

Clauses 1 and 2, the Title and the Enacting Formula were added to the Bill.

Shri Alagesan: I beg to move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

HINDU MARRIAGE BILL

Mr. Deputy-Speaker: The House will now take up the Bill to amend and codify the law relating to marriage among Hindus, as passed by the Rajya Sabha.

The Minister in the Ministry of Law (Shri Pataskar): 30 hours have been allotted for this. How many hours shall we have for the general discussion, the clause by clause consideration and the third reading?

In all, there are 30 hours.

Mr. Deputy-Speaker: Let us proceed from the third reading. It is just an exchange of bouquets or brick-bats. Let us have 1 hour for that.

Shri Pataskar: There is no occasion for any brick-bats.

Mr. Deputy-Speaker: 1 hour is the usual time for third reading.

Some Hon. Members: Two hours.

Mr. Deputy-Speaker: Let us have 1½ hours for the third reading.

Shri S. S. More (Sholapur): He should give us all *shastras* so that the reactionary elements may be satisfied about the propriety of this measure.

Mr. Deputy-Speaker: Let us have 1 hour for the third reading. 29 hours are then left. For the clause by clause consideration we shall have 4 hours.

Shri U. M. Trivedi (Chittor): On a point of information. I do not know whether my hon. friend Shri S. S.

More is justified in saying that the reactionary elements must be given some time. That is not a happy word. He should refrain from using such language. According to me, those who call themselves progressive are equally reactionaries and renegades. I do not like the idea of people being called reactionaries because they speak about it.

Shri S. S. More: Henceforward I shall call all reactionary people by the name Trivedi.

Mr. Deputy-Speaker: Very good. These compliments can be exchanged easily. Persons who call others reactionaries may themselves be reactionaries.

Shri V.P. Nayar (Chirayinkil): What will be the reaction for this?

Shri Gidwani (Thanna): Marriage and divorce.

Shri V. G. Deshpande (Guna): 20 hours should be given for the clauses, because they should be carefully considered. Last time our experience was that all the amendments were put together, and every amendment was not considered on its merits. This is a social legislation of very great importance, and we appeal that all the amendments and all the suggestions should be given proper consideration, in the House.

Shri K. K. Basu (Diamond Harbour): 1½ hours for the third reading and the rest for the clauses.

Mr. Deputy-Speaker: General discussion we have had many times. There was a very similar Bill also.

Shri Pataskar: The Special Marriage Bill.

Mr. Deputy-Speaker: We have had general discussion both when that Bill was introduced, and also when this was referred to a Joint Committee. At that time there was general discussion only and we were not attending to any clauses.

Shri S. S. More: May I support Shri V. G. Deshpande's proposal though I do

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not agree with his views? I believe that as far as the clauses are concerned, they will be affecting the life of the people concerned. As far as the general principles are concerned, we may wax eloquent but they will not be effective or useful for the purpose of interpretation. So my submission is that the clauses may be subjected to more careful scrutiny so that all the defects may be removed.

Shri K. K. Basu: The eloquence may be more useful to the Members themselves.

Mr. Deputy-Speaker: If the Members agree, we may have 10 hours for the general discussion, 2 hours for the third reading, and 18 hours for the second reading; or we may have 12 hours for the general discussion, 2 hours for the third reading, and 16 hours for the clauses.

Shri K. K. Basu: Let that be the last word.

Mr. Deputy-Speaker: Is the House agreeable to this?

Several Hon. Members: Yes.

Mr. Deputy-Speaker: So we shall have 12 hours for the general discussion, 16 hours for the clauses and 2 hours for the third reading.

By the time we reach the end of the general discussion, if we find there is not sufficient number of amendments, then we will think over getting some more time for the general discussion...

Shri K. K. Basu: For eloquence.

Mr. Deputy-Speaker:...if hon. Members are anxious to speak. So, tentatively, we shall have 12 hours for the general discussion, 16 hours for the clauses and 2 hours for the third reading.

Shri K. K. Basu: What is the hon. Minister's allotment?

Mr. Deputy-Speaker: The hon. Minister will take an hour.

Shri K. K. Basu: Both at the beginning as well as at the end?

Mr. Deputy-Speaker: That we shall see.

Shri Pataskar: So far as the clauses are concerned, it will all depend upon how many amendments people send. If their number is limited, then the Minister will not have to take much time in reply.

Shri V. G. Deshpande: Will it be a continuous discussion or it will be two hours today and then on some other day?

Mr. Deputy-Speaker: It will be going on continuously, I think, or possibly, the State Bank Bill might come up in between.

Pandit Thakur Das Bhargava (Gurgaon): According to the agenda, the Untouchability (Offences) Bill is coming up tomorrow.

Mr. Deputy-Speaker: Enough unto the day is this discussion. The hon. Minister may begin now.

Shri Pataskar: I beg to move:

"That the Bill to amend and codify the law relating to marriage among Hindus, as passed by Rajya Sabha, be taken into consideration."

[SARDAR HUKAM SINGH in the Chair.]

Sir, at this stage I will briefly refer to the stages through which this matter has upto now passed and I will place a brief survey of the same before the House. As this House is aware, this Bill originally formed part of the lapsed Hindu Code Bill. This part of that Code relating to marriage among Hindus has been before the Central Legislature for a very long time, almost for about 12 or 13 years. The House is also aware of the various stages through which the attempts to codify the Hindu Law have passed. What is now known as Hindu Law is a spacious and complicated structure with different schools prevailing in different parts of the country. The codification was opposed by some as be-

ing impossible and as being fraught with grave danger to the Hindu Society. Enlightened public opinion, has, however, all along held that codification is in the best interests, could make the law certain and at the same time mark the progress that has taken place in what has now come to be called the Hindu society.

The present Bill was first introduced in Rajya Sabha on the 11th December 1952, and on the 20th December, 1952, a motion that the Bill be circulated for eliciting public opinion was made in that House and passed. The Bill was then circulated for eliciting public opinion and the opinions received showed that a large measure of public opinion was in favour of the main provisions of the Bill. Of the 27 States consulted 15 State Governments expressed themselves in favour of the Bill, 8 State Governments did not express any opinion, and only 2 States expressed themselves in favour of the prevention of polygamy but did not favour the introduction of divorce.

Shri Kasliwal (Kotah-Jhalawar): Which are those States?

Shri Pataskar: I think Ajmer and some other State.

Shri V. G. Deshpande: Is it confidential?

Shri Pataskar: There is nothing confidential. I will supply any information that is asked for. I think it is Ajmer and another State.

Shri S. S. More: How can Ajmer be confidential?

Shri Pataskar: One is Ajmer and the other State I do not remember. There is nothing confidential, otherwise why I should make a mention of this.

After the receipt of these opinions, the Rajya Sabha debated the motion to refer this Bill to a Joint Select Committee in March 1954, and the motion was adopted. Thereafter, the same motion to refer this Bill to a Joint Select Committee was discus-

sed in this House on the 10th, 11th, 12th and 13th of May, 1954 and the motion was adopted.

The Bill thus referred to the Select Committee underwent several changes and the Committee took great pains to look carefully into the matter and the Report of the Select Committee was submitted on the 25th of November, 1954. The matter was taken up in the Rajya Sabha and they passed it on the 15th December, 1954.

Thereafter this matter is being taken up in this House for being finally discussed and passed into law.

It will thus be seen that this matter has been considered both in the Select Committee and in Parliament at some great length and has been pending in Parliament in one form or another for the last two and a half years. It is, therefore, necessary that the subject matter of this Bill should be decided without any unnecessary delay by this House.

The main questions involved in this Bill are broadly three: (1) the abolition of caste as a necessary requirement of a valid marriage; (2) enforcement of monogamy; and (3) divorce or dissolution of marriage on certain grounds.

As regards the first, I may say that Parliament has already passed the Hindu Marriages Validity Act, 1949, and accepted in principle the underlying necessity for a provision of this character. In this connection I may mention that that Bill has been passed at the instance of our hon. friend Panjit Thakur Das Bhargava and he must really be complimented for what he achieved some time back and without much furor being raised.

As regards the enforcement of monogamy, I may say that monogamy has all along been a normal feature of the Hindu society. It may be that there was no legal prohibition against allowing polygamy, but as a result of the social and

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economic changes in society, polygamy is on its last legs. There might have been some cases where there was polygamy, but monogamy has been a normal feature of our society in my view. However, the time has come when there should be express prohibition against polygamy.

As regards the third, there is still some opposition in certain quarters to which I shall refer at a later stage.

I shall now briefly refer to the changes through which this Bill has passed in the Joint Select Committee and in the Rajya Sabha which has passed the Bill.

One significant change made by the Rajya Sabha is in the title of the Bill itself. Instead of the Bill being called the 'Hindu Marriage and Divorce Bill' as originally proposed, it is now called 'The Hindu Marriage Bill'—a change which hon. Members of this House might be with a few exceptions, will, I am sure, heartily approve because the accent is not on the dissolubility of marriage but the accent is on the maintenance of marriage and that is more important. Another important change made by the Rajya Sabha is in clause 2 of the Bill. The Scheduled Tribes within the meaning of clause 25 of article 366 of the Constitution have been excluded from the purview of the measure in view of the fact that these Tribes have their own peculiar customs. Nevertheless, power is given to the Central Government to apply the provisions of the Act by notification to such Tribes so that the law could be extended to them when a suitable opportunity comes.

The Joint Select Committee has modified the definition of 'District Court' in clause 3 of the Bill so as to make it clear that where there is a City Civil Court it is that court which shall have jurisdiction under the law. The power to notify inferior courts as District Courts for the purpose of this law is now vested in the State Governments, instead of the Central

Government as proposed in the original Bill.

The Joint Select Committee had not made any changes in the definitions of 'sapindas' and 'degrees of prohibited relationship' except to include some more relations like children of brother and sister, brother's widow, etc., within the 'degrees of prohibited relationship' between whom marriages should not be encouraged. Local customs to the contrary will of course be covered by the saving provisions in clause 5 (iv) and 5(v) of the Bill.

In clause 5 of the Bill, the Joint Committee raised the age of the bridegroom and the bride from 18 and 15 years to 21 and 16 years respectively. In doing so, the Joint Committee was perhaps influenced by the modern trends relating to the age of marriage. The Rajya Sabha has, however, restored the ages to 18 and 15 as proposed in the original Bill. The change is in conformity with the provisions of the Child Marriage Restraint Act of 1929.

So far as guardianship in marriage—clause 6 of the Bill—is concerned, the Joint Committee felt that in view of their having raised the age limit, it was not necessary to have a long list of guardians as proposed in the original Bill. They also provided that where the guardian is a guardian by half-blood, the bride should be living with and should have been brought up by him to enable him to act as a guardian. The original list of guardians included the maternal grandfather and the maternal uncle. But the Rajya Sabha included the maternal grandfather, maternal grandmother and the maternal uncle provided the bride is brought up by and is living with him. The only relatives omitted from the original Bill are the maternal uncle by half-blood and the residuary relatives.

Then come the clauses relating to judicial separation, nullity of marriage and divorce. The right of divorce is provided only in those exceptional cases where the aggrieved party is without any other remedy. The

scheme adopted by the Joint Select Committee with regard to these provisions in this Bill is slightly different from the scheme in the Special Marriage Act, which we have passed and where on the same ground a party can obtain either judicial separation or divorce. In this Bill the grounds for judicial separation and divorce are not identical. A decree for judicial separation may be followed up by a decree of divorce after two years or it may be cancelled by the parties coming together. Greater emphasis is laid in the Bill on attempts to preserve the marriage tie as far as possible and this is in keeping with our traditions.

In clause 10 of the Bill, as amended by the Joint Select Committee, the word "cruelty" has a self-contained definition and the definition of "desertion" has been widened to include wilful neglect.

In clause 11 of the Bill as introduced and as amended by the Joint Select Committee, there was a provision relating to marriages solemnized before the commencement of the Act being declared as void in certain circumstances on a petition presented by either party to such a marriage. The Rajya Sabha deleted this provision as being unnecessary. If a marriage celebrated before the commencement of the Act was void under the law in force at the time of the celebration nothing contained in this Act would render it valid and no provision saying that it may be declared to be null and void on certain specified grounds is necessary. Moreover, such a provision might be misconstrued as rendering all pre-Act marriages void. Hence, the Rajya Sabha deleted the provisions relating to pre-Act marriages from clause 11. However, by an amendment to clause 13(2) a wife has been given a right to present a petition for the dissolution of her marriage by a decree of divorce on the ground that in the case of a marriage solemnized before the commencement of the Act, the husband had married again before such commencement or that any other wife of the husband married before such commencement

was alive at the time of the solemnization of the marriage petitioner. This is in conformity with similar provisions in the Bombay, Madras and Saurashtra Acts and it should be noted that this is a ground for granting a divorce and not for declaring the marriage to be void.

In clause 12 of the Bill as passed by the Rajya Sabha containing grounds on which a marriage shall be voidable, the following ground has also been added, viz. "that if the bride was pregnant by some person other than the petitioner at the time of the marriage."

As regards clause 13 of the Bill, the Joint Committee included "leading an adulterous life" by either party as a ground for divorce, but as the expression was not clear in its significance, the Rajya Sabha changed it to "living in adultery". I do not know what the difference is. A single act of adultery may be a ground for judicial separation—clause 10(1) (f)—but for divorce "living in adultery" has to be established. The distinction is deliberate. The Joint Committee has also included two new grounds for divorce, namely, "renunciation of the world by either party and certain loathsome acts on the part of the husband." A new sub-clause (2) (i) has been added to clause 13 of the Bill as passed by the Rajya Sabha regarding pre-Act plural marriages.

As regards clause 15, a total period of one year from the date of divorce was considered to be sufficient by the Joint Committee for the purpose of preventing re-marriages with indecent haste.

In clause 16, a provision analogous to section 34 of the Special Marriage Act has been included so that children are not branded with illegitimacy in any case.

Clause 18 of the Bill is new and was inserted by the Joint Committee to render punishable contraventions of certain conditions laid down in clause 5. This is important as otherwise it

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might have become possible for persons to contravene those conditions and get off lightly. Clauses 11 and 12 of the Bill do not cover all contraventions and some sanction is required in respect of contraventions of conditions left uncovered by clause 11 and 12.

In clause 22 of the Bill an improvement has been effected by the Joint Committee whereby unsavoury details about divorce proceedings are not to be published except with the permission of the Court. The Joint Committee have also suitably re-drafted clause 23 whereby the first effort of every court would be to see that the parties are reconciled rather than they should be forced to separate.

In clauses 24 and 25 of the Bill as amended by the Joint Committee and as passed by the Rajya Sabha, a wife is also made responsible for the payment of alimony in some cases. It is to be noted that no such provision was made in the Special Marriage Act.

In clause 30 of the Bill as passed by the Rajya Sabha, the corresponding Acts in force in Bombay, Saurashtra and Madras have been expressly included for repeal, because there is no necessity for these enactments.

