

silence, it does not mean that they are accepting his interpretation. He may proceed to the next point now.

Mr. Naziruddin Ahmad : I come to clause 8 of the departmental Bill.

Mr. Speaker : It would be better if the honourable member gives references to the final Bill as it is before the House and then point out the change. Otherwise I cannot follow. He is referring to three or four Bills.

Mr. Naziruddin Ahmad : I have been starting from the original Bill. Of course it is clause 8 in the final Bill also. In clause 4 of Part IV of the original Bill it is said:

“A sacramental marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto.”

In the revised draft clause 8, sub-clause (1) says :

“A sacramental marriage shall not be complete and binding on the parties unless it is solemnised in accordance with such customary rites and ceremonies of either party thereto as are essential for such marriage.”

Sir, I do not think it is a point of argument—this is by mistake. But the point which I wish to submit is that I do not insist on this interpretation as a necessary logical consequence but I believe it is introduced unconsciously and there is a certain amount of doubt as to the validity of the marriages. I know that the feeling of every lawyer, judge and statesman would be against the invalidity of the marriage on this ground of registration. But that is political; the approach should be entirely legal and constitutional. What is the interpretation ? If you do not perform your marriage in accordance with these new provisions the marriage will be invalid. It follows therefore, whether we agree with the justice of the provision or not, it follows to my humble mind that unless the particulars of the marriage are entered in the register the marriage itself would be invalid. I submit that for the consideration of the House.

I have already referred to the provisions in regard to the making of the entries, that the making of the entries shall be compulsory.

Mr. Speaker : That he has said; he need not repeat it.

Mr. Naziruddin Ahmad : Is it compulsory for the parties or for the registering officer ?

Mr. Speaker : That is a matter of detail into which we need not go at present.

Mr. Naziruddin Ahmad : All right, Sir. (*Interruption*).

Mr. Speaker : Let there be no asides.

Mr. Naziruddin Ahmad : But, Sir, I have a quick ear and this is not conducive to good debate. My learned friend who is an experienced parliamentarian should not try to discourage speeches. He should forget that he was addressing the old Council when the British were there. He should remember that he now belongs to a party which is ruling and I belong to no party at all but am an individual who is opposing.

Mr. Speaker : Let us not carry on this discussion.

Shri B. Das (Orissa : General): Do you want us to keep our mouths shut ?

Mr. Speaker : Mr. Das. The remedy is open. We can afford to be deaf on such occasions and proceed further. I also hear many whispers when the debate is going on, but I do not take any notice of them.

Mr. Naziruddin Ahmad : Sir, you are in a more fortunate position.

Mr. Speaker : Let us now proceed. What is the next substantial point ?

Mr. Naziruddin Ahmad : I now come to another part—Part V of the original Bill relating to Minority and Guardianship. Clause 3 thereof has been entirely omitted in the final and departmental Bill. I need not go into the details of the clause, but this is a substantial clause which has been omitted. That is introducing a serious change. There are other unimportant changes and I will not deal with them.

I now come to the Part relating to Adoption, that is Part VI of the original Bill. Clauses 1 and 2 thereof have been omitted. In departmental Bill clause 55—also clause 55(1) of the final Bill—there is a sub-clause (3) which is new. Then again in Part VI of the original Bill sub-clause (1) of clause 19 is omitted. A new clause has been introduced with entirely different conditions. In departmental Bill clause No. 68, which also corresponds to clause 68 of the final Bill, sub-clause (1) is a new clause. And the Proviso to this sub-clause of clause 68 of both the Bills is also new. Then again sub-clause (3) of clause 19 of the original Bill with two conditions is entirely omitted in the final Bill. Sub-clause (5) of this clause again has been omitted. So also clause 21 of the original Bill—Part VI—has been omitted. Then again clause 25 of the original Bill in Part VI. with two sub-clauses and two other parts, is entirely omitted.

I submit that these are most important changes made by the Departmental Bill. Although it is clear that some honourable Members of the Select Committee realise that there were substantial changes introduced in the departmental Bill that may have been a later realisation in view of the guarantee that no substantial changes have been made. In fact their attention may not have been specifically drawn to it and there is a danger that all these details may not have been fully considered by them. That would not have happened if they had confined their attention to the original Bill and proceeded clause by clause or if they had sat first and given a direction to the Department to prepare.

Mr. Speaker : The honourable Member is again covering the same ground; he has covered it yesterday.

Mr. Naziruddin Ahmad : Sir, I do not wish to repeat the grounds. In these circumstances I submit that the simple point is that this is a very substantial matter which has prejudiced the fair and full consideration of the Bill by the Select Committee.

I do not wish to cast any aspersion on the Members of the Select Committee, but without a proper comparison of the clause it would be extremely difficult for the Members of the Select Committee to follow all the changes.

We then come to the other matters in connection with this Bill. The question of inheritance is agitating the mind of the country for a long time. The position of the daughter is the most contentious provision of the Bill that I can think of. In fact, I was asked why it was that I was refusing to my Hindu sisters what I have given to my Muslim sisters. The reply is very simple. Under the Muslim Law, the daughter has been given a share. We are not permitted to question the wisdom of that Law; that Law has got to be taken along with various other circumstances, historical, social and others which justify that. There is a kind of justice which has been tolerated and accepted by the Muslim society for 1350 years. But our Hindu sisters have tolerated their lot for about three to four thousand years under a different system. A comparison between the two systems so far as the daughter's position is concerned, would not be quite relevant. In fact, the two systems of law approach the matter from different points of view and they depend upon different historical accidents. Under the Muslim Law, the system of inheritance was taken from the old Arabian customs. It arose out of obvious and inevitable circumstances. In Arabia there were no

immovable properties, all was desert, and the properties consisted of movable. When a man died

Mr. Tajamul Husain (Bihar: Muslim): On a point of information, may I ask this. The honourable Member says that in Arabia there was no immoveable property. What about the houses ?

