PARLIAMENTARY DEBATES

OFFICIAL REPORT

[VOLUME 5]

PROCEEDINGS AND DEBATES OF THE THIRD SESSION OF THE NATIONAL ASSEMBLY OF THE SECOND PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF GUYANA

21st Sitting | **2.00 p.m.** | **Tuesday, 17th August, 1971**

MEMBERS OF THE NATIONAL ASSEMBLY

Speaker

His Honour the Speaker, Mr. Sase Narain, J.P.

Members of the Government

People's National Congress

Elected Ministers

The Hon. L.F.S. Burnham, S.C.,
Prime Minister **(Absent)**

Dr. the Hon. P.A. Reid,
Deputy Prime Minister and Minister of Agriculture

The Hon. M. Kasim, A.A.,
Minister of Communications

The Hon. H.D. Hoyte, S.C.,
Minister of Finance

The Hon. W.G. Carrington,
Minister of Labour and Social Security

The Hon. Miss S.M. Field-Ridley,
Minister of Education

The Hon. B. Ramsaroop,
Minister of Housing and Reconstruction (Leader of the House)

The Hon. D.A. Singh,
Minister of Trade

The Hon. O.E. Clarke,
Minister of Home Affairs

The Hon. C.V. Mingo,
Minister of Local Government

The Hon. W. Haynes,
Minister of State for Co-operatives and Community Development

Appointed Ministers

The Hon. S.S. Ramphal, S.C.,
Attorney-General and Minister of State

The Hon. H Green,
Minister of Works, Hydraulics and Supply **(Absent)**

The Hon. H.O. Jack,
Minister of Mines and Forests

The Hon. E.B. McDavid,
Minister of Information and Culture

Parliamentary Secretaries

Mr. J.G. Joaquin, J.P.,
Parliamentary Secretary, Ministery of Finance

Mr. P. Duncan, J.P.,
Parliamentary Secretary, Ministry of Agriculture

Mr. A. Salim,
Parliamentary Secretary, Ministry of Agriculture

Mr. J.R. Thomas,
Parliamentary Secretary, Office of the Prime Minister

Mr. C.E. Wrights, J.P.,
Parliamentary Secretary, Minister of Works, Hydraulics and Supply

Other Members

Mr. J.N. Aaron
Miss M.M. Ackman, Government Whip
Mr. K. Bancroft
Mr. N.J. Bissember
Mr. J. Budhoo, J.P.
Mr. L.I. Chan-A-Sue
Mr. E.F. Correia
Mr. M. Corrica
Mr. E.H.A. Fowler
Mr. R.J. Jordon
Mr. S.M. Saffee
Mr. R.C. Van Sluytman
Mr. M. Zaheeruddeen, J.P.
Mrs. L.E. Willems

Members of the Opposition

People's Progressive Party

Dr. C.B. Jagan, Leader of the Opposition **(Absent – on leave)**
Mr. Ram Karran
Mr. R. Chandisingh
Dr. F.H.W. Ramsahoye, S.C. **(Absent – on leave)**
Mr. D.C. Jagan, J.P., Deputy Speaker
Mr. E.M.G. Wilson
Mr. A.M. Hamid, J.P. Opposition Whip
Mr. G.H. Lall
Mr. M.Y. Ally
Mr. Reepu Daman Persaud, J.P.
Mr. E.M. Stoby, J.P.
Mr. R. Ally
Mr. E.L Ambrose
Mrs. L.M. Branco
Mr. Balchand Persaud
Mr. Bhola Persaud
Mr. I.R. Remington, J.P.

Mrs. R.P. Sahoye **(Absent – on leave)**
Mr. V. Teekah

United Force

Mrs. E. DaSilva **(Absent – on leave)**
Mr. M.F. Singh **(Absent)**
Mr. J.A. Sutton

Independent

Mr. R.E. Cheeks

OFFICERS

Clerk of the National Assembly – Mr. F.A. Narain

Deputy Clerk of the National Assembly – Mr. M.B. Henry

The National Assembly met at 2 p.m.

*[**Mr. Speaker** in the Chair.]*

Prayers

OATH OF A NEW MEMBER

Mr. Speaker: Hon. Members, I have been advised that Mr. Elvin Bernard McDavid has been appointed as a Minister with effect from the 16th of August, 1971. Mr. McDavid is not an elected Member of the National Assembly, but he has, in accordance with article 34 (6) of the Constitution, by virtue of holding the office of Minister, become a Member of the Assembly.

Before Mr. McDavid can take part in the proceedings of the Assembly, he is required by article 76 of the Constitution to make and subscribe the oath of office before the Assembly. As Mr. McDavid is present, will be please proceed to the Table where the necessary oath will be administered to him by the Clerk. Hon. Members, please stand.

The Oath of Office was made and subscribed by the hon. Minister of Information and Culture.

ANNOUNCEMENTS BY THE SPEAKER

MINISTERIAL CHANGES

Mr. Speaker: I have been advised that, with effect from the 16th of August, 1971:

(i) the hon. B. Ramsaroop, formerly Minister of Trade, has been designated Minister of Housing and Reconstruction;

(ii) the hon. D.A. Singh, formerly Minister of Housing and Reconstruction, has been designated Minister of Trade;

(iii) the hon. W. Haynes, formerly Parliamentary Secretary, Office of the Prime Minister, has been appointed a Minister, and has been designated Minister of State for Co-operatives and Community Development; and

(iv) the hon. E.B. McDavid, who has been appointed a Minister, has been designated Minister of Information and Culture.

On behalf of all Members of the Assembly and myself, I wish to congratulate Mr. Haynes and Mr. McDavid on their appointments as Ministers. We welcome the new Minister, Mr. McDavid, to the Assembly, and extend best wishes to the four Ministers, Mr. Ramsaroop, Mr. Singh, Mr. Hayes, and Mr. McDavid, in their respective assignments.

2.15 p.m.

LEAVE TO MEMBER

Mr. Speaker: Leave has been granted to the hon. Member Mrs. DaSilva up to the end of this week.

INTRODUCTION OF BILLS

FIRST READING

The following Bill was presented and read for the First time:

Guarantee of Loans (Public Corporations and Companies)

[The Minister of Finance]

PUBLIC BUSINESS

MOTIONS

"WHEREAS this National Assembly, in pursuance of Section 3 of the Public Loan Ordinance, 1966, approved by Resolution No. XX passed on 10th November, 1970, of the amendment of Guyana Development Programme for the period 1966 to 1972, by increasing the sum provided for the development of the Livestock Industry under Chapter XII, section II by $9 mn., to enable the first stage of a livestock development programme to be undertaken;

AND WHEREAS this National Assembly, in pursuance of Section 4 of the Public Loans Ordinance, 1966, approved, by Resolution No. XXI on 10th November, 1970, of the raising from the International Development Association of a loan (credit) in the sum of (United States) Two million two hundred thousand dollars ($2,200,000) that is to say approximately (Guyana) Four million four hundred thousand dollars ($4,400,000) for the purpose of the aforesaid;

AND WHEREAS development Credit Agreement No. 221 GUA, between the Government of Guyana and the International Development Association, for the sum and purposes aforesaid was signed on 27th November, 1970;

AND WHEREAS paragraph 1 of Schedule 1 of the Development Credit Agreement provided for an amount of (United States) One million five hundred thousand dollars ($1,500,000) of the proceeds of the Credit to be allocated to provide for long-term loans for on-ranch investment;

AND WHEREAS Part A (ii) of Schedule II of the Agreement aforementioned provides for the development, through the extension by participating banks of long-term sub-loans, of approximately ten (a) private, co-operative or company ranches or (b) Amerindian tribal ranches, all in the Rupununi Savannahs; the long-term sub-loans being for (12) twelve years, including (4) years of grace, at nine and one-half (91/2) per centum per annum;

AND WHEREAS in accordance with Section 3.13 of the Agreement of the aforementioned, the Government of Guyana shall guarantee the repayment of capital and the payment of interest and other charges on sub-loans for the development of Amerindian tribal ranches;

AND WHEREAS two Amerindian tribal ranches are included in the Project and each will require a sub-loan to the extent of (Guyana) seventy-four thousand one hundred dollars ($74,100);

Now, therefore, be it resolved that this National Assembly, in pursuance of Section 3.13 of the Development Credit Agreement, authorise the Government of Guyana to guarantee the repayment of capital and the payment of interest and other charges on the sub-loans to the extent of (Guyana) one hundred and forty-eight thousand two hundred dollars ($148,200) for the development of the two Amerindian Tribal Ranches." *[The Minister of Finance]*

The Minister of Finance (Mr. Hoye): Your Honour, I signify, in accordance with paragraph (2) of article 80 of the Constitution of Guyana, that Cabinet has recommended the Motion standing in my name on the Order Paper for consideration by the National Assembly.

Mr. Speaker: Hon. Minister, please proceed.

Mr. Hoyte: On the 10th November, 1970, this honourable House approved by Resolution No. XXI of the raising from the International Development Association of a credit or loan in the amount of $2.2 million (United States). The purpose of that credit was to finance the Livestock Development Programme as outlined in the Development Programme, 1966 to 1972.

In terms of that Resolution, the Government entered into an Agreement with I.D.A., which as hon. Members know is the soft window of the International Bank for Reconstruction and Development and, in terms of that Agreement, the Government undertook to set up a number of ranches as part of the general Development Programme and the Livestock project in particular.