I have tried to refer to some of the important changes made by the Joint Committee and the Rajya Sabha in the provisions of the Bill as it was introduced. I am sure the detailed provisions of this Bill as passed by the Rajya Sabha would be considered at great length when the House takes up the clause-by-clause consideration of the Bill. I have therefore avoided any discussion about the detailed provisions as contained in the different clauses of the Bill as passed by the Rajya Sabha.

I shall now try to deal with some of the main objections which have been raised with respect to the principle underlying the Bill. Those that object to this law base their objec-

tions mainly on the following three grounds: (i) that we are interfering with the ancient law, (ii) that we are trying to effect वर्ण संकर and (iii) that we are trying to destroy the sacramental character of the marriage by permitting divorces.

Now, it would be appropriate to find out what really was the ancient law on the basis of which some of our friends take objection to a measure of this kind. Now, for instance, one of the oldest books on this subject is the code of Manu—मानव धर्म शास्त्र. Then there is a commentary written subsequently after about five centuries by Yagnavalkya and a few hundred years later by Narada. Then, there is also Kautilya's अर्थ शास्त्र. As a matter of fact, what was this ancient law? Has ancient law remained immutable? In its very conception was it intended that for all times to come it would remain immutable? I think that was not even the idea of those that laid down these *shastras*. If we turn only to what has been laid down by Manu in Chapter II, Verse XII,

वेदः स्मृतिः सदाचारः

स्वस्य च प्रियम् आत्मनः

एतत् चतुर्विधं प्राहुः

साक्षात् धर्मस्य लक्षणम् ।

Dharma was not understood in the sense in which we look upon Christianity as a religion or Islam as a religion. *Dharma* was a course of conduct intended for the human beings, for the whole of society. This *shastra* was then probably confined only to *Bharatvarsha*. But the very title of what Manu said shows that it was *Manava Dharma Shastra*. Confusion arose from the fact that ever since the new conceptions of the Christian religion or the Muslim religion came, some people have fallen into the error to regard this also as *dharma* in that sense. For instance, what is the Muslim religion? Anybody who follows the prophet, Mohammed and believes in the *Quran* is a Muslim. Similarly, anybody who follows the Bible and believes that

Christ was the Son of God is a Christian. But, according to our ancient *shastra* on which we lay so much stress, was that the idea? It included everybody. There may be people who were worshipping idols; there may be people who did not worship idols; there may be people who believed in God; there may be people who did not believe in God. So, this was more or less *dharma* in the sense that it was a course of conduct which ancient Manu laid down for the guidance of men, as he then thought the course of conduct should be. Trying to compare it with what the other religions do and then considering it from that context and complaining that some thing which the Hindu religion does not advise is being done is what I cannot really understand. I read this *sloka* for the purpose of showing that even as Manu says, along with *Vedas* and *Smritis* are *sadachara*, good conduct which one is bound to follow, as also *swasyacha priyatmanah* (स्वस्यच प्रियम् प्रात्मनः) i.e. what is satisfying to the self and the soul. We have to look upon it from that point of view. Even Manu foresaw that *dharma* should be a thing which must be in the interests of the people and which should be guided by considerations of what was to the benefit and advantage of the soul and person. On that basis I am prepared to look at it. How far should it be made applicable to the present circumstances? This to my mind removes a lot of confusion Manu did not merely refer to *Vedas* or *Smritis*. He also referred to *sadachara* and *Swasyacha Priyatmanah* (स्वस्यच प्रियम्प्रात्मनः) —what is agreeable to one's body and soul or good conscience. I will request the hon. Members to exercise their good conscience and then find out whether what we are doing is right or not. Many do not want to do that. I know there might be difference of opinion. I am not one of those who want to say that there should not be difference of opinion. But this is not the proper time to consider what Manu said 2000 years

ago divorced from its context with the present time. What Manu then laid down for those times may be right or may be wrong. We have no knowledge of conditions which existed then. Therefore, I am not one of those who say that from the present angle of view or from the present spectacles we wear, or under circumstances by which our minds are influenced at present, we should judge the code of Manu for condemning it or for approving what Manu said. I find that in the name of the ancient law and lawgivers some hon. Members raise objections which, as a matter of fact, have no foundation.

I am definitely of the opinion that it is highly improper to look at what Manu said some 2000 years ago either for condemning it or for literally following it in the present context of things. You cannot do any one of these things.

I will say that even history of what has happened in India with respect to *dharma* or rules of conduct is worth noting. Manu was followed by Yagnavalkya in the 4th century, by Narada in the 5th century and Brihaspati in the 6th or 7th century. I need not call them commentators if some people object to it; I am not interested in calling them by particular names. So far as my limited knowledge goes, I have always been regarding them as commentators of Manu explaining these things with some changes that were desirable because that was the machinery by which they could make those changes as the time may require. By their commentaries they have effected changes in the original code in conformity with the changed conditions of society in their own respective days. What is known as Hindu law at present is entirely different from what was laid down by Manu or Yagnavalkya or any of those other sages centuries back. It is too late in the day, therefore, to contend that this is ancient divine law and must not be changed or altered. It has already been altered from time to time to suit the different conditions of society. Methods might have been different as different

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conditions permitted different methods. Society is never static and, similarly, law also must not be so. The original laws of Manu dealt with all aspects of social life, not merely with marriage or succession, but they also dealt with administration and what is now known as criminal law and other branches of the present civil law governing society. All these different aspects of law accepting marriage and succession are governed by different enacted laws which have been made applicable to our country during the last 250 years and more by the British administrators. And, I do not find any voice raised against them. They were good enough in so far as they were suitable in the changed conditions of life. To that extent, the divine ancient laws have been changed already.

As early as 1856, the Widow Remarriage Act was passed because in certain so-called regenerated classes of Hindu community remarriage was not allowed. Similar sentimental objections were raised then also. But, what is the present state of affairs. That law was not passed by any elected House like this. It was passed by a few—five or six people—Europeans who formed the Council then. They passed it and it has been found that it has not worked any hardship. On the contrary it has been found to be more and more used by those people many of whom at one stage wanted to object to even that reform taking place.

Then, again, it has to be remembered that during the long Muslim rule, in certain parts of India, it was the Muhammadan law which was the law of the land. Of course, in matters of succession it did not interfere but in other matters it was the law. To that extent.....

Pandit K. C. Sharma (Meerut Dist. —South): Never for marriage.

Shri Pataskar: No, not in marriage.

Shri U. M. Trivedi: He is talking of divorce.

Shri Pataskar: In the matter of marriage also, the Hindus were left alone.

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I may give them credit for that. The reasons which might prompt persons belonging to an entirely different culture, a different religion, a different basis of society, not to interfere with the laws which govern the rest of the people is something which could be understood. With our own people coming on the scene, they have to find out and decide for themselves and these considerations need not prevail. Of course, what they should do or should not do is a different matter. The considerations are bound to be different from what they were then.

During all this period of 2000 years, the social laws were administered in different parts of India in different places in different ways. I will not go into the details. It is a fact that has been recognised. The differences from the original texts and what were laid down in *dharma shastras* went to such length that it was found:

श्रुतयो विभिन्नाः स्मृतयोपिभिन्नाः
नैको ऋषियस्य वचनं प्रमाणं
धर्मस्य तत्त्वं निहितं गुहायां
महाजनो येन गतः स पन्थाः

The ordinary man found that there were so many *srutis*, so many *smritis*. One Rishi does not agree with another and the best way was to follow the great men.

Acharya Kripalani (Bhagalpur cum Purnea): Who were divorcing their wives!

Shri Pataskar: It is on that account therefore that the law formerly became a matter of custom which varied from place to place. That is what happened.

Why is it necessary to go to the length of finding out what was stated in certain *smritis* 2000 years ago? There is a historical reason for that. The present system of judicial administration came with the East India Company and later with the British Parliament. Not that we were uncivilised people. As I said, before the

British Administration a state of society had developed where if there was some dispute, the *dharmadhikari* was there, the old custom was there, and things were decided according to custom. The present system has come only recently. It was first applied in the factory areas of the three towns of Bombay, Madras and Calcutta and that too only to Europeans. They did not want to make it applicable to others because they had no sovereign powers. A century later, the East India Company obtained the Diwani rights of Bengal, Bihar and Orissa from the puppet Emperor at Delhi. It was then that they introduced their system of administration through the law courts. The administration of such courts required certain definite uniform laws. There came in an entirely different aspect of the matter. Gradually they codified the Penal Code, the Procedure Code, Contract laws, the law of Evidence and so on. However, in their position as rulers over a dependency, they thought it safe not to interfere with what they thought were matters of religion. They did not interest themselves, as we are interested ourselves, in the development of our society. They were concerned with more or less ruling over a population from a place 4000 miles away. They did not care to introduce other laws.

By way of information. I might say that from 1833 onwards, there was a definite move by the then Administrators like Lord Macaulay and others that there should be some codification of the laws applicable to the people. But, certain historic events occurred and they thought that what these people thought were matters of religion, had better be left alone. They stopped with the codification of the civil laws regarding marriage succession. Then, it was for the first time after 1860 that they issued a regulation saying that in all these matters regarding caste, marriage and inheritance they would not make any laws, but the people may be governed by the laws to which they were accustomed.

It is very interesting to note what

they did in the beginning. They did not know to which laws these people were subject and what their customs were. They took the advice of *pundits*. For about 100 years in different parts of Madras, Bombay and Bengal, whenever there was a European Judge, he called two Hindu *pundits* to advise him in any case relating to the Hindus and two *Kazis* or *muftis* in any case relating to Muslims. It was found that their advice also varied from time to time and place to place. It is from the decisions in those cases that the present law has been framed. The *Pundits* differed among themselves. If one depended on Yagnavalkya, another depended on Narada. After 100 years they again began to think what could be done because these decisions differed from place to place. As there were different decisions of the different High Courts, they realised that something should be done for uniformity, but they found that it was impossible to do it. I might say that they probably thought, that instead of entangling themselves in these matters it was much more advantageous that there should be differences. So long as differences continued it was good for a foreign administration. Why should they bother to introduce a uniform system and invite all this trouble to themselves? The present Hindu Law to which some of my hon. friends want to stick to, is not the ancient law, is not the law either of Manu or Yagnavalkya. It is the law made by these judicial decisions. Who gave the decisions? There were judges who knew law. But they depended on the *pundits* for sanskrit. If I may say so, their decisions were based on the opinion of sanskritists who did know law and judges who knew law but had no knowledge of sanskrit. That is what we now call the Hindu law. I appeal to the hon. Members to bear this in mind. I am not one of those who find fault with our ancient law-givers. I have nothing to say against them. We must see what the present state of things is and what is the remedy and how we can remedy these matters.

Acharya Kripalani: May I ask a question? Whom does the hon. Minister represent?

Shri Pataskar: So far as this Bill is concerned, I represent the Government and I am in charge of the Bill.

Acharya Kripalani: I wanted to know whom he represents. Does he represent the Hindus or does he represent the people of India?

Shri Pataskar: I represent the people of India. I do not claim to represent here the Hindus. On the contrary, I was trying to make out that there was nothing like a Hindu 200 years ago in this land. It is only when the British administration was introduced that this term came in. I might for the information of the Members say, this. The Indian Succession Act was passed. If it was Indian, to whom it had been made applicable; to all Indians or at any rate to majority of the Indian people. But they did not want to make it applicable to the majority of the people who were either Hindus or Muslims. It is called the Indian Succession Act; it only applied to the Christians because the Government was Christian. That is a different matter. Except the Hindus and Muslims, the rest was Indian in the eyes of the British. In regard to Hindus and Muslims, they did not want to interfere so far as marriage, succession, etc., were concerned. Therefore I say that I am proud that I represent the Indians and what I am trying to do here is in the interests of the Indians.

Shri Lokenath Mishra: Why then pilot this 'Hindu' Marriage Bill?

Shri V. G. Deshpande: Then, why not an Indian Marriage Bill?

Shri Pataskar: I would request the hon. Members to have patience. Even that point will be answered. I am also aware that they raise these objections not from the point of view of doing something for the Indians; but they are trying to persist in the separation of Hindus and Muslims from

others which was the result of foreign administration.

I would request them to get rid of this.

An Hon. Member: You are perpetuating it. (*Interruptions*).

Mr. Chairman: We should allow the hon. Minister to proceed.

Shri S. S. More: There must be some heat when thinking about marriages.

Mr. Chairman: There is divorce as well.

Shri S. S. More: Without heat, there cannot be divorced also. (*Interruptions*).

Shri Pataskar: To resume that topic, as I was saying, our present law is the law of judicial decisions of this type. That is what we at present call Hindu law. These judicial decisions have varied from region to region and there is no uniformity in them. They may even be changed by subsequent judicial decisions on the ground that the former decisions have become corroded by long lapse of time. We are not sure also that these decisions will always stand. It would be open to any judicial authority subsequently to give the go-bye to these laws and say, 'No, this has been corroded by time'. Therefore, I am saying that whatever we have to do in the present times must be done by resort to the legislative process. Our country, it must be admitted, was empty of law, as we now understand and administer it, ours is a continuation of that system. The result is that if the legislature does not legislate, the courts of justice will have to legislate, for it is a process which perpetually goes on through some organ or other, wherever there is a civilised government of the modern type. The only result is that if you do not do anything, this thing will go on haphazardly as it is.

Cunningham, as early as 1877, prepared a digest of these judicial deci-

sions with a view to see if that would lead to any certainty and uniformity, but ultimately came to the conclusion that the only way to attain certainty was codification. He gave up the attempt in desperation.

Shri V. G. Deshpande: You are following it.

Shri Pataskar: Yes. He dared not do it. But I can dare to do it. This is what Cunningham himself said:

"The moment a judge is left without any lawful rations in the shape of express enactments, he is constrained to go out foraging for supplies, and the more learned and diligent he is, the further he is likely to go".

That is our common experience as to what is happening in courts of law, but which Cunningham realised in 1877. He found that judicial decisions in Hindu law took the form of deciding not what the law ought to be, but what it is according to the interpretation of primitive texts or forgotten phases of society unmodified by contemporaneous opinion. That was the opinion given regarding this Law in 1877. Can one contend that judicial decisions of this order are preferable to the deliberate, well-weighed, well-informed action of the legislature grounded solely on consideration of public welfare and guided by the wishes and opinions of those who form that legislature as the representatives of the whole nation?

I hope I have been able to convince some of my critics, even the most sceptical people, that the ancient law, as it prevailed several centuries back, is not in existence, that in no case can it be resurrected, that the present law on this subject is neither logical, nor consistent nor uniform. It is also entirely inconsistent with the present state of society. So far as this objection regarding the ancient law is concerned, and the view that it should not be changed, I think I have tried to explain the position as dispassionately as I possibly could.