Mr. Naziruddin Ahmad : The question is needless. I will ask the honourable member to read a very learned book of Von. Kremer, a German authority, on "The Orient Under the Caliphs". That book will give the desired information. There is a translation of it by the Late Mr. Khuda Baksh. It is the only book on the subject. It has dealt the entire subject from a specialist's point of view. I will humbly ask my honourable friend to read that book for further elucidation, but I am not concerned with giving the entire details of it in the House because that is not quite relevant.

I was submitting that my learned friend's question as to there being absence of immovable property does not really arise. Arabia consisted, certainly, of immovable property also but most people had no immovable property. (*interruption*). No further interruption. I have been asked by the honourable the Speaker not to mind interruptions but it is difficult to close one's ears to what is happening.

An Honourable Member : Close your mouth.

Mr. Naziruddin Ahmad : I shall as soon as I feel satisfied that I have discharged my duty and as soon as I feel that the majority do not want to hear me. I shall certainly do it.

Sir, in that book the whole history has been given. When a man died. He left a bedstead or some clothing or a horse or camel and things of that sort, and according to old Arabian customs they were divided among the near relatives. No trouble arose. The Qoran does not give any specific share to each individual. The present system of inheritance is a growth of the old Arab custom and amended and changed by Muslim doctors, especially by that great authority on Muslim Law, Abu Hanifa and others. I need not go into that. All that I was concerned in saying was that the Muslim approach is a matter of history. Whether good or bad is not to the point, and the fact that I oppose the share of the Hindu daughter is not because I am unwilling to give my Hindu sisters what I would give to my Muslim sisters. If what is good to a Muslim depends upon ancient customs and sentiments what is good to a Hindu should also depend upon the ancient customs and sentiments of the Hindus. When the Arabs conquered the areas surrounding the

Mediterranean difficulties arose because they acquired immovable property. It is a matter of history that they felt the difficulty of a large number of shareholders inheriting the property leading thus to disruption. Then it was that the system of *wakf*, which we now find today, was thought of. Some passages in the Holi Book were developed by Muslim divines and they tried to develop the law of *wakf*. That was now they wanted to counteract the evil effect of division. In India the law of *wakf* was further developed by Indian courts and especially by the Privy Council and this to a large extent thwarted the application of the *wakf* law in domestic purposes. It is well-known that Mr. Jinnah, in 1913, brought a Bill in the House and got an Act passed—the *wakf* Act—which recognised the validity of certain *wakfs* which were regular in practice among the Muslims. This was an attempt to counteract the evil effect of infinitesimal divisions. The Muslim approach to the division of property is entirely different. The outlook of a Muslim is individualistic. In fact, the infinitesimal division induces in them separatist tendencies. Brothers do not live in the joint family for long; they quickly divide. We have seen a separatist tendency on a large scale in recent Indian history. So, the approach of a Muslim is individualistic whereas the approach of a Hindu is from the family point of view. The Hindu lives in a family. There the unit is the family and they approach the women's rights from the point of view of a family. The Muslim approach is different. In fact women in a Hindu family are not unequal to men, the question of inequality as has been pointed out does not really arise; they are equal to men in every way but each has a recognised part in the economy of the Hindu family. That is the way of approach of the question. Although I do not question the authority of this House to legislate on any matter, I question only the propriety of this House entering into this legislation without discussing and going into details of the system under which the Hindu civilisation has lived. The position of a Hindu widow should be considered from that angle and if on adequate consideration it appears that the system is rotten, it is for the Hindu society to change it. It is not for me to change it. It is up to me only to point out certain things which come to my mind as a member of the Legislature; it is not my vote that will carry; the vote of the majority will carry. I have a duty to submit certain points as they appear to me. I submit therefore that the Hindu law is not unjust to the female. It has done full justice to the female considering her as a part of the family system where she has a part

to play. In fact, in this legislature we have different parts to play. There is no question of inequality or discrimination. We have all parts to play. In these circumstances I submit that the position of the Hindu women has to be considered from this point of view. The division amongst Muslims has gone too far. How the share of a daughter leads to disruption of the family is worthy of consideration. As soon as a man dies, leaving sons and daughters, the daughters at once inherit their shares. They are married and in a majority of cases they are transported to different families. In fact, inter-marriage in Muslim Law is a *device* to counteract infinitesimal division. There is again a provision that in case person having a share transfers the property to an outsider, the original co-sharers have been given the right to re-purchase the share on payment of the price. But as every lawyer knows, a suit for presumption is hedged in with so many legal difficulties that it hardly succeeds. The *Wakf* is another attempt to counteract this tendency. The share to a Muslim daughter has not conduced to the solidarity of the family property.

Mr. Tajamul Husain : I do not wish to interrupt, but as it is a case of Muslim Law, I am interested in it. I want to know from my honourable friend whether he does not approve of the inheritance as enunciated under Muslim law ?

Mr. Naziruddin Ahmad : I should submit that the question does not arise.

Mr. Tajamul Husain : It is for the Speaker to say whether it arises or not.

Mr. Naziruddin Ahmad : Even then, I shall not be drawn into a controversy over this. How the Muslim family deteriorates and desintegrates, is a matter of long experience to us, as also I believe to many lawyers like yourself. When a daughter is married, for some time family amity keeps them together, but a time comes when the daughter comes to her father's house and a misunderstanding arises between the daughter and the brother's wife. Women differ on more unsubstantial matters than men. They being more sensitive differ.

Shri Mahavir Tyagi : You are casting aspersions on women.

Mr. Naziruddin Ahmad : It is not casting aspersions. It is analysing their character. The sentimental nature of women makes them more attractive, more interesting and more loving. If women were as hard-hearted, as strong, as rugged, as we are, life would have been

impossible. In fact, it is the beauty of feminine nature that they are so different from men. It is the union of two distinct types that makes life bearable and happy. So it is not by way of disparagement that I was making this remark.

