

**FIRST LEGISLATIVE ASSEMBLY  
STATE OF SINGAPORE**

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**REPORT OF THE SELECT COMMITTEE ON THE  
MUSLIMS (AMENDMENT) BILL**

**L.A. 14 of 1960**

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**Ordered by the Assembly to be printed:  
21st April, 1960**

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## MUSLIMS (AMENDMENT) BILL

Committed to a Select Committee by resolution of the Legislative Assembly  
passed on 13th January, 1960.

Members of the Select Committee:-

Mr. Speaker (Sir George Oehlers, O.B.E.) (*Chairman*)

Dato Abdul Hamid bin Haji Jumat, P.M.N.

Inche Baharuddin bin Mohamed Ariff

Mr. K. M. Byrne

Inche Mohamed Ali bin Alwi

Inche Mohd. Ariff bin Suradi

Inche M. Ismail Rahim

Inche Yaacob bin Mohamed

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MUSLIMS (AMENDMENT) BILL**

The Select Committee to whom the Muslims (Amendment) Bill was committed have agreed to the following report:-

1. In accordance with Standing Order No. 75 (Advertisement when Bill committed to a Select Committee), an advertisement inviting the public to make written representations on the Muslims (Amendment) Bill was published in the following newspapers, namely, the *Nanyang Siang Pau*, *Sin Chew Jit Poh*, *Straits Times*, *Utusan Melayu*, *Berita Harian* and *Tamil Murasu*, of 18th January, 1960. Publicity to the invitation was also given in a press release and in broadcast over Radio Singapore. Written representations could be submitted in Chinese, English, Malay or Tamil, and the closing date was 12th February, 1960.

2. At their first meeting on 17th February, 1960, your Committee agreed that registered Muslim women's organisations in Singapore be invited to submit written representations and/or to give evidence, and that another advertisement be inserted in the newspapers noting that no representations on the Bill had been received from women and women's organisations, and inviting representations.

3. This advertisement was published in the *Nanyang Siang Pau*, *Sin Chew Jit Poh*, *Straits Times*, *Berita Harian* and *Tamil Murasu* of 20th February, 1960, and in the *Utusan Melayu* of 22nd February, 1960. Publicity to this invitation was also given in a press release and in broadcast over Radio Singapore. Written representations could be submitted in Chinese, English, Malay or Tamil, and the closing date was 21st March, 1960.

4. The written representations received are annexed to this report as Appendix 11, numbered Paper S.C. [Muslims (Amendment) Bill] as hereinafter appearing:-

*Paper S.C.*

(1) Inche M. K. Shariff	...	No. 1
(2) Inche Mohd. Yatim bin Mohd. Dohon	...	No. 2
(3) The Pan-Malayan Islamic Party, Singapore (Persatuan Islam Setanah Melayu)	... ..	No. 3
(4) Dato Syed Ibrahim bin Omar Alsagoff	...	No. 4
(5) Inche Sulaiman bin Haji Siraj	...	No. 5
(6) Inche Syed Othman bin Abdul Rahman bin Yahya	...	No. 6
(7) Inche Onn bin Mohd. Amin	...	No. 7
(8) Inche Mohamad Jizan bin Monel	...	No. 8
(9) Inche Ali bin Haji Amin	...	No. 9
(10) Inche Shaikh Maarof bin Mohd. Jarhom	...	No. 10
(11) Muslim Welfare Association	... ..	No. 11
(12) Inche Mohamed bin Omar	...	No. 12
(13) Persatuan Pemudi Islam Singapura (Young Women Muslim Association, Singapore)		
Persatuan Seni Drama Wanita Singapura (Women's Dramatic Association, Singapore)		
Chawangan Kaum Ibu , Persatuan Seruan Islam Semalaya		
Chawangan Singapura (Ladies Section, All-Malaya Muslim Missionary Society, Singapore)		
Other women	... ..	No. 13

5. Your Committee also agreed to invite the State Advocate-General, the President of the Shariah Court and the Chief Kathi to submit memoranda on the Bill and to give evidence.

6. The memorandum received from the State Advocate-General is annexed to this report as Appendix II, numbered Paper S.C. [Muslims (Amendment) Bill] No. 14.

7. Oral evidence was heard from the following:-

- (1) Inche Mohd. Yatim bin Mohd. Dohon, on behalf of the Persatuan Persuratan Pemuda Pemudi Melayu (Malay Youth Literary Association);
- (2) Inche Syed Othman bin Abdul Rahman bin Yahya;
- (3) Inche Ali bin Haji Amin;
- (4) Inche Shaikh Maarof bin Mohd. Jarhom;
- (5) Inche M. A. Majid, representing the Muslim Welfare Association;
- (6) Inche M. K. Shariff;
- (7) Inche Sulaiman bin Haji Siraj;
- (8) Inche Mohamed bin Omar;
- (9) Inche Syed Junied Al-Junied  
Ustaz Mohamed Yunus bin Hassan  
Inche Syed Abubaker bin Al-Hadad } representing the Pan-Malayan  
Islamic Party, Singapore;
- (10) Mrs. M. Siraj  
Mrs. Aliya Lynn Tung  
Miss M. Namazie } representing the Young Women Muslim  
Association, Singapore;
- (11) Tuan Haji Mohamed Sanusi bin Haji Mahmood, Registrar  
of Muslim Marriages and President, Shariah Court;  
Tuan Haji Ali bin Haji Mohamed Said Salleh, Chief Kathi; } and
- (12) Inche Ahmad bin Mohamed Ibrahim, State Advocate-General.

8. The Minutes of Evidence taken are annexed to this report as Appendix III.

9. Your Committee held 15 meetings.

10. The amendments to the Muslims (Amendment) Bill which your Committee recommend are incorporated in the reprint of the Bill is annexed to this report as Appendix I.

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*Notes:-*

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APPENDIX I

*Reprint of Bill as amended by the Select Committee.*

A BILL  
*intituled*

An Ordinance to amend the Muslims Ordinance, 1957  
(No. 25 of 1957).

Be it enacted by the Yang di-Pertuan Negara with the advice and consent of the Legislative Assembly of Singapore, as follows:-

1. This Ordinance may be cited as the Muslims (Amendment) Ordinance, 1960. Short title.

2. Section 4 of the Muslims Ordinance (hereinafter in this Ordinance referred to as the "principal Ordinance") is hereby amended by inserting immediately after subsection (6) thereof the following new subsection:- Amendment of section 4.

"(7) The jurisdiction, authority and powers of the Chief *Kathi* and any *Kathi* shall be such as are conferred by this Ordinance:

Provided that the Yang di-Pertuan Negara may by the terms of the letter of appointment of the Chief *Kathi* or any *Kathi* restrict the exercise of any powers which would otherwise be conferred on such Chief *Kathi* or *Kathi* by this Ordinance."

3. Section 7 of the principal Ordinance is hereby amended- Amendment of section 7.

(a) by deleting the word "It" appearing in the first line of subsection (1) thereof and substituting therefor the words "Subject to the provisions of this Ordinance it";

(b) by deleting the word "Any" appearing in the first line of subsection (2) thereof and substituting therefor the words "Subject to the provisions of this Ordinance any"; and

(c) by inserting immediately after the words "law of Islam" appearing in the fifth line of subsection (2) thereof the words "or this Ordinance".

New  
section 7A.

4. The principal Ordinance is hereby amended by inserting immediately after section 7 thereof the following new section:-

"Restriction  
on solemnization of  
marriages.

7A.-(1) No marriage shall be solemnized under this Ordinance if the woman to be wedded is married under the law of Islam to any person other than the other party to the intended marriage.

(2) No marriage shall be solemnized under this Ordinance if the man to be wedded is married under the law of Islam to any person other than the other party to the intended marriage, except-

(a) by the Chief *Kathi*; or

(b) with the written consent of the Chief *Kathi* by the *wali* of the woman to be wedded or by a *Kathi* at the request of such *wali*.

(3) Before solemnizing a marriage or giving his written consent to the solemnization of a marriage under subsection (2) of this section the Chief *Kathi* shall satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

Amendment of  
section 12.

5. Section 12 of the principal Ordinance is hereby amended-

(a) by inserting immediately after the word "divorce" appearing in the first line of subsection (3) thereof the words "or revocation of divorce";

(b) by inserting immediately after the word "satisfied" appearing in the second line of subsection (3) thereof the words "after inquiry"; and

(c) by inserting immediately after subsection (3) thereof the following new subsection:-

"(4) Nothing in this section shall apply to a divorce effected by a decree or order of the Shariah Court or the Appeal Board."

Amendment of  
section 14.

6. Section 14 of the principal Ordinance is hereby amended-

(a) by deleting the marginal note thereto and substituting therefor the words "Appeal from *Kathi*.";

- (b) by deleting the words "such refusal" appearing in the first line of subsection (3) thereof and substituting therefor the words "any decision of a *Kathi* under this Ordinance"; and
- (c) by deleting the word "refusal" appearing in the second line of subsection (4) thereof and substituting therefor the words "the decision".

7. Section 17 of the principal Ordinance is hereby repealed and the following substituted therefor:-

Repeal and re-enactment of section 17.

"Copy of entry to be given to parties.

17. On the completion of the registration of any marriage, divorce or revocation of divorce, the *Kathi* shall upon payment of the prescribed fees give to each party to the marriage, divorce or revocation of divorce a copy of the entry duly signed and sealed with his seal of office:

Provided that if the divorce is capable of revocation no certificate of divorce shall be issued to the wife until the expiration of the period during which the divorce may lawfully be revoked."

8. Subsection (2) of section 21 of the principal Ordinance is hereby amended by deleting paragraph (d) thereof and substituting therefor the following:-

Amendment of section 21.

- "(d) the disposition or division of property on divorce;
- (e) the payment of *mas-kahwin*, maintenance and consolatory gifts or *matta'ah*."

9. Section 28 of the principal Ordinance is hereby repealed and the following substituted therefor:-

Repeal and re-enactment of section 28.

"Powers of the Court.

28. The Court shall have the following powers:-

- (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses as the Court may think it necessary or desirable to procure or examine;
- (b) to require the evidence, whether written or oral, of any witness to be made on oath or affirmation or by statutory declaration;
- (c) to summon any person to attend before the Court to give evidence or produce any document or other thing in his possession and to examine him as

a witness or require him to produce any document or other thing in his possession;

(d) to issue a warrant of arrest to compel the attendance of any person who, after being summoned to attend, fails to do so and who does not excuse such failure to the satisfaction of the Court and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to obey the summons;

(e) to exercise the powers of a Magistrate's Court for the purpose of giving effect to a warrant of arrest or order of imprisonment and of a court under Chapter XXXII of the Criminal Procedure Code."

Cap. 132.

Amendment of section 31.

10. Section 31 of the principal Ordinance is hereby amended by deleting the proviso thereto and substituting therefor the following:-

"Provided that the Court may, if it thinks fit, order the whole or any part of any proceeding before it to be heard *in camera*."

Amendment of section 33.

11. Section 33 of the principal Ordinance is hereby amended-

(a) by deleting the words "If satisfied that there is serious disagreement between the parties to a marriage" appearing in the first and second lines of subsection (1) thereof and substituting therefor the words "Before making an order or decree for *talak*, *fasah*, *taalik*, *khula* or *nusus*"; and

(b) by deleting subsection (3) thereof and substituting therefor the following:-

"(3) The *hakam* shall endeavour to effect a reconciliation between the parties and shall report the result of their arbitration to the Court."



12. Section 36 of the principal Ordinance is hereby repealed and the following substituted therefor:-

Repeal and re-enactment of section 36.

"Claims for maintenance, *mas-kahwin* and *matta'ah*.

36.-(1) The Court shall have power to inquire into and adjudicate upon claims by married women or women who have been divorced for maintenance and for *mas-kahwin*.

(2) A woman who has been divorced by her husband may apply to the Court for a consolatory gift or *matta'ah* and the Court may after hearing the parties order payment of such sum as may be just and in accordance with the law of Islam.

(3) The procedure and forms of process in suits under this section shall be as prescribed by rules made under this Ordinance.

Cap. 44.

(4) Any order for the payment of maintenance made under this section shall, until reversed, be a bar to any proceedings under the Married Women and Children (Maintenance) Ordinance."

13. The principal Ordinance is hereby amended by inserting immediately after section 36 thereof the following new sections:-

New sections 36A and 36B.

"Power of Court to make orders in applications for divorce.

36A.-(1) In any application for divorce the Court may, at any stage of the proceedings or after a decree or order has been made, make such orders as it thinks fit with respect to-

- (a) the payment of maintenance or *mas-kahwin* to the wife;
- (b) the payment of a consolatory gift or *matta'ah* to the wife;
- (c) the custody, maintenance and education of the minor children of the parties; and
- (d) the disposition or division of property on divorce.

Enforcement of orders.

36B. If any person fails or neglects to comply with an order of the Court under section 36 or 36A of this Ordinance the Court may for every breach of the order direct the amount or the value of the property due to be levied in the manner provided

for levying fines imposed by a Magistrate's Court or may sentence him to imprisonment for a term which may extend to six months."

Amend-  
ment of  
section 42.

14. Section 42 of the principal Ordinance is hereby amended-

- (a) by deleting the colon appearing in the fifth line thereof and substituting therefor a full-stop; and
- (b) by deleting the proviso thereto.

New section 60A.

15. The principal Ordinance is hereby amended by inserting immediately after section 60 thereof the following new section : —

"Unlawful  
solemniza-  
tion of  
marriage  
and unlaw-  
ful registra-  
tion of  
marriage,  
divorce or  
revocation  
of divorce.

60A. Any person who-

- (a) solemnizes or purports to solemnize any marriage between Muslims in contravention of the provisions of this Ordinance; or
- (b) registers any marriage, divorce or revocation of divorce effected between Muslims in contravention of the provisions of this Ordinance,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment."

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## APPENDIX II

### WRITTEN REPRESENTATIONS RECEIVED AND MEMORANDUM FROM THE STATE ADVOCATE-GENERAL

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APPENDIX II

**Paper S.C. [Muslims (Amendment) Bill] No. 1**

*(Translation from Malay)*

M. K. SHARIFF,  
c/o St. John Ambulance Hqrs.,  
25 Gilstead Road,  
Singapore 11.

19th January, 1960.

Clerk of the Legislative Assembly,  
Empress Place,  
Singapore.

Sir,

With reference to an item published in the *Berita Harian* dated 16th January concerning the law about Muslim marriage, I would be glad if my representations as below are accepted and placed before the Committee on Muslim marriage.

1. Although every Muslim (Islam) is permitted by religion to have more than one wife but not more than four, I say here that for every Muslim who wishes to have his marriage solemnized at the residence of a Kathi, the Kathi must investigate whether the person already has a wife.

2. Any person is permitted to have more than one wife according to Islamic conditions provided that the person must be in a position whereby he is able to provide maintenance and conjugal relationship.

3. Before a marriage is solemnized or a marriage ceremony proceeded with, the person in authority (Tuan Imam) must carry out investigations concerning the man's income.

4. With regard to "Divorce", no Kathi should give the decision to effect a divorce and the matter must be brought before the authorities. My intention, by this, is so that it would not be easy for Muslims to divorce their wives without getting a final clarification.

5. At the conclusion of a marriage ceremony officiated by a Kathi, the marriage certificate must be given to the bridegroom there and then, without further delay.

6. *Fasah-With* regard to *Fasah no* Kathi should grant a *Fasah* upon receipt of complaints from a wife. The final decision from a woman should not be admissible unless made through the Shariah Court.

7. After a divorce has taken place the question of payment of maintenance, if the wife has children, should be decided upon. Maintenance must be fixed according to the husband's income and must be paid through the Shariah Court.

The above are the representations which I am disposed to make in the interest of Islam.

I am, Sir,  
*M. K. Shariff.*

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**Paper S.C. [Muslims (Amendment) Bill] No. 2**

MOHD. YATIM BIN MOHD. DOHON,  
29 Fuyong Estate,  
Singapore 23.

20th January, 1960.

Clerk to the Legislative Assembly,  
State of Singapore.

Sir,

I would like to refer to the Muslim Marriage Bill which was read a second time at the last Assembly meeting and I would like to suggest that any Muslim man who wishes to contract a second marriage should be asked to appear before a board appointed by Government wherein he will be examined by the said board as to his eligibility to contract such marriage in accordance with the conditions stipulated in the marriage laws of Islam. When the board is satisfied that the applicant has fulfilled the necessary conditions then the board will issue a certificate to the applicant to contract a second marriage before any Kathi.

I am prepared to give evidence in support of my proposal before the Select Committee if called upon to do so.

Yours faithfully,  
*Mohd. Yatim bin Mohd. Dohon.*

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**Paper S.C. [Muslims (Amendment) Bill] No. 3**

THE SINGAPORE PAN-MALAYAN ISLAMIC PARTY,  
c/o 550 Kampong Bahru Road,  
Singapore 4.

20th January, 1960.

The Clerk of the Legislative Assembly,  
Assembly House,  
Singapore 6.

Dear Sir,

I am directed to inform you that the PMIP Executive Central Committee meeting held on 16.1.60, unanimously carried a resolution regarding the Muslim Amendment Bill.

The resolution is that the PMJP regrets that it does not agree over the issue that only the Chief Kathi could perform rite over the marriage of a Muslim who wishes to marry a second wife.

The meeting was chaired by the PMIP Vice-President, Mr. H. M. Yahiya.

Yours faithfully,  
THE PAN-MALAYAN ISLAMIC PARTY,  
*Zainul Abidin Shah,*  
Secretary-General.

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**Paper S.C. [Muslims (Amendment) Bill] No. 4**

DATO SYED IBRAHIM BIN OMAR ALSAGOFF,  
2A Raffles Place,  
Singapore.

24th January, 1960.

The Clerk of the Legislative Assembly,  
Assembly House,  
Empress Place,  
Singapore 6.

Sir,

I shall be obliged if you will bring the following to the notice of the Select Committee appointed by the Legislative Assembly to consider the Muslims (Amendment) Bill.

With reference to what I read in the newspapers, *re* the Muslims (Amendment) Bill, I would like to state that it is much better to leave solemnizing of a marriage, to the Chief Kathi only, in the case of persons who have already a wife or wives or females who have no *Wali*. For strong reasons-

- (1) the Chief Kathi is undoubtedly the most suitable person from the point of view of religious knowledge and status;
- (2) he is now paid, and attends full office hours therefore he can perform these marriages easily and I do not think it will take much of his time. Besides, as he is now paid, the fees for performing the marriages will go to the Treasury; and
- (3) if he wishes to take another wife he can solemnize his own marriage. This is a remote expectation.

Previously when the Muslim Advisory Board suggested payment to Kathis including the Chief Kathi, it was stated that the fees payable by the parties to the marriage will cover the salaries payable to the Kathis.

It may be advisable to appoint the President of the Shariah Court or one of the kathis as a deputy for the Chief Kathi to perform marriages if and when he cannot do so on account of illness or absence from Singapore.

With regard to the persons going from Singapore to get married in Johore or elsewhere in the Federation of Malaya or from there to get married in Singapore, I think it will be very good if the governments of Singapore and the Federation of Malaya can come to an agreement whereby no Kathi in either territory should solemnize any marriage except for people who are resident in their respective territories except where the bride lives in a different territory from the bridegroom and only in such cases, if required, because usually the bridegroom comes to the place of the bride for the marriage. It must not be forgotten that if parties travel to another territory for the purpose of getting married, there is very often some sinister reason.

Such agreement will benefit both Singapore and the Federation of Malaya and place a check on people avoiding the contracting of marriages in their country of residence for no valid reason.

Yours faithfully,

*Dato Syed Ibrahim bin Omar Alsagoff.*

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**Paper S.C. [Muslims (Amendment) Bill] No. 5**

*(Translation from Malay)*

SULAIMAN BIN HAJI SIRAJ,  
150 Robinson Road,  
Singapore.

25th January, 1960.

Clerk of the Legislative Assembly,  
Empress Place,  
Singapore.

Sir,

In response to your invitation through the local edition of *Berita Harian* dated 16/1/60 concerning the Bill on Muslim Marriages in Singapore, I wish to take the opportunity of forwarding herewith a few representations on the question of Powers of the Chief Kathi.

1. *Deputy Chief Kathi:* In my opinion it would be beneficial if a Deputy Chief Kathi be appointed to carry out all the duties of the Chief Kathi in, and during, the absence of the Chief Kathi due, for instance, to illness or vacation (whether the vacation be long or short and whether it be outside the State or otherwise). At all other times the Deputy Chief Kathi could be given the duty of assisting in work of a suitable nature in the office of the Chief Kathi or in the Shariah Court.

2. *Powers for the Deputy Chief Kathi:* Powers should be vested in the Deputy Chief Kathi so appointed to fit himself to perform all the duties of the Chief Kathi during the latter's absence. With such an appointment and with such powers vested in the Deputy Chief Kathi, it is hoped that there would arise no obstacles in the functions and responsibilities that should appropriately be performed by the Chief Kathi, such as the solemnization in Singapore, of marriages involving a male Muslim who already has a wife or wives, and so forth.

3. *Right of Appeal:* The right of appeal should also be extended to anyone against all decisions of the Chief Kathi or those of his Deputy. All such appeals should be brought before the President of the Shariah Court or before a Committee appointed by the President of the Shariah Court, for review and reconsideration. Decisions arrived at by the President of the Shariah Court or by the Committee appointed by the Court, are final.

The above are the representations which I wish to contribute and are forwarded with the hope that perchance they could be considered together with representations from other sources. In conclusion, thank you and Peace and the Blessings of Allah be upon you.

I am,  
Yours truly,  
*Sulaiman bin Haji Siraj.*

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**Paper S.C. [Muslims (Amendment) Bill] No. 6**

*(Translation from Malay)*

SYED OTHMAN B. A. RAHMAN B. YAHYA,  
c/o Malay Girl's School,  
Scotts Road,  
Singapore 9.

2nd February, 1960.

Clerk of the Legislative Assembly,  
Empress Place,  
Singapore 6.

Sir,

*Muslim Bill*

I have read in the *Uturan Zaman* No. 24 of its 21st year of issue (Kuala Lumpur) dated Sunday, 17th January, 1960, corresponding to 18 Rejab, 1379 A.H., an item headlined "Public invited to make representations" appearing on the front page of the paper.

*Re Polygamous Marriage*

(a) I fully agree that every male Muslim who wishes to marry more than one wife should make a declaration in the presence of the Chief Kathi concerning his ability to comply with the conditions of such marriage; the declarations should be made in writing by filling in forms wherein the conditions are set out, and should be sworn to before two witnesses and signed in the presence of the Chief Kathi. If the declaration is found to be untruthful the authorities should take action against the person, and if proved guilty the person could be fined or sentenced to imprisonment or sentenced to both by the Shariah Court.

*Re Wali Hakim*

(b) I feel dissatisfied that the Chief Kathi alone is given the authority to solemnize marriage involving a female person who has no lawful guardian. Rather, such authority should be given to all Kathis duly appointed by the Singapore Government, so that members of the public may each go to the nearest Kathi in the district convenient to them. If the Kathis fail to carry out their duties in accordance with the law of Islam, the authorities should take action against them and those found guilty could be punished accordingly.

*Reduction of Marriage Fees*

(c) The payment of marriage fees as at present obtaining, namely \$20 if at the Kathi's house or at the office of the Shariah Court, and \$30 if at the house of a party to the marriage, should be reduced to \$15 and \$20 respectively. In my opinion this reduced scale is sufficiently fair. I have heard grumbles among discontented Muslims.

*Re the Taalik Document (Surat Taalik)*

(d) Recently, Inche Ahmad Ibrahim, the State Advocate-General stated that the Singapore Government had withdrawn all documents for the registration of marriage which have written on them the words of the *Taalik (lafadz Taalik)*, the withdrawal being demanded by the All-Malaya Muslim Missionary Society which held that such words should not be written in such documents. I am not satisfied; the demand is very erroneous. It is rumoured that there are ulterior motives in the views held by the members of the Working Committee of the All-Malaya Muslim



Missionary Society? Whereas, in my own case, when I got married in Johore Bahru on 3rd December, 2603, the copy of the register of marriage, No. 6516 serial number 16/03, bears on it the words of the *Taalik* printed in Jawi, I would suggest that the withdrawal be revoked and that the words of the *Taalik* be reinstated, so that it would be convenient for the Kathis without wasting time at the house of the party or at the Kathis' house and at the Shariah Court. In your deliberations, if members of the Select Committee find it necessary to call for the copy of my register of marriage, I shall be ready to produce it for your perusal.

*Re Fasting Month*

(e) I would suggest that Muslim shops be closed during the day and may be opened to commence business at 6 p.m. but no consumption of food or drinks should be allowed therein until the time of breaking fast; and likewise shops of non-Muslims too should be required to refuse Muslim customers entry to the shops for the purpose of eating or drinking during the day as such acts are derogatory to the dignity and self-respect of the Islam religion. Similarly regarding acts of eating and drinking in public places, the authorities and the police should put a stop to them; offenders should be arrested and prosecuted in the Shariah Court and if found guilty, could be fined up to a maximum amount of \$100 or gaoled for a maximum term of six months or sentenced to both.

*Muslim Lawyer for the Shariah Court*

(f) I would suggest that there be Muslim lawyers for the Shariah Court; that is, there should be Shariah lawyers (*Peguam Shariah*) who are Muslims, for the defence of the accused or the defendants in cases concerning divorce, *Pasah*, maintenance and other matters pertaining to Islam. The time is ripe today, because the Shariah Court now has full powers given to it by the P.A.P. Government which is most just.

- (1) The condition is that the persons must be Muslims of the Ahli Sunnah Wal-Jamaah schools of thought.
- (2) They should be qualified in the religious knowledge of Islam with qualifications from Islamic Religious Schools and should first be tested by the President of the Shariah Court, Singapore; or they should be so certified by the Head of Religious Affairs Department of any State in the Federation of Malaya. During hearings these lawyers should conduct their cases in the national language.
- (3) Every Muslim of the Ahli Sunnah Wal-Jamaah schools of thought applying to be a Shariah official (*Pegawai Shariah*) should, on obtaining permission from the Singapore Government, pay a fee of \$250 a year. I feel these suggestions of mine embody within them my views on the matter, and I leave it to the Select Committee to consider them and to have them incorporated into the Muslims Ordinance.

*Istana Kampong Gelam*

(g) I would suggest to the government through the Select Committee, in respect of Istana Kampong Gelam, Singapore, which is now the residence of Yang Mulia Tengku Muda and members of his family who are receiving monthly political pensions in Singapore-

That the Istana Kampong Gelam be taken over and compensation for it be paid to those entitled, for them to buy houses as alternative accommodation; and

That the Istana be turned into a Shariah Court, the locality being very appropriate; this matter too is left to the Select Committee.

*Muslim Mufti of the  
Ahli Sunnah Wal-Jamaah schools of thought*

(h) I would suggest that the time is now ripe for Government to appoint a *Mufti* for the fully self-governing State of Singapore.

I wish to thank members of the Select Committee very much for giving due attention to my representations for the benefit of the public. I shall be ready to appear before you gentlemen if requested to do so.

I am,  
Yours respectfully,

*Syed Othman b. A. R. b. Yahya.*  
I/C No. 8982  
K.T.S. No. 010020

**(Additional representations)**

*( Translation from Malay )*

SYED OTHMAN B. A. RAHMAN B. YAHYA,  
c/o Malay Girls' School,  
Scotts Road,  
Singapore 9.

Clerk of the Legislative Assembly,  
Empress Place,  
Singapore 6.

6th February, 1960.

Sir,

*Muslims (Amendment) Bill*

In connection with representations on the above as contained in my letter\* to you dated 2nd February, 1960, I wish to make a few additions to the representations, in respect of section 7A (1) of clause 3 of the Bill.

(a) In my opinion, under any religion, law, custom or usage it is a grave wrong if marriage, between a woman who is married and another man of the same religion, is solemnized.

(b) In the case of a Muslim woman who is married to a man of the same religion, if, of her own free will she wishes to embrace a religion other than Islam, then her ties with her husband are automatically severed and she has no further connection with her religion and her husband.

(c) In the case of a non-Muslim woman who is married to a man of the same religion, if, of her own free will she wishes to embrace the religion of Islam, then her ties with her husband are automatically severed after she has become a Muslim, and she has no further connection with her religion and her husband, according to the laws of Islam.

(d) In my view any Kathi is entitled to solemnize the marriage of a woman in the case of (c) above, which is not wrong according to the laws of Islam.

(e) I would suggest to members of the Select Committee that prior enquiries should be made to, and the views sought of, scholars and learned people well versed in knowledge of Islamic-laws (*'alim ulama*) of the Ahli Sunnah Wal-Jamaah schools of thought, in Singapore or in the Federation of Malaya, regarding matters pertaining to Muslims as in (b) and (c) above.

I wish to thank members of the Select Committee for giving due attention to my representations. I shall be ready to appear before you gentlemen if requested to do so.

I am,  
Yours respectfully,

*Syed Othman b. A. Rahman b. Yahya.*  
I/C SSS No. 8982  
K.T.S. No. 010020.

**(Further additional representations):**

*(Translation from Malay)*

SYED OTHMAN BIN ABDUL RAHMAN BIN YAHYA,  
c/o Malay Girls' School,  
Scotts Road,  
Singapore 9.

17th March, 1960.

Clerk of the Legislative Assembly,  
Empress Place,  
Singapore 6.

Sir,

**Muslims (Amendment) Bill**

In connection with representations on the above as contained in my letter\* to you dated 2nd February, 1960, I wish to add a few suggestions concerning *Zakat* and *Fitrah*.

*Zakat and Fitrah*

(a) I would suggest to the Select Committee that *Zakat* and *Fitrah* should be entrusted to the Shariah Court to manage, and that the Shariah Court appoint a chairman of *Zakat* and *Fitrah* committee every year.

(b) Muslims throughout Singapore be called upon to pay their *Zakat* rate every year not later than the 27th day of Ramadhan so that the *Zakat* could be distributed to the needy and the poor.

(c) Muslims to hand their *Fitrah* to alms-men duly authorised by the Shariah Court, and those who do so should get a receipt from the alms-men - a white-coloured receipt for cheap rice and a blue-coloured receipt for good quality rice.

(d) Those who give their *Zakat* or *Fitrah* to people other than the alms-men or their representatives may be prosecuted under the *Zakat* Ordinance (No.... of 1960).

(e) Those found guilty be fined by the magistrate of the Shariah Court a sum not exceeding \$100 and not less than \$25; in default they be sentenced to one month rigorous imprisonment or to both such fine and imprisonment.

(f) This year or in the past, Muslims are or have been giving their *Zakat* and *Fitrah* to whomsoever they please. I believe there is not a *Zakat* and *Fitrah* Ordinance just yet. Now the time for one is appropriate because there is already a Shariah Court in this our fully self-governing State.

(g) It is my opinion that the State of Singapore is now fully self-governing and a Shariah Court is existing. *Zakat* and *Fitrah* should be entrusted to the Shariah Court to manage as is the case in countries such as the Federation of Malaya in particular and Muslim countries in general, so that the collections from *Zakat* and *Fitrah* could be utilised for welfare purposes such as the payment of a salary to Kathis and to the staff of the Shariah Court and for other similar worthy purposes.

I am prepared too be present at any time before the Select Committee if it invites me so to do. I thank you very much.

Yours respectfully,

*Syed Othman bin Abdul Rahman bin Yahya,*

**Paper S.C. [Muslims (Amendment) Bill] No. 7**

*(Translation from Malay)*

ONN BIN MOHD. AMIN,  
Kampong Hip Guan San,  
Singapore 4.

9th February, 1960.

The Officer in charge of  
Muslims (Amendment) Bill.

Sir,

In brief, I wish to avail myself of the opportunity afforded to the people to make any comments or representations for the improvement of the law concerning Muslim marriage. I give below a few suggestions considered to be beneficial if they could be embodied into a regulation under our Shariah Court. I am prepared to come before the Select Committee if required on condition that it be on my day off (when I am not working). My suggestions are as follows:

(1) All *Imams* who are duly appointed should be authorised to solemnize marriage in respect of a married man who wishes to marry again or in respect of an adopted-daughter whose adopted father wishes her to be wedded.

Under the present law only the Chief Kathi has that authority. This is unfair and an inconvenience to the people. For instance, if, after a person has made preparations for his adopted-daughter's or for his own marriage, the Chief Kathi is suddenly taken ill or otherwise indisposed, has the person to wait until the Chief Kathi's recovery? In the event that the Chief Kathi's illness gets worse and he dies, has the person to wait until a successor is appointed by the government?

(2) The fee for registration of marriage where the marriage is solemnized at the house of a party or at the *Imam's* house should be \$10 only. It is hereby suggested that government should pay a fixed salary to all *Imams* who are authorised to solemnize marriage and special transport (car) should be made available to them at all times when their services are required by the people.

(3) On anyone making a report that a woman is cohabiting with a man when it is suspected that they are not legally married, the Kathi or *Imam* should carry out investigations and bring the matter to Court for trial or for necessary action to be taken accordingly.

(4) (A deviation from the subject of marriage)-It is suggested that an *Imam* and a doctor should at all times be available at the office of the Shariah Court or at the office of the Registrar of Births & Death, so that when a report of death is received the doctor is available to go and carry out his duty, and the *Imam* is available to go and perform the necessary rituals such as to bathe and enshroud the corpse and conduct the burial. In the past, the following usually happens: When a death has been reported everyone has to wait for

hours for the doctor to come. After he has finished with his job, very often there is no one available who is competent to bathe or to enshroud the corpse. If, eventually, all that is done, someone to conduct the prayer for the dead has to be looked for. This very often is what happens among Muslims in Singapore.

That is all and I hope my suggestions will get unanimous support and bring good results to Muslim members of the public. Thank you, and Merdeka.

Yours truly,  
*Onn bin Mohd. Amin.*

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**Paper S.C. [Muslims (Amendment) Bill] No. 8**

*(Translation from Malay)*

MOHAMAD JIZAN BIN MONEL,  
550 Kampong Bahru Road,  
Singapore 4.

11th February, 1960.

The Hon. the Clerk of the Legislative Assembly,  
Assembly House,  
Singapore 6.

Sir,

I write to present my views on the Muslims (Amendment) Bill with regard to:

- (a) increasing the powers of the Shariah Court to punish those guilty of failing or neglecting to comply with an order of the Court, and
- (b) the Chief Kathi alone to be invested with authority to solemnize marriage where a man already has a wife or wives.

2. *Re (a)*, I support this move wholeheartedly.

3. *Re (b)*, in my opinion such authority should be given to all Kathis. There should, however, be stipulations that the Kathis should carefully investigate the circumstances of both parties to the marriage before it is solemnized.

4. As regards *Wali Hakim*, I hope that the authority to solemnize marriage by *Wali Hakim* too, is extended to all Kathis and not merely to the Chief Kathi. In the event that either party subsequently makes a complaint alleging a breach of the law of Islam, then the Shariah Court should take appropriate action against the Kathi who solemnized the marriage. By this means the public interest can be safeguarded.

5. These are all the views I wish to present on the Muslims (Amendment) Bill, and I thank you very much.

Yours truly,  
*Mohamad Jizan bin Monel.*

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**Paper S.C. [Muslims (Amendment) Bill] No. 9**

*(Translation from Malay)*

ALI BIN HAJI AMIN,  
10 Radin Mas,  
Singapore 4.

12th February, 1960.

The Hon. the Clerk of the Legislative Assembly,  
Assembly House,  
Singapore 6.

Sir,

I wish to present my views on the Muslims (Amendment) Bill with regard to:

- (i) increasing the powers of the Shariah Court to punish in cases of failure or neglect to comply with an order of the Court, and
- (ii) limiting only to the Chief Kathi of the authority to solemnize marriage where a man has already a wife or wives.

2. *Re (i)*, I fully support this move and wish to express my sincere feeling of gratitude to the Government of Singapore for it.

3. *Re (ii)*, the authority to solemnize marriage where a man has already a wife or wives should be invested in all Kathis, provided that the Kathis should carry out thorough investigations into the circumstances of the marriage from both parties before solemnizing it. If subsequently a complaint arises from either party that there has been a breach of the law of Islam, then the Shariah Court must take appropriate action against the Kathi responsible. I do hope that this authority is extended to all Kathis, for the convenience of the Muslim public, and not merely limited to the Chief Kathi alone.

4. Regarding *Wali Hakim*. I do not agree that the authority to solemnize marriage by *Wali Hakim* is to be invested only in the Chief Kathi. Rather, it should be invested in all Kathis. The reason is one of convenience for the public. For instance, if there are five or six such marriages taking place in a day, wouldn't it be an unnecessary inconvenience to the public by having to make them wait a long time for the Chief Kathi to turn up, if he alone is authorized to solemnize the marriage? If, on the other hand, all Kathis have that authority, such inconvenience could easily be averted. Any Kathi who fails to exercise his authority in the proper manner could be dealt with accordingly by the Court.

5. This is all and I ask your indulgence and forgiveness for any shortcomings in the statement of my views above. In conclusion, I thank you very much.

Yours truly,  
*Ali bin Haji Amin.*

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**Paper S.C. [Muslims (Amendment) Bull No. 10**

*(Translation from Malay)*

S. MAAROF BIN MOHD. JARHOM,  
448 Paya Lebar Road,  
off Jalan Yahya Afifi.  
Singapore 14.

*(Updated: received on 10th February, 1960).*

The Clerk of the Legislative Assembly,  
Assembly House,  
Singapore 6.

Sir,

I wish respectfully to state that through an announcement by the Government of Singapore, I have come to learn of amendments to be made to the Muslims Ordinance, in Singapore. As a Muslim who loves his religion which, at present, is not progressing along its correct and true course, I sincerely wish to present a few suggestions based on my own personal views.

On the matter of the law as enacted by the Government concerning the religion of Islam, it is my firm view that the intention of the Singapore Government and that of the leaders of the P.A.P. are indeed praiseworthy. In my opinion, if the P.A.P. Government really wishes to uphold the dignity of the Shariah Court, then the 'Shariah' should be the genuine one which has within it no elements that divert the law of the religion from its correct and true foundation. If the law enacted departs from the law of religion that is genuine, true and pure, then there is no need to call it the Muslim Ordinance (*undang<sup>2</sup> Shara' Islam*), for then it is merely based on *urof* or the consolidated opinions of the intelligent and the learned, like other laws enacted in the Assembly House. In other words, the Ordinance does not lean upon the law of religion for support nor likewise does the law of religion lean upon the Ordinance. In view of what I have stated in the foregoing, I shall now proceed to present concrete suggestions as follows:-

First, the Law on Polygamy. Polygmy is permitted by the law of Islam. A male Muslim is permitted to have four wives. That is undeniable and sacrosanct - a basic principle which must not be changed under any pretexts. A person whose wife is a T.B. patient or is suffering from an infectious disease or is no longer able, due to age, to give him sexual satisfaction or is afflicted by a malignant disease of the internal organs, is permitted to beget himself another wife, provided that he earns more than \$250 a month. A husband who is able to maintain a second, a third or a fourth wife therefore means a person whose monthly income must be more than a thousand dollars and besides must be physically sound and healthy; that is to say, not only must he be financially capable of maintaining his wives satisfactorily, but also must he be physically capable of satisfactorily providing them with their conjugal needs. Under these conditions, too, polygamy is permitted. The reason why Islam permits polygamy is to reduce prostitution and to promote the growth of a decent and chaste society. But a husband who does not come under the category mentioned above and gets no consent from his wife for him to contract subsequent marriages and cannot satisfy the Court that he can undertake to live with his wives reasonably in peace, harmony and comfort is precluded from contracting a polygamous marriage. People who really can be classified under the said category are indeed rare these days. Those outside the category are positively not allowed by the law of Islam to marry more than one wife.

Secondly, Divorce in Islam. The incidence of divorce among Muslims is prevalent due to irresponsible elements, both men and women, who are ignorant of the religion and of the sanctity of marriage. This arises as a result of these irresponsible elements of society frequently outraging the modesty of young

maidens and eloping with them for no better purpose than merely to satisfy their sexual lust, thereby besmirching the good name of society. I hereby suggest that the *maskahwin be* raised to \$500 for all marriages and that the husband be required to pay a monthly maintenance of \$30 for his wife until her marriage, unless there is recalcitrancy on the part of the other party, in which case the provision for *nusus* under the law of Islam can be invoked. Furthermore, if a person entices a young girl (whether of age or under) from her lawful guardian and elopes with her, and outrages her, the person should be punished with imprisonment for a term of three months and the girl should be taken away from him. He may make an application to marry her to the Court or to the Chief Kathi or through an intermediary to her guardian. But the act of eloping and subsequently making a report to the police for the purpose of effecting a marriage should not be allowed as it scandalises the family and humiliates Muslims in general. Such offences should fittingly be punished with imprisonment without option of a fine.

Thirdly, Custody of Children (*Hazhana*). The right of custody of children lies with the wife who is entitled to bring them up until they are big enough to make their own choice; that is, for a period which could be limited to ten years. If a child then chooses to live with his father, he should be allowed to do so. If, however, the woman marries another person, her right of custody of the children automatically ends and falls on the maternal grandparents. If there be no maternal grandparents, then the right of custody goes to the maternal aunt. In the absence of both of these, the right goes to the paternal grandparents.

Fourthly, upon a non-Muslim woman who is married to a non-Muslim embracing the religion of Islam, of her own free will without coercion or compulsion, the husband is automatically divested of his rights and duties towards her. The woman will not be subject to *eddah* and may be married to a Muslim the very next day. If she is with child without her knowing it, the child will be accepted as of the Islam faith and not that of her former husband, and after the full period of pregnancy the right to the child is solely hers.

Fifthly, all Kathis duly appointed should be given powers under this Ordinance. That is to say, a Kathi should be empowered to deal with matters of divorce and all matters pertaining to religion. Such powers should not be made the monopoly of any particular individuals. If any controversy arises, the Kathi should make a report of it to the Chief Kathi and to the Shariah Court or it could be handed over to the Chief Kathi to be dealt with and not be left to any particular Kathi alone. Any Kathi found guilty of dereliction of duty and of any offence should be duly punished according to his just deserts. Persons who commit perjury in the Shariah Court and seek to defeat the purpose of justice should, upon conviction, be sentenced to imprisonment without the option of a fine. With regard to the acts of cohabitation and adultery, I suggest that these should not be dealt with under the law of Islam, as the punishment prescribed therefor is a hundred lashes for an unmarried woman and stoning to death for a married person. This is severe. They should more properly be dealt with in the District Court or by the police. The example of the Federation of Malaya, however, should not be emulated where fines of \$20 and \$50 are imposed for such offences which can bring shame to Muslims everywhere.

In conclusion, if it is your pleasure that I should be present before the Committee at any time, I shall be prepared to do so and to give further explanations and to cite relevant authorities to your satisfaction. Long live the P.A.P. Government and may its success endure for ever.

Peace be unto you and thank you.

Yours truly,  
S. Maarof bin Mohd. Jarhom.



**(Additional representations):**

S. MAAROF BIN MOHAMAD JARHOM,  
448 Paya Lebar Road,  
Singapore 14.

19th March, 1960.

Chief Reporter and Editor,  
Legislative Assembly,  
Singapore.

Sir,

I had received your letter accompanied with a copy of the minutes of evidence. I have thoroughly revised the copy and there is no alterations needed. Thank you.

There are two points that I would like to stress in addition to what I had given on 10th February, 1960.

My first suggestion is that the name of the "Shariah Court" should be changed to "Shariah Islamiah Court". This is because every religion is based on its own *Shariah*, e.g. Prophet Musa have its own *Shariah*. Therefore to differentiate the *Shariah* of Muhammad from other religion, the name should be changed as what I have suggested.

Secondly (with regard to lawyers), I suggest that all lawyers dealing with the "Shariah Court" must be of Muslim nationality. They must have religious education and must know the language of Arab.

The government must also limit the payment of the cost as small as possible, so that the poor could engage any lawyer when needed. Payment must also be given to the lawyer by the people engaged in it, whether the case was won or not.

Thank you.

Yours faithfully,  
S. Maarof bin Mohamad Jarhom.

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**Paper S.C. [Muslims (Amendment) Bill] No. 11**

MUSLIM WELFARE ASSOCIATION,  
139 Rangoon Road,  
Singapore 8.

10th February, 1960.

The Select Committee of the Legislative Assembly on the  
Muslims (Amendment) Bill (No. 42 of 1959).

Through: The Clerk of the Legislative Assembly,  
Assembly House,  
Singapore 6.

Gentlemen,

*Amendment to Muslims Ordinance, 1957 (No. 25 of 1957)*

We have the honour to present on behalf of this Association our comments on the above Bill, trusting that these will be given full consideration for the benefit and well-being of the Muslims of multi-races so as to bring peace and prosperity to the new self-governing State of Singapore under the P.A.P. Government.

2. We wish to express our satisfaction with the establishment of the "Shariah Court" in Singapore. Our comments are not only on the present Bill but on the "Principal Ordinance" as well. It is true that we did not make our comments at the earlier period for various reasons but we do hope that time is now ripe to make necessary amend now for more satisfactory and happy results.

Section 4 (3): The letter of appointment ("Appointments of Chief Kathi and Kathis") shall-

(a) he in such form as the Yang di-Pertuan Negara prescribes (deleting the "Governor");

(b) be signed by Command of the Yang di-Pertuan Negara (deleting "the Chief Secretary");

(5): The Yang di-Pertuan Negara may at any time at his pleasure by a notification in the *Gazette* cancel such appointment, whenever the holder of such appointment prove incompetent or unsatisfactory in the discharge of his duty in accordance to law of Islam and/or good name of the Society and Islam.

Section 7 (Wali): (3) The entire subsection to be changed, and amended as follows:-

Where there is no *wali* of the woman to be wedded or where a *wali* shall on grounds which any Kathi does not consider satisfactory, should refuse his consent to the marriage, and refer the case to the President of the Shariah Court for his decision. Under no circumstances marriage of a woman without lawful and *bonafide wali* to be wedded by any Kathi in the State of Singapore, and marriage of such *wali*-less woman to be solemnized by the approval of the President of the Shariah Court. (It will be the duty of the President of the Shariah Court to satisfy himself that the prospective husband is a good Muslim and genuine, and the woman will find a good home to live).

(4) to be entirely deleted.

New section 7A (2) should be re-amended as follows:-

"Restriction on solemnization of marriages.

No marriage shall be solemnized under this Ordinance if the man to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage, except by giving prior notice of 30 days stating all the grounds to a Kathi who shall before solemnizing the marriage satisfy himself after proper enquiry to the law of Islam to such marriage." (It is earnestly requested that no monopoly to be given to the Chief Kathi for solemnizing any marriage for the benefit of Muslims and good name of Islam in Singapore. The dignity of that high office should be preserved and should not be given extra power for the sake of power as inherent danger that lies in it. As Lord Acton said, "Power corrupts and absolute power corrupts absolutely.").

We further suggest in order to minimize divorces and polygamy and other social evils prevailing among the Muslims in Singapore adequate provisions should be made in the Muslim Marriage contract solemnized between adult man and woman on the following principle:-

(1) The present amount of *Mahr (Maskawin)* offered by a husband to a wife is very poor and should be adequately increased so as to keep the marriage bond very happy and safe as that of an anchor to a ship.

(2) No Kathi to solemnize a marriage of any woman (spinster/ widow or divorcee) to any man (single/ unmarried/ widower or divorced) between the ages of 16 and 60 in his office or any place in the State of Singapore who will make such request secretly without the consent and presence of their blood relations and next-of-kin.

(3) The clauses in the marriage contract should be clearly stated in print (in Malay-Jawi and Rumi with English translation) and these are to be stated in the marriage certificate and duly signed by the parties (husband and wife) and the witnesses and the Kathi. Any such clause not agreed by the party can be deleted at the time of solemnizing the marriage contract before the Kathi. We agree what was printed by the outgoing President of the Shariah Court (Inche M. T. Suhaimi) as stated in the Singapore *Straits Times* Press dated the 19th January, 1960 in page 6 under the heading: "Muslim Marriage Certificate ...". We would also recommend further clauses such as: "habitual drunken mischieves, indulgence in crimes and continually violating Muslim way of life, etc." for happy and satisfactory married life for the good of the society and Islam.

We trust that the various points we have raised will receive your due consideration, and will be glad to appear before you for oral representations to clarify any points verbally if you wish us to do so.

We have the honour to be,

Gentlemen,

Your obedient servants,

On behalf of the MUSLIM WELFARE ASSOCIATION,

*M. A. Majid*

President.

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**Paper S.C. [Muslims (Amendment) Bill] No. 12**

*(Translation from Malay)*

MOHAMED BIN OMAR,

310 Onan Road,

Singapore.

29th February, 1960.

Clerk of the Legislative Assembly,  
Empress Place,  
Singapore.

*Subject: Muslims (Amendment) Bill  
Muslims who are non-citizens of Singapore*

Sir,

In order to safeguard the welfare of Muslim women who are citizens of Singapore, I would be glad if the Singapore Government could formulate a Bill to protect Muslim women who are Singapore citizens and are married to Muslims who are not Singapore citizens, so that they are not left stranded by their non-Singapore-citizen husbands, without an assured maintenance for their livelihood.

Quite often in the past Muslim women who were Singapore citizens were left stranded by their husbands whenever the latter wished to return to their native land, for instance, as in the case of some Indian Muslims married to Malay

Muslim wives; maintenance for their wives was not assured prior to their departure for their native land. This has caused many divorces. In order to prevent further occurrences of that nature I hope the government could legislate an ordinance whereby Muslim husbands who are not Singapore citizens could be required to ensure the livelihood of and provide maintenance for their wives before returning to their native land, failing which their travel permits should be withheld from them. I hope this suggestion receives the attention of the government for which I give many thanks.

Thank you.

Yours truly,  
*Mohamed bin Omar.*

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**Paper S.C. (Muslims (Amendment) Bill) No. 13**

PERSATUAN PEMUDI ISLAM,  
7 Palembang Road,  
Singapore 7.

19th March, 1960.

The Select Committee, Muslims Bill,  
Assembly House,  
Empress Place,  
Singapore 6.

Dear Sir,

The members of the Persatuan Pemudi Islam Singapura, the Persatuan Seni Drama Wanita Melayu Singapura, the Jamiah and some other Muslim women, held three meetings, on the 25th of February, the 3rd and 12th of March, respectively, at the premises of the above association. The amendments proposed to the Muslims Ordinance were discussed at length. After discussion the following resolutions were passed unanimously:-

1. That the proposed amendments to the Muslims Ordinance shall be supported in principle.
2. That clause 7A (1) of the Bill be amended by the addition of the following words:-  
"except by the Chief Kathi, who shall satisfy himself after inquiry, that there is no lawful obstacle according to the law of Islam, to such marriage."
3. That "Lawful Obstacle" for the purposes of clause 7A (2) be defined as follows:-  
"Lawful Obstacle" shall be deemed to include the apparent inability, both financial and moral, of the man to be wedded, to observe equity among his present and proposed wives.
4. That in an inquiry under clause 7A (2), the Chief Kathi be assisted by a committee, on which women be represented.
5. That maintenance in clause 36A (1) (a) be paid on the divorce of a woman,

- (a) until she re-marries or dies, if the divorce is without 'just cause; or,
- (b) during the period of the 'Eddah', if the divorce is for 'just cause'.

The amendments proposed to clause 7A (2) of the Bill do not conflict with the provisions of the law of Islam. Surah 4, v. 3, imposes conditions on the marriage of a second, third, or fourth wife, and lays down clearly that "If ye fear that ye cannot observe equity, between them, then, espouse but a single wife." When this passage is read with Surah 4, v. 129, "Ye will never be able to be just and equitable between women, no matter how much ye may strive to do so", it becomes apparent that a man must have a flexible conscience indeed, to marry more than one wife. We feel that we are within the bounds of Islam in demanding these amendments.

With regard to maintenance, in clause 36A (1) (a) of the Bill the suggestion we have made under (a) becomes necessary because of a custom that has arisen, in fixing a nominal Mas-Kawin (Mahr). The result of this is that when a woman is divorced the utmost she is entitled to is maintenance during the period of the 'Eddah'. The proper method in dealing with this problem is to awaken in parents and women, the need to demand, and fix, a suitable Mas-Kawin (Mahr), but as it is not possible to change overnight a hardened custom it becomes necessary to suggest that in the event of a divorce on the part of the husband through caprice, or without 'just cause' he should provide maintenance for his wife, until she remarries or dies. In other Islamic countries a small portion of the Mas-Kawin (Mahr) is promptly paid, and a much larger portion is deferred, but if divorce takes place it becomes immediately payable. In point of fact, this deferred Mas-Kawin (Mahr) is a strong safeguard against a frivolous divorce.

We shall be grateful if an opportunity is given to our representatives to appear before the Select Committee, to support the amendments above.

Yours faithfully,  
PERSATUAN PEMUDI ISLAM SINGAPURA  
(Young Women Muslim Association)

*Mrs. M. Siraj*

*Mrs. Aliya Lynn Tung*

*Dah Mohamed Noor*

PERSATUAN SENT DRAMA WANITA  
SINGAPURA

*Masmi Haji Othman*

CHAWANGAN KAUM IBU  
PERSATUAN SERUAN ISLAM SEMALAYA CHAWANGAN SINGAPURA  
(i.e. The Jamiyah)

*Rahmah Sedin*

OTHER WOMEN.

*Aisha Alsagoff*  
(For Kamsiah Ahmad)

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**Paper S.C. [Muslims (Amendment) Bill] No. 14.**

STATE ADVOCATE-GENERAL, SINGAPORE,  
State Advocate-General's Chambers,  
Havelock Road,  
Singapore 1.

31st March, 1960.

The Clerk of the Legislative Assembly,  
Singapore.

Sir,

I have the honour to send herewith my memorandum on the Muslims (Amendment) Bill.

2. I regret that the memorandum is a long one but this has been necessary to deal with all the problems raised and to indicate the background of the problems.

I have the honour to be,  
Sir,

Your obedient servant,

*Ahmad bin Mohamed Ibrahim*  
STATE ADVOCATE-GENERAL,  
Singapore.

The Muslims (Amendment) Bill, 1959  
MEMORANDUM BY STATE ADVOCATE-GENERAL

1. *Power of Kathis*

A Kathi is a Muslim Judge and under Muslim law can (if he is so authorized) try all cases civil as well as criminal. He is a judicial officer appointed by and deriving his powers from the Ruler of a State. He has no inherent powers but has the powers given him in his letter of appointment. It is the duty of the Ruler to appoint a Kathi but the number is left to his discretion. He can if he thinks it expedient appoint one Kathi.

It is stated in Nawawi's Minhaj et Talibin that "The Ruler may appoint two kathis in the same district, either nominating each one to special judicial functions or to a particular portion of the locality or for a particular time or for a certain kind of proceedings; or nominating both of them to the same functions" (p. 501). Abdul Rahim in his Muhammadan Jurisprudence states "A Qadi may be appointed for a limited time or with jurisdiction over a particular area. Similarly a particular class of cases may be excluded from his jurisdiction or he may be empowered to try only particular classes of cases" (p. 309).

The term "Chief Kathi" is not a misnomer. Muslim States had their Chief Kathis and in the Federation every State has a Chief Kathi and Kathis. The position in the Federation is a little different from that in Singapore. In the Federation Kathis are appointed for specific areas while the Chief Kathi is appointed for the whole State; there is not only one Shariah Court but there are Courts of the Chief Kathi and Courts of Kathis having civil as well as criminal jurisdiction; the Court of the Chief Kathi has jurisdiction throughout the State while the Court of a Kathi has jurisdiction only within the local limits of the Kathi's jurisdiction; the jurisdiction of the Chief Kathi is unlimited in amount while that of the Kathi is so limited. In Singapore there is one Shariah Court with a limited civil jurisdiction and while there is provision for the appointment of a Kathi for a particular district or place, in fact all Kathis are appointed for the whole of

Singapore. The provisions relating to the appointment of the Chief Kathi and Kathis in the Federation are contained in the various State enactments but these generally follow the model of the Selanger enactment which provides as follows:-

"Appoint-  
ments. 43.-(1) His Highness the Sultan may appoint any suitable person to be Kathi Besar, Selangor, and may similarly appoint any suitable persons to be Kathis for such areas as he may prescribe, and may at any time revoke any such appointment. All such appointments shall be notified in the *Gazette*.

(2) His Highness the Sultan in Council, after consultation with the Majlis, may from time to time grant or revoke letters of appointment to any Kathi Besar or Kathi and may by the terms of any such letter restrict the exercise of any powers which would otherwise be conferred on such Kathi Besar or Kathi by this Enactment or by any other written law.

(3) Save as aforesaid, the jurisdiction, authority and powers of any Kathi Besar or Kathi shall be such as are conferred by this Enactment or by any other written law."

Kathis were officially appointed in Singapore for the first time under the Mahomedan Marriage Ordinance, 1880 (No. 5 of 1880). This provided that the Governor may where it is made to appear that any person has been chosen by a number of Muslims to act as Kathi for any district or place or for any nationality, recognise such person as a Kathi and give such person a certificate of recognition. It was provided that no Kathi recognised under the Ordinance should be held to have any judicial authority other than was necessary to decide upon questions relating to the existence or non-existence of the status of marriage or divorce between persons voluntarily appearing before him. A Kathi could be appointed a Moham-medan Registrar to register marriages and divorces. Power to receive applications for *fasah* or *taalik* were first given to the Kathis by the Mahomedan Marriage (Amendment) Ordinance, 1894. The power to make decrees of *fasah* and *taalik* divorce were exercised by Kathis under the express powers given by that Ordinance and the subsequent Ordinance replacing it; such express power was given by Part II of the Muslims Ordinance (Cap. 46 of the Revised Edition). This power has however now been taken away from the Kathis, with the result that they cannot make orders of *fasah*, *taalik*, *nusus* or orders for maintenance.

The position is accepted and Kathis do not in fact now make orders of *fasah*, *taalik*, *nusus* or orders for maintenance but if it is felt necessary to place the position beyond all doubt, a new subsection might be added to section 4 of the Muslims Ordinance, 1957, as follows:-

"(7) The jurisdiction, authority and powers of the Chief Kathi and any Kathi shall be such as are conferred by this Ordinance:

Provided that the Yang di-Pertuan Negara may by the terms of the letter of appointment of the Chief Kathi or any Kathi restrict the exercise of any powers which would otherwise be conferred on such Chief Kathi or Kathi by this Ordinance."

## 2. *Wali Hakim*

Under the Shafei School of Muslim law, a woman can only be given in marriage by her wali who can delegate this power to any person. If she has no lawful wali, then it is the Ruler of the State who takes the place of her wali but this power can be delegated by the Ruler to any person.

The presence of a Kathi is not essential to a Muslim marriage but the presence of a wali is essential under the Shafei School of Law. The Kathi exercises powers in respect of marriage only because such powers are delegated to him either by the lawful wali or by the Ruler.

In order to ensure that the teachings of the Shafei School of Law are followed, legislation in the Federation provides for the solemnization of marriages generally and for the solemnization of marriages where the girl has no lawful wali. Thus in Trengganu it is provided by the Administration of Islamic Law Enactment 1955 as follows:-

"96.-(1) A marriage may be solemnized by any person holding a tauliah from His Highness the Sultan authorizing him to solemnize marriages.

(2) A marriage may be solemnized, with the prior knowledge of a Registrar, by a wali of the woman to be married who is permitted by Islamic law to solemnize such marriage.

(3) No person shall solemnize any marriage save in pursuance of subsection (1) or (2) of this section:

Provided that a marriage solemnized in breach of the provisions of this subsection, but in accordance with the provisions of Islamic law, shall be valid and shall be registered under the provisions of this Enactment.

98. A marriage shall be void and shall not be registered under the provisions of this Enactment unless both parties to the marriage have consented thereto, and either-

(a) the wali of the bride has consented thereto in accordance with Islamic law; or

(b) the *Kadzi* having jurisdiction in the place where the bride resides or any person generally or specially authorized thereto by him has, after due enquiry in the presence of all parties concerned, granted his consent thereto as wali raja in accordance with Islamic law; such consent may be given wherever there is no wali available to act, or where the wali has refused his consent without sufficient reason."

The Selangor Enactment goes a little further in that it provides-

"121.-(4) If there is no wali, of the woman to be wedded or a wali shall without adequate reason to be approved by the Registrar of Marriages and Divorces refuse his consent to the marriage, the marriage may be solemnized by the Registrar for the *kariah* in which the woman to be wedded ordinarily resides but before solemnizing such marriage the Registrar shall make enquiry as prescribed in subsection (3) of this section and in cases where the wali refuses to give his consent to the marriage shall also obtain the approval of His Highness the Sultan."

Moreover the Federation enactments provide that a marriage shall normally be solemnized in the *kariah* masjid (or local mosque area) in which the bride ordinarily resides, and a marriage may be solemnized elsewhere only with the permission of the Registrar of Marriages. There is therefore adequate protection for the woman to be married and her wali in the Federation. The marriage of a woman who has no wali can only be solemnized by the Registrar in the village where she ordinarily resides and it can be solemnized only in that village. The effective result is that there is only one person who can solemnize such marriages and a person does not have a choice from a number of Kathis.

In Singapore the same result is achieved by requiring that all such marriages where the girl has no wali or where the wali unreasonably refuses his consent can only be solemnized by the Chief Kathi. In effect the power of the Ruler is delegated to one person only, that is, the Chief Kathi.

There have been vague general complaints of inconvenience caused to the parties but no specific complaint has ever been made to the authorities. The inconvenience can be resolved by a little planning and understanding on the part



of those who arrange the marriages. It might be interesting to note that the Chief Kathi solemnized 669 marriages in 1959, out of which he acted as wali *hakim* in 438 marriages.

It has been suggested that it would be possible to arrange for the inquiries to be made by the Chief Kathi and for the marriages to be solemnized by the Kathi. Apart from the possibility of duplication of inquiries, it would appear that if the parties can appear for an inquiry before the Chief Kathi, there is no reason why they cannot stay for the very short ceremony of marriage. A Kathi who solemnizes a marriage, acts as the agent of the bride and should therefore himself be satisfied that the marriage is legal according to Muslim law; it is doubtful if he can accept the certificate of another man. The actual ceremony of marriage is very short. All that is needed is that the Kathi or the wali for the bride says to the bridegroom "On the authority possessed by me or given to me I marry you to Miss X with the *maskahwin* of \$22.50 (or some other amount)" and the bridegroom says "I accept marriage with Miss X with the *maskahwin* of \$22.50" (or the stipulated amount). These words of offer and acceptance must be pronounced verbally in the presence of at least two witnesses. No other ceremony is essential for the marriage. There is no reason why the actual marriage ceremony (*nikah*) cannot be held at the office of the Chief Kathi or on some day other than the Sunday or holidays which appear to be so popular for the holding of the marriage feasts and the other trappings of the marriage ceremony.

It is not the Kathi but the wali who is essential in a Muslim marriage according to the Shafei School of law. Muslim law does not require a marriage to be solemnized by a Kathi and a Kathi has no inherent right to solemnize marriages. A Kathi derives his powers either from the lawful wali or from the Ruler, and the lawful wali or the Ruler can delegate his powers to any person he likes. In the case where the woman has no wali or where the wali unreasonably refuses his consent to a marriage, the Ruler, becomes the guardian of the woman to be wedded and there is no legal objection to the delegation of his powers only to the *Chief Kathi*. The Ruler may delegate this power to all Kathis but in such a case the Kathi who solemnizes the marriage must himself make the necessary inquiry. It is not unlawful also to provide for an independent inquiry by the Chief Kathi or the President of the Shariah Court or by a Board; such inquiries cannot however take the place of the inquiry by the person solemnizing the marriage and would appear to go beyond the requirements of Muslim law.

### 3. *Polygamous Marriages*

The verses in the Holy Quran which deal with polygamous marriages have been translated by Allama Yusuf Ali as follows:-

- (a) [To orphans restore their property when they reach their age nor substitute your worthless things for their good ones; nor devour their substance by mixing it up with your own. For this is a great sin.] If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if you fear that you will not be able to deal justly with them, then only one [or a captive that your right hands possess]. That will be more suitable to prevent you from doing injustice. (Surah IV Verses 2 and 3.)
- (b) They ask you concerning the women. Say: God instructs you about them. And remember what has been said unto you in the Book, concerning the orphans of women to whom you give not the portions prescribed and yet whom you desire to marry, as also concerning the children who are weak and oppressed, that you stand firm for justice to orphans" (Surah IV Verse 127).
- (c) You are never able to be fair and just as between women even if it is your ardent desire; but turn not away from a woman altogether so as to leave her as it were hanging in the air. If you come to a friendly

understanding and practise self-restraint, God is Oft-forgiving, Most merciful. But if they disagree and must part, God will provide abundance for all from His all-reaching Bounty" (Surah IV Verse 129-130).

The verses of the Holy Quran cannot be interpreted in the same way as a modern statute law and in order to interpret these verses it is necessary to have regard to the practice and sayings of the Prophet, to the opinions of Muslim scholars from the earliest days of Islam to today and to the consensus of opinion and practice of the Muslims. There is room in Islam too for different interpretations of its teachings. In relation to the question of polygamy in Islam the various interpretations may be classified (though this is by no means exhaustive) under four heads-

- (i) the conservative orthodox view is that polygamy is allowed in Islam, but is neither enjoined nor forbidden. The test of equity to the wives is a subjective test-that is if a person feels he can be equitable to the wives he can marry them and should not be prevented from doing so. It is assumed that the individual Muslim would have sufficient education and moral character to judge whether he is justified in marrying more than one wife. The test of "equity" applies only to outward conduct over which a man has control but not for example in the affection of the heart. As a learned commentator on the Quran says "Though a person cannot treat a wife equally with a beloved wife, yet he should observe some measure of justice towards her; for if a man is not able perfectly to perform his duty, he might not for that reason entirely neglect it." (Baidawi). This view is still officially adhered to in Malaya.
- (ii) the liberal orthodox view agrees with the conservative orthodox view that polygamy is permitted in Islam. It goes on to claim however that the interpretation of the "verse of Polygamy" should not only be regarded as binding on the individual conscience but should be enforced by the courts as a condition precedent to the registration of a second marriage, on the principle that the Ruler may command the observance of anything which the sacred law approves. This is the view held by Shaik Mohammed Abduh, who was at one time Mufti of Egypt. This view has been officially adopted in Syria where it is provided that "The Qadi (Kathi) may withhold permission for a man who is already married to marry a second wife, where it is established that he is not in a position to support them both". The Explanatory Statement to the Syria legislation stated "Seeing that the lawfulness of polygamous marriages is restricted, in the Sharjah, by the husband's ability to support all the wives concerned, and seeing that the draft law has adopted the view of those who hold that a marriage may be dissolved for failure of maintenance, a married man has been forbidden to marry another wife if he cannot support both spouses, on the principle that doors which lead to abuses must be closed." It is reported that legislation to this effect has also been enacted in the United Arab Republic.
- (iii) the unorthodox *view* interprets the verses of the Holy Quran as in effect prohibiting polygamy. The argument is that the Holy Quran states that it is not possible to treat wives with equity and therefore the condition precedent for marriage with more than one wife cannot exist. This view is contrary to the practice and example of the distinguished companions of the Prophet and contrary to the accepted interpretation of the verses of the Holy Quran. It has however been officially adopted in Turkey, which has adopted the Swiss Civil Code,

and in Tunis where polygamy has been prohibited by law, although it is not expressly provided that a polygamous marriage contracted in defiance of the prohibition is invalid.

- (iv) the historical view interprets the verses of the Holy Quran in the context of the events of the time when they were revealed, when as a result of war there were a large number of widows and orphans in Arabia, and also in the light of the example of the Prophet and his Companions who married widows in order to provide a means of livelihood for them. In this view it would not be wrong for the legislature (as representing the consensus of opinion in a country) to prohibit polygamy in the context of present day conditions of life.

The proposals in the amending Bill are in general in line with the liberal orthodox view. In view of the fact that under Muslim law the wali of a woman is permitted to solemnise her marriage it may be considered that in order not to go against the Muslim law, subsection (2) of the proposed section 7A should be amended-

- (a) by deleting all the words after "except" and substituting therefor the words-

"(a) with the written consent of the Chief Kathi by the wali of the woman to be wedded or by a Kathi at the request of such wali: or

(b) by the Chief Kathi."; and

- (b) by inserting a new subsection (3) as follows:-

"(3) Before solemnizing a marriage or giving his written consent to the solemnization of a marriage under subsection (2) of this section the Chief Kathi shall satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage.".