The next charge is that we are creating *Varanasankar*. Now is this really the time when anybody can raise his voice in favour either of perpetuating or trying to create divisions in society? On the one hand, I am being charged, 'Why are you bringing forward a Hindu Bill only and not a Bill applicable to all Indians?' On the other hand, the same kind of groups raise the objection, 'Well, you are destroying our *Varnas*'. Well, I do not see the logic of this. As a matter of fact, even on that point, I would ask, what is this *Varna*. In *Bhagwadgita* it is said:

चातुर्वर्ण्यं मया सृष्टं गुण कर्म विभागशः

It was based on quality, on work that we did. How subsequently it came to be classified by birth and not by *guna* and *karma* is a matter of history which it is not profitable to investigate. It is true that Manu did recognise this classification of men and men on the basis of birth. The women and *shudras* were given a very inferior place. But the course of conduct recommended by Manu more than two thousand years ago cannot be made applicable to the present state of society. I have no desire to sit in judgment over what happened some two thousand years ago with a view either to condemn or to justify it. It is not necessary to do so. On the contrary, such a thing is likely to cause more harm than good. What Manu then laid down may be the result of reaction against certain chaos produced in the society at an earlier stage. It may be that there are some people who say that. But Manu himself never thought that the course of conduct that he then laid down for the benefit of society should always be adhered to. He has himself expressed that *dharma* should include *sadachara* as well as what is good for oneself and what is good for the society. In fact, I would say that Manu, the great seer, foresaw the difficulties that would arise by laying down for all future times certain rules of conduct and therefore, he has included in *dharma* not only *sadachara*

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but also *swasyacha priyam atmanah*—that is, what is agreeable to one's soul and good conscience. And it is evident that what is agreeable to one's soul or good conscience is bound to change according to times and circumstances.

The *Varnas* as envisaged in *Bhagwad Gita* on the basis of *guna* and *karma* are not in existence anywhere and the present castes are only a perverted form of that ancient classification. Whatever its merits or demerits some two thousand years back, that system has now degenerated into casteism and must be ended.

Again, so far therefore as the provision in this Bill providing that marriages amongst any class of Hindus will be valid is concerned, it has already been accepted by Parliament when it passed the Hindu Marriages Validity Act in 1949. I need not therefore say much regarding this charge.

Now, remains the last objection. The third and the last objection is that we are destroying the sacramental character of the ancient marriage system by introducing divorce. My friend, Shri Nand Lal Sharma is not here.

Shri Satyendra Narayan Sinha (Gaya West): He will reply to you tomorrow.

Shri Pataskar: It is not true that our ancient law gives ever regarded the marriage as indissoluble or as a sacrament. I do not know what basis there is for that view. At the most, it can be said that *Manu Smriti* does not lay down any procedure for divorce. To that extent I am prepared to go. But beyond that, this idea of sacrament is only of recent growth. But in those days when a wife could be sold or deserted, how can we find a procedure for divorcing her? You have to look at what *Manu* laid down in terms of the conditions which existed then. There you find a provision that a wife could be deserted or even sold.

Shri Syamnandan Sahaya (Muzaffarpur Central): Sold?

Shri Pataskar: Yes. I shall read it out. It is in chapter 9.

Shri V. G. Deshpande: You are making very serious charges.

Shri Pataskar: Chapter 9, verse 46 reads as follows.

न निष्क्रिय विसर्गाभ्यां भर्तुर्भार्या विमुच्यते
एवं धर्म विजातीम प्राक् प्रजापति निमित्तम् ।

I wanted to avoid it but now that my hon. friend, Shri Deshpande provoked me, I had to read it. (Interruptions.)

Shri S. S. More: Will you please translate it?

Shri Pataskar: Neither by sale nor desertion can a wife be released from her husband. Thus we fully acknowledge the Law enacted of old by the Lord of Creatures.

That is one stanza. I will quote the other. This is 47.

सकृदशो निपतति सकृत्, कन्या प्रदीयिते
सकृदाह ददाभीति भिज्योतानि सतां सकृत् ।

The translation is: Once is the partition of an inheritance made, once is a damsel given in marriage and once does a man say "I give"; these three are, by good men done once for all and irrevocably. They have been interpreted as the authority for holding that marriage is irrevocable and that it is thus a sacrament.

Shri S. S. More: That should be made applicable to the Members of Parliament.....

Shri Pataskar: Now let us take it a little more seriously.

Mr. Chairman: Whatsoever that is already applicable we are taking it away; you want it to apply further.

Shri Pataskar: Those are the verses. Any equivalent of the word sacrament is nowhere used. I would challenge anybody to point it out.

Verse 46, which I read previously, shows clearly that it envisages the sale or desertion of a wife and then says that she will still not be released from the husband. There is a point in it. These people do not read the whole. For what purpose such a wife sold or deserted is to be regarded as not released from the husband is a question to be considered. Manu himself in the subsequent verses which I would like to avoid referring to makes it clear that it is for the purpose of determining to whom should the children of such a sold or deserted wife belong. Verse 48 makes it clear that these children would belong to the husband and not to the person to whom she is sold. It may be that now we are looking at things from the point of view of birth control. In these days they are looking at it from a different view. If a wife is sold and if there is a child, it should belong to the husband and not the natural father of the child.

Shri V. G. Deshpande: It is not sold. The hon. Law Minister should understand Sanskrit properly.

Shri Pataskar: I think I understand it much better.

Shri Lokenath Mishra: The hon. Member Shri Deshpande, is thus defeating his own cause.

Mr. Chairman: Let not a controversy be started this way. The hon. Minister should also address the Chair.

Shri Pataskar: Let us look to the context of the whole thing.

In what context has it been said? What was the underlying idea in saying what happens to a sold or deserted wife? You should read the whole...

An Hon. Member: It is like what happens to stolen property.

Shri Pataskar: We must ask any pundit to read the whole of the chapter and tell any modern society of people who are thinking rationally that such provisions can be used for the purpose of saying that marriage is a sacrament and not a contract. It is entirely misconceived..... (Interruption).

Mr. Chairman: Everyone will have his say. I shall request the hon. Members to be more serious. Let us hear the Minister. Afterwards, the hon. Members shall have their opportunities to explain the same text or whatever they want to say.

Shri Pataskar: Because it had been represented to me, I thought it fair that I should refer to all these things which had been pointed out to me and find out what substance really is there in chapter 9.

The girls who were married were young because there is also a provision that they should be married at the age of 8 or 10. The guardian gave her in marriage. It is laid down in verse 47 and that he should do it only once. What is wrong in it? When Manu was laying down the course of conduct he says that when a father gives the daughter to some bridegroom, he should do it once. Nobody expected that he could have made any other provision. You must interpret these things in their right context and correct perspective. I can go into all these details at the time of replying if necessary. I have already touched on the system that has developed in subsequent times as a result of wrong interpretation; that is a different matter. Even Kautilya's Arthashastra which is oftentimes quoted for this purpose makes it only recommendatory. If some hon. Member makes a point of this I will try to reply to it. There is a positive provision in *Narda Smṛiti* that in certain cases a different husband is allowed to a wife and they are categorised.....

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नष्टे मृते प्रवाजते
 स्त्रीविच पतिते पतौ
 पंचत्सु प्रापत्सु नारीणाम्
 पतिस्थो विधीयते ।

If he is dead, if he is impotent, etc. etc. The curious explanation given by some people is that *pati* here did not mean a husband but the betrothed. They want to explain away that provision by saying that *pati* does not mean the husband but *pati* means betrothed and in that event if a betrothed person died etc. then this provision would apply. It is ridiculous. *Pati* cannot mean anybody who is not a *pati*. Any amount of ingenuity can do nothing to change it.

An Hon. Member: There is *Sabhapati*.

Shri Pataskar: In a marriage it is not *sabhapati*. In marriage it means husband. All these things are as a matter of fact given wrong interpretation probably by some people and *pundits* on which all these oppositions in the name of religion, ancient culture and all that are based, it appears however, clear that this sacramental nature of the marriage tie has been developed as a prominent feature only during the British period of administration and even if one were to say that some thousands of years back marriage amongst a certain class of people based on caste was indissoluble, it is too late in the day to plead for the continuation of such a separate provision in respect of certain people because they happen to belong to the so-called regenerate class. We are having, and we had in the past, enough trouble on account of the continuance of the caste system which once may have served some useful purpose. But at the present moment, it is nothing short of a social evil which in the interest of our nation has to be rooted out at the earliest possible time.

Representations have been made to me by some associations who regard themselves as the representatives of those who want to preserve the ancient Hindu religion.

I also find that there was recently a convention held where probably my hon. friend Shri V. G. Deshpande was also present. I then was amazed to read what the eminent President of that body thought about what we are doing here. He said it was the rightful function of that convention,

"to furnish our legislators with such counsel as would lie in the capacity of its participants who would really represent a measure of detachment from any possible short-sighted collective impulses of a party in the legislature, where the thinking is mostly done by the leaders and the majority is not even left with any means of knowing what to think".

These are the words as reported in the Press. "To furnish our legislators with such counsel as would lie in the capacity of its participants". Nothing wrong so far; anybody can give advice. But I object to this wording:

"who would really represent a measure of detachment from any possible short-sighted collective impulses of a party in the legislature".

They assume that they are all very impartial and very dispassionate and that we here are doing a thing which is wrong. They say we are short-sighted. We have "collective impulses of a party in the legislature, where the thinking is mostly done by the leaders and the majority is not even left with any means of knowing what to think". In a democratic age, because a few members in the minority do not find things that are being done by the majority agreeable to them, they should make a very eminent jurist to come and sit down and make him say such a thing is not proper. I leave it to the House to judge. What he sug-

gests is that the present Bill is the result of the short-sighted collective impulses of a party in the legislature; and that in the legislatures thinking is generally done by the leaders and the majority is not even left with any means of knowing what to think. I think it was on account of the company in which he went that the President has said this. Otherwise, an eminent jurist like him could not have said this.

Shri S. S. More: That defeat in Calcutta made the difference.

Shri Pataskar: I emphatically deny that this measure is the result of short-sighted collective impulses of any party. As we all know, this matter has been under consideration since the year 1939 when this party was not in power. Then again, to charge the legislatures constituted on the basis of adult franchise as consisting of people where the leaders only think and the majority have no means of knowing what to think—is this very difficult to understand—is with due regard to the eminence of the President of that convention, to say the least, to betray a mind which is not only undemocratic in character but treats democracy with contempt and from a point of an angle of superior wisdom concentrated in himself. I think, nobody, however great he may be, in this age could come forward and say that under the Constitution under which we are working, here is a pack of people who cannot think.

An Hon. Member: You are paid to show that.

Shri Pataskar: Having started with that mental attitude towards democracies and the functioning of the legislatures, what the President further said can only be described as being due to a strong prejudice on the part of people who had gathered at that convention.

With respect to this particular Bill, the main point urged was:

"Marriage in the Hindu system was not a mere arrangement for a man and a woman to live toge-

ther for the satisfaction of the cravings of the sex. To Hindus it was an indissoluble union. A deviation from these ideas was bound to involve posterity in disastrous consequences in the disruption of Hindu society and in the destruction of all that spiritual heritage which had elevated us above many of the peoples of the world".

They thus believe that they are superior and above many of the peoples in the world. This, to my mind, is the height of assumption of an air of superiority born of self-conceit. Otherwise, what is the meaning? Everybody tries to avoid saying that he possesses superior wisdom than anybody else. I think good men do not do it. They do not have this approach.

The sponsors of this convention also suggest that divorce which once may have existed in our social system had been rejected later on and then ask us why should we want to re-introduce it again. There is nothing to show that divorce was at any time rejected. I do not know what this means. They say that divorce once existed and then society rejected it and that we are now trying to re-introduce it. I do not know what is the basis of this assumption. I might hear it sometime later from some of the hon. Members here.

Divorce is allowed in more than 80 per cent of the population of our country. By custom it is allowed in this country in nearly 80 per cent of the population. So, it is not as if what had been discontinued is tried to be continued by this measure.

Another fear expressed is that if there is a provision for divorce, then, it will be obtained by those who want to resort to it on some undesirable grounds. What does the President of the convention say? He says:

"Cases will not be impossible where thousands will make opportunities for their wives' unfaithfulness in order to gain a divorce and re-marriage"

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To think of this problem in that way in spite of the experience of the practical working of permissibility of divorce in 80 per cent of the population is, to my mind, nothing short of taking a morbid view of the social structure of people who are described as Hindus.

Amongst the section of the people who are agitating for the prevention of any legislation regarding the Hindus, there are some who propagate and distribute leaflets. I have got two or three of them here. One such leaflet which was handed over to me is a *Memorandum on the sexual life of the Western communities with special reference to Divorce*. That is the title of that leaflet. I think such a thing, however, will not mislead anyone. In the first place, it is a very wrong method of approach to an important question like this. Why should we go to America, to look at any social institution in another country from the point of view of selecting all manner of perversities and then try to represent that society as consisting only of such perverse people? One Lindsay—he is always quoted—a Judge of the U.S.A. had made some report several years back about some sexual perversities in America. He has also been previously quoted for such a purpose. They say that if you have divorce, all these perversities will follow. I say such propaganda is a thing which must be avoided by the citizens of any independent nation in the interest of decency. We can solve our problems without slinging mud on others.

I might remind people that when one Miss Mayo came to India and tried to represent Hindu society as consisting only of certain perverts and collected such cases, we know with what amount of feeling and dignity and detestation we condemned this outrage against our country and society. We condemned that outright as being against our country and society. Let us not repeat that so far as our people are concerned. If you continue to do like that, retaliation in worse form may follow. It is not, therefore, proper to

emulate that example by trying to publish such leaflets in the name of preserving the ancient foundations of our society. Why should we do it?

The learned President of that convention has further said:

"Why should we not gain by their experience and remain satisfied with a divorce already provided in the Special Marriage Act?"

He has pleaded, "that members of the Hindu community are entitled not to be treated as mere irresponsible actors playing an imposed part in a play which they do not understand or need not try to understand". What justification is there for this? 80 per cent of the population of this country consists of people who are called and known as Hindus and we here are also their representatives. I do not know what justification is there for saying that we are treating the Hindu society in that way. There is no attempt in any way to do anything which will not lead to progress but to regress.

We have considered up till now what steps we could possibly take, we have considered the matter in various ways with various people, with people of various points of view and the measures will still be considered in this House. But to say that something is done behind the back of the people is a thing which I am not able to understand.

There is also a mild threat conveyed to us in the speech of the President:

"Our legislators would do well to remember that the instruments they are now trying to use may be the creatures of their desires".

That means to say that we are doing this because we are all desirous of having divorces and all that sort of thing, and trying to destroy the ancient culture and go about in chaos; and he further said:

"...that the instruments they are now trying to use may be the creatures of their desires, but they will

evoke, modify and deflect people's desires in turn, and in course of time will take complete revenge upon us all."

That is the threat that has been ultimately administered to us. If you read the provisions of the Bill you will find there is nothing of that kind, regarding which you can say that such consequences follow. I have tried to understand the grounds of this warning. But I can assure them that we understand the people whom we represent better and whatever we do we are doing with a full sense of responsibility, and therefore such empty threats may better be avoided. They will not have any effect upon us.