When the daughter gets offended with her sister-in-law, she goes back to her husband and says "I want my share." Then the trouble
12 NOON begins sooner or later. It has happened in every home. The sister's husband comes to his brother-in-law and demands a share and it is refused and then he wants to sell the share to the brother. The brother of course would not be willing or able to pay the full price demanded, so this man goes to another man in the village and sells the property for a small cash and a promise of more after the trouble is over. Then some physical demonstration of new right begins. A criminal or civil case follows. From ordinary injury to murder, from registration proceedings to partition proceedings and so on. Lawyers will be thankful if this Bill is passed, because it will give them a considerable amount of business. Litigation begins and does not end in five or ten or twenty years. Litigation after litigation follows in bewildering succession and the whole village is rent with party factions. If there are only several brothers, they can live together and manage the properties together, although their wives may quarrel with each other. Brothers hardly quarrel. In this way the Hindu joint family system goes on. There is nothing inherently different between a Muslim family and Hindu family except in this. Muslims have been habituated to think of partition and individualistic life. The Hindu is habituated to joint and corporate life. Probably, very few of my esteemed Hindu friends can visualise the real difficulty that would arise out of the daughter's share. In fact, it is never a gain to the daughter. There is a corresponding loss to counterbalance the gain. Suppose out of a litigation and a share a daughter is enriched to that extent. She goes to her husband's house and has her own sons and daughters. All that she takes from her brother, her daughter will take from her sons. Instead of considering the women individually and separately, if we consider her as part of family life, then the gain is not counterbalanced by the loss. I submit that the daughter's share will introduce endless complications and litigation, quarrel and misunderstanding and what not. In fact, it is my unhappy experience that no prosperous Muslim family has lasted for three generations. This and other things make them paupers. The point is not whether the system is good or bad.

Muslims have accepted it as part of their religion and will accept it so long as the majority do not think it is bad. So far as Hindus are concerned they have accepted their system and unless the majority are convinced that that system under which they have been thriving and been made so prominent, a system which has outlived many ravages of foreign invasions, unless they are convinced that that system is bad, there should be no interference. My point is that comparison between the Hindu sister and Muslim sister would be extremely dangerous, because their positions are not analogous and actually there are differentiating elements which arise from different histories, considerations and environments. Therefore, there is no simple analogy between the position of the Hindu sister and the Muslim sister. I think the effect of a daughter's share must be considered dispassionately in all conceivable aspects. It is not a net gain to the daughter herself. It leads to fragmentation. I would not have referred to this in detail but for the fact that on 9th April when the Bill was sent to Select Committee, I referred to this mischievous tendency and Mrs. Hansa Mehta expressed surprise that the daughter's share would lead to litigation or fragmentation of property. It is due to the fact that perhaps the mischief which we have experienced has fortunately not been experienced in the Hindu society. It is for this reason that there was a possibility of misunderstanding, and that is why I have referred to this matter. I submit, Sir, that the position of the daughter must be considered in the context of Hindu ideas and of Hindu families. Every one is affectionately disposed towards her. She is well married, and at the time of marriage various gifts are made, there is the dowry and besides that large properties too are sometimes given. And she is a welcome guest in her father's house. But if you give her a share, then the relations between the brothers and sisters will no longer be one of affection, but it will turn into one of business, one of hostile and clashing interests. In fact, love will be extinct, if the daughters' shares are allowed to penetrate the folds of Hindu society. Sir, these are some considerations which I believe should be considered dispassionately.

Shri Mahavir Tyagi : What is your experience ?

Mr. Speaker : Order, order.

Mr. Naziruddin Ahmad : My experience is that we have become impoverished. If Hindu society thinks that impoverishment is a virtue they are welcome to accept the system. After all we hear talks of

introducing a classless society of absolute equality. It will be the equality of poverty and indigence. But I do not complain of my system. And after all, this is not the place to discuss it. I only submit here that the whole subject must be considered deliberately by Hindu society and not merely viewed in the light of equality of brother and sister. That is too much of a slogan. We as serious legislators in this House should not be taken in by slogans. Here I have only given a slight hint on some of the aspects. There are many other matters but it is impossible for me to deal with all aspects. It may be that I have over-emphasised certain minor aspects, and left out others. But these are only a few observations which may make people think and not rush on, so far as the daughters are concerned.

And now comes the question of equality. Is not the women sometimes superior to man in certain aspects ? I believe that she is in many spheres superior. She is the mistress of the house. She is the mistress of her husband's soul, his purse, his property, his inclinations, his whims, every thing is controlled by her. I submit, therefore, that the women should not consider herself as ignored, merely because she is not being given a share. In fact, her position is unassailable in the family. What woman is there who is not respected and loved in the family ? Does she require anything personal ? Does she require anything herself, apart from the welfare of her husband, of his brothers and of her children and the children of her brothers? That is the Hindu system. Whether it is good or bad, it is not for me to discuss.

An Honourable Member : Quite right.

Mr. Naziruddin Ahmad : It is for the Hindu community. It is for that community to say whether the system which has lasted for over four thousand years.....

Babu Ramnarayan Singh : More than that.

Mr. Naziruddin Ahmad : It is for them to say whether it is really so rotten and so rickety—to quote Dr. Ambedkar—that it requires overhauling, that it requires breaking up and resetting, in fact whether a problem akin to that Relief and Rehabilitation has arisen in Hindu society. I feel that it is nothing of that sort. The problem is merely an intellectual upheaval. It is an abstraction of legal theory. It is an unnecessarily fine question of equality that is at the root of this division, of all this discussion and so much hostility. The whole thing is a simple affairs. Are you satisfied with your family system ? Does it give you satisfaction ? Has that system saved you from the ravages of time?

