोर्स देने का सवाल है पत्नी को अपने पति को डाइवोर्स करने का अधिकार इस बिल में दिया गया है। मैं इस चीज को मानती हूँ कि आज भी कई एक क़ानून ऐसे हैं जो स्त्रियों की रक्षा करते हैं लेकिन चीज यह है कि उन को हम लोग भी नहीं जानते हैं, देश की हज़ारों, करोड़ों अनपढ़ बहिनें भला उन को क्या जानें और जानती भी हों तो उपाध्यक्ष महोदय उनको कोई मदद देने वाला नहीं होता है, कोई वकील नहीं मिलता है, पैसा उन के पास नहीं होता है और बहुत कम फ़ायदा वे उन क़ानूनों से उठा सकती हैं, पर मेरा विश्वास है कि इस क़ानून के पास होने से उन के मन में एक आत्म-विश्वास पैदा होगा, एक साइकोलॉजि पैदा होगी और साथ ही पुरुष को भी इस बात का अहसास होगा कि अगर मैं ने ऐसी बातें कहीं तो आज देश की स्त्री को अधिकार है कि वह मुझ को छोड़ कर जा सकती है। अगर मैं उस को नाजायज़ सताऊँ तो वह इस तलाक़ के अधिकार का मेरे विरुद्ध प्रयोग कर सकती है। इस चीज से हो सकता है कि हमारी बहुत कम बहिनें फ़ायदा उठावें, फिर भी मेरा ख़याल है कि साइकोलॉजिकल चेंज औरत के दिल में होगा कि अगर वह चाहे तो अपनी जान छुड़ा सकती है और किन्हीं सुरतों में उस के लिये अपने पति से जान छुड़ाना ज़रूरी हो जाता है और उन्हीं सुरतों के वास्ते हम यह अधिकार तलाक़ का अपनी बहिनों को दिलाना चाहते हैं।

उपाध्यक्ष महोदय, मैं कहाँ तक औरतों की दुर्दशा बयान करूँ। औरतों की मार-पीट तो एक मामूली सी चीज और एक मज़ाक की चीज बन कर रह गई है। हमारे देश में अगर कोई पड़ोसी किसी कुत्ते को भी पीटता तो पड़ोसी जा कर हाथ पकड़ लेता है कि ऐसा

[श्रीमती सुभद्रा जोशी]

मत करो, लेकिन अगर कोई पति अपनी स्त्री को पीट रहा होता है तो लोग और मुहल्ले वाले कह देते हैं कि हमें इन के मामले में कोई दखल नहीं देना है, यह तो इन का अपने घर का मामला है, इस में हमें बोलने और बीच में पड़ने की कोई जरूरत नहीं है। मार, पीट एक बिल्कुल मामूली चीज हो गई है और हम को आदत हो गई है उस के लिये कहने की कोई बात नहीं रह गई है लेकिन समाज को तो अपना कर्तव्य पूरा करना है और आज इंसानियत इस बात का हम से तकाजा करती है कि हम अपनी स्त्रियों को गिरी हुई अवस्था में से ऊपर उठायें और उन के उचित अधिकार उन को दिलवायें। मैं यह कहते हुए बहुत शर्म महसूस कर रही हूँ लेकिन मैं आज साफ़ तौर पर बतलाना चाहती हूँ कि क्या समाज के उन ठेकेदारों को मालूम है कि आज मेरे पास ऐसे-ऐसे केसेज भी आते हैं कि जिन में स्त्रियों के पति स्वयं उन को मजबूर करते हैं कि वे औरतें जा कर अनुचित तरीके से पेशा करें और पैसा कमायें, मेरा वह बात कहते हुए सिर शर्म से झुक जाता है लेकिन यह वाक्या है जो कि हमारे नोटिस में आया है। चाहे ऐसे केसेज ज्यादा न हों और बहुत थोड़े हों, लेकिन यह सच्चाई है और इस से इन्कार नहीं किया जा सकता कि हमारी बहुत सी ऐसी असहाय और बदकिस्मत बहिनें हैं जिन्हें उन के पति द्वारा इस घृणित काम को अपनाने पर विवश किया जाता है और वह अपनी आबरू बेचने और अपनी इज्जत लुटाने के लिये मजबूर की जाती है ताकि वह पैसा कमा कर घर में ला सकें, मैं समाज के उन ठेकेदारों के पूछती हूँ कि इस स्त्री के लिये समाज में रक्षा का क्या प्रबन्ध है। मैं जानती हूँ कि आज यह गन्दगी बहुत अच्छे-अच्छे घरों भी घुस गई है और मुझे बहुत दुःख

और दर्द हुआ जब मैंने सुना कि एक बहुत अच्छे और बाइज्जत घर में एक १८, १९ साल का लड़का अपनी बीवी से जो करीब १४, १५ साल की है, इस कोशिश में है कि वह अपनी बीवी से इस तरह का गलत काम करायें, लड़का बहुत आवारा किस्म का था और उस के मां-बाप ने यह सोच कर कि शादी के बाद वह सुघर जायगा, उस की शादी कर दी, लेकिन नतीजा उस का यह हुआ जो मैंने आप को बताया। घर में दो, दो दिन खाना नहीं बनता है, मां-बाप परेशान हैं, रिश्तेदार सब परेशान हैं, खाना नहीं खाते, दिन रात रोना, पीटना मचा हुआ है, लड़के के मां-बाप कब तक उस लड़की की रक्षा कर सकते हैं? और मुझे तो नज़र आ रहा है कि उस लड़की के पास आखिर में सिवाय अपने पति की बात मानने के और उस काम को अपनाने के और कोई दूसरा रास्ता नहीं रह गया है और आखिर में जा कर उस बद-किस्मत लड़की को किसी जी० बी० रोड या काठबाजार के कोठे में शरण लेनी पड़ेगी। हम ऐसे-ऐसे केसेज और मजबूरियों की हालत में इस कानून का मौजूद होना जरूरी समझते हैं। और उपाध्यक्ष महोदय, हम जानते हैं कि ऐसे केस हुए हैं जहां पर स्त्री को मजबूर हो कर अपने पति की हत्या करनी पड़ी है और हम ने जेल में देखा कि वहां पर बहुत सी औरतें ऐसी आती थीं जो अपने पति को मार कर वहां आती थीं। और कैसी सूरत में मारती थीं? कैसी-कैसी मजबूरियों में मारती थीं? कोई बेचारी शौक से तो मारती थी नहीं, किसी परेशानी में ही मारती थीं, कोई-कोई बच्चों को ही मार कर आ जाती थीं। तो आखिर अगर हमारा समाज, या हम लोग इन बहनों के लिये भी कुछ खयाल करें और उन के लिये भी कुछ कर दें तो उस से देश की कुछ हानि नहीं है, उपाध्यक्ष

महोदय, मेरा यकीन है कि इस से हिन्दू समाज तरक्की करेगा और जरूर आगे बढ़ेगा ।

इस के बाद एक चीज जो इस बिल में है वह मैरेज की बात है । मैं चाहती हूँ कि इस मैरेज की बात की तरफ भी ध्यान दिया जाय । मुझे नहीं मालूम कि सेलेक्ट कमेटी इस पर गौर करना मुनासिब समझेगी या नहीं । एक क्लोज है "गाजियनशिप आफ मैरेज" । अर्थात् किसी उम्र तक की लड़की की शादी तो हो ही नहीं सकती है और उस के बाद उस का गाजियन उस की शादी कर सकता है । इस का जो बेसिक आइडिया है वह है कन्यादान । यानी औरत कोई ऐसी चीज है जोकि गिफ्ट के तौर पर दूसरे को दी जा सकती है । मैं समझती हूँ कि इस में जो खूबियाँ बताई जाती हैं वह अब नजर नहीं आती हैं । जहां तक कन्या के मां बाप का ताल्लुक है, उन का प्रेम इतना ज्यादा होता है, अगाध होता है कि उस की बुराइयाँ हमारे सामने कम आती हैं । पर यह जो कन्यादान देने की बात है कि बाप न हो तो मां, मां न हो तो दादा, दादा न हो तो चाचा और चाचा न हो तो चाची, एक दर्जन भर आदमियों की लिस्ट है, इस में सब से मजाक की बात यह है कि आखीर में लिखा हुआ है "एनी अदर रि्लेटिव" । मुझे आज के युग में इस बात से कुछ दुःख भी हुआ है और हंसी भी आती है, यह एक अजीब तरीका है कि किसी एज की लड़की हो, वह अपनी शादी नहीं कर सकती, लेकिन दुनियां भर के रिश्तेदार उस की शादी कर सकते हैं । यह बहुत रिडिकुलस मालूम होता है । इसलिये, उपाध्यक्ष महोदय, सेलेक्ट कमेटी से मेरी यह दरखास्त है कि आप एज चाहे जितनी बड़ी कर दें, जितनी भी मुनासिब समझें कि जबकि लड़का और लड़की अपना फायदा समझ सकता

हो, आप चाहें तो १५ साल से ५० साल कर दें, अगर आप यह समझें कि ५० साल से पहले मुझ में अक्ल नहीं आ सकती, और आप मुझ को इजाजत नहीं दे सकते, तो आप इस एज को ५० साल कर दीजिये, पर ऐसी कोई चीज कि दुनिया भर के लोगों को अधिकार हो कि लड़की की शादी कर दें, लेकिन लड़की को अपनी शादी करने का अधिकार न हो, दुनिया भर के लोग जिस को चाहें उस को दे दें, जिस से चाहे उस की गांठ बांध दें, यह भावना आजकल ज़रा नामुनासिब सी बात मालूम होती है । वैसे मेरी तो इच्छा यह है कि लड़की की जो एज है उस को १५ साल से उठा कर १८ साल कर दी जाये और लड़के की एज २१ साल कर दी जाय । गाजियनशिप का क्लोज बिल्कुल हटा दिया जाय या सिर्फ मां-बाप और लीगल गाजियन तक ही इस को रहने दिया जाय । बाकी के सारे गाजियन एलिमिनेट कर दिये जायें क्योंकि ऐसा भी हम ने देखा है कि शादी करते वक्त जब गाजियन शादी करते हैं, तो पैसे की तो मामूली बात है, बहुत से रिश्तेदार, बहुत से इन्टरेस्टेड आदमी ऐसे होते हैं, खास तौर पर जब लड़की के मां-बाप नहीं रहते हैं, जिन के सामने लड़की का इन्टरेस्ट नहीं होता है, उन के सामने दूसरे इन्टरेस्ट सामने आ जाते हैं । इसलिये शादी या तो मां-बाप करें या फिर लीगल गाजियन करें । गाजियनशिप का यह क्लोज हटा देना चाहिये ! हां, लड़की की एज उठा देनी चाहिये ताकि वह अपना फायदा खुद समझ सके ।

इस के बाद उपाध्यक्ष महोदय, मुझे आप से यह प्रार्थना करनी है, जैसा मैं ने आप से कहा था कि इस कानून में काफी अधिकार नहीं दिये गये हैं । कहा जाता है कि इस में तकरीबन बराबरी के अधिकार दिये गये हैं । आज स्त्री भी डाइवोर्स कर सकती है और पुरुष भी डाइवोर्स कर सकता है । अगर यह

मती सुभद्रा जोशी]