Further, the Agreement provided for the setting up of tribal ranches in the Rupununi. Government has proceeded under the Agreement with the implementation of that particular aspect of the Development Programme and two tribal ranches will be set up in the Rupununi, but the Agreement itself required the Government to guarantee the funds which were to be advanced for the purpose of setting up Amerindian tribal ranches.

Under the general scheme, there will be participation by the private commercial banks and the finance for the tribal ranches will come from the private commercial banks. The terms of these loans, which are designated sub-loans in the Agreement, are that the loans are for 12 years, including a grace period of four years, and interest is chargeable at 91/2 per cent.

In terms of the Agreement with the I.D.A., which was laid in this honourable House in November, 1970, which was debated in this honourable House and which was approved, Government now brings this Motion before the House for the approval of a guarantee in respect of two Amerindian tribal ranches, each of which will require a sub-loan in the extent of $74,100. Consequently, I commend to this honourable House this Motion which seeks to authorise a

Government guarantee in respect of the repayment of capital and interest in the amount of $148,200 for the development of two Amerindian tribal ranches in the Rupununi.

Question proposed

Mr. Stoby: Mr. Speaker, it is very interesting to hear that two tribal ranches will be set up in the Rupununi area for the Amerindians in particular. I realise that development projects for the interior are long overdue. According to the Motion, $74,100 is being allotted for one ranch but interest at the rate of 9 ½ per cent for eight years amounts to $56,316.

The Minister said that there is to be a four-year period of grace and it might appear that this investment is an ideal one which would bring development to the people of that area, but in my opinion it is good business for the commercial banks which will make handsome sums by way of interest during the period of eight years.

I think that investment in the Rupununi should be in the line of cattle. It is stated in the Report of the Amerindian Land Commission that the interior is not really suitable for investment on account of the poor pasturage. The questions I would like to ask are these: Where will these two tribal ranches be set up? Will they be on the land formerly held by the Melvilles and Harts who fled this country? The Minister should tell this House where these ranches will be set up and the number of square miles that will be allocated for them.

I should also like to know whether Amerindians will hold legal title to these lands or whether they will belong to the State. In the case of liquidation what will be the position? Will they be run as co-operatives or by local authorities?

My next question relates to the management or control of the ranches. We would like to know who will be the managers of these tribal ranches because, according to the Report of the

Amerindian Land Commission, the Amerindians are incapable of running their own enterprises. As I pointed out earlier, this project will only create a good investment for the financiers.

2.25 p.m.

The Speaker: The hon. Member Mr Sutton.

Mr. Sutton: Mr. Speaker, we would be lacking in our duty if the opportunity was not taken to note, what appears for the first time, a serious attempt by the Government to actually do something concrete for the benefit of the Amerindians. But we on this section of the Opposition hope that this gesture will not be an empty one and every attempt will be made to ensure that it is a success and, in fact, help the Amerindian community which will be involved in this exercise.

Apart from the general intention to get the Amerindian tribes mentioned here involved in this exercise we must note the fact that the Government is guaranteeing these loans which were long ago envisaged in the Development Plan as such. We wonder what the Government will do at least during the period the loan is outstanding to ensure that the management of these ranches are not left to chance, that the management of the finances of the operation will be in proper hands, and to ensure as it is obviously the first venture in something like this, that sufficient expert guidance is available until such time the Government is satisfied that the Amerindian tribes can stand on their own legs. Because if ventures like these are made and they prove failures we will see how terrifically damaging they would be.

We hope that the Government would do all in its power to satisfy everybody that no stone is left unturned, to ensure the success of what are laudable ventures in new fields and very noteworthy in that we seem to have no precedent of direct help of this nature being afforded to the Amerindian community. We hope that this will be an example so managed, so built-in that it will ensure its success if it is at all possible because the success of a ranch does not only depend on hard work, it depends on business ability, marketing and all the factors which pertain to the

success of a ranch which is a specialised type of business. Therefore, we hope that the Government will do all in its power, not only during the time when it is open by guarantee and the money is unpaid but by the time the loan is paid back that the two Amerindian ranches would have become so adept in this exercise that it will be an encouragement to other communities which would be encouraged to do likewise.

Mr. Ram Karran: Sir, while on paper it might appear that we are moving in the right direction, the lack of information on the part of the Government shrouds this effort in a little bit of mystery which causes me to have some doubt. I thought that at this meeting as we have the hon. Minister of Agriculture, I repeat Agriculture, he would have been able to give this House some details and to assure us of the Government's ability to run this scheme successfully. We also have in this House another Amerindian Member, the hon. Member Mr. Phillip Duncan who comes from this area who should know about these so-called ranches that are going to be set up because they are only on paper.

We dealt the other day with a matter similar to this and I went into great detail with respect to the Government's policy of bringing new breeds into the country and the matter has remained just there. I understand that the Government is making little or no effort to get better needs through its artificial insemination services. We have invited over and over the hon. Minister to talk to us but since he left the chair of the Minister of Finance he seemed to have become dumb – I do not know if it is a demotion or if it is his reluctance to speak on a subject he is supposed to know best. *[Interruption]*

I wish to compliment my colleague the Amerindian Member, Mr. Stoby on his observation and to say that we on this side of House which to see this as a success. We have brought before this Government the Peberdy Report. I know that hon. Members have never read that Report before we told them about it. Why is it that this scheme which is now set up in not related to the Perberdy Report? The hon. Minister tells me from his seat that it is a co-operative. It is only the principles of co-operatives that will run there? I for one, sir, and my colleagues

have no doubt at all if the Amerindians are able to run ranches for Melville and Hart and all the exploiters in the Rupununi that they can run ranches for themselves. At the same time, we want to make sure that the Government is giving them proper guidance and leadership, and the Government cannot be said to be doing that sort of thing on the coastlands. Only the other day we read that the Minister of Trade – he is now demoted or promoted, I do not know, he has gone back to Housing – has given the assurance to the farmers in Georgetown that they are going to be allowed to distribute milk in the City until December.

The Municipality comes back and says, "Do not worry with the Minister; you are stopping at the 31st August." You do not do things like that. The Government cannot expect people to dump the milk in the Demerara River. Or is it that what the Government wants these people to do, especially at a time when the Plant pays the producer something like 84 cents for delivery at the Plant and they stop the small farmers from selling milk in Georgetown? [**Dr. Reid:** "They sell water."] When they sell water catch them and lock them up. I will have no sympathy for people who distribute water. But the Government cannot ask people to sell their milk and allow Mr. Burnham or his wife – I do not know who – to sell milk in Georgetown at 16 cents a pint.

2.35 p.m.

That is unfair. Nor can it allow Bookers at Bel Air to sell milk at 15 cents a pint. It is the same milk. I drink the milk produced at Bookers and I drink the milk from the plant. In fact, what they sell at the plant is powdered milk. You cannot expect the Government to do this sort of thing and expect us to believe that it has any interest in any industry.

I am waiting, perhaps not in vain today, to hear the hon. Minister of Agriculture tell us something about these schemes. We want to vote for this measure, but tell us something about it. If the hon. Minister of Agriculture is not minded to speak, perhaps the only qualified Amerindian, Mr. Phillip Duncan – [**Hon. Members (Government):** "In the House."] – sitting

with the Government will enlighten us as to whether these tribal ranches are for the development of the Amerindian community and for Guyana as a whole.

Mr. Hoyte (replying): No debate is complete in this honourable House unless we get the effeminate querulousness of the hon. Member Mr. Ram Karran and the equally feminine irrelevance emanating from him. The hon. Member Mr. Stoby raised a number of questions which I concede demand an answer and I will attempt to deal with the matters raised legitimately by him.

The ranches will be established on a co-operative basis and, in keeping with Government's policy with respect to State lands, title to the land will be by way of lease in all of these areas where ranches are going to be established on State lands. Leases will be granted for a period initially of 25 years. May I remark that the fact that the commercial banks are now willing to accept leases of 25 years as good, firm title for advancing money is an important breakthrough in financial practices in this country. That is a fact so there is no question now as to the value of the title which will be given as collateral for financing.

The hon. Member raised another question about management. I think by now it is well known that the World Bank or its soft-window offshoot, I.D.A., does not advance money unless there has been a very careful assessment of the project and a conclusion that the project is well organised and financially viable. The Agreement which was entered into with the I.D.A. in November 1970 came after such an examination and such a conclusion.

In terms of the Agreement, there has been established within the Bank of Guyana, a livestock project division which is being administered by an internationally recognised expert identified by the I.D.A. This gentleman is Australian with many years experienced in ranch management and development. He has as his understudies two competent Guyanese persons, Dr. Mackenzie and Dr. Harricharran, so that this project has not been entered into without a very careful understanding of the management needs of the ranches which will be established. At

every stage of establishment of these ranches, there will be technical guidance which will be necessary to establish the ranches on a firm basis. I think there is no problem at all when it comes to what one may call the supporting services, which are necessary to help, not only Amerindian ranchers but all other Guyanese ranchers who are involved in the livestock development project.

Mr. Speaker, hon. Members, with those explanations, I commend this Motion for the approval of this honourable House.

Question put, and agreed to.

Motion carried.