Dr. Mono Mohan Das (West Bengal : General): And that has increased the number of Muslims in the country.

Mr. Speaker : Order, order.

The subject before us is not the structure of society. We are discussing only certain provisions in the Hindu Code. So let us not go into too many details or go on to other questions. Otherwise I will have to ask the honourable Member to discontinue.

Mr. Naziruddin Ahmad : If you allow shares, to the daughter, there will be wholesale evasions, and lots of cases relating to wills will come up. When the father dies, there will be wills. In fact, it will lead to lots of litigation. The sons will try to retain the property in their own hands and it may be that the dying father may be prevailed upon to execute a will under duress, or wills may be manufactured. Such things do happen. In fact, these are certain matters which have got to be considered.

Sir, then there is the general aspect of inheritance. In fact, this is a matter which should be carefully considered.

Then, I come to another part of the Bill, namely, marriage. In fact, with regard to monogamy. I submit that monogamy is good in theory, and good in practice also. And I also believe that numerous people would not have two wives. One is costly and troublesome enough. In fact, two wives would be a rarity. It is a rarity. I do not find two wives very common. It is extremely rare. It is only confined to very exceptional cases. Exigencies of political or economic conditions make it impossible for any one to marry two wives. But the point is whether we should try to introduce monogamy by legislation or by public opinion. There may be a tendency on the part of some men to marry two wives, not for the sake of caprice, but for the sake of having a son. According to the Hindus, a son is needed to save the father from a certain Naraka, called *puth*. A person who saves you from *Puth* is called 'Puthra', the son. Otherwise the man goes to a certain hell called *puth*. It is a religious necessity according to the Hindus to have a son and to have a son means that if the wife is barren, he tries to marry another. It has happened within my experience, and it may be within the experience of many others that a second marriage of the husband has been brought about because the first wife is barren. I have seen very happy families, where the senior wife without a child actually induced or compelled the husband to marry a second wife, and the senior wife considered herself absolutely

happy with the family. A similar belief in at a son is desirable is also prevalent amongst the Indian Muslims in Bengal.

Mr. Tajamul Husain : I want to put a question for my information and for the information of other honourable Members. I understand that a Hindu father must have a son for his own salvation. Does a Hindu mother also require a son for her salvation ? If she does, she should have the right of polyandry.

Mr. Speaker : We may have a fund of information outside the House. In the House, let us continue ourselves to the Hindu Code.

Mr. Naziruddin Ahmad : I submit, therefore that polygamy is not as dangerous as it is supposed to be in point of view of abstract logic and abstract legislation. It has got to be considered in a particular context. If there is a desire on the part of a Hindu husband to have a child and for that purpose to marry again, and if he cannot do so for the existence of the first wife it may lead to divorce proceedings. The provision of monogamy and the prevention of a second wife during the lifetime of the first wife or during the existence of the marriage with the first wife may lead to divorces. We must not think it to be fanciful. In fact this has happened even in European countries in our history. Napoleon Bonaparte married a loving wife, Josephine. He had no children and Napoleon wanted a heir to the throne of the vast empire which he created by his own genius and what did he do ? He divorced the first wife, although his love for her was intense, but the desire for a son and the perpetuation of the family got the better of him and he married a Princess and he thought by that princely alliance with the Princess of Austria he would consolidate his power for ever and he would be happy with both. This is a historical example.

The Honourable Dr. B. R. Ambedkar : What happened to Napoleon ?

Mr. Naziruddin Ahmad : He died in St. Helena—an unhappy man.

The Honourable Dr. B. R. Ambedkar : If he had not desired the founding of an empire, he would have lived otherwise.

Mr. Naziruddin Ahmad : Sir, This is an example from history. If a Hindu is prevented from marrying for the purpose of a son, if he thinks that a son is necessary, and if he believes his wife would not give him the son, then he would think of some evasion. He will in many cases enter into a morganatic marriage. Can you prevent a man from entering into a morganatic marriage or to commit a technical

crime in the full religious belief that what he is doing is just and proper according to his own conscience ? This would be interfering with sentiments of a people deeply immersed in religious thoughts and religious beliefs. In these exceptional cases therefore the matter should not be dealt with by legislation, but rather on public opinion. Polygamy is dwindling from within and the process must not be artificially hastened in order to create evasions. Absolute prohibition of polygamy is a defect and a practical difficulty in the way of the Bill. If a man requires a second wife, what prevents him from crossing over to Pakistan ? (*Shri Mahavir Tyagi*: What about a second husband ?) The second husband is also prevalent in some places. Mr. Tyagi is well aware of this. Polygamy would be prohibited in India and you will refuse to recognise it, but the man must have a son and what prevents him from bringing the married wife—the second wife married in Pakistan—to his house and it may be that the first wife may be consenting. Would you then pass a law which is against deep-rooted sentiments and beliefs of the Hindus. There are serious matters to be considered. This is hardly a subject for drastic legislation going against the very principles, the fundamental ideas of the Hindus. The matter should be very carefully considered before we should indulge in a drastic law of this kind and then there is the provision of a penalty, legal punishment in case of a second marriage. I submit that we should not pass a law which would not be popular with our masses, which would inevitably lead to violations and evasions. We know the fate of the Sarda Act. The first effect of the Sarda Act was that many millions of infantile marriages were performed before the law would come into force. The first effect was to bring about the very mischief which it was the purpose of the law to prevent and then what is the story today. Supposing a man has a marriageable daughter, not up to the age standardized by the Sarda Act and suppose a suitable bridegroom is available, can you morally blame the father or the guardian if he contracts the marriage for the minor daughter ? Would it be merely indefensible simply because it may offend against the theoretic legal sense or the political sense of the man ? Current practices should not be made impossible all at once by law. Old practices are in consonance with the faiths and inclinations of the people. The sarda Act has largely failed and public opinion is so strong in this respect that there is hardly any prosecution against the alleged violation of the Sarda Act today. In fact legislation had been imposed by way of

