

LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)

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LOK SABHA

Tuesday, 7th September, 1954

The Lok Sabha met at a Quarter Past
Eight of the Clock

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

9-15 A.M.

PAPER LAID ON THE TABLE

DELIMITATION COMMISSION, FINAL ORDER No. 15

The Minister of Law and Minority Affairs (Shri Biswas): I beg to lay on the Table a copy of the Delimitation Commission, India. Final order No. 15, dated the 24th August, 1954, under sub-section (2) of section 9 of the Delimitation Commission Act, 1952. [Placed in Library. See No. S-295-54.]

SPECIAL MARRIAGE BILL—Contd.

Mr. Speaker: The House will now proceed with the further consideration of the Bill to provide a special form of marriage in certain cases for the registration of such and certain other marriages, and for divorce, as passed by the Rajya Sabha.

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Clause 4 is under consideration, and the House will now resume discussion on that clause. The following amendments were moved on the 2nd instant, namely, amendments Nos. 60, 61, 108, 109, 182, 227, 229, 294, 62, 112, 183, 30, 295, 2 and 113.

I would remind the House that, over this clause, and the amendments which I have just mentioned, the House has taken, up to now, four and a half hours. That means more than a working day. To be exact, it is 4 hours and 28 minutes.

I simply place this before the House, and would like hon. Members not to repeat the same arguments, though, of course, each one would like to give emphasis to the arguments by joining his voice in them. But there has to be some limit, though personally I am unwilling to have any limit on discussions in a matter of social legislation like this. But I find the same point is being repeated again and again. I would, therefore, request the Members to be short, and if there are two or three speakers, I would not mind it. Otherwise, I am afraid I shall have to accept closure now, if somebody moves it. But I would request hon. Members not to have a closure motion at least for half an hour or so. Let a few Members speak. Let there be discussion for about half an hour, and let each Member express his views in five or ten minutes, so that two or three more speakers could be accommodated. I do not think anything further is possible in a House of 399 or 350 Members present, to give a chance

[Mr. Speaker]

to everyone. There must be some time-limit.

Shri T. B. Vittal Rao (Khammam): I would like to know the number of hours allotted for this Bill. It was said by somebody that it is sixteen hours and by some others, twenty-eight hours and so on.

Mr. Speaker: That is yet under discussion. The Business Advisory Committee has not come to any final conclusions yet. It requires some further consideration, and it has called for certain further information. The Committee has also to consider the question of the House sitting for longer hours. Incidentally, that might involve the question as to the timings of the sitting. That has to be considered, and after that is considered, the Business Advisory Committee is meeting tomorrow, and I hope, by that time, it will be possible for the Committee to settle the whole programme for the remaining period of this session. So, that is one part, and I shall be able to make an announcement either tomorrow or the day after. But I am not disclosing anything very private, when I say that the Business Advisory Committee have provisionally allotted about twenty-eight hours in all for the entire discussion of the clause by clause stage, including the time taken yesterday. In other words, it will be twenty-eight hours from yesterday, and not from the time the Business Advisory Committee meets and decides. The decision will be retrospective, and it will be in operation from the time taken since yesterday. It has considered all the possible aspects that are likely to be discussed and require a discussion, and then come to this conclusion, but it is a provisional one and not final. In view of the special programme before the House, the Business Advisory Committee may as well curtail these twenty-eight hours into something else—I cannot say into how many, but it may curtail that. So, the discussion may go on from that point of view.

Clause 4.—(Conditions relating to solemnization of special marriages).

श्री भुजभुजबाबा (भागलपुर मध्य) : स्पीकर साहब, यह जो स्पेशल मैरिज बिल आज लोक सभा में चल रहा है, वह पहले ही राज्य सभा में पास हो चुका है। यह समझा जाता है कि राज्य सभा में जो सदस्य बैठते हैं, उन को विशेष अनुभव है। और विशेष अनुभव रखते हुए उन्होंने यह सिफारिश की है कि लड़की और लड़के दोनों की उम्र २१ साल की होनी चाहिये। यह उन्होंने खास कर इस दृष्टि से रक्खा है कि यह स्पेशल मैरिज एक्ट बन रहा है और इसलिये इस में खास तौर से उम्र का स्पेशल प्राविजन होना चाहिये।

[SHRI PATASKAR in the Chair]

अन्य रीति से जो विवाह होते हैं उन में कितनी उम्र होनी चाहिये, यह एक दूसरा प्रश्न है, परन्तु इस में कितनी होनी चाहिये इस के लिये यह खास प्राविजन इस में रखे गये हैं। इसलिये उन लोगों ने जो कि बड़े अनुभवी हैं, बहुत सोच विचार कर के २१, २१ साल की उम्र रखी है।

कल यहां जो बहस हो रही थी उस में जो आर्थोडॉक्स टाइप के लोग हैं वे बता रहे थे कि १२, १४, या १५ साल की उम्र में विवाह होना चाहिये। परन्तु हमारे चटर्जी साहब ने यहां पर २५ साल की उम्र रखी है। मेरी समझ में उन्होंने भी यही सोच कर के रखा है कि चूंकि यह स्पेशल मैरिज बिल है हमारे लड़के लड़कियों को इस में बहुत गम्भीरता से सोच समझ कर पढ़ना चाहिये। लीकन हमारे श्री मोर की जो कल की बहस थी उस को सुन कर मैं हैरान था। उन का कहना था कि जिस प्रकार से बाजार में कोई चीज खरीदने के लिये कोई आदमी जाता है और वहां पर ठगार्ड हो जाती है। एक दो बार उस की ठगार्ड हुई, तीसरी बार फिर ठगार्ड हो गई। फिर अनुभव से सुधर जाता है मैं मोर साहब से यह पूछना चाहता हूं कि क्या उन्होंने अपने मन में यह बात धारण कर ली है कि विवाह में भी और जब

मैंटर में भी इस प्रकार के एक्सपेरिमेंट होते चलें कि आज एक को लिया, कल दूसरे को लिया और कल तीसरे को लिया। यह तो बहुत गलत बात होगी।

सरदार हुसम सिंह (कपूरथला-भीटंडा) :
उन के साथ ठगार्ड हो चुकी हैं।

श्री भुनभुनवाला : वह बर्दा अनुभवों हैं, और मैं कहना चाहता हूँ कि उन के प्रति मेरी श्रद्धा है, परन्तु इस प्रकार की जो रीति वह जारी करना चाहते हैं वह बड़ी भयानक रीति है। मैं समझता हूँ कि उन को तो विशेषकर कोई शादी अब करनी नहीं है, अगर उन को शादी करनी होती तो मैं उन को बताता कि इस में क्या दिक्कतें हैं।

Shri N. C. Chatterjee (Hooghly):
On a point of information. He has promised us a dinner, when he registers his marriage under this Act.

Shri S. S. More (Sholapur): I refute the suggestion.

Shri N. C. Chatterjee: You are going back on your promise.

श्री भुनभुनवाला : मुझे बड़ी खुशी है कि जो कुछ मैं ने कहा था वह ठीक है। उन को तो अब विवाह करना नहीं है। आप इस वक्त जो कुछ कर रहे हैं वह उन के लिये कर रहे हैं जो होनहार यात्री लोग हैं। आप उन के साथ लव मैटर में इस तरह से खिलवाड़ करना चाहते हैं। इस तरह से तो आज एक शादी होगी, कल दूसरी होगी और परसों तीसरी होगी। यह तो इसी तरह से हो गया कि हम एक फुटबाल खरीदने के लिये गये, उस के लिये हम को ५ रुपये देने पड़े, दूसरी दफा ७ रुपये देने पड़े और ठगार्ड हो गई। इसी तरह से हमारे मारे साहब ने शादी की ठगार्ड को भी मान लिया है और कहते हैं इस में कोई हर्ज नहीं। मेरी समझ में इस प्रकार का दृष्टिकोण रखना बहुत ही भयानक है। यदि अच्छी तरह से सोच विचार किया जाय तो लड़की की उम्र १६ साल से अधिक नहीं होनी चाहिये। परन्तु यह स्पेशल मैरिज बिल है और इसमें जिस

तरह के प्रावधान रखे गये हैं उनको देखते हुए तो बड़ी उम्र ही रखनी चाहिये, ऐसी सभी लोगों की राय है।

Shri S. S. More: Let us have it at 60.

श्री भुनभुनवाला : मारे साहब कहते हैं ६०। तो मैं उनसे कहूंगा कि उनको तो शादी करनी नहीं है। ऐसा करने से जो और लोग शादी करना चाहेंगे उनको दिक्कत हो जायगी। तो वह ऐसे स्वार्थी क्यों बनते हैं। श्रीमती अम्मू स्वामीनाथन ने कहा कि जो आर्थाडाक्स लोग हैं वे शादी की कम उम्र के पक्ष में हैं लेकिन यहां वे लोग १८ साल का भी विरोध करते हैं। तो मैं यह कहता हूँ कि चूंकि यह स्पेशल मैरिज बिल है इसलिये यदि इस में २१ साल की उम्र रखी जाये तो कोई गलत बात नहीं है। अगर यह और तरह के विवाहों के लिए रखी जाय तो उस पर तो विचार किया जा सकता है। अगर कोई लड़का या लड़की चाहती है कि कम उम्र में विवाह कर ले तो उनके लिए दूसरे फार्म आफ मैरिज है। और फिर इसमें उनको अधिकार दिया गया है कि अगर बाद में वह चाहें तो डाइवोर्स कर सकते हैं। जो जल्दी शादी करना चाहते हैं वह दूसरे फार्म आफ मैरिज में शादी कर लें और फिर अगर डाइवोर्स करना चाहें तो मारे साहब से सलाह लें और अगर वह समझते हैं कि उनसे गलती हुई तो वे दूसरी मैरिज कर सकते हैं।

डा० राम सुभग सिंह (शाहाबाद-दक्षिण) :
सभापति जी, मैं इस विधेयक को दो दृष्टियों से देखता हूँ। एक तो यह कि क्या इसको विशेष विवाहों के लिये लागू किया जाय, और दूसरा यह कि क्या इसको अन्य प्रकार के विवाहों के लिये भी लागू किया जाय। अगर आप यह चाहते हैं कि इसको सब प्रकार के विवाहों में लागू किया जाय तो मैं चाहूंगा कि लड़की की उम्र को घटा कर १६ कर दिया जाय और लड़के की उम्र को घटा कर १८ कर दिया जाय। लेकिन यदि इसका उद्देश्य यह नहीं है और

[डा० राम सुभग सिंह]

इसका उद्देश्य केवल विशेष विवाहों के लिये हैं तो मैं नहीं समझता कि उम् को बहुत कम रखा जाय । इसका कारण यह है कि विशेष विवाह विशेष अवस्थाओं में होता है और उस विशेष अवस्था पर ध्यान देना चाहिये । मैं समझता हूँ कि वह अवस्था ऐसी होनी चाहिये जिसमें कि लड़का और लड़की दोनों अपनी स्थिति को संभालने लायक हों । आज जो देश की स्थिति है उसमें कोई भी लड़का २१ बरस से कम की अवस्था में अपनी स्थिति को संभालने योग्य नहीं होता है । यह कहा जा सकता है कि १४ या १५ वर्ष की अवस्था में भी लड़के अपनी स्थिति संभालने लायक हो जाते हैं । लेकिन मेरा बिज्जी अनुभव बताता है कि इसके लिये कम से कम २१ या २२ वर्ष की अवस्था होनी जरूरी है । लेकिन लड़कियों के लिए २१ से कम की अवस्था रखनी चाहिये । और उसके लिये मैं सुझाव दूंगा कि १६ के बजाय १८ रखा जाय । मैं समझता हूँ कि यह सबको मान लेनी चाहिये और इस व्यर्थ के झगड़ों में हमको नहीं पड़ना चाहिये । इसके लिए मैं चाहूंगा कि सरकार को जरा हिम्मत से काम लेना चाहिए । देश में हिन्दुओं की विवाह पद्धति, मुसलमानों की विवाह पद्धति, ईसाइयों की विवाह पद्धति वगैरह वगैरह जारी हैं । तो मैं सुझाव देता हूँ कि सरकार जरा हिम्मत से काम ले और एक ऐसा बिल लाये जो सब पर लागू हो सके और इस पार्लियामेंट पर छोड़ दे कि वह उसको जैसा बनाना चाहे बनावे । या अगर सरकार चाहे तो इसी बिल को वैसा बना दे । मुझे इससे कोई भगड़ा नहीं है । आप इसी बिल को ऐसा कर दीजिये कि यह सब विवाहों पर लागू हो और सब विवाह पद्धतियों को खत्म कर दिया जाय । अगर सरकार ऐसा करना चाहती है तो लड़की की उम्र १५ या १६ वर्ष रखे और लड़के की १८ वर्ष जैसा कि हिन्दू डाइवोर्स एंड मैरिज बिल में है या जैसा कि शारदा ऐक्ट में है । इससे हर आदमी को लाभ होगा क्योंकि विवाह के मामले में हर आदमी कीठनाई महसूस करता है ।

अगर इस तरह का कानून पास हो जाय तो लड़की के विवाह में तिलक देने और लड़की के लिये लड़का खोजने की कठिनाइयां दूर हो जायें । अभी तो विवाह धनी लोगों की चीज है । अगर किसी मिनिस्टर के यहां विवाह होता है तो ५०० या ६०० इनवीटेशन कार्ड ही छपते हैं । ऐसा करने में हमारे जैसे आदमी का तो दिवाला ही निकल जाय । अगर आप मैरिज को चीप बनाना चाहते हैं और उसको सिर्फ बड़े आदमियों की चीज नहीं रखना चाहते हैं तो यह आवश्यक है कि सबके लिये एक तरह की विवाह प्रथा रखी जाय । मैं समझता हूँ कि गवर्नमेंट ऐसा कर सकती है । लेकिन आज मुझे गवर्नमेंट में ऐसी हिम्मत का अभाव नजर आता है । गवर्नमेंट चाहती है कि जातिपात और धर्म के भेदभाव खत्म हो जायें लेकिन जो भी बिल आते हैं उनमें हम देखते हैं कि ये भेद भाव कायम रखे जाते हैं । जब मैं यह देखता हूँ तो मुझे गवर्नमेंट के प्रोफेशन और एक्शन में बहुत भेद मालूम होता है । इसीलिये मेरा सुझाव है कि गवर्नमेंट इस बिल को सब के लिये रखे और सब धार्मिक प्रथाओं को खत्म कर दे और इसमें उम्र १५ और १८ रखे । लेकिन अगर ऐसा सरकार नहीं करना चाहती है और इसको विशेष अवस्था के लिये रखना चाहती है तो १८ और २१ की उम्र रखी जाय ।

श्री बी० जी० इशाचंड (गुना) : सभापति जी, इस विधेयक के बारे में आयु का जो संशोधन हम लोगों ने आपके सामने रखा है उसके बारे में बड़ी गलतफहमी हो रही है । बहुत से लोग यह समझते हैं कि इस बिल के रास्ते में रुकावट डालने के लिये हम चाहते हैं कि लड़के और लड़की की उम्र बढ़े । मेरे सामने तो इस सदन में एक बड़ा बिचित्र दृश्य आता है । जो लोग अपने को प्रगतिशील कहते थे और जो सदा इस पक्ष में रहे कि लड़की की उम्र बढ़ायी जाय, आज हम देखते हैं कि वह कह रहे हैं कि लड़की की उम्र १६ या १८ साल रखी जाय । मैं आपको यह बताना चाहता हूँ कि जो लोग हिन्दू विवाह में १६ और १८ की उम्र रखना

चाहते हैं वे एक प्रकार से प्रागैतिक हैं क्योंकि आप देख सकते हैं कि आज दहात में जो लोग पर्सनल ला के अनुसार विवाह करते हैं वे १०, १२ या १४ साल की लड़कियों की शादी कर देते हैं। वहाँ के लिये १६ या १८ साल करना प्रगीत है। लेकिन इस स्पेशल मैरिज में तो सुशिक्षित लोग विवाह करेंगे। आर्थोडाक्स पद्धति से भी जो सुशिक्षित लोग विवाह करते हैं उनकी लड़कियों का विवाह भी आज कल १६ या १८ वर्ष में होता है। कभी कभी तो लड़की को १६ और २० वर्ष तक जाना पड़ता है और लड़के तो जब तक उनकी पढ़ाई लिखाई पूरी नहीं हो जाती है तब तक विवाह के लिये तैयार ही नहीं होते हैं। यह स्थिति तो आर्थोडाक्स विवाह करने वालों की है। अब यह स्पेशल मैरिज बिल हमारे सामने है। इसके अनुसार जो विवाह होंगे वे पर्सनल ला को छोड़ कर, धार्मिक संस्कार को छोड़ कर होंगे। इसमें पुरानी पद्धति को छोड़ कर लड़का और लड़की एक नया प्रयोग करेंगे। तो आप यह देख लीजिये कि इतना बड़ा उत्तरदायित्व आप १८ साल के लड़के और १८ साल की लड़की को देने के लिए तैयार हैं या नहीं। कुछ दलीलें दी गयी हैं कि जब एक १८ वर्ष का लड़का दश के लिए लड़ने जा सकता है तो क्या वह इस उम्र में विवाह नहीं कर सकता है। हमारे मोर साहब जो कि प्रेम के पुजारी हैं वह कहते हैं कि जैसे जायदाद का एसीनेशन हो सकता है क्या उस तरह से हृदय का परिवर्तन नहीं हो सकता है। मैं उनको बताना चाहता हूँ कि हृदय का एसीनेशन एक बहुत भारी बात है। मैं ऐसे लोगों से पूछना चाहता हूँ कि वे मतदान का अधिकार १८ वर्ष के लड़कों को क्यों नहीं देते हैं? जब आप समझते हैं कि एक १८ वर्ष का लड़का अपने उस प्रतिनिधि को नहीं चुन सकता है जिसको कि उसकी तरफ से सैंकड़ों मील दूर जा कर बोलना है, तो आप यह कैसे ठीक समझते हैं कि १६ वर्ष की लड़की और १८ वर्ष का लड़का अपने लिए लाइफ पार्टनर चुन कर सकते हैं।

Shri S. S. More: May I know from the hon. Member whether he would

have the same provision for the Hindu Marriage and Divorce Bill?

Shri U. M. Trivedi (Chittor): Hindu Marriage and Divorce Bill is not wanted at all; we oppose it fundamentally.