APPOINTMENT OF SPECIAL SELECT COMMITTEE

"Whereas it is desirable –

(a) that the law relating to matrimonial cause should be reviewed in respect of both its substantive and procedural aspects so as to make its provisions more comfortable to tne needs of the society;

(b) that the law relating to succession should likewise be reviewed in the interest of making just provision for the cases of illegitimate children and of reputed wives; and

(c) that the law relating to the performance of abortions be reviewed in the light of contemporary ideas and practices;

And whereas it is desirable that members of the public be afforded opportunity for participating in the formulation of policy on these matters:

Now, therefore, be it resolved:

(i) that a Special Select Committee be appointed to consider and recommend changes in the law relating to matrimonial causes, the law relating to succession of illegitimate children and reputed wives and the law relating to abortion; and

(ii) that, in the exercise of its functions, the Special Select Committee provide opportunity for all interested members of the public, either individually or through organisations, to submit views to it on the matters under its consideration." *[The Attorney-General and Minister of State]*

The Attorney-General and Minister of State (Mr. Ramphal): Ever so often in the House, albeit, I think we will all agree, all too infrequently, we have an opportunity to debate a matter which by its own nature tends to be outside the area of political controversy and certainly which raises issues on which not normally, and I hope today not certainly, the House divides on the basis of party political ideas.

2.45 p.m.

The Motion standing in my name, which I move on behalf of the Government, pertains to matters of this kind and I hope in the course of the debate it will be possible for us in the Chamber to approach these questions not as so many political parties, but as so many citizens of the community dealing with important social questions. For that, I submit, is the nature of the matter which we are called upon to deal with.

The lawyers among us and, indeed, lawyers everywhere, like to regard matters of this kind as being in the nature of law reform. They do, indeed, concern improvements in the law, more particularly improvements in our Statute Book. But the concept of law reform is intrinsically rather too narrow to do justice to the scope of the law relating to divorce, of the law relating to the succession of illegitimate persons, the law relating to the succession of reputed wives and the law relating to abortion.

What we are doing this afternoon, what I am at the moment initiating in this afternoon's debate, perhaps the first of its kind ever to take place in our Legitimate Chambers, is a discussion on the very essentials of our family law.

We have felt for some time on this side of the House that the time had come for us to come to grips with these questions. There are some who may urge – and certainly I would not contend with them – that the time is, in fact, overdue when this Chamber ought to have debated these important social issues. Suffice it to say that at this stage, amid the pressures of a busy parliamentary calendar, time has been found to do so and if I may be permitted, in the spirit of non-partisanship which I urged a little while ago, I should like to acknowledge the fact that the majority party opposite has itself been urging upon us from time to time, and in one way or another, the need to deal with, at least, some of these matters. We have not always agreed with them on the manner which they have proposed for dealing with them, but their interest in the need for change in our law and the practical steps they have taken to bring these areas of interest to the notice of the House and to the notice of the Government have contributed to the debate which we are having this afternoon.

Let me, Mr. Speaker, with those few preliminary remarks, turn to the specific issues which are raised in the Motion. In essence, we seek the support of the House for the establishment of a Select Committee which would consider and recommend changes in the law relating to divorce, to the rights of succession of illegitimate children and reputed wives, and the law relating to abortion.

Perhaps the best way in which I can deal with the Motion would be to attempt to explain, first of all, why we feel that the time has come for us to consider in this House and as a community whether changes should be made in the law, being as it is in the statute law, on these questions and then go on to explain why, believing that the time has come for that examination, we believe that it should proceed on the basis of a Select Committee of this House but one functioning on the basis of the widest possible participation of the community in its deliberations so that the community as a whole, the citizens of the country, can give assistance to us all in the formulation of decisions that we need to take.

The first of the issues is, of course, the law relating to divorce. So far as divorce is concerned our statute law goes back to 1961 to the year when we made basic fundamental changes in the roots of the civil law of this country, shifting them, as it were, from a Roman/Dutch base to a base in the common law of England.

In that year, as part of the legal changes that were made, we enacted a Matrimonial Causes Ordinance and this Ordinance with only one major change in 1951 remains, to this day, the basic statute dealing with divorce. That 1951 modification was in fact of very considerate importance, for all that the 1916 legislation had done in a remarkably superficial manner was to invest the Supreme Court with the jurisdiction that was previously exercisable under the Roman/Dutch law and to enjoin the Court in the exercise of the jurisdiction as far as possible in the same manner and according to the same rules and principles as these matters were dealt with in the Probate, Divorce and Admiralty Courts in the United Kingdom.

It was a remarkable approach to the law of divorce because it married two quite different systems of law without giving any clear guidance to the Courts as to the manner in which the merger of these principles and procedures was to take place. The Judges over the years have rendered yeoman service to the community in attempting to mould some of these principles into a working of the law of divorce. To some of these matters, I may have to allude later on.

Change in the law, after 1916, came very slowly and perhaps not unnaturally so, for the law of divorce, like so much of family law not merely in Guyana but elsewhere, was heavily overlaid with ecclesiastical doctrine and it was for this reason, perhaps, that until 1951 adultery and malicious desertion represented the only grounds on which a marriage could be dissolved in Guyana.

The 1951 amendment, following law reform legislation in the United Kingdom in 1937, introduced for the first time the ground of the insanity of one of the parties. But even that

legislation coming, as it did, in 1951 was already, as it were, 15 years old and it has, of course, now matured a further 21 years.

I suggest, therefore, that it is not unfair to say that our present law of divorce is at least one and probably two generations old and must reflect not the mores of this generation but the mores, the attitudes, the concepts of those earlier generations. It is not necessarily deficient because of that, but likewise it is not necessarily sanctified because of its antiquity. What we need to ensure is that the contemporary law of divorce meets the needs of our present society and, beyond that, is capable of meeting the needs of the society of tomorrow, of the Guyana of tomorrow, reflecting the social values, the social attitudes, of our contemporary society and of the society as we can envisage its developing and unfolding.

2.55 p.m.

In that type of projection, Mr. Speaker, in establishing these prospective, it is good perhaps for us to acknowledge that there are some respects in which no society, like no man is any longer an island unto himself and we are all, at least, all whose different societies are not entirely shuttered up, open to the influences of the contemporary world. Now, in that contemporary world to which we are all exposed and to whose experiments we are all subject by way of influences there has, in fact, been much dialogue over the years on the fundamental requirements of the law of divorce. Arising out of that dialogue in many countries have come very important and far-reaching changes in this important branch of family law and this is as true of countries in the Commonwealth where legal systems have tended to follow closely the laws of the United Kingdom as it is true of the Continental and Civil law system.

These questionings that have led to changes in the divorce laws in other countries are now being voiced in our community and it is perhaps time that we paused and took stock of the substances of our law of divorce, of the procedures which we have established for the dissolution

of marriage, to see in what ways we can profit from the experience of others, and in what ways out of our own experience we can find our own answers.

In approaching that re-examination, Mr. Speaker, there will be, of course, many maters to be taken into account, but perhaps the most fundamental question of all is a re-appraisal of our basic approach to the very concept of dissolution of marriage. Today, in our basic approach to the concept which requires as a prerequisite of the termination of marriage, the commission of a matrimonial offence, an offence which gives the innocent and the injured party a right to dissolve the bond of marriage. It is not, I suppose, Mr. Speaker, difficult to understand why this concept of emerged out of the religious ecclesiastical underpinning of the institution of marriage, but I hope it is equally not difficult to understand and to appreciate that the realities of marriage life particularly amid the pressing social conditions of our contemporary society have rendered this concept of fault an unreliable and unsafe guide by way of justification for dissolving the marriage.

There are, of course, obvious cases of faults but more often than not, I suspect, there are cases of faults on both sides, so as it were, each is an offender and a victim and neither can be regarded as innocent of fault. Equally, there are so many cases of bitterness and unhappiness arising without fault, at least without conscious deliberate fault. The situation perhaps which a man and a woman freely and voluntarily join in marriage have come to recognise that the essential foundations of that bond no longer exist and that to preserve the relationship of marriage in a situation of that kind is to institutionalise unhappiness and, eventually more than likely to inflict it, or its consequences, upon others. In situations of this kind where the law relates to fault and the realities established the marriage is no longer a reality. In situations of this kind the law tends to be out of touch with society, the society, since it has to work within the framework of the laws, must then find ways of meetings its needs, and the ways it finds are, of course, deceptions, duplicities, fictions, evasions – a whole series of irregular and ultra legal contrivances designed to get around the law so that the marriage can be legally dissolved. As a result, we have a situation today in which if we are to be honest and realistic we must admit that

many a divorce which comes before our courts is in fact a collusive proceeding. Sometimes it is so artificial an arrangement that matrimonial offence must, in fact, be simulated so as to bring the situation within the law requirements of faults and bring the petition within the ambit of the law.

These situations are not peculiar to Guyana and they have led, in other places, to a re-appraisal of the concept of fault as the basis of the law of divorce and many societies have now found it desirable, indeed, many have found it necessary, to move away from that concept, to move towards what is regarded as the more rational and the more realistic concept of the breakdown of the marriage, a concept which places the emphasis not only on the fault or offence of either of the parties, but on the status of the union, a concept that looks not to fault or responsibility of the husband or the wife but to the viability of continuing the marriage. A concept that asks the question not is the husband or is the wife guilty of matrimonial offence be it desertion, adultery or cruelty but has the marriage for these or other reasons broken down? In some systems there is the further question: Is that breakdown irretrievable? In the vast majority of cases, I submit, if the marriage has broken down it will not matter greatly to either husband or wife who was to blame or who was perhaps to blame in the first instance for the breakdown or whether anyone is at fault. The essential question is on this approach to the law of divorce: Has the marriage broken down?