amendment and there are some difficulties in the way of a complainant. The first difficulty is that he must deposit the costs, which will be forfeited in case he loses his case and other additional difficulties are put in the way. What has happened ? Infantile marriages are still prevalent. Nobody supports infantile marriages, but it could not be stopped by criminal prosecutions or by force, unless it is supported and backed by popular sentiment. Amongst the upper educated classes infantile marriage is practically out of the question, but just look at the poor people. If unmarried girls of the poorer classes, not coming up to the marriageable age are to be left unmarried without the care and protection of a husband, it would not be a very safe thing to allow and it may be that many abuses and difficulties will arise if such girls are left without the protection of a husband. The result would be that if she is forced to wait till she attains the statutory age, a husband would not be readily available and she cannot be married readily, and this will lead to all sorts of abuses. I submit, Sir, that remembering the fate of the Sarda Act, we should also consider the idea of compulsory monogamy under all circumstances in all its rigour and without any reasonable exceptions. I think, Sir, the matter is one of serious practical consideration and not a matter of theories and slogans. I now come to the question of divorce. Divorce is not a panacea for all family unhappiness. There is hardly a man who does not have misunderstandings with his wife and there is hardly a family which does not suffer on this score. Life would be unbearable if the relation between husband and wife was all happiness. Such happiness would be no happiness. Unless happiness is punctuated by moments of unhappiness and quarrel, it will be no happiness. In fact it is these misunderstandings which are followed by re-union—*virah* and *milan* in our society—that conduces to happiness. So, misunderstandings are some times necessary. I am addressing these remarks to all experienced men. Only lunatic would be happy all his life. If he is intelligent and has a personality there will be differences of opinion, but in the long run, the wife will prevail. Therefore if you leave the couple to live together for a time, misunderstandings will be blown away as the autumn clouds. I submit therefore that we should not hastily provide for divorce.

Now, the analogy of the Muslim custom is brought in. “A Muslim can divorce his wife, so, why should not the Hindu have the same right? A Christian can divorce his wife; why should not the Hindu

do so to ?” I may point out that the three systems are entirely different and differ radically in these matters. A Muslim is not free to divorce his wife for practical reasons. He has unrestricted right to divorce, but he has to find the necessary dower money which is usually far beyond his means, because even if it is worth only Rs. 10,000 his dower would be something like Rs. 50,000 or a lakh. It is expressly provided in the Muslim Marriage Law that dower is a check on the Muslim husband's unrestricted right of divorce. So there is a very effective practical check on every Muslim husband, however, dissatisfied he may be with his wife, against divorcing his wife. In fact this is considered to be a sufficiently deterrent condition to prevent many bold husbands from attempting a divorce. If a Hindu husband is dissatisfied with his 'wife, we should allow some time for the dissatisfaction to blow away. If you widen the door and make divorce easy, the result will be the parties will rush to Court and benefit the very lawyers who are anathema to a section of the House. Those who have experience of divorce proceedings in Court know what sordid details are narrated there. They are such as should not be heard by any decent man. Adultery is to be proved to the letter otherwise divorce will not be allowed. The unhappiness is so complete in divorced families that divorce is not a panacea for family unhappiness. If the Hindu wife or husband is given the right to rush to court, the effect will be that temporary misunderstandings which may be healed by lapse of time will result in lifelong unhappiness. In attempting to remedy existing problems you will only create many new problems.

[At this stage Mr. Speaker vacated the Chair, which was then occupied by Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar).]

If resort to Court is provided what will happen is that, the male will take advantage of this provision more than the female. It is sheer nonsense to suggest that an aggrieved woman would get relief in divorce proceedings, as it is very likely that she will be the victim herself. The husband will more often go to Court alleging this and that wrong mentioned in the Bill and get an *ex-parte* divorce. Those who know our society can imagine what possibility is there for a woman to go to Court and disprove the allegations made against her. Who will defend the case of a woman whom the husband wishes want only to discard? It is the man who will more often rush to Court. Then again, the tendency to rush to Court will be accentuated if the wife is barren and there is a desire to have a son by another marriage. Now,

supposing a man gets divorce against his wife, what will happen to the woman ? Where would she go ? After being divorced, she would be without a husband, and without moral and physical means of livelihood ? Who would befriend that woman ? The sponsors of the Bill ? I do not think they will come forward. Would she go to her brother ? No. Has she not antagonised the brother by taking a share of the family property for the benefit of the husband who has discarded her ? The result will be that her father's relations will be entirely apathetic to her sorrows. Then how will she maintain herself ?

The Honourable Dr. B. R. Ambedkar : She will marry Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not think, Sir, that any divorced woman, with any sense of taste in her, would select me. I think the honourable Minister would be a better selection.

Mr. Deputy Speaker : God forbid that any such thing should happen. Let us not make personal references.

Mr. Naziruddin Ahmad : It was not meant to be heard seriously by the Chair.

Mr. Deputy Speaker : But I am serious. The honourable Member invited that remark by the Honourable Minister when he asked : 'Where is that woman to go' ?

The Honourable Dr. B. R. Ambedkar : As he was expressing so much commiseration, I suggested that for the benefit of his own mind.

Mr. Naziruddin Ahmad : I did not resent it. I fully enjoyed the joke. But jokes apart, I ask seriously and again, where she is to go ? Take the case of a divorced European woman. She has resources. She is educated. She can get a job. She can be a shorthand-typist. She can get a job in one of our Embassies and can get a free lift in a plane and a pay as well as allowances. Such women are absolutely free. They can make friends with strangers. They are trained and accustomed to rely on themselves.