#### 4. *Effect of conversion on marriage*

The Shafei doctrine on the effect of conversion on marriage is thus summarised by Nawawi-

"A non-Muslim of whatever religion who is converted to Islam while married to a woman whose religion is founded upon some holy scripture keeps her as his wife; but if she is an idolatress or a fire-worshipper, and is not converted with him separation takes place immediately *ipso facto*, where the marriage has not yet been followed by co-habitation. Otherwise the continuation of the marriage depends upon whether the woman embraces the faith before the end of her period of legal retirement. If before the expiry of this period the wife's conversion has not yet taken place, the marriage is considered to have been dissolved from the husband's conversion; and the same rule is observed if it is the wife who is converted, while the husband remains in a state of religious blindness. Where on the other hand, both parties embrace the faith at the same time, the marriage remains valid."

Under Muslim law apostacy is regarded as tantamount to renunciation of allegiance to the Muslim State and as amounting to treason. An adult Muslim-born male who renounces Islam is therefore liable to the death penalty; when a woman, a youth or a man whose parents are not Muslims, abandons Islam the person is liable to imprisonment until he or she returns to Islam. According to the Shafei School of law when either of the spouses renounces Islam after consummation of the marriage, the marriage would become dissolved on the expiration of the *iddah* of the woman. The marriage is regarded as being in suspense until then.

It is clear from the above summary that it would be strictly contrary to the law of Islam to require-

- (a) where a Muslim woman, married to a Muslim man, renounces the Muslim religion, that the husband should effect and register a divorce, before he can be considered freed from his marriage ties;
- (b) where a non-Muslim woman, married to a non-Muslim man, embraces the religion of Islam, that her marriage be dissolved before she can contract a Muslim marriage.

It is however not possible to adhere to the strict letter of the Muslim law in this respect and it might be instructive to look at the present position in India which is thus summarized by Fyzee in his *Outlines of Mohammedan Law*-

"In order to understand the principles underlying the body of rules relating to the matrimonial status of persons renouncing or embracing Islam, we shall consider four classes of cases. First, a Muslim husband may become an apostate; secondly, a Muslim wife may renounce Islam; these are the two commonest forms of apostasy. Thirdly, a non-Muslim husband or, fourthly, a non-Muslim wife, may embrace Islam; these are the two commonest cases of conversion.

"(A) *Husband renounces Islam.* A Muslim husband who renounces Islam is an apostate and as such his marriage with his Muslim wife is dissolved *ipso facto*.

"Ameer Ali holds the view that when a Muslim married couple abandon Islam and adopt another faith their marriage is not dissolved but remains intact.

"(B) *Wife renounces Islam.* The present law on the subject may be stated in the form of two propositions: The mere renunciation of Islam by a Muslim wife does not by itself dissolve her marriage. The above rule does not apply to a woman converted to Islam from some other faith who re-embraces her former faith. For instance, W, a Christian woman, embraces Islam and marries H, a Muslim husband. She then commits an act of apostasy and re-embraces Christianity. In this case, the marriage of W with H is dissolved.

"According to the older law, as laid down by the classical jurists of Islam, apostasy on the part of the wife operated as an immediate and absolute dissolution of marriage. But in India this rule was used for the purpose of dissolving a marriage which had grown irksome to the wife, as there was no other way open to her to get rid of her husband. Now that the Dissolution of Muslim Marriages Act, 1939, gives a remedy, the statute provides that apostasy by itself does not dissolve the marriage, unless it be that a woman re-embraces her former faith.

"(C) *Husband embraces Islam.* According to Islamic law conversion to Islam on the part of a man following a scriptural religion, such as Judaism or Christianity, does not dissolve his marriage with a woman belonging to his old creed. The rule, however, is different if the couple belong to a non-scriptural faith. In that case the Muslim husband could not lawfully retain a non-kitabiyya wife; wherefore, Islam was to be 'offered' to her and, on her refusal, a decree for dissolution was to be passed. These rules, however, cannot be applied in a modern state where 'all religions are equal in the eye of the law' and where 'the Court, judicially administering the law, cannot say that one religion is better than another'. In this branch of Jurisprudence, where men and women often try to twist and mould the rules of law to suit their own selfish ends, the words of Blagden J. in *Robaba Khanum v. Khodadad* (1946) 48 Bom. L.R. 864, must always be kept in view:

" 'British India as a whole, is neither governed by Hindu, Mahomedan, Sikh, Parsi, Christian, Jewish or any other law, except a law imposed by Great Britain under which Hindus, Mahomedans, Sikhs, Parsis and others enjoy equal rights and the utmost possible freedom of religious observance, consistent in every case with the rights of other people. I have to decide this case according to the law as it is, and there seems, in principle, no adequate ground for holding that in this case Mahomedan Law is applicable to a non-Mahomedan'.

"These principles enunciated by an English judge in a British Indian Court would apply equally in India and Pakistan.

"A non-Muslim, lawfully married in accordance with his own law, cannot by a mere conversion to Islam dissolve his own marriage. Thus, if a Christian, lawfully married to a Christian woman, were to declare himself a convert to Islam and marry a Muslim woman in Muslim fashion, the second marriage would be, in the judgment of the Privy Council, of doubtful validity; but aliter, if there had been a *bona fide* conversion of both parties to the Islamic faith. In *Skinner v. Skinner*, Lord Watson observes:

"One of the many peculiar features of this suit arises from the circumstance that, in the case of spouses resident in India, their personal status, and what is frequently termed the status of the marriage, is not solely dependent upon domicile, but involves the element of religious creed. Whether a change of religion, made honestly after marriage with the assent of both spouses, without any intent to commit a fraud upon the law, will have the effect of altering rights incidental to the marriage, such as that of divorce, is a question of importance and, it may be, of nicety. Recently, however, it has been held in Calcutta in *John Jiban v. Chandra* (1939) 2 Cal. 12 that a married Christian domiciled in India, after his conversion to Islam, is governed by Muhammadan law, and is entitled, during the subsistence of his marriage with his former Christian wife, to contract a valid marriage with another woman according to Muhammadan rites. This decision appears to overlook the important principle that a previous marriage in accordance with one scheme of personal law cannot be destroyed by the mere adoption of another faith by one of the spouses. It is also in conflict with the opinions of Ameer Ali, Tyabji, Wilson and Fitzgerald, and it is submitted that it is erroneous.

"(D) *Wife embraces Islam*. The conversion of a non-Muslim wife to Islam does not *ipso facto* dissolve her marriage with her husband, and the ancient procedure of 'offering Islam' to the husband and, on his refusal, obtaining a dissolution of marriage, as laid down in the texts, cannot be followed in India. It has been held in India that by this procedure, neither a Hindu, nor a Christian, nor a Jewish, nor an Irani Zoroastrian wife can get rid of her husband.

"A considered decision on the point is the Bombay case of *Robaba Khamum v. Khodadad* decided by Blagden J. in December 1945, and confirmed by a Division Bench on appeal. Robaba, an Iranian woman, Zoroastrian by religion, who was domiciled in India, was married to Khodadad in Persia according to Zoroastrian rites. Two sons were born of the union. She embraced Islam and 'offered Islam' to her Zoroastrian husband. On his refusal, she filed a suit for a declaration that her marriage in the circumstances stood dissolved. It was held that a Zoroastrian (or Christian) wife cannot do away with her marriage by a mere profession of Islam. Blagden J., in this case, expressly dissents from a decision of the Calcutta High Court, *Mst. Ayesha Bibi v. Subodh Ch. Chakravarty*, the case of a Hindu woman, and agrees with the later decision of the same High Court in the case of a Jewish lady. *Sayeda Khatoon v. M. Obadiah*. It is submitted with respect that the decision in *Robaba's* case is correct.

"In conclusion, a few general observations may be made.

"When a Court of Law has to decide a case involving change of marital status due to conversion or apostasy, it must never be overlooked that since the rules were formulated in Islamic Jurisprudence, social conditions have changed so completely that a blind adherence to some of the rules, torn out of their proper context, would lead neither to justice nor to a fair appraisal of the system under which they were promulgated. This has been pointed out forcibly by Ameer Ali, the leading modern authority on Muhammadan law. He says:

"The British Indian Courts in their adherence to the strict letter of the ancient doctrine have, it is submitted, missed the spirit of the enunciation; and have, accordingly, treated in the case of a wife a privilege what was intended to be a

punishment. By the interpretation put on the rule, a Musulman woman is thus enabled to obtain by a simple abjuration of Islam a dissolution of the marriage tie which had become irksome. The enforcement of the Musulman Law in its entirety regarding apostates has become impossible under existing conditions in most countries inhabited by Moslems. A husband abandoning Islam cannot be punished by death; nor a woman abjuring the Faith can be liable to incarceration. Shortly stated, apostasy has ceased, especially in these countries, to be a State offence. It is absurd and contrary to the principles of justice that one part of the rule should be enforced whilst the other should be ignored.

'The legal position of the married parties, one of whom abandons Islam must therefore be determined on principles of the Musulman Law other than those relating to apostasy. For example, it is the general rule that a non-Moslem cannot contract a valid marriage with a Moslemah; according to the majority of lawyers it is an illegal union. Consequently, when a Moslem husband abandons Islam, his connection with his wife becomes an illegal or at any rate an invalid connection. And the woman, accordingly, on the expiration of her 'iddat, can marry someone else.'

"The second observation to be made is regarding the party who brings a suit. In all such cases the Court is entitled to ask: Who is the person that seeks relief? If the husband changes his religion, it is understandable that the wife should complain and sue for dissolution; and vice versa. But is it right and just that one spouse should declare himself or herself a convert and then ask the Court to declare the marriage dissolved? The result would be that by these means a party to a marriage would be able to evade the legal obligations of a marriage entered into at a prior time and in accordance with a different system of personal law.

"The third matter for serious consideration would be: Can one spouse by changing his (or her) religion alter the status of another person who has not changed his faith? A man may be, and is, permitted to change his religion at his own choice, but why should such an act be allowed to alter completely the legal status of another person who has not changed his religion?

"These are some of the difficult legal and social problems raised by the law in modern society; and while it has so far been found impossible to formulate a law of marriage and divorce which could be satisfactory in all respects, it is urged that in holding the balance equally between conflicting principles, it is our duty also to examine the social and historical background before deciding a purely legal question."

The only reported decision in Malaya dealing with the question of conversion is the case of *P.P. v. White (1940) M.L.J. 214*. In that case the accused was originally a Christian and had married a Christian lady according to the rites and ceremonies of the Church of England. While his wife was still alive, the accused married another Christian lady after they had both been converted to Islam. It was held that the accused was guilty of bigamy.

The proposed section 7A of the Ordinance merely attempts to state the existing law in Singapore. The purpose is to clarify the position, so as to avoid conflicts of law. The position is that a marriage under the Civil Marriage Ordinance or the Christian Marriage Ordinance can only be lawfully dissolved in the lifetime of the parties by an order of the court and any person married under either of these laws who contracts a marriage while his or her spouse is living would be guilty of bigamy. In order to effect the purpose it would be necessary to add after the words "law of Islam" in the proposed new section 7A (2) the words "or any written law for the time being in force in Singapore".

If it is desired not to enact any provision contrary to Muslim law, then the proposed section 7A may be amended to delete the words "any law, religion, custom or usage" and substitute therefor the words "the provisions of the law of Islam".

## 5. *Divorce*

Under Muslim law a husband can renounce his wife by issuing a *talak* to her and no order or decree of a Kathi or of a Court is needed to validate the divorce. It would therefore be contrary to Muslim law to require all divorces to be effected by order or decree of the Shariah Court. The existing provisions of the Muslims Ordinance, 1957, does not seek to affect the validity of a *talak* divorce by a husband; it merely provides that no such divorce shall be registered by a Kathi unless both the husband and wife have agreed to the divorce and that where the wife does not agree to the divorce, the husband may apply to the Shariah Court. The purpose of the application to the Shariah Court is not to validate the decree (the divorce being already valid) but merely to see whether the husband can be persuaded to change his mind and to ensure that provision is made for the maintenance and payment of compensation to the wife. In the case of a *Khula* divorce, where the husband has agreed to release the wife on payment of compensation by her, the divorce is again effected by the parties themselves and the Kathi merely registers the divorce. Where the husband does not agree to release the wife or where the amount of compensation is in dispute, then the wife must apply to the Shariah Court. The purpose of the application is again to try to see whether the parties can agree in the words of the Holy Quran "either to return to each other on equitable terms or to separate with kindness" (2:229). In case of a *fasah* divorce, it is the Shariah Court which effects the divorce, *fasah* being a divorce by judicial decree. In *taalik* divorce the wife must prove that there was a condition in the marriage contract, containing an agreement by the husband that if, for example, he fails to maintain her for three months, and the wife makes a valid complaint, the wife will be divorced by one *talak*. In such a case it is necessary for the wife to make a complaint to the Shariah Court and prove both the condition and that the condition has been fulfilled.

The procedure for the appointment of *hakam* under Muslim law is only appropriate where there are differences or disputes between the parties. Where the parties have agreed to separate, the appointment of *hakam* would not appear to be required under Muslim law. If it is desired however to ensure that the consent of the wife is a real one, it may be advisable to insert the words "after inquiry" after the word "satisfied" in subsection (3) of section 12 of the Muslims Ordinance, 1957.

## 6. *Maskahwin*

According to Muslim law the "*maskahwin*" is an obligatory marriage payment made by the husband to the wife at the time of marriage. Failure to provide for the *maskahwin* at the time of the marriage does not invalidate the marriage, for the law will then assume an agreement to pay a reasonable *maskahwin*. The *maskahwin* may be paid in cash or in kind or be payable as a debt.

The *maskahwin* is the right of the wife and although it is true the parties can mutually agree to vary the amount of the *maskahwin* after the marriage or even for the wife to waive her right to the *maskahwin*, there is nothing to stop her from demanding payment of the *maskahwin*. The Muslim jurists seem to consider that the danger lies not in the *maskahwin* being too low but in its being too high. There is therefore in some Muslim countries legislation against excessive *mahr* or *maskahwin*. Where the court is of opinion that the *maskahwin* is excessive it has power to reduce it to a reasonable amount. There are recorded sayings of the Prophet which enjoin that the *maskahwin* should be low. The legislation in the Federation seem to favour the prompt payment of the *maskahwin*. For example section 125 of the Selangor Administration of Muslim Law Enactment, 1952, provides as follows:-

"125.-(1) The *mas-kahwin* shall ordinarily be paid by the husband or his representative to the wife or her representative in the presence of the person solemnizing the marriage and at least two other witnesses.

(2) The Registrar shall in respect of every marriage to be registered by him ascertain and record-

- (a) the amount of the *mas-kahwin*,
- (b) the amount of any *pemberian*,
- (c) the amount of any part of the *mas-kahwin or pemberian* or both which was promised but not paid at the time of the solemnization of the marriage, and
- (d) particulars of any security given for the payment of any *mas-kahwin or pemberian*."

While therefore it is not wrong in Islam to raise the amount of *maskahwin* and to provide that for example not less than \$500 shall be paid on divorce, this practice would appear to be foreign to the spirit of the institution of *maskahwin* as laid down by Islam. If the purpose is to check hasty divorces it would be preferable to make more use of the institution of "*mataah*" or consolatory gift, which is meant for the purpose, rather than to adapt the institution of "*maskahwin*" which is meant for a different purpose.

#### 7. *Maintenance*

Under Muslim law maintenance is payable to a woman who has been divorced only during her period of "*iddah*". If any payment is ordered to be made to a woman to provide for her after the period of her "*iddah*" this is not maintenance but is a consolatory gift or *mataah*. According to Imam Shafei the *mataah* "is incumbent in the way of a gratuity or compensatory gift from the husband on account of his having thrown the woman into a forlorn state by his separation from her". It has been usual in the past for the *mataah* to take the form of a gift of property or money to the wife but there appears to be no legal objection to an order being made for a monthly sum to be paid to the wife. In Syria it is provided "If a man divorces his wife and it become plain to the Qadi that the husband was treating his wife wrongly by divorcing her without reasonable cause, and the wife would suffer damage and property thereby, the Qadi may give judgment in her favour against her husband, having regard to the latter's financial standing and also to the degree to which he has wronged her, of compensation not exceeding the amount of a year's maintenance for one of her position, in addition to the maintenance due to her during *her iddah* period, and may order that this be paid, either in a lump sum or monthly, according as circumstances require".

According to the Shafei School of law the amount of maintenance and the amount of the *mataah* depends primarily on the husband's financial standing. It would be contrary to the law of Islam to fix a sum irrespective of the financial standing of the husband.

#### 8. *Inheritance*

I agree that in order to conform to Muslim law and to bring the law in line with that in the Federation, the proviso to section 42 of the Muslims Ordinance, 1957, should be deleted. It might also be noted that section 41 of the Muslims Ordinance, 1957, while perhaps not contrary to Muslim law does not follow the provisions of Muslim law.

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## APPENDIX III

### MINUTES OF EVIDENCE

<i>Representors</i>	<i>Pages</i>	<i>Columns</i>
Inche Mohd. Yatim Mohd. Dohon [Also on behalf of Persatuan Persuratan Pemuda Pemudi Melayu (Malay Youth Literary Association)] ...	C 1- 7	1- 14
Inche Syed Othman bin Abdul Rahman bin Yahya	{ C 7- 11 C 64- 75	13- 22 127-150
Inche Ali bin Haji Amin	{ C 12- 21 C 21- 22	23- 42 41- 44
Inche Shaikh Maarof bin Mohd. Jarhom	{ C 76- 87 C102-113	151-174 203-226
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Inche Shariff bin Mohamed Kartawi	C 44- 49	87- 98
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Persatuan Pemudi Islam Singapore ...	C114-142	277-284
Tuan Haji Ali Mohamed Said Salleh (Chief Kathi, Singapore)	{ C143-155	285-310
Tuan Haji Mohamed Sanusi bin Haji Mahmood (President, Shariah Court) ...		
Inche Ahmad bin Mohamed Ibrahim (State Advocate-General)	C156-168	311-336

## MINUTES OF EVIDENCE

WEDNESDAY, 9TH MARCH, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)

Dato Abdul Hamid bin Haji Jumat.  
 Inche Baharuddin bin Mohamed Ariff.  
 Mr. K. M. Byrne.  
 Inche Mohamed Ali bin Alwi.

Inche Mohd. Ariff bin Suradi.  
 Inche M. Ismail Rahim.  
 Inche Yaacob bin Mohamed.

Inche Mohd. Yatim bin Mohd. Dohon, *of Persatuan Persuratan Pemuda Pemudi Melayu* (Malay Youth Literary Association), attended and was examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

1. Come in, Inche Mohd. Yatim. For the record, your name is Mohd. Yatim bin Mohd. Dohon? - (*Inche Mohd. Yatim bin Mohd. Dohon*) Yes.

2. You are here not only in your personal capacity but also on behalf of the *Persatuan Persuratan Pemuda Pemudi Melayu*? — Yes, that is right.

3. Would you like to speak in English or in Malay? - Either language will do.

*Chairman*] If you prefer to speak in Malay, you may, of course, do so. If you speak in English, it will save us some time. Your evidence in English, will, of course, be translated into Malay for the benefit of the Members of the Select Committee. I take it that translation is required, Mr. Minister?

*Mr. Byrne*] Yes.

*Chairman*

4. Shall we do it that way then? - Yes.

5. Members of the Select Committee have with them copies of your representation dated the 20th January, 1960\*.

Your representation is on clause 3 of the Bill? - Yes.

6. That is the proposed new section 7A, subsection (2)? - Yes.

7. Now that subsection reads:

"No marriage shall be solemnized under this Ordinance if the man to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage, except by the Chief Kathi who shall before solemnizing the marriage satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

Your suggestion is that, before the man who wishes to contract a second marriage comes before any Kathi, he should appear before a board. Is that correct? - Yes.

8. Would you suggest to the Select Committee what would be the composition of this board? - The board that my association has in mind is similar to the Appeal Board in section 37. It is based on that.

9. The subsection you have in mind is subsection (4), I take it, which reads:

"The Yang di-Pertuan Negara shall annually nominate at least seven Muslims to form a panel of persons from among whom

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an Appeal Board of three may be constituted from time to time by the Registrar of the Supreme Court."

Is it something similar to that? — Yes.

10. These seven Muslims, you visualise, need not necessarily be Kathis? — They need not necessarily be Kathis.

11. The duty of this board then would really be to inquire into more or less the personal life of the man who wishes to marry. Do you agree? — Yes, I agree.

12. You do not think that possibly there might be some embarrassment if a man has to appear before seven Muslims who are not necessarily Kathis? — Not necessarily seven. Though there are seven, the Registrar may appoint three.

13. Shall we say three then? If he appears before three Muslims who are not necessarily Kathis who will be able to probe into his private life, do you not think that there will be some embarrassment for him? — I do not think so. Because this is for the good of the applicant and for the good of society also. If the board thinks that it is not in any way possible for an applicant to contract a second marriage, then the board will advise him not to do so. Then it will be safer for him to carry on with the wife that he is having; otherwise there will be chaos in the life of the whole family.

14. You do not really think then that if there is to be a board, that board should consist of Kathis? You do not think it is necessary? — I do not think it is necessary. In this matter, members of the board are selected from various Muslim committees who are already known in the Muslim society, I think it will be sufficient for the board members to make inquiries as to whether the applicant would be eligible or not to contract a second marriage.

15. Would you require these three members of the board to be sworn to secrecy? — Yes, that will be appreciated.

16. Would you agree that the duties could be performed just as well by Kathis? — By three Kathis you mean?

17. Yes, by a board of Kathis—whether it is one Kathi, two Kathis or three Kathis—instead of by a layman?

—The point is, if we are to have Kathis on the board, then this Board will give a certificate (that is what I am going to suggest) to the applicant if he is allowed to marry. Then he may well go to one of these three Kathis. My contention is that it would be more appropriate if the members were not Kathis, because they are the persons who will perform marriages of this nature.

18. Your second point is that, having passed the board, the marriage could be solemnized by any Kathi? — Yes.

19. The final question is: do you not think that the Chief Kathi could do the job just as well as the board? — My humble submission is that I do not think any man, whether he is the Chief Kathi or not, will be able to carry out making inquiries into the life of the applicant. In my submission, he will not be able to reach a concrete decision, because the study of the life of the applicant requires many things to be done. If it is done by one man only, then anything may happen.

20. In other words, you prefer to have more than one man on the job? — Yes, that is my point.

*Chairman*] Inche Mohamed Ali, any questions?

*Inche Mohamed Ali*] No.

*Chairman*] Dato Abdul Hamid?

*Dato Abdul Hamid*] No.

*Chairman*] Inche Ismail?

*Inche M. Ismail Rahim*] No.

*Chairman*] Inche Mohd. Ariff?

*Inche Mohd. Ariff*] No.

*Chairman*] Inche Baharuddin?

*Inche Baharuddin*

21. According to your suggestion, Inche Mohd. Yatim, there should be three laymen on this Board. *Do you wish these three people to be well versed in the law of Islam?* - I say that it is not essential to have members on the Board to be very well versed in the law of Islam. As we all know, in the case of appeals, members of the board somehow or other are Muslims, and they know the normal procedure and requirements of Islam.

*Inche Baharuddin*] The question of the marriage of a person who already has a wife or wives living is a religious matter. In my opinion, matters such as divorce, *Talak, Fasah, Rojo* and so on are very religious in nature and should therefore be, as is now the case, dealt with by someone who is well versed, such as the President of the Shariah Court.

*Chairman*

22. I think the question there is, do you not think then, in view of what the Member has said, that in this particular matter the person to deal with it should be a person well versed in Muslim law? - As I have said just now, members of this Board should be constituted on lines similar to those of the Appeal Board. As far as I can remember, the present members of the Appeal Board are like Mr. Namazie, the State Advocate-General and some prominent Muslim people. They are well versed in the Muslim law. I think the appointment of members should be based on lines similar to those of the Appeal Board. I do not mean that these people should have a qualification in Islamic law. Qualifications to inquire into the eligibility of the applicant concerned would be sufficient.

23. So your point then is that you would expect members of our Board to be Muslims who are, in fact, sufficiently acquainted with the Muslim law? - That is right.

24. As is the case now with members of the Appeal Board? - Yes.

*Inche Baharuddin*

25. Does the witness not think that the appointment of three people on this Board would be a waste of time, in view of the fact that the Chief Kathi comes under the jurisdiction of the Shariah Court? - I do not think so.

26. If he agrees thus far, then does he not think that the Chief Kathi could well tackle the job because, if the Chief Kathi is in doubt, he can always refer to the President of the Shariah Court, and between them they can come to an agreement as to the eligibility or otherwise of an applicant to marry? — The practice, as suggested by the Member, is not being carried out. To my knowledge, things are done in a very simple and half-hearted way. When an applicant wants to get married, the Chief Kathi will not enquire into the eligibility of that person. That is why I am suggesting a provision to try to stop that, because I say that the present system of allowing the Chief Kathi or any Kathi to perform marriages as he thinks fit is improper. In order to put a stop to that, that is why I submit humbly that it should be done by this board.

*Chairman*

27. Perhaps the word "improper" is too hard. Would you say that the inquiry is not sufficiently in detail? - Yes, it is not sufficiently in detail. I will put it that way.

*Inche Baharuddin*

28. Perhaps the witness realises that this Bill is not yet in force. What has been practised in the past is that such cases were dealt with by any Kathi, and,

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as such, the inquiries carried out may not have been as thorough as we would like. But by virtue of this Bill, the intention is to have such cases referred to the Chief Kathi, so that if there is any weakness on the part of the Chief Kathi in carrying out the inquiries as required, then we can easily pinpoint the fault and remedy it? - Thank you for reminding me that this Bill is not yet in force. I say that although the present Bill sets out the manner in which the power is given to the Chief Kathi, it will just be a repetition of the old practice.

*Chairman*

29. So your point really is that you would rather have more than one person looking into the matter so that it cannot be said that one person has slipped up on certain points? - That is right.

30. There are three minds probing into the matter. In your opinion, that will be more satisfactory? - Yes, that will be more satisfactory.

*Inche Yaacob*

31. Does the witness suggest that the board to be constituted should investigate the lives of both parties to the marriage? - Yes, the board should have the liberty to investigate thoroughly the lives of the applicant, the would-be wife, and the existing wife too if it is considered necessary. It should be left to the board as to the method to be adopted of making inquiries. I submit that there should not be a hard and fast rule about it.

32. Does he suggest that the investigations to be carried out should be in the form of persons coming to the office of the board, or that the members of the board should go out and make inquiries from members of the community? - As I have said just now, the board should have the power to do such a thing. If the board think fit they

could go out into society, or they could summon witnesses to come before them to give evidence.

*Chairman*

33. In so far as procedural matters are concerned, you say, leave it entirely to the Board? — Yes.

*Inche Yaacob*

34. Does the witness not realise that the formation of this board would necessarily mean that the members will have to work full-time on making inquiries? - Certainly, if they can contribute to the good of the society, they will have to do that.

*Chairman*

35. Do you think you will be able to get honorary workers, or do you think that members of the board ought to be paid? - As far as remuneration is concerned, I would say that they should be honorary workers. As I have said, the board should be constituted of well-respected persons and persons with means, because they would then be free from any corruption-if I may put it that way. If at all remuneration should be paid, the members of the Board should be paid for their transport allowance, or something of that nature only.

*Inche Yaacob*] Does the witness not think that the inclusion of a clause on the lines he suggests would be contrary to the law of Islam?

*Chairman*] I do not think that we ought to embark on a debate on what is the law of Islam. I think we had better leave that to the State Advocate-General to advise.

*Mr. Byrne*

36. Is it the view of the witness that the board he has in mind should be allowed to range widely over the private life of the person who is seeking a second wife, and that the inquiry should not be limited to finding out

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whether any lawful obstacle exists, according to the law of Islam, to the proposed second marriage? — I think it is an established fact that the living conditions of the Muslim society in this part of the country are rather low compared to those of other people. One of the contributing factors to that state of affairs is the Muslim law which allows a man to have more than one wife. Since the inquiry is to be undertaken secretly, as I have suggested just now, I do not think it would embarrass the applicant if the board thinks it fit to inquire into his private life, because the only people who will know about his private life are the three persons on the Board.

*Chairman*

37. Your answer is: Yes, but leave it entirely to the board? — Yes.

*Mr. Byrne*

38. If the board were allowed to range widely over the private life of the person who is seeking another partner, would the witness not agree that there would be a danger that the board would get off the rails, in the sense that it might decide, because the person whose life is under scrutiny had not ordered his life, to refuse him the right to take a second wife when, in fact, what he has done would not in any way be offensive to the law of Islam? — I humbly submit that the law of Islam requires these conditions to be studied. If certain conditions arise that would not permit the board to give a certificate to the man to marry, then I think that would be the proper decision made by the board because I must admit that I am not an expert on the Muslim religion—the law of Islam says that you may marry two, three or four women if there is this condition—you can provide equal justice, treatment, and so forth to all the wives that

you have. These are the things which you have to go into first before contracting a marriage.

*Chairman*

39. Perhaps we are going much too deeply into the law of Islam at the moment. Your point is that you would expect the men on the board to know what are the lawful obstacles according to the law of Islam to a second marriage, and that they would then be given a free hand to decide whether or not there are, in fact, lawful objections according to the law of Islam? — Yes.

*Mr. Byrne*

40. The witness will see that the proposal in the Bill is that this function of inquiring as to whether there are any lawful obstacles according to the law of Islam to a second marriage is entrusted to the Chief Kathi and not to all the other Kathis. I am advised that the Chief Kathi is paid by the Government and he occupies a very important position in the Muslim community in Singapore. Does the witness not think that it would be advisable to entrust this function to the Chief Kathi rather than to a board, as he suggests? — In answer to the question, I would like to explain it in this way. During the life of our Prophet—I am not speaking with authority—I presume that when a Muslim wanted to contract a second marriage it would have been the Prophet who would advise him as to whether he could marry or not. That is only my presumption.

I am not very certain of that. Bearing that fact in mind, if we were to give a similar power to the Chief Kathi, we might in a way hold the Chief Kathi up as an equal to the Prophet. We know that no human being is equal to him, and in order to overcome that, I submit to this Select Committee that the problem should be studied by three minds.

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*Chairman*

41. You are going very deeply into Muslim history, because an argument like that can be taken very far. Is not your point really what you said in the beginning, that you would prefer three minds on the job rather than one mind. leaving aside the Prophet? — Yes. That was on my mind. I had to give a little more explanation since that particular question was put to me.

42. I do not think the Minister would admit that you are right? — I do not think so.

*Mr. Byrne*] I do not think the witness would want us to have the impertinence to equate the Chief Kathi with the Prophet.

*Chairman*] That is what I said—I do not think the Minister would agree.

*Mr. Byrne*

43. Going on from there, I think the witness has overlooked the provisions of the proposed amendment to section 14. That amendment would allow an appeal from a decision of the Chief Kathi to the Shariah Court when he decides to solemnize or refuse to solemnize a second marriage, and from the Shariah Court to the Appeal Board. Under such a system of appeal, does the witness not think that many minds would be brought to bear on this question of a second marriage, with the result that the law of Islam on the question of marriages will be fully respected by the Muslim community in Singapore? — I am aware of section 14. I am saying that, as far as the second marriage is concerned, more grants would be given to applications than refusals. We are here to discourage it as far as possible. Therefore, once an application is granted, the marriage would be performed, and there would be no question of appeal to the Shariah Court at all. There would be a question of appeal if the

application were refused. I am submitting that there would be more grants to applications than refusals in this respect.

*Chairman*

44. You do admit that there can be an appeal against the grant? — There can be.

45. But you do not think there will be many? — There will not be many. The person who makes the appeal would be the first wife. I know very well, Sir, it would be rather difficult, as far as a Muslim marriage is concerned, on appeals of this nature.

46. Or the first relatives? — Relatives and so on. But I doubt there would be any.

*Mr. Byrne*

47. Putting it at its best, Inche Mohd. Yatim, what you have just said is a surmise on your part, so how can you say that it is more likely that there would be few refusals? You must bear in mind that under the system of appeals, the appeals go to the Appeal Board—from the Chief Kathi, who is a responsible person, to another very responsible person, the President of the Shariah Court, and then on to the Appeal Board. You know the constitution of the Appeal Board. So there is actually mature reflection on the whole question at issue. If there is any difficulty about costs, the Government can be expected to see that these processes are freely placed at the disposal of the disputing parties? — My answer is the same as the last one.

*Chairman*

48. I think you have missed the point. The point is: in view of the fact that there is to be an appeal now under the proposed amendment to section 14—under the old law there was no appeal from the Chief Kathi—from the Chief Kathi to the Shariah Court, and then from the Shariah Court to

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the Appeal Board, do you not think that the Chief Kathi would give greater thought to the inquiry and not be in such a hurry as he was in the past, according to you? — I have no comments on that.

*Mr. Byrne*

49. I want the witness to know that we on the Government side are fully with him in what he wants done. We want to ensure that these second marriages are not treated lightly, and that full and proper inquiries should be made before such marriages are allowed. It is only for practical convenience that we are proposing this course, that the right to solemnize a second marriage or to refuse a second marriage will be vested in the Chief Kathi. There is an appeal from the Chief Kathi to the Shariah Court, and from the Shariah Court to the Appeal Board—these functions are reduplicated, and it is very hard to find people to serve on so many tribunals?

—I submit that better results will be obtained if it is done in the manner I am suggesting, though it will mean that extra work will have to be done on the part of the Government.

*Chairman*

50. You urge that there should be a board in the first instance. Do you then urge that there should be an appeal from the decision of that board to the Shariah Court, and from the Shariah Court to the Appeal Board? Is that what you are visualising now? In the first instance the Board will decide on the second marriage; then there may be an appeal from that board to the Shariah Court. Are you visualising that?

*(The witness withdrew.)*

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Inche Syed Othman bin Abdul Rahman bin Yahya attended and was examined.

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*Chairman*

55. First, we must apologise very profusely for having kept you waiting. Now, for the record, we have to put down your full name. It is Syed Othman bin Abdul Rahman bin Yahya, is it not?

— No. If there is to be an appeal, that appeal should go to the Appeal Board straightaway.

51. That is to say an appeal from a body of persons to another body of persons? — To another body of five or more persons on the Appeal Board.

*Chairman*] You do not visualise an appeal from the board to the Shariah Court? You would like an appeal from the board direct to the Appeal Board?

*Mr. Byrne*

52. There is only one observation that I would like to make. Inche Mohd. Yatim, if it is proved that you are right and we are wrong, I can assure you that we will review the whole position in future? — Thank you, Sir.

*Chairman*

53. Thank you very much, Che Mohd. Yatim. I think the discussion has been very profitable? — Sir, I overlooked one point and did not include it in my representation. After buying a copy of the *Gazette* Supplement, I read something about divorces in the Bill, and I wonder whether I may be permitted to give my views.

54. I would suggest that you send in a further representation on it or on any other clause which you would like to touch on, and Members of the Select Committee will decide whether or not they will call you again. The closing date is 21st March? — Yes, thank you.

*Chairman*] Is that agreeable, Mr. Minister?

*Mr. Byrne*] Yes.

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— *(Inche Othman bin Abdul Rahman bin Yahya)* Yes.

56. You have given your address as c/o Malay Girls' School, Scotts Road. What are you there? — I am a watchman.



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57. Members of the Select Committee have had with them copies of your representation dated 2nd February, 1960\*. Would you like to speak in Malay or English? - In Malay.

58. Your first representation is in regard to polygamous marriages. That would be in regard to the new section 7 (A). Briefly, you do agree that the Chief Kathi should be given the job of deciding whether a second marriage should take place or not? — Yes.

*Dato Abdul Hamid*] According to the interpreter, he says that the witness agrees that the Chief Kathi gives his consent to the marriage after he has investigated the affair. But that is not according to the witness's representation.

*Chairman*

59. This is what the witness has said in his representation:

"I fully agree that every male Muslim who wishes to marry more than one wife should make a declaration in the presence of the Chief Kathi concerning his ability to comply with the conditions of such marriage;" and he has some suggestions about the declaration; that is correct, is it not, that, firstly, the male Muslim should make a declaration? - Yes.

60. Beyond that, you still agree that it is the Chief Kathi who should have the final say? - Yes.

61. My understanding of the paragraph is that that is exactly what you mean. In addition to that, on that particular section, you have also made additional representations, dated 6th February †? - Yes.

62. That is on subsection (1) which reads:

"No marriage shall be solemnized under this Ordinance if the woman to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage."

- Quite so.

63. You have given two instances. One instance is of a Muslim woman married to a Muslim man, and you say that if the Muslim woman embraces another religion, then she should be free of her marriage to the Muslim man. Is that correct? - That is correct.

64. And your second example is the case of a non-Muslim woman married to a non-Muslim man. If the non-Muslim woman embraces Islam, she should be free of her previous marriage? — That is so.

65. Are you advocating then that in those cases there should be an automatic annulment of that marriage? - Yes, an automatic annulment.

66. Would you like that to be written into the Ordinance? - That is my idea.

*Chairman*] Inche Mohd. Alwi? On the question of polygamy and the suggestion of annulment of marriage.

*Inche Mohd. Alwi*] No questions.

*Dato Abdul Hamid*] No questions.

*Inche Ismail Rahim*] No questions.

*Inche Mohd. Ariff*] No questions.

*Inche Baharuddin*] No questions.

*Inche Yaacob*] No questions.

*Mr. Byrne*] I want to get the witness clear on this point, Mr. Speaker, Sir. In the case of a Muslim woman who is married to a Muslim man, if she of her own free will embraces a religion other than Islam, then the marriage tie is automatically broken. And the same follows in the case of a non-Muslim woman who embraces the religion of Islam. That is what the witness said.

*Chairman*] I think that is quite clear.

*Mr. Byrne*

67. This would happen only in cases where she changes her religion? — In fact, not only is the marriage annulled, but her ties with her religion

\*Appendix II. p. B5.

† Appendix II. p. B7.

are also automatically annulled. I would like to illustrate. Take my case for instance. If I, who am a Muslim, have a Muslim wife, and of my own free will I wish to embrace another religion, then my ties with my wife are automatically severed.

*Chairman*

68. So you want that principle to apply not only to the women but also to the men? - This is only an example of my own particular case. What I want embodied in the Bill is in respect of women.

69. So you do not want the men to be free, if they change their religion? - The principle applies to both.

70. The principle applies to both. But you would like to legislate only for women? - In respect of women only.

71. In so far as the present suggestions in the Bill are concerned, you would like to add a provision for women in respect of their change of religion; not a provision for men in so far as a change of their religion is concerned? — If the Select Committee think it is possible to have it included, of course, it would be preferable. But since this Bill is mostly concerned with women, I would say that the provision should be in regard to women only.

72. But you yourself are not urging that that provision should also cover men? — Of course, it would be preferable. It would be preferable to cover both rather than one.

73. The net result is that if it can be done legally, provision should be made for both. That is your point of view and you would like it, to be so? — Quite so.

*Mr. Byrne*

74. Would Syed Othman agree with me that the position of, say, a married woman embracing another religion where both parties are professing the Islamic religion is a matter for the law of Islam?

But not the second case that he quotes, that is, the case of a non-Muslim woman who embraces Islam. Would he agree that that is so? - I do not agree.

*Mr. Byrne*] I would suggest to you, Syed Othman, that in the case of (b) of your representation, that is, the case of a married Muslim woman, embracing a religion other than Islam, when her husband professes the Islamic religion, in such a case, I am advised that the marriage tie is automatically broken as it gives a ground for a valid divorce under the Islamic law.

*Chairman*] The question is that in regard to (b), that is:

"In the case of a Muslim woman who is married to a man of the same religion, if, of her own free will she wishes to embrace a religion other than Islam, then her ties with her husband are automatically severed and she has no further connection with her religion and her husband."

The point the Minister has made is that that, in fact, is the law of Islam.

*Mr. Byrne*] In such a situation, Mr. Speaker, Sir. I am advised that there is automatic divorce. But it will be necessary for the Muslim husband in that situation to register the divorce.

*Chairman*

75. In such a case, there is, in fact, an automatic divorce, the only necessity being for the man to go and register the divorce. So far as that is concerned, it has been provided for? - My point is this. In the case of a quarrel between a husband and a wife, if there is a divorce this, of course, will be recorded after the matter has been dealt with by the proper authorities. But in the case under discussion, the divorce is automatic and there is no necessity for it to be recorded. This has been the case for 1,379 years. and no one has challenged that

76. Are you really against just mere registration of a divorce of that nature without any inquiry? When I say without any inquiry, I mean without any

hearing. Without any "*berchara*". In the case where, in fact, it is admitted that there is an automatic divorce when the wife changes her religion from Muslim to any other religion, it is agreed (hat the divorce is automatic. Are you against that divorce being registered or some record made of it? — My impression was that the Select Committee did not agree with my contention in (b), and therefore I disagreed with the Committee vehemently. But now, of course, if it is a question of having annulment of the marriage being registered, it is a good thing.

77. Che Syed Othman, we are here trying to help each other. We are not fighting each other? — Yes. That is good.

78. We are trying to come to some agreement. I think the Select Committee has not disagreed with your contention in (b). That is quite clear. You are here to try and assist us, and we are here to try and understand you? — Thank you.

*Mr. Byrne*] Registration has already been required by our State Muslim law. not by the law of Islam. We have agreed that that is so.

*Chairman*] I think he has agreed.

*Mr. Byrne*] Going on from there, Mr. Speaker, in the case of a married woman. who is a non-Muslim and who embraces Islam, the Civil Marriage Ordinance applies. That has nothing to do with the law of Islam, andd the marriage tie is not automatically broken.

*Chairman*

79. Yes. In regard to (c)\*, a non-Muslim woman married to a non-Muslim man. If she embraces the religion of Islam, in a case like that, it

is not covered by the law of Islam. Is that agreed? It is not the case that in so far as the woman is concerned her marriage ties are automatically broken, or she is free from her marriage ties. Do you agree? — In the case of a non-Muslim woman married to a man of the same religion, if she, of her own free will embraces the religion of Islam. then it is my contention that her ties with her husband are automatically severed.

80. Under what law is that? — Under the law of Islam.

81. I see. But do you not agree that the marriage of a non-Muslim woman to a non-Muslim man is a marriage under civil law? — That is quite clear.

82. So that is quite clear. So that if a non-Muslim woman wishes to free herself from her marriage ties, surely she must look to the civil law. Is that not right? — The question of her trying to free herself from her marriage ties is a matter under civil law; but my point is that the question of her embracing Islam brings her within the ambit of Islamic law.

83. Your understanding of Islamic law then is that in a case like that, if a non-Muslim woman embraces the religion of Islam, under Islamic law, her civil marriage ties too are automatically broken. That is your understanding of Islamic law? — Yes.

84. That, of course, is an opinion which will have to be looked into? — Yes.

*Mr. Byrne*] I would like to point out to Syed Othman that in the case of a non-Muslim married woman who embraces Islam, in such a case, she would not be automatically divorced under

(c) reads as follows:-

"In the case of a non-Muslim woman who is married to a man of the same religion, if, of her own free will she wishes to embrace the religion of Islam, then her ties with her husband are automatically severed after she has become a Muslim, and she has no further connection with her religion and her husband, according to the laws of Islam."

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the civil marriage law, and if she proceeds to remarry, she would be liable, under the civil law, to a charge of bigamy.

*Chairman*

85. Even assuming that Inche Syed Othman is correct, he must understand that a non-Muslim woman, who embraces the Islamic religion and marries under Islamic law, would open herself to prosecution for bigamy under the civil law. It is just a statement? — Yes.

*Mr. Byrne*] I have only one further point to make, Mr. Speaker. In the case of (c), if this country were a Muslim country in the sense that the greater majority of the population were practising the Muslim religion, then that proposition might be accepted. But the proposition cannot be accepted in a country where the Muslim community is only about 20 per cent of the total population.

*Chairman*] I do not think we will put that to the witness, because that is a question for debate.

*Mr. Byrne*] I just wanted to point that out.

*Chairman*] I do not think the witness should be worried about that.

*Chairman*

86. Che Syed Othman, we have, I think, made you wait for some time, and we have taken about half an hour on your first point. Perhaps it would be better if you could come again and you will then be given more time to make your points. We will not make you wait again; we can start straightaway on your other points on some other day. Does that suit you? — Yes. It is only my duty in the interest of the people.

87. Would Friday, 18th of March, at 2.30 p.m. suit you? — Yes.

*(The witness withdrew.)*

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THURSDAY, 10TH MARCH, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)Dato Abdul Hamid bin Haji Jumat,  
P.M.N.

Inche Baharuddin bin Mohamed Ariff

Mr. K. M. Byrne

Inche Mohd. Ali bin Alwi

Inche Mohd. Ariff bin Suradi

Inche M. Ismail Rahim

Inche Yaacob bin Mohamed

Inche Ali bin Haji Amin of 10 Radin Mas, Singapore, 4, attended and was examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

88. Good morning. Your name is Ali bin Haji Amin? — (*Inche Ali bin Haji Amin*) Yes.

89. Members of the Select Committee have copies of your representation dated 12th February\*. The first thing you say is that you do agree to the increase in powers of the Shariah Court to punish in cases of failure or neglect to comply with an order of the Court? — Yes.

90. I think hon. Members of the Select Committee would not like to ask questions on that. The second point is in connection with the proposed provision in the Bill in regard to marriages other than the first marriage? — Yes.

91. The Bill provides that it is only the Chief Kathi who will be given powers to solemnize the marriage after due inquiry. You suggest that that power should be given to all Kathis? — Yes.

92. Do you suggest then that any Kathi should be able to inquire into the private life of the man who wishes to take a second wife? — Yes.

93. Do you not fear that, given a set of facts, one Kathi may form one opinion and another Kathi may form a different opinion? — The reason for my disagreement to power being given only to the Chief Kathi is that this will cause inconvenience to members of the public.

94. In what way? — I am aware of six instances in my kampong. Two of the cases involved were cases where there was a *wali*, and in four cases the marriage could not be solemnized.

95. Under the present law, if there is no *wali* of the woman to be wedded, it is only the Chief Kathi who can solemnize the marriage? — I say it is a matter of inconvenience, because, to my knowledge, on one particular occasion, there were four such marriages to be solemnized in four different places — in Telok Blangah, Kampong Bahru,

Coronation Road and at the 10th milestone, Bukit Timah Road. Taking it for granted that the solemnization of one marriage would require an hour, just imagine the inconvenience caused to all the other people who had to wait for the Chief Kathi.

96. Do you think that there will be many eager bridegrooms who wish to marry more than one wife? - I cannot say for certain, because the incidents which I have quoted just now took place in my particular kampong.

97. Do you not think that this matter of a man taking unto himself a second wife is of such great importance that it should be looked after by the Chief Kathi? - I do not agree. What I do suggest is that the power be given to all Kathis. If and when the Kathis are found not to have carried out their duties properly, then they could be dealt with accordingly.

98. You are not afraid that one Kathi-as I started off by asking you-may consider that a certain set of facts are all right and that another Kathi may consider the same set of facts not quite all right, to give permission for marriage to a second wife? - I do not think so, because the Kathi should be able to carry out very thoroughly his investigations into the lives of both parties to the marriage, and if he is found to be at fault, then proper steps could be taken against him.

99. What you have said in regard to Wali Hakim is, in effect, a suggestion that the present law should be changed? - That is quite so.

*Chairman*] Any questions?

*Inche Mohd. Ali*] No.

*Dato Abdul Hamid*

100. Just now the witness stated that the power to solemnize marriages should be given to all Kathis? — Yes.

101. Mr. Speaker just now stated that it could well be that, given a set of facts, one Kathi would decide one way and another Kathi would decide another way. Taking it for granted that what the witness suggested is acceptable what is his opinion if these circumstances were to arise? A person wanting to marry a second wife goes to, say Kathi Ahmad and on being refused permission to marry, after careful investigations have been made by that Kathi, he goes to another Kathi, Kathi Ali, who approves his application to marry a second wife. What is his view on that? - I disagree with that view because, if I were a Kathi, what I would do would be to carry out thorough investigations into the lives of both parties to the marriage. If after having carried out my duty and having given my judgment that person goes to another Kathi for another investigation, action could be taken against that person for having told me a set of lies.

*Chairman*

102. But might that not be too late? The marriage might have taken place? - The investigation to be carried out should be thorough. It should take some time and should not be done cursorily in one day.

103. That, of course, cannot be controlled. One Kathi may take one hour and another Kathi may take two days? - I have known of cases where Kathis were lax in their investigations and, therefore, in such cases, these Kathis should be properly dealt with.

*Chairman*] I think that is agreed, but as I say, it might be too late! Any questions, Inche Mohd. Ariff?

*Inche Mohd. Ariff*

104. The witness has suggested that it would cause inconvenience to members of the public if in cases of marriage without wali the power is given only to the Chief Kathi? - Yes.

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105. Does the witness not realise that in cases where there is no *wali* in a marriage, the person responsible for that marriage should contact the Chief Kathi so that proper arrangements with the Kathi could be made as regards the time of the marriage? - What I do know is the instance I have quoted just now. In one instance, there were four marriages involving *Wali Hakim* to be solemnized. It could well be that in other places on the same day there could be any number of other such marriages to be solemnized. That is where the difficulty lies.

*Chairman*

106. I think the question is: could not all those difficulties be resolved if prior arrangements are made with the Chief Kathi? - The difficulty that had been experienced in my locality was that the marriages to be solemnized were, at the request of the people concerned, to be held at 9 a.m. or 10 a.m. If the Chief Kathi were to solemnize such marriages, then it could well be that some people would have to wait any length of time.

*Inche Mohd. Ariff*

107. In such cases, if the Chief Kathi is informed well beforehand, say ten days or more before the ceremonies are to be carried out, then it would be possible for the Chief Kathi to arrange suitable times and dates for him to come along and solemnize the marriages? - I disagree. My point is that in cases of marriages of this nature, where the marriage ceremonies are to be conducted, they should be done at the convenience of the people concerned and not at the convenience of the Chief Kathi. I disagree having to wait at the convenience of the Chief Kathi.

108. With regard to the second marriage of the person who is already married, you suggest that all Kathis be given the power to solemnize such

marriages? Do you not realise that if this is done, then things may happen as has happened before? Because at the moment Kathis are given the power to decide on cases of divorce, as required by law. These Kathis are required to carry out thorough investigations into divorce cases. But in most cases the investigations carried out by the Kathis are of a cursory nature, and divorces are granted pretty easily. Do you agree that that is so? - I disagree with that.

*Chairman*

109. You are satisfied that in the past, Kathis have made proper investigations in so far as divorce is concerned? - What I say is that Kathis should carry out their duties very conscientiously. If they are found to be not doing that, then steps should be taken against them.

110. That is all very well; everybody will agree that that should be so. But the question is: in the past, has it been so-that every kathi has been careful in his investigations? - There were cases where thorough investigations were satisfactory and there were also cases where they were not.

111. And do you not fear that in the cases which we are talking about, where a man wants to take unto himself a second wife, if you give the power to solemnize such a marriage to all Kathis, the same danger may arise? - We should allow all Kathis to have that power to solemnize such marriages, but I would urge that the Kathis be made very conversant with the full implications of the law-if they were ever found to be not doing their work as they should be doing.

112. Do you then suggest that there should be some sort of rules of procedure that all Kathis should follow? - Yes.

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*Chairman*] Does that cover the hon. Member's point?

*Inche Mohd. Ariff*] Yes.

*Inche Baharuddin*] Does the witness realise that the purpose of the law is to avoid unpleasantness, to avoid divorces, and to avoid unnecessary suffering to women?

*Chairman*

113. Do you agree that this is the general purport of this suggestion?  
- Yes, I do.

*Inche Baharuddin*

114. The witness has quoted an instance of six marriages solemnized in one day, of which two were with *wali* and four without *wali*. Now, does the witness agree that the two cases with *wali* could be solemnized by any Kathi? Does he say that in cases where there is no *wali*, the marriage should also be solemnized by any Kathi? — Yes.

115. I will quote an example. If I were to entice the daughter of Inche Yaacob and go to a Kathi and tell him that I wish to marry the girl, that I am drawing a salary of \$1,000 a month and that the girl has no *wali*, does the witness agree that such a marriage should be solemnized by the Kathi, thus creating trouble for the father and mother of the girl? — I do not agree.

116. This is where my point comes in. Just now, in answer to a question of the hon. Dato Hamid, the witness agreed that investigations should be carried out very thoroughly over a stretch of time. Therefore, if investigations were to be carried out by the Chief Kathi, then a much more thorough investigation could be carried out? — I do not agree.

*Chairman*

117. Take the case quoted by the hon. Member—the case of a girl who runs away from her parents. She goes

to a kampong where she is not known but the would-be husband is known. The Kathi, then, takes the word of the man. He knows the man. The man tells him, "The girl has no *wali*. She wants to marry me and I am in a position to marry her." That is possible, is it not, if the Kathi is satisfied after making due inquiries? - That would be wrong on the part of the Kathi. He should necessarily carry out thorough investigations, from the parents of the girl and everything about the girl.

118. Yes. But if the girl says, "I have no parents. I come from Penang."?  
-Then by all means pursue the investigations in Penang.

119. That is as far as the Kathi is concerned. Meanwhile, while all this is going on, the father does not know where the girl has gone to. If the rule is that only the Chief Kathi can solemnize such a marriage, then of course it is easy for the father to go to the Chief Kathi and say, "My daughter has run away. Have you any information or has anybody approached you for her marriage?" She must have a *Wali Hakim*? — There have been cases where people, failing to have their marriage solemnized in Penang or Kuala Lumpur, have come down to Singapore to have that done. But I have read reports in the newspapers to the effect that that sort of marriage should not be allowed and, therefore, if such a marriage is to be solemnized it could only be solemnized at the place of origin.

120. That is not the point. The point arises if the father in Singapore reports to the Chief Kathi that his daughter has run away. Now that daughter, according to the present law, will not be able to be married except before the Chief Kathi. Therefore, the danger of that girl being married wrongfully by another Kathi does not arise under the present law. Would you like that to be retained?  
- I do not agree.



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*Inche Baharuddin*

121. The witness has laid stress on the point that thorough investigations should be carried out before such marriages are solemnized. He has suggested that all Kathis be given power to carry out such investigations, and later to solemnize such marriages as they think fit. Can he give us concrete reasons why he wants that to be done? - I would like to ask you what is the difference between a Kathi and a Chief Kathi.

*Inche Baharuddin*] It remains for the witness to agree or disagree with my clarification. But what I would like to say is this: the Chief Kathi has all the means of carrying out thorough investigations at his disposal, because he is a paid Government official. Whereas the other Kathis are not. If there should be cases where investigations involve people in the Federation, then the Chief Kathi is assured of means to pursue such investigations. The Chief Kathi, therefore, is better equipped to carry out thorough investigations than any of the Kathis. For instance, in cases where people in the Federation come down to Singapore or people in Singapore go up to the Federation to have marriages solemnized, then the Chief Kathi would be better able to carry out much more thorough investigations than an ordinary Kathi. Furthermore, as in the case I quoted just now, if the daughter of Inche Yaacob is enticed, then it would be easier for the Chief Kathi to carry out his duty properly if, as under the proposed Bill, only the Chief Kathi is empowered to solemnize such marriages.

*Chairman*

122. The position is that the Chief Kathi, being a paid official of the Government, has more means than an ordinary Kathi when it comes to making thorough investigations. Do you agree? - I disagree.

123. When it comes to inquiring up in the Federation, shall we say, expenses are involved, are they not? If an ordin-

ary Kathi has to make inquiries in regard to a woman who says that she has come from the Federation, a lot of money would be involved, is that right? Passage expenses, for instance, to start off with? — There will not be any difficulty if one is conscientious about carrying out his duty.

124. That means that the Kathi would be out of pocket in his expenses? — If he were to carry out his duties conscientiously in regard to religion, then small expenses of that nature would not really matter.

125. But those small expenses, of course, might mount up in certain cases. In spite of that, every Kathi should still spend his own money? - The expenses could be recovered by the Kathi from the person for whom the investigation is being made.

*Chairman*] It is problematic whether he can recover anything. I do not think we can pursue this point with advantage any further. Is there any other question?

*Inche Baharuddin*

126. That would be an encouragement to corruption, because the expenses might well be ten cents, and the amount asked for in recovery might be \$5? — I think the whole question rests on having strict rules which would be applied to the Kathis.

*Inche Yaacob*

127. There are two matters I would like to raise. One is in connection with marriages involving *Wali Hakim*, and the other concerns marriages in cases where a person is already married and wants to contract subsequent marriages. Is the witness aware of any instance where, in the case of a marriage involving *Wali Hakim*, the marriage has been solemnized where the *Wali Hakim* is within a distance of 2 *marhala* (a *marhala* is about 70 miles)? - Yes, I know. There have been such instances and I do know that that was perpetrated by the Chief Kathi.

128. Do you not know that regarding the matter in question, the Kathi has made an appeal to the Shariah Court which has upheld it? — This matter is very involved. Sir. It is very difficult to differentiate between acts done by the Kathi and the Chief Kathi.

*Chairman*

129. That is all that you urge? — All that I urge is that all Kathis be given equal power to solemnize marriages, irrespective of whether he is a Kathi or the Chief Kathi.

130. There should be some rules of procedure? — There should be strict rules of procedure which should be followed by the Kathis.

*Inche Yaacob*

131. Does the witness not know that *Wali Hakim* is actually the right of guardianship empowered by the State; that it is the highest form of authority for guardianship allowed in marriage, and that this power is now vested in the Chief Kathi? Does the witness agree that that is so? — I do not agree with your views. We should move with the times.

132. Does the witness not know that if any Kathi is to be given the authority as he has suggested, then there might well be cases, such as the Nadra case which happened some time ago, where the consequences would be very grave for all members of society? — That marriage was solemnized by a Kathi. But did he carry out his duties conscientiously? Did he carry out his investigations conscientiously? If he had, then the disaster would not have happened.

*Chairman*] The witness's point is—and he has said it time and again—give this power to all the Kathis. But lay down rules of procedure which all Kathis must follow so that if there have been any mistakes in the past those mistakes

will not be repeated. I think that is a fair summary of the evidence so far. Any questions on that?

*Inche Yaacob*] Does the witness not think that in marriages involving *Wali Hakim*, the power to solemnize them should be given to the Chief Kathi, and that the power to solemnize marriages in respect of other than *Wali Hakim* should be given to all other Kathis so as to simplify matters?

*Chairman*

133. The answer is: all Kathis, subject to the rules of procedure? — All Kathis, subject to the rules of procedure.

*Inche Yaacob*

134. Therefore the Kathis would be carrying out their duties in fear of the civil law, not of their religious duties? — If the Kathi is really conscientious about his responsibilities, then he will be carrying out his duties in full consciousness of the fact that religious laws are such and should be obeyed; and likewise, too, the civil law should be obeyed.

*Chairman*

135. The civil law, I take it, must not be in conflict with the Islamic law? — That is so.

*Inche Yaacob*] I have attempted to give concrete points to base the suggestion, but the witness has merely given his point of view.

*Chairman*

136. I think it is fair enough. He is making a suggestion to the Select Committee for the future. The past has been full of difficulties, and perhaps mistakes, and he is hoping that the difficulties and mistakes will be overcome by his suggestion. Is that right?— Yes.

*Mr. Byrne*

137. Does the witness agree with me that under present conditions, second marriages can be performed by any Kathi at all? At the present time? — Yes, I do.

138. Let us say that I am a Muslim male, and I want to take a second wife. I go to Kathi A and he turns me down. I go to Kathi B, and he also turns me down. I then go to Kathi C, who agrees to marry me. Do you agree with me that that is the present position? — I am not aware of any such instance.

*Chairman*

139. The witness is not aware, but it is still possible? — I think so.

140. If Kathi C does not make proper investigations. That is your point? — Yes. That is so.

*Mr. Byrne*

141. Now, Che Ali, when we on this side suggest that the power to solemnize marriages be placed in the hands of the Chief Kathi, we are trying to make it more difficult for second marriages to be contracted. Do you agree that that is so? — I do not agree.

*Chairman*

142. The object of this suggestion in the Bill is to make second marriages more difficult than it has been in the past. Is that agreed by you? — That is right, if the other Kathis carry out their duties conscientiously.

143. But then you do agree that it is a good thing to make second marriages a little more difficult than it has been in the past? — I do not agree, because all Kathis can carry out their duties equally conscientiously if they want to.

144. We quite understand that you do not agree that this power should be given to the Chief Kathi only. We can see your point of view. That is all right for the time being. Your point is that an ordinary Kathi could make proper in-

vestigations just as well as the Chief Kathi? — Yes.

145. Accepting all that, do you agree that the time has come to make second marriages a bit more difficult than it has been in the past? — I do not agree. It is all right in my case. I am not able to afford it, so I am not contemplating a second marriage. But if a person is able to afford it, why should there be any hindrance to his wanting to contract a second marriage? We should go by the law of Islam.

146. That is all agreed. The point is this. Past experience has shown that it is possible—you have agreed that it is possible—for a second marriage to be contracted without proper investigations. It is very simple to marry a second time? —I agree.

*Mr. Byrne*

147. The witness agrees that a second marriage should be made more difficult? —Yes.

148. If he agrees that it should be made more difficult, now I put it to him that the practical way of doing that is to say that the power to solemnize second marriages should be vested only in the Chief Kathi? — Why should it not be possible to give that power to the other Kathis?

149. I will tell you why; if the witness agrees that it is desirable to make second marriages more difficult. Take the case that I quoted just now. I go to Kathi A and Kathi B. and they both turn me down. I then go to Kathi C who agrees to marry me. Well, I can still get *my way*. But if I have the right to go only to the Chief Kathi, and if he turns me down, I cannot get married unless I appeal from his decision to the Shariah Court? — I do not agree.

*Chairman*

150. The point which I think the witness is trying to make all the time is that there may have been mistakes in the past, but in future, with proper rules of procedure, there should not be any mistake. Is that right? — That is so.

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*Mr. Byrne]* Now, Che Ali, you can take it from me that this Government is not specially concerned with the question of runaway marriages. That position was considered by the last Government of which —

*Chairman]* I do not think we ought to compare Governments. Let us come to the pith of the question.

*Mr. Byrne*

151. I am sorry. The pith of the question is this. The Muslims Ordinance provides that in case a woman has no *Wali*, or a *Wali* has refused his consent for a woman to marry, the power to solemnize this marriage is vested now under the present law in the Chief Kathi. Does the witness agree with me that that is the position now? — That is so.

152. And he agrees with me that that has been done so as to put a stop to runaway marriages? — I do not agree with that. What I have said is that, in the case of *Wali Hakim*, all Kathis should have the power to solemnize marriages. But in the case of a man wanting to contract a second marriage, perhaps the power could be given to the Chief Kathi only.

*Chairman*

153. So after all this discussion you are prepared to concede that in the case of second marriages, the power should be given to the Chief Kathi. Is that right? — Yes.

154. But you are still of the opinion that where *Wali Hakim* is necessary, the marriage could be solemnized by all Kathis? — That is so, Sir.

155. The suggestion is that the reason why, in the case of necessity for *Wali Hakim*, the power was given to the Chief Kathi only to solemnize the marriage was to prevent runaway marriages? — I do not know.

156. Do you not think then that, in fact, that has had the desired effect? — I do not agree.

157. There are still runaway marriages, are there not? — It is a matter of whether investigations were carried out thoroughly or not.

*Mr. Byrne]* Let us compare the position with regard to second marriages to the position with regard to say, marriages where there is no *Wali*. Would the witness agree with me that under the present system, it is easier to get married a second time than it is for a woman without a *Wali* to get married?

*Chairman*

158. Under the present law, apart from proper investigations, it is, in fact, easier for a man to get married a second time than it is for a woman without a *Wali* to get married? — That is not necessarily so. In the case of a woman without a *Wali*, investigations could be carried out.

159. Investigations in that case being made by one person—the Chief Kathi? — Yes.

160. And there is only one person to judge? — Yes.

161. Whereas in the case of a second marriage now, there can be judgments from separate Kathis and their judgments may differ? — Yes.

162. So it is easier, perhaps, to get round one of a group of men than it is to get round only one man. Do you agree that it is possible? — I do not agree.

*Mr. Byrne*

163. Sir, all that we are trying to do is to equate the position of second marriages with the present position of marriages where there is no *Wali*. That is all? — I well appreciate the desire to equate the two types of marriages in question. But what I say is that in one case, it would cause inconvenience to the persons concerned, because if only the Chief Kathi were to be given the power to solemnize marriages, then it would

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entail a great deal of inconvenience to people who are gathered at the ceremony, because the Kathi has to carry out investigations lasting for at least one hour in any particular marriage.

*Chairman*

164. Are you saying then that these inquiries are made on the day of the wedding? — Yes.

165. So if some arrangements can be made for these inquiries to be made beforehand, then, that will overcome your difficulty; would it not? — That will be a waste of time, because, the people who are gathered at a wedding will have to wait for the arrival of the Kathi.

166. What I mean is that there must be an inquiry before the Chief Kathi says, "Well, the marriage can be solemnized"? — That is so.

167. Cannot that inquiry be held a few days before the actual marriage ceremony? — What I do know is this—that on the 7th day of a certain month there were six marriages to be solemnized in my locality. A week before the ceremonies were to take place, the Kathi had been notified and he informed these people to go to the Chief Kathi who alone had the authority to solemnize such marriages. So on the fixed date the people who were already gathered at the four places had to wait a long time for the Chief Kathi to make his rounds.

168. The Chief Kathi then before the date of the wedding had not made any inquiry. Is that right? — I do not know. What I do know is that the local Kathi had been acquainted with the fact that in those marriages there were going to be no *Walīs*, and the Kathi had asked the persons concerned to refer the matter to the Chief Kathi.

169. If, in fact, the Chief Kathi had made his inquiries and given his verdict before the date of the wedding,

then all your troubles would have been over. There would not have been any delay. Is that right? — The Chief Kathi was well aware of the fact that there was going to be no *Wali* and he had, in fact, carried out his investigations. But the point still is that there is the delay caused by the Chief Kathi having to go from one place to another and the guests having to wait for his arrival.

170. So would you then be satisfied if, in fact, the inquiry is left with the Chief Kathi but that the actual solemnization of the marriage could be done by any Kathi after the Chief Kathi has given his verdict that it can be solemnized? Would you be satisfied with that set of circumstances? — I suggest that the Kathis be given all the powers.

*Chairman*] No other questions. I do not think we can proceed any further.

*Mr. Byrne*] Except on the question of convenience, Sir. Surely if the parties want to get married, they know the Chief Kathi has got an official address. He has got a diary and he can always fix an appointment for them. Say there are two parties. One is a girl without a *Wali* and she wants to get married. There is no difficulty for her to make an appointment with the Chief Kathi a week before the marriage is to take place. He can make the inquiries and then go round and marry them. What is the difficulty about that?

*Chairman*] I think the witness has answered that. He has said that the Chief Kathi should suit the convenience of the parties to the marriage. They should not suit the convenience of the Chief Kathi. That is what he has said.

*Mr. Byrne*] It is inescapable in the nature of things, Sir, that if this power is to be placed in the hands of one person, then he has got to make the necessary appointments.

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*Chairman*] That is what I have said. It has been answered. The witness has said, "Do not give the power to one person. Give it to all the Kathis, so that there will not be this inconvenience

caused to the parties." That is his point. Any other questions, Mr. Minister?

*Mr. Byrne*] That is all, Sir.

*Chairman*] Well, thank you very much, Inche Ali, for coming.

*(The witness withdrew.)*

Inche Shaikh Maarof bin Mohd. Jarhom attended and was examined.

*Chairman*

171. Come in. Can we please have your full name just for the record? — *(Inche Shaikh Maarof bin Mohd. Jarhom)* My name is Shaikh Maarof bin Mohd. Jarhom.

172. First we must apologise very profusely to you for having kept you waiting for such a long time. These matters are matters of great importance and we have had to take a little longer than we expected. Now, Members of the Select Committee have with them copies of your representation which was received on the 10th February\*? — Yes.

173. Your first representation is in regard to polygamy? — Yes.

174. And you set out in your paragraph, which you numbered, firstly, what you consider would be the requirements before a man should be permitted to take more than one wife? — Yes.