3.05 p.m.

Now this, I suspect, is the essential question that we in Guyana need to pose for ourselves: has the time come, on the basis of our experience, for us to establish an entirely new principle at the base of our law of divorce? In asking that question, and more particularly in answering it, a whole variety of subsidiary questions will arise. Let me give hon. Members some examples of some of these more specific questions.

We need to ask, do we not, whether a single act of adultery should in itself be a ground of divorce, should it perhaps be merely one of the factors which a court will take into account in

deciding whether a marriage should be dissolved on the ground of it having broken down. Should cruelty with its present connotations of injury to health or the need for protecting, continue as a ground for divorce or should it cease to be a ground simpliciter as cruelty, and be subsumed in the context of intolerable behaviour on the part of one or the other of the parties, behaviour of such a kind that neither the husband nor the wife could be expected any longer to continue in the union?

Perhaps, most important of all, how should we deal with the question of separation? Should the fact of separation not now provide a basis for the dissolution of a marriage where the parties have lived apart for a number of years? In many countries, indeed, in many Commonwealth countries now, actual separation for as short a period as two years may suffice for the purpose of dissolving a marriage on the ground that it has broken down if both parties agree to the dissolution; there one party does not agree to the dissolution, separation of only a slightly longer period suffices as a basis for divorce.

In short, Mr. Speaker, should we not in our legal provision take account of the realities of separation, which are important for the man, for the woman, for the children, for the community organised as it is on the institution of marriage and the concept of the family, and it is not that reality of separation, in fact, that most persuasive argument for dissolving a marriage that has, in fact, if not in the law, already been abandoned.

There are arguments that can be adduced against rendering separation in itself a ground for divorce. Some countries insist that a husband and wife should not, as it were, take advantage of his or her own desertion as a basis for dissolving the union and in those cases require the party responsible for the separation at least to wait a little longer before permitting the dissolution of the marriage. But more and more, Mr. Speaker, in all the Commonwealth jurisdictions and long before that, in the jurisdictions of the civil and continentalsystems, the law has moved toward an acceptance that where in fact there has been a separation over a period that would vary from

country to country, the time had come when the law should recognise it and permit the dissolution of the marriage.

It will be necessary in posing these questions, to take account obviously not only of the interest of the husband and of the wife. The society must ensure that adequate safeguards exist for the protection of the children of the union and whatever concept we adopt, whether it be the concept of fault or the concept of the breakdown of the marriage, we must devise ways and means to ensure that a divorce does not take effect if to do so would be in a direct way to produce severe hardships for the children, over and above those hardships which are, of course, implicit in the breakup of the family home.

There are some systems of law which go even further. In the Soviet Union, for example, and indeed in a number of other countries, a divorce can be obtained by consent by simple registration, and this system of law proceeds on the principle that a union voluntarily entered into may be just as voluntarily dissolved. There may be many members who would feel that the possibility of securing a divorce by registration deprives a marriage of the incentives for overcoming the difficulties of the passing moment. But these all, Mr. Speaker, are questions that must be asked and it is time that as a community we should begin to address ourselves to these questions and to find answers for them, arising out of the prevailing ideas, beliefs, and attitudes of our community.

I have talked so far only of divorce in relation to matrimonial causes, but there are other problems that our law encounters. One of these is in relation to the annulment of a marriage that is, not to the dissolution of a marriage that exists, but to the declaration that says for one reason or another that there never has been a valid marriage. As a Motion by my learned and hon. Friend Mr. Derek Jagan has rightly suggested, the grounds for a decree of nullity, as it is known to the law, are vague and uncertain in the extreme. That vagueness and that uncertainty arise out of the 1916 legislation to which I referred and that uncertainty arise out of the 1916 legislation to

which I referred and regrettably continues to exist despite the heroic efforts of the judiciary to make a working system of the arrangements established in that year.

Then there are difficult questions of procedure. Are we satisfied that we cannot do better in simplifying the procedures for obtaining a divorce quite apart from changes in the law as to the basis on which the petition can be presented?

3.15 p.m.

Perhaps, most important of all, can we not do something to ensure that it is cheaper to the citizen, usually the husband, to be petitioner or respondent, to secure the dissolution of a marriage than it regrettably now is? Is it possible, for example, that in undefended divorces and, if the law were to be modified, in divorces by consent, that a single legal practitioner can act for both parties – an arrangement which seems strange at a time when the law is founded on the concept of fault, but which will become perfectly reasonable and normal if it proceeded on the basis of a breakdown of the marriage.

I have spent what hon. Members may regard as an inordinately long time talking about some of the questions that I suggest need to be considered but I have done so in order to demonstrate why we feel that the time has come for us to have a thorough going re-examination of the law of divorce and to examine these matters in great depth and on the basis of the widest possible consultations before we decide upon the changes that we need to make.

The second social issue which the Motion is concerned is that relating to the succession of illegitimate children and reputed wives. Let me deal first of all with the case of the illegitimate child. Our law relating to illegitimacy reflects, I suggest, the hypocrisies and the artificialities of Victorian society. Primitive society with its frank acknowledgement of the realities of life was at least spared these. For far too long, the law of Guyana has proceeded, not entirely but for the

greater part, on the fiction that the illegitimate child is the son of nobody with no rights save those he manages to acquire for himself by his own efforts, often in a hostile environment.

These legal provisions reflected the attitude of a society that turned its back upon the bastard child, so much so indeed that they very term has come down to us today as a term of abuse. Today, fortunately, our society and others like it are more enlightened. I think it is true to say that at the domestic level, at the community level, we no longer set up social barriers to the child born out of wedlock, to the child of the unmarried mother, but our law has not moved in step with our social enlightenment and the illegitimate child remains, therefore, for many purposes, but in the context of this Motion, more especially for the purpose of succession, for purposes of inheritance, excluded from legal inheritance.

I do not claim any special originality for these thoughts. They have been expressed many times over in our community; they have been expressed many times over in our legislative bodies. Indeed, on one occasion we came very close to doing something about it. In 1964, the then Opposition party in the Legislative Assembly, had in fact put down a Motion calling for legislation to remove civil disabilities attaching to illegitimate persons. The Motion was put down in the name of the hon. Member, Mr, Stanley Hugh – and perhaps the hon. Deputy Leader of the Opposition would recall the occasion – and was seconded by the hon. Member on the Opposition Benches, Mr. L.F.S. Burnham.

The Government on that occasion accepted the Motion with an Amendment and appointed a Select Committee to examine and to report on the question. The Committee met on a number of occasions in 1964 under the chairmanship of the then Attorney-General, my hon. and learned Colleague, Dr. Ramsahoye, but its report unfortunately was never finalised. It was, indeed, unfinalised when the Parliament was dissolved pending the General Elections that were held in December of 1964.

The proceedings of that Select Committee are not public and therefore although I have had some access to the records, I do not propose to comment upon its work. One aspect of the proceedings, however, can, I believe, be improved upon and this consideration has in fact informed the Government's thinking in relation to the second paragraph of the Motion, the paragraph calling upon the Select Committee now proposed to provide an opportunity for all interested members of the public, either individually or through organisations, to submit views on the matters under the Committee's consideration.

I do not think it needs any argument in this House, or indeed in this country, to reinforce the contention that it is very necessary that we look and look urgently at the changes needed in our law in relation to illegitimate persons, certainly so far as succession to property is concerned. Here again, as in the law on divorce, while it is palpable that there is need for change in the law, it is no less certain that we need to take account of many matters including the rights of persons no less deserving and no less entitled to consideration in establishing the particular changes in the law that we need to make.

Again, let me suggest a few questions that we think need to be asked and therefore to be answered. An initial question, a question which the lawyers say arise *in limine,* is that of proof of paternity. The illegitimate child, even under our present law, inherits through its mother. The inheritance of which he is deprived is an inheritance from his father but who, Mr. Speaker, is his father? At the present moment our law approaches this question of paternity as though it were a quasi criminal question. The proceedings in the Court on which the matter arises whereby the mother secures declaration of the child's putative father is in the nature of a criminal complaint. This, in turn, leads to procedural complexities. The burden of proof is upon her and the degree of proof required is the degree normally required in criminal cases, that is, proof beyond reasonable doubt.

And even where it might fairly be argued that the proof is not perhaps as high as that, it is still at least somewhat higher that the balance of probabilities required in civil cases. There is a requirement for corroboration.

3.25 p.m.

In some countries procedural devices have been introduced to deal with this basic question of the proof of paternity, and we may have to consider whether some of these are appropriate and feasible for us. Should we, for example, in our law relating to legitimacy sanction blood tests as evidence of the probability of parentage? These tests which do not admittedly produce a positive finding in the sense it can establish beyond per adventure that a particular person is a father but the tests are nevertheless of considerable probative value. The blood can, for example, eliminate a man from any possibility of parentage and it many, conversely, point to the probability of parentage without establishing it positively t be so. Admittedly, there are objections to compelling a man named in a complaint brought by the mother of a child in compelling a man to submit a blood test of this kind, but many jurisdictions, at least, permit the courts to draw an adverse conclusion from the refusal of the man to submit to such a test when requested.