श्री श्री जी० ईशापांडे : आपका क्वेश्चन बहुत अच्छा है और मैं आपको उसकी बात बतलाना चाहता हूँ। मैं यही बता रहा था कि पार्लियामेंट के लिये वोट देते समय या असेम्बली के लिये वोट देते समय १८ साल के लड़के या लड़की को कि उनका प्रतिनिधि कौन हो, यह जज करने का अधिकार आप देते नहीं हैं, तो फिर जहाँ कि सारं जीवन साथी के चुनाव का प्रश्न हो मेरी समझ में १८ साल के लड़के या लड़की को अपना जीवन साथी चुनने का भी अधिकार नहीं देना चाहिये क्योंकि उन्हें दुनिया का बहुत कम अनुभव होता है। मैं मोर साहब को बतलाना चाहता हूँ कि हमारे यहाँ विवाह एक सामाजिक संस्कार है और यह सैंक्रामेंटल मैरिज एक भिन्न आधार पर प्राचीन परम्परा के अनुसार पिछले हजारों वर्षों से १६ या १८ साल की लड़की शादी करती है, माता, पिता की अनुज्ञा से वह शादी करके अपने पति के गृह जाती है जहाँ पर सास हैं, ससुर हैं, दूबरे हैं, इन सब लोगों के साथ भर घर में वह रहती है और उस बड़े भर परिवार की सारी जिम्मेदारियाँ वह वहन करती है, लेकिन यहाँ तो हम पाते हैं कि क्रान्ति का झंडा हाथ में उठा कर मनु और याज्ञवल्क्य के खिलाफ बगावत करके माता, पिता की अनुज्ञा के खिलाफ जब शादी करने के लिये लड़की जाती है तो क्या आप १८ साल की लड़की को इस की अनुज्ञा देना चाहते हैं कि वह जिससे चाहे शादी कर ले, इस बिल में आपने यह प्राविजन किया है कि हिन्दू हों या मुसलामान हों या क्रिश्चियन, उनकी शादी हो सकती है, मैं आपसे कहना चाहता हूँ कि आप ऐसा करते वक्त वास्तविकता की तरफ नहीं देख रहे हैं। मैं पूछना चाहता हूँ कि कौन सी रजिस्टर्ड मैरिज एक्ट के अन्दर १८ साल में और २१ साल में हो रही है और मैं समझता हूँ कि जब तक २० या २५ साल का लड़का या २१ और २२ साल की लड़की

[श्री वी० जी० दशपांडे]

नहीं होती हैं तब तक इस तरह की सिविल मैरिज उनके बीच में उचित नहीं हैं। और आप जानते हैं कि इस तरह की मैरिजेंज होने से एंवहकशन्स और सेडकशन्स होते हैं, जहां कि मां बाप की परमिशन के बगैर नाजायज शादियां होती हैं। आप गार्जियन या पालक की अनुज्ञा से उसको छूट दिलाना चाहते हैं जिसमें एक धर्म का लड़का दूसरे धर्म की लड़की को ले जाता है तो उसके माता पिता से बिना पछे उनको विवाह करने का अधिकार आप देना चाहते हैं, हम इसके विरुद्ध हैं और हम इस प्रकार का अधिकार उनको नहीं देना चाहते हैं।

मैं आप को अभी बतला रहा था कि सुधार के नाम पर, प्रगति के नाम पर, पुरुष स्त्रियों को आज फिर धोखा दे रहे हैं। आपने देखा होगा कि आज मुख्य चीज यह अनुभव की जा रही है कि स्त्री को एकोनोमिकली इंडिपेंडेंट होना चाहिये, खास कर ऐसे विवाह में जिसमें लड़का और लड़की अपने अपने माता पिता को छोड़ कर अपनी शादी करना चाहते हैं। हम देखते हैं कि स्त्री का आर्थिक दासत्व इस देश में इस कारण आ रहा है कि उनका विवाह छोटी उम्र में हो जाता है। १६, १८ साल की लड़की जिसके धामने पढाई की समस्या है, वह जल्दी शादी हो ज्ञान की वजह से गृहपुट नहीं हो पाती या डाक्टरों नहीं पास कर सकती, ऐसी लड़की को अगर आप शादी करने देंगे तो मैं पछना चाहता हूं कि स्त्रियों का आर्थिक स्वातंत्र्य इस देश में कैसे आयेगा? स्त्रियों को सदा आर्थिक स्वतंत्रता में रखने के लिये एक बालाकीपूर्ण और एक योजनाबद्ध पद्धति पुरुषों की तरफ से बर्ती जा रही है और स्त्रियों को इस तरह बहकाया जा रहा है। मेरी तो कुछ समझ में नहीं आ रहा है कि छोटी उम्र में इस तरह की शादी करने में स्त्री का आप कौन सा फायदा करते हैं जब इस तरह आप एक १६ और १८ साल की उम्र में उस लड़की पर मानव का भार डालते हैं जिसको उठाने में वह असमर्थ सिद्ध होती है। हमारे जैसे पुराने ख्याल के लोगों का तो मुख्य

उद्देश्य यह रहता है कि स्त्री विवाहित होने पर एक सुयोग्य सुमाता और सुगृहिणी बने और हमें तो देख कर बड़ी हैरानी होती है कि आप स्त्री पुरुषों के लिये जो कानून बना रहे हैं उसमें आप जान बूझ कर १६ या १८ साल लड़के या लड़की के लिये उम्र रखते हैं, मुझे यह आपकी कथित समानता देखकर हैरानी होती है। पुरुष, और स्त्री दोनों में समानता हो, इसीलिये १८ साल की ही लड़की हो और १८ साल का ही लड़का हो। यह समानता मेरी समझ में नहीं आती है। आयु के सम्बन्ध में श्री गुरुपादस्वामी ने जो सुझाव दिया है कि स्त्री और पुरुष की आयु में फर्क होना चाहिये और वह फर्क बहुत ज्यादा नहीं होना चाहिये। जैसा कि मैंने प्रारम्भ में बतलाया था कि ६० साल की लड़की और १८ साल के लड़के की शादी इस विवाह प्रणाली के अनुसार हो सकती है, तो मैं कहूंगा कि जैसे आपने बाल विवाह का निषेध किया, इस तरह के जरठकुमार और जरठकुमारी विवाहों का निषेध भी इस विधेयक के द्वारा करना बहुत आवश्यक है। आप एक आदर्श विधेयक विवाह प्रणाली जनता के सम्मुख रखने जा रहे हैं। पर्सनल ला के अनुसार जो विवाह होते हैं उनकी और इसकी आप तुलना नहीं कर सकते हैं क्योंकि उस तरह के विवाह में तो परिस्थिति ही भिन्न होती है और उस प्रकार के विवाह में पीत और पत्नी की जिम्मेदारी लेने के लिये दूसरे लोग आते हैं, लेकिन इस प्रकार के विवाहों में जहां लड़के और लड़की अपनी इच्छा से सिविल मैरिज एक्ट के अन्दर शादी करते हैं वहां एक तो उनकी दोनों की उम्र में फर्क होना चाहिये और दूसरे यह जो छोटी उम्र में शादी करने की बात है, मैं इसका विरोध करना चाहता हूं और पालक कौन हो इसके बारे में भी जो कहा जाता है कि १७ साल की उम्र की लड़की या लड़के को पालक की कोई आवश्यकता नहीं, इसके भी मैं विरुद्ध हूं। पालक में भी व्याख्या की जाती है। माता पिता हों तब तो ठीक है या तो कोई गार्जियन हो तो भी ठीक है लेकिन मैं उनसे बतलाना चाहता हूं कि

हमारा विवाह की कल्पना है कि "मैरिज इज ए सोरयल फंक्शन"। मैरिज एक सामाजिक व्यवस्था है जिसमें समाज, कुल और उनके कुटुम्ब के बाकी लोगों का सम्बन्ध आता है और फर्ज कीजिये कि किसी लड़की का पिता मर गया है लेकिन उसका दादा जीवित है तो आप यह कहेंगे कि उसको पालक रखने की जरूरत नहीं, मैं इससे सहमत नहीं हूँ क्योंकि मैं समझता हूँ कि उस लड़की या लड़के का गूँड फादर उतना ही उसका हित देख सकता है जितना कि उसका पिता देखता। इसी प्रकार उसके चाचा या बड़ भाई होते हैं उनको जरूर अधिकार देना चाहिये और उनको पालक मानना चाहिये। आप तो कहते हैं कि १८ साल की उम्र में, लेकिन मैं तो कहूँगा कि २१ साल की उम्र में भी जैसा कि हमारा यहां के बाकी लोगों ने भी माना है, उनका मशविरा लेना चाहिये लेकिन वह बंधनकारक नहीं होना चाहिये, और खास करके २१ साल से कम उम्र की स्त्री के इस प्रकार के नये प्रयोग में जान के हम विरोधी हैं और मैं समझता हूँ कि जो लोग स्त्रियों की आर्थिक दासता नहीं चाहते हैं उन लोगों को भी २१ साल की उम्र के नीचे स्त्रियों को विवाह करने की अनुज्ञा नहीं देनी चाहिये।

Several Hon. Members. rose—

Mr. Chairman: I think it would be better if hon. Members take less time. So many Members are already standing and each Member should not take more than five or six minutes.

Shri U. M. Trivedi: Sir, some of us were not allowed to speak even at the time of the general discussion.

Mr. Chairman: It is only on this clause that I say this.

Shri U. M. Trivedi: For four days we have been trying to speak.

Shri Gidwani (Thana): Sir, while considering this clause I would request hon. Members to take into consideration the effect of clause 19 on

this matter. Clause 19 reads like this:

"The Marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family."

That means that the boy or girl, married at the age of 18 will have to sever their connections with the family and they will have to seek their source of income. It is an acknowledged fact and there can be no doubt about that, in the situation in which we are today, if they were really realists they would really consider this aspects from the practical point of view. These marriages will take place only among the so-called advance people; and you will find, that after some time when the glamour is over, they will not be able to find any employment and they will be on the streets. That is one aspect of the question which we have to bear in mind. You have to take a practical view of the question, whether a boy at the age of 18 will be able to support his wife. Supposing they start procreating and within three or four years they manage to produce three or four children, where will he be?

Shrimati Sucheta Kripalani (New Delhi): He cannot produce four children; it is physically impossible.

Shri Gidwani: Only yesterday a person came to me who, within six years, has produced about four children.

Shrimati Sucheta Kripalani: That is all right.

Shri Gidwani: Whatever that may be, whether three children or two children within five years, it will be difficult for him to economically support his children. That is one aspect of the question before my mind.

You must also consider the social conditions in this country. There have

[Shri Gidwani]

been riots over such marriages; I need not go into the history. I know people's sentiments get estranged and it hurts their susceptibilities. Therefore, looking to the practical aspect of the question, we must be very careful in social legislation. I would therefore suggest that there should be no difference between the age of the boy and girl and it should be 21 years. Our women now, also claim equality. In this matter there should be perfect equality. Why should there be any disparity in this? Therefore..

Shrimati Sucheta Kripalani: You have no experience.

Shri Gidwani: I have no experience that is true. I have not married, but I have sufficient experience (*Interruption*). Marriage is not the only experience, or the only way of getting experience; there are other ways also.

Mr. Chairman: Leave that subject now.

Shri Gidwani: A social worker comes into contact with various people. I started my public career when I played the part of the mother-in-law in an anti-dowry drama in 1907. I know many things of this kind with which I have been associated as a social worker. You have only one experience of the biological process. I have the experience of dealing with people in social matters as a disinterested and detached person. Therefore, I do feel that if you really want that this Bill should do any good to the people, we should not reduce the age-limit and we should accept the recommendation of the Rajya Sabha. In this matter they have shown their wisdom

श्रीमती सुचेता कृपालानी : सभापति महोदय, मैं ज्यादा बक्त नहीं लेना चाहती हूँ क्योंकि कार्का बहस इस सम्बन्ध में हो चुकी है ।

यहाँ दो दिन से जाँ बहस हो रही है उम्र के बारे में, उस में दो रायें दिखाई देती हैं । एक

राय यह है कि शादी की उम्र को कुछ बढ़ा देना चाहिये । २५, २६ साल के लड़कों को और २९ साल की लड़कियों को ही शादी करने की इजाजत देनी चाहिये । दूसरी राय यह है कि उम्र को घटा देना चाहिये । एन्थनी साहब और कुछ दूसरे सदस्यों ने कहा कि इस उम्र को १५ साल कर देना चाहिये । किसी साहब ने कहा कि इस को १६ साल होना चाहिये । मैं समझती हूँ कि जो संशोधन २२७ नम्बर का पीछित ठाकुर दास भार्गव ने दिया है, जिस में वह कहते हैं कि लड़की को १८ साल और लड़के को २१ साल का होना चाहिये, वह बहुत मनुसिब चीज है ।

एक माननीय सदस्य : कृपालानी जी की राय तो यह नहीं है ।

श्रीमती सुचेता कृपालानी : इस सम्बन्ध में कृपालानी जी और मेरी एक राय नहीं है ।

Shri N. C. Chatterjee: There is a difference in the family.

श्रीमती सुचेता कृपालानी : जिन सदस्यों ने कहा है कि उम्र बढ़ा देनी चाहिये और उन्होंने जो आर्गुमेंट इस राय के देने में दिया है, कि जो लोग शादी करंगे इस स्पेशल मैरिज एक्ट के मुताबिक वह शिक्षित लोग हैं, प्रगतिशील लोग हैं, वह बहुत थोड़ी उम्र में शादी नहीं करंगे, वह बिल्कुल ठीक है और मैं समझती हूँ कि ज्यादातर लोग ज्यादा उम्र के ही इस एक्ट के मुताबिक शादी करने वाले हैं । हम लोग यहाँ पर कौन सी उम्र मुकर्रर कर रहे हैं ? हम लोग ऊपर की एज मुकर्रर नहीं कर रहे हैं, मिनिमम एज मुकर्रर कर रहे हैं । हम को इस बात का ख्याल रखना चाहिये कि पहले हमारे मुल्क में छोटी उम्र में शादी करने का रिवाज था । आहिस्ता आहिस्ता हम उस रिवाज को हटाते जा रहे हैं । जिस मुल्क की ट्रैडिशन है कि कम उम्र में शादी करे वहाँ ज्यादा उम्र शादी के लिये तै नहीं करना चाहिये । सब लोग यह मानते हैं कि एक लड़की का शारीरिक विकास १६ साल में हो जाता है, मगर हम चाहते हैं कि उस का मानसिक

विकास भी हो जाय । १८ साल की उम्र में हमारा दृश में औरत सम्पूर्ण विकसित समझी जाती है और २१ साल की उम्र में लड़के को सम्पूर्ण विकसित समझा जाता है । इसीलिये मैं समझती हूँ कि २१ साल की उम्र लड़के के लिये और १८ साल की उम्र लड़की के लिये बहुत ठीक है ।

मूझे दशपांड जी के भाषण को सुन कर बड़ी खुशी हुई जब उन्होंने औरतों के वास्ते इतनी हमदर्दी दिखलाई और दिलचस्पी दिखलाई । औरतों के मामले में अगर वह इतनी ही हमदर्दी और दिलचस्पी हर मामले में दिखलाते रहें तो हम लोग जो यहां पर औरत मंत्र हैं उन को बड़ी खुशी होगी । मैं यह कहना चाहती हूँ कि अगर हम उम्र को १८ और २१ से भी ज्यादा बढ़ा देंगे तो हमें यह डर है कि सामाजिक दिक्कतें और बढ़ जायेंगी । जब कभी कोई जल्दी से शादी करना चाहे और शादी न कर सके उससे समाज को नैतिक पतन होने का डर है । इस तरह से हमारा समाज की नैतिक हालत नहीं सुधरेंगी जो कि हमारा उद्देश्य है । इसीलिये मेरा विचार यह है कि निम्नमम एज बहुत ज्यादा ऊपर नहीं होनी चाहिये । इस से कोई कठिनाई भी नहीं पड़ेगी, जो लोग चाहे इस एक्ट के बनने के बाद भी ज्यादा उम्र में शादी कर सकते हैं । इसीलिये मैं सम्पूर्ण तरीके से पीडित ठाकुर दास भार्गव के संशोधन का समर्थन करती हूँ ।

Shrimati Sushama Sen (Bhagalpur South): Sir, I do not want to prolong the discussion because there has already been quite enough discussion as the Speaker himself remarked today.

I support the amendment of Pandit Thakur Das Bhargava that the age of the girl should be 18 and the age of the bridegroom 21. I think it is quite fit and proper that these ages should be accepted by the House. Regarding the age of the girl, the woman Members not only from this House, but outside women who have been consulted, are all of the opinion that 18 should be the age of the girl because girl is quite fit and ready for mar-

riage when she is 18. Another thing is, for the middle-class people it is rather difficult if girls are not married till a very late age. Therefore, I would support the amendment that the age of girls should be 18 and that of boys 21.

For the boys it is necessary to raise the age to 21 because their education will not have been finished and they will not be earning before they are 21. Unless a boy is earning he should not marry. Therefore, I support this amendment whole heartedly.

The Minister of Defence Organisation (Shri Tyagi): Will there not be any constitutional difficulty in discriminating between the two sexes?

Shri D. D. Pant (Almora Dist.—North East): Yes; exactly, that is my point.

Pandit Thakur Das Bhargava (Gurgaon): According to the rules of physical constitution the boy matures at 21 and girl at the age of 18.

Shri D. D. Pant: No, no; it is an offence against that clause.

Mr. Chairman: Order, order. The hon. Lady Member may begin.

Shrimati Ila Palchoudhury (Nabadwip): Sir, I shall be very brief.

Mr. Chairman: I expect everyone to be brief.

Shrimati Ila Palchoudhury: I shall be still briefer than the one who have gone before me. I fully support the amendment of Pandit Thakur Das Bhargava because it is quite right that girls of 18 and boys of 21 should be allowed to marry.

Shri D. D. Pant: Then why do you want equality?

Shrimati Ila Palchoudhury: In this there is no equality as the girl matures sooner than a boy.

Pandit Thakur Das Bhargava: You want to have maternity benefits for yourself. (Interruption)

Mr. Chairman: Order, order.

Shrimati Da Palchoudhury: Everyone knows that a boy is not really up to the mental standard of a girl of 18 till he is at least 21!

Dr. Jaisoorya (Medak): I protest:

Shrimati Da Palchoudhury: It must be admitted that this Bill touches only a fringe of society. Practically, it will not touch the rural society at all and it will only touch a fringe of the urban society. In that society a girl is able to take care of herself at 18 and if the boy is 21, the marriage can well be solemnized. It does not mean that any other ages are prohibited for the purposes of marriage by this Act. They can marry at any age, 60 and 18 or *vice versa* as an hon. Member proposed. This Act does not prevent that.