175. The details you have put in that paragraph are your own opinions. Is that right? They are not contained in any book of law? — Those are my suggestions. They are my views based on religious principles.

176. So that when you say that a man should not take unto himself a second wife unless he earns more than \$250 a month, that is your own opinion? — Yes. But that refers to conditions under which he could take a second wife.

177. The question of polygamy is touched on in the proposed new section 7A, which says

"(2) No marriage shall be solemnized under this Ordinance if the man to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage, except by the Chief Kathi who shall before solemnizing the marriage satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

Do you agree that the power to solemnize such marriages should be vested in the Chief Kathi? — According to religion, if such a power is to be given to only one particular person, then that is going to lead to difficulties.

178. Can you please explain the difficulties? — If the power is given only to one particular individual, then various unpleasant things could arise.

179. What are the unpleasant things? — For instance, there is the case of people who have to wait at various parties for the Chief Kathi to make his rounds. On the other hand, if all Kathis are given the power to solemnize polygamous marriages of this nature, then that inconvenience may not arise.

180. Can I enlarge on that first? Where is the inconvenience? Where is the delay? — Whether it be the Chief Kathi or any other Kathi, he will have to obey the same law, the same set of rules. Therefore, there is no necessity for the power to be given only to the Chief Kathi.

181. The question was the delay. Are you saying then that if there is to be an inquiry, the inquiry is made on the same day as the marriage ceremony, which then results in the delay? — The difficulty is that if the Chief Kathi alone

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were to be given that power, then he would have a lot on his hands and difficulties might thus arise. If the power is to be given to the Chief Kathi, why not straightaway give the power to the President of the Shariah Court?

182. We will come to that later on, but what I am trying to get at is this question of complaint about delay. You have not answered my question as to whether the inquiry-if there is to be an inquiry-is to be made on the day of the marriage? — That is one of the reasons.

183. Now, to get over that objection, would it not be better for the inquiry-if there is to be an inquiry- to be held well ahead of the day of the wedding? - If it will not cause any inconvenience to the parties concerned, that will be preferable.

184. What inconvenience do you visualise? — Where there are several marriages to be solemnized in one day, and the Chief Kathi alone has to make his visits to the various places.

185. That is something different. That is the actual solemnizing of the

marriage. When it comes to making inquiries, which is well before the date of the marriage, there can be no question of inconvenience? - I do agree but after the Chief Kathi has carried out his inquiries, why is it that no other Kathis are allowed to solemnize the marriage except by the Chief Kathi alone?

186. That is the question. Supposing the provision remains, that the inquiry must be made by the Chief Kathi alone, but that the solemnizing of the marriage may be by any of the other Kathis, what would be your reaction to that? — I would support it.

187. Having reached that stage, we can adjourn conveniently now. I would like to explain to you, Inche Maarof, that the Select Committee have agreed to sit till 12 o'clock and it is now past 12 o'clock. We have apologised to you for starting late. We cannot finish with your representation today. Could you come tomorrow at 3.15 p.m.? We will try not to keep you waiting? — I am ever ready to come.

*Chairman*] Thank you very much.

*(The witness withdrew.)*

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FRIDAY, 11TH MARCH, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)

Dato Abdul Hamid bin Haji Jumat.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.

Inche Mohd. Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

Inche Mirza Abdul Majid, President of the Muslim Welfare Association, attended and was examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

188. Your full name is Mirza Abdul Majid and you are the President of the Muslim Welfare Association? — (Inche Mirza Abdul Majid) Yes.

189. Members of the Select Committee have copies of your representation dated 10th February, 1960\*. The first point you make is on the Ordinance itself, that is, section 4 of the Ordinance. You suggest in the first instance that subsection (3) should be amended from:

"The letter of appointment shall -  
(a) be in such form as the Governor prescribes;"

to

"The letter of appointment shall-

(a) be in such form as the Yang di-Pertuan Negara prescribes;"

But Inche Majid, perhaps you do not know that an amendment has already been made: instead of the Governor prescribing the form, it is now the Minister who prescribes the form? — No.

190. If that is so, are you satisfied with the subsection which now reads: "The letter of appointment shall-

(a) be in such form, as the Minister prescribes;"

Will that satisfy you? — As the Head of State is the Yang di-Pertuan Negara, I think it would be better if he prescribes the form.

191. Do you know that the Yang di-Pertuan Negara only acts on the advice of the Cabinet? — Yes.

192. So what difference does it make? — Although he is so advised, I think it would be better if he does it himself.

193. Again you make the same suggestion on section 4 (3) (b). I might inform you that there is also an amendment. Subsection (3) (b) now reads:

"The letter of appointment shall-  
(b) be signed by the Minister;"

You suggest that it should be signed by the Yang di-Pertuan Negara? — Yes, signed "by Command of the Yang di-Pertuan Negara".

194. Signed by whom? — Let the Minister sign it. I have no objection to that.

195. But you would like it to be "by Command of the Yang di-Pertuan Negara"? — Yes.



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196. Supposing the Yang di-Pertuan Negara is not a Malay? - **I think the Yang di-Pertuan Negara, as the Head of State, will give it more due consideration than the Minister, who is a person with political ideologies.**

*Chairman*] Any questions?

*Inche Mohd. Ali bin Alwi*] No.

*Dato Abdul Humid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff bin Suradi*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*

197. Inche Majid might like to know that the letter of appointment must be in such form as the Minister prescribes and it is signed by the Minister. When the letter of appointment is communicated to a Kathi, it will be the Minister who will have to state that His Excellency the Yang di-Pertuan Negara has appointed so and so to be a Kathi; so that, in fact, this would facilitate the work of His Excellency. There is a form of appointment prescribed in the Schedule for the appointment of a Kathi which states that so and so is hereby appointed by His Excellency the Yang di-Pertuan Negara to be a Kathi for Singapore. The appointment is not made by the Minister but by the Yang di-Pertuan Negara? - **Yes, I have no objection. The political situation in some of the newly independent countries has progressed in a different way. As the Minister cannot be free from political ideologies, I think it would be better for the people of the State of Singapore if the Head of State were given the right to have a say in each and every sphere of public activity.**

*Chairman*

198. Under section 4 (1):

"The Yang di-Pertuan Negara may appoint any male Muslim of good character and position and of suitable attainments to be the Chief Kathi and may similarly appoint suitable Muslims to be Kathis."

So the final appointment, whether the Yang di-Pertuan Negara acts on advice or not, is with him. What the Minister is indicating is that in the form of appointment, that is stated. That being so, is it then necessary to burden the Yang di-Pertuan Negara further by asking him to sign that form? - No.

199. You are satisfied? - Yes.

*Mr. Byrne*

200. So that the Minister is only a channel of communication in so far as the appointment is concerned? - I have no objection to that. What I would like to say is this. Today it is this Minister; tomorrow it may be another Minister. But as I said, it would be good for the people of the State. In some countries-I do not want to mention those neighbouring countries which have broken away from the British Commonwealth on achieving independence-the political developments have disappointed the people in a very —

*Chairman*

201. Let us not go deeply into that. The point is this. You say that it is for the good of the country that the Yang di-Pertuan Negara should sign those forms? - No.

202. It is good for the country that the Yang di-Pertuan Negara should appoint. That is what you are saying? — It would be better if that is so.

203. It is so. Now, the Yang di-Pertuan Negara appoints. You are then satisfied? — Yes.

204. So long as that fact is stated in the form, you are satisfied? - Yes.

205. Your next representation is on section 4 (5). The present subsection, in fact, reads:

"Me Yang di-Pertuan Negara may at any time at his pleasure by a notification in the *Gazette* cancel such appointment."

You suggest that that should be amended to read:

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"The Yang di-Pertuan Negara may at any time at his pleasure by a notification in the *Gazette* cancel such appointment, whenever the holder - of such appointment prove incompetent or unsatisfactory in the discharge of his duty in accordance to law of Islam and/or good name of the Society and Islam."

Is there any necessity to add those words? — Yes, if it is possible, because in our view it would be better if the subsection were worded in that way. The holder of the position will be secure and at the same time it will do more good.

206. But do you not think that the Yang di-Pertuan Negara would not cancel an appointment without some good reason? — You must realise that we are now a new State with self-government and we must proceed step by step.

*Chairman*] Any questions? — No.

*Inche Mohd. Ali bin Alwi*] No.

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff bin Suradi*] No.

*Inche Yaacob*] No.

*Mr. Byrne*] I would just like to point out to Inche Majid that the words used are:

"The Yang di-Pertuan Negara may at any time at his pleasure by a notification in the *Gazette* cancel such appointment."

The cancellation of an appointment is at the pleasure of the Yang di-Pertuan Negara, and one could expect that, before deciding to exercise discretion in such a matter, he would have due regard to the matters which have been raised by Inche Majid in his proposed amendment to the subsection.

*Chairman*

207. Do you appreciate that? — Yes.

208. We come to your next representation on the question of *wali*. You wish the entire section 7 (3) to be changed. The present subsection reads:

"Where there is no *wali* of the woman to be wedded or where a *wali* shall, on grounds which the Chief *Kathi* does not consider satisfactory, refuse his consent to the marriage, the marriage may be solemnized by the Chief *Kathi* but before solemnizing such marriage the Chief *Kathi* shall make enquiry as prescribed in subsection (2) of this section."

Your first point is that you wish that a first inquiry should be by any *Kathi*, and not by the Chief *Kathi* alone. Is that right? — Yes.

209. Why do you say that? — It will be good for the masses because there should be no distinction between *Kathis*. If they are recognised as *Kathis*, then they should be given an opportunity to administer the Islamic law.

210. Your point then is that any *Kathi* should first decide whether the refusal of a *wali*-less marriage is satisfactory or not. You say that any *Kathi* should be given the power to do that. You then say that in so far as the other inquiries are concerned—correct me if I understood you wrongly—which the Chief *Kathi* is enjoined to make in order to satisfy himself that there is no lawful obstacle according to the law of Islam to such a marriage, they should be made by the President of the Shariah Court. Is that it? — Yes I am not satisfied that a *Kathi* should be given the final authority to act as a *wali* where there is no *wali*, because that is a miscarriage of justice. From my 35 years' experience in Singapore. I have found that it is an injustice done to the persons concerned and also to the good name of Islam, because *Kathis* are not relatives of the parties concerned and they do not care what happens to them the next day. That is why I boldly say that no *Kathi* should be given that power, but I do respect the decision of the President of the Shariah Court.

211. Shall we go slowly? If a girl has no *wali*, what do you suggest should happen? — The case should be referred to the President of the Shariah Court.

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212. First, there must be an application to the Court? - Yes.

213. Then you suggest that the President of the Shariah Court makes an inquiry to find out whether there is any lawful obstacle according to the law of Islam. Is that correct? - Yes.

214. Once the President is satisfied that there is no lawful obstacle, then what is the next step? - Then the marriage can be performed by any *Kathi*.

215. Say the President gives a certificate, then any *Kathi* can perform the marriage? - Yes.

216. There will be no *wali* then even for that marriage? - We have the Shariah Court now, but if there were no Shariah Court, I would say. "Let it go before a Magistrate, because I know he will make a proper inquiry before a decision is made." But a *Kathi* will never do it.

217. Let us visualise your idea. First, there is an application made by a woman who has not got a *wali* to be married. She goes to the President of the Shariah Court who makes his inquiry. Then he certifies that there is no lawful obstacle. With that certificate, the woman or the bridegroom goes to a *Kathi* and the *Kathi* then performs the ceremony of marriage. At that marriage, must there not be a *wali*? — The President of the Shariah Court makes inquiries and when he is satisfied, he will issue a certificate. That certificate will be valid.

218. That is quite right, but for the purpose of solemnizing a marriage, must there not be a *Wali*? — There is no *Wali* for the reason that the case has been referred to the President of the Shariah Court for investigation, and he has given his approval.

219. So in your view, there is then no necessity to have a *Wali Hakim*? — He does nothing.

220. It is not necessary to have a *Wali Hakim* for a marriage? - No, because if the President of the Shariah

Court has given his decision, I think that is good.

221. You think it is good but you are not certain that that is the Muslim law? - The Muslim law is for minors. What we want is that the parties concerned should not be deceived or find themselves in difficulty later on.

222. Just one second, please. We must be quite certain about this. Shall we take *Shafei* law - that is the law which is common in Malaya? You are under the impression then that in *Shafei* law, where a woman has no *Wali* in the ordinary sense of the word, there need not be a *Wali Hakim* when her marriage is solemnized after she has received a certificate from the President of the Shariah Court. That is your impression? - Yes. The position is this. The *imam* takes the place of the *Wali* when there is no *Wali* available.

223. That is a different thing entirely. You say now that the *Kathi* who is to perform the marriage will be the *Wali*? — Yes. He should not be a *Wali* as well as the *Kathi*.

224. He should not be a *Wali*? — He should be the *Kathi* only but not the *Wali* at the same time.

225. Let us come to the solemnizing of a marriage. At the marriage itself, there must be somebody to act as a *Wali*, otherwise it would not be a proper marriage? - The *Wali* is a blood relative, like a father or an uncle. It is for the protection of the bride. The Shariah Court will investigate.

226. We are talking about a woman who has no *Wali* in the ordinary sense of the word, and she gets the permission from the President of the Shariah Court? - I think the Shariah Court, after satisfying itself, will give the certificate. That certificate would do more good than if an *Imam* were to become a *Wali Hakim*.

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227. So you are under the impression then that the details of the wedding do not in such circumstances require a *Wali Hakim*? — If the President of the Shariah Court is satisfied, not otherwise.

*Inche Mohd. Ali*

228. Can the witness say why, instead of having any Kathi to act as a *Wali Hakim*, he would prefer to have a letter from the President of the Shariah Court saying that any Kathi can solemnize a marriage?

— My contention is this. From my experience, I find that a Kathi does not give much thought to his responsibilities as a *Wali* to the bride. I believe that a magistrate will take into consideration all the facts about an applicant and will give a proper decision. I believe that when an application is made to the President of the Shariah Court, he will go deeply into the matter, and if he is satisfied he will then issue a certificate. That would be more useful and preferable than if a Kathi were to take the place of a *Wali*. Of course, I have no authoritative knowledge of this.

*Chairman*

229. You think then that a Kathi would not look so deeply into the matter as the President of the Shariah Court would? — Yes.

230. And would you say the same thing of the Chief Kathi, that he would not look as deeply into these matters as the President of the Shariah Court? — Yes, the same thing.

231. In spite of the fact that the Chief Kathi is now, in fact, paid a salary by the Government? — I still consider that the President of the Shariah Court would be more suitable to judge the matter.

232. Let us go a little slowly, because some Members wish a translation. At the moment, we have got the position where the witness suggests that if there

is to be an inquiry as to whether there is no lawful obstacle, according to the law of Islam, in the case of the marriage of a woman who is without a *Wali*, then that enquiry should be made by the President of the Shariah Court? — That is my submission.

*Chairman*] The President then is to certify that there is no lawful obstacle, and any Kathi, on the strength of that certificate, should be allowed to solemnize the marriage. The witness considers that in such a case his understanding of the law is that there need not necessarily be a *Wali Hakim*. And he considers that if the duty of inquiry is vested in a Kathi, or even in the Chief Kathi, that inquiry will not be in such detail or so thorough as an inquiry by the President.

*Inche Mohd. Ali*

233. I would like to ask another question. As I see things at present, the necessity for a *Wali Hakim* in a second marriage is to prevent Muslim girls from being victimised by other Malays who are non-Muslims. You have said just now that any Kathi, after receiving a letter of authority from the Shariah Court, should be allowed to solemnize any marriage. If that is the case, can you tell me who is to be blamed in the case of a marriage that ends in failure, or that later on someone complains that the investigation was not carried out thoroughly? Is the Kathi who performed the marriage or the President of the Shariah Court to be blamed for this? — Of the many marriages that have taken place, I have not come across any instance where the Kathi is held responsible for a mistake on his part. To protect the custody of the girl who is unfortunate in not having a *Wali*, the President of the Court, or any person connected with the Court, should look into the matter thoroughly for the benefit of the person concerned. The Court official is in a better position to investigate thoroughly than any Kathi, or the President of an organisation, or any influential person.

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*Chairman*

234. The question was, whose fault do you think it would be if something goes wrong? Who is to be blamed if the marriage went wrong—the President of the Shariah Court, or the Kathi who solemnized the marriage? — The President of the Shariah Court, as an official of the State, should look into the question very thoroughly and should not perform the marriage unless he is fully satisfied.

235. So your answer then is that it will not be the fault of the Kathi? — No.

*Inche Mohd. Ali*

236. Since that is your answer, is it in accordance with the Muslim law that, since we find that the President of the Shariah Court has issued the authority, and may be according to the law of Islam he is wrong, is it proper or improper for the Government to punish him by dismissing him? — If the President has made a blunder, the person affected will go to the Government and complain. He will say, the law official has done him an injustice, and there is a limit. But in the case of the Chief Kathi or any Kathi, he would say, "I have done my duty according to the law of Islam, and I cannot be responsible for anything that happens later. I have done my job—to perform the marriage—according to the law." In the case of the President of the Shariah Court, there will be Minutes, there will be a record. At any stage, anybody can go and look into the records. If the Government passes this Bill, it will become law and then there will be a procedure of inquiry.

237. Your point is that you think that the President can deal with these matters more thoroughly and that if he is proved incompetent, it is up to Government to remove him? — Yes.

*Dato Abdul Hamid*

238. In other words, listening to what you say, you are trying to tell this Committee that where a woman has not

got a lawful *Wali*, i.e., she has not got a father or brother or uncle, then the matter will be referred to the Shariah Court for investigation, and having investigated, any Kathi can perform the marriage ceremony without the *Wali*?

— According to the Islamic law, if the certificate is produced, on the strength of it the Kathi is given the power to perform the marriage. That is approved by the Shariah Court, because the woman has no *Wali* of her own.

*Chairman*

239. Would you be surprised if we are advised that in *Shafei* law, it is in fact necessary to have a *Wali Hakim* in this case? — In that case, the *Imam* plays the role of the *Wali*.

240. When you say "*Imam*", is it the Kathi who solemnizes the wedding, and the Kathi who solemnizes the wedding will also act as *Wali*? — All the time, up till now.

241. That is not the same as what you have been telling us? — Up till now, the practice in Singapore, as far as I know, is that the Kathi who solemnizes the marriage acts as a *Wali* as well.

242. And it is necessary for him to do so? — Yes, according to *Shafei* law. But I would say that, if the Shariah Court is empowered to do this, it will be to the advantage of the *Shafei* people and the people concerned.

243. That is in so far as the inquiry is concerned? — Yes, then there will be two principals.

*Dato Abdul Humid*] One other question which I wish to ask is probably a personal question, Sir.

*Chairman*] My suggestion to Members is that perhaps in such a case an impersonal approach would be better. In fact, all questions asked should be through the Speaker.

*Dato Abdul Hamid*

244. Will the witness be able so confirm that he belongs to the Hanafi school of thought? — Yes, of course. I know I am a Hanafi. I do not deny it.

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*Chairman*

245. Do not get excited. I do not think there is any hidden meaning. What the Member just wants to know is whether you are versed in the *Shafei* law? - I know, but I am not an authority on it. I must admit I am saying it as a Muslim, with 35 years' residence here, and my wife is a *Shafei*.

246. Your wife is a *Shafei*? - My wife is a *Shafei*. My children are *Shafei*. I am not going to say anything further about this.

*Chairman*] Che Ismail, any question?

*Inche Ismail*] No questions.

*Inche Mohd. Ariff*

247. The witness has said that the inquiries carried out by a Kathi or even by the Chief Kathi will not be as thorough as those carried out by the Shariah Court. Why is it required that the inquiries should be carried out by the Shariah Court? — From my experience, if anybody makes an application to a Court official, the Court official will not take it so lightly as the Chief Kathi would. From my personal experience, I know that if anybody approaches a Kathi and invites him to his house, the Kathi will say, "All right. I am the *Wali*. Carry on." But in the case of a Court official, he will never commit himself. He will look into the application and make a record of everything available at a later stage or at any stage. And if anything crops up, then the public can go to the Government and say, "There you are. The President of the Shariah Court is not helping the Muslims, the *Shafei* people." That serves as a safeguard.

*Chairman*

248. You suggest that the reason for that is that the President of the Shariah Court is a paid official? — He is a paid official as well as a Court official, because the President of the Shariah Court is an official of the Court.

249. He is a paid official and also holds a position in the Court. You do not think that the Chief Kathi, being a paid official, will also take just as much trouble? — He will not act in the way that the President of the Court would.

*Inche Mohd. Ariff*

250. Is the witness not aware of the fact that the Chief Kathi is himself a Government servant, and he now and then gives his views to the President of the Shariah Court? — I have no complaints against the Chief Kathi. My point is, I have come here to speak what I consider to be good for society, for the Muslims and for the country. Because this legislation is intended to bring about improvements, and happier results would be obtained. Because the President of the Shariah Court, as a Court official, can solicit the co-operation of the Social Welfare Department, the Police, and many other Government departments—these are auxiliaries to the office of the President—he is the best person to obtain help from other Government departments to see that the interests of the applicant are protected, and to see that there is no hearsay evidence. I can say that a Kathi will readily give his consent through hearsay evidence only.

*Chairman*

251. You are talking of the Chief Kathi who is a paid official. You say that the Chief Kathi will also give his decision on hearsay evidence? — If one or two or five men would speak to him, he would believe, but not the Court.

*Inche Mohd. Ariff*

252. I am not for a moment suggesting that you are against the person of the Kathi. What I am saying is this: you have said earlier that no Kathi, even the Chief Kathi, will be able to carry out his inquiries as thoroughly as can the President of the Shariah Court. So in view of the fact that the Chief Kathi is now a

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Government official, he is an official who carries out his work on behalf of the Government and he does now and then help the work of the Shariah Court? - Yes, he may help the President of the Shariah Court; I have no objection. If the Government want to make him a superior officer, I have no objection. If the Government want to make him the Deputy Yang di-Pertuan Negara, I would still have no objection.

*Chairman*

253. Can I just say what you have in mind, and that is, I think you have made it quite clear that the President of the Shariah Court, having all the means at his disposal, will be, in your opinion, more thorough in his investigations than the Chief Kathi. That is your point? - Yes.

*Inche Baharuddin*

254. I think the witness will agree with me that in any department, there are certain officials doing certain jobs. Does he agree? - Yes, but I am not too sure, as I am not in the Government. But my point is —

*Chairman*

255. Can I just interrupt? The answer is just "yes" or "no"? Does the witness know that an official in a Government department has a certain job? Does he agree with that? - Yes.

*Inche Baharuddin*] On the question of marriages, the Chief Kathi performs specific duties in respect of marriages. Does he agree with me on that point?

*Chairman*] The Chief Kathi performs specific duties in connection with marriages where there are no *Walis*, is that it?

*Inche Baharuddin*] No. Any marriage, where the Chief Kathi is the head, and under him there are other Kathis.

*Chairman*

256. Do you agree that the Chief Kathi has specific duties to perform in regard to all marriages? - I do not agree.

257. Suppose it is an ordinary marriage performed by a Kathi. The Chief Kathi has nothing at all to do with it—that is your impression? - My comment is this. According to Islamic law, when a Kathi is given authority to act as a Kathi, he should be given equal rights.

258. He should be, but in the present context of Singapore, do you say that ordinary Kathis are completely independent of the Chief Kathi in so far as solemnizing marriages is concerned? You say that that is so? - Yes.

*Inche Baharuddin*

259. If we are to merge the duties of the President of the Shariah Court with those of the Chief Kathi—in other words, the duties of the President of the Shariah Court are in respect of Muslim divorces and controversial matters arising out of Islamic law—those matters come under the purview of the President of the Shariah Court and matters coming under the jurisdiction of the Chief Kathi are matters concerning marriages—if we are to integrate these duties, does the witness then consider that such an integration would really be good, or does he not consider that that would cause more difficulties? - Excuse me, I am making a suggestion for the consideration of the Select Committee. If the Government of this State want to help and remedy the defects for the good of the people, then I think, if one man is not sufficient in the Shariah Court, Government should let him have another assistant. That is a matter for the Government. What I say is this: if the Government want to have legislation for the good of the Muslims, then I think it is the Court official who will be working full-time. He should look into the matter, not part-time officials or somebody else.

*Chairman*

260. So in your opinion, if it is left to the Chief Kathi to make inquiries, it would not be to the good of Singapore? - It would not be.

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*Inche Baharuddin*] According to the functions of the department, we have got the Chief Kathi to look after marriages. The Chief Kathi is a Government official paid by the Government, and he is one of the officials in the *Shariah* Court. Whereas the President of the Court has got specific duties. If we were to ask the President to investigate marriages, *Wali Hakims*, and others, in my opinion, I do think the witness will agree with me that it would be creating a heavier burden or giving one person more functions and letting the other person just sit down and shake his legs.

*Chairman*] I think the position is quite clear. The witness has given his opinion, and that opinion is not shared by the Member for Anson. Therefore, we must leave it at that. We should not enter into a debate if there is one opinion expressed by the witness and another opinion by a Member.

*Inche Yaacob*

261. Would the witness agree with me that the President of the *Shariah* Court is the highest authority of the Court? — At the moment, it is the same as before the legislation was enacted. I think he is, but I do not think he will be the final authority in all Islamic matters. There must be someone superior to him.

*Chairman*

262. The question is, in Court duties, that is the *Shariah* Court, the President is the highest authority? — Yes, at the moment.

*Inche Yaacob*

263. Does Inche Majid not agree that in the case of *Wali Hakim*, if the President of the *Shariah* Court were to refuse permission for the marriage to be solemnized, would that not impose a greater burden on the applicant in that he might have to apply to a higher authority? — Yes. He can apply to the Minister, the Yang di-Pertuan Negara

or to the superior court. If the aggrieved party is dissatisfied, the Government should form an Appeal Board. That should be the only authority to decide. There must be some other appeal authority.

*Inche Yaacob*] As far as I know, the *Shariah* Court is not constituted like the other Courts, in that whereas in the other Courts you can appeal to the higher Courts, in the case of the *Shariah* Court you have no *higher* court to appeal to.

*Chairman*

264. There is no appeal court as such. Do you agree with that? — There must be one.

265. Under section 39 (1) of the Ordinance there is a reference to the Yang di-Pertuan Negara. It reads:

"The Yang di-Pertuan Negara may in his discretion call for the record of any proceedings before the Court, the Registrar or *Kathi* and may order any decision to be reversed, altered or modified."

That is the appeal you are thinking of, is it not? There is a reference to the Yang di-Pertuan Negara? — There is.

266. And it may well be that there may be an appeal to the Appeal Board? — Yes. I appeal to the Government to make the necessary amendments to the Appeal Board.

267. To the Appeal Board? — Yes.

*Inche Yaacob*

268. My point is that in the case of the *Shariah* Court, the avenue for appeal would be rather limited. If there is any appeal against the decision of the *Shariah* Court, it goes to the very top of the appeal authority; whereas in the other courts you have various other subsidiary stages. So that what I would say is this. Preferably it should be the *Kathi* or the Chief *Kathi* who makes the decision. Then if there is to be an appeal against that decision, it could go to the *Shariah* Court, and then it could



go further up? - We want things to be done in the right and proper manner, for the good of all. Why should it go from here to there, and from one group to so many groups? Why from the *Kathi* to the Shariah Court, and then to the Appeal Court? It is limited. We want the outcome to be good. We want to have good results. That is my suggestion. I am not going to say it must be adopted. I am appealing to the Committee. My views are here. If the Committee is satisfied, it can take my views into consideration.

*Chairman*

269. Perhaps the witness is getting a little bit tired! Do not imagine that this Committee is against you, Inche Majid. What they are trying to do is to understand your point of view, and to ask you to try to understand their point of view. It is a question of trying to understand each other's point of view. Do not think that the Committee is here to be antagonistic towards you. Your point is, as you have said, that you have a very strong feeling that if these inquiries are left to the President of the Shariah Court, we could get better results than if they are left to the Chief *Kathi* or any *Kathi*. That is your opinion for what it is worth, and if the Select Committee does not agree with you, you cannot help it? - Yes.

*Inche Yaacob*

270. What would be the witness's view if the Chief *Kathi* is given all the facilities enjoyed by the President of the Shariah Court for carrying out the inquiries? - The Chief *Kathi* has a specific job as head of the *Kathis*. He should remain out of this matter, because if anything crops up, there must be some consultation with him. But if he comes into the picture, with whom is the Government going to consult?

*Chairman*

271. The question is this. You have already said that it is the President of

the Shariah Court who gets your vote, because you think he has got all the facilities possible to make a thorough inquiry. The Parliamentary Secretary wants to know this-supposing the Chief *Kathi* is also given those same facilities by the Government, what will be your reaction? Would you then be content to leave matters to the Chief *Kathi*? — I would still say that I prefer the President of the Shariah Court to the Chief *Kathi*.

*Mr. Byrne*

272. Mr. Speaker, Sir, does the witness not realise that it is very important that the *Kathi*, the individual who solemnizes the marriage, should be the very same person to make the inquiry with regard to that same marriage? — What I find up till now is this. It has not been satisfactorily done by the *Kathis* in Singapore.

*Chairman*

273. That is all right. That is your theme. But the question is quite different. The question is, do you not think that it is the *Kathi* who solemnizes the marriage who should satisfy himself, by due inquiry, that there are no legal obstacles, assuming that the inquiry is an appropriate one? — I do not think that the *Kathi* will be able to satisfy himself in the same way as can the President of the Shariah Court.

274. I understand that. But supposing he can. Supposing he has got all the facilities and he makes just as thorough an inquiry. Supposing he does make all those inquiries and he acts judicially in those matters. Is it not better for him, as a *Kathi*, to be satisfied personally before he performs the requirement of solemnizing the marriage? That is the question the Minister has posed? — I do not think so.

275. You do not think so. Your opinion is that it does not matter who makes the inquiry. So long as the inquiry has been favourable, the certificate

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is issued, then anybody can solemnize the marriage. That is your point of view? — Yes.

*Mr. Byrne*

276. Does the witness know that just as the law has invested *Kathis* with the power to marry, the law has also placed them under certain obligations with regard to the marriages they perform? — From the past records of these people and certain others as a result of their carelessness—I can say now that many divorces have taken place, and will take place if we allow this job to continue to be done by our *Kathis*. The number of divorces will increase. That will not be good.

*Chairman*

277. That was in the past? — It will be in the future.

278. Well, that has happened in the past. For the future, all these suggestions have been made in order to plug the loopholes. The Chief *Kathi* is now paid. Therefore, he has now certain obligations to do his work right? — Yes.

279. The question is, do you not think that in those circumstances matters could be safely left to the Chief *Kathi*? — But I still prefer, if we want to get more satisfactory results and to prevent blunders, that the President of the Shariah Court should be given the power to look into these matters.

*Mr. Byrne*

280. Mr. Speaker, Sir, this discussion has turned on the marriage which is solemnized by the Chief *Kathi* when there is no *Wali* present. The witness must understand that not all marriages are concerned with this situation. The greater majority of the marriages are ordinary marriages where there are *Walis* present, and where the *Walis* do not refuse their consent. Now all those marriages are today being performed by the *Kathis*. They have certain duties. They are vested with those powers and they are under certain obligations with

regard to those marriages. They have to make a full inquiry. Is the witness happy with that situation, the situation which obtains in an ordinary marriage where there is a *Wali* present or where the *Wali* does not refuse his consent. Is the witness not happy that the power to marry should be vested in the person who actually solemnizes the marriage? Is he happy with that situation? — No. I am not happy. I think I have made further representations later on.

*Chairman*

281. You know the present position, that in a marriage where there is a *Wali*, any *Kathi* can solemnize the marriage? That *Kathi*, before he solemnizes the marriage, must also make an inquiry. He must satisfy himself that there is no lawful obstacle. Are you satisfied with that position where the *Kathi*, in those cases where there is a *Wali*, makes the inquiry himself and solemnizes the marriage? — I am not satisfied; I have made my comments.

282. Are you suggesting that that provision of the law should also be changed? — No, I do not say that. Slowly everything will be perfect. I am not going to raise the question whether the *Wali* is present or not. It is the duty of the *Wali* to protect the interest of the party concerned—the bride. Our *Kathis* are a little lenient, as I find. They consider that when everything is ready, good things should not be debarred, and they should give their consent. They cannot decide one way or the other. They are to perform the marriage when everything is ready for solemnizing the marriage. From that experience I find that if a Court official is willing to be picked for the job, it will be one from the Shariah Court. That is my request.

283. When you say that you have made further representation later on, is this the representation you mean, when you say:

"No *Kathi* to solemnize a marriage of any woman (spinster/ widow or divorcee) to any man (single/ unmarried/ widower or divorced)

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between the ages of 16 and 60 in his office or any place in the State of Singapore who will make such request secretly without the consent and presence of their blood relations and next-of-kin."

Is that what you mean? - Yes.

284. Surely in a case like that, I think the presumption is that the woman comes and says she has no Wali. Therefore, if that is so, that brings into play subsection (3) of section 7. Is that right? So we come back to the same position? - Yes.

*Mr. Byrne*

285. Does the witness seriously suggest to the Select Committee, Mr. Speaker, Sir, that where there is a *Wali* or the *Wali* does not refuse his consent - in the case of the ordinary Muslim marriage - such an inquiry should be made by the President of the Shariah Court? - No.

286. Why does he say no? — If the *Wali* is there, and he does not refuse, then there is no conflict. If I am going to say what I should like to say before this Committee, then I will be going against the very principles of the *Shafei* school of thought.

287. My point, Mr. Speaker, Sir, as I have emphasised it, is this. Does the witness not consider it right and proper that the very same official or the same person who solemnizes the marriage should be the very same official to make the inquiry? That is the point I am making? - But you are going to bring about improvements, Sir, and for that reason. I stress that if you entrust a court official to do just as the Social Welfare Department is doing —

*Chairman*

288. You consider that it would be an improvement if the inquiry is made by the President, but you would not seriously argue against the proposition made by the Minister, that generally it would be better for the Kathi who

solemnizes the marriage to satisfy himself that there are no legal obstacles to the marriage. That is all the Minister is proposing, that the same man should first satisfy himself before he performs the ceremony? - That is what I say. If there is no *Wali*, I still dispute it; but in the case of *Wali*, I do not say "no".

*Mr. Byrne*

289. Mr. Speaker, Sir, in the case of an ordinary marriage, it is the ordinary Kathi who makes the inquiry before he solemnizes the marriage. Would it not be an improvement in the case of a woman to be wedded who has no *Wali*, or where the *Wali* has refused his consent, that the person to make that inquiry before the marriage is solemnized should be the Chief Kathi? Is that not an improvement? - No, that is not an improvement. That is not what I think. From my experience, what I find is this; if you are going to bring about improvements, you have got the Social Welfare Department machinery to help not only the Muslims but also everybody; but in the case of the Shariah Court, you are helping the Muslims. I think you should make use of the President of the Shariah Court to close the loopholes and correct the defects.

*Chairman*

290. Why give more work to the President? Supposing the Chief Kathi can do all that, with the machinery that is available to the President at his disposal, as suggested by the Parliamentary Secretary. What then? - If the Government wants to do that, I cannot do anything.

291. You do not like it? - No.

*Mr. Byrne*] We on this side are fully with Inche Majid in his desire that there should be a full and proper inquiry. And we say, Inche Majid, that under the present system in cases where there is no *Wali* or where the *Wali* refuses his consent, the inquiry is made by the Chief

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Kathi, and then he can make a decision. He has got to make up his mind whether he will marry or he will refuse to marry. That is the position, is it not? The Chief Kathi today can either say, after inquiry, that he is going to solemnize the marriage, or he can say, "Well, I am not going to solemnize the marriage." Is that not the position?

*Chairman*

292. I think he has agreed on that. That is the position in law? — Yes.

*Mr. Byrne*

293. Now, I want to inform Inche Majid that it is proposed on this side of the House to amend section 14 of the Ordinance to provide an appeal from the decision of the Chief Kathi. Say the Chief Kathi either refuses to marry or decides to marry. The aggrieved party can, under the amendment that we propose, appeal to the President of the Shariah Court against the decision of the Chief Kathi. We will so provide. And going on from there, when the President of the Shariah Court has made a decision, if the aggrieved party is still dissatisfied, he can go from the President of the Shariah Court to the Appeal Court. Would that satisfy the witness? — I have not much objection. But what I say is that our Kathis are of the old school. We want to bring about improvements, and the old school will not be so helpful. That is my point.

294. Under the present system, there is no appeal from the decision of the Chief Kathi to the President of the Shariah Court, and from the President to the Appeal Board. Now, the only revision that is possible is to bring the matter to the attention of the Yang di-Pertuan Negara. When he comes to know about it, he can make a decision reversing the order. But we now propose this system of appeal. Would not the very fact that there is this system of appeal ensure that proper inquiries are

made by the Chief Kathi? — Yes, he may, but what I have said is that from the experience which I have gained, I still believe it will not be so satisfactory. Since the Government is going to help the people, and since the Government has got the will and the machinery to help, I am suggesting that the Shariah Court would be more appropriate.

*Chairman*

295. Let us be quite clear; you fear that the Chief Kathi will not make a proper investigation even though he knows there is a chance of appeal from his decision to the Shariah Court, and from the Shariah Court to the Appeal Board, and finally, maybe, to the Yang di-Pertuan Negara. In spite of that, and in spite of the fact that the Chief Kathi may be given all the machinery available to the President of the Shariah Court to make the inquiry, you still think that he will not be thorough in his investigation, and you stick by that. He will not be good? — Yes.

*Mr. Byrne*

296. Mr. Speaker, Sir, if there is an appeal from the decision of the Chief Kathi to the President of the Shariah Court, and the President of the Shariah Court finds that there was no proper inquiry made by the Chief Kathi, he would, in his decision, draw attention to that, and the Chief Kathi would run the risk of, say, being removed from office. Does the witness realise that? — Yes, I realise that.

*Chairman*

297. Would that not make the Chief Kathi a little more careful? — What I mean is that I am afraid that the Chief Kathi would approve most of the applications. In the case of the Shariah Court, rejections will be more than approvals. If there is to be an approval, there would be a very thorough investigation by the President, since he is a public official, and the party concerned would benefit.

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298. Your point is that, in spite of everything, the Chief Kathi or any Kathi would still tend to be lenient? — Yes, he would tend to the lenient.

299. And once the marriage takes place, it is, of course, too late? — Yes.

*Mr. Byrne*

300. Does the witness know that the Chief Kathi and the Senior Kathi are today paid officials, that they work full-time for the Government? They do not now receive fees for the marriages that they perform? — Yes. I know.

*Chairman*

301. Shall we pass on to the next representation, which is on the new section 7A (2), which provides for polygamous marriages? It says:

"No marriage shall be solemnized under this Ordinance if the man to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage, except by the Chief Kathi who shall before solemnizing the marriage satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

Now you in your suggestion seem to imply that the inquiry in this particular case could be made by any Kathi, and that the marriage could be solemnized by any Kathi. Have I understood you correctly? — Yes.

302. So in this case you are satisfied if the inquiry is made by a Kathi, whereas in the other case, which we have been talking about, where there is no *Wali*, you insist that the inquiry should be made by the President of the Shariah Court. Is that correct? — Yes.

303. Why do you make that distinction? — I have given the reason in my representation previously.

304. What is the reason? — I said, "except by giving prior notice of 30 days stating all the grounds to a Kathi who shall before solemnizing the marriage satisfy himself after proper enquiry to the law of Islam to such marriage." In

this case, I am giving 30 days' notice. not at any time according to the convenience of the man, and not privately.

305. So that if a Kathi, you say, is given 30 days within which to make the inquiry, you are satisfied in so far as inquiries for polygamous marriages are concerned. Is that right? — Yes.

306. Supposing we put it the other way. If the Chief Kathi or a Kathi is given 30 days' notice of a marriage of a woman without *Wali*-30 days within which to make an enquiry would that satisfy you? — The business of the *Wali* is to protect the interest of the bride concerned-her future life- and this is quite a different thing.

307. Do you not think that it is just as important for the second wife to be equally protected? That a woman should not become a second wife unless certain requirements of Islam are present? Do you not think so? — That is why I say notice of 30 days must be given. It must be done publicly and not privately. At a later stage, I have something more to say in this connection.

308. You advocate then that when an inquiry is made into an application from a man to take unto himself a second wife, there should first be a complete disclosure on paper of his means and so on and so forth; and, secondly, a public inquiry? Are you advocating that? — Yes.

309. You are advocating that an inquiry can be made by a *Kathi*? — Yes.

310. I have not got your distinction. What is your distinction between this type of case and the case of a girl without a *Wali*? I have not understood that yet? — My opinion is that when Kathis are given the authority to act as Kathis, they should be given equal powers. There should not be any distinction in that.

311. We are not arguing that at the moment. What I am trying to get is your distinction between the case where a man

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applies for permission to take unto himself a second wife, and the case of a girl who is without a *Wali*. In the second case, the girl without a *Wali*, you say it is of such great importance that you would like a court official to inquire? — Yes.

312. Now, in the case of a second wife, you say it is all right if a *Kathi* inquires, not necessarily the President. Do you not think that both cases are of equal importance? — The second case is more important than the first case.

313. So the second case is important because you are looking after the interests of the girl without a *Wali*? — Yes.

314. And the first case is not so important because the interests of the second wife are not so important? — It is important. But according to our Islamic way of plural marriages sometimes — can I quote an authority?

315. Yes? — You know the position today of Soraya, ex-Queen of Persia?

316. Let us not go into foreign affairs now. I think we will leave it at that. You now advocate that in the case of polygamous marriages, any *Kathi* should be given the power to solemnize. That same *Kathi* must make due inquiry and that inquiry could be made after receipt of a 30-day notice in which all the grounds for the marriage are stated by the applicant. That is your point? — Yes, so that it will not be a secret marriage. Sometimes these plural marriages are done secretly, so the other party—the first wife—will not know that her husband is going to have another wife.

317. And you further advocate that the inquiry should be in public? — Yes.

*Chairman*] There will be very few polygamous marriages! Inche Mohd. Ali?

*Inche Mohd. Ali*] No, Sir.

*Dato Abdul Hamid*] No questions.

*Inche M. Ismail Rahim*) No.

*Inche Mohd. A Riff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*

318. Mr. Speaker, Sir, Inche Majid has now considered the marriage of a woman who has got no *Wali* to be very much more important than the marriage of a woman who is to be a second wife. Why does he say that one is more important than the other? What grounds has he for believing that? — According to our Islamic law, the Muslims are entitled to a plural marriage, which is a benefit. But often people take a mean advantage of this. That is why today we are against these plural marriages. That is also why this law is being enacted now. But we still do not want to deprive Muslims of their freedom in cases where the wife is sick. What I mean is that the *Kathi* will be given some directive as to why an application for a plural marriage should be approved.

*Chairman*

319. I am sorry to interrupt you, but I think the question is quite a simple one. The question is this. Taking the woman's point of view, you have said that the marriage of a woman without a *Wali* is much more important than the marriage of a woman who becomes the second wife of a man? — Yes.

320. We are taking the point of view of the women. Is it not just as important to the woman in the first marriage as it is to the woman in the second marriage? — It cannot be taken as equal, Sir. Because the second wife is not blind. If it is publicly made known.

321. She is not blind? — The second wife should be thoroughly acquainted with the husband's matrimonial status—whether he is single or

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married. If she knows the husband has already got a wife and she wants to "decorate" him again, well, that is her own funeral.

322. But the point is this: is it not very important to her that the law of Islam should not be broken in the second marriage? - No, Sir, because the Government is trying to help each and every woman to help herself. By this legislation, the Government is helping the women. But nowadays, second marriages are still taking place secretly and, there is no question of any inquiry. The Government should force an inquiry. But if the woman, who is going to be the second or third wife, knows everything about the man, and she still wants to marry him, although he already has a wife, then I think nothing can stop her.

323. But the decision is not the woman's to make. The decision is with the person who makes the inquiry? — No, that is *the Kathi*. The man who is to make the inquiry should tell the party concerned, "Well, this is the position of the applicant, and if you want to marry him then this will be the result." If the person concerned still wants to marry, then I think nobody should interfere.

324. Is that the Islamic law? My impression is quite different. Supposing the *Kathi* finds Mr. A cannot afford to keep two wives. Mr. A has got wife B, he wants to marry another one, C. The *Kathi* after inquiry finds that Mr. A cannot afford it. He says, "I think you cannot afford to keep C." In spite of that, Inche Majid, you say that C can say, "Well, I still want to marry A," and the *Kathi will* marry them? - As a result of the investigation, the *Kathi will* tell the bride-to-be, "This is the position of your husband." The *Kathi will* be forced to disclose all the facts of the party concerned. And if the woman still insists that she wants to marry a husband, who is a bankrupt, after knowing all the facts, then regulations should be made about this plural marriage. My

idea is this. If the Government approves it, then there will be some rules and regulations by which investigations should take place. They are not to be left to the whims of the *Kathi*. The Government will make some rules.

325. We all understand that, Inche Majid. But I am trying to get your understanding of the law. This is *Shafei* law and *Hanafi* law. I am sure it must be the same? - Yes.

326. Let us take my example again. A is married to B. A wants to take unto himself another wife, C. The *Kathi* makes the inquiry and finds that it is a fact that A is earning a meagre salary and, therefore, he will not be able to support two wives, B and C. He makes that point? - Yes.

327. Are you telling us then that your appreciation of the Islamic law is that, in spite of that, if C desires to be married, the *Kathi will* then marry A and C? Are you saying that? Yes or no? - But if the *Kathi* is not satisfied he will refuse.

328. That is exactly what I am trying to point out. Even if C desires to be married? - She will refer to the court.

329. She will appeal probably? - No. The findings of the *Kathi*, which are not favourable, will be reported.

330. Say it has gone right up to the highest authority and the highest authority still says, "A, you cannot afford two wives." But C says, "I still want to marry A." Will any *Kathi* marry them? — No *Kathi will* do so.

*Chairman*] Well, that is exactly what we want. After all that, we have got your answer.

*Mr. Byrne*

331. Mr. Speaker, Sir, would the witness agree that in the interests of Muslim women themselves it will be desirable that proper inquiries be made

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before they are to become second wives; that it should never be made too easy for such marriages to be solemnized? Does the witness agree to that? - Yes.

332. That would be an improvement? — Yes, that is what I mean.

333. The witness agrees that that is so? — Yes, I agree.

334. Mr. Speaker, Sir, the proposal that we have in mind will give effect to that intention, not the proposal that Inche Majid suggests. Would the witness agree that that is so? — But what I -

*Mr. Byrne*] Can I put it to the witness very clearly? Under the system that he contemplates, the *Kathi* is to be invested with this power. We propose that only the Chief *Kathi* should, after inquiry, solemnize the second marriage. Why do we suggest that? Because if it is left to the *Kathis*-say, a Muslim wishes to take a second wife. He can go to one *Kathi*, *Kathi A*. *Kathi A* may say, "Oh, no. You should not take a second wife." He is disappointed. He then goes to *Kathi B* and so on. He may eventually get one *Kathi* who will say, "Yes, I will marry you."

*Chairman*

335. Can I just stop the Minister there, and point out that the witness has indicated that he wishes this inquiry to be held in public, so perhaps that point is met there. A person goes to *Kathi A*. *Kathi A* must make a public inquiry, and we presume then, of course, that the public inquiry will attract the attention of all *Kathis*. I think that point has been made? - Yes.

*Mr. Byrne*] A public inquiry in what sense, Mr. Speaker, Sir?

*Chairman*] A public inquiry as to whether this man has the means and whether there are no obstacles under the Islamic law to his taking a second wife.

*Mr. Byrne*] I cannot see how the *Kathi* can hold that public inquiry unless he advertises the fact in the papers and says, "On such and such a date, so and so has applied to me for permission to take a second wife. Has anybody got objections to that? If he has, will he come forward and make the objection?"

*Chairman*] That was the suggestion by the witness. I do not think we can pursue it any further.

*Mr. Byrne*] That is so.

*Chairman*

336. Shall we go ahead then, Inche Majid, on to your other recommendations or representation? You say:

'(1) The present amount of "Mahr" (Mas-kawin) offered by a husband to a wife is very poor and should be adequately increased so as to keep the marriage bond very happy and safe as that of an anchor to a ship.'

Would you say that the law should lay down what should be the minimum *mas-kahwin*? — Yes.

337. What would you suggest to be the minimum? — At least three months' gross income of the wage-earner.

338. At the date of marriage, I suppose? - Yes.

*Chairman*] Any question on that?

*Inche Mohd. Alt*] No.

*Dato Abdul Humid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd A riff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*

339. Is it the witness's own view or is it based on the Islamic law? — I think that has been the practice in India which has now been divided into two countries. It is the practice of about 100 million Muslims in India.

*Chairman*

340. It is part of the law of India and Pakistan? — Yes. They are now divided.



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341. It is in both India and Pakistan that there is, in fact, this provision in law, is there? - In practice. Each and every Muslim has his dowry as such.

342. Is it three months' gross income? - More, Sir. I am suggesting -

343. At least three months' gross income? - Yes.

344. And you say that it is the practice in India and Pakistan? — Yes, in India and Pakistan. But it is more than this amount.

345. You say, "at least". And you say that it is only by practice, and there is no force of law? - In each and every marriage.

346. It is by practice only. There is no law. Are you suggesting that we should write it into our law? - Yes. That is also done in the marriage contract.

347. Inche Majid, please listen to me. In India and Pakistan you say it is by practice. There is no force of law but only a contract if they agree to sign an agreement? - It is just like here. In each and every Muslim marriage, there is a marriage certificate and it is stated in that agreement.

348. Are you suggesting that this suggestion of at least three months' gross income should be written into the Bill? - That has not been done in —

349. But are you suggesting that it should be done here? - They have not done so in India and Pakistan.

350. And you want Singapore to give the lead? - If the Government and the Muslim community want it.

351. I just want to know what you want. Are you suggesting that the Select Committee should write that provision into the Bill or leave it to practice? - If possible, I would request that it be enacted in the Bill.

*Inche Yaacob*

352. Does the witness not realise that most of the Muslims in India and Pakistan are of the *Hanafi* school of thought? - Yes. But what I want to say is that we are here to help the Muslims and to decrease the number of divorces. If the Minister wants to bring about improvement to the Muslims, and see that marriages are continued happily with less divorces taking place, then this is one of the good ways by which divorces can be minimised. Otherwise it is just like-I cannot express this very strongly because I am afraid my comments will not be very happy.

*Chairman*

353. Your comments may be out of order? - As I find that some of my Muslim brothers consider that I am of the *Hanafi* sect. That is why I am a little bit cautious.

*Inche Yaacob*

354. I can appreciate the witness's point of view. But what I fear is that if we were to accept his suggestion, then the ultimate effect would be that there would be more prostitution, instead of the good effects that he aims for, because the amount of the *mas-kahwin* will be beyond the means of most people. Therefore, people would resort to prostitution more than to marriage? — Excuse me, Sir. As a Muslim and as a human being, I think we want to give respect to womanhood. Do you think women are to be treated like chattels as in the days of the Prophet?

*Chairman*

355. Shall we not go back to history? I do not think the Member has suggested what women are chattels at all? - No, but prostitution, Sir -

356. He has suggested that if the *mas-kahwin* is set at too high a figure, there will be less possible marriages and, therefore, some women who cannot get married might resort to prostitution.

Do you agree? — No. We want to change this unhappy situation. We want the Muslims to prosper. We want happy results to be achieved for the good of society and the country. As the Government is enacting this law with the idea of helping the Muslims and the women, we must see that justice is done. Whatever effort we make, unless the root of the trouble is removed, there will be no happy result. Marriages here cost a lot of money. But it is rather strange that the *mas-kahwin* is not even equal to the fees of the *Kathi* today. I understand that the fee of a *Kathi* is \$30 whereas the *mas-kahwin* is only \$22.50. It is ridiculous as it does not even amount to a day's taxi fare. Do you think our wife or mother or daughter is so cheap? If we do not increase -

357. That is not the point? — But what I say is —

358. Just one second. That is an argument for increasing the *mas-kahwin*. What the Member fears is that if you raise the *mas-kahwin* too high-he has suggested your figure is too high-then the result achieved might not be the happy result you are hoping for. The result might, in certain cases, be just the opposite. It might be that certain girls cannot find husbands and, therefore, they might resort to prostitution. I think that is the only point the Member is trying to make? - Excuse me, Sir. This dowry is not to be given in cash at the marriage. It is a credit. If it is given in cash, then if it is even \$10,000, the marriage will still go to the rocks the next day.

359. I see. Your suggestion then is that your *mas-kahwin* will not be a lump sum. It can be by instalments? — No. What I mean is, it is a credit-*mas-kahwin hutang*. That will be an end for all time. Supposing I am in a bad temper and I want to say goodbye to my wife, then she will say, "Mr. Majid, come on, my dowry money." Then I will say, "I cannot afford it. All right, please forgive me."

*Inche Yaacob*

360. I wish to point out that *mas-kahwin* is the right of the woman and not that of the husband? — Yes.

361. And if the woman so prefers, she can waive *mas-kahwin*? — Yes.

362. So if we legislate that *mas-kahwin* should be at such and such a figure as you suggest, then that it where the difficulty would lie? — No, excuse me. What I said is "hard property." It is the hard share of the *mas-kahwin* that belongs to the woman. What I say is, if the husband is in a bad temper and wants to divorce his wife, this will offer a balance because at that time he will not be able to pay that amount. It will take time.

*Chairman*

363. But I think the point is this. Do you agree or do you not agree that *mas-kahwin* is a woman's right? - Yes.

364. And, therefore, the fixing of *mas-kahwin* should be left to the woman. Do you agree or do you not? - But a woman has no voice in society up till now. They leave it to the elderly people - the *Walis* and the *Imams*. The *Imams* will utter the citation of the Holy Prophet, "Oh, it was from time immemorial"

365. Shall we not go on to the Koran now? So your point then is that, although *mas-kahwin* is the right of the girl, in fact, the *mas-kahwin* is arranged not by the girl but by her relatives and the *Kathis*? — Yes.

366. And you would like written into the law some provision whereby the *mas-kahwin* should be not less than a specific figure. Is that right? — Yes. But for a businessman it should be more. For a wage-earner, the minimum figure is three months' gross income.

*Mr. Byrne*

367. Mr. Speaker, Sir, the intention of Inche Majid in suggesting this increase of the *mas-kahwin* was in order that the

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marriage bond can be "very happy and safe as that of an anchor to a ship"? — Yes.

368. The Member for Bukit Timah (Inche Yaacob) has already pointed out that, far from having that result, Sir, if you make the *mas-kahwin* high by increasing it, you are actually going to make marriages more difficult. The result would be as he has already indicated? — Certainly not, Sir, because this money is not to be given in cash. The wife will be able to ask for it as long as the marriage continues.

369. My point here, Mr. Speaker, Sir, is this. I agree that divorces should not be made easy. That is what Inche Majid is indicating all the time. That is why he wants the *mas-kahwin* to be increased? — Yes.

370. But the effect of it, as the Member for Bukit Timah has pointed out, Sir, is that if you increase the *mas-kahwin*, it is going to make marriages more difficult? — Excuse me, Sir. If it is well advertised and the truth is spoken, 100 per cent of the women will ask for it. But at the moment, as the society stands, no girl will speak at the marriage solemnization ceremony. She never speaks. To tell the truth, can any Member say that our wives have demanded the *mas-kahwin*? It is left entirely to the *Walis*. The *Walis* and the *Imams* fix it. It is the old custom.

371. Mr. Speaker, Sir, the Bill provides that where a woman is divorced, she will be eligible for maintenance, for the return of *mas-kahwin*, even in the case where it is *mas-kahwin Hutang*. Then also she would be eligible for a consolatory gift or *matta'ah*. There are damages for divorce. Now, would that not have the effect of making divorces difficult and producing the result that the witness wishes to produce? — If that

is also allowed then it will bring benefits. I am only suggesting. I am not going to say that my request must be carried out. But I am only suggesting something to remedy the existing defects. That is one of the reasons, Sir, why many men in a temper divorce their wives. If they are fined, they say, "Never mind. Let her go. I have tasted her already. She is nothing. I can get another wife." But if there is a dowry, then —

*Chairman*] Let us not go into such details now. Mr. Minister, anything further?

*Mr. Byrne*] No, Sir.

*Chairman*

372. We have already dealt with No. (2)\*, your second point? — Yes.

*Mr. Byrne*] Except the exception made by Inche Majid that persons under the age of 16 and over 60 are not to be married.

*Chairman*

373. The question the Minister wishes to ask is this. Why do you wish to fix the age from 16 to 60? Supposing a man of 61 wants to marry secretly. Is that all right? — After 60, women are not fertile.

*Mr. Byrne*] The witness's representation reads

"to any man ... between the ages of 16 and 60."

He does not place any restrictions on the woman but on the man.

*Chairman*

374. Your representation reads:

"No *Kathi* to solemnize a marriage of any woman (spinster/ widow or divorcee) to any man ... between the ages of 16 and 60

You confine the ages to the man? — I mean to confine the ages to the woman.

\*No. (2) reads as follows: —

"No *Kathi* to solemnize a marriage of any woman (spinster/ widow or divorcee) to any man (single/ unmarried/ widower or divorced) between the ages of 16 and 60 in his office or any place in the State of Singapore who will make such request secretly without the consent and presence of their blood relations and next-of-kin."

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375. I see. Sixteen is the age of marriage? - The reason is that below the age of 16, no marriage is legal.

376. So your age of 60 refers to the woman? - To the woman.

*Mr. Byrne]* The representation should then read:

"No *Kathi* to solemnize a marriage of any man .. to any woman (spinster/ widow or divorcee) between the ages of 16 and 60 ...".

*Chairman*

377. That is right. If a woman is over the age of 61, you are not worried about it at all? - That is right.

*Chairman]* Shall we go on to your next representation No. (3)\*? It is really a representation on a Rule. It has nothing to do with the Bill, but with the Rules promulgated under the Ordinance. You suggest that a marriage certificate should have all those particulars which you have stated in your sub-paragraph (3).

*(The witness withdrew.)*

*I* presume that will be noted by the Minister because, as you will appreciate, it has nothing to do with the Select Committee. The Select Committee is dealing with the Bill. I am sure that will be noted by the Minister, is that correct?

*Mr. Byrne]* Yes. I only want to point out that as regards the information now required to be furnished in the prescribed form, there are, I think, 29 different matters to be stated.

*Chairman*

378. Perhaps if you get a copy of the form and make direct representations to the Ministry, I am sure the Minister will give them due consideration? - Yes.

379. Thank you very much, Inche Majid. We have kept you a little longer than we expected? — Not at all.

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Inche Shaikh Maarof bin Mohd. Jarhom attended. Further examination adjourned to Wednesday, 23rd March, 1960, at 10 a.m.

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\* No. (3) reads as follows:

"The clauses in the marriage contract should be clearly stated in print (in Malay -Jawi and Rumi with English translation) and these are to be stated in the marriage certificate and duly signed by the parties (husband and wife) and the witnesses and the *Kathi*. Any such clause not agreed by the party can be deleted at the time of solemnizing the marriage contract before the *Kathi*. We agree what was printed by the outgoing President of the Shariah Court (Inche M. T. Suhaimi) as stated in the *Singapore Straits Times* Press dated the 19th January, 1960 in page 6 under the heading: "Muslim Marriage Certificate ...". We would also recommend further clauses such as: "habitual drunken mischieves, indulgence in crimes and continually violating Muslim way of life, etc." for happy and satisfactory married life for the good of the society and Islam."

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WEDNESDAY, 16TH MARCH, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)

Dato Abdul Hamid bin Haji Jumat  
 Inche Baharuddin bin Mohamed Ariff  
 Mr. K. M. Byrne

Inche Mohd. Ariff bin Suradi  
 Inche M. Ismail Rahim  
 Inche Yaacob bin Mohamed

ABSENT:

Inche Mohd. Ali bin Alwi (with apologies)

Inche M. K. Shariff, c/o St. John Ambulance Headquarters, 25 Gilstead Road, Singapore, attended and was examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

380. Come in; do sit down. For the record, can we have your full name?

— (*Inche Shariff bin Mohamed Kartawi*) Shariff bin Mohamed Kartawi.

381. You have given your address as c/o St. John Ambulance Headquarters. What are you there? — I am a Staff Officer.

382. Would you like to speak in Malay or in English—you have the choice? — I speak Malay better.

383. Now, Members of the Select Committee have had with them copies of your representation dated 19th January, 1960\*. Your first representation appears to be in connection with plural marriages. Is that correct? — Yes.

384. That representation takes in the first three paragraphs † of your letter? — Yes.

385. The relevant clause dealing with that subject is clause 3 of the Bill, which suggests a new section 7A. Am I right when I say that your representation is directed to the new subsection (2) of that new section? Have you got a copy of the Bill? — No.

386. Perhaps we can read section 7A at page 2 of the Bill—clause 3:

"(1) *No* marriage shall be solemnized under this Ordinance *if* the woman to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage.

(2) *No* marriage shall be solemnized under this Ordinance if the man to be wedded is married under any law, religion, custom or

\* Appendix II, p. BI.

† The paragraphs read as follows:

"1. Although every Muslim (Islam) is permitted by religion to have more than one wife but not more than four, I say here that for every Muslim who wishes to have his marriage solemnised at the residence of a Kathi, the Kathi must investigate whether the person already has a wife.

2. Any person is permitted to have more than one wife according to Islamic conditions provided that the person must be in a position whereby he is able to provide maintenance and conjugal relationship.

3. Before a marriage is solemnised or a marriage ceremony proceeded with, the person in authority (Tuan Imam) must carry out investigations concerning the man's income."

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usage to any person other than the other party to the intended marriage, except by the Chief Kathi who shall before solemnizing the marriage satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."?

- Yes, that is correct.

387. So that your representation really suggests that this plural marriage could be solemnized by any Kathi who could be given the power to make full investigations that, briefly, is your representation? - Yes, that is so.

388. What is your objection to this power being given solely to the Chief Kathi? - The reason for my suggestion that there should be a special Kathi to carry our investigations in respect of these marriages is that in the past it has been the practice for Kathis not to carry out their duties as thoroughly as *they* should have done. They did not go to the extent of making full inquiries as to whether the person concerned was already married, or whether the information given to them, was correct or not.

389. So you do agree that there could be one special Kathi to make the special investigations, is that correct? - Yes.

390. Why should that special Kathi not be the Chief Kathi? — He could be any Kathi provided he is entrusted with specific duty of carrying out investigations into matters such as these.

391. You have no objection if the Chief Kathi is the special Kathi that you envisage? - No, I have none.

392. Having gone thus far, would you object to the Chief Kathi also being given the sole power to solemnize the marriage? - I would not.

*Chairman*] Any questions?

*Hon. Members indicated dissent.*

*Chairman*

393. Coming to your next representation, that is, paragraph 4, which is in connection with divorce, you say:

"With regard to "Divorce", no Kathi should give the decision to effect a divorce and the matter must be brought before the authorities.

My intention, by this, is so that it would not be easy for Muslims to divorce their wives without getting a final clarification."?

- Yes.

394. By "authorities", do you mean the Shariah Court? - Yes.

395. The present position is that a Kathi is, given the duty of registering divorces? — Yes.

396. He does not, in fact, effect a divorce? - I would like to elaborate on my suggestion at paragraph 4 of my letter. In the matter of divorce, whether it be before the Chief Kathi or the Shariah Court, the matter should be carefully investigated into and reports from both parties should be carefully considered. It is only after weighty consideration by either the Chief Kathi or the Shariah Court that *talak* will then be pronounced.

397. The present position is as contained in the Ordinance, i.e. section 12, subsection (3), where it says:

"A Kathi shall not register any divorce unless he is satisfied that both the husband and the wife have consented thereto."

That is the present law. Are you not satisfied with that? - I have the opportunity of coming across this relevant provision in the law only today. But from past experience, I can tell of a particular case in which my own sister was involved—she made a report to a Kathi and without much investigation on) his part, the husband was allowed to declare *talak* on the wife. That is an instance which I have experienced myself.

398. So you want to prevent any husband from declaring a divorce before a proper inquiry is made by, shall we say, the Shariah Court or the Chief Kathi? - Yes, that is so.

399. As far as you are concerned, you are not satisfied with the present position of the law in regard to divorce, is that correct? - Yes.

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400. You would rather the Shariah Court-shall we confine ourselves to the Shariah Court, or would you say the Shariah Court or the Chief Kathi?- effect a divorce? - My suggestion is that either the Shariah Court or a sub-committee be appointed to consider and investigate into matters of divorce before any final decision is arrived at.

401. At the moment, only disputes as to divorce go to the Shariah Court. You know that, do you not? - Yes.

402. If the Shariah Court is given power to make decrees in respect of divorce, whether there has been a dispute or not, you will be satisfied, will you not? - I agree.

403. You do not fear that that might go against the tenets of the law of Islam? - I am not conversant with Islamic law, but I have made suggestions for the purpose of achieving results which I think will be beneficial to the community and to the welfare of the people concerned.

*Chairman*] Any questions?

*Dato Abdul Hamid*] No questions.

*Inche Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yacob*] No.

*Mr. Byrne*

404. Mr. Speaker, Sir, I think you have pointed out the distinction that, as far as divorce by consent is concerned, the Kathi only registers the divorce. But where there is a dispute in regard to a proposed divorce, then the matter is dealt with by the Shariah Court. Does the witness understand that question? - Yes.

405. And the Shariah Court also can make decrees in respect of divorce such as *pasah*, *talak*; or *khula* on application by the party concerned? - Yes.

406. So that there is provision in the law that decrees in respect of divorce may be made after all parties have been

heard and after full inquiries have been made? - Yes.

*Chairman*

407. Am I right in saying that the point you are trying to make is that even in the case of divorce by consent, there should be a proper decree made by the Shariah Court? - The point I am trying to drive at is this: in the past, I do know that, I had a quarrel with my wife. I went to a Kathi and place the matter before him, and then he said, "Go home and think the matter over." But if I were to produce \$30, the whole matter would be resolved. This is what I want to guard against in the future.

408. The law of Islam, as far as I understand it, is that the husband is entitled to say his *talak*-nothing can stop him from doing that, is that right? — That is true. But if we are to allow such a state of affairs to be prolonged, then there would be many divorces and many women would be made *janda*.

409. So you are really advocating some change in the basic law of Islam? - As I have explained, my knowledge of Islamic law is not thorough and my suggestions are therefore open to the Committee to accept or to reject. But my main intention is to avoid the frequent instances of divorces; that the matter of divorce should not be regarded lightly and that it should be given due weight of consideration so as to avoid divorces and women becoming widows very easily.

*Mr. Byrne*] I think the witness has made this point-that before a divorce is registered, where a party has consented to such a divorce, there must be full and proper inquiries made. Now, we accept that position, and to ensure that that is so, Mr. Speaker, Sir, we provide for an appeal from any decision of the Kathi against the registration of a divorce. In the case of a divorce by consent where there has been a registration by the Kathi, but in fact one of the parties subsequently alleges that there

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has been no true consent, I am advised that that appeal can be brought to the Shariah Court.

*Chairman*

410. If there is a dispute. I think it is clear from the Ordinance. I think the witness understands it. The point, I think, is that the witness really wants some sort of machinery whereby there can be reconciliation before the husband completes his divorce? — Yes, I agree with that. You have further said that divorce should be avoided, if at all possible, by means of reconciliation. If reconciliation could be effected, that would go a long way to preventing divorces, because divorce is a serious matter, and in the heat of anger both parties tend to forget themselves and lose control of themselves. Therefore, there should be some means whereby reconciliation could be effected.

411. At the present moment, in cases where the matter comes before the Shariah Court, the Shariah Court can appoint *a Hakam*. You know that, do you not? — Yes.

412. It has been suggested in the Bill that there should be an amendment to say that

"The *hakam* shall endeavour to effect a reconciliation between the parties and shall report the result of their arbitration to the Court."

— Yes.

413. You would like to see that go a little further. You would like to see that we apply it to all cases of divorces? — That is so.

*Mr. Byrne*] Mr. Speaker, inquiries by all Kathis as to consents, whether there is full consent, and so on, are judicial proceedings for the purposes of the Ordinance, and I think the instructions can go from the Chief Kathi to the Kathi to ensure that, when he is registering a divorce by consent, he takes steps to try, as far as possible, to effect a reconciliation between the parties first. Perhaps it can be done administratively.