Assuming we resolve these questions of procedural character what changes do we make in the law itself? What do we do, for example, in the case of wills where a testator bequeaths his property to his child, his son, or issue should it not be the case that the law requires that the references to child and to son and to issues in the will include a reference to an illegitimate child? This, I submit, Mr. Speaker, is a matter that we need to examine and to take a decision upon. It is certainly the case that in a number of Commonwealth jurisdictions today such a request, using language of that kind, would suffice to pass the inheritance to the illegitimate child.

But perhaps the most pressing need of all is for us to re-examine the law relating to intestacy, that is, situations in which the father of the illegitimate child does without leaving a will and his property falls to be disposed of among his relatives on the basis of the rules of

succession laid down by law. We need to consider, for example, whether under these rules of succession, which now excludes altogether the illegitimate child, he should not succeed equally with legitimate children, or if his rights of succession are to be in some way different from those of his father's other children, what precisely should be the nature of his rights? There may be some who will say that he should only succeed or share in the succession to his father's estate in the absence of a widow and legitimate children. All these are matters we shall have to consider. It is simple for us to say that the law is deficient; it is easy for us to agree that it is deficient, it is not so simple and it is not so easy for us to determine precisely what changes are required. Then there are more difficult and complicated questions. If the illegitimate child is to succeed to his father's estate if the father dies without leaving a will, does he likewise succeed and share in the inheritance of his grandfather on the father's side? Does he share in any way in the inheritance of brothers and sisters of the same union? It is a difficult question which will require us all to take account of experiments that have been made in other places but more especially to take account of our knowledge of the special needs and the special circumstances of Guyana.

Now, in the Motion coupled with the question of illegitimate children, is that question of reputed wives. Here too, in the case of the illegitimate child, the law for the greater part treats the reputed as a non-person. True, but only in relation to the child, if she is borne a child, she says institute affiliation proceedings for the maintenance of the child having established the paternity. But particularly in relation to the question of succession the reputed wife, like the illegitimate child, is entirely excluded.

The case of the reputed wife raises even more complex questions – not the least of them being the question of definition. The matter is admittedly not so difficult where a man and a woman have lived together as man and wife despite not having gone through a solemn or a civil form of marriage. Indeed, in such a case, where the man predeceases the woman and she can establish dependency at this death the law already accords her a certain amount of recognition in terms of certain statutory rights such as, for example, under the National Insurance legislation

and, more recently, under Amendments to the Rice Farmers (Security of Tenure) legislation and the Rent Restriction legislation. More complex questions arise, however, in relation to succession particularly where there is a widow and we cannot assume that the accepted definition of reputed wife will exclude in all circumstances the existence of a widow. And even more difficult questions arise where whether or not there is a widow, where there exists another or others who claim to be wives by repute of the deceased. Now, Mr. Speaker, particularly where we are regulating the competing claims and conflicting claims in relation to the acknowledged rights of a widow or children, whether legitimate or illegitimate, it is necessary to mark the limits of the definition of the reputed wife with particular care; and the question of these limits is like the other questions I have sought to raise, one that requires, I hope the House will agree, the widest ranging enquiry.

3.35 p.m.

That brings me, Mr. Speaker, to the final social issue with which the Motion is concerned, namely, the question of abortion. This, so far as I am aware, is not a matter that has ever before been the subject of a discussion of a specific nature at the parliamentary level in Guyana, but I submit, Mr. Speaker, that the time is at hand when our society must come to grips with the essential question presented in the proposition for the legalisation of abortion in at least a restricted category of cases. This is obviously a matter on which some members of our community will hold very strong views, some deriving from religious convictions, other deriving from convictions of a more general nature, but convictions held no less profoundly.

We need, I suggest, to listen to these voices of our fellow citizens and to pay due regard to their views but I hope that all of us will try to approach this matter without becoming violently and passionately emotive. I believe that if we approach it in a rational way, in a careful and studied way, we should be able to establish in our community, the consensus for change in the law with which we can all live, bearing in mind especially that in the final analysis, it is left to

the conscience of the individual, to the decision of the individual, whatever the law may permit, to decide whether he will take advantage of its opportunities.

Our law relating to abortion is neither of this generation nor of this century. It is contained in the provisions of our Criminal Law (Offences) Ordinance and these provisions are, with only the most minor changes, in the same form in which they were originally promulgated in 1893 following at that time the provisions of the United Kingdom legislation enacted in 1861. The law relating to abortion in Guyana is therefore an antique – it is more than a hundred years old. Under its provisions only the need to preserve the life of the mother constitutes justification for the termination of a pregnancy.

Admittedly, a liberal judicial construction over the years has perhaps just permitted a situation in which a doctor may escape the consequences of the law inflicting on him responsibility for the most serious type of felony if it can be established that on the basis of his knowledge and experience, he was of the opinion that the probable consequence of continuing the pregnancy would be to make the mother a physical and a mental wreck; a test, perhaps, just short of the need for preservation of life, but a test that imposes the most severe obligations all the same.

The law of abortion, like the law of divorce – but perhaps to an even greater degree – was, in its historical development, much conditioned in most countries by ecclesiastical considerations. But even apart from the religious doctrine – the taking of an unborn life – raises such profound moral issues. No matter how strongly we may feel that the time has come to re-examine the law of abortion, it would, I suggest, Mr. Speaker, be wrong to approach the question in any other manner than on the basis that we are in an area of the utmost sensitivity in which considerations of conscience, of morality, indeed, considerations of humanity, have a legitimate place.

Then there are considerations of another kind no less important. The fate of the unmarried mother, the fate of her child, the implications of an unwanted pregnancy even in the case of a married mother, the considerations that advanced medical science now make it possible for us to take into account, of the serious psychological damage of a lasting nature which an unwanted pregnancy may produce, all these are matters that must be reviewed in deciding whether the time has not come to make the law relating to abortion more conformable to the needs and indeed to the attitudes of the society. And in doing so, Mr. Speaker, we will have to consider the realities of our society.

We will to refrain from shutting our eyes to the many unwanted pregnancies that are being terminated everywhere in the country. We will have to refrain from shutting our eyes to the fiction that abortions only take place in the interest of saving the life of the mother. We will have to ask ourselves the question whether we do not do real damage to the fabric of the law when it is so far out of step and out of tune with the times, that it is widely disregarded, and disregarded with impunity, because the social conscience of the society does not view its violation as an act of criminality.

In asking these questions, we cannot but be aware that in the world outside Guyana, the law on abortion is not standing still and that because of this, those who can pay the expenses to travel and of clinics abroad can secure the termination of unwanted pregnancies through taking advantage of the changes in the law of other countries in leaving those who cannot afford these arrangements to seek to achieve the same result in secrecy and with a deep sense of shame, and, because of one or the other, and more of the than not, because of both, sometimes to pay the penalty of death at the hands of charlatans or amateurs in unhygienic backroom surroundings.

What does it really profit us if these are indeed the realities – to tell ourselves that the law does not permit the taking of the unborn life? Even so, many questions remain to be answered even if we decide that the existing law is too restrictive and should be relaxed to some degree; for the really difficult questions arise precisely at that point, the question of determining the

particular circumstances in which an abortion should be permitted and the circumstances in which it should be performed. I think most of us would probably agree that it should not be possible, as it is in some countries, for abortions to be performed by medical practitioners on request. If this is not to be, what circumstances justify a legal abortion?

3.45 p.m.

Others have wrestled with these problems and I should like, with your permission, to read just a few paragraphs from a most comprehensive report produced by a Committee established by the Parliament of India on the question of the legalisation of abortions on this question of the experience of other countries.

So world-wide has become the issue with which we are dealing that abortion is permitted on medical reasons – and this is a summary of the statement of the laws of other countries – if due to a woman's illness, physical defect or weakness, child-birth will entail serious danger to her life in these countries – Denmark, Norway, Sweden, Yugoslavia, Federal Republic of Germany, United Kingdom, Hungary, Rumania, Thailand, Japan and in many others. In some of these countries abortion is permitted if child-birth will entail serious danger to her health alone.

Abortion is permitted on medico-social reasons if due to a woman's conditions of life and other circumstances there is reason to assume that her physical or psychic strength will be seriously reduced through child-birth and child care. This is the position in Denmark, Norway, Sweden, Hungary, Rumania and Japan.

Abortion is permitted in some countries for humanitarian reasons if a woman has become pregnant as a result of rape or other criminal coercion or incestuous sexual intercourse or if she is insane or an imbecile, or under 15 years of age at the time of the fertilising coercion in Denmark, Norway, Sweden, Hungary, Yugoslavia, Rumania, Japan and Cuba.

Abortion is permitted in some countries on eugenic reasons if there is reason to assume that the woman or the father of the expected child will transmit to their off-spring hereditary insanity, imbecility, a serious disease or a serious physical handicap.

Finally, as I said earlier, abortion is permitted practically voluntarily in Hungary, Rumania, the U.S.S.R., Japan and Child.

All these countries have wrestled with the question which faces us in Guyana today. Their decisions and their solutions may not be our decisions and our solutions but their experience and their quest for a solution must certainly be of value to us.

Because of these reasons we feel that this is not a matter – just as in the case of divorce and illegitimacy and reputed wives – on which the Government either wishes or intends to proceed in a dogmatic way. We recognise that these are social issues. They are ones on which we need the benefit of consultation with the community. Indeed, we feel they are ones on which the community has a right to be consulted and the community has a contribution to make through such consultations. Only of we proceed in this way we can in our view formulate the policies of change in all these important and sensitive fields, in ways that we can be certain will be right for the country as a whole and right, not just for today, for essentially legislation of this kind is not so much for ourselves but for those who come after us.