Another point that I would like to submit is that any consent of the guardian in this sort of an Act is really out of place; because these marriages will take place when the boys and girls have made up their minds and are not willing to consult their families. Although clause 19, as pointed out, will effect separation, as I said, to keep matters easy and pleasant between the family and boys or girls, the separation may be *de jure*, but it need not necessarily be *de facto*. Majority has been conferred, for all practical purposes, at 18 years, hence this particular stress on consent should not be placed because it makes the guardian's position really untenable. The children can always say: "We are major, and we can do just what we like". Therefore I think the consent clause should not be there and the age of 18 and 21 for boys and girls approved.

Mr. Chairman: I find that still a large number of Members—about a dozen more—are trying to catch my eye and are standing. I would therefore, request the Members not to force me to say, ultimately, that the matter has been sufficiently dis-

cussed. As far as possible, I do not want to exclude any Member from saying what he has to say. I will only say that Members should not try to speak on this because it is an alluring and easy subject. They must only speak if they have to add anything more than what has already been contributed. With this hint I will call upon the Member on that side, next to Shri D. C. Sharma

पंडित डी० एन० तिवारी (सारन दक्षिण) : सभापति महोदय, शादी के मामले में हम लोग कम से कम उम्र की बात सोच रहे हैं। जितनी बातें शादी के समय होनी चाहियें, जैसे मानसिक, शारीरिक तथा भौतिक, साथ में आर्थिक भी उन में सब से ज्यादा वर बधू दोनों की उम्र का सवाल महत्वपूर्ण है। और इसीलिये इस पर कुछ ज्यादा समय दिया जाय तो कुछ नाजायज नहीं है।

हम इस बिल पर बहस करते वक़्त यह भूल जाते हैं कि यह बिल कोई साधारण बिल नहीं है बल्कि स्पेशल बिल है और इसके सिद्धान्त स्पेशल हैं। इसीलिये जो साधारण सिद्धान्त हैं उनसे कुछ अधिक उम्र में ही इस बिल के अनुसार शादी होना बहुत आवश्यक है। आज जो भाई यहाँ कह रहे हैं कि एसी शादी करने वाले लड़कों और लड़कियों के मार्ग में कोई बाधा नहीं होनी चाहिये वे यह भूल जाते हैं कि वे भी गार्जियन हैं और उनको भी इजाजत देनी है। सब गार्जियन और सब लोग ऐसे नहीं हो सकते जो कि अपने लड़के और लड़की की हाँ में हाँ नहीं मिलायें। कुछ हमारे मारे साहब के तरह के भी होंगे जो उनको अपनी राय दे कर प्रोत्साहित करना चाहेंगे।

दूसरी गलत राय यह दी जा रही है कि सर्व साधारण को इस पद्धति में आकृष्ट करने के लिए यह जरूरी है कि हम इस में उम्र कम रखें। मैं नहीं समझता कि इसमें सर्व साधारण को आकृष्ट करने की क्या जरूरत है। आपने अभी सुना कि यह बिल देहातों को टच करने वाला नहीं है। जैसा कि मिसेज चौधरी ने कहा इस बिल का कोई असर देहातों में नहीं पड़ेगा।

शायद हमारे कुछ गांवों को टच कर तो कर लेकिन आम तौर से यह गांवों को टच नहीं करेगा। तो दहात वालों को और जन साधारण को इस बिल में विशेष दिलचस्पी देने के लिये हम क्या कोशिश करना चाहते हैं यह मेरी समझ में नहीं आता है। मैं नहीं चाहता कि जन साधारण इस पद्धति को अपनाये। कारण इस पद्धति में सबसे जबरदस्त जो खराबी है वह यह है कि शादी करने वाले का इच्छा फूटो इस बिल के अनुसार शादी करने पर अपने परिवार से अलग हो जाना होगा।

सभापति महोदय : इस मुद्दे पर तो बहुत कहा जा चुका है। कुछ और कहना हो तो कहिये।

पंडित डी० एन० तिवारी : इस तरह की शादी के बाद हमको अपने परिवार से इच्छा फूटो अलग हो जाना पड़ेगा। अगर आप यह समझते हैं कि १८ या २१ वर्ष का लड़का इस योग्य हो सकता है कि वह अपने परिवार से अलग रह कर अपनी रोटी कमा सकेगा तो आप यह इजाजत दे दीजिये। शिक्षित लोगों की नौकरियों के लिये दरखास्त आती है उनको आप दीखिये तो आपको मालूम होगा कि अधिकतर जितने एज्केंट्स लोग हैं वे २१ वर्ष से ऊपर ही रोटी कमाने योग्य हो पाते हैं। और इस तरह की रोटी कमाने वाली लड़कियों की उम्र भी २० या २१ से ऊपर की ही होती है। मेरा सुझाव यह है कि जब वह सेंफ सपोर्टिंग हो जाएं उस वक्त आप उनको यह इजाजत दीजिये कि वे अपने मन से शादी कर लें और उसके बाद अपना जीवन निर्वाह करें। यह नहीं कि आप कम उम्र में उनकी शर्दी करके उन पर एक भार लाद दें और वह अपनी परिवारशोभी न कर सकें। मैं समझता हूँ कि यह उचित नहीं है। इसीलिये मेरी राय में यह जरूरी है कि जब गार्जियन की राय लेने की आवश्यकता न हो तो उम्र २१ वर्ष से कम न होनी चाहिये।

हमारे बहुत से भाइयों ने कहा कि दिकयान्सी लोग, जो सुधार नहीं चाहते वे ज्यादा उम्र रखाना चाहते हैं। आज हम एक नया नजारा देख रहे

हैं। बहुत से रिफार्मर लोग जो बराबर २५ साल से सेंट्रल असेम्बली में और इस सदन में लड़के और लड़की की उम्र बढ़ाने के पक्ष में रहे हैं आज यह चाहते हैं कि उम्र कम कर दी जाय। मेरी समझ में नहीं आता कि आज उनका रिफार्म कहां गया।

10 A.M.

Shri B. S. Murthy (Eluru): The hon. Minister is otherwise busy now.

पंडित डी० एन० तिवारी : मैं कहना चाहता हूँ कि पहले जो लोग उम्र बढ़ाना चाहते थे क्या वे कंसर्ट हैं। उनको यह नहीं कहना चाहिये कि जो लोग उनके साथ समाज सुधार में आगे नहीं बढ़ सकते हैं वे रिफ्रेशनरी हैं। हम लोग जो बहुत आगे नहीं जाना चाहते हैं उनका विचार है कि जब लड़की और लड़का जवाबदेही लेने के लिए तैयार हो जायें तब उनकी शादी हो। धार्मिक पद्धति से यह पद्धति अलग है। धार्मिक पद्धति में बिना गार्जियन की राय के शादी नहीं होती है। इसीलिये यदि उसका मिलान इससे किया जाय तो गलत होगा। इसीलिये मैं यह सुझाव आपके सामने रखना चाहता हूँ कि लड़कों की उम्र २१ वर्ष से अधिक होनी चाहिये लेकिन लड़कियों की उम्र जब कंसर्ट के साथ न हो तो २१ वर्ष हो और कंसर्ट के साथ १८ वर्ष हो।

Shri D. D. Pant: I only submit that this amendment offends against the Constitution which confers equal rights on both sexes. You are conferring the right on a girl to enjoy married life at the age of eighteen but why are you going to deprive the boy of the same right?

Pandit Thakur Das Bhargava: I would like to know whether the hon. Member wants maternity benefits for himself on the basis of equality.

Shri D. D. Pant: That is quite a different thing. My submission is that the clause if amended in this manner will be ultra vires of the Constitution.

The Minister of Law and Minority Affairs (Shri Biswas): I would just draw the attention of the hon. Member to article 15, sub-article (3), which says that "Nothing in this article shall prevent the State from making any special provision for women and children".

Shri D. D. Pant: But this is conferring a special right on them.

Mr. Chairman: I do not think there is any constitutional point involved here.

Shri Sadhan Gupta (Calcutta-South-East): Nature itself is *ultra vires* of the Constitution.

Mr. Chairman: I would like to close the discussion on this clause at about 10-15 A.M.

Shri U. M. Trivedi: In the discussion that we have had so far, one fundamental thing was brought out. As the Law Minister has been putting it, this is a Special Marriage Bill, and it is not a Bill meant for everybody.

Shri Biswas: It is meant for everybody.

Shri U. M. Trivedi: He cannot talk in two languages. His reference was that in the Special Marriage Act of 1872, which is being repealed by the provisions of the present Bill, we had a provision that anybody who wanted to marry under it had to make a declaration that he was not a Hindu, nor a Mohammadan, nor a Jain, nor a Sikh. Therefore, let us be honest about it and for the sake of this marriage, do not put up a foundation on a false statement, and it is with that object that the Special Marriage Bill has been brought forward now. As he has also told us—and we are also cognisant of the fact—that we are following this Bill with the Hindu Divorce and Marriage Bill, where similar provisions do exist, and that is the law which is coming up and which will be applicable to all Hindus. This Bill, as its name suggests, is a Special Mar-

riage Bill and those who want to marry under it must certainly have mature consideration of all the consequences that are going to follow from following the special procedure that is laid down here, and it cannot be denied that the great majority of the people living in this country are Hindus. Therefore we have to consider it with greater emphasis on our cultural development. We have got a saying in Gujarati that up to the age of 25 a man is passing through the stage of an ass or donkey. Up to the age of 25 you are not able to form correct ideas of worldly affairs. You may be well up in your studies, you may study books on history, economics or mathematics and pass examinations. But the same does not apply to your judgement on worldly affairs.

Particularly in regard to marriage, so many consequences follow from it. The first important thing that a man should decide is whether a girl or woman whom he is going to marry is an idiot or not; you do not know at the age of 25 the difference between an idiot and an imbecile.

Shri D. D. Pant: Pitt became the Prime Minister of England at the age of 25.

Shri U. M. Trivedi: But he was not an idiot.

Many people do not develop psychologically before the age of twenty-five with the result that they do not know the difference between an idiot and an imbecile. We know that under the Penal Code a boy below the age of seven is treated on a par with an idiot. That is why whatever he does is not an offence. In the case of a boy under the age of twelve who commits an offence, it has to be proved that he has developed sufficient intelligence as to realise the consequences of his action. We do not know whether the persons who are going to take advantage of this measure will be persons whose intellectual ideas of the world would have developed to such an extent.

as to realise the consequences of their actions. So, when we are providing for a type of marriage which is not of the normal or usual type, and when the consequences of that marriage is to deprive a person of the right of inheritance of the Joint Hindu family, with other attendant consequences not only upon themselves but also upon their progeny, why do you want to force those who are merely of the age of eighteen to formulate a particular type of decision which might affect them at a later stage?

I therefore, say that although I would have ordinarily agreed with what Pandit Thakur Das Bhargava has suggested by way of amendment, I would go a little further and support the amendment of Shri Chatterjee that until the parties have crossed the stage of ass or donkey (that is 25 years) we should not permit them to take recourse to this special law, with all its serious attendant consequences.

Shri S. S. More: So, this Bill is for the prevention of marriage of donkeys!

Mr. Chairman: Let us not have cross-talks. That shows we are treating the subject lightly. While on the one hand hon. Members complain that this is an important provision and should have more time, I find them indulging in laughter which goes to show that they are treating it lightly.

Shri U. M. Trivedi: I endorse every word that has fallen from your lips.

In fact, my hon. friend Shri More has been very flippant in this respect and I expect that he will not proceed in that way.

Shri S. S. More: It is the inviolable right to Mr. Trivedi to be flippant.

Shri U. M. Trivedi: The other question to which I want to draw the attention of the House is to the amendment suggested to part (d)—that is degree of prohibited relationship.

Mr. Chairman: We are now dealing only with sub-clause (d).

Shri U. M. Trivedi: As my hon. friend Shri Jhunjhunwala has very rightly put it, here we are not dealing with goods or chattels; we are not dealing with merchandise—so that you cannot say: "well I have committed a mistake in my selection, I return this and take another."

There is an unfortunate belief among some of our friends here that unless we follow western ideas we are not progressive. But in order to be progressive it is necessary that we should give up all our intelligence? In England, we know, a boy is considered a minor up to the age of 21. It is not fair to impose upon us this position that a boy or girl attains majority at the age of 18. We ourselves do not know that intellectually we are far superior to the other races. It would have been better if the age of majority had been fixed at 21 in India also.

But so far as the question of marriage is concerned, it requires rather deep and serious consideration of the consequences that follow. It is not a matter like casting your vote like a flock of sheep and we done away with it. It is much more important than casting your vote. We have fixed the minimum age for the exercise of franchise at 21. I say it is but reasonable that we should raise the age of marriage under this measure to 25.

Shri Barman (North Bengal—Reserved—Sch. Castes): Sir, this is a very controversial provision in the Bill. At the outset I should admit that there is much for in the amendment tabled by my hon. friend Pandit Thakur Das Bhargava.

Dr. Rama Rao (Kakinada): It is better to mention the age suggested rather than give the number of the amendment.

Shri Barman: On account of the differences of opinion prevailing

[Shri Barman]

among hon. members, I feel that the amendment moved by my hon. friend Shri Venkataraman is a *via media* and a most sensible one. In the Select Committee Report on the Special Marriage Bill, 1952, you will find that the Committee after giving consideration to this all-important matters recommended...

Mr. Chairman: Which is the number of that amendment?

Shri Venkataraman (Tanjore): Amendment with regard to guardian is 291 and the amendment with regard to age is 295.

Shri Barman: ...by a majority that the parents should have completed the age of 18 years. And then the next clause provides that "each party, if he or she has not completed the age of twenty-one years, has obtained the consent of his or her guardian if any to the marriage".

Here I beg to submit that two things are provided. First of all, there may be a constitutional question or not, but one thing is clear, that the age of both the girl and the boy has been put down at eighteen. The Upper House of course has changed it to twenty-one, and therefore this controversy has arisen here. I think that we should consider between the two limits, eighteen and twenty-one, equally for the age of boys as well as for girls.

It is very difficult to say at what age each and every girl will attain puberty; so also, in the case of boys it is difficult to say when each and every boy will attain maturity. It may be that under the law the girl is supposed to attain majority at the age of eighteen. But well-developed girls attain puberty before that age. And under the ordinary laws prevailing according to each religion, the age-limit for marriage is there which is below eighteen.

So we cannot simply lay down a hard and fast rule that because each and every girl attains puberty at the

age of eighteen, or in the case of boys they attain maturity at the age of twenty-one, no boy or girl should be allowed to marry below that age. I think it is not very sound for us to say that dogmatically. Each case varies according to circumstances, climate, health. But we must lay down a certain lower limit below which we may say that we shall not allow any marriage under this Act to be performed.

This is a Special Marriage Act. In such cases I think that eighteen should be the age-limit below which boys or girls should not be allowed to marry.

Now the question has arisen that a boy does not attain maturity until he is twenty-one years of age. Apart from the submission that I have already made regarding individual variations, there is one safeguard here. That is if the boy or girl—in this case let me say the boy—has not attained the age of twenty-one, if the father or mother be living or there is a court guardian, then it is their concern to see whether the marriage will be a judicious one, will be for the happiness of the boy, and they will look after the boy's future interests and future happiness. So that is safeguarded.

The question remains as regards orphans. It is very difficult for this whole House to take responsibility for all the orphans under different circumstances. You may remember that on the floor of the House, Mr. Anthony has posed a question. He has said that under the present circumstances in our educational institutions under the co-education scheme boys and girls mix freely together. The question of age of puberty, as I have said, is a debatable one. But in a case where a boy and a girl had contacted with each other and something which was not desirable had happened, then what is the fate of that union? Suppose they belong to two communities. You are not allowing the boy and

girl to contract this special marriage till they are twenty-one. And if an issue is born, say, before the marriage is solemnized that issue will become illegitimate. How is this House going to provide for such circumstances? It is not of course possible to provide for all contingencies. But Mr. Anthony's proposition is not to be flouted with levity.

I think that in the case of boys and girls who have got no court guardian, no father, no mother, who are orphans, it would not be right for us to say that until the boy attains twenty-one years of age he will not be allowed to marry. They are alone in this world. Nobody is taking responsibility for them. So even if they be below twenty-one years of age and there is no father, no mother, no court guardian, let them take the consequences of their own acts.

Considering all these factors I personally think that the amendment moved by Mr. Venkataraman is a sound one and we should support it.

Mr. Chairman: Shri D. C. Sharma. I think you are probably the last speaker.

Babu Ramnarayan Singh (Hazari-bagh West): I also want to speak.

Shri A. P. Sinha (Muzaffarpur East): The Speaker said at 9-30 that this will be discussed only for half an hour. Now it is almost an hour.

Shri D. C. Sharma (Hoshiarpur): I have seen on the floor of this House a lady Member differing from her husband so far as this clause is concerned, and I therefore make bold to differ from the Law Minister.

Mr. Chairman: May I make an appeal to the hon. Members. Some section of the House think that the matter has been discussed very thoroughly. I myself have got that feeling and in fact wanted to close it at 10-15, but I find that even important Members are trying to rise and catch the eye of the Chair. I suggest that the hon. Member may finish within two or three minutes if he has

anything new to say. Otherwise what is the good of forcing me to resort to some other method?

Shri D. C. Sharma: Most of the hon. Members of this House, when they come to prescribe the age of marriage for boys as well as for girls, try to keep it low. I think this measure is neither a reformist measure nor an orthodox measure. It is neither fish, nor flesh, nor fowl. I would think that the provision of consent should be done away with altogether.

Mr. Chairman: We are not concerned with it at this stage. We are only on clause 4, sub-clause (c), as to what should be the age at which these people should be allowed to marry.

Shri D. C. Sharma: I am arguing on that point that there should be no element of consent in it, because the consent of the parents will be obtained under duress either by the girl or by the boy. Because, I know the parents will find it very difficult to differ either from the girl or the boy when they are in a mood to marry under all circumstances. I would therefore say that we should have one flat clause here and we should do away with the element of consent altogether. Let the boys and girls be free parties to contract the marriage if they so desire. Please do not put the parents in a false position. This is the first point I want to make.