*Chairman*

414. I think the point that is worrying the witness is that-maybe I am wrong, but that is my understanding of it-under the Islamic law, whether the wife likes it or not, the husband can divorce. There is nothing to stop the husband from divorcing. When it comes to the registration of the divorce, the Kathi cannot register it except where he is satisfied that the husband and the wife have consented. But the divorce could still take place without the wife's consent, according to the law of Islam. The witness wants to stop that sort of thing. Am I right? — That is so.

415. If only it is possible, under Islamic law, you would like to see some provision whereby the husband goes before, shall we say, the Shariah Court before he starts pronouncing his *talak*. Is that right? There would be an opportunity for the Shariah Court to appoint *a hakam*? — That is so.

416. Of course, you do appreciate that it might be difficult to do that under Islamic law? — My suggestion is, therefore, for the Committee to try and consider the best way to effect such an objective.

*Mr. Byrne*] Mr. Speaker, Sir, I do not think we propose to interfere with Islamic law as such, that the husband would be free to pronounce *talak* in his own home without being required to do that before the Kathi or the Shariah Court, but we are trying to ensure that divorces are not treated light-heartedly. For that reason, we have provided in the Bill that in cases where there are divorces, the married woman who is divorced has a claim to maintenance, *mas-kahwin*, or consolatory gifts. That is provided for in the amendment to section 36.

*Chairman*

417. You do appreciate that? — Yes. I quite appreciate that any husband can declare *talak* on the wife at home and that there is nothing to prevent him.



But as I have said, the main intention of my suggestion is to make divorce difficult, and to make people realise that divorce is something which is not a matter to be considered lightly. It is a matter which should be considered very weightily.

418. You do agree that, as far as the civil authorities are concerned, they can go thus far and no farther where Islamic law is concerned. What you are advocating can really be achieved by education. Do you agree with that? — I do.

*Chairman*] Are there any more questions?

*Mr. Byrne*] No.

*Chairman*

419. Coming to your next representation, your paragraph 5 reads:

"At the conclusion of a marriage ceremony officiated by a Kathi, the marriage certificate must be given to the bridegroom there and then, without further delay."

The present law is section 17. It says:

"On the completion of the registration of any marriage, divorce or revocation of divorce the Kathi shall upon application deliver to each party to the marriage, divorce or revocation of divorce a copy of the entry duly signed and sealed with his seal of office."

In the case of a marriage, you suggest that the Kathi should give the marriage certificate, whether there is an application or not? — I suggest that after the ceremony is over, the certificate be issued to the party.

*Chairman*] Any questions?

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*

420. Do you consider that on the application for a marriage certificate, there will be an opportunity for corruption? — The reason for my suggestion is that in February last, in the case of the marriage of my brother, after the marriage ceremony had been performed, an

application was made to the Kathi for a copy of the certificate of registration. But the Kathi put it off to the next day, and again to the next day, and up till now the marriage certificate has not been received.

*Chairman*

421. The Kathi then has been committing a breach of the Ordinance? — I would like the Committee to consider whether or not my suggestion is sound, namely, immediately after the marriage ceremony is over, a copy of the marriage certificate be given to the parties concerned without application.

*Chairman*] That happens in a Christian marriage, does it not?

*Mr. Byrne*] That is so.

*Chairman*] Any other questions?

*Mr. Byrne*

422: Only this, Mr. Speaker, Sir. The marriage is registered. That is the point about the marriage. All that the parties want is a copy of the registration that has been effected. Some people may not want the marriage certificate. They are content that the marriage is registered. If they do want a certificate, I think they should request it? — My suggestion is solely for people who want a copy of the marriage certificate. For those who do not want it, they can do whatever they like with it.

*Mr. Byrne*] Anyway, Mr. Speaker, the matter can be dealt with administratively.

*Chairman*

423. The Minister does appreciate that another way in which it could be dealt with is by inserting a new clause in the Bill. You can do it administratively, or by inserting a new clause in the Bill. Your next representation, Inche Shariff, is on the question of "*Pasah*". You say:

"With regard to *Pasah* no Kathi should grant a *Pasah* upon receipt of complaints from a wife. The final decision from a woman should not be admissible unless made through the Shariah Court."

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At the present moment, under the present law, the wife has the opportunity of going to the Shariah Court for an application for divorce, known as *Pasah*? — Is it the case that on a wife going to the Shariah Court with an application for *Pasah*, no investigation is carried out?

424. Yes. Look at section 32. The application is made by the woman, and the Court is bound to do certain things under the section. One of the things is to give notice to the husband to appear. Then under subsection (5), whether the husband appears or not—

"The Court shall then record in a book to be kept for that purpose the sworn statement of the woman and of at least two witnesses, and may then, if satisfied that the provisions of the law of Islam have been complied with, make such order or decree as is by the law of Islam lawful."

— I was not aware of the existence of this provision until now, but the reason why I made the suggestion is that there was a case involving my own friend. In that particular case, his wife made an application for a *Pasah* to a Kathi, after her husband who was a sailor had not returned for a year. The husband had not been communicating with her for a year. After the necessary period was over, the wife married another man. Then the husband turned up and found that his wife had already obtained a *Pasah*, and was already married to another man. That is what made me bring up this suggestion in my representation. But now I am fully satisfied that there is already provision in the law to see to such a thing; as you have said just now, such provision has already been legislated for.

425. Do you have a specific case where a Kathi has accepted or registered an application for a *Pasah*? — Yes.

426. When? — Two or three years ago. My suggestion was made because I had not seen this particular provision in the law, but now, after I have heard

the relevant provision mentioned, I am quite satisfied with that provision of law.

*Mr. Byrne*] There is also a note, Mr. Speaker, Sir, in memorandum No. 1. The translator's note reads:

'"*Pasah*" means dissolution or annulment of a marriage (by judicial decree).'

*Chairman*] That is the ordinary meaning of the word.

*Chairman*

427. You do know then that since the passing of the Muslims Ordinance, which was on the 25th of November, 1958, a Kathi is not permitted to register a *Pasah* decree? — Not to my knowledge.

428. And the word "*Pasah*" itself means a dissolution or annulment of a marriage by a judicial decree? — Yes.

429. And you are now satisfied? — Yes.

*Chairman*] Are there any questions?

*Hon. Members indicated dissent.*

*Chairman*

430. Now, your final paragraph 7 reads:

"After a divorce has taken place the question of payment of maintenance, if the wife has children, should be decided upon. Maintenance must be fixed according to the husband's income and be paid through the Shariah Court."

— Yes.

431. In so far as the married woman is concerned, that has already been provided for? — Yes.

432. In so far as the children are concerned, there is recourse to the Civil Courts, apart from the Shariah Court. Are you satisfied? — Yes.

*Chairman*] Any questions?

*Hon. Members indicated dissent.*

*Chairman*) Thank you very much, Inche Shariff.

(The witness withdrew.)

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Inche Sulaiman bin Haji Siraj of 150 Robinson Road, attended and was examined.

*Chairman*

433. Do come in. Sit down, please. For the record, your name is Sulaiman bin Haji Siraj? — (*Inche Sulaiman bin Haji Siraj*) Yes, Sir.

434. Members of the Committee have received copies of your representation dated 25th January\*? — Yes.

435. Would you like to speak in Malay or in English? — May I give my evidence in Malay?

436. Certainly, by all means? — Thank you very much.

437. Your first representation is in connection with a Deputy Chief Kathi. You consider it would be beneficial if a Deputy Chief Kathi be appointed to carry out all the duties of Chief Kathi under certain circumstances? Is that correct? — That is so, Sir.

438. Under the present law, that is section 4, subsection (6):

"In the event of the Chief Kathi or a Kathi temporarily leaving the Colony or being temporarily incapacitated from performing the duties of his office the Yang di-Pertuan Negara may appoint a suitable person to officiate in his appointment."

Are you satisfied with that? — I was actually not aware of this provision in the Ordinance. That was why I made the suggestion that there should be someone to relieve the Chief Kathi in his absence.

439. Now that you know that there is this provision in the law, are you satisfied with that provision or do you want to go further and say that a Deputy Chief Kathi should be appointed in any event? — I would like my suggestion to stand, that is, that a Deputy Chief Kathi be appointed.

440. But this Deputy Chief Kathi then would only act if the Chief Kathi were not there. Is that it? — That

was the original idea. But even so, I would say that, considering the population of Singapore, a Deputy Chief Kathi should nevertheless be appointed.

441. You do say in your representation "At all other times ...", that is, when the Chief Kathi is available.

"At all other times the Deputy Chief Kathi could be given the duty of assisting in work of a suitable nature in the office of the Chief Kathi or in the Shariah Court."? — Yes.

442. And you do suggest that the Deputy Chief Kathi should also be paid in the same way as the Chief Kathi is paid. In the same way but not in the same amount? — Quite naturally.

*Chairman*] Any questions?

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*

443. I would like to point out to the witness, Mr. Speaker, Sir, that in fact, in addition to the Chief Kathi, who is paid a salary by the Government, Government has also appointed another Kathi who also receives a salary. He is, I think, an assistant to the President of the Shariah Court. He has an office in the building of the Shariah Court? — I have read that in the papers. But is this additional Kathi entrusted with the job of assisting the Shariah Court or is he entrusted with the job of assisting in the work that the Chief Kathi cannot perform because of the number of jobs to be done?

*Mr. Byrne*] Mr. Speaker, Sir, this Kathi is assisting both. In fact, the Chief Kathi also has an office in the building of the Shariah Court, so that the Kathi

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assists both the Chief Kathi as well as the President of the Shariah Court. It is intended that when the Chief Kathi is absent, or when he is ill and is unable to discharge his duties, the Kathi will then act as a deputy. In fact, the President of the Shariah Court held this post of Kathi until his promotion to President of the *Shariah* Court.

*Chairman*

444. Are you now satisfied? — Thank you very much. I feel relieved now to know that there is another Kathi to help the Chief Kathi in his work.

445. You do not insist that he should be called "Deputy"? — I feel it would be more appropriate if he be titled "Deputy Chief Kathy".

*Mr. Byrne*] We could look into that when considering next year's Estimates.

*Data Abdul Hamid*] Change the name!

*Chairman*

446. The next representation is on the right of appeal. You say:

"The right of appeal should also be extended to anyone against all decisions of the

*(The witness withdrew.)*

Inche Mohamed bin Omar, of No. 310 Onan Road, attended and was examined.

*Chairman*

449. Do come in. Sit down, please. Your name is Mohamed bin Omar? - *(Inche Mohamed bin Omar)* Yes.

450. Members of the Committee have received copies of your representation dated the 29th February\*? - Yes.

451. You say:

"In order to safeguard the welfare of Muslim women who are citizens of Singapore, I would be glad if the Singapore *Government* could formulate a Bill to protect Muslim women who are Singapore citizens and are married to Muslims who are not Singapore citizens, so that they are not left stranded

Chief Kathi or that of his Deputy. All such appeals should be brought before the President of the Shariah Court or before a Committee appointed by the President of the Shariah Court, for review and reconsideration. Decisions arrived at by the President of the Shariah Court or by the Committee appointed by the Court, are final."?

- Yes.

447. With the amendments proposed in the Bill, the position would be this. There would be, in fact, an appeal from every Kathi, that is, the Chief Kathi or any Kathi, to the Shariah Court in the first instance, and from the Shariah Court town Appeal Board. That would be the position as soon as this Bill becomes law. Would you be satisfied? — I am quite satisfied with the provisions as stated. My suggestion was made before I became aware of this provision.

*Chairman*] Any questions?

*Hon. Members indicated dissent.*

*Chairman*

448. Well, that brings us to the end of your representation. Thank you very much indeed? - Thank you.

by their non-Singapore-citizen husbands, without an assured maintenance for their livelihood."?

- Yes.

452. You do know that the Bill provides that the Court will have power to adjudicate upon claims for maintenance by married women? - I do.

453. " But your point is that you are afraid that even with that power given to the Court, there may be cases where a husband may run away from Singapore, and, therefore, the wife will nevertheless be left stranded? - That is so.

*Chairman*] Any questions, Dato Abdul Humid?

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*] Mr. Speaker, Sir, I think the only requirement, as far as the marriage is concerned, is that the parties are resident in the State of Singapore. So that it will be quite impossible for the Legislature to try and prohibit marriages between citizen-Muslim women and non-Muslim men.

*Chairman*] I do not think the witness has said that. He says that that kind of marriage is all right. But what he is suggesting is the question of maintenance when the husband runs away.

*Mr. Byrne*] Then we will turn the problem over to the Social Welfare Department, Sir.

*Chairman*] The Minister's point is this. It is a problem which is prevalent, no matter whether the person is a Muslim or not. It is prevalent in all communities and it is difficult to prevent such a thing happening—a husband running away without making provision for maintenance.

*Mr. Byrne*

454. In fact, Mr. Speaker, Sir, the husband who has a wife and children here really does accept the State of Singapore as his domicile, and if there are absences abroad, they are probably usually temporary. The Social Welfare Department has very seldom known of cases where Muslims who came here from India have abandoned their families here and have returned to India. The greater majority of the cases are cases where they go to India on leave with the intention of returning here. But it sometimes happens that they may die whilst they are away? — But there are cases

where people who are not citizens of Singapore are allowed to marry Muslim women who are citizens of Singapore.

*Chairman*

455. The Minister has not denied that, but the point he is making is that, in his experience in the Social Welfare Department, there are very few such cases of Indian Muslims abandoning their families in Singapore? — Most Malay women are illiterate and they do not go to the Social Welfare Department. They do not know where to go with their problems. They go to the Kathis. So if there is provision made to prevent the occurrence of such a thing, then you can be sure that such cases will not arise.

*Mr. Byrne*] The only way to prevent it is to restrict marriages between Malayan Muslim women and non-Malays and this would be undesirable.

*Chairman*

456. The Minister's point is this. The only practical way is to prevent marriages between Malayan Muslims and—as you have mentioned—Indian Muslims? — I am not suggesting that marriages between Malayan Muslims and Indian Muslims should be restricted, but what I am suggesting is that the Government should look into the matter of Indian Muslims, who are not citizens of Singapore, marrying Muslim women who are citizens of Singapore; and that any order of maintenance should be made against those people who are not permanent residents of Singapore before they return to their country of domicile.

457. Do you say that an order of maintenance should be made against them even when they say that they are coming back? — That would depend on the length of time within which such persons return. If a husband makes provision for his wife's maintenance for a month, saying that he will come back in a month, and he comes back three months later, it would mean that the wife would get maintenance for only one month.

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458. In that case, you would suggest that there should be an order of maintenance against an Indian Muslim before he goes to India. Is that right? — That is so.

459. We will take that position. The order of maintenance is made and the Indian Muslim says, "I will be back in a month's time." For how many months would you say that the order of maintenance should be made against him? — In the case of a month, an order of maintenance for at least three months should be made against him.

460. And he must guarantee payment of that maintenance for three months before he goes, is that right? — That is so.

461. Supposing he does not come back after three months, what then? — A reminder should be sent to him.

462. But if he ignores the reminder? — Then the Court should take action.

463. The Court takes action against him. Meanwhile, he is in India and the action cannot be enforced. The position after three months will therefore be the same. Do you agree that there are several practical difficulties in your suggestion? — Once we make it a law, these people should adhere strictly to it. They should consider the matter very thoroughly before they break the law.

*Chairman*] Any more questions, Mr. Minister?

*Mr. Byrne*] No.

*Chairman*] Thank you very much for coming.

*(The witness withdrew.)*

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THURSDAY, 17TH MARCH, 1960

## PRESENT:

Mr. SPEAKER (*in the Chair*)

Dato Abdul Hamid bin Haji Jumat.  
 Inche Baharuddin bin Mohamed Ariff.  
 Mr. K. M. Byrne.

Inche Mohd. Ali bin Alwi.  
 Inche M. Ismail Rahim.  
 Inche Yaacob bin Mohamed.

## ABSENT:

Inche Mohd. Ariff bin Suradi

The following representatives of the Singapore Pan-Malayan Islamic Party attended and were examined:

Ustaz Yunos bin Hassan (Committee member).

Syed Abubaker bin Al-Hadad (Member of the Dewan Ulama Committee).

Syed Junid Al-Junid (Treasurer).

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

464. Gentlemen, can we have your full names and your positions in the Pan-Malayan Islamic Party for the record? — (*Ustaz Yunos bin Hassan*) My name is Ustaz Yunos bin Hassan and I am a Committee member. (*Syed Abubaker bin Al-Hadad*) My name is Syed Abubaker bin Al-Hadad and I am a member of the Dewan Ulama Committee of the Singapore Pan-Malayan Islamic Party.

465. That is, you are a Committee member of a sub-committee? — Yes. (*Syed Junid Al-Junid*) My name is Syed Junid Al-Junid and I am the Treasurer.

466. Who will be the spokesman? — (*Ustaz Yunos*) I will be the spokesman.

467. Although Ustaz Yunos is to be the spokesman, I want the other representatives to understand that any of

them who wishes to speak may do so if he so desires. I will address my questions in the first instance to Ustaz Yunos. The Members of the Select Committee have received your letter dated 20th January, 1960\*. In that letter, you say that there was a unanimous resolution of your Party:

...that the PMIP regrets that it does not agree over the issue that only the Chief *Kathi* could perform rite over the marriage of a Muslim who wishes to marry a second wife."

— Yes.

468. Could you inform Members of the Select Committee what is the alternative you suggest? — First and foremost, I have a mandate from my Party — the Pan-Malayan Islamic Party (Singapore Branch) — to convey our gratitude to this Select Committee for the opportunity given to us to give oral evidence on our suggestions which we think would be of mutual benefit to all concerned.

\*Appendix II, p. B2.

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469. In answer to that, I am sure the Members of the Select Committee would like me to say that we are grateful to you for finding the time to come and see us. Please continue, Ustaz Yunos? - We would be very grateful if the power to solemnize marriages in respect of Muslims who wish to marry a second time is given to all *Kathis*.

470. Can you give us any reason why that is your wish? - Such marriages should not cause inconvenience to the public. The solemnization of a marriage in respect of a Muslim who wishes to marry a second time should be carried out by any *Kathi* chosen by the parties concerned. Since this is a matter which affects the interests of the Muslim community, it is only right that people who are well versed in such matters should deal with them. No restrictions should be imposed on the people who wish to contract a second marriage. These people should be guided by the words in the Koran.

471. I think you had better be quite certain in your minds that there is no attempt to deviate from the law of Islam as such. I do not think that Members of the Select Committee would agree to any attempt to do so. The point is this. A second marriage has two steps, has it not? One step is that there must be an inquiry to see that there are no lawful obstacles according to the law of Islam. The second step is the actual solemnization of the marriage? — Yes.

472. In regard to the solemnization of the marriage, I think you have already indicated that you would prefer that it should be performed by any *Kathi* chosen by the parties concerned? - Yes.

473. The question I would like you to answer is this. Would you not prefer that, in so far as the inquiry is concerned, it should be made by one specific person who, after the inquiry, would then give a certificate for the marriage?

- All *Kathis* should be able to perform the solemnization of the marriage. As far as the inquiry is concerned, it should be left to the person who solemnizes the marriage.

474. Your view is that the inquiry should be made by the *Kathi* who solemnizes the marriage? - My basis for that view is that the *Kathi* is only an intermediary. He is not necessary in any marriage. A marriage can be performed even if there is no *Kathi*, provided that all the requirements pertaining to the marriage are met.

475. You then say that, according to the law of Islam, if a man wants to take unto himself a second wife, he need not have any person to pass judgment on him as to whether or not he is offending against the law of Islam? Is that your point? - The question of making an inquiry is left to those people who are responsible for law and order. In the law of Islam, there is no requirement laid down that an inquiry ought to be made.

476. But do you not agree that it would be for the good of society anyway that an inquiry should be made? — According to the Koran, there is no requirement laid down whatsoever for an inquiry to be made about a person who is to be married. God has said in the Koran, in a particular context, in the *Surat Al-Nisa*, that there is no requirement at all for an inquiry to be made about a person who wants to be married a second or a third time. As regards the power to solemnize a marriage, it should be given to a *Kathi*. As far as the law of Islam is concerned, this is an attempt to tighten the laxity in the law of Islam. And this is also an attempt to bring the Muslim people into line with the law regarding monogamy, which is for people other than Muslims. According to the law of Islam, every *Kathi* has the right to solemnize the marriages of Muslims.



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477. Is that in the Koran itself? — It is not necessary for a *Kathi* to solemnize a marriage. Rather any Muslim, who knows his Islamic tenets and who can satisfy all the requirements for the purpose of marriage according to the tenets of Islam, can solemnize a marriage.

478. Can contract? - Can solemnize a marriage.

479. Are you saying then, for instance, that you, as a Muslim, will be able to have power under the law of Islam to solemnize a marriage between two other Muslims? - Yes, I have that right provided the parties concerned empower me to do so.

480. Assuming that that is correct—we will not debate it—the practice, however, as evolved in Singapore is that the solemnizing of marriages takes place only before a *Kathi*, is that right? Has that been the practice? — Yes, and -

481. Just a minute. I want to get this point quite clear in my mind as we do not want to go back to it. Am I right in saying that you do not advocate that you should go back to the system where anybody can solemnize a marriage? Are you satisfied that marriages may be solemnized by *Kathis*? - I will be satisfied if marriages of this nature are solemnized by any *Kathi*.

482. We now come back to the same position. What I am trying to get at is this: as far as solemnizing of marriages is concerned, you are firm in your stand that the solemnizing of the marriage must be by any *Kathi*. Is that right? - It is not a necessity. What I am saying is that the marriage shall not be solemnized by a *Kathi*, but it may be solemnized by a *Kathi* according to the law of Islam. But in this country it would be better if marriages are solemnized in the presence of *Kathis*.

483. You would not advocate then taking out any provision of the law or practice that a marriage ought to be

solemnized before a *Kathi*, is that correct? - No.

484. Now, having arrived at that stage, the next point is this question of inquiry. You, Ustaz Mohd. Yunus, I think, have urged that even the inquiry should be made by the *Kathi* who solemnizes the marriage, is that correct? - Yes.

485. Can you give us some reasons why that is so? Are you against the inquiry being made by somebody else, shall we say, the Chief *Kathi*, or perhaps the President of the Shariah Court? Can you give us any reasons why you think that inquiry should not be made by a separate person? — (Syed Abubaker) The reason why we say that is if you are to restrict inquiries to the Chief *Kathi* or the President of the Shariah Court, it will have the effect of tightening up the laxity of the law of Islam.

486. Now, in the case of a second marriage, you agree that it is of great importance to the women that there must be a certainty that all requirements of the Islamic law are present. You agree with that, do you not? - It is desirable that before a second marriage is contracted, the person wanting to contract that marriage should know all the requirements of the law of Islam pertaining to that kind of marriage. Another reason is, if after inquiry the marriage is not approved by the person making the inquiry, the party could, with the consent of the *wali* of the second wife, nevertheless contract the marriage, and then a big problem will arise.

487. Contract that marriage before another *Kathi*? — It is not necessary, according to the law of Islam, for a marriage to be solemnized before a *Kathi*. It is preferable but not necessary. So in order to avoid evil consequences, I make this suggestion.

488. You say that that type of marriage solemnized not before a *Kathi* is possible under the law of Islam. Do you

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know of any occasion where it has, in fact, occurred in Singapore? — **NO.**

489. So in a case like that, then, if it does occur, the *Wali* of the girl is empowered, under the law of Islam, to solemnize the marriage and the *Wali* himself then makes the inquiry, is that correct? — Knowing the circumstances of the matter between the man and the woman, and fearing consequences which are undesirable, the *Wali* will on such occasions solemnize the marriage himself.

490. The object of this new provision is to try and prevent second marriages from being solemnized as easily as that. Do you not agree that this is a desirable idea? — According to the law of Islam, there should be no difficulty about such marriages. If such marriages would entail difficulty, then they would not be according to the law of Islam.

491. We are getting away from the whole point. According to the law of Islam, there must be certain specific requirements before a man can take unto himself a second wife. You will agree that those requirements are, in fact, capable of different interpretations according to how you look at it? — I do agree.

492. The idea of giving the job of interpreting those requirements to one man surely is to ensure that the interpretation of those requirements is the same for all cases, is it not? — Yes, that is good.

493. That is the object of trying to give the power, in so far as inquiries are concerned, to one man—we will not now discuss the solemnization of marriages; let us confine ourselves at the moment to the inquiry. The idea then is to get one man to make the inquiry in all cases, so that there can be no question that different interpretations are being put on the requirements of Islam. Do you not think that that is a good idea? — The object, no doubt, is good, but it will have the effect of placing an obstacle in the

way of the person who wishes to contract a second marriage.

494. Why do you say that? If one man says, "Your circumstances are such and, according to the requirements of the law of Islam, you cannot contract a marriage." If one man says that, where is the obstacle? According to the opinion of this man, the person in question has not qualified under the law of Islam. That is the obstacle which is provided for by the law of Islam? — As I have said earlier, permission might be refused, but there is nothing to prevent a man and a woman from being married by the *Wali*; so the effect will be bad.

495. That is quite a different consideration entirely. If that is considered to be bad, then some other provision, if agreed to, can be made that a *Wali* cannot solemnize a marriage. That is, of course, going against the law of Islam, and is quite different. The point that I am trying to make is, do you or do you not agree that it would be a good thing, if there is to be an inquiry, for that inquiry to be made by one person for all persons? That is the question to which I want an answer? — The law of Islam makes things simple, so it would be a simple matter to allow inquiries to be made by any *Kathi*.

496. You have agreed, I think, that, given a certain set of circumstances, it is not so simple for everybody to come to the same decision as to what the requirements really are. You agree that it is true—that opinions will differ. That applies to every law, not only the law of Islam, but even to any civil law— it is always capable of different interpretations? — But it is because the resultant effect will be an obstacle to the person wanting to contract a second marriage that I am making the suggestion.

497. When you say "obstacle", what is the obstacle? This man who wants to marry must overcome an obstacle according to the law of Islam? The only way he can get over the obstacle is to satisfy

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one man's interpretation of the requirement? - The reason for a person wanting to contract a second marriage is his lack of the necessary knowledge of Islam. I admit that quite a good number of people who have solemnized marriages a second time are not aware of the necessary requirements pertaining to that marriage. I am sure that not many people are aware, on this question of polygamy, that it is tolerated. It is not imperative and it is not forbidden. Rather it is tolerated.

498. The idea of this legislation is to see that if there is polygamy, there will not be any hardship on the second wife, third wife or fourth wife. That is the idea, is it not? - The root of the evil is the lack of knowledge as to the proper requirements.

499. Therefore, can I say then that you do agree that an inquiry must be made and if the inquiry is made, it should be a stricter one? — An inquiry should be carried out by the one who wishes to solemnize the marriage, and the inquiry —

500. Now you say all *Kathis*. If you leave it to all *Kathis*, there is a danger, would you agree, that one *Kathi* may have a certain opinion on a set of facts; another *Kathi* may have another opinion on the same facts; and a third *Kathi* may have another opinion on the same facts. There is a danger, is there not? - In short, the inquiry should be entrusted to the *Kathi* who is to solemnize the marriage.

501. That is what you have said. Is this correct? You do not fear that given a set of facts, *Kathi A* will say "no"; *Kathi B* might say "no"; but *Kathi C* might say "yes"? You do not fear that that will happen? - No. (*Syed Abubaker*) It seems to me that our discussion has gone outside the bounds of the matter.

502. Why do you say that? — I would like to ask this first of all: is the inquiry to be carried out before the second marriage is solemnized? Is that

inquiry a requirement of Islam? Or is it something that is connected with some other law?

503. Let us not question that. I think what *Syed Abubaker* must try and get into his mind first is this. Does he or does he not agree that a second marriage is of great importance, in so far as the law of Islam is concerned? - According to the law of Islam, a second marriage or a third marriage is not a matter of difficulty to the person.

504. I understand-not a matter of difficulty in solemnizing. But there are certain requirements of Islam which, if followed carefully, will make, in fact, a second marriage a bit more difficult than it is now? - Yes. I would appreciate it if I could bear what those conditions are.

505. What I want you to be quite certain in your mind is this. Is it not a fact that the interpretation of the requirements of Islam, whatever they are, in so far as second marriages are concerned, has been lax in certain cases? Do you agree or do you not? Put it very shortly. Do you agree that in the past second marriages have been easy? - Yes.

506. Therefore, do you agree that there have been cases in the past where a second marriage has been contracted, but, strictly, the requirements of Islam have not been satisfied up to the hilt? - Yes. I agree. If in the past many such marriages have taken place without satisfying the requirements of Islam, that is a matter which is not good in the eyes of the public.

507. They have happened? - Yes. If from now we can have those marriages solemnized according to the strict rules of Islam, then it would be a good thing.

508. You have now said that even *Kathis* in the past have made mistakes? - Yes.

509. Now, the question I would like you to answer is this: do you not agree then that, in view of the past mistakes, it would be better in future to leave the decision whether a man comes within the requirements of Islamic law, to one

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man, and one man only? Leave out the Chief *Kathi* or anybody else. Say one man. He must, of course, be a man well versed in Islamic law. So that there cannot be any question of different opinions coming to bear on the same set of circumstances. What is your answer to that?

- In the eyes of Islam, giving power or authority to only one person to carry out inquiries in respect of polygamous marriages is undesirable.

510. According to the law of Islam, do you say? - Yes.

511. Is that stated in the Koran? - There is nothing in the law of Islam to say that, in respect of a polygamous marriage, inquiries should be made beforehand.

512. That I will admit. I think that is correct. I hope you understand me. But in order to conform to the requirements of Islam, common sense tells us that there must be someone to make some sort of an inquiry. Is that not right? Somebody must look into the matter and say: "Do this" or "Do that" to conform to the requirements of Islam? That must follow? — I agree. What I say is that the *Kathis* who carry out inquiries in respect of such marriages know what the requirements are. It is only by virtue of their knowledge of such things that they are appointed *Kathis*.

513. So I come to the same question that I asked Ustaz Yunos, that given a set of facts, you do not fear that *Kathi A* might say "no", *Kathi B* might say "no", but *Kathi C* might say "yes"? You have no fear about that? — I will give an example. Supposing two people want to get married. They go to a *Kathi*, and as a result of making an inquiry the *Kathi* finds that the facts are true as stated by the man who wants to get married. -He therefore solemnizes the marriage. So the matter ends as far as that *Kathi* is concerned. What business have the other *Kathis* over this matter which has been settled by that *Kathi*?

514. You have gone too fast. Let us say that these two people go to *Kathi A*. *Kathi A* makes an inquiry and says "no". That is at Kampong Geylang West. Now the two persons are not satisfied, and they go to *Kathi B* somewhere in Jurong. *Kathi B* also knows them, but he does not know that *Kathi A* has already made the decision. He makes an inquiry and he says yes. How do you reconcile these two positions? - In my opinion, this marriage hangs on the question of inquiry. This is contrary to Islam.

515. Islam only says that you must have a certain requirement. Why do you say the inquiry is contrary to Islam? Islam says these are the requirements. So it is for the *Kathis* to look at these requirements, and to find out whether they are satisfied. Why do you say that an inquiry is against the law of Islam? There must be an inquiry to find out? - Because as I said earlier, the inquiry itself is not a necessity under the law of Islam.

516. But you must admit that before you are satisfied that the requirements are in fact there, there must be an inquiry by someone into some sort of facts before that somebody can say, "Right, you are not offending the law of Islam." There must be some sort of probing into the matter? - Yes, I agree. But the inquiry has been carried out by the *Wali* of the woman to be married.

517. And you have agreed that some of these inquiries in the past have resulted in mistakes and that the problem is to overcome these mistakes, is that right? — Yes.

518. The problem is to prevent any further mistakes, and your solution is to give the power to all *Kathis*. That is the solution, is that right? - That is so.

519. Even though you have admitted that *Kathis* in the past have made mistakes? — Yes. In my opinion, it would of course be preferable to have only one person to carry out the inquiry. But by what authority are we to appoint

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just one man, since the law of Islam does not say so?

520. The final question I would like to ask is: are you certain in your minds that there cannot be a separation of the duty of inquiry from the power to solemnize? In other words, one person must do two things. You cannot have one person doing the inquiry and another person doing the solemnizing. Are you quite certain in your minds that that is so? - No.

521. I thought Ustaz Yunus said so. Does he agree with me? — (*Ustaz Yunus*) It is not that the *Kathi* solemnizing the marriage must be the person who should carry out the inquiry. What I say is, it could be.

522. I beg your pardon. I must have misunderstood you. So the position then is, if there is to be a separation of the two duties-inquiry and solemnizing of marriages-there cannot be any objection in Islamic law that the inquiry should be made by one person and the solemnizing by another person. You are satisfied that that is so? - I am not satisfied.

523. You are not satisfied. And therefore - ? - Now, I would like to pose a question.

524. We have plenty of time. Two people want to marry? — A and B want to marry. The *Wali* has agreed to it. Then he empowers someone to carry out the inquiry.

525. The *Wali* empowers? — Yes. Then someone is empowered to carry out the inquiry. The result of the inquiry is that the application is not approved. Then what would be the position then?

526. You have not got my point. What I want to know is, supposing one person does the inquiry-no matter who it is, whether it is the person empowered or anybody-is it wrong for another person to solemnize the marriage? That is what I want to know? - No, but the consequences will be as I have stated just now.

527. They might be. But I want to know whether there is any objection if such a thing can be arranged, apart from any difficulties that might arise? - If that arrangement were made, then the consequences which I mentioned just now would arise.

528. Yes. It is not wrong in law for there to be two people but you fear there may be complications? - Who gives the power for the inquiry to be made?

529. That does not matter at all. What I want to know is just whether or not it is right or wrong for two people to come into the picture. Must there be one person making the inquiry and solemnizing, or can there be two people? That is all I want to know. We understand all these difficulties. You have already pointed them out. But what I want to know is, is it imperative that only one person should be concerned? - I fear that if this is legislated, then there might be complications.

530. I am not asking for legislation. There is no trap, but I just want to know whether in your view, there must be one person making the inquiry and solemnizing the marriage, or, if there is no harm, apart from consequences, for one person to do the inquiry and another person to do the solemnizing. That is all I want to know. There is no question of legislation? - What I fear is this: if someone is authorized to carry out the inquiry, and as a result of the inquiry the application is not approved, then the persons wanting to get married may go and get themselves married by the *wali*. Where then is the authority of this person making the inquiry?

531. Take the case where an inquiry is made by a person who says "Yes". And the person has been appointed, shall we say, by the father of the girl. That person makes the inquiry and he says "Yes". Now, must that person making the inquiry also solemnize the

marriage or can the marriage be solemnized by someone else? It is so simple. That is all? - Yes, it could be either.

532. Well, that is exactly what I want. That is all and nothing more. Just one more question. You do know that where a woman has no *wali* the present law says:

"7.-(3) Where there is no *wali* of the woman to be wedded or where a *wali* shall, on grounds which the Chief *Kathi* does not consider satisfactory, refuse his consent to the marriage, the marriage may be solemnized by the Chief *Kathi* but before solemnizing such marriage the Chief *Kathi* shall make enquiry as prescribed in subsection (2) of this section."

- I do.

533. Are you against that law or are you satisfied? - According to the law of Islam, where a woman to be wedded has no *wali*, a *wali hakim* can be appointed.

534. Yes, we know that. Under the present law, the Chief *Kathi* must make the inquiry and the Chief *Kathi* alone can solemnize the marriage. That is the present law and you have no quarrel with it, have you? - I disagree.

535. Is it the first time you know of this law? - Yes.

536. And your objection, I suppose, will be the same as the objections you have raised? — Yes.

*Chairman*] Inche Mohd. Ali, any questions?

*Inche Mohd. Ali*] Yes. I would like to ask a few questions so that I may understand more clearly the matter that is before us.

*Chairman*] Yes.

*Inche Mohd. Ali*] I would like to go into the statement of Ustaz Yunus. I would like to ask him whether the Muslim community in Singapore are communal in outlook or not?

*Chairman*] Let us not go into that. I do not know whether that is relevant.

*Inche Mohd. Ali*] To come to the point. Among the Muslims -

*Chairman*] Just one second. I do not think I can allow any irrelevant questions to be asked. Let us not worry about whether the Muslims in Singapore are communal or not. Let us go or to the principle of the suggestion.

*Inche Mohd. Ali*] The position is this. Take, for instance, someone who wants to take a second wife and the latter happens to be an Arab girl. What happens is that an application for such a marriage is refused. Are the *Kathis* empowered to approve such marriages?

*Chairman*] I do not think we ought to give instances of that nature at all. How is that relevant to the proposition before the Select Committee? Can the Member please explain, before I allow the question to be put?

*Inche Mohd. Ali*] If, for example, a person wishes to contract a second marriage and the girl in question is an Arab. The Arab girl agrees to marry him, but the parents of the girl may not agree because of the difference in classes. Could a *Kathi* or the Chief *Kathi* perform such a marriage according to the Islamic law?

*Chairman*] Whether the girl is an Arab, or a Malay or an Indian, surely it makes no difference according to the Islamic law. Are you suggesting that there is a difference?

*Inche Mohd. Ali*] Yes, there is a difference.

*Chairman*

537. The question then is this. Take the case of a Malay Muslim already married to a Malay girl. That Malay Muslim wishes to take a second wife who is an Arab Muslim, and the parents of the Arab Muslim girl refuse. Does the witness agree or does he not agree that the *Kathi* should be able to make an inquiry in such a case? - Why should the *Kathi* come into the picture when the *Wali* has already given his disapproval?

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538. So you say in such a case that the *Kathi* should not interfere. Is that right? - Yes, because the *Wali* has more authority than the *Kathi*.

539. As that, in your view, according to the law of Islam? - Yes. As I have stated just now, the *Kathi* is only a middleman. His duty is only to register the marriage.

540. So it is according to the law of Islam? - Yes.

541. Syed Abubaker? — (Syed Abubaker) Before we tag on the law of Islam to this, I think we must know whether the woman in question is *Anak Data* or a maiden or a divorcee?

542. Let us confine ourselves to maidens? - Supposing it is a maiden. According to the followers of the *Imam Shafei* school of thought, a maiden has no right whatsoever where a marriage is concerned. That right lies with the father or with the grandfather. The father or grandfather can force the maiden to marry if the man whom she is to marry is of equal status with her. If she is a divorced woman and the parent or *Wali* has not given consent to the marriage, then her own application to the *Kathi* is sufficient, provided that the man she proposes to marry is of equal status with her.

543. So there is a distinction in the case of a maiden. Once the *Wali* says "No", the *Kathi* cannot come in and interfere. In the case of a divorced woman, even if the *Wali* says "No", the *Kathi* can take up the case? — This is according to the law of *Shafei*.

*Chairman*] Inche Mohd. Ali, any other questions?

*Inche Mohd. Ali*] No, Sir.

*Chairman*] Dato Abdul Hamid?

*Dato Abdul Hamid*] I think, Mr. Speaker, it is about time to stop.

*Chairman*] You have several questions then?

*Dato Abdul Hamid*] I have two or three questions.

*Chairman*] Mr. Minister, shall we fix another date?

*Mr. Byrne*] Yes.

*Chairman*

544. The Select Committee have fixed 12 o'clock as the time to rise and we have reached 12 o'clock now. Can you manage to come another day to continue this very interesting and instructive discussion? — (*Ustaz Yunus*) Yes, with pleasure.

545. Can you come on Thursday, the 24th, at 10 a.m.? — (*Syed Abubaker*) Is it in order if someone represents me on that day?

*Chairman*] It is quite all right so long as that person represents the Pan-Malayan Islamic Party.

*Inche Yaacob*

546. We of the Select Committee may feel that we would like to get clarification from the same individuals concerned. If another representative turns up, would it not be that Members of the Select Committee might feel that they cannot get satisfaction out of the questions they put to the witnesses? - As for the answers that you expect, they will spring from the four authorities: the *Koran*, the *Hadith*, the *Ijma* and the *Quiyas*.

*Chairman*

547. Syed Abubaker, you must not adopt that inimical attitude in so far as the Select Committee are concerned. Most of us, including myself, are very ignorant of the Islamic law. You must not think that we are against you. What we are trying to do is to try to understand you and I would like you to try to understand us, because Islamic law is a specialised subject. What Inche Yaacob was trying to indicate is that you have, in fact, given very interesting information to us and all he was trying to say is that if you do not come again, it may be difficult for him to

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clarify in his mind what you have said. That is all. I do not think the Select Committee would think of compelling you to come. It is a question of asking you whether you have the time to come. If you can come, then that is the end of the matter? - God willing, I shall try to come, but if for some reason I may not be able to come, am I allowed to send a representative on my behalf?

548. The answer is yes. I think Inche Yaacob only pointed out that if you could not come he would not be able to clarify in his mind what has been stated by you. It is quite clear that you three gentlemen have come and given us of your time in order to assist us to come to some solution in this very complex matter. If 24th March does not suit *Syed Abubaker*, can you suggest another day? —

Would it be convenient if we continue with this after Hari Raya?

*Chairman*] Hari Raya falls on the 28th March. There is not much difficulty, is there? We might get other representations.

*Mr. Byrne*] This is the Puasa month. It could be held on the 24th.

*Chairman*

549. Would 24th March suit you?  
— If necessary. I shall come on the 24th.

*Chairman*] There is some procedural urgency in so far as the passing of this Bill into law is concerned. We are trying to do this as fast as we can. This discussion is then postponed to 24th March at 10 a.m. Thank you very much for coming.

*(The witnesses withdrew.)*



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FRIDAY, 18TH MARCH, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)

Dato Abdul Hamid bin Haji Jumat  
 Inche Baharuddin bin Mohamed Ariff  
 Mr. K. M. Byrne

Inche Mohd. Ali bin Alwi  
 Inche Mohd. Ariff bin Suradi  
 Inche M. Ismail Rahim  
 Inche Yaacob bin Mohamed

Inche Syed Othman bin Abdul Rahman bin Yahya attended and was further examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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Chairman

550. Do come in, Inche Syed Othman. Sit down? — (*Syed Othman bin Abdul Rahman bin Yahya*) Yes.

551. Members of the Select Committee have just had copies of your further representation dated 17th of March\* in regard to "*Zakat* and *Fitrah*". Do you suggest that there should be a separate Ordinance to cover these two matters? — That is so.

552. You do not suggest that we should write it into the present Muslims Ordinance, do you? — This should be embodied in the present Muslims Ordinance; there should be powers and regulations in respect of *Zakat* and *Fitrah*.

553. So when you say in your representation in paragraph (d):

"Those who give their *Zakat* or *Fitrah* to people other than the alms-men or their representatives may be prosecuted under the *Zakat* Ordinance (No.... of 1960)."

what exactly do you mean? — There is nothing now under the present law about *Zakat* and *Fitrah*. If these two matters are embodied in the Muslims

Ordinance, then people found guilty as under paragraph (d) can be prosecuted accordingly.

554. But you do not mean a separate Ordinance really for that purpose, do you? — What I mean is that these two matters, *Zakat* and *Fitrah*, should be embodied in the Muslims Ordinance.

555. And the punishment section also could be embodied in the Muslims Ordinance? — That is so.

556. If the Select Committee agreed that that should be so, do you not think that there are other matters under the law of Islam which should also be included? — In my opinion, the Shariah Court is an organisation which is at the moment "empty".

557. Not enough of work, in other words? — With the amendment now to be made to the original Muslims Ordinance, I am taking the opportunity to suggest amendments which I feel should be made.

558. At the moment, if a Muslim does not contribute the *Zakat* or the *Fitrah*, he is not punished, is that so?

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There is no means of punishing him?  
- As far as I am aware, ever since the time of the imperialists there has been no such provision.

559. Now that the imperialists have gone, you want a provision in, do you?  
- Preferably so, now that we have self-government. Since the Government has brought up various amendments to the Muslims Ordinance, I therefore feel that those amendments should not be made half-way. They should be thorough.

560. That brings me back to my first question. Do you not think that there are other provisions of Islamic law which should also be written into the Muslims Ordinance? — No doubt there are. But as far as I am concerned, these are the suggestions I wish to bring forward.

*Chairman*] *Inche Mohd. Ali*, any questions on *Zakat* and *Fitr*ah?

*Inche Mohd. Ali*

561. Mr. Speaker, Sir, I would like to ask Syed Othman whether he thinks *Zakat* and *Fitr*ah are the only matters to be embodied in the Muslims Ordinance, or whether he thinks that other pillars of Islam should also be brought in? — To me, *Zakat* and *Fitr*ah are matters which are of great importance. I do not mean to suggest that the other four pillars of Islam should be dealt with here. I am bringing up this suggestion because of the income that Government can lay its hands on through *Zakat* and *Fitr*ah.

562. Do you, therefore, say that the question of *Puasa* (fasting) during the month of *Ramadhan* is not important and, therefore, it should not be brought into the Muslims Ordinance? — With regard to fasting during the month of *Ramadhan*, I have already included suggestions in my representation.

*Chairman*

563. That is paragraph (e) of your representation dated 2nd February, 1960\*? — Yes.

*Chairman*] Dato Abdul Hamid?

*Data Abdul Hamid*] No questions.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*

564. I wish to get some clarification from *Inche Syed Othman* on *Zakat* and *Fitr*ah. In my view, if we force Muslims to pay *Zakat* and *Fitr*ah while the official religion of Singapore is not Islam, would that not be an object of criticism from Muslims, in view of the fact that Islam is a religion that is relaxed in nature, according to the evidence which we have heard from the various witnesses? Is that not the view of *Syed Othman*? — Mr. Speaker, Sir, I would like to answer the questions of the hon. Member. I believe he was not born in Singapore, but born in Perak. I too was not born here. I was born in Penang. It can be said that the majority of those who are here are not Singapore-born. Therefore, I feel that the matter I have raised is not contradictory to Islam. I am taking a long-term view, and

\*Paragraph (e) reads as follows:-

*"Re FASTING MONTH*

I would suggest that Muslim shops be closed during the day and may be opened to commence business at 6 p.m. but no consumption of food or drinks should be allowed therein until the time of breaking fast; and likewise shops of non-Muslims too should be required to refuse Muslim customers entry to the shops for the purpose of eating or drinking during the day as such acts are derogatory to the dignity and self-respect of the Islam religion. Similarly regarding acts of eating and drinking in public places, the authorities and the police should put a stop to them; offenders should be arrested and prosecuted in the Shariah Court and if found guilty, could be fined up to a maximum amount of \$1110 or goaled for a maximum term of six months or sentenced to both."

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I would like to draw attention to the fact that in the Federation of Malaya, we have the Shariah Court. This Court manages the affairs of *Zakat* and *Fitrah*. Recently, I remember reading in the papers that the religious department of Johore has issued regulations to the effect that those who fail to pay up their *Zakat* and *Fitrah* will be fined not less than \$25 under such and such a section of such and such an Ordinance.

*Chairman*

565. Yes, please stop there. The point the hon. Member was making is that that is quite all right in the Federation where the official religion is Islam, whereas here in Singapore, the official religion is not Islam. He draws a distinction there. In a country where the official religion is Islam, it is all right to write into the statute book all these provisions of Islamic law, but the hon. Member considers that it will arouse criticism to do this in a non-Islamic State? - In my opinion, this matter will not arouse criticism from the public because it is something which is good and useful and it will also show that we have a proper system for our Shariah Court here. If I may, I would like to refer the Committee to my suggestion regarding polygamous marriages. Why is this suggestion made? The reason is that we want to avoid unnecessary harm to the people. I feel, therefore, that the matter of *Zakat* and *Fitrah* which I have raised will not arouse criticism from the people, because I know a good number of people who wish that *Zakat* and *Fitrah* be written into the Muslims Ordinance.

*Inche Baharuddin*

566. That may be Syed Othman's opinion and he may be right. But as far as I am concerned, I feel that even in the matter of tightening up the loopholes in respect of polygamous marriages, we have encountered difficulties. Therefore, if criticisms have been levelled by the people against tightening up

the loopholes in respect of polygamous marriages, then I fear that the question of bringing up *Zakat* and *Fitrah* might equally be criticised too, because Muslims could not be forced to do this or that, in view of the relaxed nature of the Islamic religion. I believe Syed Othman is aware of and understands the objective of the present Government, which is to enact a law for the welfare of the people of Singapore and one that will be appreciated by them? - I support and endorse the views of the hon. Member concerning the efforts of the Government. I am convinced that this Government is democratic in its ideals, and that is the reason why I give up my time in order to come here and present my suggestions to the Government for the benefit of the people. Another matter I would like to pose before the Committee is this: when did Islam become the official religion of the Federation of Malaya? I think, Sir, it was in 1957. Even before the country became independent, *Zakat* and *Fitrah* were embodied into the law of the country and many people have criticised the Government and asked, "Why should we pay our *Zakat* and *Fitrah* to such and such a person and not to whoever we like?"

*Chairman*

567. I think we are just wandering away from the purport of the question, and that is this-I think the hon. Member is anxious in this respect-in regard to the provision of polygamous marriages. we, as Members of the Select Committee, have, in fact, received criticism. I think the hon. Member is afraid that if we also bring in this question of *Zakat* and *Fitrah* now, there will be more criticism. That is all I think the hon. Member wishes to say, that if we try to import all these subjects into the Muslims Ordinance there will be a flood of criticism and that is not good for the State of Singapore at this stage. I think that is possibly what the hon. Member has in mind. But your view, as I understand it, is that you think that the question of *Zakat* and *Fitrah* is of sufficient

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importance to be introduced into the Ordinance now. You are not urging that other tenets of the Islamic law should now be introduced into the Muslims Ordinance at this stage. Perhaps all the best can be brought in later on. Have I assessed your representation correctly on those lines? - Yes.

*Inche Yaacob*

568. Mr. Speaker, I am much impressed by the suggestion made by Inche Syed Othman. I think it is a good one. But on the question of *Zakat*, does he mean the yearly tithes or *Zakat* in connection with property? - What I mean by *Zakat* and *Fitrah* is the yearly payment of tithes.

*Chairman*

569. That is, during the fasting month? - Yes.

*Inche Yaacob*

570. The heading of the witness's representation reads "*Zakat and Fitrah*". I take it that "*Zakat*" is in respect of property but "*Fitrah*" is the matter which he has in mind? - Giving "*Zakat*", which is "*Fitrah*", is different from giving "*Zakat*" for property.

*Chairman*

571. What do you really mean by "*Zakat*"? Is it a tithe based on landed property? - I mean the "*Zakat*" which is paid in connection with fasting; the payment is made in rice or the equivalent of the cost of the rice.

572. So that when you say "*Zakat and Fitrah*", it means one contribution? - That is so.

573. It can either be by way of a contribution in rice or the equivalent of the cost of the rice? - Yes. For example, if a person chooses good quality rice, the cost of three katties and 12 tahils of that rice is \$1.20, and the cost of the cheaper quality of rice is \$1. That is what I have in mind.

*Inche Yaacob*

574. Mr. Speaker, therefore, what he really means is "*Zakat Fitrah*" and not "*Zakat and Fitrah*"? - Yes, "*Zakat Fitrah*".

*Chairman*

575. Is that what it means- "*Zakat Fitrah*"? - Yes.

*Inche Yaacob*

576. If it is "*Zakat Fitrah*", distribution could be made to eight parties. Apart from distribution made to the needy, the poor, the *muallafs* and the *ibni-sabil*, do you not think, that the distribution of *Zakat Fitrah* would entail having one "*bait-tul mal*" (Muslim treasury)? - Indeed my suggestion is that there should be a "*bait-ul mal*".

577. By having this "*bait-ul mal*", would it not involve other matters which do not come within the purview of the Muslims Ordinance-*Zakat* on property and also *Zakat* involving people who die without leaving any next-of-kin? - I did state earlier on that if we want to go, into the matter of the Shariah Court, we should not go half-way between the head and the navel but we should go all the way.

*Chairman*

578. Did I not understand you to say that there are, in fact, other aspects of Islamic law which could be included in the Muslims Ordinance but which you are not now urging? - At the moment, I am making a suggestion concerning the payment of "*Zakat Fitrah*" to anyone, at random. I suggest that there must be a regulation controlling that.

579. The suggestion of the Parliamentary Secretary (Inche Yaacob) is that other matters should not come in. Do you agree that they need not come in now? - That is so. We should proceed step by step.

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*Inche Yaacob*

580. Does Inche Syed Othman not agree with me that the Shariah Court is a Court for deciding conflicts between two parties? — I have visited the Shariah Court at Fort Canning and I have found that the Court where conflicts between husbands and wives are decided is housed in a small room, whereas the greater part of the building is put to use for other matters.

581. I am not referring to the room where the Shariah Court is situated but to the power of the Shariah Court. The Shariah Court is a place for deciding conflicts between two parties. The witness suggests that the Shariah Court should also be the body to administer matters concerning *Zakat Fitrah*. As far as I know, the Shariah Court in the Federation of Malaya is an organisation which comes under the Religious Department? — I have seen the Shariah Court in Johore and that is how we would like our Court to be in the future. We should proceed step by step. Mr. Speaker, the Shariah Court is an institution, shall we say, like a Police Court. Why should we not include various matters which come under the definition of "Shariah"?

*Chairman*

582. You would like the Shariah Court's jurisdiction to extend over *Zakat Fitrah*. That is what you would like, if possible? — That is so.

*Inche Yaacob*] The Shariah Court is an institution for the purpose of resolving conflicts between two parties. If *Zakat Fitrah* is to be brought under the law, then it should be administered by another body distinct from the Shariah Court.

*Chairman*

583. The hon. Member suggest that there should be two distinct bodies. One is the present Shariah Court which resolves differences. If

*Zakat Fitrah* should be controlled, there should be another organisation to look after that? — That is what I mean.

584. So that when you say that because we have a Shariah Court, it should now take control of *Zakat Fitrah*, that is not quite correct? Is this what you are now suggesting? If *Zakat Fitrah* is to be controlled, the control should be exercised by another department, but if there are any breaches, the Shariah Court should be given power to punish for the breaches? — That is so.

*Inche Yaacob*] This is a new matter which does not appear in the Muslims Ordinance. It is only today that we have heard a new suggestion from Inche Syed Othman. If we do accept the suggestion, would it not mean that we would have to invite representations and views from other Muslims in Singapore?

*Chairman*] I do not think the witness should be put that question. — I think the position is very clear. We have invited representations until 21st March and the witness is perfectly entitled to put in his representations. As I did indicate earlier on, a representation may suggest the introduction of new sections to the Ordinance itself. We are not confined to what is, in fact, contained in the Bill, because the Bill is just an amending Bill. I do not think that we should say that we exclude this. We cannot exclude this. But I think what the Member is afraid of is that once we let in matters like these, we are opening up a wide field and we will never be able to get on with our work. We will, in fact, have to delay the legislation, which is now proposed in this Bill. Is that the hon. Member's fear?

*Inche Yaacob*] Yes.*Chairman*

585. Does the witness appreciate that? — Yes.

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*Mr. Byrne]* Mr. Speaker, I would just like to point out that I think the inquiry should be limited to what is set out in the preamble to the Ordinance. The long title of the Muslims Ordinance (No. 25 of 1957) reads:-

"An Ordinance to repeal and to enact the law relating to Muslims, the registration of marriages and divorces among Muslims and to establish the Shariah Court."

All inquiries that come within that ambit would be within the scope of the deliberations of this Select Committee.

*Chairman]* "An Ordinance to repeal and to re-enact the law relating to Muslims ..." That is a very, very wide field in my view, and it is not suggested that "*Zakat Fitrah*" does not come within the law of Islam.

*Mr. Byrne]* It would come within that.

*Chairman]* And therefore the discussion we have had on *Zakat* and *Fitrah* is not ultra the long title of the Ordinance: "to repeal and to re-enact the law relating to Muslims ...". I have looked into the question myself and it seems to me that it is very wide indeed. I have indicated in the past that if there is to be an amending Bill, the safest thing is to say what the amendments are and to say, for example, "an Ordinance to amend the Muslims Ordinance for the following purposes ...", no matter how long the long title is—it can even take a full page—and that would then exclude any attempt to bring in new clauses which are not, in fact, covered by the amending Bill. That is a remark which I have made before and I would like to make it again. Any other questions, Mr. Minister?

*Mr. Byrne]* No.

*Chairman*

586. Now, we go back to Inche Syed Othman's original representation dated 2nd February, 1960\*. We

have already dealt with "Polygamous Marriage". The next representation is in regard to "*Wali Hakim*", where you say:

"I feel dissatisfied that the Chief *Kathi* alone is given the authority to solemnize marriage involving a female person who has no lawful guardian. Rather, such authority should be given to all *Kathis* duly appointed by the Singapore Government, so that members of the public may each go to the nearest *Kathi* in the district convenient to them. If the *Kathis* fail to carry out their duties in accordance with the law of Islam, the authorities should take action against them and those found guilty could be punished accordingly."

Now, this is a case where a girl, shall we say, has no *wali*. You suggest that any *Kathi* should be empowered to make inquiries to ascertain that there are no lawful obstacles according to the law of Islam, and then to marry that girl. You suggest that, do you not?

— Yes.

587. Now, we go back to the question of polygamous marriage. There is a case, shall we say, of a girl who is to be given away in a second marriage. You have suggested that in such a case the power to make inquiries and solemnize the marriage should be given solely to the Chief *Kathi*. There are two cases: one is a girl without a *wali* and the other is a girl undertaking a second marriage. Now, do you not think that both cases are equally important? You have agreed that, in the case of the second marriage, the power should be given solely to the Chief *Kathi*. Should not the same thing apply to the girl who is without a *wali*—that the power should be given solely to the Chief *Kathi*? — There is a difference. The reason why I agree, in the case of polygamy, that the power to carry out inquiries and to solemnize the marriage should be given to the Chief *Kathi* in accordance with proper conditions is that this kind of marriage does not occur very often among people who are in, the middle class but rather among

the well-to-do class. Such people marry not because they have any Islamic reasons in mind, but purely because of their lust. That is why I stressed that only the Chief *Kathi* should be given the power to make inquiries and to solemnize the marriage.

588. Do you not think that the same may be applied to the girl without a *wali*? She may be trapped by a person who is full of lust? - But this is not, a polygamous marriage. This is in respect of a marriage for the first time.

589. Yes, but it may be a runaway marriage? - What I am confining myself to is the case of the girl without a *wali*. I am not speaking on the matter of a polygamous marriage. In regard to *wali*, I think the person should not have to go to the Chief *Kathi* because it would be inconvenient and because most of these people would be staying far away. If it comes out that the person applying to marry this girl without a *wali* is, in fact, wanting to contract a second marriage, then it does not come within the matter that is before us. I would like to pose a question to you, Mr. Speaker, Sir, how many *Kathis* are there in Singapore?

590. Do not ask me. I am not here to answer questions. You are here to answer questions. Shall we try and make it short? What I want to be quite certain about is: do you understand-I suppose you do understand-that the provision in the law in regard to a girl who has no *wali* was really put in to prevent as far as possible runaway marriages? Do you appreciate that? Now, supposing I am a Muslim and I have a daughter who runs away with a boy. They go to a kampong, and the girl, i.e. my daughter; persuades the *Kathi* that she has no *wali*, and the *Kathi* believes her and believes the boy. There is then no way of preventing that runaway marriage, is there? - I feel that the Shariah Court should issue a general order to all *Kathis* saying that if they

solemnize such marriages without making proper inquiry, then they would be laying themselves open to drastic action by the authorities. Then the sort of thing might not arise.

591. What do you mean by "proper inquiry". Take this supposed case of my daughter. She and her boy friend go to Jurong, and the girl tells the *Kathi*, "I have no parents. I am an orphan and I want to marry this boy." The *Kathi* believes the boy; he knows the boy and the boy persuades him that that is so, and that the girl is telling him the truth. What inquiry can the *Kathi* make? — Right. But if the Chief *Kathi* were to be given the sole power, could he too not be faced with such a situation?

592. No. The position would be this: if the Chief *Kathi* only is given that power. I as the father could go to him and say, "My daughter has run away. Would you please make a note of it?" So if my daughter goes to the Chief *Kathi*, he would say, "No. I cannot marry you. Your father has made a report." But I cannot go, to all the *Kathis* in Singapore. It may be too late? - My view is this-all *Kathis* are given the same authority as the Chief *Kathi*. Secondly, the people staying in far-off places, like the neighbouring islands, have no *Kathi*. Therefore, I feel that the authority to solemnize such marriages should be given to all the *Kathis* and that all the *Kathis* be given orders to carry out their inquiries thoroughly.

*Chairman*] Inche Mohd. Ali, any questions?

*Inche Mohd. Ali*] No.

*Inche Ismail Rahim*] No.

*Inche Mohd. Aria*] No.

*Inche Baharuddin*] No.

*Inche Yacob*

593. Does Inche Syed Othman not agree with me that *Wali Hakim* means the authority of the *Hakim*; the authority being in the hands of the *Hakim*?

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- As far as I know in the past, *Wali Hakim* means that the authority is with the *Kathi*, not the *Hakim*.

594. Is it not a fact that the *Kathi* is appointed by the authorities-the Government-and that he does not act by himself? - Thank you for pointing that out. That is the reason why I suggest that the *Kathis* should be authorised. Now, are the *Kathis* so appointed by the Government?

595. That is the reason why the Government wants to withdraw the power to solemnize such marriages from all *Kathis*, and to entrust it to the Chief *Kathi* only? — In that case, if you have no trust in the other *Kathis*, then I feel there is no point in appointing them. You should do away with them.

596. Mr. Speaker, Sir, it is not a question of Government not having trust in the *Kathis*; — otherwise they would not be given letters of appointment, but rather this is to simplify inquiries to be made? — My point is to avoid inconvenience to the *ra'ayat* having to come all the way from far-off places.

597. I quite appreciate the desire to avoid inconvenience. But at the same time, there is a desire to avoid the danger that may befall those girls who are without *wali*? — Mr. Speaker, Sir, Let us say that I have an adopted daughter and therefore she has no *wali*. I bring her to the Chief *Kathi* and he takes statements from me and from the girl. After having taken the statements, is it not a good thing for the Chief *Kathi* to ask, "Where are you staying?" I answer, "I am staying at Bedok." He asks me, "Who is the *Kathi* of that area?". and I say, let us say, Haji Abdul Rahman. So from that point onwards, what would you say if the Chief *Kathi*, based upon the statements made, issues a certificate to say that the proper inquiries have been made. He then chops the certificate with his seal and with that I proceed to the other *Kathi*.

*Chairman*

598. Let us get this straight. Are you then suggesting that you will be satisfied if the inquiry is made by the Chief *Kathi*, that the Chief *Kathi* will then give a certificate for the marriage, and thereafter any *Kathi* with that certificate can perform the marriage ceremony? — Yes. This is to avoid inconvenience of distance.

*Inche Yaacob*] Therefore, it appears that this maybe the same solution as for a polygamous marriage.

*Chairman*

599. You offer the same solution in regard to a polygamous marriage? - About the same. This is an alternative suggestion of mine, which is not the same as my original suggestion.

600. So in so far as polygamous marriages are concerned, you will be content if that procedure is followed; in other words, the Chief *Kathi* makes the inquiry and any other *Kathi* solemnizes the marriage. Even in the case of polygamous marriages, you will be content?

— Yes, that is so.

*Mr. Byrne*] I have only a question to ask which concerns appeals. Suppose that system is introduced, the Chief *Kathi* certifies that he agrees to the girl who has no *wali* marrying, and, say, a *Kathi* marries her. Unless the power of solemnizing that marriage is in the hands of the same person, it would be very hard to decide whether the appeal is from the Chief *Kathi's* decision or the solemnization of the marriage by the *Kathi*.

*Chairman*] That of course, is a debatable point. I wonder whether the witness should answer that. Perhaps Members of the Select Committee will consider that point and then, when we come to considering the Bill clause by clause, I think that matter can be debated if an amendment is moved-on that point.

*Mr. Byrne*] Yes.



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*Chairman*] I think that is a matter for the Ministry to look into, the issue of certificates. Anyway, I do not think the witness should be asked that question do you, Mr. Minister?

*Mr. Byrne*] Except that if the witness's suggested system is adopted, it will minimise the inconvenience to the authorities; and he mentions that sometimes the parties stay far away and it is a great inconvenience for them to go to the Chief *Kathi*. It would be easier if they could get the matter dealt with by the *Kathi* on the spot. It was then a suggestion. I think he later came round to the view that proper inquiry should be centralised in the person of the Chief *Kathi*. Then there is the other point—the question of solemnization of the marriage, which is tied up with the certification by the Chief *Kathi*. What if a situation like this happens? The Chief *Kathi* decides that the parties may marry and then there is an argument later as to whether he has given them the authority to marry. Now what happens? Do they proceed with the marriage?

*Chairman*] I suppose that is a debatable point. It more or less follows the same procedure as Christian marriages, where there is the Registrar who formally issues a certificate. There are difficulties even in Christian marriages. But I think what the witness has done is to offer that as an alternative suggestion. Shall we leave it at that? His first suggestion is that the Chief *Kathi* should make the inquiry and perform the solemnization in so far as polygamous marriages are concerned. In so far as *Wali Hakim* is concerned, all *Kathis* can make inquiries and perform the solemnization. His alternative suggestion is that inquiry in regard to such marriages should lie with the Chief *Kathi* and that after certification by the Chief *Kathi*, any *Kathi* should be permitted to solemnize the marriages. I think we will leave it at that. I think Members could weigh the possibilities, the dangers and the difficulties, and then debate the matter at the proper time.

*Chairman*

601. Now we go on to the question of "Reduction of Marriage Fees". You have suggested that marriage fees should be reduced. That is a matter which is covered by the Rules which are made under the Ordinance. This Select Committee is not looking into the Rules. That is a matter which the Government will have to consider, and therefore we cannot discuss it in this Committee. The same thing applies to your representation in regard to "*Surat Taalik*". Now we go on to the question of "Fasting Month". You make certain suggestions in regard to Muslim shops during the fasting month. You suggest that there should be written into the Muslims Ordinance a section punishing any breach of the rules to be observed by Muslims during the fasting months in that respect? — Yes.

602. Your reasons, I take it, are generally the same as the reasons you have given when you urge that *Zakat Fitrah* should also be incorporated into the Muslims Ordinance? — Yes.

*Chairman*] Any questions?

*Inche Mohd. Ali*] No.

*Data Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*) No.

*Inche Yaacob*] No.

*Mr. Byrne*] No.

*Chairman*

603. Now we come to your suggestion regarding Muslim lawyers for the Shariah Court. First, I would like to make one point clear before I ask any question. You first say:

"I would suggest that there be Muslim lawyers for the Shariah Court; that is, there should be Shariah lawyers (Peguan Shariah) who are Muslims, for the defence of the accused or the defendants in cases concerning divorce, Pasah, maintenance and other matters pertaining to Islam."

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And a little later down you say, in subparagraph (3);

"Every Muslim of the Ahli Sunnah Wal Jamaah schools of thought applying to be a Shariah official (Pegawai Shariah) should, on obtaining permission from the Singapore Government, pay a fee of \$250 a year."

Is there a distinction, in those contexts, between your Shariah lawyer and Shariah official? — The word "Pegawai" is a typographical error.

604. I beg your pardon. So you mean "Shariah lawyer"? — Yes, *Pegum*.

605. It is an error which you have made in your original representation, is it not? — That is so.

606. So that what you are urging now is that there should be—you know that there is a Singapore Bar for lawyers? — Yes.

607. Lawyers have to pay a fee before they can practise in the Courts of Singapore. You are suggesting then that there should be a separate Bar for Shariah, lawyers, are you? — What I mean is that, the Shariah lawyers should come under a separate religious department, as is the case in Johore where I know two persons are appointed as pleaders; one is Syed Mohamed by name, but the other one—I am not certain of his name.

608. There should be a different class of lawyers, shall we say, who confine their work to matters dealt with by the Shariah Court. Is that it? — Yes.

609. At present, of course, under section 24 of the Muslims Ordinance, "Advocates and solicitors shall have the right to appear in the Court on behalf of a party to any proceedings." — I am not satisfied because of something which happened in the Shariah Court in Singapore. It was in connection with a particular case before the Shariah Court. I went to see a Muslim lawyer, but, he turned down my offer, saying that he was not conversant with the Shariah law. He said that if he were to

accept my offer, he would merely be pocketing my money, and it would be a sin both to the person and to him.