This is why we have chosen the institution of the Select Committee of this House so that all parties represented in the House can share in this work of examination and in the formulation of recommendations. This is why we seek to enjoin the Committee in specific and perhaps unusual terms to secure wide public consultation with individuals and with organisations, indeed, with all interested Guyanese who wish to contribute to decision-making in this important matter and we hope that members of the community will come forward, that organisations that have a point of view to express will come forward to the Committee in its deliberations.

We believe that the Committee functioning in this way can render an invaluable service not only to the House but to the country as a whole so that at the end of the day, on the basis of its deliberations, this House may ultimately take those final decisions on which only can the statute law of Guyana be modified and it is my hope, it is the hope of the Government, that out of the work of the Committee we can provide for Guyana an effective and an enlightened code of family law.

Question proposed

Mr. Speaker: The hon. Member Mr. Jagan.

Mr. Jagan: Mr. Speaker, I looked in vain in May's to see whether there was any precedent for the Motion, or part of the Motion, that was moved by my hon. and learned Friend this afternoon. I was not too sure whether the Motion could have properly been taken this afternoon, but having regard to the fact that I think it is a unique way for the Government to try to present this Motion and because there is no precedent, I decided not to do so.

Your Honour would remember that two Motions dealing with matrimonial causes and succession were tabled during the last Session of Parliament and had to be retabled because the House was prorogued. It is strange, sir, that listed on the Order Paper for tomorrow are those same Motions dealing with exactly the same matters that are being debated today. When one sees that this Motion was most likely sent in by my hon. and learned Friend the Attorney-General on the 12th August, 1971, one wonders whether the Government is not really justifying the criticism that people normally make, namely, that it is trying to use the Parliament as a rubber stamp.

Here is the Government putting two Motions to be debated tomorrow when notice of them was given long before this Motion. We are now required to debate exactly the same subject matters of those Motions. What is the use of having those Motions fixed to be debated tomorrow?

My hon. and learned Friend the Leader of the House in fact spoke to me with respect to those two Motions and I suggested to him that in view of the fact that notice of those Motions was given some time ago and it is the intention of the Government to have a Select Committee appointed, then, when those Motions come up to be debated, the Government should move an Amendment requiring that a Select Committee should be appointed.

3.55 p.m.

Your Honour, so far as we are concerned, we want changes in the laws to be made; we do not mind whether the Government moves the Motion or it is moved from the Opposition. As my learned Friend has said this question of illegitimacy a Committee had investigated this matter some time in 1963 and 1964. Having listened to my learned and hon. Friend, I wonder what is the need for having this matter go to a Select Committee. My learned Friend has put forward the argument in such a way that I do not think that many Members in this House would disagree with him that there is a crying need for changes in the laws dealing with these matters.

I will deal with each matter separately. Dealing with the question of matrimonial causes, I think I could endorse almost everything said by my learned and hon. Friend.

Mr. Speaker: Hon. Member, if you are really going to start developing these points, I think it may be a convenient time to take the suspension.

Sitting suspended at 4 p.m.

On resumption

4.30 p.m.

Mr. Speaker: The hon. Member Mr. Jagan.

Mr. Jagan: Your Honour, at the Suspension I was just dealing with the question of matrimonial causes. Most, if not all, legal practitioners are aware of the farcical nature of presentation of petitions for divorce and nullity and the high cost and the complicated procedures with respect to the dissolution of a marriage. As the leaned and hon. Attorney-General said, in many marriages the divorce as collusive, before the matter even reaches the court the parties agree that one should bring the petition and the other would not defend.

Your Honour, the usual ground in this country because it is easier than the others, is that one normally presents the petition on malicious desertion. But my contention is that even with the arrangement that could be made there are still many cases where the large number of persons suffers great hardship because of the law.

For instance, my learned and hon. Friend referred to some of the measures that he thought should be remedied. I am sure that he had looked at the latest position in England because of the cases referred to were dealt with not too long ago by the latest Act in England. My contention is that once a marriage is broken down and the parties cannot be divorced, in many cases the parties would be living apart they would be living with someone else and we find illegitimate children and all sorts of immoralities. The society in which we live criticises people for being "immoral" because whilst being married at the same time the person is living with someone else.

4.35 p.m.

These are some of the questions which I think the hon. Attorney-General had posed and I think that many people would agree that once the marriage is broken down, then the parties should be able to have the marriage dissolved. As my learned Friend said, I think it is in England, parties living apart for two years, by consent, could have the marriage dissolved, and for a longer period without the consent of the other party. I agree with my friend that one should

not consider who the wrong-doer is because if one has to go into details, one would find that both parties to a certain extent may be guilty of some fault.

As my learned and hon. Friend the Minister of Trade (Mr. Singh) said, the husband is the person who always loses. That brings me to some other points. Why should a wife have security for costs in these days when a woman claim in all respects to be equal with a man? They work just like a husband. We find that although there is a breakdown of the marriage and the parties are living separate and apart, the husband files a petition, the wife is not interested in holding on to the marriage but she is interested in getting some money. So, she goes to a legal practitioner, has an answer put in to defend the suit, applies for security costs, which is automatically given to the wife, the matter comes up for hearing and the wife withdraws from the suit. It is granted as an undefended petition and the costs are awarded against the husband and, in some cases, the husband agrees to let the wife proceed with her answer.

One could think of the question of maintenance. Why should a husband pay maintenance for a wife even when she remarries after a divorce? The question is also about a wife who may commit adultery. In England, they have abolished the right of action for breach of promise of marriage, or for a husband to claim damages against a co-respondent because he committed adultery with his wife. Why should single person be penalised to pay damages to a husband because he committed adultery with a lady who is living separate and apart from her husband? The question of the cost of dissolving a marriage or to have a marriage declared null and void is very expensive. It is said it is very easy to get into it but it is very difficult to get out because of the great cost in having a petition presented and having the marriage dissolved ultimately by the court.

Many judges, even in this country, are of the view that there should be a simple procedure in dealing with the whole question of marriages and the dissolution of marriages, because of one looks at 99 per cent of the petitions that are presented, one would see they are framed in the same manner, and that is why one of the judges, to save time, usually asks the

petitioner: "Did you swear to the affidavit?" and he grants the decree nisi, rather than go through the four or five pages setting out "facts", which are obviously not correct. People are made to swear falsely because they want the marriage dissolved.

I think hon. Members of this House speak for all strata of the community. People of all walks of life are represented here. I think we could express the view of the community and, in my view, there is no necessity to have this long process of a Select Committee to go into the question of matrimonial causes. My view is that divorce should be granted very cheaply and I would suggest that the magistrate's court should be given jurisdiction to dissolve marriages. In England, they have moved from the High Court, and the County Courts can dissolve marriages. My friend talks about the District Court. That would be more expensive to the Government, but the point is, there are magistrates' courts all over the country and once a divorce is going though undefended, it is only a matter of people attending the court and it is granted. It would be far cheaper for the litigants and the people who want their marriages dissolved.

There is no need for this cumbersome way, after the decree nisi is granted one has to wait to see whether the Attorney-General has intervened. Within my short practice at the Bar, I cannot remember any case where the learned Attorney-General has intervened, but I think that the procedure should be simplified. One does not need a Select Committee to do this. The Attorney-General and hon. Members on the other side are quite aware of what is required and what is required to be remedied.

I was a member of the last Committee and it was the most frustrating thing to be a member of a Committee such as that. Not only members of the Opposition or the Government but many members lost interest in the Committee. My learned friend Mr. Bissember was a member of that Committee.

As I see it, the proceedings of the Committee will drag on for a long time and we will find ourselves in the next two or three years in the same position as we are in today.

As far as matrimonial causes are concerned, I would urge my hon. and learned Friend, the Attorney-General, that there is not much controversy as far as changes in the law relating to matrimonial causes are concerned. There is hardly any controversy. Most people in this country agree that once the marriage is broken down there should be a divorce. There are one or two spiteful wives or husbands who, even when they go to legal advisers and are asked, "Why hold on to a marriage that has broken down?", will insist that they wish to hold on to it. Not even for money will they change.

I know of a case where a husband presented a petition and there was a clear ground for divorce, but the wife decided to defend the suit. She is not living with him; she has a boy friend, but she intends to hold on to that marriage. She was advised to let the husband be granted a divorce but she filed an answer without even asking that she be granted a divorce although the marriage has obviously broken down. The husband even offered to pay maintenance to her.

There are some people like this and whether we have a Select Committee or not the position will not be rectified. I think the community as a whole would welcome early changes in the law dealing with matrimonial causes and the Select Committee will only present urgent legislation.

If I may move now to deal with the question of succession: There are cases, as my learned and hon. Friend has said, where illegitimate children are recognised by the law from the purpose of claims and compensation. My hon. and learned Friend referred to the National Insurance Scheme and to instances where the putative father may have died as the result of an accident arising from negligence of some other person. In such cases, although there are legitimate children, illegitimate children are permitted to claim. This falls under Chapter 112. If illegitimate children are afforded an opportunity to claim damages against wrongdoers I can see

no reason why those same children should not be entitled to claim and to share in the estate of the deceased person.