What does the past experience say? We have had the Act in India for a very long time, and I think a large number of marriages have been performed under this Act. Please enquire—it is a statistical approach or an approach of experience—please enquire from those persons who have married under the provisions of this Act what their relative ages were when they married. If you do that you will come to the conclusion that there were very few persons who married under this Act when the age of the girl was eighteen or when the age of the boy was twenty-one. I would therefore say that when you

[Shri D. C. Sharma]

are prescribing that age limit, you are going against the experience that we have accumulated under this Act for the last 50 years or more. I do not remember the exact number of years.

So far as this clause is concerned, I would say that we should look at it from the psychological point of view. The psychological point of view is this. We should give the boy and the girl the utmost freedom to marry when the urge to marry is in them and we should not put shackles in their free choice. I think one of the tests of civilisation, if I can understand civilisation in the way in which people understand it today, is this. As civilisation in the modern sense of the word progresses, the age of marriage gets levelled up. Students of anthropology know it. (*An Hon. Member*: What is your experience?) You study the conditions of marriage which prevail among the Tribes, whom we, in a sense of superiority, call primitive. I do not call them primitive. You study the science of anthropology. You will find that there has been a tendency all along the line to raise the age of marriage among boys and girls. This is what anthropology tells us. I have been connected with an organisation which can call itself a reformist organisation among Hindus. I have been told that the normal age for a young man to marry is 25. People say that this is the voice of reaction.

Shri M. S. Gurupadaswamy (Mysore): When did you marry?

Shri D. C. Sharma: I married when I was 13 years old.

That does not mean anything.

An Hon. Member: These are personal questions.

Mr. Chairman: It is not relevant also.

Shri D. C. Sharma: Some religious reformers in our country have said and said emphatically, and I know

their followers are always saying this that no young man should be allowed to marry before he is 25. I think there is much wisdom in that, much virtue in that, much goodness in that. You cannot marry only because you feel the biological urge. You should marry when you have the means to support your wife; you should marry when you have acquired the means to run a home; you should marry when you have acquired the means to look after your family. You can see young man and young woman doing their best for their family; for making the marriage a success? if this is the voice of reaction that a young man should be 25 years old and the girl's age should be 21, I think India should afford to be reactionary, because I think this is not the voice of reaction, but is the voice of reform.

I was referring to psychology. Those who have read the life of President Wilson will know this. When he became a widower, he wanted to marry again. He met a lady and proposed to her. The lady said to him, "We have not known each other for a long time, when I have not known you for a sufficiently long period, how can we marry each other." I think we should not put a premium upon the half-baked love which passes in young men for love. It should be a case of intimacy, a case of knowledge and understanding. I do not think that this kind of understanding will develop if you put the age limit very low.

My friend asked me, what is your experience as a teacher. My experience as a teacher is this. If you keep the age limit low, as it has been suggested by so many persons here, I submit that our educational institutions will not function in that kind of atmosphere which is needed for running the educational institutions. I do not want to elaborate that point. I have been teaching to classes which consist of boys and girls and I have some experience of institutions where you have co-education. I know all

that. I have also read books which have been published on the subject including the famous one by Judge Lindsay, published in the U.S.A. As a teacher, I would say that you should not bring down the age limit. You should keep the age limit for boys at 25 and for girls at twenty-one. Unless you do that....

Shri Bhagwat Jha Azad (Purnea *cum* Santal Parganas): No, no.

Shri D. C. Sharma: It does not matter, because I know there are some persons who do not understand psychology. If you do not do that, I will tell you, you will be putting a premium on this course expression, with which some of my friends may be familiar, *calaf love*. I would say that love should not be treated as a hothouse plant which springs up suddenly and which matures suddenly. Love should be taken as a plant of slow growth. Unless it has been tested by time, it should not be taken notice of.

I say, here is a measure which the hon. Law Minister has said is a reformist measure. Quite right; I agree that there are some persons who do not want to marry under the old law. We want to give them a chance to live. But, if it is a reformist measure, I would say that the Law Minister should go the whole hog and he should make it a really reformist measure. He should not make it a measure of compromise: half of orthodoxy and half of reform or 75 per cent of orthodox and 25 per cent of reform.

Acharya Kripalani (Bhagalpur *cum* Purnea): Mixed economy.

Shri D. C. Sharma: There may be mixed economy in industry. There cannot be mixed economy in marriages, mixed economy in that sense. I would therefore say that the voice of experience dictates, our knowledge of other sciences dictates that the age limit for boys should be put at 25 and the age limit for girls should be twenty-one and that there should be no question of consent of the guardian

which, I think, will be a very very harsh thing today.

Shri A. P. Sinha: I beg to move:

"That the question be now put."

Mr. Chairman: There is a motion.

"That the question be now put."

I think there has been sufficient discussion. I will put that motion to the House. That would only mean that the amendments which are under discussion will be put to the House after this motion is passed: not that the whole clause will be put before the House. The question is:

"That the question be now put."

"That the question be now put."

Mr. Chairman: I will try to put these amendments serially. I will put each amendment separately, because they are of different kinds. I will take up amendment No. 60.

Some Hon. Members: They should be read also.

Mr. Chairman: The question is:

In page 3, for line 6, substitute:

"(c) the parties have completed the age of twenty-one years and the difference of age between the parties does not exceed fifteen years;"

The motion was negatived.

Mr. Chairman: Then, we take up 61.

Shri Biswas: I thought, if I may say so. Sir, that I would be given a chance to reply after you accept the closure.

Mr. Chairman: Certainly. I would say that I had no desire to exclude the Law Minister from making a reply. Normally, I should have called upon him. But, he had said that he left it to the House and I therefore thought that probably he did not want to speak.

Shri Biswas: I only wanted to make the matter easier.

Shri V. G. Deshpande: What about this amendment?

Mr. Chairman: I think it may stand. It does not matter. There are so many amendments of the same nature.

Shri V. G. Deshpande: It should be put again.

Shri Biswas: I was only submitting that I would place the matter in an easier form before the hon. Members so that they may follow how it stands. I have, for instance, made a table as to which amendments are of a similar nature and so on. If I give that information, it will be helpful to the House. I have divided the amendments into different categories. One category wants twenty-one years and a disparity of the age between the two not to exceed fifteen. That is amendment No. 60. Other amendments which suggest twenty-one for the man and eighteen for the woman are: Nos. 61, 109, 227, 111 and 30. Then, amendments which suggest eighteen are: Nos. 108, 110, 182, 62, and 298 (in List No. 7. You will find it in the second Consolidated List).

An Hon. Member: What about Amendment No. 112?

Shri Venkataraman: It is also included in Amendment No. 62.

Mr. Chairman: I think they are the same.

Shri Biswas: I did not take it separately. Sixty-two includes that, yes.

Then, there are some amendments which say the age should be eighteen, but only the male has to obtain consent if he is below twenty-one, i.e., amendment No. 108. It says, age eighteen for both, but consent only for the male if he is below twenty-one. Amendment No. 110 wants eighteen, but consent in the case of both if below twenty-one. Amendment No. 182 is the same as amendment No. 108—only male has to obtain consent if below twenty-one. Also amendment No. 298—eighteen subject to consent.

Mr. Chairman: I find a reference is made to some of the amendments which, I am told, have not been moved. The only amendments moved are: 60, 61, 108, 109, 182, 229....
(*Interruption.*)

Shri Biswas: I thought all the amendments in the list had been moved. I am taking the amendments which appear in the list. I did not follow which of these amendments had been actually moved.

Then, there are some special amendments regarding disparity of age. Amendment No. 60 says: difference not to exceed fifteen. Same with amendment No. 294, difference not to exceed fifteen years. Amendment No. 341—there also the difference is not to exceed fifteen years.

Then, other ages have also been suggested. For instance, amendment No. 229 of Shri Frank Anthony—male eighteen but not twenty-one, female fifteen but not twenty-one, that is to say, without consent. If you are above twenty-one, no consent, but if you are below twenty-one, you require consent of father, guardian of the person or of mother. Amendment No. 341 also suggests disparity of fifteen years between the ages of the two parties.

Mr. Chairman: Where is 341?

Shri Biswas: It has not been moved.

And, then, Mr. Sadhan Gupta—Amendment No. 424. Has he moved that? It is not moved. I need not deal with that.

These are the

Shri N. C. Chatterjee: What about the progressives? I wanted the age to be raised. Amendment No. 183.

Shri Biswas: Then the other class of amendments. Amendment No. 228 that is to say, male twenty-four, female twenty-one.

Mr. Chairman: Amendment No. 228 is also not there.

Shri Biswas: Not moved, I see.

Mr. Chatterjee's amendment, i.e., No. 183. He suggests twenty-five.

Amendment No. 423 has not been moved. It also asks for twenty-five for males and twenty-one for females, but that has not been moved.

As you pointed out, this question of minimum age for marriage we have been debating for about five hours and a half now.

The first question which arises is whether there should be a minimum age prescribed at all. If so, whether it is to be by legislation, or it should be left to the discretion of the parties in every individual case—that is the next question. Then, if by legislation, should it be directory or mandatory—that is the third question.

Now, on this question as to whether there should be a minimum age, so far as the Special Marriage Act is concerned, there has been a minimum age prescribed since 1872. So, for nearly eighty years....

Some Hon. Members: Eighty-two years.

Shri Biswas:...this rule has been there and has been found working quite all right. Some hon. Members wanted to know the figures showing at what age marriages are actually solemnized under the Special Marriage Act. Unfortunately, such statistics are not obtainable, for the very simple reason that the declaration which was required to be given by the parties under that Act merely provided that the bride and bridegroom must both say that they had completed the respective ages prescribed. In the case of the bride, the age was lower, while in the case of the bridegroom it was a little higher. The bridegroom had to say, 'I have completed my age of eighteen years,' while in the case of the bride, she would have to say, 'I have completed my age of fourteen years.' What exactly is their actual age is not required to be stated, and therefore, we have no statistics to show whether the marriages took place at the age of fourteen, which was the minimum age for the bride, or above, or at the age of eighteen which was the minimum

in the case of the bridegroom, or above. We have not got those figures.

Now, what should be the minimum age? On that point, opinions are bound to differ, as is reflected in the debate in this House over this question. It will all depend upon the view you take of the whole matter, your concept of marriage, and the basic considerations which ought to guide you in coming to a decision on this question. As my hon. friend Dr. Jaisoorya has said, there are several aspects. The biological aspect is one, the social aspect is another, and so on.

Shri N. C. Chatterjee: You added the emotional also.

Shri Biswas:...or whatever it is. It all depends upon the angle of vision from which you look at it.

Take the Hindu law, for instance. The ancient Hindu law did not prescribe a minimum age at all; it only prescribed the maximum. A girl must be married before she attains puberty, and if the father does not give her away in marriage even after she has attained puberty, she is given the liberty to marry herself without the father's consent or authority. So, the minimum age was not prescribed, and it was regarded as the most meritorious act if a father gave away his girl in marriage, at the age of nine or ten. What was behind it? This is not something which we can simply dismiss as....

Shri N. C. Chatterjee: Antediluvian.

Shri Biswas:...antediluvian or mediæval or something like that. There was a good deal of reason behind it. After all, what was the conception of marriage in those days? A marriage which was solemnized at the age of nine or ten was not marriage in the sense in which we understand it. As a matter of fact, the idea of marriage was that it should effect a permanent union, and the most effective way of securing that object would be to bring a girl into the family at an age when she will unconsciously feel as if she was a limb of that family, a member

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of that family as, if she was born into that family. That was the idea. In order to secure that closeness...

Shri N. C. Chatterjee: Grafting.

Shri Biswas:.. of tie between the bride and bridegroom, this was the expedient resorted to. It was grafting or transplanting, if you like to put it that way. If you want to graft a branch of one tree into another, you do not take the...

Shri A. M. Thomas (Ernakulam): you do not take the old.

Shri Biswas:...old. That means that grafting is always with fresh material. So, the younger you marry the girl and get her over to the bridegroom's family, the better. But although the marriage took place at nine, the bride and bridegroom did not come together in the sense in which parties to a marriage come together now, till the girl had attained puberty, and even after that, till three years had passed since the attainment of puberty. And there were ceremonies actually performed to mark these different stages. So, at the time the girl was mature enough for maternity, she was sufficiently old, and the bridegroom also had grown sufficiently old by that time. By way of interesting information, which I just collected the other day, I may say....

Shri B. S. Murthy: Does the hon. Law Minister know that in those marriages, the girl, even though she was married at the age of nine, was not brought into her father-in-law's family, until she had given birth to three or four children?

Shri Biswas: That is what I am pointing out. Although there was the formal marriage solemnization, she was not brought into that house until some time after that. The parties did not come together soon after marriage. That is the idea. (*Interruptions*)

Mr. Chairman: The hon. Minister is only giving some information.

Shri Biswas: Acharya Kripalani has suggested the age of thirty-five. Well, some of us were inclined to laugh it away, and we were actually citing Shrimati Sucheta Kripalani as the best witness against him. As a matter of fact, when I was reading this book I found that something like that was actually the age which was prescribed for males, according to our *shastras*. It was pointed out also that the law of eugenics was nowhere studied more carefully than here.

An Hon. Member: What is that book?

Shri Biswas: This is Jayaswal's book on Manu and Yagnavalkya. I shall read the whole paragraph, which is as follows:

"Modern statistics have shown that a young man produces the maximum of bad and the minimum of good children, while a young woman produces the greatest number of good and the smallest number of bad children. A disparity between the ages of the husband and wife so arranged, that when a man is fully matured and the woman, young, produces the least number of wicked citizens. The Manava Code fixes the age of marriage at thirty for the man and twelve for the girl, that is, at the age of motherhood, the girl would be about seventeen or sixteen, and the man thirty-five."

Incidentally, I may say that thirty-five is the age which has been mentioned by my hon. friend Acharya Kripalani. Jayaswal continues:

"Other age limits are so arranged that a man could not be a father before the age of thirty-two. There is evidence that the girl's age was lowed by Kautilya, on account of a policy for population."

So, you see that there is authority in our old *shastras* for some of the suggestions which have been made on the floor of the House today.

Shri S. S. More: They are standing by the old authority. There is nothing else.

Shri Biswas: That was the actual practice that was followed in those days.

Shri S. S. More: But the social conditions were entirely different.

Shri Biswas: Exactly. I am not suggesting that the social conditions have not changed. But I am pointing out that...

Shri G. P. Sinha (Palamau *cum* Hazaribagh *cum* Ranchi): On a point of information. May I know from the hon. Law Minister what the average age of modern man in India is?

Shri S. S. More: Twenty-six.

Shri Biswas: I am sorry I cannot answer that question. What I am pointing out is this. Opinions as to the proper age for marriage will differ, according to the various considerations which you apply. When you can justify the age of thirty, thirty-five, twelve or sixteen, and so on, you can justify other age-limits as well. I was only pointing out this, because I found it so interesting that I thought I should place it before you. I am not suggesting that you should follow it or that the social conditions today are such that we can adopt and adapt all that we find in those earlier days.

If the object of marriage is to produce healthy progeny, then, of course, a person will fix the age at a certain limit. If, on the other hand, the other test is applied, namely, that they should be of sufficient age to be able to realise their responsibilities and the status that they are going to acquire, and therefore, they must be old enough to understand what is marriage, what are its implications, etc., then, you must fix the age at a certain level. If a third test is applied, that

the age should be fixed in accordance with existing social conditions, to which Shri Frank Anthony referred then you will have to fix the age at a certain other level.

Now, taking a realistic view of the situation, you find boys and girls coming together at a very young age. Is it right to throw them into each other's company at an immature age, so to say, and at the same time not to be prepared for the consequences? Therefore, the best thing would be to fix the age at such a limit that you can avoid the undesirable consequences, and at the same time, secure the happiness of the parties who want to contract a marriage. All sorts of arguments may be used in support of, or against, any particular view. We have got to judge the matter with reference to two important facts: this is a special marriage law which is to apply to all, irrespective of religions, and if there was a necessity for prescribing a minimum age in any law, it should be in this law. I have told you about the personal law of Hindus; you have the personal law of Muslims: there you find the attainment of puberty both for male and female as the age of marriage. The age of marriage must not be confounded with the age of majority. The Indian Majority Act expressly excludes marriage, dower, adoption and things like that from the scope of that Act. Therefore, in these matters in India, parties are at liberty to fix their own age for marriage, adoption, dower and so forth.

Pandit Thakur Das Bhargava: The Sarda Act fixes the age for everybody.

Shri Biswas: Subject to legislation of course I was going to refer to that. Under the Indian Majority Act, these matters were left out of the scope of that enactment. So far as legislation is concerned, there is the Child Marriage Restraint Act—known as the Sarda Act. There, of course, the ages were eighteen and fourteen, and the latter was subsequently amended to

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fifteen. But subject to that, the parties were left to be governed by their personal laws. Amongst Hindus, as I have said, there was no minimum age prescribed, but the maximum was laid down. Amongst Muslims, the age of attainment of puberty is the age for marriage, both for boys and girls. Then, it is interesting to find...

Shri Borawat (Ahmednagar South): Is there no age limit there?

Shri Biswas: Attainment of puberty only; no age.

In Travancore, there is an Act and there the age for the male is twenty-one and for the female eighteen, subject to consent in the case of the female, if she is under twenty-one. Then in Bombay, under the Anti-Bigamy Act of 1946, a 'minor' is defined as a boy or girl under sixteen, and it is only if they are not minors that they will be competent to marry, that is, the minimum age would be sixteen in that way. Then the Madras Act imposes a penalty if anyone marries who is under eighteen; so there eighteen is the minimum age. Then under the Indian Christian Marriage Act, which was referred to by Shri Anthony, the man is to be above sixteen and the woman thirteen. In the Christian Marriage Act, there is no provision regarding the age of consent, but it is to be determined according to the law as in England at the time of the marriage. The law in England has undergone a change. Now, the English law, following the canon-law in this respect, originally prescribed fourteen as the age of marriage for boys and twelve as the age of marriage for girls. Under the recent Act, the English Marriage Act of 1949, sixteen is the age for both. Under English law where either party is a minor, consent of parents or guardians is required.

Shri S. S. More: If the consent is unnecessarily refused, then the consent of the court.

Shri Biswas: That is under the new Act. But so far as the cases under the old law are concerned, what I find is this, that the requirement of consent has been held to be merely directory and want of consent would not generally nullify the proclamation of banns.

11 A.M.

Shri N. C. Chatterjee: That is so even under the Sarda Act.

Shri Biswas: It does not render the marriage invalid. Sarda Act imposes a penalty.