610. Perhaps you went to the wrong Muslim lawyer? — As far as I am aware, it is difficult to find such lawyers in Singapore. That is the reason why I suggested that they should be from the *Ahli Sunnah Wal-Jamaah* schools of thought, which exclude people of the Qadiani Sect to be found in Onan Road in Singapore.

611. Are you satisfied in your mind that there are, in fact, people well versed in the law of this particular school of thought in Singapore? — Yes, there are, but since there is no provision in the law whereby their services could be utilised, these people have not come forward.

612. But, on principle, you do not object to an advocate and solicitor—the ordinary lawyer of the Singapore Court—appearing, do you? — I keep an open mind on that.

613. So you really want an amendment to sections 24 and 25. Section 25 says:

"Every party to *any* proceedings shall appear in person or by advocate and solicitor."

You would like that altered so that you can let in pleaders with the requisite qualifications to appear before the Shariah Court on behalf of a party?

Yes.

*Chairman*] Inche Mohd. Ali, any questions?

*Inche Mohd. Ali*] No.

*Dato Abdul Hamid*] I have got a question. The witness was suggesting that Muslim lawyers of the *Ahli Sunnah Wal-Jamaah* school of thought be allowed to appear in the Shariah Court.

*Chairman*] Pleaders.

*Dato Abdul Hamid*

614. Pleaders. And he draws a distinction between the *Ahli Sunnah Wal-Jamaah* and those who are not within

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the group. But, at the same time, he agrees with section 24 of the existing Ordinance which says: "Advocates and solicitors shall have the right to appear in the Court ...."? - On condition that he is able to do so. If he is not able, what then?

615. In other words, those advocates and solicitors, as mentioned in section 24, need not necessarily be members of the *Ahli Sunnah Wal-Jamaah*? — In the case of Muslim pleaders, I suggest that they should be from the *Ahli Sunnah Wal-Jamaah*. But as for the advocates and solicitors, I agree it is a question of whether or not they are able to take up the case before the Shariah Court. If they are able, well and good, I agree.

616. Even if they are Qadianis? — My point is that, in the case of pleaders before the Shariah Court, I say they must be members of the *Ahli Sunnah Wal-Jamaah*. As for the advocates and solicitors, if they have the ability to conduct cases before the Shariah Court, I do not mind whether they are members of the *Ahli Sunnah Wal-Jamaah* or not. If the advocate and solicitor is a Qadiani, and he can plead the case before the Shariah Court better than a Muslim advocate and solicitor of the *Ahli Sunnah Wal-Jamaah* Sect, well, by all means, let us have the Qadiani advocate.

*Chairman*

617. If the advocate and solicitor takes your money, and he is unable to plead correctly for you, there is always the Bar Committee to whom you can complain? - If reports are made, yes. If the matter is not reported, it remains as it is.

618. I expect you will be the first to report if that happens to you? — I had a case before while I was in the Police Force of Singapore. The case was not successful, and on my asking the lawyer what had happened, and how it was that the case was lost, he

merely shrugged his shoulders and said, "Well, what can be done? It was the fault of the witnesses."

*Chairman*] Any questions?

*Inche Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*] I want to say something for the Bar.

*Chairman*] For or against the Bar?

*Mr. Byrne*] I believe it is provided in the Advocates and Solicitors Ordinance that unless there is a specific provision in any written law to the contrary, then they have an exclusive right of representation before the Courts of the State.

*Chairman*] Unless stated to the contrary.

*Mr. Byrne*] Unless there is any written law to the contrary, they have an exclusive right.

*Chairman*

619. The witness is suggesting that there should be an exception written into the Muslim law? — Yes.

*Chairman*] Any other questions, Mr. Minister?

*Mr. Byrne*] No.

*Chairman*

620. Your next representation is a very novel one, is it not? It is in regard to the Istana Kampong Gelam. I do not think the Select Committee can urge Government to spend money on that, do you? — It will not be a loss to the Government if, in fact, it does that.

621. Perhaps we can leave it to the Government? - Yes.

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622. Then we come to your final suggestion which is on the question of *Mufti*. You say:

"I would suggest that the time is now ripe for Government to appoint a *Mufti* for the fully self-governing State of Singapore."

You do know that there is provision already in section 38 of the Ordinance:

"The Yang di-Pertuan Negara may appoint a *Kathi* or some other male Muslim to be a *Mufti* and to assist the Registrar, the Court and the Appeal Board with advice in all matters connected with the law of Islam."

- I would like to ask, if I may, about the Yang di-Pertuan Negara appointing such a person. Is it through the Cabinet or on his own?

623. If he is paid, it would be on the advice of the Public Service Commission. Now, as far as you are concerned, you are urging that the *Mufti* should be of the *Ahli Sunnah Wal-Jamaah* schools of thought. Is that it?

- Yes.

624. Are you suggesting that the section should be amended to make that imperative: that is, he must be of the *Ahli Sunnah Wal-Jamaah* schools of thought? - Yes, preferably.

625. Preferably, but you are not urging that it should be part of the law? - I hope it could be, as early as possible.

626. Your point is that, as early as possible, the qualification should be written into the Ordinance—the qualification that the *Mufti* must be of the *Ahli Sunnah Wal-Jamaah* schools of thought? - Yes.

*Chairman*] Any questions?

*Inche Mohd. Ali*] No.

*Dato Abdul Hamid*] No.

*Inche Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*

627. There are four Schools of Law of the *Ahli Sunnah Wal-Jamaah*. They are *Hanafi*, *Maliki*, *Shafei*, and *Hanbali*. What is the position now? Do you suggest any one of these, or all? — What I suggest is that the person should be from any one of these schools, but the *Mufti* should be from the *Shafei* school of law.

628. You want to qualify that again and say he must be from the *Ahli Sunnah Wal-Jamaah Shafei* school of law? - He should be someone from the *Shafei* school of law and not outside the four schools of law.

*Chairman*

629. Thank you very much indeed, Syed Othman. That covers your representation. I think it has been a very interesting and instructive discussion. In any case, I can say that I have learnt a lot? - I wish to say how grateful I am to the Select Committee and to the Government, not forgetting the Members of the Opposition, for being able to come here and give evidence. The purpose of my coming here today is not to show off my capability but rather because I feel the Government today is my Government, and because I do not see any imperialist around here. They are all Malaysians.

630. Perhaps we had better not go into that, otherwise we might go further and further, and perhaps Members would like to ask questions on that? - I wish to thank the Select Committee very much, and I hope I will have the opportunity of coming again before the Select Committee.

*Chairman*] Thank you very much.

(The witness withdrew.)

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WEDNESDAY, 23RD MARCH, 1960

PRESENT:

Mr. *SPEAKER* (*in the Chair*)

Date Abdul Hamid bin Haji Jumat  
 Inche Baharuddin bin Mohamed Ariff  
 Mr. K. M. Byrne

Inche Mohd. Ali bin Alwi  
 Inche Mohd. Ariff bin Suradi  
 Inche M. Ismail Rahim  
 Inche Yaacob bin Mohamed

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Inche Shaikh Maarof bin Mohd. Jarhom attended and was further examined.

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Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

631. Sit down, Inche Shaikh Maarof bin Mohd. Jarhom? — (*Inche Shaikh Maarof bin Mohd. Jarhom*) Yes.

632. The last time when you gave evidence we were dealing with the provision as regards polygamy? — Yes.

633. The provision in the Bill is the new section 7A, subsection (2). That provision suggests that a polygamous marriage can only be solemnized by the Chief Kathi. It says:

"...who shall before solemnizing the marriage satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

And you supported the suggestion that the inquiry could be made by the Chief Kathi alone but that the solemnization of the marriage could be performed by any other Kathi? — Yes.

*Chairman*] We will start from there. Perhaps Members would like to ask questions. Inche Mohd. Ali?

*Inche Mohd. Ali*] No.

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

[*Mr. Byrne came in at this stage.*]

*Chairman*] Mr. Minister, we have just revised the last point touched on in the evidence given by the witness. He supported the suggestion that an inquiry could be made by the Chief Kathi alone, but that the solemnization of the marriage may be made by any other Kathi. That is his point. Any question on that?

*Mr. Byrne*] No.

*Chairman*

634. Now we go back to Inche Shaikh Maarof's original representations which were received on 10th February\*. The next point made in his representation touches on the question of divorce. Inche Shaikh Maarof, you make certain suggestions which you hope would reduce the incidence of divorce? — Yes.

635. Your first suggestion is on the question of *mas-kahwin*. You suggest: "that the *"mas-kahwin"* be raised to \$500 for all marriages and that the bridegroom be required to pay a monthly maintenance of

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\$30 for his bride until marriage is solemnized, unless there is recalcitrancy on the part of the other party, in which case the provision for 'nusus' under the law of Islam can be invoked.'

Do you say that those suggestions should be written into the law? — My suggestion is that the \$500 in *mas-kahwin* should not be paid direct. It is only to be paid to the wife on the husband pronouncing divorce for no apparent reason. This, I suggest, would go some way towards reducing the incidence of divorce.

636. Is it *mas-kahwin hutang*? — Yes, that is so.

637. And you would like that provision to be written into the law, would you not? - I agree with that.

638. But is not *mas-kahwin* really a private arrangement between the bride's people and the bridegroom? - That is true, but at the present moment, we find divorces taking place without any apparent reason.

639. And you are satisfied that a provision of that nature would not go against the law of Islam? — No. During the time of the Prophet, even more than that was done.

640. But the point I am trying to make is, is it right to force a bridegroom to pay a specific sum for *mas-kahwin*?

— A condition should be made that if a divorce takes place on the application of the wife, then the payment of \$500 *mas-kahwin* can be waived. In fact, other payments could be waived in addition to the \$500 being waived to the husband. My suggestion is purely intended to apply to cases where wives are divorced for no apparent reason, in which case the husband could be required by law to pay up the *mas-kahwin*. This would have the effect of making a divorce difficult for the husband.

641. In other words, the husband might in effect be liable to a fine? — It is not a fine but a preventive measure.

642. Then you wanted to say something about your suggestion of a monthly maintenance of \$30? — That is where the husband is at fault.

643. Yes. But your suggestion is before marriage. You say, "the bridegroom be required to pay a monthly maintenance of \$30 for his bride until marriage is solemnized"? — The original intention was that \$30 was to be paid by the husband who divorced the wife for no apparent reason. \$30 was to be paid to the wife until she remarried.

*Dato Abdul Hamid*] Mr. Speaker, I think the translation is incorrect.

*Chairman*

644. I am checking on that. "Suami" really means "husband". So that in the translation the word "bridegroom" should really read "husband" and "bride" should really read, I suppose, "wife". So that your suggestion, Inche Shaikh Maarof, is that \$30 be paid monthly to the divorced wife until such time as she remarries? — Yes.

645. The translation will be amended accordingly. Is this a new idea or has it happened in the past?—This has never happened in my country. But here this kind of thing happens very often. It does not happen according to the requirements of the Islamic law.

646. That is about divorce. But what I am touching on is this suggestion that there should be a monthly maintenance of \$30 after divorce. Is that a new idea or has there been such a payment in the past? - If you say that this is a matter which has happened according to the law of Islam, I have no grounds to support that contention.

647. I have never suggested that this is a provision which you can find in the law of Islam. What I want to know is, has this provision been made in the past, or is it a new idea? - According to the law of Islam, there is a provision whereby the husband has to pay maintenance to the wife.

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648. Is it a provision in the law of Islam, or is it just a practice of Islam?  
- It has been practised.

649. In completing your suggestions, you also suggest that there should be included provisions for punishment for enticement and outraging a young girl? - Yes.

650. You are not satisfied with the punishment provisions available under the civil law in regard to such offences?  
- The reason for my suggestion is that sometimes this matter is just kept out of sight and not brought up by the Muslim people. If there is ample provision in the civil law, I am quite satisfied.

651. Under the provisions of the Bill, there is a new section proposed in clause 11, which says that in any application for divorce the Court may make orders for the payment of maintenance or *mas-kahwin*, and the payment of a consolatory gift or *matta'ah* to the wife. Would that not go some way towards fulfilling your desire that divorce should not be as simple as has been in the past? - I feel that that is not enough to prevent the great number of divorces that are taking place.

*Inche Mohd. Ali*] I would like to dwell on what has been said by the witness on *mas-kahwin* being approved by the Prophet. I would like to know whether what has been approved by the Prophet has become law, or is it only a matter of practice?

*Chairman*] I think the question is, is it suggested that this question of *mas-kahwin* is imperative under the law of Islam, or whether it is only by agreement that *mas-kahwin* is paid. Is that the question, Inche Mohd. Ali?

*Inche Mohd. Ali*] Yes.

*Chairman*

652. The question then is, does the witness agree that under the law of Islam this question of *mas-kahwin* is not imperative but is left to the parties

to arrange? — This law is to apply only to those people who freely divorce their wives. It will not apply to people who treat their wives well and who do not divorce their wives.

653. I think the question in the mind of the hon. Member is this. Is it a fact that the law of Islam says that there must be *mas-kahwin*, or is it, according to the law of Islam, left to the wishes of the parties concerned?  
- *Mas-kahwin* is desirable and should apply to *bona-fide* marriages that is, marriages by people with good intentions.

654. For instance, could there be a marriage without *mas-kahwin*? — Yes, but we have also had cases where whole properties were given over to the wife as *mas-kahwin* during the time of the Prophet.

655. I think we would not argue against that, but the point has been made -and I think the Member is satisfied now-that *mas-kahwin* is not an essential part of a marriage, but by practice *mas-kahwin* is agreed upon. The Court may be called upon to decide on the question of *mas-kahwin* and may assume that a reasonable amount of *mas-kahwin* has been agreed upon. You would like to see that amount of *mas-kahwin* fixed at least at \$500. That is in the case of people who divorce their wives for no apparent good reason? — *Mas-kahwin* is a matter which is decided on on contracting a marriage.

*Chairman*] We do know that.

*Inche Mohd. Ali*

656. If, as the witness wishes, a *mas-kahwin* of \$500 and a monthly payment of \$30 as maintenance are written into the law, then the situation could well arise where a man who is not a citizen of Singapore wants to marry a woman who is a citizen of Singapore. If the amount of *mas-kahwin* is agreed upon satisfactorily, the payment is *only* deferred. If the man creates a difficult

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situation in Singapore, the Government or the proper authorities could then take proper steps to correct the situation. If, however, the man is an Indian, say, from Travancore, and he divorces his wife, what will be the position if he goes away for a long time and fails to pay her maintenance? —

As regards people who reside outside Singapore, it is left to the Government to take appropriate steps. Where the woman is concerned, she would not be able to do anything, because this is a matter which would bring shame on her. If the man has property in Singapore, then the Government can make demands on him as regards maintenance.

*Inche Mohd. Ali*] Mr. Speaker, there is flexibility in the law as regards this matter. In such a situation, will the Government here be able to get in touch with the government of the country, where the man has gone to, to look into the matter?

*Chairman*] I do not think we should ask the witness to answer that question. I suppose there is such a thing as reciprocal enforcement of maintenance orders. It is possible by agreement between two nations to enforce the orders. What the witness is suggesting is that this should be written into the law and, in the cases mentioned by the hon. Member, the Government should try to come to some agreement with the country concerned as to how best to enforce the orders of maintenance made.

*Inche Mohd. Ali*] If a wife is left by the husband who has gone out of the country and the wife goes to an *Imam* to claim her maintenance of \$30, I feel it would be difficult for her to claim that \$30, if this payment of maintenance is written into the law.

*Chairman*] Just one second before things get a little complicated. Are we not talking about maintenance which is payable on divorce?

*Inche Mohd. Ali*] Yes.

*Chairman*] The case mentioned is where a wife has been deserted by her husband, and she wants maintenance. We have not dealt with the suggestion that there should be maintenance in such a case yet, have we? Let us confine ourselves to the question of divorce where, if the suggestion is accepted, the wife would be entitled to \$30 per month maintenance.

*Inche Mohd. Ali*

657. As the matter has not arisen, I do not wish to pursue it any further? — The matter raised by the hon. Member is outside the scope of my suggestion. My suggestion is in respect of the wife who is divorced, not because of her own fault. In the case of the wife who herself asks for a divorce, then there is no question of maintenance payable to her.

*Chairman*] I do not think the hon. Member has suggested that either. He is worried about the wife who is deserted purely and simply by the husband going away. The point made by the Member has not arisen at the moment.

*Dato Abdul Hamid*

658. The witness has stated earlier that the \$500 *mas-kahwin* should be fixed for people who want to be married. Does he not think that \$500 might be too stiff a payment to be expected of a poor person, whereas during the time of the Holy Prophet a person who was poor and who could not afford to pay maintenance was advised by the Holy Prophet, "Go and teach your wife to read the Koran. That shall be the *mas-kahwin* for your wife."? — We might as well consider the marriage where all the property costing thousands of dollars was given over as *mas-kahwin*.

*Chairman*

659. Yes, but I think the hon. Member's point is this—that there cannot be a fixed sum, because if you have a fixed



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sum like \$500 it might cause hardship to the poorer class? — *Mas-kahwin* is really a matter where, if the divorce is at the request of the woman, she can waive payment of *mas-kahwin*. The idea is to have payment of *mas-kahwin* enforced on people who are not sincere in their intention to marry. We now have a situation where divorces are very prevalent because there is no such provision in the law that could be enforced on these people. Therefore, husbands could very easily divorce their wives. The purpose of my suggestion is to prevent this sort of thing happening on the part of people who take religion lightly.

*Chairman*] The witness has made that clear time and again.

*Dato Abdul Humid*

660. Mr. Speaker, the witness has stated that the purpose of fixing the *mas-kahwin* at \$500 is to prevent people from marrying polygamously and from divorcing their wives light-heartedly. What would be the position then in respect of someone who is sincere in his intention to contract a marriage? There is no means whereby we can say that a person is sincere or not sincere before his marriage. Would this not cause anyone who is sincere to feel that, because of the existence of this provision, he is a victim of the law? — I have stated earlier that the \$500 *mas-kahwin* should be a deferred payment. The payment of \$500 could therefore be waived if a divorce takes place on reasonable grounds. The wife could agree to waive payment of the *mas-kahwin*, or the husband could ask his wife to overlook its payment. The effect of the *mas-kahwin* is to prevent people from taking a light-hearted attitude to marriages and divorces.

*Chairman*

661. Yes, but what if the wife does not wish to waive willy-nilly? If the wife says that divorce is not right but the husband says that divorce is right,

what then? — Then it should be decided by the Kathi or the Court. There is provision for *nusus*. That, however, is another matter.

662. So your point really is : let us have this provision in the law. This provision is meant for husbands who wish to divorce their wives without any good reason. If the divorce is a divorce with sufficient grounds, then that \$500 *mas-kahwin* is not paid? — In fact, it could even be waived.

663. Yes, I am just coming to that. It would not be paid either because the wife says, "I waive it," or if the wife does not want to waive it, it goes to Court and the Court says, "*Mas-kahwin* is not payable"? — Yes. The Court will surely then carry out inquiries, and if it finds out that the divorce is not on reasonable grounds, then of course it will impose a sentence on the person.

*Chairman*] I think that is the position, Dato.

*Dato Abdul Hamid*

664. With regard to the witness's suggestions that the \$500 *mas-kahwin* be deferred, or otherwise, and that the monthly maintenance of \$30 should be written into the law, does he not think that these matters should more appropriately be dealt with at the time when the marriage is to take place? — If this is a matter for agreement between the two parties, then it cannot be re-opened. If a divorce results, then the Shariah Court will not have much to say.

665. Does the witness not think it would be better if conditions are agreed upon at the time when the marriage is to take place, so that both parties could agree to specific conditions? This could simplify matters and it would also make it easy for the Shariah Court to act, should it be necessary later on? — It appears to me that what the hon. Member is suggesting is not according to the practice of Islam. This is a matter for *taalik*.

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*Chairman*

666. Are you suggesting that it is against the law of Islam for a marriage agreement to be entered into-a marriage agreement which includes provision for *mas-kahwin*? — Not in regard to *mas-kahwin*. *Mas-kahwin* and *taalik* are permissible.

667. Let me get this quite clear. Is it all right if there is, in fact, a marriage agreement including *mas-kahwin*? — This is not a common practice in Islam, Sir.

668. You say it is not a common practice, but it is not against the law of Islam to have an agreement? — We already have our laws. Why then the necessity for this agreement?

669. Do you mean that if your suggestion is accepted? — Yes.

670. I do not think the witness understands. Take the case of two parties getting together and they want to get married. There is some agreement, shall we say, about *mas-kahwin* usually. There is nothing against the law of Islam that that should be so? — As far as *mas-kahwin* is concerned, whether it is \$500 or more, it is not against the law of Islam.

671. Your point, I think, is that when there is this agreement, it must at least conform to your suggestions if those suggestions are written into the law? — Yes, that is so.

672. And the conditions are that this *mas-kahwin* will not, in fact, be paid if the divorce is for proper reason? — Yes.

*Chairman*] I think that is the position.

*Dato Abdul Hamid*

673. There is one more question. The witness has stated that my suggestion, if accepted, is against the law of Islam. I would like to know against what aspect of the law of Islam? — Regarding the agreement which you have suggested, I have never known of it happening among Muslims.

*Chairman*

674. The question is: does it or does it not go against the law of Islam? — I cannot say it is strictly *haram*.

675. And you cannot say it is against the law of Islam? — Because no one has done that before.

676. That does not mean to say that it is against the law of Islam, is it? — No. But if that has been done, then it is another matter.

677. Please do not make sweeping statements like that. If you do not know, then say you do not know. The position then, I suppose, is that you do not know whether an agreement of the nature suggested by the hon. Member goes against the law of Islam? — I cannot say it is against the law of Islam.

*Chairman*] That is exactly what the hon. Member wants to know.

*Inche M. Ismail Rahim*

678. My question is directed to the suggestion that \$30 maintenance should be paid monthly to the wife who has been divorced until she remarries. Is this to be a provision in the law? — I have said over and over again that the women have nothing to defend themselves with.

*Chairman*

679. You have already suggested that this provision should be written into the law? — Yes, to insert a provision into the law in order that it be a safeguard against men who take divorces lightly.

*Inche M. Ismail Rahim*

680. Is the witness satisfied in his mind that this is a just provision? — Especially now in an emergency it is more than just.

681. Is he satisfied that this should be applied to all sections of the Muslim community? — The law makes no

exceptions. I have stated that this only applies to cases of divorce on no reasonable grounds. Women are helpless, so this provision is meant to be a safeguard for them.

*Chairman*

682. And only to apply if the divorce has been effected for no good reasons. if the divorce is for a good reason, then the wife cannot expect to be paid \$30 per month or any amount per month? - Yes, because that is so in Islam.

*Inche M. Ismail Rahim*] For justice to be achieved, the matter should go before the Shariah Court. It is the Shariah Court which should see that justice is being done. That is my point.

*Chairman*

683. Would the witness be satisfied if it is left to the Shariah Court to decide as to what should be the amount of *mas-kahwin*, or the amount of maintenance, or the amount of any payment? - We should have this law and it will then be up to the Kathi and to the Shariah Court to weigh the matter carefully and to see that justice is done.

684. But the point made by the hon. Member is, why fix a figure? Why not leave the fixing of the figure to the Court? - We will not then be able to prevent divorces which sometimes are regarded lightly.

*Inche M. Ismail Rahim*] The reason why I think the matter should be decided by the Shariah Court is that, if I were a poor man, I would not be able to pay \$500 *mas-kahwin* and \$30 monthly maintenance. But if I were a rich man, this would be no problem to me. So I say the matter should be decided by the Shariah Court.

*Chairman*

685. Does the witness appreciate the point? - I do. As to whether a person is poor or rich, if he marries with a sincere intention, then there is nothing he should fear. Everything will

resolve itself very nicely. It is only in cases where people take divorces lightly that I feel this provision should apply.

686. But the point made by the hon. Member is that a rich man may also take divorces lightly. If he has only to pay \$500 *mas-kahwin* and \$30 monthly maintenance, it will not prevent him from divorcing his wife and taking it lightly? - These matters arise from people who are irresponsible in their attitude.

687. That is accepted. But the Member says that even a rich man can be irresponsible quite easily, because you are suggesting that he should only pay \$500 *mas-kahwin* and \$30 a month as maintenance? — What is to be done about that? The law should apply to both rich and poor.

*Inche M. Ismail Rahim*

688. The point I wish to raise is this. I am not quite happy with the views expressed, because it is all right in the case of the rich man. But in the case of someone earning, say, a salary of \$120, he may not be able to afford \$30? - My point is that, in fact, the \$30 is to apply to one who earns a low income and has no children. If he has children, then the matter could be considered accordingly.

*Chairman*

689. I think we are going very far away from the point. The point made by the hon. Member is quite clear, and that is, if we are to accept this suggestion in principle, then there is no point in fixing any exact figures, because those figures which the witness has suggested are nothing to a rich man, but a great deal to a poor man. And a rich man can be just as guilty of a wrongful divorce as a poor man. That is the only point made. Have you got any answer to that? - With regard to inability to pay maintenance, if the person is poor, then he need not have to go to goal. There will be consideration on that score.

*Chairman*] Those are details which I do not think we should debate further. Any questions, Inche Mohd. Ariff?

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*

690. Mr. Speaker, Sir, I think the witness will agree with me that the law in the past regarding divorces has been very loose? — I do not wish to commit myself to saying that the law in the past regarding divorces has been loose or otherwise. It is just that those are my suggestions which I think, if accepted, would help to prevent divorces.

691. The witness has stated earlier that in the past husbands have been divorcing their wives very easily, so that it shows that the law in the past has been loose? — I say this: If my suggestions had been carried out three years earlier, we would only have had a quarter of the number of divorces that have taken place.

*Chairman*

692. You do agree that there has been quite a large number of divorces, and one of the reasons you think is that the *mas-kahwin* is too low, is that correct? — There has been no provision for maintenance of \$30 a month to the divorced wives. -

693. Two of your several reasons—one is that the *mas-kahwin* is too low, and the other is that there is no provision of maintenance of \$30 per month? - That makes divorces very easy.

*Inche Baharuddin*

694. I do not wish to dwell on the suggested sums of \$500 or \$30, because those are just suggestions on the part of the witness. What I disagree with is that the man who divorces his wife should be forced to pay \$500, because if the suggestion is accepted then the law has to be enforced that the irresponsible husband should be forced

to pay \$500. In the case of an irresponsible husband, if he knows very well that he is doing something wrong, he will say, "Well, I do not mind continuing to do things wrongly, and I refuse to pay the \$500." I would like to ask the witness's views. What does he think will be the position then? What does he think the Government should do if the husband has not paid the \$500? — My suggestions are based on the Islamic law. If he divorces his wife, and he has nothing whatever—no property—then he cannot be imprisoned. But if he has property, then we can take action.

*Chairman*

695. We will deal with the \$500 *mas-kahwin*—if your suggestion is accepted, then in the case of the husband who refuses to pay the \$500 you have, I think, indicated that the matter would then go to the Court. Is that right? And the Court will then make an order that the man has to pay the \$500. Is that right? — Yes.

696. You suggest that if he does not pay the \$500, the amount should be levied on his property, if he has any. If he has no property, what then? — If the Court finds that this man is merely trying to evade the issue, he could be sentenced to imprisonment.

697. You do then agree with the new section 36B in clause 11 which reads:

"If any person fails or neglects to comply with an order of the Court under section 36 or 36A of this Ordinance the Court may for every breach of the order direct the amount or the value of the property due to be levied in the manner provided for levying fines imposed by a Magistrate's Court or may sentence him to imprisonment for a term which may extend to six months."?

— Yes.

*Inche Yaacob*

698. Mr. Speaker, Sir, does the witness agree with me that *mas-kahwin* is the right of the woman? - That is correct.

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699. Does he not agree that the fixing of the *mas-kahwin* amounts to forcing it on the woman? — The question of forcing does not arise.

700. Mr. Speaker, is this not actually forcing, if the law says the man should pay a *mas-kahwin* of \$500? — The \$500 is for people who are irresponsible.

*Chairman*

701. Shall we stop there for a bit? Supposing two young people want to get married—they are just starting in life. Supposing on the bride's side, she says, "Well, I know you cannot afford much. I will be quite content with a *mas-kahwin* of \$50." Everything is all right then? — Actually the *mas-kahwin* can be just a recitation of the *Surat Fatiha*. It could be anything. But we want to fix it at \$500.

702. But the point raised by the hon. Member is this. Is it not then imposing something on the bride which she really does not want? — We cannot force her.

703. But you are advocating that we should force her, because you say, "Write it into the law"? — But if the bride wishes to overlook the maintenance, that is a matter which is outside the law.

704. The husband is not bound to pay that? — If, at the time of the marriage, the girl agrees that the *mas-kahwin* is to be waived, well, that is a matter which is outside the law.

705. You say then that even if the \$500 for *mas-kahwin* is written into the law, the law should also say that the bride, if she does not want it, can say, "No, I do not want it."? — In fact she can even agree to accept the *mas-kahwin* in cash.

706. That we already know. But what I think the hon. Member would like to know is, what is the point of writing this \$500 into the law if, at the same time, you say that the bride can

ignore what is written into the law by saying, "I want to waive it straight-away."? — The benefit of the \$500 is for the safety of the marriage. If the man knows that he is going to be liable for a sum of \$500, then he will cherish his wife.

707. Take the case when he know! he is not going to be liable, because the wife says, "I do not want it."? — But then a hundred wives may not want to waive it. If one exceptional individual wants to waive it, then that is an exceptional case.

*Chairman*] I see. That makes it clear.

*Inche Yaacob*

708. On the suggestion of \$30 for maintenance, does the witness not agree with me that, according to the law of Islam, the husband is liable for the payment of maintenance only for the period of her *eddah*? — That depends on the nature of the divorce. But now the matter has become one of emergency, because divorces are very prevalent. On the strength of a word, a woman can be divorced.

*Chairman*

709. But the point is this. Ordinarily, the husband would be called upon to pay maintenance for his wife during the period of the *eddah* only. Is that right? — That is so. But according to the law of Islam, in an emergency, we can impose a further heavier condition.

*Inche Yaacob*

710. Does the witness think that in Singapore now an emergency law relating to this matter is called for? — That is so.

*Inche Yaacob*] Therefore the witness's suggestions are merely for the purpose of preventing divorces. Is that so? Is there no other alternative in the case of divorce? For instance, a divorce could only take place in Court. And that, too, if the Court has failed to bring about

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reconciliation. As stated by the Shariah Court yesterday, the incidence of divorce now is very much below what has been obtaining many years ago.

*Chairman*

711. I think the question is this: does the witness not think that it would be better, on the question of divorce, to leave the matter to the Shariah Court? In fact, there has been a statement that the Shariah Court has dealt with fewer divorce cases lately than it did in the past? - On this question of divorce, the position is not *yet* satisfactory. Divorce is something that is most abhorred by God. Divorce has become very prevalent, and it has been very easy to effect divorces among the Muslim community. That is why there should be a provision, of law to tighten up what has been loose all this while in order to avoid such easy divorces.

*Mr. Byrne*

712. Mr. Speaker, Sir, I think we on the Government side want to make it clear to the witness that we are one with him in wanting to make divorce difficult. We do not want it to be made easier than it used to be before. That is why we have introduced this amendment to section 36 to provide that the Shariah Court can make orders of maintenance, orders for the payment of *mas-kahwin*, and orders for the payment of *matta'ah* in case of divorces. Mr. Speaker, Sir, the witness has proposed that the maintenance should be fixed at \$30 monthly. His intention is that, by so fixing a sum of money, it would serve as a deterrent to those who would otherwise treat divorce lightly. My colleague, the Member for Geylang East (Inche M. Ismail Rahim), has already pointed out to the Select Committee that \$30 would be just a flea-bite to a rich man, but it is a large sum of money to a poor man. If we were to fix \$30 as the sum that is to be paid as maintenance does the witness not agree that we would be making divorces

very much easier for the rich men and making it difficult for the poor men? - What we can see obtaining among the Muslim community at present is that divorces happen mostly among people of the so-called lower strata.

*Chairman*

713. What I think the Minister is anxious to point out is that, in a case like that, it could very well be dealt with by the Court. The Court might say, "Well, you are a man of poor means. I will then order you to pay maintenance according to your means." The Court might, on the other hand, in the case of a rich man, order him to pay quite a large sum. Why should the Court be limited to \$30 only? - No, Sir. My suggestion actually is that \$30 is the minimum amount to apply to a person whose income is, say, around \$200 a month and who has no children. But in the case of people of better means, the Court could decide accordingly.

714. But there are cases of husbands who earn less than \$200, are there not? What do you say about those people? Do they still pay \$30? - For people earning an income of around \$150 or \$200, I say the minimum maintenance to apply must be \$30.

715. And for those earning less than \$150? - The matter rests with the Court.

*Mr. Byrne*

716. Mr. Speaker, Sir, would the witness not agree with me that if a law is to be enacted on this question of maintenance, it would be necessary that this law be seen to be operating equally to both rich and poor alike? — I think so too.

717. And the only way we can do it, if I may suggest it to the witness, is to leave it in the hands of the Court. The Court would have discretion to look into the circumstances of the party, and make its decision as to what

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amount of maintenance the party should pay? - How can we let the public know that this payment is to be made until the wife re-marries if a law to such effect is not legislated?

*Chairman*

718. That is a different point entirely. The point is, do you not agree, after all this discussion, that perhaps it would be best, in so far as the amount of maintenance is concerned, to leave the matter to the Court? - Is it the intention of the Government to see to it that if a person divorces his wife on no reasonable grounds, then maintenance is to be paid until the wife re-marries?

719. I do not think you can go into details like that. The point, I think, is this. There is a suggested provision in the Bill that the Court shall have power to decide on maintenance in cases of divorce, and the Minister has suggested leaving it to the Court in so far as the amount is concerned. Do you not agree? - Then you are leaving the matter wide open.

720. Yes; leave it to the discretion of the Court? - Then we do not see the law that is being applied.

*Mr. Byrne*

721. Mr. Speaker, Sir, I would like to point out to the witness that maintenance will be paid during the period of *eddah* by the amendment that we propose to section 36. But in the case of the woman who needs support from her husband up to the time that she marries, there is provision for the Court, to order the payment of consolatory gifts for that purpose? - As far as *matta'ah* is concerned, a person can pay for a month or two months, and then he can stop paying.

*Mr. Byrne*] Mr. Speaker, Sir, it can be in the form of an annuity.

*Chairman*

722. Consolatory gifts can be in the form of a monthly payment or an annuity. It can be in the form of a monthly payment—an order made that so much money should be paid per month, or it can even be a sum to be paid annually. If the order is not obeyed, then, of course, we have already read to you that section of the Ordinance which says what the Court can do if the order is not obeyed? — The *mawta'ah* cannot be considered as maintenance. This is a gift which could be in any form. Because we want to prevent divorces, we should make a provision that is fixed and tight.

*Mr. Byrne*

723. For the information of the witness, I am advised, Mr. Speaker, Sir, that *matta'ah* is like permanent alimony, payable on divorce under the Divorce Ordinance, so that it can be paid as a lump sum or in the form of an annuity, for the support of the wife until she remarries? - Yes, the provision for *matta'ah* too should apply, but it should be paid monthly.

724. That would be left to the discretion of the Court, Sir. But there is provision in this Bill for that? — I know, Sir. But now we want to legislate a law which will be firm whereby people who think of divorcing their wives would know what payments they would have to pay if they divorce their wives.

*Chairman*

725. You want the law to be more precise, instead of simply leaving the matter to the discretion of the Court, is that right? - If you leave it to the Court, then the public will not know.

726. So you would like it to be more precise. In your view, it would be more precise if certain figures were, in fact, written into the Ordinance and details as to how these payments are to be made should also be written into the

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Ordinance? - The figures could be left out, but the public must be able to know that if a person divorces his wife, he will have to pay a monthly *matta'ah*.

*Mr. Byrne*

727. So what the witness is suggesting then is that it should be provided in the law that *matta'ah* be paid, say, either in a lump sum or in monthly payments. That is what he is suggesting to the Select Committee? — To be paid monthly until the wife re-marries.

*Chairman*] Yes. I think the witness has made the point that he would like an amendment to the suggested law that *matta'ah* should always be paid monthly.

*Mr. Byrne*] In monthly payments until she re-marries.

*Chairman*] Yes, I think he has made that point.

*Mr. Byrne*

728. There is one more point, Mr. Speaker, Sir. On the question of *mas-kahwin*, I am advised that it is, in essence, a gift which the husband makes to his wife at the time of marriage under the Muslim law? - According to the law of Islam, the *mas-kahwin* is obligatory. It could be in any form. It could be just reading a certain text from the Koran. But in whatever form it is, the *mas-kahwin* is obligatory.

*(The witness withdrew.)*

729. My point is this. The *mas-kahwin* arises out of an agreement between the two parties, and it is not within the power of the Shariah Court ever to vary that agreement. What the Shariah Court can do is only to make an order for *mas-kahwin*, of a reasonable amount if there has been no such agreement before? - Why I suggest the figure of \$500 and payment be deferred is to ensure that the person will regard marriage as it should be regarded, that is, not lightly. For any one who wants to contract a marriage with sincerity, then he should not have any fear at all.

*Mr. Byrne*] Mr. Speaker, Sir, there is one last point. We are in complete agreement with him in what he wants to do, but we are trying to see how best we can do it.

*Chairman*] I do not think we can go any further on that point. We have touched on all aspects of the representation on that point, and now we have come to the end of our sitting.

*Chairman*

730. I hope Inche Shaikh Maarof is not too tired to come again? — I am quite happy to come at any time.

731. What about Wednesday, 30th March, at 10 a.m. It is after the Hari Raya Puasa. Is it all right? - Yes.



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THURSDAY, 24TH MARCH, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)Inche Baharuddin bin Mohamed Ariff  
Mr. K. M. ByrneInche Mohd. Ali bin Alwi  
Inche M. Ismail Rahim  
Inche Yaacob bin Mohamed

ABSENT:

Dato Abdul Hamid bin Haji Jumat  
(*with apologies*)

Inche Mohd. Ariff bin Suradi

The following representatives of the Singapore Pan-Malayan Islamic Party attended and were further examined:-

Ustaz Mohamed Yunos bin Hassan (Committee Member).

Syed Abubaker bin Al-Hadad (Member of the Dewan Ulama Committee).

Syed Junid Al-Junied (Treasurer).

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

732. Come in. Do sit down. We have the same gentlemen here, and that is, Ustaz Mohamed Yunos bin Hassan, Syed Abubaker bin Al-Hadad and Syed Junid Al-Junied. Is that correct? — (*Ustaz Mohamed Yunos bin Hassan, Syed Abubaker bin Al-Hadad and Syed Junid Al-Junied*) Yes.

733. May I first try and summarise the conclusions that were reached when we last met? Firstly, the representatives of the Party are quite certain that in the case of a polygamous marriage, they did not agree that the Chief Kathi alone should be given the power to solemnize the marriage and to make inquiries before solemnizing the marriage, if there was any lawful obstacle according to the law of Islam to such a marriage. Is that correct? — (*Ustaz Mohamed Yunos*) Yes.

734. The second point is that the presence of any Kathi is not really required for a marriage, is that correct? — No.

735. That is not correct? You did not raise the point that it is really not necessary for a Kathi to be present at a marriage—it is not required by Islamic law? — I did not say so.

736. Shall I try and revive *your* memory? It is Question 474. This is what I asked:

"Your view is that the inquiry should be made by the Kathi who solemnizes the marriage?"

Your answer was:

"My basis for that view is that the Kathi is only an intermediary. He is not necessary in any marriage. A marriage can be performed even if there is no Kathi, provided that all the requirements pertaining to the marriage are met."

Is that a correct report? — Yes.

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737. Am I not correct then when I say that your second point is that the presence of a Kathi is not really required for a marriage? — In the interests of safeguarding the welfare of the marriage, it will be better if a Kathi is present, because he is someone who is duly appointed by Government.

738. That is your third point. What I am saying is that you did tell Members of the Select Committee that, according to the law of Islam, it is not really necessary for a Kathi to be present to solemnize a marriage or to make inquiries? — That is in general.

739. Now, coming to your third point—which you have just said is that it will be better if there is a Kathi—if power is to be given in regard to polygamous marriages, then that power should be given to all the Kathis and not to the Chief Kathi only. Your first reason is for the sake of convenience, and your second reason is that the parties to the marriage should be free to choose whichever Kathi they desire? — Yes.

740. The fourth point you have made is that, in your view, it should be the same Kathi performing both duties, that is, the solemnization of the marriage and making the inquiry beforehand? — Yes.

741. And your fifth point is this: there is, in fact, no prohibition against one person making the inquiry and another person solemnizing the marriage, but you are not in favour of the idea because there might be complications? — Yes.

742. Your final point is that the arguments you have advanced in regard to polygamous marriages apply to the provisions of the Ordinance in the case where a girl has no *wali* or the *wali* has refused his consent to the marriage; that is to say, you are against the Chief Kathi being given the sole power in regard to those cases? — In the case of a woman who has no *wali*.

743. Or in the case of a woman who has a *wali* but *the wali* has refused to give his consent? — That is another matter.

744. Shall we revive your memory again? This is Question 532, last sentence:

“Just one more question. *You* do know that where a woman has no *wali* the present law says:

“7.-(3) Where there is no *wali* of the woman to be wedded or where a *wali* shall, on grounds which the Chief *Kathi* does not consider satisfactory, refuse his consent to the marriage, the marriage may be solemnized by the Chief *Kathi* but before solemnizing such marriage the Chief *Kathi* shall make enquiry as prescribed in subsection (2) of this section.”,

and you replied, “I do.” And the next question I asked was:

“Are you against that law or are you satisfied?”,

and your answer was:

“According to the law of Islam, where a woman to be wedded has *no wali*, a *wali hakim* can be appointed.”?

— Yes.

745. And I further asked you:

“Yes, we know that. Under the present law, the Chief Kathi must make the inquiry and the Chief Kathi alone can solemnize the marriage. That is the present law and you have no quarrel with it, have you?”

And your answer was, “I disagree”?

— Yes.

746. Then I said:

“Is it the first time you know of this law?”, and you said, “Yes.” I said further:

“And your objection, I suppose, will be the same as the objections you have raised? — Yes.”

Well, that does appear to have been concentrated on the case of a woman having no *wali*. Now, I think you wanted to say something about the present provision of the law where the Chief Kathi is, in fact, given power even in cases where the *wali* has refused to give his consent? — Would you please repeat your question?

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747. There is a provision in the law, which we have just read out to you, concerning the case of a woman or a girl who has a *wali* but the *wali* has refused to give his consent on certain grounds. Now, the present law says the Chief Kathi can decide whether or not the *wali's* grounds for the refusal are satisfactory. If he considers that they are not, in fact, satisfactory, then he can then solemnize the marriage. What have you to say about that? — I would ask your permission for my colleague to reply.

748. As I have indicated earlier, any person who wishes to speak may do so? — (*Syed Abubaker*) On the question of the woman who has a *wali*, and the *wali* refuses to give his consent to the marriage, and this *wali* is living in the same State. Any Kathi, and not only the Chief Kathi, can communicate with the *wali* to inquire into the reasons for such a refusal, at least two or three times. The Kathi should attempt to get the reason for the *wali's* refusal of his consent. If he finds that the reason for refusal is not in conformity with the law of Islam, as, for instance, if the woman to be married is of equal status with the person she wishes to marry, then under such circumstances the Kathi can solemnize the marriage.

749. That is all right. But supposing the Kathi finds that the *wali* is wrong, what then? — If the reasons are against the law of Islam, then the Kathi has full power to act accordingly.

750. So your short answer really is that you disagree with the present law and you say that it should be amended to give this power to any Kathi? — This is so.

*Chairman*] I think I have summarised the evidence so far and now it is up to hon. Members to ask questions. Inche Mohd. Ali, any questions?

*Inche Mohd. Ali*] No questions.

*Inche M. Ismail Rahim*] No.

*Inche Baharuddin*] Mr. Speaker, Sir, I believe the representatives of the Pan-Malayan Islamic Party realise that the purpose of bringing in these amendments to the Ordinance is to avoid the bad consequences that have resulted in the past.

*Chairman*

751. Would the witnesses like to answer that question? Is that a correct assessment? Who would like to answer that? — (*Ustaz Mohamed Yunus*) Could you please repeat the question?

752. Let me put it this way. Do you appreciate that the object of this Bill is to try to correct the mistakes that have occurred in the past? — I feel that all Muslims are in sympathy with this Bill, but we should understand that the Muslim community and the Islamic community are two different communities. I would like to bring in an example. I feel that not only you but everybody will agree that a warrior and a sword are two different things. If the warrior is victorious in war, the credit for it is not given to the sword but to the skill of the warrior wielding it. In like manner, it is not the earth that is high or low, or the music that is out of tempo. Rather it is the dancers who are at fault. Likewise in the case of members of the Muslim community, the fault lies in their lack of understanding of the law of Islam. It is by this means that we judge their knowledge of the law of Islam.

753. I think that is a very picturesque way of describing the whole thing? — The law of Islam is easy and flexible; its purpose is to make things easy for us. But it is our own actions which are at fault. Why should we therefore touch on the law of Islam?

754. That, of course, applies to any society, does it not? The fault of wrongdoing always lies with the person himself, not with the law? — Yes.

755. The position, I think, as far as the hon. Member is concerned, is this: we shall deal first with polygamous marriages—do you or do you not agree that there have been polygamous marriages in the past which, in fact, have gone against the law of Islam? Is that correct, or is it not? — Yes. Most polygamous marriages, however, have been according to the law of Islam.

756. And the fault, as you say, lies in the lack of understanding of Islamic law in so far as these people are concerned the people who contract polygamous marriages? — Yes.

757. But you agree that, in fact, there have been cases where people know the law of Islam, but in spite of that they try to get around it in order to contract polygamous marriages. Do you agree or not? — That is wrong. He is doing wrong to his religion.

758. What the hon. Member wishes to point out is that an effort is now being made to stop all these mistakes as far as possible. Do you not think that that is a good thing to do; or do you say, just leave it to the people to educate themselves. What is your idea now? — In my opinion, the person wanting to contract a second marriage should understand the law of Islam in relation to that marriage.

759. Who is to make him understand? There must be somebody to make him understand, if he does not understand? — In my opinion, it is the person who solemnizes the marriage.

760. And you have already advocated that the Kathi could, if he solemnizes the marriage? — Yes.

761. And your solution is: give all Kathis the power to solemnize polygamous marriages? — Yes.

*Inche Baharuddin*] Mr. Speaker, Sir, I wish to thank the witness for his views. He has asked: why does the Government want to change the law in regard to such marriages? But we do follow fully the law of Islam, as far as such marriages are concerned. But in

the past the law has not been followed to the full. The conditions for such marriages were not informed to the people concerned. Now we wish to make the conditions necessary for such marriages clear to the people, with all the wisdom at our command. We can do this for the benefit of the people who do not know of such conditions. Mr. Speaker, Sir, in short, the matter is like this. Just now the witness has stated that people who want to contract such marriages are ignorant of the conditions of such marriages. In my opinion, this view is correct. The Government is now trying to make these people understand what the conditions are, and the means whereby this purpose can be achieved is to empower one person, that is, the Chief Kathi, to go into the question of this kind of marriage based on the true law of Islam.

*Chairman*

762. I think the witness appreciates that. But what the witness is saying is this. Why give that power to the Chief Kathi? Why not to all Kathis? Is that it? — Yes, that is so.

763. Does Syed Abubaker like to add to that? — (*Syed Abubaker*) The hon. Member has stated that the person wanting to contract such a marriage does not know the conditions for such a marriage.

764. Can I stop you at that? I think the position is this. The hon. Member said that he agreed with Ustaz Mohamed Yunus when he said that in the past the parties who wished to contract polygamous marriages were, in fact, ignorant of the law of Islam, in so far as that was concerned. The hon. Member then went on to say that the object of the Government was to see that the people were, in fact, told what the law was, and the method which the Government has suggested is that it is the Chief Kathi who should be given the power to solemnize these polygamous marriages so that he could tell the parties. "These are the requirements." The answer to that, by Ustaz

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Mohamed Yunos, is, why give that power to the Chief Kathi alone? Why not to all Kathis? Is that a fair assessment? - Yes.

*Chairman*] Any other questions?

*Inche Baharuddin*] As regards the law of Islam, Ustaz Mohamed Yunos has stated that it makes it easy for people to contract such marriages.

*Chairman*] No, I do not think that is correct. I think Ustaz Mohamed Yunos has just pointed out that, in general, the law of Islam is easy and flexible. He has not concentrated on marriages. I may be wrong.

*Inche Baharuddin*] In Question 503 -

*Chairman*

765. I see, the hon. Member is referring to the witness's past evidence, not the evidence he has just given. He is now recollecting what has been said by Syed Abubaker. The question is, does Syed Abubaker recollect saying, "According to the law of Islam, a second marriage or a third marriage is not a matter of difficulty to the person."? - Yes.

*Inche Baharuddin*] Does Syed Abubaker also recollect saying, "If in the past many such marriages have taken place without satisfying the requirements of Islam, that is a matter which is not good in the eyes of the public."?

*Chairman*] This was my question the last time to Syed Abubaker. I asked:

"What I want you to be quite certain in your mind is this. Is it not a fact that the interpretation of the requirements of Islam, whatever they are, in so far as second marriages are concerned, has been lax in certain classes? Do you agree or do you not? Put it very shortly. Do you agree that in the past second marriages have been easy?"

And you answered "Yes". Then I went on to ask:

"Therefore, do you agree that there have been cases in the past where a second marriage has been contracted, but, strictly, the requirements of Islam have not been satisfied up to the hilt?"

And you answered:

"Yes. I agree. If in the past many such marriages have taken place without satisfying the requirements of Islam, that is a matter which is not good in the eyes of the public."

And I went on to ask:

"They have happened?"

And you replied:

"Yes. If from now we can have those marriages solemnized according to the strict rules of Islam, then it would be a good thing."

Then I went on to say:

"You have now said that even Kathis in the past have made mistakes?"

And you said "Yes". Then I went on to ask this question:

"Now, the question I would like you to answer is this: do you not agree then that, in view of the past mistakes, it would be better in future to leave the decision whether a man comes within the requirements of Islamic law, to one man, and one man only? Leave out the Chief Kathi or anybody else. Say one man. He must, of course, be a man well versed in Islamic law. So that there cannot be any question of different opinions coming to bear on the same set of circumstances. What is your answer to that?"

And your answer was:

"In the eyes of Islam, giving power or authority to only one person to carry out inquiries in respect of polygamous marriages is undesirable."

Now, what is the question, Inche Baharuddin?

*Inche Baharuddin*

766. Mr. Speaker, Sir, after we have heard the statements made by the witnesses in the past, I believe they will agree with me that it is not the law of Islam relating to marriages that is easy in nature, but rather it is the inquiry carried out by a person or persons which have been lax. Does the witness agree with me on that point? - Yes.

767. Thank you. It is not the law of Islam that is lax? - No. The law of Islam is flexible but the person carrying out the inquiry does it in an easy manner.

*Chairman*

768. Is this the position? In so far as the law of Islam is concerned, it is *easy* and flexible. But what has happened in the past is that the people making the inquiries have carried them out in so easy a manner that they have got round the law of Islam very easily. Is that correct? — The law of Islam is flexible, and the nature of the inquiry should be in accordance with the flexibility of the law of Islam.

769. I think the hon. Member will admit that. But what he is trying to point out is that, in spite of the flexibility of the Islamic law, these inquiries themselves have been lax? — (*Ustaz Mohamed Yunus*) It is because of that that the consequences are bad.

*Chairman*] Yes. Is that clear now, Inche Baharuddin?

*Inche Baharuddin*

770. Yes. Does the witness think that, in future, the inquiries should be carried out as easily as they have been carried out in the past, or should they be tightened up, in view of the divorces and the troubles that arise in the homes of various families? — (*Syed Junid Al-Tuned*) In my view, Sir, the divorces which are to be found among the Muslim community now are not due to polygamous marriages. Most of the divorces that happen now are divorces which take place between people who are married only to one wife. That is because the husband does not realise what his duties are towards his wife, and the wife likewise does not understand what her duties are towards her husband. This is because of the lack of understanding of the law of Islam.

*Chairman*

771. I think we are now going completely away from the subject. There are two points of view. Let us record both of them and leave it at that, otherwise we will be debating on divorces. Let us leave the point of view of the hon. Member and the point of view of

Syed Junid in so far as divorce is concerned. Let us just record them. Now we go back to the real pith of the question, and that is, do the witnesses agree that inquiries in future should not be as lax as they have been in the past, and that there should be something to tighten up these inquiries? — (*Ustaz Mohamed Yunus*) If the inquiry is carried out by any Kathi, then I agree.

*Chairman*] Any other questions?

*Inche Baharuddin*] No.

*Chairman*] Inche Yaacob?

*Inche Yaacob*] Yes, Mr. Speaker, Sir. Do the witnesses agree with me that the faith of the Muslim people at present is different from that to be found during the time of the Holy Prophet?

*Chairman*

772. Would you like to answer that question, Syed Abubaker? — (*Syed Abubaker*) The question of *Imam* (faith) to a Muslim comes in the second category. Every *Mu'min* is a Muslim but it does not mean that every Muslim is a *Mu'min*. That is a matter of religious practice-*Ibadah*.

*Chairman*] That is exactly what I was going to say. It is very debatable.

*Inche Yaacob*] I would like the witness to answer whether he thinks the faith-the *Iman-of the* Muslims at present is the same as that during the time of the Prophet.

*Chairman*

773. I think the answer has been given by Syed Abubaker, which is, that surely it depends on the individual who practices the law of Islam. Does the witness wish to answer? — *Iman*, as understood in Arabic, means belief in the heart, and according to a particular text. Therefore, there is no means of gauging the extent of one's faith.

*Chairman*] That is what I understood the witness to say. Religious belief is a matter of the heart, and it is impossible for anyone to gage what is in the heart of a person, is that right?

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*Inche Yaacob*] I raise this question, Mr. Speaker, Sir, because there is a connection with the question of marriage, according to the law of Islam?

*Chairman*] Will the hon. Member put that question?

*Inche Yaacob*] According to the law of Islam, the first essential requirement for anyone who wishes to contract a polygamous marriage is that he must be able to exercise equity. This cannot be achieved unless the person has a deep and abiding faith in God, not only in regard to giving maintenance but also in regard to duties concerning conjugal relationships. In fact, if he spends half an hour of one night with one wife, he must spend half an hour of one night with the other wife.

*Chairman*] Now, what is the question?

*Inche Yaacob*] So the divorces that we find in the Shariah Court now take place because of the lack of equity, the lack of justice on the part of the husband. That is why we have suggested that there should be a thorough inquiry into the capability of the husband to provide all the necessary things to his wives as required by Islam.

*Chairman*] I think the witnesses will agree up to a point that that is so; that some sort of education should be given to these people. But they say that the power to give this education should not be confined only to the Chief Kathi but should be given to all the Kathis. I think that is the point, am I right?

*Inche Yaacob*] I am not dealing with the power to educate. I am dealing with the power to make inquiries. It is not necessary for the Chief Kathi to go and find out for himself how many times the man concerned spends the night with one of his wives and how many times with the other wife. But if he is a peon earning a salary of \$120 a month and he wants to marry three wives, then it will be unreasonable. Therefore, it is necessary for the Chief

Kathi to make inquiries as to whether this person has a lot of property or otherwise.

*Chairman*] Yes, but I think the witnesses have asked the question, "Why the Chief Kathi alone? Why not all the Kathis?"

*Inche Yaacob*] The answer is because Singapore is small.

*Chairman*

774. The hon. Member thinks that because Singapore is small this power of inquiry should be confined only to the Chief Kathi. Would the witness like to answer that? — (*Ustaz Mohamed Yunus*) Mr. Speaker, Sir, although Singapore is small, its population is big. I believe we are now embarking on another aspect of the matter. We were on the question of solemnization of marriages, but now it seems that we are embarking on the question of maintenance.

*Inche Yaacob*] Mr. Speaker, Sir, I brought in the question of maintenance as an example of the kind of inquiry that should take place. Secondly, about the population of Singapore, it is true that it is big, but the incidence of polygamous marriages is about 100 only. I would like to inform the Committee that there is one eminent Muslim authority, Shaikh Mohd. Abduh. He was at one time the Mufti of Egypt. In 1926, he suggested introducing a Bill relating to marriages, dealing, among other things, with the question of polygamous marriages and requiring the Kathis to carry out very thorough inquiries as to the suitability and the capability of the person wanting to contract a polygamous marriage. He had to abide by the conditions if he wanted to contract a polygamous marriage. But the suggestion was not put into effect. That same Bill, however, was approved by the Governments of Egypt and Syria last month, and will take effect as from 1st of October this year.

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*Chairman*] Can I get this clear? This Bill provides that the inquiry could be made by all Kathis? I just want to be quite certain first, and the witnesses must be quite certain too. Does this Bill provide that the inquiry could be made by all Kathis?

*Inche Yaacob*] By one official.

*Chairman*] So the Bill which the hon. Member is talking about provides that the inquiry should be made by one official?

*Inche Yaacob*] Yes. The inquiry should be made by one of the Government officials from the Department of Social Welfare. He is the one who will be responsible for deciding whether or not the marriage is to be approved.

*Chairman*] I suppose the question is: what is the witness's reaction to that, is that right?

*Inche Yaacob*

775. Yes, that is so? — (*Syed Abubaker*) As far as I am concerned, I do not quite agree, because it is suggested that the inquiry should be carried out by one official. Inquiries should be made, yes. What is wrong if Kathis are the people who carry out the inquiries? Every Kathi who holds office should know thoroughly the requirements of Islam. He is appointed a Kathi for the purpose of solving disputes according to the law to be found in the Koran according to the traditions of the Prophet and also according to the laws of *Qiyas* and *Ijma*. If inquiries are to be carried out, it would be quite sufficient that they be carried out by the Kathis.

*Chairman*

776. I think the witness said the last time he was here that even Kathis in the past had made mistakes? — Whether it be a Kathi or a Judge, he will make mistakes.

777. And you have said that you do not think it would be better if this power of inquiry should be localised in one person? — It should not be localised in one person.

*Inche Yaacob*] Mr. Speaker, Sir, I do not understand why partly we come back to the law of Islam and partly not,

*Chairman*] What does the Member mean by "partly"?

*Inche Yaacob*] I do not understand why the witness falls back partly on the law of Islam and partly not.

*Chairman*] In what way?

*Inche Yaacob*

778. Partly the witness said just now that according to the law of Islam Kathis are appointed to carry out very thorough and proper investigations, whereas on the question of marriage, the marriage would be proper without the presence of the Kathi. If the witness accepts the Kathi, why does he not accept the Chief Kathi? Both of them are following the law of Islam? — (*Ustaz Mohamed Yunus*) We, who follow the religion and live in the country, must obey our religious precepts as well as the law of the country. The point is, according to the law of Islam, if the Kathi is not appointed to register any marriage, then the consequences will be bad—for instance, the question of property left by the deceased. So in order to avoid these evil consequences, that is one of the duties of the Government.

*Inche Yaacob*] So, Mr. Speaker, the power given to the Chief Kathi is not wrong.

*Chairman*

779. I do not think the witnesses have stated that it is wrong. What they are trying to urge now is that all Kathis should be treated in the same way as the Chief Kathi is treated. All Kathis should be equally versed in the law of



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Islam, and therefore they would be able to administer the law just as well as the Chief Kathi. Is that right? — Yes.

*Inche Yaacob*] But, Mr. Speaker, it is not the same regarding inquiries, because it has been pointed that if Kathi A and Kathi B disapprove an application, Kathi C may approve it. So we find a conflict in their decisions.

*Chairman*] I think we have dealt with that point already. They are quite adamant when *they* say that, in spite of that, all Kathis should be given the power.

*Inche Yaacob*] The Chief Kathi is a paid official and he has a number of officials to assist him in his department. Therefore, he is in a position to carry out more thorough inquiries. As regards polygamous marriages, it does happen that such a marriage is a forced one, because psychologically no lady would like to have a rival. The woman is forced to marry by her *wali*, and she has to obey him. Therefore, the Chief Kathi, who has a number of officials working for him—perhaps he has the help of a lady official—will be in a better position to make proper inquiries not only about the man but also about the woman. According to the law of Islam, a forced marriage is not valid.

*Chairman*

780. I think the question is this. Does the witness agree that, because of the facilities which the Chief Kathi has—he might have a lady official, and so on—he is in a better position to make more thorough inquiries than an ordinary Kathi, so that the inquiry he carries out can be directed to the man concerned, and also to the proposed bride concerned? — (*Syed Abubaker*) As regards forced marriages, the question arises whether the person to be married is a divorcee or a maiden. If she is a divorcee, her *wali* has no right to force her into a marriage. In that case, there is no question of forcing her into a

marriage. But if she is a maiden, her *wali* can force her to marry if the person she is to marry is of the same status as herself.

781. I think the question really boils down to this. Do you not think that the Chief Kathi, with all the facilities at his disposal, is, in fact, in a better position to make more thorough inquiries than the other Kathis? — No.

*Inche Yaacob*] We are only trying to sound the views of the witnesses. I realise they have the conviction of their views. On the question of a forced polygamous marriage, according to the tradition of the Holy Prophet as related by *Imam* Mohamed, a Muslim, a woman came before the Holy Prophet saying that she was forced into marriage, and He said to her, "You should be separated from your husband, because the marriage was not valid." But the custom among the Malays is different. The girl is told by her *wali*, "If you do not obey me, you can go out of my house and I will disown you as my daughter throughout life and death." Such cases often happen in our society. Therefore, it is most necessary that thorough inquiries should be carried out.

*Chairman*

782. Syed Abubaker, the answer is that any Kathi can make an inquiry just as well as the Chief Kathi. Is that right? — Yes. Again, Sir, the matter raised by the hon. Member comes under *taalik*.

783. Let us not get into a debate on that. Let us concentrate on the subject before us. The witnesses are quite clear in their minds that if power is to be given to anybody to inquire into the circumstances which would enable a person to contract a polygamous marriage, that power should be given to all Kathis. In their view, any Kathi can make just as satisfactory and thorough an investigation as the Chief Kathi. Is that correct? — Yes.

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*Mr. Byrne*

784. Mr. Speaker, in the view of the witnesses here, is it not important to the Muslim community in Singapore that proper inquiries are made and that the conclusions reached as a result of these inquiries should be reliable? — (*Ustaz Mohamed Yunus*) Yes.

785. I would like to refer to the case that was put by Members on the Government side, where a person, who wanted to take a second wife, went to Kathi A, B and C, and was turned down by them. Then he went to Kathi D who said "Yes, that will be all right. I will marry you." Now there were four inquiries made and the conclusions reached by the first three Kathis were different from those reached by the fourth Kathi. Can the witnesses say that that any of those conclusions was reliable? — **I am saying this in all sincerity.** Kathi A disapproved the application but Kathi B approved it. Let us not go so far as to consider Kathi D; let us consider Kathi B who approved it. There must be good reasons why Kathi A disapproved it and we must know what the reasons were and why Kathi B approved it. If Kathi B approved what should not have been approved, then he had made a great mistake.

*Chairman*

786. That, I think, is all right, but what the Minister wants to impress on the minds of the witnesses is this. It is possible that Kathi A will look at a set circumstances and say, "No. In my opinion, that offends the law of Islam." He is sincere. He thinks very clearly in his mind that it offends the law of Islam. But Kathi B, with a different mind, comes and looks at the same set of circumstances and, in all sincerity also, says, "Yes. I think it is all right according to the law of Islam." That is quite possible, not only in the law of Islam but also in civil law. Do you agree that that is possible? — Yes.

787. The position then arises that one of these decisions must be wrong?

— Yes.

788. So that what the Minister is getting at is this: is it not better if the power is given to one person and he will make the decision for all? In other words, that person will make a decision which nobody can contest, except on appeal to a higher authority? — I do not think so. There are various conditions which allow polygamous marriages: one is if there is incompatibility —

789. Let us not go into details. We all agree that there are certain conditions. But human nature is such that it is possible that opinions can differ on anything. Like now, my opinion may be different from yours. Both of us can be said to be sincere. In order not to have this conflict of opinion at that level — that is, the level of inquiry for the marriage itself — the suggestion is, let that power of inquiry be vested in one man. Do you not think that that is a good thing? — It is because of such conflict of opinion that the Holy Prophet once said, "There are three categories of Kathis: two are those whose decisions are not valid because they do not go according to the law of Islam; the third is all right." I say that the full power should be given to all Kathis. If it is found that Kathi A does not approve an application and Kathi B approves it, then let a body be empowered to call the two Kathis, whose views are different, to come forward to give their reasons for approving or disapproving the application.

790. That, of course, is quite all right if Kathi A knows of Kathi B's decision and Kathi B knows of Kathi A's decision; but, as has been pointed out, there may be cases where one Kathi at one end of Singapore — shall we say, Kampong Jurong — has made a decision and the parties then go to another Kathi in Kampong Geylang who knows

nothing about it. Then, of course, everything will be too late, would it not? What is the solution? — (*Syed Abubaker*) In my opinion, all Kathis can carry out the inquiry. If a person goes to Kathi A who disapproves his application and he thereupon goes to Kathi B who approves it, we find two conflicting decisions. But as far as the inquiry is concerned, it should be carried out very thoroughly. The conflict of opinion is on a matter which is not obligatory, according to the law of Islam. Every Kathi knows the law of Islam. There may be Kathis who do not know it to a very full extent. This matter is not one that is of importance in the law of Islam.

791. Has it not got great importance to the poor lady who is to be married? — What I mean is that the inquiry itself is of no importance.

792. But the decision itself must be of great importance to the woman, must it not? The Minister's point is, do you therefore not agree that it is important that the decision must be a correct one? — A person goes to Kathi C and he approves his application. The approval itself is still left open to doubt as to whether it is according to the law of Islam, or whether the decisions of Kathis A and B are according to the law of Islam.

793. That is the Minister's point. If you have four people putting their minds on to a set of facts, you will not be certain that the decision of one of them as against the decision of the other three, or three of them as against the other one, is the correct decision. You cannot say which is the correct decision? — If one person carries out an inquiry, would his decision be a correct one? Whereas we, may have three or four Kathis arriving at various decisions.

794. But the point the Minister is making is that, in order to avoid this sort of conflict—correct me if I am

wrong, Mr. Minister—is it not better to allow one person to make the decision first at one stage? Then if the decision of that person is wrong, there can be an appeal to the Shariah Court, and from the Shariah Court to the Appeal Court? — That is our view in this Committee, but such a thing is not allowed in the law of Islam.

*Mr. Byrne*] Mr. Speaker, Sir, before this Bill was introduced, all the proposals in the Bill were put to very responsible Muslim associations in Singapore, such as the Muslim Advisory Board and the Muslim Missionary Society. The Muslims who are in those associations, are very learned in Islamic law, and they supported these proposals in this Bill.

*Chairman*] What is the question, Mr. Minister?

*Mr. Byrne*] I think the witnesses have already pointed out that the placing of this authority of inquiry and solemnizing the second marriage in the Chief Kathi or one Kathi is against the law of Islam. If that were so, I would have expected the authorities whom I have quoted to point that out to the Government even before this Bill was introduced.

*Chairman*

795. Bearing in mind the fact that this Bill was placed before these bodies of Muslims, and that they supported it, do the witnesses not think that these Muslim bodies would have protested very vehemently if, in fact, it is against the law of Islam that the power to inquire should be vested in one man?

— (*Ustaz Mohamed Yunus*) Mr. Speaker, Sir, I believe that those bodies are responsible bodies and they know and understand the law of Islam well. But I would like to ask a question: is there nothing in the law of Islam which says that if a person who is not a Muslim but becomes a Muslim and has a child who is not a Muslim dies, does his property not go to the child? Is it not so stated in the Muslims Ordinance?

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796. What is the purport of that question? Has it anything to do with the inquiry? - Yes.

797. How? The question posed by the Minister is quite clear. He says that this Bill was referred to responsible bodies of Muslims. They supported the provisions of the Bill, shall we say, the provision in regard to polygamous marriages, i.e. that the power to investigate should be vested in the Chief Kathi. *Syed Abubaker* has just said that he thinks it is against the law of Islam to vest this power in this one person. Now, the Minister wants to know whether the witness will not agree that if, in fact, it was against the law of Islam, these bodies of Muslims would have promptly told him so? That is the question. Why then the point about intestacy? - The Minister has said that the matter had been referred to the Muslim organisations and that if there was anything in the Bill that was against the law of Islam, these people would have quite naturally objected to it. That is the reason why I have raised this point, because this is something which has a relationship to the law regarding property.