The measures with regard to the codification of Hindu law which we are taking are measures that are being taken with the concurrence of the people themselves and by a body which, by and large, effectively represents the people to whom this measure is going to be made applicable. The warning is merely an indication that some people want to give this social measure a political turn and use it for political propaganda. There can be no other object in holding a Convention of that sort.

Another eminent gentleman at the Convention said:

"To Hindus marriage was an indissoluble union."

He is an ex-judge who said that. Does he mean by 'Hindus' only that small percentage of the population amongst whom divorce is not permitted? Or does he mean by 'Hindus' the whole body of people who have come to be recognised as Hindus? He also freely made use of the writings of Judge Lindsay. The whole tenor of the Convention's proceedings shows that in this connection they say to us: "Look here, this is what Lindsay has said, some years ago, this has happened in America, beware if you have such a measure, the same thing will happen in this country also". I do not know what

justification there is for such language.

We are no doubt trying to codify or legislate with respect to many of these matters. I have already given you the history as to how after some time the British administrators did not find it in their interests or to their advantage to have any codification. They had first an idea to do it. In fact at that time if they had probably done all these things, much of the present troubles would have been avoided. Who now complains about the Indian Penal Code, the Criminal Procedure Code, the Contracts Act or other Acts in which there are so many provisions of a like nature? Nobody complains, and nobody comes forward to complain. I would briefly mention some of the Acts that were passed in those days:—The Bengal Sati Regulation Act, 1829, the Hindu Widow's Remarriage Act, 1856, the Arya Marriage Validation Act, etc. To the second Act naturally there was some objection raised in the beginning, but it has worked smoothly since 1856. Then there were also the Arya Marriage Validation Act, and the Hindu Marriage Validation Act of 1949 which permitted inter-caste marriages, and defined Hindus to include all those people to whom this Bill is now made applicable.

When marriage between various castes, between Hindus and Hindus, or between a Hindu and a Jain, or between a Hindu and any other person to whom this Bill is made applicable, is recognised, then what is meant by *Brahma* form of marriage? I have been requested to see that at least this *Brahma* form of marriage is preserved, and that some provision is made that in the case of a *Brahma* form of marriage at any rate there should be no dissolution. I have every sympathy with the sentiments of those who urge that. But what is the present state? Formerly we used to have eight forms of marriage, known as the *Brahma*, *Gandharva*, *asura*, *pisacha*, *rakhsa*, etc. They have all disappeared now, and the present state of the law laid down by judicial decisions is that it is a pre-

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sumption that in the case of a marriage between a Hindu and a Hindu it is in the form of a *Brahma* marriage. So I do not understand how any distinction could be made at all. That is my difficulty.

Moreover, at the present moment, if we once come to the conclusion that it is not desirable to continue the present unsatisfactory state of the law being decided only by judges, the Parliament to which naturally this function must go, sitting with folded hands and doing nothing, then the question is different. I have every sympathy with those who urge that in the case of the *Brahma* marriage, there should not be any dissolution, for after all marriage is not such a light thing that people should look at it from this point of view, namely that today a person can marry and the next day he should come and ask for divorce. Nobody thinks that way in fact. Even those of us who are in favour of this Bill, do not consider it from that point of view.

But the point is that at the present moment the state of the law is that the *Brahma* marriage will be presumed in the case of every one. So, what distinction could be made between this and other forms of marriage? The further question is: If you make this exception how can it be done, will it be on the basis of regenerate and non-regenerate classes? Who are the regenerate and who are the non-regenerate? We know that we have had enough trouble on these matters. At least we who remain south of Vindhyas know to our cost what an amount of trouble has been caused on account of this distinction between regenerate and non-regenerate. Those of us who live in South India would realise that this has been the cause of many of the troubles through which we are passing today; and I would be the last person to be a party to the perpetuation of anything like it. I would try to do whatever can be done for respecting the opinion of those who regard marriage as indissoluble. In fact nothing is being done in this Bill to injure their senti-

ments. But I will be the last person for that purpose to perpetuate these distinctions between the regenerate and the non-regenerate classes which to our cost we have found in the last century and more have been the cause of all our troubles and have been the source of all conflicts.

I shall now wind up with these few remarks. First of all I want to make it clear that this is a measure of social importance—we recognise it—conceived in a spirit of doing good to the country and to every section of it,—in this case, the section of women, because men in such matters have all along been enjoying disproportionate rights and privileges as compared with women. We cannot in the name of preserving the sanctity of any ancient culture try to treat them in a different way in the present times and conditions of our country. To try to do so will be an anti-social act. And I would appeal to those who are trying to keep up to their privileges in the name of the so-called religion, to think of the consequences which would follow; if women who form half the population of our country in whom this sovereignty rests according to our Constitution, were denied these privileges and kept out of them. If we do not try to solve these problems on a basis of justice, equality and fairplay, no appeal to mere sentiments is likely to create much effect or to prolong the continuance of unjustified and unsocial privileges.

I know that the idea of divorce is to some people as good as a matter of religious faith or sentiment. I would say that I have respect for such people. I have nothing to say against them, because everybody is free to have his own faiths in these matters. But I am convinced that by this measure I am not doing anything which would in any way prevent them from adhering to their faith beliefs and sentiments. Even after the passage of this Bill it is not as if it is compulsory that people should di-

voice. If there are people who think that they should preserve their faith and sentiments and try to avoid divorce, then that is in fact consistent with the spirit in which this Bill has been framed. In fact we are also going to put in a provision that as far as possible even if the parties go to a court, the court should make attempts to keep them together rather than separate them. Nobody wants that there should be any such separation. Therefore, I say that I have the highest and fullest sympathy for such sentiment. But I would say that let them not also try to impose it another. Nothing is being done which will harm anybody. It is not as if by divorce being allowed every married man will try to run away to another woman. No such thing will happen that a large number of married men will go in for divorce after some time. That is not what we anticipate in our country, and that is not what would happen in our society of which we are all really so proud.

On the contrary I would appeal to those people who look at this question from a political point of view, and who for some reason or other are unable to reconcile themselves to the changed conditions of society in a democratic state, to try to take note of the times and the changing circumstances, and to adjust themselves as much as they possibly can. Individual matters of faith and religion and sentiment have to be respected; and they are respected; but that does not mean that they can hold up the progress of society or that they can be allowed to impose their will on others.

I can assure hon. Members that we look upon these matters strictly and purely from a social aspect, and so we cannot be deterred by any unjustified warnings of the changes in our political fortunes. We have not brought this measure as representatives of a party, but as the representatives of the people of this country, and we are trying to do what, to the best of our ability and wisdom, we think is right and proper, in the interest of society and

the country as a whole. Our ideal is:

सर्वे सुखिनः सन्तु
सर्वे सन्तु निरामया
सर्वे भद्राणि पश्यन्तु
न कःचित् दुःखम् आप्नुयात् ।

That is our ideal. That is what we are trying to attain. In order to reach that ideal measures of this kind are necessary and it is from that point of view, from a purely social aspect of it, that this Bill has been brought forward.

I hope and trust that the Bill will soon be passed.

Shri V. G. Deshpande: Sir, I want to raise a point of order. The Bill that has been moved by the hon. Minister is *ultra vires* of the Constitution.

Mr. Chairman: Let me place the motion before the House.

Shri S. S. More: The point of order itself is out of order.

Mr. Chairman: Motion moved:

"That the Bill to amend and codify the law relating to marriage among Hindus, as passed by Rajya Sabha, be taken into consideration."

Shri V. G. Deshpande: Sir, my submission is that this Bill militates against articles 14 and 25 of the Constitution. Article 14 says:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Now, by this Bill, we are making a discrimination between Hindus...

Mr. Chairman: If the hon. Member permits me, I may tell him that I will give him the first chance to speak. I am not going to decide whether it is *ultra vires* or not. That will be left to the House to decide. I am calling the hon. Member first. In his speech he can press this point as well.

Shri Lokenath Mishra: Sir, on a point of information. Since this Bill

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is likely to raise lively and interesting debate may we expect from you, being in the Chair, to get each one of us a copy of the speech delivered by the hon. Minister, and secondly to invite names of Members who are likely to participate in this debate so that we may not have the frustration of getting up and sitting down and yet not catching the Chairman's eye? Because this is a social measure and requires discussion fully I expect from you this privilege, in the name of democracy which has been sworn by the hon. Minister.

An Hon. Member: But, what is the point of order?

Mr. Chairman: There is no point of order and the hon. Member wanted to raise a point of information, if I remember correct.

Shri Lokenath Mishra: Yes, Sir.

Mr. Chairman: As far as the first point is concerned, I will see if it is possible to have a copy of the speech circulated to Members. So far as the second point is concerned, when a Motion has been put to the House there is general invitation that those who want to speak may stand up and try to catch the eye of the Chair. It has already been circulated for information of hon. Members that even if they send in chits either through the party whips or directly, then too they shall have to stand up in their seats and catch the eye of the Chair if they want to speak. It is only to facilitate matters and to help the Chair in selecting the names that these chits are submitted. So, those hon. Members who want to send their names may do so. Some hon. Members have already done so. Others who want to speak may also send their chits. But, so long as I am in the Chair I will make selections after seeing who are those hon. Members who get up and try to catch the eye of the Chair.

Shri S. S. More: May I make one request? As far as this measure is concerned, the selection of speakers should not be on the party basis.

Mr. Chairman: There is no dispute about that.

Shri Dhulekar (Jhansi Distt.—South): Our request is that those persons who had no chance of speaking before should be given a chance now; otherwise they will not get any chance.

Mr. Chairman: In my opinion we cannot exclude certain Members who have had chances before because this is a measure in which Members of all sections would like to participate.

Shri U. M. Trivedi: Sir, I, have one request.

Mr. Chairman: Would it not be better if we proceed with the debate now?

Shri U. M. Trivedi: My request is this. We originally decided to have 30 hours for this Bill. The hon. Minister has very kindly taken one hour and ten minutes and he is expected to take one hour and ten minutes at the end. He will also take about two hours on the clauses. Under those circumstances, when he will take away 5 hours out of the time allotted, would it not be possible to increase the time by 5 hours?

Mr. Chairman: When the Business Advisory Committee decided to allot 30 hours for this Bill, they took into consideration the time that was likely to be taken by the Minister at various stages. Now, let us proceed.

श्री वी० जी० देशपांडे : समापति महोदय, जहां तक इस विधेयक की विधान-बाह्यता का सम्बन्ध है, उस के बारे में मैं कुछ अधिक नहीं कहना चाहता हूँ, क्योंकि मुझ से अधिक समर्थ लोग इस विषय पर बोलने वाले हैं। मैं केवल इतना ही कहूँगा कि हमने भारतवर्ष में रहने वाले सब लोगों को अपने संविधान के द्वारा बड़ी गम्भीरता के साथ यह आश्वासन दिया था कि सब के साथ समान बर्ताव किया जायगा, किन्तु आज आप यह विधेयक हमारे सामने ला रहे हैं, जिस का सम्बन्ध केवल हिन्दुओं

की विवाह-पद्धति से है। मैं देखता हूँ कि यहां पर मेरे रोमन कैथोलिक मित्र बैठे हुए हैं, मुसलमान मित्र बैठे हुए हैं, किन्तु आप केवल हिन्दू स्त्री के लिये क़ानून बना रहे हैं, मुसलमान स्त्री के लिये नहीं, जबकि उन के यहां बहुपत्नीत्व मौजूद है। आप की समानता की भावना मुसलमान स्त्रियों को मुक्त करने के लिये जाने की ताकत नहीं रखती। यह तो पहली बात है।

दूसरी बात यह है कि तलाक के विषय में, विवाह-विच्छेद के विषय में हिन्दू की उन्नति करने की आपके हृदय में जितनी चिन्ता और भावना है, उतनी रोमन कैथोलिक और मुसलमान के लिये नहीं है और न ही उस के लिये आप के पास सामर्थ्य है। इस धर्म-निरपेक्ष राज्य के संविधान में धारा १४ में आप ने सब के साथ समानता का व्यवहार करने का निश्चय किया था। आप ने उस को तिलांजलि दे दी। धारा २५ में यह आश्वासन दिया गया है कि हर एक व्यक्ति को इस देश में अपने अपने धर्म के अनुसार चलने का अधिकार है। मैं कानूनी बातों में जाना नहीं चाहता हूँ कि धार्मिक रूप से आचरण करने के अधिकार का अर्थ क्या होता है। अभी विधान मंत्री जी ने बताया है कि धर्म के विषय में क्रिश्चियन और हिन्दू की व्याख्या में बहुत फर्क है। इसी कारण से मैं कहता हूँ कि अपने धर्म के अनुसार ब्रह्म-पद्धति से मैंने जिस विवाह को संस्कार के नाते किया है, उस का कभी विच्छेद नहीं हो सकता है। इस विधेयक के द्वारा आप मेरे धर्म-स्वतंत्र्य को आघात पहुंचाना चाहते हैं। इतनी वैधानिक आपत्ति करने के पश्चात् मैं विधेयक के बारे में कुछ सन्देह कहना चाहता हूँ।

प्रारम्भ में मुझे स्वीकार करना पड़ता है कि माननीय विधान मंत्री का भाषण

मुन कर मुझे बड़ी निराशा हुई है। बात यह है कि हम तो प्रतिगामी लोग हैं, केवल शास्त्रों की बातें बताते हैं, केवल श्लोक कहते हैं। इसलिये हमें तो यही मालूम होता है कि आज एक और मनु या शंकराचार्य या याज्ञवल्क्य संसार को एक नया विधान देने के लिये पृथ्वी पर आ गया है। मैं तो यह उछना चाहता हूँ कि आखिर हमारे समाज में ऐसा कौन सा परिवर्तन हो गया है, जिस के कारण हजारों साल में चली आ रही और मानी जा रही हमारी इस विवाह-संस्था में परिवर्तन करने की आवश्यकता आ पड़ी है। इस बारे में एक भी दलील हमारे विधान मंत्री ने नहीं दी। उन्होंने ने सिर्फ एक ही बात बताई और वह यह कि धर्म-शास्त्र भी बदलता है और क्योंकि वह पहले भी बदलता था, इसलिये अब भी बदलना ठीक है। उस को कोई भी बदल दे, पहले स्त्री और पुरुष में विवाह होता था, आप पुरुष पुरुष में विवाह करें। आखिर बदल ही तो करनी है—परिवर्तन ही तो करना है। “परिवर्तन करना चाहिये” केवल इतना कहने से आप की बात चलने वाली नहीं है। मैं तो विधान मंत्री से इस बात की अपेक्षा करता था कि वह हम को बतायेंगे कि जिस मानोगामी—एकपत्नीत्व—को हम मानते आ रहे हैं, जिस विवाह-विच्छेद का हम विरोध करते आ रहे हैं, समाज की किन परिस्थितियों के कारण वह उन में परिवर्तन करना चाहते हैं और समाज में उन के कारण कितनी कुप्रथाएं पैदा हो रही हैं। हमारे विधान मंत्री हिन्दुस्तान के बाहर जात्रा नहीं चाहते हैं। वह नहीं जानते कि अमरीका में क्या हो रहा है, इंग्लैण्ड में क्या हो रहा है। लिडजे का उन्होंने ने नाम ले दिया। मेरे सामने एक पुस्तक है जिस में लिडजे के एक दो कोर्टेज हैं। इस के प्रतिरिक्त इस में बहुत ही

[श्री बी० जी० देशपांडे]

4 P. M.

अन्य सूचना और आंकड़े हैं। इस में कोर्ट्स के डिसिजन हैं। इस में यह बताया गया है कि किस किस अवस्था में वहां विवाह-विच्छेद हुए हैं। इस में यहां तक बताया गया है कि यू० एस० ए० में हर साल कितने विवाह होते हैं और कितने विवाहों का विच्छेद होता है। एक साल के आंकड़े दे कर बताया गया है कि ढाई विवाहों का परिणाम एक तलाक होता है अर्थात् अगर ढाई विवाह होते हैं, तो एक तलाक होता है। जब ये बातें यहां पर रखी जाती हैं, तो जवाब दिया जाता है कि हम ऐसी बातें [SHRIMATI SUSHAMA SEN in the Chair.]