So a civilised European woman can stand on *her* own legs and her position is different from that of our women, not the advanced fashionable ones but poor unfriended woman discarded by the husband and fathers' relations. It is not easy, as the Law Minister jocosely said, for a divorced woman to get a husband; even if she is willing a suitable husband is not to be readily available. So her position would be extremely difficult and such women would be the worst victims of the

system of divorce. Then allegations in Court would be too serious to be thought of. Proceedings in Court in such cases are sordid in the extreme and it would be impossible for us, in the present state of our society, to allow the husband and wife to rush to Court.

Then there is another aspect. There are among tribal and other people a kind of customary divorce which involves very simple formalities. They get divorced very cheaply and expeditiously but if they are forced to go to Court it will mean that they could not do it for financial and other reasons and divorce, which they can get easily according to their own custom, will be forbidden to them. You want to complicate matters when you want to achieve uniformity. The law may be the theoretically uniform but it will work hard against the poorer people. In the name of easy divorce people will rush to Court when time would have effected a reconciliation; domestic happiness will be shattered and the parties and society will then repent for ever. To impose this artificial law upon the simple ways of living of these poor people would be very hard; it will make things costly; every decree would have to be supported by a decision of the High Court and it would be a costly affair. Instead of all this I submit the parties should be left to themselves. To introduce divorce in this way, making the same for all classes of people in different stages of civilisation and training would be highly mischievous. It is customary for people here to quote Sanskrit slokas to support or strengthen their arguments. I will also attempt one.

*“Aja juddhe, krishin sradhhe, prabhate megharambarah,
Dampati kalahaschaiba, babharambhe laghukriah.”*

When two goats fight, they stand on their hind legs and a severe impact of the horns seems imminent, but the actual clash is very slight; when a million *rishis* meet for a *sradh* with great ceremony, only a minute quantity of food suffices the thunder clap of the morning cloud looks menacing, but it ends in no heavy rain; and marital quarrels, though seriously and menacingly begun, end in nothing serious.

In Domestic quarrels natural and social forces should be allowed to work to bring about reconciliation.

Instead of divorce you should give them time. The question of divorce is not all one way traffic. It has got to be considered from every point of view. The Honourable the Law Minister advanced a very novel argument that as 90 per cent of the people are *sudras* and these 90 per cent, of the people practise divorce, it is just meet and proper that the law of the majority should be made also applicable

to the remaining 10 per cent. This is not legal logic. It is not acceptable. The Muslims are microscopic minority in India. Should that be a reason for converting all the Muslims into Hindus or imposing upon them the laws of the Hindus and to cremate their dead bodies, for example, according to the Hindu custom ? Or take the other example. The Hindus are in a minority in Pakistan. Would the Hindus call it justice if the Muslim law is forced upon them—if according to the customs of the majority the Hindus are made to bury their dead ? Therefore, the argument of the majority is nothing.

With regard to the statement that 90 per cent of the people have their system of divorce, the *Hindu* of Madras, in an editorial, said that so far as Madras is concerned it is a “damn lie” or something of the sort and that it is entirely inapplicable to the Scheduled Classes or the *Sudras* in Madras.

May I now speak from my experience in Bengal. There are many distinguished Members from Bengal, particularly Pandit Maitra. He will correct me if I am wrong. Is it the custom amongst the 90 per cent *Sudras* in Bangal to.....

Pandit Lakshmi Kanta Maitra : That is sheer nonsense !

An Honourable Member : He is not a *Sudra* ?

The Honourable Dr. B. R. Ambedkar : Maitra, a *Sudra* ?

Mr. Naziruddin Ahmad : We live amongst them. Is it customary among the majority of the *Sudras* to resort to divorce ?

Babu Ramnarayan Singh : In some cases.

Mr. Naziruddin Ahmad : Certainly. But that does not make it the rule of the 90 per cent *Sudras*. Some Assam Members whisper from behind that it is, I hope Assam grows tea and also divorce ! But Bengal produces tea without divorce. I submit Sir, that the argument of the majority is based on a mistaken notion. The facts are not true. It may be that in Bombay it is very prevalent and for that reason the Honourable the Law Minister might have been impressed with the applicability of the theory in other parts of India. Therefore, the assertion that 90 per cent of the people accept divorce is not based on facts, and even if it was true, that should not be made applicable to those who do not observe that system. That argument would fail and should not be used to support the result. A system of straight divorce or an uniform divorce, though a uniform procedure and rule would produce hardship in those cases where a simple form of divorce is prevalent by custom, and would

produce unhappiness and disruption in families where divorce is not prevalent. In these days of easy approach to the law Courts, it would be the wealthy classes that would seek the so-called advantages of this procedure rather than the poorer classes. Therefore, divorce, if it is to be provided, must be provided with the consent of the people. At any rate the second marriage may be permitted with the consent of the first wife under special circumstances. Polygamy is fast dying out and should not be stepped by legislation. This may lead to divorce proceedings, or a man may cross over to Pakistan or to Burma, or to Malaya or to other places and take a second wife and come back. So if society is not sufficiently advanced and educated and sufficiently alive to the need of monogamy and divorce, a provision of this nature would not be accepted by them and would lead to evasions in many cases. Court proceedings should not therefore be encouraged. Again, if divorce proceedings are frequent, it will lead to considerable amount of unhappiness.

Shri Khurshed Lal (Deputy Minister of Communications): May I know if divorce is so bad, then would the honourable Member support the abolition of divorce in Muslim law ?

Mr. Naziruddin Ahmad : Although a Member of the Select Committee, the honourable Member was absent from the House when this matter was argued earlier. I think the honourable Member should concern himself more with further increase in the rate on postcards than intervening in the debate in a scrappy manner. This matter has already been very elaborately argued out in the absence of the honourable Member.

Shri Khurshed Lal : Is 'postcards' relevant in this ?

Mr. Deputy Speaker : It is better that we divorce ourselves from 'postcards'!