काफी नहीं है, इस वक्त मेरी समझ में पुरुष और स्त्री में बहुत अन्तर है। अगर आप बराबरी के अधिकार देते हैं, स्त्री को ज्यादा अधिकार देने की बात नहीं है, और न यह कोई बहुत तरक्की की बात है। मुझे तो तब भी कोई एतराज नहीं होगा अगर आप डाइवोर्स को छोड़ कर सती की प्रथा पर फिर आ जायें। लेकिन जो गड़बड़ होती है वह तब होती है जब अनईक्वल डिस्ट्रिब्यूशन आफ राइट्स होता है। जैसे आज समाज में कम पैसा आये या ज्यादा आये, इस में गड़बड़ नहीं होती है, गड़बड़ तब होती है जबकि अनईक्वल डिस्ट्रिब्यूशन आफ वेल्थ होता है, उसी तरह से स्त्री के अधिकारों की भी बात है। धार्मिक शादी में अगर डाइवोर्स आप नामनासिब समझते हैं तो सती प्रथा आप फिर चलायें, लेकिन साथ में यह भी कर दें कि पत्नी मर जाय तो पुरुष भी सती हो जाय जैसे कि पति मर जाता था तो स्त्री भी सती हो जाती थी। आज भी अत्याचार होता है, नामनासिब बात होती है, आज हमारे समाज में एक को तो सुप्रीम अधिकार होते हैं और दूसरे को कुछ नहीं होते। आज भी, जैसा कल एक सदस्य ने कहा था, स्त्री को प्रापर्टी में कोई अधिकार नहीं है, जायदाद पर उस का कोई अधिकार नहीं है। ईक्वल राइट्स की बात एक फार्स सी मालूम होती है। किस चीज में ईक्वल राइट्स हैं? आज अगर एक हिन्दू स्त्री बीमार हो जाय, नजर से गिरा दी जाय, पति को किसी और स्त्री से मुहब्बत हो जाय और अपनी स्त्री को लात मार कर घर से बाहर निकाल दे, तो इस में ईक्वल राइट्स कहाँ हैं, प्रापर्टी में राइट्स नहीं हैं। ऐसी स्थिति में इतना काफी नहीं है कि डाइवोर्स के मामले में आप बराबरी के अधिकार दें। बल्कि जैसे हरिजनों और शङ्खुल्ड कास्ट्स के बारे में गवर्नमेंट खास प्रोटक्शन देती है,

उसी प्रकार से स्त्रियों को भी खास प्रोटक्शन देना चाहिये। उन को सरकारी तौर पर लीगल ऐडवाइस दी जानी चाहिये जबकि वह लेना चाहें, उन की खास तौर पर पैरवी होनी चाहिये। जब तक यह नहीं मिलेगी देश की करोड़ों स्त्रियाँ जोकि बैंकवर्ड हैं वह इस चीज से फायदा नहीं उठा सकती हैं।

यह भी एतराज किया जाता है कि जब तक प्रापर्टी के राइट्स नहीं होंगे तब तक डाइवोर्स का हक दे देना ठीक नहीं होगा क्योंकि इस तरह से पत्नी तो मर गई वह बेचारी आखिर कहाँ जायेगी? इस सम्बन्ध में जैसा मैं ने शुरू में कहा था कि मैं बराबरी के हक नहीं मांगती हूँ मैं कहती हूँ कि हमें आप सिर्फ इन्सान समझिये। थोड़ी आजादी दे दें। इतनी आजादी दे दें कि हम अपने आप को इन्सान समझ कर एक आजाद वातावरण में सांस ले सकें। इस के बाद जब हम में आत्म-विश्वास आ जायगा तब, जैसे और बैंकवर्ड लोग देश में हैं जिन की आज तरक्की नहीं हो सकी है उन को आत्म-विश्वास देना चाहते हैं, उन की सहायता करना चाहते हैं, हम भी उस तरह का आत्म-विश्वास पा कर प्रापर्टी ला से निपट लेंगे।

मैं इतना ही कहना चाहती हूँ कि मैं इस बिल का स्वागत करती हूँ लेकिन मैं समझती हूँ कि इस में तमाम चीजें नहीं हैं। जैसा कि एक सदस्य ने कहा था कि इस में डाबरी के सिलसिले में कुछ सजा होनी चाहिये, हमारा मॅरेज ऐंड डाइवोर्स ला कुछ ज्यादा सुल्ट होना चाहिये। मैं तो कहती हूँ कि ऐसी हालत में मॅरेज को नल ऐंड वायड समझना चाहिये या फिर डाइवोर्स की grounds में शामिल कर देना चाहिये। जब तक यह नहीं होता तब तक यह काफी नहीं है।

उपाध्यक्ष महोदय, मैं एक बात और कहूंगी। यह एक आम खतरा है, कुछ लोग चाहते भी हैं, यहां के सदस्यों से भी चर्चा हुई कि इतने सालों से यह बिल यहां पास नहीं हो रहा है। मझे भी ऐसा लगता है कि यह बिल नीचे दबा हुआ है, और पास होने ही नहीं आता है। मालूम होता है कि यह इसे पास करने की गलत जगह है। यहां पर सब राजनैतिक कार्यकर्ता हैं, सयासी कार्यकर्ता हैं। सयासी कार्यकर्ताओं की जिन्दगी ऐसी होती है कि दुनियां भर में झाड़ू लगा खाते हैं, दुनियां भर के बच्चों का इलाज कराते हैं और दुनियां भर के काम करते हैं लेकिन अपने घर वालों और अपने घर की बीबी का क्या हाल है इस की बात भी नहीं पूछते। सारे पड़ोस के सब काम करते हैं, सब जमातें, दुनियां भर के घरों की सफाई कर देंगे, सफाई का हप्ता मनायेंगे, दुनियां भर के बच्चों की मदद करेंगे, लेकिन अपनी बीबी का जहां तक सवाल है, उस के लिये कुछ नहीं करते हैं। तो ऐसी जगह में इस बिल को ले आना कि अजर स्त्रियों को डाइवोर्स का कोई अधिकार मिल जाय तो मैं देखती हूं कि मेरे भाई बड़े परेशान होते हैं कि शायद हम सब से पहले इस के टारजेट न बन जाय। इसलिए, उपाध्यक्ष महोदय, मूझे उन से खास तौर पर यह कहना है कि यह खतरा उन के दिलों से हट जाना चाहिए क्योंकि दुनियां में घर के कामों के अलावा हीरो-वरशिप जैसी चीज भी होती है और अगर वह दुनियां की खिदमत करते रहेंगे तो उनकी स्त्रियां इतनी कठोर नहीं हो सकतीं कि उनका श्याल न कर के ऐसे खतरे में उनकी मुद्दतिला कर दें।

Shri V. P. Nayar (Chirayinkil): I am sorry, Sir, that after striking a very discordant note, the hon. Mem-

ber Shri U. M. Trivedi is not in his seat. I would have very much liked him to be here because I have to answer him on certain points which he has raised. He was quoting to us certain jurists like Kenny and others. I would very much like to quote to him some masters whose names he did not mention but whose theories he upheld, like Manu, Apasthamba Brihaspathi and Yajnavalkya and others. I shall come to that later.

Sir, we find in this Bill only a half-hearted attempt of the hon. Law Minister and his Government. If you examine the history of our legislation, you will find that there has not been a single Bill, the passing of which was so very essential for the community, but the actual passage of which was so deliberately procrastinated. I do not think, Sir, that there was any Bill which was discussed and on which the Government have wasted such a large amount of public money and time for a period of 15 years. The original idea of having a Bill seems to have been entertained as early as in 1939. I find that you, Sir, have taken a very active part in the debates when the Bill was before the House in 1950 or 51 so that it is not necessary for me to give you the details of the history of this Bill. The point is this. During the times of the British, when their Government faced the gravest danger in India during the war time, even they had brought about some sort of a measure like this.

Shri Gidwani (Thana): The hon. Law Minister is not here. There is none on the Treasury Benches to hear.

The Deputy Minister of Health (Shrimati Chandrasekhar): I am here taking down notes.

Shri V. P. Nayar: They also set up a committee. They introduced two Bills in the then Central legislature. Subsequently, of course, we

[Shri V. P. Nayar]

know that the Government of India in those days which had a sort of wanton disregard for the public demand, did not like to take it up because they were only marking time for their exit. What has happened afterwards? The present Government of India came into power. Before that, the Rau Committee had gone into all the details necessary, they had toured the country from one end to the other, collected so much evidence and had also sent a proposal for a draft Hindu Code. This Code was discussed for ump-teen hours in the Provisional Parliament. I find that some Members have spoken on it for 2½ hours, three hours and four hours. With all that, the issue was again shelved.

Last time, I remember, when the Congress was campaigning for the general elections, almost every Congress leader spoke with great gusto that the next time they are in power they will bring forward a consolidated Hindu Code without any delay. In fact, the leader of the Congress party, Shri Jawaharlal Nehru also spoke at many places that the Hindu Code will be one of the most important Bills which the next Government will bring. But the Law Minister now comes before us and says that we shall have to content ourselves with this small Bill. Why is it that we have a truncated Bill like this? Does not Government owe a duty to the House and the people, to state the circumstances in which the Government thought it fit only to have this Bill in its present form? I know and the Government also knows that the demand of the people is for a consolidated Code. Without any ostensible reason, the Congress now comes forward and gives us the benefit of this small Bill! As I said, the Law Minister is very half-hearted in his attempt.

The President, I remember, in his speech before both the Houses in

1952, told us that we shall have the Hindu Code in one or two instalments. The Government owes us a duty. Here is a matter in which the Committee recommended that the Bill should have all the provisions. As far as I have known, nobody ever suggested before this Government brought it forward like this, or before the President made the announcement that we shall have only piecemeal legislation, that the Hindu Code Bill should be truncated and given to us in this form as the first instalment. I can easily find out the reason for this. Although the Government would not take the courage to tell us, the reason is obvious. Although some little progress Bill had achieved in the Hindu Code Bill, that Bill had to be shelved because the Congress Government rested on certain pillars of reaction. Every little progressive measure which they have brought, we have seen, has floundered on rocks of reaction. There are supporters of the Bill undoubtedly, in the Congress ranks. But, there are influences which see that Hindu Code Government sabotage that Hindu Code Bill and give this Bill in its present insignificant scope and truncated condition. I want an answer from the Law Minister. Sir, look at the Statement of Objects and Reasons.

Here is the Statement of Objects and Reasons. What is the object of this Bill? I am reading from the Statement of Objects and Reasons, para 2.

"As stated earlier by Government, the Code is now being split up into separate parts for the purpose of facilitating discussion and passage in Parliament and the present Bill is the first of a series of such parts and deals with marriage and divorce."

Why is it that this Bill deals with only marriage and divorce? Why should not the Government come

forward and say that the situation about marriage and divorce is such and such and the Government have to bring forward such a Bill to meet such situation? They do not have the courage to come before us and tell us the real object. Instead of that, they say, you are having a Bill for the purpose of regulating the law of marriage and divorce. I want the hon. Law Minister to reply to us why it was so necessitated, and why the Government gave up the idea of bringing forward a comprehensive Bill. I went through his speech in the Council of States. I went through his speech which he read here also. I could not find any explanation of the present stand of the Government. I am sure that, so long as the Government do not come forward and say what it is due to, I say it is precisely because the Government are unable today to offend some people who wield very great influence over them.

We know that for the present the Hindu Code is necessary. What is the Hindu law as it obtains today? It is so very confusing. It is a veritable mass of judicial decisions and modern interpretations on the texts of the old *Śruti*s and *Smṛiti*s. I do not think that even an ordinary lawyer understands its implications. In spite of the very complex mixture that we have of judicial interpretations of Manu *Smṛiti* and Yajñyavalkya *Smṛiti* and the like, what you find today is that the Government still does not feel it necessary to give us a simple law, a rational law, a law which is understandable by the ordinary Hindu who has to apply it in his everyday life.

We do not believe for a moment that the personal law of the Hindus, in this twentieth century, should be a law as it was propounded by the great old sages like Manu and others. Although Shri U. M. Trivedi did not give us the names of any of the sages, he was talking about Hindu society, Hindu culture and all

that. I am sorry he is not here even now. Are we in this year of 1954 to be guided by concepts which moved Manu and others to write down all that they liked? Did Manu ever ask any one of us to come and sit together and discuss this Bill in Parliament?

Shri S. S. More: We were not there.

Shri V. P. Nayar: It is very idle.....

Sardar A. S. Saigal (Bilaspur): How will Manu come?

Shri V. P. Nayar: That is what I also say. In those days when the great sages, as they are often called, wrote certain things, when they laid down the law, when they made the law, when they indicated: "This shall guide the ordinary life of Hindus", it was so done entirely in a different set-up. Here, we have advanced thousands of years and the champions of reaction, whom you will also hear after me—some of them, I understand, will speak.....

Mr. Deputy-Speaker: Does the hon. Member think that the whole chapter will close with him? There are a number of others. They will also speak.

Shri V. P. Nayar: That is why I say that there are some more champions of reaction and I would like to anticipate their arguments. I know, Sir, you are a very keen student of Sanskrit. I do not claim such knowledge and I am sorry I am not quite able to understand Sanskrit in the spirit in which it is to be understood. I am submitting to you certain aspects to show that we should not always conform to the law as propounded by Manu and as explained by Yajñyavalkya of further embellished by Balambhatta. Here is a passage.

Mr. Deputy-Speaker: Does the hon. Member say that today all those injunctions are out-of-date?