*Mr. Byrne*] Mr. Speaker, Sir, I think what the witness is saying is that the provision of section 42 was opposed by the Muslim Advisory Board. I think that is what he meant by the law proposed by the Government. I think that is what the witness has said.

*Chairman*

798. That is all right. As far as that is concerned, the witness does agree then that if there is any provision in the Bill which goes against the law of Islam, he would expect these bodies of Muslims to object—that is the answer, is it not? - Yes.

*Mr. Byrne*] But, Mr. Speaker, Sir, that has happened in one Islamic State. There is monogamy in Turkey and it is the State law that over-rides the Islamic law *here*.

*Chairman*

799. I would suggest to the Minister that we should not get into a debate of such a deep nature at the moment. What we should concentrate on now is the question whether or not the witnesses are satisfied in their minds that giving the power to make an inquiry of this nature to one person is contradictory to the law of Islam. Are the witnesses satisfied in their minds that that is so? - Yes.

800. If, in fact, the opinion of the authorities on the law of Islam is that it is *not* against the law of Islam, will the witnesses then have any objections to this provision—that the inquiry should be made by one person? — (*Syed Abubaker*) If we find opinions to the contrary based on sound grounds, then we will accept, but only if the grounds are based on the law of Islam.

801. I think that is a fair assessment? — (*Ustaz Mohamed Yunus*) Excuse me. Sir, what about the matter that I have raised just now? What is the decision on that?

802. There is no decision. It is irrelevant? - It was not I who brought up the matter. It was, actually the honourable Minister.

*Chairman*] Yes, but I overruled it.

*Mr. Byrne*] This is just to clear up one point. At the outset, the witnesses said that if this power of inquiry were to be placed in the hands of the Chief Kathi, it would cause inconvenience to the public. My colleague, the Parliamentary Secretary too," the Minister for National Development (*Inche Yaacob*), has said just now that, as far as he is aware, these second marriages do not exceed a hundred a year. Therefore, Mr. Speaker, Sir, it would not be an inconvenience actually to place this power in the hands of the Chief Kathi.

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*Chairman*

803. The position is this: the Parliamentary Secretary has pointed out that, in so far as the records go, the number of polygamous marriages annually is about 100. Is that accepted as a correct assessment of the number of polygamous marriages? - That is possible.

804. The position then is that you have said that one of the reasons why you are against this power of inquiry being vested in one man is that it would cause inconvenience to the parties contracting the marriage. In view of the fact that there are only a hundred polygamous marriages a year, would you now change your mind and say that it is not inconvenient because of the small number? - What I fear is that if the person wanting to contract a polygamous marriage resides in Woodlands and if the Chief Kathi resides in Changi, it will be difficult. And another point arises : if the power is given to the Chief Kathi, what is the position then if he himself wants to contract a polygamous marriage?

805. I suppose you appoint a deputy for that? — (*Syed Junid*) I would like to clarify this point, the power given to the Chief Kathi—is it to inquire or to solemnize?

806. At the moment, the Bill suggests that the Chief Kathi should do both. But the suggestion has been made by several witnesses that perhaps the inquiry should be made by one person, maybe the Chief Kathi, and the solemnizing of the marriage by any Kathi. That is the suggestion which the Select Committee are now weighing in their minds? - I appreciate these views of the other witnesses. But I believe this Bill, before it was introduced, had been placed before the Muslim Advisory Board.

807. Yes. But please do not think that this Select Committee cannot overrule the Muslim Advisory Board or any body of people. This Select Committee

reports back to the Assembly, and it is the Assembly which will give the final verdict. So I think it is better that Syed Junid disabuses his mind of the idea that a decision has already been made. A decision has *not* been made as far as this Committee is concerned? - The Minister has said just now that this Bill had been placed before the Muslim Advisory Board on which there are prominent Muslims, learned in the law of Islam, and he has stated that no one had objected to it. But what I wish to say is, if the power to solemnize marriages is given to the Chief Kathi only, then definitely that is against the law of Islam.

808. The position then is that this Select Committee must be very careful not to do anything against the law of Islam. And I think Syed Abubaker has indicated that if the advice to the Select Committee is that it is *not* against the law of Islam, that advice must be based on the law of Islam. Have I made it quite clear? - Yes. I ask your permission to allow me to bring up another matter which I feel is against the law of Islam\*.

809. Is it contained in the Bill? — In the Ordinance that is already in force.

810. How is it then that your Party has not made representations on it? — We had, if I am not mistaken. We sent in representations to the past Government.

811. But you have been given an opportunity to send in representations to this present Select Committee. If your Party wishes to make further representations, they have very little time in which to do it? - I merely wish to draw the attention of this Select Committee to what we have in mind.

812. If the witness would just mention the section, perhaps we might look into it? - Section 42.

813. That is the point on which Ustaz Mohamed Yunus has just commented? - Yes.

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*Chairman*] We will leave it at that. I think Members of the Select Committee can look into it. But I do not think it is fair to ask the Select Committee to take in other representations of which they have had no notice. Is there any objection, Mr. Minister, if the P.M.I.P. wishes to send in a further memorandum?

*Mr. Byrne*] No objection.

*Chairman*

814. There is no objection. If the Party wishes to send in a further representation, then please do it quickly because we are coming to the end of our

work. Send it in by all means, and that representation can be circularised. Well, I must now thank you very much indeed for coming here and giving us of your time. This discussion has been valuable and I think all the observations made will be considered by the Select Committee? — (*Ustaz Mohamed Yunos*) Likewise, on our part, we too would like to thank the Select Committee for working hard in the interests of the community.

815. One other point. If the memorandum is to be sent in, perhaps it should be sent in before the 31st March? - Yes, thank you.

(*The witnesses withdrew.*)

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WEDNESDAY, 30TH MARCH, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)

Inche Baharuddin bin Mohamed Ariff  
Inche M. Ismail Rahim

Inche Yaacob bin Mohamed

ABSENT:

Dato Abdul Hamid bin Haji Jumat (with  
apologies)  
Mr. K. M. Byrne

Inche Mohd. Ali bin Alwi  
Inche Mohd. Ariff bin Suradi

Inche Shaikh Maarof bin Mohd. Jarhom attended and was further examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

816. Come in. Do sit down, Inche Shaikh Maarof bin Mohd. Jarhom?  
— (*Inche Shaikh Maarof bin Mohd. Jarhom*) Thank you.

817. We have now, I think, reached the third point raised in your original memorandum\*? - Yes.

818. That is where you deal with the custody of children (*Hazhana*). You say:

"The right of custody of children lies with the wife who is entitled to bring them up until they are big enough to make their own choice; that is, for a period which could be limited to ten years. If a child then chooses to live with his father, he should be allowed to do so. If, however, the woman marries another person, her right of custody of the children automatically ends and falls on the maternal grandparents. If there be no maternal grandparents, then the right of custody goes to the maternal aunt. In the absence of both of these, the right goes to the paternal grandparents."

Is that your own idea of what should happen, or is it your appreciation of the law of Islam on that point? - This is based on the law of Islam pertaining to the four schools of thought.

819. You do know that in clause 11 of the Bill, it is suggested that there should be a new section-section 36A. And the provision there, amongst other things, is this:

"(1) In any application for divorce the Court may, at any stage of the proceedings or after a decree or order has been made, make such orders as it thinks fit with respect to-

(c) The custody, maintenance and education of the minor children of the parties;"?

- I know that that is so. Usually, the Court fails to achieve this purpose. Then it refers the matter to another Court so that it becomes inconvenient to the people concerned. But if the suggestion is accepted, it will be a good thing for the people concerned.

820. The suggestion is that in future the Shariah Court will have jurisdiction in so far as the custody of the children is concerned where the parties seek a divorce? - If it is not written into the law, then it would be difficult for the people who want to carry the matter further. But if the suggestion is written into the law, then it would be clear-cut and easy for the people concerned to take whatever steps they want to take.

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821. But would you not expect the Shariah Court, when making a decree or an order in regard to the custody of children, to pay due regard to the law of Islam? — I know the Shariah Court will do that, but if we have the suggestion written into the law, then we will have something that is clear-cut.

822. Do you not agree that if you start doing that in regard to the custody of the children, you will have to write the whole of the law of Islam into the Ordinance in regard to divorce marriages and so on? — I feel that those other matters are not as important as this one. This matter is often the cause of a lot of strife, hardship and quarrels.

823. But there is always an appeal from the Shariah Court to an Appeal Board, if the Shariah Court goes wrong. You know that, do you not? — That is where the difficulty lies. It will cause a lot of strife if people have to fight it out in the other Court. But if the suggestion is written into the law and the law becomes clear-cut on this matter, then the Shariah Court could conform to this and make orders accordingly.

824. But the Shariah Court is bound by the law of Islam. You have got a code of law, which is the law of Islam, and that is administered by the Shariah Court. That is all there is to it? — That may be so, but we are now trying to amend the Muslims Ordinance. So it is only proper that all these matters be written into this amending Bill so that the point becomes clear and thereby strife could be avoided.

825. You think then that the President of the Shariah Court would not know these provisions which you have cited? — I do not say that he is not aware of that.

826. Is that not sufficient? Why write the suggestion into the Ordinance? — If we write it into the law, then it will be clear. The people will be satisfied and a lot of time can be saved.

827. What you really want, of course, is that people be educated in the law of Islam. That is the job of the religious teachers? — Yes. If, for instance, I know of these conditions, I would not do things which are contrary to the law of Islam and therefore a lot of strife can be avoided.

*Chairman*] *Che Ismail*, any questions?

*Inche M. Ismail*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Chairman*

828. Now we to your fourth -representation. You say:

"Upon a non-Muslim woman who is married to a non-Muslim embracing the religion of Islam, of her own free will without coercion or compulsion, the husband is automatically divested of his rights and duties towards her. The woman will not be subject to "eddah" and may be married to a Muslim the very next day. If she is with child without her knowing it, the child will be accepted as of the Islam faith and not that of her former husband, and after the full period of pregnancy the right to the child is solely hers."

Again, is that an exposition of your understanding of the law of Islam? — That is the law of Islam.

829. So that you, in effect, do not agree wholly with the proposed new section 7A, subsection (1), which is contained in clause 3 of the Bill. It reads:

"No marriage shall be solemnized under this Ordinance if the woman to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage."

-If we are to go by this provision it is something different. But if we are to go by the law of Islam, then the law of Islam says that if a woman who is a non-Muslim wants to embrace Islam, then before she becomes a Muslim there are ways and means whereby she could be advised to think the matter over very carefully. All sorts of things could be done to make her understand the full implications of what she is about to do before she becomes a Muslim. But if, in spite of all those efforts, she is firm in



her desire to embrace Islam and she recites the *Shahadah*, then the law of Islam applies. Then if that happens, her ties with her former husband are completely severed. If she happens to be bearing a child without her knowing it, then the child is rightly hers and is considered to be of Islamic faith and not following the religion of its former father.

830. That is really contained in your representation? — Yes.

831. The point then is this: that in your *view*, if a non-Muslim woman is married to a non-Muslim man, shall we say, under the civil law and the marriage is registered with the Registrar of Marriages, and if she then embraces Islam, then there would be an automatic annulment of her marriage to the non-Muslim man? — According to the law of Islam, that is so.

832. According to civil law, of course, that is not so. You know that, do you not? — I have not made any mention of the civil law.

833. But if she does what has been suggested, that is, she embraces the religion of Islam, and then marries under Muslim rites, she will, in civil law, of course, be committing bigamy. You know that, do you not? — I am not referring to the civil law. I am merely referring to the Islamic law.

834. But you do know that at the moment, the State of Singapore is not a Muslim State and, therefore, people who contract civil marriages must, at the moment, face the consequences of any breach of their duties in regard to the civil law? — That is true. But what then is the position where a person becomes a Muslim and she cannot uphold her rights according to the law of Islam?

*Chairman*] Che Ismail, any questions?

*Inche M. Ismail*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*

835. It is stated in the suggestion that if a woman who is married embraces Islam, then she may be married the very next day. If she is then with child, is it not contrary to the law of Islam? —

I have stated earlier that in the case of a woman who embraces Islam, if she is with child but she does not know it, then, as far as she is concerned, she is not with child. If she is with child but she cannot be certain, then when she gives birth after seven or eight months the child will be considered as belonging to the non-Muslim father. But if it is clear that she is already pregnant and later on she gives birth, then the child goes to the mother, and cannot be returned to the father who is a non-Muslim. It would be better, of course, if the marriage is deferred three or four months after she has embraced Islam.

836. Is it not a fact that according to the Shafei school of thought it is a requirement under the *Kitab* called *Al-Fighu 'A la al-Madzahibu Al-Arba'* (Chapter 4, page 205), that if a woman, who is a non-Muslim of the *Kitab* or otherwise, embraces Islam before she cohabits with her husband, then she must be parted from him immediately if he does not embrace Islam together with her. If the wife who embraces Islam has already had relationship with her husband, then it is obligatory on her part that she observes *eddah*; and if the husband embraces Islam before the *eddah* period is over, then they can be husband and wife in the normal way. That is the conception according to the text of the book I have quoted. This, therefore, is contrary to the opinion of the witness who has stated that the wife need not *undergo eddah* and can marry the very next day. Mr. Speaker, Sir, I trust the witness agrees that this matter should be put outside the law, in view of the cosmopolitan and multi-religious nature of Singapore, as I feel that it is a matter which does not happen very often. Even if it does happen, the people concerned

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should resolve the question of divorce in the civil court. It should be left to the people concerned to embrace whatever religion they feel inclined to embrace? - The view of the hon. Member, as quoted from the text of the book mentioned, is, according to him, based on the conception of the four schools of Islamic law. It serves the purpose of comparing the views of the different *ulamas* (jurists). In my opinion, it would be better if there is a waiting period of three to four months so that we could determine for certain whether a woman is pregnant or not. My suggestion is based on the practice during the time of the Holy Prophet. At that time, *ed-dah* was waived but, according to the learned jurists, that was a time when there was a religious war on. Things now are different and the jurists are still undecided as to what the position is. Therefore, the marriage is postponed for three or four months.

*Chairman*

837. Can I just interrupt? In view of what has been said, there appears to be some disagreement on this particular point, is there not? - Yes. There is a difference of opinion among the four schools of Islamic law. This is a matter which can be resolved in the light of events. In my view, the marriage should be deferred for three to four months.

838. The point I am trying to impress upon the witness is this. If we are to write all these matters into our Ordinance, we might also write in matters which might offend one school of thought and please another school of thought-which is not good. Do you not agree? I do not think we should now go into a debate as to which side is right. In view of the cosmopolitan nature of the people of the State of Singapore and of the multi-religious society we have here, what the hon. Member suggests is-is it not better for the non-Muslim people to resolve their marriage difficulties according to the civil law before they think of embracing the Muslim

religion? - I have also stated that view earlier. If a man or a woman wishes to embrace Islam, we should try to advise them on the full implications of the action they are about to take.

839. I think you have said that already. You have also said that if, after all that has been done, the woman still wishes to embrace the Islam religion, then she ought to be allowed to do so. You said that, did you not? — Yes. As you have suggested, Sir, all these things could be done before the act of embracing Islam.

840. But would it not be better for the Muslim community as a whole if this non-Muslim woman were to be told in no uncertain terms that she should first dissolve her marriage ties with her non-Muslim husband before she embraces the religion of Islam? - Yes, that is a matter of advice on the part of the relatives or religious dignitaries.

841. But do you not think that it would be better if this non-Muslim woman were told, "We will not take you into the Islamic religion until your marriage has been dissolved."? — That cannot be. If anyone wants to become a Muslim, that wish should not be denied.

*Chairman*] Inche Yaacob, any further questions?

*Inche Yaacob*] No.

*Chairman*

842. We come to the fifth point made in your original representation. You say:

"... all Kathis duly appointed should be given powers under this Ordinance. That is to say, a Kathi should be empowered to deal with matters of divorce and all matters pertaining to religion."

The first point is matters of divorce. The Ordinance itself gives power to Kathis to register divorces. Section 12 (3) of the Ordinance states:

"A *Kathi* shall not register any divorce unless he is satisfied that both the husband and the wife have consented thereto."

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That is the position. Are you not satisfied with it? In other words, the Kathi is given the power to register divorces by consent and nothing more? — That is true.

843. What are the powers you wish to give to all Kathis with regard to divorce? — My suggestion is that the Kathis should not be debarred from their other duties, according to the law of Islam.

844. Just one second. We are now concentrating on divorce. What are the powers you wish to give to Kathis in regard to divorce? — As far as divorce is concerned, the power is already with the Kathis.

845. So you are satisfied then that a Kathi's jurisdiction should be limited to registering divorces by consent? — Yes.

846. We then come to your other suggestion. You say:

"... a Kathi should be empowered to deal with ... all matters pertaining to religion."

Can you detail the matters which you think Kathis should be given the power to deal with and which they have not already got the power to deal with? — I refer to the power relating to the solemnizing of the marriage of a girl who has no *wali*, without limiting that power to a particular Kathi.

847. Let us detail the matters. The first is the matter of girls who have no *walis*? What is the second one? — Last time it was suggested, in the matter of —

848. Just one second. We come back to this point. You say that:

"... a Kathi should be empowered to deal with ... all matters pertaining to religion."

I want you to detail these matters for the benefit of Members of the Select Committee. The first is the question of the marriage of girls with no *walis*. What is the second one? — The first is the question of a virgin who has no *wali*. This is a matter which we have dealt

with some time ago. We have already debated that. So the position is quite clear, that is, all Kathis should be given the power to solemnize marriages, and the inquiries should be made by the Chief Kathi or the Shariah Court.

849. I just want to be quite clear. I think the debate originally arose with regard to the suggestion that the Chief Kathi should solemnize and inquire with regard to polygamous marriages? — But this matter has also been clarified in the process.

850. And then the conclusion arrived at was in regard to a polygamous marriages Did you say that you would be satisfied if the same procedure were applied to the case of a *wali hakim*? — Yes.

851. We have disposed of that then. What is the second point, please? — I have mentioned it before. It is the question of someone eloping with someone else's daughter. We did not go into the question of divorce in relation to that. We have not debated that yet.

852. A matter of someone eloping with someone else's daughter? — Yes. The question of someone eloping with the virgin daughter of another person. We have touched on it but we have not debated it.

853. And what power do you want to give the Kathis in regard to that? — This matter does not concern the Kathis. This matter is in regard to a person who has the intention of marrying the daughter of another person. He should make an application in the normal way, but he should not elope with the virgin girl.

854. That is all right. Let us go back to your representation. You say:

"... a Kathi should be empowered to deal with matters of divorce and all matters pertaining to religion."

Let us stop there for the moment. We have dealt with divorce. You are satisfied now with regard to divorce. We

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have also dealt with the case of virgins who have no *walis*, and also with regard to polygamous marriages. Is there any matter which you think all Kathis should be empowered to do? Let us deal with this point first. The power need not be confined to only one person? — I have already agreed that the power to make inquiries be given to the Chief Kathi.

855. So is this the short answer—that there are, in fact, no other matters then? — In so far as the solemnization of marriages is concerned, all Kathis should be given the power.

856. We have dealt with that? — Now I would like to go into the matter of a person eloping with the virgin daughter of another person.

857. So that the subject you have touched upon, that is:

"... a Kathi should be empowered to deal with matters of divorce and all matters pertaining to religion. Such powers should not be made the monopoly of any particular individuals."

is now closed. You are satisfied with that? — Yes.

858. Now you want to touch on this question of someone eloping with someone else's daughter. What is your suggestion there? — My suggestion is as contained in my original representation, that the person should be punished with imprisonment for a term of three months.

*Chairman*] I think we have got that already. Any question on that, Inche Baharuddin?

*Inche Baharuddin*

859. Does the witness not agree with me that the question of elopement of a person with the virgin daughter of another person is a serious matter? — I know it is a serious matter.

860. Mr. Speaker, Sir, does the witness not realise that there are two

aspects to this matter of elopement? One is elopement without the consent of the girl, and the other is elopement for reasons of love? — **Replying to the question posed by the hon. Member,** if the elopement takes place without the consent of the girl, then that is an entirely different matter. It is up to the civil law to deal with that aspect. My suggestion is directed to the matter of elopement where both sides agree. I suggest that there should be no elopement at all. If there is a mutual agreement on both sides, then an application should be made in the normal way to the parents or guardians of the girl. If it is not successful, then the application could be made to the Shariah Court or to the Chief Kathi. If under the circumstances the parent refuses permission for the marriage, then permission should be given by the Shariah Court. And after the marriage has been solemnized, the man can then take possession of his wife, without any hindrance. Elopement should be totally disallowed, because it can cause all sorts of difficulties to society. Even if the person has undergone imprisonment, a marriage could subsequently be solemnized. Under these circumstances, enquiries could be made as to the responsibility involved in the marriage, the position in society, and so on. This is the kind of marriage that is preferable. If it is a marriage through elopement, then it is a criminal matter.

*Chairman*

861. So that the position then is this : if a couple in love with each other elope, the man who goes away with this girl must first undergo punishment—your suggestion is three months' gaol? — Yes.

862. Then after he has come out of gaol, he can apply to marry that girl, is that right? — Yes. In all cases there must be an application.

863. Meanwhile the girl has to wait for three months? — Yes. If there is subsequent agreement, the marriage can take place.

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864. You do not think it would be better for the peace of mind of the girl anyway that she should be married immediately? - That cannot be, because after all this is an outrage. The purpose is to stop this sort of affair.

865. So that you think the girl herself should be indirectly punished? — No, because a young girl is very often brought under an influence.

866. Even in these modern times—modern girlhood in the State of Singapore? - However that may be, there must be a third party.

*Inche Baharuddin*

867. What is the difference, Mr. Speaker, Sir, between a marriage after elopement without the knowledge of the *wali* of the girl and a marriage without the consent of the *wali* after the man has undergone a term of imprisonment of three months? - We should give an opportunity to the man involved. The opportunity should be left open where there is mutual agreement. The idea of this suggestion is to discourage elopement. And now we should also widen the scope of the Islamic law in this country, so that question of *Kufu* should not come under consideration. As, for instance, an Arab refusing marriage to one who is a Javanese, or an Indian, or a Malay, even if he is a negro or a slave who is a Muslim. The only thing which should be considered is the man's conduct and character. These are the things that should matter. As to this racial origin, it should not be brought under consideration.

*Inche Yaacob*

868. Has the witness not heard that there have been occasions where the girl commits suicide because permission to marry has been withheld? - The question of suicide does not arise, Sir. I have stated earlier that in the case of a man who wishes to ask for the hand of someone else's daughter, the door should be left open and the Court

should be able to solemnize such a marriage with the power that it exercises. I am sure the hon. Member himself does not like someone who is irresponsible and unemployed to ask for the hand of someone's daughter. Since we have considered the matter of polygamous marriages, I think this matter should also be gone into thoroughly, so that we could ascertain whether or not the girl could be safe after marriage to this person.

*Chairman*

869. You do not think that in the case of two people in love, love knows no bounds, and therefore it makes no difference whether you say the man is to be punished for three months or not as a result of the elopement? - But if there is a law to this effect, then the two people will not elope. They can ask politely for permission to marry. They know that marriage is possible. What is the purpose then of eloping?

870. You believe that young people can be restrained? — I feel that Government should look into this matter seriously. Because of someone's desires, the whole family life can be disrupted.

*Inche Yaacob*

871. Does the witness not know that the fault very often lies with the *walis* who refuse permission? - I have stated earlier that if there is mutual agreement on both sides and the application is turned down, then the marriage could be effected through the Shariah Court or the Chief Kathi.

*Chairman*

872. There is provision under section 7 (3) for that, that is, for the Chief Kathi to decide whether the grounds for refusal are satisfactory or not? — That is when mutual agreement is present. The good points of this suggestion are that, firstly, it safeguards the good name of the parents, and, secondly, it will ensure whether the girl will be in safe hands or not.

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*Chairman*] Any other questions?

*Inche Yaacob*] No.

*Chairman*

873. Now, we come back to your representation where you say in your paragraph marked "Fifthly", fourth sentence:

"If any controversy arises, the Kathi should make a report of it to the Chief Kathi and to the Shariah Court or it could be handed over to the Chief Kathi to be dealt with and not be left to any particular Kathi alone. Any Kathi found guilty of dereliction of duty and of any offence should be duly punished according to his just deserts."

The position now is that, with the provisions in the Bill added to the provisions in the Ordinance, there will be an appeal from the decision of any Kathi, including the Chief Kathi, to the Shariah Court, and from the Shariah Court to the Appeal Board. Does that satisfy you now? - Yes, that is very desirable.

874. You say that any Kathi "found guilty of dereliction of duty" should be duly punished. What type of punishment do you suggest? — That could be according to the nature of his offence, such as deprive him of his letter of authority, or he could be fined; or if the offence is severe, then he could be imprisoned.

*Chairman*] Any questions on that?

*Hon. Members*] No.

*Chairman*

875. Then you go on to say:

"Persons who commit perjury in the Shariah Court and seek to defeat the purpose of justice should, upon conviction, be sentenced to imprisonment without the opinion of a fine."

— Yes, that was my suggestion.

876. With the amendments in the Bill, I think the Shariah Court will be given full powers to punish for offences described by the witness? — Yes, the President of the Shariah Court should be given such powers.

877. But, of course, the power is not confined to imprisonment. It is up to

the discretion of the Court whether it should be imprisonment or a fine? — This matter is serious enough according to the law of Islam. The punishment should be three months or more.

878. But you do not think that the President of the Shariah Court should be given discretion in such matters?

-If there is no specific provision in the law, it is feared that the punishment would be light. The President of the Shariah Court might hesitate to impose the punishment.

879. But in certain cases he might want to exercise mercy. Do you not think so? - Of course, we cannot interfere with the rights of the Judges, just as we do not want to interfere with the power of the President of the Shariah Court to allow the person to withdraw his statement. What we are concerned with is the case of people who purposely commit perjury in order to defeat the purpose of the law.

880. But do you not think that in the case of a grave offence, the President will certainly give a very heavy penalty? Why do you want to put a provision into the law saying that he must do a thing like that? - Because the good it will do will be great if we put it into the law.

*Chairman*] Any questions on that?

*Inche M. Ismail Rahim*] No questions.

*Inche Baharuddin*] No.

*Inche Yaacob*

881. Mr. Speaker, Sir, does the witness not agree with me that it would be better for people who commit perjury to suffer dual punishment—one punishment is against the oath that he takes in the name of God, and the other punishment according to the law of Islam? - There are two kinds of offences for perjury. We want to avoid that happening in the Court. In the Court there should be no difference at

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all if the punishment should be imprisonment. As for the other kind of punishment-against the oath-that is another matter entirely.

882. Mr. Speaker, Sir, does the witness not realise that the people of Islam are *very* scared of facing the consequences of making an oath in the name of God? And in Islam, when a person makes an oath in the presence of a witness, it is a grave offence indeed if he commits perjury? — I feel the hon. Member has very seldom witnessed a case in the Shariah Court. I have had considerable experience of such cases in the Shariah Court. The number of people committing perjury is quite large. It is not little, because the Shariah Court has no power to punish these people. On one particular occasion I detected a person telling lies before the Court, and when I called upon the Court to punish the person, I was told that it had no power to impose such punishment. There are witnesses who give evidence on oath, but who give conflicting evidence. That is apparently because they are not scared of the consequences of making a false statement. And if I were to say now that people are less scared of God but more scared of the law, that is true.

883. Is it not a matter of injustice if, for a minor offence, the same punishment is to be imposed? — Is it not true that the Judge should exercise his discretion?

*Chairman*

884. That is the point. You agree then that the Judge should be given a discretion? If you say that all perjurers are to be punished by at least three months' imprisonment, where is the discretion? — The suggestion of three months' imprisonment should be written into the law, but it should be left to the Judge to use his discretion. If, for instance, a person has committed perjury—he has told a lie—then the President could ask him to withdraw

his statement. But it is only in the case of people who persist in committing perjury that this punishment by imprisonment should apply. In the case of a person who is very obstinate about it, he should rightly deserve three months' imprisonment.

885. So that you want the Select Committee to write into the law that the punishment is three months' imprisonment, but that the President of the Shariah Court need not inflict that punishment. Is that it? — It is left to the discretion of the President of the Shariah Court.

886. So that if he wants to inflict punishment by imprisonment of one day or two days, he can do so? — It is left to him. If the person has withdrawn the statement that is not true, then the President may waive the punishment.

887. Then in your representation you carry on and say:

"With regard to the acts of cohabitation and adultery, I suggest that these should not be dealt with under the law of Islam, as the punishment prescribed therefor is a hundred lashes for an unmarried woman and stoning to death for a married person. This is severe. They should more properly be dealt with in the District Court or by the police. The example of the Federation of Malaya, however, should not be emulated where fines of \$20 and \$50 are imposed for such offences which can bring shame to Muslims everywhere."

Is that correct? — Yes.

*Chairman*] Any questions on that?

*Inche M. Ismail Rahim*

888. Is it not a fact that adultery is one of the gravest sins in Islam? — Yes, it is a very serious crime.

*Inche M. Ismail Rahim*] Why is it that now fines or imprisonment are not to be imposed?

889. I think the Member has misunderstood the witness. What the witness has stated in his representation is that cohabitation and adultery should be punished, but not according to the

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law of Islam, but if you are to punish a person for cohabitation and adultery, do not follow the Federation of Malaya where the witness says "fines of \$20 and \$50 are imposed for such offences which can bring shame to Muslims everywhere." I think the question possibly now is: what punishment does he suggest should be meted out for acts of adultery? - I am not making this suggestion according to my whims and fancies. This matter is serious. We know that Islam is not the official religion here. Even if the punishment imposed is three months' imprisonment or three years or ten years, or whether the punishment is a fine of \$500 or \$1,000, it is not according to the law of Islam.

890. We have got that. For a woman who is not married, one hundred lashes, and for a married person, stoning to death. I think what the hon Member wishes to know is this. You have suggested that in the case of elopement, the punishment is three months' gaol. In the case of adultery, what do you suggest should be the punishment? - When I suggest three months' imprisonment in the case of elopement, that is if the girl has not been outraged. But where this matter is concerned, the punishment is specific and cannot be changed.

891. What do you suggest should be done? - I feel that this is a matter which could well be left to the Criminal Court.

892. Criminal Court? Not the Shariah Court? - It would not be possible for the Shariah Court to impose the heavy punishment specified by the law of Islam.

893. It has nothing to do with the Select Committee, is that right? — It is a matter which cannot be dealt with according to the law of Islam. Therefore, it is suggested that this be not written into the Ordinance.

894. Just like cutting off the hand for theft? - Yes.

*Chairman*] Any other questions?

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Chairman*] Finally, you sent in additional representations dated 19th March, 1960\*. Your first suggestion is that the name of the "Shariah Court" should be changed to "Shariah Islamiah Court". Are there any questions on that? Just a change of the name of the Court.

*Inche M. Ismail Rahim*

895. At the moment, the Court is called the Shariah Court. Now the witness suggests that the name be "Shariah Islamiah Court", which perpetuates the name in English? - In Malay it is *Mahkamah Shariah Islamiah*.

*Chairman*

896. What I think the witness is suggesting is an amendment to section 20 of the Ordinance, which reads:

The Yang di-Pertuan Negara may by notification in the *Gazette* constitute a Shariah Court for the Colony, hereinafter in this Part of this Ordinance referred to as the "Court".

He suggests that there should be added the word "Islamiah", or if a Malay name is, to be used, "*Mahkamah Shariah Islamiah*". Is that correct?— Yes.

*Inche Baharuddin*

897. According to the witness, Mr. Speaker, Sir, the Shariah as practised during the time of the Holy Prophet Moses was another Shariah. Would the witness, like to elaborate on the difference between these terms? — Every prophet receives a commandment from God which, in the Arabic language, is called "Shariah". Therefore, the various names of the Shariah—such as the Shariah of Moses, the Shariah of Jesus—are different canon laws brought about through these prophets.



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*Chairman*

898. But do you not agree that, in so far as the State of Singapore is concerned, the word "Shariah" has come to be commonly known throughout the State as Muslim law, and, in fact, in the Federation as well? - **Through-**out the world the Shariah Court is called the Shariah Islamiah Court. So if we restrict ourselves to the use of the word "Shariah" only, "Shariah" means just canon law. It may be in respect of a particular prophet like Moses or Jesus.

899. In the Federation the Court is called the Shariah Court - do you know? - **In the Federation,** that is their affair. There, in the case of adultery, a person is fined only \$20.

900. The point is this. There has been no confusion in the Federation in any way, has there? - If they want to go deeper into it, it is better to call it as I have suggested. If I were in the Federation, I would certainly put this suggestion to the authorities. I feel that very soon they will follow us, because representations and letters have been sent to them concerning fines of \$20 and \$50 in respect of offences for adultery.

901. It seems to me that the name is not so very important, if people come to understand what the Court is? — Yes. Nevertheless, I feel it is important enough for consideration, because no harm can be done if this name is used.

902. Shall we go on to your second point, which is with regard to lawyers? You say:

'I suggest that all lawyers dealing with the "Shariah Court" must be of Muslim nationality. They must have religious education and must know the language of Arab.'

At the moment, under section 24 of the Muslims Ordinance:

"Advocates and solicitors shall have the right to appear in the Court on behalf of a party to any proceedings."

And section 25:

"Every party to any proceedings shall appear in person or by advocate and solicitor."

You want those sections amended, do you? - **I feel the amendments** as suggested should be made, because at present people who can afford to pay \$300 or \$400 may go to the advocates and solicitors that we have in order to have their cases defended and those who cannot afford it will resort to loans in order to have their cases defended. But for all one knows, the case may be one which does not need to be represented by an advocate and solicitor.

903. So you feel that if the lawyer is of Muslim nationality, and has a religious education and knows the Arabic language, his fees would be less. Is that it? - The fees would be less. Also the law of Islam could be adhered to carefully.

*Chairman*] Any questions?

*Inche Baharuddin*] No.

*Inche Yaacob*

904. Mr. Speaker, Sir, because the Shariah Court is now using Malay as the language medium, where is the necessity for a knowledge of the Arabic language? - **There is no doubt** that Malay is the national language, but for a better understanding of the law of Islam, a knowledge of the Arabic language is essential, because the scope of that language is wide.

905. We know that if the law of Islam is written in Malay, quite a number of Kathis in the State of Johore who are duly authorised by Government are people who are graduates from religious schools where Malay is the medium of teaching? — I am not suggesting that Malay should not be used. Malay is the national language. What I am suggesting is that there

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would be a wider knowledge of the law of Islam, which has not so far been written in Malay.

*Chairman*

906. Thank you very much, Inche Shaikh Maarof, for coming here for four days? - My purpose is to achieve something good for the people. I hope my views will be given very careful consideration, because I know

thoroughly well everything pertaining to the matters which we have been discussing.

*Chairman*] I think I can speak on behalf of the Members of the Select Committee when I say that they appreciate all that has been said. They appreciate the difficulties of the law of Islam, and they will no doubt be receiving expert advice on the points you have raised. Thank you.

*(The witness withdrew.)*

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THURSDAY, 31ST MARCH, 1960

## PRESENT:

Mr. SPEAKER (*in the Chair*).

Dato Abdul Hamid bin Haji Jumat	Inche M. Ismail Rahim
Inche Baharuddin bin Mohamed Ariff	Inche Mohd. Ali bin Alwi
Mr. K. M. Byrne	Inche Yaacob bin Mohamed

## ABSENT

Inche Mohd. Ariff bin Suradi.

The following representatives of the Persatuan Pemudi Islam Singapura (Young Women Muslim Association, Singapore) attended and were examined:

Mrs. Mohamed Siraj (President).  
 Mrs. Aliya Lynn Tung (Member).  
 Miss Manijeh Namazie (Member).

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

907. Do come in, ladies, and please sit down. For the record, can we have your names, please? From the Young Women Muslim Association, we have Mrs. Mohamed Siraj who is the President of the Association? — (*Mrs. Mohamed Siraj*) Yes.

908. I understand that Che Dah binte Noor Mohamed is not here. Then there is Mrs. Aliya Lynn Tung who is a member of the Association? — (*Mrs. Aliya Lynn Tung*) Yes.

909. Then there is Miss Manijeh Namazie who is a member of the Association? — (*Miss Manijeh Namazie*) Yes.

910. Then from the Malay Women's Dramatic Association, Singapore, we were to have the President, Che Masni Yunus. Is there any news about her? — (*Mrs. Siraj*) She was supposed to come. She has not arrived yet.

911. Then we were to have the Secretary of the Ladies Section of the All-Malaya Missionary Society, Singapore, Che Rahmad Sedin. Is there any news about her? — I apologise for her. She is not well.

912. I take it that you would prefer to give your evidence in English? — I would like to speak in Malay.

913. And I take it that you will nominally be the spokesman? — No.

914. So that I suppose the position will be that if anybody catches my eye, then I will call upon her to speak. I think Members of the Select Committee have had with them copies of the representations\* made by the three Associations dated 19th March, 1960. The first representation is in regard to the proposed new section 7A (1) of the Bill. That subsection reads:

"No marriage shall be solemnized under this Ordinance if the woman to be wedded is married under any law, religion, custom

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or usage to any person other than the other party to the intended marriage."

You suggest that the following words be added:

"except by the Chief Kathi, who shall satisfy himself after inquiry, that there is no lawful obstacle according to the law of Islam, to such marriage."

Could you tell Members of the Select Committee what exactly is in your minds in connection with this suggested addition? — (*Miss Namazie*) If I may reply? We think that we may be depriving a Muslim woman of her right to marry.

915. You mean a Muslim woman who is already married? — If the law of Islam allows her to marry, she should be allowed the privilege to marry.

916. Is a Muslim woman then allowed to have two husbands? — No. As far as I know, a lot of first marriages are perfectly all right.

917. Is that not met by the proposed new section 7A (1)? — A woman may become a Muslim.

918. Let us take the case of a non-Muslim woman then. This is the case you are citing, the case of a non-Muslim woman who embraces the religion of Islam. So long as that non-Muslim woman is unmarried, I suppose there is no obstacle at all. You agree as far as that is concerned? — To what you have said, Mr. Speaker, *yes*.

919. And the proposed new section does not, in any way, prevent her from marrying under Muslim rites. Are you agreed on that? — *Yes*. That a woman who is not married goes to the Chief Kathi?

920. Why to the Chief Kathi? — Or to whoever the person in question is. Then she is allowed to marry. The clause does not concern her.

921. Do you not agree that that is so? — Certainly.

922. Is that not your reading of it? — Reading of the new section, *yes*.

923. Yes, the proposed new section 7A (1)? — You are not satisfied that I have understood the section?

924. Are you satisfied that in a case like that, where an unmarried non-Muslim woman embraces the religion of Islam, there is nothing under the proposed new section 7A (1) to prevent her from marrying under Muslim rites? Are you agreed on that? — I do not quite understand. If the woman to be wedded is married under any law, I think it would apply to married women under the proposed new section 7A (1) which reads:

"No marriage shall be solemnized under this Ordinance if the woman to be wedded is married ...".

Does it not refer to women who are already married?

925. That is what I say. So that in a case like that, where an unmarried non-Muslim woman embraces the religion of Islam, there is nothing to prevent her from marrying? — *Yes*, that is right.

926. Now we come to the case of a non-Muslim woman who is already married under, shall we say, civil law, and her marriage is registered under the Civil Marriage Ordinance. You will agree with me that that woman then has certain duties and obligations in so far as the civil law is concerned? — I am afraid I am no expert in civil law. But if you say so, *yes*.

927. Your case is that if that non-Muslim married woman embraces the Islamic religion, then under the law of Islam her marriage ties are broken. Is that your case? — I think that is the law of Islam.

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928. You think that that is the law of Islam. Mrs. Siraj, are you certain it is the law of Islam? — (*Mrs. Siraj*) Yes.

929. That is your understanding of the law of Islam? — Yes.

930. So that you would like the Chief Kathi, in a case like that, to satisfy himself that this married lady has, in fact, become a Muslim and therefore under the Islamic law she can marry again? — Yes. (*Miss Namazie*) Yes. I do not want this woman to be deprived of her right of marriage. All Muslim women are equal. There are no second-class women. They should not be deprived of the right of marriage.

931. You do realise, of course, that up to now this State of Singapore is not a Muslim State? — Yes.

932. And therefore there are certain laws which govern the law of bigamy in the State of Singapore. You realise that, do you not? — Yes.

933. And therefore in a case like that, if a non-Muslim woman is married under the civil law and then, after becoming a Muslim, she contracts another marriage under the law of Islam, she can, at the present moment and under the present law, be charged with bigamy. You realise that, do you not? — Is it not that, by having the Muslims Ordinance, we should be treated separately?

934. We will come to that. I just want to know whether you appreciate that that is the present position? — (*Mrs. Aliya Lynn Tung*) Mr. Speaker, may I say something? When a non-Muslim woman is converted to Islam—there is freedom of faith in this State—she is given her rights under the law of Islam. So her marriage comes to an end when she is converted to Islam.

935. That I think is appreciated by Members of the Select Committee. But my question still remains unanswered.

Do you appreciate that in the present state of law, that married lady exposes herself to a charge of bigamy? — (*Miss Namazie*) Not as a Muslim, Mr. Speaker.

936. In the present state of the law? — We are only concerned with Muslims.

937. Your appreciation of the present state of the civil law is that this lady cannot be charged with bigamy. Is that it? — Is it the Muslim law?

938. No, the law of the State of Singapore? — Surely the State of Singapore recognises the rights of Muslims. Surely the State of Singapore allows us the freedom of worship.

939. My question was, will the lady not expose herself to a charge of bigamy? Whether that charge will succeed or not is, of course, a different matter. You are arguing that it should not succeed, is that it? — I do not see how she could be charged with bigamy, because she is a Muslim.

940. Let us not argue about that. I am advised that that is the position anyway—that this lady then exposes herself to a charge of bigamy—and you urge that that should not be so. Is that right? — I will not enter into an argument with you as you have legal advice.

941. No. You are urging that it should not be so, and that certain provisions should be made in the law that that should not be so. Is that right? — I am urging that the provisions in the Muslims Ordinance should be in conformity with the law of Islam.

942. Under the Civil Marriage Ordinance, section 5 reads:

"Any person, married in accordance with the provisions of this Ordinance [that is, the Civil Marriage Ordinance], who during the continuance of such marriage purports to contract a valid marriage with a third person under any law, custom, religion or usage

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shall be deemed to commit the offence of marrying again during the lifetime of husband or wife, as the case may be, within the meaning of section 494 of the Penal Code."

That as bigamy. That is the provision of the State law now, and you are urging that if that as the provision of the State law, then you think that that law ought to be changed, because it should not apply in any case to a Muslim woman, because she can contract a marriage under those circumstances according to the law of Islam. That is the position, is it? — No, I am not urging anything. I am not concerned with the civil law. If you do not mind, may I read out the Muslims Ordinance (No. 25 of 1957) of the Colony of Singapore:

"An Ordinance to repeal and to re-enact the law relating to Muslims, the registration of marriages and divorces among Muslims ...".

"An Ordinance to repeal and to re-enact the law relating to Muslims". Does that not apply to us?

943. Now you are embarking on a very ticklish subject, that as, the interpretation of statute law. I do not think we should embark on that. All I can say is that when the title of the Ordinance is "An Ordinance to repeal and to re-enact the law relating to Muslims", that law means the law as already laid down by the State? — Is the State not laying down the law here?

944. Not the complete law of Islam. Anyway, let us not argue about that. Let us face facts first, shall we? The facts are, as I have stated, under the Civil Marriage Ordinance, this lady willy-nilly opens herself to a charge of bigamy. Am I right in saying that you ladies think that that should not be so in so far as Muslim women are concerned, because the law of Islam says that a Muslim woman can re-marry under Muslim rights? Is that right, Mrs. Siraj? — (*Mrs. Siraj*) In the case of a married woman who believes in and wants to embrace the religion of Islam,

what will be the position if she cannot achieve her desire because of the fact that she is married and still attached to her husband?

945. Mrs. Siraj, are you suggesting then that a married woman cannot be converted to the Islamic faith if she is married to a non-Muslim? — Yes. The position will be that she will not be able to follow strictly the law of Islam whilst she still remains attached to her former husband.

946. The question as this. Apart from re-marriage, is there anything which would prevent her from becoming a Muslim? — She need not re-marry in order to embrace the religion of Islam. She embraces the religion of Islam because of her faith in the religion.

947. But the point as this: can this non-Muslim lady embrace the religion of Islam and yet remain married to her non-Muslim husband? — (*Miss Namazie*) I do not think a Muslim woman is allowed to marry a non-Muslim; or having married a non-Muslim on conversion, I do not think she can remain his wife.

948. That is a point I wish to clear. So the position then, as far as I have been advised, is that a non-Muslim woman who is married to a non-Muslim man can, in fact, be converted and become a Muslim. And under the law of Islam, she ceases to be the wife of the non-Muslim husband. That I am advised as the law of Islam. That being so, are you arguing against that? — No. I am trying to make it understood that her marriage ceases. That means a divorce takes place. Is that at?

949. That as where we come up against the wall which has been put up by State legislation. The position then is that, according to the law of Islam, which is not the law of the State at the moment — we are not a Muslim State — ? — But the government is the champion of Islam!

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950. Yes, champions, but the law of Islam is not the State law at the moment. The position then is, under the law of Islam, this married lady whom we have been talking about ceases to be the wife of the non-Muslim husband. But under the State law, she is not considered as having been divorced from her non-Muslim husband. Therefore, if she contracts a second marriage under the Muslim law, she, according to the section I have read out, then could be charged with bigamy. Now those are, in fact, the facts. Let us not argue and say that they are not the facts. They are the facts in Singapore. Now I am trying to get your point of view on record, and that is this - if I am not correct, say I am not correct - that you feel that the State law should be changed so that this non-Muslim woman, who is converted to Islam, should not run the peril of being charged with bigamy, is that it? — Does this State law allow a person to become a Muslim?

951. That is a very frivolous question. I do not think there is anything under the State law which prevents anybody from embracing any religion? — There is freedom of worship. So if one becomes a Muslim, does the State law apply?

952. I think the witness must appreciate that, up to now, the law of Islam is not the State law is that appreciated? — Yes.

953. Now, the State law, which is the law laid down in Ordinances, always over-rides any other law. That is a very blanket statement? — Over-rides Muslim law?

954. In this particular case, it appears to over-ride the tenets of the law of Islam. That over-riding of the tenets of the law of Islam is contained in the Civil Marriage Ordinance. What I am trying to elicit from the witnesses is this: am I correct in assessing their representation that that should not be so. and that

amendments ought to be made so that a non-Muslim woman who embraces the law of Islam should not be made to run the peril, under the civil law now, of being charged with bigamy? Have I got a correct assessment of what the witnesses are urging? — Am I right in understanding that we are given freedom of worship with certain conditions?

955. Let us not argue about that. I just want to know what you want. What do you really want? — The privilege for Muslim women to marry.

956. At the moment, there is no such privilege under the State law. That is clear? — Are not those women to be accorded the privilege?

957. The State law says that there is none? — Well, then, I am asking you to give us that privilege.

958. We are going round and round in circles! Now you are urging that if the State law says that the woman who embraces the religion of Islam remarries, she can be charged with bigamy, then that Law ought to be changed? — I am not concerned with the State law. I am just saying that if a woman who is already married goes to the Chief Kathi and asks to be married, and if the Chief Kathi thinks that there is nothing in the law of Islam to prevent the marriage, she should be allowed to marry.

959. She marries, and of course exposes herself to bigamy? — We are not concerned with the State law, Sir. We have come here to make representation on behalf of our Muslim sisters. It is up to you to decide what the law is, and we have come to advise you. And the State law may not see what we really see - that our Muslim sisters are deprived of the right to marry.

960. I will put it this way as there does not seem to be a positive statement - these are my words, so please do not

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say they are your own words—that the witness has urged that a non-Muslim married woman converted to Islam should be given all the privileges of Islam, including the privilege of marrying, and if the State law says that that cannot be so, then the State law should be amended. That seems to be an assessment of what has been urged. There is only one other point. The witness is urging then that the law of Islam should be applied in its entirety in Singapore? — Not quite.

961. Let us get a general statement. Is it the opinion of the Association that the law of Islam should be applied in its entirety in the State of Singapore? — We have no objection.

962. So that if the law of Islam says that a hand must be cut off for theft, you say that that should apply in Singapore? — We are simply advising you on what the Muslim law means.

963. I am just trying to indicate to you how impossible it is? — (*Mrs. Aliya Lynn Tung*) I just want to say that Islam has an international appeal. This world-wide religion has a particular character. That is why this State is having the Muslims Ordinance.

964. You do appreciate, of course, that in certain Muslim States, the law of Islam has, in fact, been replaced in certain cases by State laws. I think I have indicated the cases where punishment under the Islamic law is very, very severe. But in certain States they have abolished that sort of punishment, directly or indirectly going against the law of Islam. You do appreciate that in certain States—even in an Islamic State—the Islamic law is departed from in certain cases? — Amended according to the place and the time.

*Inche Mohd. Ali*

965. Mr. Speaker, Sir, I do not have any questions to ask the witnesses, except one, and that is in connection with

the proposed amendment by the phrase here "except by the Chief Kathi." Can the witnesses explain whether it is in accordance with the law of Islam? — (*Miss Namazie*) As the Chief Kathi is in the position of a judicial officer and because he knows the law of Islam, he should be allowed to decide in accordance with the law of Islam.

*Chairman*

966. I think the hon. Member wishes to know whether you are satisfied that giving this power to the Chief Kathi does not go against the law of Islam, which perhaps indicates that this power could be exercised by all Kathis. I think that is what the hon. Member wishes to know. Are you satisfied on that point? — I do not quite understand it. Does the Member suggest that all Kathis should be given this power? But all Kathis may be interested parties. Every time they marry a person or divorce a person, they get a financial gain from it. But the Chief Kathi does not. He is a judicial officer—at least he is in the position of a judicial officer.

967. I think the question goes deeper than that. Are you satisfied that confining this power to one person, that of the Chief Kathi, does not go against some tenets of the law of Islam? — I do not understand. You must have somebody to get two people married. I do not see why it should go against the law of Islam.

*Chairman*] That is the answer. The witness does not see why it should go against the law of Islam.

*Inche Mohd. Ali*] If such is the case, do the witnesses agree or not that the marriages solemnized by the other Kathis are in accordance with the law of Islam if this sub-clause (1) is incorporated into and becomes part of the provisions of the Bill?



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*Chairman*

968. What the hon. Member wants to know is this: if you think that this power should be given solely to the Chief Kathi, does it follow then that if a similar type of marriage is solemnized by another Kathi after due inquiry, that would possibly not be in accordance with the law of Islam. In other words, have you got any faith in the other Kathis? — **No**, Mr. Speaker. This is not a question of personalities. The Chief Kathi should be chosen for his knowledge of Islam.

969. Would you object strongly if this power is given to all the Kathis? — This is a serious matter, Mr. Speaker, Sir.

970. So you would prefer to see the power confined to the Chief Kathi? — I think it would be better to have one person.

971. For the sake of the ladies? — For the sake of others. We live in a multi-racial society.

*Dato Abdul Hamid*

972. I think the witnesses appreciate the fact that it is not possible for the State to legislate for all aspects of the Islamic religion into our laws? — It is appreciated.

*Chairman*

973. Let us go round in a circle again! The question was this: do the witnesses appreciate the fact that it is not possible to write into the State law all the provisions of the law of Islam? — *(All witnesses)* No comments.

*Data Abdul Hamid*

974. Were the witnesses therefore stating that whenever or wherever Government introduces some aspects of Muslim law into the Statute Book, they should be in accordance with the law of Islam? — *(All witnesses)* Yes.

*Chairman]* Any questions?*Inche M. Ismail Rahim]* No.*Inche Baharuddin]* No.*Inche Yaacob*

975. Do the witnesses agree with my view-in fact, with the view of all Muslims—that when a non-Muslim woman who is already married embraces the religion of Islam, she thereupon immediately ceases all connections with her husband? — *(Miss Namazie)* Therefore this law is incorrect.

*Chairman*

976. Let us not argue, Miss Namazie. The question was this: under Muslim law, a non-Muslim married woman who embraces the faith of Islam immediately ceases all connections with her husband. Is that correct? — Yes.

*Inche Yaacob]* And if marriage with her former non-Muslim husband has been consummated, then she has to observe *eddah* and it is only after *eddah* that she can remarry a Muslim?

*Chairman*

977. Is that your understanding of the law of Islam? — I am afraid I am no expert. If it says so, then it is so.

978. So you accept that as a statement. Whether it is correct or not, you do not wish to argue? — May I interrupt? Mrs. Siraj would like to speak. *(Mrs. Siraj)* No.

*Chairman* ] It is just a statement, and I do not think the witnesses can be bound by the statement, "I agree" or "I do not agree;" Just take it as a basis of a question. Assume that that is so.

*Inche Yaacob]* Do the witnesses agree with me that Singapore is a multi-religious society, and if a law is enacted which attacks the interests of another religion, then that is most undesirable?

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*Chairman*

979. That is possibly a question that could be answered, but the witnesses need not answer if they do not wish to. The question is: do the witnesses agree that if any law is enacted which is contrary to or upsets the religion of another race, then that is not a good thing for the State of Singapore? — Could it be made specific? Could the Member say which religion will be upset?

*Chairman*] The Christian religion perhaps.

*Inche Yaacob*

980. For instance, a non-Muslim woman who is already married embraces Islam for the purpose of contracting a marriage. The former non-Muslim husband refuses to divorce his wife, and prosecutes her in accordance with the civil law. That state of affairs may give rise to anti-racial feelings and cause religious strife among the people? — (*Miss Namazie*) I do not understand how it could affect other religious laws.

*Chairman*

981. Let us forget now about the religious laws. I think the hon. Member has got a different tag. I will explain his first tag, and that is, he wants to know whether, in the circumstances which he has described, there might not be a danger of inter-racial strife and trouble? — (*Mrs. Aliya Lynn Tung*) May I say something? There are many cases. A man who is a Catholic accepts Islam in order to get married to a Muslim girl. There is no religious conflict whatever.

*Inche Yaacob*] That may be so if the husband has no further interest in the wife. But if the husband still wants his wife, then he can pursue the matter in Court. And another example. This is not a matter of marriage, but one relating to the Nadra case —

*Mr. Byrne*] The riot case.*Chairman*

982. Let us not go into that riot case, Inche Yaacob. Let us not deal with it. I think one example is quite enough. The hon. Member fears that if we are to allow a thing like this to happen—that is, if a non-Muslim married woman, after being converted to the religion of Islam, gets married, then the non-Muslim husband might prosecute her in Court for bigamy, and that might give rise to inter-racial strife? — (*Miss Namazie*) Are they not allowed to practise their religion?

983. Do you or do you not think that there is a danger? That is the question? — I do not think so. I do not appreciate that.

984. You do not think that there will be a danger? — I do not think so.

*Inche Yaacob*

985. There is a possibility, Mr. Speaker, that if this becomes law, then several women may want to embrace Islam for the purpose of re-marrying? — (*Mrs. Aliya Lynn Tung*) May I say something? There are many cases where the men just take advantage of converting to Islam in order to get married. It is not easy for the wife or the mother to convert to Islam just for the sake of another marriage. She must be in a very desperate condition if she wants to do so. That is the last course she can pursue. It is not easy for a mother to give up her family, her home and her children to re-marry by taking the advantage of converting to Islam. Besides, to embrace a faith is a very serious thing. If she is converted, then she should have all the privileges and consequences as well.

*Chairman*] The short answer is that, in the view of Mrs. Tung, this matter is a serious matter, and she does not

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think that there will be several women, as suggested by the hon. Member, who will embrace the religion of Islam for the purpose of re-marrying.

*Inche Yaacob*] *Is it* agreed that a non-Muslim woman who is married and who then embraces Islam, should first of all resolve the question of marriage with her former husband in the Civil Court? Only after the divorce has been settled will she then be able to re-marry. The purpose is to avoid inter-racial strife in a multi-racial society.

*Chairman*

986. Can I put it shortly? The hon. Member suggests that a non-Muslim married woman should first have her marriage to her non-Muslim husband dissolved in a Civil Court of law. Only after the marriage has been dissolved should she then think of embracing Islam to re-marry. This he suggests would prevent the possibility of inter-racial strife in this multi-racial State of ours. I hope I have made it clear? — (*Miss Namazie*) As I understand it, the Member is trying to put obstacles in the way of women becoming Muslims.

987. I do not think that has been suggested. The Member is only posing this question: *is it* not better for that to happen before talking about being converted to the Muslim religion and re-marrying under Muslim rites? Is it not better for the State of Singapore that that should be so? — We are concerned only with Muslim women. We do not quite understand the civil law. We are concerned here only with Muslim law.

988. I think the hon. Member fears that if we allow things like this to be written into the State law, then there may be a possibility of inter-religious strife and trouble between races. Do you or do you not agree that there is a possibility? — We have faith in our non-Muslim brothers and sisters.

*Chairman*] Your answer then is that you do not think there is a possibility.

*Mr. Byrne*

989. Mr. Speaker, Sir, I would like to know from the ladies whether they speak here as champions of the rights of Muslim women or are they prepared to champion the rights of all women? — A Muslim woman is still a woman.

*Chairman*

990. And what is the answer? — We would champion the rights of women?

991. Of all women? — We not only champion the rights of Muslim women, but we also champion the rights of all women in general.

992. Why are the witnesses being evasive? The question is quite straightforward. Do the representatives here now champion the rights of all women irrespective of whether they are Muslims, Christians, or of any other religious denomination? That is a pure and simple question which requires a pure and simple answer? — "Champion" is a compliment indeed. I do not think we would be modest if we say we are championing the rights of all women.

993. Supposing there should be some law against Christian women, what would you, as representatives of your Association, think about it? Would you come to the rescue of Christian women, or just leave them to fight their own battle? — We will help any woman.

994. Your answer then is, you would come to their help, *would* you not? — Yes, would we not?

995. Miss Namazie says, "Yes, would we not?" Mrs. Tung, what is your answer? — (*Mrs. Tung*) Yes, I think there are many aspects in Islamic religion which have raised the status of women. It goes for the other non-Muslim women too.

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996. For instance, would you recommend equality of pay for all? - Yes. of course. Some of our Muslim sisters are working in the Government. Of course, we support them.

997. Only if there are Muslim women. If not, you just leave them? — As long as they are women, we support one another.

*Chairman*] That is the answer, Mr. Minister.

*Mr. Byrne*] Mr. Speaker, Sir, the witnesses thought that it was right that any non-Muslim woman who is married under the Civil Law Ordinance should be allowed, on conversion to Islam, to get married under the law of Islam. If that should be allowed to the non-Muslim women, then, for that same reason, it must be allowed to the non-Muslim male. What would be the witnesses' reaction then to a situation like this: a non-Muslim male, after he has been converted to the religion of Islam, suddenly decides, although he is already married to a woman—it need not be a Muslim woman, it may be any woman at all - to take unto himself a second wife. What would be their reaction to the position of that woman?

*Chairman*

998. Is that clear? — (*Miss Namazie*) We agree with what the Government has to say on clause 7A (2).

999. Clause 7A (2)? You have not got the question at all? - I am sorry. I beg your pardon.

1000. This is the question that has been posed just now. Take the case of a non-Muslim married couple. Now the non-Muslim married male is converted to Islam. Then he, having been converted to Islam, takes unto himself another wife, according to the Muslim rites. According to you, his ties then with the non-Muslim married woman would be dissolved under the law of Islam? — I do not think so, because a Muslim man can be married to a non-Muslim woman.

1001. So your appreciation of the law then is that, in so far as the man is

concerned, if he is converted to the religion of Islam, his ties with his wife are not broken? - To the best of my knowledge, no.

1002. That, I am advised, would only apply if the woman belongs to a religion with a Revealed Book, for example, a Christian woman. Let us then take the case of a non-Muslim married woman who is not a Christian or of a religion with a Revealed Book, shall we say, a Hindu? The position then would be that this non-Muslim husband, who is converted to the religion of Islam, can discard his Hindu wife willy-nilly, and take unto himself another wife under the Muslim rites. In such a situation, do you not, as representatives of women, come to the rescue of this Hindu woman? - I do not know what the term "*Kitabiah*" actually implies. What is a "revealed" religion? I do not know whether or not in India it is the practice to accept Hindu as having some religious scriptures.

1003. A Revealed Book? — I am afraid my lack of knowledge of the Muslim law puts me at a disadvantage.

1004. Anyway, what I think the Minister wishes to know is this: in a case like that, where a non-Muslim man embraces Islam and takes unto himself a second wife, you say that if that wife is of a religion with a Revealed Book - put it that way—the new section 7A (2) would apply. But if, in the case I have cited of the Hindu wife, the non-Muslim married man converts to Islam and deserts her, what then? What would you do? Could there be a provision to protect this Hindu wife? - I do not know. If I may go back to the new section 7A (2)—because, I am not sure that I have understood the question:

"... if the man to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage ...".

You see, no marriage can be solemnized except by the Chief Kathi. So I think the law makes provision for that.

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*Chairman*] But the Chief Kathi only finds out whether there is any lawful obstacle according to the law of Islam That is all he is there for.

*Mr. Byrne*

1005. Mr Speaker, I want to know from the ladies whether they would be happy to be the champions of the rights of women in a situation like this. All of sudden, a woman, who has been married under the law of the State and who considers herself to have been married for several years, finds out that her husband has embraced another religion, and he is free to marry somebody else. Have the witnesses really no sympathy for such a woman in that situation, if they are really the champions of the rights of women? - That is why we would like the phrase "lawful obstacle" to be made clear. By remaining Muslims, with certain provisions, we run the risk of being married four at a time to one person.

*Mr. Byrne*] Mr. Speaker, Sir, can I go on from there? You have pointed out before that this is not an Islamic State. Do the ladies know that in Turkey today, which is an Islamic country, the only marriage that can be contracted under the law is a monogamous marriage? Would they accept that to be the situation.

*Chairman*

1006. Do you or do you not know that in Turkey, which is a Muslim country, there is, in fact, a State law which provides for monogamous marriages? — (*Mrs. Tung*) Yes.

1007. You do know? - We are of the opinion that there should be monogamy in the Muslim community. And in our letter we gave a strong hint about that. And we have brought here an aide memoire on monogamy.\*

*Chairman*] Shall we leave that for the time being? Let the Minister pursue his question.

*Mr. Byrne*

1008. Mr. Speaker, Sir, one of the ladies has said just now that she believes in freedom of religion in our State. Now it is just as important that a person should have the right to have no belief as to have a religious belief. Do they agree with that? — (*Miss Namazie*) If there is freedom of worship, then people certainly are also entitled not to have any beliefs.

*Chairman*

1009. So you agree with that? — I do.

*Mr. Byrne*

1010. So it is possible for a civil marriage to be contracted between parties who have no religious beliefs at all or who have religious beliefs; and if there is to be a State law, then it cannot provide only for a situation where people have religious beliefs. It must provide for situations where they have religious beliefs as well as for situations where they have no religious beliefs. So going on from there, I would say that there is nothing under the Civil Marriage Ordinance which would in any way restrict the freedom of a woman and a practising Muslim to marry under the provisions of that Ordinance if they so desire. Would the witnesses agree that that is so? — There is no — ?

*Chairman*] There is no restriction. Under the Civil Marriage Ordinance, there is a general licence to any person to contract a marriage.

*Mr. Byrne*] I would just like to correct that, Mr. Speaker, Sir. There is nothing to prevent, say, a marriage from being solemnized under the provisions of this Ordinance by one of the parties if he or she so wishes.

*Chairman*] Under the Civil Marriage Ordinance, there is provision whereby marriages can be contracted between two parties one of whom is of the Muslim religion, or both of whom are

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atheists, shall we say? Can we start from there, Mr. Minister?

*Mr. Byrne*

1011. Say there is a male Muslim who desires to marry a non-Muslim woman under the provisions of this Ordinance. He knows, when he does that, that he is contracting a monogamous marriage. In that situation, if the male then says, "Well, I abrogate my marriage ties. I am a Muslim and I want to take unto myself a second wife under the law of Islam." Now do the witnesses not think that it is right and proper for the man in that situation, after having knowingly contracted a monogamous marriage, to be liable to prosecution for bigamy under this enactment? — If he marries under the Muslim law, then he can do it. But if he marries under the civil law, then he must face the consequences.

*Chairman*

1012. So that you agree then that if a male Muslim marries a non-Muslim woman under the Civil Marriage Ordinance, he must take the consequences for bigamy if he takes unto himself another wife under the Muslim rites. You agree that that is so? — (*Mrs. Tung*) May I add something? The man previously has a non-Muslim wife. If he himself is converted to Islam, he has the right and obligation to convert his wife first.

1013. You have not got the point. The point is this: this male Muslim is already a Muslim and he marries under the civil law a non-Muslim. That is the case the Minister has posed? — The woman must be a Muslim.

1014. No. Under the civil law she need not be. The male Muslim marries under the civil law a non-Muslim woman. That is the situation the Minister wishes you to bear in mind. Then this male Muslim takes unto himself, under Muslim rites, a second wife-and he is correct in doing that under the law of Islam-but the civil law says that this male Muslim in doing so opens

himself to a charge of bigamy. Do you not think that that is right, because he has already contracted a first marriage knowing well what would be the penalty if he takes unto himself another wife under Muslim rites? — I think it is the duty of the Chief Kathi to investigate. If the male Muslim marries under the civil law a non-Muslim woman, then he is not obeying the Islamic law. So the Chief Kathi should not solemnize his marriage to a second wife.

1015. But "should" and "should not" are two different terms. You do agree that, according to the law of Islam, there is no lawful obstacle. Is there any lawful obstacle which will prevent this male Muslim, who has already got a non-Muslim wife, from taking unto himself a second wife? — There are many obstacles.

*Chairman*] It is the law of Islam that I am talking about. Is there any lawful obstacle under the law of Islam to prevent this male Muslim, who has already got a non-Muslim wife, from taking unto himself a second wife under Muslim rites? I am advised that there are none. Do you agree? Do you think there ought to be? There is no answer. Mr. Minister?

*Mr. Byrne*

1016. I think one of the witnesses has just now said, Mr. Speaker, Sir, that there is a hint in their representations to the Select Committee that they desire that there should be an end to polygamy as far as the Muslim community is concerned. If that is their desire, should not there be an equal desire on their part that no impression be given that they would, in any way as the champions of the rights of women, want to support the situation where polyandry is possible? — (*Miss Namazie*) We do not want that. This is a serious matter. Supposing there is a non-Muslim woman. She is married to a non-Muslim man. In all good faith, she becomes a Muslim and her non-Muslim

husband tells her that she cannot practise her religion. She is his wife and she has to obey her husband. What happens then?

*Chairman*

1017. Miss Namazie, I think you have missed the question. Apart from the law of Islam which allows polygamy, I think you have said, or Mrs. Tung has indicated, that women—even Muslim women of your Associations—are in favour of monogamy. Am I right? — Yes.

1018. Now, if you are in favour of monogamy, ought you not also to be against polyandry? — Mr. Speaker, I would like to know what polyandry implies? The having of two husbands at the same time?

1019. Yes? — According to the Muslim law, we are allowed only one. If a woman wants to become a Muslim, and she marries a Muslim, she must be satisfied with one Muslim husband.

1020. So we come back then to the point that once a non-Muslim married woman embraces Islam, then her ties with her husband are completely at an end and, therefore, she has no husband? — Yes.

1021. And therefore, when she marries again under Muslim law, she is not, in fact, practising polyandry because she has no other husband? — That is as far as I know.

*Mr. Byrne*

1022. That, Mr. Speaker, Sir, is therefore the point at issue. There is conflict there between Islamic law and State law. It is quite possible for a woman to be in the situation where she would, in fact, be having two husbands at the same time. The State law would say she has two husbands at one time. The Islamic law would say no—that she is married to the new Islamic husband? — But would not the State law say that Islamic law should apply, Mr. Speaker?

*Mr. Byrne* / No. We do not want a situation like that to develop.