Shri Ramnath Goenka (Madras : General): I think you should move for changing the *Shariat* Law !

Mr. Deputy Speaker : Let there be no personal remarks. One remark of such a nature always leads to another.

Mr. Naziruddin Ahmad : Removal of the *Shariat* Law would interfere with the existing law. The introduction of monogamy and divorce among the Hindus would be an interference with the existing law. Therein lies the difference between the two. In fact you must not readily interfere with accepted law and therefore the analogy of the Muslim law should not be applied.

Shri H. V. Kamath : Does he accept everything that exists or does he want a change in anything at all ?

Mr. Deputy Speaker : The House is not concerned with changes other than in the Bill.

Mr. Naziruddin Ahmad : The question of change is an academic question. The question of changing the law has been as old as history. In fact there are temperaments who try to make changes simply because it is a change. They would effect a change on the mere ground that it is a change. There are others who will never agree to any change because any change is a innovation. This was discussed in a classical passage by Macaulay and he said that the best brains lie near the border line, between the two extremes. So a change in the law is not to be adopted merely for its own sake. Again, a strict adherence to the old law, irrespective of all considerations would be equally bad. The position is that you must march with the times and the overriding consideration would be that you must take the people with you. I am referring to moral right. Legal right we have. We have ample legal right to break any law we like and create any law we like. That legal right is assumed. I do not question it. But what moral right have you to effect a change.....

Babu Ramnarayan Singh : No.

Mr. Naziruddin Ahmad:.....affecting large classes of people—30 crores—without their consent ? I am not here to oppose all changes. I am here to oppose any change which is not sanctioned by public opinion. What moral right have you to introduce drastic changes without their sanction ?

Shri L. Krishnaswami Bharathi: We have got their consent; we represent them.

Mr. Naziruddin Ahmad: You then raise a very important constitutional question. This House was elected for the purpose of drafting the constitution

Mr. Deputy Speaker : I am afraid so far as the constitutional issue is concerned there is already a ruling by the Chair. This is a sovereign body which can legislate on anything. If the honourable Member has other grounds he can go on.

Mr. Naziruddin Ahmad: I do not dispute the authority of the House. We have the right to destroy the Hindu society or Muslim society and blend them into something new devoid of religion. That

right is never for a moment in dispute. But the question is are the people behind this law ?

Some Honourable Members : No, no.

Some other Honourable Members: Yes, yes.

Mr. Naziruddin Ahmad: I believe they are not behind the law, they are against it. (An Honourable Member: 'They are for it') How do you know they are for it ? A matter of this gigantic magnitude should be placed before the electorate. That is the constitutional procedure. In fact the day before yesterday Mr. Osborne told us that he could not agree to add certain things unless the matters were specifically brought to the notice of the electorate and permission is given by them. In fact they cannot do any such thing. They consider themselves incapable of proceeding in a constitutional manner without the consent of the electorate. But we are so far advanced that we can afford to disregard the opinion of the electorate. In fact at one time it was argued that the dilatory method is meant to defeat the purpose. If there is any election the Hindu Code would not be passed. This session the argument has been entirely the reverse. They say that they have shown that the electorate is with us. It is with their sanction that we have brought this Bill. It is neither with their sanction nor with their consent that you have brought forward this legislation.

How did this law start ? It was framed under the authority of a foreign government which was then desperately fighting for its own existence. English power was threatened with total extinction. It was a life and death struggle for the British. It was in these times that a Home member, Sir, Reginald Maxwell appointed the Rau Committee. So the thing was conceived under the pressure of a global war when the existence of England was at stake. When the Bill was prepared it was introduced by Mr. Jogendra Nath Mandal, the Minister of Law of the Interim Government. At that time the country was being ravaged by destructive struggles, enormous loss of life and disturbance to public peace on an unprecedented scale, when the then Minister knew the temporary character of the tenure of his office, when his thoughts were already focused on Pakistan and when he was no longer interested in the Bill, it was under those circumstances that the Bill was presented before the House. In fact Pakistan was more than a conception at that time it was already a reality. It was at that time the Bill was introduced in the Assembly.....

Mr. Deputy Speaker : I find that there are a number of people on the waiting list. The honourable Member has already taken one and a half days. When is he likely to conclude ? Has he any idea himself ?

An Honourable Member: In this House nobody has any idea.

Mr. Naziruddin Ahmad : Even the Law Minister has no idea. In fact this remark arose out of interruption. I may take some-time.

Shri L. Krishnaswami Bharathi : How long ? The House is anxious.

Mr. Naziruddin Ahmad : The House was entitled to know how long the Bill would be considered and there was no reply and therefore my position is more difficult.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

Shri H. V. Kamath : Sir, there does not appear to be a quorum in the House.

Mr. Speaker: I think there is a quorum.

Mr. Naziruddin Ahmad : Sir, when we rose before Lunch I was dealing with the question as to whether it will be proper for this House to pass this legislation. With regard to the constitutional power of this House I have no doubt that we are constitutionally competent to pass a law of this nature. The question really is whether we have the moral right, or whether it would be morally proper for us to pass this law. The whole question would be whether this House has been authorised directly or indirectly by our constituencies to agree to this law. Some honourable Members say that the people are behind the Bill. My impression is that the people are not behind the Bill. The number of objections which are already on record is great. I believe that objections are pouring into the Legislative Assembly Department and they are so numerous that they could not be classified or docketed or dealt with in any systematic manner. They are pouring in on a gigantic scale. That shows the intensity of public feeling. The question is whether we in a democratic society, in a Legislature constituted on a democratic basis, should pass the law without ascertaining the opinion of the public. As I was submitting the Bill owes its conception to an alien Government which was, at the lime of its inception fighting for its own existence and was busy and otherwise occupied. The Bill was submitted to the

House by a Minister of Law who was Minister of the Interim Government at a time when that Minister was contemplating a departure to Pakistan and had no interest in the Bill at all.