Shri V. P. Nayar: Not only that. The point here which was taken up by Mr. Trivedi was that you should not have a law like this for Hindu society for the simple reason that if you have it imposed on Hindu society, it will destroy the unity of Hinduism.

This Bill deals with the marriage and divorce of Hindus. What does Manu say about marriage? As I said, the champions will always take us back to Manu. I am reading out from a translation of Manu.

Mr. Deputy-Speaker: Is it from Yajnyavalkya?

Shri V. P. Nayar: This is a translation of the Yajnyavalkya smriti in which Manu is quoted and the translation is by no less an authority than Srisa Chandra Vidyarnava. This is what Manu said. The House will be interested because when once you hear Manu you will try to think that if we were to be guided solely by his principles and law, none of us would have been able to marry at all. Here are the qualifications which Manu lays down for a wife:

"Let him wed a female free from bodily defects, who has an agreeable name the (graceful) gait of a Hamsa or of an elephant, a moderate (quantity of) hair on the body and on the head, small teeth, and soft limbs."

Mr. Deputy-Speaker: He, I think gives advice to youngmen.

Shri V. P. Nayar: I am coming to his advice to the young girls also. He has advised the girls also about men. I would not have bothered much had Manu stopped there, but he goes further, and Manu is again quoted here. He also mentions the

girls who should be avoided:

"Let him not marry a maiden (with) reddish (hair)".....

Some of the North Indian girls have reddish hair.

Shri S. S. More: He seems to speak with knowledge.

Shri V. P. Nayar: Yes, I have.

".....nor one who has a redundant member, nor one who is sickly, nor one either with no hair (on the body) or too much, nor one who is garrulous or has red (eyes)."

I think that if these conditions were to prevail in modern law, none of us would have been able to marry at all. I am not submitting to you in terms of this particular school confining only to the Manu Smriti. What does the Vishnu Purana say? It says.....

Shri S. N. Das (Darbhanga Central): The quotation he has referred to is not a law. It is an advice that was given to the people.

Shri V. P. Nayar: It is not a law in this sense that whatever he wrote may not be a law under the present statute. His advice has the force of law.

Shri S. S. More: I want to understand what is deprecatory in what Manu has said.

Mr. Deputy-Speaker: Mr. More wants to know whether it is anywhere laid down that on account of this disqualification, a marriage will become null and void.

Shri S. N. Das: Is there anything like that?

Mr. Deputy-Speaker: It is one thing to give advice for the purpose of progeny. They had that in view, that the progeny must be very good and so on.

Shri V. P. Nayar: I understand the point, but here is a mandatory requirement on the Hindu which you find.

Some Hon. Members: Not mandatory.

Shri V. P. Nayar: It is more or less mandatory because the word used is "must". I am reading out an extract from the Vishnu Purana. In the Third Book, Chapter X.....

Sardar A. S. Saigal: It is only a direction, not mandatory.

Shri V. P. Nayar: Sardar A. S. Saigal probably gets excited because in the next category his case will also be included. This is what the *Vishnu Purana* says. I would request the House to forbear with me for some time.

Mr. Deputy-Speaker: Some hon. Member must read the ancient texts, and he is doing it for the benefit of the other Members here.

Shri V. P. Nayar: Sir, the *Vishnu Purana* says this. What I said was it is almost mandatory because the word in the English translation at least is "must".

"He must not marry a girl who is vicious, or unhealthy, of low origin, or labouring under disease; one who has been ill brought up; one who talks improperly; one who inherits some malady from father or mother; one who has a beard....."

Mr. Deputy-Speaker: It refers to a woman.

Shri V. P. Nayar: Yes. Certainly.

"...or who is of a masculine appearance..." So this must necessarily apply to women. For men "masculine appearance" would not have been condemned.

"...one who speaks thick, or thin, or croaks like a raven; one

who keeps her eyes shut, or has the eyes very prominent; one who has hairy legs, or thick ankles; or one who has dimples in her cheeks, when she laughs."

All of us would consider that those women who have dimples are lovely and beautiful.

Shrimati Sushama Sen (Bhagalpur South): How is all this relevant to this Bill?

Mr. Deputy-Speaker: That is what I am asking. If any hon. Member wants to marry any one of these categories, by all means he is perfectly free. But if you say in this law that you must marry a woman who is blind or full of defects and so on, I do not think any father will let his son marry her. What is the objection?

Shri V. P. Nayar: My point was only this, that in 1954 we cannot obviously follow the directions which were given by Manu and all the other suggestions. It was only to emphasize that point, that I read out the extracts.

Shri S. S. More: I want to ask whether these directions, excepting the dimples perhaps, will not be valid even for our sons and brothers, or will Mr. V. P. Nayar prescribe the opposite for his son or brother?

Mr. Deputy-Speaker: Let it be left at this stage.

Shri Biswas: The best thing is not to dabble with things which we do not understand.

Shri V. P. Nayar: The hon. Law Minister may be modest, but I know what is my understanding and I also happen to know what is his understanding.

I will not again go into the texts, but I will only say...

Mr. Deputy-Speaker: I am afraid the hon. Member has chosen a wrong illustration. There are many other things to which exception can be taken.

Shri V. P. Nayar: I know, Sir, you have mastered all the classics, I have not. I want only to use certain portions which are in support of my argument to show that Manu and all the old institutions and their teachings are to be discarded *in toto* in certain matters.

I would take you to this point. Is it not a fact that the famous sage Manu laid down that one of the conditions of marriage should be that the husband should be at least three times as old as the wife?

Shri C. D. Pande: No, no. Nowhere.

Shri V. P. Nayar: Here it is. I shall quote.

Shri S. S. More: That is the quotation that we require.

Shri V. P. Nayar: I am quoting again from the *Mitakshara*. Probably the passage is from *Balambhatta's Glossary*. Yes.

"Manu (IX 94) gives the following age about the marriage of a girl:—

'A man, aged thirty years, shall marry a maiden of twelve who pleases him, or a man of twenty-four, a girl of 7 years of age, if (the performance of) his duties would (otherwise) be impeded, (he must marry) sooner.'

"According to *Brihaspati*, a man of thirty should marry a girl of ten, while a person of twenty-one years should marry a girl of seven years of age. *Balambhatta* does not, however, prove this last."

He also agrees with Manu, he differs from *Brihaspati*. So, stretching it to

the logical conclusion, what will our girls of twenty do? If we were to have Manu's law, if we were to give it the force of law in the Hindu Code, a young girl of 20 will be forced to marry a young man of 60 years. I do not deny that in the *Manu Smriti*, the *Yajnavalkya Smriti*, the *Vedas* and the *Puranas*, the *Samhitas*, the *Brahmanas* or the *Shastras*, we have certainly a treasure.

Mr. Deputy-Speaker: The difference between the two ages is not more than fifteen.

Shri V. P. Nayar: It would have been only an arithmetical difference, but because the two instances are there, it is the difference in proportion.

In the one case, it is said that a man of thirty must marry a girl of ten; if it had been only that, probably we could take it that it is a difference of twenty years. But, again, he illustrates it by saying, that a man of twenty-four should marry a girl of eight. That definitely shows that a girl of one-third the age of the male should be secured for the marriage of male. I do not deny that it is certainly very interesting to read Manu and others, but to understand them is perhaps more interesting. But this is a point which I want the House to take into consideration, in meeting the arguments which the champions of reaction in this House will be putting forward. We cannot, in this twentieth century, abide by all that is written by Manu. We have to discard so many things, and in so doing, we have to take it that we live in a modern society, that we live not in the days of Manu, not in the days of the *Yajnavalkya*, but in 1954, with entirely a different concept about life, about society and about everything else. I shall stop quoting from Manu, because I know that the House will not be very much interested.

Then, I say that there is a notion in the country, very much reflected in the

evidence which was placed before the Hindu Law Committee. The bulk of that evidence contains specimens of the rankest reaction which you can have in this country. Many Ex-High Court judges have written that there could be no incursions into the realm of Hindu law. We do not agree to that at all. Whatever be the views of the learned High Court judges, we say that a radical reform is absolutely essential, and we cannot conform to the old *Smritis*. A good number of people, especially from the south, and most of them—I am not submitting this with any prejudice in mind—Brahmins, for instance, who have subscribed their evidence to this Committee, have, in unmistakable terms, repudiated the suggestion that the Hindu Code Bill in its entirety should be had. Shrimat Sankaracharya—the modern Sankaracharya not the old Sankaracharya who ascended the *Sarvajnapita*—says that this is a very obnoxious adventure. I also find that a very interesting view has been expressed by Pandit Madan Mohan Malaviya. These are not names which we can trifle with. I know, but this is what Pandit Madan Mohan Malaviya had to say. I am only saying this to emphasize that here in the country, there is a section which wields a great influence on the present Government, which is arch-reactionary in character, and which wants to sabotage every progressive measure which this Government may bring forward. The fault of this Government is that in every such case, they have to compromise with the stand taken by a set of arch-reactionaries. That is where I accuse this Government.

[PANDIT THAKUR DAS BHARGAVA
in the Chair]

This is what Pandit Madan Mohan Malaviya says:

"I hold that the proposed changes are opposed to the behests of Hindu *Sastras*, and strike at the very fundamentals of Hindu social system. I further hold that the changes, if any,

should come from within the Hindu society itself, and not enforced on it from outside by any Act of the Legislature."

Shri C. D. Pande: It is sound still.

Shri V. P. Nayar: This is what Pandit Madan Mohan Malaviya says. If you go through this volume of evidence, you will find that perhaps in no other printed work there will be such mass of reaction as in this. In this context, I would like to remind the House that it is not the fault of this Government, but it is precisely the compromising attitude of this Government to a certain section of the most reactionary people who unfortunately wield their influence, as against the mass of humanity of this country. It is there, as I have pointed out earlier, that we have to accuse this Government, and it is, therefore, I say that the Bill is the result of a half-hearted measure.

I do not propose to read further from that evidence. But I would only say that we must visualise the situation entirely from another angle. What is the position of women today in our country? From one end of India to the other, possibly with the exception of the little place from which I come, women are in perpetual bondage. All of them are under shackles and under chains, and there is the most unlimited tyranny practised by men on women. It is a scandalous state of affairs, so far as our women are concerned.

Shri C. D. Pande: Not in Malabar, I believe.

Shri V. P. Nayar: I said Malabar has been fortunate enough to have a more liberal view than the rest of India.

Shri Raghavachari (Penukonda): Many other parts.

Shri V. P. Nayar: Generally speaking a vast majority of our women in

[Shri V. P. Nayar]

India, especially in the Hindu society, are under bondage. For them, we have to do something. We have to liberate the masses of our women. We have to see that they have a better partnership in life with men. It is here that I would like my hon. sisters to voice...

Shri Raghuramaiah (Tenali): May I know whether men have equal rights with women in Malabar?

Shrimati Ammu Swaminadhan (Dindigul): Certainly absolute equality.

Shri V. P. Nayar: The Malabar man does not treat his wife as a chattel, as perhaps my hon. friend wants to. I say, with a sense of responsibility, that in Hindu society, the position of women at best is only that of a glorified domestic servant, and nothing more than that.

Some Hon. Members: No, no.

Shri V. P. Nayar: You may say, no.....

Mr. Chairman: In a matter of this nature, which affects so many Members coming from different parts of the country, it cannot be generalised like this.

Shri V. P. Nayar: I suppose I have the freedom to generalise; I may be wrong, but I say this that the majority of our women in India—and I say so, with a sense of responsibility—do not enjoy the freedom which they ought to enjoy, and are subject to the utmost tyranny by the men.

Shri B. Das (Jaipur-Keonjhar): My hon. friend may be too young to understand.

Shri V. P. Nayar: I think the experience of my venerable old friend will be much better.

The object of this Government in bringing forward this Bill should have been to create an impression in the mind of the public that this Government are sincere in emancipating the women of India. But for that, no attempt has been made. No reference has been made as to the necessity or the possible utility of this Bill, in emancipating the hundreds of thousands of women who are almost in conditions of slavery today. But yet we would always support a measure of this nature, though we know that this is only of a very limited scope. As this is a measure which will help the women of India to a little extent to get free from their present position of bondage, we would certainly support the hon. Minister, and support him whole-heartedly, although we are constrained to say that, in this Bill, we find only a very half-hearted attempt on the part of the hon. Minister, and he has not made a frank statement.