*Chairman*

1023. Apart from what the law of Islam teaches, the Minister is pointing out that in the present state of the civil law, the facts are these: this non-Muslim married woman who embraces Islam and takes unto herself a husband is, in fact, in the eyes of the civil law, practising polyandry? — But I think we have gone into the matter and have made ourselves clear.

1024. The Minister's point is this. That even if that situation, in fact, arises, you do not think that there should be any difficulties? — I would not consider that to be polyandry, because she would be married to only one husband at a time.

*Mr. Byrne*

1025. Mr. Speaker, Sir, I want to get this very certain from the ladies, that as far as they appear here as champions of the rights of women, they would make their stand for monogamy. But as far as they appear here as champions for women of the Islamic faith, they would like to see restrictions put on polygamy. Would that represent their attitude to the Select Committee, Sir? — Would I be right in understanding the question to be that we are here to put obstacles in the way of polygamy?

*Chairman*

1026. I do not think the Minister has said that at all? — I am sorry.

1027. The assessment, as far as the Minister understands it, is this. That you, as representatives of womanhood, say that you are in favour of monogamy; and as representatives of Muslim women, you are advocating that there should be some restrictions on polygamy. Is that, briefly, the assessment? — Yes.

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*Mr. Byrne*

1028. So the witnesses are at one with what the Government is trying to do?  
 - Certainly. That is why we have come here. We believe in most of the things that the Government is trying to do.

*Chairman*] To complete this very interesting discussion on clause 7A (1) - have you any further questions, Mr. Minister?

*Mr. Byrne*] No, Sir.

*Chairman*

1029. We have then completed the witnesses' representation as contained in paragraph 2 of their memorandum, and it brings us to the time when we rise. It is about 12 o'clock. It looks as though this discussion will take at least another morning. Could the ladies come again? Shall we say that we will meet again tomorrow at 10 a.m.? Thank you very much? - Mr. Speaker, I would like to thank you. for listening to us so patiently.

1030. Oh, we have not finished yet! Some of these topics are very interesting? — Thank you.

*(The witnesses withdrew.)*



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FRIDAY, 1st APRIL, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*).

Dato Abdul Hamid bin Haji Jumat	Inche Mohd. Ali bin AIwi
Inche Baharuddin bin Mohamed Ariff	Inche Mohd. Ariff bin Suradi
Mr. K. M. Byrne	Inche M. Ismail Rahim
	Inche Yaacob bin Mohamed

The following representatives of the Persatuan Pemudi Islam Singapura (Young Women Muslim Association, Singapore) attended and were examined:

Mrs. Mohamed Siraj (President).  
 Mrs. Aliya Lynn Tung (Member).  
 Miss Manijeh Namazie (Member).

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

1031. Come in. Do sit down. We have the same ladies-Mrs. Mohamed Siraj, Mrs. Aliya Lynn Tung, and Miss Manijeh Namazie? — (*Mrs. Siraj, Mrs. Tung and Miss Namazie*) *Yes*.

1032. Shall we go straight on to your second representation which is contained in paragraph numbered 3 in your letter\* which reads:

"That "Lawful Obstacle" for the purposes of clause 7A (2) be defined as follows:-

"Lawful Obstacle" shall be deemed to include the apparent inability, both financial and moral, of the man to be wedded, to observe equity among his present and proposed wives.

And you explained that recommendation lower down in your letter where you said:

"The amendments proposed to clause 7A (2) of the Bill do not conflict with the provisions of the law of Islam.",

and you quoted extracts from the Book. Now, the proposed new subsection suggests that it is the Chief Kathi who

shall, before solemnizing a polygamous marriage, satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such a marriage. Do you not think that it could safely be left to the Chief Kathi to decide what, in fact, is the lawful obstacle, if any, instead of defining "Lawful Obstacle" in the Bill itself? — (*Miss Namazie*) May I answer that? Considering what has happened over the years, we would like the phrase "Lawful Obstacle" to be as specific as possible according to the law of Islam.

1033. You do not think that the Chief Kathi would give the same meaning to the words "Lawful Obstacle" as you have given in your suggested amendment? - I do think we need to be specific. We have only indicated what "Lawful Obstacle" can possibly mean.

1034. You do agree that the law of Islam is, let me put it this way, flexible? - Exactly, and that is why

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we would like it to be as specific as possible.

1035. And you do not think that, by trying to define terms like this "Lawful obstacle", you might unnecessarily restrict the wider meaning of that expression? — We do not mind the restriction so long as it does not go against the law of Islam.

1036. I understand that. But if you restrict it, you might restrict the wider meaning which might be given to the term. Do you not fear that that might happen? — (*Mrs. Tung*) We would like to restrict it where evil can be done. But we would like to enlarge it where good can prevail.

1037. That is very enigmatic. Can you explain that? In relation to this particular topic, you say:

'"Lawful Obstacle" shall be deemed to include the apparent inability, both financial and moral, of the man to be wedded, to observe equity among his present and proposed wives.'

"Financial" is clear. What is this question of "moral" inability? — "Moral" is just the opposite of "immoral". What in your civil law explains about "immoral", we have the same thing in our Islamic law.

*Chairman*] I think I had better give up! Inche Mohd. Ali, have you any questions?

*Inche Mohd. Ali*] No questions.

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Yaacob*] No.

*Mr. Byrne*] It is really very difficult to know what is "moral" and what is "immoral". It will get you nowhere, Mr. Speaker, Sir. One way of saying it would be that it would be immoral that there should be polygamous unions—if it is accepted that polygamous unions are not right. It is all a matter of one's own personal attitude to the

problem. But in view of the fact that in Islamic law polygamous unions are recognised, I think we should leave these questions, which are questions of law, to those who are well versed in Islamic law. For that reason, I think it would be wise to leave the section as it is without any definition as to what is the meaning of "lawful obstacle".

*Chairman*

1038. Have the witnesses followed the Minister? — (*Miss Namazie*) Yes. Can I explain what we mean by "moral"? As the Minister says, it is a question of attitude. What we mean is that a man should, as far as possible, try to treat his wives equally as far as his time and affection (if that is possible) and his other outward observances are concerned. It is because of the great laxity that accompanies the alarming number of polygamous marriages that we stress that the expression "lawful obstacle should be defined. It is a question of attitude, and there are so many attitudes to the same thing. That is why we want to guide the Chief Kathi along the lines that we think.

1039. But as the Minister has pointed out, there are so many different interpretations of the word "moral". If the word "moral" is put into the Bill just like that, well, different people will have different interpretations? — That is why we suggest that there be a Committee where we can put forward all kinds of interpretation.

*Chairman*] Let us turn to the Committee later on. Has the Minister any further questions?

*Mr. Byrne*

1040. It is very hard to define these things, Mr. Speaker, Sir. A man might be rich and be able to afford more than one wife. That might be permissible to him under the Islamic law. On the other hand, although he is providing for his wife, he may be ill-treating her. That is a question not so much of law as of fact, the fact that he is ill-treating his wife. There is no reason why the Chief Kathi should allow him in such a case

to take unto himself a second wife. But these are really questions of fact, and they should be left in the hands of somebody who is wise in the ways of the law of Islam and can be trusted to carry out his duties properly? — My only answer to that is this: this will put no obstacle in his way in interpreting the law of Islam. It will not hinder him.

1041. Mr. Speaker, Sir, in dealing with the law of Islam, we have tried all along not to write into the Statute Book anything which would show that we are trying to interpret the law of Islam. We are only introducing the necessary procedures so that the State can be satisfied that there are proper inquiries, that the legislation is properly framed, and that women can have redress when they are not properly treated or married under this Bill. That is all we can do. But we cannot try to import our own ideas as to what the law is in legislation like this? — (*Mrs. Tung*) We are not experts in Islamic law. Maybe the Select Committee are experts in Islamic law.

*Chairman*

1042. Can I just interrupt? I would say straightaway that no Member of the Select Committee has ever claimed to be an expert in Islamic law? — So we will appreciate very much if this Select Committee will go to the experts and urge them to interpret what the Islamic law really is.

1043. The Minister's point is that it would be invidious-sometimes it may be dangerous-to try to import into Statute law interpretations of the law of Islam, because interpretations can vary even amongst experts. That is the point. All that the Bill seeks to do is to provide the procedure whereby women in relevant cases could have some degree of protection. In so far as the interpretation of the law is concerned, the Minister suggests that that be best left to the expert who administers the law. In this particular case, that will be the Chief Kathi? — (*Miss Namazie*) We are not

suggesting that it should not be left to the Chief Kathi. We are just suggesting that we do not give him a lot of latitude. Mr. Speaker, Sir, as the Hon. Minister has said, "morally" can mean so much. So the Chief Kathi has a lot of latitude to decide. We are not trying to decide for him, but we are just trying to tell him that the law of Islam allows so much, and therefore he should think along those lines.

1044. Do you not think that he would? That is the point? — The Chief Kathi is a man, Mr. Speaker.

1045. Yes, but I do not think you should look at him in that light. He is there to administer what he considers to be justice. I think that is the way to look at the Chief Kathi who is appointed for that purpose, just like a Judge of the Supreme Court? — What is the objection to "Lawful Obstacle"? I do not see how the Chief Kathi is in any way restricted by the definition.

1046. But are you satisfied it is, in fact, a full definition, or a definition which cannot be criticised under the law of Islam? I do not know myself-I am not an expert. Is the witness satisfied that it is a definition which cannot be criticised? — We will stand by our definition.

*Mr. Byrne*

1047. I would also like to point out, Mr. Speaker, Sir, that we have provided for a system of appeals. So that if any party is dissatisfied with the Chief Kathi's interpretation of what is a lawful obstacle, he can appeal to the President of the Shariah Court. And if he is still dissatisfied with the President's ruling, then he can go to the Appeal Board. So there is a system of appeals provided and everybody will have a chance of knowing that these questions are properly looked into, if they should be disputed? — That is after the damage is done. We have got to stop them from marrying

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more than one wife. We want to do that within the bounds of Islam. And Islam allows us to interpret. Islam specifically states:

"If ye fear that ye cannot observe equity, between them, then, espouse but a single wife."

*Chairman*

1048. I take it that the Chief Kathi will know that? - We do not deny that he will know that. But we want him to realise its importance. That is why we want it to be defined.

1049. Are you really seriously doubting that he will not realise the importance of that? - Mr. Speaker, if you look around and see what has happened all these years, surely you will see that they have not given due heed to that. There are people marrying more than one wife.

1050. Then, of course, these marriages were in the past solemnized by any Kathi, were they not? Perhaps one cannot say the same of the Chief Kathi as one could say of some of the other Kathis. That is one of the reasons, I think, behind this suggestion that the inquiry should be vested in one person. And it is suggested here that the person should be the Chief Kathi. You realise that, do you not? - I realise that the Chief Kathi should be the person.

*Mr. Byrne* | Mr. Speaker, Sir, it has been pointed out to this Select Committee before that, second marriages are, in fact, not really a problem in the Islamic community here, because they do not exceed 100 a year; whereas divorce is the real problem. It is necessary to tighten up the administration of the law with regard to divorces. It is regrettable to say that women who profess the Islamic faith have, in the past, been divorced very easily. But we tightened that up considerably when the Shariah Court was set up. We have read a Press statement by the President of the Shariah Court to the effect that the law of divorce has been tightened up and, in fact, the number of divorces has fallen

considerably since the Shariah Court was introduced.

*Chairman*

1051. Shall we leave that a little later on? I think the witnesses have touched on divorce later on in paragraph 5. But the point is that we have been informed that the number of polygamous marriages does not exceed or is round about 100 per year, so that the problem is not so very great. Do the witnesses agree? — (*Mrs. Tung*) But there is still a problem. So in order to prevent more problems from arising, we have to ask that these lawful obstacles be suitably defined.

1052. I do not think we can go any further on that. So we will leave that for the moment and go back to your representation. Your next representation is numbered "4". You suggest:

"That in an inquiry under clause 7A (2), the Chief Kathi be assisted by a committee, on which women be represented."

You have indicated in your definition of "lawful obstacle" that the inquiry should be directed, *inter alia*, at the financial and moral qualifications of the man to be wedded so that he could "observe equity among his present and proposed wives". Now if your suggestion is accepted—that if a committee is to be appointed, it should also include women—would you not agree with me that it would be exceedingly embarrassing to the man who wishes to marry? — Why should we care whether the man is embarrassed or not? For so many years have women been embarrassed by men.

1053. Do you agree that if we accept this suggestion, it will not only be an obstacle under the law of Islam, but the "civic" aspects of the whole matter will present very grave obstacles to the man? — (*Miss Namazie*) In what way, Mr. Speaker?

1054. I cannot imagine a man, who wants to take unto himself a second wife, having to appear before a committee consisting of women so that they

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can inquire into his financial and moral qualifications. To my mind, it would be a very grave obstacle for that man?

— (*Mrs. Tung*) A marriage is always between a man and a woman. So the committee can also listen to the point of view of the woman. That is why women should be represented.

1055. Do you say that the committee is also to investigate the woman? — (*Mrs. Siraj*) We should safeguard women's rights to see that they do not suffer more.

1056. And to do that, you want to inquire into the man's life, is that right? — (*Miss Namazie*) No, I do not think so. A second marriage is a matter of conscience, it is true. But we just want to be certain that the man is capable of exercising equity. After all, if he has a wife already and is taking unto himself a second wife, then he must not take the law of Islam lightly. So far these conditions have been ignored. People nowadays are not such good Muslims as they were before. They expect the privileges without considering the responsibilities. That is why we would like to clarify our views before the Select Committee.

1057. You do not think it would also be embarrassing to the women on the committee? — Whether it is embarrassing or not, they have to go through with these things.

1058. Do you agree that embarrassment sometimes does not lead to making good judgments? — We have to agree with that.

*Chairman*] Any questions?

*Inche Mohd. Ali*] No questions.

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Baharuddin*

1059. Just now it was suggested by the witnesses that there should be an inquiry into the financial and moral aspects of a person wanting to contract

a polygamous marriage. Then the witnesses went on to say that there should be a committee on which women should be represented to inquire into the woman's side of the marriage. What is the necessity for an inquiry into the affairs of the woman to be married, as far as her financial and moral aspects are concerned? — (*Mrs. Tung*) I do not think that our statement has been fully understood. If a woman is represented on the committee, she will give her views on the marriage as a woman; because very often it has been the man's point of view which has been represented. So why should the woman's point of view also not be represented on the committee on a marriage, especially if it is a second marriage, which in the Koran is forbidden. So far, these provisions have not been interpreted in the right way.

*Chairman*

1060. You do not suggest that the bride herself should be investigated?

— In a second marriage, maybe the girl is not fully aware of her position. So if there is a woman on the committee, she can help to explain to the girl.

1061. So that this committee, which you envisage, is also to undertake the duty of advising the bride. Is that right?

— It is to help her find out whether the man can give her financial and moral equity among the wives.

1062. In other words, this committee of yours would undertake the duties of a *wali*, is that right? — (*Miss Namazie*) I think Mrs. Tung has been misunderstood. I think the questioner has misunderstood our statement. The idea is the man's ability to be equitable, not the woman's. The committee can advise her as to whether the man will be equitable to her. She is just as much a party to the contract as the man, but it is his ability that we are questioning, not the woman's.

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1063. Does the bride come into the picture at all? Is the bride brought before the committee who will say, "These are the circumstances. We advise you not to marry or to marry." I just want to know what your committee will do? - We have just told you that we would like to have a committee. The object of the committee is to find out whether it is possible for the man to act in an equitable manner, and if the committee thinks that the bride should be brought before it for questioning, then that is up to the committee. We just suggest that there should be a committee to question the man.

1064. I think what the Members of the Select Committee would like to know is what are the terms of reference of this committee? So far we have got one term of reference, that is, to inquire into the ability of the man to observe equity. That is the main term of reference. And as a subsidiary to that, you suggest that the committee be empowered, if at all it is necessary, to advise the bride. Is that a fair statement of what is in your minds? - If the committee thinks that the woman should be questioned, it is up to the committee. We do not want to put down too many suggestions. We are concerned now with having a committee set up.

*Inche Baharuddin*] Actually I have not misunderstood the position. I base my statement on the previous statement made, namely, that an inquiry by the committee could be directed at the woman intended to be married as a second wife. If the inquiry is to be directed at the aspects of financial and moral equity, why is it necessary to pursue the inquiry to the woman?

*Chairman*] I think that has been now explained. The bride has been brought into the picture not for the purposes of inquiry into her financial or moral qualifications. She has been brought into the

picture in order that she can, if necessary, be guided as to whether or not the marriage should take place.

*Inche Baharuddin*] That is all.

*Inche Yaacob*

1065. The witnesses have suggested that there should be a committee. Is it their idea that the committee be appointed from members of the public or from people who are Government officials?

- I do not think we are concerned with that. That depends on the Government. It must do what it thinks fit.

1066. Do the witnesses not realise if the committee is to be formed to make inquiries into such matters, then personal and confidential matters relating to the person under inquiry would come up to the surface and this would be a source of great embarrassment to the person concerned? — (*Mrs. Tung*) I think we have answered that.

*Chairman*] In other words, the witnesses have stated that they do not care for the embarrassment of the man.

*Inche Yaacob*

1067. Would the witnesses agree that if the committee to be appointed to assist the Chief Kathi is composed of Government officials, there may well be representatives of women among them? — (*Miss Namazie*) It does not matter who the committee consists of, so long as its members are responsible people and they are conversant with the law of Islam.

1068. Mr. Speaker, Sir, my point is that it is not the committee but rather the Chief Kathi who will be assisted by Government officials? - (*Mrs. Tung*) May we modify our answer? It should be Government-appointed independent persons, not Government officials.

*Chairman*

1069. It is clear now what is in your minds. It is that the persons to be appointed to this committee to make in-

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quiries should not be Government officials. Is that it? - There may be Government officials on it, but they are there not as Government officials. The Chief Kathi is there as a representative of the Government. The committee may be composed of Government officials, but they are there as individuals to put forward their views.

1070. Put it this way. You say that a committee be appointed. Let the committee consist of individual Government appointees, and those appointees may or may not be officials? - It has nothing to do with politics or the Government. It is a non-Party committee.

1071. You are not happy with the suggestion that an inquiry could be made by the Chief Kathi or by his official assistants amongst whom are women? - We would prefer the committee not to be confined to those individuals.

*Inche Yaacob*

1072. Are the witnesses aware that in Egypt, according to the law that will come into force there in November this year, in cases of polygamous marriages, the inquiry would be carried out by an official of the Social Welfare Department? - Because Egypt is a Muslim country.

*Chairman*

1073. Are the witnesses aware of that law? - No.

1074. In other words, the inquiry is made not by a committee, but by an official who is serving in the Shariah Court? — (*Miss Namazie*) This is a matter of fact, not of Muslim law.

*Chairman*

1075. Do the witnesses not think that in such a case here, the inquiry could well be made by an official, as will be done in Egypt? - Is Egypt afflicted with our problem, which is that we have

a great number of divorces and a great number of marriages? I am afraid I do not know the state of affairs in Egypt where marriages are concerned.

*Inche Yaacob*

1076. Mr. Speaker, Sir, if we are to take notice of the news appearing in the papers, then the problem in Egypt is very much more serious than our problem here, because there are more than 60,000 divorces there in a year? — (*Mrs. Tung*) Egypt is not Singapore, and Singapore is not Egypt! Egypt has its public opinion, and so has Singapore. We have our ways and they have their ways. We may take their laws as examples, but we need not necessarily follow them.

1077. Mr. Speaker, Sir, I am not suggesting that we follow what is being done in Egypt. In Egypt the inquiry is to be made by a Government official. What is suggested in Singapore is that the inquiry be carried out by a number of Government officials among whom may be women who are working in the Shariah Court? — Since we have the Muslims Ordinance, the Government respects it and the Muslim community should have their own say in matters concerning marriages. So if there is any problem arising therefrom, there should be independent Muslims to settle it with the Chief Kathi. That is all.

*Chairman*

1078. What is the objection to Government officials making the inquiry? I understood the witnesses did not object to Government officials being on this committee that they envisage. So what is in a name? The witnesses do not object to Government officials being on the committee, and yet they seem to object to the same officials making an inquiry without being on the committee. What is the difference? I cannot see the difference? — (*Miss Namazie*) May I ask a question? Why do you want Government officials to be on the committee? Why do you want to confine the composition

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of the committee to Government officials? If you can explain that, I think I can answer the question better. Why do you want only Government officials?

*Inche Yaacob*

1079. Mr. Speaker, Sir, in my opinion, if an independent committee were to carry out such an inquiry, I feel it would be difficult for the Government, in the event the committee has made an error, to take action accordingly against the committee. Whereas if the inquiry is to be carried out by Government officials, then the matter would be simpler for the Government. Secondly, if the inquiry is to be open to the public, there would be opportunity for corruption? — I am afraid I cannot agree with the questioner at all. I do not see why Government officials should be more infallible in this than others?

*Chairman*

1080. The witness means infallible in judgment? — Yes.

1081. I think we must agree that no person is infallible—that is the first thing we must agree on. But the hon. Member's point is this. If a committee of independents makes a mistake, it is difficult for Government to come down on the members of that committee for making that mistake. Whereas if a Government official makes a mistake, it is much easier for the Government to come down on that official for making that mistake. That is what has been indicated, not the question of infallibility? — As the Hon. Minister said yesterday, we are championing the rights of women. I am afraid we have to champion the rights of Government servants also!

1082. You think that even if a Government official makes a mistake, the Government should not come down on him? — The point is that he is there to decide to the best of his ability. I do not see why it matters whether he is a Government official or not.

1083. I do not think the hon. Member means making an honest mistake. If it is an honest mistake, of course, the Government will always overlook it. In this case, he refers to a mistake which is a palpable mistake for hidden reasons. I think that is what the Member really means, that it is easier for the Government in such a case to come down on the official than it would be for it to come down on the members of an independent committee. Do you not agree? — (*Mrs. Tung*) There are civil laws and there are Islamic laws. And any individual would not readily make any mistakes so long as he is under these laws.

1084. Is Mrs. Tung suggesting that no person would ever make a mistake on Islamic law? — No. I mean he will not escape from the two laws. The Member said that if an independent person makes any mistake, then the Government cannot reach him.

1085. No, he did not say that. The hon. Member said that it is easier to come down on a Government official than it is to come down on an independent. Do you not agree that that is so? — (*Miss Namazie*) I am afraid I do not quite follow the importance of that, Mr. Speaker.

1086. In things of this nature, matters of opinion must differ. The second point which the hon. Member makes is that he thinks that if the matter is left to a committee of independents, there is more scope for corruption than if it is left to officials of the Government. Would you like to express an opinion, or would you say that opinions differ as well? — We have faith in the Government to appoint people who are incorruptible as far as this matter is concerned.

*Inche Yaacob*

1087. Then there is another reason, Mr. Speaker, Sir. It is a question of the time available for carrying out such inquiries. If the inquiries are to be carried



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out by the Chief Kathi, assisted by Government officials, among whom may be women, then these officials would be in a position to devote the whole of their time to carrying out the inquiries, whereas if the committee, which is to make the inquiries, were to consist of independent individuals, then that position would not obtain? — Mr. Speaker, are there no existing committees on which independents serve?

*Chairman*

1088. I think the answer is yes? — Then why the objection in this case? Does the hon. Member think that Muslims are more liable to corruption than other people?

1089. I do not think the Member has mentioned corruption in his third point. I think it is a question of speed, is it not? — Or that Muslims work slower than other people then.

1090. Committees always work slower than officials. Is that right? — In fact, it is a good thing in this instance for the committee to work slowly because this is a serious matter.

1091. You do not think people wanting to take unto themselves second wives would be in a hurry? — They should not be.

*Mr. Byrne*

1092. Mr. Speaker, Sir, the ladies have suggested that it would be necessary for the committee to be appointed to have women to serve on it in order to assist the Chief Kathi in reaching correct conclusions according to Islamic law on questions relating to lawful obstacles to second marriages. Will they not agree, if women are appointed to such a committee, that it might be that they would adopt partisan attitudes? When serving on such a committee, they might feel that they are there to champion the rights of women. If they adopted that attitude,

would they not agree that it would necessarily be in conflict with the determination of questions of law? — We do not suggest that women should be in a majority on this committee. But only that they be on it so that they may put forth their views. They cannot hamper the committee very much if they are not in a majority.

1093. Would the witnesses not agree that it would be possible for that situation to be reached—even if you have a committee equally divided, say, there are two men and two women, to advise the Chief Kathi? Situations like that could develop. Far from assisting the Chief Kathi in determining a question of law, they might very well adopt partisan attitudes and increase his difficulties? — Would the Chief Kathi in that case not have a deciding vote in any event?

*Chairman*

1094. Supposing there is a committee of five. If the quorum is set at three, shall we say, but four people turn up. And of those four, two are women and two are men. The decision then is split in that case. The witnesses' suggestion in cases when the votes are equal is that the Chief Kathi be given a casting vote. Is that it? — Exactly. If the work of the committee is going to be hampered, I do not think it matters whether it is the women who are partisans or the men. I mean, it is surely a case of the working of the committee.

1095. Do the witnesses not think that that is an unsatisfactory position to reach—that a decision is reached on this very important matter—you have stressed it is very important—only by a casting vote? Do they not think that it is a very unhappy position to reach? — We hope that it will not be necessary very often. I feel that the Hon. Minister does not think that women can think clearly, that they are always emotionally involved.

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*Mr. Byrne*] No, Mr. Speaker, Sir. Far from it. I would say that in a committee like that, there would always be a danger or certain men associating themselves with the views expressed by the women. You might get, say, a very persuasive woman who is championing the rights of women. You might have the men persuaded to her point of view. So that far from there being any determination of the legal point at issue, the committee would be swayed more by emotion than by reason, Sir.

*Chairman*

1096. Is that possible? — Mr. Speaker, I am afraid I cannot agree that only women can be emotional.

1097. I think the Minister is trying to point out that in matters of this nature, you must admit that emotions can be aroused. Therefore, if there is a committee of individuals, there is a danger of emotion over-riding what are, in fact, legal points which would be decided quite differently if emotion had not intervened. There have been cases like that. The Minister thinks it might happen if a committee of independents were appointed in this matter. Do you agree that it is possible? — (*Mrs. Tung*) We would like to have a committee that is all composed of women, because, so far, it has been all men. If there are only men on a committee, women's voices will never be heard. So if there is a woman or two, their voices will be heard, and the facts given by them will in some way affect the decision of the Chief Kathi. If there is no woman to voice her views, then things will just go on as before.

*Mr. Byrne*

1098. Mr. Speaker, Sir, I would like to point out to the witnesses that these inquiries are in the nature of judicial proceedings. It is so stated in section 61 (2) of the Muslims Ordinance which reads:

"All proceedings before the *Shariah* Court or before a Registrar or *Kathi* under this Ordinance shall be deemed to be judicial proceedings within the meaning of Chapter XI of the Penal Code."

Mr. Speaker, Sir, if they are in the nature of judicial proceedings, it is but right that the conduct of these proceedings should be entrusted to a single person rather than to a committee, as was suggested by the witnesses here? — (*Miss Namazie*) Mr. Speaker, Sir, in cases of murder I think you have juries also composed partly of women. I think the emotional bias of women is more than offset in this instance by the contribution that they can make on such a committee.

*Mr. Byrne*] Mr. Speaker, Sir, there is all the difference in the world between a jury and a judge. A judge decides all questions of law. The jury never decides questions of law. It decides on questions of fact.

*Chairman*

1099. I think what the witnesses, perhaps, have in mind is this. Let the Chief Kathi be the judge and let a committee be appointed to inquire into the facts and give their views thereupon. Then let the Chief Kathi be the judge whether or not, by reason of those facts, there are lawful obstacles. Is that it? — Yes.

*Mr. Byrne*

1100. Mr. Speaker, Sir, I would suggest a better way of doing it. The way that we are proposing is that a Muslim lady social case worker be appointed by Government. She will be permanently attached to the *Shariah* Court and to the Chief Kathi who has also an office within the precincts of the *Shariah* Court. In fact, Mr. Speaker, Sir, we have the Legislative Assembly's approval for this appointment to be made. We have actually advertised for a lady to fill this post. I do agree entirely that women should

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not be left out of these inquiries. That is why we have already got approval for this appointment. These inquiries should be left to a Muslim lady social case worker. She would make all the inquiries and then submit recommendations to the Chief Kathi on all questions of fact. It would then be left to him to make the decision as to the legal aspect. In my view, I think that would help more in determining all these matters than if a nebulous organisation like this suggested committee were appointed to assist the Chief Kathi? - I do not know why, Mr. Speaker, the committee should be nebulous.

*Chairman*

1101. I was afraid the witnesses would pounce on words like "nebulous". But I think the pith of the whole thing is this. The Minister has pointed out that a Muslim lady social case worker is to be appointed, and it is the intention that she would be part of the machinery to inquire into matters of this nature. She would then present the result of her inquiries, in so far as the facts are concerned, to the Chief Kathi. It would be the Chief Kathi's duty then to give a judicial decision on the facts. Now, would that allay the fears of the witnesses? — We welcome that, Mr. Speaker. But I think we would like some independent individuals-ordinary women-to put forward the views of other ordinary women. A social case worker is trained to think on certain lines.

*Mr. Byrne*] Mr. Speaker, Sir, it is very hard for us, even if we have such committees to get the people to fill these appointments. That has been our experience. I think, Mr. Speaker, Sir, by and large, it would help us to do well what we are proposing to do if we have on the staff of the Shariah Court a woman who is trained in all these matters. She would be of considerable assistance to the Chief Kathi.

*Chairman*

1102. I think perhaps we are going too deep into detail. But the point now is this. The view of the Minister is that it would be easier, perhaps speedier, if women officials trained in the work were appointed, rather than a committee to look into matters of this nature. That is the view expressed by the Minister, and the witnesses do not agree completely. They would rather see this social welfare lady officer assisted by a completely independent person or a group of persons. Is that it? — Yes.

*Chairman*] Shall we leave it at that?

*Mr. Byrne*] Mr. Speaker, Sir, I would just like to add this one further point. We have considerable experience of these matters. We have a Counselling and Advice Bureau in our Ministry. All the Government officials who are employed in that section of the Ministry are women and they do the work very satisfactorily.

*Chairman*

1103. The Minister also points out that there is already a group of women who are doing this sort of marriage counselling and advice work in the Social Welfare Department, and their services may at times be called upon for this purpose. Does that allay the witnesses' fears or are their fears still present? - We are conscious that the Government is trying to help us. But would the Chief Kathi pay enough attention to the lady social worker's advice? Would not the advice of the committee weigh more with the Chief Kathi?

1104. Do not forget, as the Minister has pointed out, that the Chief Kathi has a legal duty to perform. He has to give what is, in effect, a judicial decision. If his decision on the facts is wrong, there is always an appeal to the Shariah Court, and from the Shariah

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Court to the Appeal Board. I suppose human nature is such that even a judge can make mistakes. That is why even in the Civil Courts there are Courts of Appeal? - We do not suggest that the Chief Kathi would not act in accordance with the law. But it is just that the committee could help and advise him.

1105. Not on the law? — Not on the law, but on the facts.

1106. I do not see how the committee's advice can come in. All that the committee can do is to say, "These are the facts. Mr. A's evidence is this, that and the other. This is the position." It is then up to the Chief Kathi to decide on those facts. Can Mr. A take unto himself another wife? The committee is not going to tell the Chief Kathi that he cannot. Am I right? — Yes.

*Chairman*] Well, that is the position.

*Mr. Byrne*] Another point, Mr. Speaker, Sir. Pardon me for pointing this out: Sir, the parties may feel themselves more free to speak to a Government official than they would to a committee, particularly when the subject of the inquiry is their own private lives.

*Chairman*

1107. Do the ladies not agree that a person would speak to an official more readily than to a committee of independent individuals, especially as the inquiry is directed to his private life? - We could also have the official on the committee then. The official could make his or her contribution.

1108. But if the man appears before an official, do the witnesses not agree that he would be more ready to have his private life discussed than if he were to appear before a committee of individuals who are perhaps strangers to him, or who perhaps may not be strangers but who know him? — He would also be more ready to take a second wife, Mr. Speaker!

*Chairman*] Now, of course, we are talking round in circles. Mr. Minister, any more questions?

*Mr. Byrne*] No, Sir.

*Chairman*

1109. Shall we now go on to the witnesses' final suggestion? They say:

"That maintenance in clause 36A (1) (a) be paid on the divorce of a woman,

(a) until she re-marries or dies, if the divorce is without 'just cause'; or,

(b) during the period of the 'Eddah', if the divorce is for 'just cause'."

As regards (b), that is a provision of the law of Islam, is it not? That maintenance ought to be paid or should be paid during the period of 'Eddah', if the divorce is for 'just cause'. Is that right? — Yes.

1110. The first suggestion does not really come within the ambit of the law of Islam, does it? - To the best of my knowledge, it, is not specifically stated in the law of Islam.

1111. And you suggest that this provision should be embodied in the Muslims Ordinance, because, as you have stated a little later on, one of the reasons is that there is this custom which has arisen in Singapore of fixing only nominal *mas-kahwin*. Is that right? — That is correct.

*Chairman*] I have no questions. Any questions on that?

*Dato Abdul Hamid*

1112. This expression 'just cause'. I do not quite follow the intention of the witnesses. In a divorce, does the term 'just cause' mean that if one of the parties concerned does not agree to the divorce, then you call it an unjust cause? — What we mean by 'just cause' is this: if the woman has been divorced for misbehaviour or for other just causes.

1113. In the Muslims Ordinance, section 12 (3) says:

"A *Kathi* shall not register any divorce unless he is satisfied that both the husband and the wife have consented thereto."

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Now assuming that both the husband and the wife have consented thereto, would that amount to a just cause, according to the interpretation of the witnesses? - No. The wife may have consented, because she may not have any other option but to consent. But I do not think we have included that in our meaning of 'just cause'.

*Chairman*

1114. I think what the witnesses have indicated is this. First, I shall read the proposed section 36 A (1):

"In any application for divorce the Court may, at any stage of the proceedings or after a decree or order has been made, make such orders as it thinks fit with respect to-

(a) the payment of maintenance *or mas-kahwin* to the wife;"

So that it is only when the case comes before the Court that the Court will then decide what is or what is not 'just cause', and make the order accordingly. That is the point? - If the woman, for instance, asks for a divorce.

1115. On application to the Court?

- Yes.

1116. So it does not apply to cases where divorce is by consent. Is that right? - 'Just cause' does not apply.

*Inche M. Ismail Rahim*] No questions.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*] Mr. Speaker, Sir, I think the lady witnesses have dealt with this question of *mas-kahwin*. They suggest that it is quite low now, particularly so as the *mas-kahwin* is owed. It must be of such an amount as to provide an adequate deterrent should the man desire to divorce his wife for frivolous reasons. Now it has been pointed out to the Select Committee that *mas-kahwin* is a gift by a husband to his wife at the time of marriage, and there is no way by which the State can fix the amount of *mas-kahwin* that is owed.

*Chairman*] I do not know whether the witnesses are suggesting that. Are they suggesting that *mas-kahwin* should be fixed?

*Mr. Byrne*] They say that it should be of a larger amount.

*Chairman*

1117. The witnesses say:

"... it is not possible to change overnight a hardened custom ..."?

- Mr. Speaker, may I interrupt here? The *mas-kahwin* is a woman's right. It is not a gift. It is the woman's right on marriage.

1118. The woman is entitled to some sort of *mas-kahwin*? — Yes.

1119. But I think the point is that *mas-kahwin* under the law of Islam can even be the reading of a chapter of the Koran, or something like that? — It depends on agreement.

1120. That is it. That is what the Minister suggests? — The *mas-kahwin* depends upon mutual agreement.

*Mr. Byrne*

1121. She has the right to decide not to accept *mas-kahwin*? — Well, no. A woman cannot decide not to accept it. The man has to agree to a certain amount of *mas-kahwin*. But the woman can, after marriage, forgive the man the *mas-kahwin*. I am afraid I do not know very much about Muslim law. I think the State Advocate-General could advise.

*Chairman*

1122. But the witnesses are not suggesting that we should now write into the law some fixed sum for *mas-kahwin*? — No.

*Mr. Byrne*] I am advised, Mr. Speaker, Sir, that *mas-kahwin* is payable only during the period of *eddah*. If there is *mas-kahwin*, Sir.

*Chairman*] The Minister means maintenance?

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*Mr. Byrne*

1123. I am sorry, Sir. I am dealing with the question of maintenance. Maintenance is paid only during the period of *eddah*. It is not payable under Islamic law after that period? — It is not against the law of Islam to pay after that period.

1124. I would like to point out. Mr. Speaker, that it has already been referred to before in the Select Committee that, as far as maintenance is concerned—which is payable outside the period of *eddah*—this is already provided for in the amendment we propose to section 36, where there is provision for the Court to award the payment by the man of a consolatory gift to his wife. Now, that consolatory gift, we have been advised, Mr. Speaker, Sir, can be paid either in one lump sum or in instalments. That would cover maintenance for the divorced wife until such time as she remarries. That is what the ladies have asked us to do in their memorandum? — *Matta'ah* is a gift which is paid over and above half the *mas-kahwin* when a marriage is not consummated.

1125. I am advised, Mr. Speaker, Sir, that that is the *Hanafi* conception. That is not the *Shafei* conception? — Well, there is room for disagreement.

*Chairman*

1126. *Shafei* law would be the law generally administered by the *Shariah* Court. So, as far as the consolatory gift or *matta'ah* is concerned, that consolatory gift could take the place of maintenance after the period of *eddah*? Would that satisfy the witnesses? — We would prefer maintenance. When a woman marries, Mr. Speaker, she has two rights. One is the *mahr*, the *mas-kahwin*; the second is the right of her inheritance. By divorcing her, the man deprives her of the right of inheritance. Before a woman marries, her father is

obliged to maintain her. When she marries, her husband is obliged to maintain her. It is not certain that when she is divorced, whether the father is still obliged to maintain her. So where does the maintenance come from?

1127. Clause 10 sets out the new section 36, and subsection (1) of the new section 36 reads:

"The Court shall have power to inquire into and adjudicate upon claims by married women or women who have been divorced for maintenance..."

You would like that subsection to include, if it does not do so already, maintenance until the woman remarries or dies if the divorce is without 'just cause'. Is that it? — That is so.

*Chairman*] Any other questions?

*Mr. Byrne*] Mr. Speaker, Sir, there is also a provision here—it is the new section 36 (4) in clause 10—which says:

"Any order for the payment of maintenance made under this section shall, until reversed, be a bar to any proceedings under the Married Women and Children (Maintenance) Ordinance."

*Chairman*

1128. I think the minds of the witnesses are really directed to the new section 36 (1). I think that is possibly what it is. They wish the maintenance mentioned there to be so elaborated upon as to include maintenance during the period until the woman remarries or dies. That, of course, is conditional on the divorce being for just cause. Is that right? — (*Mrs. Siraj*) Yes.

1129. Thank you very much indeed, ladies, for coming here on two successive days. I think the discussion has been very instructive and interesting? — (*Mrs. Tung*) May I raise the problem of monogamy about which we have strongly hinted in our letter?

1130. Has this any connection with the Bill itself? — In that case, may I just circulate my aide memoire?

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1131. You would like to table an aide memoire on the question of monogamy? Perhaps hon. Members would be rather interested to see that. We will distribute the copies if you will hand them to me.

*Copies of the aide memoirs handed in.\**

We will just table that and we will decide what we can do about it. Thank you very much? — (Mrs. Siraj) Mr.

Speaker and Members of the Select Committee, on behalf of Miss Namazie, Mrs. Lynn Tung and all the others whom we represent, I thank you very much for being so patient in listening to us these two mornings. I also apologise for being so late yesterday.

*Chairman]* It is the privilege of women to be late! I must repeat the Select Committee's thanks for your assistance in this matter.

*(The witnesses withdrew.)*

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\* Annex "A". p. C169.

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FRIDAY, 8TH APRIL, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)

Dato Abdul Hamid bin Haji Jumat.  
 Inche Baharuddin bin Mohamed Ariff.  
 Mr. K. M. Byrne.  
 Inche Mohd. Ali bin Alwi.

Inche Mohd. Ariff bin Suradi.  
 Inche M. Ismail Rahim.  
 Inche Yaacob bin Mohamed.

Tuan Haji Ali Mohamed Said Salleh, the Chief Kathi, and Tuan Haji Mohamed Sanusi bin Haji Mahmood, the President of the Shariah Court, attended and were examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

1132. Good morning. Do come in and sit down. For the record, may we have your names? Tuan Haji Mohamed Sanusi bin Haji Mahmood, you are the Registrar of Muslim Marriages and the President of the Shariah Court? —  
 (*Tuan Haji Mohamed Sanusi bin Haji Mahmood*) Yes.

1133. And Tuan Haji Ali Mohamed Said Salleh, you are the Chief Kathi? —  
 (*Tuan Haji Ali Mohamed Said Salleh*) Yes.

1134. I think both the witnesses have received a memorandum\* prepared by me posing certain questions that have arisen during the course of our deliberations. The President of the Shariah Court has answered the questions posed in the memorandum†, but the Chief Kathi has not done so up to now? — Yes. But I have prepared my answers in Malay, and most of them will be very much along the same lines as those of the memorandum submitted by the President of the Shariah Court.

1135. I would like to ask a few questions on this memorandum, and perhaps either the President of the Shariah Court or the Chief Kathi can give me the answers. The first question posed was in connection with *Wali Hakim* and Polygamous Marriages. In both of these cases, the present law provides and the proposed law suggests that the power should be given solely to the Chief Kathi to solemnize a marriage and to make inquiry before the marriage. The question posed was whether the inquiry, as to whether or not there is any lawful obstacle to the marriage according to the Islamic law, could be made by the Chief Kathi or any other person or Board or Committee. The answer in the memorandum to that question was:

"The inquiry should be made by the Chief Kathi as he was appointed by the Head of the State (or Hakim) to deputise him to marry women who have no Wali."

And it went on to say:

"According to the law of Islam, the power of marrying these women is vested in the hand of the Head of the State, but he can appoint any suitable person as his deputy in

\* Annex "B", pp. C170-2.

† Annex "C" pp. C173-5.



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this matter. If it is a big country consisting of several towns, he can appoint a deputy in each town."

So the question is this: is there anything to prevent the Head of State from appointing all Kathis to do this particular job instead of appointing only one Kathi? - In my opinion the Yang di-Pertuan Negara can give permission to the Chief Kathi to appoint an assistant to assist him. This is according to the size of the State. If the State is a big one, there could be one or two deputies.

1136. But discretion is always with the Head of State. That is correct, is it not? - Yes.

1137. Even if the country is small, you think that all the Kathis *may be* appointed. The Head of State can do so, and there is nothing to prevent him from doing so? - According to the law of Fikih, if the country is a small one, the Head of State need not appoint more than one. Singapore is a small State. It could be different from Malaya which has various towns.

1138. But what I want to get at is this. You say, "He need not." Is there anything to prevent him from appointing all Kathis? - According to the law, he need not appoint more than one.

1139. But he can appoint more than one if he likes? - Yes, if he likes. But it is not required.

1140. That is the answer. This opinion expressed seems to be in connection with the case where a girl is without a wali? — Yes.

1141. What about the case of a polygamous marriage? - The same applies.

1142. You say that even in the case of a polygamous marriage, the power should be confined to one person. Is that correct? - To one, and his deputy, if any.

1143. But why do you say that? Is that according to the law of Islam? Here is the case of a polygamous marriage where a woman has a wali. Take the case of a polygamous marriage where the proposed second wife has a wali. Do you still say that the power to solemnize that marriage and to make inquiries should be confined to one person? — There are two parts to it. As for making inquiries, it should be carried out by one person, but the solemnization of the marriage could be done by all Kathis.

*Mr. Byrne*] He says that if there is a wali, it could be done by all Kathis. If there is no wali, what is his opinion?

*Chairman*

1144. I am talking about polygamous marriages where the bride has a wali. I asked that question and the answer was: in the case of a polygamous marriage where the second bride has a wali, the inquiry should be made by one person and the solemnization could be by all Kathis? - Yes.

1145. The next question posed on the same subject was:

"If the result of the inquiry is that there is no lawful obstacle to the marriage, a certificate for marriage could be issued by the person or Board or Committee making the inquiry."

And the opinion expressed in the memorandum was:

"If the result of the inquiry is that there is no lawful obstacle to the marriage, it is not necessary that a certificate for marriage should be issued by the person making the inquiry (i.e. the Chief Kathi) as he is the lawful and proper person to solemnise the marriage under the law of Islam."

That opinion applies to the case where a girl is without a wali, am I right? — (*Tuan Haji Mohamed Sanusi*) Yes.

1146. So now we have two sets of circumstances. The first is, where there is a marriage of a girl without a wali, in that case the Head of State appoints a person-in this particular case he would be the Chief Kathi-to make the inquiry and to solemnize the marriage.

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That is the first type of case. Now we go to the case of a polygamous marriage where the second bride has got a *wali*. In that particular case, all Kathis can be given the power to solemnize the marriage, but one person could be given the power to make the inquiry as to whether there are lawful obstacles? — (*Tuan Haji Ali Mohamed*) Yes.

1147. The only question I would like to ask is: is it imperative that, in the second case of the polygamous marriage, only one person should be given the power to make the inquiry? — According to the first point raised just now, the Head of State can appoint a deputy to the Chief Kathi. So, therefore, in this case the Deputy Chief Kathi could carry out the inquiry.

1148. But we are talking about a polygamous marriage where the woman has a *wali*. What I want to know is whether there is any provision in the law of Islam that the inquiry into whether or not there are lawful obstacles to that marriage should be made by one person appointed by the Head of State? — In the chapter on *Istikhlaf* concerning appointments, it is stated that the Chief Kathi, with the sanction of the Head of State, can appoint a deputy.

1149. Let us confine ourselves to the case of a polygamous marriage of a second bride who has a *wali*. Is it suggested that there must be an inquiry if there are no lawful obstacles to the marriage of the second bride? And it is suggested that it is the Chief Kathi who should make the inquiry. My question is this. Is there anything under the law of Islam which prohibits any other Kathi from making a similar inquiry? — Yes. In the Chapter on *Istikhlaf*. Once the Head of State has appointed a person, then that order cannot be gone against.

1150. Is it the contention of Tuan Haji Ali that in matters of this nature it is the Head of State who should make the inquiry, either by himself or by a deputy? — Here the Chief Kathi is the representative of the Head of State. If he

is authorised to be a deputy, then he can attend to the whole matter. If the question arises why it is that only the Chief Kathi should carry out the inquiry, then the answer is that the matter of making the inquiry covers a wide field, and not all Kathis are in a position to carry it out.

1151. But that is a different question. What I want to know is this. Supposing any other Kathi wishes to make the inquiry as to whether or not there are any lawful obstacles in regard to polygamous marriages, would he be going against the law of Islam? — Yes. In the matter of *Istikhlaf*, he would be going against the law of Islam.

1152. So that the short answer then is if, in fact, any inquiry is required under the law of Islam, then that inquiry should have its source from the Head of State. In other words, it is the Head of State who is responsible for seeing that the inquiry is carried out properly. Is that right? — Yes. He gives the authority to the Chief Kathi.

*Chairman*] Any other questions on that?

*Inche Mohd. Ali*] Mr. Speaker, the Chief Kathi has stated that when a person wants to contract a marriage, the inquiry must be made by the Chief Kathi. And I understand that if the inquiry is made by any other Kathi that is going against the law of Islam. Why then is it that in the past, such marriages were not discussed by the other Kathis with the Chief Kathi himself?

*Chairman*

1153. Put it this way. With regard to polygamous marriages in the past, they were, in fact, inquired into and solemnized by any Kathi. That is right? — Yes.

1154. If, as the Chief Kathi now says, that is wrong, according to the law of Islam, then why were steps not taken earlier to see that it was stopped? — The reason why steps were not taken

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before is that we have a new Government now. This matter did not arise before. The previous Government did not deeply consider this matter.

1155. Put it this way. It is now suggested under the Bill that the Chief Kathi should be given this power? - Yes.

1156. Your point perhaps is this: that if that becomes law, then there is a presumption that it is the Head of the State who is giving that power to the Chief Kathi. Is that right? - Yes.

1157. So that if that suggested provision does not become law, then it would still be lawful for any Kathi to make that inquiry? - That is not correct. According to the law of Islam, as I have mentioned, that is not allowed.

1158. But the Head of State has not as yet given the power to the Chief Kathi to make these inquiries. Am I right? - Yes. But I do not feel that the Head of State would do anything that would go against the law of Islam.

1159. I quite agree. But until the Head of State does give this power to the Chief Kathi, am I right in saying that it is not unlawful for any other Kathi to make the inquiry? — The religion does not allow that.

1160. The position then is that, up to now, Kathis have been acting against the law of Islam in solemnizing polygamous marriages? - Yes, because in the past the Kathis have not been up to the standard required to carry out such inquiries. I know this because I myself have been in charge of making inquiries to see whether these people could be appointed Kathis or not.

1161. I think the question is this—do not answer if you do not wish to—does it not follow then that polygamous marriages undertaken in the past by ordinary Kathis, other than the Chief Kathi, have been invalid? - No. Those marriages were valid.

1162. So that those Kathis, although they were acting, in your opinion, against the law of Islam, were, in fact, able to solemnize valid marriages. Is that it? - Yes.

*Inche Mohd. Ali*

1163. From the explanation of the Chief Kathi, it appears that marriages in the past have not been solemnized according to what is proper under the law of Islam. It is wrong from the Islamic point of view, but Islam does allow a polygamous marriage. Mr. Speaker, Sir, I do not deny that the present Government wishes to uphold the religion of Islam, but the Government in the past too had appointed bodies, such as the Muslim Advisory Board, to advise it on matters concerning the religion of Islam in Singapore. If the situation obtaining then was wrong, why did the Chief Kathi himself not call the Kathis together and make a report to the authorities? - I did not know the Kathis, but the deeds were not wrong.

*Chairman*

1164. The deeds were not wrong. Let us stop at that. So that those Kathis who were, in fact, solemnizing polygamous marriages in the past were not doing anything wrong. Is that it? - No. Because the marriages were not more than four.

1165. So that they could under the law of Islam make their inquiries? — On this question of inquiry, we come back to the point raised earlier.

1166. So that, in your opinion still, these Kathis who were solemnizing polygamous marriages in the past were wrong in making the inquiries. They could not do so? - Yes. If the present law stands as it is.

1167. When you say the present law, which present law? The law of Islam or the State law? - The present law which wants to deal with the question of polygamy.

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1168. So that we come back to the same point. The position now is that there is a suggestion that the Chief Kathi should be given the sole power? - Yes.

1169. Now if that provision does not become law, then the position would be the same as it was in the past. Is that right? — Yes.

1170. And that position is that all Kathis could make the inquiry, that they could solemnize a polygamous marriage, and that they would not go against the law of Islam? - Yes. But the reason why the power is now given to one Kathi only to solemnize the marriage of a woman who has no *wali* has been discussed at great length by the previous Board.

1171. Can I just interrupt? That is all right. What is worrying the Member for Kampong Kembangan is that in the past polygamous marriages have been solemnized by any Kathi. He wants to be quite certain in his mind that those past polygamous marriages were, in fact, legal not only in the eyes of the State law but also in the eyes of Islam. That is all he wants to know. He wants to be quite certain that that is so? - Yes. They were legal.

*Dato Abdul Hamid*

1172. Mr. Speaker, I have a question. In the answers tabled by the President of the Shariah Court, and also from the statements by the Chief Kathi, it is stated that the only person who can solemnize a polygamous marriage is the Chief Kathi, who is appointed by the Yang di-Pertuan Negara. But if I am not wrong-I am not an expert on religious matters-such a state of affairs is possible in a State where the religion is Islam. In other words, if the religion of the country is Islam, the Head of State is a Muslim, the matter of *wali hakim* is a matter for the Head of State.

That much I agree. But in the present context of the State of Singapore, where the State religion is not any particular religion, how could it be then? Of course, at the moment, the Head of State happens to be a Muslim. He has powers to appoint the Chief Kathi or other Kathis. He has the power also to appoint the Chief Kathi alone to solemnize marriages in cases of *wali hakim*. But what would be the position then in the future, if the Head of State is not a Muslim, with regard to the appointment of the Chief Kathi, and the fixing of the duties of the Chief Kathi and other Kathis? - Whoever be the Government, if the Government were to formulate a law that would be against the law of Islam, that law would not be acceptable. This matter has been discussed by the committees of the Boards in the past for about two years. All the discussions were within the law of Islam.

*Chairman*

1173. I think the point has been missed. The point is this. Under the law of Islam, the Chief Kathi derives his powers from the Head of State. That is all right in an Islamic State where the religion of the State is Islam. In a State like Singapore, where the State religion is not Islam, can it be said that the Chief Kathi then derives his power from the Head of State? - Yes, surely.

1174. Even if the Head of State is not a Muslim? — Yes.

1175. Or is it not really the position that the Chief Kathi derives his power, in a non-Islamic State, from the State law? — I feel that point of view is against the law of Islam. Whatever is against the law of Islam should not be accepted.

*Chairman*] That is the answer. Inche Ismail?

*Inche M. Ismail Rahim*] No questions.

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*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*] Mr. Speaker, Sir, in these proceedings certain charges have been levelled against the Government. It has been suggested by representatives of the P.M.I.P., and in the questions that have been asked by the Members opposite, that by wanting to vest these powers of inquiry in the case of the second marriage of a woman with a *wali*, in the hands of the Chief Kathi, the Government side is doing something which is contrary to the law of Islam.

*Chairman*] Can I clear that first? I do not think it is fair to say that Members of the Opposition have suggested that at all. If the record is looked into, I do not think that has been suggested at all. It is only a question as to whether or not it is against the law of Islam. It is not that the Government wishes to go against the law of Islam. I am quite certain that the Opposition did not suggest that the Government wished to go against the law of Islam.

*Mr. Byrne*] I heard the Member for Geylang Serai (Dato Abdul Hamid) say in this Committee that, in his view, these powers should be vested in all Kathis and not in the hands of the Chief Kathi.

*Dato Abdul Hamid*] I have not expressed that view, Mr. Speaker, Sir.

*Chairman*] I think the Minister must be very careful before he makes an allegation. If he can point to a question and the answer which indicates that he is right, then I will allow that question. Otherwise I must over-rule it. The impression I have got is that every Member of this Committee wants to be quite certain in his mind that the vesting of the power of inquiry in only one person, that is, the Chief Kathi, is not against the law of Islam. That is all there is to it. That is why we are calling for expert advice. There is no

allegation at all that the Government is trying to go against the law of Islam.

*Mr. Byrne*] Mr. Speaker, Sir, I have been attending these proceedings right through. That was the suggestion put forward. This has been one of the clauses of the Bill which has been under considerable attack.

*Chairman*] As far as the P.M.I.P. is concerned, I think perhaps the Minister is correct. But I do not think he is correct when he alleges that the Opposition have aligned themselves with that point of view.

*Mr. Byrne*] The tenor of the questions was this. In the case of a woman with no *wali*, it was accepted that the power of inquiry and the power to solemnize the marriage should be in the hands of the Chief Kathi. But in the case of the second marriage of a woman with a *wali*, all along this has been resisted on the grounds that if this power of inquiry were placed in the hands of the Chief Kathi, then the Government would be doing something which is contrary to the law of Islam.

*Chairman*] As far as the witnesses are concerned, that perhaps is correct. But I do not think that charge can be levelled against the Opposition Members with any fairness. If the Minister can point out the questions which have been asked by the Opposition which indicate that attitude of mind, then, of course, I will permit that question.

*Mr. Byrne*] Mr. Speaker, Sir, I will look through these notes and I will refer to the point when we get to the arguments later.

*Chairman*] At the moment, let us be impersonal and ask the witnesses to give their views on points of law. We will leave it at that.

*Mr. Byrne*

1176. Sir, it has been suggested by some witnesses here in these proceedings that, by wanting to place the

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power of inquiry in the hands of the Chief Kathi in the matter of a second marriage, the Government is doing something which is contrary to the law of Islam. Does the witnesses think that that suggestion is justified? — No. Sir.

1177. Mr. Speaker, Sir, by wanting now to place this power of inquiry, in the case of a Muslim man who is taking a second wife, in the hands of the Chief Kathi, is it the witness's opinion that the Government is trying to carry out the law of Islam? — Yes.

1178. Mr. Speaker, Sir, we have with us here today Tuan Haji Mohamed Sanusi, the President of the Shariah Court. Can I get it from him whether he associates himself with the answers that have just been given to us by the Chief Kathi? — (*Tuan Haji Mohamed Sanusi*). Yes.

1179. Mr. Speaker, Sir, in the case of the woman with no *wali*, where similar powers of inquiry and solemnization of marriage have been placed in the hands of the Chief Kathi, it has also been suggested to us that that is contrary to the law of Islam. Does the Chief Kathi so agree? — (*Tuan Haji Ali Mohamed*) No.

1180. Mr. Speaker, Sir, it has also been suggested to us that if this power of inquiry is vested in the hands of the Chief Kathi, it will cause a great inconvenience to the Muslim community in Singapore. Does he so agree, Sir? — No. There will be no inconvenience. A woman who has no *wali* should give notice of her intention to marry one week earlier.

*Chairman*

1181. And then the inquiry can be made immediately, is that right? — Yes, after that.

1182. So that the position then is that it is possible to make your inquiry as to whether or not there is no lawful

obstacle before the date of the marriage?

— Yes, and that will be of no inconvenience to the public. There has been no inconvenience reported so far. Unfortunately, in the case of people who go to the Kathis, the Kathis do not inquire as to whether there is a *wali* or no *wali*.

1183. So the position is that it can always be arranged for the inquiries to be made before the date of the solemnization of the marriage? — Yes.

*Chairman*] The complaint was that inquiries were made on the same day, and if there were seven marriages on that particular day, then, of course, there was a delay. I think that was the complaint.

*Mr. Byrne*] Yes.

*Chairman*] Any further questions?

*Mr. Byrne*

1184. Mr. Speaker, Sir, the Chief Kathi knows that there is a post of Kathi on the establishment of the Shariah Court who is to assist the President of the Shariah Court? — Yes.

1185. I understand that post is now vacant. Suppose the Chief Kathi is cluttered up with a lot of work, it would be possible for him to share part of that work with the Kathi who is on the establishment of the Shariah Court? — Yes. Or, if it is not against the law, with the President of the Shariah Court.

1186. So that there would be persons who would be there to assist the Chief Kathi in making the inquiries? — Yes.

1187. In addition, Mr. Speaker, Sir, the Chief Kathi knows that the Government proposes to appoint very soon a Muslim lady social case worker. She would be in a position not only to assist the Chief Kathi with inquiries in regard to second marriages and marriages of

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women with no *walis*, but she would also be able to assist the President of the Shariah Court in making investigations into matters affecting divorce? - In modern Muslim States, as far as I know, I am not aware of the presence of a lady officer who is involved in the work of making inquiries in regard to marriages.

1188. I am advised that she only assists and does not make the decisions herself, Sir? - There is no success or victory in any endeavour where the matter is left to a woman.

*Chairman*

1189. Let us not go into details, otherwise you might have the women organisations down on us, Mr. Minister! The point, I think, is this. The Minister is pointing out that there are Government officials who would be able to assist in inquiries of this nature. So that with the assistance of these officials, do you agree that time can also be saved? - Yes. If that is so, if it is in the interests of women, then it would be better if the results of the inquiries are referred to a body such as this, rather than have the ladies sit on the board of inquiry.

1190. We are not suggesting that at all. The only point is the question of time. There have been complaints that there has been a lot of inconvenience because of the time taken for the inquiry to be made and for the solemnization of the marriage. The Minister is suggesting that there are Government officials who would be able to assist the Chief Kathi in these inquiries and that if these officers do assist, then there would be a saving of time. Do you agree? - Yes. But I feel that if that was so, then it would not shorten the time but rather it would lengthen it.

*Chairman*] Mr. Minister, do you like to pursue the question?

*Mr. Byrne*] No.

*Chairman*] Any further questions?

*Inche Yaacob*

1191. Is it not permissible for women to give assistance in these matters? There may well be matters which are very private in nature and which may not be heard by a man? Naturally, the woman concerned would be shy to divulge private information. Therefore, will it not be of help if there is a lady officer to assist in the inquiries? - Yes; but, first, I would like to know whether this lady officer will permanently be at the Court?

1192. Mr. Speaker, Sir, I believe this lady officer, being an officer, will have a room to herself. Therefore, inquiries could be made under conditions of privacy. I am aware of the provision in the Shariah Court of Johore where lady officers have separate rooms for assisting in inquiries? — During the time of the Prophet, a woman went and made a complaint to the Holy Prophet. The Holy Prophet himself did not entertain the complaint, but he had his wife to assist him to hear it. It is one thing for the lady officer to assist in matters of that nature, but another thing for her to be in the Court for the inquiry.

*Chairman*

1193. In other words, to be the judge, is that it? - No.

1194. You are against any lady being appointed a judge. But you have no objection if there is a lady officer to make inquiries into the circumstances of another woman? - Yes, that is so. Because we had that sort of thing during the time of the Holy Prophet. But she will carry out the inquiries on the instruction of the President of the Shariah Court or the Chief Kathi.

1195. Now, the next point was on divorce and the President of the Shariah Court's memorandum has this to say:

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"Divorces in which both parties disagree should be by order or decree of the Shariah Court as they are difficult and complicated cases, but those by mutual consent should be carried out by any Kathi as this will lighten the burden of, and reduce the jam in the Shariah Court. Moreover, every Kathi has been instructed to reconcile the parties before registering the divorce."

That is from the angle of the Shariah Court. Will the President of the Shariah Court tell me whether it will be against the law of Islam if the State decrees that all divorces, even *talak* divorces, should take place within the Shariah Court?

— (*Tuan Haji Mohamed Sanusi*) It is not against the law of Islam. But it is not sufficient to have just one judge in the Court.

*Chairman*] Do Members like to ask any questions?

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*

1196. What would be the view of the witnesses if the Government were to appoint a body of *hakam* for the purpose of trying to reconcile both parties, and if the *hakam* fails to effect reconciliation, then he will advise the Kathis of the result. If both parties agree, then the matter could be reported to any Kathi. But if the matter is very complicated, then it will be referred to the Shariah Court? — As regards *hakam*, there

are ways whereby the Kathis or the President of the Shariah Court could constitute *hakam*. In other words, the *hakam* is formed if the attempts of the President of the Shariah Court or the Kathi to effect a reconciliation by himself reaches a deadlock. If the President of the Shariah Court or the Kathi can effect a reconciliation without the services of *hakam*, then that would be better and would save time.\*

1197. I have come to know of one instance in Jakarta where there have been many divorces, and the Government has formed a Reconciliation Board to solve the differences of husbands and wives. When the Board fails to achieve its purpose, it is then that these people who want divorces will go to the Kathis. In Singapore I see that divorces are prevalent and, therefore, if Government were to form such a board, would it be against the law of Islam? — Under such circumstances, it can be according to the law of Islam. But if reconciliation is not possible and the matter is referred to the Shariah Court and it, too, cannot decide on the matter, then the President of the Shariah Court, under those circumstances, has the right to appoint another *Hakam* to bring about a satisfactory solution; because in Islam, if this second *Hakam* too fails, then only can the Court give its decision.

\*In a letter dated 19-4-60, Tuan Haji Ali Mohamed Said Salleh, the Chief Kathi, declares with reference to question 1196 as follows:-

"As on the assumption that the government appoint a body of *Hakam*, then according to the Law of Islam it is going against it. I quote "Paba'thu Hakaman" (engkau (hakim) angkatkan Hakam). *Hakam* is formed to try to conciliate between the husband and the wife when their conflict is very strong. From the above quotation it is clear that that is the only way to constitute *Hakam*; again the procedure ordered by Syedina Ali on the formation of *Hakam* in a book "TAJ" page 362 points to the same way on how *hakam* is formed.

In short when the conflict between the parties, husband and wife, is very strong and the Kathi could not resolve the matter then the Kathi should bring up the matter to the President of the Shariah Court. The President then could order both parties to appoint two *Hakam*. When these first two *hakam* fail to get either conciliation or divorce then the President could order both parties to appoint two new *hakam* (the second) to be formed. When this 2nd *hakam* too fails then the matter is left to the President of the Court to decide and judge it with care and justice.

Finally I would like to point out that if one or both of the conflicting parties do not feel satisfied on the judgement passed by the President of Mahkamah Shariah they could ask the Appeal Court for a hearing of their case." '



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*Mr. Byrne*

1198. In the experience of the President of the Shariah Court, has he known of any cases where the parties, divorced by consent, subsequently appeared before the Shariah Court and complained that there was no true consent to such a divorce? - There have been one or two such cases, but they came not with the complaint that they did not agree to divorce. They came with the complaint that the Kathi, who registered the divorce, did not satisfactorily go into the matter of maintenance. There were also others who came to the Shariah Court with the complaint that the Kathi who dealt with the divorce did not make full inquiries.

*Chairman*

1199. The next point was the question of *fasah*. The question was:

"Can a married woman obtain a divorce known as *fasah* other than in the Shariah Court?"

The answer in the memorandum was:

"According to the law of Islam, a married woman can obtain a divorce known as *fasah* if there is no Shariah Court or Kathi in her town, subject to certain conditions. But under the Muslims Ordinance No. 25 of 1957, she cannot obtain such divorce except in the Shariah Court as it is a very complicated matter that requires a proper and courtly procedure ..."

So that the position then is this. Am I correct in saying that the Islamic law provides that if there is a Shariah Court or Kathi, then the woman cannot divorce her husband by way of *fasah* except in the Shariah Court or before a Kathi? - Yes.

1200. The position then in Singapore is that there are Kathis and, therefore, there is nothing to prevent a woman from going to a Kathi to divorce her husband by way of *fasah*? — Yes.

1201. But in your interpretation of the State law, you say that it really compels her to go to the Shariah Court?

- The law of Islam, too, compels the woman to go to the Shariah Court, or to a Kathi.

1202. So that if there is a Shariah Court and there are also Kathis, the woman under Islamic law must go to the Shariah Court? - Yes.

1203. So the previous answer must be corrected. The previous answer then should be this: Even though there are Kathis in Singapore, the woman must go to the Shariah Court according to the law of Islam? — In the first case, it refers only to the general position where there is no Shariah Court or Kathi.

*Chairman*] Any questions?

*Inche Mohd. Ali*

1204. Mr. Speaker, from the statements of the President of the Shariah Court on the question of *fasah*, I would like to ask whether, according to the law of Islam, the President of the Shariah Court has the power to act on Kathis who issue the *fasah*? - Generally, according to the law of Islam, the President of the Shariah Court cannot prevent all Kathis from making decrees in respect of *fasah* if the Kathis are appointed by the Head of State. But according to the Muslims Ordinance (No. 25 of 1957), it is only the Shariah Court that can decree *fasah*. If so, the President would appear to be empowered to prevent the Kathis from making decrees in respect of *fasah*.

*Chairman*] Any questions?

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Incite Baharaddin*] No.

*Inche Yaacob*] No.

*Mr. Byrne*] No.

*Chairman*

1205. We now come to the miscellaneous questions. The first question was on *mas-kahwin*: "What can be offered and accepted as *mas-kahwin*?"

The answer in the memorandum was:

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"Anything of monetary value, even a handkerchief, can be offered and accepted as mas-kahwin under the Islamic law."

We have been told that even the recital of a verse in the Koran is sufficient *mas-kahwin*. Is that right? — That is so.

1206. Another question which I touched upon was this: "Would it be contrary to the law of Islam if the Muslim Ordinance contained a provision that mas-kahwin should be not less than a sum named in the Ordinance (say \$500)?"

The answer was:

"Yes, it is. But the mas-kahwin should be by mutual consent according to the status in life of the bride (i.e. whether rich, poor, or middle-class)."

Do you abide by that opinion? — Yes.

*Chairman*] Any questions?

*Inche Mohd. Ali*] No.

*Inche M. Ismail Rahim*] No.

*Inche Mohd. Ariff*] No.

*Inche Baharuddin*] No.

*Inche Yaacob*

1207. I have been given to understand by witnesses that in some countries the amount of *mas-kahwin* is fixed. For instance, in Johore, it is \$22.50. In India it is three months' earnings of the man. What is the opinion of the witnesses on this matter? — We, as a self-governing State, need not necessarily follow what happens in other countries. With regard to the \$22.50 as *mas-kahwin*, I know that that is also being practised in Singapore. But it is not forced upon the parties. According to *Sunnah*, it says that the *mas-kahwin* is 500 dirhams. One dirham is equivalent to nine cents. Therefore, 500 dirhams is equivalent to \$45. That is most commendable.