On this question of consent, it may be asked, 'Well, why should there be consent?' As a matter of fact, I believe my friend, Dr. Jaisoorya, suggested that there should be as few impediments in the way of marriage for the sake of the happiness of the parties as possible. In this connection, I might just quote a very interesting extract from Sir William Jones'. He was actually talking about the Hindu law of guardianship in marriage. He said:

"All unnecessary restraints upon love, which contributes so largely to relieve the anxieties of a laborious life, and upon marriage, which conduces so eminently to the peace and good order of society are odious in the highest degree".

At the same time, he says:

"Yet at Athens, whence arts, law, humanity, learning and religion are said to have sprung, a girl could not be legally united with the object of her affection without the consent of her *controller*, who was either her father or her grand-sire or brother or her guardian".

So the necessity of a guardian was recognised as early as that in Greece itself.

Pandit K. C. Sharma (Meerut Distt.-South): Woman is much more old now; she does not need a controller.

Shri Biswas: If the minimum age is fixed—whatever the figure may be—and then if the party, although satisfying that requirement, is still under a particular age, you should obtain consent. That meets the objection.

One of the considerations suggested for the age of marriage is that you must be old enough to realise the responsibilities of the act. If you think eighteen—or whatever you may fix—is much too low for that purpose, bring in the guardian who will advise the parties, and they should act with the consent of the guardian. That is the only object for which consent is required; otherwise, if you think eighteen is an age at which a man or woman is old enough to understand what he or she is doing, then of course the question of consent does not arise. It is not like fixing the age of majority for other purposes, as under the Indian Majority Act. But this is something which affects the happiness and future life of the two parties and, therefore, they must certainly realise the consequences and the implications of the step they are taking. If you think that the age you fix, the minimum age, is not sufficiently high for that purpose, then require the consent of the guardian. That is the idea. If you make it twenty-one or twenty-four or twenty-five, certainly the question of obtaining the consent of anybody else does not arise.

These are the matters which I wanted to place before the House. As I said, after all, the House will have to decide. There are different opinions and we shall follow the opinion of the majority as reflected here.

Shri Lokenath Mishra (Puri): What is your final opinion?

Shri Biswas: So far as my opinion is concerned, it is embodied in the Bill

as it was introduced—eighteen, subject to consent if the parties are below twenty-one. That was accepted by the Joint Committee; that was reversed by the Council of States, as it was then called. I hold by the opinion which was embodied in the Bill as introduced and Mr. Venkataraman has given notice of an amendment which seeks to restore the provision in the original Bill.

Shri Lokenath Mishra: Good. Then we will vote for it.

Shri N. C. Chatterjee: May I suggest one course? Would it not be better if, in putting the amendments to the vote of the House, you start with the older age-limit? Somebody has suggested twenty-five. You will put that to the vote first; if it is not carried, then you take up the amendment for twenty-one; if it is not carried, then go to eighteen.

Shri Venkataraman: Mr. Chairman, on the other hand, I would suggest that you put the lower age-limit and if it is not carried.....

Mr. Chairman: I think the much better course would be to put them one after another.

Pandit Thakur Das Bhargava: Supposing more than one amendments are carried? So, only such amendments should first be put as would not eliminate others.

Mr. Chairman: I do not think it will be so. I have ascertained that there are only a few which are identical. I have already put amendment No. 60 to the vote. I will now put amendment No. 61.

The question is:

In page 3, for line 6, substitute:

“(c) the male has completed the age of twenty-one years and the female the age of eighteen years.”

The Lok Sabha divided: Ayes 118; Noes 106.

Division No. 1]

AYES

[11-07 a.m.]

Achalu, Shri
 Altekar, Shri
 Amrit Kaur, Rajkumari
 Asthana, Shri
 Baldev Singh, Sardar
 Barupal, Shri P. L.
 Basu, Shri K. K.
 Bhargava, Pandit M. B.
 Bhargava, Pandit Thakur Dass
 Bhatkar, Shri
 Buchhikotaiah, Shri
 Chakravarty, Shrimati Renu
 Chandak, Shri
 Charak, Th. Lakshman Singh
 Chatterjee, Shri Tushar
 Chatterjee, Shri N. C.
 Chaudhuri, Shri T. K.
 Chowdary, Shri C. R.
 Chowdhury Shri N. B.
 Dabhi, Shri
 Das, Shri B. C.
 Das, Shri K. K.
 Deogam, Shri
 Desai, Shri K. K.
 Desai, Shri K. N.
 Deshpande, Shri G. H.
 Deshpande, Shri V. G.
 Dholakia, Shri
 Digamber Singh, Shri
 Dube, Shri U. S.
 Elayaperumal, Shri
 Gadgil, Shri
 Gandhi, Shri M. M.
 Gidwani, Shri
 Gupta, Shri Sadhan
 Gurupadaswami, Shri M. S.
 Hari Mohan, Dr.
 Hembrom, Shri
 Hukam Singh, Sardar
 Hyder Husein, Ch.

Jagjivan Ram, Shri
 Jaisooraya, Dr.
 Jajwara, Shri
 Jangde, Shri
 Jena, Shri K. C.
 Jena, Shri Niranjan
 Joshi, Shri Jethalal
 Joshi, Shri M. D.
 Kasliwal, Shri
 Katham, Shri
 Kelappan, Shri
 Keskar, Dr.
 Khare, Dr. N. B.
 Kirolikar, Shri
 Kripalani, Shrimati Sucheta
 Kureel, Shri B. N.
 Lal, Shri R. S.
 Mahtab, Shri
 Majhi, Shri R. C.
 Mandal, Dr. P.
 Mehta, Shri Asoka
 Misra, Shri B. N.
 Missir, Shri V.
 Mohd. Akbar, Sofi
 More, Shri K. L.
 More, Shri S. S.
 Mukerjee, Shri H. N.
 Mukne, Shri Y. M.
 Murthy, Shri B. S.
 Muthukrishnan, Shri
 Nanadas, Shri
 Narasimham, Shri S. V. L.
 Nayar, Shri V. P.
 Palchoudhury, Shrimati Ila
 Pannalal, Shri
 Parekh, Dr. J. N.
 Patel, Shri B. K.
 Patel, Shrimati Maniben
 Patil, Shri Kanavade
 Patil, Shri Shankargauda

Raghavaiah, Shri
 Raghbir Sahai, Shri
 Ramananda Tirtha, Swami
 Ramnarayan Singh, Babu
 Ranjit Singh, Shri
 Rao, Diwan Raghavendra
 Rao, Dr. Rama
 Rao, Shri Gopala
 Rao, Shri K. S.
 Rao, Shri Mohana
 Rao, Shri T. B. Vittal
 Reddi, Shri Esvara
 Reddy, Shri Viswanatha
 Rishang Keishing, Shri
 Sahu, Shri Bhagbat
 Saigal, Sardar A. S.
 Sanganna, Shri
 Sen, Shrimati Sushama
 Shah, Shri R. N.
 Shahnawaz Khan, Shri
 Shivananjappa, Shri
 Singh, Shri Babunath
 Singh, Shri M. N.
 Singh, Shri R. N.
 Singh, Shri T. N.
 Sinha, Shri Anirudha
 Sinha, Shri Jhulan
 Sinha, Shri Nageshwar Prasad
 Swami, Shri Sivamurthi
 Swaminadhan, Shrimati Ammu
 Tewari, Sardar R. B. S.
 Thomas, Shri A. M.
 Trivedi, Shri U. M.
 Tulsidas, Shri
 Vaishya, Shri M. B.
 Velayudhan, Shri
 Vishwanath Prasad, Shri
 Waghmare, Shri

NOES

Achuthan, Shri
 Agarwal, Shri S. N.
 Agarwal, Shri H. L.
 Agrawal, Shri M. L.
 Ajit Singh, Shri
 Akarpuri, Sardar
 Alagesan, Shri
 Anandchand Shri
 Anthony, Shri Frank
 Azad, Maulana
 Azad, Shri Bhagwat Jha
 Bansal, Shri
 Barman, Shri
 Barrow, Shri
 Bhagat, Shri B. R.
 Bharati, Shri G. S.
 Bhatt, Shri C.

Bidari, Shri
 Bogawat, Shri
 Borooah, Shri
 Brajeshwar Prasad, Shri
 Chanda, Shri Anil K.
 Das, Shri B. K.
 Deo, Shri R. N. S.
 Deshmukh, Shri C. D.
 Dhuaiya, Shri
 Dube, Shri Mulchand
 Dubey, Shri R. G.
 Dwivedi Shri D. P.
 Dwivedi, Shri M. L.
 Bacharan, Shri I.
 Gandhi, Shri V. B.
 Garg, Shri R. P.
 Ghulam Qader, Shri

Giridhari Bhoi, Shri
 Gopi Ram, Shri
 Iqbal Singh, Sardar
 Iyyunni, Shri C. R.
 Jatav-vir, Dr.
 Jayashri, Shrimati
 Joshi, Shri Liladhar
 Joshi, Shri N. L.
 Joshi, Shrimati Subhadra
 Jwala Prasad, Shri
 Karmakar, Shri
 Khedkar, Shri G. B.
 Khongmen, Shrimati
 Kolay, Shri
 Krishna, Shri M. R.
 Krishna Chandra, Shri
 Krishnamachari, Shri T. T.

Lakshmayya, Shri
 Lallanji, Shri
 Mahodaya, Shri
 Malaviya, Shri K. D.
 Malliah, Shri U. S.
 Malvia, Shri B. N.
 Malviya, Pandit C. N.
 Mascarene, Kumari Annie
 Masuriya Din, Shri
 Mehta, Shri Balwant Sinha
 Mishra, Shri S. N.
 Mishra, Shri L. N.
 Misra, Shri R. D.
 Nair, Shri C. K.
 Natesan, Shri
 Nehru, Shri Jawaharlal
 Nehru, Shrimati Uma
 Pandey, Dr. Natabar
 Pant, Shri D. D.

Pawar, Shri V. P.
 Pocker Saheb, Shri
 Prabhakar, Shri Naval
 Prasad, Shri H. S.
 Radha Raman, Shri
 Raghavachari, Shri
 Raj Bahadur, Shri
 Ram Dass, Shri
 Ramaswamy, Shri S. V.
 Ranbir Singh, Ch.
 Rane, Shri
 Raut, Shri Bhola
 Reddi, Shri Ramachandra*
 Satish Chandra, Shri
 Sewal, Shri A.R.
 Sharma, Pandit Balkrishna
 Sharma, Shri D. C.
 Sharma, Shri K. R.
 Sharma, Shri R. C.

Shobha Ram, Shri
 Siddanajappa, Shri
 Singh, Shri D. N.
 Singh, Shri H. P.
 Singh, Shri L. Jogeswar
 Sinha, Shri A. P.
 Sinha, Shri G. P.
 Sinha, Shri Satya Narayan
 Sunder Lal, Shri
 Tiwary, Pandit D. N.
 Upadhyay, Shri Shiva Dayal.
 Upadhyay, Shri S. D.
 Varma, Shri B. B.
 Verma, Shri M. L.
 Venkataraman, Shri
 Vidyalkar, Shri A. N.
 Wodeyar, Shri

The motion was adopted.

Shri S. V. Ramaswamy (Salem): May I suggest a verbal amendment? The word "years" may kindly be added so that the amendment may read "the male has completed the age of twenty-one years and the female the age of eighteen years;"

Pandit Thakur Das Bhargava: This is the amendment that I have given notice of; it is No. 227.

Mr. Chairman: Order, order. I am afraid the passing of this amendment bars the other amendments regarding age limit.

Shrimati Renu Chakravarty (Basirhat): Amendment No. 108 has to be pressed because there is a proviso that if the man has not completed the age of twenty-one years, he shall have obtained the consent of his guardian.

Mr. Chairman: I am afraid that also is barred.

Shri Venkataraman: In view of the amendment which has just now been carried, I seek your permission to move my amendment No. 295 in a modified form.

An Hon. Member: It is also barred

Shri Venkataraman: It is not.

Mr. Chairman: Let me get the amendment first.

Shri Venkataraman: On page 2 of list No. 7, my amendment No. 295.. says: "(cc) each party, if he or she has not completed the age of twenty-one years....." In substitution of this, I want to move:

"(cc) where the female has not completed the age of twenty-one years, she has obtained the consent of her guardian;

Provided that no such consent shall be required in the case of a widow, widower or divorcee;"

Mr. Chairman: I would like the hon. Member to pass on that amendment to me.

Shri Venkataraman: Yes, Sir. This has become consequential on the amendment which has been accepted by the House. The object of moving this amendment is to see that girls, who are now entitled to marry at the age of eighteen, do get the consent of their parents or guardians before they complete the age of twenty-one. We have only fixed so far, by this amendment, the age of marriage of the parties, and it is still open to this House to consider the other amendment as to whether the girl at the age

[Shri Venkataraman]

of eighteen should be allowed to marry without the consent of her parent or guardian. My submission to the House is that if the girl has not completed the age of twenty-one, she should still get the consent of her parent or guardian if there is any for that purpose.

Mr. Chairman: I would like to have the amendment written out and sent to me.

Pandit Thakur Das Bhargava: No new amendment at this stage should be allowed.

Mr. Chairman: Let me first have a copy of the amendment.

Shri S. S. More: May I rise on a point of order? We are now considering the amendments in *seriatim* as you were pleased to say. Many of us desired that Mr. Frank Anthony's amendment ought to have been put to vote first. Leaving that question aside, is it permissible for hon. Members to suggest any amendment which is likely to modify or soften or dilute the amendments which we have already passed.

Mr. Chairman: The fact is that by the passing of amendment No. 61, all the other amendments relating to age limit are barred, but the hon. Member, Shri Venkataraman wants the permission of the Chair to move a new amendment.

Shri S. S. More: Should that permission be given?

Mr. Chairman: I will first get the copy of the amendment and read it. I do not understand why Members should get excited.

The hon. Member, Shri Venkataraman, has asked for permission to move an amendment in view of the decision arrived at by the House with regard to amendment No. 61. It reads:

In page 3, after line 6, insert:

"(cc) where the female has not completed the age of twenty-one

years, she has obtained the consent of her guardian:

Provided that no such consent shall be required in the case of a widow, widower or divorcee;"

An Hon. Member: "Widower or divorcee" is not called for.

Mr. Chairman: I would not hastily try to arrive at a decision in the matter. All other amendments are barred and there is only one amendment for which permission is being sought from the Chair for introducing it. I will consider it and give my decision tomorrow.

Shri K. K. Basu (Diamond Harbour): Let this be summarily rejected.

Mr. Chairman: Consideration of clause 4 is not yet over.

Shri Gadgil (Poona Central): Since you have postponed this particular amendment for consideration tomorrow, is it open to any of the Members to suggest amendments to this? There may be some others who may like the guardianship to be restricted to parents only in this particular case.

Mr. Chairman: If at all I allow the amendment to be moved, then, the amendments may be moved.

Shri S. S. More: Can we bring an amendment that even when a male who has completed 21 years—if he is between 21st and 25th years or even within his thirtieth year—he must also obtain the consent of somebody?

Mr. Chairman: It will be better to discuss it tomorrow.

Shrimati Renu Chakravartty: There will be a lot of amendments tomorrow if we permit this.

Shri Frank Anthony (Nominated-Anglo-Indians): I have an amendment

which is something to this effect, but not quite to this effect. I want your permission to submit that amendment in writing. The amendment which I wish to submit, will not in any way cut across the amendment which has been adopted. My amendment says that a girl who has completed 15 years of age and who has not completed 18 years, may marry, provided she secures the consent of the parent or guardian. It is not barred.

Mr. Chairman: It is barred.

Shri Frank Anthony: It is not barred. The amendment which my friend purported to move is barred, because the amendment which has been adopted is cutting across: where for a girl of 18 no consent is required, and where, for a boy who has attained the age of 21, no consent of any description is required. I am not cutting across that position. But I say that a girl who has attained the age of 18 may marry a boy between 18 and 21 provided he gets the consent of the parent or guardian. This does not in any way offend the amendment, while his does offend the amendment so far as the girls are concerned.

Pandit Thakur Das Bhargava: The decision that the House has taken is that the boy must have completed the age of 21 and the girl, 18. This is absolutely unconditional. Now, all amendments seeking the permission of the guardian or seeking a marriage of girls below the age of 18 or of the boys who are less than 21 are absolutely barred. If we proceed logically and strictly all these do not arise. The age-limit is there and those two conditions must be fulfilled. We have carried that amendment. Therefore, my humble submission is that this present amendment by Shri Venkataraman and the proposed amendment by Shri Anthony are both barred.

Sardar Hukam Singh: I suppose the amendment that has been proposed by Shri Venkataraman is quite in order. It is not barred, though we have adopted the amendment of Pandit

Thakur Das Bhargava. We must look to the provisions that are contained in sub-clause (c) of clause 4. It says: "the parties have completed the age of twenty-one years." That has been now amended and passed. But this provision, namely, "the parties have completed the age of twenty-one years," was previously different in the report of the Select Committee. Afterwards, this was amended. Now, by the amendment that we have adopted just now, we have amended that sub-clause only. So far as this is concerned, that is, that each party, if he or she has not completed the age of 21 years and has obtained the consent of the guardian for the marriage, it is a different matter altogether. It is a different clause.

Shri A. M. Thomas: The hon. Member is referring to the Bill as reported by the Select Committee. The Bill is now being considered as passed by the Council of States.

Sardar Hukam Singh: Yes; we have passed the provision regarding the age at which the couple want to marry. But so far as the conditions under this age are concerned, that is, whether the party shall be required to obtain the consent of the guardian or the parent, that is quite a different matter. If we put in this condition, that so far as the girl is concerned—if she is between 18 and 21—then the consent would be required, it is different affair altogether. It is not barred under the amendment that we have just adopted.

Mr. Chairman: Whether permission should or should not be given, is the question.

Shri S. S. More: You have reserved or deferred permission. I propose to bring to your notice that this clause (c) as it stood in the Bill originally was:

"the parties have completed the age of twenty-one years."