I now come to some of the provisions of the Bill. I for one can never dream of any future of India, unless we raise the status of women to one of equality with men in real life. Some hon. interrupter, was saying that the position of women is not such and not so bad. I may be permitted to quote again from the scripture, for that reflects the concept which our men had about the women. I do not remember the author of that sloka, but that sloka runs thus:

न स्त्री दुष्यति जारेण

न अग्निर्दहनकर्मणा

न आपो मूत्रपूरीषाभ्यां....

What is that concept? A woman is not spoiled by her paramours; just as agni is not spoiled by the dirty things which it burns, just as the ocean is not polluted by all the dirty things which go into it, so is a woman not polluted by her paramours. This was the concept of the ancient society.

Shri Biswas: Where did you pick up this treasure?

Shri V. P. Nayar: I may say that at his age, the first line appeals to the hon. Minister so much.

I do not say that this is a general concept, but I still maintain that what you have, and what you proclaim to be the freedom of woman of this land, is not freedom, but its negation. You do not allow freedom in actual life. Go to any village, any town, any place. You will find that the majority of women are kept only as domestic servants; not that they do not have anything to do with sex—they do have—but this is the difference. The difference is there because marriage in India is more or less on a class basis. You do not avoid a marriage on a class basis here in the Bill. That is why I want a realistic approach. I wanted to know the definite views of the hon. Minister. He could have come and told me and could have said so in the Statement of Objects and Reasons: "This is the position. We want to emancipate the women. We want to do them justice. We want also to see that they rise and move along right lines for progress and further progress". That is lacking in this. That is why I often repeated that I cannot consider this as a full-hearted measure.

Now, Sir, I shall come to certain provisions of the Bill which I would like the hon. Minister and the Select Committee to consider. There is, for example the provision for divorce.

Mr. Chairman: The hon. Member has taken already 25 minutes.

Shri V. P. Nayar: I shall be finishing in about ten minutes. I shall be very brief. I come to the provision for divorce. What I cannot understand is the provision in clause 15, read along with the saving clause 29. Clause 15 says:

"(1) Notwithstanding anything contained in this Act, it shall not

be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition three years have elapsed since the date of the marriage."

I perfectly understand this, but it conflicts with the latter provision. The latter provision, that is, clause 29(2) says:

"Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the termination of a Hindu marriage, whether solemnized before or after the commencement of this Act."

Now, under the *marumakkattayam* law, no time-limit is now required for a divorce in the *marumakkattayam* marriage and you will also find the exposition of the present position on page 260 of the written statement before the Hindu Law Committee where Mr. Kuttikrishna Menon, who I understand was the Advocate-General of Madras till recently, has stated that if you stipulate that a period should lapse before a petition for divorce is filed, it would be less liberal than the provisions obtaining in the *marumakkattayam* law. The point that is difficult for me to understand is, in one section you say that "Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition," etc. This must take away the effect of the saving clause. Or, if you say: "Nothing contained in this Act shall be deemed to affect any right recognised by custom", etc., as is mentioned in clause 26(2), then, it must certainly take away the provisions of clause 15(1). How do you reconcile this position? This is conflicting. I submit that when courts are called upon to adjudicate upon this, are they to go by clause 15 and say that there must be three years' notice, or, are they to go by the saving clause and say they are prepared to grant it? I

[Shri V. P. Nayar]

say that the problem has not been studied from the perspective of the *marumakkattayam* law which is much more liberal in certain respects than what is contained in the Bill before us. Any one of us can secure a divorce.....

Shri Biswas: The object is to save the *Marumakkattayam* law. If a little drafting change has got to be made, the Select Committee will make it.

Shri V. P. Nayar: I did not say that the object is otherwise.

Mr. Chairman: There is a contradiction.

Shri V. P. Nayar: Yes, there is contradiction, because later on, if this is not pointed out, and if it goes into the body of the law, there will be an obvious contradiction in which case it will be difficult for the judges to adjudicate. I say that the perspective of the *marumakkattayam* law has not been taken into consideration. Also, I find to my great surprise that in this law upon which there was a meeting at Trivandrum to consider how the *marumakkattayam* law has to be fitted into this scheme of things here, unfortunately there is not a single Member from that place which follows *marumakkattayam* law in the Select Committee. I very much wish that the hon. Minister takes somebody, whether it is from that side or this side or any other side, who will be able to put forward the point of view of *marumakkattayam* law before the Select Committee, as such a person can know things for certain from actual facts.

12 Noon

I wrote to the hon. Minister yesterday and asked him what were the steps that he had taken to find out the actual position of the *marumakkattayam* law. Then he drew my attention to what passed at a meeting in Trivandrum where Dr. Ambedkar, his predecessor in office, held a conference. I hope I will have the permission of the Law Minister to read

a portion from that extract. It says:

"The conference met for two days and afterwards decided to leave the matter to a small committee to make proposals in this behalf. The committee so constituted made proposals which were unanimous. These proposals demanded certain changes to be introduced in the part of the Hindu Code relating to marriage, divorce and succession and a few other minor changes in other parts of the Bill. As these proposals were unanimous, it is proposed to give effect to them."

This was in the old Bill. We want to know what were the points on which there was unanimous agreement, because I find that certain provisions of the Bill, however pressing the need for them might be in certain parts of India, are certainly not progressive so far as the *marumakkattayam* law is concerned. I would request the hon. Minister to see whether it is not possible, even at this stage, to include a Member of this House, whose personal law is *marumakkattayam* law, in the Select Committee.

Then there is another provision regarding divorce. In sub-clause (ii) of clause 13, you will find that "either party to the marriage has ceased to be a Hindu by conversion to another religion". With very great respect, I ask the hon. Law Minister: Is marriage to be based solely upon the considerations of religion? If it is so, then have it. Is this an enactment which wants to uphold religion? In fact, this wants to take away from the clutches of religion certain classes of people who want to enjoy more freedom. So, if you lay down in this Bill a condition that by a mere change of religion, whatever be the conduct of the husband or wife, whatever be their good relations, it will give a handle for others who are interested, to make the husband or the wife to sue for separation. I think, therefore, that this clause also requires reconsideration

Then there is the order of preference given in the matter of guardianship, the order of preference which will apply to all schools of law,—*aliya-santana* law, *marumakkattayam* law, *makkattayam* law or *dayabhaga* law. The order of preference which you have set offends certain customary rights. In the west coast, the nearest relative is considered to be the maternal uncle. The concept of law is that this system has been working very well there. You may say it may depend upon what is obtained by custom. But here there is this contradiction. The saving clause itself is not all right. So, I request the hon. Minister to impress upon the Select Committee the necessity for reconsidering this matter also.

I have another doubt. That is a very genuine doubt, because I find that in clause 7, reference is made to ceremonies. This is what clause 7 says:

"(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto."

Well and good. The customary rites of those governed by the *marumakkattayam* law are merely cloth-giving in the presence of four respectable witnesses. It is probably the simplest form of marriage ever known in this country. But I do not know where this form of ceremony, namely, taking of seven steps, is practised. I find that in some of the tribes, certain ceremonies are followed in respect of the marriage. In the classics, we know of the forms of marriage as *asura*, *rakshasa* and *paisacha*. Do you mean to say that they must conform to the legally recognized forms of marriage? It is a matter for doubt. If the hon. Minister says that there is no part of India where these forms are practised, where custom does not recognise such forms of marriage, then I withdraw what I say.

Mr. Chairman: Clause 7 deals with certain rites and ceremonies. It is

different from *asura* form of marriage, etc

Shri V. P. Nayar: What are the rites and ceremonies of a *paisacha* marriage? What are the rites and ceremonies of an *asura* or a *rakshasa* marriage? Do you mean to say that they are not recognized forms of old days?

Mr. Chairman: We are only concerned with the rites and ceremonies as they obtain today. Whether *asura* or other form of marriage is recognized or not is beside the point.

Shri V. P. Nayar: Supposing in a tribe, a certain form of marriage has gained recognition by constant usage, do you mean to say that under this clause we have to recognise it and give it legal sanction. It is a matter for doubt. Of course, I have not studied the groups of tribes where many rites and ceremonies in respect of marriage may be followed. An *asura* marriage is marriage by giving away a large sum of money. *Paisacha* marriage is a marriage by deceit. *Rakshasa* marriage is a forcible taking away of the bride.

Mr. Chairman: It is all a matter of interpretation.

Shri V. P. Nayar: It is open to interpretation but the difficulty is there. I have not been able to look up to the manners and customs in respect of marriage of various groups of people of India. If any such rite or ceremony lingers on as a custom recognised by constant practice, then it is a very objectionable matter.

Sir, I would only urge upon the Select Committee that they should return the Bill with as great expeditiousness as possible. Government has sufficiently protracted it. Government is responsible for this procrastination all these fifteen years and we should not give them an opportunity to shelve this short Bill any longer.

Shrimati Sushama Sen: Sir, I welcome the Hindu Marriage and Divorce

[Shrimati Sushama Sen]

Bill. I congratulate the Law Minister for the clear and lucid speech with which he introduced the Bill in this House yesterday. We know that this measure has been before the Legislature since 1939. I am glad to find that public opinion has gained in strength in favour of this Bill. As has been pointed out by the Law Minister, opinions from 28 States had been invited and 15 were in favour. Unfortunately two—and one of them is Bihar—have been against divorce but is in favour of monogamy. I am sure if this matter is properly put, the public will be in favour. For instance, in my constituency, people will understand that there is no reason to be afraid of this divorce, because, in certain cases, divorce is absolutely necessary, as for instance in adultery and cruelty.

While codification was opposed by many as being fraught with great danger to Hindu society, there were others who wanted to march ahead in the light of the changes which had taken place. Hindu law, as has been pointed out, is a spacious structure with many schools and the Rau Committee took great pains to evolve by judicious selection and combination of the best elements in each of such schools, a system, while retaining the distinctive character of Hindu law, which would satisfy the needs of a progressive society. Hindu society, as has been rightly pointed out by the Law Minister, has never been static. Even in olden times the task of codifying the law from time to time was performed for the people by successive law-givers who, by a well-thought out process of selection and exposition of the ancient texts, moulded the law to the needs of the time. Very often, as he rightly points out, the most irreconcilable viewpoints were reconciled in conformity with the changed conditions because Hindu law had to keep abreast of the times.

There is nothing against Hindu religion or Hindu culture as has been

argued by some of the hon. Members of the House. Surely, the House will agree that women held the highest place in ancient times, as the presiding deities of our country were Durga, Parvati, Lakshmi, and Saraswati. Then the names of Sita, Savitri, Khanna, Lilavati and a host of other women live in history up to the present day. Even in our days we have produced great women. Above all, I would remind those who are against this measure, which affects the position of women, it is the women who have produced the great men of our country. So, if the large section of the population think that this measure is necessary, it is up to the men to be gracious enough not to put in any hindrance and to pass this into law. There should be no voice raised against it. The lives of some Hindu women, as has been rightly pointed out, were practically a round of duties. They are no longer to be treated as mere chattels. In some cases they are treated as such, but the women are conscious these days of their rights. They know their position and they do claim their rightful place which has been assured to them by the Constitution of India. When our country has gained freedom, do a section of men want not to give freedom to the women? Do they not want to give due respect and honour to the mothers who have produced them into this world? Do they not consider about the happiness of their daughters and their sisters? All these things go to make up society. This Bill is not a day too late and it should be welcomed by all sections of the people and of the House and I hope there will be no dissentient voice in this House.

Shri R. K. Chaudhuri: Not of the people but of the House.

Shrimati Sushama Sen: Now, Sir, there are one or two points which I may point out, with respect to the Law Minister, about this question of divorce. Since the Select Committee has been appointed, I shall point out

some of the anomalies which seem to exist in this Bill about judicial separation. For instance, in clause 10, it is said, 'adultery committed during marriage'. I think it must be after marriage and it should be changed.

Then, as the Law Minister himself has pointed out, about leprosy and other venereal diseases, it is very difficult to make a distinction and I think these matters should have to be gone into very carefully before they are passed by the Select Committee. Of course, divorce on the question of adultery and cruelty as laid down in the English law should certainly be reasonable grounds for divorce. Some other things which have been put in here may be carefully gone into.

Another point which I would like to mention is about the age of the bride and the age of the bridegroom. It has been laid down here that 16 is the minimum age for the bride. To make it in conformity with the Special Marriage Act. I would suggest that the marriageable age for girls be raised to 18 and for boys to 21. This, I think, would be fair and reasonable.