*Chairman*] Any questions, Mr. Byrne? *Mr. Byrne*] No.

*Chairman*

1208. We come to this question of *mutta'ah* which means consolatory gift. The question posed was:

"What can be offered and accepted as *matta'ah*?"

and the answer was:

"Any suitable amount of money in accordance with the status in life of the husband can be offered and accepted as *mutta'ah*."

— May I interrupt here? It should read:

"Any suitable amount of money or thing of value ..."

1209: Yes. The next question was:

"Would it be contrary to the law of Islam if the Muslims Ordinance contained a provision that *matta'ah* should be not less than a monthly payment of a sum to be named in the Ordinance over a period of time (say \$30 per month for say one year or until remarriage of the divorced wife)?"

The answer was:

"Yes, it would be contrary to the law of Islam to do so."

Do you abide by that opinion? — Yes.

1210. Apart from the question of *mutta'ah*, it has been suggested that maintenance should be paid to a woman who has been divorced without just cause until she remarries or dies? — It is *nafkah*.

1211. Let us direct our minds now to this suggestion. There is a suggestion that *nafkah* (maintenance) should be paid to a woman who has been divorced for an unjust cause until she remarries or dies, that is, apart from the maintenance she is entitled to under the law of Islam for the period of *eddah*. It has been suggested that *mutta'ah* could take the place of this suggested maintenance. Is that possible? — As far as I know in the *Kitabs* of Fiqh, the *mutta'ah* is only given once and it should be 30 dirhams, which is equivalent to \$2.70. But if we are to consider that the money in the olden days was of more value than it is now, and if we multiply it by four, it will be about a little less than \$11.

1212. So that your short answer is that this *mutta'ah* cannot be considered in the same light as maintenance, is that it? — Yes.

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1213. We are told that in Syria there is a provision of the law there—I suppose it is State law—which reads:

"If a man divorces his wife and it becomes plain to the Qadi that the husband was treating his wife wrongly by divorcing her without reasonable cause, if the wife will suffer damage and property thereby, the Qadi may give judgment in her favour against her husband, having regard to the latter's financial standing and also to the degree to which he has wronged her of compensation not exceeding the amount of a year's maintenance for one of her position, in addition to the maintenance due to her during her *eddah* period and may order this to be paid either in a lump sum or monthly according as circumstances require."

If a provision for maintenance of that nature is made in the State law of Singapore, that would not go against the law of Islam? — As far as I know, according to the law of Islam—what is followed here is the Shafei school of law. There is nothing in that law which permits such a state of affairs. Furthermore, as I have stated earlier, Singapore is different from Syria. It is not incumbent upon Singapore to follow what is done there. Furthermore, we do not know what school of law is being practised in Syria. If I am not wrong, what happens in Syria also takes place in Egypt. But I know that in Egypt, the school of thought is *Hanafi*. That is all I wish to say.

1214. I do not think it has been suggested that Singapore should follow the law of any other country. What we would like to know is whether or not anything as practised here would go against the law of Islam. I think the witness has said that, as far as he knows, apart from maintenance during the woman's *eddah* period, there is nothing in the law of Islam to permit of maintenance for a woman until she marries or until she dies. Is that right? I would like to draw a distinction. I want to know whether such a measure is prohibited by Islam? — I would say that if the State has a mufti, the mufti could then issue an official ruling that this could be done in the interests of the

welfare of the public, on condition that the mufti is appointed and be given power by the Head of State. But I am no mufti, and as far as I know, according to current practice and the sayings of the Prophet, there is nothing to show that such a thing is permissible. The Koran and the sayings and the practice of the Prophet are two sources of Islamic law. That is my answer.

1215. So your appreciation then is that if the law of Islam does not say that a certain thing is permissible, then that thing is prohibited, is that it? — No, because as I have said just now, one mufti, appointed and given full power by the Head of State, can formulate a law which is not only for the general welfare of the public, but also for the purposes of avoiding harm.

1216. You would rather see that type of provision being laid down by the mufti and not by the State? — Yes. Because the mufti is one who is deeply learned in the law.

1217. If the mufti advises the Government that that should be the law, would you then object to that law being written into the Ordinance? — Speaking for my personal self, I would not have any objection to that, because I want to remain loyal to the powers that have been given me by the Head of State, and rightly all Muslims should abide by that law.

*Inche Mohd. Ali*

1218. Mr. Speaker, Sir, with regard to the mufti, I want to know his position. According to the evidence of the President of the Shariah Court, the mufti is appointed by the Head of State. Therefore, I would like to know which position is better—whether this mufti should be appointed by the Head of State in an honorary capacity, or whether he should be appointed by the Government as a paid official? — The mufti can be appointed in an honorary capac-

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ity or he can be paid, but in my opinion the position of a paid mufti is better than that of an honorary one.

*Chairman*

1219. If the Chief Kathi likes to go, he can do so? — (*Tuan Haji Ali Mohamed*) Yes, thank you.

1220. Thank you very much for coming? - Thank you.

*Chairman*) Are there any other questions to be asked?

*Hon. Members*] No.

*Chairman*

1221. So I think we can wind up, as I have no questions on "Change of religion". That then brings us to the end of this discussion. Mr. President and Chief Kathi. Thank you very much indeed for coming and giving us of your time? — (*Tuan Haji Mohamed Sanusi*) I wish to thank the Committee too. This is part of my duty.

*(The witnesses withdrew.)*

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SATURDAY, 9TH APRIL, 1960

PRESENT:

Mr. SPEAKER (*in the Chair*)Dato Abdul Hamid bin Haji Jumat,  
Inche Baharuddin bin Mohamed Ariff.Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

ABSENT:

Mr. K. M. Byrne.  
Inche Mohd. Ali bin Alwi (*with  
apologies*).

Inche Mohd. Ariff bin Suradi.

Inche Ahmad bin Mohamed Ibrahim, the State Advocate-General, attended and was examined.

Inche Ismail bin Alang, Simultaneous Interpreter of the Legislative Assembly, assisted in the interpretation.

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*Chairman*

1222. Good morning. Just for the record, your name is Ahmad bin Mohamed Ibrahim? -(*Inche Ahmad bin Mohamed Ibrahim*) Yes.

1223. You are the State Advocate-General of Singapore? - Yes.

1224. We will deal with the memorandum which you submitted under cover of your letter dated 31st March, 1960\*. You start off by saying:

"A Kathi is a Muslim Judge and under Muslim law can (if he is so authorized) try all cases civil as well as criminal. He is a judicial officer appointed by and deriving his powers from the Ruler of a State. He has no inherent powers but has the powers given him in his letter of appointment. It is the duty of the Ruler to appoint a Kathi but the number is left to his discretion. He can if he thinks it expedient appoint one Kathi."

The point I would like to clear up—the point was really made by the Member for Geylang Serai—is this. Would that statement hold good in a non-Islamic State? - The question whether a country is a Muslim country or

not a Muslim country gives rise to a lot of difficulties. The appointment of a Kathi under the Muslim law is *Fardu Kifayah* (a public duty). That is, it is the duty of Muslims staying in a particular country to have a Kathi. If the country is not a Muslim country, that is, the Muslim law is not recognised by the Government of that country, then it is the duty of the Muslims to appoint the Kathi themselves. That was the position in Singapore before 1880. But where the Muslim law is recognised in a country, and the Government provides facilities for the administration of Muslim law, then, in the view of some Muslim authorities, that is a Muslim country. Therefore, the State or Government can appoint a Kathi.

1225. Can we put it this way then? In so far as Singapore is concerned, the Muslims here have come to be satisfied that appointments of Kathis could be by the Head of State on the advice of Government? - Yes.

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1226. So that in Singapore it is now an accepted fact that all Kathis derive their authority from the State? — Yes.

*Chairman*] It is now proposed that that fact should be written into the law. That is the proposal that the State Advocate-General has made, I think, in page 2. This is the suggestion he made in the memorandum:

"The position is accepted and Kathis do not in fact now make orders of *fasah*, *taalik*, *nusus* or orders for maintenance but if it is felt necessary to place the position beyond all doubt, a new subsection might be added to section 4 of the Muslims Ordinance, 1957, as follows:-

(7) The jurisdiction, authority and powers of the Chief Kathi and any Kathi shall be such as are conferred by this Ordinance:

Provided that the Yang di-Pertuan Negara may by the terms of the letter of appointment of the Chief Kathi or any Kathi restrict the exercise of any powers which would otherwise be conferred on such Chief Kathi or Kathi by this Ordinance."

Any questions on that?

*Dato Abdul Hamid*

1227. I would like to have some clarification. The State Advocate-General has said just now that some Muslim authorities would agree that in a country where the Islamic law is recognised, the Head of State can, without going against the law of Islam, appoint the Chief Kathi and Kathis. But we know that in Singapore at the present moment, the Islamic law is not fully recognised. Would the statement which the State Advocate-General has made just now apply to a situation like this, where only parts of the Islamic law are recognised, and not the whole of the Islamic law is recognised? — I think it is a question of degree. I can say that today there is no country in the world, apart from Saudi Arabia, which follows the Muslim law in its entirety.

*Chairman*

1228. I suppose the position really is what the Muslims in any country accept? — Yes.

*Inche M. Ismail Rahim*] No questions.

*Inche Yaacob*

1229. Mr. Speaker, what is the view of the State Advocate-General as to the name of the Kathi in Singapore? Should not the Kathi be named the "Registrar of Marriages and Divorce"? — They are, in fact, Deputy Registrars of Muslim Marriages and Divorces. But, again, it is a matter of degree as to whether they do exercise judicial functions or not under the Ordinance. They do exercise judicial function, although I agree it is a limited power now.

1230. In my opinion, Mr. Speaker, Sir, there should be only one Kathi, strictly speaking, in the State. All other Kathis are deputies. Would it not be a good idea if, in Singapore, such a state of affairs is brought about? That is, there should be one Kathi and several deputies? — That is a matter of administration rather than Muslim law. A *naib* Kathi is only an assistant to a Kathi. I might mention that in Penang and Malacca, it is proposed to reduce the number of Kathis, but not to the extent of one. In Malacca it is proposed that there should be only four Kathis.

*Chairman*

1231. I suppose it is just a question of name, is it not? — Yes.

1232. In effect, the Chief Kathi is the Kathi and the others who are called Kathis are, in fact, assistant or deputy Kathis. Is that right? — Yes.

*Inche Yaacob*] Mr. Speaker, I have been asked several times by visitors from other countries about the appointment of Kathis. They are amused to learn that the number of Kathis in Singapore is quite considerable, whereas countries which are many times bigger than Singapore have only one Kathi.

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*Chairman*

1233. I think the answer has been given. It is a question of administration. Is that right? — Yes. I have nothing to add.

*Inche Yaacob*

1234. Will it be agreed then if the name "Kathi" is amended in the Ordinance whether he is to be called Kathi or Chief Kathi or *naib* Kathi? — Sir, as I have said, it is a question of administration. If we can so arrange that the existing Kathis can act directly under the orders of the Chief Kathi, then I agree it is a good thing.

*Chairman*

1235. I think what the hon. Member wishes to urge is that the names be now changed. Instead of the Chief Kathi, call him the Kathi of Singapore, and the other Kathis should be named *naib* Kathis. That is the first point. The second point is, should it not be possible to reduce the number of *naib* Kathis? Those are the two points? — I can answer the second point-whether it is possible. In fact, it is the policy of the Government to reduce the number of Kathis. Where vacancies occur by death, they are not filled.

1236. Would you like to answer the first point-the question of changing the name-or would you like to keep silent on that? — I think I would like the advice of the Muslim Advisory Board.

*Chairman*] Inche Baharuddin?*Inche Baharuddin*] No questions.*Chairman*

1237. Can we next deal with the question of *Wali Hakim* and related to it the question of polygamous marriages? At page 4 of the memorandum, you say in the fourth paragraph:

"It is not the Kathi but the wali who is essential in a Muslim marriage according to the Shafei School of law. Muslim law does not require a marriage to be solemnized by a

Kathi and a Kathi has no inherent right to solemnize marriages. A Kathi derives his powers either from the lawful wali or from the Ruler, and the lawful wali or the Ruler can delegate his powers to any person he likes. In the case where the woman has no wali or where the wali unreasonably refuses his consent to a marriage, the Ruler becomes the guardian of the woman to be wedded and there is no legal objection to the delegation of his powers only to the *Chief Kathi*. The Ruler may delegate this power to all Kathis but in such a case the Kathi who solemnizes the marriage must himself make the necessary inquiry. It is not unlawful also to provide for an independent inquiry by the Chief Kathi or the President of the Shariah Court or by a Board; such inquiries cannot however take the place of the inquiry by the person solemnizing the marriage and would appear to go beyond the requirements of Muslim law."

I would like, first, to deal with the case where the woman has no *wali*. In such a case, to use your words, "the Ruler becomes the guardian of the woman to be wedded". In the Ordinance itself we find it is the Chief Kathi who has been given the power to solemnize and to inquire into marriages of that nature. So, it is then presumed that it is really the Ruler who has delegated his power to the Chief Kathi, and it is the Chief Kathi who then becomes a *wali hakim*. Will there be any objection if the Chief Kathi makes the inquiry as *wali hakim*? He makes the inquiry as to whether or not there are any lawful obstacles, and then requests another Kathi to solemnize the marriage or delegates his power of solemnizing the marriage to another Kathi? — Sir, the power that is delegated to the Chief Kathi by the Ruler is not the power to make the inquiry but to solemnize the marriage and act as *wali* 'in the marriage. As many witnesses have stated previously, the inquiry itself is not essential as to the validity of the marriage. It is better, of course, to have an inquiry. But if the marriage is invalid, it is not because there is no inquiry, but it is because the marriage goes against the provisions of the law of Islam.

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1238. The point I am trying to get at is this. Is it not possible for the Chief Kathi, as the *wali hakim*, deriving his power from the Ruler, to request another Kathi to solemnize the marriage? - I do not think so, because the power which is delegated cannot be delegated again.

1239. Let me put it this way. The source of the delegated power is the Ruler. So when the Ruler delegates his power to the Chief Kathi, could he not also say, "The Chief Kathi will have the power to redelegate the power of solemnizing the marriage"? Could he not do that? — I know of no such provision in the Muslim law. I would not say that it is impossible, but the point I would like to make is this: that the Kathi who performs the marriage must himself be satisfied that the provisions of the Muslim law are not contravened.

1240. I quite agree, but, of course, he can always be satisfied in several ways. He can be satisfied by inquiring himself or he can be satisfied after hearing the result of an inquiry made by somebody else? - That would be contrary to Muslim law.

1241. Would it really be? - Yes.

1242. Can you explain why? - The Kathi who performs the marriage cannot say, "I am satisfied, because Mr. X has said that he is satisfied." He himself must be satisfied.

1243. Would that apply to polygamous marriages? - I do not follow that.

1244. I mean, in polygamous marriages, the Kathi who solemnizes the marriage, I take it, must be satisfied that there is no lawful obstacle. Am I right? — Yes. You mean the matter on which I have suggested a further amendment?

1245. Yes? — In that case, there will have to be two inquiries, and not one inquiry. We cannot avoid that.

1246. Just one second, please. For the record, I refer to page 6 of the memorandum where there is a suggestion in connection with polygamous marriages:

"The proposals in the amending Bill are in general in line with the liberal orthodox view. In view of the fact that under Muslim law the wali of a woman is permitted to solemnise her marriage it may be considered that in order not to go against the Muslim law, subsection (2) of the proposed section 7A should be amended-

(a) by deleting all the words after "except" and substituting therefor the words-

"(a) with the written consent of the Chief Kathi by the wali of the woman to be wedded or by a Kathi at the request of such wali; or

(h) by the Chief Kathi [that is, the actual solemnizing of a marriage]; and

(b) by inserting a new subsection (3) as follows:-

"(3) Before solemnizing a marriage or giving his written consent to the solemnization of a marriage under subsection (2) of this section the Chief Kathi shall satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

So that the suggestion really is in three parts: first, the Chief Kathi makes the inquiry; second, the Chief Kathi gives his written consent to the marriage; third, the marriage is solemnized with that written consent by the *wali* or by a Kathi at the request of such *wali*. Take the Kathi who at the request of the *wali* solemnizes the marriage. Now the question is: must he make an independent inquiry? — Yes, he ought to make his own inquiry.

1247. So that even if the Chief Kathi gives his written consent to this marriage, if a Kathi is approached and he disagrees with the Chief Kathi, he need not solemnize the marriage? — He need not solemnize the marriage.

1248. This Kathi would not be able to solemnize the marriage because he



*Chairman*] Yes. That is all I want to know.

*Dato Abdul Hamid*

1257. I am somewhat confused, Mr. Speaker, about this question of inconvenience. We have had witnesses who appeared before us and give instances of inconvenience in the solemnization of marriages with regard to *Wali Hakim*. On page 4 of the State Advocate-General's memorandum, paragraph 2, he says:

"It might be interesting to note that the Chief Kathi solemnized 669 marriages in 1959, out of which he acted as *wali hakim* in 438 marriages."

We have also had evidence from witnesses before that Muslim marriages in Singapore are seasonal, that they take place during certain months of the year; for instance, after *Hari Raya Puasa* or *Hari Raya Haji*. You may get as many as 1,000 or 2,000 marriages. So considering that, I feel the Chief Kathi would have a lot on his hands. Now, I wish to ask the State Advocate-General whether it is against the law of Islam for the Head of State to appoint more than one Kathi who could be given the powers of marriage in *Wali Hakim*? — I have tried to explain that in my memorandum. The question is one of administration rather than that of Muslim law. The problem is really to avoid conflict in the jurisdiction. If you can demarcate the jurisdiction of the three or four Kathis, then I believe that is possible, as is done in the Federation of Malaya. There the Sultan or the Ruler can appoint more than one Kathi. I have tried to point out that although the laws in the Federation provide for more than one Kathi—we can exercise this right in practice, the parties have no choice. They must go to one Kathi. You can see arrange it in Singapore but, as I say, Singapore is a small place.

*Chairman*

1258. From the memorandum, it would appear that in so far as marriages involving *Wali Hakim* are concerned, there were 438 marriages in 1959. Of course, one cannot know how many polygamous marriages there will be in a year. Is there any record of any polygamous marriages? — So far, there has been no record. As I have said, it is a rough estimate. I think it should be less than 100.

1259. I think that figure was also given by the Parliamentary Secretary (Inche Yaacob). Therefore, shall we say, the Chief Kathi would be called upon in one year to perform an average of 530 marriages involving *Wali Hakim* and polygamous marriages. Now in that situation, the hon. Member suggests that, perhaps for the sake of convenience, these powers should be given to more than one Kathi. Would you like to express your view? — The Chief Kathi was present before this Select Committee, and he said that there had been no inconvenience. I would also like to make a further point—that in 1959 the Chief Kathi was not a Government servant until about August; so that for the greater part of 1959, he was not a Government servant. Since he has been appointed a Government servant, we have asked him to concentrate on *Wali Hakim* marriages only.

1260. What does that mean? Does it mean more *Wali Hakim* marriages since August 1959? — No, he has got less. Because, apart from the 438 *Wali Hakim* marriages, he did solemnize other marriages, making a total of 669. We have issued instructions that he should concentrate on *Wali Hakim* marriages only.

1261. Am I right in saying that a problem of this nature should really go to the Muslim Advisory Board as they

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know what to do, rather than put a prohibition in the Ordinance? — Up to now, there has been no genuine complaint, if I may say so.

1262. "Genuine" is a strong word. Because we did have a witness who gave an example of seven marriages in one day? — As I have said, the inconvenience could have been avoided by some arrangement. But all complaints were fully investigated.

*Chairman*] That is the answer really, I suppose, that details of administration should really be the subject of inquiry by the Board, and on the advice of the Board, Government should then consider whether or not the Ordinance should be amended?

*Dato Abdul Hamid*] The State Advocate-General has said just now that if it is administratively possible, then possibly the Government or the Yang di-Pertuan Negara could appoint more than one Kathi to perform *Wali Hakim* marriages.

*Chairman*

1263. I do not think he has said that? — I mean it can be done.

*Chairman*] It is possible, but it is not forbidden by the law of Islam.

*Dato Abdul Hamid*

1264. In that event, Sir, regarding the State Advocate-General's suggestion for a further amendment to section 4 of the Muslims Ordinance, 1957, as contained in his memorandum at page 2 on subsection (7)-would that cover the position where it is possible for the Government or the Yang di-Pertuan Negara to appoint more than one Kathi for the purpose of *wali hakim* marriages? — No. This is to amend section 4.

*Chairman*

1265. The relevant subsection, I take it, Mr. State Advocate-General, is section 7 subsection (3) which deals with

*Wali Hakim*, where it is specifically stated that the Chief Kathi should have power in these matters. So the amendment should really be to section 7, subsection (3), if the intention is to give power to more than one Kathi to perform *wali hakim* marriages? — Yes. The purpose of the proposed amendment is to enable the power of the Kathi to be reduced, not to be increased.

*Chairman*] Inche Ismail, any questions?

*Inche M. Ismail Rahim*] No.

*Inche Yaacob*] Mr. Speaker, Sir, I was most impressed by the State Advocate-General's evidence to the effect that the Chief Kathi had solemnized 669 marriages in 1959, and that he acted as *wali hakim* in 438 marriages. In other words, the people who contracted *wali hakim* marriages numbered 438. What does the State Advocate-General feel regarding the suggestion that the Chief Kathi be given the authority to solemnize marriages in respect of *wali hakim* and polygamous marriages only? Because there are too many good things to be obtained by this. At the moment, the Kathis are not paid, so that by the Chief Kathi not solemnizing ordinary marriages, there would be opportunities for the Kathis to supplement their income. Secondly, the office of the Chief Kathi would not be the place where people would come in queues in respect of ordinary marriages. Normally the matter that causes a lot of difficulty is in connection with marriages involving *wali hakim* and polygamous marriages.

*Chairman*

1266. Would the State Advocate-General like to answer that? — I agree with the principle of what is suggested, but I feel that it is better done by administrative directions rather than by writing it into the law.

1267. Is there not also one other point? Is not this suggestion going to deprive a *wali* from choosing the Chief Kathi to solemnize the marriage? — If we were to have such a law, I agree

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it would restrict the choice. I might say that the Chief Kathi is the most qualified of the Kathis now. He is one of the few who speak Arabic. The other point is that I fear that if we write it into the Ordinance, then we might find that the Chief Kathi will have very little work to do. In fact, the position now is that although the Chief Kathi has an office in the Shariah Court, he does very little work during office hours, because the custom of the people is that they still want the Kathis to go to the house, so that the major part of the work of the Chief Kathi is now outside office hours. We hope that that will change in time.

1268. But I think the Parliamentary Secretary's point is this: after giving this power to the Chief Kathi to solemnize polygamous marriages; and in view of the fact that there is a record that in the past he has had to solemnize 438 marriages involving *wali hakim*, cannot it now be said that it is anticipated that the time of the Chief Kathi, so far as *wali hakim* marriages and polygamous marriages are concerned, could be so fully taken up that he would not have the time for any other *wali* marriages? — That is a matter which only events can show and, therefore, I would prefer it to be done by administrative procedure rather than by law.

*Inche Baharuddin*

1269. Mr. Speaker, the question of inconvenience to the public is one of administration, as we have heard. But the Member opposite has said just now that 438 *wali hakim* marriages have been solemnized by the Chief Kathi. Mr. Speaker, Sir, I feel that it is a fact that most of those marriages were in the nature of sudden marriages, without ample prior notice. And as the Chief Kathi said yesterday, notice should be given at least a week in advance. Therefore, will the State Advocate-General agree with me that the time should be extended, as in the case of Christian marriages, from one week, as suggested by the Chief Kathi, to more than a week,

say, about two weeks or three weeks? If this could be effected, I am confident that the difficulties faced by the public can be overcome, so that the marriages could be treated on a first come first served basis? — That will be a matter for the rules.

*Chairman*

1270. I think the State Advocate-General is indicating that the matter could be provided for in rules. But would it not be appropriate to insert a provision like that in the Ordinance itself? — If I may add? When these amendments become law, it will be an absolute necessity, I think, to ask those who want to marry to fill up forms.

*Inche Baharuddin*] Mr. Speaker, what I have said is only to strengthen the suggestion that the power to solemnize *wali hakim* marriages be given to the Chief Kathi only, because one of the objections to this was on the grounds of inconvenience to the public. Therefore, if suitable rules could be made, then I feel the matter would be nicely solved.

*Chairman*] There is power under section 65 (1) of the Muslims Ordinance:

"The Minister may make such rules as seem to him necessary or expedient for the purpose of carrying out the provisions of this Ordinance."

Any other questions?

*Inche Baharuddin*] No.

*Chairman*] The next point touched on by the memorandum is the effect of conversion on marriage. And in page 10, there appears this paragraph:

"The proposed section 7A of the Ordinance merely attempts to state the existing law in Singapore. The purpose is to clarify the position, so as to avoid conflicts of law. The position is that a marriage under the Civil Marriage Ordinance or the Christian Marriage Ordinance can only be lawfully dissolved in the lifetime of the parties by an order of the court and any person married under either of these laws who contracts a marriage while his or her spouse is living would be guilty of bigamy. In order to effect the purpose it would be necessary to add

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after the words "law of Islam" in the proposed new section 7A (2) the words "or any written law for the time being in force in Singapore".

If the suggested amendment\* appearing in page 6 of the memorandum in connection with the same subsection (2) is accepted, then, of course, that amendment would be in the new subsection (3) as appears in page 6. I have no questions on that. Any questions?

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Yaacob*] No.

*Inche Baharuddin*] No.

*Chairman*

1271. The next point touched on is the question of divorce. The fear that was expressed by witnesses was that in cases where the Kathis register divorce by consent under the provisions of section 12 (3), there may be cases where there has been no real consent. The suggestion was put up that some machinery should be introduced whereby there should be the appointment of *hakam* in every case of divorce. The answer to that is given in the last paragraph of page 10 of the memorandum which reads:

The procedure for the appointment of *hakam* under Muslim law is only appropriate where there are differences or disputes between the parties. Where the parties have agreed to separate, the appointment of *hakam* would not appear to be required under Muslim law. If it is desired however to ensure that the consent of the wife is a real one, it may be advisable to insert the words "after inquiry" after the word "satisfied" in subsection (3) of section 12 of the Muslims Ordinance, 1957.<sup>1</sup>

So that the subsection will then read:

"A *Kathi* shall not register any divorce unless he is satisfied after inquiry that both the husband and the wife have consented thereto."

The question I would like to ask is this assuming that that is accepted, if the *Kathi* is not satisfied that that is the real consent, what does he do then? — He must refer the matter to the Shariah Court.

1272. He is empowered to do that, is he? — Yes.

1273. I was just wondering whether section 21 would give this *Kathi* jurisdiction to make a complaint to the Court or lay information before the Court. Is he an interested party in that sense? — No. I think he will probably only advise the parties to go to Court.

1274. Would it not be advisable then to make some amendments to enable this particular *Kathi*, who has come across this problem, to refer it to the Shariah Court, thus giving him some sort of *locus standi*? — If we want to restrict divorces, surely we should leave it to the parties concerned to take the initiative if they want to. The man would probably come to the *Kathi* and say, "I have divorced my wife. Will you register the divorce?" The *Kathi* will say, "Since your wife does not consent to it, I cannot register. You must go to the Shariah Court."

1275. But the man need not, of course. The divorce is still valid, even if it is not registered. Is that correct? — Then two things will happen—either the man goes back to live with his

\* The suggested amendment to the proposed section 7A (2) reads as follows:

(a) by deleting all the words after "except" and substituting therefor the words—

(a) with the written consent of the Chief *Kathi* by the wali of the woman to be wedded or by a *Kathi* at the request of such wali; or

(b) by the Chief *Kathi*."; and

(b) by inserting a new subsection (3) as follows:—

"(3) Before solemnizing a marriage or giving his written consent to the solemnization of a marriage under subsection (2) of this section the Chief *Kathi* shall satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

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wife; then there is *Rojo*-the divorce is over. Or he does not go back to his wife; then the wife can make a complaint to the Shariah Court.

1276. It is only then that the machinery of the *hakam* will come into play? — That is right.

*Chairman*] Any questions?

*Data Abdul Hamid*

1277. The suggested amendment to subsection (3) of section 12 of the Muslims Ordinance, where it has been suggested that the words "after inquiry" be put in after the word "satisfied"- that would apply, of course, to a case where the Kathi would not register a divorce. But it has also been proposed by the amending Bill for the same subsection to include the words "or revocation of divorce" after the word "divorce". Sir, does the suggested amendment by the State Advocate-General mean that an inquiry must also be held before a revocation of divorce can be registered? — Yes, I think it is very necessary.

*Chairman*] Any questions, *Inche Ismail*?

*Inche M. Ismail Rahim*] No.

*Inche Yaacob*] No.

*Inche Baharuddin*

1278. As has been stated by the State Advocate-General, let us take the case of a husband who has divorced his wife, and he then goes to a Kathi. The Kathi refuses to register the divorce on the grounds that the wife has not consented. The Kathi then requests that the matter be referred to the Shariah Court for the divorce to be registered. If the husband still persists in wanting to divorce his wife, and the wife persists in not consenting, then what would be the position? — Sir, that is, in fact, one of my worries in the application of the Muslims Ordinance, because if the Muslims want to wreck the Ordinance, they can do so easily. But, as a matter of fact, Muslims are so law-abiding that they will comply with it.

*Chairman*

1279. In fact, the Shariah Court has got powers to decree a divorce even if a divorce is not by mutual consent. That is what the Ordinance says. Is that right? And the Muslims have accepted that as a practice? — Yes.

1280. I think what the State Advocate-General is saying is that the force of this Ordinance is really dependent on its acceptance by the Muslims in Singapore? — Yes.

*Inche Baharuddin*

1281. In that case, Mr. Speaker, Sir, we will then not be able really to prevent divorces? — The answer to that is that the validity of the divorce does not depend on registration. The way in which we can restrict divorces is by the additional powers given to the Court for maintenance.

1282. If it is possible for the State Advocate-General to make suggestions to the effect that the Shariah Court would be in a position to punish those husbands who insist on divorcing their wives, then I think our purpose would be achieved? — That, I would suggest, is a matter of education rather than of law.

*Chairman*

1283. The next point touched on is this question of *mas-kahwin* which is connected with *matta'ah* and also indirectly connected with maintenance. The question was posed as to whether or not it would be wrong to provide in the Ordinance that the minimum *mas-kahwin* should be \$500. The answer to that is contained in the memorandum which says:

While therefore it is not wrong in Islam to raise the amount of *maskahwin* and to provide that for example not less than \$500 shall be paid on divorce, this practice would appear to be foreign to the spirit of the institution of *maskahwin* as laid down by Islam.

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If the purpose is to check hasty divorces it would be preferable to make more use of the institution of "mataah" or consolatory gift, which is meant for the purpose, rather than to adapt the institution of "*maskahwin*" which is meant for a different purpose.

I suppose I am right in saying that this suggestion that the *mas-kahwin* should be fixed at not less than \$500 comes within the second category of your definition of matters against the law of Islam. That is, it is not required by the law of Islam? — Yes. I thought I would go a little further in this respect. As I mentioned in paragraph 6 of my memorandum:

"There are recorded sayings of the Prophet which enjoin that the *maskahwin* should be low."

1284. Yes. So that if provision of this nature is to be written into the law, it should be only on the advice of the highest authority on Muslim law in the land? — Yes.

1285. Connected with that, as I say, is the question of maintenance. It is hoped that if there can be some provision whereby money is paid to a divorced wife until she re-marries or dies-the divorce having been effected without just cause-then there might be some check on divorce. There seems to be some contradiction in opinion as to whether or not *mutta'ah*, or consolatory gift, could take the place of this maintenance, apart from the maintenance which is payable during the period of *eddah*. Would you like to enlarge on that? — I think the President of the Shariah Court made it clear yesterday that it would be possible for the *mutta'ah* to take this form if it is approved by the highest authority on Muslim law in the land. But the problems which we face in Malaya are also faced in other Muslim countries. Although I am not saying that we ought to follow everything that is done in foreign countries, I am suggesting that this is one way in which the opinion of the highest authority in the land can be sought.

1286. And we can assume that it was, as a result of that opinion, that this law was passed in Syria? — Yes. Sir, I can go further and say that I know this to be so.

1287. For the record, I will read that law

"If a man divorces his wife and it becomes plain to the Qadi [I take it that 'Qadi' means Kathi] that the husband was treating his wife wrongly by divorcing her without reasonable cause, the wife would suffer damage — " ?

- Please insert the word "and" so that it will read:

"... and the wife would suffer damage ...".

1288. Yes.

"... and the wife would suffer damage and property thereby, the Qadi may give judgment in her favour against her husband, having regard to the latter's financial standing and also to the degree to which he has wronged her, of compensation not exceeding the amount of a year's maintenance for one of her position, in addition to the maintenance due to her during her *iddah* period, and may order this be paid, either in a lump sum or monthly, according as circumstances require".

So I think it is now clear that *mutta'ah* is something apart from maintenance. At the most, it could be in substitution for maintenance, that is, of course, maintenance apart from the maintenance during the period of *eddah*. Is that a fair assessment? — Perhaps it depends on what we mean by maintenance. Maintenance is only payable to a wife, child or dependant.

1289. Shall I qualify that by saying maintenance to the wife apart from the maintenance during the period of *eddah*? — *Mutta'ah* is certainly not maintenance to the wife the moment she ceases to be a wife.

1290. We will put it this way : maintenance to a divorced wife. Can I get the correct explanation now? What is maintenance during the period of *eddah*? It is maintenance to the wife-the wife is still a wife-during the period of *eddah*. Is that right? — During the

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period of *eddah*, the divorce is not complete. The divorce becomes complete after the end of the period of *eddah*.

1291. So that if there is to be a maintenance after the period of *eddah*, it is maintenance in the sense that is used for maintenance loosely in a civil court?

— Yes. It is not true maintenance according to Muslim law.

1292. I see what you mean. *Mutta'ah* is something apart from that type of maintenance? — Yes.

1293. At the most, it can be a substitute for that type of maintenance? — If I may explain? In certain cases, a divorced woman has no right to maintenance because the divorce can take effect at once and there is no *eddah*.

*Chairman*] Yes, I think that is clear. Any questions?

*Dato Abdul Hamid*] No.

*Inche M. Ismail Rahim*] No.

*Inche Yaacob*] No.

*Inche Baharuddin*] No.

*Chairman*

1294. Then we come to your final statement on "Inheritance". You say:

"I agree that in order to conform to Muslim law and to bring the law in line with that in the Federation, the proviso to section 42 of the Muslims Ordinance, 1957, should be deleted. It might also be noted that section 41 of the Muslims Ordinance, 1957, while perhaps not contrary to Muslim law does not follow the provisions of Muslim law."

The proviso which is suggested to be deleted reads:

"Provided that any of the next of kin who is not a Muslim shall be entitled to share it the distribution as though he were Muslim."

I think that that type of next of kin could be provided for under "Testacy"?

— Yes.

*Chairman*] Any questions?

*All Members*] No.

*Chairman*] We have come to the end of your memorandum, Mr. State Advocate-General.

*Inche Yaacob*] Sir, may I raise a question?

*Chairman*] Yes, so long as it is not too deep. Do not forget that the State Advocate-General is here as an expert in law, so it is not fair to ask him a difficult question. Anyway the hon. Member can ask the question.

*Inche Yaacob*] I have a question to ask in connection with the position of witnesses to a marriage. In Singapore, sometimes the witnesses at the solemnization of a marriage are actually neighbours of the Kathi. Very often these witnesses do not know who the parties to be married are. Therefore, should there not be a provision in the law regarding these witnesses who have to say whether the parties to be married are, in fact, people who can be married; that the woman is not someone else's wife; that the two parties have not been suckled by the same lady; or where the husband to the intended marriage is concerned, that the witnesses should certify that they know that he has no other wife that is allowed by the law of Islam. Now, I find his position in Singapore, where the witnesses are concerned, to be very lax.

*Chairman*

1295. Is it possible to write something into the law relating to these witnesses, or is it a matter which could really be dealt by administratively or by the rules? — It looks simple, but I am afraid it is more difficult than that!

1296. That is exactly why I asked hon. Members to send in advance notice of their questions? — The way we have approached the problem in Singapore is that the witnesses are the witnesses to the declarations. Whether the function of the witnesses goes further than that is a matter I am not prepared to say at present.

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1297. In any case, the onus of inquiry in certain matters has been placed on the Chief Kathi? — The problem which the hon. Member has raised is more serious in divorces than in marriages.

*Inche Yaacob*] I will request the State Advocate-General to submit a memorandum about his opinion on this matter for consideration by this Select Committee.

*Chairman*] I think there is no time really for any more memoranda.

*Inche Yaacob*] For information.

*Chairman*

1298. There is no time to deal with it at all, because our next sitting is on the 21st of April, and notices of amendments must come in by the 14th of April. I do not think we ought to insist that a memorandum be submitted by the State Advocate-General, because he has other work. I have already indicated twice that any questions—if there are any—requiring expert knowledge should be sent in beforehand. I do not know what the State Advocate-General has to say about it? — Perhaps I may make myself clear. I agree with the hon. Member on the principle of the matter. But whether it should be written into the law is an entirely different matter.

*Chairman*] Perhaps we can put it this way? Will the hon. Member be satisfied if the State Advocate-General undertakes to look into the question and then consider whether or not some provision could be made in the rules? I

think this is strictly a matter which, if it is provided for, should be provided for in the rules and not in the body of the Ordinance. If that is so, then, of course, the drafting of the rules is outside the jurisdiction of the Select Committee.

*Inche Yaacob*

1299. Mr. Speaker, Sir, this is not a matter of rules, but of the law itself. This matter will concern the witness who may be false? — That is a witness at the inquiry. That is an entirely different matter.

*Chairman*

1300. I think perhaps the State Advocate-General will agree with me that matters of that nature are dealt with in rules, and rules, I do not think the Member should forget, have the force of law? — The other point is that we have been careful so far not to write the Muslim law into the Ordinance.

*Chairman*] I think we cannot pursue that matter further. Is there any other point?

*Inche Yaacob*] No.

*Chairman*

1301. In that case, we must thank the State Advocate-General for giving us so much of his time not only in advising the Select Committee when there was a sitting, but also in giving his evidence today? — Thank you, Sir.

(The witness withdrew.)



**MUSLIMS (AMENDMENT) BILL**

(\**Aide Memoire handed in by Mrs. Aliya Lynn Tung.*)

It is useless to repeat that Koran is sent by God through the voice of his Messenger, and here I wish to emphasize that it has been sent to mankind in general and *not* to any particular people or any specified place or time. It is for all people, all the time. We Muslims have a motto which is "Allahu Akbar" (God is Greatest). If God is greatest and He must know the secret of every one's heart. He certainly knows the needs of His creatures. It is for this very reason that many verses of the Koran are flexible and left to man-the most clever of His creation-to interpret them according to circumstances and it is for this reason that God repeated time and time again that He is Merciful and benevolent.

If God is benevolent to men, He is also merciful to women.

1. Koran is there waiting for intelligent and good people to interpret and certainly NOT for those who abuse it. Any good Muslim should see that it is not abused through wrongful interpretation.

You, Gentlemen present here today are learned and it is your sacred duty to interpret the Holy Book-one of the most read ones in the world-in the right sense according to the place and to the time in which we are living. Singapore is one of the most famous medans of the entire world, it should serve to be an example to many Muslims.

2. Please note that all those who abuse the holy religion of Islam are generally the ignorant ones who do not observe the five pillars of the religion and still less do they know the meaning of justice. If they do not have a basic knowledge of the word "Justice" or "Fair dealing" how could they be just to their wives? The innocent women need the protection of legislation against such unscrupulous men.

3. If you want, Gentlemen, to abide to the Koran, then let us refer to the Holy verse 3 in Chapter 4:

*"If ye fear that ye will not deal fairly by the orphans, marry of the women, who seem good to you, two, or three or four; and IF ye fear ye cannot do justice (to so many) then one (only)".*

We wish to lay emphasis on the two big IFs mentioned in this verse and insist that the Highest Religious Authorities of Singapore to be sure of the following : -

- (a) Whether the man's intention to marry a second time is for the purpose of marrying a widow to save the orphans or any other noble cause.
- (b) That he is in a position and capable of doing justice to more than one wife.

This should be taken as pre-marital consideration before the Chief Kathi with the assistance of a selected committee-in which some women should have representation and say-to accord his refusal or approval.

Furthermore, according to law, the new clause of the civil code makes it a little bit difficult for a man to acquire a second wife and in this connection we wish to quote another verse of the Koran which is revealed after the previous one.

*"Ye will NOT be able to deal equally between (your) wives however much ye wish (to do so) leaving her as in suspense. If ye do good and keep from evil, lo! Allah is ever Forgiving, merciful . . ." (Chap. 4 verse 129).*

The Koran says here that a man cannot deal equally between his wives and he should keep away from evil. If he insists to have more than one wife, he is committing a sin because by so doing he invites troubles which leads to evil. The religious authorities should not allow him to commit sin when they have the sacred duty to stop it.

**MUSLIMS (AMENDMENT) BILL**

(† Memorandum by Mr. Speaker dated 25th March, 1960.)

A. The following paragraphs contain suggestions which have been made in connection with amendments to the Muslims Ordinance, 1957. In regard to each suggestion, an opinion is sought as to whether, in any way, the suggestion goes against or offends the law of Islam or goes against or offends any of the teachings of any of the recognised schools of Islamic law or thought.

(1) *Wali Hakim and Polygamous Marriages*

- (a) (i) Section 7 (3) of the Muslims Ordinance, 1957, provides as follows: -

"7.-(3) Where there is no *wali* of the woman to be wedded or where a *wali* shall, on grounds which the Chief *Kathi* does not consider satisfactory, refuse his consent to the marriage, the marriage may be solemnized by the Chief *Kathi* but before solemnizing such marriage the Chief *Kathi* shall make enquiry as prescribed in subsection (2)\* of this section."

- (ii) Clause 3 of the Muslims Bill proposes to make a new provision in the Muslims Ordinance, 1957, as follows:-

"7A.-(2) No marriage shall be solemnized under this Ordinance if the man to be wedded is married under any law, religion, custom or usage to any person other than the other party to the intended marriage, except by the Chief *Kathi* who shall before solemnizing the marriage satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."

- (b) In each of the above cases, power is given solely to the Chief *Kathi*-

- (i) to solemnize the marriage; and
- (ii) before solemnizing such marriage, to make inquiry in order to satisfy himself that there is no lawful obstacle according to the law of Islam to such marriage.

- (c) The suggestion (on which an opinion is sought) is that-

- (i) the inquiry should be made by the Chief *Kathi*, or the President of the Sharjah Court, or by a Board of Muslims or by a Committee (including women, in the case of a polygamous marriage) to be appointed for the purpose;
- (ii) if the result of the inquiry is that there is no lawful obstacle to the marriage, a certificate for marriage could be issued by the person or Board or Committee making the inquiry;
- (iii) on production of the certificate for marriage, the marriage could be solemnized by any *Kathi*.

(2) *Divorce*

- (a) The Sharjah Court is empowered-

- (i) to hear and determine all actions and proceedings in which all the parties are Muslims and which involve disputes relating to divorces known as *fasah*, *taalik*, *khula* and *talak* other than these by mutual consent of the parties; [See section 21 (2) (b) Muslims Ordinance, 1957]

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\*Section 7 (2):

"7.-(2) Any *Kathi* may at the request of the *wali* of the woman to be wedded perform the marriage ceremony but before solemnizing such marriage he shall make full enquiry in order to satisfy himself that there is no lawful obstacle according to the law of Islam to the marriage and shall not perform the ceremony until he is so satisfied."

(ii) to receive applications for and make orders or decrees in regard to divorces known as *fasah* [See section 32] and *taalik* and *khula* [See section 34].

- (b) The suggestion (on which an opinion is sought) is that all divorces (including divorces by mutual consent of the parties) should be by order or decree of the Shariah Court. It is thought that in this way an opportunity would occur for the Court to appoint *hakam* in an endeavour to effect reconciliation between the parties before any divorce (including a divorce by mutual consent) becomes effective. [Compare section 33 (enabling the Court to appoint *hakam*) which appears to come into effect only when applications are made to the Court for divorces known as *fasah*, *taalik* and *khula*.]

B. "*Fasah*"

- (1) Section 32 (1) of the Muslims Ordinance, 1957, provides as follows :-

"32.-(1) The Court may receive from a married woman who has been resident for at least four months within the Colony an application for the divorce known in the law of Islam as *fasah*."

- (2) Can a married woman obtain a divorce known as *fasah* other than in the Shariah Court?
- (3) If the answer is in the negative, would it not be advisable to amend the section quoted above to make it clear that the married woman must apply to, and can only obtain *fasah* through, the Shariah Court?
- (4) If an amendment as suggested in paragraph (3) above is made, what would be the position in regard to section 34 which deals with *taalik* and *khula*?

C. *Miscellaneous questions*

(1) *Mas-kahwin*

- (a) (i) What can be offered and accepted as *mas-kahwin*?
- (ii) Must there be *mas-kahwin* in respect of every Muslim marriage?
- (b) Would it be contrary to the law of Islam if the Muslims Ordinance contained a provision that *mas-kahwin* should be not less than a sum named in the Ordinance (say \$500)?

(2) *Matta'ah*

- (a) What can be offered and accepted as *matta'ah*?
- (b) Would it be contrary to the law of Islam if the Muslims Ordinance contained a provision that *matta'ah* should be not less than a monthly payment of a sum to be named in the Ordinance over a period of time (say \$30 per month for say one year or until re-marriage of the divorced wife)?

(3) *Change of religion*

- (a) A Muslim woman, married to a Muslim man, renounces the Muslim religion.
- (i) Under the law of Islam, is the Muslim man automatically freed from his marriage ties or should he have to divorce his wife to be freed from his marriage ties?
- (ii) Would it be contrary to the law of Islam to compel him to effect a divorce and to register such divorce, before he can be considered to be freed from his marriage ties?

- (b) A non-Muslim woman, married to a non-Muslim man, embraces the religion of Islam.
- (i) Under the law of Islam, is the woman automatically freed from her marriage ties and can she marry again under Muslim rites?
  - (ii) Would it be contrary to the law of Islam to prevent her from contracting a Muslim marriage until she has been divorced from, or she has divorced, her non-Muslim husband in accordance with the Civil law?
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† See Question No. 1134 *et seq.*

**MUSLIMS (AMENDMENT) BILL**

(\*Memorandum by the President of the Shariah Court, Tuan Haji Mohamed Sanusi bin Mahmood, in reply to Mr. Speaker's memorandum dated 25th March, 1960.)

The following are my opinions according to the law of Islam recognised by the Shafi'i School of thoughts-

A. Under the heading: *Wali Hakim and Polygamous Marriages*

"(c) The suggestion (on which an opinion is sought) is that:-

- (i) the inquiry should be made by the Chief Kathi, or the President of the Shariah Court, or by a Board of Muslims or by a Committee (including women, in the case of a polygamous marriage) to be appointed for the purpose;"

My opinion to (i) : -

The inquiry should be made by the Chief Kathi as he was appointed by the Head of the State (or *Hakim*) to deputise him to marry women who have no *Wali*.

According to the law of Islam, the power of marrying these women is vested in the hand of the Head of the State, but he can appoint any suitable person as his deputy in this matter. If it is a big country consisting of several towns, he can appoint a deputy in each town.

"(ii) if the result of the inquiry is that there is no lawful obstacle to the marriage, a certificate for marriage could be issued by the person or Board or Committee making the inquiry;"

My opinion to (ii):-

If the result of the inquiry is that there is no lawful obstacle to the marriage, it is not necessary that a certificate for marriage should be issued by the person making the inquiry (i.e. the Chief Kathi) as he is the lawful and proper person to solemnise the marriage under the law of Islam.

"(iii) on production of the certificate for marriage, the marriage could be solemnised by any Kathi."

My opinion to (iii):-

There is no need for this. Moreover, no Kathis except the Chief Kathi were appointed by the Head of the State to deputise him to marry women who have no *Wali*.

(2) *Divorce*

"(b) The suggestion (on which an opinion is sought) is that all divorces (including divorces by mutual consent of the parties) should be by order or decree of the Shariah Court. It is thought that in this way an opportunity would occur for the Court to appoint *hakam* in an endeavour to effect reconciliation between the parties before any divorce (including a divorce by mutual consent) becomes effective. [Compare section 33 (enabling the Court to appoint *hakam*) which appears to come into effect only when applications are made to the Court for divorces known as *fasah*, *taalik* and *khula*.]"

My opinion to (b) : -

Divorces in which both parties disagree should be by order or decree of the Shariah Court as they are difficult and complicated cases, but those by mutual consent should be carried out by any Kathi as this will lighten the burden of, and reduce the jam in the Shariah Court. Moreover, every Kathi has been instructed to reconcile the parties before registering the divorce.

*B. Fasah*

"(2) Can a married woman obtain a divorce known as fasah other than in Shariah Court?"

My answer to (2) : -

According to the law of Islam, a married woman can obtain a divorce known as fasah if there is no Shariah Court or Kathi in her town, subject to certain conditions. But under the Muslim Ordinance No. 25 of 1957, she cannot obtain such divorce except in the Shariah Court as it is a very complicated matter that requires a proper and courtly procedure. In my opinion the Shariah Court should be the proper place to tackle this.

"(3) If the answer is in the negative, would it not be advisable to amend the Section quoted above to make it clear that the married woman must apply to, and can only obtain fasah through, the Shariah Court?"

My answer to (3) : -

It is not advisable to amend the section quoted above, as it is already provided by section 12 (3) of the Muslim Ordinance No. 25 of 1957 which says, "A Kathi shall not register any divorce unless he is satisfied that both the husband and wife have consented thereto". In case of fasah, both parties must either disagree, or the husband cannot afford to maintain his wife or give her the lowest possible maintenance according to the law of Islam.

"(4) If an amendment as suggested in paragraph (3) above is made, what would be the position in regard to section 34 which deals with ta'alik and khula?"

My answer to (4):-

There is no need for this amendment; hence my answer to this question is nil.

*C. Miscellaneous questions*

*(1) Mas-kahwin*

"(a) (i) What can be offered and accepted as mas-kahwin?"

My answer to (a) (i) : -

Anything of monetary value, even a handkerchief, can be offered and accepted as mas-kahwin under the Islamic law.

"(ii) Must there be mas-kahwin in respect of every Muslim marriage?"

My answer to (ii) : -

Yes, there must be mas-kahwin in respect of every Muslim marriage.

"(b) Would it be contrary to the law of Islam if the Muslim Ordinance contained a provision that mas-kahwin should be not less than a sum named in the Ordinance (say \$500)?"

My answer to (b) : -

Yes, it is. But the mas-kahwin should be by mutual consent according to the status in life of the bride (i.e. whether rich, poor, or middle-class).

*(2) Mutta'ah*

"(a) What can be offered and accepted as matta'ah?"

My answer to (a) : -

Any suitable amount of money in accordance with the status in life of the husband can be offered and accepted as mutta'ah.

"(b) Would it be contrary to the law of Islam if the Muslims Ordinance contained a provision that matta'ah should be not less than a monthly payment of a sum to be named in the

Ordinance over a period of time (say \$30 per month for say one year or until remarriage of the divorced wife)?"

My answer to (b) : -

Yes, it would be contrary to the law of Islam to do so.

(3) *Change of religion*

"(a) A Muslim woman, married to a Muslim man, renounces the Muslim religion.

(i) Under the law of Islam, is the Muslim man automatically freed from his marriage ties or should he have to divorce his wife to be freed from his marriage ties?"

My answer to (i) : -

The Muslim man is automatically freed from his marriage ties.

"(ii) Would it be contrary to the law of Islam to compel him to effect a divorce and to register such divorce, before he can be considered to be freed from his marriage ties?"

My answer to (ii) : -

Yes, it would be contrary to the law of Islam to compel him to do so.

"(b) A non-Muslim woman, married to a non-Muslim man, embraces the religion of Islam.

(i) Under the law of Islam, is the woman automatically freed from her marriage ties and can she marry again under Muslim rites?"

My answer to (i) : -

Yes, under the law of Islam the woman is automatically freed from her marriage ties if she has never had any intercourse with her husband and she can marry again under Muslim rites straightaway, but if she has had intercourse with him, she shall not be freed from her marriage ties except after she has finished her "Eddah". Only after this "Eddah" can she marry again under the Muslim rites.

"(ii) Would it be contrary to the law of Islam to prevent her from contracting a Muslim marriage until she has been divorced from, or she has divorced, her non-Muslim husband in accordance with the Civil law?"

My answer to (ii) : -

Yes, it would be contrary to the law of Islam to do so; but in this case it is allowed under the law of Islam to make an agreement between the Muslims and the non-Muslims that a married non-Muslim woman embracing Islam should not be solemnised in marriage to a Muslim man by the Muslims, and that a married Muslim woman embracing non-Muslim religion should not be solemnised in marriage to non-Muslim man by the non-Muslims.

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**MUSLIMS (AMENDMENT) BILL**

*(Translation from Malay)*

PERSATUAN ISLAM SATANAH MELAYU (PAS), SINGAPURA  
(The Pan Malayan Islamic Party, Singapore)

550 Kg. Bahru Road,  
Singapore 4,  
13th April, 1960.

Clerk of the Legislative Assembly,  
Assembly House,  
Singapore 6.

Sir,

*\*Subject: The law on inheritance (Muslims Ordinance, 1957-No. 25)*

As the opportunity has been extended to us, we hereby wish to state our views on the question concerning inheritance, which is that as it exists in section 42 of the Muslims Ordinance, 1957, it is opposed and contrary to the law of Islam.

As such we believe this question is surely under your consideration.

*Addition:*

For the general benefit of all, we would be glad if it would be possible for you to publish the Ordinances and *Gazettes* pertaining to Muslims in the National language (Malay).

For your kind indulgence, we thank you very much.

By order,

Pan-Malayan Islamic Party,  
(Singapore)

Zainul Abidin Shah  
Secretary (State)

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\* See Question No. 808 *et seq.*



**MINUTES OF PROCEEDINGS OF THE SELECT COMMITTEE ON THE  
MUSLIMS (AMENDMENT) BILL**

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**1st Meeting**

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WEDNESDAY, 17TH FEBRUARY, 1960  
**2.30 p.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).

Dato Abdul Hamid bin Haji Jumat, P.M.N.

Mr. K. M. Byrne.

Inche Mohamed Ali bin Alwi.

Inche Mohd. Ariff bin Suradi.

Inche M. Ismail Rahim.

Inche Yaacob bin Mohamed.

ABSENT:

Inche Baharuddin bin Mohamed Ariff.

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1. The Committee deliberated.
2. Written representations received, as contained in papers S.C. [Muslims (Amendment) Bill] Nos. 1 to 11 inclusive, were considered.  
*Agreed*, that all eleven representors be invited to give evidence.
3. *Agreed*, that registered Muslim women's organisations in Singapore be invited to submit written representations and/or to give evidence.
4. *Agreed*, that the State Advocate-General, the Chief Kathi and the President of the Shariah Court be invited to give evidence.
5. *Agreed*, that another advertisement be inserted in the newspapers noting that no representations on the Bill have been received from women and women's organisations, and inviting them to make such representations.

Adjourned to 10.00 a.m., Wednesday,  
9th March, 1960.

D2

**2nd Meeting**

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WEDNESDAY, 9TH MARCH, 1960

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

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1. The Committee deliberated.
2. Further written representations received, as contained in Paper S.C. [Muslims (Amendment) Bill] No. 12, were considered.
3. Inche Mohd. Yatim bin Mohd. Dohon, on behalf of the Persatuan Per-suratan Pemuda Pemudi Melayu (Malay Youth Literary Association), was examined.
4. Inche Syed Othman bin Abdul Rahman bin Yahya was examined. To be further examined on Friday, 18th March, 1960, at 2.30 p.m.

Adjourned to 10.00 a.m., Thursday,  
10th March, 1960.

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**3rd Meeting**

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THURSDAY, 10TH MARCH, 1960

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

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1. Inche Ali bin Haji Amin was examined.
2. Inche Shaikh Maarof bin Mohd. Jarhom was examined. To be further examined on Friday, 11th March, 1960, at 3.15 p.m.

Adjourned to 2.30 p.m., Friday,  
11th March, 1960.

## D3

### 4th Meeting

FRIDAY, 11TH MARCH, 1960

**2.30 p m.**

#### PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

1. Inche M. A. Majid, representing the Muslim Welfare Association, was examined.
2. The Committee deliberated.
3. *Agreed* that the further examination of Inche Shaikh Maarof bin Mohd. Jarhom be deferred to Wednesday, 23rd March, 1960, at 10 a.m.
4. *Agreed* that the State Advocate-General, the Chief Kathi and the President of the Shariah Court be invited to submit memoranda on the Bill.

Adjourned to 10.00 a.m., Wednesday,  
16th March, 1960.

### 5th Meeting

WEDNESDAY, 16TH MARCH, 1960

**10.00 a.m.**

#### PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

#### ABSENT:

Inche Mohamed Ali bin Alwi (*with apologies*).

1. Inche M. K. Shariff was examined.
2. Inche Sulaiman bin Haji Siraj was examined.
3. Inche Mohamed bin Omar was examined.

Adjourned to 10.00 a.m., Thursday,  
17th March, 1960.

D 4

**6th Meeting**

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THURSDAY, 17TH MARCH, 1960

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

ABSENT:

Inche Mohd. Ariff bin Suradi.

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1. The following, representing the Pan-Malayan Islamic Party (Persatuan Islam Setanah Melayu), Singapore, were examined:-

- (1) Inche Syed Junied Al-Junied (Treasurer);
- (2) Ustaz Mohamed Yunos bin Hassan (Committee member); and
- (3) Inche Syed Abubaker bin Al-Hadad (member of the Dewan Ulama Committee of the Party).

To be further examined on Thursday, 24th March, 1960, at 10.00 a.m.

Adjourned to 2.30 p.m., Friday  
18th March, 1960.

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**7th Meeting**

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FRIDAY, 18TH MARCH, 1960

**2.30 p.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

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1. Further written representations received, as contained in Paper S.C [Muslims (Amendment) Bill] No. 6: further additional representations, were considered.

2. Inche Syed Othman bin Abdul Rahman bin Yahya was further examined.

Adjourned to 10.00 a.m., Wednesday,  
23rd March, 1960.

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**8th Meeting**

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WEDNESDAY, 23RD MARCH, 1960.

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

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1. Inche Shaikh Maarof bin Mohd. Jarhom was further examined. To be further examined on Wednesday, 30th March, 1960, at 10.00 a.m.
2. Further written representations received, as contained in Paper S.C. [Muslims (Amendment) Bill] No. 10: additional representations, and Paper S.C. [Muslims (Amendment) Bill] No. 13, were considered.

Adjourned to 10.00 a.m., Thursday,  
24th March, 1960.

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**9th Meeting**

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THURSDAY, 24TH MARCH, 1960

**10.00 am.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

ABSENT:

Dato Abdul Hamid bin Haji Jumat, P.M.N. (*with apologies*).  
Inche Mohd. Ariff bin Suradi.

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1. The following, representing the Pan-Malayan Islamic Party (Persatuan Islam Setanah Melayu), Singapore, were further examined:-
  - (2) Ustaz Mohamed Yunos bin Hassan (Committee member); and
  - (3) Inche Syed Abubaker bin Al-Hadad (member of the Dewan Ulama Committee of the Party).

Adjourned to 10.00 a.m., Wednesday,  
30th March, 1960.

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D 6

**10th Meeting**

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WEDNESDAY, 30TH MARCH, 1960

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Inche Baharuddin bin Mohamed Ariff.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

ABSENT:

Dato Abdul Hamid bin Haji Jumat, P.M.N. (*with apologies*).  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi (*with apologies*).  
Inche Mohd. Ariff bin Suradi.

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1. Inche Shaikh Maarof bin Mohd. Jarhom was further examined.

Adjourned to 10.00 a.m., Thursday,  
31st March, 1960.

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**11th Meeting**

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THURSDAY, 31ST MARCH, 1960

**10.25 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed

ABSENT:

Inche Mohd. Ariff bin Suradi.

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1. The following were examined:-
  - (1) Mrs. M. Siraj, President of the Persatuan Pemudi Islam Singapura (Young Women Muslim Association); and
  - (2) Mrs. Aliya Lynn Tung } members of the Association.
  - (3) Miss M. Namazie }

To be further examined on Friday, 1st April, 1960, at 10.00 a.m.

Adjourned to 10.00 a.m., Friday,  
1st April, 1960.

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**12th Meeting**

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FRIDAY, 1ST APRIL, 1960

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

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1. The following were further examined:-

- (1) Mrs. M. Siraj, President of the Persatuan Pemudi Islam Singapura (Young Women Muslim Association); and
  - (2) Mrs. Aliya Lynn Tung
  - (3) Miss M. Namazie
- } members of the Association.

Adjourned to 10.00 a.m., Friday,  
8th April, 1960.

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**13th Meeting**

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FRIDAY, 8TH APRIL, 1960

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche Mohd. Ariff bin Suradi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

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1. Memorandum by the State Advocate-General, Inche Ahmad bin Mohamed Ibrahim, as contained in Paper S.C. [Muslims (Amendment) Bill] No. 14, was considered.

2. The following were examined:-

- (1) Tuan Haji Mohamed Sanusi bin Haji Mahmood, Registrar of Muslim Marriages and President, Shariah Court; and
- (2) Tuan Haji Ali bin Haji Mohamed Said Salleh, Chief Kathi.

Adjourned to 9.30 a.m., Saturday,  
9th April, 1960.

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**14th Meeting**

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SATURDAY, 9TH APRIL, 1960

**9.30 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

ABSENT:

Mr. K. M. Byrne (*with apologies*).  
Inche Mohamed Ali bin Alwi (*with apologies*).  
Inche Mohd. Ariff bin Suradi.

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1. Inche Ahmad bin Mohamed Ibrahim, State Advocate-General, was examined.

Adjourned to 10.00 a.m., Thursday,  
21st April, 1960.

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**15th Meeting**

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THURSDAY, 21ST APRIL, 1960

**10.00 a.m.**

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PRESENT:

Mr. Speaker (*in the Chair*).  
Dato Abdul Hamid bin Haji Jumat, P.M.N.  
Inche Baharuddin bin Mohamed Ariff.  
Mr. K. M. Byrne.  
Inche Mohamed Ali bin Alwi.  
Inche M. Ismail Rahim.  
Inche Yaacob bin Mohamed.

ABSENT:

Inche Mohd. Ariff bin Suradi.

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1. *The Bill considered, clause by clause.*

*Clause 1* agreed to.

*Clause 2:*

*Amendment proposed, in page 2, line 3, at end, to add-*

(d) by deleting the words "the Chief" appearing in the second line of subsection (3) thereof and substituting therefor the word "a";



- (e) by deleting the word "Chief" appearing in the fourth and fifth lines of subsection (3) thereof; and
- (f) by deleting the words "the Chief *Kathi* or" appearing in the first line of subsection (4) thereof.' - (Dato Abdul Hamid bin Haji Jumat).

*Amendment negated.*

*Clause 2* agreed to.

*Clause 3:*

*Amendments made-*

- (i) *In page 2, lines 9 and 10*, by leaving out "any law, religion, custom or usage" and inserting "the law of Islam".
- (ii) *in page 2, lines 14 and 15*, by leaving out "any law, religion, custom or usage" and inserting "the law of Islam".
- (iii) *in page 2, line 16*, by leaving out from "except" to the end of line 20 and inserting-
  - "(a) by the Chief *Kathi*; or
  - (b) with the written consent of the Chief *Kathi* by the *wali* of the woman to be wedded or by a *Kathi* at the request of such wali.
- (3) Before solemnizing a marriage or giving his written consent to the solemnization of a marriage under subsection (2) of this section the Chief *Kathi* shall satisfy himself after inquiry that there is no lawful obstacle according to the law of Islam to such marriage."- (Mr. K. M. Byrne).

*Clause 3*, as amended, agreed to.

*Clause 4:*

*Amendment made, in page 2, line 25*, by leaving out "and" and inserting-  
'(b) by inserting immediately after the word "satisfied" appearing in the second line of subsection (3) thereof the words "after inquiry"; and'.  
-(Mr. Byrne).

*Clause 4*, as amended, agreed to.

*Clause 5:*

*Amendment made, in page 2, lines 37 and 38*, by leaving out "a decision of a *Kathi*" and inserting "any decision of a *Kathi* under this Ordinance".- (Mr. Byrne).

*Clause 5*, as amended, agreed to.

*Clauses 6 to 8* inclusive agreed to.

*Clause 9:*

*Amendment made, in page 4, line 11*, after 'marriage' ', by inserting "appearing in the first and second lines of subsection (1) thereof".-(Mr. Byrne).

*Clause 9*, as amended, agreed to.

*Clauses 10 and 11* agreed to.

*New clause after clause 1:*

*New clause A* brought up and read the first time -

'Amend-  
ment of  
section 4.

Section 4 of the Muslims Ordinance (hereinafter in this Ordinance referred to as the "principal Ordinance") is hereby amended by inserting immediately after subsection (6) thereof the following new subsection:-

"(7) The jurisdiction, authority and powers of the Chief *Kathi* and any *Kathi* shall be such as are conferred by this Ordinance:

Provided that the Yang di-Pertuan Negara may by the terms of the letter of appointment of the Chief *Kathi* or any *Kathi* restrict the exercise of any powers which would otherwise be conferred on such Chief *Kathi* or *Kathi* by this Ordinance."'.-(Mr. Byrne).

*New clause* read a second time and added to the Bill.

*New clause after clause 5:*

*New clause B* brought up and read the first time:-

'Repeal  
and re-  
enactment  
of section  
17.

Section 17 of the principal Ordinance is hereby repealed and the following substituted therefor:-

"Copy of  
entry to  
be given  
to  
parties.

17. On the completion of the registration of any marriage, divorce or revocation of divorce, the *Kaihi* shall upon payment of the prescribed fees give to each party to the marriage, divorce or revocation of divorce a copy of the entry duly signed and sealed with his seal of office:

Provided that if the divorce is capable of revocation no certificate of divorce shall be issued to the wife until the expiration of the period during which the divorce may lawfully be revoked."'.-(Mr. Byrne).

*New clause* read a second time and added to the Bill.

*New clause after clause 11:*

*New clause C* brought up and read the first time : -

"Amend-  
ment of  
section  
42.

Section 42 of the principal Ordinance is hereby amended-

(a) by deleting the colon appearing in the fifth line thereof and substituting therefor a full-stop; and

(b) by deleting the proviso thereto."'.-(Mr. Byrne).

*New clause* read a second time and added to the Bill.

*New clause after clause 11 and new clause C:*

*New clause D* brought up and read the first time:

'New  
section  
60A.

The principal Ordinance is hereby amended by inserting immediately after section 60 thereof the following new section : —

"Unlawful  
solemniza-  
tion of  
marriage  
and  
unlawful

60A. Any person who-

(a) solemnizes or purports to solemnize any marriage between Muslims in contravention of the provisions of this Ordinance; or

registra-  
tion of  
marriage,  
divorce or  
revoca-  
tion of  
divorce.

(b) registers any marriage, divorce or revoca-  
tion of divorce effected between Mus-  
lims in contravention of the provisions  
of this Ordinance,

shall be guilty of an offence and shall be liable  
on conviction to a fine not exceeding five hundred  
dollars or to imprisonment for a term not ex-  
ceeding six months or to both such fine and im-  
prisonment.".'- (Mr. Byrne).

*New clause* read a second time and added to the Bill.

2. Bill to be reported.

#### REPORT

3. The Chairman's report *brought up* and *read* the first time.

4. *Resolved*, "That the Chairman's report be read a second time paragraph  
by paragraph."

*Paragraphs 1 to 10* inclusive read and agreed to.

5. *Resolved*, "That this report be the report of the Committee to the Assem-  
bly."

6. Mr. K. M. Byrne and Dato Abdul Hamid bin Haji Jumat thanked the  
Chairman, who replied suitably.

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