This has been now replaced by the amendment which has been adopted

[Shri S. S. More]

by the House just now. The amendment which is now proposed and for which information is being sought, comes in, in all its real significance, as a sort of proviso to sub-clause (c). Sub-clause (c) has already been passed in its entirety. Can we tack on to it something else? If, when the amendment was being discussed, and before it was put to vote, some amendments to that original amendment had been moved, then, it would have been perfectly in order. But when once an amendment has been passed, simply saying, 'let sub-clause (cc) be there,' is not proper. We have to look into the purpose and intention of that amendment, and see how it will affect the original provision. This is not the way in which it should be couched for the purpose of getting your permission and passing muster. So, I would say that once sub-clause (c) has been effectively passed by the considered vote of this House, then, no modification of that clause (c), or deletion or watering down shall be permitted, because that will be going against the mandate of this House. So, no other suggestion can be permitted, whether it comes immediately after, or subsequently. There is the rule of procedure that when we have arrived at any particular decision and subsequently some amendments have been moved or even moved earlier, then, that subsequent amendment, in virtue of our previous decision, will be knocked out. This is a very important matter. If, unfortunately, you give permission to it, it will open the doors for so many other amendments, and the sanctity of our decision, even if it is wrong from the point of view of some Members here, should not be disturbed as it is being sought to be disturbed. Let the girl of 18 years marry without any restriction on her right to marry. That is the intention which has been demonstrated before this House by that vote. Against that intention, something is being smuggled in to modify that. That should not be permitted. Otherwise, Shri Frank Anthony will

be perfectly entitled to say that he is in the same position as Shri Venkataraman, if permission is granted to Shri Venkataraman to move that amendment. Then, there will be also new provisions coming. Then, you will have to say, in the interests of equality, that anybody can move an amendment. That will be unfair to all of us.

Shri Bogawat: What is suggested by Shri More is not quite correct, because, this amendment does not come in the way of sub-clause (c). It is a different amendment altogether. It is sub-clause (cc). What he has suggested is not by way of proviso but as an independent amendment in that clause. If we pass that clause (c), just as we have done, that amendment does not come in the way. So, Mr. More's objection that the amendment should not be allowed, is not correct, because it is a different clause altogether. It is sub-clause (cc). It is not an amendment to sub-clause (c), but is a different amendment adding a sub-clause in clause 4, that is sub-clause (cc). So my submission is that, as Shri Venkataraman has suggested, another clause,—sub-clause (cc)—in clause 4 should be kindly considered.

Shri Biswas: There is no necessary connection between the amendment which the House has accepted and the further amendment which my hon. friend, Shri Venkataraman, has asked for permission to move. The question of consent is not at all dependent on the question of the minimum age for marriage. We might have a fixed minimum age, say, 25, and still we may provide that there shall be consent by an independent clause. Therefore, the question of consent does not at all depend on, and is not connected with, the question of the age being fixed at 18 or 21 or any other figure. That is my submission.

Shri Raghavachari (Penukonda): My submission is that this question whether the amendment is in order and is permissible or not, is being

supported and opposed not on proper consideration at all. My submission is this: When a particular amendment has been carried, the only reason why further amendments must be barred in the face of that amendment which is carried, must be that a particular thing has been specifically decided. What has now been decided is only that parties to a marriage must be of a particular age. The question whether there should be consent or no consent of another person has not at all been the subject-matter of the amendment that has been passed. When it is a question of other matters that may be urged to control the actions of the parties, it is open to the House to discuss it so long as the House has not decided upon that particular matter. Therefore, it is certainly within the rights, and the amendment can be considered under the rules. Arguments were advanced that the amendment sought would open the gates for other amendments to come. But these are extraneous for the consideration of the legality of an amendment. Even if hundred amendments are given, consider all of them and allow such of them. The House is always entitled to vote for or against them.

So, I respectfully submit that it is open to Mr. Venkataraman or any other Member to so modify or amend an amendment which he has already given which is not against the principle specifically decided upon by the House.

Shri H. N. Mukerjee (Calcutta North-East): Sir, I would like to recall to you your initial reaction which was that the other amendments were barred after the adoption of this amendment. Now that reaction was due to the fact that you had presided over the deliberations of these amendments. All these amendments were discussed together and it is definitely your conviction, as far as I can make out, that the whole point was discussed as a whole, in its entirety, by the House. The question was in regard to the desirability or otherwise

of having a provision regarding obligatory consent in regard to certain people of certain age groups. It was in regard to that point that a certain amendment was placed before the House, an amendment which made it very clear that there will be no question of consent from the guardian.

That amendment has been disposed of. You have not to take note not only of all the purely technical factors, but also of the way in which this matter has been discussed in the House. I was amazed to hear the Law Minister pointing out with considerable emotion that the question of consent was not there at all. The question of consent being desirable or not was discussed throughout the proceedings and this amendment had for its specific object the elimination of any provision for consent if the girl or boy reached a certain age. I need not go into the merits of the matter; you have heard the debate and that is why I recall to you your initial reaction which was absolutely right. We should not take a purely technical view of the matter. We must remember the debate which took place and we should see that the wishes of the House are not disregarded in the manner it is sought to be done by the backdoor.

Mr. Chairman: So far as my first reaction to the other amendments is concerned, it still stands. The same amendment is not being moved. What the hon. Member now does is to seek the permission of the Chair to move a certain amendment. The only question for consideration now is whether by the passing of this amendment, No. 61, that also has been decided, and whether in such a case permission should or should not be given by the Chair. So far as this proposed amendment of Shri Venkataraman is concerned, whether leave should or should not be given to its being moved at this stage, I reserve my ruling. Excepting for that point, I think the matter has been sufficiently discussed. I shall give my ruling tomorrow.

[Mr. Chairman]

Clause 4 is still not over. We shall now proceed with the other sub-clauses.

Shri Frank Anthony: I am seeking your permission to submit a similar amendment.

Mr. Chairman: I do not prevent any hon. Member from sending any amendment. They will also be considered. I have now before me only the amendment of Mr. Venkataraman. All other matters are closed. We shall proceed with the further sub-clauses of clause 4.

Shrimati Renu Chakravartty: So any amendments given notice of us by us will be considered by you?

Mr. Chairman: But I have nothing before me except the amendment of Mr. Venkataraman.

Shri H. N. Mukerjee: We are considering a particular clause and that clause had certain amendment suggested by certain Members of the House. A particular amendment which substantially affects the quality and content of this particular clause has been adopted. Now at this point of time an hon. Member requests, and the Chair agrees, to receive further amendments. Where do we stand then? Where is the finality?

Mr. Chairman: I have not decided on anything: I have reserved my decision on that point.

Shri H. N. Mukerjee: There must be some finality somewhere.

Mr. Chairman: Why should the hon. Member take it for granted that permission has been given, when the matter has been reserved?

Shri H. N. Mukerjee: We are not going to sit for ever discussing the Special Marriage Bill.

Shri Venkataraman: There is already an amendment (No. 295) standing in my name. It is not as if I am introducing it. I redraft it in the light of

the decision of the House—I am not introducing anything new.

Mr. Chairman: As I said earlier, I shall consider all that and give my decision tomorrow.

Shri H. N. Mukerjee: May we know from the Leader of the Party in power whether he has anything to say with regard to this matter?

The Prime Minister and Minister of External Affairs and Defence (Shri Jawaharlal Nehru): Mr. Chairman, I really fail to see why any hon. Member should feel so warmly on this subject. So far as the legal matter is concerned I will say nothing. You have reserved it for your consideration: lawyers have spoken about it here. The question is that the House should decide what it wants to decide and should not normally go back on its decision. Whether this is going back or not may be considered either from the point of view of law or on the merits. You have yourself said that you are going to consider this matter. If there is no contravention of any legal matter in this, the House will decide. It will accept it or throw it out. I do not see myself how it comes in the way of the previous decision.

Shri N. C. Chatterjee: In legal language the whole issue is *res-judicata*. What Mr. Venkataraman is doing is accepting the decision of the House as correct and final and is only adding some kind of a proviso.

Mr. Chairman: That means the other amendments are barred.

Shri M. S. Gurupadaswamy: Before you go to other amendments I may point out that I have got an amendment (No. 294) and in the light of the amendment that has been accepted by the House. I may be allowed to move the latter part of it.

Mr. Chairman: I have already decided about it. All the other amendments, except the one for which permission has been sought by Shri Venkataraman are barred.

Shri M. S. Gurupadaswamy: He is permitted to move his amendment; I am equally entitled to move mine.

Mr. Chairman: It is perfectly open to any hon. Member to ask for permission. But unless it comes to me, how am I to consider it and decide on it. If anybody wishes that he has any suggestions to make they may make them and we shall consider them.

Let us now proceed to clause 4(d). Those hon. Members who want to move their amendments to this clause may get up and move them

Shri Sadhan Gupta: I beg to move:

In page 3, after line 8, add:

"Provided that a marriage between persons within the prohibited degrees of relationship may be solemnized under this Act if the law or any custom or usage having the force of law, governing each of them permits a marriage between them; and".

Shri Bogawat: I beg to move:

In page 3, lines 7 and 8, after "relationship" insert:

"unless the law, any custom or usage having the force of law governing them permits of a marriage between them".

Mr. Chairman: I take it that the amendments moved are only the above, namely, 425 and 114 and that all the other amendments are not moved.

Mr. Chairman: Amendments moved:

(i) In page 3, after line 8, add:

"Provided that a marriage between persons within the prohibited degrees of relationship may be solemnized under this Act if the law or any custom or usage having the force of law, governing each of them permits a marriage between them; and"

(ii) In page 3, lines 7 and 8, after "relationship" insert:

"unless the law, any custom or usage having the force of law governing them permits of a marriage between them".

Dr. Rama Rao: Mr. Chairman. I have moved my amendment. No. 113 to sub-clause (d) of clause 4. The amended clause will read like this: "provided the parties are not within the degrees of prohibited relationship unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two." My amendment seeks to permit people already following certain customs to register their marriages under this Act. Clause 15 of this Bill admits such a course of action after the normal ceremony of marriage is over. As far as this is concerned it does not prohibit marriages between certain relations.

I want to appeal to our North Indian friends not to have a stone curtain before their eyes but to see beyond the Vindhya and understand the customs and laws of the South Indians. Most of our thinking is conditioned by things we are used to. People in South India marry their maternal uncles' daughters. That is a very common thing but the wonderful list of prohibited relationship prohibits such marriages. This law prevents such marriages. It is not abnormal and therefore, I request my North Indian friends not to see things through their limited glasses only. Customs differ; habits differ. Therefore, if you give permission for people to marry under one system of law, why do you not allow them to marry under another system provided they like to? I am not saying that all the Hindu marriages should be registered here. Those that want to marry under the old system with bands, fire-works and all the other ceremonies with a large expenditure let them marry by all means. But, there will be a large number of peo-

[Dr. Rama Rao]

ple who will avail of this, according to me, because of the economy and simplicity of the marriage. The hon. Minister of Law is standing in the way of performing marriages under this Act just because he has certain prejudices and he goes to the extent of saying "promiscuous living together". I protest most vehemently against this reckless use of words against a certain....

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Shri Biswas: I referred to what Mr. Anthony said....

Dr. Rama Rao: Then I stand corrected. The point I am trying to emphasise is this. Most of our thinking is conditioned by things with which we are accustomed. I can give an illustration. Mr. Chatterjee is here. For a South Indian Brahmin eating fish is unthinkable; he thinks it is absurd to call a person Brahmin if he eats fish. If our friend, Mr. Chatterjee consumes fish.....

Shri N. C. Chatterjee: Nothing; I am an absolute vegetarian...

Dr. Rama Rao: It may not be this Chatterjee. I am speaking of the Bengali Brahmins who, quite well, consider themselves to be the custodians of Brahminism. I am not against fish or Bengal; I like them both and the Bengalis have played a great role in the revolution. But my point is this. Just as the thinking of the South Indian Brahmin is limited by things he is used to, so also the North Indians, including Mr. Biswas, have conditioned their thinking in the light of things they are accustomed to.

Take another instance: If I tell a South Indian lady—a village woman—that our Punjabi sisters are wearing pyjamas, she will not at first believe me; she may say: it is quite immodest, indecent and she will even go to the extent of saying that it is to some extent even immoral; that is their prejudice; it is so because a South Indian village woman has never heard of a

lady wearing pyjamas. Her thinking is conditioned by things to which she is used. Similarly, the thinking of our hon. Law Minister and many of our North Indian friends is conditioned by things they are accustomed to. I request them therefore to see beyond the stone curtain of Vindhya and to give permission to them also to marry if they choose to do so under this Act.

Of course, you may say that if they want to marry they can do so under other laws. My point, as I have already tried to emphasise is this. Marriages are usually very costly. I think that about fifty per cent. of the marriages end in debts. So much money has to be spent for the sake of dignity. People who marry so sometimes take ten or twenty years and more to come out of these debts. This Act will enable people to marry probably within five or ten rupees. I therefore request the hon. Law Minister to accept my amendment.

I am just copying the words which he himself used in another clause. Marriages can be performed under the normal procedure and then they can be registered under clause 15. I want you to extend the same privilege to people who want to marry under this law.

Now I come to Eugencies. They have not absolute or positive proof in aid of their prejudice. There are two views; two different views only; there is no positive proof to show that these marriages are undesirable or are harmful. Even according to the theory of genes—in fact there are scientists who question it—even according to that theory the chances are fifty-fifty. There is a concentration of genes. We are not a scientific body deciding eugenics here. If it is a scientific body or if the Law Minister has suddenly become scientific and wants to enforce marriages on scientific lines he should ban all such marriages. He should prohibit them. But is he doing it? He is not. He is only putting

a premium on economy, simplicity, on what I may call freedom.

Therefore, I strongly request the hon. the Law Minister and our North Indian friends to accept my amendment (No.113) so that more people will be enabled to marry under this law.

Shri Biswas: Having regard to the remarks of my hon. friend it is just as well that I should make the position clear, because otherwise speeches on that line will go on and we shall be losing time for nothing.

I shall explain why it is that this provision cannot be accepted by Government.

We may see that in clause 15 the provision has already been made by the other House—it refers to registration of marriages—when laying down the conditions which must be fulfilled before a marriage may be registered, that “the parties are not within the degrees of prohibited relationship, unless the law or any custom or usage having the force of law, governing each of them permits of a marriage between the two”. In other words, if there has already been a marriage performed in accordance with customary rules, that marriage will be regarded as a valid marriage. But as regards new marriages which are going to be solemnized for the first time under this Act, we say that we shall not permit any customary variation, we shall lay down certain conditions and one of them will be that the parties must not be within the prohibited degrees of relationship as defined in this Bill. If that condition is not satisfied, the marriage will not be a valid marriage. Clause 4(d) refers to post-Act marriages, not to pre-Act marriages. We propose to make a distinction between pre-Act marriages and post-Act marriages. Pre-Act marriages will be allowed to be registered even though they were not in accordance with the condition prescribed by this Bill, but which were in accordance with customary

rules in force at the time of the marriage. That is the idea. In regard to those who are anxious to marry according to the customary forms even now, it is quite open to them to marry under their personal law. But if they choose to marry under this law, then they must accept the conditions which for the first time are being laid down for such marriages.

And this is a law for the whole of India, not for any particular community, not for South India, only, but for South India, North India, East India, West India (*Shri N. C. Chatterjee*: And Central India). And therefore the rest of India need not draw inspiration from South India. We are legislating for the whole of India. Therefore we say that looking into the matter from that broad point of view it is not right that there should be any marriage between prohibited relations. And this has been the law everywhere.

What are the degrees of prohibited relationship, is a different matter. You can say five degrees on the father's or seven degrees; three degrees on the mother's side or five degrees. Or you can lay down a list to make it clear beyond doubt as to who will be a prohibited relation and who will not be. That is another matter. But in every community this is the practice. I say without fear of contradiction, I cannot speak about Russia. But even there I believe they do not allow marriages between prohibited degrees of relationship and among near relations. So this eugenic principle is universally recognised. And we are doing the same. We provide that if a marriage under this law does not observe the rules of prohibited degrees of relationship, that will be a void marriage. But if there are any customs to the contrary, let these customs be recognised in respect of these marriages which have already taken place. But if future marriages are proposed to be solemnized in violation of the rule about prohibited degrees of relationship, then I say they should come under the personal law

[Shri Biswas]

which permits such marriages. But do not make a mockery of this Bill. That is the point. Therefore in a scheme of this nature there can be no room for any customary variations so far as prohibited degrees of relationship are concerned. That is my submission

In regard to the prohibited degrees you will find that we are trying to provide the minimum of restrictions. but at the same time the restrictions are such as will preclude undesirable marriages which are wrong from a eugenic point of view. My friend, I suppose, will not like to permit incestuous marriages. The list of prohibited degrees will bar incestuous marriages. Nobody will like such a marriage. I have not suggested anywhere that the customary forms of marriage which prevail in South India are incestuous or open to similar objections. I have not said it. There is the custom which permits it. But let not customs have any effect on marriages which will be solemnized in future under this Act. That is all that I plead for.

Shri N. C. Chatterjee: I think the hon. the Law Minister is quite logical, and I am afraid that my learned friend who wants his amendment to be accepted is not consistent. He and his friends are taking up the attitude that the sacramental marriage or the marriage according to Hindu custom is rather medieval, rather not progressive, and they are asking for a uniform law. They cannot have the best of both worlds. If you want to have the customary law then stick to customary forms of marriage; marry under your personal law; do not take advantage of this thing.

What they are trying to do is this. They are saying that if you want to take advantage of this kind of civil marriage which is to be registered under this Special Marriage Act, there must be some limitation with regard to age and there must be some limita-

tion prescribed in degrees of prohibited relationship.

Frankly saying, if in South India, Malabar or East India or any part of the country there is anything which ought to be incorporated herein, boldly say so. If it is good for Madras and good for the whole of India, let us modify the provision and apply it uniformly and rigidly throughout India.

But do not say: "I will marry under this Act; but I will have customary degrees of prohibited relationship." Do not say "I will have certain limitations, but I can resort to a side-wind and make them nugatory or illusory by invoking my personal law." That will not be fair. Stick to your personal law. Nobody prevents you from marrying under your personal law. Nobody is compelling you to derogate from your customary rules of marriage and take advantage of this.

Come out boldly and say if you want first cousins' marriage. If you think it is good, let us incorporate it. Let Parliament discuss it on its merits and make provision in the Schedule where prohibited degrees of relationship are being specified.

But it will not be fair, it will not be right, it will not be consistent, it will not be logical, you lack the courage of your conviction if you say that you will marry under this Act but will be governed by customary law so far as prohibited degrees of relationship are concerned. Then you demand that you must not have these medieval antediluvian *Manu*, *Yagnyavalkya* laws now. *Manu's* injunction has ruled India for centuries.