Shri Nand Lal Sharma: Is this age-limit for the purpose of marriage or divorce?

Shrimati Sushama Sen: Of course, for marriage.

An Hon. Member: Marriage comes first, then only divorce.

Shrimati Sushama Sen: The Bill has been divided into three categories, namely, abolition of caste as a necessary requirement of marriage, enforcement of monogamy—which we all want, and I am sure the whole House will join in this issue of monogamy—and provision of divorce and dissolution of marriage on certain grounds. The Law Minister has also pointed out that all these provisions are of a permissive and enabling nature. This I cannot quite follow. If it is an Act, I suppose all the provisions will be enforced, and, therefore,

I am not quite clear how this can be a permissive Bill.

Shri Biswas: I shall explain it in my reply.

Shrimati Sushama Sen: Regarding the ceremony of marriage, the Bill says: "A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto". I am glad to find that only *saptapadi* can form a complete marriage. This will be in conformity with the modern progressive society. I am glad that this has been put in. I would ask the Law Minister to consider raising the age of the bride and also the age of the bridegroom to 18 and 21 respectively. I would not like to take any more time of the House and I hope that the House will pass the Bill without any dissentient voice.

Shri G. H. Deshpande (Nasik—Central): I rise to support the Bill that is being discussed in the House since yesterday. There were two speeches which I listened to with great attention. One was from the Communist Benches and the other from a Jana Sangh Member. I was rather ashamed of the mentality that was given expression to in the House by the Member who belonged to Jana Sangh. I tried to analyse his speech. It seems that he has a very low opinion of the womanhood of India. He thinks that if the provision for divorce is made, from that moment onwards there is the possibility that every woman will forsake her husband. Our women have not forsaken their husbands simply because they are legally tied down to their husbands. That seems to be the opinion that is held by the Jana Sangh Member about our women. I was rather astonished to listen to that speech. Whether we should have any provision for divorce or not is another thing. It may be argued on its merits and demerits and one can arrive at any conclusion, but why should people be so afraid of it that the moment a provision for divorce is made there would be a

[Shri G. H. Deshpande]

possibility that every woman will be desirous of leaving her husband. I have further analysed his speech. It means that he has a very low opinion about the manhood of India also because the undercurrent of his thought seems to be that there is nothing in man that a woman will be induced to choose him her partner for life, but the compulsion of law; because there is this tie of law, man and wife are bound together. What is the use of continuing such a union which can be sustained only under law? That ought not to be the opinion about our men, neither about our women. I think we have a much better standard of men and women in this country as compared with even the advanced countries of the world. The hon. Member from the Communist Benches was trying to ridicule some of our old authors. He is not a communist who never tries to speak in extremes, and he is not a communist who never tries to run down anything which is Indian. I would like to tell the hon. Communist Member that whatever was said by Manu and others have stood the test of centuries together in the past. They do not deserve to be ridiculed. Their writings used to be translated into action for centuries; they may not be followed now, when the world is completely changed. If you look at the writings of Manu and others, you will see that what they propagated has stood the test of time in this world or at least in India for years together, while if the communists will have some retrospection, they will find that during the last 35 years, they have taken at least 70 somersaults. So, Manu and our other ancient writers deserve much more respect as compared to the communists. I do not want that they should be run down by the communists. (*Inter-ruption.*) There is that sort of tendency, namely, run down everything Indian and everything ancient, as if our ancient people had no vision. They were, in fact, far better in certain things in their own time and were good people. They deserve praise

even in this century. I would like to place for consideration, through you, before the hon. Member of the Jana Sangh: Have women no soul? There was a primer in ancient days in certain Bombay schools, in which there was a sentence like this: "A cow has no soul and a woman has no soul". What law should govern them? How should they be governed? Have they not the right to express? Is it the man alone that can say what law should be for the woman? Is it the man alone that can say whether there should be a provision for divorce or not? Is the woman not concerned with it? Has the woman not got the right to give expression to her views? Has he come across the views expressed by enlightened women throughout India regarding divorce and regarding provisions for marriage and certain other matters? This is a consistent and persistent demand from the womanhood of India. Let there be a provision for divorce. It is not that Indian women want to carry it to the farcical end that on consent they should sever connections with their husbands. Last week I happened to read an American journal and there I was surprised to read that a woman had successfully secured divorce from her husband in a court of law on the plea that her husband was a powerful and persistent snorer. We do not want to have such ridiculous things here. After all, life is a compromise. Under certain circumstances, if you do not provide for a divorce, it will mean a serious thing. Supposing the husband is suffering from leprosy, do you mean to say that the wife should be forced to pull on with him for her life-time? If the husband is very very cruel, do you mean that under those circumstances, she should be forced to carry on with him? What is the use of that marriage? What is the use of saying that "after all, we are husband and wife?" When the husband treats the wife in such a cruel manner that life becomes intolerable for her, why should the remedy of divorce not be available to her under these hard circumstances? If a provision for

divorce is there, it is not that it will be abused by Hindu society, but there will be a balance. The man will be very cautious; he will have to consider the prospect of divorce in case the enforcement of monogamy is infringed by him, he must realise that unless and until he is prepared to accommodate his partner, he will not be able to secure her faithfulness and devotion. He will say: "Let us adjust and let us try to understand each other and lead a better life". The provision of law with the enforcement of monogamy will have a wholesome effect on the marriage institutions in this age and that is why I would like to support the Bill. So far as monogamy is concerned, we have an Act in Bombay to that effect. When we introduced the measure in Bombay, there were many people who used to say: "What will happen? This custom has been obtaining for centuries past". There were some women also among them, who used to say: "What is this? Supposing I have not produced a son for my husband, there is a possibility of his getting a son by another marriage; I will have the satisfaction that my husband has a son". There were some people who could not look beyond what they used to think according to old tradition. Because they were not used to the conception of monogamy they said: "What is this? You are restraining us from marrying again."

It so happened that one day a man who had canvassed for the Congress at the elections and who was friendly towards me came to my house full of rage. He began shouting: "Where are you? I have voted for you and your party. But you and your party are going to ruin my life". I asked him: "What has happened? What have I and my party done to ruin your life?" He replied it was a year or so back that he supported the candidates put up by the Congress at the elections. Six months after that he married. But soon after the marriage his wife fell ill and he could not have any relations with her. It was only ten days back

that his father had arranged for another marriage with a young girl. When the party was about to start for the marriage festival, all of a sudden the police came and told him: "Your Government, the Congress Government, has passed such a law and you cannot marry again". "What sort of Government is this", he asked, "to come in the way of my marriage?" I said, "My friend, sit here for some time". The sun was hot and he had come in hot haste. I gave him some cold water and tried to argue with him.

"Your grievance is legitimate", I tried to tell him, "but just consider if the thing had been the other way about. Supposing you had fallen ill immediately after marriage and your father-in-law had arranged a marriage of your wife with some other gentleman, because she could not have any happiness from you, what would have been your sentiment"? He said, "I would have been much annoyed". Then, I said: "Is it not your duty to bring her here. admit her in some decent hospital and give her some good treatment? Is it not your duty as a husband and as her partner in life to look after her when she is on her death-bed? Are you not ashamed of yourself that when your partner in life is dying, you are going to celebrate your second marriage?" He replied: "Yes, there is much truth in what you say, will you arrange for that?" I arranged for it, she was admitted into a hospital, she recovered and now, Sir, they have two sons and they are going on very happily. Both of them when they meet me say that it is the Congress Government which has given them this happiness.

There is some human element, there is some justice in this measure. Otherwise so many marriages would have been broken. So, if the conditions that are laid down in this Bill become law, they will have a wholesome effect on the marriage institution, as it obtains among the Hindus. The orthodox

[Shri G. H. Deshpande]

Hindus have nothing to fear from it. What is there? They can marry according to their taste. It is not, when we say that caste considerations should not be there, that we are going to enforce that only partners belonging to different castes must marry. For my part, I would even welcome a provision of that type, because the time has come, if Hinduism has to survive, it must get rid of the caste-ridden atmosphere in which it is today. I for one would say that if the caste system does not disappear, people will have to change it by law and say that only those people who belong to different castes can come together and marry. But no such provision has been made. There is nothing shocking in this even for the orthodox people. I do not see any reason why the Jana Sangh should feel so upset. How can such people who are so upset by this innocuous reform, reform the Hindu society and the country? We have, therefore, to take a bold stand. There are two extreme opinions about this measure. One section is very much afraid of this measure; the other says: "This is a half-hearted measure; the Congress Government has not got enough courage, because it is their belief that the only courageous people in the world are the communists." I did not see any courage on the part of the communists in this country when we were fighting the British imperialism. If there is any party which is wanting in courage it is the Communist Party. At any rate we need not take any lessons from them, so far as courage is concerned.

After all, who has raised the standard of women in this country? I do admit, Sir, that in this country in spite of all the social reforms that we have introduced, the womanhood of India, especially women of the Hindu community, are still labouring under several disabilities. For them something ought to be done. But take for a moment into consideration the reforms brought about within the last twenty-five years. Who has raised the

status of womanhood in India? It is the Father of the Nation who has done it. Can anybody deny that? Can anybody deny that several reformist measures have been brought and translated into action by the Congress Governments. The Congress alone had the courage to do it. There was no other party in India which had the courage to do it. So, we need not take any lessons in courage, as politically, economically, socially, we are trying to see that this country progresses and keeps up with modern ideas.

Sir, I support this Bill because it removes certain obstacles in the way of Hindu women. It gives them better status; it has some consideration for the Hindu women. I am convinced, Sir, that the Bill when it becomes law will have a very wholesome effect on the institution of marriage among the Hindus. I am longing for that day when it will be possible to have a common law for the entire population of India. There is no doubt about it. My Jana Sangh friends ask: "Why not do it today?" Well, we are democrats. In a democracy you have to persuade people. You have to carry people with you, you have to create public opinion. Simply because we are in a majority we do not wish to push something down the throat of the minority. That will not be consistent with democratic traditions. The Jana Sangh has not yet understood the democratic spirit that has come in the country. They ask why we should take into consideration the sentiments of the minority; simply brush them aside. If we do that I do not know what will happen. You have to introduce certain social reforms. But while introducing such social reforms of a radical character which affect the age-old customs of a particular community, especially when it is in a minority, you have to convert them to your views—at least a substantial section among them has to be converted. Unless and until that is done you cannot impose any law, simply because we are in a majority. That is the

Lesson that has been taught to us. The Congress Government today has passed legislation abolishing untouchability; it has enacted several other reform measures. How was the Congress Party able to do it? Because the Father of the Nation has given us the strength to do it. He awakened the people; he told the people to look at things from a modern point of view. It is he who raised the consciousness of the society as such and it was due to the work that he did in this country during the last 25 years that we are in a position to legislate and legislate so easily for certain healthy reforms.

So, in a democratic country we have to hasten slowly. Not that we should not hasten, but we must hasten slowly. According to the democratic test, our party ought to be proud of this measure. I congratulate the Law Minister for having introduced such a wholesome measure. I whole-heartedly support it.

Mr. Chairman: Shri M. P. Mishra.

Pandit S. C. Mishra (Monghyr North-East): Are we not to speak from this side?

Mr. Chairman: Everybody will have an opportunity to speak, provided he catches the eye of the Chair.