Shri H. V. Kamath : He is repeating what he said in the morning.

Mr. Naziruddin Ahmad : Now the present Bill was continued by the Honourable Minister, Dr. Ambedkar, when India was very much occupied with a large number of serious problems. It is evident, as it appears from the admission of the Minister of Law himself, that the present Bill was merely continued without any adequate thought. It was only when it was sent to a Select Committee that it occurred to the Minister of Law that the Bill had not been properly drafted, that it required amendments—whether substantial or not is a different matter, but it required amendments all through. So he himself set down to redraft the whole Bill. In fact the product of that Committee is a book called “The Hindu Code” which is almost exactly the same as the present revised Bill, and it purports to be “a Bill to amend and codify certain branches of the Hindu law” by “Dr. B. R. Ambedkar, Minister of Law”. So what was a Bill submitted by Mr. Jogendra Nath Mandal was informally transformed into a Bill by Dr. Ambedkar. The point I was driving at is this that the Bill not at any time received any consideration or any adequate consideration before the Government first tried to sponsor it. In fact as soon as it was apparent that the Bill was not properly drafted, that it required to be re-written wholesale and that it required to be changed in a large number of particulars, that was the moment to withdraw the Bill. But without withdrawing it the Minister of Law made numerous changes and presented a new Bill. This shows that the Bill was never considered in detail. If it is a fact that even the Government had to change its mind to make serious alterations in the body of the Bill it shows that the Government with its enormous resources were unable to accept it—much less has the country accepted it.

Now, Sir, the present Constituent Assembly was elected for a specific purpose.

Mr. Tajamul Husain : I am afraid the honourable Member is repeating the same thing.

Mr. Speaker : I do not know whether he said this.

Shri L. Krishnaswamy Bharathi : He said it in the morning.

Mr. Naziruddin Ahmad : I had hardly begun it. This House was not elected for the purpose of passing this legislation.

Mr. Tajamul Husain : Sir, he said exactly this. It was in your absence.

Mr. Naziruddin Ahmad : Let me develop my point. The question is whether we had been authorised in this direction. In fact the authority of this House is based upon an indirect election; there was no direct election.

Shri H. V. Kamath : He said the same thing earlier and the Deputy Speaker gave a ruling also on the point.

Mr. Speaker : I leave it to the honourable Member, if he has said it because I do not know.

Mr. Naziruddin Ahmad : Sir. I want to elaborate it.

Mr. Speaker: Then, of course, no elaboration is necessary. He may go to the next point.

Mr. Naziruddin Ahmad : We rose at that time for Lunch.

Mr. Speaker : The point seems to be very clear and it does not require any elaboration that this House was not elected by direct election, that the election has been indirect, that it was elected for a specific purpose, namely of making a Constitution, and therefore it should not go into this kind of legislation at this stage—that is the point. It hardly requires any elaboration. If it is the idea of the honourable Member to carry on for a long time. I shall be unable to support him.

Mr. Naziruddin Ahmad : The point is that as soon as I began I was contradicted by Mr. Krishnaswamy Bharati.

Shri L. Krishnaswami Bharati : On a point of personal explanation, Sir, I never opened my mouth at that time.

Mr. Speaker : Whether a particular Member asserts or denies a particular thing, it has no effect so far as the real fact goes. If he has authority he has, if he has not. Mere assertion by one Member in one way or the other really does not make any difference. He may just state his point without going into detail.

Mr. Naziruddin Ahmad : The question is that it is not so obvious.

Mr. Speaker : It is obvious.

Mr. Naziruddin Ahmad : No, Sir, To Mr. Bharati it is not obvious.

Mr. Speaker : The honourable Member need not care to convince one Member who refuse to be convinced, He is addressing the whole House. He should know the House consists of Members, who have some level of understanding.

Mr. Naziruddin Ahmad : It is not the understanding that I deny, it is the mind being locked up—that is the difficulty. Some people are unwilling to be convinced.

Mr. Speaker : They cannot be convinced. Let us not take our time to convince them. The honourable Member may take his next point.

Mr. Naziruddin Ahmad : You would be pleased, therefore, to consider that we have no moral authority to pass the law. In fact, the Government framed a Bill and then sent it out for circulation. I refer to appendix II at page 41 of the second Hindu Law Committee Report. “The Bill as framed by the Rau Committee was sent for circulation and the Bill was sent to large number of public bodies and individuals of weight and authority and their opinion was sought”. It is made absolutely clear in the notification dated 5th August 1944 that the Hindu Law Committee intend to revise the draft in the light of public opinion as elicited by them in writing and orally. This is very important and should supply a key to unravelling the present matter. The Bill was submitted for public opinion and it was clearly stated therein that the Bill would be revised in accordance with public opinion. What was the public opinion. The public opinion at one stage of the matter is contained in the “Written Statement submitted to the Hindu Law Committee, volumes I and II”. I believed this opinion has never been adequately considered by the Members of the House or it was never considered by many Members of the House. When these opinions were received they were analysed and then oral evidence was also invited and a large number of witnesses were examined. That is to be found in the “oral evidence tendered to the Hindu Law Committee dated 1945”. These volumes, if analysed and carefully read, would show that public opinion which was consulted was very preponderatingly against the Hindu Code. Therefore, it follows that the Hindu Law Committee proceeded to adhere to their own views and revised the Bill here and there not in accordance with public opinion, but in spite of it. The effect of this evidence has been carefully analysed in the dissentient note by D. N. Mitter, the ex-Judge of the Calcutta High Court who was also a Member. In fact, he had written an elaborate minute of dissent. I do not wish to go over this matter, but he has analysed this opinion under different headings, namely whether we should have codification or not, whether the marriage law should be changed, whether there should be divorce and so forth. He has analysed the opinions and the evidence, for and against under each head, and I submit