चुन चुन कर यहां लाते हैं। दलीलों की कोई जरूरत नहीं है। इस प्रकार की दलीलें दे कर आप इस प्रकार का प्रगतिशील बिल, जैसाकि आप इसे समझते हैं लेकिन मेरे विचार में तो यह ऐसा बिल्कुल नहीं है और मैं तो इसे बिल्कुल उलटा मानता हूँ—ले आयेगे यह मैं नहीं समझता था। हजारों वर्षों से जिन बातों पर हम विश्वास करते आये हैं और जिन को बिल्कुल ठीक समझते आये हैं उन में परिवर्तन करने के लिये जब आप हमारे सामने आते हैं तो आप का यह कर्तव्य हो जाता है, आप का उत्तर-दायित्व हो जाता है कि आप बताते कि जो दशा हिन्दू समाज की आज है उस में सुधार करने के पश्चात् समाज में यह नई परिस्थितियां होंगी और यह सुधार होंगे। यह बताने का आप का कर्तव्य था लेकिन यह बताने की आप ने कृपा नहीं की। आप ने केवल इतना ही बताया कि प्राचीन काल में शास्त्रों में परिवर्तन होते रहे हैं। एक बड़े भाग्य की बात यह है कि हमारे विधि मंत्री को शास्त्रों का बहुत ज्ञान तो नहीं है, जब मैं ऐसा कहता हूँ तो

मैं उन के विरुद्ध तो कुछ कहना नहीं चाहता मेरे से शायद ज्यादा ज्ञान हो यह मैं मानता हूँ लेकिन मैं कहना चाहता हूँ कि शास्त्रों का अध्ययन बड़ी गम्भीरता से करना पड़ता है। उन्होंने एक दो श्लोक यहां से ले लिये और एक दो वहां से ले लिये और बिना शास्त्रों का अच्छी तरह से अध्ययन किये एक दम इस सदन के सामने आ गये और कहने लगे कि हिन्दू विवाह या जो हिन्दू संस्कार जो हैं इन में क्रांतिकारी परिवर्तन करने की आवश्यकता है। उन के विचार में पहले तो हिन्दू विवाह एक सौदा होता था इस वास्ते इस प्रकार के सौदे को खत्म करने के लिये वे एक क्रांतिकारी संशोधन यहां ले आये। मैं उन को बताना चाहता हूँ कि हिन्दू शास्त्रों के अनुसार जो हमारे १६ संस्कार हैं उन में एक हिन्दुओं का विवाह यह भी एक संस्कार माना गया है और यह एक प्रमुख संस्कार है। हिन्दू धर्म में जिस प्रकार एक स्त्री के लिये पतिव्रत का धर्म पालन करना आवश्यक है उसी प्रकार एक पुरुष के लिये भी पत्नी व्रत का पालन करना भी उतना ही आवश्यक है। जब एक हिन्दू का विवाह होता है तो वह तीन महान उद्देश्यों की पूर्ति के लिये होता है और वे तीन महान उद्देश्य हैं अर्थ, धर्म और काम। हिन्दुओं में विवाह केवल काम के लिये ही नहीं बल्कि धर्म के लिये और पुत्र उत्पादन के लिये किया जाता है। इस प्रकार की बातें हम हजारों वर्षों से मानते आये हैं। परन्तु मैं कहना चाहता हूँ कि जो कुछ शास्त्रों में लिखा है उस को आप भ्रमण रख दीजिये। मेरा तो उन में पूरा विश्वास है। लेकिन आप इस बात को छोड़ दीजिये और इन शास्त्रों की बात को छोड़ कर जो दो तीन बातें मैं देखता हूँ बाकी बातों पर जब कलाज ढाई कलाज कन्सिडरेशन शुरू होगा उस

वक्त बोलूंगा और बताऊंगा कि किस प्रकार यह शास्त्रों के विरुद्ध है उन की ही चर्चा करूंगा। पहले किस प्रकार के शास्त्रों पर आघात हुए हैं यह बताने की मुझे यहां बहुत आवश्यकता महसूस नहीं होती है। परन्तु मैं इतना बतलाना चाहता हूं कि इस बिल की अनेक क्लॉजिज जैसे ५(ए), ६, १२ (१)(ए) इत्यादि हमारे शास्त्रों से बहुत दूर गई हैं। परन्तु जैसे मैं ने कहा कि शास्त्रों से दूर जाने की बात को आप भ्रम रखिये और भ्रम रखने के बाद आप मुझे बताये कि जो दो बातें जिन का मैं अभी उल्लेख करूंगा अपने पाश्चात्य लोगों के अनुकरण से आप यहां ला रहे हैं उन का क्या प्रभाव पड़ेगा। आप ने यहां पर एबालिशन ऑफ कास्ट मौनोगेमी और डाइवोर्स इन तीन बातों पर जोर दिया है और इन तीन बातों को इस बिल में ला रहे हैं। कास्ट के बारे में मुझे कुछ कहना नहीं है क्योंकि यह आज एक प्रमुख विषय नहीं है। बाकी दो बातों पर मैं अपने विचार यहां पर रखना चाहूंगा। मौनोगेमी का जो आप ने अधिकार दिया है इस अधिकार को सिद्ध करने के लिये आप को यहां पर दलीलें देनी चाहिये थीं परन्तु ऐसा करने के बजाय आप ने यह कह दिया है कि आज इस को बहुत आवश्यकता थी कि समाज में कोई क्रान्तिकारी परिवर्तन आये। इस तरह के शब्द कह कर काम चलने वाला नहीं है। इस मामले के बारे में भी आप शास्त्रों में न जायें, बंदों में न जायें अनुस्मृति में न जायें लेकिन आप को इतना तो बताने की आवश्यकता थी कि इस चीज को जरूरत क्यों पड़ी। इस बात को आप ने सिद्ध नहीं किया। एक एक विषय पर जो आपसे आते हैं मैं उन को बतलाऊंगा केवल धर्म पर इंटरफ़ीयरेंस केवल वर्णसंकर और सैक्रिमेंटल कॅरेक्टर है यह तीन बातें कह कर काम चलने वाला नहीं है। आप

पहली बात मौनोगेमी की जो है उस को लीजिये। हिन्दुओं में न केवल पतिव्रत है बल्कि पत्नीव्रत भी है।

मुझे बड़ी खुशी हुई कि एक कांग्रेस दल के सदस्य मेरे माननीय मित्र श्री राने ने इस के बारे में एक संशोधन रक्खा है। अपने संशोधन में आप ने लिखा है कि यह मौनोगेमी जो है इस से बड़ी तकलीफ हो रही है और यह बढ़ती ही जा रही है। बम्बई के प्रान्त में यह चीजें उन्होंने देखी हैं। मैं ने उन से पूछा कि भाई तुम तो कांग्रेस पार्टी के एक सदस्य हो तुम ने ऐसी समझदारी का संशोधन कैसे रक्खा है। इस के जवाब में वे कहन लगे कि भाई यह पार्टी का सवाल नहीं है। बम्बई में एक ऐक्ट है। मैं लोगों में घूमता हूं और बहुत ज्यादा तकलीफ देखता हूं। इस तकलीफ को देखते हुए मैं ने यहां अपना एक संशोधन किया है कि कोई विशेष परिस्थिति में कोर्ट को अनुज्ञा से पुरुष को दूसरा विवाह करने की अनुज्ञा होनी चाहिये और जो परिस्थिति रक्खी गई है वह यह है कि अगर किसी स्त्री को कोई बीमारो हो जाए कि जो बीमारी ठीक न होती हो तो पुरुष को इन की समझ में स्त्री को निकाल देने का हक होना चाहिये उन को डाइवोर्स करने का अधिकार होना चाहिये। हमारे राने साहब का सुझाव है कि किसी की पत्नी को कोढ़ होता है कोई बीमार पड़ती है तो उस को अपनी पत्नी को तलाक देने का अधिकार नहीं होना चाहिये। किन्तु उस की सम्मति से और कोर्ट की अनुज्ञा से दूसरा विवाह करने का अधिकार होना चाहिये। मैं तो आप को बतलाना चाहता हूं कि मेरे एक मित्र हैं उन का लड़का दो साल से लुन्टिक हो गया है और अब मैं आप से पूछना चाहता हूं कि वे अपने लड़के को घर से निकाल दें और कहे कि यह मेरा लड़का नहीं है। इन्हीं

[श्री बी० जी० देशपांडे]

प्रकार से मेरी पत्नी जिस से कि मेरी दो साल हुए शादी हुई हो वह यदि लुनेटिक हो जाय और एक साल में या दो साल में अर्द्ध नहीं होती तो क्या मुझे उसे निकाल देना चाहिये। क्या मुझे उसे डाइवोर्स दे देना चाहिये। मैं समझता हूँ यह जो आप कर रहे हैं यह कोई प्रगति की बात आप नहीं कर रहे हैं। इस प्रकार की बातें यहां लाना ठीक नहीं है। इस के साथ ही साथ आप यह कहते हैं कि जो मौनोगेमी है यह ज्यादा उदारता की है। मुझे तो आप को बतलाना है कि आज इस देश में पौलीगेमी जो हो रही है इस को रोकने की आवश्यकता है। आप प्रदेशों की तरफ देखते नहीं हैं आप स्टेटिस्टिक्स की तरफ देखते नहीं हैं आप तो केवल पाश्चात्य देशों का अनुकरण करना चाहते हैं।

मैं आप से पूछना चाहता हूँ कि राव कमिटी जो १० साल पहले नियुक्त की गई थी और उस ने जो रिपोर्ट दी थी उस के पश्चात् आप ने कौन से स्टेटिस्टिक्स एकत्र किये हैं? आप तो लोगों की भावनाओं को देखना नहीं चाहते। आप यह भी देखना नहीं चाहते कि कितने लोग इस देश में दूसरा विवाह करते हैं। किन किन परिस्थितियों में वह ऐसा करते हैं किन किन कारणों से करते हैं। उन को सजा देनी चाहिये या नहीं। दिल्ली में, पूना में, नागपुर में मैं ने देखा कि दूसरे विवाह हो रहे हैं। कौन कर रहे हैं? धर्म के ठेकेदार नहीं कर रहे हैं। इन विवाहों को तथाकथित प्रागतिक पुरुष और स्त्रियां कर रहे हैं। एक पढ़े लिखे पुरुष का विवाह होता है। कुछ समय बाद एक पढ़ी लिखी स्त्री आ कर उस से विवाह करती है और उस की गृहस्त्री को बिगाड़ देती है। इस को आप को रोकना चाहिये।

Shri U. M. Trivedi: On a point of order; there is neither the Law Minister nor anybody here.

रखा संगठन मंत्री (श्री स्वामी) : मैं भी एक मिनिस्टर हूँ। I am also a Minister; Madam, I have also taken the oath.

श्री बी० जी० देशपांडे : आप ने देखा है कि इस देश में पढ़े लिखे लोगों में बहु-पत्नीत्व बढ़ रहा है। मैं सरकार को धन्यवाद दूंगा कि उन्होंने परिपत्रक निकाल कर इस प्रकार के विवाह रोकने की कोशिश की थी। लेकिन इस कानून द्वारा पहली स्त्री को निकाल कर दूसरी स्त्री करने का अधिकार आप उन को दे रहे हैं। अगर किसी को अपनी पत्नी अर्द्ध नहीं मालूम हुई और कोई दूसरी स्त्री उस की गृहस्त्री पर डाका मारने आ गई तो आप उस को ऐसा करने का अधिकार इस कानून द्वारा दे रहे हैं। इस प्रकार के विवाह न हों इस प्रकार का कोई प्रतिबन्ध इस कानून में नहीं है। बल्कि आप इस प्रकार के विवाह करने वालों को एक प्रकार से बहोश देने की बातें कर रहे हैं। उन लोगों को कोई भी दंड इस कानून के अनुसार मिलने वाला नहीं है। इस बहुपत्नीत्व को आप को रोकना है। लेकिन यह बिन उस का इलाज नहीं है। हमारे शास्त्र के अनुसार इस प्रकार की जो बातें करतें हैं उनको सजा देने का विधान है। मैं तो कहता हूँ कि यदि कोई स्त्री इस प्रकार से किसी के वैवाहिक जीवन को बिगाड़ने का प्रयत्न करे तो उसे सजा मिलनी चाहिये।

Mr. Chairman: Please address the Chair.