श्री एम० पी० मिश्र (मुंगेर उत्तर-पश्चिम) : सम्भाषित जी, मैं इस बिल का समर्थन करने के लिए खड़ा हुआ हूँ। मैं जानता हूँ कि सामाजिक सुधार कानूनों के जरिये नहीं हो सकते। मुझे मालूम है कि इस देश में आज से बीस बरस पहले एक शारदा कानून पास हुआ था। उस कानून का इरादा था कि बालविवाह न हो, बच्चे बच्चियों की जो आज शादी होती है वह रुक जाय। लेकिन मैं जानता हूँ कि बीस बरस के करीब उस कानून को हो गये, कई

दफा उस कानून में संशोधन भी हुए, कुछ सख्तियाँ भी लाई गईं, लेकिन फिर भी देश में आज भी बहुत बड़े पैमाने पर बाल-विवाह होते हैं। अभी एक बहिन ने कहा कि इधर बालविवाह बहुत कम हो गया है। यह बात गलत है। मैं गांव से आता हूँ और मैं जानता हूँ कि वहाँ पर आज भी बाल विवाह बहुत होते हैं। दिक्कत की बात यह है कि जब लोग हिन्दू समाज के बारे में बोलते हैं तब वास्तव में वे उन लोगों के ही बारे में बोलते हैं जिन के बीच से वे खुद आते हैं। बाकी समुदाय को वे भूल जाते हैं। अभी हमारे जनसंघ के दोस्त श्री त्रिवेदी बोल रहे थे, उन्होंने कहा कि इस बिल के द्वारा हिन्दू संस्कृति और हिन्दू धर्म पर बड़ा कुठाराघात हो रहा है। वह जब हिन्दू का नाम लेते हैं तो उनकी आंखों के सामने सिर्फ ब्राह्मण होते हैं। लेकिन मैं उनको बतलाऊँ कि इस बिल की धारणों हिन्दुओं के एक बहुत बड़े भाग पर लागू नहीं होतीं। मेरा मतलब उन छोटी छोटी जातियों से है जिनमें कि इतना तलाक, इतना डाइवोर्स है जितना कि शायद दुनिया की किसी जाति में नहीं है। गांवों में बसने वाली उन छोटी छोटी जातियों में आये दिन डाइवोर्स होते रहते हैं और मैं आपको बतलाऊँ कि उन जातियों में इतने डाइवोर्स होते रहते हैं कि जिसका कोई ठिकाना नहीं है। मेरे गांव में मेरे घर के बगल में एक डोम का घर है। कुछ दिन हुए, एक नौजवान आदमी कलकत्ते से शादी कर के एक औरत घर में लाया, उसकी बीवी खूबपूरत थी। वह दिन भर उसके घर में रही, नाच गान हुआ, खाना पीना चला। रात में भी वह रही लेकिन दूसरे दिन सबेरे वह उस के घर से भाग गई। और एक महीने के बाद मैं ने देखा कि उसी लड़की को उसी गांव का एक दूसरा लड़का ब्याह कर के ले आया।

[श्री एम० पी० मिश्र]

इसलिये मेरे दोस्त जब हिन्दू हिन्दू कहते हैं, तो वह सिर्फ़ अपने तक यानी ब्राह्मणों तक ही देखते हैं और चिल्लाने लगते हैं कि हिन्दू धर्म और समाज पर इस क़ानून को पास कर के कुठाराघात किया जा रहा है। मैं मानता हूँ कि यह क़ानून ऐसा है कि जिस की वजह से एक तरफ़ ब्राह्मणों के रस्मो-रिवाज में कठिनाई पैदा होगी और दूसरी तरफ़ जो छोटी जाति के लोग कहलाते हैं उन पर भी इस क़ानून के लागू करने से शादी करने और तलाक़ देने की उनकी आजादी खत्म हो जायगी। मैं कह चुका हूँ कि अकेले क़ानून से सामाजिक सुधार नहीं हो सकते, हमें उस के लिये लोगों को शिक्षित करना होगा और उस के लिये अनुकूल वातावरण पैदा करना होगा। बालविवाह, श्रीमती सेन कहती हैं, कि बहुत कम हो गया है। लेकिन अभी भी वह खत्म नहीं हुआ है और आज भी बाल-विवाह हमारे गांवों में बहुत बड़े पैमाने पर होता है। पढ़े लिखे समाज में यह कुरीति धीरे धीरे घटती जा रही है, लेकिन मैं यह नहीं मानता कि शारदा ऐक्ट को नहीं पास होना चाहिये था। उस का भी असर कुछ ज़रूर हमारे हिन्दू समाज पर हुआ होगा। उस पर असेम्बली में इतनी बहस हुई, सारे देश भर में उस की चर्चा हुई और आज पढ़े लिखे समाज में बालविवाह कम होता जा रहा है लेकिन गांवों में और अशिक्षित समाज में आज भी बालविवाह होता है और गांवों में चार वर्ष के लड़के की दो वर्ष की लड़की के संग शादी होती है। हमारे गांव से कोई केवल एक मील पर पुलिस का थाना है लेकिन ये चीजें होती हैं। यह सब होते हुए भी मैं इस चीज को मानता हूँ कि ऐसे क़ानूनों की आवश्यकता से इन्कार नहीं किया जा सकता। और जो लोग समाज को आगे ले जाना चाहते हैं और उस को बदलना चाहते हैं, उनको ऐसे क़ानून मदद देते हैं और उनको मदद

देना चाहिये। हमारे गाड़गिल साहब ने कहा कि इस बिल का वह लोग कैसे विरोध करते हैं कि जिन्होंने इस देश के संविधान को मान लिया है, जिस के अनुसार देश के हर मर्द और हर औरत को बराबरी के हक़ प्राप्त हैं।

मैं बतलाना चाहता हूँ कि यह ज़माना वह पुराना ज़माना नहीं रहा, जब हर बात को सिद्ध करने के लिये श्लोक को पढ़ दिया जाता था। संस्कृत के श्लोकों के बारे में मेरा ख़्याल है कि किसी भी बात को सिद्ध करने के लिये आप वहां से श्लोक ले आ सकते हैं और अगर न मिले तो हमारे श्री देशमुख सरीखे व्यक्ति बड़े बड़े स्वयं श्लोक बना भी लिया करते हैं। कुछ भाई हमारे ऐसे हैं जो क़ानून का विरोध करने के लिये संस्कृत श्लोकों का सहारा लेते हैं और अपना विरोध क़ानून के प्रति प्रकट करने के लिये वक्त बेवक्त संस्कृत श्लोक पढ़ दिया करते हैं...

Shri Nand Lal Sharma: The same thing can be said of English quotations as well.

Shri M. P. Mishra: Yes, equally.

मैं इस बात को नहीं मानता कि क़ानून का विरोध करने के लिये श्लोकों का सहारा लिया जाय। ज़रूरी बात यह है कि हम देखें कि हमारी बहिनें अपने उचित अधिकारों से वंचित न रखी जायें, एक सेकुलर स्टेट यानी लैकिक राज्य होने के नाते यह हमारा कर्तव्य हो जाता है कि हमारी देवियों को, जोकि कुल आबादी का आधा भाग होती हैं, उन के उचित अधिकार मिलें और वह भी पढ़ लिख सकें। इस देश में साक्षरता का यह हाल है कि प्रत्येक सौ आदमी में केवल बीस पढ़े लिखे लोग हैं, लेकिन औरतों में

पढ़े लिखों की तादाद केवल हजार मं बीस या पच्चीस ही होगी, इसलिये आज जिस आबादी का करीब करीब आधा भाग बेकार पड़ा हुआ है और घर की चहारदीवारियों में क्रंद पड़ा हुआ है, हम उस को आगे बढ़ाने की कोशिश करें। संविधान की बात तो जानने दीजिये, अगर आप को देश को आगे ले जाना है, दुनिया के साथ क्रदम मिलाना है, तो हमारी जो मां और बहिनें हैं, उनको इस घर की जेल से निकाल कर आजादी के आंगन में लाना होगा और मैं समझता हूं कि यह कानून उन लोगों की मदद करेगा जो उनको उस क्रंद से छुड़ाना चाहते हैं।

अभी श्रीमती सुभद्रा जोशी ने भाषण दिया, मेरा ख्याल है कि सारे हाउस ने उस को बहुत दर्द के साथ सुना होगा कि आज हमारी बहिनों की कंसी दयनीय अवस्था है। और यह वाक्य है कि आज औरतों को कोई अधिकार प्राप्त नहीं है। उनको कानूनी हक बहुत थोड़ा है, पति की भरजी पर उन की ज़िन्दगी निर्भर करती है और हमारी राय में यह आज के जमाने में नहीं होना चाहिये। और अगर उन को कुछ हक कानून के द्वारा दिये जाते हैं तो वह स्वागत योग्य हैं। मैं तो चाहता हूं कि जैसे कि पुराने हिन्दू कोड बिल में स्त्रियों को पति की जाय-दाद में अधिकार दिये जाने की चर्चा थी वह एक बहुत ही वाजिब चीज थी। और आज उस के जिक्र को हटा दिया गया है, तो इस से मुझे दुख हुआ है और मैं चाहता हूं कि स्त्री को पति की जायदाद में अधिकार देने के वास्ते किसी रूप में कानून पेश किया जाना चाहिये। आज उन को पति की संपत्ति में अधिकार प्राप्त नहीं है, मैं चाहता हूं कि लेजिस्लेशन द्वारा यह अधिकार उन को दिलाया जाय, साथ ही समाज में भी उन को उनका उचित दर्जा और स्थान दिलाने का प्रयत्न किया जाय, आज उन के लिये रोजगार और

दूसरी चीजों के लिये भी खुला दरवाजा नहीं है।

इन सब बातों पर विचार करना चाहिये और इस तरह की व्यवस्था होनी चाहिये कि पति के साथ पत्नी को उस की सम्पत्ति में अधिकार रहे। डाइवोर्स की अवस्था में उस के सम्पत्ति के अधिकार का क्या बनेगा, यह मैं अभी नहीं कह सकता। लेकिन हमें कानून द्वारा उन को ये अधिकार दिलाने चाहिये। हमें यह भी देखना है कि औरतों को हमारे लिये शिक्षित करना कितना जरूरी है, क्योंकि आखिरकार वही बच्चों को पालती और बड़ा करती हैं और आगे जा कर वही बच्चे देश के नागरिक बनते हैं और यह बात सिद्धान्त रूप में मान ली गई है कि बच्चे आगे क्या होंगे, अथवा किसी आदमी का व्यक्तित्व क्या होगा, उस की पर्सनेलिटी कैसी होगी, यह उस के बचपने में तय हो जाता है, उस का निशान बचपन में पड़ जाता है, उस की रूपरेखा बचपन में ही बन जाती है और उस बच्चे को बनाने का काम मां को ही अदा करना पड़ता है। इसलिये यह बहुत जरूरी है कि हमारी मां और बहिनें शिक्षित हों। आप समझ सकते हैं कि एक अनपढ़ स्त्री है और उस का पति रात को शराब पी कर आता हो और उसे पीटता हो, तो बच्चों पर कैसा असर पड़ेगा? यह देहात की बात नहीं है, पढ़े लिखे समाज का भी वही बुरा हाल है। मैं अपने यहां की बात कहता हूं। मैं अपने ही फ्लेट ११९ साउथ ऐवन्यू की बात बतलाता हूं कि एक रोज साढ़े ग्यारह बजे रात जब मैं सोया हुआ था तो बड़े जोर से शोर हुआ और बच्चे चिल्लाये, मैं बहुत हैरान था कि इतनी रात को ग्यारह, बारह बजे बच्चे कैसे चिल्ला रहे हैं। आवाज उन के चिल्लाने की एक दफा बन्द हो गई, लेकिन फिर उन के चिल्लाने की आवाज

[श्री एम० पी० मिश्र]

आई और उन की चीख कुछ इस किस्म की थी कि मुझे उसे सुन कर बहुत कष्ट हुआ और तब मैं अपने बिस्तर पर लेटा न रह सका और बाहर पृच्छलाछ के लिये निकल आया, तब एक आदमी बाहर खड़ा हुआ था उस से मालूम हुआ कि इस में एक आदमी रहता है जो अपनी स्त्री को पीट रहा है और वह शराब पी कर आया है। मैं ने उस आदमी से कहा कि तुम उस आदमी को पीटने से मना क्यों नहीं करते हो तो उस ने कहा कि मैं मना करूँ तो वह मुझे मारेंगे। मैं ने नीचे आ कर नौकर को बुलाया और जब मैं उस के घर पर पहुंचा तो उस ने दरवाजा बन्द कर लिया, मैंने तब पुलिस को टेलीफोन करना चाहा, लेकिन तब तक एक दूसरा आदमी भेरे पास आया और कहने लगा कि उस की स्त्री भी अगर उस के पति को कोई मारने से रोकता है तो रोकने वाले से नाराज हो जाती है। मुझे यह सुन कर बहुत दुःख हुआ कि हालत यहां तक पहुंच चुकी है कि स्त्री ने मान लिया है कि उस के भ्राम्य में पति से पीटना लिखा है, पुरुष को उस को पीटने का अधिकार है.....

Acharya Kripalani (Bhagalpur cum Purnea): They loved their husbands more than they do now.