I would also urge the Government to forget the question of a Select Committee so far as the law relating to succession is concerned. My hon. and learned Friend has given some examples dealing with the various questions. I think the questions that he has raised are the questions that need to be remedied. This applies to the question about reputed wives also. I am sure that in your practice, sir, you must have come up against many cases where a woman was living with someone for a number of years and had children by that person and, after that person's death, under the law of succession, neither the reputed wife nor any of those children could claim and share in the estate of the deceased.

At times one finds that the children and the reputed wife have to beg the next of kin to apply for letters of administration and at the same time they have to allow the next of kin to have something of the deceased's estate. In my experience, I have seen where the next of kin, the brothers and sisters of the deceased, usually take everything without giving those children even a penny.

In many cases, if one had asked the deceased before his death whom he would have wished to succeed to his property or his wealth, his obvious answer would have been his reputed wife or his wife and children. Therefore, I would urge upon the Government to enact legislation as soon as possible to take care of this hardship that is being experienced by this class of persons.

The law, sir, has already recognised the reputed wife, as my hon. and learned Friend as said, in the Workmen's Compensation Ordinance, for instance, and to a certain extent in the National Insurance Scheme. I have not experienced much difficulty in the working of that legislation. If, therefore, the Government enacts legislation for the purpose of succession to enable reputed wives and illegitimate children to claim, I do not see that one would find too much difficulty in administering it.

Of course, legislation can be enacted and, if, by experience, one finds that certain hardships are being created then, of course, amendments can be made to the legislation. There are obvious hardships that are being created now and I would urge my hon. and learned Friend to enact legislation to take care of them. If he wants more time to consider other aspects of the matter, then a Select Committee could be appointed to deal with those other aspects of succession but so far as the obvious cases are concerned, then legislation could be enacted to deal with them. I presume that my hon. and learned Friend will be on the Committee. I hoped e will be on it but I doubt whether he will find the time for it.

As my hon. and learned Friend, Mr. Bissember, will tell you, it is a waste of time and if one broadens the Committee as is contemplated here in this Motion it will make matters worse. I remember when a former Committee was dealing with the question of succession. We invited certain religious groups to give evidence and I think that was the end of the meetings of the Committee because each religious group had its own recommendations. Therefore, we ended up where we had started. I think my hon. and learned Friend will support that statement.

That is why I would urge on my hon. and learned Friend, the Attorney-General, that so far as there is an obvious need for the legalisation to be amended, we should do so right away without having to go into this Committee. I think the views of the Opposition are well known from our Motion which will be "debated" tomorrow. We have heard the views of the Government from my hon. and learned Friend.

4.55 p.m.

There may be one or two persons who have minority views but as the Prime Minister said some time ago, we have to consider the majority, we have to make a decision in favour of the majority. The P.P.P. represents a cross-section of the population. The hon. Member from the United Force will be speaking in due course; we might hear his party's views. Your Honour, having heard the

views of all Members of this House I can see no need for the Government to insist that each one of these questions should go to a Select Committee.

I can understand the question of abortion; it may be a little more controversial than the others; although in my view that should also not go to a Committee. If my hon. and learned Friend insists on that, I will go along with it to a certain extent. My view is that abortion should be made legal. My hon. Friend Mr. Chandisingh will deal mote with the question of abortion. If hon. Members want to hear my view on this, it is this: if a person does not want a child and the person conceives and cannot afford to maintain that child or for any other reasons does not want the child, that person should be free to go to a doctor and have an abortion.

The question is this: that at present there is a large number of persons who would have abortions done and who could afford it, who could go to a doctor and have it done. Those who cannot afford it would go to a quack and then the person's health is in jeopardy. Your Honour, the same way as we would have criticism and opposition to abortion those same persons oppose the use of contraceptives. Many people who cannot afford to have children should not be forced to do so. I am not attacking any person's religion. But should not they be entitled to have it done that way? I am sure that if there is legislation then it could be done cheaper also. Right now because it is illegal the doctors charge exorbitant fees I understand from my learned and hon. Friend.

I would urge my learned and hon. Friend, in closing, that so far as the question dealing with matrimonial causes is concerned, legislation should be drafted immediately. My learned friend has read the English Act because he has referred to certain aspects of it and I see no reason why we cannot follow it. Our girls wear min skirts just like them; the boys wear the same long hair. The hon. Attorney-General has given all the argument why legislation should be enacted immediately in his Speech. I would urge him not to waste time on this Select Committee. It is against public opinion that people should be forced to hold on to this legal barrier so that they cannot re-marry if they want to do so. I would urge my learned and hon. Friend to separate his

Motions. The Motion dealt with three aspects of the matter and one or two might be more controversial than the others.

So far as the question of succession is concerned, I agree with the hon. Attorney-General that there may be difficulties where there is a reputed wife with illegitimate children and a wife and legitimate children as to how the estate should be divided – what percentage and so on – or who should decide how it should be divided. Dealing with Workmen's Compensation, although a person does leaving legitimate children and a wife, and illegitimate children and a reputed wife or wives – because in many cases when a person does you find so many relatives and wives trying to claim. The magistrate in that type of case would hear the evidence, whether they are fictitious claims or not, and decide according to the needs and how close the relationship was and the amount of the compensation is so divided. That way, I presume, there might have to be some investigation and consultation.

As I said, with regard to the question of abortion, as my learned and hon. Friend said since this matter was not debated fully before and views of the community might not have been heard before, it might be justifiable to refer that to a Committee. But there again I would hope that the committee would act expeditiously so that legislation could be enacted as soon as possible so that people in this country would not suffer from any disability when compared with other countries as cited by my learned and hon. Friend.

Speaker: The hon. Member Mr. Cheeks

Mr. Cheeks: Mr. Speaker, I wish to go on record as supporting this Motion from the standpoint of the appointment of a Committee to go into all of the relevant facts and make recommendations. I believe that this matter is far too important for this House to decide without hearing the views from outside.

This is a matter which involves morality, religion, law and other fields of human activity. People who have strong views against as well as people who are strongly in favour of one side or the other should all be given an opportunity of having their views aired.

On the question of divorce, for instance, on the one hand you have the views of some churches, which feel that divorce is almost always wrong.

5.05 p.m.

"Those whom God have joined together, let no man put asunder." But the question is: how do we know God has joined them together, and if God has joined them together through an agent, why cannot God separate them, also through an agent? Many argue this way.

They say that Christ taught that "those whom God hath joined together, let no man put asunder." He did not say that those whom God hath joined together, let no God put asunder; and if God joined them when they were married, well then, God can put them asunder when the time comes. I have heard this argument. I feel that the recommendation of the Motion, that a committee should be formed to go into all the pros and cons, is quite necessary, and it is for that reason that I decided to make a short contribution to this debate.

Take the question of abortion. There are very strongly opposed views. Some very strong opinions are expressed that the conditions in the world today are different from what they were two or three thousand years ago. If it was all right for there to be no limit on the growth of the population in past centuries, reason and commonsense suggest that there should be a limit now. But there is the opposite view that as the population of the world increases, science places at the disposal of man the means of maintaining this increase in population, and in better comfort than when the world was young and the population was small. Since there are so many strong arguments on both sides, I think it is right for a cross section of people from outside to be fully represented on the committee. I therefore support the Motion.

Mr. Sutton: Mr. Speaker, the hon. Attorney-General spoke at length in proposing this Motion. We also had the benefit of hearing from hon. Member Mr. Jagan and now the hon. Member Mr. Cheeks. It seems abundantly clear that it is not a question of whether something should be done but a sense of responsibility must prevail in order to ensure that degree of change is adequate and suitable to the conditions in which we now live.

I will not spend any time on speaking on this subject. What I am particularly interested in is that this is such an important matter that I hope that the House without reservation will support this Motion because it is very timely and very necessary in the context of this country. We live in conditions where for the most part we have not had any part in decisions of whether they should be created or whether they should not be created and we ourselves are fir and proper to amend or make our laws to fit the conditions in which we find ourselves. We should ensure that we get the best results and the best use can be made of both the human and material resources at our disposal so that the laws by which we are now governed are such that they do not inhibit the possibilities that we may have.

The pros and cons have been aired at length by the hon. Attorney-General when moving this Motion and I only hope that when this Select Committee is formed and an approach is made to involve the public in this exercise, that every opportunity will be taken to have the evidence and information gathered from all sections of the community in such a manner as to ensure that not only the views of certain privileged sections are taken into account. We know there are quite a few laws and we know this matter touches religious dogma and several entrenched associations and methods of life.

In order to ensure that too much weight is not given to one or the other, every opportunity must be given to have the views expressed on as wide a base as possible.

The Government, through the hon. Attorney-General, must be complimented in bringing this Motion and we hope that every effort will be made to go through the motions and have it

implemented as soon as possible in such a manner that the present disabilities which have been clearly stated and mentioned will be cured. In trying to do something constructive about this matter, we should not allow the pendulum to swing too heavily in the other direction by going to hastily about what we have to do. We will have the opportunity of studying the solutions put up by other countries and so avoid the mistakes of extremism which have possibly taken place in other quarters.

I therefore take pleasure in associating myself and this section of the House with this Motion in the hope that it will be implemented and pursued for the benefit of all sections of the country.