श्री बी० जी० देशपांडे : जिस का पहले विवाह हो चुका है उसे आप दूसरा विवाह करने की अनुमति देने। हमारी

विवाह पद्धति स्त्री पुरुष को एक प्रकार की सेन्स आफ सीबोरिटी देती है। एक छोटी देहात की लड़की का एक बड़े से बड़े आदमी से विवाह हो जाता है फिर वह आदमी चाहे मिनिस्टर बने या प्राइम मिनिस्टर बने या पाकिस्तान का प्राइम मिनिस्टर बने वह स्त्री समझती है कि मेरे पद को कोई ले नहीं सकता। वह आनन्द के साथ अपने जीवन क्रम को चलाती है। और पुरुष भी यह समझता है कि वह बाहर चाहे जितने घबके खायें चाहे जितनी लड़ाइयां लड़े लेकिन उस के घर के अन्दर एक निष्ठावान जीव बैठा है जो उस का आदर करता है और उस से प्रेम करता है। लेकिन आज हम देखते हैं कि जब कोई छोटा आदमी बड़ा आदमी हो जाता है तो वह सोचता है कि पहली स्त्री को निकाल दे और एक पढ़ी-लिखी प्रगतिशील स्त्री से विवाह करे जोकि व्याख्यान दे सके, जो मन्दिरों में न जावे। वह आदमी ऐसी स्त्री को ले आता है। तो आज हमें उस पहली स्त्री का संरक्षण करने की अत्यन्त आवश्यकता है। आप ने जो कानून बनाया है क्या उस के अनुसार एक स्त्री कोर्ट में जा कर अपना डिफेंस कर सकती है? उस को अधिक स्वातंत्र्य नहीं दिया हुआ है। पुरुष अदालत में जा कर गवाही भी दे सकता है और स्त्रियों पर इल्जाम भी लगा सकता है और अपना संरक्षण करने में भी समर्थ है। इसलिये मैं समझता हूँ कि अगर इस कानून से कोई क्रायदा उठा सकता है तो वह पुरुष वर्ग ही है और स्त्री उस के सामने असहाय हो जायगी। इस देश में हिन्दू विवाह कानून ने जो एक प्रकार की सुरक्षितता पुरुषों को और विशेष कर स्त्रियों को दी थी वह इस कानून से नष्ट हो जायगी। अभी बम्बई में एक अभिनेत्री ने एक मुसलमान के साथ शादी कर ली। उस के साथ दो चार महीने

रही। कई दिन हुए तो उस को मालूम हुआ कि उस के पति ने उस को १५ दिन पहले तलाक दे दिया। उस को यह मालूम भी नहीं हुआ कि यह यूनीलेटरल डाइवोर्स कैसे हो गया। हम ने जो हिन्दू विवाह कानून में सुरक्षा की भावना रखी है इस से हमारे यहां वैवाहिक जीवन में बहुत आनन्द का निर्माण हुआ। लेकिन आज जीवन के प्रति एक रोमांटिक एप्रोच दिखलाई देती है जिस में एक अद्भुत रमणीय और प्रेम की भावना रहती है और उस में जीवन की एक प्रकार की स्वतंत्रता रहती है। आज उस भावना पर अधिक जोर है। हम ने वैवाहिक जीवन में बाल बच्चों का पालन पोषण समाज का संगठन आदि का ध्येय अपने सामने रखा था। आप ने इस कानून में तलाक को रख कर स्त्री की हालत को खराब कर दिया है। अगर यह कानून पास हो गया तो इस से स्त्री की अवस्था खराब हो जायेगी।

मैं यह मानने के लिये तैयार हूँ कि यदि कहीं अपवादात्मक परिस्थिति में किसी स्त्री या पुरुष के साथ अन्याय हो रहा हो तो उस का प्रतिकार किया जाय। उस के लिये मेरे दिल में जगह है। मेरे दिल में उन के लिये सहानुभूति है। मैं चाहता हूँ कि समाज में इस प्रकार की एक व्यवस्था हो कि किसी के साथ अन्याय न हो। इतना तो मैं मानने के लिये तैयार हूँ। परन्तु अन्याय वैवाहिक जीवन में परिवर्तन का मैं पक्षपाती नहीं हूँ। सामाजिक जीवन को स्थिर बनाये रखने के लिये, बालबच्चों के पालन पोषण के लिये, उन की शिक्षा आदि के लिये और कौटुम्बिक जीवन को स्वस्थ बनाये रखने के लिये यह आवश्यक है कि स्त्री पुरुष तलाक न लें। और केवल घम के ठेकेदार ही नहीं बल्कि बड़े बड़े प्रगतिशील विचार वाले भी इस तलाक की प्रथा के विरुद्ध हैं। आज एक या दो पुरुषों या स्त्रियों को तकलीफ

[श्री बी० जी० देशपांडे]

न हो इस के लिये हम पूरी प्रजा के जीवन को अस्वस्थ बना रहे हैं और जनता के जीवन में इस कानून द्वारा मत्सर और द्वेष का प्रवेश कर रहे हैं। जो प्रगतिशील लोग हैं उन के लिये हम ने पहले ही यहां पर विशेष विवाह विधेयक पास कर दिया है। ऐसा करने के पश्चात् आप क्यों जानबूझ कर इन कानून द्वारा हिन्दुओं की भावना को ठेस पहुंचाते हैं।

मुझे तो बड़ा आश्चर्य हुआ जब मैं ने विधि मंत्री का भाषण सुना। वह तो समझते थे कि इसके पक्ष में एक भी दलील देने की आवश्यकता ही नहीं है। उन्होंने केवल इतना ही कहा कि हम इसमें संशोधन कर रहे हैं, पर उसके पक्ष में दलील देने का उन्होंने सौजन्य नहीं दिखाया। आप एक बहुत महत्व का विधेयक ला रहे हैं। मैं आप से गम्भीरतापूर्वक प्रार्थना करता हूँ कि ऐसा जल्दी में न करे। दस घंटे में या बीस घंटे में या तीस घंटे में इतना बड़ा सामाजिक परिवर्तन होने जा रहा है। कुछ लोग हमारी बात का और हमारे विवाह के कानून का मखौल करते हैं, लेकिन मैं कहता हूँ कि यह मखौल करने की चीज नहीं है। विवाह हमारे यहां एक बड़ी निष्ठा की चीज है। हमारे दुश्मन भी जब इस निष्ठा को देखते हैं तो वे हमारी प्रशंसा करते हैं। आप देख सकते हैं कि महरोली में अलाउद्दीन की टूम्ब पर लिखा है कि 'हिन्दुस्तान की स्त्रियों ने मुझे हराया है।' उस पर फारसी में लिखा है कि जलती हुई मोमबत्ती पर पतंग जलते हैं यह तो हमको मालूम है, लेकिन बुझे हुये दीपक पर मरने वाले पतंग मीने इस देश की स्त्रियों के रूप में ही देखे हैं। इस प्रकार उसने यहां के स्त्रीत्व की प्रशंसा की है। उसने चित्तौड़ का जोहर देखा हुआ

था। हमारे यहां के वैवाहिक जीवन में इस प्रकार की निष्ठा है, इसलिये इसका मखौल नहीं करना चाहिये। हमने इस देश के अन्दर एक महान् आदर्श का निर्माण किया था। उस उच्च आदर्श के अनुसार हम सैकड़ों, हजारों वर्ष तक चलते रहे। जो लोग हमारे साथ नहीं चल सके उनको हमने स्वतंत्रता दे दी कि वे रिवाज के अनुसार चलें। लेकिन आज कुछ ब्राह्मण, क्षत्रिय और वैश्य प्रगतिशील बन हुए इस निष्ठा का मखौल करते हैं और इसकी अघोषितता का लक्षण समझते हैं। ऐसे लोगों के लिये हमने विशेष विवाह विधेयक का निर्माण कर दिया है। यह कानून बनाने के पश्चात् भी आप जानबूझ कर धर्म का मखौल कर रहे हैं और वह कार्य पाटस्कर जी जैसे सम्मान्य और वृद्ध पुरुष के द्वारा हो रहा है। वह कहते हैं कि "पहले यहां विवाह संस्कार नहीं होता था, इस का निर्माण ब्रिटिश लोगों ने किया है। हम विवाह के अवसर पर यह प्रतिज्ञा लेते हैं :

"धर्म च अर्थ च कामे च, नाति चरामि, नाति चरामि नाति चरामि"

इतनी महान् प्रतिज्ञा हम लेते हैं जीवन की पवित्रता के लिये, स्त्री की सुरक्षितता के लिये, बच्चों के पालन पोषण के लिये, और समाज को स्वस्थ बनाने के लिये। इस कार्य के लिये हम विवाह द्वारा एकत्र होते हैं। हमने इस विवाह संस्था के मंदिर का निर्माण किया है और हम इस पृथ्वी पर इसका गौरव समझते हैं। आप देखेंगे कि आपके बाकी सब सुधार नष्ट हो सकते हैं, बाकी आपका एश्वर्य नष्ट हो सकता है। "डिक्साइन एण्ड फाल आफ रोमन एम्पायर" में दिया हुआ है कि जब रोम में विलासिता बढ़ गयी और जर्मनी से जंगली टोलियों ने आकर वहां पर विजय प्राप्त की और उनकी विजय के दो ढ़ी कारण

उसमें लिखें हैं, एक तो उनका विश्वास था कि जो मरता है वह स्वर्ग जाता है, यह भावना उनमें थी और दूसरी भावना यह थी कि वहाँ की स्त्रियाँ पतिव्रत धर्म की तरफ बहुत ध्यान देती थीं, इन दो महान् भावनाओं के कारण उस रोमन एम्पायर, जिसका ऐश्वर्य दुनिया मानती है, उस महान् रोमन साम्राज्य को उन जंगली लोगों ने हराया और वह साम्राज्य पतन को प्राप्त हुआ। उसी तरह का पतिव्रत का एक महान् आदर्श हमने इस देश में निर्माण किया है और जिस आदर्श को आज आप इस तलाक व्यवस्था और विशेष विवाह विधेयक के द्वारा ठुकराने जा रहे हैं और मैं फिर आज आपसे प्रार्थना करूँगा कि इस प्रकार का प्रस्ताव या विधेयक रखते हुए इस बात की जिद्द मत कीजिये कि तीस घंटे के अन्दर यह जो हमने तीन हजार साल में या लाखों साल में अपनी संस्कृति निर्माण की है, उसको हम ठुकरा देंगे। मैं तो आप से यह भी कहने के लिये तैयार हूँ कि शास्त्रों पर यदि आप का विश्वास नहीं है तो उन को छोड़ दीजिये, लेकिन मेरी तो निष्ठा और विश्वास अपने धर्म शास्त्रों पर है और जिन हमारे प्राचीन पूर्वजों और आर्य ऋषियों ने इन शास्त्रों का निर्माण किया था उन के हृदय में अपने देश और समाज के प्रति देशभक्ति की भावना थी और इसी महान् भावना को हृदय में ले कर उन्होंने धर्मशास्त्रों की रचना की थी। मैं यह मानने को तैयार नहीं हूँ कि हमारे उन प्राचीन ऋषियों को मनुष्यस्थ भावों का ज्ञान नहीं था। इस तरह के धर्म शास्त्रों का निर्माण बड़े संयम और गहन अध्ययन के बाद होता है। हमारे मनु, याज्ञवल्क्य, विश्वामित्र का इस कार्य में बड़ा भाग रहा है और हमारा हिन्दू समाज उन का बड़ा ऋणी है। मनुष्य स्वभाव बदलता होता, लेकिन इतने क्रान्ति-

कारी रूप में नहीं बदलता है। मनुष्य स्वभाव को देख कर अनादि काल के लिये नियम उन्होंने बनाये हैं, उन नियमों को आप परिवर्तन के नाम पर ठुकरा देते हैं और दावा करते हैं कि हम जनता के प्रतिनिधि हैं, जनता ने हम में अपना विश्वास प्रकट किया है और हमें इस प्रकार का परिवर्तन करने का पूर्ण अधिकार है और पाटस्कर साहब इस तरह की भावना ले कर यहाँ आये और कहें कि हम इस देश के लिये एक नया कानून निर्मित करेंगे, तो मैं उन से निवेदन करूँगा कि पहले आप इस देश की परिस्थिति का पूरा अवलोकन करें और हमारे सामने तथ्य रखें कि इस देश में स्त्री मात्र पर इन-इन कारणों से अत्याचार होता है और इस प्रकार के अत्याचार होते हैं और इन का निराकरण करने के लिये हम यह यह सुधार लाये हैं, यह करने के बजाय एक खाली जिद्द को ले कर कि समाज शास्त्र में जमाने के साथ "बेंज" आवश्यक है, इसलिये हम "बेंज" करेंगे ही, इस तरह की जिद्द में समझता हूँ कि उचित नहीं है और देश और समाज के लिये घातक सिद्ध हो सकती है क्योंकि किसी अच्छी चीज को बिगाड़ना तो बड़ा आसान है, उस का निर्माण करना कठिन होता है। अगर कहीं किसी तालाब या बर्तन में पानी भरा है तो कोई भी जहर फेंक कर उस को विषैला बना सकता है और एक बार जहर फेंकने के पश्चात् फिर हम हेल्पलेस हो जायेंगे और कुछ नहीं कर सकेंगे। मेरी समझ में ठीक आप वही कार्य प्राचीन हिन्दू विवाह पद्धति को तोड़ कर करने जा रहे हैं और केवल पाश्चात्य देशों के अनुकरण में अपने देश और समाज की परिस्थितियों को ध्यान में न रखते हुए अपनी आदर्श और पुरातन विवाह प्रथा में परिवर्तन कर

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रहे हैं और साथ ही मैं समझता हूँ कि देश को करीब ८० या ९० प्रतिशत आबादी इस प्रकार का विवाह में संशोधन नहीं चाहती, यह संभव हो सकता है कि दस, पांच प्रतिशत आबादी को, कुछ बड़े लोगों की इस प्रकार के हिन्दू मैरिज बिल की आवश्यकता महसूस हो सकती हो तो केवल दस, पांच प्रतिशत बड़े बड़े लोगों के खातिर आप इस पुरातन और आदर्श विवाह प्रणाली को क्यों बदलना चाहते हैं और जिस तबदीली का असर हमारे देश और समाज पर खराब पड़ने वाला है। अगर आप यह समझते हैं कि स्पेशल मैरिज बिल पास होने के पश्चात् भी इस तरह का बिल पास होना अत्यावश्यक है तो आप का कर्तव्य है कि आप इस देश की परिस्थिति को पूरी तौर पर समझ लीजिये और बारीकी से उस का अध्ययन करने के पश्चात् आप इस तरह का विधान ला सकते हैं।

आखिर में मैं एक ही बात आप को बताना चाहता हूँ कि बिधि मंत्री जो यह कहते हैं कि हम जनता के प्रतिनिधि हैं और हम एलेक्टोरेट से नहीं डरते, तो यह तो मैं भी देख रहा हूँ कि आप जनता से नहीं डरते, परन्तु आप को एक बात तो माननी ही पड़ेगी कि पिछले चुनावों के अक्सर पर आप ने अपने एलेक्शन मैनिफेस्टो में इन बिलों को छोड़ दिया था, ऐसा किस कारण हुआ, मुझे पता नहीं लेकिन आप अपने पिछले चुनाव घोषणापत्र को उठा कर पढ़ लीजिये, उस में इन बिलों का कोई जिक्र नहीं पायेंगे

Mr. Chairman: I might say that the hon. Member has already taken more than half an hour. How long is he going to take?

Shri N. C. Chatterjee (Hooghly): This is a very important Bill of a revolutionary character.

Shrimati Renu Chakravarty (Basirhat): One member cannot take one hour.

Shri V. G. Deshpande: I shall finish in half an hour?

Shri Bogawat (Ahmednagar—South): If one Member takes one hour, there are other Members who have to speak.

Mr. Chairman: Twelve hours have been allotted for the general discussion. Other Members also must have an opportunity to speak.