श्री एम० पी० मिश्र : तो मैं कहता हूँ कि स्थिति यहां तक पहुंच गई है और इस को बदलना चाहिये। इस को बदलने के लिये एक बड़ा कदम हम को उठाना होगा ताकि स्त्रियों को अपने ऊपर विश्वास हो सके। अभी तो हरिजनों के बारे में संविधान में कानून बना है, हरिजनों के लिये छुआछूत उठ गया। हम तो गांधी में अभी भी यदि उन्हें छूते हैं तो पुरानी पीढ़ी के बड़े बूढ़े कहते हैं कि तुम पाप कर रहे हो और हरिजन

लोगों में भी बड़े बूढ़े कहते हैं कि तुम यह पाप कर रहे हो कि हमारे बच्चों के साथ मिलते हो, उन को छूते हो। यह हमारा संस्कार बन गया है। इसी तरह से हो सकता है कि हमारी स्त्रियां या कुछ बहनें खड़ी हो कर इस बिल का विरोध करें। लेकिन मैं कहता हूँ कि यह बिल बहुत जरूरी है। इस से देश को मदद पहुंचेगी, इस देश की स्त्रियों को मदद पहुंचेगी, इस देश के लोकराज्य को मदद पहुंचेगी और मैं इस बिल का समर्थन करता हूँ।

कहा जाता है कि तलाक बहुत बुरी चीज है और हम चाहते हैं कि तलाक देश भर में चालू हो जाय। मेरी समझ से तो तलाक न अच्छी चीज है और न बुरी चीज है। छुरी न अच्छी चीज होती है और न बुरी चीज होती है। अगर आप छुरी से किसी निर्दोष आदमी की गर्दन काट दें, तो वह बहुत खराब चीज हो जाती है, लेकिन अगर आप छुरी से किसी को ज़रूम का जहर दूर कर देते हैं तो वह अच्छी चीज हो जाती है। इसी तरह से तलाक कहीं कहीं अच्छी चीज हो सकती है और कहीं कहीं पर बुरी चीज हो सकती है। कहा जाता है कि योरोप में रूस बहुत बड़ा देश है।

आचार्य कृपालानी : तालाब भी ऐसे ही हैं जैसे कि तलाक। यह भी बुरा हो सकता है।

श्री एम० पी० मिश्र : मैं जानता हूँ कि रूस में लोगों ने शुरू में बेरोक टोक डाइवोर्स को जारी किया। लेकिन फिर अनुभव से उन्हें इस को कम करने के लिये सख्त कानून बनाना पड़ा। और अब उन्होंने ने डाइवोर्स पर काफी नियंत्रण लगा रक्खा है क्योंकि अगर डाइवोर्स ही डाइवोर्स चल गये तो परिवार की प्रथा ही समाज से टूट जायेगी।

में उन लोगों के साथ एक राय नहीं रखता हूँ जो यह समझते हैं कि विवाह जो है वह कोई धार्मिक संस्था है। शास्त्रों में लिखा है कि पहले हिन्दुस्तान में विवाह नहीं था। महाभारत पढ़ने वाले लोग जानते हैं कि एक उद्दालक ऋषि थे। इन ऋषि के पहले विवाह होता ही नहीं था। पहले यह प्रथा थी कि ऋषि के यहां जो अतिथि आते थे उन को पूरा आतिथ्य तो मिलता ही था साथ ही इस आतिथ्य के साथ यह भी प्रथा थी कि अतिथि जिस के यहां ठहरते थे उस की पत्नी के साथ सो भी सकते थे। ऐसा ही हुआ। उद्दालक ऋषि के यहां एक ऋषि आये और रात भर ठहरे। और मुबह होने पर उद्दालक ऋषि की स्त्री को ले कर चले गये। उद्दालक ऋषि के पुत्र ने देखा कि वह ऋषि उस की मां को लिये जा रहा है तो उस ने विरोध किया। तभी से विवाह की प्रथा चली और अभी भी कई जगहों पर विवाह की प्रथा नहीं है। तो विवाह की प्रथा को भगवान ने बना कर भेजा और यह प्रथा सदा थी और सदा रहेगी, यह मैं नहीं मानता हूँ। लेकिन मैं मानता हूँ कि सम्यता के निर्माण में इस प्रथा का बहुत बड़ा हाथ रहा है। परिवार नाम की जो संस्था है उस की जड़ विवाह में है और परिवार के बिना समाज नहीं चल सकता है, इसलिये विवाह तो चलेगा ही। लेकिन इस के साथ यह भी जरूरी है कि जो दुखी लोग हैं उन को रास्ता मिलना चाहिये। एक स्त्री है और एक मर्द है, दोनों में विवाह हुआ, लेकिन कोई कारण हुआ कि दोनों में अनबन हो गई, दोनों में झगड़ा होता है, और दोनों की पटती नहीं है। न पटने से क्या होता है कि उन के जो बच्चे हैं उन के ऊपर इस का बुरा असर पड़ता है, उन के बच्चों की चिन्दगी दूबर हो जाती है। ऐसी स्थिति में उन दोनों स्त्री पुरुष के सामने एक तरीका है, सब से अच्छा उपाय है कि वह

दोनों अलग हो जायें और अलग हो कर सुखी जिन्दगी बिताने की कोशिश करें। यह न हो कि उन को बांध कर रक्सा जाय, यह न हो कि एक स्त्री को उस का पति सताता है,— मालाबार में ऐसा भी हो सकता है कि कोई स्त्री ही शायद अपने पति को सताती होगी,— तो भी उन को एक साथ रहने के लिये मजबूर किया जाय।

आचार्य कृपालानी : अरे भाई, यहां भी होता है।

श्री एम० पी० मिश्र : लेकिन मैं यह कहना चाहता हूँ कि जहां तक तलाक के बारे में मैं ने देखा है, उस में इतना बन्धन रक्खा गया है, इस कानून में इतना नियंत्रण रक्खा गया है कि इस में बड़ी मुश्किल पड़ेगी। मैं समझता हूँ कि इस को ढीला करना चाहिये और दूसरे हाउस ने स्पेशल मैरेज बिल में जो यह रक्खा है कि स्त्री पुरुष अपनी रजामन्दी से ही अपने विवाह सम्बन्ध को तोड़ सकते हैं; कुछ ऐसी आजादी उन्हें जरूर होनी चाहिये। अगर इस तरह से विवाह सम्बन्ध टूट सकेंगे तो विवाह सम्बन्ध टूटने से ज्यादा झगड़े नहीं होंगे, पति और पत्नी को परेशानी भी कम होगी और बकीलों को फ्रीस देने से भी बचत होगी।

साथ ही साथ में यह भी कहूंगा कि विवाह की उम्र लड़की के लिये कम से कम १८ वर्ष और लड़के के लिये कम से कम २१ वर्ष होनी चाहिये। इस तरह से गार्जियनशिप का झगड़ा भी खत्म हो जायगा और लड़की और लड़का अपना भला बुरा समझने लायक भी हो जायेंगे।

इस के साथ ही साथ मेरा यह भी निवेदन है, और जैसा मैं ने शुरू में कहा था कि हमारी सरकार को और खास कर हमारे कानून मंत्री को सोचना चाहिये कि सम्पत्ति में जब तक स्त्रियों को अधिकार

[श्री एम० पी० मिश्र]

नहीं होगा तब तक कोई सुधार, कोई कानूनी अधिकार, उन की मदद नहीं कर सकता। इसलिये इस बिल को बढ़िया बनाने के लिये, जोरदार बनाने के लिये, स्त्रियों को अधिकार देने के लिये, और जो अधिकार उन को कानून से मिल सकें उन का पूरा फायदा उठाने के लिये यह जरूरी है कि उन को सम्पत्ति में अधिकार दिया जाय। बिना इस के कानून से वह अपने अधिकार मनवा सकेंगी, यह मैं नहीं मानता हूँ। मुमकिन है कि हमारे जनसंघ के लोग खड़े हो कर यह कहें कि स्त्री बनाई इसलिये गई है कि वह घर के भीतर रहे, वह घर का इन्तजाम करे और दोनों वक्त चूल्हा फूकें। उस का यह काम नहीं है कि वह मर्दों की बराबरी करे। लेकिन वह गलती करते हैं। मैं कल एक किताब पढ़ रहा था और मुझे मालूम है कि न्यू गाइना में एक जाति है जिसका नाम है चम्बुली। इस जाति के अन्दर क्या होता है वह मैं बतलाना चाहता हूँ। ठीक यहाँ से उल्टी बात है :

"An actual reversal of sex attitudes is found among the Tchambuli. Here the woman is the dominant, impersonal, managing partner and the man the less responsible and emotionally dependent partner. It is the woman who makes the sexual choice; it is the man who is chosen. Women get along well with each other; men are 'catty' about other men, suspicious, and distrustful. Because of their dependence on the women for security the men are shy, sensitive, and subservient; they engage in artistic and other 'feminine' activities, such as dancing, weaving and painting."

मर्द यह काम करते हैं और औरतें खेती करती हैं, हल चलाती हैं।

कुछ माननीय सदस्य : यह कहां की बात है ?

श्री एम० पी० मिश्र : न्यू गाइना में यह एक चम्बुली जाति है। तो मैं कहता हूँ कि औरतों को इसी लिये भगवान ने या सृष्टि ने बनाया है यह गलत है। बल्कि हमारा समाज अपने नियम और संस्कार से ऐसा करता है। यह ठीक है कि आज यहाँ औरतें भी समझती हैं कि उन का काम है चूल्हा जलाना और घर का इन्तजाम करना। कुछ स्त्रियां तो ऐसा समझती थीं कि अगर उस का पति मारे भी तो उस का काम है मार को सहना। बन्दूक चलाना उस का काम नहीं है। लेकिन हमें तो एक ऐसा समाज बनाना है जहाँ स्त्रियां बन्दूक भी चला सकें। कल ही मैं ने पढ़ा था कि दिल्ली के ही पास थोड़ी दूर पर अलीगढ़ में एक पहलवान है जो कि औरत है और जो यहाँ बाहर के बड़े बड़े पहलवान आते हैं उन को उस ने चुनौती दी है कि वह लोग जा कर उस से लड़ें।

कुछ माननीय सदस्य : उस का नाम क्या है ?

श्री एम० पी० मिश्र : हमीदा बानू बेगम। यह बात गलत है कि मर्द औरतों से ऊपर हैं, या उन को भगवान ने कोई छोटा जीव बनाया है। वह हर तरह से मर्दों के बराबर हैं और उन को पूरा हक होना चाहिये मर्दों की बराबरी करने का। यह मैं इसलिये कह रहा हूँ ताकि हमारा देश आगे बढ़े, हमारे देश के लोग आगे बढ़ें और हमारा लोकराज्य आगे बढ़े, और हम उस उद्देश्य तथा मंजिल पर पहुँचें जिस का झंडा हम ने १५ अगस्त, १९४७ को फहराया था।

Pandit S. C. Mishra: I wish to say that there are certain people in this House who think that they have brought forward a very progressive measure, and that a very progressive measure has been brought forward by a very progressive Government. There

are other people who malign the old Hindu society, Hindu forms, etc. I wish to say that although this measure may be a little progressive measure, it is certainly not more progressive than what you people see around you. For example, I say there are certain customs which are prevalent in Hindu society. This Bill allows those customs may be broken, but then it does not go beyond what is prevalent in Christian society or Muslim society. If you think you are radical. I say you are not radical at all. A little frog began to demonstrate before children, saying: "You see I am as big as a bull" and began to puff and puff till it burst itself. To Hindu society marriage between cousins is repugnant, but there are parts in India where marriage between niece and uncle is not a prohibited thing in Hindu society, but here in this Bill whereas you allow that Hindus can marry between cousins, at the other place, what is prevalent in some parts you prohibit. It is just like the foreigners who came to India and said: "You Hindus are in darkness. You are *kafirs*. We are bringing you out into enlightenment".

Some friend here was quoting Manu. In the first line Manu says:

नार्य्यस्तु यत्र पूज्यन्ते रमन्ते तत्र देवताः ।

That is the very fundamental concept of Hindu society. It means, only that society where women are worshipped flourishes; that society where women are not worshipped does not flourish.

During the Vedic ages, there was no institution of marriage. Not only that, but the Vedic hymn says that sages wrote out with their own hands: "At such and such a place when I was travelling in the jungle, I saw a girl. I had a liking for. I proposed to her, and we went to such and such a place and got satisfied". That sage who was worshipped in society has written it down, and nobody said he was a bad man. Draupadi had five husbands. The sages have said that she is the woman who is the most

virtuous in society. Any woman who had five husbands should be called "प्रातःस्मरणाय".