*Asapinda Cha ja motuh
Asagotra cha ja pituh/
Sa prasata dwijatnam
Darakarmani maithune//*

Say it is not proper now. Frame a list of prohibited degrees now. Frame it and enforce it throughout the country and have some kind of uniform civil code for regulating all the civil marriages. Do not allow any more invocation of customs. You do not know

how many millions of customs we have among different classes and different communities and different castes and sub-castes. In one region you may have million of customs and usages. You do not know to what you are giving your legislative sanction. Don't give the parliamentary imprimatur to all kinds of customary usages whereby you can make this law nugatory to that extent. If you have courage of conviction, boldly say that a particular kind of prohibited degree of relationship must be enforced uniformly throughout India.

The Directive Principles have been, to some extent, brought into actual practice. Otherwise, if you have both the things, invocation of the civil law and at the same time, invocation of sacramental or customary law, it will lead to anomalies, it will lead to inconsistencies. It will make this law nugatory, it will not be fair, it will not be just, and it will be thoroughly illogical.

Shri Raghavachari: I rise to oppose this amendment. My hon. friend who has moved this amendment wants to add a proviso which is to be found elsewhere in the Act. His fears or his purpose, I am not able to understand as being either real or necessary. Of course, my hon. friend Shri N. C. Chatterjee has advanced all arguments in favour of rejection of this amendment. As I said at an earlier stage, there has always been some confusion in the minds of Members of this House. Whenever they consider any particular clause in the *Special Marriage Bill*, they think in terms of making it always applicable to other marriages under other laws. That is the confusion that is working in the minds of some hon. Members. As Shri N. C. Chatterjee has already pointed out, it is not necessary that the customs should be brought here. It is illogical.

Apart from that, I will add another argument. Reference has been made to clause 15 which does provide for such exempted degrees of relationship coming together in marriage and

even that marriage can be registered under this law. I for one think that even Dr. Rama Rao, without this amendment, can certainly come under this Act. Only he must wait for a few hours after the marriage has taken place under other laws.

Dr. Rama Rao: After all the expensive show.

Shri Raghavachari: I will come to expenses in a minute. All that section 15 says is,

"Any marriage celebrated, whether before or after the commencement of this Act,... may be registered..."

It is always there.

His other argument is that registering after having undergone another marriage involves expenses.

Is there anything in this law which says that one must spend much money?

Dr. Rama Rao: But, it is done

Shri Raghavachari: It is your stupidity, your foolishness, your want of courage that makes you conform to methods of expenditure. When you want to have your marriage registered under this law, have your marriage celebrated quietly under a tree, without inviting anybody. Who asks you to spend money? The question of expenses cannot be brought in.

To my mind, it is a simple matter that the House has to examine. The list of prohibited degrees of relationship, we have yet to consider in detail. If all these customs also must be brought in here it only means that this law is going to be purposeless. Why then bring so many laws, spend the time of the House and then bring in everything into the hotchpot? I oppose his amendment

Shrimati Renu Chakravartty: I would like to answer the points made by Shri N. C. Chatterjee. It is true that we do want one civil law apply-

[Shrimati Renu Chakravartty]

ing for all marriages and which will guide all sections of the Indian people. But as yet we have not been able to do that. Therefore, we have to accept the position that we are in a state of transition. It is no use saying that we have to absolutely divide the two sets of marriages the civil and the customary. It is impossible.

Shri Nand Lal Sharma (Sikar):
That is your goal.

Shrimati Renu Chakravartty: I have not been able to follow my hon. friend. We accept the position that there are people, a majority of the people, who will be marrying under the sacramental form, who will accept the customary law. But, at the same time, even among them, there are people who want to have their marriages registered. They want the registration to take place. They want that there should be monogamy. I remember in the Select Committee, one of the persons who most strongly advocated the admittance of usage and custom under this Act was a Muslim Member from the Upper House. He said, it is impossible for us at this moment to have a law whereby we can enforce monogamy even when it is a marriage between two Muslims. These same arguments were put forward as are brought forward here. We would here like to have monogamy. We would like that there should be one law and a new reformed law for the whole of India. But, we have not got it. Are we not, then, going to take the next best? If we do not do that, we would make no progress at all. We have to accept the position as it is. We have to explain things to the people to dispel their prejudices step by step. We have also to make provision for the demands of the time taking everything into consideration. Therefore, I feel that at this stage of transition, it is no use categorically saying that this civil form of marriage is an entirely separate thing and we are

not going to accept customary forms of marriage in this Act. So, let them go and marry under the customary forms of marriage. Society at the moment demands that the customary forms should be gone through and at the same time, they would like to enforce monogamy and they want that the marriage should be registered. Section 15 has been cited by Shri Raghavachari. Seeing the fate of this Bill, I doubt very much whether we will stand by section 15. Even that section may be withdrawn under pressure from certain quarters. (*An Hon. Member:* It may be deleted.) That is true. It is true that if we cannot get custom and usage into this Bill here, we can by some other method make up for it in section 15. Even then, I am afraid of section 15. It is quite true that there are a very large number of people who want this to be deleted. Therefore, the real reason why we press this amendment is this. Registration for Hindu marriages is optional. At the same time, it is only the States that can enforce this. It is not something on which we will legislate centrally. Therefore, since we are not making registration compulsory for Hindu marriages, I would again urge that we should allow even to those who are being married under custom and usage, the protection of registration under this Special Marriage law. Therefore, I say that this amendment should be supported. This argument that we should absolutely divide the marriages into two watertight separate compartments does not hold good in this period of transition

Shri Bogawat: I have brought in amendment No. 114 to the effect.

In page 3, lines 7 and 8, after "relationship" insert:

"unless the law, any custom or usage having the force of law governing them permits of a marriage between them".

You know very well that among the common people, there is a custom

whereby they marry the mother's brother's daughter. At least in my presidency, the common people prefer to marry the mother's brother's daughter.

Shri Velayudhan (*Quilon cum Mavelikkara—Reserved—Sch. Castes*): What is the custom?

Shri Bogawat: To marry the mother's brother's daughter; that is the maternal uncle's daughter. That is a common custom in my province. At least among the common people, such marriages take place. In order that they may take advantage of the rule of monogamy, in order that they may be able to take advantage of the Succession Act and other advantages, it is quite necessary that there should be registration of such marriages. This clause is quite necessary when such marriages take place in number. If you refer to the prohibited degrees mentioned in the First Schedule, we find in item 37, the mother's brother's daughter is included in the prohibited degrees. That is, we give the go-by to so many marriages which are taking place under the old customs. Similarly, there are other customs also. For instance, among Mohammedans, there are customs to marry between certain relations—for instance, first cousins. This is because there are certain reasons for that, that the property rights and other rights should not go to other people. Therefore, these marriages take place owing to custom. So, in order not to give the go-by to such customs, it is quite essential that there should be this clause. On the contrary, the Law Minister has said about clause 15, but I am of this opinion that this should be withdrawn if it is not necessary at all. If you allow this amendment, then it will be of much use to so many people, a number of people who are now trying to get their marriages registered under this Act and derive the advantages of this Bill. Otherwise, they will not get the advantage of this Bill. That is my object. So, I will request the hon. Law Minister to consider this amendment and if anything comes

in the way of clause 15, he may withdraw clause 15, or take out such prohibited degrees as mother's brother's daughter and son. So, I request the House that my amendment may kindly be considered.

Dr. Jaisoorya: The whole difficulty, the whole confusion arose because in the original thing it was written:

"Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage..."

Now, it has been clarified that those marriages which were under customary law shall be entitled to be registered only up to the time this Act comes into force. After that, we intend to have certain rules of relationship which are generally accepted. What has happened before cannot be undone. Therefore, the law allows that you can register provided you have married under the customary law before this Act comes into force.

Now, the argument of Dr. Rama Rao and the gentleman here is that customary law, customary usage having the force of law should be allowed. I want to ask how many? There will be no end to concessions to all sorts of customary laws, and the very purpose and spirit of this Bill will be lost. Do you believe that there is no such thing as eugenics, that eugenics is all bunk? In the ancient Egyptian empire, the Egyptian kings married their own sisters. There is no evidence that it was bad. Where are you going to put a stop to all this? It is incestuous. Marriage with your niece is incestuous, whether you call it customary law or not. Marriage with your cousin is incestuous, whether you call it customary law or not. And I should know something about it because my father was forced to marry his niece as his first wife, and he did not approve of it. That is customary law. It is not always based on absolutely correct

[Dr. Jaisoorya]

eugenics. It happens. Many things like this happen. But we have got to lay down some general guiding lines. There may be mistakes here and there but we must lay down the guiding lines. "Otherwise a large number of people will not be able to marry"—that is an argument in a bargaining spirit. We do not want many people to marry unless they observe these things which we think are correct, and we should not make, against conscience and present knowledge, any concession only in order to get more and more people into this thing. Make the Hindu Marriage Act also monogamous. Then there should be no argument that because we want monogamy people should come here. We have got a certain principle, a certain standard—this standard for this, that standard for that and so on. I am not prepared to water down a general principle only for the sake of getting more clients.

Shri V. G. Despande: I rise to oppose this Bill not because...

An Hon. Member: This amendment.

Shri V. G. Deshpande: ... this amendment of Dr. Rama Rao, not because I regard these connections as incestuous. In fact, I belong to a caste in which marriages with maternal uncle's daughters are allowed. Not only are they allowed, I would accept challenge from anybody to prove that they are against *shastras*, or against any laws of eugenics. If you read the old *nibandhas* and *prabhandas*, there are very scholarly discussions on this point. But the point is not concerned with the marriages with maternal uncle's daughters or what happens in certain castes and communities in further south of India. We have to consider whether we are going to allow all customary laws to be made permissible under these prohibited degrees. As Mr. Chatterjee has rightly pointed out, the proper place where Dr. Rama Rao's amendment should have been made was the schedule to this Act. If we are convinced that according to laws of

eugenics, morality and other social considerations, marriage with maternal uncle's daughter is proper, there should be a specific proposal for it. I personally feel that in the customary law which we are following there is nothing improper, and therefore the Hindu law, as a rule laid down for a definite class of people, ought to be accepted. But by this amendment you are accepting every custom that will be proved in a court of law, and it may be made permissible under this. If you have got any specific proposals, they can be brought and can be included in the schedule.

One hon. Member said that in his parts common people have been doing this. Perhaps he does not know uncommon people, and common people, also he does not know. He is perhaps a foreigner in his own province. The highest castes in the province to which he belongs are following that law. He, unfortunately, does not know it. Whether it is followed by common men or extraordinary men, the point is this. Common men are not going to take advantage of this law. Only those people are going to take advantage of this law who want a uniform civil procedure code in this country and who believe in certain laws of eugenics or morality or sociology. And I entirely agree with Mr. Chatterjee when he says that certain customs have to be allowed under this Special Marriage Act. Parliament should have opportunity to discuss. If the House gives its consent that maternal uncles can be married to their nieces, if the House accepts it, take it and include it in the Schedule. But I am finding that there is, I should like to say, not a very proper anxiety to include all kinds of marriages, and by that giving encouragement to all kinds of reactionary tendencies in the society. They say: "Decrease the age of marriage, make it fifteen, fourteen." If child marriages can also be allowed according to customs, our enthusiasts of progressivism would come and say that in villages marriages are taking

place at the age of five, allow marriages at the age of five also. I do not know what is their view in their heart of hearts, but I am finding that those people who regard marriages with maternal uncle's daughters as incestuous, also say that a larger number will come. It is just like catching votes in the elections. Any device is good. And there is a strange psychology working that these marriages must be made as popular as possible.

My own objection is not to any kind of particular custom or manner, and as I have said in the beginning, in fact I am a firm believer in the customs for which they are speaking. Perhaps it would have been better if they had mentioned specifically that marriage with maternal uncle's daughter should be allowed, or those who feel that a niece should marry her maternal uncle should have specifically said it here, and then we could have discussed points in favour and against it. But here we are making it a sweeping amendment saying any customary law, personal law or usage having the force of law. India is a very strange type of country. Strange laws are there in this country. Some persons were saying that there are...

Shri Velayudhan: Strange religions also.

Shri V. G. Deshpande: Strange religions also are there. But I am finding those devotees of progressivism are coming here and supporting all kinds of customs, manners and all these things. They say: "You are talking against us, South Indians." I could have understood this thing, that there can be love for your own customs, usages in your parts, but this Bill is itself a revolt against all those things. Thousands of years we had held dear to our hearts certain usages. You are doing away with the marriage ceremony, you are doing away with the sacred fire, you are doing away with all this sacred vow, but you are stick-

ing to all kinds of customs which we do not know, and parading in this House that you are introducing a uniform civil law for the whole country, and that a model system of marriage is being introduced. And in that marriage, you say, this is an ideal girl, but she should have any kind of nose, any kind of complexion, and any kind of eyes. In this manner, a law which is not definite, but is based upon the fleeting usages and customs in different parts of the country will make the whole thing ridiculous. Therefore, in the name of consistency, I appeal that this amendment should be rejected.

Mr. Chairman: Shri Sadhan Gupta.

Shri Velayudhan: About Malabar, I want to make out a few points.

Mr. Chairman: Let Shri Sadhan Gupta speak first. He has tabled an amendment in this regard.

Shri Velayudhan: The hon. Minister referred to Malabar in the course of his speech.

Shri Sadhan Gupta: My amendment and Dr. Rama Rao's amendment are almost identical in words, excepting for the last word, but that is not very material. I would strongly oppose the hon. Members, including the hon. Law Minister, who have come out with what they think to be the logical arguments against the acceptance of these amendments.

The hon. Law Minister has stated that it is bad eugenics to permit the marriage between relations who have the permission of customary law to marry in South India. I submit that is an entirely wrong way of approaching the whole thing. Now, we know that India is land of diversity, and in different parts of the country, there are different customs, and the customs prevailing in one part are revolting to people in another part. But that is not the question here. The question of eugenics or a hygienic marriage

[Shri Sadhan Gupta]

does not arise at all in this connection, for the simple reason that if you really think that this kind of marriage permitted by custom is unhygienic or uneugenic, then the only thing is to prohibit it. Let there be a discussion in the House as to whether it is unhygienic or whether it is contrary to eugenics, and let it be prohibited altogether, if the House comes to the conclusion that it is unhygienic, or uneugenic, or should not be permitted for other reasons. On this very principle, you have prohibited polygamy. On this very principle, you are seeking to prohibit polygamy and polyandry even in Hindu marriages. So, if you really think that marriage between relations who are permitted to marry in the south is bad, and unhygienic, you come forward with a bill, let the House discuss that, and if it thinks that it is really unhygienic, then it may ban it, or if it thinks that it is not unhygienic, then it may permit the custom to go on. The question is, as things stand at present, you are prepared to recognize the custom. You are prepared to agree that if the marriage is in the form prescribed by the customary law, then it is a valid marriage. My question is this. What is the justification, or where is the logic in preventing people marrying under this particular Act? Let us be quite clear about it. This Act does not seek to provide for eugenic marriages. What this Act seeks to do is to provide a simple form of marriage, and an easy method by which alliances which have become unfortunate may be terminated. It confers liberal the right of divorce, and it creates a simple procedure of marriage. It is these that the Act seeks to do, and nothing else. If that is so, why should people who have the right to marry, who have the right to be husbands and wives under a particular form of law be denied the right to be husbands and wives under this particular Act?

Mr. Chairman: May I just ask one question? The difficulty which occurs

to me is this. Supposing this amendment is accepted, and a person has already got two wives married under the old customary law, should that also be allowed to be registered under this Act?

Shri Sadhan Gupta: That is a different thing. This relates to prohibited degrees of relationship.

Mr. Chairman: I can understand the whole thing, if there is only one wife. But a man may have two wives...

Shri Sadhan Gupta: No, the point is this. We are all agreed in this House that monogamy should be the rule.

Mr. Chairman: If you water it down to that level, it may legitimately be argued, why allow any marriage to be registered under this Act at all?

Shri Sadhan Gupta: The point is that, in this House, we are agreed on the principle that a man or a woman shall not be allowed to marry more than one spouse. That we are all agreed to.

Shri U. M. Trivedi: One spouse at a time.

Shri Nand Lal Sharma: Is that customary law?

Shri Sadhan Gupta: At a time, he or she shall not be allowed to have more than one spouse. That we are agreed to, and that is why we are providing for the same thing in the Hindu law reform also; we are providing the same thing in this particular Bill also. That is understandable. If you adopt the same attitude towards these prohibited degrees of relationship, namely, that no one, whether permitted by custom or not, should be allowed to marry within the prohibited degrees of relationship in any event, I could have understood it. But that is not your

contention. Your contention is that persons within prohibited degrees of relationship may marry in accordance with customary law, but they may not marry under this Act. Where is the logic behind it? Why should a husband and wife, who have the right, and who can marry otherwise, be denied the right of availing themselves of this simple procedure of marriage, and of enjoying the more liberal rights of divorce which this particular form or procedure of marriage implies as a concomitant. That is the thing to be considered.

Moreover, this has a very wide application. It does not concern merely the people of South India. This Act is supposed to apply to every community. Let us take the case of the Muslims, or even the Parsis, among whom marriages within the prohibited degrees of relationship are allowed. You are not stopping that by any Bill, and you are not stopping that by any law. Only, you are providing that under this law, they will not be allowed to marry. And this illogicality of the hon. Law Minister has proceeded to such an extent that he is willing to permit pre-Act marriages to be registered under this Act as special marriages, but not post-Act marriages. What is the difference between a pre-Act marriage, and a post-Act marriage in this case? When a husband and wife marry in accordance with the customary form of law, they do not marry with a view to registering it under this particular Act. They first marry under the customary law, because they want to marry under that law, and then they grow wiser, and they think that they might enjoy the rights of divorce and the rights of succession provided by this particular Act, and therefore, they register it under this Act. So, what is the meaning in permitting pre-Act marriages to be registered, but not post-Act marriages to be registered?

Shri Biswas: Perhaps, I ought to make this point quite clear, in regard to the introduction of customary vari-

ations. When I said, we shall be prepared to register pre-Act marriages, but not post-Act marriages, what I meant was that in respect of pre-Act marriages, we shall allow custom to have its force, but in respect of post-Act marriages, we shall not allow this. I was referring only to this particular clause regarding prohibited degrees of relationship, not that we are going to rule out registration altogether.

Shri Sadhan Gupta: That was not what I said. I said there was no logic in saying that in the case of pre-Act customary marriages registration would be allowed and in the case of post-Act customary marriages registration would not be allowed.

Mr. Chairman: Is there any such thing in the present Bill?