Shri V. G. Deshpande: I shall conclude. हां तो मैं आप को बतला रहा था कि आप अपने पिछले चुनाव पत्र को जो प्रकाशित हुआ था उठा कर पढ़ लीजिये, उस घोषणापत्र में इस हिन्दू विवाह विधेयक और हिन्दुओं के पुरातन कानूनों पर आघात करने वाले कानूनों का जिक्र नहीं था। इस प्रकार का महत्वपूर्ण विषय देश के सम्मुख आप ने रक्खा हुआ था, रखने के पश्चात् उस के विषय में एक कमेटी बनाई गई थी और उस राव कमेटी ने देश के एक कोने से ले कर दूसरे कोने तक जनमत जानने का प्रयत्न किया था और उस को जानने के पश्चात् उस समिति के एक सदस्य श्री मित्र ने उस के बारे में लिखा है कि यह विधेयक जो सरकार लाने जा रही है यह जनता में प्रिय नहीं है और जनता को इस प्रकार का विधेयक मंजूर नहीं है और उन्होंने ने उदाहरण दे कर बताया है कि देश की ओवरहूवेलिंग मैजिस्ट्री, प्रचंड जनसंख्या इस विधेयक के विरोध में है। मेरा कहना है कि दस साल में एक दफा चुनाव आया, चुनाव में यह बिल आप ने जनता के सम्मुख रक्खा नहीं, मुझे जहाँ तक पता है, जान बूझ कर इस विवाहबन्ध विधेयक को एलेक्शन

मैनिफेस्टो से आप ने निकाल दिया और पावर में आने के पश्चात् आप इस विषयक के बारे में प्रान्तीय सरकारों से पूछते हैं और उस में भी मैं श्री राधा विनोद पाल से सहमत हूँ जब वह कहते हैं कि 'मोल्ली वन लीडर हैज टू थिक' और जब हम ऐसा कहते हैं तब आप को गुस्सा आता है कि हमें ऐसा कहते हैं। जनता ने आप को ऐसा करने के लिये मैनडेट नहीं दिया है, आप कहेंगे कि यहां हम पार्लिटिक्स ला रहे हैं, लेकिन मेरा तो मत है कि डेमोक्रेटिक स्ट्रक्चर में सोशियल रिफार्म्स तब आते हैं जब जनता उन को चाहती है। उन को करने से पहले जनता को समझाया जाता है कि हम ये चीजें करने वाले हैं और जनता का भावनाओं का आदर करते हुए और जो उन की इच्छा होती है उस की पूर्ति करते हुए एक जनप्रिय सरकार कानून बनाती है। आप यदि यह बिल रखना ही चाहते हैं तो वो वर्ष के भीतर फिर चुनाव आने वाले हैं, उस वक्त तक आप ठहर जायें और इस अवधि के लिये जो तलाक के इच्छुक होंगे उन से मैं आप की तरफ से क्षमा मांग लूंगा, और मैं चाहूंगा कि चुनाव के अवसर पर आप जनता में जायें और बतलायें कि हम इस तरह का बिल पास करने वाले हैं और उस के आधार पर आप चुनावों के अवसर पर जनता से अपने लिये वोट मांगें और एलेक्टोरेट से मैनडेट लेने के पश्चात् आप यहां पर आ सकते हैं और इस तरह का कानून पास करा सकते हैं और बिना हिचक के कह सकते हैं कि हमारे इस कानून के पीछे जनता का संजुरी है और वह इन प्रकार का बिल चाहती है। अन्त में मैं और अधिक न कहते हुए सिर्फ यहीं निवेदन करूंगा कि एक महान् विवाह की प्रणाली, कोटिम्बिक जीवन का एक महान् आदर्श और अपनी एक अभिमान योग्य आदर्श संस्कृति हम ने निर्माण की है और

उस को आप इतनी लाइटली और इतनी अग्रभारतापूर्वक धक्का दे कर समाप्त न कीजिये। बस इतना ही मेरा प्रार्थना है।

Shri B. K. Ray (Cuttack): Madam, I must thank you respectfully for giving me this opportunity to take part in this debate.

My reaction to this Bill is not one of opposition or raising obstacles in the way of the passage of this Bill, but it is one of sympathy and co-operation. On studying this Bill, in spite of the past history through which this Bill has passed, and in spite of the fact that it has been passed by the Rajya Sabha, in my humble judgement, I have found certain defects in the Bill which I think ought to be corrected at this stage so that the law enacted by the Bill may have facility of administration and leave as little doubt in its application as possible.

I am not including in, nor do I favour any body indulging in, controversies as to what the ancients said must always be followed or whether they must not be. Nobody can turn the table against time and tide of society. Society is progressing. Circumstances have come into existence which were not there before Manu or Nardā or other ancient law givers. Therefore, with regard to the policy of the Bill, I give my wholehearted support.

Now, I would invite the attention of this House and of the hon. Minister to the three particular features in the Bill which, if I am correct, ought to be corrected. The first is that Hindu law which provided the provisions of law regulating our married life was our personal law. Wherever we went, it governed us. Now, this statute ought to be made applicable to all Hindus and that, I think, is also the intention of Government. It is not only confined in its operation to India and Hindus living in India but extends to Hindus outside, and as the law passed by a sovereign legislature of a sovereign

[Shri Birakisar Ray]

country, under the fundamental principles of private international law, it will be respected extra-territorially. But if our provision in the Act is not sufficient to make it fully extra-territorial, I should call it a defect—a lacuna. Therefore, we must say in the Bill that this law applies to all Hindus wherever they may be on the face of this earth, and wherever they may be residing.

Pandit Fotedar (Jammu and Kashmir): Except Hindus of Jammu and Kashmir.

An Hon. Member: Why?

Pandit Fotedar: See the Bill.

Shri Radha Raman (Delhi City): Include them.

Shri B. K. Ray: Suppose you do not have that, the difficulty will be this. People who want to have marriage in contravention of your section 5 may go to a foreign country and get the marriage performed there. When they come back as married couple, your law does not say anything as to how to behave with them. That is why I say that this is the first feature in which I consider the Bill as framed to be defective. It may be due to language or it may be due to lack of intention to give it that wide scope which, I think, ought to be given to it. Otherwise, it will fall in its purpose to a large extent. The law can be evaded.

The second feature is also an important one in my judgment. Now, in one of the clauses of the Bill, it has been said that all ancient texts, their interpretation—and with it also necessarily goes judge-made laws—shall cease to have effect after the passing of this Act. The heading of the clause is 'Over-riding effect of Act'. The point is, so far we in this country have not such a thing as common law: so for the purpose of regulating the married life, we had the law known as Hindu law and custom. That, if I can use the term, is abolished or repealed or annulled by this. Then, where is the provision in the Act by which you are going to lay down what are the mutual

rights and obligations as between the married couple? If two people marry, what right does accrue to the husband as against the wife and to the wife as against the husband? Unless you say that, there will be difficulty in administering the sections in which the law of judicial separation, the law of divorce and the law of restitution of conjugal rights have been enacted. You do not know your rights because you cannot fall back upon the Hindu law and custom. It is gone.

Shri S. S. More: Not the whole of it.

Shri B. K. Ray: The whole of it that relates to Hindu marriage is gone.

Shri S. S. More: No. Only those matters affecting us are gone.

Shri B. K. Ray: Of course, this is my submission. If the Law Minister and the House take a different view, let them take it. But I submit as you say, in respect of the matters in which this Act has made laws, all texts and everything else will go. Therefore, the position is that at any rate that will be worth controversy in court. It may be that you will not be surprised if some court says that there are no mutual rights and obligations defined in the Act. In that case, the judgments will vary according as the yard stick of the judges in which they have to define what is reasonable, just, or proper. For instance, in the clause relating to restitution of conjugal rights, you have said that if one of the parties to the marriage has deserted 'without reasonable excuse' etc. etc. Now, what is 'reasonable excuse'? You might remember that in America a wife succeeded in getting her husband punished with a fine of five dollars simply because he kissed her at a time when she was just going to call on a friend after finishing her toilet.

Shri Tyagi: Is that so?

Shri B. K. Ray: Suppose such a thing is repeated by the husband. Suppose he says, 'I will pay five dollars and I will kiss my wife'. Then

such a thing can be a ground for divorce under the American law. But are you going to say that this is a 'reasonable excuse' in India.

Shri Syamnandan Sahaya: Shri Pataskar will reply to that?

Shri B. K. Ray: Therefore, I say that there ought to be a provision either enumerating or defining or illustrating what are the mutual rights and obligations, how much of Hindu law in this respect goes and how much remains. This is the second feature to which I invite the attention of the House.

Then the third feature is as regards those clauses which, I learn from the hon. Minister, have been introduced in the Rajya Sabha by way of punishing people for having contravened the law of marriage as laid down in the Act. According to several clauses, the wife, when she comes as a respondent, will be compelled in certain cases to pay for the maintenance and support of the husband.....

Shri Syamnandan Sahaya: That is very very essential.

Shri B. K. Ray:..and to pay for the expenses of the proceedings. And after the decree, she will be made to pay for the maintenance and support of the husband, so long as he remains unmarried. This seems to me to be something very wrong, because so far as we know the law, there is no responsibility on the wife to maintain the husband. It is just the contrary.

Shri Pataskar: The elders thought otherwise.

Shri B. K. Ray: Under what circumstances, then, should the wife be made to pay the expenses of maintenance and support of the husband?

An Hon. Member: It is retrograde.

Shri B. K. Ray: Therefore, I invite the attention of the House to these two clauses. So far as the party being wrong in his or her conduct is concerned, on that being found in court sub-

sequently, the court has got the discretion, the right to punish the party by grant of a decree for special costs and the like. But if the wife has to pay for the maintenance and support of the husband during the pendency of the proceeding, it will have one deleterious effect, namely, that many women, even if they have a good cause, for fear of this, will not go to court.

These are the three features which, if not properly attended to, may leave some lacuna in the law, and there may be difficulties in administering it and you may very soon have to come before the legislature to amend it. That is all I want to say.

श्रीमती सुभद्रा जोशी (करनाल) :

सभानेत्री महोदया, सब से पहले तो मैं अपने मित्र श्री देशपांडे जी को मुबारकबाद देना चाहती हूँ कि आखिर कोई दिन तो उन को ऐसा मिला जब मुसलमान भाइयों से उन को बहुत सहानुभूति हुई और उन्होंने मुसलमान भाइयों को भाई कहा तथा मुसलमान बहनों को बहन कह कर पुकारा। उन्होंने कहा कि यह संविधान के खिलाफ है कि इस किस्म का कानून पास किया जाय, इस किस्म का कोई अधिकार या खास कर सहायित किसी को दी जाय। मैं उन का ध्यान और अपने अन्य साथियों का ध्यान कान्स्टिट्यूशन की उस धारा की तरफ ले जाना चाहती हूँ जिस में यह दिया है कि किसी के खिलाफ किसी किस्म का जाति भेद या किसी और वजह से भेद नहीं किया जायेगा।

सभानेत्री जी, अजीब बात है कि हमारे यहां इस की गिनती तो हमेशा की जाती है कि हमारे यहां हिन्दू कितने हैं, मुसलमान कितने हैं, पारसी कितने हैं, रोमन कैथोलिक्स कितने हैं, पर हमारे देश में स्त्रियाँ कितनी हैं और पुरुष कितने हैं, इस की तरफ कोई ध्यान नहीं देता है। हमारे हिन्दुस्तान की

[श्रीमती सुषमा जोशी]

जो आधी आबादी है, आज जब कानून उसके साथ भेद-भाव करता है, तो उनका ध्यान संविधान की उस धारा की तरफ नहीं जाता है। मैं कहना चाहती हूँ कि अपने अपने घरों में कोई स्त्री और पुरुष पति-पत्नी हैं और कोई भाई-बहिन हैं। वह तो घर का रिश्ता है। अपने घर में कोई स्त्री अपने पति को प्रेमवश या बेवकूफ बनाने के लिए चाहे देवता कहे और चाहे भगवान कहे और चाहे परमात्मा कहे। इसी तरह कोई पुरुष अपनी पत्नी को दासी कहे लक्ष्मी कहे या देवी कहे। यह तो अपने घर की रिश्तेदारी है। पर हँसी उस वक्त आती है जब कानून पुरुष को भगवान और स्त्री को दासी समझ ले। इस वक्त हमारे यहां जो कानून है, उनमें स्त्री और पुरुष के प्रति कितना फर्क रखा गया है। फर्क हम में है इस में कोई ताज्जुब की बात नहीं है, पर हकूमत और कानून उसमें फर्क करे, यह एक महामूर्खता की बात है। आज कानून के अनुसार पुरुष और स्त्री में यह फर्क है कि पुरुष चाहे जितनी शादियां करे, उस पर कोई बन्धन नहीं है, परन्तु स्त्री ऐसा नहीं कर सकती है। आज पुरुष चाहे अपनी स्त्री को छोड़ दे, दूसरी शादी कर ले, उसको घर से निकाल दे, पर अगर स्त्री चाहे, तो वह घर छोड़ कर बाहर नहीं निकल सकती है। इस वक्त हकूमत से कुछ मांगने का सवाल नहीं है। हम तो यह चाहते हैं कि कानून ने जो फर्क पैदा कर दिया है, उसको हटा दिया जाय। आज का कानून क्या है? आज का कानून यह है कि फर्क कीजिये कि एक भाई और बहिन के बीच चायदाद का मामला है, तो बहिन को कुछ नहीं

मिल सकता है, क्योंकि वह लड़की है—कानून के अनुसार लड़की को कुछ नहीं मिल सकता है। यह बात हमारे फंडामेंटल राइट्स के खिलाफ है। मैं देशपांडे जी का ध्यान इस तरफ दिलाना चाहती हूँ कि अगर केवल हिन्दुओं के लिये कोई कानून बनाना हमारे फंडामेंटल राइट्स के खिलाफ है, तो इस वक्त कानून में जो स्त्री और पुरुष में फर्क किया गया है, वह तो फंडामेंटल राइट्स के और भी ज्यादा खिलाफ है। हम तो सिर्फ यही मांग करते हैं कि हम को कानूनी अधिकार दिया जाय और किसी के साथ महज पुरुष होने की वजह से फर्क न किया जाय।

इस के बाद देशपांडे जी ने कहा कि पढ़ी लिखी लड़कियां घर बरबाद करने के लिये आ जाती हैं। इस देश में आज पढ़ी लिखी लड़कियों की जो हालत है, उस का जिक्र कर के मैं इस सदन का सिर गर्म से झुकाना नहीं चाहती।

विवाह संस्कार की बात भी कही गई है। मैं देशपांडे साहब को कहना चाहती हूँ कि वह न छेड़ें उस फोड़े को—उस से कोई भला होने वाला नहीं है। आज वह शास्त्रों का जिक्र न करें। आज अगर वह कानून में और शादी की बातों में शास्त्रों का जिक्र कर के रुकावट पैदा करना चाहते हैं, तो मैं कह देना चाहती हूँ कि उन शास्त्रों को भलग हटा कर स्त्रियों के हाथों से दूसरे शास्त्र लिखे जायेंगे।