In the beginning of Hindu society perhaps not only was there no marriage, but women had the right to take as many men as they chose. This institution of polygamy has come from the Japanese. Later on women began to say: "We want protection from this. We cannot take so many men". Then, it is on the insistence of the women that this new system of monogamy was introduced in Hindu society, and it was restricted to one man. Later on, even that was thought to be very heavy, and then it was said one man can marry any number of women, and women did not protest. They themselves wanted that.

I. P. M.

This is the history of our society. I do not say anything that was prevalent at a certain period should ever or can ever remain valid for society. That cannot happen. Every law or every custom which is for the good of society at one period will certainly become anti-dated, antiquated at a later period. Then, certainly people must sit down together at a round table or in Parliament and find out what are the changes required. But certain people are championing this Bill in the hope that tomorrow they can go to the people and get their votes. One of my friends did cite a story from that side. He said: "It is only the Congress Government that has done this and therefore the votes must go to the Congress". Our Prime Minister wants to have a vote of confidence from the Nagas, and the Chief Minister of U.P. wants that all the institutions that are manned by *sadhus* and naked people and all reactionary persons must also vote confidence in the Congress. How can that very Congress bring a very radical Bill? So, you want to bring a Bill on the force of which you can simply go to the people and say: "We have emancipated the women also", but certainly you have not emancipated the

[Pandit S. C. Mishra]

women as my friend there told you. Unless they have got certain basic rights to property we will make their position only funny. The lady Member from there was greatly bewailing that such and such a man—she did not say divorced—has given up his wife. Why was she weeping? Why has the wife not the courage to say: "I detest that man. I am going to marry again"?

There are certain beastly jaws in this statute which are imported from the West. There are certain rights given to man which are only copied from the West. A man can go into a court and compel a woman to come and live with him. What is this? You could have done much more service to women if our Law Minister had only enacted this, that from this time on woman shall be compelled to live with any man, be he her married husband, against her will. (*An Hon. Member:* It is there.) If it is there, then what is the use of crying and saying all these things? It is not there. A man can go to a court and compel a woman to remain with him. These are things happening. Therefore, instead of giving this real right to women you are only bringing in this Bill because you have made a proclamation five years ago and therefore you have somehow to see that you comply with it. You can now go and beg for the votes of women. You are bringing in a measure which will really give no relief to women.

Why is the Law Minister making a mess of laws that will not work? In Hindu society these things are prevalent. Only some reasonable time is allowed to lapse between a divorce and remarriage. It may not be a divorce in a court, but Hindu men and women, if they cannot live together—I do not know of the Brahmins or the high caste people; a Hindu does not mean only a Brahmin—eighty per cent. of them have got this custom prevalent; society does not take it ill and no beating or *lathi* or *danda* is brought into play. If a woman

says: "I cannot live with this man", she goes away. Only some time is allowed to lapse between this getting away from each other and re-marrying—sometimes a year or six months. Society observes only that. This is a permanent practice.

Considered from all these points of view, this Bill does not at all go far enough. If you intend bringing a remedy, why are you stitching a dress for a child who is going to grow, which will not last for three months? What is the use of spending public energy and money on a Bill which will not last six months, which will not be able to provide the remedies that society seeks? It may be a vote-catching device. Therefore when this Bill is going to the Select Committee you should not adopt the attitude of the West that you are bringing enlightenment. I would like to say that the first things ought to have been given first to the women. The foremost rights that are necessary for them should have been given to them first. But not one of them is to be found in this Bill. In the absence of these rights, the household woman shall still be a prey to man. Of course, the physical force is there, but added to this, the financial force is also there. Unless society progresses to such an extent that every child shall be considered to be a legitimate child and shall be given sustenance from the State, and unless you reach this stage, you will not be able to do anything to emancipate women, even if you want to do so. If you cannot emancipate women, why make their lot worse, by making them a prey to people like my hon. friend here or my hon. friend there? They will only make the lot of the women worse in the countryside and everywhere. (*Interruptions.*)

Two days ago, in the evening. I was in the Connaught Place, and I saw six lady graduates talking among themselves. One of these lady

graduates produced a petition, saying
 प्राथना है, इसमें लिखा ।

and the other said, I do not believe in *prarthanas*, so I will not write. I thought it was some prayer to God. So I got interested, and I asked one of the girls whom I happened to know, what is the matter, if it is time for prayer, and whether you pray here. She said, no. Then, I thought that perhaps some League was run for women, and this was some petition by them. But I learnt that it was not so. Under the 'Ashis' of our great Brahmins and *pandits*, they have printed some pamphlets, and they are now bringing forward as many women as possible to sign them and say, this Parliament must not pass this Bill providing for divorce and things like that. Perhaps, this must be your experience also. In the village side in our country, where the *pardah* system was prevalent, when our great leader Mahatma Gandhi tried to get the women out of their *pardahs*, it was the women themselves who voiced the most vehement protest against it. You will recall that a nephew of Mahatmaji lost his life in Bihar, when that campaign for the emancipation of women from the *pardah* system was going on. The womenfolk came from inside their houses, with broomsticks in their hands, against those who wanted to emancipate them. In this way, the greatest opposition was from the women themselves.

I tell you here that if you only want to catch votes, this is a good measure for that. But soon after election, you will yourselves revoke this, and say, the women of the country are against this, so, we are repealing this. The men have so manipulated that the women themselves are protesting against this measure. Ultimately a stage will come, when you will say, the women are protesting against this, and therefore, let us take this away from the statute book. I would, therefore, request the hon. Law Minister to look into these things, and make this Bill simpler, and not hedge it with so many things. For God's sake, be a

little more progressive than the Christian society, or the Muslim society or any other society. Why do you not take the lead in the Hindu society? If the Hindu society is to progress, it should progress along scientific lines. Let it progress according to what the demands of the age are. But instead of doing that, why do you hedge in things in this way? I would request the hon. Minister to see whether this Bill cannot be more simplified in the Select Committee, and to put first things first. Give them their inherent rights first; you may give them some more rights on other grounds, and I certainly do not grudge that. But give them their necessary rights first.

So far as divorce is concerned, if the bond of love cannot keep a man and a woman together, it is the most heinous cruelty to keep them together under threat of any law. Of course, you must give them some reasonable time to understand each other. But if, after a period of six months, they repeat more than once that they cannot live together, and that they must have divorce, why not allow them to have divorce? Why hedge in the whole thing by all these provisions? If there is divorce, I would also suggest that the woman must go with some property. If it is inherited property, then it must be half, there should be no question about it. Even if it be the earning of her husband, she must have equitable rights in it, and take a portion of it with her. But there are no provisions in this Bill to that effect. As things stand, a woman can ask for divorce only under the hope that perhaps she will be picked up by some other man, who may be more wicked than the man with whom she was living earlier.

If you really wish to protect women, immediately bring in another Bill which can give some sustenance to women.

श्री जांगड़े (बिलासपुर—रक्षित-बनुसूक्ति जातियां) : सम्भाषित महोदय, आज यह हमारे लिये बड़े महत्व का दिन है कि हिन्दुस्तान के

[श्री जांगड़े]

भीतर जनता एक नये दिन का निर्माण करेगी और वह इसलिये कि आज आप यहां हिन्दू समाज जिसकी कि संख्या ३२ करोड़ के लगभग है उस हिन्दू समाज में एक समता का दिन आने वाला है और वह समता हिन्दू समाज को कन्याकुमारी से ले कर बरीनाथ तक सारे देश को एक रस्ती में बांध सकती है और समता आने पर हिन्दू समाज उन्नति के पथ पर निरंतर अग्रसर होता जायेगा और मुझे इस बात की बड़ी प्रसन्नता है कि समता का इस बिल के द्वारा समावेश हो रहा है। हम यह देख रहे हैं कि प्राविजनल पार्लियामेंट में अन्तर्कालीन संसद् के समय हम ने देखा कि हिन्दू कोड बिल का बहुत भारी विरोध होता था, पर हमें इस बात को देख कर आज बड़ी खुशी हो रही है कि इस सदन में इस बिल का कोई बहुत ज्यादा विरोध नहीं हो रहा है और अगर कुछ हो भी रहा है तो सुझावों के रूप में हो रहा है, उस का मूल रूप में विरोध नहीं हो रहा है और यह बड़ी खुशी की बात है कि इस देश में और संसद् के सदस्यों में भी अब प्रगतिशील विचार उत्पन्न हो रहे हैं और यह देख कर हृदय में बहुत आनन्द होता है।

इस के उपरान्त अब मैं यह कहना चाहता हूँ कि यह जो बिल लाया गया है इस बिल में बहुत सी सामियां हैं, बहुत सी कमजोरियां हैं जिन्हें मैं यहां पर बताना चाहता हूँ। आप यह देखिये कि किसी भी सदस्य ने इस बिल की बेसिक चीज को नहीं देखा, फाइनेंस, आर्थिक समस्या को किसी भी सदस्य ने नहीं पकड़ा। जुडीशल सेप्रेशन के लिये या किसी विवाह को हमें नल एन्ड वायड कराने के लिये या डाइवोर्स वगैरह के लिये इस बिल में डिस्ट्रिक्ट कोर्ट में जाने की बात कही गई है और यदि जिला अदालत या जिला न्यायालय में जाने वाली बिल की वह धारा पास होती है तो आप देखेंगे कि लाखों लोग

अदालतों में महीनों चक्कर काटेंगे और जहमत उठायेंगे और वकील लोगों की बन आयेंगी और वे हज़ारों और लाखों रुपया उन से एंठ लेंगे और तब जा कर कितने ही दिनों बाद उन का मामला तय होगा। आज के दिन भी इन अदालतों के चक्कर से बचने के लिये हिन्दू समाज की उपजाति के लोग अपने पंचों के हाथ में अपने मामले का फ़ैसला सौंप देते हैं और वे उन जातियों के पंच मैरिज, डाइवोर्स आदि के सम्बन्ध में निर्णय देते हैं, मैं पूछना चाहता हूँ कि आप ने इस बिल में उस पैने और समय की बर्बादी जो अदालत में जाने से होगी, उस को बचाने के लिये आप ने इस में क्या प्राविजन रक्खा है? आप समझते हैं कि यह मैरिज और डाइवोर्स बिल पास कर देने से हिन्दू समाज में स्त्रियों को बहुत बड़ी सुविधा मिलेगी और उन की दशा में सुधार होगा पर क्या आप जानते हैं कि हज़ारों औरतें जो अपने मर्द को छोड़ देती हैं और हज़ारों मर्द जो अपनी औरतों को छोड़ देते हैं उन में से इस मामले को ले कर कितने लोग अदालत में जाने को तैयार होंगे, इस बात की कल्पना किसी सदस्य ने नहीं की है और मैं इस की एक कल्पना आप को कराना चाहता हूँ।

एक दूसरी चीज जैसा कि हमारे एम० पी० मिश्र ने कहा कि हमारे यहां शारदा एक्ट जो बना था जिस के मुताबिक़ शादी के समय लड़की की उम्र पन्द्रह साल की और लड़के की उम्र अठारह साल की होनी चाहिये, सब जानते हैं कि उस क़ानून पर कहां तक हमारे देश में अमल हुआ, आज तक शायद मुश्किल से उम क़ानून का एक फ़ी सदी उपयोग ही हुआ होगा। मिश्र जी ने ठीक ही कहा कि देश में अभी भी ९९ फ़ी सदी लोग नाबालिग़ शादी करते हैं और मेरे यहां तो रिवाज है कि बच्चा पैदा ही नहीं होता उस के पहले ही दो घरों

में यह तय हो जाता है कि अगर एक के घर लड़का पैदा हुआ और दूसरे के घर में लड़की तो उस लड़के और लड़की का आपस में विवाह कर दिया जायगा, यह हमारे यहां रिवाज है ।

यहां पर कहते हैं कि पुरुषों का स्त्रियों पर बहुत ज्यादा अत्याचार होता है लेकिन

मेरे यहां औरतें पुरुषों पर अत्याचार करती हैं

Mr. Chairman: The hon. Member can continue his speech tomorrow. The House will now stand adjourned till 8-15 a.m. tomorrow.

The House then adjourned till a Quarter Past Eight of the Clock on Wednesday the 12th May 1954.