Shri Sadhan Gupta: It is in the present Bill—clause 15(e). He wants to modify that provision. Now, the point is either you want to give the couple the extended rights which this law enables them to possess or you do not. I submit that on the ground that they were married under customary law, this right should never be withheld. I would submit it is unconstitutional to withhold this right. Where is the rationale for this classification between customary law and the prohibited degrees under this law and between pre-Act customary marriages and post-Act customary marriages? What we need is the equal protection of the laws. When we permit customary marriages, why should we deny them equal protection of this particular Act? On what basis, on what rational basis of classification can you do this? Again, when give a certain class of people within the prohibited degrees married under customary law protection, why should we not give other classes the same protection? That is why I wish the Law Minister would give his very mature and very anxious consideration to this aspect of the matter. What is the logic behind treating the two classes differently? We are not insisting that everyone in every part

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of the country should be governed by the same law. Mr. Chatterjee said that if the law was good for one particular part, it was good for another. By no means it has had an organic growth in that part of the country and that is why it is there, and in the other part of the country, the law has had another kind of organic growth and so it is not there. Therefore, if you want to prohibit the marriage, prohibit it in all cases; let us decide how much we can prohibit. If you do not want to prohibit that marriage, for God's sake do not deny one portion of the community their right to enjoy the benefits of this particular Bill.

Several Hon. Members rose—

Shri Velayudhan: A certain reference was made about custom in Malabar. I would like to reply to that.

Mr. Chairman: Yes.

Shri Velayudhan: I was to some extent surprised when I read the amendment moved by Dr. Rama Rao and supported by Shrimati Renu Chakravartty. In this respect, I think they go very very backward, when they themselves claim that they are advanced. This is without casting any reflection on any particular person. I must tell you that the very purpose of this Bill is to do away with or to discourage custom and usage. Our friends now want to stick to that custom and usage. In Malabar, there was a custom of marrying the sister's daughter to the brother's son or *vice versa*, about which the hon. Law Minister mentioned. And he said that two gentlemen wrote to him that they will find themselves helpless if this Bill is carried as it is with this particular clause. But I must tell you that there is a very important point in this matter, and because the particular mention of that letter has got wide publicity in the country, I must convey to the House that that is not the entire fact. The fact is this, that even though those customary marriages still exist in Malabar, yet we had given the right of property to

women as well as men by legislation, with the result that today the position is that very few young men or young women think of marrying their own kith and kin. Therefore, that particular letter which the Law Minister got is not a representative letter. Of course, there was this custom; but it has already practically vanished in Malabar or in the whole of Kerala today. I welcome this particular clause personally; not only personally, but from the eugenic point of view also it is an obnoxious custom. That is what I feel. It should have been stopped earlier. The modern youth does not like this custom of marrying blood relations. Therefore, I was surprised when Shrimati Renu Chakravartty was trying to uphold a custom which was condemned by even the youth of the country today. So I welcome the elucidation or clarification given by the Law Minister and I feel the House should reject these particular amendments from this group, *in toto*.

Shri M. S. Gurupadaswamy: Mr. Sadhan Gupta while speaking on his amendment said....

Mr. Chairman: Before the hon. Member proceeds, may I make one point clear? It is perfectly clear—of course, as a lawyer he will realise it—that there is no intention by this to prohibit in any way marriages which may take place under custom.

Shri S. S. More: They will be prohibited under this legislation.

Mr. Chairman: Yes, if solemnized under this Act and if within certain prohibited degrees.

Shri Velayudhan: It will be within limited degrees.

Mr. Chairman: Let us try and see what the effect of this will be instead of arguing why some are doing it and why some are not doing it.

Shri M. S. Gurupadaswamy: I will be very brief in my remarks. Mr. Sadhan Gupta was making out that

the purpose of this measure is not to encourage eugenic marriages; on the contrary, he said the purpose is very simple, to encourage a particular, special, type of marriage. I differ from him in this respect. The purpose is not only to encourage speedy marriages and easy divorces, but also to lay down healthy norms, some good standards, for marriage in society. It is very unfortunate that of all people Members who belong to the Communist Party—should come forward with a proposition which is regarded by all progressive sections as most notorious and most primordial. I was really shocked that an amendment like this should come from such a progressive section, and that Shrimati Renu Chakravartty and Dr. Rama Rao should support it.

Shrimati Renu Chakravartty: Why doesn't he answer my question?

Shri M. S. Gurupadaswamy: I am answering. My hon. friend, the lady Member, said that there should be no objection to people who marry under customary law and practices taking advantage of the benefits of this law, and the schedule of prohibited degrees should not in any way come against these couples marrying if the customary law permits it. Sir, there are so many customary laws prevailing in the country, and our country is almost a veritable jungle of customary laws and practices. Are we still to think in terms of customary law and practice? If customary law is good let us adopt it. But, if the customary law, usage or practice is inherently bad and unreasonable, then should we try to hug it?

Shrimati Renu Chakravartty: Ban it?

Shri M. S. Gurupadaswamy: Certainly ban it. I would have expected the hon. Member to come forward and say that this is a salutary provision and let us extend it to all the classes of marriages. Let us make it compulsory. That would be a progressive

step. The Communist Party wants to have one wheel of progress and another wheel of reaction. This is fantastic.

Shri Sadhan Gupta was invoking logic for defense of his point. I do not think it is logical. On the contrary I must say it is illogical logic to say that there should be a special type of marriage under this law and, at the same time, to argue that the salutary effects of this measure should be taken away by a backdoor method of invoking customs. This is a rather very untenable proposition.

We are aware that in society even today there are divorces and divorces; there are free and easy marriages and speedy divorces. Customs permit them. Why should we not rely on them and extend the scope of customs? Then we need not think of enacting this law at all. But this enactment is intended to set a few good norms for society in respect of marriages and divorces. We have to extend the scope of this. Sir, what is the purpose of an enactment? The purpose of a statutory enactment is to reduce the scope of customary law so that we may avoid any sort of indefiniteness, doubt or uncertainty.

Another purpose is to bring reason and reasonableness to the field of customs and practices and to eliminate slowly the practices and customs. Even if the customs are good, we must substitute them by statute law which is definite, precise and reasonable. That is the purpose of an enactment. My friends here seem to have missed the bus.

Shri Velayudhan: You take the bus. (Interruptions.)

Shri M. S. Gurupadaswamy: It is very unfortunate, Sir, that this amendment has been brought forward by my progressive friends, as it is most reactionary. I strongly object to this amendment and this should not be permitted. If it is permitted, the main purpose of the Bill would be defeated and will be indirectly sabotaged.

Shrimati Renu Chakravarty: May I ask this illuminating Member how we can enforce monogamy among those large sections who are actually being married under the customary law? (Interruptions.)

Shrimati Jayashri (Bombay-Suburban): I am strongly against the amendment. I am surprised that Mrs. Renu Chakravarty is supporting this amendment. When we try to have a uniform law it is necessary that we should progress and have changes in our law which are more progressive.

In clause 15, some of us thought that confusion would be created by allowing customary laws to prevail, as we all know that India is a vast country and we have a variety of customs and usages. Some customs even allow divorces by saying 'talak'. We are not going to allow that in the present Bill. We have to be very careful when we want to change the present Act of 1873. On this ground, some of us oppose clause 15, which would have allowed a loophole. But, I am glad our Law Minister has given us the assurance that this Act will not apply in future only to those marriages which have taken place before this Act has come into force and I am glad that the Law Minister is going to make this change. I hope the Members here also would support this.

1 P.M.

On the point of eugenics also, I think it is necessary that cousin marriages should be stopped. When we want to have a uniform Act we should see that it is more progressive. Those who want to resort to their customary laws can marry according to their personal laws. Nobody is going to prevent them. On this ground, I strongly oppose this amendment.

Shri S. S. More: I want to raise some points. The amendment says:—

“unless the law or any custom or usage having the force of law governing each of them permits of a marriage between the two.”

According to this amendment, I want to know from my friends whether it will not be necessary for both the parties to be under a particular custom. Supposing A and B are governed by two different customs, what will be the position? If the word 'each' is to be interpreted in the proper way, then it would mean that both A and B must be governed by that same custom and, if they are governed by that same custom, then only that sort of marriage will be permissible according to this amendment.

Personally, I am very much against custom and usage. What is the definition of custom? There are judicial decisions. Customs must be ancient and must be sufficiently widespread and reasonable. Reason and custom go ill together. Customs developed under the pressure of society are useful for a particular time. The moment society advances, what was useful at a particular stage of its development becomes out of date and out of tune with the marching society. Therefore, such customs must be supposed to lose their force.

Shri V. G. Deshpande: Marriage itself is custom.

Shri S. S. More: Custom and usage are the two legs on which orthodoxy walks and man, who is advancing scientifically, must particularly see whether a particular custom is in accord with science or not. If it is in accord with science, then we might look at it with some tolerance. The present measure is not knocking out all customary marriages. Possibly, there might be a certain custom which might be in full accord with prohibitory degrees mentioned here. Such customs, when embodied into law, acquire greater validity. But, there might be certain customs which might be undesirable customs, which might be out of date in the present times, and which might not pass the muster of science and modern ideas that we have developed. Are we going to stand for such customs? On the contrary, we must knock out custom because custom itself imposes cer-

tain undesirable restrictions and there has been legislation to annul or undo the effect of custom or usage.

I would bring to your notice the Hindu Marriage Disabilities Removal Act of 1946. What does it say? Clause 2 says:—

“Notwithstanding any text, rule or interpretation of the Hindu law or any custom or usage, a marriage, between Hindus which is otherwise valid, shall not be invalid by reason only of the fact that the parties thereto belong to the same *gotra* or *pravara* or belong to different subdivisions of the same caste.”.

So, in certain communities custom laid down that persons belonging to the same *gotra* should not marry. It was found that the custom was unreasonable and therefore, law came to the aid of the parties, and permitted marriage between the same *gotra* and *pravara*.

Shri Nand Lal Sharma: What about reason?

Shri S. S. More: My hon. friend is asking me: what about reason? Now, reason is not a safe criterion because different individuals will have different standards of reason and different stages of reason develop. Therefore, what is reasonable has to be construed in the light of scientific advancement. For instance: if a custom says that a *sudra* should not eat sugar, then I would protest against that custom. But, if it is prescribed by a doctor that a man who is suffering from diabetes should not take sugar and the *sudra* happens to be one of the diabetic patients, then I would say that this injunction is an injunction prescribed by science and must remain.

Dr. Jaisoorya: I protest; I am a diabetic and I eat sugar.

Shri S. S. More: Then we will have to pass a law preventing such a diabetic patient from eating sugar. That is another matter. Therefore, whatever is prevented by society; whatever is prohibited by society at certain stages of development, when we have

registered a further advance, we have again to submit that particular custom or particular prohibition to the test of scientific advancement and to the requirements of the times in which we are residing. So, I personally feel— I do not want to take much time of the House—that this amendment should not be passed. This is a measure which is trying to take the country to an advanced stage; this is going to take the country to a progressive stage, and whatever is likely to be retrograde or reactionary should not be mixed up with the present legislation. I would have viewed this amendment with sympathy if no other form of marriage was available for persons with customs. Now, there are different legislations; there are different marriages for Muslims, Parsis, Christians and Hindus. As long as these different provisions are there, provisions which take notice of the customs and permit such marriages, there are other doors by which they can go out if they want to do so. So far as these doors are concerned they should be strictly kept open for those who qualify under the strict provisions of this particular enactment. So, my submission is that, with all my sympathy I quite see that, they are trying to cater to the needs of a larger number of persons, but that is not the way by which we can do this. We must find out some other way by which we can get this done.

There is one more argument which I want to mention. If marriages are confined to a particular family, it is undesirable. Why should the party be confined to a particular girl? On the contrary, if there is some such provision by which the custom will be knocked out, the boys and girls will have a larger field of selection. The property will be distributed more equitably in different families and that will be a step in the right direction towards advancement of society; otherwise, these marriages are engineered by persons who want to keep the property intact in their own families.

Shri Sadhan Gupta: Then, ban it.

Shri S. S. More: You please move a measure. I request Shri Sadhan Gupta to table a Bill and I will support that Bill if he comes forward with such a Bill. My submission is that these marriages are always taken advantage of by persons who want to keep the property confined to certain families and do not want it to go outside. Therefore, even from that monetary point of view I am against this particular amendment.

श्री नंथ लाल शर्मा :

नमो भगवते कृष्णायुधाय ॥

सभापति महोदय, बात यह है कि दो दंपित्यों के बीच में एक बच्चे के सम्बन्ध में झगड़ा हो गया। किसी न्यायाधीश के पास कैसे गया। दोनों मातायें रोती रहीं कि यह बच्चा मेरा है। दोनों ही उस बच्चे के हटाने से बड़ी दुखी होती रहीं, प्राण दंती रहीं और चिल्लाती रहीं। अन्त में बड़ी चिन्ता हुई कि क्या किया जाये। अन्त में न्यायाधीश ने यह कहा कि इस बच्चे को आधा आधा कर दिया जाये, आधा बच्चा एक स्त्री को दं दिया जाये और दूसरा आधा दूसरी स्त्री को दं दिया जाये। जो बेचारी बच्चे की माता थी उस ने कहा कि इस बच्चे को दूसरी स्त्री ही को दं दिया जाये, वही उस की माता है, मैं नहीं हूँ।

मुझे कोई बड़ा अचम्भा नहीं हुआ जब साम्यवादी पक्ष से इतने शक्तिशाली ढंग से और बड़े स्नेह से बोलते हुए कस्टम्स को बचाने की चेष्टा की जा रही थी। वस्तुतः उन की इच्छा यह है कि इस कस्टम बेचारे के प्राण ले लिये जायें। इस के अलावा और कुछ नहीं है। हम को जरा भी अचम्भा इस बात से नहीं हुआ। जो जादूगरनी मुख से आग उगल सकती है और उसी समय पानी भी उगल सकती है वह अगर एक ही क्षण में कस्टम को नष्ट करने और कस्टम की रक्षा करने की बात कहे तो कोई अचम्भा नहीं। पहली बात यह है कि कस्टम की रक्षा यदि करनी ही थी तो इस जाति और देश में जो कस्टम प्रारम्भ से चले आ रहे थे, उस में स्पेशल मैरिज कहीं नहीं थी, उस के

।द भी हमारे विधि मंत्री महोदय ने जिन के मन में थोड़ी सी पिछले पिता पितामह और बाप दादां की इज्जत रह गई, यह नहीं चाहा कि प्राहिबिटेड डिगरीज को बिल्कुल हटा दिया जाये। हालांकि मैं जानता हूँ कि इस बिल के शिथिल में कस्टमरी प्राहिबिटेड डिगरीज नहीं हैं, लेकिन आप के इस बिल में दी हुई प्राहिबिटेड डिगरीज जो हैं वह अलग हैं।

कस्टम के अनुसार तो---

असपिण्डा च या मातुरसगोत्रा च या पितुः ।

सा प्रशस्ता द्विजातीनां दारकर्मिण भेधुने ॥

(मनु)

अथवा

यवीयसीं भ्रातृमतीमसमानार्थगोत्रजाम् ॥

(याज्ञवल्क्य)

यह बिल भी कस्टमरी नहीं है। आप ने जो यूजिनक्स की बात बार बार की और जिस का समर्थन करने की हिम्मत डा० जयसूर्य भी रखते हैं या श्री गुरुपादस्वामी जिस के समर्थन के लिये आगे बढ़ने की हिम्मत करते हैं वह सिर्फ मोरीलटी के सीमित दायरे में रह कर ही ऐसा करते हैं। जो हमारे बन्धु आज कस्टम की रक्षा चाहते हैं, उन से मैं चाहूंगा कि वह लोग जो कस्टम हमारे यहाँ चला आता था कि पिता के सगोत्र और माता के सपिण्डा के साथ विवाह नहीं करंगे, उस के लिये भी उठ कर कहें। मैं उन का स्वागत करूंगा यदि वह खड़े हो कर कह दें कि स्पेशल मैरिज हमारे कस्टम के मुताबिक ही हो, और जहाँ कोई कस्टम नहीं है वहाँ स्पेशल मैरिज न हों। यदि आप यह स्वीकार करें तो मैं कहता हूँ कि हम आप का स्वागत करंगे। लेकिन आप लिबर्ट-निज्म के चार्टर की बात करंगे, प्रेम के गुण गायेंगे

रीतमिन्दरं वेद पाठ इव शिरश्शलं जनयति ।
कामर्द्व के मन्दिर में वेद का पाठ हो ।
तो शिर दर्द पैदा करता है । वैसे ही मुझे यह दिखता है कि आज के प्रसंग में वह कस्टम का नाम ले रहे हैं। इसी लिये मैं ने आज भगवान प्रेम की जय बोली है, कामर्द्व की जय बोली

हैं। यहां सब से बड़ा दर्बता कामदर्ब हैं। हमार अर्षियों ने विवाह के समय कहा हैं :

कामोद्धात् कामायादात् कामोदाता कामः
प्रतिगृहीता कामैतत् ॥

काम ही दाता हैं, काम ही लेता हैं, दर्बता भी काम का हैं और काम के लिये दर्बता हैं। एसी परिस्थिति में जहां पर कामदर्ब नंगा ही नाचने लगा, वहां पर विधि मंत्री बेचार ने थोड़ा सा प्रयत्न किया कि मोरीलटी ही नष्ट नहीं हो जानी चाहिये। हमार बन्धु इस कस्टम के नाम से थोड़ी बहुत बची हुई मोरीलटी को ही मिटाने की चेष्टा कर रहे हैं, यह दर्ब कर मुझें अचम्भा नहीं हैं। वह जिस सभ्यता को लाना चाहते हैं वह सभ्यता क्या होगी यह तो नारायण

ही जानें। कहीं पर वह दीक्षण के नाम से रक्षा चाहते हैं, वह दीक्षण न जाने रूस की तरह का कोई दूसरा आयरन कर्टेन्ड दर्ब हैं या क्या हैं, कहीं पर किसी दूसरे नाम से चाहते हैं। पता नहीं वह किस प्रकार के कस्टम की रक्षा चाहते हैं। वह चाहते हैं कस्टम का सर्वनाश और नाम लेते हैं कस्टम की रक्षा का। मैं यहीं पर उन की इस भावना का विरोध नहीं करता बल्कि इसके आगे जहां कहीं पर भी वह आयेगी वहां भी इसका विरोध करूंगा।

इन शब्दों के साथ मैं इस संशोधन का विरोध करता हूं।

The Lok Sabha then adjourned till a Quarter Past Eight of the Clock on Wednesday, the 8th September, 1954.