सभानेत्री जी, आज शादी का जिक्र किया जाता है। किस की शादी का? मैं कहती हूँ कि मालूम होता है कि जब स्त्री का जिक्र होता है, तो हमारे यहाँ अक्सर पत्नी की बात सोची जाती है, क्योंकि हमारे पुरुषों के ऐसे संस्कार बन गये हैं कि शादी होने के बाद उन के दिल में स्त्री के लिये प्रेम तो क्या, एक जिध, दुस्मनी

और दासत्व की भावना आ जाती है और जब भी वे उस का जिक्र करते हैं, तो एक और ही तरह जिक्र करते हैं। मैं आप के द्वारा सभासदों का ध्यान इस तरफ भी दिलाना चाहती हूँ कि जिन स्त्रियों को आप मजाक उड़ाते हैं, खिल्ली उड़ाते हैं, वे आप की बच्चियाँ और बेटियाँ भी हैं और बहिनें भी हैं—वे बेटियाँ और बहिनें, जिन की शादी करने के लिये आप गली गली और घर घर भटकते हैं। जब पति उन को छोड़ देता है, तो आप अपनी पगड़ी और टोपी उतार कर जवाई और समुर के पावों में रख देते हैं और हर तरीके से इस बात की कोशिश करते हैं कि वह बेटो या बहिन सुखी रहे। इसलिये मैं कहना चाहती हूँ कि जब स्त्री का जिक्र होता है, तो अपनी पत्नी की बात के साथ ही साथ अपनी बच्ची और बहिन की बात भी सोचें।

अब मैं स्त्रियों की शादी का जिक्र करती हूँ। आज हमारे मुल्क में क्या होता है? हम अपनी लड़की को पढ़ाते लिखाते हैं, अच्छा बनाते हैं और जो कुछ हो सकता है, करते हैं और उसके बाद कई लोग—अजीब अजीब शकलों के लोग—उस को देखने के लिये आते हैं। कोई कहता है कि नाक टेढ़ी है, कोई कहता है कि रंग खराब है, कोई कहता है कि चलती ऐसे है—यह आप की लड़की के लिये कहा जाता है। अगर सब कुछ ठीक होता है, तो फिर कहा जाता है कि जहेज कितना दोगे। जब शादी होती है, तो पहली बात हमारे दिमाग में यह आती है कि हमारी लड़की को खाने को मिलेगा या नहीं, पहनने को कपड़ा मिलेगा या नहीं। मैं यह कहना चाहती हूँ कि जो हमारी विवाह-पद्धति है, वह प्रास्टीच्युशन है—उस से बढ़ कर और कुछ नहीं है। आप देखिये कि हमारी स्त्रियों को ऐसी शर्म की जिन्दगी बितानी पड़ती है। मैं आप से कहती हूँ कि...

Shri Lokenath Mishra: Is that in order? She said 'Hindu marriage system is a prostitution.' Is it so?

Mr. Chairman: Order, order.

श्रीमती सुभद्रा जोशी : सभानेनी जी मैं माफी चाहती हूँ कि मुझे ऐसी कठोर भाषा इस्तेमाल करनी पड़ रही है।

Pandit Thakur Das Bhargava: Probably she did not mean that marriage life was prostitution. She never meant it; she only wanted to convey the idea that women are not treated properly. I should think that these words may be expunged because she did not mean them and would like to see them expunged.

Shri Lokenath Mishra: But she does not herself say that she did not mean what she said.

Mr. Chairman: She did not mean it. Order, order.

Shri V. G. Deshpande: This should be expunged from the record.

श्रीमती सुभद्रा जोशी : सभानेनी जी, मैं आप से यह कहती हूँ कि मैं इस बात के लिये माफी चाहती हूँ कि जो कुछ मैं कह रही हूँ उस के लिये शब्द बहुत कठोर इस्तेमाल कर रही हूँ।

एक माननीय सदस्य : कठोर नहीं भ्रूलील।

श्रीमती सुभद्रा जोशी : भ्रूलील बातें तो आप तीस घंटे तक सुनेंगे, जब कि इस बिल पर बहस होगी।

मैं ने ये कठोर शब्द इसलिये इस्तेमाल किये हैं, क्योंकि समाज की इस वक्त जो हालत है उस से यह मालूम होता है कि जब तक एक बात बार बार न कही जाय, उस का कुछ असर नहीं होता है—जब तक एक कील जोर से न लगाई जाय, तब तक दिमाग काम नहीं करता है। ऐसा ही करने की मैं ने इस वक्त कोशिश की है। यह तो बाहिर है कि हर एक शादी ऐसी ही होती है और हर एक स्त्री का जीवन ऐसा ही होता है। आज स्त्री की हालत और जीवन इतना गिरा हुआ है कि हम अपमान से अपना सिर नहीं उठा सकते।

[श्रीमती सुभद्रा जोशी]

देशपांडे जी ने कहा कि स्त्री के लिये कानून पास हो जाने के बाद सिक्स्योरिटी नहीं रहेगी। मैं कहती हूँ कि अब कौन सी सिक्स्योरिटी है? आप जब चाहें, अपनी पत्नी को छोड़ सकते हैं।

एक माननीय सदस्य : बिल्कुल गलत।

श्रीमती सुभद्रा जोशी : जो लोग अपनी पत्नी को छोड़ देते हैं, अगर उन को बुला कर पूछा जाय और कोशिश की जाय कि वह उस को न छोड़ें तो अजीब अजीब कारण बताये जाते हैं। अगर हमारे सभासदों का ध्यान, जो कि पब्लिक के नुमायन्दे हैं, इस तरफ नहीं गया, तो मैं चाहती हूँ कि वह आज जाय। मैं इस सवाल की खोज करती हूँ और बहुत से भाई बहिन करते हैं। अगर उन से पूछा जाय कि आप ने अपनी बीवी को क्यों छोड़ दिया, तो कोई कहता है कि जहेज नहीं दिया था, कोई कहता है कि बच्चे नहीं होते थे, कोई कहता है कि लड़कियां होती थीं, कोई कहता है कि लड़की की सास से नहीं बनती थी। एक बहन मेरे पास आई वह छोटी सी उम्र की बच्ची थी उस के पति ने उस को इस लिये छोड़ दिया कि उस का रंग काला था। उस के पति ने उसको कहा कि अगर तुम मेरे होटल में बरतन मांजी, तो तुम्हें रख सकता हूँ, वरना नहीं रख सकता। यह हमारी बच्चियों की बात है इसलिये मैं कहती हूँ कि अब जब यह बिल पास हो जायेगा तो हम उन को यदि छोड़ना भी चाहें तो छोड़ नहीं सकेंगे सिवाय उन केसिस में जिन का जिक्र कि इस बिल में किया गया है। अगर हम यह चाहेंगे कि चूँकि दहेज नहीं दिया गया है इसलिये उस को छोड़ दिया जाये तो हम ऐसा नहीं कर सकेंगे। मेरा ऐसा विश्वास है कि इस बिल के पास हो जाने पर स्त्रियों में ज्यादा शक्ति आयेगी और उन की ज्यादा रक्षा हो सकेगी।

अब मैं मंत्री महोदय से चन्द एक दरख्वास्तें करना चाहती हूँ। मैं मंत्री महोदय से प्रार्थना करती हूँ कि वे इस बिल में एक ऐसी प्राक्किसन करें कि स्त्रियों को बिना पैसा खर्च किये हुए उन के लिये वकीलों का इन्तजाम हो सके इस तरह से उन के केसिस कोर्ट में लड़े जा सकें।

दूसरी प्रार्थना मैं मंत्री जी से यह करना चाहती हूँ कि इस बिल में एक प्रोविजन यह भी गई है कि एक खास उम्र तक की लड़की गाडियन की इच्छा से शादी करेगी और उस उम्र के बाद गाडियन की इजाजत शादी करने के लिये आवश्यक नहीं होगी। मेरी प्रार्थना यह है कि आप उम्र एक कर दीजिये चाहे वह कितनी ज्यादा क्यों न रक्खी जाय। आप एक ऐसी उम्र मुकर्र करें जिस से कि वह अपनी शादी अपनी मर्जी से कर सकें। अगर आप इसी तरह से रखना चाहते हैं कि गाडियन उस की शादी करे तो मेरी प्रार्थना यह है कि इस तरह की शादी करने से पहले लड़की की अनुमति भी जरूर ले ली जाय। उस की मर्जी के बगैर उस की शादी न की जाये। किसी की भी जबर्दस्ती शादी नहीं होनी चाहिये।

इतना कहने के बाद मैं मंत्री महोदय को सच्चे दिल से मुबारिकबाद देती हूँ कि आखिर वह दिन आया जब कि उन्होंने इस सदन में यह कानून पेश किया और इसको पास कराने का निश्चय किया। मैं उन से प्रार्थना करना चाहती हूँ कि वे इस बात की परवाह न करें कि देशपांडे जी इस के बारे में क्या कहते हैं। पाटस्कर साहब को यह कहना चाहिये कि मैं इस देश में कुछ करने के लिये आया हूँ और जो हमारी बच्चियां हैं उन की मैं रक्षा करूंगा और चाहे जितनी देशपांडे जी इस के रास्ते में रुकावटें डालें वे उन से डरने वाले नहीं हैं। मैं उन को यकीन दिलाती हूँ कि हिन्दु-

स्तान की भावी संतानें जो होंगी और जो हमारी बच्चियाँ हैं वे उन के गुण गावेंगी ।

अन्त में मैं मंत्री जी से प्रार्थना करना चाहती हूँ कि अगर कोई भुटियाँ हैं तो उन को दूर करने के बाद इस बिल को अच्छी तरह पास करना चाहिये ।

Shri N. C. Chatterjee: This Bill is one of the most important and revolutionary Bills which demands very close attention of every Member of this Parliament. Madam, other civilizations have perished—those of Babylon, Nineveh, Assyria, the Hellenic world, the ancient civilization of Rome, they have all perished. They are now the subjects of antiquarian researches, but Hindu civilization still lives. It has still life and it is dynamic.

Pandit K. C. Sharma: It is petrified.

Shri N. C. Chatterjee. No. It has not petrified. I say that without any fear of contradiction. It is still living and it has something to give to the world. The greatest fighters of India's independence wanted freedom from alien domination not because they had any fight with England on racial grounds but because they were perfectly conscious that India had something to contribute to world civilization. You know one of India's greatest sons, one of India's greatest philosophers, one of India's greatest savants and *vogis* was Rishi Aurobindo. He said we want freedom for India because "India's last word has not yet been spoken" because India's message has not yet been delivered. What is there that is vital in Hindu civilization? What is the *elan vital* in India's heritage that has kept Indian civilization at a glorious height? There must be something dynamic, there must be something soul-giving, there must be something soul-uplifting in our culture, in our heritage, in our civilization, something which is of eternal value which India has cherished through the millennium? What is that message for the spreading of which our greatest men have fought for emancipation? I am proud to say I say

this in all humility and of this every one should be conscious in this House,—the great essence of Indian civilization is the purity of family life; the great ideal of chastity, the great ideal of Indian womanhood which has been our pride and our glory through the ages.

It was swami Vivekananda, when he came back from America after his glorious conquest of the West—the Warrior Saint, the Vedanta Kesari—who said:

भुलियो ना तोमार उपास्य

उमानाथ शंकर भूलियो ना तोपार

नारीजातिर आदर्श सीता सावित्री दमयन्त्री।

"Oh men and women of India," said that soul-uplifting Warrior Monk, "Oh sons and daughters of Mother India, forget not your cherished God is Shankar, the God of Renunciation; Your highest ideal of womanhood is chastity personified, the ideal of womanhood embodied in Sita, Savitri and Damayanti". Now, are you going to stimulate, to preserve, to cherish that ideal, or, is this Bill which you are going to pass today going to keep aloft that highest ideal or is it going to sabotage that ideal? Hindu civilization has resisted many an onslaught. It has met the challenge of ages. It has met the challenge of iconoclasts. It has met the challenge of internal fifth columnists. It shall not die. But how are you now going to keep the ideal aloft? Are you going to strengthen those ideals or are you going to weaken those ideals?

I am appealing to Shri Pataskar. If the Prime Minister were here, I should have appealed to him. He talks of democracy. All the Congress leaders talk of democracy. Is this measure consistent with the fundamental principles of democracy? Is it right to have a revolutionary measure, a radical measure, which touches the roots of the civilization of India, the personal law of the millions of our people and which has stood the test for centuries, for thousands of years? What right have you to pass such a Bill? I do appeal to my friend the Minister to answer it. What right has he?

[Shri N. C. Chatterjee]

What right has the Minister, who sponsors this Bill, to bring forward such a measure unless and until there is a clear mandate of the electorate? Where is that mandate? When did you get that mandate? Shri Jawaharlal Nehru, the Prime Minister of India, is preaching democracy in Indonesia, in China and in every part of the world. Do act upon the fundamental tenets of democracy in our own country. Do not try to force down throats of the nation this kind of Bill without a definite mandate from the electorate. You have not taken that mandate. I do maintain that the electorate was never consulted. The nation was never consulted and was never asked for a vote on this issue. I am not very bold when I assert that if you take a referendum on this issue, particularly on divorce, the overwhelming majority of our people, not only Hindus but also Muslims, will vote down any such measure like this divorce Bill. You know that has never been put before the electorate.

Shri V. G. Deshpande was perfectly right in saying that in the Congress manifesto you did not make this an issue. In one constituency in the State from which I come, this was made an issue, because a very prominent lady who was one of the most important sponsors of the Hindu Code was resisting and fighting me and she made this Hindu Code an issue. I have the privilege and the honour and the glory of representing a constituency which has acquired a place in history. That particular territory, that particular part of India, gave birth both to Raja Ram Mohan Roy and Shri Ramakrishna Paramahansa. That constituency in the General Election definitely gave its verdict against the Hindu Code. Now, you the masters of the Congress, the leaders of the Congress, think that in the interests of India this kind of divorce should be brought in. This is a thing which

Hinduism had definitely discarded, which Hindu personal law had definitely eschewed, which our law-givers had not thought of. Our law-givers were not law Ministers. They were saints. They were Manu and Yagnavalkya and other Rishis. They were God-given, God-intoxicated men, inspired by the highest ideals. They were not aspiring for any political position. They were not aspiring for material gain.

5 P.M.

They had consecrated their lives by devotion, by Sadhana, by what I call intense devotion to eternal values, and then they promulgated the *Manu Smriti* or the *Yagnavalkya Smriti* on the basis of their Sadhana and devotion.

Mr. Chairman: It is now five o'clock. The House has to adjourn.

MESSAGE FROM RAJYA SABHA

Secretary: Sir, I have to report the following message received from the Secretary of Rajya Sabha:

"In accordance with the provisions of sub-rule (6) of rule 162 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Finance Bill, 1955, which was passed by the Lok Sabha at its sitting held on the 22nd April, 1955, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

Mr. Chairman: The House will now stand adjourned and meet again at 11 A.M. tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 27th April, 1955.