Mr. Chandisingh: I should just like to touch on that aspect of the Motion which relates to the need for revision of the laws on abortion. To begin with, I should like to correct a certain misconception which crept into the hon. Minister's remarks. I think it is understandable because it is not always that he is present in this House and that perhaps is what led him to say, to the effect, that this aspect, the one relating to abortion, has never been aired in Parliament.

It is true that as far as I am aware there has been no formal Motion or anything of the kind. In that sense it would be correct, but I would just like to remind him and this honourable House that I think it was two or three years ago, during the debate on the estimates that we on this side of the House did raise this matter about the need to revise the laws on abortion and urged the Government to take steps in this direction. We are, however, very pleased that this question has at least taken a practical form and is now actually before this House.

5.15 p.m.

We regard this question relating to abortion as a very vital matter indeed. As the hon. Minister of State has correctly stated the present law is antiquated and we can see that the present provisions of the law which allow, or which seem to justify, abortion on very restricted grounds,

for example, if the life of the pregnant woman is in danger – this very restricted type of law makes the whole thing more or less a farce. The law actually, as it stands today, gives a green light to quacks and as a result, although we have a law, it works in the opposite direction, that is, the effect is contrary to what it ought to be.

We think that it is high time that this state of barbarity perpetrated on the women of this country should come to an end. I do not think that the term "barbarous" or "cruel" pertaining to the present situation is ill-founded by any means. We think that it is necessary for this change for simple humanitarian reasons apart from other considerations. It is also necessary for moral reasons and I am referring to morality in its broadest, its deepest, truest sense and not the type of restricted concept of morality which some people choose to regard as very important.

We do know that there are certain persons in the community who, for various reasons, maintain scruples regarding the whole question of abortion, whether it should be freely permitted or not and so on. We recognise the sincerity of those persons who do have such views, be they based upon ecclesiastical considerations or otherwise. But it is our belief that such opinions should not be allowed to deny the overwhelming majority of people, who do not hold such positions, the right to have abortions, particularly when we know that the situation today leads to ill-health, damage and also to death. It leads, at the same time, to wrecking of persons' lives, socially as well as physically, and much harm is done by the continuation of the existing law.

Furthermore, as I said before, as the law stands at the moment, it is not preventing abortions or safeguarding against the performance of abortions. What it is doing to is send numerous women, including young girls, to quacks and to persons who are not in a position to perform abortions in aseptic conditions. In the Georgetown Hospital alone something like 20 to 25 cases turn up every week as a result of such illegal operations performed by persons who are not equipped to perform them. These cases turn up, I understand, with haemorrhage, sepsis, and so on. Several of them actually die, not to speak of those whose health may be permanently damaged.

If we take the country, as a whole, perhaps the figure may run into hundreds. The situation is therefore very alarming. It is a good thing that, in the recent period, this matter has seen the light of day and that steps are about to be taken to put an end to the situation.

I should like also to refer to those cases where persons cannot afford to pay high fees for performing such presently illegal abortions. I refer to poor people who cannot afford the high fees charged by certain medical men and who have to go to quacks. There are some people who can afford to pay and do pay very high fees to have abortions performed. Added to this, there is the question of guilt which attends such visitation.

Furthermore, I wish to emphasise that we live in a society in which unmarried women who give birth to children have a difficult time. Births out of wedlock are not regarded with the social acceptance that they have found in several other countries in the world. Therefore, it is highly important that we should really move to change the situation. We know that many young girls today become pregnant and do not wish to have the baby, for understandable reasons – the question of social acceptance and so on.

The fact that the society, parents and others, will not accept the situation, the fact that such girls in this position jeopardise their chances of marriage, the shame that is produced, including the social ostracism – all of these things lead to the conclusion that the present situation is very unkind and cruel to the women of our country.

We think, Mr. Speaker, that it should be the right of a woman to request to have an abortion without restriction or with very few restrictions at all. I make this point because it has been bruited around that there is some opinion which is in favour of liberalising the law but which would still require that very severe restriction and conditions be imposed. We have heard the hon. Minister of State give examples from different countries.

Some people might be inclined to think that abortion should only be permitted in the case of pregnancy by incest, rape or other circumstances like that, or if the health of the mother is endangered. It is our view that when this comes up we should tackle the question from the other end of the scale, as it were. In other words, abortion should be available under safe, hygienic conditions, as a right and that any restriction imposed must be seen in the context of this over-all right.

5.25 p.m.

For example, I would certainly agree that perhaps there should be set up some form of counselling for women who desire to have abortion. Apart from the medical opinion as to whether this is desirable or not, there may be set up some agency to counsel, to advise, even to persuade women perhaps, of the undesirability of having an abortion. In other words, there may b some measure of persuasion against this if it is felt that this is a useful exercise rather than to have someone just decide on their own that they would like to have an abortion and that is that.

But such limitations must be regarded as merely in the sphere of counselling so as to give a person a second thought. I do not feel that we should start out from the position that abortion is something bad which must be restricted by all means that that we will only relax in certain conditions where it is harmful to the health. These are some of our views that we are throwing into the melting pot for consideration.

Let me cite another case. Let us say that a wife has several children and she decided that does not want to have any more children. Presently such a person can be sterilised. That would mean that such a woman would not be able physically to have children in future. But suppose this woman through a remarriage decides at a later stage that it may be a good thing to have another child. Well, sir, if the woman has been sterilised, it means that she could no longer change her mind and this is another consideration which ought to be borne in mind.

I should like to point out too that medical opinion is that there is no danger in properly carried out abortion. In other words, several abortions performed under proper conditions are not harmful to a person. Generally speaking, we feel that the whole procedure must be simplified and also rendered safe. We should get rid of all the hypocrisy surrounding this question and really make it understood that women for a variety of reasons, maybe just a desire not to have a child, should be able to go to the hospital or a recognised medical practitioner where facilities are available in order to have an abortion performed without any feeling of guilt, at least, of social ostracism, of hiding and doing things quietly. Furthermore, that such procedure should be, at least, if not free, very cheap so that women may have this right and exercise this right effectively.

Another point I should like to make is that, perhaps, the Government or the Ministry of Health when this comes up will give some sort of consideration to the facilities available for performing abortions. As far as I am informed, there are adequate facilities in most of our hospitals at the moment, but perhaps this matter can be taken into account. In any event, with a liberalising of the law on abortion, it is unlikely that this will itself give rise to a spate of demands for abortion. This is not my opinion at all. What is happening at the moment is that a lot of abortions are taking place but they are concealed, illegal as it were, and are being performed under conditions which lead to the destruction of the health, and in many cases, the lives of our women citizens.

Now, Mr. Speaker, there may be some argument adduced about population. I have heard it said that our population is very small and we have need for a growing population for the development of our country. Undoubtedly this is true; our population is very small and in any case we can do with a bigger population. But I do not think that any argument raised based upon population control is necessarily associated with liberalising the laws on abortion. As I have said already, the thing is being done now to a large extent; the law itself is not preventing it. Secondly, I should like to say that any question of population growth has to be considered as a separate question. For example, I would feel that if one wants to encourage population growth in a country, it would be necessary to create the conditions for persons to have and maintain large

or larger families. The answer to population growth may be to institute facilities such as family grants for large families. I merely mention this at this time, Mr. Speaker, just to reinforce, so to speak, arguments which have been used on that side and on this side to justify the need for a very liberal change to this law.

I think with these remarks we have indicated our feeling on this matter. We think that this is a very timely proposition. It is high time that it be introduced and we would like to hope that the setting up of this special committee will not result in undue delay over the finalisation and the preparation of the necessary laws. As I have indicated already, perhaps hundreds or even thousands of women are now in jeopardy and the longer this matter is left in abeyance many young people will die. Enlightened opinion calls for this. I am not suggesting that we should merely copy or ape what has been done in other countries. Certainly we can use the yardsticks which have been formulated in certain other countries as a guide. I think we would be doing well if we examine our own needs here at the present time to see the real seriousness of the situation and act very quickly to bring about a change.

5.35 p.m.

The Attorney-General and Minister of State (replying): I need to say very little, I believe, in response. I would like to thank all sections of the House and all hon. Members who have contributed to the debate. I should like to particularly thank the hon. Member Mr. Cheeks for placing the Motion in its best perspective, that is, not so much of a presentation of a positive and clear-cut point of view from the Government of these issues, but the presentation based on the recognition of a need to look into the questions.

We will all have views as individuals. We will have views as groups. What I think we are all agreed upon is that the time has come for us to decide what changes to make. I should like to urge my hon. Friend Mr. Jagan of the reasonableness of proceeding through the Select Committee. I think the speeches from members opposite alone have demonstrated the need for

his to reach important decisions on important questions. We agree on the need for change. We are not yet either agreed or conscious of all the possibilities by way of answers and solutions. The Select Committee provides a means for doing this by first of all tapping the resources on Benches opposite for it is clear that there is much knowledge and experience that can be placed to the benefit of the community from those quarters, and as the hon. Member Mr. Sutton pointed out, encouraging the community at large to participate in the process of decision making.

I hope we can look forward to the support of the House when the Select Committee meets to carry out its functions and I would like to assure the House that the Government for its part, through its representation on the Committee, will pursue the work of the Committee with all diligence.

Question put, and agreed to.

Motion carried.

ADJOURNMENT

Resolved, "That this Assembly do now adjourn until Wednesday, 18th August, 1971, at 2 p.m. [**Mr. Ramsaroop**]

Adjourned accordingly at 5.37 p.m.

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